

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
ELECTION PETITION APPEAL NO.032 OF 2011**

5 **1. LANYERO SARAH OCHIENG**
 2. ELECTORAL COMMISSION.....APPELLANTS
 VERSUS
LANYERO MOLLY.....RESPONDENT

10 **CORAM: HON.JUSTICE A.E.N.MPAGI-BAHIGEINE, DCJ**
 HON.JUSTICE S.B.K.KAVUMA, JA
 HON.JUSTICE REMMY KASULE, JA

15 **JUDGMENT OF THE COURT**

Introduction

20 This is an appeal from the judgment and orders of the High Court of Uganda at Gulu
 (*Ruby Opio Aweri, J*), delivered on the 23rd day of August 2011 in Election Petition
 No.002 of 2011.

Background

25 The background to this appeal is that the 1st appellant and the respondent were among the
 four contestants in the parliamentary election held on the 18th February 2011 for the
 Woman Member of Parliament for Lamwo District. At the end of the election the 1st
 appellant was declared winner and the following results were published: Lanyero Sarah
 Ochieng-11, 546, Lanyero Molly-11, 058, Lajara Vicky-4,042 and Angeyo Mary-
30 3,079.The respondent challenged the results in court on several grounds. The learned trial
 judge found in favor of the respondent and awarded her the costs of the petition. The 1st
 appellant filed a Notice of Appeal and a Memorandum of Appeal but her lawyers

inadvertently failed to effect service of vital documents upon the respondent let alone filing a record of appeal within the prescribed time. On the 29th November 2011, by consent of the parties before the learned Registrar, the 1st appellant was granted 14 days within which to serve the Memorandum of Appeal and to file and serve the record of appeal. She complied, hence this appeal.

Grounds of appeal

The grounds of the appeal are set out in the Memorandum Of Appeal as follows:

10 **“1. The learned trial judge erred in law and fact when he found that the 1st Appellant committed illegal practices and electoral offences in connection with the election, personally or through her agents, with her knowledge and consent or approval;**

15 **2. The learned trial judge erred in law and fact when he found that the 2nd Appellant failed to conduct the election in accordance with the provisions of the Parliamentary Elections Act and the principles therein and that the non-compliance affected the result of the election in a substantial manner;**

20 **3. The learned trial judge erred in law and fact when he failed to fairly, justly and properly evaluate all the evidence on record thereby coming to the wrong conclusions;**

4. The learned trial judge erred in law and fact when he engaged in conjecture and speculation and reached the wrong conclusions.”(Sic)

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Representation

At the hearing of the appeal, the 1st appellant was represented by Mr. John Mary Mugisha, assisted by Mr.Saverino Twinobusingye, (hereinafter together referred to as counsel for the 1st appellant). The 2nd appellant was represented by Mr.Okello Oryem (hereinafter called counsel for the 2nd appellant), while the respondent was represented by Mr. Louis Odongo Lloyd Ochoro Biya,(hereinafter called counsel for the respondent).

Issues

The following are the issues for courts resolution:

- 5 **1. Whether the learned trial judge erred in law and fact when he found that the 1st Appellant committed illegal practices and electoral offences in connection with the election personally or through her agents, with her knowledge and consent or approval.**

- 10 **2. Whether the learned trial judge erred in law and fact when he found that the 2nd Appellant failed to conduct the election in accordance with the provisions of the Parliamentary Elections Act and the principles therein and that the non-compliance affected the result of the election in a substantial manner.**

- 15 **3. Whether the learned trial judge erred in law and fact when he failed to fairly, justly and properly evaluate all the evidence on record thereby coming to the wrong conclusions.**

- 4. Whether the learned trial judge erred in law and fact when he engaged in conjecture and speculation and reached the wrong conclusions.**

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Case for the appellants

25 **Ground one**

On the 1st ground, counsel for the appellant submitted that it was erroneous the trial judge to find that the electoral offence of bribery had been proved against the 1st appellant without consider the key ingredients of bribery as stipulated in S.68 of the Parliamentary

Elections Act), (PEA) and in **Kiiza Besigye v Kaguta Museveni SC Election Petition Appeal No.01 of 2001.**

5 Counsel submitted that the learned trial judge erroneously relied on photographs purportedly taken by one, Otim Joseph, at Potika Parish, Agoro Sub County. He there was no evidence to show that they were taken from that sub county. He further submitted that there was no evidence to show that the women appearing in those photographs were registered voters. He asked court to note that Otim Joseph who swore an affidavit, was a partisan witness, being an agent of the respondent and there was no independent evidence
10 to corroborate his evidence. Counsel pointed out that the learned trial judge relied on the evidence of Layuu who distributed bitenge and salt yet there was no proof that she was the 1st appellants agent.

Ground two

15 On ground 2, counsel for the 1st appellants submitted that the principles of free and fair elections were settled in **Kiiza Besigye v Kaguta Museveni** (supra) where the court summarized them as:

- **“The election must be free and fair**
- **The election must be by universal adult suffrage, which underpins the right
20 to register and to 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 election must be based on the majority of the votes cast**

25 Counsel argued that the learned trial judge failed to apply this test in the instant case. In his view, the learned judge erred in holding that the qualitative test should apply in deciding whether there was substantial non compliance calculated to influence the election results in issue.

30 **Ground three**

On ground 3, counsel submitted that the learned trial judge failed to properly evaluate the evidence on record. He asked this court to re-appraise the evidence as per the case of **Pandya v R [1995] EA 336** and Rule 30 of the Court of Appeal Rules. He submitted that the learned trial judge even sampled some affidavits and concluded that there was ballot stuffing and multiple voting when there was no evidence of these whatsoever. Counsel cited the case of **Masiko Winifred Komuhangi v Babihuga J.Winnie CA Election Petition Appeal No.9 of 2002** where court discarded random sampling being speculative.

Ground four

On ground 4, counsel submitted that the learned trial judge failed in his cardinal duty of resolving issues and controversy and instead resorted to conjecture and speculation. To him, the trial judge's heavy reliance on photographs with questionable authenticity and his finding that there was systematic non compliance orchestrated by bigwigs to promote the 1st appellant's success, was, but pure of conjecture and speculation.

Counsel argued that the trial judge's failure to invite other evidence to corroborate the evidence of partisan witnesses was a serious let down and he should not have relied on that uncorroborated evidence to reach the conclusion he did.

He prayed court should allow the appeal with costs to the 1st appellant here and in the court below. He also prayed for a certificate for two counsel.

Counsel for the 2nd appellant associated himself with counsel for the 1st appellant's submissions and only added a few points on the 2nd issue. He submitted that while bribery is a separate ground under S.61 (1) (c) PEA for setting aside an election, it does not amount to proof of non compliance under S.61(1)(a) of the Act.

He pointed out that S.30 (5) PEA particularly provides for the setting up of a polling stations and it was thus not enough for one, Okot Benjamin, to say that he saw the Returning Officer issuing two ballot papers. He argued that the respondent had the duty to show how the safeguards to electoral secrecy were infringed. He also stated that the

respondent's only complaint had been that the ballot boxes were not sealed. He did not complain about not ballot stuffing or multiple voting.

Concerning the use of vehicles with foreign registration numbers, counsel contended that there was no evidence for identifying those vehicles. He submitted that he did not know of any law that prohibited the E.C from using foreign vehicles. All in all, counsel argued that there was no evidence upon which to make the findings about non compliance in this election. To him, the judge's choice of the qualitative method was not proper given that he relied on only 4 polling stations out of over 100 polling stations to come to the conclusion that there were electoral malpractices.

Case for the respondent

Counsel for the respondent submitted that under S.61 (1) (a) of the PEA, it is the duty of the 2nd appellant to ensure that regular, free and fair elections are held. The respondent complained to the Presiding Officer that the elections were not free and fair and to support her case, Aryem Lucia swore an affidavit that one, Okeny Mark, was giving 5,000/= to women. Counsel submitted that the witnesses were available for cross-examining but the 1st appellant did not take the opportunity. He asserted that uncontroverted evidence is acceptable and that the learned trial judge was within the law when he found non compliance with the election laws.

On ballot stuffing, counsel for the respondent stated that one, Benjamin Okot had testified that he witnessed the Presiding Officer, an officer of the 2nd appellant, keep unsealed ballot boxes and give selected people 2 ballot papers to go and vote. Counsel emphasized that under S.12 (1) (e) (f) and (j) of the Electoral Commission Act, it is the duty of the 2nd appellant to take measures to ensure that the electoral process was conducted under the conditions of freedom and fairness. He stated that Okot Benjamin was not cross-examined by the 2nd appellant and as such, his evidence was not destroyed and so it was to the satisfaction of court. To counsel, the 2nd appellant abdicated the responsibility assigned to them by law.

On bribery, counsel for the respondent submitted that the learned trial judge was right in finding that it took away from the voters of Lamwo their free will to vote. He relied on the case of **Kiiza Besigye** (supra). He submitted that compliance does not stop with the respondent but all those engaged in the election.

5 Counsel prayed that court finds that the learned trial judge properly addressed himself to the law and the evidence before him and came to the correct conclusion. He prayed that court finds no merit in this appeal and dismisses it with costs here and at the court below with a certificate for two counsel.

10 **Reply**

In reply, counsel for the 1st appellant submitted that the case of **Mukasa Anthony Harris v Dr. Michael Lulume Bayiga S.C Election Petition Appeal No.21 of 2007** was being quoted out of context because in that case, their Lordships evaluated the evidence of 5 witnesses who had given evidence on bribes. He argued that in that case, there was
15 evidence of voters and receipt of money and many saw the briber and the bribed who were registered voters.

On cross-examination, counsel pointed out that it is not a requirement that all witnesses should be cross-examined as this would defeat the purpose for trial on affidavits .He
20 argued that as long as the evidence has been rebutted or it cannot stand on its own, there would be no need for cross-examining the concerned witnesses.

Regarding the burden to produce the women who appeared in the photographs, counsel submitted that that the burden was on the petitioner since he who alleges must prove.
25 That it was only after the petitioner had given this evidence, that the respondent, now appellant, would have had the duty to controvert it.

He submitted that, all the other affidavits sworn to by the respondent's witnesses were controverted and the claims that Okot Benjamin had made statements to the police were rebutted by Olweny Michael, the police officer who said that no such report was made.

On whether proof of bribery can be proof of malpractice or non compliance counsel submitted that in the **Kiiza Besigye** case (supra) court held that bribery takes away the free will but with non compliance, the law considers the failure to comply with the electoral laws and relates it to the duty of the Electoral Commission. To counsel, the free will of voters, which is the mischief aimed at by the offence of bribery is not part of conducting the election. He argued that that was the reason the grounds are separated. He stated that bribery goes to the free will and non compliance goes to conduct of elections by the E.C.

10 **Duty of court**

This court, being the first appellate court in the instant case has the duty to subject the evidence on record, as a whole, to a fresh and exhaustive scrutiny and draw its own conclusions of fact. In doing so, court must make due allowance of the fact that it never saw or heard the witnesses give evidence at the trial. See **Pandya v R [1957] EA 336**. Mindful of the above, we now proceed to resolve the controversy between the parties as below.

Court's consideration of the appeal

We shall resolve issues one and two separately first and issues 3 and 4 together next.

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Issue one and 2

The gist of issue one is whether the learned trial judge erroneously found that the 1st appellant had by himself and through his agents had committed the electoral offence of bribery.

25 S.68 of the Parliamentary Elections Act, (PEA) provides:

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“(1) A person who, either before or during an election with intent, either directly or indirectly to influence another person to vote or to refrain from voting for any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that other person, commits the offence of bribery and is liable on

conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both.”(sic)

In **Kizza Besigye v Kaguta Museveni, SC Election Petition No.1 of 2001**, Odoki CJ held:

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“I accept the submission of Mr. Bitangaro that the petitioner must prove the following ingredients to establish the illegal practice of offering gifts:

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- **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”(sic)**

15 These ingredients are inclusive and not in the alternative. To establish whether a bribe was given to a voter, the law, therefore, requires, *among other things*, proof that the person alleged to have received the bribe was a registered voter at the material time and that the bribe was intended to influence his/her voting or nonvoting. The motive for the bribe must, therefore, also be proved. See **Kizza Besigye vs. Kaguta Museveni** (supra).

20 S.1 of the PEA defines a registered voter as:

“A person whose name is entered on the voters register”

The conclusive proof of a registered voter, therefore, is by evidence of a person’s name or names and other relevant data having been entered on the National Voters Register. It is not the voter’s card or any other election document but the National Voters Register.

25 In the instant case, the respondent pleaded in her petition paragraph 6 that the appellant personally and through her agents/party officials, with her knowledge, consent or approval committed illegal practices and offences and in paragraphs 6-9 she alleges specifically bribery was committed contrary to S.68 (1) of the PEA.

30 To prove the allegations the respondent relies on *inter alia*, the evidence of Otim Joseph in his affidavit sworn on the 23rd May 2011 where he also states, *inter alia*, that he was the

administrator in charge of welfare for the respondent during the election in issue. He took photographs on the 17th Feb 2011, according to him, Pottika Parish Agoro sub county, of various ladies who informed him that they were registered voter. The women were singing praises of the 1st appellant for having supplied them with bitenge through a
5 one Layun who the women told the witness that the said Layun was an agent of the 1st applicant and that the bitenge had been bought by the 1st appellant. The photographs of the jubilating women were annexed to Otim Joseph's affidavit collectively marked as 'A'.

The jubilating women, according to the witness, further told him that the same Layun had
10 provided each of them with 10 sachets of salt to distribute among women and that the salt had been delivered by the 1st appellant. There was no affidavit in rebuttal of these allegations in Otim Joseph's affidavit. Similar evidence on the distribution of bitenge and salt to women by agents of the 1st appellant is contained in the affidavit of the respondent in support of her petition sworn on the 18th March 2011. She avers such information was
15 given to her by her agents, Nono Kenneth and Otti Cosam.

Akena Erick sates that he too saw Adyer Stella and Mang Estar, his neighbours celebrating that the 1st appellant had given them bitenge.

Onono Kenneth and Ocittis affidavits were rebutted by the affidavits of.....

The 1st appellant too denied any allegations of her, by herself or through any of her
20 agents, consent or approval proposal having committed any illegal practices or electoral offences. The denials are reported in her affidavit in support of her answer to the respondents petition sworn on the 12th April 2011.

The respondent filed a total of 13 affidavits in support of her petition one affidavit was by herself in support and accompanying the petition and an additional one in support of
25 the petition.

Two affidavits in support of the petitioner were from Okot Benjamin sworn on theand the affidavit in support were from Otim Joseph sworn on theand the.....respectively.

Each of the following namely Odur Justine Peace, Aryemo Lucia, Ociti Kocam, Latin
30 Alex, Nono Kenneth and Akena Erick sworn to one affidavit in support of the petitions petitioner found they were duly filed.

The 1st and the 2nd respondenteach filed an answer to the petition with one affidavit sworn by the 1st respondent in support of her answer and two affidavits, one from engineer Badru Kiggundu, the Chairman of the 2nd respondent and a another by Stella Kariang in support of the respondents answer to the petition. Both respondents denied
5 the allegations made against each of them by the petitioner in her petition and the averments in the affidavits filed on record in support of their respective answers to the petition were evidence in support of their respective answers (affirmation).

Other affidavits in support of the answers to the petition were by Nono Kenneth(R), Lukaka Julanda, Arop George, Odwar Georg, Ochen Mathew Akiya, Olaya Micheal,
10 Asuman Odongoto, Amony Eldr, Okeny Mark, Olka Wilfred and Odur Justine Peace.

Review and scrutiny of the evidence on record.

on record to a fresh review and scrutiny bearing is made that he did not see the witnesses testify. We have also considered the law applicable to all the issues raised in the instant
15 case and in the two processes we have been able to ascertain the following.

In his affidavit in support of the respondent's answers to the petition, sworn on the 16th day of June 2011..... practically and effectively disowned/retracted the allegations of vote bribery and by the and on behalf of the 1st respondent as she had alleged in his/her affidavit in support of the petitioners sworn to on the 18th may 2011. He/she also
20 effectively retracted the allegations of non compliance with the law by the 2nd respondent in the conduct of the election of the woman members of parliament for Luwero district held on the 18TH Feb 2011. This, therefore, meant that she, for reasons she gave in her affidavit of the ...and 2011 never saw the 1st respondent and one Okeny Mark distributing any Bitenge to the people in her village she had named in her said affidavit of the 18th
25 May 2011 as being bribed to vote for the 1st respondent among other NRM candidates.

Similarly in his affidavit in support of the answer to the petition sworn on the 16th June 2011 Odur Justine Peace, for reasons he explains in his said affidavit withdraws his earlier affidavit he had sworn in support of the petition on the 16th May 2011 and effectively disowns the contents thereof.

30 The effect of his withdrawal of that affidavit is that the retrial the evidence he had given alleging he had seen the 1st respondent speak to Akayo Doreen and Oyoo and had later

seen sachets of salt being of loaded from a pick up belonging to one, Asuman Odongo too, on the 17th February 2011 and lots of the hearsay evidence he talks about concerning alleged campaigning by Hillary Onek and the 1st respondent bribing people of Atwol trading centre with salt and shs 100,000 and being argued by theto vote for only

5 NRM candidates. The bribery allegations against Okany Mark giving shs 50,000/= to 50 people and allegations of non compliance with the law by the EC in conducting the said election mainly by failing to protect the secrecy of the ballot were equally disowned.

Our further review and scrutiny of the evidence on record has shown that the affidavits of the petitioner herself and those others in support of her petition had denied allegations of

10 bribery based bitenge and goodies like salt, soap, biscuits and money given to various people on various occasions. The affidavit of Otim Joseph was most emphatic on the bitenge issue over which he attached photographs of the women whom he avers received, them and were in jubilation over them. The affidavits also complain about failure by the

15 2nd respondent to protect the secrecy of the vote by allowing ballot boxes in some polling stations to remain unsealed for hours after the commencement of voting and failing to keep voting materials in a secure manner after voting ofothers like that of.....about campaigning beyond the time allowed by law while others like that of.....complained of unfair treatment of the petitioners agents as they monitored the voting exercise on behalf of the petitioner. In this respondent one.....averred that he

20 had to abandon the station he was deployed at when he saw the presiding officer at.....*interalia* selectively giving certain people 2 ballot papers. These concepts were in allegations contained in affidavits of Okeny Mark, Olak Wilfred, Latim Alex Bongomin Alex and Ociti Kocam . the evidence in the petitioners affidavits was rebutted by the affidavits in support of the answer to the petition of Oloya Micheal and Engineer Badru

25 Kiggundu the Chairman of the EC while that of Okeny Mark, Olak Wilfred Latim Alex Ociti Kocam Odwar George, Ociti Kocams by Oloya Micheal and the 1st Respondet while that of Otim Joesph is rebutted by Stella Korian. Mathew Akiya, Amony Elder and Arop George rebut that of Bongomin Alex in addition to the 1st respondent. The evidence of Aryemo Lucia is rebutted by that of Adong too, Stella Koriang and Olok Wilfred while

30 Asuma Odongotoo, Okeny Mark and Olak Wilfred rebut that of Odur Justine which evidence, as we indicated earlier in this judgment was retracted by Odur, Akena Ericks

evidence is inconsequential as he confessed in cross examination that he did not go anywhere on polling day due to a sick child of his.

In the instant case, the learned trial judge relied on the evidence of one Otim Joseph to find that bribery had been proved against the 1st appellant. Whereas the learned trial judge rightly noted that the role of agents was to oversee the electoral process and whether it was being done according to law, this witness being a self confessed agent of the respondent's was a partisan witness whose evidence required corroboration by evidence from an independent source.

This court in **Wadada Rogers v Sasaga Isaiah Jonny & EC Election Petition No.31 of 2011**, held:

“No number of witnesses is required to prove a fact. In election matters partisan witnesses have a tendency to exaggerate claims about what might have happened during elections. In such situations, it is necessary to look for ‘other’ evidence from an independent source to confirm the truthfulness or falsity of the allegation.”(Sic)

In the instant case there was no such ‘other’ evidence from an independent source. to corroborate Otim's evidence and since he was the respondent's agent, proof of the allegations of bribery could not be established to the standard required in election matters basing on just the uncorroborated evidence of a partisan witness.

Further, the photographs that were adduced to show that the respondent bribed women in Lamwo were never authenticated. Whereas they showed people receiving goodies and adorning T-shirts with the 1st appellant's picture, it was not proved for sure that the T-shirts were adorned with her knowledge and approval and that the photographs were taken at the time and place of the alleged bribe giving or even that it was the 1st appellant or his agents who gave away these goodies, with the intention of influencing any voters. Of critical importance, is the need to prove that the people bribed were actually registered voters. In this case, there was no evidence to show that the women who allegedly

received salt and bitenge were registered voters being bribed to influence their pattern of voting.

5 Counsel for the appellants drew attention to the fact that whereas bribery is an illegal practice, it does not amount to non compliance with electoral laws because non compliance is in regard to the failure of the EC to carry out its electoral duties while bribery targets voters.

10 S.61 of the PEA provides for grounds for setting aside an election and S.61 (1) (a) of the PEA provides for non compliance with the provisions of this Act relating to elections. Bribery is provided for under S.68 as an illegal practice and S.61 (1) (b) provides for illegal practice as one of the grounds under which an election may be set aside. This distinction clearly shows that bribery does not amount to non compliance but it is a
15 ground for setting aside an election. Therefore, the two cannot be interchangeably used to support conclusions on the two situations.

Concerning the claims that the 2nd appellant did not conduct the elections in a free and fair manner, counsel for the appellant submitted that there was never evidence to show
20 that the vehicles the respondent claimed were used by the 2nd appellant to transport ballot boxes were prohibited by any law. The evidence of Okot Benjamin claiming that they made statements to the police regarding the poor conduct of the election by the 2nd appellant were controverted by one, Olweny Michael, the police officer who stated that there were never such statements recorded at Police. Clearly, there was no proof of
25 mismanagement of the election process by the 2nd appellant.

From the above, we find that with the lacking evidence that was adduced by the respondent, the learned trial judge wrongly found it sufficient to decide that there were illegal malpractices and non compliance of the electoral laws that affected the results of
30 the election in Lamwo in a substantial manner. Quantitatively, the 488 vote difference

between the respondent and the 1st appellant could never have been bridged even if it had been satisfactorily proven that there was non compliance with the laws.

5 Courts have illustrated what appropriate test to adopt, when determining the effect of the non compliance. In **Masiko Winifred Komuhangi v Babihuga J.Winnie, C.A. Election Petition Appeal No.9 of 2002**, Mukasa-Kikonyogo, DCJ (as she then was) stated as follows:

10 **“I think I am more persuaded by the counsel for the respondent that the test to be applied in determining the effect of the irregularities on the result of the election depends on the particular facts of the case.”(Sic)**

15 We find that the qualitative test the learned trial judge used in this case, in our view, could not apply since there was no proof of the alleged malpractices which would in turn have shown that the entire process on the whole was marred with incompetence and unfairness.

20 All in all, we find that the learned trial judge did not correctly evaluate the available evidence which affected the decision he reached. In our view, there was never sufficient evidence adduced by the respondent at trial to warrant the nullification of the 1st appellant’s election or justify the argument that the 2nd respondent abdicated their duties and failed to conduct a free and fair election.

This appeal would therefore succeed for the reasons mentioned above.

We so find.

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Dated at Kampala this...05th...day of ...**October**...2012

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A.E.N Mpagi-Bahigeine

30 **Deputy Chief Justice**

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S.B.K.Kavuma

Justice of Appeal

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Remmy Kasule

Justice of Appeal

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20 He also argued that the learned trial judge ignored the affidavits in reply and did not juxtapose the 1st appellant's affidavits with those of the respondent on all the allegations as he ought to have done.

where court held that bribery is outlawed and it operates to deny the free will of the voters as their choice is determined by the enticements given and received

25 Concerning the use of vehicles with foreign registration numbers, counsel submitted that their use was no evidence of bad conduct of the election or of electoral malpractices. To counsel, that was pure conjecture since there was no evidence that these vehicles that were used belonged to the Electoral Commission and as such, their mere presence did not constitute misconduct or malpractice.

In the case of **Kiiza Besigye v Y.K.Museveni & Electoral Commission Election Petition No.1 of 2006**, Katureebe JSC held that the charge of bribery had to be proved beyond reasonable doubt and not on the basis of the balance of possibilities.

We find that there was no such proof of bribery to the satisfaction of court in this case.