

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

ELECTION PETITION NO. 014 OF 2016

DR. BAYIGGA MICHAEL PHILIP LULUME ::::::::::: PETITIONER

Versus

1. MUTEBI DAVID RONNIE

2. ELECTORAL COMMISSION::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BATEMA N.D.A, JUDGE

Judgment

Dr. Bayigga Lulume brought this petition having lost in the Parliamentary elections held on 18th February 2016 to the 1st respondent Mutebi David. The Electoral Commission returned Mutebi David, declared and gazetted him as the validly elected Member of Parliament for Buikwe South Constituency. Dr. Bayigga Lulume was dissatisfied and aggrieved by the results and complained to this court that illegal practices and offences were committed by Mr. Mutebi David personally and by other people with his knowledge and consent or approval.

The petitioner specifically sets out grounds of bribery, false statements, violence and intimidation. He named 37 witnesses but only 22 of them filed affidavits in support of his petition. Four issues were framed at the start:

1. Whether the 2nd respondent conducted elections in compliance with the provisions of the Parliamentary Elections Act, the Electoral Act and the Constitution of the Republic of Uganda.

2. Whether the non-compliance, if any, affected the results of the elections in a substantial manner.
3. Whether electoral offences and illegal acts were committed by the 1st respondent in person or by his agents with his knowledge and consent or approval.
4. What are the remedies available to the parties?

When it came to the point of submissions, counsel for the petitioner indicated to court that they were abandoning the grounds in the 1st and 2nd issues. In effect; the petitioner dropped, but did not apply to withdraw, the petition against the Electoral Commission. Since there is no case presented and proved against the Electoral Commission, judgment is right away entered in favor of Electoral Commission (the 2nd respondent). The petition against the Electoral Commission stands dismissed with costs for one counsel.

STANDARD OF PROOF

Both counsel submitted, and I agree, that the standard of proof is set out in section 61(3) of the Parliamentary Elections Act. It is required that any ground specified in subsection (1) of Section 61 shall be proved on the basis of a balanced of probabilities.

In *Karokora Katono Zedekiya v. The Electoral Commission & Kagonyera Mondo, Election Petition No. 02 Of 2001*, Justice Musoke Kibuuka J, (as he then was) held that with regard to Uganda's situation and circumstances, an order setting aside the election of a Member of Parliament carries with it serious financial implications to the nation. The government will have to spend millions of shillings to finance the ensuing bye-election thus the crucial need for courts to act, in matters of this nature, only in instances where the grounds of the petition are proved at a very high degree of probability.

My opinion is that in order to merit an order setting aside the elections of a Member of Parliament, the evidence produced by the petitioner must be such as would, in the circumstances, compel the court to act upon it. The petitioner must produce credible and cogent evidence to the satisfaction of court. *I refer to the case of Mugema Peter v. Mudyobole Abed Nasser, Election Petition Appeal No.30 of 2011.*

BURDEN OF PROOF

The petitioner carries the burden to prove all the allegations. The burden never shifts to the respondent.

PROCEDURE AND EVIDENCE

It is the case that all evidence in election petitions at the trial in favour of or against the petition shall be by way of affidavit read in open court (Rule 15(1) of the Parliamentary Elections (Interim Provisions) Rules). “Affidavit” is not defined under the Rules but “Petition” means an election petition and includes the affidavits required by these rules to accompany the petition.

An affidavit in an election petition would by implication come from a party to an election petition or a registered voter or witness in support of either the petitioner or the respondent. Cross examination of the deponents is not automatic; it is only with the leave of court (Rule 15(2) of the Rules). It appears Court may at its own discretion or motion examine any witness or call and examine or recall any witness who has not sworn an affidavit as an exception to the rule. *(See subrule 3 of Rule 15)* In these circumstances, it is important that we look at affidavits as part and parcel of the petition. They are a very important aspect of the election petition because this is the main way by which evidence is presented to the court in support of or against the petition.

PRELIMINARY ISSUES CONCERNING AFFIDAVITS

Counsel Ssekaana Musa for the 1st respondent raised several issues on affidavits filed by the petitioner in support of the petition.

(a) Affidavits based on hearsay:-

It was alleged that the petitioner sets out allegations relying on information he got from his agents and not within his knowledge and belief. The various agents are not specifically named as to state which particular information they gave him. That this was hearsay.

I would agree and more so if the information came after the filing of this petition. Paragraphs 5-14, 22-25 and 30 of the affidavit sworn by the petitioner, Dr. Bayiga Lulume, on 4th April 2016 are largely hearsay. The alleged information has no specific direct source named in the body of the affidavit and one wonders how the petitioner would verily believe such information to be true and correct. I would place very little, if not none at all, any evidential value on hearsay. Of

course the law makes some exceptions. In *Nsubuga Jona v. Electoral Commission & Bwanika Mathias Lwanga, Election Petition No. 34 of 2011* the court rejected parts of the petitioner's affidavit in support of the petition where the so-called agents, if any, remained voiceless and faceless. Similarly in the instant case, the so-called agents and supporters are voiceless and faceless. Much as the petitioner named 37 deponents in paragraph 5(viii) of the petition, he attributed no particular paragraph to a particular person as the source of information in his affidavit in support. There is a high likelihood of the petitioner putting words into the mouths of those named and or manufacturing both the evidence and their signatures to the jurat. This court will adopt the position by the Supreme Court of Uganda in the case of *Col. (Rtd) Dr. Kizza Besigye v. Yoweri Museveni Kaguta & Electoral Commission, Supreme Court Presidential Election Petition No.0001 of 2006*, and sever off those parts of the petitioner's affidavits in support which are hearsay and offend provisions of Order 19 Rule 3 of The Civil Procedure Rules without rendering the remaining parts of the affidavit a nullity.

(b) Affidavits with jurats standing alone:-

Counsel Ssekaana pointed out the fact that all affidavits filed in support of the petition have the jurat typed and signed independent of the main body of the affidavits. The rest of the body of the affidavits is typed in different fonts and spacing, some end in the middle of a page or are widely spaced with no justification except to close up gaps and push the jurat to the next page. Counsel suspects that such evidence was cooked up and merely taken to the deponents to sign or the deponents did not swear to the contents of the main body. Most important of all, counsel submitted that the deponents never swore the affidavits or if they did, they did not swear before the Commissioner for Oaths. Moreover, most of the affidavits had the words '**sworn at Jinja**' crossed out and substituted with '**sworn at Kampala**'. No one counter signed on the deletion. Counsel Ssekaana pointed out that he suspects that these deponents never appeared before any commissioner for oaths be it in Kampala or Jinja but merely signed the jurat. That one cannot tell who crossed out the venue of where the oath was administered from. That it could have been the deponent, counsel for the petitioner or the commissioner for oaths. He submitted that the way jurats are attached to the main body of the affidavits offends the law on oaths and must be stopped.

I must admit that the courts in Uganda have been liberal on the format of jurats. I could not easily come across any authority condemning the separation of the signature page from the text of the affidavit yet, as pointed out by counsel Ssekaana for the 1st respondent, it creates room for any fraudulent counsel drafting the affidavit to manufacture or cook up evidence and simply attach the signature of the so-called deponent. The practice of separating the jurat from the main body of the affidavit lends a hand to the not-far-fetched suspicion that the deponent did not know the contents of the affidavit and did not swear to the truthfulness and correctness of the contents in the text of the affidavit. Yes, it is possible that the deponent never appeared before any Commissioner for Oaths, where the deletion or crossing are not countersigned against. Court is unable to tell whether the oath was taken at Jinja or Kampala. All the affidavits with a standalone jurat offend the provisions of Sections 5 and 6 of the oaths act in that the deponent is not able to truly state that he or she.... (by name) of....(a given address) is swearing or affirming to the existence of certain facts within his knowledge or information brought to his or her belief, paragraph by paragraph. Any person signing or deponing the affidavit must first own the contents by stating that “I ...(so and so) of (address), hereby swear or solemnly affirm and state as follows:” and then the text follows.

In election petition such as this one, the deponent must take oath and state in clear terms his or her name, sex, age (or adulthood) and the sound status of his or her mind to understand the nature of the oath and the capacity in which he or she is swearing the affidavit. These are mandatory and preliminary to stating the evidence in the text of the affidavit. When the jurat is signed separately, there is no proof that the deponent has sworn to the facts or information or the belief in the affidavit. A stand alone jurat signed separately from the main body of the affidavit can be attached to any other affidavit. And this was never the intention of the law. The practice of separating the jurat from the main body of the affidavit is unlawful and or irregular rendering the affidavit defective. It has been a common or usual practice but that does not make it lawful. This court cannot condone any illegality brought to its attention. I refer to the case of ***Makula International Limited v. Cardinal Nsubuga Wamala [1992] HCB 1***. The practice is irregular and unjustified. It promotes the admission of fraudulent, forged or suspicious evidence in a serious trial.

In the Kenyan case of ***Re: Central Bank of Kenya & Anor, Nairobi (Mulimani) High Court Civil Case No. 427 of 2000; [2002]1 EA 31 (Gacheche,CA*** , on 12 September 2002) in Vol.1 of Odunga's Digest on Civil Case Law and Procedure, 2nd Edition, case 137) it was held that where the jurat in an affidavit appears on pages separate from the main text, it offends the provisions of the Oaths and Statutory Declarations Act and renders that affidavit defective. However, the format of the application is not fatal unless prejudice is caused. It was emphasized that **Striking out pleadings must be done with extreme care and caution.**

It is the call for extreme care and caution that has appealed to me not to just strike out the pleadings in the instant Petition. Otherwise all the petitioner's affidavits are defective by reason of the jurat being separate from the text of the affidavit. **If this had been raised by counsel Ssekaana as a Preliminary objection before the full trial, I would have granted it and disposed of this matter.** Luckily, several other issues and points of law had been argued for my reasoning and ruling by the time he raised the issues on jurats.

The issue of affidavits and jurats as raised in the instant petition is both substantive law and a technicality. Non-legal minds coming as parties or witnesses and or voters from Buikwe South Constituency may never understand how justice is administered by the courts of law if I just strike down this petition after they have been cross examined and their lawyers have made final submissions. Justice should not only be done but must be seen to be done.

Let me start with pointing out why the court believes the affidavits of the petitioner are defective. First of all, there is a very high probability that these affidavits were never sworn before a commissioner for oaths. The venue where the oath was administered is crossed out. Jinja is replaced with Kampala without countersigning. Secondly the space for dates and signatures of deponents are strategically provided for at the top of each page. Such space can always be typed or filled in by computer after the commissioner signing and sealing empty jurats *enmasse*. We

have had such cases where lawyers commission affidavits or deponents sign affidavits without following the law on oaths and statutory declarations.

Again in the instant petition, names of deponents have been strategically typed out on unjustified lines. In computer applications, the computer deletes unnecessary spaces and closes gaps unless one mechanically pushes down the words to the next line. For our case, the names have been pushed down mechanically, even where the typed name would have been typed and printed on a **justified** page or line, it is deliberately **entered** down on the next line so that the name of the deponent is inserted to sit properly in line with the space for signature of the deponent. The **fonts** differ and it is obvious that the commissioner for oaths signed blank jurats.

A random sampling will clearly and glaringly show the work of computer wizards. Take the example of the affidavit of Mr. Nsubuga Raphael at page 37 (volume 1) and the affidavit of Kanyike John signed at page 56 (volume 3) and that of Mambi Asuman signed at page 60 (vol.3), the names are typed in a different font and entered or pushed below to fit on the blank line yet they would ordinarily fit on the upper line. Let me hope I am understood when I use these basic computer application terminologies in this court. Perhaps it would have been best understood if we were comparing different ink, different handwriting and letter styles and sizes in long hand.

Leaving blank spaces in the middle of an affidavit text and or half pages to push the signature of the jurat to a separate page cannot be explained as good drafting style done in good faith. A quick look at the affidavits marked Volume 3 of Semakobe Rogers at pages 103-107, Musisi Charles Serunkuma at pages 120-122 and Musoke Julius at page 123-126 tells it all. Most glaringly detached from the text in the jurat is the affidavit of Mbazira Joseph at pages 20-23 (Vol.2) and that of Kaliwano Ben at pages 1-3 of (vol.3) and Muwanguzi David Kisenyi at pages 35-38 (Vol.2). The texts of the affidavits are deliberately **without page numbers**. I doubt whether the deponents ever saw and read the texts since they are detached from the jurats. I would recommend signing on each page as a best practice so that deponents can see, read and own both the text body and signature page hence the entire affidavit. I also have no reason to believe that those particular deponents physically appeared before the commissioner for oaths to

administer the oaths to them. In the case of ***Kakooza John Baptist v. the Electoral Commission & Yiga Anthony, Supreme Court Election Appeal No. 11 of 2007*** court rejected an affidavit signed but not sworn before a commissioner for oaths. Justice Kanyeihamba, Justice of the Supreme Court (as he then was) ruled that it was a mere plain statement that cannot pass as an affidavit. True, to condone such a statement and take it as a valid affidavit in support of the petition would undermine the importance of affidavit evidence which is rooted in the fact that it was made on oath.

(c) Affidavits with deferring signatures and thumb prints:-

Counsel for the petitioner filed some affidavits whose signatures differ from the ones appearing on the national identity cards of the deponents. Others thumb printed and also signed at the same time which makes a difference too. Others signed yet their national identity cards show that they are unable to sign. Counsel Ssekaana wondered whether they are genuine or not.

In reply counsel for the petitioner submitted that one is free to use a signature or a thumb print. That answer left a lot to be desired. Where a party chooses to sign, the signature on the identity card must be similar with, if not the same as, the one signed on the affidavit. The same goes for thumb prints. In the recent case of ***Karazani Charles v. Musoke Paul Sebulime & Electoral Commission, Election Petition No.17 of 2016 at Jinja***, Justice Kabiito ruled that;

“in respect of signatures of the deponents that are inconsistent with those on the national identity cards, it is my view that such an inconsistency that is apparent on the face of the record makes the affidavit to be suspect and unreliable”

The above case is similar with the instant case. I would treat the petitioner’s affidavits that have inconsistent signatures with a lot of suspicion. They are inherently unreliable and no probative value can be attached to them in the consideration of whether or not I should set aside this election. I therefore throw out the affidavits of the following deponents;

1. Sonya Ismail.
2. Bakaali Kigenyi
3. Muwanguzi David Kigenyi
4. Kikwalo Joseph

5. Sinabulya Farouk
6. Nambowa Agnes
7. Bbanda James
8. Musisi Francis; and
9. Kabugo Moses.

I would not only condemn the act of the petitioner forging signatures of so-called deponents but also treat him with the contempt he deserves. This only confirms my earlier suspicion and conclusion that a jurat on a separate page is undesirable because it facilitates the admission of fraudulent, forged or suspicious evidence in a serious trial.

Forgery of signatures is not only a shameful act but also a criminal act which cannot be defended by a learned mind prosecuting an election petition. He who comes for equity and justice must come to me with clean hands. One should not stoop so low in the bid of wanting to become a Member of Parliament.

(d) Affidavits coached in similar words:-

The last preliminary issue on affidavits was that many of them were similar, paragraph by paragraph, word by word and sentence by sentence yet different deponents were reporting about different incidents at different rallies in different places. It was a ‘**cut and paste**’ case or ‘**copy and paste**’ in the computer terminology.

Counsel Ssekaana cited the case of *Mpaire Beatrice v. Nyendwoha Bigirwa & Another, Election Petition No.18 of 2011* and prayed that court should not believe such evidence. I also agree. I also find it strange, surprising and hard to believe that each one of the deponents heard the 1st respondent utter the very and same words or statement on different days and at different places during the campaigns. It is not possible that each of the witnesses behaved in the same way after hearing the statements. That is; by believing that the petitioner was indeed a ‘mufeere’ (conman) and a ‘mukodo’ (mean person). And none of them reported the threatened violence or the bribery to police or the Electoral Commission. All deponents who received cash bribes turned against their former Democratic Party flag bearer and voted for the 1st respondent Mutebi David of the National Resistance Movement (NRM)! This is unbelievable. I draw the inference from all the affidavits couched in the same language and similar statements that these were

witnesses who were arranged and schooled to say the same thing. The uniformity, *pari materia* raise doubts about the authenticity of what they asserted. Such evidence, though not cross examined on, cannot be received as Gospel truth. I shall receive it but with lots of suspicion and caution. I have already stated that failure to cross-examine witnesses does not mean that the affidavit evidence is truthful. See **Akileng Abimelek v. Olirah Peter Musawo & Electoral Commission, Election petition No.27 of 2011.**

MAIN ISSUES FOR RESOLUTION IN THE PETITION

What are the remaining issues for resolution in the petition? Court's work has been made easier by the petitioner abandoning grounds 1 and 2 against the Electoral Commission. The 3rd issue still standing against the 1st respondent is whether electoral offences and illegal acts were committed by the 1st respondent in person or by his agents with his knowledge and consent or approval.

Bribery of voters at Namukuma

The petitioner brought allegations of bribery against the 1st respondent at Namukuma. Mbazira Joseph was the main witness for the petitioner. He stated that on 14th February 2016 he attended a rally addressed by Mutebi David. At the conclusion of the rally Mutebi offered Shs.150,000/- to the electorate. That the money in three notes each of 50,000/- was handed to Mr. Kasolo in his presence. The money was distributed to the villages of Kakajja, Bulunda and Namukuma according to Mbazira Joseph. However Mbazira in paragraph 13 saw only two villages getting the money. Mr. Othieno took and distributed Sh.50,000/= to Kikajja people. His father, Mr. Zziwa, took and distributed Sh 50.000/= to the people from Bulunda and also retained Sh.50.000/= again for Bulunda. Mbazira himself got a share of Sh. 2,000/-.

Mbazira is supported by Kyambadde Eliab. Kyambadde added a fourth village of Kanga which did not get a share of the money. He said his father, Mr. Zziwa, distributed the money for Namukuma and gave him Sh. 1000/=. That Zziwa retained Sh. 50.000/= for Bulunda village. Another Semanda also saw the bribe of 150.000/= and got a share of Sh. 1000/=. Mande Godfrey

‘swore’ an affidavit in support. He saw the bribe but since he was from Kanga village which didn’t get a share, he got nothing.

The other evidence in proof of the bribe of sh.150.000/- at Namukuma would have been the affidavits of Muwanguzi David Kisenyi and Kikwalo Joseph but these affidavits have been thrown out on account of differing signatures in the affidavit and the National Identity Card.

In reply, Mutebi denied ever holding a rally at Namukuma on the alleged date of 14th February 2016. According to his exhibited harmonized program, he was at Namukuma on 12th January 2016 (annex C1). Mutebi is supported by his campaign agents Sentongo Isma, Lubega Charles, Nakitto Muzaale and Sunday Robert Iraari who deponed that there was no rally held and addressed by the 1st respondent on 14th February 2016 at Namukuma. That on that day the campaign team held a review meeting at Seeta-Mukono from 12.00 noon until 6.00 pm under the chairmanship of the 1st respondent.

The petitioner relied on the evidence of Mbazira Joseph, Kyambadde Eriab, Semanda Ivan, Mande Godfrey and Wamunga who were inconsistent in their evidence. Wamunga is the only witness who said people **scrambled** for the money and he did not get a share. Mbazira Joseph, unlike his brothers Kyambadde and Semanda, does not mention Kanga village in the failed distribution scheme. Instead he knows that Bulunda got Shs.50.000/= distributed by their father who again kept another Shs.50.000 for Bulunda. Mbazira does not mention Namukuma village getting a share as mentioned by the others.

All the affidavits of the witnesses from Namukuma are coached in similar statements about what they heard Mutebi David saying at the rally. I want to believe these were schooled and coached on what to state. It is not credible evidence more so when it involves forging signatures of two of the so-called witnesses Muwanguzi David Kisenyi and Kikwalo Joseph. Evidence tainted with fraud is no evidence worth the name.

The evidence of a rally at Namukuma on the date of 14th February 2016 is not proved to my satisfaction since the harmonized campaign program issued by the electoral commission reads differently. The petitioner adduced no believable evidence to prove that this rally at which the

bribe of Shs.150.000/= is alleged to have been dished out by the 1st respondent ever took place. The evidence built around this rally is mere fantasy.

Worse still, there was nothing attached to the affidavits of the deponents who confessed that they received bribes to prove that they are registered voters in Buikwe south. It is important to prove that the persons bribed were registered voters and that their vote mattered in determining the outcome of the election in that constituency. All the deponents did not state that they are registered voters. They neither attached nor showed their voter numbers on the voter's register or their voter identification slips. Here we are, wasting our valuable time on mere bystanders without any voting responsibility in Namukuma village. Being none voters, the likes of Mbazira Joseph, Kyambadde Eliab, Semanda Ivan, Mande Godfrey and Wamungu were not even appointed agents of the petitioner. I did not get to know in which capacity they 'swore' their affidavits and why the petitioner thinks their evidence is relevant in the prosecution of this election petition.

Alleged Bribery at Kigaya Landing Site:

It was alleged that the 1st Respondent bribed voters at Kigaya Landing Site by buying or them a big saucepan as a gift. That the gift stayed on Public display for 2 days. Having thrown out the affidavits of Nambowa Agnes, Bbanda James and Ssenabulya Farouk on account of inconsistent signatures, there is little to consider in the affidavit of Kaliwano. He speaks of running to the Landing Site when he heard ululations. No dates. That he heard Mr. Bbanda, the LCI Chairman, heaping praises on Mutebi David and saw gifts decorated with Candidate David Mutebi's campaign posters which included a Saucepan of capacity of 40 litres of water and a tank of about 10 – 12 jerricans capacity. He said he saw people switch loyalty/support from Dr. Bayigga Lulume to David Mutebi. This witness does not name the persons he saw being influenced by the said bribe. We cannot tell whether they were registered voters. And this having been a secret ballot, I wonder how he could tell that the people he saw voted for Mutebi, and not Dr. Bayigga Lulume. As rightly observed by Counsel for the 1st Respondent, it is hard to believe that the gift stayed on public display for two days and no photograph of the same was taken.

I would believe the evidence of Kyabalema, Bakaali Lubega Charles, Kamoga Nyabenda Daniel, Zziwa Deo, Sserwadda and Sserunjogi in reply. I believe the only money delivered to voters at Kigaya was Shs.250,000/= President Museveni sent to every village to facilitate NRM Party activities. The NRM members chose to use the money to buy a big saucepan and a water drum for communal use. The money that was delivered by the NRM Sub – County officials cannot be attributed to the 1st Respondent. Nyabenda Daniel, the NRM Party Chairperson of Kigaya Landing Site ably explained to court how they got this money. During the celebration of having successfully bought and delivered the big saucepan and water tank they allowed all party members to bring campaign posters of their various candidates campaigning for various posts on an NRM ticket. To me, this was an expected reaction. Some NRM Members worshipped the saucepan and water drum and decorated it with NRM Campaign posters. It was their way of expressing happiness, excitement and appreciation for the money they received for party **‘facilitation’** from their NRM President. There was no proof that this was done with the knowledge and consent or approval of Mutebi David. It was not Mutebi’s cash and no reasonable court can conclude that Mutebi bribed voters at Kigaya landing site with a saucepan and water tank.

Alleged bribery of individuals:

Nazziwa Christine claimed she was bribed with a packet of sugar and a new hoe. The items were delivered by Mr. Kasuku Enock, Sunday Iraali and Hasifa Namyalo. That Mr. Kasuku instructed her to vote for Mutebi David. That the next day at Kyanja Polling Station a certain lady assisted her. That lady ticked the **‘bus’** for the President and a **‘bus’** for the area Member of Parliament without asking for her opinion on who to vote for. She did not protest but felt embarrassed.

Nazziwa’s allegation cannot be verified. She did not report anywhere be it to the Petitioner, the Police or the Electoral Commission. She did not exhibit the sugar and the hoe. It is hard to believe that the brand new hoe is no more!!

At the Polling Station this deponent had all chances to protest the acts of the person who allegedly ticked the bus contrary to her wish of who to vote for. She did not protest at all!

Nazziwa talks of voting for the President and area Member of Parliament. She leaves out the Woman Member of Parliament yet voting for all the three post was conducted the same day in one transaction. I wonder whether she actually is a registered voter who actually voted at Kyanja Polling Station that day. If she is a registered voter who actually voted then the Petitioner failed to show court her particulars. Nothing is attached to her affidavit to verify her identity. There was a dot for her signature on the affidavit which I could not take for her signature. **She did not sign or thumbprint on her affidavit as the deponent. Her evidence is as such thrown out.**

Bakaali Kigenyi alleged that from 15th to 18th February, 2016 one Katabira Fred rode a Motor Cycle from one area to another carrying grass for feeding goats. Hidden in the grass was a box of soap which he distributed from house to house in Nakawali village.

The witness alleged that Fred Katabira distributed soap to Nanyonjo Sawuya, Mukyala Paulo, Mukadde Bittu, Mzee Juuko Kisaata and many others. The witness was himself bribed with Shs.10,000/=.

I have already thrown out the affidavit of this witness for changing signatures.

But even if his evidence was to be admitted, it is unbelievable. He was aware of the unlawful acts of bribery by Fred Katabira for 3 consecutive days but reported him nowhere. He did not report to the Petitioner or the Police or the Electoral Commission. A trap would have been laid to intercept the said Katabira and catch him red handed, in the act, with his pants down. Bakaali Kigenyi received Shs.10,000/= but never exhibited it - be it to shame the giver or to burst his evil schemes. Yet he declined to giving him supporters from Dr. Bayigga's camp because he feared they would succumb to Katabira's requests once he gave them money. Unbelievable.! Bakaali Kigenyi is a joker wasting our time. His allegations of bribery of voters was not corroborated or substantiated and it remained hanging.

Bribery with a Tarpaulin:

Batanule Sowedi and Musisi Charles alleged that on 9/02/2016 at Kibirige Memorial Primary School the 1st Respondent addressed them. That he promised to give the people a donation

through the Chair Person of NRM Mr. Kiwanuka Michael. That when Mr. Mutebi David left the meeting Mr. Kiwanuka introduced a blue tarpaulin to the gathering.

In reply the 1st Respondent denied holding a rally at Kitenda (Kibirige Memorial School) on the said date of 9/02/2016. Indeed the official campaign calendar does not show that Mutebi had a rally at the said school on the date in question. This is one of the many allegations which may have been probable but not proven to the satisfaction of court. At least not by the evidence of these suspicious copy and paste affidavits coached in same Statements and with the jurats detached from the texts of the affidavits. The allegation was never reported to police and there is no proof that the people in allegedly in the meeting were registered voters and that they were indeed influenced to vote for Mutebi David to the disadvantage of Dr. Bayigga Lulume.

For all the cases of alleged bribery the so – called beneficiaries were Democratic Party Supporters of the Petitioner. Their allegations have to be evaluated with a lot of caution because they could go out of their way to tell lies in support of their candidate. In ***Mbayo Jacob Robert V. Electoral Commission & Talisunya, Election Petition No._07 of 2006***, Court called for caution. Court advised that some other evidence from an independent source is required to confirm the allegations of bribery instead of reliance on supporters of the Candidates trading accusations and counter – accusations.

None of the beneficiaries of alleged bribes proved that they were registered voters. In ***Kabusu Moses Wagaba v. Lwanga Timothy & Electoral Commission, Election Petition Appeal No. 53 of 2011***, court held that a Voter's Register must be attached to show that the person bribed was a voter. Court expected the Petitioner to extract and annex a page of the register on which the deponent appears. One of the essential ingredients of bribery of a voter is proof that the person bribed was a registered voter. In the instant case Dr. Bayigga Lulume has miserably failed to prove all the allegations of bribery of voters by Mutebi David or his agents to the satisfaction of this court.

FALSE STATEMENTS

Under Section 73 of the Parliamentary Elections Act, it is an offence for any person before or during an election to make a false statement concerning the character of a candidate with the purpose of effecting or preventing the election of that candidate.

It is illegal to publish or cause to be published by words whether written or spoken or by song such false statements which he or she knows or has reason to believe to be false, or in respect of which he or she is reckless whether it is true or false. A convict under this section is liable to a fine not exceeding twelve currency points (Shs.240,000/=) or imprisonment not exceeding six months or both. This section does not take away the right of a person to sue for defamation of character.

It was alleged that the 1st Respondent and / or his agents called the Petitioner ‘**Omufeere**’ (Conman) during the campaigns. That the allegations that he was a Mufeere were malicious and false and this grossly damaged the Petitioner’s personality and character before the electorate. A big number of affidavits in support of the petition in volume 3 are all talking about the alleged false statement of ‘**Omufeere**.’

Together with Omufeere was another false name of ‘**Omukodo**’ (Mean man) which are said to have been uttered consistently by the 1st Respondent at his political rallies.

The 1st Respondent denied ever referring to the Petitioner as a Mufeere or Omukodo and blamed the Petitioner for starting it all and spreading false propaganda which backfired.

That when he won Election Petition No. 12 of 2011 against the 1st Respondent, the Petitioner asked for Shs.420,000,000/= as costs. His lawyer, Mr. Tebyasa negotiated and got Shs.20,000,000/=. However, during the recent campaigns the Petitioner claimed he had impoverished the 1st Respondent upon paying the bill of costs of Shs.420,000,000/=. That Dr. Bayigga Lulume spread word around the Constituency that Mutebi David was no longer a threat having been brought to his knees by the financial burden of paying his huge bill of costs.

It appears Mutebi David picked on the political game and turned the false statement into an advantage. His campaign team photocopied and circulated a letter Dr. Bayigga Lulume had written to Counsel Tebyasa Ambrose (Annexure “B”) to clarify on whether Mutebi had paid

costs amounting to Shs.420 million. Counsel Ambrose Tebyasa had angrily replied (Annexure A) to his client (the Petitioner) that he had negotiated for and got costs worth Shs.20 million only. Tebyasa said he had reliably heard from Mr. Mutebi that it was the Petitioner himself spreading false rumours that Mutebi David is about to be arrested for failure to meet the bill of costs (Civil debt) of Shs.420 million.

Mr. Tebyasa categorically stated that they did not wish to be dragged into political mind games of the two political camps of Dr. Bayigga and Mr. Mutebi. The Mutebi camp is then said to have spread propaganda that Dr. Bayigga is mean because he had failed to share the huge amount of costs with his electorate especially his court witnesses. **My opinion is that these were political mind games that politicians play.** Dr. Bayigga Lulume, a seasoned politician, used the bill of costs to deflate Mutebi's supporters. He presented Mutebi as a potential civil debtor and a poor man not worth electing to the next Parliament. Mr. Mutebi also pretended he had been impoverished by the huge bill of costs and incited the electorate to ask for a share of that money from Dr. Bayigga. Indeed some supporters switched loyalty. The 'Omukodo' mind game worked for both politicians but hurt Dr. Bayigga later when he failed to put it to an end in time. The fire he himself started swallowed him. It reminds us of the proverb: ***"If you live in a glass house do not throw stones."***

The Petitioner should not be heard crying foul for political games he himself started. It was a bad gamble of pure politics that provided food for thought in the Constituency. **The Petitioner himself is the one who made the false statement complained of and cannot therefore be protected by the law.**

Dr. Bayigga's woes were made worse by a newspaper column in **KAMUNYE** which published him among D.P. politicians who are mean. The headline read: ***"Bassitakange, Baabano Banabyabufuzi mu D. P. abasinga obukodo."*** It was published on Wednesday July 27th, 2011. There is his portrait printed alongside this story. It is this story that played political rounds in the Constituency during the complained of recent campaigns. **I do not see much of a false statement to attribute to Mutebi David. It is this newspaper Dr. Bayigga should have blamed for baptizing him truly a mean person (Omukodo).**

No political opponent would fail to build political capital out of this story. This court would have faulted Mutebi David if it found that he is the one who made that statement publically and maliciously knowing it to be a false statement or having reason to believe it was false but sought to unfairly influence the elections to the disadvantage of the Petitioner but there is no evidence adduced by the Petitioner to prove that it was a false statement.

As regards the allegations of being **omufeere** the Petitioner alleged that he had been informed, by his supporters and agents in Namukuma, Lugala, Nkokonjeru, Ngogwe, Ssugu, Malongwe, Dungi and Najja, that the first Respondent and his agents falsely accused him of receiving billions of shillings from Government to build a hospital in Buikwe South Constituency but instead built it in Kansanga, Kampala well knowing that the statements were false. **The hospital story was first published in Bukedde newspaper under the ‘Kasalabecca’ (Deep cutting / sharp rumours) column on Wednesday January 4, 2012.**

It was published that Dr. Lulume had greatly benefitted from his second term in Parliament. That he had bought a plot at Kansanga along Ggaba Road and built thereon a double storied hospital. The paper further reported that although he is a Member of Parliament, he had been working at Nsambya General Clinic. Now he has established his own hospital called Kampala International Medical Centre, Kansanga. That this is in addition to Buikwe Mobile Hospital which he established in his Constituency.

The hot rumormonger had reported that the Member of Parliament is always seen at the hospital (pictured) after the parliamentary sessions treating his patients. (See: affidavits of Ntulume Robert Mugalu and Rashid Lukwago).

This is the piece of news the people of Buikwe South had picked on to call their M. P. a Mufeere. No strategic politician can fail to build political hills out of this newspaper story. It is again myopic of the Petitioner not to foresee what would result from it on the Political Scene. The Petitioner did not protest to the editor of **Bukedde** or refute the story. He did not even ask for an apology. He did not sue the newspaper or otherwise try to make good the damage, if any.

May be it was a true story and a correct analysis of the Petitioner's Political and social economic development. I cannot attribute the story of the hospital to Mutebi David. The Petitioner left it to an open interpretation by any one in Buikwe.

I read through and tried to comprehend the affidavits of Sserunjogi Joseph and Semaganda Charles but found each attributing the statement of omufeere to different things. Sserunjogi said Konoweeka Diriisa coined the title ***"Omufeere we Kansanga"*** relating the Petitioner's hospital in Kansanga to conning the people of Buikwe. On the other hand Semaganda attributes it to the 1st Respondent who he quotes as telling a rally at Najja on 26/01/2016 that the Petitioner is a Mufeere or Omukodo ***"Meaning that the Petitioner was a thief who stole from the Constituency and a miser who could not share the 420 Million with his supporters."*** (See: Paragraph 14 of Semaganda's affidavit at Page 10 Volume 3).

The affidavits of Lubowa Edmund, Ssegirinya Richard, Lukwago Patu, Yusuf Sekandi and Walusimbi Frank all speak of the hospital in Kansanga as the false statement. People claimed that the Petitioner should have built that in Buikwe. That this was a false statement is not proved by Dr. Bayigga. He cannot be allowed to pick on his political rival and blame him for his political woes. As the Baganda say: ***"The eyes of a slaughtered goat keep looking at the one skinning it and forget the butcher."*** Mutebi David is only but a scapegoat. Dr. Bayigga would not have been called a Mufeere if Bukedde had not published rumours about his private hospital which he built in Kansanga. To his electorate, he had denied them a hospital. To people like Mubiru Livingstone whom he had promised but failed to deliver a Mobile Clinic or ambulance the newspaper story rubbed salt in the wound. The paper portrayed the Petitioner as one truly operating a Mobile Clinic in Buikwe whereas not. He was nothing less than a Mufeere. Any reasonable man waiting for the Petitioner to establish a clinic in Buikwe would have been provoked to call him names on hearing that he has since built a hospital outside the Constituency.

Voters become bitter and demanding when they are promised better earth and heaven by politicians who never keep their promises. Kyambadde George William is still waiting for church windows the Petitioner promised at the burial of Late Lwembawo Paul on 1/6/2010. He swore that the sincerity and honesty of the Petitioner have remained in question basing on the

cumulative lies and that the 1st Respondent made no false statements against the Petitioner in 2016.

Kasuku Enock is bitter that the Petitioner has never fulfilled his promise to assist him with school fees for 3 children in Institutions of higher learning. He alleges that the Petitioner made him to sell his motorcycle to fund his campaigns in 2010 but he has never been paid back. That he even picked family savings from the custody of his daughter to run Dr. Bayigga's campaign. The family is still demanding for a refund of Shs.2,400,000/=. Out of frustration due to endless promises Kasuku's daughter composed a song warning the general public about the Petitioner's dishonesty and lies.

Another Bwire Dennis is fed up with the Petitioner for failure to deliver hoes, setting up Mobile Clinics and failing to help boda-boda cyclists to improve their incomes as he had promised in 2011.

A one Kamyia Noah was a strong mobiliser for the Petitioner from 2006 to 2011. He got disappointed with him when he failed to deliver church windows he had promised to buy in Memory of the Late Lwembawo.

It is therefore not farfetched for the electorate to perceive the Petitioner as a Mufeere (Conman) or liar. I would seriously advise Dr. Bayigga to fulfill his promises as soon as he can. It will not take long before the voters sing his praises and bless him if he works on the seemingly false statements.

Telling off political liars, reminding politicians of unfulfilled promises and pledges and giving them or baptizing them with embarrassing pseudo – names that condemn their unwanted characters and sinful ways should be welcomed as a good political barometer. Whoever does not read this barometer very well ends up losing the election.

I would dismiss this ground.

Violence and Intimidation:

There were several allegations made against the first Respondent and his supporters.

Under Section 80 of the Parliamentary Elections Act it is an offence of undue influence for a person to, directly or indirectly through another person, make use of or threaten to make use of, any force or violence, inflict or threaten to inflict in person or through any other person any temporal or spiritual injury, damage, harm or loss upon or against any person. The offence is treated as a serious offence with fines up to one hundred and twenty currency points and imprisonment not exceeding five years or both depending on the sub-section charged.

In the instant case the Petitioner alleged that several of his supporters were subjected to violence. These included Kateregga, Wasswa, Nkwanga Edward, Musisi Abubakari and Mo violence at Zziba. The last incident was on 19/02/2016 a day after elections.

The 1st Respondent denied committing offences of undue influence. He instead blamed Dr. Bayigga Lulume for the violence during the campaign period and soon after elections.

It was alleged that a one Kateregga was assaulted. In reply Kateregga Godfrey's assault was dismissed by Kaweesi Jimmy, a former Campaign Manager for the Petitioner in Kimera Parish. He knew Kateregga as Lulume's gang leader based at Nangunga who was arrested at Kamya's home and detained. On 10/02/2016 Kaweesi Jimmy was one of the people who rescued Noah Kamya from Lulume's gang that had attacked his home on their way from a rally at Ssi.

Indeed the police report filed and exhibited as Annex F in support of the 1st Respondent's answer to the Petition shows that on February 10, 2016, a case was reported to police in which one Kateregga Godfrey was caught with wooden pieces having nails, a knife and several posters of President Museveni, Candidate Mutebi David Ronnie and Candidate Sembuya Stephen hebbad plucked down. He was found with another group of people still at large in the home of Kamya Noah with intent to hurt him. A case was recorded. Kateregga Godfrey was picked up by police patrol and detained but later released on police bond as investigations continue. Ref. 07/11/02/2016.

Violence on Wasswa Nkwanga Edward was a circus. In his affidavit in support of the petition of the Petitioner he alleged that he was beaten by a group of people among whom he recognized:

- a) Musoke – Kipala S/O Kipala
- b) Kaweesa Jimmy S/O Saaja
- c) Kaluuma Haruna S/O Kamadi
- d) Erisa Kitenda
- e) Pafla and Ssemiti

all being residents of Kimera village. That he was hospitalized. He was interrogated by police before he could recover. He was later referred to Mulago Hospital from where he fully recovered.

This court was able to watch a video in which Wasswa denies some major aspects of his affidavit. I have chosen to disregard the evidence of Wasswa Nkwanga because he was switching sides like a prostitute looking for greener pastures. He could not ably pinpoint (out) who had assaulted him.

There was alleged violence on Musisi Abubaker. This was responded to by the 1st Respondent using the police report. It was recorded that on the night of 16/02/2016 two boda-boda riders SSENKANGA JOSEPH and DENNIS BWIRE reported threats of violence by one D. P. supporter MUSISI ABUBAKER of Lweru. The two were given police escorts up to their residences after which case Ref: 18/17/02/2016 was recorded. On the same day of February 18, 2016 the said Musisi Abubaker recorded a complaint of assault as well. Both cases are being investigated.

There was violence reported at Zziba, the home area of the Petitioner. It was alleged that the 1st Respondent made a stopover at Zziba when he was coming from Nkokonjeru where he held his last rally on 15/02/2016. He switched on loud speakers and spoke telling people of Zziba to join him and switch from Lulume just like the people of Nkokonjeru had done. That thereafter the 1st Respondent ordered his gang of ***‘Team No Sleep’*** to beat up the people. In the shortest time the gang swung into action and beat up people in the trading centre. Musisi Charles escaped narrowly to tell this story. Ssembajje Jamil sustained a cut wound on the forehead. Kyasanku Paul sustained a fracture on the right collar bone. Kyasanku said he recorded his complaint with

Ngogwe Police Station. He does not provide a police reference number though. He reported the matter to the Petitioner who took his photograph exhibited as R3.

Another Lukanga Samson escaped from the beating of about 15 people who met him buying airtime at Zziba. He ran to the Petitioner and reported the matter. He took his photograph and exhibited it as R4. Unfortunately the police report exhibited by the 1st Respondent does not have any report of the Zziba incident of 15/02/2016!

The Police report recorded violence on 19/02/2016 too. The report states that after the declaration of HON. MUTEBI DAVID RONNIE as winner, a group that was organized by the LCIII Chairman of Ngogwe who also doubles as a leader in Hon. Lulume Bayigga's campaign team is reported to have attacked HON. MUTEBI DAVID'S celebrants at Nangunga which caused a serious fight leaving many people injured with property destroyed.

Another 5 suspects were also arrested at Nkokonjeru in violence – related activities and a case was recorded vide SD: 63/19/2016.

The police report was filed by the District Police Commander Lugazi Police Station, Buikwe District and handed over to Hon. Mutebi David Ronnie Member of Parliament Elect. I have no doubt it is authentic. My overall finding of this security report is that both political camps were violent. Both candidates failed to control their supporters and restrain them from descending into violence. As expected of unruly supporters, there was a lot of tension and violent clashes took place here and there but were contained by the Security agencies.

The video tape we watched showing the Petitioner at rallies in Ssi and Nkokonjeru showed him threatening to maim and break supporters of Mutebi David using kung-fu and shanglin shu kicks (or whatever he called it) as a trained specialist in violence.

Much of the violence recorded by police is attributed to Hon. Dr. Bayigga Lulume and his gang. All the people allegedly injured in the fights would run to Dr. Bayigga to report. He would take their photos and prepare for this petition instead of referring them to police for proper investigation!!

None of the victims acknowledged getting medical treatment at Dr. Bayigga's place although he is a Medical doctor. I have carefully examined the affidavits of the injured persons but found them wanting. The photographs have no dates and court cannot tell whether they were taken in the political chaos or they were photographs of his patients at his clinic. The injuries were not reported to police and there are no police examination Forms (PF3) attached to the affidavits.

As earlier ruled, the body of the text of the affidavits are detached from the jurat signed by the deponents and the Commissioner for Oaths. Most of the deponents did not attach their identity cards yet the integrity and identity of the deponents is so important in the evidence based on affidavits. I found such affidavits inherently suspicious and not so reliable.

However, I want to believe the evidence of the police report and the evidence of the peace-making LCI Chairperson of Ngogwe, Mr. Kyobe Peterson. He got concerned on hearing of after – election violence. He initiated a peace – making reconciliatory meeting.

The meeting learnt that supporters of Mutebi clashed with supporters of Bayigga. After the declaration of Hon. Mutebi David as winner, his supporters moved from trading centre to trading centre celebrating their victory.

The celebrants provoked the camp of Dr. Bayigga Lulume who had lost the elections. The supporters of Dr. Bayigga Lulume attacked the celebrating crowd and a serious fight ensued. Many were injured and a lot of property was destroyed. The two leading politicians did little to prevent or stop this violence. It would be very unfair to heap all blame on only Mutebi David Ronnie. This ground fails too.

Issue No.4 : Remedies Available to the Parties

The Petitioner has failed to prove to the satisfaction of court that the 1st Respondent committed electoral offences or illegal acts in person or that the electoral offences and illegal acts were committed by his agents with his knowledge and consent or approval.

I condemn the failure of both parties to prevent and stop violent clashes of their supporters. But there is no sufficient evidence adduced to prove that the violence affected the conducting of elections or results of the election in a substantial manner so as to warrant the setting aside of Mutebi's hard won victory.

The Petition is dismissed with costs.

I declare Hon. Mutebi David Ronnie the validly elected, gazetted and sworn in Member of Parliament for Buikwe South Constituency.

BATEMA N. D. A.

JUDGE

15/07/2016