

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO**

ELECTION PETITION NO.30 OF 2011

NALUGO MARY MARGARET SEKIZIYIVU::::::::::::: PETITIONER

VERSUS

- 1. BAKALUBA MUKASA PETER :::::::::::::::1ST RESPONDENT**
2. ELECTORAL COMMISSION ::::::::::::::: 2ND RESPONDENT

BEFORE THE HON. JUSTICE ELDAD MWANGUSYA:

JUDGMENT

The Petitioner, Nalugo Mary Margaret Sekiziyivu and the first Respondent, Bakaluba Mukasa Peter were among the five candidates who contested for the Parliamentary seat for Mukono South Constituency, Mukono District in the recently concluded Parliamentary Elections which were held on the 18th February 2011. The other Candidates were Kiyaga Jovan Namakajo, Mutema Derrick and Sekato Timothy. At the conclusion of the said elections the Electoral Commission (2nd Respondent in this trial) declared that the 1st Respondent had won the election with 14,930 votes while the Petitioner was runner up with 7,011 votes. Mutema Derrick, Kiyaga Jovan Namakajo and Sekato Timothy polled 4,632, 1,867 and 1,196 votes respectively. The above results were published in the Uganda Gazette by the second Respondent.

Following the declaration and gazetting of the results the Petitioner filed this petition challenging the said results alleging that the election was conducted in contravention of the Provisions of the Constitution of the Republic of Uganda, the Electoral Commission Act (Cap 140), the Parliamentary Elections Act, 2005 and other electoral Laws the non compliance of which affected the result of the election in a substantial manner rendering it an invalid election.

The other allegation was that the entire electoral process in Mukono South Constituency beginning from the campaigning period was characterized by gross irregularities, malpractices, violence, acts of intimidation and torture, lack of freedom and transparency, unfairness and commission of numerous electoral offences and illegal practices contrary to the provisions of the Constitution of the Republic of Uganda, 1995, Parliamentary Elections Act, 2005 and the Electoral Commission Act Cap 140. The above acts and omissions were enumerated in paragraph 4 of the petition as under:-

4(a) contrary to Section 2(1)(e) and (f) of the Electoral Commission Act, the 2nd Respondent failed to take measures to ensure that the electoral process in Mukono South Constituency was conducted under conditions of freedom and fairness when :-

- (i) The agents and supporters of First Respondent intimidated the Petitioner's supporters and polling/campaign agents throughout the campaign period up to the polling day and instilled fear among them thereby tearing the interests of the Petitioner unprotected on polling day.
 - (ii) Voters were ferried by the 1st Respondent's agents and supporters and were as a result of connivance between the agents of the 1st Respondent and the 2nd Respondent made to vote in favour of the 2nd Respondent more over at different polling stations where they are not registered.
 - (iii) Registered voters who had turned up to vote were denied a chance to cast their votes on the allegation that their names did not appear in the register.
 - (iv) Contrary to Section 30(4) and Section 32(1) of the Parliamentary Elections Act, 2005, the Petitioner was denied effective representation at polling stations during voting when her polling agents were made to sit around 5 metres from the Presiding officer's desk contrary to the Law and could not safeguard the Petitioner.
- b) Contrary to Section 12(1)(b) of the Electoral Commission Act the 2nd Respondent failed to control the use of ballot papers when there was massive rigging of votes through ballot stuffing, multiple voting and pre ticking of ballots for voters and manipulation of the voters' roll.
- c) Contrary to electoral laws, the 1st Respondent used his photograph while dressed in his Reverend attire with a collar at his campaign posters.

- d) The 1st Respondent personally used his influence as a Reverend and baptized several Christians in the Constituency during campaigns with a request to the electorate to vote for him on Election Day.
- e) The 2nd Respondent without sensitizing the electorate transferred voters' names from their usual polling stations to other polling stations unknown to the voters thereby denying voters a chance to cast their votes.
- f) Contrary to Sections 47(5), (6) and Section 50(1) (d) of the Parliamentary Elections Act 2005, the officers of the 2nd Respondent in connivance with the 1st Respondent's agents denied the Petitioner's agents copies of the Declaration of Results Forms at several polling stations. In paragraph 7 of the petition a number of illegal practices and offences are enumerated against the 1st Respondent as follows:-

- (a) Personally or through his agents bribed voters contrary to Section 68(1) of the Parliamentary Election Act, 2005 by giving out bribes in form of money, footballs, netballs, spraying pumps, saucepans, food, sodas, tarpaulins and other household gadgets.
- (b) During the NRM primaries the 1st Respondent commenced the construction of a school a Kimmi Landing Site called Kimmi Primary School, the same school was completed and opened in January 2011 during the general campaigns. At its launch the 1st Respondent promised to offer free education for all the pupils, enroll teachers for the school and pay other school requirements and called upon all the people to vote for him in case they need more development in the area the first Respondent used the said school as a campaign tool

throughout his campaigns. The school has a turnover of around 250 pupils.

- (c) During the NRM primaries, the 1st Respondent undertook to construct a Community Based Secondary School in Mpunge Sub County. He commenced by constructing the foundation for the school which stalled after the NRM primaries. He resumed further construction of the school

during general campaigns and the same is ongoing. The 1st Respondent used the said school as a campaign tool throughout his campaigns in the entire Constituency. The construction of the above school lured voters since the sub county lacked a secondary school.

- (d) During the general campaigns, the 1st Respondent offered a structure for a health centre at Kimmi Landing Site which he officially handed over to the residents on 15th December 2010 during the official launch of Makula Sacco. When handing over the said Health Centre the first Respondent promised to offer free treatment, stock the Health Centre with drugs on top of paying the medical personnel working at the Health Centre. He called upon all the people to vote for him in case they need more development in the area. The 1st Respondent used the said Health Centre as a campaign tool throughout his campaigns to lure voters as Kimmi Landing Site lacks a health facility.
- (e) During campaigns, the 1st Respondent organized a football tournament at Nsanja Parish in which four teams, Kalengera Trading Centre FC, Kalengera "A" F.C. Nsanja F.C and Katosi F.C participated in which the 1st Respondent, who was the organizer and Chief Guest gave Kalengera "A" F.C the winner of a cup and Ug. Shs 10,000/= (Ten thousand shillings) 1st runner up. The supporters and players of Katosi F.C, Kalengera Trading Centre F.C became rowdy, quarreled and vowed not to vote for the 1st Respondent in the Parliamentary Elections and to cool down their tempers the 1st Respondent bribed them with footballs.
- (f) During general campaigns, the roof for Kulubi Mosque was blown off by a storm and the 1st Respondent visited whereupon he promised to reroof it up to its completion. As a starting point the 1st Respondent gave to the Chairman of the area a sum of Ug. Sh.50,000= to assist in the purchase of timber to replace the roof and promised to give more assistance. The 1st Respondent urged the residents to return the same favour by voting him during the Parliamentary elections.

- (g) In the same village of Kulubi, the 1st Respondent visited the home of a one Mukyala Musawo whose house had equally been swept away by a storm. The 1st Respondent gave a sum of Ug. Shs.40,000= for buying cement to reconstruct the house. The 1st Respondent urged Mukyala Musawo to vote him during the Parliamentary elections.
- (h) On the 3rd day of February 2011 at Nakisunga Sub county headquarters playground at a rally for President Yoweri Kaguta Museveni, the NRM flag bearers and supporters organized by the 1st Respondent, the 1st Respondent cooked food from his home and the same was distributed to all persons present by the 1st Respondent's agents to wit, Ludigo, Bitalo (Former L.D.U.) Kagiri Mohammed, Musisi Muhammad, who all along praised the 1st Respondent for offering the meal and urged all persons present to vote for the 1st Respondent during the Parliamentary elections for Mukono South Constituency.

It is contended in paragraph 8 that all the above illegal practices and offences were committed by the 1st Respondent/or his agents and supporters with his knowledge, consent or approval and that the first Respondent is liable for these offences and illegal practices.

In view of the above illegal practices the Petitioner seeks orders of this court that:-

- (a) The 1st Respondent was not validly elected member of Parliament for Mukono South Constituency.
- (b) The election of the 1st Respondent as directly elected member of Parliament for Mukono South Constituency be annulled and a fresh election be conducted in the said Constituency.
- (c) The Respondents pay the costs of the petition.
- (d) Such other remedy available under the Electoral Laws as the court considers just and appropriate in the circumstances.

In his answer to the petition the 1st Respondent denies all the above allegations leveled against him contending that the elections in Mukono South Constituency were conducted in total compliance with Constitution and all the Electoral Laws he specifically averred that:-

- (i) The election was conducted under conditions of freedom and fairness and there was no intimidation of the Petitioner's agents or Supporters.
- (ii) There was no ferrying of voters and the allegations of non registered voters voting at different polling stations are baseless.
- (iii) There was no registered voters who were denied a right to vote.
- (iv) The Petitioner's agents duly represented her at all polling stations and they signed all the declaration of results forms and none of them ever raised any issue of sitting far away from the presiding officers table.
- (v) The election and the entire electoral process were free, fair and transparent.

In paragraph 6 of his reply he denied that there was any form of rigging and that the allegations of ballot stuffing, multiple voting, pre ticking of ballot papers and manipulation of voters' roll are baseless.

In paragraph 7 of his reply he avers that as an ordained priest in the Anglican Church of Uganda Mukono Diocese he continues to dress and serve the diocese and the allegations of soliciting for votes at religious functions are devoid of merit.

In paragraph 10 of his reply the 1st Respondent contends that:-

- (i) He has never bribed any voters during the campaigns and the allegations of giving out money, footballs, netballs, spraying pumps, saucepans, food, sodas, tarpaulins and other households gadgets.
- (ii) The allegations of Kimmi Primary School Construction are denied as bribery since the construction of this school commenced in February – March 2010 before campaigns and it is a Government aided Primary School under the government of Uganda and when campaigns begun there was no construction done.

- (iii) He mobilized the people of Mpunge community in February 2010 to construct a classroom block and two offices and the Petitioner contributed bricks worth 500,000/= to the cause.
- (iv) The allegations of Kimmi Health Centre are denied since I only bought a personal building at Kimmi Trading Centre which is being rented out to some tenants but part of the building was offered for a First Aid Clinic when the District was able to set it up and the same has never been established or launched.
- (v) The alleged football tournament for Nsanja Parish has never been organized by the 1st Respondent since the tournament is an annual event organized by the family of Kiyingi and it is known as Kiyingi Family Cup and the 1st Respondent only attended to watch the finals as well as all other candidates.
- (vi) During the finals no one was ever given or bribed with balls or money as alleged.
- (vii) The area was affected by a heavy hailstorm which blew off all the roof tops of most buildings/houses and the 1st Respondent visited some of the affected homes including the home of Musawo and the mosque.
- (viii) He visited the mosque which was badly damaged and he advised them to change the foundation since it was meaningless to re-roof and it would be affected again.
- (ix) During his visit he never offered any money for any purpose whatsoever or any assistance apart from promising to report their problem to the district authorities.
- (x) While he went to visit Musawo's home which was affected he never offered any money and around the same time he visited he found one of the Petitioner's agent – Kamuzata on the road.
- (xi) It is true that the President held a rally at Nakisunga Sub County headquarters playground and President Museveni Election Task Force was wholly in charge and the 1st Respondent only attended as the party flag bearer and it was also attended by the petitioner.
- (xiii) The entire electoral exercise was conducted in compliance with the Law and no complaint was ever raised during polling or campaigns by the Petitioner save for some incidents by bribery and intimidation and harassment of supporters by the Petitioner and her agents.

He denied having benefited from any non compliance with the law if any or committed any illegal practices. Instead it was the Petitioner who committed acts of bribery, campaigning outside the time and harassment of 1st Respondents voters.

The second Respondent also denied all the allegations contained in the petition as regards the manner in which the elections were conducted. In support of the 2nd Respondent's answer to the petition its Chairman Eng. Dr. Badru M. Kiggundu stated that contrary to what was alleged by the Petitioner the Electoral Commission provided and set up the necessary mechanism to facilitate the election process and that the Electoral Commission lawfully declared the 1st Respondent winner of the election having polled the highest number of votes and having been validly elected as Member of Parliament Mukono South Constituency.

At the scheduling conference held on the 15th day of June 2011 the parties agreed on the following facts:-

- (1) That the second Respondent organized a National Elections for Members of Parliament on the 18th day of February 2011.
- (2) That the Petitioner and 1st Respondent participated in the said election and the 1st Respondent emerged the winner with 14.930 votes a margin of 7.919 votes. The other participants included Mutema Derrick who polled 4.632 voters, Sekato Timothy who polled 1.867 votes and Kiyaga Jovan Namakajjo who polled 1.196 votes. The following issues were framed:-

- (1) Whether the elections for Member of Parliament for Mukono South Constituency were conducted in compliance with the Electoral Laws.
- (2) Whether the non compliance if any affected the results of the elections in a substantial manner.
- (3) Whether the 1st Respondent committed any illegal practices personally or through his agents with his knowledge, consent or approval.
- (4) What remedies are available to the parties.

After the parties had closed their respective cases Mr. Katumba Chrisestom Counsel for the Petitioner submitted that several grounds in support of the petition had not been proved and the Petitioner was abandoning them. These grounds were in relation to intimidation of voters, ferrying of voters, disenfranchisement of voters, denial of effective representation at Polling Stations, failure to control the use of ballot papers resulting into rigging of votes, transfer of voters from their usual Polling Stations to other Stations not known to them and denial of copies of Declaration of Results Forms. On abandonment of the above grounds what remain of this petition are allegations of bribery of voters in contravention of Section 68 of the Parliamentary Elections Act which I set out hereunder:-

“68 Bribery

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

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

(3) Sub Section (1) does not apply in respect of the provision of refreshments or food –

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

- (b) Offered by any person other than a candidate or a candidate's agent who, at his or her own expense provides the refreshments or food at a candidate's campaign planning and organization meeting.
- (4) An offence under Sub Section (1) shall be an illegal practice.
- (5) Every candidate's agent who, by himself or herself or any other person, directly or indirectly, before the close of polls or polling day offers, procures or provides or promises to procure or provide any alcoholic beverage to anybody commits an illegal practice.
- (6) A person who during the campaign in respect of an election, solicits from a candidate or candidate's agent any money, gift, alcoholic beverage or other consideration in return for directly or indirectly influencing another person to vote or refraining from voting for a candidate or in consideration for his or her voting for the candidate or not voting for another candidate, commits an illegal practice.
- (7) A candidate or an agent of a candidate shall not carry on fundraising or giving of donations during the period of campaigning.
- (8) A person who contravenes subsection (7), commits an illegal practice.
- (9) For purposes of this Section fundraising shall not include the soliciting of funds for candidates to organize for elections." (underlining provided).

From the wording of this provision, commission of an act of briber constitutes both an illegal practice as well as an offence punishable under Sub Section (1). The provision prohibits the influencing of voters to vote or refrain from voting for any candidate by giving money, gifts, alcoholic beverage or any other consideration except for the provision of refreshments or food at a candidate's campaign planning and organization of meetings. The other prohibition is on fundraising or giving of donations during campaign periods. The alleged illegal practices cited in this petition contains both categories of illegal practice and although there is a multiplicity of incidents of illegal practice, a single act of bribery would be enough to upset an election if proved to the required standard.

In his final submissions Mr. Musa Sekaana representing the first Respondent raised the issue of the competence of the petition when the Petitioner failed to name the persons who were bribed. He cited the case of **Bannalib Issa Taligola versus The Electoral Commission and Wasugirya Bob Fred (High Court of E.P. No.15 of 2006** where His Lordship Justice Yorokamu Bamwine (as he then was) stated as follows:-

“.....Intention is therefore an integral part of the offence. Setting out the ground in the petition, without more, cannot satisfy the requirement under S.147 of the act. In other words to establish the ground of bribery. The Petitioner cannot just allege bribery. He has to specifically plead facts going to the elements of that offence. For instance the nature of the bribe to a named voter or voters, with the purpose of inducing the voter or those voters in a particular way. The petition lacks those details. The allegation about bribery is vague. It does not put the case of the Petitioner in terms that make it clear just what is being alleged. It raises the inference that at the time of filing the petition the Petitioner did not have any evidence of anybody who had been bribed but that after filing the same he went on a fishing expedition to look for evidence to support the blanket accusation. This cannot be the object of the Law. In the circumstances the paragraph in the petition alleging bribery should be struck out for failure to on the part of the Petitioner to plead specific elements of the allegation in the petition. In view of the Petitioner’s failure to mention in the petition even a single name of any person who had been bribed at the time of filing and with how much, the subsequent affidavits of people who had allegedly been bribed cannot cure the defect”

If the above statement was the correct position of the Law as Mr. Sekaana would have wanted this court to believe all the grounds of the petition would be struck out because all that the Petitioner does is to cite the incidents of bribery without naming the recipients of the bribes. On their own the statements by the Petitioner that the 1st Respondent committed those illegal acts would have no evidential value but the subsequent affidavits of the witnesses who testify to having witnessed the acts would prove the acts if they were to be believed. This position is stated in the case cited by Mr. Sekaana when it went it went on appeal to the Court of Appeal of Uganda (see **BANTALIBU ISSA**

TALIGOLA AND 1. THE ELECTORAL COMMISSION 2. WANSUGIRYA BOB FRED (Election Petition Appeal No.11 of 2006) where His Lordship S.G. Engwau, J.A.

as he then was stated as follows:

”Under Rule 30 of the Rules of this court, I have re-apprised the evidence on record as whole and my conclusion is that had the trial Judge considered subsequent affidavits, he would have found that the allegations of bribery and canvassing for votes on the polling day had been proved to the satisfaction as the court. By its nature an election petition, in my view, time is of the essence. A Petitioner may not have all the necessary evidence he or she would like to put in the affidavits in support of the petition at the time of filing the same. Subsequent affidavits evidence should be allowed and considered as a whole and findings should be made on them”

So this court is tasked to look at the affidavits in support of the petition and resolve as to whether or not the acts were committed, whether or not the Petitioner is specific about the persons who were bribed. But as stated by the Lady Justice Byamugisha J.A. in the case of **MBAYO JACOB ROBERT VS ELECTORAL COMMISSION AND TALONSYA SINAH (Election Appeal No.07/06)** this is by no means an easy task. The following task is set:-

“In the instant appeal, the recipients of the salt all appeal to be supporters of the Appellant. The circumstance under which the whole incident was played out with accusations and counter accusations from both sides is such that some “other evidence” from an independent source is required to confirm what actually happened” As to whether or not this test is met by this petition will be determined when each of the alleged incidents of bribery or donation is discussed. I will deal with the incidents in the order Mr. Katumba Chrisestom, Counsel for the Petitioner dealt with them in his final submissions to this court.

Mr. Katumba started with the allegation that the Respondent constructed a Primary School at Kimmi Landing Site (see Para 20 of the Petitioner’s affidavit in support of the petition). According to the affidavit of this Umaru Kawoya the construction of this

Primary School started during the period of the NRM Primaries and the roofing was done during the campaigns for the Parliamentary Seat. The first Respondent is also alleged to have offered free education to all pupils, enroll teachers for the school and pay the school requirements. The first Respondent does not deny having initiated the construction of this school for the community which was ready for use at the beginning of the 1st term of 2011. According to Section 68(7) of the Parliamentary Elections Act giving of donations is prohibited during the period of campaigns and the evidence before this court points to the fact that the project started well before the 1st Respondent was even nominated to stand in the constituency. On the offer of free education to all pupils, enrollment of teachers for the school and provision of other school requirements the pupils in this school would access free education through a Government Universal Primary Education Programme.

The second allegation of an illegal practice was the offer of a structure to house a Health Centre at Kimmi Landing Site which the first Respondent does not deny. Again this was well before the campaign period for the Parliamentary Elections. The offer was not taken. There is no clinic at the Landing Site although the premises are available. The timing of this offer puts it out of the prohibition under S.68 (7) of the Parliamentary Elections.

Another project was one whereby the 1st Respondent contributed 100 bags of cement towards construction of a building at Mpuge Secondary School which he does not deny. According to him this was a community based project to which a number of persons including the Petitioner contributed. Both Baraza Mara and Kimera Moses who swore affidavits in support of this illegal practice and were cross examined on the incident testify that the first consultative meeting convened by the first Respondent was held in the month of February 2010 which puts it outside the period envisaged under S.68(7) of the Act. I do not think the construction of the building in phases had anything to do with the Respondent because there were other players involved in its construction. It was not deliberately done to coincide with the campaign periods because the construction must

have depended on availability of other building materials other than the cement pledged by the first Respondent.

There was an allegation that the first Respondent organized a football tournament in which the winner received a trophy and the runner-up got an envelope containing Shs.10,000= . The 1st Respondent denied organization of the tournament. He only attended the final match as a guest of Honour and presented the trophy to the winner in that capacity. This incident was a clear example of what Justice Byamugisha describes in the case of **Mbayo Jacob Robert vs Electoral Commission and Another (Supra)** where evidence is adduced by either side and at the end of the day court is unable to resolve the issue without an independent source. In this case no independent source was produced and the issue as to whether or not the tournament was organized by the 1st Respondent as claimed by the Petitioner or was organized by the Kiyingi Family as claimed by the 1st Respondent remains unresolved. If all the 1st Respondent did was preside over a football match, made a speech in which he solicited for votes and even attended a dance, none of the provisions of S.68 of the Parliamentary Act was infringed or there was no proof of an illegal practice.

There were allegations that following a storm that destroyed a number of properties at Kulubi village the 1st Respondent visited the home of one Mukyala Musawo where he gave her Shs 40,000= to assist her reconstruct her damaged house and contributed timber to reconstruct the damaged mosque. Although the 1st Respondent admits having visited the area to offer his sympathies as he is wont to do he denies having made the donations alleged. On the incident at Musawo's house Nakalema Sarah alias Musawo whose house was allegedly damaged by the storm swore an affidavit in which she stated that although the 1st Respondent visited her house to commiserate with her he never gave her any money to assist her reconstruct it and if the alleged recipient denies having received the money there is no basis for this court to find that she did however vehement the claim that she did might be.

On the incident at the mosque John Kambugu to whom the money for purchase of the timber was allegedly passed denied having been at the mosque at the time the 1st Respondent visited it as alleged by Hamuzata Kigenyi and Kavuma Godfrey both of whom swore affidavits in support of the petition. He was cross examined on this incident and he stated that on the night of 31.01.2011 and 01.02.2011 when the storm destroyed the two properties, he had spent the night at Katosi and by the time he returned home on 1.02.2011 the 1st Respondent had already visited the area. This again a case where court has the word of the Petitioner and her witnesses against the word of the Respondent and his witnesses without any independent source which presents the difficulty of determining which of them is telling the truth but as the Petitioner bears the burden of proving her case and there is no basis of believing her story against that of the Respondent the only conclusion that this court can draw is that both incidents of illegal practice at Kulubi have not been proved.

The Petitioner's Counsel did not submit on the incident where the 1st Respondent was alleged to have prepared and served food at the campaign rally for Presidential Candidate Y.K. Museveni. The evidence was that the Respondent who was one of the Masters of Ceremony announced that there was plenty of food for everybody and those who were served with food were reminded that the 1st Respondent was the one who had served the food and he should be remembered when time for voting came. I am not sure that even if it was to be proved that the Respondent prepared the food (and there is no proof) it would follow that whoever served the food and made the utterances did so with the knowledge and consent of the 1st Respondent. This election would not be nullified on such an allegation.

There is an incident of bribery where Mukisa Franco, Sebayiga Fred, Mukalete Hussein Hallim Wamagoli claim that while they were at Mbazi Trading Centre the 1st Respondent stopped his vehicle and after greeting them gave them Shs.10,000= each and asked them to vote for him. The 1st respondent denied having met the said persons at Mbazi Trading Centre because he was campaigning at Lulagire where his rallies were disrupted and he fled to Mpugwe. Counsel for the Petitioner submitted that since Mbazi Trading Center is

found in Mpugwe Sub County and that is where the 1st Respondent went after fleeing the rallies which were disrupted court should find that Respondent met the aforementioned people whom court should find truthful. Court does find any basis for disbelieving the 1st Respondent's assertion that he never met or bribed those persons.

Lastly is the incident where Edward Mukasa, a Polling Assistant at Mpugwe alleged that as he was proceeding to vote at Mbale Polling Station where he had registered he met agents and supporters of the 1st Respondent of whom Joseph Lwanga gave him Shs 5,000= and asked him to vote for the 1st Respondent. He was also given transport back to the Poling Station where he was a Polling Assistant. Section 68(2) of the Parliamentary Elections Act creates an offence for a recipient of a bribe like Edward Mukasa claims to have received. The 1st Respondent denies any knowledge of this bribe and this court cannot rely on the evidence of a self confessed criminal who was an Election Official who instead of causing the arrest of the said agents of the 1st Respondent confesses to having committed the offence for which he now wants an election in which he participated as an official nullified. I do not find Edward Mukasa such a credible witness that this court would rely on to nullify this election. This incident was also not proved.

There was a blanket accusation that the first Respondent gave out money, footballs, spraying pumps, saucepans, food, sodas, tarpaulins and other household gadgets but apart from the incidents discussed no evidence of distribution of footballs, spraying pumps, saucepans, tarpaulins and other household gadgets was presented. I wish to comment that pleading in an Election Petition which is made on oath should avoid such a blanket accusations that cannot be proved even given the allowance already discussed that a Petitioner in an Election Petition is time constrained.

As a result of the above analysis of the incidents of the alleged illegal practices and/or bribes Court finds that none of them have been proved to warrant annulment of the election of Mukono South Constituency as prayed. In the result the petition is dismissed with costs to the Respondents.

ELDAD MWANGUSYA
JUDGE
22.07.2011