THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

IN THE MATTER OF PARLIAMENTARY ELECTION FOR DISTRICT WOMAN REPRESENTATIVE TO PARLIAMENT FOR RAKAI DISTRICT HELD ON THE 14TH JANUARY, 2021

ELECTION PETITION NO. 06 OF 2021

**NALUBEGA GRACE::::::

30 **Background to the Petition**

The Petitioner, the 1st Respondent and two others were candidates in the elections for Woman Member of Parliament for Rakai District, held on the 14th January, 2021. The 2nd Respondent returned and published in the gazette of the 17th/2/2021, the 1st Respondent as the validly elected Woman Member of Parliament for Rakai District
35 and she has even been sworn in as such, hence this Petition.

The grounds of this Petition are set out in the affidavit in support of the Petition by the Petitioner, but briefly are that;

1. **In the elections held on the 14th day of January, 2021 the Petitioner stood on the ticket of NUP together with Kikanshemeza Nowerena**
40 **(Independent) Asha Kayanja (NRM) Tashabwa Faith (Independent) and Suubi Kyinyamatama Juliet K (Independent).**
2. **The Returning Officer of the Electoral Commission returned the 1st Respondent as the validly elected Woman Member of Parliament for Rakai District, having polled 34,291 (Thirty-Four Thousand Two Hundred**
45 **and Ninety-One) votes as opposed to the Petitioner who came second with 19,682 (Nineteen Thousand Six Hundred and Eighty-Two) votes.**
3. **The results of the elections were gazetted by the Electoral Commission on the 17th February, 2021.**
4. **The Petitioner is aware that the 1st Respondent was at the time of her**
50 **election for District Woman Representative to Parliament for Rakai District not qualified for election as a Member of Parliament.**
5. **That to be qualified to be a Member of Parliament, a person should be a registered voter.**

6. **That on the 5th February, 2021, the Petitioner instructed her lawyers from M/S Nsambu & Co. Advocates to request for certified copies of nomination documents for the 1st Respondent from the Electoral Commission, which the Electoral Commission provided on the 12th day of February, 2021.**
7. **The Petitioner is aware that the Respondent purports to be a registered voter in Lwanga Primary School polling station in Lwanga Parish at Kacheera Sub-County in Buyamba County, Rakai District.**
8. **NUP got the official copy of the National Voters Register and the Petitioner looked at the excerpt of Lwanga P/School polling station in Lwanga Parish at Kacheera Sub-County, in Buyamba County, Rakai District.**
9. **That the 1st Respondent was not a registered voter in Rakai District or at all at the time of elections of January 14th, 2021 for District Woman Representative to Parliament for Rakai District.**
10. **That the 1st Respondent was not qualified to be a Woman Member of Parliament for Rakai District.**
11. **That in the circumstances, the Petitioner other than the 1st Respondent won the election since she was second in the elections.**

The Respondents oppose the petition and have filed their answers to the petition.

Representation

Learned Counsel Caleb Alaka, Muyizzi Samuel Mulindwa and Paul Kenneth Kakande represent the Petitioner, Counsel Joseph Kyazze and Elisha Bafirawala are for the 1st Respondent while Counsel Angella Kanyiginya is for the 2nd Respondent.

The agreed issues are: -

80 1. **Whether the Petitioner's cause of action challenging the validity of the 1st Respondent's nomination and election on account of the alleged want of qualification is maintainable in law, after conclusion of elections.**
2. **Whether the 1st Respondent was not qualified for nomination and election as a Woman Member of Parliament for Rakai District.**
85 3. **What remedies are available to the parties.**

Issue No. 1: Whether the Petitioner's cause of action challenging the validity of the 1st Respondent's nomination and election on account of the alleged want of qualification is maintainable in law, after conclusion of the elections.

Counsel for the petitioner submitted that in this case, the cause of action
90 challenging the validity of the 1st Respondent's nomination and election on account of want of qualification, is statutory in nature, and that under the law, such a cause of action can only be commenced and or maintained after conduct of an election. Counsel explained that Section 61 of the Parliamentary Elections Act, presupposes, that challenging the election of a candidate, can only be done after an election and
95 not at the time of expressing of interest to contest as a Member of Parliament by the candidate, neither can it be done before/after nomination nor during the conduct of the electoral process and that such a person must have been declared and gazetted as a Member of Parliament. Counsel further explained that under S. 60 (3) of the PEA, such action must be commenced within thirty days after publication
100 of the result of the election in the Gazette and the grounds for setting aside elections are provided for under S. 61 (1) of the Parliamentary Elections Act. That the Petitioner contended under Paragraph 5 of the Petition that the 1st Respondent was at the time of her election not qualified for election as a Member of Parliament because she was not a registered voter in Rakai District or at all at the time of the

105 elections. Counsel relied on Article 80 (1) (b) of the 1995 Constitution of Uganda, (as amended) and S.4 (1) of the Parliamentary Elections Act, (as amended) which stipulate, among others, that a person is qualified to be a Member of Parliament if that person is a registered voter.

Counsel averred that the above provisions of the law clearly indicate that issues of 110 qualifications are grounds of annulling and or setting aside Elections under the Parliamentary Elections, 2005 as amended and prayed that this Court finds that the Petitioner's cause of action challenging the validity of the 1st Respondent's nomination and election on account of the alleged want of qualification is maintainable in law after the conclusion of the election.

115 In reply, Counsel for the 1st Respondent submitted that a cause of action challenging the validity of the 1st Respondent's nomination and election on account of alleged want of qualification is not maintainable in law after conclusion of the elections. That electoral laws governing Parliamentary Elections stipulate various stages to be followed by the Electoral Commission while conducting elections and at each stage 120 of the electoral process, the procedure for complaints is stipulated and therefore, it is imprudent for one to wait until when elections are completed and then raise complaints about an initial stage. That after elections are held and results are declared, a reasonable complaint should be about the conduct of the election not against an earlier segment of the process. Counsel relied on the cases of ***Ongole*** 125 ***James Michael -v- Electoral Commission & Anor, EP No. 08/2006, Akol Hellen Odeke -v- Okodel Umar, EPA No.06 of 2020, Kasirye Zzimula Fred –v- Bazigatirawo Kibuuka Francis Amooti & Anor EPA No. 01 of 2018 and Ninsiima Grace –v- Azairwe Dorothy Nshaija Kabaraitsya & EC*** and explained that the mandate to determine the complaints, including those arising after nomination like 130 the alleged ineligibility of a nominated candidate is primarily vested in the Electoral

Commission under *Article* 61(1) (f) of the 1995 Constitution and section 15 of the Electoral Commission Act. That the rationale for such a remedial process is that, 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.

135 Counsel argued that in this case, evidence on record shows that the Petitioner had knowledge of the 1st Respondent's alleged ineligibility to be nominated and elected prior to the elections. That there was a remedial process which the Petitioner could have utilised to challenge the 1st Respondent's nomination before the election was concluded but she chose to sit on her legal right until when the election was over

140 and then raised complaints in regard to the nomination and election process. That the petitioner is caught up by her inaction. She had ample opportunity to act but did not do so and she is therefore estopped from raising the allegations of the 1st Respondent's alleged ineligibility after losing an election.

That the Petitioner's averments at page 6 of the submissions as to the interpretation

145 of Section 61 of the Parliamentary Election Act and the authorities cited, are all out of context.

Counsel argued that Section 61 (1) (d) of the PEA, is only invoked and applicable where the Petitioner pleads specifically that they discovered the alleged ineligibility or disqualification after the elections, unlike in this case where the petitioner was

150 aware of the alleged ineligibility but waited until when she had lost the election before raising her claim. Counsel prayed that this court be pleased to dismiss this petition.

For the 2nd Respondent, Counsel submitted that according to the averments in Paragraphs 5, 6, & 11, of the affidavit in support of the petition, the Petitioner was

155 aware of the alleged ineligibility of the 1st Respondent and she ought to have lodged a complaint to the Electoral Commission under Article 61(1) (f) and S. 15 of

the Electoral Commission Act which confer upon the 2nd Respondent the primary jurisdiction to hear matters relating to pre-election processes. She relied on the case of ***Akol Hellen Odeke -v- Okodel Umar, EPA No.06 of 2020*** and explained that the Petitioner was granted the liberty to inspect the nomination documents and raise any complaints but she chose not to benefit from the available remedies under the law and waited for the elections to be concluded and now brings this Petition as an afterthought in an action which is not maintainable in law.

Counsel submitted that after elections are held and results declared, a reasonable complaint should be about the conduct of the election and not against an earlier segment of the process like nomination. She relied on the cases of ***Ongole James Michael –v- Electoral Commission & Anor(supra), Kasirye Zzimula Fred –v- Bazigatirawo Kibuuka Francis Amooti & Anor (supra), Article 61(1) (f) of the Constitution and S. 15 (1) of the Elections Petitions Act*** and invited this court to find that the Petitioner is estopped from raising the allegation of ineligibility of the 1st Respondent to be nominated and elected as a Member of Parliament and dismiss this petition.

Analysis

Art. 61(1) (f) of the Constitution and S. 15(1) of the Electoral Commission Act mandate the Electoral Commission to hear and determine election complaints arising from the electoral process /before and during polling.

Electoral process was defined in the case of ***Charles Nsubuga-v-Eng. Badru Kiggundu & 3 others; MC No.148 of 2015, by Musota, J, (as he then was) when he noted that: -***

"the Electoral process spans the entire period from the time any aspirant decides to run for any elective office to the time when he/she is declared winner or loser".

Under S. 15 (b) of the Parliamentary Elections Act, (PEA) any registered voter of a constituency has a right to inspect any nomination paper filed with the Returning Officer in respect of the Constituency and lodge any complaint with the returning officer in relation to any nomination challenging the qualifications of any person.

In this case, it is the Petitioner's claim that the 1st Respondent was not a registered voter at the time of her election and as such, she was not qualified to be a Member of Parliament under article 80 (1) of the Constitution and Section 4 (1) of the Parliamentary Elections Act.

The petitioner has not presented any evidence to show that she inspected the voters roll and or that she raised any complaint with the returning officer of the Commission to point out that the 1st Respondent was not qualified in any way and that she was not qualifying to be a Member of Parliament. The petitioner states in paragraph 7 of her affidavit in support of the petition that she instructed her lawyers on the 5th day of February, 2021 to request for certified copies of nomination documents for the 1st Respondent from the Electoral Commission. One would wonder why the petitioner waited for the entire electoral process to be concluded on the 14th January, 2021 and then she sends her lawyers on the 5th February, 2021, three weeks after the elections, to request for nomination documents of the 1st Respondent for her scrutiny. Inspection of nomination documents is a pre- polling activity that should have been done under S. 15 (b) of the Parliamentary Elections Act and addressed under Art. 61(1) (f) of the Constitution and S.15 (1) of the Electoral Commission Act by the Electoral Commission. See the cases of

205 **Byanyima Winnie –v- Ngoma Ngime, CR No. 9 of 2001, Justice V. F. Musoke-Kibuuka (as he then was), noted that;**

"**the** ***Parliamentary Elections process is a progressive one. The Act contains clearly marked and self-contained segments of the electoral process. The context also reveals that the electoral process does not move along a dual track.***
210 ***Nor does it go forward and backwards. It is clear that it moves in a single direction and along a single track: Once one segment is completed, the process moves on to another segment. Those segments or sets of election activities, e.g. nomination of candidates, campaigning, voting, counting of votes and announcing of the results and election petitions, are all well demarcated by the***
215 ***law. Indeed, each segment is contained in a well numbered and different part of the Act. It is clear that none of them flows into other. The law does not provide for any overlapping. There will, for instance, be no official campaigning until the nomination of candidates is over. There will be no counting of votes until the voting period is over. There will be no declaration or the gazetting of the name***
220 ***of the winning candidate by the Election Commission until the vote counting process is over in the particular constituency of the particular Member of Parliament. That, I think, is a singular characteristic of the electoral law of Uganda."***

In ***Kasirye Zzimula Fred - v - Bazigatirawo Kibuuka Frances Amooti & Anor***
225 ***Election Petition Appeal No.1 of 2018, the Court of Appeal held that;***

"… 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
230 ***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 stipulated period and as such would be estopped from doing so after the election ..." (underlining is mine for emphasis).

In Charles Nsubuga-v-Eng. Badru Kiggundu & 3 others MC No.148 of 2015, Musota, J, (as he then was) noted that;

"Where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions will be strengthened and respected."

See also Bernard Mulage –v- Fineserve Africa Limited & 3 others; Petition No. 503 of 2014, National Rainbow Coalition (NARK Kenya) –v- Independent Electoral and Boundaries Commission (I.E.B.C.) & 3 others [2017] eKLR, and Speaker of National Assembly –v- Ngenga Karume [2008] 1 KLR425.

I find the above decisions applicable to this case. The Petitioner was not vigilant, she sat on her rights too long and is therefore estopped from coming to court after the electoral process is completed to challenge the validity of the 1st Respondent's nomination and election on account of alleged want of qualification. I find the Petitioner's action to be an afterthought and not maintainable in law.

Issue 2: Whether the 1st Respondent was not qualified for nomination and election as a Woman Member of Parliament for Rakai District

Submissions for the petitioner

Counsel for the Petitioner relied on Article 80(1) of the Constitution and Section 4 (1) of the PEA and submitted that the 1st Respondent was, at the time of her election, not qualified for election as a Member of Parliament on ground that she was not and is not a registered voter. He referred this Court to paragraphs 5, 6, 7, 8,

9, 10 and 11 of the petitioner's affidavit in support of the petition and the attached annexures. That the 1st Respondent identifies herself as Suubi Kyinyamatama Juilet K, which does not appear on the voter's register at the polling station where she purports to have voted. Counsel relied on the cases of ***Hon. Otada Sam Amooti Owor –v- Taban Idi Amin & Anor, EPA No. 93 of 2016*** **and** ***Simon Peter Kinyera –v- Electoral commission & Anor EP No. 3 of 2018*** and explained that the import of the court's decision in the above cases and S.1 of the PEA is that for one to present himself/herself as a registered voter, he/she should be identified and called by the names in the voters' register. That in the Otada case, the 1st Respondent, Taban Idi Amin, despite presenting a National Identity Card in the names of Taban Idi Amin, was found not to be the same person as Idi Taban Amin Tampo, which was in the Voter's Register and he was found not to be a registered voter. That in this case therefore, the 1st Respondent is also not a registered voter.

Submissions for the 1st Respondent

Counsel for the 1st Respondent made submissions on four principles that guide the change of name and identity. Counsel submitted that addition of a name does not constitute a change of name and it does not require the person to comply with the provisions relating to change of name under S. 36 of the Registration of Persons Act. That the Registration of Persons Act only applies to persons whose original names had been entered on the register such that upon any change of name, they are required to depone a Deed poll, gazette the name and then apply to amend the register. That a change of name is effective upon the amendment of the register. Counsel averred that mere addition of a name does not require compliance with the provisions of the Act, especially where the original name has not been proved to have been registered under the said Act. That addition of names has no effect to the identity of the person. Counsel relied on the case of ***Mutembuli Yususf –v- Nagwomu Musamba Moses EPA No. 43 of 2016.***

The second principle that Counsel relied on is that it is incumbent upon the petitioner to prove the allegations that the differing names on the nomination papers and the academic certificates do not refer to the same person. That once the Respondent, whose eligibility for nomination and election is challenged proves that the impugned names are all related to him/her and the petitioner does not bring any other person claiming to be the registered voter and owner of the academic documents, the petitioner will not succeed, Counsel relied on the case of ***Baleke Peter –v-Electoral Commission & Kakooza Joseph EPA No. 4 of 2016.*** The third principle is that the use of a statutory declaration is sufficient to prove and explain names and the fact that the names all belong to one and the same person. On this principle, Counsel referred this Court to the cases of ***Mandera Amos –v- Bwowe Ivan EPA No. 91 of 2016 and Mutembuli Yusuf –v- Nangwomu Musamba Moses (supra).*** In regard to the fourth principle, Counsel submitted that interchanging of one's names including the added and adopted names does not affect their qualifications and identity. That this was the court's finding in the case of ***Okello P. Charles Engola Macodwongo and Electoral Commission –v- Ayena Odongo Krispus Charles EPA No. 26 of 2016.*** That Court noted that by verifying his names, the 1st Appellant did not forfeit the rights attached to his former name, rights such as the right to academic qualifications obtained in that name. That the affidavit in verification of the names was sufficient to show that the 1st Appellant was one and the same person who had acquired the qualifications. Counsel submitted that where a candidate in an election position assumes, adds or adopts other names, it is not a legal requirement that the original academic records available in the original names must equally be changed, he relied on the cases of ***Ongole James Michael –v- Electoral Commission EP No. 8 of 2006 and Ninsima Grace –v- Azairwe Dorothy Nshaija Kabaraitsya & EC EPA No. 5 of 2016*** and submitted that where a candidate whose eligibility is challenged on account of added names presents a

sworn statutory declaration explaining that the names added to her original names included her father's name and another being the adoption of her husband's name or just another name, such addition of the latter cannot amount to a change of name. That addition of her father's name was not a change of name but a simple addition and that writing names in a different order could not affect one's qualifications and identity.

In regard to this case, Counsel explained that the 1st Respondent's original name is Kobusingye Juliet, which is the name on the National Voters' Register. That the 1st Respondent subsequently added the names Suubi Kyinyamatama and changed the order of her names to Suubi Kyinyamatama Juliet K, the initial "K" standing for Kobusingye. Counsel submitted that the addition of the names of Suubi Kyinyamatama by the 1st Respondent to her maiden names Kobusingye Juliet cannot be said to constitute a change of name and change of identity to the extent that it can be said that she is not the Kobusingye Juliet, who is on the National Voters' register. That the 1st Respondent was not required to comply with the provisions relating to change of name under S. 36 of the Registration of Persons Act, 2015. That addition of names did not affect her identity. Counsel further submitted that it was incumbent upon the Petitioner to prove the allegations that the differing names on the nomination papers from the voters' register did not refer to the 1st Respondent. That in the pleadings in Election Petition No. 03 of 2021, attached to the 1st Respondent's answer to the petition as annexure "A", the identity of the voter registered as Kobusingye Juliet being the 1st Respondent is confirmed by the petitioner herself. Counsel argued that the Petitioner did not adduce cogent evidence to prove the allegation that the 1st Respondent is not a registered voter. He relied on annexures "BI & B2", "C"," D1", "D2", "E", "K", to the 1st Respondent's answer to the Petition and invited Court to compare all the documents referred to which the Petitioner did not contest. Counsel relied on the cases of ***Hashim***

340 ***Sulaiman –v- Onega Robert EPA No.1 of 2021 at Page 5, Mandera Amos –v- Bwowe Ivan EPA No. 91/2016 and Mutembuli Yusuf –v- Nagwomu Musamba Moses (supra), Okello P. Charles Engola Macodwongo and the Electoral Commission –v- Ayena Odongo Krispus Charles (supra) Dr. Kizito Deo Lukyamuzi –v- Kasamba Mathias and Electoral Commission EP No. 0003 of 2011, Ninsiima***
345 ***Grace -v- Azairwe Dorothy Nshaija Kabaraitsya & EC, EPA No. 05/2016, Baleke Peter versus Electoral Commissioner and Kakooza Joseph, EPA No. 04/2016*** and prayed that Court finds that the 1st Respondent was not only qualified for nomination and election on account of being a citizen of Uganda but was also a duly registered voter, possessed with the relevant qualifications for nomination for
350 the position of Member of Parliament.

Submissions for the 2nd Respondent

Counsel submitted that the Petitioner's evidence only raise mere suspicion based on the names used by the 1st Respondent but has not adduced evidence disproving her identity as the registered voter. She relied on Article 80(1) of the Constitution and
355 Sections 1(1) & 4(1) of the Parliamentary Elections Act and explained that the contention that the 2nd Respondent nominated the 1st Respondent who was not registered as a voter is devoid of any merit. That the available records show that the 1st Respondent presented nomination forms in the names of Suubi Kyinyamatama Juliet K. whose color photograph was attached, she presented academic certificates
360 in the names of Kobusingye Juliet the same name that appears on the National Voters' Register, she also presented a National Identity Card No. CF88036109PUZF issued by NIRA in the names Kobusingye Juliet, the same name that appears on the National Voters' Register and a Deed Poll and Gazette Notice that explained that Suubi Kyinyamatama Juliet K, or Juliet K Suubi Kyinyamatama, whose maiden name
365 is Kobusingye Juliet, is one and the same person. The 1st Respondent submitted a statutory declaration explaining that the initial "K", in the name Suubi Kyinyamatama

Juliet K. is an initial for Kobusingye, the same name that appears on the National Voter's Register. That the name Kobusingye Juliet on the National Voters' register has a photograph against it. Counsel clarified that the Returning Officer of the 2nd Respondent compared the Photo and confirmed that it corresponded with the one in the 1st Respondent's National Identity Card and the photograph submitted with the Nomination Papers as well as the 1st Respondent who physically appeared before her (the Returning Officer). The extract of the Voter's Information Personal Details in the custody of the Electoral Commission is in the names of Kobusingye Juliet which also has her Photographs. Counsel explained that the 2nd Respondent was in no doubt that on the evidence presented before the Returning Officer, Suubi Kyinyamatama Juliet K. and Kobusingye Juliet was one and the same person. That the name Kobusingye Juliet belonged to the 1st Respondent and the addition of the names Suubi Kyinyamatama and change of order of names were explained to the satisfaction of the Returning Officer and there was no doubt about the identity of the registered voter under the names Kobusingye Juliet being the 1st Respondent. Counsel further submitted that no other person has ever claimed to be the Juliet Kobusingye on the register. She explained that mere addition of names to a maiden name, which has been ably explained cannot adversely affect the identity of the 1st Respondent and it did not amount to a change of name envisaged in the decision of ***Otada Sam Amooti -v- Taban Amin (supra)*** relied on by Counsel for the Petitioner.

Counsel submitted that Courts have held that addition of names, change of order of names or mere disparity in names which is explained by way of a deed poll or statutory declaration does not affect the rights of a registered voter or change his/her identity. She referred this court to the cases of ***Hashim Sulaiman –v- Onega Robert; EPA No. 001 of 2021, Mutembuli Yusuf –v- Nagwomu Musamba Moses, (supra), Okello P. Charles Engola Macodwongo, the Electoral Commission –v-***

Ayena Odongo Krispus, (supra) and Baleke Peter -v- Electoral Commissione and Kakooza Joseph (supra) and averred that the 1st Respondent proved before the 2nd Respondent that the impugned names are all related to her and that the Petitioner did not present any evidence to the contrary. She prayed that this court be pleased to dismiss this petition with costs on those grounds.

Analysis

It is a requirement of the law under Article 80 (1) (b) of the Constitution of Uganda and S. 4 (1) (b) of the Parliamentary Elections Act that for a person to qualify to be a Member of Parliament he/she must be a registered voter.

A registered voter under S.1 (1) of the Parliamentary Elections Act is a person whose name is entered on the voters' register.

The Petitioner states under paragraph 10 of her affidavit in support of the Petition that the 1st Respondent is not a registered voter and yet she was nominated and returned as the validly elected woman Member of Parliament for Rakai District. She relies on annexure "I", an excerpt from the voters' register, attached to her affidavit where Kobusingye Juliet is reflected as one of the registered voters contrary to all the supporting documents in the names of Suubi Kyinyamatama Juliet K, which the 1st Respondent submitted for her nomination. The documents are attached as annexures "C", "D", "E", "F", "G" and "H" to the petitioner's affidavit in support of the Petition.

Under paragraphs 6 and 13, of the affidavit in support of the 2nd Respondent's answer to the petition, the Returning Officer of the 2nd Respondent, Ms. Nabukeera Sarah states that the 1st Respondent presented nomination papers with a photograph of herself which was consistent with the photograph on the voter personal information details of Kobusingye Juliet and the one on the voters' register. That the 1st Respondent also presented 'O' and 'A' level certificates bearing the names of Kobusingye Juliet and a registered deed poll, Gazette Notice and a

statutory declaration which explained the names of Suubi Kyinyamatama and the abbreviated letter 'K' for Kobusingye added to the 1st Respondents names. That the particulars in the 1st Respondent's National Identity Card corresponded with the voter personal details in the records of the Electoral Commission. The Returning Officer was satisfied that Suubi Kyinyamatama Juliet K was the same person as Kobusingye Juliet appearing on the voters' register. All the documents referred to above are attached to the Returning Officer's affidavit in support of the 2nd Respondent's answer to the petition as annexures "B", "C", "D" & "E". I have looked at the said documents and taken into consideration copies of the Deed poll, its gazette and a copy of the statutory declaration marked as annexures "D1", "D2" and "E" also attached to the affidavit in support of the 2nd Respondent's answer to the petition. In the declaration, the 1st Respondent explains that all the above names refer to her.

In the case of **Tinka –v- Bigirwenkya & Anor EPA No. 7 of 2011, Elizabeth Musoke, J (as she then was), noted that: -**

"Swearing a deed poll would not make the 1st respondent forfeit all the rights attached to the former name of Itatume Jane. I would liken this to assuming a new name when one's academic certificates are all in that person's former names. Assuming the new name would not mean that the person who assumes the new name thereby relinquishes all rights to the academic certificates acquired in the old names, or that he/she has to go back to the various institutions to have all the certificates changed to the new name. The deed poll, which is duly registered, would suffice to show the whole world that the person going by the newly assumed name indicated in the deed poll is also the owner of the certificates. The same would go for the voter's card which the 1st respondent acquired in her original names of Itatume Jane. She did not lose her rights to the voter's card. All she had to do was to present herself for

nomination with her voter's card which is still in the old names and then submit her deed poll to show that she is now going under a new name for purposes of all acts subsequent to the deed poll, the deed poll proves that she is one and the same person on the register under the old name. Although the 1st respondent relinquished use of the name of Itatume Jane, she did not relinquish all rights acquired by her as Itatume Jane. She continues with those acquired rights only that she now has to use a different name." (underlining is mine for emphasis).

The above holding is applicable to this case. The 1st Respondent's use of the added names of Suubi Kyinyamatama commenced after the deed poll. She explained that the letter "K" in the deed poll stands for her name Kobusingye. I agree with the holding in the above case that addition of the new names does not mean that the 1st Respondent has now totally become a different person and that she has nothing to do with all her previous records in the old names. The declaration presented to the Returning Officer at nomination clarifies on the new names that the 1st Respondent added to her old names and it confirmed that she is one and the same person. In the case of ***Wakayima Musoke Nsereko & Electoral Commission –v- Kasule Robert Ssebunya EPA No. 50 & 102 of 2016*** relied on by Counsel for the Petitioner, the 1st Appellant was faulted by court for adopting a set of names without following the legal procedure, which his Counsel conceded to; this is not the case here. In the instant case, the 1st Respondent presented her deed poll and declaration explaining the added names. S.36 of the Registration of Persons Act applies to change of names and not addition of names.

In view of the above, I find that the 1st Respondent was a registered voter under Art. 80(1) (b) of the Constitution of Uganda and S. 4 (1) (b) PEA and as such, she qualified for nomination and election as a Woman Member of Parliament for Rakai District. Therefore, I find no merit in this petition and I hereby dismiss it with costs to the Respondents.

I so order

Dated, signed and delivered by mail at Masaka this 17th day of September, 2021.

Esta Nambayo

480 **JUDGE**

17/09/2021