

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
ELECTION PETITION NO. 008 OF 2016

KANANURA JOHN BOSCO.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL COMMISSION1ST RESPONDENT

KAGORO KIIZA ISIMBWA2ND RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Judgment

Introduction

This is an election petition instituted by one Kananura John Bosco against the Respondents. The Petitioner is a registered voter of Technical School in Lake Kabatoro Town Council and was contesting for the post of Chairperson LC3 Lake Kabatoro Town Council-Kasese District. Whereof the Petitioner prayed for a declaration that the 2nd Respondent was not validly elected as Chairperson LC3 Kabatoro Town Council; that the said Election be annulled and set aside; that the Petitioner be declared as a winner of Lake-Kabatoro Town Council; that in the alternative but without prejudice, a fresh election be conducted in the said Sub-county or a recount of votes be conducted; and the Respondents pay the costs for the Petition.

Background

On 9th March 2016, elections for Chairperson LC3 Lake-Kabatoro Town Council – Kasese District were held. Among the candidates were the Petitioner, 2nd Respondent and Arinaitwe N. Kagongo who stood for the position. The 2nd Respondent emerged winner while the Petitioner

came in second place and discontent with the results. The margin between the two candidates was of four votes. The 1st Respondent declared the 2nd Respondent winner of the election and he has since been gazetted and sworn in as LC3.

The Petitioner filed this petition in his capacity as a candidate who lost the election, challenging the manner in which the 1st Respondent conducted the election and alleging that the 2nd Respondent committed election offences either personally or through his agents with his knowledge and approval during the election.

The grounds upon which the petition is premised are set down, in the petition and explained in the affidavit in support. The Petitioner's main grounds are that the 2nd Respondent did not comply with the nomination procedures as required by the Local Governments Act to support his running in the election. The other grounds are that the 2nd Respondent committed illegal practices and engaged in electoral offences during election, and also that the 1st Respondent declared the Petitioner's valid votes invalid and announced the results in favor of the 2nd Respondent.

The 1st Respondent on the other hand prayed that the petition be struck out claiming that it lacked material facts, and that the accompanying affidavits were defective. Alternatively, the 1st Respondent denied all the allegations in the petition and maintained that the election was conducted in compliance with the electoral laws. That the nomination of all the candidates was lawfully done and the 1st Respondent did not receive any complaints from the Petitioner throughout the electoral process. That the election was conducted in a free, fair and transparent manner and that the final result of the election reflected the true will of the people.

In his defense, the 2nd Respondent contended that the election was conducted in compliance with the law and that he did not personally, or through his agents, with his knowledge and consent procure, provide or bribe voters with money, undue influence or threats to divert the supporters of the Petitioner into voting for him.

Counsel Ngaruye Ruhindi and Counsel Victor Busingye appeared for the Petitioner, Counsel Samuel Kiriaghe represented the 1st Respondent, and Counsel Immaculate Nshekanabo represented the 2nd Respondent.

For the determination of this petition, the parties agreed on a number of issues thus:

1. Whether or not the 2nd Respondent was validly nominated?
2. Whether or not there was non-compliance with the provisions of the Local Government's Act?
3. If so, whether the non-compliance affected the results of the election in a substantial manner?
4. Whether or not the 2nd Respondent committed any of the alleged illegal practices/ election offences pleaded in the petition personally or by his agents with his knowledge and consent or approval?
5. What remedies are available to the parties?

The burden and standard of proof

The Petitioner, who has come to Court to overturn the election results, bears the burden to prove his case. Odoki C.J. in the case of *Col (Rtd) Dr. Kiiza Besigye versus Yoweri Kaguta Museveni & Electoral Commission - S.C. Election Petition No 1 of 2001*, stated that standard of proof is; 'very very high just near beyond reasonable doubt'.

The learned C.J. equated the standard of proof in election petitions with that required to establish an allegation of fraud in a civil action; which is also much higher than in ordinary civil suits. Counsel for the Petitioner contended otherwise; arguing that the learned C.J.'s dictum in the 2001 *Col (Rtd) Dr. Kiiza Besigye* case (supra), on the standard of proof in election petitions is now exclusive to Presidential election petitions. His basis for contending so was that Parliament has relaxed and lowered the standard of proof in Parliamentary election petitions by the provision of **section 61(3)** of the Parliamentary Elections Act, 2005 which requires proof to be to the satisfaction of Court on a balance of probabilities.

Section 172 of the Local Government Act provides that for any issue not provided for, the Parliamentary Election Act in force shall apply to the election of LCs with such modifications.

Section 61(3) of the Parliamentary Elections Act therefore provides that in a petition of this nature, the burden of proof is cast on the Petitioner to prove the assertions to the satisfaction of

the court that the relevant laws were committed, and that they affected the results of the election in a substantive manner. Accordingly, the standard of proof is on a balance of probabilities but slightly higher though lower than beyond reasonable doubt; **Mukasa Anthony Harris v Dr. Bayiga Michael Lulume SCCA 18 of 2007; Matsiko Winfred Komuganyi v Babihuga Winnie Election Petition Appeal No 9 of 2009.**

Before going into the merit of the petition, counsel for the 1st Respondent had raised a preliminary objection. He submitted thus:

1. That the pleadings in the petition lacked material particulars; to which he submitted that **Order 6 Rule 3** of the Civil Procedure Rules SI 71-1 provides for the stating of the particulars in detail, in cases where the pleading party relies on misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary. He also referred to **Order 7 Rule 11(a)** of the Civil Procedure Rules SI 71-1 that a petition which does not disclose a reasonable cause of action is incurable and ought to be rejected; that failure to plead the particulars meant that the petition discloses no cause of action. He further argues that the accompanying affidavit is largely based on hearsay and relies on **Order 19 Rule 13(1)** Civil Procedure Rules that;

“Affidavits shall be confined to such facts as the deponent is of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.”

On referring to **rule 26** of the Parliamentary (Election Petition) Rules SI 141-2, the Petitioner, in his defense submitted that

“No proceedings upon a petition shall be defeated by any formal objections or by any miscarriage of any notice or any other document sent by the Registrar to any party to the petition.”

That a petition should not be defeated on such technical objections as election petitions are matters of great public importance. **Muriisa Nicholas V George Ruyondo: HCT 0010 of 2011.**

Note should be taken of the fact that all the Petitioners affidavits were based on hearsay. It is now settled law that in an election petition and this is peculiar to it, affidavits in support of and

accompanying the pleading, although they are depositions, form part of the pleading; hence it is permissible for them to rely on matters based on information. Any other affidavit falling outside this category must be subjected to the rule regarding depositions based on information; namely that save in interlocutory matters affidavit depositions that are based on information are not permissible; which is really the rule against hearsay evidence. Hence, the part of any affidavit on record that offends the rule against hearsay is expunged as per Odoki C.J. in the case of ***Col (Rtd) Kiizza Besigye vs Yoweri Museveni, Supreme Court Election Petition No 1 of 2001.***

This petition was accompanied by an affidavit sworn by the Petitioner himself. The affidavit explained as to why the petition had been filed. The allegations that are laid out in the petition are explained in the affidavit. This is enough to amount to a cause of action and the particulars that are required. The Respondents were able also to understand the action brought against them to which they answered accordingly. The parties to the petition also agreed on the issues to be solved on trial. Recalling the words of **Oder, JSC in the INTERFREIGHT FORWARDERS CASE** “*that issues are framed on the basis of the case made out from the pleadings of the parties.*” **Bakaluba Peter Mukasa v Nambooze Betty Bakireke Supreme Court Election Petition Appeal No. 4 of 2009.** This means that by the time of framing issues at the scheduling, both parties had understood the facts and the contents of the pleading. For that matter, this objection to the petition fails.

2. The 1st Respondent also objects to the affidavits sworn before the petition. That the petition was filed on the 6th of May 2016 while the affidavits of Kisughu John, Jagwe Joseph, Biira Jane, Moses Kandole, Namu Agnes and Kisembo Saidat are dated 4th May 2016. He further alleges that the petition plus the Petitioner’s own affidavit were filed on the 5th of May 2016.

Though the Petitioner did not directly address this in his reply, I would find in the favor of the Petitioner given the importance of the matter and parties are free to date before but it becomes effective upon filing. Filing a petition requires a lot of preparation which is all based on affidavits. It only makes sense that the Petitioner had to prepare affidavits on whose basis he would bring a petition. Therefore, the said affidavits shall be considered while assessing the evidence.

3. (a) He also alleges that some of the Petitioner's affidavits offend the law – the Illiterates Protection Act, cap 78 and the Advocates Act, cap 267 and therefore they should be struck out. He submitted that the provisions of **Section 2, 3 and 4** of the Illiterates Protection Act were not complied with. That they are not true as to who explained the documents to the deponents. The affidavits in question are the rejoinders of Jagwe Joseph, Namu Agnes, Kisugu John, Kisembo Saidat, Kandole Moses, Masike Kamabu and Biira Jane. That the same affidavits were explained by a one Businge A. Victor the jurat reflects Saabu Stephen as the commissioner and interpreter.

He also quoted **Election Petition No. 001 of 2012 Tiken Francis and Chilemo Neslon v Election Commission; Kasaala Growers Cooperative Society v Kakooza Jonathan and Kalemera Edson SCCA No. 19 of 2010 and HCCS No. 280 of 2006 Violet Nakiwala & 2 Ors v Ezekiel Rwekibira & Anor** that the Provisions of the Illiterates Protection Act, cap 78 are mandatory and their application is a matter of substantive law and not mere technicalities as they are intended to protect the illiterate persons against manipulation.

- b. The other affidavits offend the Illiterates Protection Act, Cap 78 as they do not indicate who drew them. While referring to **Rtd. Col. Dr. Kizza Besigye v Election Commission and Yoweri Kaguta Museveni, Presidential Election Petition No. 1 of 2006**, that if the affidavits were not prepared in chambers or by the firm they purport to have been prepared, then the endorsement on them to that effect was false.
- c. That with some affidavits, only the certificates of translation were commissioned, offending **sections 2,3 and 4** of the Illiterates Protection Act, cap 78 as well as **section 5** of the Commissioner for Oaths (Advocates) Act, cap 5. That the jurats in the affidavits are false. Also, they do not indicate payment of court fees, service not properly filed and for that matter court cannot rely on them.

The Petitioner in his response claims that the facts in the cases given by the 1st Respondent are distinguishable from this particular case. That in this case, the deponents swore before court that they had understood the contents of the affidavits. That no one wrote their names on the affidavits, the translations are attached to the affidavits, and they were signed before a

Magistrate. On the payment of court fees, these were paid in time as assessments were picked from the court's registry.

Section 3 of the Illiterates Protection Act cap 78 outlines the duties of a witness towards an illiterate. It provides:

“Any person who shall write any document for or at the request, on behalf or in the name of any illiterate shall also write on the document his or her own true and full name as the writer of the of the document and his or her true full address, and his or her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been and that it fully and correctly represents his or her instructions and was read over and explained to him or her.”

Section 6 of the Commissioner for Oaths Act also provides:

“Every Commissioner for Oaths before who any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken.”

Rule 9 to the Schedule to the Act provides the form of such jurat and it shows that the jurat should state the name of the Commissioner, date and place where the jurat is made. In the jurat, they reflect who explained to the deponents in the languages that they understood clearly. In the instant case, the affidavits in question were witnessed by a Magistrate with a seal in the place of a commissioner. They also reflect the address and all the requirements satisfying the strict requirements of the law. These affidavits shall therefore be admitted.

- d. That the supplementary affidavits filed out of time without the leave of the court. The Respondents had already filed their answers and had no opportunity to reply to these said affidavits. It is the submission of the 1st Respondent that these were calculated to prejudice the Respondents. That **section 138(4)** of the Local Government Act, cap 243 as amended requires Election Petitions to be filed within 14 days after the results. That these expired on the 9th of May 2016. He cites **Mutembuli Yusuf v Nagwomu Moses Musamba & the Election Commission Election Petition No. 0013 of 2016** in which

Justice Bashaija K ruled that supplementary affidavits should be filed when the petition was first filed or soon thereafter, but in any case not after the Respondents filed and served their response.

In his defense, the Petitioner argued that the affidavits were filed in time for the Respondent to reply to them. The Petitioner identifies his own affidavit. However, this was not in question. These affidavits filed out of time without leave of court are prejudicial to the Respondent as they amount to an attempt by the Petitioner to plug holes that the Respondent's respective answers could have poked into the petition.

1. Whether or not the 2nd Respondent was validly nominated?

Lack of signature of the person proposing the nomination.

The Petitioner complained that Byamukama Robert did not append his signature on the nomination paper. He tendered evidence under Exhibit p.4s with the names of the person who proposed the nomination. He submitted that the document was identified by the Returning officer, Mboingaba Lawrence. In his reply, the first Respondent submitted that candidates submitted the nomination documents which were verified and forwarded to the Electoral Commission. The Petitioner referred to **section 111(4) (e)** of the Local Government Act whose wording does not require both name and signature but only a signature. Writing of a name alone can also amount to signing of a document. This is not true; it requires both the name and signature. Unfortunately, the Petitioner adduced no evidence to show that a name does not amount to a signature.

Seconding the nomination with a required number of voters.

Lake Kabatoro as per the evidence has five polling electoral areas. The Petitioner submitted that under **section 111(4) (f)** of the Local Government Act, each candidate is required to attach a list of 20 registered voters from each electoral area. That a total of 100 registered voters supporting the election was necessary. He tendered exhibits to lead evidence that the signatories were not registered voters. However, no proof was brought to Court. Counsel for the Petitioner refers to Exhibit L with a list of 10 voters. The 1st Respondent submitted that the Petitioner is estopped from contesting against the nomination that he knew it but he chose to carry on with the

campaigns. The fact that the Petitioner never reported to the Returning Officer, it meant that everything was ok and he proceeded with the campaigns and probably if he had reported the matter it would have been dealt with accordingly.

Section 15 of the Electoral Commission Act, Cap. 140, provides for the Power of the commission to resolve complaints; appeals and it states as follows;

“Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the commission; and where the irregularity is confirmed, the commission shall take necessary action to correct the irregularity and any effects it may have caused.”

In the instant case no complaint was made by the Petitioner in regard to the irregularities that were allegedly committed by the 2nd Respondent for which an immediate remedy could have been sought. The Petitioner also alleged that the 2nd Respondent was not validly nominated. However, the 1st Respondent told Court that the nominees of the 2nd Respondent used National Identity Cards and as opposed to Voter’s cards, for the National identity Cards it is hard to tell which polling station one is attached to.

The 1st Respondent submitted that these nomination papers were allowed by the Electoral Commission as valid. That if they had found any error they would not have been approved. Further, that the rationale behind the 20 signatures was not to make a large total but only to show that the person who intends to contest has a considerable number of persons backing their running. The 1st Respondent however does not give a basis for the said estoppel nor the law under which the same should be applied in these circumstances.

The 2nd Respondent on the other hand argued that the nominations were verified by the returning officer, who also stated on oath that what was followed was the requirement as he had asked. He also further went ahead to state that Identity Card numbers are not voters card numbers that were required. That this would therefore make it impossible to ascertain who of the nominators was a registered voter and of what area they had come from.

The 2nd Respondent satisfied court as to what the practice was for the nomination. The guidelines as set by the electoral commission were observed by the 1st Respondent. His papers were also admitted by the Electoral Commission. If these had been invalid, the nomination would have been revoked at that time even before the election date.

2. Whether or not there was non-compliance with the provisions of the Local Government's Act?

Petitioner's supporters denied the right to vote for a candidate of their choice.

The Petitioner adduced evidence to show some of his voters were denied a right to vote in secrecy. He relies on the affidavits of Moses Kandole who says that he was assisted by a Ms. MberiIraba Agnes. That he had to lie to the returning officers at the polling station that he was blind and that he needed assistance to vote. Agnes denied this course of action. In her affidavit, Agnes stated that she too is an illiterate and was assisted by her nephew to vote. His agents at the said polling stations did not come forth to back up the allegation as to helping people proved by the Petitioner as he did not adduce further evidence to rebut any inference of doubt as to who was rejected on the voting day, those who claimed to be blind. Kisembo Saidat also does not satisfy court as to who assisted her in the voting process, denying her an opportunity to vote for a candidate of her choice. The Petitioner never called any polling agents to come and testify before Court in this regard. There is not enough evidence to satisfy Court on this allegation therefore it fails.

Bribery of voters

The Petitioner complained that the election was flawed by bribery which was given by the 2nd Respondent and or his agents in form of money. Bribery during an election is defined as an offence committed by one who gives or promises to give or offers money or valuable inducement to an elector in order to induce corruptly the later to vote in a particular way or to abstain from voting or as a reward to a voter for having voted in a particular way or abstained from voting; **Black's Law Dictionary 6th Edition.**

The offence of bribery is contrary to **section 68(1)** of the Parliamentary Elections Act which provides;

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

There should be evidence to show that;

- A gift was given to a voter
- The gift was given by the candidate or his agent.
- It was given with the intention of inducing the person to vote.

Achieng Sarah Opendi & Anor v Ochwo Nyakecho Court of Appeal Petition Appeal 39 of 2011.

The affidavit of the Petitioner mentions bribery though not at great lengths. It contains hearsay, basing on the word of Kisembo Saidat, who swore that she received 200,000/-. However, this was disputed by the evidence of the 2nd Respondent himself who denies having met Saidat on the said day or even before that. Kisembos’s affidavit is not specific on where the money was given and for what purpose. He also denies having promised Namu Agnes the said money for further studies. Namu, who gives details on who gave her the money and that was promised further funds for her education also states that the purpose of the money was never disclosed to her. The money in question was not tendered in as evidence. It is very hard to conceive in my mind, I, disagree, the Petitioner did not link bribery by the 2nd Respondent to my satisfaction and therefore this fails.

For that matter, bribery of the voters is not satisfied as required by the elements of the offence.

Intimidation and harassment

That the Petitioner’s supporters were denied the right to vote by the Respondent’s Agents at Kyarukara Technical School polling stations A & B. That Jagwe Joseph, Kandole Moses, Namu Agnes and Kisembo Saidat were harassed, intimidated and bribed. That Kandole Moses did not vote but instead was told to tell a lie to the election officers that he was blind and that he would

be assisted. That a one Mrs. Mberi Iraba Agnes voted on his behalf. Mrs. Iraba in her own affidavit denies this allegation. The accusation does not show the criterion that was used to pick the person who assisted in the voting. That Kandole Moses also voted through procuring a lie to the polling officials. The basis of this intimidation is not clear. The Petitioner further goes ahead to state that one of his agent was threatened to be killed that's why he never swore any affidavit. However, no police file was ever opened regarding this threat. The Petitioner then testified in court that as far as this matter is concerned, losing the election was a threat greater than that which was made on his supporter's life. That he therefore deemed it fit to report the malpractices but not the threats and intimidation of his voters. There was no evidence of violence reported. I find that in absence of such, intimidation was not proved and therefore cannot be claimed for that matter. The Petitioner in his affidavit only made reference to a complaint that he made to Police by giving a reference number however, nothing much in relation to the same was adduced in Court.

Forgery

The evidence that was adduced does not prove forgery in the petition. The Petitioner submitted that some signatures were forged. However, there is no evidence to prove this. A report by a hand writing expert should have been attached to prove this and also specimens of the actual signatures alongside the forged ones. Court cannot rely on mere words of the Petitioner in alleging forgery as this would be detrimental to the case. Direct evidence is needed and in the absence of an expert witness to prove forgery, this too cannot stand as a claim of malpractices.

In this petition the Petitioner brought Declaration forms that were certified by the Returning Officer Kasese and the Respondent brought those that were certified by the Secretary to the Electoral Commission. The law gives mandate to the Secretary Electoral Commission to have custody of the Electoral documents and in that regard documents certified by the same would take precedence.

Under **Section 8** of the Electoral Commission Act, coupled with **Section 73** of the Evidence Act, Cap. 6 provides for public documents among which are those documents that belong to official bodies.

Section 75 of the Evidence Act provides for certified copies of public documents and states that;

“Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on and Any officer who, by the ordinary course of his or her official duty, is authorised to deliver such copies, shall be deemed to have the custody of those documents within the meaning of this section.”

Section 78 of the Evidence Act provides for Presumption as to genuineness of certified copies and states that;

“The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in Uganda, to be genuine if the document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The court shall also presume that any officer by whom any such document purports to be signed or certified held, when he or she signed it, the official character which he or she claims in that paper.”

Thus, in the circumstances if there were forgeries the Secretary to the Electoral Commission would not have approved the same by certifying them for official use and Court had to rely as per the above provisions on the documents submitted as certified by the Secretary Electoral Commission.

Wrongful invalidation of otherwise valid votes.

The Petitioner did not include the evidence to prove this allegation either. However, a random look at the declaration of results shows, that;

D1 declaration form for landing site, a total of 800 ballot papers were issued and their votes all tallied; D2 declaration form for Kyarukara B had missing details as to the breakdown of the votes and the one that was later brought by the Returning Officer had an extra unaccounted for vote; D3 declaration form technical school did not have any disparities, D4 Declaration form for Quran Primary school was less by 1 vote in accordance with the total number of ballot papers

issued; D5 Katwe primary school did not have any disparities; D6 declaration form of LCIII Office did not have any disparities; D7 Declaration form for Kyarukara play ground, the total number of ballot papers that were issued were 500, however, on adding up the total number of female voters 185, male voters 180, the unused ballots 124, and the spoilt votes 03 the total comes to 492, less by 8 votes, it was therefore the duty of the Electoral Commission to account for these missing votes; D8 Declaration form for salt industry had one extra unaccounted for vote. Be as it may, the disparity in the various Declaration forms could have had a number of explanations and the burden would have been on the Electoral Commission to explain as to whether it was human error, deliberate or otherwise. These disparities however did not substantially affect the outcome of the elections because it is hard to determine that indeed they could have been in favor of the Petitioner or the 2nd Respondent or the other contestant. Probably if the votes were recounted immediately, the truth would have come out but Court ordering a recount now would not help because the ballots could have been doctored or tampered with since it is months since the elections were held.

In this Petition specifically Paragraph 10 and in the Petitioner's affidavit in support to the Petition in Paragraph 12 and 16 he alludes that some of his valid votes were declared invalid in favor of the 2nd Respondent but the Petitioner did not lead evidence to prove the same.

3. If so, whether the non-compliance affected the results of the election in a substantial manner?

In the case of **Rtd. Col. Dr. Kiiza Besigye versus Electoral Commission and Museveni, Presidential election Petition No. 1 of 2006**, Odoki JSC (as he then was) held that;

"...Section 59 of the Presidential Elections Act 161 of 2005 anticipates that some non-compliances or irregularities of the law or principles may occur during an election, but an election should not be annulled unless they have affected it in a substantial manner..."

In order to assess the effect, the court has to evaluate the whole process of the election to determine how it affected the results and then assess the degree of the effect; **Amama Mbabazi & Anor v Musinguzi Garuga James Election Petition Appeal 12 of 2002**.

According to the records and evidence despite the small loopholes of non-compliance with the electoral laws it did not substantially affect the results and in any case be as it may Electoral Commission cannot be said to be perfect.

4. Whether or not the 2nd Respondent committed any of the alleged illegal practices/ election offences pleaded in the petition personally or by his agents with his knowledge and consent or approval.

The tallying of votes and declaring invalid of what was supposedly valid was the responsibility of the 1st Respondent. It may be difficult to trace this back to the role of the 2nd Respondent or his agents, therefore no proof was adduced in Court that the alleged illegal practice/election offences pleaded in the petition were committed personally by the 2nd Respondent or his agents with his knowledge, consent or approval.

Section 61(1)(c) of the Parliamentary Elections Act provides for annulment of any election of which there is proof of commission of an illegal practice or any other offence under the Act, either by the candidate personally, or by his agents with his knowledge, consent or approval. **Section 68(4)** classifies commission of the acts prohibited in subsection (1) thereof as an illegal practice. The allegation in this petition is that those prohibited acts were committed by the 2nd Respondent himself, and by his agents acting with his knowledge and sanction.

However, no sufficient proof was adduced in regard to the same for Court to order for the annulment of the elections.

5. What remedies are available to the parties?

Section 27 of the Civil Procedure Act provides that;

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.”

The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

In the case of **Prince J. D. C Mpuga Rukidi versus Prince Solomon Kioro and Others, Civil Appeal No. 15 of 1994 (S.C)**, it was held that;

“That however, where Court is of the view that owing to the nature of the suit, the promotion of harmony and reconciliation is necessary, it may order each party to bear his/her own costs.”

This is an election petition where both parties have spent a lot of money during campaigns, elections and in the petition itself and in the spirit of brotherhood, harmony, reconciliation, and generally the fact that both the Petitioner and the 2nd Respondent are closely related, I find no reason to award costs.

All grounds fail. The petition is therefore dismissed and each part bears its own costs.

Right of appeal explained.

Dated this 9th Day of September 2016

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OYUKO. ANTHONY OJOK

JUDGE

Delivered in open Court in the presence of;

1. Both parties
2. Counsel for the Petitioner
3. Counsel for the 1st Respondent

4. Counsel for the 2nd Respondent
5. Court clerk