

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MBALE**

**ELECTION PETITION NO.22 OF 2011**

**WAMUNDU ABDUL MAJID                    :::::::::::                    PETITIONER**

**VERSUS**

**1. MASABA ABDUL**  
**2. THE ELECTORAL COMMISSION                    :::::::::::                    RESPONDENTS**

**BEFORE: HON. MR. JUSTICE MIKE J. CHIBITA**

**JUDGMENT**

This is a petition filed by the petitioner, Wamundu Abdul Majid, against the respondents for declarations that:-

- The 1<sup>st</sup> respondent was not validly elected as Chairperson LC III Bubyangu sub County.
- The Chair of Bubyangu Sub County is declared vacant and fresh elections be held.
- Costs of the petition are paid by the respondents.

The petitioner, 1<sup>st</sup> respondent and several others were candidates for the post of Chairperson Bubyangu Sub County Local Government elections held on 7<sup>th</sup> March 2011. The petitioner is aggrieved by the declaration of the 1<sup>st</sup> respondent as the winner of the elections on the following grounds:-

- That the 1<sup>st</sup> respondent committed illegal practices and electoral offences.
- That the 2<sup>nd</sup> respondent failed to conduct the elections in accordance with the provisions of the Constitution, the Electoral Commission Act and the Local Governments Act.

- That the 1<sup>st</sup> respondent personally benefitted from the non compliance with the electoral laws and this affected the outcome of the elections in a substantial manner.

The petition is accompanied by the affidavit of the petitioner and several other voters.

The 1<sup>st</sup> respondent in his answer to the petition accompanied by his affidavit in addition to several other voters' affidavits, denies all the accusations contained in the petition. He contends that the elections were conducted in accordance with the principles of transparent, free and fair elections as laid down by the electoral laws.

He argues in the alternative that if any irregularities or non compliance occurred they were not enough to affect the outcome of the elections in a substantial manner. He therefore asks court to dismiss the petition with costs.

The 2<sup>nd</sup> respondent's answer to the petition is along the same lines. The answer to the petition of the 2<sup>nd</sup> respondent is accompanied by the affidavit of Dr. Badru Kiggundu the Chairperson of the 2<sup>nd</sup> respondent.

At the scheduling conference the following memorandum was agreed upon:-

#### **AGREED FACTS:**

There was an election for Chairperson LC 3 for Bubyanga Sub County on 7<sup>th</sup> March 2011.

There were seven candidates who contested in that election including petitioner and respondent.

The 2<sup>nd</sup> respondent declared the 1<sup>st</sup> respondent winner and had him gazetted and published in the Gazette of 15<sup>th</sup> April, 2011.

The 1<sup>st</sup> respondent polled 1593 votes and the petitioner 1449 votes.

#### **ISSUES:**

1. Whether there was failure or non compliance with the Electoral laws.

2. Whether the failure and non compliance affected the results in a substantial manner.
3. Whether the 1<sup>st</sup> respondent committed any electoral offences or illegal practices personally or by his agents, with his knowledge, consent and approval.
4. What remedies are available to the parties?

## **WITNESSES**

All deponents of affidavits should be considered witnesses.

The Petitioner expressed interest in cross examining the following four witnesses:

- 1<sup>st</sup> Respondent
- Mawerere George
- Nangoye Jabberi
- Kissa Loaving

The 1<sup>st</sup> Respondent expressed interest in cross examining the following three witnesses:

- Petitioner
- Masifa Faruku
- Mugobela Yahaya

The 2<sup>nd</sup> respondent asked to cross examine the following two witnesses:

- Sayiruna Nagudi
- Mwima Nasuru

The Counsel agreed to file and serve written submissions, which they did according to an agreed timetable,

In the process of the trial it emerged that Masifa Faruku was out of the country and therefore not available for cross examination. Witnesses Mwima, Nangoye and Kissa were dropped from cross examination by consent.

Counsel agreed to submit written submissions in accordance with an agreed timetable.

The petitioner was represented by learned Counsel James Gyabi. The 1<sup>st</sup> respondent was represented by learned Counsel Michael Mudangha. The 2<sup>nd</sup> respondent was represented by learned Counsel Jude Mwasa.

Issue one was whether there was non compliance with electoral laws in conducting the elections. Counsel for the petitioner contends that the 2<sup>nd</sup> respondent failed to ensure that the electoral process was conducted under conditions of freedom and fairness. With specific reference to the Lusamenta polling station he relies on the evidence of Sayiruna Nagudi Nakiondo, which is supported by that of Mubajje Juma to highlight violence and intimidation.

Bubyangu collection Centre is another area pointed out as being at the centre of violence as evidenced by the petitioner's affidavit, corroborated by affidavits of Naswagi Abdala, Mwima Nasuru and Badru Wolimbwa.

On rigging at Lusamenta again the petitioner relies on Sayiruna to show that non registered voters were allowed to vote, his polling agents prevented from protecting his interests and some of them chased away.

The petition also lays claims of allowing certain voters to vote twice. The affidavits of Badru Wolimbwa, Mugobela Yahaya and Bulobe David testify to this practice at Machese Trading Centre Polling station. Masifa Faruku, a polling assistant at the same station and an employee of the 2<sup>nd</sup> respondent depones to the same fact.

With this evidence Counsel for the petitioner avers that issue number one should be resolved in favour of the petitioner.

On issue number two whether the non compliance affected the results, counsel refers court to the case of **Kizza Besigye versus Museveni and Electoral Commission No.1 of 2001** particularly the judgment of Mulenga JSC where he espoused the need for a quantitative outlook to the electoral contest.

The petitioner again relies on the evidence of Sayiruni Nagudi who testified that her co agent Juma Mubajje was chased away after being identified as being a stumbling block to the 1<sup>st</sup> respondent's efforts at rigging the election. Counsel argues that the only reason the 1<sup>st</sup> respondent got 380 votes and the petitioner 10 votes at Lusamenta is because of multiple voting by the 1<sup>st</sup> respondent's supporters and denial of the right to voters petitioner's supporters.

Counsel makes the same argument in respect to Bubyangu polling station. He therefore concludes this issue by stating that all evidence of non compliance when quantified leads to the conclusion that the results would have been affected substantially had the election been conducted in accordance with the law.

Issue three is whether the 1<sup>st</sup> respondent committed electoral offences and illegal practices. In support of this issue Counsel Gyabi relied on the Local Governments Act section 139. The section provides that an election of a Chairperson or member of a Council may be set aside if proved that an illegal practice or electoral offence was committed by a candidate personally or with his/her knowledge, consent or approval.

The first illegal practice/electoral offence alleged to have been committed by the 1<sup>st</sup> respondent is voting more than once contrary to section 152 (b) of the Local Governments Act. The petitioner in his affidavit states that he had information that the 1<sup>st</sup> respondent voted more than once; at Bubyangu Primary school polling station and at Machese Trading Centre polling station.

According to Counsel Gyabi, the 1<sup>st</sup> respondent does not directly deny this allegation in either of his affidavits of 13<sup>th</sup> May, 2011 and that of 30<sup>th</sup> May, 2011. Other affidavits containing information in support of this allegation are those of Mwima Nasuru, Badru Wolimbwa, Bulobe David, Mafabi Amidu, Mugobela Yahaya, Masifa Faruku and Gizamba Ausi.

Their evidence is to the effect that the 1<sup>st</sup> respondent voted at Machese Trading Centre Polling Station at about 2.15 p.m. Earlier, at about 1.00 p.m. the 1<sup>st</sup> respondent is said to have voted at Bubyangu primary school polling station, according to the evidence of Mwima Nasuru, which, according to Counsel, is uncontroverted.

Witness Mugobela Yahaya is the one witness who claims to have seen the 1<sup>st</sup> respondent voting both at Bubyangu and at Machese Polling Stations.

The other issue emerging is that the 1<sup>st</sup> respondent used the names Masaba Abdu Basya to vote a second time. Counsel insists that his denial of those set of names is an afterthought and a conscious effort to deceive court.

He further calls upon court to disbelieve the evidence of Musa Masaba and Muyonga Abubaker who swore affidavits for both sides. He attacks the evidence of Kissa Loaving in favour of the 2<sup>nd</sup> respondent where he states that he never saw the 1<sup>st</sup> respondent vote at Bubyangu where he was the Presiding Officer.

The affidavits of Mwima Nasuru and Mugobela Yahaya are evidence in support of the assertion that 1<sup>st</sup> respondent voted twice.

Evidence was also adduced to the effect that the 1<sup>st</sup> respondent destroyed ballot boxes and ballot documents contrary to section 151 (h) (2) of the Local Governments Act. This allegation is supported by the evidence of Mwima Nasuru, Nangoye Jabberi and Mafabi Amidu, which according to Counsel's submissions were uncontroverted by the 1<sup>st</sup> respondent.

Further affidavits from Mwima Idi and Naswagi Abdula, officials of the 2<sup>nd</sup> respondent, state that the 1<sup>st</sup> respondent was seen burning ballot boxes at Bubyangu G.C.S Collection Centre in the presence of Nangoye Jabberi the Sub county Election Supervisor.

Counsel points out that the only attempted denial of this is by Mawerere George, a Police officer attached to Mbale Central police Station. He points out that though in his affidavit Mawerere set out to deny the contents of the affidavit of Mwima Nasuru during cross examination he stated that he had not read the affidavit of Mwima Nasuru! Therefore he swore to an affidavit without knowing what was in it and set out to support an alibi that was not raised by the 1<sup>st</sup> respondent.

Though Nangoye Jabberi denies the occurrence of this incident his employees Mwima Idi and Naswagi Abdula contradict his testimony.

Counsel for the petitioner therefore concludes that his client has ably proved to the required standard that the 1<sup>st</sup> respondent personally voted more than once and destroyed or otherwise interfered with ballot boxes and ballot documents contrary to the law. He further states that proof of one of these offences is enough to annul an election. However having proved two offences therefore provides court with overwhelming cause to do so.

In conclusion Counsel therefore submits that issue four regarding remedies should be resolved in favour of the petitioner.

The remedies Counsel prays for are: orders and declarations that the 1<sup>st</sup> respondent was not validly elected as Chairperson LC III for Bubyangu Sub County, that the election be annulled, set aside and a new election organized and finally that the respondents be asked to pay costs to the petitioner.

Counsel Mudangha for the 1<sup>st</sup> respondent submitted written submissions and in response to issue number one concerning non compliance with electoral laws he states that his client was not in charge of the elections and was therefore under no obligation to ensure compliance with the electoral laws.

He states that the petitioner's evidence should be dismissed as hearsay since he did not witness any of the acts complained of having retreated to his home after voting. He calls upon court to disregard the affidavit of Sayiruni Nagudi as untruthful since she states that she was nowhere near the votes were being cast.

He cites **Alisemera Babiiha Jane versus Bikorwenda EO No. DR. MFP 1 of 1996** to state that there should have been tendered a copy of the Official Register used on polling day indicating who had voted and who had not. Since the petitioner or any of his witnesses did not tender in such evidence, Counsel calls upon court to disregard that ground and dismiss the petition with costs.

On voting twice by the 1<sup>st</sup> respondent, Counsel cited the case of **Eng Katwiremu versus Mushemeza EP No. 1 of 1996** where it was stated that a judicial analysis of evidence should take serious account of the fact that such people (supporters and/ or agents) may not give independent testimony. He calls upon court to find the evidence of Gidobo, a Presiding officer, to be more believable.

On issue number two Counsel associates himself with the case of **Kizza Besigye versus Museveni** but denies that there was non compliance with the law. He refers to **Alisemera** to contend that proof of an irregularity per se does not lead to the avoidance of an election but there must be proof that such irregularity affected the results in a substantial manner. Counsel concludes that no such evidence exists and therefore the issue should be resolved in favour of the 1<sup>st</sup> respondent.

On whether the 1<sup>st</sup> respondent committed electoral offences, Counsel avers vehemently that the 1<sup>st</sup> respondent did not commit any illegal practices or offences as alleged. He discredits the affidavit evidence in support of the petitioner's allegations as hearsay. He adds that the petitioner during cross

examination stated that he discovered the alleged offence while checking the Register at night but could not relate the photographs in the Register to the 1<sup>st</sup> respondent.

Counsel Mudangha further states that petitioner contradicted himself when it came to the name of the 1<sup>st</sup> respondent's initial B. further that he failed to place the 1<sup>st</sup> respondent at the two polling stations. He asks court to disregard the affidavits of Muyonga Abubaker and Masaba Musa since they were repudiated at a later stage especially since they were not called for cross examination.

He challenges the petitioner not to shift the burden of proof onto the 1<sup>st</sup> respondent when he alludes to refusal to deny or put up his case against the petitioner. In support of this position he cites **Ogola versus Akika Othieno Tororo EP No.2 of 1996** where it was restated that the burden of proof always lies on the petitioner.

On the burning of ballot boxes Counsel submits that petitioner during cross examination stated that he did not see the destruction or burning of ballot materials. That the case now rests on who is more believable between agents/supporters of the petitioner and independent employees of the 2<sup>nd</sup> respondent.

He therefore calls upon court to believe the evidence of Nangoye Jabberi and that of Mawerere George who stated that he was with the 1<sup>st</sup> respondent at all material times and therefore could not have participated in the burning of election materials.

In conclusion, Counsel calls upon court to find that the petitioner has failed to adduce evidence in support of his case, the case be dismissed accordingly with costs to the respondents.

Counsel Mwasa Jude for the 2<sup>nd</sup> respondent correctly restates the law on burden and standard of proof to be on the petitioner. He tackles issues one and three together, which are whether there was non compliance with electoral laws and whether the 1<sup>st</sup> respondent committed illegal practices and electoral offences.

Counsel acknowledges the responsibility to conduct free and fair elections as imposed by law. He maintains that contrary to what the petitioner alleges his client took all measures to ensure that the elections were conducted in compliance with the law.

He refers court to the evidence of Umar Kiyimba the Presiding officer and Namajje Abasa the parish supervisor, and Mafabi Abdu Mudoma the Presiding Officer for Lusamenta as counter acting the



petitioner's witnesses Sayiruna Nagudi and Mubajje Juma. This, he maintains, proves that there was no intimidation or harassment at all.

He points out that witness Nagudi, a sister and agent of the petitioner, did not know the name of the Presiding Officer of the Polling Station. Court is therefore called upon to find her evidence to be contradictory and premised on falsehoods.

On destruction of voting materials at Bubyangu, Counsel calls upon court to believe the evidence of Nangoye Jabberi and Kiyimba Umaru rather than the petitioner's Naswagi Abdula, Mwima Nasuru and Wolimbwa. In any case, he argues, if such incidents had occurred, the Electoral Commission would have been the principal complainant and since it was not is evidence that the said acts never happened.

In the alternative, Counsel argues that even if these acts were proved to have occurred, which they were not, they would not have affected the results in a substantial manner.

On alleged rigging at Lusamenta, Counsel again calls upon court to disregard this allegation seeing as it is based on the evidence of Sayiruna Nagudi who does not know who the Presiding Officer was. In any case, he adds, there was no way a polling agent as Nagudi could have seen or heard what was going on between the Presiding Officer and a polling assistant given the distance she was at.

Counsel Mwasa denies knowledge of the allegations that the 1<sup>st</sup> respondent voted twice. He acknowledges that the 1<sup>st</sup> respondent voted only once at Machese TC Polling Station where he is registered as Masaba Abdu B.

He calls upon court to find that the petitioner has failed to prove his case to the required standard set out in the cases of **Kizza Besigye versus Museveni and Masiko Komuhangi versus Babihuga**.

On the issue of whether the non compliance with Electoral laws, if any, affected the results in a substantial manner Counsel acknowledges that section 139 (a) does not expect a perfect election. However a petitioner must prove non compliance and that this non compliance affected the results of the elections in a substantial manner. He quotes **Odetta versus Omeda EP No. 19 of 2006** to support his assertion.

He argues that what amounts to substantial effect is reached by estimating the effect of non compliance on the number of votes so as to determine whether the petitioner would in all likelihood have got more votes to the point where it would be unsafe to leave the winner in that position.

Counsel further states that elections are matters of great public importance with far reaching financial implications. Therefore there must be cogent evidence before a victory is overturned. Moreover the petitioner has not shown how the alleged irregularities cost him the 144 votes, the difference between him and the winner. He also points out that the petitioner's agents signed the DR Forms for Lusimenta where the alleged irregularities took place.

He asks court to disregard the evidence of Sayiruna Nagudi for being unreliable and to reject the other evidence because 80% of it is deponed by brothers and sisters of the petitioner.

Counsel therefore calls upon court to find that the petitioner has failed to prove his allegations to the required standard and therefore has failed to discharge his duty. Consequently the petition should be dismissed with costs.

Issue number one is centered around the testimony of Sayiruna Nagudi who was described as a sister and agent of the petitioner by Counsel for the respondents. I don't think this is enough reason to discredit her as a witness. Indeed the worth of a witness' evidence should be judged by its substance and intrinsic value rather than who the witness is related to and how.

She however discredited her evidence when during cross examination she failed to state with certainty who the Presiding Officer of Lusamenta polling station was. She stated that the Presiding officer was Bulaimu Wodada whereas evidence available shows that the Presiding Officer was Mafabi Abdu Mudoma. It would therefore be risky to rely on any of her other evidence.

However there is some evidence from Machese TC polling Station by other witnesses which raises some nagging questions. Badru Mwima Wolimbwa, Bulobe David and Yahaya Mugobela state separately that they were at Machese and saw the 1<sup>st</sup> respondent being allowed to vote notwithstanding that he had indelible ink on his finger. They state that the Presiding Officer allowed him to vote again notwithstanding the obvious sign of indelible ink.

The Presiding Officer, a one Gidobo William swore an affidavit denying this fact. However his evidence is contradicted by one of his officials, Masifa Faruku, who states that there was a problem at their polling station. Gidobo William in paragraph 10 of his affidavit disputes only paragraph 8 of Masifa Faruku's affidavit. Meaning that he does not dispute the other contents including the fact that the 1<sup>st</sup> respondent voted at Machese at about 2.15 p.m. this fact of time of voting is deponed to by the other witnesses of the petitioner mentioned above.

The 1<sup>st</sup> respondent in his affidavit of 30<sup>th</sup> May disputes only paragraph 7 of Masifa Faruku's affidavit. That he did not vote at 2.15 p.m. as stated but he voted at 8.30 a.m. The time of voting is of the essence because it is part of the evidence that points to the 1<sup>st</sup> respondent's having voted twice. So it is basically the 1<sup>st</sup> respondent's word against Gidobo's, Masifa's, Wolimbwa's, Bulobe's and Mugobela's. We shall come to this point later.

As far as resolution of the issue is concerned, the petitioner has evidence of non compliance with electoral laws and this issue is resolved in his favour.

On issue number two concerning whether the non compliance affected the elections in a substantial manner, the petitioner faced an uphill task. He cited the case that has become the locus classicus on Ugandan electoral law and process **Kizza Besigye versus Museveni** and quoted Mulenga JSC as stating that the petitioner needs to prove that the winning majority would have been reduced thereby putting the victory in doubt.

My understanding is that this exercise involves quantitative analysis as has been stated in a plethora of authorities. The petitioner pointed out that the margin of 144 votes would be considerably reduced if the voting had proceeded normally at Lusamenta Polling station. He however does not delve deep enough into the arithmetics to show how many votes the petitioner would gain, how many the 1<sup>st</sup> respondent would lose and by how many votes the margin would be reduced.

I tend to agree with Counsel for the 2<sup>nd</sup> respondent that the law and by implication, the courts, do not expect a perfect election. That is why the test is stated to be whether the imperfect election led to a substantial miscarriage in the final outcome or not. I therefore agree with, and apply, the standard quoted to have been set in **Odetta versus Omeda EP No. 19 of 2006** that the petitioner must prove substantive effect quantitatively.

I find that the petitioner failed to prove that the non compliance that characterized the Bubyangu Sub county election affected the results in a substantial manner. This second issue is therefore resolved in favour of the respondents.

Issue number 3 relates to commission of illegal practices and electoral offences by the 1<sup>st</sup> respondent. As pointed out under issue number one, there are several witnesses who stated that the 1<sup>st</sup> respondent voted twice, at Machese and at Bubyangu. The 1<sup>st</sup> respondent himself admits to voting at Machese at 8.30 a.m. The other witnesses including Mugobela Yahaya put his time of voting at about 2.15 p.m.

Time is of the essence for two major reasons. The first is that it is in contention and therefore helps establish which of the witnesses is more likely to be telling the truth and which one is not. Secondly but most importantly is the fact that if the 1<sup>st</sup> respondent voted at Machese at 8.30 a.m. then there is no way he could have voted elsewhere and by implication would not have indelible ink on his finger.

However if he voted at Machese at 2.15 p.m. then the possibility that he had indelible ink and therefore had voted elsewhere would become more plausible. Witnesses Mugobela Yahaya, Mwima Nasuru, Badru Wolimbwa and Bulobe David put the time at 2.15 p.m. There is the independent evidence of Masifa Faruku who was an official of the 2<sup>nd</sup> respondent but stated in his affidavit that he saw the 1<sup>st</sup> respondent at Machese polling station at around 2.15 p.m. and saw one agent of the petitioner protesting that 1<sup>st</sup> respondent was a voter at Bubyangu.

The 1<sup>st</sup> respondent agrees to voting at Machese and witnesses above put him at Machese at 2.15 pm. Additionally the Presiding Officer at the station Gidobo William does not rebut the issue of the time of 2.15 p.m. when the 1<sup>st</sup> respondent was stated to have been at Machese by many witnesses including the polling assistant.

Witnesses Mugobela Yahaya and Mudoma Muhamudu put the 1<sup>st</sup> respondent as well at Bubyangu polling station and state that they saw him voting. Witness Mugobela Yahaya was cross-examined and he maintained his stand regarding the issue of the 1<sup>st</sup> respondent's having voted twice. I found him a solid and reliable witness. I therefore also put to him the question whether he had indeed seen the 1<sup>st</sup> respondent vote twice to which he answered in the affirmative.

The 1<sup>st</sup> respondent on the other hand seemed evasive and hostile during cross examination. One of the reasons he is said to have been a voter at Bubyangu is the reason that there is a voter registered as Masaba Abdu B. at Bubyangu. It was not overwhelmingly proved that this Masaba Abdu B. is one and the same as the 1<sup>st</sup> respondent.

It is noteworthy and suspicious however that a leader should maintain a last or any name as a last initial. When asked to state his full names during cross-examination the 1<sup>st</sup> respondent stated that he is Masaba Abdu B. It was not until court asked him to state what the B stands for in full that he said Bismillah. The question that arises is why keep the B so mysteriously quiet for so long? Unless there is an ulterior motive for doing so one should ordinarily state their full names when asked. In any case, it is now customary to have initials in the middle rather than at the end of the two names though there is no law to that effect.

I find that the Electoral Commission continues to treat the issue of registration of voters' names casually. Otherwise why would it register somebody as Masaba Abdu B. on a National Voters' Roll. Why not write all the three names or restrict the initials to the middle?

The affidavits in rebuttal by Kissa Loaving, Umar Kiyimba and Gidobo William have been studied and noted. They however do not chip away at the solid evidence piled up against the 1<sup>st</sup> respondent. I therefore find that the petitioner has proved to the satisfaction of court that the 1<sup>st</sup> respondent committed the electoral offence of voting twice.

The other offence that is leveled against the 1<sup>st</sup> respondent is that of burning ballot boxes and other materials. Though he does not expressly deny the allegation there is the evidence of Nangoye Jabberi the supervisor of the 2<sup>nd</sup> respondent. He denies that this ever happened, at all, or in his presence as alleged by several witnesses. He however acknowledges that there was some crowd violence and he had to call in the Police who promptly responded by dispersing angry crowds.

George Mawerere swore an affidavit in favour of the 1<sup>st</sup> respondent but was an unmitigated disaster at cross examination. His affidavit was in rebuttal of Mwima Nasuru's affidavit but denied having read Mwima's affidavit. He then became very evasive in the witness box. He did more to increase court's belief that the 1<sup>st</sup> respondent was involved in some cover up than to exonerate him. He exhibited ignorance of the contents of what he had deponed to in his affidavit. He came off as a very unreliable witness who was deliberately lying to court to protect the 1<sup>st</sup> respondent.

The 1<sup>st</sup> respondent himself does not come out to expressly deny the allegations of burning ballot boxes neither does he state where he was at the critical material times. It is therefore likely that the said incident did happen and the 1<sup>st</sup> respondent was involved.

Having been found to have knowingly voted more than once therefore, contrary to sections 77 (b) of the Parliamentary Elections Act and 152 of the Local Government's Act and in line with section 61 (c) of the same Act I hereby set aside the elections for Bubyangu Sub county Local Council III and accordingly make the following orders:-

The election of the 1<sup>st</sup> respondent as Chairperson LC III Bubyangu Sub County is nullified.

A fresh election will be conducted by the Electoral Commission to fill the now vacant post.

The respondents will pay the petitioner costs of the petition.

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**29.07.2011**

**JUSTICE MIKE J. CHIBITA**

**DATE**

**JUDGMENT READ AND DELIVERED IN THE PRESENCE OF:**

- 1. PETITIONER: WAMUNDU MAJID
  
- 2. COUNSEL FOR PETITIONER: GYABI
  
- 3. RESPONDENTS: MASAMBA ABDU, GIZAMBA
  
- 4. COUNSEL FOR RESPONDENTS: MUSAMALI MARTIN
  
- 5. COURT CLERK: GRACE KANAGWA

**BY: JUSTICE MIKE J. CHIBITA..... DATE: 29.07.2011**