

THE REPUBLIC OF UGANDA

**IN THE SUPREME OF UGANDA
AT MENG0**

**(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA, KANYEIHAMBA,
KATUREEBE, JJ.S.C.)**

ELECTION PETITION APPEAL NO. 21 OF 2007

BETWEEN

**1. FRED BADDA } APPELLANTS
2. ELECTORAL COMMISSION }**

AND

PROF. MUYANDA MUTEBI RESPONDENT

*(An appeal arising from the judgment and orders of the Court of Appeal
(Okello, Mpagi Bahigeine and Byamugisha, JJA) dated 21st May, 2007 in
Election Petition Appeal No. 25 of 2006)*

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second election petition appeal from the judgment and orders
of the Court of Appeal which dismissed the appellant's appeal against the
judgment and orders of the High Court held at Masaka (Maitum, J.)
No. 002 of 2006.

The background to this appeal is as follows:-

Parliamentary elections were held throughout the country on 23rd
February 2006. Fred Badda, the first appellant, Professor Muyanda

Mutebi the respondent and the one Andrew Kulazikulabe were some of the contestants for the Parliamentary seat for Bujumba country, Karangala District. The Electoral Commission declared the 1st appellant winner with 3,316 votes while the respondent was runner-up with 3,292 of the total votes cast.

Dissatisfied with the results, the respondent petitioned the High Court challenging the results. He joined the 2nd appellant alleging it had failed to conduct the elections in the Constituency in accordance with the law.

The High Court dismissed the petition. The appellants appealed to the Court of Appeal which dismissed the appeal. Hence, this appeal.

Before dealing with the issues raised in this appeal, I am constrained to observe that the record of appeal prepared and filed by counsel for the appellant offends against the rules of this court. The written submissions by counsel also offend against the guidelines issued by the learned Chief Justice regarding the length and format of written submissions under Rule 94 of the rules of this court. For the purposes of understanding and clarity, Rule 82 of the rules provided that;

"A Memorandum of Appeal shall set forth concisely and under distinct head, without arguments or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided and the nature of the order it is proposed to ask the court to make".



The list of particulars contained in what Counsel call index and their contents immediately reveals non-compliance with those rules. The record of appeal itself is compiled in some seven hundred and sixty nine pages which, in my opinion, goes far beyond the realms of the rules of the court. It is inconceivable that the record of proceedings should also incorporate the number of authorities to be cited in the appeal, contrary to the Chief Justice's guidelines on written submissions.

The first appellant's written submission dated and filed in this court on the 23rd January, 2008 contain numerous pages including those which are smuggled in by such phrases as see pages 620, 621, 320 of our record or we adopt the submissions in the lower courts as appear on pages 667 – 685, 761 and 357-432 of the Court of Appeal and High Court respectively. To compound the error, the written submissions incorporate some 13 authorities with many of them reproduced while on others, the record of proceedings is conspicuously silent. There seems to be lack of seriousness and knowledge on the part of some counsel as to how appeals to this court, the highest and final court of appeal in our jurisdiction should be presented. In my opinion, the record of appeal before this court is not intended to contain everything that occurred before and during the proceedings in both the elections, High Court and the Court of Appeal, except in so far as they are pertinently relevant to the issues and grounds framed for the determination of an appeal. For instance, I can see no purpose in including the Uganda Gazette in the record of proceedings since what it contains is not a material particular in this appeal.

A glance at the four grounds of appeal shows quite clearly that the whole appeal hinges on whether or not the appellant committed the electoral offence of bribery. Thus, the grounds of appeal are framed as follows:

1. ***The Learned Justices of the Court of Appeal failed to properly reevaluate the relevant evidence regarding the alleged bribery and electoral malpractices thereby reaching a wrong decision that the election results were substantially affected.***
2. ***The learned Justices of the Court of Appeal erred in law and fact in holding that the prize of a cow to the runner up team in the Badda cup tournament amounted to a bribe within the meaning of the Parliamentary Election Act 2005.***
3. ***The learned Justices of the Court of Appeal erred in law and fact in holding that the appellant and his agents offered monetary bribes to voters at Lutoboka and Bidico.***
4. ***The learned Justices of the Court of Appeal erred in law and fact in holding that the appellant's agents indulged in bribery and massive multiple voting which affected the results in a substantial manner.***

In my opinion, the only ground in the Court of Appeal which appears to have been relevant was ground 3 in that court which read as follows:

"3. Whether the 1st respondent committed any election offences or illegal practices within the meaning of the PEA either by himself or through other persons with his knowledge or consent or approval".

It is inattentiveness on the part of counsel to include ground 4 in the Memorandum of appeal stating that the Court of Appeal erred in law and fact in holding that the appellants' agents indulged in massive multiple voting which affected the results in a substantial manner when the grounds containing that allegation were unanimously dismissed by the learned Justices of Appeal. Thus, in her lead judgment on this matter, Bahigeine – Mpagi, J.A, having considered the appellant's complaints in grounds 4, 7, 8 and 9 and the respondent's responses, allowed these grounds in favour of the appellant. It is baffling as to how counsel for the appellant would now again make that issue a ground of appeal in this court. The result of my observations is that, in my opinion, the only issue to be determined by this court is whether or not the appellant committed the electoral offence of bribery. Had counsel for the appellant identified this as the only matter to be determined by this court, a lot of expenses and time would have been spared.

I now come to the matter of bribery and electoral malpractices. It is the appellant's counsel's submission that both the High Court and the Court of Appeal erred in law and fact in finding and holding that there had been bribery and electoral malpractices.

The concurrent findings of the High Court and Court of Appeal on the facts were as follows: The learned trial judge said in his findings.

"I am satisfied with the evidence of PG and have taken not of Bogere's affidavit that a cow was offered to the Kagoonya Football Club not as part of and parcel of what the Committee had agreed on but to solicit votes for the 1st respondent. This was an election

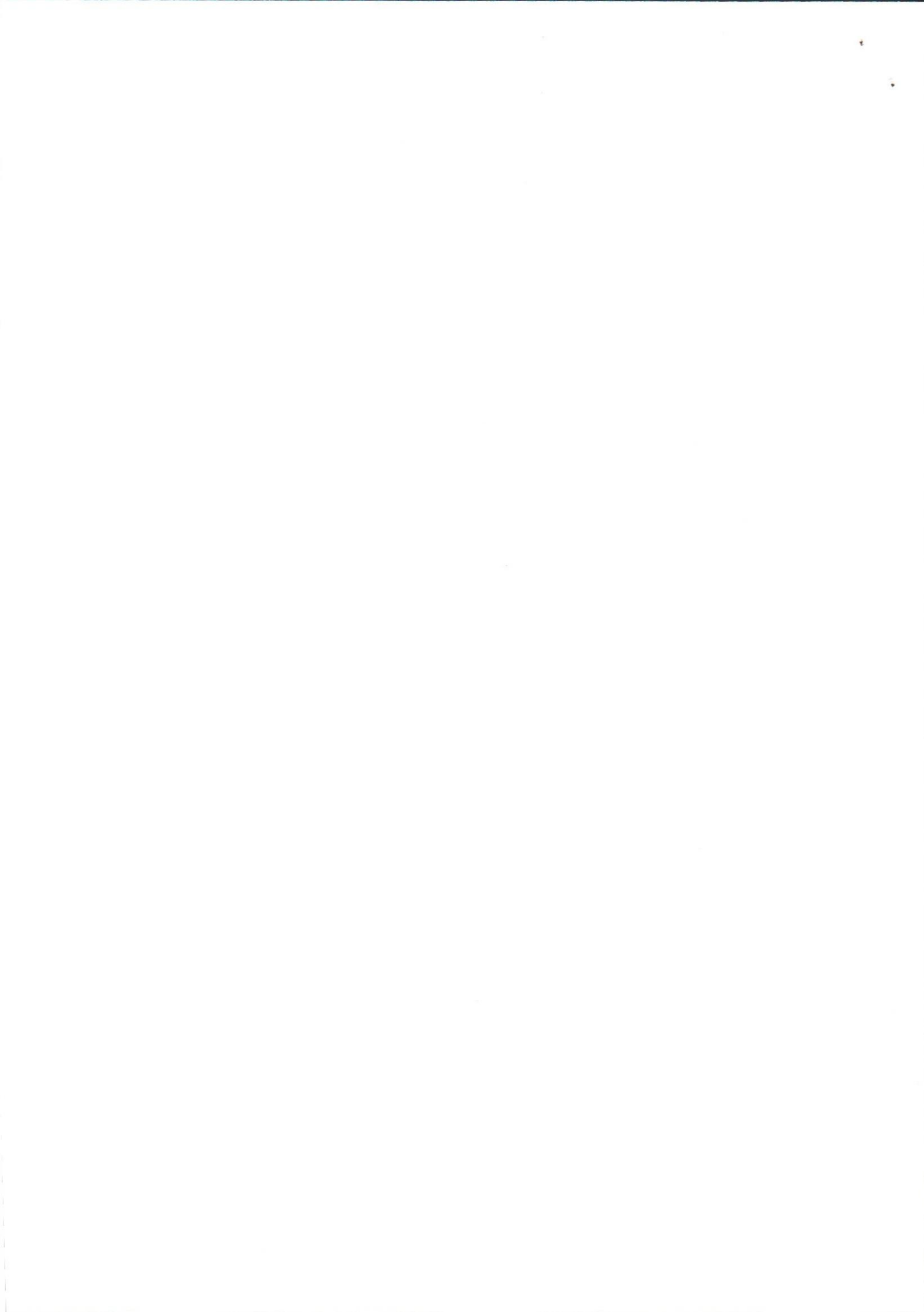
campaign period, and however, one looked at it, the donation of a cow to the losing team, in the circumstances in which it was donated, i.e after they vowed not to vote for the first respondent, was a gesture calculated directly to influence them to vote for the 1st respondent”.

On the issue of bribery, Messrs Ambrose Tebyasa & Co. Advocates submitted that the lower courts failed to properly evaluate the relevant evidence regarding the alleged bribery and electoral malpractices and therefore reached a wrong decision that the election results were substantially affected by bribery and electoral malpractices. Counsel contended that the learned Justices of Appeal failed to properly evaluate evidence and circumstances surrounding the alleged bribery by (sic.) a cow and therefore reached a wrong and erroneous decision. He contended that it was common ground that the Badda tournament had been in place since 2001. Counsel contended that under those circumstances, it was upon the respondent to prove that the usual prize at the tournament was a bribe on the basis that it was given during an election period. Counsel contended that the courts below should not have relied on the respondents' witnesses' evidence which was false and fabricated. Counsel further submitted that the appellant had failed to prove that the appellant had failed to show that the tournament prizes had in anyway influenced voters one way or the other.

The evidence about what occurred at the tournament venue and what languages were spoken during the giving of the cow and money was contradictory and therefore unsafe to found a correct conclusion.

Counsel further contended that some of the evidence tendered at the hearing of the petition was unreliable and was contrary to the provisions of O. 19, r3 of the Civil Procedure Rules. Counsel cited **Winfred Kamuhangi v. Babihuga J. Winnie, Election Petition Appeal No 9/2002, Amama Mbabazi v. Musinguzi Garuga, Election Petition Appeal No. 12/2002, Kifamunte Henry v. Uganda (s.c) Crim. Appeal No. 8/98 (unreported) and Muddumba v. Wilberforce Kalisa, (C.A) No. 9 of 2002 (unreported)** in support of his written submissions.

10 Counsel for the respondent, Mr. Lubega assisted by Mr. Katumba opposed the appeal and opted to argue against the appeal orally. Mr. Lubega while agreeing with Counsel for the appellant on the background and facts of the appeal, expressed the view that he found difficulty with
15 grounds 3 and 4 as framed for the appellant. He contended that ground 3 offends against the rules of this court in that it is not precise and is argumentative. He further contended that ground 4 of the appeal contains a complaint against the Court of Appeal on an issue not brought to the attention of that court for determination. It follows, argued
20 counsel, that consequently the Justices of the Court of Appeal cannot be criticized for a matter which was not before them and for which they had no opportunity to adjudicate upon. Counsel therefore prayed this court to strike out the two grounds. We decided to hear counsel on all the grounds and I will be returning to ground 4 in the course of this
25 judgment.



Counsel for the respondent submitted that this was not one of those cases where as a second appellate court, this court, should intervene. In Counsel's opinion, the courts below adequately dealt with the matters raised and this court has no reasons for interfering with the findings and
5 decisions of those courts.

Counsel contended that what is in issue in this case is whether or not a bribe was offered. In counsel's opinion, the prizes awarded to the contestants in the club could not be conceived as bribes because the
10 tournament which is an annual event had been organized and went on long before the alleged incident of bribery. Counsel further contended that it was not only the club's committee which altered the date of the tournament but as the event had been held and was a going concern, it could not be contemplated as having the motives or purposes of bribery.
15 He contended that the record showed that it was the tournament committee which changed the timing of the tournament as evidenced by a number of affidavits submitted for perusal in the High Court. Counsel contended further that there was no credible evidence that the cow had been given as a bribe.

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Counsel further contended that the appellant had failed to prove that bribery had been offered and the evidence tendered in an effort to prove the case was weak. Counsel cited a number of cases in support of his submissions including the Parliamentary Elections Act, No. 178 2005,
25 **Wasike Stephen Mugeni v. Amori Siryoyi, Election Petition Appeal No. 05/2007, Paul Kawanga Ssemwogerere & Zachary Olum v.**



Attorney General, Kiiza Besigye v. Yoweri Kaguta Museveni and Another; Presidential Election Petition No.1/2001, Kirunda Kivenjinja Ali v. Katuntu Abdu and Electoral Commission; Election Petition Appeal No.24/2006 and Mukasa Anthony Harris v. Dr. Bayiga Micheal Lulume; Election Petition Appeal No. 14/2006.

In the Court of Appeal, Mpagi-Bahigeine, J.A exhaustively reevaluated the evidence and after citing the relevant law on bribery and electoral malpractices, the learned Justice observed;

"Though elections are not supposed to do away with social events as commented by Mr. Kandebe, the shifting of the dates for the tournament to coincide with the campaign period raises some doubts as to the bona fides of the 1st appellant, which was its sponsor. The campaign period gazetted by General Notice 20/2006 for 20th January to 21st February as campaigning period is deemed to be public notice especially to an aspiring candidate. The 1st respondent denied responsibility for the change of dates, claiming that the date had been changed by the finance committee which he sponsors but is not a member thereof. The two committee members Maurice Nante and Serwanga Christopher and Mr. Lwanga, the team manager never mentioned taking such decision to shift the date in their affidavits. They only mentioned how the cow was delivered to them. It is to be noted that after the runners up had failed to get the goat, the 1st appellant promised them a cheque for Shs. 100,000 which they declined and threatened not to

5 vote for him. He then promised them a cow which was duly delivered as testified to by Maurice Nante, Serwanga Christopher, Nsubuga John, Stephen Opeto, Kalungi Sam, Kalibbala George and katumba John. Though Opeto Isaac, Card No. 08198294 was a mere spectator at the tournament, he confirmed that the 1st appellant gave a calf to the winning team Nakayiba FC. The Kagoya FC were supposed to get a goat which they did not get. The 1st appellant promised the runners up, Kagoya FC, a cow within a week's time and pleaded with the supporters not to let him down during the elections, after they had threatened not to vote for him during the elections.... There were no inconsistencies nor contradictions in the affidavits in support of this ground. I was not persuaded by Mr. Kandebe's arguments to the contrary. I accept the learned Judge's findings that the gift of the cow was clearly intended to influence the voters to vote for the 1st appellant".

I do not have any reasons to interfere with the concurrent findings of the two courts. In my view, the four grounds of appeal ought to fail.

20 On the cross-appeal, I agree with counsel for the appellant that there is no substance in this complaint. The learned Justices of Appeal fully and correctly determined this matter. This view is fortified by the fact that in its opposition to the counterclaim, counsel for the appellant submitted that the courts below properly and adequately dealt with the matter raised in the counterclaim. It behoves one to discover that whereas

counsel contended that the courts below adequately and properly reevaluated the evidence relating to the counterclaim, it nevertheless challenges the same courts for failing to evaluate adequately, the issues forming the grounds of the appellant's appeal. I have already stated that I am satisfied that the Court below adequately dealt with the issues and evidence in this case.

I would dismiss this appeal with costs to the respondent. I would also dismiss the counterclaim with no orders as to costs. I would certify one counsel.

Dated at Mengo 11th day of November 2008

**G.W.KANYEIHAMBA
JUSTICE OF THE SUPREME COURT**

THE REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF UGANDA
AT MENGO**

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(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA
AND KATUREEBE JJ.SC)

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ELECTION PETITION APPEAL NO 21 OF 2001

BETWEEN

FRED BADDA } ::::::::::::::::::::::::::::::::::::::: APPELLANT

15
AND

PROF MUYANDA MUTEBI} ::::::::::::::::::::::::::::::::::::::: RESPONDENTS

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*[Appeal from the decision of the Constitutional Court at Kampala (Okello, Mpagi- Bahigeine, and
Byamugisha, J.J.A) dated 21st May 2007, in Election Petition Appeal No. 25 of 2006]*

JUDGMENT OF ODOKI, CJ

25 I have had the advantage of reading in draft the judgment prepared by my
learned brother, Kanyeihamba JSC, and I agree with him that this appeal should
be dismissed with costs to the respondent in here and the Courts below. I also
agree that the counter-claim should be dismissed with no order as to costs.

30 As the other members of the Court also agree, this appeal is dismissed with
orders in the terms proposed by Kanyeihamba JSC.

Dated at Mengo this 11th day of November 2008

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B J Odoki
CHIEF JUSTICE

IN THE SUPREME OF UGANDA

AT MENG0

5 (CORAM: ODOKI, C.J., TSEKOOKO, MULENGA, KANYEIHAMBA &
KATUREEBE JJ.S.C.)

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15 2. ELECTORAL COMMISSION :::::::::::::::::::: APPELLANTS

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20 *(An appeal from the judgment of the Court of Appeal (Okello, Mpagi-Bahigeine and
Byamugisha J.J.A) at Kampala dated 21st May 2007 in Election Petition Appeal No.25 of 2006)*

25 **JUDGMENT OF MULENGA JSC.**

I have had the benefit of reading, in draft, the judgment of my learned brother,
Kanyeihamba, JSC. I agree with him that this appeal be dismissed. I also
agree with the orders proposed by him.

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DATED at Mengo this 11th day of November 2008.

J. N. Mulenga
35 JUSTICE OF THE SUPREME COURT



THE REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF UGANDA
AT MENGO**

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*(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA KANYEIHAMBA,
KATUREEBE, JJ.SC).*

ELECTION PETITION NO. 21 OF 2007

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2. ELECTORAL COMMISSION } :::::::::::::::::::: APPELLANTS

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*(An appeal arising from the judgment and orders of the Court of
Appeal (Okello, Mpagi Bahigeine and Byamugisha, JJ.A) dated 21st
May, 2007 in Election Petition Appeal No. 25 of 2006).*

JUDGMENT OF KATUREEBE, JSC.

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I have had the benefit of reading, in draft, the judgment of my learned brother,
Kanyeihamba, JSC. I agree with him that this appeal be dismissed. I also agree
with the orders proposed by him.

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DATED at Mengo this 11th day of November 2008.

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Bart M. Katureebe
Justice of the Supreme Court

