

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
ELECTION PETITION NO. 009 OF 2016

MPUUGA DAVID.....PETITIONER

VERSUS

- 1. NINSIIMA BOAZ KASIRABO.....1st RESPONDENT**
- 2. THE ELECTORAL COMMISSION.....2nd RESPONDENT**

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

JUDGMENT

The petitioner brought this petition for a cancelation of election results and orders that;

- There be a recount in court of the ballots for Dyango, Kizinga, Nkundi full gospel, Kabashambo, Rwambajjo and Kobukurura polling stations.
- The first respondent was not validly elected as Member of Parliament for Kooki County.
- The results of Dyango, Kizinga, Nkundi full gospel, Kabashambo, Rwambajjo, Kobukurura and, Rusaana polling stations be cancelled/nullified and/or set aside.
- The petitioner be declared as the validly elected winner of the said election.
- In the alternative the said election be annulled and set aside and a new election be conducted.

The back ground to the case is that on the 18th/February/2016, elections were held and the respondent was returned, declared and published by the first respondent as the validly elected candidate. It is alleged that the election was not conducted in accordance and in compliance with the electoral laws of Uganda (**the Constitution and the Parliamentary Elections Act**). Further that the non-compliance affected the results in a substantial manner.

The particulars of the non-compliance;

- the second respondent allowed stick and gun wielding men to be present at various stations including; Dyago, Kizinga, Nkundi full gospel church, Kabashambo, Rwambajjo, Kobukurura, Rusaana, Nyanja Catholic church, Kijojo Full Gospel Church, Kezekia, Kibaale Primary school, Kibaale Secondary School, Kanseka, Kiziba Primary School, Mweruka Primary school, Magabirano playground, Rwakakala, Kalwai, Kyamugongo, Ndagga, Lukerere and Kitokota polling stations. They intimidated voters and the petitioner's agents and supporters which affected the results of the elections.
- There was ballot stuffing at various polling stations such as Dyango, Kizinga, Nkundi full gospel, Kabashambo, Rwambajjo and Kobukurura by the second respondent's agents and supporters of the first respondent together with those of his party the National Resistance Movement (**NRM**). The same was done in favor of the first respondent.
- There was multiple voting in Dyango and Kamate by agents and supporters of the first respondent undeterred by the second respondent's agents who were manning the respective polling stations.
- The second respondent allowed voting to continue beyond 4:00pm without formally or otherwise announcing any extension of time for people who were not in the line by the cut-off time of 4:00pm. The same was done to favor the first respondent.
- There was a presence of gun and stick wielding men at several polling stations who would get ballots from the presiding officers, tick and stuff them in the ballot boxes in favor of the first respondent. This greatly compromised the freedom of the voters at the polling stations. It was done with the knowledge of the polling officials in contravention of the electoral laws.
- The polling officials allowed multiple voting by the gun and stick wielding men who moved from one polling station to another. They did so in favor of the first respondent despite objection from the petitioner's polling agents and supporters.
- The second respondent compromised the principle of impartiality and transparency when it failed to restrain the first respondent from carrying out illegal activities during the election exercise but instead supported the vice.

- The 2nd respondent allowed people who did not appear on the voters register to vote and did not use Biometric data machines during the process with the intention and effect of defeating the petitioner.

Illegalities were committed during the election by the first respondent and other people with his knowledge, consent and or approval. The petitioner informed the second respondent of the same but it ignored them.

The illegalities

- ✚ *At Kabashambo and Rwambajo polling stations one **Turyahabwe Fred** (the parish supervisor employed by the second respondent) and armed men were allowed to tick more than one ballot paper and stuff them in the ballot box there by compromising the impartiality as well as contravening the law.*
- ✚ *At the said places voter turn-up was stated by the second respondent to have been **100%** despite prior deaths of voters as well as others who never voted on that day.*
- ✚ *The results of Kobukurura polling station were canceled because the number of voters exceeded the registered number of voters by two votes, a sign of multiple voting and ballot stuffing.*
- ✚ *Some ballots which had not been issued by the end of the voting exercise were ticked by army men and stuffed into the boxes at Kabashambo, Rwambajo and Kobukurura.*
- ✚ *At Dyango, Kamate, Rwambajjo, Kabashambo, Nkundi Full Gospel Church and Kizinga polling stations, a **Declaration of Results** form with unknown bar code was used and when the machine rejected it, the results were entered into the computer manually which facilitated rigging by the second respondent's agents in favor of the first respondent.*
- ✚ *At the polling stations of Kabashambo, Kobukurura, Kamate, Dyango, Kizinga, Kanseka, Magabirano playground, Nyanja Catholic Church, Kalwai, Rusana church of Uganda and Ssanje Primary school, the presiding officer allowed partisan persons to assist more than ten persons to vote contrary to the law. They openly campaign for and voted the NRM candidate, the first respondent.*

✚ *The first respondent directly and substantially benefitted from the non-compliance with the electoral laws and illegalities. The said non-compliance affected the elections in a substantial manner.*

The Petitioner (Mpuuga David) testified that he voted from Katuntu polling station but through the third parties he knew what happened in Kibaale, Kiziba, and other polling stations he named in his affidavit.

He knows that his polling agents were arrested, and there were armed men at Kyarurangira and Kiziba polling stations who were commanding voters to vote the **bus**. Some people ticked ballot papers and stuffed them in the boxes, and at Kabashambo polling station one **Tukwasibwe Ronalt** stuffed the ballot box with pre-ticked votes. His agents did not sign the Declaration of Result form.

Afisa Nalubega, Katembeka Godfrey, Kato John Wilson, Rushongora Eliphaz, Katungeza John, Byaruhanga Wilson, Kobusheshe Ednance, Barusha, Kyokunda Jovuret, Rwitaraka John, and Mbabazi Mary Idah all died before the elections as per death certificates on record. Natukunda Macline a registered voter had been admitted at Rakai Hospital and did not vote yet the records show that there was 100% voter turn-up.

At Rwambajo polling station his agents were Kawesi James and Sekawunde Ali. Kaweesi Isaac was not his agent as indicted in the DR Form.

First respondent's (**NINSIIMA BOAZ KASIRABO**) answer to the petition supported by his affidavit was that he won by a margin of 896 votes and the poll results was not soaked in illegality or non-compliance with electoral laws. He did not orchestrate any electoral malpractice personally or through authorized agents and is not aware of any dead persons who had been registered persons by the time of polling.

He is not aware of any stick or gun wielding men that were present at the polling stations at his instance or that of the second respondent or at all and he did not employ any of his agents to indulge in ballot stuffing. There was no multiple voting.

On the complaint that voting went on after 4:00pm, it was argued that the second respondent (**the Electoral Commission**) is permitted by law to carry on with voting/polling well past 4:00pm under circumstances permitted by law and that no disabling circumstances are pleaded by the petitioner in this case.

He maintained that no person or group of persons who were not on the voters roll were allowed to vote. And it is not true that the results of Kabukurura polling station were canceled because they were in excess of the actually results by two votes.

He said that there is no proof of malpractice at Kabashambo, Rwambajo and Kobukurura polling stations, and no single Declaration of Result Form can apply to and be used in respect of more than one polling station as the petitioner alleges in respect of Kizinga, Nkundi full gospel church, Kabashambo, Rwambajo, Kamate and Dyango pollinig stations. Finally, no particular persons were facilitated to vote contrary to due process at Kabashambo, Kobukurura, Kamate, Dyango, Kanseka, Magabirano playground, Nyanja Catholic Church, Kalwai, Rusana church of Uganda and Ssanje primary school polling stations.

The second Respondent's (**the Electoral Commission**) answer was that the first respondent was lawfully returned as winner of the free, fair and transparent election after he obtained a majority of the valid votes cast, (**12,672 votes**). Relying on the affidavit in support sworn by Mr. **Daniel Baguma** the Rakai District Registrar the second respondent said that it is not true that;

- voters in Kooki County were denied a right to vote or that there was multiple voting in the constituency,
- that the second respondent allowed voting to go on past 4:00pm save for voters who were already in the line,
- that there was ballot stuffing at various polling stations. The voter's registers for each polling station were strictly used to identify the eligible voters,
- that the Biometric Voter Verification Kits were deliberately not used during the voting exercise,
- that second respondent portrayed bias and was biased in favor of the first respondent. The election was held in free and fair and transparent manner,

- that the first respondent and his agents had access to the ballot papers to facilitate ballot stuffing and that he and his agents **conversed** for votes and distributed his posters on the voting day,
- that the first respondent with his agents allowed stick and gun wielding men to be present at the various polling stations and intimidated voters, and that this affected the elections in a substantial manner.

It was maintained that there was no report that the first respondent personally or through any other persons committed any illegal acts and/or illegality under the Parliamentary Elections Act and other Laws. There was no illegal transfer of ballot papers.

Finally that the election was conducted in compliance with the provisions and principles laid down in the Constitution, the Parliamentary Elections Act, The Electoral Commission Act and all other relevant laws. There were no election malpractices and irregularities and if there was any non-compliance it did not affect the result of the election in a substantial manner.

The issues as framed by the parties are;

1. Whether there was non-compliance with the Electoral Laws for the election for the Member of Parliament for Kooki county constituency.
2. Whether such non-compliance affected the results in a substantial manner.
3. What are the remedies available for the parties?

BURDEN AND STANDARD OF PROOF.

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 the 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.

WHETHER THERE WAS NON-COMPLIANCE WITH THE ELECTORAL LAWS DURING THESE ELECTIONS.

The specific acts of non-compliance that were complained of were;

- I. Intimidation of voters by stick and gun wielding men at various polling stations,
- II. Multiple voting and ballot stuffing at various polling stations,
- III. Intimidation and chasing away of the petitioners polling agents and forcing others to sign Declaration of Result Forms,
- IV. Falsification of Declaration of Result Forms at various polling stations,
- V. Non-verification of voter details from the voter register and not using the Biometric Voter Data Verification Machine at various polling stations, and
- VI. Wrong tallying or non-tallying of figures at some polling stations.

Intimidation of voters by stick and gun wielding men at various polling stations, and intimidation and chasing away of the petitioners polling agents and forcing others to sign Declaration of Result Forms.

The main evidence in this regard was of **PW9 (Hamidu Tumwine)** a boda boda rider at Kibale stage in Rakai who said that on the voting day at 3:00pm one **Bukenya Majayu (Dw 2)** with three men two of whom were in military uniform hired him to transport them to various places. One of the soldiers had a big gun while the other had a pistol and bullet chains. One of the men who was in civilian clothes had a stick but was being addressed by his colleagues as '**Captain**'.

His customers were going from Polling station to Polling station within Kiziba and Kyarurangira sub-counties. The armed men would go to the presiding officers, take them aside and engage in conversations for some minutes. There after the army officer would announce in the presence of

the officials of the second respondent and the voters at the stations that “**the president has advised that the people should vote until 8:00pm**”. At **Kabukurura Polling Station**, the army officer with a big gun in a harsh strong voice commanded everybody to sit down while

threatening to shoot and kill anybody who moved or said a word. The situation was terrifying and traumatizing. Everybody feared and sat down. The armed man went to the presiding officer and instructed him to stop checking and verifying voter details and biometric machine in the voter. He said that people should vote as they wish. He grabbed the ballot books from the presiding officer’s table and said that he had come to vote for movement only. He called all the polling assistants and presiding officers and ordered them to start ticking ballots for the presidential and all other NRM candidates. When the presiding officer refused, the army man instructed **Bukenya (Dw2)** and the other two officers to tick the ballot papers, and each ticked two booklets.

The ballot papers ticked by **Bukenya** were poured in the ballot box for Member of Parliament **Kooki** constituency.

From **Kobukurura**, they went to **Dyango**, **Kamate**, **Kabashambo**, **Rwabanjo**, **Nkundi Full Gospel Church**, **Kizinga** and **Kyarurangira Catholic Church** Polling Stations. At all these polling stations, the army men instructed the second respondent’s officials to let the people vote up to 8:00pm and not to verify their details and that voters should only vote for NRM candidates.

DW2 (Bukenya Charles Alias Majayu) said that he knows **Tumwine Hamidu (PW9)** but that his affidavit contains false accusations. He testified that he did not come in contact with him on polling day before or after 3:00pm. He was sick and at his home. He did not go to any polling station as alleged by **Tumwine** and did not get in contact with any army man armed or unarmed or in uniform. In cross examination he said that he did not vote since he had flu and headache. He was neither a supporter of **Kasirabo Ninsiima Boaz** nor his campaign agent. He never hired **Pw9** as he alleged.

The **1st respondent** testified that **Bukenya Majayu (DW2)** was his supporter but not his agent and that he did not see him on 18th February 2016.

I have considered both the petitioners and the defence evidence and note that Tumwine and Bukenya are known to each other. This removes any possibility of mistaken identity, especially since they interacted during day time. On the face of it, there is no reason for **Tumwine** making a false allegation against Bukenya. I found **Tumwine Hamidu (Pw9)** to have been an independent

witness, being that he was not an agent of the petitioner and did not participate in the elections beyond being a voter. He therefore had no reason to bring such an allegation against Dw2 who in fact gave him business by hiring him to transport him and his colleagues as Tumwine testified. He struck me as a witness of truth. I did not believe Bukenya's denial being as it is that Tumwine properly identified him, thereby destroying the alibi he raised.

In addition while the respondent said that Dw2 is his supporter, Dw2 denies this. This means that either of the two is not being truthful, and there is basis for believing that the liar is Dw2. The 1st respondent would have no reason to believe and even testify that he is his supporter unless he said so or acted in a manner that made him believe so. On the other hand Dw2 has motive for distancing himself from the respondent at this time since that would make his denial of the events testified to by Pw9 credible.

I did not believe his denial of both the respondent's evidence that he is his supporter, and most importantly, of the Pw9's evidence that he hired him to transport him from Polling station to Polling station with armed men.

Pw9 (**Tumwine's**) evidence was lent credence by other witnesses who were at the various polling stations. PW3 (**Nansamba Florence**) and PW15 (**Bukenya Lubuuka Wilson**) polling agents of the petitioner at **Kamate** Polling Station testified that 5 (five) men, one of whom was in army uniform and armed with a gun and another dressed in army uniform with a pistol and others in plain clothes approached the presiding officer and talked to him for about 5 (five) minutes. After the discussion, the presiding officer talked to the polling assistants as the armed men positioned themselves next to the ballot boxes and basins where the voters were voting from.

The polling assistants and presiding officers told voters to vote only **the bus**. She was denied access to the voters register to cross check the voter details.

PW4 (Nakintu Sarah) the petitioner's Polling agent of at **Kibale S.S.S** Polling Station said that she and **PW18 (Senjuba Benon)** a polling agent for the petitioner at **Kizinga polling station** were arrested and detained on night of the 17th/February/2016 while going to Kibale town where she was going to be a Polling Agent. The armed men who stopped them searched their car,

registration no. UAB 781R. The following day those men acted as the polling agents of the first respondent at **Kibale S.S.S** Polling Station where she was an agent and others came to the Polling Station with guns telling people to vote for **Ninsiima Boaz Kasirabo** (the first respondent). These men stood at the basin where voters were voting from and intimidated them into voting for NRM candidates only.

PW5 (Ssenkasi Ibrahim) and **PW14 (Lukwata Gerald)** the petitioners Polling Agents at **Dyango primary school** Polling Station said that while voting was going on at around 11:00am, unidentified people came with guns and sticks to the Polling Station in an **Ipsum** car whose number plates had been covered with posters of President Museveni and told the people to vote for **Ninsiima Boaz Kasiraba (the first respondent)** and NRM candidates only.

By 4:38 pm the people in the line had finished voting. Other armed men came and told whoever was still around to vote again without using the biometric data machine and the voters register. The petitioner's supporters protested but were shut up by the armed men. Vote counting went on until 10:30pm in the presence of armed men who were monitoring the process. The armed men told the petitioner's agents that they would be kidnapped and disappear for good if they continue protesting and refuse to sign the Declaration of Result forms. **PW5** signed the D.R Form out of fear and was chased by the armed men thereafter. The men who caused fear were in UPDF uniform. **PW10 (Akankwasa Julius)** a registered voter from **Dyango Primary School** also testified to the presence of the armed men who threatened to shoot and beat everyone who was at the station.

PW16 (Abaho Julius) a polling supervisor for the petitioner in Dyango and Rwambajo parishes also testified to the presence of the armed men who were directing voters to vote for NRM candidates at Kamate, Kabukurura, Dyango, and Kabashambo, and Rwambajo Polling Stations.

PW6 (Kawesi Isaac) was the petitioner's agent at **Kabashambo Polling Station**. He testified

that the second respondent's parish supervisor confiscated the petitioner's agents' appointment letters and gave them to the presiding office. At 3:30pm, armed came and confiscated the ballot papers from the polling officials and took them behind the school building. He saw them, particularly one Tahirwa ticking ballot papers after which they put those papers into the ballot boxes.

He confronted **Tahirwa** about what he had done and he said he was following orders from above. **Tahirwa** told the crime preventer to arrest him. A scuffle ensued and he was threatened with death if he did not leave the station.

He witnessed a similar incident at **Rwambajo** Polling Station where **Pw7 (Ssekawunde Ali Kajerero)** and **PW8 (Ssebandeke Swaibu a.k.a Dona)** were the petitioner's Polling agents. They all said that one **Serugo Yasin** and **Kanyete** had pre-ticked ballot papers. An armed man ordered the people to sit down and told the presiding officer, **Serugo** and **Kanyete** to tick all the remaining ballot papers in favor of all NRM candidates including the first respondent.

PW11 (Kawalya Wilson), a polling agent of the petitioner at **Kabukurura Polling Station** testified about four men one of whom had a gun and others in army uniform who came to the Polling Station and said that voting had been extended and should continue. They cocked their guns and ordered all people around to go back in the line and vote again. They intimidated them that they were trained to kill. They ordered the polling agents to sign the Declaration Forms.

PW12 (Byamukama Kenneth) the petitioner's parish supervisor for **Rwambajo parish** testified about a plain clothed armed man who came running from behind the building with pre-ticked ballot papers and stuffed them in the ballot boxes. The armed man chased him from the polling station when he tried to object to the ballot stuffing.

PW13 (Mugula Francis) and **PW17 (Nsereko John Fred)**, the petitioner's agents at **Nkundi Full Gospel Church** Polling Station testified about the presence of an unidentified man with a big gun and another with a pistol at the Polling Station. The man with the big gun told the presiding officer and the polling assistant and the people present that all un-ticked ballot papers had to be ticked until they all get finished. He also said that all NRM candidates had to win. The presiding officer allowed anybody who came to vote without checking the voters register or

using the biometric voter's data verification machine. After the counting, the presiding officer filled in votes as instructed by the armed man.

On the other hand the defense evidence of **DW3 (Kasana Paul)**, a presiding officer at **Kamate Full Gospel Church polling station**, **DW4 (Twikirize Jovita)** the 1st Respondent's agent at **Dyango Primary School Polling Station**, **DW5 (Ndyabahika Steven)** the presiding officer at

Kibaale S.S.S Polling Station, **DW6 (Kajuna Alex)** a Polling Agent for the first respondent at **Kibale S.S.S**, **DW7 (Mutatiina Meshach)** a presiding officer for Rusana church of Uganda polling station, **DW8 (Rugumayo Jackson a.k.a Kadozi)** the first respondent's agent at Kazinga polling station, **DW9 (Tukwasibwe Ronart)**, the Presiding officer for Kabashambo polling station, **PW10 (Asiimwe Justus)**, the presiding officer for Rwambajo primary school polling station and the District Registrar Rakia District **DW11 (Baguma Daniel)**, all testified that what all the Petitioners witnesses deposed and testified to, that there were armed men who intimidated voters and the petitioner's agents and chased them from the named Polling Stations were lies.

I however noted that all defense witnesses put up plain denials as opposed to the detailed accounts of the petitioners witness about what took place at each of the named polling stations.

I should mention that I generally found it very difficult to believe the respondents witnesses given that there was evidence of outright dishonesty touching on key aspects of the conduct of this election. One such aspect came out in **DW9 (Tukwasibwe Ronart)**'s evidence. He was a Presiding officer for Kabashambo Polling Station. To his affidavit he attached a D.R form (**Annexure AB**) which bears a signature attributed to an agent for the petitioner. The petitioner's evidence is that his agent did not sign any DR form at that station. He evidenced this by the unsigned DR Form- **Annexure J** to his affidavit.

Now, but for the signature in **annexture AB** and the lack of it in **annexture J**, both documents bear the same information, including the signature of the presiding officer. Being that the two documents share the same origin, their existence in that state is a harsh statement on the honesty or dishonesty of the respondents being as it seems that it points to outright forgery of the petitioner's agent's signature with a view to clothing the whole process with credibility. The

magnitude of the illegalities and the fact that they were blatantly committed and in an organized manner as testified to by the petitioner's witnesses is such that both respondents were aware of what was going. It is my view and finding that the people who committed the illegalities did so with the full knowledge, consent and or approval of both respondents. Moreover there is evidence that the petitioner through some of his agents informed the second respondent of the same but it ignored them.

Mindful of the legal requirements as to the burden and standard of proof I am satisfied to sufficient levels that there was intimidation of voters by stick and gun wielding men at the named Polling Stations.

Multiple voting and ballot stuffing at various polling stations.

In one instance, the District Registrar Rakia District **DW11 (Baguma Daniel)** in cross-examination admitted that according to the tally sheets for **Kobukurura polling station**, the number of votes cast exceeded the number of registered voters according to the additions. This in my view is clear evidence of ballot stuffing.

For the petitioner **PW9 (Hamidu Tumwine)** testified about the multiple voting at **Dyango, Kamate, Kabashambo, Rwabanjo, Nkundi Full Gospel Church, Kizinga and Kyarurangira Catholic Church Polling Stations.**

PW4 (Nakintu Sarah) said that she witnessed it at **Kibale S.S.S Polling Station** while **PW18 (Senjuba Benon)** said that they saw it at **Kizinga polling station.**

PW5 (Ssenkasi Ibrahim), PW10 (Akankwasa Julius),PW14 (Lukwata Gerald) testified about it with regard to **Dyango primary school** Polling Station.

PW16 (Abaho Julius) testified about the same in **Dyango** and **Rwambajo parishes** at **Kamate, Kabukurura, Dyango, Kabashambo, and Rwambajo Polling Stations** in particular, while **PW11 (Kawalya Wilson)** testified about it in relation to **Kabukurura** Polling Station in particular. **PW6 (Kawesi Isaac)** also testified about the same with regard to **Kabashambo Polling Station** while **Pw7 (Ssekawunde Ali Kajerero)** and **PW8 (Ssebandeke Swaibu a.k.a**

Dona) and **PW12 (Byamukama Kenneth)** gave evidence about it in relation to **Rwambajo** Polling Station.

PW13 (Mugula Francis) and **PW17 (Nsereko John Fred)**, said that they witnessed it at **Nkundi Full Gospel Church** Polling Station.

These witnesses gave evidence in a steadfast manner without prevaricating and impressed me as witnesses of truth. The defense witnesses raised plain denials which I have rejected for lack of credibility. Again on the basis of the evidence on record I find that there was multiple voting and ballot stuffing at the various above named polling stations.

Falsification of Declaration of Result Forms at various polling stations.

DW9 (Tukwasibwe Ronart)'s evidence about a D.R form (**Annexure AB**) which bears a signature attributed to an agent for the petitioner when no such agent signed the form is a classic example of falsification of a DR Form.

Other than that evidence there is that of **PW5 (Senkasi Ibrahim)** who testified that the armed men told the petitioner's agents that they would be kidnapped and disappear for good if they continue protesting and refuse to sign the Declaration of Result forms and that he signed the DR Form out of fear.

PW11- Kawalya Wilson also said that at Kabukurura polling station armed men ticked the unused ballot papers in favor of the NRM candidates and stuffed them in the ballot boxes and then ordered the polling agents to sign the Declaration Forms.

PW15-Bukenya Lubuka Wilson a Polling agent of the petitioner at Kamate full gospel church polling station testified that he signed the DR form but what is in it is not the true outcome.

PW17-Nsereko John Fred said that armed men filled Declaration Forms and ordered him to sign them. The results in the forms did not correspond with the votes that were cast and the number of ballot papers issued. He signed the DR form out of fear.

PW18-Senjuba Benon said that at Kizinga polling station the returning officer added 25 votes to Boaz Ninsiima Kasirabo which he disagreed with, and that in the DR form, there were two votes over and above what were issued.

The common theme in the above evidence is that the witnesses were forced to sign DR Forms. The defence again raised plain denials, but as I have pointed out, they are not credible, especially since there is at least an instance of obvious falsification of a DR form. There is evidence of a deliberate ploy to clothe the process with credibility. I reject the respondents' evidence and find that there was falsification of Declaration of Result Forms at above named polling stations.

Non-verification of voter details from the voter register and not using the Biometric Voter Data Verification Machine at various polling stations.

For the petitioner **PW9 (Hamidu Tumwine)** testified about the multiple voting and non-verification of voter details from the voter register and not using the biometric data verification machine at **Dyango, Kamate, Kabashambo, Rwabanjo, Nkundi Full Gospel Church, Kizinga and Kyarurangira Catholic Church Polling Stations.**

PW4 (Nakintu Sarah) said that she witnessed it at **Kibale S.S.S Polling Station** while **PW18 (Senjuba Benon)** said that they saw it at **Kizinga polling station.**

PW5 (Ssenkasi Ibrahim), PW10 (Akankwasa Julius), PW14 (Lukwata Gerald) testified about it with regard to **Dyango primary school Polling Station.**

PW16 (Abaho Julius) testified about the same in **Dyango and Rwambajo parishes** at **Kamate, Kabukurura, Dyango, Kabashambo, and Rwambajo Polling Stations** in particular, while **PW11 (Kawalya Wilson)** testified about it in relation to **Kabukurura Polling Station** in particular.

PW6 (Kawesi Isaac) also testified about the same with regard to **Kabashambo Polling Station** while **PW7 (Ssekawunde Ali Kajerero)** and **PW8 (Ssebandeke Swaibu a.k.a Dona)** and **PW12 (Byamukama Kenneth)** gave evidence about it in relation to **Rwambajo Polling Station.**

PW13 (Mugula Francis) and **PW17 (Nsereko John Fred)**, said that they witnessed it at **Nkundi Full Gospel Church Polling Station.**

Again the defence denied the allegations. The petitioner's witnesses came across as witnesses of truth and I had no reason to doubt them. I reject the denials and on the basis of the petitioner's evidence I find that there was no verification of voter details from the voter register. The Biometric Voter Data Verification Machine was not used at various polling stations as well and all this to facilitate ballot rigging.

Wrong tallying or non-tallying of figures at some polling stations.

On this complaint an example was given by none other than the District Registrar himself, Mr. Daniel Baguma (DW11). His evidence was that according to the tally sheets, there are no results

for Dyango polling station, and that results were not entered in the system for unknown reason. Further that there was a problem with adding up. The results could not be detected by the system and for **Kobukurura polling station**, the number of votes cast exceeded the number of registered voters according to the additions.

For **Nkundi polling station** the computation was as below;

Total of valid votes.....503

Invalid votes.....08

Total Cast.....511

Ballot papers issued520

Ballot papers issued (520) –Total Cast (511) = 9 (unused)

The 9 (nine) would be the unused ballot papers **but in the DR form** the unused is indicated as 91 votes.

Other than that, for the petitioner it was demonstrated that the report that there was 100% voter turn up Rwambajo polling station was inaccurate since at least **PW2 (Natukunda Afisa Mackline)** did not vote. **Pw7 Ssekawunde Ali** and **Pw 8 Sebandeke Swaib** aka **Dona** also testified that **Hafisa Nalubega**, **Kato John Wilson** aka **George**, **Rushongora Yohana**, **Tibanyedera** aka **Eliphaz**, **Katembeka Yosamu** aka **Godfrey** aka **Godi** all died before the elections so the voter turn up could not have been 100% as was claimed by the respondents.

PW13- Mugula Francis and **PW17-Nsereko John Fred** agents of the petitioner at **Nkundi Full gospel church polling station** said that the presiding officer allowed anybody who came to vote without checking the voters register or using the biometric voter's data verification machine. After the counting, the presiding officer filled in votes as instructed by the armed man thus presenting un-tallied results. There was discrepancy in the votes issued and cast and between the number of voters and those registered. The number of votes ticked is higher than the voters who turned up.

PW15-Bukenya Lubuka Wilson also testified about the untallied results at **Kamate full gospel church** polling station. He said that the presiding officer allowed anybody who came to vote without checking the voters register or using the biometric voter's data verification machine. After the counting, the presiding officer filled in votes as instructed by the armed man thus presenting un-tallied results.

PW18-Senjuba Benon testifying about the events at Kizinga polling station said that the election officials added an extra 25 votes to the tallied votes in favor of the first respondent.

To crown it all, the 1st respondent testified that the results from some stations, eg, Kabukurura where there was excess of registered voters by 2 votes was nullified. His evidence shows that there were problems in tallying of the results. Beyond that the defence again merely denied the allegations. The above witnesses gave credible evidence about what they saw. They were not discredited in cross examination and came across as witnesses of truth. I believed them and rejected the defenses denials.

I find that there was wrong tallying or non-tallying of figures at the named polling stations. All the acts and omissions in this case are illegal practices and election offences under Sections 68 to 83 of the Parliamentary Elections Act. The issue as to whether there was non-compliance with the electoral laws during these elections must therefore be answered in the affirmative since there was;

- Intimidation of voters by stick and gun wielding men at various polling stations,

- Multiple voting and ballot stuffing at various polling stations,
- Intimidation and chasing away of the petitioners polling agents and forcing others to sign Declaration of Result Forms,
- Falsification of Declaration of Result Forms at various polling stations,
- Non-verification of voter details from the voter register and not using the Biometric Voter Data Verification Machine at various polling stations, and
- Wrong tallying or non-tallying of figures at some polling stations, contrary to the Law.

WHETHER THE NON-COMPLIANCE AFFECTED THE RESULTS IN A SUBSTANTIAL MANNER.

Tales have been told of gun wielding men holding voters, polling agents and even polling officials at ransom. Going by the evidence on record, the offenders seemed undeterred, and behaved as though they were a Law unto themselves. They acted with impunity, massively intimidating voters and polling agents, followed by equally massive stuffing of the ballot boxes with pre-ticked votes. In this case there is no need for applying either the qualitatively and quantitatively test, for there was no election to talk about in the first place. Each of the illegalities in this case ran counter to the very idea of an election. There can therefore be no doubt that all the illegalities taken together, affected the results in substantial manner.

WHAT ARE THE REMEDIES AVAILABLE FOR THE PARTIES?

I have taken into account the magnitude of the illegalities and determined that it is not possible, on the basis of the results of the impugned process to determine who won the elections. The only reasonable option is to have a fresh start. I therefore declare that first respondent was not validly elected as Member of Parliament for Kooki County and hereby nullify and set aside the elections and order that fresh elections be conducted.

Costs to the petitioner.

Margaret Tibulya

Judge

26th July 2016.