

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

ELECTION PETITION NO. 023 OF 2021  
IN THE MATTER OF THE LOCAL GOVERNMENTS ACT, CAP 243 (AS  
AMMENDED)

AND

IN THE MATTER OF AN ELECTION PETITION AGAINST THE MBALE CITY  
INDUSTRIAL DIVISION CHAIRPERSON / MAYOR ELECTIONS HELD ON THE 25<sup>TH</sup>  
DAY OF JANUARY 2021.

KURANGA FRED MASABA .....PETITIONER  
VERSUS

1. ELECTORAL COMMISSION  
2. MASABA MUHAMOOD MUTENYO } .....RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE.

JUDGMENT

**Introduction:**

The petitioner contested as a candidate for Mbale City Industrial Division Chairperson/Mayor in the recently concluded Mbale City Chairperson Elections held on the 25<sup>th</sup> day of January 2021 wherein the 1<sup>st</sup> respondent gazetted the 2<sup>nd</sup> respondent as the winner on the 22<sup>nd</sup> day of April 2021. The petitioner was dissatisfied with the outcome of the said elections thus brought the instant petition under **Section 138 (1)** of the Local Government Act, Cap. 243, seeking the following orders;

- i. A declaration that the election and declaration of the 2<sup>nd</sup> Respondent as the Mbale City Industrial Division Chairperson/Mayor was illegal, unlawful, null and void *ab initio*.
- ii. An order nullifying and/or setting aside the election of the 2<sup>nd</sup> Respondent as the Mbale City Industrial Division Chairperson/Mayor.
- iii. An order directing the 1<sup>st</sup> Respondent to conduct a free, fair and credible Mbale City Industrial Division Chairperson/Mayor election.
- iv. The Respondents pay costs of the Petition.

## Pleadings:

The petitioner contended that the entire election was not conducted in a free, fair and transparent manner in accordance with the provisions of the Constitution of the Republic of Uganda, 1995, the Electoral Commissions Act and the Local Governments Act. That there were numerous electoral malpractices and offences which were committed by the respondents, their agents and supporters to wit; falsification/alteration of results/multiple voting/ disenfranchisement, bribery of voters, intimidation/voter violence/disenfranchisement of voters and ferrying of voters/permitting unauthorized person to vote.

The petition was supported by the affidavits of the petitioner, Mwanika Bruno, Achieng Phoebe, Gususwa Nathan Ptereson, Muyama Reachel, Nabuteli Harriet, Magomu Steven Fredrick, Asadi Were, Mutaka Irene, Wamana Levi, and affidavits in rejoinder of Nabuyelee Harriet, Nabude Grace, Mukamba Robert Kakai Joan, Wantegeli Abbas, Mutuwa Violet, Nabukwasi Scovia, Mubikirwa Ronald, and Manyali Denis.

The 1<sup>st</sup> respondent in her answer to the petition denied all the allegations made by the petitioner and contended that the results for the pinpointed polling stations were strictly and perfectly counted, recorded in the declaration of Results Forms, announced and tallied in the presence of all the candidates or their appointed agents and other stake holders who wished to be present and they were confirmed and dully endorsed by both the presiding Officers and candidates' agents.

That the 1<sup>st</sup> respondent was not aware of the allegations of bribery at the polling stations of Masaba High School, Shende, Masaba Cell, Wakwahaba Lower Petro Station, Munkage Koran Primary School, Zesui (A-M) and Kautharah contained in paragraph 12 of the petition as none was ever reported to it by anybody.

In further, reply to the allegations of intimidation and violence, the 1<sup>st</sup> respondent contended that there was deployment of Police Constables at various polling stations to curtail any such vices. And that there was no ferrying of unauthorized persons to vote at polling stations of Kautharah and Munkaga.

And in the *alternative*, that if there was any non-compliance, the same did not affect the outcome of the election in a substantial manner.

The 1<sup>st</sup> respondent's answer to petition was supported by the affidavit of Rebero Charles.

The 2<sup>nd</sup> respondent on the other hand in his answer to the petition denied the allegations of the petitioner and averred that the elections were free, fair and transparent and in accordance with the law. That there were no alterations at the pinpointed polling stations, nor was there any bribery or intimidation, violence and disenfranchisement of voters. Thus, there were no illegalities or malpractices committed by the 2<sup>nd</sup> respondent or any other person with his knowledge, consent or approval. That the alleged non-compliance with the electoral laws, if at all could not and did not affect the results of the elections in a substantial manner.

The 2<sup>nd</sup> respondent's answer to the petition was supported by the affidavits of Musonyi David Luseti, Muzaki Caroline, Sudi Kakaire, Waiswa Muhammed, Ibrahim Wabwire, Oduma Ronald, Wasike Miriam, Kahindo Zula, Nalwanga Yudaya, Ssempijja Umar, and Kintu Rukata Shariff.

The petitioner in his affidavit in rejoinder maintained that the entire electoral process for Mbale City Industrial Division Chairperson/ Mayor was not conducted in a free, fair and transparent manner in accordance/compliance with the provisions of the Constitution of the Republic of Uganda, 1995, the Electoral Commissions Act and the Parliamentary Elections Act.

#### **Issues:**

During scheduling, the following issues were raised for this court's determination;

1. Whether the election for Mbale City Industrial Division Chairperson/ Mayor, Mbale City was conducted in accordance with Electoral laws?
2. Whether the non- compliance (if any) affected the result of the election in a substantial manner?
3. Whether the 2<sup>nd</sup> Respondent committed any electoral offences by himself or his agents with his knowledge, consent or approval?
4. What remedies are available to the parties?

Counsel for the petitioner however in his submissions decided to frame different issues and eliminated issue 3 as listed below;

1. Whether the Election was conducted in accordance with the law?

2. If not, whether the non-compliance affected the result in a substantial manner?
3. What remedies are available?

Court will adopt the petitioner's newly set issues since the initial issues one and three seem to be covered under the current issue one.

#### **Representation:**

Mr. Nangulu Edmund represented the petitioner, Mr Patrick Wettaka together with Gilda Katutu appeared for the 1<sup>st</sup> respondent and Mr. Obedo Deogratiuous together with Ogudi Anthony appeared for the 2<sup>nd</sup> respondent. All parties filed written submissions.

The Petitioner applied to cross examine the Respondents' witnesses that is Rebero Charles, the 1<sup>st</sup> Respondent's Returning Officer, the 2<sup>nd</sup> Respondent and his witnesses; Were Khalidi Prezo, Bikuku Geoffrey and Ibrahim Wabwire .

#### **Preliminary objections:**

Counsel for the petitioner raised a number of preliminary objections as follows;

- a. That the 2<sup>nd</sup> Respondent's supporting affidavits are fundamentally defective for offending section 3 of the Illiterates Protection Act.

Counsel for the petitioner quoted section 3 of the Illiterates Protection Act which provides that;

*"Any person who shall write any document for or at the request of or on behalf or in the name of any illiterate person shall also write on the document his or her true and full name as the writer of the document and his or her true and full address and his or her doing so shall imply the statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her."*

He added that, section 1 of the Oaths Act provides that;

*"The oaths which shall be taken as occasion shall demand shall be the oaths set out in the First Schedule of this Act."*

That Form B of the First Schedule of the Oaths Act provides for a jurat where a third person has read the affidavit, as in the instant case, to the illiterate

deponent. And failure to follow the dictates of the law has been held to render the affidavits void as the anomaly is not merely a matter of form but of substance since it goes to the root of the protection of an illiterate.

Counsel for the petitioner quoted the case of **Nsubuga Sylvest v. Kalibala Charles & Another**, Election Petition Appeal No. 70 of 2016, where it was stated that;

*“The law on preparation of affidavit evidence is purposed to preserve the sanctity of the species of evidence. As such it is important that the law is strictly complied with to avoid defeating the spirit of the law... the 23 affidavits did not show who drafted them but instead reflected that they were translated by one Lubale Jimmy. It is our strong view that preparation and translation are two different things and one cannot be held to suffice for the other”.*

Counsel for the petitioner added that the necessity for the Commissioner for Oaths to certify that he witnessed the interpretation of the contents of the affidavit to the illiterate deponent is at the bedrock of the protection sought by the Act. It is not merely a matter of form but substance and this position was confirmed in the case of **Winfred Matsiko v. Bamukwatsa Betty**, Election Petition No. 004 of 2018.

Counsel for the petitioner went on to submit that in the instant case, the 2<sup>nd</sup> Respondent’s supporting affidavits were sworn by illiterate persons. That all the supporting affidavits deponed by Were Khalidi Prizo, Bikuku Geofrey, Jamada Musamba, Amina Matama, Musonyi David Luseti, Muzaki Caroline, Sudi Kakaire, Waiswa Muhammed, Ibrahim Wabwire, Oduma Ronald, Wasike Mirriam, Kahindo Zura, Nalwanga Yudaya, Ssempijja Umar, Kintu Rukata Shariff were deponed by illiterate persons and were accordingly subject to specific requirements as illiterate persons.

Each of the affidavits bears certification to the effect that the contents of the same were translated by Gizaza Samson. That this was a fundamental omission and a violation of the provisions of the Oaths Act and the Illiterates Protection Act which require an affidavit executed on behalf of an illiterate person to bear a particular jurat confirming that the translation was effected in the presence of the commissioner for oaths.

Counsel for petitioner relied on the case of **Winifred Komuhangi Masika v. Bamukwatsa Betty & Electoral Commission**, Election Petition No. 04 of 2018,

where it was stated that an affidavit executed on behalf of an illiterate person must clearly state that the same was executed under the express instructions of the illiterate. The commissioner for Oaths must state that the content was read over to the Deponent in his presence. That failure to follow the dictates of the legislation rendered the said affidavits void.

Counsel for the petitioner concluded that this Court should therefore strike out the affidavits of Were Khalidi Prizo, Bikuku Geoffrey, Jamada Musamba, Amina Matama, Musonyi David Luseti, Muzaki Caroline, Sudi Kakaire, Waiswa Muhammed, Ibrahim Wabwire, Oduma Ronald, Wasike Miriam, Kahindo Zura, Nalwanga Yudaya, Ssempijja Umar and Kintu Rukata Shariff.

Counsel for the 2<sup>nd</sup> respondent on the other hand submitted in reply that the said affidavits were commissioned properly before a commissioner of oaths before whom the various deponents appeared and the same were read back to the deponents in and translated to languages they understood.

I have carefully considered the submissions and authorities as cited by the parties, I will go ahead to resolve this preliminary objection as follows;

Illiterate has been defined under **Section 1 (b)** of the Illiterates Protection Act to mean;

*“In relation to any document, a person who is unable to read and understand the script or language in which the document is written or printed.”*

In the instant case the impugned affidavits all have a certificate of translation clearly indicating that the deponents were illiterate.

Form B of the Oaths Act provides the format of a jurat where a third person has read the affidavit to the deponent as below;

*“Sworn at.....in the district of .....this  
.....day of.....,20.....,before me, and I certify that this  
affidavit was read over in my presence to the deponent he/she being blind or  
illiterate and the nature and contents of the exhibits referred to in the affidavit  
explained to him/her in the .....language. The deponent appeared  
perfectly to understand the same and made his/her mark or signature thereto  
in my presence”*

The format of the jurat as outlined above indicates that it is the Commissioner of Oaths who certifies that the affidavit in case of a deponent who is illiterate. That the contents of the affidavit were translated to him/her in the presence of the Commissioner of Oaths and it is confirmed that the deponent understood the contents thereof. In the case of **Asea John Bosco Ozuma v. Tumwesigye Deo Mbabazi and Another, Election Petition No. 22/2016**, it was held that; the law requires that the Commissioner of Oaths is the one that should make the affirmation and certify that the document and all its annextures were read and explained to the deponent. Thus, the obligation to certify is placed on the Commissioner for Oaths personally.

Also, in the case of **Tikens Francis and Another v. The Electoral Commission and 2 Others, Election Petition No. 1 of 2012** it was stated that;

*“There is a clear intention in the above enactments that a person who writes the document of the illiterate must append at the end of such a document a kind of “certificate” consisting of that person’s full names and full address and certifying that person was the writer of the document, that he wrote the document on the instructions of the illiterate and in fact, that he explained to the illiterate the contents of the document and that, in fact, the illiterate as a result of the explanation understood the contents of the document...the import of Section 3 of the Act is to ensure that documents which are purportedly written for and on instructions of illiterate persons are understood by such persons if they are to be bound by their content...these stringent requirements were intended to protect illiterate persons from manipulation or any oppressive acts of literate persons...the requirements of the Illiterates Protection Act are legal requirements and not procedural requirements. The law can therefore not be bent under Article 126(2)(e) of the Constitution...”*

The provisions of **Section 3** of the Illiterate’s Protection Act, are therefore in mandatory terms and failure to comply with the said Section renders the document inadmissible. The impugned affidavits have a certification by a translator and not a jurat made by the Commissioner for Oaths indicating that the contents were read to the deponents in his presence and understood. The certification as made by the translator indicates that the contents were translated to the deponents and understood, however, this should have been certified by the Commissioner of Oaths confirming that the affidavits were read to the deponents in his presence which was not done in the instant case.

It is this court's finding and in agreement with the submissions of the petitioner and authorities as cited that the affidavits in support of the 2<sup>nd</sup> respondent's answer to petition made by; Were Khalidi Prizo, Bikuku Geoffrey, Jamada Musamba, Amina Matama, Musonyi David Luseti, Muzaki Caroline, Sudi Kakaire, Waiswa Muhammed, Ibrahim Wabwire, Oduma Ronald, Wasike Miriam, Kahindo Zura, Nalwanga Yudaya, Ssempijja Umar and Kintu Rukata Shariff offended the law and the same are accordingly struck out. This objection is hereby upheld.

b. That the 2<sup>nd</sup> respondent's 2<sup>nd</sup> volume of affidavits is incompetent on account of having been filed out of time.

Counsel for the petitioner in his submissions cited the case of **Yusuf Mutembuli v. Magomu & Another, Election Petition Appeal No. 43 of 2016**, where it was held that the filing of pleadings in Electoral matters is restrictive and is governed by the provisions of **Order 8 rule 18** of the Civil Procedure Rules. It was further stated that upon filing a petition, the Respondent is only permitted to file an answer and all supporting Affidavits within 10 days and thereafter the Petitioner shall file a rejoinder.

That in the instant case, the 2<sup>nd</sup> Respondent made his Answer to Petition on the 19<sup>th</sup> day of May 2021 without leave of the Court, filed supplementary Affidavits on the 27<sup>th</sup> day of May 2021. Thus, the Affidavits of Musonyi David Luseti, Muzaki Caroline, Sudi Kakaire, Waiswa Muhammed, Ibrahim Wabwire, Oduma Ronald, Wasike Miriam, Kahindo Zura, Nalwanga Yudaya, Ssempijja Umar, Kintu Rukata Shariff were illegally filed on the Court Record.

Counsel for the Petitioner concluded that this court should strike out the said Affidavits in the interest of justice and fairness.

Counsel for the 2<sup>nd</sup> respondent on the other hand in reply submitted that the Petitioner himself filed his affidavits in rejoinder on the 11<sup>th</sup> of August which is way out of the stipulated time and while in court on the 19<sup>th</sup> of September, 2021, that it was agreed that the parties do not get into issues of objections and court allowed all the pleadings to be on file.

Counsel for the 2<sup>nd</sup> respondent quoted the case of **Tamale Julius Konde v. Ssenkabuga Isaac & Electoral Commission, Election Petition No. 75 of 2016**, where court held *inter alia* that;



5 *“since it is sometimes practically not possible to file all the affidavits in support of the petition at the same time as the petition. As long as the additional affidavits are filed before the scheduling conference is conducted, it’s usually acceptable as no prejudice would be occasioned to the Respondent even if no leave of court is obtained.”*

That, these additional affidavits were filed before scheduling, served on the Petitioner who responded to the same and this did not prejudice the Petitioner so the affidavits should be allowed in the interest of justice and fairness.

10 It is this court’s view that it is trite that election petitions operate under strict time lines however, court has the discretion to allow affidavits filed out of time if it deems them as relevant. It would therefore be wrong to disregard considerable affidavit evidence simply because it was filed out of time. (See: **Bantalib Issa Taligola v. Wasugirya Bob Fred and the Electoral Commission, Election Petition Appeal No. 11 of 2006**).

15 I also, agree with the submissions of the 2<sup>nd</sup> respondent that affidavits can be filed at any time before scheduling even without leave of court as long as the opposite party has a right of reply and this will not prejudice them in any way. In the circumstances if this court had not already struck out the impugned affidavits for contravening the provisions of **Section 3** of the Illiterate’s Protection Act, the same would have been admitted as this court has discretion to decide on what is  
20 pertinent when it comes to evidence that aids court in disposal of the case before it and the affidavits were made before scheduling and the petitioner had the opportunity to reply to the same. This objection is accordingly overruled.

25 c. **That some of the 2<sup>nd</sup> respondent’s affidavits are defective on account of variance in signatures.**

Counsel for the petitioner relied on the case of **Karazani Charles v. Musoke Paul Sebulime & Electoral Commission, Election Petition No. 17 of 2016**, where it was held that where the Deponent’s signature is inconsistent with the signature on the National Identity Card or other guiding documents. That such inconsistency  
30 renders an affidavit unreliable and void.

The Affidavits in issue in the instant case are those of;

- i. Nalwanga Yudaya who allegedly has a different from the signature on the National Identity Card in the names of Nalwanga Udaya while the

National Identity Card is scribbled in “NALWANGA”, that the National Identity Card bears “NALUANGA”.

- ii. Ssempijja Umar’s signature on his Affidavit is completely different from the signature on the Declaration of Results Form for Mukanga Koran Primary School (A-NAL) marked Annexure A21 of the Petitioner’s Affidavit in support and the signature on the National Identity Card.
- iii. Oduma Ronald’s signature on his affidavit at page 12 and National Identity Card do not tally with the signature on the Declaration of Results form for warid booster polling station.

Counsel for the 2<sup>nd</sup> respondent in reply submitted that there was no inconsistency in the signatures of the deponents as raised by the petitioner as the said signatures are similar and prayed that the preliminary objection be disregarded.

I have carefully considered the submissions of both parties in regard to this issue and I have carefully looked at the affidavits in question.

The affidavits as outlined above clearly differ in how the signatures were appended on the National Identity Card and the affidavits noting from the way the letters are made out or written save for Nalwanga Yudaya’s affidavit whose photocopy of the National Identity Card was cut at the bottom breaking the letter “W” to look like “UA”.

It is not true that the signatures are similar as submitted by the 2<sup>nd</sup> respondent, on browsing the affidavits in particular that of Ssempijja Umar, it can be seen that there was tracing done before the person who forged the signature signed over the tracing. This court would ordinarily rely on a handwriting expert since it does not have the expertise to examine handwritings as per **Section 43** of the Evidence Act which provides that;

*“When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in that foreign law, science or art, or in question as to the identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”*

The duty of a handwriting expert was outlined in the case of **Maulidi Abdullah Chengo v. Republic [1964] 1 E.A 122**, where it was held that; the most that an expert on handwriting can properly say, in an appropriate case, is that he does not believe a particular person or, positively, that two writings are so similar as to

be indistinguishable. Court further held that the handwriting expert should point out the particular features of similarity or dissimilarity between the forged signature on the questioned document and the specimens of handwriting. The court referred to a passage from the summing-up of Lord Hewart in the trial of William Henry Podmore (the famous Trial Series), which received approval of Court of Criminal Appeal in **R. v. Podmore (2)** where he said:

*“Let me say a word about handwriting experts. Let everyone be treated with proper respect, but the evidence of handwriting experts is sometimes rather misunderstood. A handwriting expert is not a person who tells you, this is the handwriting of such and such a man. He is a person who, habituated to the examination of handwritings, practiced in the task of making minute examination of handwriting, directs the attention of others to things which he suggests are similarities. That, and no more than that, in his legitimate province.”*

It is therefore the duty of a handwriting expert to give their opinion to court in regard to the features of similarity or dissimilarity between a forged signature and specimens of handwriting. The petitioner who has the duty to prove his allegations could have engaged a handwriting expert to guide this court on the actualities of the signatures of the three deponents above.

Be that as it may, this court is not prohibited from comparing signatures/handwritings in the absence of expert evidence, however, this will be exercised with great caution since this court lacks expertise in the matter. (See: **Hon. Kipoi Tonny Nsubuga v. Ronny Waluku Wataka and 2 Others, Election Petition Appeal No. 7 of 2011**).

I accordingly find that the signatures on the affidavits of Oduma Ronald’s and Ssempijja Umar’s vary from what was appended on their National Identity Cards. And the said affidavits already stand struck out so this court cannot strike them out again. This preliminary objection is therefore upheld in part.

In conclusion therefore, all the 2<sup>nd</sup> respondent’s affidavits stand struck out and he is only left with his affidavit in support of the petition.

#### **Burden and standard of proof:**

It is a cardinal principle of the law of evidence that by virtue of **Section 101 and 102 of the Evidence Act** that the burden of proof rests upon whoever desires any

court to give judgment as to any legal liability dependant on the existence of facts which he or she asserts must prove those facts exist.

In Election Petitions the burden of proof therefore lies upon the Petitioner to prove that each and every assertion or allegation of malpractice or non-compliance with the provisions and the principles laid down by the relevant laws was committed to the satisfaction of the Court. The standard of proof required is proof on a balance of probabilities. (See: **Mukasa Anthony Harris v. Dr. Bayiga Michael Phillip Lulume, Election Petition Appeal No. 18 of 2007.**)

The standard of proof is set by the statute to be on a balance of probabilities, because of the public importance of an election petition, the facts in the petition must be proved to the satisfaction of the Court. A petitioner has a duty to adduce credible and/or cogent evidence to prove the allegations to the stated standard of proof. (See: **Matsiko Winifred Komuhangi v. Babihuga J. Winnie, Election Petition Appeal No. 9 of 2002.**)

In the case of **Col. (Rtd) Besigye Kizza v. Museveni Yoweri Kaguta & The Electoral Commission Petition No. 1 of 2006**, Odoki, C.J (as he then was) in his judgment cited with approved the observations of Lord Denning in the English case of **Blyth v. Blyth [1966] A.C 643** where it was stated as follows;

*“The courts must not strengthen it nor must they weaken it. Nor would I think it desirable that any kind of gross should be put on it. When parliament has ordained that a court Must be satisfied only parliament can prescribe a lesser requirement. No one whether he be a judge or Juror would in fact be satisfied “if he was in a state of reasonable doubt”*

I agree with the submissions and authorities cited by all of the parties in as far as burden and standard of proof in election petitions are concerned. However, the same will not be reproduced here, though they are highly appreciated.

#### **The law:**

Local Government Council elections can be nullified or set aside as per the provisions of **Section 139** of the Local Governments Act, Cap 243 and the grounds must be proven to the satisfaction of the Court either;

- a. That there was failure to conduct the election in accordance with the provisions of this Part of the Act and that the non-compliance and failure affected the results of the election in a substantial manner;

- b. That a person other than the one elected purportedly won the election;
- c. That an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or
- 5 d. That the candidate was at the time of his or her election not qualified or was disqualified from election.

**Resolution of issues:**

10 **Issue 1: Whether the Mbale City Industrial Division Chairperson / Mayor Elections were conducted in compliance with the law and procedure?**

**a. Falsification/alteration of results:**

15 Counsel for the petitioner in his submissions stated that it was the petitioner's contention that the elections were not free and fair and that the returning officer declared false results after the 1<sup>st</sup> respondent's agents neglected to enter each candidate's actual results. Thus, according the petitioner lesser votes totalling to 3,647 votes.

That the actual results as obtained by the petitioner at the polling stations are indicated as hereunder;

- 20 1. At Kizungu Trading Centre N-Z Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 26 votes while the 2<sup>nd</sup> respondent obtained 38 votes.
- 2. At Bugisu model Primary School Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 28 votes while the 2<sup>nd</sup> respondent obtained 77 votes.
- 25 3. At Munkaga Koran Primary School A –NAL Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 32 votes while the 2<sup>nd</sup> respondent obtained 88 votes.
- 30 4. At Kigya Warid Boster Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 05 votes while the 2<sup>nd</sup> respondent obtained 11 votes.

5. At Excel NUR & PRI SCH(A-M) Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 17 votes while the 2<sup>nd</sup> respondent obtained 49 votes.
- 5 6. At Munkaga Koran Primary School (NAM-Z) Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 41 votes while the 2<sup>nd</sup> respondent obtained 101 votes.
7. At Kizungu Trading Centre A-M Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 26 votes while the 2<sup>nd</sup> respondent obtained 45 votes.
- 10 8. At Excel NUR PRI SCH (N-Z) Polling Station in Bukasakya ward, Industrial Division the petitioner obtained 27 votes while the 2<sup>nd</sup> respondent obtained 35 votes.
- 15 9. At Nakibiso Musoto Christian PRI-SCH Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 46 votes.
10. At Musoto Christian Nursery School Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 102 votes.
- 20 11. At Masanda Trading Centre(A-M) Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 32 votes while the 2<sup>nd</sup> respondent obtained 106 votes.
12. At Makhumbo Grounds Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 36 votes while the 2<sup>nd</sup> respondent obtained 74 votes.
- 25 13. At Green Pastures S.S Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 51 votes.
14. At Nabitiri Play Ground Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 12 votes while the 2<sup>nd</sup> respondent obtained 90 votes.
- 30 15. At Masanda Trading Centre Polling Station in Nabitiri ward, Industrial Division the petitioner obtained 58 votes while the 2<sup>nd</sup> respondent obtained 02 votes.
16. At Kisenyi Primary School Polling Station in Marale ward, Industrial Division the petitioner obtained 13 votes while the 2<sup>nd</sup> respondent obtained 59 votes.
- 35 17. At Marale C.O.U (A-M) in Marale ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 73 votes.

18. At Bugema B (A-M) Polling Station in Marale ward, Industrial Division the petitioner obtained 10 votes while the 2<sup>nd</sup> respondent obtained 89 votes.

19. At Bugema B (N-Z) in Marale ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 85 votes.

20. At Nasinge Adam's Mosque Polling Station in Marale ward, Industrial Division the petitioner obtained 18 votes while the 2<sup>nd</sup> respondent obtained 89 votes.

21. At Marale C.O.U (N-Z) Polling Station in Marale ward, Industrial Division the petitioner obtained 13 votes while the 2<sup>nd</sup> respondent obtained 78 votes.

22. At Nashisa PRI SCH. Polling Station in Tsabanyanya Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 51 votes.

23. At Kibiniko C.O.U Polling Station in Tsabanyanya Ward, Industrial Division the petitioner obtained 13 votes while the 2<sup>nd</sup> respondent obtained 03 votes.

24. At Masaba Play Ground Polling Station in Tsabanyanya Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 55 votes.

25. At Bugema C – Bukasakya S/Q Polling Station in Tsabanyanya Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 70 votes.

26. At Stadium A Polling Station in Masaba Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 29 votes.

27. At GRC Station - Temutwewo Polling Station in Masaba Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 22 votes.

28. At GRC Station – Bugwere Polling Station in Masaba Ward, Industrial Division the petitioner obtained 10 votes while the 2<sup>nd</sup> respondent obtained 94 votes.

29. At Hamba Stores B- Malawa (A-M) Polling Station in Masaba Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 35 votes.

30. At Lions Park Polling Station in Masaba Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 13 votes.

31. At Hamba Stores B – Malawa (N-Z) Polling Station in Masaba Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 30 votes.
32. At Hamba Stores B- Bumasisfu Polling Station in Masaba Ward, Industrial Division the petitioner obtained 00 votes while the 2<sup>nd</sup> respondent obtained 17 votes.
33. At Namatal Church of Uganda (A-M) Wandawa Polling Station in Namatala Ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 19 votes.
34. At Namatal Church of Uganda (N-Z) Wandawa Polling Station in Namatala Ward, Industrial Division the petitioner obtained 10 votes while the 2<sup>nd</sup> respondent obtained 21 votes.
35. At Catholic Church Namatala (A-L) Nyanza Polling Station in Namatala Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 27 votes.
36. At Catholic Church Namatala (NAM-Z) Nyanza Polling Station in Namatala Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 36 votes.
37. At Fountain Public PRI SCH (A-L) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 29 votes while the 2<sup>nd</sup> respondent obtained 49 votes.
38. At Fountain Public PRI-SCH(M-NAM) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 28 votes while the 2<sup>nd</sup> respondent obtained 40 votes.
39. At Fountain Public PRI- SCH (NAN-Z) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 12 votes while the 2<sup>nd</sup> respondent obtained 24 votes.
40. At Catholic Church Namatala (M-NAL) Nyanza Polling Station in Namatala Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 31 votes.
41. At Bubirabi Grammer PRI SCH Polling Station in Namatala Ward, Industrial Division the petitioner obtained 02 votes while the 2<sup>nd</sup> respondent obtained 08 votes.
42. At Namatala PRI SCH Yoweri (N-Z) Somero Polling Station in Namatala Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 10 votes.



43. At Namatal PRI SCH Yoweri (A-M) Somero Polling Station in Namatala Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 09 votes.
44. At Mvule (L-Z) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 22 votes.
45. At Mvule (A-K) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 24 votes.
46. At Raising Hope Infant SCH (NAMB-Z) Sisye Polling Station in Namatala Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 17 votes.
47. At Raising Hope Infant SCH(M-NAMA) Sisye Polling Station in Namatala Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 19 votes.
48. At Raising Hope Infant SCH (A-L) Sisye Polling Station in Namatala Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 19 votes.
49. At Kiduda Play Ground (A-M) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 15 votes.
50. At Kiduda Play Ground (N-Z) Polling Station in Namatala Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 03 votes.
51. At Bugwere Road Muyembe Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 02 votes while the 2<sup>nd</sup> respondent obtained 16 votes.
52. At Manafwa High School Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 11 votes.
53. At Maluku Hall – Wanyera Cell Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 02 votes while the 2<sup>nd</sup> respondent obtained 20 votes.
54. At Majanga (A-M) Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 05 votes while the 2<sup>nd</sup> respondent obtained 19 votes.

55. At Majanga (N-Z) Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 06 votes while the 2<sup>nd</sup> respondent obtained 26 votes.

56. At Wambwa PRI SCH Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 18 votes.

57. At Wambwa PRI SCH (A-M) Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 07 votes while the 2<sup>nd</sup> respondent obtained 23 votes.

58. At Mitti Nursery(A-M) Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 11 votes while the 2<sup>nd</sup> respondent obtained 29 votes.

59. At Mitti Nursery (N-Z) Polling Station in Malukhu Ward, Industrial Division the petitioner obtained 23 votes while the 2<sup>nd</sup> respondent obtained 18 votes.

60. At NSSF Republic Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 21 votes.

61. At Police Ground Polling Station in South Central Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 66 votes.

62. At Shine On Kale Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 46 votes.

63. At Akamba Bus Terminal Naboa Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 30 votes.

64. At Nuralis Park Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 13 votes while the 2<sup>nd</sup> respondent obtained 121 votes.

65. At Nabuyonga PRI SCH ST. Andrews Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 63 votes.

66. At NSSF Cathedral Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 28 votes.

67. At Bilal Mosque Foods Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 28 votes.
68. At Elgon Nursery Lwakaka cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 24 votes.
69. At St. Andrews C.O.U Bishop Wasikye Cell Polling Station in South Central Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 13 votes.
70. At Doko Polling Station in Doko Ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 57 votes.
71. At Doko Centre Polling Station in Doko Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 26 votes.
72. At Doko Nsambya Polling Station in Doko Ward, Industrial Division the petitioner obtained 08 votes while the 2<sup>nd</sup> respondent obtained 24 votes.
73. At Mangho Upper SDA Church Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 55 votes.
74. At Musene's Place Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 05 votes while the 2<sup>nd</sup> respondent obtained 76 votes.
75. At Namalogo Primary School B Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 53 votes.
76. At Bumboi Catholic Church Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 101 votes.
77. At Nabwisya Trading Centre Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 45 votes.
78. At Namalogo PRI SCH Polling Station in Namalogo Ward, Industrial Division the petitioner obtained 02 votes while the 2<sup>nd</sup> respondent obtained 82 votes.
79. At Bulujele Polling Station in Mooni- Nambale Ward, Industrial Division the petitioner obtained 28 votes while the 2<sup>nd</sup> respondent obtained 127 votes.

80. At Mirembe Polling Station in Mooni- Nambale Ward, Industrial Division the petitioner obtained 11 votes while the 2<sup>nd</sup> respondent obtained 154 votes.
81. At Nabisolo PRI SCH Polling Station in Bumboi Ward, Industrial Division the petitioner obtained 06 votes while the 2<sup>nd</sup> respondent obtained 115 votes.
82. At Kidobo G.C.S(Nalokha) Polling Station in Bumboi Ward, Industrial Division the petitioner obtained 01 votes while the 2<sup>nd</sup> respondent obtained 177 votes.
83. At Bumboi PRI SCH Polling Station in Bumboi Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 251 votes.
84. At Bukasakya C.O.U Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 150 votes while the 2<sup>nd</sup> respondent obtained 51 votes.
85. At Mutoto SCTY HQTRS (A-M) Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 42 votes while the 2<sup>nd</sup> respondent obtained 25 votes.
86. At Mutoto SCTY HQTRS (N-Z) Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 51 votes while the 2<sup>nd</sup> respondent obtained 22 votes.
87. At Bukunalire Catholic Church Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 151 votes while the 2<sup>nd</sup> respondent obtained 21 votes.
88. At St. Joseph Bukasakya Catholic Church Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 58 votes while the 2<sup>nd</sup> respondent obtained 187 votes.
89. At Bunamwani C.O.U Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 281 votes while the 2<sup>nd</sup> respondent obtained 41 votes.
90. At Mutoto Primary School Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 57 votes while the 2<sup>nd</sup> respondent obtained 37 votes.
91. At Bukasakya Primary School Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 103 votes while the 2<sup>nd</sup> respondent obtained 25 votes.

92. At Makokha Catholic Church Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 113 votes while the 2<sup>nd</sup> respondent obtained 15 votes.

93. At Syeba Play Ground Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 154 votes while the 2<sup>nd</sup> respondent obtained 25 votes.

94. At Busimba Primary School Polling Station in Bumutoto Ward, Industrial Division the petitioner obtained 195 votes while the 2<sup>nd</sup> respondent obtained 70 votes.

95. At Shende Polling Station in Mukhubu Ward, Industrial Division the petitioner obtained 27 votes while the 2<sup>nd</sup> respondent obtained 55 votes.

96. At Wasike's Place Polling Station in Muyanda Ward, Industrial Division the petitioner obtained 63 votes while the 2<sup>nd</sup> respondent obtained 62 votes.

97. At Nabweya (N-Z) Polling Station in Busamaga West Ward, Industrial Division the petitioner obtained 03 votes while the 2<sup>nd</sup> respondent obtained 70 votes.

98. At Bumboi (A-M) Polling Station in Busamaga West Ward, Industrial Division the petitioner obtained 18 votes while the 2<sup>nd</sup> respondent obtained 25 votes.

99. At Nabweya (A-M) Polling Station in Busamaga West Ward, Industrial Division the petitioner obtained 04 votes while the 2<sup>nd</sup> respondent obtained 47 votes.

100. At Bumboi (N-Z) Polling Station in Busamaga West Ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 35 votes.

101. At Health Centre/ Mosque Polling Station in Busamaga West Ward, Industrial Division the petitioner obtained 10 votes while the 2<sup>nd</sup> respondent obtained 69 votes.

102. At Namatsyo/ Namalogo Polling Station in Busamaga East Ward, Industrial Division the petitioner obtained 09 votes while the 2<sup>nd</sup> respondent obtained 61 votes.

103. At Butandiga Polling Station in Busamaga East Ward, Industrial Division the petitioner obtained 11 votes while the 2<sup>nd</sup> respondent obtained 41 votes.

104. At Nampanga (N-Z) Polling Station in Busamaga East Ward, Industrial Division the petitioner obtained 17 votes while the 2<sup>nd</sup> respondent obtained 43 votes.

105. At Nampanga (A-M) Polling Station in Busamaga East Ward, Industrial Division the petitioner obtained 15 votes while the 2<sup>nd</sup> respondent obtained 26 votes.
106. At Nagudi (A-M) Polling Station in Mooni- Wanale Ward, Industrial Division the petitioner obtained 12 votes while the 2<sup>nd</sup> respondent obtained 50 votes.
107. At Namubiru Polling Station in Mooni Wanale Ward, Industrial Division the petitioner obtained 11 votes while the 2<sup>nd</sup> respondent obtained 29 votes
108. At Nashibiso I (N-Z) Polling Station in Mooni Wanale Ward, Industrial Division the petitioner obtained 16 votes while the 2<sup>nd</sup> respondent obtained 53 votes.
109. At Nashibiso I (A-M) Polling Station in Mooni Wanale Ward, Industrial Division the petitioner obtained 22 votes while the 2<sup>nd</sup> respondent obtained 43 votes.
110. At Nagudi (N-Z) Polling Station in Mooni Wanale Ward, Industrial Division the petitioner obtained 21 votes while the 2<sup>nd</sup> respondent obtained 76 votes.
111. At Fairway Primary School II Polling Station in Boma Ward, Industrial Division the petitioner obtained 10 votes while the 2<sup>nd</sup> respondent obtained 47 votes.
112. At Fairway Primary School III Polling Station in Boma Ward, Industrial Division the petitioner obtained 14 votes while the 2<sup>nd</sup> respondent obtained 40 votes.
113. At Fairway Primary School I Polling Station in Boma Ward, Industrial Division the petitioner obtained 15 votes while the 2<sup>nd</sup> respondent obtained 35 votes.
114. At Isebelle Polling Station in Mukhubu Ward, Industrial Division the petitioner obtained 13 votes while the 2<sup>nd</sup> respondent obtained 78 votes.
115. At Zesui (A-M) Polling Station in Mukhubu Ward, Industrial Division the petitioner obtained 15 votes while the 2<sup>nd</sup> respondent obtained 45 votes.
116. At Sawa Polling Station in Mukhubu Ward, Industrial Division the petitioner obtained 12 votes while the 2<sup>nd</sup> respondent obtained 155 votes.
117. At Zesui (N-Z) Polling Station in Mukhubu Ward, Industrial Division the petitioner obtained 20 votes while the 2<sup>nd</sup> respondent obtained 44 Votes.

118. At Nauyo Primary School Polling Station in Napooli central Ward, Industrial Division the petitioner obtained 137 votes while the 2<sup>nd</sup> respondent obtained 101 votes.

119. At Masaba High SCH Polling Station in Napooli Upper Ward, Industrial Division the petitioner obtained 127 votes while the 2<sup>nd</sup> respondent obtained 69 votes.

120. At Victory School Compound Polling Station in Napooli Lower Ward, Industrial Division the petitioner obtained 60 votes while the 2<sup>nd</sup> respondent obtained 42 votes.

121. At Kautharah Nursery - Primary Polling Station in Napooli Lower Ward, Industrial Division the petitioner obtained 123 votes while the 2<sup>nd</sup> respondent obtained 84 votes.

122. At Ward Booster Polling Station in Wakhwaba Central Ward, Industrial Division the petitioner obtained 184 votes while the 2<sup>nd</sup> respondent obtained 113 votes.

123. At Wakhwaba Lower Polling Station in Wakhwaba Lower Ward, Industrial Division the petitioner obtained 122 votes while the 2<sup>nd</sup> respondent obtained 115 votes.

124. At Holy Trinity Church Polling Station in Wakhwaba Upper Ward, Industrial Division the petitioner obtained 110 votes while the 2<sup>nd</sup> respondent obtained 106 votes.

125. At Wakhwaba MTN Booster Polling Station in Wakhwaba Upper Ward, Industrial Division the petitioner obtained 161 votes while the 2<sup>nd</sup> respondent obtained 49 votes.

126. At Mwalimu Awusi Polling Station in Kijja Ward, Industrial Division the petitioner obtained 47 votes while the 2<sup>nd</sup> respondent obtained 55 votes.

Counsel for the petitioner further submitted that this evidence was corroborated by Mukamba Robert, a candidate in the election, who in his affidavit stated that upon comparison with his Declaration of Results Forms, he confirmed that indeed the aforementioned are the results obtained by the candidates. That the Respondents' agents did not controvert or refute the aforesaid results. He added that the 2<sup>nd</sup> Respondent in particular did not offer any contrary results to prove the allegations of the Petitioner false. That upon an application for certified copies, the 1<sup>st</sup> Respondent availed to the Petitioner certified copies which copies were admitted and exhibited on the court record. That the results from all the polling stations tallied save for results at Bulujele, Wakhwaba Lower Petrol

Station, Victory School Compound, Masanda Trading Centre (N-Z) and Masaba High School polling stations.

Furthermore, that according to the court record, the original copy of the Declaration of Results Form marked A at page 28 obtained by the Petitioner from the Presiding Officer at Bulujele polling station indicated that the Petitioner obtained 28 votes and the 2<sup>nd</sup> Respondent obtained 127 Votes. The said number of votes tallies with the number of ballots received at the polling station and the number of ballots cast by voters on that day. On the contrary, that the certified copy by the secretary of the 1<sup>st</sup> Respondent indicates an obvious alteration in the number of votes obtained by the 2<sup>nd</sup> Respondent to 227 against the actual 127 in order to disguise the alterations, the 1<sup>st</sup> Respondent's agents altered the entry of the total number of valid votes cast from 302 to 402, total number of ballots counted from 343 to 416 and total number of unused ballot papers from 457 to 284.

Secondly, that the original copy of the Declaration of Results Form marked annexure A123 on the Petitioner's affidavit in support of the Petition obtained by the Petitioner from the Presiding Officer at Wakhwaba Lower Petrol Station polling station indicates that the Petitioner obtained 122 votes and the 2<sup>nd</sup> Respondent obtained 115 votes. The said number of votes tallies with the number of ballots received at the polling station and the number of ballots cast by voters on that day. On the contrary, the certified copy by the secretary of the 1<sup>st</sup> Respondent indicates an obvious alteration in the number of votes obtained by the 2<sup>nd</sup> Respondent to 576 against the actual 115 in order to disguise the alterations, the 1<sup>st</sup> Respondent's agents altered the entry of the total number of valid votes cast from 299 to 760.

Thirdly, that the original copy of the Declaration of Results Form marked annexure A120 on the Petitioner's affidavit in support of the Petition obtained by the Petitioner from the Presiding Officer at Victory School Compound polling station indicated that the Petitioner obtained 60 votes and the 2<sup>nd</sup> Respondent obtained 42 votes. That the said number of votes tallies with the number of ballots received at the polling station and the number of ballots cast by voters on that day. On the contrary, the certified copy by the secretary of the 1<sup>st</sup> Respondent indicated an obvious alteration in the number of votes obtained by the 2<sup>nd</sup> Respondent to 142 against the actual 42 in order to disguise the alterations, the 1<sup>st</sup> Respondent's agents altered the entry of the total number of



valid votes which was altered from 141 to 241, number of ballots counted from 148 to 248 and total number of males who voted from 95 to 195.

5 Fourthly, that the original copy of the Declaration of Results Form marked  
annexture A15 of the Petitioner's affidavit in support of the Petition obtained by  
the Petitioner from the Presiding Officer at Masanda Trading Centre (N-Z)  
polling station indicates that the Petitioner obtained 32 votes and the 2<sup>nd</sup>  
Respondent obtained 106 votes. The said number of votes tallies with the number  
of ballots received at the polling station and the number of ballots cast by voters  
10 on that day. On the contrary, the certified copy by the secretary of the 1<sup>st</sup>  
Respondent indicates an obvious alteration in the number of votes obtained by  
the 2<sup>nd</sup> Respondent to 452 against the actual 102 in order to disguise the  
alterations, the 1<sup>st</sup> Respondent's agents altered the entry of the total number of  
valid votes from 300 to 647, cancelled out the total number of ballots counted  
15 (306) and replaced it with 653, increased the total number of unused ballot  
papers from 444 to 647 and increased the total number of male voters from 131  
to 279 and female voters from 169 to 347 in order to conceal the illegal votes  
assigned to the 2<sup>nd</sup> Respondent.

20 Fifthly, that the original copy of the Declaration of Results Form marked  
annexture A119 on the Petitioner's affidavit in support of the Petition obtained by  
the Petitioner from the Presiding Officer at Masaba High School polling station  
indicates that the Petitioner obtained 127 votes and the 2<sup>nd</sup> Respondent obtained  
69 votes. The said number of votes tallies with the number of ballots received at  
25 the polling station and the number of ballots cast by voters on that day. On the  
contrary, the certified copy by the secretary of the 1<sup>st</sup> Respondent indicates an  
obvious alteration in the number of votes obtained by the 2<sup>nd</sup> Respondent to 300  
against the actual 69 in order to disguise the alterations, the 1<sup>st</sup> Respondent's  
agents altered the entry of total number of valid votes cast which was increased  
30 from 234 to 465, the total number of ballots counted from 244 to 474, the total  
number of unused ballots from 406 to 176, total number of females from 119 to  
219 and males from 124 to 255.

35 Counsel for the petitioner went on to submit that, by virtue of **Section 61** of the  
Evidence Act, once a document is executed in several copies, each of those copies  
constitutes an original record to form basis of the electoral results. That in the  
circumstances the original copies, having been obtained from the 1<sup>st</sup>

Respondent's Presiding Officers indeed constitute a valid record to support the evidence of the Petitioner.

5 Counsel for the petitioner also noted that Mukamba Robert, another former candidate in the election, in his Affidavit confirmed the results as per the original Declaration of Results forms to be true. That this evidence was corroborated by the Affidavit evidence of Nabutyele Harriet, Magomu Stephen, Nabutyele Harriet, Nabudde Grace, Kakai Joan, Watengele Abass, Mutuwa Juliet, Manyali Denis, Nabukwasi Scovia, Mubikirwa Ronald and Mutuwa Evelyne. Thus. the  
10 the aforementioned Results were deliberately altered by the Respondents' agents in order to accord the 1<sup>st</sup> Respondent an illegal superior margin to the detriment of the Petitioner.

15 It was further submitted for the petitioner that during cross examination, the 1<sup>st</sup> Respondent's Returning Officer identified the Petitioner's original copy of the Declaration of Results Forms. Upon comparison with the certified copy, he admitted that both Declaration of Results Forms were signed by the Presiding Officers at the respective polling stations. The witness acknowledged that the serial number and / or barcodes of both documents were similar save that the  
20 entries on the certified copies were different from the entries on the original copies for the aforesaid five polling stations. That the said witness confirmed that he did not notice any discrepancies on the Declaration of Results Forms at the time of tallying. He however acknowledged that during the tallying process, issues were raised about the varying figures but denied receipt of a formal  
25 complaint and therefore took no action.

Counsel for the Petitioner went on to submit that the returning officer insisted that the alterations, if any, were effected by the respective Presiding Officers. That during further cross examination by the court, the 1<sup>st</sup> Respondent's  
30 Returning Officer admitted that each of the candidates' agents was given a copy of the Declaration of Results Forms and when asked by the court to confirm the validity of the original copy, he stated that, "Yes, this is the original form. Agents normally sign at the back".

35 Counsel for the petitioner further submitted that the 2<sup>nd</sup> respondent in his evidence was evasive and could not tell court the number of votes he got at particular Polling Stations.

Counsel for the petitioner added that Were Khalidi Prizo, one of the 2<sup>nd</sup> Respondent's witnesses was untruthful and his evidence should be disregarded.

5 Counsel for the petitioner also noted that during the tallying of the results, Wamana Levi swore an affidavit on behalf of the Petitioner stating that he raised an objection in regard to the conflicting electoral results from several polling stations, including the aforesaid 5 polling stations. In his testimony, he stated that the Returning Officer and all the other candidates present agreed to disallow the results from the said polling stations, but surprisingly the same Returning Officer  
10 went on to include the said results.

Counsel for the petitioner made reference to section 12 (e) and (f) of the Electoral Commissions Act, where the Returning Officer is empowered to nullify electoral results from polling stations that do not correspond or are contradictory without  
15 any valid explanation as in the present circumstances. That such mandate was espoused in the case of **Weswa David v. Electoral Commission & Another, Election Petition No. 21 of 2016** where the Hon. Mr. Justice Andrew Bashaija whilst faced with a scenario where the number of registered voters exceeded the number of registered voters stated that;

20 *“Section 12(e) and (f) of the Electoral Commission Act empowers the 1<sup>st</sup> Respondent to take any measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness. This invariably includes cancellation of results if that would meet conditions of freedom and  
25 fairness....After evaluating the entire evidence, I find-justifiable basis for cancellation of the results in issue by the Returning Officer. In his affidavit in support of the answer to the petition, at paragraph 9, the Returning Officer attempts half - heartedly to assign the reason for the cancellation. He cites excess ballots in the ballot box having been cast in relation to the total number  
30 of registered voters. He does not even attempt to give the number of the excess votes that prompted him to cancel the results nor does he state as a matter of fact the total number of the registered voters he claims to have been exceeded”.*

35 Counsel for the petitioner concluded that from the foregoing, there was apparent connivance between the Respondents to falsify the entries on the Declaration of Results Forms in order to accord the 2<sup>nd</sup> Respondent a superior vote margin.

Counsel for the petitioner made reference to the case of **Freda Nanziri Kase Mubanda v. Mary Babirye Kabanda and Another**, Court of Appeal Election Petition No. 38 of 2016, where it was held that; the ground of falsification is proved where a petitioner presents a Declaration of Results Form bearing a  
5 contrary result from the result relied upon.

Counsel for the 1<sup>st</sup> respondent on the other hand submitted that the Petitioner in paragraph 8 of his own Affidavit in support of the Petition and paragraph 10 of his Affidavit in rejoinder clearly stated that based on information from his agents  
10 from various polling stations provides the number of votes that he alludes to as the actual results that he obtained as per the Declaration of Results Forms. That the said actual results as stated by the Petitioner when tabulated maintain the 2<sup>nd</sup> Respondent winner of the election. That the Petition is accompanied by uncertified photocopies of Declaration of Results Forms which are of no  
15 evidential value.

Counsel for the 1<sup>st</sup> respondent relied on the Supreme Court decision in the case of **Kakooza John Baptist Versus Electoral Commission & Yiga Anthony**, Election Petition Appeal No. 11/2007, where Hon. Justice Kanyeihamba(Rtd) held that;  
20

*“A non-certified Declaration of Results Form cannot be validated by the mere fact that it is annexed to an affidavit. A Declaration of Results Form is a public document within the meaning of section 73(a) (ii) of the Evidence Act. It requires certification if it is to be presented as an authentic and valid  
25 document in evidence. Consequently, I agree with Okello, J.A. where in his lead judgment he opines that Rule 15 of the Parliamentary Elections (Election Petitions) Rules, 1996, does not prohibit or indeed conflict with section 76 of the Evidence Act which provides that the contents of public documents or parts thereof are to be proved by certified copies. I also agree with the learned  
30 Justice of Appeal when he opines that the appellant could have provided the uncertified copies of the Declaration of Results Forms if he had given notice to the Electoral Commission to produce copies of all the declaration forms from the sub-county but it failed to do so. There is no evidence that the appellant had given such notice to the Electoral Commission nor applied through court  
35 for the Electoral Commission to produce at the trial the Declaration of Results Forms.....”.*

*In my opinion therefore, the courts below cannot be faulted for holding that the uncertified copies of Declaration of Results Forms annexed to the affidavit of the appellant were inadmissible as evidence.*

5 Counsel for the 1<sup>st</sup> respondent further submitted that at the hearing of this petition and on the day when the petitioner cross examined the 1<sup>st</sup> Respondent's Returning Officer, Rebero Charles, he had been availed with certified copies thereof but he chose not to have them support his case perhaps after realising that his case had become so weak and he could not make any case out of them.

10 Counsel for the 1<sup>st</sup> respondent added that the petitioner did state on Oath in paragraph 8 of his Affidavit that what is contained thereunder are the actual results obtained by both himself and the 2<sup>nd</sup> Respondent. That he did not state alternative results that he perceives were the actual results obtained by himself or  
15 by the 2<sup>nd</sup> Respondent but were altered/falsified by the 1<sup>st</sup> Respondent to accord the 2<sup>nd</sup> Respondent unfair win against him. Counsel of the 2<sup>nd</sup> respondent made reference to the case of **Mbagadi & Another v. Dr. Nabwiso, Election Petitions No. 14 & 16 of 2011**, where Court emphasised that;

20 *“When filing a Petition, the Petitioner must have had knowledge of what votes he is challenging and must have had basis for his challenge. If the basis is not in the Petition, any evidence outside the Petition is departure from the pleadings and is inadmissible”.*

25 Counsel for the 1<sup>st</sup> respondent further submitted that during cross examination of Rebero Charles, he told court that according to the certified Declaration of Results Forms for all the polling stations including but not limited to Masanda Trading Centre, Wakhwaba Lower Petrol Station Polling Station, Masaba High School Polling Station and Bulujele Polling Station had no alterations on the  
30 results obtained by each candidate and were dully signed by the petitioner's agents who did not deny their respective signatures appearing on the Declaration of Results Forms.

35 Counsel for the 1<sup>st</sup> respondent submitted that the petitioner was not personally present at the respective polling stations complained of on polling day. He could only be represented by his dully appointed agents as per **Sections 132 (3) and 136(2)** of the Local Governments Act. That it is apparent that the Petitioner's agents counter signed the Declaration of Results Forms and no complaints of

irregularities were recorded with the presiding officer, the Returning Officer or with police. By signing the forms, they therefore confirmed the results therein.

Counsel for the 1<sup>st</sup> respondent stated that the above finding was fortified by the principles set down in the case of **Hon. Gagawala Nelson Wambuzi v. Electoral Commission and Kenneth Lubogo**, HCT-03-CV-EP-0008/2011 where Hon. Lady Justice Flavia Senoga Anglin held that;

*“When an agent signs a declaration of results form, he is confirming the truth of what is contained therein. He is confirming to the principal that this is the correct result of what transpired at the polling station. The candidate in particular is therefore stopped from challenging the contents of the form because he is the appointing authority of the agent”. Further that “even an agent who refuses to sign a declaration form but does not state the reasons for not signing as prescribed on the form is also estopped from claiming that there were irregularities at the polling station when he had an opportunity to complain but did not”.*

Counsel for the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent contended that the petitioner’s witnesses were not his agents or registered voters and no proof of the same was submitted to court. That the persons who signed on the Declaration of Results forms were not the petitioner’s witnesses and those are the ones that are the true agents of the petitioner.

Counsel for the 2<sup>nd</sup> respondent relied on **Sections 42, 47 and 48** of the Parliamentary Elections Act, which are to the effect that one is appointed an agent in writing, and no proof was attached to prove this. Counsel further cited **Section 18** of the Electoral Commission Act, which provides that the only legally acceptable source when proving whether a person is a registered voter is the voters Register and voter rolls and none were attached to prove that by the Petitioner’s witnesses.

Counsel for the 2<sup>nd</sup> respondent also contested the petitioner’s reliance on uncertified Declaration of Results forms yet he was availed with the certified forms by the 1<sup>st</sup> respondent.

Also, Counsel for the 2<sup>nd</sup> respondent submitted that it was the evidence of the returning officer that he never received any complaint about the results having

been falsified or altered and besides the petitioner was at all times represented by his agents who signed on the Declaration of Results forms without any complaint. That a complaint now on the basis of the Declaration forms is an afterthought as the petitioner was represented at the polling station complained of by his agents and is therefore bound by the outcome of the election.

Further, that the Petitioner put so much emphasis on the affidavit of Mukamba Robert, which is hearsay as he stated in paragraph 8, that the source of his information were his polling agents, campaign supervisors, ordinary voters but these people were not named, none deposed an affidavit alluding to his averments, he also stated that he was a female adult Ugandan which is unbelievable.

Furthermore, that it is trite law that failure to disclose source of information in an affidavit renders the affidavit null and void as per the case of **Uganda Journalists Safety Commission & others v Attorney General, Constitutional Petition No. 7 of 1997.**

Counsel for the 2<sup>nd</sup> respondent added that the Petitioner submitted that alterations were made on the Declaration of Results Forms, but corrections have been held not to be critical issues as per the case of **Ngoma Ngime v. Electoral Commission & Another, Election Petition No. 11 of 2012**, where it was held that;

*“Any corrections on a form per say is not usually a critical issue. It simply means a mistake was made and the presiding officer corrected the error.”*

I have carefully considered the submissions of all the parties here under. I will go ahead to resolve this allegation of falsification/alteration of results.

It was contended by the 1<sup>st</sup> and 2<sup>nd</sup> respondents that the petitioner’s witnesses claimed to have been appointed as polling agents however, there was no proof attached there to. Indeed, upon perusal of the affidavits in support of the petitioner’s allegations, there were no appointment letters attached there to. I find this as being dishonest, why should a witness claim to have been appointed a polling agent well knowing it not to be true?

I find this evidence as being clothed with falsehoods however, it is now settled law that, in the interest of substantive justice, the court can apply the doctrine of severance and as such, the falsehoods can be excluded from the affidavit and court relies on the remaining paragraphs. (See: Rtd Col Dr. Kizza Besigye v. Electoral Commission and Yoweri Kaguta Museveni, (Supra)).

It was the petitioner's contention that the results of the election were falsified in favour of the 2<sup>nd</sup> respondent. The Petitioner relied on the original declaration forms that were given to the polling agents of the petitioner citing **Section 61** of the Evidence Act. And also adduced evidence of Mukamba Robert, who was said to have also been a candidate in the same Local Council Elections. However, even though Mukamba Robert stated that the results were falsified because his Declaration Forms had the same results as those submitted by the Petitioner and went ahead to rely them, this witness' Declaration of Results forms were never availed to Court for verification or confirmation.

The affidavit of Mukamba Robert was also based on hearsay and there was no disclosure of his source of his information as per his paragraph 8 in the affidavit contravening **Order 19 Rule 3** of the Civil Procedure Rules. Counsel for the petitioner in rejoinder submitted that nondisclosure is not fatal according to the case of Betty Muzanira Bamukwatsa v. Matsiko Winnifred Komuhangi & Anor, **Election Petition Appeal No. 65 of 2016**, wherein it was held that omission to disclose the source of information is not fatal.

With all due respect I disagree, affidavits according to the law are limited to information that is within one's knowledge and where the source of information is not disclosed then the parties from whom this information was obtained can depone affidavits and the same information can be held as admissible for being corroborated by the affidavits of the informants. (See: Chemoiko Chebrot Stephen v. Soyekwo Kenneth and Electoral Commission, **Election Petition Appeal No. 56 of 2016**).

In the case of Col. (Rtd) v Dr. Kiiza Besigye v. Yoweri K. Museveni & Another, (Supra) it was held that;

*“Technically speaking this information was hearsay as the deponent did not witness the incidents reported to her. Her affidavit can only be relied on if it is*



*corroborated by other evidence from those who reported to her or who witnessed similar incidents.”*

It is trite law that the failure to disclose the source of information in an affidavit renders the affidavit null and void. In this regard I agree with the submissions of the 2<sup>nd</sup> respondent and authority as cited. I accordingly disregard this witness' evidence as the same is not credible and uncorroborated.

The original Declaration of Results forms as relied on by the petitioner were challenged by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents for being inadmissible referring to the case of **Kakooza John Baptist v. Electoral Commission & Yiga Anthony, (supra)**.

I agree with the submissions for the respondents and I also associate myself with the authority as cited. Courts can only look at uncertified Declaration of Results Forms if the party can prove that a letter was written requesting for them and they had failed to be availed.

In the instant case certified copies of the Declaration of Results forms were made available to the petitioner and thus, should have been relied upon. This court does not understand the rationale behind the petitioner's insistent reliance on the uncertified Declaration of results forms while they had been availed with the certified copies by the 1<sup>st</sup> respondent. This case certainly does not fall under the exceptions provided under **Section 64** of the Evidence Act where one can rely on uncertified copies.

It is trite that the courts will rely on certified copies because they are the ones believed to be the true, reliable and authentic copies of any given document which so requires certification. Declaration of Results Forms are public documents. A party who wishes to rely on them has to have them certified in accordance with **Sections 75 and 76** of the Evidence Act. Without such certification, such documents cannot prove any fact which they sought to prove. (See: **Mashate Magomu Peter v. Electoral Commission and Sizomu Gershom Rabbi Wambedde, Election Petition Appeal No. 47 of 2016 citing Kakooza John Baptist v. Electoral Commission and Anthony Yiga (Supra)**). The evidence that the petitioner ought to have relied on to prove his allegations was the certified Declaration of Results forms which were accordingly availed to him which was not done in the instant case. This court's hands are therefore tied, counsel cannot

choose what suits him and ignore the law. This evidence is therefore found in admissible.

5 The petitioner also stated that the 2<sup>nd</sup> respondent was evasive when it came to telling the truth as to the results he obtained at given polling stations. I find this argument with all due respect unreasonable, it is true as was stated by the 2<sup>nd</sup> respondent that he was voted at several polling stations and it is humanly impossible to know off head the results which he obtained at which polling stations unless counsel was insinuating that the 2<sup>nd</sup> respondent's brain should  
10 operate like a computer that retrieves information fed to it as and when it is required to. Otherwise, the 2<sup>nd</sup> respondent like any human being cannot be expected to remember what he obtained from over 120 polling stations. I accordingly find this argument as unreasonable and baseless.

15 The petitioner appealed to this court to find the 2<sup>nd</sup> respondent's witness, Were Khalidi Prizo, as untruthful. Even though I do agree with this submission since the witness seemed not to know what he was talking about as he was being cross examined. The said evidence was already expunged off the record and cannot therefore be evaluated.

20 Counsel for the petitioner also made reference to the evidence of Bikukku Godfrey who told Court that he was present at his polling station on the polling day where he was overseeing security as a local leader. That on the said day about 300 voters came and participated in the election and yet it was the  
25 evidence of the 1<sup>st</sup> and 2<sup>nd</sup> respondent certified declaration of results forms that about 700 voters participated in the elections. That this could only mean that the petitioner was right in his allegation that the results were inflated. In regard to this piece of evidence, court will not examine the same as the said evidence was also expunged from the court record.

30 The petitioner further based his allegation on the corrections that were made on the Declaration of Results forms as being an alteration of the results. Corrections *per se* on Declaration of Results Forms are not usually a critical issue. They ordinarily implied that a mistake was made and that the presiding or returning  
35 officer corrected the error. It only becomes grave if other irregularities are proved such as ballot stuffing. In the case of **Mugisha Vicent v. Kajara Aston Peterson, Mulamira Barbara and The Electoral Commission and Another, Election Petition No. 11 of 2012**, it was stated that; in the instant case, the court noted

that there were no major inconsistencies between the tally sheet and the Declaration of Results Forms. The tally sheet also showed that results from all polling stations were entered. Furthermore, all the Declaration of Results Forms exhibited by the 2<sup>nd</sup> respondent were signed by presiding officers. Therefore, the irregularity of alteration of the Declaration of Results Forms had not been proved to the required standard.

I find that the corrections on the Declaration of Results Forms were minor and this was due to a human error/mistake that can be made any of us and besides the said Declaration of Results forms were signed by the polling agents without protest/complaint.

The petitioner in my view failed to discharge his burden in proving this allegation to the satisfaction of this court. The petitioner merely lied out results based on uncertified Declaration forms, he alleged to be the true results but never brought any other results to support his allegation of falsification of results. This court was therefore unable to compare any other results to those that the petitioner believed to be the correct results as obtained by the petitioner and 2<sup>nd</sup> respondent to find that indeed the results were falsified or altered in favour of the 2<sup>nd</sup> respondent.

I accordingly find and hold that the petitioner did not prove this allegation of falsification of results to the satisfaction of this Court.

**b. Bribery:**

Counsel for the Petitioner stated that the 2<sup>nd</sup> Respondent and his agents engaged in bribery of voters at several polling stations as detailed under paragraph 11 of his affidavit.

Counsel for the petitioner quoted the case of **Amoro Paul & Electoral Commission v. Okello John Baptist, Election Petition Appeal No. 39 and 95 of 2016**, where it was held that three ingredients have to be proved in regard to bribery, these being; the gift was given to the voter; the gift was given by the Candidate or their Agent; and the gift was given with the intention of inducing a person to vote.

Counsel for the petitioner went on to submit that the testimony of Mwanika Bruno; a registered voter at Shende polling station, Achieng Phoebe; a registered

voter at Zesui A-M, Muyama Racheal; a voter at Masaba cell polling station, Nabutere Harriet; a polling agent at Wakhwaba Lower Petrol Station polling station, Asadi Were; a voter at Munkaga Koran Primary School polling station and Mutaka Irene; a voter at Kauthara Primary School polling station, all stated  
5 in specific detail where and how the 2<sup>nd</sup> Respondent and his known agents directly engaged in bribery of voters at the polling stations on election day by directly distributing money in various denominations to voters at the polling stations while persuading them to vote in favour of the 2<sup>nd</sup> Respondent. That the said affidavits give a precise detail of the time of bribery, the Agent of the 2<sup>nd</sup>  
10 Respondent giving the bribe, the voter to whom the bribe was given and that the purpose of the bribe was purely intended to persuade the voter to vote in favour of the 2<sup>nd</sup> Respondent.

Counsel for the 1<sup>st</sup> respondent on the other hand defined bribery according to Black's Law Dictionary, 6<sup>th</sup> Edition as;

15 *"The offence committed by one who gives or promises to give or offers money or valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstained from voting".*

20 Counsel also cited Section 147 of The Local Government Act which provides that;

25 *"A person who either before or during an election with intent either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that other person, commits the offence of bribery and is liable on conviction to a fine not exceeding seventy-two currency points or to imprisonment not exceeding three years or both".*

30 Counsel further quoted the case of Col. (Rtd). Dr. Besigye Kizza v. Museveni Yoweri Kaguta & Another (Supra), where Court outlined the 3 ingredients of the offence of election bribery. That there ought to be evidence that; a gift was given to a voter, the gift was given by a candidate or his agent and that was given with the intention of inducing the person to vote.

35 Therefore, the electoral offence of bribery involves the giver and recipient. The recipient has to be well identified a registered voter and not being a fictitious

non existing person. That in the instant case, it was not sufficient to assert that the money or gift was given by the 2<sup>nd</sup> respondent to a person purported to be a voter. That the recipient must confirm by deposing affidavit evidence that he/she is a registered voter and indeed received the money or gift from either the 2<sup>nd</sup> respondent personally or from his agents with his full knowledge, consent or approval with intent to influence the voter's choice of candidate. That without evidence from the alleged recipient confirming receipt of money or gift it would be no different like accusing a person of receiving a bribe without their knowledge of such accusations. Besides, no voter details and or particulars such as copy of the voters' register where they appear, voter location slips or voter identification numbers of such alleged recipients of the bribe were adduced by the petitioner.

Counsel for the 2<sup>nd</sup> respondent made more less similar submissions as those of the 1<sup>st</sup> respondent. He made reference to the cases of **Kabusu Moses Wagaba v. Lwanga Timothy & Electoral Commission, Election Petition No. 0015 of 20011** where court held that a voter' register must be attached to show that a person who was bribed was a voter/ registered voter at the station.

And **Isabirye Moses Wagaba v. Iwalga Timothy Mutekanga & Electoral Commission Appeal No. 0015 of 2011**, where court held that it was absolutely necessary to prove to the satisfaction of court that the people bribed were registered voters.

Counsel for the 2<sup>nd</sup> respondent concluded that in the instant case, the petitioner failed to prove and provide evidence to show that the persons that were bribed were actually registered voters of Mbale City.

I have carefully considered the submissions under this allegation and in the instant case the petitioner had the duty to prove to the required standard of proof that indeed the respondent or his agent bribed the voters. It was not enough for the petitioner to rely on evidence of deponents who merely stated that they saw persons being bribed. None of the persons who were bribed swore affidavits to prove that indeed they received any money and this was done by the 2<sup>nd</sup> respondent or his agents.

The petitioner was also unable to prove that the persons that received the alleged bribe were registered voters in those given areas as no Voters' Registers were

submitted in evidence. I accordingly agree with the submissions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in this regard.

I find and hold that the allegation of bribery was not proved by unequivocal evidence, no cogent or independent evidence was adduced to support the alleged distribution of money. The petitioner therefore failed to prove that there was money given to a registered voter, that the money was given by a candidate or his agent and that the money was given with the intention of inducing the person to vote. This allegation was thus not proved to the satisfaction of this court.

**c. Multiple voting:**

Counsel for the petitioner submitted that the 2<sup>nd</sup> Respondent orchestrated incidences of multiple voting by unauthorized persons at various polling stations. That this evidence was supported by Gususwa Nathan Peterson who testified that unauthorized persons were allowed to vote at the polling stations after they showed a green mark on their thumbs.

Counsel for the 1<sup>st</sup> respondent on the other hand submitted that this allegation was contained in paragraph 4E of the petitioner's affidavit in support of the petition. That Multiple voting and ballot stuffing are used synonymously and would suffice in instances where either voters are issued with more than one ballot paper or where the number of votes counted exceeds the number of registered voters appearing on the Voters' Roll.

That the petitioner in the instant case did not lead any evidence pointing to voting more than once by any voter or votes counted exceeding the number of registered voters on the voter roll.

It is this court's finding that the petitioner did not adduce any cogent evidence to support his allegation of multiple voting.

Ballot stuffing/multiple voting is a form of electoral fraud whereby a person who was permitted only one vote cast more than one. It could also happen where a person, instead of casting their vote in a single booth, cast in multiple booths. Ballot stuffing could take various forms, such as casting votes on behalf of people who did not show up at the polls or for those who were long dead or voting by

fictitious characters. (See: **Kinyamatama Suubi Juliet v. Sentongo Robinah Nakasirye**, Election Petition Appeal No. 92 of 2016).

5 The petitioner relied on the affidavit evidence of Gususwa Nathan Peterson, who stated that while he was at Holy Trinity Polling Station, he saw people voting who were not voters on the register and had a green mark on their thumbs which they showed to the presiding officer who allowed them to vote. This witness merely states that he saw and there is nothing else to corroborate this piece of evidence, no names were given, or any proof adduced that actually the people who came  
10 and voted were not voters of that area. No voters' registers were attached to corroborate this piece of evidence.

Gususwa's evidence as relied on by the petitioner also does not show how there was multiple voting either through evidence of people voting more than once, or  
15 people voting on behalf of others or ballot stuffing or that the votes counted exceeded the number of registered voters appearing on the Voters' Roll. I accordingly find and hold that the petitioner did not prove this allegation to the satisfaction of this court.

20 The petitioner raised a number of electoral offences against the respondents but only discussed the offences of falsification of results, bribery and multiple voting. I accordingly consider the rest of the allegations of electoral offences as abandoned as against the respondents. This court will not waste its time discussing the same as no evidence was led in that regard.

25 In conclusion, I find and hold that the petitioner did not adduce sufficient evidence to discharge his burden of proving his allegations of falsification of results, bribery and multiple voting to the satisfaction of this court. The petitioner thus failed to prove that there was non-compliance with the law and procedure  
30 in the conducting of the Mbale City Industrial Division Chairperson/Mayor Elections This issue is accordingly resolved in the negative.

**Issue 2: If not, whether the non-compliance affected the result in a substantial manner?**

35 Counsel for the petitioner quoted the case of **Rtd. Col Dr. Kiiza Besigye v. Kaguta Museveni**, (*Supra*), where the phrase substantial manner was extensively and elaborately discussed by the Honourable Odoki CJ (as he then was), to mean that

the effect must be calculated to influence the result in a significant manner. He further stated that in order to assess the effect, the Court has to assess the whole process of the election to determine how it affected the result and then assess the degree of that effect.

5 Counsel for the petitioner went on to submit that in the instant circumstances, according to the results tally sheet, the 2<sup>nd</sup> Respondent legally obtained 8,163 votes, but if the illegally obtained votes are excluded from his aforesaid total, then he does not enjoy a superior number of votes. That proper computation would confirm that the 2<sup>nd</sup> Respondent's vote margin substantially drops, which in  
10 effect confirms that the anomalies indicated substantially affected the outcome of the election. That this court is therefore empowered to nullify the election and order a fresh election where the outcome does not reflect a free and fair process as per **Section 139** of the Local Governments Act.

15 Counsel for the 1<sup>st</sup> respondent on the other hand submitted that the vote difference between the petitioner and 2<sup>nd</sup> respondent was over 4000 votes. That the Petitioner should have adduced evidence which would reduce the margin between him and the 2<sup>nd</sup> Respondent. Thus, the substantial effect can only be drawn and arrived at when and after a comparison and adjustments have been made from the results scored between the loser of an election/ petitioner and  
20 winner so that after adjustments the winner's victory margin is reduced or completely closed. That the Petitioner miserably failed to prove that there was any non-compliance that substantially affected the results in a substantial manner.

25 Counsel for the 1<sup>st</sup> respondent added that the non-compliance if any could not affect the results substantially and cited the case of **Odetta v. Omeda Election Petition No, 001 of 1996** Court noted:

30 *“What must the Petitioner prove? He must prove that whatever non-compliance with the provisions of the statute must have affected the result of the election in a substantial manner. It is not sufficient therefore to allege and even prove that there was harassment, intimidation and house burning. The Petitioner must go further and show that the results of the election were thereby affected and not merely affected but in a substantial manner”*

35 Counsel for the 1<sup>st</sup> respondent concluded that the Petitioner did not show that the non-compliance if any, substantially affected the results since the margin of winning clearly portrays the free will of the electorate and this Court should



therefore not overturn the mandate of the voters where there was a margin of over 4000 votes. That the non-compliance if any was so petty with no substantial effect on the outcome of the election which reflected the true will of the electorates of Industrial Division, Mbale City.

- 5 Counsel for the 2<sup>nd</sup> respondent on the other hand submitted that the Respondents averred and showed compliance with the provisions of all the electoral laws and other principles governing elections. That the Petitioner, garnered 3,647 against the Respondent with 8,163 votes, making it a difference of over 4000 votes.

10 Counsel for the 2<sup>nd</sup> respondent made reference to the case of **Edward Byaruhunga Katumba v. Electoral Commission & Another**, Election Petition No.17/2001 at pg. 12-13 of the lead judgment **Byamugisha J.A** who clarified on the expression “Affecting the result in a substantial manner” as;

15 *“The expression affecting the results in a substantial manner was recently considered by the Supreme Court in election Petition No. 1 of 2001. The Learned Judge quoted with approval the judgment of MULENGA JSC at pg. 355, where his Lordship had this to say “To my understanding therefore the expression non- compliance affected the result in a substantial manner, it were not for the non- compliance substantially. That means to succeed, the petitioner does not have to prove that the declared would have lost. It is*  
20 *sufficient to prove that the winning majority would have been reduced. Such reduction however would have to be such as would put the victory in doubt.”*

Counsel for the petitioner in rejoinder submitted that in the instant case, the tally sheet indicated that the 2<sup>nd</sup> Respondent obtained 8,163 votes in the election. However, a proper computation of the results indicated that the 2<sup>nd</sup> Respondent  
25 was accorded an illegal tally of 1,697 votes from the impugned polling stations at which results were altered. That the 2<sup>nd</sup> Respondent’s illegal majority is further reduced if the results from Shende polling station, Masaba Cell polling station, Munkaga Koran Primary School polling station, Zesui A-M polling station and Kautharah polling station where incidences of bribery were reported during the  
30 election are nullified.

Counsel made reference to the case of **Rtd. Col Dr. Kiiza Besigye v. Kaguta Museveni, (Supra)**, where it was emphasized that whilst examining the effect of noncompliance, the trial court must take it into account the general effect of such irregularity and the quality of the process. The Justices held that where on

account of the noncompliance, the quality is so bad that the accruing result is not a reflection of a free and fair process, the Court ought to nullify the election.

That in the instant circumstances, the results were obviously tampered with / falsified by the Respondents. As a result of that tampering. The 2<sup>nd</sup> Respondent  
5 obtained 8,163 votes. That if the aforesaid five (5) polling stations are nullified, the 2<sup>nd</sup> Respondent would lose a substantial number of 2,2147 votes which would leave a minimal and/or smaller vote difference between him and the 2<sup>nd</sup> runner up.

10 It is this court's view that the petitioner submitted that if deductions of the illegally obtained votes by the 2<sup>nd</sup> respondent are made that this would substantially reduce his results. The burden was on the petitioner to prove that there was non-compliance with the provisions of the law in manner the elections were conducted which were substantially affected. He had to show that non-  
15 compliance was intended to affect the results in a significant manner. The 2<sup>nd</sup> respondent obtained 8,163 votes while the Petitioner obtained 3,647 votes making it a difference of over 4000 votes between the two parties.

It was submitted for the petitioner that the 2<sup>nd</sup> respondent obtained 1,697 illegal votes from the impugned polling stations at which results were altered. That the  
20 2<sup>nd</sup> Respondent's illegal majority would further reduce the outcome of the results in favour of the 2<sup>nd</sup> respondent if the results from Shende polling station, Masaba Cell polling station, Munkaga Koran Primary School polling station, Zesui A-M polling station and Kautharah polling station added. The said results were never availed to court.

25 Counsel for the petitioner goes ahead and adds that if all these results are added the 2<sup>nd</sup> respondent would lose a substantial number of 22147 votes. How and where this figure is obtained from, this court cannot tell. The said figure of 22147 by which the 2<sup>nd</sup> respondent would apparently have less votes with a minimum margin between him and the 2<sup>nd</sup> runner up is even higher than 8,163  
30 votes the 2<sup>nd</sup> respondent obtained as the winner of the elections.

**Section 139(a) of the Local Governments Act**, requires proof of substantial effect on the results of the elections as one of the grounds for setting aside an election. This means that the effect of the non-compliance must be substantial enough for court to be convinced to set aside an election.

The petitioner in that instant case, does not adduce any evidence showing the total votes the 2<sup>nd</sup> respondent allegedly illegally added to his final results, nor does the petitioner prove that there was non-compliance of the electoral laws that affected the results in favour of the 2<sup>nd</sup> respondent. If anything, the submissions for the petitioner state that there would be a slim margin between him and the 2<sup>nd</sup> runner up which in essence means that the 2<sup>nd</sup> respondent even after the deduction of the alleged illegal votes would still remain the incumbent.

The petitioner under issue one was unable to prove to this court that there was any non-compliance with the electoral laws and in the circumstances since there was no non-compliance proved, it cannot be said that the election results were affected in a substantial manner since the petitioner could not satisfactorily point out the results that were unjustly added in favour of the 2<sup>nd</sup> respondent propelling him to win the election.

I find and hold that the petitioner led no evidence to the satisfaction of this court that there was non-compliance with electoral laws which affected the results of the elections of Mbale City Industrial Division Chairperson/ Mayor in a substantial manner. This issue is also resolved in the negative.

### **Issue No. 3: What remedies are available?**

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the petitioner failed to prove the allegations made in his Petition and their consequential effect on the result of the election, thus the same should be dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents with certificate for two counsel.

Having found that the petitioner failed to prove that the election was not conducted in accordance with the provisions of the Constitution of the Republic of Uganda, 1995, the Electoral laws in Uganda, as alleged. He failed to prove that there were electoral offences and illegal acts committed by the 2<sup>nd</sup> Respondent, his agents, with his knowledge, consent or approval. The petitioner therefore failed to prove his allegations as against the respondents.

This petition is found devoid of merit and is accordingly dismissed with costs and to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

8/9/2021

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