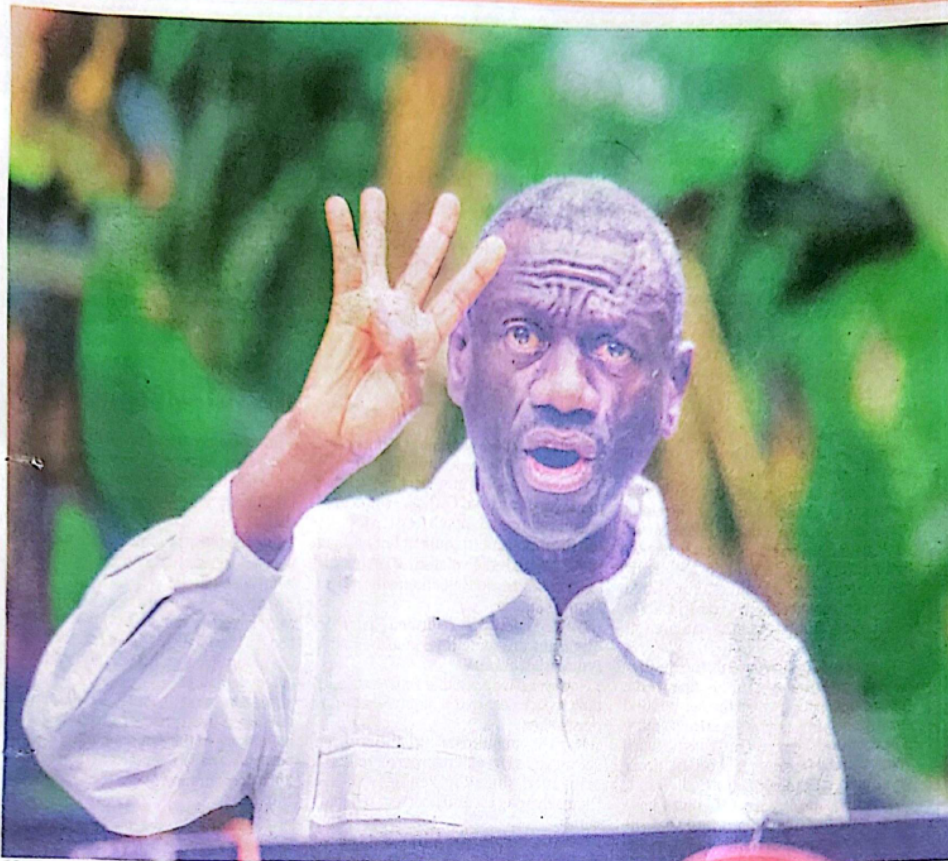


Perspective



Dr. Kizza Besigye has questioned the impartiality of the presiding judge in his case, highlighting concerns about judicial recusal and public confidence in the courts. PHOTO/MICHAEL KAKUMIRIZI

When judges judge their own bias case

When a judge accused of bias is allowed to rule on whether they are biased, justice risks collapsing into contradiction. The ordeal of Rose Nalubowa – like that of Dr Kizza Besigye, Isaac Ssemakadde and Male Mabirizi before her – exposes a structural flaw in Uganda's Judiciary that forces litigants to choose between trusting a forum they distrust or abandoning their constitutional right to justice.

BY KAKWENZA
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Rose Nalubowa, just like others before (Dr Kizza Besigye, Isaac K Ssemakadde, Male Mabirizi) faced an impossible choice at the High Court.

The National Unity Platform (NUP) candidate had just arbitrarily lost her 2026 parliamentary election and believed the judge assigned to hear her petition, former president of the Uganda Law Society, Justice Simon Peter Kinobe, could not be impartial.

But when she asked him to step aside, she confronted a Kafkaesque reality: the very judge whose bias she questioned would decide whether he was biased or not.

She lost after Justice Kinobe ruled, with braggadocio (according to the video I have seen on TikTok, where he dehumanised the petitioner's lawyer, Sam Muyizzi, he was perfectly impartial).

Faced now with proceeding before a judge she distrusted or abandoning her claim entirely, bruised Nalubowa chose to walk away empty-hand-

ed. Justice, it turned out, was not available on terms she could accept.

Nalubowa's dilemma, and that of others before her, exposes a fundamental flaw in our judicial system: judges decide challenges to their own impartiality, and this creates a logical paradox. If a judge is truly biased, can we trust their judgment that they are not? And if we cannot trust that judgment, how can we trust any decision they make, including the decision to recuse themselves or not?

This kind of backward legal system forces litigants into an impossible and hopeless position. Trust the judge you distrust, or abandon your constitutional rights. This forces our judges into an equally impossible position of rule against yourself (unlikely) or rule in your own favour (which destroys public confidence) and this absolutely forces the entire justice system into a legitimacy crisis.

If the justice system lacks legitimacy, why then do we say we have a Judiciary? This incongruity is not unique to our country. In the United Kingdom, courts apply the *Porter v Magill* stand-

ard. A judge must recuse if a reasonable observer would perceive a real possibility of bias. But even this sophisticated test cannot escape the paradox, the judge still decides whether they meet the standard.

When citizens lose faith that national courts can deliver impartial justice, the entire legal system loses legitimacy. Then, where does that leave the men and women at the bench asking Ugandans to have faith in the Ugandan Judiciary? Nalubowa's case is not an isolated incident. Isaac Ssemakadde, Kizza Besigye and Male Mabirizi faced a similar dilemma when challenging the impartiality of Emmanuel Baguma, Musa Sekaana, Kavuma, etcetera.

In both cases, the judges ruled in their own favour and in both cases, the litigants felt they had no real recourse.

The anomaly corrodes public confidence in the Judiciary. It forces litigants to choose between accepting a forum they believe is compromised or abandoning their constitutional right to access justice. Neither option upholds the rule of law. So, where is the rule of law that politicians tell us about?

PARADOX

In Uganda, a judge accused of bias decides whether they are biased.

This forces litigants to either proceed before a judge they distrust or abandon their case. Critics argue that without automatic referral to a higher court or clear disqualification rules, this practice undermines public confidence in the judiciary.