



- a) That the nomination of the 1<sup>st</sup> Respondent was not proper as he did not have the required academic qualifications for the seat of Member of Parliament.
- b) That the 1<sup>st</sup> Respondent holds a different name from the one on the academic documents that were used for nomination.
- c) That there were grave irregularities and non-compliance with the provisions of the Parliamentary Elections Act and other laws which affected the results in a substantial manner.

### **Counsel legal representation**

- [3] The Petitioner was represented by **Counsel Vincent Mugisha of M/s Kesiime & Co Advocates, Kampala**, the 1<sup>st</sup> Respondent was represented by **Counsel Kyobe William of M/s KAL Advocates, Kampala**, while the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents were represented by **Mr. Kugonza of the 3<sup>rd</sup> Respondent's Law Chambers**.
- [4] All the counsel filed their respective written submissions as permitted by court and the evidence on record is by way of affidavit evidence filed by all the parties pursuant to the provisions of **Rule 15(1) of S.I 141-2** under the **P.E.A.** The submissions and the provided authorities were helpful to court and all the counsel involved are commended for the work done.

### **Agreed issues**

- [5] During Scheduling, the following issues were agreed upon for the determination of this petition:

- 1) Whether the elections were conducted in compliance with the electoral laws; and if not, whether the non-compliance affected the results of the election in a substantial manner.
- 2) Whether the 1<sup>st</sup> Respondent personally or his agents, with his knowledge, consent or approval committed any illegal practices or offences.
- 3) Whether the 1<sup>st</sup> Respondent was qualified for nomination and election as a member of parliament for Kyaka Central County Constituency at the time of elections.
- 4) What remedies are available to the parties.

### **Burden and Standard of proof**

- [6] It is settled law that the burden of proof in Election Petitions lies upon the Petitioner who is required to prove every allegation contained in the Petition to the satisfaction of the court. The Standard of proof is a matter of statutory regulation by **Subsection 3 of Section 61 of the Parliamentary Elections Act, (P.E.A) 2005**. The Subsection provides that the standard of proof required to prove an allegation in an election petition is proof upon balance of probabilities; **MUKASA ANTHONY Vs DR. BAYIGA M.P. LULUME, Election Petition Appeal No. 18 Of 2007**.
- [7] In **ODO TAYEBWA Vs BASAJJABALABA NASSER & E.C, E.P.A No.13 OF 2021**, the expression in **Section 61 (1) and 3 P.E.A** ‘satisfaction of the court on a balance of probabilities’ was interpreted to mean proof that is ‘slightly higher than proof on a preponderance of probabilities but short of proof beyond

reasonable doubt'. See also **OCEN PETER & E.C Vs. EBIL FRED, E.P.A NO. 83 OF 2016** where it was held that the standard of proof is higher in election matters than that required in ordinary suits because of the public importance and seriousness of the allegations normally contained in the petitions.

- [8] It follows therefore, a petitioner has a duty to adduce credible and or cogent evidence to prove the allegations to the stated standard of proof.

### **Resolution of issues**

**Issue 1: Whether the elections were conducted in compliance with the electoral laws; and if not, whether the non-compliance affected the results of the election in a substantial manner.**

- [9] Counsel for the Petitioner submitted that the **Ugandan Constitution's Article 61(a)** and **Section 12(1)(e) of the Electoral Commission Act**, enjoins the Electoral Commission to ensure that regular, free and fair elections are held in an atmosphere of freedom and fairness that will permit the will of the electorate to prevail. That fairness in an election should be determined at all stages of the electoral process and that an election manned by wide spread violence, intimidation and torture of voters cannot be said to be free and fair; **KIRUNDA KIVEJINJA Vs ABDU KATUNTU, E.P.A No. 24 OF 2006**. See also **KIIZA BESIGYE VS E.C & ANOR, E.P. No.1/2002(SC)**.

- [10] The Petitioner contended that the above required legal ambience was flawed, which rendered the elections unfair, not

free, and tainted with irregularities in non-compliance of electoral laws as set out in **paragraph 7** of the petition.

[11] Counsel for the Respondents contended that for an election of the 1<sup>st</sup> Respondent to be set aside, the petitioner must plead and prove which provisions of the Act were not complied with. Secondly, he must plead and prove that as a result of the non-compliance, there was failure to conduct the election in accordance with the principles laid down in those provisions. Thirdly, he must plead and prove that non-compliance and the failure affected the result in a substantial manner; **KIRUNDA KIVEJINJA VS ABDU KATUNTU & ANOR (Supra)**.

[12] That in the instant case, the returns made by the 3<sup>rd</sup> Respondent were in order and reflected the will of the people and that the 1<sup>st</sup> Respondent was legally returned and declared the member of parliament for Kyaka Constituency, Kyegegwa District.

#### **A) Allegations of Non-compliance**

##### **I. Denial of the Petitioner's constitutional right to representation during the electoral process Contrary to Section 32(1) of the P.E.A and Article 68(3) of the Uganda Constitution.**

[13] It is the Petitioner's case in **paragraph 7(c) (i) & (ii)** of his petition that his agents were denied access to monitor the safety dispatch of the polling materials to the polling Centres, and to verify voters through the supervision and monitoring of the use of **Biometric Machines** and the Voters' register

which denial breached **Section 32(1) of the P.E.A** and **Article 68(3) of the Constitution of Uganda**, among other electoral laws.

- [14] The Petitioner claims that an election candidate has a duty to safeguard his interest during the whole polling process in line with **Section 32(1) P.E.A** that legislates thus;

*“A candidate may be present in person or through his or her representative or polling agent at each polling station for the purposes of safeguarding the interests of the candidate with regard to the polling process.”*

An “agent” includes a representative and polling agent of a candidate (**Section 1(1) P.E.A**) appointed in writing by a candidate (**Section 32(2) P.E.A**). These interests accrue from the time of dispatch of the polling materials, at voting and during the vote tallying.

- [15] The Petitioner pleads the particulars of the breach of his duty under **paragraph 7(c) of** the petition and claims that on the elections’ eve, his agents were denied by the 2<sup>nd</sup> Respondent to monitor the safety and the dispatch of the ballot boxes to the diverse polling stations when they went to district office. He adduced the affidavit evidence of the following, attached to his petition to prove his case:

**1.Mugambe Patrick** who claims he was allegedly chased from the 2<sup>nd</sup> Respondent’s office where he had gone to monitor the dispatch of polling materials.

**2.Niwagaba Johnson, Richard Nkurikiye and Tumwesigye Benon** among others (paragraph 7 of the petitioner’s affidavit) all purported to be his agents, that they were stopped from

monitoring the operation of the **Biometric Machines** and the **verification in the register** by the 3<sup>rd</sup> Respondent's agents.

[16] Counsel for the Petitioner submitted that there was a Principal-Agency relationship with the above mentioned deponents by their appointment letters attached to their respective affidavits. However, I have perused all the affidavits referred to by counsel for the Petitioner, though he Principal-Agency relationship of the Petitioner with these deponents.

[17] As regards the affidavits of **Tushangomujuni Martin, Nyesiga Ivan, Twasiima Prosper** and **Mubangizi Fred**, though their respective Agency appointment letters are attached, all deponents are confessed illiterates by virtue of the jurat/Certificate of translation in their affidavits. As per their respective National Identity Cards attached, they are and were however **unable to sign**. Surprisingly, in their affidavits, each purport to had signed his respective affidavit. There is nothing in their affidavit to explain this anomaly or show that by the time they acquired their respective National Identity cards, they were unable to sign for certain reasons but they are now able to sign.

[18] In **HON.GEORGE PATRICK KASUJJA VS FREDRICK NGOBI GUME & ANOR, E.P.A No. 68 OF 2016**, the trial judge had found it incredible for witnesses to purport to sign an affidavit when they have been unable to sign on their National  
*reasoning and hereby find that the affidavits were rightly rejected. It is of paramount importance that affidavits are*

*carefully drafted most especially because they are the principle source of evidence in election matters.”*

- [19] In the instant case, on account of the varying signatures on affidavits and remarks on National IDs that the deponents cannot sign, the following evidence affidavits attached to the petition; 1) **Tushangomujuni Martin**, 2) **Nyesiga Ivan**, 3) **Twasiima, Prosper**, 4) **Mubangizi fred**, 5) **Naturinda Ivan**, 6) **Dinavence Tumuhimbise** are accordingly found suspect, inherently unreliable, doubtful and lacking probative value and as a result, I have no option but to reject and strike them off.
- [20] The same standards definitely apply to the following affidavits attached in support of the 1<sup>st</sup> Respondent's answer to the petition; 1) **Mwesige Christopher**, 2) **Barongo Sebastian** and 3) **Mugisa Patrick**. These affidavits also have signatures of the deponents yet on their respective National IDs, there are remarks they were “**unable to sign**”.
- [21] The affidavits of **Tukamushaba Christine** and **Tusingwire Isaac** attached to the petition and **Twinomujuni Julius's** affidavit attached to the 1<sup>st</sup> Respondent's answer to the petition, the deponents purported signatures are found to visibly differ from their respective signatures on their National IDs. I am alive to the fact that it is ordinarily a hand writing or signature expert to verify whether the 2 signatures differ (**Section 43 of the Evidence Act**) but where the 2 signatures are found visibly different, court is entitled, in the absence of expert evidence to compare the signatures. This



has however, to be exercised with great caution; **HON.KIPOI TONNY VS RONNY WALUKU WETAKA, E.P.A No.7/2011.**

- [22] In this case, I find the impugned signatures on the above affidavits varying from what was appended on their National IDs, noting from the way the letters are made out or written, slants and curves. However, since the anomaly has been discovered by court on its own during the evaluation of evidence, I am entitled to hold the three impugned affidavits suspect and doubtful and therefore place less or no weight on such evidence.
- [23] In the circumstances, I proceed to evaluate the evidence adduced on the remainder of the affidavits. On this issue, the remaining affidavits relied on by the petitioner are those of **Tumwesigye Benon, Zaribugire Bernard, Niwagaba Edward and Ogaba Abdunul.**
- [24] The 1<sup>st</sup> Respondent denies the Petitioner's allegations that the petitioner's agents were denied their right to access and monitor the operation of the Biometric Machines and verify the voter's register on the polling day. It is the Respondent's case that all the candidates were allowed to monitor the dispatch of the polling materials from Electoral Commission District office to the polling stations. That the representation of the Petitioner is confirmed by the evidence of the Petitioner himself that he had agents at all polling stations during the process of casting and tallying votes. See also the affidavit of **Love Kevina** attached to the Respondent's answer to the petition.

- [25] Lastly, that the Agents of the Petitioner signed the **Declaration of Results Form (D.R.Forms)** at the respective polling stations where the Petitioner's agents allege that they were stopped monitoring the operation of the Biometric Machines and the verification of voters' in the register by the 3<sup>rd</sup> Respondent's agents.
- [26] I have looked at the **D.R.Forms** in respect of the polling stations where the four deponents were stationed by the Petitioner, that is; **Tumwesigye Benon** at **Kacumbi Itambiro polling station**, **Zaribugire Bernard** at **Bukere P/s (A-K) polling station**, **Ogaba Abdunul** at **Kibuye Organic (L-Z) polling station** and **Niwagaba Edward** at **Queen of peace P/s polling station**, I find that all the Petitioner's agents involved duly signed the **D.R.Forms** signifying that everything was in order and thereby certified the results as reflecting the will of the people who participated in the voting.
- [27] On the other hand, the 1<sup>st</sup> Respondent in **paragraph 22 of his affidavit** depone that all the polling stations where the Petitioner challenges the results as declared by the Returning officer, the counting was done in the presence of the Petitioner's agents who confirmed the number of votes received by both the 1<sup>st</sup> Respondent and the Petitioner, by signing the D.R. Forms.
- [28] Secondly, the additional affidavits for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents i.e of a) **Evelyne.A. Wandera**, the Returning officer of **Kyegegwa Electoral district**, b) **Priscilla Kasiita**, the supervisor **Nkenja Sub-county**, c) **Bisembo Monic**, the Presiding officer of **Queen of Peace Primary school polling**

station, d) **Betumine Alex** of **Bukere Primary School (A-K) polling station** and e) **Kunolera Gerald**, the Presiding officer of **Kibuye Organization Farmers (L-Z) polling station** and others all deny any interference from anybody with the operation of **Biometric Machines**, which are for purposes of additional identification as well as verification of a Registered voter and there is no agent of the participating candidates who was allowed to sit on the same table with those manning the machine due to the **covid 19** pandemic guidelines from the Ministry of Health and World Health Organization . That what is paramount for purposes of identifying a voter appearing at the polling station is the **National Voters Register (NVR)**, which bears a photo of a voter, a copy of which was given to all agents of candidates at the polling station.

- [29] None of the Petitioner's agents who include **Tumwesigye Benon** stationed at Kacumbi Itambiro polling station, **Zaribugire Bernard** stationed at Bukerere P/s (A-K) polling station, **Ogaba Abdunul** stationed at Kibuye Organic Farmers (L-Z) polling station, **Niwagaba Edward** stationed at Queen of peace polling station and others specifically denied having been given copies of National Voters Register. I take judicial notice of the effect of **covid 19** in the preparation, organization and conduct of the elections and at that, I would not expect the polling officials to permit every candidate's agent to sit with the polling officials operating the Biometric Machine on the same table. Permitting such would amount to crowding the table and therefore risking **covid** infection and also most likely compromise the security of the voting exercise.

[30] In conclusion, I find that none of the Petitioner's proved agent(s) were denied presence at their respective polling stations for purposes of witnessing events that took place there. They were able to verify the voters' register, the verifiable document that contains all persons entitled to vote (Section 18 of the E.C.Act) since none deny being given a copy by the 3<sup>rd</sup> Respondent's agents. Secondly, each of them signed the **D.R.Forms** without indication of any complaint. This court is therefore in the circumstances entitled to conclude that the agents of the Petitioner were satisfied with the electoral process and the events at their respective polling stations by their act of endorsing the D.R.Forms; **NGOMA NGIME VS E.C & ANOR, E.P.A No.12 OF 2002.**

[31] I therefore find that there is no evidence to support the Petitioner's allegation that there was denial of the Petitioner's Constitutional right to representation during the electoral process contrary to **Section 32(1) P.E.A** and **Article 68(3) of the Uganda Constitution.**

**II. Undue influence contrary to Section 80(1)(a) of the P.E.A, use of violence, harassment and intimidation of voters; fraudulent defacing or destroying election documents contrary to Section 76(a) of the P.E.A.**

[32] It is the Petitioner's case as pleaded in **paragraph 7 (c) (iii) of the petition** that there were several incidents of violence and intimidation by the 1<sup>st</sup> Respondent's agents with knowledge of the Respondent towards the Petitioner's agents and

supporters during the election process and at the election day;

a) A one **Denis** was kicked and beaten by the 1<sup>st</sup> Respondent's agents at Kabagara polling station during voting hours.

b) **On the 22<sup>nd</sup> day of Decemcer,2020**, the Petitioner's car which was carrying his supporters was smashed by supporters of the 1<sup>st</sup> Respondent at Katemba Trading Centre which greatly scared voters to appear to vote for the Petitioner on the voting day.

c) In **paragraph 15** of the Petitioner's affidavit, that on several occasions, his posters were defaced by the agents of the 1<sup>st</sup> Respondent in the areas of **Kakabare** and **Katemba** among others.

[33] As regards the allegations of intimidation and harassment, the petitioner adduced the affidavit evidence of **Tumwesigye Benon**, who stated that a one **Elly S/o Kasibayo** came with soldiers and threatened to cause violence if he insisted on monitoring the operation of the **Biometric Machines** and the **verification of Voters in the register**.

[34] The Petitioner also adduced evidence of **Niwabiine Denis**, who also alluded to the said **Elly S/o Kasibayo** and another group of the 1<sup>st</sup> Respondent's agents who came in a premio car No. UBH 989 and they arrested him together with a one **Vvumilia**, an agent to the Petitioner and they were beaten with threats of making them disappear.

[35] Then lastly, **Tumusiime Robert**, a supporter of the Petitioner deponed that the supporters of the 1<sup>st</sup> Respondent broke his car and tried to assault him but had to drive away faster to

save his life. He claim to had reported the incident to Kyegegwa police station vide **SD 33/12/12/2020**.

[36] All these deponents, **Tumwesigye Benon**, **Niwabiine Denis** and **Tumusiime Robert** are self-confessed agents and or supporters of the Petitioner. They are therefore partisan witnesses. In **AMORU & ANOR VS OKELLO OKELLO, E.P.A No. 39 OF 2016** while citing the case of **WADADA ROGERS VS SASANGA & ANOR, E.P.A No.31 OF 2011** court held the proposition that:

*“In Election matters, partisan witnesses have a tendency to exaggerate claims about what might have happened during elections. In such situations, it is necessary to look for “other” evidence from an independent source to confirm the truthfulness or falsity of the allegations.”*

[37] In the instant case, in the circumstances where the Respondents deny the allegations and contend that no such report of the incidences were reported to the presiding officers and or the Electoral Commission, the claims of intimidation and harassment remain unauthentic. The mere claim that an incident was reported at police and quoting the **SD Reference number** without attaching a police Certified copy is not enough. There is need for other evidence from an independent source to corroborate the claims of the Petitioner and his witnesses which I find lacking in this case.

[38] In the absence of any independent evidence to support and corroborate the Petitioner’s allegations, I find that there is no evidence adduced to the satisfaction of court that the alleged attacks on the agents and supporters of the Petitioner

occurred and that they were orchestrated by the agents of the 1<sup>st</sup> Respondent.

[39] As regards the defacing of the Petitioner's posters, there must first, be evidence that these posters existed and were accordingly displayed at the relevant referred to points in the constituency. This is so, because we have known candidates that have participated in elections but have no posters due to lack of funds. Court cannot therefore, assume that all candidates print and display campaign posters.

[40] Secondly, there must be evidence that the posters were defaced. Fraudulent defacing or destroying of candidates' posters being an electoral offence under **Section 76(a) P.E.A**, there must be among other things, evidence of a report to police. The claim therefore by **Tumusiime Robert** in support of the petition that he personally saw supporters of the 1<sup>st</sup> Respondent such as a one **Roger S/o Sanyu**, defacing the posters of the Petitioner in Kyegegwa Town Council without further evidence that in the 1<sup>st</sup> instance those posters existed, and he reported the act to police is not enough.

[41] Lastly, there was no evidence led by the Petitioner, that in the circumstances where there were more than 2 candidates in the race, the offence was committed by the 1<sup>st</sup> Respondent's supporters and that the posters were destroyed with the 1<sup>st</sup> Respondent's knowledge, consent or approval.

[42] As a result, I find that it has not been proved to the satisfaction of court that there was generalized intimidation and harassment of the Petitioner's agents and supporters, and

defacement of posters to warrant the annulment of the 1<sup>st</sup> Respondent's election.

**III. Making Wrong Returns of an election on the Declaration Results Forms (D.R.Forms) contrary to Section 78(a) of the P.E.A.**

[43] The Petitioner pleaded in **paragraph 7(d) and (f) of the petition** that the votes that were announced do not tally with the results that were declared by the 2<sup>nd</sup> Respondent. The Petitioner, in **paragraphs 7(f) (i-xix)** identifies wrong returns on the D.R. Forms of **19 polling stations** that bore discrepancies and inconsistencies during the tallying of votes by the 2<sup>nd</sup> Respondent's agents, all of which constitute an offence of '**making wrong returns of an election**'.

[44] Under **Section 78(a) P.E.A**, an election officer or other person having any duty to perform in relation to an election, who makes in any record, return or other document which he or she is required to keep or make under the Act any entry which he or she knows or has any reasonable cause to believe to be false commits an election offence of '**making wrong returns of an election.**'

[45] The impugned polling stations with the alleged discrepancies and inconsistencies during the tallying of votes by the 2<sup>nd</sup> Respondent's agents are; i) **Kako Primary School (A-K)**, ii) **Kikyendo Catholic Church**, iii) **Kyakatwanga (M-Z)**, iv) **Kicumu Primary School**, v) **Kacunbi Itambiro**, vi) **Kyangoma Catholic Church**, vii) **Ijugangoma Trading Centre**, viii) **Kyatega parish H/QS(L-Z)**, ix) **Ngangi P/s**, x) **Kasenene**



**Church of Uganda (A-K), xi) Kabagara Itambiro, xii) Kasenene P/s, xiii) Rwemijo Trading Centre, xiv) Nkaaka Parish H/QS (A-K), xv) Kinyinza Pentecostal Church, xvi) Kyarukembura Trading Centre, xvii) Kyakatwanga (A-4), xviii) Kisiita Church of Uganda and Kyebando Primary School.**

[46] I have looked at and closely examined each of the impugned polling stations and I have noted the following;

- a) Whereas the total number of the votes cast for each candidate were properly reflected and indicated on each of the impugned **D.R.Forms**, there are numerous errors in computation of the break down regarding the total No. of valid votes **cast, rejected (invalid)** and the Total No. of Ballot papers **counted, spoilt, issued to polling station and un used**. Then the other errors are in the computation of the Total number of **females** and **males** who voted in relation to the Total No. of votes cast and ballot papers counted.
- b) Each of the impugned **D.R.Forms** were duly endorsed by the presiding officer and the respective agents of the Petitioner and the 1<sup>st</sup> Respondent without either of them registering any complaint.

[47] **Article 68(4) of the Constitution** gives 4 essential ingredients of a valid D.R.Form;

- 1)Endorsement by the presiding officer.
- 2)Endorsement by the candidates' representatives or agents
- 3)The name of the polling station
- 4)The number of votes cast in favour of each candidate.

It is my view once the **D.R.Form** has satisfied the above requirements, then it is lawful and authentic.

[48] In **BABU EDWARD FRANCIS VS THE E.C & ANOR, H.C.E.P No. 10/2002**, Justice Stella Amoko (as she then was) held;

*“when an agent signs a D.R.Form, he is confirming the truth of what is contained in the D.R.Form. He is confirming to his 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.”*

See also **HON. OBOTH VS OTAALA EMMANUEL, E.P.A No. 38 OF 2011**.

[49] It follows therefore that once the **D.R.Forms** are dully endorsed by the respective presiding officers and the candidates and or their agents, then they are valid and reflect the outcome of the election.

[50] As regards the errors in the computation of the break down regarding the Total No. of valid votes **cast, rejected (invalid), ballot papers counted, spoilt, issued to polling station and unused**, as found reflected in the impugned D.R.Forms, it is my view that the errors are not fatal and therefore if corrected, it would not affect the outcome of the election.

[51] I am fortified in this position by the fact that it is not the Petitioner’s case that the results of the elections for either candidate were falsified. The petitioner’s case is that the **D.R.Forms** contained discrepancies and inconstancies which

in his view are evidence of ballot stuffing. It is clear from the impugned **D.R.Forms** that even if or once the discrepancies and the inconsistencies are corrected, it would have no effect on the figures reflected in the forms regarding the votes cast to and secured by each of the candidates. If the petitioner in this case had been contesting the votes cast in favour of each candidate or that the results which were announced did not tally with the results that were declared by the 2<sup>nd</sup> Respondent, and therefore he was relying on the ground of falsification, he would have presented a tally sheet or D.R.Forms with different figures for comparison.

[52] In my view, the discrepancies and inconsistencies in the computation of the breakdown of votes and how ballot papers were utilized referred to by the Petitioner, were not fundamental and substantial and this is proved by the fact that if it were so, the Petitioner and his agents would have objected to the **D.R.Forms** by raising a formal complaint to the 3<sup>rd</sup> Respondent and or refuse to endorse them. The fact that they did not reject the **D.R.Forms** but endorsed them, is evidence that the forms present and reflect a proper election for each of the impugned polling stations and that the results were valid. The claim that the Petitioner's agents were intimidated or threatened to endorse the **D.R.Forms** is not backed by any evidence because no report of such an incident was reported anywhere or indicated on the **D.R.Forms** themselves.

[53] Lastly, "making wrong returns of an election" under **Section 78 P.E.A** is an offence but is not perse a ground for annulling

an election under **Section 61 of P.E.A.** The petitioner has to prove to the satisfaction of court;

- a) That there has been failure to conduct the election in accordance with the principles as laid down in the provisions of the Act and that “the non-compliance and failure affected the result of the election in a substantial manner.”
- b) That an illegal practice or any 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.

[54] In the instant case, counsel for the Petitioner successfully pointed out the flaws in the **D.R.Forms** regarding the errors that the 3<sup>rd</sup> Respondent made during the computation of the breakdown of votes in different categories. He went on to point out the stations where all of this occurred and the figures involved. However, Counsel and the Petitioner were under duty to prove to the satisfaction of court how this substantially affected the outcome of the results in those particular polling stations. The Petitioner and counsel failed to discharge the onus in the instant case.

[55] It is my view, that the error in the computation of the breakdowns in the **D.R.Forms** appear to had resulted from the incompetencies and inefficiencies of the 3<sup>rd</sup> Respondent’s officers, and also the election fatigue that is characterized with elections generally. It has nothing to do with the 1<sup>st</sup> Respondent, the winner of the elections. He cannot be held vicariously liable for the offence.

[56] It is therefore my concluding view, that as long as what was reflected on the ballot papers as votes to the candidates that were cast at a polling station is what was transferred on the **D.R.Forms**, and the candidates and their agents endorsed the results, then the rest to wit; the computation of the breakdown into categories on the **D.R.Forms** is a formality.

[57] This is however not to say that the 3<sup>rd</sup> Respondent's Agents should abrogate their duties and obligations of conducting electoral process with utmost diligence and seriousness. **D.R.Forms** are very important for purposes of propriety of the electoral process. It is therefore imperative for election officials to enter all the relevant information on the **D.R.Forms** in order to provide safeguards against fraud. Court therefore, still emphasizes that the 3<sup>rd</sup> Respondent's officers and agents are not to be excused for their lack of diligence in conducting the election as mandated by the law. Any sloppiness on part of the 3<sup>rd</sup> Respondent in conducting the election is to be condemned. Under **Section 78(c) of the P.E.A** which provides that an election officer or other person having any duty to perform in an election, who makes in any record, return or other document which he or she is required to keep or make under the Act, any entry which he or she knows or has any reasonable cause to believe to be false; commits an electoral offence of "making wrong returns of an election" is sufficient notice.

#### **IV. Disenfranchising voters contrary to Article 59 of the Ugandan Constitution.**

- [58] To 'disenfranchise' means to deprive of the right to vote, **Merrian - Webster Dictionary**. In his bid to prove his allegations of disenfranchisement of his supporters, the Petitioner relied on the affidavit evidence of **Mugabe Patrick** who deponed that on the voting day, he got information from one of the Petitioner's supporters that a one **Tito**, an agent of the 1<sup>st</sup> Respondent was issuing voter's slips to only the Respondent's supporters.
- [59] This witness did not disclose the source of the information that a one **Tito** an agent of the 1<sup>st</sup> Respondent was issuing out voter's slips to the 1<sup>st</sup> Respondent's supporters. He did not witness what he claimed to have reported to police. His evidence is mere hearsay.
- [60] The second witness relied on by the Petitioner is **Dinavence Tumuhimbise**. It is noted that **Dinavence Tumuhimbise's** affidavit evidence was struck off the record on account of the signature thereon yet on the National Identity card, it is remarked "unable to sign".
- [61] As regards the Petitioner's claims that some polling stations such as **Nkaaka parish H/qs(A-K), Ijugangoma Trading Centre** and **Kyangoma Catholic Church** were closed as early as 3:00pm and that this disenfranchised his supporters, counsel for the Petitioner referred me to the **D.R.Forms** of the above polling stations as proof.
- [62] Though **D.R.Forms** are not the best pieces of evidence to prove time at which the voting at the polling station closed, I heeded and inspected the Electoral Commission Certified

copies of the **D.R.Forms** attached to the 3<sup>rd</sup> Respondent's answer to the petition (**R X1-77**) but in comparison to copies attached to the petition (**P.Exh.6**) and found that the **presiding officers** of the impugned polling stations endorsed on their respective **D.R.Forms**; **9:8pm** for Nkaaka parish, **6:00pm** for Ijugangoma and **6:00pm** for Kyangoma Catholic Church. It is my view that the presiding officer's time of endorsement on the **D.R.Forms** signifies the closure of the electoral process at a particular polling station but not the voting process which does not involve tallying of the votes. The presiding officer's time of endorsement on the **D.R.Forms** is in the circumstances not proof of time at which the voting at the polling station closed.

- [63] In the premises, I find that the petitioner has not proved the allegation of disenfranchisement of his supporters by virtue of voting closure time. Instead, the available evidence from the impugned polling station clearly shows that the polling officials proceeded beyond **6:00pm** for purposes of tallying the votes and eventual announcement of the results. The evidence of **Mugabe Patrick** is majorly hearsay and therefore inadmissible. No evidence has therefore been provided that the voting closed at 3:00pm. Besides, there is no list of person(s) allegedly disenfranchised provided or that they filed an affidavit to show that he/she was a voter and therefore disenfranchised.

#### **V. Ballot stuffing contrary to Section 76(c) P.E.A**

- [64] Counsel for the Petitioner submitted that the inconsistencies identified and noted in some of the **D.R.Forms** already referred to and the barring of the Petitioner's agents from the

supervision of the Biometric machines to verify the voters was deliberate in order to abet multiple voting and therefore, is proof of ballot stuffing at the relevant polling station stations. In other words, the Petitioner is alleging both multiple voting and ballot stuffing.

[65] Both multiple voting and ballot stuffing are electoral offences under **Sections 31 and 76(c) & (f) P.E.A.** It is now well established at law that a petitioner bears a higher standard of proof than when dealing with ordinary election irregularity. Both electoral offences or malpractices involves voting more than once at a polling station; **MUGISHA VINCENT VS KAJARA ASTON, F/PORTAL, H.C.E.P No. 4/2016.**

[66] In the instant case, a part from the Petitioner raising mere allegations, no cogent evidence of ballot stuffing was adduced to prove the allegations to the required standard. As regards the discrepancies in the **D.R.Forms**, it has already been found by this court that they were errors in the computation of the breakdown of the various categories of the votes and utilization of ballot papers and they were therefore not fundamental and substantial as they did not affect the number of votes cast to each individual candidate, thus reflected a proper election. The Petitioner's agents on their part also endorsed these **D.R.Forms** as valid. The **D.R.Forms** therefore produced in court, cannot amount to evidence from which to infer ballot stuffing and multiple voting at all in this particular case. The allegations and claims by the Petitioner's agents and supporters of ballot stuffing have already been found to have not been backed up by any evidence.



[67] In the premises, I find the allegations of Multiple voting and Ballot stuffing not proved to the satisfaction of court.

**Issue 2: Whether the non-compliance affected the results of the election in a substantial manner.**

[68] Counsel for the Petitioner submitted that considering the discrepancies in the voting results of the selected polling stations' **D.R.Forms** of the earlier on referred to 19 impugned polling stations canvassed under "**Making Wrong Returns of an Election on the Declaration Results Forms,**" using and following the mathematical test of Ballot papers issued, votes counted and Ballot papers as unused, coupled with the disenfranchisement of voters, court should find that the compound effect occasioned a substantial effect on the Petitioner's vote margin and the result of the election.

[69] Both counsel for the Respondents submitted that court should consider among other things whether the irregularities complained of adversely affected the sanctity of the election and, whether the winning majority would have been reduced in such away as to put victory of the winning candidate in doubt, in view of the win margin of **6,973 votes** in favour of the 1<sup>st</sup> Respondent.

[70] It is the 1<sup>st</sup> Respondent's case that all the evidence on record is comprised of mere assertions with no proof to back them up. That therefore, the elections were conducted in compliance with the electoral laws and where there was non-compliance, it did not affect the results of the election in a substantial manner.

[71] As already observed in this case, the Petitioner's allegations were merely conjectures without evidence. The malpractices identified in the 19 impugned polling stations did not have an effect on the number of votes cast to the participating candidates. They were mere errors in the computation of the breakdown of the vote categories. Non-compliance is not enough to overturn an election rather, it must be demonstrably shown that such non-compliance affected the results of the election in a substantial manner; **MULINDO REHEMA VS WINIFRED KIIZA & E.C, E.P.No. 29/16.**

[72] In this case, the Petitioner has failed the test. He has not demonstrably shown that the isolated non-compliance with the electoral laws instance affected the results of the election of the member of parliament for **Kyaka Central Constituency** in the election. This issue is in the circumstances found in the negative.

**Issue No.3: Whether the 1<sup>st</sup> Respondent or his agents with his knowledge and consent or approval, committed any illegal practice or offence.**

[73] In cases of bribery, being a very serious allegation which on its own can overturn an election, the burden is on the petitioner to prove each and every allegation of bribery and all the statutory ingredients of bribery to the satisfaction of court; **BAKALUBA PETER MUKASA Vs NAMBOOZE BETTY, E.P No.4 OF 2009 (S.C).** In **KAMBA SALEH MOSES Vs HON.NAMUYANGU JENNIFER, E.P.A No.27 OF 2011**, Court observed;

*“...bribery is such a grave illegal practice and as such it must be given serious consideration. The standard of proof is required to be slightly higher than that of the ordinary balance on probabilities applicable to ordinary civil cases. It does not, however call for proving the bribery beyond reasonable doubt as is the case in criminal cases, what is required is proof to the satisfaction of court.”*

**Section 68(1) of the P.E.A** provides that;

*“A person who either before or during an election with **intent**, either directly or indirectly to influence another person to vote or refrain from voting any candidate, gives or provides or causes to be given or provided any money, gifts or other consideration to that other person, commits the offences of bribery...”*

**Black’s Law Dictionary 6<sup>th</sup> Edition** defines **Bribery** as,

*“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.”*

See also **APOLOT STELLA ISODO Vs AMONGIN JACQUILINE, E.P.A No.60/2016.**

[74] In the instant case, the allegations of bribery are categories under the following heads;

**a) Offering of culverts in Nyabulukuya, Kazizi, Musombe, Gariboreka, Itambabinga and Kyichwamirundi.**

- [75] It is the Petitioner's case in **paragraphs 12 and 13 of his affidavit** that the 1<sup>st</sup> Respondent gave out culverts to the community and went on a **Radio Britop FM program** where he bragged about giving culverts to voters in different areas claiming that he alone should be the reason enough to be voted unlike other candidates.
- [76] Counsel for the Petitioner submitted that the dissemination of the broad casted radio Britop FM program in question is proved by about 21 deponents he listed whom he claimed are all **registered voters** by virtue of their attached copies of their National IDs. That they all aver that the talk on the radio insinuated that the 1<sup>st</sup> Respondent should be voted because of his culvert gifts to the diverse communities.
- [77] On the other hand, the 1<sup>st</sup> Respondent denied the Petitioner's allegations and contended that the culverts were purchased after a fundraising by the residents and that he presided over the start of the work started in early 2020 before nomination. That otherwise, his participation in fundraising for the purchase of the culverts and repair of the bridge were not intended to directly or indirectly influence other persons to vote or refrain from voting any candidate in the impugned areas, but rather that he was fulfilling his civic duty as a citizen and resident of Kyaka Constituency.
- [78] In **APOLOT STELLA ISODO Vs HON. AMONGIN & ANOR, E.P.A No.60/2016**, it was held that it is now established that there are 3 ingredients of bribery;
1. A gift was given to a voter

2. The gift was given by a candidate or his agent
3. That it was given with the intention of inducing the person to vote.

**Section 1 of the P.E.A** defines a voter as,

*“a person qualified to be registered as a voter at an election who is so registered and at the time of an election is not disqualified from voting.”*

**In KAMBA SALEH MOSES Vs HON. NAMUNYANGU JENNIFER, (supra)**, It was emphasized that it is absolutely necessary that it is proved to the satisfaction of court by those alleging the bribery that the people allegedly bribed were registered voters at the time of the alleged bribery. The standard requires *inter alia*, the motive of the giver to be established.

[79] In the instant case, the Petitioner presented about 21 affidavits evidence to prove his allegations that the 1<sup>st</sup> Respondent while on a **Radio Britop FM program** broadcast in **January 2021**, indirectly influenced the voters to vote for him through his promises to transform their incomes into prosperity, and to offer their communities development. The **radio Britop FM program** wherein the 1<sup>st</sup> Respondent made the promises and intimated to donate culverts which he eventually delivered, was personally recorded by **Kateba Joseph**. The said **Kateba Joseph** deposed an affidavit to that effect.

[80] I have looked and evaluated the affidavits of each of the Petitioner's witnesses relied upon to prove the allegation of bribery who include the said **Kateeba Joseph**, none of them attached evidence to their affidavits proving that they are voters within the meaning of **Section 1 of the P.E.A.**

[81] It is now settled law conclusive proof of a registered voter is by evidence of a person's name appearing in the National Voters' Register; **NABUKEERA HUSSEIN HANIFER VS KUSASIRA PEACE & ANOR, E.P.A.No. 72 OF 2016.**

It is therefore neither a **National Identity card**, not even a **Voter Location slip** is sufficient proof of a registered voter because one may possess them but at the time of an Election, he/she may not be qualified to vote. This is also emphasized by **Section 18 of the Electoral Commission Act** which provides that the only source when proving whether a person is a registered voter is the Voters' Register and Voter rolls. None of these have been attached to prove that all the allegedly bribed were registered voters at the time of the alleged bribe. It is the position of the law that National Identity cards cannot confirm the Petitioner's witnesses' eligibility as registered voters.

[82] Secondly, among the 21 purported registered witness voters and supporters include **Naturinda Ivan, Nyesiga Ivan, Tushagomujuni Martin** and **Dinavensi Tumuhimbise** whose affidavits were struck out for being incompetent.

[83] As regards the **Radio program on Britop FM** and the allegations of delivery of culverts to the communities, the 1<sup>st</sup> Respondent does not deny attendance and participation in the program. It is however the 1<sup>st</sup> Respondent's case that in the Radio program, he was merely reminding the electorate of the projects he had been involved in and that whatever he did, it was not intended to induce anyone to vote for him.

[84] I have carefully perused the **Britop Fm Radio program** contents in **P.Exh. 9** and played a compact disc (CD) of the program as recorded by **Kateba Joseph**. I do find that neither is the program of the impugned **Britop FM Radio** talk named nor is the date upon which it was aired disclosed for purposes of enabling court put the contents of the program in the proper context. At the same time, in the pleadings and all the relevant affidavit evidence, no date and name of the program was availed.

[85] In the premises, I find that it cannot be assumed that merely because somewhere in the Transcript's translation of the **C.D (P.Exh.9)**, the 1<sup>st</sup> Respondent mentioned the events of the previous month as "**December**" and therefore implied that the program was in "January", in my view, it is not enough evidence. It is important that the name of the program and period/date in which the alleged talk on the radio took place so as to ascertain whether the incident took place during the election period and its intention or purpose. In my view, the mentioning of the month of "**December**" and the words "**on 14<sup>th</sup> after voting for the cause of development**" without mentioning the year is not proof to the satisfaction of court that the incident took place in "**January 2021**" as the Petitioner wants us to believe. The petitioner ought to have pleaded and presented full particulars of the program with the dates.

[85] Secondly, I note that in the Radio program in question, the 1<sup>st</sup> Respondent was communicating to the listeners generally about his social obligations regarding the community. Indeed,

he participated in the laying of culverts during communal road works.

[86] As was observed in **KAMBA SALEH VS HON. NAMUYANGU (Supra)** that in determining election matters involving bribery allegations, the law requires caution on the part of court to subject each allegation of bribery to thorough and high level scrutiny and to be alive to the fact that in election petitions, in which the prize is political power, witnesses may easily resort to telling lies in their evidence, in order to secure Judicial victory for their preferred candidate.

[87] Lastly, in **KABUUSU MOSES VS LWANGA TIMOTHY & ANOR, H.C.E.P No.15 OF 2012**, Court also observed that,

*“...in prohibiting the giving of gifts or donations during the electoral period parliament did not intend that during campaign period, candidates become heartless beasts of the jungle, acting with abandonment of rationality, and absolutely averse to the need to be humane even in situation that meets the heart.”*

[88] In the instant case, I find that there is no evidence to the satisfaction of court that in the 1<sup>st</sup> instance, the impugned program on **Britop FM** was aired and broad casted during the election period so as to constitute either a campaign or evidence of the giving out culverts to the communities as a bribe. None of the Petitioner’s witnesses including **Kateba Joseph** who recorded audio (**P.Exh.9 CD**) deposed anywhere regarding the name of the program and when it was aired or broadcasted.



[89] As regards the participation of the 1<sup>st</sup> Respondent in the laying or fixing of the culverts, I find no evidence that he was acting beyond his social responsibility of joining the community and other community leaders in laying down of culverts as they worked on the roads. No cogent evidence was led by the Petitioner that the culverts were purchased by the 1<sup>st</sup> Respondent for distribution among the communities with the intention to induce the recipients to vote him. This fortified by the fact that the 1<sup>st</sup> Respondent himself stated in the talk show on the radio that whatever is being done had nothing to do with votes.

[90] In the premises, I find that the Petitioner has not proved to the satisfaction of court that the participation of the 1<sup>st</sup> Respondent in road works with the community and other community leaders and his talk on Radio Britop FM was intended to induce anyone to vote him or refrain from voting anyone else including the Petitioner.

**b) Giving out money in Nyantaleguza, Kyebando and Sinai Church of Uganda and other places.**

[91] In this regard, the Petitioner relied on the evidence of **Kaibanda Amon** who deponed that the 1<sup>st</sup> Respondent brought **6 culverts** and **50 sacks of cement** and paid him and others **50,000/=** to share and fix the culverts. The others who received money include **Naturinda, Tusingwire Isaac, Turyahebwa Patrick, Tumukunde Emily** and **Ainebyona Festo** who were all paid for working at various bridges by the 1<sup>st</sup> Respondent with the intention that they vote him. The 1<sup>st</sup> Respondent denied the allegations.

[92] Again, as I have already observed, no evidence was led by the Petitioner that all the above witnesses were voters so as to suffice the monies allegedly given to them by the 1<sup>st</sup> Respondent as a bribe within the meaning of **Section 68 P.E.A.** The mere possession of National IDs is not enough. Besides, the affidavit of **Naturinda** and one **Tushangomujunu Martin** had already been struck off record for being incompetent. Lastly, I don't see any other independent evidence to prove the allegations of giving out money to the people that were working or worked on the various bridges and that the giving out of the money, if at all it occurred, was for influencing people to vote for the 1<sup>st</sup> Respondent. The same applies to the allegations by **Aryiza Eria, Kwinaga Deus** regarding the donation at Jerusalem Community Church and Sinai Church of Uganda. There is no evidence that the alleged beneficiaries constituted voters.

**c) Donation of a sound system at Kakabara Itambiro Church.**

[93] This allegation is contained in **paragraph 12 of the Petitioner's affidavit.** The Petitioner relied on the affidavit evidence of **Tumusiime Brenda** and **Zaribugire Bernard** who deponed that they are supporters of the Petitioner and that on 8/1//2021, the 1<sup>st</sup> Respondent offered the **members of faith** of which they are members, a public sound system. No evidence was led that the deponents themselves or the other unnamed beneficiaries of the public sound system are voters. Secondly, there is no independent evidence available to corroborate the allegations of the deponents who are ardent supporters of the petitioner.

**d) Giving out of the 10 iron sheets at Habyapa Stage and fliers to voters.**

[94] As regards this allegation, there is no evidence whatsoever to support the Petitioner's claims. The 2 deponents; **Matsiko James** and **Kwihangana James** in support of the Petitioner claimed that the 1<sup>st</sup> Respondent issued fliers to voters on the eve of voting so that they vote for him. There is no list of those persons who were issued with the fliers and there is no evidence that they are voters.

**e) Falsification of D.R Forms at Kibira (A-K), Bukare P/s (O-Z), Isanga P/s and others.**

[95] As I have already observed, no evidence was led to prove that the **D.R.Forms** of the above impugned polling stations were falsified. In the premises where the petitioner has not adduced any evidence regarding what he opines as the correct results, I am unable to believe and go by his assertions. I have again looked at the sample polling stations of **Kibira (A-K)**, **Bukare P/s (O-Z)** and **Isanga P/s**, I have not been able to detect any falsification of results worth naming so.

[96] All in all, the Petitioner has not discharged the evidential burden in proof of the illegal practices alleged and when this is coupled with the fact that non was reported to police and or the Retuning officer of the 3<sup>rd</sup> Respondent, I find the Election was generally free and fair and it reflected the will of the people of **Kyaka Central County Constituency**.

**Issue No. 4: Whether the 1<sup>st</sup> Respondent was qualified for nominations to stand as a member of parliament at the time of the election.**

- [97] Counsel for the Petitioner submitted that **Article 80(1) (c) of the Constitution of Uganda** and **Section 4 (1) (c) P.E.A** legislate the basic requisite academic qualifications as the Uganda Advanced Certificate of Education (U.A.C.E) or its equivalent qualifications as can be accredited by the National Council for Higher Education (NCHE).
- [98] The Petitioner contends that the 1<sup>st</sup> Respondent was unqualified for nominations to stand as a member of parliament because he relied on the nomination documents including academic documents that he did not authenticate as his own in law.
- [99] Counsel submitted that the basis of the Petitioner's claim is not based on the authenticity of the academic documents that the 1<sup>st</sup> Respondent exhibited, but it is rather, on the lawful identity of the 1<sup>st</sup> Respondent and the person named in the presented documentations that include the academic papers that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents relied on to nominate him.
- [100] That the 1<sup>st</sup> Respondent a one **Bright Tom Amooti** was not known as so named in his nomination papers in law when he, at the time of the nomination attempted to identify himself as **Bright Tom Amooti**. That he was at the time, in the process of processing a deed poll to legalize that name he had also inconsistently used on his National Identity card, among other documents, apparently to justify its use for nomination

purposes. That to the Respondent's prejudice, the Deed poll was gazetted way after both the nominations and the subsequent elections that were held on 14/1/2021. It is the Petitioner's submission that the said **Deed poll** ought to have been done fully before nomination to justify its use during the nomination. Thus at the time of the nominations, the 1<sup>st</sup> Respondent was not lawfully known by the names of **Bright Tom Amooti**, the registered names of his nominations with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. On the nomination date, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents ought to have known that the 1<sup>st</sup> Respondent was ineligible for election under that name whose use he had not legalized, which makes them liable for this omission. Counsel for the Petitioner distinguished the court of Appeal decisions in **OKELLO P. CHARLES ENGOLA & ANOR VS AYENA ODONGO, E.P.No. 26 & 94** and **HASHIM SULAIMAN VS ONEGA ROBERT, E.P.A No. 01 OF 2021** from the instant case because in these cases, the Appellants were merely adding their father's names and a political pseudo name.

[101] Counsel for the Petitioner concluded therefore, that the 1<sup>st</sup> Respondent lacked the minimum academic qualifications under the names **Bright Tom Amooti** since he tendered U.A.C.E academic documents acquired in 2003 which are not his as it did not bear the names thereon **Bright Tom**.

[102] On the other hand, the Respondent's counsel submitted that the 1<sup>st</sup> Respondent was properly nominated and had all the required academic qualifications for the seat of Member of Parliament as per his U.A.C.E from **Wits College Namulanda**, Diploma and Bachelors of Arts both from **Nkumba University (P.E 2)**.

- [103] The 1<sup>st</sup> Respondent on his part, testified that his National ID and passport (**P.E 5 & 4**) are in the names **“Bright Tom Amooti.”** That he is a Mutooro and therefore **“Amooti”** is a petty name (Empaako) which is commonly held and used among the Batooro. The counsel invited court to take judicial notice of the Batooro petty names.
- [104] The 1<sup>st</sup> Respondent testified further that he has used the name **“Amooti”** all his life and has since his University days added it to his names and at the date of his nomination, he had sworn a statutory declaration explaining that **Tom Bright** and **Tom Bright Amooti** are one and the same refer to him, the basis upon which he was nominated.
- [105] It is the position of the law that the burden of proving the authenticity of impugned academic qualifications or documents rests with the one who relies on it; **ABDUL BANGIRANA NAKENDO VS PATRICK MWONDHA, S.C, E.P No. 9 OF 2007.** In **NINSIIMA GRACE VS AZAIRWE DOROTHY NSHANJA KABARAITSYA & ANOR, E.P.A No. 5 /2016,** the court of Appeal held that;
- “the first Respondent having sworn a statutory declaration explaining that the addition of one name had been to add her father’s name and another being the adoption of her husband’s name upon marriage, the addition of the latter did not amount to a change of name but was rather an adoption of the husband’s name. Similarly, the adoption of her father’s name was not a change in the name but a simple adoption.”*

The issue in this case is whether the 1<sup>st</sup> Respondent's name "**Amooti**" was an addition of a name and not a change of names.

[106] In the instant case, it clear and uncontested that the 1<sup>st</sup> Respondent made a statutory declaration explaining his names **Bright Tom Amooti** visa vis his academic documents which included his U.A.C.E in 2019 (**P.Exh.3**). It is also not in dispute that the 1<sup>st</sup> Respondent's passport and National identity card (**P.Exh.4 and 5**) bear the full names **Tom Bright Amooti** and it is also not in dispute that he took out a Deed poll for purposes of evidencing that he is known by the names **Bright Tom Amooti** on **10/8/2010** but had the deed poll gazetted on **26<sup>th</sup> March 2021**. The gazetting definitely took place after nomination and it is therefore apparent that on nomination, he must have presented his academic documents accompanied by a statutory Declaration of 2019 and an un gazetted Deed poll of 2010. It is upon these documents that the 3<sup>rd</sup> Respondent nominated him. It is therefore correct, as put by counsel for the Petitioner that the nomination of the 1<sup>st</sup> Respondent was based on the above documents when the 1<sup>st</sup> Respondent was still in the process of gazetting his deed poll.

[107] On this basis, it is the counsel for the Petitioner's submission that the 1<sup>st</sup> Respondent's attempt to make a deed poll after nomination but before election should have compelled the 3<sup>rd</sup> Respondent to cancel the 1<sup>st</sup> Respondent's nomination under **Section 13(c) of the P.E.A** for illegibility of his submitted use of the name of **Bright Tom Amooti** for his nomination registration.

- [108] It is my view that a deed poll becomes effective only upon its gazetting; **SERUNJOGI JAMES MUKIIBI VS LULE UMAR MAWIYA, E.P.A No. 15 OF 2006.**
- [109] The issue now is whether in the absence of a duly gazetted deed poll, the 1<sup>st</sup> Respondent was ineligible for nomination. In the instant case, it has not been disputed by the Petitioner that among the Batooro “**Amooti**” is a petty name. In view of the above, I heed the call of the Respondents and take judicial notice of the fact that “**Amooti**” is a petty name (empaako) among the Batooro tribe.
- [110] It is common knowledge that the Batooro and Banyoro tribes in Uganda have what is referred to as “petty names”, **empaako**. The petty names are acquired and or adopted at any stage of one’s life. This is also permissible for those non Batooro but who become adopted and accept to adapt to the Batooro culture and end up acquiring and adopting petty names. When petty names are acquired or adopted, some individuals may opt and prefer to use them as part of their official names whereas others may not. For those who may acquire petty names and add them on their official names, in my view, such is not a change of names but an adoption of a petty name and therefore, does not necessarily require a deed poll.
- [111] A petty name can be equated to a pseudonym/pseudo name, pen name or a non dep lome (French) and therefore following the decision of **OKELLO .P. CHARLES ENGOLA MACODWOGO & NOR VS AYENA ODONGO (supra)** and **HASHIM SULAIMAN VS ONEGA ROBERT (supra)**, I find that though the 1<sup>st</sup>



Respondent deposed a statutory declaration purporting to replace the name **Bright Tom** and substitute it with **Bright Tom Amooti**, it did not amount to change or replace a name with another but to add or adopt the petty name “Amoot”.

[112] In **OKELLO.P. CHARLES ENGOLA & ANOR VS AYENA ODONGO, E.P.AS No. 26 & 94 OF 2016**, the court of Appeal held;

*“It is our view that interchanging of names cannot affect one’s qualifications. In this case, according to his testimony, the 1<sup>st</sup> Appellant did not change the name ‘Macodwongo’ for political purposes. The 1<sup>st</sup> Appellant did not forfeit all rights attached to his former name of ‘Okello P. Charles’.”*

See also **NINSIIMA GRACE VS AZAIRWE DORORTY** (Supra).

In **MANDERA AMOS VS BWOWE IVAN, E.P.A No. 19/2016**, it was held;

*“...the **appellant** relied on a statutory declaration clarifying the discrepancy between the two names. We are fully aware and ready to take judicial notice of the fact that a **statutory declaration** is one mode through which discrepancies in names in a document may be clarified.”*

[113] In the instant case, it has been found that the 1<sup>st</sup> Respondent accompanied his academic documents with a statutory declaration for nomination. On the basis of the documents presented, he was duly nominated. It cannot be said in the circumstances, that the 1<sup>st</sup> Respondent’s presentation of his academic documents accompanied with a statutory declaration clarifying the discrepancies in names occasioned any nomination anomalies to require the 3<sup>rd</sup> Respondent

cancel or refuse his nomination under **Section 13 (c) P.E.A**, that he was not qualified for election. In the premises, I find that the 1<sup>st</sup> Respondent was rightly and duly nominated. He needed not first go through the processing of a deed poll.

[114] The next issue is whether the 1<sup>st</sup> Respondent who presented the academic documents accompanied with the statutory declaration for nomination was the owner of the document.

[115] The Petitioner does not contest the authenticity of the academic documents, that the 1<sup>st</sup> Respondent exhibited on his nomination. He is contesting the person named in the presented documents to be the 1<sup>st</sup> Respondent. In the petitioner's response to the 1<sup>st</sup> Respondent's written submissions, he contended that that petitioner adduced cogent factual evidence of the school album of **Namulanda Wits College at Namulanda** for U.A.C.E 2003 students where a one Bright Tom was registered as aged **21 years (P.E.7)**. That relatedly, the 1<sup>st</sup> Respondent got married vide marriage certificate dated 6<sup>th</sup>/10/2007 when he was aged **27 years (R.I)**. That therefore, a **Bright Tom** who sat for **U.A.C.E 2003 at Namulanda WITS College**, Namulanda should be aged about **25 years** and not **27 years**, and for that matter, it is doubtable this **Bright Tom** is the 1<sup>st</sup> Respondent who claims to be a one **Bright Tom Amooti** that got married vide marriage certificate dated 6<sup>th</sup> October, 2007.

[116] In this case, the 1<sup>st</sup> Respondent having proved that the academic documents in question were authentic, it is the duty of the Petitioner to prove to the satisfaction of court that the

academic documents in question are not his but belong to a different person.

[117] The Petitioner has adduced the history of the 1<sup>st</sup> Respondent and counsel has argued that by 2003 when the 1<sup>st</sup> Respondent got his U.A.C.E, he was 21 years as per the school album at **Wits College Namulanda** and therefore by 2007 when he purportedly got married, he could not be 27 years of age as per his **marriage certificate**.

[118] I have perused both the **marriage certificate** and the **Wits College Namulanda** where the 1<sup>st</sup> respondent sat for his U.A.C.E. It is clear from mathematical calculations that the 1<sup>st</sup> Respondent having been born in **October 1980**, (looking at his marriage certificate), by **May 2003**, at Wits College Namulanda, he would be **21 years** as reflected in the school album and by **October 2003**, he would be **22 years**. It follows therefore, that by the time he got married, he was by **October 2007** aged **26 years**. In terms of age therefore, there is a discrepancy of **1 year** implying that it could have been an error either on the 1<sup>st</sup> Respondent's stated age at **Wits College Namulanda** or at his wedding at **All Saints Cathedral - Kampala**. Otherwise, on his part, the 1<sup>st</sup> Respondent adduced sufficient evidence that he attended the said school and a photo album which bears his photo and other students like **Kenneth Francis Balengera** who appeared in court and identified himself and the 1<sup>st</sup> Respondent was availed in court. No expert or photographic expert was presented by the petitioner in court to prove that the 1<sup>st</sup> Respondent is not the one appearing in the photo album.

[119] In absence of any other evidence from the Petitioner that the 1<sup>st</sup> Respondent is not the **Tom Bright** and or **Tom Bright Amooti** or production of the purported **Tom Bright**, I find that the Petitioner's allegations that the 1<sup>st</sup> Respondent was not qualified for nomination to stand as a member of parliament wild and therefore void and without merit.

**Issue No.5: What remedies are available to the parties.**

[120] The Petitioner failed to prove to the satisfaction of court his allegations for setting aside the election of the 1<sup>st</sup> Respondent.

[121] The difference of votes between the Petitioner and the 1<sup>st</sup> Respondent was **6,973 votes** which is so high that the Petitioner failed to justify his claims. The Petitioner failed to prove his allegations to the standard required in election petitions. In the premises, the petition is dismissed with costs in accordance with **Section 27 of the CPA**. The election of the 1<sup>st</sup> Respondent as a **Member of Parliament** for **Kyaka Central County Constituency** is accordingly confirmed.

**Dated at Fort portal this 29<sup>th</sup> day of October, 2021.**

**BYARUHANGA JESSE RUGYEMA**  
**JUDGE.**