

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, CJ; ODER, JSC; TSEKOOKO, JSC; KAROKORA, JSC

AND MULENGA, JSC.)

ELECTION PETITION NO.1 OF 2001

COL (RTD) BESIGYE KIZZA:..... PETITIONER

VERSUS

1. MUSEVENI YOWERI KAGUTA

2. ELECTION COMMISSION:..... RESPONDENTS

REASONS FOR JUDGEMENT OF ODOKI, CJ.

This is filed by the petitioner Col. (RTD) Dr. Besigye Kizza against the 1st Respondent Mr. Museveni Yoweri Kaguta and the 2nd Respondent the Electoral Commission, challenging the results of the presidential Election held on 12th March 2001. The 2nd Respondent organized those elections and declared the 1st Respondent the winner. The petitioner seeks this court that Museveni Yoweri Kaguta was not validly elected as president, and that the election be annulled.

The petition was brought under the Presidential Elections Act 2000 (No. 17 of 2000) and the Presidential Elections (Election Petitions) Rule 2001(SI No. 13 of 2000) article 104 of the Constitution and Section 58 of the Presidential Elections Act 2000 provide that any aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission as President was not validly elected, within ten days after the declaration of results. The Supreme Court is required to inquire and determine the petition expeditiously and declare its findings not later than thirty days from the date the petition is filed. Where an election is annulled, a fresh election must be held within twenty days from the date of the annulment.

On 23rd March 2001 the Petitioner lodged a petition in the Supreme Court. It was accompanied by an affidavit sworn by him. In his petition, the Petitioner complains that the 2nd Respondent failed to comply with the Electoral Commission Act and the Presidential Election Act in various

instances and that the non-compliance affected the results of the election in a substantial manner. The petitioner also alleged in the petition that the 1st Respondent committed various illegal practices or election offences personally or by his agents with his knowledge and consent or approval. Five issues were framed by the Court. The hearing of the petition commenced on 3rd March and was concluded on 13th March 2001

The petition symbolized the restoration of democracy, constitutionalism and the rule of law in Uganda. It demonstrated the fundamental democratic values contained in the 1995 Constitution, which include the sovereignty of the people, the right of the people to choose their leaders through regular free and fair elections and the peaceful resolution of disputes. It was an important petition because it involves the election of a Head of state, Head of Government and Commander-in-Chief of the Uganda Peoples Defence Forces and the Fountain of Honour. The petition was bound to affect the entire election because the election of a president is by universal adult suffrage through a secret ballot. The outcome of the petition would have far reaching consequences on the peace, stability, unity and development of Uganda.

We gave our judgment on 21st April 2001 dismissing the petition with an order that each party bears its own costs. The Court's findings on each issue were as follows:

“1. That during the Presidential Election 2001, the 2nd Respondent did not comply with provisions of the Presidential Elections Act:

- (a) in s.28 as it did not publish in the Gazette 14 days prior to nomination of candidates, a complete list of polling stations that were used in the election; and***
- (b) in s.32 (5), as it failed to supply to the petitioner official copy of voters register for use by his agents on polling day***

2. that the said election was conducted partially in accordance with the principles laid down in the said Act, but that:

- (a) in some areas of the country, the principle of free and fair elections was compromised;***
- (b) in the special polling stations for soldiers, the principle of transparency was not applied; and***

(c) there was evidence that in a significant number of polling stations there was cheating.

- 3. By majority of three to two, that it was not proved to the satisfaction of the Court that failure to comply with the provisions of, and principles laid down in the said Act, as found in the first and second issues, affected the result of the election in a substantial manner.*
- 4. By majority of three to two, that no illegal practice, or other offence under the said Act, was proved to satisfaction of the Court, to have been committed in connection with the said election by the 1st Respondent personally, or with his knowledge and consent or approval.*
- 5. In the result, by majority decision it is ordered that the petition be and it is hereby dismissed.”*

We order that each party bears its own costs.

We reserved the reasons for our judgment. I now give the reasons for my judgment dismissing the petition.

Background to the Petition:

On 12th March 2001, Uganda went to the polls to elect a President. These were the second Presidential Elections held under the 1995 constitution. The first elections were held in 1996. Those elections were won by the 1st Respondent who is the incumbent President. The term of the office of President is five years and the President cannot hold office for more than two terms.

At the March 2001 elections, there were six candidates namely: the petitioner Besigye Kizza, Awori Aggrey, Bwengye Francis, Karuhanga K. Chapaa, Kibirige Mayanja Muhammad and Museveni Yoweri Kaguta, the 1st Respondent. The electoral commission returned by its declaration dated 14th March 2001 the 1st Respondent as the vividly elected President, having 69.3% of the votes cast at the election. The Petitioner obtained 27.8% of the votes cast.

The particulars of the complaints against the 2nd Respondent are contained in para 3(1) of the petition. They are failure to publish additional polling stations in time, failure to publish a full list

of all polling stations in each constituency 14 days before nomination day, failure to supply copies of the voters Register, the Voters for each constituency and the Voters Roll for each polling Station; and failure to display copies of the Voters roll for each Parish or Ward for a period of 21 days. Other complaints are chasing away of the Petitioner's agents from many polling stations, allowing voting before or after official polling time, stuffing ballot boxes with ballot papers and failure to open the ballot boxes in full view of those present, and allowing people to vote more than once.

The petitioner also complained against the 2nd Respondent that one of its Commissioner and two officials were involved in electoral offences and were charged in court, that the 2nd Respondent failed to control distribution and use of ballot boxes and papers resulting in commission of election offences. The Petitioner further complained that the 2nd Respondent allowed people under 18 years of age to vote. It failed to prevent Petitioner's agents being chased away from polling stations, it allowed people with no valid Voters Cards to vote, it allowed people with deadly weapons namely soldiers and para-military personnel to be present at polling stations, it denied the Petitioner's Polling agents information concerning the counting and tallying process, and it declared results of the election when all the Electoral Commissioners had not signed the Declaration Results Form.

Other Petitioner's complaints are the 2nd Respondent failed to ensure that the electoral process was conducted under conditions of freedom and fairness and as a result the campaigns of the Petitioner and his agents were interfere with, that some of the Petitioner's agents and supporters were abducted and arrested, that some of the 2nd Respondent's agents ticked ballot papers in favour of the 1st Respondent and other stuffed ballot boxes with ticked ballot papers and that as a result of such non-compliance with the provisions of the Act and the Election Act affected the result of the election in a substantial manner.

The petitioner alleges in the petition that the 1st Respondent committed various illegal practices or election offences personally or by his agents with his knowledge and consent or approval. The first allegation against the 1st Respondent is that contrary to section 65 of the Act he publicly and maliciously made a statement that the Petitioner was a victim of Aids without any reasonable ground to believe that it was true and that this false statement had the effect of promoting the election of the 1st Respondent unfairly in preference to the Petitioner alleged to be a victim of

Aids as voters were scared of voting for your Petitioner who by necessary implication was destined to fail to carry out the functions of the demanding office of president and to serve out the statutory term.

The second complaint is that contrary to section 63 of the Act the 1st Respondent and his agents with the Respondent's knowledge and consent offered gifts to voters with the intention of inducing them to vote for him.

The third allegation is that contrary to section 12 (1) (e) and (f) of the Electoral Commission Act the 1st Respondent appointed major General Jeje Odongo and other partisan Senior Military Officers to take charge of security of the Presidential Elections Process and thereafter a partisan section of the army was deployed all over the country with the result that very many Voters either voted for the 1st Respondent under coercion and fear from voting altogether.

The fourth allegation is that contrary to section 25 (b) of the Act the 1st Respondent organized groups under the presidential Protection Unit and his Senior Presidential Adviser a one Major kakooza Mutale with his kalangala Action Plan para-military personnel to use force and violence against persons suspected of not supporting the 1st Respondent thereby causing a breach of peace and induced others to vote against their conscience in order to gain unfair advantage for the 1st Respondent in the election.

The fifth complaint is that contrary to section 25 (e) of the Act the 1st Respondent threatened that he would put the Petitioner six feet deep- which meant causing death to the Petitioner.

Finally, the Petitioner alleges that the said illegal practices and offences were committed by the 1st Respondent personally or and his agents and supporters with his knowledge and consent or approval through the military, Presidential protection Unit and other organs of the state attached to his office and under his command as the President, Commander-in-Chief of the Armed Forces.

The 2nd Respondent filed an answer to the petition accompanied by an affidavit sworn by its Chairman, Hajji Aziz Kasujja. In its answer the 2nd Respondent admits some of the alleged facts but gives explanations and denies others.

The 2nd Respondent denied creating new polling stations but stated that existing stations were split to ease the voting process and it affected all candidates equally.

The 2nd Respondent denied refusing to supply to the Petitioner copies of the final Voters Register but stated that non delivery was due to insufficient time to prepare the Register. It further denied that it failed to efficiently compile, maintain and up-date the Voters Register and denied knowledge of dead or illegible people remaining of the Register. The 2nd Respondent stated that the Voters Register was displayed for five days throughout the country. It denied knowledge that polling agents of any presidential candidate was chased away, and denied that itself or its agents allowed voting before of after official polling hours. The 2nd Respondent denied allowing the stuffing of ballot boxes or anybody to vote more than once. It denied intruders being allowed to tamper with voters Register and Rolls or voting materials.

The 2nd Respondent admitted that one Commissioner and two other employees were arrested and charged in court and their cases had not been determined; and the matter was therefore subjudice. The 2nd Respondent denied knowledge that the agents of the 1st Respondent interfered with the electioneering activities of the petitioner, or that people below the age of 18 years were allowed to vote. It denied allowing armed people in any polling stations. The 2nd Respondent averred that polling agents of all candidates has access to information concerning counting and tallying process, and that the results of the election were declared in compliance with the law. It denied knowledge of any abductions or arrests of the Petitioner's agents or that its servants/agents ticked ballot papers in favour of the 1st Respondent and gave them to the voters.

The 2nd Respondent further stated in its answer to the petition that the Presidential Election process was conducted under conditions of freedom and fairness and that there was no proof of non-compliance with the Act, and that the non-compliance affected the result in a substantial manner. The 2nd Respondent denied knowledge of any allegations leveled against the 1st Respondent, and avers that the elections were free and fair as it reflected the wishes of the majority of Ugandans and international observers who monitored the elections throughout the country and confirmed this position.

In his answer to the petition accompanied by an affidavit sworn by him, the 1st Respondent denied that his agents/supporters did interfere "with the electioneering activities of the Petitioner and his agents" but he contended that the entire Presidential Electoral process was conducted under conditions of freedom and fairness and that he obtained "more than 50% of the valid votes of those entitled to vote".

The 1st Respondent stated the statement that the “Petitioner was a victim of AIDS” was not made by the 1st Respondent publicly or maliciously for the purpose of promoting or procuring an election for himself contrary to section 65 of the Act but that is as true that a companion of the Petitioner, Judith Bitwire, and her child with the Petitioner died of AIDS. The 1st Respondent had known the Petitioner for a long time and had seen his appearance change over time to bear obvious resemblance to other Aids victims that the 1st Respondent had previously observed.

The 1st Respondent denied that neither him nor his agents with his knowledge and consent or approval offered gifts to voters with the intention of inducing them to vote for him.

The Respondent stated that the entire electoral process was conducted under conditions of freedom and fairness and secure conditions necessary for the conduct of the election in accordance with the Act and other laws.

The 1st Respondent denied threatening that he would put the Petitioner six feet deep as alleged in the petition but stated that prior to the election process, in his capacity as President and Commander-in-Chief. He warned that any person who interfered with the army would be put six feet deep.

He stated that he made the statement on the 27th November 2000 at the National Conference of the Movement and made this statement for the security, good governance and order of the country to deter subversion in the army. The 1st Respondent did not make the statement for the purpose alleged.

The issues:

Five issues were framed by the Court in consultation with the Counsel for the parties. These were as follows:

1. Whether during the 2001 election of the President, there was non-compliance with provisions of the Presidential Elections Act, 2000.
2. Whether the said election was not conducted in accordance with the principles laid down in the provisions of the said Act.

3. Whether, if the first and second issues are answered in the affirmative, such non-compliance with the provisions and principles of the said Act, affected the result of the election in a substantial manner.
4. Whether an illegal practice or any other offence under the said Act was committed, in connection with the said election, by the 1st Respondent personally, or with his knowledge and consent or approval.
5. What reliefs are available to the parties?

I answered the first two issues in the affirmative and answered the third and fourth in the negative. Consequently I dismissed the petition and ordered each party to bear its costs.

The Burden of Proof.

All counsel for the parties in this petition agreed that the burden of proof lies on the Petitioner to prove the allegations made against the Respondents to the satisfaction of the Court. The common position is supported by the provisions of Sections 58 (6) of the Presidential Elections Act as interpreted by judicial decisions. Section 58 (6) of the Act provides,

“the election of a candidate as president shall only be annulled on any of the following grounds if proved to the satisfaction of the Court.”

In Mbowe v Elinfoo (1967) EA 240 Georges, CJ in the Tanzanian High Court said at page 241,

“there has been much argument as to the meaning of the term provided to the satisfaction of the Court.

In my view it is clear that the burden of proof must be on the Petitioner rather than the Respondent, because it is he who seeks to have this election declared void”.

The decision in Mbowe v Eliufoo (supra) has been cited with approval by the Uganda Courts in cases of Odetta v Omeda, Election Petition No.1 of 1996 Margaret Zziwa v Naava Nabagesera, Civil App. No. 39 of 1997 (CA). Katwiremu Bategana v Mushemeza and 2 Others, Election Petition No.1 of 1966 (HC) Mbarara) and Ayena Odong v Ben Wacha & Another, Election Petition No.2 of 1966 (HC)

In my view the burden of proof in elections as in other civil cases is settled. It lies on the Petitioner to prove his case to the satisfaction of the court. The only controversy surrounds the standard of proof required to satisfy the court. Counsel for the parties were generally agreed on the standard of proof.

Mr. Balikuddembe submitted that the standard is not proof beyond reasonable doubt but a standard slightly higher than in an ordinary civil case, that standard being the required to prove an allegation of fraud. For the Respondents both Mr. Kabatsi and Dr. Khaminwa agreed that the standard is not proof beyond reasonable doubt, but very close to it.

The courts in Uganda have not been consistent but the preponderance of opinion has gravitated towards the standard of proof of beyond reasonable doubt, which is the standard required in criminal cases. In Katwiremu Bategana v Mushemeza & Others (supra) Musoke Kibuuku, J said,

“A number of decisions of this Court in recent election petition trials have come out to state in no uncertain terms that the standard of proof which is required for proving allegation in election petition is proof which is required for proving allegation in election petition is proof beyond reasonable doubt. This was the position adopted, for instance by Ouma J in Micheal A. Ogola v Akika Othieno Emmanuel, Election Petition No.2 of 1996 (at Tororo High Court Registry). It was also the position adopted by G. M. Okello, J in Ayena Odong KC v Ben Wacha and R O Apac Election Petition No.2 of 1996 (at Gulu High Court Registry). The same position was adopted by Lady Justice Mpangi Bahigeine in Aloysius Liiga v Waswa John Richard, Election Petition No.2 of 1996 at Mukono. On the other hand Katutsi J in Alisemera Babiiha v R O. Bundibugyo v Bikorendia Aida Election Petition DIR MFP 1 of 1996 at Fort Portal High Court Registry after reviewing the decisions in both Mbowe’s case and Baters case (both supra) had the following to state,

‘The standard of proof therefore required to prove these allegations must be proportionally higher than in ordinary civil suits. This is the standard of proof I will adopt in this case’.”

Musoke Kibuuka, J agreed with the view held by Katutsi, J when he concluded,

“There is therefore one important aspect of this procedural dichotomy. That is the fact that everyone seems to be agreed that whatever name is given the standard of proof required for an allegation to be proved to the satisfaction of the court under Section 91 (1) of the Parliamentary Elections/ (Inter IM Provisions) Statute 1996, is proof which is higher than that which is required in ordinary civil suits. That in my view is sufficient for the disposal of the allegations made in this petition.”

On the other hand in Margaret Zziwa and 2 Others v Naava Nabagesera (supra) the Court of Appeal of Uganda said,

“The effect of the holding in the Mbowe case and the Uganda cases that have followed that decision, is that grounds for setting aside an election of a successful parliamentary candidate set out in S.91 of Statute 4 of 1996 must be proved beyond reasonable doubt. This is because the court cannot be satisfied if there was a reasonable doubt.

The difference of opinion on the standard of proof in election petitions springs from the interpretation given to the decision of the Court of Appeal in Bater v Bater (1950) 2 All ER 456. This was a divorce case where in dismissing the petition of the wife on the ground of cruelty, the court said that she must prove her case beyond reasonable doubt. On appeal the Court of Appeal held that this was a correct statement of the law and the court had not misdirected itself.

Bucknill L J said

“I do not understand how a court can be satisfied that a charge has been proved - and the statute requires that the court shall be satisfied before pronouncing a decree - if at the end of the case the court has a reasonable doubt whether the case has been proved. To be satisfied and at the same time to have a reasonable doubt seems to me to be an impossible state of mind. I will add this. I regard proceedings for divorce as proceedings of a very great importance, not only to the parties, but also to the State. --- If a high standard of proof is required because of the importance of a particular case to the parties and also to the community, divorce proceedings require that high standard.”

Denning LJ on his part sought to play down the difference of opinion on the standard of proof. He thought it was a matter of playing with words as there was no absolute standard in either civil

or criminal cases, the standard varying from case to case depending on the gravity of the matter. He observed,

“The difference of opinion which has been evoked about the standard of proof in these case may well turn out to be more a matter of words than anything. It is true to that by our law there is a higher standard of proof in criminal cases than civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that in proportion as to the crime is enormous so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court when considering a charge of fraud will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when considering a charge of a criminal nature, but still it does require a degree of probability, which is commensurate with the occasion. Likewise, a divorce court should require a degree of probability which is proportionate to the subject matter.”

Bater v Bater (supra) was divorce case; but it was followed in Mbowe v Eliufoo (supra), which was dealing with an election petition, because the wording of the sections imposed the burden of proof on the petition to prove the allegations to the satisfaction of the court.

In Mbowe v Eliufoo (supra) Georges, CJ said,

“And the standard of proof is one which involves proof to the satisfaction of the court. In my view words in fact mean the same thing as satisfying the court. There have been some authorities on this matter and in particular there is the case of Bater v Bater (supra). That case dealt not with election petitions, but with divorce, but the statutory provisions are similar i. e the court had to be satisfied that one or more of the grounds set out in s.99 (2) (a) has been established. There Denning, CJ in his judgment took the view that one cannot be satisfied where one is in doubt. Where a reasonable doubt exist then it is impossible to say that one is satisfied and with that view I quite respectfully

agree and say that the standard of proof in his case must be such that one has no reasonable doubt that one or more of the grounds set out in s.99 have been established.

It should be noted that Georges, CJ carefully avoided holding that the standard of proof was beyond reasonable doubt. On a subsequent English case, *Blyth v Blyth* (1966) AC 643, the House of Lords in a divorce case based on adultery by a wife, who pleaded condonation, it was held that there was no statutory requirement that the absence of condonation must be proved beyond reasonable doubt. In matrimonial cases, as in other services, the proof must be by a preponderance of probability, the degree of probability depending on the subject matter, so that in proportion as to the offence is grave, so the proof should be clear. It is interesting to note that two out of three Lords dissented. Lord Denning who was among the majority had this to say,

“My Lords, the word “satisfied” is a clear and simple one and one that is well understood. I would hope that interpretation or explanation of the word be unnecessary. It needs no addition. From it there should be no subtraction. The courts must not strengthen it: nor must they weaken it. Nor would I think it desirable that any kind of gloss should be put upon 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. It may be however that in some sets of circumstances and in regard to some issues the state of being satisfied (and so eliminating reasonable doubt) is much more easily reached than in others. The measure of what is a reasonable doubt will vary with the circumstance. But the standard of proof has been laid down by parliament when it directs that a court must be satisfied.”

I entirely agree with those observations by Lord Denning. The standard of proof required in this petition is proof to the satisfaction of the court. It is true that a court may not be satisfied if it entertains a reasonable doubt, but the degree of the proof will depend on the gravity of the matter to be proved.

An election petition is not a criminal proceeding. Section 58 (7) of the presidential Elections Act provides that nothing in this section confers upon the Supreme Court when hearing an election petition power to convict a person for a criminal offence. The high standard of proof in criminal

cases is intended to protect the liberty of the citizen. If the legislature intended to provide that the standard of proof in an election petition shall be beyond reasonable doubt, it would have said so. Since the Legislature chose to use words “proved to the satisfaction of the court”, it is my view that that is the standard of proof required in an election petition of this kind. It is a standard of proof that is very high because the subject matter of the petition is of critical importance to the welfare of the people of Uganda and their democratic governance.

Affidavit Evidence:

All evidence at the trial of an election petition is required to be adduced by affidavits. Cross-examination of the deponents may be permitted only with the leave of the court. This is provided in Rule 14, which states in material parts as follows:

- “(1) subject to this rule, all evidence at the trial, in favour of or against the petition shall be by way of affidavit read in open court.***
- (2) With leave of the court, any person swearing an affidavit which is before the court may be cross-examined by the opposite party and re-examined by the party on behalf of whom the affidavit is sworn.”***

Accordingly parties filed many affidavits to support their respective cases. The Petitioner filed 174 affidavits both in support of the petition and in reply to the affidavits of the 1st and 2nd Respondents, who in turn filed 133 and 88 affidavits respectively. However, leave was granted to the Petitioner to call and cross-examine one deponent, Dr. Diana Atwine, who had sworn an affidavit in support of the 1st Respondent.

Mr. Nkurunziza learned counsel for the 1st Respondent submitted that three categories of affidavits were filed by the Petitioner as follows:

- (i) Affidavits which are inadmissible in law.
- (ii) Affidavits specifically referred to in submission by the counsel for the Petitioner.
- (iii) Affidavits filed but not referred to during submissions.

As regards affidavits, which are inadmissible in law, Mr. Nkurunziza identified again three categories namely,

- (i) Affidavit sworn outside Uganda.
- (ii) Affidavit sworn before advocates appearing in the petition.
- (iii) Affidavits sworn in breach of Order 17r.3 of the Civil Procedure Rules.

Mr. Balikuddembe learned leading counsel for the Petitioner challenged the admissibility of the affidavit accompanying the answer of the Respondent.

Hon. Okwir Rwaboni filed an affidavit sworn before a solicitor in the United Kingdom. It was submitted by Mr. Nkurunziza that under section 7(3) of the Statutory Declaration Act No. 10 of 2000, a statutory declaration taken outside Uganda cannot be received in evidence unless it is registered under the Registration of Documents Act. In this case, there was no evidence that Hon. Okwir's declaration was registered. Mr. Balikuddembe learned leading counsel for the Petitioner argued that Hon. Okwir's affidavit was sworn for use in this court and was admissible by virtue of the provisions of Sections 3 and 4 of the Statutory Declaration Act 2000.

Section 3 of the Statutory Declaration Act provides,

“After the commencement of this Act no affidavit shall be sworn for any purpose except-

(a) Where it relates to any proceedings application or other matter commenced in any court to a court.

(b) Where under any written law an affidavit is authorized to be sworn.”

On the other hand section 4 provides that in every case to which Section 3 does not apply, a person wishing to depose to any fact for any purpose may do so by means of statutory declaration.

Under Section 7(1) a person wishing to depose outside Uganda to any fact for any purpose in Uganda, he may make a statutory declaration before any person authorized to take a statutory declaration by the law of the country in which the declaration is made. It is provided under Section 7 (3) that a statutory declaration taken outside Uganda under this section shall not be admissible in evidence unless it is registered with the Registrar of documents under the Registration Documents Act.

The issue in this case is whether the document filed by Hon. Okwir is an affidavit or a statutory declaration. The document is headed "affidavit". But at the end of it he stated "And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 135." It was declared before Solicitor/Commissioner for Oaths.

It seems to me the Hon. Okwir intended to swear an affidavit, but the form the document took was that of a statutory declaration. If the document was for use in these court proceedings it could not be a statutory declaration but an affidavit. The document was witnessed by Solicitor/Commissioner for Oaths who had the power to administer an affidavit. The most important element is that it was made an oath. I think this is in article 126 that substantial justice shall be administered without undue regard to technicalities, given the special circumstances of this Petition.

Eleven affidavits were challenged as inadmissible on account of having been sworn before two advocates who were part of the team of counsel for the Petitioner, namely Mr. Kiyemba Mutale and Mr. Wycliff Birungi. Mr. Balikuddembe counsel for the Petitioner stated from the Bar that by the time the two advocates commissioned the affidavits, they were not members of the team representing the Petitioner. This statement was not challenged.

The proviso to Section 5(1) of the Commissioner for Oaths (Advocates) Act Cap 53 states,

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

In view of the fact that Mr. Balikuddembe's statement was not challenged nor is there evidence to prove that the two advocates were already acting for the Petitioner or otherwise participating in the proceedings. I am not satisfied the affidavits they commissioned are inadmissible.

It was submitted for the 1st Respondent that the many affidavits filed by the Petitioner offended Order 17 r.3 of the Civil Procedure Rules and were therefore inadmissible. Order 17 r.3 provides.

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

(2) the costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall unless the court otherwise directs, be paid by the party filing the same.”

Mr. Nkurunziza learned counsel for the 1st Respondent submitted that this petition was not an interlocutory proceeding but a final proceeding which will determine the right of the parties conclusively and therefore any affidavit which is not confined to such facts as the deponent is able to prove by his own knowledge is in breach of this rule and should be rejected by the court. Counsel relied on the decisions in Paul Semogerere and Z. Olum v Attorney General, Constitutional Petition No.3/99, Charles Mubiru v Attorney General, Constitutional Appeal No.1 of 2001. Kibwimukya v Kasigwa (1978) HCB.

Learned counsel submitted further that the affidavits did not distinguish which facts were based on knowledge, and which were based on information and belief, nor were the sources of information disclosed. He also contended that it was not possible for a court to sever defective portion vitiated the whole document. He relied on the decision of the High Court in Sirazali C M Hudoni v Amiran, Tejani and others HCS No712 of 1995.

Mr. Balikuddembe learned counsel for the Petitioner submitted that the court had discretion to admit some parts of the affidavit and reject other than which are defective in the same way the court has power to reject hearsay evidence. He referred to the decision of the Supreme Court in Reamation Ltd. v Uganda Co-operative Creameries, Civil Appl No.7/2000 and Motor Mart (U) Ltd. V Yona Kanyomozi Civil Appl. No.6 of 1999 where he contended that the court exercised its discretion to sever the affidavit and exclude hearsay matters.

In Assanand & Son Uganda Ltd. V East African Records Ltd. (1959) EA 360 and Caspair Ltd. V Harry Grandy (1962) EA 414, the Court of Appeal held that a court should not act on an affidavit which did not distinguish between matters stated on information and belief and matters to which the deponent swears from his own knowledge, or affidavit which does not set out the deponents means of knowledge or his grounds of belief regarding the matter stated on information. In

Assanand & Sons v EA Records (1959) EA 360 at p. 364, the learned President of the Court of Appeal said,

“The affidavit of Mr. Campbell was deficient in three respects. First it did not set out the deponent’s means of knowledge or his grounds, or belief regarding the matters stated on information and belief, and secondly it did not distinguish between matters stated in information and belief and matters deposed to from the deponents knowledge (see O.XVIII r.3 (1) and Standard Goods Corporation Ltd. V Harakchand Nathu & Co. (1950) EACA 99). The court should not have acted upon an affidavit so drawn.”

In Standard Goods Corporation Ltd. V Harakchand Nathu & Co. (1950) 17 EACA 99 the Court of Appeal held that it is settled that where an affidavit is made on information it should not be acted upon by the court unless the sources of information are specified. At p. 100, the court said

“The affidavit in question consisted of seven paragraphs. Para 2 was the facts stated herein are within my knowledge; and para 7 was what is stated herein is true and correct to the best of my knowledge in two ways: (1) by his own physical observation or (2) by information given to him by some on else. It is clear that reading paragraphs 2 and 7 of the affidavit together, the deponent was stating facts without stating which were from his own observation and which were from information. An affidavit of this kind ought never to be accepted by a court as justifying an order based on the so called facts.”

Affidavits based on information and belief should be restricted to interlocutory matters. In proceedings which finally determine the matter only affidavits based on the deponent’s knowledge should be acted upon. See Paulo K. Ssemogerere and Z Olum v Attorney General, Constitutional Petition No.3 of 1999, and Charles Mubiru v Attorney General, Constitutional Appeal No.1 of 2001. In Paulo K. Ssemogerere and Z. Olum v Attorney General (supra) the Constitutional Court of Uganda held (per Berko JA):

“except in purely interlocutory matters affidavits must be restricted to matters within the personal knowledge of the deponent. They must not be based on information or be expression of opinion Affidavits should be strictly confined to such facts, as the deponent is able of his own knowledge to prove. Affidavits by person having no

personal knowledge of the facts and merely echoing the statement of the claim cannot be used at the hearing.”

The Court of Appeal distinguished the cases of Nassand & Sons (Uganda) Ltd v East African Records Ltd (1959) EA 360, Standard Goods Corporation Ltd. V Harachand Nathu 7 Co. (1950) 17 EACA 99 and Aristella Kabwimukya v John Kasigwa (1978) HCB which concerned interlocutory applications.

The Court pointed out,

“A constitutional Petition is not an interlocutory Application. Therefore an affidavit in support of it must be restricted to facts the deponent is able of his own knowledge to prove and not facts based on information and belief”.

It held that an affidavit based on information given to the deponent by some one else is hearsay and inadmissible to support the petition.

In Charles Mubiru v Attorney General Constitutional Appeal No.1 of 2001, the Constitutional Court of Uganda held, relying on its decision in Ssemogerere & Another v Attorney General (Supra) that an affidavit by the Petitioner which was merely echoing the information his advocate has given him was not based on his personal knowledge and could not be relied upon in a Constitutional Petition. An election petition is not an interlocutory proceedings but a final proceedings, which is aimed at determining the merits of the case. Therefore affidavits admissible in such proceedings must be based on the deponent’s knowledge, not on his information and belief.

The issue for determination is what should be the fate of affidavits filed by either party, which do not strictly comply with the law as stated above. Specifically, should all the affidavits which do not contain matters deposed from the deponents knowledge as well as those based on information and belief be acted upon whether they distinguish which facts are deposed from own knowledge and those based on information and belief?

There are two types of affidavits. The first is one, which distinguishes the facts based on knowledge and those on information and belief. The second category are those affidavits which contain matters based on knowledge, information and belief without distinguishing

which facts are based on knowledge. A common formula for ending the second category of affidavits is “That all that is herein stated is true and correct to the best of my knowledge and belief” as most of the affidavits in Vol. 2 of the Petitioner’s affidavits. Facts based on belief are inadmissible in an election petition.

It was submitted for the Petitioner that the Court has discretion to sever the defective parts of affidavit, and act on the rest of the affidavit. There is some authority for the proposition that in proper cases, a court may sever parts of the affidavit, which are defective or superstitious instead of rejecting the whole affidavit.

In *Nandala v Lyding* (1963) EA 706 the affidavit supporting an application ended in para 6 with the words that “what is stated therein is true to my best of my knowledge, information and belief”.

At the beginning of the hearing of an application, counsel for the defendant submitted that the whole affidavit should be struck off as it contravened O. 17 r 13 of the Civil Procedure Rules as it did not disclose the source of the deponent’s knowledge, information and belief. Sir Udo Udoma CJ held that the concluding paragraph of the affidavit was empty verbiage and unnecessary and that it should be struck off since the contents of the rest of the affidavit were statements of facts within the knowledge of the plaintiff and related to his own personal knowledge and accordingly O.17 r 3 was not contravened.

Udo Udoma, CJ said at page 710,

“I am satisfied that the contents of para 6 of the affidavits are mere empty verbiage – a surplus – which bear no relation to the contents of the affidavit as a whole. It is therefore severable from the rest of the remaining paragraphs of the affidavit, as in my view, the contents as paras 1-5 of the affidavit are statements of facts pecuniary within the knowledge of the deponent and relate to his own personal activities.

In the circumstances I would strike off para 6 of the affidavit leaving thereby the rest of the affidavit as I am satisfied that the contents thereof are facts

which the deponent is able of his own knowledge to prove. Accordingly para 6 of the affidavits is hereby stuck off.”

In Zola v Ralli Bros Ltd (1969) EA 691 THE East African Court of Appeal held that the trial Judge could exercise his discretion to act on an affidavit which was merely defective in some respects, and was not a nullity. Newbold P. said at page 693,

“As regards the submission that the affidavit of Mr. Harkness was a nullity because it failed to comply with the provisions of 0.18 and 0.35 and the trial judge should not have acted upon it but should have dismissed the motion. I agree that if the affidavit is a nullity then the trial judge could not act on it and the motion should have been dismissed. As I have said in other cases the courts should hesitate treat an incorrect or irregular act as a nullity, particularly where the act relates to the matters of procedure [see Prabhudas & Co. v The Standard Bank Ltd. (1968) EA 670]. It was urged that Mr. Harkness could not swear positively to the facts verifying the cause of action. It is difficult to envisage, in the circumstances of this case of a more suitable person to swear the affidavit on behalf of plaintiffs, who could not themselves swear to it, than Mr. Harkness, who was the manager of the Standard Bank, one of the plaintiffs, and who had personal knowledge of at least some of the relevant facts and who would be intimately concerned with the accounts of the parties in the Standard Bank. It is to be noted that according to his affidavit the amounts lent by the plaintiffs were credited to the account of the Sisal Co. in the branch of the Standard Bank of which he was manager. It was also urged that the affidavit did not distinguish clearly between those facts within the knowledge of Mr. Harkness and those facts stated on information and belief, nor did it set out Mr. Harkness’s means of knowledge, nor the grounds for belief on the matters stated on information and belief. I do not agree. There is scarcely and affidavit, or indeed any document, which cannot be criticized. It may be that the affidavit could have been more explicit in certain respects, but there is set out therein the means of knowledge and the grounds of belief and the source of information in respect of each of the matters stated on knowledge, belief or information. I am satisfied that the affidavit complied with the provisions of 0.35 and 0.18 and substantially with the requirements relating to affidavits as set out in the decisions of this court in

***Assnand & Sons v East African Records, (1959) EA 360* Nea 360 and Standard Good Corporation v Nathu Company (1950), 17 EACA 99, to which we were referred by Mr. Salter. I am also satisfied that there is no reason to hold that the affidavit was a nullity. If it was merely irregular in some respects it was open to the trial judge in his discretion to act upon it. He has done so and I see no reason whatsoever to interfere with the exercise of his discretion.”**

In Reamation Ltd v UGANDA Corporation Creameries Ltd. And Another Civil Application No.7 of 2001, Motor Mart (U) Ltd. V Yona Kanyomozi Civil Appl. No.6 of 199 and Yona Kanyomozi v Motor Mart (U) Ltd. No.8 of 98, the Supreme Court adopted a liberal approach to affidavits. In Yona Kanyomozi v Motor Mart (U) Ltd. (supra) Mulenga, JSC held that some parts of counsels affidavits were false and that those parts were irrelevant to the application and could be ignored. On a reference to the full Court, it was argued that the impugned affidavit was capable of severance as the single judge did before arriving at his decision. The full court held that it was unable to interfere with the discretion exercised by the single judge.

Form the authorities I have cited there is a general trend towards taking a liberal approach in dealing with defective affidavits. This is in line with the constitutional directive enacted in article 126 of the Constitution that the courts should administer substantive justice without undue regard to technicalities. Rules of procedure should be used as handmaidens of justice but not to defeat it.

In the present case, the only method of adducing evidence is by affidavits. Many of them have been drawn up in a hurry to comply with the time limits for filing pleading and determining the petition. It would cause great injustice to the parties if the affidavits which did not strictly conform to the rules of procedure were rejected. This is an exceptional case their all the relevant evidence that is admissible should be received in court. I shall accept affidavits, which contain both admissible and hearsay evidence, and only parts which are based on knowledge will be relied upon. As order 17r 3 (2) provides the costs of affidavits which contain hearsay matters should be borne by the party filing such affidavits.

Many affidavits were filed by the Petitioner but not specifically referred to by his counsel in their submissions. Counsel provided a list of such affidavits. There was also a list showing affidavits of the Petitioner, which had not been rebutted or controverted. It was submitted that such

affidavit should be taken to be admitted. I do not agree that they should be taken as gospel truth. I shall take into account all the various affidavit depending on their status and probative value as evidence in determining the issues in this petition.

Objection was raised to the admissibility of the affidavit sworn by the 1st Respondent in support of his answer to the Petition. Mr. Balikuddembe learned counsel for the Petitioner submitted that the affidavit did not conform to the form of the jurat. In that the affidavit does not show before whom the affidavit was sworn.

Sections 6 of the Commissioner for Oaths (Advocates) Act states,

“Every Commissioner for Oaths before whom any oaths or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made”

Rule 9 of the schedule that the forms of jurat is set out in the third schedule to the Rules. The form of Jurat is as follows:

“Sworn/Declared before me...this...Day of ...19...at....

COMMISSIONER OF OATHS”

The 1st Respondent’s affidavit did not indicate the name or the title of the person before whom it was made. It merely contained a signature and the seal of High Court. It was submitted for the 1st Respondent that the signature was that of the Registrar of the High Court, Mr. Gidudu who had power to administer an affidavit by virtue of his office. Mr. Gidudu subsequently made an affidavit confirming that he is the person before whom the affidavit was sworn.

The Registrar of High Court has by virtue of his Office all the powers and duties of a Commissioner for Oaths in accordance with Section 4 of the Commissioner of Oaths (Advocates) Act. The Registrar’s jurat fulfilled the essential requirements of the jurat namely the place and date the affidavit was made. But it should have included his name and title to strictly comply with the Form of Jurat contained in the schedule. The lack of proper form was however cured by the affidavit sworn by Mr. Gidudu. Accordingly, the objection raised against the affidavit sworn by the 1st Respondent had no merit.

Section 58 (3) of the Act requires this Court to inquire and determine the petition expeditiously and to declare its findings within thirty days from the date the petition is filed. It seems to me that it is by reason expedition that all evidence at the trial has to be by affidavit. However, this mode of trial may not be suitable for an important and controversial case like this where the court is denied the opportunity to see the witness and to subject them to cross examination so that the court can properly and fairly assess the credibility and veracity of the witnesses which is necessary for the ascertainment of the truth. It is hoped that the procedure and period of hearing in presidential elections will be reviewed.

Issue No. 1: **Non-compliance with the Provisions of the Act:**

The first issue was whether during the 2001 election of the President there was non-compliance with the provisions of the Presidential Elections Act 2000 Section 58 (6) (a) of the Act provides,

“(6) The election of a candidate as president shall only be annulled on any of the following grounds if proved to be satisfaction of the Court-

(a) Non-compliance with the provisions of this Act, if the Court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions that the non-compliance affected the result of the election in a substantial manner.”

Due to the manner in which the Section is drafted, four issues were framed arising from it relating to the non-compliance with provisions, non-compliance with principles and the effect of non-compliance on the result. I think that it would have been more convenient to combine the first and second issues because they are closely linked. Mere con-compliance with the provisions of the act does not seem to be sufficient unless it resulted in a breach of the principles laid down in the Act.

The second difficulty with the Section arises out of the provisions of Section 2 (2) of the Act, which provides,

“The Commission Act shall be constructed as one with this Act.”

This formula of drafting was explained in Craines on Statute Law 7th edn. 1971 at page 138 as follows:

“Act to be construed as one with another

It is now a common practice to insert clauses which make certain Acts one for purposes of construction i.e. certain Acts which are to be read with one another Act or Acts. The effect of enacting that an Act shall be construed as one with another is that the court must construe every part of each of the Acts as it had been contained in one Act, unless there is some manifest discrepancy making it necessary to hold that the later Act has to some extent, modified something found in the earlier Act or that from internal evidence the reference of the later to the earlier Act does not effect a complete incorporation of the provisions of the two Acts.”

A similar interpretation and purpose is given in Halsburys Laws of England 4th edn. Para 890 page 544.

The Presidential Elections Act and the Electoral Commissions Act must therefore be read together and every provision of each of the Acts must be interpreted as if it has been incorporated in one Act, unless there is a clear inconsistency or ambiguity which is resolved by holding that the later Act modified the earlier Act. This technique of drafting is sometimes referred to as incorporation of reference and is not free from difficulties of interpretation.

It seems to me that the grounds of annulling a Presidential Election must be those contained only in the Presidential Elections Act. Therefore the phrase “non-compliance with the provisions of this Act” appears to mean non-compliance with the provisions of the Presidential Elections Act only. However when considering non-compliance with the principles of the Act, it seems to me necessary to take into consideration the provisions of the Electoral Commission Act which contain the principles relating to a free and fair election.

It was submitted for the Petitioner that failure to comply with the provisions of the Electoral Commission Act is a ground for annulling a Presidential Election. The 2nd Respond averred in the answer to the Petition that such non-compliance is not a ground for annulling a Presidential Election.

In my view non-compliance with the provisions of the Commission Act is not per se a ground for annulling a Presidential Election. Such non-compliance can be a ground if it affects the principles behind the provisions of the Presidential Elections Act, which govern the annulment of Presidential Elections.

The presentation of the case for the Petitioner on the first issue dealt with all the allegations of non-compliance with the provisions of the Act against the 2nd Respond. For convenience of consideration of the issues and to avoid unnecessary repetition, I shall deal with the allegations of non-compliance with the Act under the first issue, and those of non-compliance with the principles of the Act under the second issue.

Failure to supply the Voters' Register:

The Petitioner alleges in paragraph 3(1) (d) of the Petition that contrary to Section 32(5) of the Act, the 2nd Respondent completed compiling a purported Final Voters Register on Saturday 10th March 2001 and failed when requested by the Petitioner, the 2nd Respondent denied ever refusing any request by the Petitioner for copies of the final Voters Registers as alleged but stated that non-delivery thereof was due to insufficient time to prepare the Register.

Section 35 (1) of the Act provides that a candidate may be present in person or her representative or Polling Agents at each Polling station for the purpose of safeguarding the interests of the candidate with regard to the polling Sub-section (5) states,

“(5) The Polling Agents shall have an official copy of the Voters Register of the Polling Station at the candidates cost.”

In his affidavit in support of the Petitioner, the Petitioner stated that he had applied through his National Co-ordinator to be supplied with copies of the Final Voters Registers for use by him and his Polling Agent on payment of the necessary charges by him, but the 2nd Respondent did not do so. In answer to the Petitioner's Affidavit, Mr. Aziz Kasujja, Chairman of the 2nd Respondent, admitted receiving the Petitioner's request for a copy of the Register on 11 March 2001 but explained that there was no sufficient time to print the Register for the Petitioner on the eve of polling day, and he informed the Petitioner's Agent verbally.

No sound reason is given why the Voters Register could not be printed in time to be supplied to the Petitioner as required by law.

I am satisfied on the admission of the 2nd Respondent that it did not comply with the provisions of Section 32 (5) of the Act, in that it failed to supply the Petitioner with an official copy of the Voters Register for use by his agents on polling day.

Non-compliance with Respect to Polling Stations:

The Petition complains in para 3(1) (a) of the Petition that on 10th March 2001 less than 48 hours before the Polling day in addition to the Polling Stations duly published in the Uganda Gazettes of 22nd December 2000, 19th February 2001 and 9th March 2001 the 2nd Respondent made and added new Polling Stations out of time contrary to the provisions of Section 28 (1) (a) of the Act.

In paragraph 3(1) (b) of the Petition, the Petition complains that contrary to Section 28 of the 2nd Respondent failed to publish a full list of all Polling stations in each Constituency 14 days before nomination day 8th and 9th January 2001.

In his affidavit in support of the Petition, the Petitioner avers that on 11th March 2001 the 2nd Respondent supplied him with a list of gazette Polling Stations with added new and ungazetted Polling Stations and as a result he failed at the eleventh hour to appoint and deploy his agents to supervise all these new polling stations and safeguard his interests.

In the letter forwarding the list of all Polling Stations to the Task Force Mr. Kasujja stated.

“The Electoral Commission informs all Presidential Candidates that the list of all Polling Stations countrywide is herewith attached.

NOTE: That some of the Polling Stations have been split for purposes of easing the voting process.

For this purpose Polling Agents for each candidate should be appointed in the split Polling Stations

Please note that the changes have been alphabetically affected on the Register.

It should be noted that these are not new Polling Stations. A copy of this letter hereby informs the Returning Officers and the respective Presiding officers.”

In his affidavit in reply to 2nd Respondent affidavit, the Petitioner alleged that there were 29 new Polling Stations in Makindye Division East with different stations codes. He also cited new Polling station Station in Soroti Municipality and Nakawa Division in Kampala.

The 2nd Respondent pleaded in answer to the petition that no new Polling Stations were created but rather some existing Polling Stations were split for purposes of easing the voting process due to the big number of voters in those stations and that it was within the 2nd Respondent’s powers to split the said Polling Stations. In his affidavit accompanying the answer, the Chairman of the 2nd Respondent Mr. Aziz Kasujja reaffirmed what had been pleaded in answer and added that all the candidates were duly informed and were able to appoint agents for those polling stations. In his supplementary affidavit in reply Mr. Kasujja denied that the splitting Polling stations was done to rig elections in favour of any candidate but to provide voter convenience, and that it was not necessary to display the Voters Rolls for the split Polling stations as the Voters Rolls for the parent stations which included list of voters for the split stations had already been displayed.

Section 28 of the Act requires the Commissioner to publish a list of Polling Stations and supply the lists to all returning officers. The relevant provision reads:

- “(1) The Commission shall by notice in the Gazette publish –***
- (a) a list of the polling stations in each constituency at least fourteen days before nomination; and***
 - (b) A list of the candidates nominated in alphabetical order with surnames first.***
- (2) The Commission shall forward each list referred to in subsection (1) to all returning officers; and the returning officers shall ensure that the lists relevant to each constituency are published widely in that constituency.”***

It was contended for the 2nd Respondent that the list of 11th March one-day before the polling day, did not contain new Polling Stations, but split ones. But according to the evidence of Mr. Mukasa David Bulonge the Head of the Election Monitoring Desk of the National Task Force of

the Petitioner, that list contained 1176 new Polling Stations while 303 were missing although originally appearing in the previous gazettes. Examples of new stations were given in Makindye Division East, Soroti Municipality and Nakawa Division in Kampala.

In his supplementary affidavit in reply, Mr. Kasujja admits that some Polling Stations which had been gazette were deleted from the list published on 11th March 2001 but he explains that this was due to movement of people and the need to create voter convenience. He explains that such was the case in Kotido and Kapchorwa Districts, and also in Kkome Island sub-country in Mukono District. Mr. Kasujja's explanation about giving separate code number to so-called split Polling Stations was mere for administrative convenience.

The issue is whether the 2nd Respondent published a list of the Polling stations for each constituency at least fourteen days before nomination of candidates. It is common ground that nomination of candidates was conducted on 8th and 9th January 2001. It is also not in dispute that the list of Polling Stations was published in the Gazettes of 22nd December 2000, 19th February and 9th March 2001. It is also admitted that the 2nd Respondent replied the Petitioner with a list of gazette Polling Stations on 11th March. It was clear that the publication of the list on 22nd December 2000 was within the prescribed period. The lists of February 19th and March 9th and 11th were outside the prescribed period.

The evidence on record shows that in Makindye Division East the list of 11th March 2001 indicated 29 more additional Polling Stations than the list published in the Gazette of 22nd December 2000. The number of Polling Stations in all the 7(seven) parishes was increased by varying numbers and there is no evidence to show that the split or additional Polling Stations were part of other Polling Stations.

In Soroti Municipality there were originally two Polling Stations as per gazette of 22nd December 2000, but in the list of 11th March 2001, there were four Polling Stations with separate codes. In Kinambogo Parish Buyende sub-county in Kamuli District, the original number of Polling Stations was four but on 11th March the number was increased to five. In Nakawa Division, Mbuya 1 Parish, the number of polling Stations was increased from 8 to 10.

After carefully evaluating the evidence on this matter of additional Polling Stations I find that the split stations were in fact new Polling Stations with different codes. It is not necessary to

establish the number of additional Polling Stations but the Petitioner's evidence which was not challenged put the number at 1176. The publication of these additional Polling Stations on 11th March 2001 was grossly out of time.

I must therefore find that the 2nd Respondent did not comply with the provisions of Section 28 of the Act when it failed to publish in the Gazette 14 days prior to the nomination of candidates' a complete list of the Polling Stations that ere used in the Presidential Election.

Conclusion on issue No.1:

In his submission Mr. Mbabazi referred to the functions and powers of the 2nd Respondent in respect of registration of voters, update of Voters Registers, compilation of the Register and supply of Voters Roll to candidates agents, and submitted that there was no National Voters Register by 22 January 2001, the date appointed by the 2nd Respondent as when the exercise of updating the Voters Register should be completed. He submitted further that the 2nd Respondent failed to supply the Voters Roll to the Petitioner because the Register was not ready.

He argued that the display period was inadequate and contrary to the prescribed period of 21 days. He contended that the issuance of cards was not properly done as the number of registered voters was not known. He submitted that in Makindye Division, there was an excess of votes by 97, 787, and yet the 2nd Respondent explained that this was due to arithmetic error.

Mr. Mbabazi learned counsel for the Petitioner submitted that there was no National Voters Register by the 22 January 2001 the date appointed by the Chairman of the Commission as the date when the updating exercise would be completed. He submitted further that the register was not ready by 8th March 2001. As regards the display of the Voters' Register, Mr. Mbabazi submitted that it was supposed to be done within 21 days and the period must be gazette to enable the Voters' Register to be subjected to public scrutiny.

As regards non-compliance with regard to polling stations, Mr. Mbabazi submitted that there were 1176 new Polling Station while 303 were missing although originally published in the Gazette. He also submitted that there were sham Polling Stations which did not appear in the Gazette nor in the list of 11 March 2001. He referred to the affidavit of James Oluka who stated that he knew that there were two designated Polling Stations. But on the final list there were four

Polling Stations and two for Akisim NRA Barracks. He referred to the affidavit of the Returning Officer where he admitted that there were three designated stations. Mr. Mbabazi concluded that it can be implied that there were two additional Polling Stations.

Learned counsel also referred to the affidavit of Ebulu Vicent who stated that inside Mbuya Barracks there were seven Polling Stations and Capt. Ondoga admitted they were seven. But in the list of Polling Stations there were under Mbuya 1 and Mbuya 11 outside Quarterguard and yet in the Gazette there was one Polling Station as a Special area outside Quarterguard. He submitted that therefore there must have been at least six extra Polling Stations, but the number of people who voted there is not known. He asked whether these voters were part of the National Voters Register.

Mr. Mbabazi also referred to the affidavit of Mukasa who stated that there were five sham Polling Stations in Kitgum. These are also referred to by Ongee Marino who stated that they were six new stations not designated. Counsel submitted that the results from the tally sheets indicate that the 1st Respondent benefitted from these sham stations. Mr. Mbabazi concluded that if you examine the web of evidence from the lack of register you end up with the following malpractices: multiple voting, ballot stuffing, denial to vote, voting by the underage, ghost voters and falsification of results.

I think the submissions of Mr. Mbabazi have some merit. However he did not specifically address the principles which non-compliance with the provisions infringed. It is clear however, that the failure to produce an impeccable voters register resulted in a number of malpractices listed by Mr. Mbabazi like multiple voting, ballot stuffing, ghost voters and denial to vote. I shall deal with these aspects individually later.

The principles which were undermined by a defective voters' register were the principle of voter registration, right to vote, free and fair elections and transparency. The failure to publish the list of Polling Stations in time undermined all the principle of transparency. The failure to supply the Voters Rolls to the Petitioner's agents also undermined the principle of transparency.

Therefore there was partial compliance with the provisions of the Act.

Issue No.2. Non-compliance with the Principles of the Act:

The second issue is whether the 2001 election of the President was not conducted in accordance with the principles laid down in the provisions of the Presidential Elections Act 2000. As I have already observed, Section 2 (2) of the Act stipulates that “the Commission Act shall be construed as one with this Act,” thus incorporating the principles laid down in the Commission Act into the Presidential Elections Act.

Mr. Mbabazi learned counsel for the Petitioner submitted that the principles of the Act are transparency, representation of a candidate at a Polling Station, the right to vote, the right to register, freedom to vote and values of a democratic society. The principles were laid down in Section 12 and 19 of the Commission Act and articles 56 and 61 of the Constitution.

Later Mr. Mbabazi summarized the principles to consist of free and fair elections, right to vote, adult suffrage secret ballot and transparency. He concluded that the totality of the principles is that there must be a valid election under Section 51 of the Act and article 104 of the Constitution and a President who is valid by elected.

Dr. Kwaminwa learned counsel for the 1st Respondent observed that the Constitution and the Act do not define the principles of the Act. He submitted that the principles can be found in the Constitution and its Preamble, the Presidential Elections Act, the Electoral Commission Act, and the Common Law cases. He cited the case of *Hackney* (1874) 31 L.T. 69, which contains the principles of secret voting, electors having a fair opportunity to cast their votes and arrangement of districts for convenience of voters.

The above principles were adopted in the case of *Morgan v Simpson* (1975) QB 151 (1974) 3 ALL ER 722 (CA) which emphasises that there must be voting by secret ballot, there must be no substantial departure from the procedure set out by Parliament as to render an ordinary person to condemn the election as a sham, and a substantial proportion of qualified voters should not be disfranchised. He summarized the principles to be that the elections must be free and fair, it must be by secret ballot and must be conducted in accordance with the procedure laid down by Parliament. The most important test is that a considerable number of voters must not be prevented from voting. The burden was on the Petitioner to demonstrate that a substantial number of voters were prevented from voting.

Mr. Kabatsi, learned counsel for the 2nd Respondent agreed with Mr. Mbabazi's list of principles of free and fair elections, vote by secret ballot and universal suffrage. These principles are contained in the Act and the Constitution. He submitted further that the principles of freedom and fairness were laid down in the case of AG v Kabourou (1999) 2 LRC 757 which emphasized that there must be laws put in place that promote conditions of freedom and fairness. He submitted that the Presidential Elections Act did that.

In my opinion, the principles of the Act can be summarized as follows:

- The election must be free and fair
- The election must be by universal adult suffrage, which under pins the right to register and vote.
- The election must be conducted in accordance with the law and procedure laid down by parliament.
- There must be transparency in the conduct of elections.
- The result of the election must be based on the majority of the votes cast.

The overriding principle in my view is that the election must be free and fair. It is stated in the Commission Act that the Commission must ensure that the election is conducted under conditions of freedom and fairness. In order to do so, the Commission must be independent and impartial in the conduct of elections.

The concept of free and fair elections is not defined in the Constitution or in any Act of Parliament. No judicial authority was cited to explain the concept. However, Mr. Walubiri learned counsel for the Petitioner referred to us passages from his book entitled "Uganda: Constitutionalism at Cross Roads 1999 (Walubiri PM (ed) at p. 312 where he writes,

“Article 69 (1) of the constitution requires that the choice of a political system be done through free and fair elections or a referendum. The Constitution does not define or describe the concept of “free and fair elections or referendum” International law and practice has over the years defined what contributes a free and fair election or referendum. You have to look at the totality of the exercise and make a value judgment.”

The author then quotes from Guy and S Godwin Gills *Free and Fair Elections: International Law and Practice*, Inter Parliamentary Union Geneva, 1994 where it is stated,

“A successful election does not depend solely on what happens on ballot day, the totality of the process must be examined, including preliminary issues such as the nature of the electoral system, voter organization and civic education. The indices of a free and fair election are especially important with respect to the conduct of the election campaign, at which point a number of fundamental human rights come into play together with the responsibility of the State as described in article 2 of the 1966 Covenant on Civic and Political Rights, to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Specifically national and international observers will need to know whether freedom of movement, assembly association and expression have been respected throughout the election period; whether all have conducted their political activities within the law, whether any political party or special interest group has been subjected to arbitrary and unnecessary restrictions in regard to access to the media generally in regard to their freedom to communicate their views; candidates and supporters have enjoyed equal security whether voters have been able to cast their ballots freely; without fear or intimidation whether the secretary of the ballot has been maintained; and whether the overall conduct of the ballots has been as to avoid fraud and illegality.”

Elections are the highest expressions of the general will. They symbolise the right of the people to be governed only with their consent. The people have a right to make and unmake a government. Article 21 of the Universal Declaration of Human Rights 1948 provides,

“The will of the people shall be the basis of the authority of government: this shall be expressed in periodic and genuine elections which shall be held by secret vote or by equivalent free voting procedures.”

Articles 25 of the UN Covenant on Civil and Political Rights 1966 is in the same terms. The two articles also recognize the rights of everyone “to take part in the government of this country directly freely chosen representatives.”

Our Constitution incorporates those principles in article 1 (4) which states,

“The people shall express their will and consent on who shall govern them and how they should be governed through regular free and fair elections of their representatives or through referenda.”

An election is the mechanism whereby choices of a political culture are known. These choices should be expressed in ways which protect the rights of the individual and ensure that each vote cast is counted and reported properly. An electoral process which fails to ensure the fundamental rights of citizens before and after the election is flawed.

To ensure that elections are free and fair there should be sufficient time given for all stages of the elections, nominations, campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and the citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officers. There must be a leveling of the ground so that the incumbents or government ministers and officials do not have an unfair advantage. The entire election process should have an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people. The election procedures should guarantee the secrecy of the ballot, accuracy of counting and the announcement of results in a timely manner. Election law and guidelines for those participating in elections should be made and published in good time. Fairness and transparency must be adhered to in stages of election of electoral process. Those who commit electoral offences or otherwise subvert the electoral process should be subjected to severe sanctions. The Electoral Commission must consider and determine election disputes speedily and fairly.

Elections are a vital process in establishing a stable and legitimate political order. They are crucial instruments for peaceful and orderly transfer of power. The ballot must replace the bullet as a means of changing government. They should be conducted regularly in a free and fair manner. Political actors and leaders must be prepared to accept the result of the election and to lose gracefully. The Electoral Commission should be granted adequate powers and facilities, to

build capacity, efficiency and credibility in its conduct of elections so that they are free and fair and always reflect the general will of the electorate.

Failure to Compile, Update and Display Voters Register:

The Petitioner further alleges in para 3(1) (a) that contrary to Section 12 (e) and 18 of the Electoral Commission Act, the 2nd Respondent failed efficiently to compile, maintain and update the National Voters Register. The Voters Roll for each Polling Station within each constituency and that as a result the Voters Register and the said Voters Rolls contained many flaws such as dead people's names and names of people who ought not to vote in Uganda remaining on the register while several persons who were eligible voters had their names omitted from the said Register and Rolls.

Furthermore the Petitioner complained in para 3(1) (f) that contrary to Section 25 of the electoral Commission Act, the 2nd Respondent failed to display copies of the Voters' Roll for each Parish or Ward in a public place within each Parish or Ward for a period of not less than 21 days and as a result the Petitioner and his agents and supporters were denied sufficient time to scrutinize and clean the Voters Roll and exercise their rights under the law.

The 2nd Respondent also denied that it failed to efficiently compile, maintain and update the National Voters Rolls for constituencies and Polling Stations and further that it had no knowledge of people who ought not to vote in Uganda remaining on the Register with several persons who were eligible voters had their names omitted from the Register and Rolls. The 2nd Respondent averred that even if the said allegations were true, they did not constitute a ground upon which the election of a candidate as President could be annulled.

As regards non-display of Voters Register, the Respondent answered that the Voters Register was initially displayed countrywide for three days and everybody was free to scrutinize the said Register. The 2nd Respondent further states that after consultations with and on request by agents of all Presidential candidates including those of the Petitioner, the 2nd Respondent extended the time for display of the Voters Register for another two days. The 2nd Respondent avers that the failure to display copies of the voters Roll for each parish or Ward in a public place for not less than 21 days does not constitute a ground upon which the election of a candidate as President can be annulled.

Before considering the evidence, which was adduced in support of these grounds, it is necessary to consider the law upon which they are based with a view to ascertaining whether the grounds are maintainable in law. Mr. Mbabazi learned counsel for the Petitioner referred us to the preamble and Sections 2(2) and 29 (4) of the Presidential Elections Act. He also relied on Sections 12 and 18 of the Electoral Commission Act 1997, and as amended in Section 19(7) by the Electoral Commission (Amendment) Act of 2000. Reliance was placed on article 65(1) of the Constitution.

The Presidential Elections Act 2000 is a special law intended to provide a legal framework to govern future elections to the office of the President. But in Section 2(2) of the Act, it states that “The Commission Act shall be construed as one with this Act.”

Section 18 of the Commission Act lays down the Commission obligation to compile, maintain and update a National Voters Register as follows:

- “(1) The Commission shall compile, maintain and update on a continuing basis a National Voters Register, in this Act referred to as the Register, which shall include the names of all persons entitled to vote in any national or local government election.***
- (2) The Commission shall maintain as part of the voters Register, Voters’ Rolls for each constituency under this Act***
- (3) The Commission shall maintain as part of the Voters Roll for each constituency as Voters Roll for each Polling Station within the constituency as prescribed by law.***

Section 12 of the Commission Act provides additional powers to enable the Commission carry out its functions under chapter five of the Constitution. Article 65 of the Constitution sets out the functions of the Commission, which include compiling, maintaining and updating the Voters Register.

The 2nd Respondent has a statutory duty to update the Voters Register before any election is held. The 2nd Respondent must display for public scrutiny the Voters Roll for each Parish or ward for a

period of not less than 21 days duly notified in the Gazette. In this connection Section 25(1) of the Commission Act stipulates:

“Before any election is held, the Commission shall by notice in the Gazette appoint a period of not less than twenty one days, during which a copy of the Voters Roll for each Parish or Ward shall be displayed for public scrutiny and during which any objections or complaints in relation to any necessary corrections; shall be raise of filed.”

In the present case, it admitted that the display was carried out for only five days. The only question to be decided is whether the 2nd Respondent has powers to abridge the period of display. It was contended for the 2nd Respondent that it has powers to do so under Section 38(1) of the Commission Act which provides,

“Where during the course of an election it appears to the Commissioner that by reason of any mistake miscalculation, emergency or unusual or unforeseen circumstances any of the provisions of this Act or any law relating to the election other than the Constitution, does not accord with the exigencies of the situation, the Commission may by particular or general instructions extend the time for doing any act, increase the number of election officers or Polling Stations or otherwise adapt any of those provisions as may be required to achieve the purposes of this Act, or that law to such an extent as the Commission considers necessary to meet the exigencies of the situation.

It was contended for the Petitioner that the above provision authorized the 2nd Respondent to increase but not reduce the period of display. I believe counsel was relying on the ejusden generis rule which is explained in Halsbury’s Law of England Vol.44 4th edn. Para 877, page 535 in these terms:

“As a rule where in a statute there are general words following particular words, the general words must be confined to things of the same kind as those specified, although this as a rule of construction must be applied with caution and subject to the primary rule that statutes are to be construed as referring in accordance with the intention of parliament. For the ejusden generis rule to apply the specific words must constitute a category class of genus, and the general words must not by their nature exclude

themselves from the category class or genus, so that for example, a superior thing will not be held within a class of inferior things. If the particular words exhaust a whole genus the general words must be construed as referring to some larger genus. It seems that the ejusden generis rule can have no application where the general words precede the enumeration of particular instances and may not be relevant for the construction of international conventions.”

On the other hand counsel for the 2nd Respondent submitted that the Commission has powers to reduce the period of display, to meet the exigencies of the situation.

In my opinion, ejusden generis rule of construction does apply to the provisions of Section 38(1) of the Commission Act with the result that the 2nd Respondent has no powers to reduce the period of display of the Voters Register. Display must be given sufficient time to enable the updating and cleaning of the Register to promote the principle of voter registration and transparency. Failure to display for the prescribed minimum period undermined those two principles and was responsible for complaints relating to voting.

The question is whether the 2nd Respondent failed efficiently to compile, maintain and update the National Voters Register, the Voters Roll for each Polling Station with each constituency as a result of which the Register and Rolls contained many flaws. There is no direct evidence that the Voters Register and Voters Rolls were not efficiently compiled, maintained and updated. It was contended by Mr. Mbabazi for the Petitioner that there was in fact no National Register of Voters. Evidence was called of Mr. Mukasa David Bulonge who testified about the disparity in the total number of voters as communicated by the Chairman of the 2nd Respondent from time to time.

Mr. Mukasa stated in his affidavit that on 10th March 2001 while the display of Voters Register was still in progress the Chairman of the 2nd Respondent announced while addressing International Observers that the number of registered voters was still 11.6 voters, this number having been obtained from the returns received from the field after the National Voters Register update exercise as claimed by the Chairman in his letter to candidates dated 7 March 2001 in which he admitted he had no final Voters Register. But on 11 March 2001, the Chairman of the 2nd Respondent announced at a final briefing for candidates that the number of registered voters

was 10,674,080 while the number of Polling stations was 17,147. But when the results were declared the number of registered voters and Polling Stations had increased to 10,775,836 and 17,308 respectively as per provisional declaration of results. The Petitioner contended that because the exact number of registered voters was not known, the 2nd Respondent procured more ballot papers than the number of voters whose use or whereabouts remain undisclosed.

In his supplementary affidavit in reply, Mr. Kasujja stated that the National Voters Register had existed since 1993 when a National Voters Register was first prepared for the purpose of the Constituent Assembly and that since then the National Voters Register has been maintained and updated. It was updated before the 1996 Presidential Elections and the Register was subsequently cleaned before the referendum. He repeated that for the Presidential Election the update of the Register was done at village level from 11th January 2001 to 22nd January 2001. Mr. Kasujja pointed out that in February 2001 the National Voters Register was printed and displayed at Polling Stations in the form of Voters Rolls in four components i.e. the previously registered Voters, the newly registered voters, the transferred voters and the voters recommended for deletion for ease of scrutinizing the register.

Furthermore Mr. Kasujja stated that the display was carried out for three days and after consultations and in agreement with all candidates' agents. He explains that the time of display and update of the Register was affected by a decision to have photographic voters' cards, which required fresh registration. The exercise was commenced but due to unforeseen delays in delivery of all the necessary equipment which had not arrived by 31st December 2000 the 2nd Respondent was forced to revert to the old system of updating the existing Register having lost a lot of time.

Explaining the disparity in the total number of registered voters Mr. Kasujja stated that after the Referendum of June 2000, the Register on cleaning had about 9,308,173 voters. After the update the number rose to 9,308,173 voters. After the display and cleanup the number reduced to 10,672,389. This number however did not include soldiers and adults living with them and when they were included the number rose by 103,447 to 10,775,836. Mr. Kasujja stated further that the National Voters Register is made of 214 Constituency Rolls and the Constituency Rolls are in turn made up of all polling Stations rolls in the Constituency and on 11th March 2001 these had already been printed out, and the number of Registered Voters was known.

On the evidence adduced in this petition I am satisfied that the 2nd Respondent did not efficiently compile, maintain and update the National Voters Register and Voters Rolls for each Constituency for the Presidential Elections. This violated the principles of registration of voters, fairness and transparency.

Voting by Underage Persons:

The Petitioner alleges in the petition that contrary to Section 19 (1) (b) of the Commission Act, the 2nd Respondent's Agents or Servants in the course of their duties allowed people under 18 years of age to vote. The 2nd Respondent in answer to the petition denied the allegation.

Section 19 (1) (b) of the Commission Act provides that any person who is a citizen of Uganda and is eighteen years of age or above shall apply to be registered as voter in a Parish or Ward where the person originated from or resides or works in gainful employment. It is provided in Subsection (2) that no person shall be qualified to vote unless that person is not registered as a voter in accordance with article 59 of the Constitution. This section lays down the principle of universal adult suffrage.

The Petitioner filed several affidavits in support of this allegation, which were controverted by the 2nd Respondent. Suliman Niuro, a Polling Monitor of the Petitioner in Bukode North Constituency, deposed that he visited bus part A Polling Station where he saw soldiers from the RDC's Office threatening and forcing young children below 18 years to vote. Niuro states that he and others tried to refuse them to vote but the soldiers overpowered them, and arrested him for 30 minutes. After chasing away Polling Agents, the soldiers brought many small children to vote. The Agents went back after almost four hours. He said he saw others vote in the name of the dead people and mentioned two. He states further that the declaration forms were very inaccurate in a number of stations.

His evidence is challenged by Magezi Abu who was the Presiding Officer at bus Park A Polling Station. Magezi states that no soldiers ever came to his Polling Station nor did they force young children or unauthorized people to vote. He stated that the Petitioner's Agents witnessed the voting exercise from the beginning to the end and both of them duly signed the Results Declaration Forms.

Nava Nabagesera, the Resident District Commissioner Bugiri District also denied the allegations made by Niiro that soldiers from her Office threatened people and forced young people to vote. She stated that she has three escorts who are all the time with her and did not go to Bus park (A) Polling Station. She received no reports of soldiers threatening or arresting any person during elections in her District. These two witnesses cast very serious doubts on the claims made by Suliman Niiro that soldiers forced underage children to vote.

John Kijumba who was appointed a Monitor for the Petitioner in Bukonjo West Constituency in Kasese District stated that on the Polling day he found six underage children lined up to vote at Kasika Polling Station. The Polling Officials ignored him although he does not say what he did about it. He claimed that the 1st Candidate's agents threatened to stone him and he went and reported to Bwera Police Station. At Rusese Kyampara Polling Station, he saw two underage people lined up to vote. He pointed them to the Presiding Officer but he allowed them to vote. He does not explain what he meant by underage or how he came to the conclusion that they were underage.

The Presiding Officer Mupaghanja Boniface in his affidavit denied talking to Kajumba. He admitted that Baluku Henry the Polling Agent for Presidential Candidate Mohamed Kibirige Mayanja pointed out to him two girls who had lined up to vote as being underage based on the fact that they were primary school pupils. He checked the voters register and found their names therein. He also found that they had valid voter's cards. He questioned the girls' father Manywayuro Ezra who said that the girls were over 18 years of age. He then discussed the matter with the Polling Agents present and it was resolved that any prospective voter suspected to be underage should provide a birth certificate for verification or that their age be verified by their parents. He allowed the girls to vote. He denied allowing any underage to vote.

Lucia Naggayi, head of the Election Monitoring Team of Kiboga District for the Petitioner claimed that at Malagi Polling Station she found a Kasozi Bernard voting using card No. 15094729 who upon examination was found to be underage and was thereafter reported to Police. There is no indication that Kasozi voted. Wabuyebele Martin who was the Presiding officer for Kyalajoni AL Polling Station in Kiboga district denied that there was such Station known as Malagi in Lubiri Parish.

The evidence of Boniface Ruhindi Ngaruyu who was deployed to oversee the performance of the Polling Agents for the Petitioner in Mbarara Municipality states that while he was at Mankeke Polling Station he saw a number of Fuso lorries and pickups loaded with students escorted by armed Military Police who were driven to Kakyeka Stadium and the military ordered the election constable to allow them to join the line and vote without any agents questioning their identity. The witness does not say whether these children were underage or not registered in the area they voted. This evidence is worthless.

The allegations were denied by Aspol Kwesiga who was District Registrar of the Commission in-charge of Mbarara District. His evidence was that Makenke was never used as a Polling Station during the Referendum of 2000. He stated that the allegations made by Ruhindi were completely false because as one of the persons, who supervised elections, no such incidents took place at Kakyeka Stadium and the Petitioner's Polling Agents signed the respective Declaration of Results Forms.

Ssentongo Elias an overseer of the Polling Agents for the petitioner in Ntungamo Town Council and Kahunga Sub-county claimed that at Karegeya Polling Station he found armed soldiers who had camped at Irenga, the home of Mrs. Janet Museveni and the said soldiers allowed children who were clearly under the age of 18 years to vote for the 1st Respondent.

Another witness Patrick Matsiko Wa Mucoori, a senior Reporter with Monitor Newspaper claimed that he saw a young girl of about 12 years coming to vote with a card and she was given a ballot paper. When he asked why the child was voting, the Presiding Officer said that the girl was voting for her father who was reportedly sick in the barracks. This voting was technically improper.

Byaruhanga Yhaya who was a Polling Agent for the Petitioner at Maracha D Polling Station, South East Busia Town council, Busia District, claimed that there were 6 underage children who were allowed to vote and his attempts to stop them were ignored by the Presiding Officer.

On the evidence adduced it cannot be positively concluded that the alleged children were under 18 years. There was no proof of under age. A birth certificate or medical evidence would be credible evidence, see Sang v Rep (1971) EA.539

Multiple Voting:

The Petitioner complains in paragraph 3 (1) (j) of the petition that contrary to Section 31 of the Act, 2nd Respondent's Agents or Servants or Presiding Officers in the course of their duties and with full knowledge that some people had already voted allowed the same people to vote more than once. The 2nd Respondent denied allowing anybody to vote more than once.

Section 31 (1) of the Act provides that "No person shall vote or attempt to vote more than once at any election." It is an offence under section 71 (b) of the Act to vote more than once at an election. The principle behind this provision is equality and fairness.

Patrick Matsiko wa Mucoori, a senior Reporter with Monitor Newspaper, claimed that he saw voters continuing to vote several times at Kanyaruguru Special voting Station for the Army and when he informed the Presiding Officer, he stopped them from voting. He claimed that he saw the Battalion intelligence Officer voting more than five times by changing his cloths each time he came to vote. He did not name the intelligence Officer or how he knew his post. When multiple voting was stopped, he got scared and stopped pointing out other malpractices and made arrangements to leave.

He claimed that when he wanted to go the Presiding Officer confiscated his personal effects and ordered him to be taken to the quarter guard where he was detained for 10 minutes and released and taken back to the Polling Station where they met on the way the Battalion Commanding Officer, Capt Kankiriho who threatened to beat him if he went near the polling station or revealed what he had seen at the station. Later he was allowed to recover his personal effects and left that very night for Kampala by bus.

Ssentongo Elias, an overseer of the Polling Agents for the Petitioner in Ntungamo Town Council and Kahunga Sub-county claimed that Tom Muhoozi, the Deputy Chairman District Public Service Commission colluded with the presiding Officer to allow some people to vote more than once at Kabuhome Polling Station. But Tom Muhoozi in his affidavit denied seeing Ssentongo at the Polling Station. He denied colluding with the Presiding Officer to allow people to vote more than once.

Hingiro John who a Polling Agent of the Petitioner for Kabungo Primary School I Polling Station in Ntungamo claimed that the Presiding Officer Muhwezi Mark and the Polling Assistant Muhumuza Fred were issuing many ballot papers to individuals who were known supports of the 1st Respondent. These included Kilama L and Byaruhanga B. the same Presiding Officers gave many unticked ballot papers to Karuhanga Davis Muvale the LC III Chairman of Rwenkiniro Sub-county, and they were taken to unknown destination. But he does not say what happened to the ballot papers whether they were cast or not. He only says he refused to sign the declaration form though he was forced to do so.

However Muhumuza Fred denied the allegations made by Hingiro. He stated that he did not issue any ballot papers as alleged since his work as Polling Assistance was to check for the names of the voters in the Register and tick against whoever cast his or her vote. Muhwezi Mark who was the presiding Officer similarly denied the allegation. He stated that he was the only person who was issuing ballot papers whereas Muhumuza was marking the names of the voters who had come to vote. He issued only one ballot paper per voter and no more. He explained that the Petitioner's Agents left the Polling Station on their own before the closure of the polling exercise and that is why they did not sign the Forms.

Kasigazi Noel who was a Polling Agent for the Petitioner at Rweranura Polling station claimed that he saw Sibomaana Amos a Campaign Agent of the 1st Respondent casting a bundle of ballot papers after colluding with Presiding Officer. He lodged a written objection t the Presiding Officer who rejected it. This is unhelpful. How many ballot papers were cast and how were they cast, one by one or by bundle? Where they already ticked or he ticked them? When he requested why Sibomaana was allowed to cast a bundle of ballot papers, he was threatened with violence by the LC I Chairman and LC111 Chairman and others. He claimed that during the scuffle Turyakira was given all the remaining ballot papers by the Presiding Officer, which he ticked and put in the ballot box. But Sibomaana Amos denied a Campaign Agent for the 1st Respondent in Katashekwa. He denied voting more than once or put a bundle of ballot papers in the ballot box. He also denied threatening anybody.

Karenzyo Eliphaz who was a Polling Agent of the Petitioner at Bihomborwa Polling Station in Kanungu District claimed that at the Polling Station he saw a lady called Specioza Kiiza at the table where ballot papers were being filled and she was insisting on ticking them for voters in

favour of the 1st Respondent. She ticked on the open table hundreds of ballot papers for the 1st Respondent. At one time two ballot papers were given to one lady and she protested, she was mishandled. He claims he saw Deo Barabona, Vice Chairman LCII cast over 100 ballots as he helplessly watched Barabona did not ink his thumb throughout the process. Another old lady was given five ballot papers and she cast them. Barayobela a Congolese employee of Kanyabitabo – who was the Parish Movement Chairman, also cast 10 ballots although he was not a Ugandan. He decided to go away and report to the Petitioner’s Campaign Office at Kahihi. He did not report to any electoral or Police Officer. It is not clear how he was able to count the votes cast when he claims he was being harassed and threatened with death.

Guma Majid Awadson who was a Polling Monitor for the Petitioner in Kuru Division Polling Station in Yumbe District stated that he saw Achaga Safi the LC III Vice Chairman of Kuru Division voting at two Polling Stations using different voter’s cards. The Polling Stations are Bura B, Bura A and the polling cards were No.0027587 and No.00267715 respectively. He reported the matter to the prison constable deployed to take charge to take charge of the area but he feared to arrest Achaga who was a Member of the Task Force of the 1st Respondent.

He claimed that at Geya Parish Aliba A Polling Station he saw the presiding Officer Abele Young Majid giving six ballot papers to the LCIII Chairman Kuru county called Drasi Ali, a member of the Yumbe Task Force of the 1st Respondent. But Drasi Ali denied the allegations against him. He stated that he was not given six ballot papers nor did he arrest anybody on the polling day.

Ronald Tusiime the Petitioner’s Polling Agent in Mparo, Rukiga County Kabale District claimed that he saw some people who had voted at Kihanga Playground Polling Station come and vote again at Rukiga County Headquarters Polling Station. He named Baryakika Colling who used D Tindimwensi’s card and Dunga Bugari who used voter card of G. Twesogome. He claimed that the Petitioner’s Agents were forced to sign the declaration forms.

Mugizi Frank who was a Polling Agent of the Petitioner at Rubanga Polling Station in Ntungamo District, claimed that he witnessed massive rigging whereby people were being allowed to vote more than once and when he protested, the 1st Respondent’s supporters namely, Simon, Twahirwa Sura, Kanyogisa, Siriri, and Karyhota Muyambi threatened to assault him and chased

him away from the Polling Station. After leaving the Polling Station, Ali Mutebi Campaign Manager of the 1st Respondent offered him Shs.15,000/= in order to go back and sign the Declaration of Results Form but he refused. There is no description of how the multiple voting was done and the names of voters involved.

But Namanya Allen who was the Presiding Officer at Rubanga Polling Station denied that any person voted more than once. He admitted that Mugizi witnessed the Polling exercise from commencement but he voluntarily left the station between 3:00 p.m. and 4.00 p.m. and did not return and therefore did not sign the declaration of results forms.

Kidega Micheal who was a monitor in Nwoya County in Gulu District stated that he went to Alero Polling Station outside the barracks where he found 50 soldiers who had voters cards but were not on the register. He says he tried to intervene but the soldiers said they had superior orders from a major to Paraa Polling Station where voting ended at 5:00 p.m. and then started again at 7.30 p.m. and continued to 10.00 p.m. He states that he discovered later that the same soldiers he got at Alere were the same soldiers voting in Paraa where they were led by Lt. Peter.

I find the evidence adduced by the Petitioner on this allegation convincing and I accept it despite denials by evidence from the Respondents. The allegation of multiple voting in several Polling Stations has been proved. It violated the principles of equality and fairness.

Voting Before or After Prescribed Time:

The Petitioner alleges in his petition that contrary to Section 29 (2) and (5) of the Act, the 2nd Respondent and its agents or servants allowed voting before the official time by people who were neither present at the Polling Stations nor in the line of voters at the official hour of closing. The 2nd Respondent denied the allegation and averred that only people present at the polling stations or those in the line of voters at the official closing time were allowed to vote out of time.

Section 29(2) of the Act provides that

***“At every polling station, polling time shall commence at seven o’clock in the morning and close at five o’clock in the afternoon.*”**

This section promotes the principle of transparency.

Moses Babikinamu who was a Polling Agent for the Petitioner at Lwebifakuli Polling Station in Mawogola County, Sembabule District claimed that on the polling day he reported at the Polling Station at 6:30 a.m. but by that time voting had started. He asked the Presiding officer why the voting commenced before 7.00 a.m. but she simply asked him to sit down and concentrate on his work. At about 10.00 a.m. the Member of Parliament for the area Hon. Sam Kuteesa came and asked how many people had voted and he was told 300 whereas he had counted 52. By 5.00 p.m. he had recorded 160 voters, but at the end of the exercise the Presiding Officer declared 510. When he disputed the number declared, the 1st Respondent's Agents threatened him with arrest. The Presiding Officer forced him to sign the documents without him reading through and he did so. He did not report this matter to any authority. Instead he signed the Declaration Results Form. He must be deemed to have signed the forms voluntarily in the absence of any other evidence to support his claims of duress.

Oliver Karinkizi denied the allegations made by Babikinamu. He denied being a Campaign Agent of the 1st Respondent. He stated that he was the Presiding Officer at the Polling Station and voting commenced at 7.00 a.m. in the presence of other agents except Babikinamu who came after 7.00 a.m. he denied making him sit at a distance of five meters away. He admitted Hon. Kuteesa came to the Polling Station but in the afternoon. He stated that the number of people who voted at the Polling Station was 510, which was declared in the presence of all agents. He revealed that Babikainamu and his colleague willingly signed the tally sheets in the presence of many people. Hon. Sam Kuteesa admitted visiting the Polling Station, but denied interfering with the voting process at the Polling Station.

Ngandura John was Polling Agent for the Petitioner at Nyakabengo Primary School Polling Station in Kisoro District. He claims that he arrived at the Polling Station at 4.00 a.m. and the polling began at 6.00 a.m. despite his request that it starts at 7.00 a.m. which was turned down by the Presiding Officer. Livingstone Tenywa, the District Police Commander, Kisoro District, denied receiving any report from Ngandura on the polling day.

Tumusiime Enock who was in charge of overseeing the operations of Polling Agents for the Petitioner in Kajara county in Ntungamo District, claimed that at 7.30 p.m. on polling day after completing the tallying of results in Ntungamo Town Council, he received information that voting was still going on at Kayenje Polling Station. At 11.30 p.m he and the Returning Officer

of Ntungamo District and six Police Officers went to Ntungamo Catholic Social Centre following information that voting was taking place there. They found voters still casting their votes in favor of the 1st Respondent even though the place was not a polling station. They found nine ballot boxes already delivered at the Centre from Ngoma, Rugarama, Kagagu, Kayonza, Kikoni, Kahengyeri, Kabingo, Rwebirizi and Rusunga.

When the returning Officer questioned the Presiding Officer why he allowed voting at an ungazetted place, the Presiding Officers responded that the Chairman of the Electoral Commission had extended the time for voting to midnight. Because of these irregularities the Petitioner's Agents decided not to sign the Tally sheets and the Declaration of Results Forms for the District. The witness does not say how he came to know that the voters were voting for the 1st Respondent. Secondly he does not indicate what action was taken against the Presiding Officers by the Returning Officer or the Police. His tale is incomplete and is not corroborated.

Musisi Francis a Polling Agent of the Petitioner at Bailambogwe Polling Station in Mayuge District, claimed that on the polling day when he reported at the Polling Station at 6.00a.m., he discovered that the voting exercise had already started in the absence of all other Polling Agents for different candidates. Then who was conducting the elections or who was present? The witness is silent as to who was present. How many people had voted?

I find that the evidence by the Petitioner not credible and convincing. I believe the evidence by the Presiding Officers that they conducted the voting within the prescribed time. Therefore the principle of transparency was not violated.

Pre-ticking of Ballot Papers:

In para 3 (1) (x) of the Petition, the Petitioner alleges that contrary to sections 70 (f) and (j) and 71 (b) of the Act, some of the 2nd Respondent's Agents or servants as presiding Officers or Polling Agents, in the course of their duties, ticked ballot papers in the 1st Respondent's favour and later gave them to voters to put in the ballot boxes, and others interfered with ballot papers and stuffed them with already ticked ballot papers. I shall deal later with the ballot stuffing.

The 2nd Respondent denied the allegation. Section 70 (f) and (j) of the Act provide as follows:

“70. Any person who –

(f) knowingly and intentionally puts into a ballot box anything other than the ballot paper which he or she is authorized to put in,

.....
.....

(j) not being authorized so to do under this Act makes any mark on a ballot paper issued to a person other than the person making the mark, with intent that the ballot paper shall be used to record the vote of that other person;

Commit an offence and is liable on conviction to a fine not exceeding two hundred currency points or imprisonment not exceeding five years or both.”

This provision is intended to safeguard the principles of secret ballot and transparency.

I shall now consider the evidence adduced to support the allegation. Muhairwoha Godfrey who stated that he was a Polling Agent for the Petitioner in charge of Kajaaho 4 in Kajaaho Parish Kikagati Sub-county Isingiro County South Constituency alleged that he witnessed numerous malpractices and massive rigging at the said Polling Station for the 1st Respondent. He states that at around 10.00 a.m. one Charles Rwabambari a supporter of the 1st Respondent went to the desk of the Presiding Officer accompanied by one Kanyanurwa Parish Chief, Kajaaho Parish, and took over the station from Katsimbazi the Presiding Officer and stated issuing ballot papers and ticking them for voters. When he protested, the Parish Chief ordered that he be arrested tied up and taken to Prison at the sub-county but when an armed uniformed UPDF Reserve Force Officer tried to arrest him, he escaped.

Mulindwa Abasi of Kabolwe Zone LC I Kibuku Parish Pallisa District states his affidavit that he was a Monitor for the Petitioner in Kibuku Parish. At all Polling Stations he visited, there were voters who could not vote because on reporting they were told their names had been ticked and they were told they were not supposed to vote. When they complained they were chased away. He claims when he raised complaints he was threatened and his life is still under threat and he is being accused of being a rebel. Mulindwa does not mention which Polling stations he visited or

even a single voter whose name was ticked and he was denied a right to vote. It seems much of his information is hearsay.

Wasunia Amis who was a Monitor for NGO Election Monitoring Uganda (NEMU) Group Uganda) in charge of Rurama Polling Station in Kayenje Parish in Ntungamo District, stated that at that Polling Station voters were allowed to tick from the Presiding Officer's table under the guidance of the Presiding Officer, one Kamukama H. who was ordering them to vote for the 1st Respondent.

The evidence of this witness is challenged by Tumwebaze Mukiga who was the District Registrar for Ntungamo District, employed by the Electoral Commission. He stated that on polling day he was in charge of supervision of Rurama County, which comprises Ntungamo Sub-county, Ntungamo Town Council, Nyakyera Sub-County, Rukoni Rurama and Rweekiniro sub-counties. He stated that he travelled to almost all Polling Stations and could positively state that the polling exercise was conducted peacefully.

Referring to Wasiima's affidavit, he stated that he knew him very well and Wasiima is not illiterate and the signature on the affidavit is not his signature. He says that he personally reached Rurama polling station and found no problem. He received no complaint from Wasiima or any other person. He reached the Polling Station at the closing of polls shortly after 5.00 p.m. and even talked to Wasiima who assured him there was no problem at the Polling Station. The evidence of Tumwebaze casts serious doubts on the credibility of Wasiima's affidavit.

Betty Kyimpairwe who was a Polling Agent for the Petitioner in Mbarara claims that at Kyabandasa Kanyegamere Polling Station, she found the Presiding Officer and Polling Officials maliciously spoiling ballot papers cast for the Petitioner by adding small ticks on the 1st Respondent. She does not explain at what stage this action was committed because if the ballot papers had already been cast in the ballot boxes, it is difficult to understand how they were taken out and spoilt.

Although the evidence on this allegation is scanty, I believe the Petitioner's evidence. It is my finding that the Petitioner has proved to my satisfaction that some people pre-ticked ballot papers and put them into ballot boxes or marked ballot papers for other voters to use for voting as alleged, in a few places. This infringed the principles of voting by secret ballot and transparency.

Ballot Stuffing:

The Petitioner complains in para 3 (1) (i) of the Petition that contrary to Section 30(1) of the Act the 2nd Respondent's Agents or servants in the course of their duties, allowed commencement of the poll with ballot boxes already stuffed with ballot papers and without first opening the said boxes in full view at all present to ensure that they are devoid of any contents. The 2nd Petitioner denied the allegation. Section 30 (7) of the Act provides,

“The Presiding Officer at each Polling Station shall at the commencement of the poll and in full view of all present, open the first box, turn it upside down with the open top facing down to ensure to the satisfaction of everyone present that the ballot box is devoid of any contents and after that place the ballot box is devoid of any contents and after that place the ballot box on the table referred to in paragraph (c) of subsection (5).”

This provision promotes the principles of fairness and transparency.

Betty Kyampaire, who was a District Monitor for the Petitioner in Kamwenge District claims in her affidavit that while she was monitoring with James Birungi and two other members of the Monitoring team, she discovered at Busingye Primary School Polling where Mr. Bwengye LCIII Vice Chairman stuffed 300 ballot papers into the box. She claims she saw the destroyed ballot books at the Polling Station. She does not explain whether she witnessed the stuffing or merely heard about it. She does not explain how it was done and at what time.

She claims further that she saw that stuffing of ballot boxes by LC Officials and Members of the Respondent's Task Force and ticking from the table was common at most polling Stations in Kamwenge Sub-County where she monitored. No names of these officials are given, nor how many ballot papers were stuffed. She does not explain what did happen as a result of these malpractices.

Mugenyi Silver who was an Election Officer in charge of Mid-Western Region responsible for preparation and dispatch of election materials and monitoring of elections denied the allegation that at a Polling Station known as Busingye Primary School 300 ballot papers were stuffed in one ballot box by the LC III Chairman. He stated that there is no such polling station in the

District, and the nearest Polling Station is Busingye Trading Centre Polling Station, which was supplied with 800 ballot papers and declaration of result forms indicated that 792 valid votes were cast, 7 were invalid and 1 remained unused. He stated further that if any ballot papers had been stuffed into the box, it would have inflated the number of votes cast, which was not the case at the said Station. He denied instructing the 1st Respondent's Agents to cast votes for some people, who were not the 1st Respondent's supporters, nor did he collude with the Presiding Officer to allow people to vote more than once.

In her affidavit, Lucia Naggayi who was the Head of the Election Monitoring Team of Kiboga for the Petitioner claims that at Kyalojani Polling Station (A-M) she found bulky ballot papers stuffed in the ballot box and upon complaint he was chased away. He does not explain how he found that the box had been stuffed before voting. However, Wabuyebele Martin who was the Presiding Officer at the Polling Station denied the allegation of ballot stuffing, prior ticking of ballot papers and chasing away the Petitioner's Agent. Nkangabwa Godfrey who was a Presiding Officer at Kyalojani MZ Polling Station in Kiboga District stated that there was no such a Polling Station as Kyalojani Polling Station (A-M) but the Polling Stations in Lubiri are Kyalojani AL, Kyalojani MZ and Katugo. He too denied that any ballot papers were stuffed in the ballot box and that some voters were given ballot papers already ticked.

Ntume Noellene who was the Presiding Officer for Bukomero II N-Z Polling Station stated that Naggayi never counted any ballot papers in any ballot book. And it was not true that there were 110 ballot papers in one book. Since he did not count the ballot papers he could not establish the number of ballot papers in the books.

Ndifuna Wilber, appointed election monitor for the Petitioner in Busia Town Council, Busia District, claimed that upon information received, he went with Police Officers and tricked Bazilio that he was a voter and wanted to vote for the 1st Respondent. Bazilio came with bundles of ballot papers, marked voters' cards and voters register. He then gave one voter's card and ticked it against the name of Jogo Joseph in the Register. Two girls came and were issued with ballot papers. The Police Officers whom he had tipped came and arrested them and he handed the ballot papers to the Police. The suspects were taken to the Police Station but later released without charge. This was an attempted rigging or stuffing which failed.

Abduraham Mwanja stated that he was the Chairman for Kigulu South Constituency and Chairman Bulamogi Sub-county and was appointed as a monitor. He does not indicate which Presidential Candidate appointed him. He says that he visited Iganga Town Council Polling Station to ensure that the voting was free and fair. He claims that he saw a vehicle, Hilux double cabin Reg. No UG 0095 B, bringing ballot boxes with ballot papers and deposited them in Iganga Hospital. When he approached the area the people involved shifted the boxes to Kasokoso Primary School, which had two Polling stations A and B. He followed them on his motor-cycle and when he insisted on checking the ballot boxes. The people involved who were soldiers refused and took the boxes away. It is not clear how Mwanja came to know the boxes to be stuffed with ballot papers. He does not disclose where the ballot stuffing was done and by who.

Mwanja further claims that at around 4 p.m. the Health Medical Officers and the Mayor of Iganga Ismail Kyeyago ordered those who had old voters cards to vote and those who had cards but names did not appear on the list of voters to vote and they voted. But Ismail Kyeyago denied the allegation made by Mwanja in respect to ordering people to vote as alleged because he had no power to do so. Gwaivu Abdalla who was the Election Supervisor in charge of Iganga Town Council stated that he did not receive any report or complaint about the vehicle depositing stuffed ballot boxes at Iganga Hospital or any report against Ismail Kyeyago allowing unauthorized voters to vote.

James Birungi Ozo who states that he was appointed a District Monitor by the Petitioner and also District Campaign Co-ordinator for Kamwenge District claims that he was informed by Kahesi Slaya a supporter of the Petitioner that the LC II Vice Chairman one Bwengye stuffed 300 ballot papers ticked in favour of the 1st Respondent in the ballot box during the election at Busingye Primary School Station. Kahesi Slaya never swore any affidavit. This evidence is therefore hearsay and inadmissible.

Tukahebwa Kenneth who was a Polling Agent for the Petitioner at Kyenzaza Trading Centre Polling Station in Banyaruguru, Bushenyi District, claimed that at 2.00 p.m. one Banyenzaki, a driver of one Watuwa Schola from State House tried to stuff ballot papers in the ballot box and they protested against him and a home guard arrested him with the ballot papers. Within five

minutes Schola came and took away her driver and the home guard was disarmed. This was a mere attempt; there was no ballot stuffing.

In any case Watuwa Schola denied the allegation. She explained that on polling day while she arrived at Kyenzaza Trading Centre where she received information that her driver Abdu Banyenzaki had a scuffle with a vigilante near the Polling station.

She was unable to establish the details of the scuffle. She rushed home and found Abdu who informed her that the vigilante was drunk and his identity was doubtful. She went back to the Polling Station with the LC III Chairman Frank Mubangizi and found the vigilante drunk and armed near the Polling Station. The Chairman then disarmed the vigilante and then summoned the LDU Commander to deal with him for being drunk and carrying a firearm near the Polling Station.

Mary Frances Ssemambo who was the Chairperson of the Elect Besigye Task Force, Mbarara District, claimed that a lot of malpractices and rigging took place in Mbarara District. Examples of this include the fact that in some Polling stations the total number of votes shown as cast for that in some polling stations the total number of votes cast shown as cast for the 1st Respondent far exceeds the total number of votes cast for all the candidates and total number of ballot papers issued to the Polling Station. In some stations there were large numbers of ballot papers shown as having remained unused even where the number of ballot papers issued to the various polling Stations were shown as not exceeding the total number of ballot papers actually used, an anomaly which was not explained. She attached some copies of the Declaration of Results Forms.

Her evidence is challenged by the affidavit of Hezz Kafureka who was the Returning Officer of Mbarara District. He states that the anomalies and discrepancies referred to were all contained in an official document known as the Declaration of Results Form Dr. which are prepared by the presiding Officers of respective Polling Stations. He was responsible for the supervision of the supervision of the tallying process in the district where by apparent anomalies and discrepancies were resolved and recorded in the Official Tally Sheet. He explains that the anomalies in the Form were a result of human error by the Presiding Officers. He points out that despite the

anomalies and discrepancies the Petitioner's Agents endorsed the Declaration of Results Forms and did not dispute the results of the elections.

Ssemambo does not state she witnessed any malpractices herself. She is relying on information given or compiled by others. Secondly, the statistics do not prove ballot stuffing since in some instances figures indicate many unused ballot papers. Thirdly, the forms she attached to her affidavit were all signed by the Petitioner's Agents without objections. Therefore her evidence cannot establish ballot stuffing. Moreover the anomalies and discrepancies have been satisfactorily explained away by the Returning Officer.

The evidence adduced on ballot stuffing is credible although some is exaggerated and based on hearsay. There is sufficient evidence to support the allegation. My finding is that the Petitioner has proved to my satisfaction by the evidence adduced that the 2nd Respondent's Agents failed to comply with the provisions and principles of Section 30 (7) of the Act and that there was ballot stuffing as this infringed the principles of fairness and transparency.

Chasing Away Polling Agents from Polling Stations:

The Petitioner complains in para 3 (1) (g) of the Petition that contrary to Provisions of Section 32 and Section 47 (4) and (5) of the Act, on the polling day, during the polling exercise, the Petitioner's Agents were chased away from the Polling Stations in many Districts of Uganda as a result, the Petitioner's interests at those Polling Stations could not be safeguarded.

The 2nd Respondent denied the allegation. It stated that it had no knowledge that the Polling Agents of any Presidential Candidate were chased away by its servants or any other person and that the Petitioner's Agents were free to observe and monitor the voting process.

Section 32 (1) of the Act provides,

“A candidate may be present in person or through his or her representative or polling agents at each Polling Station for the purpose of safeguarding the interests of the candidate with regard to the polling process.”

According to sub-section (2) not more than two agents may be appointed for each Polling Station. Section 32 (4) provides that the Polling Agents shall be seated in such a place as to

enable them observe and monitor clearly the voting process. On the other hand Section 47 deals with the process of counting votes after the voting. Section 47 (4) and (5) deals with the votes of the Polling Agent during the counting and provides as follows:

“(4) subject to this Act, a candidate is entitled to be present in person or through his or her agents at the polling Station throughout the voting and counting of the votes and at the place of tallying of votes and ascertaining of the results of the poll for the purposes of safeguarding the interests of the candidate with regard to all stages of the counting and tallying process.

(5) The Presiding Officer and the candidate or their agents, if any, shall sign and retain a copy of a declaration stating –

(a) the polling station

(b) the number of votes casting in favour of each candidate and the Presiding Officer shall there and then announce the results of the voting at the Poling Station before communicating them to the Returning Officer.”

The objective of these provisions is to promote transparency in the voting, counting and tallying of results.

The Petitioner adduced evidence by affidavit from several districts relating to the complaints of chasing away his Polling Agents from Polling Stations and tallying centres and the problems of tallying of results generally as reflected in the Declaration of Results Forms and Tally sheets. I shall first consider the evidence in relation to chasing away agents from Polling Stations.

Mary Frances Ssemambo who was the Chairperson of the Elect Besigye Task Force in Mbarara District claimed that in a many Polling Stations particularly in Nyabushozi County and Isingiro County South Polling Agents for the Petitioner were harassed, arrested, beaten tied up and detained or threatened with violence and chased away from the Polling Stations by heavily armed UPDF soldiers and the 1st Respondent’s Agents, and therefore the interests of the Petitioner were not safeguarded at the Polling Stations. She swears these facts to the best of her knowledge but does not disclose the source of knowledge whether she actually witnessed these incidents. The names of Agents involved and the Polling Stations are not disclosed. It is just and

omnibus allegation she attaches to her affidavit about 22 Declaration of Results Forms, which are all, signed by the Petitioner's Agents from various Polling Stations in Mbarara District. This tends to prove that the Petitioner's Agents were present during the Polling at these Polling Stations. The Returning Officer for Mbarara District, Hezzy Kafureka denied her allegations.

Alex Busingye who was in charge of overseeing the operations and welfare of the Polling Agents for the Petitioner in Kazo County, in Mbarara District claimed that in the majority of the Polling Stations he visited, he found that the Polling Agents for the Petitioner had been chased away by armed UPDF soldiers. At a Polling Station called Nkungu, he alleges that he found a monitor for that station tied up by the UPDF soldiers and bundled on motor vehicle No. 114 UBS pick-up in which they were travelling.

But Mbabazi Kalinda who was the Presiding Officer at Nkungu Trading Centre Polling Station A-K denied the allegation by Busingye and confirmed that he was a Polling Agent at the said Polling Station. He stated that Busingye did not complain to him about the arrest of a Monitor and he denied that the incidence ever took place. He stated further that both Busingye and Byaruhanga Polly who were Agents of the Petitioner freely endorsed the Declaration of Results Form.

Basajabalaba Jafari who was the Secretary to the Elect Besigye Task Force for Bushenyi District stated that on the Polling day at Kalanda primary School Polling Station, he saw one Agent for the 1st Respondent called Ryamenga manhandling the Petitioner's Agent and chasing him away from the Polling Station. The Presiding Officer allowed voting to take place for three hours until the Sub-county Chief and the Police intervened following his report to Katerera Police Post.

Evarist Bashongoka, Sub-county Supervisor of the elections in Katerera in Bushenyi District denied the allegation by Basajabalaba that the Petitioner's Agents were chased away because he found them monitoring elections at Katanda Primary School Polling Station.

Tumwebaze Arthur stated in his affidavit that he was a Polling Agent for the Petitioner at Kataraka Primary School Polling Station. He claims that he was asked to sit 20 meters away by the Election Constable at around 2.00 p.m. He saw the Constable handling out voters' cards to voters while voting was going on. He states that some persons who never appeared at the Polling Station like Bangirana Livingstone and Takahiirwa Arthur had their names ticked in the voters

Register as having voted when they never voted and their cards used by other persons who impersonated them.

He also claims that he saw multiple voting at the said Polling Station in favour of the 1st Respondent. His complaints were ignored and he refused to sign the Declaration of Result Forms an account of the malpractices.

Wamanya Isaac who was the Presiding Officer at Kataraka Primary School Polling Station in Ntungamo District, denied the allegation by Tumwebaze Arthur that he prevented him from monitoring the voting on behalf of the Petitioner. He stated that he gave Tumwebaze a seat near other candidates' Agents, and he received no complaint from any of the Agents. He denied that any other person issued Voters cards except himself, nor did he see any person carrying out double voting at the Polling Station. His evidence is that candidates' agents except for the 1st Respondent went for lunch at 3.00 p.m. but did not return by the time polling had closed; and therefore did not sign the Declaration Forms.

James Musinguzi who was in charge of the Petitioner's Campaigns in Southern Region of Uganda stated that on the day of election, he visited Kashanja, Nyarurambi, Kijumbire and Ntungamo Polling Centres in Kanungu District and in all these places he found that the Polling agents of the Petitioner were chased away from the Polling area and there was no actual voting since the ballot papers were being pre-ticked in favour of the 1st Respondent by Polling Officials who would then direct the voters to put them in the ballot boxes. He complained about his to the Returning Officers but in vain. He claimed that at Kifumbwe Polling Centre, the Petitioner's Agents who had been chased away were dragged from their homes to come and sign the Declaration of Results Forms in respect of voting they had not witnessed.

Boniface Ruhindi Ngaruye who is a District Councilor and was a member of the Elect Besigye Task Force in Mbarara stated that on the Polling day he was deployed to oversee the performance of the Polling Agents for the Petitioner in Mbarara, surrounding areas and Ishongoro Sub-county. At Biharwe Polling Station he saw that the Presiding Officer had denied the Petitioner's Agents to be present until he went at about midday and explained to the Presiding Officer that he has no such authority. He found no Polling Agents at the newly created Polling Station called Makenke A-J, Makenke A-N, Makenke O-Z which had not been included

in the parking list handed to him on March 11 2001 by the Returning Officer, Mbarara. By the time he approached Agents for the said Polling Stations at Makenke, the Polling was about to close and the Petitioner's candidates only witnessed the counting process.

But Aspol Kwenja who was the District Registrar, Electoral Commission in charge of Mbarara District, denied the allegations by Ruhindi Ngaruye. He stated that the Persons who were sent as Polling Agents for the Petitioner originally lacked proper documentation but subsequently brought them and they eventually signed the Declaration of Results Forms, copies of which were attached to his affidavit. I have looked at the form and two agents of the Petitioner signed the form for Makenke K-N Polling Station.

Ssentongo Elias who was in-charge of Polling Agents in Ntungamo Town Council on behalf of the Petitioner stated that at Nyaburiza Parish and Kabuhone Polling Station the Chairman of the District Service Commission and a known supporter of the 1st Respondent, Tom Muhozi chased away all the Polling Agents except those for the 1st Respondent. However, Muhozi Tom denied chasing away candidates agents. He stated that after casting his vote at 10.00 a.m. he went back to his home. He returned later to the Polling Station after the voting closed and he saw all the Petitioner's Agents who duly signed the Declaration of Results Form.

Koko Medard a Polling Monitor for the Petition in Kanungu District but does not indicate the area of monitoring stated that at Nayarutojo he found that a District Councilor had chased away the Polling Agents from the Polling Station and forced to stand 50 metres away from the ballot boxes where they could not see what was going on. He states that all people except the Agents of the 1st Respondent had been chased away from the voting area. He further claims that he and another agent were chased away from Nyarugando Parish Station. At Ruhandagazi Polling Station he found that one of his agents had been beaten by the LCIII Chairman, Arthur Mugisha and his supporters were in disarray. It is not clear whether he witnessed the beating of his Agents.

The evidence of Koko is disputed by Rutazaria Silver who was the Presiding Officer at Kyamugaga II (A-K) in Nyantojo Parish, Kambuga Sub-county in Kanungu District. He states that no agents were chased away from his Polling Station by Mugisha or anyone. According to him all the agents sat together with election monitors close to the polling desks during the whole

voting process. He stated that the voting area was not deserted until after voting closed at 5.00 p.m.

Tukahirwa David who was a registered voter at Nsambya Polling Station in Mubende District claimed that when he went to the station to collect his voters card on polling day as promised by the Polling Official, the Presiding Officer refused to give one saying his was missing. But others were being issued with cards. He was unable to vote because he had no voter's card though he had a registration certificate.

He claims that as soon as the voting started the Presiding Officer ordered the Polling Agents for all candidates to go away from the area earmarked with a rope where counting was going to take place. When counting of votes started, the Presiding Officer held the ballot papers close to his chest and read out the names of candidates and thereafter passed over the same to his assistant. He would not show the ballot papers to the people to see in whose favour each ballot paper was ticked.

Barnabus Mutwe, who was the Presiding Officer at Nsambya Polling Station in Mubende District, stated that there were only four people whose names did not appear on the Register and he did not allow them to vote. He told the Agents to move two metres away from the ballot papers so as not to tamper with them. He denied that there were any soldiers near the Polling Station and nobody threatened anybody during the voting or the counting of the votes. He stated that the counting nobody raised any complaint, and the Petitioner's Agent signed the Declaration Results Forms without any complaint.

Hamman Rashid who was a Polling Agent of the Petitioner for Kilangazi A Polling Station in Ngoma Nakaseke County in Luwero District claimed that when he arrived at the Polling Station at 6.30 a.m. polling had started and he saw voters voting more than once. At about midday Major Bwende came and threatened him and ordered him to go away and he did so. He was therefore not ready to witness the counting of votes. But Major Bwende denies the allegations made by Rashid. Major Bwende says there was no such Polling Station.

Ssenyonga John who was the Polling Agent of the Petitioner posted at Katuntu Polling Stations, Lwebitakuli Parish in Sembabule District, claimed that on Polling day he went to Lwebitakuli Polling Station and when he introduced himself to the Presiding Officer, and asked for a seat, he

was chased away alleging that he was not resident of the village. He explained to the Presiding Officer that he was appointed a monitor and many people from his village were registered at the Polling Station. After 30 minutes of argument he was allowed to do his work but asked to sit far away from the Presiding Officer's desk. He accordingly sat 10 metres away from his desk. He also states that he was prevented by the Presiding Agent from looking at the Register and voters cards. Later he was given documents by the Presiding Officer and was forced to sign them.

The evidence of Ssenyonga is disputed by Karamuka Abel who was a Polling Assistant of Katuntu Polling Station, Lwebitakuli Parish in Sembabule District. He states that on the polling day at 7.00 a.m., the Presiding Officer called the Polling Agents of the Petitioner and 1st Respondent himself and the crowd to witness the opening of the ballot box which he showed to everybody. At around 9.00 a.m. Senyonga John came to the Polling Station claiming to be an Agent of the Petitioner but he was carrying an appointment letter in the name Mutyaba Julius. The Presiding Officer allowed him to monitor the voting, which went on smoothly. Senyonga went away and came back at about 12.00 p.m. with an appointment letter in his name after cancelling the names of Mutyaba Julius. The Presiding Officer allowed him to monitor the voting, which went on smoothly. Ssenyonga and another agent of the Petitioner Mpeke both signed the Declaration of Results Forms freely without any threat from anyone.

Kipala John who was deployed as a monitor for the Petitioner at Mugab Parish Kakunto in Rakai district stated that when he complained to the Presiding Officer about malpractices of people attempting to vote twice and refusing to dip fingers in the ink or ticking ballot papers he was chased away by the Presiding Officer and he was rescued by his colleague Kimera who drove him away in his vehicle at 3.30 p.m. (This affidavit is not controverted).

Suliman Niuro, a monitor for the Petitioner in Bukooli North Constituency claimed that Agents of the Petitioner were chased away for 4 hours from Bus Park A Polling Station in Bugiri Town Council by armed soldiers during which period they forced young children to vote. The agents came back after 4 hours before the voting ended. But Magezi Abu who was the Presiding Officer at Bus Park "A" Polling Station disputed the claim of Suliman Niuro. He stated that during the voting no soldiers came to his Polling Station or forced unauthorized people to vote. He stated that the security at the Polling Station was in the hands of one Policeman who was the Election Constable.

Kimunwe Ibrahim, who was a Polling Monitor in-charge of Bukoli South Constituency in Bugiri District claimed that at every Polling Station he visited on the polling day, the Petitioner's Agents had been chased away by the Presiding Officers, 8 metres away. The witness does not explain why he calls this chasing away agents or the effect of being seated 8 metres away.

Kirunda Mubarak, a Polling Monitor of the Petitioner in Mayuge District stated that he found at Mpungwe Polling Station that the appointment letters of the Polling Agents had been withdrawn from them on the grounds that the Presiding Officers suspected them to have been fake and they had been chased away. When he asked the Presiding Officer why the Polling Agents had been sent away, he replied that they were not sure of the Agents and had told them to sit far. Kirunda states that the Agents were not allowed to write down anything. He reported the matter to the Chief Administrative Officer who ignored his complaint. He claims further claims that the LC1 Chairman got hold of him and chased him away out of the Polling Station.

However, the evidence by Kirunda is disputed by Balaba Dustan who was the Acting Chief Administrative Officer (CAO) of Mayuge District at the time of the election. He states that he does know Kirunda and he never received a report from him alleging that the Petitioner's Agents had not been allowed to witness the voting exercise and protect their candidate's interests.

Helen Aeko who was a Petitioner at Kalapata "A" Polling Station in Kumi District claimed that the Presiding Officer Richard Napokol chased her away when the voting started and refused her to monitor the number of ballot papers and names of registered voters. She stated that the presiding officer did not want her near the table where ballot papers were being issued and the ticking of the register was done. Later she was forced to sign the Declaration of Results Forms.

In his affidavit in reply Napokol admitted knowing Aeko as Agent of the Petitioner, but also her sister in law. He stated that Aeko arrived at the Polling Station after Polling had started but another Agent of the Petitioner had been present at the commencement of the exercise. She was given a seat and monitored the polling process. He stated that the two ballot paper books had been dispatched from the Electoral Commission when they were not full and all the agents who were present at the commencement of the exercise had been informed. At the end of the exercise, all polling Agents endorsed the exercises as having been conducted freely without any

irregularities and they duly signed the Declaration of Results Forms. He did not force any agent to sign the forms.

Dennis Odwok a Campaign Agent in Amida Sub-county in Kitgum District claimed that he found that at the ungazetted Polling Stations for the army namely, Ngom-Orono (A-4), Ngom-Orono (F-N) and Ngom-Orono (O-Z) UPDF soldiers were the ones conducting the elections instead of Officials of the 2nd Respondent, and there were no Candidates' Agents to observe and monitor the elections. He alleges further that thereafter the Presiding Officer entered the results from the three Polling Stations in the Tally sheet for Lukung Sub-county. He does not explain how he was able to monitor all these.

Olanya James, who was the Presiding Officer for Ongom Orono O-Z Polling Station in Kitgum District, denied the allegation by Dennis Odwok that the election of the Polling Station was conducted by the army instead of officials from the Electoral Commission. He stated that they were all candidates' Agents present at the Station and all of them signed the Declaration of Results Forms, which was attached to the affidavit. I have booked at the form and it is true that one agent for each Presidential Candidates signed the form.

It seems to me that there were a number of problems associated with Polling Agents. Some did not have proper identification and when this was corrected they were allowed to carry out their duties. Some complained of having been asked to sit too far away to be able to monitor the voting effectively. The distances are not uniform as they range from 5 to 20 metres. It is not clear what the ideal distance is. In some new Polling Stations, it may be that the Petitioner did not have adequate time to appoint agents. In other cases it may be that the agents were harassed by polling or security officials. Despite these complaints, it appears from the declaration of results form attached to the affidavits of both parties that the majority were signed by the Petitioner's Agents. Most of the Petitioner's evidence has been seriously challenged by the 2nd Respondents witnesses.

On the evidence before me I do not find that it has been proved to my satisfaction that the 2nd Respondent or his agents or any other person chased away the Petitioner's Agents in contravention of Section 32 (1) and Section 47 (4) and (5) of the Act. Therefore the principle of transparency was not violated.

Complaints Related to the Tallying of Results:

I shall now deal with the complaints relating to the process of tallying the results. Both the Petitioner and the 2nd Respondent adduced evidence in support or defence of their respective cases.

In affidavit in support of the Petition, the Petitioner challenges the election results of Mawakota County South and Makindye Division East where he alleges that the number of voters cast was more than the number of the registered voters making the percentage as 105.34% and 109.86% respectively. The full details are indicated in his affidavit. He states that from the two constituencies there were $2,184 + 7,797 = 9,981$ votes cast in excess of the registered voters. The Petitioner further states that he has looked at the Declaration of Results Form DR for Bukaade Primary School Polling Centre in Buwologoma Parish, Bukenga Sub-county. Luuka county Constituency in Iganga District and noted that the number of votes cast exceeded the number of ballots issued for the Polling Station. The total votes were 856 while the number of votes issued were 650. He attached form DR for Bukaade Primary School Polling Station in annexed hereto as annexe P.4.

Mr. Aziz Kasujja, Chairman of the Respondent, in his affidavit in answer to the Petition stated that the results received by the Commission and declared on 14 March 2001 were as shown on the Result Form B and detailed in District Result Sheets annexed hereto as R 1 AND R 2. He stated that annexure P.3 to the Petitioner's affidavit did not complain authentic results as the proper results are contained in the summary result sheets by district attached to his affidavit as R 2.

Kasujja denies that the number of votes cast for Makindye County East were more than the number of registered voters. He explains that what was shown in the table of results attached to the Petitioner's affidavit was an arithmetical error as explained in annexure R 3 (a) and (b) and was corrected as shown in annexure R 3 (c) (i) and (ii).

R 3 (a) is a letter from Mr. G.T Mwesigye, Returning Officer, and Kampala, addressed to the Chairman of the 2nd Respondent. It is headed "Results for Makindye East" and states,

“On 13th March 2001 I dispatched for Makindye East which were erroneous. This error came out as a result of faulty tallying from the DR Form. This problem was brought to my attention yesterday 19th March by one Leticia of the Commission.

This morning we revisited the DR Forms and found that our original tallying was faulty and gave a picture of more voters than those registered in the Constituency. We regret the error. Attached is the correct result fro Makindye East, and the report of the Tallying Clerk.”

R 3 (b) referred to above letter dated 27th March 2001 signed by Tumwesigye David on behalf of the Counting Officers addressed to the Returning Officer Kampala. It is headed “Error made in Tallying the Votes for Makindye” state in part,

“The error has been identified and rectified in relation to the recently concluded Presidential Elections.

The error was made by carrying forward for (sic) from one Tally Sheet to another and wrong adding. While on some tally sheets the totals were carried forward on others the totals were not carried forward. And even then the summary that was added for each tally sheet included the totals that were already carried forward. This caused double counting. This led to votes cast for candidates totaling to 86,087.

The error has been rectified by tallying the votes on new tally sheets.

The correct total votes cast for candidates is 570,018 as indicated on the Transmission Form.

R 3 (c) (i) is the summary of the Transmission of Results, which indicates the correct total of votes for each candidate, which is reflected in R 3 © (ii) Constituency Provisional Results for Kampala District.

According to Mr. Kasujja the results in the Petitioner’s affidavit in respect of Mawokota County South were not correct, the correct results being shown in annexure 4 to his affidavit, with 40,887 registered voters, and the total number of votes cast as 27,234. Mr. Kasujja denied that the 9981 votes were cast for candidates of Mawokota County South and Makindye Country

East in excess of registered voters as alleged in the Petitioner's affidavit. He stated that in Mawokota 40,887 voters were registered and 27,234 voted making a percentage of 66.6% and in Makindye there were 79,078 registered voters and the total votes cast were 57,018 which is 72.1% of the registered voters.

Further more Mr. Kasujja explained that the tabulation of figures on the Declaration of Results Form "P 4" attached to the Petitioner's affidavit is not correct and is not an authentic document of the 2nd Respondent. The correct results were as shown in the document annexed to his affidavit as R5.

The Petitioner in his affidavit in reply to Mr. Kasujja makes many allegations including falsification of results, ballot stuffing, results inconsistent with the number of papers issued and cast, ghost voters and multiple voting. Much of the information contained in the affidavit is hearsay or merely his opinion; and not based on his personal knowledge. However he attaches Declaration of Results Forms to support his opinion.

He states that the results announced on Radio and broadcast on TV were finally changed in the results declared on 14 March 2001 and contained in annexe P 3 to the affidavit of Kasujja. He claims that the results of Makindye Division East where the error was admitted in tallying and corrected on 27 March 2001 are proof of ballot stuffing and alleged correction of an arithmetical error is falsification of the results by the Respondent.

The Petitioner further claims that the Declaration of Results Forms from a number of Polling Stations in Bushenyi, Mbarara, Mbale, Masindi, Mpigi, Mayuge, Mukono, Sembabule, Soroti, Kamuli, Wakiso, Kiboga, Kabarole, Jinja, Ntungamo, Kasese, Kayunga, Luwero and Iganga show that the number of votes cast at the Polling Stations exceeded the number of ballot papers issued to the Polling Stations. Copies of the forms were annexed to his affidavit.

Examples are given. At Bukoko TCA (N-Z) Polling Station Bubulo Constituency in Mbale District, the number of votes cast for the 1st Respondent exceeded the number of valid votes cast for all the candidates. At Kimengo (M-Z) Polling Station, Buruli Constituency in Masindi District, the number of ballot papers issued were equal in numbers with the votes cast but the total number of unused ballots was 410 ballot papers. At Mayembe Upper Prison C, Mawokota County North in Mpigi District the number of ballot papers cast exceeded the number of ballots

counted as there were 416 ballot papers unused. At Ishaka Adventist College Igara County West, Bushenyi District, the number of ballot papers issued at the Polling Station was 477 equivalent to the number of ballot papers counted yet 353 ballot papers were unused. The Petitioner stated that the above acts, which constituted ballot stuffing, characterized the election countrywide. But it is interesting to note that all the 190 copies of Declaration of Results Forms attached to his affidavit were signed by his agents. The Petitioner alleges further that Annexe P 4 given to him by his Agent was not signed by his Agent and it contrasts with annex R 5 to the affidavit of Mr. Kasujja.

Mr. Kasujja denied the above allegations in his supplementary affidavit. He stated that there was no falsification of election results in favour of any candidate at all and Annexures R 3 (a) (b) (i) (ii) to his previous affidavit were genuine documents and that no tallying was done after announcement of results. What was done was the correction of errors.

Mary Frances Ssemambo was the Chairperson of the Elect Besigye Task force in Mbarara District. She claims that a lot of malpractices took place in Mbarara District, and there was massive rigging of the elections. She states that in some Polling Stations the total number of votes shown as cast for the 1st Respondent far exceeds the total number of votes cast for all candidates and the total number of ballot papers issued to the Polling Station. She attached copies of the Declaration of Results Forms filled by one of the Polling Stations to demonstrate this and was marked as Annexure MFS-A-I.

She claims that there were large numbers of ballot papers shown as having remained unused in a number of Polling Station even where the number of ballot pa to the various Polling Stations were shown as not exceeding the total number of ballot papers actually used, an anomaly which was not explained. She attached about 15 copies of the Declaration of Results Forms filled to demonstrate the anomaly.

Edith Byanyima stated that she was a Tallying Agent for the Petitioner in Mbarara District. She was given an official copy of the Return Form for Transmission of results (Annexure EB-A-1) and also read the official declaration of results for the Electoral Commission (Annexure EB-A-2). She compared the compared the results from Mbarara on the two documents and found that they were not the same. Whereas on Annexure EB-A-2 the Petitioner is recorded as having

received 37,226 votes; in Annexure EB-A-2 the Petitioner is recorded as having received 37,180 votes and the 1st Respondent is recorded as having received 426 votes in Annexure EB-A-1 and 430,929 votes in Annexure EB-A-2.

Ndyomugenyi Robert stated that on 7th April 2001 he was given a letter of introduction by the Head Counsel for the Petitioner to Mbarara and Bushenyi. He reached the two areas on 10 April 2001. Upon presentation of the letter to the District Returning Officer Mbarara who wrote a Minute to the District Registrar to take appropriate action. The District Returning Officer of Bushenyi, Mr. Bitabareho opened 3 ballot boxes in the presence of OC CID Bushenyi and the 1st Respondents four representatives and the District Registrar of the Commission. The three ballot boxes were for Ishaka Adventist College, Mushumba Parish Headquarters and Kalungi Mothers Union Polling Station. He picked the declaration forms together with the voters' rolls, which were later certified by the Commission as true copies.

He proceeded to Mbarara and met the District Returning Officer and four boxes were opened for the following stations, Ruti 2 (L-Z) Miringo 4, Nyamityobola and 4 Kyarubungo. At Miringo the number of voters on Voters Register who voted were 687 and yet the tally sheet certified by the Electoral Commission indicated that the 1st Respondent alone got 781 votes more than the number of people who voted.

Mr. Kasujja, Chairman of the 2nd Respondent denied the above allegation. He stated in his affidavit in reply that the Annexures Mr. Bulonge attached to his affidavit were not correct and his findings in Annexure A are misleading. He explained that the number of voters who voted at Miringo 4 Polling Station were 827 and not 687 and the correct figures are indicated on the copy of the Declaration Results Form marked E and the copy of the Tally Sheet marked F. The Polling Agents of the Petition endorsed the forms and filed no complaint.

Hezzy Kafureka who was the Returning Officer of Mbarara District denied the allegations made by Mary Frances Ssemambo and Edith Byanyima. In reply to the affidavit of Ssemambo, Kafureka states that the alleged anomalies and discrepancies are all contained in an official document known as the Declaration Results Form DR which were prepared by the Presiding Officers of the respective Polling Stations. Before the official Results for Mbarara District were publicly announced the information contained in the Results Forms had to be tallied. The process

of tallying involved various forms which included the accountability Papers at the Polling Station Form, the Packing List, the Official Report book and form TVB which is filled before opening the ballot box and counting ballot papers. The process of tallying was carried out under his supervision in his capacity as the returning Officer of Mbarara District. During the tallying process the tallying clerks for every county would resolve any anomaly or inconsistency arising in the Declaration of Results Form prepared by the respective officers. The apparent anomalies and discrepancies reflected in the Annexures to Ssemambo's affidavit were all resolved and recorded in the Official Tally Sheet. Kafureka stated that despite the anomalies and discrepancies reflected in the Annexures to Ssemambo's affidavit, all the Polling Agents of the Petitioner endorsed the Declaration of Results Forms and did not dispute the results of the election. He explained that the apparent anomalies in the forms were a result of human error by the Presiding Officers while completing the forms. He stated that Ssemambo did not seek an explanation from him nor participate in the tallying process.

As regards Edith Byanyima's affidavit, Kafureka stated that she attended the tallying exercise but arrived when the process had begun and left before it was concluded. He said that the Annexures referred to as EB- A-Z in Byanyima's affidavit was a copy of a newspaper publication of the New Vision dated March 16 2001 and was not an official document of the Electoral Commission. But the document referred to as Annexure EB-A-1 by Byanyima is the Official record of the results in Mbarara District.

John Tumusiime who was the Chairperson of the Elect Besigye Task Force for Bushenyi District claimed that there was a large number of ballot papers shown as having remained unused in a number of Polling Stations even where the number of ballot papers issued to the various Polling Stations were shown as not exceeding the total number of ballot papers actually used. And this anomaly was not explained. He attached copies of Declaration of Results Forms to demonstrate the anomalies. He alleges that the packing list, which was availed to him, did not indicate how many ballot papers had been issued to each Polling Station. He states that he was denied the tally sheets by the Returning Officer, nor were they availed to the tallying agents for the Petitioner in Bushenyi District.

But Johnston Bitabareho, who was the Returning Officer of Bushenyi District, denied the allegations by John Tumusiime. He denied that there were a lot of malpractices in the conduct of

elections in the District, and also denied the specific allegations made by Tumusiime. He stated that the Presiding Officers at the Polling Stations specified erroneously recorded the number of ballot papers issued to the voters at the Polling Station in the place of the number of ballot papers issued by the Electoral Commission to the Polling Station. He attached copies of the official report books of the various Polling Stations showing the actual number of ballot papers issued to the Polling Stations.

He explained that in order to reach the number of unused ballots the Presiding Officers were required to deduct the valid, invalid and spoilt ballots from the number of ballot papers issued to the station but the arithmetic was flawed and affected by wrong entries in the cases cited. Despite the arithmetic errors in the entries, there were no unaccounted for ballot papers in the Polling Stations mentioned and the Presiding Officers nonetheless filled in the actual number of ballots remaining at the Polling Stations. He stated that when the entry regarding the number of ballots issued to the Polling Station is corrected in accordance with the Official Report book. And valid, invalid and spoilt ballots are deducted, the figure derived in all the cases mentioned is the same as the unused ballots entered in the declaration of results appearing in annexures to Tumusiime's affidavit.

He stated further that Tumusiime was not entitled to receive any packing lists, but packing lists containing the number of ballot papers issued were duly sent to every Presiding Officer at every Polling Station in the District. He denied refusing to give Tumusiime tally sheets and stated that in the morning of 13 March 2001, he announced to everyone present including Tumusiime that he would announce the results in the afternoon of the same day and he did so but in the absence of the Petitioner's Agents. On 15 March 2001 Tumusiime came to his Office and asked for the tally sheets, but he informed him that the District Registrar had taken them to the Electoral Commission in Kampala.

Anteli Twahirwa who was the Kabale District Chairman for the Petitioner's Campaign Task Force alleged that their Agents were forced to sign Declaration of Results Forms. He stated that he had perused the Declaration of Results Forms from his District and found that nearly all of them are inaccurate. He claims that they indicate the total number of ballot papers in the possession of Polling Officials, which were higher than the total numbers of ballot papers officially received at the respective Polling Stations. Copies of some of the forms containing

these massively rigged in favor of the 1st Respondent. It is not clear how he arrives at this conclusion when 10 out of 11 Declaration of Results Forms he attached to his affidavit were signed by the Petitioner's Agents.

Katengwa Samuel who was the Returning Officer to Kabale District denied the allegations made by Twahirwa. He stated that it was Twahirwa as the Petitioner's Campaign Chairman who went on air at Voice of Kigezi Radio Station calling upon all the Petitioner's Agents to withdraw from Polling Stations and not sign the Official Declaration of Results Forms. His view that only those who may not have heard the announcement or saw no reason for refusing to sign what they had witnessed freely signed the said forms.

Katengwa further explains that the anomalies referred to in Annexures E marked "C 1" – "C1" were partly a result of the Polling Official running short of ballot papers due to having received insufficient numbers and borrowing from neighboring stations but this was evidenced by the report of the Electoral Commission Sub-county Supervisor; a copy of which was attached to his affidavit.

As regards the alleged inaccuracies in the Declaration of Results Forms attached to Tuhirwa's affidavit, he explained that they were not deliberately committed by the Presiding Officers who prepared them but the said anomalies and discrepancies were in some cases a result of human and arithmetical error. He states further that in all cases the Presiding Officers at all the Districts' Polling Stations forwarded the Declaration of Results Forms to him and before the official results were forwarded to the Electoral Commission in Kampala, he had a duty to carry out a tallying exercise when all candidates were entitled to be present and participate. He explained that during the tallying exercises they rectified the arithmetical errors and therefore the anomalies and discrepancies complained of by Twahirwa were resolved in the presence of candidates tallying agents. The Petitioner's representatives refused to sign the Transmission of Results Return form due to Twahirwa's Radio announcement. The results he transmitted from his district were cross-checked and confirmed at the Tallying Centre at the Commission in Kampala.

Suliman Niiro who was a Monitor for the Petitioner in Bukooli North Constituency in Bugiri District stated that he found that some calculations on the Declaration of Results Forms were

elevated and very inaccurate at several Polling Stations like Kamango, Nkavule Parish sub-county Karrani, Buwelya Makoova, Mayenge Parish, Budhaya Parish School.

Ongee Marino was appointed a Monitor for the Petitioner in Kitgum District. He stated that at about 2 p.m. he found that six Polling Stations had been created and voting was conducted without agents for the Petitioner at the Polling Stations of Pajimo Barracks A, Pajimo Barracks B, Ngom Oromo (A-E), Ngom-Oromo (F-N), Ngom-Oromo (O-Z) and Malim Abondo's Home II when the results were being tallied the exercise continued smoothly for the gazette Polling Station but when it came to the above created Polling Stations, the Returning Officer refused to declare the results and said the details would be known later when the ballot boxes and the Declaration of Results Forms had been submitted to him.

When he objected the proposed procedure he was forcefully removed from the place of Tallying by the Police. He went and reported the matter to Hon. Okello Okello who was in-charge of the Petitioner's Campaigns in the district. Hon. Okello wrote a letter to the Returning Officer, which was attached to the affidavit. In his letter Hon. Okello Okello was urging the Returning Officer to allow Ogee to perform his duties including checking all the tallies. On his return to the tallying centre he found the exercise completed and his request to look at the results of Polling Station by Polling Station was refused by the Returning Officer.

Aliga Micheal the Presiding Officer for Malim Abondro Home II Kitgum Polling Station denied that the polling went on without Agent of the Petitioner. He denied further that the Returning Officer refused to declare the results but he himself declared the results at the Polling Station in the presence of voters and candidates' agents. Akena Kennedy a Presiding Officer at Malim Abondo Home II Kitgum corroborated the evidence of Aliga Micheal.

Charles Owor stated that he was requested by the National Elect Kizza Besigye Task Force together with Richard Turyahabwe to go to the Electoral Commission officer to witness the receipt and tallying of election results on behalf of the Petitioner. They carried a letter of introduction to the Chairman of Electoral Commission. At the electoral Commission they met Mr. Wamala who agreed to show them around the Offices where the results were being received and tallied. But he and his colleague were refused to enter the Data Centre by the person dressed in civilian clothes who demanded that they get permission from the Chairperson of the Electoral

Commission himself. After failing to get the permission they left the Commission Offices between 4.30 and 5.30 p.m. and reported the matter to the legal Counsel to the Petitioner's Task Force, Mr. Balikundembe and Mr. Yona Kanyomozi introduced two gentlemen to her as the Agents of the Petitioner. The gentlemen did not have letters of introduction so their names were substituted in place of Owori and Turyahabwe by the Lead Counsel. She personally introduced the two agents who she learned to be Dr. Kironde and Mr. Bwogi Kawalya, to the tallying staff and allowed them into the Data Processing Department and they witnessed the tallying of results after which they left on their own accord. I have looked at the copy of the introduction letter in which the names of the agents were substituted as indicated by Mrs. Nkurukenda.

Wamala Joshua who was the Acting Head Election Management Department of the Electoral Commission denied the allegation by Robert Kironde that Hon. Bakabulindi was the first person to receive results as he was not handling results but observing the tallying process. He explained that Hon. Bakabulindi was in the tallying centre as an agent of the 1st Respondent as much as Kironde was the agent for the Petitioner.

Frank Mukunzi who claims to be a Data Analyst made an affidavit to which he attached a report entitled Data Analysis Report on the 2001 Presidential Election which was commissioned by the Petitioner, he was requested to establish the practical viability of the results declared by the Electoral Commission. According to his report, he used techniques of applied science in the field of statics, mathematics and experimental social psychology. He claims that his analysis revealed that whereas the Commission presented figures with high precision. They were grossly inaccurate by an error margin of over 50% in the Commissions' figures of the voters' register, his opinion was that the error was so significant that the possibly of the actual poll results showing a different picture from the one given by the Electoral Commission could not be ruled out. However, from the data available, he was unable to determine to what extent the above errors affected each candidate.

Mr. Mukunzi criticizes the figure 10,775,836, registered voters declared by the Commission. He agrees with the figure by the Bureau of Statistics of 8.9 as realistic. But his own calculations bring him to a figure of 10,627,118, thus making a difference of 10,756 with the figure of the Electoral Commission. In reaching this figure he made a number of assumptions when

calculating the number of Ugandans who qualified to vote after the 1991 census, without considering those who died.

I am unable to rely on this opinion. The expertise of Mr. Mukunzi as Data Analyst was not established but was disputed by those in the data analyst profession. His opinion was purely speculative.

I accept the evidence of the Petitioner that there were anomalies and discrepancies in the Declaration of Results Forms and in Tally Sheets. These have been admitted by the 2nd Respondent. However, I accept the explanation given by the 2nd Respondent that the mistakes were due to arithmetic errors committed by Presiding Officers and Tallying Officers, and were not deliberately made to falsify the results or rig the elections. I also accept the evidence of the 2nd Respondent that the Petitioner's Agent were not refused to witness the tallying of the result. Therefore the principle of transparency was not undermined.

Failure of Control the Distribution and Use of Ballot Boxes and Ballot Papers:

The Petitioner complains in para 3 (1) (m) of the Petition that contrary to Section 12 (1) (b) and (c) of the Electoral Commission Act, the 2nd Respondent failed to control the distribution and use of ballot boxes and papers resulting in the commission of numerous election offences under part x of the Act. The offences listed are:

- (i) Unauthorized persons getting possession of ballot papers and other documents relating to the election and using them during the election;
- (ii) unauthorized persons and or officials of the 2nd Respondent using ballot documents acquired to stuff ballot boxes, tick ballot papers on behalf of the voters voting more than once and or doctoring figures in the Voters Register and Rolls.

The Petitioner alleges that as a result, a Commissioner and other official of the Electoral Commission were arrested on the Election Day and charged on 14th March 2001 before the Buganda Road Chief Magistrates Court under Criminal Case No.344 of 2001. In his affidavit in support of the petition the Petitioner states that he knows that Hajati Miiro a Member of the Commission was arrested with two Senior Officers in the Data Centre of the Commission of the

polling day and were charged in Buganda Road Chief Magistrates Court with electoral offences and he attached a copy of the charge sheet.

Mr. Kasujja, the Chairman of the 2nd Respondent admitted that Commissioner Miiro and 2 other Officers were arrested and charged in Buganda Road Court but they were not yet tried or convicted and therefore presumed innocent and their cases were subjudice. It is common ground that Mrs. Miiro, a Member of the Electoral Commission and two others namely, Timothy Wakabi a Statistician and Ibrahim Lutalo. Acting Head Voter Registration in the Commission were charged with two counts of abuse of office and neglect of duty before the Buganda Road Chief Magistrate Court. The particulars of the charge of abuse of their authority they did arbitrary acts prejudicial to right of the Commission in that they printed excess voters cards in various names and for various electoral areas. They are also charged with neglecting to print the correct number of voters' cards thereby resulting in printing of excess voters' cards.

This is a criminal case, which has been tried. The accused are presumed innocent until proved guilty. The matter is subjudice and cannot be used as evidence of wrong doing by the 2nd Respondent until the case is determined.

I have already dealt with allegations of stuffing ballot boxes, ticking of ballot papers on behalf of the voters, multiple voting, failure to compile and update Voters Register and Rolls. I shall now first deal with allegations relating to failure to control the distribution and use of ballot boxes and papers.

Section 12 (1) (b) and (c) of the Commission Act provides;

“(1) The Commission shall subject to and for the purposes of carrying out its functions under Chapter Five of the Constitution and this Act, have the following powers –

(a) To design, print distribute and control the use of ballot papers;

(b) To provide, distribute, and collect ballot boxes.”

The Petitioner alleges that the 2nd Respondent's Failure to control distribution and used of ballot boxes and papers resulted in the commission of numerous election offences under part X of the

ticked all of them and put them in the ballot box. He found out that the same had been done in all Polling Stations by Sulait Mugaye and Ismail, who were the 1st Respondents Agents. He does not say he found out.

Basajjabalaba Jafari who was the Secretary of the Elect Besigye Task Force for Bushenyi District stated that he was in-charge of overseeing Polling Agents in Bunyaruguru County. At Kyenzaza Trading Centre Polling Station he received information from the Petitioner's Agents that one Kyomuhangi Allen had 13 ballot papers ticked in favour of the 1st Respondent and that when she tried to cast them she was intercepted and they were removed from her and handed-over to the Monitor of the Station. He approached the Monitor and the ballot papers were handed over to Fr. Vincent Birungi, District Co-ordinator of the NEMO GROUP who took them to Bushenyi Police Station. He went to the Police Station and made his statement. He attached copies of the ballot papers to his affidavit. I have looked at the ballot papers and they are all ticked in favour of the 1st Respondent except one, which has crosses against the Petitioner and Karuhanga Chapaa – Thus making it a spoilt ballot paper.

Patrick Tumuhairwe who was the Presiding Officer at Kyenzaza Trading Centre Polling Station stated that in the afternoon of the polling day, he was approached by a Monitor called Fr. Vincent Birungi. Fr. Birungi asked him about an alleged incident whereby Allen Kyomuhangi was caught with ballot papers while attempting to put them in the ballot box at the Polling Station. He informed Fr. Birungi that the incident could not have occurred without his knowledge and none had reported the matter to him or his Polling Assistants and record of incidents which occurred were recorded in the Official Report Book, which he attached to his affidavit. The report book does not contain the allegation or complaint; and it is signed by the Agents of the Petitioner namely Aruho Micheal and Tukahebwa Kenneth.

John Tumusiime stated that he was the Chairperson of Elect Besigye Task Force for Bushenyi District. He claims he saw a lot of malpractices and rigging in Bushenyi District. He claims that some Polling Stations received ballot book with some of the ballot papers already plucked off. He attached copies of Declaration of Results Forms to demonstrate this. But the forms do not show how the ballot papers were plucked off and how many. He states that cases reported to Bushenyi Police Station included multiple voting, impersonation, being in unlawful possession of ballot papers and selling voter's cards. He does not indicate who committed these

malpractices and to what extent. He also claims that a large number of ballot papers were shown to have remained unused – in a number of Polling Stations even where the number of ballot papers issued was shown as not exceeding the total number of ballot papers actually used, an anomaly which was not explained. About twelve copies of Declaration of Results Forms were attached, but they were all signed by the Petitioner’s Agents without complaint. He also claimed that he was denied the Tally sheets by the Returning Officer nor were they availed to the Tallying Agents for the Petitioner for Bushenyi District.

John Bitarabeho, who was the Returning Officer for Bushenyi District, denied the allegations made by Tumusiime. He stated that it was not true that the Polling Stations received ballot books with some of the ballot papers already plucked off. He explained that the number of ballot papers dispatched in all cases concurred with those received at the Polling Stations. He attached copies of packing lists showing that in all cases the number of ballot papers dispatched were the same as those received and noted in Annexures JF. A1 and JF. A2.

He also denied that a large number of ballot papers remained unused even when those issued to the Polling Station did not exceed those used. He explained that the Presiding Officers of the said Polling Stations erroneously recorded the number of ballot papers issued to the voters at the Polling Station. He attached copies of the Official Report Books of the various Polling Stations showing the actual number of ballot papers issued to the Polling Stations.

Betty Kyimpairwe who was the District Monitor for the Petitioner in Kamwenge District claimed that at Kyabandara Kanyegaramire Polling Station where the Petitioner had support. She found the Presiding Officer and Polling Officials maliciously spoiling ballots cast for the Petitioner by adding a small tick on the 1st Respondent. As a result of this she complains, most of the Petitioner’s ballots became invalid. She states that this same thing happened at Nkongoto Primary School.

But Mugenyi Silver, who was the Election Officer, Election Management Department in-charge of Mid Western Region denied the allegations. He stated that at the Polling Station only 2 ballot papers were declared invalid and only one ballot paper was recorded as spoilt. A copy of the Accountability of Ballot papers Form ABP for the Polling Station was attached to confirm this statement.

James Birungi Ozo who was a District Monitor for the Petitioner in Kamwenge District claimed that at Kakinga Polling Station at around 3.30 p.m. he found the Parish Chief removing the votes cast for the Petitioner from the ballot box using sticks inserted into the ballot box. But Mugenyi Silver who was the Election Officer Management Department in-charge of Mid Western Region denied the allegation. He explained that the size of the slot on the ballot box could not allow for the alleged removal of ballot papers.

Magumba Abdu who stated that he was appointed a Polling Agent of the Petitioner at Munyonyo Muslim School Polling Station in Mayuge District stated that of the nine ballot papers booklets one of them had ten (10) ballot papers missing, and upon inquiring from the Presiding Officer, he was informed that the booklet had been handed over to him in that condition.

Balaba Dustan who was the Returning Officer for Mayuge District stated that he caused the voting materials to be delivered to their respective places while they were still in the sealed form in which they had been dispatched from the Electoral Commission. In support of what Balaba has said, Maigovu Jowali who was the Polling Agent for the 1st Respondent at the said Polling Station, stated that he was present when voting materials arrived at the Polling Station at Minoni Muslim School which is mistakenly referred to as Munyonyo Muslim by Magumba. The number of ballot papers booklets was verified in the presence of Magumba. He confirmed that of the 9 booklets he saw each of 8 ballot booklets 100 ballot which had less than 100 ballot papers and it was only the 9th booklet which had less than 100 ballot papers. All this tallied with the parking list inside the ballot box. At the end of the all other candidates' agents voluntarily signed the Declaration of Results Forms.

Musisi Francis who was a Polling Agent for the Petitioner Baitambogwe Polling Station in Mayuge claimed that at the Polling Station, when the first booklet of papers containing 100 ballot leaves got finished, the Presiding Officers produced a second booklet which had seventy three (73) ballot papers missing as only 27 were displayed to them. On inquiring, they were informed by the Presiding Officer that they had been removed and taken to another Polling station.

Ojok David Livingstone who was the Chairman of the Namatala Ward Task Force for the Petitioner in Mbale Municipality stated that on the polling day he and his fellow Monitor Massa

Musa received information at Namatala Police Post that one lady was distributing voters cards. Accompanied by a Police Officer, they went to her home. He knew her as Nakintu. On being asked about the allegations she admitted that she had received 50 voters cards from one Councilor, Charles Wafula to distribute to the supporters of the 1st Respondent. She said she had distributed 11 voter's cards to her fellow supporters of the 1st Respondent. She produced the remaining cards together with the bottle of jik one tablet of cussons Imperial soap and a drying rug for removing the marking ink. The Police Officer arrested her and took her to the Police Station together with the exhibits. The following day she was released.

Wafula Charles who is a Councilor of Industrial Division Council Mbale Municipality denied the allegations made by Ojok David. He admitted knowing Nakintu Margaret but denied giving 50 voter's cards to Nakintu to distribute to supporters of the 1st Respondent. He never received any voter cards from any person for distribution to the 1st Respondent's supporters.

Maliki Bukoli who was a voter at Doko Cell Polling Station in Mbale Municipality claimed that at 11 a.m. while he was proceeding to the Polling Station he met a crowd gathered around a man at the Catholic Church Polling Station. He noticed a man known to him as Mukonge who had been arrested with 5 voter's cards. He saw him being taken to Mbale Police Station. After 2 days he saw Mukonge back in his area. He does not say whether he actually saw the voter's cards or what happened to them thereafter.

Helen Aeko, a Polling Agent for the Petitioner at Kalapata "A" Polling Station in Kumi District alleged that the pads of ballot papers did not contain the regular number of 100 papers per ballot paper pad. One of the pads contained only 29 ballot papers and another had only 20 ballot papers. But she also stated she was chased away from the desk where ballot papers were by the Presiding Officer.

But the Presiding Officer of that Polling Station Napokol Richard explained that the two ballot paper books referred to had been dispatched from the Commission when they were not full and all the Polling Agents who were present at the commencement of the voting exercise were notified of the fact.

Ongee Marino who was the Petitioner's Monitor in Kitgum District claimed that on the polling day he witnessed the delivery of an additional ballot box destined for Pandwong was

apprehended and handed over to the Police with a request that it be opened but the Police refused. He also witnessed the delivery to Kitgum Police Station of a ballot box meant for Palika, which he believes, was used for rigging the election. No time is given, and he does not state whether the boxes were empty or stuffed.

He further claims that Capt. Nuwagaba landed in Kitgum in a helicopter with 3 additional ballot boxes and the Registrar Geoffrey collected the said ballot boxes in a pick-up under army escort together with the said Nuwagaba. He states that the ballot boxes were meant to be taken to Ngom Oromo at around 8.00 p.m. he objected and at around 10.00 p.m. they took the boxes to the Police Station and requested that the boxes be opened, but the Returning Officer refused since the ballot boxes were stuffed with ballot papers and were heavy.

Godfrey Okot who was the Registrar/Election Officer of Kitgum District stated that he had about 200 Polling Stations both civilian and army. On 11 March 2001 he received all polling materials and distributed them to all Polling Stations without a shortage in his electoral area. On polling day at 7.30 p.m Capt. Nuwagaba came to Kitgum with 3 ballot boxes meant for Ongom Oromo Polling Stations.

He informed Capt. Nuwagaba that there was no shortage in Ngom Oromo and all the army units had voted and Capt. Nuwagaba left with them the ballot boxes sealed. Capt. Nuwagaba, the Returning Officer Kitgum and himself decided to take the three boxes to the Police Station. The seal of the boxes has not been opened to date. He denied that the three boxes were stuffed with ballot papers as claimed by Marino because they were not used during the elections.

Katehangwa Samuel the Returning Officer for Kabale District in reply to Anteli Twahirwa's complaint about anomalies in tally sheets in Annexures C1-C12, he explained that they were partly a result of Polling Officials running short of ballot papers due to having received insufficient numbers and borrowing from the neighboring stations, but this was evidenced on the report of the Electoral Commission Sub-county Supervisor (a copy was attached marked C). He attached copies of two requests for more ballot papers from two Presiding Officers. Another copy was returning a balance of ballot papers.

Wamala Joshua who was the Acting Head of Election Management Department of Electoral Commission explained the allegation that certain booklets contained less than 100 ballot papers.

He stated that the Commission ordered for 11 million ballot papers each. Since however the numbers of voters at the various Polling Stations were not in denomination of exact 100s and the ballot booklets contained 100 ballot papers each, some booklets had to be split for ease of distribution to Polling Stations.

Looking at the evidence as a whole, I accept the evidence of the 2nd Respondent as regards the explanation as to why some ballot books did not have 100 ballot papers. It was due to convenience of distribution to Polling Stations where the number of voters did not require round figures of 100 ballot papers in each ballot book. There is also the explanation that the calculations by Presiding Offices were inaccurate in many Polling Stations. There was borrowing of ballot papers from neighboring stations. At the end of the polling exercise, the results were correctly tallied to correspond to the actual number of ballot papers issued to the Polling Station. The claims that unauthorized persons were found with ballot papers have also been satisfactorily explained or refuted.

Unauthorized Possession of Voters Cards.

I shall now consider the evidence relating to unauthorized possession of voter's cards. Both the Petitioner and the 2nd Respondent filed affidavits in support of their respective cases.

Wafid Amir who was a Monitor for the Petitioner in Mutoto Bungokho Sub-county in Mbale District stated in his undated affidavit that while he was at Munkaga Stage, the Resident District Commissioner, Hassan Galiwango came in his vehicle and packed at the stage. The Sub-county Chief Nambale – Mutoto was at the stage and went to talk to Galiwango. After the discussions the RDC continued towards Tororo. At the same time the area Movement Chairman, Geoffrey came from Tororo side on a motor cycle driven by one Sonya David and he went towards Musoto, which was his next destination.

At Musoto, he found Musongole the Vice-Chairman of his village holding discussions with the Sub-county Chief Nambale. When he reached where they were, Sonya drove his motor cycle in the opposite direction allegedly carrying a black handbag which he did not possess when he was driven to Musoto. As he suspected rigging of elections, he told his driver to turn back and give a chase. At the local railway crossing, Sonya's Motor cycle developed a problem and he found him there. He asked Sonya what he was carrying in the black handbag but when Sonya tried to

grab the bag and run away he struggled for the bag which got torn and more than 50,000 voters cards and some official stamps plus Return Forms for the Sub-county of Bungoko were poured down. He raised an alarm, which was answered by a crowd, which assisted him to arrest Sonya and retain the bag. The Movement Chairman and Sub-county Chief came to the scene and tried to rescue Sonya, but in vain. Sonya was detained until Police Officers from Mbale Police Station came and took him into custody together with his exhibits. He escorted Sonya to the Police Station. Two days later he saw Sonya back home.

Wamae Kenneth who is the Sub-county Chief of Bungoko Mutoto in Mbale District denied the above allegations. He stated that on the polling day he received a report from the Presiding Officer of Musoto A Polling Station that some people had been refused voting because they did not have valid voter's cards and that some people had voter's cards but their names were not appearing on the Voter's Register. he carried with him envelopes containing returns for voter's cards, Registers Rolls inkpads and pens. On his way back, he was ambushed in Marare Village by Wafid Amir who started raising an alarm to the effect that the tax collector meaning him was stealing votes. He ran away for fear of being lynched.

He denied being in possession of 50,000 voter's cards at the time stated the number of voters in the sub-county is 20,000. He said that the balance of the cards he was returning to the sub-county headquarters was less than 3,000. Wafidi Ali and Musongole Julius grabbed from him the balance of voter's cards from 4 Polling Stations, namely Nauyo "A", Nauyo "B", Nauyo "C" and Bunamwami Church of Uganda. He denied engaging in any election malpractices as alleged.

Wafid Amir's affidavit is technically inadmissible as not being dated. But even if it were admitted, the allegations therein have been rebutted by Wamae Kenneth whose explanation is credible in the circumstances.

Mubaje Sulaiti a voter at Bukwanga Store Polling Station in Bungokho county, Mbale District claimed that he saw a person in-charge of the marking ink holding about 10 voter's cards and 10 ballot papers and when he complained about this, the Presiding Officer, two armed LDU assaulted him and removed the papers from him and put them in the ballot box. He was not allowed to vote as his voter's card was removed from him and was chased away. He reported the matter to Mbale Police Station where he made a statement.

This evidence is refuted by Kasakya Hakim who was the Presiding Officer for Bukwanga Trading Centre B Polling Station. Kasakya states at about 11.00 a.m. a group of five people came with valid voters' cards but whose names were not on the register. He informed them that they could not vote and asked them to leave. Mubaje joined the Petitioner's Agents and beat him until he was rescued by a Local Defence Unit Officer, whereupon Mubaje left and later reported the matter to Mbale Police Station. He denied that there was any lady who attempted to cast 10 ballot papers into the ballot boxes as alleged. He denied forcefully removing Mubaje's voter's cards or threatening violence against him.

Arajabu Mugamba who was deployed at Bukwanga "C" Polling Station as a Plice Constable denied being armed on that day. He knew Mubaje, who came at 10 a.m. with Issa Kibwiti and went to the Presiding Officer's table. While at the table, Mubaje and Kibwiti attempted to grab ballot papers from the Presiding Officer, Mr. Kasakya Hakim. He intervened and pushed them away. They grabbed him and beat him severely, after which they ran away. He reported the matter to the Returning Officer when he reported to the Polling Station 2.00 p.m. He therefore denied assaulting Mubaje and removing ballot papers from him and put them in the ballot box.

Karenzyo Eliphaz a Registered voter at Rwenyerere Polling Station in Kihiihi, Kanungu District stated that when the voters Register was displayed, he went to his Polling Station and was given his voter's card. But he noticed that many newly registered voters especially youths who had only recently reached voting age had been denied cards on the ground that they were rebels. He alleged that Abel Turaakira the LC II Chairman was involved in this practice. He claims that the Polling officials were left with many "unclaimed cards" which they then distributed to the LC1 Chairman for distribution to others; but they never did so. Later, he alleges, Mrs. Jackline Mbabazi wife to Hon. Amama Mbabazi convened a meeting in the Lukiiko Hall at Kihiihi and directed the Chairman to keep the voting cards safely to be used for the 1st Respondent. He claims that he was outside the Hall and heard her clearly.

Jackline Mbabazi denied the allegation made by Karenzyo. She denied convening a meeting in the Lukiiko Hall at Kihiihi where she directed Chairman of LCI to keep voting cards of unclaimed cards safely for use and benefit of the 1st Respondent's election.

Idd Kiryowa who was a Polling Agent for the Petitioner at Nabiseke Polling Station in Sembabule District claimed that at around 1.00 p.m. one Mukasa who was a Campaign Agent for the 1st Respondent was found distributing voter's cards to some people behind a building. He was offered money to give up supporting the Petitioner but he refused. He left them there and lodged a complaint to the Presiding Officer but to no avail.

Kakuba Nathan who was the Polling Agent for the 1st Respondent at Nabiseke A –L Polling Station where he cast his vote denied requesting Nabosa to approach Iddi Kiryowa for any reason whatsoever. He denied being behind any building since he was supposed to keep near the Presiding Officer's desk all the time. He also denied stuffing any ballot papers in the ballot box.

Fazil Masinde who was a Monitor in-charge of seven Polling Stations in Mayuge District, claimed that on the polling day, at Babuli Polling Station, he found the area Chairman of LC1 Mr. Isa Bwana with voters' cards which he was distributing to people who were not registered voters instructing them to vote for the 1st Respondent. He reported the matter to Mayuge Police but no action was taken. At Butangalo, one Mrs. Kidiri Mukoda was also distributing voters' cards to many registered voters and among the people who were given was Isha Nabirye and Baina Nakagolo who was arrested while trying to vote. At Busakera B Polling Station, a Gombolola Security Officer, Ahmed Gesa was also issuing voters' cards and directing people to vote for the 1st Respondent.

But Gesa Ahmed who was the Defence Secretary LCII Kaluuba parish and Gombolola Internal Security Officer (GISO) at Katyelera Sub-county, Mayuge District denied the allegation made by Masinde. He stated that he was not an Agent of the 1st Respondent neither did he hold any official position in the electoral process. He therefore did not issue any voters' cards to any person or direct people to vote for the 1st Respondent. He stated that he was busy performing his duties of monitoring the general security situation in the sub-county and only appeared at the Polling Station of Busakera B at about 2 p.m. to cast his vote and then left. He denied threatening anybody at the Polling Station. The Presiding Officer, Mudaaki Emmanuel also denied the allegation made by Masinde.

Sulaiti Kule who was a Monitor for the Petitioner in Kasese District claimed that one Robert Kanunu came to him complaining and handed him 16 voter's cards allegedly given to him to

supply to other people. He took the cards to Kasese Police Station. He noted the names and numbers of the cards and for what purpose, and what Polling Station he was at, at the time. Kugonza James who was the Presiding Officer at “BELOW THE Town Agent House L-Z” Polling Station refuted Kule’s allegations about the Petitioner’s Agents sitting 3 to 5 metres away from the Presiding Officer’s desk instead of 2 metres agreed earlier. Kugonza stated that the agents sat 2 metres away. This evidence casts doubts on the credibility of Kule.

Guma Majid Awadson who was a Polling Monitor for the Petitioner at Kuru Division Polling Station at Lomunga, Aleapi and Geya Parish claimed that at Aleapi Parish, Ojinga Polling Station he saw one Mawa a member of the 1st Respondent’s District Task Force and Campaign Manager distributing voters’ cards to people who were not appearing on the Register and who did not have voters’ cards. He arrested Mawa and the voters’ cards for one Leila Alungaru No. 00229167. While he was recording the number of the second card, armed Military Personnel came and took Mawa away with the cards threatening to arrest him. He also claimed that Drasai LCIII Chairman of Kuru County had been issued with six ballot papers to vote for Aliba A Polling Station.

But Drasi Ali denied that he was given six ballot papers to vote by Abele as alleged above. Okot Araa Sam the District Police commander, Yumbe District admitted receiving a complaint from Guma Majid at 9 a.m. that Drasi had been issued with 6 ballot papers to vote at Aliba Polling Station. He instructed his junior staff to go to the scene and investigate the matter. The investigations revealed that the allegations against Drasi were false and no arrests were made.

The issue and distribution of voters’ cards is the responsibility of the 2nd Respondent and any person or officer it may authorize to do so. In some of the complaints, the Presiding Officers or Polling Officials were criticized for issuing voters’ cards. There was no evidence that they were not so authorized. It may also be true that time for issuing voters cards before or on the day of polling have been denied by the evidence adduced by the 2nd Respondent. This evidence has cast serious doubt on the evidence and allegations by the Petitioner. I therefore find that it has not been proved to my satisfaction that the 2nd Respondent failed to control the distribution and use of ballot boxes and ballot papers resulting in the commission of numerous election offences.

Failure of All Commissioners to Sign Declaration of Results Form B:

It is alleged in para 3 (1) (u) of the Petition that contrary to Section 56 (2) of the Act the 2nd Respondent declared the results of the Presidential Election when all the Electoral Commissioners had not signed the Declaration of Results Form B. Section 56 (1) and (2) of the Act provides,

- “(1) The Commission shall ascertain, publish and declare in writing under its seal the results of the Presidential Election within forty-eight hours.**
- (2) the declaration under sub-section (1) shall be in Form B or Form C as specified in the Seventh Schedule to this Act as the case may be.”**

The form has places for signatures of seven Commissioners and Secretary to the Commission.

However, Section 56 (2) of the Act does not provide how decisions of the Commission relating to elections or any other matter are to be taken. This is provided for in Section 8 of the Commission Act, which states in part as follows:

- “(1) Every decision of the Commission shall as far as possible be by consensus.**
- (2) Where on any matter consensus cannot be obtained, the matter shall be decided by voting; and the matter shall be taken to have been decided if supported by the votes of a majority of all the Members of the Commission.**
- (3) In any vote under sub-section (2) each Member of the Commission shall have one vote and none shall have a casting vote.**
- (4) The quorum of the Commission at any meeting shall be five.**
- (5) The Commission may act notwithstanding the absence of any member or any vacancy in the office of a member.**
- (6) The Secretary shall cause to be recorded minutes of the proceedings of the Commission.”**

The Declaration of Results Form B was signed by five Commissioners and the Secretary. Mrs. Miiro who was a Commissioner did not sign because she was in custody facing a criminal charge. It is common knowledge that Lady Justice Maitum ceased to be a Commissioner on

appointment as a High Court Judge. The Commission had capacity to act notwithstanding any vacancy on it or absence of a member provided it had a quorum of five. The Declaration of Results Form B was signed by five Commissioners and therefore the Commissioners' decision declaring the results of the election was in accordance with the law. The independence, impartially and integrity had indeed its authority was not thereby undermined in anyway.

Allowing People with Deadly Weapons at Polling Stations:

The Petitioner complains[®] that contrary to Section 42 of the Act the 2nd Respondent and its Agents or Servants in the course of their duties allowed people with deadly weapons to wit soldiers and para-military personnel at Polling Stations – a presence which intimidated many voters to vote for the soldiers boss – the 1st Respondent which – many of those who disliked to be forced for that candidate stayed away or refrained from voting at all.

In reply the 2nd Respondent denied allowing any unauthorized armed people in any Polling Stations and stated that no voters were refrained from voting for a candidate of their choice as alleged.

Section 42 of the Act provides,

“(1) No person shall arm himself during any part of polling day with any deadly weapon or approach within one kilometer of a Polling station with deadly weapons unless called upon to do so by lawful authority or where he or she is ordinarily entitled by virtue of his or her office to carry arms.

(2) Any person who contravenes sub-section (1) commits an offence.”

This provision appears intended to provide an atmosphere of freedom at or near the Polling Station. It prohibits the holding of deadly weapons at Polling Stations unless so authorized or unless the weapon is held by virtue of office. This section creates an offence committed by a person, and it appears to be it may not be breached by the 2nd Respondent unless it unlawfully authorized any person to hold a deadly weapon at a Polling Station. The Act does not contain a definition of a deadly weapon but it must be such a weapon when may cause death when used for offensive purposes. A gun or a panga could be a deadly weapon.

Section 40 of the Act makes a Presiding Officer to require the assistance of a Police Officer or other persons present to aid him or her in maintaining peace and good order at the Polling Station. Section 41 provides that where there is no Police Officer to maintain order in a rural Polling Station and the necessary to maintain such order arises the Presiding Officer shall appoint a person to be an Election Constable to maintain order in the Polling Station throughout the day. But a Presiding Officer may only appoint a person other than a Police Officer to be an Election Constable where there is actual or threatened disorder or when it is likely that a large number of voters will seek to vote at the same time. It is clear therefore that security at Polling Stations is required to be maintained by Police Officers or election constables.

The Petitioner adduced the evidence of several witnesses to support his case. Alex Busingye who was in-charge of overseeing the operations and welfare of the Polling Agents for the Petitioner in Kazo County in Mbarara District claims that at the majority of the Polling Stations he visited he found that the Polling Agents for the Petitioner had been chased away by armed UPDF soldiers. She gives only one example of one Polling Station called Nkungu where she found a Monitor for the Station had been tied by UPDF soldiers and bundled on a motor vehicle Reg. No. 114 UBS pick-ups in which they were travelling.

Mbabazi Kalinda who was the Presiding Officer at Nkungu Trading Center Polling Station A-K denied the allegations made by Busingye. He stated that Busingye never complained to him that an Election Monitor had been taken away by soldiers. He denied that at his Polling Station a Monitor was tied up by soldiers and bundled on a pick-up.

Mary Frances Ssemambo who was the Chairperson of the Petitioner's Task Force in Mbarara District claims that in many Polling Stations in Nyabusozi County and Isingiro Country South, Polling Agents for the Petitioner were harassed, arrested, beaten, tied up and detained or threatened with violence and chased from the Polling Stations by heavily armed UPDF soldiers, LDUs and the 1st Respondent's Agents, and the interests of the Petitioner in numerous Polling Stations were not safeguarded. She does not indicate how she came to know this or any agent who was so treated.

Hezzy Kafureka, the Returning Officer of Mbarara District denied the allegations made by Ssemambo. He stated that the anomalies in the Declaration of Results Forms were a result of

arithmetic errors, which were corrected during the Polling process, and the forms were end Polling Agents of the Petitioner.

Koko Medard who was a Polling Monitor for the Petitioner in Kanungu District claimed that when he reported at his Polling Station, he found Polling Officials working together with non-officials including an army veteran called Kakambe and others. Kakambe was guarding the ballot box armed with a gun and he threatened to kill anybody who touched it. He also claims that the Petitioner's Agents were chased from the polling area, to stand about 50 metres away. This was done by a District Councilor Peter Mugisha. But Rutanza Silver who was the Presiding Officer denied the allegations and stated that all Polling Monitors were present till the counting of votes.

John Kijumba who was a Monitor for the Petitioner for Bukonjo West Constituency in Kasese District claims that prior to the polling day, a soldier by the name of Kilindiro William who came to his area and said that he had been sent by State House to arrest those campaigning for the Petitioner, and that he had their list which included his name. On the polling day, at Katojo Polling Station, he noted that there were about 10 army men all armed with guns guarding the Polling Centre. He did not say that the soldiers intimidated or interfered with the voting.

Milton Wakabalya who was the Presiding Officer for Kajo Polling Station in Kasese District denied the allegations made by John Kijumba. He stated that on the polling day, Katushabe Marusi carrying any firearm nor did he see any armed men at the Polling Station, nor did he receive any report of their presence.

Imoni Stephen a Campaign Agent for the Petitioner in Kwapa County, Tororo District claimed that on polling day at the close of the polling the Presiding Officer convinced all Agents to sign the Declaration Forms before votes were tallied. Before the votes could be counted, the LCIII Chairman, Alfred to the Polling Station after 6.00 p.m. with cocked it and ordered everybody to disappear.

They disappeared but returned 30 minutes later only to find that at the end of the exercise 160 ballot papers had not been used leaving 65 ballot papers unaccounted for. After disagreement the agents of the Petitioner insisted that the 65 votes be destroyed. The matter was reported to CID Malaba who arrested the Presiding Officer.

Masasiro Stephen who was a Polling Agent for the Petitioner at Nkusi Primary School Polling Station claimed that while at the Polling Station a disturbance was started by the Area Sub-county Chief Abdu Mudoma, the Chairman of the 1st Respondent's Task Force. Ali Mukholi the Sub-county Councilor, Mr. Micheal Namundi who came to the station 4 armed soldiers. The soldiers shot in the air. The Polling Agents for the Petitioner – himself and Mr. Wafuba were severely assaulted. After the assault, he alleges that the Sub-county Chief, the Sub-County Councilor and the Chairman of the 1st Respondent's Task Force put ballot papers in which the 1st Respondent's picture had been ticked into the ballot box. When they tried to intervene, they were assaulted further and removed from the ballot box. He struggled with Ali Mukholi and snatched 5 ballot papers from him. He took the ballot papers to Mbale Police Station where he made a report. Magezi Abu who was the Presiding Officer at Bus Park "A" Polling Station in Bugiri District denied that any soldiers ever came to his polling Station and forced unauthorized people to vote as alleged by Niiro.

Baguma John Henry was appointed a Monitor for the Petitioner in the whole of Bukonjo County in Kasese District. He alleges that on 12 March 2001, the RDC in-charge of Bukonjo West, one Aggrey Mwami came to Musaa Polling Station, with a lorry full of armed soldiers. Mwami ordered the Presiding Officer to allow all soldiers to vote and handed to the Presiding Officer the names of the soldiers when the Polling Station had its own register before the RDC arrived. When he protested, he was overpowered and threatened with death by a soldier in-charge of operations at Nyabwongo Army Battalion Headquarters. He noted that the men who had voted at Nyabwongo Army Barracks had been transported to Rwenghuyo and Kisenga Trading Centre Polling Station where they voted again. When he pointed this out to the Presiding Officer, he was chased away by major Muhindo Mawa who threatened to kill him if he continued to protest against the soldiers voting from any Polling Station (NB soldiers were voters). No guns were seen. He does not explain how he recognized soldiers who had voted in other Polling Stations.

Major Mawa Muhindo of the UPDF stationed at 13th Battalion Bwera in Kasese District denied the allegations made by Baguma John that he went to Rwenghuyo and Kisenga Trading Centres. He stated that he voted at Kisolholho Primary School Polling Station, which is approximately 20 kilometers away from Kisenga Trading Centre. He denied chasing away Baguma or threatened to kill him as alleged.

Alex Otim who was a Monitor of the Petitioner in Paico Division in Gulu District stated that while he was at Paico P.7 School together with another Monitor, they found that two soldiers were deployed at each Polling Station. He claimed that the soldiers were forcing old people to vote according to their choice. He mentions the following soldiers as being involved in the malpractices – Opoka Denis, Mawa Rasheet, Dumba Julius and Ocen Francis. He alleges that when they chased the soldiers away from the Polling Station, they went to a nearby barracks and came back armed and were also using an army vehicle (mamba). The soldiers assaulted and arrested him and Okello Saul and released them at 8.00 p.m. after voting.

Despite denials by the witnesses of the Respondents, I accept the evidence for the Petitioner that in a few Polling Stations there were some armed people contrary to the law.

Abduction and Arrest of Agents and Supporters:

The Petitioner complains in para3(1) (w) of the petition that his agents and supporters were abducted and some arrested by the army to prevail upon them to vote for the 2nd Respondent or to refrain from voting contrary to Section 74 (b) of the Act. The Petitioner does not specify in his supporting affidavit, the names of those abducted or arrested to prevent them from voting for him save for Hon. Rwabwoni Okwir. But other witnesses have given statement to support the complaint. To consider first the complaint in respect of Hon. Okwir who was the Chairperson of the Youth and students Committee of the Elect Besigye Task Force.

In his affidavit sworn from London on 23 March 2001 Hon. Major (Rtd) Okwir Rabwoni MP states that he was illegally arrested. Denied and tortured and intimidated during the presidential Campaigns in Uganda which ran from 8th January to 12th March 2001, when he was confronted by members of the Presidential Protection Unit (PPU) in Rukungiri District at Kanungu Trading Centre and prevented from meeting with their supporters but later left for his next meeting in Rugyeyo Sub-county, Rukungiri District. Twelve armed soldiers under the command of Capt. Ndahura surrounded him there and his supporters and ordered him to leave the District while assaulting the Petitioner's supporters.

Hon Rabwoni further states that on 19th February 2001 he was made to sign a document announcing his withdrawal from the Elect Besigye Task Force (EBTF), by two UPDF officers: Major General David Tinyefunza and Lt Col. Nobel Mayombo at Nile Hotel, Kampala on 20

February 2001, he avers that he was unlawfully and violently arrested at Entebbe International Airport, beaten and sat upon in a military police pick-up in the presence of journalists, diplomats and colleagues and illegally detained at the Chieftaincy of Military Intelligence (CMI) Headquarters in Kampala. During the arrest he sustained injuries to his leg and chest and for which injuries he was still undergoing treatment. He went through six hour grueling interrogation session conducted by seven officers of the Chieftaincy of the Military Intelligence.

He further states that on 21st February 2001, he had a telephone conversation with H.E, the President Museveni when he was in Gulu where he tried to convince him to leave “the wrong group” and promised to allow him leave the country and to take care of his interests while he was abroad.

On the same day he claims that he was freed to make a statement disassociating himself from the Presidential candidate Dr. Besigye’s Task in the presence of Major General Elly Tumwine, Major General David Tinyefunza, Maj. General Jeje Ondongo and Lt. Col. Noble Mayombo, a statement which he later read to the press at Parliament Buildings the same evening. He claims that from 21st February 2001 he was virtually under house arrest at his residence in Bbunga, guarded by officers and men of UPDF under the guise of “state protection;” against his own candidate and supporters.

On 27th February 2001, he claims he had to leave the country as he felt his life was in danger and he was currently living in the United Kingdom with his family. He concludes his affidavit by claiming that consequently, he did not vote in the 12th March 2001 Presidential elections, which is a denial of his constitutional right.

Hon Okwir’s account of how he was arrested at Entebbe International Airport is supported by the affidavits of the Petitioner and his wife, Hon. Winnie Byanyima. According to the Petitioner’s affidavit in support of the petition, on 19 February 2001 at about 7 p.m. he arrived from Bundibugyo and found Hon. Okwir at his house with his wife Solange and Mrs. Anne Mugisha. Hon. Okwir narrated to him how he had been intimidated for two days by Maj. Gen. David Tinyefunza and Lt. Col. Mayombo. He also informed him how he has been taken to the international Conference Centre and forced for his safety to sign a document to the effect that he

had resigned from the Petitioner's Task Force and that they were getting funds from countries hostile to Uganda. After signing the document he had been taken to Nile Resort for lunch.

The Petitioner defended further that after discussing the matter with Hon. Okwir, it was decided that the public be informed through the press about what had happened and they continued with the campaign normally. After the press conference they continued with the residence where Okwir spent the night. The following day on 20 February 2001 the Petitioner was scheduled to address rallies in Adjumani and Moyo Districts, and had planned to travel by a chartered aircraft from Entebbe at 9.30 a.m. together with some members of his Task Force including Hon. Okwir. They arrived at the Entebbe VIP Lounge at about 9.30 a.m. As they proceeded to the aircraft at about 10.00 a.m. an official of the airport informed him that the aircraft has been refused clearance to take off and that they should return to the Lounge while clearance problems were sorted out. As they arrived back in the Lounge an official of the Civil Aviation Authority named B. Monday came and informed Hon. Okwir that he had instruction to take him away but Hon. Okwir refused to go. The official went but shortly afterwards Capt. Rwakitarate Moses from the PPU came with some armed men putting on civilian clothes and instructed Okwir to get up and go with him. Hon Okwir refused to comply, as they were not authorized under the law to arrest him.

At about 3.00 p.m. Col. Kasirye Gwanga arrived with a large group of armed soldiers and forcefully arrested Hon. Okwir and damped him on a pick-up and sat on his head, chest and legs, and drove off. The rest of the affidavit in which he deposes on what Hon. Okwir told him about his interrogation and telephone conversation with the 1st Respondent is hearsay.

Hon. Winnie Byanima also made an affidavit to support Hon. Okwir's claim that he was abducted from Entebbe Airport. She states that on 19th February 2001 Hon. Okwir turned up at her home at Port Bell in the evening and he narrated how he had been pressurized and coerced by Maj. Gen. Tinyefuza, Lt. Col. Mayombo, Col. Kasirye Gwanga and other senior army officers to make a statement of withdrawal from the EBTF but he stated that since he had escaped from them he was back into the EBTF although he feared for his life. On 20 February 2001, the Petitioner, Hon Rabwoni and herself and other members of EBTF went to Entebbe International Airport to board a plane to Adjumani where they were scheduled to address a rally. While at Entebbe International Airport, Hon. Rabwoni Okwir was forcefully abducted from the VIP

Lounge by a big number of soldiers, which include Capt. Moses Rwakitarate of the PPU who appeared to be in-charge of the operation, which lasted five hours. She states that Hon. Rabwoni was never charged with any offence but has since fled into exile.

The allegations made by Hon. Okwir have been answered by the affidavits of the 1st Respondent, Maj. Gen. Jeje Odongo, Maj. Gen. David Tinyefuza, Lt. Col. Mayombo and Capt. Rwakitarate Moses. In his affidavit in support of the answer to the petition, the 1st Respondent states that it is not true that on 21 February 2001 he had a telephone conversation with Hon. Okwir where he tried to convince him to leave that “wrong group”. He states that on that day he had a telephone conversation with Hon. Okwir where he asked him whether it was Maj. Gen. Tinyefuza or Hon. Okwir himself who was telling the truth about the voluntariness of the statement he had signed stating that he had withdrawn from the Petitioner’s Task Force. He further states that Hon. Okwir told him that the Monitor Newspaper report which alleged he was forced to withdraw from the Petitioner’s Task Force was false. The 1st Respondent asked him what he intended to do and Okwir replied that he wanted to go abroad for medical treatment and rest. The 1st Respondent asked him further how he would be able to maintain himself abroad as a member of Parliament of Uganda. He advised Hon. Okwir to notify the Speaker of Parliament so that he could continue to draw his salary until he returned home.

In his affidavit, Maj. Gen. Tinyefuza denied that on 21 February 2001 Hon. Okwir was forced to make a statement disassociating himself from EBTF in his presence. He stated that in the ordinary course of his duties as Senior Advisor to the Commander-in-Chief, he details and receives information from various persons acting under lawful covert circumstances, reports concerning security matters within Uganda.

He deposed that on numerous occasions he had assigned Hon. Okwir the task of covertly gathering information and reporting to him matters of highly sensitive nature relating to the security of Uganda. On 15 February 2001 Hon. Okwir requested him for a meeting which was held on 17 February 2001 at Okapi Gallery in Bbunga where they held long discussions concerning national security matters in which the Petitioner was named. He informed Lt. Col. Noble Mayombo about the information he had received from Hon. Okwir and the three agreed to meet at Sheraton Hotel, the venue selected by Hon. Okwir.

Major Gen. Tinyefuza further states that on 18 February 2001 Hon. Okwir offered to escort him to Sembabule to attend a funeral of a relative. While there Hon. Okwir informed him that he had decided to withdraw from EBTF, and Hon. Okwir addressed mourners informing them of his decision.

On 19 February 2001 he proceeded to the International Conference Centre where he found that Hon. Okwir had already written a statement which was being typed announcing his withdrawal from the EBTF. Lt Col. Mayombo was in the room. After the statement was signed Hon. Okwir voluntarily signed it, and the two shook hands. Hon. Okwir promised to put in writing the reports he had given verbally within 3 days, they had lunch with Hon. Okwir and his wife at Nile Hotel.

According to Major General Tinyefuza Hon. Okwir asked for facilities including security to enable him meet his Youth Constituents, at the Ranch on the Lake to brief them about his decision. Security was provided to Hon. Okwir by Lt. Col. Mayombo consisting of a pistol and two guards. In the evening Hon. Okwir could not be traced. On 20th February he received information that Hon. Okwir had been apprehended at Entebbe International Airport and taken to the headquarter of the Military Intelligence.

In his affidavit, Lt. Col. Nobel Mayombo, the Ag. Chief of Military Intelligence and Security of the Uganda People Defence Forces (UPDF), and a Member of Parliament representing the UPDF, denied the allegation by Hon. Okwir and Byanyima that on 19 February 2001, HE AND Maj. Gen. Tinyefuza forrgn a document at Nile Hotel, announcing his withdrawal from the ETBF.

Lt. Col. Mayombo states that his job involves collection, analysis and dissemination of intelligence reports on matters of security and distribution of such information to the President, Army Commander, Commanders of various units and other security organization of the country. He further states that on 1st January Hon. Okwir who is his young brother and very close friend came to his house for the new year celebrations and in the course of a political debate told him of his intention to support the Petitioner. From the time Hon. Okwir returned from Rwanda, he had been using him to collect intelligence and security matters in Uganda and Hon. Okwir had given him very good intelligence reports on security matters in Uganda. Lt. Col. Mayombo states that he encouraged Hon. Okwir to join the EBTF so that he gives him information about security

related plans of that group and he agreed to do so. On many occasions between that date and 17 February 2001 Hon. Okwir had given information of a security nature for which he received remuneration from him. As a result of information received from Maj. Gen. Tinyefuza, a meeting was arranged in Sheraton Hotel where he booked the room. The meeting was held till 4.00 a.m. and food and drinks were served. Hon Okwir informed the meeting that the Petitioner and Naser Ssebagala were planning to start insurgency in the event that the Petitioner lost the elections. Hon. Okwir also informed the meeting that they had linked up with people who were throwing bombs in the city, that they were hatching plots to kidnap their own members and blame it on the Government and had hired assassins to kill prominent politicians and leaders in Government. Hon. Okwir further informed the meeting that they had imported guns and were receiving money from neighboring countries, which were interested in destabilizing Uganda.

Lt. Col. Mayombo stated that on 19 February 2001 he went to Hon. Okwir's residence where he found many people including his brothers, and had breakfast with them after which he travelled with them to the International Conference Centre room 328. Hon. Okwir wanted typing services for his statement withdrawing from EBTF and his secretary Aida provided the services. While at the Conference Centre, Hon. Okwir discussed with him and other officers who included Lt. Col. Mugasha, Lt. Col. Gowa, Col. Kasirye Gwanga about his decision to abandon EBTF because it was involved in planning subversive activities. Therefore, Hon. Okwir signed the document withdrawing from EBTF and they went to have lunch at Nile Hotel.

Lt. Col. Mayombo further states that Hon. Okwir asked for security and he was given a pistol and two armed escorts, one uniformed guard at his house and other in civilian attire to travel with him. After leaving the hotel attempts to contact Hon. Okwir proved fruitless; and Lt. Col. Mayombo got worried. He suspected that Hon. Okwir could have been kidnapped by the ETBF after hearing the statement on radio. He received intelligence information that Hon. Okwir was going to be killed in Adjumani by the EBTF members. He telephoned the Director of CID and the inspector General of Police and it was decided to stop Hon. Okwir from travelling. He deployed Capt. Monday and Capt. Rwakitarate to stop Okwir from travelling. When these officers were obstructed by the Petitioner and others he informed the Director of CID who instructed his officers at Entebbe to effect the arrest. Hon. Okwir was subsequently arrested and brought and brought to Lt. Col. Mayombo's office at Kitante Road. Hon. Okwir said he was not feeling well

and a doctor was called from Mbuya Military Hospital who checked him and found him with no serious injuries. Hon. Okwir was given a bed, blanket and bed sheets and received food and cigarettes supplied by his wife. Hon. Okwir asked Lt. Col. Mayombo to avail him an opportunity to talk to H.E. the President that he wished to travel abroad for treatment, rest and adequate security.

Lt. Col. Mayombo deponed further that upon 1st Respondent's directive he requested the British Government to issue Hon. Okwir and his wife visas, which were obtained together with tickets and money to use abroad. Hon Okwir was later escorted to his residence in Bbunga where he stayed with his father and 4 relatives for one week before travelling abroad. He states that Hon. Okwir was escorted to the airport by members of his father and 4 relatives for one week before travelling abroad. He states that Hon. Okwir was escorted to the airport by members of his family and received by the staff of the Uganda High Commissions in London and he is still in contact with him.

Capt. Moses Rwakitarate made an affidavit to explain his role in the arrest of Hon. Okwir. He is the Intelligence Officer of the Presidents Protection Unit (PPU). He states that he was requested by Lt. Col. Mayombo to oversee the arrest of Hon. Okwir at Entebbe International Airport. He went to the Airport and found the arrest in progress. He asked Hon. Okwir to go with him to Kampala to answer some questions as required by Lt. Col. Mayombo. The Petitioner and others prevented Hon. Okwir from coming voluntarily. Eventually Hon. Okwir was arrested by combined efforts of the Police and army Officers who include Capt. Kayanja Muhanga.

The provisions of Section 74 (b) are as follows:

“74. A person commits the offence of undue influence –

(b)If by abduction, duress or any fraudulent device or contrivance impedes or prevails upon a voter either to vote or to refrain from voting.”

The right to vote is fundamental political right. Article 59 (1) of the Constitution provides that “Every citizen of Uganda of eighteen years and above has a right to vote.” It is also provided in Article 59 (3) that “ The State shall all necessary steps to ensure: that all citizens qualified to vote

register and exercise their right to vote.” The arrest or abduction of Hon. Okwir from Entebbe International Airport was a matter of political significance in the Presidential Elections.

The evidence adduced by the Respondents on this matter casts serious doubts as to the credibility of Hon. Okwir’s claim that he was forced to sign a statement withdrawing from the EBTF and that he fled to United Kingdom for his own safety. The possibility that Hon. Okwir was an informer of the UPDF and that he voluntarily made and signed the statement and that he went to the UK for treatment and rest cannot be excluded. No reason was given as to why he alone of all the members of EBTF should have feared for his life to force him flee the country and thereby fail to vote in the Presidential Elections. However the fact of his arrest and detention and eventual flee amounted to violation of his liberty and intimidation of supporters and agents of the petitioner and interfered with his campaigns. This contravened the principle of free and fair election.

I shall now deal with other cases where it is claimed that agents or supporter were abducted or arrested in order to prevent them from voting.

Kiiza Davis who was a Polling Agent of the Petitioner at Ganyenda Polling Station in Kamwenge Town claimed in his affidavit that he was arrested on 11 March at 9.00 at Kamwege Town by two Local Defence Force Officers and taken to a Railway Line where he found another agent arrested. At about 10.00 p.m. 2nd Lt. Richard instructed the LDF officers to take away his identity card and continue detaining him. At 1.00 a.m. he was transported to Kamwenge Army Detach and put in a detach where he was guarded by armed soldiers. On the Election Day he was taken to the polling centre of Kamwenge Primary School Block One where Lt. Richard ordered the Presiding Officer to tick for him a ballot paper in favour of the 1st Respondent. He was given the ticketed ballot paper and escorted by 2 armed soldiers to the ballot box where he put the same. He was released at about 6.00 p.m. and did not carry out his duties as a Polling Agent.

In his affidavit, Bukenya Samuel who was a Campaign Agent of the National task Force Team of the Petitioner in Nakawa Division claims that on 11 March 2001 at 6.30 p.m. while he was at the Trading Centre of Kinawataka Zone, he was forcefully arrested by armed soldiers in a car covered by the 1st Respondent’s posters. He was taken to Mbuya Military Barracks where he was asked which candidate he intended to vote for during the Presidential Elections. He told that he

supported the Petitioner for whom he would vote. He was detained in the cells until 21 March 2001 when he was released after the elections. He claims that he was beaten and tortured during the arrest and detention. No reason is given for his arrest in the first place and why he was detained after the polling day. The witness seems not to have told the whole story, from the evidence of Kiiza Davis and Bukenya Samuel I find that they were arrested by the Military and denied the right to vote for candidates of their choice.

I am satisfied on the evidence adduced that some of the Petitioner Agents and Supporters were abducted or arrested in several areas and this caused intimidation and harassment and denial of right to vote which infringed the principle of a free and fair election.

Intimidation by the Army, PPU. And Para-Military Personnel:

The Petitioner complains in para 3 (1) (v) of the Petitioner that contrary to Section 12 (1) (e) and (f) of the Electoral Commission Act, the 2nd Respondent failed to ensure that the entire Presidential electoral process was conducted under conditions of freedom and fairness and as a result the Petitioner and his Agents campaigns Unit and the Para-military personnel such as that led by Major Kakooza Mutale.

Section 12 (1) (e) and (f) of the Commission Act provide for the following powers of the Commission:

“(e) to take measure for ensuring that the entire electoral process is conducted under conditions of freedom and fairness.

(f) to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this Act or any other law.”

The principle behind these provisions is that of free and fair elections. It is convenient to deal with this complaint together with the allegation of interfering with electioneering activities of the Petitioner since this is an aspect of failure to provide conditions of freedom and fairness during campaigning and voting. The Petitioner complains in para 3 (1) (n) of the Petition that contrary to Section 25 of the Act, the 1st Respondent's Agent and Supporters interfered with the electioneering activities of the Petitioner and his Agents.

Section 25 of the Act creates an offence interfering with electioneering activities of any person. The offences is committed by uttering or writing words to create hatred or disharmony; organizing groups to train them in the use of violence or force; obstructing the free exercise of voting; compelling a candidate to withdraw; threatening any candidate or voter or inducing candidates or voters to fear through of witchcraft or divine censure. The principle underlined here is again of free and fair election.

Section 2 (1) of the Act defines agent by reference to a candidate as including his representative and polling agent of a candidate. In this complaint it is alleged that it was the 1st Respondent's Agents and Supporters who interfered with the electioneering activities of the Petitioner and his Agents.

The UPDF was accused of playing a major role in carrying out acts of intimidation, harassment, arrest through violence, which undermined the principle of freedom and fairness. The PPU played a special role in Rukungiri and it was also accused of intimidation, harassment and causing injury and death. Other security agencies like the LDUs were also accused. The RDCs, DISOs, GISOs, and LC officials and the 1st Respondent's Supporters were also alleged in participating in these acts of violence and harassment. I shall now deal with the evidence that was adduced by the Petitioner to support the allegations and the evidence in rebuttal by the 1st and 2nd Respondents.

In his affidavit in support to the Petition, the Petitioner alleges that during the whole period of the Presidential Election Campaigns, the 1st Respondent deployed the Army and Major Kakooza Mutale's para-military personnel of Kalangala Action Plan all over the country and directed the Army Commander Major General Jeje Odongo and other Senior Military Officers to be in-charge of security during the whole Presidential Election process and subsequent to this, his supporters, campaign agents and himself were harassed and intimidated and a number of his supporters and these and theses PPU soldiers intimidated and harassed his supporters and campaign agents all the time.

On 16TH February 2001 when he went to address a Campaign Rally at Kamwenge Town in Kamwenge District, he found that agents and supporters of the 1st Respondent had organized themselves along the streets of Kamwenge Town carrying posters of the 1st Respondent, singing

their campaign slogans and throwing stones at their vehicles and this interfered with his campaign and his supporters were intimidated and assaulted. As the programme of the Presidential Campaigns shows the 1st Respondent was supposed to be doing his campaigns in Gulu on that day.

On 2nd March 2001 at about 10.30 p.m., he arrived in Rukungiri Town in a convoy of motor vehicles of his supporters who had met him at the Kahengye Bridge about 20 km from Rukungiri Town. As the convoy came into Town, many town residents who were his supporters came to the roadside clapping as a sign of welcome. He then saw many soldiers, of the Presidential protection Unit come from all directions wielding truncheons causing them to run screaming in all directions. The soldiers then attacked the people in the vehicles of his convoy and some came to attack the vehicle in which he was seated. The policemen who were detailed as his bodyguards had to threaten to open fire in order to stave off this attack.

His convoy continued slowly under the protection of the police guards to his village in Rwakabengo. Many of the supporters who had been attacked by the presidential Protection Unit in the town ran to his compound and spend there the night for fear of being attacked if they dared go back home that night.

At about 10.30 p.m. he went back to Rukungiri Town to Rondavles Hotel where he found the Regional Police Commander (South Western) Mr. Stephen Okwalinga and reported what had happened that evening. He reported him that he had information from them that the PPU soldiers planned to stop people from attending his rallies the following day. The Regional Police Commander assured him that he would effect deployments to ensure that his planned campaign rally would not be disrupted and that he was going to stay in the District to personally supervise the security for the Presidential Election.

On the 3rd March 2001 as he addressed rallies at Nyarushanje, Nyakishenyi, Kanungu and Kihiihi, and at all these places, he observed that all his supporters were in terrible fear for their personal security because of the heavy deployment of the Presidential Protection Unit and the Local Defence Unit in their respective areas by reason of intimidation and harassment. Due to the said heavy deployment of PPU soldiers and LDUs in the whole district of Rukungiri and the

resultant tension, he was forced to cut out rallies organized for him at Bwambara and Bugangari in Rujumbura County in order to get the main campaign rally at Rukungiri Town early.

On that day he arrived at the main rally in Rukungiri town at about 5.00 p.m. and in his address to the people he informed them that he was aware of the state of terror created by the PPU soldiers and that for their sake he had to be very brief so that they could return home before dark; and he appealed to all his supporters to refrain from violence even in the face of extreme provocation. The main Rally in Rukungiri Town ended at about 6.00 p.m. and the people moved out of the playground the venue of the Rally peacefully. He then went back to his home to collect his luggage and proceed to Kampala. Shortly after getting home he heard gunshots from the direction of Rukungiri town Centre which continued for about 20 minutes; and then he saw people come running from town to his home for safety.

He went back to town at about 7.00 p.m and found the town completely deserted except for the PPU soldiers and a few people wearing campaign T-shirts of the 1st Respondent and he saw next to Ijumo Hotel White Truck surrounded by about 10 to 12 PPU soldiers who were throwing people onto this White Truck. He stopped by Mr. Charles Makuru's residence where he found many people having taken refuge in Makuru's compound and left for Mbarara town where they spent the night.

When he reached Mbarara town he telephoned Mr. Charles Makuru to find out the situation in Rukungiri town and he told him the situation was still tense and that he had tried to get in touch with the Regional Police Commander and discovered that he had been recalled to Police Headquarters in Kampala early that afternoon. Subsequently he went back to Rukungiri and was shown the grave of one Berondera who had been shot dead in that incident.

He stated that he then knew that one person died, 15 persons were seriously injured and hospitalized and very many others sustained minor injuries as a result of the attack by PPU soldiers on that day in Rukungiri Town and all this was reported in the Sunday Monitor of 4th March 2001. He further claimed that all this time when Presidential Protection Unit soldiers were deployed in Rukungiri District, President Museveni was not physically present in that district.

The Petitioner then details out his evidence regarding the Okwir saga, which has already been considered above. The Petitioner claims that the 1st Respondent made repeated statement justifying the actions of the Military including PPU during the Presidential Election process.

He states that following all these events he cancelled his scheduled campaign trip to Adjumani and other District of West Nile and lost 3 days of campaign. In the meanwhile he sought audience with the Electoral Commission to complain about the escalating level of violence, intimidation and harassment of his agents and supporters and he did so when he met the Electoral Commission on the 22nd February 2001.

Following this meeting with Electoral Commission, the Chairman of the Electoral Commission wrote to the 1st Respondent, Commander-in-Chief of the Armed Forces process and not to deploy the PPU where the President of Uganda is not personally present. The letter, which is dated 21th February 2001, read as follows.

“RE: Violence and Intimidation of Candidates

The Commission wishes to appeal to you, Your Excellency, as the head of State and fountain of honour in Uganda, to intervene and save the democratic process from disintegration by ensuring peace and harmony in the electoral process.

The Commission has received disturbing reports and complaints of intimidation of Candidates, their agents and supporters, which in some cases has resulted in loss of life and property.

In a meeting that the Commission held with Candidate Dr. Kizza Besigye on 22nd February 2001. A number of issues of public concern were raised regarding the way security matters have been handled particularly during the campaign period.

We wish Your Excellency to draw your attention to the Electoral Commission Act. Section 12 (1) which confers powers to the Commission and we quote:

- ‘(e) to take measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness;***

(f) to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this act or any other law.’

In addition, Section 20 (1) of the Presidential Elections Act, No.17 of 2000 provides that the Commission shall ensure that the relevant organs of the state provide during the entire period of campaign, protection of each candidate and adequate security at all meetings of candidates.

The Commission is aware of its operational limitation in enforcing the powers under the above mentioned provisions of the law and had therefore, entrusted the keeping of security during these elections to the Police. The Commission has pointed out to the Police that in case there was need for reinforcing the security deployment, then it would be the Police to seek assistance from other security organs so as to ensure smooth running and conclusion of the electoral process.

We also expect that the deployment of PPU is made where the President is expected to be as this is a facility that Your excellency is entitled to as the incumbent. We have also issued press statements instructing public institutions including RDCs and DISO to treat all candidates equally as is provided for in the Presidential Act 2000 and we expect them to abide by those instructions,

The Commission therefore, would like to request you as Commander-in-Chief of the Armed Forces to instruct armed personnel not to do anything that would be interpreted as interference in the electoral process contrary to law and thus jeopardise the democratization principles that our country has embarked on since the Government of NRM came into power.

Your early intervention in this matter will go along way to enable us fulfill our duties as laid out in the constitution and other Laws of this country.”

The letter was copied to the Minister of Internal Affairs, the Minister of State for Security, the Inspector General of Police and all Candidates’ Task forces.

Earlier on the 20th February 2001, the Deputy Chairperson of the Electoral Commission wrote to the Army Commander and Inspector General of Police appealing to them to ensure that Candidates' campaigns continue without unnecessary interference. The letter stated:

“Complaint from Dr. Kizza Besigye

Col. Dr. Kizza Besigye, Presidential Candidate was scheduled to address rallies in Adjumani today. However, Candidate Besigye telephoned the Electoral Commission from Entebbe Airport this morning to inform us that Military Intelligence personnel led by Captain Rwakitarate were insisting on arresting Hon. Major Rabwoni Okwir with whom he was travelling to Adjumani. As a result, Candidate Kizza Besigye told the Electoral Commission that he would not proceed with the campaigns because the electoral process was being interfered with. When the Electoral Commission urged Candidate Besigye to continue to Adjumani without Major Rabwoni, he said that he was not leaving Rabwoni behind and that he was besieged by Military personnel.

The petitioner continues that contrary to the pleas of the Electoral Commission, the Army Commander Maj. Gen. Odongo Jeje addressed a press conference and issued a press statement confirming the Army's involvement in the security of the Presidential Election process. The Press Statement which was dated 9th March 2001, stated,

“The Role of UPDF in the 2001 Presidential Elections

Following the contention by some presidential candidates as to the role of the Army involvement in the electoral process, the National Security Task Force has found it imperative to explain the need for the involvement of UPDF in the security detail before, during and after elections.

Although the electoral laws do not specifically refer to the Army in regulating the electoral process, the Uganda Police or any other civilian authority can be assisted by the Army under article 209 of the Constitution of the Republic of Uganda where functions of UPDF include:

(a) Preserving and defending the sovereignty of Ugandans Directives 4(I) of the Constitution.

(b) Co-operating with civilian authorities in emergency situations.

Indeed the involvement and co-operation of joint forces for security during elections is not a new phenomenon. This can be exemplified by what happened in the 1989 National Resistance Council expansion elections, the 1991 Local Council Elections, 1996 Presidential Elections and Parliamentary Elections where the NRA/UPDF was actively involved without raising any controversy.

In the recent past, threats of especially urban terrorism necessitated the formation of a joint anti-terrorize UPDF, ISO, ESO and Police who successfully co-operated to eliminate the threat. This was formed in 1998 and is still operational.

Today, as Ugandans campaign and prepare to have their Presidential Elections of 2001, our intelligence information indicates that some negative forces against peace are planning assassinations, riots, demonstrations, acts of violence, looting and other criminal acts during and after elections.

On top of this demand on the Police, there are presently 17000 polling stations, which require policing during the elections. At the same time Police is required to escort electoral materials, officials and still guard Presidential Candidates, above the normal Police schedule of duties.

With all this to be done there is no doubt that 15000 strong Police force would not even be adequate to man all polling centres, let alone keeping peace and security. Hence the need for the UPDF to lend a hand.

In fact, the Chairman of the Electoral Commission has written to the Army leadership requesting that the Army uses its personnel and resources to provide security during the electoral period. This is contrary to the erroneous belief that the Army had usurped the powers of the Electoral Commission.

The Army has certainly not been involved in the electoral activities like registration of voters, display of registers, acting as polling agents and will not be involved in the counting of votes or any other related electioneering activity.

On the basis of the above, we wish to assure all Ugandans, Presidential Candidates inclusive, that the UPDF has not, and does not intend to, usurp anybody else's role but is serving as a STAND-BY force that will come in only when the National Security Task force in conjunction with the Electoral Commission identifies a security need for it to."

The Petitioner states that at the beginning of March, 2001 the Inspector General of Police assured the public of security during and after the Presidential Election and this was reported in the Monitor Newspaper of 2nd March, 2001. On the 7th March, 2001 4 Presidential Candidates including himself wrote to the 2nd Respondent complaining about flaws in the Presidential election process. The letter stated:

"RE: FLAWS IN THE PRESIDENTIAL ELECTORAL PROCESS, 2001

We the undersigned Presidential candidates are writing to express our concern about the serious flaws in the on-going Presidential Electoral Process:

1. Security, violence and intimidation

As you are aware, President Museveni has deployed Major Gen. Jeje Odongo, the Army Commander together with other senior army officers to take charge of security during the Presidential Electoral process. The Presidential Protection Unit (PPU) has also been deployed in different parts of the country even where the security situation does not warrant it.

As you rightly pointed out in your communication to President Museveni as Commander-in-chief of the armed forces, on 24th February, 2001 it is the duty of the Electoral Commission to ensure the security of the Presidential Electoral Process and in pursuance of this responsibility the Elections to the police, President Museveni's act of deploying the military in this exercise has usurped the powers of the Electoral

Commission and the police, who are by law responsible for security during any electoral process.

Violence and intimidation by PPU and para-military personnel has escalated of late and has resulted in loss of lives and injury to citizens of this country.

2. Serious Flaws in the Electoral Process

We have noted with great concern the delay in the issuance of the cleaned, final voter's register and yet we have only 4 days to polling day. Furthermore voters cards are being issued using a national voter's register which is not final.

According to the National Bureau of Statistics, Uganda cannot have more than 8.9 million citizens of voting age and yet you have quoted a figure of 11.06 million registered voters on the basis of which voter's cards have been printed and are being issued out.

We have evidence that the Electoral Commission and/or its contracted suppliers have printed blank voters' cards, which can be easily abused. We also draw your attention to the very poor quality of voters' cards that can be easily reproduced.

In certain parts of Uganda such as Kampala City, there are less polling stations currently gazetted than those in June 2000 Referendum.

To date we have not received any explanation about the reported intrusion, activities and identity of the culprits who entered the data processing centre of the Electoral Commission.

Public officers such as Army Officers, RDCs, DISOs, GISOs who are supposed to be non-partisan under the law continue to campaign for candidate Museveni.

In view of the above stated flaws, we demand that you convene a meeting of ALL Presidential candidates (and not their representatives), not later than Friday March 9th, 2001 to resolve these serious and very urgent issues."

The 2nd Respondent reply dated 8 March 2001 stated as follows.

“FLAWS IN THE PRESIDENTIAL ELECTIONS PROCESS, 2001

This is to acknowledge receipt of your letter dated March 7th, 2001 which was signed by Presidential Candidates Dr. Col. (Rtd.) Kizza Besigye, Mr. Chapaa Karuhanga and Mr. M. Kibirige Mayanja. You raised of violence, intimidation and serious flaws in the electoral process. We wish to respond to these issues as follows:

a. Security, Violence and intimidation.

The Electoral Commission in line with Section 20 (1) and (b) of the Presidential Elections Act. 2001 has contracted the Police and other State Security Organs to provide during the entire campaign period, protection of each Candidate and adequate security at all meetings of Candidates. To this effect the Commission has availed Police protection to each Candidate at home and while travelling and addressing Campaign Rallies.

With regard to violence and intimidation, the Electoral Commission has written to the Head of State as the Commander In Chief of the Armed Forces, to contain the Army and to Inspector General of Police to ensure that the Police carry out their mandate as provided under Article 212 of the Constitution of Uganda.

It is incumbent upon the Police when necessary to seek reinforcement from other State Security Organs to contain any deteriorating security situation, maintain law and order and protect the lives and property of Ugandans.

Following these communications, reports from the Police indicate that the security situation the campaigns have improved and acts of violence and intimidation have reduced considerably countrywide.

b. Serious Flaws in the Electoral Process.

You have expressed concern over the delay in producing the final Voters Register.

Please be assured that the final Voters Register will be ready in time for Polling.

Your worry about the number of Voters on the Voters Register has been noted. It is important to note that the last Population Census for Uganda was conducted in 1991.

What the National Bureau of Statistics has provided you with are population projections, which might not rhyme with the list of eligible electors. The figure of 11.6 million Voters on the Register is derived from returns received from the field after the

national Voters Register Update Exercise. It is during this exercise that new voters are registered, those who wish to transfer to other voting centers are transferred, the dead and other non Bonafide voters are deleted from the Register, you will recall that at the request of the Presidential Candidates the period for this exercise was extended to allow the voters more time to scrutinize and clean the Register. there is no way the Commission can cause the number of voters on the Register to Rhyme with the figure of 8.9 million citizens of voting age projected by the National Bureau of Statistics because the mandate, methodology and legal requirements of the two government bodies are different.

A few blank Cards were mistakenly issued to some Polling Stations. These should have been returned to the Commission and appropriate ones issued. It should be pointed out that these Cards are to be used for the Presidential Elections only. The electoral Commission could not invest a lot of money in them by way of quality. However, they have sufficient security features to allow for detection of any imitations. Holders of suspected fake cards should be reported to the authorities.

Various factors are considered when creating Polling stations. Should these factors change, new Polling Stations may be created or existing one could be closed. The Commission relies very much on the input from the field. It would have been helpful if you had indicated specific names of Polling Stations affected so that remedial actions is taken or reasons are given for their being degazetted if at all.

The matter of the intruders into our Data Processing Centre is being handled by the Police. We wish nevertheless to assure you that our data was not damaged, tampered with or corrupted.

With regard to Army Officers, RDCs, DISOs and GISOs campaigning for certain Candidate, the Commission issued instructions to all those concerned to stop the practice. The Commission will be grateful to receive specific names and places still engaging in this practice so that appropriate action can be taken.

I am sure the issues you have been satisfactorily answered and in view of the Candidates and Commission's last minute activities currently going on, the meeting of all Presidential Candidates demanded for will not be practicable.”

The letter was copied to the Commander-in Chief of the UPDF, the Inspector General of Police, the 1st Respondent as a presidential Candidate and Candidates A. Awori and F. W. Bwengye.

On March 2001 the Candidates again wrote to the 2nd Respondent a letter which read.

“RE: FLAWS IN THE PRESIDENTIAL ELECTION PROCESS, 2001:

We acknowledge receipt of your letter dated 8th March 2001 in response to our letter to you dated 7th March 2001. We will respond as follows:

Security:

Although it is incumbent upon the police when necessary to seek reinforcement from other security organs to contain any deteriorating security situation, maintain law and order and protect the lives and property of Ugandan: the police has not yet admitted that that it has failed in its work. Reference is made to a letter dated 8th March 2001, addressed to Dr. Kizza Besigye Task Force by Mrs. Flora Nkurunkenda, Deputy Chairperson, and Electoral Commission.

We are requesting the Electoral Commission to ensure that the army, which has been deployed for the presidential election process, which has been deployed for the presidential election process by the Commander-in-Chief of the Armed Forces, be withdrawn within 24 hours, otherwise we will have no alternative but to take drastic steps. The police should remain in charge even when they seek reinforcement from other state security organs.

The Electoral Commission will bear the consequences of the confusion that may arise out of deploying different security organs.”

James Musinguzi was in-charge of the Petitioner’s campaigns in the Southwestern Region of Uganda. He claimed that in the course of discharging his responsibilities he was exposed to enormous intimidation, harassment and violence throughout the regions. He states that shortly after the Petitioner had announced his intention to stand as a Presidential Candidate Soldiers belonging to the Presidential Protection Unit (PPU) were heavily deployed in the Districts of Rukungiri and Kanungu. The said soldiers he alleges unleashed terror and suffering on the local

people believed to be supporters of the Petitioner and the people affected including Richard Bashaija, Sam Kaguliro, Henry Kanyabitabo and many others complained to him about the harassment and he forwarded the complaint to the 2nd Respondent and the Police, but no action was taken. The soldiers continued to harass suspected supporters of the Petitioner till elections.

During the entire period of the campaigns, he further claims Gad Buluro the Gomborora Internal Security Officer (GISO) for Kihiihi Sub-County, Peter Mugisha a Councillor for Kambuga, Stephen Rujaga, Godfrey Karabenda and many other civilians on the 1st Respondent's Task Force regularly went around with guns, threatening Besigye supporters to compel them to support the 1st Respondent. He reported the matter to the 2nd Respondent and the Police and the Regional Police Commander Mr. Stephen Okwalinga sent a Mobile Police Unit at Kanungu to arrest Rujaga but without success. The following day, the Regional Police Commander was ordered out of the region, the very day, the Petitioner was to address a rally in Rukungiri Town. The District Police Commander had earlier been withdrawn.

Musinguzi claims that in the absence of any Senior Police Officer in the Town, the PPU soldiers unleashed even more terror and in the process they shot to death one of their supporters and injured 14 others without any provocation whatsoever. He states that as a result of this terror that agents feared to converse for support for their candidate.

It is not clear how much of the above allegations are based on Musinguzi's actual knowledge or belief since his affidavit is based on both. It may be that part of his evidence is hearsay.

Kakuru Sam who was the Chairman of the Petitioner's Task Force for Kiruma Sub-county in Kanungu District made several allegations regarding how security agencies interfered with the Petitioner's campaigns and harassed him. They stated that in early January 2001, they could not hold a meeting at James Musinguzi's home at Kirango because they were surrounded by about 14 PPU personnel who came in the vehicle of Deputy RDC, Mugisha Muhwezi. About two weeks later when he went to Kambuga to meet Major Okwir, he found PPU personnel beating up Henry Kanyabitabo and Chappa Bakunzi for mobilizing people to meet Okwir. He was also beaten and chased on his motorcycle using double cabin pick-up belonging to Capt. Ndahura. The PPU also forced them to close their offices.

In mid-February 2001 when their Campaign Task Force went to meet Kirima Task Force, the GISO and his group smashed the windscreen and lights of the vehicle of his Campaign Task Force, as they stopped at Modern Hotel, Kanungu. On 11 March, 2001, the same group went to Kihanda and rounded up all the Petitioner's Agents in the Parish and put them in custody until after the polling day. He alleged that PPU was heavily deployed all over the district. On voting day he claimed that all Policemen who voted at the Stadium were ordered to tick their votes at an open table, in the presence of GISO "boys" when he objected to Polling Officials ticking for other people, he was manhandled, beaten and chased away.

At around 5.00 p.m. he claims that he was removed from his house by stone wielding thugs who threatened to demolish it. He did not oblige, and was taken to the Polling Station and ordered to sign the Declaration of Results Forms but he refused. He was taken to the RDC, his Deputy and the GISO and others and forced to sign the forms. He claims that similar incidents were widespread in his area and surrounding counties and he personally witnessed many of them.

John Hassy Kasamunyu was a Campaign and Polling Agent of the petitioner in Kanungu District claimed that on 17 February 2001 at Kanungu, he found that Makerere student had been molested by the 1st Respondent's supporters and the matter was reported to Police. When he and Mbabazi was about to reach the Police Station, a gang of people attacked them and threw them off the motorcycle. One member of the gang drove off with his motorcycle, but the Police refused, claiming it was a government motorcycle which should not be used for campaign. On 9 March 2001 while they were holding a Task Force Meeting for Kihanda Parish about 15 vigilantes of the 1st Respondent attacked them. They were half naked and were carrying sticks, whistles and stones. They started beating up the Petitioner's supporters.

They made an alarm and the vigilantes ran away when the alarm was answered. They arrested one vigilante whom they took to Kihiihi Police Station. The next day the Police and PPU started hunting for them. Nine people were arrested and taken to Kanungu Police Station where they stayed in custody till 16 March 2001. He claims that these nine people who were the Petitioner's Agents never voted or monitored the voting. He claims he was hunted and never worked as an agent and he is still hiding away from his home.

Bashaija Richard who was a Polling Agent at Butagazi Polling Station and co-ordinator for the Petitioner in Rukungiri District Task Force alleges that on 27 January 2001 at around 3.00 p.m. while they were holding their candidates meeting at Kyeijanga Kirimi, four Policemen from Rukungiri came and arrested them claiming the meeting was illegal. They were kept in custody at Rukungiri Police Station for three days after they were released on police bond and later closed the case.

On 20 February 2001, at Kanungu when he was coming from checking on one of their Agents, he and Owembabazi were arrested by the GISO of Kirimi who had set up a roadblock. They were beaten, thrown on a pick-up truck and taken to Karengye. He was thrown in a pit and buried under the soil leaving only the head in the open. After they left, Owembabazi rescued him. As he was trying to go to Rukungiri, Police Station to report the incident, Police fired tear gas at him preventing him from doing so.

A day later the GISO and Police demanded that he takes them to the scene. They found the owner of the land where he had been buried and he corroborated his statement. They told him to report to the Police Station the next day, but when he did so, he was arrested and arrested and locked up for three days, taken to court and charged with leading a demonstration and released on bail.

On 2 March 2001, as they were waiting for the Petitioner in front of their District Campaign Office, PPU soldiers attacked and beat them up, dispersing and preventing them from meeting the Petitioner. In the evening, PPU soldiers found him in Ijumo Hotel, arrested and dragged him to the streets, removed his shoes and kicked him for about 30 minutes and then released him.

On 3rd March 2001, as they were arranging to hold a rally with the Petitioner, he found Capt. Ndahura of the PPU at Hotel Holiday. Capt. Ndahura called him to his table and pulled out his pistol; held it at his head and warned him that he would shoot him if anything happened to PPU soldiers went on rampage in the town, shooting many bullets in the air and shooting at their supporters resulting in the killing of the Baroda. He states that they had neither provoked the PPU nor breached the peace but they were just walking back from the venue of the rally. From then on, he claims, the PPU soldiers started actively looking for him and he went into hiding till the morning of the voting when he sneaked in and cast his vote.

Mubangizi Dennis was the Chairman for the Petitioner's Task Force in Bwambaa-county in Rukungiri District, claims that on 5 February 2001, the GISO Kajuna Warren came and arrested him saying that Capt. Ndahura, Commander of the PPU in the district wanted him. He went and reported the incident to Rukungiri Police Station. On 3rd March 2001, three PPU soldiers arrested him at the Bikarunga rally before the Petitioner arrived. He was taken to Nyarubare Barracks and was beaten. He spent a night there and was released after another thorough beating. He was threatened with death if he reported the assault or went to any hospital. He reported the matter to the District Task Force who sent him a vehicle, which took him to Nyakibale Hospital where he was hospitalized.

Orikiriza Livingstone, a Polling Agent for the Petitioner for Nyarushanje, Rubabo County in Rukungiri District, claims that in the course of campaigns, one Sebagyenzi, Chairman LC III and Dezi Rwabona, the Treasurer LC III at Nyarushanje restricted him from campaigning for Petitioner and threatened to arrest him until he left the village on 20 January 2001 and took refuge in Kabale Town for a week. When he returned to his village, he started conducting campaigns secretly throughout the period of January.

Around 7 February 2001 a group of armed personnel moved around his village at night targeting homes of the Petitioner's Supporters and ordering those supporters to desist from supporting and campaigning for the Petitioner. Thereafter it was difficult for him to continue with the campaigns in his area, and the exercise of cleaning up the Voters Register was not conducted at all. On 10 March 2001 the Petitioner's Campaign Agents from Kampala were prevented from campaigning by Rwabona and soldiers of the PPU, despite Police clearance. He and others hid till the polling day. On polling day, he was forced by Rwabona to sign the Declaration of Results Forms despite irregularities he had observed.

Mpwabwooba Callist who was the co-ordinator for the Petitioner's Task Force for Rugyeyo Sub-county in Kanungu District, alleged that on the day of elections the PPU soldiers were deployed throughout his village and neighboring ones and Gomborora Headquarter to "monitor elections". The night before some were distributed at the homes of some of the known supporters of the Petitioner such as James Musinguzi and Byaruhanga Benon. That night he found them there and in the whole area. On voting day, the PPU soldiers were distributed in Parishes where the Petitioner was known to have strong support and they kept chasing him and his supporters

wherever they went. On his way from one polling station to another he claims that one Mugisha Muhwezi pointed a gun at him while he was in his car, but he continued with his journey.

Keko Medad who was a Polling Agent for the Petitioner in Kanungu District stated that throughout the district, and Rukungiri, generally army men from the PPU had been deployed and were prominently present in Kambuga, Kihiihi, Kayonza and other places. He states that he was travelling a lot and saw them for about three months. They used to move with Mugisha Muhwezi (Deputy RDC) who would point out the Petitioner's Supporters who would be harassed and dispersed during meetings. When Major Okwir came to address them, they chased him away. They beat up a lot of people including Henry Kanyabitabo and Kalisti. They rounded up the Petitioner's Supporters and put them in jail at Kambuga. He claims similar incidents were widespread in the area and surrounding counties and he personally witnessed them.

Peter Byomanyire who was a campaign Agent for the Petitioner co-ordinating Mbarara and Kamwenge District stated that he experienced violence against himself during the campaign. On 16 February 2001, at around 5.00 p.m. after the Petitioner had finished addressing a campaign rally at Kamwenge, they met a mob of the 1st Respondent's Supporters armed with stones, bricks and sticks who started beating them shouting "kill Besigye Supporters". They were chased to Kamwenge Police Station where they took refuge. He says that on that day he was badly assaulted and had to go for medical treatment for two weeks. He does not state who assaulted him.

On March 2001 he states that James Birungi Ozo and him went to Mahyoro to consult with agents of the Petitioner and while they were there he was surrounded by five armed and uniformed UPDF soldiers who ordered them to leave the area and they left before consulting their agents.

On the same day they found Capt. Kankiriho, the Commanding Officer of Bihanga with two escorts at RBT Lodge in Ibanda Town. Capt. Kankiriho ordered Birungi who was wearing a T-shirt bearing the Petitioner's picture to leave the area. As Birungi was leaving Capt. Kankiriho pulled a pistol and shot at him but the bullet never hit him. He claims that thereafter Capt. Kankiriho went around the town tearing the posters of the Petitioner whenever he saw them.

During the night of the same day, he heard six gun shots and the following day he came and reported the matter to the Chairperson of the Task Force at Mbarara.

Bernard Masiko who was a Campaign agent for the Petitioner and a Polling Monitor in Kayonza Sub-county Kanungu District claimed that on 9 February 2001 at around 3.00 p.m. the Deputy RDC Mr. Mugisha Muhwezi Nyindombi accompanied by the Gomborora Internal Security Officer (GISO) Paul Bagorogazi came to his office with army men from the PPU and ordered the attendant to remove the Petitioner's posters and sign post and keep them inside and it was done.

Four days before the polling day, Mrs Jackline Mbabazi came and held a meeting with Sergeant Nankunda Bogorogazi and ordered the 1st Respondent's Supporters to beat up all the Petitioner's Supporters. He further claims that Sam Karibwende, Chairman LC III threatened to shoot then if they did not close the Petitioner's Campaign Office.

Dallington Sebarole who was the Chairperson of Kirima Sub-county Task Force for the Petitioner in Kanungu stated that on 27 January 2001 at 4.00 p.m. after he had held a consultative meeting at his house at Kyeyanga, a vehicle carrying armed Policemen came. Four of them were ordered to board it, himself, Richard Bashaija, Yuro Rwangara and one lady. They were taken to Rukungiri Police Station where they were remanded. They were released on police bond on 30 January 2001 after the intervention of Hon. Bibihuga and others. They continued reporting to the police until he was finally discharged on 14th March 2001, without being charged with any offence.

On 28 February 2001 after answering his police bond, he boarded a vehicle belonging to the Petitioner's Task Force at Rukungiri on his way to Kihiihi via Bugangari and Rwambura. At Rwambura, they found a roadblock manned by army officers. When they stopped nine of them were arrested and reported at Rwambura Police Station where they were given a police vehicle to take them to Rukungiri Police and they were remanded at 7.00 p.m. but were released after 3 hours after the intervention of George Owakuriroru.

Anteli Twahirwa who was the kabala District Chairman for the Petitioner's Task Force claimed that during the campaigns the RDC Mr. Mwesigye together with LDUs, Parish Chiefs and Gomborora Internal Security Officer (GISOs) kept them under constant harassment. The

harassment was widespread and occurred in almost every part of the district they attempted to visit.

Sande Wilson, who was a Mobiliser for the Petitioner's Task Force in the whole of Kabale District, alleged that during the campaigns the RDC Mr. Mwesigye kept them under constant harassment. In early March 2001 the RDC mobilized LC Officials and the 1st Respondent's supporters who were used to violently stop them from holding a rally at Ryakaramira Trading Centre in Rubaya. He claims that the RDC kept threatening them with arrest until they abandoned the Petitioner's campaign. At public rallies, he claims further that people should compile lists of the Petitioner's supporters and send them to him. On polling day he found that many of their agents had been chased away from the Polling stations, or arrested and jailed. When they complained to the Chief Administrative Officer, he advised that they should report to the police. They did but the Police proved powerless. He claims that at almost every Polling Station he visited, he found people ticking votes in full view of the Polling Officials and the public.

Byomuhangi Kaguta who was a Polling Agent for the Petitioner at Rushaaya Polling Station states that on 11 March 2001 on the eve of elections, he was arrested by three armed soldiers of the PPU who had been deployed all over the district. He claims he was thrown in a pit (ndaki) in the barracks where he spent the whole night. The following day, Bulerere and Tukahiirwa also Agents of the Petitioner were brought in custody to join him. They spent the whole of the voting day in the said pit, and accordingly did not vote. He claims there was general harassment of his colleagues on the Petitioner's Campaign Team in Rukungiri especially from the time the PPU and senior administrators actively started on a deliberate process to prevent any form of support for the Petitioner in Rukungiri and Kanungu Districts.

Owembabazi Placidia who was an Agent of the District Task Force for the Petitioner in Rukungiri District stated that on 11 March 2001 with the apparent intention to intimidate and scare her not to vote for the Petitioner, two armed Policemen and one plain clothes Policeman and some other unidentified persons without a search warrant surrounded her premises and said they were searching for military equipment in her possession to wit, guns, uniforms and others. But nothing was found in her possession. Surprisingly, she does not mention the arrest of

Richard Bashaija who claims to have been buried in a pit and she rescued him on 20 February 2001.

Alex Busigye who was in-charge of overseeing the operations and welfare of the Polling Agents for the Petitioner in Kazo County, Mbarara District, claimed that at a Polling Station called Nkunge, he found a monitor for that Station tied up any soldiers and was bundled on Motor vehicle Reg. 114 UBS pick-up in which they were travelling. He does not say that the soldiers were stationed at the Polling Stations or had arrested the Monitor from the Station.

James Birungi Ozo who was a District Monitor for the Petitioner in Kamwenge District claimed that during the campaigns, on 8th March 2001, he was shot at by Capt. Kankiriho, the Commanding Officer of Bihanga Barracks in order to prevent him from campaigning for the Petitioner. The shooting was in the presence of Peter Byomanyire and Engineer Dan Byamukama and LC III Movement Chairman for Ibanda. The bullet did not hit him. He reported the incident to Ibanda Police Station.

Idd Kiryowa who was a Polling Agent for the Petitioner at Nabiseke Polling Station in Sembabule District alleges that after seeing people pushing a heap of ballot papers in the ballot boxes he and his colleague refused to endorse the Declaration of Results Forms but the Presiding Officer and a Security Officer threatened to arrest him if he refused and he signed. He did not indicate what kind of security officer was.

Robina Nadunga who was a registered voter at Bugema A Centre in Bungokho Sub-county, Mbale District stated that on the polling day she met two men including one Masaba who assaulted her with hippo hide stick alleging that she was going to vote for the Petitioner. When her voter's card fell down, Masaba picked it up and never gave it back to her. She reported the matter to LC I Chairman Burahani, who sent her to report to Mbale Police Station. The Police gave her medical forms and a letter to the Presiding Officer at Bugema. She was allowed to vote. On her way back Masaba came with a gun in a vehicle and warned her not to stay in the village. She ran away to Kampala where she stayed for some days.

Julius Okwi, a Polling Agent of the Petitioner at Kereng B Polling Station in Kumi District claimed that at the Polling Station one Okolimong Martin a Clinical Officer at Marela Health Centre and one Ochom Charles the Parish Chief of Kachede had motorcycles which they were

given to ferry people to vote. These people voted and yet their names were not in the Voters Register. they voted against the names of the people who did not collect their cards for reasons of death, migration or others. At the time of counting votes, one Okurut alias Tolong was threatening to shoot one Opolot, a supporter of the Petitioner and he managed to scare other people away from the counting process.

Ediba Justine Emokol who was a Polling Agent for the Petitioner at Kapoken A Polling Station, in Kumi District claimed that on polling day, Haji Okodel came and asked him to leave the Station which he resisted. He was warned that if the Petitioner lost, he would have to leave the area. He ordered the other agent of the Petitioner Iporut to remove his shoes and sent him away from the Polling Stations and his whereabouts are not known to-date.

Dan Okello who was a registered voter at Otara III Polling Station in Erute North Constituency in Lira District claimed that on the polling day as he Saul Okot were approaching Aromo Sub-county Headquarters where his Polling Station was situated they met the Commandant of Aromo UPDF detach Sergeant Sempijja who was being given a lift on motor cycle of the Sub-county Chief of Aromo. The Commandant stopped him and pushed Okot off his bicycle. At Aromo Trading Centre he heard of his imminent arrest and reported to the District Police Commander Lira. He got a letter from the DPC to allow him to go and vote, but on the way they were arrested by the UPDF Commandant at 3.30 p.m. and taken to Wileta Polling Station where he was locked up in a double cabin vehicle and guarded by soldiers till 6.00 p.m.

The Respondents filed many affidavits in rebuttal of the Petitioner's evidence. There is evidence of Security Officers involved in the elections or mentioned by the Petitioner's witnesses. There is evidence of LC Officials, Elections Officials and Election Agents of the 1st Respondent. Then there is the evidence of voters and members of the public. I shall start with evidence of Security Officers.

Major General Jeje Odongo who has been the Army Commander of the Uganda Peoples Defence Forces (UPDF) since 3rd January, 1998 stated that his duties as Army Commander included the overall Command and direction of the UPDF which is enjoined by the Constitution of the Republic of Uganda to preserve the sovereignty and territorial integrity of Uganda. He was by

virtue of his duties a member of the National Security Council, which is enjoined by Constitution to oversee and advise the President on matters relating to national security.

He stated that sometime in January 2001, at one of its routine meeting, the National Security Council noted that there were indications that election-related crimes were on the increase and could jeopardize the general peace and security of the country. During the same period, he received intelligence reports from various parts of the country pointing to the same situation.

On the basis of the foregoing he briefed the Commander-in-Chief/President of the country and indicated to him the need to put a mechanism to handle the situation. About the same time, he had a discussion with the Minister of internal Affairs who pointed out to him the inadequacies of the Police Force in relation to the task ahead and requested the Police be augmented the formation of a joint security task force to oversee, handle and ensure peace and security during the electoral process.

A joint security task force comprised of the Police, the Army, the LDUs and the intelligence agencies was formed, under the Chairmanship of the Army Commander, deputized by the Inspector General of Police and the Director General of Internal Security Organisation. The joint security task force constituted a joint Command structure whereby in each District, the District Police Commander was the overall in charge of security of the District and the Armed forces were put on alert for assistance and when need arose.

He explained that the formation of such a joint security task force was not new phenomena in this country as the same course of action had always been resorted to whenever need arose.

Examples were:

- The 1987 currency exchange exercise
- The 1989 expansion of the NRC elections
- The 1992 Local Council elections
- The 2000 Referendum exercise
- The visit of the United States President Bill Clinton.

For the foregoing reasons, he denied that the 1st Respondent appointed him and other Senior Officers to take charge of the election process for partisan purposes. He denied that the army

was deployed all over the country and that such deployment resulted into any voters voting the 1st Respondent under coercion or fear or that they abstained from voting. To the best of his knowledge, save for the Polling Stations where members of the Armed Forces were ordinarily registered as voters, he could confirm that members of the Armed Forces never went to any Polling Station for the purpose alleged by the Petitioner.

He stated further it is not true that the 1st Respondent organized under the Presidential Protection Unit (PPU) to use force or violence against the Petitioner as alleged in Paragraph 3 (2) d of the Petition. He asserted that members of the PPU, which was a specialized unit for the protection of the President, were deployed in Rukungiri in advance to his visit to the area sometime in January 2001 and their stay was necessitated by his planned return to the area, having taken into consideration the safety of the person of the President and the general peace and security of the area.

He denied the allegations about the members of the PPU harassing, intimidating, or in any way misbehaving against the Petitioner and/or his supporters as alleged by the Petitioner. He stated that on 3rd March 2001, he received a report that there was a clash between groups of people in Rukungiri after the Petitioner had addressed a public rally and in the process some members of the groups pelted stones, bottles and sticks at the soldiers and in the process of self defence, one person was fatally wounded by a stray bullet. He denied that either him or any other officer of the UPDF was partisan in the execution of their duties or that they carried out their duties in such a manner as to promote the candidature of the 1st Respondent as alleged.

The evidence of John Kitembo corroborated that of Major Gen. Jeje Odongo regarding the general deployment of the UPDF. John Kitembo who was the Inspector General of the Uganda Police from April 1999 stated that one of the main duties of the Uganda Police Force by the law is the protection of lives and property and the maintenance of peace and order. In the execution of these duties the Uganda Police often and where the need arises acts jointly and in concert with other security organs of the State such as the army and intelligence Organs. By virtue of his appointment, he is a member of the National Security Council.

He stated further that it is the requirement of the law that the Electoral Commission ensures that the Police and other relevant organs of the State provide adequate security for the conduct of the elections and the protection of the candidate. Given the magnitude of the electoral process of the Presidential Elections for 2001, it was found out that the Uganda Police which comprises about 15,000 personnel were not going to be adequate to Police about 18,000 Polling stations and the related election activities in addition to its ordinary day to day duties.

The intelligence reports he received and incidents recorded indicated a rise in possible election-related crimes which necessitated his requesting the Minister of Internal Affairs on 25th January, 2001 that other security agencies be brought into play during and immediately after the election exercise. The letter read as follows:

“THE PRESIDENTIAL ELECTIONS 2001

As discussed in the National Security Committee, this is to confirm that the Uganda Police Force will require reinforcement from other security agencies.

There are about 17500 polling stations as against the strength of 14800 police personnel. As we police the polling exercise there is need for continued general surveillance, patrols and management of crime and other offences that may be election related.

I am accordingly requesting that other security agencies be brought into play during and immediately after the election exercise.”

Thereafter, a joint Security Task Force was set up between the Uganda Police, the Uganda Peoples Defence Forces and the Intelligence Organs to oversee and manage security in the country during the electoral process and the same was chaired by the Army Commander, by virtue of his seniority, and deputized by himself and the Director General of the Internal Security Organisation. He explained that this was not the first time such a joint security task force has been formed and previous instances include. Those already mentioned by Mj. Gen. Odongo Jeje.

He stated that under the Command of the Joint Security Task Force, security in the district was under the command of the District Police Commander for each district with support from

members of the other security organs. However, policing of the polling stations and tallying centres during the electoral process was only under the Uganda Police save for the army barracks for which the Electoral Commission had made other arrangement. He denied that the Uganda Police abdicated from its duties or that the policing of the electoral process was taken over by the Uganda Peoples Defence Forces as alleged.

He concluded that there were no security related incidents reported during the whole period of the electoral process save for a few electoral malpractices which are under investigations or in the Courts of law and he had not received any reports involving investigations or in the Courts of law and he had not received any reports involving the 1st Respondent. The evidence of Capt. Atwooki B. Ndahura is very relevant to the deployment of the PPU and allegations of intimidation and harassment made against the Unit. Capt. Ndahura stated that he was the Commander of the few troops from the Presidential Protection Unit that were deployed in Rukungiri in advance to the President's visit in January 2001 as usual to prepare and secure the area for his visit on 16th January 2001. Since the President was soon returning to the District for another rally the soldiers under his command stayed in Rukungiri and were camped at the State Lodge. The PPU always deployed and also retained a skeletal presence at Presidential lodges countrywide and reinforced or reduced as was deemed fit by the unit authorities.

In response to the affidavit of Frank Byaruhanga, he denied that the PPU beat up people in Rukungiri for supporting the Petitioner. He stated positively that no PPU soldier moved out of station without him or his knowledge. These soldiers were permanently stationed at the State Lodge in Rukungiri and only a few at a time moved out with his express permission.

On 3rd March-2001 the Petitioner addressed a rally in Rukungiri Town. On that day, no PPU soldiers moved to Bwambara Sub-County. He denied that the PPU moved to Bwambara on 3rd March-2001 or beat up people or dispersed Sebunya's rally alleged by Frank Byaruhanga, but it remained in camp until late in the evening when he moved to town with his escorts in response to the shooting which he heard in town, to find out what was happening. He never participated. He stated that he was not aware of the allegation that a one Zikanga was found with voters' cards and he never instructed Seezi or anybody else to release anybody in connection with election malpractices as alleged by Frank Byaruhanga.

He denied that men from PPU accompanied the Deputy RDC, Mugisha Muhwezi, to Kayonza Sub-country when he allegedly ordered the removal of Besigye's signpost and posters from his offices as alleged in the affidavit of Bernard Masiko. He also denied that the PPU soldiers in Rukungiri District were deployed and were prominently present in Kambuga, Kihiihi, Kayonza and other places as alleged in Koko Medad's affidavit. He suggested that he and his soldiers were based in Rukungiri Town at the State Lodge. The PPU also scouted the purposes of reconnaissance: but this did not include surrounding or entering people's houses.

He denied that the PPU harassed Supporters of the Petitioner or tore the Petitioner's posters or dispersed his supporters as alleged by Koko Medard. He also denied that he chased Hon. Rabwoni Okwir from Rukungiri or dispersed his rallies. He only assisted the Kanungu Police with transport to disperse what the O/C deemed an illegal rally, which Hon. Okwir's unauthorized escort who was a UPDF soldier in active service. The police also arrested two people for uttering abusive words against the President. He further denied that PPU beat up people including Kanyabitooke, Kallist and many others.

The allegation in the affidavit of John Hassy Kasamunyu that Police and PPU hunted Besigye supporters for beating a vigilante in Kihinda Parish in Kirima Sub-county was not true. He denied deploying PPU in Kihinda Parish for the purpose or at all. In reply to the affidavit of Mpwabwooba Kallist, he stated that it was not true that PPU was distributed Station. They remained encamped at their station and never moved out on polling day.

In reply to the affidavit of Bashaija Richard, Capt Ndahura stated that it was not true that he met him in Hotel Holiday or that he drew a pistol on his head. He never met Bashaija in Hotel Holiday on 3rd March 2001 or anywhere else. He stated that the allegation by Byomuhangi Kaguta that on 11th March 2001 he was arrested by armed soldiers from PPU from Bwambara Sub-county was false. There was no PPU in Bwambara on 11th March 2001 and there was no UPDF barracks in that area where he was alleged to have been thrown in a pit.

He denied sending Kijina Warren or any other person to arrest Mubangizi Dennis as he alleges in his affidavit. He stated that it was not true that the PPU went on the rampage and shot at Besigye's Supporters. A joint force of Police and UPDF soldiers from the Garrison Battalion 2nd Division was charged with the security of the town and PPU was not involved. The joint force

was conducting patrols and intervened to disperse a rowdy and violent crowd of the Petitioner's Supporters who pelted stones at civilians and also at the joint security force. The shooting was in the air and meant to disperse them to save the situation from getting out of hand. Two people had already got seriously wounded by the Petitioner's stone throwing Supporters. On the previous day, 2nd March 2001, the crowd of the Petitioner's Supporters had attacked the joint patrol under the command of IP Bashaija and injured 4 soldiers and a policeman who were admitted at Nyakibare Hospital.

The allegations by Mumbangizi Dennis that he was arrested by PPU and taken and beaten in Nyabubare Barracks on 3rd March 2001 were false. There was no PPU personnel who ever left their camp in Rukungiri on that day. In reply to the allegations made by James Musinguzi, he stated that it was not true that he unleashed terror in Rukungiri and he was not responsible for the death of one person and injury of others, which were only a result of clashes between the Petitioner's supporters and the Joint Security Force. The clashes were provoked by the violence of the Petitioner's Supporters.

The allegations relating to the deployment of Major Kakooza Mutale and his Kalangala Action Plan para-military were answered by him in his affidavit. Major Kakooza Mutaale stated that his duties as a Special Presidential Advisor on Political Affairs among others included mass mobilization, which involved organizing conventions, seminars, conferences, workshops and discussion groups for persons interested in discussing and disseminating political opinions. In pursuance of his duties in mobilization, he organized a convention of movement mobilisers from all over the country in Kalangala.

The convention was held from the 25th to 28th September 2000 and was addressed by several guest speakers notably Hon. Ruhakana Rugunda, the Minister in charge of the Presidency and the 1st Respondent. The Convention at its closure adopted some policies known as the Kalangala Action Plan. A photocopy of the proposed plans was attached to his affidavit. He denied that the people who attended that convention were members of a para-military force as stated in the petition and he does not lead any para-military group. The convention was attended by citizens of Uganda of diverse professions and occupations. A list of the persons who attended the Convention was attached to his affidavit. He stated that he knew from his military training that the three days spent at the Convention in Kalangala was too short a period to train and or drill

civilians into para-military force and no military training ever took place. The Convention was attended by the 1st Respondent in his capacity as president of Uganda and the participants presented the 1st Respondent with a Memorandum. A photocopy of the Memorandum was attached to the affidavit. The 1st Respondent in his capacity as President of Uganda addressed the Convention. A copy of his speech was attached. After the Convention in Kalangala, the various mobilisers who attended returned to their respective districts and countries to continue with their work of mobilization. He denied the allegations made by Hon. Winnie Byanyima that he alone or with armed men beat up and intimidated the Petitioner's Supporters at Mbale Municipality.

Mugisha Muhwezi who was the Deputy Resident District Commissioner for Rukungiri District against whom many allegations were made responded to the affidavits of Bernard Matsiko, Kakuru Sam, Mpwabwooba Callist and Koko Medad. He denied the allegations made by Bernard Matsiko and stated that it was not true that on 9th February 2001, he went with PPU, GISO and Sub-county Chief of Kayonza Sub-county to the Petitioner's campaign office and ordered the office attendant to remove the Petitioner's sign post and posters and keep them inside the office. Throughout the campaign period he never went to or entered the said office at all as alleged by Matsiko. He knew the LC III Chairman of Kayonza Sub-county as Karibwende but not Beikirize.

With regard to allegations by Kakuru Sam Mpwabwooba Callist he also denied them. He stated that he was not aware that PPU used his vehicle as alleged by both of them. The PPU had its own transport and never used his vehicle. He stated that allegations contained in Sam Kakuru's affidavit were false. He never returned to Kihiihi Police Station to forcefully release the alleged assailant. He never returned to Kahiihi to round up Besigye's Agents in Kihanda as alleged by Kakuru Sam. It was not part of his job to round up or arrest people. The allegations that the RDC and himself forced Kakuru to sign the Declaration of Results Forms was false. He was not aware that Sam Kakuru was the Petitioner's Agent for any Polling Station on polling day and he did not know whether he signed or not.

He did not know Mpwabwooba Callist and he never pointed a gun against him as he alleged in his affidavit. In reply to Koko Medad's allegation, he stated that he never travelled with PPU to point out the Petitioner's Supporters to be harassed. He did not know which people supported Besigye or any other candidate and never harassed anybody or used PPU to do so.

Mutebe Jerome was the Officer in charge of Kanungu Police Station in Karima Sub-county. He denied the allegations made by Sam Kakuru and John Hassy Kasamunyu. He stated that on 10 March 2001 the Chairman LC I of Kihanda reported to his station that Yatuhonde had been abducted by persons led by Kasamunyo and Tukahiirwa Esau on 9 March 2001 and he did not know his whereabouts. Investigations by the Officer-in-charge of CID revealed that Yatuhinde was a Supporter of the 1st Respondent and the 1st Respondent and the abductors were Supporters of the Petitioner.

He and the Officer-in-charge of CID, the LC I Kihanda and his staff proceeded to Kihiihi Police Station to verify the allegations. On the way they met Yatuhinde who was identified by the area LC I Chairman. Yatuhinde revealed to them the nine culprits who were arrested and the case referred to Rukungiri Police Station. He denied that Kakuru was manhandled while he looked on because no policemen were deployed in Karuhanda Polling Station due to shortage of manpower.

As regards the allegations made by Kasamunyu, Mutebebe stated that Kasamunyu had reported to his Police Station that the motorcycle had been stolen yet it was brought to the Station in the company of a policeman. When he demanded documents of ownership from Kasamunyo, he did not return. Later an NGO called Uganda Farmers Association (UNFA) wrote to him stating that the motorcycle should not be released to him because it belonged to the NGO and that the Chairman of UNFA was to personally collect the motorcycle from the Police Station. It is not clear who is telling the truth, Kakuru and Kasamunyu or the Police Officer, Mutebebe. One side must be telling lies.

Lt (Rtd.) Jamil Kakombe of Kambuga Rukungiri District denied the allegations made by Koko Medad. He stated that he never worked with Polling Officials at his Polling Station at Nyakulungiira 1 (L-Z) Ruhangazi Parish where he voted. He was not armed when he went to cast his vote, nor did he guard any ballot box or swear to kill anybody at his Polling Station. He went away at 8.00 a.m. and did not return to the Polling Station. He did not prevent or allow anybody to vote or witness the counting of votes as he had left the Polling Station.

Peter Mugisha who was the District Task Force member for the 1st Respondent's Task Force for Rukungiri District and a District Monitor for his Candidate also denied the allegations made by Koko Medad. He denied chasing away the Petitioner's Agents from the ballot box because he

saw agents seated together at the Polling desk. Mugisha stated that he did not see or hear of any deployment of PPU forces in the Polling Stations he visited before during and after the elections and in his view the voting process was free and fair.

Samuel Epodoi who was the district Commander of Mbarara District stated that during the elections he headed a joint security command comprising of the Uganda Police Force and Uganda Peoples Defence Forces, which was constituted for purposes of monitoring security in the district. He denied the allegations made by Mary Frances Ssemambo that in many Polling Stations particularly in Nyabushozi County and Isingiro South Petitioner's Agents were harassed, arrested, beaten, tied up or threatened with violence and chased away by heavily armed UPDF soldiers, LDUs and the 1ST Respondent's Agents.

He stated that on polling day both Nyabushozi and Isingiro South County were policed by mobile crews constituted by both Policemen and UPDF soldiers under the leadership of Police Officers. He denied that the alleged incidents never took place and the allegations of harassment of the Petitioner's Agents were false. He asserted that on the election day the whole of Mbarara District was peaceful and only two election related incidents were reported.

Emoding Anthony who was the District Police Commander Lira admitted that Dan Okello came to Lira Police Station and reported to him an impending arrest by one Commandant Sempijja at Aromo UPDF detach. He wrote to the said Commandant a note to allow Okello to vote without hindrance. He denied that Okello recorded a statement with him or that he came back to him the following day. He stated that elections in Lira were free and fair and held in a peaceful and conducive atmosphere.

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Sempijja Gerald who was the Commandant of Aromo UPDF detach stated that he received intelligence report on 11 March 2001 that Dan Okello was mobilizing voters to create insecurity

during the matter to the Commanding Officer Major Bylima of Aromo UPDF detach on the same day. In the evening Okello came to him with a note from the DPC Lira requesting him to allow Okello to vote. He denied having at any time refused Okello to vote. He also denied arresting Okello at any time or visit Waleta Polling Station as he voted at Ojala Polling Station about 10 miles from Waleta, and thereafter he returned to Aromo UPDF detach for duty 13 miles from Waleta where he stayed.

Karebanda Godfrey a registered voter at Kanungu Polling Station in Kanungu Town denied the allegations made against him by Kakuru, Tugume, Kasamunyu and James Musinguzi. He denied talking to Musinguzi nor seeing him on polling day. He voted at his Polling Station at 11.00 a.m. and never met the Chairman LC III at the station. He denied directing directing the smashing of the windscreen of the vehicle as alleged by Kakuru. He stated that when he reached Kanungu on that day, he found the windscreen already smashed and there was chaos with the Petitioner's Supporters chasing people with pangas. He called the Police who took over the matter.

He denied that on 10 February 2001 he went with the Deputy RDC to Kahiihi to forcefully release a suspect. He denied that he returned to the Polling Station and also denied that he and the Deputy RDC forced Kasamunyu to Declaration of Results Forms. He further denied that he was in the seizure of Kasamunyu's motorcycle or handing it over to the Police. He denied Musinguzi allegations that he used to move with a gun and stated that he does not own one.

He also denied Bashaija's allegation that he arrested him. He denied setting him up any roadblock in Kanungu Town on 20 February 2001. He denied that Bashaija and others were arrested and thrown on a pick-up and taken to Karengye. He denied that Bashaija was thrown in a pit and buried. He stated that he did not know Bashaija and did not know why he raised totally false allegations against him.

Korutookyee Geneozo was the Presiding Officer at Bikomero Polling Station in Rukungiri District. He denied that 14 soldiers were deployed in his area and surrounding villages before and during the elections. He stated that all the agents were allocated a bench close to the polling desk and none was chased away. He denied being the Presiding Officer at Kifunjo as alleged by Mpwabwooba.

James Mwesigye who was the Resident District Commissioner (RDC) Kabale District denied the allegations made by Sande Wilson because the events alleged never happened. He also denied the allegations made by Antelli Twahirwa. He stated that none of the Government Officials by Twahirwa were involved in any form of election malpractice before or during the elections. The letter to the Electoral Commission was not copied to him as the Returning Officer Kabale. Didas Kanyesigye Vice Chairman LC 5 – Kable District Council also denied interfering with the Petitioner's Polling Agents in Kabale District as alleged by Sande Wilson.

Namara Merab was among those injured in the violence. She stated that on 3 March 2001 at about 5.00 p.m. she was standing on a shop veranda in Rukungiri Town when she was hit by a stone which came from the Petitioner's Supporters and she got injured on the head. That day, the Petitioner had addressed a rally in the stadium. When they approached where she was, they started throwing stones and before she could run away one stone hit her on the head. She was rushed to Rwamahwa Health Centre as the Police tried to chase away the Petitioner's Supporters.

Jaffar Olupot who was a Polling agent for the 1st Respondent at Kapoken/Akalabai A-E Polling Station denied the allegations made by Ediba as false because Haji Odokol never visited the Polling Station and nobody ever chased him away from the Polling Station as evidenced by his signing the Declaration of Results Form which was annexed to the affidavit. He stated that he never heard of any person by the names of Iporut and nobody was arrested at the Polling Station.

Hon. Capt. Charles Byaruhanga who is a member of Parliament for Kabale County Kamwenge District, stated that he was actively involved in the campaign for the last Presidential Elections. He admitted knowing Betty Kyompaire and Henry Muhwezi. He denied threatening, intimidating or harassing anyone during the election campaign as alleged in the affidavits of Betty Kyampaire, Muhwezi and Moses Tibanyendera.

On 28 February 2001 he addressed a rally at Kyakazafu but did not see nor speak to Tibanyendera nor did he attend a party at Byodi Trading Centre. On that day Noah Kassim stayed at Kyakarafu Trading Centre and did not even attend the rally. He denied tearing down posters of any candidate as alleged by Tibanyendera. He also denied being interrogated by any Police Officer or Human Rights Commission about allegations of torture, intimidation or harassment of any person and he was not aware of any complaint having been filed against him.

He asserted that he did not try to convince Muhwezi Henry to support the 1st Respondent nor did he do so forcefully or by intimidation as alleged.

In answer to Mary Nadunga's affidavit, Muhamud Masaba of Bungokho Mutoto Sub-county, Mbale District stated that he knew Nadunga as a neighbor and Member of the Petitioner's Task Force of Bungokhtitency. He admitted meeting Nadunga at the Bodaboda Stage in Munkaga Trading Centre in the company of Wamae Kenneth the Sub-county Chief of Bungokho-Mutoto but it was not true that he assaulted her with a hippo hide stick. He denied that he picked her voter's card while declaring that she was not going to vote for the Petitioner. He stated that he was not rebuked by anybody for assaulting Nadunga.

He admitted going to Mbale Police Station on the polling day but this was in respect of a case of attempted arson of his house and vehicle committed the previous night, and in respect of Nadunga's case. He denied that on polling day after Nadunga had voted, he stopped her on her way home and he warned her not to stay in the village. He stated that he was not a member of the security forces and had never held a gun.

Gesa Ahmed who was the Defence Secretary LC II Kulumba Parish and the Gombolola Internal Security Officer (GISO) of Kityelera sub-county in Mayuge District, denied the allegations made by Fazil Masinde. He stated that during the campaigns and elections he remained neutral and only performed his duties of monitoring the general security situation in the Sub-county. He denied threatening any voters at Busakira B Polling Station as alleged by Masinde.

Mudaaki Emmanuel who was the Presiding Officer at Bulangata Trading Centre Polling Station also denied Masinde's allegations. He said he did not receive any complaint from him or any other person. The voting proceeded smoothly and in transparent manner and all agents signed the Declaration Results Form.

Karungi Rosebell who was the Presiding Officer at Busheka 2 (A-L) Polling Station in Bukanga County Mbarara District denied the allegations made by Peter Byomanyire. She stated that the Polling Agents of the Petitioner namely Ntaho and Musipari were present and remained at the Polling Station throughout until they signed the Declaration of Results Form. She denied the allegation that the agents sat 30 metres away.

In answer to Ediba Justine's allegations Haji Umari Okodel the LC 5 Chairperson of Kumi District stated that he does not know not even met Ediba. On polling day he did not visit any polling station at which Ediba was an Agent. He never ordered one Iporut to remove his shoes nor did he send him away from the Polling Station. He denied the allegation that he monitored the ticking in the basin and watched many people during the voting nor did he intimidate anyone to vote for any candidate against his wish.

Findings of Intimidation:

I accept the evidence adduced by the petitioner. It is detailed, consistent and credible. The denials and explanations in the Respondent's evidence have not sufficiently rebutted the various allegations of intimidation made by the Petitioner. It is not disputed that the Army was deployed throughout the country at the time of voting. It is bit also disputed that the PPU was stationed in Rukungiri throughout the period of election campaign and during polling.

I find that the highest concentration of intimidation, violence and harassment took place in Rukungiri, Kanungu and Kamwenge. The intimidation interfered with the Petitioner's campaigns in those Districts. In Rukungiri and Kanungu, it was perpetuated mainly by the PPU. In Kamwenge it was done by UPDF soldiers.

The intimidation of Agents and supporters extended to closing branch officers and tearing of posters, disposing consultative meetings and rallies, abduction, arrest and causing injury or death to Agents and supporters. On polling day, intimidation consisted of ordering voters to vote for the 1st Respondent and harassing Petitioner's Polling agents.

Elsewhere in the country, the degree of intimidation was less pronounced. In Kabale intimidation seems to have been perpetuated by the RDS, GISO s and some LC Officials. In Mbale, Kumi and Lira there were isolated intimidation by UPDF soldiers, LC Officials and the 1st Respondent's Supporters who were civilians.

There is however no evidence that the general deployment of the Army during the polling period was a source of intimidation and harassment of the Petitioner's Agents and Supporters. There is also no evidence that Major Kakooza Mutale intimidated Agents and supporters of the Petitioner.

My conclusion on intimidation by UPDF and PPU is that it was established to my satisfaction that they caused intimidation and harassment to the Petitioner's Agents and Supporters but it was limited to a few areas most of which are mentioned above. This intimidation undermined the principles of free and fair election and transparency.

Issue No.3: Effects of Non-compliance with the Provisions and Principles of the Act on the Results.

I shall now consider the third issue which is whether if the first and second issues are answered in the affirmative, such non-compliance with the provisions and principles of the said Act, affected the result of the election in a substantial manner.

In his Petition, the Petitioner avers in para 3 (1) (y) that such non-compliance affected the result of the election in a substantial manner in the following instances.

- “(i) The number of actual voters on the Voter Roll/Register remaining unknown and some people were disfranchised; and the number of votes cast during the election at certain Polling Stations exceeded the registered number of registered votes or the ballot papers delivered at the station.***
- (ii) the identity of the voters could not be verified.***
- (iii) the electoral process regarding the voter's register was full of serious flaws and voters were denied the chance and sufficient time to correct those flaws.***
- (iv) No sufficient time was allowed for the Petitioner and his agents and supporters to scrutinize the voters roll/register and take corrective measures regarding the same.***
- (v) The petitioner's Polling Agents were denied the opportunity to safeguard their Candidate's interests at the time of polling, counting and tallying of votes and in the absence illegal voters voted while legitimate voters voted more than once.***
- (vi) The Petitioner was unduly hindered from freely canvassing for support by the presence of the Military and para-military personnel who intimidated the voters.***
- (vii) It cannot positively be ascertained that the 1st Respondent obtained more than 50% of valid votes of those entitled to vote.***

In answer to the Petition, the 2nd Respondent refuted the allegations and stated:

“(a) that there is no proof that the 2nd Respondent did not comply with the provision of the Presidential Elections Act 2000 and the Electoral Commission Act 1997 and that non-compliance in any which is not admitted – affected the result in a substantial manner.

(b) that in any case non-compliance with provisions of the Electoral Commission Act is not ground for nullification of results of a Presidential Election.

(c) That the number of Voters on the Voters Register/Ross was known and no persons were disenfranchised and votes were cast following the Voters Registers.

(d) It is not true that the identity of voters could not be verified.

(e) There are no serious flaws in the Voters Register and no voters were denied a chance to scrutinize the Registers with a view to correcting flaws if any.

(f) It is not true that the Petitioner’s Polling Agents were denied the opportunity to safeguard the interests of the petitioner at the time of polling, counting and tallying of votes and there is no evidence that illegal voters voted and legitimate voters voted more than once as alleged.

(g) The 2nd Respondent did not hinder the Petitioner from freely canvassing for support but on the contrary the Petitioner traversed the whole country during the campaign period.

(h) From the results declared by the 2nd Respondent, it is evident that the 1st Respondent, it is evident that the 1st Respondent obtained 69.3% of the valid votes cast.”

The Lead Counsel for the Petitioner and two of his colleagues addressed us on issue No. 3 Mr. Mbabazi who was the first to address us submitted that there are two types of non-compliance. The first one is that which goes to the root of the Constitution. Such act is substantial because the Constitution is supreme. The second is non-compliance with the Act. He contended that the failure to have an up-dated register offended a cardinal principle and therefore affected the

results of the election and made the elections a sham. The involvement of the army affected the freedom of elections.

Mr. Mbabazi referred to the history of the country and the desire to hold free and fair elections as contained in Article 1 of the Constitution and the National Objective and Directive Principles of State Policy. He submitted that the non-compliance affected substantially the constitutional values – the value of secret ballot. He contended that substantial effect was not a question of quantity. As regards quantity, he cited instances where ballot papers were stuffed in 22 districts and over 200 ballot papers stuffed at one polling station and about 600 people voted at a sham polling station. He also referred to falsification of results. It was his contention that the results were substantially affected if seen in the context of free and fair elections. However, Counsel was unable to state to what degree the results were substantially affected.

Mr. Walubiri, Learned Counsel for the Petitioner, also addressed us on Issue No. 3. He submitted that the principles of the Act were derived from the constitution particularly the need to reverse our political history of political and constitutional instability as indicated in the Preamble to the Constitution. The principles in the preamble are meant to promote peace, freedom, democracy, equality, social justice and progress. There are democratic principles recognized in the National Objective and Directive Principles of State Policy. The principles are meant to empower and encourage active participation of all citizens at all levels in their governance. This tied up with Article 1 of the Constitution, which deals with sovereignty of the people. In terms of Presidential Elections, it was Mr. Walubiri's submission that the overriding principle and benchmark was that the elections must be free and fair. He referred to Article 1 94) of the Constitution and Section 12 of the Commission Act.

Learned Counsel then submitted that what the Court has to decide is whether the non-compliance affected the results in a substantial manner. The problem was what test would be used to determine "substantial manner". He contended that the submission by Dr. Khaminwa and Mr. Kabatsi for the Respondents that the test was one of the numbers was a wrong approach.

Mr. Walubiri submitted that the authorities both Counsel relied on of Mbowe v Eliufoo (1967) EA 240 Ibrahim v Shagari (1985) LCR (Cont) 1 were at variance with the underpinnings of the values of the Constitution. In his view Mbowe v Eliufoo (supra) was dealing with political and

constitutional setting that is not in accordance with the democratic setting in Tanzania of today, and the decision should be discarded as out of date. He submitted that instead the Court should rely on the case of Attorney General v. Kabourou (1995) 2LRC 757 which is more modern.

As regards the Nigerian case of Ibrahim v. Shagari (supra) he submitted that it should be ignored because it exposes poor jurisprudence. In his view, the decision did not assist to promote social and economic stability since the decision was followed by a military dictatorship.

He contended that it is dangerous to use numbers. To determine whether the non-compliance affected the results is a value judgment, a qualitative decision not based on quantities. Counsel submitted that not all numbers can satisfy free and fair elections and if the election is not free and fair, then such an election exercise is invalid and could be nullified if it went to the root of the matter.

Mr. Walubiri emphasized that the Court has to put meaning to a concept of free and fair election, which entails looking at the entire electoral process from voter registration to date of election and the voting, and tallying of the results. There is a need to assess the entire process to determine whether it was free and fair, and make a value judgment. Counsel cited his book on Constitutionalism at Cross Roads (supra) where there is a quotation from G. Grill, Free and Fair Elections International Practice 1994.

He submitted further that non-compliance cannot be quantified in numbers for instance, intimidation, lack of freedom, and it is impossible to quantify their effect. His argument was that numbers are relevant for proving non-compliance but for proving the effect, one had to look at the principles and values, the gravity, the climate and the activities to see how they affected the results. The question, he submitted was, did the people really exercise their sovereignty? Mr. Walubiri contended that the opinion of the International Observers was not based on any numbers. The 2nd Respondent relied on their opinion not numbers. He submitted that the elections were not free and fair.

Learned counsel contended that even on numbers, the Petitioner had adduced evidence to prove substantial effect. He referred to the evidence of Frank Mukunzi who examined 254 Declaration of results Forms and made a report of his analysis. He also cited the evidence of Twinomasiko

Jackson which showed a voter's roll printed on 9 March 2001 which showed that all voters were supposed to have voted except one on each page. He submitted that this was not voting.

Mr. Walubiri then referred to the affidavit of Ndomugenyi Robert which showed that a total of 687 people voted whereas the tally sheet certified by the Commission indicated that the 1st Respondent alone got 781.

He cited Mr. Mukunzi's opinion, which was that nation wide there were 2,579,802 ghost voters that is one in every 3 ballots because of un-updated register, and therefore the numbers made a substantial effect. According to Counsel, Mukunzi showed that the gap had narrowed. He relied on the case Mbowe v Eliufoo (supra) which stated that if in making adjustments the gap appears to narrow the results would be annulled.

Winding up submissions for the Petitioner on Issue No. 3, the Lead Counsel for the Petitioner, Mr. Balikuddembe emphasized that the 2nd Respondent did a shoddy job in organizing and managing the Presidential elections. The 2nd Respondent had a minimum of four to prepare for and cause the election to be held under conditions of freedom and fairness but it failed to do so.

Learned Counsel referred to the chairman wrote to the 1st Respondent begging him to rescue the electoral process which was being adversely affected by the deployment of PPU and questioned whether the Court could hold that the elections were held under conditions of freedom and fairness when the petitioner was being prevented in the killing of one of his supporters in Rukungiri by a gun wielding soldier.

Mr. Balikuddembe submitted that the Petitioner had led evidence showing that the 2nd Respondent failed to comply with the preparation of the register and up-date the register on continuous basis, that the Petitioner was unable to appoint Polling Agents for additional polling stations and that the failure to comply with the provisions and the principles embedded in the Act affected the results in a substantial manner both in quality and quantity.

Mr. Kabatsi the learned Solicitor General submitted that the incidents were too few to prove that the elections were not conducted under conditions of freedom and fairness. He referred to the evidence of the Chairman of the 2nd Respondent which attached reports to the following

international Observers who declared that the elections were free and fair: the Libyan Ambassador, the Tanzanian Delegation and the Gambian Delegation.

The learned Solicitor General also relied on the Reports of Returning Officers who testifies that the elections were free and fair, namely from Kisoro, Kitgum, Mayuge, Tororo, Rukungiri, Ntugamo and Kasese. He also referred to the affidavit of Mr. Francis Bwengye, a former presidential Candidate, who stated that there were no malpractices in the elections. Mr. Kabatsi referred to the interview of Bob Mutebi with the Petitioner in Rukungiri after casting his vote where the Petitioner did not say that the election was not free and fair. Lastly Mr. Kabatsi referred to the affidavits of Maj. Gen. Jeje Odong, Army Commander, and Mr. John Kisembo, Inspector General of Police who stated that the conditions under which the elections were held were free and fair. The learned Solicitor General concluded that the Petitioner had failed to discharge the heavy burden of proof that the elections were not free and fair.

In his submission Dr. Khaminwa learned counsel for the 1st Respondent emphasized that this was not an ordinary petition but one that is in respect of the President of the Republic of Uganda, who is the Head of State and Head of government. He cited the case of Bush v Gore Supreme Court of United States No. 00-949 December 12, 2000 in which the US Supreme court emphasized that they were dealing with an election of the President of the United States. The Supreme Court said,

“We deal here not with an ordinary election but with an election of the president of the United States. In Burroghs v United States, 290 US 534 (1934) we said,

“while presidential electors are not officers or agents of the federal government (Green 134 US 377) they exercise federal functions and discharge duties in virtue of authority conferred by the Constitution of the United States. The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be strongly stated.”

Learned counsel pointed out that the President is the only Chief Executive Officer of the Nation who is elected by universal adult suffrage, and is not confined to a small constituency. He observed that this was the first petition coming before the Supreme Court under the 1995

Constitution there has been an election in 1996 but there was no petition. This Court has no authorities on the petition as the only authorities were from inferior courts on election of Members of Parliament. It was his submission that the Court will therefore set the law on this matter.

On the question of substantial effect, Dr. Khaminwa referred to the case of Ibrahim v Shagari (1985) LRC Cons. 1 where it was held that “substantial” does not carry the same meaning as “absolute compliance”. He referred to judgment of Irikefe, JSC who said, at page 91

“it is not disputed that only one return is contemplated within the intendment of Section 7 of the Electoral Act, 1982 and that “exhibit B in this case is such return. A return to an election will not be avoided if it appears to any court hearing the petition that challenges the return that the Electoral Act. (See Section 123 (1) of the Electoral Act). This is that part of the Act relied upon by the appellant and which deals with electoral malpractices. The word used in the section is substantial, which does not carry the same clout as absolute compliance.”

Counsel also referred to the judgment of Nnamani JSC at page 21 where he stated,

“As we rightly submitted by the learned Attorney General of the Federation, Chief R. O. Akinjide, S.A.N. (for the 2nd Respondent). The Court is the sole judge and if is satisfied that the election has been conducted substantially in accordance with part II of the Act will not invalidate it. The wording of Section 123 is such that it presumes that there will be minor breaches of the regulations but the election will only be voided if the non-compliance so resulting and established in court will take into account the effect if any which such non-compliance with provisions of Part II of the Electoral Act 1982 has had on the result of the election.

He submitted that the wording of the section presupposes some minor breaches and that the Nigerian Section is substantially similar to the Uganda Provision.

Referring to the affidavit of Mr. Frank Mukunzi, Dr. Khaminwa argued that his evidence was in favour of the Respondents because he stated that it was not possible to tell how the irregularities

affected each candidate. It was counsel's contention that one has to show the mistake affected the results in a substantial manner.

Learned counsel referred to the votes obtained by the two candidates. He pointed out that the 1st Respondent scored 5,123,360 votes, which was 69.3% of the votes cast. The Petitioner scores 2,255,795 votes, which was 27.8% of the votes cast. He submitted that this was a big number of votes and that one could only score the percentage of 27.8% when the elections were free and fair. He observed that the other three candidates got smaller numbers but they were contended. He concluded by submitting that the difference in votes between the 1st Respondent and the Petitioner of more than three million was a colossal number.

The first question to address is what is the yardstick used in determining the effect of non-compliance on the results. Mr. Walubiri for the Petitioner advanced the proposition that this question is determined by a value judgment – whether the election has been free and fair. He played down the role of numbers. Mr. Walubiri relied on the opinion of the Court of appeal of Tanzania in the case of AG v Kabourou (supra).

In that case it was held that the underlying principle that election should be free and fair meant that an election which was g and unfair was not an election at all as envisaged by the Constitution and the Elections Act, and anything which rendered an election, and any law which sought to protect unfree or unfair elections from annulment would be unconstitutional. On the other hand, a non-compliance with the Elections Act might affect the election results, but not necessarily make the election unfree and unfair. But this opinion was obiter dictum and was not the ground on which the election was declared void.

I am of the view that the value judgment is only relevant in considering the process of the election, and the principles underlying the process. At the end of the elections a value judgment can be made that an election was not free and fair, but that is not the result of the election. It is only one of the principles of non compliance with which may render the election to be set aside if it has affected the result in a substantial manner.

It has been held that the “result” means the success of the candidate over another and not merely an alteration in the number of votes given to each candidate: Clare, Eastern Division, Case (1892) 4 QM. & H, 162 at p. 164. In Ruffle v Rogers (1982) QB 1220, (1982) 2 ALL ER 157,

where votes were wrongly rejected and inclusion of such votes would have resulted in a tie, which would then have been determined by the Returning Officer by lot such a tie was a “result” for those purposes. The result of the poll was that the conservative candidate was defeated by a majority of two.

The second question to sounder is when is the result to be affected by the non-compliance with the Act or irregularities in the election. Courts in Uganda have relied greatly on the decision of Georges, CJ in Mbowe v Eliufoo (supra) in defining the phrase “affected the results of the elections” which appeared in Section 99 (b) of the National Assembly (Elections) Act 1964. Georges, CJ referred to the case of Re: Kensington North Parliamentary Election Petition (1960) 2 ALL ER 150 where the Court said.

“Even if the burden rested on respondent, I have come to the conclusion that the evidence is all one way. Here out of a total voting electorate of persons who recorded thee or possibly four are shown by the evidence to have voted without having a mark placed against their names in the register and each of them voted only once. Even if one was to assume in favour of the Petitioner that some proportion of the remainder of 111 persons, whom we have not seen were in somewhat similar case, there does not seem to be a thread of evidence that there is any substantial non compliance with the provision requiring a mark to be placed against the voters names in the register; and when the only evidence before the court is that of three, or possibly four people who are affected in that they recorded their votes without having a mark placed against their names, each voted only once, one cannot possibly come to the conclusion that although there was a breach of the statutory rules, the breach could have had any effect on the result of the election. Even if all the 111 persons were similarly affected, it could not possibly have affected the result of this election; therefore although there was a breach in regard to the matter set out in para 3 (i) of the petition, I should be prepared to say that there was a substantial compliance with the law in this respect governing elections and that omission to place a mark against the names did not effect the result.”

Georges, CJ defined the phrase affected the result in this way, at page 242,

“In my view in the phrase “affected the result,” the word “result means not only the result in the sense that a certain candidate won and another lost. The result may be said to be affected after making adjustments, the effect of proved irregularities the contest seems much closer than it appears to be when first determined. But when the winning majority is so large that even a substantial reduction still leaves the successful candidate a wide margin, then it cannot be said that the result of the election would be affected by any particular non-compliance of the rules.”

In Mbowe v Eliufoo (supra) that unsuccessful candidate in the National Assembly elections petitioned for an order that the election in one constituency was null and void, the ground for the petition were that polling agents were not properly appointed, the eligible voters did not vote because ballot papers were exhausted; and that threats were used to influence voters to vote for the Respondent.

The results of the election were as follows:

- Number of voters in the list - 30,889
- Votes for the Petitioner - 6,393
- Votes for the Respondent - 20,213
- Majority margin - 13, 820

The High Court of Tanzania held that non-compliance with the provisions of the law was not substantial and did not affect the results of the election.

In Gunn v Sharpe (1974) IQB 808 it was held the irregularities had affected the result. This was a local government election for the three councilors. At ten Polling Stations 102 papers were rejected because they did not bear official mark. Of the rejected papers 98 came from one Polling Station, constituting more than half of the 189 papers issued at the station. If the votes on rejected papers had been counted, two petitioning candidates would have been successful instead of the Respondents who had in fact been elected. The Petitioners sought a declaration that the election was not conducted substantially in accordance with the law as to elections within S. 37 (1) of the Representation of the people Act 1949 and that the error affected the result of the election.

It was held that the errors were substantial and such as to be likely to affect the result of the election, since they had resulted in more than half the voters who had sought to vote at one Polling Station being disfranchised and this prevented them from voting. It was held further that since the errors had in fact affected the result the election of the Respondents would therefore be declared void.

In Morgan v Simpson (1974) 3 ALL ER 722, (1975) 1 QB 151, the elections were declared invalid. The facts of the case were that 23,691 votes were cast in a local government election. Forty-four ballot papers were rejected because they were not stamped with the Official mark as required by the applicable rules, the error having been made by the Polling Clerks. It was established that if the 44 ballot papers had not been rejected, but had been counted, the Petitioner who was a candidate at the election would have won by a majority of seven votes over the Respondent. It was held that where breaches of election rules though trivial had affected the result, that by itself was not enough to compel the court to declare the election void (though conducted substantially in accordance with the law as to elections. The elections were declared invalid.

Lord Denning made interesting propositions regarding the law governing elections, at (1975) 1 QB p. 164,

“Collating all these cases together I suggest that the law can be stated in these propositions:

- 1. If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result is affected or not. That is shown by the Hackney Case of OM & H 77, where two out of 19 Polling Stations were closed all day, and 5,000 voters were unable to vote.***
- 2. If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls – provided that it did not affect the result of the election. That is shown by the Islington Case 17 T.LR 210 where 14 ballot papers were issued after 8.00 p.m.***
- 3. But even though the election was conducted substantially, in accordance with the law as to elections nevertheless if there was a breach of the rules or a mistake at the***

polls – and this did not affect the result – then the election if vitiated. This was shown by Gunn v Sharpe (1974) QB 808 where the mistake in not stamping 102 ballot papers did affect the result.

In the Borough of Hackney, Gil v Reed (1874 XXXI L.T. 69 Grove J said,

“The result of the election would in my judgment be affected if instead of majority or 10 or even 10, upon scrutiny the matter might be very different.”

In Ibrahim v Shagari (1985)LRC Const. 1 Nnamani JSC held page 19 that the word return had been defined in Section 164 of the Electoral Act 1982 No.8 as –

The declaration of the result of the election in accordance with the appropriate provisions of this Act and includes a certificate of return in form EC 8 in the Schedule to this Act.”

The learned Justice of the Supreme Court added.

“It is my view that the result of the election is in Exhibit B and Exhibit B1. It was by Exhibit B1 that the 1st Respondent was declared as winning the election.”

Although the provisions in the English and Nigerian electoral laws are slightly different from the Ugandan law, I am of the opinion that the authorities from these countries are relevant and persuasive.

In the instant petition, the result of the election is contained in the Declaration of Results Form 3, which was signed by the five members of the 2nd Respondent and its Secretary, and was dated 14 Math 2001. The result indicated the number of valid cast, the total number of valid votes cast for candidates, the total number of invalid votes and the percentage of the total number of votes cast, and the candidate who was declared to have been elected as president.

In term of figures, the result was as follows;

- | | | |
|------------------|---|-------------------|
| 1. Awori Aggrey | - | 103,915(1.4%) |
| 2. Besigye Kizza | - | 2,055,795 (27.8%) |

- | | | |
|------------------------------|---|-------------------|
| 3. Bwengye Francis A. W. | - | 22,751 (0.3) |
| 4. Karuhanga K. Chapaa | - | 10,080 (0.1%) |
| 5. Kibirige Mayanja Muhammed | - | 73,790 (1.0%) |
| 6. Museveni Yoweri Kaguta | - | 5,123,360 (69.3%) |

The total number of votes cast was 7,389,691. The total number of invalid votes was 186,453 amounting to 2.5 % of the total number of votes cast. The total number of votes cast was 7,576,144 amounting to 70% of the total number of registered voters. The candidate who obtained the highest number of votes in the election and the votes cast in his favour being more than fifty percent of the valid votes cast at the election and was declared elected President of the Republic of Uganda was Museveni Y. Kaguta, the 1st Respondent.

Section 65 (a) of the Act lays down the principle that an election cannot be set aside-compliance with the provisions and principles of the Act has affected the result in a substantial manner. Dealing with a similar provision in the Parliamentary Elections Statute, in the case of Odetta v Omeda, Election Petition No.001 of 1996, Ntagoba PJ, said,

“What must the Petitioner prove? He must prove that whatever non-compliance with the provisions of the Statute must have affected the result in a substantial manner. Such proof would involve an analysis of the result.”

In Katwiremu Bategana v Mushemeza Election Petition No.1 of 1996 (HC – Mbarara) the irregularities complained of by the Petitioner included lack of or improper display of voters register, voting by unregistered voters, improper assistance to voters to mark ballot papers under pretext of disability, impersonation, voting with cares not in own and voting more than once by some voters. Although some of the irregularities were proved to have been true, it was held that the irregularities had not affected the result of the election in a substantial manner. Musoke Kibuuka J, said.

“Although the Petitioner has in many instances proved to the satisfaction of the Court that there were irregularities in the process of conducting the Parliamentary elections in Sheema South Constituency he has not gone beyond that as the law requires. He had to show that those irregularities affected the result of the election in a substantial manner. That he has bot done. The Petition therefore fails on issue number one.”

Similarly in Ayena Odong v Ben Wacha, Election Petition No.2 of 1996 (HC) Okello, J said.

“in the instant case, there was no evidence of the effect of any alleged irregularities on the results that could be adjusted from the result. All that there is an address by the Petitioner from the Bar, that the effect of the communication of the malpractices to the voters, affected the result of the election in a substantial manner because they changed the minds of the voters in favour of the Respondent. That is not evidence ... the winning margin here is 8,000 votes. That is quite a substantial margin. Without any evidence of the effect of the alleged irregularities proved to be adjusted to the above figure, it is difficult to say that the irregularities affected the result of the election in a substantial manner.”

The need to prove that the result was affected in a substantial manner was emphasized by Ntabgoba, PJ in Odetta v Omeda Election Petition N.001 of 1996, as follows:

“I must say that with the additional words in our provision in “substantial manner” the standard of proof under s.91 of Statute No.4 of 1996 becomes a great deal higher than the standard of proof in the case of Tanzania discussed by Georges, CJ. What must the Petitioner prove? He must prove that whatever non-compliance with the provisions of the Statute must have affected the results of the election in 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 than that and show that the results of the election were thereby affected and not merely affected but affected in a substantial manner.”

Elections must not be set aside on light or trivial grounds. It is a matter of great public interest. In Gunn v Sharpe (supra). Wills, J said that “elections should not be lightly set aside simply because there have been informalities and errors. In the Hachney Case (supra) cited with approval in Morgan v Simpson (supra) Grove, J emphasized that an election should not be annulled for minor errors or trivialities. He stated,

“An election is not to be upset for an informality or for a triviality. It is not to be upset because the clock at one of the polling booths was five minutes too late or because some of the voting papers were not delivered in a proper way. The objection must be

something substantial, something calculated really to affect the result of the election. I think that is a way of viewing it, which is very consistent with the terms of the election. So far as it appears to me the rational and fair meaning of the section appears to me to prevent an election from becoming void by trifling objections on ground of informality, but the judge is to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a rational mind to produce a substantial effect upon the election.”

The judge concluded.

“that being my construction of the section, I cannot say considering the very large number of electors who have been disabled from voting upon the present occasion, that under these circumstance it has been an election which may be fairly taken to represent the voices of the electors of Hachney.”

What is a substantial effect? This has not been defined in the Statute or judicial decisions. But the cases of Hackney (supra) and Morgan v Simpson (supra) attempted to define what the word substantial meant. I agree with the opinion of Grove, J. The effect must be calculated to really influence the result in a significant manner. In order to assess the effect the court has to evaluate the whole process of election to determine how it affected the result, and then assess the degree of the effect. In this process of evaluation, it cannot be said that numbers are not important just as the conditions which produced those numbers, numbers are useful in making adjustments for the irregularities.

The crucial point is that there must be cogent evidence direct or circumstantial to establish not only the effect of non-compliance or irregularities but to satisfy the court that the effect on the result was substantial.

In this petition, the Petitioner has proved that there was non-compliance with the provisions and principles of the Act in quite a number of instances. There is no doubt that these irregularities and malpractices had some effect on the results one way or the other. If we take the result of the election as indicated on Form B, there is no evidence adduced to show how the non-compliance with the provisions and principles of the Act affected the results of each candidate, including the Petitioner. No adjustments or calculations based on those irregularities was done even taking into

account the factor of intimidation or absence of conditions of freedom and fairness in some instances.

It is understandable to argue that the failure to efficiently compile and update the voters register resulted in ghost voters remaining on the Roll and eligible voters being excluded from the register and thus being denied their right to vote. But there was no evidence that only supporters of the Petitioner were omitted from the Voters Register. The number of eligible voters who were denied the right to vote was not produced. The presence of ghost voters on the Register could have facilities rigging through impersonation and multiple voting. Again we do not know how many ghost voters were left on the Register.

Attempts were made to prove that the total number of voters announced by the 2nd Respondent was inflated. But there was no actual or correct number proved from official or private documents dealing with population census. Instead an academic or theoretical analysis of previous population figures Mr. Makunzi, an Engineer turned Data Analyst, was presented which was in any case inconclusive.

The failure to supply the voters rolls to the Petitioner to be used during polling and the failure to publish all Polling Station must have in one way another affected the Petitioner's preparations for monitoring elections. But what was the effect of these omissions on the result of the election?

It was submitted that in the new Polling stations in the special areas where the Army soldiers voted, there were more irregularities because there were no Polling Agents and that the 1st Respondent got proportionally more votes than in the surrounding areas in the same District. Even if the facts were correct, this only proves that the non-compliance affected the results, but did so in a substantial manner? There was no evidence to this effect.

There was no sufficient evidence to prove the effect of other irregularities like multiple voting, ballot stuffing and pre-ticking of votes. The fact that these malpractices were proved to have occurred is not enough. The Petitioner had to go further and prove their exigent, degree, and the substantial effect they had on the outcome of the election.

I would say the same thing for the malpractices and offences, which caused intimidation and harassment to the agents and supporters of the petitioner which were proved to have to have

occurred. Their intensity and effect varied from area to area. They were intense in Rukungiri and Kanungu where the Petitioner originates and was expected to have big support. They were also experienced in Kabale, Mbale and Kamwenge. Again it must be assumed that the intimidation had some effect, but how much effect?

On the other hand objective facts indicate that the Petitioner performed reasonably well by obtaining 2,055,795 votes, which was 27.8% of the total number of votes cast. He won outright in some District even where the special areas for voting by soldiers existed like Gulu and Kitgum. He performed reasonably well in other Districts of Uganda where there was intimidation and irregularities.

The 1st Respondent got overwhelming support from the population as indicated in the result he got of 5,123,360 votes cast which was 69.3% of the total votes cast. The voter turn up of 70.3% was very high. The difference between the votes obtained by the 1st Respondent and the Petitioner is over 3 million votes. This is a big margin which cannot be bridged by any reasonable adjustment given to the Petitioner say 10%.

The International election observers gave their verdict that the elections generally were free and fair and reflected the general will of the people of Uganda. The observers gave an objective opinion on the elections. Their opinions should be given the due respect they deserve.

Therefore although several malpractices and irregularities were proved in this petition, the Petitioner failed to adduce sufficient evidence direct or circumstantial to satisfy me that those aspects of non-compliance with the provisions and principles of the Act affected the result of the election in a substantial manner.

As Anamansi, JSC said in Ibrahim v Shagari (supra) at p. 24

“Although it seems obvious it needs emphasis that courts of law can only decide issues in controversy between parties on the basis of evidence before them. It would be invidious if it were otherwise.”

My findings on issue No.3:

My conclusions on Issue No. 3 are that it has not been proved that the number of actual voters on the Voters Roll/Register remained unknown and that the number of votes cast during the election at certain Polling Stations exceeded the registered number of registered voters or the ballot papers delivered at the station. On the contrary the number of registered voters was declared by the 2nd Respondent and known. Some people could have been disfranchised through errors and inefficiency but the number was not established nor do I consider it significant given the voter turn up.

I have found that the 2nd Respondent did not display the Register for 21 days but only 5 days. I am of the view that this period was insufficient for public scrutiny of the register by voters, updating the register and efficient cleaning of the register. however it has not been proved as to how this affected the results and whether the effect was substantial. The Petitioner has failed to establish that the identity of the voters could not be verified. There was evidence, which was credible that there was a national register of voters and roll of voters containing the identity of voters. There was also evidence that voters' cards were issued to facilitate identification of voters. It is true that some registered voters were not issued with cards and could have been refused to vote on this account. But such number was not established nor do I think it was significant. It was not established to my satisfaction that the electoral process regarding the register was full of serious flaws and that voters were denied the chance and sufficient time to correct those flaws.

The Petitioner has failed to prove to my satisfaction that the failure to publish a list of additional Polling stations, and failure to supply his agents with copies of the Voter Register and Rolls affected the results of the election in a substantial manner.

The Petitioner has not satisfied me that his Polling Agents were denied the opportunity to safeguard his interests at the time of polling, counting and tallying of votes. The evidence adduced on this allegation was riddled with inconsistencies and exaggerations and was seriously challenged by the Respondents. I am satisfied that the Petitioner's Agents and Supporters were abducted and arrested, but it has not been proved that this affected the results in a substantial manner.

The Petitioner has not proved to my satisfaction that he was substantially hindered from freely canvassing for support by the presence of the military and para-military personnel who intimidated the voters. The evidence on record indicates that the Petitioner was able to campaign freely throughout the country except a few areas where his campaigns were interfered with by the military and para-military personnel. These areas included Rukungiri, Kanungu, Ntungamo, Mbale and Kamwenge. The effect of this on the elections was not established leave aside whether it was substantial.

While irregularities in the voting exercise were proved in some areas, they were not widespread throughout the whole country, and their extent, degree and effect were not established or proved to have substantially affected the results.

The burden was on the Petitioner to prove that the 1st Respondent did not obtain more than 50% of the valid votes of those entitled to vote. He failed to do so. His attempt to prove by statistical analysis what percentage of votes the 1st Respondent could have obtained in a free and fair election was academic, theoretical, speculative and lacking in expertise and credibility. There was no attempt to analyse the actual votes cast or not cast to determine the pattern of voting and how the 1st Respondent benefited from it and the Petitioner was deprived by it.

I therefore hold that the Petitioner has failed to prove to my satisfaction that the non-compliance with the provisions and principles of the Act affected the result of the election in a substantial manner.

Issue No.4: Illegal Practices by 1st Respondent:

Issue No.4 which is solely directed against the 1st Respondent is whether an illegal practice or any other offence under the said Act was committed in connection with the said election by the 1st Respondent personally or with his knowledge and consent or approval.

There are five illegal practices alleged against the 1st Respondent. These are the allegations that the Petitioner had Aids, the allegation of offer of gifts to voters, the deployment of a partisan army during elections, the allegation of intimidation of the Petitioner's Supporters by the PPU and Major Kakooza Mutale's Kalangala Action Plan para-military personnel, and the allegation

of threat to cause death to the Petitioner. I shall deal with each of these allegations in the order in which they are listed.

Before I consider the various alleged practices of offences, it is convenient to address legal points relating to the scope and effect of the provisions of Section 58 (6) of the Act which provides,

“(6) The election of a candidate as President shall only be annulled on any of the following grounds if proved to the satisfaction of the court –

(c) 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.”

There are two preliminary points that I wish to dispose of in respect of the scope of illegal practices as a ground for nullifying a presidential election. The first point is to emphasize that the three grounds specified in Section 6 are independent of each other. The effect of this is, in my judgment, that there is no requirement to prove that the illegal practice in Section 6 (c) affected the result in a substantial manner. There seems to have been a deliberate intention by parliament to ensure that candidates conduct themselves in an exemplary manner during the elections and that the commission of illegal practices or election offences makes them unfit to hold the office for which they seek election. But it seems to me there is no bar to such a candidate standing again in a subsequent election. Whether any trivial illegal practice committed by a candidate should be sufficient to nullify an otherwise free and fair election where the illegal practice has not affected the election in a substantial manner, is a matter for future consideration.

The second point is about the principle of agency. Normally a principle or master is liable for the actions of his agent or servant committed in the course of his employment either with actual, implied or apparent authority. It seems that this is the position under English electoral law.

Mr. walubiri submitted that a candidate is liable for the actions of the agent done within the scope of his employment even when the agent was strictly prohibited from doing a particular act. He relied in the News Digest of English Case Law 2nd edn. 1924 and vol. 20 of the Digest:

Annoltd British and European Cases 1982 (Butterworths) para 646 page 72 where the concept of implied consent is discussed.

He contended that if a candidate employed a candidate who bribed, the candidate would lose his seat. Referring to Section 65 (c) of the Act, he argued that knowledge could be inferred from the fact of appointment, and the fact that the agent was acting to solicit votes for the 1st Respondent.

Mr. Bitangaro for the 1st Respondent did not agree with the submissions of Mr. Walubiri. He connected that the authorities cited by Mr. Walubiri were irrelevant. If an Agent were to bribe without the knowledge and consent of the Candidate the latter would not be liable for the illegal practices. He argued that there must be express not implied or apparent authority. There must be evidence of agency.

He submitted that the crucial test is whether there has been employment or authorization of the agent to do some election work. In the present case, the 1st Respondent appointed his agents and the letters spell out the terms of agency.

With respect, I accept the submissions of Mr. Bitangaro on this point. The wording of Section 6 (c) is clear and unambiguous. It requires that the Candidate be liable for the actions of his agents only when they are committed with his knowledge and consent or approval. To this extent the general principles of the law of agency have been modified.

The Allegation of Aids:

The Petitioner complains in para 3 (2) (a) of the Petition that contrary to Section 65 of the Act, the 1st Respondent publicly and maliciously made a false statement that the Petitioner was a victim of AIDS without any reasonable ground to believe that it was true and this false statement had the effect of promoting the election of the 1st Respondent unfairly in preference to the Petitioner alleged to be a victim of AIDS and voters were scared of voting for him who was by necessary implication destined to fail to carry out the functions of the demanding Office of President and to serve out the statutory term.

In answer to the Petition, the 1st Respondent states that the statement that the Petitioner was a victim of AIDS was not made by him publicly or maliciously for the purpose of promoting or procuring an election for himself contrary to Section 65 of the Act. However he states that it is true that the companion of the Petitioner, Judith Bitwire, and her child with the Petitioner died of AIDS. He states further that he has known the Petitioner for a long time and has seen his appearance change for a long time to bear obvious resemblance of other AIDS victims that he had previously observed.

Section 65 of the Act provides,

“Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal of a candidate at that election for the purpose of promoting or procuring the election of another candidate knowing that statement to be false or not knowing or believing it on reasonable grounds to be true, commits an illegal practice.”

In his affidavit in support of the Petitioner, the Petitioner states that he knows that he is not suffering from AIDS but the 1st Respondent maliciously made false allegation that he was a victim of AIDS without any reasonable grounds for believing that it was true and this false and malicious allegation against him had the effect of promoting the election of the 1st Respondent unfairly in preference to him alleged to be a victim of AIDS as voters were scared of voting for him who by ne necessary implication was destined to fail to carry out the functions of the demanding office of the President and serve the statutory term. He attached a copy of the Monitor Newspaper of 8 March 2001 reporting the 1st Respondent’s statement.

In his affidavit in reply to the 1st Respondent, the Petitioner admitted that Judith Bitwire was his companion up to 1991 and that she died in 1999 but he did not know the cause of her death. He also admitted that he had a child with the late Bitwire and that the child died in 1991 but he did not die of AIDS. The Petitioner stated that the statement admittedly made by the 1st Respondent that the Petitioner was a victim of AIDS was meant to stigmatise him and undermine his candidature before the electorate through demoralizing his supporters and voters in general and to promote his own candidature against his.

The Petitioner asserted that the statement was false in all respects and that the 1st Respondent had never diagnosed him or tested him and found him as an AIDS victim, and had never asked him about his health status. He explained that his appearance which is natural just like any other person could not enable one to know or believe that he was a victim and none had been given by the 1st Respondent. He was not and had not been bed-ridden in his life and he was able to work normally and during the Presidential Campaigns he traversed the whole of Uganda without breaking down or feeling particularly fatigued.

The 1st Respondent's false Statement that the Petitioner was an AIDS victim was made publicly in an interview with a Time Magazine Journalist called Marguerite Micheals for publication in the Time Magazine and website known as <http://www.time.com/time/magazine/printout/0,8816,101373,00.htm>. The time Magazine was sold all over the world including Uganda where copies are purchased on the street. He attached a copy he purchased from the website of the Times Magazine was also publicly available as an electronic version and one can access, read, download or print copies. A copy of the printed article by Marguerite Micheals was to his affidavit. He alleges that the 1st Respondent thereafter explained the meaning of his statement in a Press Conference held on 11th March 2001 with all journalists and reporters local and international that his statement meant that "state House is not a place for the invalid. A President should be someone in full control of his faculties both mental and physical".

He complains that by referring to him as an invalid without all his faculties and incapable of being a President, the 1st Respondent undermined his candidature to his prejudice at the election. He states that this Statement was published in the Newspapers in Uganda viz New Vision, Monitor, copies of which were attached and broadcast on all Radio Stations namely Radio Simba, Central Broadcasting Service, Radio One, Capital and Uganda Television.

As a result of the 1st Respondent's said statements he claims his agents appointed during the electoral process and some of his supporters expressed their concern with his health status and sought for his explanation. He asserted that he knew the meaning of an invalid but that he was invalid as suggested by the 1st Respondent in his Press Conference held on 11th March 2001.

Dr. Ssekasanvu Emmanuel who holds a Masters Degree in Medicine –Internal Medicine of Makerere University stated that he has 10 years experience as a Registered Medical Officer in Uganda and was currently doing research in HIV Associated Infections. He gave his professional opinion on the allegation of AIDS made by the 1st Respondent against the Petitioner by giving a professional definition of AIDS. His opinion which was sent to Lead Counsel for the Petitioner by letter dated 1 April 2001 stated,

“Re: Report on case definition of AIDS

Following your request for a case definition of AIDS from me, this is my report on the subject;

The acronym/term AIDS in full stands for acquired immune deficiency syndrome. This is used to mean a conglomeration of signs and symptoms associated with late HIV disease.

The internationally accepted full definition of AIDS has been compiled by the Centres for disease control Atlanta Georgia USA the content of which is included here in; Appendix 1.

However the World Health Organisation (WHO) experts came up with a clinical definition for AIDS using signs and symptoms. These are grouped as major and/or minor signs; Appendix 2.

Presence of any of the major signs is diagnostic of underlying HIV disease Combining one Major two or more of the minor signs makes a presumptive clinical diagnosis of AIDS.

It must be noted that such a clinical criteria can only be used by trained medical personnel to make a presumptive diagnosis and even then, after detailed examination of the person in question.

Likewise, the diagnosis of HIV infection as well as AIDS cannot be made in a person merely because of loss of a Partner and/or child due to AIDS. This is because on some

occasions the infection may not be necessarily passed on to the partner despite intimate contact. Indeed, the issue of discordant couples is not uncommon in clinical practice.

A pathologist can recognize AIDS at post – mortem examination of an HIV infected body. However, such individuals usually die of HIV associated illnesses as the immediate cause of death other than HIV disease itself, for example, they could die from severe infection with bacteria or respiratory failure etc. as the immediate cause of death. The term died from HIV associated would be more appropriate.”

Appendix 2 which contains the WHO clinical definition of AIDS using signs and symptoms states,

“the clinical Diagnosis of HIV Disease

A. Major Findings/ signs

- ***Kaposi sarcoma***
- ***Cryptococcal meningitis***
- ***Esophageal candidiasis***
- ***Hepres zooter in patients below 50 years***
- ***Oral thrush in patients below 50 years.***

B. Minor Findings/signs

- ***Weight loss > 10% of original body weight***
- ***Recurrent fevers > 1 month***
- ***Zed lymphadenopathy***
- ***Generalized maculopapular rash***
- ***Disseminated tuberculosis***
- ***Risk exposure e.g. multiple sexual partners, blood transfusion after 1975”.***

The Petitioner also filed an affidavit of Major Rubaramira Ruranga in support of his compliant relating to the allegation of AIDS made against him. Major Ruranga stated that he was 53 years and was the Head of the National Guidance and Empowerment Network of People with HIV/AIDS (NGENT). He disclosed that he had been living with HIV for 16 years but he was going about his duties normally. He was married to two wives, one with whom he had lived for 29 years and had three children with her, and the second whom he married in 1991 and had one

child with her aged 1 ½ years. He asserted that despite the fact that they interacted sexually whenever they tested for HIV, he and the second wife were positive but his first wife and the 1 ½ years old child tested negative. He disclosed that he had sought the consent of his spouses to divulge matters pertaining to their health in his testimony in this case.

The 1st Respondent adduced the evidence of Dr. Diana Atwine to support his allegation of AIDS against the Petitioner. She stated that she was a medical doctor employed by Joint Clinical Research Centre (JCRC). In the ordinary course of her duties of the Centre she signs death certificates in respect of deceased patients of the Centre. She confirmed that she signed a Certificate of Cause of Death of the late Judith Bitwire in the course of her duties at the JCRC.

In the copy of the Death Certificate attached to her affidavit, in respect of Judith Bitwire who was admitted on 11 May 1999 and died on 21 May 1999, the cause of death is indicated as “Empyema, Respiratory Failure”. Other significant conditions contributing to death but not related to disease or condition include “Advance Immuno Suppression”.

Dr. Atwine was the only witness whom the parties applied to call for cross examination. The application was made by the Petitioner. When she testified before the Court, she confirmed that she had signed the death certificate in respect of the deceased, Judith Bitwire, she stated that the death certificate was given to her father and the Petitioner who was by then her husband.

Moses Byaruhanga who was the Secretary to the National Task Force (NTF) of the 1st Respondent stated that he knew Judith Bitwire because he studied with her at Makerere University between 1987-1990. While at Makerere he used to take photographs and at one time she wished him to take photographs of her child at a house on Plot 9 Akii Bua Road Nakasere where she was cohabiting with the Petitioner as wife and husband.

The 1st Respondent also adduced evidence of Prof. John Rwomusana who stated that he is a Medical Doctor who did his Post Graduate Studies in Medicine and Clinical Pathology, involving studies in virology, genetics and immunology, which are basis to the science of HIV Disease. He is Director of Research and Policy Development at the Uganda AIDS Commission.

He co-ordinates all AIDS related bio-medical and social research in the country, involving the gathering of research results and research related information in the country, packaging such

information for dissemination for the purpose of policy development and further research in HIV/AIDS prevention, care and support. He is involved in the development of research guidelines, approaches, standards and plans. He is therefore very conversant with the research results pertaining to both medical and social aspects of AIDS. He revealed that research in Uganda has established that there is a concept of “Community Diagnosis” of AIDS based on Community perceptions, beliefs and observations concerning HIV/AIDS. The said concept is a useful research tool that enables research into the community awareness as to the risk and dangers of the spread of HIV/AIDS.

He explained that research in Uganda has revealed that it is a common widespread practice in lay conversations to refer to individuals in community who have lost partners and very young children presumably due to AIDS, as person suffering from AIDS. An example of such observation can be taken from research settings such as in Kyamulibwa, Masaka District where the Uganda Virus Research Institute and the Medical Research Council have undertaken community-based research for a period of over ten years.

The practice is common at funerals in reference to deaths of persons and is used by the Community to protect families through guarding against inheritance of spouses who have lost partners and other sexual based relationships. He concluded that the practice is of a social societal advantage, which is more widespread in a country where there are high levels of awareness and openness about AIDS, such as Uganda. The practice has developed a right upon people in the community to openly express their beliefs in matters concerning AIDS and its transmission. The research has shown that it is normal practice for ordinary people to make presumptions that an individual is suffering from AIDS upon observation of skin changes and the individual’s AIDS related bereavement.

Mr. Balikuddembe learned lead counsel for the Petitioner noted that the 1st Respondent admitted making the statement but denied making it publicly or maliciously. He referred to the affidavit of Dr. Ssekasanvu Emmanuel and Major Rubaramira. He dismissed the affidavit of Marita Namayinja as hearsay. She had claimed to have known several women friend of the Petitioner had died of AIDS.

Learned counsel criticized the evidence of Prof. Rwomusana as gossip and idle talk, since his research was not available. He dismissed the evidence of Dr. Atwine as useless as she may have referred to a different person from the one referred to by the 1st Respondent. He contended that death certificate did not conform to the Birth and Deaths Registration Act, as was not signed by a pathologist. Counsel argued that the death certificate does not say that Judith Bitwire died of AIDS since any other condition could cause immune suppression.

Mr. Balikuddembe submitted further that the 1st Respondent as he was interviewed by a journalist and the statement in the Times Magazine and on Internet on 8 March 2001 and therefore he knew it would be published in the press. Learned counsel cited the case of Attorney General v Kabourou (1995) 2 LRC where the Tanzanian Court of Appeal said, at p. 783,

“The evidence adduced at the trial shows that these statements were widely published in the press. There can be no doubt that those who uttered those statements were aware that the statements would be published in the press.”

Learned counsel argued that the 1st Petitioner confirmed the publications when he made a statement at a press Conference on the eve of election on 11 March 2001 where he referred to the Petitioner as an invalid.

As regards the question whether the 1st Respondent made the statement maliciously, Mr. Balikuddembe observed that the 1st Respondent does not explain why he made the statement and repeated it. Counsel submitted that the 1st Respondent therefore made the statement with the intention undermining the Petitioner’s chances of being elected, and this amounted to malice.

Mr. Balikuddembe also referred to the affidavit of Dr. Ssekasanvu, which attached a Declaration of Paris Aid Conference of 1984 of which Uganda was a signatory. He submitted that since the Declaration obliges political leaders to act with compassion towards AIDS victims, the 1st Respondent must have made the statement maliciously to stigmatise the Petitioner. He argued that the statement was false and therefore maliciously made.

Learned Counsel for the Petitioner submitted further that there is no evidence that the 1st Respondent attended the funeral at which occasion it was announced that Judith Bitwire had died

of AIDS. He contended that the 1st Respondent did not specify resemblance of people with AIDS, and that even Prof. Rwomusana did not give signs of resemblance of victims of AIDS.

Mr. Balikuddembe concluded his submission that the sum total of the evidence was that the 1st Respondent made a false statement which he knew to be false and published a malicious statement which he knew was going to be published, in order to promote his election. The 1st Respondent therefore committed an offence under Section.23 (5) (a) (b) and (7) of the Act, and this would dispose of the Petition in accordance with Section 59 (b) and (c) of the Act.

Dr, Byamugisha lead counsel for the Respondent pointed out that para. 51 of the Petitioner's affidavit was a repetition of the allegation in the Petition. He submitted that this was not evidence as Section 65 of the Act provided for proof of evidence. It was his contention that the Petitioner had to produce evidence that he does not have AIDS. He argued that the Petitioner must also prove a publication of a false statement knowing it to be false or believing not to be true and that it was to procure the election the election of another candidate. He invited the Court to consider whether another candidate involves the same candidate.

Learned lead counsel for the 1st Respondent submitted that the Petitioner was hiding the cause of his death of his wife and that of his child since he took away the body and got post mortem report. Referring to the statement by the Petitioner that the 1st Respondent had not tested him, he asked why the Petitioner did not himself go for the list. He contended that if the Petitioner is to be believed he must present the diagnosis of his condition. It was not enough for him to claim that his appearance is like that of a normal person and he had never been bedridden, and had campaigned throughout the whole country. He referred to the major affidavit of Major Rubaramira where he stated that although he has AIDS he goes about his business normally. Counsel submitted that this circumstantial evidence was not sufficient to prove falsity of the statement.

Dr. Byamugisha referred to the affidavit of Dr. Ssekasanvu where it stated that AIDS means Acquired Immune Syndrome which appeared on Judith Bitwire's death certificate. He pointed out that according to Dr. Ssekasanvu, clinical diagnosis uses and symptoms. He submitted that Dr. Ssekasanvu did not carry out this clinical examination on the Petitioner nor did the Petitioner examine himself.

Learned counsel for the 1st Respondent argued further that the 1st Respondent based his opinion on his own presumptions, since the doctor concluded that a layman could hold that a person had AIDS because his spouse died of AIDS, his client, the 1st Respondent, has reasonable grounds to believe that the Petitioner had AIDS.

Dr. Byamugisha relied on the affidavit of Prof. Rwomusana who he referred to as an AIDS expert who has had medical and social experience of AIDS. Counsel referred to Prof. Rwomusana's opinion that there was an established concept of community diagnosis of AIDS based on loss of partners and children, which the community uses to protect families by guarding against inheritance of spouses. Counsel submitted that research shows that ordinary people make presumptions based on skin changes. He argued that this evidence was the basis of his client's honest belief that the Petitioner had AIDS. He contended that the 1st Respondent was not required to prove that the Petitioner has AIDS, but that the 1st Respondent had reasonable grounds for believing that the Petitioner had AIDS. It was the Petitioner who had a duty to prove that he had no AIDS.

On the burden of proof, Dr. Byamugisha submitted that it lay on the Petitioner to prove falsity and he had failed to discharge the burden. As regards the question of promoting the 1st Respondent's election, learned counsel submitted that the 1st Respondent was telling an American paper, not promoting his election. Moreover, counsel argued, the Petitioner did say in the Monitor Newspaper that the publication would not affect him because the statement was the sign of a desperate man facing defeat. Furthermore Dr. Byamugisha concluded that the 1st Respondent was responding to allegations from the Petitioner that he was arrogant and had been in power for too long. Therefore the statement was not malicious because the Petitioner knows why it was made.

As regards the question whether the statement was made without reasonable grounds, Dr. Byamugisha referred to the 1st Respondent's answer to the Petition and his affidavit in support and submitted that the 1st Respondent had reasonable grounds to believe the statement to be true because:

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and submitted that the 1st Respondent had reasonable grounds to believe the statement to be true because:

- (i) He has known the Petitioner for a long time
- (ii) The Petitioner's wife died of AIDS
- (iii) The Petitioner's body appearance bears resemblance to other AIDS victims
- (iv) Prof. Rwomusana supports the above manner of proving AIDS based on community perceptions.

Dr. Byamugisha referred to para.5 of the Petitioner's affidavit where he states that voters were scared of voting for him. Counsel submitted that the Petitioner did not tell the Monitor Newspaper about this, nor did he adduce any evidence of a single voter who had refused to vote for him because of this statement. Learned counsel concluded that the Petitioner had failed to prove the ingredients of the offence.

It is trite law that the burden of proof lies on the Petitioner to prove all the ingredients of the illegal practice under Section 65 of the Act. In C.D. Field's Law of Evidence (In India and Pakistan) 10th edn. Vol.V at page 4152, para. 87 it is stated,

“In Dr. Jagjit Singh v Giana Singh, AIL 1966 SC. 772, it was held that the onus to prove the essential ingredients prescribed by Sub-section (4) of Sec. 123 of the Representation of the People Act is on him who alleges publication of false statements of fact. The election Petitioner has to prove that the impugned statement has been published by the Candidate or his Agent or if by any other person, with the consent of the candidate of his election agent. He has further to show that the impugned statement is false and that the Candidate either believed that the statement to be false or did not believe it to be true. It has further to prove inter alia that the statement was in relation to the personal character or conduct of the complaining candidate. Finally it has to be shown that the publication was reasonably calculated to prejudice the prospects of the complaining candidates election. But though the onus is on the election Petitioner to show all these things, the main things that the election Petitioner has to prove are that such publication was made of a statement of fact and that the statement is false and is with respect to the personal character of conduct of the

Petitioner. So the main onus on the Petitioner is to show that the statement of fact was false and related to his personal character or conduct. Once that is proved, the burden shifts to the candidate making the false statement of fact to show his belief was.”

As far as shifting of burden of adducing evidence is concerned it is stated in Sarkar’s Law of Evidence Vol.2 14th edn. 1993 Reprint 1997 pages 1338-1340 as follows,

***“It appears to me that there can be sufficient evidence to shift the onus from one side to the other if the evidence is sufficient prima facie to establish the case of the party on whom the onus lies. It is not merely a question of weighing feathers on one side or the other, and saying that if there were two feathers on one side and one on the other that could be sufficient to shift the onus, what is meant is that in the first instance the party on whom the onus lies must prove his case sufficiently to justify a judgment in his favour if there is no other evidence Stoney v Eastbourne RD Council (19727) I ch. 367,397).*”**

The main elements of the illegal practice under Section 65 of the Act which must be proved are as follows:

- (i) that a statement was published,
- (ii) that the statement was false,
- (iii) that the statement concerned illness, death or withdrawal of a candidate,
- (iv) that the maker knew that the statement was false, or knew or believed it on reasonable ground to be true,
- (v) that the statement was made for the purpose of election of another candidate.

I think it is common ground that the alleged statement was published and that it concerned the illness of the Petitioner. The highly contested question was whether the statement was false or whether the 1st Respondent knew that it was false or knew or believed it on reasonable grounds to be true. In other words, it is not sufficient to prove that the statement was false, it must also be proved that the maker knew that the statement was false or did not believe it to be true.

The first question to consider is whether the 1st Respondent made a false statement. A false statement has been defined in Black's Law Dictionary, 6th edn. 1990 at p. 602 as follows:

“statement knowingly false, or made recklessly without honest belief in its truth and with the purpose to mislead or deceive.

An incorrect statement or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct.”

In Halsburys Law of England Vol. 15 4th edn. Para. 705 page 540, it is stated that it is an illegal practice before or during an election for any person to make or publish any statement of fact in relation to the candidates personal character unless he can show that he had reasonable grounds for believing and did believe the statement to be true. The authors go on to state.

“It is irrelevant whether the statement has or has not been provoked by a statement of a similar character made on the part of an opponent.” Mommoth Boroughs Case (1901) 5 O’M & H 166 at 173.

The Petitioner adduced no independent or expert evidence to support his statement that he has no AIDS and that his looks are normal and was able to campaign throughout the whole country presumably like a healthy person. The affidavit of Major Rubaramira that he has AIDS but is able to carry out his normal duties and marital obligations and that one of his wives and child are HIV negative did not help much the Petitioner’s case. It only proved that one can have AIDS and enjoy normal life and that one spouse can be positive and the other negative. Even the evidence of Dr. Ssekasanvu did not advance the Petitioner’s case. Instead, Dr. Ssekasanvu stated that it is contrary to Medical Ethics and Hippocratic Oath for a Medical Doctor to discuss or reveal the ailments of his or her patients to third parties whether dead or alive. It is not clear whether he examined the Petitioner and was therefore claiming professional privilege.

We are therefore left with the evidence adduced by the 1st Respondent to substantiate his statement. Dr. Byamugisha summarized the evidence in his submissions. It was disputed that the 1st Respondent had closely known the Petitioner for a long time. It was not disputed that the Petitioner’s companion or wife Judith Bitwire and her child died. It is also common ground that

she died of Advanced Immuno Suppression. The 1st Respondent also based his opinion on the appearance of the Petitioner, which had changed. The 1st Respondent based his opinion on all above to come up to the conclusion that the Petitioner had AIDS.

The question is whether the opinion reached by the 1st Respondent was based on reasonable grounds. Would a reasonable ordinary person who is not an expert on AIDS or health worker come to the same conclusion? Prof. Rwomusana has ably explained the concept of the community diagnosis of AIDS based on loss of partners and children, which is used to protect families against inheritance of spouses after death of the husbands. He explained that ordinary people also make presumptions about AIDS based on skin changes. Signs are also listed by Dr. Ssekasanvu as diagnostic signs for AIDS.

The conclusion I make out of the above analysis is that the Petitioner has failed to establish to my satisfaction that the statement made by the 1st Respondent that the Petitioner had AIDS was false. In fact in this case there was no shifting of the burden of adducing evidence on the question of falsity or absence of reasonable grounds because the Petitioner did not establish a prima facie case on either of these ingredients.

Nevertheless the 1st Respondent adduced credible evidence to prove his grounds for holding that the statement he made that the Petitioner was not false. And that he knew or believed on reasonable grounds to be true. Having failed to prove these two crucial elements, the Petitioner has failed to prove that the 1st Respondent committed the alleged illegal practice under Section 65 of the Act.

That being the case, it is not necessary to consider whether the statement was intended to promote or procure the election of the 1st Respondent.

Offering of Gifts:

It is alleged by the Petitioner in para 2 (b) of the Petition that contrary to Section 63 of the Act the 1st Respondent and his agents, with the 1st Respondent's knowledge and consent offered gifts to voters with the intention of inducing them to vote for him. This allegation does not seem to be supported by any averments in the affidavit in support of the Petition and would therefore be technically untenable.

However in reply to the 1st Respondent's affidavit in support of his Answer to the Petition, the Petitioner gave details of the alleged gifts offered by the 1st Respondent or his agents. In this affidavit the Petitioner stated that the 1st Respondent at a campaign meeting held at the International conference Centre on Friday 26th January, 2001 to solicit support from Motor-cyclists (Boda-boda) the 1st Respondent gave a gift of a new Motor-cycle to one of the cyclists/voters to vote for him. The gift giving ceremony by the 1st Respondent was published both in The Sunday Monitor and Sunday Vision of 28th January 2001 copies of which he attached. Subsequently he personally heard the said Sam Kabugo on Central Broadcasting Corporation FM Radio urging his fellow Boda-boda cyclist to support the 1st Respondent in his bid for the Presidency of Uganda.

In rebuttal, the 1st Respondent adduced the evidence of Kabugo Sam aged 20 years old who admitted that he was given a motorcycle by the 1st Respondent but for the reason that he was his Campaign Agent. He stated that he was an ardent supporter of the 1st Respondent. When the 1st Respondent offered to stand for elections he decided to mobilise support for him especially among his Bodaboda business colleagues. On 9 January 2001 while he was at Kalolo Airstrip to witness the nomination of the 1st Respondent he was asked by Moses Byaruhanga to carry the 1st Respondent from one corner for the Airstrip to the podium as the crowd congestion could not allow easy passage of his motorcade. He accepted the request and carried it out.

After nomination he was appointed a Campaign Agent for the 1st Respondent and a copy of his letter of appointment was attached. Later he agreed with Byaruhanga that the Task Force for the 1st Respondent would give him a motorbike to facilitate his mobilization. The motorbike was handed to him by the 1st Respondent on 26 January 2001. His mobilization and campaign included advertisement, which were broadcast over therefore denied that he was given a motorbike to influence him to vote for the 1st Respondent because he was already his supporter, mobiliser and agent.

Section 63 (1) of the Act provides,

“Any candidate or agent of the candidate who either before or during an election gives or provides any money, gift or other consideration, to a voter with the intention of inducing the person to vote for him or her commits an illegal practice.”

This provision is intended to safeguard the integrity of the electoral process and promote fairness.

I accept the submission of Mr. Bitangaro that the Petitioner must prove the following ingredients to establish the illegal practice of offering gifts:

- That a gift was given to a voter.
- That the gift was given by a candidate or his agent.
- That the gift was given to induce the person to vote for the candidate.

Kabugo's evidence had not been challenged and I accept it. I find that the motorcycle was not given to him with the intention of inducing him to vote for the 1st Respondent but to facilitate him as a Campaign mobiliser or agent. This action did not amount to offering a gift and therefore did not violate any principle of the Act.

The Petitioner alleged further that the 1st Respondent with the intention of inducing persons to vote for him offered the following:

- (a) Abolished Cost Sharing in all Government Health Centres including those operated by Local Governments.
- (b) Increased the salaries of Medical Workers in the middle of the budget year.
- (c) Offered to increase pay to teachers and indeed made this offer in a meeting at the International Conference Centre with all the teachers in Kamapala on March, 2001.
- (d) Hurriedly caused his Minister of Works and Campaign agent Hon John Nasasira to publicly and out of the ordinary in full view of voters to sign contracts for the tarmacking and upgrading of roads using his position as the incumbent President to execute the said contracts and deliver on his promises to the people of the beneficiary districts.
 - (i) Busunju-Kiboga
 - (ii) Kiboga-Hoima
 - (iii) Arua –Pakwach
 - (iv) Ntungamo-Rukungiri and the tarmacking and upgrading of these roads was part of the 1st Respondent's Campaign Manifesto.

(e) At a campaign meeting at Arua on 12th February 2001 the Respondent offered a gift of money to voters who attended the rally and a record of this rally was Video recorded – a copy of the recording was submitted as an exhibit.

The 1st Respondent denied the allegations in his answer to the Petition. He stated both in THE Answer and the affidavit supporting it that neither himself nor his agents with knowledge and consent or approval offered gifts to voters with the intention of inducing them to vote for him.

The Petitioner adduced no evidence to prove that the increase was directed at voters and intended to induce them to vote for the 1st Respondent. This alone would be sufficient to sustain a finding that such offer or gifts has not been established. However the 1st Respondent adduced evidence to prove that the measures were part of government programmes decided much before the elections and had been incorporated in the National Budget and other national programmes. In his affidavit rebutting the allegations regarding abolition of cost-sharing in Government Health Centres, Dr. Crispus Kiyonga, the Minister of Health denied that Government abolished cost sharing in Government Health Centres with the intention of including persons to vote for the 1st Respondent as alleged by the Petitioner. He explained that cost sharing has been introduced some years back to assist in filling the financial gaps in Health Sector Budget.

Under the constitution, Primary Health Care is the responsibility of the Local Government (Districts) but the Central Government can always come in to assist and finance directly where there is need by prioritizing the sector. In 1997, the Government introduced the Primary Health Care Conditional Grants, under which the Government increased funding to the sector aimed at improving health of the population particularly the poor of the poor. At the same time, there has been an on-going debate and no consensus in government as whether to abolish Cost Sharing or not because it was blocking the poor people's access to health services.

The conditional grant has been increasing over the years whereby Shs.39 billion was budgeted for Primary Health Care in the Financial Year 2001/2001 compared to Shs.12 billion of the previous year. Of the Shs.39 billion, one billion shillings was reserved for purchase of supplementary drugs. The Primary Health Care Conditions Grant was inter ail to cater for salaries and allowances of Health workers in peripheral health units which where previously

supposed to be paid by Local Council IIs and the districts who have proved to have no capacity to sustain these payments.

In the month of October 2000, well before the campaigns, he addressed Donors to the Health Sector and informed them how the 1st Respondent was concerned that the poor could not meet the user charges which was denying them access to health services. By December 2000, the Central Government had disbursed half of the money budgeted for supplementary drugs in that Financial Year. By February of this year, all the health units were reasonably staffed or supplied with the drugs acquired using money from the conditional grant.

Therefore it was no longer justified to deny the poor health services due to inability to pay under the Cost Sharing policy. With or without elections the Government Agenda on cost sharing has already been set by the budget of the Financial Year 2000/2001. He concluded that it was therefore not correct to say that the 1st Respondent abolished Cost Sharing to induce voters in view of the Government Agenda.

The allegation relating to the increase of salaries for medical workers and teachers was answered by Hon. Benigna Mukiibi, who is the Minister of State for Public Service, currently holding the portfolio because the substantive Minister for Public Service is on leave. She stated that the scope of this portfolio extends to making proposal for the increase of adjustment and or regulation of salaries of public servants and emoluments of pensioners.

During the National Budget for the Financial Year 2000/2001 the Minister of Finance made provision for the implementation of recommendations in the pay Strategy Report prepared by the Ministry of Public Service to address the plight of the middle rank professionals. A copy of the Budget speech read on 15th June 2000 as attached to the affidavit. On page 25 of the Official Budget speech under the sub-heading "IMPROVING THE PERFORMANCE OF THE PUBLIC SERVICE" the minister of Finance outlined the budget for public Service Reform. Pay and Pensions.

The modalities for the disbursement of these funds were worked out between our Ministry and the Ministry of Finance to allot these excess funds to increase the salaries for different categories of mid rank professionals. In January 2001, the Ministry of Public Service issued a p increase of pay for medical workers. A copy of the press release was attached to her affidavit.

The increment of salaries for medical workers and teachers was a result of funds designated in the budget under the Public Service Pay Reform Program and was not done by the 1st Respondent to induce voters alleged in paragraph 22 (b) and 22 (c) of the Petitioners affidavit in reply dated 5th April 2001.

There is no evidence to challenge the explanation given by Hon. Mukiibi that the increase of salaries had been planned and budgeted for before elections. The only complaint which can be raised was that the implementation of the programme was close to the campaign period. But there is no evidence to prove conclusively that it was done to induce voters to vote for the 1st Respondent.

Hon. John Nasasira, Minister of works, Housing and Communication answered the allegations regarding signing of contracts for tarmacking and up-grading roads. He denied the allegations that he publicly and out of the ordinary course of his duties as Minister signed contracts for tarmacking and upgrading the roads mentioned by the Petitioner.

He explained that the contracts referred to by the Petitioner were not signed by him by Charles Muganzi; the Permanent Secretary of the Ministry of Works, Housing and Communications and he attended the functions in his capacity as the responsible Minister. The said road contracts were part of the implementation of the Governments Ten Year Road Sector Development Program, which commenced in 1996. He attached a copy of the executive summary of the Governments Ten Year Road Sector Development Program.

The Credit Agreement between the Government of Uganda and the World Bank for the financing of the implementing of the tarmacking and upgrading of the Busunju-Kiboga-Hoima and Arua-Pakwach was signed in November, 1999. A copy of the Credit Agreement was attached to the affidavit. The advertisement for short listing contractors for the tenders for the tarmacking of Busunju-Kiboga; Kiboga-Hoima and Arua-Pakwach was issued in November, 1999. A copy of the said advertisement was attached. The letters inviting the short listed contractors for the tenders for the tarmacking and up-grading of the roads referred to above were issued in July 2000. Copies of the letters were also attached to his affidavit.

Hon. Nasasira denied that any agreement had signed for the tarmacking and up grading of the Ntungamo-Rukungiri Road. He explained that the tarmacking and upgrading of the Ntungamo-

Rukungiri Road was part of the Ten Year Road Sector Development Program and only the contract for tarmacking and upgrading the Ntungamo-Kagamba section has so far been signed as part of implementing this program.

The signing of contracts for tarmacking and upgrading of roads under his ministry had always been done publicly. He concluded that it was false to allege that the award and signing of the road contracts resulted from the 1st Respondent's campaign manifesto or at all. I accept Hon. Nasasira's evidence, which has not been challenged.

Another allegation of bribery made by the Petitioner was that on 12 February 2001, the 1st respondent offered money to voters at a rally in Arua. Counsel for the Petitioner tendered in Court a tape recording of the occasion. This evidence was inadmissible in absence of an affidavit explaining how the tape was recorded. There was no evidence that the people offered money were voters. The allegation was refuted by Moses Byaruhanga who stated that on the alleged day, the 1st Respondent was not in Arua but in Masindi. This allegation was therefore not proved.

As regards offering gifts by agents, Ssali Mukago a registered voter in Rubaale Trading Centre in Ntungamo District, claimed that on 9 March one Daudi Kahurutuka a campaign agent for the 1st Respondent came at around 8. 00 p.m. and found him at Ali Mutebi's Hotel and told him that he would give him any amount of money he wanted from the 1st Respondent's Task Force so that he could allow to steal the votes. He does not say what his response was. But he alleges that on the polling day at Rubaale Moslem Primary School Polling Station during the counting of votes, he saw ten ballot papers, which were folded together and ticked in favour of the 1st Respondent. When he complained to the Presiding Officer, he said it was allowed.

But David Kahurutuka a resident of Rubaale Trading Centre in Ntungamo District denied the allegations made by Ssali Mukago. He stated that he never met Ssali at Ali Mutebi's Hotel on 9, March 2001 as falsely alleged. He never asked Ssali to mention any amount of money he wanted from the 1st Respondent's Task Force. He said he was not a member of that Task Force but only the volunteer group and did not have any plans whatsoever to rig the elections as alleged. He asserted that the Volunteer Group had sufficiently canvassed for votes for the 1st Respondent. He concluded that there was no bribery offered to Ssali or rigging of the election as alleged.

Gariyo Wellington who was in charge of overseeing the operation of Polling Agents for the Petitioner in Rubire Sub-county claimed that at around 11.00 a.m. he visited Kyanyazire Cell and saw Mwesigwa Rukutana loading people on a motor vehicle Reg. No. UAA 006A Nissan pick-up and he was giving Shs. 5,000/= to every person who was boarding and instructing them to vote for the 1st Respondent. He mentions no date but it may be assumed to be polling day. He does not indicate where the people boarding were going or being taken. Not even one person who was given money is mentioned.

Mwesigwa Rukutana who is a Member of Parliament for Rushenyi County in Ntungamo District stated that he was not an Agent of the 1st Respondent during the Presidential Elections. He denied the allegations made by Gariyo that he was at Kyanyanzira village loading people on pick-up Reg. No. UAA 006 A and giving Shs. 5,000/= to every person who boarded it. He stated that on that day he never stepped in the said village, nor did he load anybody on the alleged vehicle or give any money to anybody. He further states that on polling day he cast his vote at Ruyonza Polling Station at around 7.00 a.m. after which he proceeded to Omugyenyi where he found Bob Kabonero with whom he moved around his constituency in his vehicle Prado Reg. No. UAA 915 S which was being driven by Richard Asingwire. During his movements he never went to Kyanzanzira Village or Rwaharamira Polling Station.

Bob Kabonero a voter at Omugyenyi Polling Station in Rushenyi Ntungamo District refuted the allegation made by Gariyo Wellington. He stated that he voted at Omugyenyi Polling Station shortly after 7.00 a.m. during the Presidential Elections he was neither appointed nor did he act as a campaign agent for the 1st Respondent. After casting his vote he spent the rest of the day driving around Rushenyi and other parts of Ntungamo in the company of Hon. Mwesigwa Rukutana. He stated that he did not see Hon. Mwesigwa Rukutana offering Shs. 5,000/= or any sums of money to voters as alleged by Gariyo. Moses Byaruhanga who was the Secretary of the National Task Force (NTF) of the 1st Respondent denied that Mwesigwa Rukutana was neither a campaign agent nor a polling agent for the 1st Respondent.

Mugizi Frank who was a Polling Agent for the Petitioner for Rubanya Polling Stations in Ntungamo District, claimed that at the Polling Station he witnessed massive rigging whereby people were allowed to vote more than once and when he protested the 1st Respondent's supporters namely; Simon, Twahirwa Sura, Kanyagira Simon and Kakyota Muyambi threatened

to assault him and chased him from the Polling Station. After leaving the Polling Station one Ali Mutebi a Campaign Agent of the 1st Respondent offered him Shs. 15,000/= to go back and sign the Declaration of Results Form and not to report the malpractices but he refused to accept the money or sign the forms.

Omalla Ram who was the co-ordinator of Eastern Region veterans for the Petitioner claimed that on 12 March while he was monitoring the voting process he received a report from Opio Kalamira that in Pyuwo Polling Station, councilor Onyango Wilbroad had given his father Odomi money to give people to vote for the 1st Respondent. He drove to Payawo Trading Centre near the Polling Station where he found Onyango's father Odomi was with many people and he denied the allegation. When he contacted other people they denied that Odomi had been given money by Onyango his son. This evidence is not only hearsay but adverse to the Petitioner's case. It was a false allegation of bribery.

Drabbo Joseph a mobiliser for the Petitioner in Adumi Sub-county, Ayivu County, Arua District claimed that on the polling day he saw the LC I Chairman of Ndru Sub-parish called Godfrey Asea telling people to vote for the 1st Respondent riding on motorcycle. He saw the said Asea giving out unspecified amounts of money to one Odipio Inyasio at Lea Polling Station with directives that the same be given to all women so that they voted for the 1st Respondent. He reported the matter to the Police Constable but the suspect was not apprehended. There is no proof that Asea was an agent of the Respondent and at the 1st Respondent knew and consented or approved his actions. Therefore the allegations of offering gifts by the 1st Respondent of his agents have not been proved.

Threat to Cause Death to the Petitioner:

In para 2 (e) of the Petition, the Petitioner complains that the 1st Respondent threatened that he would put the Petitioner six feet deep – which meant causing death to the Petitioner when he was in the public interest, pointing out grievances on mismanagement in the UPDF and this had the effect of scaring voters to vote for the 1st Respondent to guarantee their own safety.

The 1st Respondent denied the allegation. He stated that prior to the electoral process he had in his capacity as President and Commander-in-Chief warned that any person who interferes with the army would be put six feet deep. He stated further that he made the statement on the 27

November 2000 at the National Conference of the Movement and that he made the statement for the security, good governance and order of the country to deter subversion in the army.

In his affidavit in reply to the Petitioner, the 1st Respondent denied uttering the threat against the Petitioner. He explained that he made this statement at the National Conference of the Movement on 27 November 2000 and he made for the security good governance and order of the country and to deter subversion in the army. He did not make the statement for purposes alleged in the Petition.

It is not clear under what provision of the law the complaint is based. It seems however that the Petitioner is alleging intimidation of his voters by the 1st Respondent's threat. The threat is admitted by the 1st Respondent, but not the motive or effect as alleged by the Petitioner.

The Petitioner adduced no evidence to support the allegation that the statement was made in reference to himself as a candidate or to scare his supporters, or that any of his supporters were indeed scared or voted for the 1st Respondent. The statement was made in November 2000 before nomination of candidates and the 1st Respondent has explained the purpose of making statement. I find that the Petitioner has failed to prove to my satisfaction that the 1st Respondent committed an illegal practice or offence by making the alleged statement.

Deployment of Partisan Army During Elections:

The Petitioner complains in para 3(2) (c) of the petition that contrary to Section 12 (1) (e) and (f) of the Electoral Commission Act, the 1st Respondent appointed Major General Jeje Odongo and other partisan Senior Military Officers to take charge of the Presidential Election process and thereafter a partisan section of the army was deployed all over the country with the result that very many voters either voted for the 1st Respondent under coercion and fear or abstained from voting altogether.

The 1st Respondent states in his affidavit in reply that the deployment of security forces was done by the Government for the purpose of security law and order throughout the country. He did not appoint any military officers to take charge of the security of the Presidential Election process as alleged in the Petition. He knows that Government deployed security forces throughout the country for security preservation of law and order.

In his affidavit to the Petition, the 1st Respondent denied knowledge of the allegations contained in para 3 (1) of the Petition except the arrest and charging in court of Hajati Miiro. He stated that he was not present at the times and places where they were alleged to have occurred and did not witness them.

He stated that he instructed his campaign agents to mobilise for election on the basis of his election manifesto entitled “Consolidating the Achievements of the Movement” only and he had no knowledge of their having acted contrary to law., conduct which he did not consent to or approve of on the part of any person.

He further states that because the Police were inadequate and the security situation so required the government decided to and did deploy, security forces throughout the country to keep peace and order but he had no personal knowledge of nor did he in his capacity as president of the Republic of Uganda, receive any reports of intimidation of voters by soldiers and para-military personnel at Polling Stations. He asserted that the elections were conducted under conditions of freedom and fairness and under secure conditions as a result of sufficient deployment of security forces throughout the country by the Government.

On the allegation of general deployment of the Army during the campaign period, Mr. Walubiri learned counsel for the Petitioner submitted that the 1st Respondent did not deny deployment of the Army but claimed that the electoral process was conducted under conditions of freedom and fairness and explains the need for deployment, Mr. Walubiri refers to the affidavits of Major General Jeje Odongo and Mr. John Kisembo, who supported the 1st Respondent’s reason for deployment namely that it was necessary in order to supplement the Police to curb electoral violence, which was on the increase.

Learned counsel for the Petitioner argued that the Army did not provide security, but it was a cause of insecurity as the evidence on record showed that it was torturing people or making it impossible for the Petitioner to campaign. Counsel then referred to the various affidavits, which gave evidence of harassment by the military, including the affidavits of Kimunyu in Kamuli, Baguma in Kasese, Kijumba in Kasese, Ssemabo in Mbarara, Busingye, Masasiro in Mbale and Tuhirwa in Kabale.

Dealing with what he called the legal angle, Mr. Walubiri submitted that the deployment of the army in previous instances like the currency reform, the Local Government elections and the Presidential and Parliamentary election was all illegal. He concluded that there was no provision allowing deployment of the Army in the Currency Reforms Statutes nor in later Statutes dealing with elections. He submitted that the role of the UPDF is set out in article 209 and has nothing to do with internal policing which is the mandate of the Police under article 112.

Learned Counsel for the Petitioner further argued that under section 41 of the Act, the Police are required to provide security, but if there was no police then the presiding officer would appoint anybody present to act as an election constable, only in restricted circumstances, where there was actual or threat to public order. Since there was no state of emergency, Mr. Walubiri submitted that the deployment was unconstitutional and illegal. And constituted an offence under s. 15 (b) and (c) of the Act. He further contended that the deployment of the Army and PPU was with the consent of the Respondent, which occasioned intimidation of many people including Major Okwir.

Mr. Walubiri further contended that a candidate is liable for the actions of the agent done within the scope of his employment even where the agent was strictly prohibited from undertaking the particular action. He referred us to The News Digest of English Case Law 2nd ed. 1924, and Digest: Annotated British Commonwealth and European cases 1982 (Butterworths para. 646 p. 72) where the concept of implied consent is discussed.

Dr. Byamugisha learned lead counsel for the 1st Respondent submitted that Section 12 (1) of the Commission Act requires the 2nd measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness. Learned counsel referred to the affidavits of Major General Jeje Odongo explaining why the UPDF got involved in maintaining security after Police had requested for argumentation. The reason was to take charge of the security as it had been done in previous occasions. The evidence of Major General Jeje Odongo was corroborated Mr. Kisembo, Inspector General of Police.

Dr. Byamugisha also referred to the evidence that the Commission had written to the candidates informing them how he had contacted the Police and other security during the entire campaign period. The Chairman of the Commission stated that the security had improved after the Joint

Security Force had been constituted. Learned counsel concluded that the deployment of the UPDF was therefore not illegal. Secondly, the deployment was not used for an illegal purpose to persuade voters to vote for the 1st Respondent.

As regards the abduction or arrest of Major Okwir, Dr. Byamugisha submitted that the circumstances of his arrest are explained by Lt. Col. Mayombo and his evidence is supported by that of Maj. Gen. David Tinyefuza. Dr. Byamugisha submitted that it not true that Major Okwir was arrested to remove him from the Petitioner's group but to save his life from the Petitioner's group who wanted to deal with him for spying on them.

Dr. Byamugisha further contended that there was no evidence adduced to prove that a partisan army was deployed over the whole country, which harassed and coerced voters. He also submitted that there was no evidence of how many voters abstained from voting due to coercion and fear. He argued that the provision of Section 3 (2) and 12 (1) (e) and (f) of the Commission Act do not constitute an offence but are obligations of the Commission.

On the question of agency, Dr. Byamugisha submitted that the Petitioner went beyond the requirements of the Act by adding officers attached to his office as president since these officers cease to be his agents under the Act. He submitted that the President is not a candidate in his capacity as Chairman of the Movement or Commander-in-Chief of Uganda Armed Forces.

The first point to consider is whether the general deployment of the army was unconstitutional and illegal as submitted by learned counsel for the Petitioner. The Uganda Peoples Defence forces (UPDF) as a state agency is established by article 208 of the Constitution. Clause 3 (2) and (3) of article 208 provide.

“(2) The Uganda Peoples Defence Forces shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority as established by the Constitution.

(3) Members of the Uganda Peoples Defence Forces shall be citizens of Uganda of god character.

The constitution sets the functions of the UPDF in article 209 which, states,

“209. The functions of the Uganda Peoples Defence Forces are –

- (a) To preserve and defend the sovereignty and territorial integrity of Uganda;***
- (b) To co-operate with the civilian authority in emergency situations and cases of natural disasters;***
- (c) To foster harmony and understanding between Defence Forces and civilians; and***
- (d) To engage in productive activities for the development of Uganda.”***

It seems to me that the purpose of the above provisions was to create a national rather than a partisan Army. There was no evidence that there is a partisan section in the army or that the army, which was generally developed, was partisan. There was no evidence of appointment of partisan commanders. Maj. Gen. Jeje Odongo was already the Commander of the Army when appointed to take charge of security.

The second objective appears to me to create a professional and disciplined army, which would respect the rights of the people. It was mandated to foster harmony and understanding between the army and the public. It was intended to create good civil-military relations and to promote a pro-people army as its name suggests.

The third goal appears to establish an army which though primarily responsible for the defence of Uganda, would co-operate with other security agencies in emergency situations and natural disasters. Other security agencies here include the police. It was submitted that the army could only come to assist the Police in a state of emergency. I am not persuaded by this argument since the provision does not refer to a state of emergency, but emergency situations, which may involve security.

The fourth objective was to establish a productive army, which contributed to the development of Uganda especially in times of peace. I have attempted to explain the constitutional character and role of the UPDF because it is important for understanding the role it played in these elections.

It is not in dispute that the UPDF was requested by the Police to assist with the maintenance of security during the elections including the campaign period. The reasons for this request have been adequately indicated in the affidavits of the 1st Respondent, the Commander of the UPDF,

the Inspector General of Police and the Chairman of the 2nd Respondent. It is well established that the maintenance of functions of the Uganda Police Forces to include:

“(a) to protect life and property;

(b) to preserve law and order

(c) to prevent and detect crime; and

(d) to co-operate with the civilian authority and other security organs established under this Constitution and with the population generally.”

It was under article 212 (d) that the Police requested the army to assist them in maintaining security throughout the country. In my judgment it was not unconstitutional or illegal to deploy the UPDF to assist in maintaining security to ensure that the elections were conducted under conditions of freedom and fairness. Whether the Army exceeded its mandate or engaged in activities incompatible with its role during elections in another matter.

In Liversege v Anderson (1942) AC 206 Lord Macmillan stated at page 253,

“As Lord Park said in the Zamora (1916) 2 A.C. 77, 107. Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matter should be made the subject of evidence in a court of law or otherwise discussed in public.”

The evidence as a whole does not indicate that intimidation was caused by the general deployment of the Army. Intimidation was restricted to some areas where the soldiers would probably have been even if there was no general deployment. Places near barracks were a case in point. Another case is the PPU, which was deployed in Rukungiri for a specific purpose.

As regards the question of agency, I am of the view that the general principles of agency do not apply. Therefore English decisions and the case of Muwonge v Attorney General (1967) EA 17 are not applicable.

In view of the strict provisions of Section 65 (c) it must be proved that the illegal practices were committed by the agent with his knowledge and consent or approval. There was no express

evidence that the 1st Respondent knew and consented or approval the acts of evidence or intimidation, which were perpetuated by members of the UPDF. Reliance was placed on the letter written to the 1st Respondent requesting him to take action to save the electoral process from being derailed. There was no evidence that the 1st Respondent received the letter or consented or approved those actions. He expressly denied knowledge of them or their approval. The burden was on the Petitioner to prove this essential element in the illegal practice alleged. It would be dangerous to imply authorization by the 1st Respondent merely because the soldiers belonged to the UPDF of which he is the Commander-in-Chief. The purpose of the law would not be achieved by such interpretation. A reasonable degree of guilty knowledge is required under the section.

In my judgment, the Petitioner failed to prove to my satisfaction that the 1st Respondent knew and consented or approved the illegal practices committed by members of the UPDF.

Deployment of PPU and Major Kakooza Mutale’s Kalangala Action Plan para-military Force:

In para 3 (2) (d) of the Petition, the Petitioner alleges that contrary to Section 25 (b) of the Act. The 1st Respondent organized groups under the Presidential Protection Unit and his Senior Presidential Adviser one Major Kakooza Mutale with his Kalangala Action Plan para-military personnel to use force and violence against persons suspected of not supporting the 1st Respondent thereby accusing a breach of the peace, disharmony and disturbance of public tranquility and induce others to vote against their conscience in order to gain unfair advantage for the 1st Respondent during the Presidential Elections.

In his affidavit in support of his answer to the Petition, the 1st Respondent stated that he did not directly or indirectly organize groups of persons under the PPU or Major Kakooza Mutale with his Kalangala Action Plan personnel and whatever such persons are stated to have done by the Petitioner was without his knowledge and consent or approval.

Section 25 (b) of the Act states,

“Any person who before or during election for the purposes of effecting or preventing the election of a candidate either directly or indirectly –

(b) organizes in a group of persons with the intention of training the group in the use of force violence, abusive, insulting, corruption or vituperative songs or language calculated to malign, disparage, condemn, insult or abuse another person or candidate or with a view to causing disharmony or a breach of the peace or disturb public tranquility so as to gain unfair advantage in the election over that other candidate;

Commits an offence and is liable on conviction to a fine not exceeding eighty currently or imprisonment not exceeding one year or both.”

This provision prohibits the establishment of special group of people with the intention of training them to interfere with the peaceful organization of free and fair elections and to intimidate other candidates and supporters in order to gain unfair advantage over the candidate.

There is no evidence that the PPU was established or organized with the intention of training it to interfere with the elections. The evidence on record is that the PPU is a standing facility for the protection of the security of the President of Uganda. Although there was evidence that it was deployed in Rukungiri District, there is no evidence of special training to carry out the activities prohibited in Section 25 (b) of the Act. Whatever activities or electoral offences they were engaged in, there is no evidence that the 1st Respondent personally organized or mandated them to do so. It is therefore not possible to conclude that those provisions of the Act or principles behind them were violated by the PPU.

As regards the allegations against Major Kakooza Mutale and his Kalangala Plan of Action, the Petitioner adduced no evidence of their activities, and how they violated the provisions of Section 25 (b) of the Act. In the absence of that evidence it is not possible to understand what principles of the Act were violated.

On the contrary Major Kakooza Mutale has given a reasonable and uncontroverted explanation of the origin, composition, purpose and activities of the Action Plan. It does not contain those prohibited acts mentioned in Section 25 (b) of the Act.

In his submissions, Dr. Byamugisha referred to the affidavit of Capt Ndahura who was the Commander of the PPU in Rukungiri who explained why he was sent to prepare and secure the

areas for the visit of the 1st Respondent on 16 January 2001. Capt. Ndahura whose evidence had been earlier reviewed denied that the PPU was involved in acts of violence and intimidation. He also denied sending soldiers to Polling Stations and stated that they were permanently camped at State Lodge in Rukungiri.

Learned lead counsel of the 1st Respondent argued that the 1st Respondent's witnesses had exonerated the 1st Respondent, and he was not personally involved in the acts of terror and violence. He submitted that the PPU are agents of the State not of the President and does not pay them. He contended further that the PPU is in each area where there is a State Lodge, and the President does not deploy PPU, but that is done by the UPDF. He submitted that the 1st Respondent was a Presidential Candidate and therefore the case of Muwonge v Attorney General (1967) E.A. 17 does not apply.

I have already held that the PPU were involved in acts of intimidation in Rukungiri. It is not necessary for me to decide whether their continued stay in Rukungiri was necessary or desirable. The reason given for their continued stay was to prepare for the return of the 1st Respondent for campaign. The 1st Respondent was entitled under the Act to retain his security facilities as Head of State. On this basis it cannot be said that the deployment of PPU in Rukungiri was illegal.

The PPU exceeded their powers by engaging in acts of intimidation and harassment of the Petitioner's Agents and supporters. The question is whether the 1st Respondent is responsible for their actions. There was no evidence adduced to prove that the 1st Respondent knew or consented to those actions or approved them. It may be said that as Head of State, who is guarded by the PPU, he ought to have known what the PPU was doing in Rukungiri. That may be a good moral judgment or expectation but is not evidence of fact. The 1st Respondent was also a candidate who was busy campaigning throughout the country. There was no evidence that he was responsible for deployment of the PPU. Therefore it cannot be assumed that he knew and consented to their actions. The Petitioner failed to discharge the burden of proof to my satisfaction on this allegation.

Issue No. 5: Reliefs to the Parties:

Issue No.5 was what reliefs are available to the parties? In the Petition the Petitioner prayed for the following reliefs.:

“4. Therefore you Petitioner prays that this Honourable Court declares:

(a) That Museveni Yoweri Kaguta was not validly elected as President.

(b) That the election be annulled

The Petitioner prays for costs of this petition.

In view of my findings on Issue No. 3 and No.4 that the Petitioner has failed to satisfy me that the non-compliance with the provisions and principles of the Act affected the results of the election in a substantial manner and that the 1st Respondent committed any illegal practice or offence, I held that the Petition be dismissed. Consequently the reliefs prayed for in para (a) and (b) were refused.

On the question of costs Dr. Byamugisha learned lead counsel for the 1st Respondent submitted that the 1st Respondent be awarded costs of the petition since the petition had been dismissed. He contended that under Section 27 of the Civil Procedure Act, which governs the award of costs, costs of any action should follow the event unless the Court, for good reasons, orders otherwise. In this petition the costs should follow the event of dismissing the petition by awarding the successful party its costs. It was his submission that a person coming to court should weigh the consequences of his action to stop frivolous petitions.

Mr. Deus Byamugisha learned counsel for the 2nd Respondent agreed with the submission of Dr. Byamugisha that costs normally follow the event and therefore since the Petition was dismissed, the Petitioner should pay the costs of the litigation. He asked for a certificate of two advocates.

On the other hand Mr. Balikuddembe learned lead counsel for the Petitioner contended this was a historic and unprecedented case, brought by the Petitioner as an aggrieved party in the interest of Uganda, for the development of electoral law. He argued that the Petitioner has succeeded on some of the issues framed touching on the non-compliance with the provisions of the law. It would be unfair, he contended to reward the 2nd Respondent for failure to comply with the law. He argued further that litigants should be allowed access to courts when aggrieved. He concluded that the petition was in public interest. He submitted that the 1st Respondent should be responsible for the intimidation which occurred, which forced the Petitioner to appear before this Court. He therefore prayed that each party bears its own costs.

It well settled that costs follow the event unless the court orders otherwise for good reason. The discretion accorded to the court to deny a successful party costs of litigation must be exercised judicially and for good cause. Costs are an indemnity to compensate the successful litigant the expenses incurred during the litigation. Costs are not intended to be punitive but a successful litigant may be deprived of his costs only exceptional circumstances. See Wambugu vs Public Service Commission (1972) E.A. 296.

In awarding costs, the courts must balance the principle that justice must take its course by compensating the successful litigant against the principle of not discouraging poor litigants from accessing justice through award of exorbitant costs.

In the present petition, I am of the considered opinion that the interests of justice require that the Court exercises its discretion not to award the costs to the Respondents. I agree with Mr. Balikuddembe that this was a historic and unprecedented case in which a presidential candidate who is a serving President was taken to court to challenge his election. The petition raises important legal issues which are crucial to the political and constitutional development of the country. In a sense, it can be looked at as public interest litigation. It promotes the culture of peaceful resolution of disputes. The petition was not frivolous or vexatious as the Petitioner succeed on issue No.1 and No.2. The petition was therefore of great public importance in the history of Uganda.

In several cases of significant political and Constitutional nature, this court has ordered each party to bear its own costs. This was done in the case of Prince J D C Mpuga Rukidi v Prince Solomon Iguru and Others. C.A. 18/94 (SC) where the right of the King of Bunyoro to succeed to the throne was unsuccessfully challenged. In the case of Attorney General v Major Gen. David Tinyefuza, Cost. App. No.1 of 1997 (SC) the party agreed that each party bears their own costs. The position appears to be the same in India: see Charan Lal Sahu and Others v Singh (1985) LRC Const. 31

In Prince Mpuga Rukidi v Prince Salmon Iguru (supra) I said,

“In this case the learned judge applied the general rule in exercising his discretion in favour of the successful party, the respondents, he did not consider the special nature of the case and the relationship between the parties before he came to his decision on

costs. This was an important case, which settled the question of succession to the throne of Bunyoro-Kitara and therefore paved the way to the restoration of the institution of Traditional Ruler of Bunyoro-Kitara Kingdom. It was a matter of great public importance. The fact that the question has been settled also means that there is need for the reconciliation among the contestants for the well being of the Kingdom. In those circumstances I agree that each party should bear its own costs here and in the court below.”

What I said in the Iguru Case applies with equal force to this Petition.

Accordingly, it was my view that each party should bear the costs of litigation in this petition.

For the above reasons, I dismissed the Petition and ordered that each party bears its own costs.

Dated at Kampala this 6th day of July 2001.

B J Odoki

CHIEF JUSTICE

