

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT AMPALA**  
**ELECTION PETITION APPEALS NO. 14 & 16 OF 2011**

*(Arising from the judgment and orders of Mwangusha J.  
dated 2011 in Election Petition No. 4 of 2011 at Jinja)*

5

**BETWEEN**

**1. MBAGHADI FREDRICK NKAYI**

10 **2. ELECTORAL COMMISSION :::::::::::::::::::: APPELLANTS**

**AND**

**DR. NABWISO FRANK WILBERFORCE B ::::::: RESPONDENT**

**CORAM:**

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**HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, DCJ**  
**HON. JUSTICE A.S. NSHIMYE, JA**  
**HON. JUSTICE REMMY KASULE, JA**

20 **JUDGEMENT OF A.E.N. MPAGI BAHIGEINE, DCJ**

The two Election Petition Appeals arise from the judgment and orders of the High Court (Mwangushya J) in Election Petition No. 4 of 2011 at Jinja. The 1<sup>st</sup> appellant appealed through Appeal No. 14 of 2011, while  
25 2<sup>nd</sup> appellant appeal through Appeal No. 16 of 2011. Both appeals were

consolidated by this court on 09/12/2011 vide Election Petition Application No. 0025 of 2011.

The learned trial judge, agreeing with Dr. Frank Wilberforce Nabwiso, hereinafter referred to as the respondent, ruled after trial of the Election Petition that there was gross miscomputation of the results which substantially affected the results and thus the court was unable to find that Mbagadhi Frederick Nkayi, hereinafter referred to as the 1<sup>st</sup> appellant, was validly elected.

The learned trial judge thereupon nullified the 1<sup>st</sup> appellant's election and ordered fresh elections. Hence the two appeals now consolidated into one appeal.

The following is the background. The 1<sup>st</sup> appellant and the respondent were amongst the 10 (ten) candidates who participated in the elections for Kagoma County Constituency, during the 18<sup>th</sup> February 2011 country wide general elections.

After polling, the 1<sup>st</sup> appellant garnered 11948 votes as against 11469 for the respondent. The Electoral Commission, hereinafter the 2<sup>nd</sup> appellant, declared the 1<sup>st</sup> appellant the winner.

The issues the learned trial judge had to determine were:-

1. **Whether or not the Petitioner won the election of Member of Parliament for Kagoma County.**
2. **Whether in the conduct of the election by the 1<sup>st</sup> respondent (Electoral Commission) there was non-compliance with the electoral laws and the principles therein.**
3. **If so, whether, the non-compliance affected the results in a substantial manner.**
4. **What remedies are available and to which party.**

The learned judge found as aforementioned and allowed the petition.

The issues before this appellate court are as follows:

1. *Whether or not the learned judge properly evaluated the evidence on record and came to the wrong conclusion –that the 1<sup>st</sup> appellant, Mbagadhi Frederick Nkayi was not validly elected member of Parliament for Kagoma Constituency.*
2. *Whether or not the learned trial judge erred in law and fact in finding that the results contained in the declaration of results forms that are not signed by the presiding officer are invalid.*
3. *Whether or not the learned judge erred in law and in fact in rejecting the results of the recount conducted in court.*

**4. Whether or not the learned judge erred in law when he found that non-signing of the Declaration of Results forms affected the results in a substantial manner.**

Mr. Kiryowa Kiwanuka with Mr. Thomas Ocaya appeared for the 1<sup>st</sup> appellant while Mr Musa Ssekaana was for the 2<sup>nd</sup> appellant. Mr Joseph Kyazze with Mr. Simon Kiiza represented the respondent.

Mr. Kiryowa, submitting on Issues 1 and 2 together, asserted that before the High Court, the respondent's case was that on examining the declaration of results forms (DRs) from the 133 polling stations he realized and was convinced that he had polled 11650;105 votes more than the 1<sup>st</sup> appellant who had polled 11,545. He believed that he would therefore have been the winner, but for the miscomputation of the results. This he pleaded, (Paragraph **5(a)** and **(b)** of his petition and paragraph **9** of the supporting affidavit).

15

There were 133 polling stations. In 118 there was no controversy as to their content and form. The respondent contested 15 polling stations. The first 12 relate to the failure by the Presiding officers to sign the Declaration of Results forms (DRS). For one DR form, the dispute concerned the signature of the respondent's agent and for two polling stations the controversy was about different results.

However, having stated that he had looked at the 133 polling stations DR forms, he turned around and claimed to have been denied DR forms from various 27 polling stations which he also claimed the presiding officers refused to sign. He listed them as annexure “0” to his affidavit  
5 in support of the petition.

Mr. Kiryowa asserted that all polling stations complained about in Annexure “O” appear in the scheduling Agreed Tally, except for Nakakulwe, Buwala Stone and Kyeriinda North and South polling  
10 stations which were disputed. He submitted that the respondent was so inconsistent and his evidence too contradictory, for his case to be believed.

Learned Counsel pointed out that originally four affidavits were filed  
15 with the petition complaining about only four polling stations. In this regard Ngobi Aloni filed an affidavit complaining about Butangala Mosque polling station. This complaint was however abandoned and admitted as H3/RR98.

20 The second affidavit was by Musoke Moses relating to Kayalwe A and B polling stations. These complaints were also abandoned and admitted as L /RR117.

The third affidavit was by Talugenda Badian was in respect of Nabulagala Trading Centre polling station which was again abandoned and admitted as L1/RR133. All this reflects inconsistency, learned  
5 Counsel submitted.

The fourth affidavit by Kayima Fred relating to Kyerinda North and South polling stations was not admitted. This therefore left complaints only in respect of Nakakulwe, Buwala Stone and Kyerinda North and  
10 South.

Counsel submitted that the respondent's pleadings violated all rules of pleadings. Even after scheduling as indicated above there was no attempt to attain consistency or definiteness. It was incumbent upon the  
15 respondent to ensure clarity and precision in order to secure and attain credibility. This the respondent had failed to do.

Mr. Kiryowa cited *J K Patel v Spear Motors Ltd Civil Uganda Supreme Court Appeal No. 4 of 1991* where a reference was made to *Phippson'*  
20 *Evidence (para 95)* on the burden of proof in the sense of establishing a case on the pleadings:

“...it rests, before evidence is gone into upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into,

*upon the party against whom the tribunal, at the time the question arises, would give judgment if no further evidence were adduced...”*

Mr Kiryowa maintained that there was no attempt by the respondent to  
5 make out his case on the pleadings and evidence. His case ought not to be believed.

Mr. Kyazze who opposed the appeal maintained that the respondent’s  
10 complaint before the High Court was twofold namely:

1. Miscomputation of results benefitting the appellant and
2. Non-compliance with the electoral laws.

He argued that failure by the presiding officers to sign the DR forms, the  
refusal by the presiding officer to avail DR forms to the respondent’s  
15 agents which affected the results in a substantial manner, all combined, amounted to non-compliance with the electoral laws.

He stated that the pre-trial conferencing memorandum was executed by consent of all parties and their Counsel. The memorandum sorted out:

- 20 1. Disputed results
2. Undisputed Declaration of Result forms of 118 polling stations.

It set out the disputed results and the respective DR forms for 15 polling stations. It stated issues for determination by court which put the petition into proper perspective as enjoined under Order XB of the Civil Procedure Rules, applied in *Tororo Cement Co. Ltd v Froline International Ltd* SCCA No 2 of 2001.

It was further argued by Mr. Kyazze that the consent memorandum overrode pleadings and admissions. The appellants were estopped from reopening it, citing *Administrator General v Bwanika James & Others*, SCCA No. 7 of 2003.

It is inconceivable to me that a party can be bound by a consent memorandum based on facts he realizes are erroneous. I note that learned Counsel disregarded the part of the judgment in the above case he cited which qualifies his statement thus:

*“...Indeed in as much as they are admitted with consent, the contents of such admitted documents can be treated as truth unless those contents intrinsically point to the contrary...”*

This is self-explanatory. The appellants were not estopped from referring and re-examining the consent memorandum. It was not an order endorsed by court.



Mr. Kyazze submitted further that the respondent did not depart from the confines of his case once the Judge had adopted the consent memorandum. He pointed out that the consent memorandum reduced  
5 the appellant's margin of 700 votes to only 6.

By challenging the 15 DR forms the respondent was demonstrating the non compliance with the Electoral Laws as pleaded in the petition. It had substantial effect on the entire electoral process. The appeal  
10 therefore lacks merit.

When filing a petition, the petitioner must have had knowledge of what votes he is challenging and must have had a basis for his challenge. Although mere irregularities or defects in the form of a petition should  
15 not be regarded as matters of vital importance, however, the particulars vital to the respondent's case should be clearly stated. This is not so with the instant appeal.

The respondent first based his claim on the entire 133 polling stations.  
20 In the same vein he denied having been availed DRs from 27 polling stations which he claimed had not been signed. This is a little difficult

to understand. They were not availed to him and yet he knew they had not been signed.

He failed to disclose the source of his information. It is trite that  
5 information has to be from his personal knowledge or that of his representative deponing to what they observed at the counting of the votes and that they even objected to the malpractice.

The absence of his source of information renders his claim to be hearsay, rather porous and therefore doubtful.

10 The polling stations referred to above where the DRs were allegedly not handed over to his agents and not signed are:

**Budondo Sub-county:**

(he mentioned 6 polling stations but listed):

Code 02 – Kivubuka Kazinga

15 Code 04 - Ivuuamba 11

Code 0 - Kabowa

***Sub-total - 3 (out of 34)***

**Buhaganya Sub-county:**

20 (he mentioned 10 polling stations but listed):

Code 0 - Nakakulwe (Kisozi)

Code 3 - Buwala Stone

Code 4 Buwala Primary School

Code 6 - Karambye Church

***Sub-total - 4(out of 32)***

5 **Buwenge Sub-county:**

(he claimed 3 polling stations but listed only):

Code 4 - Kihamba

***Sub-total 1(out of 33)***

10 **Buyengo Sub-county:**

(he claims 6 polling stations but listed):

Code 0 - Buwabuzi Mosque

Code 01 - Nakajo

Code 03 - Bukyenywe Trading Centre

15 Code 01 - Kakaire Health Centre

***Grand total 12(out of 133)***

Under paragraph 13 of his affidavit, he names 27 polling stations but manages to list only 12. This is anomalous and does not augur well with  
20 the required standard of pleading. These were matters material to the case. There had to be precision and clarity. A certain amount of detail was always necessary to achieve this goal. The learned trial judge does not seem to have carefully evaluated this aspect of the matter.

Turning to the issue of unsigned DR forms, Mr Kyazze concluded that the judge was correct not to declare the 1st appellant as the winner of elections on basis of incompetent documents.

5 I must now turn to examine the contents and form of the disputed DR forms:

Re: **Kivubuka:**

1. (a) The appellant's DR – RR9-ExD1 at page 520  
the appellant scored 264 votes.  
10 the respondent scored 116 votes.

The candidates' agents signed. The presiding office did not sign.

(b) The respondent's DR – D9-Exp1- at page 90

15 Candidates' results same as DR-RR9- Ex D1.

Same agents signed for both candidates.

Presiding officer Bwaming Samuel signed.

2. **Nawangoma Polling Station:**

20 (a) The appellant's DR-RR 29-Ex D2 page 560.

Appellant scored 92 votes

Respondent scored 108 votes.

The candidates' agents signed. Presiding officer did not sign.

(b) Respondent's DR D29-Ex P2. at page 124

Candidates' results same.

5 Candidates' agents signed. Presiding officer Bakala Samson signed.

### 3. **Bufula Polling Station**

(a) Appellant's DR-RR34-Ex D3 at page 570

10 Appellant scored 136 votes  
Respondent scored 130 votes.

Candidates' agents signed. Presiding officer did not sign.

(b) Respondent's D 34-Ex P3 at page 134.

15 Results same.

Candidates' agents signed. Presiding officer Baise Nicholas signed.

### 4. **Nakalulwe (Kisozi)** (disputed)

20 (a) Appellant's DR-RR43-Ex D4 page 588

Appellant scored 66 votes

Respondent scored 14 votes

Agents signed. Presiding officer Kyakubabye Samuel signed.

(c) Respondent's DR? (This station was disputed).

5 **5. Buwala Store** (disputed)

(a) Appellant's DR-RR 45- Ex D5-page 592.

Appellant scored 34 votes

Respondent scored 02 votes

Candidates' names do not appear at the back of DR nor do their agents appear.

10

(b) Respondent's

Nakakuliwe and Bwala were not admitted.

15 **6. St. Peter Primary School**

(a) Appellant's DR-RR 48-Ex D6- at page 598

Appellant's score – 67 votes

Respondent's score – 12 votes.

Neither agents nor presiding officer signed.

20

(b) Respondent's 7.14-Ex P4 page 192

Scores same

Agents signed. Presiding officer Balinonye Pascal signed

5 7. **Mpumwire Primary School**

(a) Appellant's RR 55-Ex D7 – at page 612

Appellant scored 52 votes

Respondent scored 57 votes.

Agents signed. Presiding officer did not sign.

10

(b) Respondent's 721 – Ex P5-page 206

Results same

Agents signed. Presiding officer did not sign.

15 8. **Nabukosi**

(a) Appellant's RR 59 – Ex D8- at page 619

Appellant's score 69 votes

Respondents' score 10 votes

Candidates' agents signed. Presiding officer did not sign.

20

(b) Respondent's 7.25-Ex P6- at page 214

Results same

Agents signed. Presiding officer Mugongona Edward signed.

5 9. **Yuka**

(a) Appellant's RR 68 –Ex D9- at page 639.

Appellant's score 063 votes

Respondent's score 074 votes

Presiding officer Fred's name appears.

10

(b) Respondent's H2-Ex P7- at page 269

Results same

Presiding officer Fred's name appears.

15 10. **Buwera Primary School**

(a) Appellant's RR 69 –Ex D10- at page 641

Appellant's score 286 votes

Respondent's score 92 votes

Agents signed. Presiding officer did not sign.

20

(b) Respondent's H3-Ex P8- at page 271



Results same

Agents signed. Presiding officer Rev. Mwenero David signed.

5 11 **Mutai 2** (disputed)

(a) Appellant's RR 72-Ex D11- at page 647

Appellant's score 97 votes

Respondent's score 206 votes

Agents signed. Presiding officer Mathias signed.

10

(b) Respondent's H.6 Ex P09- at page 277

Appellant's score 94 votes

Respondent's score 206 votes

Agents signed. Presiding officer Kabegere Mathias signed.

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12. **Mpungire** A-RR 87-Ex D12- at page 677

(a) Appellant's score 86 votes

Respondent's score fifty (50) votes

Agents signed. Presiding officer did not sign.

20

(b) Respondent's H6 –Ex P10 at page 306

Results same

Agents signed. Presiding officer S. Kismunia signed.

5 13. **Kyerinda** (disputed)

(a) Appellant's RR 107 – Ex D13- at page 717

Appellant's score 307 votes

Respondent's score 85 votes

10 Agents did not sign. Presiding officer Nambwere Prossy  
Kalika signed.

(b) Respondent's J11-Ex P11- at page 373

Appellant's score 107 votes

Respondent's score 185 votes

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14. **Buwenge South C**

(a) RR 108 Ex D 14 at page 719

Appellant's score 24 votes

Respondent's score 26 votes

20 Agents one signed. The other thumb marked. Presiding  
officer did not sign.

(b) Respondent's JR. Ex P12- at page 375

Appellant's same

Agents thumb marked. Presiding officer did not sign.

5 15. **Bugongwe** (U.A.C. of Rig)

RR 121 Ex D15- at page 745

(a) Appellant's score 46 votes

Respondent's score 43 votes

Agents signed. Presiding officer did not sign

10

(b) Respondent'S17 Ex P3 at page 415

Results same

Agents signed. Presiding officer did not sign.

The learned trial judge having rejected the above, allowed the  
15 respondent to rely on some DR forms though the appellants' certified  
copies were not duly signed by the presiding officers. These were for  
Ibbungu polling station, Buwenge South (KAZ) Buyengo Primary  
School; and Kanubona Pine Tree polling station.

**Ibbungu – at page 513**

20 The DR tendered in by the respondent was signed by the presiding  
officer but the DR produced by the appellant is unsigned.

Form RR6 indicates the score as follows:

Appellant - 93

Respondent - 180

Agents signed but not the presiding officer. Results were admitted.

- 5 Form D6 at page 84 indicates the same results.

Agents signed as well as the presiding officer Namukire. Results were admitted.

**Buwange South** (KAZ-) at page 721-2

Form RR 109 indicates:

- 10 Appellant scored 145

Respondent scored 153

Agents signed but not the presiding officer

Form J 13 at page 377

Same results

- 15 Agents signed as well as presiding officer Mawerere Dias

Results were admitted.

**Buyengo Primary School polling station**

Form RR 123 at page 749.

Appellant scored 94 votes

Respondent scored 130 votes

Agents signed but not the presiding officer.

5 Form L9 at page 419 shows:

Same results.

Agents signed

Presiding officer Otim Patrick also signed.

Results were admitted.

10

**Kambona Pine Tree polling station**

DR form RR 131 is signed by the candidates' agents though not by the presiding officer.

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DR l 17 at page 427

Appellant's score 110

Respondent's score 32

Candidates' agents signed as well as the presiding officer Asiimwe Jennifer. Results admitted.

It is pertinent to observe that these tend to give the respondent an upper edge.

5 The respondent's argument to which the learned judge acceded was that in the above cases he admitted an original DR corresponding to a certified copy. Where he had no original he did not admit uncertified signed copies, even though the results were the same.

10 Mr. Kiryowa argued that the results based on the DR forms produced by the respondent in appeal and the results contained in the appellant's DRs forms are the same, therefore the complaint is not about numbers but about something which happened after the voters of Kagoma had exercised their right. On all the DR forms the candidates' agents signed.

15

He argued that the purpose of the DR forms is to enable the candidate, the Electoral Commission and the voters to ascertain what took place at the polling station. They tell the story of those polling stations, he submitted. The agents sign to confirm the results after which the  
20 presiding officer is requested to sign, he asserted.

Learned Counsel also argued that the respondent admitted that the Electoral Commission can rely on DR forms which are not signed by the presiding officer as true and correct when he admitted some unsigned DRs in the Agreed Tally. An election is about checks and balances.  
5 The DR form provides one check. The other is by the polling agents. These safeguard the results of their principals the candidates by signing to confirm the results.

He cited *Anifa Kawoya Bangirana & anor v Joy Kabatsi, Election Petition Appeals Nos. 3 and 4 of 2007* where it was held by this court  
10 that “....., failure to sign the declaration of results forms per se does not affect the quality of the elections.

*Declaration of results forms are filled or completed after the poll is closed and the votes are counted in a polling station. If there are failures in the correct filling or signing of the declaration of result  
15 forms in any polling stations that could be a ground to justify recount. They do not affect the result of the election because such a failure does not invalidate the votes otherwise properly cast”*

Counsel pointed out that in this *Anifa Kawoya* case though the court had  
20 one set of unsigned forms to look at, it declined to hold that unsigned forms *per se* did invalidate the votes. The Supreme Court did not interfere with this position.

In the instant case, Mr. Kiryowa attributed such omissions as failure to sign the DR forms to the overwhelming number of candidates participating in the elections, and referred to para 9 & 10 of the affidavit  
5 of the Returning Officer, Mujuriza Flavia who averred that the election involved 10 candidates on the same day. There were about 16 agents at any single polling station. There was thus a flurry of activities.

Counsel further submitted that the validity of results in unsigned DRs is a matter of law and fact. Every set of facts must be examined  
10 separately. The learned judge was thus wrong to find that unsigned DR forms per se rendered the elections invalid.

Mr. Sekaana's arguments supported those of Mr. Kiryowa Kiwanuka.

Mr. Kyazze submitted that while the 1<sup>st</sup> appellant concedes to non  
15 compliance with the electoral laws his only contention is that such non compliance occurred in the last stages of the electoral process. Learned Counsel argued that failure to sign DR forms was an illegality and a gross violation of the mandatory constitutional statutory requirement. He cited ***Uganda Railways Corporation v Ekwam D.O. and 5104  
20 others CAC Appl. No. 185/2007.***



He stated that unsigned DRs were invalid for non compliance with the electoral laws and could not be included in the final computation of the results.

He maintained that the learned judge was alive to the duty of a trial court  
5 not merely to determine whether one had won but whether the elections were conducted in accordance with the electoral laws. The judge therefore had to consider the validity of the 15 DR forms disputed in form and content, Mr. Kyazze contended.

Starting with Nakakulwe, the judge found the DR form forged and thus  
10 not to be relied upon, adding that it was even never submitted upon and is not a ground of appeal. He asserted that the judge thus considered the remaining 14 DR forms and concluded that “the election cannot be said to have been held within the principles of transparency, freedom and fairness as alleged by the Chairperson Electoral Commission”.

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Citing section 12 of the Electoral Commission Act, he submitted that it mandates the Election Commission officials and participants to comply with the laws which include a statutory obligation for presiding officer to sign the DR forms as a condition precedent to announcing and  
20 declaring the results, citing **Article 68(4) of the Constitution**. He also alluded to Mr. Kiryowa’s submissions that signing the DR form being

the last stage of the electoral process underscores the importance of such a stage.

His view was that the fact that the respondent consented to some  
5 unsigned DR forms in the 118 agreed polling stations, was because the  
respondent had the original signed DR forms. The same could not  
extend to unsigned certified DR forms where he had no corresponding  
originals. Where he had no original he did not admit uncertified signed  
copies which are the ones disputed.

10 Mr. Kyazze argued that with regard to all the other forms the respondent  
contested, his agents had been denied DR forms. Signing the DR form  
by agent is not as mandatory as is signing by the presiding officer. The  
presiding officer is the agent of the Electoral Commission – and his/her  
signature is the basis of the results. His view was that the learned judge  
15 was correct in his findings. He prayed for dismissal of the appeal

Under the circumstances of this petition, I hold the view that the role of  
the court is not confined to balancing of the rights and merits of the  
opposing parties. Rather the question is, was a valid election held  
20 having regard to the rights of Kagoma voters? I have looked at the  
whole of the evidence – I have scrutinized the DR forms in question as  
indicated above.

I find that on the whole the results as borne out by documents are the same with no evidence of complaints whatsoever having been raised at the time of counting of the votes. The process was generally fault-free  
5 as pointed out by Mr. Kiryowa. The agents signed most forms without any complaints. They are the candidates' representatives. Thereafter the presiding officers signed some, though not all, at the same polling stations. This was the sealing of the process.

10 I consider the situation would have been different if there were no other copies to compare with. See *John Baptist Kakooza v The Electoral Commission* (supra).

In determining whether an election was so conducted as to be substantially in accordance with the electoral laws and whether the  
15 omission to sign some of the DR forms by the presiding officers affected the results – these are the questions for the court to decide basing on the evidence as a whole – *Baxter v Baxter (1950)2 All E R 458; Komuhangi v Babihuga T. Winne – Election Petition Appeal No. 9/2002.*

20 I thus do consider that under the circumstances of this case failure by the presiding officer to sign some of the DR forms cannot be used as a sword, where the agents signed most of them, to stop the mandate of the

voters of Kagoma County in electing a candidate of their own choice. see **Anifa Kawoya Bangirana and Anor.** (Supra). It would otherwise be tantamount to disenfranchising the unsuspecting Kagoma voters.

- 5 The purpose of section 12 of the Electoral Commission Act and Article 68(4) of the Constitution is not to disenfranchise but to safeguard the votes against fraudulent manipulation.

Substantial justice warrants this court to admit the results on the DR forms omitted to be signed by the presiding officers but which results  
10 are the same as on all forms in possession of the respondent and the 2<sup>nd</sup> appellant, which would restore the appellant's majority votes. The learned judge erred in law to disregard them.

***Regarding issue No. 3 whether or not the learned judge erred in law  
15 and fact in rejecting the results of the recount conducted in court.***

It is well established that a recount is not granted as of right but on evidence of good grounds, for believing that there had been a mistake on the part of the returning officer.

As regards the DR forms for Kyerinda North, and Mutai II polling stations, there were glaring discrepancies between the two forms coupled with the lack of a clue from the ballot box as to the intentions of the voters, the learned judge was correct to reject such results. Similarly  
5 Mutai II was correctly rejected for the unexplained discrepancies.

Regarding Buwala Store polling station where the signature of the respondent's agent was in question, this matter assumed a criminal element and should have been subjected to expert investigative  
10 assessment. With respect, the learned judge ought not to have arrogated to himself the role of a handwriting expert especially when there was nothing to compare the signature with. The results were, however, rightly rejected, for the other reasons.

This takes care of the entire petition which succeeds with costs here and  
15 below. The orders of the High Court annulling the Election of the appellant and ordering a by-election are set aside

I consequently hold that the majority of the voters of Kagoma Constituency elected the 1<sup>st</sup> appellant MBAGHADI FREDERICK  
20 NKAYI and this court would not interfere with their choice.

Since my Lords A. Nshimye and R. Kasule, JJA both agree, this appeal is allowed. The 1<sup>st</sup> appellant Mbaghadi Frederick Nkayi retains his seat as Member of Parliament for Kagoma Constituency.

As regards the issue of costs, I considered that since the Electoral Commission was responsible for the lack of signatures on some of the DR forms thus prompting the filing of the petition, it will bear its own costs of the appeal and below.

As between the 1<sup>st</sup> appellant and the respondent, the circumstances indicate that the respondent should not have rushed to court without thoroughly scrutinizing and establishing all the relevant DR forms as to their validity, he is therefore responsible for meeting some costs to the 1<sup>st</sup> appellant.

It is accordingly ordered that he pays to the 1<sup>st</sup> appellant half of the costs of the appeal and below.

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Dated this .....25<sup>th</sup> ..... day of ...May..... 2012

A.E.N. Mpagi Bahigeine  
20 **DEPUTY CHIEF JUSTICE**

**JUDGMENT OF A.S.NSHIMYE, JA**

I have had the benefit of reading the lead judgment of Hon A.E.N.Mpagi Bahigeine, DCJ.

I agree with it that the appeal be allowed with half of the costs here and  
5 below only to the first appellant.

Dated this ...25<sup>th</sup>...day of ...May... 2012

.....  
A.S.NSHIMYE,

10 JUSTICE OF APPEAL

**JUDGMENT OF REMMY K.KASULE, JA**

I too have had the benefit of carefully reading in draft the judgment  
15 prepared by the Honourable Deputy Chief Justice Mpagi-Bahigeine. I agree that the appeal ought to succeed for the reasons she has proposed as regards to costs.

Dated this ...25<sup>th</sup>...day of ...May... 2012

20 .....  
REMMY K.KASULE,  
JUSTICE OF APPEAL

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