

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
ELECTION PETITION NO. 06 OF 2001

PETER NYOMBI ::PETITIONER

VERSUS

1. **MURULI MUKASA**
2. **THE ELECTORAL COMMISSION** } ::::: **RESPONDENT**

BEFORE HON. MR. JUSTICE GIDEON TINYINONDI:

JUDGEMENT

On 26/06/2001 Parliamentary Elections were held in Nakasongola Constituency, Nakasongola District. The 1st Respondent and Petitioner were the only two candidates. The 1st Respondent emerged and the 2nd Respondent declared him the winner with 21,299 votes against the Petitioner's 12,523.

The Petitioner was aggrieved by and dissatisfied with the total results of the election. He petitioned alleging: -

“(a) that the election was not carried out in accordance with the provisions of the Parliamentary Elections Act, 2001 because there were numerous

malpractices and substantial non-compliance with the law that substantially affected the result and rendered the whole electoral process a nullity.

- (b) the Petitioner and not the 1st Respondent won the election on the 26/06/2001.
- (c) The 1st Respondent personally and/or through his agents and supporters with his knowledge and consent committed several illegal practices and offences in connection with this election before and during the election day.”

The Petitioner alleged the following to be the PARTICLUARS OF ILLEGAL PRACTICES:

- “(a) The 1st Respondent and/or his agents with his facilitation and/or knowledge had his people vote more than once at various Polling Stations.

- (b) Bribing voters cards by the 1st Respondent and/or through his agents to vote in favour of the 1st Respondent.
- (c) Distribution of voter cards by the 1st Respondent and/or by his agents to his supporters to facilitate them vote more than once.
- (d) Intimidating known voters and supporters of the Petitioner and preventing them from voting.
- (e) Transporting voters to vote more than once from one Polling Station to another by the 1st Respondent and/or his agents with his facilitation and consent.
- (f) Being in possession of ballot papers ticked in favour of the 1st Respondent before the election day by the 1st Respondent and/or his agents or supporters.
- (g) Carrying on campaigns and addressing a rally past the stipulated time.

- (h) Intimidating voters by the 1st Respondent himself and/or by his agents with his knowledge and consent, to vote for him.
- (i) Transporting non-registered voters by the 1st Respondent and/or his agents with his knowledge and consent, from outside the Constituency to vote him.
- (j) Campaigning using sectarian utterances and mudslinging language against the Petitioner by the 1st Respondent.
- (k) That the Petitioner's agents and supporters were abducted and some prevented by the army to abstain from voting for the Petitioner."

The Petitioner further listed the following to be the PARTICULARS OF NON-COMPLIANCE WITH THE LAW: -

- “(a) Failure to clean the Voters’ Register thereby allowing room for ineligible persons to vote for the 1st Respondent.
- (b) Printing excess Voters’ cards and failing to manage and/or control their distribution thereby allowing them to be used by the 1st Respondent to rig the elections in his favour.
- (c) Failure to control soldiers and other security operatives thereby allowing them to interfere with and influence the election process in favour of the 1st Respondent.
- (d) Allowing soldiers and other unauthorized persons to handle, manage and distribute Voters’ cards, thereby allowing them to use them to rig the elections in favour of the 1st Respondents.
- (e) Displaying of the 1st Respondent’s posters at Polling Stations.

- (f) Failing to ensure conditions of a free and fair election by allowing the 1st Respondent/his servants/agents to intimidate and/or prevent the Petitioner's voters from voting.

- (g) Denying the Petitioner's agents a chance to witness the voting process at some Polling Stations by the 1st Respondent, his servants and/or agents with his knowledge and approval, with the acquiescence and connivance of the 2nd Respondent.

- (h) During the polling exercise the Petitioner's Polling Agents were chased away from some Polling Stations and as a result the Petitioner's interests at these Polling Stations could not be safeguarded.

- (i) The 2nd Respondent and/or its agents/servants, the Presiding Officers in the course of their duties, allowed people with no valid voter cards to vote.

- (j) The 2nd Respondent's agents/servants allowed the voting and carried out the counting and tallying of votes in the forced absence of the Petitioner's agents whose duty was to safeguard the Petitioner's interests by observing the voting, counting and tallying process to ascertain the results."

In paragraph 4 of his petition the Petitioner alleged that he was further aggrieved because despite having pointed out all the alleged illegal practices to the 2nd Respondent the latter went ahead to declare the 1st Respondent as the winner.

The Petitioner prayed for: -

- (a) An Order that the 1st Respondent was not duly elected.
- (b) An Order that the election of the 1st Respondent be nullified.

- (c) A declaration that the Petitioner and not the 1st Respondent won the Parliamentary Election for Nakasongola Constituency held on 26th June 2001.
- (d) An Order that the Respondents pay the Costs of this Petition.

ALTERNATIVELY

- (e) An Order that the Results of the Parliamentary Elections for Nakasongola Constituency be annulled and fresh elections be held for Nakasongola Constituency.

To support his petition the Petitioner filed his own and thirty other supporting affidavits.

The 1st Respondent filed an Answer wherein he alleged: -

- “1. **THAT** your 1st Respondent is a male adult Ugandan of sound mind of the above address for the purposes of this petition.

2. **THAT** your 1st Respondent is the Member of Parliament for Nakasongola Constituency in Nakasongola District of Uganda having been duly declared as elected by the 2nd Respondent pursuant to Parliamentary elections held on 26th June, 2001 under the provisions of the Parliamentary Elections Act 2001.

3. **THAT** the 1st Respondent has perused and understood the contents of the petition of Peter Nyombi and replies thereto as follows: -

4. **THAT** the 1st Respondent denies the truth of paragraph 3 of the Petition and the Petitioner shall be put to strict proof of each of the allegations contained therein.

5. **THAT** the 1st Respondent denies commission on any illegal practice or election offence as alleged by the Petitioner either by himself or by his agents with his knowledge and consent or approval.

6. **THAT** in response to the specific allegations and particulars of illegal practices and offences set out under paragraph 3(c) of the Petition the 1st Respondent states as follows: -

- (i) The 1st Respondent never facilitated any person to vote more than once at any various Polling Stations.
- (ii) The 1st Respondent has no knowledge of any person voting more than once at any polling station.
- (iii) The 1st Respondent has no knowledge of nor did he consent or give approval to any of his agents facilitating people to vote more than once at any or various polling stations.

- (iv) The 1st Respondent never distributed voters cards to his supporters to facilitate them vote more than once.
- (v) The 1st Respondent has no knowledge nor did he consent to or approve of any of his agents distributing voters cards to supporters to facilitate them vote more than once.
- (vi) The 1st Respondent denies having intimidated voters and supporters of the Petitioner to vote for him and/or preventing them from voting.
- (vii) The 1st Respondent denies having transported voters to vote more than once from one Polling Station to another.
- (viii) The 1st Respondent denies knowledge nor did he consent to or approve of any

of his agents transporting voters to vote more than once from one Polling Station to another.

- (ix) The 1st Respondent denies being in possession of ballot papers ticked in his favour before the election day.

- (x) The 1st Respondent denies knowledge of nor did he consent to or approve of any of his agents being in possession of ballot papers ticked in his favour before the election day.

- (xi) The 1st Respondent denies knowledge of nor did he consent to or approve of any of his agents intimidating voters to vote for him.

- (xii) The 1st Respondent denies transporting non registered voters from outside the Constituency to vote for him.

- (xiii) The 1st Respondent denies knowledge nor did he consent to or approve of any of his agents transporting voters from outside the Constituency to vote for him.

- (xiv) The 1st Respondent denies campaigning using sectarian utterances and mudslinging language against the Petitioner.

- (xv) The 1st Respondent denies carrying on the campaigns and addressing a rally past the stipulated time but in the alternative and without prejudice to such denial states that it does not amount to an illegal practice or an election offence nor did such non compliance with Section

21 (d) of the Act affect the result of the election in a substantial manner.

(xvi) The 1st Respondent denies knowledge of any abduction of the Petitioner's supporters nor that they were prevented by the army to abstain from voting for the Petitioner.

(xvii) The 1st Respondent denies any acquiescence in, or connivance by the 2nd Respondent of the 1st Respondent denying the Petitioners' agents the chance to witness the voting process at some polling stations nor does the 1st Respondent have knowledge nor did he consent to or approve of his agents denying the Petitioners such chance aforesaid.

7. The 1st Respondent states that the elections were carried out in a free and fair manner in accordance and compliance with the provisions relating to elections under the Parliamentary Elections Act 2001.
8. The 1st Respondent defeated the Petitioner by a margin of Eighty Thousand Seven Hundred Seventy Six Votes clearly reflecting the general and overall will of the people who voted in the said election in Nakasongola Constituency.
9. **THAT** any non compliance with the provisions of the Act relating to elections which non compliance is denied, such failure did not affect the result of the election in a substantial manner.”

The support of the Answer and in reply to the affidavits supports the petition the 1st Respondent filed his own and thirty eight affidavits plus his own additional affidavits. Of these affidavits the Petitioner’s Counsel cross-examined on seven.

The 2nd Respondent also filed an Answer stating: -

- “1. Paragraphs 1 and 2 of the Petition are admitted.

2. The 2nd Respondent shall aver that the elections were conducted in accordance/compliance with the provisions of the electoral law.

IN THE ALTERNATIVE AND WITHOUT PREJUDICE to the foregoing, the 2nd Respondent avers that if there was any non-compliance with the electoral laws it did not affect the result of the election in a substantial manner.

3. The 2nd Respondent categorically denies the allegations of election malpractices and non-compliance contained in paragraph 3 of the petition and avers as hereunder:
 - (a) That the 2nd Respondent did conduct the election exercise in accordance/compliance with the electoral laws and any non-compliance, which is

denied did not affect the result of the election in a substantial manner.

- (b) That the 1st Respondent did win the election held on the 26th day of June, 2001 in Nakasongola Constituency.
- (c) That there is no evidence to support the contents of paragraph 3 (c) and (d) of the petition and the petitioner shall be put to strict proof thereof;
- (d) That the 2nd Respondent did clean the voters register and all in eligible persons were excluded from the voter's register and barred from voting.
- (e) That the 2nd Respondent ensured that voters cards were safely kept and properly distributed and the 1st Respondent did not rig the election.
- (f) That the election was conducted under same conditions.

- (g) That the entire election exercise was flawless, free and fair.
- (h) That the 2nd Respondent ensured that only its officials handled, kept and distributed voters cards.
- (i) That at no polling station did the 1st Respondent display his posters.
- (j) That no person who was eligible and duly registered as a voter and properly identified was denied the right to vote.
- (k) That the 2nd Respondent ensured that at all polling stations the Petitioner's agents were free and did witness the entire election exercise.
- (l) That at no polling station did the 2nd Respondent allows an ineligible person to vote.
- (m) That the voting and tallying process was done in the presence of all those interested and if at all the Petitioner's agents were absent which, is denied,

they must have absented themselves of their own free will.

4. That the 2nd Respondent declared the 1st Respondent as the manner of the election held in Nakasongola constituency after ascertaining the results conclusively.”

The 2nd Respondent supported its Answer by filing five affidavits. Of these the Petitioner’s Counsel cross-examined on four.

At the hearing the following were agreed and framed as the issues: -

- “1. Whether an illegal practice or an election offence was committed by the 1st Respondent in the election.
2. Whether there was non-compliance with the provisions of the Parliament Act.
3. Whether there was failure to conduct the election in accordance with the provisions of the Parliament Act.

4. Whether non-compliance and failure affected the results in a substantial manner.

5. Remedies.”

All Counsel agreed that the burden of proof is settled. The Petitioner has to prove the grounds for nullification of the election to the satisfaction of the court. The standard of proof is on a balance of probabilities {See: Section 62 (3) of the Parliamentary Elections Act 2001. I would hasten to gloss this standard by quoting from BAT ER vs. BATER, (1950) 2 ALL. E. R. 458 where Lord Denning ...J, stated: -

“The case may be proved on the preponderance but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court when considering a change of fraud will naturally require a higher degree of probability than that which it would require if considering whether negligence has been established. It does not adopt so high a degree as a criminal court, even when considering a change of

criminal nature, but still it does require a degree of which is commensurate with the occasion.”

I would even go further to agree with my brother Musoke-Kibuuka J. in Z. KAROKORA KATONO ZEDEKIYA vs. THE ELECTORAL COMMISSION AND ANOTHER, HCT 05 - CV - ELECTION PETITION 0002/2001 where at page 6 the rationale standart in these words:

“It is quite crucial to emphasize and bear in mind that setting aside the election of a member of Parliament is indeed a very grave matter. The decision carries with it much weight and serious implications. It is a matter of both individual and national importance. The removal of the elected member of Parliament renders the affected constituency to remain without a voice for some time.COPY OMISSION. Thus the crucial need for courts to act in matters of this nature only in instances when the grounds of the petition are proved at a high degree of probability.”

To the 1st issue I now revert. In paragraph 3 (g) of his petition, the Petitioner alleged that the 1st Respondent carried on a campaign outside the stipulated time. In support of this allegation the Petitioner presented three affidavits, to wit;

- i) Opyoko Philip
- ii) Samanya Stephen, Basalirwa, and;
- iii) Byansi Samuel.

In the three affidavits it is disclosed that at about 10.00 a.m. on 25/06/2001 the 1st Respondent addressed a general assembly of Nakasongola Army Senior Secondary School. The first two deponents were students at the school and in attendance while Byansi was not such a student nor was he in attendance. His deposition on this allegation is thus not credible especially when in paragraph 6 he states that he merely “overheard” the 1st Respondent and his group telling the students to vote for the 1st Respondent.

In paragraph 6(xv) of his Answer the 1st Respondent stated that he did not carry on the alleged campaign and that without prejudice to the denial this did not account to an illegal practice or an election offence, nor did it affect the result of the election in a substantial manner. The

1st Respondent was cross-examined on his affidavit and admitted he addressed a gathering of voters in Nakasongola Army barracks after the official campaign had been closed and addressed them on the role of an Petitioner in his area generally but not what a Member of Parliament would do for them.”

In re-examination the 1st Respondent testified that he was conversant with Parliament law and that it did not prohibit any candidate from talking to any group of persons on the day before polling day. That prior to the 2001 Presidential election the Head Master of Nakasongola Army S. School requested him to address students’ complaints about water, insufficient lighting and insufficient library books. That he had chosen 25/06/2001 to do so and fashioned the topic “The Role of an MP in his area” for the occasion. On this evidence alone I find and hold that the 1st Respondent carried on a campaign on 25/06/2001.

What is the statutory law on this aspect? Section 21 (5) of the Parliamentary Elections Act, No. 8/01 stipulates: -

“(5) No campaign meeting shall be held within twenty-four hours before polling day.”

Section 45 (1) of the same Act reads: -

“(1). The campaign period prescribed by the Commission under Subsection 91) of Section 21 shall not extend beyond midnight of the day before polling day.”

Hereafter I shall caption this Act as the “PEA”.

These two sections have been previously considered by Kibuka - Musoke J. in E. P. 0004 of 2001 WINNIE BABIHUGA vs MASIKO WINNIE KOMUHANGI AND 2 OTHERS. At page 86.

The learned Judge pronounced: -

“Accordingly even if it had been proved that the first Respondent had campaigned on Radio Rukungiri and alleged (8.00 p.m. on the eve of the elections) there would have been no offence committed by her under the Parliament Elections Act 2001.”

I agree with the learned Judge’s interpretation and adopt the same for my holding herein that the 1st Respondent did not commit any illegal practice or election offence by campaigning at the said school on the

said day. I also agree with the 2nd Respondent's Counsel that the Petitioner called no evidence to involve the 2nd Respondent.

In paragraph 3 (b) of the petition, the Petitioner alleged that the 1st Respondent and/or his agents bribed voters to vote in his favour. The Petitioner's allegations were supported in the following affidavits.

i) **Kate Nakirindi of Kakola-Kiswera, Mayanda, Kalongo Nakasongola District,** deponed:

- "1. That I am a female adult Ugandan of sound mind residing at the above address and a registered voter of Kakola Polling Station.

2. That on the 26th June 2001 at the above station I saw Mr. Muruli-Mukasa's Agent, Sserunyange's motorcycle with posters of Muruli-Mukasa.

3. That the motorcycle was being rode by the said agent in turn with another one Kazungu to transport voters to the Polling Station and when the voters reached, they were

shown the said posters and told to vote for that person on the Ballot Papers.

4. That at the station I witnessed the said Sserunyange helping the voters especially those of Rwandese extraction to tick the Ballot Papers in a manner that was improper in connivance with the Presiding Officer.
5. That at the station I witnessed people coming with Voters' cards that did not belong to them and when Peter Nyombi's Agent Buulo Kalangira tried to raise this, he was intimidated by Muruli Mukasa's agents and supporters.
6. That I also witnessed the said Sserunyange giving some of the voters, money at the station and telling them to vote for Muruli Mukasa. He gave Mzee Luwuma Kamyamba booze to vote for Muruli Mukasa.
7. That I went to the nearby Police Station to report Sserunyange's actions but the Police told me that it was too late.

8. That shortly before the polling day, Mr. Butamanya, a known agent of Hon. Muruli-Mukasa who even stepped down for him gave me UShs.500/= and asked me to vote for Hon. Muruli-Mukasa and told me that he had been sent by Hon. Muruli-Mukasa.
9. That later in the day another agent called Kyenkya also approached me asking for Hon. Muruli-Mukasa's support and gave me Shs.1,000/= for a beer and that it was a message from Hon. Muruli-Mukasa. These people bribed very many people in Hon. Muruli-Mukasa's name.
10. That Mr. Sserunyange bragged to me that even though Nyombi was strong they were going to buy the votes and win using state power.
11. That Hon. Muruli-Mukasa came to the station at around 4.00 p.m. and stayed there for sometime and Sserunyange halted the polling to see him and the Chairman LCV.

12. That I swear this Affidavit in support of Peter Nyombi's Petition challenging the election of the 1st Respondent.

13. That whatever is stated herein is true and correct to the best of my knowledge and belief."

Whereas the deponent stated to be from Kakora-Kiswera and was a registered voter of Kakola Polling Station and Sserunyange gave "some of the voters money at the polling station....." in her presence (paragraph 6), she does not name a single one of the recipients. Nor does she allude to the number of people who received and how much each. I perused Sserunyange G. Willy's affidavit. He admitted he was the 1st Respondent's Polling agent at the said Kakoola polling station, Kiswera. In paragraph 9 of his affidavit he denied paragraph 6 of Kate Nakirindi's affidavit. Because Kate Nakirindi's affidavit lacks in particulars and because of Sserunyange G. Willy's denial, I find it difficult to believe Kate Nakirindi's allegations against Sserunyange and through him the 1st Respondent I find the bribery alleged not proved.

In paragraph 6 still, Kate Nakirindi deponed that Sserunyange “gave booze to Mzee Luwuma”. She does not describe the identity of this Mzee Luwuma where he hailed from; whether he was a voter; where the booze was given to him; and what type of booze. On accounts of lack of particulars and corroboration of her allegation alleged bribery of Mzee Luwuma not proved.

In paragraph 8 Kate Nakirindi deponed that “shortly before polling day Mr. Butamanya, a known agent of Hon. Muruli Mukasa gave me Shs. 500/= and asked me to vote for Hon. Muruli Mukasa”. Kate Nakirindi does not give particulars concerning “Mr Butamanya”. She does not state the date and place where Mr. Butamanya so cheaply paid for her vote. In his affidavit (paragraph 4) Mr. Butamanya Johnson bothered to stated that he had read Kate Nakirindi’s affidavit and denied her paragraph 8; did not know anybody by her name (paragraph 5); and denied offering her Shs. 500/= (paragraph 6). In his affidavit paragraph 41 the 1st Respondent denied Mr. Butamanya was ever his agent. This denial was not controverted.

On accounts both of lack of particulars of Kate Nakirindi’s affidavit and the denial in Butamanya Johnson’s and the 1st Respondent’s affidavits

in reply, I hold the allegations by Kate Nakirindi against Mr. Butamanya and through him the 1st Respondent not proved.

In her paragraph 9 Kate Nakirindi deponed that “later in the day another agent called Kyenkya... gave me Shs. 1,000/= for a beer” Kyenkya Stephen swore an affidavit in reply. He denied the contents of paragraph 9 of Kate Nakirindi’s affidavit. (paragraphs 3 and 8). In his paragraphs 4 to 7 he gives details of his area of operation as the 1st Respondent’s Kalungi Task Force Chairperson for the campaign period. He discloses that he had no authority from the 1st Respondent to carry out campaign outside Kalungi Sub-county let alone Kakola-Kiswera Rayanda in Kalongo Sub-county where Kate Nakirindi hailed from. In the absence of any challenge to this reply which I find to be credible I prefer Kyenkya Stephen’s to Kate Nakirindi’s affidavit which lacks particulars as to when and where Kyenkya Stephen gave her the bribe. Since Kyenkya Stephen denied proffering the bribe and given that Kate Nakirindi’s allegations of bribery have tended to lose credibility, Kate Nakirindi’s allegations reach the peak of vagueness where in paragraph 9 she states: “These people bribed very many people in Hon. Muruli Mukasa’s name” without telling who these recipients are and how she knew these people were instructed by Hon. Muruli

Mukasa. I hold that Kate Nakirindi's allegations against the 1st Respondent through Kyenkya have not been proved. The allegations about giving bribes to "very many people" in Hon. Muruli Mukasa's name do not disclose the source of information and are therefore hearing summon.

ii). **Opyoko Phillip** was another of the Petitioner's witnesses to file an affidavit alleging bribery. In his paragraph 17 he deponed: -

"17 At 5.30 p.m. Captain Magara thanked us for joining the family and pulled out U.Shs.20,000/= and gave it to us to go and buy soda and promised us a party if we voted for Hon. Muruli Mukasa."

Earlier in his paragraph 1 he deponed he was a registered voter at Nakasongola Army Barracks Airfield A - D and a student at the Nakasongola Army Senior Secondary School. The incident is alleged to have taken place on 25/06/2001 after the 1st Respondent had addressed the school general assembly called by the Head Master, Captain Baise Mukasa (paragraphs 8 to 16). The "us" in paragraph 17 refers back to paragraph 13 of the same affidavit which reads: -

“13. That the said Captain Magara read out a list of 21 students myself inclusive and ordered us to go in front and in our presence told Hon. Muruli Mukasa that we had crossed from Peter Nyombi’s camp to his camp ...”

(iii) Paragraphs 8 to 11 of **Micheal Kaggwa’s** affidavit read:

“8. That the said Lt. Emaka asked us to record the names of all students at the school who support Peter Nyombi so that they can be read at the General Assembly to be held on 25th day of June 2001 and say that they had crossed from Peter Nyombi to Muruli-Mukasa.

9. That on the 25th day of June 2001 a General Assembly was called at school which was attended by Hon. Muruli-Mukasa, the L.C.V Chairman - Nakasongola. Bagonza Christopher, Col. Katagara and Major Mureba among others.

10. That at the said General Assembly Captain Magara called us with other students and announced that we had crossed from Peter Nyombi's Camp and joined that of Ho. Muruli-Mukasa."

"11. That the said Captain Magara met us again on the same day at around 5.30 p.m. and thanked for joining the right family and gave us UShs. 20,000/= sent by Hon. Muruli-Mukasa for sodas."

Learned Counsel for the Petitioner submitted that Micheal Kaggwa's affidavit corroborated the contents of Opyoko Phillip's affidavit. On their face value, yes; but not on the probative value. The "person" referred to in Section 69 of the PEA (ante) is a registered voter. The PEA reads: **COPY**. Neither Opyoko Phillip nor Micheal Kaggwa told who the persons mentioned by Opyoko Phillip and Micheal Kaggwa in their respective affidavits as described ???? "us" are ? Nor does any of their affidavits mention that the "us" are registered voters.

There is the affidavit of Captain Peter Magara. In paragraph 6 he denies Opyoko Phillip's allegations, in paragraph 12, that he was

Campaign Manager of the 1st Respondent. In paragraphs 11 he denies he invited the students to meet him at 5.30 p.m. on 25/06/2001. He denies giving them Shs. 20,000/= to buy soda and promising to host a party for them if they voted for the 1st Respondent.

Captain Magara was cross-examined. He testified he did not know Opyoko Phillip. The burden of proof was on Petitioner to cause Opyoko Phillip and Michael Kaggwa to file a further affidavit challenging Captain Magara on his denials. Especially so when the 1st Respondent in paragraph 19 of his affidavit supporting the Answer and paragraph 40 of his additional affidavit. ??????? For the reasons that Opyoko Phillip and Michael Kaggwa did not prove the giving of the bribe, and that the recipients were registered voters I am not satisfied that the Petitioner had through Opyoko Phillip and Michael Kaggwa proved any bribery by Captain Magara and through him the 1st Respondent.

v). **Sarah Kityo** was another of the Petitioner's witnesses on bribery committed on behalf of the 1st Respondent. In paragraph 3 of her affidavit she alleged that on 25/06/2001 Hon. Muruli-Mukasa's agent called Kakande "came to our group, Tukole Kabojja Women's Group and gave the Group's Secretary on behalf of the

Group Shs. 100,000/= saying that Hon. Muruli-Mukasa had sent it to us so that we vote for him in the polls tomorrow.”

In paragraph 5 she deponed that “our Group has twenty women and the money was handed to us at Namayonjo Trading Centre”. Compare this evidence with that in the affidavit of (vi) Lugonvu Patrick. In paragraph 2 he stated that “on 25/06/2001 Kakande Dissan and Adson Basemera who are well known to me and were campaigning agents for Hon. Muruli-Mukasa brought money and gave Ronald Ssebukera of Kabojja U.Shs.100,000/=: Emmanuel Nsubuga of Namayonjo U.Shs.100,000/=:”. In paragraph 3 he stated that “these persons were agents for Hon. Muruli-Mukasa and were told by the said Ronald Ssebukera and Adson Basemera to go and distribute it to people so that they can vote for Hon. Muruli-Mukasa”. In paragraph 5 he deponed that as I moved around the village many people were talking about Hon. Muruli-Mukasa’s agents giving out money.”

In my considered view Lugonvu Patrick’s and Sarah Kityo’s affidavits are inconsistent, if not contradictory, as far as Kakande’s giving money is concerned. Sarah stated that

Kakande gave money (Shs.100,000/=) to the Secretary Tukole Kabojja Women's Group. Lugonvu Patrick says it was given to Sarah. While Lugonvu Patrick states that Kakande was in company of Busemera Adson, Sarah does not mention Basemera Adson. In his affidavit in reply Kakande Dissan denies ever giving any amount of money to Sarah (see: his paragraph 3). He denies he was 1st Respondent's agent (paragraph 4). In paragraph 14 of his additional affidavit the 1st Respondent denied the contents of Lugonvu Patrick's affidavit. The contradictions (inconsistencies in Lugonvu Patrick's and Sarah Kityo's affidavits are grave. They were not explained away in face of the 1st Respondent's and Kakande's affidavits. I have no choice but to hold the affidavits of Sarah Kityo and Lugonvu Patrick to contain lies. I disbelieve them both as regards the alleged bribe of Shs.100,000/= given by Kakande to Kabojja Women's Group or his being agent of the 1st Respondent.

Furthermore the 1st Respondent's and Kakande's denial of any agency between them was not challenged in the cross-examination of the 1st Respondent or controverted by any additional affidavit by either Lugonvu Patrick or Sarah Kityo. In

paragraph 8 of his affidavit Lugonvu Patrick states that whatever he stated is based on his knowledge and belief. However it is elementary knowledge that paragraphs 2, 3, and 5 can only be based on information whose sources Lugonvu Patrick has not given. I dismiss the affidavit of Lugonvu Patrick as containing hearsay and therefore no evidence at all.

As I have already pointed out Lugonvu Patrick alleged in his paragraph 2 three other recipients of bribes from Kakande Dissan and Adson Basemera. In paragraph 4 he further states that Kakande Dissan gave Mzee Dominic Kigongo and Mzee Begumisa Shs.5,000/= “to go and vote for Hon. Muruli-Mukasa to buy their votes.” I confess I cannot puzzle out what this paragraph is all about. This is the Petitioner’s case and I am not bound to clarify his affidavit evidence. The two Mzees were not called to corroborate or clarify Lugonvu Patrick’s affidavit. Having found the greater part of it to contain falsehoods and hearing summon I would go further to hold the whole affidavit to have failed to advance the allegation of bribery by Kakande Dissan and through him, the 1st Respondent.

vii). To **Samuel Kityo's** affidavit I will now direct my attention. In paragraph 3 he stated that on 25/06/2001 Kakande, Hon. Muruli-Mukasa's agent, brought money to Namayonjo village for various local groups. In paragraph 4 he stated that Kakande "gave me Shs.100,000/= on behalf of Kabojja Mixed Farmers and urged us to vote for Hon. Muruli-Mukasa since he had given us money." In paragraph 5 Sarah Kityo depones that "I saw other group leaders like Women's Groups also receiving some money. I saw Sarah Nakyanzi receiving money on the same day from the same person." I note that Sarah Kityo does not state in what capacity he received the bribe on behalf of Kabojja Mixed Farmers; he does not specify if he was a member of the Kabojja Mixed Farmers; he does not state if he was alone when Kakande gave him the money. Both paragraphs 4 and 5 lack basic particulars. As with Lugonvu Patrick and Sarah Kityo's affidavits, the 1st Respondent and Kakande deny any agency relationship between them and the alleged bribe money {see: paragraph 41 of the 1st Respondent's additional affidavit and paragraph 4 of Kakande's affidavit}. The 1st Respondent was cross-examined. No allusion was made about the allegations of Samuel Kityo. On accounts of lack of basic particulars in Samuel Kityo's affidavit and the

unchallenged evidence of the 1st Respondent and Kakande, I find and hold the allegations of Samuel Kityo not proved.

viii). On behalf of the Petitioner **Tumusiime David Okello** swore an affidavit alleging bribery committed by the 1st Respondent himself. In paragraph 9 of his affidavit Tumusiime David Okello deponed: -

“9. That Hon. Muruli-Mukasa came at one time to Kabakazi during the campaigns, talked to people and at the end of his address gave U.Shs.200,000/= to Kabakazi Women’s Group begging them to vote for him.”

In his additional affidavit, paragraph 16, the 1st Respondent denied the contents of Tumusiime David Okello’s affidavit, paragraph 9. The 1st Respondent was further cross-examined and this allegation was kept under the carpet by the Petitioner’s Counsel. Without any evidence to corroborate Tumusiime David Okello’s paragraph it smacks of vagueness bordering on hearsay. I reject the same as far as the allegation of bribery of Kabakazi Women’s Group is concerned.

In his paragraph 21 Tumusiime David Okello deponed:

“21. That he told me to change to his camp, whereupon he offered me fuel so that I can move the whole night telling people to change to his camp. When I declined his offer, he threatened me saying that I might not leave the barracks and I may not vote tomorrow.”

In paragraph 16 of his additional affidavit the 1st Respondent denied paragraph 21 of Tumusiime David Okello’s affidavit. When he was cross-examined the 1st Respondent was not challenged on his denial. I therefore reject the allegation as not proved.

ix). **Sande Pain Muwanga** swore an affidavit in support of Petitioner’s allegations of bribery committed by the 1st Respondent. He deponed to being a registered voter of Nakataka Polling Station Irina Nakasongola District. In paragraph 4 of his affidavit he states that at around 9.30 p.m. on 11/06/2001 at Namungolo village he “saw Steven Kyenkya a re-known agent of Hon. Muruli-Mukasa had given them the money so that they vote

for him and not Peter Nyombi who is a poor man.” I note that he does not state how he knew that Kyenkya Stephen was a re-known agent of Hon. Muruli-Mukasa. I also note that though earlier in his affidavit he states he hails from Namungolo, he does not mention or identify by name a single recipient of the bribe in this paragraph. Further he does not mention how much each recipient got. In paragraph 5 he states that Kyenkya gave out U.Shs.2,000/= to Night Florence Nampala, U.Shs.10,000/= to Richard Ssebide (the L.C.I Namungolo Chairperson) U.Shs.5,000/= to Christopher Sekyanzi, U.Shs.5,000/= to Richard Byekwaso, U.Shs.15,000/= to Kyabarikoba, U.Shs.20,000/= each to Mulekwa and Bampiga among others.” [Emphasis is mine].

I note that the villages where the above enumerated recipient of bribes are not given. They cannot be the same “voters” mentioned in paragraph 4 because the deponent chose to mention them in their own separate paragraph.

In paragraph 6 Sande Pain Muwanga depones:

“6. That on top of giving out money I witnessed the said Kyenkya buying alcohol for people and giving out hoes to

Bagyenga Nakafero and many others telling them to vote for Hon. Muruli-Mukasa since he had given them booze and hoes”.

{Again the emphasis is mine}

I note that the affidavit lacks in many vital particulars. Moreover by stating “among others” and “many others” the deponent is not giving any useful evidence. He is engaging in guesswork.

In paragraphs 12 and 13 of his additional affidavit the 1st Respondent denies the contents of the affidavit of Sande Pain Muwanga. In paragraphs 3 and 4 of his affidavit Richard Ssebidde denied the contents of paragraph 5 of the affidavit of Sande Pain Muwanga. In paragraphs 3 to 8 of his affidavit Kyenkya Stephen denied the contents of Sande Pain Muwanga’s affidavit. Further and most crucial in paragraph 6 Kyenkya Stephen stated that Sande Pain Muwanga is not a resident of Namungolo. Sande Pain Muwanga did not challenge this deposition. In paragraphs 2 and 3 Bampiga Stephen denied Sande Pain Muwanga’s allegations. The 1st Respondent was cross-examined. His denial was not shaken. As far the denials of the alleged recipients of the bribe they need not all to

have made replies because Kyenkya Stephen and the 1st Respondent mentioned them in their respective denials and their denials were not shaken in cross-examination or by affidavits in rebuttal. There cannot be smoke without fire. In NASAN BATUNGI vs OKUMU DISON OCAYA: MISCELLANEOUS APPLICATION 343 of 1995 Ntabgoba, the Principal Judge stated: -

“Here the Court is confronted with two controverting affidavits. If they are affidavits one would expect them to be truthful. Yet one of them must be false. In the absence of another affidavit to rebut what is deponed to ... in reply then, which of the two affidavits should be believed on the issue? Certainly ... the latter is presumed to be the one that is truthful, because failure to rebut imports acquiescence in it.”

I am greatly persuaded by this reasoning and would adopt it in the rest of my judgment especially where there are affidavits in reply and cross-examination to boot.

Learned Counsel for the Petitioner addressed the evidence of Chrisestom Kayise, the Returning Officer, Nakasongola District who testified on behalf of the 2nd Respondent. Counsel stated that in cross-examination the witness confirmed his deposition in the affidavit dated 05/08/2001 that election exercise was flawless free and fair. That in further cross-examination he confirmed that the issue of bribery was raised by the Petitioner's agents and that it was rampant. [Counsel misquoted the court record] that in recommendation no. (vi) of his Report on Parliament Elections 2001, Nakasongola District the witness alluded to the issue of bribery in this election. For his part Learned Counsel for the 1st Respondent submitted that on analysis the Report showed that the witness received reports of bribery from the Petitioner's side but that he was not able to confirm these reports. I agree with this submission because in re-examination by Counsel for the 1st Respondent, the witness testified that it would be wrong to suggest that the other reasons (for low voter turn-out) were bribery. He further testified that he did not think that the candidates had reached a level of bribing voters not to go to vote.

In cross-examination by Counsel for the 2nd Respondent the witness stated the Report was based on reports he received but that he did not verify all the allegations including bribery.

For all the reasons I have endeavoured to give hereinabove Sande Pain Muwanga's allegations of bribery fail.

(x) In his affidavit in support of the Petitioner, Senkebe Ronald deponed that he was a resident of Lwampanga L.C.I and an appointed agent of the Petitioner for Lwampanga, Kisenyi Zone Nakasongola Constituency. That on 25/06/2001 the L.C.III Chairman Batumbya addressed a rally at Kijaulo Zone where he campaigned for Hon. Muruli-Mukasa (paragraph 4). That "in the night of the same day the L.C.III Chairman returned to the area and found me in the company of Kitembo, Moses Monday, Stephen City and Samanya and gave us Shs. 20,000/= to share amongst ourselves saying it was from Hon. Muruli-Mukasa to enable us to vote for him the next day". Learned Counsel for the 1st Respondent invited court to note that in many of the affidavits in support of the Petitioner where the deponent is a voter he avers so and mentions his polling station. For Senkebe Ronald

and Samanya Rogers, I will refer to the latter's affidavit by and by, no such evidence was given. Nor did they give evidence that Kitembo, Moses Monday or Stephen City were registered voters. The invitation to court is, I guess, correctly based on section 69 of the Act (ante) to which I have hereinbefore made reference. In paragraph 7 of his affidavit in reply Batumbya Begumya Fred denied giving U.Shillings to Senkebe, Kitembo and Samanya Rogers for the purpose alleged by Senkebe Ronald. He does not mention Stephen City or Moses Monday. However, his denial was not challenged. In the instant affidavit proof of the alleged bribery still fails because the Petitioner has not shown the recipients to be registered voters.

- (xi) **Samanya Rogers** swore an affidavit in support of the petition. In paragraph 5 he corroborated paragraph 5 of Senkebe Ronald's affidavit already discussed immediately hereinabove. Proof of his allegations fail reason I have given for Samanya Roger's affidavit.
- (xii) **Byansi Samuel** swore an affidavit to support the Petitioner's charge of bribery by the 1st Respondent. In paragraph 2 he stated that the 1st Respondent assigned him to do research on the electorate and report back to him. "This assignment started

right from the initial stages of presidential campaigns and the parliamentary elections of 2001,” he deponed in the same paragraph 2. In paragraph 8 he deponed:

“8. That on the same eve (of voting day), I saw John Kitaka, Hon. Muruli-Mukasa’s agent being given money by another agent to go and distribute/bribe people to cast their vote in favour of Hon. Muruli-Mukasa.”

Let me hazard a finding that this deposition betrays the quality of the research Byansi Samuel was allegedly carrying out. If what he stated is true he ought to have done further research from his boss and given us the names of the “other agent” who gave Kitaka the money. He could even have gone further to dig out how much money was given to Kitaka. In paragraphs 34 of his affidavit supporting his Answer the 1st Respondent denied the contents of paragraphs 2 and 3 of Byansi Samuel’s affidavit. In paragraph 35 he deponed:

“35. That I never assigned Byansi Samuel to do research for me regarding the electorate and file reports with me during the elections or at all.”

This serious denial was not rebutted by the said Byansi Samuel. The 1st Respondent was cross-examined in court. The allegations of Byansi Samuel were not put to him. John Kitaka admitted due appointment as the 1st Respondent's Vice Chairperson of Nakasongola District Task Force (paragraph 3). In his paragraph 4 he deponed that "it is neither true that I was given money by anyone for the purpose of bribing people to cast their vote in favour of the 1st Respondent nor did I distribute money for the same purpose."

Learned Counsel for the 1st Respondent submitted that I should accept the evidence of the 1st Respondent even where the evidence is plain denial because there may be circulars where an allegation is falsely leveled against a person and that person has absolutely no knowledge about it. That in that case the person against whom the allegation is made can do no more than merely deny. Counsel further submitted that for the burden to shift to such a person to prove the allegation wrong, the person alleging should have first adduced sufficient evidence to establish that the allegation is prima facie true. That this would be done by providing details or particulars and preferably corroborating evidence. That the Petitioner had failed to do so. That

the 1st Respondent's evidence which had not been challenged should be accepted. I agree with both Counsel's submissions. What however underlines the eventual decision is the weight of the evidence called. In the instant issue of bribery the Petitioner's evidence has been found to be gravely wanting as I have indicated against each affidavit called in this regard. The allegation thus fails. I would again invoke the decision in BATUNGI'S case already referred to.

Learned Counsel for the Petitioner wound up on this aspect by submitting that a candidate who has engaged in acts of bribery either personally or by agents should not be left to take benefit of the criminal act. Counsel cited S 62(1) (c) of the PEA (ante) BERESFORD vs. ROYAL INSURANCE COMPANY LTD. Therefore [1938] 2-ALL ER 602. He submitted further that on this ground alone the election of the 1st Respondent be nullified and that I should recommend prosecution proceedings in pursuance of Ss. 64(8) and 69 (1) of the Act (ante).

He finally cited the case of BESIGYE (ante) page 472 paragraph on the issue of bribery and campaign agents.

In reply Learned Counsel for the 1st Respondent stated that in terms of S. 62 (1) (c) of the Act there must be actual knowledge of the candidate with regard to the act of his agent Counsel cited BESIGYE PP. 193 (paragraph 2), 270 (last paragraph) and 271 (last paragraph).

I agree with the statement of the law pointed out by Learned Counsel for the 1st Respondent. In none of the affidavits filed by and on behalf of the Petitioner has it been proved that the 1st Respondent had knowledge of and consented or approved the alleged acts of the people alleged to have given out bribe. Where the 1st Respondent volunteered to deny lack of knowledge consent or approval no affidavit was filed in rebuttal. Above all in cross-examination the 1st Respondent was not saddled with any question on the issue. I find and hold the allegations of bribery not proved on a balance of probabilities.

In paragraph 3(j) of his petition, the Petitioner alleged that the 1st Respondent campaigned using sectarian utterances and (...pg41) language against the Petitioner. Counsel for the Petitioner stated that this type of campaign tactic is prohibited by section 74 (i) of the Act (ante). That section reads:

COPY S. 74 (1)

To support this allegation the Petitioner swore an affidavit deponing as follows:

- “7. That during the campaign, the 1st Respondent used sectarian and smear campaign calling me a Multi-partist supported by the Mengo Establishment, DP and UPC. This document was circulated widely by the 1st Respondent and his agents and read out at campaign rallies addressed by the 1st Respondent in the Constituency.

8. That it is not true that I am a Multi-partist or that I was supported by Mengo Establishment, UPC and DP as alleged by Hon. Muruli-Mukasa and his agents. That I have at all material times supported the Movement System of Government.

9. That on 25th June 2001 while at Shell Petrol Station in Nakasongola Town I saw a one Kasozi of Namuka Village with a document in his pocket bearing my names.

10. That I and my agents suspected the document to be the one Hon. Muruli-Mukasa had been circulating and using to malign my name among the voters.
11. That Kasozi was a re-known supporter and campaign agent of Hon. Muruli-Mukasa.
12. That I asked Kasozi for the document and he refused and threw it to a one Ruhinda alias Mandevu who attempted to flee with it, was chased by supporters and arrested with the assistance of Police from Nakasongola Police Station which is opposite the Petrol Station.
13. That Kasozi and Ruhinda were arrested and taken to Police where a Police file was opened and statements made. The file Number is SD/REF/21/06/2001. A copy of the said document was given to me. A copy is attached and marked as Annexure "B".
14. That, perusal of the document revealed that it was the one that Hon. Muruli-Mukasa had been circulating titled Inter-party

force Committee labeling me a Multi-partist and a rebel sympathizer, which allegations are completely false.

15. That the Constituency is predominantly in support of the movement system and such a document was intended to decampaign me and indeed did decampaign me. I am not a supporter of UPC, DP, Itongwa, nor am I the Representative of Nakasongola in Mengo Lukiiko.”

Regarding the affidavit of Chrisestom Kayise sworn in support of the Answer of the 2nd Respondent Learned Counsel stated that a page 2 of his Report (ante) the witness confirmed in cross-examination that the matter was in fact raised in the Candidate’s meeting of 24/05/2001. That the witness further testified that what he deponed to was true and so was his Report. That, however, in paragraph 4 of his affidavit he denied that he was “not aware of the Petitioner’s depositions.” That in further cross-examination he testified that the recommendations in the Report were based on his findings, observations, and information. Counsel submitted that since the witness’ Report contradicted his evidence the affidavit was false on that ground.

In reply Counsel for the 1st Respondent submitted that under section 74 (1) of the PEA the Petitioner must prove: -

- (i) That the 1st Respondent before or during the election publishes, makes or causes to be made or published statements;
- (ii) Such statements must be false;
- (iii) The statement must be in relation to the personal character of another candidate;
- (iv) Alternative to proving the statement to be false, Petitioner must prove that the 1st Respondent knew or had reason to believe the statement was false;
- (v) The 1st Respondent made the statement recklessly whether it is true or false.

Counsel further submitted that throughout the provision of the section the burden of proof remains with the Petitioner to prove to the requested standard that the statute was indeed false or that the 1st Respondent knew it to be false or had reason to believe it was false; that the burden of proof does not shift to the 1st Respondent till all the above ingredients have been proved by the Petitioner.

Learned Counsel stated that the Petitioner's allegation was in paragraph 13 of his affidavit. That these allegations were denied by the 1st Respondent in his affidavit in support of his Answer (paragraphs 8 and 14) and his additional (affidavit paragraphs 16 up to 19, 30, 31, 34 and 35). That the Petitioner relied on Annexure "A" to the petition and contended that these issues were raised at the Candidate's meeting. It was noteworthy that on page 2 of annexure "A" the Candidates' meeting was convened by the Returning Officer on 24/05/2001. It was there that the Petitioner formally presented the following intentions (by Hon. Muruli-Mukasa Wilson) to discredit him:

"- swear campaign to tarnish his name;

-

- disorganize his meetings/rallies using the office of the District Security Officer – Nakasongola;
- spread propaganda that he (Nyombi Peter) is a multipartysist with strong leanings to the Mengo Establishment.”

That according to page 2 of the same Report “the campaign were to begin on 28/05/2001 and end on 24/06/2001.” Accordingly, Learned Counsel submitted by the time of the Candidates’ meeting the campaign period had not started. That at this meeting the Petitioner was making allegations as to what the 1st Respondent intended to do in future but not what he had done. Learned Counsel further pointed out that there was a second Candidates’ meeting held on 16/06/2001 at which issues raised are reported on page 3 of the Report. At this second meeting there were no allegations of smear campaign or that the 1st Respondent was engaged in publication of false statements against the Petitioner. Counsel submitted that there was no evidence in Annexure “A” to prove that the 1st Respondent was publishing false statements against the Petitioner.

Learned Counsel for the 1st Respondent further argued that the Returning Officer was cross-examined. He confirmed that these two meetings were held but denied he ever saw annexure “B” to the Petitioner’s affidavit as having ever been brought to his attention. He stated that he saw the document after the election. Counsel invited me to believe the evidence of the Returning Officer since the document is not mentioned in the Report. Counsel further submitted that at no point did the Returning Officer in his evidence confirm the Petitioner’s allegation as being true, they were not verified.

First of all I entirely agree with the approach to the issue as illustrated by Counsel for the 1st Respondent. The law as stated in section 74 (1) of the Act lays down the ingredients to be proved by the Petitioner. Learned Counsel for the Petitioner’s approach short-circuits a lot of the requirements of section 74 (1). In addition the submissions he makes about the affidavit and evidence in cross-examination of the Returning Officer misrepresent the court record. For example, Counsel stated that in cross-examination the Returning Officer testified that the recommendations were based on his findings, observation and information. At page 86 (b) of the court record the Returning Officer does not specifically state that the recommendations were based on

his This is further strengthened by his evidence on page 95 of the court record where in re-examination he testified: "I did not verify all the allegations. ... Thus the Report is based on the reports I received." I find no contradiction in his Report and affidavit. Furthermore if Counsel for the 1st Respondent approach to section 74 (1) of the Act is followed, which is the legitimate course to take, then the Returning Officer's evidence that he did not verify the reports coming to him and because annexure "B" was not availed to him at least during the first two Candidates' meetings and the fact that the Petitioner was voicing his suspicions of what the 1st Respondent might do in future - all these factors confirm that the Returning Officer was "not aware" of the depositions in the Petitioner's affidavit. Since the Petitioner relied solely on annexure "A" this document fell for short of proof by the Petitioner that the 1st Respondent published false statements against him. I so find and hold.

I will now turn to other evidence of smear campaign called on behalf of the Petitioner.

a). **Opyoko Phillip** swore an affidavit. In which he deponed that during the school general assembly held on 25/06/2001 at around 10.00 a.m. (paragraph 8). In paragraph 12 he stated:

“Captain Magara who was the campaign manager of Hon. Muruli-Mukasa’s Task Force in the barracks, told the students that His Excellency the President had directed that they elect Hon. Muruli-Mukasa because he is a Movement instead of Peter Nyombi who is a multipartyst. He read out a document entitled Inter-Party Forces which alleged that Peter Nyombi is a member of Mengo and is supported by UPC and DP and will bring Obote back.” In paragraph 16 Opyoko Philip deponed that “the said Hon. Muruli-Mukasa... also commented on Captain Magara’s address telling people to note what type of person Nyombi was”. In paragraph 6 of his affidavit in reply Captain Magara denies he was ever a campaign agent of the 1st Respondent or his Campaign Manager in the barracks. His denial was corroborated by Stephen Ssettimba Kigozi, the Chief Coordinator of the 1st Respondent’s campaign team whose duties included involvement of all the 1st Respondent’s campaign agents and polling agents {see: paragraphs 2 - 5 and 8 of his affidavit}. He was not challenged in his depositions. He denies pulling out and reading a document entitled

“Inter Party Committee” to the school general assembly on 25/06/2001. He denies campaigning for the 1st Respondent at the said assembly “or at any time during the elections” [See paragraphs 8 and 9 of his affidavit]. He was cross-examined as DW 5 for the 1st Respondent.

The 1st Respondent filed an affidavit in reply to Opyoko Philip’s affidavit and the public generally. In paragraph 19 he stated that Captain Magara and other soldiers he mentioned “are not and have never been my agents for purposes of election nor for any other purpose.” The 1st Respondent was cross-examined also. The agency of Captain Magara was not put to him. In paragraph 20 of his affidavit the 1st Respondent was cross-examined and the denial was not challenged.

b). **Samanya Stephen Basalirwa’s** affidavit shows: -

“1. That I am a male adult Ugandan of sound mind a student of Nakasongola Army Secondary School, Nakasongola Constituency, Nakasongola District.

2. That I was an appointed agent of the Petitioner at Airfield M - N Polling Station Quarter Guard,

Nakasongola Barracks, in Lwampanga and his campaign manager for Nakasongola Army Secondary school.

3. That on 25/06/2001 at about 10.00 a.m. all students of the school were ordered to assemble at the School Main Hall by the Headmaster.
4. That I with other students obliged and assembled in the School Hall.
5. That in attendance at the Assembly was the Headmaster, the Commanding Officer of Nakasongola some other Senior army Officers, the Chairman L.C.V and Hon. Muruli-Mukasa, who the Headmaster introduced to us as the Chief Guest.
6. That after the Headmaster's address, one of Hon. Muruli-Mukasa's campaign agents pulled out a document titled "Inter party Force Committee" addressed to the People of Nakasongola County saying

that UPC and DP are strong supporters of Peter Nyombi who is a member thereof.

7. The same agent addressed the students' body urging them not to vote Nyombi because he is a Multipartist after which he circulated copies of the same document to the Students. See Annexure "B".

8. That when Hon. Muruli-Mukasa rose to address us he started by explaining the role of Parliament in an attempt to cover up the accusations that he was a non-performer and commented on the documents which had been read out saying that we had heard for ourselves the type of person Nyombi was."

Annexure "B" appears to be the annexure "B" in the Petitioner's affidavit (paragraph 13) and the document Opyoko Philip alleges Captain Magala read at the students' general assembly of 25/06/2001. This is how the petitioner deponed about the document.

- “9. That on 25th June 2001 while at Shell Petrol Station in Nakasongola Town I saw a one Kasozi of Namuka Village with a document in his pocket bearing my names.
10. That I and my agents suspected the document to be the one Hon. Muruli-Mukasa had been circulating and using to malign my name among the voters.
11. **That Kasozi was a reknown supporter and campaign agent of Hon. Muruli-Mukasa.**
12. **That I asked Kasozi for the document and he refused and threw it to a one Ruhinda alias Mandevu who attempted to flee with it, was chased by supporters and arrested with the assistance of Police from Nakasongola Police Station which is opposite the Petrol Station.**
13. **That Kasozi and Ruhinda were arrested and taken to Police where a Police file was opened**

and statements made. The file Number is SD/REF/21/06/2001. A copy of the said document was given to me. A copy is attached and marked as Annexure "B".

14. That, perusal of the document revealed that it was the one that Hon. Muruli-Mukasa had been circulating titled Inter-party force Committee labeling me a Multi-partist and a rebel sympathizer, which allegations are completely false."

Samanya Stephen B does not disclose the identity of the 1st Respondent's agent who read and circulated the document. If it is true he was a student at the Nakasongola Army Barracks Senior Secondary School like Opyoka Philip and attended the school general assembly did he not know that the alleged agent was, as Opyoka Philip claimed, Captain Magara?

The above notwithstanding Samanya Stephen Basalirwa does not disclose where he obtained his annexure "B" from. I am of the firm view he did not obtain it at the school, especially about the time of

the general assembly because the Petitioner deponed it was obtained at Shell Petrol Station, Nakasongola town after a scuffle with Kasozi of Namuka village {Section: paragraphs 9 to 13 of the Petitioner's affidavit}. Since the 1st Respondent was cross-examined as was Captain Magara and both were not pinned down as to the existence of the document at the school general assembly, I find and hold that the Petitioner has failed to prove its existence at that place.

I now turn to the alleged recovery of the said annexure "B" at Shell Petrol station in Nakasongola town (paragraphs 12 and 13 of the Petitioner's affidavit). The depositions of the Petitioner find corroboration in the affidavit of (c) Ganaffa Ronald, who deponed: -

- "1. That I am a male adult Ugandan of sound mind residing at Nakasongola Town Centre.
2. That I am a registered voter at Nakasongola Town Council Community Centre A in Nakasongola District.
3. That during the Parliamentary Campaigns and elections held on the 26th day of June 2001, I was

appointed a Polling Agent for Peter Nyombi at Nakasongola Town Council Community Centre A.

4. That on the 25th day of June 2001 at around 11.00 p.m. I went with Mr. Peter Nyombi to Shell Filling Station opposite Nakasongola Police Station for fuelling.
5. That at the said station a number of motorcycles came for fuelling while clad with Hon. Muruli-Mukasa's posters.
6. That while we were at the said Filling Station Mr. Christopher Nkoyoyo the Vice Chairman, Nakasongola Local Council V came and greeted Mr. Peter Nyombi after which he continued overseeing the refueling of the said motorcycles.
7. That while still in Mr. Peter Nyombi's motor vehicle at the said Filling Station, one Kasozi who is known to me came to greet Mr. Peter Nyombi who was in the

car. They greeted each other, I saw a paper in Kasozi's shirt pocket which bore Peter Nyombi's names that could be seen and read clearly which I brought to the attention of Mr. Peter Nyombi.

8. That we came out of the car and Mr. Nyombi asked the said Kasozi to give us the documents which bore his names but the said Kasozi refused.
9. That when the said Kasozi refused Mr. Peter Nyombi's escort one Umar Sendiwala arrested him as many people gathered to witness what was happening.
10. That the said Kasozi threw the document to one Ruhinda who attempted to run away but we chased him.
11. The Police joined us and arrested Ruhinda alias Mandevu and recovered the said document from him and took him to the Police Station.

12. That at the Police Station the said Kasozi disclaimed the document and we were made to write statements at the Police Station.
13. **The Police gave us a copy of the said document, a copy of which is attached hereto as Annexure "B".**
14. That from the Police Station we went back to the Filling Station and saw the said motorcycles which were decorated with Hon. Muruli-Mukasa's posters proceeded to Kalungi Sub-county where Hon. Muruli-Mukasa was scheduled to hold various rallies.
15. That I make this Affidavit in support of Peter Nyombi's Petition challenging the election of the 1st Respondent.
16. That whatever is stated herein is true and correct to the best of my knowledge and belief."

From these affidavits, it is abundantly clear that the copy of annexure “B” is alleged to have been supplied to the Petitioner himself by the staff of Nakasongola Police Station after the document was recovered from Difasi Kasozi and Ruhinda alias Mandevu at the Shell Petrol Station. Ganaffa Ronald adds to his affidavit that Ruhinda was actually arrested, taken to the police station and together with Kasozi and others made to write statements. The Petitioner gives the police file number as SD/REF/21/06/2001. According to Ganaffa Ronald these events were witnessed by Christopher Nkoyoyo, the Vice Chairman Nakasongola LC I who “came and greeted Mr. Peter Nyombi after which he continued overseeing the refueling of motorcycles.”

Kasozi Difasi swore an affidavit admitting everything stated by Ganaffa Ronald save in his paragraphs 5, 6, 15 and 17 where he deponed: -

“5. **THAT,** I turned and walked away after greeting the Petitioner. After about 8 meters from the vehicle, I felt somebody grab my person from the behind and he attempted to stuff a document into my shirt pocket.

6. **THAT**, the document could not enter the pocket as it (the pocket) was buttoned down with a button. The document fell to the ground.

15. **THAT**, I had never seen or been in possession of the said document. I first saw the contents of the document at the police.

17. **THAT, the 1st Respondent has never instructed me to, nor given to me, nor authorized or approved of the alleged distribution or circulation of the said document."**

Ruhinda Muhammed swore an affidavit to say: -

- “1. **THAT**, I am a male adult Ugandan of sound mind.

2. **THAT**, I have perused the affidavits of Peter Nyombi and Ganaffa Ronald dated 27th July 2001 in support of the petition and reply thereto as follows: -

3. **THAT**, I perused the contents of paragraph 12 of the affidavit of Peter Nyombi and paragraph 10 of the affidavit of Ganaffa Ronald.

4. **THAT**, it is not true as alleged that the said Kasozi threw a document to me and that I attempted to run away.

5. **THAT**, on 25th June 2001, I was at Shell Petrol Station, Nakasongola to collect fuel for my motor cycle together with other supporters of the 1st Respondent.

6. **THAT**, while at the Shell Petrol Station, I saw a scuffle involving Kasozi and I proceeded to see the cause of the said scuffle.

7. **THAT**, on inquiring from Kasozi as to the cause of the scuffle, Kasozi told me that the Petitioner and his supporters had forced a document into his possession.

8. **THAT**, on inquiring on the whereabouts of the document, Kasozi directed me towards the paper which had fallen.

9. **THAT**, I went to pick the document which had fallen whereafter I was arrested.

10. **THAT**, I do not know the author of the document neither was the document ever in my possession.

11. **THAT**, I swear this affidavit in support of the 1st Respondent's answer to the Petition.

12. **THAT**, what is stated hereinabove is true and correct to the best of my knowledge."

In paragraph 15 of his affidavit supporting his Answer the 1st Respondent deponed:

"15. That I have no knowledge nor did I consent of approve the acts of Kasozi and Ruhinda as alleged in paragraphs 9 to 13 of the Petitioner's affidavit and

paragraphs 4 to 14 of the affidavit of Ganaffa
Ronald....”

Once more the 1st Respondent was cross-examined and these denials were not controverted. The Petitioner has thus not proved that the 1st Respondent had knowledge and/or consented or approved the alleged possession of the document by Kasozi Nor has the Petitioner proved his allegation in paragraph 11 of his affidavit that Kasozi was a campaign agent of the 1st Respondent.

Counsel for the 1st Respondent invited me to scrutinize the document in issue with the hindsight that we were dealing with a petition concerning the elections of 2001. The document is dated 30/05/1996. Learned Counsel wondered if the document could have been written with the 2001 election in mind. He submitted that it was highly improbable that this document had any relation to this election. He further submitted that the Petitioner had failed to adduce evidence to prove that annexure “B” was in fact the document given to him by the police because it was not a certified copy and no witness was called from the police to testify to the authenticity of the document. I agree with these submissions. I would also add that the Petitioner has not even explained why he did not call Christopher Nkoyoyo whom Ganaffa

mentioned in paragraph 6 of his affidavit. I looked at the said annexure very closely. According to its date of May 30, 1996 and its contents I have failed to relate it to the 2001 Parliamentary elections. Its authenticity was not proved. Nor was its origin. The burden of proof was on the Petitioner. He failed to discharge it. I find and hold that the 1st Respondent had no knowledge of the document.

d). **Ssegawa Ebuneri's** affidavit goes, inter alia, like this: -

“1. That I am a male adult Ugandan of sound mind residing in Nakasongola Town Centre.

2. That I am a registered voter at Nakasongola Town Council, Community Centre A in Nakasongola District.

3. That during the Parliamentary Campaigns and Elections held on the 26th day of June 2001, I was appointed an Agent for Peter Nyombi.

4. That on the 24th day of June 2001 I went to Hon. Muruli-Mukasa's Campaign Rally in Nakasongola Town

Centre at the District Headquarters at about 4.00 p.m.

5. That at the said rally one of Hon. Muruli-Mukasa's Campaign Managers Ssemanda Martin who is well known to me, read a letter to the people at the rally in which he said that it was allegedly written by the Baganda at Mengo to the Nakasongola people urging them to vote Mr. Peter Nyombi because he is a member of Uganda people's congress, supports Itongwa and that he is against the Institution of Nakasongola District.

6. The said Ssemanda went on to say that the said letter was written and signed by Ben Wacha and Mzee Kyakwambara.

7. That after the said Ssemanda had finished reading the letter Hon. Muruli-Mukasa stood up to address the people and said that "you have heard the nature of

the person who is looking for your votes” in reference to Peter Nyombi.

8. That the said rally went on till about 8.00 p.m.

9. That I certify that what is stated herein-above is true and correct to the best of my knowledge and belief except where a fact is deposed to from information acquired as indicated herein in which case the same is true and correct to the best of my information and belief.”

The affidavit of Ssegawa Ebuneri does not disclose for which location Ssemanda Martin was assigned to campaign for the 1st Respondent. Although in paragraph 5 Ssegawa Ebuneri states the said Ssemanda Martin “is well known to me”. Ssegawa Ebuneri gives no other particulars of Ssemanda Martin. The alleged Ssemanda Martin did not file any affidavit in reply.

In his paragraph 14 of the affidavit supporting his Answer the 1st Respondent deposed: -

“14. The contents of paragraph 5 of the affidavit of Ebuneri Ssegawa in support of the petition are false. At my last rally at Nakasongola Town Council on 24/07/2001 nobody by the name of Ssemanda Martin or anybody at all read the alleged letter to the audience nor did I refer to the Petitioner.”

In paragraph 39 he deponed: -

“39. That I have no campaign manager by the names of Ssemanda Martin as alleged in and the contents of paragraphs 5, 6 and 7 of Ssegawa Ebuneri’s affidavit.”

The 1st Respondent was cross-examined. These denials were not challenged/controverted. Submitting on this affidavit Counsel for the Petitioner stated that Ssemanda was his agent; nor did the 1st Respondent deny that Ssemanda Martin was at the rally. That because of the above and the fact the 1st Respondent did not deny he addressed that rally, this was evidence that the mudslinging of the paragraphs committed by both the 1st Respondent and his agents.

For his part Counsel for the 1st Respondent submitted that Ssegawa Ebuneri's allegations were denied by the 1st Respondent in his affidavit (paragraphs 14 and 39). He invited me to certify (...pg59) this affidavit with that of Ssekutte. I proceed to reproduce e) **Ssekutte Enock's** affidavit first:

- “1. That I am a male adult Ugandan of sound mind and registered voter in Nakasongola Town Council, Nakasongola District.
2. That on 24th June 2001, I attended a Campaign rally for Candidate Muruli-Mukasa at Boma Ground in Nakasongola Town.
3. That the said rally was addressed by many people including Mr. Bagonza, Mr. J. Morton Semanda and Mr. Magala all being Campaign Agents of Hon. Muruli-Mukasa.
4. That as Mr. Semanda was addressing the rally, Mr. Magala, the L.C. II Chairman of East Ward, Nakasongola

handed him a document which was alleged to have come from Inter-party Head Office in Kampala.

5. That Mr. Semanda read to the rally a document which contained many false allegations including the following: -

(a) that Nyombi was against the creation of Nakasongola District.

(b) that he supports Itongwa and will help to release Itongwa's boys arrested by the Government.

(c) that Nyombi is backed by Mengo, UPC and DP supports FEDERO.

(d) that he will bring Obote back.

6. That Hon. Muruli-Mukasa in his address, told the gathering that the people had heard the contents of

the document and asked the people to note the type of person Peter Nyombi is.

7. That I tried to get a copy of the said document but Semanda told me that the copies had got finished.
8. That I have known Mr. Nyombi for many years and he has always stood for and supports the Movement System of Government.
9. That the allegations in that letter were false and was intended to incite hatred against Nyombi's from the voters.
10. That I swear this Affidavit in support of the Petition.
11. That whatever is stated herein is true and correct to the best of my knowledge and belief."

It is clear from the two affidavits that the two deponent hail from Nakasongola Town Council. They appear to be deponing to the same

rally of 24th/06/2001 (Ssegawa's paragraph 4 and Ssekutte's paragraph 2). They depone inconsistencies (see: paragraphs 5 and 6 of Ssegawa's and paragraphs 3 and 4 of Ssekutte's affidavit). In paragraph 6 Ssegawa states that Semanda Martin read a letter which said the letter was written and signed by Ben Wacha and Mzee Kyakwamba. Ssekutte said that Magala L.C II Chairman gave a document to J. Morton Semanda to read.

In paragraph 7 Ssekutte depones that he tried to obtain a copy of the document but J. Morton Semanda told him the copies had got finished. The inconsistencies I have pointed out are, in my view, fundamental. Apart from these inconsistencies Ssegawa stated that Martin Samanda was well known to him and the 1st Respondent's campaign agent. He did not disclose his source of information. As I have pointed out the 1st Respondent denied this allegation and was neither challenged nor controverted. Ssekutte also proffers his J. Morton Semanda as the 1st Respondent's campaign agent. He does not disclose his source of information. Japheth Morton Ssemanda swore an affidavit. In his paragraph 3 he denied the contents of Ssekutte's affidavit. No further affidavit was filed to re-but Japheth Morton Ssemanda's denial.

Stephen Settimba Kigozi filed an affidavit on behalf of the 1st Respondent. He deponed inter alia: -

- “2. **THAT,** I was at all material times during the Parliamentary Elections for Nakasongola Constituency held on 26th June, 2001, the Chief Coordinator for the 1st Respondent campaign team for Nakasongola District. (A photocopy of the letter of appointment is attached and marked “**SSK I**”).

3. **THAT,** my duties involved appointment for and on behalf of the 1st Respondent at different levels such as campaign agents and polling agents. All agents were and had to be duly appointed in writing.

4. **THAT,** I personally issued all the Letters of Appointment of the 1st Respondent’s agents.

5. **THAT,** I am aware of the names of all the 1st Respondent’s agents. I was and have at all times been in possession of the list of names of the 1st Respondent’s agents.

6. **THAT,** I know that Col. Katagara of the Nakasongola Army Barracks was never an agent of the 1st Respondent before or during and for the purposes of the Parliamentary Election.
7. **THAT,** I know that Major Mureeba of the Nakasongola Army Barracks was never an agent of the 1st Respondent before or during and for the purposes of the Parliamentary Election.
8. **THAT,** I know that Captain Magara of the Nakasongola Army Barracks was never an agent of the 1st Respondent before or during and for the purposes of the Parliamentary Election.
9. **THAT,** I know that Lt. Imaka of the Nakasongola Army Barracks was never an agent of the 1st Respondent before or during and for the purposes of the Parliamentary Election.
10. **THAT,** my duties included organizing and attending every campaign rally of the 1st Respondent.
11. **THAT,** I attended every campaign rally held by the 1st Respondent.

12. **THAT,** at each rally I had the duty to introduce the 1st Respondent to the public which duty I performed.

23. **THAT,** I have perused the affidavit of Ssegawa Ebuneri in support of the petition and state that paragraphs 5, 6, 7 and 8 thereof are false.

24. **THAT,** no person at the rally read any letter nor did any person by the names Ssemanda Martin read and discuss the contents of such letter as alleged.

25. **THAT,** the 1st Respondent never referred to any letter or document as alleged nor did he refer to the personal character of the Petitioner.

Stephen Settimba Kigozi's affidavit was never challenged.

In regard to the affidavits of Ssegawa and Ssekitte Learned Counsel for the 1st Respondent submitted that theirs were not a mere question of inconsistencies being minor but rather that they were numerous and obvious. He wondered if this was poor memory or there was a

possibility of the evidence being CONCOCTED and therefore not consistent. I am unable to regard the inconsistencies as minor. In my view they are fundamental and grave. I am also not able to respond to Counsel's wonder. All I am able to say is that in view of the unchallenged denials by the 1st Respondent, Japheth Morton Semanda and Stephen Settimba Kigozi, Ssegawa's and Ssekutte's affidavit have failed to prove any rota of smear campaign by the 1st Respondent against the Petitioner.

(f) The affidavit of **Tumusiime David Okello** reads in part: -

- “2. That I am a registered voter at Kabakazi Polling Station and a duly appointed Campaign Agent of Nyombi, during the 2001 Parliamentary Elections.

3. That I attended a Campaign Rally for Muruli-Mukasa at Wabigalo Trading Centre on a day I cannot recall but I remember it was about 2 weeks to polling day.

4. That during that campaign, Muruli-Mukasa said that his opponent is a Multipartist, meaning a Member of DP or UPC and described himself as a person close to the President and a “pipe” which can bring

developments to the area. And that if they sent his opponent to Parliament, he will not be considered for a Ministerial Post and the “Pipe will be blocked.”

5. That Hon. Muruli-Mukasa said that he had been sent by the President, and so the people of Nakasongola should not elect the President’s enemy (Petitioner) who is going to revive political parties.

6. That Hon. Muruli-Mukasa also said that his opponent had been sent by Mengo Establishment which does not support Government and that even the security he has is from Mengo (that Nyombi’s escorts were from Mengo).

7. That at the close of the Rally, Hon. Muruli-Mukasa gave money to his Agents like Costa Luwumuliza and told them to buy drinks for the people in order to vote for him.

8. That I remember very well that I attended a similar campaign held by Muruli-Mukasa at Lwampanga and he said the same words against Nyombi.”

The paragraphs 16 to 19 of his additional affidavit the 1st Respondent deponed: -

“16. That they took me to the barracks on their motorcycle, where we found Hon. Muruli-Mukasa, L.C.V Chairman, Butamanya, Deputy R.D.C Apac, Katagara in the Main Hall with the students. They kept me somewhere nearby where I was able to see all the above people in the Main Hall until the meeting ended at about 1.00 p.m.

17. That thereafter, they took me to an office where I met Hon. Muruli-Mukasa, the two men who picked me from town, Fred Kacumu, Taremwa Amos who came following to see where I was being taken, and another Captain. Hon. Muruli-Mukasa asked me whether I knew him to which I answered in the

affirmative that I knew him as a Minister and area M.
P.

18. That he then asked me why I was spoiling his votes in the area by misdirecting people to a wrong camp of Peter Nyombi, a Multipartyist who is going to spoil the area. That I told him that I have not misled anyone and that I do not know whether Nyombi is a Multipartyist, and I was just campaigning for him.
19. That he then asked me why I had refused to campaign for him and I told him that it is because he had refused to help the Pastoralists in the area even after he was called upon to meet them especially on their land disputes with the Baruli.”

The 1st Respondent was cross-examined. His denials were not contraverted. On the other hand Tumusiime David Okello was not the only supporter of the Petitioner at these rallies. The Petitioner did not adduce evidence corroborating Tumusiime David Okello’s affidavit. According to BESIGYE (ante) vol. II page 177 it is now settled law that a

person seeking to set aside the election result under Section 74 (1) of the Act shoulders the burden of proof. Further at page 384 Mulenga J. S. C in reference to Section 65 of the Presidential Elections Act 2000 which is almost in pair material with Section 74 (1) of the PEA stated: -

“..... Secondly, the burden to prove that the statement was false was imposed by Statute namely S. 65 of the Act. To prove that the illegal practice as defined in that provision was committed, the Petitioner has the onus to prove that the statement published by the 1st Respondent was false and he has to prove it so as to leave the court certain that it was false...”

In my judgment the Petitioner did not make any attempt to prove that the alleged statements, if they were made, were false. The holding app/res....pg64) to all the affidavits on this issue.

g). **Baikale Ronald** deponed:

“1.

2. I am a registered voter of Namukago Polling Station, Nakasongola District and I was appointed an agent for Peter Nyombi during the 2001 Parliamentary Elections.
3.
4. That at about 2.00 p.m. I left Kyesibire and went to Namukago to cast my vote.
5. That on my way I met GISO Lutwama reading to a group of people at Kiwembi Trading Centre a document talking about Nyombi Peter that he is supported by Mengo Establishment.
6. That when I confronted him he revealed that Hon. Muruli-Mukasa is the one who had got Nyombi with the document and sent it to read it to the people so that they get to know that the Petitioner is a bad person.

7. That I grabbed the paper from him whereupon he warned me that I was to suffer because I do not know the work he does.

8. That I took the paper to the overall Sub-county head of Nyombi's agents and we took it to the police at Lwampanga."

In his paragraphs 30 and 31 of the additional affidavit the 1st Respondent denies the contents of paragraphs 5 to 9 of the affidavit of Baikale Ronald. He states he "never sent GISO Lutwama to campaign for me at all nor did I send any document talking about Nyombi Peter being supported by the Mengo Establishment to him to read to the people nor did I consent or approve of any such acts or utterances on the part of GISO Lutwama". The document was not annexed to Baikale Ronald's affidavit. Its whereabouts were not alluded to by the Petitioner or any of his witnesses. Neither the alleged overall head of the Petitioner's Sub-county agents nor anyone from Kiwembi Trading Centre who was present when GISO Lutwama was reading the document came forth to corroborate Baikale Ronald's allegations. In his additional affidavit, paragraphs 30 and 31, the 1st Respondent

denied the contents of paragraphs 5 to 9 of Baikale Ronald's affidavit. Furthermore the 1st Respondent was cross-examined. Baikale Ronald's allegations were not alluded to. The Petitioner did not adduce evidence that contrary to his denial the 1st Respondent had knowledge or approved or consented to GISO Lutwama's acts. I hold that Baikale Ronald's allegations against the 1st Respondent were not proved.

h). **Stephen Yiga** also filed an affidavit in support of the petition. In paragraph 2 he tells how he was a registered voter of Irimba polling station and an appointed agent for Peter Nyombi at that station during the 2001 Parliamentary Elections. In paragraph 4 he deponed: -

"4. That on 22/06/2001 when I was coming from attending funeral rites of the late Kaggwa, I and my colleagues met one Lutwama (GISO) addressing a gathering at Namukago. He was reading to them a document talking about Nyombi being supported by the Mengo establishment and a multipatyst. We later grabbed him and got the paper from him and found there my name, that of Tube, Baikale,

Sebinwagi, Seruzi and Katusabe which was saying that we had joined Nyombi who was going to take us to Itongwa.

5. That we took the document to Police

The whereabouts of the document are not known or explained to court. No witness came from the Police (and the "Police" where it was allegedly taken is not named) to confirm receipt of the alleged document.

The allegations by Stephen Yiga were not corroborated by anyone either of those people named in paragraph 4 of his affidavit or present when Lutwama (GISO) was reading the document. Counsel for the Petitioner argued that Baikale Ronald corroborated Stephen Yiga in as far as Lutwama (GISO) read a false statement. I do not subscribe to this argument because Baikale Ronald spoke of events at Kiwembi Trading Centre at 2.00 p.m. of an unknown date while Stephen Yiga spoke of events of 22/06/2001 at Namukago without specifying the time. It was not explained to me that Kiwembi Trading Centre is otherwise known as Namukago vice-versa. Let me conclude by holding

that I do not believe the allegations of Stephen Yiga accordingly find that he has not advanced the Petitioner's case of smear campaign against him by the 1st Respondent.

While still addressing the issue the Petitioner's Counsel submitted that members of GISO and ISO had featured a lot in these affidavits. That not only did they tamper with the electoral process in the District but that there was also evidence that they were part of the Returning Officer's team. That, that evidence was in the Returning Officer's Reports (ante). That the evidence of Kayise (the Returning Officer) showed he had limited control over the GISO. That the GISO was headed by Hon. Muruli-Mukasa. That in his evidence the 1st Respondent admitted that the ISO and GISO were under Internal Security. Counsel submitted that there were agents of the state who were supposed to ensure a free and fair election but who were at the same time the ones involved in campaigning for a particular candidate and de-campaigning another, thereby undermining concept of a free and fair election.

I find Counsel's statement to be from the bar and to be a gross exaggeration. There was no evidence of the DISO and GISOs featuring

“a lot” in the election. There was no evidence of their tampering with the electoral process. There was no evidence that they were part of the Returning Officer’s team. There was no evidence that they campaigned for or de-campaigned any candidate. My findings are based on the following. First, Baikale Ronald and Stephen Yiga were the only witnesses for the Petitioner who alleged any involvement in the campaigns. Both of them mention only one GISO, Lutwama and their allegations are in reference to Kiwembi Trading Centre and Namukago. Surely these two places cannot be substantial to the rest of Nakasongola District. Furthermore I have already held that I do not believe their evidence.

Secondly, in his evidence in cross-examination **Chrisestom Kayise** the Returning Officer testified that in the Candidate’s meetings Peter Nyombi had raised fears of the involvement of the GISO’s and their impartiality. That it was for this reason that he had called GISO, Lieutenant Amura, to speak for himself. And that in fact Lieutenant Amura alleged Peter Nyombi’s fears. In part Kayise’s evidence goes: -

“As the Returning Office in this meeting I heard Peter Nyombi tell bluntly that he had no problem with the DISO but rather with the GISOs. I advised the DISO to deal with

these problems. After this meeting these concerns were not raised again, which meant that the DISO had dealt with the problem.”

[Emphasis is mine]

Kayise’s evidence was not controverted by the Petitioner. Counsel for the Petitioner strenuously tried to cajole the witness into accepting that the GISO’s were involved in the electoral process. He elicited from the witness the following unshaken testimony.

“It is not right to suggest that I had no control over the GISOs in as far as the campaigns were concerned. I had some limited control. The suggestion that I could not raise a finger against the DISO and GISOs because I feared to lose my job is not correct. My job is constitutionally protected. My employer is Nakasongola District Administration not the Electoral Commission. I verified this allegation (Page 3 bullet 2 of the Report that the office of the DISO was repairing motorcycles for use by the GISOs to campaign for Hon. Muruli-Mukasa and

intimidate Peter Nyombi). I found out that the DISO was repairing his motor cycles for his routine duties.”

Petitioner has failed to prove the allegations of false statements concerning his character as envisaged in Section 74 (1) of the PEA and as applied in the BESIGYE case (ante) Page 200.

In paragraph 3 (c) and (f) of his petition the Petitioner alleged that the 1st Respondent and his agents were “in possession of ballot paper ticked in favour of the 1st Respondent before the election day.” Section 77 (c) of the PEA under which this offence falls provides: -

“77. Any person who

- a)
- b)
- c) without any authority supplies any ballot paper to any person.
- d)

Commits an offence and is liable on conviction to a fine not exceeding one hundred and fifty currency units or imprisonment not exceeding five years or both.”

The following affidavits were presented to support the allegations:

- i). **Richard Waiswa:** In paragraph 5 he deponed that “on the 26/06/2001 in the early hrs of the morning I found Major Mureeba who heads the Non-effective Unit giving voters cards to some Non-effectives who do not belong to the barracks and directing them to go and vote for Hon. Muruli-Mukasa”. In paragraphs 6 and 8 he goes on:

“6. That however on 25/06/2001 when some students went to collect their voters cards, they found their names ticked and were told they had already picked their cards and did not vote on 26/06/2001.

9. That as voting went on I later learnt that some Non-effective soldiers were caught attempting to vote at Wajjala Primary School polling centre with voters cards that did not belong to them.”

It is to be noted that Richard Waiswa stated he was a resident, student and registered voter of Nakasongola Army Senior Secondary School.

Major Fred Jimmy Mureeba filed an affidavit in reply. Some of its excerpts:

“1. That I am the Commanding Officer of Nakasongola Reception Centre (NRC).

2. That the Reception Centre receives soldiers from different units around the country including the sick, disabled, retirement cases and others on transfer.

3.

4.

5.

6.

7. That I deny the contents of paragraphs 5 and 7 of the affidavit of Richard Waiswa. I did not give out voters cards to Non-effectives who do not belong to the barracks; nor did I direct them to vote for the 1st Respondent or at Wajjala Primary School.

8. That I was not in possession of voters cards other than mine on voting day.”

In his submission Counsel for the Petitioner stated that in his affidavit Major Mureeba confirmed in confirmed in cross-examination that a number of non-effective came in the barracks early in February. That the significance of this is that these soldiers were given cards to go and vote. That Captain Magara was slightly more truthful than the Major because he said the non-effectives were brought in early June. That this was the time of election. That Major Mureeba, Captain Magara and Lieutenant Imaka were ensuring that the 1st Respondent wins the election.

For his part Counsel for the 1st Respondent asked me to ignore Richard Waiswa’s evidence because it lacked particulars, to wit, he does not state where he found Major Mureeba giving out voters cards, how he knew who were the non-effectives who did not belong to the barracks; he does not state which students found their names ticked and their cards taken. That no evidence was adduced from any student to corroborate Richard Waiswa’s allegations of the ‘deprived’ students. That Richard Waiswa does not disclose the source of his information on

his allegations in paragraph 8. That no evidence was led to implicate the 1st Respondent as having known, consented and (or approved the alleged acts of the Major. All these are, in my view, correct observations.

Major Mureeba was cross-examined as DW4. Richard Waiswa's allegations were not confirmed. In my considered view Richard Waiswa's affidavit leaves a lot to be desired. He tells of "some" non-effectives being given cards; "some" students finding their cards stolen; "later learning" that "some" non-effectives were caught attempting to vote at Wajjala Primary School. I would not regard this as evidence. It is more of hearsay and speculation. The submission of the Petitioner's Counsel are not supported by any evidence. I hold that Richard Waiswa's affidavit does not amount to evidence. I reject it on these aforesaid grounds.

ii). **Henry Musisi** of Wajjala, Nakasongola deponed, inter alia:

"1. That I am a male adult Ugandan of sound mind residing at the above address and a registered voter of Wajjala Polling Station A (A - M) located at Wajjala Primary School.

2. That I was appointed an Agent of Peter Nyombi at the above Polling Station.
3. That on the voting day, the 26th June 2001, I was at the said Polling Station and witnessed Army men and their families who came to vote at the station but had voters cards that did not belong to them.
4. That at around 9.00 a.m., a person presented a Voter's card belonging to Mwalye Patrick. We knew Mwalye Patrick and he was not the one. The card was confiscated and the man walked away.
5. That from then on, the Presiding Officer Mr. Rajab Kyagaba tried to verify the voters by asking them to shout their names and produce identification documents. They had no identity cards and only pulled out from their pockets fliers of Hon. Muruli-Mukasa.

6. That some voters gave different names from the Voters cards they held and in other instances some had cards with names of different sexes while some of the other voters kept quiet and Major Mureeba and Lieutenant Emaka who were Hon. Muruli-Mukasa's Campaign Agents said that they were dumb.
7. That the Presiding Officer decided to confiscate the Voters' cards however Major Mureeba threatened him with violence if we insisted on the issue but we stood on our ground and about 40 cards were confiscated by 1.00 p.m.
8. That some voters did not identify themselves but we had little to do because of intimidation from Major Mureeba, Captain Magala and Lieutenant Emaka who kept threatening us with violence.
9. That I later found out that names appeared on the register, the cards belonged to voters who had been transferred or shifted from the area while the others

belonged to residents that had earlier gone to the station to pick their cards but had found them missing.

10. That I established from the voters who had not got their cards that when the cards were being issued, voters who were not supporters of Hon. Muruli-Mukasa were denied their Voters cards by the person who issued out the Voters cards who was a supporter of Hon. Muruli-Mukasa. A case in point is Mwalye Patrick.
11. That people like Captain Katongole, Katto among others had long been transferred but their cards were among those confiscated.
12. That the Voters' Register had never been up-dated since the C. A. Elections, so it included very many ghost voters.
13. That the votes were later counted but I refused to sign because of this anomaly.

14. That I verily believe that the election exercise in this Polling Station Wajjala A (A - M) was not free and fair as it was characterized by intimidation, impersonation and denial of rightful voters from voting.
15. That I swear this Affidavit in support of Peter Nyombi's Petition challenging the election of the 1st Respondent.
16. That whatever is stated herein is true and correct to the best of my knowledge and belief."

Referring to this witness' affidavit Counsel for the Petitioner submitted that it disclosed a classic case of flawed election in this Wajjala Polling Station. That when the Polling Station decided to confiscate the cards, Major Mureeba threatened him; some voters did not identify themselves; some cards belonged to voters who had left the area while others belonged to the residents of the area who had earlier gone to the polling station to pick them but had found them missing. That in

Kayise's (the Returning Officer) two affidavits in reply he did not speak about Henry Musisi's affidavit. That the only person who tried to deny Henry Musisi's allegations was Kyagaba Rajab, the Presiding Officer.

It is pertinent I now turn to Kyagaba's affidavit. He deponed, inter-alia,

"1.

2. That I was the Presiding Officer of Wajjala Polling Station
A(A - M).

3. That the voting at the Polling station was conducted
smoothly.

4. That I have perused the affidavit of Henry Musisi dated
27/07/2001

5. That the contents of paragraphs 3 to 8, 11, 12 and 14
..... are not correct.

6. That no any man came with their families to vote.

7. That on polling day about 13 persons came to vote but could not properly identify themselves and that I did not allow them to vote but confiscated their cards and handed the cards to the District Registrar of Nakasongola District.

8.

9. That no person came to vote with cards bearing different sexes from that apparent of the person.”

With regard to this affidavit the Petitioner’s Counsel submitted that it was false because: -

a) Kayise the Returning Officer, stated in his Report that he went to the polling station because there was a problem and he is the one who picked these cards. So it was not true for Kyagaba to say that he handed them to the District Registrar.

b) The statement of the Returning Officer shows there was a problem at this polling station. That this

resulted in the recommendation by the Returning Officer that -

“the Commission should move quickly to print voters’ cards having a voter’s photo. This will greatly reduce the impersonation that was witnessed at some polling stations especially with the army where there are no proper identification documents.”

On the other hand Counsel for the 1st Respondent submitted that I should disregard it. Musisi’s affidavit especially paragraphs 9 to 11 which were based on information without disclosing the source and instead believe the 1st Respondent’s witnesses - Major Mureeba, Captain Magara and Lieutenant Imaka who were cross-examined and their denials were never challenged. That no evidence was called from anyone whose voter’s card had been used and that no other evidence was called to corroborate Henry Musisi’s.

After perusal of Henry Musisi’s affidavit I find that this evidence is shaky. It is devoid of material particulars. I would have expected corroborations evidence of the contents of paragraph 4; In paragraph 6

he depones to “some” who gave different names. I would have liked to learn of their numbers and the actual names on the cards. I would have wanted to hear about the numerical numbers and names of the alleged “some” instances where the card bearers were of different sexes. I would have liked to know if these “somes” actually cast their votes. Finally, still on Henry Musisi’s paragraph 6 I would have expected evidence to controvert Major Mureeba’s denial of Henry Musisi’s paragraphs 6, 7 and 8. {See paragraphs 7 and 17 of his affidavit}. Major Mureeba was cross-examined in court. Henry Musisi’s allegations were not put to him for his response. I would have been interested to learn where from Henry Musisi knew that Major Mureeba and Lieutenant Imaka were the 1st Respondent’s Campaign agent. This is because Major Mureeba (paragraph 7) Lieutenant Imaka paragraph 7 and the 1st Respondent’s paragraphs 19 and 21 and his evidence in cross-examination – all denied the campaign agency. I would also have been interested to learn from Henry Musisi why he deponed (in paragraph 7) to 40 cards having been confiscated at Wajjala Polling Station A(A – M) and did not refer to the Returning Officer’s Report page 4 annexed to the Petitioner’s affidavit where 13 cards are reported to have been retrieved by the Returning Officer. The Returning Officer was cross-examined and the question of 40 cards at

Wajjala Polling Station A(A – M) was not addressed to him. For all the above reasons I find and hold that Henry Musisi’s affidavit has not proved the allegations to my satisfaction. I reject it.

The above holding notwithstanding, I also find that the evidence of Rajab Kyagaba contained a falsehood in paragraph 3. This finding is based on the Returning Officer’s Report and Kyagaba Rajab’s own paragraph 7. I reject his affidavit.

iii). **Samanya Stephen Basalirwa** also swore an affidavit to support the issue of supply of ballot papers by the 1st Respondent and/or his agents and supporters. He deponed, inter alia,

- “1. That I am a male adult Ugandan of sound mind a student of Nakasongola Army Secondary School, Nakasongola Constituency, Nakasongola District.
2. That I was an appointed agent of the Petitioner at Airfield M – N Polling Station Quarter Guard, Nakasongola Barracks, in Lwampanga and his campaign manager for Nakasongola Army Secondary School.

3. That on 25/06/2001 at about 10.00 a.m., all students of the school were ordered to assemble at the School Main Hall by the Headmaster.
4. That I with all other students obliged and assembled in the School Hall.
5. That in attendance at the Assembly was the Headmaster, the Commanding Officer of Nakasongola some other Senior army officers, the Chairman L.C.V and Hon. Muruli-Mukasa, who the Headmaster introduced to us as the Chief Guest.
6. That after the Headmaster's address, one of Hon. Muruli-Mukasa's campaign agents pulled out a document titled "Inter party Force Committee" addressed to the People of Nakasongola County saying that UPC and DP are strong supporters of Peter Nyombi who is a member thereof.

7. The same agent addressed the students' body urging them not to vote Nyombi because he is a Multipartist after which he circulated copies of the same document to the Students. See Annexure "B".
8. That when Hon. Muruli-Mukasa rose to address us he started by explaining the role of Parliament in an attempt to cover up the accusations that he was a non-performer and commented on the documents which had been read out saying that we had heard for ourselves the type of person Nyombi was.
9. That on 26/07/2001, I woke up very early in the morning and went to the Polling Station Airfield M - N where my fellow students were to vote.
10. That at about mid-day, I realized that very few students had come to vote where upon, I decided to go back to the barracks and find out what was wrong.

11. That in the Barracks, I discovered that Major Mureeba had issued Orders that the transport for the students provided by Nyombi should not be allowed in the barracks and yet the polling stations are very far from the school.

12. That when students decide to walk the long distance to go and vote Col. Katagara issued an order barring them from leaving the Barracks, so even those who had already gone out and joined the line to vote fled back to the Barracks.

13. That while at my polling station, I saw cards of former students of my school who had completed their senior four being used by some soldiers to vote and when I raised the issue with the Presiding Officer, he simply told me that as long as a person comes with a Card, he is allowed to vote.

14. That cards which were used included those of Nabimanya Collins, Nuwagaba Polly, Batumba Rajab, Tumwesigye Bruno, Batayoga Morris, etc.
15. That when I confronted one of the solders who had come to vote using a former student's card called Nuwagaba Polly as to how he had got it, he told me that Captain Magara of Nakasongola, a reknown agent of Hon. Muruli-Mukasa was the one who had given it to him.
16. That whatever is stated herein is true and correct to the best of my knowledge and belief.”

No evidence was led to corroborate this affidavit. It is relegated to hearing summons and accordingly rejected. I opine that it was for these reasons Counsel for the Petitioner never referred to it.

iv). **Kalangwa Paul's** affidavit in support of the petition reads in part:

“1.

2. That I was agent of Peter Nyombi (at and registered under of Kakola Polling Station).
3. That on voting day so many voters came to the station with voter's cards that did not belong to them; for instance Makandoli came with a card belonging to Nalongo Grace who was well-known to me and had left the area for Ankole.
4. That Muhangerwa's card was brought by a girl called Justine. I knew Muhangerwa had migrated to Nabiswera and many others.
5. That when we noticed this trend of the voters we confiscated the voter's cards and refused the bearers to vote."

[Emphasis is mine]

Learned Counsel for the Petitioner asked to accept this evidence because it was not controverted. I do not agree with Learned Counsel.

Kalangwa Paul's affidavit did not contain sufficient particulars to necessitate a reply. None of the two people he alleges had their cards 'stolen' swore an affidavit to confirm. None of any voters present gave evidence to corroborate Kalangwa Paul's evidence. And "and many others" in paragraph 3 is simply nonsensical. None of Kalangwa Paul's "we"s in paragraph 5 who assisted him to confiscate the cards is known by name. More corroborated Kalangwa Paul's allegation of confiscation of the cards. Kalangwa Paul himself does not tell the numerical number of the cards confiscated. Or were they the only two he referred to in paragraphs 3 and 4? To cap, Kalangwa Paul does not allege the supplier of the alleged ballot papers. I find and hold that Kalangwa Paul's evidence does not allege or support any offence under Section 77 (c) of the Act (ante).

v). In his affidavit **Byansi Samuel** for the Petitioner deponed:

- "1.
2. That I was assigned by Hon. Muruli-Mukasa to do research regarding the electorate and file reports with him. This assignment was right from the initial stages of the presidential campaigns and parliamentary elections of 2001.

3.

4. That on 25/06/2001 support of the Answer the 1st Respondent denied he ever assigned Byansi Samuel to do research for him regarding the electorate. In his evidence in cross-examination he was only asked if he knew Byansi Samuel and he replied he had known him for two or three years. No other question was put to him regarding Byansi Samuel's allegations.

Japheth Morton Ssemanda filed an affidavit in reply to Byansi Samuel's. He deponed thus: -

"1.

2. That I have perused the affidavit of Samuel Byansi
.....

3. That I was the Secretary Nakasongola District Task Force
duly appointed as a campaign agent by the 1st
Respondent

4. That I have never had in my possession 180 voter cards
or any number thereof whatsoever.

5. That I do not know any name by the name Semanda an
agent of Hon. Muruli-Mukasa had 180 voter cards
and handed 60 of them to Bitte Joseph of Kigeri,
another agent of Hon. Muruli-Mukasa, in my
presence to find people who can use them to vote in
Community Centre A and B Polling Stations in
Nakasongola Town Council.

6.

7. That on the eve of voting day, I saw Semanda also
works in Hon. Muruli-Mukasa's office and was his
campaign agent with a bundle of ticked ballot

papers of about 200 in number heading for Lwampanga Sub-county.

8.....

9.....

10.

11.

12.”

In his paragraph 35 of the affidavit Bitte Joseph of Kigeri.

“6. That I have never distributed voter cards for use anywhere at any one time nor have I ever received instructions from the 1st Respondent to do so.”

Senyonga Stephen Mugenyi swore an affidavit in reply to Byansi Samuel’s. In paragraph 3 he denied Byansi Samuel’s paragraph 7 in toto. In paragraph 4 he denied ever being appointed 1st Respondent’s campaign agent.

In paragraph 6 he deponed that he had never received ticked ballot papers or instructions from the 1st Respondent to distribute ticked ballot papers to anyone.

The offence is created by Statute Section 77 (c). The burden of proof is on the Petitioner both under the said sub-section and generally under an election petition. The allegations by Byansi Samuel were denied by the 1st Respondent and the persons he referred to in his affidavit. The 1st Respondent was cross-examined and his denial was controverted. Most important, the denials that he assigned Byansi Samuel research work and that Senyonga was his campaign agent. Byansi Samuel does not tell how he ascertained the number of voter cards. Further his paragraph 11 is hearing summon therefore no evidence at all. The Petitioner did not adduce any other evidence to support Byansi Samuel's claim. There was no evidence that the 1st Respondent had knowledge of or consented to or approved these acts. I hold that the evidence of Byansi Samuel has failed to prove the offence.

iv). **Ali Ntabazi's** affidavit in support of the petition alleged that "several" people came to Kiswera, Mayinda, Nakasongola District where Ali Ntabazi was a voter. They had cards that were not in their names like Lwanguga and Sabina who were not residents of the area (paragraph 4). In paragraph 5 he deponed that the said voters' cards were confiscated but the Presiding Officer later let "some" people vote.

Nowhere else are we told how many were the “several” people and who they were. Nowhere else are we told how many were and who the “some” that the Presiding Officer allowed to vote and whiff. We are not told who confiscated the cards and where they are. I hold Ali Ntabazi’s affidavit to be of no evidence value. I ignore it.

vii). **Semakula Sande Laban** was another witness for the Petitioner.

He deponed (paragraph 3) that he was appointed a Monitor at Wajjala Polling Station A (N - Z). He proceeds:

“4. That on voting day 26/06/2001 Captain Magala and lieutenant Imaka who were the campaign agents for Hon. Muruli-Mukasa transported army men and their families to go and cast their votes.

5. That I observed that most of those people had voter cards not in their names.

6. That I discovered this when the Presiding Officer asked for their names and they announced names different from those on the voter cards in their possession.

7. That even some of them presented voters cards that had names of different sexes.
8. That when the issue was raised Captain Magara and Lieutenant Imaka both known agents of Hon. Muruli-Mukasa joined the line of voters and started coaching these people to say the names on the voter cards.
9. That some soldiers failed to cram these names and still mentioned their actual names so the cards were confiscated and the soldiers went away.
10. That some others, on being discovered, grabbed the cards from the Presiding Officer and went away.
11. That the Returning Officer, Kaise Chrisestom and the District Registrar came to the Polling Station at around 12.00 and by that time the Presiding Officer had already confiscated 42 cards of which I had recorded only 9 in the names of: -

- i). Namanya Francis
- ii). Lunya Jane
- iii). Tugume Aberi
- iv). Wamujira Lamson
- v). Nansamba Madina
- vi). Okoth Alfred
- vii). Nabafu Alna
- viii). Oling Agnes.

12. That we later found out that these cards belonged to army men and other people who used to stay in the Barracks but had since been transferred or left the barracks and the register still had their names because it has never been cleared since the Constituency Assembly Elections.
13. That some people who were known not to support Hon. Muruli-Mukasa never received their cards and those cards were kept by the Army Authorities and given out to other people to use them. One such card belonged to one Mwalye Patrick but was

confiscated with another soldier and yet Mwalye was around but never came to vote because his Voter's card was never issued to him.

14. That I verily believe that many soldiers voted at this Polling Station with Voter's cards that were not theirs having crammed the names on the Voters' cards.
15. That some of the soldiers refused to be inked and simply walked away and I verily believe that the same soldiers came and voted again at this Polling Station or elsewhere.
16. That later on Captain Magala and Lieutenant Emaka intimidated the Presiding Officer who was confiscating the Voters cards and stopped them from doing so and promised to reward them later if this did not continue.
17. That I verily believe that the exercise at Wajjala Polling Station A(N - Z) was not free and fair as it

was characterized by a lot of intimidation, impersonation and multiple voting.

18. That I verily believe that the Election exercise in this Polling Station Wajjala (A - M) was not free and fair as it was characterized by impersonation.
19. That I swear this Affidavit in support of Peter Nyombi's Petition challenging the election of the 1st Respondent.
20. That whatever is stated is true and correct to the best of my knowledge and belief."

Paragraph 5 lacks particulars of how many were "most" of these people; who were they; and in whose names were the alleged voters cards. This detail would have been easy to relate since in paragraph 6 Semakula Sande Laban states that he "discovered this when the Presiding Officer asked them for their names and they announced names different from those on the cards in their possession." I regard paragraph 5 as containing a falsehood. This applies to paragraphs 7,

9, 10, 13 and 14 mutatis mutandis. In paragraph 8 SSL alleged that Lieutenant Imaka and Captain Magala were both known agents of Hon. Muruli-Mukasa and coached the voters. The 1st Respondent was cross-examined and filed an affidavit denying the agency. His denial was not challenged. In paragraph 11 Semakula Sande Laban alleged that 42 cards were confiscated and that he recorded only 9. Yet he showed 8 in the affidavit. He does not explain the handicap he faced to record the rest of the names. He does not disclose who the "we" are who "later" (when?) "found out that these cards belonged to" army men and other people "who" had since left or transferred." Since he found out but cannot give the particulars, I hold this paragraph to be a falsehood. In paragraph 13 these "some" people are left unnamed except Mwalye Patrick. None of them filed an affidavit to corroborate Semakula Sande Laban. No explanation was given for this default.

In paragraph 17 and 18 Semakula Sande Laban refers to different polling stations. He does not explain how he was at both of them at the same time or the different times he was there. Bateganya, the Presiding Officer, replied to this affidavit. He was also cross-examined in court. He was neither shaken nor controverted. All in all I hold the

evidence of Semakula Sande Laban to have been so riddled with falsehoods that it cannot be believed.

Like in respect of if Mwalye's affidavit, although I have rejected Semakula Sande Laban's affidavit I, however, commend Kayise's evidence in cross-examination where he admitted visiting and confirming attempted malpractices. He testified that he handed a total of 48 cards from three polling stations to police and asked them to carry out investigations. He wondered why the Presiding Officer's and all polling officials had failed to arrest the impersonators. In further cross-examination he admitted that in any election, not one necessarily involving the army, impersonation is possible. He did not accept the suggestion by the Petitioner's Counsel that since he did not know how these particular voter cards got into the hands of these impersonators therefore there were so many voters cards in circulation because his trusted polling officials would have apprehended them. The witness went on to admit that there "were not several but limited cases of impersonation at Namika Polling Station, one or two at Kyawaikata and Nakasongola Town Council. I am not remiss of the evidence of Bateganya Samuel, the Presiding Officer at Wajjala Polling Station A(N - Z). In his affidavit (paragraph 5) he stated that the

contents of paragraphs 4 to 11, 14 to 16 of Semakula Sande Laban's affidavit were false. In his paragraph 8 he admits confiscating 8 voter cards and chasing the bearers for lack of identification. He was cross-examined and his evidence remained unchallenged. I would add and by way of conclusion on Semakula Sande Laban's affidavit and evidence of Kayise that the burden of proof is on the Petitioner. The burden was obliquely eased but was not discharged to my satisfaction by the suggestions put to Kayise.

viii). **Nabuuso Prossy** on behalf of the Petitioner swore as follows: -

- "1.
2. That I was appointed polling agent of Peter Nyombi for Wajjala Polling Station B polling station, Lwampanga sub-county.
3.
4.
5.

6. At around 11 a.m. a soldier came to vote and confessed that the card was not his.
7. That the said soldier was asked who had given him the card and he said that a "Mukubwa" was the one and this "Mukubwa" was in the barracks.
8. That upon this incident I asked the Presiding Officer to check all cards being presented by soldiers coming to vote and we confirmed that a big number of soldiers had cards which did not belong to them.
9. That we collected in all about 100 cards
10. The Presiding Officer called in the Returning Officer to whom these cards were handed over in my presence.
11. That it is true that by the time I discovered this anomaly quite a big number of soldiers from the barracks had already cast their voters.

12.

13. That upon closing the station the Presiding Officer counted the votes in the presence of everyone and on tallying the votes against the names of the registered voters at the polling station, it was discovered the votes cast were more

14.”

[Emphasis is mine]

Neither Nabuso Prossy nor any other witness supplied the particulars necessary for paragraphs 6, 7, 8, 9 and 13 of her affidavit.

Semanda Musa swore an affidavit saying he was the presiding Officer of the alleged polling station. He deponed (paragraph 5) that Peter Nyombi’s affidavit contained falsehoods in paragraphs 2, 4, 5 to 13. In paragraph 6 he deponed that the agents of the Petitioner at this polling station were Seruga and Kibirige Abas but not Nabuso Prossy. In

paragraphs 8 and 9 he asked all the polling agents whether they had any complaint against the exercise and upon saying they did not they proceeded to sign the Declaration of Results form annexed as “F”. His evidence on this affidavit was not controverted. Chrisestom Kayise, the Returning Officer swore an affidavit replying Nabuso Prossy’s. The witness was also cross-examined. And in his report he mentioned that 27 voters cards were confiscated from this polling station. The rest of his evidence vs-a-vis Nabuso Prossy’s evidence remained uncontroverted. I find the affidavit of Nabuso Prossy full of grave and exaggerated falsehoods. I reject it. I accept the evidence of Kayise that at this polling station only 27 voters cards were confiscated before they were cast.

ix). **Omwoya Walter** testified on behalf of the Petitioner. In his affidavit stating, inter alia,

“1.

2. That I am a registered voter at Kiguli Army Primary School and was appointed agent for Nyombi for Air field Area 0 - 7.

3. ..

4. ..

5. ..

6. That on polling I arrived at the polling station at 7.00 a.m. before voting commenced.
7. That I remember that one of the agents of Hon. Muruli-Mukasa called Rutha bragging to me at the polling station while holding two cards in his names that they were going to win the election.
8.
9. That I saw him voting the first time, then went to Tumwesigye's home and washed his finger, came back and voted the 2nd time.
10. ..
11. That we were already intimidated and threatened by the soldiers, so we could neither arrest those voting more than once.....
12. That when I reported to action of Rutha to the Security Personnel around (a soldier himself) he simply advised Rutha to ignore me”
13.
14.

15. That at the time of collecting voter cards, I tried to pick my wife's card but it was not there, yet her name was on the vote register.
16.
17.
18.
19.
20.

[Emphasis supplied]

In his submission on this affidavit the Petitioner's Counsel contended that since Rutha admitted in his affidavit in reply that he was 1st Respondent's agent COUNSEL cited TIRWOMWE PATRICK SPENCER vs NDUHURA: E. P. 4/01 as being in his favour the evidence of Omwonya Walter had proved that Rutha voted twice. That Rutha being the 1st Respondent's agent and having been proved to have voted twice the 1st Respondent should be held responsible for Rutha's acts. That further since the evidence of Omwonya Walter had not been controverted by the 1st Respondent it should be held to be truthful.

As for Counsel for the 1st Respondent he invited me to disregard Omwonya Walter's affidavit for lack of important particulars. He submitted that no evidence was called from the Presiding Officer to support the allegations. No student came forth to corroborate the allegation that he could not vote because his name had been ticked. I would add that Omwonya Walter did not explain how despite the intimidation and threats by soldiers he braved seeing Rutha vote, go wash his finger, and came back to vote a second time. He neither tells the numerical numbers of these soldiers, their names, where they came from, or specify that for stated reasons did not know. Since in paragraph 12 he states "we" were already threatened one of the "we" could have corroborated the allegations. No reason was advanced why not. In paragraph 15 he did not specify the alleged "time of collection" of voter cards. He does not disclose his wife's names. He assigns no reason why his alleged wife did not give evidence to support his allegations.

Rutha Julius swore an affidavit in reply. He admitted he was the 1st Respondent's agent at Airfield (0 - Z). He denied the allegations of Omwonya Walter that he had two voting cards in his names (paragraph 5). He denied he voted twice paragraph (6).

After perusing the record and listening to Counsel's submissions, I find Omwonya Walter's affidavit not creditworthy on accounts of lack of material particulars, its tendency to be hearing summon and lack of corroboration. Contrary to Petitioner's Counsel's submissions it did prove that Rutha had voted twice nor that proof of that, which it was not, was proof that the 1st Respondent was responsible for Rutha's acts. As Counsel for the 1st Respondent rightly pointed out the present case was distinguishable from TIRWOMWE's case where Nduhura, the candidate had himself voted twice; and the majority decision in BESIGYE's case (ante) was that the law of agency was modified by statutory provisions requiring express knowledge consent or approval of a candidate. I agree Not to leave the stone unturned I quote p. 400 of BESIGYES case (ante).

“.....In my view the principles of agency between an election candidate and his/her agent discussed (in the learned works cited earlier) equally apply to the election in instant petition but subject to the provisions of Section 58 (b) (c) of the Act.”

[Emphasis supplied].

On behalf of the Petitioner, (x) **Luyiga Lameka** swore an affidavit. He stated he was a registered voter and Peter Nyombi's agent at Nabiswera Polling Station where the Presiding Officer was Mawanda. When the Presiding Officer opened the box Luyiga Lameka, Kyambadde, Michael Mukasa the area L.C Chairman were present (paragraph 3). He goes on:

“4. That the agents of Peter Nyombi and Hon. Muruli-Mukasa agreed to record down the names of voters coming to vote so that it is easy to synchronize votes at counting time.

5.

6.....

7.....

8.....

9.....

10. That at the close of the polling exercise, I had recorded 416 people who had turned up to vote.

11. That after the counting the Presiding Officer indicated that he had issued 427 ballot paper. When

I queried his figures he said I had a figure of 416 as the total votes cast, Hon. Muruli's agents recorded up to 360, so the Register was the thing to refer to.

12. That I was threatened "by the agents of Hon. Muruli-Mukasa" and "Other" people present to sign the declaration of results and I signed out of fear for my life.

13.

14.

15.

16.

17.

18."

Learned Counsel for the Petitioner submitted that since this evidence was not controverted by the 2nd Respondent it amounted to proof of excess cards “whose origins are known” and proof that offences under section 77 (c) and (e) had been committed.

In reply to the above submission Learned Counsel for the 2nd Respondent submitted as follows. The Petitioner allegations were supported by the afore-listed ten affidavits. Those of Henry Musisi, Nabuuso Prossy and Semakula Sande Laban refer to Wajjala as the area that was affected. This would reduce the polling stations affected to seven. Looking at Semakula Sande Laban’s paragraph 2, “Wajjala Primary School was a polling centre comprising of five polling stations namely:

- a) Wajjala polling station primary school A(A - M)
- b) Wajjala polling station primary school A(N - Z)
- c) Wajjala polling station primary school B
- d) Wajjala polling station primary school Kikoiro Centre
(A - M)
- e) Wajjala polling station primary school Kikoiro Centre
(N - Z).

That of these five Nabuuso Prossy referred to Wajjala Primary School B, Semakula Sande Laban referred to them generally and did not state which ones were affected. That there was thus no evidence to show that even at the Wajjala Polling Centre all the polling stations were affected. That in conclusion the Petitioner had not proved that the supply of ballot papers by the 1st Respondent if at all was widespread throughout the Constituency. That therefore they had no substantial affect on the result of the entire election.

I would agree with the analysis by Learned Counsel for the 2nd Respondent. Let it be remembered that according to the Returning Officer's Report the Constituency consisted of 136 polling stations. This is in addition to my findings that all the affidavits on behalf of the Petitioner. On this issue had no probative value.

I hold that the Petitioner has not proved to my satisfaction any impersonation or multiple voting or supply of ballot papers and that the acts were perpetrated either by the 1st Respondent or by his agents/supporters with his knowledge consent or approval.

In paragraph 3(d), (h), and (k) of the petition the Petitioner alleges intimidation of known voters and supporters of the Petitioner and preventing them from voting, intimidating voters by the 1st Respondent himself and/or by his agents with his knowledge and consent to vote for him, and Petitioner's agents and supporters being abducted and some prevented by the army to abstain from voting for the Petitioner.

Article 59 (1) of the Constitution provides:

“59 (1). Every citizen of Uganda of eighteen years of age or above has a right to vote.”

Section 72 of the Act (ante) reads:

“72. Any person who, at an election or on nomination days, willfully obstructs a voter, or an aspiring candidate either at the polling station or nomination centre or on his or her way to or from the polling station or nomination centre commits an illegal practice.”

To prove these illegal practices the Petitioner filed the following affidavits:

a). Richard Waiswa who deponed as follows:

“1. That I ama registered voter at Nakasongola Army Barracks O - Z Polling Station.

2. That I am a student of (the Nakasongola Army Senior Secondary School).

3.

4.

5.

6.

7.

8.

9.

10. That when I mobilized a taxi to go and collect students so that they can go and vote, Major Mureeba and Captain Magala refused the students to use the said taxi and arrested the taxi driver but released him shortly and ordered him to go away.

11. That at around 3.00 p.m. on 26/06/2001 Colonel Katagaba came to the Quarter guard and ordered that no student should go beyond the Quarter guard and

ordered students to go back to school which was now surrounded by heavily armed soldiers.

12. That as a result many students who were supporters of Peter Nyombi did not go to vote.

13.

14.”

Major Fred Jimmy Mureeba replied to this affidavit. He deponed:

“1. That I am the Clerical Officer Nakasongola Reception Centre.

2.....

3.....

4.....

5.....

6.....

7.....

8.....

9. That I never intimidated or threatened any voter or supporters or agents of the Petitioner.

10.

11.

12. That I deny the contents of paragraphs 9 and 10 of the affidavit of Richard Waiswa.

13.

14.

15. That I never refused students to use a taxi to go and vote nor did I see Captain Magala arrest the taxi driver.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

26.

27.”

Major Mureeba was cross-examined as DW4