

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-EP-00017-2011
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT, 2005
AND
IN THE MATTER OF PARLIAMENTARY ELECTIONS
(ELECTIONS PETITION) RULES 1996
AND
IN THE MATTER OF PARLIAMENTARY ELECTIONS HELD ON 18TH DAY OF
FEBRUARY, 2011

NABUKEERA HUSSEIN HANIFA :::::::::::::::::::: PETITIONER

VS

1. KIBULE RONALD
2. ELECTORAL COMMISSION } **:::::::::::::::::: RESPONDENTS**

BEFORE: THE HON. MR. JUSTICE LAMECK MUKASA

REPRESENTATION

Mr. Ambrose Tebyasa } Counsel for the Petitioner
Mr. Geoffrey Ojok Odur }

Mr. John Mary Mugisha } Counsel for the 1st Respondent
Mr. Evans Ochieng }

Mr. Henry Ddungu } Counsel for the 2nd Respondent

Court Clerk
Ms. Deborah Namatovu

JUDGMENT:

The 2nd Respondent, The Electoral Commission, organized the Parliamentary Elections conducted on 18th February 2011. The Petitioner (Nabukeera Hussein Hanifa), Mpalanyi Christopher, Mutyaba Stephen, Kibuule Ronald (1st Respondent), Bakubi Lukubira Moses and Nsimbi Rajab were the Candidates in Mukono North Constituency. The Electoral Commission (2nd Respondent) returned the 1st Respondent as validly elected vide the Uganda Gazette dated 21st February 2011.

The 1st Respondent (NRM) was declared winner with 13,343 votes. The Petitioner (Independent) lost the election. She polled 3,341 votes, Bakubi Lukubira Moses (FDC) 1959 votes, Mutyaba Stephen (DP) 1200 votes, Nsuubi Ali Rajab (UFA) 463 votes and Mpalanyi Christopher (UPC) 226 votes. The Petitioner contends that the election was conducted in contravention and Contrary to the Provisions of the Constitution, the Electoral Commission Act and the Parliamentary Elections Act.

The parties filed a Joint Scheduling Memorandum, signed by their respective Counsel. It was adopted as part of the Scheduling Conference proceedings. The parties agreed on the following issues for Court's determination: -

1. Whether the 1st Respondent committed any electoral offences or illegal practices within the meaning of the Parliamentary Elections Act, either by himself or through any other persons with his knowledge and consent or approval.
2. Whether the Parliamentary Elections in respect of Mukono North Constituency were not conducted by the 2nd Respondent in accordance and in compliance with the Electoral Laws and if so whether the non-compliance, if any affected the results of the said Election in a substantial manner.
3. What remedies are available to the parties.

PARTIES' EVIDENCE:

Rule 4(8) of the Parliamentary Elections (Election Petitions) Rules (herein after referred to as ‘The Rules’) provides:

“(8) The Petition shall be accompanied by an affidavit setting out the facts on which the Petition is based together with a list of any documents on which the Petitioner intends to rely”.

Then Rule 8 stipulates:

“(1) If the Respondent wishes to oppose the Petition the Respondent shall, within ten days after the Petition was served on him or her file an answer to the Petition.

(2)

(3) The answer of the Respondent shall be accompanied by -----

(a) an affidavit stating the facts upon which the Respondent relies in support of his or her answer,”

And Rule 15 provides:

“(1) subject to this rule evidence at the trial, in favor or against the petition, shall be by way of an affidavit read in open court”.

PETITIONER’S EVIDENCE:

The Petition was accompanied by the Petitioner’s affirmation dated 22nd March 2011. She filed 21 affidavits in support, 13 affidavits in rejoinder and one supplementary affidavit in rejoinder. That is a total of 36 affidavits. Among the Petitioner’s affidavits was one deponed to by Sheik Kalumba Abdu Noor. The 1st Respondent filed a total of 20 affidavits among which was Kalumba Abdul. In paragraph 3 thereof the said Kalumba disowned the affidavit allegedly deponed to by him in support of the Petition. As a result Mr. Tebyasa, for the Petitioner, sought the said Kalumba’s affidavit in support of the Petition to be expunged from the record, which was done. Accordingly 35 affidavits were received on record in support of the Petitioner’s case. In

the course of the hearing Mr. Tebyasa for the Petitioner, sought one of the Petitioner's witnesses, Buyondo Elvis to be declared a hostile witness and sought his affidavit and oral evidence to be expunged from the Court record which was done.

1ST RESPONDENT'S EVIDENCE.

The 1st Respondent filed 22 Affidavits in support of his Answer, 13 Affidavits in Sur-Rejoinder and one Supplementary Affidavit. That is a total of 36 affidavits. Sheik Kalumba Abdu Noor's affidavit in support of the Petition having been expunged from the record Mr. Mugisha for the 1st Respondent also sought Sheik Kalumba's affidavit, which was in rebuttal of the affidavit alleged deposed by him in support of the Petition, to be expunged from the record. It was so expunged. The Petitioner contested the admissibility of 14 of the 1st Respondent's affidavits in support and all his affidavits in Sur-Rejoinder.

This issue was resolved in my ruling delivered on 30th May, 2011. As a result whereof 35 affidavits of the 1st Respondent were received on record.

2ND RESPONDENT'S EVIDENCE

The 2nd respondent filed two affidavits which were received in evidence.

THE LAW ON SETTING ASIDE AN ELECTION

Section 61(1) of the Parliamentary Elections Act (hereinafter referred to as "**The PEA**") specifies the grounds upon which the elections of a Member of Parliament may be set aside. It provides that:

“(1) The election of a Candidate as a Member of 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 results of the election in a substantial manner; or

- (b) That a person other than the elected won the election; or*
- (c) That an illegal practice or any other offence under this Act was committed in contravention with the election by the candidate personally or with his or her knowledge and consent or approval; or*
- (d) That the Candidate was at the time of his or her election not qualified or was disqualified from election as a member of parliament.*

Rule 4(3) provides that:

The only grounds on which an election may be set aside are those set in Section 61 of the Act”.

BURDEN AND STANDARD OF PROOF

Counsel for all the parties agree that it is now settled Law that the burden of proof in election petitions lies upon the Petitioner and he or she is required to discharge that burden on the basis of the balance of probabilities but to the satisfaction of the Court. Section 61(1) PEA requires the grounds to be proved to the satisfaction of the Court and Subsection 3 thereof states:

“Any ground specified in subsection (1) shall be proved on the basis of a balance of probabilities”.

As to satisfaction of Court it was observed by Lord Denning in **Blyth Vs Blyth [1966] AC 643** and cited with approval by Hon. Justice Benjamin Odoki CJ, in **Presidential Election Petition No. 1 of 2001 Col. (Rtd) Dr. Kizza Besigye Vs EC & Museveni Yoweri Kaguta** that:-

“.....No one whether he be a Judge or Juror would in fact be ‘satisfied’ if he was in a state of reasonable doubt.....”

As to standard of proof, the Supreme Court stated in the same case that:

“It is a standard of proof that is very high because the subject matter of the Petition is of critical importance to the welfare of the people of Uganda and their democratic governance”.

This was emphasized in **Presidential Election Petition No. 1 of 2006, Col (Rtd.) Dr. Kizza Besigye Vs EC & Museveni Yoweri Kaguta**, where the same Court stated:

“ One of the principles established in Presidential Election Petition No. 1 of 2001 was that the burden of proof lies on the Petitioner to satisfy the Court on balance of probabilities that the non-compliance under the law and principle affected the result of the election in substantial manner. The standard of proof is higher than in an ordinary Civil Case and is similar to standard of proof required to establish fraud but it is not as high as in Criminal Cases where proof beyond reasonable doubt is required.”

In **Election Petition Appeal No. 9 of 2002 Masiko Winfred Komuhangi Vs Babihunga J. Winnie**, Justice Mukasa Kikonyogo_DCJ stated, at page 13: -

“.....A Petitioner has a duty to adduce credible or cogent evidence to prove his allegation at the required standard of proof”.

And at page 46 stated:

“.....It must be that kind of evidence that is free from contradictions, truthful so as to convince a reasonable tribunal to give Judgment in a party’s favor.....”

As to affecting the results of the election in a substantial manner I wish to refer to the holding of the Zambian Supreme Court in **Election Petition No. 1 of 2006, Anderson Kambeta Mugoha & others Vs Patrick Mwanawasa EC & AG** where it stated:

“.....For the Petitioners to succeed in the present Petition, it is not enough to say that the Respondent have completely failed to provide a defence or to call witnesses but that the evidence adduced establishes the issues raised to a fairly high degree of convincing clarity in that the proven defects and the electoral flaws were such that the majority of voters were prevented from electing the candidate whom they preferred, or the election was so flawed that the defects seriously affected the result which could no longer reasonably be said to represent the true free choice and free will of the majority voters.....”

CAUTION:

In an Election Petition, just like in the elections themselves, each party is set out to win. Therefore Court must cautiously and carefully evaluate all the evidence adduced by either party. In the Tanzania case of **Nelson Vs AG & Anor [1990] 2 EA 160 (CAF)** Court held that evidence of partisans must be viewed with great care and caution, scrutiny and circumspection. In **Karokora Vs EC & Kagonyera Election Petition No. 2 of 2001** Justice Musoke – Kibuuka observed:-

“.....It would be difficult intended for a Court to believe that supporters of one candidate behaved in a saintly manner, while those of the other Candidate were all servants of the devil”.

While Justice Yorokamu Bamwine in **Banatib Issa Taligola Vs EC and Wasugoya Bob Fred** stated:

“Court is cutely aware that in election contests of this nature, witnesses most of them motivated by the desire to score victory against their opponents deliberately resort to peddling falsehoods. What was a hill is magnified into a mountain.”

In Paul Mwiru Vs Igeme Nathan Samson Nabeeta, EC NCHE Hon. Justice Monica Mugenyi observed:

“.....The evidence of both parties is, in its entirety quite subjective and cannot be relied upon without testing its authenticity from a neutral and independent source. Indeed in Mbayo Jacob Vs EC & Anor Election Petition Appeal No. 7 of 2006 Byamugisha JA alluded to such subjectivity where she said of evidence in election petitions:-

“Some other evidence from an independent source is required to confirm what actually happened”.

With the above principles in mind I now proceed to consider the merits of the Petition.

ISSUE NO. 1:

Whether the 1st Respondent committed any electoral offences or illegal practices within the meaning of the Parliamentary Elections Act, either by himself or through any other person with his knowledge and consent or approval.

The Petitioner in paragraph 4 of the Petition claims that the 1st Respondent personally or with his knowledge and consent or approval committed illegal practices and electoral offences connected with the election. In their Submissions Counsel for the Petitioner particularized the following:

- (a) Bribery at Katoogo
- (b) Bribery at Kabembe by way of food and drinks
- (c) Bribery at Kalagala
- (d) Bribery at Namasumbi
- (e) Bribery at Walusubi

- (f) Bribery at Walusubi by way of food.
- (g) Bribery at Bulijjo
- (h) Bribery at Nabiyangi

Section 68 PEA provides:-

- “(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 a cause to be given or provided any money, gift or other consideration to that person, commits the offence of bribery and is liable on conviction to a fine, not exceeding seventy two currency points or imprisonment not exceeding three years or both.**
- (2) A person who receives any money, gift or other consideration under Subsection (1) also commits the offence under that Subsection.**
- (3)**
- (4) An offence under Subsection (1) shall be an illegal practice...”**

As a general rule proof of a single act of bribery to the required standard by or with knowledge and consent or approval of the candidate, however insignificant is sufficient to invalidate the election.

In **Nambooze Betty Bakireke Vs Bakaluba Peter Mukasa & EC Election Petition No. 14 of 2006**. Justice Arach Amoko stated:

“In Law a bribe is a bribe. The amount is immaterial”

The Halsbury’s Law of England 4th Ed Vol. 15 page 534 provides:

“As a general rule, due proof of a single act of bribery by or with knowledge and consent or approval of the Candidate or by the Candidates agents, however insignificant the act may be as sufficient to invalidate the election. Court is not at liberty to weigh its importance nor can it allow any excuse whatever the circumstances may be”.

The illegal practice under Subsection (1) above has the following ingredients:-

- (i) *giving, providing or causing to be given or provided any money, gift or other consideration;*
- (ii) *By a candidate or his/her agent with his/her knowledge and consent or approval.*
- (iii) *The givers intention to influence a person,*
- (iv) *The influenced person to vote or refrain from voting any candidate.*

See also: **Yeri Ofwono Apollo Vs Tana Sanjay & EC E.P. No. 9 of 2011**

Intention or knowledge are states of mind which is rarely established by direct evidence, It is most times inferred from the conduct of the person before, during and after the event and from the circumstances of a particular case. In **Kizza Besigye Vs Museveni Yoweri Kaguta and EC No. 1 of 2001** (supra)

Justice Tsekooko JSC stated that rarely would a candidate state explicitly that he is bribing the voters with a view of influencing them, but the intention is gathered from the surrounding set of facts and events.

The receiver must be a voter otherwise he/she cannot be influenced to vote or refrain from voting. In Presidential **Election Petition No. 1 of 2001 , Col Rtd Dr. Kizza Besigye Vs Museveni Yoweri Kaguta & EC** the Supreme Court held that the offence of Electoral bribery is

not committed unless the gift, money or other consideration is given to or received by a person who is proved to be a registered voter. In the 2006 Kizza Besige Vs Museveni Yoweri Kaguta Petition Odoki CJ stated that:

“.....the mere distribution of money to agents or their supporters did not amount to bribery unless the corrupt motive and status of the receiver of the money as a voter were established....”

The Justice Bart Katurebe JSC stated:

“.....it is therefore not enough for a Petitioner or any person to merely allege that agents gave money to voters, a high degree of specificity is required. The agent must be named, the receiver of the money must be named and he/she must be a voter; the purpose of the money must be to influence his vote”

See also Bantalib Issa Taligola Vs EC & Wasungira Bob Fred Election Petition No. 15 of 2006

Let me now consider each of the alleged events of bribery. As to whether any alleged event of bribery was specifically pleaded with the relevant particulars I will resolve the issue in respect to each particular event as I consider the same. In so doing I will particularly consider the Petition and the supporting affidavits in respect thereof.

(a) Bribery at Katoogo:

In paragraph 4 of the Petition it is pleaded that the 1st Respondent at different places in Mukono North Constituency which included Katoogo, Mbalala, Kabembe, Kalagala, Namasumbi, Walusubi, Wakiso, Bulijjo and Nabiyagi gave or caused to be given to voters food, drinks and money Contrary to Section 68(1) and (4) of the Parliamentary Elections Act.

As to bribery at Katoogo the Petitioner relied on the affidavits of Tendo Faith and Issa Mukiibi. Tendo Faith deponed to two affidavits, one dated 22nd March 2011 and the second dated 17th May 2011. In their Submissions Counsel for the 1st Respondent prayed to Court not to rely on Tendo Faiths' affidavit dated 22nd March 2011 on the ground that she had not held a bible while swearing. In cross-examination Faith stated:-

“When I reached the Office on the first occasion a document was read to me. Then I was told to sign and we left. There was nothing else done. On the second occasion I was given a bible. I was led into swearing but I do not remember the exact words. Then I signed”

And while being re-examined she stated:

“On the first occasion I was not given a bible. On the first occasion I was not made to swear”

Her affidavit dated 22nd March 2011 is indicated sworn before Wilfred Niwagaba, Commissioner for Oaths. On the basis of the above evidence Counsel for the 1st Respondent submitted that Faith's above affidavit was incurably defective as it offends the provisions of the Oaths Act. They cited **Kakooza John Baptist Vs EC & Anor. Supreme Court Election Petition Appeal No. 11 of 2007** where Kanyehamba JSC held:

“ To condone such an unsworn statement seeking to pass as an affidavit would undermine the importance of affidavit evidence which is rooted in the fact that it is made on oath”

In their Submission in reply Counsel for the Petitioner argued and I agree, that a holy book is not the only manner of taking Oath. It is an established practice in Courts that in absence of a holy bible or Koran a witness may raise his/her right hand and take the Oath. However whether Faith

held a bible or not, she unequivocally stated in re-examination that on the first occasion she was not made to swear. Section 5 of the Oath Act stipulates:

“(1) Whenever any Oath is required to be taken under the Provisions of this or any other Act; or in order to comply with the requirements of any Law in force for the time being in Uganda or any other Country, the following provisions shall apply, that is to say, the person taking the Oath may do so in the following form and manner.....

- (a) *he or she shall hold, if a Christian , a copy of the gospels of the New Testament or if a Jew, a copy of the four evangelists or the New Testament or if a Moslem, a copy of the Holy Koran, in his or her uplifted hand, and shall say or repeat after the person administering the Oath the words prescribed by Law or by the practice of the Court as the case may be***
- (b) *in any other manner which is lawful according to any Law, customary or otherwise in force in Uganda.***

(Emphasis added)

In her own words Faith did not swear or take oath. In the premises I find her affidavit dated 22nd March 2011 incurably defective and the same is struck out.

For the same reason this Court was invited not to rely on Isa Mukiibi’s affidavit. His affidavit is also indicated sworn before Wilfred Niwagaba a Commissioner for Oaths. In cross-examination by Counsel for the 1st Respondent Mukiibi stated:

“ A document was read out to me in English by a Lawyer.it was translated to me in Luganda and I understood it.I was requested to sign. After signing I was brought back.”

Mukiibi doesn't state anywhere that he did not take Oath. I am unable to infer from his statement above that he did not take Oath. His affidavit is accordingly retained on record.

In his affidavit Isa Mukiibi states that he is a resident of Katoogo and registered voter in Mukono North Constituency under Voters Registration No. 03472722. He avers that sometime in February 2011 before the Elections while he was playing Ludo with about ten people Kibuule Ronald went to them and asked them to vote for him. That he pulled out a bundle of green notes each of five thousand, counted ten notes totaling fifty thousand shillings and handed it over to him to share amongst his colleagues present. That they shared the money and each got Shs. 5,000/=. In her affidavit dated 17th May 2011, Tendo Faith states:

“ 4. That I swear this affidavit to confirm that I saw Mr. Kibuule Ronald giving out money to men playing Ludo who included my husband and the people who were playing Cards at Katoogo in February 2011 before parliamentary and that Mr. Katambala Suleiman was not with Mr. Kibuule at that time.

5. That the Petitioner's Lawyer Mr. Ambrose Tebyasa has further read and explained to me the contents of the affirmations of Isa Mukiibi who is my husband and I confirm that the contents thereof as to his receipt of money from Mr. Kibuule are true because I saw him receiving it only that I was not able to know at the time of receipt how much money he was receiving”

The 1st Respondent, in his Answer and affidavit, generally and particularly at Katoogo, and also in his oral evidence, denies either by himself or through any of his agents giving money to voters. In response to Faith and Mukiibi's affidavits the 1st Respondent denies giving money to

Isa Mukiibi or to men who were playing cards and ludo or any other group of persons at “**Ewa Jasit**” restaurant at Katoogo.

In support of his Answer the first Respondent also filed the affidavit deposed to by Katambala Suleiman. Katambala therein stated that he was with the 1st Respondent whenever he visited Katoogo and always introduced him to the people as and before he started his speech. He contends that throughout the 1st Respondent’s campaigns in Katoogo he never issued or gave out money to any voter or voters at all. However Katambala’s evidence was discredited when he in cross-examination claimed that he was among the appointed campaigners of the 1st Respondent and that he had received an appointment letter from him in that regard. This was denied by the 1st Respondent and his Chief Campaigner Bengo Godfrey who in their respective cross-examination denied having ever appointed Katambala as the 1st Respondent’s campaigner or working with him during the 1st Respondents campaigns.

Counsel the Petitioner pointed out that the 1st Respondent’s Legal Officer Waiswa, Evelyn for welfare, Annet in charge of finance, Mpaya in charge of abrupt assistance and Sylvester in charge of surveillance whom the 1st Respondent stated he always moved with, none of them swore any affidavit to deny that the 1st Respondent ever gave out money at Katoogo or elsewhere.

The above notwithstanding it is the Petitioner to prove his case and not the Respondent to prove his defence. I have considered the affidavits of Faith and Mukiibi and find that Faith did not at all show that she is a registered voter in the Constituency. Mukiibi failed to prove that he is a registered voter. He did not attach or produce his voters Card. He only stated that his voters card had been misplaced.

There is no evidence adduced to show that the other alleged receivers of the money were voters in the Constituency. Further Mukiibi and Faith stated that they are wife and husband yet Mukiibi was an accomplice as receiver of the alleged bribe. There is no independent evidence adduced to corroborate their statements. None of the other alleged receivers of the money gave evidence. In

the premises I find that the Petitioner has failed to prove the alleged bribery at Katoogo to the required standard.

(c) Bribery at Kabembe by way of food and drinks.

To prove this claim the Petitioner relies on the affidavits of Swamadu Lumu and Kalule Charles Ngondwe. Counsel for the 1st Respondent, in their Submission, invited this Court not to rely on their respective affidavits on the ground that they respectively did concede that they never took Oath before the Commissioner of Oaths. Swamadu Lumu and Kalule Charles Ngodwe's respective affidavits in reply, dated 22nd March 2011 are indicated sworn before Wilfred Niwagaba a Commissioner for Oaths. Swamadu Lumu's affidavit in rejoinder, dated 17th May 2011 is indicated sworn before Obed Mwebasa a Commissioner of Oaths. In cross-examination, about the swearing of his affidavits, Swamadu Lumu's states:

“We were taken to an Office. There was a man who read to me what I had stated. It was what I had stated. It was read out to me in Luganda the language I understand. I signed and he stamped”

In re-examination he stated:

“ I went to the Office at Nakasero once. I signed the second document also from the same Office. I signed both documents the same day in that office.”

Though Swamadu Lumu might have been confused as to where he swore the second affidavit, I am unable to infer from his statements above that he did not swear the affidavits before the respective Commissioner of oaths. Kalule Charles Ngondwe was not cross-examined. The 1st Respondents' counsel's submission that he conceded not swearing his affidavit is not based on any evidence.

In his two affidavits Swamadu Lumu states that on 1st January 2011 he attended the 1st Respondent's campaign rally at Kabembe play ground. That the 1st Respondent addressed them at about 4.00 pm. And asked them to vote him as Member of Parliament. That when Mr. Kibuule was concluding his address, he asked his men who were on trucks to serve them food which was rice and meat. The food was served and he with others present ate the food.

Kalule Charles Ngondwe stated, in his affidavit, that he is a resident of Kabembe and registered voter in Mukono North Constituency under Voter's Registration No. 08599721. He on 31st December, 2010, with others, witnessed fireworks sponsored by Mr. Kibuule Ronald. That Mr. Kibuule addressed them and informed them that he was to hold a rally the following day 1st January 2011 at Kabembe play ground at 3.00 p.m. at which lots of eats and drinks would be available. That he actually attended the rally on 1st January 2011 at which Mr. Kibuule addressed them and asked them to vote for him. He also states that Mr. Kibuule asked his men on trucks to serve them food which was rice and meat.

In cross-examination Swamadu Lumu testified that on 31st December 2010 while at Kiyunga a group of yellow coloured vehicles carrying Kibuule's posters, with people dressed in his T/shirts came over. One of the vehicles had a loud speaker announcing, he states that:

“ Tomorrow 1st January 2011 you are invited to be present. The area MP candidate who has a future plan will address you and give you a meal after”

He further testified that after his speech at the rally on 1st January 2011 Kibuule stayed briefly when food was being served and left. The food was brought in a single Cabin Pick up whose make, colour or number plate the witness could not remember. In further cross-examination he stated that the food served was matooke, rice and meat.

In his affidavit dated 6th April 2011 the 1st Respondent admits having attended a rally at Kabembe play ground, addressing the same and asking Voters to vote him. He however denies serving or asking his men on trucks or any other person to serve food to people at that rally. He also denies announcing that there would be lots of eats and drinks at that rally.

In cross-examination the 1st Respondent admits having attended the said rally at Kabembe which he said the organizer code named “**Museveni Tusula Mungato**”. He contends that it was not his rally but had attended and addressed it as a guest representing the President. He testified that he did not know about people being served with food and drinks at that function. In response to Swamadi Lumu’s affidavit, Bengo Godfrey, who states was the 1st Respondent’s Official Chief Campaigner, makes a general denial that throughout their campaigns they never prepared food or hired anyone to prepare food to be served at their rallies or to any Voter. Bengo did not attend this rally at Kabembe.

Both Swamadu Lumu and Kalule Charles Ngondwe claim to have been among the people served with and eaten the food served by the alleged Kibuule’s men. Lumu contradicts himself and Kalule as to the kinds of food served. In their respective affidavits they talk of rice and meat but in his cross-examination he introduces matooke among the types served. Also in their affidavit they talk of food being delivered on trucks yet in his cross-examination Lumu talks of one vehicle, a single cabin pick-up. There is no evidence adduced to connect the 1st Respondent with this pick-up. Its make, colour and particularly its registration number are not given. There is no evidence given to connect the people who delivered and served the food to the 1st Respondent. At least the people who were stated to have announced the rally at Kiyunga were stated in Lumu’s oral testimony to have been driving in a group of yellow coloured vehicles, which is the 1st Respondent’s party Official colour, and carrying Kibuule’s posters and people dressed in his T/shirts. There is no similar evidence with the vehicle and people who delivered and served the food at the Kabembe rally.

Further it is trite that the people bribed must have been voters in the relevant Constituency. Kalule states that he is a registered Voter in the Constituency under Voters Registration No. 08599721. It is not enough to so state. He should have produced his Voter’s Card or registration slip to prove that he is voter No. 08599721. Save for stating that he is a voter at Kiyunga Polling Station, Lumu does not give his voter Registration number and does not provide his voters card or registration slip. Not everybody who attends a rally is a voter, let alone at the constituency he/she attends. There is no evidence adduced to show that the people specifically

named in the respective affidavits, that is Sande Kisomose Hassan and Hajati Safina, among the people who ate the food, were voters in the constituency. I appreciate that it cannot be imagined that all the people at the rally or at least some of them were not voters. But for the deponents and those specifically named in their respective affidavits being the chosen sample it must be proved that they were registered voters in the Constituency which was not done. In light of the above I find that the Petitioner has failed to prove to the required standard the alleged bribery at Kabembe.

(c) Bribery at Kalagala:

The Petitioner claims that the 1st Respondent bribed Voters with food and drinks at Kalagala on 26th January 2011. The Petitioner relies solely on the evidence of Kawere Isma. He states that he is a registered voter in Mukono North Constituency under Voter's Registration No. 09246264 and a resident of Kasayi. I must commend this witness for having produced his Voter's Card in Court, though Counsel did not seek for it to be tendered as exhibit. The witness avers that he attended various rallies for Kibuule Ronald among which was the one held on 26th January 2011 at Kalagala football field. That Kibuule addressed them and asked them to vote him as a Member of Parliament. That when Kibuule was concluding his speech he asked his men who were on a truck to serve them with rice and meat. Himself and one Kabanda were among the many who attended the rally and ate the food.

In his affidavit the 1st Respondent contends that what Kawere Isma states in his affidavit as to delivering and serving food is false. In cross-examination the 1st Respondent denies having held a rally at Kalagala. He testified that on 26th January 2011 he attended NRM Anniversary Celebrations at Kalagala. That at the function he addressed the Youths as one of the special guests present. That while at the function he never saw food being served and was not aware of any arrangement to serve food on that occasion.

In cross-examination Kawere Isma also testified that 26th January is a Liberation Day celebrated throughout the Country. That 26th January 2011 was celebrated at Kalagala football field and attended by many important guests among whom he remembers Tamale Mirundi, District

Councilors and Sub-county Councilors. According to him the day was both a Celebration Day and a Rally Day as many Candidates campaigned at the function. He states that food was brought in a Diana Pick-up. When the guest of honour arrived food was off-loaded and served by Kibuule's Campaigners. According to him the 1st Respondent was the guest of honour. He stated:

“ I do not know whether Kibuule is the one who organized the function but all we were told is that Kibuule was the one who had offered the food. He spoke at the function and asked to be given votes”.

The 1st Respondent admits having attended the function on 26th January 2011 and to have spoken to the people who had gathered. This was a campaign period so it cannot be imagined that as a Candidate the 1st Respondent could have spoken and not asked for votes. According to Kawere many Candidates campaigned at the function. This was apparently a 26th January Liberation Day Celebrations turned into an NRM Campaign Rally day. The 1st respondent was not the sole Candidate at the Rally. The Petitioner's sole witness, as regards this function, did not say that the function was organized by the 1st Respondent. He was just told that Kibuule was the one who had offered the food. He does not name his informer. He states that Kibuule did not serve the food but contends that it was served by Kibuule's Campaigners. He does not name any. The witness did not adduce any evidence to connect the Diana Pick –up to the 1st Respondent. The 1st Respondent testified that he was not aware of any arrangement to serve food at that function and there was no evidence to impute otherwise. There is no evidence to show the people behind or responsible for the organization of this food. If it was at all served there is no evidence to show that it was with the knowledge and consent or approval of the 1st Respondent. The Petitioner has failed to prove to the required standard this alleged event of bribery.

(d) Bribery at Namasumbi.

I must on the off-set comment about the conduct of the Petitioners Counsel in his Submission in regard to this event. On Counsel's own application Sheik Kalumba Abdu Noor's affidavit in support of the Petitioners case was expunged from the record. Also Sheik Kalumba's affidavit in support of the 1st Respondent's case was on the application of his Counsel and with the consent of the

Petitioner's Counsel also expunged from the record. In the course of hearing the Respondent's evidence Mr. Tebyasa, for the Petitioner, moved this court to use its powers under Section 64 of the Parliamentary Elections Act to summon and examine Sheik Kalumba. This Court declined to exercise its discretion for the reasons given in its ruling on the matter. I find it strange and unprofessional that Mr. Tebyasa continued in his Submissions to rely on Sheik Kalumba's affidavits as if they were still part of the evidence on record. This was a deliberate effort by Counsel to confuse and mislead Court.

With regard to this event the Petitioner relies on the affidavits of Khalifa Ntambi, Jamil Kizito, Bukenya Musa, Mwalimu Yakub Kasozi and Waswa Ibrahim dated 22nd March 201 and the affidavits in rejoinder of Kasolo Ali, Khalifa Ntambi and Jamil Kizito dated 17th May 2011. In their respective affidavits, coached in almost the same words, the deponent stated that they on Friday 21st January 2011 attended Juma prayer at Masgid Noor Mosque at Namasumbi which were led by Imam Abdul Noor Kalumba. After the prayer the Imam informed them that there was a guest who wanted to talk to the believers and was one of the Candidates for Mukono North Constituency. Sheik Mujjumba then addressed them briefly and introduced Mr. Kibuule. The 1st Respondent addressed the believers for about 30-40 minutes inside the Mosque and requested for their votes. That the 1st Respondent concluded his speech by telling them that he had something for the believers with Imam Kalumba. That in their full view Kibuule handed over some money to Imam Kalumba. Shortly thereafter Khalifa Ntambi Isa came with soda and informed the believers that it had been bought on the money given to them by Kibuule. He served the soda to all who were inside the Mosque. All the deponents drank the soda save for Kasolo Ali. For him he stated that he left the believers behind waiting for the sodas. Khalifa Ntambi Isa states that after Kibuule had given the money to Imam Kalumba, he was approached by one Sebyala with Shs. 40,000/= and told him that Imam Kalumba was requesting him to go and buy them soda offered to the believers. He rode his motor cycle and bought sodas which were shared amongst the believers present. That they took the sodas together Kibuule who requested them to vote for him promising them bigger things when he goes through.

In his affidavit the 1st Respondent denied telling believers that he had something for them with Imam Kalumba and denies handing over money to the said Imam. He also relies on the respective affidavits of Abbas Mujumbi Imam Lukwago Yunus, Kabambwe Ibrahim,

Kyomugisha Hadijja, Nabukera Saidat, Muhammed Lwanyaga Sengoba and Masajjage Amir. They all attended the said Juma prayers. They all deny that the 1st Respondent gave out any money to buy sodas for the believers. Abbas Mujubi admits having addressed the believers and introducing the 1st Respondent to them.

I have doubts about the affidavit of Imam Abbas Mujjumba. At the hearing of his oral testimony which was on 6th July 2011, he signed out three specimen signatures received in evidence as Exhibit P2. On top of each specimen signature he inserted a date **“06-07-2011”**. He stated that he always put a date as part of his signature. That is the date of the day he signs. In the present case his affidavit is dated and affirmed on the 5th day of April 2011. On top of his signature is the date **“19-03-2011”**. He testifies in cross-examination that he signed the affidavit on 5th April 2011. Imam Abbas Mujjumba did not give any satisfactory explanation as to this discrepancy in dates. The only reasonable conclusion I can make is that Imam Abbas Mujjumba never appeared before the Commissioner for Oaths for administration of the Oath. He must have signed on 19th March 2011 and the affidavit was presented before he Commissioner for Oaths who purported to have administered the Oath on 5th April 2011. Such conduct contravenes Section 5 of the Commissioner of Oaths (Advocates) Act; Section 6 of the Oaths Act as well as Rule 7 of the Commissioner for Oaths Rules which require the deponent to personally appear and sign the affidavit before the Commissioner of Oath and swear or affirm by saying or repeating after the person administering the Oath words prescribed by Law. In **Kakooza John Baptist Vs EC & Anthony Iga Supreme Court Election Petition No. 11 of 2007** the deponent stated:

“I read through the affidavit and signed it before I sent it to the commissioner”

The affidavit was rejected. Similarly this Court cannot condone such conduct of the deponent. I accordingly strike out Imam Abbas Mujjumba’s affidavit.

The witnesses for both the Petitioner and the Respondent were Moslem believers who had attended the Juma prayers that day. Each gave a different version of what happened in the mosque that day. The witnesses for each camp were clearly partisan, each group set to defend its

candidate, Faced with a similar situation Justice Monica Mugenyi in **Paul Mwiru Vs Igeme Nathan Samson Nabeeta and others, Election Petition No. 3 of 2011** held:

“...The evidence of both parties is, in its entirety, quite subjective and cannot be relied upon without testing its authenticity from a neutral and independent source”

Her Lordship cited with approval Justice CK Byamugisha in **Mbayo Jacob Robert Vs EC & Talamusya Sinnah Election Petition Appeal No. 7 of 2006** where she stated:

“ The circumstance under which the whole incident was played out was accusation and counter accusation from both sides such that some ‘other evidence’ from an independent source is required to confirm what actually happened”.

Without any independent evidence adduced by the Petitioner her evidence is left contradicted by the 1st Respondent’s evidence and insufficiently proved.

The Petitioner is required to set down the particulars of the illegal practices or electoral offence complained of. Rule 17 makes the provisions of the Civil Procedure Act and Rules made there under applicable to the practice and procedure of Petitions. Order 6 Rule 3 of the Civil Procedure Rules requires particulars of the claim stated with clarity so that the defendant is able to understand and respond to the case against him. In the Petition and in the Petitioner’s affidavit in support thereof there is no claim of a pledge of a water tank to Namasumbi Mosque. The Petitioner’s claim is limited to bribery by money, eats or drinks and transporting Voters to Polling Stations. The Petitioner is bound by her pleadings and cannot be allowed to seek a relief on matters not pleaded.

In their respective evidence in cross-examination the 1st Respondent’s witnesses Kabambwe Ibrahim, Hadija Kyomugisha, Nabukera Saidat and Yunus Lukwago stated that while in the

Mosque the 1st Respondent promised that if he goes through he will get friends to donate a water tank to the mosque. On this issue the 1st respondent stated:

“I did not promise the faithful anything while in the mosque. They asked me to ask the President for a water tank. I did not promise them one. They also mentioned that I had Moslem friends whom I promised to link them to, the likes of Alhaj Moses Kigongo, Hajji Katongole”

On the above evidence Counsel for the Petitioner submitted that promising a water tank was done in contravention of the Law and constitutes a bribe. He continued that a pledge of an item that would otherwise constitute a bribe if given instantly, once promised amounts to a bribe. He cited various Dictionary definitions like the Black’s Law Dictionary (8th Ed) page 203 where it defines bribe as:

“A price, reward, gift in favour bestowed or promised with a view to pervert the Judgment of or to influence, the action of a person....”

He also cited **Busingye Fred Vs Kithende Kalibhoga & EC Election Petition No. 005 of 2006** where Justice Rugadya Atwoki, quoting the Black’s Law Dictionary held that:

“Bribery at elections as the offence committed by one who gives or promises to give or offers money or valuable inducement to an election, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, was a reward to the voter for having voted in a particular way or to abstained from voting”

With due respect the electoral offence of bribery is specifically created by Section 68 PEA. Pursuant to that Section the offence is committed by a person who ***“gives, or provides or causes to be given or provided any money, gift or other considerations”***

It is trite that specific Statutory Provisions take precedent over general provisions. The Section does not cover a person who promises or pledges. It must be appreciated that Election Campaigns are characterized with promises and pledges by candidates to satisfy the voter's anticipations or desires when elected in Office. It could not have been the Legislative intention to defeat the essence of campaigns.

The Petitioner's witnesses, Jamil Kizito, Wasswa Ibrahim and Bukenya Musa, in their respective affidavits state that they had a brief meeting with the 1st Respondent in which he asked them to convince more people to support him. That he gave each of them Shs. 5,000/=.

The 1st Respondent in his affidavit denies being in a meeting with the said Petitioner's witnesses outside the mosque and denies giving them any money. Under Section 68(2) PEA any person who receives a bribe under subsection (1) also commits the offence. The evidence of the Petitioner's witnesses above is that of accomplices in the circumstances and this required independent evidence to satisfy Court as to what actually happened which is not provided by the Petitioner. In cross-examination Jamil Kizito states that this was his first time to meet the 1st Respondent and did not know him before. He doesn't say that he was introduced to him by anybody and he confesses that he is a DP supporter. There is doubt as to how the 1st Respondent could have singled him out of the many believers present and trusted him and his colleagues on first sight to solicit votes for him.

All in all I find that the Petitioner has failed to prove bribery, in its various alleged forms, at Namasumbi Mosque.

(e) Bribery at Walusibi:

In her affidavit, filed in rejoinder, the Petitioner's witness Nabusulwa Sarah states that one week to the elections the 1st Respondent while asking for votes at Walusubi gave Shs. 20,000/- to Maama Siri for herself, the deponent and about three other women to share. That Maama Siri declined to give the deponent her share and she complained to the 1st Respondent, who was still around in his car and he gave her Shs. 5,000/= reminding her not to forget him on the Polling

day. That she also saw the 1st Respondent hand over money to Swaibu to distribute to a group of men who were gathered at the same trading centre.

This is evidence of a single accomplice witness, the receiver of the alleged bribe money. It is not supported by any other independent evidence. Though she deponed that she is a resident of Walusubi and registered voter no. 34526973 she does not attach her Voter's Card to so prove. Neither does she provide evidence to state that Maama Siri, the other three unnamed women; Swaibu or the other unnamed men were voters in the Constituency. In the premises I find that the Petitioner has failed to prove this claim to the satisfaction of Court.

(f) Bribery at Walusibi by way of food.

The Petitioner relies on the affidavit of Nabusulwa Sarah filed in rejoinder, Sekabira Robert and Victor Otukala. Nabusulwa Sarah alias Mukyala Pinwa states that she operates a Restaurant at Walusubi boda boda Stage. Sekabira Robert states that he is a boda boda cyclist operating from Walusubi boda boda stage. Victor Otukala is a motor cycle mechanic at Walusubi boda boda stage. They state that one afternoon in February 2011, a tipper truck driven by one Faisal brought food, rice and offals, which was served to people at the stage by Sekabira Robert.

Though Sekabira stated that he is a resident and voter at Walusubi he does not provide his voters card number or the card itself. Otukula states his voter's Registration Number is 10003327276260381 no evidence was provided to prove that Nabusulwa Sarah states that she is registered voter No. 34526973 but she does not provide any evidence to that effect. Sekabira names among the people served with the food.

Victor Otukula whom he says is a voter at Kakoola, Musenze a voter at Walusubi, Kafuuma, Kamange voters at Wakiso and Nalongo Pinwa alias Nabusuwa Sara a voter at Walusubi. He does not provide any evidence to show how he established that they were such voters as he alleges. The three witnesses state that the driver of the truck was Faisal who operates from the Walusubi stage. That he was in the company of Swaibu whom Sekabira Said was one of the 1st Respondent's Campaign Manager. He says that Swaibu told them that they had brought the food on behalf of the 1st Respondent.

The 1st Respondent denies that Swaibu was his agent or campaign Manager. He denies by himself or through his agents to have ever served any food to voters at Walusubi boda boda stage. In cross-examinations the 1st Respondent stated that he first came to know Faisal Segawa and Swaibu Matumbe through the Petition papers filed in Court. Faisal Segawa in his affidavit admits being a tipper driver at the stage but denies ever distributing food at the stage. He denies being a campaigning agent of the 1st Respondent. In cross-examination he denies having been hired to transport food which was distributed at Walusubi. Swaibu Matumbwe Tamusuza, admits that he is a boda boda cyclist at the stage, he admits knowing Faisal a driver at the state. He however denies ever boarding a truck and distributing food as alleged by the Petitioners witnesses. He denies being appointed or ever holding out as the campaigning Agent of the 1st Respondent.

The evidence of the Petitioner's witnesses, who testified that they were among the people who shared the food, was contradicted by Faisal and Swaibu who denied to have delivered food to the stage as alleged by the Petitioner's witnesses. There was need for independent evidence to show exactly what happened. There is no evidence to connect the 1st Respondent with the food. The 1st Respondent and both Swaibu and Faisal deny that they were agents of the 1st Respondent. The mere fact that Bengo Godfrey, the 1st Respondent's, Chief Campaign Manager, stated that the 1st Respondent had at least two agents on each villages, is not proof that Faisal and Swaibu were the two or any of them. The registration number of the vehicle is not given and no evidence is adduced to prove that the truck which transported food was the one driven by Said Faisal during the relevant periods. It is not stated whether the truck had anything, like posters, to connect it with the 1st Respondent.

The Petitioner has not provided satisfactory evidence to prove this claim to the required standard.

(g) Bribery at Kapeke: -

The Petitioner's witnesses Rita Lutaaya, Matovu Denis and Mawanda Mutale, in their respective affidavits state that on 19th January 2011, Abbas Mujjumba, who was the chief Campaigner of the 1st respondent found them at Kapeke and told them that he was looking for them on behalf of the 1st Respondent as it had been established that they had substantial influence in the area. That he

handed Shs. 50,000/= to Rita for the three to share and asked them to convince other people to support and vote for the 1st Respondent.

Both in cross-examination and in re-examination Matovu Denis stated that he is not politically influential in the area. He however stated in re-examination that he is a progressive agriculturalist. That Rita and Mawanda were politically influential so they had got a bigger share of the money, he got only Shs. 10,000/=. He stated that Mujjumba had declined to give them the 1st Respondent's T/Shirts saying that he knew they would not put them on. He stated he is a DP supporter. If Mujjumba had trusted Matovu as an influential person who could vote and influence other people to vote for his candidate one wonders why he could not trust him to put on Kibuule's T/shirts as evidence of such support.

Rita Lutaaya stated in her affidavit that her Voter Registration Number is 070162275236499. She however did not attach or produce her Voter's Registration receipt to so prove. In her cross-examination she stated:

“Those who voted Kibuule were not voting him as a Movement Member. We elected him as a son born from our home area. It was immaterial that I was a DP and he was an NRM. he (referring to Mujjumba) came and informed us that we should support a candidate who is from our village and get a Minister from our area Kapeke.....”

Rita's testimony above shows what influenced her to vote, if at all she voted for the 1st Respondent. It was not money.

Mawanda Mutate stated that his voter's registration number is 09275642 but he did not attach any card or Registration receipt as a voter to his affidavit. No evidence is adduced to the satisfaction of court that he was a registered voter in the Constituency.

The three witnesses stated that the money was given to them by Abbas Mujjumba. I agree with Counsel for the 1st Respondent that the Petitioner had the onus to prove the nexus between the 1st Respondent and Abbas Mujjumba and to prove that the 1st Respondent sanctioned the alleged bribery. The 1st respondent in his affidavit denies that Abbas Mujjumba was his Chief Campaign Manager and denies sanctioning the said bribery at Kapeke for the Petitioner's witness. In cross-examination he denied that Abbas Mujjumba was his Campaign Agent. He however acknowledged that Mujjumba was the L.C. II Chairman of Kasenge Parish and having recognized his presence at his rally at Kasenge, Mbalala Trading Centre. He states that though it was Abbas Mujjumba who called him to address the worshippers at Namasumbi Mosque he had found him in the Mosque and not gone with him.

Godfrey Bengo, the 1st Respondent's Chief Campaigner, stated in his cross-examination that he assisted the 1st respondent to appoint the campaign agents. That they did not use the NRM structures in the area to solicit votes for the 1st respondent. He did not know Abbas Mujjumba. I have, in this Judgment struck out Iman Abbas Mujjumba's affidavit for being defective.

There is no evidence to show that Abbas Mujjumba was the 1st respondent's appointed Campaign Agent. There is no evidence that Abbas Mujjumba had come in the 1st respondent's team to Namasumbi Mosque. The fact that he was the one who introduced or called the 1st Respondent to address the believers in the mosque did make him an agent of the 1st Respondent. The fact that he was the L.C. II Chairman Kasenge Parish and as such within the NRM structures in the area did not perse make him an agent of the 1st Respondent, though he was a Candidate on the NRM ticket. I so held in **Mudiobole Abeedi Nasser Vs Mugema Peter & Electoral Petition No. 0007 of 2011.** In the 2006 Kizza Besigye Petition, Hon. Justice Odoki CJ held;

“The agent is the understudy of the candidate and has to be under instructions given by him, being under his control. The position of a leader is different and he does not act under the instructions of a candidate or under his control. The candidate is held to be bound by the act of his agent because of the authority given by a candidate to act and perform on his behalf. There is no such relationship between the candidate and the

leader..... For this reason the Consent of the Candidate or his Agent is necessary when the act is done by any other person”.

There is no evidence, circumstantial or otherwise, to show that the 1st Respondent sanctioned the giving out of the money, if at all by Abbas Mujjumba, nor that he had knowledge or consented to it. I find that the Petitioner has failed to prove this event of bribery.

(h) Bribery at Bulijjo;

The Petitioner contends that there was an incident bribery at Bulijjo by one Afani Bbosa an Agent of the 1st Respondent. She relies on the affidavits of Kukumura Ignatious, Kazibwe Sam and Yovani Mawanda.

Kukumura Ignatious states in his affidavit that on 17th January 2011 when he had gone to the Gombolola Headquarters he met one Kizza Ahmed who requested him to take letters to the Chairman L.C.I of Bulijjo and Nameese. The letters had come from the office of the Gombolola Chief. He was told to tell the Chairmen not to miss out picking their money on 25th January 2011 and that they should be there in person. That on 25th January 2011 the Chairman L.C. I Bulijjo Afani Bbosa who was also the Movement Chairman of the village went to the deponent's shop and informed him that he had received Shs. 350,000= from the Gombolola Chief as per the letter he had delivered. He goes on to say that the money was courtesy of Kibuuka Ronald for eligible and potential voters who had accepted to vote him as a Movement Candidate. Afani Bbosa gave him Shs. 9,000= in appreciation of him taking his letter and in selling his vote for the 1st respondent.

Sam Kazibwe in his affidavit says that in his presence Afani Bbosa informed Kukumura Ignatious that he had received Shs. 350,000= from the Gombolola Chief as per the letter Kukumura had delivered to him. Afani Bbosa gave Kukumura some money and bought the deponent two Nile Special beers saying it was a message from the 1st Respondent.

Yovani Mawanda alias Yovani Wanyama states in his affidavit while at Kukumura's shop he saw Afani Bbosa give Shs. 10,000= to Kukumura who gave him back Shs. 1,000=. That Afani bought him and others beers with complements that it was a message from Kibuule.

There is no evidence adduced to show that Afani Bbosa had given Kukumura money and bought beers for Kazibwe and Mawanda with the authority and consent or knowledge of the 1st Respondent. There is no evidence to show that the 1st Respondent was the source of the money. From Kukumura's and Kazibwe's evidence the source of the money was the Gombolola Chief. Gombolola Chiefs are civil servants and there is no evidence to show that this unnamed Gombolola chief or Kizza Ahmed who gave Kukumura the letters were agents of the 1st Respondent. Clearly Afani Bbosa gave Kukumura Shs. 9,000= in appreciation of his having delivered him the letter. The letter was not from the 1st Respondent. This claim is not proved at all.

(i) Bribery at Nabiyagi:

This claim is also found in Kukumura Ignatius's affidavit. He states that on polling day, 18th February 2011 at Nabiyagi Polling Station, he found one Yiga who resides near the Polling Station giving out money to people from his home. He claims that Yiga was the Movement flag bearer L.C I of Nabiyagi and one of the Campaign Managers of the 1st Respondent. He recognized one Ssengendo who he found receiving Shs. 5,000=.

There is no evidence to show that Yiga was the 1st Respondent's Campaign Manager. The 1st Respondent in his affidavit denies that Yiga was his agent. The fact that Yiga was the NRM flag bearer for L.C I Nabiyagi did not per se make him an agent of the 1st Respondent. There is no evidence to prove that, if at all Yiga gave out money as alleged, he did so with the knowledge, and consent or approval of the 1st Respondent or his Agents.

All in all I find that the Petitioner has failed to prove that the 1st Respondent whether by himself or through any other person with his knowledge, consent or approval committed any of the electoral offences or illegal practices as claimed in the petition.

ISSUE 2:

Whether the Parliamentary Elections in respect of Mukono North Constituency were not conducted by the 2nd Respondent in accordance and in compliance with the Electoral Laws

and if so whether the non-compliance, if any, affected the results of the said Election in a substantial manner.

Mr. Tebyasa for the Petitioner submitted that an election cannot be said to have been conducted in compliance with Electoral Laws if it is marred with bribery of voters. To an extent I agree, The qualities of the free and fair election were summarized by Hon. Justice Odoki CJ in **Kizza Besigye Vs Museveni Y.K. & Electoral Commission Presidential Election Petition No. 1 of 2001** as follows:

- The election must be free and fair.
- 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 results of the election must be based on majority of the votes cast.

It was the testimony of the Returning Officer that an election cannot be free and fair if it is marred with bribery. He admitted that he had received a complaint by Mpalanyi Christopher who was one of the candidates spelling out several areas of bribery.

A complaint perse is neither evidence nor proof of bribery. The said Mpalanyi Christopher did not provide any evidence to Court. Further I have already found that the Petitioner has failed to prove any of the alleged acts of bribery committed by the 1st Respondent or other persons with his knowledge and consent or approval. I accordingly find that the Petitioner has failed to prove that the elections were not conducted by the 2nd Respondent in accordance and compliance with the Electoral Laws.

In the circumstance the issue whether non-compliance affected the results of the election in a substantial manner does not arise. The evidence available shows that the 1st Respondent was declared winner with 13,343 votes as opposed to the Petitioner 3,341 votes. With a difference of

10,000 votes I find that the Election results reflected the will of the majority of Mukono North Constituency.

ISSUE 3;

What remedies are available to the parties:

In the final result the Petition fails and the same is hereby dismissed.

The Petitioner shall pay the taxed Costs of the 1st Respondent.

Election Petitions though personal in nature, to some extent are public interest cases in that they resolve a public interest as to the people's representation in Parliament.

On that basis the Petitioner will pay 50% of the 2nd Respondent's taxed Costs.

LAMECK N. MUKASA

JUDGE

8/09/2011