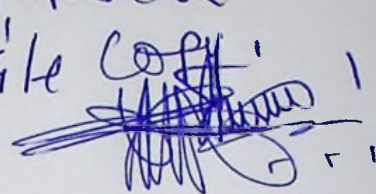


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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
ELECTION PETITION NO. 001 OF 2021

HON. LANYERO MOLLY..... PETITIONER

Versus

1. ACORA NANCY

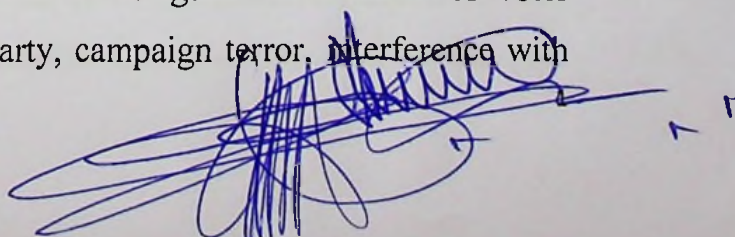
2. ELECTORAL COMMISSION..... RESPONDENTS

BEFORE: HON. JUSTICE TADEO ASHIMWE.

Judgment

The petitioner brought this petition having lost in the woman Parliamentary elections held on the 14th day of January 2021 to the 1st respondent, Acora Nancy. The Electoral Commission returned, declared and gazetted the 1st respondent as the validly elected woman Member of Parliament for Lamwo District. Hon Lanyero Molly was dissatisfied and aggrieved by the results and complained to this court that illegal practices and offences were committed by Acora Nancy personally and by other people with her knowledge and consent or approval and that the 2nd respondent did not conduct the elections in compliance with the laws.

The petitioner specifically sets out grounds of irregular amendment of voter register, use of colours similar to NRM Party, campaign terror, interference with



electoral process and violence/ intimidation. That the said non compliance with the laws and the offences affected the results in a substantial manner. Several affidavits in support of her petition but only 34 were admitted on court record. The 1st respondent led evidence of 33 witnesses.

Issues for court's determination were framed as follows:

1. Whether there was non-compliance with the electoral laws in the conduct of election for woman member of Parliament for Lamwo District.
2. If so, whether the non-compliance affected the results of the elections in a substantial manner.
3. Whether illegal practices and other electoral offence were committed during the elections by the 1st respondent personally or through her agents with her knowledge and consent or approval, to her eventual benefit.
4. What remedies are available to the parties?

At the hearing, the petitioner was represented by Counsel Karuhanga Justus, Tabaro Edwin and Simon Peter Nyero Lokwiya while the 1st respondent was represented by Counsel Anyuru Geoffery, Okello Oryem Alfred and Ngonde Denis. The second respondent was represented by Ezale Osman.

The matter proceeded by way of affidavits and some witnesses were cross examined by all parties' advocates in the order they wished and at closure written submissions were filed under the guidance of court.

STANDARD OF PROOF IN ELECTION PETIONS.

The standard of proof is set out in section 61(3) of the Parliamentary Elections Act. It is required that any ground specified in subsection (1) of Section 61 shall be

proved on the basis of a balanced of probabilities. The court has however raised the said balance of probability to be higher than it is in the ordinary civil cases. See the case of *Karokora Katono Zedekiya v. The Electoral Commission & Kagonyera Mondo*, Election Petition No. 02 Of 2001 by Hon. Justice Musoke Kibuuka as he then was. I agree with the position in the above case. It is now settled that the standard of proof in election petitions is on the balance of probability of a higher degree.

Therefore, for a court to set aside the election of a Member of Parliament, the evidence produced by the petitioner must be so compelling, cogent and credible. *The case of Mugema Peter v. Mudyobole Abed Nasser*, Election Petition Appeal No.30 of 2011 says it all.

BURDEN OF PROOF.

Section 100 evidence Act is to the effect that “*whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove existence of any facts, it is said that the burden of proof is on that person.*”

Further section 102 clarifies; - “*that a burden of proof as to any particular fact lies on that person who wishes court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person*”

Therefore, it is clear that the petitioner carries the burden to prove all the allegations. The burden never shifts to the respondent.

ISSUES FOR RESOLUTION IN THE PETITION

ISSUE 1: Whether there was non-compliance with electoral laws in the conduct of the election for Woman Member of Parliament for Lamwo District?

ISSUE 2: If so, whether the non-compliance with electoral laws affected the results in a substantial manner?

The parties argued the above two issues together and this court will follow the same order in its resolution.

To demonstrate the lack of compliance with laws, the petitioner's counsel submitted raising a number of grounds as follows;

IRREGULAR UPDATE OF A REGISTER.

On the above ground, counsel argued that the 2nd respondent irregularly without an instrument and or consultation updated the voter register which increased the number of voters from the original 61,131 voters to 65,223 voters thereby creating 4,092 ghost voters outside the time limit which is a breach of sections 18 and 19 of the Electoral Commission Act. He further argued that the petitioner had earlier received a voter's register with 61,131 voters. That the commission however came up with a new register with 65,223 voters. That the said breach was done in collusion with the 1st respondent to her benefit.

In reply, the 1st respondent did not deny the increase in the number of voters as reflected in the final register made by the 2nd respondent. In their view there was nothing wrong in updating the register.

The 2nd respondent also did not deny the register update to increase the number of voters. Counsel only faulted the petitioner for insisting on an old register which was obtained when the update process was still ongoing. He relied on sections 25 and 18A of the Electoral Commission Act as amended arguing that it's a duty of the Commission to update the register and the Parties are given copies 2 weeks before voting day.

RESSOLUTION

Article 61(e) of the constitution is to the effect that; - *"the function of the electoral commission is to compile, maintain, revise and update the voter's register"*.

In addition, **Section 18** of the Electoral commission act is to the effect that *"the commission shall compile, maintain and update, on a continuing basis, a national voters register in this act referred to as a voter's register, which shall include names of all persons entitled to vote in any national or local government election."*

Section 18A of the Electoral Commission Act (as amended) is to the effect that;

"The Commission shall transmit to every political party and organization taking part in an election, an electronic copy of the voters registers immediately after the nomination day but before polling day and an updated paper copy of the register containing photographs of the voters to be used on the polling day, two weeks before polling day."

Further **Section 25(1) of the Electoral commission** act provides that before any general election is held, the Commission shall, by notice in the Gazette, appoint a

period of not less than twenty-one days during which a copy of the voter's roll for each parish or ward shall be displayed for public scrutiny.”

“(1a) In addition to the twenty-one days referred to in subsection (1), the Commission shall allow a period of ten days during which any objections or complaints in relation to the names recommended by the tribunal to be included or deleted from the voters roll or in relation to any necessary corrections shall be raised or filed.

(1c) for purposes of this section, the complaints relating to the voters roll shall be received by the tribunal”.

From the above provisions of the law, it is clear that the Independent Electoral commission has the mandate to continuously maintain and update a voter register in accordance with the law for purposes of any election to take place.

In this petition, the petitioner contends that a new register different from one she received in October 2020 was used to conduct the election.

This fact is not denied by the respondent and the evidence on record shows that the election was conducted under a new register without any objection from the petitioner prior to the polling day.

According to PE7, (The statutory instrument) in a gazette of 20th December 2019 the updating exercise commenced on 21st November 2019 and was to end by 23rd December 2019. No evidence has been led to show that the new register used in the election was made outside 23rd of December 2019 as per the instrument.

The petitioner having led evidence of how she obtained the old register from the 2nd respondent, she led no evidence to show that what she obtained was a final register. However, the 2nd respondent whose duty was to update the register led evidence to show that the register in possession of the petitioner was an old register which was updated to increase the number of voters. There is nothing to show that it was illegally done since there was a clear notification in the gazette of 20th December 2019 stipulating the update exercise period which exercise culminated in a new register used in the conduct of the election. There is equally no evidence that the voter update exercise was done without consultation as required by law as there was no complaint raised during the exercise to the tribunal or electoral commission. Besides as per PE2 and 3, both parties used the same new register on the Election Day and all the petitioner's agent used the new register during the voting and signed all the DR forms without any protest. The general complaint to EC after election could not help since election was based on a non-contested register.

Further, from the evidence on record, the total number of voters added in the new register is stated to be 4,092. However, it is not possible to tell whom the said voters voted for and there is no evidence to show that they voted for the 1st respondent so as to affect the outcome of the election at the disadvantage of the petitioner.

I am satisfied that in amending the register, the 2nd respondent did not breach any law and simply complied with its statutory duty as enshrined in the Electoral Commission Act which requires update of a register before election.

I therefore find no merit in this ground as it is evident that the 2nd respondent updated the old register in accordance with the law.

Use of colors similar to that of the NRM party.

On this ground, the petitioner's counsel cited S.17 (1) of the Parliamentary Elections Act which mandates the 2nd respondent to assign candidates symbols and colors. Relying on the affidavits of the petitioner and one Okidi Joseph, he argued that the 1st Respondent designed her posters and banners to contain a combination of her symbol and the yellow color exclusively used by the National Resistance Movement flag bearers and further went on flying the NRM flag.

That the 1st Respondent in cross examination conceded that her posters had “egg yellow” colour and this was also confirmed by the District Returning Officer Mr. Samuel Olet in cross examination. It is certain that an ordinary voter from remote areas of Uganda cannot differentiate the yellow of the NRM party Page 8 of 20 and the “egg yellow” of the 1st Respondent. He submitted further that the 1st Respondent purposefully used the same colour to campaign and gain favour with the masses to hoodwink them that she had the blessing of the NRM party which is popular in the region. That considering that the petitioner and 1st respondent garnered a combined total of 22,202 votes in the NRM party primaries and combined total of 29,836 votes in the general election, this clearly shows that the party endorsement was crucial in delivering the final vote. That therefore, use of party colours by the 1st respondent was an unfair advantage and moreover illegal.

In reply the 1st respondent's counsel argued that the 1st respondent has never used the NRM colour, and neither did she use the symbol for the NRM.

The Returning officer for Lamwo RR-W1 also confirmed that they approve symbols for candidates, the 1st respondent used a saucepan, while the petitioner used a bus, and that the ballot paper does not bear colour in the background. The 2nd respondent's counsel agreed with the petitioners on the law regarding allocation of symbols but not colours and that no colours are assigned to independent candidates.

RESSOLUTION

The gist of the petitioner's complaint is that NRM voters were confused by the symbol of the 1st respondent which contained a yellow colour for NRM where she was a flag bearer. Her evidence and that of Okidi Joseph allude to a fact that the 1st respondent used posters of a yellow color and the president's posters. The 1st respondent under cross-examination stated that her poster colors was different and called it "egg yellow" as opposed to yellow of the NRM party and that her symbol was a source pan. The returning officer (RR-W1) stated that he never assigned any color to the 1st respondent but only gave her a symbol of a saucepan which was different from a Bus for the petitioner.

The question for determination is whether in the circumstances above the voters were confused.

First of all, the court record does not have clear evidence of the 1st respondent's campaign pictures as the original posters were not produced at trial. The annexures to the affidavit of Okidi Joseph are too faint and one cannot tell the person/candidate in those posters and the exact colours in those posters apart from the president's poster which was a bit clear. The copies of the posters relied on by the petitioner were never admitted in evidence.

Secondly the symbols for the 1st respondent and the petitioner were completely different that no reasonable man would confuse a bus for a saucepan even if the two posters had similar colours which is not the case in this petition. I am not satisfied that there was a confusion of identification between the candidates.

Consequently, I find no merit in this ground and the same fails.

Campaign of Terror

On this ground, counsel relied on the evidence of the Petitioner PW 29, PW28, PW32, PW33, PW34 and PW35, arguing that after failing to win the flag for NRM party, the 1st Respondent together with Hon. Hillary Onek (RW20) and Kidega James Nabinson (RW37) orchestrated a plan to frustrate the petitioner and intimidate her agents through a campaign of terror including use of violence, intimidation and interference of the voting process which they did with impunity.

In reply, the 1st respondent's counsel submitted that the petitioner did not bring any cogent evidence of terror, other than wild allegations on the RDC. That the petitioner conceded that she expected the RDC and Hon Hillary Onek to support her in vain. The said officials were in court and clearly told court under cross-examination that they never used any state resources to the advantage of the 1st respondent. That it is therefore wrong for the petitioner to use their names on what they did not do simply because they never supported her.

The second respondent's counsel dismissed the petitioner's allegations as mere suspicions between the 1st respondent and RW20 and RW37. He relied on section 60(1) (f) of the Parliamentary Election Act arguing that such complaints are supposed to be resolved during election if raised.

Resolution.

The petitioner's evidence in support of this ground through the 5 witnesses is that the RDC at different places assaulted and offered bribes to voters in order to vote the 1st respondent. However, no corroborative evidence was led to support the petitioner's evidence that the said assault indeed took place. This corroborative evidence would have been in form of medical evidence or court decision against the RDC and his team.

Further, even if this court found that the supporters of the petitioner were assaulted by the RDC, no evidence was led to show that it was done on instructions or with consent of the 1st respondent.

Therefore, the petitioner's allegations of terror by the 1st respondent remained unproved to the satisfaction of court.

Consequently, I find no merit in this ground too which hereby fails

Interference with the electoral process and violence/ intimidation.

On this ground, Counsel cited the case of **Kizza Besigye Vs Yoweri Kaguta Museveni and Another Presidential Election Petition No. 1 of 2001** arguing that Candidates should not be deprived of their right to stand for elections, and officials do not have an 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. Counsel further cited different incidents which in

his view amounted to interference with the electoral process, violence and intimidation as follows; -

A) Incident at Madi Opoki

On this incident, Counsel for the petitioner relied on the evidence of PW29, the petitioner, who deponed that she witnessed the 1st respondent and her husband Odonga Patrick at Madi Opoki way laid the petitioner's campaign coordinators, Okwera Robert, Luwum Brian, Anyati Brian and Okema Denis, confiscated their phones and UGX. 900,000 (Nine Hundred Thousand Shillings Only). The evidence Anyati Brian, the victim at Madi-Opoki, since the Petitioner herself was the victim and this went on unabated in the presence of a gun man later identified as Pte. Komakech Simon. A case file vide **CRB no. 018/2021** was opened and that both the 1st respondent and her husband confirmed in cross examination having been arrested by a senior police officer Deputy CID Director Page 10 of 20 Olugu Francis.

Counsel cited Article 1 of the Constitution of Uganda arguing that power vests in the people to express their free will in determining political leaders through periodical elections. The offence of undue influence is a creature of Section 80 (a) and (b) of the Parliamentary Elections Act. He further cited the **case of Abdu Katuntu Vs Kirunda Kivejinja E.P No. 007 of 2006** where it was found that threats or acts of intimidation interferes with the peaceful atmosphere and subverts the will of the electorate to choose leaders of their choosing.

b) Incident at Palabek Kal.

Counsel for the petitioner based his submissions on the evidence of PW29 at paragraphs 37, 38 and 39 which in his view clearly points to a situation where she gave a chase to the RDC who she saw carrying ballot boxes in his car but was assaulted by his bodyguard, one Ochola James Langoya who roughed her up and shoved her away. These boxes were seen at Palabek Kal Amony Nancy and Lakareber Florence who witnessed the confrontation at Palabek Kal. That PW29, the petitioner further gave chase to the RDC who took off and entered RW20 residence at Ogili and was shielded by army guards. The RDC conceded that he sought refuge in his evidence but confuses by claiming that he as running from the insults of the petitioner. He further conceded together with his bodyguard that a battalion commander came and disarmed them and took away the guard. He cited the case of **Ninsiima Grace Vs Azairwe Dorothy Nshaija Kabaraitnya and Another Election Petition Appeal No. 05 of 2016**, arguing that the Petitioner must adduce sufficient evidence to show the non-compliance affected the outcome of the electoral process.

In his view the application of the substantiality test with regard the effect of non-compliance with the provisions of the Parliamentary Elections Act is both qualitative and quantitative and invited court to find that non-compliance with laws and offence affected the results in a substantial manner.

In reply the 1st respondent submitted that all that the Petitioner pleaded and tried to prove in this case is her personal difference with Hon Hillary Onok and Kidega James Nabison, the RDC Lamwo for not supporting her as she expected. That the allegations about intimidation, violence are all afterthought, inconsistent with the events. In his view, the allegation that the RDC assaulted a one Komakech Loading is not true, the Petitioner in paragraph 6(d) states the report to be **SD**

09/10/01/2021 which makes it clear that the police report was made on the 10th of January 2021, four days before the alleged assault. That Komakech Loding in his affidavit does not attach any medical forms from wherever he was getting treatment before April 2021, what is attached is PF3 dated 16th April 2021 and bearing a stamp dated 18th April 2021, from Police headquarters and treatment not from Mengo dated 17th April 2021. This is manifest lie to mislead court in believing that he was assaulted by the RDC on the 14th day of January 2021, whereas not. Further that the allegation of aggravated robbery on the 1st respondent, first of all this is not one of the offences under the Parliamentary Elections Act, secondly the said file was closed by the DPP, thirdly Okwera Robert was in court and clearly told court they made those allegations out of annoyance after his candidate lost the election but it was not true.

He submitted on the incident at Padwat village that the petitioner conceded in cross-examination that she had no proof of her campaign program in that village on the 15th day of December 2020. 1st respondent witness R1-W29 Ongee Ensio, the LC 1 of the village was clear that on the 15th of December 2020, it was the 1st respondent with campaign program in his village, not the petitioner, but to the contrary the people who he describes as body guards to the Petitioner came and disorganized the campaign by the 1st respondent. That the petitioner wants to play victim here, when she was the aggressor. He prayed that court should disregard her evidence to that effect. He went ahead to submit that the polling stations that the Petitioner has complaint, she was the winner, at Lugede P.7 School, the petitioner got 96 against 56 for the 1st respondent, and in Standard Junior Petitioner got 94, against 36 for the 1st respondent.

Counsel further submitted that through the discovery she presented voter roll for 10 polling stations of Ogwech, Kwoncok P.7, Lugede P.7, Ogako Lacan P.S, Opwoyo Trading Centre, Dog Tangi, Lonai, Kal Piktat, Ber Loko Market Place, and Pawach, to try to prove that there was no ticking of the names of the people who voted.

On the questioned 10 polling stations, counsel argued that according to the results, the Petitioner got substantial votes, and was even the winner in some of the them, for example, in Apwoyo Trading Centre, she got 110 votes, Dog Tangi she got 123 votes, Kwoncok primary school got 45 votes, Ogako Lacan P.7 school 125, Lugede P.7 school 96, Ogwech 70, Pawach Health Centre 93, Lonai 88, Kal Piktat 43, and Berlobo Market Place 59. The Petitioner cannot turn around and say people did not vote in those stations yet she got votes. If there was lapse on the part of the Presiding officer in not ticking the names in the register, then that is a minor error, which can be ignored. In any case the petitioner was at those polling stations through her agents, they had copies of the same register/voter roll and no complaint was raised in any of the ten polling stations.

Counsel further submitted that the court should consider the signing of the DR Forms. Both the petitioners' and 1st respondents' agents signed 100% of the DR Forms. Even the ten polling stations complained of that the ticks are not there or inconsistent with the voter roll, the agents signed. That the signature by the candidates' agents on the DR Forms meant that they confirmed the contents of the results and data as given on the DR Form, and that their candidates were bound. In support of his argument he cited the case of *Babu Edward Francis Vs Electoral*

Commission and Elias Lukwago HCEP No. 10 of 2006 (Kampala) and CA No. 11/02, Ngoma Ngime Vs EC and W. Byanyima

Further that by the petitioner's agents signing the DR Forms, they confirmed that the votes stated therein is correct. There is no cogent evidence that any complaints were made by the petitioner's agents at the polling stations as required under **S. 48 of the PEA**. If the petitioner did not appoint capable agents who would stand up to the task, it is the petitioner herself to blame for failing to identify capable and competent agents as was stated ***Halima Nakawungu vs Electoral Commission & Anor, Election Petition No 2 of 2011***.

Counsel backed his submission on the evidence of the Returning Officer, RR - W1, who testified that the Petitioner had agents in those polling station with copy of the Voter Roll that they would cross-check the names of voters before a ballot paper is issued. That even the petitioner concedes to this position.

He finally prayed that this honorable dismisses the petitioner's claims on all the incidents above.

Counsel additionally submitted that there was no non-compliance which affected the result of the election in a substantial manner referring to the case of ***Kizza Besigye vs Yoweri Kaguta Museveni & Anor Supreme Court Presidential Petition No. 1 of 2001*** and ***Amama Mbabazi & Anor vs Musinguzi Garuga James, Election Petition Appeal No. 12 of 2002***, arguing that it is not sufficient that there have been irregularities in the election, it must be proved that the non-compliance/irregularities affected the results of the election in a substantial manner. The principle is that an election should not be set aside basing on trivial errors and informalities.

That in this petition, the petitioner did not prove the alleged irregularities, and prayed that even if court finds so, the winning margin is **4,202 votes** from the electorate of Lamwo district.

That the ten (10) polling stations where the petitioner is complaining about failure to tick on the voter roll has a total number of 2,479 votes as can be seen from the DR forms. That even if this is to be deducted from the winning margin, the 1st respondent would still be a head by **1,723 votes**. He invited court to find that there is no evidence of non-compliance with the electoral laws that has been proved by the petitioner that did affect the results of the election for the Woman Member of Parliament for Lamwo District in a substantial way.

Resolution.

The contention of the petitioner on this ground is that her agents and voters were intimidated, assaulted and prevented from participating in the electoral process.

Counsel for the petitioner cited the incident at Madi Opoki where it was stated that the petitioner's campaign coordinators were way laid, had their phones and money confiscated by the 1st respondent and her husband. This incident was denied by the 1st respondent who testified that instead it is the petitioners group which stopped the 1st respondent and her husband. This incident was investigated by police where the 1st respondent was even arrested during investigation but no charges were preferred against the 1st respondent and her husband. In the absence of any criminal charges against the 1st respondent and her husband, it is very difficult for this court conclude that she was responsible for whatever took place at the Madi Opoki incident. Therefore, this court is not satisfied that the respondent committed any offence at Madi opoki.

On the Incident at Palabek Kal the petitioner led evidence through her affidavit that she saw the RDC carrying ballot boxes in his car and that when she gave a chase, she was assaulted and shoved away by the body guard. That the RDC took off and entered the residence of R20 and was shielded by the army guards.

Although evidence on record from the RDC shows that the army guards and the RDC's body guard were arrested by a battalion commander, the said ballot boxes allegedly in the RDC'S car were never recovered from the residence of RW20.

In addition, the petitioner's claim of assault is not backed by any medical evidence or police report to corroborate her testimony.

In my view the petitioner has failed to produce cogent and credible evidence to support the incident at Palabek Kal to the satisfaction of court.

Further the petitioner led evidence of an incident at Padwat village, where she testified that the 1st respondent interfered with her campaign program on the 15th day of December by appearing with her on the same day in the same village for campaigns.

However, the petitioner conceded in cross-examination that she had no proof of her campaign program in that village on the 15th day of December 2020. Besides in the absence of evidence of a campaign programme, its difficult tell that the petitioner was supposed to be in that specific place. The respondent led evidence of R1-W29 Ongee Ensio, the LC 1 chairperson of the village who told court under cross-examination that on the 15th of December 2020, it was the 1st respondent with campaign program in his village and not the petitioner.

Besides issues of campaign schedules are issues which should have been handled by the electoral commission prior to the polling day and could come to this court by way of appeal.

I therefore find no merit on this issue.

ASSAULT.

The petitioner also led evidence to the effect that on the 14/01/2021 the RDC assaulted a one komakech loding PW32 for supporting the petitioner and that he sustained grave injuries and a fracture on the leg.

Whereas it is true that the police letter marked J on the affidavit of the petitioner, PW29 confirmed the injury of the said komakech loding, it was not conclusive on who and when komaketch was injured or if actually he was injured at the instructions or with consent of the petitioner.

Evidence on record from witnesses shows that komakech was assaulted on the 14/01/2021. However, the evidence of treatment attached to in his affidavit shows that he received treatment on the 16th day of April 2021 close to 4 months from the date of the alleged assault. It beats logic that one can sustain a fracture and he stays without treatment for a long period of time as it is in this matter. This court is not convinced by the evidence led by the petitioner regarding assault of a one Komakech as a fracture is a serious injury to be kept unattended to for a period of 4 months.

Lastly, the petitioner through the discovery presented evidence of a voter roll for 10 polling stations of Ogwech, Kwoncok P.7, Lugede P.7, Ogako Lacan P.S, Opwoyo Trading Centre, Dog Tangi, Lonai, Kal Piktari, Ber Loko Market Place, and Pawach, to prove that there was no ticking of the names of the people who

voted at the 10 polling stations and that in essence that means voters did not vote and the vote result was manufactured by the second respondent which amounts to making false entries.

Whereas there is evidence on record to show that only a handful of voters were ticked on the voter register in the 10 polling stations, court is under duty to evaluate the evidence on record to satisfy itself on whether this omission is enough to conclude that people never voted and if so whether it affected the election results substantial way.

From the evidence on record, it is clear that all the agents of the petitioner signed on DR form as a sign of their acknowledgement of the poll results. I agree with the case of **Babu Edward Francis Vs Electoral Commission and Elias Lukwago HCEP No. 10 of 2006 (Kampala)** cited by the 1st respondent's counsel Where court held that; -

"When an agent signs a DR Form, he is confirming the truth of what is contained in the DR form. He is confirming to his principal that this is the correct result of what transpired at the polling station. The candidate in particular is therefore stopped from challenging the contents of the form because he is the appointing authority of the agent.

As already stated, all the agents of the petitioner signed DR forms and none of them deposed an affidavit to say that the information contained in these forms is not correct. If the agents of the appellant were not satisfied with procedure of verifying voters and the results at the end of the election, they could have declined to sign the declared of results forms and indicate their reasons for refusal to do so.

This was not done. Instead they signed all the DR forms and this was confirmed by the petitioner in cross examination.

In the circumstances the petitioner is estopped from denying the result of the election where she fully participated through her agents who endorsed the election outcome by signing all the DR forms.

In conclusion this court has not found any non-compliance with the law by the respondents and as such it is not necessary to discuss the effect of non-compliance as was required in issue two.

Therefore, issues one and two are resolved in the negative

Issue 3: Whether illegal practices and other electoral offences were committed during the election by the First Respondent personally or by her agents with her knowledge, consent and approval, to her eventual benefit?

To support the above issue, the petitioner's counsel, submitted that there were illegal practices and offences committed by the 2nd respondent by making false entries on the Voter Roll, Declaration of Results Forms, Tally Sheet.

To support his argument, he cited the case of **Joy Kabatsi Vs Anifa Kawooya & Another Election Petition Appeal 003 of 2007** and Supreme Court in **Joy Kabatsi Kafura v Anifa Kawooya Bangirana & Electoral Commission; Election Petition appeal no. 25 of 2007** Mulenga JSC (as he then was) arguing that making false entries creates an electoral offence. He further cited section S. 78 of the Parliamentary Election Act which states that an election officer or other person having any duty to perform in relation to an election who makes any record, return or other document which he or she is required to keep or make under this

Act, any entry which he or she knows or has reasonable cause to believe to be false
Commits an offence and is liable on conviction to a fine not exceeding one
hundred and twenty currency points or imprisonment not exceeding five years or
both.

Citing Section 34 (4) of the Parliamentary Elections Act, he submitted that it is
mandatory for the Presiding Officer or Polling Assistant to place a tick against the
Voter's name in the Voter's Roll for the Polling Station. He further relied on
evidence of RW21, the Returning Officer who conceded in cross examination that
the only way to ascertain if a voter voted is by looking at the voter register which
shows a tick and was used after the voter moved from the biometric machine. So, it
remains that the DR form is simply an entry of the totals of the Voter roll at each
polling station. There cannot be an accurate DR form without a corresponding
voter roll.

That in the instant case, there are ten polling stations with voter rolls whose
numbers do not tally with the numbers on the DR form thus showing false entries,
concocted results manufactured by the respondents.

He led evidence of 10 polling stations where there were discrepancies between the
voter Roll/register and the DR form results.

There was no specific reply on this from the 1st respondent but the 2nd respondent
submitted that whereas the act provides for ticking of the voters roll, during voting
the 2nd respondent uses in addition a biometric machine to verify the voters. In his
view, the omission to tick the register does not necessarily mean that a person
cannot vote if confirmed by the biometric Machine.

He further submitted that the petitioner's agents were all present during the election process and they confirmed all the voters by appending their signatures on DR forms without any complaint regarding verification of voters.

RESSSOLUTION

Evidence on record confirms that there was an omission by the polling assistant to tick all the voters who voted on the voter roll as per the requirement of section 34 (4) of the Parliamentary Elections Act. The voter roll ticks indicates fewer voters compared to the DR forms.

In my view, this omission of failure to tick an eligible voter does not necessarily mean that the entire results as reflected in the DR forms are false Entries to create an offence under the law for reasons that the methods of verification of voters is not limited to the voter roll alone but also a biometric Machine as per the returning officer's evidence on record.

In the absence of any complaint and or protest by the petitioner's agents during voting regarding the people who turned up to vote and the voter Roll used by all the parties, the omission can only be treated as a minor omission which does not affect the election outcome in a substantial way. In this petition, had the agents of the petitioner raised the issue of ticking the register to returning officer on the polling day, the same would have been cured. This position was confirmed in the case of **Kasirabo Ninsiima Boaz vs Mpuga David EPA no. 55 of 2016** where court held that; - *"An election should not be set aside basing on trivial errors and informalities."*

I therefore find this complaint without merit.

record from an independent witness who witnessed the alleged bribery. He argued further that what is on record is evidence from accomplices to the crime which requires corroboration. He cited *Section 68 (2) of the Parliamentary Elections Act and the case of Kamba Saleh Moses vs Namuyangu Jennifer, Elections Petition Appeal No. 27 of 2011 at page 15* where accomplice evidence was said to require corroborated for court to rely on it. *He finally* submitted that the petitioner has not proved her allegation of bribery, and prayed that the same be dismissed.

RESSOLUTION.

According to the black's law dictionary, bribery is defined to mean the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty.

In this petition, it was argued that the 1st respondent through the RDC a one Kidega and his team bribed voters to influence them from voting her.

The petitioner led evidence of Arube Charles, Odera Simon Peter, Amone Robinson Nasser, and Kwoyelo Innocent to support the claim of bribery by the RDC.

Surprisingly, none of these witnesses reported this bribery to any authority and since the law treats them as accomplices to the bribery, their evidence needs to be treated with caution. This position was confirmed in the case of **Mbayo Jacob Robert V. Electoral Commission & Talisunya, Election Petition No. 07 of 2006**, where Court advised that some other evidence from an independent source is required to confirm the allegations of bribery instead of reliance on supporters of the Candidates trading accusations and counter – accusation.

In this petition, the 5 witnesses presented were supporters of the petitioner and therefore having an interest in the outcome of the election.

Therefore, in the absence of independent corroborative evidence to support these bribery allegations, this court finds the evidence on record doubtful and not safe to be relied upon to make finding.

Besides the petitioner led no evidence to show that the alleged bribery was done with approval, and or consent of the 1st respondent.

I am therefore not satisfied that the offence of bribery was committed or if at all it was committed, the 1st respondent consented/approved it.

In conclusion, it is the finding of this court that all the alleged electoral offences and illegalities have not been proved to the satisfaction of this court.

Issue 3 is answered in the negative.

Issue 4: What remedies are available to the parties?

This court having found all the grounds of the petition without merit, the petitioner is not entitled to any remedy. This petition lacks merit and is hereby dismissed.

COSTS

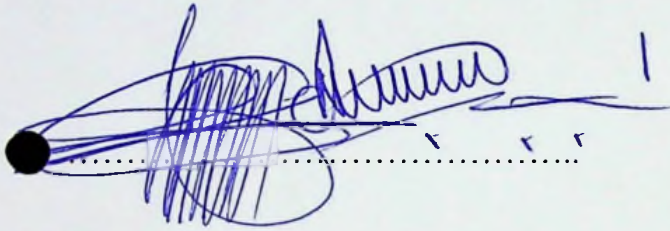
Both parties in this matter prayed for costs in accordance with **rule 27 of the Parliamentary Elections (Interim provisions) Rules – SI 141-2** provides for costs in elections matters. According to this rule,

“All costs of and incidental to the presentation of the petition and the proceedings consequent on the petition shall be defrayed by the parties to the petition in such manner and in such proportions as the court may determine.”

The petition having failed and no good cause has been shown for the award of costs to the petitioner, he is not entitled to costs.

However, the law is that costs must follow the events and therefore both respondents are entitled to cost which I hereby grant.

I hereby declare Hon. Acora Nancy as the validly elected woman Member of Parliament for Lamwo District.



Tadeo Asiimwe

JUDGE

20/09/2021