

The petition is supported by 38 affidavits. The 1st Respondent's answer to the petition is supported by 35 affidavits while the answer to the petition by the 2nd Respondent is supported by 1 affidavit. The Petitioner filed 33 affidavits in re-joinder.

The 1st Respondent filed an answer to the petition denying each and every allegation of fact contained in the petition, that the allegations were mere falsehoods, fabrication, conjectures and hearsay and further, in particular, that the distribution of hand hoes was a Government Program under NAADS and office of the Prime Minister. The 2nd Respondent also filed an answer to the petition contending that the elections were conducted in accordance with the provisions of the electoral laws.

The main thrust of the Petitioner's case is that the 1st Respondent either personally or through her agents with her knowledge, consent and approval committed numerous election offences and illegal practices when she bribed voters contrary to **Section 68 [1] and 4 of the Parliamentary Elections Act 2005** as amended. Further that the 2nd Respondent conducted and held the elections in contravention of the electoral laws thereby affecting the result of the election in a substantial manner to the benefit of the 1st Respondent.

At the hearing, the Petitioner was represented jointly by Ms. Obore, Engulu Advocates and M/S Isodo & Co. Advocates while the 1st Respondent was represented jointly by Tebusereke Mayinja, Okello & Co. Advocate and M/S Luzige, Lubega, Kavuma & Co. Advocates. The 2nd Respondent was represented by M/S Lex Uganda Advocates and Solicitors.

b). Issues

The following issues were framed for determination:-

- i) *Whether or not the 1st Respondent was properly brought before this court or properly served by the Petitioner.*

- ii) Whether the 1st Respondent personally or through her agents, with her knowledge, consent or approval committed electoral offences/allegations.
- iii) Whether the election was conducted in accordance with the principles laid down in the Constitution, Parliamentary Elections Act and Electoral Commission Act.
- iv) Whether the irregularities and non-compliance if any, affected the result in a substantial manner.
- v) Whether the 1st and 2nd Respondents colluded to commit electoral malpractices.
- vi) Whether the Petitioner is entitled to any remedy sought.

c). Burden of Proof and Standard of proof

It is now trite that the burden of proof in election petitions lies with the Petitioner because it is him/her who seeks to have the election annulled. (see **Mbowe Vs Eliafu [1967] E A 240**) Uganda Courts have followed this position which was reaffirmed in **Col (RTD) Dr. Kiiza Besigye Vs Yoweri Museveni Kaguta Election Petition No. 1 of 2001** where Odoki CJ (as he then was) wrote;-

“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 election petitions is also now settled. **Section 61 (3) of the PEA** provides;-

“Any grounds specified in subsection (1) shall be proved on the basis of a balance of probabilities”

However though the standard of proof is on a balance of probabilities, it is slightly 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**).

d). Preliminary objections

1. At the trial, Counsel for the 1st Respondent raised two preliminary objections. The first one was that Mr. David Obore, Counsel for the Petitioner, should step down from the conduct of the case because he is alleged to have served the petition on the 1st Respondent and would therefore be barred by **Regulation 9 of the Advocates (Professional Conduct) regulations S1.267-2** because the 1st Respondent intended to cross examine him.

I overruled this objection on the premis that Mr. Obore’s conduct in serving the petition on the 1st Respondent is clearly provided for under **Section 6 (1) of PEA** which provides;-

“Within seven days after filing the petition with the registrar, the petitioner or his or her advocate shall serve on each Respondent notice in writing of the presentation of the petition accompanied by a copy of the petition”

Accordingly the above clearly falls under the exception provided under the **Advocate (Profession Conduct) regulation** which provides that;-

*“.....
..... except that this regulation should not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on a formal or non-contentions matter or fact in any matter in which he or she acts or appears”*

The second objection related to Mr. Sam Isodo co-Counsel for the Petitioner who was alleged to be and indeed confirmed that he was an official agent of the Petitioner for the elections in terms of **Section 11 (i) (a) (ii) of PEA**. Counsel for the 1st Respondent stated that the basis of the objection was that they intended to cross examine Mr. Isodo as official agent of the Petitioner and as such he could not act as her Counsel in the case now before court. I allowed Mr. Isodo to remain on the Petitioner’s team and undertook to give my reasons in the judgment.

As noted, Mr. Isodo was the official agent of the Petitioner. It is also not in disputes that Mr. Isodo did not swear any affidavit in support of the petition. As such he does not fall

under the ambit of **Regulation 9 of the Advocate (Profession Conduct) regulations** SI 267-2. However he could only fall under the ambit of the regulation if, in the course of the trial he was required as a witness to give evidence. The trial is by way of affidavit evidence read in open court (see **Rule 15 (1) PEA** Rules SI 141-2). With leave of court any person swearing an affidavit which is before court may be cross examined by the opposite party (**Rule 15 (2)**).

2. In his submissions Counsel for the 1st Respondent submitted that they had encountered difficulties in getting affidavit from Mr. Isodo and that they wished to invoke the provisions of **Section 64 (1)(b) of PEA** and apply to court to summon Mr. Isodo to give evidence. With due respect to Counsel for the 1st Respondent, I am of the opinion that that option is not open to the parties to the petition. **Rule 15 (3) of PEA** Rules SI 141-2 is to the effect that:-

*“The court **may of its own motion**, examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence of the witness is likely to assist the court to arrive at a just decision”.*
(emphasis added)

In my view **Section 64 (1) (6) of PEA** and **Rule 15 (3) of PEA** Rules are not analogous to **O.16 r CPR** as Learned Counsel seemed to imply. Accordingly it was for the above reasons that I allowed Mr. Isodo to continue as co-Counsel for the Petitioner.

I will now proceed to consider the other issues as agreed upon during conferencing.

Issue 1 Whether or not the 1st Respondent was properly brought before this court or properly served by the Petitioner

The respondent in her supplementary affidavit in support of her answer to the petition at para 2 thereof contended that she was served with the Notice of Presentation of the Petition and the Petition on the 12th day of April 2016. According to Counsel for the 1st Respondent, since the petition was filed in court on 1st day of April 2016, service of the notice of presentation and the petition should have been served on the

1st respondent not later than 8th April 2016 (S.62 of PEA and Regulation 6 (1) of PEA rules).

Counsel for the 1st Respondent further contended that the affidavit of service deponed by Counsel for the Petitioner, David Obora was not properly on court record since there was no proof that the requisite court fees had been paid. Counsel relied on the holding in *Ndaule Ronald Vs Hajji Naddule Abdul Civil Appeal No. 20 of 2006*.

In reply, Counsel for the Petitioner submitted that whereas the Petition was filed on 1st April 2016, the Notice of Presentation of Petition was signed on 4th April 2016 and accordingly service of the Notice of Presentation and the Petition should have been served not later than 11th day of April 2016. On payment of filing fees, Counsel stated the receipts on court record indicate that the Petitioner in total paid for filing of 73 affidavits which include the affidavit of service.

In the alternative, it was Counsel's submission that should court find that any fees were not paid, then it was an inadvertent mistake in respect of which appropriate orders can be made in respect of paying the requisite fees in accordance with **Rule 6 of the Court Fees, Fines and Deposits Rules (cap 41)**.

I have looked at the affidavit of service deponed by Mr. David Obore Counsel for the Petitioner. It is indicated to have been sworn on 9th April 2016 and filed in court on 11th April 2013 attaching the copy of the Notice of Presentation of Petition which bears an acknowledgement of service by the 2nd Respondent dated 8th April 2016 and that of the 1st Respondent dated 12th April 2016. At para 17 thereof Mr. Obore deponed that the 1st Respondent stubbornly indicated the date of service on the Notice of Presentation as 12th April 2016 when in fact she was served on 8th April 2016. While being cross examined in respect of the affidavit of service, Mr. Obore stated that it would have been foolhardy for him to have served on 12th April 2016 and then swear an affidavit of service on 9th April 2016 and file it on court record on 11th April 2016.

I entirely agree with him.

Mr. Obore's affidavit of service which is on court record is indicated to have been filed on 11th April 2016. Counsel for the 1st Respondent stated in his submissions that the court stamp was backdated. He offered no supporting evidence for this assertion. The affidavit is also stated to have been commissioned on 9th April 2016. I see no evidence advanced by the 1st Respondent to the contrary. Since Mr. Obore was steadfast in cross examination I am inclined to agree with him that the 1st Respondent deliberately endorsed on the Notice of Presentation the date of 12th April 2016 when in fact she was served on 8th April 2016.

In the result it is my finding that the 1st respondent is properly before this court having been properly served by the Petitioner.

Issue 2: Whether the 1st Respondent personally or through her agents with her knowledge consent or approval committed illegal acts.

The Petitioner adduced affidavit evidence alleging illegal acts by the 1st Respondent which centered on bribery by distribution of hoes, boats, iron sheets, saucepans and money to the electorate. The alleged incidents of bribery are stated to have happened at diverse locations throughout the constituency. I will now set out the alleged bribery incidents per location

a. Bribery at Okoboi Super Mix Bar

The Petitioner supported this allegation through among others two affidavits in support deposed by Omongin James (Vol. 1 pg 51) and that of Ogullu George (Vol.1 pg 58). They all allege that they were invited to a meeting at the said bar the night of 12th December 2015 which started at 10:00pm, was addressed by the 1st Respondent and hoes were distributed. The deponents alleged that the hoes were delivered in Ongodia Julius's vehicle Reg No. UAP 655U.

In answer to the allegation, the 1st Respondent denied distributing hoes and contended that the distribution of hand held hoes was a Government Program under NAADS and the office of Prime Minister (OPM) in actuation of the Presidential directive to supply hoes to farmers in Ngora District. This position was supported by among others Mr. Ojangole

Joseph (1st resp. answer pg 64) a coordinator of Ngora District Development Farmers Association Network (NGODDAFAN) and Oboi Andrew (1st resp. answer pg 34) a District Agricultural Officer Ngora District Local Government. They all state that the district, in October 2015 received a consignment of 15792 hand held hoes from NAADS and that the hand held hoes were distributed to all the five sub-counties in Ngora District. It is further stated that the distribution was completed by end of November.

b. Bribery at Osingiria village

The Petitioner alleged that this happened at Osingiria village. However she alleged that she also personally witnessed the loading of the hoes for delivery at Osingiria. That on 13th December 2015 while at her shop in Ngora Town which is behind where the 1st Respondent has an office, she got information that the 1st Respondent's agents were loading hand held hoes on Julius Ongodia's vehicle Reg No. UAP 655U. She further stated that she reported the matter to Ngora Central Police Station who took no action.

Further that she reported the matter to the District Police Commander, the Resident District Commissioner and the office of the 2nd Respondent and nothing was done about it.

This allegation too was denied by the 1st Respondent and she adduced evidence of Ongodia Julius the owner and driver of vehicle No. UAP 655 U who admitted transporting hand hoes during December 2015 to various villages including Okiba in Okoboi parish, Osingiria, Obosai, Akarakei, Atutur and others. That all deliveries were made during the day and were on behalf of Onjangole, Coordinator of Ngora District Farmers Network. The 1st Respondent also adduced evidence of SP Esau Atorom Opio, the DPC Ngora District, who stated that the Petitioner together with her campaign agents on several occasions complained to his office that the 1st Respondent was distributing hoes to the electorate in Okosoi, Osingiria, Akakukel and Nyanongo. That he investigated and found that the hoes were distributed in October and November 2015 as a Government Program. The period of the distribution of the hoes is further confirmed by some witnesses like Oumo Brian (1st resp. answer pg 82)

c. Bribery at the home of the late S.K Okurutu in Oluwa.

This allegation is supported by among others the evidence of Osikel James (vol.1pg 73) and Stephen Okiria (vol. 1 pg 80) who state that upon being mobilized, they convened at the home of late S.K Okurutu on 13th December 2015 and at about 11:30 pm the 1st the Respondent arrived with a truck carrying hoes. That the 1st Respondent addressed those present who were about 180 in a number and hoes were distributed. Mr. Osikel at par 5 and 6 of his affidavit alleges that when the 1st Respondent delayed in coming he was requested to call her on her MTN number 0772 364994 which he did using his phone and the 1st Respondent informed him that she was delayed but was coming. If this piece of information is true i wonder then why Counsel for the Petitioner did not support it with the print out of the deponents log for the phone calls made and received that day which could have been easily obtained from the service provider.

In answer to this, the 1st Respondent relied on the evidence of among others the area LC1 Chairman – Emot orinyo Charles (1st resp. answer pg 113) who denied the allegations but stated that as LC1 Chairman he participated in a Government Program in the month of November 2015 where hoes were distributed to farmers. Further, the caretaker of the home a one Ongaine Ignatius (1st resp. answer pg 117) confirmed the period and stated that's when the home was used to distribute the hoes.

d. Bribery at Atida Idoga in Ajeelo

This allegation is supported by among others the evidence of Okudo William (vol. 1 pg 8118) and Okaya Geoffrey (vol. 1 pg 125) who allege that the 1st Respondent on the night of 14th December 2015 distributed hoes at Atida Idoga.

In answer, the 1st Respondent relied on the affidavit of among others Edimu Simon Peter (1st resp. answer pg 78) denying that allegation and stating that it was in November 2015 when hoes were distributed to the people as part of Government Program.

e. Bribery at Ajesa Primary School

The allegation is supported by among others the affidavit evidence of Ebedu Julius (vol. 1 pg 95) and Otai David (vol. 1 pg 102) who stated that 750 people were mobilized at Ajesa

Primary School on 15th February 2016 where the 1st Respondent on arrival at 6:00am in the morning addressed the gathering and distributed hoes.

In answer, the 1st Respondent relies on among others the affidavit of Ekidit Richard (1st resp answer pg 98) who testified as sub-county coordinator of Kapir Development Farmers Association and stated that the hoes were received in the month of October 2015 and were indeed a Government Program.

f. Bribery at Tilling PAG Church

The allegation in support by among others the affidavit of Eretu Francis (vol. 1 pg 106) and that of Ikara John (vol. 1 pg 114) who state that on 22nd January 2016 they were mobilized to meet at the church at 4:00am in the morning but the 1st Respondent arrived at 6:00am and distributed hoes.

In answer to the allegation the 1st Respondent relied on among others the affidavit of Emario Emmanuel (1st resp. answer pg 98) who stated that the hoes were distributed in November 2015 under NAADS Program.

g. Bribery at Juwai Catholic Church

The allegation is supported by among others the affidavits of Opolot Moses (vol. pg 84) and Otim David (vol. 1 pg 91) who state that on 23rd January 2016 the 1st Respondent between 8:00am and 9:00am distributed hoes and informed the people that these were not government hoes but hers personally. That as a cover up measure the hoes were brought in an ambulance.

In answer to the allegation the 1st Respondent relied on among others the evidence of Oreete Sam (1st resp. answer pg 107) who stated that the hoes were distributed on 28th October 2015 under the auspices of Ngora District Farmers Association.

h. Bribery at Kasakuli Pentecostal Church

The Petitioner alleged that on 31st January 2016, the 1st Respondent attended church service at Kabakuli PAG and while addresses the congregation asked them to vote for her in forthcoming elections and donated a sum of Shs. 700,000/= and a big

saucepan to the church. The Petitioner relied on the evidence in the affidavits of Oluka James (vol. pg 187) Apio Sarah (vol. pg 194) Rev Martin Odi (vol 1 pg 198) and Okura John (vol. 1 pg 206 (a)).

In rebuttal, the 1st Respondent denied the allegation and contended it was a fabrication by among others Rev. Martin Odi. She relied on the evidence of Okiror James William (1st resp. answer pg 119) who echoed the same sentiments as the 1st Respondent that it is Rev. Martin Odi who is behind the smear, and that of Okallebo Jackson (1st resp answer pg 120) all who point a finger to Rev. Martin odi.

i. Bribery at Atapar Catholic Church

The Petitioner alleges that on 27th December 2015 during church service the pledge by the 1st Respondent of iron sheets was announced. That on 3rd January 2016 the 1st Respondent spoke in church and announced the fulfillment of her pledge and handed over 50 iron sheets. That by the time of filing the petition the iron sheets had not yet been used. In proof of this the Petitioner relies on the affidavit of Oriokot Patrick (vol 1 pg 176) and Ekemu Juventine (vol 1 pg 183).

In answer the 1st Respondent relied on evidence of Atai Betty (1st resp. answer pg 60) who stated that the iron sheets were delivered by the RDC in 2015 and according to the 1st Respondent's answer to the petition the iron sheets were distributed by Government as relief to the disaster affected areas. She also relied on the evidence of Opolot Apollo (1st resp. answer pg 41) Acting Deputy Chief Administrator Ngora District who stated that upon the schools and churches in Ngora District being affected by hailstorms, a list was compiled and on intervention of the 1st Respondent, the District Woman Member of Parliament, OPM in June 2014 delivered a consignment of iron sheets and tauplines which items were distributed to affected schools and churches which included Atapar Catholic Church and Oteteen Primary School. This information is supported by the evidence of Ariong John RDC Ngora (1st resp. answer pg 46).

j. Bribery at Oteteen Primary School

It is alleged that the Petitioner while addressing a rally at the school was requested for iron sheets for roofing a teacher's house which request she refused and the 1st Respondent upon hearing this went the following day 10th February 2016 and held a rally and announced a donation of 20 iron sheets and Jerseys for Oteteen Football Club. That the said items were picked by Ijala Simon and Epedumo Julius the next day from the 1st Respondent's home at Agu. However, they only picked 16 iron sheets. The Petitioner tendered in evidence photos of football players wearing the Jerseys (Ex 84 and 85).

In answer, the 1st Respondent in respect of iron sheets, contended that Oteteen Primary School was a beneficiary of iron sheets from the RDC for roofing a teacher's house. Ijala Simon (1st resp. answer pg 129) who was alleged to have picked the iron sheets from the residence of the 1st Respondent denied and stated that he picked them from the RDC office in September or October 2015. On the issue of football Jerseys the 1st Respondents admitted having distributed the Jerseys but long before the campaign period. That this was in line with a football tournament- Amongin Jacqueline cup- she has been sponsoring.

k. Bribery at Atapar –Agule and Kopege Village

The Petitioner through among others the affidavits of Otekat Juma (vol 1 pg 129 and Epau Tom vol. 1 pg 144) and others alleges that the 1st Respondent donated boats to the two villages. The deliveries were on 12th February 2016 for Atapar –Agule and 14th February 2016 for Kopege village. The photographs of the boats appear as annexure ASI 7 (a) and ASI 7 (b) to the Petitioners affidavit in support and the said photographs were taken by Odeke Simon Peter. He stated he took them two days after declaration of results.

In rebuttal, the 1st Respondent while admitting the donation, disputes the date of delivery and maintains the boats were delivered to the villages in September 2015. Her evidence is collaborated by among others that of Odeke Peter the LC Chairman of Atapar parish and that of Onyait Puis resident of Agure Village.

Consideration

The Petitioner's allegation of illegal acts committed by the 1st Respondent personally or through her agent with her knowledge, consent or approval is founded on bribery. Bribery is defined under **S.68 (1) PEA** to mean;-

(1) 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 candidates 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 (1) 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.

(see Col (Rtd) Dr. Besigye Kizza Vs Museveni Kaguta and Anor. Election Petition No. 1 of 2001)

Counsel for the Petitioner argued that the evidence adduced showed that all the donations were delivered and distributed by the 1st Respondent personally save for iron sheets and football jerseys in Otetem Primary School, that the 1st Respondent asked the beneficiaries to vote for her in return and that all these acts were done between 12th December 2015 and February 2016 within the gazetted campaign period.

In his submissions Counsel for the 2nd Respondent cited the decision of **Musa Anthony Hamis Vs Dr. Lulume Bayiga M. Philip** where Musoke Kibuka J had this to say;-

“It is a pity that in election petitions such as this one, truth is often the first victim to be sacrificed”

I entirely agree.

I note in this petition that the Petitioner has endeavoured to place the alleged bribery events between 12th December 2015 and 15th February 2016 and the 1st Respondent while admitting the donations, insists they were effected between the months of September and October 2015. It is well known that according to the Electoral Commission road map for 2015-2016 general elections, candidates for parliamentary elections 2016 were nominated on 2nd and 3rd December 2015. So for the 1st Respondent to fall within the ambit of **S 68 (i) & (4) of PEA** the alleged acts of bribery should be post 3rd December 2015. In the same vein for the 1st Respondent to demonstrate that the donations she made are not proscribed by the electoral laws, she has to show that they were made before nomination. Indeed that is, in sum the evidence tendered by Petitioner and the 1st Respondent in support of and in rebuttal of the allegation respectively.

Indeed as ably put by Owing Dollo J (as he then was) in **Kabuusu Moses Wagabo Vs Lwaiga Timothy Mutekanga & EC Election Petition No. 15 of 2011:-**

“Owing to the highly partisan and passionate attachment which people have to the candidate and partly they support to the extent that not infrequently they go to any length either to seek to establish adverse claim or to rebut it. It is advisable to look for cogent independent evidence in proof. I should add that it would be strange for a candidate to openly and with impunity dish out money or material benefits to voters for the purpose of influencing them. I suppose candidates who indulge in such breaches usually do so with utmost discretion”.

Further the need for credible evidence to support allegations of electoral malpractice was recently emphasized by the Supreme Court in **Amama Mbazi Vs Yoweri Kaguta Museveni, Electoral Commission and Attorney General Election Petition No. 1 of 2016** where it was stated:-

*“..... The legal burden rests on the Petitioner to place **Credible** evidence before court which will satisfy the court that the allegations made by the Petitioner are true.”*

In the petition under reviewed, the 1st Respondent is alleged to have mobilized people for distribution of hoes as follows:-

300 people at Super Max bar at 10:00pm, 500 people at Osingiria, 200 people at Oluwa (s.k Okurutu's house) at 11:30pm, many people at Atida Idoga at 1:00am, 750 people at Ajesa Primary School at 6:00am, many people at Tilling PAG Church at 6:00am.

All the people were mobilized ostensibly for distribution of hoes at night because according to the deponents of the affidavits in support of the petition, the 1st Respondent informed them she was carrying out the activity illegally. To my mind these allegations squarely fall in the category where truth has been sacrificed for the sake of establishing an adverse claim against the 1st Respondent. To mobilize the numbers of people mentioned in the affidavits at the odd hours of 10:00pm, 11:30pm, 6:00am etc is to say the least stretching the truth if not outright lying. All the affidavits tendered in evidence relating to the said events held at night are silent on the basic minimum requirements. The conveners of the rallies would have been expected to put in place basics like tents and chairs and ensuring the venues are well lit. There is no indication in the evidence before court that this was done. Doesn't this mean that the evidence has failed the credibility test. I think so.

Accordingly, without cogent independent evidence to support the alleged distribution of hoes at odd hours of the night I am unable to rely on this type of evidence.

I am more persuaded to believe the explanation offered by the 1st Respondent- that the hoes were distributed between the months of September and October 2015 as part of a Government Programe. The 1st Respondent through her evidence and that of the District Agricultural Officer Oboi Andrew (1st resp. answer pg 34), the Dy Chief Administrative Officer - Opolot Apollo (1st resp. answer pg 41) and Ariong John the Resident District Commissioner (1st resp. answer pg 46) have been able to demonstrate that the hand hoes were procured by government and the contact person was the 1st Respondent. Accordingly in my view there in no scintilla of evidence pointing to the 1st Respondent having bribed voters with hand held hoes.

On bribery at Kabakuli Church, I note that the Petitioner among others relied on the evidence of Rev. Martin Odi who was a preacher of the day and according to the Marriage Certificate (pg 36) is the one who officiated at the marriage of the Petitioner at the same church. That, in my mind, puts him high in the hierarchy of the said church which would have placed him in a better position to provide more cogent evidence relating to the donation e.g copy of receipt for the sums, a record in the church books showing the donation etc. In absence of independent evidence- which in my view should be readily available relating to this donations, i am not persuaded that the donation was made. The Petitioner has failed to prove this allegation to the required standard.

Relating to the donation of Jerseys to the Otetem FC, the 1st Respondent indeed did not deny donating Jerseys but contended it was not on 11th February 2016 as alleged and stated she had been running a football tournament and the alleged donation was done before the campaigns period. Mr. Simon Odeke (vol. 1 pg 238) who took the photographs (annexture. ASI 9 (a) and ASI 9 (b)) to Petitioner's affidavit when called for cross examination, could not explain why there were no spectators in his photographs since he claimed they were taken after a football match. There was also the issue of one of the players photographed wearing the Jerseys who was wearing the Jersey over another one with inscription of the names of the Petitioner. When questioned about this during cross examination the Petitioner strangely in answer said that the case was not about investigating T-shirts. All this leads me to the inference that the Petitioner has failed to support with credible evidence the assertion that the 1st Respondent donated the jerseys on 11th February 2016.

The Petitioner also alleged that the 1st Respondent made malicious statements against her at Nyamonju Primary School and Ibonguso in Puna. She alleged that the 1st Respondent while addressing a rally at Nyamonju Primary School on 22nd January 2016 stated that the Petitioner was interfering with her campaign to vaccinate people against Hepatitis B Virus. The Petitioner relied on the evidence of Ikilai Emmanuel (vol. pg 201) Emmu Benard (vol. 1 pg 229 and Atenyo Paul (vol.1 pg 213).

These allegations were denied by the 1st Respondent who argued that she was not the one conducting the vaccination programme and that the Petitioner's witnesses failed to

state the exact words allegedly uttered by her. Counsel for the 1st Respondent relied on the case of **Kabuusu** (supra) where it was emphasized that in case of allegations of this nature it is incumbent on the Petitioner where the Respondent has denied the allegation, to indicate the objectionable words through the evidence of an incontrovertible source to prove the attack on the person of the Petitioner and that the attack went beyond permissible criticism. I note that the Petitioner relied on among others the evidence of Eumu Benard (vol. 1 pg 229) who was also contesting for the position of LCV Chairman. Mr. Eumu stated in his affidavit that the malicious statements were aimed at him and the Petitioner and that they put them in bad light in the District. In my view Mr. Eumu and the other witnesses relied on by the Petitioner are not credible and have not helped me to determine that the 1st Respondent did in fact make the offending utterances.

In the result this issue is resolved in the negative.

Issue 3 Whether the said election was conducted in accordance with the principles laid down in the Constitution, Parliamentary Elections Act and Electoral Commissions Act.

The Petitioner submitted that from their discussion in issue 2, the election of the 1st Respondent was not conducted in accordance with the law. I agree with the submissions by Counsel for the 2nd Respondent that in effect the Petitioner appears to be only relying on the alleged bribery of voters to prove the non compliance with the electoral laws. The only other evidence led by the Petitioner to support her case relating to this issue was that Alomu John Patrick (vol. 1 pg 235) which related to events on 24th February 2016 during the elections for Local Council positions and his testimony was not helpful to the Petitioner in this regard.

Accordingly consequent upon my findings in issue 2 this issue is also answered in the negative.

Issue 4 Whether the irregularities and non-compliance with the provisions of the electoral laws affected the result in the substantial manner.

It appears along the way the Petitioner abandoned prosecuting this issue. In the result the issue fails.

Issue 5 Whether the first and second Respondents colluded to commit electoral malpractices.

5 The Petitioner contends that by conduct especially of Ms. Norah Lunyolo the Returning Officer for Ngora District of the 2nd Respondent colluded with the 1st Respondent to commit electoral malpractices. The conduct referred to by the Petitioner is failure to pick up voter bribery by the 1st Respondent, not handling the complaints levelled against the 1st Respondent by the Petitioner, not being personally present at the police station
10 when the voting materials were received.

With due respect I fail to see how Counsel for Petitioner expects to prove collusion between the 1st and 2nd Respondent based on the alleged conduct of Ms. Lunyolo.

Respectfully, I fail to see how Counsel expects court to make a finding of collusion between the 1st and 2nd Respondents based on the alleged conduct or inaction of Ms.
15 Lunyolo the Returning Officer of Ngora District or the conduct or inaction of the police for that matter.

In the result this issue is answered in the negative.

Issue 6 What remedies are available to the parties

Based on the findings on all the issues above, the Petitioner has failed to prove any of the
20 allegations before court. It is my finding that the 1st Respondent was validly elected as Woman Member of Parliament for Ngora District.

Accordingly this petition is dismissed with costs.

25 **B. Kainamura**
Judge

25.07.2016