

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBARARA**

**ELECTION PETITION NO. HCT-05-CV-EPA-0003 OF 2001**

MUSINGUZI GARUGA JAMES

PETITIONER

VERSUS

AMAMA MBABAZI

RESPONDENT NO. 1

ELECTORAL COMMISSION

RESPONDENT NO. 2

**BEFORE: THE HONOURABLE MR. JUSTICE F.M.S. EGONDA-NTENDE**

**JUDGEMENT**

1. Musinguzi Garuga James, hereinafter called the Petitioner, was a candidate in the Parliamentary elections that took place on the 26<sup>th</sup> of June 2001. He was a candidate in Kinkizi West Constituency. Amama Mbabazi, hereinafter referred to as the Respondent No 1, was the other candidate in the same constituency. Respondent No. 1 was declared the winner and validly elected Member of Parliament for Kinkizi West with 25,433 votes. The Petitioner garnered 12977 votes. This result was published in the Uganda Gazette of 29<sup>th</sup> June 2001.
2. The Petitioner contends that the said election was conducted in contravention and contrary to the provisions and principles of the Parliamentary Elections Act, 2001, the Electoral Commission Act, 1997 and the Constitution, and that this affected the result of the election in a substantial manner. In particular the Petitioner alleges that the entire electoral process from beginning to end was characterised by acts of intimidation, lack of freedom and transparency, unfairness and violence through the commission of numerous

electoral offences, illegal practices and or acts of contravention of the relevant law. The Petitioner seeks from this court a declaration that the Respondent No. 1 was not validly elected the Member of Parliament for Kinkizi West Constituency, annulment of the said election, an order for a new election to be held, and costs of this petition.

3. The Respondent No. 1, in answer to the petition, denies the Petitioner's allegations as regards wrongdoing and breaches of the law by both the Respondent No. 1 and No. 2. He seeks that the petition be dismissed with costs. The Electoral Commission, hereinafter called Respondent No. 2, opposed the petition, contending that the election was held in compliance with the provisions of electoral laws, and that if there was any non-compliance, which was denied, it did not affect the result of the election in a substantial manner. Respondent No. 2 seeks the dismissal of the petition with costs.
4. In accordance with The Parliamentary Elections (Election Petitions) Rules, 1996, the parties filed affidavit evidence in support of each party's case, and cross-examination of witnesses was allowed by consent in respect of some witnesses for Respondent No. 1 and 2. At the time of addresses of counsel to this court, learned counsel for the Petitioner, took objection to the affidavits filed for the Respondent No. 2. It is appropriate to deal with this objection at this stage.
5. In their written submissions counsel for the petitioner submitted that all the affidavits filed for the Respondent No. 2 appear to have been sworn before a judicial officer. However, on the face of the said affidavits there is no stamp, as is the normal practice, showing the fees that have been paid. For each of the affidavits a sum of Shs.1500/= ought to have been paid under S I No. 20 of 1991. As no fees were paid, the said documents are invalid and cannot be acted upon. Counsel for the petitioner submitted that all these affidavits should collapse, leaving the Respondent No. 2's answer to the petition unsupported by evidence.
6. In a statement from the Bar, Mr. Deus Byamugisha, learned counsel for the Respondent No. 2 submitted that it was not true that no fees had been paid. He stated that he had a receipt dated 28<sup>th</sup> September 2001 from Rukingiri Station for Shs37, 000/= for commissioning 25 affidavits. In respect of the other fees paid on 7<sup>th</sup> September 01 he was still looking for the receipt. He submitted that the affidavits be allowed to stand.

7. Dr. Joseph Byamugisha, learned counsel for Respondent No. 1 submitted that the interpretation Decree presumes properly done documents that bear a court seal. The claim that there is a practice of embossment of the receipt on the affidavit should have been proved by evidence but had been disproved by the production of the receipt.
8. In his reply to this particular point, Mr. Peter Walubiri, learned counsel for the Petitioner, submitted that the receipt produced does not mention the specific affidavits that were commissioned. It does not state the case in respect of which there were commissioned. It simply states 25 affidavits alleged to have been sworn on 28<sup>th</sup> September 2001. A perusal of the Respondents No. 2's affidavits reveals that there are only 22 affidavits sworn on the 28<sup>th</sup> September 2001. So this receipt of twenty-five affidavits relates to some other set of affidavits and not the ones before court. As for the reference to the Interpretation Decree Mr. Walubiri stated that its effect was not to question, if the affidavit had been properly commissioned, for as long as the affidavit bore a court seal, which was not the matter in contention here.
9. From the foregoing, it is clear that when challenged that no payment of fees for swearing Respondent No. 2's affidavits in this case, no explanation was provided with regard to the payment of fees for swearing before a judicial officer, all the Respondent No. 2's affidavits dated 8<sup>th</sup> August 01 and 7<sup>th</sup> September 01. Counsel could not produce a receipt or other explanation to satisfy court the requisite fees had been paid. I take it in the circumstances that no payment was made for the 1 affidavit of Ntaho Frank sworn on 8<sup>th</sup> August 01 and 19 affidavits sworn on the 7<sup>th</sup> September 2001 before the Chief Magistrate, Rukingiri. What is the effect of non-payment of fees for swearing an affidavit before a magistrate? Section 100 of the Civil Procedure Act deals with making up deficiencies in relation to court fees and in my view, it is quite relevant to the situation that we have here. I will set it out below.
10. "Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole amount or part, as the case may be, of such court fee; **and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.**" (Emphasis is mine.)

11. The above provision allows for the payment of the deficient amount at any stage of the proceedings and such payment would allow the document to have same force and effect as if such payment had been made in the first instance. Implicit from the said provision is the suggestion that without payment of fees, such a document would not have the same force and effect, as a document that had been properly paid for. In context of these proceedings, the force and effect would relate to admission as evidence in this case. If no fees have been paid, this court cannot rely on it, or take it into account as part of the record of evidence adduced in this case.
12. This court, however, has the discretion to allow payment of such deficient fees at any stage of the proceedings, and this would cure the defect. I would have been inclined to allow the Respondent No. 2 to pay up had counsel requested to be allowed to remedy this situation in the absence of any proof of payment. Counsel had such an opportunity when he made his statement from the bar but made no such request. I would have been inclined too to order the Respondent No. 2 to pay up the amount, nevertheless, had I been seized with more time in these proceedings. As it happens I am at the last stage of these proceedings that is writing a final decision. At this stage fees would have had to be paid for this court to give 'force and effect' to the affidavits in question. Ordering payment of fees to be made after judgement is written and delivered would be to give force and effect to documents before payment, contrary to the provisions of Section 100 of the Civil Procedure Act. Accordingly I decline to give force and effect to the 20 affidavits sworn on 8<sup>th</sup> August 01 and 7<sup>th</sup> September 2001 for Respondent No. 2, for none payment of fees to the Judicial Officers before whom there were sworn.
13. I now turn to the other 22 affidavits sworn on the 28<sup>th</sup> September 2001 for Respondent No. 2. All counsel who addressed me on this subject referred to a receipt. This receipt was not passed on to this court in the proceedings of that day or at any time thereafter. I recall learned counsel for Respondent No. 2, Mr. Deus Byamugisha, passing it to counsel for the Petitioner. Mr. Deus Byamugisha stated that it was receipt for payment of 25 affidavits on the 28<sup>th</sup> September 2001. It is stated to be for Shs.37,000/=. Mr. Walubiri submits that the receipt bears no relationship to this case because Respondent No. 2 filed only 22 affidavits sworn on the 28<sup>th</sup> September 01, and not 25. It also does not indicate the names of the person swearing the affidavits.

14. I have not had an opportunity to examine the receipt but from its description, it is not as helpful, as it ought to have been. But this is not the fault of Respondent No. 2. It is the fault of court staff that wrote the receipt. This is where it is obvious that the practice of embossing on the document a stamp indicating the amount paid, receipt number and date is a very useful practice. In spite of the deficiencies shown in the receipt referred to, I will accept that payment was effected for the 22 affidavits sworn on the 28<sup>th</sup> September 2001.

15. The parties agreed to the following issues. (i)

Whether during the election of the Member of Parliament for Kinkizi County West Constituency there was non-compliance with the provisions of the Parliamentary Elections Act, 2001. (ii) Whether the said

elections were not conducted in accordance with the principles laid down in the provisions of the Parliamentary Elections Act. (iii) Whether if there was non-compliance with the provisions and principles of the said Act, such non-compliance affected the results of the said election in a substantial manner

(iv) Whether any illegal practices and or offences under the Parliamentary Elections Act, were committed in connection with the said elections by the Respondent No. 1 personally or with his knowledge and consent or approval. (v) What reliefs are available to the parties.

16. I propose to proceed issue by issue. But before I do so I shall begin by stating that it was not disputed that the burden of proof lay on the petitioner to prove his case. The standard of proof necessary to discharge that burden is set out in Section 62 (3) of the Parliamentary Elections Act. It reads, “Any ground specified in subsection (1) of this section shall be proved on the basis of a balance of probabilities.” This standard is so well established that it needs no further elucidation.

**17. Issue No. 1: Whether during the election of the Member of Parliament for Kinkizi County West Constituency there was non-compliance with the provisions of the Parliamentary Elections Act.**

The written submissions of counsel for the petitioner stated that this involved three aspects, (a) Intimidation, harassment and violence, (b) Ballot Rigging and (c) Illegal, Sectarian and defamatory campaign. It is a convenient way of dealing the issue. In their written submissions counsel for the petitioner reviewed the affidavit evidence and other evidence in this order

while counsel for the Respondent No. 1, Dr. Joseph Byamugisha reviewed extensively the Poll Watchers Reports and Declaration of Results forms filed by the petitioner. I intend to examine all the evidence on the issue. Mr. Deus Byamugisha, counsel for Respondent No. 2, adopted the submissions of Dr. Joseph Byamugisha on this issue.

18. The petitioner presented 86 affidavits in support of this ground. 27 of which, it was claimed, have not been controverted by affidavits of the respondents on the issue of intimidation. This is not strictly correct. Some of these affidavits have been controverted by affidavits sworn for the respondents, albeit in general terms in some cases and also during cross-examination. All the evidence presented for the petitioner will be considered alongside all the evidence on record for the respondents, save that which has no force and effect in these proceedings for non payment of fees.
19. I now turn to consider the evidence on intimidation, harassment and violence. The petitioner swore 2 affidavits and both of them touch on this point. In his affidavit dated 26<sup>th</sup> July 2001, he details numerous reports of violence, intimidation and reports he received from his agents and supporters. These or most of these are covered by the affidavits of those agents and supporters or other deponents, which have been filed in support of his case. I need not set them out here, save for one or two that led to his taking action directly.
20. He was notified that on 14<sup>th</sup> June 01 his car, M/V Reg No. UAD 648 C, had been attacked and vandalised. His son and supporters who were travelling in the said vehicle were arrested, beaten and tortured. A public address system and Shs.10.000.000/= that had been in the car were stolen. This attack and robbery was reported to have been perpetuated by Captain Ndahura and soldiers of the Presidential Protection Unit. The witness complained to the Respondent No. 2 and the District Police Commander, Rukungiri about the conduct of the PPU and there was a partial withdrawal of the same. I shall set out the letter written to the DPC with copies to the Respondent No. 2.
21. “Musungunzi, J. Garuga Parliamentary Candidate Kinkizi West. 15<sup>th</sup> June 2001. The District Police Commander, Rukungiri District. Dear Sir,  
RE: Request for Police Protection. Last night  
my official Vehicle Registration number UAD 684 C Pajero was attacked by armed thugs travelling in a blue double cabin Mitsubishi pick up vehicle Registration number UAB

943 U belonging to Captain Ndahura of the PPU. The occupants my vehicle confirm that one of the people in the said vehicle was Captain Ndahura. This is to officially register my displeasure and complaint and request for your office's protection. My car was smashed and several properties stolen including my public address system. Please provide me with two armed guards day and night during the campaign period.

Yours Faithfully,

(signed) J.

Musinguzi-Garuga, Parliamentary candidate

cc. O.C Kihhi

Police,

Electoral Commission,

Monitor Newspaper,

New

Vision Newspaper.”

22. The Chairman of the Respondent No. 2 responded by writing to the District Police Commander requesting him to provide two police guards to the petitioner at his cost. The petitioner attached some Declaration of Results forms. I will turn to examination of these forms. 78 Declaration of Results forms contain no adverse comment in the space provided for comments by candidate agents and presiding officer though some of these forms do not bear signatures of the presiding officer and at times signatures of petitioners agents, and in a few instances signatures for the Respondent No. 1. 10 of the Declaration of Results forms contain some adverse comments pointing to the harassment, intimidation and in some cases assault of the petitioner's agents by Ali Rugomwa and UPDF soldiers. For instance the form for Nyamwegabira 11 polling station, the petitioner's agent stated, “There has been intervention of the UPDF for some hours which could have threatened our supporters.” The presiding officer made no comment.
23. On the form for Nyarutembe/Kamane 11 the presiding officer noted, “Musinguzi's agents Lwanga Stanely and Mu..(not legible) Edson deliberately refused to sign saying that they were intimidated and their voters rolls were taken during the polling process by Ally Rugomwa armed personnel.”
24. On the form for Kihhi town, (polling station was not named), a petitioner's agent wrote, “The first reason is the soldiers arrived at the polling station and beaten us with know reason. They have arrested us for about 30 minutes while election still going on.” The Presiding Officer stated, “The above information is invalid. The arrest of Musinguzi agent was due to the possession of an illegal register which he was marking.” At Kasiro

polling station the petitioner's agent wrote on the form, "At around 9.30am two armed army men came and started to beat me. Then I was taken to the Police. It was on 26/6/2001. Signed David Kakuyo, agent of Musinguzi Garuga James."

25. On the Nshaka 11/Samaria form the presiding officer stated, "Musinguzi's agents didn't sign because by the time we finished they had been put under arrest." On the Kinyangwe 11 form the presiding officer noted that agents for Musinguzi disappeared mysteriously while for Nshaka 1 A-K it was noted petitioners agents were absent and reasons not known.
26. In his affidavit in reply dated 24<sup>th</sup> September 01 the petitioner attached several documents that I shall examine in relation to violence, intimidation and harassment. The first one is the final report of NEMGROUP-U on the parliamentary elections. It states in part, in appendix 1 on Political Atmosphere, "At most polling stations, the atmosphere was calm and conducive for people to cast their vote in secret. There were, however, constituencies such as Mbarara municipality, Kinkizi West, Rukiga, Tingey, Lira Municipality, Soroti Municipality, Bubulo East and West, Bukhooli South and Central, Busujju and Tororo County where the atmosphere was tense, intimidatory and often violent. In the opinion of the NEMGROUP, some voters in the above constituencies may not have exercised their right to vote freely for a candidate of their choice"
27. On the role of the security forces the report states, "Reports from various parts of the country indicate that there was increased vigilance of the police in acting decisively in dealing with election related incidences. However, there were reported cases of interference by the army in Lira, Gulu, Mbarara, Soroti and Rukungiri." It goes on to state in relation to particular malpractices that, "At Busogye (L-Z) polling station 50 ballot papers were ticked at the presiding officer's table without any complaints from agents of Candidate Musinguzi because of the presence of UPDF soldiers at the polling station."
28. In appendix III the report states, "RUKUNGURI Presidential Protection Unit (PPU) soldiers were deployed in the district under unclear circumstances, which could only be inferred and construed as a way of intimidating the voters. As a result of the presence of PPU the voters did not freely, exercise their liberty to freely choose their MPs."



29. 20 twenty-poll watcher reports were annexed to the petitioner's second affidavit. These reports were part of the NEMGROUP-U's observation forms used by the poll watchers at polling stations. Of the 20 reports attached 17 detail some kind of harassment, intimidation, and or use of force against the petitioner's agents or the population. The report (2495) on Nshaka 1 L-Z records an affirmative yes to the question, "Did you observe any security forces intimidating voters at or near the polling station?" And the details that follow state, "UPDF soldiers arrested some agents of candidet Musinguzi. People run away in fear. They came back later."
30. The report (2406) for Kinhang 11 in Bihomborwa parish notes, "At the beginning at the station the number voters were high but after deployment of security personnels the.. was fear and this caused the decrease of number of voter to come and vote." The Declaration of Results form for this station shows that out of 619 ballots papers issued for this station only 319 were used. If 619 is taken as the expected or the registered number of voters for the station then only about 50% turned up to vote.
31. The report (2485) on Nyamwegabira III in a section for comments states, "UPDF soldiers came and molested intimidated the people but the police came in time and calmed the situation (10.30a.m.) However the Asst. RDC Kanungu came in at 2.00 p.m. with his body guards threatened and even molested one of the priests at Nyamwegabira Mission." The report (2502) for Rwenyerere A-K polling station notes, " UPDF soldiers under the command of the Chief Intelligence Officer came and destabilised the voters. Musinguzi's agents were molested and arrested." The comment follows an affirmative yes to the question "Did you observe any security forces intimidating voters at or near the polling station?" The report (2514) for Nshaka 11/Samalia in Karubeizi parish notes, "UPDF forces came and caused intimidation to the voters. Some agents we... arrested by the army and voters left only to come later on." The report (2518) for Kinyange 1 in Bihomborwa Parish notes among other things that Mbabazi's agents were threatening Musinguzi's agents.
32. The report (2500) for Rwenyere L-Z in Bihomborwa parish notes, "Mr. Ali Rugomwa came in the morning hours and put Musinguzi's agent in his vehicle, then decided to take him to Kihikihi. After one hour that agent came back. In this intimidation UPDF soldiers were assisting him. He said that the main intention of taking that agent to Kihikihi was that

he had a voters Register” In the section on other comments the report states, “Some of the voters decide not to vote because of the intimidation of Mr. Ali Rugomwa.” Mr Ali Rugomwa is mentioned in three other reports as having arrested petitioner’s agents with the help of the soldiers and taken them to Kihikihi. Mr. Kamwesiga is mentioned in one report as having removed a register from petitioner’s agents.

33. The petitioner objected to the results declared and on 27<sup>th</sup> June 01 did so in writing to the Returning officer. The letter stated, “RE: Objection to Declaration of Results for Kinkizi West. I hereby object to the declaration of the results for Kinkizi West Constituency on the following grounds, namely,
- 1- There was institutional violence by the Deputy RDC, Kanungu Mr. Alimundabira I.O Edward Natukunda unleashed against my known and suspected supporters whose effect was that many people were prevented from voting though their votes have been discovered to have been cast.
  - 2- There was heavy deployment of UPDF soldiers in the range of 2,000 (two thousand) on most routes leading to the polling stations and with aid of Candidate Amama Mbabazi’s agents, my known and suspected supporters were either harassed and chased away. These troops were under the command of Lt. Col. Goa Kasiita who came on the eve of the election day specifically to disorganise the election.
  - 3- Those polling agents of mine who managed to reach their polling stations were harassed and chased away and those who resisted were arrested, beaten, tortured and detained.
  - 4- The Official voter’s registers which I had purchased from the Electoral Commission and given to my polling agents were confiscated on the orders of the said Deputy RDC and destroyed.
  - 5- The motor vehicle of Candidate Amama Mbabazi were pestered with the portraits of Candidate Amama Mbabazi and there were moving around all the polling stations accompanied by Armed UPDF troops on Polling day contrary to the law.
  - 6- Amama Mbabazi’s political assistant Mr. James Kamwesiga who had already been reported to the police for attempted murder and aggravated robbery was still roaming all the polling stations armed with a machine gun.
  - 7- Civilians were

armed by Candidate Amama Mbabazi or with his knowledge or approval purposely to unleash terror on my supporters. These included Munubi of Kihembe parish and Ali Rugomwa of Kihihi to mention but a few and they were all this campaign agents.

8- A former Giso of Kihihi by the names of Gadi Butuuro who was in Mbarara on murder charges was released two days before polling day and he was immediately armed and he terrorised my supporters.

Therefore on the above grounds and very many others which make the entire electoral process in Kinkizi West a sham, I dispute the results and request for a fresh free and fair election.

Yours faithfully,  
Musinguzi)."

(signed James Musinguzi)." )

34. The Deputy Chief Administrative Officer responded to this letter with a letter of his own addressed the CAO, Rukungiri. He denied personal knowledge or witnessing many of the matters complained about by the petitioner. In part he states, "2) On the deployment of UPDF soldiers in the Constituency, it is true there was UPDF personnel but not near the Polling stations. I saw an average of 3 soldiers off the polling stations I visited. 3) There was confusion in some parishes of Kihihi Sub-County as a result of the possession of voters' registers by Musinguzi's agents, which the agents of Mbabazi mistook to be a ploy for cheating the votes. This confusion led to arrest of some of Musinguzi's agents by security forces and put to the Police Station of Kihihi. They were however released immediately by the Police after getting clarifications from the Returning Officer and myself, that it was not an offence to carry a voters register by Candidates Agents as per Parliamentary Elections Guidelines."
35. Akashumbusha Naris of Kanyambeho village, Karubeizi parish, Kihihi sub-county, was a registered voter at Samaria 11 A-L polling station and a member of the election task force for the petitioner. He states that on the night of 24<sup>th</sup> June, 01 at around 11.00 pm a group of five soldiers came to his shop at Omukatafari Trading Centre in Karubeizi Parish. The soldiers were in the company of Nsabimana, a neighbour and member of the Respondent No. 1's task force. In the shop posters of the Petitioner and Respondent No. 1 were displayed. The soldiers demanded to know why there were more posters displayed for the Petitioner than Respondent No. 1. One of the soldiers used his gun tear the Petitioners posters off the wall. Then the soldiers left.

36. On polling day, the witness complained to the polling officials at their polling station about a Mr. Bagwowabo and his family who voted several times and did not dip their fingers in the indelible ink. The polling official did nothing. Nsabimana, however, told Bagwowabo of the complaint the witness had raised. Nkoro Bagwowabo confronted the witness and slapped him twice for making the complaint he did to the polling official.
37. Byamukama Dennis of Kameeme village, Kibimbiri Parish, Kihikihi sub-county was a registered voter at Matanda Primary School and a campaign agent for the petitioner. He states that on the 24<sup>th</sup> June, many soldiers were deployed throughout the constituency. On the eve of elections, at about 1.00 a.m. a group of 15 soldiers armed with guns came in the company of Agaba and Xavier Musinguzi from the same village as the witness. The soldiers searched for money and took Shs. 310,000/= from the witness's bedroom. They helped themselves to torches and dry cells and drank beer from his stock in the shop. They told him they are punishing him for supporting the petitioner.
38. The following day he went to report to the police station at Kihikihi at about 9.00 am and he found a group of soldiers who had brought five people whose shirts had been removed. They sat them on the floor and said that they had been disturbing elections at Kihikihi playground. Another group of soldiers brought people from Nyanga who had also been arrested in connection with elections.
39. Kabyesiza Medard of Kabuga village, Rushoroza Parish Kihikihi Sub-county details an incident on the 14<sup>th</sup> June 2001 as they were returning from a rally by the petitioner at Nyamirama. They were set upon with another colleague by assailants in military fatigues with guns who beat them up. The witness sustained a broken rib, a dislocated knee cap, and injured arm. He had a letter appointing him a campaign agent of the petitioner. The assailants tore this up. He reported the incident to the police station at Kihikihi. He was treated at a local clinic and later at Kambuga Hospital.
40. Mbabazi Lydia of Nshaka village, Karubeizi Parish, Kihikihi sub county on voting day went to vote at Nshaka 1L-Z polling station and found that the petitioner's agents including her husband, Charles Mbabazi, had been arrested and taken away. She was prevented from voting by Respondent No. 1's supporters who had insisted that they tick her ballot paper for her. She refused and instead left without voting. She noted the presence of soldiers at the polling station.

41. Mudesta Ngashekyi of Kururuma B LC 1, Kibimbiri Parish, Kihhi sub-county, states that on the night preceding the parliamentary elections at about 9.00 p.m. some people in military fatigues and with guns broke into her home. She hid under the bed with the children. They searched the house. The children were forced out of the house and asked if Juma was in the house.
42. Owomugabe Miria of Rwamahamba village, Karubeizi parish, Kihhi sub-county was the polling agent for the petitioner at Nshaka A-K polling station. Voting at Nshaka polling station started at around 8.00 a.m. but only for the other two polling stations as the ballot box for Nshaka A-K had not arrived. A presiding officer at another station suddenly threw his books on the table, and said he was not ready to continue with conducting the exercise while the agents of the Petitioner had their own copy of the voters register. Supporters of Respondent No. 1 attempted to take the registers but the petitioner's agents resisted. Soldiers in uniform and agents of the Respondent No. 1 arrested the petitioner's agents and took them away.
43. Reverend Busingye Charles of Nkumbagara cell, Nyakatunguru Parish, Kihhi sub-county states that at around 10.00 a.m. soldiers, in company of the Muluka chief of Nyakatunguru, one Mariko, came to Nyamwegabira Catholic parish grounds where there were three polling stations. They arrested agents of the Petitioner accusing them of illegal possession of voters' registers. The witness, among others, complained. The soldiers threatened to shoot them. They put the agents on the pick up that they had come with. The O/C Kihhi Police Station, arrived at the scene and reprimanded the soldiers for their actions and ordered them to release the agents which they did and left.
44. After the departure of that group, and the O/C, more soldiers came to the polling station and ordered all people to go 50 metres away whether they had voted or not, except the chairman. Later he witnessed the arrival of Assistant RDC Mr. Alimundabira who ordered those people that had remained to go away. He states that Mr. Alimundabira then arrested Father Karugaba who was standing at the Catholic Parish Offices opposite the polling centre. Father Karugaba was violently thrown on the Assistant RDC's pickup and they drove away with him.
45. Tugume James of Kiruruma village Nyakatunguru Kihhi sub county was the petitioner's monitor in charge of Nyamwegabira polling centre with three polling stations. Like Rev.

Busingye he witnessed the arrest of the Petitioner's agents at Nyamwegabira polling centre by Mariko Babicwa, the Muluka Chief and a party of soldiers. He names the arrested agents as John Tumwesigye and Mutekanga Hussein.

46. Tumwesigye Emmanuel of Rwenyerere village, Bihomborwa Parish, Kihhi sub county states that on the 14<sup>th</sup> June 2001, following the petitioners rally at Nyamirama, he was part of a group of motor cycle taxi operators leading a convoy escorting the petitioner from the rally to his residence, singing songs and uttering praises in favour of the petitioner. When this procession got to Kihhi town, Captain Ndahura with PPU soldiers attacked the convoy and beat them up. Soldiers vandalised the witness's motorcycle and took it to Kihhi Police Station. The witness suffered a broken shoulder. At the scene of the attack Captain Ndahura was with the O/C Kihhi Police Station and ARDC Alimundabira.
47. Tumwesigye Gad of Kihhi town, was a polling agent of the petitioner at Meizimera 1 polling station. Voting started at about 8.00am . At about 9.30am three people, two of whom were in army uniform arrived at the polling station in M/V No. UPY 039, driven by one Barekye, a supporter of Respondent No. 1. They told the presiding officer that they were false voters register at this station. The presiding officer pointed to the witness and stated that he had one. The witness was arrested by the soldiers, assaulted and thrown onto the pickup truck. On the pick up truck he found one Gambindi Robert, an agent of the petitioner and Sayuni Marwariro, a supporter of the petitioner, already under armed guard. Another of the petitioner's agents at Meizimera 11 polling station was thrown on the back of the pick up.
48. The witness and the others were driven to the office of ARDC, Mr. Alimundabira, which shares the same compound with Kihhi Police Station. They were then taken to the Kihhi Police Station. Later the ARDC came and asked the witness why they had been arrested. The witness told him that they were arrested for possession of copies of voters' registers. The ARDC told them that was no offence and that they should be released. They were released at about 1.00pm minus their registers.
49. Twesigye Robert of Nyakiyaga village, Rwanga Parish was a campaign and polling agent for the petitioner. He states that both the PPU and regular soldiers were deployed in Kinkizi West Constituency before the parliamentary elections. They harassed the

petitioner's supporters. On polling day the witness was at Karabatungye 11 polling station, with a copy of the voters register ticking off names of voters who had voted. Soon after the voting started three soldiers arrived, arrested the witness and dragged him to a vehicle where he found Ali Rugomwa. Ali Rugomwa told them they had left other culprits. Two of the soldiers went back. On the truck the witness found Mbareba Alex, a supporter of Respondent No. 1 who assaulted the witness telling him that they had told him not to oppose the government but had refused to listen.

50. Other agents of the petitioner were picked up, including Sam Hakiza and Jude Kirumira, assaulted and thrown onto the truck. They were driven to the Police Station. At the police station, the police officer asked the Sergeant why we had been arrested and he told him that it was on orders of the ARDC. They were kept at the Police Station until the ARDC arrived. He told us it was okay to have registers and that we could be released. The witness and others regained their freedom at around 1.00pm.
51. The witness returned to the polling station. When he saw some people including one Tumuhimbise John, Mbonimpa Richard, voting twice and he attempted to complain, the Respondent No. 1's agents told him that they would hand him back to the army men that had arrested him earlier. The witness was cowed and just watched. At the end of the election when the witness was given the Declaration of Results forms he started to write his comments and the presiding officers grabbed the papers from him.
52. Barigye Chris of Kakureiju cell, Kyeshero parish, Kayonza sub county states that Rugando 1A-K polling station voting started at about 9.00am, and initially went well. There were some foreign observers present who left at about midday. At around 3.00pm some 30 soldiers came to the polling centre and chased away all people save the election officials and candidate agents.
53. Alex Arinaitwe of Kashesha LC 1 village, Kihembe parish, Kanyantorogo sub county was a polling agent of the petitioner at Kashesha 1 polling station. On polling day he was travelling in a pick up vehicle, with others, heading to the polling station when they were stopped by an armed soldier. The soldier ordered those on the vehicle to identify themselves. He removed from the witness his appointment letter, voter's card, portable radio and shs220,000/=. He then ordered the party not to proceed to the polling station. The witness went and reported to the Police at Kihihi. Police escorted them to the polling

station at about 9.00am. As the witness had no appointment letter he was allowed only to cast his vote but not to execute the duties of a polling agent for the petitioner. He left after casting his vote.

54. Turinawe Sarafina was a polling assistant/polling constable at Meizimera 11 polling station. On election day she was on duty when between 9.00a.m. and 10.00 a.m. an armed soldier with a civilian approached their station, and inquired why there were allowing the petitioner's agents to be in possession of copies of voters register. The witness told him that it was proper. The soldier grabbed Robert Turyatunga who had the register and struck him with the butt of the gun, kicked him and threw him on a pick up. The vehicle drove off in the way of Kihhi town. Thereafter the witness noticed that even the second agent of the petitioner had disappeared. There were several incidents thereafter when soldiers intervened to chase away the petitioner's supporters, who were objecting to election malpractices.
55. Byaruhanga Frank of Nyabirehe village, Kihembe parish, Kanyantoro sub county states that he attended rallies addressed by both candidates and had no official role for any of the candidates in the election. He attended a rally by Kamara Bayeye the RDC of Kanungu District and a person who was said to be the IO of Kanungu District whose name he cannot remember. Armed and uniformed soldiers accompanied them. The rally was at Karukara, Kihembe on a date he does not recall. It started at about 10.00am and ended at about 1.00pm. The I.O stated that the petitioner had met Kony in Nairobi to plan how to topple the Government of Uganda. He read a list of people said to be agents of the petitioner for Kihembe Parish and said to them that if they continued to be his agents they would be followed, picked up and dealt with but if they stopped they would be free.
56. The RDC then addressed the rally. He said he had an additional list of 5 agents who included Abel Muhindo, Bahati Michael, Enoch and Muhozi Wycliffe. He ordered the I.O. to arrest them, but the I.O. said they should be excused this time round save for only Muhindo Abel who was a parish chief. Before the end of the rally, they called out all the people whose names had been read from a list of the Petitioner's agents and told them to go in front of the crowd and denounce their support for the Petitioner. Banyenzaki John Bosco and Asiimwe Yusuf complied but others refused to denounce the Petitioner. Asiimwe Yusuf's appointment letter was confiscated.



57. Christopher Byaruhanga of Kashesha village, Kihembe parish, Kanyantorogo sub county was a campaign coordinator for the petitioner. He states that he attended some of the rallies addressed by Sgt. Natukunda and Kamara Bayeye where the petitioner's supporters would be threatened to be dealt with severely. During the campaign period he met Captain Ndahura of the Presidential Protection unit who was well known to him, and he ordered him to get out of the constituency within three days. The witness was also in the procession of 14<sup>th</sup> June 2001. He states that Mr. Alimundabira and Captain Ndahura were at Corner Pub in Kihihi town. At about 7.30 pm they ordered their escorts to assault the group. In the process motorcycles of the petitioner's supporters were confiscated and vandalised and taken to the Police station.
58. Christopher Byaruhanga states that on polling day as he was going to vote at Nyamwegabira Catholic Church he found a road block manned by an LC 1 chairman of Kihihi trading centre, one Turyagenda with a UPDF Lieutenant and Sgt. Natukunda. He was stopped together with Baguma and their vehicle was checked but were left to go after forty minutes. As he approached Kashesha 1 polling station he found another roadblock with many people, lying on the ground, heads down. Soldiers at the roadblock stopped him. Those lying on the ground shouted out his name and he told them to get up. They got up and run away. He claims that there was another roadblock before getting to the polling centre that they encountered blocking them from proceeding. He managed to get to the polling station nevertheless and on reaching there found confusion arising from a claim that Kiconco Tabaaro had stuffed one ballot box with pre-ticked ballot papers, and that he admitted to have stuffed the box with 148 ballot papers. Munubi arrived on the scene with soldiers and started beating up the petitioner's agents and supporters, including Gaabo Henry, Godi, Komuhangi Stydia and Tumwebaze.
59. Musinguzi Enoch and Bahati Michael of Ruhara village, Kihembe parish swore a joint affidavit. They attended the rally referred to by Byaruhanga Frank and give its date as the Friday preceding the election day. They state Sgt. Natukunda and Kamara Bayeye addressed it. They repeat what Byaruhanga Frank states in more or less the same terms and add that they were told to denounce the Petitioner and left the rally in protest. On polling day at about 7.00am they were walking to the polling station. On the way they

met two armed soldiers who stopped and arrested them until 7.30am. Before releasing them, they retained Bahati's appointment letter as a polling agent.

60. Muhimbo Abel of Kengoma village, Kihembe parish, Kanyantorogo sub county states that he is the parish chief of Kihembe parish. During the parliamentary elections he exhibited no preference for any candidate as expected of a public servant. During the campaign period Mr. Kamara Bayeye, the RDC came to Kengoro trading centre in his parish. He did not find him there. He was told that the RDC had dismissed him. He ignored this information as there was nothing in writing. Munubi found the witness waiting to vote on polling day. He told the witness that by midday he will have chased him out of Kihembe. The witness voted and left for his home.
61. At about 11.00am while he was at home, narrating to people his ordeal, among who were those who had not voted as yet, Munubi came in Respondent No. 1's Mercedes Benz with armed and uniformed soldiers. Munubi and the soldiers assaulted the witness, arrested him and threw in the boot of the vehicle. People who were around fled. He was taken back to the polling station, transferred to a pick up and then driven to the Office of the RDC at Kihhi town. He was later released and he reported the matter to Kihhi Police station. He was referred to Kambuga hospital for treatment and examination.
62. Tugume Moses of Kyozi LC 1, Kihembe parish, Kanyantorogo Sub county, was a polling agent for the petitioner. On the 25<sup>th</sup> June 2001 at about 5.00pm he was going to inspect his gardens in Kyozi when he saw one Munubi Francis and other supporters of the Respondent No. 1 in a meeting at Kaharata's house. Munubi signalled a soldier in the car and talked him. The soldier came to the witness and asked why he was not in the meeting. He told him he was going to inspect his gardens. The soldier asked him twice who was the candidate of his choice but the witness told him this was his secret. The soldier held the witness by the neck and slapped him. The witness then told him since he had assaulted him the candidate of his choice was Garuga.
63. On hearing this Munubi came over from where he was seated and ordered the soldier to assault the witness more severely. Incessant blows, kicks and slaps to all parts of the witness's body followed. Munubi joined in the assault with a stick. This incident was reported to Kihhi police station and the witness was given a form for medical examination and treatment.

64. Gaabo Henry was a registered voter at Ntabagwe 11 polling station and a campaign agent for the petitioner. On 25<sup>th</sup> June 2001 while at home at about 8.30 pm a soldier who he knew as Brown came over to his house. The soldier demanded to know who was in the house and why he supported Musinguzi, a wrong person. The witness told him only his wife and his brother, Barigye Robert were in the house. The soldier beat up the brother.
65. Ntabagwe had five polling stations: Kashesha 1, Kashesha Atok, Kashesha 111, Ntabagwe 1, Ntabagwe 11, and Kashesha L-Z. On the morning of the polling day, at about 6.00 am the witness in company of Franck Tumwebaze, Mulemye, Barigye Robert and others were stopped at a roadblock on their way to Ntabagwe polling centre. He explained that he had assignments to do as a monitor of one of the candidates and he was allowed to proceed but the rest were told to go back.
66. At the polling station the witness objected to the use of a ballot box which contained pre-ticked votes stuffed therein by one Kiconco, without emptying it. Francis Munubi, the witness's father, arrived at that point with 4-armed soldiers and ordered the voting to go ahead without emptying the ballot box. The soldiers beat up the witness and one Godi. The witness ran off and hid in the near-by bushes.
67. Tumwebaze Medard of Nyakasharara village, Kihembe Parish, Kanyantorogo sub county was a campaign agent for the petitioner. He was detailed by the petitioner to ensure that there was little or no vote stealing or other malpractices at Ntabagwe 11 polling station. He proceeded very early to the polling station, and while approaching the polling station at about 6.00 am he was confronted by an armed soldier in the company of known supporters of Respondent No. 1 like Rukundo Bigambo, Tibesigwa Francis and others. The witness was ordered not to proceed. The witness found other vigilantes of the petitioner had also been prevented from proceeding.
68. At around 7.00 am, one Topher Kamara, a member of the Task force for the petitioner arrived and the soldier went to his vehicle. The witness used that opportunity to escape and proceed to the polling station. At the polling station he found people confronting Kiconco, that he had stuffed the ballot box with votes and it must be emptied before voting. Munubi arrived at that point with soldiers and they arrested Kaguriro. The soldiers then dispersed the crowd and ordered everyone to his polling station. Later in the morning at about 11.00 am Munubi came with soldiers and ordered them to arrest the

witness which they did while assaulting him. At the intervention of one Rwaguma the Sub county chief he was later released.

69. Rosemary Tugumisirize of Kayenje village, Mashaku parish , Nyamirama Sub county was a campaign agent for the petitioner. On the 23<sup>rd</sup> June 2001, there was a rally at Nyamirama trading centre addressed by an I.O. By the time the witness got to the rally the speaker had started speaking. He told the rally that the petitioner was a rebel. He further said soldiers would be deployed to ensure that the petitioner did not win. He urged the people to vote for the Respondent No. 1.
70. On the 25<sup>th</sup> June 2001, a lorry full of armed soldiers came to Nyamirama sub county headquarters. That night the witness with some other people spent the night not in their homes but at the home of one Hope, a friend who was a supporter of the Respondent No. 1. At the polling station the following day the Respondent No. 1's wife came ahead of a pick up truck with soldiers. When she left the soldiers chased away people off the polling station. The witness left.
71. Turyatunga Jacqueline of Karoni village, Kigarama parish, Nyamirama sub county was a vigilante for the petitioner with the duty of ensuring there was no vote stealing. On 25<sup>th</sup> June 01 a lorry full of soldiers came to Nyamirama sub county head quarters. At about 7.00 pm some soldiers found the witness at her house and told her to vote for the Respondent No. 1. The following day at the polling station some 3 soldiers voted under protests of the witness. Sometime at around 12.00 pm the soldiers sent away the witness and others who went and reported to the Sub County chief. The sub county chief escorted them back to the polling station and stated that they were entitled to be there. They were then allowed to stay.
72. Ariyo Amos of Nyamabare village, Karubeizi Parish, Kihhihi sub county was the polling agent of the petitioner at Nshaka L-Z polling station. At 8.30 a.m. on polling day he heard commotion from Nshaka 11/Samaria, a nearby polling station. He saw Nyindo Erika and Mbabazi Charles, petitioners agents at that polling station arrested and pushed into M/V UAD 310G. Nuwagaba, a nephew of the Respondent No. 1 grabbed the witness and demanded for surrender of the voter's register. With the help of Akili Alex, Nuwagaba bundled the witness into the vehicle where he found Charles Mbabazi and Nyindo Erika under arrest and guard of two people in civilian clothing with 2 pistols.

73. The witness and the others in the vehicle were driven to the Respondent No. 1's home. The Respondent questioned them and later he directed that they be taken to the police station. At the police station the O/C told those who had taken them there that it was not an offence to be in possession of registers. Those who took them refused to record statements and the Officer ordered the release of the witness and others arrested. They did not return to the polling centre having heard that the soldiers had taken over the polling stations.
74. Nyindo Erika was the polling agent for the petitioner at Nshaka II/Samaria polling station from where he was arrested, assaulted and thrown into a minibus UAD 310G, and was shortly joined by Ariyo Amos and Mbabazi Charles. Thereafter he provides the same account of what happened to them as Ariyo Amos and Mbabazi Charles.
75. Sabiiti Phoebe was a voter at Rukarara 1/Karabatungye 1 polling station. On polling day as she was going to vote she met people whose names she does not recall who told her that suspected supporters of the petitioner were being beaten severely at polling stations in Rwanga Parish. She feared to proceed and returned home. She did not vote.
76. Tigeita Jane of Kibimbiri was a voter and together with her husband supported the petitioner. On the night of 25/06/01, their house was attacked at night by people that turned out to be dressed in military uniforms and armed with guns. Her husband had suspected the attack and spent the night elsewhere. After failing to get the witness to open the front door the assailants kicked it several times but it failed to give way. One of the assailants broke into the house through a window and entered. He had a torch. He ordered the witness with her children out of the house. The assailants demanded money allegedly provided to the husband of the witness by the petitioner. She said they did not have any and demanded to know why they were being mistreated. They told her it was because of their support for the petitioner.
77. Tumuheise David Collins of Rwemisisi village, Bihomborwa parish was registered to vote at Kinyangwe II polling station and a polling agent of the petitioner. On the 25/06/01, at about 7.30 p.m. he was on his way home when he met Safari, an LDU and known supporter of the Respondent No. 1. He was with ten other people. They arrested and beat up the witness and also broke his bicycle. He made an alarm and they ran away. He reported the matter to the Police Station at Kihikihi. On polling day on the way to the

polling station he met Safari in LDU uniform and armed with others. They were arresting petitioner's agents and taking them to the local administration prison at Kihhi. The witness held back until Safari and his group left.

78. The witness then proceeded to the polling station. At around 10.00 a.m. the polling centre, comprising of four polling stations, was surrounded by soldiers. Following this Ali Rugomwa arrived on a pick up with armed soldiers. He proceeded to arrest petitioner's agents with copies of voters register, and forcefully loaded them on to the pick up and drove away. The witness managed to jump off the pick up and returned to the polling station. Thereafter he watched hopelessly as Respondent No. 1's agents ticked ballot papers for voters to cast.
79. Bamwanga David of Nyamirambi cell, Rushoroza parish, Kihhi sub county was a polling agent of the petitioner for Kabuga II, Kazinga III polling station. In the early hours of the 26/06/01 at about 2.00 a.m. he woke to find that David Ntambara, Chairman LC 11, and two soldiers had broken into his house and entered right into his bedroom. The soldiers assaulted the witness with encouragement of Ntambara. They stole the witness's Shs.50,000/= which they found under his mattress.
80. The witness was taken to the sitting room where he found one more soldier and ten civilians whom he knew as supporters of Respondent No. 1. These were Crevesto Barakagira, Charles Twinomugisha, Bafakubagye Gadi, Karoli Abel, Musekura, Rwahem, Tiburuhunga Mukwase, Julius Mugabe and Tumushabe. This group was drinking beer from his shop. Ntambara stated that the witness had betrayed the movement and one of the soldiers told him in Rukiga, "You refused Parliamentary Elections Actce, now we are going to kill you." The witness escaped through the back of his house and spent the rest of the night in the bush. He returned home at about 7.00 a.m. and went to vote but feared to remain at the polling station as an agent. He left and reported the matter to Kihhi Police station.
81. Byaruhanga Kanyabitabo Henry of Kasiro LC 1 was a campaign and polling agent for the petitioner. On the 14/06/01 at about 10.30 p.m. he was travelling in the petitioners vehicle, a Pajero, dropping off petitioner's supporters. They found a vehicle belonging to Captain Ndahura, parked across the road at Kasiro Cell. It was full of soldiers. The occupants of the petitioner's vehicle were ordered out of it. These were Irwin Musinguzi,

son of the petitioner, Birungi, Pamela, Mutekanga Hussein, and Jamil the driver. They were ordered to lie down on the ground and were assaulted. The vehicle was searched. A microphone was removed and money that was in the glove compartment stolen. The vehicle's windscreen was smashed. On the 26/06/01 while the witness was distributing appointment letters for polling agents for the petitioner, he saw Kamwesiga while at Mpungu. Kamwesiga was in a double cabin hilux pick up and it had soldiers on it. He dropped some soldiers at Kanyashogy trading centre.

82. Ensinikweri Narisi of Kazinga village, Rushoroza parish, Kihhi sub county was a campaign and polling agent for the petitioner. A few days before the polling day, Mr. David Ntambara, Chairman LC 11 Rushoroza, and campaign agent for Respondent No. 1 found the witness and others at a rally at Kanyegaramire trading centre and he wrote down their names. He told them that on the polling day he would make sure they do not vote. On polling day the witness got up early to go and witness the opening of the ballot box. On the way, just before Kibimbiri trading centre, he met Ntambara who was with Tiboruhanga Samuel, Mbareba, Alex, Twinomugisha Charles, Barakagira and others, all active supporters of the Respondent No. 1. They severely beat the witness. Ntambara took his tax tickets and shs.11,000/= in cash the witness had on him.
83. On the way to Kihhi a vehicle, with soldiers came and Ntambara handed over the witness and another person they had arrested to the soldiers. Ntambara told the soldiers, "Take them and beat them because they have been giving us hard time. Now that we have got rid of them, we shall vote properly." They were taken to the Sub county headquarters. The police asked them what had happened and the witness told them. The police went and arrested Ntambara but Ali Rugomwa and other supporters of Ntambara came and forcefully removed him from the police. The witness was taken to the polling station and he voted. He could, however, not stay to work as a polling agent because of his condition.
84. Father Karugaba Siliverino of Nyamwegabira Parish, was priest serving at Nyamwegabira Catholic Parish. He was not politically active for or against any candidate. On the polling day he was standing outside the catholic parish offices, part of the compound where there was a polling centre when at about 2.15 p.m. an ARDC, Mr. Alimundabira arrived at the scene, escorted by about twenty soldiers. He came over to where the witness was and after an interchange of words he ordered his soldiers to arrest

the witness and throw him onto his vehicle. The soldiers hesitated. He got hold of the witness and threw him onto the pick up. One of the soldiers then kicked the witness and the vehicle sped away.

85. At Kinyashohera the vehicle stopped. The ARDC came out and accused the witness of being anti-Government. After some angry exchange of words the ARDC got hold of the witness and threw him off the vehicle into the road and they drove off. The witness reported the incident to Kihikihi Police Station, and was provided forms for medical examination and treatment at Kambuga Hospital. The witness states that prior to the arrival of the ARDC the polling area had been surrounded by armed soldiers.
86. Gumusiriza Benson of Meizimera 11 cell, Kihikihi Township, was a campaign agent for the petitioner. He states, among other things that on the day of nominations, in the evening he was at Corner Pub, Kihikihi with Isaac Kayiwa. Present in the pub was Sgt. Natukunda and his escorts. Sgt. Natukunda heard the witness and his friend discussing that the Petitioner had overshadowed the Respondent No. 1 during the nominations and that he was likely to win. Sgt. Natukunda arrested the witness and his friend, removed their shirts and shoes and made them lie at the back of his pick up for two hours while his escorts sat on their heads. Subsequently he slapped and kicked them, warning them that if they continued to show support for the petitioner, the government will show them more than he had shown them that evening. On other occasions he threatened to expel them from the township.
87. Hadija Mubarak of Ndeeba cell, Kihikihi recounts the 14<sup>th</sup> June 01 attack on the petitioner's supporters' procession from a rally at Nyamirama that occurred in Kihikihi. She also witnessed the arrest of the Petitioner's agents at Meizimera 1 polling station by soldiers brought by Ali Rugomwa. Together with Kyarimpa Charity they became the victim of an assault by Respondent No. 1's supporters when they complained about one Lilian Babigumira who was voting more than one once. Both of them suffered injuries and Kyarimpa Charity had a miscarriage.
88. Hakiza Sam of Rwemisi 1 village, Rwanga parish was a polling agent for the petitioner at Rukarara 1/Karabatungye polling station, who had a copy of the voters register. On polling day he was arrested by Ali Rugomwa and three soldiers and taken to Kihikihi police station while at the same time he was being assaulted. On their way to Kihikihi police



station they stopped at Kihihi playground and David Kakuyo, another of the petitioner's agents was brought and loaded onto the pick up too.

89. David Kakuyo of Rutwe village, Kihihi Trading Centre was the petitioner's agent at Kasiro polling station. He states that he had a copy of the voters register on polling day. Just after 9.30 a.m. he was violently arrested and assaulted by soldiers, dumped on a pick up, where he found several other agents of the petitioner, and taken to Kihihi Police station. Eventually they were released but he had lost his voters register in the process. They experienced fear and intimidation thereafter.
90. Mbabazi Charles of Omukirwa, Karubeizi parish was a polling agent for the petitioner. He was part of the agents of the Petitioner, including Amos Ariyo, arrested by soldiers and Respondent No. 1's agents and taken to the Respondent No. 1's house before finally being taken to the Police station at Kihihi.
91. Mungyereza Richard of Kinyangwe village, Bihomborwa parish was appointed to monitor the operations of the petitioner's polling agents in Bihomborwa Primary School playground polling centre where there were 4 polling stations. He states that on polling day, Mrs Specie Kiiza in the company of armed soldiers arrived at the polling centre. She ordered two of the soldiers to arrest four agents of the petitioner that she found with copies of the voters register. The agents arrested included Kasongo, Collins and Busingye.
92. Ali Rugomwa arrived on a pick up with soldiers too, and some of the agents of the petitioner already arrested. He ordered the soldiers to remove the shirts of the agents they found and load them on to the pick up. He took away the agents who only returned after 1.00p.m.
93. Mutekanga Hussein of Nyamwegabira village , Nyakatunguru parish was a campaign and polling agent for the petitioner. He sets out in detail in his affidavit the 14<sup>th</sup> June 01 attack on the petitioner's car. He was in the car at the time, and suffered injury from the assailants. On polling day at about 9.00 a.m. Mariko Babicwa, the parish chief, and Turyagenda, an LC 1 chairman came with soldiers to the Nyamwegabira polling centre. Turyagenda ordered the arrest of the witness for possession of a voter's register which was effected. People protested and the soldiers cocked their guns. The O/C, Kihihi Police

Station arrived and intervened and the witness was released. The witness witnessed the arrest of Father Karugaba by Mr. Alimundabira, the ARDC.

94. Niwagaba Deus of Mushunga cell, Nyanga Parish, Kihhi sub county was a campaign agent for the petitioner. He states that he was at Bukorwe 1 polling station when Ali Rugomwa came with soldiers and arrested the petitioners agent who had a copy of the voters register. He went away with the agent on a pick up and the witness decided to follow him. He went to four other polling stations arresting Petitioner's agents. These were Bukorwe II, Ishasha A-L, Ishasha M-Z, Nkunda Parish and Bihomborwa Parish.. The group were delivered to Kihhi Sub county headquarters. The witness found other agents of the petitioner already arrested and sitting outside the ARDC's office in the sun. They were finally released at around 1.00 pm.
95. Niwagaba Robert worked as an assistant presiding officer at Nshaka 11/Samaria polling station. He states that on polling day when he attempted to stop the presiding officer Mr. Kamurigira from pre-ticking votes for voters, he was threatened by supporters of Respondent No. 1 that they would beat him up. He hopelessly watched on as various other malpractices were committed at his station including use of other people's voters' cards to vote. He states that soldiers came to the polling station and disrupted the voting process by forcefully attempting to arrest the petitioner's agent.
96. Nteziyaremye Gideon of Rwerere village was polling agent for the petitioner at Kazinga 1 polling station. On the evening of 25<sup>th</sup> June between 10.00 p.m. –11.00 p.m. Ntambara David with 13 people, all known to the witness came to his shop, as he was still serving some customers. Ntambara had an iron bar and the rest of the group was armed with staves. They demanded copies of the voters' register that he had. The witness refused to accede to their request. And they left. Later in the night at around 1.00 a.m. Ntambara returned and broke into the witness's house. He was in the company of 4 soldiers. The witness ran away to his main home where he shortly thereafter met a David Bamwanga, who told him he had also been attacked that night.
97. The witness slept at his mother's house and the following morning he reported to the polling station where he started cross checking the voters against a copy of the register that he had. As he was doing that, Isa Mohamed, Ali Rugomwa and 3 soldiers appeared and demanded authority for his being in possession of a copy of the register.

Pandemonium broke out and the witness escaped into hiding and never returned to the station to execute his duties as a polling agent.

98. Busingye Enos of Murushasha village, Mpungu parish, Kayonza sub county states that he was a polling agent for the petitioner at Muramba 1 polling station in Muramba parish. Voting started after the arrival of ballot boxes at 9.00a.m. But prior to this he had witnessed Caleb Tumwesimire hand about 200 voters cards to Justus Kazaarwa. The witness, apparently with others followed Kazaarwa to a nearby market, and forced him to surrender the cards to the witness. Thereafter some soldiers arrived and this galvanised Kazaarwa to reclaim the voters' cards.
99. Later on at about 10.00 a.m. Kamwesiga arrived with soldiers and arrested the Petitioner's agents and made them sit on the ground and take off their shoes. These acts scared the witness so much so that thereafter he could no longer complain when Respondent No. 1's supporters perpetuated malpractices during the voting.
100. Busingye Peter of Kakureijju village, Kyeshero parish, Kayonza sub county was appointed by the petitioner as coordinator for polling for the polling stations of Rugando 1 A-K, Rugando 1 L-Z, Rugando II A-K, Rugando II L-Z, Rugando III/Rutendere and Rutendere II. On the eve of polling day the witness with others were travelling around Ntungamo Parish when their vehicle broke down at Munyaga Bridge. While it was being prepared some soldiers came aboard a pick up vehicle. The witness and his group took off and hid in the bush until the soldiers left. Thereafter they feared to continue to Ntungamo, and after the vehicle was repaired, returned home.
101. On the following day, the witness reported to the polling station. As voting was proceeding Kamwesiga came with some soldiers, and ordered the witness and others to go home. The soldiers present cocked their guns, and the witness run away to a distance where he could not monitor what was going on at the polling station.
102. Byaruhanga Enoch of Nyamirambi village, Kyeshero Parish, Kayonza sub county was appointed a polling agent for the petitioner at Rugando III/Rutendere I polling station. On the 25<sup>th</sup> June 2001 he attended a rally addressed by the ARDC, Mr. Alimundabira at Nyamirambi trading centre. The ARDC told the rally that the people should compile a list of the petitioner's supporters as he had learnt they were going to cause violence at the election. He was joined at this rally by a Major in the army, who

arrived while he was speaking, escorted by soldiers in an army vehicle. The Major also addressed the rally. He told the people that they did not go to the bush to fight wars like the one the petitioner was going to wage if he won the election. To ensure that the Respondent No. 1 won, the Major said that they would deploy soldiers all over the parish. Indeed by 8.00 p.m. the soldiers were around and telling people to go to bed early.

103. The witness states that the following day at the polling station Kamwesiga came with soldiers at about 3.00 p.m. and inquired as to how many ballot papers were left. The presiding officer told him 2 ½ booklets. He ordered him to give ½ a booklet to the soldiers who voted. Those soldiers were not from the parish in question.
104. John Viani Muhwezi of Katabaruza cell Kyeshero parish, Kayonza sub county states that he was a campaign agent for the petitioner and a voter at Rugando III/Rutendere Polling station in Kyeshero parish. On polling day he voted at this station and stayed to witness the process. At around 2.00 p.m. the parish chief ordered those who were not polling agents to leave the vicinity of the polling centre. The witness and others refused to budge. At around 3.00 p.m. Kamwesiga arrived with soldiers in tow. The witness complained about one Grace Buhati trying to cast two votes. Kamwesiga turned on the witness, seized him and ordered the soldiers to beat him up. The soldiers slapped the witness several times. The witness was thereafter handed over to the LC II chairman.
105. Kwizera Joseph of Rugando Cell, Kyeshero parish, was a campaign agent for the petitioner and voter at Rugando I L-Z polling station. He states that he was charged by the Petitioner to monitor informally the voting process at the polling centre that contained six polling stations. Things were moving smoothly until about 2.00 p.m. or shortly thereafter. Mr. Rwamahe and another person came to the station and requested to be allowed to vote with the many voters' cards that they had. The witness refused. Mr. Rwamahe went away but he was to return at around 5.00p.m. with soldiers and he directed them to the witness. They beat up the witness and ordered him out of the polling centre. He left and never returned.
106. Mugabe Gregory Frank of Factory Cell, Ntungamo parish, Kayonza sub county, states that he was campaign coordinator for the petitioner for the entire Kinkizi West Constituency and chairman for the petitioner's task force for Kayonza sub county. During the campaign period the witness received threats from Kamwesiga, ARDC Alimundabira

and Sgt. Natukunda that they would be arrested for being anti-government. Following the President's rally at Butogota, where he endorsed the candidature of the Respondent No. 1, the threats intensified and the witness was forced to be in and out of hiding.

107. On the 25<sup>th</sup> June 01 in the company of the Petitioner the witness reported to the Police Post at Butogota and made a complaint. The police confirmed that they had received the orders of the ARDC, Alimundabira, to arrest him. While the witness was recording a statement, the ARDC came into the police post, and asked if they had apprehended the witness. The police told him they could not arrest him without a charge. The ARDC told them to make sure they arrested the witness before midnight that night. He went away. It was then that the witness realised that the ARDC did not know him. Thereafter he went with the Petitioner and stayed with him at Savanah Hotel. On polling day he sneaked into his polling station, voted and returned into hiding.
108. Faibi Mukankusi of Nyamirambi LC 1, Kyeshero Parish, Kayonza sub county was a polling agent for the petitioner at Rugando 1 L-Z polling station. On polling day Kamwesiga came with some of soldiers at the polling station and one of them forced her to move away from her table near the polling officials where she was observing the polling from. She complied.
109. Nfitimukuza G. Mbonigaba of Nyakishojwa village, Kyeshero parish, Kayonza was a monitor for NEMGROUP deployed to observe elections at Rugando 1 A-K polling station, Kyeshero parish Kayonza sub county. He states that he reported to the polling station at 5.45am but found that soldiers had surrounded the entrance to the playground and blocked entry. At around 7.00 am the soldiers allowed the witness and others to enter the playground. Voting did not start until about 9.55 am. The polling officials initially treated all voters the same way until about 3.00 p.m. with the arrival of Kamwesiga and about 30 armed soldiers. The soldiers shouted at the people and even beat up one John Viani Muhwezi. People scattered in all directions. Kamwesiga told the presiding officer, "now you can do your work." Thereafter voting malpractices started with many ballot papers being given to known supporters of Respondent No. 1.
110. Niwagaba Joseph of Nyamirambi village, Kyeshero parish, Kayonza sub county was the polling agent for the petitioner for Rugando 1 N-Z polling station. He states that he had a copy of the voter register to verify the genuineness of voters casting their votes. It

was removed from him by the Muluka chief at about 9.30a.m. on polling day. Later Kamwesiga appeared at the station with soldiers. After receiving threats from one soldier the witness looked on hopelessly as Mbanabugabo and others cast multiple votes.

111. Reverend Stephen Besigye of Butogota village, Ntungamo parish, Kayonza sub county was a campaign agent for the petitioner in Kayonza sub county. He attended a rally on 22<sup>nd</sup> June 01 at Kayonza tea factory addressed by Sgt. Natukunda who told the people that if they voted for the petitioner the government would not be responsible for their security if the interahamwe attacked the area. The witness confronted Sgt. Natukunda for partisanship in the campaign when he was a public official.
112. On 23<sup>rd</sup> June 01 while in Kihhihi, he was informed that his home had been attacked by soldiers and he did not return until the 24<sup>th</sup> June 01. He found his daughter who reported that soldiers had attacked the home and beaten her up, broke into his bedroom and made off with Shs.350,000/=. He took his daughter to the police post at Butogota and she made a statement. The witness did not spend that night at home either. On returning the following day he found that soldiers had spent the night in his compound. Soldiers continued to look for him on 25<sup>th</sup> June 01, and he had to move by stealth. On polling day at Butogota 11 polling station supporters for Respondent No. 1 were ordering the voters to tick the Respondent No. 1's name on the ballot paper. The witness and petitioner's agents resisted this until the Respondent No. 1 visited the polling station and addressed the people at the polling station. Thereafter the tide of malpractices was unstoppable.
113. Twinomuhwezi John Bosco of Rutendere LC 1, Kyeshero parish, Kayonza sub county stated that he was a mobiliser for the petitioner in respect of Kayonza sub county in the last parliamentary elections. On the 23<sup>rd</sup> June 01 at about 9.00 p.m. he left Butogota trading centre with Tanasi Shwekyerera in the witness's motor vehicle no. 258UDH, a Toyota corolla being driven by Kenneth Namanya, the witness's driver. The witness was in the back seat. They were going home. On the way he noticed that they were being followed by a pick up truck which he initially thought to belong to Bwindi Impenetrable forest. He ordered the driver to drive slowly and give it clearance to overtake them. It did not overtake them but merely continued to follow them.

114. About 4 kilometres from Butogota the witness's vehicle branched off to the road going to his home area. The pick up also turned. The witness looked at it more closely and realised that the person seated in the front of the pickup was armed with a gun. He immediately alerted his friends that it appeared they were being trailed. The driver then packed the vehicle by the roadside and the pick up passed them and then stopped in front, blocking off the road. Someone jumped out and ordered them to get out of the vehicle. He recognised him as Kamwesiga. He was armed. Without waiting for the witness to get out of the vehicle Kamwesiga shot at him straight in the eye and the witness fell.
115. Shwekyerera and the witness were forced out of the vehicle, taken behind the witness's car and made to lie in the road. The driver was also dragged out of the vehicle and all were severely assaulted. The pick up was turned to face the witness's vehicle and its lights were trained on the witness's vehicle. As Kamwesiga assaulted the witness he asked the whereabouts of Mugabe Frank and Reverend Besigye. The witness told him he did not know their whereabouts. Kamwesiga stripped them off everything they had and demanded for money. He forced Shwekyerera's briefcase open and took out the money that was there. He then ordered a military policeman that he was travelling with to get into the witness's vehicle and he put the witness and Shwekyerera into the pick up and drove them to Kihhi Police Station.
116. At the police station he handed them over claiming he had arrested them while they were distributing money to voters and purported to exhibit the money he had taken from them. The witness was taken to Kihhi Health Centre for treatment. The following day he was taken to Kambuga Hospital, and then Kisizi Hospital and in turn referred to Ruharo Eye Centre in Mbarara. Ruharo Eye Centre referred the witness to Mbarara Teaching Hospital where his eye was removed on 27<sup>th</sup> June 01. As a result of the said matters the witness could not mobilise for the petitioner or even vote. Atanasi Shwekyerera made an affidavit in more or less the same times as provided by John Bosco Twinomuhwezi.
117. Evidence of pre-election intimidation, harassment and violence for Kayonza sub county is also contained in the affidavits of Tinkabeire John, Tukwasibe Caleb, Wamala Justus, Boston Barya, Bob Kabushenga and Tugume John.

118. Evidence of pre-election intimidation, harassment and violence in respect of Nyamirama Sub county is also contained in the evidence of Katabazi Gabriel, Kanaaba Willy, Kiconco Wilson, Rwaboona George, (Mashaku parish); and Muriisa Jones, (Nyamirambi parish).
119. Evidence of pre election intimidation, harassment and violence in respect of Kanyantorogo sub county is also contained in the affidavits sworn by Bahiira Frank, (Burema parish); Bariyo Charles, Komuhangi Stidia, Mubangizi Milton, Tumwebaze Medadi, (Kihembe Parish); Biteirweho Phillip and Musinguzi Zainab, (Nyamigoye Parish).
120. Mukiga Alex of Rukungiri town states that on 27<sup>th</sup> June 01 he was at the boda boda stage in Rukungiri at about 8.30am when he saw two lorries full of armed soldiers chanting words in Swahili, “Tumeshinda adui Musinguzi” which translated into, “ we have defeated Musinguzi the enemy”. The vehicles did not stop but took the Nyakibare direction on Kabale-Ntungamo Road. Baguma Robert of Rukungiri town gave somewhat similar evidence to that of Mukiga Alex.
121. Nyenihire Peter, a parish chief of Kiringa Kambuga sub county, states that on the 25<sup>th</sup> June 01 they were drinking in a bar at Kambuga Trading Centre when a convoy of five fuso lorries full of armed soldiers came from the direction of Rukungiri. The witness and other people gathered outside as the convoy passed. The witness heard a soldier saying, “Where is Musinguzi the rebel? We are going to uproot him. We will not allow Kanungu to be infiltrated by rebels.”
122. Twongyeirwe Johnson of Kanyankyende village, Rukugunda parish in Kinkizi east constituency was at home on the 25<sup>th</sup> June 2001 at about 8.30 pm. 5 fuso lorries full of soldiers came from the direction of Kanungu to the direction of Kanyantorogo. He heard some people chanting, “Mbabazi no change, Musinguzi adui.” The witness did not know where the soldiers were heading.
123. I now turn to the evidence for the Respondent No. 1 on this issue. The respondent no. 1 swore two affidavits and was cross-examined in court. He states that he is a qualified lawyer and enrolled advocate of the High Court. He states that he knows the provisions of the Electoral Commission Act and the Parliamentary Elections Act and was determined to comply with all their provisions from nomination to polling. He ordered



his agents to similarly comply with the law. He denied all the allegations in the petition and supporting affidavits against him. He denied the claim that the elections were not conducted in accordance with the law.

124. He stated that though there were a UPDF battalion and detachments at Kanyantorogo, Bwindi, Ishasha, Butogota, and Kihiki to secure the area and keep peace because of previous incursions by the Interahamwe and ADF, there was no deployment of the Presidential Protection Unit and UPDF in or for the election process. For the last 15 years the Respondent No. 1 has been guarded and escorted by Military Police Personnel and these were the only ones that camped at his home or were used by him during the campaign period.
125. A police constable passed his home with two suspects on polling day because the driver of the vehicle that had given them a lift wanted to greet the Respondent No. 1. He greeted them and talked to one Ariyo who is a neighbour who told him the reason for his arrest. Otherwise he did not at all interfere with police work. He denied ever calling the petitioner an ADF rebel for he had no evidence that pointed to that conclusion. He specifically among others denied Mbabazi Charles's affidavit and Nyindo Erika's affidavit and stated that the affidavits were false.
126. Respondent No. 1 did not know that his campaign agent, James Vincent Kamwesiga was armed until the incident of shooting during the campaign occurred. He did not know much about the incident. It was possible for a civilian to be armed by the police or the army or even ISO for if one were a security personnel you would ordinarily have a gun.
127. Ali Rugomwa stated in his affidavit that allegations against him alleging he had committed any election offences and illegal practices contained in various affidavits in Vol. 1, 2 & 3 of the Petitioner were not true at all. He was the overall supervisor of the task force of the respondent for Kihiki sub county. On polling day he voted at Kasiro polling station in Kihiki town. He went to Kibimbiri where there five polling stations, Rushoroza, Nyakatunguru, Nkunda and Nyanga Parish. He did not see any soldiers of UPDF or of the PPU.
128. He denied the contents of the affidavits of Hadija Mubarak and Gumusiriza Benon, asserting that he never voted in his brother's name or any one else. He stated that

Hadija Mubarak has a grudge against him arising out of his father's estate, administered by him. Hadija Mubarak is a sister in law to the witness. He denies assaulting Hakiza Sam and the contents of his affidavit in para 12, 13 & 14. He denies the contents of the affidavit sworn by Mungyereza Richard. On the contrary he asserts that he was hired by the O/C Kihikihi Police Station to take two police officers to Bihomborwa parish where a misunderstanding had broken out between the petitioner's agents and presiding officers. Petitioner's agents wanted the polling officials to use the registers that they had and not the official registers that were supplied to the polling officials. The police resolved the dispute by taking away the petitioner's agents registers and voting proceeded smoothly thereafter.

129. Ali Rugomwa denied that he confiscated any registers of the petitioner's agents or arrested anybody at Bukorwe 1 polling station. He denied the contents of the affidavit of Nuwagaba Deus. He denied the contents of the affidavit of David Collins Tumuheise and Sarafina Turinawe.

130. David Ntambara is the LC II Chairman of Rushoroza and he was a campaign agent for the Respondent No. 1. He denies the allegations made against him by Bamwanga David and Ensinikweri. In particular he denies storming the house of Bamwanga with or without soldiers or abducting and assaulting Ensinikweri. On his way to vote he told by one Nzamuhabwa that he was needed at the police and when he reached there he was told by the officer at the reception that he was not needed.

131. The witness was the parish coordinator for the Respondent No. 1's campaign. He had over a hundred agents for the petitioner. These included Twinomugisha Charles, Masekura Henry, Bagambagye Gadi, Rwaheru George, Mugabe Julius, Kasole Abel, Mukwase, Tibomuhanga Ismail, Ngoboka Elidadi, and Miryango David.

132. James Vincent Kamwesiga was the official campaign agent for the Respondent No. 1. In absence of the candidate anything official related to the election had to be handled by him. Mr. Kamwesiga swore two affidavits and was cross-examined. He denies all allegations against him in volumes 1, 2 & 3 of the petitioner's evidence that he committed an illegal practice or other offence during the elections. He denies that the Respondent No. 1 used government resources or the presidential protection unit to campaign or during the campaigns. He denies that he intimidated, harassed arrested or

beat up the petitioner's supporters. He asserts that the election was free and fair and was held in an atmosphere of freedom. He asserts that all affidavits in support of the petition are false.

133. Kamwesiga specifically denies the affidavits of Byaruhanga Kanyabitaho Henry, Mwikirize Moses, Busingye Enos, Byaruhanga Enoch, Mugabe Gregory Frank, Faibi Mukankusi, Nfitimukiza G Mbonigaba, Reverend Besigye, Tinkabeire John, Atanasi Shwekyerera, Tugume John, Twinomuhwezi John Bosco, Wamala Justus, and Muriisa Jones in so far as they make specific allegations against him, and in some cases offers his own version of events. He denies the contents of affidavits of Tusingwire Gasto and Ampeire Dinah, asserting that Ampeire Dinah has a grudge against him and his family.
134. In relation to the incident in which he fired a gun at Twinomuhwezi John Bosco he states that the vehicle in which Twinomuhwezi was travelling had been trailing him for about two kilometres that evening, and had first shot at him in an ambush and he had fired back in self defence. He states that there were five people in that vehicle, one had a gun and another a torch, and that these two escaped. He arrested the remaining three in the car and took them to the police station at Kihhihi and handed them over with what they had.
135. He stated that he was an ISO staff who had been issued with a gun for his protection. He did not have a firearm certificate authorising him to bear arms. He at times moved with his AK-47 Rifle during the campaigns but did not carry it on election day. The Respondent No. 1 was not aware that he was armed or that he was an officer with ISO, the Internal Security Organisation.
136. Ojao Samuel was the District Police Commander of Kanungu District. He states that no soldiers were used in the electoral process and he had sufficient police officers and LDUs to deploy as election constables. The elections were peaceful.
137. Edward Natukunda is a sergeant and an intelligence officer with the Uganda Peoples Defence Forces stationed in Rukungiri and Kanungu districts. He states that his duties are purely intelligence work within those two districts. He states that during the elections he never worked with Jackleene Mbabazi, James V Kamwesiga, Alimundabira, Donato Kananura, and Rwamahe Emmanuel. He did not address any rallies. He did not

take any instructions from or report to the Respondent No. 1. The witness does not know Ali Rugomwa or Jack Tumwesigire.

138. There was no deployment of the Presidential Protection Unit during the campaigns save during the visit of the President to the area, and the PPU left with the President. UPDF did not get involved in the elections. A one Magidu, a veteran was arrested for fear that he was leading a group of veterans intending to disrupt elections. Once he was arrested the veterans disappeared. He denies the affidavits of Byaruhanga Kanyabitaho, Gumisiriza Benson, Kwehagana Charles, Kwijuka Charles, Mutekanga Hussein, Mwikirize Moses, Busingye Peter and any other person who depones that he addressed a rally decampaigning the petitioner. He denied the affidavits sworn by Tusingwire Gasto, Karakyezi Salongo, Peace Musinguzi and Christopher Byaruhanga.
139. On election day the witness states that he travelled early in the morning to Bwindi and came back in the evening. He did not notice any roadblock on the way and there were no roadblocks on election day.
140. Captain Atwooki B Ndahura is an officer in the UPDF, a staff officer in the office of the Military Assistant of the President, and Commander of troops from the PPU deployed in Rukungiri during the period in question. As the President was to visit Kanungu District on 12<sup>th</sup> and 13<sup>th</sup> June 01 he moved to Kanungu District to secure the area. On the 14<sup>th</sup> June 01, not having received any instructions to pull out, he joined a team that included DPC, ARDC, DISO and O/C Kihikihi Police and they moved in the same vehicle from about 12.00 p.m. to 7.00 p.m., returning to Kihikihi, sat at Corner Pub for refreshments. He stayed at Corner Pub until 1.00 a.m. when he left for Kanyantorogo Military Camp where his troops and himself were camped.
141. The witness denies the affidavit of Byaruhanga Kanyabitabo Henry, and asserts that ARDC could not have ordered his troops, being a civilian. His escorts did not assault anyone and rowdy and illegal procession of the petitioner was dispersed by the O/C Kihikihi Police on the instructions of the DPC. There was a procession of the Respondent No. 1's supporters in one vehicle, a pick up and these were asked by the police to sit near the team at Corner Pub. The illegal procession was dispersed by the police. Neither the witness nor his soldiers were involved in the attack on the Petitioner's vehicle that evening.

142. Kamara Bayeye is the Resident District Commissioner of Kanungu District. He states that he never campaigned for the Respondent No. 1 and any affidavit to that effect was false. As a result of reports that the petitioner had mobilised veterans from Kasese and non-Ugandans from Congo to come and vote him and there reports of an imminent invasion by the Interahamwe the witness mobilised local council personnel, chiefs and defence secretaries urging them to sensitise the masses on the security of the District. The army was not involved at all in the electoral process in the District. The army remained in their barracks.
143. Emmanuel Rwamahe Byabajuluzi denied the allegations against him in the affidavit of Byaruhanga Enoch. He states that the contents thereof are false and malicious. Byaruhanga Enoch bears a grudge because sometime early in the year he had helped LC officials to apprehend Byaruhanga for theft of cattle belonging to Mrs. Kibariroha. The witness voted at Rugando 1 A-K and never went to Rugando 1 L-Z whether alone or in the company of soldiers.
144. Kiconco Tabaro, in cross-examination stated that there was no violence at the polling station where he was the presiding officer. Julius Shalita is the Gombolola Internal Security Officer for Kanyantorogo sub county. He denies the allegations against him in the affidavits of Bahiira Frank and Beteirweho Phillip. He asserts that he never took any instructions from the Respondent No. 1 nor was he, his agent. He never addressed any rallies during the election period. His wife operates a restaurant at their residence which was open to supporters of both candidates. It was not an office for Respondent No.1. He did not detain Phillip Biteterweho though he received a report that he had assaulted a voter. When he went to check, the matter had already been reported to the police. He did not interfere.
145. Specie Kiiza was a campaign agent for the respondent no. 1 in Bihomborwa parish. She joins Ali Rugomwa in explaining that it is the petitioner's agents that were insisting that the presiding officers use their registers rather than the official registers. In Bihomborwa polling stations the police officers removed these registers and voting proceeded smoothly, freely and fairly. There were no soldiers at all at the polling stations in Bihomborwa. All affidavits for the petitioner claiming malpractices were false.

146. Eve Ahimbisibwe attended all the rallies of the candidates at Kihhi town. The respondent no.1 never used any abusive or threatening language against the petitioner. Stanely Twongyeirwe denies in his affidavit that he travelled with or took soldiers to the polling stations or to people's homes as alleged by Kiconco Wilson, Murrisa Jones and Katabazi Gabriel. There were no soldiers at any of the polling stations he visited. He never travelled with Kamwesiga or Rwemisisiro. Reverend Gersom Nyesigire is a pastor of Rugando church of Uganda parish. He states that there was no insecurity, intimidation or unlawful activities at his polling station, Kyesero during the elections. Karisiti Mbanzabugabo denies that he ever saw or talked to any soldier at his polling station of Rugando 1 L-Z as alleged by Niwagaba Joseph in his affidavit.
147. Charles Shiribukana asserts that para 8 of the affidavit of Hakiza Sam is false. He never came across Hakiza Sam and his group or poured their drinks. Tumwesimire Caleb in relation to violence, intimidation or harassment, states that when he went to Miramba II/Buramba L-Z polling station he did not chase away any on-lookers, and he did not have 5 or any soldiers as alleged.
148. I now turn to the evidence adduced for Respondent No. 2. Moses Kanyarutokye who was the supervising officer for Kayonza and Kanyantorogo sub county save for Kihembe parish. He states that during the supervision he did not see any army men manning the polling stations or inside polling stations and did not find any road blocks on the way at all. He never saw anybody being arrested or receive complaints to that effect. At Burema parish he explained to the voters and the presiding officers there that the petitioner's agents were allowed to use their register if they were genuine.
149. Twesigye H Mukombe was the presiding officer at Kiniabizo L-Z polling station. He states that contents of paragraph 12 of the affidavit of Rwaboona George were not true in so far as even if all the polling station were in the same vicinity, there were not all visible at the same time. Para 5 & 6 are somewhat incomprehensible in their description of distances. There were no army personnel at his polling station. Tumwijukye Peace was the presiding officer at Nyakinono 1 M-Z. She states that there were no soldiers at her polling station as alleged by Rwaboona George in his affidavit.
150. Twine John was the presiding officer of Butogota III polling station. There was no harassment of voters by Respondent No.1's supporters. There was no army deployed to

the polling station and security was controlled by the polling constables. Monday Robert was the presiding officer at Kishenyi II polling station. No soldiers stormed the polling station. Bafaki Olivia was the presiding officer for Butogota II A-L. She denies the contents of Para 20 of the affidavit of Rev. Besigye. Respondent No. 1 did not do anything attributed to him in that paragraph.

151. Kaweesa Eliphaz was the presiding officer at Nshaka I A-K polling station. He disputes the truth of the contents of para 7, 8 & 9 of the affidavit of Kyatengirwe Jovia. No soldiers stormed the polling station and no agents were arrested. The petitioner's agents did not turn up at all. Twongyeirwe Michael was the presiding officer of Nyakabingo Kishenyi I A-K polling station. He rejects para 7 & 8 of the affidavit of Tugume John, asserting that he never saw Kamwesiga at the Polling station. He does not directly dispute the contents of para 9 of Tugume's affidavit save to state that the polling exercise was conducted in a peaceful atmosphere.
152. Rwemarika John was the presiding officer at Nyabitanda 11 polling station. He rejects paragraphs 18 to 24 of Reverend Besigye's affidavit as untruthful. He did not see any soldier at the polling centre. Turinawe Medard was the presiding officer of Kamahe 1 polling station. The army or any other people did not interfere with polling process. The polling constable was in charge of the security at the polling station.
153. Zirarusha Phenahas was the presiding officer for Bukorwe II polling station. He states that paragraphs 10, 11, & 18 of the affidavit of Denis Nuwagaba dated 27<sup>th</sup> July 01 are not true. Ali Rugomwa did not arrest or pick up any agent from the polling station as alleged in paragraph 11. The whole polling process was peaceful and ended well. Muhwezi Wence was the presiding officer at Kanyantorogo polling station. He states that there were no army men at the polling station or within the vicinity. He states that the contents of paragraph 11 of the affidavit of Bariho Frank are not true.
154. Tabaaro Kiconco swore an affidavit for the respondent no.2, in addition to the one he swore for Respondent No. 1. In cross-examination he insisted though that he had sworn only one affidavit dated 10<sup>th</sup> August 01. I shall therefore disregard the one dated 28<sup>th</sup> September 01 for respondent no.2 as he rejected it orally.
155. Bernard Tindiwegyi was the presiding officer at Muramba 11 polling station. He states that the contents of paragraph 23 of the affidavit of Mubangizi Milton are not true.

He did not see any soldiers at his polling station and there was no harassment of voters at all by anyone on polling day.

156. Lydia Tumusiime was a polling assistant at Kashesha 1 polling station. She denies that there were any pre-ticked ballot papers as alleged by affidavits of Mubangizi Milton, Bariyo Charles, Bahira Frank, Stidia Komuhangi and Abel Muhimbo. No soldiers came to the station at any one time to control the station or harass the voters.
157. Byamugisha Augustine was the presiding officer at Muramba III/Buremba I polling station. He states that the contents of paragraphs 4 & 6 of the affidavit of Tukwasibwe Caleb are false. He knows Caleb Tumwesimire and he did not do the things ascribed to him in paragraph 6. There were no army men at his polling station and the petitioner's agents used their registers freely.
158. Rwaguma Ben was the Sub County Chief for Kanyantorogo and he supervised the elections in the said sub-county. He did not see any roadblocks on the way or army men at the polling stations or in their vicinity. He received no report of confiscation of petitioner's agents' registers and Mr. Moses Kanyarutokye had explained that these could be used if they were authentic by the agents. The contents of Para 5 of the affidavit of Muhimbo Abel and 3 of Biteirweho Phillip are not true. He has no knowledge of the contents of paragraph 4 & 5 of Biteirweho as no report was made to him.
159. Nahabwe Samuel was the presiding officer at Nyabubare polling station. He states that save for the time that voting began paragraph 7 of the affidavit of Musinguzi Zainab is not true. Para 5 of the witness's affidavit was incomplete with a portion erased by whiteout fluid. A copy of the same affidavit given to court by counsel for respondent no.2, in the bound volume, is similarly affected but with slightly more words in the paragraph. I will set both of them out. "That the GISO did come to the polling station but he left the soldiers" And the other version is, "That the GISO did come to the polling station" The editing was haphazard! He asserts that paragraphs 8, 9 & 10 of the affidavit of Musinguzi Zainab are untrue.
160. Tukamusherura James was the presiding officer of Nyabubare 1 polling station. That the GISO came to the polling station, not at 1.00 pm but at 11.00 a.m., and the witness did not see any soldiers with him. Phillip Biteterweho was not chased away but was told to keep calm as he was creating confusion and unrest at the polling station. He



remained at the polling station all day. Paragraphs 8 & 9 of the affidavit of Musinguzi Zainab are not true. Monday Sam, Josephat Kasigi, Story Feder all of whom originate from Nyamigoye parish have never shifted station as alleged in paragraph 9 of the said Zainab's affidavit.

161. Twesigome Evarist was the presiding officer at Kashesha A-K polling station. He states that he did not see any army men at the polling station and the election was conducted peacefully. He rejects paragraph 23 of the affidavit of Mubangizi Milton as untrue. No soldiers surrounded the polling station or forced anybody to sit far away from the presiding officer's table.

162. Karuhanga Y.N was the presiding officer at Kashesha L-Z. He states that he did not see any soldiers at the polling station and there was no harassment of any voters by anyone at the polling station. He asserts that the contents of paragraph 23 of the affidavit of Mubangizi Milton are not true.

163. *The Petitioner contends under Part 4 (a) of the petition that contrary to section 12(1)(e) of the Electoral Commission Act, 1997 and the principle of a free and fair election underlying the said provision, the Respondent No.2 failed to ensure that the entire electoral process in Kinkizi County West constituency was conducted under the conditions of freedom and fairness when,* (i) *The Uganda Peoples Defence forces (UPDF), Presidential Protection Unit (PPU), Government Officials comprising of the Resident District Commissioner (RDC), Assistant Resident District Commissioner (ARDC), Chiefs, Gombolola Internal Security Officers (GISO) and Local Government Council Executives, interfered with the electoral process through torture, arrest, harassment, intimidation, confiscation of property and the beating of the Petitioner's supporters during the campaigns and at polling aimed at preventing them from supporting the Petitioner.*

*(v)The petitioner was denied representation at the polling stations during the period of voting, counting votes and ascertaining of the results of the poll.*

164. Section 12(1)(e) of the ECA states,  
“The Commission shall, subject to, and for the purposes of carrying out its functions under Chapter Five of the Constitution and this Act, have the following powers—  
(e) to take measures for ensuring that the entire electoral process is conducted under

conditions of freedom and fairness.”

Under Article 61

of the Constitution the Commission has inter alia the following functions,

“(a) to ensure that regular, free and fair elections are held; (b) to organise, conduct and supervise elections and referenda in accordance with this Constitution;”

165. It is the position of the petitioner that the Electoral Commission failed to comply with the above provisions of ensuring that the entire electoral process was conducted under conditions of freedom and fairness. The petitioner has adduced evidence in support of this ground, and like wise the respondents, who assert that the Electoral Commission was not wanting in any way in this regard, have adduced evidence to show that the electoral process was held under conditions of freedom and fairness. I have set out the evidence for each party on this aspect above. I will now proceed to make my findings.

166. **Pre-polling day situation**

In his first affidavit Bayeye the Resident District Commissioner states, “(Bi) that as Resident District Commissioner I received security reports from intelligence officers, O/C Police and Local Council officials of Kihhihi and Kayonza to the effect that the petitioner planned to disrupt the elections. In particular, that the petitioner had trained vigilantes locally known as ‘Kanyamas’, meaning ‘hit and do not miss the flesh and he was advocating violence.” “(ii) that the reports further indicated that the petitioner

had ferried some veterans from Kasese and had some in Rukungiri purposely to train these vigilantes. The reports further indicated that non-Ugandans were being mobilised in the Congo to come and vote for the petitioner.”

“(iii) That at the time we had also received intelligence reports concerning threats from Interahamwe about an eminent invasion.” “(iv) **That in**

**order to counter these threats I organised security meetings with local council personnel, chiefs and defence secretaries urging them to sensitise the masses on the security of the District.”** (Emphasis is mine.)

167. It is not my duty to assess efficacy of intelligence information and reports, but I am surprised, if such reports were of any credit, that the RDC did not inform the electoral commission whose duty it was to organise the elections to take appropriate action in relation to these reports and the petitioner. The RDC decided to counter these threats,

some of which were said to be coming from the petitioner, by organising security meetings and urging the participants to sensitise the masses. In my view, it is then not surprising that the petitioner was being branded a rebel before the people by those involved with security. And that public rallies were held to denounce the petitioner as a rebel, and those who supported him. This was so even if in reality there was no iota of evidence linking the petitioner with any rebel forces fighting the Government of Uganda. No such evidence has been suggested to exist in these proceedings.

168. I accept the evidence of Byaruhanga Frank that the RDC Kamara Bayeye and an I.O., who I take to be Sergeant Natukunda, addressed a rally at Karukara, Kihembe at which the petitioner was called a rebel. Petitioner's agents' names were read out and threatened to be 'dealt with'. They called out those people to come to the front and denounce support for the petitioner and those who complied included Banyenzaki John Bosco and Asimwe Yusuf. The duo also addressed another rally at Kihembe Central. I accept the evidence of Musinguzi Enoch and Bahati Michael who attended the same rally at Karukara that was addressed by Kamara Bayeye and Natukunda.

169. I reject the denials of Sergeant Natukunda that he never addressed any rallies either personally or with Assistant RDC Alimundabira at which he called the Petitioner a rebel. I accept the evidence of Gumisiriza Benson when he states in para 4 of his affidavit sworn on the 23<sup>rd</sup> July 01 that L.C. officials throughout the constituency and other prominent supporters of the Respondent No.1 such as Sgt. Natukunda, Mr. Alimundabira, the Assistant RDC and others were at all times saying that the Petitioner was a rebel/guerrilla and that if they continued to support him, they would be arrested. I accept the evidence of Gumisiriza Benson that Sgt. Natukunda assaulted him and his friend for supporting the petitioner when he met them in a bar.

170. I accept the evidence of Christopher Byaruhanga that Sgt. Natukunda held a rally at Kihhi township on 10<sup>th</sup> June 01 in which he called the petitioner a rebel whose election would bring blood shed and war. He called on the people to stop wearing t-shirts bearing the portrait of the petitioner and that they should overwhelmingly vote for Respondent No.1. I also accept that Natukunda addressed subsequent rallies at Kanyantorogo, Kanyangusi, Kihembe and Nyamigoye within Kinkizi West Constituency, bearing the same poisoned message. I accept the evidence of Rosemary Tugumisirize that

she attended a rally on 23<sup>rd</sup> June 01 at Nyamirama trading centre which was addressed by the Intelligence officer who called the petitioner a rebel and advised the people to vote for Respondent No.1.

171. I am satisfied that that the RDC, Kamara Bayeye, ARDC, Alimundabira and I.O., Sergeant Natukunda, under the guise of sensitising the public on security issues intimidated and or harassed the petitioner's agents and supporters during the campaign period by portraying them as supporting a rebel and enemy of the Government of Uganda.

172. **The June 14<sup>th</sup> 2001 Incidents:**

On the 14<sup>th</sup> June 2001 at the end of a rally for the petitioner there was a procession of his supporters through Kihhi town led by motor cycle riders popularly known as 'boda boda'. It was intercepted and violently dispersed. The motorcycles were abandoned in the street and were thereafter taken to the police station. It is contended that they were vandalised. It is contended for the Petitioner that it is the Presidential Protection Unit soldiers under the command of Captain Ndahura who violently dispersed the procession. Captain Ndahura denies this and claims that though he was present or near the scene of disruption, neither his soldiers, nor himself were involved. He states that the procession was dispersed on the instructions of the DPC to the O/C Kihhi Police Station.

173. The District Police Commander swore an affidavit but he does not refer specifically or otherwise to this incident. Captain Ndahura claims that there was likelihood of confrontation of the supporters for different candidates because they were coming from opposite directions. He states though that the respondent No. 1's supporters were on one pick up and they had asked them to come and sit near them. If that was the case one wonders how they could have been a clash between the petitioner's supporter's procession which was in the streets and the respondents supporters sited in Corner Pub, out of harms way, if any at all and sited near the top security brass of the district.

174. I am unable to find a lawful reason why the petitioner's supporter's procession was violently dispersed. On the evidence no credible or lawful reason has been advanced by those responsible for the dispersal of the procession. The persons, the DPC and O/C Kihhi Police Station, alleged by Captain Ndahura to have been responsible for violent dispersal of the procession have not put in any evidence explaining why they did so or

giving an account of this incident complained of by the petitioner. The petitioner's witnesses point to the Presidential Protection Unit, elements of which were on the scene, as having been responsible. On a balance of probability I am inclined to accept the version put forward by the petitioner and find that the procession of his supporters was violently dispersed, some of their motorcycles vandalised by the PPU. The beating of the petitioner's supporters could only have been intended to intimidate them from continuing to support the petitioner.

175. The other incident on 14<sup>th</sup> June 01 was the attack on the petitioner's vehicle, UAB 684C, and theft of the public address system and some money. At about 10.00 p.m. on 14<sup>th</sup> June 01 Mrs Peace Musinguzi sent this vehicle to drop petitioner's campaign agents at Kanyantorogo. Among the people in the vehicle was Alywn Musinguzi, Hussein Mutekanga, Henry Kanyabitaho, and Mrs Barigye. Mutekanga Hussein states that they were intercepted at Kasiro in Kihhi Township by 2 PPU soldiers who had blocked the road with their double cabin pick up. The soldiers were joined by several others who beat them up. One of the soldiers who was an escort of Captain Ndahura told the witness, "We were able to thoroughly beat the Besigye people—you are also going to see." The soldiers took the public address system that was in the vehicle together with a sum of money. The windscreen was smashed.
176. Captain Ndahura states that while he was at Corner Pub, his vehicle was outside in his full view, and it remained parked until he left at 1.00a.m. He also speaks for his escorts when he claims that none was involved in this incident. The incident was in Kihhi Township. Hussein Mutekanga claims to have known one of the assailants having seen him before as an escort to Captain Ndahura. None of the escorts swore an affidavit. Neither did the driver of the pick up to account for their movements that evening. The incident is alleged to have occurred in Kihhi township where they were. I am inclined to accept on a balance of probability that the version told by Hussein Mutekanga is what occurred on that night. The reason for the attack was intimidation.
177. On the night of 23<sup>rd</sup> June 01 Vincent Kamwesiga, the official campaign agent for Respondent No.1, who was also an officer in the Internal Security Organisation, shot at John Bosco Twinomuhwezi or at the car in which John Bosco Twinomuhwezi was travelling in. Mr. John Bosco Twinomuhwezi was a campaign agent for the petitioner.

The account of Kamwesiga of this incident differs from the account of John Bosco Twinomuhwezi, and one of the occupants the car. The car belonged to John B Twinomuhwezi and they were driving home that evening with his uncle, Atanasi Shwekyerera, and the driver, Kenneth Namanya. They left Butogota trading centre at about 9.00 p.m. Atanasi Shwekyerera had hired the vehicle to take him home.

178. Kamwesiga claims that this vehicle had been following them and that when it stopped they overtook it and stopped ahead. They were shot at and he shot back in self-defence. He saw two people run away into the bush, one had a gun and another a torch. Kamwesiga was in a pick up with a military police escort of Respondent No.1, and a driver. He is not sure if that escort also fired. It would be very surprising if they had shot at Kamwesiga's vehicle and the military policeman in the vehicle would not have shot back not only to protect himself but the occupants of the car in which he was travelling. Twinomuhwezi and Shwekyerera point only to Kamwesiga firing a shot at them, with no other shot fired.

179. Learned counsel for the respondent No.1, Dr. Byamugisha, suggested that Twinomuhwezi was not worthy of belief as there was a discrepancy between the statement he made to the police and in his affidavit. In the statement to the police he states that following the shot of Kamwesiga, a piece of glass hit and injured his eye. In the affidavit he states that Kamwesiga shot him in the eye. I suppose that whether his eye was hit by bullet or a piece of glass for the victim it is really a conclusion made at different points in time. Unfortunately the witness was not cross-examined. The essential details of his story are corroborated by the evidence of Shwekyerera. Kamwesiga himself does not deny discharging a bullet into their vehicle. He does accept that he did so.

180. The military policeman in the vehicle with Kamwesiga did not swear an affidavit. Neither did the driver of their pick up. Twinomuhwezi and Shwekyerera were on their way home and this incident occurred on the way to where they said they were going. They claim there were only three in the vehicle. I am inclined to accept the version put forward by Shwekyerera who had in fact just come back from Kampala that very evening. He wanted to get home. He hired John Twinomuhwezi's vehicle for that purpose. They noticed that a vehicle was following them and eventually stopped. The vehicle passed them and then they were attacked by Kamwesiga.

181. From the account of John Twinomuhwezi it is evident that Kamwesiga knew that the vehicle belonged to one of the petitioner's agents. He appears to have expected to find another two of the petitioner's agents in the vehicle. He did not. He assaulted those he found, searched their car and confiscated their papers and money. Kamwesiga advances no reason why he confiscated the items he did. He was engaged in a deliberate attempt to intimidate these known agents of the petitioner.
182. There are numerous incidents in the evidence for the petitioner, which I accept as it is convincing, that show scores of petitioner's agents and supporters attacked in their homes or places of business on the evening and night prior to polling day. The attacks were perpetrated by the respondent no.1's agents in company with soldiers of the UPDF. The purpose of these attacks must have been to intimidate the victims from not voting or acting for the petitioner as his polling agents.
183. **Polling Day** The  
petitioner has adduced evidence to show that there were UPDF soldiers on polling day that manned some road blocks and in company of Ali Rugomwa, an agent for Respondent No.1 effected arrests of the petitioner's agents from many polling stations, confiscated copies of lawfully acquired and held registers of voters. The respondent no.1 contended that this was not the case and no soldiers intervened in the electoral process. The comments on Declaration of Results forms indicates that there was some intervention by soldiers in the company of Ali Rugomwa in respect of Kihhi sub county. The Poll watchers reports similarly indicate that at there was such intervention by soldiers and agents of the respondent no.1.
184. The report that was compiled by the Assistant Returning Officer for the Chief Administrative Officer dated 3<sup>rd</sup> July 01, in no uncertain terms, states, "On the deployment of the UPDF soldiers in the constituency, it is true there was UPDF personnel but not near the polling stations. I saw an average of 3 soldiers off the polling stations I visited." UPDF personnel were deployed though this has been denied by both respondents. The author of this report was Mr. Tibugyenda a servant of Respondent No. 2, during the electoral process. This lends credence to the other evidence adduced by the petitioner to the effect that UPDF personnel were deployed on polling day.

185. Every affidavit of the respondents has denied the deployment of UPDF soldiers. It was as if this was by rote. UPDF had no official role assigned to them in the electoral process. Its presence which has been so assiduously denied has been established in my view. Counsel for the respondent no.1 submits that the petitioner has grossly exaggerated the presence of UPDF in the constituency. That may be so but the complete denial of their presence would seem to point to an understanding by the respondents' witnesses of the unlawful and insidious purpose for which they were deployed.
186. There is evidence, especially in Kihhihi sub county that Ali Rugomwa in the company of soldiers arrested many of the petitioner's agents from polling stations and dumped them at Kihhihi police station, alleging that they had illegal registers. Many of the agents arrested claim to have been assaulted by the soldiers and Ali Rugomwa. Some Declaration of results forms and poll watchers reports show too that this occurred at some polling stations. The report of Mr Tibugyenda of 3<sup>rd</sup> July 01 shows that this occurred. The arrest of these agents, assault and detention at police was not justified in anyway, and amounted to intimidation and harassment of the petitioner's agents, detracting freedom and fairness from the electoral process.
187. The arrest of the Petitioner's agents from polling stations, the confiscation of their registers, all of which were totally unjustified did result in the denial of the petitioner representation at those polling stations from which the agents were arrested from. It may be noted that the agents were released and some returned to their stations. Others in light of the harassment and assault suffered from their captors, did not return to their stations. Some agents who returned felt sufficiently intimidated not to object to malpractices occurring, which in itself, suggests no meaningful representation. And there are stations where the agents were not disturbed and worked throughout the polling day without incident. At those stations representation was meaningful.
188. *The Petitioner further contends under part 4(b) of the petition that contrary to Section 12(1)(f) of the Electoral Commission Act, 1997 and the principle of freedom, fairness, transparency, and free expression of the will and consent of the people through an election on who shall govern them and who they should be governed, the Respondent No.2 failed to take steps to ensure that there was secure conditions necessary for the conduct of the election in Kinkizi County West Constituency when:*



(i) *The petitioner supporters were denied the right to vote.*

(ii) *The petitioner's supporters were through force and violence made to vote for the respondent no.1.*

(iii) *Violence and force was unleashed on the Petitioner's supporters by the Uganda Peoples Defence Force (UPDF), Presidential Protection Unit (PPU) and other security and governmental agencies to intimidate and stop them from voting for the Petitioner, and instead vote for the respondent No.1.*

(iv) *Armed Uganda Peoples Defence Forces were positioned at polling stations to continue with their previous intimidation of voters carried out during the campaign period to stop and prevent the electorate from voting for the Petitioner and instead vote for the Respondent No.1.*

(vi) *The Respondent No. 1 used as his campaign agents the President, the UPDF, RDC, ARDC, GISOs, Chiefs, LCs and polling officials for his campaigns who in turn together with the Respondent No.1, his agents and supporters intimidated, harassed, demonised and beat the petitioner's supporters and agents.*

189. Section 12(1)(f) of the ECA states, "to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this Act or any other law." What are the secure conditions necessary for the conduct of any election in accordance with the law in Uganda? This question appears to have been answered by my brother, Musoke Kibuka, J., in *Winnie Babihuga v Masiko Winnie Komuhangi and others* H.C.T.00-CV-EPA-0004 of 2001 when he stated, "the election must be conducted under conditions that enable the voter to cast his or her vote as he or she wishes, purely on his or her own accord. The conditions must be such as enable the voter to cast his or her vote for whoever candidate he or she wishes to vote for. There must be no obstruction, harassment, hindrance, threats or intimidation. There must be no bribery to induce the voter one way or the other. There must be no conditions creating fear in the minds of voters for persecution or victimisation after the elections have taken place."

190. The Petitioner contends that in breach of Section 12(1)(f) of the ECA, the petitioner's supporters were denied the right to vote. The petitioner has adduced evidence in support of this head and the respondents have adduced evidence to the contrary. The comments in the poll watcher reports would appear to me to be credible by nature of the independence of pollwatchers/monitors from the candidates. The poll watcher for

Kinyangwe II in Bihomborwa parish, Kihihi sub county noted, “At the beginning at the station the number (of) voters were high but after the deployment of security personnel the(re) was fear and this caused the decrease of number of voters to come and vote.” At this station only about 50% of the voters voted.

191. The poll watcher on Nyamwegabira III states, “UPDF soldiers came and molested intimidated people but the police came in time and calmed the situation (10.30a.m.) However the Asst. RDC Kanungu came in at 2.00p.m. with his body guards threatened and even molested one of the priests at Nyamwegabira Mission.” This report seems to bear out the affidavit of Rev. Charles Busingye and I accept the said affidavit as a truthful account of what occurred at this polling centre that had three polling stations. At this station at different occasions the army chased away voters. In turn the ARDC Mr. Alimundabira came and chased away voters from this station.
192. Sabiiti Phoebe was a voter of Rwanga parish who on polling day was going to the polling station. She met people who told her the petitioner’s supporters were being beaten. She feared to go ahead and vote. I do not think her fear was unfounded. Owomugabe Miria was a voter who stated that the polling official at Kiruruma trading centre did not give her, her voters card, and refused to provide an explanation why he had not issued one to her.
193. The pollwatchers report on Nshaka L-Z notes, “UPDF soldiers arrested some agents of Candidet Musinguzi. People ran away in fear. They came back later”. This report seems to bear out the account of what happened at Nshaka 1A-K given by Kyatengirwe Jovia with regard to paragraph 13 of her affidavit. Both polling stations were at one polling centre. I reject the account of Kaweesa Eliphaz the presiding officer for Nshaka 1 A-K, especially when he claims no soldiers came to his polling station. I prefer the account of Kyatengirwe Jovia. I accept her evidence in total. She states that she was present when at Samaria polling centre when the petitioner’s supporters, including the adult member of the family of Hajji Rutangyengwa were denied voters cards by the electoral officials. She mentions two other families that were denied voters card.
194. In paragraph 13 of her affidavit she states, “That after soldiers armed with guns had stormed the polling station, arrested and taken away the Petitioner’s polling agents

and chased away many of his supporters, most of the petitioner's supporters feared to come to the station to vote."

195. I am satisfied that by a combination of circumstances, including denial of voters cards, intimidation and fear, some of the petitioner's supporters were denied their right to vote.

196. *The Petitioners supporters were made through force and violence to vote for Respondent No.1* The pollwatchers report for Kinyangwe 1 in Bihomborwa parish records a yes answer to the question, "Did any polling Station official tell any voter which candidate they should vote for at any time?" It further records this was done by the presiding officer and it was 4 times. It does not, however, indicate which candidate he told them to vote for.

197. Kyatengirwe Jovia stated in her affidavit, para 9, "that right from the outset, the said presiding officer did not allow most voters to tick the ballot papers from the basin provided for the purpose, but would himself tick for the voters, against the 1<sup>st</sup> Respondent's name, before handing back the ballot paper for the voter to drop in the box." She looked on helplessly in anger because the petitioner's agents had already been arrested and taken away. When it came to her turn to vote, the presiding officer ticked her ballot for Respondent No.1, in spite of which she encircled the petitioner's name, knowing that it will be a spoilt vote, rather than vote a person not of her choice. Mbabazi Lydia described how there was an attempt to make her vote for the Respondent No.1 which she rejected and instead opted not to cast her vote. I accept the evidence of both these witnesses and reject the denials of Kaweesa Eliphaz. Kaweesa has been shown not to be a truthful witness earlier on.

198. Niwagaba Robert was the assistant presiding officer at Nshaka II/Samaria polling station. He stated that he attempted to stop the presiding officer Mr. Kamurigira from pre-ticking votes for voters, but he was threatened by supporters of Respondent No.1 that they would beat him up. He thereafter watched hopelessly as various electoral malpractices were committed. I accept the evidence of Niwagaba Robert.

199. Rwamahe was accused by Enoch Byaruhanga of ticking ballot papers that were being handed out to voters at Rugando III/Rutendere I polling station starting at about 11.00a.m. till he was shouted away by the petitioner's supporters. Rwamahe denies doing

so in his affidavit. I am inclined to accept the evidence of Byaruhanga rather than Rwamahe. It appears that ticking ballot papers for the voters, in disregard of their right to vote for a candidate of their own choice was common at some polling stations. Denial of these malpractices seems to be a common response of those accused of committing them.

200. It is convenient to take the next following three items together that is---- (iii)

*Violence and force was unleashed on the Petitioner's supporters by the Uganda Peoples Defence Force (UPDF), Presidential Protection Unit (PPU) and other security and governmental agencies to intimidate and stop them from voting for the Petitioner, and instead vote for the respondent No.1.*

*(iv) Armed Uganda Peoples Defence Forces were positioned at polling stations to continue with their previous intimidation of voters carried out during the campaign period to stop and prevent the electorate from voting for the Petitioner and instead vote for the Respondent No.1.*

*(vi) The Respondent No. 1 used as his campaign agents the President, the UPDF, RDC, ARDC, GISOs, Chiefs, LCs and polling officials for his campaigns who in turn together with the Respondent No.1, his agents and supporters intimidated, harassed, demonised and beat the petitioner's supporters and agents.*

201. I have already found that the security apparatus controlled by the RDC in terms of himself, his assistant, Alimundabira and Sergeant Natukunda extensively campaigned for the Respondent No.1 at public rallies while calling the petitioner a rebel and threatening his supporters and agents. This campaign they waged was intended to intimidate the people from supporting the petitioner. Threats such as the government would not intervene if the Interahamwe attacked again were calculated to spread fear and despondency. Whether they did this at the request of the Respondent or with his knowledge and approval has not been established but it was to his benefit.

202. The Poll watcher report for Kyantuhe/Buzaki polling stations states, "The voters were being told to vote for Amaama that if not, they will see afterward and this happened in Rushaka by Deo from Nyamirama." It also notes that complaints were lodged with the presiding officer. Giving the details of the complaint, it states, "The DISO was giving some voters card which were not for them but the presiding officer stopped them from voting and he was telling some people who to vote for." This is the hand of the security apparatus of the RDC at work.

203. Ntambara David, the LC 11 Chairman of Rushoroza parish broke into the house of Bamwanga David at about 2.00am on the night of 25<sup>th</sup> June 01. He was accompanied and assisted by soldiers together with a group of the respondent no.1's agents and supporters. The witness was attacked for being an agent and supporter of the petitioner. On the same night Ntambara and his group attacked Nteziyaremye Gideon at his home/shop at Rwerere village. Later Ensinikwiri on the way to the polling station on polling day, met Ntambara on the way, with the some of the same people that he had been with at Bamwanga's house. They beat up the witness and handed him over to soldiers who came on a vehicle. The soldiers took the witness to the local sub county headquarters.
204. I reject the denials of Ntambara David and accept the evidence of these witnesses. Bamwanga was definitely assaulted and he sought and received medical treatment. Ensinikwiri had to seek and received medical treatment. Someone assaulted him to inflict those injuries. He has named the people who inflicted those injuries. The same people have been named as being active in assaulting the supporters and agents of the petitioner in their parish. I accept the evidence of these witnesses in preference to the denials of Ntambara David.
205. The presence of UPDF soldiers at some polling stations has already been established above. Several witnesses have stated that they came across road blocks manned by soldiers and supporters of the Respondent No.1 just before polling stations at Nyamwegabira Catholic Parish polling centre, and Ntabagwe Polling centre at which the petitioners supporters were being harassed and denied access to proceed to polling stations. Christopher Byaruhanga, Gabo Henry and Tumwebaze Medadi have so stated in their affidavits. I accept this evidence as it ties in with the Assistant Returning Officer, Mr. Tibugyenda, that there were soldiers off polling stations. These witnesses establish the purpose of those soldiers being where they were.
206. *The Petitioner further contends under part 4(e) that contrary to Section 21(6) of the Parliamentary Elections Act, 2001 the Respondent No.2 failed to ensure that adequate security was provided for the petitioner's campaign meetings.*
207. Section 21(6) of Parliamentary Elections Act, 2001 provides, "The Commission shall ensure that adequate security is provided for candidates at campaign meetings." No evidence has

been adduced to suggest that the Petitioner's security at campaign meetings was inadequate or in jeopardy. The two incidents that occurred on 14<sup>th</sup> June 2001, one involving the petitioner's motor vehicle and other properties and the other procession of supporters through Kihhi town escorting the Petitioner home after a campaign rally, did not relate to campaign meetings strictly.

208. *The Petitioner contends under 4(f) that contrary to Section 22(1) of the Parliamentary Elections Act, 2001, public officers, authorities including the President of Uganda, the Resident District Commissioner Kanungu, the Assistant Resident Commissioner, the Respondent No.1's Political Assistant, UPDF soldiers, and Officers of Internal Security Organisation, Chiefs and the LCs gave preferential treatment to the Respondent No.1 and harassed, and discriminated against the petitioner, his agents and supporters, their agents, servants and or supporters during the campaign period and on polling day.*

209. Section 22(1) of the Parliamentary Elections Act, 2001 states, "During the campaign period, every public officer and public authority and institution shall, as far as possible, give equal treatment to all candidates." Before considering the evidence under this head, it is important to determine, what in law, under this provision, amounts to a public officer, and a public authority and institution. The section relates to both individual conduct of an officer and or institutional behaviour or conduct of a public authority or institution. The Parliamentary Elections Act, 2001 does not define public officer or public authority or public institution. The Interpretation Decree 1976 provides, "public office", "public officer" and "public service" have the same meaning as in the Constitution."

210. Article 257(1) of the Constitution defines those terms. Public Office means an office in the public service. Public Officer means a person holding or acting in any public office. Public service means service in the civil capacity of the Government or of a local government. Article 257(2)(b) of the Constitution states, "a reference to an office in the public service does not include a reference to the office of the President, the Vice-President, the Speaker or Deputy Speaker, a Minister, the Attorney General, a member of Parliament or a member of any commission, authority, council or committee established by this Constitution."

211. Following the above it is clear then that the office of the President is not an office in the Public service of Uganda, and the President is therefore not a public officer within the ambit of Section 22(1) of the Parliamentary Elections Act, 2001. Neither are officers and men of the UPDF members of the public service and therefore public officers since service in the UPDF is not service in the civil capacity of the Government, unless they have been expressly appointed to service within the public service. Under the Constitution though the UPDF is expressly stated to be non-partisan. See Article 208 of the Constitution.
212. Even if it has been shown that the President campaigned for Respondent No.1 and against the Petitioner, and therefore treated one preferentially from the other, the President is not a public officer under Section 22(1) of the Parliamentary Elections Act, 2001. He therefore did not infringe it. However, if the language the President used is shown to come in the ambit of Sections 22(3) of the Parliamentary Elections Act, 2001, it is possible for any person, including the President, to commit an offence under Section 21(4). I will set out both sub sections.
213. “22(3) No person shall, while campaigning, use any language which is defamatory or insulting or which constitutes incitement to public disorder, insurrection, hatred or violence or which threatens war.” “(4) Any person who contravenes subsection (3) commits an offence.” It is useful to note that whereas in subsection (1) the word used is public officer or public institution, in subsection (3) and (4) the word used is ‘any person’, and therefore intended to be all encompassing.
214. Officers of Internal Security Organisation like Vincent Kamwesiga are officers of in the public service. I reach this conclusion aided by the Security Organisations Statute, 1987. Section 1(1) establishes, inter alia, the Internal Security Organisation. Subsection (2) thereof states, “The organisations shall be Government Departments.” These organisations are not part of the UPDF. Being a government department its officers are officers in the public service and are public officers. For Kamwesiga to be the official campaign agent of the Respondent No.1, was in breach of Section 22(1) of the Parliamentary Elections Act, 2001. Likewise for the RDC and ARDC to campaign for the respondent no.1, it was contrary to Section 22(1) of the Parliamentary Elections Act, 2001.

215. *The Petitioner contends under 4(k) that contrary to Section 25(a)(b)(c)(d) and (e) of the Parliamentary Elections Act, 2001 the Respondent No.2 failed to stop the Respondent No. 1 and his agents from interfering with the electioneering activities of the Petitioner.*
216. I have perused Section 25 of the Parliamentary Elections Act, 2001, and the evidence adduced in this cause. I do not find any evidence that brings into play subsections (a), (b) and (d) thereof. I will set out the subsections to which there may be evidence in support and these are (c) and (e).  
“25. A person who, before or during an election, for the purpose of effecting or preventing the election of a candidate either directly or indirectly ---- (c) obstructs or interferes or attempts to obstruct or interfere with the free exercise of the franchise of a voter or compels or attempts to compel a voter to vote or to refrain from voting; or (e) in any manner threatens any candidate or voter with injury or harm of any kind; or”
217. There is evidence which I have accepted that shows that RDC, Kamara Bayeye, ARDC, Alimundabira, and Sergeant Natukunda carried out a campaign against the petitioner, vilifying him as part of the rebel forces fighting government, intimidating the voters that support him that their support was support for those fighting government. This interfered with the free exercise of the franchise of voters, as the voters were being coerced that they should vote for respondent no.1 and not for the petitioner.
218. There is evidence that I have accepted already that shows that the petitioner’s supporters were obstructed by road blocks from reaching polling stations. There is evidence which I have accepted above that shows that at some polling stations the voters free exercise of franchise was interfered with when polling officials and or respondent no.1’s supporters marked ballot papers for those voters thereby disenfranchising them. There is evidence which I have accepted above which shows that not only were voters threatened with harm and injury, harm and injury was visited on some voters.
219. *The Petitioner contends under part 4(x) that contrary to section 41 and 42 of the Parliamentary Elections Act, 2001 Presiding officers failed to maintain peace and good order at the polling stations.*



220. Section 41 of the Parliamentary Elections Act, 2001 is set out below.

“During an election and while the polls are open, every returning officer and presiding officer is a keeper of the peace and has all the powers of a justice of the peace, and he or she may---

(a) require the assistance of a member of the Uganda Police Force or other persons present to aid him or her in maintaining peace and good order at the polling station; or

(b) warn or arrest or cause to be placed in the custody of any police officer or other person authorised by law, any person disturbing the peace and good order at the polling station; or

(c) cause any arrested person to be imprisoned under an order signed by him or her until not later than an hour after the closure of the poll.”

221. Section 42 deals with power of the presiding officer to appoint election constables. It would appear to me evident that at those polling stations that saw the unlawful arrest and removal of the petitioner’s agents from the polling stations by respondent no.1’s agents and soldiers the case is properly made out of the failure of the presiding officers to maintain peace and good order at the polling stations. It is those who perpetrated, on the evidence which I have already accepted, the said arrests, seizures of the copies of voters’ register that petitioner’s agent had and were lawfully using who should have been arrested instead, and if necessary imprisoned until the election was over. There are many stations too where there are no complaints.

222. *The Petitioner contends under part 4(y) that contrary to Section 43(1) of the Parliamentary Elections Act, 2001 Presiding Officers/servants of the Respondent No.2 allowed people with arms and ammunition to be present at polling stations.*

223. Section 43 states,

“(1) No person shall arm himself or herself during any part of polling day, with any arms or ammunition or approach within one kilometre of a polling station, with arms and ammunition unless called upon to do so by lawful authority or where he or she is ordinarily entitled by virtue of his office to carry arms. (2) Any person who contravenes subsection (1) commits an offence.” I suppose lawful authority here refers to the presiding officer who is in undisputed charge of the polling station, and his superior officers in the electoral process. A person who is not an electoral official with authority or

jurisdiction at that polling station would not qualify to be a lawful authority for purposes of this provision.

224. The other exception is if a person is entitled by virtue of his office to carry arms. I think in such a situation once a person has been shown to have approached within one kilometre of a polling station the evidential burden shifts upon him or those responsible for his presence to prove on a balance of probability that such person was entitled to bear arms by virtue of his or her office. In its application, this provision makes no distinction between civilians and members of the armed forces. ‘No person shall arm himself or herself’ is across the board, civilian or non-civilian alike, and permits of only two exceptions.

225. I have already accepted evidence that shows that Ali Rugomwa, in the company of armed soldiers went to several polling stations in Kihhihi sub county and arrested petitioner’s agents and removed them there from to Kihhihi Police station. What was happening is what was exactly intended to be forestalled by the provision, that these instruments of fear and coercion, would not be visited upon a polling station to disrupt the freedom and fairness that must attend a free and fair election. I accept the evidence before this court that shows that James Vincent Kamwesiga was similarly engaged in another part of Kinkizi West Constituency.

226. Respondent No.1 admits that he was escorted to several polling stations on polling day by four military policemen who were armed. He states in his affidavit that for the last fifteen years he has been guarded by a retinue of six military policemen. Dr. Joseph Byamugisha submitted that the respondent no.1 was entitled to be guarded twenty four hours a day.

227. Once it was established that the Respondent No.1 was escorted by armed military policemen to the polling station, an evidential burden shifted to the Respondent No. 1 to show that he was entitled to an escort of armed military policemen, including moving with them to a polling station. As a minister in government he may have been entitled by virtue of his terms of service or by provision of law to such security. No evidence, however, showing entitlement, has been adduced. What has been adduced is not evidence of entitlement, but a practice in relation to only the Respondent No.1. This is not

sufficient. In any case the guards could have remained or their arms and ammunitions could have remained outside the one kilometre cut off point for arms and ammunitions.

228. It may be suggested that for the military policemen they were entitled by virtue of their office to carry arms and ammunitions. No evidence has been adduced to show that this is the case. Evidence would have to be adduced that shows that they are entitled to carry arms and ammunition to polling stations. I find that these four military policemen were in breach of the provisions of Section 43(1) of Parliamentary Elections Act, 2001 when they moved to several polling stations on polling day with arms and ammunitions.

229. There is evidence which I accept that Munuubi, a campaign agent for respondent no.1 on polling day moved with armed soldiers to several polling stations, including Kashesha 1 polling station. The affidavits of Muhimbo Abel and Gabo Henry, Munuubi's son, are proof of this. Munubi has not sworn an affidavit to the contrary.

230. *The Petitioner contends under 4(bb) that contrary to Section 51(4) of the Parliamentary Elections Act, 2001 the Petitioner's agents were prevented by the Respondent No.1's agents and or UPDF, RDC, ARDC, GISOs, Chiefs, LCs, and the Respondent No.2's officials to be present at the polling stations, and as such they did not sign the declaration of results forms, and/or were forced to sign such declaration of results forms against their will.*

231. Section 51(4) of the Parliamentary Elections Act, 2001 states,  
"The declaration of results form referred to in subsection (1) shall be signed by the presiding officer and the candidates or their agents as are present and wish to do so, and the presiding officer shall there and then, announce the results of the voting at that polling station before communicating them to the returning officer."

232. For a substantial number of polling stations the petitioner's agents signed the declaration of results forms. For a number of polling stations where the petitioner's agents were arrested, assaulted and removed to detention for a period on polling day, by the action of Respondent No.1's agents and soldiers, as well as inaction or connivance with some presiding officers, the petitioner was denied representation at those polling stations for the period that the agents were away. But even when they returned some of them had been sufficiently intimidated as not to constitute effective representation. Some

signed the declaration forms and others declined as the declaration of results forms themselves show.

233. The remaining parts of Issue no.1 are those, in the words of counsel for the petitioner, that relate to (b) ballot rigging and (c) illegal and sectarian campaign. The complaints that relate to ballot rigging are found in part 4(a)(ii), (iii), (iv) & (v), 4 (c), (d), (m), (n), (o), (p), (q), (r), (s), (t), (v), (w), (z), (aa) & (cc) of the petition. The complaints that relate to illegal and sectarian campaign are found in part 4 (g), (h), (i), (j) and (l) of the petition. I will take them in that order.
234. Starting with the part referred to as ballot rigging and related acts, I am unable to find in the evidence adduced anything relating to allegations set out in part 4 (m), 4(n), 4(o) and 4(p) of the petition. I find nothing in the evidence that supports the claim that contrary to Section 29 of the Parliamentary Elections Act, 2001 the Respondent No. 2 failed to publish in the gazette and widely in Kinkizi county west constituency lists of polling stations and names of candidates nominated for the constituency.
235. I find nothing in the evidence to support the claim that contrary to Section 30(2) of the Parliamentary Elections Act, 2001 the Respondent No.2's officials in connivance with the Respondent No.1 and his agents started the polling very late. There is some evidence that at some few polling stations voting started between 8.00am and 9.30 am. I do not think this was very late. More importantly there is no evidence pointing to connivance of the respondents and their officials.
236. I find nothing in the evidence adduced that supports the allegations that contrary to Section 30(4) of the Parliamentary Elections Act, 2001 the Respondent No.2's officials in connivance with the Respondent No.1's and his agents continued with the polling exercise on polling day after the hour of five o'clock in the afternoon.
237. As regards the complaint in 4(a)(iii) of the petition that there was no updated Voter's register for the constituency whereby votes were cast in the names of deceased voters or those who had migrated from the constituency, though there is evidence for the petitioner pointing to the voting complained of, there is no specific evidence that shows the respondent no.2 failed to comply with the law in maintaining an updated voters register. The Respondent No.2 is obliged under Section 18 of the ECA to maintain on a continuing basis a national voters' register of all persons entitled to vote in national and

local government elections. I suppose that at any one time there is bound to be voters on the roll who have either passed away or shifted before a general update of the register is done. It was incumbent on the petitioner to adduce evidence to the effect that no general update on a continuing basis had been done by Respondent No.2. This has not been done.

238. *“4(a)(ii) There was massive rigging of votes through ballot stuffing, multiple voting and pre-ticking of ballot papers for voters and manipulation of voter’s rolls.”*

The affidavits of Kyatengirwe Jovia, Owomugabe Miria, Busingye Peter, Kwizera John, Peace Musinguzi, John Vian Muhwezi, Nfitimuhuza G Mbonigaba, Niwagaba Robert and Mubangizi Milton for the petitioner show that ‘ballot stuffing’, a form of an individual casting a batch of ballot papers still bound together, was done at several polling stations including Nshaka A-K and Rugando Polling centre. I accept this evidence, preferring it to any evidence to the contrary, in light of the determined and illegal arrests of petitioner’s polling agents from polling stations whose only purpose must have been to allow the respondent no.1’s agents a free hand in such electoral malpractices.

239. For the same reason I accept the evidence of the petitioner on multiple voting, including allowing people with indelible ink on their thumbs to vote and allowing people to go without inking their thumbs after voting. Evidence available indicates that this occurred at Samaria A-L, Meizimera I, Meizimera II, Nshaka I L-Z, Kinyangwe I, Nyamwegabira III, and Kyeshero Polling Centre (with 6 polling stations). Justus Kazaarwa was a witness for the respondent no.1 who was shown on the video with many ballot papers. In his affidavit he claims to have been a campaign agent for the petitioner. During his cross examination he changed his story, from a simple denial of ever possessing many voters cards as alleged, to claiming he was acting out a part on the video. I do not accept either of his contradictory accounts given on oath for he is definitely an unreliable witness.

240. Kyatengirwe Jovia, Mbabazi Lydia, Byaruhanga Enoch have sworn affidavits that attest to the practice of pre-ticking of ballots papers by either the presiding officer or respondent no.1’s agents and supporters at the polling stations where the other malpractices complained of took place. These acts also meant that voters were denied the opportunity to make their choice of which candidate to vote for by secret ballot as required by law. Evidence already accepted above herein points to the fact that some

qualified voters were prevented from voting by either being prevented from reaching the polling station or being chased away from polling stations or being denied voters cards.

241. Musinguzi Zainab in her affidavit, inter alia, details the names of 40 people whose votes were cast in their absence as they had moved away from the area or died. The presiding officer, Tukamushera James, swore affidavit in which he denied that three of these people had moved but was silent on the other 37 names. There is no affidavit from one or more of these people. I am inclined to accept the affidavit of Musinguzi Zainab that votes were cast in the names of people who were not present. Whoever voted in the names of the said 40 people were ineligible to vote. The evidence in relation to the election malpractices discussed under this section point to ineligible voters casting ballot papers too.

242. The petitioner complains that the respondent no.2's officials did not tally results properly including the announcements of results on the basis of incomplete/invalid declaration forms. Presiding officers in respect of nine polling stations did not sign the declaration of results forms that are certified by the returning officer for the constituency. These are in respect of Bushogy Primary School A-K, Matanda Primary School, Matanda II P, Kanyinaburimano, Kinyangwe I, Ishasha M-Z, Ishasha A-L, Kazinga I, and Ntabagwe II.

243. Article 68(4) of the Constitution provides, "The presiding officer, the candidates or their representatives and in the case of a referendum, the sides contesting or their agents, if any, shall sign and retain a copy of a declaration stating--- (a) the polling station; (b) the number of votes cast in favour of each of the candidate or question; and the presiding officer shall there and then, announce the results of voting at that polling station before communicating them to the returning officer."

244. Section 51(4) of the Parliamentary Elections Act, 2001 states, "The declaration of results form referred to in subsection (1) shall be signed by the presiding officer and the candidates or their agents as are present and wish to do so, and the presiding officer shall there and then, announce the results of the voting at that polling station before communicating them to the returning officer."

245. It is mandatory in my view for the presiding officer to sign the declaration of results forms for the station he is been in charge before declaring the results and sending the form to the returning officer. This is imposed by both the Constitution and the Parliamentary Elections Act, 2001. It was suggested by Dr. Byamugisha that the forms tendered in court might be any one of the many copies required to be filled and not necessarily the original with the returning officer. The forms presented to this court are certified correct by the returning officer, and I accept them as true copies of the forms that were availed to the returning officer. These forms were not signed as the law demanded. The omission renders the forms void and of no force or effect.

246. The final acts complained of under the sub title of ballot rigging and related acts, the petitioner claims that the petitioner's agents were prevented from protecting the petitioner's interests, to ensure that the foregoing acts complained of were not perpetrated at polling stations. The Constitution under Article 8 declares, "(3) A candidate is entitled to be present in person or through his or her representatives or polling agents at the polling station throughout the period of voting, counting of the votes and ascertaining of the results of the poll." This is restated in Section 33(1) of the Parliamentary Elections Act, 2001.

247. I have already accepted evidence that shows that through the use of force, and UPDF personnel, petitioner's agents were arrested, assaulted and removed from some of the polling stations in the constituency for entirely unjustifiable reasons by Respondent No.1's agents. Even for those of the petitioner's agents who returned to polling stations they were prevented from being present 'at polling stations throughout the period of voting'. This was unconstitutional, and perhaps one of only the worst species of actions to undermine freedom and fairness of an electoral process. There is only one conclusion one come too, and that is the intention was to ensure that there was no one to protect the petitioner's interests at the polling stations.

248. I now turn to Illegal and Sectarian campaign complaint, the last portion of issue no.1. I have already covered most of part 4(b)(vi) of the petition above. I shall look at parts 4(h), 4(i), 4(j) and 4(l) of the petition. I shall set them out below.

249. *"(h) Contrary to section 22(3) of the Parliamentary Elections Act, 2001 the 2<sup>nd</sup> Respondent failed to stop the 1<sup>st</sup> Respondent and his agents from using defamatory and*

*insulting language, which constituted incitement to hatred against the Petitioner during the campaigns.”*

250. Section 22(3) of the Parliamentary Elections Act, 2001 states, “No person shall while campaigning use any language which is defamatory or insulting or which constitutes incitement to public disorder, insurrection, hatred or violence or which threatens war.”
251. There is evidence which I have accepted showing that the RDC, Mr. Kamara Bayeye, ARDC, Alimundabira, and Sergeant Natukunda campaigned for the Respondent No.1. In doing so they labelled the petitioner as a rebel fighting government. In effect what they said of the petitioner was that he was committing treasonable acts. This was definitely in my view defamatory. But these persons were not appointed agents of respondent no.1 in the electoral process and nor could they have been so validly appointed. The respondent no.1 has been accused of using the same language by George Rwaboona and Byaruhanga Enoch. He has denied doing so.
252. The respondent no.1, in his testimony and affidavits, has been inconsistent about one matter, and that is the reason for paying the sum of Shs.60,000/= at Kyepatiko. The inconsistency is such that at least one of the explanations is a lie. It is false. That makes suspect the rest of his evidence. In light of that, I am not inclined to accept his denials even if given on oath, that he did not call the petitioner a rebel or rebel collaborator, as stated in the affidavits of George Rwaboona and Byaruhanga Enoch. I prefer the evidence of Byaruhanga Enoch and Rwaboona David to that of the respondent no.1. I find that the Respondent No.1 in breach of Section 22(3) of the Parliamentary Elections Act, 2001, used the said defamatory language, inter alia, at Rushaka and Kigarama.
253. “4(i) *Contrary to Section 23(6) and (7) of the Parliamentary Elections Act, 2001 the 2<sup>nd</sup> Respondent failed to stop the 1<sup>st</sup> Respondent and his agents from making malicious, false, sectarian, reckless, abusive, derisive, ridiculous, and sectarian statements in the election media to decampaign the Petitioner.*”
254. Section 23(6) and (7) of the Parliamentary Elections Act, 2001 refers to private electronic media, and not ‘election media’ the phrase used in the petition. See Section 23(5) the Parliamentary Elections Act, 2001. In Section 23(10) of the Parliamentary Elections Act, 2001, electronic media is defined to include television, radio, internet and



email. The publication marked annexe 7 attached to the petition would not qualify to be electronic media unless it is shown to have been printed off the internet or email, which is not the case.

255. The only evidence of use of electronic media before me is the affidavit of Byaruhanga Christopher which gives an account of statements made by the President on Radio West in Mbarara. The provisions of Section 23(5) and (6) cover all persons by virtue of subsection (7) of the same section. Even though the President was not appointed agent of the Respondent No.1, he is also required to comply with the provisions of Section 23(5) and (6) of Parliamentary Elections Act, 2001, once he makes a foray into the parliamentary elections campaigns.

256. The words and or language complained of is stated in paragraphs 11 and 12 of the affidavit of Christopher Byaruhanga. I set them out. “11. That the President further stated that he wondered whether the Petitioner was not getting campaign funds from hostile sources and swore to investigate the matter and take decisive action, a statement which he had said on or about 12<sup>th</sup> June, 2001, on Radio west programme which I personally listened to along with many other listeners at Kihikihi township in the Kinkizi County west constituency.”

257. “(12). That on the said Radio West programme, the said President Museveni further named the Petitioner as one of the five enemies of the Movement, along with Winnie Byanyima, Winnie Babihuga and others and he added “I do not want them in Parliament.”

258. Counsel for petitioner have not shown the court the particular prohibited acts in Section 23(6) of the Parliamentary Elections Act, 2001, which range from (a) to (h) that the President violated by uttering the words that he did. Are the Presidents utterances on Radio West false or malicious or sectarian or abusive or derogatory or exaggerated and or mudslinging? Or are they all rolled into one plea? It appears counsel left the task to the court. It is a task counsel cannot abdicate from if they wish to succeed under that head.

259. Only one witness termed the Presidents words at the rallies in the constituency insulting and abusive when he referred to the Petitioner as squint eyed but these statements were made, on the evidence before this court, at a rally, and not to an electronic media. No evidence suggested that the President’s speech at the rally was

actually broadcast in the private electronic media to bring those utterances within the purview of Section 23(6) of the Parliamentary Elections Act, 2001.

260. “(j) *Contrary to section 24(1) and (3) of the Parliamentary Elections Act, 2001, the 2<sup>nd</sup> Respondent failed to stop the 1<sup>st</sup> Respondent and his agents from using sectarian campaign against the Petitioner during the campaigns.*”

261. Section 24 of the Parliamentary Elections Act, 2001 states,

“(1) No person shall use or attempt to use any political party colour or symbol, or political party, tribal, or religious affiliations or any other sectarian ground as a basis for that person’s candidature for election or in support of that person’s campaign.”

“(3) Any person who contravenes subsection (1) commits an offence.” These provisions seem to relate to a person’s candidature as portrayed by himself or as portrayed by those campaigning for him and not necessarily as he portrays other candidates. What is prohibited is a sectarian campaign for oneself and not a sectarian campaign against another candidate under this provision. Though it may be possible in portraying another candidate in a sectarian manner to portray oneself too, by contrast, in a sectarian manner that infringes this provision.

262. Sectarian is not defined by the Act or the Constitution or the Interpretation Decree to my knowledge. However, it is a word that is derived from the word ‘sect’. The meaning of sect is given in the Concise Oxford Dictionary at page 1092. “2. the followers of a particular philosopher or philosophy, or school of thought in politics etc” If one follows a school of thought in politics committed to any one particular set of ideas or system for instance multi-party, one-party, two-party, no-party, or movement school of thought, not being of universal application, one is a follower of that sect. If one then promotes his or her candidature on the basis of that sect of political thought to which one belongs, then one is doing so on a sectarian ground.

263. It is possible in my view if a candidate used his belief or association with either a political party or the movement as a basis for that person’s candidature for election or in support of that person’s campaign for a parliamentary election that he or she would be in breach of the provisions of this section, and would be committing an offence. That would be possible because of the ordinary meaning of the words ‘sect’ and or ‘sectarian’.

264. It is not in dispute that the President at least addressed one rally in Kinkizi west constituency during the campaigns that was attended by the Petitioner. What he said at that rally is not in dispute. He canvassed voters to vote for one of his two children who had not strayed from the movement, and that was the respondent no.1. In doing so, the President, in my view, campaigned for the respondent no.1 on a sectarian ground, namely that the respondent no.1 subscribes to the movement school of political thought, a school of political thought or system different from other schools of thought or systems to which he assigned the petitioner now to belong.
265. The rationale for the said provisions is to avoid partisan or sectarian campaigns and I suppose proceed only on individual merit of the candidates. Under the movement system the Constitution has ordained individual merit to be the only basis for election to a political office. This is enshrined in Article 70(d) of the Constitution. Once a candidate is promoted as the movement candidate, it runs foul not only of Section 24(1) of the Parliamentary Elections Act, 2001 but also Article 70(d) of the Constitution. I find therefore that the portrayal of the respondent no.1 by the President and other people who campaigned for him as the movement candidate was in contravention of Section 24(1) and (3) of the Parliamentary Elections Act, 2001.
266. *“(l) Contrary to section 26 of the Parliamentary Elections Act, 2001, the 2<sup>nd</sup> Respondent failed to restrain the 1<sup>st</sup> Respondents and his agents from using government resources during elections.”* I shall set out below the provisions of Section 26 of the Parliamentary Elections Act, 2001 that are relevant to this section.
267. *“(1) Except as authorised under this Act, or otherwise authorised by law, no candidate shall use Government or public resources for the purpose of campaigning for election.”* *“(2) Where a candidate is a Minister or holds any other political office, he or she shall, during the campaign period, restrict the use of the official facilities ordinarily attached to his or her office to the execution of his or her official duties.”*
268. Vincent Kamwesiga is an operative of the Internal Security Organisation by his own admission. He states that the Respondent No.1 was unaware of this fact. He was the official campaign agent for Respondent No.1 during the campaigns in question. Dr. Byamugisha has suggested that a human person cannot be a resource within the meaning

of the above provision. In any case in his view this issue was not necessary for this decision. Government or public resources is not defined in the Act but there is nothing to suggest that it is restricted to non human resources. I think it is wide enough to include human and non human resources.

269. The Internal Security Organisation is a government department. Its staff or employees and or operatives, are the human resources of that department. The prohibition to use government or public resources does not stop at facilities attached to a minister's office. It is any government or public resource that a candidate is prohibited from using for the purpose of a campaign for election. The prohibition is strict. It does not even require knowledge of the user or candidate that this is a government or public resource. Even if Candidate Mbabazi was unaware that Vincent Kamwesiga was an operative of Internal Security Organisation, once he appointed him his official campaign agent, he had converted government resources for his own use for campaigning for an election.

270. The other allegations of use of government resources are not directly naming candidate Mbabazi as the person who used the said resources. Proof of knowledge and approval of use of resources by other persons for the candidates campaign would have to be proved which has not been done.

271. **Issue No.2: Whether the said elections were not conducted in accordance with the principles laid down in the Provisions of the Parliamentary Elections Act, 2001**

272. All learned counsel who addressed me on this issue agreed that the principles laid down in the provisions of the Parliamentary Elections Act, 2001 may be summarised in the following words of Chief Justice B Odoki in *Besigye v Museveni Yoweri Kaguta and Anor*, Supreme Election Petition No.1 of 2001 (when he said, in reference to Presidential Elections and the Presidential Elections Act), "To ensure that elections are free and fair there should be sufficient time given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and the citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be a levelling of the ground so that the incumbents or government ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people. The

election procedures should guarantee the secrecy of the ballot, the accuracy of counting and the announcement of results in a timely manner. Election Law and guidelines for those participating in elections should be made and published in good time. Fairness and transparency must be adhered to in all stages of the electoral process. Those who commit electoral offences or otherwise subvert the electoral process should be subjected to severe sanctions. The Electoral Commission must consider and determine election disputes speedily and fairly.”

273. Though the Supreme Court was considering the Presidential Elections Act, the principles mentioned above are equally distillable from the Parliamentary Elections Act, 2001, the Election Commission Act, and more importantly from the Constitution which gives rise to the Parliamentary Elections Act. I have only one other principle to add, in case of elections under the movement system. And that is the principle of individual merit as contained in Article 70(d) of the Constitution and Section 24 of the Parliamentary Elections Act, 2001. I shall set out both provisions.

274. “70(1) The movement political system is broad based, inclusive and non-partisan and shall conform to the following principles---

- (a) participatory democracy
- (b) democracy, accountability and transparency;
- (c) accessibility to all positions of leadership by all citizens;
- (d) individual merit as a basis for election to political offices.”

275. “24(1) No person shall use or attempt to use any political party colour or symbol, or political party, tribal, or religious affiliations or any other sectarian ground as a basis for that person’s candidature for election or in support of that person’s campaign.

(2) Notwithstanding subsection (1) the use of any political party colour or symbol, or political party affiliations may be used as a basis for a person’s candidature for election or support during a period when a multi-party political system is in operation.

(3) Any person who contravenes subsection (1) commits an offence.”

276. The principle of individual merit for election to political office is intended to ensure that the broad base, the inclusiveness and non-partisan nature of the movement system is preserved. It seeks to eliminate the basis for election being association for political, religious, tribal or any other sectarian ground. It bars the promotion of the

candidature of any person based on association with others of similar interest as long as that association, excludes or appears to exclude others and is partisan. A candidate must therefore seek office, on his individual merit, not on the basis of belonging to a ‘distinct school’ in terms of politics or other sectarian ground to promote his candidature or others using that ‘distinct school’ to campaign for his election.

277. I have already considered in issue no. 1 the evidence adduced in support of non-compliance with the provisions of the Parliamentary Elections Act, 2001. What I have to decide at this stage is whether in light of what I have found in issue no.1, the conduct of this election was not in accordance with the principles laid down in the provisions breached.

278. I am satisfied that the campaign of intimidation, prior to the election, executed and perpetrated by the security apparatus in Kinkizi West Constituency, comprising of the RDC, Kamara Bayeye, ARDC, Alimundabira, I.O. Sergeant Natukunda throughout the constituency violated the principle of a free and fair election, free from intimidation. This was spiced with the intervention of the Presidential Protection Unit in meting out violence to the petitioner’s supporters in the two incidents of 14<sup>th</sup> June 2001. Soldiers of the UPDF were active on election eve together with respondent no.1’s agents and supporters in harassing petitioner’s agents in their homes. This continued on polling day, off some polling stations preventing voters to turn up, and at some polling stations, acting in concert with the agents of the respondent no.1, in illegally arresting, assaulting and removing from the polling stations the agents of the petitioner. This violated the principle of a free and fair election with transparency adhered to at all stages of the electoral process.

279. In spite of the numerous reports to the Police of cases of assaults, beatings and shooting of the petitioner’s agents by supporters and agents of respondent no.1, including the shooting of Twinomuhwezi by Vincent Kamwesiga, the official campaign agent of respondent no.1, who was definitely in unlawful possession of a firearm, no action was taken against those responsible to bring them to justice, lending an air of impunity to those engaged in unleashing violence to the petitioner’s supporters and agents.

280. There was no level ground with Public officials at the District level and the President campaigning for the respondent no.1, in a manner that violated the law, as found above.
281. The various election malpractices including compelling voters to vote for the respondent no.1 that have been established under Issue no.1 violated the principle of the right of citizens to vote for the candidates of their choice.
282. The conduct of the elections violated the principle of individual merit in so far as a sectarian campaign was conducted for the respondent No.1 and against the petitioner by the President and public officials as found above. By identifying the respondent no.1 as the ‘movement’ candidate, and the petitioner as the ‘enemy’ of the ‘movement’ the promotion of the respondent no.1’s candidature was sectarian, dividing the citizens into those who belong to the movement and those outside of the movement. This severely undermined the broad base, inclusiveness and non-partisan nature of the movement. It violated the principle of individual merit, the hallmark of the movement system.
283. I would answer issue no.2 in the affirmative. The elections in Kinkizi West Constituency were not conducted in accordance with the principles laid down in the provisions of the Parliamentary Elections Act, 2001.

284. **Issue No. 3**

**Whether if there was non-compliance with the provisions and principles of the said Act such non-compliance affected the results of the said election in a substantial manner.**

This issue is founded upon Section 62(1)(a) of the Parliamentary Elections Act, 2001 which provides for one of the grounds upon which an election can be set aside. I shall set it out below.

285. “(1) The election of a candidate as a member of parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the court--- (a) non-compliance with the provisions of this Act relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and the failure affected the result in a substantial manner;”
286. It is contended for the petitioner that the non-compliance with the provisions of the Parliamentary Elections Act, 2001, and the failure to conduct the elections according

to the principles in those provisions affected the result in a substantial manner. To determine whether the non-compliance and failure affected the result in a substantial manner, Counsel for petitioner submit that there are two possible tests, which I refer to as the quantitative test, and qualitative test, adopting the nomenclature used by my brother, Musoke Kibuka J., in *Winnie Babihuga v Masiko Winnie Komuhangi and others* HCT-00-CV-EP-0004-2001 (at Mbarara).

287. On the other hand it is contended for both respondents that whatever non-compliance with the provisions of the Act, and the principles contained therein that has been established, such non-compliance and failure did not affect the result in a substantial manner. Dr. Byamugisha argues that from the declaration of results forms and the pollwatchers reports it is only about 10 out of 88 polling stations where it is shown that there may have been any non-compliance and failure. This could not have affected the result in a substantial manner.

288. Mr. Deus Byamugisha argued that in *Besigye v Museveni Yoweri Kaguta* (Supra), the Supreme Court had decided, and that it was binding on this court, that a petitioner had to prove by numbers of votes that the successful candidate would not have obtained had it not been for non-compliance with the provisions of the Act. And on adjustments being made, the majority of the winner should be wiped out by the adjustments for it to be proved that the non-compliance and failure affected the result in a substantial manner. For the respondents it is contended that this is only the test available for determining ‘affecting the result in a substantial manner’.

289. I do not think the submission of Mr. Deus Byamugisha is an accurate reading of the Supreme Court decision. It is true that the majority espoused the quantitative test and the minority espoused the qualitative test. However, at least in the judgement of Mulenga, JSC., one of the majority, the quantitative test is not the only test. It is possible to apply the qualitative test too in some circumstances. The relevant portion of his judgement is set out below.

290. “Intimidation in the electoral process may, as I have indicated manifest in diverse forms, from acts of violence and harassment, to invasion of secrecy of voting. It can affect the result in two ways. In one way, it may prevent fair competition between or among the contesting candidates. Secondly it may cause voters not to vote according to



their free will, either by compelling them not to vote or vote for a candidate they do not freely choose. The extent to which fair competition is prevented by intimidation can be proved by direct evidence. Similarly proof of the extent to which voters are prevented from voting because of intimidation, can be by direct evidence. However, the Court cannot demand, and does not expect, proof of the effect of intimidation as would require a voter to disclose how, or for whom, he or she voted, as that would be a violation of the principle of secret ballot. Learned Counsel for the Petitioner contended that in those circumstances, it is not possible to quantify the effect of intimidation in terms of figures and numbers of voters and votes. I agree with that contention in as much as there is bound to be invisible effect of intimidation which is not seen or easily perceived. That, however, would not be reason for a court to readily conclude that an amount of intimidation affected the result. No, conversely, should it be ground for the court to lightly dismiss evidence of intimidation because its effect on the final result is not established in figures and numbers. Ultimately, what the court must determine judicially is whether in view of the proved intimidation,, the election result is a choice made freely by the majority of the voters. Needless to say therefore, that proof of the level and extent of the intimidation is very material for that determination. On the one hand the intimidation may be so grave and extended to such large proportion of the electorate that it becomes compelling, or irresistible to infer that it affected the result. On the other hand the intimidation may have been such as would not compel an average voter to act against his or her will, or may have been confined to a relatively small proportion of the electorate. In such an eventuality the court would not infer that the intimidation affected the result, except where the contest was so close that the court is led to the conclusion that this balance in the context was swung or tilted by the intimidation.” (Emphasis is mine.)

291. It is clear from this quote that one of the majority in the supreme court was of the opinion that another test, a qualitative test was possible in some circumstances, which in effect means that there are two possible tests to apply depending on the circumstances. My brother Musoke Kibuka, J., reached the same conclusion in *W. Babihuga v Masiko Winnie Komuhangi* (Supra) when he stated, “In the circumstances, therefore, it appears to me that in conducting any judicial analysis under the Provisions of Section 62(1)(a) of the

Parliamentary Elections Act, 2001, the court may apply any of the two separate tests or both. The first is the quantitative test. That test is most relevant where numbers and figures are in question. The second is the qualitative test. That test is most suitable where the quality of the entire election process is questioned and court has to determine whether or not the election was free and fair.”

292. I therefore reject the submission of Mr. Deus Byamugisha that only the quantitative test is available to this court to determine that the non-compliance with the provisions of the Parliamentary Elections Act, 2001, and failure to conduct elections according to the principles contained in the same provision affected the result of the election in a substantial manner. Turning to Dr. Byamugisha’s submission that the non-compliance of the provisions of the Act, was restricted to only 10 out of 88 polling stations, this submission ignores all the violations of law and intimidation that have been proved to have been committed prior to polling day. Dr. Byamugisha suggested that the petitioner had exaggerated what occurred but offered no proof of the exaggerations. It is the whole electoral process that is under review, and not just events on polling day.

293. After a careful review of the evidence on both intimidation and the illegal sectarian campaign, which I summarise below, I am satisfied that any one of them, were of such gravity, so widespread and pervasive, as to irresistibly lead me to the conclusion that the result of the election was substantially affected by any one of them. Taken together, in addition to the election voting malpractices that have been proved, some of which flow, from the systematic intimidation, I am abundantly satisfied, applying the qualitative test, that the result was affected in a substantial manner.

294. The picture of this constituency that has been firmly established in evidence before me, and summarised below, is almost no different from that painted by Mulenga JSC., when he said, “The evidence of intimidation in Rukungiri, however, was of such gravity and so generalised that I concluded it must have had an effect on the voting there. It was not directed at the Petitioner and his agents alone, but it also reached out to the supporters and other voters who turned up to meet the Petitioner or to attend his rally, and the rallies addressed by his campaign agents, and were violently dispersed by soldiers. The violence and harassment led to personal injuries and deprivation of liberty of the victims and must have caused apprehension and fear of the same by those who witnessed

the occurrences as well as the close neighbours who heard of it. As late as just over a week prior to polling day, a person was shot dead in a violence that erupted after a rally addressed by the petitioner in Rukingiri town. On polling day the petitioner's polling agents were openly harassed out of some polling stations they were supposed to oversee.” See *Besigye v Museveni and Anor* (Supra).

295. It has been established in the evidence before this court that there was a campaign of intimidation conducted firstly by the Resident District Commissioner, Assistant Resident District Commissioner, UPDF Intelligence officer in Kanungu District, and several Gombolola internal security organisation officers among other activities, through public rallies, throughout the constituency against the supporters of the petitioner. It was alleged that the petitioner was rebel who would lead them to war. Supporters and agents of the petitioner were asked to denounce their support for the petitioner publicly at some of those rallies. The acts of the said group were calculated to instil fear and despondency in the population to scare them from voting for the petitioner in the elections.

296. There are supporters of the petitioner in a procession from a rally who were beaten up and their motor-cycles vandalised. That same night the petitioner's vehicle was damaged, the occupants beaten up, and some property and money therein stolen by Soldiers of the Presidential Protection Unit. One of the Petitioner's agents, Twinomuhwezi was shot at by the official agent of the respondent no.1, who was in unlawful possession of a firearm at the time. It has not been shown that being an officer of ISO entitles one to carry a firearm, especially when one is illegally conducting a campaign for a candidate.

297. The acts of violence and intimidation of the petitioner's supporters and agents before polling day cover all the four sub counties that make Kinkizi West Constituency. In Kihhi sub county they covered the parishes of Karubeizi, Kibimbiri, , Kihhi township, Rushoroza, Rwanga, Nyakatunguru, Nyanga and Bihomborwa. In Kayonza sub county these occurred in the parishes of Kyeshero, Ntungamo, and Mpungu. In Kanyantorogo sub county the acts of intimidation occurred in Burema, Kihembe, and Nyamigoye Parishes. In Nyamirama sub county these acts of intimidation occurred in Mashaku, Nyarurambi, and Kigarama parishes.

298. The acts of violence and intimidation including arrests, assault and removal of the petitioner's agents and supporters from polling stations on polling day were fairly widespread too, though concentrated in Kihhihi sub county and Kayonza sub county. From the affidavit evidence on record over 30 polling stations was affected in all the sub counties of the constituency. The arrest of petitioner's agents was intended not only to intimidate them but to disable them from protecting the petitioner's interests at the polling stations. These arrests, assaults and removal from polling stations appear to have been quite well planned by the respondent no.1's agents and help mobilised in the form of UPDF soldiers to assist them carry out their nefarious design and acts.
299. Officially the army had no role to play in the electoral process in this constituency. The evidence available is that they were deployed off some polling stations. There is evidence from witnesses who assert that on their way to polling stations they came across road blocks mounted by the army and supporters of the respondent no.1 preventing voters getting to polling stations. This was part of a scheme of intimidation.
300. Apart from the violence there are the electoral malpractices related to voting that have been shown to have occurred at about twenty polling stations, especially the polling stations that saw the forcible removal of the petitioner's agents temporarily for some hours or for the whole day.
301. Illegal and sectarian campaign contrary to law has been proved to have been carried out for the respondent no.1 and against the petitioner by public officers at the district level, Vincent Kamwesiga, UPDF officers like Sergeant Natukunda, and the President too. Sectarian campaigns strike at the very core of the basis for a free and fair election under the movement system which is the principle of individual merit as the basis for election to political office. It leaves the concept of broad-base, inclusiveness and non-partisanship in shreds. In my view where a sectarian campaign was extensive as in this case the result of the election could not but be affected in a substantial manner.
302. For the reasons set out above I answer issue no. 3 in the affirmative.
303. **Issue No. 4: Whether any illegal practices and/or offences under the Parliamentary Elections Act, 2001 were committed in connection with the said elections by the Respondent No. 1 personally or with his knowledge and consent or approval**
- Section 62(1)(c) of the

Parliamentary Elections Act, 2001 is the one that provides the legal basis for this issue, and I will set it out below

304. .“(1) The election of a candidate as a member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the court--- (c) that an illegal practice or any other offence under this Act was committed in connection with the election of the candidate personally or with his or her knowledge and consent or approval; or” Proof of commission of one illegal practice or offence is therefore sufficient ground to annul an election.

305. The petitioner alleges that the respondent no.1 committed many offences and illegal practices. In their written submission counsel for the petitioner concentrate on only 8 or so offences allegedly committed by the respondent no.1. The first three relate to bribery. I will set out the provisions that relate to bribery.

306. Section 69 of the Parliamentary Elections Act, 2001 provides,

“(1) Any person who, either before or during an election with intent, either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that other person, commits the offence of bribery and is liable on conviction to a fine not exceeding ninety currency points or imprisonment not exceeding three years or both.

(2) Any person who receives any money, gift or other consideration under subsection (1) also commits the offence under that subsection.

(3) Subsection (1) does not apply in respect of the provision of refreshments or food---

(a) offered by a candidate or candidate’s agent who provides refreshments or food as an election expense at a candidates’ campaign planning and organisation meeting; or

(b) offered by any person other than a candidate or a candidate’s agent who, at his or her own expense provides the refreshments or food at a candidates’ campaign planning and organisation meeting.

(5) An offence under subsection (1) shall be an illegal practice.”

307. The ingredients of this offence are the following:

(1) Any person before or during an election; (2) With intent either directly or indirectly to influence another person to vote or refrain from voting for any candidate; (3) gives or provides

or causes to be given or provided any money or gift or other consideration to that other person.

308. Niwagaba Godfrey has stated in his affidavit that on the 22<sup>nd</sup> June 2001 at about 9.00p.m. at Kyepatiko trading centre the respondent no.1 addressed a rally attended by the witness. He asked people why they were giving him a cold reception and they replied that it is because he never stopped to talk to them before. The respondent told the people that he was sorry and as an atonement he offered and paid shs.60,000/=. He gave this money to Kamanzi Wilson the chairperson of Nyakinoni who gave out the money to the people present, and the witness received shs.500/=.
309. The respondent no.1 admits in his affidavit of paying the sum of shs.60,000/= on the date and at the place alleged by Niwagaba Godfrey but denies the purpose alleged by Niwagaba. He also states that he paid the money to his agent for refreshments for a campaign planning and organisation meeting. During cross-examination he stated that he paid the money to his agent called Matane who may be a son of Kamanzi for the purpose of buying pens, pencils, note books and t-shirts for his campaign. The respondent denied addressing a rally at Kyepatiko on that day.
310. I am satisfied that the respondent no.1 is lying as regards the purpose for which he paid the money. Firstly he has provided two inconsistent explanations as to the purpose of the payment. Secondly none of his agents who have sworn affidavits and those who were cross examined has admitted that they received any money from the candidate or his agents. His agents in unison have stated that no money was given out during campaigns even for the purpose that the respondent is alleging he gave out the money for here. It may have been helpful if the particular agent who received this money had sworn an affidavit and given an account of how he expended this sum. He did not do so. There was no evidence that the campaign planning and organisation meeting paid for took place at all or that actually refreshments or food was provided to any such purported campaign planning and organisation meeting.
311. The money was paid on the evening of 22<sup>nd</sup> June, with only two clear days left for further campaigning. Organisation and formation of a new committee for the area to be active essentially for only two days may be possible but the whole idea is not credible.

The time remaining for campaigning was so short that it was likely the two days would expire before the new committee was formed and it hit the campaign trail or ground.

312. I am satisfied that both inconsistent explanations are false and in fact do corroborate the evidence of Niwagaba Godfrey. At the same time they reveal an attempt by the respondent no.1 to hide the purpose for which this money was paid by trying to bring it into areas that are permissible in law. Dr. Byamugisha has submitted that even if I found that the respondent no.1 had told a lie, the lie was not a bribe. He further submitted that payment of money for atonement is no bribe itself, and is not criminal.

313. I agree with Dr. Byamugisha that telling a lie is not paying a bribe, but in my view, telling a lie or lies, can be compelling circumstantial evidence from which to infer an unlawful intention to actually pay a bribe. I find that the respondent no.1 before elections, on the 22<sup>nd</sup> June 2001 at about 9.00p.m. did pay shs.60.000/= to Kamanzi Wilson, for distribution to the people at Kyepatiko attending his rally, with a view to influence them to vote for him, rather than the other candidate in the elections that were at hand. The witness, Niwagaba Godfrey attending this rally was duly paid shs.500/= from the sum of Shs.60,000/=. He was a voter registered as no.08217371 at Samaria II (M-Z) polling station.

314. Rarely would a candidate paying bribes or indeed any person doing so announce in public that he is paying a bribe for one to vote for him. It is not surprising that he or she may couch the language accompanying the gift in such a manner that it leaves the receiver in no doubt as to the intention and expectation of the giver while outwardly hiding the true nature of the gift. The respondent was addressing a campaign meeting that was rather cold to his solicitation of votes. It was only three days away to voting day. He inquired of the reason for this coldness, and upon the same being furnished, he ‘atoned’ for his misdeeds. He was seeking votes from the people. I am satisfied that this was as direct as could be, but it also amply qualifies as an indirect way of bribing the people who attended the rally to vote for him, and not for the other candidate. It was an offence to make such a payment.

315. I find that the respondent no.1 committed the illegal practice and offence of bribery contrary to Section 69 of the Parliamentary Elections Act, 2001 in paying the sum of Shs.60.000/= on 22<sup>nd</sup> June 2001 to Kamanzi Wilson.

316. As regards the Amos Nzei and the promise of 100 crates of soda to the supporters of respondent no.1 at a victory party, the respondent no.1 has contested that any such promise was made. The respondent no.1's version is that Amos Nzei gave a 20 crates of soda to sports teams that played at the grounds where the respondent no.1's rally had been held earlier on in the day. I am not sure, even if I accepted the petitioner's version, whether a promise to give a gift or money in the future, after elections in question, would come within the purview of Section 69(1) of the Parliamentary Elections Act, 2001. The provisions seem to relate to presents given before or during elections, and not after or promises to give gifts after the election even if made before the election.
317. Turning to the money given to LC officials Musinguzi Jackson and Turyatemba Juliet by Julius Akakwansa and Mary Batenda respectively I do not think sufficient nexus has been drawn between that money, a sum of shs.1000/= in each case, and the respondent no.1. I am not sure that there are sufficient circumstances to infer knowledge, approval or consent of the respondent no.1 to these acts.
318. I now turn to the offence of carrying arms and ammunition at polling stations contrary to Section 43(1) of the Parliamentary Elections Act, 2001. I shall bring in view the said provisions. “(1) No person shall arm himself or herself during any part of polling day, with any arms or ammunition or approach within one kilometre of a polling station, with arms and ammunition unless called upon to do so by lawful authority or where he or she is ordinarily entitled by virtue of his or her office to carry arms.”
- “(2). Any person who contravenes subsection (1) commits an offence.”
319. The facts upon which the petitioner contends that the respondent no.1 committed this offence are not substantially in dispute. The respondent accepts that he visited several polling stations on polling day, including the one he voted at, in the company or being escorted by four armed military policemen, part of his retinue of guards. The respondent had six armed military policemen at his home and on polling day, he moved with four and two remained at home. It is contended for the petitioner and not denied by the respondent no.1 that the said four armed military policemen were at each of these polling stations, Nshaka Primary School polling station, where the respondent no.1 voted from, and Nyamwegabira Catholic parish polling centre, among others.



320. Counsel for the respondent no.1 contend that the petitioner was entitled to a twenty four hour guard, and was entitled to move with his military police escorts for this purpose. He had been so guarded for the last fifteen years. For the petitioner it is contended that much as he may have had these guards for the last fifteen years, he would have to show entitlement to the said guards which he has not done. Having failed to do so, the petitioner contends that the said soldiers, with knowledge, approval, and consent of the respondent no. 1, unlawfully, in contravention of Section 43(1) of the Parliamentary Elections Act, 2001, approached within one kilometre of the polling stations they visited with arms and ammunitions, thus committing the offence complained of.
321. There are two exceptions to Section 43(1) of the Parliamentary Elections Act, 2001, and that where a person in lawful authority has authorised the prohibited acts or the person who has armed himself or carried the ammunition or being so armed approaches within one kilometre of the polling centre is 'ordinarily entitled by virtue of his or her office to carry arms.' There has been no claim that these four military policemen were authorised by a lawful authority. Lawful authority is not defined but reading it within context of this legislation, the lawful authority must be in reference to officials with lawful authority over polling stations, stretching from the Electoral commission to the presiding officers at the station. A candidate cannot be a lawful authority for purposes of this section.
322. It may be said in favour of the respondent no.1 that the military policemen are covered by the second exception which is that by virtue of their office they are entitled to carry arms. Here I would assume the office or offices referred to are of being military policemen and or guards of the respondent no.1. For my part I am not sure that one can say that there are entitled to carry arms without more. Entitlement is a question of law or agreement. No law has been pointed to that provides this entitlement. And no other proof of any sort has been raised to show that they come within this exception. Section 43 is as much aimed at the armed forces as it is aimed at any person who happens to have these instruments of coercion.
323. The Respondent no.1 has not shown that at law or even by agreement with his employers he was entitled, as a Minister of State for Regional Cooperation to a detail of

guards from the military police. He has not established an entitlement to the escort he moved with. Past practice creates no entitlement. It may be a privilege but that is all it can be. In order not to run foul of this section, the petitioner would have had to require his soldier/guards to leave their arms and ammunition, a kilometre away from the polling station, before approaching the polling station with the said guards. He did not do so. Nor did he seek permission of any lawful authority as required by the provisions of the Section 43(1) of the Parliamentary Elections Act, 2001. This offence was committed with the knowledge, consent and approval of the respondent no.1.

324. The petitioner contends that the respondent no.1 committed an offence under Section 26 of Parliamentary Elections Act, 2001, in so far as he used government resources for his campaign. The prohibition in that section is not penal in my view.

325. With regard to the offences that may have been committed in breach of Section 25 of Parliamentary Elections Act, 2001, in interfering with the electioneering activities of the petitioner, the respondent no.1 has not been shown to have been involved directly in the commission of those offences by diverse persons, some of whom were his campaign agents. It should be for those agents to answer directly for the crimes that they committed. The same holds true for the offence of undue influence contrary to Section 81 of Parliamentary Elections Act, 2001.

326. **Issue No.5: Remedies available to the parties**

I have found herein above, in answer to issue no.3, that there was non-compliance with the provisions of Parliamentary Elections Act, 2001 and there was a failure to conduct the election for Kinkizi west constituency in accordance with the principles laid in those provisions and that this non-compliance and failure affected the result of the election in a substantial manner. That alone is sufficient to order the setting aside of the election in accordance with Section 62(1)(a) of the Parliamentary Elections Act, 2001.

327. I have also found the respondent no.1 guilty of the illegal practice of bribery, contrary to Section 69(1) of the Parliamentary Elections Act, 2001, and the offence of approaching within one kilometre of a polling station armed and with ammunition, contrary to Section to 43(1) of the Parliamentary Elections Act to have been committed with his knowledge, consent and approval, contrary to Section 62(1)(c) of the

Parliamentary Elections Act, 2001. Each of these two findings is sufficient to set aside the election in question under Section 62(1)(c) of the Parliamentary Elections Act, 2001.

328. The election of the Respondent No.1 is accordingly set aside, under Section 62(1) (a) and (c) of Parliamentary Elections Act. The seat, in Parliament, for Kinkizi West Constituency is hereby declared vacant.

329. This petition is allowed with costs against both respondents. A certificate of costs for two counsel is issued for the petitioner in accordance with Rule 39(1) of the Advocates (Remuneration and Taxation of Costs) Rules, 1982, having regard to the nature and importance of this election petition.

Dated, signed and delivered at Kampala this 17<sup>th</sup> day of May 2002

Fredrick M.S. Egonda-Ntende  
Judge