THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

**ELECTION PETITION NO. 002 OF 2022**

1. AGABA GILBERT
2. LOLEM JOSEPHINE
3. NAKITENDE SALAAMA ADELAIDE
4. BWENGYE LAUBEN MUHANGI

PETITIONERS

**VERSUS**

1. THE ATTORNEY GENERAL
2. HON. AMONG ANNET ANITA,
   THE SPEAKER OF PARLIAMENT
3. ADOLF MWESIGE KASAIJA
   CLERK TO PARLIAMENT
4. AKOL ROSE OKULLU
5. NAMARA DENIS
6. KAKOOZA JAMES
7. ODONGO GEORGE STEPHEN
8. MUSAMALI PAUL MWASA
9. KADOGO VERONICA BABIRYE
10. MUGYENYI MARY RUTAMWEBWA
11. AMONGIN JACQUELINE
12. SIRANDA GERALD BLACKS

RESPONDENTS

**BEFORE: HON. JUSTICE EMMANUEL BAGUMA**

**JUDGMENT**

## Introduction

The petitioners (Agaba Gilbert, Lolem Josephine Nakitende Salaama Adelaide and Bwengye Lauben Muhangi) contested for elections for Uganda's Representatives to the East African Legislative Assembly which was held on 29th September 2024. 1st petitioner Agaba Gilbert polled 210 votes, 2nd petitioner Lolem Josephine polled 11 votes, 3rd petitioner Nakitende Salaama polled 6 votes and the 4th petitioner Bwengye Lauben Muhangi 5 votes

On the other hand, the 4th Respondent Akol Rose Okullu polled 422 votes, 5th Respondent Namara Denis polled 415, 6th Respondent Kakooza James polled 405, 7th Respondent Odongo George Stephen polled 403 votes, 8th Respondent Musamali Paul Mwasa polled 401 votes, 9th Respondent Kadogo Veronica Babirye polled 383, 10th Respondent Mugyenyi Mary Rutamwebwa polled 367, 11th Respondent Amongin Jacqueline polled 338 and the 12th Respondent Siranda Gerald Blacks polled 233.

The 2nd and 3rd Respondents declared the 4th to 12th Respondents as the winners in the election.

The petitioners being dissatisfied with the results as declared by the 2nd and 3rd Respondents filed this petition challenging the results of the election alleging a number of irregularities, non- compliance with the law and electoral offences.

The petitioners accordingly petitioned this court against the results of EALA Elections conducted on the 29th day of September 2022 seeking for orders that; -

a) An order be issued annulling the result of the election conducted on the 29th September 2022 for Uganda Representatives to the East African Legislative Assembly.
b) A declaration that the 4th to 12th Respondents were not validly elected as Uganda's Representatives to the East African Legislative Assembly.
c) An order be issues annulling the election of the 4th to 12th Respondents as Ugandan Representatives to the East African Legislative Assembly.

d) An order for the conduct of fresh elections for Ugandan representatives to the East African Legislative Assembly be issued.
e) An order that the 2nd and 3rd Respondents jointly and /or severally pay the costs of this petition.

**The pleadings.**

In the petition, petitioners contended that the election was not conducted in accordance with the Treaty for the establishment of the East African Community, the East African Legislative Assembly Election Act and the Ugandan Constitution. That the election grossly offended and made a farce of the democratic principles. That the 1st Respondent failed in his duty to advise the institution of Parliament to follow the Treaty.

That the election exercise that was carried out under the supervision of the 2nd and 3rd Respondents on 29th September 2022 in Uganda Parliament was a total nullity and mere spurious imitation of election as it had predetermined results. The declaration of the 4th to 12th Respondents as the successful candidates by the 2nd Respondent was a fait accompli.

On the other hand, the Respondents filed files answers to the petition denying each and every allegation of the fact contained in the petition and contended that the election was conducted in accordance with the EAC Treaty, EALA Act, Uganda Constitution and the 2nd and 3rd Respondent committed no illegalities or irregularities.

**Legal representation.**

Counsel Jude Byamukama, together with Zahara Tumwikirize represented the petitioners while Namakula Elizabeth senior state attorney together with Mr. Solomon Kirunda, Akena Moses Wayibwa Simon represented the 1st, 2nd and 3rd Respondents, Joseph Kyazze represented the 2nd ,3rd, 4th, 5th, 7th, 8th, 9th, 10th and 11th and 12th Respondents. Apolo Katumba Reprsented the 6th Respondent and Counsel Ronald Oine represented the 10th Respondent, Mr. Justine Semuyaba represented the 9th and 12th Respondents.

**Issues for court's determination.**

1. **Whether the 2nd and 3rd Respondents were properly joined as parties to the Election Petition?**
2. **Whether the petitioners' affidavits filed after the closure of pleadings are competently on record?**
3. **Whether there was non-compliance with the Treaty for Establishment of the East African Legislative Assembly and electoral laws during the conduct of the election for Uganda's Representatives to the 5th East African Legislative Assembly.**
4. **If so, whether the non- compliance affected the results of the election in a substantial manner?**
5. **Whether the Petitioners are entitled to the remedies sought?**

**Burden of Proof.**

In Election petitions, the burden of proof is cast on the petitioners to prove the assertions to the satisfaction of the court that the alleged irregularities or malpractices or non-compliance with the provisions and principles laid down in the relevant electoral laws were committed and that this affected the results of the election in a substantive manner. Furthermore, the evidence must be cogent' strong, and credible. ***See Col. (RTD) Dr. Kiiza Besigye Vs Yoweri Kaguta Museveni Presidential Election Petition No. 1 of 2001***

**Standard of proof.**

In the case of **Paul Mwiru v Hon' Igeme Nabeta & Others-Election Petition No. 06 of 2Ol1** court held: -

***"section 61(3) of the PEA sets the standard of proof in parliamentary election petitions. The burden of proof lies on the petitioner to prove the allegations in the petition and the standard of proof required is proof on a balance of probabilities".***

However, though the standard of proof is on a balance of probabilities, it is slightly higher though lower than beyond reasonable doubt **(see Mukasa Anthony Harris Vs Dr. Bayiga Michael Philip Lulume S.C.C.A No. 18 of 2007).**

Where court noted that;

"***The standard of proof is a matter of statutory regulation by Subsection 3 of Section 61 of the PEA, 2005. The Subsection provides that the standard of proof required to prove an allegation in an election Petition is proof upon a balance of probabilities. The standard of proof is on a balance of probabilities but slightly higher though lower than beyond of reasonable doubt."***

This is because an election petition is of great importance both to the individuals concerned and the nation at large. The petitioners have a duty to adduce credible or cogent evidence to prove his allegation at the required standard of proof.

At hearing both parties agreed to file written submissions on agreed issues for court's determination which are well laid in the joint scheduling memorandum.

However, counsel for the petitioners in his written submissions raised a preliminary objection to the effect that issues No. 1 and 2 relate to matters that were canvassed before the previous trial judge who declined to determine them in the ruling that was subsequently set aside by the Court of Appeal in Election Appeal No. 05 of 2023.

He submitted that Respondents did not cross-appeal the failure to determine the said issues (1) and (2) by the previous judge in the stated Election appeal and as such they are precluded from raising them during this retrial. That in **Election Petition Appeal No. 60 of 2016; Apolot Stella Isodo Vs Amongin Jacqueline**, the **Court of Appeal** emphasized that where a successful party from the decision of the lower court does not cross-appeal on any finding to which they are dissatisfied, they are precluded from raising it again. In its own words, the Court held as follows;

> **"Before delving into the merits of the Appeal, we would like to deal with the submission of the Counsel for the Respondent on the issue of affidavits in rejoinder deponed by the appellant's witnesses that were**

**"supposed" to be expunged which the learned trial judge did not address. <u>We note that counsel for the Respondent did not cross-appeal on the above issue which implied that the respondent was satisfied with the way it was handled."</u>**

Counsel contended that the court of appeal ordered that this petition be heard and determined on its own merit.

On the other hand, Counsel for the Respondent submitted that there was no finding and no decision by *Hon. Justice Dr. Singiza* on the said two issues. His Lordship, having determined that court had no jurisdiction to adjudicate the subject matter of the dispute, he did not pronounce himself on the two issues. The trial Court in its ruling held that; ***"Since the Petition in its current form seeks to interpret the treaty, it is dismissed with costs to the respondents for want of jurisdiction due to the reasons stated in this ruling. Having dismissed the petition, I find it unnecessary to discuss the second and third questions that deal with the cause of action and defective affidavits.***

That there was thus no determination by the Learned Judge on the issue of cause of action against the 2nd and 3rd Respondents or the admissibility of affidavit evidence, whether in the positive or negative, which would be the basis of a cross appeal. It is thus inconceivable that the Respondents could be expected to cross appeal on issues that had not been determined by the High Court, upon a ruling that it had no jurisdiction in the matter.

From the above contention regarding matters formulated under issues 1 and 2 by the petitioners. I have very carefully read the ruling of Justice Dr. Singiza wherein he dismissed this election petition on ground that the High Court lacked jurisdiction to interpret the EAC Treaty. In his ruling he stated that;

***"Since the Petition in its current form seeks to interpret the treaty, it is dismissed with costs to the respondents for want of jurisdiction due to the reasons stated in this ruling. Having dismissed the petition, I find it unnecessary to discuss the second and third questions that deal with the cause of action and defective affidavits' .***

From the above piece observation in the ruling by Justice Singiza, he did not consider the matters raised in the current matter in issues 1 and 2. A matter can only be said

to be res judicata if its heard and determined on its merit, the learned Justice Singiza did not determine the issues raised here. This court will accordingly deliberate on the same.

The preliminary objection is according dismissed.

Having resolved the preliminary objection above, I will now proceed to consider the petition on its own merit.

**Submissions by counsel for the petitioners**

**Issue No. 1**

**Whether the 2nd and 3rd Respondents were properly joined as parties to the Election Petition?**

Counsel submitted that the 2nd and 3rd Respondents were properly joined as parties to the election petition. The question of whether the 2nd and 3rd Respondents can be sued as parties to this Election Petition is not solely a matter of law.

He submitted that their addition as parties requires the evaluation of evidence for this court to satisfy itself on whether they were rightly added as parties or not. The Petitioners contended that the 2nd and 3rd Respondents breached their duty under the law when they conducted a spurious and fraudulent election that returned the 4th to 12th Respondents as Uganda's representatives to EALA.
Counsel submitted that under the Parliamentary elections, the 2nd and 3rd Respondents on account of being the conveners/supervisors of the 5th EALA election would be the equivalent of the Electoral Commission and the Returning Officers. It is not in dispute that the election of Uganda's Representatives to the 5th East African Legislative Assembly was directly supervised by the 2nd and 3rd Respondents**.** The Parliamentary Rules of Procedure for the Election of Members of the East African Legislative Assembly imposed various obligations on both the Speaker and Clerk of Parliament in the conduct of the said election. That the above automatically qualifies 2nd and 3rd Respondents as necessary parties to any dispute touching the conduct of the election in question.

Counsel referred to the case of the **Departed Asians Property Custodian Board Vs Jaffer Brothers Ltd (1999) EA 55**, where the **Supreme Court in considering the import of** Order 1 Rule 10 (2) of the Civil Procedure Rules decided as follows;

> ***"… a party may be joined in a suit, not because there is a cause of action against it, but because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...***
>
> ***In order for a person to be joined to a suit on ground that his presence was necessary for the effective and complete settlement of all questions involved in the suit, it was necessary to show either that the orders sought would legally affect the interests of that person and that it is desirable to have that person joined to avoid multiplicity of suits, or that the defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that other person."***

Counsel concluded with the case of **Prof. Peter Anyang' Nyong'o & 10 Ors Vs AG of Kenya, REF No. 1 of 2006, the East African Court of Justice** which held that the clerk to the East African Legislative Assembly and the Secretary-General could be sued as necessary parties responsible for enforcing the decision sought.

**Issue No. 2**

**Whether the Petitioners' affidavits filed after closure of the pleadings are competently on record?**

**C**ounsel submitted that the affidavits of Kinshaba Patience Nkunda, Phiona Rwandarugali and the additional affidavit of Agaba Gilbert in support of the Petition filed on the 3rd January 2023 are competently on the court record.

Counsel submitted that It is trite law that any affidavit filed before the scheduling conference of an election matter is deemed to be good filing. He referred to the case of **EPA No. 75 of 2016; Tamale Julius Konde Versus Ssenkubuge Isaac & EC**, where the Court of Appeal overturned the decision of the High Court wherein it had

struck out additional affidavits on the ground that they were filed without leave after the 2nd Appellant therein had already filed its answer to the petition. That while acknowledging that courts have always adopted a liberal approach when dealing with affidavits in election matters, the Court of Appeal also considered that elections are matters of great public interest which have the short statutory timeframe within which they are to be filed and whose evidence cannot be fully gathered before filing. The learned Justices of Appeal held that;

> ***"It is our firm view, based on the above factors, that it is sometimes practically not possible to file all the affidavits in support of the petition at the same time with the petition. As long as the additional affidavits are filed before the scheduling conference is conducted, it is usually acceptable as no prejudice would be occasioned to the Respondents even if no leave of court is obtained. We have observed this practice at the Supreme Court in presidential election petitions. This is because it is during the scheduling conference that all loopholes in the pleadings are plugged, issues for trial and the authorities to be relied on are agreed upon, and the matter set down for hearing.***"

Court further held that;
***"it is only those additional affidavits that are filed after the scheduling conference that require a party to seek leave of court".***
As such, they found that the filing of additional affidavits by the Appellant therein without the leave of court did not occasion any injustice to the respondents who could have still filed their reply to those affidavits as the matter had not yet been scheduled.

Counsel concluded that It is evident on the court record that the impugned affidavits were filed on 3rd January 2023 and served on the Respondents on 4th and 5th January 2023 way before the scheduling conference of the petition which only happened on the 14th of March 2024 before this honourable court. The said affidavits had already been on court record even before the mention before the previous trial judge. The Respondents had an opportunity to file affidavits in reply to the same before scheduling but they chose not to do so. Strangely, the 12th Respondent, Gerald

Siranda Blacks deponed an affidavit in rejoinder to the 3 affidavits on the 5th of January 2023.

**Issue No. 3**

**Whether there was non-compliance with the Treaty for the Establishment of the East African Legislative Assembly, and the electoral laws during the conduct of the election for Uganda's representatives to the 5th East African Legislative Assembly?**

Counsel submitted that according to the Petition, the EALA election was not conducted in accordance with the Treaty, the East African Legislative Assembly Elections Act and the Ugandan Constitution but also made a farce of the democratic principles. He contended that the said election was a total nullity and a mere spurious imitation of elections. That the 2nd and 3rd Respondents also did not follow the specific rules of procedure as to the election of members of the East African Legislative Assembly as well as their own rules and representations made before and during the conduct of the elections.

Counsel submitted that the failure to conduct an election according to the laid down rules of procedure renders an election void. He referred to the case of **Jacob Oulanyah Vs Attorney General; Constitutional Petition No. 28 of 2006**; where the Constitutional Court nullified the electoral process for EALA MPs and held that: -

***"there had been no election by Parliament as required by the laid down procedure and that the manner in which the purported election to EALA was conducted contravened Articles 89 (1) and 94 (1) of the Constitution of Uganda which according to Article 50 (1) of the Treaty provided the procedure to govern the election".***

Counsel further referred to the case of **Prof. Peter Anyang' Nyongo & Ors Vs Attorney General of Kenya; Reference No. 1 of 2006**; where the EACJ considered

the import of Article 50 of the treaty before determining itself on the binding effect of the rules of procedure initiated by the partner state where it was held that;

**"The National Assembly of any democratic sovereign state has the powers of regulating its conduct through rules of procedure by whatever name called. Once made and adopted, they are binding until revoked, amended or otherwise modified by the National Assembly itself."**

Further, counsel contended that the said election was not free and fair. It was undemocratic especially since the 2nd and 3rd Respondents created an unlevelled playing field for all the candidates in the race. He referred The **Supreme Court** in **Presidential Election Petition No. 01 of 2001; Rtd Col. Dr. Kiiza Besigye VS Yoweri Kaguta Museveni and EC**, where court defined **"free and fair elections"** in the following terms;

***"To ensure that elections are free and fair there should be sufficient time given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be a levelling of the ground so that the incumbents or Government Ministers and officials do not have unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people……. Election laws and guidelines for those participating in elections should be made and published in good time. Fairness and transparency must be adhered to in all stages of the electoral process."***

Counsel contended that in the instant case, according to the affidavit of Agaba Gilbert, the Simultaneous conduct of polling and campaigning, Usage of a ballot paper whose order of names was arbitrary and designed to favour the 4th to 12th Respondents whose names followed chronologically as the 2nd Respondent wished to have them elected particularly those who had been incumbent members of EALA (the 4th to 9th Respondents), the secretive voting outside plenary, failure to publish official results or circulate them to candidates, ballot stuffing and partisan

actions by the 2nd Respondent, the 2nd Respondents directly campaigned for the "six" (incumbent candidates) under the guise that there was a need for continuity and more prejudiced the petitioners and unduly influenced the result of the election.

Counsel contended that rule 13(1) of the rules of procedure was faulted as the contestants were not given seven minutes time to address parliament before voting. 24 Members were allowed to vote before campaigns could start.

Counsel submitted that failure to conduct voting by secret ballot in the Plenary contrary to Rule 13 (2) of the Rules of Procedure for the Election of Members of the East African Legislative Assembly not only rendered the election void but also violated Articles 89 and 94 of the 1995 Constitution as well as Rules 12 (2) and 16 (2) of the Rules of Procedure of the Parliament of Uganda S.I No. 30 of 2021, according to the parliamentary Hansards, voting took place outside the House in a tent after speaker had adjourned the sitting in total violation of the above cited law and such an election cannot be said to be free and fair.

Counsel submitted that even if we are to consider the voting process from which the 4th to the 12th Respondents were elected, it was still tainted with material illegalities. For instance, the ballot paper used and designed by the 3rd Respondent also rendered the election not free and fair for the following reasons.

That the 1st Petitioner and one Ategeka B. Moses both independent candidates were combined in the same row on the said ballot paper thereby rendering the ballot paper defective. This was a material error as it confused the electorate who needed to choose between the 1st Petitioner and one Ategeka Moses.

The ballot paper was defective as it had no security features, serial numbers or other unique features required of a ballot paper and the same were susceptible to fraud in the form of ballot stuffing.

That further, the ballot paper used in the election also had the 4th to 12th Respondents in chronological order as the first 9 candidates and who “miraculously” turned out to be the successful candidates in the race. That this was stage managed

and the outcome was a mere fait accompli. The change of the order of names on the ballot paper misled the voters since the Petitioners had communicated to them (voters) that their (petitioners') names on the ballot paper were the same as the Report of the verification committee, the Notice published in the New Vision newspaper dates 23rd September 2022, the Parliament of Uganda's order paper for 29th September 2022.

Counsel referred to the case of **Omar & Anor Vs Mbuzi & Anor Civil Appeal No. 50 of 2006,** where the Court of Appeal of Kenya held that a ballot paper is an integral part of the election and where it is found to be defective then the elections cannot be said to have been free and fair. The learned justices of Appeal in their own words held that;

***"In our view, the ballot paper, as we have stated is an integral part of the election...We cannot on our part, conceive a more important defect in an election than a ballot paper that instead of guiding voters, misleads them… we find no hesitation in finding that the defect went to the foundation of any election namely, ensuring that the elections are free and fair by providing to all candidates offering themselves for elections ... a level playing ground..."***

Counsel submitted that the other aspect of noncompliance is that the Petitioners were denied access to the voter's roll both before and after the election. That hey were denied an opportunity to be present in person or through their agents at the impugned election. The Petitioners were also denied copies of the official results/declaration of results forms even when they specifically applied to the 3rd Respondent for the same. That this deliberate denial of official results was intended to evade and defeat scrutiny of the spurious exercise in which the 4th to 12th Respondents were elected.

That the 9th and 11th Respondents were members of the NRM while the 12th Respondent's political party is in a coalition with the NRM Government thereby making all the 9 successful candidates of a common political platform of the ruling party hence of one shade of opinion as opposed to the different shades of opinion stipulated under Article 50 (1) of the EAC Treaty and Rule 12 (1) of the Rules of Procedure of Parliament S.I No. 30/2021.

Counsel submitted that there was outright ballot stuffing from the secretive polling station set up by the 2nd and 3rd Respondents. As the 1st Petitioner testifies on

paragraphs 15 to 19, the final tally indicating that 495 votes were cast is fraudulent. Firstly, 57 MPs affiliated to National Unity Platform boycotted the exercise whereas 2 of their colleagues (Hon Allan Ssewanyana and Hon Muhammad Ssegirinya) were in jail. Secondly, 12 MPs were not in the country, 2 MPs (Hon Moses Ali and Hon Apolo Masika) were ill whereas Hon Betty Engola was bereaved and absent. Thirdly, one ineligible voter (Hon Alice Kaboyo who is an ex officio) participated in the voting as witnessed by the 4th Petitioner**.** Considering that over 70 MPs did not participate in this exercise and that the number of MPs is 529, the figure of 495 ballot papers cast is simply a symptom of fraud.

**Issue No. 4**

**If so, whether the non-compliance affected the results of the election in a substantial manner?**

Counsel for the Petitioners submitted that the irregularities and illegalities cited affected the election both qualitatively and quantitively. He referred to Kenyan High Court decision in **Joho Vs Nyange (2008) 3 KLR (EP) 500**, where Justice Maraga held that;

**"The law is therefore clear as to when an election can be nullified. An election will be nullified if it is not conducted substantially in accordance with the law as to elections. It will also be nullified, even though it is conducted substantially in accordance with the law as to elections, if there are errors or mistakes in conducting it which, however trivial, are found to have affected the results of the election."**

Counsel contended that the failure to follow the established rules rendered the impugned election a sham and qualitatively devoid of merit regardless of the result. He referred to the decision in **Amama Mbabazi vs Yoweri Kaguta Museveni & Ors, Presidential Petition No. 1 of 2016**, where the Supreme Court held that;

**"if there is evidence of such substantial departure from the constitutional imperative that the process could be said to have been qualitatively devoid of**

**merit and rightly be described as a spurious imitation of what elections should be, the court would annul the outcome."**

Counsel submitted that the 2nd and 3rd Respondents did not comply with the constitution, Rules of procedure of parliament, rules of procedure as to the election of members of the East African Legislative Assembly and other laws as to the elections and the principles therein. They also did not follow their own rules and representations made before and during the conduct of the elections such as the requirement to start voting immediately after campaigns. He referred to the case of **Joy Kabatsi Kafura Vs Anifa Kawooya Bangirana & Anor EPA No. 25 of 2007**, where court held that;

> ***"an election is a process encompassing several activities from the nomination of candidates through the final declaration of the duly elected candidate. If any one of the activities is flawed through failure to comply with the applicable law, it affects the quality of the electoral process, and subject to the gravity of the flaw, it is bound to affect the election results."***

Counsel argued that the non-compliance with the law laid down in issue 3, affected the result of the impugned election quantitatively. The action of allowing twenty-four (24) members of parliament to vote before each candidate had campaigned to them (particularly the 1st Petitioner) quantitatively affected the result of the election, especially concerning the 12th Respondent as per the affidavit of the 1st Petitioner. That the 12th Respondent purportedly garnered 233 votes while the 1st Petitioner, Gilbert Agaba garnered 210 votes. The only reasonable consequence is that because all the 24 MPs (including Barnabas Tinkasimire) voted before the 1st Petitioner had addressed parliament, he did not have an opportunity to persuade them to vote for him. If the 24 votes were to be added to the 210 votes that the 1st Petitioner obtained, he would have garnered 234 votes. This would have propelled him to be among the successful nine candidates in the race. Besides, there is evidence that a significant number of MPs (over 70 in number) did not participate in the exercise and the tallied results included stuffed ballots.

Counsel concluded that the entire exercise was a sham and a spurious imitation of an election which warrants nullification by this court.

**Issue No. 5**

**Whether the Petitioners are entitled to the remedies sought?**

Counsel submitted that the Petitioners are entitled to the prayers sought under the petition namely nullification of the EALA election that was unlawfully conducted, declaration that the 4th to 12th Respondents were not lawfully elected, an order for conduct of a fresh election and order that the 1st, 2nd and 3rd Respondents jointly and/or severally pay the costs of this petition.

**Joint submissions by Counsel for the Respondents**

***Issue No.1.***

***Whether the 2nd and 3rd Respondents were properly joined as Parties to the Election Petition?***

Counsel for the Respondents jointly submitted that the 2nd and 3rd Respondents have no corporate legal existence as such rendering a petition against them incompetent. That the Petitioners have not cited any provision in any of the laws governing the impugned election, which renders the 2nd and 3rd Respondents liable for acts and or omissions committed in the execution of their official functions. That the position of the law is that, for a person to be the subject of any legal proceedings, whether as a party or a necessary party, such a party must have legal existence in the eyes of the law and therefore capable of suing or being sued as such. Mere physical existence of an office is not sufficient to confer a legal existence. Counsel referred to the case of ***Major Roland Kakooza Mutale versus AG & IGG [2001-2005] HCB 110.***

Counsel contended that the Office of the Speaker is a creature of ***Article 82 of the Constitution*** but it is not a corporation sole and cannot sue or be sued as such. The Rt. Hon. Anita Among, the 2nd Respondent executes official functions of the office of the Speaker and cannot be held personally liable for any acts or omissions in exercise of her official functions on behalf of Parliament, a legislative arm of the Government. Counsel referred to the case of **Charles Harry Twagira v Attorney General and Two others (Civil Appeal 4 of 2007)**

Similarly, the Office of the Clerk to Parliament is not conferred with any corporate status whether under the Constitution or an Act of Parliament, and can therefore not sue or be sued as such. The Hon. Adolf Mwesigye, the 3rd Respondent is not suable on account of any alleged act or omission in execution of his official functions.

Counsel insisted that under ***Section 2 of the Parliament (Powers and Privileges) Act, Cap 258*** it states that*;*

*No civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, Parliament or to a committee, or by reason of any matter or thing brought by the member in Parliament or a committee by petition, bill, motion or otherwise.*

Additionally, the 2nd and 3rd Respondents are protected against personal lawsuits arising from exercise of their official functions by ***section 25 of the Parliamentary (Powers & Privileges) Act Cap 258***, which provides thus;

***Neither the Speaker nor any officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or that officer by or under this Act".***

Counsel prayed that the petition be struck off against the 2nd and 3rd Respondents.

**Issue No. 2**

**Whether the Petitioners' affidavits filed after the closure of pleadings are competently on record.**

Counsel submitted that it is undisputed that the procedure in so far as filing documents in Election Petitions is concerned is governed by the Civil Procedure Rules. This is the import of Rule 17 of the Parliamentary Elections (Election Petitions) Rules S.1 141-2 cited in ***Mutembuli versus Nagwomu & Another Election Petition Appeal No. 43 of 2016[2017].***

That the Petitioners were entitled to rejoin to the answers to the Petition and the affidavits in support thereof filed by the Respondents, if in their opinion, the

respondents' answers raised any new issues. The rejoinder is supposed to be filed within 15 days from date of receipt of the last of the answers to the Petition. This is regulated by ***Order 18 Rule 1 of the CPR***. He relied on the case of ***Mutembuli v Nagwomu & Anor supra.*** In the event that the reply is not filed within the 15 days, pursuant to ***Order 18 Rule 1 and 2 of the CPR***, pleadings are deemed to be closed and no pleading subsequent to the reply shall be filed, save with leave of court.

Counsel contended that by 30th November 2022, no rejoinder had been filed by the Petitioners. On 5th January 2023, the Petitioners served what were described as Affidavits in Support of the Petition. These were filed on 3rd January 2023. They are; the affidavit of Kinshaba Patience Nkunda in support of the Petition, and a bundle of two affidavits of Agaba Gilbert and Phiona Rwandarugari also in support of the Petition.

Counsel concluded that the said affidavits offended the rules of filing affidavits in election petitions and ought to be struck off.

**Issue NO. 3**

**Whether there was non-compliance with the Treaty for Establishment of the East African Legislative Assembly and electoral laws during the conduct of the election for Uganda's Representatives to the 5th East African Legislative Assembly?**

Counsel for the Respondents jointly submitted that in determining whether an election has been free and fair, the court is required to first examine the Electoral laws governing the conduct of the said election. That the Applicable law in determining whether there was non-compliance with the electoral laws is primarily the Treaty for Establishment of the East African Community and the EALA Act. Whereas the Petitioner's contend that the elections were conducted in a manner that offends Article 6 & 7 of the Treaty as well as section 6 of the EALA Act, they have not demonstrated with evidence, the manner in which an election is required to be conducted under the said provisions, or how the Respondents flouted the procedures prescribed by the said provisions.

Counsel submitted that in the determination of election petitions/disputes arising out of East African Legislative Assembly Representative-Elections, the Court may apply

the law that is used to determine questions relating to Parliamentary Elections in Uganda. He referred to the case of ***Kamurali Jeremiah Birungi & Amor versus Attorney General & Anor National Assembly Petition No. 002 of 2012.*** Thus the law applicable would be the Parliamentary Elections Act. However, equally relevant are the Rules of Procedure for the Election of Members of the East African Legislative Assembly.

Counsel submitted that any decision to nullify the election, has serious ramifications on the regional Assembly and must thus be premised on very cogent evidence. The court must be satisfied that the Petitioner's evidence satisfies the threshold, warranting nullification of the election. He referred to the case of ***Karokora Katono Zedekia vs. Electoral Commission and Kagonyera Mondo Election Petition No. 02/2001***, cited by the Court of Appeal in ***Komakech versus Odonga Otto*** where His Lordship held that;

*"Setting aside an election of a Member of Parliament is, indeed, a very grave subject matter. It is a matter of both individual and national importance. The decision carries with it much weight and serious implications. ... Parliament will continue to carry out its legislative function on matters of national importance without any representation of the constituency affected. ... Thus, the crucial need for courts to act in matters of this nature only in instances where the grounds of the petition are proved at a very high degree of probability".*

Counsel submitted that the Petitioners contend that the election was not conducted in accordance with the Treaty, the EALA Act, and the Ugandan Constitution. He contended that the alleged acts or omissions identified by the Petitioners do not constitute cogent evidence warranting the nullification of the election. The allegations of alleged noncompliance with the Rules of Procedure were rebutted by the Respondents. The allegations that the 2nd and 3rd Respondents created an unlevelled ground playing filed for all candidates was rebutted by the 3rd Respondent's evidence in the affidavit in support of answer to the petition. The 3rd Respondent explained the manner in which the election was conducted and demonstrated compliance with the requisite procedure.

Counsel submitted that the allegations of simultaneous conduct of polling and campaigning and use of ballot paper whose order of names was allegedly designed to favour the 4th to 12th Respondents were rebutted by the Respondents.

He contended that what the Petitioner's allege to be campaigning by the 2nd Respondent is not correct. The 2nd Respondent provided guidelines for consideration by the electorate and only alluded to a precedent that had been set before. She guided on matters of law, fact and precedent and indeed, presided over the House with the highest degree of impartiality and decorum expected of a Speaker of a National Assembly. She did not in any way state that Members of Parliament must vote for the 4th to 12th Respondents. The decision to vote the 4th to 12th Respondent was left to the individual voters. A distinction must be drawn between campaigning and providing guidance on how the electoral process should be conducted or on how it has been conducted in the past. That it is the context in which the guidance and comments of the 2nd and 3rd Respondents must be viewed. No independent evidence has been adduced by any of the registered Voters in the impugned elections, to prove that their choice of candidate was influenced by the comments of the 2nd Respondent and that they ended up voting for the 4th -12th Respondents, instead of the Petitioners.

Counsel submitted that the contention by the petitioners that Rule 13 (1) of the Rules of Procedure was flouted to the extent that the Petitioners were not afforded adequate time to address Parliament. He submitted that the Petitioners concede that the 3rd Respondent published a list of verified and nominated candidates. The Petitioners were included in the list. that candidates were offered a fair and equal opportunity to canvass for votes prior to and after nomination and were allowed to engage the MPs/ Voters directly. This evidence is corroborated by the affidavits of the 4th -12th Respondents.

Counsel stated that the exceptional cases of a few voters who voted during the campaigns was well explained by the 2nd Respondent. The 2nd Respondent explained that the commencement of early voting for some few members was necessitated by the existing exigencies of the time and that requests had been made in line with Rules 7 and 8 of the Rules of procedure of Parliament. the members who requested for leave to vote early clearly knew who the candidates of their choice were and could not be influenced. No evidence has been adduced by the Petitioners to show that any of such members could have voted in their favour, had it not been for the leave granted to them to vote early. The allegation that they could have been persuaded by the Petitioners to vote in their favour is merely speculative.

In relation to the alleged failure to conduct voting by secret ballot in the Plenary contrary to Rule 13 (2) of the Rules of Procedure. Counsel submitted that the manner of voting alluded to in *Article 89 (1) of the Constitution* relates to questions for decisions of Parliament determinable by majority of the members. It has no application to elections of EALA members. That *Rule 98 of the Rules of Procedure of Parliament* alluded to does not bar Parliament from adopting a procedure of voting that was adopted for the impugned election. It applies to election for removal of a person holding office under the Constitution. The 4th -12th Respondents fall outside that category. It would only apply where the House had resolved that the voting would be by secret ballot in the Plenary of Parliament. The circumstances under which the Rule applies were not pleaded nor proved to obtain in the instant matter. That the requirement alluded to by the Petitioners that voting members of the Assembly shall be done in plenary and by secret ballot has not been demonstrated to be mandatory.

In reply to the contention that voting required to be done during the plenary sitting but members voted in a tent rendered the election void is legally flawed. Counsel for the Respondents submitted that, it is not in dispute that the elections were conducted in Parliament. Reasons were advanced as to why the voting was done in the tent. It has not been suggested nor proved that the tent where voting took place was outside the precincts of Parliament. The adjournment of the House didn't constitute suspension of voting. What was adjourned was other business of Parliament to pave way and create time for Members to cast their vote. It has not been proved by the Petitioners that because voting took place in the tent, un registered voters were allowed to vote in favour of the 4th -12 Respondents to the detriment of the Petitioners. On the contrary, the 3rd Respondent in his affidavit in reply confirms that only members entitled to vote and available to vote were allowed to vote. Additionally, the Members who voted in the tent were the same members who would have voted during the plenary sitting preferred by the Petitioners. No evidence has been adduced to prove how this affected the result of the election in a substantial manner.

Counsel submitted that the Petitioners contended that the voting process from which the 4th -12th Respondents were elected was tainted with material irregularities; that

the ballot paper designed by the 3rd Respondent rendered the election not free and fair. That the 1st Petitioner and one Ategeka B Moses were combined in the same row which confused the electorate who needed to choose between the first Petitioner and Ategeka. He argued that there was no confusion at all as both names were numbered as ***14 and 15*** respectively and space for ticking duly provided. Confusion would arise from maybe a mix up of names but not just having the names within the same row. Additionally, none of the Voters swore any affidavit in support of the petition to prove that, because of the said error, they were confused and unable to choose between the 1st Petitioner and Ategeka. The electorate are literate elected Members of Parliament, expected to have high level of vigilance and not "*mere morons in a hurry"* who would vote anyhow.

In respect to the contention that the ballot papers were defective as it had no security features and other unique features. Counsel submitted that counsel for the petitioners has not cited any provision of law rendering a ballot papers void for those reasons. The Petitioners have not demonstrated how the want of their desired features affected the result of the election in a substantial manner. No evidence that the said ballot papers were replicated, or that any fraud was detected on account of the design of the ballot papers. That the Petitioners simply rely on speculation and imagination.

Counsel submitted that the allegation that the change of order of names misled voters and was calculated to favour the 4th -12th Respondents is equally flawed. The voters in the election were Members of Parliament not ordinary voters. None of the voters swore an affidavit contending that the change of order of names confused them and they could not locate the candidates of their choice.

In respect to the allegation of denial of presence at the polling station during the voting exercise. Counsel submitted that the candidate has a choice whether to be present or through an agent. No evidence has been adduced that the Petitioners were barred from being present or having agents. On the contrary, the 3rd Respondent adduced evidence to prove that this was available and accessible. It has not been proved how this affected the result of the election in a substantial manner

On the allegation that the 9th and 11th Respondents were Members of NRM and the 12th Respondent's Political party is in coalition with the NRM Government and that all the 4th-12th Respondents therefore represent one shade of opinion is devoid of legal and factual merit.

Counsel submitted that the 9th and 11th Respondents were never nominated as NRM leaning candidates, neither was the 12th Respondents. The question is on what basis were they nominated? The nomination papers were attached and are on court record. Each candidate had to indicate whether they are sponsored by a party and if so which party and those who desired to contest as independents equally submitted forms on that basis. The assumption by the Petitioners that the 9th and 11th and 12th Respondents are NRM candidates is premised on conjecture, fanciful ideas and attractive reasoning but not the law and evidence. Court cannot base its decision to nullify the election on mere theories advanced by the Petitioners. He referred to the case of ***Advocates Coalition for Development and Environment & Others Versus AG.***

The allegation of outright ballot stuffing from the secretive polling station is equally flawed. Counsel submitted that the Petitioner contends that the final tally indicating 495 MPS voted is fraudulent. The Petitioner's claims that 57 MPs affiliated to NUP boycotted, some were not in the country, others were sick and other bereaved is not supported by any evidence at all. Counsel for the Respondents contended that None of the said MPs has sworn an affidavit to corroborate the Petitioner's allegations. There is no evidence that Hon. Alice Kaboyo voted. None of the alleged 70 MPs who purportedly did not vote has sworn any affidavit in support of the Petitioner's allegations. That apart from the allegations contained in the affidavits of the petitioners, there was no evidence of ballot stuffing. The Petitioners failed to adduce evidence that they knew voters who had cast more than one vote, or cast in multiple polling stations or that they knew people who had voted in the place of deceased persons or fictitious characters, to constitute ballot stuffing. He referred to the case of ***EPA No. 0057 and 0054 /2016 Hellen Adoa & EC versus Alice Alaso.***

Counsel submitted that Ballot stuffing is an election malpractice which involves voting more than once at a polling station or moving to various polling stations casting votes either in the names of people who did not exist at all or those who are dead or absent at the time of voting yet recorded to have voted. He referred to the

case of ***Suubi Kinyamatma Juliet versus Sentongo Robinah Nakasirye Court of Appeal EPA No. 92 of 2016.*** In the circumstances, the petitioner would only allege ballot stuffing if the number of votes cast exceed the number of voters registered to vote. In absence of evidence that the number of votes cast exceeded the number of physical persons who voted, the allegation of ballot stuffing, multiple voting and related allegations are not proved.

Counsel also noted that the allegations of ballot stuffing are contained in the affidavit of Hon. Kinshaba Patience, the evidence of Hon. Kinshaba is of a partisan witness. The Petitioners cannot contend that her evidence is undisputed when it was filed after the filing of the answer to the Petition. Hon Kinshaba is one of the aggrieved parties. Her evidence is thus one of a partisan witness which required corroboration. *Hon Alion Yorke Odria*, *Hon Obiga Rose and Hon Awas Sylvia*, who she alludes to her affidavit on the allegations of ballot stuffing did not swore any affidavits to corroborate her story. Her evidence falls short of being compelling as required by law. He referred to the case of ***Kamba Saleh Moses v Namuyangu Jennifer (Election Petition Appeal 27 of 2011,*** where court noted that,

"*the Petitioner's witnesses who testified to the allegations of non-compliance are confessed supporters of the Petitioner and are partisan witnesses. Their evidence required independent evidence from a non-partisan and independent witness for corroboration".*

Counsel concluded that the allegation of non compliance and unfairness alluded to by the petitioners was not backed up with cogent evidence to warrant nullification of an election as required under the law.

**Issue No. 4**

**If so, whether the non-compliance affected the results of the election in a substantial manner**

Counsel for the Respondent referred to ***Section 61 (1) (a) of the PEA***, and submitted that it is not sufficient for the Petitioners to establish that the electoral malpractices or irregularities did occur. They must establish that the electoral malpractices or irregularities or alleged non-compliance were of such magnitude that they

substantially and materially affected the outcome of the electoral process. He referred to the case of ***Hellen Adoa & EC versus Alice Alaso supra,***

Counsel argued that *"substantial"* manner means that the votes candidates obtained would have been different in a substantial manner, if it wasn't for the non-compliance substantially. That the Petitioner doesn't have to prove that the declared candidate would have lost. It is sufficient to prove that the winning majority would have been reduced. Such reduction however would have to have put the victory in doubt. He made reference to the case of ***Halima Nakawungu vs. EC and Anor HCEP No. 002 of 2011.***

Counsel submitted that, in discharging the burden, the Petitioners must prove to the satisfaction of the court that; on *each of the complaints, the 4th -12th Respondents unfairly got a substantial number of votes, which if there were no such non-compliance, the votes would have gone to the Petitioners, who would have won the election*. He relied on ***EPA No.13/2011 Odo Tayebwa versus Basajjabalaba Nasser***

He concluded that the Petitioners have not adduced compelling evidence to prove the alleged irregularities pointed out are substantial areas of alleged noncompliance. The Petitioners have not proved that because of the alleged areas of non-compliance, they would have won the election. The 1st Petitioner has not proved that had the 24 MPs who voted earlier voted upon conclusion of campaigning, they would all have voted in his favour and that he would have won the election. Most of the contentions by the Petitioners are premised on fanciful ideas and attractive reasoning but not evidence. It's all conjecture and speculation of what they positively imagine could have transpired. There is no doubt that the electorate expressed its will and voted for the 4th -12th Respondents

**Issue No.5.**

**Whether the Petitioners are entitled to the Remedies sought?**

Counsel submitted that the petitioners are not entitled to the remedies sought since they have failed to prove that the irregularities and none compliance if any affected the results in a substantial manner as required under the law governing lection

petitions. Counsel for the Respondents jointly prayed that the petition be dismissed with costs to the Respondents.

**Analysis of court.**

**Issue No. 1**

***Whether the 2nd and 3rd Respondents were properly joined as Parties to the Election Petition?***

According to ***section 25 of the Parliamentary (Powers & Privileges) Act Cap 258***;

***Neither the Speaker nor any officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or that officer by or under this Act".***

I have perused the affidavit in support of the application and written submissions for the petitioners, there is no where they have cited any provisions of the laws that the 2nd and 3rd Respondents have corporate legal status showing that they can be sued in their personal capacity for the actions and omission of their duties in Parliament.

The 2nd Respondent is empowered under the EAC Treaty and EALA Act to conduct elections and acts as the returning officer. The 3rd Respondent being the clerk to parliament is mandated under the Parliamentary Act to organize the elections. They were in essence acting as the electoral commission.

The office of the speaker is created under Article 82 of the Constitution, this article does not state that the office of the speaker is corporate or can sue or be sued hence the speaker cannot be held personally liable for acts and omissions exercised in her official functions on behalf of Parliament.

The 1st Respondent is the Legal representative of government and Parliament being an arm of Government, its action and omissions can ably be handled by the Attorney General who is the 1st Respondent. Equally the office of the clerk to Parliament (3rd Respondent) has no corporate status under the constitution or any other law hence he cannot be sued in his individual capacity for the actions and omission relating to his official duties in Parliament.

From the evidence on record, the 1st Respondent already relied on the affidavit of the 3rd Respondent in support of the answer to the petition which details the events of the election in issue thus justifies that the 1st Respondent represents 2nd and 3rd Respondents in this petition.

In the view of the above I find that the 2nd and 3rd Respondents were wrongly joined as parties the election petition in their personal capacity.

Issue No. 1 is resolved in the negative.

**Issue No. 2**

**Whether the Petitioners' affidavits filed after the closure of pleadings are competently on record.**

In **EPA No. 75 of 2016; Tamale Julius Konde Versus Ssenkubuge Isaac & EC**, the court of appeal held that;

***"It is our firm view, based on the above factors, that it is sometimes practically not possible to file all the affidavits in support of the petition at the same time with the petition. As long as the additional affidavits are filed before the scheduling conference is conducted, it is usually acceptable as no prejudice would be occasioned to the Respondents even if no leave of court is obtained. We have observed this practice at the Supreme Court in presidential election petitions. This is because it is during the scheduling conference that all loopholes in the pleadings are plugged, issues for trial and the authorities to be relied on are agreed upon, and the matter set down for hearing*."**

In the instant case, counsel for Respondents objected to the petitioners additional affidavits of **Kinshaba Patience Nkunda, Phiona Rwandarugali** and the additional affidavit of **Agaba Gilbert** in support of the Petition filed on the 3rd January 2023 that they were filed out of time. In reply, Counsel for the petitioners contended that the said affidavits were properly before court since they were filed before scheduling and the 12th Respondent made a reply on them.

From the evidence on record, the impugned affidavits were filed on 3rd January 2023 before the scheduling conference of the petition which took place on the 14th of March 2024 before this honourable court. The said affidavits had already been on court record even before. The Respondents had an opportunity to file affidavits in reply to the same before scheduling just like the 12th Respondent (Gerald Siranda Blacks) who deponed an affidavit in rejoinder to the 3 affidavits on the 5th of January 2023.

It has been a good practice that courts always adopt a liberal approach when dealing with affidavits in election matters, considering that elections are matters of great public importance which have the short statutory timeframe within which they are to be filed and whose evidence cannot be fully gathered before filing.

It is this court's view that the additional affidavits by the petitioners filed before scheduling conference did not need leave of court and they are competently on record.

Issue No.2 is resolved in the affirmative.

**Issue No. 3**

**Whether there was non-compliance with the Treaty for Establishment of the East African Legislative Assembly and electoral laws during the conduct of the election for Uganda's Representatives to the 5th East African Legislative Assembly?**

According to ***Ref. No. 2 of 2007 Christopher Mutikila Vs the Attorney General of United Republic of Tanzania, The Secretary General of EAC and others;*** and ***Ref. No. 1 of 2006 Prof. Anyang Nyong & 10 Others Vs Attorney General of Kenya & 2 Others*** it was observed that any petition contesting the legality of the elections into EALA shall be made under the respective national state laws as per Article 52 of the Treaty. In Uganda, the law governing elections for members of parliament is the Parliamentary Elections Act.

Section 61 (1) (a) of the Parliamentary Elections Act 2005 provides that;

The election of a candidate as a member of parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the court that;

***"non-compliance with the provisions of this Act relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non- compliance and failure affected the result of the election in a substantial manner".***

In the instant petition, the petitioners contend that the elections were conducted in a manner that violated Articles 6 and 7 of the Treaty and section 6 of the EALA Act.as far as court can ascertain, the specific acts of none compliance complained of and were brought forth in evidence included the following; -

1. **Failure to follow electoral laws.**

It was submitted for the petitioners that EALA elections were not conducted in accordance with the Treaty, the East African Legislative Assembly Elections Act and the Ugandan Constitution and also made a farce of the democratic principles. That the said election was a total nullity and a mere spurious imitation of elections. That the 2nd and 3rd Respondents did not follow the specific rules of procedure as to the election of members of the East African Legislative Assembly as well as their own rules and representations made before and during the conduct of the elections.

In reply, counsel for the Respondents submitted that there were no illegalities committed and the election was conducted in accordance with the EAC Treaty, EALA Act and the Constitution of Uganda.

The allegations of none compliance with the rules of procedure were rebutted by the affidavit of the 3rd Respondent. there was no cogent evidence to show that there was failure to follow electoral laws.

2. **Simultaneous conduct of polling and campaigns**

From the evidence of Parliamentary Hansards attached on both the 3rd Respondent and 1st Petitioners affidavits, when session started, there were members who had emergencies to attend to and requested to vote and go. The speaker communicated the issue and read out the names of those members. They proceeded and voted and went to attend to their emergencies.

Much as the Petitioners complain that they were denied an opportunity to campaign to those members, The Parliamentary rules of procedure are not cast in stones that

they cannot be adjusted by the speaker to suit the available situation. This court is not convinced that the members who voted early did not vote for the petitioners or if the petitioners had campaigned to them they would all vote for them.

Besides, the candidates in the election were nominated on the 19th and 20th September 2022 and the Verification committee returned the candidates' names on 22nd September 2022 presenting 28 candidates. By 23rd September the list of nominated candidates was published in the newspapers and candidates started campaigning till 29th September for general campaigns and election. With all due respect, the petitioners had enough time to campaign and canvas votes for themselves.

In addition, no evidence was adduced to prove that had the petitioners campaigned to them, they would have voted for them. There is equally no evidence that those who were allowed to vote early did not vote for the petitioners.

3. **Usage of a ballot papers whose order of names was arbitrary and designed to favour the 4th to 12th Respondents.**

There is no established law which provides that names on ballot papers should be aligned in alphabetical order. There is no basis that court can rely on to condemn the 2nd and 3rd Respondent for offending a none existing law.

In the instant case the electorate are members of Parliament who are well conversant with reading and writing unlike ordinary citizen, they could read all the names on the ballot papers to find who their favorite candidate is and vote for him or her.

I find that the order of names in this election process did not offend any law.

4. **Voting outside plenary**

The petitioners contested voting outside the plenary in the tent and submitted that this offended the rules of procedure in particular rule 98 of the Parliamentary rules of procedure which requires voting of the members of EALA to be by secrete vote in the plenary. In response, Counsel for the Respondents submitted that the voting in the tent was not illegal and the same did not prevent any member from voting.

I have carefully scrutinized the averments in the affidavits, evidence on record and the submissions of both counsel. It is not in dispute that the tent was within the premises of Parliament. It allowed all members present to vote and did not affect the conduct of the election in any way. Besides the Petitioners have not stated how they were prejudiced by voting in the tent rather than inside the Plenary.

5. **Failure to publish official results**

The Petitioners contended that after voting, the speaker failed to publish official result. On the contrary the Respondent contended that the results were published and each candidate got to know what they got and the 4th to 12 Respondents were declared winners.

Basing on the evidence on record, there is a Hansard attached to the affidavits of both parties and at page 6134 and 6135 it shows how many votes each candidate got as announced by the 2nd Respondent. There is evidence that members got to know their polls and the winners were gazatted in the national gazette. If indeed the 2nd and 3rd Respondents did not publish results, how then did the Petitioners know the winners and that they lost? this allegation was not substantiated.

6. **Ballot stuffing**

According to the case of **Toolit Simon Akocha Versus Oulanya Jacob L'okoli and EC EPA No. 19 of 2011** ballot stuffing refers to;

***"a type of electoral fraud whereby a person who is permitted only one vote submits multiple ballots. It can also happen when a person instead of casting votes in a single booth casts his/her vote in multiple booths. Ballot stuffing can take various forms:***

- ***a ballot stuffer casts vote on behalf of people who did not show up to the polls.***
- ***Votes will be cast by those who are long dead or by fictitious characters.***

***ballot stuffing occurs when someone intentionally and knowingly causes unauthorized votes to be put in the ballot box for purpose of rigging the poll in favour of some candidate".***

In order to assess the effect of non-compliance, the qualitative and quantitative tests are relevant. In the case of ***Besigye v Museveni*** (supra) Odoki CJ said:
***"In order to assess the effect the court has to evaluate the whole process of election to determine how it affected the result, and then assess the degree of the effect. In this process of evaluation, it cannot be said that numbers are not important just as the conditions, which produced those numbers, are useful in making adjustment for the irregularities."***

In the instant case, the petitioners tried to allude to the fact that the number of MPs. Who voted were more than the numbers of MPs present on voting day. It was alleged that NUP members of Parliament boycotted the election. However, There was no cogent evidence to that effect. There is no evidence by way of affidavit from the NUP members to the effect that they did not vote but found that someone else voted in their names. The Petitioners did not tender evidence of Vote Registers and Parliamentary attendance list to show that there were more members who voted than physically present. There is no affidavit by the members who are allegedly said to be out of the country to that effect, not even their travel documents were tendered.

The petitioners do not show quantitatively the number of votes stuffed and their impact on the number of votes polled by the petitioners plus their effect on the victory of the 4th to 12th Respondent.

In the case of **Toolit Simon Akocha Versus Oulanya Jacob L'okoli and EC supra, the court of appeal held that;**

***".....This table shows that there were more votes in the ballot box than the voters who turned up to vote. The total number of invalid and spoilt votes was 54. The appellant and the 1st respondent obtained 94 and 106 votes respectively. <u>The evidence adduced did not show that the 1st respondent benefited from the extra ten votes cast at this polling station. Even if the ten votes are deducted from the final tally, the final outcome would not change significantly to put the victory of the 1st respondent in doubt".</u>***

Basing on the above decision, the petitioners not only had a duty to prove the extra number of votes cast but also their effect on the Respondent's votes.

The petitioners alleged that they were denied access to voter registers, how then were they able to compare attendance vis visa number of votes casted?

I find that the Petitioners fell short of proving the allegations of ballot stuffing to warrant nullification of the election.

## 7. Partiality of the 2nd Respondent

It was contended by the petitioners that the 2nd Respondent was partial and during the session, she openly campaigned for the 6 Respondents who were incumbents in the EALA. Counsel referred to parliamentary Hansards of the day. In reply, the Counsel for the Respondents submitted that the 2nd Respondent never campaigned for any of the Respondents but simply guided the house on what should take place during the exercise.

I have considered the submissions of both counsel on this issue however, I find that this allegation has not been proved to the satisfaction of court upon a balance of probabilities.

## 8. 4th to 12th Respondents belonging to the same party

It was submitted by the Petitioners that the 4th to the 12th Respondents were members and affiliates to the ruling party (NRM). On the contrary counsel for the Respondents submitted that some of the members applied as independent and it was wrong for the Petitioners to assume that they belong to NRM.

Basing on the nomination documents on record attached to the affidavits of the Respondents, some of the members contested as independent and other contested on tickets of other political parties like DP. The allegations that the independent members were formerly NRM is farfetched and speculative.

**9. Denial of access to the polling station.**

The evidence of a list of agents for candidates in the election as attached on the affidavit of the 11th Respondent Amongin Jacquiline shows that candidates had agents but only 5 members opted not to have. This evidence was never rebutted in rejoinder. The Petitioners were aware of their right to have agents but chose not and this cannot be visited on the Respondents.

**Issue No. 4**

**If so, whether the non-compliance affected the results of the election in a substantial manner**

According to **Section 61 (1) (a) of the PEA**, it is not sufficient for the Petitioner to establish that the electoral malpractices or irregularities did occur. They must establish that the electoral malpractices or irregularities or alleged non-compliance were of such magnitude that they substantially and materially affected the outcome of the electoral process. **See *EPA No. 57 & 54 of 2016 Hellen Adoa & EC versus Alice Alaso,***

In the case of ***Halima Nakawungu vs. EC and Anor HCEP No. 002 of 2011.***, *"substantial"* manner was defined to mean;

***"the votes candidates obtained would have been different in a substantial manner, if it wasn't for the non-compliance substantially. That the Petitioner doesn't have to prove that the declared candidate would have lost. It is sufficient to prove that the winning majority would have been reduced. Such reduction however would have to have put the victory in doubt".***

In this case, in discharging the burden, the Petitioners must prove to the satisfaction of the court that; on each of the complaints, the 4th -12th Respondents unfairly got a substantial number of votes, which if there were no such non-compliance, the votes would have gone to the Petitioners, who would have won the election. ***See EPA No.13/2011 Odo Tayebwa versus Basajjabalaba Nasser***

In the instant case, the Petitioners have not adduced cogent evidence to prove that the alleged irregularities affected the results in a substantial manner. The Petitioners

have not proved that because of the alleged areas of non-compliance, they would have won the election and the 4th to 12th Respondent would have lost.

The Petitioners have not proved that if the 24 MPs who voted early had voted at the end of campaigns, they would all have voted in their favour and that this would have a great impact on the votes polled by the 4th to 12th Respondents.

The petitioners evidence was full of speculation and mere statements of irregularities without giving a quantitative effect to the final votes canvased by each candidate.

This court finds that the Petitioners have failed to show how the none compliance if any affected the results in a substantial manner to warrant nullification of the election.

**Issue 5**

**Whether the Petitioners are entitled to the Remedies sought?**

The petitioners having failed to prove that there was none compliance with the electoral laws which affected the result of the election in a substantive manner, court makes the following orders;

1. **The petition is hereby dismissed.**
2. **The results of the 5th EALA election conducted on 29th September 2022 for Uganda Representative to East African Legislative Assembly are upheld.**
3. **The 4th to 12th Respondents were validly elected as Uganda's Representatives to the 5th East African Legislative Assembly.**
4. **Given the nature and circumstances of this petition, being a matter of public importance court makes no order as to costs.**

Dated, signed, sealed and delivered by email on this **16th** day of **July 2024**.

Emmanuel Baguma

Judge