

power in possession of the Appellant and other government property to be forwarded to the divisional clerk plus payment of the costs of the petition by the Respondent. The Appellant, who was 2nd Respondent in the petition, was dissatisfied with the said decision of the trial court, hence this appeal.

Representation and Hearing

[3] At the hearing, the Appellant was represented by **Mr. Rukundo Seth** from M/s Rukundo Seth & Co. Advocates. The Respondent or their advocate did not appear despite evidence of service of court process. Court allowed the hearing of the appeal to proceed ex parte and closed the hearing by way of submissions under Order 17 rule 4 of the CPR. The court adopted the written submissions filed by the Appellant and the same have been considered in the determination of the matter before Court.

The Grounds of Appeal

[4] The Appellant raised one ground of appeal in the memorandum of appeal namely; *That the learned trial Magistrate erred in law and fact when he failed to evaluate evidence of 250 largest numbers of voters physically lining up behind the Appellant as elected candidate for Bongole village Chairperson Administrative Unit Local Council 1 Ndejje Parish Wakiso District thereby wrongly annulled lawfully public declared elections of the Appellant.*

Duty of the Court on Appeal

[5] The duty of a first appellate court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in a lower court. See: *Section 80 of the Civil Procedure Act Cap 71*. This position has also been re-stated in a number of decided cases including *Fredrick Zaabwe v Orient Bank Ltd CACA No. 4 of 2006*; *Kifamunte Henry v Uganda SC CR. Appeal No. 10 of 1997*; and *Baguma*

Fred v Uganda SC Crim. App. No. 7 of 2004. In the latter case, **Oder, JSC** stated thus:

“First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court”.

Burden and Standard of Proof

[6] The burden of proof in an election petition lies on the petitioner to prove the assertions raised in the petition. This is in line with the rule of evidence under section 101 of the Evidence Act Cap 6 to the effect that he who alleges must prove. See: *Kyakulaga Bwino Fred & EC v Waguma Badogi Ismail, Election Petition Appeals No. 15 and 20 of 2016* and *Akuguzibwe Lawrence v Muhumuza David & 2 Others, Election Petition Appeal No. 22 of 2016*.

[7] The legal burden of proof normally remains on the petitioner throughout the trial and does not shift to the Respondent. See: *Mutembuli Yusuf v Nagwomu Moses Masamba & EC, Election petition Appeal No. 43 of 2016*. It is only in a few specific instances, depending on the grounds relied upon in a particular petition, that the burden may shift. One of the few exceptions relates to situations where the authenticity of one’s academic credentials is challenged, whereby the burden of proving the authenticity of the impugned academic credentials rests on the person that relies on those credentials. See: *Acen Christine Ayo v Abongo Elizabeth, Election Petition Appeal No. 58 of 2016* citing *Abdul Balingira Nakendo v Patrick Mwondha, Supreme Court Election Appeal No.9 of 2006*.

[8] The standard of proof required in a Local Council Election Petition is to the satisfaction of the court as provided for under Section 139 of the Local Governments Act, Cap 243. For avoidance of doubt, Section 139 of the Local Government Act provides that;

“The election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court –

- a) that there was failure to conduct the election in accordance with the provisions of this part of the Act and that the non-compliance and failure affected the result of the election in a substantial manner;*
- b) that the person other than the one elected purportedly won the election;*
- c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or*
- d) that the candidate was at the time of his or her election not qualified or was disqualified from election”. [Emphasis added]*

Consideration of the Ground of Appeal

Submissions by the Appellant

[9] The Appellant faulted the trial Magistrate for finding that the court was not furnished with a return of the results of 11/07/2018 yet the elections of 10/07/2018 were cancelled and a re-run was conducted on 11/07/2018 whose election results remained a mystery. It was submitted by the Appellant that the election of the Appellant as LC1 Chairperson was lawful, that the electoral laws were not violated and that the EC Form 10 for transmission of results shows that the elections were held on 10/7/2018 but the Respondent did not attend court to support its claims. The Appellant stated that the Respondent (Electoral Commission) did not dispute the EC Form 10 which shows that two candidates participated in the election, that the form signed on

10/7/2018 that declared the Appellant winner is valid and should be relied on to confirm the election of the Appellant. The Appellant also submitted that the election was conducted by lining up behind candidates and there were no election offences or illegal practices committed by the Appellant. He further stated that the voting in the village was repeated because there was chaos but it is the Appellant who won on both occasions.

Determination by the Court

[10] Let me begin with a comment on the way the ground of appeal herein was framed. The law requires that grounds of appeal are framed in a way that is concise and precise. Order 43 rule 1(2) of the CPR requires a memorandum of appeal to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative and the grounds to be numbered consecutively. The instant ground of appeal is not concisely stated and makes a narrative of events; which makes it offensive to the law. Nevertheless, I will go ahead and consider the ground of appeal on the merits.

[11] The Appellant faults the learned trial Magistrate for not considering evidence of the 250 voters who lined up behind him on the election date before reaching a conclusion that the election was not conducted in accordance with the electoral laws. This evidence is contained in the Form EC 10, the Return Form for Transmission of Results for village Chairpersons dated 10th July 2018 at page 62-63 of the Record of Appeal, indicating that the Appellant was declared winner having obtained 250 votes against Kibirige Joseph who obtained 231 votes. The basis upon which the trial Magistrate rejected that evidence was that it was not authentic given that the copy provided was a photocopy, the return had only two candidates yet four candidates are said to have contested, and it was signed on 10th July 2018 yet there was evidence

that the election of that day was cancelled and a fresh election conducted the next day, 11th July 2018.

[12] Under the law, proof of evidence contained in a public document is through production of the original or certified copy thereof. See: *Sections 60, 62, 64 and 76 of the Evidence Act Cap 6*. Form EC 10 is a public document within the meaning of Section 73(a) of the Evidence Act and therefore required certification where its authenticity was brought into question. Where a party to an election petition requests the Electoral Commission for a certified copy of such a document and the Commission refuses or fails to provide the same, the Court may exceptionally rely on a copy produced by the party. See: *Kakooza John Baptist v Yiga Anthony & Anor, EPA No. 11 of 2007*. In the present case, however, there is no indication on record as to whether any of the parties to the petition requested for a certified copy of the form in issue. There is also no explanation as to why the Commission, which was a party to the petition, did not produce the original or a certified copy thereof. Clearly, the EC Form 10 in the instant case had questions over its authenticity and the learned trial Magistrate correctly refrained from relying on it. The learned trial Magistrate therefore properly considered the evidence before him and I find no fault in his finding and the conclusion he arrived at. I do not find any way in which the result of the election, presented in such a manner, would have been relied upon to reach a different finding.

[13] In the premises, the ground of appeal bears no merit. The appeal fails and is accordingly dismissed with an order that the judgment and decree of the learned trial Magistrate are upheld and maintained. However, since the term of the LC 1 leaders expired and was tentatively renewed under a statutory instrument approved by Parliament, and published in the Uganda Gazette (Vol. CXVI No. 84 under General Notice No. 2189 of 2023 dated 29th December 2023), the order passed by the trial court for conducting a re-election within 60

days from the date of the judgment has been rendered ineffective and inconsequential.

[14] Regarding costs, since the irregularities that led to the petition were committed by the Respondent, and the appeal has failed, each party to the appeal shall bear their own costs of both the appeal and in the lower court. The petitioner in the lower court was not added as a party to the appeal but had been successful and was awarded costs against the current Respondent (then 1st Respondent). That order of the trial court is not interfered with and the said petitioner shall have the costs of the proceedings in the trial court as against the present Respondent.

It is so ordered.

Dated, signed and delivered by email this 23rd day of April, 2024.



Boniface Wamala
JUDGE