

Next step. Sources close to the Amama Mbabazi team are confident he will in the next 10 days walk to the Supreme Court and attempt to put up a case for an election that was in process and event, not free and fair and beseech the justices of the court to annul the same, writes **Ivan Okuda**

When all is said and done, the election is here and the outcome, at least as relayed by the Electoral Commission (EC), the

What next for Besigye,

only entity legally empowered to announce the winner of the presidential election, is out for the world.

Question of the day is: what next for Forum for Democratic Change candidate Kizza Besigye and independent candidate Amama Mbabazi?

Reading Mbabazi's script can be a huge task, thanks in part to his rather behind the scenes method of work and unwritten rule of unpredictability. We can, however, peep into Dr Besigye's tool box to decode what



Go Forward presidential candidate Amama Mbabazi. PHOTO BY ABUBAKER LUBOWA



FDC presidential candidate Kizza Besigye casting his vote on Thursday in Rukungiri District. FILE PHOTO

his political roadmap looks like, first from his public statements and precedents of the 2001, 2006 and 2011 elections.

Besigye not going to court

At the height of the presidential campaign, Dr Besigye reiterated his earlier stand on challenging President Museveni's victory in the Supreme Court in whom he lost confidence and faith after the 2001 and 2006 petitions failed to change the outcome of what he called a fraudulent election.

"If they want to rig this time and they think Besigye will go to court afterwards, let them forget it. It will all be sorted here (using people power)," Dr Besigye told a rally in Busia Town on November 22, 2015, in the company of Kampala Lord Mayor Erias Lukwago, FDC president Maj Gen Mugisha Muntu and FDC secretary general Nathan Nandala Mafabi.

The retired colonel changed his mind on contesting for the presidency under the current electoral system which critics say is skewed to tilt the scale in NRM's favour. There is no evidence, however, that he will change his mind on challenging Museveni's win in the same courts whose decisions in 2001 and 2006 he respected but disagreed with.

Mr Wandera Ogalo is a former active politician and seasoned lawyer who has had a fair share of the trenches with Besigye, representing him both in 2001 and 2006 where he put up a performance that nearly got Museveni's election overturned.

This time round, Ogalo too has ruled out the avenue of seeking redress in the country's Supreme Court, telling *Sunday Monitor* in an interview yesterday, "I tried a last ditch attempt to argue before the Constitutional Court to strike out Section 59 of the Presidential Elections Act which denies us justice but the court last month held that the provision is not unconstitutional."

Section 59(6) (a) of the Presidential Elections Act states: "The election of a candidate as president shall only be annulled on any of the following grounds if proved to the satisfaction of the court—that non-compliance with the provisions of this Act, if the court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions and that the non-compliance affected the result of the election in a substantial manner."

What is substantial? Can we say everything can go wrong in a presidential election so long as it doesn't substantially affect the outcome of the election? These are some of the questions Besigye, through Mr Wandera wanted the Constitutional Court to answer when they filed the petition in 2009.

Strangely though, the petition gathered dust until last month as though in anticipation from the State of a reference to a pending petition challenging Section 59 which the Supreme Court has always relied on.

Had the court struck out the provision, Mr Wandera says, "I would have convinced Besigye to try the Supreme Court again but now that the provision was upheld, we have no confidence we shall get justice. I would actually humbly decline if my client asked me to represent him and advise against the same."

Mr Erias Lukwago, a member of Besigye's legal team, too rules out the option of the Supreme Court, on his part, not entirely because the contested section stands in our law books, but for loss of faith in the courts on matters where Museveni's political interests are before the judges.

Mr Lukwago told this newspaper in an interview yesterday, "I would also not be part of the team if Besigye wanted to go to court because Museveni has hijacked all State institutions, you saw how my case was handled."

Mbabazi likely to petition court

Right from the time a maximum tactical surprise was thrown at him at Kyankwanzi in 2014, with Youth minister Evelyn Anite kneeling before Museveni and begging him to offer himself for re-election and later demanding NRM MPs to sign a sole candidate resolution, Mbabazi's legal team has strolled between court rooms and corridors, filing one petition after another.

As of the time of writing this article, his team had filed not less than eight suits in the High Court and Constitutional Court.

First was the Benjamin Alipanga Vs NRM, Yoweri Museveni and others petition in which he asked the Constitutional Court, through a proxy, to annul the sole candidate resolution

THE KEY PLAYERS SAY

Wandera Ogalo, lawyer: "I think Besigye will refine and expand the defiance campaign. Don't forget that Nelson Mandela and Oliver Tambo in 1952 started a defiance campaign against apartheid, so Besigye's campaign will be more sophisticated and refined. He will not sit back and hold his hands."

Kampala Lord Mayor Erias Lukwago: "I would also not be part of the team if Besigye wanted to go to court because Museveni has hijacked all State institutions, you saw how my case was handled."

Mr Severino Twinobusingye, a lawyer and strategist of Mr Mbabazi: "Legally speaking the election is fundamentally flawed. On the basis of what has transpired the election was conducted in total breach of the Constitution, every letter and spirit of all statutes."