THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 17 OF 2005 (AS AMENDED)

AND

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS (ELECTION PETITION) RULES

ELECTION PETITION No. 0001 OF 2011

IDDI LUBYAYI KISIKI ……………………………………………………............ PETITIONER

VERSUS

1. ELECTORAL COMMISSION }

2. THE RETURNING OFFICER }

BUKOMANSIMBI DISTRICT } ::: RESPONDENTS

3. KIYINGI DEOGRATIUS }

BEFORE THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

In the national Parliamentary and Presidential elections held on the 18th of February 2011, under the charge of the Electoral Commission (herein the 1st Respondent), the candidates who contested for the representation of Bukomansimbi Constituency, of Bukomansimbi District, in the Parliament of Uganda were: Iddi Lubyayi Kisiki (herein the Petitioner) who was then the incumbent Member of Parliament for the Constituency, Kiyingi Deogratius (herein the 3rd

Respondent), and others not parties to this petition. The elections were held simultaneously at the same polling stations, with the same polling officials (agents of the 1st Respondent) presiding over them; and Ms Ahebwa Anna (herein the 2nd Respondent) being the District Returning Officer.

After the conclusion of the polling, and tallying of the results from the various polling stations, the 2nd Respondent who was responsible for the supervision and conduct of the elections in the district, and to make returns, as the 1st Respondent's principal officer, hence its agent, declared that the 3rd Respondent had garnered 18,318 votes, followed by the Petitioner with 17,873 votes, while the other candidates ended up with inconsequential votes. Accordingly, she returned the 3rd Respondent as the candidate duly elected to represent the Constituency in Parliament; and the 1st Respondent caused this return to be published in the Gazette as stipulated by law. These were facts not in dispute at all.

The Petitioner's grievance with the results so declared, and the consequential return made, and as a consequence of which he brought this petition, was that the election for Member of Parliament for Bukomansimbi Constituency was riddled with a lot of malpractices committed by the 1st and 2nd Respondents and their agents to the advantage of the 3rd Respondent, in non–compliance with the electoral laws and practice; and these affected the outcome of the election in a substantial manner. He therefore contended that as a result, the 3rd Respondent did not legitimately win the election. The malpractices and non–compliance which form the basis of the Petitioner's grievance can be recast as follows; that: –

(i). The 2nd Respondent exhibited bias against the Petitioner by openly supporting the 3rd Respondent in the entire electoral process in that: –

(a) She colluded with the 3rd Respondent and appointed known agents and supporters of the 3rd Respondent as polling officials; and despite the protest by the Petitioner to her and the Deputy Chairperson of the 1st Respondent, nothing was done to rectify it.

(b) She attended secret and clandestine meetings with the 3rd Respondent where plans and strategies were hatched to rig elections in favour of the 3rd Respondent; and the same strategies were handed to the biased officials to implement on Election Day.

(c) She allowed the 3rd Respondent and his agents to transport and have possession of the ballot boxes after polling and to falsify or alter results in favour of the 3rd Respondent.

(d) She tampered with the ballot boxes during storage by deliberately breaking several of their seals; and thereby frustrated the exercise of re–count of the votes ordered by Court upon an application by the Petitioner therefor.

(ii). The polling officials exhibited bias against the Petitioner, and rigged the election in favour of the 3rd Respondent as follows:–

(a) By invalidating votes cast in favour of the Petitioner.

(b) By barring registered voters, who were supporters of the Petitioner, from voting.

(c) By using incorrect national register on polling day as it omitted the names of many registered voters, thereby disenfranchising them; and thus rigging elections in favour of the 3rd Respondent.

(iii). The 3rd Respondent, by himself or through his agents and supporters, with his knowledge and consent, committed illegal practices and other electoral offences such as: –

(a) Bribery and intimidation of voters.

(b) Falsification of votes.

(c) Destruction of voting materials:

The Petitioner therefore prayed that the petition be allowed, and the Court should either order that the 3rd Respondent who was declared as having won the election vacates his seat; or, in the alternative, Court should order that the 3rd Respondent was not duly elected and declare his seat vacant, with the result that the 1st Respondent be ordered to conduct a repeat of the election in the constituency. In either of the reliefs pleaded for by the Petitioner, he prayed for costs against the Respondents. He made affirmation in two affidavits which accompanied and supported the petition.

In their reply to the petition, the Respondents denied the adverse allegations made in the petition and instead contended that the election in which the 3rd Respondent was returned as

Member of Parliament for Bukomansimbi Constituency, which is now being contested, was held in compliance with the electoral laws, devoid of any irregularities, and was thus free and fair; but in the alternative, that in the event that there was any non–compliance with the electoral laws, this never affected the outcome of the election. Each of the replies was supported by an affidavit which reiterated on the contention made therein; and was in rebuttal of the adverse allegations made by the Petitioner against the Respondents.

Dr Badru Kigundu made affirmation for the 1st and 2nd Respondent, while the third Respondent swore an affidavit himself in support of his reply. Kateregа Mohammed also affirmed in a supplementary affidavit dated the 5th of April 2011, in support of the 3rd Respondent's reply. On the 8th of April, 2011 the Petitioner filed some 63 affidavits sworn by various persons in support of the petition. On the 14th May 2011, 40 affidavits sworn either by the 3rd Respondent's polling agents, or other registered voters, in support of his answer to the petition, and rebutting the claims made by the Petitioner's witnesses, were filed.

For their part, the 1st and 2nd Respondents also filed a total of 5 affidavits; one by the 2nd Respondent herself, dated the 13th May 2011, intituled as being in support of the 1st and 2nd Respondents; while the other four were by four individuals, and were all dated the 9th of May 2011 and intituled as affidavits in rejoinder. All these affidavits in support of the Respondents' replies were in rebuttal of specific adverse claims made by the Petitioner, or his witnesses, of electoral malpractices allegedly committed by the Respondents. I will advert to these affidavits in the course of discussing the issues framed for determination by this Court.

On the advice of Court Counsels filed a joint memorandum in which the facts agreed upon, as not being in dispute, were as set out at the beginning of this judgment; but more specifically that on the 18th of February 2011, the Presidential election, Constituency Parliamentary elections, and the District Woman Parliamentary elections, were held simultaneously at each polling station; and were presided over by the same polling officials. It was further agreed that each of the candidates had their respective polling agents, and political Party or individual election symbols which they identified with that day.

The Petitioner's election symbol, it was agreed, was the 'Bus'; this being the party symbol of the National Resistance Movement (NRM) party of which he was flag bearer. For the 3rd Respondent, it was the 'Hoe' which is the party symbol for the Democratic Party (DP); which he was the flag bearer of. It was also agreed that a vote re–count exercise, which had been

ordered by Court at the instance of the Petitioner, was aborted upon the Chief Magistrate discovering that some of the ballot boxes either had broken or loose seals, or their seals missing altogether.

The facts which were however contested, and were thus left for this Court to determine were the following; namely that: –

(i) The alleged conduct of the election by the 1st and 2nd Respondents generally in non compliance with the electoral laws and practice;
(ii) The alleged disenfranchisement of voters, invalidation of votes, and falsification or alterations of results in favour of the 3rd Respondent;
(iii) The alleged attendance, by the 2nd Respondent, of a meeting convened by the 3rd Respondent at Kalungu District on the 16th of February 2011, where plans and strategies were hatched to rig elections in favour of the 3rd Respondent;
(iv) The allegation that the 2nd Respondent allowed the 3rd Respondent and his agents to transport and have possession of the ballot boxes after polling;
(v) The alleged commission of illegal practices by the 3rd Respondent.

The following issues were then framed for Court's determination:

(1) Whether in the conduct of Parliamentary elections in Bukomansimbi Constituency, Bukomansimbi District, there was non–compliance with the law and practice regulating the conduct of elections in Uganda.
(2) In the event that issue No. 1 is answered in the affirmative, whether such non–compliance affected the result in a substantial manner.
(3) Whether any illegal practice or election offence was committed by the 3rd Respondent personally or by his agents with his knowledge, consent, and approval.
(4) What remedies are available to the parties?

Counsels agreed that Court should rely on the following documents:

(i) The affidavit evidence filed in Court,
(ii) The certified Declaration of Results forms attached to the affidavit of Anna Ahebwa dated 13th May 2011.

(iii) The table of the affidavits filed with the Respondents' initial scheduling memorandum.

(iv) Others that may be presented with leave of Court.

Counsels notified Court that they wished to examine certain witnesses. I accordingly directed that those witnesses should be named and be summoned to attend Court for that purpose.

The Petitioner's Counsel applied that Court should secure the ballot boxes from the 45 polling stations named as illustrative of the wrongful vote invalidation complained of by the Petitioner. Counsels for the Respondents however cried foul; contending that this application was an ambush as it had neither been prayed for, nor had it featured in the joint scheduling memorandum. Their further contention was that the security of the ballot boxes could not be guaranteed; and that this had been the reason for the Chief Magistrate declining to carry out a recount in the first place.

Counsels then agreed that two issues be framed, for determination by the Court, out of this application of recount. These issues were:

(a) Whether the issue of recount had been pleaded;

(b) Whether a recount would be prudent and safe to conduct.

In his address on these two issues, the Petitioner's Counsel submitted that section 63 of the Parliamentary Elections Act, 2005 (as amended) mandates this Court to order for a recount; and that paragraph 20 of the petition and the first leg of the prayers for relief therein pertain to the issue of recount. He referred Court to the uncontroverted affidavit evidence of Nakalema that 107 votes had initially wrongfully been invalidated, and only reinstated when objection was raised about it, as evidence of the merit in the claim about incidents of wrongful vote invalidation. Thus, he prayed that Court be pleased to order a recount of votes in the 45 ballot boxes from the polling stations named in annexture 'C' to the petition.

After the cross examination of the witnesses, Counsels for the Respondents submitted on the application for recount, urging Court not to make any such order; arguing that the discretion Court is clothed with, under section 63(5) of the Parliamentary Elections Act, for ordering a recount, has to be judiciously exercised. They relied on the decision of Arach–Amoko J. (as she then was), in ***Babu Edward Francis vs The Electoral Commission & Elias Lukwago***;

Kampala Election Petition No. 10 of 2006, advising that a recount only be ordered where the Applicant has made out a prima facie case in that regard.

Counsels also referred me to the decision of Musoke–Kibuuka J. in ***Byanyima Winnie vs Ngoma Ngime; Mbarara Civil Revision No. 9 of 2001,*** which clarified that an order for recount of votes is made for purposes of untangling questions of numerical figures. They contended that however in the instant case before me, with regard to the figures of invalidated votes complained of, there is a discrepancy between the Petitioner's affidavit evidence and that given viva voce in Court, and as well from what is contained in the Declaration of Results (DR) forms. Counsels argued further that many deponents were not specific about the number of votes allegedly invalidated, as they merely stated that *'at least'* a given number of invalidated votes belonged to the Petitioner.

Counsels submitted that in the DR forms none of the polling agents had entered any complaint of wrongful invalidation of votes; and no complaint record book was presented to Court to enable it make an informed decision on the matter. Counsels referred me to the Court of Appeal decision in ***Ngoma Ngime vs Electoral Commission & Anor; Election Petition Appeal No. 11 of 2002***, and the decision of Bamwine J. (as he then was) in ***Nyakecho Kezia Ochwo vs The Electoral Commission & Grace Oburu; Mbale Election Petition No. 11 of 2006,*** on the matter. Finally, Counsels urged Court not to carry out a selective recount, as that exercise should cover all ballot boxes.

After hearing the learned Counsels' submissions on the matter of vote–recount, I reserved my ruling. Counsels then addressed me in their final submissions on the substantive issues in the petition, framed for Court's determination. I am indebted to Counsels for their quite impressive and focused presentations. In my ruling on the application for recount, which was delivered at Kampala by the Assistant Registrar of the International Crimes Division because I had to attend a burial at my home village, I declined to make an order for a recount since I was not persuaded that there was wisdom in doing so. I undertook to give my reasons in this final judgment; as I will shortly hereafter do.

Issue No. 1 **Whether, in the conduct of the Parliamentary elections held in Bukomansimbi Constituency, there was non–compliance with the laws and practice regulating the conduct of elections in Uganda.**

The electoral process is the cherished means by which, in the exercise of their democratic rights to determine how and by whom they should be governed, the populace express their will in concert; otherwise known as the process of executing the social contract. The various laws of Uganda, such as the 1995 Constitution in which it has been enshrined that power belongs to the people, with the provisions therein for elections, the Electoral Commission Act, the Presidential Elections Act, the Parliamentary Elections Act, the Local Governments Act, and the rules made under them, all have provisions whose intendments are the genuine conduct of the electoral process to enable the voters express their true will.

The cardinal principle that is at the core of a successful election, therefore, is that it must be free and fair; hence the popular expression ***'free and fair election'***. Central to this is that those charged with the responsibility to conduct or oversee the electoral process must be impartial and above reproach. This is achieved when the vote–seeking candidates are afforded equal opportunities and an enabling environment to present to the electorates the issues that concern them, and the electorates are equally afforded an uninhibited opportunity to enable them make their choice and decision from an informed vantage point; hence the other popular expression ***'levelled playing ground'***.

In sum, nothing must be done or allowed that would detract from the need to conduct an election under a conducive environment characterised by free expression of opinion, untainted exercise of voting, with no falsification of the outcome of the expressed will of the people as manifested by the votes cast. The converse, gravely offends against these principles which are the bedrock of a genuine democratic process. In the event that these principles or rules of conduct are flouted, that cherished process may be derailed; and – as has been the tragic experience of this country – with the danger that it may result in devastating and far–reaching ramifications.

In the matter before me, the Petitioner's case is that there were numerous instances of non–compliance with the laws and rules regarding the electoral process; and that these substantially affected the outcome of the election. Following from this he pleaded for a recount of the votes to determine the true winner of the election, or nullification of the results to allow for fresh election. The following are the allegations of non compliance: –

(i). BIAS BY THE 1ST AND 2ND RESPONDENTS

(a) Bias in the choice of polling officials.

In the Petitioner's two affidavits which accompanied and supported the petition, both affirmed on the 18th day of March 2011 at Kampala before one Richard Mwebembezi a Commissioner for Oaths, he reiterated and elaborated on the contentions raised in the petition. He stated that the 2nd Respondent's choice of polling officials had been biased as she colluded with the 3rd Respondent and employed the latter's known supporters and agents; and despite his complaint to Mr Joseph Biribonwa the Vice Chairperson of the 1st Respondent, it was not addressed. This he believed was all meant for rigging the elections in favour of the 3rd Respondent.

When subjected to cross examination, the Petitioner who testified as PW8 stated that not a single of his nominees was picked for the post of presiding officer; and when he complained to Mr Biribonwa the Vice Chairperson of the 1st Respondent, about all the presiding officers appointed by the 2nd Respondent being DP party members, the list of presiding officers was amended to include NRM supporters. However three days to the elections, a new list of presiding officers, all of whom were DP members whom he knows by face though not by name, was pinned on notice boards; and this was the list used on polling day. He however conceded that no law had been flouted in choosing the presiding officers.

In her affidavit dated 13th May 2011, sworn in support of the 1st and 2nd Respondents' reply, Anna Ahebwa (the 2nd Respondent) the official responsible for the preparations, supervision and conduct of elections in Bukomansimbi District, denied the adverse allegations made by or on behalf of the Petitioner with regard to the elections in Bukomansimbi Constituency. She contended instead that these were free and fair and were conducted in compliance with the electoral laws. She refuted the allegation that she was biased against the Petitioner, and contended that her selection and appointment of polling officials had been transparent, and based on merit.

In her testimony in cross examination, as DW1, she explained that her choice of presiding officials and polling assistants was from applicants who had been shortlisted and had passed interviews conducted by her district team, following her advertising for applications. Political parties and candidates, she said, played no role whatever in this exercise. She explained further that the successful applicants were trained, at their respective sub county headquarters, on the conduct of the polling exercise, such as opening of the polls, vote

counting, determining valid and invalid votes on which they have the final say at the polling station, and were instructed to be non partisan.

She denied that there was any complaint either from the Petitioner or from the 1st Respondent's Headquarters about her choice of polling officials. Emmanuel Lukyamuzi, the election supervisor for Kitanda Sub – County denied, in his deposition that the polling officials appointed to conduct elections in Bukomansimbi Constituency were known supporters of the 3rd Respondent as alleged by the Petitioner, since they were all appointed on merit and were trained by the 2nd Respondent on their roles before the conduct of the elections. The 3rd Respondent in his affidavit of 5th April 2011, denied the allegation that he exerted influence in the choice of polling officials, or that any of his polling agents had been employed by the 1st Respondent.

Kato Joseph Yiga the election supervisor for Butenga Sub County swore a similar affidavit; adding that, before the elections, the 2nd Respondent trained polling officials, candidates' agents, as well as polling constables, on their roles as election officials. Saulo Bbosa the election supervisor for Bukomansimbi Town Council made similar contention in his affidavit; and so did Nabatanda Sheibah the election supervisor for Kibinge Sub County. Nakazibwe Milly who testified in cross examination as DW2 testified that she sat for interview, passed, and was trained as a presiding officer to be punctual, truthful, and not to participate in the campaigns.

It is quite evident that the Petitioner's allegation that the 2nd Respondent was biased in her selection of the presiding officials and polling assistants is not backed by any cogent or independent evidence. On the contrary, it is the converse as is seen above which stands fully corroborated. If indeed the original list had been amended to include NRM supporters, upon his alleged complaint, he should have availed a copy of such a list to Court; or caused one of those NRM supporters, who he alleges were included in the amended list, to give evidence in support of this contention.

The singular responsibility of polling officials is to ensure free and fair conduct of the elections on polling day, as impartial umpires. It would have been terribly wrong for the Returning Officer to select such officials at the behest of anyone, or to satisfy the representation of any political party, as was desired by the Petitioner. This would have gravely dented the desired impartiality of those officials; and rendered the electoral process

and its outcome the subject of serious challenge. The law caters for the subjective protection of the candidates' votes and thereby the interests of their parties, on polling day, by allowing them to appoint polling agents.

(b) Clandestine and secret meetings between the 2nd and 3rd Respondents to plan startegies for rigging the elections in favour of the 3rd Respondent.

The Petitioner accused the 2nd Respondent of having attended secret and clandestine meetings with the 3rd Respondent where plans and strategies were hatched to rig elections in favour of the 3rd Respondent; and further that the same strategies were handed to the biased officials of the 1st Respondent to implement on Election Day. It was the affidavit affirmation and testimony in cross examination by Mpoza Manisuli which the Petitioner relied on as direct evidence of this. Mpoza Manisuli made affirmations in two separate affidavits, dated the 25th and 30th March 2011 respectively.

In the first affidavit, he disclosed that he is a member of the NRM party, and was an ardent supporter and campaigner for the Petitioner in the elections. He deposed that at the invitation of the 3rd Respondent, he attended meetings, convened in various places outside the constituency to plot how to defeat the Petitioner and other NRM candidates, where several supporters of the 3rd Respondent were in attendance; and these included Kateregga Mohammed, and Kalumba George William who used to facilitate their attendance. In the meetings, the 3rd Respondent assured them of a master plan which he would reveal towards the polling day.

He stated further that in a meeting held on 16th February 2011, at Kalungu District Headquarters, the 3rd Respondent promised to unveil his master card that evening to convince them of his plan; and then invited the 2nd Respondent who entered, stayed with them briefly, greeted them then left; after which the 3rd Respondent assured them that she had given him guarantees that victory would be his; therefore those in the meeting should henceforth start celebrations, as the Petitioner was already finished! He also stated that Kalumba George promised to reward them handsomely and to inflict severe harm on anyone who would betray the group; and that he has been receiving threatening messages from Kalumba George.

In his affidavit of 30th March, he states that he was a campaign agent for Mohammed Kateregga the candidate for LCV Chair, Bukomansimbi District; and that he attended several

preparatory meetings together with the 3rd Respondent and other persons he named. In paragraph 6, he deposed that in the first meeting Mohammed Kateregga urged them to support him for the LCV Chairpersonship and to support Lubyayi Iddi (the Petitioner) for Member of Parliament. After this the 3rd Respondent advised that the next meeting take place in Masaka town to avoid leakages. Accordingly, the second meeting, attended by the 3rd Respondent, was held at Hotel Brovad, Masaka.

In this meeting, one Salongo William Kalumba, an otherwise avowed Movementist, urged them to support the 3rd Respondent for Member of Parliament. He urged them to keep this a secret; and promised each of them Shs. 10,000,000/= if they campaigned and ensured the 3rd Respondent's victory. The last meeting, he said, took place on the 16th February 2011, at Kalungu; and was also attended by the 3rd Respondent. Others in attendance included a delegation from Kalangala District. In this meeting, the 3rd Respondent informed them that he had sealed a deal with the Returning Officer (the 2nd Respondent) hence he was certain of victory.

After this briefing, the Returning Officer (the 2nd Respondent) entered and joined them; and in her presence the 3rd Respondent told the meeting that he had paid for votes at her (2nd Respondent's) office! In cross examination, where he testified as PW6, he reiterated what he had stated in his first affidavit, that he was a campaign agent for the Petitioner; then retracted it by saying instead that he was a strong supporter, but not a campaigner of the Petitioner. He gave his age as 22 years, and that he had voted since 2006 when he was about 20 years old; but could not recall the year he was born. Later he confessed that he had forgotten years.

He testified that he attended the meetings at the invitation of the 3rd Respondent; and kept on briefing the Petitioner about it. He reiterated the names of about twenty people who, he said, attended the meetings. He also stated that they were given money and promised more by Salongo William Kalumba an NRM candidate from another district. His further testimony was that in their meeting of 16th February 2011, held at Kalungu District Hqs., Anna Ahebwa was brought in by the 3rd Respondent and was with them briefly and only waved to them. He stated that Katerega Mohamed and the 3rd Respondent belong to different political parties.

He stated that at the Brovad and at Maria Flo meetings, both of which the 3rd Respondent attended, they were promised houses. Anna Ahebwa (the Returning Officer), in an affidavit dated 13th May 2011, refuted her alleged collusion with the 3rd Respondent in the electoral

process. She denied knowledge of the alleged meetings where strategies were hatched to rig the elections. The 3rd Respondent, in his affidavit dated the 5th of April 2011, also denied any collusion with, or holding any private meeting with the 2nd Respondent, or any knowledge of her on a personal basis.

He also denied attending any meeting on the 16th February 2011 with Kateregga Mohamed, Kalumba George William, and Mpoza Manisuli. Katerega Mohammed, in his affidavit dated the 5th of April 2011, also denied attending any meeting on the 16th of February 2011 with the 2nd Respondent, or the others Mpoza Mansuli named. A close scrutiny of the evidence adduced in proof of the alleged meeting between the 2nd and 3rd Respondents, leaves a lot to be desired. There is simply no evidence that any plans and strategies were hatched to rig elections in favour of the 3rd Respondent, in the alleged meetings.

The only evidence alleging the clandestine meetings is from Mpoza Mansuli whose evidence is that in these meetings they were given assurances that the 3rd Respondent had a master plan for defeating the Petitioner. Unfortunately, there is the glaring inconsistency in Mpoza Mansuli's evidence on the purpose for and what transpired during the alleged first meeting. In one affidavit he states that the meeting was to discuss the campaign plans of Mohammed Kateregga who was contesting for the LCV Chair, and in the other affidavit he states that he was invited by the 3rd Respondent to attend a meeting in his support. He was inconsistent about whether he was the Petitioner's campaign agent, or just an ardent supporter.

There is no evidence that he had crossed to the 3rd Respondent's camp, or had made him believe so; and yet his evidence is that he became a trusted confidante and was privy to clandestine meetings where very secret ulterior electoral designs were discussed. His evidence on the manner the 2nd Respondent allegedly involved herself in this, is equally most unconvincing. It sounded to me like a fairy tale. How, one may ask, could a Returning Officer bent on rigging elections in favour of one of the candidates, for whatever consideration, throw caution to the wind in the manner alleged by Mpoza Mansuli, and act with such foolhardy, and incriminating recklessness; and this, before a crowd of some twenty ordinary voters, merely to impress them?

Obviously, had she been privy to the ulterior electoral design she is accused of, she would have kept a safe distance, and acted most discreetly. There is no sense in the 2nd Respondent attending a conspiracy meeting with persons who were not electoral officials, hence had no

role in the conduct of the elections on polling day. Had the alleged meeting of 16th February been with polling officials, it would have been justifiable to make an adverse inference therefrom. The denial by the 2nd and 3rd Respondents, as well as other persons who allegedly attended these discreet meetings, renders it most unsafe, if not altogether dangerous, to place any reliance on the evidence of Mpoza Mansuli; a confessed mole.

His evidence lacks the requisite independent corroboration; and is woefully littered with inconsistencies and retractions clearly intended to bring him within the credibility bracket. He is even ignorant of his age; claiming that he was 20 years of age in 2006, and only 22 years of age five years later in 2011! He alleges that Kalumba George William the financier of their clandestine meetings has sent him threatening messages; yet no corroborative proof of this was availed to Court. One wonders how Kateregga, the district official agent for the 3rd Respondent, could have urged them in the first meeting to vote for the Petitioner.

It is also incredible that such clandestine meetings held to discreetly discuss such secret agenda, and continuously shifted to avoid any possible leakages, could be open to so many and varied people; including a delegation from as distant an area as Kalangala District. The picture Mansuli paints, of those behind the meetings, is of reckless conspirators whose purpose was to show off as people with the capacity to defeat their opponents. Nowhere does he adduce evidence of any vote rigging plan or scheme discussed and or agreed upon in the meetings to be handed down to the polling officials.

(c) Allowing the 3rd Respondent and his agents to transport, or be in possession of, the the ballot boxes after polling; and to falsify or alter results in favour of the 3rd Respondent.

No evidence was adduced whatever to prove the allegation that the 3rd Respondent or any of his agents transported the ballot boxes after the close of the polling, or had possession of them at any time during the electoral process, or at all. The 2nd Respondent testified that she alone has access to the ballot boxes which are stored in a garage next to her office. It was Kawoya Siraje (PW7), the truck driver, whose evidence was meant to link the 3rd Respondent and his agents with the ballot boxes. He testified that when he went to collect the ballot boxes from the 2nd Respondent's house where they were stored, to take them to Masaka Chief Magistrate's Court, he found the 3rd Respondent in the parking yard of the place.

He testified that, however, the 3rd Respondent departed when he was still parking the truck. Even if that were so, the 3rd Respondent's presence at that compound cannot by any stretch of inference amount to being in possession of the ballot boxes. PW7 testified that Kateregga entered the house in the company of the DPC; and he did not know what transpired inside there. He testified that he later participated in loading the ballot boxes which were piled on top of one another; and it was while he was doing so that he discovered that some of the boxes had no seals; upon which he alerted Kateregga who recorded their particulars. Otherwise, he did not see anyone breaking any seal from any ballot box. It is therefore clear that the Petitioner's contention in this regard is unfounded.

With regard to what took place at the vote tallying centre, Solide Y.D. Joseph, who testified during cross examination as PW5, stated that the tally centre was an open hall made out of two classrooms; and was, that night of the poll, full of people. This is the venue where, according to him, the 2nd Respondent discriminately and in a most partisan manner allowed the 3rd Respondent together with Mohammed Kateregga to take charge of the computer used for tallying results and manipulate it with impunity; in the full view of the people gathered who, needless to say, were of varying political persuasions. PW5 conceded that he never compared the DR forms in his possession with the one the Returning Officer had.

Katerega Mohammed for his part affirmed in his affidavit, dated the 5th of April 2011, that he was stationed at the tally centre as the 3rd Respondent's district agent; and that the vote tallying exercise, which was based on Declaration of Results (DR) forms from all polling stations, and had been signed by the candidates' agents, and the 1st Respondent's polling officials, proceeded smoothly without any hitch or complaint from anyone. The 2nd Respondent, in her affidavit dated 13th May 2011, refuted the allegation that she allowed Kateregga Mohamed to tally the election results.

She also denied the allegation of vote falsification or alteration of results to favour the 3rd Respondent; and attached certified copies of DR forms duly signed by the candidates' polling agents, which showed no discrepancy between the total votes entered in the DR forms and the tally sheet. She reiterated this when she testified during cross examination as DW1. Given the sentiment that is aroused in the electorates by the electoral process, and the tensions that invariably result from this, it is inconceivable that such blatant acts of open collusion, as is claimed by PW5, could have taken place at the tally centre; and with the alleged impunity.

There would have been such an uproar and confusion, if not complete mayhem, caused by the multitude that was prepared to persevere and endure the long night vigil to witness the last leg of the polling process and know the final tally. There must have been supporters of the Petitioner amongst these, keen to ensure that no mischief took place to their candidate's detriment. From among these, the Petitioner would surely have found no difficulty in identifying just one person to testify in corroboration of the alleged collusion. The alleged manipulation and falsification of the results by Kateregga, at the tally centre, with the complicity of the 2nd Respondent, is manifestly utterly unfounded.

Solide Joseph, just like Mpoza Mansuli, was sadly wanting in demeanour; with questionable intent that could not deceive any reasonable person. There was no discrepancy shown to Court between the vote record in the DR forms and the entry in the tally sheet. I am therefore not amused by their purpose in this petition. The whole of their evidence were woefully discredited, and could not meet the test of balance of probability even at the standard required in an ordinary civil suit; leave alone for an election petition such as this. The Petitioner has therefore failed to establish that there was any collusion at all between the 2nd and 3rd Respondents; leave alone to favour the 3rd Respondent in the electoral process.

(d) Tampering with the ballot boxes during storage by deliberately breaking several of their seals; and thereby frustrating the exercise of re–count.

The evidence adduced to prove this allegation was by Solide Joseph PW5 who testified that the 2nd Respondent had during the vote tallying exercise forcefully ripped the seals off some of the ballot boxes and forced her hands in them. Kawoya Siraje, PW7, who participated in loading the ballot boxes, testified that they were piled on top of one another in the store. He was however emphatic that he did not see anyone breaking any seal from a ballot box; and in fact, he was the one who alerted Kateregga about the broken or missing seals, whereupon Kateregga took note of such boxes. I have already given my views on the testimony of Solide Joseph.

The 2nd Respondent opined in cross examination that these seals could have broken or got loose due to their incompatibility with metallic boxes, as they were plastic materials; and the very bad roads of Bukomansimbi which they were transported on. As with the earlier accusations, I am not convinced that the 2nd Respondent had a hand in the breaking, loosening or disappearance of the seals. When I asked her in Court her view about vote recount, she

was readily agreeable that it be done as she would lose nothing by it being done. I prefer to take it that the damage to the seals was due to their inability to withstand the rough terrain of the area, and the manner they were piled on top of each other during storage.

(ii). BIAS ALLEGEDLY EXHIBITED BY POLLING OFFICIALS AGAINST THE PETITIONER, AND THEIR RIGGING OF THE ELECTION IN FAVOUR OF THE 3RD RESPONDENT:

(a) Invalidating votes cast in favour of the Petitioner.

The Petitioner's chief point of grievance was that his votes were deliberately invalidated, to the advantage of the 3rd Respondent. In one of the two affidavits he swore in support of the petition, he complained that 1,792 votes, most of which he claimed to be his, were wrongfully invalidated; and yet in the corresponding paragraph of the other affidavit, he gave the number of invalidated votes as 1,692. Annexture "C" to one of the affidavits gave an illustration of 45 polling stations with total of 1085 invalidated votes, almost all of which he claimed belonged to him; and which substantially affected the overall outcome of the election.

In paragraph 17 of one of the affidavits he stated that he had, before the tallying of the votes, protested to the 2nd Respondent about the vote invalidation but she did not assist him, and he made reference to annextures "C_1" and "C_2" thereto. To his affidavit dated 14th May, 2011, the Petitioner attached certified copies of Declaration of Results forms supplied to him by the 1st Respondent; and which he contended had proof of his claim regarding the invalidation of votes. A cluster of 63 affidavits, sworn mainly by the Petitioner's polling agents were filed on the 8th of April 2011.

In these affidavits they severally deposed that votes which were clearly ascertainable as being the Petitioner's were instead invalidated by presiding officers in various polling stations. The bulk of the depositions in these affidavits were that the polling officials invalidated votes where the voters had either marked the picture of the Petitioner, his party symbol of the bus, or where the ticks in the box were not straight. In rebuttal, Lukyamuzi Emmanuel, Kato Joseph Yiga, Bbosa Saulo, and Nabatanda Sheibah, swore the affidavits I have already referred to herein above.

They deposed severally that as sub county election supervisors, they never received any complaint or report about vote invalidation, bribery, or intimidation, from any of the polling stations in their respective sub counties. On the 14th of May 2011, 40 affidavits sworn in rebuttal of the adverse claims made by the Petitioner, or his witnesses, against the three Respondents were also filed. Anna Ahebwa (the 2nd Respondent) also swore an affidavit on the 13th May 2011 in rebuttal of all the adverse claims made by the Petitioner about vote rigging or invalidation. She attached certified copies of DR forms duly signed by the candidates' polling agents.

Nakazibwe Milly, the presiding officer at Kagogo Church polling station, in her affidavit dated the 23rd May 2011, rebutted Seguya Frank's deposition in his affidavit dated 15th April 2011, that the DR forms were signed before the polling began; and that he was the Petitioner's polling agent at the station. She instead named Kagaba Kassim and Nantongo Mary as the agents; and they signed the DR forms after the polling exercise. She denied confiscating Seguya's letter of authority or chasing him away; or that any scuffle took place in the polling station she was presiding at. Nakalema Harriet had in her affidavit dated 25th March 2011, deposed that she had voted at Nakusi polling station around 12.00 noon, and stayed there till the end of voting and witnessed the vote counting exercise.

She stated that one Polling Assistant called Lubulwa Badru who was a known campaigner of the 3rd Respondent, and the Presiding Officer did not allow the Petitioner's agents to protect his votes during the vote counting; and that more than 100 votes for the Petitioner were deliberately invalidated, leading to Deo Lutalo, their party Chairman, vehemently protesting at the invalidation. She deposed further that upon Deo Lutalo's protest the polling officials and the agents of the 3rd Respondent summoned the police who came, led by the DPC, tear–gassed their supporters, arrested, manhandled and undressed Deo Lutalo and removed him from the polling station.

She stated further that it was only after she had called the RDC on phone, over the invalidated votes, who then intervened by calling the DPC on phone, that the invalidated votes were checked again and 100 votes out of them, ascertained as belonging to the Petitioner, were declared valid. Eventually, only 7 votes were found to be invalid. In cross examination she testified as PW1, and stated that Lutalo Deo for the NRM was seated with the two polling agents of the Petitioner. She testified further that during the vote counting exercise, the

presiding officer allowed ticks placed on the 'hoe' as valid, but disallowed ticks placed on the 'bus'. This was so done, she said, despite protests from people gathered around.

A scuffle ensued when Lutalo Deo challenged the practice, for which he was arrested around 5.30 p.m. She stated further that although she was not an agent of the Petitioner, she rang the RDC as a party member; and that on a revisit of the vote counting the invalid votes were rectified from 100 to only 7 votes. Kagaba Kassim had affirmed an affidavit that he was the Petitioner's polling agent at Kagogo A Church polling station; and that during the counting of the votes cast, 14 valid votes cast for the Petitioner were declared invalid.

In cross examination, he testified as PW2 and stated that he substituted Seguya as the Petitioner's polling agent, because Seguya had been chased away at around 8.00 a.m. and was taken away by the 3rd Respondent and his wife. Seguya had also deposed that much in his affidavit dated 15th April 2011. PW2 testified also that he was made to sign the DR form before the end of the polling whereas other polling agents signed after the polling had ended; but he thought that his earlier signing was the authorisation for him to be an agent. He could not recall the name of his co–polling agent until the agent was named, although he had known her before for a long time.

He stated that 14 ballot papers were invalidated, of which two belonged to the 3rd Respondent, although from the DR form attached to the affidavit of the 2nd Respondent, the invalid ballot papers were recorded as 11. Nakasinga Jane had, in her affidavit dated 30th March 2011, deposed that she was polling agent for the Petitioner at Kyabagoma Health Centre polling station. She deposed that here 72 votes, the majority of which were the Petitioner's were declared invalid although the intention of the voters were clear. In cross examination, she testified as PW4 and stated that as polling agents they had been trained by their party officials, to safeguard the votes of the Petitioner.

This, they had to do by ensuring that there was no cheating or falsification during counting; and by indicating any irregularity, or matter they were not happy with. She stated that the 72 votes wrongly declared invalid were all for the Petitioner; and admitted that they signed the DR forms, but made a report on what had happened and handed it over to their party officials to take to the sub county to an office she could not recall. The 2nd Respondent testified in cross examination as DW1 and stated that apart from the Petitioner who complained to her

about invalidated votes, there was no official communication to her about invalidated votes from any of the polling stations.

She confirmed that in the constituency poll there were 1,692 invalid votes, while in the presidential poll there were 2,271 invalid votes. She could not recall the exact number of invalid votes for the Woman Member of Parliament but stated that it was not far from the one in issue now. She also testified that while training the polling officials, she had also invited polling agents to attend the training. Nakazibwe Milly testified in cross examination as DW2 that in Kagogo Catholic Church polling station where she presided, the candidates' polling agents who were present signed the DR forms after accepting the results.

She stated that in all cases where a voter marked either the candidate's picture or party symbol, she allowed the votes as valid in accordance with the instructions she and other polling officials had been given during the training that preceded the polling exercise. She was vehement that there were no complaints whatever over votes she had declared invalid during the counting. I have carefully considered the testimonies from either side. Because the total number of invalid votes were as many as 1,692; and yet the difference in the vote tally between the Petitioner and the 3rd Respondent who was returned as the person elected was only 445, the Petitioner pleaded with Court for a recount; arguing that this would resolve the issue of the true winner of the evidently hard fought election contest.

As pointed out above, I declined to order for a recount despite this slim margin; and I will here give my reasons for deciding so. While the law mandates Courts to order for a recount, it should not be done simply because one of the parties to the contest is not happy with the results. The recount made by the Chief Magistrate under the provision of section 55 of the Parliamentary Elections Act is carried out in arrest of publication of the results in the Gazette by the Electoral Commission; and may reverse the return and declaration made. The one by the High Court, envisaged under section 63 (5) of the same Act, on the other hand, comes after the Electoral Commission has already gazetted the winner.

The second scenario may result in the High Court reversing the results so declared, and returning a person other than the one earlier returned, as winner, or order for fresh elections. In both situations, the law clothes the Court with powers otherwise vested in the Electoral Commission. An application for a recount must as was held by Arach–Amoko J. (as she then was) in the ***Babu Edward Francis vs The Electoral Commission & Elias Lukwago*** case

(supra), establish a prima facie case that there was foul play, sufficient enough to warrant an order for recount, before the Court can, as was stated by Musoke–Kibuka in ***Byanyima Winnie vs Ngoma Ngime; Mbarara Civil Revision*** (supra), descend into the arena for the purposes of untangling the numerical figures in the votes cast.

In that case, only 164 votes stood between the declared winner and the runner up who had sought a recount. In the process of conducting a recount, 21 ballot boxes were found not to have been secured in accordance with the provisions of the law. The learned Judge, declining to order a recount stated that the recount envisaged under the auspices of the High Court is intended to establish whether the person gazetted as winner was validly elected. Therefore since some of the ballot boxes had not been properly secured, he said:

> *"It is, therefore, difficult to reconcile a recounting of any votes from ballot boxes which have not been secured in accordance with the law, with those values and aspirations or even with the goals and purposes of section 56 of the Act. It appears to me that it should take much less than ordinary common sense to know that where any of the ballot boxes presented for a recount are found to be open or unsealed, the purposes of a recount are not achievable. Prima facie, the evidence would have been tampered with and rendered useless.*
>
> *… … … To pretend to conduct a recount where some of the ballot boxes have been found open is … an abuse of Court's process. It amounts to second guessing the results. … Exercising jurisdiction under those circumstances would be exercising it with material irregularity. … Such material irregularity is so fundamental that it vitiates the entire process of conducting a valid recount."*

The learned judge then advised that the Court's decision to make an order for a recount should be made judicially, where good cause has been shown for the recount, to the satisfaction of Court on a balance of probabilities; and further that, prima facie, the purpose of the recount is achievable. He was emphatic that:

> *"All the ballot boxes presented by the Returning Officer, for the purposes of the recount, must have been and should still be sealed … Where any of those ballot boxes have been unsealed before their presentation before [Court], then prima facie the purpose of the recount is not achievable and no legitimate recount can take place*

under those circumstances since the evidence of the numerical numbers of the votes polled by each candidate, which the recount seeks to verify, would not have been secured in accordance with the law and should be regarded as tampered with, and rendered unreliable, valueless, and completely useless."

In the case before me, the Chief Magistrate declined to carry out the recount on finding six boxes tampered with. The evidence adduced by PW7, who transported the boxes to the Chief Magistrate's Court, suggests that a lot more boxes, than the ones identified by the Chief Magistrate, were tampered with. Thereafter the boxes were moved to and from Masaka Court; and in the light of the explanation by the Returning Officer that movement of the boxes on the bad road was one of the probable causes of the damage to the seals, it is quite possible that yet more of these boxes' seals sustained damage in the process. I am in full agreement with Musoke–Kibuka J. that carrying out a recount under those circumstances would be an exercise in futility.

The other reason which militates against the order for recount is the lack of convincing or prima facie case for making such an order. This reason is found in the evidence of the Petitioner himself that his agents were instructed to guard his votes; and also in the evidence of PW4 who testified that she and other polling agents of the Petitioner were trained and instructed on how to guard against cheating or falsification of the Petitioner's votes; and that they should indicate their dissatisfaction when such an incident occurred. Yet, strangely, none of the polling agents either signed the DR forms in protests or declined to do so altogether.

If I were to believe the majority of the depositions as to the number of votes allegedly wrongfully invalidated, then it would actually mean in most of the polling stations in Bukomansimbi there were no invalid votes altogether; which would be curious in the light of the evidence of Anna Ahebwa the Returning Officer that the huge number of invalid votes (1,692) was not peculiar to the now impugned Parliamentary election, as the District Woman MP election registered more or less a similar number of invalid votes, and the presidential poll registered up to 2,271 invalid votes. The voters could not have messed themselves up in the other elections held simultaneously with the one now being contested before me, and yet voted with near perfection in the one now being challenged.

These three polls took place simultaneously that day in all constituencies all over Uganda, with the same voters as the participants in each of them; and presided over by the same

polling officials. I am inclined to think that the problem in Bukomansimbi was not mischief on the part of the polling officials; but rather poor or total lack of voter civic education. In the circumstance for Court to order for a recount, it would serve only to find out how a particular voter or voters in a polling station might have voted, rather than untangling the numerical strength of each candidate's votes, which should be the correct reason for conducting a recount.

The only convincing evidence of wrongful invalidation of votes was that of Nakalema Harriet (PW1) whose unchallenged deposition was that 100 votes had been wrongfully invalidated, most of which belonged to the Petitioner; and her intervention caused that to be reduced to only 7 genuinely invalid votes. It seems to me that this incident put in motion the Petitioner's claim that in nearly all the polling stations votes that were rightly his were wrongfully invalidated. He stated that some of his polling agents had told him that they did not sign the DR forms or that they had not been given DR forms. This however was never proved through any convincing evidence adduced by any of those polling agents, or independently.

There is therefore serious doubt whether almost all the votes declared invalid were for the Petitioner's as alleged. In the absence of such convincing evidence, I take the converse evidence that the invalid votes were those where the intention of the voter was unascertainable. It is an express provision of section 47 (7) (b) of the Parliamentary Elections Act that a polling agent not satisfied with the conduct of the polling or count and declining to sign the Declaration of Results form, must give reasons on the Declaration of Results form for such refusal. I would myself have been prepared to go further and accept refusal to sign the DR form altogether as prima facie evidence of protest against the conduct of the polling.

Had the polling agents from the numerous polling stations either indicated their protest as required by law, or refused to sign the DR forms altogether, a prima facie case would certainly have been established, justifying an order for recount in view of the fact that the 1692 invalid votes far outweigh the 445 votes separating the Petitioner and the 3rd Respondent. In the ***Nyakecho Kezia Ochwo vs The Electoral Commission & Grace Oburu*** case (supra), Bamwine J. declined to order a recount, notwithstanding that the total number of invalid votes were as high as 14,000 where the difference between the winner and runner up was only 4000 votes.

The reason for declining to do so was failure of the agents to lodge any complaint in the DR forms or in any other manner as required by law. Hence to order for a recount would have been in breach of the limited function of Court in the exercise of a recount; which is to determine the extent of invalidation or falsification of votes in respect of which a prima facie evidence has been adduced. Therefore, it is not the number of invalid votes per se; but rather establishment of sufficient evidence to persuade Court that some mischief took place at with regard to the counting process at the polling station, which should move a Court to proceed to untangle the question of numerical strength of the votes cast.

I am not convinced that there was a pattern of deliberate vote invalidation as alleged by the Petitioner and his witnesses so as to necessitate the intervention of this Court. Nevertheless, it is of course within the purview of this Court to point out the apparent lack of adequate civic education as the cause of the dismal performance of the voters across the board in Bukomansimbi County which gravely frustrated the correct expression of their will; and thereby dented the democratic process. There is thus need for the Government and Parliament of Uganda to seriously consider the timely appropriation of sufficient funds for voter civic education as a most essential component of the exercise that leads to realising true democracy.

The other matter, which I consider Parliament should look into for the purpose of ensuring that the expressed will of a voter is not thwarted by technicalities, is the definition of a valid vote. Section 30 (5)(b)(i) mandatorily provides that a valid vote is one which is either a tick with a pen or mark with thumbprint in the space provided in the box against the candidate's picture, or on the candidate's picture itself. Section 49 (1) (a) (i) invalidates any vote where an unauthorised mark of choice as been used even where the intention of the voter is clear. For example a cross as a mark of choice would invalidate the vote cast even when placed either in the right box, on the face of a candidate, or any other place from which the intention of the voter is unmistakably ascertainable.

The liberal provision of section 49 (2) of the Act unfortunately cannot save the situation as it strictly applies only to situations where the voter has used the authorised mark and not any other. Therefore, a cross or an asterisk, for instance, would under the law invalidate a vote notwithstanding that it is placed in the correct place provided for by the law. Just as Courts of law are enjoined by the Constitution to apply substantive justice in disregard of undue

technical deficiencies, so should the process of determining the intention of the voter be equally treated.

(b) Disenfranchisement of voters.

The Petitioner's belief was that the register used on the polling day was different from the one displayed prior to the elections, as many names of registered voters were missing therefrom; and many of his supporters were turned away from the polling stations, and thus did not vote. Nakasinga Janet PW4 (who had sworn two affidavits dated 25th and 30th) testified that She and her colleague had a copy of the register given to her from the sub county which had no pictures of the voters on whereas the one with the presiding officer had pictures on; and that Nakanwagi Bernadette whose name was on the register was refused to vote.

Namugerwa Miriam deposed that at Rukenke 'B' polling station, Kaganda Rashid, Winama Anita, Siridiyo Habalemuremyi, and Kyamanzina Senzariya who were registered voters were denied the right to vote. The unrebutted deposition of Nakalanzi Florence was that Nandege Teddy, Nanyonga Leokadia, and Namuzigwa Gladys, and herself, were denied the right to vote yet their names were on the register. This was corroborated by the deposition of Esther Bonabana. However, the bulk of those alleged to have been disenfranchised did not give evidence in Court, and yet they were known.

I am not satisfied that the wrong register was used for the polling exercise. Owing to the fact that the voter register undergoes a process of verification through display out of which a final register is then compiled and used for the polling, the Petitioner had to provide proof that the register which his witnesses testified had been given to them by their party officials was the final or correct register. Secondly, even if I were to accept that the persons alleged by the Petitioner's witnesses were denied the right to vote, there was no evidence of a systematic wide spread disenfranchisement of voters, so as to affect the outcome of the elections.

The Petitioner's claim that in some polling stations, polling officials refused to allow disabled voters suspected to be his supporters to cast their votes with the assistance of people of their choice; hence they were either disentitled of assistance altogether, or forced to vote with the assistance of the 3rd Respondent's agents was simply not proved. Furthermore, the candidate a voter ultimately votes for is a confidential preserve of the voter; over which voters are

known to be quite unpredictable. No candidate should claim any voter, with certitude, as being his.

The evidence adduced to prove disenfranchisement, as with vote invalidation, even if I believe them, would not be sufficient to overturn the election outcome. They were isolated incidents falling short of the required proof that would move Court to intervene. Accordingly, there was no proof of non compliance with the laws and practice regulating elections in this country, in the conduct of Bukomansimbi Constituency parliamentary election; for which reason, I resolve Issue No. 1 in the negative. I need add here that it is not humanly possible to get an ideal electoral process owing to the involvement of numerous persons, level of education, and the sentiments that accompany the adversarial nature of the process.

Issue No. 2. **In the event that issue No. 1 is answered in the affirmative, whether such non–compliance affected the result in a substantial manner.**

Having answered the 1st issue in the negative, it goes without saying that I have to answer this issue as well in the negative. It should only be where the acts contravening the electoral law are outrageous, or sufficiently tilt the balance of the outcome of the election differently, that the Courts should find that they have affected the results in a substantial manner.

Issue No. 3. **Whether any illegal practice or election offence was committed by the 3rd Respondent personally or by his agents with his knowledge, consent, and approval.**

In the final submissions Counsels informed me that the Petitioner had abandoned this ground. I this was the proper thing to do in the light of the evidence that had been adduced to prove occurrence of illegal practices. This further goes to support and strengthen my finding in Issue No. 1, that such allegations of bias, and collusion between the 3rd and 2nd Respondents as vote manipulation at the tally centre by the 3rd Respondent and his agent, choice of polling officials, and ballot box seal destruction, all had no substance in them.

Issue No. 4. **What remedies are available to the parties?**

Accordingly, I find that the Petitioner has not adduced sufficient evidence to discharge the burden that lay on him and to the standard required for election petitions, to cause me to

overturn the outcome of the election results for Bukomansimbi County Parliamentary constituency as pleaded by him. I therefore dismiss the petition, and order the Petitioner to pay costs to the 3rd Respondent; while the 1st and 2nd Respondent will meet their own costs of the proceedings.

Alfonse Chigamoy Owiny – Dollo

JUDGE

02 – O9 – 2011