

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
[Coram: Egonda-Ntende, Bamugemereire & Luswata, JJA]
ELECTION PETITION APPLICATION NO. 16 OF 2023,
(Arising out of Election Petition Appeal No. 04 of 2023)
(Arising out of Election Petition No. 07 of 2021)

BETWEEN

ARIKO JONNY DE WEST ===== APPLICANT

AND

OMARA YUVENTINE ===== RESPONDENT

RULING OF THE COURT

Introduction

[1] The applicant and respondent were candidates for the seat of the LCV Chairperson for Abim District in the general elections held on 14th January 2021. The Electoral Commission (EC) returned the respondent as the validly elected LCV Chairperson for the District. The applicant filed Election Petition No. 007 of 2021 at the Soroti High Court challenging the outcome of the election. On 9/3/2023, the High Court nullified the respondent's victory on grounds that at the time of his nomination, he had not resigned from the Uganda People's Defence Forces (UPDF). The respondent accordingly filed Election Petition Appeal No. 04 of 2023 (EPA No. 4/2023) to this Court, challenging the decision of the High Court.

[2] The applicant has now filed this application under Rules 2(2) and 43(1) & (2) of the Judicature (Court of Appeal Rules) Directions S.I 13-10 (hereinafter the Rules of Court) to seek an order of this court to strike out pages 11 to 16 of the respondent's

5 supplementary Record of Appeal, for the reason that it does not
form part of the record of the High Court. The appellant in
addition seeks costs of the application.

[3] The grounds of the application were set out as follows:

- 10 1. The applicant successfully obtained judgement in
Election Petition No.07 of 2021 against the respondent at
the High Court of Uganda at Soroti.
- 15 2. The respondent appealed against the Judgement of the
lower court to the Court of Appeal vide **Election Petition
Appeal No. 04 of 2023- Omara Yuventine V Ariko
Johnny De West.**
- 20 3. That on the 23rd May 2023, the respondent filed a
supplementary record of appeal with smuggled evidence
at pages 11 to 16 that did not constitute evidence before
the lower court.
- 25 4. The smuggling of the certificate of service at pages 11 to
16 in the respondent's supplementary record of appeal is
aimed at extinguishing the lower court's finding that the
respondent had not been lawfully discharged from army
30 at the time of his nomination for the LCV Chairperson
Abim District.
5. That pages 11 to 16 of the respondent's supplementary
record be struck out for not forming part of the lower
court's record.
- 35 6. That it is just and equitable that the orders sought in the
application are granted.

[4] Mwesiga Philip an advocate of the Courts of Judicature attached
40 to the law firm of JB Byamukama & Co. Advocates, filed an
affidavit in support of the application. Briefly, he deposed to the
fact that after filing their appeal, the respondent's lawyers served

5 his firm with a record of appeal, which he confirmed contained
the true record of the High Court at Soroti. However, that on
23/5/2023, the respondent again filed and served upon them a
supplementary record of appeal that contained a Certificate of
10 Service for the respondent contained in pages 11 to 16 of the
supplementary record. That being aware that the Certificate of
service (hereinafter Certificate) was never part of the record of
the High Court, his firm sought, and on 31/5/2023 received
from the Registrar of the High Court, certified copies of the
15 respondent's answer to the petition, affidavit in support, and all
annexures thereto. Mr. Mwesiga was then able to confirm that
pages 11-16 of the supplementary record did not form part of the
record of the High Court. He considered the actions of the
respondent's counsel as illegal and unethical, aimed at
extinguishing the High Court's finding that the respondent had
20 not been lawfully discharged from the army at the time of his
nomination for the election of the LCV Chairperson, Abim
District.

25 [5] The respondent opposed the application. He filed an affidavit in
reply to the application where he raised two preliminary points
of law to wit:

- 30 a. The applicant has in Election Petition No. 4/2023 already
raised and made their submissions in respect of a
preliminary objection regarding the impugned pages 11-16
of the appellant's supplementary record of appeal
(hereinafter SRA). The appellant has likewise responded to
that objection. The objection awaits the judgment of this
Court and expunging the same in this application is only
35 designed to delay the judgment in the appeal and would
render the submissions of both parties on that objection,
nugatory.

5 b. Mwesiga Philip as the advocate in personal conduct of the
matter is prohibited from deposing to the facts of the affidavit
in support of the motion.

10 [6] Mr. Omara in addition generally denied all facts raised in Mr.
Mwesiga's affidavit. He contended that the impugned Certificate
was adduced at the trial and was referred to by the Judge at page
19 of his judgment. That he is in possession of the original
Certificate issued to him by the Uganda People's Defence Forces
15 (UPDF) and can produce it for the inspection of this Court. That,
that notwithstanding, a copy of that Certificate appears as
Annexure "B" at page 10 and Annexure "E" of the supplementary
record, both being parts that are not under contest in this
application. That in fact, pages 11-16 of the SRA are integral
pages and part of the Certificate and as such, cannot be severed
20 from it.

25 [7] Mr. Omara continued that the trial Judge made a correct finding
that he had attached the Certificate instead of a discharge
certificate, but misdirected himself on the legal effect of the
Certificate, which is the subject of the appeal.

30 [8] Mr. Mwesiga filed an affidavit in rejoinder. He denied being the
advocate in personal conduct of the matter and therefore not
legally prohibited to depose to facts supporting the application.
He asserted that the application is necessary in order to address
the propriety of only pages 11-16 of the SRA, and the need to
strike them out because they were never part of the record at the
High Court but merely an attempt by the respondent to adduce
evidence without leave of this Court. He explained further that
35 only page 10 of the Certificate was attached, but not pages 11-
16 of the SRA, and that the reference made at page 19 of the
judgment of the High Court, was limited to the contents and
annexures attached to the respondent's affidavit in answer to the
petition. He emphasized that in his judgment, the trial Judge

5 held that the Certificate produced by the respondent did not
prove that he resigned or retired from the UPDF before his
nomination in accordance with the UPDF Act. He concluded by
repeating his prayer that the Certificate be struck out for not
forming part of the record of the High Court.

10 **Submissions of Counsel**

15 [9] Both parties were present at the hearing at which the applicant
was represented by Mr. Jude Byamukama who was assisted by
Mr. Innocent Okong. Mr. Evans Ochieng represented the
respondent. The parties opted to rely on their written
submissions on record.

20 [10] In his submissions, counsel for the applicant repeated the
grounds raised in the motion. He then drew our attention to
Rules 87(1), (3) & (5), 89 and 90(4) of the Rules of Court. He
submitted then that once an appeal is filed in this Court, the
Registrar is mandated to obtain from the High Court the original
25 record and proceedings of the High Court. That a respondent
may with leave file a supplementary record of appeal if they wish
to cure defects in their record or, to file additional documents.
He submitted further that a SRA which must be prepared near
as may be in the same manner as the filed record, contains only
basic documents mentioned in Rule 90, because it merely
30 supplements a defective or insufficient original record of appeal.
Citing the decision of the Supreme Court in **Barclays Bank of
Uganda Ltd versus Eddy Rodrigues, Civil Appeal No. 5/1987**,
he emphasized that a SRA can only contain documents,
pleadings and exhibits that formed the record of the lower court.

35 [11] Counsel continued that pages 11-16 of the SRA (being the
respondent's purported certificate of service) are invalid for not
having been part of the record of the High Court. To confirm those
submissions, he offered that the certified copies of the
40 respondent's pleadings in respect of the petition filed in the High

5 Court on 10/5/2021, confirm that those pages were not part of
the annexures attached to his affidavit in support of the answer
to the petition. He asserted in addition that even if the respondent
claims he has the original certificate, he cannot at this point
10 adduce it as additional evidence. He submitted further that the
respondent's actions in filing the impugned parts of the SRA
contravened Section 74(1) of the Advocates' Act which amounted
to outrageous and unethical conduct meant to undermine part of
the decision of the High Court Judge. In conclusion, he prayed
that pages 11-16 of the SRA be struck out and expunged from the
15 Record of Appeal.

[12] In response, Mr. Ochieng submitted that the respondent filed EPA
No. 4/2023 to contest the decision of the High Court which
nullified his victory as the duly elected LC V Chairperson Abim
20 District on grounds that at the time of his nomination, he had not
resigned from the UPDF. That decision was made in spite of the
fact that the respondent attached his certificate of service, which
is conclusive proof of his retirement. That after the respondent
filed his SRA, both parties filed their conferencing notes, and in
25 his notes, the applicant raised a preliminary objection contesting
the impugned pages 11-16 of the SRA, which they responded to
and is now pending the decision of the Court. The applicant then
filed this application on 22/8/2023, seeking the same orders but
being filed out of time. They also consider this application a
30 deliberate attempt to delay the hearing and disposal of EP No.
4/2023, in contravention of section 145(2) of the Local
Governments Act Cap 243, that directs that election appeals are
heard and determined within a period of three months.

35 [13] Mr. Ochieng submitted in the alternative that after perusing the
record he filed in Court on 28/3/2023, the respondent realised a
few attachments to the answer to the petition and affidavit had
not been attached. That to cure that defect, he filed a SRA on
23/5/2023 containing those omitted pleadings on which was
40 attached additional parts of his certificate of service which he had

5 initially tendered and relied on at the trial, and on which the Judge partly relied to arrive at what he considered an erroneous decision. That similarly on 18/4/2023, the applicant filed a SRA attaching documents he had omitted to file that he considered relevant to his case. Counsel equally quoted Rule 90(4) of the Rules of Court as the provision allowing such a filing to be done and the decision of **Barclays Bank of Uganda Ltd (supra)**, to explain the import of the SRA.

10 [14] Counsel continued that in their submissions with respect to EPA No. 4/2023, the applicant's counsel did raise a preliminary objection against the expunged pages. That the same advocates made submissions in their conferencing notes on appeal knowing that it would be considered by the Court before the Justices delve into the merits of the appeal. Thus, they are estopped from raising the same objection in this application which would render nugatory the conferencing notes filed by both parties in the appeal, and a waste of courts time meant to delay determination of the appeal.

25 [15] In particular response to the matters raised in this application, respondent's counsel contested the allegation made that the impugned pages of the SRA are being smuggled into the appeal. Counsel contended that a copy of the respondent's certificate of service was tendered at the trial as Annexure A (in paragraph 4) to the respondent's affidavit in support of his answer to the petition. That equally, in paragraph 5 at page 19 of his judgment, the Judge relied on those documents when making his judgment. That in fact, the point of contention in the election appeal is that the Judge wrongly evaluated that document and its legal effect when he wrongly decided that the respondent had attached a certificate of service, instead of a discharge certificate. Counsel elaborated that before his nomination, the respondent sought retirement from the UPDF under Regulation 31(3) of the Uganda People's Defence Forces (Conditions of Service) (Officers)

5 Regulations SI 307-2 (hereinafter UPDF Conditions of Service Regulations), but not resignation, as was wrongly found by the Judge.

10 [16] Respondent's counsel contended that his learned friend being fully cognizant of the errors made by the Judge, maliciously filed this application to have the Certificate expunged instead of assisting this Court to effectively determine the matters in controversy in the appeal. Counsel considered the matters raised in the application as mere technicalities that should not prevent the merits of the appeal to be considered. He invited the Court to consider the same objection raised in the appeal as was the case in **Betuco (U) Ltd & Anor versus Barclays Bank of Uganda Ltd & Others, SC Civil Appeal No. 1/2017.**

20 [17] With respect to the second objection, respondent's counsel argued that by filing the affidavit in support of the application, a contentious matter, Mr. Mwesiga contravened Regulation 9 of the Advocates (Professional Conduct) Regulations SI. 267-2. He referred to the decision in **Arthur Busingye & Another versus Gianluigi Grassi & Anor HCT-00-Cc-Ma 203-2013**, where it was held that an advocate cannot appear before any court or tribunal in a matter in which they will be required to give evidence either verbally or by affidavit. That paragraph 13 of Mr. Mwesiga's affidavit raised contentious matters that touch on the merits of the appeal. Counsel then invited the court to strike out Mr. Mwesiga's affidavit under that law and ultimately to dismiss the application with costs and instead, determine EP No. 4/2023 on its merits.

35 [18] In rejoinder, to the first preliminary objection, it was contended for the applicant that since EP No. 4/2023 has not yet been resolved by judgment, the application was filed in time, and therefore, the assertion that this application will render the conferencing notes in the main appeal nugatory, is merely

5 speculative. Counsel reiterated that the SRA filed on 23/5/2023 contained pages 11-16 that contained smuggled documents which were not part of the lower court's record.

10 [19] In rejoinder to the second preliminary objection, it was contended that counsel Mwesiga's affidavit was limited to facts which were not contentious and thus would not require cross examination, and those which he was capable of proving. Counsel offered several authorities, one of which is the Supreme Court decision in
15 **Mbarara Municipal Council versus Jetha Brothers Ltd, Civil Application No. 10/2013** where it was held that where necessary, an advocate can swear an affidavit especially on matters within their knowledge. Further relying on the Kenyan authorities of **Salama Beach Hotel Ltd versus Mario Rossi, CA Civil Appeal No. 10/2015** and **Hakika Transporters Services Ltd versus Albert Chulah Wamimitaire, CA Civil Application No. 01/2016**, counsel argued that this application presents appropriate circumstances for Mr. Mwesiga as an advocate to
20 depose an affidavit. The reason being that he is attached to the firm which represented the applicant in EP No. 7/2021, and could therefore depose of facts touching matters on the High Court record and which were verifiable from that source, and also on
25 purely legal positions that are rightly within his knowledge.

30 Court's Analysis and decision

[20] This application is brought under Rules 2(2), and 43(1) and (2), of the Rules of Court. Rule 2(2) of the Rules of Court vests in this Court discretionary powers to make such orders as are necessary to meet the ends of justice. It states:

35 '(2) *Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to*

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5 *setting aside judgments which have
been proved null and void after they
have been passed, and shall be
exercised to prevent abuse of the process
of any court caused by delay.'*

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[21] The applicant seeks an order of this Court to expunge and strike
out parts of the SRA filed by the respondent. In his reply, the
respondent contends that all the contents of the SRA were
properly filed and should be considered when disposing of the
15 appeal. His counsel has raised two preliminary objections to the
application which we shall dispose of first. He claims that:

20 a) The applicant has in Election Petition No. 4/2023 already
raised and made their submissions in respect of a
preliminary objection regarding the impugned pages 11-16
of appellant's supplementary record of appeal. The appellant
has likewise responded to that objection. The objection
awaits the judgment of this Court and expunging the same
25 in this application is only designed to delay the judgment in
the appeal, and would render the submissions of both
parties on that objection nugatory.

30 b) Mwesiga Philip as the advocate in personal conduct of the
matter is prohibited from deposing to the facts of the affidavit
in support of the motion.

[22] It is provided under Rule 43(1) that every formal application to the
Court shall be by notice of motion. Further, according to Rule
43(2):

35 *"Every formal application to the court shall be supported
by one or more affidavits of the applicant or of some
other person or persons having knowledge of the facts".*

40 It appears from the above provision that any persons who
professes knowledge of facts in issue in a case, are eligible to

5 adduce evidence by affidavit in support of it. Such persons do not
exclude an advocate like Mwesiga who has stated that his
knowledge of the facts raised in the application stems from the
fact that his firm filed both this application and the appeal, and
previously handled the petition from which the appeal emanates.
10 However, his presence in the application is contested in line with
the provisions of Regulation 9 of the Advocates (Professional
Conduct) Regulations S.I. 267-2 which generally restrict personal
involvement of advocates in their clients' cases. It provides that:

15 *"No advocate may appear before any court or tribunal in
any matter in which he or she has reason to believe that
he or she will be required as a witness to give evidence,
whether verbally or by affidavit; and if, while appearing
in any matter, it becomes apparent that he or she will be
20 required as a witness to give evidence whether verbally
or by affidavit, he or she shall not continue to appear;
except that this regulation shall not prevent an advocate
from giving evidence whether verbally or by declaration
or affidavit on a formal or non contentious matter or fact
25 in any matter in which he or she acts or appears"*

[23] It is contended for the applicant and not contested, that the firm
of M/s JByamukama & Co, to which Mr. Mwesiga is attached,
handled the petition at the High Court from which both this
30 application and EP No. 4/2023 emanate. For that reason,
although not in personal conduct of the matter, it is conceivable
that he came to know the facts of all three causes very well. He
would in that regard be a competent witness in this matter. We
are bound by the decision of the Supreme Court in that regard
35 that an advocate is not prohibited to swear an affidavit where
necessary, especially on matters that are well within their
knowledge. See **Mbarara Municipal Council versus Jetha
Brothers Ltd (supra)**.

40 [24] In this application the applicant seeks to expunge parts of the
SRA (in particular pages 11-16) for having been wrongly or
fraudulently included in the SRC. Specifically, those pages contain

5 a Certificate of Service that the respondent seeks to largely rely on
in the appeal. The respondent contends that after making a wrong
interpretation of its legal import, the trial Judge came to a wrong
conclusion of the respondent's status prior to his nomination as a
10 candidate eligible for election to the post of the LC V Chairperson
for Abim District. It is contended by the respondent that the
Certificate was one of the documents adduced and also considered
during hearing of the petition in the High Court, a contention the
applicant strongly disputes. Thus, the facts that Mr. Mwesiga
15 deposed to only appear to be confirming or disputing the presence
or absence of that document on the record of the petition in the
High Court. Those are purely formal and non-contentious issues
whose truth or lack of it, can be verified from the records filed here
and in the High Court, and nothing more.

20 [25] We accept the proposition of the appellant's counsel that even if
Mr. De West was to swear the affidavit himself, he would present
to this court, verbatim what any of his counsel would advise him
was available on the record. The dictum in the Kenyan decision of
Salama Beach Hotel (supra) is persuasive. The Court of Appeal
25 of Kenya held at page 2 that:

30 *"as regards the appellant's objection regarding the
affidavit supporting the application, it is clear that Mr.
Munyithya has deposed only to matters within his
personal knowledge as counsel acting in this matter
both in the High Court and in this Court. On the facts of
this application, even if the appellant were to swear the
affidavit himself, he would most certainly be repeating
what he would have been informed by Mr. Munyithya.
In these circumstances, we do not see a legitimate basis
35 for this complaint."*

[26] Even if we were to find that Mr. Mwesiga was not eligible to swear
the affidavit, under Regulation 9, the remedy would be to
disqualify him and in his place, request another person or the
40 applicant himself to file an affidavit supporting the application.

5 However, on the whole, we have found no merit in this objection,
and it is rejected.

10 [27] It is in addition raised as an objection that the matters raised in
the application have also been raised as an objection in the
conferencing notes filed by the applicant in EPA No. 4/2003, and
that the respondent has likewise responded to them. That being
so, this application is a waste of court's time designed to delay
final disposal of the appeal. The applicant's counsel did not
dispute that objection, but asked the court to disregard the
15 contention that the conferencing notes in respect of the election
petition filed by both parties in the appeal, would be rendered
nugatory. We confirmed from the record of appeal that the
applicant raised the same objection on page 2 of his conferencing
notes filed in Court on 26/6/2023, and the respondent filed a
20 response in their submissions filed in rejoinder on 11/7/2023.
The only difference we perceive is that the applicant provided more
detail in this application and also made a specific prayer that
pages 11 to 16 of the SRA be struck out.

25 [28] Although we find no merit that the application was filed out of
time, we are constrained to accept the proposition by respondent's
counsel that there was no specific necessity to file the motion
before us. The matters being raised are restricted to the contents
of the two records; the one at the High Court and the one in
30 respect of the appeal. Since certified copies are available to the
Court, we believe this is a matter that could have been handled by
the Court as preliminary points of law, before considering the
merits of the appeal. This Court should whenever possible be
spared of unnecessary litigation which creates back log.

35 [29] That said, we consider it imperative to decide the application. We
are now better guided by the application and the evidence adduced
by both sides. Should we find that the impugned pages of the SRA
were wrongly filed, then our duty is to discard them, but proceed

5 to consider the rest of the record to decide the appeal. It is true that, that part of the conferencing notes will be rendered redundant, but we see no prejudice to the respondent. We believe that is a matter that can be atoned for by costs.

10 [30] The facts that appear not to be in contest are that Election Petition No. 7/2021 was re-tried in the High Court sitting at Soroti. On 10/3/2023, the respondent filed EP Appeal No. 4/2023 in this Court contesting the judgment of the High Court. Mr. Mwesiga claims his firm was served with a record on 28/3/2023, which
15 they confirmed to be the true record of appeal. Subsequently, they were served with a SRA on 23/5/2023 which contained the respondent's Certificate (at pages 11 to 16) documents which were not part of the record of the High Court. In his response, the respondent contends that the certificate was adduced at the trial
20 and considered by the Judge on page 19 of his judgment. That pages 11-16 are in fact just integral pages and form part of the certificate and cannot be severed from it. He continues that the trial Judge appreciated that the certificate was adduced as part of the respondent's evidence, but he then made an erroneous
25 evaluation of its legal import.

[31] We must clarify that in this application the task before us is not to make a finding of what the trial Judge understood the certificate to be, but only whether that evidence is properly before us on
30 appeal. Therefore, two issues are raised for our consideration:

a) Was the respondent's Certificate of service ever part of the record when EP No. 7/2021 was re-tried at the High Court?

35 b) If so, was it properly introduced into the record of EP Appeal No. 4/2023?

[32] According to Rule 87 of the Rules of Court, every appellant is mandated to file a record of appeal and Rule 87(1) provides for the

5 contents of such a record. For the purposes of this application,
the record filed by the respondent should have included, (inter
alia), an index of all the documents in the trial record, the
pleadings, the affidavits read and all documents put in evidence
10 at the hearing, the judgment or reasoned order, and any other
documents necessary for the proper determination of the appeal.
Under Rule 89(2) of the Rules of Court, following receipt of the
record of appeal, the Registrar of the Court shall obtain from the
Registrar of the High Court the original record of the proceedings
of the High Court and, so far as is practicable, the exhibits.

15 [33] Under Rules 90(3) of the Rules of Court, an appellant is permitted
to file a SRA. Under Rule 90(4) it is filed only to cure defects in the
original record due to want of compliance with Rule 87. Under
Rule 90(5), the SRA shall be prepared as nearly as may be to the
20 record of appeal. We accept what was presented for the applicant
that the basic documents of a record are well listed in Rule 87. A
SRA when filed by an appellant should merely supplement or
correct a defective or insufficient original record of appeal. The
party filing the SRA must in general present the same documents
25 filed in the original record, which documents should also emanate
directly from the record of the lower court. The Supreme Court in
**Barclays Bank Ltd versus Eddy Rodrigues, Civil Appeal No.
5/1987** described the SRA to be a record of any further
documents or additional parts of documents which may be
30 required for determination of the appeal. Further that the words
“further” and “additional” are intended to refer to documents
which are part of the basic documents mentioned in **Rule 85 (now
Rule 90)** as forming the record of appeal. A respondent who
considers that they have been served with a defective or an
35 insufficient record, may under Rule 90 correct it by filing a SRA
with all documents that have been omitted. It follows then that
any additional documents should have also been part of the
original documents at the trial. The concerned party cannot be
permitted to introduce any new document. Those can only be

5 introduced as new evidence, after leave of Court if obtained under Rule 30(1) (b) and (2) of the Rules of Court.

10 [34] We have carefully perused the evidence in this application. Mr. Mwesiga stated in paragraphs 7, 8, and 9 of his affidavit in support of the application that after discovering that certain documents had been smuggled into the SRA, he applied for and then obtained a certified copy of part of the record from the Registrar of the High Court in Soroti. He concentrated in particular on Mr. Omara's answer to the petition and the affidavit in support thereof with its annexure. He confirmed from those pleadings that pages 11-16 were not part of the original record at the High Court. Those documents are marked Annexure "E" to Mr. Mwesiga's affidavit. We have perused Annexure "E" and confirmed that Mr. Mwesiga's facts as related are true.

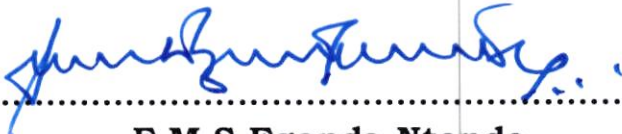
20 [35] Mr. Omara strongly contested the above facts. However, our evaluation of the same facts confirms him wrong. In paragraph 7 of his affidavit in reply to this application, he states but does not show that pages 11-16 of his SRA were part of the original record at the High Court. What he refers to as Annexure "B" is actually marked Annexure "A" at page 10 of the SRA. That one document appears as Annexure "E" in Mr. Mwesiga's affidavit in support of this application and is not contested. It is the same document that the trial Judge referred to in the first paragraph of page 19 of his judgment albeit mentioning a different serial number. Mr. Omara claimed at page 10 of the same affidavit that the applicant elected to certify only page 10 and then leave out pages 11-16 which are an integral part of the certificate. We chose to believe Mr. Mwesiga who countered that allegation when he stated that certification of a record of appeal is done by the Court and not the parties or their lawyers. We are prepared to believe that what we have as page 60 of the record of appeal filed on 28/3/2023, is what the applicant's lawyers obtained from the High Court as the original record. Mr. Omara and his lawyers provided no evidence to the contrary.

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[36] We repeat that should the respondent have deemed it necessary to adduce additional documents beyond page 10 of his SRA, he could have done so, by first obtaining formal leave and then fulfilled any criteria for filing fresh evidence. This Court is bound
10 only to consider on appeal the documents that were adduced at the trial, and nothing more.

[37] In conclusion, we have found merit in the matters raised by the applicant in this application and it is allowed. By order of the
15 Court, pages 11 to 16 of the respondent's supplementary record of appeal are struck out for not forming part of the record of the High Court.

[38] Each party shall meet their costs of this application.
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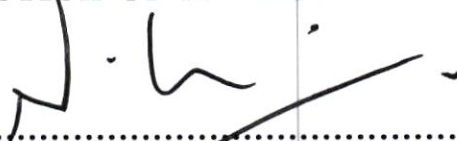
Signed, dated and delivered at Kampala this TH13 day of FEB 2024.

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F.M.S Egonda-Ntende
JUSTICE OF APPEAL

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Catherine Bamugemereire
JUSTICE OF APPEAL

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Eva K. Luswata
JUSTICE OF APPEAL