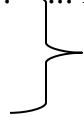


The Republic of Uganda
In The High Court Of Uganda, At Kampala
Election Petition No.018 of 2011

Muwanga Kivumbi Muhammed ::::::::::::::::::::::::::: Petitioner

Versus

1. The Electoral Commission ::::::::::::::::::: Respondents
2. Kikulukunyu Faisal



Before: Hon. Mr. Justice V. F. Musoke Kibuuka

Judgment

Introduction:

The petitioner and the second respondent were candidates for election for Member of Parliament for Butambala Constituency. The elections were held on 18th February, 2011. There were two other candidates in the race, namely, Kasule Massy Moses and Sserunjogi Edirisa Kawadwa.

The second respondent polled 13,188 votes or 48.21% as opposed to 12,453 votes or 45.53% polled by the petitioner. The difference between them was 735 votes. Kasule Massy Moses obtained some 859 votes or 3.14%. Sserunjogi Edirisa Kawadwa bagged 854 votes or 3.12% of the vote.

The first respondent declared the second respondent winner of the Parliamentary seat. He has since taken his seat in Parliament.

PLEADINGS:-

In this petition, the petitioner seeks the following orders from this honourable court;

- a) a declaration that the second respondent was not validly elected Member of Parliament for Butambala Constituency;
- b) an order setting aside the election of the second respondent as Member of Parliament for Butambala Constituency; and

c) an order awarding the costs of this petition to the petitioner.

PLEADINGS:-

In this petition, the petitioner has made three main broad allegations against the respondents.

They are:

- i) that the second respondent personally or through his agents, with his knowledge, consent or approval, offered or caused to be offered to registered voters various gifts including, but not limited to, money, cosmetics, steamers, foodstuffs, cows and footballs with a view of procuring voters to vote for him;
- ii) that the first respondent compromised the principles of impartiality and transparency when it failed to restrain the second respondent from carrying out illegal activities during the campaign period; and
- iii) that the second respondent conducted campaign rallies after the prescribed campaign time, in contravention of the law.

However, it is clear that the petitioner abandoned the allegation relating to the second respondent conducting campaign rallies beyond the time allowed for that purpose. There was no ground particularized in relation to that allegation in the petition itself or the affidavit in support or in the various affidavits by the various witness for the petitioner. No issue was framed in relation to that allegation either. Thus the petitioner's allegations for trial remained only two.

Each respondent filed an answer to the petition.

The first respondent filed its answer on 28th March, May, 2011. The affidavit in support RA1.1 was sworn by the chairperson of the Commission, Engineer Dr. Badru Kiggundu. The answer was a total denial of all the allegations against the first respondent. The first respondent

affirmatively stated in its answer, that the Parliamentary Elections in Butambala Constituency was conducted in accordance with the provisions of the Constitution, the Electoral Commission's Act and the Parliamentary Elections Act.

The second respondent filed his answer on 1st April 2011. He swore affidavit, RA2.69, in support of his answer. The second respondent denied each and every allegation made against him in the petition. He, in particular denied:

- bribing voters personally or through his agents with his knowledge consent or approval;
- donating any two cows at any football tournament; or
- giving any gifts or valuable items, personally or through his agents with his knowledge consent or approval to voters to influence them vote for him.

The petitioner deposed two affidavits PA1 and PA78, in support of his petition. In addition, he presented 68 supplementary affidavits from various witnesses to support his allegations, as required under rule 15(1), of the Parliamentary Elections (Election Petition) Rules (PEEPR). Six affidavits were subsequently withdrawn, leaving a total of 62 affidavits including the two deposed by the petitioner himself. Twenty three deponents of affidavits in support of the petition were subjected to cross-examination.

On the first respondent's part, Engineer Dr. Badru Kiggundu, who swore affidavit RA1.1, was subjected to cross-examination, which centered upon the re-organisation of the polling stations in Butambala County after it became a district prior to the Parliamentary Elections.

The second respondent filed a total of 69 affidavits, including RA2.69, RA2.68 and RA2.67, deposed by himself. He later withdrew affidavits RA2.68 and RA2.67. Affidavit RA2.22, one of the three deposed by Mr. Batte Mukasa, was also withdrawn by the second respondent.

Twenty two deponents of affidavits for the second respondent were cross-examined against the averments contained in their affidavits.

ISSUES:

There were three issues that were agreed upon for determination in this petition. They are:-

- a) whether the second respondent committed any illegal practices or election offences personally or through his agents with his knowledge, consent or approval;
- b) whether the first respondent compromised the principles of impartiality and transparency when it failed to restrain the second respondent from committing illegal practices and election offences personally or through his agents with his knowledge, consent or approval; and
- c) whether the petitioner is entitled to the reliefs he seeks through the petition.

WITHDRAWAL OF PETITION AGAINST FIRST RESPONDENT

It so happened during the final submissions, which, in this petition were oral, that court asked learned counsel for the petitioner whether the petitioner wished to maintain the case against the first respondent beyond that point. Court put that question to learned counsel for the petitioner after realizing that throughout the entire trial, the petitioner had adduced no evidence at all to substantiate his allegation, in the petition, that the first respondent had compromised the principles of impartiality and transparency or that it had failed to restrain the second respondent from committing illegal practices or election offences. In court's view, it was not enough to argue that the first respondent had a statutory duty to oversee and supervise the electoral process. It can not be everywhere or follow and attend every candidate's campaign rally. It would be expecting too much from it if that were to be the case. No single report was shown to have been made to the first respondent in that regard.

Learned Counsel for the petitioner graciously agreed to withdraw the petition, in as far as it related to the first respondent. Court now takes the final order in that regard. As against the first respondent, this petition stood withdrawn as at 9th August, 2011. The first respondent and the petitioner shall each meet own costs in that regard.

After the withdrawal of the petition against the first respondent, only two issues remained outstanding for determination. They are:-

- a) whether the second respondent committed any illegal practices or election offences personally or through his agents, with his knowledge, consent or approval; and
- b) whether the petitioner is entitled to the reliefs he seeks through the petition.

WHETHER THE SECOND RESPONDENT COMMITTED ILLEGAL PRACTICES OR ELECTION OFFENCE PERSONALLY OR THROUGH HIS AGENTS WITH HIS KNOWLEDGE, CONSENT OR APPROVAL

Court must state that it has found, unusually, very many allegations of bribery raised against the second respondent in this petition. As far as court can ascertain they include the following:

1. bribing voters at Gombe mosque with shs.100,000/=;
2. bribing voters with 6 crates of soda at Kabasanda mosque on 17th February, 2011;
3. bribing voters of Kitimba A village with a steamer lamp during the month of January, 2011;
4. bribing voters of Ngongwe B village, Bukandaganyi parish, Kalamba subcounty, with a steamer lamp at the beginning of the month of January, 2011;
5. bribing voters of Nsozibirye A village of Kumaduuka, during the month of January, 2011, with shs.50,000/=;

6. bribing voters, of the three villages of Taba Ruzinga, Kamugombwa and Kikeera, in Kalamba subcounty, during rallies in those villages, during the month of January, 2011, with a donation of a steamer lamp for each village;
7. bribing voters of Mpanga trading centre, during January, 2011, with a steamer;
8. bribing voters with a football donated to Gombe Black Boys Football Club, one week before polling day;
9. bribing voters at Gombe Mosque with shs.30,000/=, during the month of January, 2011;
10. bribing voters of Kyanajjanja village, with money during the month of January, 2011;
11. bribing voters at Kayenje Kito village, with sodas and Vaseline, during the month of December, 2011;
12. bribing voters at Kayenje church of Uganda during the victory party for Kabula Football Club, on 6th February 2011;
13. bribing voters at Lugula football ground together with Hon. Namirembe Bitamazire by donating a cow to Kyabadaza football club and another cow to Kyabadaaza women netball club on 25th December 2010;
14. bribing voters on 15th February, 2011 through agents, to wit, Bijodolo, Nandigobe, Musomesa Sulait, Hamidu Namiryango, Sheik Kiuwa, Nakku Kirimira, Mrs. Lukoba, Councilor Kiyaga all led by one Mustafa Malimbo, with money distributed throughout the villages in Budde sub-county;
15. bribing voters at Kyerima Kabungu, at Masitoowa, in December, 2010, with shs.50,000/= with which the village is alleged to have resolved to purchase cups for use during community or social function in the village;
16. bribing voters at Kikira zone, Kyerima parish, with shs.50,000/= towards the end of December, 2010; money allegedly used to purchase plates for village use;

17. bribing voters of Kinoni village, a few days to polling day, with a sum of shs.50,000/=; money allegedly handed over to Busulwa Sulaiman who distributed it among voters present;
18. bribing voters at Bujumba, Kabalamba during the month of February, 2011, with sodas, allegedly purchased by him from one Ms. Namboze's shop at Kabalamba trading centre;
19. bribing voters at Bujumba Catholic church, during the month of February, 2011, with money;
20. bribing voters, with sodas at Kabalamba trading centre, during the month of February, 2011;
21. bribing voters at Ngando trading centre, with four crates of soda allegedly distributed to the people attending the rally by one Mulindwa Asadu, alias Muddu wa Allah, to the people attending the rally; and
22. bribing voters of Kayenje village, in particular one Muyomba Joseph, with money, to wit, shs.1,000/= allegedly given out by the second respondent while moving from house to house throughout the village, just a few days to polling day.

These are generally the specific allegations made against the second respondent.

THE LAW AND PROCEDURAL PRINCIPLES

Learned Counsel, Mr. Okello Oryem, for the respondents, did address court about the need for caution, on the part of court, to subject each allegation of bribery to through scrutiny and be alive to the fact that in an election petition, in which the prize is political power, witnesses may easily resort to telling lies, in their evidence, in order to secure judicial victory for their preferred candidate. Mr. Okello Oryem relied in making this submission, upon the decision of the court of Appeal of Uganda in Mbayo Jacob Robert Vs. Electoral Commission And Talonsya Sinani,

Election Petition Appeal No.07/06. Mr. Okello equally relied upon the observations of this court, per Yorokamu Bamwine J., as he then was, in Opio John Vs. Electoral Commission And Ogolla Jack, Election Petition No.0019 of 2006, at Mbale, and Kadama E. Mwogezaddembe Vs. Wambuzi Gagaggawala G.N. And The Electoral Commission, Election Petition No.02 of 2001, at Jinja, in relation to the imperative need to subject the evidence relating to bribery and other offences in election petitions to a very high level of judicial scrutiny.

Court duly agrees with learned counsel, Mr. Okello Oryem, in that regard. This court recently observed, in the decision in Kasta Hussein Bukenya Vs. Bukenya Balibaseka Gilbert And Electoral Commission, Election Petition No.029 of 2011, that it cannot be oblivious of the distinctive characteristic of election petitions in this country that witness on either side, are often persons who were ardent supporters during the actual election contest of the party, for which they are appearing as witnesses. They can, therefore, be motivated by the continued desire to score victory to the political prize (power) which is at stake through the judicial process in these matters as well. They can, no doubt, be tempted to peddling lies in order to achieve that ultimate objective. Thus judicial inquiry conducted during the trial of an election petition ought to be quite diligent and sober.

A court will not make a decision under the provisions of section 61(1), of the PEA unless it has, before it, substantial and cogent evidence compelling it to do so. The evidence must not merely raise suspicion, as learned counsel complained. It must prove the allegation or ground as required under section 61(1) of the PEA; to the satisfaction of the court. But as required under section 61(3), of the PEA, proof to the satisfaction of the court must only be upon the balance of probabilities. The degree of probabilities being higher than that which pertains ordinarily in civil suits.

Although, generally principles of criminal law are not applicable to trials in civil matters, court does partly agree with learned counsel Mr. Okello Oryem, that it would be desirable, in suitable cases, to obtain corroborating evidence as may be seen to be appropriate in the circumstances. It may also be appropriate to take into account the fact that a receiver of an alleged bribe would be an accomplice to it's commission.

On the other hand, as section 61(1)(c) of the PEA, provides that a single illegal practice or election offence under the PEA, once proved, by the petitioner, to the satisfaction of the court, suffices. The weight or significance of the bribe would not matter as long as it is proved that it was given for the purpose of influencing a voter to vote for the candidate giving it or to refrain from voting for another candidate.

Lastly, the essential elements of bribery, under section 68(1) of the PEA, Cap. Have been outlined to include:

- a) money or gift being given out by the candidate personally or through him or his agents with his or her knowledge consent or approval;
- b) that the recipient was a registered voter;
- c) that the giving was with intent to influence the voter to vote or refrain from voting;

See *Mukasa Anthony Harris. Vs. Dr. Bayiga Michael Phillip Lulume, SC election Petition No.18 of 2007*, judgment of Tsekooko, JSC.

EVALUATION OF EVIDENCE IN RELATION TO ALLEGATIONS OF BRIBERY

Bribe of shs.100,000/= At Gombe Mosque

The key witness with regard to this allegation is PW8, Ssegirinya Muhabuba. His affidavit is PA32. He testified that the second respondent went to Gombe mosque where the witness was

with a number of other people. He says it was around Christmas time, 2010. The second respondent addressed the gathering asking for their votes. He then got out shs.100,000/=. He gave it to PW8 to distribute to each person present so that they would vote for him on polling day.

PW8 wrote down the names of those present. He found out that they were 101 in all, including himself. He then proceeded to distribute the money giving shs.1,000/= to each person. He also gave himself 1,000/=. One Haji Sulaimani Kitaka, whose name had been written down by PW8 missed out because he had left the place for a while before the distribution was done. When he came back, the money was then finished. He missed out.

Namutebi Aziza, PW15, in her affidavit, PA30, in paragraphs, 2,3 and 4, duly supports the evidence of PW8. She confirms that she was present at the mosque at Gombe when the first respondent gave the money to PW8. She was a beneficiary of that money; getting shs.1,000/=. She averred that the second respondent told them that he was giving the money to them as a Christmas gift so that they vote for him.

PW55, Mutesasira Ahamed, in his affidavit, PA61, in paragraph 4 and 5, also corroborates the evidence of Ssegirinya Muhabuba. So does Kalyango Abdul, PW50, in his affidavit PA56, in paragraph 4. He got shs.1,000/=. Lastly, PW48, Lubowa Hamdan, also testified of witnessing the same event, in his affidavit PA53. He too benefited with shs.1,000/= from that donation.

In rebuttal, Nalongo Nabulya Afuwa, RW14, in her affidavit, RA2.60, refuted the evidence of Ssegirinya and Namutebi Aziza, she claimed that the second respondent never donated the shs.100,000/=. because he never stepped in Gombe ward during the entire month of December, 2010, for campaigns.

Both Ssegirinya Muhabuba and Nalongo Nabulya were subjected to cross examination. Surprisingly, Ssegirinya's claim that the second respondent gave him shs.100,000/= to distribute was not challenged in cross examination. Questions were, only put to him about the jurat of his affidavit. To court, he looked a highly credible witness.

Nalongo Nabulya Afuwa also was subjected to cross-examination. Her claim that the second respondent never campaigned in Gombe Ward during the month of December, 2011 was proved to be a lie when she was shown the second respondents approved campaign programme; indicating that on 22nd and 23rd December, 2010, the second respondent had to campaign in Gombe Ward in Gombe town council.

Court did not consider Nalongo Hafuwa to be a truthful witness. Court preferred to believe the evidence of Ssegirinya Muhabuba, on this matter, in preference to Nalongo Hafuwa. She confessed to have been a campaign agent of the second respondent in Gombe Ward. The reason for motive to lie is thus understood.

Ssegirinya Muhabuba proved that he was a voter. So did the other four witnesses who corroborated his evidence and who claim to have benefited from the money which he is said to have distributed to voters. There are no inconsistencies or contradictions in the evidence of all the five witnesses for the petitioner. Court finds no reason to disbelieve them. It, therefore, finds that the allegation has been proved to its satisfaction, upon the balance of probabilities.

Bribe of 6 Crates of Soda At Kabasanda Mosque On 17th February, 2011

The key witness to this allegation was PW20, Gingo Alawi. His affidavit is PA42. He states that he was at Kabasanda Mosque on 17th February, 2011, at about 6.00p.m, when he and other people were mobilized by one Farouq Byuka to go and listen to the second respondent who was

with many colleagues. After talking to the gathering, the second respondent sent his driver who brought 6 crates of soda. The second respondent gave the witness one crate to distribute to those in attendance. There was no other witness who testified about this incident.

RA2.33, Farouq Kisitu, who swore an affidavit in rebuttal to that of Ggingo said there was no person called Farouk Byuka at Kabasanda. The existence of Byuka remained in doubt. Although the fact of the provision of the 6 crates of soda was never challenged when Kisitu Farouk appeared for cross-examination, court could not understand why the second respondent would have ordered his driver to bring 6 crates of soda when only one was what was needed to cover all those present?

Furthermore, the fact that by 6.00p.m, on 17th February, 2011, Parliamentary campaigns which must stop 24 hours prior to polling time, must have already have come to an end, raises doubts whether the second respondent would have been still carrying on his campaigning as Gingo Alawi claims.

In court's view, therefore, the petitioner's evidence fails to prove this allegation to the satisfaction of this court.

Bribing Voters of Kitimba B Village With A Steamer Lamp

The key witness is PW9, Aisha Nsonyiwa. The other witnesses are:-

- Hasifa Nansubuga, PW5
- Mariam Nantume – PW4
- Imelda Namubiru – PW43

In rebuttal, there are two affidavits, by Nyenje Zefania, RW9 and Donozio Lubyayi RW40.

The allegation was that some time in January, 2011, the second respondent campaigned in Kitimba A village. At the rally which was held in the compound of PW5, Hasifa Nansubuga, the second respondent donated a new steamer to the residents of the village. It was handed over to Aisha Nsonyiwa, PW9, the LCI Secretary for Women Affairs. Aisha Nsonyiwa not only confirms this allegation, but she attached the alleged steamer to her second affidavit, PA6, as an annexure. It is, indeed new with it's price tag of shs.50,000/= still showing on the container. The evidence of all the petitioner's witnesses on this allegation neats up very well. There are no inconsistencies or contradictions. Aisha Nsonyiwa was subjected to cross-examination. Court assessed her to be a credible witness.

The second respondent does not deny holding the rally in question. He only generally denies donating any steamer lamps to voters.

In his rebuttal affidavit, Nyenje Zefania confirms that himself and the four witnesses for the petitioner attended the rally at Hasifa Nansubuga's home. He avers not to have witnessed any acts of bribery.

On his part, Lubyayi Donozio in his affidavit, indicated he was replying to the affidavits of Aisha Nsonyiwa, Hasifa Nansubuga and Mariam Nantume. But he failed to address the allegation in issue.

Learned counsel, Mr. Okello Oryem, has challenged the voter status of the four petitioner's witnesses. However, court has no doubt that they were all registered voters. The numbers of their voter cards were disclosed. In any case the alleged steamer was not claimed to have been donated any of them as an individual. It was alleged to have been donated to the residents of a

village called Kitimba A, at a public rally for them in their village. Court cannot believe that that village had no voters in it or that all those who attended the rally were not voters.

The motive for the donation was well brought out in the evidence. Court remain with no doubts about it.

The possibility that Aisha Nsonyiwa or any of the other petitioner's witnesses might have gone to a shop and purchased annexure A to bring it and deceive court appears to me to be very remote, indeed. Court assessed Aisha Nsonyiwa to be an innocent and honest witness.

In the view of court, therefore, this particular allegation is proved upon the balance of probabilities and to the satisfaction of this court.

Bribing Voters of Ngogwe B Village, Bukandaganyi Parish Kalamba Sub-county

The key witness to this allegation appears to be Tebusweke, Erias, PW7. He swore two affidavits, PA15 and PA16. Other affidavits were deponed by:

- Walakira Stanley, PW21
- Mukwaya Ali, PW65
- Namuyimba David, PW66

The status of all these witnesses as registered voters is not in doubt.

In rebuttal, one Nabukenya Sepiranza, alias Maama Nameere, PW47, swore an affidavit, RA2.39. In it she denies having taken a steamer from the second respondent. She however, agrees to have taken a steamer from Tebusweke Erias. Tebusweke Erias had averred that maama Nameere had borrowed the steamer donated by the second respondent to the village. The affidavit of Nabukenya Sepiranza, therefore, does not actually rebut the main allegation that the

second respondent donated a steamer to Ngogwe B village during a campaign rally in that village.

The steamer in question was annexed to the second affidavit of Tebusweke Erias. Court does not agree with learned counsel, Mr. Okello Oryem that annexing it to the affidavit and not exhibiting it in court was not enough. As I understand it, evidence during these trials, of election petitions, is by affidavits. Ordinarily, anything annexed to an affidavit, presented before the registrar, is part of that affidavit. When the affidavit is read out in court in accordance with rule 15(1) of the PEEPRs, the affidavit together with the annexure that form part of it get into evidence. This steamer, which was annexure to the affidavit by Tebusweke, which affidavit was read out in court, got properly into evidence.

Court, like in the case of Aisha Nsonyiwa, cannot attribute the presence of the steamer, annexure A to Tebusweke's affidavit, PA16, to that witness's ingenuity. I observed him while he appeared for cross examination. He never gave me the impression of a person who could have purchased that steamer, made up the story contained in his affidavit and boldly appeared before this court with all the confidence and clarity he demonstrated. All that arose out of only one fact. He was a truthful witness who knew what he was talking about.

Surprisingly, during cross-examination, Tebusweke was, quite like Aisha Nsonyiwa, never challenged on the subject matter of his evidence, the donation of the steamer to the residents of Ngogwe B village by the second respondent. That, certainly, left a lasting impression upon the mind of the court that there was deliberate avoidance of opening the can of worms even wider!

Court, therefore, finds that this allegation too, has been proved to its satisfaction, upon the balance of probabilities.

Bribing voters of Nsozibirye Village Kamuduuka With Shs.50,000/=

There were two witnesses who testified on this allegation: They are:

PW64, Kamulegeya Siraje, affidavit, PA73; PW , Kalule Abdulla, Affidavit PA71;

Kalule's affidavit was subsequently withdrawn and replaced as PA71 by that of Nanjala Josephine, who testifies about a different allegation altogether.

The allegation made by Kamulegeya Siraje, in his words in affidavit, PA73, are:

“3. That during the address, Hon. Kikulukunyu gave shs.50,000/= to the _____ LCI, Chairman, Nsozibirye, Ssekanjako Baker, to buy a steamer as an appreciation of our support.

4. That chairman Baker showed the money to the people and Hon. _____ Kikulukunyu requested for our votes and promised to give us more if we voted him as our Member of Parliament.

5. That the chairman has since bought the steamer and is being used on various functions in the community.”

Kamulegeya Siraje's affidavit was never challenged with any affidavit in rebuttal. He appears on the record, as witness, PW64. His affidavit was read out in court. He was not cross-examined on its contents on behalf of the second respondent. Still worse, apart from the general denial by the second respondent, there was never any affidavit in rebuttal to those contents. The inference court would draw from this scenario is that the contents of Kamulegeya's affidavit were accepted as being true by the second respondent. Court could not understand why the chairman of Nsozibirye, Ssekanjako baker, never swore any affidavit in rebuttal.

To court, Kamulegeya Siraje proved that he was a voter. He gave his voter number as 09046202 and his polling station as Nsozibirye polling station. In the absence of any evidence showing that voter register No.09064202 is not in the names of Kamulegeya Siraje, on the national voters'

register, court believes showing that voter register No.09064202 is not in the names of Kamulegeya Siraje, court believes his evidence that he is a registered voter.

Court cannot doubt that the gathering at the rally, which was a campaign rally, was composed of non-voters only. There were, of course voters at the rally. The motive for the gift comes out clearly in Kamulegeya's evidence. Court cannot doubt it.

It is, in those circumstances, imperative to believe the evidence of a single witness on this allegation and conclude that it has been proved to the satisfaction of Court.

Bribing Voters of Tabaluzinga, Kamugombwa And Kikeera Villages With Steamers

The petitioner presented mainly two witnesses to prove these three allegations. They are PW58, Kyalimpa Nicholas and PW17, Kisegerwa Mundu. The gist of the evidence in the two affidavits is that the two witnesses attended rallies in each of the three villages during the first week of January, 2011. The rallies were for the second respondent. The witnesses state that the second respondent donated a steamer at each rally while asking for votes from those attending the rally. PW58 states that at Taba Ruzinga the steamer was handed over to Noa Kambagira. At Kamugombwa, it was handed over to mukyala Nganda. At Kikeera, it was received by Ssalongo Musisi. He states that he was present when all that happened.

There were two affidavits in rebuttal. They were by Kambagira Noa and Babirye Rukia also called mukyala Nganda; They are, RA2.44 and RA2.42, respectively. Neither of them answer the averments contained in the affidavits of both Kyalimpa and Kisegerwa. The affidavits of mukyala Nganda and Kambagira rebut the affidavit of Gingo Frank Kibirige, which the petitioner did withdraw for failure to produce him for cross-examination. The averments by

Kibirige did not relate to the allegation of donation of the three steamers. Ssalongo Musisi did not file any affidavit denying receipt of the alleged steamer for Kikeera village.

Kyalimpa Nicholas was not cross-examined. Kisegerwa Mundu was. But no question in cross-examination was put to him on the allegation of the donation of the 3 steamers by the second respondent.

The second respondent himself did not specifically deny those allegations. In the view of the court, therefore, the allegations by the two witnesses remain unrebutted substantially.

When Kisegerwa appeared before court for cross-examination, court assessed him to be a witness of truth. It has no reason to disbelieve him.

Learned counsel for the second respondent submitted that the evidence on these allegations was not cogent enough. He stated that there was no link between the second respondent and the agents who distributed the steamers. Court does not agree, with all due respect to learned counsel. The evidence on record is that it was the second respondent personally who gave a steamer to each village at each rally. He never acted through his agents. The question of nexus does not arise. The recipients received the steamers on behalf of their respective villages. They were not agents of the second respondent.

In the circumstances, court does not have any option but to find that these three allegations have each been proved to its satisfaction, upon the balance of probabilities.

Court could go on and on to cover all the 22 allegations involved in the evidence on record. It appears to be futile to do so in the circumstances. It suffices to say that the petitioner has proved

his first general allegation. in his petition, that the second respondent committed illegal practices during the campaign period.

That being the case, in accordance with sections 61(1)(c) and 63(4)(c) of the Parliamentary Elections Act, Cap. 141, court makes the following orders:

- a) the election of the second petitioner as Member of Parliament, Butambala Constituency, is set aside;
- b) a by-election is ordered to be held in that Constituency;
- c) the petitioner shall recover his costs, in relation to this petition, from the second respondent; and
- d) as between the petitioner and the first respondent each party shall meet own costs.

V.F. Musoke-Kibuuka

(Judge)

13.10.2011