



**At the commencement of the hearing of the petition, the following facts were agreed on:**

- (a) That the 1<sup>st</sup> Respondent was elected as Chairperson Agago District in an election conducted by the 2<sup>nd</sup> Respondent on the 23<sup>rd</sup> February, 2011.*
- (b) That the 1<sup>st</sup> Respondent's name was published in the gazette by the 2<sup>nd</sup> Respondent on the 18<sup>th</sup> May 2011 as the winner.*
- (c) The Petitioners are registered voters in Agago District.*

**The following issues were also framed for determination of Court:-**

- (1) Whether the Petitioners have locus standi to petition against the 1<sup>st</sup> Respondent's election as Chairperson Agago District.*
- (2) Whether the affidavits in support of the petition are valid.*
- (3) Whether the notice of petition was properly served on the 2<sup>nd</sup> Respondent.*
- (4) Whether the 1<sup>st</sup> Respondent was at the time of his election as Chairperson Agago District Local government, qualified to be elected.*
- (5) What are the remedies available to the parties.*

All the petitioners swore affidavits in support of the petition. Four other persons swore individual affidavits in support.

The 1<sup>st</sup> Respondent filed a single affidavit in support of and accompanying his answer. However, on the day of the hearing, the 1<sup>st</sup> Respondent presented five other affidavits seeking to establish that the petition should fail on technical grounds.

The 2<sup>nd</sup> Respondent filed one affidavit in response to the petition.

In rejoinder to the 1<sup>st</sup> Respondent's answer the petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners and two other persons swore an affidavit each.

**ISSUE NO. I: Whether the Petitioners have locus standi to petition against the 1<sup>st</sup> Respondent's election as chairperson, Agago District Local Council?**

**Section 138 of the Local Government Act (LGA)** provides as follows:-

*“138 (1) An aggrieved candidate for chairperson may petition the High Court for an order that a candidate declared as elected as chairperson of a Local Government Council was not validly elected.*

(2) *A person qualified to petition under **Sub-section 3** who is aggrieved by a declaration of the results of a Councillor may petition the Chief Magistrate's Court having jurisdiction in the Constituency.*

(3) *An election petition may be filed by any of the following persons;*

(a) *A candidate who loses an election.*

(b) *A registered voter in the Constituency concerned, supported by the signatures of not less than five hundred voters registered in the Constituency.”*

In the instant case the Petitioners are said to be registered voters in Agago District where the 1<sup>st</sup> Respondent was elected as chairperson. All of them gave their individual registration references. Attached to the petition were particulars of over 1,000 registered voters stating their voter registration numbers, village, polling stations, Sub-county and District, and their individual signatures.

In his affidavit in reply the 1<sup>st</sup> Respondent alleged that some persons in the list of voters supporting the petition were dead. **Section 107 of the Evidence Act cap 6** places the burden on the 1<sup>st</sup> Respondent to prove the death of the said voters:

*“107. When the question is whether a person is alive or dead and it is shown that he or she was alive within the last thirty years, the burden of proving that he or she is dead is on the person who affirms it.”*

It was contended for the Petitioners that the names of the persons alleged to be dead were on the voter register compiled by the Electoral Commission meaning that they were alive within the last 30 years. The burden was on the 1<sup>st</sup> Respondent to prove that any of those persons had since died after the computation of the register and that the death occurred before their names were included on the list of voters supporting the petition. The above task should have been established by presentation of valid death certificates or affidavit sworn by a family member of such dead person. The 1<sup>st</sup> Respondent did not discharge the above burden.

The 1<sup>st</sup> Respondent relied on six affidavits sworn in support of the 1<sup>st</sup> Respondent alleging that some 200 people or so whose names appear on the list of those supporting the petition had denied that they had given their consent to support petition. The people who swore that they collected the above signatures were campaign agents of the 1<sup>st</sup> Respondent. They swore that they were told by those people whose names were on the supporting list that they did not agree to support the petition. There was not a single affidavit sworn by any of those persons allegedly disputing their consent. In the premises I find the above allegations brought by the five campaign agents all hearsay evidence and are not admissible. The allegations coming from the campaign agents who naturally had vested interests in protecting their candidate was more than hearsay but an afterthought.

In that regard the observation of **Justice Owiny Dollo wins the day in the case of Dr. Kizito Deo Lukyamuzi v Kasamba Mathias & Electoral Commission, Masaka, Election Petition No.003 of 2011.**

*“Any deposition.... which was subsequent to the one accompanying the petition, was only admissible when the Petitioner deponed from his personal knowledge; otherwise it would offend the rule against hearsay since such affidavit, unlike that which accompanied the petition, was no longer part of his pleadings, but was strictly evidence.”*

For the above reasons I do agree that the depositions of the five deponents were idle talk, and of no benefit whatsoever to the 1<sup>st</sup> Respondent.

In any case even if this Court were to adopt a liberal approach and allow the names of the 200 voters to be struck off the list of supporters, such deductions would be insignificant as the petition would still remain supported by about 1,000 registered voters well above the minimum number of 500 voters required under **Section 138 (3) (b) of the Local Governments Act**. Equally any death of a voter who supported the petition which occurs after registering in support of the petition would not affect the petition.

The 1<sup>st</sup> Respondent relied heavily on the case of **Ndaula Ronald v Hajji Naduli Abdul, Election Petition Appeal No.20 of 2006**. In that case the **Hon. Deputy Chief Justice L. E. M. Mukasa Kikonyogo** (as she then was) while considering the provisions of **Section 138 of the Local Governments Act** held that:

*“To challenge the election of an LC 5 Chairperson of a district, therefore, the petitioner must under Section 138 (1) of the Local Governments Act be an aggrieved candidate. In the instant petition, the Respondent was not an aggrieved candidate. The Respondent himself stated in his petition that he was not a candidate in the elections that took place. He was, therefore, incompetent to bring a petition in the High Court of Uganda against the Appellant.*

*Further **Section 138 (2) and (3) of Local Governments Act** permits persons who are aggrieved with the results of election of a councillor to petition the Chief Magistrate’s Court having jurisdiction in the constituency.*

*From the law cited above the Respondent had no locus standi to file a petition in the High Court of Uganda against the Appellant. It should not have been filed there. The Respondent’s failure to follow or comply with the law and Procedure rules was fatal to the whole petition.”*

In my consideration the above case was cited out of context and distinguishable. The Local Governments Act is very clear. Election of LC V Chairperson can be challenged before the High Court by a losing candidate or by a registered voter in the Constituency concerned supported by the signatures of not less than five hundred voters registered in the Constituency. The five Petitioners filed the petition as registered voters and appended signatures of more than 500 voters registered in the Constituency. To that extent I find this petition competent before this court. See **Section 138 (2) and (3) (b) of the Local Governments Act.**

The next point was that there was no proof that the required court fees had been paid. It was contended that the petition did not have any endorsement initiated by the Registrar or the Cashier of the Judiciary attached to the court as required by the Judicature (Court Fees, Fees and Deposits). Rules to show that Ug. Shs.150,000/= as required by the rules had been paid. It was submitted that the belated attempt to pay could not remedy the illegality.

It is trite law that the Petitioner may have locus standi to present a petition. However, the petition presented must be properly before the Court. In other words there must not be legal defects in the petition such as non-payment of court fees: See **Ndaula Ronald v Hajji Naduli Abdul (Supra)**.

I have perused the record it shows that on 29.5.2011 the petition was filed and fees of Shs.150,000/= was assessed and paid. There is a receipt from Uganda Revenue Authority issued by the Judiciary to Odongo & Co. Advocates for payment of Shs.150,000/= to Crane Bank Gulu Branch. The only problem was that the Assistant Registrar did not endorse on the file to confirm the receipt of the fees. In fact in all the preliminary steps where his endorsements have been demanded, none of them have been endorsed. That is the standard of management we are experiencing in this country these days!

Be that as it may I am fully satisfied that the necessary fees of Shs.150,000/= had been deposited in the Bank as required. The petition is therefore properly before this Court.



## **ISSUE NO.2: Whether the affidavits in support of the petition are valid.**

It was the contention of the Respondents that the affidavits of the Petitioners along with those of Andrea Owiny, Kinyera Plodi, Kotol Clement, Nekolaci Odong Olima and Okello Stanley Kibong were all sworn before Akena Kenneth Fred of P.O. Box 800 Gulu who was practicing with Odongo & Co. Advocates of P.O. Box 800 Gulu. The Respondents contended that Akena Fred being an Advocate with Odongo & Co. Advocates contravened **Section 4 (1) of the Commissioner for Oaths Act.**

**Section 4 (1) of the Commissioner for Oaths (Advocates) Act** provides

*“.... except that a Commissioner for Oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he or she is the advocate for any of the parties to the proceedings or concerned in the matter or clerk to any such advocate or in which he or she is interested.”*

Commissioning of Oaths is the confidence the law grants to Advocates among other officers. The authority, to commission Oaths is personal to holder and is not issued to a firm member. There was no evidence to show that Akena was an Advocate of the Petitioners or concerned with the proceedings. The position of Advocate Akena was different from a Clerk. A Clerk takes instructions from the firm whereas an Advocate takes his own instructions even if he is a partner in the same firm. In the premises, it is my conclusion that Akena was not interested in the matter and was therefore proper for him to commission the said affidavits: See

**Akidi Margaret v Adong Lilly & Electoral Commission; Gulu Election  
Petition No 004 of 2011.**

**ISSUE NO. 3: Whether the notice of the Petition was properly served on the  
2<sup>nd</sup> Respondent.**

The record shows that the petition was filed on 24.5.2011. The law provides in **Section 141 of the Local Governments Act** that the petition must be filed within 14 days. In **Ronald Ndaula v Hajji Nadduli Abdul, Election Petition Appeal No. 20 of 2006** the Court of Appeal held inter alia that:

*“Non-compliance with the said section is fatal to the petition. In the aforesaid circumstances, in my view, there was no petition since no notice thereof had been given to the Appellant (Respondent to the petition) as is required by Section 141 of the Local Governments Act. This illegality cannot be said to have been cured by the Appellant’s answer to the petition. Non-compliance with Section 141 of the Local Governments Act renders the petition a nullity.”*

In the instant case, although the petition was filed on 24.5.2011, notice of the petition was issued by the Registrar on 31.5.2011. The 1<sup>st</sup> Respondent was served that very day on 31.5.2011. The 2<sup>nd</sup> Respondent was served on 2.6.2011. Time started to run on the date the notice was issued by the Court which was 31.5.2011 although the petition was filed on 24.5.2011. It was the Court which faulted time

management and not the Petitioners. As I observed earlier, Registrars rarely authenticate filing procedures. Here again is another laxity of late issuing of notice to petition (call summons). This would certainly call the office of the Chief Registrar and the Inspectorate to order. All in all, it is my conclusion that the notice to the petition was filed on the 2<sup>nd</sup> Respondent within the statutory period. In any case, even if service of the notice on the 2<sup>nd</sup> Respondent had been done out of time, it would not lead to the striking out of the entire petition. Only the 2<sup>nd</sup> Respondent would be relieved of the duty to defend itself while the 1<sup>st</sup> Respondent would still be obliged to answer in defence whether at the time of his election as Chairperson of Agogo District Local Council qualified to be so elected.

**ISSUE NO.4: Whether the 1<sup>st</sup> Respondent was at the time of his election as Chairperson of Agogo District Local Council qualified to be so elected.**

This is the central issue in this petition. The ground is that when the 1<sup>st</sup> Respondent was nominated in 2010 for the election as Agogo District Chairperson, he was allegedly above the statutory age of 75 years hence he was not qualified to be so nominated as he was barred by the provisions of **Sections 111 and 139 of the Local Governments Act Cap 243.**

**Section 111 (3) of Local Governments Act** in particular states that:-

*“111(3) A person shall not qualify for election as Chairperson of a district or city unless that person –*

*(a) Is a citizen of Uganda.*

*(b) .....*

*(c) Is at least thirty years old and not more than seventy five years of age.”*

**Section 139 of the Act** sets out the grounds for annulling an election of a district chairperson as follows:-

*“139 – The election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of Court:*

*(a)....*

*(b)....*

*(c)....*

*(d) that the candidate was at the time of his or her election not qualified or was disqualified from the election.”*

The 1995 Constitution of Uganda which is the Supreme law of the land provides guidance on Local governance in Uganda, including qualification of District Chairperson.

**Article 183 of the Constitution** states as follows:

*“183 (1) There shall be a District Chairperson who shall –*

*(a) Be the political head of the district; and*

*(b) Be elected by universal adult suffrage through a secret ballot.*

*(2) A person is not qualified to be elected district chairperson unless he or she is*

*(a) qualified to be elected a Member of Parliament;*

*(b) at least thirty years and not more than seventy five years of age; and*

*(c) a person or ordinarily resident in the district.*

Age sealing therefore is not only a statutory requirement but a Constitutional requirement. The requirement therefore is not merely for academic purposes because it bears its foundation in the Constitution and the Local Governments Act. Under **Article 176 of the Constitution**, Local Government system was created basing on the district as a unit under which there were to be other local governments and administrative units (Sub-counties, Division, Town Councils, Municipalities and Kampala Capital City Authority). Government developed and transferred powers, functions and responsibilities from Central to Local Government units. The District Local government also transferred power from higher to lower government units to ensure people’s participation and democratic control in decision making. District units have powers to plan, initiate and execute

policies in respect of matters affecting the people within their jurisdictions. In light of the above responsibilities it was right for the law to set out minimum age and maximum age qualification to bring on board a person matured enough and vibrant to make an informed decision. The District Chairperson wears a very big hat. He or she is the political head of the District. His or her political stand affects the political position of the Central Government.

Apart from being a political head, the Chairperson also monitors the general administration of the district; co-ordinates the activities of urban councils and councils of the lower administrative units in the Districts, co-ordinates and monitors Government functions as between the District and the Government. With the above functions District Chairperson has no room for being vague, irrational or below focus. He or she should also be a transparent, accountable and selfless person, being a trustee of people's power. Those qualities are functions of proper mentoring which go with experience, hence requirement of optimum age.

### **SUMMARY OF EVIDENCE**

The 1<sup>st</sup> Petitioner, Markly Vincent Okidi, a retired teacher 59 years old deponed that he obtained copies of the 1<sup>st</sup> Respondent's personal records with the Electoral Commission (2<sup>nd</sup> Respondent) and from Kyambogo University. These records disclose several discrepancies as follows:-

(a) In the Register of 2001 the 1<sup>st</sup> Respondent's date of birth was entered as 3/11/1943 (annex 1)

- (b) In the nomination form for the 2001 elections the 1<sup>st</sup> Respondent's date of birth was stated as NOVEMBER 1942 (see annex 2).
- (c) In the nomination form in 2006 the 1<sup>st</sup> Respondent's age was entered as 62+ meaning the date of birth was 1944 (see annex 4)
- (d) In the 2010 nomination form the 1<sup>st</sup> Respondent's date of birth was entered as 11/11/1943 (see annex 3).
- (e) In the 1<sup>st</sup> Respondent's entry forms for Kyambogo University – for Diploma Course, his date of birth was entered as August 1942 (see annex 5).

The above entries prompted him to consult several elders who knew the 1<sup>st</sup> Respondent and established that the 1<sup>st</sup> Respondent was above 75 years at the time of his nomination in 2010. Those he consulted were those who grew with the 1<sup>st</sup> Respondent or were school mates in primary and at TTC.

2<sup>nd</sup> Petitioner Galdin Julian Odong, a retired teacher, 82 years old deposed two affidavits.

In the 1<sup>st</sup> affidavit he stated that he was born on 29<sup>th</sup> November 1929. He knew the 1<sup>st</sup> Respondent in 1958 when he married in the family of the 1<sup>st</sup> Respondent a lady called Dusulina Abwol. He stated that he knew the 1<sup>st</sup> Respondent as being slightly younger than him. He joined Kangole TTC in 1955 and the 1<sup>st</sup> Respondent joined the same college in 1956. The 1<sup>st</sup> Respondent stayed with him in his house as a brother-in-law when doing his school teaching practice in a school in Moroto where he was head teacher. He stated that in those days children used to start attending school late; and for him he started school in 1946

at 17 years of age. He stated further that the church policy at that time was that for anyone to join TTC the person had to be adult in his twenties. He was emphatic that it was impossible for anybody to join TTC at 13 or 14 years of age.

In the 2<sup>nd</sup> affidavit sworn in rejoinder to the 1<sup>st</sup> Respondent's affidavit where he denied to any relationship and knowledge of the 2<sup>nd</sup> Petitioner, he reiterated that he knew the 1<sup>st</sup> Respondent very well as a prominent brother-in-law. He stated that it was impossible for the 1<sup>st</sup> Respondent to join Kangole TTC at 14 years old. He stated that when he joined Kangole in 1955 three students were disqualified for being below 20; Jirifansio Olut Opio; Evaristo Obita and Rafaile Oyang. The Petitioner was not cross-examined by the 1<sup>st</sup> Respondent.

3<sup>rd</sup> Petitioner Aldo Okello, retired teacher, 78 years old stated that he was born in 1935 and started attending school in 1946; and that during that time most children started schooling in their teens. He stated that he first met the 1<sup>st</sup> Respondent in 1956 when they joined Kangole TTC and the 1<sup>st</sup> Respondent was slightly older than him. They studied together in the TTC up to 1959 and qualified together and were posted together to teach at Morulem. He and the 1<sup>st</sup> Respondent were friends. He stated that it was a lie for the 1<sup>st</sup> Respondent to state that he joined Kangole TTC when he was younger than the required age because that same year 1956 when he joined together with Odok Peter, two students were sent back for being less than 20: Maleo Ojwang (who was shown to Court though never swore an affidavit) and Michael Lango. He was emphatic that he knew the 1<sup>st</sup> Respondent who was nicknamed Morulinga because he used to eat a lot and wanted to be served a towering food like Morulinga Hill.



During cross-examination Aldo clarified that he was born in 1933 and not 1935. That the 1<sup>st</sup> Respondent was born in the 1930s and not 1940s. He stated that they married in 1960 and their wives delivered their first children about the same time.

4<sup>th</sup> Petitioner Isirino Oyo Atuk 65 years old deponed that he was born in 1946 in the same Parish of Lira Kato where the 1<sup>st</sup> Respondent also comes from. He stated that the father of the 1<sup>st</sup> Respondent was a Catechist in the Protestant Church and later became a Parish Chief (janjago). That as a boy of about 15 years of age in 1960 he witnessed the 1<sup>st</sup> Respondent; then an adult campaigning for the Democratic Party in their area, and also witnessed an incident when one Jakalia Okengo the 1<sup>st</sup> Respondent's paternal uncle pushed the 1<sup>st</sup> Respondent off the podium for belonging to a party that did not enjoy wide support in the area. By that time, the 1<sup>st</sup> Respondent was already a teacher and an adult, much older than him or not merely by 4 years. He emphasized that the 1<sup>st</sup> Respondent was not born in 1942 as he claimed. He concluded that the 1<sup>st</sup> Respondent was well above 75 years old. There was no cross-examination of this deponent.

5<sup>th</sup> Petitioner, Vicenysio Obwoya a peasant farmer 78 years old stated that he was born in 1933 and was baptized in 1944. That he knew the 1<sup>st</sup> Respondent from the time of struggle for independence around 1960s, and it was the 1<sup>st</sup> Respondent who recruited him into the Democratic Party; and they campaigned together in the elections of 1961 in which Benedicto Kiwanuka was elected Chief Minister of Uganda; and by then the 1<sup>st</sup> Respondent was already in the 30s and older than him (the 5<sup>th</sup> Petitioner). He concluded that the 1<sup>st</sup> Respondent was older than him and therefore above the age of 75 years.

## **Other Deponents**

Okello Stanley Kibong 77 years old retired teacher, born in 1934 and started school in 1946. Met the 1<sup>st</sup> Respondent when he was schooling at Lira Kato and the 1<sup>st</sup> Respondent was schooling at Adilang while walking from their home in Akuri village. In 1962 the 1<sup>st</sup> Respondent was elected to Acholi District Council to represent Paimol Sub-county to which both of them belonged. He concluded that the 1<sup>st</sup> Respondent was slightly older than him and certainly above the age of 75 by the time of his nomination for the elections of 2011. The deponent was not cross-examined.

Nekolaci Odong Olima a retired Police Officer 79 years old deponed that he was born in 1932 in the same Parish of Lira Kato as the 1<sup>st</sup> Respondent. He started schooling in 1947. He knew the 1<sup>st</sup> Respondent from childhood and were related by inter-marriage. At the time he started schooling in 1947 the 1<sup>st</sup> Respondent was already a boy of teenage who was able to herd cattle. He stated that he was the age mate of the 1<sup>st</sup> Respondent and that he was the one who replaced the 1<sup>st</sup> Respondent in the Acholi District Council when by Government Policy, serving teachers were removed from District Councils. He concluded that by 2010 the 1<sup>st</sup> Respondent was above 75 years old.

KOTOL CLEMENT a retired Health Assistant 63 years old stated that he was born in 1948 in Morulem, in the present day Abim District and started attending school from Morulem Boys' Primary School in 1960 where the 1<sup>st</sup> Respondent was a teacher. He stated that by then the 1<sup>st</sup> Respondent was a fully grown man of over 30 years. He emphasized that the 1<sup>st</sup> Respondent his former teacher was certainly not only 6 (six) years older than him.

Other deponents who swore affidavit corroborating the above deponents were: Andrea Owony; John Oceng, Kinyera P'Lodi.

**1<sup>st</sup> Petitioner's Response:**

The 1<sup>st</sup> Respondent Odok Peter stated in his affidavit that his father Erisa Oceng told him that he was born in 1942; hence he was 68 years old at the time of nomination in October, 2010. He started attending school in Adilang in 1950 when he was 8 years old. He later went with his brother-in-law Gilgorio to Karamoja where he joined Kangole TTC and finished in 1959. From there he was posted to Kupoth Primary School and later to Morulem then Atunga in Atalbar.

In 1962 he was elected to Acholi District Council at the tender age of 21. He later taught in various schools and became a headmaster. In 1985 he joined Kyambogo for upgrading course. Later he left teaching, worked at NRM Secretariat and later served as RDC up to 2003, when he retired from Public Service at the age of 59.

During cross-examination he stated that his father speculated that he was born during sim sim period of 1942. He conceded that he wrote the conflicting dates on the various nomination forms and admission form for Kyambogo. He also admitted that he stated in 2011 that he was 59 years old and in the affidavit that in 2003 he was 59 years old. However he stated that he made mistakes in entering the various dates above as his date of birth as it was due to his own speculation. He stated that he was admitted to Kangole TTC at the age of 14 and qualified as a teacher at the age of 18 years. He stated that in 1962 he was both a teacher and a District Councillor. He stated that the differences in the entries he made regarding his date of birth and age were careless mistakes.

### **Other Deponents:**

Six other deponents swore affidavits each all on the point that those listed did not consent to their names being included on the list of voters supporting the petition. The six deponents were Obwona Alfonse, Oyaro Angel, Olaa Elijah, Opira Vincent, Omon George Oryem and Olonya John Bosco.

In **Byagonza v Uganda [2000] 2 EA 351** the Supreme Court held as follows:

*“Age may be proved by various means, including the statements by a witness of his own age and the opinion of a witness as to the age of another person but when age is an issue stricter method of proofs maybe required. In this case age may be proved by the admission of a party by evidence of a witness who was present at the birth of a person concerned, by production of certificate of adoption or birth, supplemented by evidence of identifying the person whose birth is there certified by the oral or written declaration of the deceased persons.... In certain criminal and other cases in which age of a person is maternal, the age will be presumed or deemed to be what **appears to the court to be his age at the relevant time after considering available evidence.**”*

In the instant case, none of the witnesses knew the exact age of the 1<sup>st</sup> Respondent. However, they testified that they interacted with him in the 1930s. Aldo Okello and Vicenysio Obwoya who were born in 1933 and 1934 stated that the 1<sup>st</sup> Respondent was older than them. Odong Galdin who was born in 1929 stated that the 1<sup>st</sup> Respondent was slightly younger than him. Andrea Omony born in the late 1920s and Nekolasi Olum who was born in 1932 stated that the 1<sup>st</sup> Respondent was

their age mate. Tying the above pieces of evidence together one would presume the age of the 1<sup>st</sup> Respondent between 1930 and 1932.

That would mean that in 2010 when the 1<sup>st</sup> Respondent was nominated for elections he was between 78 to 80 years.

The witnesses further stated that by the time the 1<sup>st</sup> Respondent joined TTC in 1956 he must have been around 20 years old since it was the policy of the Catholic Church that to join TTC that time one had to be matured. Aldo Okello clearly stated that in 1956 Michael Lango and Mateo Ojwang (who was in court) and was 17 were rejected for not being 20 years. He accordingly disputed the contention of the 1<sup>st</sup> Respondent that he joined TTC in 1956 when he was 13 years.

It must be remembered that when someone's age is put in issue the burden of proof shifts on him to prove his or her true age. It is just like proof of academic qualification. This is because a person's age is within his or her own knowledge. When authentically of the 1<sup>st</sup> Respondent's age was questioned, his reply was that he had speculated on his age. The veracity of the evidence by or for the Petitioners regarding the age of the 1<sup>st</sup> Respondent was strengthened by the 1<sup>st</sup> Respondent himself. This is because he lied under Oath by making four different entries regarding his date of birth. These were in three nomination forms, as well as in an affidavit in answer to the petition. He stated in his nomination papers for 2001 that he was 59 years old. In his affidavit in Court in the instant petition he stated that he was 59 years old in 2003. He remained at the same age of 59 for three years; namely 2001, 2002 and 2003. In 2006 he attempted to adjust his age from 42 to 52 then to 62 years and then inserted a plus and it read 62+.

Age being a mandatory requirement in election of District Chairperson needs to be proved strictly and not to be speculated upon as in the instant case. By declaring on Oath various dates of birth only meant that the 1<sup>st</sup> Respondent had some hidden agenda about his age. It only strengthens the evidence of the Petitioners that he was well above 75 years old.

Another point of doubt is gathered from the fact that in 1962 the 1<sup>st</sup> Respondent participated and was elected a District Councillor. Under the then 1962 Constitution of Uganda, one had to have the same qualification as a Member of the National Assembly to be elected to the District Council. To qualify to be elected to the National Assembly one had to be a citizen of Uganda aged 21 years old with ability to speak English unless incapacitated by blindness: See **Sections 39 and 88 of the 1962 Constitution**.

According to **COLIN LEYS Politicians and Policies, An essay on politics in Acholi 1962-1965 (EAPH) page 26**, election for the District Council was held in September 1962. There were 50 seats. Uganda People's Congress (UPC) won 27 seats and Democratic Party (DP) got 23. The 1<sup>st</sup> Respondent was among the 23 DP Councillors. Now, the most important question is, if the 1<sup>st</sup> Respondent was born in November 1942 and the election took place in September 1962 was he qualified? The answer is NO. In September 1962 the 1<sup>st</sup> Respondent had not yet attained the age of 21. In fact he was 19 years+. The sum total of all the above is that the 1<sup>st</sup> Respondent has not been truthful about his age. He is a pathological liar. Lies are invariably unsustainable. You cannot lie all your life. You cannot lie all your days. If he was 59 years in 2003 then he was born in 1944 and not 1942! That too had a purpose. It makes him 66 years old and not 68 at the time of his

nomination. By that manipulation the 1<sup>st</sup> Respondent would be 71 years old in 2016, vibrant enough to contest even for Presidency!

In conclusion I find that the Petitioners have proved that by the time of his nomination and election the 1<sup>st</sup> Respondent was well above 75 years old. His efforts to doctor his age to maintain his unsatisfying political ambitions has at last collapsed like a pack of cards. Indeed the saying in Lwo that **“PII PE MOL DOK CEN” (water/River does not flow backwards)** carries the day. For the above reasons it is my conclusion that the nomination and election of the 1<sup>st</sup> Respondent as Chairperson Agogo District was null and void, a sham in law. His seat is accordingly declared vacant. A fresh and immediate election be arranged and organised by the 2<sup>nd</sup> Respondent. Both Respondents are to pay costs. The 2<sup>nd</sup> Respondent should try to live by its Constitutional and Statutory mandate as far as statutory declarations in electoral processes are concerned. Strict letters of the law should be adhered to. **I so order.**

**HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGE**

**22/8/2011**

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