

UGANDA / JUDGMENT

Birungi Kobusingye v Nantaba and Another (Election Petition Appeal No. 38 of 2021) [2022] UGCA 163 (16 June 2022)

[2022] UGCA 163

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Musota, JA, Gashirabake, JA

CASE / FILE NUMBER

Election Petition Appeal No. 38 of 2021

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT I{AMPALA

ELECTION PETITION APPEAL NO. O38 OF 202L

(Aising out of Mukono Election Petition No. OO2 OF 2021)

BIRUNGI KOBUSINGYE JACKLINE APPELLANT

\IERSUS

1. NANTABA IDATI ERIOS 2. ELECTORAL COMMISSION..... . RTSPONDENTS
CORAM: HON. MR. JUSTICE GEOFFR" EY KIRYABWIRE' JA HON. MR. JUSTICE
STEPHEN MUSOTA, JA HON. MR. WSTICE CHRISTOPHER GASHIRABAKE, JA

JUDGMENT OF COURT

This is an Appeal against the Judgment and orders of Olive Kazaarwe Mukwaya J. delivered on the 17th September, 2021 , at the High Court of Uganda at Mukono.

Background of the Appeal.

On the 14th day of January, 2021, the Electoral Commission conducted National Elections where the Respondent, Ms. Birungi Kobusingre Jackline, Ms. Nabirye Margret, Ms. Nakaddu Brenda, Ms. Nakweede Harriet, Ms. Nalubwama Agatha and Ms. Wabuza Lydia participated as candidates. The 1st Respondent was declared the validly elected Woman Member of Parliament for Kayunga District and was gazzeted on the 17th day of February, 2021.

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The Appellant was dissatisfied with the results and she filed Election Petition No. 002 of 2021, in Mukono. The petition was dismissed with costs hence this Appeal.

The following grounds of Appeal were raised for determination;

- 1. The learned trial Judge erred in fact and in law in finding that there was no evidence proving that the name discrepancy referred to another person other than the 1st Respondent.
- 2. The learned trial Judge erred in law finding that the word "supplemental" was explained by the Respondent thereby arriving at an erroneous conclusion.
- 3. The learned trial Judge erred in her evaluation of evidence thereby arriving at the wrong conclusion.

Representation

The Appellant was represented by Mr. Martin Asingwire. The 1st Respondent was represented by Mr. Ambrose Tebyasa while the 2nd Respondent was represented by Ms. Angeyo Jennifer.

Duty of the court

This being, inter alia a first and last appellate Court in election Appeals, we are alive to Courts duty as such. In *Kifamunte Henry v Uganda*, Supreme Court Criminal Appeal No.10 of 1997, court held that a first appellate court has a duty to review/reappraise the evidence and consider all the materials which were before the trial Court and come to its own conclusion regarding the facts, taking into account, however, the fact that it neither saw nor heard the witnesses testify and that in this regard,

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it should be guided by the observations of the trial Court on the demeanor of witnesses.

The duty of this Court is laid down in Rule 30(1) (a) Judicature (Court of Appeal Rules) Directions S. I (hereinafter referred to as "the Rules of this Court") provides; of the 13-10,

> "... (1) On any appeal from a decision of the High Court acting in the exercise of its original Jurisdiction, the court may

(a) Reappraise the evidence and draw inferences of fact; and in its discretion, for sufficient reason, take additional evidence..."

This court in *Mugema Peter v. Mudiobole Abedi Nasser*, Election Petition Appeal No. 30 of 2011, held that;

"... On first appeal, an appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to re-hear the case and to consider the materials before the trial judge. The appellate court must then make up its mind by carefully weighing and considering the evidence that was adduced at trial. . . ."

Section 61(3) of The Parliamentary Elections Act, 2005 (as Amended) provides for the standard of proof in election petitions, it provides that;

> "Any ground specified in subsection (1) shall be proved on a balance of probabilities"

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In the same *Mugema Peter v. Mudiobole Abedi Nasser* (supra) court set out the burden and standard of proof in Election Petitions as follows;

> "... The burden of proof lies on the petitioner to prove the assertions in the election petition and the standard of proof required is proof on a balance of probabilities according to Section 61 (1) and 3 of the Parliamentary Elections Act " Though the standard of proof is set by the statute to be on a balance of probabilities, because of the public importance of an election petition, the facts in the petition must be proved to the satisfaction of the court. A petitioner has a duty to adduce credible and/ or cogent evidence to prove the allegations to the stated standard of proof..."

Bearing the above position of the law in mind, we shall proceed to resolve Appeal.

Grounds 1, 2 and 3

The learned trial Judge erred in fact and in law in finding that there was no evidence proving that the name discrepancy referred to another Person other than the Respondent.

The learned trial Judge erred in law in finding that the word "supplementary" was explained by the Respondent thereby arriving at an erroneous conclusion.

The learned trial Judge erred in her evaluation of evidence thereby arriving at the wrong conclusion.

Appellant's submissions.

Counsel for the Appellant argued the grounds jointly because they relate to proof of academic qualification of the 1st Respondent. He argued that Section 4 (1) (C) Parliamentary Elections Act, 2005

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provides that a person is qualified to be a Member of Parliament if that person has completed a minimum formal education of advanced level standard or its equivalent. Under Section 61(1) (d) of the same Act, an election of a candidate may be set aside if proved to the satisfaction of court that she did not have the requisite academic qualification.

That the 1st Respondent presented for nomination an 'O' Level certificate of Education issued by the Uganda National Examination Board (UNEB) serialized as U546137. It has an overleaf. It is admitted in evidence as PE1 and is part of the documents marked RE1. It alleges that the candidate was Nantaba Idah E. and was for November/ December 1996 UNEB Exams.

He further submitted that the 1st Respondent also presented for nomination an A' Level Advanced certificate of education issued by the Uganda National Board (UNEB) serialized as A293822. It has an overleaf. It was admitted in evidence as PE 1 and is part of the documents marked RE1. It alleges that the candidate was Nantaba Idah and the certificate was for November / December 1998 UNEB Exams.

For the Appellant, counsel submitted that it is not in dispute that the 1st Respondent, like any other person must have attended senior 5 and 6 for a total of two years to obtain the Uganda Advanced Certificate Education after having obtained the Uganda Certificate of Education. This is what the 1st Respondent claims to have done.

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Counsel submitted that the Appellant proved that the person who obtained the Uganda Certificate Education results in PE1 was Nantaba Idah E, different from the person who obtained the Uganda Advanced Certificate Education certificate, who is called Nantaba Idah. These are two completely different persons.'

He avers that the UACE certificate clearly shows that it was issued as a supplementary certificate. The same certificate which court saw in original form shows overleaf, that the "word 'SUPPLEMENTARY' on the front of the certificate indicates that the candidate sat for the examination on a second or subsequent occasion"

Counsel submits that the Discrepancy in the names and the appearance of the words supplementary are proof that the said qualifications are not for the 1st Respondent. The standard of proof is stated in Section 61(1) and 61(3f) of the Parliamentary Elections Act, to be to the satisfaction of court and on a balance of probabilities. This court in Rehema Tiwuwe Watongola vs. Proscovia Salamu Musumba EPA27 OF 2016 Pg. 19 held that;

> "In view of the fact that questions were raised regarding the authenticity of the appellant's academic documents the appellant bore the burden of proving that the documents she presented for nomination were authentic."

He argued that once an allegation is made challenging qualification of a candidate / Member of Parliament, and then the burden shifts to the party who claims to have the qualifications to prove the

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authenticity of the contended documents. (Katureebe JSC, as he then was in Nakendo vs. Patrick Mwondha, Election Petition No. 09/2007.1

He submitted that the position of the law relates to Section 106 of the Evidence Act that once a Respondent is being challenged over a fact in his /her possession as the person asserting the truth of that fact, he/ she must prove it. Therefore, there is no doubt that the 1st Respondent must prove her qualification once they have been challenged. He averred that the documents must be proved by primary evidence according to Section 61 and 63 of the Evidence Act. Secondary evidence can only be used, where the document itself cannot be produced for the inspection of court. Section 91 and 92 of Evidence Act are to the effect that contents of ^a documents reduced in writing have been proved by bringing the document itself and no other evidence can be adduced as to the contents of the document.

Black's law dictionary, 9th Edition, defines the word,

'supplementary as "something which is added to supply defect in the thing to which it is added or in aid of which it is made for"

Long Dictionary 2003 Edition, defines the word supplementary/ as

"Provided in addition to what already exist"

Counsel submitted that when words are unambiguous, they must be given their ordinary meaning. The UACE certificate in PE2 therefore, was used in addition to another certificate. As the

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certificate itself explains in plain words, it is issued when ^a candidate is sitting the second or subsequent occasion. This description is the very description earlier issued by UNEB, by the Secretary who issued this very certificate, Mathew Bukenya. His signature which was not denied appears on both PE2 and PE3.

It was submitted for the Appellant that the evidence of the same certificate stating that the word has another meaning and using letters to explain its meaning which conveniently only favors the 1st Respondent is definitely not admissible. If 1st Respondent's evidence is that she sat 'O'level in 1996 and 'A'Level in 1998 when then did she sit the 1st 'A' Level to earn herself s supplementary certilicate?

Counsel submitted that during nomination, the 1st Respondent attempted to explain that her National Identity card had a mistake but 10 months after the attempt to correct her name there is still no identity card with the name Erios. If this is how Electoral commission registered her as a voter then she could have contested as Nantaba Idah Erios, no effort was made to correct the voter register.

He submitted that court should not accept an argument that ^a Statutory Declaration can help you acquire academic documents. Once documents do not belong to you, oaths do not give them to you, and only serve a purpose where there is no prior contention originating from qualification dated way back in 1996 or 1998. Certainly, the presentation of an award of Makerere University degree does not help either.

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Counsel submitted that this position of the law was pronounced by Supreme Court in Gole Nicholas Davis v. Loi Kageni Kiryapawo SC No. 19 of 2007, where Justice Katureebe JSC held that'

> "Once it is proved by evidence that a fraudulent certilcate formed the basis of an admission to an academic institute, even when it was presented together with other valid d.ocuments, its contagious effect would have vitiated the validity of other documents, and rendered the admission and the award resulting there from invalid"

Counsel also made reference to SerunjoJi James Mukitbt vs. Lule Umar Mawlya EPA 15 OF 2006, which dealt with this question. He argued that the alteration of names shows that it was done to annex academic qualihcations that did not belong to the Appellant. In conclusion, the Nantaba Idah E who sat 'O' Level in 1996 is not the same as Nantaba Idah who sat 'A'level is 1998, as the same person cannot have obtained a supplementary certificate on ^a subsequent sitting. To accept an argument otherwise is to change the law on documents and proof thereof.

Counsel prayed that this court should set aside the said judgment and orders.

Respondent's Submissions.

counsel for the 1st Respondent submitted that at the time of her nomination, the 1st Respondent presented to the 2nd Respondent her academic documents vide exhibit R1. These included the 'O' certificate No U546137 and 'A' level certificate No. A293822, in

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the names of Nantaba Idah E and Nantaba Idah respectively, together with their respective verification letters from UNEB dated 7171202L. She also presented a Makerere University transcript which bore the names of Nantaba Idah and her photograph, together with a copy of the statutory Declaration which was published in the Uganda Gazette dated 30th September 2020, which explained and clarified the 1st Respondent's names'

Counsel submitted that the issue of the names Nantaba Idah, Nantaba Idah E. and Nantaba Idah Erios were sufficiently and satisfactorily explained by the 1st Respondent in her answer to the Petition and the affidavit thereto.

He submitted that the submission that the 1st Respondent was required to prove her qualification when challenged is borne out of context. The burden of proof laid on the Petitioner/ Appellant throughout the proceedings to prove her case to the satisfaction of court. It is only the evidential burden that would shift after the Petitioner had adduced credible and cogent evidence' (See Mutembuli Yusuf vs. Nagwomu Moses Musumba and Electoral Commission EPA No. 4312016)

With regard to the word "supplementary" counsel for the Respondent submitted that it had been satisfactorily explained by UNEB the issuing authority and no contrary evidence was led to controvert that evidence. UNEB vide exhibit R2B dated 51212016 on page 137 of the ROA, which was addressed to Wagabaza & Co. Advocates on behalf of the Respondent in 2016 explained that;

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"supplementary results were awarded to candidates registered as private candidates. Currently, supplementary results are awarded to candidates who have repeated the examination. The Board stopped giving supplementary results to all private candidates from 2001. Now only persons who repeated the examination after initially qualifying for a certificate are awarded supplementary awards. Nantaba Idah was a certificate marked 'supplementary' because she was registered as a private candidate and fulfilled the conditions for award"

Furthermore, counsel submitted that the UNEB letter vide exhibits R6(C) and R6 (D) dated 9/11/2021, confirmed the authenticity of the 1st Respondent's 'A' Level Certificate. The document provides that;

> "candidate uo7o5/663 (NOV/DEC 1998), Nantaba Idah, was among the 148 candidates who did not attend regular classes at Mukono Town Academy. UNEB permits schools that do not have examination centre numbers to have their candidates register at another approved school which has capacity to accommodate the number. The receiving school (Mukono Town Academy) misinterpreted the UNEB guidelines to declare the candidates as school private candidates. The school erroneously accorded them the Entry Code 8, interpreted to imply that they were private candidates repeating the examination whereas not The certificate issued to all the successful candidates of that lot bear the inscription 'Supplementary' The said certificates, however remain valid and authentic as any certificate issued to successful candidates for the same examination"

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Counsel submitted that the 1st Respondent is not the only one with an Advanced Level Certificate of Education with the word "supplementary" as alluded to by the appellant' Hon. Nyangweso Denis is one of the candidates who studied with the 1st Respondent at Green Ville High School from 1997 to 1998 and 'A' level examination at Mukono Town Academy.

Counsel contrasted the witness of the Appellant Kyomugasho B' Sidonah who had sat her 'A' Level at Immaculate Hearts Girls School, he argued that her affidavit is of no evidential value since she did not complete 'A' Level Education under the same circumstances and at the same school with the 1st Respondent'

Nexus between the 1st Respondent's Respective UCE and UACE certificate.

It was submitted for the Respondents that the student's index number voLTLlL2g, appearing on the "O" Level certificate of the 1st Respondent corresponds with the student's index number OL7I-|123 appearing on the UCE entry Form.

Similarly, the student's index number UOTOS /663 appearing on the 1st Respondent's 'A' level certificate correspond with the student's index number O7O5/663 appearing on the UACE entry Form for the 1st Respondent. Most importantly, the 1st Respondent's UACE entry form dated 1998, creates a clear nexus of the 'O' Level candidate with index number OLZLIL2S and the 'A' Level candidate with index number 0705/663 as it quotes both of them

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and removes any doubt about the identity of the candidate who sat both "O" and "A" under those index Numbers.

National identity card in the names of Nantaba IDNI Erios and Nantaba Idah.

counsel submitted that National Identification and Registration Authority (NIRA), in their letter dated 10 October 2020, addressed to the Chairman Electoral Commission, explained that, at the time, it was in the process of correcting the names of the 1st Respondent on her National Identity Card from Nantaba Idah to Nantaba Idah Erios and in the same letter, NIRA confirmed that it was an error made at the time of data entry in the National identification Register.

Furthermore, counsel for the Respondents submitted that the Petitioner's submissions that the 1st Respondent's name was never corrected in the voter's register is evidence from the bar. The Appellant did not plead or attach any evidence to that effect. Neither did she challenge and raise a complaint with the 2nd Respondent about the 1st Respondent's nomination as required by Article 61(1) (b) of the Constitution and Section 15 of the Electoral Commission Act, yet the appellant confirmed to have inspected the 1st Respondent's nomination documents.

He noted that it is now settled law that once a candidate failed to raise a complaint with the Electoral Commission regarding another candidate's nomination as required by Section 15 of the Electoral

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Commission Act, she/ he is estopped from raising the same issues after elections. (See *Kasirye Zziranula Fred vs. Bazigatirawo Kibuuka Francis Amooti and EC Election Petition Appeal No. 10/2018*.)

Negations on using a statutory declaration and a deed poll by the 1st Respondent to acquire academic documents

Counsel submitted that the Statutory Declaration was never to assume papers but to inform the whole world that the 1st Respondent was one and the same person appearing in both papers. He noted that the 1st Respondent adduced evidence of both her head teachers at the time. Mr. Geserwa George the head teacher at Kattikamu Light college and Mr. Ssemogerere William the Head teacher of Green Ville High School Mukono. That since the Petitioner did not challenge the 1st Respondent's evidence and explanation of academic documents she was satisfied that all averments of the 1st Respondent are true (See *Kalyesubula Fenekanis vs. Luwero District land board and 2 other M'A No' 5,67 of 2011 arising from C. S. No 186 of 2011*.)

It was counsel for the Respondents' submission that the Appellant has failed to prove that the 1st Respondent did not have the required qualification.

Consideration of Court.

We will consider the grounds jointly as the Appellant submitted since they all revolve around proof of academic qualifications. It was

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the Appellant,s contention that the 1st Respondent did not have the requisite minimum academic qualification as required under Article 80 (1) (C) of the Constitution and Section a (1) (C) of the Parliamentary Elections Act. These two provisions provide that for a person to qualify to be a Member of Parliament they must have completed a minimum of advanced level of education or its equivalent.

It is the Appellant,s case that 1st Respondent that Nantaba Idah ^E who sat ,o, Level in 1996 is not the same as Nantaba Idah who sat 'A' level is 1998, as the same person cannot have obtained ^a supplementary certificate on a subsequent sitting. It was brought to the attention of this court that the 1st Respondent's certificate possessed the word "supplementary" which meant that the Appellant had re-sat the exam. The Appellant's question is how could the same Nantaba who sat for Uganda Certificate of Education in 1996 have sat a supplementary exam in 1998 yet ordinarily that would have been her first sitting? counsel for the Appellant concluded that the 1st Respondent used someone else's academic papers in order to meet the requirement of Article 80 (1) (c) of the constitution and section a 1(c) of the Parliamentary Election Act. While resolving this issue the trial court held that;

> "Besides the averments in the affidavit in support of the Petition, the Petitioner did not adduce additional evidence to prove that the 1st Respondent was not the genuine owner of the 'O' and 'A' level certificates, Ex. P.1 and P.2' On the other hand the 1st Respondent attached a copy of ^a Statutory Declaration dated 30th September 2020 She

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explains therein that all three names 'Nantaba Idah Erios' belong to her. Also attached is a copy of the Uganda Gazette dated 2nd October 22 containing the Statutory Declaration"

We were able to peruse through the petition and the supporting affidavits and we agree with the trial Judge that just mere averments in the affidavit without proof do not warrant a Petitioner ^a judgment in their favour. It is an established requirement of the law in Election Petitions that whoever wants court to give judgment in their favour must adduce cogent evidence to prove their averments to the satisfaction of court. In *Masiko Winfred Komuhangi v. Babihuga J. Winnie*, Election Petition Appeal No.9 of 2002 , Justice Mukasa -Kikonyogo DCIL, held in her lead judgment that,

> "As I have already stated above, the decision of court should be based on the cogency of evidence adduced by the party who seeks judgment in his favor or her favor' It must be that kind of evidence that is free from contradictions' truthful so as to convince a reasonable tribunal to give judgment in a Party's favor"

The law on change of names has been considered by both this Court and Supreme Court. In Mutembuli Yusuf vs' Nagwomu Moses Musumba, Election Petition No. of 20L6, where court quoted Col.(Rtd) Dr. Besigye I(:izza vs. Muaevenl Yoweri Kaguta Election Petition No.1 of 20OL, stated as follows;

we know that the order of tfre names of those parties have been changing almost on every election at the instance of the Election Commission. We do not agree with the proposition that the order of

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names would have any effect on the candidate's academic qualilications on their own. More evidence must be adduced to prove to the satisfaction of the Court, that a person who sat and obtained certain academic qualifrcation is not the same person who was nominated for an election' In this case the only evidence presented was that of discrepancy in names. That discrepaacy was ably explained away by the 1st Respondent when he proved that he had only added his father's nzunes on to his own names

This is what Shakespeare wrote in his book, Romeo and Juliet; what is in a name? 'A rose by any other name would smell as sweet!'

In other words a label or name cannot alter the character or substance of the subject. a qualified doctor does not cease to be one simply because

thenameathisdoorismisspeltorincludesanalnethatdoesnotappear onhisdisagreecertificate.

Thequotationtobeanswerediswhetheror

notthepersonbehindthatdoorisonewhoqualiliedfromthemedical school. The Ernsvers to that question must inevitability go far beyond the order to the narne on paper qualification In this case there must be proof providedbytheappellantthatthelst Respondentdidnotobtainthe required qualifications. That proof was lacking "

The Respondent in this appeal was the Petitioner at the High Court' Among other prayers, the Appellant in the lower court prayed that the election and declaration of the lst Respondent be set aside and the 2nd Respondent be ordered to organize a by -election for Woman Member of Parliament for Kayunga District under section 3 of the Act.

Election petition evidence is by way of affidavit, we shall refer to the affidavit evidence on the Record of Appeal, in Paragraph 5-16 of the Appellant's affidavit, she averred that;

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- 5. At the nomination, the 1st Respondent presented a Uganda certificate of education issued in 1996 from Uganda National Examinations Board, indicating that the 1st Respondent sat the examination at light college Kattikamu under index number vorT I I r23.
- 6. The 1st Respondent also presented a Uganda Advanced Certificate of Education issued in 1998 from Uganda National Examinations Board, indicating that the 1st Respondent sat the examination at Mukono Town Academy under index number U7O51663'
- 7. The certifrcate referred to in A'has the names Nantaba Idah ^E while the certificate referred to in 'B'has Nantaba Idah' Both certificates and or one of them does not belong to the 1st Respondent whose name is claimed to be Nantaba Idah Erios'
- 8. The certificate referred to in annexure B' bears the words 'SUPPLEMENTARY' which from the overleal indicates that the candidate sat for the examination on a second or subsequent occasion. The Word was further explained in a communication from the examinations body.
- 9. It is clear from the certificates that the two candidates in the said certificates were registered under UNEB Centers with schools stated and the index numbers, and not as private candidates'
- 10. To qualiff with a UACE certificate , one must have studied for two years of senior 5 and 6 which last two years , and as such' ^a person who sat'O'lêvel in 1996 cannot have sat a supplementaSz exam in 1998 as that would be the flrst year and occasion for sitting.
- 11. From the above, Nantaba Idah E who sat 'O'kvel in 1996 cannot be the same as Nantaba Idah who sat 'A' Level in 1998 on ^a second or subsequent occasion.
- 12. The 1st Respondent therefore has no proof of obtaining the minimum academic qualifications, and the certificates of education do not belong to her.

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- 13. The 1st Respondent was by reason of lack of academic qualihcations not qualified to contest for the seat of Member of Parliament as required bY law.
- 14. The 1st Respondent further presented discrepancies in her names and schools attended when she presented a Curriculum Vitea to the 2nd Respondent.

- 15. The 1st Respondent has claimed on several occasions to have sat the examination at Advanced Level as a private candidate, but the certificate and CV attached state otherwise'
- 16. Nantabaldah E, Nantabaldah, Nantabaldah Erios and Nantaba Idah Erios are different persons and do not refer to the first Respondent"

The Appellant made the above averments but she did not exhibit the required burden of proof. It is not enough for the petitioner to show the discrepancy between the names and the names of their academic certificates. The Petitioner has to adduce more evidence to prove to the satisfaction of court that the person who sat and obtained certain academic qualifications was not the same person who was nominated for election, but someone else somewhere. As proof the Appellant ought to have produced the alleged owner of the said documents to this court, which she did not'

We have perused through all the documents referred to by the 1st Respondent and we believe that there are authentic. one of the functions of UNEB is to issue certificates. The Appellant did not bring any evidence to show that actually what the 1st Respondent averred was not true.

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Lst Respondent

The 1st Respondent corroborated her averments by filing affidavits of different witnesses like her schoolmate Hon. Nyangweso Denis, who averred that he joined Greenville High School Mukono in ¹⁹⁹⁷ in senior 5 and they did not have a UNEB centre number. He stated that they registered under Mukono Town Academy and when their 4^A level certificates came back, they bore the word .. Supplementary" Mr. Ssemwogerere William the former head teacher also averred to the same effect. Lastly in the letter dated 1st February 2016, Exh. R2B, the UNEB Executive Secretary, MBB Bukuya explained specifically why the word "supplementary" appeared on the 1st Respondent's "A" Level certificate'

Additionally, she swore a Statutory Declaration and made a deed poll to the effect that the said documents refer to her'

we are persuaded by the above cogent evidence that the 1st Respondent had the requisite academic qualification as required under Article 80 (1) (c) of the constitution and section 1 (c) of the Parliamentary Elections Act. The petitioner/ Appellant did not produce the alleged owner of the said academic documents. She had the evidential burden in law to prove what she was challenging in the Petition.

we therefore find that the trial Judge was right in finding that the Petitioner had failed to prove to the satisfaction of the court on ^a balance of probabilities that the 1st Respondent did not have requisite academic qualification.

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Before we take leave of this appeal, we note that the Appellant's queries are pre-nomination complaints that ought to be reported by the Appellant to the Electoral Commission before elections are conducted. Section 15 of the Electoral Commission Act and Section 15 of the Parliamentary Elections Act, provide an avenue for pre-nomination complaints to be lodged before any Returning Officer and the Commission before or during nomination. A candidate is expected to inspect the nomination file of the opponent and make any such complaint in order to save the electorate from wasting their time. It has been held that once ^a candidate does not raise any pre-election/ nomination complaint before or during nomination period, it is presumed that he/she has foregone their rights to contest the candidature of the opponents. In *Kasirye Zzirulula Fred vs. Bazigatirawo Kibuuka Francis Amooti and anor*, Election Petition No'01 of 2018, court held that,

> "From the reading of the above provisions of the law, it appears to us that the intention of the legislature in enacting section 15 of the Electoral Commission Act was to ensure that all disputes arising prior or during nominations before voting are resolved with finality before the election date, except where the law otherwise specifically provides' Timely complaints will avoid undue expense and inconvenience to the parties inclusive of the electorate who do not have to vote where nomination is contested Issues of nomination should be resolved before elections'

> It appears to us that, the appellant waived his rights to complain when he failed to bring the complaints within the

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stipulated period and as such would be estopped from doing so after the election"

Principally, this appeal would have also failed on this ground that the Petitioner never approached the Commission, about the authenticity of the academic documents of the 1st Respondent but waited for the elections to be concluded before she came for redress from court. This court in *Namujju Dlouizia Cissy and the Electoral Commission vs. Martin Kizito sseruranga*, Election petition Appeal No. 62 of 2016, held that failure to comply with the Parliamentary Elections Act should not be taken lightly because elections are not ordinary suits where a party is enforcing a right accruing to him/her as a person. Rather that it is an exercise which involves the determination of Constitutional rights of many people. The procedures set down are special and must be followed strictly.

In conclusion, we find that the 1st Respondent was academically qualified to be nominated and elected as woman Member of Parliament of Kayunga District. However, whereas the law under Section 26 of the civil Procedure Act provides that costs follow the cause, we are persuaded that in the interest of justice this court will not award costs. This court in *Akuguzibwe Lawrence v' Muhumuza David and o2 others*, Election Petition Appeal No.22 of 20-16, where court held that,

> "Election litigation is a matter of great national importance in which courts should carefully consider the question of awarding costs so as not to unjustifiably deter aggrieved parties from seeking court redress"

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This court further persuasively cited the authority of *Mwogezaddembe v. Gagawala Vlambuzi*, Hlgh Court Election Petltion No.2 of 200L, where it was held that;

> "There is another dimension to such petitions; the quest for better conduct of elections in future". Keeping quiet over weaknesses in the electoral process for fear of heavy penalties by way of costs in the event of losing the petition...would serve to undermine the very foundation and spirit of good governance"

It is therefore our finding that the appeal does not have merit and it is hereby dismissed with no order to costs. The judgment and orders of the lower court are hereby upheld, to the effect that;

- 1. The 1st Respondent was validly elected as a Woman Member of Parliament for KaYunga District.
- 2. Each party shall bear its own Costs both in this court and in the lower court.

Dated at Kampala this \\\\$^ a.y or...ar,rn\ ²⁰²²

GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

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STEPHEN MUSOTA

JUSTICE OF APPEAL

C. GASHIRABAKE

JUSTICE OF APPEAL

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