

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASAKA**  
**ELECTION PETITION NO.11 OF 2016**

**LUBEGA DRAKE FRANCIS.....PETITIONER**

**VERSUS**

- 1. THE ELECTORAL COMMISSION**
- 2. KALEMBA CHRISTOPHER.....RESPONDENTS**

**BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.**

**JUDGMENT**

The petitioner's complaints are that;

1. The following illegal practices were committed by the **2<sup>nd</sup> respondent** personally and/or with his knowledge, consent and approval;
  - a. He before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, offered, gave or caused to be given to registered voters iron sheets contrary to section 68(1) of the Parliamentary Elections Act.
  - b. He before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, offered, gave or caused to be given to registered voters money contrary to section 68(1) of the Parliamentary Elections Act.

2. He does not possess the minimum formal education of Advanced level standard or its equivalent to qualify him to be a Member of Parliament. His admission to Kampala University where he claims to have obtained the same was wrongful and unlawful for lack of minimum qualification for admission into a University. The said academic documents are tainted with illegalities as they were completed in less duration than that stipulated under the law thereby making them null and void.
3. He did not resign his position as Resident District Commissioner of Lwengo District before participating in the NRM primaries as well as the election in issue.
4. He used a Government motor vehicle during his campaigns contrary to the Law.
5. The 1<sup>st</sup> respondent compromised the principle of impartiality and transparency when it failed to restrain the 2<sup>nd</sup> respondent from carrying out the said illegal practices and other illegal activities during the campaign period.

**The petitioner seeks the following orders;**

1. A declaration that the 2<sup>nd</sup> respondent's admission to Kampala University was null and void and that accordingly the Ordinary Level Certificate, the Diploma and the Degree obtained from the University be declared invalid for that reason having been tainted with illegalities.
2. A declaration that he does not possess the minimum formal education of Advanced Level certificate or its equivalent to be nominated as Member of Parliament.
3. A declaration that he was not validly elected as the Member of Parliament for Kakuuto Constituency, Rakai District.
4. The said election be annulled, set aside and fresh elections be conducted.
5. The respondents pay the costs of this application.

The 1<sup>st</sup> respondent, in answer to the petition maintained that the election was conducted in accordance with the Constitution, the Parliamentary Elections Act, the Electoral Commission Act and other Laws, and that it exhibited the highest degree of impartiality and transparency between the candidates. It further maintained that the 2<sup>nd</sup> respondent presented higher academic qualifications than the minimum required by the Law, which showed that he was qualified to stand as a Member of Parliament, and that it had no knowledge of the alleged illegal practices or offences.

The 2<sup>nd</sup> respondent denied the allegations and maintained that the election was conducted in accordance with the Constitution, the Parliamentary Elections Act, the Electoral Commission Act and other Laws. He said that he is not guilty of bribery of voters before, during or after the elections. He further maintained that he had higher academic qualifications than the minimum required by the Law, and that he resigned his position as the Resident District Commissioner Lwengo and subsequently handed over all the property of the office including the motor vehicle.

**The issues as agreed on by the parties were.**

1. Whether there was non-compliance with the provisions of the Parliamentary Elections Act, the Electoral Commission Act, and the principles governing elections.
2. Whether the non-compliance, if any affected the results in a substantial manner.
3. Whether the illegal practices or any of the electoral offences under the Parliamentary Elections Act were committed by the 2<sup>nd</sup> respondent personally or by his agents with his knowledge, consent and/or approval.
4. Whether at the time of the nomination and elections the 2<sup>nd</sup> respondent possessed the minimum academic qualifications of Advanced Level or its equivalent for being a Member of Parliament.

I however have problems with the above formulation of the issues and the order in which they appear, preferring to merge issue number one with number three, and renumbering them as here below;

1. Whether the 2<sup>nd</sup> respondent personally or by his agents with his knowledge, consent and/or approval committed the election offences and indulged in the illegal practices complained about.
2. Whether at the time of his nomination and elections the 2<sup>nd</sup> respondent possessed the minimum academic qualifications of Advanced Level or its equivalent for being a Member of Parliament.
3. Whether by failing to restrain the 2<sup>nd</sup> respondent and by allowing him to be nominated without proof of attainment of the minimum academic requirements the 1<sup>st</sup> respondent failed to comply with the provisions of the Parliamentary Elections Act, the Electoral Commission Act, and the principles governing elections.
4. Whether the non-compliance, if any affected the results in a substantial manner.

In election petitions the burden of proof lies with the petitioner, see **Hon Abdul Katuntu Vs. Hon Kirunda Kivejinja Ali, Election Petition No. 7 of 2006**. A petitioner has to prove the allegations he made in the petition to the **satisfaction of the court**. The standard of proof is on a balance of probabilities (**S. 61(3) P.E.A**). This has been interpreted in **Col. Rtd Dr. Besigye Kiiza Vs. Museveni Yoweri & 1** cited in **Hon Abdul Katuntu Vs. Hon Kirunda Kivejinja Ali, Election Petition No. 7 of 2006**, to mean a preponderance of probability, the degree of probability depending on the importance of the subject matter.

The nullification of the election of a Member of Parliament is a very important matter since it involves interfering with the Constitutional right of the people to elect leaders of their choice. The court must therefore before making any adverse orders be satisfied by the evidence on record that the allegations in the petition have been proved with a high degree of preponderance.

**1. Whether the 2<sup>nd</sup> respondent personally or by his agents with his knowledge, consent and/or approval committed election offences and indulged in illegal practices.**

In paragraph 3 of the petition the petitioner complains about the following offences and illegal practices;

- Before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, the 2<sup>nd</sup> respondent offered, gave or caused to be given to registered voters iron sheets contrary to section 68 (1) of the Parliamentary Elections Act.
- Before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, the 2<sup>nd</sup> respondent offered, gave or caused to be given to registered voters money contrary to section 68 (1) of the Parliamentary Elections Act.
- He did not resign his position as Resident District Commissioner of Lwengo District before participating in the NRM primaries as well as the election in issue.
- He used a Government motor vehicle during his campaigns contrary to the Law.

I will here below pronounce myself on whether each of the above complaints have been satisfactorily proved.

***I. Whether he offered, gave or caused to be given to registered voters iron sheets contrary to section 68(1) of the Parliamentary Elections Act.***

To prove this allegation the petitioner averred in Paragraph 6 (a) of his affidavit that boda boda riders of Kyapa Kangabwa stage who are voters were given 6 iron sheets for construction of the shelter at Kyapa Kangabwa boda stage, and that the shelter stands to date. He attached a picture of the shelter which was taken by Yiga Muhamad who swore an affidavit. He also relied on the affidavits of Muwawu Yasin, Banalya Hamis, Mwanje Saddam, Ssegirinya Aduswamadu, and Mutebi Alex, all registered voters and boda boda riders who operate from Kyapa Kangabwa stage. They deposed that in the first week of February 2016 the second respondent went to their boda stage with his campaign manager (Muzakiru Kintu) and donated to them 6 iron sheets for putting up a shelter at the stage. He asked them to vote for him.

In his affidavit, the 2<sup>nd</sup> respondent rebutted those allegations. He was supported by Muzakiru Kintu who was alleged to have been his campaign manager and who is said to have been with him on the day in issue.

Muzakiru Kintu averred that Muwawu Yasin, Banalya Hamis, Mwanje Saddam, Ssegirinya Aduswamadu, and Mutebi Alex who averred that he and the respondent gave them iron sheets told lies. He maintained that he contested in the Local Government elections for the position of councilor Katovu Parish. As such he was busy campaigning for himself and could not therefore have been the campaign manager for the 2<sup>nd</sup> respondent, let alone given iron sheets to boda boda riders with the 2<sup>nd</sup> respondent or for and on his behalf. He further averred that he has never seen the 2<sup>nd</sup> respondent give iron sheets to boda boda riders at Kyapa Kangabwa stage.

In cross examination Mr Muzakiru Kintu maintained that he was not unopposed for the position of councilor and that he campaigned, having competed against Mark Kateregga. He however said that he was the one who built the shelter in issue, and that he used money he held for the boda boda riders which he topped up with his own funds.

The 2<sup>nd</sup> respondent in re-examined first said that Muzakiru Kintu was not his campaign manager since **he was looking for his own votes**, but later added that Muzakiru Kintu was elected unopposed. This evidence contradicted the position that Muzakiru Kintu was busy campaigning for himself and was therefore not available for the 2<sup>nd</sup> respondent's campaign. This is a major contradiction which points to deliberate falsehood by both witnesses.

Moreover there was no indication that the boda boda riders who attested to the fact that the 2<sup>nd</sup> respondent and Muzakiru Kintu built the shelter in issue had any reason to tell lies.

Muwawu contradicted himself in his affidavit when he averred that he is a boda boda rider, yet in cross examination he said he is a fuel vendor. That contradiction was however sufficiently explained as having been an error on the part of the lawyer who drafted the affidavit. I did not believe that it was a deliberate lie. I therefore accepted the Muwawu's explanation in this regard.

Moreover the contradiction in Muwawu's affidavit does not water down the evidence of the rest of the witnesses, especially given the fact that Muzakiru Kintu admits that he in fact built the shelter with 6 iron sheets. The fact that he is the one who built it and with 6 iron sheets lends credence to the petitioners account of events, since those facts don't seem to me to be a mere coincidence

I believed the evidence that the 2<sup>nd</sup> respondent was with Muzakiru Kintu at the material time and that he gave Muzakiru Kintu the 6 iron sheets which he used to build the shelter in issue for voters (the boda boda riders who testified). I also believed the evidence that he asked them to vote for him. On the basis of that evidence I find that he personally, and/or through Muzakiru Kintu, and/or with his knowledge, consent or approval gave the 6 iron sheets to those voters.

***II. Whether before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, the 2<sup>nd</sup> respondent offered, gave or caused to be given to registered voters money contrary to section 68(1) of the Parliamentary Elections Act.***

On the basis of the same evidence and reasoning as above I am positive that the 2<sup>nd</sup> respondent gave 200,000/= to Muzakiru Kintu to build the shelter for the voters at Kyapa Kangabwa stage as alleged. I find that he personally, and/or through Muzakiru Kintu, and/or with his knowledge, consent or approval gave money to those voters.

***III. Whether he did not resign his position as Resident District Commissioner of Lwengo District before participating in the NRM primaries as well as the election in issue.***

The petitioner averred that the respondent did not resign his position. He attached to his affidavit copies of salary pay slips in favor of the respondent for the period in issue furnished to him by the office of the Accountant General upon request. He also relied on the evidence of Mugambe Pascal who in paragraph 4 of his affidavit averred that when he requested the Electoral Commission for the respondent's nomination documents but that no letter of resignation was availed to him.

In his affidavit the respondent averred that he resigned his position as RDC. He attached a copy of his application for resignation and a letter granting his request (**annexures ‘I’ and ‘J’ respectively**). In cross examination he denied that he received salary for the months of June, July and August 2105 as alleged, and said that he used to receive his salary through his Centenary Bank Account. He disowned the account indicated in the salary pay slips which were attached to the respondent’s supplementary affidavit.

I have carefully considered the evidence relating to this issue and note that the respondent’s resignation letter bears no evidence of acknowledgement of its receipt by his employer. In addition while it purports to have been written on the 8th May 2015 the response was written on 15<sup>th</sup> July 2015. For such an important matter the period taken to respond appears to be overly long, a fact which renders the purported resignation suspicious and not credible. I did not believe that the respondent resigned his position before nomination and election.

On the issue of receipt/non-receipt of salary by the respondent, I scrutinized the bank statement (**exhibit D1**), tendered in evidence by the respondent to support the position that he did not receive salary for the period in issue. While it cannot be doubted that he is the account holder of that account, I did not believe it was the account through which he used to get his salary, for it bears no evidence of any salary transactions at all, i.e., even for the period outside the one in issue.

On the other hand the petitioner’s letter seeking information from the Accountant General bears acknowledgement of its receipt. The salary slips show that the salary payment was in favor of the respondent, and that it was for the period in issue. I find that the 4 salary pay slips attached to the letter are genuine and are evidence that the respondent earned a salary during the campaign period. This finding goes to galvanize the position that he did not resign his job before nomination and election.



***IV. Whether he used a Government motor vehicle during his campaigns contrary to the Law.***

In paragraph 11 of the affidavit in support of the petition the petitioner avers that the respondent used government vehicle UG 1948C in his campaigns for both NRM party primary elections and the election in issue. Pascal Mugambe in paragraph 5 of his affidavit swears to similar effect. In cross examination Mugambe said that the respondent continued to use the government vehicle in August after the primary nominations. In re-examination he said that there was a function in Kyebe sub-county Nyinzira parish at which he saw the respondent in the government vehicle.

In paragraph 12 of his affidavit the respondent averred that he handed over the vehicle. He attached a copy of the hand over report (**Annexure ‘K’**).

I have considered the petitioner and Mugambe’s evidence that they saw the respondent use the vehicle in the campaigns, and the respondent’s denial of that fact. He sought to rely on the hand-over report he attached to his affidavit as proof of hand over of the vehicle. I note that the hand over report only evidences the fact that he said he would hand it over. Whether or not he actually handed it over is still in issue.

The petitioner bears the burden to prove that the vehicle was not handed over. In this case the allegation that the respondent did not hand over the vehicle was countered by a denial thereby maintaining the balance in equilibrium. Being that he bears the burden of proof the petitioner should have adduced more concrete evidence beyond merely saying that he saw the respondent using the vehicle. I am not satisfied that this allegation has been proved.

On whether the 2<sup>nd</sup> respondent personally or by his agents with his knowledge, consent and/or approval committed election offences and indulged in illegal practices, I find that he gave registered voters iron sheets and money contrary to section 68(1) of the Parliamentary Elections Act. I also find that he did not resign his position as Resident District Commissioner of Lwengo District before participating in the NRM primaries as well as the election in issue.

I however did not find sufficient evidence that he used a Government motor vehicle during his campaigns.

**2. Whether at the time of his nomination and election the 2<sup>nd</sup> respondent possessed the minimum academic qualifications of Advanced Level or its equivalent for being a Member of Parliament.**

In paragraphs 8 and 9 of his affidavit the petitioner averred that the respondent doesn't possess the minimum qualifications to stand for the position of Member of Parliament. The specifics of this allegation are that the 'O'-level certificate that the respondent presented to the Electoral Commission shows that he obtained less credits than the requisite three. A copy of the 'O'-Level certificate in issue is annexure 'E' and 'B' to the petitioner's and the respondent's affidavit's respectively. It is contended that all subsequent academic documents (**on which the respondent's nomination was based**) which were obtained on the basis of that 'O'-level certificate are null and void.

The subsequent documents include;

- A certificate in Social Work and Social Administration from Kampala University, 2010.
- A diploma in Social Work and Social Administration from Kampala University, 2012.
- A Bachelor's Degree in Social Work and Social Administration from Kampala University, 2015.

In his submissions counsel cited **the University and other Tertiary Institutions (minimum entry requirements for admission to Universities or other Tertiary Institutions Regulations, S.I No. 63 of 2007** pointing out that "the minimum requirement for admission to an ordinary certificate program is the Certificate of Education (**U.C.E**) with at least 3 credits obtained at the same sitting." He said that having obtained only one credit the respondent should not have been admitted to a University and that the subsequent documents and therefore his election were invalid, null and void for want of the requisite academic qualifications.

He cited the case of **Gole Nicholas Davis Vs Loi Kageni Kiryapawo, (S.C) Election Appeal No. 19 of 2007** for the submission that once it is proved by evidence that a fraudulent/unlawful

certificate formed the basis of admission to an academic institution, even when it was presented together with other valid documents, its contagious effect would have vitiated the validity of the other documents, and rendered the admission and the award resulting there from invalid.

The petitioner seeks a declaration that the Certificate, Diploma and Degree awarded to the 2<sup>nd</sup> respondent by Kampala University are null and void, and that the respondent does not hold the necessary or required qualifications to be elected as a Member of Parliament.

For the 2<sup>nd</sup> Respondent it was submitted that he adduced unchallenged evidence that he studied up to university level and obtained a Degree. Further that the 2007 Statutory Instrument which sets minimum entry requirements for admission to tertiary institutions was passed in 2007 yet the 2<sup>nd</sup> Respondent was awarded his Uganda Certificate of Education in 1981, and that the Law should not be applied retrospectively.

Other arguments were that the 2<sup>nd</sup> Respondent only applied and was admitted by the University. He studied and successfully completed the courses. The Certificates he was awarded remain valid.

Counsel for the respondent cited **Joy Kabatsi Vs. Anifa Kawoya & another, Election Petition Appeal No. 025 of 2007** for the submission that where a candidate presents a qualification which is higher than the minimum required for nomination for any post, it is not enough for his opponents to argue that the higher qualification was based on a forgery or something irregular. They need to show that as a result of their allegations the awarding institution of the higher qualification subsequently cancelled or withdrew the award of the disputed qualification.

They also cited **Hon. Kipoi Tonny Nsubuga Vs. Ronny Waluku Wataka and others, Election Appeal No. 007 of 2011** where it was held that mere allegations of invalidity of academic qualifications of the candidate are insufficient as long as the certificates of such candidate were not cancelled and were valid at the material time.

They further cited **Kampala University Vs. National Council for Higher Education (NCHE); Misc. Cause No. 053 of 2014** in which the issue was whether NCHE could cancel or nullify an academic certificate issued by the University. The Court relying on **S.45 (2) (f)** of the

Universities and other Tertiary Institutions Act 2001 held that the law only gives power to **NCHE** to investigate institutions of higher learning and that it has no powers to determine which student has followed due process from admission to graduation in a University in Uganda. The University senate is the only one with power to recall or cancel ones degree award.

Counsel submitted that at the time of the 2<sup>nd</sup> Respondent's nomination, his diploma and degree certificates were, and remain valid because they have not been recalled or cancelled by the senate

of the awarding institution. One cannot therefore talk about invalidating or nullifying the said certificates.

He also submitted that these Court proceedings are not proceedings in which the Petitioner would seek cancellation of the 2<sup>nd</sup> Respondent's certificate on the ground of failure to follow academic due process at admission. It has to be in proceedings where both the student and the University are parties.

They argued that the case of **Gole Nicholas Davis v. Loi Kageni Kiryapawo SC Election Appeal No. 019 of 2007** which was cited by counsel for the petitioner for the argument that were a fraudulent certificate is presented, it vitiates the validity of other documents, is distinguishable from the case at hand in that whereas the certificate in that case was fraudulently acquired without studying for it, the one in this case was properly obtained after attending the course for it.

I have had an anxious consideration of the arguments of both counsel. The argument that since the respondent obtained his 'O' level certificate in 1981, the 2007 regulation should not apply to him is not sustainable. That argument would be valid only if in 1981 it was legally possible to enroll for the University Certificates on the basis of the one credit 'O' level certificate, and if he had obtained the certificates then. As it is, he only took steps to enroll for the certificates under the 2007 legal dispensation. He is therefore bound by the current law.

The submission that the Petitioner cannot seek the cancellation of the 2<sup>nd</sup> Respondent's certificate is premised on the wrong view that only the University Senate has the powers to cancel such documents. The decision in **Kampala University Vs. National Council for Higher Education**

(NCHE); **Misc. Cause No. 053 of 2014** did not oust court's jurisdiction as far as the cancellation of invalid certificates is concerned.

For the respondent it was argued on the basis of **Joy Kabatsi Vs. Anifa Kawoya & another, Election Petition Appeal No. 025 of 2007, Hon. Kipoi Tonny Nsubuga Vs. Ronny Waluku Wataka and others, Election Appeal No. 007 of 2011, and Kampala University Vs. National Council for Higher Education (NCHE); Misc. Cause No. 053 of 2014**, that the documents that the 2<sup>nd</sup> respondent presented for nomination are valid until cancelled by the University senate.

I am however persuaded by **Owiny Dollo (J's)** views expressed in **Birekeraawo Mathias Nsubuga Vs Muyanja Mbabaali (supra)** that the comment in **Joy Kabatsi Kafura Vs Anifa Kawooya Bangirana & anor, S.C. Election Petition Appeal No. 25 of 2007** on which counsel for the respondent sought to rely for the above submission was obiter since the matter was not a ground of appeal in the case. As was pointed out by the learned Judge **Joy Kabatsi Kafura Vs Anifa Kawooya Bangirana & anor** was delivered on the 11<sup>th</sup> day of November 2008 well after the decision in **Gole Nicholas Davis Vs Loi Kageni Kiryapawo** case (**supra**) was delivered (on the 6<sup>th</sup> of March 2008).

I am fortified in this view by latter decision in **Muyanja Mbabaali Vs Birekerawo Mathias Nsubuga (C/A) Election Petition No. 36 of 2011** that since the Diploma on whose basis the appellant was admitted to Nkumba University was invalid, the University degree on which he relied for nomination was invalid as well. This decision settled the issue as to who can and when an academic document may be pronounced to be invalid.

Counsel for the respondent sought to distinguish the above cases from the current one on the basis that unlike this case, there was forgery in the other cases. He pointed out that in this case the respondent genuinely obtained the impugned certificates.

My view is, (**and it is my finding**) that **GOLE** and **MUYANJA (supra)** are authority for the general principle that once it is proved by evidence that a fraudulent certificate formed the basis for admission to an academic institution, even when it was presented together with other valid documents, its contagious effect would have vitiated the validity of the other documents, and

rendered the admission and the award resulting there from invalid. This is regardless of the nature or cause for the invalidity.

The only issue therefore is whether the 'O' level certificate that the 2<sup>nd</sup> respondent presented to Kampala University is/was valid for purposes of obtaining the University certificate.

It cannot be in dispute that Part 111 of **the University and other Tertiary Institutions (minimum entry requirements for admission to Universities or other Tertiary Institutions Regulations)** provides that for one to pursue a certificate course they must have scored at least three credits at the 'O'-level. Similarly not in dispute is the fact that the 2<sup>nd</sup> respondent scored only one credit at his 'O' level, but that he was admitted to a certificate course at Kampala University on the basis of that 'O' level certificate. He obtained a Diploma and finally a Degree which he presented for his nomination in the recent elections.

There can be no doubt that the certificate was obtained in contravention of the law and is therefore invalid. It is the law (**GOLE and MUYANJA (supra)**) that since that certificate was invalid (by operation of the Law in this case), it could not form the basis for the issuance of valid documents. I therefore find that the certificate he obtained on the basis of the one-credit 'O'-level certificate and all subsequent documents are invalid.

That the 2<sup>nd</sup> respondent may have successfully pursued the course does not smoothen the rough edges off the Law or put him outside its confines. It does not retrospectively cloth the 'O'-level certificate with legality. A contrary finding would tantamount to allowing the opening of an illegal window for admission to a certificate course and rendering the Law useless, a sure way of promoting impunity.

All factors considered, I find that by using the impugned 'O'- level certificate to obtain the certificate in Social Work and Social Administration and all the subsequent qualifications stemming from it, the 2<sup>nd</sup> respondent flaunted the Law. The certificate in Social Work and Social Administration and subsequent qualifications were illegally obtained and are therefore invalid. I find that at the time of his nomination and election the 2<sup>nd</sup> respondent did not possess the

minimum academic qualifications of Advanced Level or its equivalent for being a Member of Parliament.

**3. Whether by failing to restrain the 2<sup>nd</sup> respondent and by allowing him to be nominated without proof of attainment of the minimum academic requirements the 1<sup>st</sup> respondent failed to comply with the provisions of the Parliamentary Elections Act, the Electoral Commission Act, and the principles governing elections.**

In his affidavit in support of the petition the petitioner averred that the 1<sup>st</sup> respondent compromised the principle of impartiality and transparency when it failed to restrain the 2<sup>nd</sup> respondent from carrying out the illegal activities complained of during the campaigns and allowed him to be nominated without the minimum formal education of 'A' - level or its equivalent.

The 1<sup>st</sup> respondent's answers were that;

- It exhibited the highest degree of impartiality and transparency between the candidates.
- The election was conducted in accordance with the provisions of the Constitution, the Electoral Commission Act, the Parliamentary Elections Act and other Laws.
- The 2<sup>nd</sup> respondent presented higher academic qualifications than the minimum required by the Law.
- It did not have any knowledge of the allegations of illegal practices or offences made against the 2<sup>nd</sup> respondent.

The commission relied on the affidavit of the Returning Officer one **Baguma Rogers Daniel** who deposed to the above facts.

I note that the petitioner did not substantiate some of the allegations against the 1<sup>st</sup> respondent. There is no evidence for example that the 1<sup>st</sup> respondent was aware that the 2<sup>nd</sup> respondent offered, gave or caused to be given to registered voters iron sheets and money and it failed to restrain him.

There is evidence however that the Commission was aware that he did not resign his job before he was nominated. This is evidence from **Mugambe Pascal** who said that among the documents he was given upon request to the Electoral Commission there was no evidence that the 2<sup>nd</sup>

respondent had resigned his job. Since the 2<sup>nd</sup> respondent was required before nomination to submit evidence of his resignation to the commission which he did not yet was allowed to participate in the elections, the 1<sup>st</sup> respondent must be taken to have been aware of the fact that he did not resign the job.

Mindful of the fact that the petitioner bears the burden of proof, I find that he failed to discharge the burden with regard to the complaint over the 2<sup>nd</sup> respondent's offences of bribery. He however proved that the 1<sup>st</sup> respondent failed to restrain the 2<sup>nd</sup> respondent from not complying with the requirement to resign his job before nominations and elections.

On the issue of the 2<sup>nd</sup> respondent's minimum academic requirements, the 1<sup>st</sup> respondent said that the 2<sup>nd</sup> respondent presented higher academic qualifications than the minimum required by the Law. There is no indication that the commission was legally bound to investigate how he attained those qualifications. There is therefore no basis for an adverse finding in this regard as well. I answer this issue in the negative.

#### **4. Whether the non-compliance, if any affected the results in a substantial manner.**

I note that in addition to the electoral offences and illegal practices that have been found to have been committed there were major commissions and omissions such as the fact that the 2<sup>nd</sup> respondent did not have the minimum qualifications to stand for the office of Member of Parliament. It is therefore not necessary to consider the qualitative and quantitative effect of the illegal practices on the election result.

The petitioner has proved to the satisfaction of the court that;

- **the 2<sup>nd</sup> respondent personally or by his agents with his knowledge, consent and/or approval committed election offences and indulged in illegal practices when;**
  - *He offered, gave or caused to be given to registered voters iron sheets contrary to section 68(1) of the Parliamentary Elections Act.*
  - *Before and during the election, with intent to directly and/or indirectly influence the voters to vote for him, he offered, gave or caused to be given to*



*registered voters money contrary to section 68(1) of the Parliamentary Elections Act.*

➤ *He did not resign his position as Resident District Commissioner of Lwengo District before participating in the NRM primaries as well as the election in issue.*

- **the 2<sup>nd</sup> respondent did not possess the minimum academic qualifications of Advanced Level or its equivalent for being a Member of Parliament.**

The petition therefore succeeds against the 2<sup>nd</sup> respondent. The complaint that the 1<sup>st</sup> respondent failed to restrain the 2<sup>nd</sup> respondent and allowed him to be nominated without proof of attainment of the minimum academic requirements, and that it failed to comply with the provisions of the Parliamentary Elections Act, the Electoral Commission Act, and the principles governing elections succeeds only to the extent that the 1<sup>st</sup> respondent failed to restrain the 2<sup>nd</sup> respondent from being nominated before he resigned his job. The rest of the complaint however fails for lack of evidence.

**The court makes the following orders;**

- ❖ The election of the 2<sup>nd</sup> respondent as Member of Parliament Kakuuto County, Rakai District is annulled.
- ❖ The Parliamentary seat for Kakuuto County, Rakai District is hereby declared vacant.
- ❖ As between the petitioner and the 1<sup>st</sup> respondent each will bear their own costs.
- ❖ As between the petitioner and the 2<sup>nd</sup> respondent, costs to the petitioner.

**Margaret Tibulya.**

**Judge.**

**4<sup>th</sup> July 2016**