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CASE ALERT

HIGH COURT UPHOLDS THE ELECTION OF THE BUKIMBIRI COUNTY MP

Asigario Turyagyenda v Kwizera Eddie Wa-Gahungu & The Electoral Commission, Election Petition No. 001 of 2026

DISPUTE RESOLUTION

3 November 2026

CASE DETAILS

Asigario Turyagyenda v Kwizera Eddie Wa-Gahungu & The Electoral Commission, Election Petition No. 001 of 2026, High Court of Uganda at Kabale, before Hon. Justice Lubega Farouq. Judgment was delivered electronically on 13 November 2026.

KTA Advocates represented the 2nd Respondent, the Electoral Commission, through Mr. Keneth Kipaalu and Ms. Sumayya Nalubowa. Mr. Jude Byamukama, Mr. Steven Birikano and Ms. Patience Babiwemba appeared for the Petitioner. Mr. Wandera Ogalo of M/s Victoria Advocates and Legal Consultants, Mr. Peter Mukidi Walubiri of M/s KBW Advocates and Mr. Mark Kyoriboona jointly appeared for the 1st Respondent.

Represented by

The 2nd Respondent was represented by the following members of the KTA Advocates Dispute Resolution team:



Keneth Kipaalu

Lead Counsel,
Dispute Resolution



Sumayya Nalubowa

Associate,
Dispute Resolution

BRIEF FACTS

The Petitioner challenged the election of the 1st Respondent as the directly elected Member of Parliament for Bukimbiri County Constituency, Kisoro District, following the general elections held on 15 January 2026. The 1st Respondent, an independent candidate, polled 14,761 votes against the Petitioner's 12,553, while Owebeyi James of the Forum for Democratic Change polled 102. The results were published in the Uganda Gazette on 2 March 2026 and the petition was filed on 30 March 2026, within the thirty days allowed by law.

The petition rested on two grounds: voter bribery, and undue influence and obstruction of voters on polling day. The Petitioner alleged that on 12 January 2026 the 1st Respondent distributed money to voters at a rally at Gasovu Health Centre III and, later the same day, at Kateriteri Trading Centre; and that on polling day he commanded his supporters to assault the Petitioner's agents at Ramera Health Unit and Kijuguta Primary School polling stations.

The petition was accompanied by a single affidavit, the Petitioner's own. Both Respondents filed their answers on 9 April 2026. The Petitioner then filed twenty further affidavits in support of the petition on 22 June 2026 and three more in September, and on 14 October 2026 — the day before the hearing — sought leave to file an affidavit from His Worship Isaac Rukundo confirming that he was the judicial officer who had commissioned nineteen of the earlier affidavits, whose jurats omitted his name.

THE COURT'S REASONING

Affidavits filed after the petition

The Court held that affidavits described as being in support of a petition must accompany the petition and be filed within the thirty days allowed under section 79(3) of the Parliamentary Elections Act. Anything filed later is supplementary evidence, which requires leave of Court; filing without leave is irregular even where the material is evidence rather than a new ground. The rationale is to give

the respondent a fair opportunity to answer and to guard against the endless filing of affidavit evidence in a matter governed by strict statutory timelines. The twenty affidavits filed on 22 June 2026, after both Respondents had already answered, were expunged.

The curative affidavit

The Court distinguished Col. (Rtd) Besigye Kizza v Museveni Yoweri Kaguta & Another, where a Registrar's confirmatory affidavit cured a defective jurat. There the affidavit was a stand-alone confirmation; here it was styled an affidavit in support of the petition and came more than six months after filing. The application was brought on the very day the petition was set down for hearing, with no proof of service on the record, which the Court held offended the principle against trial by ambush. The affidavit was rejected, and the improperly commissioned affidavits it was meant to save fell with it.

Evidence must follow the pleadings

Three affidavits translating an audio recording of the rally were struck out because the recording had never been pleaded: a party may not introduce by affidavit matters not raised in the pleadings. Uncertified public documents annexed to the 1st Respondent's affidavit — a copy of the voters' register and three results tally sheets — were expunged under sections 73 and 76 of the Evidence Act. A Government Analytical Laboratory report was expunged because its author never deposed an affidavit: an expert report must be tendered by the expert who made it.

Election officers as witnesses

Affidavits from three presiding officers filed in support of the 1st Respondent were expunged. Following the binding authority of Bagala Joyce Ntwatwa v Nabakooba Judith Nalule & Another, the Court held that section 7(6) of the Parliamentary Elections Act requires an election officer to obtain authorisation from the Electoral Commission before revealing matters that came to his or her knowledge through the appointment. The Court declined to follow the more liberal approach taken in Hon. Mujungu Jennifer v Tumwine Anne Mary & Another.

Bribery

Bribery must be proved beyond reasonable doubt, not on a balance of probabilities, and requires proof that a gift was given to a voter, that it was given by the candidate or an agent, and that it was given with the intention of inducing a vote. Once the supporting affidavits had been expunged, all that remained of the Petitioner's case was his own affidavit recounting what others had told him. That is hearsay, inadmissible under section 59 of the Evidence Act, which requires oral evidence to be direct. No affidavit was traceable from the voter said to have received money at Kateriteri. Both allegations failed.

Undue influence and obstruction of voters

The deponents relied on were the Petitioner's own agents and supporters, whose evidence called for caution and independent corroboration. None was offered: there was no evidence of a complaint to the police or a report to the Electoral Commission about any of the alleged incidents. Those affidavits had in any event been struck off, leaving only the Petitioner's hearsay account, on which the Court declined to nullify an election.

Three affidavits translating an audio recording of the rally were struck out because the recording had never been pleaded: a party may not introduce by affidavit matters not raised in the pleadings. Uncertified public documents annexed to the 1st Respondent's affidavit — a copy of the voters' register and three results tally sheets — were expunged under sections 73 and 76 of the Evidence Act.

DECISION

The petition was dismissed for want of merit. The Court declared that the 1st Respondent was validly elected and duly declared by the 2nd Respondent as the directly elected Member of Parliament for Bukimbiri County Constituency, Kisoro District. Costs of the petition were awarded to the Respondents.

KEY TAKEAWAYS

01. Affidavits in support of an election petition must be filed with the petition, within thirty days of gazettement. Anything filed later is supplementary evidence and requires leave of Court, even if it raises no new ground.

02. A defect in the form of a jurat can be cured by a confirmatory affidavit, but not by one styled as an affidavit in support filed months late, and not by an application sprung on the other side on the morning of the hearing.

03. Evidence must follow the pleadings. A recording, a translation or any other material not pleaded cannot be brought in afterwards by affidavit.

04. Election officers must obtain authorisation from the Electoral Commission before testifying about what they learned in office, whichever party calls them.

05. Public documents must be certified before they are relied on, and an expert report must be tendered by its author.

06. Bribery must be proved beyond reasonable doubt. Once the supporting affidavits fall away, a petitioner's own account of what he was told is hearsay and proves nothing; and allegations of electoral violence made by a candidate's own agents need independent corroboration.

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