

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA ELECTION
PETITION NO. 005 OF 2016

HON. ODO TAYEBWA..... PETITIONER

VERSUS

1. GORDON KAKUUNA ARINDA

2. THE ELECTORAL COMMISSION
RESPONDENTS

BEFORE: HON. JUSTICE DAMALIE. N. LWANGA

JUDGMENT

The Petitioner and the 1st Respondent stood for the position of Member of Parliament for Bushenyi-Ishaka Municipality Constituency, Bushenyi District during the Parliamentary Elections which were held throughout Uganda on 18/2/16. The other contestant in that election was Mr. Nekemia Zelebabel Mbaine. The 2nd Respondent organized those elections in pursuit of its Constitutional mandate under **Article 61(l) (a), of the Constitution.**

The 1st Respondent was returned, declared and gazetted by the 2nd Respondent as the validly elected Member of Parliament on 3/3/16, with 6,457 votes, representing 40.53% of all votes cast; thereas which translates into 33.48% of the petitioner garnered 5,334 votes cast; while Nekemia Zelebabel Mbaine polled 4,142 votes, which is 26% of all votes cast.

The Petitioner being dissatisfied with the results filed this petition on 1/4/16, in which he made allegations of illegal practices and electoral offences, in contravention of the Parliamentary Elections **Act** and other electoral laws. He raised allegations of violation of **Sections 42, 68, 73 and 80 of the Parliamentary Elections Act**, and that the 1st Respondent was not validly elected as the directly elected Member of

Parliament for Bushenyi-Ishaka Municipality Constituency. The Petitioner's allegations were further **particularized** in his affidavit in support of the petition, and 40 other witness swore affidavit in its support.

The petition seeks the following declarations/orders:

- a) That the Bushenyi-Ishaka Municipality Parliamentary Constituency elections were not free and fair and undermined the principles in the electoral laws;
- b) That the election and declaration of the 1st Respondent by the 2nd Respondent as the directly elected Member of Parliament for Bushenyi-Ishaka Municipality, Bushenyi District be nullified and be set aside and a fresh free and fair election be organized;
- c) That costs of this Petition be paid by the Respondents;
- d) Such other remedy available under the electoral laws as court considers just and appropriate in the circumstances.

The 1st Respondent filed an answer to the petition denying all the allegations in the petition. The answer to the petition was supported by the affidavit of the 1st Respondent, who is RW2 on the record, in which he averred that no illegal practices and/or offences were committed by himself personally or with his gr knowledge and consent or approval. He deposed that the election was conducted in accordance with the principles laid down in the provisions of the **Constitution, the Electoral Commission Act and the Parliamentary Elections Act (PEA)**; the elections were conducted in a peaceful atmosphere; and he was validly elected.

The 1st Respondent's answer to the petition was supported by affidavits of 55 other witnesses.

The 2nd Respondent also filed an answer to the petition, which was supported by the affidavit of Mr. Mbabazi Godfrey, the Returning Officer for Bushenyi District.

An affidavit was filed by the Petitioner in rejoinder to the Respondents' answers to the petition.

The Petitioner was represented by Mr. Ngaruye Ruhindi and Mr. Nuwagaba Collins, while Mr. Kibandama Alexander and Mr. Tusingwire Ronald represented the 1st Respondent; and the 2nd **Respondent** was represented by Mr. Justus Karuhanga, Mr. Edwin Tabaro and Mr. Andrew Mausio.

Issues;

The following four issues were framed for determination by court:

1. Whether the 1st Respondent personally, or through his agents and with his knowledge and consent or approval committed any electoral offence or illegal practice in the aforesaid election.
2. Whether there was any non-compliance with the provisions **of the Parliamentary Elections Act** and whether there was a failure to conduct the elections in accordance with the principles laid down in the **Parliamentary Elections Act**.
3. If issue 2 is answered in the affirmative, whether the non-compliance and failure affected the result of the election in a *substantial* manner.
4. Remedies.

After hearing of the evidence, counsel for all the parties filed written submissions, with leave of court.

PRELIMINARY OBJECTIONS

In their submissions learned counsel for the Petitioner first raised an objection against late filing of all the affidavits in support of the 1st Respondent's answer to the petition, apart from that of the 1st Respondent which was filed within 10 days from the date of service of the petition on him. The objection was based on **Rule 8 (3) (a) of the Parliamentary Elections (Interim Provisions) (PEIP) Rules**. Their argument is that the words 'an affidavit' include 'affidavits' under **Section 3 (3) of the Interpretation Act**, therefore all the supporting affidavit should have been filed within 10 days after service of the petition. It was their prayer that the affidavits which were filed after 14/4/16 are not properly before court and ought to be struck out, which would leave the Petitioner's evidence challenged by only the evidence of the 1st Respondent, and that of the Returning Officer.

However, learned counsel for the 1st Respondent argued that the prayer to strike out the affidavits which were filed late should be disregarded since the scheduling was concluded without a complaint by counsel for the Petitioner, and the Petitioner filed affidavits in rejoinder on 23/5/16. He further argued that if the Rules intended that all evidence be filed within 10 days, **Rule 15 of the PEIP Rules** would have provided so; and since court already exercised its discretion and allowed the Petitioner additional time to file affidavits in rejoinder, no prejudice was caused to the Petitioner.

It is true that apart from the affidavit of the 1st Respondent in support of his answer to the petition, the rest of the supporting affidavits were filed 32 and 33 days after the 1st Respondent was served with the petition, which is 22 and 23 days out of time respectively. This offends **Rule 8(1) of the PEIP Rules**, which provides that if the Respondent wishes to oppose the petition he or she shall within ten days after the petition was served on him or her file an answer to the petition. **Sub-rule (3) (a)** of the said Rule requires that the Respondent's answer must be accompanied by an affidavit stating the facts upon which the Respondent relies in support of his or her answer.

The issue is whether the affidavits of the 1st Respondent's witness which were filed out of time should be struck out. The courts have to adopt a relaxed approach towards procedure defects of the procedural rules in issue is fatal appears to depend on whether the non- observance would lead to injustice. If it would not, then the courts would be willing to overlook it

Case law supports the position that administration of justice requires that the substance of the dispute be decided on merit and that not all errors and lapses should necessarily debar a litigant from the pursuit of his rights. In **Sitenda Sebalu Vs. Sam K. Njuba, Election Appeal No. 26 of 2007** the Supreme Court held that:

“It is no longer enough for court in determining the validity I & of an act done in breach of a Statutory provision to ask itself whether or not the breached provision is mandatory or directory. The court must look at the purpose of the legislation and consider whether the breach of the provision should invalidate the impugned act. The purpose is derived 15 from the object of the statute. In the present case Ss.60(3),

62, 63(2) d, 66(2) & (4) of the Parliamentary Elections Act imperatively set up time limits within which to file and serve and hear election petitions so that in public interest disputes concerning election of peoples’ representatives are resolved P-O expeditiously but also in public interest the disputes must be resolved on merit. Therefore the legislature could not have intended the rigid application of S. 62 of the Act since it would defeat the purpose of resolving the disputes arising p- from election petitions on merit. ”

That position was followed in the case of Denis Kimuli Batemuka Vs. Sarah Biribomwa Anywar & Another, Masaka Civil Suit

No. 247 of 1986 where the court held that non-compliance with the rules of procedure is not detrimental to the proceedings if there is no injustice caused to the parties; and that court has to look at the intention of the legislature.

In **Yowasi Kaliguruka Vs. Samuel Byarufu, Court of Appeal Civil Appeal No. 18 of 2008** the Appellant criticized the first Appellate Judge for considering the merits of the appeal, which had been filed out of time. The Court of Appeal held thus:

“Mr. Walubiri’s contention is that the Judge should not have considered the merits of the appeal on the ground that it was filed out of time. In the interest of Justice, Mr. Walubiri’s contention is untenable in the circumstances of this case

Further, it is my considered view that Mr. Walubiri’s contention is based on mere technicalities. Under Article 126 (2) (e) of the 1995 Constitution of Uganda, substantive Justice must be administered without undue regard to technicalities. I cannot fault the 1st

appellate Judge for re-examining and re-evaluating the evidence on record. ”

Applying the above principle to this case, although the impugned affidavits were filed 22 and 23 days late, and without leave of court, the Petitioner has not shown any prejudice or inconvenience suffered as a result of the late filing of the 1st Respondent's affidavits. He was allowed ample time by court to file affidavits in rejoinder, which was done, and he cross examined the deponents of the affidavits which were filed late. Since the procedural defect caused no substantial prejudice to the Petitioner I am of the view that late filing of the 1st Respondent's affidavits would not lead to injustice, and there is no strong argument dictating their rejection.

They will not be struck out.

Counsel for the Petitioner also asked court to disregard the evidence of Nuwagaba Norbert and Nuwagaba Emmanuel whose affidavits were struck out on application of counsel for the 1st Respondent upon realizing the confusion in their names and identities. Counsel for the 1st Respondent conceded to that prayer, **and** also added the affidavit of Mwijukye Milton which was too struck off the record. I will therefore not rely on the evidence of those witnesses.

Court was further asked to reject 35 affidavits of the 1st Respondent's witnesses for containing a falsehood in the body of each affidavit, that the deponent had read and understood the affidavit s/he was responding to, yet the affidavits contain a **jurat** at the end indicating that the deponents are illiterate. Learned counsel for the Petitioner contended that the averment amounts to a falsehood, hence perjury, since each of the deponents admitted in cross examination that they could not read English.

I agree that the deponents of the affidavits complained of could not have read and understood the affidavits they were responding to as indicated in their affidavits, since they are illiterates. However, it was clear during cross examination of all those witnesses that each of them knew and understood the nature and contents of the allegations of the Petitioner's witnesses which they were responding to, and they gave clear responses to them in court; therefore the parts of their affidavits which wrongly state that they had read the affidavits did not affect the averments they made.

There is authority for the proposition that in proper cases court has discretion to sever parts of affidavits, which are defective or superfluous instead of rejecting the whole affidavit. In **Col. (Rtd.)**

Dr. Besigye Kizza Vs. Museveni Yoweti Kaguta & Electoral commission, Election Petition No.1 of 2001

the Supreme Court in the judgment of Odoki, CJ (as he then was) reviewed the issue of affidavits, rejected the parts of the affidavits which were based on hearsay and relied on the parts which were based on knowledge.

The learned CJ cited **Nandala v Lyding (1963) EA 706** in which Udo Udoma, CJ struck off the concluding paragraph of the affidavit after noting that it was empty verbiage and unnecessary, and relied on the contents of the rest of the affidavit which he said were statements of facts within the knowledge of the deponent. He also cited **Yona Kanyomozi Vs. Motor Mart (U) Ltd, Civil Application No. 8 of 1998** in the following words:

“In Yona Kanyomozi v Motor Mart (U) Ltd. (supra) Mulenga, JSC held that some parts of counsel’s affidavits were false and that those parts were irrelevant to the application and could be ignored. On a reference to the full Court, it was argued that the impugned affidavit was capable of severance as the judge did before arriving at his decision. The full court held that it was unable to interfere with the discretion exercised by the single judge. ”

In the instant case too I find that the parts of the affidavits which contain false averments can be severed since they are in the introductory parts of the affidavits, and are not relevant statements of fact on the subject of the affidavits. I accordingly strike off the paragraph in each of those deponents’ affidavits which states that the deponent had read and understood the affidavit that s/he was **responding** to. I will only rely on the contents of the rest of the affidavits which are statements of facts within the knowledge of the deponents.

Counsel for the Petitioner further asked court to discard the evidence of 4 witnesses of the 1st Respondent who swore affidavits but never appeared for cross examination when demanded by the Petitioner's counsel. These are:

- 1, Eldard Bwarare, originally listed as R1W13
- 2, Kansiime Naboth, originally listed as R1W6
- 3, Nyehangane Elias Mparana, originally listed as R1W19
- 4, Mugisha Elly, originally listed as R1W19.

Learned counsel for the 1st Respondent conceded to discarding of the affidavits of these four witnesses, and I agree. I will therefore **not** rely on the evidence of those witnesses whose veracity was not tested through cross examination.

Another witness whose affidavit counsel for the Petitioner sought to be disregarded is Barinde Francis who swore an affidavit in support of the Petition, and then swore another affidavit in support of the 1st Respondent's answer to the Petition. Learned counsel for the 1st Respondent objected on grounds that it is not the same person that swore affidavits for the Petitioner and the 1st Respondent. However, a look at both affidavits reveals the same signature, passport size photograph and other particulars on both affidavits; which proves that they were deposed by the same person. I must say that a witness who denies facts which were stated on oath and changes to support another party is unreliable. I accordingly find the affidavits of Barinde Francis not to be credible. It is safer for court to disregard such evidence as stated in *Ourum Okiror sam Vs the Electoral Commission and Another*, Mbale Election petition No. 08 of 2011:

that the credibility of a witness who appears on both sides of the case, stating contradictory statements is left considerably compromised, and the safest course of action for court to take is to completely disregard his/her evidence. I will therefore disregard the evidence of Barinde Francis.

Nuwagaba Innocent, listed as RW26 is the last witness whose affidavit -counsel for the Petitioner complained about, because he is a self confessed illiterate whose affidavit however, was not made in compliance with the Oaths Act as it has no interpretation clause.

This witness testified as RW21. He told court in cross examination that he does not understand English, and he signed his affidavit after its contents were read and interpreted to him by lawyer Gonzaga.

I agree with counsel for the Petitioner that the affidavit of this witness should have been made in accordance with the provisions of **The Illiterates Protection Act** and the **Oaths Act**, but it was not. It lacks the certification that it was read and explained to him as required by that Act.

However, the Court of Appeal has adopted a liberal view of affidavits in election petitions after citing **Col. Dr. Kiiza Besigye Vs. Yoweri Kaguta Museveni & Another, Supreme Court Presidential Election Petition No. 1 of 2001**. In **Muhindo Rehema Vs. Winfred Kiiza & The Electoral Commission, Court of Appeal Election Petition Appeal No. 29 of 2011** the trial judge had excluded eight affidavits, because they did not indicate that they had been read and explained to the deponents who understood the contents, thus non-compliance with both the

Oaths Act and The Illiterates Protection Act. The Court of Appeal held that the trial judge was not justified in excluding the affidavits which had no **jurat**, on grounds that the averments in the affidavits displayed knowledge of the contents of the affidavit they were responding to, thus alleviating the concern that they had not been read or explained to each one of them. Court found that the trial judge was only justified to exclude the affidavit of a witness who never appeared for cross examination.

On the basis of that decision I will not strike out the affidavit of Nuwagaba Innocent since the averments in his affidavit show that he knew and understood the contents of the affidavit he was responding to.

Learned counsel for the 1st Respondent also raised preliminary points of law, that the affidavits of the Petitioner's witnesses offend the principles of **The Illiterates Protection Act**, and the provisions of the **Commissioner for Oaths Act**.

It was contended that the person who wrote, translated and explained the affidavits to the illiterate witnesses of the Petitioner did not state his/her own true and full name and address, as required under **Sections 2 and 3 of The Illiterates Protection Act**; that those affidavits are illegal, barred by law, and must be struck off the record as the omission cannot be regarded as a mere technicality. That would leave the petition unsupported by any evidence.

Counsel also submitted that the commissioning of the affidavits and sealing of exhibits in respect of the affidavits of the Petitioner's witnesses is incurably defective as it did not comply

with the prescribed format which requires disclosure of the name and address of the Commissioner for Oaths, under Rule 9 of the Commissioner for Oaths Rules; and the exhibits appear to have been sealed by a Commissioner for Oaths in disregard of Rule 8 of the Commissioner for Oaths Rules, since the commissioning was done by a magistrate. Further that the deponents of the affidavits that were sworn on 1/4/16 never appeared before the magistrate, because from the account they give it is not possible that they all took oath before the same person on the same day.

Learned counsel for the 2nd Respondent also argued a similar point of law as counsel for the 1st Respondent; that all the Petitioner's affidavits are incurably defective because the person who commissioned them was not disclosed in the jurat, and s/he may not have been authorised to do so. Moreover the affidavits which were sealed with the court seal of the Chief Magistrate of Mbarara indicate that the person who commissioned them was a Commissioner for Oaths, yet the witnesses testified that they were commissioned by one Kwizera, a Magistrate Grade 1. It was their submission that all the 41 affidavits' of the Petitioner ought to be struck out.

But learned counsel for the Petitioner in his submissions in rejoinder contended that the affidavits should be considered by court since the testimonies of the deponents during cross examination were not inconsistent, and show that they are aware of the contents of their affidavits; and the affidavits bear the seal of the Chief Magistrates' Court of Mbarara, which confirms the testimonies of the deponents that they swore them before a Grade 1 Magistrate at that court.

As I pointed out earlier while dealing with the same point in respect of Nuwagira Innocent, the Supreme Court has adopted the position that not all errors and lapses should necessarily invalidate an impugned act, but that the court should look at the intention of the legislature. See **Sitenda Sebalu Vs. Sam K. Njuba** (supra).

The Supreme Court approved the following guidelines in Smith's Judicial Review of Administrative Action on matters of breach of Statutory provisions:

“..... although nullification is the natural and usual consequence of disobedience, breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature or if no substantial prejudice had been suffered by those for whose benefit the requirements were introduced or if serious public inconvenience would be caused by holding them to be mandatory or if the court is for any reason disinclined to interfere with the act or decision that is impugned. ”

See also Col. (RTD) Dr. Kiiza Besigye Vs. Yoweri Kaguta Museveni & Another (supra) and Muhindo Rehema Vs. Winfred Kiiza & The Electoral Commission (supra).

In this case the provisions of **Section 3 of the Illiterates Protection Act** and several **Sections of the Commissioner for Oaths (Advocates) Act** were not complied with. I also note that while all the witnesses testified in cross examination that their affidavits were commissioned by a magistrate in Mbarara court, the signature on the affidavits is indicated to be that of a Commissioner for Oaths. However, those are errors that can be ignored under the authority of sitenda sebalu vs sam K Njuba

(supra); considering that no substantial prejudice was proved to have been suffered by those for whose benefit the legal requirements were introduced. Rather a serious public inconvenience would be caused by holding the legal requirements to be mandatory and excluding the affidavits in an election petition.

In **Col. (Rtd.) Dr. Besigye Kizza Vs. Museveni Yoweri Kaguta & Electoral Commission** (supra) the omissions on the affidavits were cured by the additional affidavit of the Registrar confirming that he had commissioned the affidavits. In **Nabukeera Hussein Hanifa Vs. Kibuule Ronald & Another, Jinja Election Petition No. 017 of 2011** the trial judge in his ruling on a similar objection also found the omission curable and directed the 1st Respondent to file supplementary affidavits by the respective court officers before whom the oath or affirmation was made.

Although the omissions in this case were not cured in the course of the trial as it was in the above cases, it must be noted that at the hearing the deponents of the impugned affidavits who were cross examined acknowledged the affidavits as theirs, and told court that they took the oath and signed the affidavits before a Magistrate Grade 1 of Mbarara Court His Worship Kwizera; and the affidavits bear the court seal of the Chief Magistrate's Court of Mbarara. I find that no substantial prejudice was suffered by those for whose benefit the requirements were introduced, who happen to be the illiterate deponents in this case, as submitted by counsel for the Petitioner.

I will also treat the fact that the affidavits bear the court seal yet the title of the officer who administered the oath is indicated as a Commissioner for Oaths as a minor technicality, since a Magistrate

and a Commissioner for Oaths are both authorized to administer oaths, and no injustice or prejudice was caused.

As regards failure to properly seal and mark the annextures I will again rely on Nabukeera Hussein Hanifa Vs. Kibuule Ronald & Another (supra) in which the judge cited Egypt Air Corporation t/a Egypt Air Uganda Vs. Sufflsh International Food Processors Ltd & Anor, Supreme Court Civil Application No. 14 of 2000, where due to the peculiar circumstances of the proceedings before the court, it treated non-compliance with the Commissioner for Oaths (Advocates) Act as a technicality because it did not cause any injustice.

Counsel for the 1st Respondent also argued that the Petitioner's affidavits which were deponed and filed on 1/4/16 in the Mbarara High Court Registry are illegal and should not be relied on by court, for offending the Commissioner for **Oaths Act**. Their submission was that the deponents of those affidavits did not actually appear before the Magistrate to commission their affidavits, because of the discrepancies in the witnesses' evidence about the time they each had their affidavits commissioned, and the way one Fred who led them to the magistrate was dressed. It was also contended that some of the affidavits were commissioned outside official court working hours, which is **9.00 am - 5.00 pm**, and for some witnesses, the time they stated during which the commissioning was done is too short to complete the exercise.

Concerning the time and duration during which the impugned affidavits were sworn, I note that most of the deponents were illiterate, and had no watches when they testified in court. It is not known whether at the time of taking the oath they had watches from which they were reading the exact of the material events.

It would therefore not be fair to strictly tie them down on matters of the time they stated. Most of them were just estimating the time their affidavits were commissioned and the duration of the exercise, and the apparent inconsistencies in the time stated by each of them cannot be ruled out as genuine mistakes in their **estimation** of time.

I am not persuaded by the argument that the affidavits could not be commissioned on one day as argued by counsel for the 1st Respondent. This depends on how fast the

exercise is done in respect of each deponent. I will also treat the different description of the way Fred was dressed to be a minor contradiction. The inconsistencies in the amount of money given by the Petitioner to each of the deponents to travel and swear the affidavits will also be treated as a minor contradiction that does not go to the root of the case. All in all I do not find the impugned affidavits to be invalid on grounds of those inconsistencies.

However, as regards PW9 Nkwasiwe Ezra who told court that he swore the affidavit before a magistrate who was dressed like the presiding judge (I was fully robed in the red ceremonial judges' robe, flaps and the judges' wig), I find that he never appeared before the magistrate to take the oath as he testified. The magistrate who commissioned his affidavit could not have been robed like a judge, which also contradicts the evidence of other deponents who claimed to have sworn their affidavits before the same magistrate while dressed in ordinary clothes. His testimony **was** clear and deliberate lies. I will not rely on it. In **Kakooza John Baptist Vs. Electoral Commission & Yiga Anthony, Election Petition Appeal No. 11 of 2007** the Supreme Court held that failure to appear before a commissioner for Oaths makes an affidavit fatally defective.

For Bamuhairwe Robert (PW17) and Musa Kasujja (PW24) it was argued that the two did not appear before the magistrate, and their affidavits ought to be struck out because they testified that they signed their affidavits in the chambers of Ngaruye Ruhindi and Co. Advocates. I find that it is Bamuhairwe Robert who testified to have signed his affidavit in the chambers of counsel Ngaruye Ruhindi. Since Mr. Ngaruye Ruhindi is counsel for the Petitioner in this matter it was wrong for the witness to sign his affidavit before him, rather than before a Commissioner for Oaths. **Section 5(1) of the Commissioner for Oaths Act** states:

"Provided that a Commissioner for Oaths shall not exercise any of the powers given under this section in any proceeding or matter in which he is the advocate for any of the parties to the proceedings or concerned in the matter or clerk to such advocate or in which he is interested. "

In view of the fact that Mr. Ngaruye is the advocate for the Petitioner the affidavit which was sworn in his chambers is inadmissible. Accordingly the affidavit of Bamuhairwe Robert (PW17) is struck off.

However, as regards Musa Kasujja (PW24) although he had testified that he signed his

affidavit in lawyer Ngaruye’s chambers, during re-examination he told court in detail how he was brought to the court and took the oath before signing the affidavit after it was explained to him. I find his explanation to be in line with the submissions of counsel for the Petitioner, that the deponent first signed the handwritten draft before taking the oath and signing the final affidavit before the magistrate.

. The affidavit of Musa Kasujja (PW24) will therefore not be struck off.

The other witnesses whose affidavits counsel for the 1st Respondent sought to have court struck out are those of deponents who were never made available for cross examination by the Petitioner as desired by the 1st Respondent. The affidavits referred to are for the following deponents:

1. Byamugisha Kyota Brian
2. Kasimba Alexander
- 3 .Nahabwe Didas
4. Arinaitwe Yohaana
5. Bandiho Siriri
6. Natureeba Ben Mabale
7. Barinde Francis
8. Byamugisha Esau
9. Owakubariho Hilton
10. Ahimbisibwe Wilber
- 11.Mbaine Nekemia Zelebabel

It is true that the above witnesses were never presented by the Petitioner for cross examination yet court granted leave for them to be cross examined. During the preliminaries Learned counsel for the Petitioner asked to know which of the Petitioner's witnesses the Respondents wished to cross examine, to which counsel for the

1st Respondent answered that they wished to cross examine all the deponents of the Petitioner's affidavits. Court granted them leave. After cross examination of PW 29 counsel for the Petitioner addressed court on the status of the remaining witnesses of the Petitioner. He reported that some of them will not be presented for cross examination. On 26/5/16 Mr. Ngaruye reported to court that they had decided that the witnesses whose evidence relates to the CDs will not be availed for cross examination. He added Mbaine Nekemia Zelebabel "in addition to those who had been mentioned by counsel for the 1st Respondent." He then closed the Petitioner's case. Therefore counsel for the Petitioner cannot now turn around and claim that some of the witnesses were present but counsel for the 1st Respondent chose not to cross examine them. That argument is not backed by the record.

As I pointed out earlier evidence of a deponent who fails to appear **for** cross examination when summoned is evidence of the weakest kind, and court should not rely on it. I agree with the proposition in **Paddy Kabagambe & Another Vs. Bwambale Bihande Yokasi & Another, Fort Portal Election Petition No. 11 of 2006**, that evidence of a deponent who fails to appear for cross examination when summoned is evidence of the weakest kind, and court should not rely on it. I will therefore not rely on the evidence of those eleven witnesses of the Petitioner.

Finally learned counsel for the 1st Respondent objected to submissions of counsel for the Petitioner under five headings on matters that were not raised in the petition, and yet no amendment of the petition was ever made. This he argued, is contrary to the position of the law that a party must raise all its grounds in the pleadings, and cannot depart from them. The affected headings are:

1. The alleged bribery of Ushs. 1250000/= at Ahakitookye on the 17th of February 2016 at 8:30 pm.
2. The alleged violence and intimidation at Buramba primary school polling station on 18th February 2016.

3. The alleged bribery at Basajabalaba Primary School Polling Station on 18th February 2016;
4. The alleged bribery at Rwatukwire on 16 February 2016 at 6:00 pm; and
5. The alleged bribery of Ushs. 2000 at Rwenjeru Polling Station II on the 18th of February 2016.

In his submissions in rejoinder learned counsel for the Petitioner submitted that all the above allegations were covered in paragraph 6(j) and 6(t) of the petition, and there are no new grounds which were brought out in the submissions.

It is not true that all those five allegations were not pleaded in the petition. The allegation at Rwatukwire was pleaded in paragraph 6(j) of the petition which is a specific complaint of bribery against Hassan Basajabalaba. It states that he gave Muheebwa Boaz a bundle of money and asked him to distribute it, at Rwatukwire Primary School Polling Station. I therefore find that allegation was **pleaded** in the petition, and counsel for the Petitioner was right to submit on it.

I however note, in agreement with counsel for the 1st Respondent, that the allegations of bribery at Ahakitookye, Basajabalaba Primary School Polling Station and Rwenjeru Polling Station II were not covered in the petition. Similarly the alleged violence and intimidation at Buramba Primary School Polling Station was not mentioned in the petition.

Paragraph 6(t) of the petition which counsel for the Petitioner seeks to rely on only states generally that Basajabalaba moved to several polling stations with a firearm and intimidated voters. No specific polling station is mentioned.

It is trite law that all the allegations against the Respondents must be stated in the petition. It was held as follows by the Supreme Court in the case of Interfreight Forwarders (U) Ltd Vs. East African Development Bank, Civil Appeal No. 33 of 1992:

"The system of pleadings is necessary in litigation. It operates to define and deliver with clarity and precision the 10 real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them."

It thus serves the double purposes of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial. ”

See also Mbagadi & Another Vs. Dr. Nabwiso, Court of Appeal Election Petition Appeals No. 14 and 16 of 2011 where the court pointed out that although mere irregularities or defects in the form of a petition should not be regarded as matters of vital importance, the particulars vital to the Respondent's case should be clearly stated.

On the other hand I note, as rightly pointed out by counsel for the Respondent, that the Petitioner appears to have abandoned some of the allegations in the petition as his counsel did not refer to them in their submissions.

Allegations of bribery and other illegal acts were made against people referred to by the Petitioner as agents of the 1st Respondent.

This was denied by the 1st Respondent and those persons who deponed affidavits in support of the 1st Respondent's answer to the petition. In a bid to prove that the 1st Respondent had campaign agents who included Hassan Basajabalaba the Petitioner attached copies of photographs where the 1st Respondent appears with Hassan Basajabalaba and Hon. Mary Karooro Okurut among others, on his affidavit in rejoinder. However, these photographs are part of the exhibits in respect of which the 1st Respondent applied and was granted leave to have the gadgets that took and developed the exhibits produced in court for use during cross examination of the relevant witnesses. However, the Petitioner never produced the phone, and never availed Ahimbisibwe Wilber for cross examination, who is said to have developed the pictures from the phone into pictures that were attached on the Petitioner's affidavit. Since the authenticity of the photographs was never tested as the 1st Respondent had wished, it is unsafe for court to rely on them.

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In the same vein court ordered that the original gadgets which produced the audio and video evidence of the Petitioner be produced so that they are subjected to forensic

examination, as prayed by the 1st Respondent. The Petitioner did not comply, and also most of the relevant witnesses were not availed for cross examination. The audio and video evidence is therefore also unreliable.

The Petitioner also attached on his affidavit in rejoinder a copy of a letter which was written by the 1st Respondent appointing 75 polling agents, in a bid to prove that the wording of those letters shows that the appointees were his campaign agents.

The letters thanked the appointees for having campaigned for the 1st Respondent during the NRM primaries, and requested them to be his polling agents on the voting day. It is clear to me that those letters were not appointing those polling agents as campaign agents, as the Petitioner wants court to believe.

Be that as it may, I agree with the submissions of counsel for the Petitioner, and the authority of **Odo Tayebwa Vs. Basajabalaba Nasser & Another, Election Petition Appeal No. 003 of 2011**, that every instance in which it is shown. that either with the knowledge of the member or candidate himself a person acts in furthering the election for him, trying to get votes for him, is evidence that the person so acting was authorised to act as his agent. It is therefore not necessary that every agent of a candidate must have been formally appointed in writing. However, in order for one to be held to be an agent of a candidate evidence must be adduced by the party who so asserts, to prove that the person was acting with the knowledge, consent and approval of the candidate.

The Petitioner further rebutted evidence of the campaign programme which the 1st Respondent attached on his answer to the petition as Annexure 157 (D), and testified that it is the one he followed during campaigns. The Petitioner attached on his affidavit in rejoinder another campaign programme which he claimed was the genuine one. It must however, be noted that the Returning Officer for Bushenyi District swore an affidavit, and the Petitioner had opportunity to cross examine him, but he did not, yet that was the best and easiest way to confirm which of the

two campaign programmes is the genuine/official one. I find that he has not successfully rebutted the 1st respondent's evidence on the campaign programme.

The Law

Section 61(1) of the Parliamentary Elections Act (PEA) lays down the grounds upon which the election of a Member of Parliament may be set aside, which include among others non-compliance with the provisions of the Act or the principles in those provisions, if the non-compliance affected the result of the election in a substantial manner; and commission of an illegal practice or offence under the Act by the candidate personally or with his or her knowledge and consent or approval.

Under Section 61(3) of the PEA the burden of proof in election petitions is on a balance of probabilities. The law is now settled that given the public importance of elections the degree of proof in election petitions is relatively higher than that in ordinary civil suits though lower than beyond reasonable doubt; and the Petitioner must prove every allegation set out in the petition to the satisfaction of the court. See Mukasa Anthony Harris Vs. Dr. Bayiga Michael Lulume, Supreme Court Election Petition Appeal No. 18 of 2007; Mugema Peter Vs. Mudiobole Abedi Nasser, Court of Appeal Election Petition Appeal No. 30 of 2011; Hon. Gagawala Nelson Wambuzi Vs. Returning Officer Kaliro District & 2 Others, Jinja Election Petition No. 008 of 2011; and John Cossy Odomel Vs. The Electoral Commission & Another. Election Petition No. 06 of 2006.

Resolution of Issues

Issue No. 1 - Whether the 1st Respondent personally, or through his agents and with his knowledge and consent or approval committed any electoral offence or illegal practice in the aforesaid election. Allegations of bribery and other illegal practices were made against the 1st Respondent by the Petitioner. I am aware that a single illegal practice or electoral offence once proved to the satisfaction of the court is sufficient ground for setting aside an election.

Over time courts have developed principles to be applied in determining bribery allegations in election petitions. In Kamba Saleh Moses Vs. Hon. Namuyangu Jennifer, Election Petition Appeal No. 027 of 2011 the Court of Appeal pointed out the need for 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 prize is political power, witnesses may easily resort to telling lies in their evidence, in order to secure judicial victory for their preferred candidate. It was observed that bribery is such

a grave illegal practice that must be given serious consideration; the standard of proof is required to be slightly higher than of the ordinary balance of probabilities applicable to ordinary civil cases to prove it to the satisfaction of court; and the court must be satisfied that the people allegedly bribed were registered voters at the material time. The motive of the giver of the bribe was also held to be relevant.

It was also held by the **Court of Appeal in the case of Odo Tayebwa Vs. Basajjabalaba Nasser and Another, Election Petition Appeal No. 013 of 2011** that clear and unequivocal proof is required before a case of bribery will be held to have been proved. In **Masiko Winfred Komuhangi Vs. Babihuga, Election ^Petition Appeal No. 9 of 2002** it was held that a Petitioner has a duty to adduce credible or cogent evidence to prove his allegations at the required standard of proof.

I will consider each allegation separately, in the same order that counsel for the Petitioner submitted on the allegations.

Bribery at Irembezi on 16 February 2016

According to counsel for the Petitioner this allegation is supported by the affidavit of Bamuhairwe Robert who also testified as PW17, and Nsafirabo Adrine (PW27). However, the affidavit of Bamuhairwe was struck off for offending the **Oaths** Act, as he never appeared before a **Commissioner for Oaths**, hence his evidence is fatally defective. I will therefore not act on it. But also the bribery of 1,250,000/= which he averred to was at Nyakahita Church of Uganda, not Irembezi Trading Centre as counsel submitted.

The evidence of PW27 Nsafirabo on bribery at Irembezi Primary School leaves a lot to be desired. She averred that Basajjabalaba arrived at the school at 2.30 pm together with the 1st Respondent and other people, and he gave 1,250,000/= to Apollo Asiimwe to be distributed to the people present there and then. She however, did not state how she knew the amount that Basajjabalaba gave to Apollo Asiimwe to be 1,250,000/=. She also did not say whether the money was distributed, and if so how it was shared out.

Her evidence lacks details about the bribery she claims to have witnessed, which makes it hard to believe.

Learned counsel for the Petitioner never referred to Barekye Lauben (PW18) yet he also testified on this allegation. His evidence was that at Irembezi Primary School at 2.30 pm Basajabalaba gave 750,000/= to Byaruhanga Stephen (RW5) to distribute to the people present. He also never gave any details of how he knew the amount from Basajabalaba to have been 750,000/=:, or who shared the money.

It is inconceivable that at the same rally at the same time PW27 saw Basajabalaba giving 1,250,000/= to Apollo Asiimwe to distribute it to the people present, while PW18 saw the same Basajabalaba giving 750,000/= to Byaruhanga Stephen to distribute it to the people present. It is improbable that each of the two witnesses who were at the same rally with Basajabalaba at the same time witnessed different acts by him, which were directed to the same target. The only logical conclusion to be drawn from the evidence of these two witnesses is that they are telling lies.

Basing on the above analysis alone I would dismiss the allegations of bribery at Irembezi as lies.

Nevertheless the evidence of this bribery was rebutted by the 1st Respondent who denied having been at that place; the evidence of Topista Kyokunda (RW19) who disputed having received any money; and Byaruhanga Stephen (RW5) denied having received 750,000/= from Basajabalaba or having offered any money to PW18; Karuhanga Kagumire also denied having attended any rallies with the 1st Respondent on 16/2/16.

All in all I find no merit in the allegation of bribery at Irembezi.

Bribery at Ambassador Nkuruho's Hotel at Kyeitembe on 15th February 2016

Evidence on this allegation was adduced through Bahati Edson (PW3) and Tumusiime Francis Xavier (PW8). Their evidence was that they were each invited for that meeting by one Lozio Nshemereirwe the NRM Chairperson for the Central Division, and the meeting was for all NRM flag bearers. At the meeting 2,500,000/= was given to Mzee Eldard Bwarare to distribute to all those who attended, and each of the two witnesses received 20,000/=:.

However, Aloysious Nshemereirwe who is alleged to have invited them for the meeting

swore an affidavit and denied knowing Bahati Edson and Tumusiime Francis Xavier, among others. He denied inviting Bahati or Tumusiime to the alleged meeting at Nkuruho's hotel on 15/2/16, and said he was not aware about the said meeting.

Apart from Nshemereirwe the allegation of the said meeting was rebutted by the 1st Respondent in his affidavit where he stated that he never went to Ambassador Nkuruho's hotel on 15/2/16, he was at Bushenyi Guest house meeting his campaign team and later campaigned in Central Ward.

Ambassador Nkuruho also swore an affidavit, and testified as RW1. He denied knowledge about the said meeting; ever inviting any of the people who allegedly attended it; giving any body 2,500,000/= to bribe the people present; or having given the alleged bribe.

He averred that he could not have attended the meeting of NRM flag bearers because he was not contesting for any position nor a flag bearer; and being a civil servant and an Ambassador, he is barred from involvement in partisan politics. Although Ambassador Nkuruho contradicted himself about having read the petition and affidavits, the contradiction is not a major one, since the evidence he gave was responding to the contents of the petition and the affidavits anyway. Further, the contradiction is not part of the relevant facts or evidence, it is about how he learnt about the allegations.

On the other hand I find serious inconsistencies in the evidence of Bahati. While in his affidavit Bahati averred that the 2,500,000/= was given to Bwarare by both Ambassadors Nkuruho and Katungwe, in cross examination he told court that Ambassador Nkuruho alone is the one who gave the 2,500,000/= to Mzee Bwarare. This contradiction regarding the participation of Ambassador Katungwe in the bribery raises doubts about it having taken place, for why would he mention Ambassador Katungwe in his affidavit if she never participated in the bribery? This is a serious contradiction which is not explained. I must say that the evidence of a witness who contradicted himself on who gave the bribe money cannot be said to be credible on the allegation of that bribery.

I also note that Bahati testified in cross examination that he never reported the bribe by Nkuruho to any person although he knew that bribery is an offence. He testified that it was six days later, three days after the election, and after he knew that the 1st Respondent had

been declared the winner that he went to the Petitioner's home at 8.00 am and reported the bribery to him. I wonder why Bahati did not report the bribery until six days later, and only after learning that the 1st Respondent had been declared winner.

This also raises doubts about the credibility of his evidence. A person who knew that a crime had been committed but never reported it anywhere until six days later after learning that the 1st Respondent had won cannot be trusted. Whatever it is that prompted him to eventually report the bribery, the unanswered question which goes to his credibility remains whether he would have reported it had the 1st Respondent lost the election.

I further find contradictions between the evidence of Bahati and Tumusiime. Bahati never included Hassan Basajabalaba among the people who attended the meeting. He also never mentioned him among the people who addressed the meeting. However, Tumusiime who also stated that he attended the meeting which was organized by NRM flag bearers at Ambassador Nkuruho's Hotel averred that after the flag bearers had addressed the meeting Hassan Basajabalaba addressed the people in his capacity as the District NRM Chairperson, Bushenyi. That he called all the NRM flag bearers and other people who held other positions in the NRM structure to come in front and introduce themselves, after which he campaigned for the NRM flag bearers. It was also his evidence that after his speech Basajabalaba introduced Ambassadors Nkuruho and Katungwe each of whom spoke and campaigned for NRM, then Ambassador Nkuruho handed over shs. 2,500,000/= to Mr. Eldard Bwarare to distribute to the people present. Considering the major role that Basajabalaba is said to have played at the meeting it is not conceivable that Bahati could have forgotten to mention him, if indeed the meeting took place and Basajabalaba played the role described by Tumusiime. This also raises doubts about the said

meeting having taken place, in view of the rebuttal by the 1 Respondent's evidence.

Further, while Bahati testified that Ambassador Nkuruho is the one who counted the money in his presence as he (Bahati) was seated next to him, Tumusiime told court that Mzee Bwarare is the one who counted the money, and he was seated at the podium with Ambassador Nkuruho, while he was seated down, and that Bahati never sat, he was moving around.

From the evidence in rebuttal by the 1st Respondent, Ambassador Nkuruho and Aloysious Nshemereirwe that the alleged meeting never took place and that no money was given to Bwarare, coupled with the above contradictions in the evidence of Bahati and Tumusiime, I find that this allegation was not proved against the 1st Respondent.

Bribery of 1,000,000/= to voters of Rwenjeru Central Cell on **I 5 16/2/16** by Basajabalaba

Evidence on this allegation was adduced through the affidavits of Muramye Yefusa (PW6) and Nuwagira Afex (PW21). PW6 averred that on 12/2/16 at around noon the 1st Respondent went to Rwenjeru Central Cell and gave 250,000/= to Mr. Lauben Mafari. He further stated that on 16/2/16 at around 3.00 pm the 1st Respondent, Hassan Basajabalaba and other NRM politicians went to Rwenjeru Church of Uganda where they campaigned, and Basajabalaba gave 1,000,000/= to Lauben Mafari, with a promise to give more when the 1st Respondent wins the election. In cross ,9J5 examination he said that he (PW6) received 4,800/=.

Nuwagira Afex (PW21) also deposed on the same campaign rally at 3.00 pm, except that for him he stated that on that date and place Basajabalaba gave 1,250,000/= to Mr. Mugume Rwakishaya, and , in cross examination he said he received 9,000/= of that money.

I find serious contradictions in the evidence of PW6 and PW21. While PW6 testified that Basajabalaba first gave 250,000/= then later 1,000,000/= the evidence of PW21 is that he gave the 1,250,000/= in one lump sum. Further PW6 told court that Basajabalaba gave the money to Karuhanga to hand it over to Mafari who distributed it and gave him 4,800/=, but PW21 testified that Basajabalaba gave the money to Mugume Rwakishaya who distributed it, and on lining up for it he received 9,000/= from Mugume. Given that the two witnesses are referring to the same bribery of 1,250,000/= I find the contradictions in their evidence on the person to whom Basajabalaba handed the money, the amount of money he gave in bribe, and the amount given to each person unexplained; yet they go to the root of the allegation.

It is trite law that serious contradictions which are not explained should lead to rejection of the witness(s) evidence. See **Alfred Tajar Vs Uganda EACA Criminal Appeal No. 197 of 1969. 1** therefore reject the evidence of PW6 and PW21 on the allegation of the bribe that was given by Basajabalaba. I find no merit in that allegation.

Bribery of 2,000/= at Rwenjeru Polling Station on 18/2/16

The witness to this allegation is the same Muramye Yefusa (PW6). His evidence is that Karuhanga Kagumire gave money to Eri Kamugasha in the denominations of 2,000/= to distribute to voters at Rwenjeru polling station 11. PW6 did not substantiate this allegation.

He did not state on whose behalf Karuhanga gave the money to Eri Kamugasha, or whether he was an agent of the 1st Respondent. Karuhanga swore an affidavit and testified as RW7. It is true as pointed out by counsel for the Petitioner, that his affidavit did not address the particular allegation against him. In fact it instead addressed the allegations against Lauben Mafari who was alleged to have received money from Basajabalaba.

However, even without a specific denial by Karuhanga, as I have noted the allegation against him is not substantiated as it does not *state* on whose behalf he was acting, or that he was an agent of the 1st Respondent, yet the burden to prove it lies with the Petitioner. It is also evidence of bribery given by a single witness, which is not corroborated. None of the voters who received money from Kamugasha or those who saw him distributing money swore an affidavit, yet PW6 knows them and he listed their names. I also wonder how such an illegal act in such a place could go unreported to any authority, since no evidence of such a report was adduced.

I agree with the submissions of counsel for the 1st Respondent on this allegation, and the authority of **Achieng Sarah & Another Vs. Ochwo Nyakecho Keziah, Court of Appeal Election Petition Appeal No. 39 of 2012**. The Court of Appeal, warned of the need for ‘other’ evidence to confirm that a particular witness is telling the truth about bribery on the polling day, due to a tendency by partisan witnesses to exaggerate claims of what might have happened. In this case such ‘other’ evidence is lacking, and I am not satisfied that court should rely on the evidence of the sole witness.

The Petitioner has failed to prove this allegation to the required standard.

Bribery of shs. 1,250,000/= to the voters of Rwenjeru Trading Centre

The evidence on this allegation was adduced through Nuwagira Afex (PW21), which I referred to earlier, and which counsel for the Petitioner submitted that it corroborates that of PW6 on the alleged bribery at Rwenjeru Central Cell. Both PW6 and PW21 state that the rally was held at Rwenjeru Church of Uganda. The evidence on this allegation is similar to that on the allegation of bribery at Irembezi (pg28). It is not explained how the two people who attended the same rally at the same time and place and claim that Basajabalaba gave the money after his speech, would state different people that he gave the money to, and different amounts of money that he gave. For the same reasons I find that this allegation is also not proved.

Bribery of 1,250,000/= at Bunyarigi Catholic Church:

Byamukama John Bosco (PW12) is the witness who gave evidence on this allegation. He stated that on 15/2/16 at Bunyarigi Catholic Church Hassan Basajabalaba who was in company of the 1st Respondent gave 1,250,000/= to Mr. Senesio Hangamaisho to distribute it amongst voters of Bungarisi ward, in the presence of about 100 people.

I note that PW12 did not state how he knew the amount of money that was given by Basajabalaba to be 1,250,000/=, yet his evidence in cross examination implies that he was shunned to the extent that Hangamaisho refused to give him money because he does not belong to NRM.

The question is how did he know the exact amount that was given to Hangamaisho? Further, his evidence was rebutted by the said Hangamaisho who swore an affidavit, and (3 testified

as RW18. He stated that he was not an agent of the 1st Respondent, and denied having been given 1,250,000/= by Basajabalaba or being asked to distribute any money to the voters on behalf of the 1st Respondent. He clarified that he took the oath before Lawyer Tumwesigye, hence the argument by counsel for the Petitioner that he never appeared before a Commissioner for Oaths cannot stand.

The fact that PW12 could not give sufficient details of the bribe to satisfy court; his evidence in uncorroborated by any of the many people who were present; coupled with the unchallenged denial by Hangamaisho, means that the allegation was not proved to the required standard. I so find.

Donation of 1,000,000/= at Bunyarigi Catholic Church by the 1st Respondent on 15/2/16:

This allegation was supported by Byamukama John Bosco (PW12) and Mwesigye John (PW7). The evidence of PW12 was that on 15/2/16 at Bunyarigi Catholic Church at around 4.00 pm the 1st Respondent came to Bunyarigi Catholic Church and gave 1,000,000/= to Mr. Nuwagaba Nobert to finalise the leveling of the playground in Bunyarigi Ward Headquarters. For PW7 he stated that on the same day at 8.00 pm he saw a grader leveling the playground of Bunyarigi ward Parish Headquarters, and when he inquired he was told that it was sent by the 1st respondent.

The 1st Respondent's evidence was that he was not aware of any playground that was constructed during campaigns; and specifically, that he does not know Bunyarigi playground. He adduced evidence of Rutaro Julius who swore two affidavits, and testified as RW24. He said that he is the person charged with the responsibility of soliciting for funds to aid the smooth running of school programs and projects, which include leveling of the said playground. He told court that the allegations that the 1st Respondent gave money to Mr. Nuwagaba Norbert to finalise the leveling of Bunyarigi Headquarters playground are false; further that the 1st Respondent never sent a grader to finish the work of leveling that playground, and he did not in any way aid the school on that activity.

I note that PW12 again did not state how he knew that the amount of money donated by the 1st Respondent was 1,000,000/=, yet it was not handed to him. His evidence is also not corroborated by any person who attended the rally, yet he said that the donation was made in the presence of about 100 people. Further when PW7 made inquiries he was told that the grader was sent by the 1st Respondent, yet according PW12 the 1st Respondent donated money, not the grader to do the work.

Further, the evidence of PW12 was that the money for leveling the ground was given by the 1st Respondent to Nuwagaba Nobert after

4:00pm. I find it hard to believe that when Nuwagaba was given the money he was able to rush through all preparations and find a ready grader to do the work of leveling the playground that

same evening. No evidence was adduced to explain that unique manner in which the work was done, or the need for the unusual rush to ensure the work is done that day, at night.

Besides the capacity in which Nuwagaba was given money and took the responsibility of leveling the playground was not stated, yet the evidence of RW24 that leveling of the playground was his responsibility was not challenged.

In view of the above analysis of the evidence on this allegation I reject the evidence of PW12 and PW7. It has not been proved that the 1st Respondent contributed money for leveling of the playground. I accordingly find no merit in the allegation.

Bribery at Rwatukwire on 16/2/16 at 6.00 pm

The Petitioner's evidence concerning this allegation was adduced through Muhairwe Jane, who testified as PW16. Her evidence was that on 16/2/16 Hassan, the 1st Respondent, and other candidates came to a rally at Rwatukwire Primary School, which Hassan addressed. Thereafter the 1st Respondent gave money to one Aloyzious Nshemereirwe the NRM Chairperson who in turn gave it to the LC1 Chairperson Muhebwa Boaz to distribute. That Boaz gave each person present 7,000/=, but for her she missed as she left to go and get her goats from the grazing land.

The 1st Respondent denied attending that rally, and giving that money. His evidence was that on that day he was doing small foot work in Keirere cell; then he proceeded to Kibare. Muhebwa Boaz also swore an affidavit for the 1st Respondent, and testified as RW16. He denied having received money from Aloyzious Nshemereirwe for distribution; and that he never gave any one 7,000/= as alleged by PW16. He also denied having participated in the political activities of the 1st Respondent.

Aloyzious Nshemereirwe too deposed an affidavit and testified as RW36. He among others denied having received money and giving it to Boaz to distribute 7,000/= to each person as alleged.

According to PW16 announcements were made in Mutojo cell that the rally was scheduled for 2.00 pm. When she arrived at the venue she found other people of the cell waiting. They waited until 6.00 pm when Hassan, the 1st Respondent and other candidates arrived, that is when the bribe money was given, but she does not state how much of the exercise she witnessed before she left to go and care , for her goats. She also stated that the que was long. All that goes to show that the rally was attended by many people. However, the only witness who would have corroborated her evidence in the bribery allegation which is denied by the 1st Respondent, RW36 and RW16 was Byamugisha Esau who was not availed for cross examination and court cannot rely on his evidence, as noted earlier. Having subjected the evidence of PW16 to scrutiny together with the evidence in rebuttal, I am not satisfied that it proves this allegation against the 1st Respondent to the required standard.

Bribery at Buhuuma Buramba at the home of late Enock Bamwanga on 13/2/16

Byarugaba Godwin who swore an affidavit in respect to this allegation and testified as PW28, and. Nuwamanya John who testified as PW29 are the witnesses who adduced evidence of this bribery at the home of late Enock Bamwanga. But their evidence was rebutted by Yasin Kyota who testified as RW42. In his affidavit he denied having gone to the home of late Bamwanga with the 1st respondent on 13th /2/16:

and that it is not true that the 1st Respondent and Basajabalaba gave out bribes in his presence at that place. Mutungi Bernard also swore an affidavit and testified as RW35. He stated that he was present at the home of late Bamwanga, but the 1st Respondent never went there, therefore he could not have given out any money in that home.

I find unexplained discrepancies in the evidence of PW28 and PW29. PW28 stated that on 13/2/16 at around 8.00 pm Haji Hassan Basajabalaba came with three people; the 1st Respondent, Yasin Kyota and Muhammad Lukwago to the home of late Enock Bamwanga and found him and other people there. However, PW29 adds Silagi Banyanga and Jafari Basajabalaba on the team which came and met them, making the number of people who came with Basajabalaba five.

Further, PW28 deposed that Basajabalaba gave them 1,500,000/= of which 500,000/= was for the voters who will vote for the 1st Respondent on the voting day; 500,000/= was to be shared among those present for their transport; while 500,000/= was to be put on the account of Mwezikye group. For him he received 3,000/=. However, the evidence of PW29 was that Basajabalaba gave them all the 1,500,000/= to be shared among themselves.

These contradictions raise doubts about what exactly transpired, and the purpose of the bribe given by Basajabalaba and the 1st Respondent. In view of the unexplained contradictions in the evidence of the two witnesses of the Petitioner in the face of the rebuttal by two witnesses of the 1st Respondent, I find their evidence to be unsatisfactory to prove the allegations.

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Donation at Mazinga Ward on 24/1/16 of 400,000/= to repair the source of gravity piped water and protected spring water wells

Evidence on this allegation was adduced through Bashaija Herbert (PW23), Tukundane Rodgers (PW19), Nayebare Elly (PW13) and Nahabwe Didas. Bashaija averred that during the NRM primaries the 1st Respondent held a rally at Ahakikoona Trading Centre where he promised, to repair the protected spring water well in the area if he won the primaries. After winning the primaries he repaired the water spring through one Barinde Francis. Tukundane swore an affidavit with similar evidence; while Nayebare stated that on 16/2/16 while at Rutemberwa's home the 1st Respondent told the people present that he used Barinde Francis to repair the source of gravity water which supplies Mazinga ward, and a total of five water springs. Nahabwe Didas was not availed for cross examination, hence his evidence is unreliable and will be disregarded.

The allegation was denied by the 1st Respondent who said that he never went to Mazinga ward, he never repaired the spring water well, and he had no money for such a project. His evidence was supported by Kenzaki Merabu (RW3) who stated in her affidavit that the spring water well was not repaired by the 1st Respondent, but by Mbaine Nekemia Zelebabel, and she was the custodian of all the cement that was used to repair it. Nuwasasira Dan also i swore an affidavit and stated that he lives near the water source in issue, and his mother was the custodian of the cement that was used to repair it, and it was repaired by Zelebabel. Tumwine Lauben (RW39) swore an affidavit with similar contents, that the well was repaired by Zelebabel, not the 1st Respondent. Zelebabel swore an affidavit to rejoin the rebuttals ,but was not availed for cross examination as was required. I will therefore not rely on his evidence. As earlier explained. This leaves the evidence of the 1st respondent's witness in rebuttal unchallenged .

Learned counsel for the 1st Respondent submitted that court should rely on the affidavit of Barinde Francis in support of the 1st Respondent's answer to the petition, because the

Petitioner's counsel never cross examined him yet he had the opportunity to do so. I however, already ruled that I would not rely on the evidence of Barinde, as he switched sides (see page 10-11).

Be that as it may, in view of the 1st Respondent's rebuttal and in absence of the evidence of Barinda the witnesses of the Petitioner cannot prove that the repairs were paid for by the 1st Respondent, or the amount of money he paid. Their evidence is that they saw Barinde carrying materials for repair, and that he told them that the 1st Respondent had paid him to do the work. But Barinde's evidence was earlier held to be unreliable as he made another statement denying the allegation and supporting the 1st Respondent's case. What he told the witnesses is therefore also unreliable. Even the evidence of what the 1st Respondent allegedly told PW 23 that he contracted Barinde cannot prove the allegation in view of the rebuttal by the 1st Respondent, and the unreliable evidence of Barinde.

Donation of 1,000,000/= at Kyandago to the voters of Kashenyi Ward to purchase a cow on 9/2/16

On this allegation Muhwezi Alex (PW2) deposed an affidavit and averred that on 9/2/16 the 1st Respondent attended a party at the home of Butamanya Moris as the guest of honour, and handed him (PW 2) 1000,000/= with instructions to buy a bull to slaughter for Kashenyi football teams. That PW 2 handed the money to Murangira Joseph to buy the bull, which was eaten on 14th /2/16 after a football match and a campaign address by the 1st Respondent. Turyasiima Acleo deposed that on 14/2/16 he came to Kashenyi playground where a bull was slaughtered and eaten after the 1st Respondent was thanked for the bull, and he asked the people to vote for him. The donation of 1,000,000/= was also deposed to by Owakubariho Hilton, but he was never availed for cross examination. However, his affidavit stated that the party at which the 1st Respondent donated 1,000,000/= to buy a bull for the football teams took place on 9/1/16.

The 1st Respondent denied the allegation. Both in his answer to the petition and in the affidavit supporting it he said that he did not personally or through his agents give 1,000,000/= at Kyandago to the voters for the purpose of buying a bull. He averred that he did not attend the party at which the donation is alleged to have been given on 9/1/16 because he was attending a meeting of NRM candidates at Entebbe State House.

Further, Ihoora Ignatius (RW32) stated that he was the guest of honour and sponsor at the party at which he handed over a goat for roasting on 9/2/16. He said that the 1st Respondent never attended the party and he

never gave out 1,000,000/= to buy a bull as alleged.

Butamanya Moris swore an affidavit and denied having hosted a party at his home on 9/2/16 where the 1st Respondent was the guest of honour. However, during cross examination he admitted that he hosted the party on 9/2/16 as the team manager, but said that the 1st Respondent never attended it, and that Muhwezi(PW 2) also never attended it.

This witness contradicted himself on material facts of hosting a party at his home on 9/2/16. I find no explanation for the contradictions between his affidavit and his cross examination in court on that issue. His evidence is therefore not credible, and will not act on it.

Nyehangane Elias Mparana also swore an affidavit in support of the 1st Respondent's answer to the petition, but he was not availed for cross examination. I will ignore his evidence too.

I however, note contradictions in the Petitioner's evidence regarding the date of the party at which the donation is alleged to have been given by the 1st Respondent. The two witnesses who attended it are Muhwezi Alex who stated that the party took place on 9/2/16, and Owakubariho Hilton who stated that it took place on 9/1/16. The fact that two different dates were stated for the same party made the allegation against the 1st Respondent unclear. It is no wonder that in his affidavit supporting the answer to the petition where he denied having attended the party or donated money for a bull, the 1st Respondent only explained his whereabouts on 9/1/16.

But his witness Ihoora stated that the party took place on 9/2/16 and that the 1st Respondent did not attend it. In view of the lack of clarity and confusion in evidence of the Petitioner's witnesses on the allegation against the 1st Respondent I will not rely on it, since it was misleading to the 1st Respondent on how to respond to it, and the court cannot also tell when the alleged donation was made. The clarification by counsel for the Petitioner that the correct date⁹ was 9/2/16 cannot cure the effect of

the contradiction since the 1st Respondent already responded to the contradictory allegations; and counsel cannot make corrections in evidence which is already on record. I accordingly find that the petitioner has failed to prove that the 1st respondent donated 1000000/- to buy a bull for the football teams of kashenyi.

*

Bribery of 200,000/= to Nkwasiwe Ezra at Bushenyi Guest

House on 14/2/16 by the 1st Respondent

Nkwasiwe Ezra is the witness who swore an affidavit, and testified to this allegation as PW9. His evidence was that on 15/2/16 he met the 1st Respondent at Bushenyi Guest House and he gave him 200,000/= while convincing him to join his campaign team. However, the affidavit of this witness was struck off the record for not complying with the Oaths Act in a material aspect. It is clear that he never appeared before a commissioner for oaths or a magistrate to take oath as he told court three times during cross examination and re examination that he signed the affidavit before a person who was robbed like the presiding judge - in the red & judge's ceremonial gown, wig and flaps. This was a clear lie as no commissioner for oaths or magistrate would rob like a judge.

But also Nkwasiwe's evidence was that the 200,000/= was given to him to join the 1st Respondent's campaign team. Therefore the submissions of counsel for the Petitioner that he received 200,000/= to vote for the 1st Respondent is misconceived.

Bribery at Yafeesi Bagarukaine's home of Ntaaza I cell of Kashenyi ward on 14/2/16 of 500,000/= & a donation of 200,000/= by Basajabalaba and 100,000/= by the 1st Respondent

The above allegations were also testified to by Nkwasiwe Ezra (PW9) whose affidavit was struck off the record for non- **compliance** with the Oaths Act, and for being a liar, as I have just **explained** above while dealing with the allegation of bribery of Nkwasiwe by the 1st Respondent.

Bribery of 750,000/= at St. Kagwa Primary School on 16/2/16

Mubangizi Alex swore an affidavit and testified to this allegation as PW20. His evidence was that on 16/2/16 at a rally at St. Kagwa Primary School Hassan Basajabalaba handed 750,000/= to the 1st Respondent to distribute to about 300 people at the rally. He said **that** for him he never waited to receive the money because he left the playground as it was late. This implies that this witness never witnessed any person receiving that money; indeed he did not mention any. He did not state how he knew the amount of money that was given by Basajabalaba to the 1st Respondent; and he did not say whether the money was distributed by the 1st Respondent.

His evidence would therefore not prove that money was distributed to any voters.

The other witness who swore an affidavit on this allegation and would have corroborated the evidence of PW20 is Bandiho Siriri, whose evidence is unreliable as he was never availed for cross examination.

In view of my observations above I hold that this allegation is also not proved against the 1st Respondent.

Bribery of 750,000/= on 15/2/16 at Rweibare Cell which Basajabalaba gave to Mwijukye Innocent to distribute

Evidence on this allegation was adduced ⁴through Mugisha Silvano (PW11). His

evidence was that on 15/2/16 he was invited to the home of Scola Mbabazi by Rutaro Julius where the 1st Respondent, **Basajabalaba**, Richard Byaruhanga and Aloysius Nshemerirwe came and found over 100 people at around 3.00 pm. That **Basajabalaba** handed 750,000/= to Mwijukye Innocent who was instructed by the 1st Respondent to distribute it, and each member received 4,000/=.

But if 100 people had shared 750,000/= each of them would have received 7,500/= and not 4,000/=. Further, the evidence of the meeting at Scola's home puts two other meetings/rallies at which allegations of bribery or donations were made by other witnesses in doubt. Bahati Edson (PW3) who testified about the meeting at Ambassador Nkuruho's hotel at Kyeitembe on the same day (15/2/16) said that the meeting at Nkuruho's hotel was for all NRM flag bearers and was attended by the 1st Respondent among others. That lunch was served at around 1.30 pm after which all the candidates addressed the meeting, followed by the two Ambassadors present. According to him the money was given after all that had happened, which in my view must have been well after 3:00 pm, yet the 1st Respondent is said to have arrived at Scola's home at 3.00 pm.

Further, Byamukama John Bosco (PW12) who averred that he **witnessed** the bribery at Bunyarigi Catholic Church said that the money was given at around 4.00 pm on the same day by Basajabalaba and the 1st Respondent. During cross examination he dismissed the suggestion that the 1st respondent was at Scola's home at that time.

It is highly unlikely that on the same afternoon Basajabalaba and the 1st Respondent could have attended three meetings/rallies at Scola's home, Ambassador Nkuruho's hotel; and Bunyarigi Catholic Church while addressing the people, and giving out bribes/donations at each one of them. Even if allowance was to be given for poor time estimates by the witnesses, such inconsistencies in the evidence on serious allegations of bribery cannot be taken lightly. This creates doubts in the three allegations affected by this evidence.

Be that as it may Mugisha's evidence was rebutted by Mbabazi Scola (RW30) who stated that she has never engaged in the political activities of the 1st Respondent. She said it was not true that 100 people gathered at her home as her house is too small to accommodate even five people; and she denied that money was ever distributed at her home.

Rutaro Julius swore two affidavits, and testified ⁴~~as~~ RW24, also rebutting this allegation. In his

affidavit which was sworn on 12/4/16 he responded to the allegations of Mugisha and averred that he never went to the shop of Mugisha to invite him to Scola’s home as alleged.

Aloysious Nshemerirwe also denied attending the meeting at Scola’s home as alleged by Mugisha.

Twijukye Innocent who is alleged to have received the money from Basajabalaba also swore an affidavit and testified as RW17.

He denied having received the money, or distributing 4,000/= to each person as alleged by Mugisha.

None of the affidavits in rebuttal were rejoined, and counsel for the petitioner never addressed this allegation in their submissions. Having analysed the evidence on this allegation as above I find no merit in it.

Bribery at Basajabalaba Primary School

As pointed out by counsel for the 1st Respondent this allegation was not pleaded in the petition. Further, it was testified to by Natureba Ben Mabale who was never availed for cross examination, making his evidence unreliable as earlier noted. It was also rebutted by Halimah (RW53). I find that this allegation has not been proved.

Bribery of 1,250,000/= at Ahakitookye:

This allegation was similarly not raised in the petition. I will not address it as this would result into injustice to the 1st Respondent because it offends the law on pleadings as earlier pointed out. See my comments on page 22.

Attack of the Petitioner’s character and minimizing the stature and candidature of the Petitioner, contrary to Sections 21(3) & 73 of the PEA

This allegation in my view falls under Section 73, and not 21(3) of the Parliamentary Elections Act (PEA), as the alleged words did not form language used while the 1st Respondent was campaigning, but were written on posters for distribution. The Petitioner himself

adduced evidence on this allegation, and three other witnesses swore affidavits in its support. It is alleged by Kansiime Darius (pW22) that on 17/2/16 at 9.00 am the vehicle of the 1st Respondent Reg. No. UAM 930V was used by one Alex to distribute posters bearing the Petitioner's portrait photograph with the words **"REEBA ENJOKA OMUMATSINDE, ENDYALYA YA FDC, TRAITOR"** which are loosely translated to mean **"SEE A SNAKE IN THE PLOUGHED GARDEN, A TRAITOR TO FDC"**. Musa Kasujja (PW24) and Mbera Richard (PW25) stated that on the same day at 8.30 pm the same vehicle was used by the 1st Respondent to distribute those posters at Ahakitookye. A copy of the said portrait/poster was attached on the Petitioner's affidavit in support of the petition.

The 1st Respondent denied the allegation and stated that on 17/2/16 his said vehicle was at Bushenyi Police Station having been damaged in violence. He adduced evidence of a police officer D/IP Nkabyesiza Agapito (RW49) who corroborated his evidence that on that day the 1st Respondent's vehicle was grounded at the police station as an exhibit having been damaged, and its driver assaulted.

That it was only released at 6.00 pm. He produced the relevant case file in court, and it indicated that the vehicle was released under minute 14 on 17/2/16 at 1800 hours, based on the instructions of the O/C CID in minute 13. Ayebazibwe Alex also swore an affidavit and testified as RW48. His evidence was that on the night of 15/2/16 he borrowed the said vehicle from the 1st Respondent but as he was driving home at night he was attacked and the vehicle was damaged. It was taken to the police on the morning of 16/2/16 where it was kept until late afternoon on 17/2/16, while he was hospitalized in KIU Hospital.

The above evidence of RW49 and RW48, and the police file records/minutes satisfy me that vehicle Reg. No. UAM 930V was in Bushenyi police custody from 16/2/16 until 17/2/16 at 6.00 pm when it was released to the 1st Respondent. It could therefore not have been used by Alex who was in hospital to distribute the posters. This evidence strongly affects the entire claim of the Petitioner of use of that vehicle to distribute the posters, and renders it doubtful. If evidence of their distribution at 9.00 am is found to be false, lies in the evidence of their distribution later at 8.30 pm using the same vehicle on

the same day cannot be ruled **out**. Besides there is no evidence that the posters were made by the 1st Respondent or his agent(s).

I also note that the Petitioner has not proved that the offence under Section 73 of the PEA was committed through distribution of the posters. During cross examination he admitted that the picture which was used on the posters was his, which was published in the Daily Monitor of 21st May, 2015. In that picture he was wearing a hat bearing a portrait photograph of President Yoweri Kaguta Museveni, with the words ‘M7 NRM 2016’ inscribed on it, which in my view could easily lead any reasonable person to believe that he supported the NRM party for 2016.

Lastly on this. allegation, in the case of Dr. Bayigga Michael Philip Lulume Vs. Hon. Mukasa Anthony Harris & The Electoral Commission, Jinja Election Petition No. 6 of 2006 the petitioner complained about statements made by the Respondent that he was not a qualified doctor but a quack one and a witch doctor; and that he is a foreigner in the constituency as he had no home of his own there, among others. The court had this to say:

“The petitioner had the onus to prove that the statements were made by the first respondent in the first place. Secondly that they were false, malicious, sectarian, etc. It is not enough even in the seemingly obvious case of alleging that you have been called a ‘quack doctor ’ to just state that fact alone in your evidence and wait for the court to say that you practice medicine at such a hospital and everyone knows you as a genuine medical doctor. You must produce evidence to prove that negative. Mulenga JSC, in his reasons for the judgment in Election Petition No. 1 of 2001, Col. Rtd. Dr. Beisgye Kizza vs Museveni Yoweri Kaguta, dealt with the peculiarity of proving a negative such as the present one in an extensive manner. He relied upon the decision of the Supreme Court of Uganda in J. K. Patel vs Spear Motors Ltd, SCCA No. 4 of 1991 and the House of Lords decision in Constantine Steamship Line Ltd vs Imperial Smelting Corporation [1941] 1 All ER 165, which dealt with similar issues. The learned Justice then stated,

‘Secondly, the burden to prove that the statement was false, was imposed by statute, namely by the provision of s. 65 of the Act. To prove that an illegal practice as defined in that provision was committed, the petitioner had the onus to prove that the statement published by the first respondent was false, and he had to prove it so as to leave the court certain that it was false. Even if the first respondent offered no evidence at all, the burden would not be any less. Whilst the illegal practice is similar to defamation in nature, it differs in the way it has to be proved. This may well appear harsh, (is in the saying ‘adding insult to injury’, but the illegal practice being quasi criminal, leads me to the conclusion that the onus of proof would shift only if a

prima facie case has been made out. To my mind, evidence advanced by the petitioner did not make out a prima facie case, sufficient to shift the burden of proof , I was therefore, unable to find that the petitioner had proved to the required standard that the statement was false. ’ ”

In this case too the Petitioner in his affidavit in support only averred that the statement on the posters was false and reckless, *because* it meant that he was allying with NRM to destroy FDC which had sponsored his candidature. While it may seem obvious that he was sponsored by FDC he ought to have explained how false or reckless the words were in the peculiar circumstances of this case, as being sponsored by FDC per se does not amount to **proof** that the words were false or reckless. Court on its own cannot be expected to make such conclusions in absence of evidence.

I consequently find that the Petitioner has not proved this allegation against the 1st Respondent to court's satisfaction.

Issue No. 2 - Whether there was any non-compliance with the provisions of the Parliamentary Elections Act and whether there was a failure to conduct the elections in accordance with the principles laid down in the Parliamentary Elections Act

In the present case the Petitioner avers in his affidavit in support Of the petition that he received reports of illegalities and non- compliance with the principles in the electoral laws. But the affidavit in support of the answer of the 2nd Respondent averred that the elections were conducted in accordance with the principles in the electoral laws; the 2nd Respondent put in place mechanisms to ensure that the entire electoral process was smooth, transparent free and fair, and the voters exercised their will in accordance with the Constitution. It was his contention that the Petitioner never complained of illegal acts during or after polling as required by the electoral laws, therefore his complaints are an afterthought.

Intimidation and violence at Ishaka Taxi Park Polling Station on 18/2/16 with machetes and firearms

Evidence on this allegation was adduced through Paul Tusubira, an Advocate, who testified as PW15. He stated that on 7/3/16 he received instructions from the Petitioner to follow up a criminal case CRB 240/2016 where one Muhammed Lukwago had been arrested from a polling station threatening violence while armed with a panga, on election day. He proceeded to Bushenyi Police Station where he was given the file to peruse, and was shown the exhibit panga, but the suspect had been released on police bond.

The fact that one Muhammed Lukwago was arrested with a panga was corroborated by D/Sgt Ngaiga David, RW23 who said that the complaint on that file was that Lukwago was arrested with a panga in Ishaka town by the team headed by D/C Okodu Anthony. He however, rebutted the fact that PW15 accessed the police file at the

police station, because he never saw him at the station on 7/3/16 and the file was under his control as the investigating officer.

The 1st Respondent in his answer to the petition denied having personally or through his agents intimidated voters at Ishaka Taxi Park polling Station with machetes and pangas. But in view of the evidence that a police file exists with a complaint that Lukwago was found in possession of a panga, I find that the allegation of violence is proved.

Intimidation and violence at Basajabalaba Polling Station on 18/2/16

The witness who deposed an affidavit in respect to this allegation is Natureba Ben Mabale. However, he was not availed for cross examination as required. Court cannot therefore act on his evidence. Since he was the sole witness to this allegation I find that the Petitioner has failed to prove it.

Violence and intimidation at Buramba Primary School Polling Station:

This allegation was not pleaded in the petition as I noted earlier. I will therefore not address it as it offends the law on pleadings, as I explained on page 22.

I agree with the submissions of learned counsel for the 2nd Respondent that most of the alleged illegal practices and non-compliance are not corroborated by any cogent evidence, and were not reported to any independent authority like the 2nd Respondent.

Issue No. 3 - If issue 2 is answered in the affirmative, whether the non-compliance and failure affected the result of the election in a substantial manner.

Non-compliance with the electoral laws per se is not enough to annul an election. Under Section 61(1) of the PEA the non-compliance must be so significant as to substantially affect the results of the election. See *Muhindo Rehema Vs. Winfred Kiiza & Anor*, Court of Appeal Election Petition Appeal No. 29 of **2011**.

The only allegation that was proved by the Petitioner is that of possession of a panga by Lukwago on the polling day. The issue is whether that incident affected the outcome of the election in a substantial manner. Evidence to prove that is lacking. The evidence on the violence and intimidation at Ishaka Taxi Park polling station was not testified to by any direct evidence. Neither the Petitioner, PW15 nor RW23 testified to having witnessed it, and the alleged threats to the supporters of the Petitioner was not alluded to by any witness. RW23 only told court the nature of the complaint on the file, but did not indicate whether the said panga was used, or where. He only said that Lukwago was found in possession of the panga in Ishaka town, which is a general statement. None of the people who were present at the polling station where the panga was allegedly used to threaten people swore an affidavit. Without those details court cannot determine the effect of the malpractice on the outcome of the election, or whether it was substantial. The Petitioner has therefore not proved that the alleged malpractices substantially affected the outcome of the election.

In conclusion this petition is dismissed with costs.

Dated this 26th day of August 2016

DAMALIE.N.LWANGA

JUDGE