



were at variance with the votes cast, counted and captured by the Biometric Voters Verification Kits (BVVK).

6. That at the five (5) polling stations named above the Polling Agents were forced by the presiding officers to sign blank Declaration of Results forms (DRFs).
7. That the Petitioner's Polling Agents at the following polling stations: - Lalogi Division Headquarters (A-A), Lalogi Division Headquarter (B-Z), Lalogi P.7 school, Ajuri P.7 school, Laminonami market, Aketket P.7 school, Loyoajonga market (A-A), and Te – chwa , were denied access to the Declaration of Results forms and these were later discovered to be falsified by a one Mr. Oyet Francis in favor of the 1<sup>st</sup> Respondent.
8. That the Presiding officers at Awail Wanglobo and Barolam Cooperative Society ii polling stations did not sign the Declaration of Result forms and it was therefore illegal to include the results from these polling stations in the tally sheets.
9. That on 20<sup>th</sup> February 2016, three (3) sealed ballot boxes filled with cast votes, Declaration Results forms and other election materials were found at a shop of a one Mwaka Martin in Acet Trading Centre. To the Petitioner this was evidence of disenfranchisement of voters of Omoro Constituency.
10. That the 1<sup>st</sup> Respondent used government facilities and policemen to intimidate voters and thereby gained an unfair advantage over the Petitioner.

The Petitioner sought for the following remedies from this court;

1. A declaration that the 1<sup>st</sup> Respondent was not the duly elected Member of Parliament for Omoro County in Gulu District.
2. An order for recount and tally of the votes cast in five (5) polling stations of Awoo P.7 school, Parak P.7 school, Cuk Bale, Lakwana P.7 school, Lwala Te- Obee.
3. A declaration that the Petitioner was the winner and duly elected Member of Parliament for Omoro County Constituency.
4. The Respondents be ordered to pay the costs of this petition.

The 1<sup>st</sup> Respondent in his answer to the petition filed on 7<sup>th</sup> April 2016, contended as follows;

- a) That he never participated in any alleged illegal practice or electoral offence as alleged in the petition.
- b) That none of his agents participated in the alleged vote stuffing, multiple voting or falsification of results.
- c) That as the holder of the office of Deputy Speaker of the Parliament of the Republic of Uganda, he was entitled to certain facilities but he never used these facilities to intimidate the voters as alleged.
- d) That in case the agents of the Petitioner signed blank Declaration forms, that would have been unwise on their part and according to him all Polling Agents must have received copies of these forms.
- e) That he had no knowledge as to whether the Biometric Voters Verification Kits could capture how and for whom a voter preferred in the elections.
- f) That he had no knowledge of announcement for partial results relating to fifty four (54) polling stations and that in case such an announcement was made, it would be improper for the Petitioner to celebrate victory based on partial results.
- g) That he was not aware of the allegations levelled against a one Mr.Oyet Francis with regards to falsification of results.
- h) That he was not aware of the allegation that election materials were not safely kept after the elections and in any case such negligence did not affect the results of a concluded election.
- i) Finally that the results in the contested five polling stations of Awoo. P.7 school, Parak P.7 School,Cuk Bale, Lakwana P.7 School and Lwala Te- obee even when discounted would not affect the results of the said election in a substantial manner.

He prayed that this court dismisses the petition with costs.

The 2<sup>nd</sup> Respondent in his answer to the Petition filed on 7<sup>th</sup> April 2016 contended as follows;

- a) That the electoral process in Omoro Count Constituency was conducted fairly and legally in compliance with the provisions of the relevant laws.

- b) That they never declared any provisional results as alleged and are only aware of the final results declared at 7.11 pm on the 19<sup>th</sup> February 2016 and this was in respect to all the fifty nine (59) polling stations in Omoro County Constituency.
- c) That the Declaration of Results forms for Lalogi Division Headquarter (A-A), Lalogi Division Headquarters (B-Z), Lalogi Division P.7 school , Ajuri P.7 school, Laminonami market, Aketket P.7 school, Loyojonga market (A-A) and Te- chwa Polling stations were duly signed after closure of voting.
- d) That the tallying of the results was conducted in the presence of all candidates' agents and they were given copies of the Declaration of Results forms.
- e) The 2<sup>nd</sup> Respondent further contended that they kept all election materials well and as such denied that any ballot boxes filled with pre ticked ballots and or Declaration forms were ever found abandoned at any salon shop as alleged in the petition.

In the alternative but without prejudice, the 2<sup>nd</sup> Respondent contended that if there was any non-compliance with electoral laws, such non-compliance did not affect the final outcome of the election for Member of Parliament for Omoro County Constituency in a substantial manner. They therefore prayed that this court dismisses the petition with costs.

During the scheduling conference held on 23<sup>rd</sup> May 2016, the Petitioner was represented by Mr. Kwemara Kafuzi together with Mr. Kizito Deo, while the 1<sup>st</sup> Respondent was represented by Mr. Edmund Wakida and the 2<sup>nd</sup> Respondent was represented by Mr. Peter Mulongo.

The following were the agreed facts at the scheduling conference;

- 1. That the 2<sup>nd</sup> Respondent conducted elections for the Member of Parliament for Omoro County Constituency on the 18<sup>th</sup> day of February 2016.**
- 2. That there are fifty nine (59) polling stations in Omoro County Constituency.**
- 3. That the 1<sup>st</sup> Respondent was declared winner of the election with 8,218 votes as compared to the Petitioner's 6,823 votes.**
- 4. That there is a return form for transmission of results in respect to this election.**
- 5. That the 1<sup>st</sup> Respondent was at all material times to this election and even at the time of hearing this petition the Deputy Speaker of the Parliament of the Republic of Uganda.**

During the scheduling conference, the following were the issues agreed upon.

- 1. Whether the Petition is competent before this court.**
- 2. Whether there was non-compliance with the principles and provisions of the electoral law in the election for Member of Parliament of Omoro Constituency.**
- 3. If so, whether such non-compliance affected the results for the said election in a substantial manner.**
- 4. Whether there were any illegal practices or electoral offences committed by the 1<sup>st</sup> Respondent personally or his agents with his knowledge, consent and approval.**
- 5. What are the remedies available to the parties?**

This court having established that all Counsel had read the affidavits in this petition, admitted them in evidence and marked them as follows:

1. The affidavit of Toolit Simon Aketcha filed in this court on the 24<sup>th</sup> March 2016 was marked Exhibit P1.
2. The affidavit of Toolit Simon Aketcha filed on 27<sup>th</sup> April 2016 in rejoinder to the 1<sup>st</sup> Respondent's answer was marked Exhibit PIA.
3. The affidavit of Toolit Simon Oketcha filed on 27<sup>th</sup> April 2016 in rejoinder to the 2<sup>nd</sup> Respondent's answer was marked PIB.
4. The affidavit of Komakeck William Kelly filed on 24<sup>th</sup> March 2016 was marked Exhibit P2.
5. The affidavit of Odongkara Simon Ronny filed on 24<sup>th</sup> March 2016 was marked Exhibit P3.
6. The affidavit of Oketa Geoffrey filed on 24<sup>th</sup> March 2016 was marked Exhibit P4.
7. The affidavit of Oyat Chagga Wilson filed on 24<sup>th</sup> March 2016 was marked Exhibit P5.
8. The affidavit of Oyet Francis filed on 24<sup>th</sup> March 2016 was marked Exhibit P6.
9. The affidavit of Ayo Alex Wilberforce filed on 24<sup>th</sup> March 2016 was marked Exhibit P7.
10. The affidavit of Hakim Cassim filed on 24<sup>th</sup> March 2016 was marked Exhibit P8.
11. The affidavit of Tugume Joseph filed on 24<sup>th</sup> March 2016 was marked Exhibit P9.

12. The affidavit of Bongonyinge Jacob filed on 24<sup>th</sup> March 2016 was marked Exhibit P10.
13. The affidavit of Matovu Rogers filed on 27<sup>th</sup> April 2016 was marked Exhibit P11.

In respect to the 1<sup>st</sup> Respondent his affidavits were marked as follows:

1. The affidavit of Jacob L'Okori Oulanyah filed on 7<sup>th</sup> April 2016 was marked as Exhibit R1.
2. The gazette of 3<sup>rd</sup> March 2016 attached to the affidavit of the 1<sup>st</sup> Respondent was marked Exhibit R1(a).
3. The Return form for transmission of results attached to the affidavit of the 1<sup>st</sup> Respondent was marked Exhibit R1(b).
4. The letter from the Clerk to Parliament addressed to the Chairperson Electoral Commission dated 1<sup>st</sup> February 2011 and attached to affidavit of 1<sup>st</sup> Respondent was marked Exhibit R1(c).
5. The affidavit of Acellam Ben filed on 7<sup>th</sup> April 2016 was marked Exhibit P2.
6. The National Identity card for Acellam Ben attached to his affidavit was marked Exhibit P2(a).
7. The letter appointing Ben Acellam as an agent of 1<sup>st</sup> Respondent dated 18<sup>th</sup> February 2016 and attached to his affidavit was marked Exhibit P2(b).
8. The Result Tally sheet for Omoro County Constituency attached to affidavit of Ben Acellam was marked Exhibit P2 (c).
9. The Declaration of Results for Ajuri P.7school attached to affidavit of Ben Acellam was marked Exhibit P 2 (d).
10. The Declaration of Results for Lalogi Division Headquarters (A-A) attached to affidavit of Ben Acellam was marked Exhibit P2 (e).
11. The Declaration of Results form for Aketket P.7school attached to the affidavit of Ben Acellam was marked Exhibit P2 (f).

The 2<sup>nd</sup> Respondent sought to rely on the affidavit of the Returning Officer Gulu District Mr. Benson Obete filed in this court on 7<sup>th</sup> April 2016 and the same was marked Exhibit RR1.

At the end of the scheduling conference Mr. Edmond Wakida and Mr. Peter Mulongo Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively informed this court that they did not wish to cross examine any of the Petitioner's witnesses. Mr. Kwemara Kafuzi on the other hand informed the court that he was interested in cross examining Mr. Benson Obete on the contents of his affidavit Exhibit RR 2.

When this petition came for hearing on 25<sup>th</sup> May 2016, the Returning Officer Mr. Benson Obete was cross examined on his affidavit by Mr. Opwonya. During this cross examination he told court that he was the Returning Officer in charge of Gulu District for the elections held on 18<sup>th</sup> February 2016 and this covered Omoro County Constituency.

He received tamper proof envelopes containing accountability for ballot papers, official report book and Declaration of Results forms. In respect of Omoro County results came in at once at around 11.00 p.m. on 18<sup>th</sup> February 2016. He started tallying these results from 6.00 a.m. on 19<sup>th</sup> of February 2016 and he completed tallying at around 7.00 p.m. At 7.11 p.m. he printed the transmission of results for Omoro County Constituency and he gave this return form for transmission of results to everybody who was there.

He told court that he printed Exhibit P12 from the computer and the same is computer generated.

On 20<sup>th</sup> February 2016, the Petitioner sent a boy to his office with a complaint to the effect that he was dissatisfied with what transpired at the tally Centre on 19<sup>th</sup> February 2016.

He told this court that his signature on Exhibit R1(b) was forged, yet he printed many copies of Exhibit P12 and gave to the agents present but they did not acknowledge receipt of the same.

That he announced the results for Omoro County Constituency at 7.21 p.m. and was not aware if the 1<sup>st</sup> Respondent was present at the tally Centre at this time, but he gave a copy of Exhibit P12 to the official agent of the 1<sup>st</sup> Respondent.

He told this court that he announced results for each candidate and declared the winner. By the time he announced these results he had the return form Exhibit P12.

That indeed voting was extended in the Polling Stations disclosed in paragraph 10 of his affidavit and this could have been due to rains on that day.

That to the best of his knowledge, all the Declaration of Results forms submitted to him were fully authenticated. He actually received no complaints from the supervisors.

That on 19<sup>th</sup> February 2016, at 4.30 a.m., the Petitioner, Mr. Kelly Komakech, Hon. Ojara, Martin Mapenduzi and Mr. Ben Acellam escorted the black ballot boxes containing non usable electoral materials to the tally Centre. They were to compare what was entered with their Declaration of Results forms.

The police case mentioned in this petition was about three (3) transparent ballot boxes found on 20<sup>th</sup> February 2016. These were to be left in the field for re-use in future elections and he did not know their contents. In fact according to him, the police produced a report in relation to these boxes and this matter was closed.

He told court that he did not visit Acholi Inn on 17<sup>th</sup> February 2016 and in fact he has never entered Acholi Inn in his life time and he did not receive any bribe as alleged.

Still while under cross examination by Mr. Deo Kizito, he stated that he transmitted the results to the Electoral Commission Headquarters online. The process of tallying involved him (Mr. Benson Obete) and two (2) tally clerks who would cross check all results entered from the Declaration of Results forms to ensure that they were correctly entered. He would scan the results from the Declaration of Results forms and they would appear on the computers of the tally clerks and once they found the results correct, he would then enter them on the tally sheet.

He told court that the bar code was automatically generated but when asked why Exhibit P12 had no bar code he had no explanation for this.

According to Exhibit P12 candidates scored the following votes:-

- Lamony Walter Canogura got 332 votes.
- Okello Job Collins got 548 votes.
- Oulanyah Jacob L'okori got 8218 votes.
- Owani Dick Denis got 3080 votes.
- Tolit Simon Aketcha got 6823 votes.

- The valid votes cast were 19001
- The rejected (Invalid) ballot papers were 968
- Counted ballot papers were 19969
- Spoilt ballot papers were 32

He told court that he declared results for fifty nine (59) Polling Stations at once and he never announced any partial results as alleged by the Petitioner.

That prior to this election, he had been a Returning Officer in Ntoroko and Kyenjojo Districts. As Returning Officer he was the overall supervisor of elections in the District. To the best of his knowledge the elections in Omoro County Constituency were run in compliance with the law and were free and fair.

He never saw the 1<sup>st</sup> Respondent use government vehicles during his campaigns and he received no complaint to this effect. He also never received any complaint about the Declaration of Results forms at the tally Centre. He announced results for each Polling Station as contained in the Declaration of Results forms and agents participated in the tallying process.

He told court that ideally he would reject a Declaration of Results forms, if the results captured for each candidate did not tally, or where they exceeded the number of registered voters, or the total number of votes counted at a Polling Station. But for Omoro County Constituency none of the Declaration of Results forms received had such a defect.

He did not know Komakech Lawrence, since he supervised 332 (three hundred thirty two) presiding officers, he needed to cross check his list to confirm if Komakech Lawrence was one of them. If a presiding officer did not sign a Declaration of Results form then he would query the same.

On Exhibit P12 he stated that it was not mandatory to get signatures of the agents at the back of the Return and indeed there was none on Exhibit P 12. It was also observed that Exhibit P12 lacked the official logo of the Electoral Commission.

While being re-examined by Mr. Peter Mulongo he stated that the Return of Transmission of Results form is a computer generated document and it is Exhibit P12 that he transmitted to the Electoral Commission.

That the Declaration of Results forms Lakwana P.7 school, Parak P.7 school, Awoo P.7 school, Cuk Bale, Lwala Te ober, Awali wang lobo and Barolam cooperative society ii shown to him by Mr. Deo Kizito, Counsel for the Petitioner were the same Declaration of Results forms he relied upon during the tallying process and indeed the results in the Declaration of Results forms for all these Polling Stations were the same results on the tally sheet Exhibit R2(c).

That none of the coordinators or their agents complained about the results he read from the Declaration of Results forms. While at the tally Centre, he asked the Petitioner if he had any problem with what he read from the Declaration of Results forms and tally sheet and he had no complaint.

These results were transmitted to the Electoral Commission electronically. He gave out the Return of Transmission of Results forms and tally sheets to the candidates and their agents while at the tally Centre and none of them raised any complaints.

According to him the election of Member of Parliament for Omoro County Constituency was within the law, free, transparent and fair.

It is vital to remind oneself of the burden of proof in petitions as this one. The burden of proof in election petitions like in other civil matters lies on the petitioner to prove the allegations levelled against the opposite party see **S.101 of the Evidence Act**. However unlike in ordinary civil suits the standard of proof is slightly higher. It is to the satisfaction of the court. This is because of the importance of the electoral process. It concerns the freedoms and liberties of the citizenry in a fundamental way. See **Supreme Court Election Petition No. 1 /2001. Col(RTD) Dr. K. Besigye vs. Museveni Yoweri Kaguta & Electoral Commission**.

Therefore in the instant petition, the Petitioner had to prove all the allegations against the Respondents to the satisfaction of court.

In their written submissions filed on 27<sup>th</sup> May 2016, as directed by court, Counsel for the Petitioner contended that there was no mediation as required by the **Judicature (mediation)**

**Rules** and such mediation was mandatory under S.4(1).He thus prayed that the matter be referred to mediation.

I note that training in mediation in this circuit was conducted from 4<sup>th</sup> to 6<sup>th</sup> April 2016 and this petition was filed on 24<sup>th</sup> March 2016. Perhaps this explains why the Assistant Registrar of this court did not reject this Petition which did not comply with the provisions of Rule 5 of the Judicature (mediation) Rules 2013 which provides as follows:-

### **5.Case Summary**

**1. A party to a civil action shall file a case summary**

**2. The case summary shall be filed with the court at the time of filing pleadings.**

**3. A case summary shall include the following;**

**a) The names of the parties**

**b) The address of the parties including postal, fax, telephone and email addresses.**

**c) The facts giving rise to the civil action and the defense to the facts.**

**d) The name and address of the advocate of the party if any.**

**e) The person with full authority to sign a settlement**

**f) The name of the person who will be the lead negotiator for the party**

**g) The name of the proposed mediator if any; and**

**h) The documents that the Petitioner intends to rely on at mediation.**

**(4) The court shall ensure that all parties comply with sub rule 3.**

If this court is to enforce the provisions of the Judicature (mediation) Rules 2013 especially Rule 5 (4), then the instant petition would be incompetent as the same was filed without a case summary and the same ought to be struck out.

However in the interest of justice and pursuant to Article 126 (2) (e) of the Constitution of the Republic of Uganda, the objection raised by Counsel for the Petitioner is hereby overruled.

This court observes that the submissions by different Counsel took divergent trends an indication that may be Counsel for the Petitioner did not serve his submissions upon Counsel for the Respondents.

I now proceed to the issues as set out during the scheduling conference.

**1. Whether this petition is competent before this court.**

This issue arose during the scheduling conference when it was realized that the petition and all affidavits in support thereof were bound separately from the annextures to be relied upon. The court found difficulty in merging the annextures to the petition and affidavits in support to the petition.

Counsel for the petitioner submitted that the court file should be handed over to the court clerk to arrange these annextures and attach them to the petition and their respective affidavits. Mr. Kizito, Counsel for the Petitioner further submitted that election petitions are matters of extreme importance to parties and the electorate and sought to use Rules 19 and 26 of the Parliamentary Elections (Interim Provisions) Rules.

In his reply, Mr. Edmund Wakida for the 1<sup>st</sup> Respondent submitted that the affidavits in support of the petition lacked annextures and they were not verified as required by law. Since the court clerk is not a Commissioner for oaths, Counsel argued that he could not rectify this anomaly. He prayed that we proceed with the petition as it was.

Mr. Peter Mulongo, Counsel for the 2<sup>nd</sup> Respondent associated himself with the submissions of Mr. Wakida but prayed that the petition be struck out with costs.

However on 25th May 2016, Mr. Charles Dalton Opwonya who joined this case as one of the advocates for the Petitioner, presented to court a bound book with numbered pages and he stated that it was for ease of reference.

With all due respect to Counsel, the said bound book was not received at the court registry and the same shall not be relied upon by court.

Counsel for the Petitioner in his final submissions, contended that there was an apparent mistake of Counsel by not putting the documents in order and an apparent defect in the design of the stamp of the Chief Magistrate that could not mark the Annexures properly. According to him scheduling should rectify such organizational errors in paper work.

I have carefully studied the submissions and authorities cited by Counsel for the 1<sup>st</sup> Respondent on this issue. I entirely agree that an election petition affects the parties and the electorate and for this reason it cannot be rejected for reasons like failure to put annexures to an affidavit.

However, for this particular petition, Paragraph 7 of the petition reads as follows:-

**“ 7. THAT your Petitioner avers and contends that denial of DRFS to the Polling Agents at the following Polling Stations; Lalogi Division Headquarters (A-A), Lalogi Division Headquarters(B-Z), Lalogi P.7 school, Ajuri P.7 school, Laminonami market, Aketket P.7 school, Layoajonga market (A-A), Te-cwa, by the respective Presiding Officers tainted the results with frauds and robbed the exercise of free and fair elections in as far as the said DRFs were later found to have been falsified in favor of the 1<sup>st</sup> Respondent by the Election Supervisor Lalogi sub county one Mr. Oyet Francis at, Lalogi sub county police post which affected the results of the election in a substantial manner.”**

The above averment clearly indicates that the Polling Agents of the Petitioner were denied DRFs. However the Petitioner did not guide court as to where and how he got the DRFs intended to be attached to his affidavit. The source and authenticity of the DRFs intended to be attached to the affidavit of the Petitioner is therefore not clear.

These DRFs are purportedly annexed to the affidavit of the Petitioner, paragraph 8 of which affidavit reads as follows.

**“8. THAT I aver and contend that due to extension of time for voting, as above mentioned, the Presiding Officers at the above mentioned 5 Polling Stations compelled the Polling Agents to sign blank DRFs before the figures reflecting the actual votes cast and announced were entered on the pretext of saving time and thereafter the Polling Agents were denied copies of the DRFs, that it was dark well knowing that they had been falsified in favor of the 1<sup>st</sup> Respondent. Copies of the said DRFS signed before voting ended are hereby attached and marked Annexure C1, C2, C3, C4, C5”**

This court observes that the source of these DRFs is not indicated anywhere in the the Petitioner's affidavit and court cannot admit them in evidence.

The same evidence runs through the evidence of Komakech William Kelly Exhibit P2 see paragraphs 4 and 5;and the affidavit of Odongkara Simon Ronny Exhibit P3 see paragraphs 4 and 5.

It is clear from these paragraphs that these witnesses did not see the DRFs sought to be attached to the affidavit of the Petitioner.

In paragraph 9 of his affidavit, (Exhibit P4), Oketa Geoffrey claims to have seen the DRF for Ajuri P.7 School Polling Station on 20<sup>th</sup> February 2016 but the same is not annexed to his affidavit.

In paragraph 7 of his affidavit (Exhibit P9), Tugume Joseph, claims to have seen a DRF for Cuk Bale Polling Station with one Komakech Kenneth. Unfortunately, Komakech Kenneth did not file an affidavit to verify this fact.

This court observes that the evidence surrounding DRFs is so important to this petition and should have been given the seriousness it deserved. The failure by the Petitioner to disclose the source of the DRFs that he intended to rely on in proving this petition was a serious omission on his part. He did not even produce evidence to show that he wrote to the Electoral Commission requesting for certified copies of the DRFs intended to be relied upon in this petition.

The case of **Kakooza John Baptist vs. Electoral Commission and Yiga Anthony, Supreme Court Election Appeal No. 11 of 2007**, is instructive on this point. In this case it was held inter alia, that

**“Anon-certified DR form cannot be validated by the mere fact that it is annexed to an affidavit. A DR form is a public document within the meaning of S. 73(a) (ii) of the Evidence Act. It requires certification, if it is to be presented as an authentic and valid document in evidence”**

This court will therefore allow Annexure A to the petition which the Uganda gazette, Annexure A to the affidavit of the Petitioner which is the Return form for Transmission of Results, Annexure B which is letter dated 20<sup>th</sup> February 2016, from the Petitioner addressed to the Returning Officer, and Annexure E which is a letter dated 30<sup>th</sup> December 2015 from the Petitioner to the Returning Officer.

However the DRFs plus all evidence relating to them is hereby rejected specifically because their source is not disclosed and they are not certified by the Electoral Commission as provided for in S.75 of the Evidence Act

I therefore find that this petition is competent and it is supported by affidavits in support thereof together with Annexure A to the petition, Annexures A, B, and E to the affidavit of the Petitioner.

## **Issue 2**

### **Whether there was non-compliance with the principles and provisions of the electoral laws in the election of Member of Parliament for Omoro County Constituency Gulu District.**

Counsel for the Petitioner combined the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> issues and argued them together. He submitted that by announcing results without a valid Return form for Transmission of Results, and declaring a person who never participated in the elections as a winner, the Returning Officer did not comply with electoral laws.

Counsel for the 1<sup>st</sup> Respondent did not respond to this particular aspect of submissions by Counsel for the Petitioner. Counsel for the 2<sup>nd</sup> Respondent on the other hand contended that S.58 of the Parliamentary Elections Act (PEA) provides for the declaration of the candidate with the largest number of votes as the winner of the election but does not show what the prescribed form should look like. He further invited the court to examine Exhibit R1 (b) and Exhibit P12 which according to him contain similar information save for the logo of the Electoral Commission and the bar code missing on Exhibit P12. He invited this court to invoke the provisions of Article 126 (e) of the Constitution of the Republic of Uganda to deal with this point.

This court has carefully studied the submissions of both Counsel and the provisions of S. 58 of the PEA.

**S.58 (1) of the PEA reads as follows:-**

**“Each Returning Officer shall, immediately after the addition of votes under sub section (1) of S. 53, or after any recount, declare elected the candidate who obtained the largest number of votes by completing a return in the prescribed form.**

**S. 58(2) reads as follows**

**“Upon completing the return, every Returning Officer shall transmit to the Commission the following documents**

- a) The return form**
- b) Repealed**
- c) The tally sheets and**
- d) The Declaration of Results forms from which the official addition of the votes were made.”**

In this case the Petitioner in paragraph 4 of his affidavit in support of his petition stated that Mr. Benson Obete was put under pressure by the candidates/agents, election observers, media and the general public and he produced the return form marked Annexure A to his affidavit. Interestingly the 1<sup>st</sup> Respondent refers to the same Return form for Transmission of Results which he annexed to his affidavit and the same was admitted in this court as Exhibit R1(b).

Apparently the Petitioner and 1<sup>st</sup> Respondent rely on the same return form for transmission of results which bears the official logo of the 2<sup>nd</sup> Respondent and has a bar code at the bottom. In this document, the person with the largest number of votes was Oulanyah Jacob L’okori who belonged to the NRM Political party with 8218 votes which were clearly printed against his name. However at the bottom of this form the person declared as winner was Oulanyah Jacob

Collins. Court finds this to be a bonafide mistake given the circumstances under which the Return form was made as indicated in paragraph 4 of the affidavit of the Petitioner.

When the Returning officer Mr. Benson Obete appeared before court for cross examination on 25<sup>th</sup> May 2016, he categorically told court that the return forms for transmission of results attached to the affidavits of the Petitioner and 1<sup>st</sup> Respondent in this case were forged and he presented Exhibit P12. Exhibit P12 had the same figures with Exhibit R1 (b) BUT the names of Oulanyah Jacob Collins had been corrected to read Oulanyah Jacob L'okori. Court also observes that Exhibit P12 did not have the official logo of the 2<sup>nd</sup> Respondent and had no bar code at the bottom.

I find that Benson Obete while under pressure wrote the names of Oulanyah Jacob Collins as they appear on Exhibit R 1 (b) and he thought he could correct this mistake by presenting Exhibit P 12 which had the names of Oulanyah Jacob L'okori. The results on Exhibit R 1 (b) and Exhibit P12 are the same as the person with largest number of votes is Oulanyah Jacob L'okori who obtained 8218 votes and therefore the mistake on Exhibit R1 (b) is minor and has no bearing to the final result in this case.

#### **Use of Government resources.**

Counsel for the Petitioner referred to S. 25 of the PEA and contended that the 1<sup>st</sup> Respondent contravened this section when he used official government vehicles during his campaign and the 2<sup>nd</sup> Respondent did not stop him even when alerted about this conduct on 30<sup>th</sup> December 2015. In reply Counsel for 1<sup>st</sup> Respondent submitted that S. 25 of the PEA permits the use of public resources by ministers and other political office holders in execution of official duties and such officers are obliged to notify the 2<sup>nd</sup> Respondent in writing. He submitted that the 1<sup>st</sup> Respondent held a public office under Article 82 of the Constitution of the Republic of Uganda and the Clerk to Parliament vide his letter dated 1<sup>st</sup> February 2011, notified the 2<sup>nd</sup> Respondent about the use of these vehicles. Indeed Counsel for the 1<sup>st</sup> Respondent submitted that the same allegations were raised in Election Petition **No. 1 of 2011 Tolit Simon vs. Oulanyah** and the court rejected the allegations.

These allegations are contained in paragraph 17 of the Petitioner's affidavit and are responded to in paragraph 7 of the 1<sup>st</sup> Respondent's affidavit. At the scheduling conference it was agreed

fact that the 1<sup>st</sup> Respondent was before this election and at all material times to this petition the Deputy speaker of the parliament of Uganda. This court therefore finds that the 1<sup>st</sup> Respondent being the bearer of a Constitutional office under Article 82 of the Constitution was entitled to these facilities and there is no proof before this court that the 1<sup>st</sup> Respondent used any of these facilities to gain unfair advantage in the parliamentary race for Omoro County parliamentary elections.

**Allegations of false declaration of 1<sup>st</sup> Respondent without figures.**

According to the pleadings, the Petitioner and 1<sup>st</sup> Respondent both attached a Return form for transmission of results which indicated the number of votes obtained by each candidate. Court was also shown a tally sheet indicating results for all 59 Polling Stations in Omoro County Constituency (Exhibit R2 (c)). During cross examination of the Returning officer, Counsel for the Petitioner failed to fault him on any entry on the tally sheet an indication that the Returning Officer correctly entered the results for all the 59 Polling stations from DRFs to the tally sheets. The Returning officer denied making announcement of partial results as alleged by the Petitioner.

Perhaps if the Petitioner had availed the evidence of Biometric voters verification kits (BVVK) as he mentioned in paragraph 10 of his affidavit, together with certified copies of DRFs, his case would have been proved. In the absence of these the Petitioner failed to prove this allegation to the satisfaction of court.

**Allegations of pre signing of Blank DR forms.**

This allegation seems to run through most of the Petitioner's affidavits. I do find these allegations rather absurd for people who are engaged by a candidate to oversee a polling exercise, only to betray their Principal. These seem to be deliberate lies by the agents. In the case of **Halim Nakawungu vs. Electoral Commission & Anor Election Petition No. 002 of 2011**, Justice Elizabeth Musoke noted that by the Petitioner's agents signing DR forms, they confirmed that the votes stated therein to be valid and were actually valid. She noted that there was no single complaint from the Petitioner and his agents to either the Electoral Commission or to the police or any other independent entity in respect of the Petitioner's assertion in this ground.

I similarly find no merit in this allegation, as Mr. Benson Obete did not receive any such complaints. On the contrary, the letter dated 20<sup>th</sup> February 2016 from the Petitioner to the Returning Officer annexure B to the Petitioner's affidavit, the 2<sup>nd</sup> last paragraph reads as follows:

**“Therefore reject the figures provided by you because they are not based on the actual votes cast at polling stations. Our own records from DRFs authenticated by Presiding Officers show that I won the Omoro County Parliamentary Elections”.**

From the contents of the above letter this court finds the allegations by the Petitioner and his witnesses that the DRFs were not availed, and that they were signed by the agents in advance, to be false. As a matter of fact the letter from the Petitioner to the 2<sup>nd</sup> Respondent had no complaint regarding DRFs in this election.

The Petitioner thus failed to prove to the satisfaction of court that the DRFs were pre signed.

### **Abandoned ballot boxes**

This allegation is raised in paragraph 9 of the Petitioner's affidavit. However the Petitioner did not avail details as to which Polling stations they related to or in which election they were supposed to be used. According to Benson Obete, the police investigated this case and closed it. The Petitioner hinted on this in paragraph 18 of his affidavit but did not attach the report he referred to as annexure “F”. The evidence concerning these abandoned ballot boxes is not relevant to this petition because according to the tally sheet,(Exhibit P2(c)) all results for the 59 polling stations were included in the tally sheet.

The Petitioner therefore miserably failed to prove to the satisfaction of court that there was non-compliance with the electoral laws in the conduct of the parliamentary elections for Omoro County Constituency.

### **Issue 3 – Whether the non-compliance affected the results of the election in a substantial manner**

Having resolved the second issue in the negative, I find this issue rather moot. Since the Petitioner did not provide certified DRFs in this case from the Electoral Commission, it was difficult for him to pass the substantiality test.

**Issue 4 – Whether there was any illegal practice or electoral offences committed by the 1<sup>st</sup> Respondent personally or his agents with his knowledge, consent or approval.**

Counsel for the Petitioner, did not submit on this issue. After carefully reading the Petition and affidavits in support thereof I have noted as follows:

Paragraph 16 of Petitioner's affidavit, mentions the use of a vehicle UAG 567C to transport voters allegedly hired by the 1<sup>st</sup> Respondent. However the Petitioner did not provide details relating to the ownership of the said motor vehicle UAG 567C and which person hired it on the material day. It is therefore difficult for court to impute bribery on the 1<sup>st</sup> Respondent basing on this allegation.

In his affidavit, (Exhibit P11), Matovu Rogers stated that on 17<sup>th</sup> February, 2016 at 22 hrs. at Acholi Inn, he saw Benson Obete bribing men to vote. However during cross examination Benson Obete denied these allegations. It is not clear to court why Matovu Rogers did not report this allegation either to police or any other authority. For him to keep such serious information for a period of close to two months makes the allegation suspicious.

**Issue 5. What remedies are available to the parties?**

I have carefully studied the prayers set out in the submissions of Counsel for the Petitioner and respectfully find that in the absence of certified DRFs and evidence surrounding the use of Biometric Voters Verification kits (BVVK), the court was not satisfied that the petitioner is entitled to any of the prayers sought for by the Petitioner.

Counsel for the 1<sup>st</sup> Respondent invited this court to reduce votes from the tally. I however find no reason to do this. He finally prayed for dismissal of the petition with costs.

Counsel for the 2<sup>nd</sup> Respondent submitted that the Petitioner failed to prove the allegations raised in this petition and the same should be dismissed with costs.

Court finds that this petition was poorly arranged, lacked vital documents particularly certified DRFs and it was supported by very weak evidence. Therefore the Petitioner failed to prove the allegations levied against the Respondents to the satisfaction of court.

I therefore declare that **OULANYAH JACOB L'OKORI** was properly and validly elected as the Member of Parliament for Omoro County Constituency with a total of 8218 (eight thousand two hundred eighteen) votes in the elections conducted on 18<sup>th</sup> February 2016.

This petition is hereby dismissed with costs.

Dated at Gulu this **08<sup>th</sup>** day of **June, 2016**

**DAVID MATOVU**

**JUDGE.**