

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT SOROTI**

**HCT - 00 - CV – E.P – 0005 – 2016**

**HON ALICE ASIANUT ALASO:.....PETITIONER**

**VERSUS**

**1. ELECTORAL COMMISSION**

**2. HELLEN ADDA ALIAS HELLEN ADOA:.....RESPONDENTS**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**J U D G M E N T:**

On 18<sup>th</sup> February 2016, elections for Serere District Woman Member of Parliament were held. The Petitioner, 2<sup>nd</sup> Respondent and Ms Agnes Asege were the three candidates who stood for the position. The 2<sup>nd</sup> Respondent emerged winner while the Petitioner came in second. The margin between the two candidates was of 16,111 votes. The 1<sup>st</sup> Respondent declared the 2<sup>nd</sup> Respondent winner of the election and she has since been gazetted and sworn in as Woman MP representing Serere district.

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

The Petitioner seeks a declaration that the Respondents did not comply with the provisions laid down in the electoral laws, that there was commission of illegal practices and offences by the 2<sup>nd</sup> Respondent personally and by her agents with her knowledge and that this non-compliance affected the result of the election in a substantial manner.

The grounds upon which the petition is premised are clearly set forth in detail, both in the petition and the affidavits in support of the petition as required by Rule 4(8) of the Parliamentary Elections (Interim Provisions) Rules.

The petition's main ground is that the 1<sup>st</sup> Respondent did not comply with the provisions of the law and set principles while conducting the election for Woman Member of Parliament for Serere district. The other ground is that the 2<sup>nd</sup> Respondent committed illegal practices and engaged in electoral offences during the election.

The Petitioner therefore sought orders from this court that:

- the election of the 2<sup>nd</sup> Respondent be set aside and fresh elections be held
- any other remedy the Court considers just
- costs of the Petition

The 1<sup>st</sup> Respondent's defense to this petition is that the election was conducted in a peaceful, free and fair manner in accordance with the principle of transparency established by the electoral laws and that the final result of the election reflected the true will of the majority voters.

In their defense, the 2<sup>nd</sup> Respondent contended that the election was conducted in compliance with the law and that she did not personally, or through her agents, with her knowledge and consent procure, provide or bribe voters with money, alcohol, salt, soap or use any undue influence.

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

1. Whether or not there was non-compliance with the electoral laws;
2. Whether there was failure to conduct the election in accordance with the principles laid down in the provisions of the electoral laws;
3. Whether the non-compliance affected the results of the election in a substantial manner;

4. Whether the 2<sup>nd</sup> Respondent or her agents, with her knowledge, consent or approval committed illegal acts/offences
5. Whether the Petitioner is entitled to the remedies sought?

In a petition of this nature, the burden of proof is cast on the Petitioner to prove the assertions to the satisfaction of the court that the irregularities or malpractices or non-compliance with the provisions and principles laid down in the relevant laws were committed, and that they affected the results of the election in a substantive manner. Accordingly, the standard of proof is on a balance of probabilities but slightly higher though lower than beyond reasonable doubt; **Section 61(1) of the Parliamentary Elections Act, 2005; Mukasa Anthony Harris V Dr. Bayiga Michael Lulume SCCA 18/2007; Matsiko Winfred Komugangi V Babihuga Winnie Election Petition Appeal 9/2009.**

Before the petition could be heard, Counsel for the 2<sup>nd</sup> Respondent raised a preliminary objection. He submitted that 47 of the Petitioner's affidavits in support of her petition should be struck out as they did not conform to the requirements of the Illiterates Protection Act and the Oaths Act. He submitted that under Section 3 of the Illiterates Protection Act, one who writes a document for an illiterate person is required to state his details; that is, full name and full address and that the person must confirm that he/she was instructed to write the document by the person for who he purported to have written which was not the case in the 47 affidavits. Further that the person before whom the affidavit was commissioned must be named as provided for by Section 6 of the Oaths Act

Counsel also submitted that the purpose of Section 3 of the Illiterates Protection Act is to ensure that documents purported to be written for illiterate persons are understood by third persons if they are to be bound by their content and to protect illiterate persons from manipulation or any oppressive act by literate persons.

He further submitted that non-compliance with these requirements rendered the affidavits fatally defective and in this he relied on the authorities of **Kasaala Growers Co-operative Society V Kakooza Jonathan & Anor SCCA 19/2010; Ngoma Ngime V Electoral Commission & Anor Court of Appeal Election Appeal 11/2002; Tiken Francis & Anor V Electoral Commission**

**& 2 Others Election Petition 01/2012 and Col (Rtd) Kizza Besigye V Museveni Yoweri Kaguta& Anor Supreme Court Election Petition 01/2001**

In reply, the Petitioner's advocate submitted that a liberal interpretation should be given in respect of affidavits in election petitions and invited Court to invoke Article 126 of the Constitution to do substantive justice with undue regard to technicalities as any defects in the affidavits were merely as to form. In this, he also relied on **Col (Rtd) Kizza Besigye V Museveni Yoweri Kaguta& Anor Supreme Court Election Petition (supra)**

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

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

Section 6 of the Commissioner for Oaths Act also provides:

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

Rule 9 of the Schedule to the Act provides the form of such jurat and it shows that the jurat should state the name of the Commissioner, date and place where the jurat is made.

In the instant case, the affidavits of the 47 illiterate deponents were witnessed by one Engulu Phillip and in the place for Commissioner of Oaths was a stamp from the Chief Magistrate Court Soroti, accompanied by the signature. Despite writing his name, Engulu Phillip did not state his true and full address which would have satisfied that implication that he was instructed by the deponent and that his statements correctly represented their instructions. The name and title of the person who commissioned the affidavits is also not known and because of this, the jurat did

not strictly comply with the form of jurat contained in the Schedule of the Oaths Act; **Col (Rtd) Kizza Besigye V Museveni Yoweri Kaguta & Anor Supreme Court Election Petition (supra)**

Counsel for the Petitioner relied on this case for the holding that affidavits in election petitions should be given a liberal interpretation. However the finding in that case is distinguishable from the facts in the instant case. In the Kizza Besigye case, the affidavit contested merely had a signature and seal of the Registrar of the High Court in the place of Commissioner for Oaths but excluded his name. This lack of proper form was however cured by an affidavit sworn by the Registrar confirming that he was the person before whom the affidavit was sworn. The liberal interpretation in this case was the court admitting this affidavit by the Registrar to cure the defect in not stating his name as Commissioner of Oaths.

In the instant case, the above has not been done. The Commissioner of Oaths before whom the 47 affidavits were sworn is still not known nor can Court ascertain whether he had the authority to commission the affidavits. This in my view remained a material deviation from the requirement of Section 6 of the Oaths Act and such a defect goes beyond a defect in form which may be cured by Article 126 of the Constitution.

The 47 affidavits accordingly did not comply with the statutory requirements in the Illiterate Protection Act and the Oaths Act which rendered them fatally defective; **Kasaala Growers Cooperative Society V Kakooza Jonathan & Anor SCCA (supra)** These 47 affidavits are accordingly struck out.

This left the Petitioner with 6 affidavits; that is, the Petitioner's affidavit in support of the petition, her affidavit in rejoinder, Omadi Jaffery, Vincent Bule, Simon Peter Ongodia, Cephas Mukhwana.

The Petitioner alleged that the whole election process beginning with the campaigning period to the voting day was characterized by acts of intimidation, harassment, violence, lack of freedom and transparency, unfairness and commission of electoral offences and illegal practices in total breach of the constitution, the PEA and the Electoral Commission Act. The Petitioner also alleged that the 2<sup>nd</sup> Respondent used a government vehicle in her campaigns.

She stated that the 1<sup>st</sup> Respondent failed to prevent state operatives, state functionaries and NRM party members from interfering with the electoral process through acts of violence and intimidation. She also alleged that the 1<sup>st</sup> Respondent failed to deter the 2<sup>nd</sup> Respondent from interfering with the electoral process and that the 1<sup>st</sup> Respondent committed falsehoods in the counting and tallying of votes.

The 1<sup>st</sup> Respondent also allegedly failed to attend to the many complaints brought to it by the Petitioner and other constituents.

Both Respondents denied all these allegations and stated that the elections were carried out in full compliance with the electoral laws and in particular the 2<sup>nd</sup> Respondent denied ever putting any posters on vehicles apart from two trucks which carried her election materials.

#### **Non-compliance of electoral laws;**

The Petitioner alleged that her complaints to the 1<sup>st</sup> Respondent were not addressed. In particular, she complained about the use of a government vehicle but the Returning Officer RW8 Betty Atim Awot did not take any action and this vehicle continued from campaign to campaign all over Serere. RW8 admitted that the Petitioner did complain that a local government ambulance was being used for campaigns. This witness also told court that indeed she did nothing about it. Her excuse for not doing anything was that there was no confirmation that it belonged to local government. On further cross examination, she said she did not investigate because she feared to be considered partial. It is surprising that she responded in this manner because the purpose of the complaint was so that she investigates the issues concerning the vehicle. This was very unfortunate because the duty of a Returning Officer is to ensure an even and impartial electoral process in the constituency as provided for by the Parliamentary Election Act which she failed to fulfill.

Court also realized she was not a truthful witness because in paragraph 4 of her affidavit in reply, she denied that any report had ever been made concerning illegalities and electoral offences.

RW8 also admitted that the Petitioner complained to her that she was being harassed and her posters were being pulled down. This witness again said she did not take any action because

there was no evidence to show that a similar report had been made to the police. That posters of the Petitioner were being pulled down was confirmed by RW 5 SP Oyuku Jimmy, the DPC in the district who told court that there was destruction of posters.

This lackadaisical conduct of RW8 who was the Returning Officer of Serere was in breach of her responsibilities and can only be construed as non compliance by the 1<sup>st</sup> Respondent to the Electoral laws.

### **Excess ballot papers;**

The Petitioner alleged that there was ballot stuffing, altering of results on the way to the tally centre and at the tally centre. She also alleged that excess ballot papers were discovered at the polling stations. Court has found no evidence of altering results. There would be witnesses in that regard had their affidavits struck out for non compliance with the Illiterates Protection Act and the Oaths Act. What however remained clear is that in many stations, the total number of ballot papers at the end of the day exceeded the ballot papers that had been issued.

A random look at the declaration of result forms revealed that either the Returning officers took their own ballot papers to the station in addition to those issued officially or they had a deficiency in issues of simple addition and subtraction.

For example at Atia Primary school, the 1<sup>st</sup> Respondent issued 392 ballot papers. The total number of females and males who voted was 213 and 179 respectively. This means the total number of votes which were cast were 392. It means that all the ballot papers which were issued to that station were given out and cast but surprisingly, after every ballot paper given out by the 1<sup>st</sup> Respondent had been cast, the electoral officials still had 158 unused ballot papers.

The results at Ajesa -Olio Primary School are no better. A total of 310 people voted and the record shows that the 1<sup>st</sup> Respondent issued to that polling station 310 ballot papers. It means that at the end of the day there should have been no used paper but interestingly at the end of the day there were still 190 unused ballot papers.

As for Akisim polling station 1,200 ballot papers were issued by the 1<sup>st</sup> Respondent. 290 people voted, the total number of unused ballot papers would be 1200 – 290 which leaves a balance of

910 but as it is, the DR forms show a balance of 108 papers. There is no trace of 802 ballot papers. Where did they go?

At Kyeri township polling station, a total of 638 men and women were given ballot papers. The 1<sup>st</sup> Respondent issued an equal number of ballot papers. The simple arithmetic would be zero ballot papers unused but surprisingly at the close of the day, the polling officials still had 263 ballot papers.

Oculura Primary school polling station had the most interesting results. It was issued 1496 ballot papers. The total number of men and women who voted was 378. It would mean that the ballot papers that remained unused would be 1496-379 which is equal to 117. Interestingly enough, instead of the unused ballot papers reducing, they were multiplied by almost 3. At the end of the day, the ballot papers remaining from those issued were 3871. One wonders where the election officials got the extra 2375 ballot papers.

I have randomly picked these figures from the DR forms which are 203 in number and I find the anomaly in figures of unused ballot papers so big that it renders the whole exercise a mockery. The Petitioner has submitted that 14,457 ballot papers cannot be accounted for. During cross examination of RW8, who was the returning officer, the court and advocates asked her to explain where the polling stations were getting these extra ballot papers from. She had no answer. One could suspect that it is the voters who secretly brought the papers in but that would mean finding them already in the ballot boxes.

These unused ballot papers were in the hands of the Polling assistants. They could therefore only have been brought in by the polling assistants themselves. This in my view falls on the verge of criminality and is therefore complete non compliance with the electoral laws and process.

### **Harassment & Arrests;**

The issue of harassment and arrests is well established in the evidence of RW4 Major Justin Engwau. He deposed in his affidavit that he did not vote in Serere but that on 17<sup>th</sup> February 2016 at 11:00am he went back to Serere from Soroti where he received information that a veteran called Olila Sam was harassing people. That he went and arrested him and also recovered army uniforms. That he also carried out patrols on the voting day to detect and prevent any breach of



peace. During cross-examination however, he said there was insecurity between NRM and opposition and the purpose of his going there was to arrest those fighting during the election. He said he found people fighting in Atira and being a leader with two soldiers and two policemen, he arrested Olisa Sam.

In complete departure from what he had deposed that he arrested Olisa Sam because he was a veteran with army uniform, RW4 said in cross examination that he arrested Olisa Sam because he was campaigning for the Petitioner. He admitted to have taken this Petitioner's campaign agent and locked him up in CPS.

In my view, this is an indication that the military was involved in the harassment and arrest of supporters of the Petitioner. This very RW4 told court that he carried out patrols all over Serere and having confirmed to court that he arrested Sam Olisa because he was campaigning for the Petitioner, one can only conclude that his traversing the constituency was for similar activities.

### **Bribery;**

One of the complaints of the Petitioner was that the election was marred by bribery which was given by the 2<sup>nd</sup> Respondent and or her agents in various forms like but not limited to sugar, salt, money and drums. The 2<sup>nd</sup> Respondent denied that she or her agents gave out any of the items named.

Bribery during an election is defined as the offence committed by one who gives or promises to give or offers money or valuable inducement to an electer in order to corruptly induce the latter to vote in a particular way or to abstain from voting or as a reward to a voter for having voted in a particular way or abstained from voting; **Black's Law Dictionary 6<sup>th</sup> Edition**

The offence of bribery is contrary to Section 68 of the PEA which provides in 68(1):

*“A person who either before or during an election with intent either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or 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 to imprisonment not exceeding three years or both.”*

For one to say there was bribery there ought to be evidence that;

- A gift was given to a voter
- The gift was given by a candidate or his agent
- It was given with the intention of inducing the person to vote; **Achieng Sarah Opendi & Anor V OchwoNyakecho Court of Appeal Election Petition Appeal 39/2011**

In the affidavit of Cephas Mukhwana, he deposed that through a friend called Hassan, he was offered a job to act as bodyguard to the 2<sup>nd</sup> Respondent's brother and participate in the distribution of items to the electorate. In paragraph 9, right through to Paragraph 22 he described the activities that took place in a bid to ensure that the 2<sup>nd</sup> Respondent wins that election. I find it necessary to reproduce this here;

- “9. That when we arrived at the school, Isaac told us he was going to call Hellen Adoa and other members of her campaign team to come and address us on what we were supposed to do.*
- 10. That at around 10:00pm some people came who addressed us.*
- 11. That in their address they welcomed us and informed us that we were to work as commandos/commanders to fight anybody who was becoming an obstacle to Hellen Adoa's success in the election.*
- 12. That we were also told that our work included the distribution of money, soap, salt and sugar wherever we would be sent to take them within the district.*
- 13. That on Tuesday 16<sup>th</sup> February 2016, I and Isaac were made to be the bodyguards of a man who I later learnt to be a brother of Adoa Hellen who was in charge of giving money to the different teams which were in turn to distribute the same to the people in the villages.*
- 14. That after distributing money to groups at Toto Adoa Nursery and Primary School, we later went to Serere Township Primary school at about 5:00pm and met other groups who were also given money to distribute. After which we returned to Toto Adoa Nursery and Primary School at about 7:00pm.*

15. *That at around 10:00pm, I was picked up together with some dark man by a man whom I later learnt to be the administrator of Halycon Secondary school. We were taken to Halycon Secondary school in Soroti to guard the school.*
16. *That while we were guarding the school, we observed that in one of the buildings, there were ballot boxes which were being filled with ballot papers, but since our role was to offer security, we did not inquire.*
17. *That in the morning of 17<sup>th</sup> February 2016, we were picked up at about 7:30am by the same administrator and taken back to Toto Adoa Nursery and Primary School at Serere.*
18. *That at about 1:00pm, we joined the Electoral Commission team in the process of distributing electoral materials to different sub-counties and that at every sub-county where we left two (2) commanders to take care of Hellen Adoa's interests.*
19. *That I and the dark man I had, were left at Kyere sub-county headquarters where we stayed til 11:00pm when we were picked and taken back to base at Toto Adoa Nursery and Primary School where we stayed till morning.*
20. *That on voting day of 18<sup>th</sup> February 2016 at about 6:30am I left together with Isaac and others to do patrol work in the different polling stations where we distributed money to the voters along the routes.*
21. *That after the announcement of results we escorted Hellen Adoa upto her home in Soroti town.*
22. *That it was at Hellen Adoa's residence in Soroti town where I was paid my Ugx 200,000/= (Two Hundred Thousand Shillings) and I left for home in Tororo. "*

In his evidence he told court how their duty was to fight anybody and act as commandos which in my view imports violence. That their work included the giving of money, soap, salt and sugar and the person in charge of this exercise under whom they worked was the brother of the Respondent.

He said the distribution of these items was done within the district, they gave out money out of town and in the evening at 5:00pm they returned to Serere where the distribution of money continued. At 10:00 pm he and another went to Halicon Secondary school where while on duty, they observed ballot papers being stuffed in ballot boxes on the eve of elections. That even on election day itself, he and others distributed money along the routes. At the end of the exercise he was paid 200,000/=. These were not acts of a restricted polling area but acts across the whole constituency because as Mukhwana stated they moved from place to place. The Respondent opted not to cross examine this witness and therefore his evidence remained unchallenged.

As for the 250 drums, the 2<sup>nd</sup> Respondent accepted giving them but she said she had done so outside the campaign period. Her testimony was not challenged because the Petitioner's witness that deposed to it was struck out under the Preliminary Objection.

#### **Government Ambulance Motor vehicle;**

One of the biggest complaints by the Petitioner was that the 2<sup>nd</sup> Respondent used in her campaigns a government vehicle namely an ambulance that she had donated to local government. The Respondent's denied using the ambulance for campaigns. She deposed that the idea for the ambulance was generated in April 2015 when she wrote to the CAO of her intention to donate an ambulance to the district. That having received the green light from the CAO, she begun the process of importing one and that on 8<sup>th</sup> July 2015, that ambulance left Japan for Uganda, arriving in the country in August. That it was not until the 1<sup>st</sup> December 2015, after passing through a lot of hurdles, that the ownership of the vehicle changed to Ministry of Health. Thereafter the vehicle was registered as belonging to Serere district local government on 29<sup>th</sup> January 2016 and the vehicle was delivered to the district on 1<sup>st</sup> February 2016 with a public handover that took place on 2<sup>nd</sup> February 2016. The 2<sup>nd</sup> Respondent contended that it was due to bureaucratic delays that it arrived in Serere during the campaign period. She denied using the vehicle for campaigns and denied putting posters on the ambulance.

Photographs of this vehicle were exhibited including an Etop newspaper clipping of the week 4<sup>th</sup> – 10<sup>th</sup> February 2016. The pictures showed an ambulance with posters of the 2<sup>nd</sup> Respondent and the words "*ADOL DONI ABOL*" on the side of the vehicle and also the words "*AJELE ISE*"

The Respondent on cross examination told court the meaning of these words. She told court that “ADOL DO ONI ABOL” meant “TIME TO DEVELOP” while “AJELE ISE” meant “DOVE OF SERERE.” Asked who the dove was, she said a dove is a saver so both can be the donor and the vehicle. By these words she meant that the donor of the vehicle was the saver of the people; she was the donor. In a community like Serere where RW6 Agum Moses who was the Principal Assistant Secretary, acting as Deputy Chief Administrative Officer said, there was lack of sufficient ambulances, handing over a motorvehicle ambulance on the 2<sup>nd</sup> of February 2016, 16 days from the elections was certainly a big vote puller.

The 2<sup>nd</sup> Respondent in reply to the allegation that she donated the ambulance in the campaign period stated that she had conceived the idea of donating the ambulance as early as April 2015 and she had written to the administration of the district proposing the donation. That since it was suggested in April 2015 it could not be a donation in campaign period but a fulfillment of an old pledge. In determining whether a donation or gift is not but a subtle bribe, the imminence of the election is instructive. A donation given when an election is imminent attracts the danger of being construed as a bribe. Donations during campaigns are strictly prohibited. Section 68(7) and (8) of the PEA provide;

(7) *A candidate or an agent of a candidate shall not carry on fundraising or giving donations during the period of campaign.*

(8) *A person who contravenes (7) commits an illegal practice*

These provisions are intended to restrain campaigners from giving donations during the campaign period. In the instant case, one cannot say that the 2<sup>nd</sup> Respondent was merely honoring an old pledge. Honoring a pledge made close to a year ago, 16 days from the election is manifestly clear that the donation was honored with intention of corruptly influencing the voters of Serere; **Odo Tayebwa V Nasser Basajabalaba & Anor Election Appeal 13/2001.**

Handing over the motor vehicle “to coincide with the campaign period raises doubts as to the bonafides” of the 2<sup>nd</sup> Respondent; **Fred Badda & Anor V Prof Muyanda Mutebi Election Petition Appeal 25/2006**

In my view, the ceremony conducted on 2<sup>nd</sup> February 2016 close to the election day was illegal and in reach of Section 61(1)(c) of the PEA.

From the evidence, the ambulance did not stop at handover, after receiving it RW5 together with RW7 David Okecho sent it to every campaign venue, still with the 2<sup>nd</sup> Respondent's posters and branding referred to earlier in this judgment. That it was sent to these campaigns was confirmed by RW6 himself. He deposed in paragraph 13 as follows:

*“Upon the instructions of the LCV chairman, I advised the persons in charge of the ambulances, which included the ones donated to the district to make them available for servicing the political rallies during campaigns.”*

This statement is strengthened by the evidence of RW7 David Okecho LCV chairperson, who said that he directed that all the ambulances be taken to rallied and that he had seen the one of Adoa being driven at one time

This vehicle having posters and fliers of the Respondent was confirmed by RW6 who said he was surprised to see it with posters. The 2<sup>nd</sup> Respondent herself when shown a photograph of the said ambulance at a rally with women dancing around it, she admitted that that was the vehicle in question and that she had done the branding on it in November 2015. She said she did not know why it arrived during campaigns; she admitted that she used it, *“it came to my rallies,”* she said.

She said she used to do her campaigns with RW7 and it is this same RW7 who confirmed that he had ordered the use of the ambulance.

But how could this have affected the election? The first and clearest impact of the ambulance with the posters of the 2<sup>nd</sup> Respondent is discerned from the photos of the ambulance at campaign venues with women dancing around the motor vehicle. The manner in which they were dressed left no doubt that it was a political gathering. The Petitioner said that this vehicle went to every political rally which statement received support from RW5, who had released it for campaigns on behalf of the 2<sup>nd</sup> Respondent.

Hundreds of people must have read and jubilated the words on the ambulance *“ADOL DO ONI ABOL”* meaning *“TIME TO DEVELOP”* which gave the electorate hope for development if they elected the 2<sup>nd</sup> Respondent.

Every first letter is written in capital letters and when put together, they spell the 2<sup>nd</sup> Respondent's name "ADOA". The writings on the vehicle also showed that she was "AJELE ISE - DOVE OF SERERE" the saver as explained by herself. Furthermore, Etop newspaper which circulates the whole of Teso and also had the picture of this ambulance splashed in it, must have been read by many voters because such a matter would be a hot item in any media.

All this was the result of using a government vehicle in full support by the Acting CAO RW6 and the Chairman LCV RW7. This ambulance which was a government vehicle, being released by the top Chief executives of government in the district was one of the biggest blunders in the electoral process in as much as it offended Section 25(1) of the Parliamentary Election Act, 2005. This section provides:

*Except as authorized under this Act, or otherwise authorized by law, no candidate shall use Government or public resources for the purpose of campaigning for election*

On conviction, the offence carries a penalty of a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

Going back to the subject of this petition, Section 61(1)(c) an election shall be set aside if proved to the satisfaction of court that an illegal practice or offence under the Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval. The use of this government ambulance was with the full knowledge of the 2<sup>nd</sup> Respondent herself, supported by the LCV RW7 who was also on her campaign team and went on all her campaigns with her. There is therefore no doubt that she committed this offence with impunity.

This on its own is under Section 61(1)(c) of the PEA a ground for setting aside an election.

In conclusion, it is this court's finding that there was non compliance with the electoral laws by the Respondents. Having found that there was rampant distribution of sugar, salt, soap across the constituency and the use of a government motor vehicle taken to every rally, the arrests, harassment and jailing of campaign agents of the Petitioner coupled with thousands of unexplained ballot papers at polling stations, it is clear that these matters affected the result in a substantial manner.

The 2<sup>nd</sup> Respondent and her agents are found to have committed illegal acts and offences, notable of which was the use of government property for campaigns with the full knowledge and approval of the 2<sup>nd</sup> Respondent which illegal acts brought this petition in the ambit of Section 61(1)(c) of the PEA.

The Petitioner prayed for nullification of the election. In view of the non compliance of the electoral laws by the Respondents and illegalities committed by the 2<sup>nd</sup> Respondent, the only solution is to nullify the election complained of, which is hereby nullified.

The 2<sup>nd</sup> Respondent is hereby directed to arrange and hold fresh elections for Woman Member of Parliament for Serere district. The Respondents shall both be liable to pay costs in equal amounts.

Counsel for the Petitioner sought a certificate for two counsel. In view of the amount of research and time spent on the prosecution of this petition, their prayer is granted.

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***David K. Wangutusi***

***JUDGE***

***Date: 25<sup>th</sup> July 2016***