

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT SOROTI**  
**ELECTION PETITION No. 007 OF 2016**

5 **AKELLO ROSE LILLY :: PETITIONER**

**VERSUS**

- 1. TUBO CHRISTINE NAKWANG**  
**2. ELECTION COMMISSION ::: RESPONDENTS**

10 **BEFORE HON. MR. JUSTICE B. KAINAMURA**

**JUDGMENT**

**a) Introduction**

The petitioner and the 1<sup>st</sup> respondent contested for Kaabong District Woman Member of Parliament for elections which were held on the 18<sup>th</sup> February 2016. The 1<sup>st</sup> respondent  
15 polled 19,460 votes and the petitioner polled 19,334 votes. The petitioner being dissatisfied with the declaration of the 1<sup>st</sup> respondent as the winner by the 2<sup>nd</sup> respondent filed this Petition.

In the Petition, the petitioner prays for; a declaration that the Electoral process of Kaabong District Woman Member of Parliament did not conform to and comply with the principles  
20 and laws governing Parliamentary Elections in Uganda and the non compliance affected the result of the election in a substantial manner, the electoral process and election of the Kaabong District Woman Member of Parliament was marred with irregularities and illegalities, that Tubo Christine Nakwang was not validly elected as the Kaabong District Woman Member of Parliament, an order that the election of Tubo Christine Nakwang as the  
25 Kaabong District Woman Member of Parliament be set aside and a new election carried out and the respondents pay costs of the Petition.

The Petition is supported by 68 affidavits. The 1<sup>st</sup> respondent's answer to the Petition is supported by 26 affidavits, and the 2<sup>nd</sup> respondent's answer to the Petition is supported by 2 affidavits.

The 1<sup>st</sup> respondent filed an answer to the Petition denying each allegation of fact raised in the  
5 Petition stating that she neither personally nor through her agents committed what was alleged concerning bribery of voters, intimidation of voters, and usage of a government vehicle in campaigns among others. The 2<sup>nd</sup> respondent filed an answer to the petition denying the allegations raised by the petitioner and contended that the elections were done in accordance with the provisions of the Electoral laws.

10 The main thrust of the petitioner's case is that the electoral process of the election of Kaabong District Woman Member of Parliament did not conform to and comply with the principles and laws governing Parliamentary Elections in Uganda and was characterized by gross irregularities, malpractices, violence, bribery, acts of intimidation and torture, lack of freedom and transparency, unfairness and commission of numerous electoral offences and  
15 illegal practices by the 1<sup>st</sup> Respondent and her agents contrary to the provisions of the **Parliamentary Elections Act , 2005**, the **Electoral Commission Act Cap 140**, and the **Constitution of the Republic of Uganda 1995** all of which affected the election in a substantial manner.

At the hearing, the petitioner was represented jointly by Mr. Caleb Alaka together with Mr.  
20 Bosco Okiror and Mr. Okello-Oryem while the 1<sup>st</sup> respondent was represented jointly by Mr. Oteke Richard together with Mr. Daniel Okalebo from Okurut and Co. Advocates, as well as Mr. Isodo from Isodo & Co. Advocates. The 2<sup>nd</sup> respondent was represented by Mr. Latigo.

#### **b) Issues**

25 The following issues were framed for determination;-

- 1. Whether or not the Election of the 1<sup>st</sup> respondent as a woman Member of Parliament for Kaabong District did not conform to and / or comply with the principles and laws governing Parliamentary Elections in Uganda*

2. *If so, whether the non-compliance affected the results of the election in a substantial manner*
3. *Whether illegal practices and / or electoral offences were committed in connection with the election by the 1<sup>st</sup> respondent personally and / or through her agents with her knowledge, consent or approval*
4. *What remedies are available to the parties*

### **c) Burden and standard of proof**

It is now trite law that the burden of proof in election Petitions lies with the petitioner because it is him who seeks to have the election annulled. (*Mbowe Vs Eliafu [1967] EA 240*). Ugandan courts have followed this position which was reaffirmed in *Col ( RTD ) Dr. Kiiza Besigye Vs Yoweri Museveni Kaguta Petition No.1 of 2001* where Odoki CJ (as he then was) said:-

*“In my view the burden of proof in an election petition as in other civil cases is settled. It lies on the petitioner to prove his case to the satisfaction of the court.”*

The standard of proof in an election petition is also now settled. **Section 61(3) of the PEA** provides:-

*“Any grounds specified in **sub-section (1)** shall be proved on the balance of probabilities”*

*However though the standard of proof is on a balance of probabilities, it is higher though lower than beyond reasonable doubt. (See **Mukasa Anthony Harris Vs Dr. Bayiga Michael Philip Lulume S.C.C.A No.18 of 2007**).*

### **SUBMISSIONS**

**Issue 1;-** *Whether or not the Election of the 1<sup>st</sup> respondent as a woman Member of Parliament for Kaabong District did not conform to and / or comply with the principles and laws governing Parliamentary Elections in Uganda*

Under paragraph 5(a) of the Petition, the petitioner pleaded non-compliance with **Sections 52 and 55 of the Parliamentary Elections Act**. Counsel for the petitioner submitted that there was failure by the Returning Officer to deliver 2 ballot boxes for judicial recount which thereby frustrated the recount in court. Counsel argued that the votes separating the petitioner and the 1<sup>st</sup> respondent are 116 votes while the invalid votes were 4,113 votes. Counsel added that the reason for not conducting the recount was because of the non-delivery of two ballot boxes and not the non-existence of polling stations. Counsel relied on the case of **Rebecca Nalwanga Balwana Vs The E.C & Others Election Petition No.47 of 2011** stating that since there was a narrow winning margin and a great number of invalid votes, a recount would have swung the outcome of the election in one way or another and therefore invited court to set aside the election of the 1<sup>st</sup> respondent.

In response, Counsel for the 1<sup>st</sup> respondent submitted that the desired ballot boxes were not there and did not exist. Counsel added that the Chief Magistrate's Order was void ab initio since it was obtained without including the 1<sup>st</sup> respondent as a party and violated the right of the 1<sup>st</sup> respondent to be heard.

Counsel for the 2<sup>nd</sup> respondent submitted that the right to recount as stated in the case of **Rebecca Nalwanga** (supra) was not automatic. Counsel argued that the Electoral Commission could not provide ballot boxes for non-existent polling stations. In conclusion Counsel submitted that in the case of **Wesonga Kamana Edward Vs Electoral Commission and Another Mbale Election Petition No. 0014 of 2006** it was held that the burden is on the petitioner to state exactly which polling station constitutes his case.

In rejoinder, Counsel for the petitioner submitted that the reason for not conducting the recount was because of non-delivery of two ballot boxes. Counsel added that even if the two ballot boxes were missing, the petitioner still had the right to know the outcome of votes through counting the 59 ballot boxes delivered to court and not conducting the recount denied the petitioner this right.

In relation to paragraph 5(b) of the Petition, Counsel for the petitioner submitted that there was non-compliance with **Articles 61(1) (a)** of the Constitution and **Sections 12 (b) of the Electoral Commission Act**. Counsel stated that the Electoral Commission failed in its

mandate to control the use of ballot papers in Kalongor Catholic Church polling station where results were cancelled because the votes cast exceeded the registered voters. Counsel argued that there is evidence to corroborate the 2<sup>nd</sup> respondent's failure to control use of ballot papers in the affidavits of Lolemunyang Simon Peter, Boyomoe Anthony and Nakiru Maria who were registered voters at Kalongor and all allude to the fact that the total number of votes cast exceeded the number of registered voters. Counsel added that this evidence is uncontroverted by the respondents. Counsel cited the case of ***Dr. Otim Otaala Emmanuel Vs Oboth Marksons Jacob & Anor Election Petition N0.7 of 2011*** where a similar occurrence took place and the Electoral Commission failed to control the use of ballot papers. Court held that one does not need to seek proof that there was failure by the 2<sup>nd</sup> respondent to control the use of ballot papers. Counsel submitted that the cancellation of the results in Kalongor affected the election in a substantial manner considering the fact that the total number of registered voters in this impugned polling station is 289 which is above the 1<sup>st</sup> respondent's winning margin of 116 votes. Accordingly the inclusion of Kalongor results would have had a substantial effect of altering the winning margin.

Counsel for the 1<sup>st</sup> respondent in reply submitted that according to the DR forms attached to the affidavit in respect of that polling station signed by the agents of all parties, the Petitioner got 92, while the 1<sup>st</sup> Respondent got 132 votes and the invalid votes were 30 which was mis-written as 300. Counsel stated that it is not true that the excess number of votes was due to ballot stuffing as no one has deponed to that fact. Counsel added that the excess number of votes is descriptive and not actual and if these results were admitted into the general tally the gap between the petitioner and 1<sup>st</sup> respondent would have been bigger. Counsel also stated that the case of ***Dr. Otaala*** (supra) is misplaced.

Counsel for the 2<sup>nd</sup> respondent submitted that cancellation is one of the measures that the 2<sup>nd</sup> respondent took to ensure that the elections were conducted in a free and fair manner. Counsel relied on the cases of ***Achieng Sarah Opendi & Electoral Commission Vs Ochwo Nyakecho Keziah C.A. Election Petition Appeal N0.39 of 2011*** and the case of ***Kwijukye Geoffrey Vs Electoral commission & Anor High Court Masaka Election Petition N0.07 of 2011*** and pointed to the holdings of court which were to the effect that court cannot speculate on how many votes each candidate would have polled.

In rejoinder, Counsel for the petitioner submitted that it's not in dispute that the voters in Kalongor were disenfranchised.

In relation to Paragraph 5(c) of the Petition, Counsel for the petitioner submitted that **Sections 27 and 29 of the Parliamentary Elections Act** were contravened. Counsel submitted that the petitioner complained of failure of delivery of voting materials in time and failure to allow voters in the line at the official closing time of 4:00pm to vote. Counsel submitted further that in the affidavits of the L.CI Chairperson of Karcharik village under paragraphs 3,4,5,7 & 9 and the affidavit of Lotyang John Bosco under paragraphs 5, 6, 7 and 8 and Lokol Lobangiro under paragraphs 6, 8, 9 they deponed that they were registered voters at Nakwacel polling station and that ballot boxes were delivered at 11:00 am and voting closed at exactly 4:00pm.

In answer Counsel for the 1<sup>st</sup> respondent submitted that none of the deponents attempted to name any of the persons that claim did not vote and were registered voters who were disenfranchised.

Under Paragraph 5 (d)-(h) of the Petition, Counsel for the petitioner submitted that there was non-compliance with **Sections 29 and 78 (d) of the Parliamentary Elections Act**. Counsel argued that there were delays in polling caused by use of the BVKK machines to verify voters. He added that as a result, at Kathile Primary School, Nakyelo, Kosui ECD Tree Shade, Saracom and Lobalangit polling stations the polling was delayed. Counsel added that there is evidence in the affidavits of Ayaa Lucy, Natomei Lokwang, Apei Joseph Nyengole, Lokolinyang Pasquale, Lokodo Martin, Alum Proscovia, Lochokio Christopher, Lomoe Loyaan, Lokiru Gabriel Lotwal, Oryem Micheal, Nakong Sarah, Nakoyo Teddy and Losiya Lokello to corroborate this.

In answer Counsel for the 1<sup>st</sup> respondent submitted that no voter was disenfranchised by the use of the BVVK Machines.

In further answer Counsel for the 2<sup>nd</sup> respondent submitted that regarding the alleged incidences about the BVVK machines, the Returning Officer deposed that the BVVK machines were only used as secondary aid for transparency and integrity and identification process and there was no mechanism to slow the machines by the operators. Counsel added

that it would be wrong to castigate the 2<sup>nd</sup> respondent for enforcing measures to enforce free and fair elections.

In rejoinder Counsel for the petitioner submitted that the petitioner relied on the evidence in support of the Petition to prove the averments that the kit was slowed down in certain areas and as a result the voters were disenfranchised like in Kathile, Nakelyo Kosui ECD Centre, Saracom, Treeshed and Lobalangit polling stations which evidence remains uncontroverted.

In relation to paragraph 5(i) of the Petition, Counsel for the petitioner submitted that there was non-compliance with **Article 61(1) (g)** of the Constitution and **Section 12 of the Electoral Commission Act**. Counsel stated that 36 game rangers did not know their polling stations because the 2<sup>nd</sup> respondent did not educate them after relocating their polling station. Counsel argued that the 36 voters therefore as a result were all disenfranchised.

In answer Counsel for the 1<sup>st</sup> respondent submitted that there is no evidence that the 36 game rangers did not know their polling station after relocation due to lack of civil education. Counsel further argued that there is no evidence that the polling station was relocated at any one time. Counsel argued that according to the affidavit of Sarah Iyolu there was sufficient civic education of the masses. Counsel cited the case of *Akidi Margaret Vs Adong Lilly Election Petition No. 04/2011* where court held that the contention that the petitioner's voters were affected by lack of proper civic education of the masses should be a problem addressed in the campaigns.

In further answer Counsel for the 2<sup>nd</sup> respondent contended that in the affidavit of the Returning Officer it was deposed that the Electoral Commission carried out civic education before the polls in various local languages spoken by the voters.

In paragraph 5(j) and (k) of the Petition, Counsel for the petitioner submitted that there was non-compliance with **Section 50 and 50(1) (d) of the Parliamentary Elections Act**. Counsel submitted that the petitioner complained that the DR forms which were the primary source of results for tallying were filled with anomalies. Counsel added that amidst protests during the counting of the votes, the petitioner's agents had already been made to sign the DR forms which they could not retract.

In answer Counsel for the 1<sup>st</sup> respondent argued that the DR forms were duly signed and no report made to the 2<sup>nd</sup> respondent by any of the petitioner's agents that they had been forced to sign the DR forms or that they signed them before the counting. Counsel added that in regard to the invalidated votes, it should be noted that not only the petitioner's votes were  
5 invalidated and the argument cannot be entertained as was held in the case of ***Tolit Simon Vs Olanya Jacob Lo'kori & E.C Election Petition No.01/2011.***

In further answer Counsel for the 2<sup>nd</sup> respondent submitted that the attack on the DR forms for alleged anomalies is misguided in absence of evidence.

Under paragraph 5(1) of the Petition, Counsel for the petitioner submitted that there was non-  
10 compliance with **Sections 19 (3) of the Parliamentary Elections Act.** Counsel submitted that the 2<sup>nd</sup> respondent failed to protect and control use of electoral materials when the ballot box for Locherep polling station was brought in on 19<sup>th</sup> February after announcement of election result and then tallied leading to change of the result of the election which was contrary to the law.

15 In reply Counsel for the 1<sup>st</sup> respondent submitted that the normal tallying of results was done and it is attested to two people, that some ballot boxes delayed to arrive and had to be entered into the tally to determine the outcome of the election.

In further reply Counsel for the 2<sup>nd</sup> respondent submitted that if the petitioner's agents were not satisfied with the results that were declared by the presiding officers at the polling  
20 stations mentioned, they should have declined to sign the declaration of the results forms.

Under paragraph O of the Petition, Counsel for the petitioner submitted that there was non-compliance with **Section 29 of the Parliamentary Elections Act.** Counsel submitted that the 2<sup>nd</sup> respondent including the polling constable failed to adhere to voting time prescribed by law when they allowed polling to commence at 7:00 am and end at 7:00 pm without any  
25 justification in fact or law at Kotirae polling station.

In answer Counsel for the 1<sup>st</sup> respondent submitted that there is no other complaint beside that of Kotirae raised with regard to late voting time.



In further answer Counsel for the 2<sup>nd</sup> respondent submitted that he is alive to the fact that the 2<sup>nd</sup> respondent under **Section 29 of the PEA** is mandated to keep the polling station open beyond 4:00 pm to allow qualified voters who are already in the queue to vote.

In his submission, Counsel for the petitioner argued that as they had demonstrated, non compliance with the law and the respondents had failed to rebut the allegations and impeach the evidence adduced by the petitioner in support of her case. Counsel submitted that there is merit in the complaints raised by the petitioner as set out. Counsel further submitted that the principles of free and fair elections were emphasized in ***Election Petition NO. 1 of 2006, RTD Col. Kiiza Besigye Vs Electoral Commission and Yoweri Kaguta Museveni*** where  
10 Odoki CJ (as he then was) stated that;

- i) *The election must be free and fair.*
- ii) *The election must be by universal adult suffrage.*
- iii) *The election must be conducted in accordance with the law and procedure laid down by Parliament.*
- 15 iv) *There must be transparency in the conduct of the elections.*
- v) *The result of election must be based on the majority of votes cast.*

Counsel argued further that the Supreme Court has pronounced itself in similar terms again in 2016 in ***Election Petition NO. 1 of 2016, Amama Mbabazi Vs Electoral Commission and Yoweri Kaguta Museveni***.

20 Counsel for the 2<sup>nd</sup> respondent submitted that the petitioner has not proved a case in support of this issue and it ought to be answered in the negative.

### **Resolution**

On the question of non – compliance with **Section 52 and 55 of PEA**, I note that **S.52 PEA** enjoins the Returning Officer to be responsible for safe custody of the election documents in  
25 the district until they are destroyed on the direction of the Commission, whereas **S.55 PEA** empowers the Chief Magistrate, on application of any candidate, to order for a recount of the votes. The petitioner alleges that upon applying for a recount under **S. 55 PEA** and the Chief Magistrate ordering for a recount of the voters, only 59 ballot boxes instead of 61 requested

for were delivered by the 2<sup>nd</sup> respondent thus frustrating the recount. On its part the 2<sup>nd</sup> respondent contends that there were only 59 polling stations known from the list requested for by court and that there was no polling station at Kocholo H/CII and Teregue ECD center. In his submissions Counsel for the petitioner stated that the 2<sup>nd</sup> respondent adduced no evidence to demonstrate that the two polling stations did not exist. With due respect I fail to see how Counsel wishes to shift the burden. The 2<sup>nd</sup> respondent in its reply had clearly indicated that the two polling stations did not exist and tendered in evidence of the Tally Sheet and the transmission of result forms which clearly show that Kacholo H/C II does not exist under Kawaloko S/C as alleged and Teregue ECD center does not exist under Kalile S/C as alleged. I agree with the submissions of Counsel for the 2<sup>nd</sup> respondent that it was incumbent upon the petitioner to prove the existence of polling stations. In any event the Tally Sheet was admitted in evidence but the petitioner did not point to the alleged polling stations relating to the allegation. Further, no evidence was adduced by the petitioner that indeed voting took place at the impugned polling stations. Accordingly I am of the opinion that the petitioner has not proved to my satisfaction that indeed the 2<sup>nd</sup> respondent frustrated the vote recount as alleged. Accordingly non - compliance with **Ss 52 and 55 of PEA** is not proved.

On the question of non-compliance with **Article 61 (I) (a)** of the Constitution and **Section 12(b) and (c) of the Electoral Commissions Act**, the Electoral Commission is alleged to have failed to control use of ballot papers at Kalongor Catholic Church polling station leading to cancellation of results because the votes cast exceed the registered voters. Both respondents concede to the cancellation of the results of that particular polling station. On its part the 2<sup>nd</sup> respondent argued that whereas they concede, they still contend that the cancellation was necessary to ensure that the election was conducted in a free and fair manner. In *Wesonga Kamana Edward Vs Electoral Commission & Another Election Petition No 39 of 2011* relied on by Counsel for 2<sup>nd</sup> respondent, the Court of Appeal recognized the justification by the Returning Officer to cancel the results of any polling station where the principals of equal suffrage, transparency of the vote and secrecy of the ballot have been undermined by among others ballot stuffing as in this case. In that same case the court further said:-

*“It is not sufficient that there have been irregularities, but the petitioner must go further and show how they affected the results of the elections.”*

The petitioner alleges that there were 289 registered voters at the polling station and that since the winning margin between the two contestants for the seat was 116 votes therefore  
5 the cancellation of Kalongor results would have had a substantial effect of altering the winning margin. The Petitioner relied on the affidavits of Lolemunyang Simon Peter and Boyomve Anthony who state that they were present during the counting of the votes at the polling station. However none mentions the results of the voting as announced at the polling station.

10 In ***Acheing Sarah Opendi and Electoral Commission Vs Ochwo Nyaketcho Kezia Election Petition Appeal No. 39 of 2011*** the Court of Appeal while considering a similar issue had this to say:-

15 *“For the polling stations whose results were cancelled, the respondent failed to adduce evidence showing how many of the 1115 registered voters cast their votes. And how many of these voted for her. This could be ascertained from the DR forms which her polling agents must have signed and retained after voting and counting votes at the two polling stations. One imagining or thinking that the respondent could have obtained more votes from these two  
20 polling stations than her 8 contestants so as to upset the clear and un doubtful winning margin of the appellant would be to say the least speculative”.*

Since the petitioner did not adduce evidence of the results at the polling station and how the cancellation prejudiced her and since as indicated above the cancellation was justified, it is my finding that this sub-issue fails.

Under paragraph 5 (c) of the Petition, the petitioner complained of failure to deliver voting  
25 materials in time and failure to allow voters in the line at the official closing time of 4:00pm to vote. **Section 29(5) of PEA** provides:-

*(5) “If at the official hour of closing the poll in **sub-section (2)** there are any voters in the polling station or in the line of the voters under **sub-section (3)***

*of section 30 who are qualified to vote and have not been able to do so, the polling station shall be kept open to enable them to vote, but no person who is not actually present at the polling station or in the line of voters at the official hour of closing shall be allowed to vote, even if the polling station is still open when he or she arrives”.*

5

The petitioner in para 14 of her affidavit alleges that 198 voters who were in the line were not allowed to vote when the polling station closed at 4:00pm and were accordingly disenfranchised. The petitioner further relied on the affidavit of Lakol Larso the LCI Chairman of Kacharic Village who estimates those not allowed to vote at 198, that of Lotyoung John Bosco, who states the same facts. The deponents state that there was a head count to determine those who were disenfranchised but do not indicate who look took the head count. The petitioner relied on the evidence of Lokol Labangiro and Lochap John who were in the line at 4:00pm when the voting was stopped and they were not allowed to vote.

I however note that none of the two deponents indicates that they made any complaint to the Presiding Officer or to their candidate’s agents nor register any formal complaint. Interestingly if indeed 197 voters were turned away, I would expect all the candidates would have been equally concerned at the time. I see no proof of that.

It is my considered opinion that this sub-section also fails.

The petitioner complained in paragraph 5 (d) to (h) of the Petition of non compliance with **Section 29 and 78 (d) and (g) of PEA**. This related to the delays at various polling stations caused by use of BVKK machines which were being used to verify voters. The petitioner alleges that at Kathile Primary School polling station because of slow verification by BVKK officer at the station, 212 voters were turned away at 4:00pm when the voting was closed, the same happened at Nakelyo polling station where 129 people were turned away, 34 people were turned away at Kosul ECD center polling station, 92 at Saracon polling station and 74 at Lobalangit polling station.

The petitioner relied on affidavits in support deponed by a number of people. Among them Lokonnyeng Pasquale who mentions the figure of 212 voters turned away at Kathile Primary School but does not indicate how he arrived at that number. The other voters at the same

polling station whose evidence is relied on by the petitioner like Ayea Lucy, Alum Proscovia, Natomel Lokwang etc do not mention the number of people turned away. The same goes for the other polling stations complained of where the people were allegedly turned away. The numbers mentioned in the petitioner's affidavit in support of the Petition are not backed by any imperical evidence. That said I am also in agreement with the position stated by Counsel for the 2<sup>nd</sup> respondent that the primary document for identification of voters is the voters register. This position was clearly put in ***Amama Mbabazi Vs Yoweri Kaguta Museveni & others Presidential Election Petition No. 01 of 2016*** where the Supreme Court had this to say:-

10                                    *“There was evidence that some of the BVVK machines were not efficient and some did not work at all. However the principal document used to identify voters was the voters register. It is therefore our finding that the use of the BVVK did not, in itself, constitute non compliance under PEA and did not disenfranchise voters”.*

15   Accordingly since the petitioner does not provide imperical evidence to back the number of people allegedly disenfranchised due to slow use of the BVVK machines, and since the use does not *per se* constitute non compliance with principles set out in **Section 29 and 78 (d) of PEA** this sub-issue fails.

The petitioner complained in para 5(i) of non-compliance with **Article 61 (1) (g)** of the Constitution and **Section 12 of the Electoral Commission Act**. She complained that 36 game rangers did not know their polling stations because of insufficient voter education indicating that their polling station had been relocated and as such they were disenfranchised. Further that the 2<sup>nd</sup> respondent on polling day failed to organize polling at the newly designated polling station.

25   In answer, the 2<sup>nd</sup> respondent through Sarah Iyolu its Returning Officer averred that voting could not take place at Mgimoso polling station because at no point were there 5 registered voters present at the station for the Presiding Officer to commence voting exercise. Further with regard to voter education, the 2<sup>nd</sup> respondent relies on the case of ***Akidi Margaret Vs Adong Lilly Gule Election Petition No.4 of 2011*** where court opined that lack of civil

education would have had an impact across the board in the entire constituency and would have affected all voters irrespective and that candidates are also enjoined to address some of these issues while campaigning. Counsel for the 2<sup>nd</sup> respondent also referred to **Section 32 of PEA** which entitles candidates to have agents at the polling station. If as the petitioner  
5 alleges, this particular polling station was her stronghold, then I wonder why she does not adduce evidence of her agent to point to a reason why the voting did not take place. In my view this sub-issue also fails.

The petitioner complained in paragraph 5(j) and (k) of the Petition that the 2<sup>nd</sup> respondent failed to ensure that the DR forms were not filled with anomalies, that her polling agents  
10 were not availed copies of the DR forms and that the agents were made to sign the DR forms before counting of the votes. Further that the petitioner's votes were treated as invalid when in fact they were valid. I note that the affidavit relied on by the petitioner only makes allegations in general with no cogent supporting evidence. In my view the petitioner has failed in this regard. The sub-issue fails.

15 The petitioner complained in paragraph (1) that the 2<sup>nd</sup> respondent failed to control use of electoral materials contrary to **Section 19(3) of the Electoral Commission Act**, which guarantees a voter the right to vote in the parish or ward where he or she is registered. The issue raised revolves around the ballot box for Locherep polling station which is alleged to have been brought on 19<sup>th</sup> February 2016 after announcement of the election result but was  
20 all the same tallied and had the effect of changing the results of the election. The petitioner argues this was contrary to **Section 58 PEA** which enjoins the Returning Officer to immediately upon opening the result envelopes from all the polling stations, to add up the results and declare as winner the candidate with the largest number of votes. According to the petitioner, the Commission once it has tallied the votes and determined the winner, it has no  
25 powers to declare a different person.

Counsel relied on *Byanyima Winnie Vs Ngoma Ngime Civil Revision No. 9 of 2001* which was to the effect that once a person has been declared a winner of an election that person including the loser are no longer candidates and are beyond the ambit of the Electoral Commission and can only be reached through a court order. For this authority to hold, the  
30 petitioner has to show that the result for the elections for Woman Member of Parliament

Kaabong District had already been tallied and announced. The petitioner relied on the evidence of Lopoyek Paul and Ngelecha Mickey who were the Petitioner’s agents at the tally center. Lopoyek Paul does not in his affidavit indicate that tallying had been concluded. In fact at paragraph 9 of his affidavit he uses the words “when the tallying of Woman Member of Parliament was being concluded .....

5 of Parliament was being concluded .....

discovered.

Ngelecha Mickey’s evidence is more or less to the same effect. I see no indication that by the time the ballot box for Locherep was received at the tally center, that the results had already been announced. I agree with the position of Iyolu Sarah the Returning Officer of Kaabong at paragraph 16 of her affidavit in reply filed on 1<sup>st</sup> June 2016 that the tallying of results is done as and when the results of the polling stations are delivered provided however there is no inordinate delay. Accordingly this sub-issue fails.

10

The petitioner complained in paragraph 5 (o) of the Petition that the 2<sup>nd</sup> respondent including polling constables failed to adhere to the prescribed voting time. The prescribed voting time is between 7:00am to 4:00pm (see **Section 29(2) PEA**). The petitioner alleges that voting at Kotire polling station ended at 7:00om without any justification.

15

In answer to this, the 2<sup>nd</sup> respondent contended that this allegation was not supported by evidence and that in any event it is within the mandate of the 2<sup>nd</sup> respondent to keep the polling station open to allow voters who are already in the queue to vote. In absence of credible evidence to support this allegation, this sub-issue also fails.

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In conclusion based on the analysis above, this issue is answered in the negative.

**Issue two:                    *If issue 1 is answered in the affirmative whether the non-compliance affected the election in a substantial manner.***

Since I answered the first issue in the negative this issue fails.

**25    Issue three:                    *Whether illegal practices and / or electoral offences were committed in connection with the election by the 1<sup>st</sup> Respondent personally and / or through her agents with her knowledge, consent or approval***

Counsel for the petitioner submitted that **Section 61(1) (c) of the PEA** provides that the election of a candidate as a Member of Parliament shall be annulled if it is proved to the satisfaction of court that an illegal practice or any other offence under the Act was committed in connection with the election of the candidate, personally or with his or her knowledge and consent or approval. Counsel submitted further that the petitioner set out numerous illegal practices and offences against the 1<sup>st</sup> respondent which through credible evidence it has been demonstrated that they were committed. Counsel pointed to the evidence adduced and submitted that the petitioner had discharged her evidential burden in respect of all the alleged offences of which she accuses the 1<sup>st</sup> respondent either personally and through her agents with her knowledge and consent or approval to have committed. Counsel prayed that the court nullifies the election of the 1<sup>st</sup> respondent and order fresh elections for Woman Member of Parliament for Kaabong District under **Section 63(4) (c) of the Act**.

Counsel for the 1<sup>st</sup> respondent addressed each alleged offence denying its committal and further submitting that some of the evidence adduced requires corroboration such as that that had accomplices for example the alleged bribery of voters. Counsel further argued that some of the evidence given was full of inconsistencies.

Counsel for the 2<sup>nd</sup> respondent submitted that the alleged offences and illegal practices have not been proved.

In rejoinder, Counsel for the petitioner submitted that the petitioner had discharged her evidential burden in respect of all the alleged illegal practices and offences of which she accuses the 1<sup>st</sup> respondent to have personally and/or through her agents with her knowledge and consent or approval committed.

### **Resolution**

The petitioner raised various allegations against the 1<sup>st</sup> respondent such as bribery, making malicious statement, use of government resources and campaigning within 100 meters of polling station. On bribery, the petitioner alleged that the 1<sup>st</sup> Respondent bribed voter's contrary to **Section 68(1) and (4) PEA**. The section provides:-



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

.....  
.....

(4) An offence under **Sub-section (I)** shall be an illegal practice.

It is now well settled that there are three ingredients of bribery which are:-

1. *A gift was given to a voter*
2. *The gift was given by a candidate or his agent and that*
3. *It was given with the intention of inducing the person to vote or refrain from voting.*

The bribery incidents took place at diverse places. I will review each incident separately.

### **1. Bribery at Kathile West**

The petitioner relied on the affidavit of Nakong Irene a voter at Kathile Primary School polling station who was approached the morning of 18<sup>th</sup> February 2016 by a one Lokaleruko who asked her to convince her group-mates to vote for the 1<sup>st</sup> respondent. He offered her Shs. 10,000/=. She further deponed that she mobilized her group, bought 20 liters of kwete and later went to vote.

The petitioner also relied on the affidavit of Timat Konyang who deponed that Nakong Irene summoned her on the morning of 18<sup>th</sup> February 2016 and informed her about the money given to them, that she joined her in taking the kwete brew Nakong had bought before they

proceeded to vote. Koryang Lokaleruko who was alleged to have bribed Nakong denied being an agent of the 1<sup>st</sup> respondent.

## **2. Bribery at Nakapeliase**

The petitioner relied on the affidavit of Naboki Regina and Lomuita Betty. The alleged  
5 bribery was to a one Amera Anna who in the presence of the witnesses accepted the Shs. 5000/= passed on to her by Akon Julius an alleged agent of the 1<sup>st</sup> respondent.

In answer to the allegation, Akon Julius swore an affidavit denying being an agent of the 1<sup>st</sup>  
respondent and contending that on the date he is alleged to have bribed the two i.e 17<sup>th</sup>  
February 2016, he had travelled to Kotido for medical treatment. In rebuttal the Petitioner  
10 relied on the affidavit of Achola Puis who on the instructions of the Petitioner investigated  
the alibi put forward by Akon Julius that he had gone for treatment after being bitten by a  
dog. That he ascertained from the Health Center that Akon Julius received the treatment on  
29<sup>th</sup> February 2016 and not on 17<sup>th</sup> February 2016 as he alleged. The Health Center records  
indicated that Akon Julius was indeed treated of dog bite at the Health Center on 29<sup>th</sup> January  
15 2016.

## **3. Bribery at Enik Village**

The petitioner relied on evidence of Ariong Lomilo a resident and registered voter of Enik  
village who alleged that a one Lobolia Engor and Lokorol alleged agents of the 1<sup>st</sup> respondent  
distributed salt to the voters in the village requesting them to vote for the 1<sup>st</sup> respondent.  
20 Among the beneficiaries in the village were Akoru Paska, Koriuyang Betty and Meri Logiel.

In answer to this allegation, the 1<sup>st</sup> respondent contended that there was no proof that the  
other alleged recipients of the salt were registered voters and that if Ariong received salt then  
she was an accomplice and her evidence requires corroboration.

## **4. Bribery at Kathile Sub-County Headquarters**

25 The Petitioner relied on the evidence of Nakiru Christine and Josline Keem. Nakiru stated  
that while at Kathile sub-county headquarters with others including Keem they were  
approached by Moru Michael also known as Sauti an agent and supporter of the 1<sup>st</sup>

respondent who gave Shs. 5,000/= to Keem to buy the group a drink and asked them to vote for the 1<sup>st</sup> respondent. That Keem bought 6 jugs of kwete which they drunk giving praises to the 1<sup>st</sup> respondent. Keem's affidavit was to the same effect only that she added that the 1<sup>st</sup> respondent was seated in a car nearby.

5 In answer, Counsel for the 1<sup>st</sup> respondent submitted, erroneously in my view, that Keem stated in her affidavit that she met the 1<sup>st</sup> respondent going for a rally and the 1<sup>st</sup> respondent personally gave Shs. 5000/=. I don't see that piece of evidence in Keem's affidavit, she only stated that the 1<sup>st</sup> respondent was seated in car nearby and that it was Moru Michael alias Sauti who gave her the money.

#### 10 **5. Bribery at Kathile Trading Center**

The petitioner relied on the evidence of Adupa Francis a registered voter at Kathile Primary School polling station who alleged that on 17<sup>th</sup> February 2016 he was at Kathile Trading Center and around 6:00pm he was approached by Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent together with others and was offered Shs. 5,000/= and a bottle of beer and was  
15 requested to "come back". Further that he went and looked for others and bought drinks for them.

In answer Counsel for the petitioner argued that Adupa is a self-confessed accomplice and his evidence needs corroboration.

#### **6. Bribery at Namamutan Village**

20 The petitioner relied on the evidence of Lopiding Peter a registered voter of Lemugetie polling station Kathile who alleged that on 17<sup>th</sup> February 2016 Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent gave him Shs. 20,000/= and asked him to convince others to vote for the 1<sup>st</sup> respondent and the next day on 18<sup>th</sup> February 2016 he informed Lokiri Paul about the money and after voting they went and used some of the money to buy kwete.

25 In answer the 1<sup>st</sup> respondent contended this evidence was insufficient and that the bribe had aborted because the drinks were bought after voting.

#### **7. Bribery at Kurao Polling Station**

The petitioner relied on evidence of Irwata Peter who stated that he is a registered voter and an agent of the Petitioner that on 18<sup>th</sup> February 2016 when voting had already commenced Akon Julius and Lokwang Simon summoned voters and started distributing Shs. 2,000/= to each within the polling station and asking them to vote for the 1<sup>st</sup> respondent that he  
5 confronted them and they threatened to run over him with the vehicle.

In answer, the 1<sup>st</sup> respondent contended that since the deponent did not receive any money and none of the recipients testified that they received the alleged money then the allegation remains unproved.

### **8. Bribery at Nkwapichi Village**

10 The petitioner relied on the evidence of Lomuria Betty National ID No. 017709999 a registered voter at Enik ECD Center Tree Shade polling station who alleges that on 17<sup>th</sup> February 2016 at 6:00am Akon Julius an agent of the 1<sup>st</sup> respondent asked her to meet him with Amera Anna and Nathiu Lilly and handed Shs. 5,000/= to Amera Anna and requested them to vote for the 1<sup>st</sup> respondent. This allegation was not answered by the 1<sup>st</sup> respondent  
15 instead he answered the allegation by ANOTHER Lomuria Betty holder of National ID Number 007806647 and a voter at Lokarengak polling station Lemusete Parish who alleged that on 17<sup>th</sup> February 2016 at 11:00pm Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent came to Nkwapicha in a white car and was campaigning and giving out money and kick waragi to women. That he gave Lomuria Shs. 30,000/= in addition to 2 sachets of kick  
20 waragi and instructed her to use the money and waragi to summon and convince the women voters in Nkwapichi village to vote for the 1<sup>st</sup> respondent the next day. That later that night the deponent gathered about 50 women and Loiki Gabriel Kider addressed them while they were drinking waragi asking them to vote for the 1<sup>st</sup> respondent. That the following day she used Shs. 15,000/= to buy more waragi for the women who had missed the previous day.

25 In answer to the second Lomuria evidence, the 1<sup>st</sup> respondent argued that Lomuria does not say that she was personally bribed and that none of the 50 women are named.

### **9. Bribery at Lemugete Village**

The petitioner relied on evidence of Engor Pasquale who deposed that he is a registered voter at Lemugete polling station, that on 17<sup>th</sup> February 2016 Loiki Gabriel Kider and Apau Paul Dafco the agents of the 1<sup>st</sup> respondent came to Lemugete at 11:00pm in a white car carrying 20 liters of local waragi which was given to Ilukol John an agent of the 1<sup>st</sup> respondent in  
5 Lamugete to distribute to voters. That the said Loiki Gabriel Kider further gave Shs. 50,000/= to Lokol and Toya Betty (a daughter of Engor brother) instructing them to buy kwete and sachet waragi for people to vote for the 1<sup>st</sup> respondent. That he confronted them and they threatened to hurt him. Further that he reported the matter to police.

In answer the 1<sup>st</sup> respondent contended that Engor does not state where the waragi was  
10 brought from and where it was distributed and who took it and whether they were voters.

### **10. Bribery at Narube**

The petitioner relied on the evidence of Lokolinyang Pasquale a registered voter of Kathile Primary School polling station who deposed that Loiki Gabriel Kider, Apau Paul Lekumol came to Narube on 17<sup>th</sup> February 2016 and distributed money- Shs. 10,000/= per person, four  
15 crates of Eagle beer, that he had sent Lokwang Peter and Ilukol Joseph to monitor the transactions and that those distributing the money and beer were requesting people to vote for the 1<sup>st</sup> respondent.

The petitioner also relied on the evidence of Lokwang Peter Atwar a registered voter of Narube Primary School polling station who deposed that on night of 17<sup>th</sup> February 2016 he  
20 was awoken from his sleep and getting out he found Loiki Gabriel Kider who was campaigning and distributing sachets of waragi to those present. The petitioner also relied on the evidence of Lochual Hillary who stated that on 17<sup>th</sup> February 2016 Loiki Gabriel Kider gathered 100 people in the home of Akope Jacob and distributed Shs. 10,000/= per person and kick waragi.

25 In answer, the 1<sup>st</sup> respondent points the conflicting statements of the witness with regard to the home where the events are alleged to have taken place Lochul Hillary saying it was the home of Akope Jacob while Logwang saying it was at Komol Nabetero's home. Counsel argued that the evidence is misleading and as such inadmissible.

## **11. Bribery at Nachukulu East**

The petitioner relied on the evidence of Adomoi Simon Peter who alleged that on night of 17<sup>th</sup> February 2016 vehicles carrying supporters of the 1<sup>st</sup> respondent led by Loiki Gabriel Kider came to the Nachukulu Center buying kick waragi for people and the following day a  
5 one Locham Daniel a supporter of the 1<sup>st</sup> respondent distributed money at the polling center, that he brought it to the attention of the Presiding Officer who did not take any action. The petitioner also relied on the evidence of Lokol Paul who stated that on 17<sup>th</sup> February 2016 one Loiki Gabriel Kider came with three vehicles and two motorcycles, gathered people asked them to vote for the 1<sup>st</sup> respondent, distributed sachets of waragi and on polling day  
10 Adiaka Albine gathered people coming to vote gave them sachets of waragi and asked them to vote for the 1<sup>st</sup> respondent.

In answer the 1<sup>st</sup> respondent reasoned that the person who was present were accomplices and their evidence needs corroboration.

## **12. Bribery at Morouetome**

15 The petitioner relies on the evidence of Lotyang Isaac a registered voter at Nangolechawa ECD Center polling station. Lotyang was an appointed agent of the 1<sup>st</sup> respondent as shown in annexure B to his affidavit. He deposed that when he went to Morouetome on 17<sup>th</sup> February 2016 to pick his appointment letter there was a gathering of over 100 people, some agents of the  
20 1<sup>st</sup> respondent and others voters. That Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent distributed salt and bought the voters and agents a ram which was slaughtered and people ate and drank kwete which was also bought by Loiki Gabriel Kider. That the said Loiki addressed the gathering and asked them to vote for the 1<sup>st</sup> respondent. That the group of agents from Nangolechwa were given Shs. 20,000/= by Loiki Gabriel Kider for purpose of buying local brew for the voters the next day.

25 In answer to this, the 1<sup>st</sup> respondent contended that those present were all agents and that Lotyang is a traitor. She also relied on the evidence of Loiki Gabriel who stated in his affidavit filed on 31<sup>st</sup> May 2016 that what Lotyong Isaac deposed to in his affidavit is not true and that money was given as facilitation for the agents of the 1<sup>st</sup> respondent.

### 13. Bribery at Lemugete Polling Station

The petitioner relied on the evidence of Lokol Paul a voter at Lemugete polling station and polling agent for the petitioner who stated that on polling day while at the polling station (Lemugete) one Lochan Daniel with Achuka Mohammed arrived at the station, asked voters to vote for 1<sup>st</sup> respondent and gave them waragi and kwete. That he confronted them and asked them to leave.

In answer, the 1<sup>st</sup> respondent contended that there was no proof that the people alleged to have been bribed were voters.

### 14. Bribery at Kathile Primary School

The petitioner relied on the evidence of Lokitare James Lotuk a registered voter at Kathile Primary School polling station and an agent of the petitioner at the station who alleged that a one Koryang had 10 liter jerrycan of alcohol and was distributing it to the people at the polling station. That Lotuk himself was given a cup and asked to vote for the 1<sup>st</sup> respondent.

#### Resolution

What has to be resolved now is whether the alleged acts of bribery fall within the ambit of **Section 68 (1) PEA** so as to constitute an illegal practice under **Section 68 (4) PEA** to lead court to set aside the election in terms of **Section 61 (1) (c) PEA**. For the petitioner to discharge its burden under the above sections evidence has to be led to prove on a balance of probabilities that a voter was given money, gift or other consideration by either the 1<sup>st</sup> respondent personally or through her agents with her knowledge and consent or approved with intent to influence the voter to vote or refrain from voting. **Section 68 (5)** of PEA further specifically provides:-

*(5) Every candidate or candidate's agents who, by himself or herself or any other person, directly or indirectly before the close of polls on polling day, offers, procures or provides or promises to procure or provide any alcoholic beverage to any person commits an illegal practice.*

It is clear from the wording of **Section 61 PEA** that court does not require a multiplicity of incidents of bribery to annul an election. Further, for court to make a finding that an illegal act or offence was committed of which bribery is one, it has to be shown that the bribe was given by either the candidate or his/her agent with the candidate's consent or approval. This does not require proof that the candidate must have given written or express instructions to the agents to give bribes well aware that bribery is a criminal offence. As ably put by Oder (RIP) JSC in *Rt. Col Dr. Besigye Kizza Vs Yoweri Kaguta Museveni & ANo ED No. 1 of 2001*:

*“There is no way a witness who is alleged to have committed a criminal offence or malpractice in a personal capacity is going to own up to such accusations. This part of behavior applies to all human beings. This is common knowledge for which proof is unnecessary”.*

In the same case, it was further emphasized that to show that one was an agent in an election, it is not necessary to show that the person was actually appointed by the candidate or that he was paid. The test is whether there has been employment or authorization of the agent by the candidate to do some election related work or adoption of the same when the work is done. This also goes for those who may have been appointed by the candidate's agents.

The above said, I will not turn to the alleged bribery incidents and determined whether they fall within the ambit of the law. The alleged bribery at Kathile west resolves around two voters Nakong Irine and Timat Konyang being facilitated by Lokaleruko- who denies being agent of the 1<sup>st</sup> respondent- to buy kwete (alcohol beverage) with a request that they vote for the 1<sup>st</sup> respondent which they did and shared with other voters before going to vote. On the basis of the evidence before me relating to this allegation, I am not satisfied that Lokaleruko was acting as an agent of the 1<sup>st</sup> respondent and i find that no act of bribery was committed.

Turning to the alleged bribery at Nakapaliese, both witnesses testified that the money was given to a one Amera Anna. There is no proof that she was a registered voter. That said, it is also my finding that the alibi of Akon Julius who is alleged to have passed on the bribe does not stand on account of the record at the Health Center which showed that Akon in fact visited the health center on 29<sup>th</sup> January 2016 and not 17<sup>th</sup> February 2016 as alleged.

However the bribery incident at Nakapaliese is not proved to courts satisfaction. Relating to



bribery at Enick village, Ariong Lomilo a registered voter is alleged to have received salt from Lobilo Enger and Lokoroi. There is no sufficient proof that these were agents of the 1<sup>st</sup> respondent. Accordingly this allegation fails.

There was alleged bribery at Kathile Sub- county Headquarters where Nakiru Christine and Josline Keem are alleged to have received money to buy kwete from a one Moru Michael and that the 1<sup>st</sup> respondent was seated in a car nearby. Having considered the evidence before me, I am satisfied that Moru was an agent of the 1<sup>st</sup> respondent that this indeed was bribery contrary to the law. The alleged bribery at Kathile Trading Center which was allegedly carried out by Loiki Gabriel Kider an appointed agent of the 1<sup>st</sup> respondent. He is stated to have offered Adupa Francis Shs. 5,000/= and a bottle of beer and requested him to “come back” which I take to mean Adupa was a one time supporter of the 1<sup>st</sup> respondent. I am of the opinion that the conduct of Loiku Gabriel Kider amounted to bribery. The other incident was at Namamutau village where again Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent gave Shs. 20,000/= to Lopiding Peter a registered voter and asked him to convince other voters to vote for the 1<sup>st</sup> respondent. Although Lopiding indicates he bought the drinks for others after the voting, in my view, and since he was given the money for buying alcohol on 17<sup>th</sup> February 2016 then the bribery falls squarely under **S.68 (5) of PEA**. Accordingly this bribery is also proved. The other bribery incident is alleged to have been done at Kurao polling station where Irwate Peter an agent of the petitioner is stated to have witnessed Akon Julius and Lokwang Simon stated to be agents of the 1<sup>st</sup> respondent distributing money to voters. In this regard I agree with Counsel for the 1<sup>st</sup> respondent that there is no proof tendered showing that those who received the money were indeed registered voters. In my view this incident is not proved to satisfaction of court.

The other alleged bribery incident is stated to have occurred at Nikwapicha village. Apparently there were two alleged bribery incidents at the place. One recounted by Lomura Betty who stated Akon Julius met her with Amara Anna and passed on Shs. 5,000/= to Amara. Even if the allegation was not answered by the 1<sup>st</sup> respondent I am still of the view it does not stand the test of bribery.

The other allegation related to another Lomuria Betty who alleged that on 17<sup>th</sup> February 2016 Loike Gabriel Kider an agent of the 1<sup>st</sup> respondent gave her 30,000/= and sachets of kick

waragi. The events that followed have been recounted earlier in the judgment and in my view, contrary to the contention by the 1<sup>st</sup> respondent that Lumuria does not say she was bribed personally, point to the bribery by Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent contrary to the law. Accordingly the bribery is proved to the satisfaction of court.

5 The other incident is stated to have happened at Lemugete Village also involving Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent and related to distribution of local waragi and cash to purchase kwete which was consumed on the 18<sup>th</sup> February 2016. Engor is alleged to have reported the matter to police.

In my view the police report would have helped the case of the petitioner. In addition there is  
10 no proof that indeed those who received the money and the waragi used it to bribe voters. In the premis this allegation fails.

The other bribery incident is stated to have happened at Narube and as recounted earlier in this judgment I share the view of Counsel for the 1<sup>st</sup> respondent that the evidence relating to this incident is conflicting and misleading. Accordingly the bribery incident is not proved to  
15 the satisfaction of court.

The other alleged incident is stated to have happened at Nachukulu East. The evidence of Adomoi Simon Peter in my view collaborates that of Lokol Paul who personally attended the rally at the rock side and participated in drinking the waragi that was bought. In the premis I am of the view that the incident earlier set out in the judgment did happen and the petitioner  
20 has proved to the satisfaction of court that the bribery happened. The other incident is bribery at Morouetome and from the evidence recounted by Lotyang an appointed agent of the 1<sup>st</sup> respondent, the other agent of the 1<sup>st</sup> respondent Loiki Gabriel Kider turned the distribution of agent's letters into a campaigning spree where in addition to the appointed agents other voters attended and were feasted on a ram and served alcohol and given money contrary to  
25 the electoral law. In the premis I am satisfied that indeed the voters were bribed to vote for the 1<sup>st</sup> respondent.

As to the alleged bribery at Lemugate polling station, I am in agreement with the 1<sup>st</sup> respondent that the allegation does not stand the test as there is no proof that indeed bribery took place at the polling station. As for bribery at Kathile Primary School, again, in my view

the alleged events do not point to any bribery at the station and the allegation is not proved to the satisfaction of court.

In the result it is my finding that the petitioner has proved to the satisfaction of court bribery incidents at, Kathile Sub-county, Kathile Trading Center, Namamutau, Nikwapicha village,  
5 Nachukura East and Morouetome.

The other alleged illegal practice/electoral offence was campaigning within 24 hours before polling day and campaigning on polling day contrary to **Section 20(5) and 81 PEA**. The former section is to the effect that campaign meetings shall not be held within twenty four hours before polling day while the latter section relating to prohibited activities on polling  
10 day lists among others canvassing for votes within two hundred meters of any polling station seeking to influence any person to vote for any candidate.

The petitioner relied on the evidence of Lothang Isaac who testified that a one Loiki Gabriel Kider an agent of the 1<sup>st</sup> respondent on 17<sup>th</sup> February 2016 at around 5:00pm campaigned to a group of about 100 people at Monueotom who included the agents of the 1<sup>st</sup> respondent who  
15 had gone to pick their appointment letters. Further the petitioner relied on the evidence of Nachiam John who stated that a one Pak Peter Pex was campaigning for the 1<sup>st</sup> respondent on 18<sup>th</sup> February 2016 at Katirae polling station. On the same issue Adomoi Simon Peter alleged that the Presiding Officer at Nachukul Fal class polling station by the name of Losire Peter was, while distributing ballot papers, instructing voters to vote for the 1<sup>st</sup> respondent. The  
20 same pattern is said to have been witnessed in practically the entire constituency and diverse people have tendered affidavits testifying to the same. On her part the 1<sup>st</sup> respondent contends that there is no evidence proving her personal involvement or that the allegations relate to those said to be her agents. The agents featured include Loiki Gabriel Pak (who admits he was an agent of the 1<sup>st</sup> respondent) Lokong Daniel the Kaabong Town Council Engineer who  
25 features prominently (but there is no evidence pointing to him as an agent), Apau Paul Defao and others. Both Counsel for the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent while submitting on these allegations relied on ***Akidi Margaret Vs Adong Lilly & Another Gulu Election Petition No. 4 of 2011*** where Oweri Opio J (as he then was) while commenting on Counsel for the 1<sup>st</sup> respondent's submission that **PEA** does not declare campaigning within 24 hours  
30 from voting as an illegal practice had this to say:-

5 “I think the provision of **Section 20 (5) of Parliamentary Elections Act** was not meant to be mandatory but directory since the Act does not provide for remedies against the offender. It was an administrative tool by Electoral Commission to monitor and to give rest to candidates and calm to the electoral candidates. Violating the same would not allow for annulment of the results”

I entirely agree

The other complaint raised by the petitioner is that the 1<sup>st</sup> respondent made false statements contrary to **Section 24(a) PEA**. The section provides:-

10 24. A person who, before or doing an election for the purpose of effecting or preventing the election of a candidate either directly or indirectly.

15 a). by words, whether written, song, sign or any other representation or in any manner seeks to excite or promote disharmony enmity person or hatred against another person on grounds of sex, race, colour, ethnic origin, tribes, birth, creed or religion

b. ....

c. ....

d. ....

20 e. ....

f. ....

Commits an offence and liable on conviction to a fine not exceeding seventy two currently points or imprisonment not exceeding three years or both.

25 The petitioner led evidence through a number of persons like Apayal Caroline, Nading Mercy, Lokodo Martin and others who alleged that the 1<sup>st</sup> respondent and her agents at diverse places made reckless, malicious, sectarian, divisive or mudslinging statements about

the ethnicity of the petitioner. The context of the utterances was that the 1<sup>st</sup> respondent referred to the petitioner as an “*akatapit*” meaning that the Petitioner was a foreigner from Napore Community of Kitgum District.

In answer to this allegation, the 1<sup>st</sup> respondent contended that there was no proof that the said  
5 misconduct was reported to police and that no quoted statement quoting the actual words uttered was made by the 1<sup>st</sup> respondent and that even then the petitioner has not denied the truth of those statements. I agree with the position of both Counsel for the respondents that since **Section 24 of PEA** falls within the remit of criminal matters then it should have been handled as such. Further, although Counsel for the 1<sup>st</sup> respondent made reference to **Section**  
10 **73 of PEA** in his submission under this item, on reading the presentation by the petitioner, I form the view that it was not the intention of the petitioner to also proceed under this section.

The other complaint brought up by the petitioner is that of assault of the petitioner’s agents in Kathile and Kalapata. The allegations under this sub-issue talk of assault on Lokiru Paul, Uma Kizito, Lokolinyang Pasquale who all allege they were beaten by supporters of the 1<sup>st</sup>  
15 respondent like Losilo Peter, Koryang Lokoleruko, Ileny, Abdi. Lokiru Paul is stated to have sustained injuries and was treated at Kathile Health Center after he was referred there by Police. Annexed to his affidavit is the medical examination report which was submitted to police after Lokiru was treated. Apparently there is no proof of any further follow up by the police. There were other alleged assault and violence incidents from the evidence of Logwe  
20 Jino, Apei Joseph and Lochul Hillary. In my view the conduct of the alleged supporters of the 1<sup>st</sup> respondent is contrary to **Section 80 PEA** and constitutes an election offence under **part 12 of the PEA**.

The other complaint raised by the petitioner is use of government resources to campaign contrary to **Section 25 of PEA**. The petitioner backs this allegation with her affidavit in  
25 support of the Petition under paragraph 42 where she averred that the 1<sup>st</sup> respondent and her agent Loiki Gabriel Pak used motor vehicle no. LG-0026-63 attached to the office of LCIII Chairperson where Loike Gabriel Pak is the Chairperson. In the petitioner’s affidavit in rejoinder filed 26<sup>th</sup> May 2016, in answer to Loiki Gabriel Pak’s denial in his affidavit in support of the 1<sup>st</sup> respondent’s answer, the petitioner stated that the said vehicle was  
30 impounded upon her complaint to the District Chief Administrative Officer (CAO). She

refers to the letter from the CAO to the DPC to have the vehicle impounded. However the letter marked “H” annexed to the affidavit in rejoinder reads in part:-

5                                    *“My office has received numerous complaints about the use of the above mentioned Government Vehicle (LG-0026-63) for campaign purposes by the LCIII Chairperson Kaabong Town Council. This is in contravention of the **Local Government Act CAP 243 Section 126 (1)**.....”*

The section quoted restricts the use of Local Council or Government facilities by a candidate who is a Chairperson. It is also not in dispute that the said Loiki Gabriel Pak was a candidate for LCIII Chairperson Kaabong Town Council. When I analyse the evidence before me, it  
10 appears there is an attempt to confuse the events of two almost parallel campaigns, the one for women representative where the 1<sup>st</sup> respondent contested and one for the LCIII Chairperson where Loiki Gabriel Pak contested. The letter of the CAO is instructive in this regard since it specifically castigates Loiki Gabriel Pak’s use of the Government Vehicle as  
15 being in breach of the **Local Government Act** which Act did not apply to the 1<sup>st</sup> respondent and as such is in my view remote to the matter under consideration. It is my view therefore that the offence complained of is not proved to my satisfaction.

As set out above issue three is answered in the affirmative.

***Issue four:                    What remedies are available to the Parties***

On the issue of remedies, **Section 61(1) of PEA** provides that an election of a candidate as a  
20 Member of Parliament shall be set aside if any of the grounds set out in the section is proved to the satisfaction of court.

I found that there was non-compliance with the laws and principles of elections contrary to **Section 61 (1) (c) of PEA.**

In the premises, this Petition is allowed and the election of Woman Member of Parliament  
25 for Kaabong District is hereby set aside. A fresh election shall be held in accordance with the law. The petitioner shall recover her costs in relation to the Petition from the 1<sup>st</sup> respondent. As between the petitioner and the 2<sup>nd</sup> respondent each party shall meet its own costs.

Before I take leave of this matter, since it was my finding that the supporters of the 1<sup>st</sup> respondent might have engaged themselves in acts contrary to **Section 80 PEA** and cognisant of the fact that I have not conclusively established that the offences alleged were proved to the required standard, I make a further order that the allegations be comprehensively  
5 investigated and appropriate actions taken.

I so order

**B. KAINAMURA**

10 **Judge**

**15.08.2016**