

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
ELECTION PETITION NO 14 OF 2006**

**NAMBOOZE BETTY BAKIREKE..... PETITIONER**

**VERSUS**

**1)BAKALUBA PETER MUKASA]**

**2)THE ELECTORAL COMMISSION].....RESPONDENTS**

**BEFORE HON. LADY JUSTICE M.S ARACH-AMOKO**

**JUDGEMENT**

National elections were held on the 23<sup>rd</sup> February 2006. The petitioner contested with the 1<sup>st</sup> Respondent, and one Kawadwa Dawood Katamba for the Parliamentary seat of Mukono North Constituency (MNC). They contested on DP, NRM and UPC tickets respectively.

The 2<sup>nd</sup> Respondent organized the election. At the end of the election, the results declared by the second Respondent indicated that the 1<sup>st</sup> Respondent had won by 22,680 votes. The petitioner was second with 22,232 votes and Kawadwa third, with 627 votes. The results were published in the Uganda Gazette of 27<sup>th</sup> March 2006. The first Respondent has since resumed that seat in Parliament.

The petitioner contends that the 1<sup>st</sup> Respondent was not validly elected and filed this petition for an order setting aside the election on several grounds set out in paragraphs 3 to 8 of the petition. Broadly, the petitioner alleged that:-

The Electoral process in Mukono North Constituency was not conducted in compliance with the provisions and principles of the Constitution of the Republic of Uganda, 1995, the Electoral Commission Act, Cap 140 and the Parliamentary Elections Act, 2005.

The failure to conduct the election in compliance with the provisions and principles of the electoral laws affected the final result in a substantial manner, and benefited the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent personally or through his agents, with his knowledge, consent or approval, committed numerous election offences and illegal practices.

The petitioner seeks from this Court orders that:-

- a) The 1<sup>st</sup> Respondent was not validly elected as an elected Member of Parliament for Mukono North Constituency.
- b) The election of the first Respondent as directly elected Member of Parliament be annulled and instead the petitioner be declared the winner of the Parliamentary election for Mukono North Constituency.
- c) In the alternative but without prejudice to the fore going, a fresh election be conducted in the said constituency.
- d) The Respondents pay the costs of the petition.
- e) Such other remedy available under the electoral laws as the Court considers just and appropriate.

The petitioner deposed a lengthy affidavit in support of the petition. Other affidavits were filed by witnesses testifying to the various allegations contained in the petition. They were bound in volumes I to IV.

The first Respondent in his answer denied engaging in any illegal activities or any electoral offences. He also denied that the elections were characterized by irregularities and malpractices and contended that if there were any malpractices or irregularities, then they were not enough to affect the result of the election.

He contended that he was duly and validly elected and the result reflects the will of the people of Mukono North Constituency. He further contended that even if the Court were to find that there were any malpractices that affected the results, no evidence was adduced that the petitioner won the election. He also filed an affidavit in support of his answer and a supplementary affidavit dated 18/9/2006. He filed twenty other affidavits in support of his answer by various witnesses. They were bound in volumes I and II.

The second Respondent in its answer also denied any malpractices alleged against it in the petition. It contended that the election was held under conditions of fairness and freedom. It was impartial and did not support any candidate. In the alternative, the second Respondent contended that if there was any non-compliance with the provisions or the principles of the PEA, that non-compliance did not affect the elections in a substantial manner. The second Respondents answer was accompanied by the affidavit of E.C Chairman, Engineer Dr. B. Kiggundu, plus over thirty (30) affidavits sworn mainly by polling officials including the Mukono District Returning Officer, one Makki Ibrahim.

At the scheduling conference, the following facts were agreed by the parties:

- 1) The election, the date and the place.
- 2) The scores:

1<sup>st</sup> Respondent -22,680.

Petitioner -22,232.

Kawadwa -627.

The agreed issues were:-

1(a) whether there was non compliance with the provisions of the PEA, 2005 and the principles governing the electoral laws in Uganda in the parliamentary elections of Mukono North Constituency conducted on the 23<sup>rd</sup> February 2006, by the second Respondent, and,

(b) If so, whether the non compliance affected the result of the said election in a substantial manner.

2).Whether the first respondent committed any illegal practices and or offences either personally or by agent, with his knowledge and consent or approval.

3).What remedies are available to the parties.

The agreed documents were:-

-All affidavits and documents annexed there to .They were also all considered read, by agreement of the parties at the commencement of the hearing.

The grounds upon which the election of a member of Parliamentary may be set aside are specified in section 61(1) of the PEA. Although it was not set out in the petition, the grounds upon which the petitioner wishes this Court to set aside the elections of 1<sup>st</sup> Respondent in the instant petition those are clearly those set out under section 61(1) (a) and (c) which reads:-

### **61. Grounds for setting aside election**

(1) The elections of a candidate as a member Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the Court-

(a) Non-compliance with the provisions of this Act relating to elections, if the Court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and the failure affected the resulting in a substantial manner.

(b)..

(c) That an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her consent or approval, or

(c).. (underlining is for emphasis).

It is settled law that the burden of proof in an election petition lies upon the petitioner who is required to prove every allegation contained in the petition to the satisfaction of the Court.

Subsection 3 of section 61 of the PEA 2005, provides that the standard of proof required to prove an allegation in an election petition is proof upon the basis of a balance of probabilities.

The degree of proof is also well settled. It is higher than that which is required in an ordinary civil suit because of the importance of the subject matter and the gravity of the allegations often contained in the election petitions. Court will therefore in this petition, just like all previous ones, analyze and evaluate the evidence bearing in mind these principles. ( See: Col. Rtd Dr Besigye Kizza vs. M. Y. Kaguta and the E.C, Election Petition No. 1 of 2001 (Supreme Court ); Hon.Mukasa Anthony Harris vs. The E.C E.P No. 6/06.(Musoke Kibuuka J.).

**ISSUE NO 1: Whether there was non-compliance with the provisions and principles set out in the PEA.**

All allegations relating to this issue are set out in paragraph 5 of the petition.

The law is set out in the PEA. The principles were summarized by Odoki C.J in E.P No. 1 of 2001 at P.39 and applied by this Court in similar petitions including Babu Francis -vs- E. Lukwago and Anor- E.P No. 10/06 at page 41-42. They are;

- The election must be free and fair. (The overriding principle).
- The election must be by universal adult suffrage, which underpins the right 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 the elections.
- The result of the election must be based on majority of the votes cast.

The C.J at page 40 of the same judgment; that Elections are the highest expression of the general will. They symbolize the right of the people to be governed only with their consent

At the international level, Articles 21 and 25 of the Universal Declaration of Human Rights 1948 and of the UN Convention on Civil and Political Rights 1966 recognize the rights of all citizens to take part in the government of their country directly or through freely chosen representatives.

Our Constitution the supreme law of our land incorporates those principles in article 1(4) which reads:

*The people shall express their will and consent to be governed through regular free and fair elections of their representatives or through referenda.*

At page 41, His Lordship further observed that:-

An election is the mechanism whereby the 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 properly. An electoral process which fails to ensure fundamental rights and citizens before and after the election is flawed.

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To ensure that elections are free and fair, there should be sufficient time given for all stages of the elections, nominations, and campaigns, voting and counting of votes. Candidates should not be deprived of their right to stand for elections, and citizens to vote for candidates of their choice through unfair manipulation of the process by electoral officials. There must be leveling of the ground so that the incumbent 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 any thing intended to subvert the will of the people. The election procedure should guarantee the secrecy of the ballot, the accuracy of counting and the announcement of results in a timely manner. Electoral law and guidelines for those participating in the elections should be made and published in good time. Fairness and transparency must be adhered to in all stages of the electoral process. (underlining is for emphasis)

The petitioner alleges that those principles were grossly violated. The allegations are contained in paragraph 5(a) to (l) and paragraph seven of the petition.

### **1) Disenfranchisement of votes.-**

The petitioner pleaded in paragraphs 5(a) and (l) that contrary to section 19(3) of the Electoral Commission Act, the second respondent disenfranchised voters by deleting

their names from the voters roll and by denying the petitioners supporters the right to vote.

The petitioner further pleaded under paragraph 5(l) that contrary to section 34(3) and (5) of the PEA, the second Respondents officers in connivance with the first respondents agents denied the petitioners open supporters the right to vote by denying them the right to check their names on the voters register or roll for purposes of being issued with ballot papers.

The two sections read:

**19. Registration of voters.**

(1) Any person who

....

(2) No person shall.

.

(3) Subject to this Act, a voter has the right to vote in the parish or ward where he or she is registered.

***34. Procedure for handling ballot paper to voter.***

(1)..

(2)..

*(3) Where a person does not have a voters card but is able to prove to the presiding officer or polling assistant that his or her name or photograph is or are on the voters register, the presiding officer or polling assistant shall issue him or her with a ballot paper.*

(4)..

*(5) Subject to section 39, a person shall not be permitted to vote at a polling station unless the persons name appears on the voters roll of that polling station.*



(6).

To prove the allegation under 5(a), the petitioner averred in paragraph 7 of her supporting that on polling day, she received several complaints from her agents that many registered voters who were her supporters and holders of voters cards were unable to vote because their names did not appear on the voters roll. The petitioner repeated his averment in her additional affidavit in Paras 2, 3, 4, 5.

She averred that in Seeta parish, Goma sub county her voters had voters cards or registration certificates indicating that they were supposed to vote at Gwafu 1 and Gwafu 11 polling stations, but the two polling stations were not physically there. That on 23<sup>rd</sup> January 2006, (on polling day), she notified the second Respondent about the absence of the said two polling stations, but no step was taken to address the situation. She attached a copy of the letter addressed to the DRO as annexure T. She further averred that she wrote on 23<sup>rd</sup> June 2006 to the second Respondent requesting for a voters register for 2006 Parliamentary elections for Gwafu 1 and 11 polling stations, Seeta parish , Goma sub-county , but to date, the same has not been availed. A copy of the letter is annexed as U.

Other deponents in respect of Gwafu 1 and 11 are:

1) Makubuye Wasswa (vol1 p.86). He stated that he went to vote on polling day but found no polling station I the name of Gwafu 1. He moved from one polling station to another in Seeta parish but everywhere he went, he was told that his name was not on the register. As a result, he did not vote for the petitioner, the candidate of his choice for the said seat. A Copy of the card No. 09279896 issued by E.C on 22/4/02 was attached.

2) Nakate Nsobya (pg.89 vol 1). She stated that she went to Gwafu village the place she was supposed to vote from but found no voting activity going on. She moved from one polling station to another trying to trace Gwafu 1 polling station but failed. She also failed to vote for her candidate, the petitioner. A copy of card No 09279827 also issued on 22/01/02 was attached.

(3) Gombe Yusuf- No. 08088483 (copy attached issued on 22/4/02. Found no polling station in the name Gwafu 1. He tried to find his name at the nearby polling stations but failed to trace it.

4) Takuwe Vincent- Gwafu1. (Pg 19vol2 card No. 091617359, issued on 22/4/02 Same story.

5) Ayub Khan Gwafu 11.(P.28 vol 2) card No. 08088327copy issued on 22/4/02.Same story.

6). Matumba Peter Gwafu 11 (Pg 46 vol 2) No. 08088185. He stated that he found no polling station. The Presiding officer told him that his name was not on the register. He did not vote for the petitioner, the candidate of his choice.

7) Kisaka Josephine (pg 86 vol 2). No 08088185, found no polling station in the name Gwafu 11. She tried to find her name at the nearby polling station but failed to trace it therefore failed to vote for the petitioner, her choice.

8) Kisaka (pg 89 vol 2) Gwafu 11 Card No. 08088144- same story as (7).

9) Bukenya Fred (Pg 105 vol 2) Gwafu 1 Card No. 0961720. Same as No (7and and 8).

In Para 6 of its answer, the second Respondent specifically denied allegations of disenfranchisement and contended that all voters had the opportunity to check their material particulars on the register and to rectify any anomalies during the period of display.

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Eng. Kiggundu deponed in Paragraphs 4-7 of his supporting affidavit that to the best of his knowledge, the second Respondent updated the voters register between 29<sup>th</sup> Sept.2005 and 30<sup>th</sup> October 2005. It again displayed the said voters register between 22<sup>nd</sup> Dec 2005 and 17<sup>th</sup> January 2006 for purposes of giving all eligible persons the opportunity to cross-check the particulars of their voter information in preparation for the elections. Persons who found any anomaly with their voter information were given an opportunity to correct such anomaly prior to polling day. Eligible persons who had registered as voters who found their names missing and wanted to vote were given the opportunity to fill the forms to include their names on the register.

Makki Ibrahim the Returning Officer filed an affidavit dated 31/7/06. In reply to the petitioners affidavit in support. He denied the allegation and averred that all persons who appeared on the register were allowed to vote. He swore a second affidavit on 20/9/06 in reply to the petitioners additional affidavit (sworn on 30/8/06). In response to para 3, he replied that he is not aware of the contents and no such complaint was filed in his office.

In response to Para 4, he replied that a parking (sic) list containing the polling stations was issued through the district party offices. There was however no copy of gazette attached or affidavit from any district party office or official that such list was received.

In response to Para 5, Makki averred that all the gazetted polling stations for the purpose of elections had accompanying registers for purposes of voting. He however made no mention of letters T and U.

Andrew Songa the election official in charge of the voters register stated in his two affidavits (No. 8 and 29), names of the complainants were on the voters register during the polls held on the on 23/2/06. Annexure A to his affidavit is a list which indicates that their names were not deleted from the register. That there was no disenfranchisement.

According to annexure A, the names of the complainants from Gwafu 1 and 2 were appearing at the following polling stations;

- 1) Makubuya Wasswa -09279896- Seeta-Baggala.
- 2) Nakate Nsobya-09279827-Seeta parish, Baggala.
- 3) Gombe Yusuf- not on list.
- 4) Takwe Vincent 09617359-Seeta parish - Ntinda 1.
- 5) Ayub Khan-08088327-Seeta parish-Sekatawas junction.
- 6) Mutumba Peter -08088185-Seeta-Sekatawas junction.
- 7) Kisaka Josephine-08088456-Seeta Sekatawas junction.
- 8) Bukenya Fred Seeta parish Ntinda 1.

During cross-examination, Makki was asked and he admitted that Gwafu is not among the polling stations. He stated that they did not have any people registered to vote at that polling station. That he was not sure if there was anyone in MNC with voters cards reading Gwafu 1 and Gwafu 2. He admitted that he did not carry out a search to find out if there were any such people, although he had read the petitioners letter where she complained of people being disenfranchised at Gwafu 1 and 11, he

answered the complaint it is in his affidavit. He stated that Gwagu 1 and 11 did not exist among the gazzetted polling stations.

The petitioner notified the second Respondent about the absence of the said polling station well in time, at 11 am on polling day the 2<sup>nd</sup> Respondent took no step to inform them that he had been posted to other polling stations.

Makki was silent on this issue in both affidavits; however, during cross-examination and re-examination, he admitted that Gwafu 1 and 11 did not exist among the gazzetted polling stations in Mekong North constituency.

Makkis second affidavit that he is not aware as no such complaint was filed in his office is a general denial. When he was referred to the letter dated 23<sup>rd</sup> Feb 2006, Annexure T to the petitioners additional affidavit. He replied: I am not seeing this document for the first time. I have responded to it. The relevant part of the letter said: The District Returning Officer Mukono District.

**RE: GWAFU1 AND GWAFU11 POLLING STATIONS AND MISSING NAMES ON REGISTERS**

*We have just learnt that a number of people in Seeta parish, Goma sub-parish Mukono North were issued with voters cards indicating that they are to vote at Gwafu 1 and Gwafu 11 polling stations.*

*We have discovered that both polling stations do not exist on the ground and voters are stranded. We wish to request you to urgently intervene in this matter. Most of the affected people are our supporters .Please note that we are talking about these two polling stations with over 1000 voters*

The letter bears the stamp of the office of the District Registrar Mukono District indicating that it was received on 23<sup>rd</sup> /2/06. Although Makki says he responded to it, no copy of the response was produced before this Court. The court thus finds that the petitioner complained as averred to the returning officer and he took no steps.

Makkis reply to paragraphs 3 and 4 of the petitioners averment to the effect that a parking list for all polling stations in the district was issued through the district party offices for purposes of election is unsupported by any concrete evidence. No such list was produced before this court from any of the party offices and no party official has filed any affidavit as proof of receipt of such a list.

His averment that polling stations were gazetted and Gwafu 1 and II are not among them, is also not supported by any concrete evidence. No such gazette was produced before this court to prove that the polling stations in MNC were gazetted and that Gwafu 1 and 11 were not on the Gazette. The evidence of Songa Andrew is equally weak. A number of the complainants such as Makubuye Wasswa deponed that:-

*On polling day 23<sup>rd</sup> of February 2006, I went to vote but I found no polling station in the name of Gwafu 1 polling station. That I moved from one polling station to another in Seeta parish but everywhere I was told my name was not on the register.*

Songa says he has perused their affidavits and averred that the persons mentioned on the list in Annexure A to this affidavit were on the voting register during the polling held on 23<sup>rd</sup> February 2006 I have perused Annexure A. It is a list of names including the names of all the complainants who have sworn affidavits in respect of Gwafu 1 and 11 except Gombe Yusuf. I do not find it useful as it has no title and its origin is unknown. It is not on the second respondents Letter Head. It is not indicated anywhere nor is it a page from the voters register. I have thus disregarded it for the reasons given. Consequently the complainants evidence remain unrebutted, and I accept their

evidence that when they did not find the two polling stations, they moved from station to station and were told their names were not on the register. As a result they did not vote for their candidates the petitioner.

Section 35(5) of the PEA provides that;

*(5) Subject to section 39, a person shall not be permitted to vote at a polling station unless ones name appears in the voters roll for that polling station*

After perusal of the evidence on this point, the court finds that the allegation that a number of voters who were issued voters cards to vote at Gwafu 1 and 11 did not vote because they were told on polling day that their stations were non - existent is proved.

The Court is satisfied from their evidence that they were denied the opportunity to vote for their candidate, namely the petitioner as a result of the removal of the two polling stations by the 2<sup>nd</sup> Respondent. Article 59 of the Constitution casts an obligation on the state to ensure that all Ugandans who qualified to vote, vote. The EC is charged with that duty under Article 61 of the Constitution.

The other category of voters who were allegedly disenfranchised are those voters who alleged that they went to the polling station and were openly told by the presiding officers that they were not on the voters register after the presiding officers hurriedly looked through the registers or at times, did not look at the register at all. The deponents included;

## VOLUME 1

<u>Name</u>	<u>Polling Station</u>	<u>Page</u>
1) Bumpeje Fred	Wakiso	Pg 38.
2) Sekiyemba Mutwalibi No 09198859.	Wakiso	Pg 41.
3) Mussaja Alumbwa Mukaya (No. 09198859)	Buliika	Pg.44.
4) Isabirye Fred (No. 09196228)	Seeta 111	Pg.47.
He stated that he later on found his name on register during LC111 Polls on 10/3/06 and was allowed to vote.		
5) Kayanga Gideon (No 09177652)	Bulika	P.g 50
6).Mubiru Sulaiman (No 09179080)	Bulika	P.g 53.
7) Bujingo Patrick (No. 09177440)	Bulika	Pg. 56.
8) Kamagu Irene (No. 09178504)	Wakiso	Pg.59.
9) Nabakka Hadija (No. 09179358)	Bulika	Pg.62.
10) Nalwadda Rose 65 (No. 09178941)	Wakiso	P.g
(b) Ssekikubo Samuel (No.08088271)	Seeta 1	Pg.68.



He also stated that his name was on the register during the LC111 polls in March 2006 and he was allowed to vote.

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|---|----------------|---------|
| 12) Kintu Musa<br>(No.09178547).                | Wakiso         | Pg.71.  |
| 13) Kambuyu Herbert<br>(No.09177045)            | Bulika         | Pg.74.  |
| 14) Senfuma Patrick<br>(No.09178877)            | Wakiso         | Pg.77.  |
| 15) Namungo Disan                               | Wakiso         | Pg.80.  |
| 16) Nalule Fatuma                               | Seeta 111B     | Pg.85.  |
| 17) Nakibule Sophia<br>(No.02694396)            | Buyoba         | Pg.92.  |
| 18) Kitandwe J. Fisher<br>(No. 09221528)        | Misindye       | Pg.95.  |
| 19) Nabisubi Deborah<br>(No. 12875414)          | Mukono Academy | Pg.98.  |
| 20) Kitenda David<br>(No.09221241)              | Joggo          |         |
| 21) Magala Vincent Serunjogi.<br>(No.09280714). | Seeta 11       | Pg.104. |
| 22) Namutebi Juliet                             | Wakiso         | Pg.107. |

She stated that her name appeared on the register as Namutebi Julia during the display of the voters register. She pointed out the anomaly to the Returning Officer who promised to rectify it, but he didnt when she went to vote, she was refused on the ground that her name was missing thereon.

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|--------------------------------------|--------|---------|
| 23).Kimera Bashiri<br>(No. 09178518) | Wakiso | Pg.110. |
|--------------------------------------|--------|---------|

## VOLUME 2

<u>Name</u>	<u>Polling station</u>	<u>Page.</u>
23) Wasswa Patrick (N0. 11943419)	Bajjo.	Pg.8.
24) Ssonko Charles	Bajjo.	Pg.10.
25) Nabukenya Alison (No. 04016511)	Bajjo.	Pg.12.
26) Wamala Edward (No.09277939)	Bajjo	Pg.17
27) Ntege Amos Kimuli (No. 09187791)	Nabutti	Pg.22.
28) Mayengo Jackson.	Ntinda	Pg.25.

He stated that he was told that his name was missing during the Parliamentary election yet during LC 111 elections held on 10/5/06, found his name on the register at the same station, and voted. He was an open supporter and campaigner of the petitioner.

29) Mukiibi Daniel. (No. 01670685)	Seeta 1V	Pg.34.
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He said that he insisted that the polling officer checks his name because it had appeared on the register during the display of the voters register. The polling officer refused and told him not to waste her time.

30) Kabitto Medd Kyuku	Seeta IV	Pg.37.
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He was also told not to waste other voters time and ordered to leave.

31) Safari David	Seeta 111B	Pg.40.
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(No.09280741)

He was also told not to waste other voters time and was ordered to leave.

32) Nalubega Sarah Misindye Pg.55.

(No 09221016)

33) Sekaggya John Bosco Seeta 111B Pg.58.

Stated that when he presented his voters card to the polling officer, the polling officer without checking his name on the voters register, told him that his name was not there and that he should go and look for it at other nearby polling stations. He was an open supporter of the petitioner.

34) Najjuma Regina Seeta 111B Pg.61.

(No. 09281176)

35) Ddumba Robert Seeta Ntinda Pg.64.

36) Lubega Vincent Mukono Academy Pg.80.

(No.09173889).

Stated that he had earlier checked his name and found the same during the display of the voters register by the Electoral Commission.

37) Ssekandi Livingstone Seeta 11B Pg.107

(No. 09197126)

He insisted, because his name had appeared on the voters register during the display but the polling officer refused and told him not to waste other voters time and ordered him to leave.

38) Kigozi Ivan Seeta 11 A Pg.113.

No. 09279609.

Also stated that his name also appeared on the voters register during the display but the polling officer refused and told him not to waste other voters time and ordered him to leave.

The petitioner also stated in paragraph 2 of her additional affidavit that she received several complaints from her supporters who had voters cards or registration certificates but were had been denied a chance to vote on the ground that their names did not appear on the voter rolls. The relevant part of her letter annexure T says in the last paragraph that:-

In addition a number of our supporters especially in Goma sub county, are reporting to our office complaining that despite their possession of voters cards, they are being sent away as presiding officers are claiming that their names are not on the voters register. It is now 5 hours down the voting time, if you do not make immediate arrangements for these voters, we shall hold you liable for the disenfranchisement of our voters.

Please act quickly,

Yours,

Namboze Betty Bakireke.

**CANDIDATE**

In rebuttal, the Returning Officer Makki in his affidavit dated 20/9/06 denied that he received any complaint from the petitioner. However he admitted during cross-examination and the evidence on record proved that the letter was received in his office, yet he took no action.

Kiggundus affidavit is also a general statement since he was not on the ground on polling day at the various polling stations. It is therefore inconceivable that he can state with certainty the events that took place at the polling stations complained of.

Talenga Nathan the polling officer at Academy, Kakooza (A-M) swore two affidavits, the first one is dated 20/9/06 in support of the second Respondents case.(No. 28). He denied the allegations.

The second one is dated 25<sup>th</sup> September 2006 in support of the petition. He retracted his earlier evidence and stated that he actually turned away over 53 people away who had come to vote because, although they had voters cards, their names were not on the register. He stated that many of the people whom he turned away bitterly complained loudly that their names had been deliberately deleted from the register because they were open supporters of the petitioner. One such person was Vincent Lubega.

Namatovu Carol (No. 7) The polling officer at Bajjo polling station, in reply to Wamala Edward, Nabukenya Alison and Sonko Charles denied that she hurriedly checked the voters register or refused any registered voters to vote. Her version is which is repeated by several other polling officials, that when a person reported to the polling station to vote, she would ask for the voters card and then check thoroughly the voters register and even though no voters card was given to her, she would check for the voters particulars on the register thoroughly.

Andrew Songa-Election Officer in Charge of voters register, Central North Region in the Electoral Commission referred to earlier on, denied any disenfranchisement of voters by the second respondent. He attached a list of persons as annexure A to his affidavits; and averred that the persons named on the said list were on the voters register during the polls held on the 23<sup>rd</sup> February 2006. That the persons whose

names appear in bold as spelt on the database differing from the names given on the affidavit. The tick appearing on the column status indicates that the voter appears on the register of indicated polling stations and their names were not deleted from the register.

I have already rejected that annexure. But even if it was authentic, the annexure has four columns headed: Registration No; Names; Parish: Polling station and Status.

The names of all the deponents are on the list except THAT OF Gombe Yusuf. All registration numbers tally. Apart from Wamala Edward, all the names also tally. Wamala Edward has Wasswa added in bold indicating, according to the key or explanatory note at the bottom of annexure A a slight difference. The parishes and polling stations are not exactly the same. e.g. Sekaggya John Bosco (no13) is indicated as being registered at Seeta Parish, Seeta Ntinda 11 polling station but his voters card (annexure A to his affidavit and at pg 60 vol. 2) indicates that he was registered as the same number, 09281088 at Seeta Parish but at Seeta 111 B polling station.

This means his name was transferred to Seeta Ntinda 11 from Seeta 111 B, if this piece of paper is anything to go by or it was just deleted from Seeta 111 B.

Nalubega Sarah, (No. 1) whose Registration Number is indicated on 09221016. Annexure A indicates that she was registered at Masindye Parish: Lumuli polling station yet her card indicates Misindye parish, but Misindye polling station. The two polling stations are different. Lumuli polling station is number 01 and Misindye is no 06 under Misindye parish. (See tally sheet annexure Y)

Mukiibi Daniel No 01670685(No. 5 of the list). The same registration number but different polling stations are indicated. Annexure A indicates Seeta: Seeta 1.

His card (P.34 vol 2) indicates Seeta 1V.He says his name appeared on the voters register during the display of the voters register. When was it transferred to Seeta 1? Why was it deleted from Seeta IV after the display of the voters register?

Sekikubo Samuel. Registration number 08088271(.No. 30) the number and parish is the same but name appears in different polling stations.AnnexureA indicates Bugoba while the card indicates Seeta 1. (See pg 68 vol 1.)-

Nalule Fatuma Reg no 10314588 (No. 35 on list). Annexure A indicates Seeta 11 Ntinda polling station, while her card indicates Seeta 111 B polling stations. (See p.85 vol.1).

Nakibule Sophia No 02694396(No. 42 on the list). Same registration number and parish, but polling stations differ.Annexure A indicates Seeta 111 B polling station. Her card indicates Bugoba polling station. (See P. 92 vol 1).

Magala Vincent Serunjogi (No 46 on list) is indicated in Annexure A as Seeta: Bugoba Mt Elijah. But his card indicates Seeta: Seeta 11 A polling station (See P.104 Vol 1.

Kabitto Medd Kyuku (No 4 on list) Reg no 09195987. Same parish but polling station differed. Annexure A indicates Ntinda 11 while his card indicates Seeta 1V, Polling station (vol 2 Pg 39).

Najjuma Regina (no 14 on list) Reg. No. 09195987.Same parish but the polling stations differed. Annexure A indicates Seeta Ntinda II, while her card indicates Seeta 111B. (See p.61 vol 2). She averred that during the display of the voters register, her

name appeared at Seeta, Ntinda 1 polling station; which was subsequently to be her polling station. But when she went to Ntinda 1 polling station on polling day, and presented her card, the presiding officer told her that her name was not there. She could therefore not vote. (See P.61 Vol 2).

Nabirye Beatrice stated that she was supposed to vote at Seeta 111B polling station but her name was missing on polling day. Annexure A indicates that she was registered to vote at Seeta Ntinda 11 polling station instead as no. 09281231.

The rest appear on the list and at the same parishes and polling stations. All their names have been ticked which imply according to the key or explanatory note that the voter appears on register of indicated polling station and was never deleted from the register.

The question is then, why the polling officials who stated that they checked the register thoroughly failed to find their names on the register if the names were not deleted as alleged, or did they find the names on the register but lied to the complainants that their names were missing from the register? Or did the check hurriedly as alleged? Why would a polling officer lie to a voter that his name is missing from the register? Is it because some of them were well known supporters or voters of the petitioner as alleged? Did the polling officials then connive with the first Respondents agents to deny those open supporters an opportunity to vote? Which is the actual voters register for the polling stations named. Why is Songa instead adducing another list? What is the evidentiary value of the list versus the allegations made and the copies of the registration cards attached to the complainants affidavits as evidence of registration and respective polling stations? So much for Songas affidavit.



Lumala Frederick , the presiding officer for Misindye polling station averred that he was a display officer for Misindye polling station. In his reply, he noted that a number of people did not come to check the voters register. Voters cards were issued by the second respondent during the 2005 referendum and others during the display for the presidential and parliamentary elections. There were a few names that were not on the voters register. Nalubega Sarah was on the voters register and voted.

According to her voters card however, she is as registered as No. 09221016. She was registered to vote at Misindye polling station.

According to annexure A of Songas affidavit on the other hand, she register appeared on the register as having been registered to vote at Limuli polling station.

According to the 2<sup>nd</sup> Respondents own evidence therefore, she was not on the register of Misindye polling station on polling day ( According to Annexure A) therefore she could not have voted from Misindye as stated by Lumala.

Secondly, Lumala Frederick contradicts Songa. Lumala evidence that Sarah Nalubega was registered at Misindye. Songa says she was registered at Limuli and her name was not deleted from the register. These are major contradictions and cannot be ignored by this court. It actually confirms the lack of authenticity of annexure A as a mere list concocted by the second respondents officials to explain the disenfranchisement of the complainants. Lumula admits that there were a few people who were not on the voters register. Who are those? Could it include some of the complainants? (Para 5 of the affidavit pg 15).

Siraj Tibandeke, (No.20), deponed that, he was the polling official at Seeta 1V polling station. He was also the display Offficer at Seeta Church of Uganda Primary School where the register of Seeta 1, Seeta 11A, Seeta 11B, Seeta 111B, Bugoba and Seeta

IV were displayed. During the display many names were posted to the correct villages and /or parishes and a good number of people came to check their names and the register. It is true some peoples names were not on the voters register, but he advised them to check in other polling stations in the center after carefully checking his register.

He admits that some peoples names were not actually on the voters register. He also confirms that a good number of people actually did go and check their names on the register during the display period. He also confirms that many names were posted in their correct villages /or residences. If that is true, where did those names go on polling day? Why were then the names missing on poling day?

Apio Catherine says she was the polling officer Seeta 111 (pg 25) polling station and responds to Fred Isabiryees affidavit (pg.47vol 1) that the allegations contained therein are not true because; when a voter would come to the polling station, she would request for the voters cards or ask them to mention their names aloud before checking their names in the voters register. That she took time to check for each voters name and if she found that they were not on the register, she would direct them to check at the next polling station within the polling center of the School.

This is another general statement. It is not specific and does not describe how she handled Isabiryees case. Did she know him? Did she see him at the poling station that day? Did she request for his card? Or did she ask him to mention his name aloud before witting it in the register. If she indeed took time to check on each voters name did she check for Isabiryees name? Did she find it on the register or not/? Did he vote?

If Songas list is correct, then she should have found Isabiryees name on the register. Isabirye is No.27 on the list. His name was actually on the register there during the

elections and his evidence that he voted during the LC III election in March 2006 is not rebutted.

Assimwe Vincent deponed that he was the polling officer at Buliika polling station. His affidavit is response to: Kayanja Gideon, Mubiru Sulaiman, Bugingo Patrick, Nabbaka Haddija, Kambugu Herbert, and Mussaja Alumbwa Mikagga.

He also stated that, on voting day, he carefully checked the voters register for names and particulars of all the persons who presented themselves to vote. If the name of the person appeared on the voters register, then he would allow them to vote. Persons presenting themselves to vote would first loudly mention their names to him. He allowed voters to vote even though they did not have voters cards, if they properly identified themselves and most of them had their photos appearing against their names. The allegation that he hurriedly checked the register and told them that their names were not on the register is therefore not true.

Again it is too general. Did he know the complainants personally? Did they go to vote on polling day? How did he handle them? Did their names appear on the voters register? Annexure A to Songas affidavit indicates that their names were on the register on polling day. Did they come as a group? Did he identify them? Did he find their names? Their affidavits attach copies of their identity cards bearing their photos. (See vol1.pg44- 62 and 74). Did he allow them to vote? If so where is the documentary evidence that they voted? All this is lacking.

Proscovia Namuganza. (pg 30) stated that she was the polling officer at Baggala polling station. She responded to the affidavits of Makubuya Wasswa and Nakate Nsohya and stated that all persons who presented their voters cards and appeared on the voters register were allowed to vote. There are some people who came with voters

cards reading Gwafu 1, Seeta 11 and Seeta 1V and checked at her polling station and those with their particulars at Baggala polling station were allowed to vote. She had been informed by the Parish Chief and polling assistant that Baggala was a newly created polling station and she together with her polling assistant checked the register for everyone who went to vote at the polling station. She saw Nsomya at the polling station but does not recall if she voted.

This is also too general, and not specific to the complaints case. Did the two complainants present their cards? Did they vote? How did she handle them? Annexure A indicates both Nsomya and Makubuya as registered at Seeta Baggala polling station, yet both their cards read Seeta Gwafu 1. Both of them aver that they moved from one polling station to another in Seeta parish, after they found the polling station called Gwafu 1, on polling day; but everywhere they went, they were told their names were not on the voters register. If their names were on the register under Baggala, why didn't they find their names during the search? Did she know Wasswa personally? Did she find Nsomya's name? Baggala was a newly created polling station. When was it created? Before or after the display of the voters register? All those questions are not answered by her response.

Nababazi Maria Scovia (pg 32), stated that she was the polling officer of Seeta 11 B polling station. She responds to the affidavit of Sekandi Livingstone. She averred that no voter was chased away from her polling station and that she instead advised whoever was not on her register to cross-check with the nearest polling station within the polling centre.

Did she know Sekandi? Did she see him on polling day? How did she handle his case? Did he vote? Was his name on the register? Sekandi is no 21 on annexure A to Songas affidavit; under Seeta 11 B. under No. 09197126. This information tallies with

the context of his affidavit at paragraph 7 volume 2. This means he went to the correct polling station on polling day, but he didnt vote.

Why didnt Ms Mbabazi find his name on the register then if she was so careful? Why did she tell him that his name was not on the voters register? Ssekandi says he insisted that his name be checked again after the polling assistant had hurriedly looked at the register and had told him that his name was missing thereon because his name. It was appearing on the register during the display of the voters register, but she returned and told him not to waste the other voters time and ordered him to leave.

From the foregoing evidence, the Court finds that all the deponents in this category had voters cards. They were not allowed to vote because the polling assistants told them that their names were missing from the voters register. They were mostly the petitioners open supporters. Songa says that they were on the register, but has not adduced any evidence that they voted anywhere. Court is accordingly satisfied that a large number of registered voters, who were mainly supporters of the petitioner were disenfranchised in MNC, which contravened the provisions of section 19(3) of the EC Act as wells section 34 (3) of the PEA.

### **Intimidation**

The petitioner pleaded in paragraph 5(b) that:-

b) Contrary to section 2(1) (e) and (f) of the EC Act, the second respondent failed to take measures to ensure that the electoral process in MNC was conducted under conditions of freedom and fairness when:

(i) The officers of the Uganda Peoples Defence Forces (UPDF) and other Paramilitary/ militia groups intimidated the petitioners supporters during polling, aimed at preventing them from voting the petitioner.

(ii) The petitioner was denied representation at some polling stations during voting, counting of voters and declaration of results of the poll.

Section 2(1) (e) and (f) does not exist. The correct section is, I believe, section 12(1) 12. Additional powers of the commission and regulation of ballot papers.

(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)

(b).

(c)

(d)

(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 his Act or any other law

The supporting affidavit says nothing on intimidation by UPDF/Paramilitary. No mention of the polling stations affected is also made. Other supporting affidavits include the one of:

Wafula Mangeni (p. 6 vol 1) paragraphs 1, 5, 6 and 7. He stated that he was the appointed agent of the petitioner stationed at Buyuki polling station on polling day.

At about 11.15, a.m a white pick up full of soldiers wearing UPDF uniforms, which he knows belongs to one Kefa Sengendo , a resident of Naalya I Kampungu, Mpoma Parish in Naama sub county and a staunch supporter of the 1<sup>st</sup> Respondent came.

The said soldiers disembarked from the said vehicle and moved around the polling station, causing a stampede among voters. One of the said soldiers went to the voting line with Luke Mayengo whom he knew to be the agent of the 1<sup>st</sup> Respondent and started telling voters to vote for the 1<sup>st</sup> Respondent.

The other witness, Kakembo Jamil vol 2 P.6 deponed that; He is a registered voter at Academy/Kikooza (A-M) polling station and LC5 Councillor, Mukono Town council. When they approached the presiding officer to verify the names of the students of Greenville S.S on the register , a security officer, one , Frank Banana, a former DISO of Mukono who was carrying a pistol intercepted them and ordered that everyone in the queue had to vote whether they wanted it or not. Whereupon Bakireke called the director of the school on phone and the teacher who had led the students took them away.

Sengendo Moses pg 119 Vol 2, he deponed that: He is a registered voter and petitioners agent at Takajunge polling station.. At 11am Mukasa Bakireke came with other three men and found a van belonging to Greenville S.S ferrying students who were being allowed to vote by the polling officer without first crosschecking their names. When they tried to intercept him, former DISO of Mukono, Banana Frank, threatened Mukasa Bakireke and group with arrest.

The affidavits talked of ISO - not UPDF / Paramilitary. ISO is not UPDF or paramilitary. The affidavit does not state that they were prevented from voting.

Mukasa Bakireke Henry (pg 99 Vol 2). He deponed that; he was an election monitor /supervisor of the petitioner during the said elections. He received a telephone call that under age unregistered voters were being ferried from Greenville SS and being allowed by the polling officer of Takajunge polling station to vote even without verifying their names on the voters register. He immediately went to Takkajunge with the petitioner, monitors Kakembo Jamil, Kirega Musisi and Muwonge and found the students around the bus. When he protested to the polling officer, he was intercepted by one Frank Banana, a former DISO of Mukono District, a supporter and a campaign

agent of the 1<sup>st</sup> respondent who was carrying a pistol and threatened to shoot him if he dared stop the students from voting.

Again the witness does not state that the voters were intimidated by the said former DISO who could have been on a frolic of his own, and were actually stopped from voting as alleged.

In rebuttal 2<sup>nd</sup> Respondents witness Eng. Kiggundu specifically denies the allegations of intimidation or violence. Kiggundu and contended that the second respondent took steps to ensure that the entire electoral process was smooth, transparent, free and fair.

Sengendo Kefa (No 22) replied to Godfrey Mangeni and deponed that; he is an LC5 Councilor, Mukono district. He was a campaign Manager of the 1<sup>st</sup> respondent in the whole of MNC during the said elections. He is the only Kefa Sengendo in the area and therefore believes that Mangenis affidavit referred to him. He does own a white pick-up registration number UAG 733-a Nissan Sahara. He drives the said vehicle himself. The pickup did not at anytime on 23<sup>rd</sup> February 2006 carry soldiers to Buyiki polling station. After voting at 8:30 am, he went to Kyampisi Sub County in his pick-up to monitor the election process and he returned to Naama Sub County at around 11 pm and he had to pass by each polling station in Kyampira on his way back. Wafula Mangeni is not well known to him personally.

The Court has evaluated this evidence and the Court finds that:-the truck exists, it is white, and it belongs to Kefa Sengendo. It is possible that the said truck passed through the polling station with soldiers at 11:00am. Wafulas evidence needed corroboration by for example the other agents of the petitioner or supporters e.t.c for whom the soldiers caused a stampede. Sengendo averred that he left the polling station at 8:30 am after voting and did not return until 11:00pm. The petitioners



witnesses needed to adduce concrete evidence to place him at Buyuki polling station any time between 8:30 am and 11:00pm. They made no attempt to do that.

Lord Herbert Sendegge ( P. 71 vol 2 paras 3-7) he deponed that: He was the campaign agent of the petitioner at Nantabulira parish, Goma. One week before polling day, he was approached by the NRM chairman, one Basambye, who accused him of being a rebel. The village LC Chairman, one Olono John, summoned him and informed him that the RDC had informed him that Sendegge was one of the people organizing a rebellion against the Uganda government. Olono told him that he could be exonerated of his offence, if he denounced his support for DP and the petitioner in particular. On the night of the 22<sup>nd</sup> February, 2006, he saw some civilian residents in the village dressed in LDU uniforms. They included Senfuma Ronald, Ssemugenyi Herbert and others. They moved around the village from one home to another, together with men dressed in UPDF uniforms. He was around when they came to the home of one Ssebugwawo Martin and told them that if the NRM candidates, Yoweri Museveni, Bakaluba Mukasa (1<sup>st</sup> respondent) and Naluggo Ssekiziyivu did not win the elections in that village, they will trace down all the non- supporters to be dealt with. They even told them that everybody should vote the bus.

Again the court is of the view that this evidence needed corroboration from other supporters to whose homes they allegedly went since it alleged The group moved from home to home. or Sebugwawo martin in whose home the statement was allegedly made.

Olono John (No 6 2<sup>nd</sup> Respondent) he deponed that: he is an LDU officer. On 22<sup>nd</sup> and 23<sup>rd</sup> February 2006, his duty was to ensure security in Seeta parish along with police officers and a few LDUs. It is true that a few LDUs were moving around on a police patrol pickup to ensure security during the general elections. It is not true that there

were soldiers dressed in UPDF uniforms on the same pick-up moving around the parish on the 23<sup>rd</sup> February or Election Day. He does not know anyone at Nantabulirwa village called Sebugwawo Martin. He knows Lord Herbert Ssendege as a fellow resident in the village. He denied summoning Ssendege or receiving any communication from the RDC as alleged or telling Ssendege to denounce D.P.

Ssemugenyi Herbert. (No. 7) deponed that: he is an LDU Officer.

He denied that they moved from home to home threatening residents to vote for NRM candidates. The rest of his affidavit is exactly the same with Olonos, that LDUs had to ensure security.

Ben Bogere (pg. 8 117 vol 2) deponed that, a man called Salongo, an LDU, Prince Rose Sonko, a supporter and campaigner of the 1<sup>st</sup> Respondent and another person whom he did not know, came and dragged him and forced him on a hired boda boda and drove him to Mbalala police station. While at the Police station, he refused to make a statement and Prince Rose Sonko threatened to detain him longer for having refused to support the 1<sup>st</sup> respondent after getting money from Moses Byaruhanga, the Political Assistant of President Museveni. He was later released on police bond after the petitioners interventions. Afterwards, during the campaigns, He was always threatened by Prime Rose Ssonko and Mujumba Rose that his head would be chopped off for opposing the government.

Upon careful evaluation, the evidence before the Court indicates that there were some security personnel at the polling stations mentioned. But the Court does not find sufficient evidence to prove to its satisfaction that there was intimidation by the UPDF or the paramilitary military as alleged.

### **Failure to control the use of ballot papers**

The petitioner pleaded in 5 (c) that:

Contrary to section 12 (1) (b) of the EC Act , the 2<sup>nd</sup> respondent failed to control the use of ballot papers when there was massive rigging of votes through ballot stuffing, multiple voting and pre-ticking of ballots for voters and manipulation of voters roll.

S.12 (1) (b) EC Act reads:

#### **12. Additional powers of the commission and regulation of ballot papers**

(i) the commission shall powers

(a) the.

(b) To design, print, distribute, and control the use of ballot papers.

The allegations here are very serious. They are massive rigging through:-

-Ballot stuffing.

-Multiple voting.

-Pre-ticking and ballots for voters.

-Manipulation of voters roll.

The petitioner averred in paragraph 15 of her supporting affidavit that the vote difference between her and the first respondent was attained through ballot stuffing, pre-ticking of ballots, multiple voting, removal of the petitioners valid votes, forgery of the vote results, intimidation, chasing away of the polling station agents and other illegal acts and electoral malpractices stated therein.

No other affidavits were filed specifically to support the alleged failure by the 2<sup>nd</sup> Respondent to control the use of ballot papers. This allegation fails.

### **Distrubution of Ballot Papers.**

In paragraph 5(d) It is pleaded that: Contrary to section 27 (a) of the PEA the 2<sup>nd</sup> respondent , through its returning officers, failed to control the distribution and use of ballot papers to eligible voters resulting in multiple voting and vote stuffing by a number of people.

Section 27 (a) PEA read;

**27. Distribution of election materials.**

**Within forty eight hours before voting day, every returning officer shall furnish each presiding officer in the district with**

- a) **A sufficient number of ballot papers to cover the number of voters likely to vote at the polling station for which the presiding officer is responsible.**

Court finds no complaint that the number of ballot papers were insufficient. No such evidence was also adduced before court. This allegations fails.

**Starting polling Late and ending late:**

The allegation is similar to 5(c).

In paragraph 5(e) it is pleaded that:

Contrary to section 29(2) and (5) of the PEA , the second respondent, agents in connivance with the first respondent , and his agents started polling very late and ordered the same very late at some polling stations.

Section 29 (2) and (5) of the PEA provide that:

**29.Polling stations and voting time.**

**(1).**

**(2).At every polling station, polling time shall commence at seven O'clock in the morning and close at five O'clock in the afternoon.**

**(3).**

**(4).**

**(5) If at the official hour of closing the poll in subsection (2) there are any voters in the polling station, or in the line of voters under sub section (3) of section 30 who are qualified to vote, but no person who is actually present at the polling station or in the line of voters at the official hour of voting shall be allowed to vote, even if the polling station is still open when he / she arrives.**

Subsection 3 of section 30 referred to above provides that:

**30. Polling and Polling procedure.**

**(1)**

**(2)**

**(3)On polling day, all voters intending to vote shall form one line commencing backward from a point each at least 20 meters away from the folder on which each voter is to place the authorized mark of choice on the ballot paper.**

There is no specific averment by the petitioner in her supporting affidavit save for the general averment on non compliance with the PEA

Others affidavits were filed by:-

Wafula Mangeni, (Pg 6 vol 1. Paras 4 and 5), deponed that:- At Buyuki, the electoral official arrived at 7; 45am. Voting started at about 8: 05am.

In rebuttal, the 2<sup>nd</sup> respondent relied on the affidavit of Eriabu Nkalubo

The presiding officer (no.13.) He deponed that; It is true he arrived at 7:45 as Wafula Mangeni stated, but this was because he could not find a readily available boda boda to take him to the poling station. That when he reached the sub county headquarters at

6; 30 am, he found many presiding officers already lined up to collect the election materials and the bodaboda were very few. That indeed voting started at 8:05 am. The first respondent insisted. Court finds this explanation plausible. No bad faith is indicated.

Ssentongo Wasswa Joseph pg 67 vol 2 paras 5 and 10, deponed that voting ended at 7pm at Kiwanga 1 in rebuttal, the second respondent filed the affidavit of Issa Musoke (No. 4 2<sup>nd</sup> respondent). He deponed that He was the polling officer at Kiwanga polling station, on polling day. He did not specify the time in his affidavit. He merely stated that he arrived early in the morning and stayed up to the end of the exercise. In cross-examination however, he stated that 9:30 pm is when they finished everything. Voting ended at 8:00pm. Many people joined the queue between 4 -7 pm. He stated that he would have stopped the exercise with the last man in the line.

Court finds that he was still in the provisions of section 29 PEA. He allowed those who were already in the line vote. The law allows that.

Salongo Mukalazi David. (P.101 vol 2 paras 3, 4, 5.6 and 13), he deponed that at Namiyango polling station, the presiding officer arrived at around 1pm. Voting had started at 10 am. At about 5 pm, they advised the returning officer to stop allowing people into the line, but he said they were delayed as a result of rain and he allowed them to join the line up to 5:30 pm.

In rebuttal, the first Respondent filed the affidavit of Massimo Peter (No 2, 1<sup>st</sup> respondent). He deponed that, he is the LC1 Chairman of the village and the one referred to by Mukasa Salongo in his affidavit. He arrived at the polling station at 7am and stayed till 8pm. It is true that one of the originally designated polling assistants

delayed to arrive at the polling station and he was appointed by the presiding officer to take his place in order to allow elections to proceed at about 10 am.

Court finds that voting started late at his polling station (10am) due to late arrival of the election officers including the presiding officer. It did not end very late .5:30 due to the rain is not too late. It can be accommodated.

### **Illegible voters**

In paragraph 5 (f, it is pleaded that:

Contrary to sections 29(4) and 34(2) (3) and (5) of the PEA the second respondents officers and agents allowed persons whose names did not appear on the voters roll and/or who did not hold valid voters cards to vote.

Section 29 (4) reads:

#### **29. Poling stations and voting time.**

(1)

(2)

(3)

**(4)Any person registered as a voter and whose name appears in the voters roll of a poling station and who holds a valid voters card shall be entitled to vote at the polling station.**

**Section 34 (2), (3) and (5) provide the Procedure for handing ballot papers to voters. It reads:**

**1) A voter wishing to obtain a ballot paper for the purpose of voting shall produce his or her voters card to the presiding officer or polling assistant at the table under paragraph (a) of subsection (5) of section 30 .**

**(2) If a presiding officer or polling assistant is satisfied that a voters name and number indicated in the voters card correspond to the voters name and number in the voters register for the polling station, he /she shall issue a ballot paper to the voter.**

**3).Where a person does not have a voters card but is able to prove to the presiding officer or polling assistant that his or her name or photograph or both is or are on the register , the presiding officer or polling assistant shall issue him/her with a ballot paper.**

**4) The presiding officer or polling officer shall place a tick against the voters name in the voters roll for the polling station.**

**5) Subject to subsection39, a person shall not be permitted to vote at a polling station unless that persons name appears in the voters roll for the polling station.**

In the petitioners affidavits, general allegation of illegal acts and illegal malpractices were made. No specific averment on this allegation and no poling station or person was named.

The other affidavits are from:-

Nanjovu Justine-(pg13 vol 1 para 4), she deponed that: She was the petitioners agent at Namuumira polling station. The LC 1 Chairman, one Lukomu came to the polling station on several occasions with different people whose names were not on the register but he would direct polling officials to allow them to vote, claiming that they were known to him. She protested but the polling officer, Nakazibwe Peninah just ignored her. Her supervisor one Bengo George came and intervened, whereby a scuffle ensued and voting stopped for about 10 minutes. She counted 17 people of



this caliber who voted. Mr. Lukomu is the NRM party Chairman for Namumira village and also a staunch supporter of the 1<sup>st</sup> respondent.

In rebuttal, the 1<sup>st</sup> Respondent filed the affidavit of Henry Lukomu 9(No. 24 1<sup>st</sup> respondent), he deponed that, he is the Lukomu referred to by MS Nanjovu. He is not the NRM party Chairman for Namumira village. He is the LC 1 Chairman. He did not go to Namumira on polling day with different people whose names were not on the voters register and directed polling officials to direct them to vote as alleged by Nanjovu. It is not true that the voting process at Namumira polling station was stopped as alleged.

Peninah Nakaibwe , who was the presiding officer filed affidavit (no 5 2<sup>nd</sup> respondent) on behalf of the 2<sup>nd</sup> respondent. She was silent about this incident. She would have been the right person to file an affidavit in rebuttal since the alleged incident occurred at her polling station under her watch. Nanjovus evidence is therefore unrebuted.

Court finds most of the 2<sup>nd</sup> Respondents evidence a general denial. Lokomu admits that he is the only Lukomu in the area and he is the LC 1 Chairman of Namumira village.

Kakembo Jamil (pg 6vol 2. Paras 2-5), he deponed that: On polling day, at around 11am, one of the petitioners monitors, one Bakireke Mukasa Henry requested him to accompany him to Takkajunga polling station where it had been reported that underage students who were not even on the voters register, from Greenwich Senior Secondary School were being allowed to vote. He together with the petitioners monitors, Bakireke Mukasa, Kiregga Musisi and Muwonge went to Takkajunge and indeed found these students and pupils in the queue voting. They approached the presiding officer to verify if actually these childrens names were on the register. A

security officer, one Frank Banana, former DISO of Mukono who was carrying a pistol intercepted them and ordered that every one in the queue had to vote whether they wanted it or not, whereupon, Mr. Bakireke called the director of the school on phone and thereafter the teacher who had led the students took them away.

Sengendo Moses (pg 119 vol 2) deponed that: He was the petitioners agent at Tekkajunga Polling station. While there, at around 9:00am, a minibus and a truck belonging to Greenville SS ferried students to vote and that they really voted. He got concerned when he saw that the said students were being allowed to vote without the said presiding officer checking for their names in the voters register or producing voters cards and were under patronage of the 1<sup>st</sup> Respondents campaigner Councilor Namubiru. When the minibus and truck ferried in students the second time he and his co-agent together with the FDC agents protested but the presiding officer ignored them. Whereby he made a call and reported to the petitioner. The call was received by Mukasa Bakireke. Mukasa Bakireke came to the said polling station at about 11am with three other men and found the van and truck had brought students for the fourth time. One Frank Banana, a former DISO of Mukono who was carrying a pistol threatened Mukasa and group with arrest when he tried to intercept the students. Mukasa then talked on the phone and later on handed his phone to the teacher who had led the students. After the teacher talked on phone, he told the remaining students to withdraw. He counted 67 students, some of them looked very young who voted before they were intercepted.

Bakireke Mukasa (pg 91 vol 2 Para 2-8) deponed that: He was the election-monitor / supervisor for the petitioner during the elections. On voting day at around 11am, he received a telephone call from one Sengendo, the petitioner s agent at Takkajunge polling station to the effect that underage and unregistered school students from Greenville Secondary School were being allowed to vote by the presiding officer

without even verifying whether their names appeared on the voters register. He immediately proceeded to the said station in the company of other petitioners monitors to witness , Kakembo Jamil, Kiregga Musisi and Muwonge , and indeed found a school minibus and a truck with writing of Greenville Secondary School parked at the polling station with some students seated inside while others were in the queue waiting to vote. Sengendo had informed by the time he reached the said polling station, 67 students had been allowed to vote without verification of their names on the register. When he protested, Banana threatened to shoot him if he dared stop the said students from voting. He immediately called Joshua Serunjogi of Greenville SS and raised his concern to him. Mr. Serunjogi requested to speak to the teacher who had brought the students via his (Bakirekes) mobile. All of a sudden, he saw the said teacher ordering the students to come out of the queue. Over 60 students came out of the queue immediately, boarded the vehicle and left the polling station. To the affidavits of Kakembo, Bakireke and Ssenyondo, in reply, there is the affidavit of Kyambadde Enoch (No.20, first respondent) where he deponed that:

He is the deputy H/M of Greenville SS in charge of monitoring and evaluation. He is the one who drove the students of the said school to Takajjunge polling station in a 22-seater minibus. It is true that students of Greenville SS came to Takajjunge polling station to vote on polling day around midday. He drove 20 students to Takajjunge and all of them had voters cards as it was a requirement before they could get out of the school compound. When they disembarked from the mini-bus at the said polling station, a group of persons he could not identify advanced in their direction to attack them alleging that the students were not in the voters register. He took steps to check and to ensure that all students he came with had voters cards and indeed all of them had voters cards. On knowing that the students had voters cards they decided to calm down as the students joined the queue and started to vote. Around 30 minutes from time, Frank Banana who is well known to them arrived at the station dressed casually.

He moved to where he (Banana) was standing and he told him about the disturbance that had arisen. Those Greenville students were almost being barred from voting. Banana did not at any one moment pull out a pistol and ordered that all persons in the queue were to vote or threatened to shoot anybody. He is the deputy HM. He drove the van.

The witness admits that students came and voted around midday (not far from 11 am). Where was the School driver? Why was he the one driving the school bus? Where are the voters cards? Copies should have been attached (only 20). What about Mr. Joshua Serunjogi- Who is he in Greenville S.S? What was Banana doing at the polling station? Who was he? In what capacity? What about the polling officials? All these questions required answered. There was none. The fact that Students were ferried at least 4 times is not rebutted.

Nakiwala Prossy (pg 29, 1<sup>st</sup> respondent) also filed a in reply to Senyondo Moses and Mukasa Bakireke, deponed that: She was the presiding officer at Takajjunge polling station. At about 12 noon, 10 people joined the queue. Later she came to learn that they were students from Greenville SS. She did receive complaints from candidates agents that students should not be allowed to vote. She then resolved the matter by ruling that as long as they were in possession of voters cards and appeared on the register they should be allowed to vote. Indeed those who met the criteria voted. From her perception, the students were of the apparent age of 18 years and she had no reason to doubt that they were eligible to vote. She knows a Frank Banana. She saw him at the polling station that day. At the time Banana arrived at the station, the issue of the students had already been resolved; and she did not see him involve himself in the matter as alleged by Ssenyondo and Mukasa Bakireke. She did not see Mr. Banana in possession of firearms at the polling station on that day nor did she hear

him threaten anyone or make any orders regarding the voting process as alleged. The number of students (67) is an exaggeration, as she only counted 10 students.

Kyambadde Enoch, the Deputy H/M who actually drove them from school and ensured that each had a voters card before leaving the school compound says he drove 20 students

This witness admits that there were complaints. That students from Greenville SS came and voted. That Banana also came to the polling station. There is however a Contradiction: She talks of only 10 students. Why are they lying? I reject their evidence and I believe the Senyondos for that reason. I find that students from Greenville were ferried to vote at Tekkajunge. They were over 60.

Kawuma Abaas (pg 15 vol2 paras 4-6) deponed that; He is a registered voter at Nakagere poling station and an election monitor of the petitioner at Ngoma sub-county. He was at Seeta IV polling station at around 9 am on polling day. While there, one Namutebi Joyce, LC 1 Secretary for information, Baggala zone and also a member of the NRM village committee, and and also a campaign agent of the first respondent was issuing out voters cards to some voters of her choice. That he and one Elisa Nkoyoyo approached the said Namutebi Joyce and questioned her about the source of cards and the capacity in which she was distributing the same. She did not answer them, whereupon they arrested her and handed her over to an election constable, one Adang James who is the O.C C.I.D. Seeta police post. He took her to police together with the cards but police released her without being charged. The said constable told them that they should not worry because he had confiscated the cards.

Mukasa Elisa Nkoyoyo (pg 110 vol 2), corroborated the evidence of Kawuma Abaas, and deponed that: He is the LCIII, Goma Sub County. He was the election monitor for the petitioner for Goma-sub-county (. His evidence is similar to that of Kawuma).

Ssekatawa Robert. (Pg 77 Vol 2 paras 2 and 3), deponed that; He was a polling assistant for Seeta IV polling station). On polling day, two men who he later identified as Erisa Mukasa Nkoyoyo, the current LC III Chairman Goma sub-county and Abaas Kawuma, a DP mobiliser who introduced himself as election monitor for the petitioner arrested one Namutebi Joyce, a member of the NRM committee, Baggala Zone , Secretary for Information LC1 of the area and campaigner of the 1<sup>st</sup> respondent. She had a bundle of voters cards which she was distributing to some people who would join the queue to vote. Namutebi was handed over to the OC CID Seeta Police post who was also the election constable at Seeta polling station. The constable took Namutebi to the police port with the bundle of cards but later she returned to the station.

In rebuttal, MS Namutebi swore an affidavit (no. 28 1<sup>st</sup> respondent) paras 4 and 5), that: She is the only Namutebi Joyce in the area and she believes in the circumstances that the allegations in Mr. Ssekatawas affidavit were meant to refer to him. It is true she had five voters cards in her possession on polling day. The said cards belonged to her and four of her children who had accompanied her to the polling station and she was merely keeping them for safe custody. Upon arrival at the polling station, she had just handed over one card to her daughter when it caused disturbance as some people at the polling station believed that she was issuing out voters cards. She sought the assistance of one Akooli, a police constable at the station for protection and he assisted her to verify their ownership and allowed her to give them to her children. She knows Elisa Nkoyoyo as a fellow resident and Abaas Kawuma as a motorcyclist

in Baggala zone; but she denied that either of them arrested her as they alleged. She further denied having been taken to the police station as alleged.

This witness admits having voters cards and distributing them at the polling station. Why was she giving them out at the polling station? This explanation given.

The evidence on record required corroborates the evidence from Akooli, the police constable, if at all he exists; since he is the one who allegedly verified the ownership of those cards and allowed her give them to her children who should under the law be over 18 years before being eligible for voters cards and adults who should have been capable of taking good care of their voters cards instead of giving them to mummy for safe custody! Her explanation is not plausible or logical, and, as counsel Lukwago said. It is an obvious lie. I reject it.

The 1<sup>st</sup> Respondent is silent about these two incidents. He does not deny that Joyce Namutebi is his campaign agent. This allegation therefore succeeds in light of all this evidence.

### **Open voting**

Under paragraph 5 (g), the petitioner pleaded that;

Contrary to section 30 (1) of the PEA, voting at some polling stations was not by secret ballot but by an open method where the voters choice of candidate would be known to the election officials and or other people.

Section 30 (1) of the PEA regulates

**30. Polling and polling procedure. It reads:**

- i) **Voting at every election shall be by secret ballot using one ballot box at each polling station for all candidates in accordance with this act.**

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The Petitioners affidavit in support is again not specific. General averments of electoral malpractices were made.

In support, Baganja Bernard (pg33 vol 1 Para 6) deponed that: He was a duly appointed agent of the petitioner stationed at Nakapinyi A-M) polling station on polling day. As the voting process was going on, it started to rain around the voting table, obstructing him from observing the process. He complained to the presiding officer to organize the people but to no avail. He drew nearer to observe the voting exercise, but the presiding officer called a polling constable, who chased him away.

In rebuttal, the 1<sup>st</sup> Respondent filed the affidavit of Sentongo (no 25, 1<sup>st</sup> Respondents). He deponed that; He was one of the 1<sup>st</sup> Respondents agent at Nakaapinyi A polling station. At 2: 00pm they all agreed to relocate the voting materials under a big tree to provide adequate shelter from rain. (Paragraph 5). This witness does not deny that voters converged around the voting table as a result of the relocation.

Indeed, there is evidence of rain and relocation, but no concrete evidence of open voting. This allegation fails.

In paragraph 5(h), it is pleaded that:

(h) Contrary to section 20(5) of the PEA, the 1<sup>st</sup> respondent held campaign meetings within 24 hours before polling day.

Section 20(5) provides that:

**20. Campaign programmes.**



(5) A campaign meeting shall not be held within 24 hours before polling day.

Petitioners affidavit in support of specific amount. General allegations of illegal practices in paragraphs 6 and 15. supporting affidavits include:

Mugambe Lovinder (pg vol 1 Para 4), who deponed that: She was the duly appointed agent of the petitioner at Kiwumu polling station, in Kyampisi Sub County. While at the polling station, she heard the presiding officer, one Mubiru telling voters several times that the NRM bus appears near Bakaluba Peter Mukasas picture and they should find it there.

In rebuttal, Mubiru Bumbakali (No. 30, 1<sup>st</sup> respondent), denied the allegation. He deponed that; He was busy that day with his official duties as the presiding officer of the said polling station. He did not tell anybody that the Bus was near the 1<sup>st</sup> Respondents picture, and that voters should tick there.

Court finds that this is general denial. He knows Lovinder Mugambe as fellow resident of the village. He does not state any reason or motive why Lovinder should make such allegations against him amongst all other people who were at the said polling station on that day. Court therefore rejects his evidence.

Bayanja Bernard (pg 8 33 vol 1 paras 4-5) deponed that : He was a duly appointed agent of the petitioner. He was stationed at Nakapinyi (A-M) polling station on polling day. He saw the 1<sup>st</sup> Respondents agents approaching the voters before they could join the line and telling them to vote the 1<sup>st</sup> Respondent.

In reply, One of the 1<sup>st</sup> respondents, agents at Nakapinyi polling station deponed in (n0.25, 1<sup>st</sup> Respondent) that: It is not true that any agent of the 1<sup>st</sup> Respondent

involved himself or herself in acts for campaigning for the 1<sup>st</sup> Respondent at the said polling station as alleged by Bernard Baganja. Court finds this is a general denial. He is not an independent witnesses.

Lamula Bukenya (pg 43 vol 2 Para 4) deponed that: He was a registered voter and a duly appointed agent of the petitioner at Ntinda 1 polling station. He stayed at the said polling station up to the end of the polling exercise. He heard Betty Kyambadde, a polling assistant tell voters upon checking the voters name from the register to vote the bus implying voting for the 1<sup>st</sup> respondent whom he knew as the only candidate at the election of directly elected member of parliament who used the NRM bus symbol.

In rebuttal, Betty Kyambadde replied (No.10, second respondent) that: She was indeed a polling assistant at Ntinda 1. The said statement by Lamula Bukenya is not true. She did not tell any voter to vote for the bus or any other symbol but left voters to exercise their own choice.

Ssempebwa Robert, (No. 16 2<sup>nd</sup> respondent) replied that: Lumala is personally known to him as an agent for the petitioner at Ntinda 1 polling station. It is true that Betty Kyambadde was a polling assistant at Ntinda 1 polling station and she never told anyone to vote for the bus or any other symbol. She was sitting at table one therein. Court finds this is another general denial.

Kayongo Christopher (at pg 74 vol 2 paras 3, 4, and 5) deponed that:- He was a duly appointed surveillance duties officer to survey the election process at Nama and Kyampisi sub counties on polling day. Polling day was going on in Kabembe polling

station, when he found one Diriissi and Mirembe whom he knew as ardent supporters of the Respondent, clad in NRM t-shirts and busy campaigning for the 1<sup>st</sup> Respondent. He complained to the presiding officer of the said polling station who apologized, claiming that she didnt know that Diriisi and Mirembe were openly campaigning for the 1<sup>st</sup> respondent. He then told them that they were doing was illegal; Mirembe told him that as a lady councilor, she had the right to talk to her subjects on who and how to vote. After his said complaint, Diriisa made a phone call and after some minutes, one Kayiizi came driving a Diana pick-up with six security men therein. After Kabembe polling station, he then proceeded to Kikandwa polling station in the same sub-county at around 2pm in the afternoon. While there, one Gerald whom he knew very well as LC 1 Chairman of the area was openly soliciting for votes for the 1<sup>st</sup> Respondent.

In rebuttal, Mirembe Janat (No.15, 1<sup>st</sup> Respondent.) deponed that: She is the only Mirembe in that area. And so Kayongos allegation was meant to refer to her. It is true; she is supporter of the 1<sup>st</sup> respondent and the NRM generally. On the 23<sup>rd</sup> February 2006, she was at Kabembe polling station to vote for her candidates and to witness the whole process generally. She categorically denied wearing an NRM t-shirt and involving herself in open campaigning for the first respondent on polling day. She has also denied having told Kayongo that she had a right to talk to people as a councilor on how to vote.

Court finds this is another general denial. What was she doing at the polling station the whole day? She is not a polling official, or an agent. This lends credence to Kayongos evidence that what kept her there was to campaign for the 1<sup>st</sup> respondent.

Mukalazi David Salongo, the petitioners agent at Namilyango Polling station (Pg 102 Vol2 Para 9) - deponed that; the LC Chairman while issuing ballot papers used to tell voters that the votes were for Mr. Museveni, the second is for Hon. Bakaluba and the third was for Naluggo all of whom are NRM candidates. The LC1 Chairman, Masembe Peter was appointed as polling assistant by the presiding officer because one of the polling assistants was late. He arrived at 1:40 at the poling station. Polling started at 10 am.

Court agrees with petitioners counsel that, he was therefore illegally appointed since polling assistants are appointed by the returning officer under the law. (See S.. PEA). He was thus issuing the ballot papers illegally. His credibility is therefore questionable.

Gerald Kizito replied to Kayongas allegations in respect of Kikwandwa polling station (No, 5, respondent and deponed that ; He is the only Gerald in that area and in the circumstances he believes the allegations refer to him. In reply to paragraph 7, he categorically denied that he ever at any one moment involved himself in open solicitation of votes for the 1<sup>st</sup> Respondent on polling day.

This is another general denial He is not saying whether he was there at the said polling station or not.

In conclusion and based on the affidavits on and the findings, court is satisfied that this allegation was proved by the petitioner. The allegation under paragraph (1) was abandoned. Under paragraph 5(J), it is pleaded that:

Contrary to section 30 (4) and section 32 (1) of the PEA, the petitioners agents were denied access to some polling stations or areas by the first respondent , agents and the second Respondents officers during polling and counting exercise and therefore prejudiced the petitioners interests resulting into:

(i) Fake or false results .

(ii) Vote rigging through ballot stuffing, multiple voting, pre-ticked ballots being issued to voters in favour of the first respondent.

Section 30 (4) of the PEA was found to be inapplicable. Counsel argued S.32 (1) which provides that:

This ground based on **32. Polling agents of candidates**

**(1)A candidate may be present in person or through his or her representative or polling agent at each polling station for the purposes of safeguarding the interest of the candidate with regard to the polling process**

The petitioner deponed in paragraph 8-18 of her supporting affidavit that; She received several complaints from her agents that they were chased away by the 1<sup>st</sup> respondents agents and servants from some polling stations and some had their signatures forged on the DRFs at such polling stations like:

- 1) Sonde in Makindye parish, Goma sub county.
- 2) Kyungu, Nsuube Kauga parish, Mukono town council.
- 3) Kiswera, Mpoma parish, Naama sub-county.
- 4) Lutengo B, Buliika parish.  
Nama sub-county.

Copies of the DRBs are annexed as B1, B2, B3 and B4.

The petitioner deponed further that she obtained, read and understood the DRFs for each polling station in the entire constituency and discovered that several DRFs contained flaws as demonstrated below:

(a) At Buyuki, Namilyango and Misindye, the total number of votes cast for candidates exceeded the number of votes by 113,339 and 203 votes respectively.

At Takajjunge polling station in Naama sub-county, the total number of ballot papers exceeded the number of issued ballot papers by 474. Copies of the DRFs are attached as C1, C2, C3 and C4.

(b) At Jinja-Misindye polling stations in Goma sub-county, 196 cast votes were missing out of total number of ballot papers counted. 1100 ballot papers remained unused but some were falsified to appear as if there are only 194 unused ballot papers. A copy of the DRF is annexed as D.

(c) At Seeta 11 B polling station in Goma sub-county, the total number of ballot papers counted as stood at 941.5. Therefore 433 votes went missing. (See Annexure E)

(d) At Lutengo A polling station, the total number of valid votes cast and invalid votes did not add up to the total number of ballot papers counted, which stood at 393. Therefore 18 votes went missing. (See Annexure F).

(e) At Lutengo B polling station, the total number of valid votes cast and invalid votes did not add up to the total number of ballot papers counted, which stood at 363. Therefore one vote went missing. (See Annexure G).

(f) At Samuka polling station, the total number of valid votes cast did not add up to the total number of ballot papers counted, which stood at 322. Therefore one vote went missing (See Annexure G1).

(g) At Namumira polling station, the total number of unused ballot papers did not add up to the correct figure of 173. Therefore one ballot paper (1) went missing. (See Annexure H).

(h) The presiding officers did not sign the DRFs for directly elected MPs for MNC in several polling stations including:

- 1) Takajjunge.
- 2) Kikandwe.
- 3) Namanganga.
- 4) Nkongge.
- 5) Kiwanga.
- 6) Nantabulirwa.(A-M).
- 7) Wakiso.

(See: Annexure T 1, 2, 3,4,5,6, and 7.)

She further averred that at some polling stations, the presiding officers filled DRFs before the votes were counted at and some polling stations the time is not indicated.

The affected polling stations are:

- 1) Mabuye.
- 2) Namawojjo Islamic.
- 3) Bwefulumya.
- 4) Lutengo A.
- 5) Kiwumu.
- 6) Nkongge.
- 7) Samuuku.
- 8) Papaati.
- 9) Kiwango.
- 10) Lutengo B.
- 11) Nakapanyi. (A-M).

- 12) Kikandwa.
- 13) Mulungi Omu.
- 14) Namaganga
- 15) Kalagala.
- 16) Degeya Church.
- 17) Kiwanga II.
- 18) Jinja Misindye
- 19) Namilyango.
- 20) Nantabalirwa.
- 21) Ntinda.
- 22) Luguzi.
- 23) Wakiso.
- 24) Kivuvu.
- 25) Buyuki.
- 26) Kisowera.
- 27) Lwanyonyi.
- 28) Namawojjolo.

(See Annexure J1-29.)

In paragraphs 10 to 15, she averred that several of her agents were chased away from several polling stations by the 2<sup>nd</sup> Respondents agents in connivance with the 1<sup>st</sup> Respondents agents and as such, they did not sign or give reasons for not signing the DRFs. The affected polling stations are:

- 1) Namawojjolo West.
- 2) Nsambwe.
- 3) Namasiga.
- 4) Kiwanga 1.



- 5) Seeta 11 B.
- 6) Ntinda 11.

Ntinda 1 (Significance of agent was forged).

Nakapinyi.(See Annexure K-8 )

The agents of the Respondent used DRFs which were fake to declare the results at some polling stations when these forms had no serial numbers. The polling stations are:

- 1) Sonde
- 2) Kiwanga 1 and
- 3) Lutengo B.

(See annexure L 1 to 3).

The second respondents agents in connivance with the first respondents agents used forged results at Ntinda 11 polling stations. Where the agents whitewashed the original results and recorded new ones for the candidates. (See Annexure M)

The 2<sup>nd</sup> Respondents agents in connivance with the first respondents agents forged election results at Kyungu polling station when the 1st respondent had attained 154 votes by forging another DRF to indicate that he had attained 184 votes; while the petitioners results remained the same on the original and forged DRF. (See Annexure N1 and N2.)

The second Respondent used the results in the said forged DRF to declare the result at Kyungu polling station. ( See annexure 3)

The vote difference of 448 between the 1<sup>st</sup> respondent and the petitioner was obtained through ballot stuffing , preticking of ballots, multiple voting , removal of the petitioners valid votes , forgery of the results, intimidation and chasing away of the petitioners agents and all other illegal acts and electoral malpractices stated herein above.

When she detected the maneuvers to rob her of victory she immediately brought the same to the attention of the 2<sup>nd</sup> respondent. (See annexure P dated 24th February 2006). That the 2<sup>nd</sup> Respondent at first conceded that there were gross irregularities and stayed the declaration of results pending the determination of the petitioners complaint. (See Annexure Q dated 27th February).

In a dramatic turn of events, the returning officer, Mukono issued another letter dated 28<sup>th</sup> February, claiming that he had declared the results on the 25<sup>th</sup> February 2006. (See Annexure R).

Kizito Ndugwa the agentn at Kungu polling station at vol 1) swore an affidavit in support. He stated that the results declared at the polling station were: 98 for petitioner 154 for 1<sup>st</sup> Respondent and 2 for Kawadwa.

The subsequent DRF which the petitioner obtained from the EC that the results were altered in favour of the 1<sup>st</sup> Respondent to indicate on the other hand indicated that he got 184 votes, thereby increasing his total votes by 30.

The results of the other candidates remained intact. The matter was reported to Mukono Police station file CRB No Mand N. 180/ 2006. The file was forwarded to the resident state attorney under reference to Mand N- co-199-2006.

The presiding officer one Beebwa Evasy, who is the deputy H/M of the Mukono boarding School was charged in Mukono Chief Magistrates court under M and N -00-CR-0053/06, where the case is still pending. A copy of the forged DRF is attached as B and charge sheet as C.

In rebuttal, Evasy Beebwa (No. 3, 2<sup>nd</sup> Respondent) deponed that: She has read the affidavit of the petitioner in support (dated 26/4/06). She has read the affidavit of the petitioner in support (dated 26/4/06). She did not connive with any person to forge DRFs for Kyungu polling station as stated in paragraphs 13 and 14 thereof. She had made a wrong entry which she corrected to show the correct results. She was impartial during the election and has been a polling officer before and knows the consequences of tampering with election materials and results. She did not forge any result. The elections at her polling station were conducted under conditions of freedom and fairness and the polling agents signed the DRFs.

The evidence raises a number of questions. For instance, when did she discover the wrong entry? When did she correct it? Before or after declaration? Under what circumstances? Did the agents sign the corrected DRF? Why did she fill two? She altered the 1<sup>st</sup> Respondents results in the DRF after declaring results after the agents had signed. She should have contacted all the agents if she had discovered a wrong entry. Before correcting it, if at all it is true.

She did the correction behind the petitioners back and cant be accepted as impartial. 30 votes are not small in any election and it is not up to any election official to hold or substitute votes unilaterally without the risk of being accused of impartiality as in the instant case. Ms Evasy made a mistake to alter the results in favour of one candidate after declaring the result.

Wafula Godfrey Mangeni deponed that; He was the duly appointed agent of the petitioner stated at Buyuki polling station on the material day to safeguard the petitioners interest. They counted the ballots at 7; 45 am and they were 450 in 9 booklets. That polling officer did not allow him and his co-agent, one Musoke Eridard to sit proximate to the table where the voters register was. They were placed 15 meters from the table and couldnt verify whether the persons being given the ballot papers were actually true voters and had their names in the voters register, as they could not even hear their names. That voting continued and it started raining at about 2:30 pm when the polling officer ordered the polling exercise to continue inside an incomplete structure which was about 30 meters from the polling station. Voting continued in that building where the election officials sat in one room with all the election materials and ballot boxes, while they, the agents were made to sit in another room where they could not monitor the voting exercise. Voting continued under that arrangement until it stopped raining at about 5:00 pm. The polling Official, one Nkalubo Eliabu is well known to be the campaign agent of the 1<sup>st</sup> Respondent and is the general secretary of the NRM Luwunga Town Council. At the close of the polls, votes were counted and it was declared that the petitioner had got 74 votes, the 1<sup>st</sup> respondent 203 votes and Kawadwa 0 votes. Invalid votes were 9 and one vote was a spoilt vote. There were 256 unused ballot papers, being 5 unused booklets and 26 loose ballot papers. He did not have time to do the additions. He and his co-agent later added the total number of votes for all the 3 candidates, invalid votes, spoilt ballots and unwanted ballots and found that it totaled 563, thereby exceeding the number of issued ballot papers by 113.

Is it true that the number exceeded by 113? Let us look critically at the figures in Annexure A which indicates that.

Total B/ Papers used

450

No. of valid votes cast - 74+ 203=	277
Invalid / rejected ballot papers	9
Spoilt	1
Total	<u>287</u>

Total No of unwanted B/Papers + 276.

563

450

113

There is a problem with the addition. The end result shows 113 ballot papers excess. Where did they come from?

In rebuttal, Nkalubo Eriabu (No 13 2<sup>nd</sup> resp). Deponed that: He was indeed the PO at Buyuki polling station on the said day; and the said Wafula Mangeni was a polling agent for the petitioner, the allegation is not true and the agents were about 4 meters away from the table and were near enough to hear the names before the ballot paper was issued. When it started raining, he decided to use the nearby building as a polling station and agents and voters where allowed into the building and at all times monitored the polling exercise. He has never been a polling agent for the 1<sup>st</sup> respondent or any other candidate. He is not the SG of NRM Luwaga Youth Council but he is however the Chairperson for youth at LC1 level. At the close of the polls, he filled the DRF and the votes cast for each candidate are correct. However he made an error on the entry of unused ballot papers by indicating 276 instead of 163. There are no excesses in the ballot papers as indicated.

There is no complaint that the excess 113 affected the results.

Mirembe Margaret (Pg 9 vol 1) deponed that; she was the petitioners polling agent stationed at Lutengo A, polling station. At around 5pm the polling official started filling DRFs and instructed them to sign them. When she complained, the polling official said it would be late for her to fill the forms after the voting and whoever refused to sign would not take to his /her candidate. The polling official left gaps for the scores blank, saying that she would fill in the figures after the counting. During the counting, the polling official did not display the votes to the voters and agents present. After counting, the polling official declared that the 1<sup>st</sup> respondent had got 264 votes, the petitioner 107 and Kawadwa 4 votes. The results were declared at around 10 pm. All that time a dim torch was being used, so she did not have time to assess and ascertain whether everything filled on the DRF was true and correct. When they reached Nama Gombolola headquarters where they had agreed to meet their supervisor and to read back the DRF, she discovered that the votes indicated for her candidate were less by 18 as the number indicated was 89. (See Annexure A) She reported the anomaly to Sowedi Lwanga, her Supervisor, when he came to ask the supervisor on DRFs and he promised to follow it up with the Gombolola Chief.

In rebuttal, Kizza Phoebe (No 11, 2<sup>nd</sup> respondent) deponed that: She was indeed the polling official and Mirembe Margaret was a polling agent of the petitioner at Lutengo A That the allegations are untrue. She filed the forms at the end of the vote counting. The petitioner polled 89votes and she did not change any votes and filled the forms correctly. She declared the results at 9:40 pm and she had with her a steamer light. She took the results to Nama Gombolola sub county headquarters and while there she saw Mirembe and she never raised any concerns about the alleged anomaly in the DRF.

If Ms. Mirembes allegations are true, then she has only herself to blame by signing a DRF before counting of results. There is no proof that the figures she gives were

correct. Her evidence needed corroboration from other voters and agents. She was not the only agent of the petitioner at the station each candidate is entitled to two agents. She did turn up for cross-examination before the commencement of the polls, ballot papers issued to the polling station were counted by the polling official and announced to be 600.

At the close of the polls, votes were counted and it was announced that the 1<sup>st</sup> respondent had scored 230, the petitioner 187 and Kawadwa 5. Invalid votes were 5. Unused ballots were 172.

After the announcements, she sat and computed the figures to ascertain their accuracy and she discovered that when you add the total number of votes cast, invalid votes and unused ballot papers, 1 ballot paper remains unaccounted for.

Peninah Nakazibwe, the polling official deponed that; It is true the DRF reflects 172 as unused ballot papers but this was an arithmetical error and did not affect the valid votes cast for the candidates.

It is true the figures show one vote less.

Votes cast- 1st respondent	-	230
Petitioner		187
Kawadwa		5
		<u>422</u>
Invalid / reflected votes		5
Unused votes		172
Votes used		<u>599</u>
		600

Less by 1 vote.

Sowedilwanga (Pg 8 19 Vol 1) deponed that; Mirembe Margaret reported to him that a wrong entry had been made against their candidate at the polling station (Namurima) by entering 89 votes instead of 107. He immediately went to Nama Gombolola Chief Juuko Kibuule, who told him that he had no mandate to intervene in such matters and he should report to his candidate, which he did the next day.

As stated earlier, his evidence is not very useful. It does not add anything to MS Mirembes evidence. He was not at the polling station. His efforts to follow-up with the Gombolola Chief also reached a dead end.

Katumba Salongo Steven (Pg 29 Vol 1) deponed that; He was the duly appointed agent of the petitioner stationed at Mt. Elijah Bugooba polling station on polling day. He was not allowed by the polling official and polling Assistant to sit close to the table where voters register was and he was put about ten meters from the said table. He was therefore unable to tell whether the votes read out for the candidates were actually true and truly reflected the persons in whose names the ballots were ticked.

Buganja Bernard (Pg 8. 33 Vol 1) deponed that; He was the petitioners dully appointed agent stationed at Nakapinyi A-M polling station the days it started raining during the voting process and voters gathered around the voting table. He complained to the polling official but to no avail. When he drew nearer to observe the voting exercise, the polling official called a polling constable who chased him away from the polling station. The DRF (Annexure J) was signed by Ssemwogerere M as the polling official. He indicated to the DRF that the agent left before the end of exercise. No reason for his leaving is given. It is not signed by the petitioners agent. It was signed



by the 1<sup>st</sup> respondents agents Naigga Joyce and Ndawula Andrew. It indicates that the 1<sup>st</sup> respondent scored 142 votes, the petitioner 143 and Kawadwa 5 votes.

Ssemwogerere swore an affidavit in rebuttal. I believe him. He was chased away. No agent worth his salt could leave a polling station without any reason on such an important day, with so much at stake.

Katende Mukyakaze (Pg 4 Vol 2) was a polling agent at Ntinda 11. He stated that After counting of votes, it was declared that the 1<sup>st</sup> respondent got 103 votes, Kawadwa 2 and the petitioner 259. The polling official Nakabiri Teddy told them that she had no copies of DRFs to fill as the dispatch to Ntinda 11 polling station and had come without DRFs for directly elected MPs.

He verbally communicated the results of his supervisor, Lugolobi Dan.

On 25<sup>th</sup> February 2006, one of the petitioners monitors, Henry Mukasa Bakireke took him to Mukono Town Center where they found the petitioner and other people. He was shown a DRF purported to have been filled and signed at Ntinda 11 polling station. He explained to the election officials that this was a forged document and gave him the true results. He also reported that the matter of forging results to the police whose case Number is MKN CRB 179 06. A copy of the DRF is annexed as M.

In corroboration, Teddy Nakabiri (Pg 49 vol 2) deponed that; She was indeed the presiding officer of the Ntinda 11 polling station on polling day. The dispatch for that polling station did not include DRFs for the directly elected MPs. She made a report to the Parish Chief Ssempebwa Robert who was also a polling official of the nearby Ntinda 1 polling station. He advised her to count the votes and report to the sub-

county headquarters the next day for votes. She counted the votes and the scores were: 1<sup>st</sup> respondent, 105, Kawadwa 2 and the petitioner 259.

On 24<sup>th</sup> February, the following day, as she waited at the sub-county headquarters for the clerk who had been instructed by the sub-county Chief, one Bweete Ssenfuma to avail her the DRF as she was still attending to other presiding officers having problems similar to hers, a group of three men only introduced themselves as Nambooze Betty Bakireke, agents entered the office and demanded to know why they were filling forms long after the elections. Soon after, the said agents had left; the clerk closed the office without giving them the forms. She never filled or signed any DRF for Ntinda 11 polling station. She was subsequently summoned to Mukono police station for forging DRFs for the said seat and was shown a copy of the DRF purportedly filled by her. She was left released on police bond under ref: MKN CRB / 79/06.

In rebuttal, Ssempebwa Robert (No.16, 2<sup>nd</sup> respondent), deponed that: He was indeed the polling official of Ntinda 1 polling station. It is true that Ntinda 11 polling station had no DRFs. Nakabiri Teddy went to his polling station and asked for the telephone number of the sub-county chief so as to inform him of the problem. He gave her the number and she made the call and told him that the sub-county Chief would bring him the forms. At about 9pm, Nakabiri went back to him and asked him for a blank DRF to photo-copy. He informed her that all this were used up. She then agreed with the agents at her polling station that they photocopy one of the DRFs that had been filled at his polling station and white wash it and photocopy again and use the form to fill in the results of Ntinda 11. The agents went and did as had been agreed and used the copies to fill in the results at Ntinda 11 polling station.

Nakibiri Teddy has sworn an affidavit in rebuttal to this affidavit (Vol IV) where she deponed that: The allegations are absolutely false as she never agreed with any of the candidates to obtain from Sempebwa copies of the DRF and never photocopied nor whitewashed and transmitted any DRF for Ntinda.

Annexure M is clearly whitewashed. It has figures and words written on top of other faint words beneath. Nakibiris name is written on it. It however still indicates the polling station as Ntinda 1 at the bottom; although the figure 1 was added to Ntinda 1 at the top to make it look like Ntinda 11.

The allegation of forgery is proved in these circumstances. No one is certain of the results from this station. Besides no agent of the 1<sup>st</sup> respondent has sworn any affidavit to confirm the averment by Sempebwa that all the agents agreed to photocopy the DRF for Ntinda 1 to use it for Ntinda 11.

Mugobere Godfrey Sekibumba (Pg 31 vol 2) deponed that: He was an election supervisor for the petitioner at Inside parish. He was at Sonde polling station when the vote counting started at 6:30pm. After the vote-counting, the results were; 1st respondent 260, Kawaddwa got 8, and the petitioner scored 366 votes. The polling official, one Mutesasira Messarch told him and the candidates agents that the polling stations had not been issued with DRFs but he summarized the results on some pieces of paper from an exercise book and gave to the polling agents present who signed the same. The petitioners agent, one Nsumba Kefa passed over to him a copy which he had recover. The said copy was subsequently handed over to the police. (See Annexure MG2). He and the petitioner later obtained a copy of what is purported to be the DRF with surprise because none was signed at the station. The said DRF has altered results indicating that the petitioner scored 266 votes as opposed to the 366 votes she actually scored.

Kefa Nsumba (Pg 51 Vol 2) deponed that: He was the petitioners appointed polling agent at Sonde polling station. Voting ended at 6:30 pm and counting commenced immediately thereafter. After the counting, the results were: 1<sup>st</sup> respondent 260, Kawadwa 8 and petitioner 366. Eight votes were declared invalid. The polling official, one Mutesasira Mesarch, told the candidates agents and other people present that the polling station had not been issued with DRFs but he summarized the results on pieces of paper from an exercise book and told the polling agents to sign, which they did. He received a copy which he handed over to the petitioners parish supervisor, one Mugolore Godfrey Sekikumba who was present at the polling station (a copy is attached as NFI N92 to Mugoberes affidavit). On the 25<sup>th</sup> February 2006, a shopkeeper at Sonde trading center, one Kizito handed to him a photocopy of the purported DRF which had a forged signature purported to be his (Nsumba Kefas) indicating that the petitioner had scored 266 votes as opposed to 366 votes she had actually scored. He reported the case to the police under SEETA SD R/F: 19/26/02/06 and recorded a statement.

In rebuttal, Mutesasira Mesarch (No 21, 2<sup>nd</sup> respondent) deponed that: He was indeed the polling official at Sonde on that day. The allegations are not true as the petitioner only 266 votes. That at the beginning of the polls, he discovered that the no DRFs had been included in the election materials at their polling station. He rang the sub-county Chief who informed him that he would avail him some. By the time of declaration of results, indeed, no forms had been supplied and he agreed with the agents that the results be recorded on another paper pending transfer to the DRFs. He put one of the sheets of paper into the ballot box before sealing it. When he reached the sub-county headquarters, he filled the DRFs and did not alter any results of the candidates polled at the said polling station which are: 266 for the petitioner, 260 for the 1<sup>st</sup> respondent and 8 for Kawadwa and 8 invalid votes. The said Nsumba did not sign the DRF after

he (Mutesasira) had duly filled it at the sub-county headquarters. He did not sign any sheet of paper showing that the petitioner had polled 366 votes as alleged.

During cross-examination, he stated that he did not fill a DRF at Sonde polling station. The agents took the results on a certain piece of paper. He got the paper from a certain exercise book. Each agent signed it. When Lukwago counsel referred to him to the document on paper 53 Vol 2 NFI, he answered: Yes. For the 1<sup>st</sup> respondent 260, for the petitioner 366. There is a figure was changed. Asked whether that was the piece of paper he filled, he answered yes. He stated that the agents followed him to the sub-county headquarters. That he received DRFs for women MPs, but he could not explain why he included results for women MPs on the piece of paper if it is true that he had DRFs for that seat.

This statement contradicted the first paragraph to the piece of paper where he stated as follows.

***SONDE POLLING STATION.***

*This is to inform you that I did not receive results from (DR) for Direct MPs and woman MPs.*

He didn't indicate the time on the piece of paper, but he indicated 7pm on the DRF yet he stated that he prepared the paper a few minutes after 9pm and then 7pm during cross examination.

During re-examination, he also stated that on receiving the real DRFs and when the agents had signed them, he didn't take the trouble to keep the first sheet of papers; He deposited the original in the ballot box. He filed 5 copies (of the handwritten document). He gave 3 to the agents of the candidates. The only alteration is on

candidate No.2 (Nambooze Betty). The original results were 266. NFI is the one he filled, only that the results of the candidates (Namboze) were altered.

He got the DRFs from the sub-county headquarters the DRF on pg 55 vol2 is the real DRF he filled. They are the true figures of what the candidates polled at Sonde polling station.

Kefa Nsumba in rebuttal (Vol IV) denied; That he ever went to Goma sub-county with Mutesasira to sign the DRF for Sonde polling station and the signature alleged to be his is a forgery. That the truth of the matter is that he has given a piece of paper containing the results and he handed the same to Mugobere his supervisor indicating the results as stated earlier.NFI is not altered.

Mutesasira identified NF3 and NF1 as the piece of paper he signed. His allegation that it was altered to show 366 for the petitioner was no proof because no handwriting expert was called to prove the alteration.

He admitted giving copies to the agent. He also stated that he put one copy which was sealed in the box. The onus was on him to prove that the one in the box was exactly the result in the DRF,since the petitioners had made out a prima facie case that he had altered the results on their piece of paper which they had all signed when he filed the DRF at the sub-county headquarters.

More importantly, the witness is admitting that he filled the documents in respect of the same result. What he has in the box is a mere piece of paper and not DRF (the legal document for declaration of results).The results of the said station are therefore neither in the box nor outside of it.

The one outside the box is also illegal; it was not filled at the polling station. It was filled at the sub-county headquarters, 4kms away from the polling station! Is that the guideline the EC gave its polling officials?

Mutesasira is a liar. He doesn't even know the time he filled the two documents, 7pm? 9? 9:30pm? His evidence is not useful. It does not rebut the allegations against the 2<sup>nd</sup> Respondent.

Lamula Bukenya (Pg 43/2) deponed that; He was the petitioners polling agent at Ntinda 1 polling station. At about 3pm, the said Betty Kyambadde handed over the voters register to one Alex Wakulira, whom he knew was not a polling official and whom he knew as an NRMOC Chairperson of Bagala zone, Seeta parish Goma Sub County. The said Alex Wakulira remained and performed Betty Kyambaddes role up to about 6 pm when voting closed. He refused to sign the DRF due to the improper things he had seen during voting. The polling official is well known to the petitioner at Ntinda 1 polling station. That it is true, Betty Kyambadde was a polling assistant at the said polling station; but she never told any one to vote the bus or any other symbol. She was sitting at the same table with him. He never moved away from the polling station as alleged. He knows Alex Wakulira personally. He did not go to the polling station on that day and did not take over the work of the polling assistant as alleged. He wrote the names of the agents who were present during the counting of the vote in their presence; none of them signed the DRF. He admits that none of the agents signed the signed the DRFs but does not state the reason why since he had DRFs at his polling station unlike Nakabiri Teddy of Ntinda 11. Why? He did not state the reason on the DRF as required by the law? The DRF is suspect.

Ssentongo Wasswa (at pg 66 vol 2) deponed; That he was the petitioners polling agent at Kiwanga 1 polling station that day. Voting ended at about 7pm. The counting

started with presidential, then Women representatives. By the time the counting for Directly Elected MPs started, it was around 10 pm. The polling official then counted the 1<sup>st</sup> respondents votes first since they came alphabetically and declared that he had scored 277. Kawadwa had scored 22 and the petitioners score was to be determined by deducting those counted. The residents started protesting to the constable, the polling official, the polling assistants together with NRM agents loaded the materials hurriedly onto the double cabin pick-up and drove off. The witness and other residents who had concerned got motorbikes and followed the pick-up which went to Goma sub-county headquarters, but they were chased away at gun point in the compound by armed LDUs. Later on the petitioner invited him for a meeting held at her office in Mukono and showed him a copy of the DRF (attached as WJ2) which she had obtained from the returning officer of Mukono district. I did get these forms in time

The DRF is false because the polling station had been issued with 1,100 ballot papers and not 1046 as indicated DRF at page 70 and is not signed by any agent. It was filed at the sub county headquarters.

Isa Musoke the polling Assistant has indicated the reason on the form as follows:

Kafeero Difari (page 84 vol 2) deponed that; He was the petitioners appointed polling agent stationed at Kirowoza polling station-that day. He was denied the chance to sit within a distance of at least one meter from the presiding officers table despite his repeated demands.

In rebuttal, Mugambwa Willy, the presiding officer deponed (affidavit No 9, 2<sup>nd</sup> respondent) that; He did not deny the said Diffasi a chance to sit within a distance where he could observe the interest of his candidate and he indeed sat about 1 ½ meters from table one. This allegation is rebutted. Diffasi also signed the DRF



confirming the result without recording any complaint. (See pg. 55 additional affidavit).

Mukasa Henry Bakireke deponed (at pg 99 Vol 2) that: He was the petitioners election Monitor / supervisor. They were tipped off on 24<sup>th</sup> February 2006 that the new DRFs were being filled at Goma sub-county. He was in the company of one Makumbi William and Katende. They proceeded immediately to the sub-county headquarters where they found Nakabiri Teddy and Mbabazi Maria, presiding officers for Ntinda 11 and Seeta 11B polling station. Maria Mbabazi was filling DRFs long after the elections. They went back to Mukono police station and reported the case. However when they went back with police to effect the arrest of the suspects, they found the office locked and police could not arrest them. He then reported the matter to the petitioner who wrote a letter to the District Returning Officer, Mukono about forging of DRFs by the said respondent to defeat the provisional results. This same averment is repeated by the petitioner in her additional affidavit and the letter is annexed as W and it says the following:

*RE: FORGING OF DECLARATION FORMS.*

*I wish to notify you that irregularities like forging declaration forms to falsify (sic) results are being done by your presiding officer.*

*There is collusion between your presiding officers and candidate Bakaluba Mukasas agents led by one Kaweesa Ssengendo to forge and make a return of false results. Such cases have been discovered by my agents in Goma sub-county while one Mbabazi Maria was found together with others filling fresh declaration forms yesterday. Police has been notified but is important that your office also makes*

*follow-up of the matter to detect these forgeries which may subsequently affect the results.*

*I trust your urgent action to arrest the situation.*

*Yrs faithfully,*

*Nambooze Betty Bakireke*

The letter is dated 25<sup>th</sup> February 2006. It was received on the same day because it bears the stamp of the District Registrar, Mukono District Electoral Commission. This evidence corroborates that of Nakabiri Teddy and Maria Mbabazi already mentioned earlier on in this judgment.

Mukalazi David Salongo deponed (at pg 101 vol2 ) that he was the petitioner's polling agent stationed at Namilyango polling station. When their supervisors called Busulwa and Sentongo queried the issuance of ballot papers at the same table by the LC 1 Chairman who was telling people while issuing ballot papers that the votes were for Mr. Museveni first, the second for Hon Bakaluba and the third for Naluggo; all of whom were NRM candidates. The presiding officer called police and said that Mr. Busulwa and Sentongo were causing chaos at the polling station. Police came and ordered them to leave the station and they left.

Kayongo Yusuf, the presiding officer confirmed the incident (No. 18, 2<sup>nd</sup> Respondent). His explanation is that: It is true the 2 polling assistants did not arrive on time. He reported this to the sub-county Chief who advised him to recruit another person to help him with the polling exercise and he promised to come to the polling station. He communicated this information to the voters who agreed with the polling agents that

the LC1 Chairman, Masembe Peter act as a polling Assistant at Table 3 where there was indelible link.

At about 11am, the petitioners supervisor came to the polling station and started contesting his decision. The said supervisor wanted to bring a party agent to act as a polling Assistant and when he ( Kayongo Yusuf) refused, the supervisor wanted to fight him, so he called the OC Station and other policemen who asked the supervisor to leave. When the OC left, the supervisor came back to the polling station and started quarrelling, so he called the Returning Officer, Mr. Kajubi Simon who came with the sub-county Chief Bwete, and they replaced the acting polling assistant with another person called Makuye.

There is no affidavit from the OC, Mr. Kauai the returning officer or the person called Mukuye who was allegedly replaced Masembo Peter to corroborate the evidence of Mr. Kayongo Mukalazi David Salongo, evidence remains intact.

Finally there is evidence of Salongo Steven the shopkeeper at Sande. The other details of alleged flaws on the DRFs set out in paragraph 9(a) of the supporting affidavit are:

(1)At Buyuki, Namilyango and Misindye polling stations, the total number of votes cast for the candidates exceeded the number of voters who voted by 113, 339 and 203 votes. Photocopies of the DRFs are annexed as C1, 2 and 3, respectively. Also at Takajunge, there was an excess of 474. (C4).

The DRF for Buyuki is C1.Wafula Godfrey Mangeni the polling agent corroborated this evidence (pg 5 Vol 2) in paragraphs 12 and 13 of his affidavit.Nkalubo Eriabu, the presiding officer stated in paragraphs 13 and 14 of his affidavit that at the close of the

polls ,he filled the declaration of results forms and the votes cast for each candidate are correct , however he made an error on the entry of unused ballots indicating 276 (two hundred and seventy six ) instead of 163 (One hundred and sixty three.)

That there were no excesses in the ballot papers as indicated in paragraph 13 of the said affidavit.

From the foregoing, the figure 113 is admitted, but it is being treated as an error. Was it really an error? According to Manteno the DRF (C1), the No of ballot papers issued were 450 in 9 booklets.

At the close of the polls the scores were:

-1<sup>st</sup> Respondent 203 votes.

-Petitioner. 74

-Kawadwa..0

Total                      **277** votes corrected.

These votes were recorded in the DRF as valid votes cast for the candidates. Then there were 9 invalid votes. Also recorded correctly.

There was only one spoiled ballot paper.

The total is as follows:

277

9

+ 1

278

450

278

163

Instead the number of unused ballot papers is indicated on C1 as 276.

276

-163

133 difference.

The difference is 113. Mangeni says in paragraph 12 that at the close of the polls, the votes were counted, there were 276 unused ballot papers being five unused booklets and 26 loose ballot papers. Therefore, the 113 were not errors. They were physical ballot papers which remained unused after voting, where did the excess 113 ballot papers come from?

And Nkalubo rightly entered it onto the DRF. Could he be relied on as a witness? He had two different signatures. He exhibited a different specimen signature from the one on the DRF.

**Namilyangos DRF** is C2. The total scores were:

1<sup>st</sup> Rep - 299.

Petitioner 143.

Kawadwa + 11

453

The total number of valid votes cast is therefore 453; but it is entered on the DRF as 450.

The No. of rejected / invalid votes is 3.

The No. of spoilt ballot papers is 5.



On the DRF, the total number of votes cast for the candidates is entered as 346 instead which is wrong.

The No of rejected / invalid ballot papers are 3.

The No of spoiled ballot papers is zero.

The total votes is therefore

$$\begin{array}{r} 348 \\ 3 \\ + 0 \\ \hline 351 \end{array}$$

The number of ballot papers issued to the polling station is indicated as 349. The No. of unused ballot papers is indicated as 201. If you add 35 to 201, you get 551. Which means the number of ballot papers counted at this polling station was more than the ballot papers issued by over 200. Where did the excess number come from?

Lumala Fredrick, the presiding officer at this polling station gave an affidavit (No 15, 2<sup>nd</sup> Respondent) but was silent about this discrepancy.

The DRF for Takajjunge is C4. The scores are:

$$\begin{array}{r} 1^{\text{st}} \text{ Respondent} \quad 289 \\ \\ \text{Petitioner} \quad 174 \\ \\ \text{Kawadwa} \quad + \quad \underline{6} \\ \hline \underline{469} \end{array}$$

Valid votes cast is correctly entered as ..469

The rejected votes are	7
The no of spoilt ballot Papers	nil
<b>Total</b>	<b><u>476</u></b>

The total number of ballot papers issued at the polling station is indicated as 476. How could the EC be so exact?

Secondly, the total number of unused ballot papers is also indicated as 474. How? Were those results actually entered after physical counting of the ballot papers?

Conclusion: The figures show excess ballot papers. There is no explanation given. The mathematical error is a statement from the bar except for Namilyango.

Under paragraph 9( b), the petitioner alleged that 196 votes cast were missing out of the total number of ballot papers counted; and 1100 ballot papers remained unused but the same were falsified to appear as if they are only 194 unused ballot papers. The DRF is annexure D.

Here the scores are;

1<sup>st</sup> Respondent .186

Kawadwa.. 8

Petitioner152

Total **346.**

On the DRF, this total is recorded as 348; which is wrong. The total number of ballot papers counted is indicated as 550.

The number of ballot papers issued as indicated is 1650.



The difference between the total ballot papers counted and the number issued should be

$$\begin{array}{r} 1650 \\ - \underline{550} \\ \hline \underline{1100} \end{array}$$

Yet it is recorded in the DRF as 194 unused ballot papers. Again this figure is wrong.

Secondly, the votes cast plus the invalid votes (346 +8) equals 354, which is the total number of ballot papers counted. There is a difference of 196 ballot papers between the two figures. Where did they go? No explanation was given by the 2<sup>nd</sup> Respondent.

In paragraph 9(c) the petitioner alleged that the total number of votes cast for each candidate and invalid votes did not add up to the total number of ballot papers counted at Seeta 11 B polling station which stood at 941.5. Therefore 433 votes went missing. The DRF is annexure E. The scores are;

1<sup>st</sup> Respondent 222

Kawadwa. 9

Petitioner. 271

Total 502

This figure is correctly recorded on the DRF. The number of invalid votes is indicated as 6. Making a total of 508. The number of spoilt ballot papers is 7. The number of ballot papers counted stood at 941.5 The total number of ballot papers issued is indicated as 950. The discrepancy was not explained by Mbabazi Scovia; the presiding officer. (See No 32, 2<sup>nd</sup> Respondent) This leaves this allegation un rebutted.

Paragraph 9(b) is an allegation at Lutengo A polling station. The total number of valid votes cast and the invalid votes did not add up to the total number of ballot papers counted which stood at 393, which means 18 votes went missing.

Copy of the DRF was annexed as F. The scores are;

1<sup>st</sup> Respondent 264

Petitioner 89

Kawadwa 4

**Total**                      **357**

The DRF indicated the total valid votes cast as 375, which is wrong. The total number of invalid votes is 18. If you add the two (357+18) you get 373. This means the figure indicated as the number of ballot papers counted.

The difference is actually 20 votes and not 18 as alleged. Kiiza Phoebe did not rebut this allegation in her affidavit (No 11, 2<sup>nd</sup> Respondent) apart from stating that she filled the forms correctly. The figures are clearly wrong although Mirembe Margaret, the petitioners agent signed the DRF.

Paragraph 9(b) alleged that at Lutengo B, the number of valid votes cast for candidates and invalid votes did not add up to the total number of ballot papers counted which stood at 363. A copy of the DRF is annexure G. The scores are:

1<sup>st</sup> Respondent 251

Kawadwa 4

Petitioner 105

Total                      360

The entry on the DRF is correct. The number of rejected or invalid votes is indicated as 2. If you add the two (360 +2) the total comes to 362 as indicated in the DRF.

There is no affidavit from Nalwadda Justine, the polling official to rebut this allegation.

In paragraph 9(f) it is alleged at Samuka polling station, the same allegation was made and the figure stood at 322. One vote is alleged to be missing. A copy of the DRF is attached as annexure G. The scores are;

1<sup>st</sup> Respondent .225

Petitioner.83

Total 308

The total on the DRF is recorded as 309; which is wrong.

The invalid votes are indicated as 13. Spoilt ballot paper is indicated as 1. The total ballot paper is indicated as 322. The discrepancy is not explained by Kasserri Margaret the polling official.

Paragraph 9(g) alleges that at Namumira polling station, the total number of unused ballot papers do not add up to the correct figure of 173, therefore one ballot paper went missing. A copy of the DRF Annexure H. The number of ballot papers counted is 422. The difference should be 173 and not 172 as indicated.

The polling official, Peninah Nakazibwe gave an affidavit (No 5 of 2<sup>nd</sup> Respondent). She explained in paragraph 3 that it is true the DRF reflects 172 as unused ballot papers but this was an arithmetical error and did not affect the valid votes cast for the candidates. I accept her explanation because no allegation was made that the missing one vote would have been in favour of the petitioner.

In paragraph 9(h) the petitioner avers that the presiding officers did not sign the DRFs for the directly Elected MPs for MNC in several polling stations that include:

1).Takajjunge.

2). Kikandwa.

3). Namanganga.

4).Nkongge.

5). Kiwanga.

6). Nantabulirwa (A-M)

7). Wakiso.

Copies are attached as Annexure I1 to I 7.

I have examined the annexures critically and I find that I was signed by Walakira Dan and I 3 was signed by Namukasa Annet.

I4 was signed by Ssemwanga Christopher.

I5 was signed by Nalima Betty and

I7 was signed by Kabanda Richard.

Only I2 and I6 are not signed.

This allegation is therefore unsupported by the petitioners own evidence.

There is an averment at paragraph 9(i) that presiding officers filled DRFs at some syndicated. The affected polling stations and DRFs are;

<b>Name</b>	<b>DRF</b>	<b>Time indicated</b>
-------------	------------	-----------------------

1)Mabuye	J1	5pm.
2) Namawojjolo Islamic	J2	5pm.
3) Bwefulumya	J3	5pm.
4) Lutenyo A.	J4	5pm.
5) Kiwumu	J 5	5pm.
6) Nkonge	J6	5pm
7) Samuuka	J7	5pm
8) Papaati	J8	5pm.
9) Kiwango	J9	5pm.
10) Lutengo B	J10	Not indicated
11) Nakapinyi (A-M)	J11	Not indicated
12) Kikandwa	J12	Not indicated
13) Mulungi Omu	J13	Not indicated
14) Namanganga	J 14	Not indicated.
15) Kalagala	J15	Not indicated.
16) Bukerere	J16	Not indicated
17)Degeya Church	J17	Not indicated
18) Kiwanga Church	J18	5pm
19)Jinja Misindye	J19	Not indicated.

20) Namilyango	J20	Not indicated.
21)Nantabalirwa	-	-
22) Ntinda 11	J21	5pm
23) Luguzi	J22	Not indicated.
24) Kivuvu	J23	Not indicated.
25) Buyuki	J25	6pm.
26) Kisowera	J26	Not indicated.
Outside Quarter Guard		
27) Lwanyonji	J27	Not indicated.
28) Namawojjolo West	J28	Not indicated.

The allegation that the time is not indicated is clearly demonstrated on several DRFs. Out of the 28 polling stations listed, the DRFs for at least 15 polling stations do not indicate the time.

The rest except one indicate 5 pm yet all presiding officers deponed that voting did not end at 5pm and vote counting in some places went on up to 9:30 pm due to interruption by rain.

Some of the DRFs were not even filled at the polling stations because they had not been included among the polling materials. E.g. Namumira where the presiding officer called Peninah Nakazibwe deponed in paragraphs 3 to 6(no5, 2<sup>nd</sup> respondent ) that in the evening after counting of votes, she noticed that there were no DRFs for the

said polling station. They then agreed with the polling officials and agents to fill the results on the Accountability of Ballot Paper Forms for all three elections. Later on, she reported to the election supervisor at Mukono Town Council who advised her to fill a DRF which she did and transmitted.

Phoebe Kiiza of Lutengo A deponed in paragraph 10 that she declared the result at 9:40 pm. (See No 11, 2<sup>nd</sup> respondent).

Ssempebwa Robert Nsubuga , the Ntinda 1 presiding officer deponed in paragraph 17 of his affidavit that he declared the results at about 9pm , Nakabiri Teddy, the presiding officer of Ntinda 11 which was next to his polling station went to him and asked him for a blank DRF to photocopy. He informed her that all his were used up. She then agreed with the agents at her polling station that they photocopy one of the DRFs that had been filled at his polling station and whitewash it and photocopy again and use the form to fill the results of Ntinda 11 at 5:00pm! (See Annexure .J21.)

Mutesasira Mesarch , the polling official for Sonde polling station, filled a DRF(B1) Indicating 7 pm as the time yet he stated in his affidavit ( No 21, 2<sup>nd</sup> Respondent ) he had no DRF by the time of declaration of results. He recorded the results on a piece of paper. He then traveled to the Gombolola sub-county headquarters 4kms away where he filed the DRF. During cross examination, he stated that he filled the piece of paper at around 7:30 pm.

It is noteworthy that he did not indicate the time on the said piece of paper. He stated that he prepared the paper at some minutes past nine after counting the result for all candidates. Then he stated that he reached the sub-county headquarters at 9:30 pm. Then he stated that he filled forms there and then. That was coming to 10pm when he was pinned down by the petitioners counsel. He stated that that he forgot to indicate the time on the piece of paper. (See pg 56-60 of record). Lanula Bukenya, the petitioners

polling agent at Ntinda 1 stated that vote counting started at 8 pm when it was dark. They had to use torchlight. (pg 43 vol 2).

This allegation was proved to the satisfaction of the Court. At paragraph 10 of her supporting affidavit the petitioner averred that several of her agents were chased away from the polling stations by the agents of the 2<sup>nd</sup> respondent in conformance with those of the 1<sup>st</sup> respondent. As a result they did not sign or give reasons for not signing DRFs. The affected polling stations are given as:-

<b>Name:</b>	<b>Polling agent</b>	<b>PO</b>
1)Namawojjolo West		
2)Nsambwe		
3)Namasiga		
4)Kiwanga 1		
5)Seeta 11B		
6)Ntinda 11		
7)Ntinda 1 (signature forged)		
8)Nakapinyi (A-M)		

The copies of the DRF are attached as annexures K1 to K8. K2 was signed by Lule Richard and Nalubwama Robinha. K7,(Ntinda 1) indicates that it was signed by Lamula Bukenya . but the petitioner averred in paragraph 10 of her affidavit in support that the signature of Lamula Bukenya was forged. Lamula Bukenya himself stated that he refused to sign the DRf because of the improper things he had seen during the polling exercise as stated in his affidavit. That he later on discovered from a copy of



the DRf which the petitioner showed to him that somebody had written his name on the form . the DRf is annexture K7 to the petitioners affidavit in support. During cross examination.

Ssempebwa Robert was shown the said document and he admitted that it is the one he prepared. Ssempebwa Robert himself confirmed this in paragraph 11 of his affidavit (No 16, 2<sup>nd</sup> Respondent ) where he stated:-

*11. that I wrote all the names of the agents who were present during the counting on the forms, in their presence, non of them signed the Declaration of results forms The 1<sup>st</sup> Respondent was silent on this one. The allegation succeeds.*

At paragraph 11, the petitioner averred that the 2<sup>nd</sup> Respondents agents used take DRFs to declare the results of the directly elected MP at some polling stations such as Sonde, Kiwanga 1 and Lutengo B, when the forms had no serial numbers. Copies of the forms are annexed as L1 to L3.

I have perused the annextures and I find that all of them have no serial numbers on top of the right hand side. The allegation is proved.

In paragraph 12 the petitioner averred that the 2<sup>nd</sup> Respondents agents in connivance with the right the 1<sup>st</sup> Respondents agents used forged results to declare the election at Ntinda 11 polling station when the agents white washed the original results and recorded new ones for the candidate. The Form is annexed as M.

The document speaks for itself. The original was tendered as exhibit R2 (i). There is a lot of thick white wash on the document. The poling station was originally Ntinda 1. then another I was added to look like II. The code was altered to 12. The figures and words were white washed and it is indicated that the scores are indicated in figures and words as:

The 1<sup>st</sup> Respondent -103 votes

Kawandwa -2

Petitioner -150.

Whereas petitioners witnesses stated that the scores were 103,3 and 259, respectively.

The name Nakabiri Teddy, is written on top of the white wash under Presiding Officer

The person doing the white wash however forgot to indicate the place as Ntinda II at the bottom of the form. It remained Ntinda I. No agent has signed this DRF and no reason was given by the presiding officer.

Teddy Nakabiri denied that she signed this DRF and gave samples of her signatures on Exhibit R2(ii), which clearly differ from the one on the DRF. Robert Ssepmbwa told Court in cross exam that it is his signature yet he was not a presiding officer at that station.

No agent of the 1<sup>st</sup> Respondent or polling assistants appointed by the EC swore any affidavit in rebuttal. The only evidence from both respondents is from Ssempebwa Robert who told court during cross exam that he was not a polling official at the polling station. He was a presiding officer at Ntinda I. He was not there during counting or photocopying or filing of the DRF.

The purported DRF is therefore a forgery. It lies about itself. The presiding officer, Teddy Nakabiri did not remit the results to the Returning officer since she never signed any DRF. Makki the Returning Officer claimed during cross examination that he got the results from Teddy Nakabiri. He alleged that Nakabiri was a liar. She lied about the DRF. Even it is accepted that she is accepted that she is a liar, why then did Makki accept the results of a liar?

In the absence of any evidence in rebuttal, I find that there was no DRF filled at Ntinda I1.

The DRF was forged at the sub county headquarters after white washing the results of Ntinda I. The allegation that the results at this station were falsified to the detriment of the petitioner therefore stands unrebuttal.

In paragraph 13 the petitioner averred that the 2<sup>nd</sup> Respondents agents in connivance with the 1<sup>st</sup> Respondents agents forged the results of elections at Kyungu polling station where the 1<sup>st</sup> Respondents had obtained 154 votes by forging another DRF to indicate that he had scored 184 votes, photocopies of the original and forged forms the annexed as N1 and N2 respectively.

Kizito Ndugwa (p81 vol 1) deponed in corroboration, that he was he petitioners polling agent at the said station. After the voting process had ended, results were added and it was declared.

The petitioner had polled 98 votes, the 1<sup>st</sup> Respondent 154 votes and Kawadwa had got 2 votes. A photocopy of the DRf which was issued to him as an agent is attached as A

Subsequently, he discovered another copy of the DRf which the petitioner obtained from the EC which indicated that the results were altered to indicate that the 1<sup>st</sup> Respondent had scored 148 votes instead; thereby increasing his votes by 30. Copies of the original and the forged DRF are attached as A and B.

The matter was reported to Mukono Police station as CRB No MKN 180/06. The presiding officer, one Beebway Evasy, who is the Deputy Headmistress of Mukono Boarding Primary school was charged in Mukono Chief Magistrates Court vide MKN-00-CR-005 3/06 and the case is still pending hearing. A copy of the charge sheet is attached as C.

Beebway admitted in her affidavit that she altered the result. She deponed in paragraph 5 that she had made a wrong entry which she corrected to show the correct results.

I have perused Annexure N1 and N2 which is the same as A and B to Ndugwas affidavit. I find that both of them bear the same serial number, 02020. On N1, the 1<sup>st</sup> Respondents score is indicated as 150 in words and figures. Ms Beebway has signed it as presiding officer and Kizito Ndugwa and Ssempebwa Kennedy as agents for both the petitioner and the 1<sup>st</sup> Respondent.

Annexure N2 bears the signature of Ms Beebway only. The figure 154 has been white washed and 184 written in its place. The words one fifty four have been deleted and replaced with one eighty four. The eighty appears were the word fifty was.

The names Kizito appears twice next to the petitioners scores. This time Ssempungu Kennedys name is missing. Ssempungu Kenny swore an affidavit in rebuttal (No 33, 1<sup>st</sup> Respondent) to Ndugwas affidavit. He confirmed that he was the 1<sup>st</sup> Respondents polling agent at the said station. In paragraphs 4 to 8 he deponed that, After the voting exercise the results were declared and the 1<sup>st</sup> Respondent had 184 votes, the petitioner had 98 and Kawadwa 2 votes . When it came to signing the DRf they (the agents) realized that the presiding officer, Beebway Evasy had altered the results to the effect that the 1<sup>st</sup> Respondent had 154 votes, the petitioner 98 and Kawadwa 2. The agents and himself complained about the alteration and the presiding officer put on carbon paper and altered the figures to the effect that the 1<sup>st</sup> Respondent had 184 votes, the petitioner 98 and Kawadwa 2 votes.

Because the first DRF had a lot of alterations, all the agents, save Ndugwa who had already left the station agreed to have the record of the results put on the second declaration form.

*After the presiding officer had transferred the record of the results on the fresh declaration form 1 signed again, and one Kyeyune Wasswa a DP representative for Kyungu signed on behalf of Kizito Ndugwa*

This evidence is not useful to the Respondents case. The witness has not attached copies of the first and the altered DRF to indicate the results alleged. He does not deny that the DRFs annexed to the petitioners affidavit and Kizito Ndugwas affidavit to which he was replying are the ones that were referred to.

If anything, he is infact admitting that there was a problem at the said polling station with the figures and Beebway altered them. He also confirms that the DRF was forged. There is no indication anywhere that Kyeune Wasswa, a DP Representative, if at all he existed, signed the DRF on behalf of Kizito Ndugwa. Ssempungu is therefore lying.

Beebway is also lying. She denied that she altered the results and yet all the agents say she did and the altered document (Nil) is clear. I therefore find that the results of Kyungu were altered by Beebway adding 30 votes to the 1<sup>st</sup> Respondent.

In paragraph 14, the petitioner averred that the 2<sup>nd</sup> Respondent used the said forged DRF to declare the results of Kyungu polling station as per the results tally sheet annexed as O3.

I have perused Annexure O and indeed the results indicate that the 1<sup>st</sup> Respondent scored 184 votes. The petitioner and Kawadwa remained at 98 and I respectively. I dont know where Ssempungu got his results from because he stated in paragraph, 4,5 and 6 of his affidavit that Kawadwa had 2 votes This confirms the confusion that surrounded the declaration of the results at this station.

In paragraph 15, the petitioner averred that the vote difference of 448 between the 1<sup>st</sup> Respondent and herself was obtained through ballot stuffing pre tick of ballots,

multiple voting, record of petitioners valid votes, forgery of results, intimidation and chasing away of petitioners agents and all other illegal acts and electoral malpractices stated herein above.

This is a general statement most of which I have already addressed under the earlier paragraphs. I need not repeat it. The petitioner alleged in paragraph (K) of the petition that the 2<sup>nd</sup> Respondents officers in connivance with the 1<sup>st</sup> Respondents agent failed to prevent multiple voting by neglecting and or failing to inspect the fingers of voters before issuing ballot papers to voters. C/C 32(2) of the PEA.

I find no sufficient evidence to support this allegation Mr. Lukwago has also not dwelt on it in this submission.

I resolved paragraph (l) together with (a).

The petitioner alleged in paragraph (m) that the 2<sup>nd</sup> Respondents officers in connivance with the 1<sup>st</sup> Respondents, agents, assisted illiterate voters to fix the authorized mark of choice on the ballot papers c/s 37(1) (3) (4) and (5) of the PEA.

Again the petitioner does not specify the stations affected in her affidavit in support of the petition. I find no sufficient evidence to support this allegation. The same thing applies to the allegation under paragraph (n).

In paragraph (o) it is alleged that the 2<sup>nd</sup> Respondent s officers failed to adjourn the polls to some time when rain disrupted the polls, but opted to conduct the polls to small premises with no convenient access to voters c/s 45(1) and 29(1) of PEA.

Section 45(1) of the PEA reads:-

***45 interruptions and postponement of polling***

*(1) where polling at a polling station is interrupted by riot or violence or any other event while there remains, in the voters register, voters who have not completed the polling process, the presiding officer shall adjourn the polling to the next day or to any other time of the same day and shall immediately inform the returning officer of the fact*

Section 29(1) reads:

*(1) every polling station shall, as far as possible, be located in an open ground, or where there is no open ground, in large premises of convenient access, having an outside door for admittance of voters, if possible another door through which voter may leave after voting and the polling station shall as far as possible be such as to facilitate access by persons with disabilities and the aged*

There is no specific averment on this allegation in the petitioners affidavit in support, save for the general statement of non compliance and electoral malpractices. The petitioner filed supporting affidavits including:-

Godfrey Mangeni Wafula, Vol 1 pg 6), the petitioners polling agent at Buyuki polling station stated that on polling day it started raining at 2.30 pm and the presiding officer ordered the polling exercise to continue inside an incomplete structure which was about 30 meter away from the polling station. Voting continued inside the said building where the election officials sat in one room with all election materials and ballot boxes while they, the agents were made to sit in another room where they could not monitor the polling exercise. Voting continued under that arrangement until it stopped raining at about 5 pm.

The 2<sup>nd</sup> Respondent brought the affidavit of Eriabu Nkalubo (No 13) to rebut this allegation. However he also confirmed that when it started raining, he decided to use

the nearby building as a polling station. His only contention is that he did allow the agents and voters in to the said building at all times to monitor the polling exercise.

From the foregoing, I find that the said presiding officer did not adjourn the polling exercise when it was interrupted by rain, contrary to section 45(1) of the PEA.

The Presiding officer was non committal about the size of the room where he moved and the sitting arrangement, let alone the convenience to the voters.

The allegation of non compliance with section 45 and 29(1) was therefore not rebutted.

Paragraph (q) of the petition alleged that the 2<sup>nd</sup> Respondents officers did not separate the votes polled by each candidate during counting c/s 47(4) of the PEA.

Again no specific polling stations were mentioned by the petitioner in her affidavit. No submission was made on it by Lukwago. This ground is not supported by any evidence. It fails.

Under paragraph (r) the petitioner alleged that the officers and agents of the Respondents connived and denied the petitioners agent copies of the DRf at several polling stations, c/s 47(5) and (6) and section 50 (1)(d) of the PEA.

Section 47(5) provides that:

*The presiding officer and the candidates and their agents, if any, shall sign and retain a copy of a declaration stating:-*

(a) *the polling station*

(b) *the number of votes cast in favour of each candidate; and the presiding officer shall there and then announce the results of the voting at that polling station before communicating them to the returning officer*



Section 50(1) provides that:

*(1) Each presiding officer shall fill the necessary number of copies of the prescribed form for the declaration of results as follows:*

- a) *one copy .attached to the report book*
- b) *one copy shall be . In an enveloped..sealed by the presiding officer and delivered to the centre result collection centre together with the report book, for award transmission to the retuning officer.*
- c) *One copy shall be delivered to each of the candidates agents or, in the absence of those agents, to any voters present claiming to represent the candidates,*
- d) *One copy shall be deposited in the sealed box.*

Examples given by counsel for the petitioner included Ntinda II, Sonde , Kiwanga, Kyungu, Ntinda I, Namunura, Lutengo A and Lutengo B, Namawojollo west, Butuki and Nakapinnyi.

I have dealt with these DRFs in details earlier. I need not repeat the ruling on them. For emphasis, I wish to state that I am satisfied on the basis of the evidence adduced that the 2<sup>nd</sup> respondents, officers did not comply with the provisions of section 47 and 50 of the PEA in the way they handled the vote counting and the DRFs in most of the stations enumerated above. This ground succeeds.

Ground (s) is that the 2<sup>nd</sup> R4spondents officers failed to provide light during the vote counting at several polling stations c/s 47(2) of the PEA.

Section 47(2) provides that:-

*(2) subject to section 57, no votes shall stay uncounted overnight and, where required, the presiding officer shall provide light for the purposes of counting votes*

Section 57 talks about interruption or postponement of counting by riot violence etc.

The petitioner made no specific averment in her supporting affidavit. Understandably so since she was not physically present at the polling stations. However, she relied on the affidavits of Lamula Bukenya, the polling agent at Ntinda (page 43 vol 2). His evidence is that vote counting started at about 8 pm when it was already dark.

Since electricity had already gave off at Seeta, a very dim torch light was used for some time to count the votes until someone took it away.

When the torch was taken away, vote counting continued in the darkness despite protests from him and his co-agents. He thereafter refused to sign the DRF.

The 2<sup>nd</sup> Respondent brought the evidence of Ssempebwa Robert to rebut the one of Lamula Bukenya. Apart from stating that the light was sufficient, this witness doesnt not deny that it was torch light used and that there was no electricity. He does not even deny that someone took away the said torch. As stated earlier, Ssepebwa is not a credible witness.

Betty Kyambadde the polling Assistant at Ntinda 1 also contradicted Ssempebwa. According to her they used two new torches; and the torches were never taken away.

How come Ssepmebwa, who was the presiding officer, was not aware of the two new torches? Ms. Kyambaddes evidence is not reliable. She is merely trying to protect her role as polling assistant.

Sentongo Wasswa Joseph deponed at (67 vol 2 ) that voting ended at Kiwanga 1 at 7 pm. They had to count the votes for presidential and Women Member of Parliament first, according to the EC guidelines. It was at around10 pm when the counting of votes for directly elected MPs started. It was dark and light was being provided by a double cabin vehicle. The driver switched off the lights during the exercise and the

constable, presiding officer, and his assistants together with NRM agents loaded the materials on the pick up and hurriedly drove off.

The 1<sup>st</sup> Respondent brought the evidence of Musoke Isa the presiding officer. He admitted that when it become dark, they used some car headlamps to assist in vote counting. The only thing he denies is that the car lamps were switched off during vote counting.

I have already ruled on the credibility of this witnesses based on his evidence during cross examination. He is the Chairman NRM Kasoko village. He is accordingly partisan. His evidence is therefore rejected on the grounds already advanced.

Christopher Kayongo deponed on (pg 74 vol 11 para 10) that there was also no electricity at Nakapinyi. A-M and N-Z. He found counting going on. There was no electricity and polling officers were using light from a mobile phone which was extremely dim and could hardly light up the place.

No affidavit in rebuttal was filed. The law is clear. Once evidence is given and not rebutted, it is presumed to be accepted. Both stations used mobile phones which could not give sufficient light.

At Lutengo A and B, Sowedi Lwanga (vol 1 pg 19) deponed that he found polling officials using a dim torch light at 9 pm to count votes for directly elected MPs in one of the classrooms at Lutengo Primary School. The election constable pushed him away when he complained about insufficient light.

Thereafter he proceeded to Buliika polling station and he reached at 10 pm. He also found polling officials using a dim torch light. When he complained the presiding officer, one Vincent Asiimwe told him that he had no alternative. Mirembe Margaret corroborated this evidence.

The 1<sup>st</sup> Respondent offered no explanation. The 2<sup>nd</sup> Respondent brought the affidavit of Justine Nalwadda (No 19) and Phoebe Kiiza (No 11)

Nalwadda was the presiding officer at Lutengo B. She confirmed that Mirembe was a polling agent at Lutengo B. She said that Mirembe helped her to carry the lanterns they used for counting.

No dim torches were used at Lutengo B or A. Lutengo A had 2 (two) steamer lights. Phoebe Kiiza also talks of 2 steamer lamps. This evidence is manufactured to rebut the allegation by the petitioners interest. There is no explanation why the rest of the stations used torches or even vehicle headlamps, if the 2<sup>nd</sup> Respondent provided sufficient light in the form of steamer lamps. It is rejected.

In conclusion, I find that the 2<sup>nd</sup> Respondent failed to provide sufficient light at the stations mentioned. The allegation also succeeds.

Having found as I have or most of the grounds raised, I agree with counsel Lukwago that the election held at Mukono North Constituency fell short of the election envisaged under our election laws. It is well known that there is no perfect election the world over. This one fell far below the required there was a DRF which was white washed and a total of 30 votes added to the 1<sup>st</sup> Respondent. A number of DRFs were not filled at the polling stations because they were not provided with the rest of the election materials. They were later on filled at the sub county district headquarters. Over 1000 registered voters were disenfranchised. Votes were counted in dim light. Results were filled on a piece of paper from an exercise book and later on transferred to a DRF leading to another difference of 100 votes in favour of the 1<sup>st</sup> Respondent. The election at Mukono North Constituency was extremely poor. This greatly affected the result in a substantial manner and the 1<sup>st</sup> Respondent benefited from it.

## **ISSUE NO 2**

Whether the 1<sup>st</sup> Respondent committed any illegal practices and or either personally or by agents with his knowledge and consent or approval.

The petitioner contends in paragraph 7(a) to (h) that the 1<sup>st</sup> Respondent personally and or through his agents with his knowledge, consent or approval committed the following illegal practices and offences.

(a) Bribed voters, contrary to section 68(1) of the PEA.

The section provides as follows

### **68. Bribery**

(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 an 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

There is no specific averment in the petitioners supporting affidavit. She however make a general statement on offences in paragraph 6.

Specifics are given by her witnesses who name various villages where alleged acts of bribery were committed including:

(i) Nakumbo village where Muwonge George (vol 1 pg 24 paras 2 to 7) deponed that he knows the 1<sup>st</sup> Respondent very well. On the 21<sup>st</sup> February 2006, at about 2 pm, he was at Nakumbo village in Mukono, where he saw several persons including the 1<sup>st</sup> Respondent, Namwandu Zziwa, Muwonge Tadeo, Patrick Semyalo and Ms Nsumba, gathered at the home of Namwandu Zziwa. He joined the said gathering, having seen the 1<sup>st</sup> Respondent, whom he knew as one of the candidates for the seat of the Directly

elected MP for MNC who was then campaigning. During the meeting, the 1<sup>st</sup> Respondent asked the people to vote for him.

He saw the 1<sup>st</sup> Respondent pick a brown envelope from his trouser pocket, removed money from it and handed it to one Semyalo Patrick, who in turn gave it to Mrs Namwandu Zziwa, who counted the same and declared that it was Ug. Shs 250,000 ( two hundred and fifty thousand) and that they were to use it to buy drums for their drama group.

The people thanked the 1<sup>st</sup> Respondent and promised to vote for him. Thereafter, he followed the 1<sup>st</sup> Respondent as he and some other people moved to the home of one Birato within the same village where he met one Nyonjo Kawalata and Kiiza Lukoya and others whose names this witness did not know.

That the 1<sup>st</sup> Respondent gave each of the above named persons and others 1,000 shillings (one thousand shillings) and he gave him (the witness) 500 shillings (five hundred shillings) and told them to vote for him. When he informed the petitioner, she advised him to report the matter to police. He did so at Mukono police station but was referred to Naggalama police station, where he made a statement under CRB No. NAG 205/2006. The file was referred to the State Attorney for sanctioning and was given a number -MKN-250-2006.

On the 7<sup>th</sup> March 2006,one Kalibabala, Ssenkaayi Godfrey Oguziwa and Patrick Semyalo all of whom he knew as agents of the 1<sup>st</sup> Respondent went to his home and interrogated him on who had informed the petitioner that the 1<sup>st</sup> Respondent had given out money to voters on the 4<sup>th</sup> February, 2006.

In rebuttal, the 1<sup>st</sup> Respondent filed a supplementary affidavit (No 21) where he deponed in paragraphs 6-13 that:

It is true that on the 21<sup>st</sup> February 2006, he was in Nakumbo village, but he was there to meet NRM village committee members at Namwadu Zziwas place to assess how they were preparing for elections and not to meet a gathering of voters as alleged.

He knows Muwonge George personally but he is not a member of the NRM committee of Nakumbo village. He never saw Mr. Muwonge at the said committee meeting and he believes that he could not have been, as a non member, present at the said meeting. He never asked the committee members to vote for him as alleged and contended that the attendants were in any case already known to him to be NRM supporters and campaign agents. He never gave she 250,000 or any money to one Semyalo Patrick or any member of the NRM village committee with a request to vote for him.

The allegations of Mr. Muwonge are a false and malicious fabrications. He (1<sup>st</sup> Respondent) knows that the NRM village committee of Nakumbo does not have a drama group. He never went to Mr. Biratos home or gave Nyonjo Kawalaata, Kizza Lukooya or any other person shs 1,000 on that date as alleged. From Namwandus home, he proceeded to Katoogo village on Naama Sub County, to attend the vigil of one of the NRM supporters. He never set foot in Bitrato,s home before the display they went to search for witnesses in this petition. He never met Muwonge at Biratos place nor did he give Muwonge shs 500 and asked him (Muwonge) to vote for him.

Patrick Semyalo also swore an affidavit in reply to Muwonges (No 26) where he deponed that:-

It is true, that on the 21<sup>st</sup> February 2006, the 1<sup>st</sup> Respondent went to Nakumbo village where NRM village committee members were in meeting to prepare for the elections at Namwandu Zziwas home.

He attended the said meeting and they accompanied the 1<sup>st</sup> Respondent till he left the said village. It is not true that the 1<sup>st</sup> Respondent asked the NRM village committee members in the meeting to vote for him. It is also not true that at the said meeting, the 1<sup>st</sup> Respondent gave shs 250,000 to him in an envelope to buy drums for the drama group and asked the attendants to vote him in return because the said committee does not have a drama group.

It is also not true that they later went to Muwonges home and interrogated him as alleged.

Margaret Nantongo alias Namwandu Zziwa also swore an affidavit in reply (No 34) and deponed that:-

Whereas it is true that on the 21<sup>st</sup> February 2006, the 1<sup>st</sup> Respondent went to her home, it is not true that he was there to meet a group of voters for campaign purposes. He only, went to her home to meet NRM village committee members. It is not true that he gave out shs 250,000 to Patrick Semyalo, herself or any other person at the said meeting to buy drums for the drama group and asked the committed to vote for him in return as alleged.

\She personally knows Mr.Muwonge. He was not present at the meeting and he is not a resident of Nakumbo village.

She was cross examined at length by Counsel Lukwago. Her answer was that she is the one who invited the 1st Respondent to her home, because, as a member of the NRM, she wanted to make arrangement for moving disabled people. The 1<sup>st</sup> Respondent gave her shs 10,000 for fuel and boda boda. He went with Lukabuya. They went to advise her on how to educate disabled persons on how to vote and how to transport them. The 1<sup>st</sup> Respondent went at 2 pm the meeting took about 5 minutes. She required shs 10,000 to carry out the work. They were five people at



home when the 1<sup>st</sup> Respondent went to her home. The disabled people were also there. There were nine (9). She did not distribute the money there and then. She gave the money to them immediately after those of the 1<sup>st</sup> Respondent had left because the disabled asked for their money. They were in her zone. Three of them refused the money because their names were not on the register. One of them voted. She is the one who got the boda boda and took her to the polling station. Two of them never voted because their names were not on the register.

For those who accepted cash, each one took shs 500. Out of the balance, she spent shs 2,000 for hiring boda boda, shs 3,000 for fuel and for her she took shs 1000 shs because of the work she had done. Muwonge is also a disabled; although he is not in her zone Lukabuye was the one looking for votes that is why she invited both of them. None of the disabled complained about the money. They were in her caucus. She was sure they would vote for the 1<sup>st</sup> Respondent. One of the 3 voted for him. In re exam she admitted that she was asked by the police about the incident. She said that Muwonge used to land in her home when she had some girls at her home.

The 1<sup>st</sup> Respondent and both his witnesses knew Muwonge. They all admit that there was a meeting at Namwandu Zziwas home on the said date. They all say it was for NRM village committee. They do not state why it was held at Zziwas home in particular and what position she held on the committee. The 1<sup>st</sup> Respondent and Semyalo do not mention any disabled. Zziwa says it was a meeting to assist the disabled. Semyalo and the 1<sup>st</sup> Respondent are silent about the shs 10,000 Zziwa said he gave her to facilitate the disabled. This is a grave contradiction in the 1<sup>st</sup> Respondents evidence and cannot be ignored by this court because they point to a deliberate untruthfulness. The fact of receiving money from the first Respondent is not denied by Mrs. Zziwa. She only disputes the amount. In law, a bribe is a bribe. The amount is immaterial. I therefore believe the evidence of Muwonge that the 1<sup>st</sup>

Respondent gave out money to bribe disabled voters at Nakumbo village on the 21<sup>st</sup> February 2006, two days before the election.

This finding is enough to nullify the election under section 68(1) of the PEA. Mr Muwonge and Namwanda ZZiwa also committed an offence under section 68(2) PEA when they received the shs 500 and 1000 from the 1<sup>st</sup> Respondent in order to vote for him. The section provides that:

*(2)Any person who receives any money, gift or other consideration under subsection (1) also commits the offence under that subsection*

The other village is Walusumbi Namamojjolo parish where Mugambwa Hamza deponed in (vol 1 page 22 paras 1-4) that he was a duly appointed campaign agents and supervisor for the petitioner at the said parish.

On the 20<sup>th</sup> February 2006, he attended a campaign rally at Walusubi village, in Naama Sub County. At that rally, the 1<sup>st</sup> Respondent offered residents shs 150,000 and asked them to vote for him. The money was delivered by his agent and area councilor, one Godfrey Balikuddembe at a village meeting on the 21<sup>st</sup> February 2006.

He attended that meeting and the money was handed over to the village Chairman one Asadi.

During the said campaign period, the 1<sup>st</sup> Respondent organized a feast for all Namawojjolo parish residents at Namawojjolo C/u primary school where they served lots of drinks and eats.

He (Mugambwa Hamza) also attended the said function. The guest of honour was Presidential Assistant Press Secretary, Tamale Mirundi and the 1<sup>st</sup> Respondent asked the residents to vote for him.

Without wasting time, I find that this allegation is taken care by the exception under section 68(3), which provide that:-

*(3) subsections (1) does not apply in respect of provision of refreshment or food.*

*(a) offered by a candidate or candidates agent who provides refreshments or food as an election expenses at a candidates campaign planning or organizing meeting*

The witness does not allege that the said meeting was a campaign rally. It could have been a candidates campaign planning or organinsing meeting and people are bound to get thirsty and hungry and require refreshment and food. This does not therefore amount to an act of bribery, in my view. The 1<sup>st</sup> R himself stated that he was there as a mere guest, for campaign purposes.

In rebuttal of the allegation concerning the shs 150,000 bribe, Asadi Ddembe swore an affidavit in reply (No 17) where he deponed that:

He is the LC 1 chairman of Walusubi village, Namawojjolo parish, in Naama Sub County. He has read Mugambwa Hamzas affidavit. He is the only Asadi who is LC1 chairman in that area and to the best of his knowledge, the circumstances alleged by Mr. Mugambwa were meant to refer to him. He was in Walusubi village on the 21<sup>st</sup> February 2006 and the LC1 committee of which he is Chairman, never organized a village meeting on that day. He never attended any meeting or received any money from Geofrey Balikuddembe as alleged by Mr. Mugambwa. He knows Mugambwa Hamza as a fellow resident in the area and who was a campaign agents for the petitioner in the general elections.

Balikuddembe Godfrey also swore an affidavit in rebuttal to Mugambwas (No 31) in which he stated that:-

He is the only Balikuddembe Godfrey (sic) in the area and he believed that the circumstances alleged by Mr. Mugambwa refer to him. He never attended any campaign rally on the 20<sup>th</sup> February 2006 at Walusubi village as alleged.

He categorically denied receiving or delivering shs 150,000 or any money to Asadi as alleged. The 1 Respondent also replied to Mr Mugambwas affidavit in paragraphs 15-21 of his supplementary affidavit where he stated that:-

It is true that he attended an NRM campaign meeting at Walusubi village on the 20<sup>th</sup> February 2006. It is not true that he offered shs 150,000 or any money to the residents of the said village as alleged by Mr. Mugambwa. He categorically denied that Gorfrey Balikuddembe was his agent in the said elections. That he is only an LC3 councilor of Naama sub county. He never gave him or any person shs 150,000 to deliver to the residents so that they would vote for him in return.

The two affidavits would rebut the alleged bribery of shs 150,000 at Walusubi village, but for a second affidavit sworn by the same Asadi Ddembe this time C/o Lukwago & Co Advocate., counsel for the petitioner, retracting his earlier affidavit. This affidavit is entitled.

Affidavit in rejoinder (vol iv dated 25/9/2006), he stated that:-

He had, with the assistance of Counsel for the petitioner read and understood the contents of the affidavits of Godfrey Balikuddembe, the 1<sup>st</sup> Respondent that of Mugambwa Hamza as well as the earlier affidavit dated 20/9/2006 which he swore in support of the 1<sup>st</sup> Respondents answer to the petition and would wish to state that:-

The truth of the matter is that the 1<sup>st</sup> Respondent called him on phone and invited him to Namawojjolo where he told him that *he shall be arrested and imprisoned for receiving a bribe because the petitioner was complaining against him and that they should cooperate over this problem*

He verily believed that 1<sup>st</sup> Respondent that he was in danger since he had actually been one of the people who had got involved over that money and he as aware that the petitioner had complained about it.

It is true that the 1<sup>st</sup> R offered shs 150,000 to the residents including himself on the 20<sup>th</sup> February 2006 at the campaign rally. He did that in answer to complaint that the village two boreholes had broken down and in addition he also requested them to pay him back by voting for him on the 23<sup>rd</sup> February, as their MP.

The money, shs 150,000 was delivered through the 1<sup>st</sup> Respondents agent, Councillor Godfrey Balikuudembe and the NRM Chairman Naama sub county, Katuuka.

It was used to repair the village two boreholes one of them being at Johns place. The affidavit of Mugambwa is therefore factual except that although the residents had shouted that the money should be handed to him(Asadi), it was finally handed over to Katuuka who was near the 1<sup>st</sup> Respondent when he got it out and he (Asadi) was standing at a distance.

The said Katuuka and Balikuudembe brought to the village a mechanic called Yusuf and spare parts and worked on the bore holes on 22<sup>nd</sup> February and they informed him and the residents that the 1<sup>st</sup> Respondent , donation of shs 150,000 had been utilized.

He was misled to sign the affidavit in support of the 1<sup>st</sup> Respondents answer to the petition. He never went to Kampala to sign it and he had no interpreter called Florence Kabenge. He signed the said affidavit on the night of the 17th September 2006 at his home where it was brought by the 1<sup>st</sup> Respondent. He did into read through since he did not know English and his belief was that he was signing to deny having handled the money personally.

No affidavit in rebuttal was filled by the 1<sup>st</sup> Respondent or Katuuka, let alone Balikuddembe. Asadi was not cross-examined. I therefore find that the 1<sup>st</sup>

Respondent offered shs 150,000 to Walisimbi village on 20/2/2006 and that money was delivered to the village by his agents and was used to repair the village bore holes. This clearly amounted to gratification which was intended to induce the villagers to vote for him on 23<sup>rd</sup> February 2006.

Another village in this category is Wakiso village again in Naama sub county. Nsimanye John Ochieng deponed (at p 16 vol 1 paras 4 and 5) that:-

On the 20<sup>th</sup> February 2006 he attended a public gathering at Wakiso Trading Centre while campaigning at the said gathering, the 1<sup>st</sup> Respondent openly gave out shs 100,000 to a group of people attending the said gathering. He handed the money to one Kakande John Wycliff who he (Ochieng) knows as chairman LC1 Wakiso village, Bullika parish, Naama sub county to distribute. While handing over the said money, the 1<sup>st</sup> Respondent asked the voters to vote for him.

On the 21<sup>st</sup> February 2006, at around 5 pm, a village meeting which he (Ochieng) attended was held at Wakiso UMEA Primary School to determine how to share the money and it was resolved that the village Chairman uses the said money to buy saucepans and a water container which residents would use during village functions.

The 1<sup>st</sup> Respondent admitted in his supplementary affidavit that while it is true he addressed a campaign rally at Wakiso Trading Centre and asked people to vote for him, it is not true that he gave the residents shs 100,000 through Kakande John wycliff or any person to distribute to persons attending the rally. The allegations against him are a complete and malicious fabrication. This is a bare denial. Kakande John wycliff (affidavit No 18) accepted that he is the only Kakande in the area.

He admitted that there was a rally. Naturally he denied giving the money. He was cross examined by the petitioners counsel. He admitted that he wrote a letter which bears a different signature from the one on the affidavit. He is not a reliable witness.

The sharing of the money and the purchase of the saucepan is corroborated by Sowedi Lwanga who told Court that they used that money to buy saucepans for village functions.

This evidence is also corroborated by Mugambwa Hamza who stated that the 1<sup>st</sup> proceeded to Wakiso village from their village I accept it. The next one is Kitega village Mukono Town Council. Bengo George a resident of the said village deponed that:-

He knows that 1<sup>st</sup> Respondent very well. On the 22<sup>nd</sup> of January 2006, there was a social gathering organized by him self at their usual gathering ground at Musisis place, at Kitega village.

While there, the 1<sup>st</sup> Respondent showed up in motor vehicle Reg. No UAD 876-Y, Land Cruiser.

The 1<sup>st</sup> Respondent addressed the gathering, and told them that he had carried some gifts to the leaders and Bataka(elders) of the area.

He accordingly gave out wrapped gifts to various people, including the witness (Mr. Bengo) as the chairman of the area and told them to remember when casting their votes on the polling day. When he (Mr. Bengo ) opened his gift, he found a set of six glass plates. There was a photographer, one Michael Musisi Muoke who took the photograph which is attached to the affidavit of Muwada Walusimbi wherein he (Mr Bengo) is appearing while the 1<sup>st</sup> Respondent was still addressing the gathering and the village chairman is standing on the right hand side.

Mawada Walusibi also swore an affidavit (p8 95 vol 2). He talks about the same incident . He stated that there was a social gathering organized by the LC1 chairman, one George Bengo at their usual gathering ground at Musisis place, Kitega village. He attended the function and while there, the 1<sup>st</sup> Respondent showed up in motor

vehicle Reg. No UAD 876 Y, Land Cruiser. The 1<sup>st</sup> Respondent addressed the gathering where upon he told them that he had carried some gifts to the leaders and Bataka (elders) of the area. He accordingly gave out wrapped gifts to various people including the chairman and himself (Muwada) as the Mutaka of the area. He then distributed his election hand bills and requested them not to forget him when casting their votes on the polling day.

When he opened his gifts he also found a set of six glasses, which are still in his possession and which he was ready to produce to court at the hearing of the petition.

He also stated that there was a photographer called Musisi Musoke who took photographs and from whom he obtained a copy wherein he (Muwada) is appearing in a blue shirt holding his gift while the 1<sup>st</sup> Respondent was still addressing the gathering and the village Chairman is standing on the right hand side. A copy of the photo is attached as MWI.

In reply to both affidavits the 1<sup>st</sup> Respondent deponed (No 21) that:-

Save that vehicle Reg. No UAD 876 Y is his; it is not true that he attended a social gathering allegedly organized in Kitega village on the 22<sup>nd</sup> January 2006.

It is also not true that he gave out wrapped gifts as alleged and asked the residents to vote for him. Otherwise, he knows the photograph annexure MWI and he knows that the said photograph was taken sometime in 2004, at Mr. and Mrs Kisitus Nigina event of which he is a groups member. He repeated the same version during cross-examination. He added that the picture was taken at the home of Mr. and Ms Musisi who are members of Nigina group (gift circle) in 2004. They were graduating. He stated that he knows the persons in the photograph. The one holding the Kavera(polythene bag) it Mr. Mwanda . They are members of their Ngina group. They were not graduating; Mr Bengo is in a white shirt. He is the LC1 chairman.



They have no grudge against him. The vehicle mentioned is his. He didn't have a rally at Kitenga village. He didn't visit the village on that day. He last visited the village when he was graduating. He graduated on 26<sup>th</sup> November 2006, No, it was 26<sup>th</sup> November 2005. The New Year is confusing him. It was shortly before his nomination. He knew that after nomination he would be a candidate and would not be involved in the Nigina groups. Nginana is a group for development purposes. They are 150 members and each group is broken up into 15 members. The rest of the members of the group gives gifts to a particular person when he/she is graduating. What he got on his graduation was to help him and helped him to develop his home. He got sofa sets, T.Vs etc.

During re examination, he tendered the photo and its negative and he stated that it was given to him by one Ronny Lubega, the one who took the photograph. That Ronny Lubega was the only photographer at the said function. That he knows Micheal Musisi Musoke, as a journalist who normally takes photos WBS. He was not invited for the function. The photo and negative was tendered as exhibit R(1). Ronny Lubega did not file any affidavit to confirm that he took the photo or gave it the 1<sup>st</sup> Respondent.

There is another affidavit in rebuttal sworn by one Bunyo Anthony Twaibu Mugwere(No 11), where he deposed that he is the person in the photograph standing behind the 1<sup>st</sup> Respondent. He knows both Bengo George and Muwanda Walusimbi as fellow residents of Kitega village, but he has no knowledge of Musisi Micheal who allegedly took the photograph. It was not taken on the 22<sup>nd</sup> January 2006 during Presidential and Parliamentary campaigns. The photograph was taken at a Nigina function at Kitega village, Namumira parish on 11<sup>th</sup> September, 2004.

This witness, who actually appeared in the photograph behind the 1<sup>st</sup> Respondent and who recalls in details the date, place and the occasion, on which the photo was taken,

does not mention at all the name of the person who took the photograph. His affidavit does not add much to the 1<sup>st</sup> Respondents by way of corroboration.

Besides the evidence was rebutted by Musisis affidavit (vol iv) where he deponed that: He is a resident of Mukono and he offers video and photographic services for pay especially in Mukono area. The Bunyos affidavit is absolutely false. The truth is that he was contacted by Bengo George to make a photographic converge of a village function on 22/1/2006 and he is one who gave the photograph attached as Annexure MW1. The allegation made by the 1<sup>st</sup> Respondent and Bunyo are completely false as he never attended any function at Kitega on the said 11/9/2004.

Mr. Bengo also filed an affidavit in rebuttal (vol iv) where he stated that he is not a member of Mr. and Mrs Kisitus Nigina group and has never attended the alleged function on the 11/9/2004. That the truth is that the said photo was taken by Mike Musisi Musoke (in Capital letters) on the 22/1/2006 at their village social gathering. That he knows Bunyo Anthony Twaibu as a resident of Kitega village and a campaign agent of the 1<sup>st</sup> Respondent. He is the one who brought the 1<sup>st</sup> Respondent to their village social function to solicit for votes.

Surprisingly, neither Mr. Kizitu nor his wife swore affidavits to support the 1<sup>st</sup> Respondents assertions. No other member of the alleged Nigina group filed any evidence to this serious allegation. No explanation is given as to why Mr. Muwada is holding a Kavera parcel under his arm pit next to the 1<sup>st</sup> Respondent, if he is was not graduating on that day and since on such a day, it is the graduate who would be given gifts, as the 1<sup>st</sup> Respondent explained during cross-examination. Besides 1<sup>st</sup> respondent, social standing does not till in the Nigina or gift circle business, where poor people, usually women try to pool together resources to assist each other. He was an MP in the last Parliament. Surely, he didnt need to participate in a Nigina

group in order to developed, unless he had other intentions, namely to give the members gifts so that they could vote for him during the forth coming election.

Walusumbi says he is not a member of Mr. and Mrs Kisitus Nigina group; so how was he attending their group function? The 1<sup>st</sup> Respondent said both men had no grudges against him. Why then, would they tell such grave lies about him? In the absence of Ronny Lubega and in view of all these unanswered questions, I find that he is merely creating the story of the Nigina group to escape from the allegation of bribery, which is this time, clearly demonstrated in a colored photograph, with the recipient of the gift standing right next to him, while he is addressing a gathering at the said village. The 1<sup>st</sup> Respondent did not only possess the photograph, but its negative as well, implying that he could even have been the one who sponsored it. This allegation stands proved to Court satisfaction.

Ben Bogere, a resident of Kasenge Parish Nakapinyi village , deponed (vol 2 p 116), that he strongly and openly supported the petitioner. He is a registered voter at Nakapinyi polling station.

Sometime in January 2006 he attended a meeting organized by Mr. Byaruhanga Moses, the Presidents political Assistant who went to Mbalala village to campaign for NRM candidates. During the meeting, Mr Byaruhanga pledged to assist them by giving out money for development but he said those who needed money should first go to State House.

That week, after the meeting he (Bogere), together with Ronald Kibuule, Shiek abas Mujumba, Jjumba David, Bagonja Bernard Odaga and others, went to the same place on Plot 10 Buganda Road.

On reaching there, they met Moses Byaruhanga and he told them to start supporting NRM candidates with the 1<sup>st</sup> Respondent being one of them. He told them to make a

group of 5 people and then he gave them shs 400,000, which they divided equally among themselves.

Mr. Byaruhanga also gave them yellow T-shirts and emphasized that during elections, they should vote Museveni Kaguta and the 1<sup>st</sup> Respondent as the MP of MNC.

On reaching Mbalala town, he was putting on the yellow T-shirt. The petitioner exchanged it with the one of DP, when she saw him.

Afterwards, a man called Ssalongo an LDU, Prime Rose, supporters and campaigner of the 1<sup>st</sup> Respondent and one other person dragged him and forced him into a hired boda boda and took him to Mbalala police station. He refused to make a statement and the petitioner later came and released him on police bond from Mukono police station, where he had been taken.

Afterwards, during the campaigns, he was always threatened by, the 1<sup>st</sup> Respondents supporters Prime Rose Sonko and Mujumba Rose that his head would be chopped off for opposing government.

There is no affidavit from Mr. Moses Byaruhanga in rebuttal. Sheik Abbas Mujumbas affidavit (No 23) is not useful. It is a blanket denial. This is expected, since he is mentioned as one of the recipients of the money. He is partisan. He states in paragraph 4 that is both the Chairman LC11 and the NRM vice Chairman, Kasenge parish and during the general elections he was in charge of coordinating the interest of NRM candidates in the said parish

It is not disputed that Moses Byaruhanga was the Presidents Political Assistant on Political Affairs at the material time. What is in issue is the venue; but then one would not expect Mr. Byaruhanga to dish out bribes in the premises of State House where there is strict security. So he chose to do it at Plot 10, Buganda Road.

The rest of the people mentioned by Bogere filed no affidavit. Bogeres affidavit is therefore unchallenged, and I believe him.

Lastly, there is another allegation of bribery by Kayondo Badiru, (p. 27 vol 1), a resident of Lwanyonyi village, Namubiru parish, and DP chairman. He stated that he knows the 1<sup>st</sup> Respondent very well.

On the 21<sup>st</sup> February 2006, the 1<sup>st</sup> Respondent, together with Mrs Nalugo Sekiziyivu, the candidate for Women NRMO, held a campaign rally in their village at Kiwalal trading centre, at Bukenyas home. He attended the rally. The 1<sup>st</sup> Respondent addressed the rally and requested them to vote for him, stressing that his symbol was that of the Bus.

After his speech, he pulled out a twenty thousand notes from his coat pocket and handed it over to the village NRM chairman, one Etyang William alias Nandeeba. He instructed Etyang to buy some local brew/alcohol for residents so that they get morale to vote for him on the 23<sup>rd</sup> February, during the Parliamentary elections.

Gandidate Nalugo also pulled out a 20,000 note and gave it to Etyang and said that she was topping up the money so that the residents would buy enough booze to energize and fight the enemies who are the petitioner, of DP, Kizza Besigye and Elizabeth Kiwalabye of FDC.

After that, residents converged at Etyangs bar and were served with waragi, tonto , malwa and soda as they sang, praising the 1<sup>st</sup> Respondent, Nalugo and Museveni.

He rang the petitioner and she advised him to continue observing the situation and said that she would follow up the matter.

In reply, the 1<sup>st</sup> respondent deponed in his supplementary affidavit that, it is true that a campaign rally was organized at Kiwalaa Trading centre on the 21<sup>st</sup> February 2006 and that he attended the rally and addressed the residents.

However, it is not true he or Naluggo gave out any money to Etyang to buy alcohol as alleged. the allegation is a complete and malicious fabrication.

Etyang William replied (No.8) that he is the NRM chairman of Lwanyonyi village, Namubiru parish. It is true that there was a campaign rally that was held at the said place on the date mentioned. He attended it from beginning to end. It is true the 1<sup>st</sup> Respondent addressed the rally by asking the constituents to vote for him and the NRM party's sign was a Bus.

It is also true that Ms Naluggo also did the same. But it is not true that he received shs 20,000 or any money at all from the two for buying alcohol for the residents. All the persons who went for the rally went to his bar after the said rally and paid for their own drinks in the normal fashion.

Etyang was cross-examined by counsel Lukwago. He stated that he was the one who called the meeting and invited other NRM members to attend, including the 1<sup>st</sup> Respondent. He could not recall the date of the rally. He stated that he has a bar where he sells beer, waragi and malwa. After the meeting some of the people went to his bar while others went to nearby bars

After the rally, he went for a foot ball match at Eagles Nest-Bar about 3 mile from the place of the rally. He went on a motor cycle. He cant recall the teams who were playing. Now if he was three miles away watching a soccer match how did he know that the people who went to his bar paid for their drinks at the same time? How was he able to see them from three miles away?

Secondly, if he can ride a motorcycle for 3 km just to go and watch soccer, it means he is a very serious soccer fan, yet he could not recall the teams who were playing that evening. When counsel Lukwago asked him to do so.

It is clear therefore that this witness is a liar.

Sekisiyivu did not swear any affidavit, yet she features very prominently in Kayondo's affidavit not only as a fellow NRM member, but as one of the givers of the bribe. She should have sworn an affidavit if it is true that Kayondo was telling a lie, after all both of them are in Parliament. It would therefore not have been difficult for the 1<sup>st</sup> Respondent to trace her. In any case, being a fellow MP, her affidavit would possibly carry more weight, than that of a bar owner.

The affidavit of Musoke Nathan does not also assist the 1<sup>st</sup> Respondent's case. He is not only the LC1 Chairman Lwanyonyi village but has stated that in the campaign for general elections of February 2006, he was assigned a duty to mobilize support for all NRM candidates in Lwanyonyi village.

He is not an independent witness. He is not therefore expected to adduce any evidence that would go contrary to his own interest.

In conclusion and on the basis of the evidence above, I find that several acts of bribery were committed by the 1<sup>st</sup> Respondent either directly or through his agents with his knowledge and I answer this issue in the affirmative.

7(b) was abandoned.

Under 7(c) has been dealt with earlier on. 1<sup>st</sup> Respondent had in his possession voters cards and ballot papers not supposed to be in his possession and without authority, supplied them to his agents and supporters who used them to vote more than once, c/s 76(c), (e) and (g) of the PEA.

No evidence adduced to support this allegation except for the incident at Seeta IV polling station where Ms Namutebi was caught with some voters cards. She was the 1<sup>st</sup> Respondents agent, but the evidence did not point to the 1<sup>st</sup> Respondent as the source or supplier of the said voters cards. This allegation fails.

7(e) alleges that the 1<sup>st</sup> Respondent, in connivance with the agents and officers of the 2<sup>nd</sup> Respondent, forged the signature of the petitioners agents on DRFs c/s 76(a) the PEA.

7(f) alleges that he and /or his agents connived with election officials to make wrong returns and to willfully prevent the petitioners supporters from voting for the petitioner, c/s 78(a) and (d) of the PEA. I have addressed these issues earlier on in this judgment. I shall not repeat them.

7(g) alleges that the 1<sup>st</sup> Respondent and /or his agents used undue influence during campaign and on polling day by using UPDF officers to cause voters to vote for him. Again I addressed this issue already under intimidation. I shall not repeat myself

7(h) has also been addressed.

The third issue is remedies. From the findings above, the petitioner has proved, to the satisfaction of this Court merit of the allegation she made in the petition.

As a result, the petition succeeds against both Respondents and the Court makes the following declaration and orders.

- (a) The 1<sup>st</sup> Respondent was not validly elected as the directly elected MP for Mukono North Constituency.
- (b) The election of the 1<sup>st</sup> Respondent as MP for Mukono North Constituency is hereby set aside.



(c) Fresh elections be conducted in the said Constituency.

(d) The Respondents shall the costs of the petition.

.....  
M.S ARACH-AMOKO  
**JUDGE**  
19/1/2007

**Court:**

Time for delivery this judgment has been extended under Rule 13 of the PEA Rules.

.....  
M.S ARACH-AMOKO  
**JUDGE**

Judgment delivered in draft in the presence of:

- 1) Lukwago Elias for Petitioner
- 2) Herbert Byenkya for 1<sup>st</sup> Respondent.
- 3) Christinen Kaku for 2<sup>nd</sup> REsponent
- 4) Petitioner
- 5) John Wakulira Court clerk

**Absent:**

- 1) 1<sup>st</sup> Respondent
- 2) No representative for Electoral Commission.

.....  
M.S ARACH-AMOKO  
**JUDGE**  
19/1/2007