

Respondent) on 18th February, 2016 and where Prof. Morris Ogenga Latigo Wodamida (hereinafter referred to as the second Respondent) was declared the winner of Member of Parliament seat for Agago County North Constituency in Agago District.

5 The grounds of this Petition are that:-

1. The election officers of the 1st Respondent indulged in acts the sum effect of which was disenfranchisement of voters, most of whom were associated with the candidature of the Petitioner.
- 10 2. The 1st Respondent's election officer's received bribes from the 2nd Respondent and his authorized agents.
3. The 1st Respondent's Returning Officer allowed the 2nd Respondent to campaign beyond the authorized time for such campaigns.
- 15 4. The 1st Respondent's Returning Officer refused to supply the Petitioner with serial numbers of ballot boxes and the seals used in Agago County North Constituency elections for Member of Parliament.
- 20 5. The election officials of the 1st Respondent inflated election results in favour of the 2nd Respondent.
6. The 1st Respondent failed in its obligations under Sections 20 and 44 of the Parliamentary Elections Act (PEA).
- 25 7. At many Polling Stations, the election officers of the 1st Respondent deliberately withheld copies of declaration of results forms from the Petitioner and or his agents.
8. The 1st Respondent failed in its Constitution and mandate of compiling, monitoring, 30 revising and updating the voter's register thus disenfranchising voters in Agago County North Constituency.

9. The 2nd Respondent indulged in voter bribery.

10. The 2nd Respondent made false, malicious and reckless statements against the
5 Petitioner.

11. The 2nd Respondent interfered with the election activities of the Petitioner and the
Petitioner sought to have the position of Agago County North Member of Parliament
declared vacant.

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The Petition was supported by several affidavits which Court will set out later in this Judgment.

The 1st Respondent in its answer to this Petition contended as follows:-

1. That the electoral process of Member of Parliament for Agago County North
15 Constituency was conducted fairly and legally in compliance with the Provisions
of the PEA.

2. That the 1st Respondent had no knowledge of any disenfranchisement of voters
selective permission to vote, ballot stuffing or table voting as alleged.

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3. That no officer of the 1st Respondent received a bribe from the 2nd Respondent or
his authorized agents.

4. That the 1st Respondent is not aware of any bribery of voters or way laying of
25 voters as alleged.

5. That the 1st Respondent did not permit the 2nd Respondent to campaign beyond the
authorized campaign time.

6. That the 1st Respondent is not obliged to provide any candidate with serial numbers of ballot papers or seals for the ballot boxes. In any case the Petitioner did not make any request for those items.

5 7. The 1st Respondent did not inflate the results for Agago County North Constituency as alleged.

8. That the 1st Respondent has no knowledge of any of its officers having encouraged election malpractices against the Petitioner as alleged.

10 9. That the 1st Respondent provided DR Forms to all candidates agents present at the time of announcing results at each Polling Station.

15 10. That the 1st Respondent opened and closed the election within the time reasonably required to conduct the election.

11. That the 1st Respondent compiled maintained and updated the voter's register in accordance with the law.

20 12. That the 1st Respondent's returning Officer did not connive with the 2nd Respondent to recruit election officers.

13. That the 1st Respondent's returning officer trained and or oriented the election officials.

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The 1st Respondent prayed for the dismissal of the Petition with costs.

The 2nd Respondent in his answer to the Petition contended as follows:-

30 1. That the Petition is incompetent as it does not state the date when the election was conducted, the names of the other candidates, and the results obtained by each

candidate as required by Rule 4 of the Parliamentary Elections (Election Petitions) Rules SI 141-2.

5 2. That the 2nd Respondent did not bribe the 1st Respondent election officers as alleged in the Petition.

3. The 2nd Respondent and his agents deny waylaying voters as alleged.

10 4. The 2nd Respondent denies being a beneficiary of inflated results as alleged in the Petition.

5. The 2nd Respondent denies the defamatory statements and contends that the pleadings are defectively framed in this respect.

15 6. The 2nd Respondent denies using a false, fictionary and fabricated video to malign the Petitioner.

and the 2nd Respondent prayed for paragraphs 11(ii), (iii), (iv), (v), (vi), (Vii), (viii) and (ix) of the Petition to be struck out.

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In the alternative the 2nd Respondent averred that paragraph 11 of the Petition did not disclose any cause of action.

7. The 2nd Respondent denied ever bribing voters as alleged in the Petition.

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8. The 2nd Respondent denied conniving with the Returning Officer to recruit election officers favourable to him as alleged in the Petition.

The 2nd Respondent prayed for the dismissal of this Petition with costs.

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A scheduling conference was conducted on 18th May, 2016 at this conference Mr. Frank Kanduho represented the Petitioner, Mr. Peter Mulongo held brief for Mr. Isaac Bakayana Counsel for the 1st Respondent and Mr. Geoffrey Komakech represented the 2nd Respondent.

5 The following were the agreed facts:-

1. **That there was an election for the Member of Parliament for Agago County North Constituency on 18th February, 2016 in which the Petitioner and the 2nd Respondent participated as candidates and this election was organized by the 1st Respondent.**

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2. **That the 2nd Respondent was declared the winner of the above election having obtained 14,079 (fourteen thousand seventy nine) votes as opposed to the Petitioner's 10,420 (ten thousand four hundred twenty) votes.**

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3. **That the 2nd Respondent appeared in the gazette of 3rd March, 2016 and he took an Oath of 16 May, 2016 as the Member of Parliament for Agago County North Constituency.**

The following were agreed issues:-

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1. **Whether the 2nd Respondent personally or through his agents with his knowledge consent and approval committed any election malpractices/offences.**

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2. **Whether the elections for Member of Parliament for Agago County North Constituency held on 18th February, 2016 were organized and conducted in accordance with the Provisions of the electoral laws in Uganda.**

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3. **Whether if there was non-compliance such non-compliance affected the results in a substantial manner.**

4. **What remedies are available to the Parties?**

Court was informed by all Counsel that they had read and internalized all affidavits in this Petition and they were admitted in evidence as follows:-

- 5 1. The affidavit of Okot John Amos (The Petitioner) filed on 29th March, 2016 was marked as exhibit P1 and the affidavit in rejoinder filed on 18th May, 2016 was marked P1(a).

- 10 2. The affidavit of Oceng George filed on 29th March, 2016 was marked as exhibit P2.

3. The affidavit of Stella Lamunu filed on 29th March, 2016 was marked as exhibit P3.

- 15 4. The affidavit of Adoch Florence filed on 29th March, 2016 was marked as exhibit P4.

5. The affidavit of Francis Kidega filed on 29th March, 2016 was marked as exhibit P5.

- 20 6. The affidavit of Yoocana David filed on 29th March, 2016 was marked as exhibit P6 and the affidavit in rejoinder filed on the 18th May, 2016 was marked exhibit P6A.

- 25 7. The affidavit of Lagol Rosalba filed on 29th March, 2016 was marked as exhibit P7.

8. The affidavit of Atim Christine filed on 29th March, 2016 was marked as exhibit P8.

- 30 9. The affidavit of Charles Okello filed on 29th March, 2016 was marked exhibit P9.

10. The affidavit of Abur Margaret filed on 29th March, 2016 was marked as exhibit P10.
- 5 11. The affidavit of Otim Charles Adyer filed on 29th March, 2016 was marked exhibit P11.
12. The affidavit of Opio Raymond filed on 30th March, 2016 was marked exhibit P12.
- 10 13. The affidavit of Oryem Caesar filed on 30th March, 2016 was marked exhibit P13.
14. The affidavit of Opio Kalandio Babu filed on 30th March, 2016 was marked exhibit P14.
- 15 15. The affidavit of Olowch David Ocii filed on 30th March, 2016 was marked exhibit P15.
16. The affidavit of Olweny John filed on 30th March, 2016 was marked exhibit p16.
- 20 17. The affidavit of Okumu James filed on 30th March, 2016 was marked exhibit P17.
18. The affidavit of Okidi Akwilino filed on 30th March, 2016 was marked exhibit P18.
- 25 19. The affidavit of Okema George filed on 30th March, 2016 was marked exhibit P19.
20. The affidavit of Okello B. Charles filed on 30th March, 2016 was marked exhibit P20.
- 30 21. The affidavit of Odong Peter filed on 30th March, 2016 was marked exhibit P21.

22. The affidavit of Odok Bosco filed on 30th March, 2016 was marked exhibit P22.
23. The affidavit of Ocen Charles filed on 30th March, 2016 was marked exhibit P23.
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24. The affidavit of Nyeko Moses filed on 30th March, 2016 was marked exhibit P24.
25. The affidavit of Labeja James Akom filed on 30th March, 2016 was marked exhibit P25.
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26. The affidavit of Betty Aryemo filed on 30th March, 2016 was marked exhibit P26.
27. The affidavit of Jennifer Ayoo filed on 30th March, 2016 was marked exhibit P27.
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28. The affidavit of Anywar John filed on 30th March, 2016 was marked exhibit P28.
29. The affidavit of Amuku Kamilo filed on 30th March, 2016 was marked exhibit P29.
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30. The affidavit of Akidi Rose filed on 30th March, 2016 was marked exhibit P30.
31. The affidavit of Komakech Daniel filed on 18th May, 2016 was marked exhibit P31.
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32. The affidavit of Amone Gowland filed on 18th May, 2016 was marked exhibit P32.
33. The affidavit of Oryem Bosco filed on 18th May, 2016 was marked exhibit P33.
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34. The affidavit of Atoo Santana filed on 18th May, 2016 was marked exhibit P34.
35. The affidavit of Anying Nighty filed on 18th May, 2016 was marked exhibit P35.

36. The affidavit of Vincent Buwule filed on 18th may, 2016 was marked exhibit P36.
37. The affidavit of Labeja Peter filed on 18th May, 2016 was marked exhibit P37.
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38. The affidavit of Aciro Richard filed on 18th May, 2016 was marked exhibit P38.
39. The affidavit of Owor Rafael Ocaya filed on 18th May, 2016 was marked exhibit P39.
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40. The affidavit of Ocaya Godfrey filed on 18th May, 2016 was marked exhibit P40.
41. The affidavit of Ajok Gabriella filed on 18th May, 2016 was marked exhibit P41.
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42. The affidavit of Oyella Jennifer filed on 18th May, 2016 was marked exhibit P42.
43. The affidavit of Aloyotoo Rose filed on 18th May, 2016 was marked exhibit P43.
44. The affidavit of Alum Kalina filed on 18th May, 2016 was marked exhibit P44.
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45. The affidavit of Akwero Christine filed on 18th May, 2016 was marked exhibit P45.
46. The affidavit of Oloya Richard filed on 18th May, 2016 was marked exhibit P46.
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47. The letter dated 16th May, 2016 from M/S Kanduho & Co. Advocates addressed to the Secretary of Electoral Commission requesting for documents was marked exhibit P1A(i).
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- The 1st Respondent relied on only one (1) affidavit deponed by Rashid Kasakya the Returning Officer for Agago District. This affidavit was filed on 13th April, 2016 and was marked exhibit R1.

The 2nd Respondent relied on several affidavits admitted and marked as follows:-

1. The affidavit of Prof. Morris Ogenga Latigo (2nd Respondent) filed on 14th April, 2016 was marked exhibit RR1.
- 5 2. The revised campaign programme for directly elected MP for 2015/2016 general elections Agago North Constituency was marked exhibit RR1(a).
3. The affidavit of Opoka Kenneth Geoffrey filed on 14th April, 2016 was marked as exhibit RR2.
- 10 4. The affidavit of Ocen George William filed on 14th April, 2016 was marked as exhibit RR3.
- 15 5. The affidavit of Joseph Olanya Obaya filed on 14th April, 2016 was marked as exhibit RR4.
6. The affidavit of Okeny Richard Dagama filed on 14th April, 2016 was marked as exhibit RR5.
- 20 7. The affidavit of Opio Simon Latigo was not filed but was marked as exhibit RR6.
8. The affidavit of Okot Donasiano filed on 15th April, 2016 was marked exhibit as RR7.
- 25 9. A list of names nineteen (19) in number dated 3rd January, 2016 was marked exhibit RR7(a).
10. A receipt dated 11th February, 2016 in the names of Mr. Okot Donasiano for 80,000/= (eighty thousand) is marked exhibit RR7(b).
- 30 11. The affidavit of Oceng Bosco filed on 19th April, 2016 was marked exhibit RR8.

12. The affidavit of Okello Titus Lotwa filed on 19th April, 2016 was marked as exhibit RR9.
- 5 13. The affidavit of Otheino Robert filed on 19th April, 2016 was marked as exhibit RR10.
14. The affidavit of Mwange Paul filed on 19th April, 2016 was marked as exhibit RR11.
- 10 15. The affidavit of Akena Lunjino filed on 19th April, 2016 was marked as exhibit RR12.
16. The affidavit of Opio John filed on 19th April, 2016 was marked as exhibit RR13.
- 15 17. The affidavit of Ayoo Florence Otto filed on 19th April, 2016 was marked as exhibit RR14.
18. The affidavit of Olum Joseph filed on 19th April, 2016 was marked as exhibit RR15.
- 20 19. The letter appointing Olum Joseph as a Polling Agent of the 2nd Respondent at Labworomor P7 Polling Station was marked as exhibit RR15(a).
- 25 20. The Declaration of Results Form for Labwororomor P7 School is exhibit RR15(b).
21. The affidavit of Gumdonga Godfrey filed on 19th April, 2016 was marked exhibit RR16.

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22. A general receipt dated 12th January, 2016 for Ug. Shs. 70,000/- (seventy thousand) shillings being payment for two pipes by Owor Richard Ocaya of Parabongo Sub-County was marked exhibit RR16(a).
- 5 23. The Store issue voucher dated 12th January, 2016 was marked exhibit RR16(b).
24. The affidavit of Adoch Florence filed on 19th April, 2016 was marked exhibit RR17.
- 10 25. The affidavit of Ocen Charles Short filed on 19th April, 2016 was marked as exhibit RR18.
26. The affidavit of Nyeko John Bosco filed on 19th April, 2016 was marked as exhibit RR19.
- 15 27. The affidavit of Adonga Celestino filed on 19th April, 2016 was marked as exhibit RR20.
28. The affidavit of Lagol Rosalba filed on 19th April, 2016 was marked as exhibit RR21. (Court observed that the same person filed an affidavit in favour of the Petitioner marked exhibit P7).
- 20 29. The affidavit of Okello Charles filed on 19th April, 2016 was marked as exhibit RR22. (Court observed that the same person made an affidavit in favour of the Petitioner marked as exhibit P9).
- 25 30. The affidavit of Onyuk Clay filed on 19th April, 2016 was marked as exhibit RR23.
- 30 31. The affidavit of Odong Patrick Olwa filed on 25th April, 2016 was marked as exhibit RR24.

32. The affidavit of Odong Joseph Badang filed on 25th April, 2016 was marked as exhibit RR25.
- 5 33. The letter appointing Odong Joseph Badang as an agent of the 2nd Respondent for Aboko Polling Station was marked as exhibit RR25(a).
34. The affidavit of Tookema Julius Oboke filed on 25th April, 2016 was marked exhibit RR26.
- 10 35. The affidavit of Lamwaka Caroline Otto filed on 25th April, 2016 was marked as exhibit RR27.
- 15 36. The affidavit of Okot Francis filed on 25th April, 2016 was marked as exhibit RR28.
37. The affidavit of Okello Francis Odoch Acholi filed on 25th April, 2016 was marked as exhibit RR29.
- 20 38. The affidavit of Nyeko Dalmus Obonyo filed on 25th April, 2016 was marked as exhibit RR30.
39. The affidavit of Okidi Daniel filed on 25th April, 2016 was marked as exhibit RR31.
- 25 40. The letter dated 10th March, 2016 from the Petitioner addressed to the Prosecutor of Agago Magisterial Area to review a Robbery Case against Okidi Daniel was marked as exhibit RR31(a).
- 30 41. The affidavit of Owiny John Paul filed on 27th April, 2016 was marked exhibit RR32.

42. The affidavit of Olweny Thomas filed on 19th April, 2016 was marked as exhibit RR33.

5 However, on 7th June, 2016 Mr. Frank Kanduho raised a preliminary objection with regard to twenty three (23) affidavits, filed by the 2nd Respondent and in all these affidavits the jurat of a translator was made after the jurat of the Commissioner for Oaths. Court in a detailed ruling upheld the preliminary objection by Counsel and struck out the following affidavits:-

1. The affidavit of Ocen George Dagama exhibit RR3
- 10 2. The affidavit of Okeny Richard Dagama exhibit RR5.
3. The affidavit of Okot Donasiano exhibit RR7.
4. The affidavit of Oceng Bosco exhibit RR8.
5. The affidavit of Akena Lunjino exhibit RR12.
6. The affidavit of Opio John exhibit RR13.
- 15 7. The affidavit of Ayoo Florence Otto exhibit RR14.
8. The affidavit of Olum Joseph RR15.
9. The affidavit of Gumdonga Godfrey exhibit RR16.
10. The affidavit of Adoch Florence exhibit RR17.
11. The affidavit of Ocen Charles Short exhibit RR18.
- 20 12. The affidavit of Nyeko John Bosco exhibit RR19.
13. The affidavit of Adonga Celestino exhibit RR20.
14. The affidavit of Lagol Rosalba exhibit RR21.
15. The affidavit of Okello Charles exhibit RR22.
16. The affidavit of Onyuk Clay exhibit RR23.
- 25 17. The affidavit of Odong Patrick Olula exhibit RR24.
18. The affidavit of Odong Joseph Badang exhibit RR25.
19. The affidavit of Tookema Julius Oboke exhibit RR267.
20. The affidavit of Okot Francis exhibit RR28.
21. The affidavit of Okello Francis Acholi exhibit RR29.
- 30 22. The affidavit of Nyeko Dalmus Obonyo exhibit RR30.
23. The affidavit of Okidi Daniel exhibit RR31.

During the hearing the Petition the following affidavits were expunged from the Court record, because the deponents were not available for cross examination yet Counsel had indicated a desire to cross examine them, these were:-

- 5 1. The affidavit of Akidi Rose exhibit P30.
2. The affidavit of Atim Christine exhibit P8.

Counsel for the 2nd Respondent cross examined the following witnesses:-

- 10 1. PW1 Jennifer Ayoo on her affidavit exhibit P27.
2. PW2 Btty Aryemo on her affidavit exhibit 26.
3. PW3 Odong Peter on his affidavit exhibit P21.
4. PW4 Okello B. Charles on his affidavit exhibit P20.
5. PW5 Olwoch David Ocii on his affidavit exhibit P15.
- 15 6. PW6 Odoko Bosco on his affidavit exhibit P22.
7. PW7 Opio Raymond on his affidavit exhibit P12.
8. PW8 Opio Kalandio Babu on his affidavit exhibit P14.
9. PW9 Olweny John in his affidavit exhibit P16.
10. PW10 Oryem Ceasor on his affidavit exhibit P13.
- 20 11. PW11 Okumu James on his affidavit exhibit P17.
12. Pw12 Okidi Akwilino on his affidavit exhibit P18.
13. PW13 Okema George on his affidavit exhibit P19.
14. PW14 Oceng George on his affidavit exhibit P2.
15. PW15 Anywar John on his affidavit exhibit P28.
- 25 16. PW16 Nyeko Moses on his affidavit exhibit P24.
17. PW17 Labeja James Akom on his affidavit exhibit P25.
18. PW18 Amuku Kamilo on his affidavit exhibit P29.
19. PW19 Stella Lamunu on her affidavit exhibit P3.
20. PW20 Abur Margaret on her affidavit exhibit P10.
- 30 21. PW21 Otim Charles Adyer on his affidavit exhibit P11.
22. PW22 Yoocana David was cross examined on his affidavits exhibits P6 and P6A.

Whereas Counsel for the Petitioner had indicated an interest to cross examine eighteen (18) witnesses who deponed affidavits in favour of the 2nd Respondent, he changed his mind after Court's ruling which upheld his preliminary objection and struck out twenty three (23) of the 2nd Respondent's affidavit. Mr. Kanduho only cross examined PW1 Rashid Kasakya the Returning Officer for this election on the contents of his affidavit exhibit R1.

Court has carefully studied the evidence arising from cross examination and re-examination of witnesses in this case and finds no need to reproduce the same in this Judgment, but will rely on the same in the determination of the issues.

Counsel presented oral submissions and Court is grateful for the detailed arguments and wealth of authorities furnished by Counsel in this case.

It is important for one to address the burden of proof in election Petitions, which burden lies upon the Petitioner who should prove all the allegations in the Petition to the satisfaction of the Court. The standard of proof in such cases is to a higher degree of preponderance. See **Election Appeal No. 19 of 2011 Toolit Simon Akecha versus Oulanyah Jacob L'Okori & Another.**

During the scheduling conference four (4) issues were framed for determination by Court.

1st issue:

Whether the 2nd Respondent personally or through his agents with his knowledge consent and approval committed any election malpractices/offences.

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Voter bribery:

Counsel for the Petitioner Mr. Frank Kanduho submitted that voter bribery in this case was categorized in four (4) ways, use of money, household items, borehole pipes and garments. Counsel submitted in detail on each of these items, save for bribery using garments and he contended that those offences were committed by the 2nd Respondent personally and or his known agents who were named in the various affidavits.

Counsel for the 1st Respondent Mr. Peter Mulongo did not submit on this aspect of the Petition.

While Counsel for the 2nd Respondent Mr. Wandera Ogalo submitted that before Court can
5 pronounce it's self on voter bribery the following elements must exist.

1. Proof that the people bribed were registered voters in the Constituency.
2. The gift must be given to the voter by the candidate or his agents.
3. The gift must be given to induce the person to vote for a particular candidate.

10 To support this submission counsel referred to **Election Petition No. 1 of 2001 Col (Rtd) Dr. Besigye Kizza versus Museveni Yoweri Kaguta and another**. Specifically the reasons given by Odoki CJ as he then was.

Court has carefully studied all the affidavits in support of the Petition and they all disclose the
15 respective Polling Stations of the deponents, but none attached any proof to their affidavits to confirm that they were registered voters of Agago County North Consistency in Agago District.

Counsel for the Petitioner in his submissions in rejoinder argued that in the recent elections there were no voter's cards and this explains why no such voter's cards were attached to the respective
20 affidavits to prove the fact that the persons alleging bribery in this Petition were actually voters in the Constituency.

Court takes judicial notice of the fact that prior to the national elections of 18th February, 2016 all people registered for the National Identity Card Project and who were eligible voters were issued
25 with voter location slips a few days to the elections.

In the affidavits in rejoinder filed on 18th May, 2016 the Petitioner and others indicated their National Identity Card Numbers but unfortunately none of these people attached photocopies of their National Identity Cards.

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Court is now aware that registration for National Identity Cards took place in Agago County North Consistency and there is no justification for the persons who were allegedly bribed in this case failing to attach at least photocopies of their National Identity Cards to their respective affidavits.

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The above is the position of the law as set out in **Election Appeals No. 1 and 2 of 2007 Electoral Commission and Bakaluba Peter Mukasa versus Nambooze Betty Bekireke.**

I therefore find that the Petitioner has not proved to the satisfaction of this Court, that the people
10 he alleges to have been bribed by the 2nd Respondent or his agents were registered voters of Agago County North Constituency. This finding alone is enough to dispose of this aspect of bribery.

However, without prejudice to the above finding, Court found several contradictions in the
15 Petitioner's evidence on bribery which are highlighted below.

Court observed that while under cross examination all the Petitioner's witnesses claimed to recall the dates when the 2nd Respondent campaigned in their respective villages, but could not recall the dates when the Petitioner campaigned in the same villages. This pointed to selective memory
20 on their part, specifically designed for a purpose to wit bringing down the 2nd Respondent.

In his affidavit exhibit P15 Olwoch David Ocii stated that he saw the 2nd Respondent on their village of Akwang on 17th February, 2016at around 9pm he was driving a motor vehicle whose registration number he does not disclose. That the 2nd Respondent left saucepans and plates with
25 his agents Okech Santos, Owiny Denis, and Nyeko John Bosco.

In the affidavit in rejoinder by Amone Gowland exhibit P32 he stated that the vehicle used by the 2nd Respondent while in Akwang village on 17th February, 2016 was registration number UAV 296K and that the 2nd Respondent was being driven by someone whose names he did not
30 disclose.

Similarly in the affidavit of Oryem Bosco exhibit P33 he describes the vehicle used by the 2nd Respondent in Akwang village during the night of 17th February, 2016 and the fact that he was being driven by someone whose names are not disclosed.

5 Yet Adoch Florence in her affidavit exhibit P4 stated that on 17th February, 2016 at night the 2nd Respondent went to Akwang village alone and started distributing packets of salt and bars of soap

10 On the same village was Otim Charles Adyer who swore an affidavit exhibit P11 stating that he saw the 2nd Respondent on their village on 16th February, 2016 in the company of Richard Obwona his agent and it was Obwona Richard who gave him two (2) saucepans, two bar of soap and cash 20,000/=.

15 Court observes that Richard Obwona is not one of the three (3) agents named by Olwoch David Ocii to have received items from the 2nd Respondent on 17th February, 2016. In fact no money was mentioned as one of the items delivered by the 2nd Respondent.

20 While under cross examination Otim Charles Adyer PW21 told Court that the 2nd Respondent went to their village on 16th February, 2016 and did not go back after the incident.

The other witness in this respect was Opio Kalandio Babu in his affidavit exhibit P14 he stated that the 2nd Respondent held a rally at Akwang Trading Centre on 17th February, 2016. While under cross examination he stated that the 2nd Respondent held the rally on their village on 17th February, 2016 at around 8:30pm and left after ten (10) minutes, and Okech Santos went to his home at around 10pm and the rally was attended by many people.

25 It is clear from these witnesses that they were telling lies about the presence of the 2nd Respondent or his agents on 17th February, 2016, because of the following

I. Whereas Otim Charles Adyer stated that the 2nd Respondent went to their village on the 16th February, 2016 the others mentioned 17th February, 2016.

- II. The names of the agents who allegedly distributed items differ from those ones mentioned as having received the items from the 2nd Respondent
- III. The 2nd Respondent held a rally up to around 8:40pm then one wonders when he could mobilized items to be given out.
- 5 IV. If indeed the number plates of the vehicle were known why they were not included in the affidavits in support of the Petition and only came up in rejoinder.
- V. The ownership of motor vehicle Number UAV 296K was very important but was not verified.
- 10 VI. Whereas Adoch Florence saw the 2nd Respondent driving himself on the material night other witnesses saw another person whose names were not disclosed driving the 2nd Respondent.
- VII. Whereas Adoch Florence saw the 2nd Respondent give out items to voters the other witnesses insisted that the 2nd Respondent gave items to his agents to distribute to voters.
- 15 All these contradictions give credence to the 2nd Respondent's averment that on 17th February, 2016 he did not leave his home at Kalongo Town Council.

The other witnesses worth nothing were George Oceng in his affidavit exhibit P2 he stated to be resident of Aywee Telela Village where the 2nd Respondent held a rally on 14th February, 2016.

20 Okello B. Charles in his affidavit exhibit P20 stated to be a resident Aywee Telela village where the 2nd Respondent held rally on 17th February, 2016.

25 While under cross examination Okello B. Charles told Court that the 2nd Respondent did not mention any names of the persons he would send. Yet Oceng George confirmed the rally on their village to have been on 12th February, 2016 and the agents was Opio John. On his part Odok Bosco confirmed that the rally was held by the 2nd Respondent on their village on 12th February, 2016.

30 Counsel for the Petitioner implored this Court to severe parts of the affidavit of Odok Bosco relating to date of rally, venue of Atim Kikica, but this Court finds it difficult to severe any part

of this evidence. The fact is that these are residents of the same area mentioning different dates for a rally supposed to be in their area and as observed earlier, these witnesses seem to have an interest in the 2nd Respondent's rallies more than anybody else, and the contradictions in their affidavits point to deliberate lies on their part as the 2nd Respondent did not promise to send gifts as alleged by the witnesses.

The affidavit of Abur Margaret exhibit P10 stated that on 15th February, 2016 at around 9pm the 2nd Respondent delivered borehole pipes for Ladigo South village, paid cash 200,000/= (two hundred thousand) shillings and also gave 5,000/= (five thousand) shillings to the people who witnessed the delivery of these pipes.

However, while under cross examination as PW20 she could not recall the people who requested for rectification of the water problem, she stated that 200,000/= was given to Gumdongo Geoffrey to repair borehole. She confirmed that everybody at the rally received 5,000/=(Five thousand) shillings and this was big rally and it was Oceng Bosco who repaired the borehole. Court wonders why the crowd who attended the rally where each person in attendance received cash sum of Ug. 5,000/= (five thousand) shillings did not file any affidavits to corroborate Abur Margaret's evidence.

Odong Peter, Betty Aryemo and Jennifer Ayoo filed affidavits admitted in evidence as exhibits P21, 26 and 27 respectively, and they all confirmed attending the 2nd Respondent's rally at Atim Kikika village on 14th February, 2016. The 2nd Respondent gave borehole pipes to the residents of Atim Kikika village that day.

During cross examination of Betty Aryemo PW2 stated that the borehole pipes were still in her house and the borehole was not working. Yet PW3 Odong Peter while under cross examination stated that on 14th February, 2016 the people that attended the rally asked the 2nd Respondent for pipes and he promised to bring them. Yet Atto Santina in her affidavit exhibit P34 stated that the 2nd Respondent left behind Adonga Celestino to distribute the borehole pipes.

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I find the evidence surrounding borehole pipes at Atim Kikica village not adding up at all; the 2nd Respondent could not have received a request on 14th February, 2016 for borehole pipes at a rally and procured them instantly and others alleged that the 2nd Respondent gave the pipes to Adonga Celestino. There is therefore no evidence that the 2nd Respondent bribed voters of Atim Kikica using boreholes. To make matters worse even the borehole is not working up to now.

I am guided by the decision in **Election Petition Appeal No. 27 of 2011 Kamba Saleh Moses versus Hon. Namuyangu Jennifer** where their Lordships held that

10 **“in determining election matters involving bribery allegations, the law requires caution on the part of Court to subject each allegation of bribery to thorough and high level scrutiny and to be alive to the fact that in an Election Petition, in which the price is political power, witnesses may easily resort to telling lies in their evidence, in order to secure Judicial victory for their preferred candidate”.**

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I find that the 2nd Respondent was at his home at Kalongo Town Council as stated in paragraph 8(c) of his affidavit, and all attempts to state that he was at Akwang and other places 17th February, 2016 are deliberate lies designed to build the bribery allegations. Similarly, there is no evidence that the 2nd Respondent bribed voters using borehole pipes. Court therefore does not find any merits in these bribery allegations and rejects them.

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Use of defamatory words

Counsel for the Petitioner submitted that contrary to Section 21(3) and (4), and Section 73 of the PEA, the 2nd Respondent uttered defamatory statements against the Petitioner. These allegations are contained in paragraph 11(ii -d) of the Petition. In his affidavit in support of the Petition paragraph 33 the Petitioners averred as follows:-

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33” The 2nd Respondent made statements against and about me which he knew to be entirely false. He claimed at many campaign meetings that I was unfit to be a Member of Parliament so far as I could not even express myself in English and showed a fabricated video recording of me appearing

stranded on the floor of Parliament, for allegedly being incapable to express myself in English”.

5 Court observed that the video recording referred to in this case was never tendered in evidence, and therefore it is not possible for Court to determine if the same was manufactured by the 2nd Respondent or if the 2nd Respondent uttered any defamatory words in the said video.

The affidavit of Vincent Buwule exhibit P36 is not useful to the Petitioner’s case in the absence of the video recording.

10

Court therefore finds the alleged crime of defamation was not proved by the Petitioner to the satisfaction of Court.

15 In the final analysis Court finds that the 2nd Respondent did not personally or through his agents with his knowledge, consent and approval commit any electoral malpractices/offences.

The first issue is therefore resolved in the negative.

2nd issue

20 **Whether the elections for Member of Parliament for Agago County North Constituency held on 18th February, 2016 were organized and conducted in accordance with the provisions of the electoral laws of Uganda.**

Condoning use of candidates portraits at Polling Station

25 Counsel for the Petitioner submitted that in contravention of Section 44 of PEA, the officials of the 1st Respondent allowed agents of the 2nd Respondent to appear at Polling Stations while putting on the 2nd Respondents’ shirts.

30 Counsel referred to the affidavit of Okidi Akwilino exhibit P18 which in paragraph 10 mentions agents and supporters of 2nd Respondent wearing portraits of Professor Latigo during the voting exercise at Labwormor P7 Polling Station.

The same allegation is contained in the affidavit of Aciro Richard exhibit P38 in paragraph 3(a).

5 Counsel for the 1st Respondent submitted that the evidence of Okidi Akwilino and Aciro Richard was cosmetic in nature.

10 Court expected particulars of the agents or supporters who were at Labwormor P7 Polling Station while donning shirts with the portraits of the 2nd Respondent. Otherwise in the absence of their particulars, I find it difficult to conclude that these unknown people were agents of the 2nd Respondent. In such elections, many things are done to tarnish names of opponents, and in the absence of the particulars of the people who allegedly did this it is not safe for Court to impute any non-compliance on the Respondents especially in light of the fact that no complaint was lodged to this effect with the Returning Officer..

15

SELECTIVE VOTING

This allegation was contained in the affidavit of Okidi Akwilino exhibit P18 in paragraph 7 and that of Aciro Richard exhibit P38.

20 Court accepts the submission of Counsel for the 1st Respondent that this allegation is baseless as no names were disclosed to have been selected to vote in this manner. It should have been prudent to reveal the names of the voters selected to vote in this style and their age or physical state of health.

25

CLOSURE OF POLLING STATION BEFORE TIME

Counsel for the Petitioner relied on the affidavit of Ayoo Jennifer exhibit P27 where she stated that the Presiding Officer at Aboko Ward Polling Station closed Polling at around 3:40pm and stopped five (5) people from voting.

30

Unfortunately, none of the five(5) people mentioned made an affidavit to prove this allegation and the declaration of result form for Aboko Ward was not attached to the affidavit of Ayoo Jennifer to verify the time indicated by the Returning Officer as closing time.

- 5 Counsel referred to the thirteen (13) Declaration of Results Forms attached to the affidavit of the Petitioner in rejoinder to prove that with the times indicated as closing time, it was not possible for the counting and verification of Presidential and Parliamentary Election Results in the indicated times.
- 10 Court heard the testimony of RW1 the Returning Officer to the effect that some Presiding Officers indicated the time when they closed Polling Stations to be the time when they completed the counting exercise.

I find the explanation of the Returning Officer sufficient to explain the times indicated, it would
15 have been absurd if on any one declaration of results forms there was time before 4pm indicated as closing time or time of completion of the exercise.

Declaration of Results Forms with mistakes

Counsel for the Petitioner brought to the attention of Court thirteen (13) Declaration of Results
20 Forms, some of which had errors in the figures and submitted that this was incompetence on the part of the 1st Respondent's staff.

In his submission, counsel for the 1st Respondent contended that such mistakes on Declaration of Results Forms can be corrected through a vote recount and he referred Court to **Election**
25 **Petition Appeals No. 14 and 16 of 2011 Mbaghadi Fredrick Nkayi and Electoral Commission versus Dr. Nabwiso Frank Wilberforce B.**

Court found some errors in the thirteen (13) Declaration of Results Forms in respect to the unused ballot papers but unfortunately the tally sheet in this case was not produced to ascertain
30 whether these errors were actually affected in the final results. Indeed there was no complaint about the votes indicated as obtained by the candidates in these declaration of results forms.

In the final analysis Court finds that there were some errors in the declaration of results forms as pointed out by Counsel for the Petitioner but these did not affect the quality of the election in Agago County North Constituency which this Court finds to have been general free and fair.

5

Issue 3

Whether the non-compliance affected the results in a substantial manner.

Counsel for the Petitioner left this mathematical issue to Court to determine.

10

While Counsel for the 1st Respondent argued that the Petitioner did not indicate to Court how many votes he lost as a result of the non-compliance or how many votes the 2nd Respondent gained in the process; and this could only be proved by looking at the tally sheet which was not done. Counsel submitted that this election passed both the qualitative and quantitative tests.

15

The declaration of results forms admitted in evidence are the following and the Petitioner and 2nd Respondents respective results were as follows:-

20	Polling Station	Petitioner	2nd Respondent
	Town Ward	154	291
	Ogwalowoo Market	57	164
	Dungu Primary School	82	166
	Pakor P7 School	283	319
25	Oret Hill	144	262
	Orya Cotton Store(B-Z)	103	163
	Otingowiye Primary School	153	125
	Wol Kico Primary School	231	113
	Lakwa	105	171
30	Kubwor Central	104	401
	Paimol Sub-County Hqts	96	406

Kabala P7 School (A-N)	261	284
Ladigo Primary School	61	211
Total	1,730	3,076

5 It was an agreed fact at the scheduling that the Petitioner got 10,420 votes and the 2nd Respondent got 14,079 votes. With the above figures from the declaration of results forms presented by the Petitioner even if we deducted 3,076 votes from the 2nd Respondent (which would be unfair) he would still win this election by 11,003 votes thus still leaving a difference of 583 votes.

10

Court finds the observations of their Lordships in Hon. Amama Mbabazi vs. Y.K. Museveni & 2 others. Supreme Court Election Petition No. 1 of 2016 that:-

15 **“On the one hand, the court must avoid upholding an illegitimate election result and on the other, it must avoid annulling an election result that reflects the free will of the majority of the electorate whose rights are inherent in Article 1(4) of the Constitution.”**

relevant to this Petition. And the 2nd Respondent having won the Agago County North Constituency Parliamentary Elections with such a big margin of 14,079 votes the quantitative test weighs in his favour

20

The non-compliance did not therefore affect the results in such a substantial manner in this case. The third issue is answered in the negative.

Issue 4

25 **What remedies are available to the parties?**

Counsel for the Petitioner invited this Court to allow this Petition and set aside the election of the 2nd Respondent. He also prayed for costs of the Petition with a Certificate of two(2) Counsel.

30 Both Counsel for the Respondents invited Court to dismiss this Petition with Costs.

Court having found no electoral offence on the part of the 2nd Respondent and or his agents, and that the non-compliance in this election was not grave to affect the final results in a substantial manner. Court is therefore not satisfied that the Petitioner has proved the allegations in this Petition.

5

I hereby confirm that Prof., Morris Ogenga Latigo Wodamida the 2nd Respondent was validly elected Member of Parliament for Agago North County Constituency in the elections held on 18th February, 2016 with 14,079 votes.

10 This Petition is accordingly dismissed with costs.

Dated this 23rd day of **June, 2016.**

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Hon. Justice David Matovu
Judge