

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(CIVIL DIVISION)

PRE – ELECTION PETITION APPEAL NO. 0008 – OF 2025

(Arising from the decision of the Electoral Commission Communicated to the Petitioner on the 1st day of December 2025)

BWOWE IVAN::::::::::: **PETITIONER**

VERSUS

1. THE ELECTORAL COMMISSION

2. NASASIRA HAPPY

15 3. BURORA HERBERT ANDERSON

4. OKUYE FELIX EPHRAIM

5. OKUMU VINCENT NORBERT

6. SSENONYI JOEL BESEKEZI

7. KYAMBADDE WILBERFORCE

20 8. RWAMITI APUULI::::::::::: **REPONDENTS**

BEFORE: HON. JUSTICE COLLINS ACELLAM

JUDGEMENT

Introduction

This is an appeal by way of Petition against the decision of the 1st Respondent, the Electoral Commission communicated to the Appellant on the 1st day of December, 2025.

Background.

The Petitioner together with the 2nd -8th Respondents were nominated by the 1st Respondent as candidates to contest for the elective office of Member of Parliament, Nakawa Division West Constituency. At the Nominations conducted on 22nd and 23rd October, 2025, the 2nd -8th Respondents and the registered voters who seconded/supporting their nomination presented nomination papers and other documents in which they filled in the name of the Constituency as “**NAKAWA WEST**” instead of “**NAKAWA DIVISION WEST**” Constituency and took their respective Oaths to that effect. The Returning Officer of the 1st Respondent went ahead to endorse and declare them as nominated candidates for the constituency.

35 The Appellant lodged a complaint with the 1st Respondent seeking nullification of the individual and/or collective nomination of the 2nd-8th Respondent for reason that, by virtue of the documents presented by them, they were nominated as candidates for a non-existent

5 constituency. After a hearing conducted on 10th November, 2025, the 1st Respondent rendered a decision, dismissing the complaint and upholding the decision of the Returning Officer in nominating the 2nd -8th Respondents for the following reasons;

10 (a) *That whereas the Respondents respectively filled their nomination papers stating the Constituency as Nakawa West, while the Appellant/Petitioner indicated Nakawa Division West, the Control Form that was personally filled and signed by all nominated candidates was made and/or endorsed under the rightful name; Nakawa Division West.*

15 (b) *That the campaign programs and/or schedules submitted by all the Respondents as well as the Appellant indicated the intention to campaign in the same geographical areas.*

20 (c) *That the campaign program for Nakawa Division West was duly harmonized by all participating candidates and/or agents before the Returning Officer, Kampala, by 31st October, 2025, such that, by the time the complaint was lodged to the Commission the error had long been corrected, and the harmonized campaign program was indeed for Nakawa Division West Constituency and not any other constituency.*

25 (d) *That some of the candidates of this constituency have interchangeably used the name Nakawa West and Nakawa Division West including the Appellant whose campaign posters exhibited at the hearing, referred to the same constituency as Nakawa West although the correct name is Nakawa Division West.*

30 The Petitioner being dissatisfied with the decision of the 1st Respondent brought this Petition under *Article 63 and Section 11 of the Electoral Commission Act, Article 61 (1)(f) of the Constitution, Section 15 (1,2,3,4 and 5) of the Electoral Commission Act, Cap 176, Sections 26–33 of the Parliamentary Elections Act Cap. 177, Rules 4 and 5 of the Parliamentary Elections (Appeals to the High Court from Commission) Rules* for orders that;

35 a) *The appeal is allowed and the decision of the 1st Respondent upholding the nomination of the 2nd to the 8th Respondents as valid whereas not be set aside.*

b) *That the Nomination of the 2nd to the 8th Respondents by the 1st Respondent's Returning Officer as candidates for " Nakawa West" Constituency, a non-existent constituency be declared invalid.*

c) *In tandem with (b) above, a declaration be made that the Petitioner is the only validly nominated candidate for Nakawa Division West Constituency.*

d) *The 1st Respondent be ordered to declare the Petitioner herein duly elected unopposed for the elective office of Member of Parliament, Nakawa Division West Constituency.*

40 e) *Costs attendant to prosecuting this pre-election appeal and the complainant before the 1st respondent be met by the 1st Respondent herein.*

The grounds of the petition are laid out in the Affidavit in Support of the petition sworn by the Petitioner, Bwowe Ivan wherein he stated that;



5 1. *As a validly nominated candidate for member of Parliament Nakawa Division West Constituency and an advocate of the High Court of Uganda and all courts superior and subordinate thereto, he has a civic duty to challenge the said decision so far as it falls short of all statutory and constitutional requirements for the 1st Respondent to sustain the nomination of the 2nd to the 8th Respondents as valid;*

10 a) *That the gist of his complaint before the 1st Respondent was that the 2nd to the 8th Respondent presented themselves for nomination for Nakawa West Constituency.*

15 b) *That he is aware that it is the duty of the 1st Respondent through the mechanism of its Returning Officer to ensure that every prospective candidate presenting themselves for nomination satisfies the requirements spelt out under the Parliamentary Elections Act.*

20 c) *That when the 2nd- 8th Respondents presented themselves for nomination, they filled their respective nomination forms for "Nakawa West Constituency" instead of "Nakawa Division West Constituency which is duly demarcated and gazetted by 1st Respondent.*

25 d) *That the 2nd to the 8th Respondent each presented a proposer, a seconder and 10 registered voters supporting their nomination from "Nakawa West Constituency" a non - existent constituency" a matter fully well known to the 1st Respondent.*

30 e) *That the 1st Respondent proceeded to hear and determine my complaint in which it, in material particular, erred both in law and fact in applying its mind to the complaint;*

35 i. *That the 1st Respondent relied on material extraneous to his complaint.*

40 ii. *The 1st Respondent misapplied its mind to the law regulating nomination of candidates for the elective position of Member of parliament.*

45 iii. *That the 1st Respondent varied/amended/added and or altered the 2nd to the 8th Respondents' respective nomination papers by illegally favoring them with a constituency actually gazetted by it when, clearly the 2nd to 8th Respondents' respective nomination papers indicated that they had set out to seek for nomination and were actually nominated to vie for "Nakawa West Constituency" a non-existent constituency.*

 iv. *That the 1st Respondent, in its impugned decision, invited to the aid of the 2nd to the 8th Respondents literature otherwise unregulated by the electoral laws of the land to form part and parcel of a nomination paper; such as a candidates' posters, candidates' harmonization meetings and harmonized campaign program, its control form and all manner of irrelevant literature unknown to the law regulating a nomination exercise.*

 v. *The 1st Respondent, in its impugned decision, closed its eyes to the fact that there are no registered voters for "Nakawa West" constituency and thus none would have turned up to either nominate and or propose,*

5 *second let alone back up/support nomination of any of the 2nd to the 8th Respondents.*

vi. *The 1st Respondent, in its impugned decision, closed its eyes to the legal and factual point that post nomination , it is not seized with either inherent or residual power to amend, abridge , add to subtract from, speak into and otherwise vary any candidate's nomination form.*

vii. *The 1st Respondent in its impugned decision , was not alive to the legal and factual point that a candidate's nomination paper is a self-explanatory document into which nothing extraneous can be imported.*

viii. *That the 1st Respondent , in its impugned decision was not alive to the legal and factual point that a prospective candidate can only be validly nominated as such for a constituency gazette by it.*

ix. *That it was lost on the 1st Respondent that it was not seized with either inherent or residual power to purport to declare "Nakawa West" Constituency, a nonexistent constituency, as one and the same as Nakawa Division West Constituency which is the lawfully gazetted constituency.*

x. *That the 1st Respondent, in its impugned decision, intuitively amended the constitution and all enabling electoral laws so far as it “created” “Nakawa West Constituency” a nonexistent constituency.*

2. *That he is accordingly aggrieved and dissatisfied with the decision of the 1st Respondent upholding the nomination of the 2nd to the 8th Respondents as valid whereas not.*

3. *That as an Advocate of the High Court of Uganda with rich exposure to the law, he fervently knows that once the 1st Respondent has concluded a nomination exercise of any candidate at any electoral level, it cannot add, subtract, read into, vary, abridge, amend or otherwise alter a nomination paper.*

4. That the sum effect of the decision of the 1st Respondent is that it varied the respective nomination papers of the 2nd to the 8th Respondents by qualifying their non existing constituency 'Nakawa West' constituency thereby rendering its stamp of approval to an illegality *ab initio*.

35 1st Respondent's Affidavit in Reply/ Answer to Petition

The 1st Respondent to the Petition through the Affidavit sworn by **Lugolobi Hamidu**, a Senior Legal Officer of the 1st Respondent wherein he stated that;

1. *The instant petition is frivolous, vexations, an abuse of court process and ought to be struck out with costs.*

40 2. *Unless otherwise admitted, the particulars of the instant petition and the affidavit in support of the Petition are denied in toto and the Petitioner shall be put to strict proof.*

3. *He knows that the Petitioner lodged a complaint with the 1st Respondent, challenging the 1st Respondent's nomination of the 2nd to 8th Respondents candidates for direct member of parliament for Nakawa Division West Constituency, Kampala.*



5 4. *He also knows that the 1st Respondent upon receipt of the aforementioned complaint, invited the Petitioner and the 2nd to 8th Respondents to the commission for a hearing.*

10 5. *The Petitioner together with the 2nd to 8th Respondents attended the hearing of the Complaint and the 2nd to 8th Respondents respective responses and deliberated on the evidence and arguments presented.*

15 6. *In the end of the hearing of the complaint, the 1st Respondent in its decision among others informed the Petitioner that the 2nd – 8th Respondents were lawfully nominated as candidates for directly elected member of parliament, as the control form signed and filled by all nominated candidates was endorsed under the rightful name of Nakawa Division West which lawfully concluded the process of Nomination.*

The 2nd Respondent Happy Nasasira filed an answer to Petition and an affidavit in support wherein she averred that;

20 1. *The 1st Respondent validly nominated her to contest as a member of parliament for Nakawa Division West Constituency in Kampala having fulfilled all the legal requirements to contest for the same.*

25 2. *The 1st Respondent had the Petitioner's complaint interparty and rightly dismissed it for lack of merit.*

30 3. *There is one electoral area in Kampala District, Nakawa Division called Nakawa Division West Constituency, for which she was nominated.*

35 4. *The constituency is popularly known as Nakawa West Constituency.*

40 5. *The 1st Respondent rightly found and concluded that the control form that was filed and signed by all nominated candidates had the right constituency.*

45 6. *The 1st Respondent's agents through the electoral control form, corrected any error, mistake and/or misnomer that may have been on her nomination form.*

50 7. *The Petitioner is not entitled to any declarations and orders sought for.*

The 3rd Respondent Burora Herbert Anderson filed an answer to the petition and Affidavit in Reply wherein he stated that;

55 1. *He is a duly nominated candidate for Member of Parliament for Nakawa Division West also commonly known as Nakawa West.*

60 2. *He is advised by his lawyers that the petition is preterm an abuse of court process and the same should summarily be struck out.*

65 3. *The reference to Nakawa Division West constituency as Nakawa West did not in any way cause confusion to any person including the Petitioner and Electorate.*

70 4. *Having served as a Deputy RDC of Nakawa Division between November 2017 and September 2021 that the Division is divided into Nakawa East and Nakawa Division West commonly known as Nakawa west.*

75 5. *The control form that was signed by all candidates that expressed interest in contesting in this area has the constituency named as Nakawa Division West.*

80 6. *Reference to Nakawa Division West as Nakawa West was a mere omission and curable misnomer that was indeed corrected by the 1st Respondent,*



5 7. *The reference of Nakawa Division West as Nakawa West did not cause any confusion during the nomination process.*
8. *He knows that the petitioner is not in any way prejudiced by the reference by the reference of Nakawa Division West as Nakawa West.*
9. *He knows that the petitioner is deliberately trying to mislead court by causing confusion on a matter that was duly handled and corrected by the 1st Respondent.*

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The 6th Respondent, **Ssenyonyi Joel Besekezi** filed an answer to petition and an affidavit in support of the answer to petition wherein he stated that;

15 1. *He is a duly nominated candidate for Member of Parliament for Nakawa Division West Constituency on the 22nd day of October 2025.*
2. *The control form that was personally filed and signed by all the nominated candidates including the Petitioner was made and/or endorsed under the rightful name Nakawa Division West Constituency.*
3. *The campaign programs and/or schedules submitted to the 1st Respondent by him together with his Co-Respondents and the Petitioner indicate intention to campaign in the same geographical areas of Nakawa Division West Constituency but on different days.*
20 4. *The campaign program for Nakawa Division West constituency was duly harmonized by all participating candidates including him and their agents before the Returning Officer, Kampala by the 31st day of October 2025 in that regard therefore by the time the Petitioner filed this complaint, the 1st Respondent on the 6th day of November 2025 the error had long been corrected/cured.*
25 5. *The harmonized campaign program was for Nakawa Division West constituency and not any other.*
30 6. *If in his nomination papers he referred Nakawa Division West Constituency as Nakawa West constituency the same was a clerical error or short form which was corrected by the 1st Respondent.*
7. *The names Nakawa west or Nakawa Division West have been interchangeably used as exhibited on the Petitioner's Campaign Poster referring Nakawa Division West to Nakawa West.*
35 8. *His nomination by the 1st Respondent is valid since the intention and electoral area and clearly refers to Nakawa Division West.*
9. *His nomination for Member of Parliament for Nakawa Division West constituency was validly done, and the Petitioner is not entitled to any of the remedies sought in his petition.*

40 The 7th Respondent, **Kyambadde Wilberforce** filed an affidavit in reply wherein he stated that;

45 1. *He is a duly nominated candidate for the parliamentary position of Nakawa Division West constituency.*
2. *He presented his nomination papers before the agent of the 1st Respondent's Returning officer for Kampala bearing the name of the constituency as Nakawa West.*



5 3. *However, in the control form that he personally filed and signed together with other nominated candidates the Petitioner inclusive was made and endorsed under Nakawa Division West Constituency.*

10 4. *The nomination exercise is a process not an event, at the close of his nomination process, he had applied for the right constituency which is Nakawa Division West.*

15 5. *He has been advised by his lawyers that the omission of the word 'division' in between the words Nakawa and West was a trifle, a misnomer and a clerical error that can be cured under the laws of Uganda.*

20 6. *The 1st Respondent in its decision dated 21st November 2021 rightfully observed that by the time the Petitioner lodged a complaint, the minutiae human error on the nomination paper and all candidates or their agents in a harmonization meeting for the campaign program which was for none other than Nakawa Division West and thus rightfully found that the complaint has no merit.*

25 7. *He entirely associates himself with the decision of the 1st Respondent dismissing the Petitioner's complaint.*

30 8. *The petition is vexatious, frivolous and devoid of any merit and should be dismissed with costs.*

The 8th Respondent, Rwamiti Apuuli filed an answer to petition and affidavit in support wherein he averred that;

25 1. *He is a duly nominated candidate for member of parliament for Nakawa Division West constituency also commonly known as Nakawa west .*

30 2. *The petition is preterm, and an abuse of court process.*

35 3. *He knows that the Petitioner was one of those nominated for Nakawa West essentially Nakawa Division West and he never complained whatsoever.*

40 4. *The reference to Nakawa Division West constituency as Nakawa West did not in any way cause confusion to any person including the Petitioner and Electorate.*

45 5. *The control form that was signed by all candidates that expressed interest in this area has the constituency named as Nakawa Division West commonly known as Nakawa West.*

50 6. *The omission of the word Division in reference to Nakawa Division West and use Nakawa West did not cause any confusion during the entire nomination process did not cause any confusion to anyone.*

55 7. *He knows that the petitioner is not in any way prejudiced by the reference by the reference of Nakawa Division West as Nakawa West.*

The Petitioner in his affidavit in rejoinder stated that;

40 1. *The crux of the appeal has been avoided by all respondents as far as they run away from the 1st Respondent's lack of inherent and residual power to nominate the 2nd–8th Respondents for a constituency other than the constituency demarcated and gazetted by the 1st Respondent.*

45 2. *The 1st Respondent in sweeping denial to the validity of his appeal loses sight of its very own statutory report wherein the name of the contested constituency is shown as Nakawa Division West.*



5 3. *The 1st Respondent and 6th Respondent cunningly avoid the self-explanatory name of the constituency.*
4. *The 6th Respondent illegally relies on a purported control form which was not authored by him.*
5. *The 6th Respondent does not demonstrate proof of having sought for or paid for the said control form as a precondition for him to access it and let alone rely on it.*
10 6. *None of the Respondents denies that the crux of his appeal .*

Representation and Hearing

At the hearing, the Petitioner was represented by **Frank Kanduho**, the 1st Respondent was represented by **Enoch Kugonza** and **Sendyona Mukasa Edward** from its Legal Department, the 2nd Respondent was represented by **SHIELD Advocates**, the 3rd and 8th Respondents were represented by **Isaac Aisu, Phillip Munaabi and Andrew Kiryowa, Alex Luganda, Ayub Nampalwa, Hon. Nalukoola** represented the 6th Respondent, while **Ocheng Felix and France Kamya** appeared for the 7th Respondent. The 4th and 5th Respondents did not file replies.

The parties made their oral and written submissions as instructed by this court. This court has
20 duly considered them in determining this matter.

Preliminary Objection.

At the commencement of the hearing, preliminary objections raised and this court overruled them to pave way for the hearing of the petition. The court promised to give the detailed reasons in the final decision.

25 The first of the preliminary objections raised by the Petitioner was in respect to the 1st, 2nd, 3rd, 6th and 8th Respondents' answers to petition and their attendant affidavits. As earlier indicated parties made oral and written submissions which I have read and considered in determining these preliminary points of law.

30 In his submissions, counsel averred that the 1st Respondent in its Affidavit in Reply/Answer to Petition did not in the very least conform to the 6 rules spelt out under Rule 7 (1) of the rules in terms of what an affidavit filed by the commission should state.

Court's Analysis

Rule 7(1) of the Parliamentary Elections (Appeals to the High Court from Commission) Rules, S.I 141 – 1 provides that;

35 7. *"Commission's duty on service of petition.*
(1) *When the commission has been served with a petition, it shall within three days after service, lodge an affidavit with the registrar stating the following facts;*
(a) *A description of the irregularity or irregularities complained of to the commission;*
40 (b) *The orders given by the commission confirming or rejecting the existence of an irregularity or irregularities;*
(c) *The remedial orders given and the effect of those orders;*



5 (d) A statement whether any earlier complaint was reported to a lower authority and if so, what the complaint was and what orders were given by the lower authority;

(e) A statement of the facts found by the commission on the evidence placed before it; and

10 (f) Any notes of the evidence taken by the commission at the time of its hearing of the complaint made to the commission."

The above provision of the rules require the Electoral Commission, within three days of service of a petition, to lodge an affidavit stating the facts as listed in paragraphs (a)-(f) above. In this case the Commission lodged the Affidavit in Reply of Lugolobi Hamidu, a Senior Legal Officer of the 1st Respondent. I have perused the said affidavit and in all material terms satisfies the requirements of the above provision. It mirrors the impugned decision of the Commission and provides adequate information as required by the above provision of the Rules. I find no reason to fault the 1st Respondent for non-compliance with Rule 7(1) above.

I therefore find that this preliminary objection is devoid of any merit and is therefore dismissed.

The Petitioner also raised a preliminary objection regarding the Answer to the Petition filed by the 2nd-8th Respondent. The Petitioners objection is to the effect that the 2nd-8th Respondents, in contravention of Rule 8(4) which requires a Respondent, other than the Commission, served with the Petition to answer the Petition by an affidavit within two days after the service. He submitted that by filing an Answer to the Petition, instead an Affidavit in answer thereto, the Respondents committed a fatal blunder incapable of being cured by any ray of grace by this court. He prayed that the same be struck out with costs.

That the 2nd, 3rd, 6th & 8th Respondents filed answers to petition are a creation of the figment of their own imagination. That the same is a fatal blunder on the part of those respondents and therefore incapable of being cured by any ray of grace by this court. Counsel for the Petitioner cited Rule 8 (4) of the rules to back up their submissions. That the same should be struck out with costs.

Court's analysis

35 Rule 8(4) of the *Parliamentary Elections (Appeals to the High Court from Commission) Rules*,
S.I 141 – 1 provides that;

“A respondent, other than the Commission, served with the Petition, may answer the petition by an affidavit within two days after the service.”

Rule 15(1) of the Parliamentary Elections (Appeals to the High Court from Commission) Rules, S.I 141 – 1 provides that;

40 "*Subject to this rule, all evidence at the trial in favour of or against the Petition shall
be by way of affidavits read in open court.*"

From the above provision of the law, it is my understanding that a respondent to such a petition, other than the Commission, need not file an answer to the petition. It suffices to file



5 an affidavit in reply/answer to the petition. I agree with counsel for the petitioner that the 2nd-8th Respondents were not required to file an Answer to the Petition but rather an affidavit in answer to the petition. I am however unable to agree with counsel that it is fatally defective to file an answer to the petition together with an affidavit in support. It is my view that the Answer to the Petition filed by the Respondents can be severed leaving the affidavit thereof as the answer to the petition as envisaged by the rules. Nothing in the rules restricts Respondents from filing affidavit evidence subsequent to the answer to petition.

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15 **See; Winifred Komuhangi Masiko Vs Bamukwatsa Betty aka Muzanira Betty & Electoral Commission (Election Petition No. 004 of 2018) [2019] UGHC 105**

I therefore dismiss this preliminary objection as its devoid of merit and maintain the affidavits on record as valid.

20 The 6th Respondent also raised a preliminary objection on the validity of the decision which is subject to this appeal.

That the decision issued is fundamentally flawed and lacks essential attributes of a valid decision as prescribed by the law there by rendering the Petitioner's appeal unsustainable.

25 That the decision is void *ab initio* as it was signed by only one person, the Chairperson of the 1st Respondent in contravention of the statutory requirement that signatures of five members constituting quorum of five commissioners. Counsel for the 6th Respondent relied on the case of **Okabe Patrick Vs Opio Joseph Linos & Anor Election Petition No. 87 of 2016** to fortify their assertions.

30 The Petitioner's Counsel in response to this preliminary objection averred that the decision is different from minutes of the committee. That the attempt to rely on section 8 of the Election Commission is a fishing expedition by counsel for the 6th Respondent which should not be allowed by this court.

Court's analysis

35 In their pleadings in the petition, all the parties herein agree that an interparty hearing of the Petitioner's complaint before the Electoral commission, and that all the 5 commissioners were present.

Section 8(8) of the Electoral Commissions Act Cap. 176 allows the commission to regulate its own procedure.

40 In the present case, there is no evidence or doubt that the letter signed by the Chairperson communicating the decision, does not represent the decision of the commission as a whole.

This preliminary objection is also dismissed.

I will now move on to handle the Petition on its merits. Two issues were agreed upon for determination of the petition namely;

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1. Whether the 1st Respondent Commission validly upheld the decision of the Returning officer in nominating the 2nd-8th Respondents?
2. What Remedies are available.



5 **Issue One: Whether the 1st Respondent Commission validly upheld the decision of the Returning officer in nominating the 2nd-8th Respondents?**

Submissions by Counsel for the Appellant

10 Counsel for the Appellant sought to impeach the 1st Respondent's decision of upholding the decision of the returning officer to nominate the 2nd-8th Respondents on grounds of non-compliance with electoral laws and nominating in a non-existing constituency, limitation of powers of the returning officer or commission to correct a nomination paper, existence of a defective oath and consideration of material extraneous to the petitioner's complaint before the electoral commission.

15 On the first segment regarding non- compliance with the electoral laws and nominating candidates on a non-existent constituency, counsel relied on the provisions of section 28 and 29 of the PEA which provide for the procedure for nomination of candidates and argued that the commission ought to have looked at no further than the face of the nomination paper, form NP and the form for declaration of nominated persons to establish compliance with the law. That form NP for the 2nd-8th Respondents as well as their form ND/UO state that the name 20 of the constituency sought for nomination is Nakawa West. That the Gazette notices and the Electoral commission Report on the 2020/ 2021 General Elections refer to a constituency named Nakawa Division West and not Nakawa West. That had the Respondent not lost sight of the fact that it is only Nakawa Division West Constituency that duly exists and not Nakawa West Constituency, it would not have upheld the decision of the Returning officer.

25 Counsel also cited the cases of **Abdulrahman Elamin vs Dhabi Group and 2 Ors CS No.432/2012 , Sanyu Sarah vs China Railway Group and Uganda National Roads Authority CS No.011/ 2024** to the effect that any suit against or on behalf of a non-existent entity is a nullity and argued that the constituency through which the 2nd – 8th Respondents sought nomination and they were duly nominated as candidates by returning officers is non-existent.

30 It was also submitted that under section 29(3) (i)-(iii) of the Parliamentary Elections Act, a nomination paper may be replaced, corrected and a new or corrected nomination paper is filed with the returning officer not later than 5:00pm of the nomination day. That none of the Respondents replaced or corrected their nomination papers on the nomination day. That the control form is not a statutory document and the nomination form ought to have been 35 corrected on the nomination day.

40 The other contention was that the 1st Respondent in its decision relied on materials extraneous to the petitioner's complaint like the candidates' posters, harmonization meetings, the campaign program and the control form. That whereas the Nomination paper is a legal document under section 28 (1) of the PEA, the control form is an administrative post nomination document, the absence of which would not invalidate a nomination.

Submissions by the 1st, 3rd and 8th Respondents

Counsel for the Respondents disputed the petitioner's contention that the 1st Respondent was not seized with powers to declare Nakawa West as one and the same as Nakawa Division West Constituency and argued that Section 63 of the Constitution, Sections 12(1) e and f as well as



5 section 49(1) and 2 of the Electoral Commission Act clothes the Respondent with powers to cure mistakes including at the stage of nomination like in the instant case where the actual intention and geographical area are one and the same.

10 Counsel argued that the control form is not an extraneous document but rather a significant document in election management. That it is at the point of entering the control form that the nomination is concluded. That the use of the name of a constituency interchangeably by the Respondents to mean one and the same electoral area was not fatal. That the petitioner admitted in cross examination that he had printed posters under Nakawa West in reference to Nakawa Division West. That no one among the electorates was confused by reference to Nakawa Division West as Nakawa West. It was further argued that the inadvertence in regard 15 to the rightful electoral area was cured when the petitioner and the 2nd-8th Respondents signed the control form indicating Nakawa Division West Constituency.

Submissions by Counsel for the 7th Respondent

20 Counsel relied on the case of **Toolit Aketcha vs Oulanya Jacob L'okori & Anor HC EP No.01 of 2016** for the position of the law that a misnomer or clerical error on a return form cannot vitiate results. Counsel submitted that the control form that was filled and signed by all the candidates at the tail end of the nomination process bears a unique code 22903 which is specifically designed for an electoral area known as Nakawa Division West. That the omission 25 of the word division was a misnomer and clerical error that can be cured under Article 126(2) (e). That the returning officer did not find the clerical error to be an imperfection in the nomination paper leading to substantial diversity or departure from the requirements under section 29(2)n c of the PEA where he could refuse nomination where there is an imperfection in the nomination paper leading to substantial diversity under the Act. That the Returning officer complied with the electoral laws and the 1st Respondent was justified in upholding his decision nomination the 7th Respondent.

30 Resolution by the Court

From the facts and the evidence on record, the Petitioner and the 2nd -8th Respondents were all nominated by the 1st Respondent to contest for the elective position of Member of Parliament for Nakawa Division West Constituency. Save for the Appellant, the documents presented by the 2nd -8th Respondents, particularly the Nomination Form, the name of the 35 constituency was filled as Nakawa West Constituency instead of Nakawa Division West Constituency. However, a Control Form specifically designated for the Nakawa West Division was filled and signed by all the candidates and the Returning Officer confirming the nomination of the candidates.

40 The Petitioner then filed a complaint before the Electoral Commission that, apart from himself, the rest of the candidates were nominated for a non-existent constituency called Nakawa West Constituency and not Nakawa Division West Constituency. The electoral commission upheld the decision of the Returning Officer holding among others that the despite the name of the Respondents filled in their respective nomination papers, the Control Form that was personally filled and signed by all the nominated candidates and was endorsed 45 under the rightful name of Nakawa Division West; that the campaign program and/or

5 schedules submitted by all the candidates indicate an intention to campaign in the same geographical area; that the said error had been corrected and that all the candidates, including the Petitioner, have interchangeably referred to the Constituency as Nakawa West, although the correct name is Nakawa Division West Constituency.

10 This appeal is challenging the above decision of the Electoral Commission to uphold the nomination of the 2nd-8th Respondents to contest for the position of Member of Parliament for Nakawa Division West Constituency. The decision that this court is required to make is that the Electoral Commission erred in upholding the nomination of the 2nd-8th Respondents and that that the Appellant is the only duly nominated candidate to contest for the position of Member of Parliament for Nakawa Division West Constituency and therefore elected 15 unopposed. I have read the submissions of all the parties, and I have taken them into consideration in arriving at this decision.

20 The nomination phase of the Electoral cycle for Member of Parliament is regulated by Part VI of the Parliamentary Elections Act, specifically Sections 26-37 of the said Act. These provisions prescribes the requirements and the procedure at nomination, provides for factors that may invalidate a nomination paper and/or nomination of a candidate.

Section 29(2) of the Parliamentary Elections Act provides that a Returning Officer shall refuse to accept any nomination paper if;

- 25 a) *An allegation of ineligibility of the candidate is made and the grounds for the allegation appear on the nomination paper;*
- b) *There appears a major variation between the name of any person as it appears on the nomination paper and the voters roll;*
- c) *There is any imperfection in the nomination paper leading to a substantial diversity from the requirements of this Act.*

30 Section 15(1) of the Electoral Commission Act, Cap. 176, on the other had provides for the powers of the Commission to resolve complaints as follows;

35 *"A complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at the lower level of authority, shall be examined and decided by the Commission; and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and any effects it may have caused."*

Article 126(2)(e) of the 1995 Constitution of Uganda provides that; Courts must administer substantive justice without undue regard to technicalities.

The above provision of the law in essence means, justice should focus on the merits of the case not technicalities or minor procedural errors to ensure fairness and access to justice.

40 The main contention in this petition is whether the anomaly in the name of the constituency as filled by the 2nd-8th Respondent is one that could be corrected by the Returning Officer or the Electoral Commission or whether it was substantial enough to warrant a nullification of the nomination of the affected candidates.



5 The Electoral commission maintained the nomination of all contestants for that constituency averring that it was a clerical error which was corrected. I agree that the failure by the 2nd-8th Respondents to fill in the correct name of the Constituency for which they were seeking nomination is a minor irregularity or misnomer which could be cured by the Commission under the powers conferred upon it by section 15 of the Act and section 29(2) of the
10 Parliamentary Elections Act.

In handling this Petition, this court shall prioritize the merits over formal procedural flaws and technicalities. To allow the appeal this Court will be denying the voters of Nakawa Division West Constituency the opportunity of choosing their representative to parliament. To do so for the reasons advanced by the Appellant would have the effect of imposing on the voters of
15 the Constituency the Appellant as their representative. Elective democracy requires that anyone seeking political office subjects himself/herself to the will of the electorate. A proper mandate is through the ballot box. This ensures that the people express their will, and this court cannot be seen to subvert the will of the people. The effort of the Appellant through
20 this petition is an audacious attempt to sneak to parliament to represent a group of people whose mandate he has not obtained.

I agree with counsel for the Respondents that the “Nakawa West” Constituency and “ Nakawa Division West Constituency” are one and the same but often used interchangeably.

It is also my observation that on page 27 of the Electronic file of the Petition, Form ND/UO, the Petitioner just like all candidates was also declared as a nominated directly elected
25 member of parliament candidate to represent “Nakawa West” constituency. A constituency he claims does not exist. The Petitioner did not however raise that “anomaly” to the commission or to this court. Because then he would also not be nominated for Nakawa Division West constituency as he so avers.

The control form of the Parties and all preceding documents in respect to the nomination
30 indicate the constituency as Nakawa Division West. Thus, the clerical error was corrected and can not be held to cause confusion to anyone and most certainly not the Petitioner.

In the case of ***Kasangaki Diana Vs Fulgensia Tumwesigye Civil Application No. 21 of 2023 [2025] UGSC 27***, Court held that substantive justice outweighs procedural technicalities, clerical errors especially when the said errors can be explained or corrected.

35 I associate myself with the above decision and opine that the Petitioner would not in any way be prejudiced if this petition is not allowed for substantive justice to be administered. Maintaining the said nominations of the 2nd-8th Respondents aligns with the principle of substantive justice, ensuring that candidates are not disqualified on account of clerical errors which can be and was cured by the commission.

40 This Petition has not succeeded for the reasons explained above. The only remedy is to have it dismissed. It is accordingly dismissed. The Electoral Commission’s decision is upheld.

Each party should meet their costs.



5 Dated this..... 8th day of January 2026



COLLINS ACELLAM

JUDGE

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