

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE

ELECTION PETITION NO. 008 OF 2016

**IN THE MATTER OF LOCAL COUNCIL ELECTIONS FOR MUBENDE
DISTRICT CHAIRPERSON (LC.V)**

KASIRYE ZZIMULA FRED:.....
PETITIONER

V E R S U S

1. BAZIGATIRAWO KIBUUKA FRANCIS AMOOTI
2. THE ELECTORAL COMMISSION :.....
RESPONDENTS

BEFORE THE HON. JUSTICE DR. HENRY PETER ADONYO

JUDGMENT

Introduction:

1. Kasirye Zzimula Fred stood for and lost the bid to be elected chairperson for Mubende Local Council V. The Electoral Commission declared and gazetted Bazigatirawo Kibuuka Amooti as the duly elected chairperson of LCV for Mubende district. Kasirye Zzimula Fred was not satisfied with this decision and consequently filed this election petition against both Bazigatirawo Kibuuka Amooti and the Electoral Commission. Early during the handling of this matter, this court disallowed the petition on the basis of raised preliminary objections mainly in regard to the residential status of the petitioner. That decision was appealed against to the Court of Appeal which overturned it and ordered a

retrial on the basis that the matter should be heard fully. This judgment is a result of the retrial of the election petition.

Background:

2. The background to this matter is that on the 24th day of February 2016 the Electoral Commission conducted an election for the chairperson of the Local Council V (LCV) for Mubende District in which both Kasirye Zzimula Fred and Bazigatirawo Kibuuka Francis Amooti participated. Upon results being compiled and tallied, the Electoral Commission declared and, thereafter, gazetted Bazigatirawo Kibuuka Francis Amooti as the winner of the elections on the basis that Bazigatirawo Kibuuka Francis Amooti had obtained votes amounting to 52,820 as against Kasirye Zzimula Fred who had received 34,279 votes.
3. Kasirye Zzimula Fred being dissatisfied with this return of events filed this petition challenging the election outcome alleging that the election was conducted in contravention of the provisions of electoral laws namely the Local Government Act (Cap.243), the Parliamentary Elections Act and the Constitution of the Republic of Uganda 1995 (As Amended) which non-compliance he said affected the results of the elections in a substantial manner rendering the subsequent elections, the declaration and the gazetting of Bazigatirawo Kibuuka Francis Amooti as the winner of the election to be invalid.
4. According to the petition of Kasirye Zzimula Fred, the following specific contraventions of the Electoral Laws and principles were committed by the first respondent personally and or by his agents;
 - a. Bazigatirawo Kibuuka Francis Amooti was nominated, campaigned, was elected and declared winner by the Electoral Commission when he did not qualify to offer his candidature for elections as LCV chairperson as his nomination papers listed names of registered voters minus their registration numbers with the listed names even not adding to a total of fifty persons from at least two thirds of the electoral area in addition to the signatures of the nominators being forged which was contrary to **Sections**

113 (g) and 139 (3) (g) of the Local Government Act and the Constitution of the Republic Uganda 1995.

- b. Bazigatirawo Kibuuka Francis Amooti and his agents directly or indirectly threatened to use violence upon the supporters of Kasirye Zzimula Fred which act was contrary to **Section 154 (a) (i) of the Local Government Act.**
 - c. Bazigatirawo Kibuuka Francis Amooti committed the offense of undue influence as he directly and indirectly through his agents threatened to inflict loss on the residents of Mubende District after making statements to the effect that if the people of Mubende did not elect him chair, he would ensure that they were excluded from government programmes like **NAADS** which utterance was contrary to **Section 154 (a) (ii) of the Local Government Act.**
 - d. Bazigatirawo Kibuuka Francis Amooti committed the offense of bribery contrary to **Section 147(1) and (2) of the Local Government Act** which had the effect of influencing the people of Mubende to vote for him at the same time making them refrain from voting Kasirye Zzimula Fred.
5. In relation to the Second respondent which is the Electoral Commission, Kasirye Zzimula Fred alleged that ;
- The Electoral Commission failed to ensure that the elections were held within the time frames fixed for voting with some polling stations closing before the stipulated time of 4.00 p.m. which action was contrary to **Article 67(1) of the Constitution** and **Section 12 (1) (j) of the Electoral Commission Act** with this infringement invalidating the election of Bazigatirawo Kibuuka Francis Amooti as chairperson LCV Mubende under **Section 139 (c) and (d) of the Local Government Act** for the people of Mubende were not allowed to express their free will and consent through a free and fair election.
6. Arising from the above alleged infringements of the electoral laws, Mr. Kasirye Zzimula Fred sought the following declarations and orders;
- I. That he be reimbursed Uganda Shillings Two Hundred and Fifteen Million (Ug. Shs. 215, 000,000/-) being material and pecuniary losses incurred while participating in the impugned elections.
 - II. That Bazigatirawo Kibuuka Francis Amooti be declared as not validly elected as LC5 Chairperson for Mubende District.

- III. That Bazigatirawo Kibuuka Francis Amooti be found to have committed offences of undue influence and bribery.
 - IV. The election of Bazigatirawo Kibuuka Francis Amooti as LCV District Chairperson for Mubende District be annulled and set aside.
 - V. That he Kasirye Zzimula Fred having been returned second with 34,279 votes be declared winner of the said elections since he was validly elected under **Section 142(3) (b) of the Local Government Act.**
 - VI. That Bazigatirawo Kibuuka Francis Amooti and the Electoral Commission meet the costs of this petition.
7. On their part Mr. Bazigatirawo Kibuuka Francis Amooti and the Electoral Commission, the joint respondents denied all the claims made by Kasirye Zzimula Fred with both insisting that the election for Mubende LCV chairperson was conducted properly and in compliance with the Constitution of the Republic of Uganda, the Electoral Commission Act and the Parliamentary Elections Act, 2005 adding that the allegations made by Kasirye Zzimula Fred, the petitioner were misconceived and cannot entitle him to any of the reliefs sought thus implored this Honorable Court to dismiss the petition brought against them with costs.

Issues

7. Upon this matter coming up for hearing, the parties framed four issues which issues have been adopted by this Honorable court for the resolution of the instant petition and these are:

- a) Whether the 1st respondent at the time of elections was qualified as a candidate in accordance with the provisions of the law.
- b) Whether the 1st respondent and his agents committed election offences personally or with his consent
- c) Whether there was non-compliance with Electoral Laws if any and whether the non-compliance affected the outcome of the elections in a substantial manner.
- d) What are the available remedies to the parties.

These four issues are considered and resolved individually as below.

Whether Bazigatirawo Kibuuka Francis Amooti at the time of elections was qualified as a candidate in accordance with the provisions of the Law:

8. According to the law, a Chairperson LCV is the political head of a District and is elected by universal adult suffrage through secret ballot. This is the provision of law under **Article 183(1) of the Constitution of the Republic of Uganda 1995 (As Amended)**. Further, for one to be elected chairperson of a district, such a person must meet the minimum qualifications listed under **Article 183(2) of one the Constitution of the Republic of Uganda 1995 (As Amended)** which provides as follows;

- i) He or she must be qualified to be elected a member of parliament,
- ii) He or she should be at least thirty years and not more than seventy-five years of age, and
- iii) He or she must be ordinarily resident in the District.

9. The Constitution, in addition to the above qualifications grants the Parliament of Uganda under **Article 180(2)** to make such laws which would prescribe the composition, qualifications, functions and electoral procedures in respect of local government councils. Parliament carried out this requisite mandate by enacting the **Local Government Act (Cap. 243)** as the principle law consolidating and streamlining all the laws relating to local governments with **Section 111** of that legislation providing for the election and the qualifications needed for one to be elected chairperson of a district.

10. Under **Section 111 (3) of the Local Government Act** detailed qualifications for one to be nominated and elected as local chairperson V are provided as follows;

- a. That person must be a citizen of Uganda,
- b. Ordinarily resident or has made an undertaking in writing to the Electoral Commission that within six months of his or her election, he or she shall have established a residence in that district,
- c. At least thirty years and not more than seventy five years of age,
- d. A registered voter,
- e. Completed a minimum education of advanced level standard or its equivalent,
- f. Has submitted to the returning officer of a district a nomination paper in form EC 1 specified in the seventh schedule to the Act signed by two persons nominating him or her and,
- g. Attaches to his or her nomination paper a list of names of fifty registered voters from each of at least two thirds of the electoral areas, each voter

appending his or her signature, physical address and voters' registration number as specified in form EC1 of the seventh schedule to the Act.

11. The facts of this petition as seen from the evidence of Kasirye Zzimula Fred are that Bazigatirawo Kibuuka Francis Amooti was nominated, campaigned, was elected and subsequently was declared winner of the election for the chairperson LCV for Mubende District by the Electoral Commission in contravention of Sections 139 (d) and 111(3) (g) of the Local Government Act yet he did not attach to his nomination papers the minimum of fifty names and genuine signatures with voter registration numbers from at least two thirds of the electoral areas.

12. As far as the signatures on the nomination forms used for nominating Bazigatirawo Kibuuka Francis Amooti, Kasirye Zzimula Fred informed this Honorable court that the signatures on the forms remarkably differed with those of the registered voters when compared with the genuine ones on National Identity cards of the persons concerned as he had this to say in that respect in his testimony;

“After getting nomination forms, I went over looking for those who signed the nomination forms for the 1st respondent. At the time I went to look for these people, I had formed the opinion that their signatures were not genuine ”.

13. Kasirye Zzimula Fred told court that he was forced to come up with the above conclusion as a result of the information he had received from some of his supporters that the persons who nominated his rival were not genuine upon his carrying out a personal and independent field probe by sampling and comparing names and signatures from eight sub counties with the names and signatures of the registered voters from the list given to him by the Electoral Commission which made him to conclude that his rival was not properly nominated since he knew all those who were listed in the nomination forms for most of them were his supporters with signatures which were familiar to him of which he had this to say as seen in Paragraph 8 of his affidavit in support of the petition;

“ ... I know that the following registered voters from the electoral areas below are not similar to the signatures on the list of the registered voters supporting the 1strespondent's nomination as District chairperson, Mubende District:

A) Southern Division, Bageza Sub-county

- i) Nakigude Robinah**
- ii) Kyomuhendo Annet**
- iii) Kyazze John**
- iv) Nakitende Grace**
- v) Ssemanda Sylvester**
- vi) Ffukuzi Christopher**

Attached are copies of the National ID's collectively marked "ID1" and list of registered voters in support of nomination marked "LIST1"

B) Kasambya Sub-county

- i) Kibuuka Ronald**
- ii) Nakafeero Juliyeti**
- iii) Tindyebwa Wilson**
- iv) Mugerwa Benjamin**
- v) Ojiambo Jackson Nyegenye**
- v) Mugerwa Sulait**
- vi) Ssetabi Julius**

Attached are copies of the National ID's collectively marked "ID2" and list of registered voters in support of nomination marked "LIST2".

C) Bagezza Sub-county (Western Division)

- i) Kaweke Christopher**
- ii) Namayanja Sylvia**
- iii) Bukenya Joseph Bazirirawa**
- iv) Kalwanyi Deogratious**
- v) Nalugo Annet**
- vi) Nampijja Mariam**

Attached are copies of the National ID's collectively marked "ID3" and list of registered voters in support of nomination marked "LIST3"

D) Bukuya Sub-county

- i) Kyobe Alex**
- ii) Muwonge Patrick Iga**
- iii) Kayongo Edward**
- iv) Kirumira Peter**

E) Nabingoola Sub-county

- i) Bifiramunda Teopist**
- ii) Musiitwa Serapio**

F) Kitumbi sub-county

- i) Sseruyanja Hussein**

G) Kassanda Sub-county

- i) Matovu Peter**
- ii) Kawooya Peter**
- iii) Bagonza Steven**
- iv) Kabali James**
- v) Kiddu Francis**

H) Kalwana sub-county

- i) Nilebelaho Leo**
- ii) Nakafero Grace**
- iii) Komulembe Yozefina**
- iv) Nassazi Aisha**
- v) Nsubuga Sulayimani**
- vi) Mukampabuka Dominata**
- vii) Sikubwabo Dickson..."**

14. Arising from the above knowledge and investigation, Kasirye Zzimula Fred concluded to this court that Bazigatirawo Kibuuka Francis Amooti could not have

qualified to contest as LCV District Chairperson in Mubende since he did not provide genuine names and signatures of fifty registered voters from at least two thirds of the electoral area in addition to committing the offences of undue Influence contrary to Section 154 (a) (i) and (ii) and Bribery contrary to Section 147(1) (2) of the Local Government Act respectively further adding that he needed no expert in that respect to prove the genuineness of the signatures since he made use of the act of comparing the names and signatures provided by his rival with those on the National ID of the named persons and also after receiving complaints from his supporters as to the genuineness of those names and signatures further confessing to not being aware of the requirement to inspect nomination forms , which he did after the declaration of results, within a specific time frame as provided by the law.

15. As regards the offense of undue influence and threatening violence, Kasirye Zzimula Fred alluded to not personally having any direct evidence to that effect insisting that he was informed of this anomaly by his agents even if none of those agents swore any affidavit to that fact.

16. In regard to the offence of bribery, Kasirye Zzimula Fred admits not mentioning in his testimony as to who was bribed in addition to having no one deposing an affidavit confirming the fact of bribery.

17. As to whether the early closure of polling stations affected him alone, the petitioner Kasirye Zzimula Fred admitted that it affected all the candidates including his opponent adding further that he even did not raise complaints either to the Electoral Commission or to any authority during the electioneering process in regard to the perceived irregularities but merely waited to bring court action in regard to those issues for determination so that even if the elections were not properly conducted by the Electoral Commission he should be declared the winner for he polled second highest in spite of the marked difference of over 18,000 votes between his and that of the first respondent.

18. As against the Electoral Commission, the petitioner Kasirye Zzimula Fred informed this honorable court that the Electoral Commission did not conduct the elections of the LCV chairperson for Mubende in accordance with the electoral laws because of the fact that polling stations such as those of Bujaala, Kanseera, Mabaale, Nabutiti, Kiseeza, Kigumba, Kawaala, Kyabatagi, Njeru, Katabalanga, Kasana, Lugaga, Rukoba, Luwovu Trading Centre and Nakawala Primary school were closed earlier before the official closing time making their early closing to affect the outcome of the results of the election in a substantial manner.

19. In support to all the above allegations the petitioner Mr. Kasirye Zzimula Fred relied on the testimonies of several witnesses who swore affidavits in support with one of them Jude Musisi (PW2) appearing in court and testifying in regard to early closure of polling stations listed above and in respect of persons who nominated the 1st respondent. This particular witness when examined alluded to the fact that the contested signatures were not genuine for he knew well the named persons who purportedly signed them including how they signed but feigned ignorance as to whether those persons known to him swore any affidavits to confirm the fact of their signatures having been forged.

20. Jude Musisi added that in regard to the issue of early closure of polling stations, he witnessed that fact for after voting early, he went from one polling station to another before the official closing time and found as a matter of fact that at all the polling stations which he visited, voting had closed earlier than the official closing time of 4.00 pm.

21. The above facts including that of the witness who testified constituted the summary of the evidence of the petitioner Kasirye Zzimula Fred which facts were contested wholly by the respondents Mr. Bazigatirawo Kibuuka Francis Amooti and the Electoral Commission through evidence of several witnesses whose testimonies are on record with some of those witnesses appearing in court and subjected to extensive cross examination such as Suleiman Kato who was the Mubende District Returning Officer who testified that he was the one in charge of the nomination of candidates for LCV chairperson Mubende District and narrated to this court the process which took place during nomination stating that after aspiring candidates presented before him nomination forms he would check whether there were attached voters names and numbers or national identification number which if he found to be so he would compare them with those on the Official National Voters Register and if he found them matching he would proceed nominate the particular candidate.

22. In his testimony Suleiman Kato confirmed that indeed Bazigatirawo Kibuuka Francis Amooti presented to him nomination forms which were supported by fifty and more names and signatures of voters from sixteen sub counties which did form more than two thirds of Mubende electoral area and after finding so, he proceeded to nominate him accordingly.

23. Suleiman Kato testified that in his view, the nomination forms had “**MUST FILL**” areas which had to be completed by a candidate in order for such a candidate to be nominated and these included the details of particulars of that

candidate, his proposer or seconder, the names of such candidate's official agent, evidence of oath taking, the attachment of academic qualifications and the declaration of wealth. According to this witness once all these requirements were complied with then an aspiring candidate would automatically be nominated which was the case with Bazigatirawo Kibuuka Francis Amooti. To support this contention he tendered in court the original copy of the nomination form of the 1st respondent with those attachments as proof of what took place.

24. The first respondent Bazigatirawo Kibuuka Francis Amooti personally testified in court and denied all the allegations made against himself and the Electoral Commission by the petitioner Kasirye Zzimula Fred by first of all intimating that he was properly nominated since he presented to the Returning Officer Mubende nomination forms which had names of more than fifty persons per Sub County from two thirds of the electoral areas in Mubende District as was the requirement supporting this contention by tendering in court several affidavits some of whose deponents even appeared and were thoroughly cross examined including Nsubuga Sulaiman his campaign manager in Kalwana Sub County who testified to the fact of his having willingly together with many others willingly signed the nomination forms in support of the first respondent including one Jude Musisi who signed the nomination forms in his, Nsubuga Suleiman's presence.

25. On being put to task as to why his signatures appeared different, Nsubuga Suleiman insisted that all the signatures were his intimating that no signature could remain constant given the fact that they were signed under different conditions and circumstances.

26. Another witness who deposed an affidavit on behalf of the first respondent and who came to court was Nakafeero Grace who also confirmed having signed nomination forms in support of the first respondent refuting vehemently Jude Musisi's assertion that her signature was a forgery but insisted that she signed documents using three methods such as the use of her thumb print, writing her names in full and also abbreviating her name of '**Nakafeero**' with the letter '**N**' followed by her other names written in full with this latter signature being the one which she used while nominating the first respondent at Kalwana Sub County.

27. This witness was asked to sign sample signatures in court which would be used for comparison and verification with those on the nomination forms.

28. Another witness who deposed an affidavit in support of the first respondent and who appeared in court for cross examination was Mugisha Isaac who confirmed that he signed the nomination forms for the first respondent on top of his having acted as the first respondent's supervisor in charge of collecting names and signatures of those who signed nomination forms for the first respondent at Nabingoola Sub County. He also wrote sample signatures in court and tendered a copy of his national identity card on record for purposes of comparison and verification.

29. Another deponent on behalf of the first respondent was Kaliisa Noah who testified that he did nominate the first respondent and was also the latter's campaign manager in charge of collecting names and signatures for Kassanda Sub County. He denied that any of the signatures were a forgery as alleged by Jude Musisi for he testified that they were signed in his presence by the persons indicated.

30. The last deponent who appeared in court for cross examination was Robinah Nanyondo Ddamba who confirmed that she was not only a voter but that she was also a nomination team coordinator for the first respondent in Kasambya County composed of five sub counties of Kasambya, Kigando, Nabingoola, Kibalinga and Bageza. She confirmed having herself signed the nomination form in support of the 1st respondent.

STANDARD OF PROOF

31. In an election petition the standard of proof is similar to that of any civil matter in that it is done based on a balance of probability for the law requires that whoever desires a court to give judgment as to any legal right on the existence of facts which he or she asserts to be true has to prove that those facts do in fact exist to that level of proof only. This is what **Sections 101 (1) and 102 of the Evidence Act** provide which are provisions of general application.

32. This level of standard of proof in relation to election petitions was stressed by the Court of Appeal in the petition of **Paul Mwiru versus. Hon. Igeme Nabeta & Others: Election Petition Appeal No.06 of 2011** in the following terms:

"Section 61(3) of the Parliamentary Elections Act sets the standard of proof in parliamentary election petitions. The burden of proof lies on the petitioner to prove the allegations in the petition and the standard of proof required is proof on a balance of probability. The provision of this subsection was settled by the Supreme Court in the case of Mukasa Harris

v Dr. Lulume Bayiga when it upheld the interpretation given to the subsection by this court and the High Court.”

33. Such proof as indicated above however must never leave the court in doubt as to what is sought to be proved though it should not be beyond reasonable doubt as was the case with criminal matters with this position being emphatically stated by Mulenga JSC (As he then was) in **Supreme Court Election Petition No. 01 of 2001, Dr. Kiiza Besigye versus Yoweri K. Musveni & Another.**

34. Relating the above legal requirements of the standard of proof to the instant matter, it is the case of the petitioner that the 1st respondent was nominated, got elected and was returned as chairperson LCV Mubende by the second respondent in contravention of the legal requirements for the first respondent never provided the required number of names and signatures to support his nomination from at least two thirds of the electoral areas of Mubende District when seen from the fact that the names and signatures from the sub counties of Kassanda, Bukuuya, Kitenga, Kiyumi, Butologo and Kalwana were all marred with irregularities since each of these sub counties had names and signatures of registered voters nominating the first respondent which were less than fifty contrary to **Section 111 (3) (g) of the Local Government Act.**

35. To prove this point further, the petitioner stated that in as far as Kassanda Sub County was concerned, one Kiddu Francis denied ever nominating the 1st respondent which denial should reduce the signatures for that sub county from fifty to forty nine thus making this sub county having less numbers as is required by law hence reducing the number of the nominating sub counties. This position was rebutted by the first respondent who insisted that the numbers were more than fifty and thus fitted the legal requirement. A physical count of the names on the nomination forms tendered in court and which were not contested at pages U1 to U11 of the affidavit in sur-rejoinder indicates that a total of 110 registered voters nominated the 1st respondent at Kassanda Sub County. So, even if Kiddu Francis's testimony is taken as being true that he did not nominate the first respondent in that particular sub county and his name removed from the list of those who nominated the first respondent from that sub county, there would still remain a total number One Hundred and Nine (109) names under Kassanda Sub County. This number is still way above the statutory minimum required by the law of fifty registered voters. Consequently, the fact would remain that for Kassanda Sub County, the 1st respondent would have still secured the requisite number of voters nominating him. I would thus find this as a matter of fact and conclude

without further ado that indeed with the undisputed and proven number of persons nominating the first respondent being way above the required minimum at Kassanda Sub County, the first respondent did get and was properly nominated at that sub county contrary to the assertions of the petitioner.

36. As far as Bukuya Sub County is concerned, the petitioner alleged that Kyobe Alex, Kayongo Edward Kamyia and Kirumira Peter never signed the nomination forms in support of the 1st respondent's nomination since these individuals denied ever signing the nomination forms. If this assertion is taken to be true and these three (3) names are removed, then the signatures on the nomination forms for the first respondent for Bukuya Sub County would drop from Fifty (50) to Forty Seven (47) which would be below the required minimum of Fifty (50).

37. I have had the occasion to peruse the affidavits of Kyobe Alex, Kayongo Edward Kamyia and Kirumira Peter. That of Kyobe Alex is found at page 205 of the affidavit accompanying this petition and in particular paragraph 5 where he deposes that he never signed on the list of registered voters for Bukuya Sub County. The affidavit of Kayongo Edward appears at page 209 of the affidavit accompanying this petition and in paragraph 4, he deposes that he never signed for the 1st respondent with a similar position applying to Kirumira Peter. All these deponents were never cross examined by the respondents to test their assertions as to the validity that they never signed the nomination papers for the first respondent which right the respondents should have exercised under **O.19 r 2 of the Civil Procedure Rules** making these facts to remain uncontested meaning that the assertions are not controverted and thus remaining true and valid. Consequently, with the denials remaining true, I would conclude that the number of voters nominating the 1st respondent at Bukuya Sub County dropped to Forty Seven (47) which is well below the minimum of Fifty (50) required by law. The nomination of the 1st respondent in Bukuya Sub County would thus be invalidated accordingly.

38. As for Kitenga Sub County, it is the petitioner's testimony that one Akamanya Juliet signed the nomination forms twice. These nomination forms are found at pages X1 to X5 of the affidavit in sur-rejoinder and indeed reveal that Akamanya Juliet signed it twice which is in actual fact double signing and is illegal which would reduce the number of voters nominating the 1st respondent at Kitenga Sub county from Fifty (50) to Forty (49) which is below the statutory minimum. Furthermore with Akamanya's name appearing twice on the nomination forms,

this would be in clear contravention of the provisions of **Section 111 (5) of the Local Government Act** which provides thus:

“A person shall not subscribe to more than one nomination paper and no person shall give his or her support under subsection (3) or (4) to more than one candidate for the office ”.

39. The wording of this legal provision is mandatory making the double appending of Akamanya’s signature to be an illegality which cannot be accepted by court with the consequence that all the signatures from Kitenga sub county would be deemed illegal for the double signing by Akamanya Juliet infected the whole list thus Kitenga sub county would be and is hereby excluded from the list of electoral areas nominating the 1st respondent as it is trite law that an illegality once brought to the attention of court negatives any assertion. (See: **Makula International Ltd versus His Eminence Cardinal Nsubuga and another Civil Appeal No.48/81**)

40. In regard to Kiyuni Sub County, the petitioner asserts that some of the forms do not have the name of the candidate who was being nominated. I have had the occasion to peruse those forms which are found at pages I.1 to I.7 of the affidavit in sur rejoinder. While it is true that the top most form at page I.1 bears the name of the 1st respondent, the accompanying forms I.2 to I.7 do not bear the names of the first respondent. However, all those forms bear the name of Kiyuni Sub County and they are all attached together and are duly stamped and received by the 2nd respondent.

41. These forms do have a total of seventy (70) voters nominating the 1st respondent. The fact of subsequent Forms I.2 to I.7 for Kiyuni Sub County not bearing the name of the 1st respondent but attached to Form I.1 which bears the name of the first respondent and their being endorsed as a bundle as being for Kiyuni sub county in my considered opinion and view is merely a technicality and cannot preclude the validity of nomination since the non-indication of the first respondent’s name onto the subsequent forms which have names of voters who have not denied nominating 1st respondent from that very single sub county confirms the voters intention of nominating the 1st respondent even if there was that lapse of not writing the name of the person they were nominating in the subsequent but attached accompanying form for the named sub county. I would thus make a finding of fact that the first respondent did get the necessary endorsement for nomination from Kiyuni Sub County accordingly since there is a

total of Seventy (70) voters nominating the 1st respondent which is well above the required Fifty (50).

41. Similarly, Butologo Sub County falls under similar circumstances with Kiyuni Sub County as the first nomination form bears the name of the candidate being nominated with the attached five forms bearing the name of the particular sub county and are duly received by the 2nd respondent as a single batch making them to be of similar intention for nominating the person named on the first form. I would thus similarly find that the voters whose names appear in the nomination forms at pages R.1 to R.6 intended to and did nominate the 1st respondent and since their numbers are well above the minimum of Fifty (50), I would make a finding of fact and conclude that the 1st respondent was validly nominated by Butologo Sub County.

42. As for Kalwana Sub County, it is contended as expounded by Jude Musisi in his affidavit at paragraph 7 that Matovu Peter, Kawooya Samuel, Baguma Steven, Kabaali James, Sikubwabo Dickson, Nilebelaho Leo, Nakafeero Grace, Luwabula Hilda, Komulembe Yozefina, Nassazilsha, Nsubuga Sulayimani and Mukampabuka Domitira never appended their signatures on the list of registered voters supporting the nomination of the 1st respondent for District Chairperson Mubende District in addition to contestations that Nsubuga Sulayimani's affidavit is not admissible since it was taken, commissioned and translated to him by one and the same person which actions are in contravention of the provisions of the Oaths Act and the Commissioner for Oaths Rules which circumstances qualify Nsubuga Sulayimani not to have never appeared before a Commissioner of Oaths.

43. In disposing of this contestation, I refer to and note that **Section 59 (a) of the Evidence Act** imposes on a deponent to depose to facts within that deponent's knowledge with **Order 19 Rule 3 (1) of the Civil Procedure Rules** providing that:

“Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted provided that the grounds thereof are stated...”

44. This requirement applies in equal measure to election petitions as was held by the Supreme Court of Uganda in **Election Petition No. 1 of 2001 Kiiza Besigye vs. Yoweri Kaguta Musveni and Another** Odoki CJ (As he then was) noting in his judgment that:

“An election Petition is not an interlocutory proceeding but a final proceeding, which is aimed at determining the merits of the case. Therefore affidavits admissible in such proceedings must be based on the deponent’s own knowledge, not on information and belief.”

45. If the above provisions of the law and the holding of the Supreme Court are related to the affidavit of Jude Musisi, it would appear to me that it falls short of the required standard he deposes to those facts which are not within his knowledge but within some other person’s knowledge consequently leaving what he says to remain hearsay, which would be unsafe to be used to invalidate the nomination of the 1st respondent under Kalwana Sub County since it is evidence which is uncorroborated. I would thus make a finding as a result that the first respondent was properly nominated under Kalwana Sub County on the basis that Jude Musisi’s assertions remained uncorroborated.

46. In relation to whether the affidavit of Nsubuga Sulaiman is admissible, I am satisfied that he categorically confirmed appearing before counsel Bogezi who read to him the contents of the affidavit before he signed it making the mere allegation that the affidavit was read to him before signing not being sufficient to invalidate it for it is obvious that the process of obtaining his testimony by way of affidavit clearly passed the legal test requirement.

47. Having found the affidavit of Nsubuga Sulayimani valid, then I would make a finding and conclude that the voters at Kalwana Sub County duly nominated the 1st respondent as envisioned from the nomination forms found at pages T1 to T5 of the affidavit in sur rejoinder which by their very nature indicated the will of those persons named therein.

48. From the record, it is evident that the nomination forms for the first respondent with numbers of those nominating him came from the following sub counties: Kiyuni with Seventy (70), Kiganda Fifty (50), Madudu, Fifty (50), West Division Fifty (50), Kibalinga Fifty (50), Bagezza Fifty (50), Makokoto Fifty (50), Butologo Sixty (60), Nabingoola Sixty Eight (68), Kalwana Fifty (50), Kassanda One Hundred nine (109), South Division Fifty (50), Kasambya Fifty (50) and East Division One Hundred Ten (110).

49. When all the above numbers of sub counties are put together and considering each individual number of persons per sub county who appended their names and signatures being well within the required minimum, it would appear to me that the 1st respondent did in fact garner numbers of sub counties and persons

for his nomination for election as chairperson LCV Mubende District from a total of sixteen sub counties with fourteen meeting the statutory requirement of at least Fifty (50) registered voters and above thus fulfilling the requirements of **Section 111(3) (g) of the Local Government Act Cap. 243.**

50. I would thus make a finding of fact and law that the first respondent was duly nominated since he received the required numbers of voters from at least two thirds of the electoral areas in Mubende District.

51. The other matter which I have to consider and make a finding is in relation to the issue of the '**MUST FILL**' fields as testified to by Sulaiman Kato, the Retuning Officer for Mubende District. This witness narrated to court as to the fields which must be filled by a candidate before such a candidates documents are accepted prior to nomination. This assertion, however, would appear to me to be more acts of practice than legal for **Section 111 of the Local Government Act** seems not to support this contention since it does not specify what this witness wanted this court to believe to be the "**Must Fill**" fields which a candidate must fill.

52. However, the perusal of the nomination form itself seems to be and provides the necessary guidelines for areas which are "**MUST FILLS**" as are legally provided for by **Section 111 (4) (f) of the Local Government Act.** This provision of the law directs an intending candidate for elections to sign Form EC1 which is provided for in the Seventh Schedule to the Act and in it are contained provisions for the names of persons nominating a candidate, the proposer and seconder. When this is related to the instant matter, it is visible from the nomination forms for the first respondent that he was proposed by a one Naigate Naume and seconded by a one Kazibwe Zziwa.

53. Furthermore, **Section 119(4) (b) of the Local Government Act** provides for Form EC6 in the Seventh Schedule which is required to be used for the appointment of an agent of the candidate. This requirement was complied with by the first respondent for Kisakye Achilles Ssentongo was appointed and accepted to be the 1st respondent's agent as is seen from the said form attached to the sur rejoinder response to the petition.

54. Also **Section 111 (7) (a) of the Local Government Act** requires that a candidate attaches a declaration in Form EC2 which declaration I find properly filled and attached to the nomination form of the first respondent. Likewise, under **Section 111(7) (b) of the Local Government Act,** a candidate must attach a declaration of Income, Assets and Liabilities which form is made, signed and duly

attached. All these mentioned Forms together when properly filled and attached, in my view have the constituent “**Must Fills**” fields since they are provided for by law.

55. The fact that the above forms were duly filled, submitted and received by the Returning Officer would in my opinion satisfy the legal requirement that these are the documents with their must fill fields which must be returned by an intending candidate and once their constituent fields have been duly recognised as filled and the intending candidate is nominated like in the instant matter when the 1st respondent did, then a nominated candidate would be said to have complied with the legal requirements. I thus find that the must fill forms with their required fields were duly filled and submitted by the first respondent in accordance with the law.

56. Accordingly, having satisfied myself that the first respondent received the minimum required number of Fifty (50) voters who supported his nomination from two thirds of the electoral areas, I would hold that the 1st respondent was validly nominated.

57. The above notwithstanding it should be noted that **Section 15(1) of the Electoral Commission Act** requires that any person alleging any irregularity in respect to any aspect of the electoral process at any stage of such an election is required to report any such irregularity to the Electoral Commission at its lowest level and where at such level the irregularity is not satisfactorily resolved, then the same is required to be forwarded to the Electoral Commission for its final decision with the appeal process taking effect in case one is not satisfied with the decision of the Electoral Commission.

58. Furthermore, **Section 172 of the Local Government Act** provides that where in a local council election there appears to be no provision for handling certain aspects of a local council election, then the provisions of the **Presidential Elections Act** and **Parliamentary Elections Act** in force would apply to such local council elections with such modifications as may be deemed necessary by the Electoral Commission. One such process of local council elections is apparently the issue of inspection of nomination papers. The perusal of the **Local Government Act** seems to show that this is not provided for but under **Section 15 of the Parliamentary Elections Act**, the same is adequately provided for and it provides inter alia that;

Section 15: Any voter registered on the voters roll of a constituency may:-

a) During office hours on the nomination day at the office of the returning officer, inspect any nomination paper filed with the returning officer in respect of the constituency:

b) After the closure of the nomination time and during such period as may be prescribed, inspect any nomination paper in respect of the constituency at such time and subject to such conditions as may be prescribed, and lodge any complaint with the returning officer of the commission in relation to any nomination in respect of the constituency challenging the qualifications of any person.

59. In this petition, it is clear that the petitioner admits never to have utilized or even considered utilizing the above clear provisions of the law in spite of his misgivings as to the process of nomination. He apparently waited until after the election process was concluded and then raised contestations in regard to the nomination of the first respondent. In my considered opinion, since there was a remedial process which he could have utilized before the electioneering was concluded but sat on his clear legal rights and waited until the elections were over and then raise complaints in regard to nomination, I would find and conclude that the petitioner was caught up by his inaction since he had ample opportunity to act but did not do so for **“Equity Aids The Vigilant ”**.

60. In the final result, the first issue would inevitably be answered in the affirmative for I make a conclusive finding that considering all the facts and evidence adduced in this petition, the 1st respondent did qualify to be nominated and was duly and validly nominated as a candidate for LCV Chairperson Mubende District.

61. Before I take leave of this issue, I must take note of some concerns raised by the respondents in regard to the petitioner’s locus in bringing this petition for it has been asserted by them that the petitioner was not resident in Mubende District and so was not qualified to bring this action or even stand for elections in Mubende District. This contention is based on the petitioner’s averments in paragraph 1 of the petition and paragraph 1 of the affidavit in support of the petition where it is stated and I quote;

a. Paragraph 1 of the petition:

“1. Your petitioner Kasirye Zzimula Fred was registered as a voter vide CR. No.003440774 NIN CM710311019HOK at Nakuwadde village, Nakabugo Parish Wakiso sub county, Busiro County Wakiso District and was a

candidate and did participate in the Local Government Council General elections for District chairperson (LC5) Mubende District, having been duly nominated as an independent candidate with a right and qualifying to be returned District chairperson (LC5) in Mubende District ”

a. Paragraph 1 of the affidavit in support of the petition:

“1. That I am a male adult Ugandan of sound mind, a registered voter at Nakuwadde village, Nakabugo Parish Wakiso sub county, Busiro County Wakiso District and my National ID is No.003440774 and the petitioner herein and therefore competent to make this affidavit”.

62. The above averments appear to have formed the concerns of the respondents for it seems to me that the fact that the petitioner was alluding to his residential status as not being in Mubende would be in clear contravention of **Section 111(3) (b) of the Local Government Act** which requires that before one qualifies for election as chairperson of a district, he or she must ordinarily reside or has made an undertaking in writing to the Electoral Commission that within six months of his or her election, he or she shall have established a residence in that district.

63. In my view, and if this is the case, then that provision of the Local Government Act is unconstitutional for it is in direct conflict with and is a contravention of **Article 29 (2) (a) of The Constitution of the Republic Of Uganda, 1995 (As Amended)** which provides that and I quote:

“Every Ugandan shall have the right:

a) to move freely throughout Uganda and reside and settle in any part of Uganda”

64. The above provision of the Constitution is mandatory which makes the requirements provided for by **Section 111 (3) (b) of the Local Government Act** that one had to prove residency or to undertake to reside in a particular district in Uganda before one can be elected to directly contravene the Constitution as it is discriminatory for once one establishes that he or she is a citizenship of Uganda and proves his or her status as a registered voter, such person has the right to participate in any election in any part of this country as a voter or candidate without any limitation for **Article 29 (2) of the Constitution** is **NON DEROGATORY** making the limitations imposed by the Local Government Act to be irregular and unconstitutional.

Issue Two: Whether the 1st Respondent and his agents committed election offences personally or with his consent.

65. The Petitioner alleged that the 1st respondent and his agents committed several election offences including threatening to make use of violence such as;

a. Threatening to beat to death the petitioner's supporters contrary to **Section 154(a) (i) of the Local Government Act**,

b. Using undue influence since the 1st respondent directly and indirectly through his agents threatened to inflict loss upon the residents of Mubende by stating that if they did not elect him, he would ensure that the people of Mubende were excluded from government aided programmes like NAADS contrary to **Section 154 (a) (ii) of the Local Government Act** and,

c. Committed the offense of bribery contrary to **Section 147(1) and (2) of the Local Government Act** when he availed transport (boda boda) to the voters with the intention to influence them.

I intend to examine each of these electoral offences individually and conclude on each hereafter.

66. Under **Section 154 of the Local Government Act**, the offense of **UNDUE INFLUENCE** is committed when:

- a) One makes use of, threatens to make use of any force or violence
- b) Inflicts or threatens to inflict in person or through any other person any temporal or spiritual injury or damage against another person
- c) With the intention of inducing or compelling that person to vote or to refrain from voting.

67. To prove this offence, the petitioner relies on the evidence of one Mbogga Lawrence who in his affidavit accompanying the petition states in **Paragraph 3, 4 And 5** as follows:

"3. That I was threatened by the 1st respondent and his agents and supporters that I will be beaten to death if I continued being the petitioner's coordinator",

4. That I always informed the petitioner of the above threats of violence but he told me to continue working for him",

5. That we continued with the campaigns for the petitioner amidst a lot of threat from the agents of the 1st respondent ”.

68. Looking at the averments by Mbogga, I am constrained not to regard these allegations as serious for Mbogga himself testifies to the fact that after being threatened by the 1st respondent and his agents, he reported to the petitioner who comforted him and only urged him to return to work and he did willingly comply and resumed work as if nothing had happened. Surely, for one to get such threats which could result into his death, it would appear to me that such a threat would have had the consequence of having one getting so frightened and such a person would be duty bound to report such serious threats to the nearest authorities including the Electoral Commission or the police but this was not to be for apparently, no report of such incident was made which is expected of any reasonable citizen to do. Mbogga merely reported to the petitioner who comforted him and urged him to continue with his work and he did. This is not only unbelievable but appears to me to be not an act done by a threatened person. I am constrained to ignore that the alleged threat of death as it appears to have been proffered and cooked up to prop the petitioner's case after he lost the elections for it is clear that the alleged threat is neither here or there but merely conveniently brought up to make a case which can clearly be seen as an afterthought and a concoction arising from the bitterness of losing an election. This court cannot be drawn into a wayward allegation which has no head or tail for it is also trite law that to prove an alleged offense, one must prove all its ingredients to the satisfaction of Court with any doubt always resolved in favor of the accused.

69. On the other hand, there could have even been such threats proffered on Mbogga and others but there is no linkage that such threat either induced or compelled him to vote or refrain from voting leaving me to doubt as to the truthfulness of his assertion for he has not testified to the fact of voting or not after being threatened.

70. In regard to the offense of **bribery**, the petitioner in **paragraph 3(iv) of the petition** and **paragraph 11 of the affidavit in support of the petition** alleges that the 1st respondent committed the offense of bribery. The specifics of these allegations are as reproduced below;

Paragraph 11 of the Petition:

“That I know that the 1st respondent committed the offence of bribery contrary to section 147(1) (2) of the Local Government Act, Cap.140 and section 111(3)(g) of the Local Government Act”.

To highlight how the offence of bribery was committed, the petitioner relies on the affidavit evidence of one Serugo Vincent who states in **Paragraphs 3 and 4 of the Affidavit accompanying the Petition** hence:

“... 3. That during the campaign period, the 1st respondent came to Kakindu Town at about 9.00pm with a public address system de-campaigning the petitioner and ...

4. That he then bought drinks for people around and requested us not to vote for the petitioner...”.

71. The Offense of bribery and its ingredients is provided for under **Section 147 (1) of the Local Government Act**. The **Supreme Court in Election Petition No. 1 of 2001 of Col. (Rtd) Dr. Besigye vs. Yoweri Kaguta Musveni & Another**, Oder JSC at page 475 did clarify on the ingredients of the offense of bribery and stated that in an election, the offence of bribery is committed when the following occurs;

- i) That a gift was given to a voter,**
- ii) The gift was given by a candidate or his agent and,**
- iii) It was given with the intention of inducing the person to vote.**

72. From the above definition by the Supreme Court, the gift must be given to a **voter**. However, **The Local Government Act (Cap.243)** does not define who a **“voter”** is but **Section 1 of the Local Government Act** provides for a **“registered voter”** defining a **“registered voter”** to mean **“a person whose name is entered on the voters register.”** If we go by this definition, then it would seem to me that Serugo Vincent had to be proven as such before his testimony is taken as worthy but unfortunately, his affidavit does not indicate whether he is **“a voter”** or **“a registered voter”** as he states in paragraph 1 of his affidavit accompanying the petition that he is a registered Ugandan under National ID.009998916. No mention as to whether he was a registered voter or voter at all. The possession of a National ID is not within the ambit of the above statutory definition making it to fall short of the holding by the **Supreme Court in the Election Petition of Rt. Col. Kiiza Besigye vs. Yoweri Kaguta Musveni (supra)** for Odoki CJ (As he then was) held that:

“... the absence of evidence that the person alleged to have been bribed was a voter was a serious flaw because unless one is a voter, he or she cannot be influenced to vote for a candidate...”

73. Further, from the above Supreme Court decision, it is clear that for one to plead and succeed that an offense of bribery was committed in an election petition, such a person ought to show that the bribe given induced him or her to vote another candidate other than the one he had previously wanted to vote for. This appears not to be the case with Serugo Vincent for he actually confirmed to this court that in spite of the alleged bribe, he indeed voted for the petitioner as his preferred candidate. In essence, notwithstanding the alleged bribe, he still proceeded to vote for the candidate of his choice which in my view is a clear indication that the alleged bribe did not serve the purpose of swaying his decision thus having contrary effect on his choice of a candidate. This confirmation makes the alleged offense of bribery to fall flat on its face and cannot aid the cause of petitioner.

74. Consequently and considering that no concrete evidence in relation to alleged electoral offences was adduced to the satisfaction of this court, I would hold that the electoral offences as alleged by the petitioner were never committed in as far as the election of the chairperson LCV Mubende District with the result that I would answer Issue Number Two in the negative.

Issue Three: Whether there was non-compliance with Electoral Laws if any and whether the non-compliance affected the outcome of the election in a substantial manner.

75. It is the petitioner's allegation that the entire electoral process for chairperson LCV Mubende District beginning with the nomination of candidates, the campaign period to the polling day was characterized by acts of contravention and non-compliance with the provisions and principles of the Electoral laws under the following circumstances.

- a. That there was non-compliance with the law in regarding the nomination of candidates
- b. That there were election offenses committed by the first respondent or his agents during the election period, and

c. That the Second respondent failed to ensure that elections were held within the time parameters as fixed by the law at a number of polling stations for the election process at a number of polling stations closed before the official time of 4.00pm.

76. I have already addressed my mind and adequately made conclusions in regard to the issues of nomination of candidates and election offenses and I do not intend to further discuss them here save that I did answer them appropriately. I will only address the issue of closing polling stations before the official voting time which the petitioner alleged affected the outcome of the results in a substantial manner.

77. The petitioner's concerns here is that the officials of the Electoral Commission closed several polling stations before the official closing time of 4.00 pm on the polling day as follows;

- Bujaala polling station – voting stopped at 2.30 p.m.,
- Kanseera N-Z the process of counting votes had ended by 4.01 pm,
- Mabaale vote counting stopped at 2.15pm,
- Nabutiti voting exercise closed at 3.00p.m.,
- Kiseeza vote counting and tallying commenced and concluded at 2.30p.m.,
- Kigumba voting ended at 2.20 p.m.,
- Kawaala the entire voting process closed by 3.20p.m.,
- Katabalanga Primary School polling station counting of votes commenced at 3.45 p.m.,
- Kasana vote counting ended at 4.06p.m.,
- Lugaga polling was completed by 8.00 a.m.,
- Rukoba it was indicated that polling was closed at 0730 hrs.,
- Lutovu Trading Centre it was at 2.00 p.m.; and,
- Nakawala Primary School B/NAKA it was 8.00 am.

78. In all the above polling stations, the petitioner alleges that the act of closing polling stations or counting of votes before the scheduled time were irregular and contravened **Article 67(1) of the Constitution** and **Section 12(j) of the Electoral**

Commission Act. To support these allegations, several testimonies of witnesses were adduced including that of one Sekyole Vincent who deposed in paragraph 7 of his affidavit in support of the petition as follows;

Paragraph 7:

“That I know people were not reporting to the polling station to vote, the voting process was stopped at 2.30pm and the presiding officers started counting the votes and the entire process was completed by 12.00pm ”.

79. Another witness, Katongole Emmanuel the overall supervisor for the petitioner in Eastern Division deposed in his affidavit at paragraphs 5 and 6 as follows:

Paragraph 5:

“That at about 2.00pm after casting my vote, I rode to Mabaale Polling station and I reached there at 2.15pm.

Paragraph 6:

“That I found the presiding officer of the above polling station counting votes at 2.15 pm and people had been told that the voting process had ended.”

80. In response to the above allegations, Kato Sulaiman the Returning Officer of Mubende District was cross examined at length in this respect and offered some insights and explanation as to what could have taken place. He alluded that most of those allegations arose from errors or omissions on the electoral records as some of the presiding officers mis-filled the polling closing time when filling in the Declaration of Results Forms owing to limited training they had received which in any case never exceeded one to two days before the election exercise was carried out with the result that no deliberate action in this regard was taken by those officials to affect the interests of the petitioner by the Electoral Commission.

81. In respect to the explanation given by the Returning Officer, I have had the benefit of looking at the record and I have taken judicial notice that over time, courts have overturned some elections based on this very type of allegation depending on the facts on the ground.

82. However, as far as the instant matter is concerned, the decision of the **Supreme Court of Uganda in Presidential Election Petition No. 1 of 2001: Col. (Rtd) Dr. Kiiza Besigye versus Museveni Yoweri Kaguta and the Electoral**

Commission (supra) is of help for Odoki B (Chief Justice As he then was) while citing with approval the holding of Grove. J. in **Borough of Hackney Gill versus Reed [1874] XXXI L.J. 69** emphasized that an election should not be annulled due to minor errors or trivialities. This is what the learned justice had to say:

“An election is not to be upset for informality or for a triviality. It is not to be upset because the clock at one of the polling booths was five minutes too late or because some of the voting papers were not delivered in a proper way. The objection must be something substantial, something calculated to affect the result of the election. ... so far as it appears to me, the rational and fair meaning of the section appears to be to prevent an election from becoming void by trifling objections on the ground of informality, but the Judge is to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a rational mind to produce a substantial effect.”

83. Relating the above holding to the instant matter, it is the case of the petitioner as far as the instant allegation is concerned, garnered from the testimonies of Sekyole Vincent, Katongole Emmanuel, Ssebufu John, Mukisa Dickson and Mboggo Lawrence that at several polling stations as listed earlier above, voting closed before the official closure time thus depriving the petitioner’s voters the opportunity to vote for him.

84. The petitioner himself concedes that at most these polling stations, he had polling agents who included Kutungu Charles at Bujaala polling station, Nakibuuka Juliet at Mabaale polling station, Ssicoula Haluna at Kanseera polling station, Twinomujuni Abeli at Kasaana polling station, Tusiime Veda at Katabalanga polling station, Niyigaba Joseph at Kiseeza, Mugwanya Joseph at Kawaala polling station , Nahurira Stephen at Lugaaga polling station, Nambozo Florence at Rukoba polling station, Kampire at Lutovu Trading Centre polling station and Bashasha Nakawala Primary School polling station.

85. Of interest however is the fact that none of these polling agents deposed to the fact that would confirm the allegation that voting time was shortened at any of the polling stations where they were deployed as the petitioner’s agents. The deponents to these very fact are the supervisors for the petitioner involved in constant movement from one polling station to another and were neither polling agents nor stationed at any of the impugned polling stations yet the actual polling agents of the petitioner stationed at those very polling stations endorsed the Declaration of Results Forms without indicating on those forms which are on

record their reservations regarding early closure as the petitioner would want this court to believe. The fact is that a polling agent at a particular polling station is the legal and official representative of a candidate and as such is the best person to provide evidence as to whether the alleged closure of the polling station earlier or not was true. Without their testimony to that fact, the allegation of the petitioner remains weak.

86. Furthermore, the polling stations where the alleged inadequacies occurred are Twelve (12) out of a total of Five Hundred Ninety One (591) for the whole electoral area of Mubende District. Even if these were to be considered and calculated arithmetically, they would form a very low percentage of occurrences for the court to disturb the majority will of the people of Mubende District.

87. More important and indeed so, this court has not been offered any concrete evidence that the early closing of the polling stations affected only the petitioner for even the evidence of Sekyole Vincent who was the petitioner's witness could not be relied upon for he kept on contradicting himself in regard to the closing time so much that this court finds his evidence to this fact unreliable. Sekyole Vincent stated that at the polling station where he voted from, few people turned up to vote and the voting exercise was closed at 2.30 p.m. yet at another point, he goes on to state that at that very polling station, the entire voting process was completed by 12.00 noon! Surely how could the presiding officer have stopped the voting at 2.30 p.m. and then started counting the votes by 12.00 p.m. when the entire process was completed? The differing timelines proposed by Sekyole are a reflection of an attempt to cook up a story which denies his testimony any credibility.

88. With such contradictions and half-truths, the case of the petitioner would remain hollow, unfounded and unproven. However, even if this court was to take into account the problems in regard to the closing timelines, the Court of Appeal for Uganda in **Election Petition Appeal No.29 of 2011: Muhindo Rehema versus Winfred Kiiza and Electoral Commission** held that the non-compliance **PER SE** is not enough to overturn an election but rather the non-compliance must be so significant so as to substantially affect the results of the election with the same court noting that the Supreme Court of Uganda in the Election Petition of **Dr. Kiiza Besigye versus Y. K Museveni and Another (supra)** held that in *assessing the effect of such noncompliance, the trial court must evaluate the whole process of the election by using both the qualitative and quantitative approaches with quantitative approach taking the numerical approach to determine whether the*

none-compliance significantly affected the results and the qualitative approach looking at the overall process of the election especially the transparency of registration, chaos at polling stations, voter information, the process of counting and tallying and declaring results and the ability of each voter to cast their vote.

89. So, were this court to use the quantitative approach and apply it to the instant matter, it is a fact on record which is not denied that the 1st respondent polled a total of 52,850 votes compared to the petitioners 34,279 with the difference between the two being a whole 18,571 making the quantitative approach not to favor the petitioner for the arithmetic difference of 18,571 is so considerably large as to have affected the outcome of the result of the elections substantially notwithstanding the alleged flaws at the Twelve (12) polling stations.

90. As for the qualitative approach which looks at the overall process of the election especially the transparency of registration, chaos at polling stations, voter information, the process of counting, tallying and declaring results and the ability of each voter to cast their vote, these have not been sufficiently proven to the satisfaction of court to have substantially affected the election with reported flaws as alleged by the petitioner not being satisfactory to overturn the result of the elections.

91. In the final result therefore, I would, taking into account all the above find that the non-compliance with the electoral laws, if any, was so insignificant to have substantially affected the outcome of the elections of LCV chairperson Mubende District. Consequently, issue three is answered in the negative.

Issue Four: What are the available remedies

92. The resolution of the earlier issues is suggestive that the petitioner has failed to prove all his assertions to the satisfaction of this court, to the standard required in an election petition for indeed it is outwardly clear that given the overwhelming results of the polling numbers as indicated by the large turn up of voters who participated in the voting process with the majority voting for the first respondent, this court is left with no supposition but to conclude that the people of Mubende District trusted in Bazigatirawo Kibuuka Francis Amooti and so overwhelmingly elected him to be their LCV chairperson to the exclusion of the petitioner which in my view is indicative of their free will and choice as to which

of the two candidates was preferable as their LCV chairperson. That will of the people has to be respected for indeed the people of Mubende spoke freely through their votes and made their choice which this court cannot tamper with.

93. In conclusion therefore, I would thus find as a matter of fact and law that the petitioner has failed to prove all his allegations as against the two respondents to the standard required in an election petition and in the final result, this petition would fail as it does fall flat on its face.

Orders

94. This petition is accordingly found wanting and is dismissed with costs to the respondents in equal proportions.

HENRY PETER ADONYO

JUDGE

31ST OCTOBER, 2017

