

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA

IN THE MATTER OF PARLIAMENTARY ELECTIONS ACT

AND

**IN THE MATTER OF PARLIAMENTARY ELECTIONS FOR KOLE
SOUTH CONSTITUENCY, KOLE DISTRICT ELECTION PETITION NO.
001 OF 2016**

HON. EBIL FRED:.....PETITIONER

VERSUS

1. OCEN PETER

2. THE ELECTORAL COMMISSION:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE

JUDGMENT:

This Judgment arises out of an Election Petition challenging the elections of the 1st Respondent, Ocen Peter as MP for Kole County South Constituency. In the general elections held on 18th February 2016, both the Petitioner and 1st Respondent contested for the Kole county South constituency Parliamentary seat. The said elections were organised by the 2nd Respondent Returning Officer for Kole District returned whose Returning office for Kole District returned the 1st Respondent as winner of the said Parliamentary seat.

The Petitioner, who was the incumbent MP by then was the 3rd runner-up, which distant position he attributes to the way the Respondent framed his campaign

theme vide drugging of the Petitioner's name in the mud through false and hate/sectarian speech and the violence orchestrated by the 1st Respondent to chill the spines of the voter in Kole South Constituency and other fragrant electoral offences set out in the petition.

The Petitioner Hon. Ebil Fred, Hon. Ocen Peter, Alula David and Okori Anthony Brazi were candidates for the said Parliamentary seat.

The 2nd Respondent organised and conducted the elections and declared the 1st Respondent winner with 15,784 votes, Alula David garnered 12,714 votes, the Petitioner 5,867 votes and Okori Anthony Brazil 503 votes.

The Petitioner filed this Petition asserting that:

The 1st Respondent committed the electoral offences of:-

- (i) Uttering false and disparaging statements of the Petitioner, to wit that the petitioner is "Akwar Anam" and greets people with sticks for fear that they would bewitch him and because he thinks the voters are dirty.
- (ii) The 1st respondent uttered false and disparaging statements of the Petitioner when he embarked on a certain campaign by regularly referring to the Petitioner during campaigns as "Akwar Anam", in the words of paragraph 5(b) of the Petition meaning that the Petitioner was a grandson of Bantu beyond Lake Kyoga and thus not pure Langi who voters should shun".
- (iii) Using or threatening to use violence contrary to section 80 of the Parliamentary Elections Act.
- (iv) The 1st respondent used a government motor vehicle Reg. No. LG001-058 which he had officially been given to him as LC5 chairperson.

At the commencement of the trial, four issues were framed for determination by his honorable court wit;

1. Whether the 1st Respondent personally or through his agents with his knowledge, consent and approval did commit electoral offences during campaigns or elections.
2. Whether the 2nd Respondent has any liability in this case
3. Whether the Petition is competent.
4. What remedies are available to the parties.

Representation:

The Petitioner was represented by Hajji Hassan Kamba together with Mr. Isaac Okali, while Mr. Nester Byamugisha and Mr. Abwang Otim Mike represented the 1st Respondent.

Mr. Paul Kuteesa represented the 2nd Respondent.

BURDEN OF PROOF

It is settled law that the burden of proof in election petitions lies on the Petitioner to prove the allegations in the Petition and the standard of proof required is proof on a balance of probabilities. This was settled by the Supreme Court in the Case of **Mukasa Haris Vs. Dr. Lulume Bayiga Election Petition Appeal No. 18 of 2007.**

The required standard has since been put beyond doubt by section 61(3) of the Parliamentary elections Act (2005).

“Any ground specified in sub-section(1) shall be proved on the basis of a balance of probabilities.....Needless to emphasize that it is the above degree that the Petitioner has proved this Petition in order to secure judgment in his favor”.

The above position was also stated by Kanyihmaba JSC, (as he then was) in **Kakooza Baptist Vs. EC & Anor SCEPA No. 11 of 2007**

In Paul Mwiru vs. Hon. Igeme Nathan Nabeta Samson Court of Appeal Election Petition Appeal (CAEPA) No. 06 of 2011, Byamugisha JA(RIP) cited with approval the Indian case of **Jugnauth Vs Raj Direvium Nagaya Ringadoo (2008) UK PC 50**, where it was held:-

“An Election Petition is unquestionably a civil proceeding. Their Lordships are persuaded that the legislature used the language in section 45(i), by contrast with the language used in section 6491), it was deliberately choosing to approach the matter, not as one where criminal standard should apply, but as one in which the court should adopt the civil standard of proof.”

Finally, I wish to refer to the Judgment of Musoke Kibuuka J in the case of **Abdu Katuntu Vs. Kirunda Kiveijija Ali – Election Petition No. 7 of 2006** in which the learned Judge judicially stated what constitutes proof on the balance of probabilities. Musoke Kibuuka said:

“ The court trying an election petition such as this one, has the duty to ensure that before issuing an order for setting aside the election of a member of parliament, it is duly satisfied , by the evidence before it, that the allegations made in the petition have been proved to the high degree of preponderance.”

Bearing in mind the law on Burden and Standard of proof as outlined above I now proceed to consider the issues one by one:-

- (1) Whether the 1st respondent personally or through his agents with his knowledge, consent and approval did commit electoral offences during campaigns or elections.***

According to counsel for the Petitioner, two categories of electoral offence that is, those committed by the 1st Respondent personally and those committed by his known campaigning agents with his knowledge, consent and approval. Reference was made to Par. 5(a)(i) of the Petition where it is pleaded that contrary to S.73(i) of the Parliamentary Elections Act, the 1st Respondent referred to the Petitioner as a grandson of **“Akwar Anam”** and further that the **“Petitioner greets people with sticks for fear that they would bewitch him and because he thinks that the voters are dirty villagers”**.

Counsel for the petitioner added in Para 5(b) of the petition, that the 1st Respondent embarked on a sectarian campaign by regularly referring to the Petitioner during campaigns as **“Akwar Anam”**. i.e. grandson of the Bantu beyond Lake Kyoga and thus not a pure Langi whom voters should shun.”

In reply counsel for the 1st respondent submitted that according to Para. 7 of the Petitioner’s Affidavit in support **“Akwar Anam”** means a grandson of Bantu speaking. He added that whatever the actual meaning of **“Akwar Anam”** is in the Lango language, whether it means a grandson or a cousin of the Bantu speaking people. Counsel for 1st Respondent stated that the Petitioner in Para. 12 of the Petitioner’s Affidavit in support of the Petition admitted that his mother is a Muganda, his father is a langi. He added that the statement therefore true and not false or reckless.

Counsel for 2nd Respondent’s reply on the other hand was that S.7391) has the following elements that must be proved on the balance of probability.

There must be words either spoken or written.

That the words complained of must be punished.

That the words must attack the personal character of a candidate knowing they are either false or true.

The words must be uttered recklessly.

The intention must be to prevent the election of a candidate.

They added that the Petitioner has to adduce evidence to the effect that because of the words complained of, the electorate, who held him in high esteem, shunned him. That the Petitioner must adduce further evidence that the electorate or a very good portion of it lost all the respect they had for him after the said words.

I have carefully considered the above submissions which relate to sectarianism and false/reckless statements. It has been emphasized by learned counsels for the Respondents that the Petitioner has to adduce evidence that a good portion of the electorate lost all the respect they had for him after the said words.

I have read and considered a number of affidavits in support of the Petition. I shall start with the affidavit of **Ocero Sam Aka Okora** dated 21st March 2016.

I shall quote paragraphs 1, 2, 6, 7, 8, and 9 thereof:-

“1. That I am an adult male Ugandan aged 63 years old and of sound mind.”

“2. That I am a peasant farmer and the chief campaigner of Ebil Fred.”

“6. That throughout his campaigns Ocen Peter was uttering that Hon. Ebil Fred is “Akwar Anam” i.e. a cousin to the Bantu speaking tribes and it was an insult to the Langi’s for him to stand in Kole and some people believed his smear and sectarian campaign.”

“7. That Ocen Peter further shamefully insulted Ebil Fred that the latter had gone to Parliament a small man but had developed buttocks now like the tail of a sheep and that he had been sodomized by the Baganda.”

“8. That whenever we could go to campaign for Hon. Ebil Fred people would laugh at us saying that we may also be homos because Ocen was speaking the truth yet he was parading lies to win the campaign.”

“9. That we were laughed at Laro trading center, Ageri Nono and Adur trading center and even Owalo trading centre.”

The second affidavit in support of the Petition with regard to the issue of sectarianism and abusive language was by No. 34533 D/Corporal Okori George dated 21.03.2016.”

Paragraphs 36, 37, and 38 are instructive and I quote:-

“36. That during one of the candidate’s meetings in January 2016 at the Returning officers officer Kole, one of the candidates Mr. Ebil Fred raised the issue of sectarian campaign of falsehoods against him by Ocen Peter.”

“37. That Ebil Fred said that wherever Ocen Peter would go for campaigns he would say Ebil “Akwar anam” i.e. grandson of Bantu and that his huge buttocks had been sodomized among other things.”

“38. That I told Ocen Peter that promoting sectarianism was an offence though he denied having made the above statements.”

Further evidence with regard to sectarianism and abusive language was by the Petitioner himself (Ebil Fred). In his affidavit dated 21.03.2016, he stated under Para 7, that throughout his campaign rallies and meetings, the 1st Respondent

referred to him as “meaning he is a grandson of Bantu speaking people who is not supposed to be elected by Langos as all benefits of being MP would not benefit the lango people of Kole south constituency.

In the 1st Respondent’s affidavit in support of the answer to the Petition, he stated under para 10, as follows:-

“10. That the 1st Respondent further avers that throughout his campaigns, he strictly complied with the provisions of the Parliamentary Elections Act, 2005 as amended and all other Electoral Laws and he was never sectarian.”

In Para 14, of the said affidavit, the 1st Respondent simply states that he never uttered any false and disparaging statements against the Petitioner. Learned Counsel for the Petitioner submitted the above general denials by the 1st Respondent did not specifically controvert the false statements complained against him. This Court is inclined to agree with Counsel for the Petitioner’s submissions because general and evasive denials are not enough. Even Aloji James who swore an affidavit in support of the answer to the Petition also gave a general denial.

In my view, mere denials are not acceptable as a defence. This is particularly when you compare the general denials with the strong affidavit evidence of Oceri Sam aka Okora, an elderly man aged 63 years, and a chief campaigner of the Petitioner.

His testimony was clear and elaborate that Oceri Sam referred to Ebil Fred as **“Akwar Anam”** a cousin to Bantu speaking tribes and that it was an insult to the Langis for him to stand in Kole. Oceri Sam aka Okora added that Oceri Peter 1st Respondent uttered abusive words to the effect that Ebil Fred had developed buttocks like the tail of a sheep and has been sodomized by the Baganda. That was not only abusive, sectarian and disparaging, but was uncivilized and reckless

campaign not allowed under **S.73(1) of the Parliamentary and Elections Act (P.E.A).**

A criminal offence was therefore committed by the 1st respondent and that was an act of non-compliance with the electoral law. Ozero Sam aka Okora added that wherever they would go to campaign for Hon. Ebil Fred, people would laugh at them that may be they were also homos because Ocen was speaking the truth. And he listed the trading centers of Laro, Agerivan, Adur and Owalo where they were laughed at as a result of the lies and mud sliding campaign by 1st respondent.

Ozero Sam Aka Okora was supported by No. 34533 D/Corporal Okori George, a police officer. He repeated the words that Ocen Peter would say in campaigns that Ebil was “**Akwar Anam**” meaning a grandson of Bantu and that his huge buttocks had been sodomized. Detective corporal Okori George averred in his affidavit in support of the Petitioner that he warned Ocen Peter against promoting sectarianism. The evidence of the two witnesses in support of the Petitioner was never challenged by the 1st and 2nd Respondents.

Learned Counsel for the Respondents did not apply to cross-examine those two key witnesses with a view of discrediting their testimony.

Learned counsels for the Respondents submitted that eh description “**Akwar anam**” was innocent in itself and was not insulting but true. With respect, I disagree with the views of the Advocates for the Respondent because the context in which the word “**Akwar Anam**” was used, in the heat of campaigns could not be said to have meant in good faith. And this is particularly in view of the evidence of the two witnesses, Detective Corporal Okori George and Ozero Sam Aka Okora.

I have no doubt that the statements were defamatory in nature and amounted to a sectarian campaign. It was clear in the testimonies of the two witnesses above that

Ocen Peter was sectarian by stating that Ebil Fred should not be elected as he was not a pure langi but “*Akwar Anam.*”

Section 23(1) of the Parliamentary and Elections Act (P.E.A) prohibits any person from using any sectarian connotation as a basis to support that person’s campaign.

This Court is in the premises satisfied on the balance of probabilities that the 1st Respondent uttered false statements touching Petitioner’s character and conduct, which statements were intended to affect the elections of the Petitioner.

A verbal sectarian campaign based on tribal sentiments to support one’s campaign is as detrimental as the use of a symbol or color which has tribal or any other sectarian connotations.

I therefore reject the submissions by counsel for the 2nd Respondent that the 1st Respondent did not use a symbol or a color which was symbolic with Langi tribe or Bantu tribe. Verbal sectarian campaign was bad enough and therefore an offence under **Section 23(1)(a) of the Parliamentary elections Act (PEA).**

I now turn to election violence. Counsel for the Petitioner’s submissions were that, Paragraph 6 of the Petitioner is dedicated to the offence of electoral violence committed by the 1st Respondent personally and by his agents with his knowledge, consent and ratification or approval.

In **Para. 6(i)** of the Petition, it is pleaded that on 17th day of February 2016 at Akalo swamp near Akalo Trading Center, Akalo sub-county, Kole South Constituency, a group headed by the 1st Respondent’s son Otuko Robin descended on Abong Mike and Ojok Tommy all known supporters of the Petitioner

smashing the car in which they were moving and cut the duo with pangas and machetes. This group it is stated was under the instructions of the 1st Respondent.

Reference was made to the affidavit of Abong Mike (P3)- paragraph 5-17 and Ojok Tommy (P4) paragraphs 4-22 which lay bare how they were butchered under the acrimony or animosity of the gang commanded by the 1st respondent's son. Abong Mike and Ojok Tommy attach medical forms and photographs clearly demonstrating that the intention of their tormentors and assailants was to kill them. Abong Mike was cut on the head just as Ojok Tommy who up to now is a psychiatric case.

Counsel for the Petitioner further added that, in para.6(ii) it is pleaded that on the 16th day of February 2016, the campaigner of Ocen Peter called Lero Moses was sent to Mzee Oculi Joel Okwi's home in Akalo village to warn the latter that unless his family stops supporting the Petitioner, he and his family members would be killed.

Further submission were that later in the night of 17.02.2016, Ojok Adiga, Okello Wesley, Ongu Bonny among others came chasing Mzee Oculi's son cong Robert. They set Cong Robert's house on fire. The evidence of Oculi Joel and his son cong Robert are marked (P.10) and (P.11) respectively. In paragraphs 5-14 of Congo Robert's affidavits, he narrates what befell him on the fateful day. Annexure "A" to his affidavit in his burnt house by goons under the command of the 1st Respondent and his son Oluko Robin. See Annexure "A" to his affidavit in support of petition (P.10). See also paragraphs 4-10 of Oculi Joel Okwir (Congo Roberts Father's affidavit).

Learned Counsel for Petitioner emphasized that in paragraph 6(1v), it is pleaded that on the 17th day of February 2016 at about 10.30 p.m, Otuko robin son of Ocen

Peter – the 1st respondent and Ogwal Denis in company of the same gang which terrorized people during campaigns and on the eve of elections did cut Otuho Bonny in the eye saying that as DJ he was de-campaigning the 1st Respondent.

It was also the Petitioner's case that Rose Atapi (P7) the mother of Otuho (Otuko) Bonny, gave evidence and she stated in para. 7 of her affidavit that her son Otugo Bonny (Otuko Bonny) was attacked by the son and campaigner of Ocen Peter (the 1st Respondent) called Otuho Robin in the company of Ogwal and many others at their home compound. In paragraph 9 of her affidavit, Atapi Rose states that it was Otuho Robin son of Peter Ocen who cut her son with a panga referring to her son as "Adul" – enemy.

Counsel for the Petitioner concluded that Ocuni Denis (affidavit P.5) details how he survived death by a whisker when while going back home from Acung Apenyi he found people near the church at Acung Apenyi (church of Uganda). That a car with over 25 persons lay in wait. He was cut into comanatosse chest thumping that one of the Petitioner's votes was done. They even drove off with his motorcycle. According to the medical report Annexure "A" to his affidavit, Ocuni Denis was stabbed close to the heart. See paras. 3-20 of his affidavit.

The DPC Kole District Musakana Ahamed and the officer in charge election and political offences d/CP Okori George gave evidence of Mayhem orchestrated by a gang led by the 1st Respondent's son throughout Kole South Constituency.

In reply, counsel for the 1st Respondent submitted that out of the alleged gang of over 20, only one person, Otuko Robin is named in the Petition. He added that whereas in paragraph (6) of Ojok Tonny's affidavit claimed there were many assailants in the Sahara vehicle and were chanting Go Forward slogans and Ocen Peter's name, that Abong Mike's affidavit did not state so.

Counsel for the 1st Respondent also challenged evidence of proof that Okello Tonny was an agent of the 1st Respondent. Emphasis was that there were doubts about the so called Sharar vehicle used by the agents of 1st Respondent on allegations of violence on 17.02.2016 at Akalo Trading Centre. Counsel for the 1st Respondent submitted that the evidence to that effect was inconsistent and contradictory. He added that there were variations in the evidence of the witnesses for the Petitioner.

On allegations in paragraph 6(ii) of the Petition, that on 18.02.2016, the 1st Respondent personally slapped and assaulted the Petitioner's official agent Ocerro Sam aka Okora. Counsel for 1st Respondent's reply was that there was no evidence that Ocerro Sam aka Akora was an agent of the Petitioner.

Counsel for the Respondent also doubted whether any report was made to police and, that there was no evidence that the violence or threat thereof was in order to induce or compel Ocerro Sam Akora to vote or refrain from voting for the Petitioner.

Counsel for the 1st Respondent also submitted that there was no specific evidence on the alleged incidence under para 6(iii) of the Petition where 1st Respondent was stated to have sent his campaigner and supporter, Lero Moses to warn Mzee Oculi Joel Okwir, a resident of Akalo Trading Centre that his family would be killed they stopped supporting the Petitioner.

He challenged the evidence of cong Robert and Oculi Joel Okwi that para. (6) of Cong Robert's affidavit be struck out as it was meaningless.

On allegations paragraph (iv) of the Petition, learned counsel for 1st Respondent submitted that eh allegations are to the effect that on 17/02/2016 at about 10.30 p.m Otuko robin son of the 1st Respondent and Ogwal Denis in the company od the

same gang which terrorize people during campaigns which terror intensified on the eve of elections did cut Otuko Bonny in the eyes saying as a DJ he was de-campaigning the 1st Respondent.

He added that the Petitioner did not swear to any specific evidence on that incident.

The evidence of Otuko Bonny and Rosese Atapi was attacked that it did not reveal the 1st respondent committed the offences personally or those who committed the offence did it with the 1st Respondent's knowledge and approval. Counsel also concluded that there was variance of what happened in the evidence of Otuko Bonny and Rose Atapi, his mother.

Counsel for 2nd respondent on the hand submitted that under section 80 of the Parliamentary and elections Act (PEA), the following ingredients are necessary to prove intimidation/undue influence:

That the successful candidate directly or indirectly through use of force or violence compels another person to vote for him or refrain from voting. They added that the Petitioner did not produce cogent evidence to show that 1st Respondent participated in the alleged acts of violence whether directly or indirectly.

It was further submitted that the petitioner did not show that the perpetrators of the violence were agents of the 1st Respondent and that it was preposterous the Petitioner to attach unknown people to the Respondents so as to be answerable for their actions.

Counsel for the 2nd respondent also submitted that there was no evidence of court proceedings to confirm that persons who committed acts of violence were charged.

As far as this court is concerned, there are about Ten affidavits or so in support of the Petition confirming serious acts of violence before and during the contested elections.

They include that of Fred Ebil, the Petitioner, then along Mike, Ojok Tommy, Oculi Denis, Otuko Bonny, rose Atapi, Musakan Ahmed the district Police commander, Kole district No. 34533 D/Cpl Okori Gorge, a police officer in charge of Electoral and Political offences in Kole district. There is also mention that the 1st Respondent personally assaulted the Petitioner's official campaign agent, Ocerro Sam aka Okora by slapping him several times.

Otuko Robin , the son of the 1st Respondent has been implicated by many witnesses of the Petitioner as not only having led goons who cut people with machetes and knives. People's homes were said to have been burnt down to send messages of fear, and thereby shunning to elect the Petitioner; and some of those instances of violence were said to have been reported to police.

It is also the finding and holding of this court that by and large, the evidence of the Petitioner on election violence is uncontroverted. In paragraphs (1) and (12) of the 1st Respondent's affidavit in support of the answer to the Petition, he generally states that none of his agents was involved in election violence and that he did not assault Ocerro Sam Okora. There was for example no affidavit sworn by Otuko robin, the son of the 1st Respondent to clarify or avert the serious allegations labeled against him. And the 1st Respondent does not deny Otuko robin as his son, nor does he specifically controvert D/CPL Kori George and Musakana Ahmed's evidence that this son commanded goons of people who terrorized and instilled fear among the electorate of Kole south constituency.

I shall for emphasis re-produce some parts of the affidavits of Abong Mike in support of the Petition, paragraphs (1-12).

“6. That on the same day at around 10.000 p.m. on our way back a vehicle Reg. No. UAW 513W driven by Okello Tony blocked the Akolo – Bala road, ambushed us with Ojok tomy and alleged that we were buying votes for Ebil Aceng and yet we were just going to distribute appointments letters for Ruth Aceng and Ebil Fred.

“7. That Okello Tony was an agent of Ocen Peter and the above Motor vehicle was among the ones used by Ocen Peter to harass people.

“8. That Okello Tonny was commanding a group of about 20 goons chanting go Forward slogans and Ocen Peter’s name.

“9. That Okello Tonny dragged me out of my vehicle Reg. No UAX 276M and they descended on me, beat me up, kicked, boxed, stoned me and cut me with pangas on my right hand Fiba and on the head and they did the same to Ojok Tommy.

“10. That I have scars and my sight is still poor to date.

“11. That we were then bundled onto their cae and driven to police where they abandoned me and Ojok Tommy.

“12. That I reported the matter to Akalo Police Post vide CRB 105/2016 Kole District police Station and Sd. No. 18/17/02/16 at Akalo Police Post.

Annexure Am-3 are pictures of Abong Mike with a cut wound on the head and treatment Notes from Charis Health Centre dated 18.2.2016.

Also of great relevancy of the affidavit of Oculi Denis, who was beaten and left for death. Under para 12, of rose Atapi's affidavit specifically states that Ogwal and Otuko robin, the son of 1st Respondent cut his son on the right eye and he bled to unconsciousness. It was specifically stated that Otuko Robin was the one who cut. And before I take leave of the elaborate and detailed evidence on electoral violence and intimidation as per the many supporting affidavits on record, I still make specific reference to the affidavit of the District Police commander, Kole District, Musakana Ahmed.

In paragraph 4, he depons that Kole South Constituency had so many violence incidents and under para 6, that one candidate, Ocen Peter formed violent gangs to terrorize supporters of other candidates and intimidated them not to vote. I shall reproduce paragraphs 7, 8,9,10,11,12,13 and 14, given the importance of the District Police Commander particularly with regard to security matters.

“7. That on receipt of this information, I dispatched a patrol motor vehicle commanded by No. 34533 D/CPL Okori George Patrick I/C electoral and Political Crimes on the 17th Febraury 2016.

“8. That on arrival, he called back at around 23.30 hrs and told that they identified Motor vehicle No. UAX 4140 Blue Dianna carrying gangs armed with pangas, catapults, knives and stoned and were terrorizing homesteads, trading centers and anybody moving saying if they did not vote for Ocen Peter, they would die.

“9. That I ordered Mr. Okori to apprehend the gangs of which six of them i.e. Olwol Peter, 20 years old, resident of Adwir village; Odongo Daniel 20 years old son of Ocen Peter (gang commander), resident of Adakingo village; Ojok Sam 36 years old, resident of Abiebuti village, Ogwal Maurice 22 years and a resident

of Alik imalo village, Opulo Denis, male Adult, 43 years and a resident of Adwir and Oyugi Jackosn 40 years old and a resident of Akaidebe village.

“10. That all the above were arrested from the said Moto vehicle Reg. No. UAX 4140.

“11. That they were brought to Central Police Station, Kole. That they said that they were sent Ocen to go and waylay other candidates’ supporters to stop distributing/bribing of voters and that they were also using some other vehicle too.

“12. That later complaints of assault and butchered persons trickled in and their file was taken to Resident State Attorney and the file sanctioned.

“14. That theses suspects were produced in court and charged in the Chief Magistrate’s court, Lira.

The detailed averments from the affidavit of the district police commander clearly confirmed incidences of violence orchestrated by the 1st Respondent and his agents resulting into real injury and damage. The same corroborates affidavit evidence of other witnesses in support of the Petition. Those incidences of violence and undue influence were no doubt contrary to section 80(i)(a), (b) and 80(2) and sections 24 of the Parliamentary and Elections Act (PEA).

Such offences cannot be ignores or go unpunished.

In Presidential Election Petition No. 01 of 2006, Col.(RTD) Dr. Kiizza Besigye Vs. Electoral Commission and Yoweri Kaguta Museveni, Odoki Chief Justice as he then was had this to say:-

“The entire electoral process should have an atmosphere free of intimidation, bribery, violence or anything intended to subvert the will of the people.....those who commit electoral offences should be subjected to severe sanctions.

In such circumstances, this Court is completely satisfied that there were no free and fair elections in Kole County South Constituency. Counsel for the 1st Respondent’s reply was that out of a gang of 20 people, only Otuk robin in named in the Petition. Learned counsel also added that only Abong Mike and Ojok Tommy testified about the incident at Akalo swamp on the way to Akalo Trading Centre. With respect to learned counsel for the Respondent, it is not the number of many witnesses that are required to prove a fact. Even it is one or two, what is vital is whether the attack took place or not. And indeed this court is satisfied that eh attack on the supporters of the Petitioner took places as amplified by the evidence of the district Police commander and other mentioned witnesses who swore supporting affidavits.

This courts was further surprised by the submissions of Counsel for the 1st respondent (on page 9) of the 1st respondent’s submissions), that Ocerro Sam Akora in Para 2, of his affidavit sated that **he was slapped hard by 1st Respondent, but never said the slapping hard was several times.**

It is not the number of times Ocerro Sam Akora was slapped that mattered, but the act of slapping by the 1st respondent. It was bad enough that 1st Respondent slapped the chief campaigner of the Petitioner, whether once or many times and that was on offence under Sections 80(1)9a(i)-(ii) and 24(1)(b) of the Parliamentary and Elections Act (PEA).

Finally, the affidavit of Detective Corporal Okori George who was sent by the District Police commander to akalo sub-county pins the 1st Respondent on electoral violence and undue influence beyond any of doubt, Paragraphs 8, 9, 10,11, 12, 13, 15, 16, 17, 18, 19,20, 21, 22,23, 24 – 36 are all relevant and vital.

Under Para 8, detective Corporal Okori George avers that there was a violent and armed group of people, Ocen Peter's supporters who were terrorizing people in homesteads, trading centers and those passing by the road so long as they knew that such persons were not supporters of Ocen peter.

Then under Para 9, he avers that they discovered that it was Ocen Peter who sent them following arrest as they (gangs) confirmed so and Ocen peter visited them at police three times seeking for a Police bond.

Detective Corporal Okori George further states under Para 18 that among the people arrested was Otuko robin, 1st Respondent's son who was leading one of the groups where he recovered three pangas.

Furthermore, under Para (23), detective Corporal okori George, discovered that the same group had assaulted Abong Mike while in a white pick-up reg. No. UAE 513W, one of the vehicles used by Ocen Peter's group commanded by Otuko Robin, son of OCen Peter. And lastly, was Para 33, of the affidavit which was:-

“33. That even those who voted, voted for Ocen peter for fear of being followed at their homes and violence meted against them”

The affidavit of Detective corporal Okori George was never challenged by way of affidavit in reply. Counsel or the Respondents is not apply to cross-examine either Detective Corporal Okori George or the District Police Commander, Musakana Ahmed.

All their evidence remained solid and truthful as was held by **Galdino Okello J, as he then was in Samwiri Massa vs. Rose Achen (1978) HCB 297**. Then above case law has been followed in a number of cases including **East Mengo growers Cooperative Union Ltd. Vs. The Registrar of titles (2009) Vol. 1 U.L.R. 312**. It was held:-

“It is trite law that in circumstances where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted.....” And in **Election Petition Appeal No. 24 of 2006, Kirunda Kivenjijna Vs. Abdu Katuntu**, the court of Appeal held that any person who organizes groups to terrorize supporters of other Candidates and voters commits the offence under Section 80(1) and 24(1)(b) of the Parliamentary elections Act (PEA).

In view of the uncontroverted and unchallenged evidence by the district Police Commander Mr. Musakana Ahmed and Detective Corporal Okori George, as outlined, I find and hold that the 1st Respondent, Ocen peter organized groups and gangs to terrorize supporters of the Petitioner into submission and were completely intimidated not to vote for the Petitioner.

The 1st Respondent thereby breached the Provisions of Section 80(1) and 24(1)(b) of the Parliamentary and Elections Act (PEA), and so his election cannot stand.

In **Election Appeal No. 4 of 2009, Bakaluba Peter Muksa Vs Nambooze Betty Bakireke**, Bart Katureebe, JSC as he then was, held on page 23 of the Judgment that:-

“....Proof of one act of an illegal practice is enough on its own to annul an election.”

In the present case, many illegal acts have been proved to the satisfaction of Court; thereby warranting the nullification of the election of the 1st respondent, Ocen Peter.

Use of Government Resources C/S 25(1) and (5) of the Parliamentary and Elections Act (PEA).

Under Section 25(1) of the Parliamentary and elections Act, no candidate is to use government or public resources for the purpose of campaigning for election. Under sub-section (5) of section 25 of Parliamentary and elections Act, a person who contravenes the provisions in section 25 commits an electoral offence and is liable to imprisonment for one year or pay a fine of UGX. 480,000=.

In **Kirunda Kivejinja Cs. Abdu Katuntu, Court of Appeal Election Petition appeal (COAEPA) No. 24 of 2006**, the learned justices of Appeal upheld the trial judge's finding that pursuant to Section 25 of the Parliamentary and Elections Act, an electoral offence was committed by the appellant when he used government vehicle registration number UG. 0038B

In the lower Court, Justice Kibuka Musoke had found that the respondent – Kivejinja had committed an electoral offence when he used the government vehicle during campaigns.

In the instant case, it is pleaded in paragraph 6(v) that the Petitioner committed other electoral offences outlined in the affidavits in support of Petition. See Paras 19 and 20 of the Petitioner's affidavit (P1) in support of Petition.

The matter of using government vehicle Reg. No. LG 0001-058 was reported to the Electoral Commission. The Electoral Commission wrote a letter dated 10th December, 2015 to the Inspector General of police over the 1st Respondent's use of

government vehicle and was copied to the Returning officer Kole district and the 1st respondent.

In paragraph 15 of Musakana Ahmed's affidavit (the District Police Commander, Kole District) in support of petition, the DPC confirms receiving reports of the 1st Respondents use of a government motor vehicles Registration No. LG0001-058 which had been given to the 1st Respondent as LC5 Chairperson.

D/Cpl Okori George, the in charge electoral and Political offences, Kole District also deponed an affidavit in support of the petition in that respect. See para 40 of his affidavit dated 21.03.016.

In reply, counsel for the 1st respondent concedes that whereas the petitioner was acting pursuant to Section 15 of the Electoral Commissions Act, which empowers 2nd respondent to receive complaints, it was up to the Electoral commission to take any remedial action. Counsel for the 1st Respondent did not elaborate what remedial action was taken by the 2nd respondent as far as the 2st respondent's use of government vehicle Reg. No. LG0001-058 was concerned.

And Counsel for the 2nd respondent's reply was that the electoral commission was not aware of the said illegal Act. This court finds that the submissions of counsel for the 2nd respondent in that regard of misuse of Government Vehicle were contradictory and unacceptable because the matter was reported and the electoral commission wrote a letter dated 10.12.2016 over the same matter. Having taken action through writing a letter, then the electoral commission cannot change colors like a chameleon that it was not aware of any illegal acts.

All in all, this Court is satisfied on the balance of probabilities that the 1st respondent, Ocen Peter used a government vehicle Reg. No. LG 001-058 for

campaigns and that was an electoral offence under section 25(1) and (5) of the PEA sufficient to annul the election of the 1st respondent.

ISSUE NO. 2

The 2nd respondent organized the elections in Kole South Constituency which process has been found to have been non-compliant, it therefore follows that the 2nd respondent was liable as well for the flawed elections in Kole South Constituency.

ISSUE No. 3 – whether the petition is competent?

Counsel for the 1st respondent attacked the affidavits of Ojok Tonny, Oculi Denis, Rose Atapi, Otuko Bonny and Otila Jimmy. He alleged that the affidavits were not sworn by the respective deponents but were administered by the Commissioner for Oaths in respect of the **“Certificate of Translation”** by one Opio Tonny. He therefore submitted that since Opio Tonny is not a Commissioner for oaths, then they were not proper. Counsel further submitted that His worship Mushabe Alex Karocho, the Chief Magistrate Lira swore an affidavit names **“Verification affidavit”** which is not known under the law. I shall not waste much time on this issue because if counsel for 1st Respondent wanted to question the validity of the affidavits mentioned, he should have called the deponents of those affidavits for cross-examination. Since that was not done, then counsel for the 1st respondent cannot turn around to state that they should be rejected.

Secondly the verification affidavit by the learned Chief Magistrate, Mushabe Alex Karocho was to confirm that eh signatures which appear in all those affidavits belong to him and I find nothing wrong with that. His worship also confirmed that all the people who swore those affidavits appeared before him and he

commissioned the affidavits. That was proper as far as the “*Verification affidavit*” was concerned, giving an explanation of what actually happened or transpired.

This court cannot strike out an affidavit where the mistake of not writing his name was by the chief Magistrate and not of the deponents. What court has to consider is the substance of the affidavits which has been done by analyzing the evidential value of the said affidavits.

Lastly, it is now settled practice that courts have adopted a liberal approach towards alleged defective affidavits in election petitions. Indeed in **Col.(Rtd) Kiiza Besigye Vs. electoral commission and Yoweri Kaguta Museveni Presidential Election Petition No. 1 of 2006**, Odoki CJ as he then was Citing **Article 1262 (e) of the Constitution** held:

“The doctrine of substantial justice is now part of our constitutional jurisprudence....courts are therefore enjoined to disregard irregularities or errors unless they have caused substantial failure of justice.” I therefore find and hold that the petition was competent.

ISSUE NO. 4 – Remedies Available to the parties

Having found and held that the 1st respondent personally and/or through his agents with his knowledge, consent or approval committed electoral offences during campaigns and/or elections and that all the issues are answered in favour of the petitioner, then this petition is hereby allowed.

The election of the 1st respondent, Ocen Peter as a member of parliament for Kole South Constituency is nullified, and the Kole South Constituency seat is hereby declared vacant.

It is further hereby ordered that the 2nd respondent, the electoral commission conducts fresh elections for Kileleshwa constituency as soon as possible.

And finally, I award costs of this Petition to the Petitioner, Ebil Fred.

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WILSON MASALU MUSENE

JUDGE

12th/08/2016

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