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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

PRESIDENTIAL ELECTION PETITION NO. 01 OF 2016

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**(CORAM: KATUREEBE, C.J, TUMWESIGYE, KISAAKYE,
ARACH AMOKO, NSHIMYE, MWANGUSYA, OPIO-AWERI,
MWONDHA, TIBATEMWA-EKIRIKUBINZA, JJ. SC.)**

AMAMA MBABAZIPETITIONER

VERSUS

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**YOWERI KAGUTA MUSEVENI 1st RESPONDENT
ELECTORAL COMMISSION 2nd RESPONDENT
THE ATTORNEY GENERAL 3rd RESPONDENT**

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**PROFESSOR OLOKA ONYANGO & 8 ORS.....AMICI
CURIAE**

DETAILED REASONS FOR THE JUDGMENT OF THE COURT

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The Petitioner, who was one of the candidates in the
presidential election that was held on the 18th February, 2016

petitioned the Supreme Court under the Constitution, the Presidential Elections Act, 2000 and the Electoral Commission Act, 1997 (hereinafter referred to as the PEA and the ECA, respectively). He challenged the result of the election and sought a declaration that Yoweri Kaguta Museveni, the 1st Respondent, was not validly elected and an order that the election be annulled.

On the 31st March 2016, we delivered our decision in line with the Constitutional timeline imposed on the Court to render its judgment within 30 days from the date of filing the petition. We were not, however, in a position to give detailed reasons for our findings and conclusion.

We found that the 1st Respondent was validly elected as President in accordance with Article 104 of the Constitution and Section 59 of the PEA. Accordingly, we unanimously dismissed the petition. We made no order as to costs.

We promised to give the detailed reasons at a later date, which we now give in this judgment.

Background

The 18th February 2016 General Elections were the 3rd since the re-introduction of multiparty politics in Uganda as the country shifted from the movement system. The presidential race attracted a total of eight candidates, four of whom were party sponsored while four vied as independent candidates.

The Petitioner stood as an independent candidate while the 1st Respondent stood on the NRM party ticket. The others were: Dr. Kizza Besigye Kifefe (Forum For Democratic Change); Abed Bwanika (The Peoples Development Party); Baryamureeba Venansius (Independent); Benon Buta Biraaro (The Farmers Development Party); Mabiriizi Elton Joseph (Independent) and Maureen Faith Kyalya Waluube (Independent).

On the 20th February 2016, the Electoral Commission (hereinafter referred to as the “Commission”), declared the presidential election results as follows:

-	Abed Bwanika	86,075 (0.93%)
-	Amama Mbabazi	132,574 (1.43%)
-	Baryamureeba Venansius	51,086 (0.55%)
-	Benon Buta Biraaro	24,675. (0.27%)
-	Kiiza Besigye Kifefe	3, 270,290
	(35.37%)	
-	Mabiriizi Joseph	23,762 (0.26%)
-	Maureen Faith Kyalya Waluube	40,598 (0.44%)
-	Yoweri Kaguta Museveni	5,617,503
	(60.75%)	

The Petitioner was aggrieved by the above declared results. He filed this petition before this Court under Article 104 of the Constitution and Section 59 (1) of the PEA, based on various grounds and complaints.

In the petition, the Petitioner contended that the election was conducted without compliance with the provisions and the principles of the PEA, the ECA and the 1995 Constitution and that this affected the result of the election in a substantial manner. For this, he faults the Commission.

The specific complaints against the Commission included: illegal nomination of the 1st Respondent, illegal extension of nomination deadline, failure to compile a National Voters Register, failure to issue voters cards resulting in disenfranchisement of voters, use of unreliable Biometric Voter Verification Machine (BVVK), failure to identify voters, late delivery of polling materials, failure to control polling materials, starting voting without first opening the ballot boxes, allowing voting without secret ballot, pre-ticking and stuffing of ballot papers, voting before and after polling time, multiple voting, allowing unauthorized persons to vote in the presidential elections, prevention of the Petitioner's agents from voting, chasing away the Petitioner's agents from polling stations and denying the Petitioner's agents information.

Another set of allegations consisted of noncompliance with electoral laws by the Commission during the process of counting, tallying, transmission and declaration of results namely: counting and tallying of election results in the absence of the Petitioner's agents; declaration of results without Declaration of Results Forms; unlawful electronic

transmission of results from districts to the National Tally Centre using the Electronic Results Transmission and Dissemination System(ERTDS); illegal and unlawful declaration of the 1st Respondent as the winner of the
5 presidential election without District Returns and District Tally Sheets and lack of transparency in the declaration of results.

Among the specific complaints against the 1st Respondent were that several illegal practices and electoral offences were allegedly committed by him either personally, or with his
10 knowledge and consent or approval. They included voter bribery, violence and intimidation, making derogatory statements, war mongering and misuse of Government resources.

The Petitioner made no specific complaint against the Attorney
15 General but several allegations were made against public officers and security personnel.

The Petitioner's prayers to the Court included: an order for vote recount in 45 districts named in the petition; a declaration that the 1st Respondent was not validly elected as president;
20 an order annulling the election of the 1st Respondent and an award of the costs of the petition to him.

The 1st Respondent denied the Petitioner's allegations of breaches of the law. The Commission also opposed the petition and contended that the election was held in compliance with

the provisions of the electoral laws and asserted that, if there was any noncompliance, which was denied, it did not affect the result of the election in a substantial manner.

The Attorney General (hereinafter referred to as the “AG”) 5 opposed the petition as well and further contended that it was, in any case, improperly joined as a party to the petition.

All the Respondents sought the dismissal of the petition with costs.

At the commencement of the hearing, counsel for the 10 Petitioner applied under Article 126 of the Constitution, Section 100 of the Civil Procedure Act and Rule 15 of the Presidential elections (Election Petitions) Rules, 2001 vide **Miscellaneous Application No. 1 of 2016** to amend the petition. The application was allowed and the Amended Petition was filed on 15 the 7th March 2016. The Respondents filed their answers to the Amended Petition on the 9th March 2016.

Two applications were also brought before Court prior to the hearing of the petition for leave to intervene as *amicus curiae* in the petition. The first one, **Professor Oloka Onyango &** 20 **Ors (MA No. 2 2016)**, was brought by lecturers from Makerere University Law School jointly. The second application, **Foundation for Human Rights Initiative & Ors, (MA No. 3 of 2016)**, was brought by Civil Society organizations. Court allowed **Miscellaneous Application No.**

02 of 2016 and dismissed **Miscellaneous Application No. 3 of 2016**. The Makerere University lecturers filed their amicus brief on the 17th of March 2016 which was copied to the parties.

- 5 The hearing of the petition commenced on 14th March, 2016 and ended on 19th March, 2016. Article 104 of the Constitution and Section 58 of the PEA require that the petition must be inquired into and determined expeditiously and the Court must declare its findings not later than thirty days from the date of
10 filing the petition. The Judgment was thus set to be delivered on 31st March 2016.

In accordance with the Presidential elections (Election Petitions) Rules 1996, the parties filed affidavit evidence in support of each party's case. Furthermore, the chairman of the
15 Commission, Engineer Dr. Badru Kiggundu was cross-examined by the Petitioner's counsel. Although the Petitioner stated in his affidavit that he had annexed documents set out in a list mentioned as Annexure 'A' as well as copies of Election Observers Reports, that was not the case. These affidavits
20 were in fact never filed in Court, nor were the Election Observer Reports. The Petitioner however, filed other affidavits on or about the 10th of March 2016.

At the pre-hearing conference, the parties agreed on the following facts:

1. *That there was a Presidential election conducted by the Commission on the 18th February, 2016.*

2. *That on 20th February 2016, the 1st Respondent was declared as validly elected president with 5,617,503 votes representing 60.75% of the valid votes cast.*

3. *That on the 20th February 2016, the Petitioner was declared to have polled 132,574 votes representing 1.43% of the valid votes cast.*

The agreed issues were:

1. *Whether there was noncompliance with the provisions of the PEA and Electoral Commission Act, in the conduct of the 2016 Presidential election.*

2. *Whether the said election was not conducted in accordance with the principles laid down in the PEA, and the Electoral Commission Act.*

3. *Whether if either issue 1 and 2 or both are answered in the affirmative, such noncompliance with the said laws and the principles affected the results of the elections in a substantial manner.*

4. *Whether the alleged illegal practices or any electoral offences in the petition under the Presidential election*

Act, were committed by the 1st Respondent personally, or by his agents with his knowledge and consent or approval.

5 5. *Whether the Attorney General (AG) was correctly added as a respondent in this election petition.*

6. *Whether the Petitioner is entitled to any of the reliefs sought.*

Representation

At the hearing, the Petitioner was represented by learned
10 Counsel Mohamed Mbabazi, Michael Akampurira, Asuman Basalirwa, Severino Twinobusingye and Jude Byamukama. The 1st Respondent was represented by learned Counsel Didas Nkurunziza, Ebert Byenkya, Kiryowa Kiwanuka, Joseph Matsiko, Edwin Karugire, Barnabas Tumusingize and 30 others.

15 The Commission was represented by learned Counsel Enos Tumusiime, MacDusman Kabega, Elison Karuhanga, Okello Oryem, Enoch Barata, Eric Sabiti, Tom Magezi and Ivan Kyateka.

The learned Deputy Attorney General, Hon. Mwesigwa
20 Rukutana led the team of learned Counsel for the Attorney General which comprised of the learned Solicitor General Mr Francis Atoke, learned Counsel Martin Mwambutsya, Phillip

Mwaka, George Karemera, Elisha Bafirawala, Patricia Mutesi and Jackie Amusugut.

5 **Mandate of the Court**

Counsel for the Petitioner, took issue with the trial mode of presenting evidence by way of affidavit, arguing that this procedure limits the Court's role of making a thorough inquiry.

10 In support of his argument, counsel relied on the dissenting decision of Kanyeihamba, JSC, in **Kizza Besigye vs. Yoweri Museveni and Another, Presidential election Petition No.1 of 2006** where the learned Justice *inter alia* stated that:

15 **It is clear that the only respective purposes of Articles 103 (9) and 104 (9) are to empower Parliament to make laws and rules of procedure for the election and assumption of office of the President and the grounds for upholding or annulment of such an election.**

20 **Parliament is not empowered to convert the said inquiry into a trial or limit the powers of the Supreme Court from considering and taking into account any evidence touching**

on the election of the President that may assist the Court in coming to the right decision. It is my view therefore, that this Court's duty is to conduct an inquiry into the allegations contained in the petition and, after due consideration, declare its findings, give reasons thereof and make appropriate orders, if any. There is no provision in the Constitution for a trial and judgment by this Court. The inquiry meant in the Constitution is radically different from an ordinary trial whether of a criminal, civil or administrative nature.

Counsel argued that the procedure envisaged by the Constitution for the purpose of handling a Presidential election Petition is in the form of a Commission of Inquiry and that consequently the burden of presenting evidence before Court does not lie squarely on the Petitioner. It was further contended that the essence of the envisaged inquiry would be that the Court has the discretion to require particular evidence to be brought before it even if neither the Petitioner nor the Respondent are complaining about an issue.

Analysis by the Court

In considering the legal framework for dealing with a Presidential election Petition, the starting point is Article 104 of

the Constitution. An analysis of the clauses of this Article is necessary to appreciate the mandate of the Court.

Clause (1) states as follows:

5 **Subject to the provisions of this article, any aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission elected as President was not validly elected.**

10 The first point to note here is that this clause is subjected to the other clauses of the Article. Secondly, we note that inherent in the provision are two competing interests. That of the aggrieved candidate and that of the candidate declared as elected President. Following from this, it would appear that whatever the Supreme Court does, it must bear in mind the provisions of Articles 28 and 44 of the Constitution with regard to the fundamental right to fair hearing. Thirdly, the Supreme Court is being petitioned for an order that the candidate was not validly elected. To be able to make that order in a fair manner, the candidate declared elected must be given an opportunity to be heard.

20 Clause 2 of Article 104 stipulates that the petition must be lodged in the Registry of the Supreme Court within ten days after the declaration of the election results.

Clause 3 states:

25 **The Supreme Court shall inquire into and determine the petition expeditiously and**

shall declare its findings not later than thirty days from the date the Petition is filed. (Our emphasis).

A few points to note from this provision are:

- 5 (i) The Supreme Court must “inquire into the petition.” (Our emphasis)
- (ii) The Court must complete its inquiry within 30 days only.
- 10 (iii) The Court must not only declare its findings, it must determine the petition. The determination of the petition must, when read together with Clause one, result in the making of an order or orders.

Clause 4 is to the effect that where no petition is filed within
15 the time stipulated, or where a filed Petition is **dismissed** by the Supreme Court, the candidate declared elected is taken to be duly elected President. The point to note here is that the Supreme Court may dismiss the Petition. (Our Emphasis).

Clause 5 states:

- 20 **After due inquiry under clause (3) of this article, the Supreme Court may -**
 - (a) dismiss the petition;**

**(b) declare which candidate was validly
elected; or**

(c) annul the election

Clause 6 is to the effect that where an election is annulled, a
5 fresh election must be held within 20 days.

Clause 7 is about what would happen in the event of another
election being held and also being successfully challenged.

It must be noted that up to this point the Constitution has not
provided for the procedure by which the Supreme Court must
10 inquire into the petition.

Ordinarily when a Commission of Inquiry is set up, even a
Judicial Commission of Inquiry, the instrument setting it up will
give its mandate, terms of reference, its procedures, its
timelines and reporting mechanism.

15 It is never envisaged that a Commission of Inquiry will make
orders; normally it would make recommendations to the
appointing authority which then makes the decisions.

Here we are dealing with the Supreme Court which must not
only inquire into the matter but must also make decisions and
20 orders.

In that regard clause 9 of Article 104 is critical. It states as
follows:

Parliament shall make such laws as may be necessary for the purposes of this article, including laws for grounds of annulment and rules of procedure. (Emphasis ours)

5 Clearly the Constitution itself has not established the procedure of the Court. It has left that to Parliament.

Secondly, the Constitution has itself not established the grounds upon which an election may be annulled. It has left that to Parliament as well.

10 Therefore we must go to the law made by Parliament that deals with these matters. That law is the PEA [No.16 of 2005]. Therein under Part VIII, one finds provisions relating to “CHALLENGING PRESIDENTIAL ELECTION.”

Section 59 (1) to 59 (5) are a replication of the clauses 1 to 5
15 of Article 104 (supra).

Section 59 (6) sets out the grounds upon which a Presidential election may be annulled. It is important to set it out in full for greater appreciation:

**The election of a candidate as President
20 shall only be annulled on any of the
following grounds if proved to the
satisfaction of the Court.** (Emphasis ours)

- 5 (a) noncompliance with the provisions of this Act, if the Court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions and that the noncompliance affected the result of the election in a substantial manner; (Emphasis ours)
- 10 (b) that the candidate was at the time of his or her election not qualified or was disqualified for election as President; or
- (c) that an offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.

15 The major point to note here is the requirement that these grounds upon which an election may be annulled must be “**proved to the satisfaction of the Court.**” (Emphasis added)

20 The next question must be who proves these grounds to the satisfaction of the Court. Clearly the Court cannot prove to itself.

It would appear that the Act envisages and provides for inquiry by trial where evidence is adduced and facts proved to the satisfaction of the Court. Indeed Section 59 (8) on recount of votes cast brings out the idea of a trial when it states: “**Where**

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upon hearing a petition and before coming to a decision, the Court is satisfied that a recount is necessary and practical, it may order a recount of the votes cast.” (Emphasis added)

- 5 The same words of “hearing” an election Petition are repeated in Section 59 (9).

Section 59 (11) States: **“The Chief Justice shall, in consultation with the Attorney General, make rules providing for the conduct of Petitions under this Act”.**

- 10 These rules were made. These are the Presidential elections (Election Petitions) Rules, 2001 which were cited by the Petitioner’s counsel as part of the legal framework under which this petition was brought.

- Section 60 (1) of the Act is about witnesses in an election
15 Petition. It states:

At the trial of an election Petition-

- (a) any witness shall be summoned and
sworn in the same manner as a witness may
be summoned and sworn in civil
20 proceedings;
- (b) the Court may summon and examine any
person who in the opinion of the Court is

likely to assist the Court to arrive at an appropriate decision; and

(c) any person summoned by the Court under paragraph (b) may be cross-examined by the parties to the petition if they so wish.

(Emphasis ours)

Section 60 (2) states that: **“A witness who in the course of the trial of an election Petition willfully makes ...”**

10 From the above analysis, it is our opinion that the PEA leaves no doubt that the inquiry into a Presidential election petition by the Supreme Court is by way of trial. This, in our view, is most appropriate. Where the petition has named Respondents and accused the Respondents of committing certain misdeeds
15 including offences, the Respondents must be given a hearing as per Article 28 of the Constitution. The Court must necessarily inquire not only into the Petition but also into the responses to the petition. Since the Act requires proof of certain matters to the satisfaction of the Court, such proof
20 must be by way of evidence which the opposite party must have a right to challenge.

We now look at the rules of procedures as stipulated in the Presidential election (Election Petition) rules, 2001.

Rule 10 (1) provides for the place and time of trial by stating that: **“the trial of a petition shall be held at such time and place as the Court shall direct.”** (Our emphasis)

5 The rest of Rule 10 is about various procedures during the trial.

Rule 11 (1) states: **“A Petition shall be tried in open Court by an odd number of Justices of the Court not being less than five.”** (Emphasis added)

Rule 14 is about evidence at trial and states as follows:

10 **(1) Subject to this rule, all evidence at the trial, in favour of or against the Petition shall be by way of affidavit read in open Court.**

15 **(2) With leave of the Court, any person swearing an affidavit which is before the Court may be cross-examined by the opposite party and re-examined by the party on behalf of whom the affidavit is sworn.**

20 **(3) The Court may, of its own motion examine any witness or call and examine or recall any witness if the Court is of the opinion that the evidence of the witness is likely to assist the Court to arrive at a just decision.**

(4) A person summoned as a witness by the Court under sub rule (3) of this rule may, with leave of the Court, be cross-examined by the parties to the Petition.

5 Rule 15 is on procedure generally and states that:

Subject to the provisions of these rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and
10 **the rules made under that Act relating to the trial of a suit in the High Court, with such modification as the Court may consider necessary in the interests of justice and expedition of the proceedings.**

15 Indeed it was under this rule that the Petitioner sought and was granted by the Court, leave to amend the petition.

From the foregoing, it is clear that the law requires the Supreme Court to inquire into a Presidential election petition by way of a trial where the Parties adduce evidence and prove
20 their case. The procedure is well laid out in the PEA as well as the Rules made there under. The trial of this petition was

conducted and concluded in accordance with the above provisions of the Constitution, the PEA and established Rules of procedure.

5 It must also be pointed out that the stated position of Kanyeihamba, JSC, cited by Counsel for the Petitioner in the matter before us, as a basis for his argument that the Court should not handle the petition as a trial, was a one-judge minority view which was rejected by the others. In the same case, Odoki, CJ, had this to say on the matter:

10 **This Court is enjoined by Article 104 (1) of the Constitution to inquire into and determine the petition expeditiously. The Court is not required to make a general inquiry into the Presidential election as if it was a Commission**
15 **of Inquiry but to determine the issues and complaints raised in the petition.** (Our emphasis)

In specific reference to the opinion of Kanyeihamba, JSC, Tsekooko JSC in his dissenting judgment pronounced
20 himself on the matter thus:

... I do not share the opinion by my distinguished and learned brother, Dr. Justice

5 **Kanyeihamba, JSC that our current law provides for an inquiry rather than a normal full trial ... I am not persuaded that the use of the word “inquire” in Article 104 (3) and (5) displaces a trial as known in Court practice in this country which is adversarial in nature. Article 104 stipulates that a presidential election is to be challenged by a petition to this Court. Normally almost all forms of**
10 **petitions in Courts are tried by Courts.**

 The opinion of Tsekooko, JSC, is in line with our view that due to the competing interests of the aggrieved candidate on the one hand and the candidate declared as President Elect on the other, we must ensure that the
15 fundamental right to a fair hearing, inherent in a trial is respected.

 Earlier on in the same judgment, Tsekooko, JSC, had stated that:

20 **In this petition, we are sitting as a trial Court to exercise special jurisdiction conferred on us by Article 104 [especially clause (5) thereof]. Moreover as a trial Court we must decide the**

**petition on the basis of all evidence tendered
before us in this particular petition.**

We must also deal with the argument of counsel for the
Petitioner that a trial, as opposed to an “inquiry”, and one
5 which requires proof by affidavit evidence, limits the Court to
evidence laid before it by the parties. We opine that this
apprehension is rooted in a misinterpretation of the law since
as laid out above, both the Act and the Rules specifically
provide *inter alia* that the Court may, of its own motion
10 examine any witness or call and examine any witness if the
Court is of the opinion that the evidence of the witness is likely
to assist the Court to arrive at a just decision. Clearly the Court
is empowered to move beyond the evidence adduced by the
parties. It must however be emphasized that the power given
15 to the Court is discretionary and would necessarily only be
applied if the Court is of the view that the “additional
evidence” is likely to assist the Court in arriving at a just
decision.

We have also found it useful to consider the practice in other
20 jurisdictions where Presidential election Petitions are provided
for.

A look at several jurisdictions within the Commonwealth
reveals India’s Constitution as the only country which, like
Uganda, uses the phrase “inquiry” in the relevant provision.

Article 71 of **India's Constitution** provides:

Matters relating to, or connected with, the election of a President or Vice-President.

5 **(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.**

(2)

10 **(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.**

15 Arising from Article 71 (3), the Parliament of India enacted enabling legislation. However, as it is with Uganda's legal framework, the word inquiry is only used in the Constitution. The enabling laws and regulations use the word trial.

20 Section 14 (2) of India's Presidential and Vice Presidential Elections Act No. 31 of 1952, provides: **"The authority having jurisdiction to try an election petition shall be the Supreme Court."**

Section 15 of the same Act provides:

5 **Subject to the provisions of this part, rules made by the Supreme Court under Article 145 may regulate the form of election petition, the manner in which they are to be presented, and the procedure to be adopted.**

An interpretation of the above provisions was made by the Supreme Court of India in **Purno Agitok Sangma vs. Pranab Mukherjee Election Petition No.1 of 2012.**

10 The Court relied on Rule 34 of Order 39 of the 1996 Supreme Court Rules and *inter alia* held:

15 **The procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Supreme Court in the exercise of its original jurisdiction. The said procedure is contained in O.23 of Part III of the Rules.**

We note that Rule 34 of Order 39 of the 1996 Supreme Court Rules of India is in *pari materia* with Rule 15 of Uganda's
20 Presidential elections (Election Petitions) Rules, No. 13 of 2000.

We conclude that the use of the word “inquire” in the Constitution of India has not turned presidential election petitions into commissions of inquiry in India.

Article 140 (1) and (2) of **Kenya’s 2010 Constitution**, is to
5 the effect that the Supreme Court is to hear and determine the
petition.

Section 19 (1) & (4) of Kenya’s National Assembly Act and PEA
Cap 7 use the words **hear and determine a petition.**

Section 23 of Kenya’s National Assembly Act and PEA provide
10 for summoning of witnesses who may be examined and cross-
examined.

Article 139 (a) of Nigeria’s Constitution, is to the effect that:
**“Parliament shall make an Act in respect to questions
as to whether any person has been validly elected.”**

15 Pursuant to the above constitutional provision, Section 140 (1)
of Nigeria’s Electoral Act, 2010 provides: **“The applicable
Rules and procedure for election petitions is to be
found in the schedule to the Act.”**

Rule 54 provides that: **“The practice and procedure of the
20 Court shall be as nearly as possible, similar to the
practice and procedure of the Federal High Court in
exercise of its Civil Jurisdiction.”**

The above analysis of the law operating in other jurisdictions reveals that the practice adopted by this Court in dealing with presidential election petitions is in line with the practice elsewhere. We are unable to agree with the Petitioner's
5 submission that this Court ought to have adopted the mode of a Commission of Inquiry. If the suggested mode is to be adopted in future, then the law should be amended to specifically say so and to provide appropriate Rules of Procedure to be followed by the Court.

10 As already noted, Article 104 (3) of the Constitution directs this Court to inquire into **and** determine the petition. Two things are envisaged by the provision. First, is for the Court to make an inquiry and this involves taking evidence from the parties and witnesses. Furthermore, the Court can in exercise of its
15 discretion call any witness whose information would enable the Court reach a just and fair decision. Second, is that after the inquiry, Court is to determine the legal issues raised by the parties using the information it received during the process of inquiry. This we believe is the proper interpretation of the
20 inquiry process envisaged in the Article.

Burden of Proof

The burden of proof is the imperative or duty on a party to produce or place evidence before Court, evidence that will shift the conclusion away from the default position to one's

own position. It is the necessity of affirmatively proving a fact in dispute on an issue raised between parties in a cause.

Counsel for the Petitioner urged the Court to adopt the view that whereas it is the duty of a Petitioner to prove
5 noncompliance with the law, once that is successfully done, it should be the Respondents to prove that the noncompliance did not affect the result of the election. He argued that an act of noncompliance with the PEA should be sufficient for nullification of the election if the Respondents do not
10 “discharge the burden of proving that the noncompliance did not affect the result”.

Analysis by the Court

In dealing with this argument, we were guided by the Evidence Act. Section 101 of the Evidence Act provides that whoever
15 desires any Court to give judgment as to any legal right or liability dependent on the existence of fact which he or she asserts must prove that those facts exist and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Under Section 102 of the
20 Evidence Act it is provided that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 creates an exception to the rule established in Sections 101 and 102 and it provides thus:

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. (Our emphasis)

The PEA does not create any exception to the duty of a Petitioner to prove what he/she alleges. Inherent in Section 59 (6) is the concept ordinarily applied in law when an issue is raised between parties in a suit. An electoral cause is established much in the same way as a civil cause. The principle is coined in a Latin maxim -- *semper necessitas probandi incumbit qui agit* - the necessity of proof always lies with the person who lays a claim. The legal burden rests on the Petitioner to place **credible** evidence before Court which will satisfy the Court that the allegations made by the Petitioner are true. The burden is on the Petitioner to prove not only noncompliance with election law but also that the noncompliance affected the result of the election in a substantial manner.

It is only if **credible evidence** is brought before the Court that the burden shifts to the respondent and it becomes the respondent's responsibility to show either that there was no failure to comply with the law or that the noncompliance did not have substantial effect on the election.

In the matter before us, the Petitioner had the duty to adduce evidence to the effect that specific malpractices and irregularities occurred and furthermore that the irregularities so affected the result that the 1st Respondent cannot be said
5 to have been validly elected.

In two earlier presidential election petitions (**Kizza Besigye v Museveni Yoweri Kaguta and the Electoral Commission, 2001 and Kizza Besigye v the Electoral Commission and Yoweri Kaguta Museveni 2006**), this Court indeed held
10 that: **“the burden of proof lies on the Petitioner to prove what he asserts to the satisfaction of the Court.”**

We see no justification for departing from our earlier decisions.

A similar view was adopted by the Constitutional Court of Seychelles in the presidential petition of **Wavel John Charles Ramkalawan vs. the Electoral Commission and 2 Ors**
15 where the Court stated that:

**In an Election Petition, as in a civil case, it is the Petitioner who has to convince the Court to take action on the allegations in the
20 Petition. The legal burden remains with the Petitioner throughout. The evidential burden initially rests upon the party bearing the legal**

burden (that is the Petitioner), but as the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence (See *Halsbury's Laws*, 4th Edition, vol. 17, para. 15).

The Court further held that the evidential burden shifts constantly as a ball-game with the evidential burden as the ball which is continuously bounced to and fro between
10 contenders but that nevertheless, the burden of proof remains ultimately with the Petitioner.

The Court also cited with approval the holding of Lord Hoffman In **Re B (Children) (Fc) [2008] UKHL 35**, where he said that:

15 *If a legal rule requires a fact to be proved (a “fact in issue”), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The*
20 *fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to*

discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.

- 5 In our view, therefore, each and every element of the allegations made by the Petitioner has to be proved by him and by him alone. It is only when he has discharged that legal burden that the evidential burden shifts onto the Respondents.

Standard of Proof

- 10 What weight should the Court put on the material facts placed before it in a Presidential election Petition?

Where a Petitioner in a Presidential election Petition brings allegations of noncompliance with electoral laws against the electoral body on the one hand and allegations of electoral
15 offences and/or illegal practices against a candidate declared as the President Elect on the other, as is in the matter before us, varying standards of proof exist within the same case. For the Court to be satisfied that an electoral offense was committed, the allegation must be proved beyond reasonable
20 doubt.

On the other hand, we are aware that in many jurisdictions the standard of proof required to satisfy the Court that an Electoral Body / Commission failed to comply with electoral laws is not entirely settled. However, this Court has in two previous

decisions held that the standard of proof required is above balance of probabilities, but not beyond reasonable doubt. (See: **Kizza Besigye v Museveni Yoweri Kaguta and the Electoral Commission, 2001 and Kizza Besigye vs. the Electoral Commission and Yoweri Kaguta Museveni** 2006). In the 2001 case, all the five Justices of the Court agreed that “proved to the satisfaction of the Court” calls for a standard of proof which is higher than in ordinary suits. In the words of Odoki, CJ, “**a Court may not be satisfied if it entertains a reasonable doubt.**” The learned justice however emphasized that an election petition is not a criminal proceeding and that therefore the standard was not that required in criminal matters. In his view, if the legislature intended to provide that the standard of proof in an election petition should be beyond reasonable doubt, it would have said so.

Similarly, Oder, JSC, held that if Parliament had wanted to state that election offences should be proved on the balance of probability or beyond reasonable doubt it would have done so but when parliament stated that the allegations be proved to the satisfaction of the Court, it left it to the discretion of the Courts or judges to decide what is meant by being “**satisfied**”. The learned justice Oder, JSC, concluded that “**if the Court has reasonable doubt then the Court is not satisfied.**” He explained further that, in his view:

5 ... all that is required is that the Court must
be satisfied that alleged grounds for
annulment of an election have been proved, if
it has reasonable doubt then the Court is not
‘satisfied’. This is different from saying that
for a Court to be satisfied, proof must be made
beyond reasonable doubt.

To Tsekooko, JSC, what is required is: “... **proof so that the
trial justices are sure that on the facts before them one
party and not the other party is entitled to judgment.**”

Other African jurisdictions have also applied a standard above
balance of probabilities. In the 2013 Kenyan case of **Odinga
vs. the Independent Electoral and Boundaries
Commission and Others**, the Supreme Court was of the view
that:

20 **The threshold of proof should, in principle, be
above the balance of probability, though not
as high as beyond reasonable doubt: save that
this would not affect the normal standards
where criminal charges linked to an election,
are in question.**

In the Zambian case of **Akashambatwa Mbikusita Lewanika vs. Frederick Jacob Titus Chiluba, S.C.Z 8/EP/3/96**, five petitioners challenged the election of the respondent as President of Zambia on the ground that he was
5 not qualified to be a candidate for election as president and be elected because neither he nor his parents were citizens of Zambia by birth or by decent as required by the Constitution of Zambia.

The petitioners also alleged electoral flaws in the electoral
10 system, and asked for the avoidance of the election on the ground that it was rigged and not free and fair. One of the preliminary points which arose in the case was the standard of proof required in a presidential election petition. The Supreme Court of Zambia held that:

15 **Where the petition has been brought under constitutional provisions and would impact upon the governance of the nation and the deployment of the constitutional power and authority ... the issues raised are required to**
20 **be established to a fairly high degree of convincing clarity.**

This rather high standard of proof is also applicable in some jurisdictions within the United States of America. For example

in **Smith vs. Thomas, 121 Cal. 533, 536 (1898)**, the California Supreme Court held that “**very clear evidence**” was necessary in order to determine whether votes were proper or improper. In **Wilburn vs. Wixson, 37 Cal. App. 3d 730, 737 (Ct. App. 1974)**, the California Court of Appeals followed this principle and held that the standard is “*one of clear and convincing evidence.*” This standard was also adopted in **Stebbins vs. White, 190 Cal. App. 3d 769 (Ct. App. 1987)** where the California Court of Appeals upheld the trial Court’s use of the clear and convincing evidence standard of proof.

We also note that the California Jury Instructions define “clear and convincing evidence” as meaning “clear, explicit, and unequivocal evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.” **CAL. EVID. CODE § 502 (Deering 2016).**

Texas law states the burden of proof and standard of proof for the contestant as follows: “To overturn an election, an election contestant must demonstrate by **clear and convincing evidence** that voting irregularities materially affected the election results.” **Gonzales vs. Villarreal, 251 S.W.3d 763, 773 (Tex. Ct. App. 2008).**

The justification for a higher standard of proof than that required in an ordinary civil suit is rooted in the principle that

the more serious the consequences of a Court decision, the stronger the evidence that a Court requires in order to make a finding that an allegation has been proved. Annulment of a presidential election is a very serious matter. It is this high
5 standard of proof that this Court requires if it is to annul a presidential election.

Evidence adduced

The Petitioner relied on his Amended Petition as well as the following evidence to support his case:

- 10 (a) the Petitioner's Affidavit in Support of his Amended Petition and additional affidavit;
- (b) Sixty seven (67) Affidavits sworn in support of the Petition.
- (c) Video CDs attached to his affidavit but which his counsel
15 neither referred to in his submissions nor specifically introduced in evidence and was thus not viewed during the hearing;
- (d) Oral evidence adduced by the Petitioner through the cross examination of the Chairman of the Commission;
- 20 (e) the Election Results of all the 112 Districts of Uganda, which included the Return Forms for each respective District as at 20th February 2016, the Results Tally Sheet for each District as at 20th February 2016 and the Declaration of Result Forms for all the 28,010 Polling
25 Stations in Uganda.

We note that in both his initial and amended affidavit, the Petitioner indicated that he intended to rely on reports from Election Observers. The reports were, however, neither attached to the pleadings filed in Court nor to the copies that
5 were served on the Respondents. When counsel for the 1st Respondent brought this matter to the Court's attention, the Court directed counsel for the Petitioner to file the said attachments and also to serve the parties on the 12th of March, 2016. Following the Court directive, Counsel for the Petitioner
10 served Counsel for the 1st Respondent with the Observer Reports which he said had been inadvertently left out. The Petitioner's communication to the Respondents was copied to the Registrar of the Court. However, on March 18th 2016, before the close of the hearing of the petition, counsel for the
15 1st Respondent brought to the Court's attention the fact that they had agreed with counsel for the Petitioner for the said documents to be withdrawn. This position was confirmed by Mr. Akampurira, counsel for the Petitioner.

We further note that on the last day of the hearing, Mr.
20 Twinobusingye, counsel for the Petitioner, attempted to tender into evidence, a document he referred to as a "matrix", which he alleged would show polling stations where the total number of persons who had voted exceeded the registered voters in the said stations. Upon objection of counsel for the
25 Respondents that the matrix was based on forgeries, the Court directed counsel for the Petitioner to indicate the primary

source of the information he was presenting. On failing to do so, Counsel withdrew the said matrix.

The 1st Respondent, the Commission and the Attorney General each filed various affidavits in rebuttal of the allegations.

5 **ISSUE No.1: Whether there was noncompliance with the provisions of the PEA and ECA, in the conduct of the 2016 Presidential election.**

In our decision rendered on March 31st 2016, we made findings on several allegations by the Petitioner of
10 noncompliance with the provisions of the PEA and the ECA against the Respondents. In the following section, we examine in greater detail the law and the evidence that was adduced by the respective parties in support of and in rebuttal of the said allegations and our reasons for the findings and conclusions
15 that we reached with respect to each allegation.

(I) Illegal Nomination of the 1st Respondent

In paragraph 7 (a) of his Amended Petition, the Petitioner alleged that contrary to Sections 9 and 10 of the PEA, the Commission illegally nominated the 1st Respondent on the 3rd
20 November 2015, when he had not yet been sponsored by the National Resistance Movement (NRM) party, on whose ticket he purportedly contested.

The Respondents denied this allegation and contended that nomination was done after due compliance with the law.

Analysis by the Court

In our summary judgment, this Court made two decisions with
5 respect to this allegation. First, we held that the Commission
nominated the 1st Respondent as a Presidential candidate in
accordance with provisions of the PEA. Secondly, we held that
the allegations made by the Petitioner did not fit any of the
factors provided for by Section 11 of the PEA on which basis
10 the nomination of a person duly nominated can be invalidated.

We reached the above finding after carefully considering the
following provisions of the law; Sections 9, 10 and 11 of the
PEA and the affidavit evidence adduced by the respective
parties.

15 Section 9 of the PEA provides for sponsorship of candidates by
a political organization or political party, in material parts as
follows: **“Under the multiparty political system,
nomination of candidates may be made by a registered
political organization or political party sponsoring a
20 candidate ...”**

On the other hand, Section 10 of the PEA provides for a very
elaborate procedure for nomination of presidential candidates
and for conditions that a person aspiring to stand for
presidential elections must satisfy. For purposes of our

discussion, we shall only focus on those factors that are relevant to dispose of the Petitioner's allegation.

First of all, this section provides in subsection (1) (a) that a candidate in a presidential election shall not be nominated
5 unless he or she submits to the Commission on or before the day appointed as nomination day in relation to the election, a nomination paper, which is signed by that person, nominating him or her as a candidate. This section re-enacted a similar provision found in Article 103 (2) (a) of the Constitution. Worth
10 noting is the fact that both the Constitution and the PEA allow a candidate to submit his nominating paper even on the day of nomination.

Subsection 10 (7) of the PEA further provides that:

**Where under the multi-party political system,
15 a person is sponsored by a political organization or political party, the nomination paper shall indicate that he or she is so sponsored, stating the name and address of the political organization or political party.**

20 On the other hand, Section 10 (9) (a) of the PEA precludes a returning officer from refusing to accept any nomination paper by reason of an alleged ineligibility of the candidate sought to

be nominated, unless the ground for the alleged ineligibility appears on the nomination paper.

Lastly, subsection 11 of this Section requires the returning officer, immediately after the expiry of the nomination time, to
5 announce the name of every candidate who has been duly nominated.

We will now turn to consider Section 11 of the PEA, which provides for situations when a nomination of a presidential candidate can be declared invalid thus:

10 **11. A person shall not be regarded as duly nominated and the nomination paper of any person shall be regarded as void if—**

(a) the person's nomination paper was not signed and seconded in accordance with Section 10(1) and
15 **(2);**

(b) the nomination paper of the person was not accompanied by the list of names of registered voters as required by Section 10(1) and (3);

(c) the person has not complied with Section 10(6);

(d) the person seeking nomination was not qualified for election under Section 4; or

(e) the person seeking nomination has been duly nominated for election as a member of Parliament.

5 With the above provisions of the law in mind, we considered the affidavit evidence adduced to prove and rebut this allegation, respectively. We noted that the Petitioner solely relied on his affidavits in support of his petition to support this allegation. In paragraph 23 of the said original affidavit, he
10 averred as follows:

That I am aware that the 1st Respondent was illegally nominated as he had not yet been elected by National Resistance Movement party as flag bearer on whose ticket he contested.

15 In paragraph 6 of his additional affidavit that accompanied his Amended Affidavit, he deposed thus:

*That the Commission acted improperly and partially when he extended the nomination deadline to give the 1st Respondent more time instead of declaring the 1st Respondent's
20 nomination papers null and void thereby giving the 1st Respondent preferential treatment.*

As earlier stated, the Commission denied the Petitioner's allegation. It contended that it properly and duly nominated the 1st Respondent after he had complied with all the requirements of the law. In support of its contention, the
5 Commission adduced two affidavits sworn by its Chairperson, Engineer Badru Kiggundu, and Joshua Wamala, the head of the Election Management Department at the Commission, respectively. We examine their evidence in the following Section:

10 In paragraph 26 of his affidavit in rebuttal, Engineer Badru Kiggundu replied to paragraph 6 of the additional affidavit accompanying the Amended Petition and paragraph 23 of the original affidavit in support of the petition. He averred that the Commission duly nominated the 1st Respondent in accordance
15 with the law; that the Petitioner made no such complaint of illegal nomination to it; and that the nomination papers that the 1st Respondent presented to the Commission were valid and properly presented and accepted by the Commission.

These averments were further supported by Joshua Wamala,
20 who among others, averred in paragraph 3 of his affidavit that as the head of the Election Management Department of the Commission, his duties included supervising the nomination of Presidential candidates and the receipt, return and processing of nomination returns. Furthermore, in paragraphs 22 - 24 of
25 his affidavit, he averred that the Commission had extended the

nomination days for Presidential candidates as per the Road-map it had issued, from the 5th and 6th October 2015 to the 3rd and 4th November 2015. He explained that the extension followed the amendment of the PEA and was intended to
5 enable both the Commission and the aspiring candidates to fully comply with the provisions of the amended electoral laws. He attached a copy of the Press Statement which was issued by the Commission to this effect.

Wamala further averred that the Commission nominated
10 Presidential candidates for the 2016 election on the 3rd and 4th November 2015; that the 1st Respondent was sponsored by the National Resistance Movement Party; and that the 1st Respondent was nominated by the Commission on the 3rd November 2015, after complying with all the requirements of
15 the law. He attached a copy of the nomination form of the 1st Respondent to his affidavit.

The 1st Respondent also adduced affidavit evidence in rebuttal of the Petitioner's allegation that he had been illegally nominated through the affidavit of Justine Kasule Lumumba,
20 the Secretary General of the NRM party who in great detail explained how the process was conducted by NRM party. As we noted in our judgment, we reviewed the said affidavit where she averred that the 1st Respondent was endorsed by the NRM Delegates' Conference on 2nd November, 2016 as the

presidential candidate for the NRM party, in accordance with its Constitution.

We also considered the submissions by counsel for the Petitioner in respect of this allegation and respectfully agree
5 with counsel for the Respondents that they were based on evidence from the bar. We accordingly rejected them.

In light of the provisions of the law cited and the affidavit evidence in rebuttal adduced by both the Commission and the 1st Respondent, we found that the Petitioner had failed to
10 prove this grave allegation of the illegal nomination of the 1st Respondent. Accordingly, we found that there were no grounds on which the nomination of the 1st Respondent could be invalidated under the PEA.

(II) Illegal Extension of deadline for nomination of
15 **Presidential candidates**

This allegation is related to the preceding one we have discussed above. So, we will only address ourselves to those aspects that were not discussed before.

Under this allegation, the Petitioner alleged in paragraph 7 (b)
20 of his Amended Petition that the Commission had failed to comply with Section 11 of the PEA, when it failed to declare the 1st Respondent's nomination papers null and void. Secondly, the Petitioner alleged that the Commission instead acted improperly by extending the deadline to give the 1st

Respondent more time, after all other presidential candidates had submitted their respective documents to the Commission. The evidence is set out in paragraph 6 of his additional affidavit that accompanied the Amended Petition already
5 reproduced above.

Analysis by the Court

We made two decisions with respect to this allegation related to extension of the nomination dates. First, we held that there was no failure on the part of the Commission to comply with
10 Section 11 of the PEA, since this Section was not applicable to this allegation. Secondly, we held that Section 50 of the ECA grants powers to the Commission to extend the time for doing any act, including nomination and noncompliance on the part of the Commission had not been proven.

15 As observed earlier, we have already considered the provisions of Section 11 of the PEA, which we reproduced in the preceding Section. The contents of that Section do not require any further discussion as it is clearly evident that they do not address the issue of extending nomination days.

20 In our judgment, we relied on Section 50 of the ECA which provides as follows:

50. Special powers of the commission.

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

(2) For the avoidance of doubt, this Section applies to the whole electoral process, including all steps taken for the purposes of the election and includes nomination.

As was the case with the first allegation, we noted that beyond his own affidavit, the Petitioner did not adduce any additional affidavit evidence to support his allegation that the Commission had illegally extended deadline for nomination of
5 Presidential candidates. Furthermore, no additional evidence was adduced to prove that the extension had been made to benefit the 1st Respondent.

On the other hand, we found that the Commission, while acknowledging that it had indeed extended the deadline for
10 nomination, had given plausible reasons for the extension of the nomination days. According to Wamala's affidavit already referred to above and a copy of the Press Statement by Engineer Kiggundu, the Chairperson of the Commission attached thereto, the extension was necessitated by the late
15 passing of electoral law reforms by Parliament, the amendments to the PEA and the need for additional time to the Commission and the aspiring Presidential candidates to comply with the new amendments. The Commission had also specifically refuted the Petitioner's allegation that the
20 extension was meant to benefit the 1st Respondent as a presidential candidate. We accept this evidence since it was not controverted by the Petitioner.

As we noted in our judgment, indeed Section 50 of the ECA grants powers to the Commission to extend the time for doing
25 any act. Section 50 (2) in particular provides that the: "...

Section applies to the whole electoral process, including all steps taken for the purposes of the election which includes nomination.”

It is also worth further noting that Section 50 does not provide
5 for any conditions or criteria that the Commission should first
satisfy before it invokes its powers to extend the deadline for
doing any act. However, to ensure that there is fairness,
subsection (3) provides that: **“The Commission shall, in
exercising the special powers under this Section, inform
10 all political parties and organizations and independent
candidates of any action taken.”**

There is no complaint that the Petitioner or the other
concerned parties were not informed of the action taken.

Having carefully considered the above provisions of the law
15 and affidavit evidence of the Commission and in the absence
of evidence to support the allegations of the Petitioner, we
concluded that the Petitioner had similarly failed to prove this
allegation.

Before we take leave of this issue of nomination, we would like
20 to agree with the Court of Appeal in **Obiga Kania v Wadri
Kassiano Ezati and Anor, No 3 Of 2002** that voters or
opposing parties should be vigilant and object to irregularities
prior to elections although the law gives them an option to do
so after elections.

III. Failure by the Commission to compile the National voters register.

It was the Petitioner's case that contrary to Article 61(1) (e) of the 1995 Constitution, Section 12 (f) and 18 of the ECA, the
5 Commission abdicated its duty of properly compiling and securely maintaining the National voters register.

He further alleged that the Commission instead illegally and irregularly retired the duly compiled 2011 voters register and purported to create another one using data compiled by the
10 Ministry of Internal Affairs for purposes of issuing National Identity Cards (herein after referred to as National IDs).

There was no affidavit evidence adduced to support these allegations.

The Commission denied the allegations and asserted that a
15 National Voters Register was compiled, updated and maintained as required of the Commission. To support this assertion, the Commission relied on the affidavit of Joshua Wamala who was the Head of the Election Department of the Commission. In view of the seriousness of this allegation and
20 for a better appreciation of the response by the Commission to the said allegation, we have found it necessary to reproduce the evidence of Joshua Wamala in extenso here below. He deponed as follows:

The 2011 National Voters Register had different challenges affecting its integrity that needed to be addressed. In order to address the said challenges, the Commission made a decision to adopt full finger print biometric technology for the National voters register, the Commission submitted a proposal to the Government which had significant financial implications.

Having made the above decision to adopt a full finger print biometric technology for the national voters register, the Commission submitted a proposal to the Government which had significant financial implications.

In 2013, the Government took a decision to harmonize efforts of all government agencies that needed to carry out registration of citizens for various civic purposes.

The harmonization led to the establishment of the National security information system (NSIS), a multi sector comprising of the Ministry of Internal Affairs, the Electoral Commission, the Directorate of Citizenship and Immigration Control, Uganda Registration Service Bureau, The National Information Technology Authority and The Uganda Bureau of Statistics.

Through NSIS, government undertook the registration of all citizens under a mass enrollment exercise, which entailed citizens aged 16years and above. The registration was designed to capture varying information including bio data of

individual citizens, photographs and full finger print biometric particulars.

He further added that:

*The Commission obtained data from NSIS and after deducting
5 all persons who would be below the age of 18 years by 7th
May 2015, was able to compile a biometric register as at 31st
march 2015.*

*The Commission appointed a period for general updates of the
national voters register between 7th April 2015 - 4th May 2015
10 to allow citizens who had not enrolled under the NSIS
programme to register as voters and for those who wished to
change their voting locations to do so.*

Joshua Wamala in paragraph 21 of his affidavit further stated
that: *“That the Commission gave to all presidential candidates
15 soft copies and hard copies of the voters register before
elections.”*

Wamala’s evidence was supported by the affidavit of Jotham
Taremwa, the Public Relations Officer of the Commission since
2012 to that date. He deponed in paragraphs 3, 4 and 5 that
20 the Commission compiled and updated the register through a
series of announcements and advertisements in different
media houses.

Analysis by the Court

Article 61(1) (e) of the Constitution is to the effect that the Electoral Commission **“shall compile, maintain, revise and update the voter’s register.”**

5 Section 12 (1) (f) of the ECA provides that the Commission, for purposes of carrying out its function under chapter 5 of the Constitution and this Act has the power **“to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this Act or any other law.”**

10 Section 18 of the same Act states that:

“(1) The Commission shall compile, maintain and update on a continuing basis, a national voters register... which shall include the names of all persons entitled to vote in any national or local government election.”

15

All the above provisions emphasize the duty of the Commission in enabling all eligible voters to participate in democratic governance and determine their country’s destiny. This was the position of Odoki, CJ, in the case of **Kiiza Besigye V Electoral Commission & Yoweri Kaguta Museveni, Presidential election Petition No. 01 of 2006** at page 25, where he observed as follows:

20

... The Electoral Commission has a duty to ensure that all citizens qualified to vote

register and exercise their right to vote. The entire process of cleaning the register should be fair and transparent, and should be preceded by adequate voter education...

- 5 The evidence adduced by Commission was not rebutted or challenged by the Petitioner

It is our finding that a Biometric register was compiled as at 31st March, 2015. This was followed by a period of general updates of the national voter's register between 7th April, 2015
10 to 4th May, 2015 to allow citizens who had not enrolled under the NSIS programme to register as voters and for those who wished to change their voting locations to do so. The commission further displayed the register and invited voters to confirm their particulars as well as reporting ineligible voters.

- 15 Furthermore, there was an intensive media campaign through radio, television and news papers in all local languages inviting voters to update their data in the register. The Commission gave all presidential candidates soft copies and hard copies of the voters register before the elections.

- 20 On the issue of using data compiled by the Ministry of Internal Affairs meant for national identification purposes by the Commission to compile a national voters register, it is important to highlight that the data was compiled by the

National Identification and Registration Authority (NIRA) and not by the Ministry of Internal Affairs. The registration of citizens for national identification was carried out under The Citizenship and Immigration Control Act Cap 66 as amended.

5 The Act does not in any of its provisions provide that the data gathered by NIRA could be used for voting purposes. However the Registration of Persons Act 2015, Section 65 (2) is to the effect that the Electoral Commission may use the information contained in the register to compile, maintain, revise and
10 update the voters register. This being the latter Act, it takes precedence over the older Act.

In our evaluation of the evidence on record, we were convinced that there was no noncompliance with the provisions of the law as alleged by the Petitioner. We
15 accordingly found as follows:

Firstly, there was a National Voters Register which was compiled, up dated, displayed and used by the Commission to conduct the 2016 presidential elections.

Secondly, the Petitioner received a copy of the National Voters
20 Register in his capacity as one of the presidential candidates.

Thirdly, the allegation that the Commission used data compiled by the Ministry of Internal Affairs was not correct. The data was compiled by the National Identification and

Registration Authority, on whose governing board the Commission is a member.

Fourthly, the compilation of the National Voters Register was in compliance with the Article 61(1) (e) of the Constitution and
5 Section 18 (1) of the ECA as well as Section 65 of the Registration of Persons Act, 2015.

Fifthly, the Commission's use of data compiled by the National Identification and Registration Authority to compile the National Voters Register did not in any way negate its
10 independence which is guaranteed under the Constitution.

Lastly, the Petitioner did not adduce any evidence of any person who had been disenfranchised by the Commission's use of the new National Voters Register in the 2016 Presidential elections.

15 Consequently, we held that this allegation was not proved and it failed.

IV. Failure by the Commission to issue and use voters cards during the presidential elections resulting into disenfranchisement of voters.

20 The Petitioner alleged that contrary to **Section 30 (4) and 35 of the PEA and Section 26 of the ECA**, the Commission identified voters using the National IDs issued by NIRA instead

of voters cards issued by the Commission. This disenfranchised voters who had no National IDs.

The allegation was supported by the affidavit of Waguma Amos, a polling agent of the Petitioner at Port Bell who
5 deponed in paragraphs 5 and 6 as follows:

“5) I noticed some voters who clearly had National IDs being denied to proceed to vote by the presiding officers.

*6) Most surprisingly were individuals who turned up to vote who were not on the voter’s register which we had been given
10 which the presiding officers were using.(sic)”*

The Petitioner further alleged that contrary to Article 59 of the Constitution, the Commission’s substitution of voters cards with National IDs enabled persons below the age of 18 years to vote. He relied on the evidence of Sezibeeza Moses, a
15 registered voter at Rwoma polling station, who stated that: *“I saw a one Kato Kerab an underage vote....”*

We shall get back to the evidence of these two deponents later in the judgment.

The Commission conceded that no voters cards were issued in
20 the 2016 election and neither were they issued in the previous elections. It was however contended that Section 26 of the ECA was not couched in mandatory terms to require the

Commission to print and issue voters cards for use at each election.

5 The Commission however denied the allegation that the use of National IDs enabled under age persons to vote. It was argued that the in identifying voters, national IDs, voters roll and biometric machine were used. It was further contended that the physical voter's roll was compiled after deducting all persons below the age of 18 years and therefore no person underage was on this roll. This assertion was supported by the
10 affidavit of Dr. Kiggundu Badru in paragraphs 34 and 35 where he stated that identification of voters was done using the biometric machine, voter's roll and National IDs.

This assertion was further supported by the affidavit of Joshua Wamala in paragraph 12 of his affidavit which stated: "*That*
15 *the Commission obtained data from NSIS and after deducting all persons who would be below the age of 18 years by 7th May 2015, was able to compile a biometric register as at 31st march 2015.*"

Analysis by the Court

20 Section 26 of the ECA provides as follows: **"The Commission may design, print and control the issue of voters cards to voters whose names appear in the voters register."**

Given the flexible nature of the wording in that provision, the Commission may choose to issue voters cards or not and their absence do not amount to noncompliance with electoral laws.

5 In the instant case the Commission used National IDs as identification for voting purpose under Section 66 (2) (b) of the Registration of Persons Act. The above provision requires compulsory presentation of National IDs when one appears to vote. The Commission contended that the purpose of using IDs for voting was to eliminate electoral fraud. A similar
10 provision was interpreted in the case of **Crawford Et Al vs. Marion County Election Board, 553-US -2008**. In that case, the state of Indiana enacted a law that required every voter voting in person on the Election Day to present a photo identification issued by government. The Petitioner challenged
15 the constitutionality of the law (which is equivalent to Section 66 of the Registration of Persons Act). Court while dismissing the case held: **“the disadvantages to an individual voter caused by the use of the ID was offset by the National interest eliminating electoral fraud.”**

20 The similarity between that case and the instant case is that the compulsory use of the National IDs for voter identification was intended to eliminate electoral fraud.

We found that the use of National IDs was well intended. Furthermore, we are not satisfied with the evidence adduced
25 by Waguma Amos because it did not mention any person who

had a National ID and was denied the right to vote neither did the deponent mention any person who was not on the Register and was allowed to vote. Similarly, the evidence of Sezibeeza Moses regarding underage voting was also insufficient for
5 failure to attach proof of the voter's age.

From the foregoing, we found that the Commission had complied with the electoral laws and the Registration of Persons Act when it used the National IDs for identifying voters instead of the voters cards.

10 **(V) Use of Unreliable Biometric Voter Verification Machine (BVVK) and Failure by the Commission to Identify Voters.**

The Petitioner's case is that contrary Section 35 (1) and (2) of the PEA, the Commission failed to identify voters by their
15 respective voter's cards but instead applied unreliable, slow and suspect biometric identification machines (BVVK), there by denying legitimate voters their right to vote and creating room for persons not duly registered to vote.

He further averred that contrary to Section 30 (4) of the PEA,
20 voters were identified on polling day using national identity cards instead of voters cards. That as a result, eligible voters who did not register for the National IDs were disenfranchised.

In support of this allegation, the Petitioner relied on the affidavit of Nakafeero Monica, who was said to be his agent at

Kasangati Headquarters polling station. She deponed thus: *“At 4:00 pm, the polling agents said that the biometric machine was no longer functional and started to allow voters to vote without verification.”*

- 5 In response, the Commission admitted that each polling station was supplied with the BVVK machine to improve transparency and integrity of the process of identification of voters at the polling station; to prevent multiple voting, impersonation and to confirm or direct voters to their polling station. This
10 evidence was in the affidavit sworn by Dr Badru Kiggundu, the Chair person of the Electoral in his affidavit in support of the reply to the Amended Petition where he deponed as follows:

15 33) *That in reply to paragraph 35 and 36 of the original affidavit in support of the petition, the Commission properly compiled and updated the National Voters Register in accordance with the law and introduced a National Voters Register with biometric identifiers for the first time in Ugandan electoral history which improved the integrity of the*
20 *National Voters register and is credited for the improved and increased voter turnout. Further that all voters on the National Voters Register were properly identifiable. The biometric identification machines were efficient across the country.*

36) That each polling station was also supplied with biometric voter verification kit BVVK) whose purpose was as follows:

- 5 a) to improve the transparency and integrity of the process of identification of voters at the polling station. The BVVK was able to provide audio beep for a confirmation of the voter, display of the voter's photographs and bio data to the polling officials and the voter,
- 10 b) to prevent attempts of multiple voting.
- c) to prevent attempts of impersonation.
- d) to confirm the actual polling station of the voter i.e if the voter did not belong to that particular polling station but is a registered voter within the
- 15 district, the BVVK would re-direct the voter to his /her right polling station.

Kiggundu's affidavit was supported by the affidavit of Pontius Namugera who stated that he was the Director Technical Support Services since 2007 to that date and

20 had been the Commission's Data Administrator from 2003 to 2007. He deposed as follows:

6) That as part of a continuous improvement process, the Commission took the following

measures, among others in preparation for the 2016 general elections:

5 *a) Compiling of the National Voter's Register to capture photographic and full finger print biometric data.*

b) Introduction of the Biometric Voter's verification system. (BVVS)

c)

10 *7) That all the technologies listed above deployed in recently concluded elections were designed to enhance the efficiency and the transparency of the electoral process.*

15 *8) That in the effort to improve the credibility and accuracy of the National Voter's Register, the commission compiled and updated the National Voters register to full finger print biometrics and photographs in preparation for 2016 General elections.*

20 The Commission also relied on the affidavit of Mulekwa Leonard, its Director of Operations at the material time. He stated in his affidavit as follows:

25) To enhance the integrity of the electoral process, there was a physical voter's roll at each

polling station and in instances where the BVVK failed to work or where the voter's were unable to use the BVVK due to physical impairments, the physical photo bearing voters roll was used.

5 The Commission did not deny that the BVVK machines were dysfunctional in some areas but averred that each polling station was supplied with a hard copy of the voters roll as the basic document for identification of voters. It added that the voter identification was 3 facetted, that by:

- 10
- Use of the BVVK machine thorough verification of voter's finger prints;
 - Use of National Identity Cards; and
 - Use of the hard copy of the voters register at the polling stations.

15 This averment was supported by the affidavit of Badru Kiggundu in paragraphs 34 and 35 where he deponed as follows:

20 *34) That the biometric voter verification system (BVVS) configured to identify voters to eliminate the risk of multiple voting. Each polling station was supplied with a hard copy of the voters roll as the basic document for identification of voters registered to vote at that particular polling station.*

35) That where the BVVK did not operate, the voter was identified using the Voters Roll."

Further, this was supported by paragraphs 13 and 14 of the affidavit of Pontius Namugera who averred thus:

5 *13) That the Biometric voter verification kit did not and was not intended to replace the voter's roll but it was simply a support mechanism to enhance the integrity of electoral process and provided the avenue for biometric identification.*

10 *14) That all the time , the basis for voting during the elections was a voter's inclusion on the vote's roll, a physical copy of which was availed at each polling station and in instances where the BVVK malfunctioned or were voters were unable to use it*
15 *due to physical impairments , the physical voter's roll was used.*

Analysis by the Court

The main contention here was whether the failure of the BVVK machines disenfranchised any voter.

20 A Biometric voter verification machine is used to verify the identification of a voter which may involve finger prints or facial recognition that the particular voter standing or appearing before the presiding officer is the person whose

name and voter identification number and particulars appear on the register. **(See: Nana Addo Dankwo Akufo Addo & 2 ors vs. John Dramani Mahama & 2 ors, 2013)**

5 According to the Commission, the use of BVVK was meant to improve the integrity of the election process through authentication of the voter identity to eliminate electoral fraud through multiple voting. In Uganda, the use of BVVK was introduced under the provisions of Section 12 (1) (f) of the ECA.

10 Section 12 (1) (f) of the ECA provides that the commission shall **“... have the power to take steps to ensure that there are secure conditions necessary for the conduct of any election in accordance with this Act.”**

15 The above provision empowers the Commission to introduce biometric voter identification to enhance transparency, avoid multiple voting and generally curb election fraud. The machines worked in some polling stations but failed in others due to human errors or lack of skills to use them.

20 The respondent did not deny the fact that the system broke down in some areas as earlier seen in the affidavit of Mulekwa Leonard Russell. The Commission however disagreed with the effect of the break down as seen in the affidavits of Pontius Namugera and Mulekwa Leonard where it was emphasized that manual means of identification were used to identify

eligible voters in case of a BVVK break down. The evidence of these deponents strongly cast doubt on the credibility of Nakafeero Monica. Moreover her allegations were not corroborated by any other affidavit. We also noted further that
5 she did not adduce any proof that some voters at Kasangati were allowed to vote without identification.

In the case of **Nana Addo Dankwo Akufo Addo & 2 Ors vs. John Dramani Mahama & 2 Ors, 2013**, the Supreme Court of Ghana held that the onus is on those alleging the
10 infringement to establish it.

From the foregoing, it was our opinion that the Petitioner had not discharged the burden of proof. Court was aware that electronic technologies are rarely perfect. In the case of **Raila Odinga & 3 Ors vs. The Independent Electoral and
15 Boundaries Commission & 3 Ors 2013**, there was evidence that the use of BVVK failed to function in some polling stations. As a result the IBEC used the Voters Register as the basic document for identifying voters. The Supreme Court of Kenya refrained from invalidating the electoral process simply
20 because of the failure of machines in some polling stations.

The same position was taken in the Philippine case of **Douglass R Cagas vs. The Commission on Elections & Claude P. Bautista G.R. No. 194139, 2012** in regard to the effect of technological break down on the integrity of the
25 electoral system. In that case, the Philippine Court relied on

the case of **H. Harry L. Roque, JR and others vs. Commission on Election, 2009** and observed that:

5 ... the Court, however, will not indulge in the presumption that nothing would go wrong, that a successful automation election unmarred by fraud, violence and like irregularities would be the order of the moment on May 10, 2010. Neither will it guarantee, as it cannot guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded in them. That task belongs at first to Comelec, (equivalent to the Electoral Commission) as part of its mandate to ensure clean and peaceful elections. This independent constitutional commission, it is true, possesses extraordinary powers and enjoys a considerable latitude in the discharge of its functions. The road, however, towards successful 2010 automation elections would

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certainly be rough and bumpy. The Comelec is laboring under very tight timelines. It would accordingly need the help of all advocates of orderly and honest elections, of all men and women of goodwill, to smoothen the way and assist Comelec personnel address the fears expressed about the integrity of the system. Like anyone else, the Court would like and wish automated elections to succeed, credibly... (Emphasis ours)

We are highly persuaded by the above authorities.

In our view, the role of the Court in the circumstances would be to assess the effect of the failure on the integrity of the electoral process.

Evidence showed that some machines were indeed not efficient and some did not work at all. However, the principal document employed by the Commission to identify voters was the Voters register, not the BVVK.

There was ample evidence, in our judgment, to show that where the machines failed, those voters whose names were in the register did vote. Further, the Petitioner did not produce

evidence of people who were allegedly disenfranchised by the use of the BVVK.

For the foregoing reasons, we found that this allegation had also not been proved.

5 **(VI) Late delivery of polling materials**

The Petitioner alleged that contrary to Section 28 (a) (b) (c) of the PEA, officials of the Commission delivered voting materials late on election day and that at many polling stations, voting did not commence until 2:00 p.m., at some it was at 4:00 p.m.
10 and others at 8:30 p.m. He also alleged that at some stations voting ended after 1:00 p.m.

In paragraph II of his affidavit in support of the Amended Petition the Petitioner deposed that officials of the Commission deliberately delayed to deliver voting materials to many
15 polling stations within Kampala and Wakiso, districts where the 1st Respondent was considerably unpopular. The Petitioner relied on affidavit evidence of several deponents to support these allegations.

In reply to the Petition, the Commission, through Eng. Dr.
20 Badru Kiggundu, its Chairperson, deposed that the Commission delivered voting materials in time, save for some polling stations in two (2) out of one hundred and twelve (112) districts, to wit; Kampala and Wakiso, which had long and

regrettable delays. It was only at these polling stations that voting was extended in accordance with the law.

The minutes of the meeting (annexure E.C. 10.) indicated that a special Commission meeting was convened on 18th February 2016 at 1:00 p.m. to ameliorate the problem. This was in accordance with Section 50 (1) of the ECA already discussed in the judgment. During the meeting, it was noted with concern the late delivery of polling materials in some parts of Kampala and Wakiso Districts was due to logistical challenges. Despite the situation, the voters had been patiently waiting for the materials to arrive so as to participate in the process. It was agreed in Minute 4 that voting time for all voting stations in Kampala and Wakiso be extended from 4:00 p.m. to 7:00 p.m. and assure the voters that whoever would be in the line by that time would be able to vote until the last voter was attended to. The information was to be disseminated through a Press Release to all Media Houses and a Press Conference at the Commission was to be called. All District Returning Officers were to be informed for onward transmission of the information to the field staff. The Commission suspended election in some polling stations in both districts where violence had erupted and postponed elections until 19th February from 7:00 a.m. to 4:00 p.m. in 36 polling stations.

During cross examination of Engineer Kiggundu, he admitted that in some areas of Kampala and Wakiso voting materials

were delivered late for which he apologized. He added that through the strategies that the Commission had rolled out, the voter turn up in Kampala and Wakiso was better than the turn up registered in the 2011 Presidential elections.

- 5 Mulekwa Leonard Russel, the Director of Operations at the Commission but previously Head of Voter Education and District Registrar stated that out of 2697 Polling Stations voting was postponed in only 36 polling stations. Voting in these stations took place on 19th February, 2016 and through
10 the other remedial measures taken there was an improved voter turn up in Wakiso from 47.53% in 2011 to 53.84% in 2016 and in Kampala from 42.5% in 2011 to 51.48% in 2016.

In the 1st Respondent's reply to this allegation, he also asserted that the election was, save for some delays in
15 delivery of election materials in some polling stations in two (2) out of one hundred and twelve (112) districts, to wit Kampala and Wakiso in respect of which extension of the time was duly given by the Commission, conducted in accordance with the provisions and principles of the Constitution, the ECA
20 and the PEA

Analysis of the Court

Section 28 of the PEA provides as under:

28. Distribution of election materials

Within forty eight hours before polling 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;

(b) A statement of ballot papers supplied under paragraph (a) with the special numbers indicated in the statement; and

(c) The necessary materials for the voters to mark the ballot papers and complete the voting process.

The Commission conceded that there was a delay in delivery of voting materials in some areas in Kampala and Wakiso District. The delay was attributed to some miscalculation of the time required to implement improvements to the design in Declaration of Results Forms. The Commission convened an emergency meeting on 18th February, 2016 at 1:00 p.m. on realizing that more than six hours into the voting exercise some polling stations had not received their materials. But if the explanation for the delay is that the time the Commission took to implement improvements on the Declaration of Results Form was longer than anticipated, then the emergency

meeting held on 18th February, 2016 should have been held earlier because when they were supplying the materials, they must have realized that some materials would not be ready by the time polling stations opened at 7:00 a.m. In our opinion, 5 the measures taken during the emergency meeting were not effective because according to the evidence of Sendagire Gerald a resident of Zana, although voting started at 12:30 p.m. it ended at exactly 4:00 p.m. Further, according to Kajoro Allan, voting at his polling station started at 1:00p.m. and 10 ended at 8:00 p.m., which indicates that the messages sent out by the Commission to extend the time of voting might not have been received at all the polling stations. In our judgment, the blame for this confusion lay squarely with the Commission. Both Engineer Kiggundu and Mulekwa dwelt on 15 the statistics to indicate that in spite of the delays, the voter turn up was an improvement on the voter turn up in the previous election of 2011 and the fact that this was in some polling stations in only 2 of the 112 Districts in Uganda but that was not the issue. The Commission was simply required to 20 deliver the materials in time. The readiness of the Commission to conduct an election is an essential ingredient in delivery of a free and fair election and it is irrelevant that it is only in two Districts that delays were experienced or that the voter- turn up was an improvement on the previous elections. It was 25 imperative that the Commission availed voting materials to each and every voter in every corner of Uganda within the

time prescribed by the law and not create chaos and panic as was evidenced in the Districts of Kampala and Wakiso.

It was the Court's finding that the Commission did not comply with its duty under Section 28 of the PEA in the affected areas.

5 We accordingly held that the failure to deliver polling materials to polling stations within such close proximity to the Commission was evidence of incompetence and gross inefficiency by the electoral body.

(VII) Failure by the Commission to control polling materials.

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The Petitioner alleged that **contrary to Sections 12 (b) and (c)** of the **ECA**, the Commission failed to control the distribution of ballot boxes and ballot papers resulting in the commission of numerous election offences in that
15 unauthorized persons and or officials of the got possession of election materials and used them to stuff the ballot boxes, tick the ballot papers on behalf of voters, vote more than once and/or doctor figures in the Declaration of Results Forms and Tally Sheets.

20 The Petitioner relied on the affidavit evidence of two deponents to support his allegation.

The Commission contended that it carried out its duty of distributing ballot boxes and papers in accordance with the law

and only authorized persons handled the polling materials, Declaration of Results Forms and Tally Sheets.

This allegation encompasses several other allegations made by the Petitioner which include starting voting without opening
5 ballot boxes, pre-ticking and stuffing of ballot papers which we deal with in our subsequent discussion.

It was alleged that contrary to Section 30 (2) and (5) of the ECA , the Commission and its agents/servants allowed voting before the official polling time and allowed people to vote
10 beyond the polling time by people who were neither present at polling stations nor in the line of voters at the official hour of closing.

It was also alleged that contrary to Section 31 (8) of the ECA the Commission's agents/servants in the course of their duties,
15 allowed commencement of the poll with the pre-ticked ballot papers, ballot papers already stippled with ballot papers and without first opening the said boxes in full view of all present to ensure that they are devoid of any contents.

It was further alleged that contrary to Section 32 of the ECA
20 the Commission's agents/servants/ the presiding officers in the course of their duties and with full knowledge that some people had already voted allowed the same people to vote more than once.

Another allegation was that the Petitioner's agents and supporters were abducted and some arrested by some elements of the security forces to prevail upon them to vote for the 1st Respondent or to refrain from voting contrary to
5 Section 79 (b) of the ECA.

Lastly, the petitioner also alleged that contrary to Sections 72 (f) and (j) and 73 (b) of the PEA some of the Commission's agents/servants the presiding officers/ polling Assistants in the course of their duties ticked ballot papers in the 1st
10 Respondent's favour and later gave them to voters to put in the ballot boxes and others interfered with ballot boxes and stuffed them with already ticked ballot papers, and failed to prevent **"table voting"** in some areas such as Kiruhura District and in most areas of the cattle corridor in Uganda.

15 The Petitioner's evidence on these malpractices at polling was supported by:

Ruhangariyo Erias, a Resident of Kyangwali sub- county, Buhuka Parish Hoima District who deponed that:-

On the 16th February 2016 whilst at Kyangwali sub county Hall,
20 he was appointed to work as a Presiding officer for Presidential and Parliamentary elections 2016 to be held on the 18th February 2016 under the supervision of Matsiko Douglas, the District Returning Officer.

On 17th February 2016 at 8:00 p.m. he received a telephone call from Nelson Natumanya the sub County Supervisor who instructed him to meet him at the Sub county Headquarters immediately.

5 On reaching the Sub-county Headquarters he met Nelson Natumanya who instructed him and other Presiding officers that:-

(a) They should arrive late on 18th February 2016 to
10 preside over the elections at their respective polling stations;

(b) They were also to stop the election process at 4:00 p.m.

(c) They were not to send the Presidential and
15 Parliamentary election envelopes after the voting process.

On 18th February 2016 at 7:00 a.m., he arrived at Kyangwali Sub County to obtain voting materials which he received at 9:00 a.m. He arrived at his Polling Station at 1:30 p.m. and voting started at 2:00 p.m. He stopped voting at exactly
20 4:00p.m. despite having voters in the line. Counting ensued and results were entered in the Declarations of Results Form. The said Natumanya instructed him to tick the remaining unused ballot papers in favour of the 1st Respondent. Presidential Declaration Forms declaring Yoweri Kaguta

Museveni with the most number of valid votes. According to the Declaration Forms the results show that Abedi Bwanika obtained 01 vote, Amama Mbabazi obtained 34, Kiiza Besigye Kifefe 28, Yoweri Kaguta Museveni obtained 03 and the rest of
5 the candidates got no vote. Only candidate Museveni had an agent at the Polling Station.

Amanyire Fred, Resident of Ngogoli I village Kyangwali Parish, Kyangwali sub county, Buhanzi County, Hoima District who stated that he was appointed a Presiding officer at Buhuka
10 Primary School Polling Station. On 15th day he received a phone call from the sub county supervisor, one, Atumanya Nelson informing him of a meeting of all Presiding officers presided over by a team from President's Office on the 17th February, 2016. The meeting was to take place at the sub
15 county offices, Kyangwale, Hoima District. He attended the meeting where Atumanya Nelson, the Sub county supervisor instructed him and all the presiding officers present that on 18th day of February they were to report late at their respective polling stations and delay the election proceeding to ensure
20 that not more than half of the registered voters would be allowed to cast their votes and that in order to delay the voting process they were to verify the voters manually instead of scanning the voters verification slip with the Biometric verification kit further, they were to close the polling stations
25 at exactly 4:00p.m. and that they were not allowed to seal any

of the metallic boxes used in the polling exercise. He was given Shs 20,000/= Uganda Shillings twenty thousand only).

On the 18th February, 2016 he arrived at 7:00a.m. at the sub county Headquarters to receive the voting materials. He
5 received the materials at 9:00a.m. and proceeded to Buhuka Primary School Polling Station where voting started shortly after his arrival at 9:30 p.m. He closed the station at 4:00 p.m. He proceeded to count the votes which he entered on the Declaration of results form. He then proceeded to the sub
10 county Headquarters where Atumanya Nelson instructed him to open the ballot boxes.

He was instructed to tick four booklets containing 50 (fifty) ballots papers each in favour of the 1st Respondent and because of the presence of the Police and Military Police he
15 carried out the instructions. Thereafter, he together with the other presiding officers were locked up/or detained in the said office and instructed to fill in new presidential declaration forms indicating the 1st Respondent as the overall winner.

Abel Mucunguzi, Resident of Ngoma L.C.I Kyangwali Parish,
20 Kyangwali Sub County, Hoima District deposed that he was supervisor for Kyangwali Sub County appointed by candidate Rtd. Col. Dr. Kizza Besigye. That Kyangwali had a total number of 43 Polling Stations but the list for the post of Polling Assistants by the Commission indicated 49 Polling Stations

which created an extra six (6) polling stations for Hoima Municipality in which he did not appoint agents.

5 Mutyabule Jamil, resident of Iganga municipality, Northern Division Iganga District stated that he was a registered voter at Moonlight Polling Station (A-Z) where he was the Petitioner's agent. He arrived at the polling station at 5:00 a.m. but materials were delivered at 9:00a.m.

10 He witnessed bribery of voters by Abdul Matovu, NRM Chairman, for Nkatu Main L.C. Iganga whom he reported to the Police officers who were deployed at the Polling Station. After about 30 minutes, he was surrounded by unknown persons who beat him and later chased him away from the Polling Station. He was not able to witness the counting of votes as the Petitioner's agent.

15 Kenneth Kasule Kakande, resident of Kavule village, Kavule Parish, Katikamu sub-county, Luwero District and an appointed agent for the Petitioner at A-M Kinyogonya Barracks, Nakaseke District. He arrived at the Polling Station at 6:00 a.m. Voting materials had not been delivered. There were about 20 voters. 20 The majority of voters at the Polling Station were soldiers of the UPDF. He averred that:-

He was not allowed to sit near the presiding officer's table so as to be able to follow the process of verification of voters. He observed that the ballot box was not sealed. Voters would

open the entire cover to drop the ballot papers which according to the witness implied that subsequent voter in line could easily tell for whom the previous voter has cast his or her vote.

- 5 An individual who appeared to be a security official in civilian attire was standing close to the basin where voters would tick or place their marks on the ballot paper and he could easily tell which choice each voter had made.

There were three gentlemen at the said polling station who
10 were in charge of assisting the elderly and anyone who wanted to be assisted in the voting process.

He complained to the polling officers and suggested that each voter should choose someone in the line to assist him or her but his suggestion was roundly dismissed.

- 15 He protested to the presiding officer about these irregularities in vain.

He attempted to leave the polling stations but a gentleman who was wielding a stick ordered him to return to the Polling Station after threatening him with the stick.

- 20 The gentleman had a book where he was recording every individual who voted.

At around 3:30 p.m., around 50 youths dressed in UPDF uniform but looking to be adolescent boys below 18 years

arrived at the polling station in a single file with their commander in front.

The said commander, who had a big stick, instructed the said boys loudly to vote for President Museveni and warned them
5 that anyone who voted for another candidate would face dire consequences.

During the tallying process, a number of around 10 invalid votes were still counted in favour of candidate Museveni even though the marks were clearly covering two candidates.

10 Mikidadi Yusufu, a resident of Kibuli and a Special Police Constable attached to Old Kampala Police Station who worked as a Polling Constable at Nalukolongo Polling Station M-V . At about 2: 30 p.m. the presiding officer disappeared and returned at about 4:00 p.m. with NRM pre-ticked ballot papers
15 which he handed over to him in a note book.

At counting there were no agents/voters and he was asked to handle votes for the 1st Respondent and add to the ones he had been given.

Nkurunungi Felix Gisa, coordinator for the Petitioner's
20 campaigns in Muhanga, Bukinda County, Kabale who deposed that during the counting of votes at Nyakasiru Primary School Polling Station the Presiding officer was just announcing the name of the Candidate without showing the ballot papers to the observers.

Opposition agents were denied declaration forms by Kaijagye Bernet the Presiding officer at Nyakasiru Polling Station when requested.

5 While at the sub county headquarters on the Election Day at around 7:00 p.m. he witnessed the arrival of ballot boxes from Rutobo Trading Centre Polling Station. On arrival, the Presidential candidates' ballot box was destroyed by Assistant Returning Officer of Rukinga, one Musinguzi Ambrose and presiding officer of Rutobo.

10 That he saw the individuals open the ballot box and remove the ballot papers and declaration forms and then stuffed it with their own ballot papers and declaration forms. That this was witnessed by Mujuni Warren, Kwesiga Kenneth among others.

15 He made a lot of noise about the acts of the Assistant Returning Officer and Presiding officer. A fight then ensued resisting the said actions. The Police arrived and fired teargas and some of the people ran away. The incident was reported to the Electoral Officers in Kabale but no action was taken.

20 Around 8:00 p.m. on polling day, he witnessed the arrival of ballot boxes from Kandango Polling Station. Some of the boxes were broken and the results were not matching with what the opposition agents had reported on the declaration forms. He raised this issue but nothing was done.

Tumwijukye James deponed that he was a polling agent for the Petitioner at Buyanja (N - Z) Polling Station, Kasagama sub county, Lyantonde District. He stated that while at the polling station, he saw two men in civilian clothes with State House
5 identity cards who approached him together with Kenneth Kawunda, an NRM Polling Agent in the area and asked them to co-operate.

That the co-operation was to stuff pre-ticked ballot in favour of the 1st Respondent into ballot boxes. That they first resisted
10 but one of the men from State House threatened that he would arrest them and charge them with any offence of his choice. Due to the intimidation, they allowed the man to stuff the box with ballot papers and on counting he observed that the total number of votes was 420 and yet the registered number of
15 voters was 300.

Roy Peterson Mugasa, Resident of Kasaali East Ward Kibiito sub-county, Kabarole District, deponed that he was a coordinator of TDA Uganda and Go Forward Camp. He stated that on 18th February 2018 he went together with his family to
20 vote at Kibito Trading Centre Polling Station but they were turned away on the ground that they had already voted.

He traversed his area of jurisdiction and witnessed incidences where the presiding officers with the help of the Police turned away would be voters at Late David's compound Polling

Station, Mugoma Primary School Polling Station, and Kasunganyanja Polling station.

Wairagala Godfrey Kamba deponed that he was a registered voter at Buseta sub county Headquarters polling station, 5 Kibuku District and coordinator of the Petitioners campaigns in the District. He stated that he also participated in campaigns in the neighbouring Districts of Paliisa, Budaka and Butaleja. He stated further that during voting at Buseta Subcounty Headquarters polling station, he witnessed an elderly man 10 known as Mzee Magola Exoferi being denied to select a person of his choice to help him vote and at Natolo B Polling Station, he saw a presiding officer as Kevin Kantono directing voters whom to vote for. That about 5:30 p.m., he was called at Buseta II Subcounty Polling Station where he found that the 15 Polling Officials had chased away the Petitioner's agents and counting was proceeding in absence of the Petitioner's agents.

Mutwalibu Kakyu deponed that he was an agent of Go Forward Camp, Kibuku was deployed at Kibuku Primary School where he witnessed two ballot papers being given out and when he 20 protested to the District Police Commander he was advised to leave the matters. He went away in protest and did not sign the Declaration Results Form.

Wadala Abbas Wetaaka deponed that he was the Head of Go Forward Team, Mbale District. He stated that he led a team 25 consisting of 5 people per county to the Election Commission

for accreditation to enable them witness the arrival of voting materials to ascertain whether they had not been tampered with but they were denied accreditation. He further stated that they were also unable to witness the vote counting and
5 tallying after the voting exercise had ended.

He also stated that he saw some people had pre-ticked ballot papers in favour of the 1st Respondent. That the pre-ticking was being done at Bukonde Secondary School by NRM officials and agents of the 1st Respondent.

10 He stated that he alerted the Police who proceeded to the venue of the pre-ticking but the culprit fled on seeing them.

He also stated that when he went to Mbale Secondary School with Police and some of their supporters, they found the place guarded by soldiers who denied them access to the premises.

15 That after closure of the polling, at about 6:20pm, their Declaration of Results Forms were grabbed by some unknown people who disappeared with them.

Lokutan Alex resident of Kotido East Parish deposed that he was the supervisor of Go Forward in Kotido District. He stated
20 that on the 18th February, 2016, while at Kacheri Sub-County, he saw UPDF Soldiers mobilizing people to go and vote for the 1st Respondent. That while at the polling stations there were two soldiers, one was at the entrance and the other at the ticking basin directing voters to vote the 1st Respondent.

He stated further that the soldiers told voters that they would burn their houses. On his way to Kakuam to deliver an appointment letter and register for voters' information, he was attacked by the soldiers who confiscated the letters and tore
5 them up. He was stopped and detained at Lokiding Primary School until he released by Police officers who told him to exercise caution.

Walubuku Ali, District coordinator for the Petitioner for Kasasera Sub-County, Kibuku District. After voting at Kasasira
10 church of Uganda primary school he remained at the trading centre from where he received a call from one of his co-agents at Moru Poling station who informed him that there was a problem. On reaching there he found an army captain called Kanobero Beza with the other soldiers in UPDF uniform and
15 another person in civilian clothes ordering people at the polling station not to vote for the Petitioner but to vote the 1st Respondent. The voters were casting their votes in the presence of the said man who was in civilian clothes. Some people voted but others did not due to fear. The army officer
20 was using an ambulance with red number plate Reg. No UAS 327 X.

Katende John, a Special Police Constable attached to Old Kampala Police Station who stated that while on training in Masindi, Kabalye, the IGP instructed them to vote for the 1st
25 Respondent as a way of ensuring that they get recruited into

the Police. While at Old Kampala his bosses used to brief him and other Policemen on beating and intimidating supporters of the Petitioner which they did in areas of old Kampala Police.

5 Kasigwa Godwin Angalia, supervisor for the Petitioner campaigns Buliisa District who stated that on the 17th February 2016 at about 7:30pm while observing the arrival of the 84 black ballot boxes at the District Headquarters, he noticed that one was not sealed. It belonged to Ngwedo Polling Station.

10 On checking, it was found to contain ballot papers. He asked the DPC Buliisa to check all of them to ensure they were not pre-ticked but he refused and first closed its seal. Later at 2:00pm while meeting the District coordinator of GO-Forward and Democratic Party Chairman for Buliisa he was called by the RDC in his office where he found various security
15 personnel in a meeting. He was arrested and taken to Buliisa Police Station where he spent a night. He was released on 18/02/2016 at 9:00am and told to stay away from all polling stations.

20 That the act by Police intimidated his supporters and those of the Petitioner and due to his arrest the campaign teams were disorganized and were unable to appoint agents to observe elections at the polling stations in Buliisa.

In reply the 1st Respondent filed affidavits from the following witness:-

Nelson Natumanya , Sub County supervisor Kyangwali sub county, Hoima District, in his affidavit refuted Erias Ruhangariyo's allegation that on 17th February 2016 he called him for a meeting at the sub county Headquarters where he
5 instructed him to pick the polling materials late and not to send the presidential elections envelopes to the District Returning officer. He also denied allegations that voters who were in the line by 4:00 pm were denied to vote and that Kyenyanja Landing site received only 75 ballot papers because
10 the total number of voters at the said station is one hundred and Forty Four (144). He denies having instructed Ruhangariyo to tick any unused ballot papers in favour of the 1st Respondent and Amanyire Fred to sign any Presidential declaration forms to illegally declare the 1st Respondent as the
15 Candidate with the most votes.

As far as the evidence of Amanyire Fred is concerned, he denied having called him for a meeting at the Sub county Headquarters where he allegedly instructed him to ensure that not more than half the registered voters turn up to cast their
20 votes by delivering voting materials late and that no instructions were given to him to disregard the usage of Bio Metric verification Kit so as to delay voting or for any other purpose. He did not instruct Amanyire Fred not to share any declaration forms with the agents of the candidates and not to
25 seal any of the metallic polling boxes used in the polling exercise. He denied having given Shs.20.000= to Amanyire

and others or ordering Amanyire to open the polling metallic box and tick ballot papers in favour of the 1st Respondent. He denied that the Police and military Police compelled Amanyire Fred to tick four booklets comprising of 50 ballot papers each in favour of 1st Respondent. He denied that Amanyire and other presiding officers were locked and detained in the office of Kyangwali Sub County.

Mugyenyi Charles, registered voter at Rwemiyaga sub county polling station, Sembabule District who is also Returning officer/District Registrar, Kiruhura District electoral area with a total of 323 polling stations located in 91 parishes.

He stated that he distributed the polling materials to the 18 Sub-counties stores and each of them was guarded by Uganda Police.

He further stated that on 18.02.2016 the voting materials were delivered to all the 323 polling stations managed by the respective presiding officers together with the respective polling constables. That he did not receive any reports of voting materials having been tampered with before delivery to the polling stations.

He denied the allegation concerning pre-ticked ballot papers and stuffing at various polling stations in Kiruhura as false and that he did not receive any report of any incident of pre-ticked ballot papers or stuffed ballot boxes.

Aryaija Gracious, the returning officer, Kamuli District who deponed that he received election materials on 17.02.2016 in the presence of the candidates or their agents and other stakeholders. On the same day the materials were dispatched
5 to the various Sub- counties in the presence of the candidates or their agents or other stake holders. On 18th February 2016 the election materials were sent to different polling stations in the whole District in order for the elections to be conducted. Throughout the process, the security in Kamuli District was
10 manned by the Uganda Police Force. At all the polling stations, the officers in charge of security were unarmed Election Constables who were deployed by the Uganda Police Force and were trained by the Commission in Election security and management. There was no polling station in Kamuli
15 District where security was manned by any officer of the UPDF or Crime Preventers as alleged by Kisira Samuel and Dhamuluka Faruku.

He further stated that throughout the election he did not receive any report that any agent or supporter of the Petitioner
20 or any voter indeed was chased away or barred from taking part in the election. He did not receive any adverse report on any candidate or the 1st Respondent in particular. That on the contrary, the reports he received from the 1st Respondent sub county supervisors indicated that the election went on
25 smoothly in Kamuli district.

Kisambu Stephen, supervisor for Wankole sub-county Kamuli District who deponed that all the voting materials were received on 17.02.2016 in the presence of the candidates or their agents and other stakeholders. He dispatched all the materials to twenty one (21) Polling Stations within the sub county. That all the polling stations were manned by unarmed polling constables deployed by the Uganda Police force and trained by the Commission. There was no polling station in Wankole Sub County where security was manned by an officer of the Uganda People's Defence Forces or Crime Preventers as alleged.

He stated that he did not receive any report from Wankole Sub County of pre-ticked ballot papers in favour of any candidate or the 1st Respondent in particular being given to voters to stuff in ballot boxes. He stated further that there were no votes cast for the Petitioner that were read out as cast for the 1st Respondent. He stated that he was not aware of any Petitioner's supporter or agent who was abducted and prevented from monitoring the election in Wankole Sub County. He stated that, on the contrary, the reports he received from the Commission's Parish supervisors in Wankole Sub County indicated that the elections went on smoothly in the sub county.

Nabukenya Teddy, Returning Officer, Oyam District who deponed that there is no Sub County known as Low in Oyam

District, therefore, Patrick Gustine Olwata could not have voted from Low Primary School Polling Station. She further stated that she did not receive any report about the alleged acts of intimidation and vote rigging in Oyam District from any Polling agents, voters or candidates. She denied that general elections were conducted on the 16th of February in Oyam District but were conducted on the 18th February, 2016 like the rest of the county. She denied allegations of pre-ticking of ballot papers or even recovery of pre-ticked ballot papers from Oyam District. She stated that she did not receive any reports from any one of my polling agents being bribed or compromised by any presidential candidate or their agents as alleged. That all polling agents who were present, to the best of her knowledge, signed all the Declaration of Results Forms and were all given copies. That there were no delays by the Commission in delivering Returns to the District Tally Centre and that all Returns were received from the Polling Stations within the mandated 48 hours following the counting of ballots cast at each polling station. That the District Tally Centre, results were announced as per Sub County, parish, and polling station.

Louben Muhimbura, student at Mbarara University of Science and Technology deposed that he was the Presiding officer at Buyanja (N-Z) Pentecostal Church Polling Station, Lyantonde District. He stated that the Petitioner did not have an agent at his Polling Station at all. He refuted the claim by James

Tumwijukye in his affidavit that there was ballot stuffing or any attempt to stuff pre-ticked ballots at the station. He annexed a copy of the Declaration of Results Form to show not only that the Petitioner did not have any agent at the Polling Station but
5 also that the number of votes cast was 210 as against 300 registered voters and not four hundred and twenty (420) as claimed by James Tumwijukye.

Kirya Fred, presiding officer for Kibuku Primary School Polling Station, Kibuku Town Council, Kibuku District who stated that
10 on 18.02.2018 he received the voting materials in time and voting started at 7:00 a.m. and that only the 1st Respondent and candidate Kizza Besigye had agents at the Polling Station. He denied the allegation by Mutwalibu Kakyu that he was a Polling Agent of the Petitioner or that during the conduct of the
15 election he issued two ballot papers to any voter. At the conclusion of the counting, the candidates' agents who had introduced themselves signed the Declaration of Results Form which Mutwalibu could not sign because he had not been introduced as an agent at the said Polling Station.

20 Kwijuka Godfrey, the presiding officer Rwoma Polling Station, Kinyogoga sub-county Nakaseke District denied claims by Sezibezza Moses that he was the Petitioner's agent at the said polling station because the Petitioner did not have any agent at the said station. He denied claims by Moses Sezibezza that
25 he voted for any person or directed any one on how to vote.

He asserted that only persons who were on the voter's roll were allowed to vote.

5 Tuhaise Godwinnie, Presiding officer at Kasunganyanja Polling Station, Kabarole District who stated that the Petitioner had a polling agent known as Kaswiti Hilda and candidates Kiiza Besigye also had polling agents. In reply to Roy Peterson Mugasa's affidavit that seven eligible voters were denied to vote, she explained that although the said voters presented National Identity Cards, it was established that the names did
10 not appear in the Register and the explanation was that although the seven persons had National Identities they were at the age of 16 which did not entitle them to vote.

Joselyn Kabasinguzi, Presiding officer Kibito sub county Headquarters, Kabalore who in response to Roy Peterson
15 Mugasa's allegations that some people in possession of National Identity Cards were disallowed to vote, gave an explanation similar to that of Tuhaise Godwinnie that the six alleged voters did not appear in the voters Register although they held National Identity Cards because they obtained the
20 National Identity Cards when they were 16 years when the voting age is 18 years.

Analysis by the Court

As to the incidents in Kyangwali, Hoima District the evidence of Ruhangariyo that he together with Amanyire Fred were

instructed by the Supervisor to report for duty late is disputed by Nelson Atumanya who was the supervisor. He, together with Amanyire Fred claim that they were instructed to tick ballot papers in favour of the 1st Respondent which is denied
5 by Atumanya. In fact Amanyire Fred indicated that he pre-ticked four booklets containing 50 (fifty) ballots which would mean he stuffed 200(two hundred) votes on top of the ballots cast at the polling station. Ruhangariyo annexed a Declaration of Results Form which shows that the 1st Respondent for
10 whom he had ticked ballot papers polled only 3 (three votes) at the polling stations and the Petitioner polled 34(thirty four). The two hundred ballot papers Amanyire allegedly ticked in favour of the 1st Respondent are not reflected in his affidavit. Although he indicated that he attached a Declaration of
15 Results Form which was marked "B", none was seen on record.

On the other hand, the Commission adduced the affidavit of Matsiko Douglas, the District Returning Officer, Hoima who not only refuted allegations by Abel Mucunguzi that ungazetted six polling stations had been created by producing the list of
20 forty three polling stations but also refuted allegations by Ruhangariyo that he received seventy five ballots for Kyeyanja Landing Site Polling Station and showed a return of unused votes of 75, meaning that no votes were cast. Matsiko showed that the number of voters at the said polling station was 144
25 which showed that the Declaration of Results Form tendered by Ruhangriyo was false.

We have carefully analyzed the affidavit evidence of Erias Ruhangariyo, Amanyire Fred and Abel Mucunguzi and we find that their evidence is not credible at all to establish the malpractices alleged.

5 There was an allegation by Mutyabule Jamil that he was a Polling agent of the Petitioner at Moonlight Polling Station (A-Z) Iganga and that he was beaten and chased away from the Polling Station. The existence of the polling station is denied by the Commission and so is the appointment of Mutyabule as
10 an agent because he was not introduced to the Returning officer as required by law. The failure by the Petitioner to produce evidence of the existence of the polling station by producing Declaration of Results Forms and the failure by Mutyabule to produce a letter introducing him as an agent
15 rendered his evidence unreliable so as to prove the allegation that he was assaulted at a polling station the existence of which is disputed.

There was the affidavit of Gustine Olwata who deponed that he was a registered voter at Low Primary School Polling Station
20 which is denied by the Commission. He stated that on the 16th day of February 2016, when the general elections were held, he witnessed acts of intimidation and vote rigging orchestrated by officers of the Uganda Peoples Defence Forces, the Resident District Commissioner and District Chairman.
25 However, the date of 16th February 2016 seems to be a

typographical error because the general elections were actually held on 18th February 2016. He also claimed that on the Election Day, he saw the Resident District Commissioner who was in possession of the pre-ticked ballot papers in his car
5 (sic). This allegation was strongly refuted by Akulu Julian, the Resident District Commissioner Oyam District who deponed that on the day of voting, she was not in Oyam District but in Lira where she had gone to vote with her family. This, coupled with the evidence of Nabukenya Teddy, the Retuning officer
10 Oyam that Low Primary School Polling Station does not exist in Oyam District made the evidence of Gustine Olwata unreliable and his allegation that the Resident District Commissioner was in possession of pre-ticked ballot papers remained unverified.

Kenneth Kasule Kakande an appointed agent of the Petitioner
15 at A- M Kinyogoga Barracks Nakaseke District chronicled a number of incidents at the polling station which included an open ballot box.

He stated that he was not allowed to sit near the Presiding officer's table so as to follow the process of verification of
20 voters. He observed that the ballot box was not sealed and according to him a voter in line could tell for whom the previous voter had voted thus compromising the secrecy of the vote. He further stated that there was a security officer standing near the basin who could easily tell the choice the
25 voters were making. He complained of three gentlemen who

were assisting the elderly instead of the elderly making their own choices as to who should assist them. That there was a gentleman with a book where he was recording every individual who had voted. Then at around 3:30 p.m. about fifty youths dressed in UPDF uniform but looking to be below eighteen years arrived and their Commander instructed them to vote for the 1st Respondent.

Ideally a ballot box should have been sealed and the witness together with the twenty voters whom he found at the polling station should have ascertained as to whether the damaged box contained ballot papers. There was no such evidence and no evidence was adduced as to how a voter in a line would see how a voter in front would have voted because the ticking was being done in a basin. Therefore, we did not find that the secrecy of the ballot was compromised.

The witness also described how fifty youths who appeared to be below 18 years and were dressed in army uniform had lined up and voted, but if the polling station was in army barracks as claimed, then there was nothing to stop them from voting because there was no evidence to show that anyone of them was not eligible to vote. It was also difficult to verify that they followed their commander's instructions to vote for the 1st Respondent. In any case, the statement that they looked below 18 years was, a personal opinion and not conclusive evidence to establish the age of a person.

According to Roy Peterson Mugasa, seven eligible voters at Kasunganyanja and six at late David's compound Polling Station, Kibito were turned away because their names did not appear in the Register. He asserted that all of them were
5 holding National Identity Cards which entitled them to vote. The explanation by Tuhaise Godwinnie, the Presiding officer at Kasunyanja Polling Station and Josephine Kabasinguzi, the Presiding officer Kibito Sub- county Headquarters was that although the thirteen persons were on the National Register,
10 they were not captured on the Voters Register because they registered for National Identity Cards when they were sixteen years. However, none of the thirteen persons who were allegedly turned away swore an affidavit to explain the circumstances under which they were turned away and
15 whether or not any of them was a qualified voter. In absence of this evidence, we found the explanation of Tuhaise and Kabasinguzi plausible and our conclusion was that no eligible voter was chased away from the two polling stations.

The averment by Mikidadi Yusufu that counting of votes was
20 done in absence of the Petitioner's agents/voters is also unbelievable. At the conclusion of voting, voters and agents are allowed to remain at the polling stations to witness the counting and no reason was advanced for their desertion of the counting process.

Further, the averment of Mikidadi Yusufu that he was given pre-ticked ballot papers which he added to the ones of the 1st Respondent could not be verified by the Court and so were the allegations by Nkurunungi Felix that a ballot box from Rutobo Trading Centre was destroyed by the Assistant Returning Officer, Rukiga and the presiding officer, Rutobo. We also found no credibility in the assertion of Nkurunungi that ballot papers and Declaration of Result Forms were removed from a ballot box and substituted with others. If as he alleged, the result from the various polling stations were not matching with the ones the opposition agents had filled on the Declaration of Results Forms, he should have adduced evidence of the Declaration of Results Forms in possession of the opposition agents to demonstrate the discrepancies.

Lastly on this allegation, we found that the claim by James Tumwijukye that he was forced to stuff pre-ticked ballot papers which inflated the figure of the votes at the polling station by one hundred and twenty votes is incredible. During the trial the Petitioner's counsel attempted to introduce a matrix which indicated that a number of polling stations where the number of votes declared had exceeded the registered voters. Upon being challenged on the authenticity of the figures shown in the matrix of the particular polling station, all the Petitioner's counsel had to do was to produce the Declaration of Results Forms showing the excess votes. His failure to do so rendered this evidence worthless to the conclusion on this point.

(VIII) Voting before and after Polling Time.

The Petitioner alleged that **contrary to Section 30 (2) and (5) of the PEA**, the Commission allowed voting before the official polling time. The Petitioner did not adduce any
5 evidence to support this allegation.

The Petitioner further alleged that **contrary to Section 30 (2) and (5) of the PEA**, the Commission allowed voting beyond the official polling time by people who were neither present at the polling stations nor in the line of voters at the
10 official hour of closing. The Petitioner relied on his affidavit to support this allegation.

Leonard Mulekwa explained the circumstances under which polling time was extended especially in the Districts of Kampala and Wakiso which have already been discussed.

15 The Commission contended that the Petitioner had not adduced any credible evidence of voting before official polling time. It was further asserted that all voting after polling time was a deliberate measure taken by the Commission in accordance with **Section 50 of the ECA** to mitigate the effect
20 of late delivery of polling materials at the affected polling stations. The second respondent relied on the affidavits of its chairman and of other officials.

Analysis by the Court

The Petitioner is the one who asserted that there was polling before and after polling time, but there was no other evidence as to the circumstances under which voters voted outside the time allowed by the law except for those places where the
5 Chairman of the Commission explained the circumstances under which he extended voting to enable voters where voting material had been supplied late to vote.

On that basis, and given the vague nature of the allegation, we found no cogent evidence of noncompliance.

10 **(IX) Multiple Voting**

The Petitioner alleged that contrary to Section 32 of the PEA, the Presiding officers in the course of their duties allowed some voters who had already voted to vote more than once.

The Petitioner's allegation was supported by 5 other
15 deponents. These were:

Maimuna Fere, a voter at Bombo Central Polling Station who deposed that while at Mpakawero Polling Station which is next to Land Force Quarters, she saw three truckloads of soldiers entering the barracks. The soldiers later joined the line to vote
20 at Mpakawero Polling Station and she heard them saying that they had already voted but that they were at the polling station to re- vote. She asked one of the soldiers how they could re- vote even after getting the ink mark on the right thumb mark and he told her that they had been availed with a

substance to erase the mark. The soldier told her that they were going to vote more than ten times. She met a friend who was a soldier who informed her that she had already voted at Gagama Mosque Polling Station and she was going to re-vote
5 using her voter's card at Bombo Central Polling Station. She witnessed her friend voting a second time.

Kisira Samuel, a resident of Wankole sub county, Kamuli District and Co-ordinator of Democratic Alliance. He deponed that he had traversed a number of polling stations where army
10 men were chasing voters. He stated that when he went to cast his vote, he was issued with two ballot papers and on checking, he discovered that they had been pre-ticked in favour of the 1st Respondent.

Sezibeza Moses, a resident of Luwero and an agent for the
15 Petitioner at Rwoma Polling Station who stated that he observed that one Tindyombire James was telling people to vote for the 1st Respondent and was removing them from the line and taking them to the Presiding officer and asking him to issue them with multiple ballot papers to tick in favour of the
20 1st Respondent. He stated that he also saw a Presiding officer ticking votes for the illiterate and ordering them to merely place them in the boxes.

He further stated that he saw one Kato Kerab an underage voter at the said Polling Station. That he saw a Policeman who
25 had been given a ballot paper to vote at the station by the

Presiding officer and yet he was not a voter. He stated that although he protested, the said ballot paper was not cancelled but was instead given to another person to vote.

5 Wahabu Nabasabangi, Resident of Namwendwa Ward, Kibuku District and Chairman of NRM of the ward stated that he was at Namwendwa Borehole where he had voted when he was told that there was chaos at Kibuku Primary school. He proceeded to the polling station. He found when the agents were asking the Presiding officer why he was issuing voters
10 with two ballot papers. He asked the Police Constable to intervene but he was told that the agents were the ones causing chaos. That order was restored when the District Police Commander intervened. He also claimed that he saw a lady who had been given two ballot papers which she waved
15 while complaining that voters were being issued with two ballot papers.

Mutwalibu Kakyu, an agent of Go Forward, Kibuku deployed at Kibuku Primary School stated that he witnessed a voter being given two ballot papers and when he protested to the District
20 Police Commander, he advised him to leave the matters. That he went away in protest and did not sign the Declaration of Results Forms.

The Commission contended that the Petitioner had not adduced any credible evidence to support the alleged multiple
25 voting. It asserted that it took measures, including upgrading

of the National Voters Register to include biometrics, and introduced a Biometric Voter Verification System (**BVVS**) to enhance the transparency of the electoral process and the integrity of the result. It further averred that the (BVVS) was
5 designed to eliminate the possibility of multiple voting and that no incident of multiple voting was reported to it on polling day. It relied on affidavits of its officers.

Analysis by the Court

We considered both the Petitioner's evidence and that in
10 rebuttal. We found that the evidence of Maimuna Fere was largely hearsay because she deponed to what she was told by the various voters, one of whom allegedly told her that the soldiers ferried to the Land Forces Headquarters were going to vote more than ten times. Secondly, she stated that a friend of
15 hers allegedly told her that she had already voted but was going to vote a second time. There were 10 Polling Stations in Mpakawero Ward and the Petitioner had agents in nine of them. There was no evidence that Maimuna's friend whom she saw voting was voting the second time. There is also no
20 evidence that the soldiers who lined up to vote at Mpakawero Polling Station were not registered voters at the Polling Station which was near the Land Forces Quarters. Kisira Samuel testified that he was issued with two ballot papers but did not mention that he cast them. The evidence by Moses Sezibeza
25 that he saw voters being issued with multiple ballot papers to

tick in favour of the 1st Respondent could not also be ascertained and there was no evidence that the underage voter who was at the Polling Station actually voted. Wahabu Nsababangi claimed that he saw a woman who was issued with
5 two ballot papers protesting but this woman was not called as a witness. Mutwalibu Kakyu claimed to have seen a voter being issued with two ballot papers but the woman voter did not swear an affidavit and Kakyu himself abdicated his duty as an agent when he walked away from the Polling Station in
10 protest instead of remaining at the Station to record the malpractices that were being committed so openly as he claims.

We accordingly found no evidence of multiple voting because the allegations could not be verified, given the nature of the
15 evidence adduced before us.

(X) Allowing unauthorized persons to vote in the Presidential elections.

The Petitioner alleged that **contrary to Sections 30 (4) and
20 35 of the PEA**, the Presiding Officers in the course of their duties allowed people with no valid voters cards to vote or denied those who had cards from voting. This allegation was supported by the evidence of Waguma Amos, Roy Peterson Mugasa, Sezibeza Moses and Kasule Kakande which has
25 already been laid out in this judgment.

Waguma Amos, a resident of Railways Quarters, Port Bell Nakawa Division, who was a Polling Agent of the Petitioner at Port Bell particularly, stated that, he observed that some voters who had National IDs were denied to vote while some
5 others who were not on the voters register were allowed to vote.

Roy Peterson Mugasa, a resident of Kasaali East Ward Kibiito sub-county, Kabarole District, who was a coordinator of TDA Uganda and Go Forward Camp deponed that on 18th February
10 2018, he went with his family to vote at Kibiito Trading Centre Polling Station but they were turned away on the ground that they had already voted.

He further deponed that when he traversed his area of jurisdiction, he witnessed incidences where the Presiding
15 Officers with the help of the Police turned away would be voters at late David's compound Polling Station, Mugoma Primary School Polling Station, and Kasunganyanja Polling Station. At Kasunganyanja and the late David's compound Polling Stations in Kibito, seven and six eligible voters
20 respectively were turned away because their names did not appear in the Register. He asserted that all of them were holding National Identity Cards which entitled them to vote.

The Commission contended that no credible evidence had been adduced by the Petitioner to support this allegation as

well. It averred that only voters appearing on the National Voters Register and could be identified were allowed to vote.

Counsel for the 1st Respondent submitted that the improvements in the National Voters Register and Voter
5 identity verification technology; Biometric Voter Verification System (**BVVS**) eliminated the possibility of unauthorized voting. This was supported by affidavits of the Commission's officers.

Kwijuka Godfrey, the Presiding officer at Rwoma Polling
10 Station, Kinyogoga sub-county Nakaseke District denied claims by Sezibeza Moses that he was the Petitioner's agent at the said polling station because the Petitioner did not have any agent at the said station. He denied claims by Moses Sezibeeza that he had voted for any person or directed any
15 one on how to vote. He asserted that only persons who were on the voters roll were allowed to vote.

Tuhaise Godwinnie, Presiding Officer at Kasunganyanja Polling Station Kabarole District who stated that the Petitioner had a polling agent known as Kaswiti Hilda and candidate Kizza
20 Besigye also had agents. In reply to Roy Peterson Mugasa's affidavit that seven eligible voters were denied to vote, she explained that although the said voters had presented National Identity Cards, it was established that their names did not appear in the Register and the explanation was that although
25 the seven persons had National Identity cards at the age of 16,

that did not entitle them to vote since the voting age is 18 years.

Joselyn Kabasinguzi, Presiding Officer Kibito sub county Headquarters, Kabalore who in response to Roy Peterson
5 Mugasa's allegations deponed that some people in possession of National Identity Cards were disallowed to vote, gave an explanation similar to that of Tuhaise Godwinnie.

Analysis by the Court

The Petitioner relied on the affidavits of three persons. One of
10 the deponents was Waguma Amos who stated that he saw some individuals who had turned up at the Polling Station when they were not on the Register. He did not, however, state that those individuals voted. There was also the affidavit of Sezibeza Moses who deponed that he saw an underage
15 voter at a Polling Station but did not mention that he saw him voting. Then Kasule Kakande who said he saw around 50 youths at a Polling Station dressed in UPDF uniforms who appeared to him to be below 18 years. Apart from his own perception that they were below 18 years, there was no other
20 evidence that they were indeed below 18 years and he had not stated that their names were on the Register.

In our view, this evidence did not prove that anybody ineligible to vote was allowed to vote.

According to Roy Peterson Mugasa seven eligible voters at Kasunganyanja and six at late David's compound Polling Station, Kibito were turned away because their names did not appear in the Register. He asserted that all of them were
5 holding National Identity Cards which entitled them to vote. The explanation by Tuhaise Godwinnie, the Presiding Officer at Kasunyanja Polling Station and Josephine Kabasinguzi, the Presiding Officer Kibito Sub- county Headquarters was that although the thirteen persons were on the National Voters
10 Register, they were not captured on the Voters Register because they registered for National Identity Card when they were sixteen years. We also noted that none of the thirteen persons who were turned away had sworn any affidavit to explain the circumstances under which they were turned away
15 and whether or not any of them was a qualified voter. In absence of this evidence, we found the explanation of Tuhaise and Kabasinguzi plausible and our conclusion was is that the allegation that eligible voters were chased away from the two polling stations was not proved to the satisfaction of the Court.

20 **(XI) Denying Petitioner's Agents Information.**

The Petitioner complained that **contrary to section 48 of the PEA**, the Commission's agents or servants, in the course of their duties, denied his agents information concerning the counting and tallying process. Paragraph 15 of the Petitioner's

affidavit in support of his Amended Petition restated this allegation.

A number of affidavits were sworn in support of this allegation. Nakafeero Monica in her affidavit deposed that she was the
5 Petitioner's agent at Kasangati Headquarters polling Station L-N, and that at that polling station the polling assistant was not showing them the ballot papers as he counted them. Walusimbi Isma who was the Petitioner's campaign co-ordinator in Gayaza Parish also deposed that the Presiding
10 officer did not show them the ballot papers as he counted them.

Tumuhimbise Nzaana Desmond, the Petitioner's sector head of Kigezi Region, deposed that on polling day he travelled to Kisoro and discovered that the Petitioner's agents were not
15 allowed access to the voters register in order for them to ascertain the authenticity of the registered voters. That the Petitioner's agents in areas like Murora, Kyaahi, Kirundo and Nyakabande sub-counties were not allowed to access Declaration of Results Forms but that they were told to access
20 the copies at the sub-county headquarters after tallying votes. He further averred that when he approached the headquarters, he was told that the Declaration of Results Forms should have been accessed by the agents at the polling stations, and that he found this to be quite frustrating.

Nkurunungi Felix Gisa deponed that he was the Petitioner's campaign co-ordinator in Muhanga and Bukinda sub-county. He deponed, among other things, that during the counting of votes at Nyakasiru Polling Station, the presiding officer was
5 just announcing the name of the candidate voted without showing the ballot papers to the observers. Further, that agents were denied Declaration of Results Forms by the Presiding officer at Nyakasiru Primary School Polling Station. That when he requested for them the presiding officer told him
10 that he was unable to avail the Declaration of Results Forms as he had already put them in the ballot boxes.

Lokutan Alex deponed that he was the Petitioner's supervisor mandated to monitor the Petitioner's agents at various polling stations in Kotido District. He deponed, among other things,
15 that the Petitioner's agents were denied Declaration of Results Forms by the Presiding officers after polling.

Kenneth Kasule Kakande averred that he was the Petitioner's agent at A-M Kikonyoga Barracks in Nakaseke District. He deponed, among other things that he was not allowed to sit
20 near the Presiding officer's table in order to be able to follow the process of verification of voters.

In response, the Commission relied on the affidavit of Pontius Namugera, Director Technical Support Services of the Commission, in support of the Commission, deponed, among
25 other things, that following closure of voting at every polling

- station, ballots were publicly counted and the results entered on the Declaration of Results Forms which were signed by the presiding officer and the Candidate's agents who were present, and that a copy of the Declaration of Results Forms
- 5 was issued to each of the candidate's agent at the polling station. That a copy of the Declaration of Results Form was then sealed in a tamper evident envelope which was transported by the electoral officials to the District Tally Centres.
- 10 Joshua Wamala, who was the Head of the Commission's Election Management Department, also deponed on the procedure which was followed by the Commission's agents/servants in conducting the presidential elections.

Analysis by the Court

- 15 With regard to the complaint that the Petitioner's agent at A-M Kikonyoga barracks was not allowed to sit near the Presiding officer's table in order to follow the process of verification of voters, we formed the view that this complaint was misplaced. We believe that Presiding officers and their assistants' work
- 20 would be unduly interfered with if candidates' agents were to be allowed to crowd near the Presiding officers' tables in order to access the process of verifying voters. The fact that the witness was not allowed to come close to the table was, therefore, in our view, not a denial of information.

Concerning the complaint that presiding officers or their assistants counted ballot papers without showing agents those ballot papers and in other cases denied Declaration of Results Forms, we found that these allegations were not specifically
5 rebutted by the Commission. This is because Pontius Namugera and Joshua Wamala in their affidavits in support of the Commission's response merely explained the procedure expected to be applied during the elections and did not answer the complaints which were raised in the affidavit in support of
10 the petition concerning denial of information to the Petitioner's agents. In the absence of any evidence in rebuttal to this allegation by the Commission, the allegation must stand. We therefore found that in those specific cases mentioned, the Petitioner's agents were indeed denied access to Declaration
15 of Results Forms at the polling stations contrary to Section 48 of the PEA.

(XII) Alleged noncompliance by the Commission during the process of counting, tallying, transmission and declaration of results.

20

In our judgment, we considered and dismissed several allegations of non-compliance with the PEA that the Petitioner made, which related to the counting, tallying, transmission and declaration of results. In the following section, we will analyze
25 these allegations, the law, the evidence that was adduced

either to support or rebut these allegations and the reasons for our decisions.

1. Counting and Tallying of Election Results in the absence of Petitioner's Agents

In paragraph 25 of his petition, the Petitioner alleged that the Commission's agents/servants acted contrary to section 49 of the PEA when they allowed voting and the counting and tallying of votes in the forced absence of the Petitioner's agents.

Analysis by the Court

Section 49 of the PEA gives a right to any candidate, a candidate's agent or any voter who is present to raise any objection during the counting of the votes. The Section also obliges a presiding officer to keep a record in the report book, of every objection made by any candidate or a candidate's agent or any voter present, to any ballot paper found in the ballot box. The same section also requires the presiding officer to decide every question arising out of any such objection raised. Lastly, Section 49 (2) and (3) provide as follows:

(2) An objection recorded under sub-Section (1)

shall be numbered and a corresponding number placed on the back of the ballot paper to which it relates, and the ballot paper shall

be initialed by the presiding officer and it shall be witnessed by the polling assistants and candidates' agents.

(3) The decision of a presiding officer in respect of
5 **an objection raised under subsection (1) is**
final, subject to reversal only on recount
ordered by the court upon an election petition.

As is clearly evident from the provisions of Section 49 of the PEA, the section addresses the right of a candidate and/or his
10 or her agent to object and directs the presiding officer on what to do if such an objection is raised. The section does not, in our view, require the mandatory presence of a candidate or his/her agents during the counting of votes at a polling station. Nor does the section cover situations where a candidate and/or
15 his/her agents are denied the right to be present during the counting of votes. It therefore follows that the Petitioner wrongly cited this section in regard to the allegations he made.

The section which grants a candidate and/or his agents the right to be present during the counting of votes is Section 48
20 (3) of the PEA and it provides as follows:

A candidate is entitled to be present in person or through his or her representative or polling

agent at each polling station throughout the voting and counting of the votes and at the place of the tallying of the votes and ascertaining of the results of the poll for the purposes of safeguarding the interests of the candidate with regard to all stages of the counting or tallying processes.

We proceeded to analyze the evidence notwithstanding citing of the wrong section.

10 The Petitioner adduced evidence from 10 deponents to prove his allegations that the Commission's officials and agents had allowed the counting and tallying of election results in the absence of the Petitioner's agents. These included 2 witnesses, Mutogo Duncan and James Okello who deposed as
15 to what transpired at the National Tally Centre, Namboole; 5 Supervisors/District/sub-county Coordinators of the Petitioner in 5 Districts of Kibuku, Buliisa, Kamuli, Kalangala and Mbarara; one polling constable based at Nalukolongo, in Kampala District; and two polling agents named Mutyabule Jamil and
20 Mutwalibu Kakyu. We examine the respective evidence of these witnesses in the following section.

Starting with Mutogo, he deposed that he was appointed as Petitioner's agent at the National Tally Centre in Namboole and

that he arrived at the National Tally Centre at 6.00 p.m. on the 18th February 2016. He also deponed that the Chairman of the Commission came to the Tally Centre at around midnight and announced the results of the first provisional results for 580
5 polling stations, without availing him and other candidates' agents who were present with Declaration of Results Forms and Tally Sheets showing where the results announced were originating.

He further deponed that he and other agents present were
10 advised by the Commission that the information had been uploaded on the computers assigned to agents at the Tally Centre. He also deponed that he and other agents present demanded to be given an opportunity to see and witness on their computers and screens the results as they were coming
15 in from the Districts but that the Commission declined to respond to their complaint and proceeded to announce the 2nd provisional results in a similar manner. Lastly, in paragraph 28 of his affidavit, he deponed that he and other agents walked out of the National Tally Centre in protest, leaving behind only
20 the agents of the 1st respondent.

Okello was the second Petitioner's agent who deponed in a similar manner to the events that took place at the Namboole Tally Centre. He too deponed that he walked out of the National Tally Centre in protest, with Mutogo and others.

In rebuttal to the evidence of Mutogo and Okello, the Commission adduced evidence through its Chairperson, Dr. Badru Kiggundu. In paragraph 43 of his affidavit, he deponed that: *"all agents of all Presidential candidates present were*
5 *given all information and were allowed to be present during the polling, counting, tallying and declaration of results."*

Furthermore, in paragraph 47 of his affidavit, he also deponed as follows:

10 47. *...The process of counting, receiving, opening the envelopes containing the Declaration of Results Forms, verifying, recording, adding and validating the results, from the polling stations to the National Tally Centre, was fair and transparent and in accordance with the provisions of Section 54 of the Presidential Elections Act.*
15 *Particularly;*

20 *e) All candidates' agents were invited and granted full access to the National Tally Centre at the Mandela Stadium at Namboole where work stations were created for the viewing and verification of results by candidates' agents, the press, election observers and other stakeholders.*

25 *g)the Petitioner and all other candidates were supplied details of all results up to each polling station first by Declaration of Result Forms given to each of their agents present at each polling station and secondly on 23rd*

February 2016 when the Commission delivered to each candidate a soft and hard copy of the results.

We noted that the Petitioner's witnesses Mutogo and Okello made the decision to walk away in protest from the National Tally Centre at Namboole, after the Commission had announced the 2nd provisional results and refused to address their complaint. Since both witnesses voluntarily walked away from the National Tally Centre, their absence could not, per se, be blamed on the Commission. It therefore followed that while whatever transpired thereafter was in their absence, they were not chased from the Tally Centre.

Secondly, as we noted earlier, even if we had held that section 49 of the PEA applied to this allegation, the affidavits of the two Petitioner's agents were couched in such wide terms that the court could not know which official of the Commission they complained to, the particulars of the complaint that they made; and also whether such complaint were made in writing or orally. Since both deponents did not attach to their respective affidavits any copy of the alleged complaint they referred to in their affidavits, this court was not able to verify these Petitioner's claims and allegations.

We also wish to note that since at that stage, the Commission was engaged in national tallying, the provisions of Section 49 of the PEA which envisage the presiding officer making a note on the specific ballot papers of the contested ballots were not applicable. Lastly, we also note that under the Section, it is

envisaged that irrespective of the decision that the presiding officer makes, the counting of the votes continues to the end and such a decision can only be reversed after a court has ordered a recount in an election petition.

5 The third person the Petitioner relied on to support his allegation that the Commission allowed counting and tallying of votes in the absence of the Petitioner's agents was Wairagala Godfrey Kamba, who voted at Buseta Sub-County Headquarters Polling Station. In paragraphs 8 and 9 of his
10 affidavit, Kamba deposed to the alleged chasing of the Petitioner's agents at Musa's Borehole Polling Station in Buseta Sub-county, Kibuku District as follows:

8. *I was told by my sub-county Coordinator to rush to Musa's Borehole Polling Station.*

15 9. *When I arrived, I found that the polling officials had chased away our agents and were doing the counting themselves.*

The 1st respondent also relied on the evidence of James Mugulusi, to refute Kamba's evidence. Mugulusi, who was the
20 presiding officer of Musa's Borehole polling station in Buseta Parish, Buseta sub-county, Buseta, Kibuku District, deposed that to his knowledge, all agents of presidential candidates who were present inclusive of the Petitioner's agent, signed the declaration forms without any complaint.

As was the case with Kamba's affidavit, Mugulusi did not witness the alleged chasing away of the Petitioner's agents. He further failed to name any agent or agents who had been chased away or who told him that the Petitioner's agents had indeed been chased away. It is also odd that none of the agents who were allegedly chased away from the counting and/or tallying of votes either at the polling stations or at the District Tally Centres did not swear affidavits.

The Petitioner also adduced evidence from Muyambi Ellady, who deponed to the alleged chasing away of the Petitioner's agents in Mbarara District by the police. Muyambi averred that two of the Petitioner's polling agents were chased away from monitoring the elections by the Police at Rwebogo Polling Station on grounds that they were not agents for the 1st respondent's party. He further averred that he proceeded to other Polling Stations to carry out his duties as Supervisor for candidate Amama Mbabazi where he noticed that most of the Petitioner's agents were not at their designated stations. When he inquired as to absence of the said agents, he was informed that they had been chased away from the Polling Stations.

In rebuttal to Muyambi's evidence, the Attorney General filed an affidavit sworn by Magyezi Jafar, who was the District Police Commander of Mbarara District. Magyezi acknowledged having liaised with other security organs to provide security, protect people and property during and after the campaign

period. He however denied ever receiving any reports that the Petitioner, his supporters and campaign agents were being harassed and intimidated by the Police in Mbarara District. He deponed that there were no reports of incidents of assault,
5 arrest and detention of the Petitioner's supporters or his agents in Mbarara District during the election period. He denied police ever aiding the 1st respondent's supporters to cause disharmony, breach of peace or interference with the Petitioner's electioneering activities or being aware of or
10 receiving any reports of any such incidents reported to neither the police by the Petitioner nor his agents. He also denied ever deploying armed personnel at any polling station in Mbarara District but confirmed that he only deployed polling constables at the polling stations who were not armed with fire
15 arms. He also confirmed the deployment of Police officers outside the polling stations to keep security in accordance with the law. Lastly, he denied abducting or arresting the Petitioner's agents and supporters as alleged or receiving such a report from the Petitioner and/or his agents.

20 Apart from specifically mentioning Rwebogo Polling Station, Muyambi did not name any polling stations. Furthermore, Muyambi did not name the Petitioner's agents that were allegedly chased away either at the time of polling or at the time of counting of votes in the entire district. Although
25 Muyambi deponed in paragraph 7 of his affidavit that some agents' letters of appointment were confiscated by presiding

officers, again, he neither named any agent, presiding officer nor any polling station where this had allegedly occurred.

5 Dhamuluka Farouk, who was the Coordinator of the Go Forward Team of Kisozi Sub-county, Kamuli District is one of the few witnesses who went a step further and mentioned some specific polling stations where the Petitioner's agents were allegedly chased away by the army. These included Wankole, Buwaibule, Bugobi, Bududu and Nakato polling stations.

10 In paragraph 5 of his affidavit, he named one agent, Wilson, who along with other unnamed agents were allegedly abducted and prevented from monitoring Bugubi Polling Station. He also claimed that another agent named John who was also allegedly abducted, surfaced after elections.

15 In rebuttal to Dhamuluka's evidence, the Commission relied on several affidavits sworn by its field officials. One such official was Aryaija Gracious, the Returning Officer for Kamuli District. He deponed, among others, that he was responsible for elections in the entire District, but that he did not receive any
20 report that any agent or supporter of the Petitioner was indeed chased away or barred from taking part in the election. He further deponed that on the contrary, the reports he received from the Commission's sub-county supervisors indicated that the elections went on smoothly in Kamuli District.

In further rebuttal, the Commission also relied on evidence from its other field officer, one Kisambu Stephen, who was the supervisor for Wankole Sub County, Kamuli District. He too deponed that he did not receive any report that any agent or supporter of the Petitioner was indeed chased away or barred from taking part in the election. Rather, he deponed to having received only those Reports indicating that the elections had gone on smoothly.

Kisambu further deponed that at many of the above polling stations, the Petitioner did not have any agent. He averred that it was therefore false for Dhamuluka to state in his affidavit that the Petitioner's agents were chased away as there was no body to chase or deny access to Polling Stations. In paragraph 12 of his affidavit, he further denied any knowledge that any Petitioner's supporter or agent had been abducted and prevented from monitoring the election in Wankole Sub County.

As we noted in the case of the evidence of other district coordinators, Dhamuluka also failed to name the agents who were chased away from the polling stations he cited. Similarly, we did not get any explanation from the Petitioner why both the named as well as the unnamed agents did not swear individual affidavits detailing out the facts pertaining to their respective cases.

The Petitioner also relied on the evidence of Basaba Amuza, who was the coordinator for the Petitioner for Nawanyago Sub-county, Kamuli District. He too deponed that army men chased away campaign agents of the Petitioner, telling them
5 they were not supposed to be at the polling stations.

Basaba too failed to name the campaign agents and the Polling Stations where he allegedly witnessed this. His affidavit also lacked details of how he came to learn about this information and the reasons why those who were allegedly
10 chased away had not sworn their own affidavits.

Similarly, Mugumya Lawrence, who was a District Coordinator of the Petitioner in Kalangala District, also identified particular polling stations and Petitioner's agents who were allegedly chased away in his District.

15 Mugumya's evidence was refuted by Kisaka Samuel, who was the Presiding Officer of Mwena Polling Station, Kalangala Ward 'B', Kalangala Town Council, Kalangala District. He deponed that he did not know Mugumya Lawrence and he did not remember any person by such name as the said deponent
20 having come to Mwena Polling station in whatever capacity. He also averred that the Petitioner had his agents at the said polling station and that he counted the votes cast at the said polling station in the presence of all candidates' agents present including the agent of the Petitioner. Lastly, he
25 averred that the Petitioner's agents signed the Declaration of

Results Forms together with the agents of the other candidates with the exception of presidential candidates Baryamureeba, Biraro, Mibirizi and Kyalya, who did not have duly appointed agents at the polling station.

5 Mugumya's evidence was further rebutted by Caleb Tukaikiriza, the Resident District Commissioner of Kalangala District. He deponed that he was the Chairperson of the District Security Committee and that he had carried out his duties of coordinating with the police and other security organs
10 to ensure the smooth conduct of their duties in the District in the 2016 Presidential elections. He further deponed that he knows the area of Misouzi landing site, Lulamba Parish, Bufumbira Sub County in the said District but denied knowing the said Mugumya.

15 The RDC also denied Mugumya's allegation that soldiers, crime preventers and police allegedly went around the said village patrolling the area and beating people at about 2.00 a.m in the night before polling. He averred that he did not receive any such report in his capacity as the Chairperson of the Security
20 Committee. He maintained that Mugumya's allegations were false and that the presidential elections in Kalangala had been conducted in a very peaceful atmosphere.

We noted that Mugumya's evidence had similar short comings as those we had earlier observed in the evidence of
25 Dhamuluka and Basaba.

Besides district coordinators, the Petitioner also relied on the affidavit of SPC Mikidadi Yusuf, a police constable attached to Old Kampala Police Station. In his affidavit, he deponed that he was a polling constable at Nalukolongo polling station M-Nal.

5 He further deponed that at the time of counting the votes, there were no agents or voters at the polling station. He was then asked to handle votes for the 1st respondent and add to the ones he had been given.

The evidence of Mikidadi did not strike us as credible since
10 Polling Constables are not ordinarily expected to be handling polling materials and which polling agents have been appointed to represent the different presidential candidates. Secondly, since this polling station in question is in Kampala District which is a very highly populated area, it struck us as
15 unlikely that there would be a station where there would be no voters present at the time of counting the votes at the close of polling. Lastly, even if the witness' evidence were to be believed, it only goes to show that there were no agents of the Petitioner present at the time of counting of the votes. Since
20 the deponent did not state that he was an agent of the Petitioner, his evidence cannot explain the absence of the Petitioner's agents at the station, since he would not be privy to any information as to whether the Petitioner had ever appointed any agents at that polling station in the first place.

One of the two witnesses who deponed as the Petitioner's agent was one Mutyabule Jamil. He claimed that he was a polling agent for the Petitioner at Moonlight Polling Station in Iganga District. In paragraph 9 of his affidavit, he deponed
5 that on Election Day, while he was at the polling station, he was surrounded by unknown persons who beat him up and later chased him away from the polling station. In paragraph 10, he further deponed that as a result of his being chased away, he was not able to witness the counting of votes as the
10 Petitioner's agent.

Mutyabule's evidence was rebutted by the 1st respondent through the evidence of Muyindi Kassim, who was the presiding officer at Nkatu Main Polling Station (A-Z), Iganga District. He deponed that there is no polling station by the
15 name of Moonlight Polling Station (A-Z) as alleged by Mutyabule, but rather a polling station known as Nkatu Polling Station. He further refuted the evidence that Mutyabule was a polling agent for the Petitioner at the said polling station, and averred that all polling agents for the presidential candidates
20 had handed over to him copies of their appointment letters as polling agents before the commencement of voting. He averred that he received appointment letters of the Petitioner's agents who were Waiswa Herman and Kyamba Firo. He attached a copy of the Declaration of Results Form to
25 prove his averments and also deponed that Waiswa and

Kyamba duly witnessed the entire process of voting and counting of the votes at the station.

Mutyabule's evidence was further rebutted by ASP Nditta Nasibu Kidimu, the District Police Commander of Iganga District, which was adduced by the 3rd respondent. He deposed that he was in charge of, among others, providing security for the entire district. He confirmed the deployment of Police Constables at all polling stations on Election Day. He also refuted the Petitioner's claim that there was a polling station in Iganga District known as Moonlight Polling Station as alleged by Mutyabule. Lastly, he averred that he personally supervised security in Nkatu village where Mutyabule claims to have been an agent at one of the polling stations and claimed that there were no reports of such incidents as had been alleged by Mutyabule.

The second witness who deposed as the Petitioner's agent was Mutwalibu Kakyu. He averred that he was an agent of Go Forward Camp in Kibuku, who was deployed at Kibuku Primary School Primary Station. He deposed that he saw 2 ballot papers being given out and complained about it but there was no action taken on his complaint. He further averred that he also informed the District Police Commander about what he had witnessed, who advised him "to leave the matters". Lastly, he deposed that he then went away in protest and never signed the Declaration of Results Form.

The Commission relied on the evidence of Kirya Fred, who was the presiding officer for Kibuku Primary School Polling Station to rebut the evidence of Mutwalibu Kakyu. He averred that all candidates' agents introduced themselves to him at the commencement of polling by way of formal letters of appointment or introduction. He averred that he received letters of polling agents for the 1st respondent and Besigye, but none for the Petitioner. Based on this averment, he refuted Kakyu's claim that he was a polling agent of the Petitioner at Kibuku Primary School Polling Station. Lastly, he averred that as a result, all the other candidates' agents who introduced or identified themselves to him and were present at the end of the counting of the votes, signed the Declaration of Results Form for his polling station. However, he claimed that Kakyu was not entitled to sign any Declaration of Results Form since he was not an agent for any candidate at his polling station.

We will now turn to the evidence of the five Supervisors/District/Sub County Coordinators of the Petitioner in 5 Districts of Kibuku, Buliisa, Kamuli, Kalangala and Mbarara.

It is important to note at the onset, that although the Petitioner's evidence was drawn from five districts, the five witnesses were only able to specifically mention a total of nine polling stations where the Petitioner's agents were either allegedly chased away or denied access or abducted. The polling stations mentioned by the Coordinators were (a) Musa's

Borehole polling station in Buseta sub-county, Kibuku District; (b) Wankole, (c) Buwaibule, (d) Bugobi, (e) Bududu, (f) Nakato polling stations all in Kisozi Sub-county, Kamuli District where the Petitioner's agents were allegedly chased away by the
5 army; (g) Bugubi polling station where one Wilson, the Petitioner's agent was allegedly abducted and prevented from monitoring the polling; and (h) Mwena polling station in Kalangala District where the Petitioner's agents were allegedly chased away by the presiding officer after polling had closed
10 and therefore did not participate in the counting of votes which were cast and lastly, in (i) Buwanga Polling Station, where the Petitioner's agent, one Namugema Prossy was allegedly denied entry to the polling station by the Presiding Officer and no reason was provided to her and the Petitioner's supervisor
15 when he inquired.

The absence of agents in Buliisa was explained by the Petitioner's own evidence. According to one Kasigwa Godwin Angalia, who was both a parliamentary candidate and a District Supervisor for the Petitioner's campaigns in Buliisa
20 District, when he was arrested as a Parliamentary candidate for Buliisa County, the Petitioner's campaign team was disorganized. As a result, they were not able to appoint any agents for the Petitioner to observe elections at polling stations in Buliisa District.

25 We also reviewed the Declaration of Results Forms for at least three polling stations of Kibuku Primary School Polling Station,

Nkatu Polling Station and Musa's Borehole Polling Station, which had been mentioned by both parties. The review was intended to enable us to compare the documentary evidence and also assess the evidence of the respective parties. Our
5 findings showed that at Kibuku Primary School Polling Station, the Declaration of Results Form was signed by only agents of Besigye and the 1st respondent.

It was Mutwalibu Kakyu's evidence that he left the polling station in protest after making a complaint to the polling
10 officials and the DPC about the extra ballot papers being given to some voters and not getting any response and that he never signed the Declaration of Results Form. Given this evidence, it therefore follows that while it is true the Declaration of Results Form did not bear any signature from
15 any persons claiming to be the Petitioner's agents. However, Kyakyu's evidence shows that his absence at the time of signing the Declaration of Results Form was not because the Commission's officials had chased him away or denied him the opportunity to do so, but rather, by his having walked away
20 earlier.

In the case of Nkatu Polling Station, the Declaration of Results Form showed that actually the Petitioner, the 1st respondent as well as candidates Besigye and Byaramureeba all had agents at the polling station who signed the Declaration of
25 Results Form, while the remaining presidential candidates did not. In the case of the Petitioner, his agents were Waiswa and

Kyambu. The results also indicated that Besigye had the highest number of votes (275), followed by the 1st respondent (156) and Kyalya (12). The Petitioner is reflected as having scored only 3 votes at this station.

- 5 The rebuttal evidence that there was no polling station known as Moonlight, coupled with the evidence on the Declaration of Results Form that Waiswa and Kyamba duly signed the form as Petitioner's agents, and the fact that another candidate other than the 1st respondent scored highest at this station, all
10 pointed to a greater likelihood that the 1st respondent's version of events was more believable than that of the Petitioner.

On the other hand, the Declaration of Results Form for Musa's Borehole Polling Station showed that it is only the 1st
15 respondent who had agents at this polling station. As we noted before, we found the evidence of the Petitioner was lacking because he did not rely on the evidence of his agents who were allegedly chased away from this polling station.

We however only wish to add that during the course of hearing
20 this petition, counsel for the Petitioner attempted to tender in evidence, a matrix of other polling stations where all votes had been cast for the 1st respondent. The Petitioner's counsel however withdrew the matrix, following objections from the respondents to this evidence and a request to him to produce
25 the Declaration of Results Forms in question or to withdraw his

claims. In light of this withdrawal, we had no evidence before us that there were other polling stations where only one candidate scored all the votes or where only one candidate had agents or where no candidate had agents (if any).

5 In conclusion, we noted that the non-specific nature of the accusations made by the Petitioner and his District supervisors/coordinators with respect to the alleged counting and tallying of results in the absence of the Petitioner's agents, fell short of discharging the Petitioner's evidentiary burden in
10 respect of these allegations. Hence, we found them not proved.

2. Declaration of Results without Declaration of Results (DR) Forms

15 In paragraph 30 of his amended petition, the Petitioner alleged that the Commission illegally and unlawfully declared the 1st respondent as the winning candidate and that the said declaration was contrary to the Constitution and to Section 54 of the PEA. Under this allegation, the Petitioner contended
20 that the Returning Officer opened envelopes containing the Declaration of Results Forms and added up the number of votes cast for each candidate before he received all the envelopes and in the absence of the candidates or their agents.

25 The Petitioner also contended that the Commission, as the returning officer, announced provisional results before it

received all the Declaration of Results Forms. He contended that the announcement was a calculated scheme by the Commission to manipulate and “cook” the figures. He further contended that this made the 1st respondent to appear to be
5 in an early lead.

In our judgment, we held that the Petitioner had failed to prove the allegations against the Commission of non-compliance with Section 54 of the PEA.

In the following Section, we will highlight the respective
10 parties’ submissions on this allegation.

Analysis by the Court.

We will first dispose of the Petitioner’s contention that the Commission’s declaration of the 1st respondent as a winner of the 2016 Presidential elections was illegal, unlawful and
15 contrary to the Constitution.

Article 103 (4) of the Constitution of Uganda prohibits the declaration of any candidate as a winner in a Presidential election, unless that person has scored more than 50% of the valid votes cast at that election. On the other hand, article
20 103(7) of the same Constitution imposes a constitutional duty on the Commission (the 2nd Respondent) **“to ascertain, publish and declare in writing, under its seal, the results of the Presidential Elections within 48 hours from the close of polling.”**

In the present case, the Commission declared the 1st respondent as the winner of the 2016 Presidential elections after the Commission has ascertained that he had obtained more than 50% of the valid votes cast. The Commission also
5 made the declaration within 48 hours after closing the polling. In view of the above, we confirmed that the Commission had complied with both constitutional provisions and that the Petitioner's allegation of the Commission's alleged non-compliance with the Constitution had not been substantiated.

10 Let us now turn to the Petitioner's allegations with respect to Section 54 of the PEA. This Section provides as follows:

**(1) After all the envelopes containing the declaration of results forms have been received, the returning officer shall, in the
15 presence of the candidates or their agents or such of them as wish to be present, open the envelopes and add up the number of votes cast for each candidate as recorded on each form.**

(2) The returning officer may open the envelopes and add up the number of votes cast even though some of the

envelopes have not been received, if the candidates or the candidates' agents and a police officer not below the rank of inspector of police are present.

5 As we noted in our judgment, Section 54 (1) of the PEA provides for scenarios when a Returning Officer should open envelopes containing the Declaration of Result Forms when all the envelopes have been received. On the other hand, Section 54 (2) of the PEA allows a Returning Officer to open envelopes
10 and add up the votes even though all the envelopes have not been received, provided this is done in the presence of the candidates or their agents and a police officer not below the rank of Inspector of Police.

We noted that the Petitioner relied on the evidence of only two
15 deponents, Mutogo and Okello to support this allegation under this head.

We considered the evidence of the two witnesses in the preceding Section in this judgment. Suffice it to note that the two deponents were the Petitioner's agents at the National
20 Tally Centre at Namboole in Kampala and that each one of them deponed that they walked out of the National Tally Centre in protest after the Commission decided to announce and declare the 2nd provisional results on the night of February 18th 2016.

In rebuttal, the Commission relied on the evidence of its Chairman, Dr. Badru Kiggundu, who deponed in paragraph 45 of his affidavit that “the declaration of results was made in accordance with the provisions of Section 57 of the PEA. He
5 also averred that all the Commission’s declaration of results was properly and legally founded and lastly that the results were duly declared at all polling stations. In paragraph 47 of the same affidavit, he further deponed that “...*the process of counting, receiving, opening the envelopes containing the*
10 *Declaration of Results Forms, verifying, recording, adding and validating the results, from the polling stations to the National Tally Centre, was fair and transparent and in accordance with the provisions of Section 54 of the Presidential Elections Act.* He also admitted during cross examination, on behalf of the
15 Commission that, although the EC used the Electronic Results Transmission and Dissemination System (ERTDS) to transmit results from the District Tally Centres to the National Tally Centres, the primary source of the transmitted results was Declaration of Results Forms from polling stations.

20 The Commission further relied on the evidence of its Director of Technical Support Services, Pontius Namugera; and Joshua Wamala, the Head of the Election Management Department.

Namugera’s evidence, among other things focused on the procedure that all polling officials of the Commission were
25 required to follow after the closure of voting at every polling station. This involved public counting of the ballots and

entering the results on the Declaration of Results Forms, which were supposed to be signed by the presiding officer and the candidate's agents who were present.

On the other hand, Wamala averred that Declaration of Results
5 Forms are only available at the polling station and that they are the primary and principal document for results. He further averred that in the entire electoral process, the candidate's agent is only required to sign on the Declaration of Results Form at the polling station and not at any other stage. He also
10 explained that after the counting of the ballots was done publicly and recorded publicly on the Declaration of Results Form, the form was then transmitted to the District Tally Centre which relayed the result contained in the Declaration of Results Form. Lastly, he averred that tallying involved the
15 addition and verification of the addition of the results declared on the various Declaration of Results Forms at the polling station.

The 1st respondent also adduced evidence from Mike Sebalu, and Kasule Lumumba. Their respective evidence supported
20 the evidence adduced by the Commission in as far as what had happened at the National Tally Centre when results were transmitted from the District Tally Centre and also during the process of filling out the Declaration of Results Forms, tallying, transmission and declaration of results. Since a candidate or
25 his agents is not expected to be privy to the internal workings of the Commission, we did not rely on the evidence of the

Lumumba confirming that the Commission were in possession of Declaration of Results Forms before announcing the results of the presidential election.

5 The evidence of the Commission's three witnesses, namely Eng. Badru Kiggundu, Namugera and Wamala was also problematic in some aspects in as far as they also deposed as to what happened at each and every polling station whereas they were not present at any of the stations. However, their evidence was corroborated in material aspects by the
10 Declaration of Results Forms for almost all the polling stations that were jointly tendered into evidence by the consent of the Commission and the Petitioner. In our opinion, the very existence of these Declaration of Results Forms negates the Petitioner's claims that the Commission declared results
15 without Declaration of Results Forms.

Since the Petitioner did not adduce evidence to back up his claims that there were no Declaration of Results Forms in place at the time the Commission declared results either at the District Tally Centres or at the National Tally Centres, we had
20 no option but to dismiss his allegation.

Furthermore, the Petitioner did not adduce any evidence to show that the Declaration of Results Forms were not filled in by the presiding officers after the closing of the polling and counting of votes at the polling stations. Neither did he
25 adduce any evidence to show that when District Returning

Officers opened results envelopes before they received all the envelopes from their respective district, there was no police officer at the rank of inspector of police and above and candidates or their agents. Bearing in mind the constitutional
5 obligation imposed on the Commission to declare results within 48 hours from the end of polling and the fact that **Section 54 (2) of the PEA**, permitted opening of results envelopes before all envelopes were received, we cannot fault the decision of the returning officers, acting on behalf of the
10 Commission, to open envelopes, if they did it in accordance with the law.

It was incumbent on the Petitioner to adduce evidence to show that the returning officers did not comply with section 54 (2), but he failed to adduce the required evidence to prove it.
15 Instead, the Petitioner made an overly broad allegation which covered all polling stations in the country. In so doing, he failed to provide the respondents and this court with any specific particulars for named polling stations to enable the respondents to respond and to enable this court to fully inquire
20 into these allegations.

We must also observe that in the petition, the Petitioner demanded for the production of Declaration of Results Forms and Tally Sheets from the Commission so that he could compare the information on those documents with the
25 information on the Declaration of Results Forms he stated were in his possession. Indeed Counsel for the Petitioner

applied for production and inspection of the Declaration of Results Forms and Tally Sheets in possession of the Commission. This Court ordered for that production and inspection. Counsel for the Petitioner and their experts went to the offices of the Commission and examined the documents. Subsequently they demanded for the production of the said documents in Court, which the Court ordered. By consent of the Petitioner's counsel and the Commission's counsel, the documents were admitted into evidence. At no point did counsel for the Petitioner produce their own Declaration of Results Forms for comparison with those produced by the Commission. At no point did the Petitioner's counsel allege, let alone prove, that the documents they consented to admit in evidence were not genuine. The Petitioner totally failed to prove a vital aspect of his petition.

In the circumstances, we were left with no option but to rely on the available evidence, which was more supportive of a finding of compliance by the Commission with Section 54 of the PEA than of noncompliance as alleged by the Petitioner.

Lastly, as we noted in our judgment, the Petitioner appears not to have addressed himself to **Section 54 (2) of the PEA**. His claim therefore, in so far as it does not address **Section 54 (2) of the PEA** is misconceived.

3. Unlawful Electronic Transmission of Results from Districts to the National Tally Centre using the ERTDS

The third complaint of the Petitioner was about the Commission's electronic transmission of election results from the district Tally Centres to the National Tally Centre.

5 The Commission specifically admitted that it used the electronically transmitted results. The admission was made by Dr. Kiggundu during his cross examination in court. It was also admitted by Namugera, who deponed that while the Commission had actually started using electronic transmission during the 2011 Presidential elections, it used an improved
10 version of the ERTDS in the 2016 elections. We have therefore not found it necessary to review the Petitioner's evidence under this head.

In our judgment, we disposed of the Petitioner's two contentions under this head. First, we held that the electronic
15 transmission of the election results by the Commission, using the Electronic Results Transmission and Dissemination System (ERTDS) was not unlawful. This holding was based on the fact that neither Section 56 (2) of the PEA nor the Electronic Transactions Act, 2011 spell out or require the mode that the
20 transmission of results should take.

Secondly, we held that in the absence of specific provisions as to the mode of transmission, the Commission's electronic transmission of election results did not amount to noncompliance with **Section 56 (2) of the PEA.**

25 **Analysis by the Court**

Counsel for the Petitioner attempted to make a distinction between our law where electronic transmission is not specifically provided for and other countries such as Ghana, Philippines and Kenya, which have specific legislation
5 providing for electronic transmission.

As we noted in our judgment, while electronic transmission of results is not expressly permitted or required by our electoral law, it is not prohibited either. Both the Constitution and the ECA give the Commission power to organize and manage free
10 and fair elections. The Act does not specify any particular mode of managing the elections. The Chairman of the Commission testified that the Commission acted under that general power to introduce the use of technology in the conduct of the election and transmission of results. In that
15 regard, one must look at Section 23 of the **Interpretation Act (Cap 3)** which states as follows:

23. Implied power.

**Where any Act confers a power on any person to do or enforce the doing of any act or thing,
20 all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.**

We are of the firm view that the Commission did not breach any law in introducing the use of technology in the management of elections.

We also wish to add that in the absence of clear legislative provisions prohibiting its adoption, it would actually be unwise for this Court to bind the hands of the Commission in this digital age, and to prevent the Commission from embracing technology to improve its efficiency and effectiveness in conducting elections. It may however be desirable for Parliament to consider passing a law to regulate the use of technology in these circumstances.

We are aware of the possibilities that exist for scanned copies to be tampered with either before, during or after the process of transmission. We noted the evidence adduced by Pontius Namugera, on behalf of the Commission with regard to security, safeguards the Commission put in place during the process of transmission. In paragraph 19 (l), (m) and (n) of his affidavit, he averred that the captured results for each polling station were electronically transmitted through a secure private network and that the data was encrypted by the system before it was transmitted to safeguard its integrity. Furthermore, Namugera deposed that after the results had been captured and encrypted at the District Tally Centre and transmitted to the National Tally Centre, the ERTDS automatically consolidated these results to provide summaries

at National Level, District Level, Sub county Level, Parish level and for each polling station.

On the other hand, as we observed earlier in our judgment, the Petitioner failed to produce in Court those Declaration of Results Forms he claimed were in his possession. The production of these Forms would have enabled us review them and establish discrepancies, if any, with the results that were declared and tendered in by the Commission. In the absence of such evidence, the Court had no basis upon which it could assess the merit of his allegations of possible or actual tampering with the election results during the process of electronic transmission.

4. Illegal and Unlawful Declaration of 1st Respondent as winner of the Presidential Election without District Returns and District Tally Sheets

In paragraph 31 of his amended petition, the Petitioner alleged that the Commission illegally and unlawfully declared the 1st respondent winner when the Commission did not have in its possession the Declaration of Results Forms together with the District Returns and Tally Sheets.

We held that the results that were declared by the Commission on 20th February 2016 were based on Tally Sheets and Returns submitted by returning officers from the 112 Districts as at 20th February 2016. We also found by the time of declaring the 1st respondent the winner, the Commission had already received

results for 26, 223 out of 28,010 polling stations, which indicated that the Commission had complied with **Section 56 of the PEA**.

Analysis by the Court

5 We will start with reviewing the allegation of the absence and/or non-receipt of the Declaration of Results Forms at the National Tally Centre at the time the Commission declared the 1st respondent as a winner. The Petitioner contended that this was contrary to Section 56 (2) of the PEA and that the
10 declaration was unlawful because the Commission did not have at its National Tally Centre, among others, the original Declaration of Results Forms.

We evaluated this contention and also found no merit in it. The evidence adduced by the Commission through the affidavits of
15 Pontius Namugera and Eng. Dr. Badru Kiggundu was that the results which were electronically transmitted to the National Tally Centre were from scanned copies of the original Declaration of Results Forms which had been received at the respective Districts.

20 On the other hand, the Petitioner did not adduce Declaration of Results Forms he claimed were in his possession or any other evidence to show that the scanned results had been tampered with or doctored.

Lastly, our decision was premised on the fact that we did not
25 find anything to support the Petitioner's interpretation that

Section 56 (2) of the PEA requires the Commission, to have all the requisite documents in their original form at its National Tally Centre before it can announce the results of the election and declared the winner, if any. The PEA requires and in our
5 view, it suffices that: (a) the original Declaration of Results Forms have been received at the District Tally Centres, which are for purposes of the elections, also tantamount to receipt of these documents by the Commission and (b) that scanned
10 copies of the original Declaration of Results Forms have been electronically received at the Commission's headquarters and/or the National Tally Centre before the expiry of the 48 hours after the closing of polling.

We will now turn on the second part of the allegation that deals with the alleged absence of district returns and district
15 tally sheets, contrary to Section 56 (2) of the PEA, by the time the Commission declared the 1st respondent winner of the 2016 Presidential elections.

The Petitioner relied on his evidence as well as that of Mutogo and Okello. On the other hand, the Commission relied on the
20 evidence of its Chairman, Badru Kiggundu and Namugera. The two witnesses refuted the Petitioner's allegation and averred that the Commission was in possession of the returns and tally sheets from all the Districts before it declared the 1st respondent the winner.

The 1st respondent supported the averments of the Commission with the evidence of Sebalu and Lumumba.

When we reviewed the evidence, we noted that the Petitioner, like all other presidential candidates, was not present at the Namboole National Tally Centre. Hence he deponed to matters which were not within his personal knowledge. We also reviewed the evidence of Mutogo and Okello earlier on. Their evidence was insufficient to discharge the Petitioner's burden with respect to this allegation.

We have already pointed out that with the consent of counsel for the Petitioner and the Commission, the return and tally sheets for all the Districts were tendered into evidence. We had an opportunity to review these returns and tally sheets tendered into Court for all the Districts in Uganda. All the respective returns were filled in and signed by the respective district returning officers, indicating, among others, the respective votes scored by each presidential candidate, total number of valid votes cast for candidates in the district, total number of rejected (invalid) ballot papers, total number of ballot papers counted and the total number of spoilt ballot papers. The returns bore the stamp of the Commission and the time it was received.

On the other hand, the District Tally Sheets also indicated among other things, the registered voters at each polling station and the parish level; the respective votes scored by

each presidential candidate at the polling station and parish level; the total number of valid votes cast for candidates at the polling station and parish level; the total number of invalid votes cast at the polling station and parish level; the total
5 number of ballot papers counted at the polling station and the parish level and the total number of invalid votes. All these totals were then aggregated to get the sub county total, then constituency total and subsequently the district total. The District Tally Sheets also bore the stamp of the Commission
10 and the time it was generated.

We also noted that before the Commission declared the winner on 20th February 2016, all the returns and tally sheets had been received by the Commission. We noted that even in cases where results of some polling stations had not yet been
15 transmitted from the District Tally Centres, the respective District Returning Officers still sent in their returns and tally sheets with the missing information. Examples of such Districts include Jinja, Kasese, Kampala, Wakiso, Kabale, Kyenjojo and Rukungiri.

20 However, as we noted in our judgment, we took particular exception to the Commission's failure to provide any credible explanation in its answers to the Petition as to why the results for 1787 polling stations had not been received. The missing/delayed results from these polling stations resulted
25 into the Commission posting zero votes for the affected polling stations in some district tally sheets by the time of declaration

of the winner. In fact, during the hearing of the petition, the Petitioner adduced a total of 6 district tally sheets from the districts of Jinja, Kabale, Wakiso, Kampala, Kyenjojo and Rukungiri, which reflected zero results for any presidential candidates for several polling stations. This led the Petitioner and his counsel to conclude that there were indeed no results for the affected polling stations and to invite us to so find.

We established and held that the Commission eventually included most of the missing results in the final respective District and National Tally Sheets, which it issued on the 22nd of February, 2016. However, we noted with concern that the Commission failed to comply with the provisions of Section 56 (2) with respect to the results of the 1787 polling stations that had not been transmitted to the Commission as at the time of the announcement and declaration of the winner. It also follows that while in principle all District Returning Officers had submitted their district returns and tally sheets, some 49 Districts, namely Apac, Arua, Hoima, Iganga, Jinja, Kabale, Kabarole, Kalangala, Kampala, Kamuli, Kasese, Kisoro, Masindi, Mbale, Mbarara, Moyo, Mubende, Ntungamo, Rakai, Rukungiri, Soroti, Tororo, Bugiri, Ssembabule, Kayunga, Kyenjojo, Pader, Wakiso, Amolatar, Bukwo, Isingiro, Kaabong, Kaliro, Kiruhura, Koboko, Manafwa, Mityana, Nakaseke, Amuru, Bulisa, Buyende, Zombo, Alebtong, Bulambuli, Gomba, Sheema, Kole, Kween and Mitooma Districts had indeed submitted partial

results and therefore incomplete returns and tally sheets by the time of the declaration of the winner.

The transmission of partial results by a returning officer to the Commission does not fully comply with Section 56 of the PEA
5 for the following reasons. First of all, Section 56 (1) of the PEA provides that:

**Each returning officer shall, immediately after
the addition of the votes under Section 54 (1),
declare the number of votes obtained by each
10 candidate and also complete a return in the
prescribed form, indicating the number of
votes obtained by each candidate.**

Secondly, while Section 56 (2) (c) of the PEA envisages that there would be several tally sheets a district returning officer is
15 expected to transmit to the Commission, subsections 56 (1) and 56 (2) (a) of the PEA on the other hand envisage that the district returning officer shall complete and transmit “**the return form.**” Having been written in singular form, it is evident that what was envisaged under the PEA was that a
20 returning officer would receive all the Declaration of Results Forms from his or her electoral district, tally the results using the tally sheets and thereafter complete one return form. District returning officers as well as presiding officers are

officials of the Commission and are expressly authorized to act on its behalf for purposes of carrying out the duties assigned to them in respect of the conduct of the presidential election. It therefore follows that they are bound by the 48 hour
5 constitutional timeline imposed on the Commission to declare results after the close of polling. Given this obligation imposed on all election officials as well as the overall electoral body, and in the absence of a natural and unexpected calamity event such as earthquakes, flooding leading to washing away of
10 bridges, landslides, et-cetera, there should not be situations where results are not transmitted to the district tally centre by presiding officers or to the national tally centre by the district returning officer, with in the constitutional set timeline.

Our interpretation is consistent with the provisions of both
15 Article 103 (7) of the Constitution and Section 57 (1) of the PEA. Both provisions respectively impose a clear constitutional and statutory obligation on the Commission to: **“ascertain, publish and declare in writing the results of the presidential election within forty eight hours from the**
20 **close of polling.”**

Although the declaration of the winning Candidate can be made within 48 hours it is ascertained that the Candidate has passed the 50% +1 mark, it is most desirable that all results be received within that 48 hour period so that actual
25 percentages of votes received by each candidate are declared at the same time. Before all results are received, what is

declared are provisional results. Such situation should in future be avoided so as to ensure that there are no grounds for unnecessary suspicion and tension among the electorate.

5. *Lack of Transparency in the declaration of results*

5 In paragraph 36 of his amended petition, the Petitioner alleged that the Commission conducted the 2016 Presidential election and the whole process of counting, tallying and consolidating of the election results without fairness and transparency. The Petitioner further alleged that the whole electoral process was
10 instead “*unsubstantiated, shrouded in mystery and concealment*” in announcing the results and declaring the winner.

The Petitioner contended that the Commission’s actions, right from the counting, tallying and transmission of results from
15 polling stations to the District Tally Centres and finally to the purported National Tally Centre, were contrary to Article 1 (4) of the Constitution which provides:

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

The Petitioner made several specific claims to support his allegation of lack of fairness and transparency against the Commission. First, he claimed that the Commission left Declaration of Results Forms in envelopes and other election materials at the discretion of its officials to transmit to the District Tally Centres or the results collections centres. Secondly, the Petitioner alleged that at the district tally centres, returning officers started counting and tallying results from polling stations as the results envelopes were received, which was contrary to Section 54 of the PEA.

The third claim made by the Petitioner to prove lack of fairness and transparency was that returning officers transmitted results of tallying without using Declaration of Results Forms and Tally Sheets and in the absence of the Petitioner's agents.

Fourthly, the Petitioner alleged that at the National Tally Centre in Namboole, the Chairman and Commissioners of the Commission *"purportedly received the transmitted results from returning officers,"* processed and fixed these results and thereafter read them out to the candidates' agents, thus turning the agents at the National Tally Centre into *"listening posts without any input."*

Lastly, the Petitioner alleged that the Commission did not have a National Tally Centre at all as mandated by law but that it had received forged figures from illegal tally centres operated

by security agencies in different places, which included one centre that was based at Naguru.

The Petitioner alleged that all the above gave “room for switching of Declaration of Results Forms, switching results
5 when purportedly tallying and doing all malpractices of rigging to alter the final result.”

Analysis by the Court

In our judgment, we held that the Petitioner failed to prove that the Commission did not comply with Section 54 of the PEA
10 when it set up and used the National Tally Centre to ascertain results. We do not intend to repeat the discussion about the National Tally Centre.

We have however deemed it important to comment on a very serious allegation that the Petitioner made alongside his
15 allegation about the absence of a National Tally Centre. This is the claim that security operatives transmitted forged results to the national tally centre and that the Chairman and officials of the Commission “fixed” these results before reading out the “forged fixed results” to the candidates’ agents and indeed to
20 the entire electorate.

As already observed, even when they demanded for the production of the Declaration of Results Forms and Tally sheets and had them admitted in evidence, they still failed to adduce any evidence to rebut the veracity of those
25 documents. They chose to rely on a statement made from the

Bar that their evidence was lost. Strangely, counsel seemed to believe that by saying this, the Court would either go out to look for his lost evidence, or relieve them of the burden to prove the allegations and simply find for the Petitioner.

- 5 The Court can only consider evidence produced in Court which all parties have had the opportunity to examine or cross-examine. That accords with the cardinal principle of fair trial.

In other preceding sections of this judgment, we also exhaustively dealt with two other allegations that were raised
10 by the Petitioner made under this section. One related to counting and tallying results from polling stations before all the envelopes containing the results were received by the returning officer. The other dealt with the issue of the transmission of results of tallying without using Declaration of
15 Results Forms and Tally Sheets. Our reasoning remains as before.

We also considered the remaining claims of the Petitioner of lack of fairness and transparency because the Commission “left Declaration of Results Forms in envelopes and other
20 election materials at the discretion of its officials” and allowed them “to transmit” them to the District Tally Centres or to the results collections centres. The Petitioner did not cite any provision under the PEA that the Commission breached in any of the actions complained of. We also find this complaint odd
25 since under the PEA, presiding officers are expected to have

custody of election materials for their respective designated polling stations before and after polling. The Petitioner did not adduce credible evidence proving that presiding officers and other officials of the Commission abused their discretion and
5 did something contrary to the law when they had the envelopes containing Declaration of Results Forms or other election materials. In the absence of such credible evidence, we could not make any finding that officials failed to comply with the PEA simply because they remained with the
10 envelopes containing the Declaration of Results Forms and other materials, for purposes of delivering them to the results collection centre.

On the contrary, they would have been in breach of the law if they had left the envelopes and other election materials in the
15 hands of persons who were either not working for or not authorized by the Commission to keep them. The Petitioner was expected to safeguard his vote and interests by appointing his agents, who should have first ensured that the envelopes containing the results were sealed at the polling
20 stations after the counting and signing of the Declaration of Results Forms, before the presiding officer left for their delivery to the results collection centre. The Petitioner's agents should also have kept their own copy of the Declaration of Results Form for future reference. Thereafter, the Petitioner's
25 agents had the option to follow the election officials from the polling stations up to the results collection or the District Tally

Centre; to be present at opening of the envelopes; and to compare and challenge any tallied results if they were inconsistent with their respective copies of the Declaration of Results Forms they had received at the respective polling
5 stations.

The Petitioner did not adduce evidence to that effect. As we observed earlier, he did not tender evidence of his list of agents appointed and also failed to adduce evidence of those who claimed they had been chased away. In the absence of
10 such evidence, we had no basis to hold that the Petitioner's allegations had been proven.

We further considered the Petitioner's claim that the whole electoral process lacked fairness and transparency because the district returning officers "transmitted" the tallied results in
15 the absence of the Petitioner's agents. The Petitioner did not cite any provision of the law, and we did not find any, that obliges the Commission or its returning officers at the district to transmit results in the presence of the candidates and/or their agents. Section 56 of the PEA is very clear and it does not
20 impose such an obligation. In light of that, we found the Petitioner's contention not grounded in law. The Petitioner failed to adduce evidence to prove these claims.

We will now turn to the evidence of the Petitioner adduced to prove his allegations of unfairness and lack of transparency in
25 the presidential election process. The Petitioner relied on the

evidence of 13 deponents. Three out of the 13 witnesses whom the Petitioner relied on to back up his allegation that the entire election was not transparent were registered voters and were not the Petitioner's agents or coordinators.

5 One of the Petitioner's witnesses was Patrick Gustine Olwata. He claimed to be a registered voter, who had voted at Low Primary School Polling Station in Oyam District. Olwata deposed that at the end of polling and counting of votes, the presiding officers refused to give the candidates' polling
10 agents declaration forms as mandated by law. He averred that the denial was in spite of the agents' persistent pleas to be availed copies of the said forms.

Secondly, he also averred that during the tallying process at the tally centre, the returning officers were arrogant as they
15 were only announcing figures of the votes received by the respective candidates without mentioning the particulars of polling stations.

Olwata's evidence was rebutted by Nabukenya Teddy, who was the Commission's District Returning Officer for Oyam
20 District. She deposed that there was no sub county known as Low in Oyam District and that therefore Olwata could not have voted from the said as it did not exist. She further deposed she did not receive any report about the alleged acts of intimidation and rigging in Oyam District from any polling
25 agents, voters or candidates; and that to the best of her

knowledge, all polling agents who were present signed all the Declaration of Results Forms and were all given copies.

She also refuted Olwata's allegation that there were delays in transmitting Declaration of Results Forms to the District Tally Centre. She averred that there were no such delays by the Commission in delivering Returns to the District Tally Centre; that results were announced per Sub County, per Parish, per polling station at the District Tally Centre and that all Returns were received from the polling stations within in the mandated 48 hours.

We reviewed the electoral documents which were tendered into evidence by consent of both parties and confirmed as follows: First that there was no polling station indicated therein by the name of Low Primary School polling station. Secondly, according to the District Results Tally Sheet for Oyam District which was submitted along with the District Returns to Court, all the 282 polling stations in Oyam District had handed in their Returns within the mandated 48 hours rule. The same position is reflected in the District Summary Tally Sheet of 20th February which was attached to Namugera's Affidavit.

We noted that apart from the rebutted evidence on the non-existence of his alleged polling station, Olwata's affidavit lacked material details on the matters he deposed to. Given the rebuttal evidence adduced by the Commission, which was

supported by the documentary evidence on record, the evidence of Olwata was discredited.

The Petitioner's second witness on the contention that the whole elections lacked fairness and transparency was
5 Ssendangire Gerald. He claimed to be a registered voter, who voted at Mukalazi Polling Station, Zana.

Ssendangire deponed that at the time of vote counting, the presiding officer did not display the ballot papers to ascertain and verify which particular candidate had been ticked on the
10 ballot paper. He also claimed that the election exercise was not transparent because the presiding officers rejected the polling agents of the respective candidates from getting the number of the particular votes cast.

We reviewed the documentary evidence on record. We did not
15 find a polling station by the name of Mukalazi Polling Station, Zana. However, there were four polling stations bearing the words "Zana" & "Mukalazi", whose respective Declaration of Results Forms we reviewed for purposes of finding out if all or any of them tended to corroborate Ssendagire's evidence. The
20 1st respondent and candidate Besigye had agents at all these four polling stations, while the Petitioner only had one agent at the Zana (O-Z) -Mukalazi Tech. Sites, who signed the Declaration of Results Form.

Given the difficulty for the respondents and even the court to
25 ascertain which of the four polling stations Ssendagire was

referring to, this court did not find Ssendagire's evidence to be of any value in proving the alleged lack of transparency.

Secondly, our review of the four Declaration of Results Forms revealed the presence of agents of at least two candidates at each of the four polling stations and one agent for the Petitioner. The respective agents were expected to look out for their respective candidate's interests and votes. It is therefore very unlikely that Ssendagire's testimony related to any of these polling stations, and that such testimony was truthful.

Lastly, the Petitioner relied on the evidence of Muya Bazil, who was a registered voter at Lopeduru Polling Station, Matany sub-county, Napak District. Bazil claimed that while at Lokutumo Polling Station, Lokopo sub-county he was directed to step away from the polling area where counting was taking place. Muya Bazil's evidence was not rebutted.

In addition to the three registered voters, the Petitioner adduced evidence from ten coordinators to support his allegation that the declaration of results of the 2016 presidential election lacked fairness and transparency. These were Walusimbi Isma, Butiita Paul, Sabatandira George, Baluku Benson Kikumbwa, Nkurunungi Felix Giisa, Kajoro Allan Mutogo Duncan, James Okello, Nakafero Monica, and Wadala Abas Wetaka. We review their evidence in the following Section.

Walusimbi Isma who was the coordinator of the Petitioner's campaign in Gayaza Parish, deposed that at the Saza ground polling station, the presiding officer did not show them the ballot papers as he was counting them. Walusimbi's evidence
5 was not rebutted. However, we did not find a polling station by the name Saza ground polling station but found four polling stations with similar names. These were: Ssaza County Htqrs (A-K); Ssaza County Htqrs (L-Naj); Ssaza County Htqrs (Nak-Nam) and Ssaza County Htqrs (Nam-Z).

10 Butiita Paul, was the Petitioner's coordinator in Manafwa District. He averred that the returning officer of Manafwa District deliberately refused to announce the provisional presidential results on the night of the 18th day of February 2016. He also averred that the said returning officer had not
15 done so by the time Butiita swore his affidavit. Butiita further deposed that the Petitioner's electoral observers were denied accreditation in and out of the tallying centres. Butiita Paul's evidence was not rebutted. However our analysis of the evidence based on the District Summary Tally Sheet of
20 20/2/2016, which was attached to Namugera's Affidavit shows that only two out of 338 polling stations in Manafwa District had not handed in their Returns within the mandated 48 hours rule. The District Results Tally Sheet for Manafwa District as it appears on the District Returns submitted to Court by the
25 Commission also confirmed this position.

Sabatandira George, who was the coordinator of the Petitioner's Go-Forward Campaign team in Kamuli District deponed that at the time of counting the votes, he saw and heard the polling official announce the votes received by other candidates except those for the Petitioner. He also deponed that while counting votes at Namwenda polling station, the presiding officer just read out names without showing the votes to the voters. He further averred that after he and several other voters complained, the presiding officer was forced to start counting the votes all over again, he and others present were surprised that among the votes the presiding officer had counted as belonging to the 1st respondent, there were 70 votes cast which were actually for the Petitioner. Whereas Sabatabdira's evidence was not rebutted, our finding with respect to Sabatandira's testimony was that there was no polling station by the name of Namwenda polling station in Kamuli District. The only time the word "Namwenda" appears on the District Tally Sheet is in respect of a parish called Kamuli-Namwenda Ward which has 6 polling stations.

The other evidence adduced was from Baluku Benson Kikumbwa, who was the Petitioner's District Coordinator for Kasese District. He averred that the tally sheet which was posted on the Commission website indicated that the 1st respondent garnered 715 votes at the Old Taxi Park "B" Polling station in Kasese Municipality, while the Petitioner garnered 4 votes, yet the polling station has only 268 registered voters.

Whereas Baluku Benson Kikumbwa's evidence was not rebutted, our finding with respect to Baluku's testimony was that there was no polling station by the name of Old Taxi Park "B" polling station in Kasese Municipality. There was however
5 a polling station called Old Car Park in Bukonjo West.

On the other hand, Nkurunungi Felix Giisa, who was the coordinator of the Petitioner's campaign in Muhanga and Bukinga Sub County deposed that he saw the Assistant Returning Officer of Rukiga, one Musinguzi Ambrose and the
10 Presiding Officer of Rutobo destroy the presidential candidates' ballot boxes from Rutobo Trading Centre Polling Station. He further deposed that he also saw the two named individuals open and remove the ballot papers and Declaration of Results Forms and then stuff it with their own ballot papers and
15 Declaration of Results Forms. He claimed that all this was also witnessed by Mujuni Warren Kwesigwa Kenneth and so many other persons that were present. However Mujuni Warren Kwesigwa Kenneth did not swear an affidavit to support Nkurunungi's allegations. The Assistant Returning Officer of
20 Rukiga, Musinguzi Ambrose and the Presiding Officer of Rutobo Trading Centre Polling Station did not did not swear any affidavits in rebuttal either. However, our analysis showed that there was no polling station called Rutobo Trading Centre Polling station in Kabale District. Rather, we found that
25 a polling station named Rutobo Market polling station did exist.

Lastly, the Petitioner also adduced evidence from Kajoro Allan, who was his mobilizer and sector commander for Kabarole District. He deponed that at his polling station, Maganjo Church of Uganda polling station in Wakiso, he witnessed the counting of votes using dim light from the phone torches held by voters and from nearby buildings from 7:45 p.m until about 9:00 p.m. He further deponed that despite protests from voters the Commission's officials continued to count votes in the dark, after the lights went out at about 9:00 p.m. Lastly he averred that he was forced to leave before the counting was complete, amidst protests as to how votes could be verified in the dark. Kajoro Allan's evidence was not rebutted. However, our analysis shows that there were 17 polling stations under Maganjo Church of Uganda. These were, Maganjo A C/U (A-J), Maganjo A C/U (K-K), Maganjo A C/U (L-M), Maganjo A C/U (N-NAK), Maganjo A C/U (Nal-Nam), Maganjo B C/U (A-J), Maganjo B C/U (A-L), Maganjo B C/U (NAN-NZ), Maganjo B C/U (O-Z), Maganjo B C/U (K-KH), Maganjo B C/U (Ki-L), Maganjo B C/U (M-M), Maganjo B C/U (N-NAJ), Maganjo B C/U (NAK-NAL), Maganjo B C/U (NAM-NAR), Maganjo B C/U (NAS-NZ), Maganjo B C/U (O-Z). In the absence of any evidence to show which polling station Kajoro Allan was specifically referring to, we are unable to prove his allegations.

The four other witnesses were Mutogo Duncan, James Okello, Nakafero Monica and Wadala Abas Wetaka.

Nakafero Monica the agent of the Petitioner at Kasanganti Headquarters Polling Station [L-N] averred that the polling assistant was showing them the ballot papers as he counted them. She further deponed that she and other opposition
5 agents were not allowed to hold their candidate's ballot papers. Whereas Nakafero Monica's evidence was not rebutted.

Our analysis shows that there is no polling station by the name of Kasangati Headquarters polling station L-N.

10 Wadala Abas Wetaka, the Head Go Forward Team Mbale averred that the Commission's official's did not accredit his agents at the tally centre and therefore were unable to witness the vote counting and tallying after the voting exercise had ended. He also deponed that in some instances after closure of
15 polling at about 6.20 pm, their copies of declaration forms were grabbed by some unknown people and they disappeared. Wetaka's evidence was not rebutted.

Mutogo Duncan, the Petitioner's Agent at the National Tally Centre, Namboole averred that in announcing the first
20 provisional results, the Chairman of the EC did not avail them with copies of Declaration of Results Forms or Tally Sheets from where the results announced were originating. Further that their demand as agents of the petitioner to be given the opportunity to see the results on computer screens as they
25 were coming in from the districts, were not met. Instead the

Commission proceeded to announce the 2nd provisional results in the same manner.

James Okello, the Petitioner's Agent at the National Tally Centre, Namboole also averred that in announcing the first
5 provisional results, the Chairman did not avail them with
copies of the Declaration of Results Forms or Tally Sheets from
where the results announced were originating. He further
deponed that they did not do any tallying or see results
coming in from the respective districts. Rather, they merely
10 heard what was being read and watched what had been
uploaded on the computers and screens. Furthermore that all
the agents for other candidates complained to the chairman of
the Commission and sought to be availed the source of the
data so that they could do their own tallying for comparison.
15 That they further demanded that they should be given the
opportunity to see and witness on their computers and the
screens, the results as they were coming in from the districts
as had been organized. However the Commission did not heed
to their complaint and instead proceeded to announce the 2nd
20 provisional results in the same manner.

James Okello's evidence was rebutted by Mike Sebalu, who
was one of the two agents of the 1st respondent assigned to
the National Tally Centre Namboole. He deponed that the
Commission allocated each of the Presidential candidates'
25 teams a computer in the tallying room. He further deponed

that computers showed the breakdown of results as they were received from the polling stations and the District Tally Centres. He also averred that the computers were updated on a regular basis in line with the Commission's provisional results announcements and showed the District Tally results from which the provisional results at the National Tally Centre were being compiled and announced. He further averred that there were other workstations including two very large screens availing the same information to other stakeholders including the press and election observers. Contrary to James Okello's allegation that all agents of the candidate's complained to the EC Chairperson over lack of information, Mike Sebalu averred that no complaint was raised by him or on his candidate's behalf to the Commission chairperson or at all about the declaration of results. Lastly, he averred that all results were duly shown to all the presidential candidates' agents at the National Tally Centre, as they were received from the various District Tally Centres and that all agents had access to the whole process as tallying was taking place at the National Tally Centre of the Commission, all the time.

The evidence of Mutogo and Okello that in announcing the first provisional results, the Chairman did not avail them with copies of the Declaration of Results Forms or Tally Sheets from where the results announced were originating was correct. However we observe that there is no law which requires the EC to give the information that these witnesses were asking for.

It was on the basis of the foregoing analysis that we made a decision in our judgment that the Petitioner had failed to prove noncompliance with the law by the Commission in the process of announcing results at the Tally Centre.

- 5 However, it is our view that in the interest of transparency, the Commission should have given more detailed information to candidates and their agents while announcing results at the national level.

We therefore recommend that a law should be enacted to
10 regulate the tallying and declaration of results at the national level.

(XIII) Failure to accord equal treatment/coverage by State Media agencies.

The Petitioner alleges that contrary to section 12 (1) (e) of the
15 PEA, the Commission failed to accord equal treatment to the Petitioner when it failed to prevail upon the authorities and government agencies such as Uganda Broadcasting Corporation (UBC) and the New Vision to render equal
coverage to the Petitioner to enable him to present his
20 programmes but instead offered preferential treatment to the 1st Respondent. The Petitioner repeated the same complaint in his affidavit in support of the petition.

Apart from the Petitioner's own affidavit, there was only the affidavit of Mohles Kalule Ssegululigamba which was sworn in

support of this allegation. Kalule Ssegululigamba swore his affidavit in his capacity as a member of the Association for the Measurement and Evaluation of Communication and as the Project Manager and Media Analyst with the African Centre for
5 Media Excellence (ACME). He deponed, among other things, that he and his group monitored media coverage of the presidential campaign till 17th February 2016 and observed that UBC Television accorded more coverage in terms of news and commentary to the 1st Respondent than to other
10 candidates. He further averred that this concern was communicated to Fred Kyomuhendo, Chief News Editor of UBC.

He further stated that ACME released a media monitoring report in January 2016, citing unbalanced news and commentary afforded to presidential candidates by UBC and
15 the New Vision, and that the issues raised in this report were shared with UBC and the New Vision and widely published in both print and electronic media. Kalule deponed further that instead of adhering to the principle of balanced reporting, UBC increased the airtime coverage and commentary afforded to
20 the 1st Respondent. He further stated that it was a well known fact that both UBC and New Vision have and receive a wider coverage all over Uganda.

In answer to the Petitioner's allegation on this matter, the Commission stated that it executed its duty of educating all
25 media houses on their responsibilities in the election period

and issued guidelines to the media houses for that purpose. Further, that it afforded the Petitioner and all other candidates equal treatment in accordance with the law, and was not at any material time aware or made aware that the Petitioner
5 was not given fair coverage by UBC and New Vision.

Fred Kyomuhendo, Chief News Editor of UBC, deponed for Commission that UBC did not accord preferential treatment to the 1st Respondent. That UBC lacked the necessary resources in terms of finance, equipment, vehicles and manpower to
10 cover the campaign activities of all the eight candidates but relied upon footage supplied by the individual candidates' press teams. He further deponed that the 1st Respondent's press team ensured that UBC received daily footage of the 1st Respondent's campaign trail which other candidates did not
15 provide.

Winston Agaba, the Managing Director, UBC, for the Attorney General deponed that as a result of the constraints UBC faced, the presidential teams were requested to submit recorded footage for airing on TV. He further stated that the 1st
20 Respondent's campaign team regularly submitted footage of the 1st Respondent's rallies as opposed to other candidates.

Tony Owana, Producer of Political Programmes, UBC, also swore an affidavit in support of the Commission. What he deponed to was in similar terms to what the two other officials of UBC

whose affidavits have already been referred to, stated in their affidavits.

Robert Kabushenga, Managing Director/Chief Executive Officer of the New Vision Printing and Publishing Company Ltd swore
5 an affidavit stating, among other things, that the New Vision is not a Government Corporation but a public listed company and as such is required to exercise highest levels of corporate governance and to operate in compliance with all relevant laws. He averred that coverage of elections on its print and
10 electronic media was fair, balanced and impartial.

He further averred that ACME issued two reports, one in November 2015 and another in January 2016, which he attached to his affidavit, and that the New Vision was stated in those reports to have given 30.2% front page coverage to the
15 1st Respondent, while the Petitioner was given 27.8%. He concluded by stating that the New Vision did not receive any complaints from the Petitioner or any other presidential candidate on coverage of the elections on any of their print or electronic media.

20 Justine Kasule Lumumba, Secretary General of NRM for the 1st Respondent, deposed, among other things, that NRM actively recorded all the 1st Respondent's campaign rallies and proactively engaged the media to broadcast the same by ensuring that all media houses were supplied with video
25 footage and reports from the rallies.

Analysis by the Court

Section 12 (1) (e) of the ECA provides that the Commission shall for the purpose of carrying out its functions under Chapter Five of the Constitution and the ECA, have power to
5 take measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness.

Article 67(3) of the Constitution (which falls under Chapter five thereof) provides that all presidential candidates shall be given equal time and space on the State-owned media to present
10 their programmes to the people. Section 24 (1) of the PEA reproduces word for word Article 67 (3) of the Constitution.

The Commission, in its rebuttal, stated that it briefed media houses and also attached media guidelines which it issued to all media houses with respect to their obligations to grant
15 equal access to all Presidential candidates.

We noted the affidavit evidence of Robert Kabushenga, the Managing Director of New Vision and the attachments thereto, including a Report of the African Centre for Media Excellence, in rebuttal to the Petitioner's allegation. The reports showed
20 that the New Vision gave 30.2% front coverage to the 1st Respondent and 27.8% to the Petitioner which, in our view, is fair coverage. We think the percentages given the two presidential candidates are not much different.

While the law grants equal access to all presidential candidates on equal coverage on state owned media, we also believe that it is incumbent on the presidential candidates to show that they sought coverage and took all the necessary
5 steps to contact the state owned media and that the media houses either refused or denied them coverage.

In this particular case, the Petitioner did not adduce any evidence before Court to show that he had taken any of the steps outlined above and that he had lodged any complaint
10 with either the media houses in question or the Commission about unequal treatment or coverage.

We also noted, however, that whereas the New Vision may have been at one time wholly owned by Government as a state-owned corporation, the situation has since changed.
15 Today, the New Vision Printing and Publishing Company Ltd. is a public listed company. Therefore, the laws which apply to state-owned media may no longer apply to it.

We carefully studied the provisions of Article 67(3) of the Constitution and section 24 (1) of ECA which govern this issue.
20 We also carefully considered the respective submissions of the Petitioner and the Respondents with respect to this allegation.

It was our finding that it is true that UBC failed to provide equal coverage to all the presidential candidates as required by the Constitution and the law. Although the candidates may

not have asked for the airtime from UBC, it was incumbent upon UBC to show that it did offer time and space to all the candidates. Article 67 (3) of the Constitution and section 24 of the PEA provide that all presidential candidates shall be given
5 equal time and space on the state-owned media and so it is not a valid excuse for any state-owned media to argue that it did not provide equal coverage to the candidate because the candidate did not request for it. There was no evidence that UBC took any steps to communicate to presidential candidates
10 the availability of time and space for them to present their programmes.

The Commission had no control over the management of UBC and once it issued guidelines to all Media houses, including UBC, it cannot be held responsible for another Public
15 Corporation's failure to obey the law. The noncompliance was by UBC and not the Commission. We note, however, that there is an urgent need to harmonize the provisions of section 12 (1) (e) of the ECA which gives power to the Commission to ensure that the entire electoral process is conducted under conditions
20 of freedom and fairness with its inability to compel other state institutions to comply with the law to ensure free and fair elections.

We further note that the issue of unequal media coverage of state media has been a recurrent issue in previous election
25 petitions. Unfortunately, no sanction is provided for under

section 24 of the PEA for noncompliance. This is an area that requires legal reform so that the public media houses can be compelled to comply with the law.

(XIV) Failure to conduct free and fair elections resulting from use of Police and Military presence at Polling Stations.

The Petitioner alleged that contrary to **Section 12 (1) (e) and (f) of the ECA**, the Commission failed to ensure that the entire presidential electoral process was conducted under conditions of freedom and fairness and as a result the Petitioner's and his agent's campaigns were interfered with by some elements of the military including the Special Forces and the so-called Crime Preventers under General Kale Kayihura.

The Petitioner relied on the affidavit evidence of 7 deponents to support this allegation.

The Commission denied this allegation and contended that the Petitioner had not adduced any evidence to support this allegation. It averred that the election was conducted under conditions of freedom and fairness in that all polling stations were manned by Presiding officers assisted by Polling Assistants and unarmed Election Constables supervised by the Presiding officers. The Commission relied on the 3 affidavits of its officials, including the returning officer of Kamuli District.

There was affidavit evidence from General Katumba Wamala and some other officers that indeed there was deployment of the Uganda People Defence Forces (UPDF) in some areas, to support the Police Force to maintain security. This evidence is
5 further to the effect that there was intelligence information that there were some elements that wanted to disturb the peace during elections. But it was denied that the soldiers or the Police engaged in any violent acts or intimidation.

10 **Analysis of Court**

Section 43 of the PEA prohibits the carrying of weapons by any person within one kilometer of the Polling Station ***“unless called upon to do so by lawful authority or where he or she is ordinarily entitled by virtue of his or her office to
15 carry arms.”***

Therefore, in the absence of evidence of actual intimidation or violence, the mere presence of Police or Army is lawful, where called upon by lawful authority.

(XV) Intimidation.

20 The Petitioner made the following allegations relating to intimidation:-

That on the 23rd day of September 2015 contrary to S.3(1) (2) of the PEA under the directive of the 1st Respondent, the Inspector General Kale Kayihura and his officers prevented the

Petitioner, as an aspirant from conducting consultations with voters in preparation for his nomination as a Presidential candidate.

5 *That on 9/7/2015 under the directive of the 1st Respondent, and some officers under the command of General Kale Kayihura of the Uganda Police Force forcefully and arrested your Petitioner along Kampala Jinja Road in Njeru Town Council near Owen Falls Dam Bridge and publically humiliated him and later detained him at Jinja Road Police Station. By such*
10 *detention the 1st Respondent was given unfair advantage because he was criss crossing the Country undeterred under the guise of “wealth creation” campaign when he was in effect campaigning.*

15 *That contrary to section 3 of PEA, when the Petitioner was subsequently allowed to go, he was hounded and trailed by some members of the Uganda Peoples Defence Forces, the Uganda Police, a motley crew of all state security agencies and the so called Crime Preventers. They would go as advance teams, or would go at the time of the Consultations to*
20 *dissuade potential voters and members of the Public from attending the Petitioner’s meetings and actually dispersed his meetings in diverse places in Eastern Uganda, instilled fear and harassed all those who attended the said meetings. They arrested all those who carried his Manifestos, Posters and*

other Campaign materials thereby frustrating his efforts and giving unfair advantage to Candidate Yoweri Kaguta Museveni.

That contrary to section 43 of the PEA the Commission and his agents/ servants in the course of their duties allowed people
5 *with deadly weapons, to wit soldiers and the so-called Crime Preventers at polling stations. Their presence intimidated many voters to vote for the 1st Respondent who was the soldiers' commander in chief. Many of the voters who disliked being forced to vote for 1st Respondent stayed away and*
10 *refrained from voting for a candidate of their choice.*

In his affidavit in support the Petitioner made the following averments:-

That on the 9th day of July 2015 he set out with his convoy heading to Eastern Uganda to conduct his consultations as his
15 *programme had indicated. He was stopped by some Police officers under the directive of the 1st Respondent, arrested and humiliated by the said Police officers who drove him to Kiira Road Police station where he was detained. Other members of his convoy were detained at Lugazi Police station*
20 *for the whole day and were later released late in the night.*

That when he was subsequently allowed to visit the Eastern part of Uganda his supporters and his entourage were harassed by some members of the Uganda Police under the directives of the 1st Respondent.

That under the orders of the 1st Respondent his scheduled meetings with his agents were dispersed by the Police using expired and poisonous tear gas and live bullets.

5 *That while in Kapchorwa and Soroti his supporters were trailed by some members of the Uganda Police Force and Crime Preventers and other security organs who harassed them and dissuaded them from supporting him.*

10 *That while in Soroti, some members of the Uganda Police acting on the directive of 1st Respondent dispersed his Consultative meetings using tear gas and live bullets, thereby instilling fear and panic among his supporters.*

That the 1st Respondent directed mig fighters to be flown over the area so as to threaten the people who had turned up for my consultative meetings in Soroti town.

15 In our decision we dealt with 3 aspects of intimidation namely:

1. During consultation.
2. During campaigns.
3. During Voting.

20 We now review and evaluate the evidence adduced in some detail to further justify our decisions findings on the above aspects.

During consultation.

The Petitioner alleged and adduced evidence to support his allegations that there was intimidation during consultation, which intimidation was alleged engineered by the 1st Respondent. These allegations were supported by evidence of
5 Hope Mwesigye and Benon Muhanguzi who all deponed in their affidavits that as they were proceeding to Mbale to hold a consultative meeting about the candidature of the Petitioner for the Presidency of Uganda, they were intercepted at Jinja. They were brought back to Kampala and kept for a day at Kiira
10 Road Police Station.

The 1st Respondent on the other hand through the evidence of Kale Kayihura the Inspector General of Police admitted having restrained the Petitioner from holding pre-nomination consultative meetings. The Inspector General explained that it
15 was because the Petitioner had not harmonized his status with his NRM party. However, he stated that later he allowed the Petitioner to proceed and hold the said consultative meetings and save for an incident in Soroti where he refused to follow guidelines as the venue and his supporters were dispersed
20 with teargas the consultations proceeded peacefully.

Another witness for the 1st Respondent was Andrew Felix Kaweesi, Assistant Inspector of Police, who in his evidence justified his action of stopping the Petitioner from proceeding to Mbale for a pre-nomination consultative meeting on security
25 ground.

He deponed that, he did so, after consultations with the Attorney General and the Commission and that he had also received intelligence that the Petitioner's supporters had mobilized in Jinja on the route to Mbale, to cause chaos.

5 After considering the evidence of the Petitioner and that of the Respondent on that aspect, Court found in favour of the Petitioner for the reason that having been an aspirant, the Petitioner had all the rights like any other aspirant in the Presidential election to hold consultative meetings in any part
10 of Uganda. We reiterate that the act of the Police of intercepting the Petitioner on his route to Mbale and further detaining him at Kiira Road Police Station was not in accordance with the law. It was unjustified, highhanded and contrary to Section 3 of the PEA.

15 **During Campaigns and Voting**

The Petitioner filed affidavits of witnesses in support of his allegations that his campaign rallies were disrupted by the 1st Respondent's supporters and the Police on the directive of the 1st Respondent. These include:-

20 Hope Mwesigye who deponed that during the campaigns in Kabale the Kabale District Deputy Resident Commissioner, one Denis Nzeirwe ordered for the arrest of people going to attend the Petitioner's rally at Kamuganguzi Sub County. The Deputy RDC detained them for about five hours, tortured them and
25 released them when the rally was over.

That the second incident happened when the Petitioner was holding his rally in Rwashamaire, Ntungamo District the Police were distributing the 1st Respondent's Posters and T-shirts to persons who went to disrupt the Petitioner's rally.

- 5 At the rally at Rubare, Ntungamo District, a stranger was arrested with a Jerry can of Petrol.

At a rally in Kitwe, Ntungamo District, Ruhama County the venue was decorated with the 1st Respondent's posters, placards and effigies. The Petitioner's rally was disrupted by
10 the 1st Respondent's supporters led by the speaker, of Ntungamo District.

In Ntungamo Municipality persons wearing NRM T-shirts invaded the Petitioner's rally where his supporters were pelted with stones. Subsequently, the Petitioner's supporters who
15 were not in Ntungamo during the fracas were arrested from his offices at Plot 29 Nakasero Road, Kampala and taken to Ntungamo where they were charged with various offences while the NRM supporters who had started the fight were given medical treatment and cash.

- 20 The evidence of Hope Mwesigye on the above incidents was refuted by:-

Nabimanya Dan, the Speaker Ntungamo District who denied Hope Mwesigye's allegations that he disrupted the Petitioner's rally held at Kitwe Market on 11th December, 2015. He

asserted that the fracas between the Petitioner's supporters and those of the 1st Respondent was provoked by the supporters of the Petitioner who attacked shop owners who were standing in front of their shops wearing yellow T-shirts.

5 That some of these shop owners were seriously injured and others run away taking different directions. He himself was attacked and assaulted by a mob of young and energetic persons led by one Aine. He reported the incident to Ntungamo Police Station. He denied allegations by Hope
10 Mwesigye that he led the exercise of fixing posters, placards and effigies in favour of the 1st Respondent and denied allegations that only the placards, posters and effigies of the 1st Respondent were plastered all over the Town Council but were instead mixed.

15 Bindeeba Dickens, a District Police Commander, Kabale District who stated that he provided security for all the Presidential rallies in Kabale and refutes allegations by Hope Mwesigye that there was detention and torture of the Petitioner's supporters.

Nzeirwe Denis Ndyomugenyi, a Deputy Resident District
20 Commissioner, Kabale District who also denied allegations by Hope Mwesigye that there were incidents of torture, imprisonment and arrest of the Petitioner's supports ordered by him. He refuted allegations by Hope Mwesigye that the army and Police stormed the District Headquarters where
25 tallying was taking place.

Twongeirwe Frank, in Charge, Kamuganguzi Police Post, Kamuganguzi sub county, Kabale District who denied allegations by Hope Mwesigye that some people were arrested and detained on the orders of the Deputy RDC, Kabale.

5 Kawonawo Baker, a District Police Commander Ntungamo District who stated that save for two incidents where there were clashes between the Petitioner's supporters and those of the NRM on 13th December, 2015 at Kitwe and Ntungamo, the election period in Ntungamo was peaceful. According to him,
10 the scuffles at Kitwe and Ntungamo were provoked by the Petitioner's supporters who attacked supporters of the NRM dressed in their party colours. The District speaker of Ntungamo District was one of those assaulted by the Petitioner's supporters who included a one Aine. As a result of
15 the scuffles a number of persons were injured. Formal complaints were lodged with the Police and the incidents were investigated and a number of arrests were made and criminal charges preferred against the suspected culprits. They are pending trial.

20 Patrick Gustine Olwata stated to be a voter at Low Primary School Polling Station who described an incident on 29th December, 2015 when the Petitioner and his supporters were sprayed with teargas and shot at with live bullets by members of the Police of Dokolo District as the Petitioner and his
25 supporters made their way through the District.

The witness described another incident on 20th December, 2015 at Corner Alvi, Neptung District when the RDC, Andrew Awanyi who was driving a Local Government Vehicle drove through the crowd who had gathered to welcome the
5 Petitioner. He further averred that the RDC's vehicle almost rammed into the Petitioner's convoy. He claimed that he was personally assaulted by the RDC and he filed a case of assault against him which is pending hearing at the High Court Lira.

The evidence by Patrick Gustine Olwata was refuted by:-

10 Nabukenya Teddy, a Returning Officer, Oyam District who denied the existence of a polling station known as Low Primary School polling station and denies any reports of intimidation in Oyam District.

Colonel (Rtd) Okello Engola Macodwogo, the Chairman Local
15 Council V, Oyam District and newly elected member of Parliament, Oyam North Constituency, Oyam District who denied the existence of Layo Sub Region Oyam District. He also denied having intimidated any voters on the 18th of February 2016 as alleged by Patrick Gustine Olwata. He
20 further asserted that he did not witness any soldiers of the UPDF being deployed to intimidate or interfere with elections in any way.

Akulu Julian, the Resident District Commissioner, Oyam District who denied the existence of Layo sub region in Oyam District

and the existence of a District in Uganda called “Neptung”. She stated that there were no election held in Oyam District on 16th February 2016 and it was not true that she had intimidated voters on that day. She explained that she had
5 spent the whole day at home and on the 18th February 2016 she travelled with her family to Lira District where she voted from. She was not aware that any soldiers of the UPDF were deployed in Oyam to intimidate voters or interfere with elections in any way.

10 Susan Akany, the Resident District Commissioner, Dokolo District who denied claims by Patrick Gustine Olwata that live bullets were fired to disperse the Petitioner’s rally at Dokolo Town. She asserted that the rally was dispersed by use of teargas because it was held after 7.00 p.m. which was beyond
15 the time of 6:00p.m. allowed for holding rallies.

Najibu Waiswa, the District Police Commander, Oyam District who denied the existence of Layo Sub County in Oyam District. He stated that he was in charge of the security in the District and he secured the campaign venues for all the presidential
20 candidates.

David Sekitto stated to have been part of the Petitioner’s bodyguard team during the Presidential elections. He described a number of incidents in relation to the Petitioner’s allegations that his campaigns were disrupted by the Police.

He deponed that: On their journey from Kibuku to Butaleja, the Petitioner was stopped by the Police from proceeding to Mbale where he was going to address a rally.

5 That while in Dokolo, they were sprayed with teargas and fired at with live bullets by the Uganda Police.

That while in Kyenjojo Tooro Royal College where the Petitioner was staying, the Policemen guarding the College tore/defaced the Petitioner's posters. The incident was reported to the Police who arrested the culprit who has never been produced
10 in Court.

That while in Lango sub region, the Regional Police Commander interrupted/disrupted the Petitioner's rally and even ended up fighting one of the Petitioner's supporters. That while on the ferry heading to Kalangala, three plain clothes
15 security operatives armed with guns kept following the Petitioner with intent to disrupt his campaign programmes. That while at a rally in Mukono a group of NRM supporters led by the Youth Minister Hon. Ronald Kibuule disrupted the Petitioner's rally with the intention of stopping it from taking
20 place.

Benon Muhanguzi, a voter at Nubuti Polling Station, Mukono District and member of the Petitioner's Advance Campaign team described a number of incidents to support the Petitioner's allegations about the involvement of the Police and

other Government organs in the disruption of the Petitioner's campaign activities.

According to the witness, Crime Preventers who were being led by Arafati who was clad in NRM T-shirt tried to block the
5 Petitioner's campaign in Bukedea.

In Mukono Hon Ronald Kibule, an NRM Member of Parliament led a number of youths clad in NRM T-Shirts to disrupt the Petitioner's rally. The NRM had organized a parallel meeting.

At Mbalala Trading Centre, Mukono District the Petitioner's
10 supporters who were putting up posters were arrested but later released without charge. They were arrested by the son of the District Security Officer and the DPC.

Hon. Kibuule Ronald, Member of Parliament Mukono North Constituency denied allegations by Sekitto David and Benon
15 Muhanguzi that he mobilized NRM supporters to disrupt the Petitioner's rally in Mukono. He acknowledged his presence in Mukono Town on 10th November 2015 but explained that he had gone to attend a meeting of the NRM leadership previously arranged but did not disrupt the activities of the
20 Petitioner and his supporters.

Ahimbisibwe Fred, the District Police Commander Mukono District who denied disruption of Petitioners rallies as alleged by Benon Muhanguzi and Sekitto David. He also denied arrest of Petitioner's supporters putting up the Petitioner's campaigns

posters at Mbalala. He stated that he provided security for the Petitioner's rally on 10th November, 2015 the same date the NRM was holding a rally meeting at satellite beach Hotel and there was no clash between the supporters of the two parties.

5 Manzi Zakaria Muhammad, the District Internal Security Officer Mukono District who denied allegations by Benon Muhanguzi that his only son, Manzi Hani who is aged only 6 years, was involved in arresting supporters of the Petitioner in Mukono District.

10 Simon Lolim, the Resident District Commissioner, Kaabong district who denied allegations by Benon Muhanguzi that there were road blocks and heavy deployment on the roads leading to the Petitioner's campaign venues. He stated that in accordance with a District Council Resolution, all the rallies by
15 candidates within Kabong Town Council were to be held at the Old Airstrip Ground and the Petitioner was advised so contrary to his attempt to hold his rally in a much smaller place in the Central/Commercial area along the road leading to Kabong main Hospital. He denied that the Petitioner's supporters were
20 either arrested or intimidated. He also denied having in any way blocked or interfered with the Petitioner's campaigns rallies.

Emuge Benjamin, the District Internal Security Officer Kaabong District who refuted allegations by Benon Muhanguzi that he
25 blocked a road leading to the Petitioner's rally at Karenga

Trading Centre. He denied arrest of the Petitioner's supporters or defacement of the Petitioner's posters during the time of his campaign in Kaabong. He was aware of a decision to change the venue for the Petitioner's rally of which Ms Losike Angela a
5 coordinator of the Petitioner's campaign was notified and she raised no objection. He refuted claims by Benon Muhanguzi that the Petitioner's campaign rally was interrupted by arrest of his supporters and defacing of his campaign posters.

Cekerom Peter, the District Police Commander, Kaabong
10 District, who denied allegations by Benon Muhanguzi that the Petitioner's Campaign rally at Airfield was marred by violence. He only remembered the security committee advising the Petitioner to shift his rally from near the RDC's offices to the Airfield which was more specious. That the Petitioner and his
15 supporters did not object of the change of venue and the Petitioner had successful campaigns in the District without any incidents of violence.

Col. Charles Lwanga Lutaya, a serving Army Officer with the UPDF and Deputy Commander Air Force stationed at Entebbe
20 Headquarters who refuted claims by Hope Mwesigye and Benon Muhanguzi that Air Force planes were used to disperse the Petitioner's rally at Soroti. According to the witness the planes were doing routine training drills and did not disrupt any rally.

Batemyeta Zephania, a supporter of the Petitioner and mobiliser stated in his affidavit that he moved with the Petitioner throughout the campaign period during which he saw NRM supporters wearing NRM T-shirts defacing and
5 destroying the Petitioner's campaign posters in all the places that the Petitioner held rallies and placing the 1st Respondent's Campaign posters over those of the Petitioner.

At Boma grounds in Fort Portal, the organization for the rally was interrupted by a helicopter painted yellow and bearing the
10 posters of candidate Yoweri Kaguta Museveni which landed at the venue for the rally.

That he later left Boma grounds to join the Petitioner's procession entering Fort Portal Town. That the procession was confronted by a group of men and youths wearing yellow T-shirts with the 1st Respondent's campaign pictures who
15 started pelting the Petitioner's procession with stones and bottles containing urine and chanting that nobody would vote the Petitioner.

The Petitioner and his supporters still proceeded to the venue
20 for the campaign rally amidst the scuffles.

That after the campaign rally he saw a group of people wearing NRM T-shirts with the picture of the 1st Respondent fighting all the persons wearing the Petitioner's T-shirts and defacing the Petitioner's posters.

That from Fort Portal, the Petitioner proceeded to Kasese where persons wearing civilian clothes riding motor cycles and in vehicles all pasted with campaign posters of the 1st Respondent threatened the locals in Kasese not to go to the
5 Petitioner's campaign rally. The rally was held amidst threats from the 1st Respondent's supporters. A car belonging to the Petitioner's mobilisers was burnt and some of the Petitioner's mobilisers were severely beaten and hospitalized.

That while in Bushenyi a soldier at the rank of Major in
10 company of others on motor cycles and others in cars with NRM and the 1st Respondent's posters were threatening people telling them not to attend the Petitioner's rally.

That in Mbarara several people were assaulted before the rally and the Petitioner's campaign posters were destroyed and
15 defaced.

That while the Petitioner was proceeding to Kaliro from Iganga he met persons dressed in yellow T-shirts with dry banana leaves (Ebisanja) with posters of the 1st Respondent and banners who had blocked the way.

20 That in Kamuli the Petitioner's posters were defaced.

Further, according to the witness, in Kisoro the Chairman L.C. V Kisoro had gathered people outside the venue of the Petitioner's campaign rally stopping people from going to the rally until the Police intervened. The Chairman then went to a

nearby shop where he started distributing money to persons to stop them from attending the Petitioner's rally.

That in Rubare, Ntungamo District a young man was found near one of the Petitioner's vehicles holding a matchbox and
5 one liter of mineral water bottle containing petrol. He was arrested but was rescued by a Councilor known as Savimbi.

That in Kitwe, Ntungamo District where the Petitioner's main rally was scheduled, the 1st Respondent's posters were placed on the walls surrounding the venue and boxes having the 1st
10 Respondent's campaign posters were hanging from the trees around the venue.

That at the venue of the rally, he saw a man called Kassim and other people standing about 50 (fifty) feet away clad in T-shirt bearing the 1st Respondent's campaign pictures armed with
15 sticks. The witness complained to the DPC Ntungamo but as Kassim walked away, he attacked him with a knife. There was a scuffle during which the 1st Respondent's supports pelted the Petitioner's supporters with stones.

That after the rally, there was a scuffle between the 1st
20 Respondent's supporters led by Savimbi and those of the Petitioner.

Patrick Kamulindwa, the NRM District Registrar Kabalore District who denied Allan Kagoro's allegation that on 17th November, 2015 he used soldiers to pull down the Petitioner's

Campaign Posters. He averred that he had no command over any soldier and according to him, the campaign posters of all the various candidates still plaster the Town.

5 Kawonawo Baker, District Police Commander Ntungamo District explains the incidents in Ntungamo as already stated in this judgment.

Muganga Nathan, the Officer in charge of Ntungamo Central Police who stated that he deployed polling constables to ensure security at all the polling stations. He explained the
10 circumstances under which the persons suspected to have been involved in scuffles between the Petitioner's supporters and those of the NRM Party were arrested and identified, leading to charges being preferred against them. He stated that on polling day he did not receive any reports of arrests or
15 abduction of the Petitioner's agents.

Annet Kyokunda, a resident of Kanoni Kiruhura district stated that on 27th January, 2016 when candidate Amama Mbabazi was scheduled to hold a rally at Kanoni, Nzeire Sandrene Kaguta, a brother of the candidate Museveni and also
20 Chairman NRM Kiruhura District together with the Deputy RDC and GISO Kinoni, one Kenneth Muwoozi blocked the only road leading to Kanoni Market. There was a scuffle between the witness and Nzaire and it was when she reminded him of the Ntungamo incident that the road was opened. People
25 proceeding to the rally were chased away and they used small

paths leading to the rally and that affected the attendance at the rally.

Nowomugisha Sedrick Nzaire, the Chairman National Resistance Movement Kiruhura District refuted Annet Kyokunda's allegation that he blocked a road leading to Kanoni Market where the Petitioner was going to hold a campaign rally. He denied interfering with the holding of the rally but recalls meeting Annet Kyokunda who approached him and shouted at him that they are going to defeat them and he also replied her that they would not defeat them either.

Katamba Reuben, the Deputy Resident District Commissioner, Kiruhura District denied allegations by Kyokunda Annet that he together with Nuwomugisha blocked the road to Kanoni Market where the Petitioner was scheduled to hold a rally. He asserted that he was not present at Kanoni Market on 27th day of January 2016

Kenneth Muhoozi, the Gombolola Internal Security Officer (GISO) Kinoni sub county, Kazo county Kiruhura District stated that he was present when the Petitioner held his rally at Kanoni Market Kanoni Sub County and no violence was reported. Throughout his stay in the District, the Petitioner was escorted by the District Police Commander who provided him with security. He refuted Annet Kyokunda's allegation that he together with Nzeire Sandrene Kaguta and the Deputy

RDC Kiruhura interfered with the Petitioner's campaign in Kiruhura and specifically at Kanoni Market.

5 A number of witnesses, namely, Ndugu Rodgers Mugabe Lawrence, Ezekiel Mbejja and Onzima Ramadhan testified to an incident where they were arrested from the Petitioner's offices on Nakasero Road, first detained in Kampala and then Ntungamo from where they were taken to Court and charged with offences they never committed. Ndugga Rogers was a driver, Mugabe Lawrence is a journalist and youth mobiliser
10 and Ezekiel Mbejja was employed at Go Forward Secretariat as a security guard and all of them testified that they were never in Ntungamo at the time they were alleged to have committed offences in the area.

Odongo Mark Paul, the Commandant Special Investigations
15 Unit Kireka, Wakiso District admitted having detained Ndugga Rogers and Mugabe Lawrence in connection with a case of assault allegedly committed in Ntungamo District. He explained that they had been arrested in Kampala and he was requested to hold them for one night awaiting their transfer to
20 Ntungamo.

Baguma Aron Siringi, the District Police Commander, Central Police station who denied having been involved in the arrest of Ndugga Rogers, Mugabe Lawrence Ezekiel Mbejja, Semakula Asado, Medi Matovu and Onzima Ramathan from the
25 Petitioner's Go Forward offices at Nakasero which does not fall

within his area of command and none of them was detained at CPS as alleged.

Atuhairwe Gerald, the Officer in Charge of Kampala Central Police Station denied allegations by Mugabe Lawrence and
5 Ndugga Rogers that they were detained at CPS. Their names did not appear anywhere in the Register.

A number of witnesses, namely, Tumusiime Gerald, Juma Bay, David Mubiru, Sewanyana Joseph and Tito Sky described themselves as unemployed and members of a jobless group
10 called KIFACE based in Katwe. In their affidavits which are similar word for a word, they alleged that on 16th February 2016, they were contracted by one Tindyebwa an NRM mobiliser to help him protect the 1st Respondent's votes at polling stations. That they would beat anybody who was
15 seemingly against the candidature of the 1st Respondent and that nothing would happen to any member of their group since the NRM was in power and they would be paid for the services. That they thoroughly beat up opposition supporters in Lugala, Nakulabye, Kawala and Nansana in full view of the Police but
20 they were untouchables. That they have never been paid for their services and the contact person has since disappeared. That the days Dr Kizza Besigye was scheduled to have rallies in Kampala, a one Ms Tibita, an intelligence officer contacted them to beat his supporters in down town which they did.
25 They regret the torture and intimidation they meted upon

innocent Ugandans. That they had voluntarily and willingly offered to volunteer the information stated in their affidavits and committed to stand by their statements at all times and in all circumstances.

5 Samuel Mission, the District Police Commander Katwe Divisional Headquarters stated that he had been DPC since August 2015 and knew KIFACE as a criminal gang operating in Katwe and Mukono which targets people along the streets, assaulting them and stealing their property. That he never
10 received any reports that the group indiscriminately assaulted opposition supporters during the elections.

Bishop Malekzedich Rugogamu, a registered voter of Karangaro A Centre II polling station, Rukungiri District who was a District coordinator for the Petitioner's campaigns in the
15 District who stated that on 26th December, 2015 while he was proceeding to Radio Kinkizi on a campaign programme, he was involved in a hit and run accident right after being threatened by Hon. Jim Muhwezi that he would be dead by voting day. That Hon. Jim Muhwezi uttered the threats on Radio Rukungiri
20 Voice of Development. That on 26th January 2016, while at his home he was arrested by soldiers led by the O.C. CID of Rukungiri and one Ogwara Michael and Afende Mashemerwa on alleged charges of treason, but on being produced in Court he was charged with the offence of inciting violence on which
25 he was released on bail. That he was threatened by Emmy

Ngabirano, RDC Mitoma District who was campaigning for the 1st Respondent and Hon. Jim Muhwezi who told him to wait and see what would happen to him on 19th February, 2016. He mentioned others who were threatened by Hon. Jim Muhwezi
5 as Chris Kagayano, Kasangaki Medad, and Mbabazi Anthony none of whom was produced as a witness in this case.

Hon Jim Katugugu Muhwezi, the Member of Parliament Rujumbura Constituency, Rukungiri District and Minister of information and National guidance at the material time,
10 denied knowledge of Bishop Melekezadich Rugogamu and any allegations that he threatened him or any other person. He also denied having organized a hit and run car accident for Bishop Rugogamu and his son.

Bisoborwa Peter, the Resident District Commissioner Buliisa
15 District, refuted allegations by Kasigwa Godwin Angalia that he arrested him and detained him at Buliisa Police Station and denies disruption of the Petitioner's rallies.

The Attorney General filed the evidence of District Commanders in Districts which were alleged to have
20 experienced violence and intimidation during the election period including the campaigns. They included:

Odong Patrick the District Police Commander Kapchorwa, Denis Ochoma the District Police Commander Ibanda, Moses Muzima Kiconco the District Police Commander Gulu,

Katwesimire Damian the District Police Commander Bushenyi, Mbabazi Martin Bwahukwa the District Police Commander Kyenjojo, Magyezi Jaffer the District Police Commander Mbarara, Kayondo Amisi Lukanga the District Police
5 Commander Dokolo, Godfrey Achiria the District Police Commander Kibuku, Mugabi Peter the District Police Commander Mbale, Richard Musisi the District Police Commander Kalangala, Asiimwe Justus the District Police Commander Nakaseke, Akankwasa Bernard the District Police
10 Commander Hoima, John Rwagira the District Police Commander Bulisa, all of whom stated that the Police secured the Petitioner's campaigns and the polling period very well and they did not receive any complaints regarding intimidation of the Petitioner's voters and agents which we have covered in
15 this judgment.

This was captured in the evidence of Denis Ochama the District Police Commander Ibanda who stated that he did not receive any reports that the Petitioner, his supporters and any campaign agents were harassed or intimidated in Ibanda
20 District. That there were no reports of incidents of assault, arrest and detention of the Petitioner's supporters, or agents in Ibanda District during the elections period. He stated that on the contrary, he secured the entire District during elections and did not deploy armed Police personnel at any Polling
25 Station. He only deployed polling constables who were not armed with any fire arms. There was no abduction or arrest of

the Petitioners agents and supporters as alleged in the Petition. We shall explain why Ibanda District has been singled out because this was a common feature in the evidence of the District Police Commanders listed.

5 The other witnesses relied on included:-

Erasmus Twaruhuka, an Assistant Inspector General of Police and Director Human Rights and Legal Services explains the concept of Community Policing in General and the role of Crime Preventers during the election to maintain Law and
10 Order to supplement the Uganda Police. He stated that they were not recruited for the purpose of interfering with election activities as alleged by the Petitioner.

Hadijah Namutebi, the Commissioner of Police and Head of Department of Community Policing in the Uganda Police who
15 defended the use of Crime Preventers as part of a community policing programme which was introduced in the Uganda Police in the year 1989. She asserted that the criteria for recruitment did not include one's party affiliation.

Okaja Emmanuel, Deputy Town Clerk Soroti Municipality, who
20 explained the circumstances under which the venue for the Petitioner's rally was changed from Public Gardens Soroti Municipality to the Sports Grounds. He stated that the original venue had been allocated for a scheduled Health camp. That the reason was communicated to the Petitioner's team in time.

Kinobere S. Beezah, a resident of Kasasir Sub-county, and a Captain in the Uganda People's Defence Force. He denied Wabuluka Ali's allegations that he ordered voters not to vote for the Petitioner.

- 5 Caleb Tukaikiriza, Resident District Commissioner, Kalangala District who denied the allegations by the Petitioner and Lawrence Mugumya that Crime Preventers, soldiers and the Police beat up people on the morning of the voting day.

Kale Kayihura, the Inspector General of Police who was in
10 charge of the overall security during elections. He defended the role of the Crime Preventers and that of the Uganda Peoples Defence Forces which were supplementary to that of the Uganda Police in ensuring security during the elections. He denied that the 1st Respondent played any role in the
15 recruitment and deployment of Crime Preventers. He stated that the skirmishes in Ntungamo between the Petitioner's supporters and those of the 1st Respondent was provoked by the Petitioner's supporters, who, after investigations were produced in Court where they are facing trial on charges of
20 assault. He denied knowledge of an illegal tally centre at Naguru and refuted all allegations of interference by the Police in the election process. He asserted that the Police acted within their mandate to ensure that there was security during elections.

Dumba Moses, the Ag. Resident District Commissioner, Kamuli District who refuted allegations by Kisira Samuel and Sebatindira George that UPDF Soldiers assaulted voters in Kamuli District. There were no reported incidents of torture
5 and imprisonment of the Petitioner's supporters or agents and no bribery of voters with salt.

Colonel Bainomugisha William, a UPDF officer, Infantry Brigade Commander Kotido denied allegations by Alex Lokutan that the UPDF mobilized voters to vote for the 1st Respondent or that
10 the soldiers under his command gave out money and T-Shirts to voters to influence them to vote for the 1st Respondent.

Abdu Wejule, the Gombolola Internal Security Officer Nakaloke, denied allegations by Wadala Abas that he intimidated voters in his area of jurisdiction. He only patrolled the area to ensure
15 that the electoral process went on peacefully.

Andrew Felix Kaweesi, the Assistant Inspector General of Police and Director Human Resources Development in Uganda Police. He justifies the stopping of the Petitioner from proceeding to Mbale for a pre nomination consultative rally on security
20 grounds and after consultations with the Attorney General and the Commission. He stated that he also received intelligence reports that the Petitioner's supporters had mobilized in Jinja and were enroute to Mbale to cause chaos.

In paragraph 16 he deponed as follows: “ *In specific response to paragraph 5 of the amended petition my action of intercepting the Petitioner at Njeru was within my mandate as Director of Police operations and purely to prevent clashes*
5 *between the Petitioner’s and NRM Party supporters.*”

General Katumba Wamala, the Chief of Defence Forces, Uganda People Defence Force (UPDF) who stated that the Uganda Police only requested the support of the UPDF during the General elections. The support the Police required was to
10 ensure security of the country before, during and after the elections. The officers and men exercised their Constitutional right to vote and did not interfere with any of the Petitioner’s campaign rallies or the elections. The presence of the UPDF did not have any intimidating effect on the voters because of the
15 respect and admiration it has earned as a disciplined force.

Wazikonkya Margaret, the Resident District Commissioner Kibuku District, who denied allegations by Walubaku Ali that soldiers ordered voters to vote the 1st Respondent at Moru polling stations. She asserts that on the 18th February, 2016
20 she had requested for 20 soldiers to remain on standby in case of violence and they all remained at Kibuku Central Police Station.

Kinobere Herbert, the Member of Parliament Kibuku Constituency, who refuted Godfrey Kamba’s allegations that a
25 M/V Reg. No. UAS 325 X belonged to him or that it was used to

transport soldiers between Polling Stations to intimidate voters. He stated that he knew the vehicle as an ambulance belonging to an NGO and is used solely for community Health Emergencies in Kibuku District.

5 ACP Ruhweza James Akiiki, the Operations Commander, Kampala Metropolitan Police but formerly Regional Police Commander, Elgon Region based in Mbale refuted allegations by Margaret Lukowe that any area of his Command experienced any voter intimidation.

10 That contrary to section 26 of the PEA the 1st Respondent directed Rtd Lt. General Henry Tumukunde to fly the 1st Respondent's helicopter fully decorated with the 1st Respondent's campaign posters and party colours to land at Boma Ground Fort Portal and instilled fear and uncertainty and
15 in effect interfering with scheduled electioneering activities in the disruption of the Petitioner's rally.

In his reply to the amended petition the 1st Respondent denied that he directed Rtd. Lt. General Henry Tumukunde to fly the Helicopter referred to as alleged or that all. He averred that
20 he did not own the helicopter.

The Commission denied knowledge of the allegations contained in the paragraph. The Petitioner adduced the evidence of Batemenya Zephaniah who stated that he saw a helicopter painted in yellow and bearing posters of candidate
25 Yoweri Kaguta Museveni landing at the grounds where the

Petitioner's rally was being arranged. He saw Rtd. Lt. General Tumukunde alighting from the helicopter. He entered a black Land Cruiser. Then four huge bags which were removed from the Helicopter were loaded in a silver grey van that had been
5 parked near the black Land Cruiser. Both vehicles left and shortly afterwards the Helicopter also took off.

Rtd. Lt. General Henry Tumukunde is a retired officer of the UPDF. He was a volunteer in 1st Respondents election exercise for election as President of Uganda during elections
10 held on 18th February, 2016. He admitted having travelled to Fort Portal in a Helicopter which Landed at Boma Grounds. To his knowledge, the Petitioner was supposed to be campaigning in Gulu and not Kabarole. The landing of the Helicopter at Boma did not disrupt any activity at the venue save for a few
15 people who were attracted by the Helicopter which they went to view. He was immediately driven to his hotel where he was at first blocked by the Petitioner's supporters from accessing his room. He was later after 3 hours allowed to access the room. He denied allegations that on 17th November, 2015 he
20 moved to Mpanga Market in a convoy which confronted the Petitioner's supporters. He denied presence at Tooro Resort Hotel for the purpose of bribing persons intending to attend the Petitioner's rally. He denied that he was at any point in time during the campaign exercise under the control and
25 direction for the 1st Respondent for whom he was campaigning on voluntary basis and in his personal capacity.

George Michael Mukula, Vice Chairman NRM, Eastern Uganda, stated that he provided the Helicopter which was decorated with the 1st Respondent's campaigns posters and the National Resistance colours. He availed it to Rtd. General Henry
5 Tumukunde to take him to fort Portal and return to Kampala the same day. The Helicopter did not belong to the 1st Respondent as alleged in the amended petition.

Analysis by the Court

We have analyzed the above evidence critically. The Petitioner
10 failed to prove the allegations. There is no evidence that the Helicopter was flown to Fort Portal on the directions of the 1st Respondent. Secondly the allegations that the Helicopter instilled fear and uncertainty is difficult to comprehend because it dropped the passenger and the baggage and then
15 left. There was nothing to stop the supporters of the Petitioner and those interested in attending the rally from attending. We find the allegation merely speculative because those people at the Boma ground who were attracted more by the Helicopter had the right to leave the venue to view the Helicopter instead
20 of the Petitioner's rally.

We also note that none of the people allegedly intimidated swore an affidavit to that effect that was so intimidated. In our opinion the allegation was speculative.

Section 26 of the PEA allegedly contravened by the Respondents provides as follows:

26. Interference with electioneering activities of other persons

5 **A person who, before or during an election for the purpose of effecting or preventing the election of a candidate either directly or indirectly—**

10 **(a) by words, whether spoken or written, song, sign or any other representation or in any manner seeks to excite or promote disharmony, enmity or hatred against another person on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion;**

15 **(b) organizes a group of persons with the intention of training the group in the use of force, violence, abusive, insulting, corrupt or vituperative songs or language calculated to**

5 **malign, disparage, condemn, insult or abuse
another person or candidate or with a view to
causing disharmony or a breach of the peace
or to disturb public tranquility so as to gain
unfair advantage in the election over that
other person or candidate;**

10 **(c) obstructs or interferes or attempts to obstruct
or interfere with the free exercise of the
franchise of a voter or compels or attempts to
compel a voter to vote or to refrain from
voting;**

**(d) compels, or attempts to compel a candidate
to withdraw his or her candidature;**

15 **(e) in any manner threatens any candidate or
voter with injury or harm of any kind; or**

20 **(f) induces or attempts to induce any candidate
or voter to fear or believe that he or she will
suffer illness or will become an object of**

**divine, spiritual or fetish displeasure or
censure;**

**commits an offence and is liable on conviction
to a fine not exceeding seventy two currency
5 points or imprisonment not exceeding three
years or both.**

There are several aspects to the affidavit evidence filed by the
Petitioner in support of this allegation and those filed in reply
by the Respondents.

10 The first aspect is evidence completely lacking in credibility
and there are two examples of this. The first example is the
evidence of Jamil Mutyabule and Patrick Gustine Olwata. Mr.
Jamil Mutyabule stated that he is a registered voter at
Moonlight Polling Station (A- Z) where, when he reported
15 incidents of voter bribery he was surrounded by unknown
persons who beat him and chased him away from the Polling
Station. The existence of this Polling Station was denied.

Similarly, Patrick Gustine Olwata described himself as a voter
at Low Polling Station whose existence was also denied. This
20 rendered the credibility of the two witnesses questionable and
Court could not rely on them to make a finding in favour of the
Petitioner that the alleged incidents occurred.

The second example is evidence of the unemployed KIFACE group who claimed to have been hired by Tindyebwa and Ms Tibwita to beat up members of the opposition including those of candidate Rt. Col. Dr. Kiiza Besigye. All the affidavits of the mentioned witnesses were similar word for word which is an indication that someone simply drafted the affidavits and invited the deponents to sign. From the substance of the affidavits the witnesses claimed to have beaten up opposition supporters in a number of areas but not a single one of the numerous alleged victims of the assault was produced as a witness. The credibility of the witnesses who were allegedly motivated by money which was not paid to them was questionable and Court could not rely on them to prove their allegation of indiscriminately assaulting opposition supporters. Above all, this was evidence from self-confessed criminals which could not be taken in good faith in the circumstances of this case.

The second aspect of the evidence is that of Nduga Rogers, Mugabe Lawrence, Semakula Asadu, Medi Matovu and Onzima Ramathan all of whom claim that they together with others were arrested from the Go - forward offices, Nakasero detained in Kireka and later taken to Ntungamo where they were charged in Court for offences of assault which they never committed. The arrest of these witnesses was related to an incident in Ntungamo where the supporters of the Petitioner and those of the respondent clashed at a rally; the Police

intervened. Investigations into the circumstances leading to the clash were investigated by the Police and some suspects charged in Court. The claims and counterclaims as to who provoked the fight and what role each one played will be
5 determined during the trial and so will the guilt or innocence of those accused to have participated in the fight.

The third aspect of this allegation is whether or not the deployment of the Police to secure the Polling Stations and surrounding areas is intimidatory to the voters or the voters
10 feel more secure voting in a secured atmosphere. From the evidence adduced by the Petitioner, the atmosphere was potentially volatile in some areas and if the management of the Police felt that it was safer to deploy not only the Police Constables but also extra Police, none of the witnesses felt
15 scared as not to vote, Court found that the deployment of the Police as explained by the District Police Commanders in the Districts cited and Felix Kawesi the Asst. Inspector General of Police was necessary and inevitable if voters were to feel safe as they cast their vote. GEN Katumba Wamala, the Chief of
20 the Defence Forces explained the role of the UPDF as supplementary in case Uganda Police requires their support.

Court found that the deployment of the Police and Crime Preventers was necessary to ensure security during the election.

All the District Commanders like the one of Ibanda stated that no incidents of intimidation or Election related violence were reported throughout the District. This is echoed by the District Police Commander, Isingiro who indicated that he had
5 established a complaints desk to handle complaints related to elections. He employed polling constables at all polling stations in the District to monitor security during polling. According to him the election exercise went on smoothly and he never received any election related complaints and did not arrest
10 anyone on election related matters. In our view, as illustrated by the evidence of the District Police Commander Isingiro, all incidents of violation of the law should have been reported as they occurred instead of waiting for a petition. This is because such acts of violation of the law are Penal Code offences and
15 with or without a petition the perpetrators can be sanctioned.

The Petitioner had also alleged that the Police was acting on the directions of the 1st Respondent but this link was not established by any evidence.

Lastly, acts of alleged intimidation and interference with
20 electioneering activities of other persons were committed by individuals and Section 26 of the PEA provides for a penalty against the persons who commit the offences specified in that provision. The Petitioner's attempt to attribute the acts of these individuals to the 1st Respondent is not sustainable
25 because there is no way a candidate would control some

overzealous supporters tearing posters of other candidates or supporters provoking a fight or engaging in a fight with supporters of another candidate. In this regard we found no evidence to associate the 1st Respondent personally or with
5 his consent with the alleged intimidation and disruption of rallies.

ISSUE NO. 2: Whether the said election was not conducted in accordance with the principles laid down in the PEA, and the ECA.

10 The second issue was whether the election was not conducted in accordance with the principles laid down in the PEA and the ECA. These principles have been summarized by this Court in two earlier Presidential elections Petitions of: **Besigye Kizza vs. Museveni Yoweri Kaguta**, Election Petition No. 1 of 2001
15 and **Kizza Besigye vs. Yoweri Kaguta Museveni and Electoral Commission**, Election Petition No, 01 of 2006 as follows:

- a) The election must be free and fair.
- b) The election must be by universal adult suffrage.
- 20 c) The election must be conducted in accordance with the law and procedure laid down.
- d) There must be transparency in the conduct of elections.
- e) The result of the election must be based on the majority of the votes cast.

Whereas these principles can be found in the two statutory enactments, (PEA and ECA), their foundation lies in the Constitution. For example, Article 1(2) of the Constitution provides:

5 **Without limiting the effect of clause (1) of this Article, all authority in the state emanates from the people of Uganda; and the people shall be governed through their will and consent.**

10 Article 1(4) reads:

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

15 Article 103 (1) provides: **The election of the President shall be by universal adult suffrage.**

See also Article 61(1) (a) on **regular free and fair elections are held**, Article 61(e) **on voters register**, Article 68 on **transparency of the elections** and **Article 103 (4)**
20 **concerning the majority vote that a winning Presidential candidate must obtain.**

Odoki, C.J., had this to say in his judgment in **Besigye Kizza vs. Museveni Yoweri Kaguta and Electoral Commission**, Election Petition No. 01 of 2001 on free and fair elections:

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

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

This opinion was shared by all the Justices who heard the same petition. We similarly agree that the principles of a free and fair election as contained in Odoki, C.J.'s opinion reflects the position of this Court on conducting a free and fair election.

We have given our findings in regard to the Petitioner's allegation under issue 1 that there was noncompliance with some provisions of the PEA and the ECA in the conduct of the 2016 Presidential election. The question whether the Presidential election was not conducted in accordance with the principles laid down in the PEA and the ECA which is presented as Issue 2 is difficult to separate from Issue 1. This is because noncompliance with the provisions of the two Acts is closely

linked with failure to observe the principles laid down in the two Acts of Parliament.

Consequently, consideration of the allegations under issue 2 has been covered under issue 1. These included the following
5 allegations:

- *That the Commission failed to compile and maintain a National Voters Register contrary to Article 61 (1) (e) of the Constitution and Sections 12 (f) and 18 of Electoral Commission Act and illegally retired the voters register. And further that the Commission instead relied on data
10 generated by another government agency to create a new voters register which resulted in the disenfranchisement of voters and permitting of ineligible persons to vote.*
- *That there was deliberate delay by the Commission to deliver polling materials to Kampala and Wakiso areas where the 1st Respondent was expected to perform
15 poorly.*
- *That the 1st Respondent made use of government resources which are not ordinarily attached to and
20 utilized by the President contrary to Section 27 of PEA.*
- *That the Commission or his agents allowed commencement of the poll with pre-ticked ballot papers and ballot boxes which were already stuffed with ballot*

5 *papers without first opening the said boxes in full view of all present to ensure they were devoid of any contents contrary to Section 31(8) of the PEA. that contrary to Sections 72 (b) of PEA, some of the Commission's agents*
ticked ballot papers in favour of the 1st Respondent and
stuffed ballot boxes with those ballot papers and failed to
prevent table voting in places like Kiruhura and other
places in the cattle corridor.

10 *▪ That on the polling day, during the polling exercise, the*
Petitioner's polling agents were chased away from the
polling stations and that as a result, his interests at those
polling stations could not be safeguarded contrary to
Sections 33 and 48(4) and (5) of the PEA. And further that
15 *the Petitioner's agents were denied information*
concerning the counting and tallying process contrary to
Section 48 of the PEA.

When we considered all these allegations, we agreed with the
Petitioner only in the following respects regarding
noncompliance:

- 20 1. There was delay in delivery of voting materials in areas of
Kampala and Wakiso.
2. There was interference with the Petitioner's aspirant
consultative meetings.

3. There was interference with the Petitioner's electioneering activities by some elements of the Police, some Resident District Commissioners and Gombolola Internal Security Officers.

5 4. There was failure by Uganda Broadcasting Corporation to give the Petitioner equal treatment with the 1st Respondent.

5. In some cases, the Petitioner's polling agents were denied information to which they were entitled.

10 We gave reasons for our findings and we need not repeat them here.

ISSUE NO 3: Whether, if either issue 1 and 2 or both are answered in the affirmative, such noncompliance with the said laws and the principles affected the results of the elections in a substantial manner.

15 We note that both the Constitution Article 104 (1) and Section 59 (1) of the PEA provide that an aggrieved candidate may petition the Supreme Court for a declaration that a candidate declared by the Commission as an elected president was **not**
20 **validly elected**. If the allegation is proved, the consequence would be either annulment of the election or a declaration that a candidate other than the one declared as winner by the Commission was validly elected.

Under Article 104 (9) of the Constitution it is provided that:
“Parliament shall make such laws as may be necessary for the purposes of this article, including laws for grounds of annulment and rules of procedure.”

5 It should therefore be noted that the Constitution leaves it to representatives of the people - Parliament to lay out the grounds for annulment of an election. The PEA is rooted in the above specific constitutional mandate given to parliament and in its Section 59 (6) (a) the Act provides the grounds
10 which the Supreme Court can rely on to annul an election. The section provides as follows:

Challenging presidential election

The election of a candidate as President shall only be annulled on any of the following grounds if proved to the
15 satisfaction of the Court—

a) noncompliance with the provisions of this Act, if the Court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions **and that the noncompliance affected the result of the election in a**
20 **substantial manner;** (Emphasis of Court)

The import of Section 59 (6) (a) of the PEA is that noncompliance does not automatically void an election. Where a party alleges noncompliance with the electoral law; Court must not only be satisfied that there has been noncompliance

with the law, but also that such failure to comply affected the results of the election in a substantial (significant) manner.

Counsel for the Petitioner urged this Court, to depart from its decisions in **Presidential election Petition No. 01 OF 2001** and **NO. 01 OF 2006**, in which the Court held *inter alia* that in assessing the degree of the effect of noncompliance with the law on the result of an election, numbers are important. In both cases, this Court held that a Court cannot annul an election on the basis that some irregularities had occurred, without considering their mathematical impact. In the opinion of Counsel for the Petitioner, Court placed undue reliance on a quantitative test in interpreting the phrase “**affected the result of the election in a substantial manner**” and set an extremely restrictive and nearly impossible to meet test.

In applying Section 59 (6) (a) of the PEA to the matter before us, we were alive to the spirit ingrained in Article 1 of the Constitution which deals with the sovereignty of the people and provides *inter alia* that the people shall be governed through their will and consent.

Clause (4) specifically states that:

The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair

elections of their representatives or through referenda.

The import of Section 59 (6) (a) of the PEA is that it enables the Court to reflect on whether the proved irregularities
5 affected the election to the extent that the ensuing results did not reflect the choice of the majority of voters envisaged in Article 1 (4) of the Constitution and in fact negated the voters' intent.

It is important that the Court asks the question: “Given the
10 national character of the exercise **where all voters in the country formed a single constituency**, can it be said that the proven irregularities so seriously affected the process that the result could not reasonably be said to represent the true will of the people?”

15 The Petitioner alleged that the results announced by the Commission declaring the 1st Respondent as winner were manifestly different from the votes cast at polling stations. This was a very serious allegation indeed. The Petitioner sought for the disclosure and discovery of the Declaration of Results
20 Forms used by the Commission to declare results, in order that it is determined whether the results announced correspond with what was recorded on the Declaration of Results Forms in possession of the Petitioner and other candidates. The discovery was ordered by the Court and it was done. Counsel

for the Petitioner and their experts were given access to documents and they did inspect them.

By consent of the parties, the documents were exhibited in Court and introduced in evidence. Court had the opportunity to
5 examine the Tally Sheets and Declaration of Results Forms. We found no evidence of discrepancy between what was recorded in the forms and what was declared by the Commission. Counsel for Petitioner themselves failed to point out any such discrepancies.

10 We were satisfied that the results used by the Commission to declare the 1st Respondent as winner were based on the tally sheets and Declaration of Results Forms introduced in Court as evidence by the consent of the parties. The Petitioner did not produce any Declaration of Results Forms which he had stated
15 in his petition to be in his possession. Court therefore had no way of determining whether or not what was in the possession of the petitioner differed with the official record of the Commission. The Petitioner therefore failed to discharge his burden of proving the allegation that serious discrepancies
20 existed between what was declared by the Commission and what was declared at polling stations.

In defining what constitutes a valid election, we must be guided by **both** the Article on people's sovereignty (Article 1) as well as the article providing for challenging the "validity" of

an election (Article 104). Both constitutional provisions must be read together.

Court has been guided by the principle that in a democracy, the election of a leader is the preserve of the voting citizenry, and that the Court should not rush to tamper with results which reflect the expression of the population's electoral intent. Inherent in the Section is the philosophy that the fundamental consideration in an election contest should be whether the will of the majority has been affected by the non-compliance. This is the very philosophy on which Article 1 (4) of the Constitution is founded.

The context is that a general election has been held, conducted by a body duly mandated by the Constitution to hold and manage elections and declare results. On the face of it therefore, the people have spoken. There must be a basic assumption that what was done was properly done until the contrary is proved. The law is that where a duty is imposed on a body to do or carry out certain duties, there is an assumption that what was done was done correctly. That is why Article 104 (5) states that where no petition is filed or if filed it is dismissed, the person declared President shall be presumed to have been duly elected President.

We must however emphasize that although the mathematical impact of noncompliance is often critical in determining whether or not to annul an election, the Court's evaluation of

evidence and resulting decision is **not exclusively based** on the quantitative test. Court must also consider the nature of the alleged noncompliance. It is not every violation that can be evaluated in quantitative terms. But whatever the nature of the violation alleged, the quantum and quality of evidence presented to prove the violation must be sufficient to satisfy the Court that what the Constitution envisaged as a free and fair election, as the expression of the consent and will of the people on who should govern them, has been circumvented. Annuling of presidential election results is a case by case analysis of the evidence adduced before the Court. If there is evidence of such **substantial departure** from constitutional imperatives that the process could be said to have been qualitatively devoid of merit and rightly be described as a spurious imitation of what elections should be, the Court would annul the outcome. The Courts in exercise of judicial independence and discretion are at liberty to annul the outcome of such a sham election.

Under Issue 1, the Petitioner made twenty specific allegations of noncompliance with the provisions of the PEA and/or the ECA against the Commission. And under Issue No.2, the Petitioner alleged that the election was not conducted in line with principles of the PEA and ECA. As earlier stated, only five of the allegations were proved to the satisfaction of the Court and these were as follows:

1. Polling materials were delivered late in some polling stations in some parts of the country, the majority of them located in Wakiso and Kampala district. We therefore made a finding that in regard to the affected areas the Commission did not therefore comply with its duty under Section 28 of the PEA. Nevertheless it was averred by the Commission, and not controverted by the Petitioner, that in the affected polling stations, the time for voting was extended and voting was carried out and completed.
2. In some cases, the Petitioner's polling agents were denied information to which they were entitled.
3. The Uganda Broadcasting Corporation, a State Media Agency, failed to provide equal coverage to all the presidential candidates as required by the Constitution and the PEA.
4. There was interference with the Petitioner's aspirant consultation meetings in some parts of the country contrary to Section 3 of the PEA.
5. There was interference with the Petitioner's electioneering activities by some elements of the Police, some Resident District Commissioners and Gombolola Internal Security Officers.

In regard to Issue two and based on our findings under issue one, it was proved to the satisfaction of the Court that there

were instances of noncompliance with the principles of free and fair elections due to occurrences of interference with the Petitioner's aspirant consultative meetings, late delivery of polling materials, failure by Uganda Broadcasting Corporation to give the Petitioner equal treatment with the 1st Respondent, and instances of interference with the Petitioner's electioneering activities.

Having found instances of noncompliance with the law as pointed out above, the question that follows is : did any of the proved failures/irregularities on its own have substantial effect on the results of the election and therefore warrant the Court to declare that the election of the 1st Respondent as President was invalid? One could also ask: did the sum total of the five proved failures to adhere to the electoral law have such effect on the results of the election as to merit a declaration by the Court that the 1st Respondent was not validly elected as President and that the election of the 1st Respondent be annulled?

Regarding the failure by the Commission to deliver polling materials within the legally prescribed time, it was averred by the Commission, and not controverted by the Petitioner, that in the affected polling stations, the time for voting was extended and voting was carried out and completed. Furthermore, there was no evidence that the failure was widespread in the country as a whole. There was evidence, again uncontroverted, that

voter turn up in both Kampala and Wakiso was comparable to the national average. It is of course conceivable that some frustrated voters were put off by the failure to deliver materials on time. But given the percentages of voter turn up, 5 one cannot say that the number of such voters was so high as to substantially affect the result. We also note that in fact the 1st Respondent lost in most polling stations in Kampala and Wakiso. Consequently we find that the irregularity in itself did not have substantial effect on the election results.

10 In regard to the second proved failure by the Commission to wit the denial of information to the Petitioner's polling agents, there was no evidence that this was widespread, and furthermore, it was not proved that it had an impact on the number of votes got by the Petitioner.

15 Although the Uganda Broadcasting Corporation (UBC), a State Media Agency, failed to provide equal coverage to all the presidential candidates, it is difficult to state that this had substantial effect on the results and that the election ought solely on the basis of this anomaly to be annulled. There was 20 evidence that the New Vision Newspaper gave equitable coverage to the candidates. Other Broadcasters also covered the candidates.

Although instances of interference with the Petitioner's pre-campaigning and electioneering activities by State agencies 25 were proved, the Petitioner was able to get the requisite

number of supporters for purposes of nomination and he was able to continue with his consultations, was nominated, and campaigned throughout the country. We therefore come to the conclusion that this violation of the Petitioner's rights in itself
5 could not be said to have had substantial effect on the results he obtained and/or the result of the election as a whole.

We find that none of the proved allegations is of such a nature that in and of itself can be said to have affected the results in a substantial manner. Similarly, even the sum total of the four
10 proved violations cannot be said to have had substantial effect on the election results.

In further support of the argument that the substantial effect rule should not be reduced to a quantitative test, Counsel for the Petitioner cited the English Case of **Morgan and Others v**
15 **Simpson and another [1974] 3 All ER 722**. The facts of the case are that at a local government election at which a total of 23,691 votes were cast, 82 ballot papers were properly rejected by the returning officer. Forty-four of those papers were rejected because they had not been stamped with the
20 official mark as required by the local election rules. If the 44 ballot papers had not been rejected, but had been counted, the Petitioner, a candidate at the election, would have won the election by a majority of seven over the respondent. In consequence of the rejection of the 44 papers the respondent
25 had a majority of 11 and was declared the successful

candidate. The Petitioner sought an order that the election should be declared invalid under Section 37 (1) of the Representation of the People Act, on the ground that it had not been conducted “substantially in accordance with the law “; 5 alternatively that, even if it had been so conducted, the omissions of the polling clerks had affected the result.

Court held that:

Under Section 37 (1) an election Court was required to declare an election invalid if 10 irregularities in the conduct of the election had been such that it could not be said that the election had been ‘so conducted as to be substantially in accordance with the law as to elections’ or if the irregularities had affected the 15 result. And that accordingly, where breaches of the election rules, although trivial, had affected the result, that by itself was enough to compel the Court to declare the election void even though it had been conducted substantially in accordance 20 with the law as to elections. Conversely, if the election had been conducted so badly that it was not substantially in accordance with the election law it was vitiated irrespective of whether or not the result of the election had been affected.

Although **Morgan** was not a presidential election petition, but rather a challenge to the validity of results of a local government election, we have nevertheless found it pertinent to discuss the principles articulated in the said authority.

5 Counsel for the Petitioner ably summarized the principles as follows:

1. If the election was conducted so badly that it was not substantially in accordance with the law as to election the election is vitiated irrespective of whether the result was
10 affected or not.

2. If the election was so conducted that it was substantially in accordance with the law as to elections it is not vitiated by a breach of the rules or a mistake at the polls provided that it did not affect the result of the election.

15 3. Even though the election was conducted substantially in accordance with the law as to elections, if there was a breach of the rules or a mistake at the polls and it affected the result, then the election is vitiated.

In our view, the first principle establishes the qualitative test.
20 The second and third principles deal with the quantitative test.

The first question which follows is: Was the 18th February 2016 Presidential election so void of merit as to be said not to have

been conducted substantially in accordance with the law so that we can apply the qualitative test of substantial effect?

In line with our findings in regard to the twenty allegations brought before Court by the Petitioner, only four of which were
5 proved to our satisfaction, and in regard to the nature of those proved allegations, we find no evidence to support such a conclusion as was contended by the Petitioner's Counsel and Court cannot come to the conclusion that the election was not conducted substantially in accordance with the electoral law.
10 Similarly, Court is not satisfied that any of the said proved irregularities affected the results of the election or that the sum total of the irregularities had substantial effect on the results so as to fit within the parameters of the third principle in the **Morgan** case. Having analyzed the evidence tendered
15 before us, we come to the conclusion that what occurred in the election process fits within principle 2 above - the election was substantially conducted in accordance with the law and the proved irregularities did not affect the result of the election.

We must also make mention of the fact that apart from the
20 fact that the substantial effect principle is contained in the law - the Presidential election Act - in contending that compliance failures do not automatically void an election, we are emboldened by the fact that consideration of whether an irregularity had substantial effect on the results before
25 annulling an election is in keeping with a global trend not to

lightly deal with monumental political events such as presidential elections. Indeed a case study of election petitions in various jurisdictions world over reveals that Courts have maintained the approach inherent in Section 59 (6) in deciding
5 whether a Court should or should not annul Presidential election results on grounds of irregularities. There is a common thread in the comparative jurisprudence mentioned here below that it is not enough for the Petitioner to prove that the election law and rules were violated, the Petitioner must also
10 prove and satisfy the Court that the results were thereby affected in a substantial or significant manner. The trend exists in jurisdictions which have primary legislation equivalent to Section 59 (6) (a) as well as those where no such provision exists. We deem it necessary to make reference to the said
15 decisions.

The case of Ghana:

In the matter of **Nana Addo Dankwa Akufo-Addo & 2 Others V John Dramani, Presidential election Petition Writ No.J1/6/2013.**

20 Pursuant to elections conducted in December 2012, the Chairman of the Commission announced that Mr. John Dramani Mahama had received 50.70% of the votes cast, while Nana Akuffo Addo had received 47.74% of the votes cast. In line with Article 63 (9) of Ghana's Constitution, the Commission
25 declared Mr. John Dramani Mahama the President Elect.

The results declared were challenged and in particular, a declaration was sought to the effect that the 1st Petitioner had not been validly elected as president.

5 The petitioners claimed that the election had been marred with irregularities and electoral improprieties such as over voting, lack of signatures on the declaration forms by the presiding officers, lack of biometric verification of voters, and duplicate serial numbers, unknown polling stations and duplicate polling station codes. That the said malpractices hence affected the
10 election. The petitioners contended that the irregularities vitiated the presidential results in eleven thousand nine hundred and sixteen (11,916) polling stations by four million six hundred thousand five hundred and four votes (4,670,504). That if these votes were to be annulled, the 1st petitioner would
15 get three million seven hundred and seventy-five thousand five hundred and fifty-two votes representing 59.69% of votes cast while the 1st Respondent gets two million four hundred and seventy three thousand one hundred seventy-one votes representing 39.1% of votes cast.
20 The two issues for resolution by the Court were:
1. Whether or not there were statutory violations in the nature of omissions, irregularities and malpractices in the conduct of the Presidential elections held on the 7th and 8th December 2012.
25 2. Whether or not the said statutory violations, if any, affected the results of the elections.

We note that similar to Article 1 (4) of Uganda's Constitution which deals with the sovereignty of the people and gives the people the power to elect their leaders, Article 63 (2) of the Republic of Ghana provides that:

5 **The election of the President shall be on the**
terms of universal adult suffrage and shall,
subject to the provisions of this Constitution,
be conducted in accordance with such
regulations as may be prescribed by
10 **constitutional instrument by the Electoral**
Commission. (Our emphasis)

Nevertheless, the Supreme Court of Ghana held *inter alia* that:

15 **Where a party alleges non-conformity with the**
electoral law; the Petitioner must not only
prove that there has been noncompliance with
the law, but that such failure of compliance
did affect the validity of the elections. (Our
emphasis)

20 In the words of the majority of the panel, compliance failures
do not automatically void an election; unless explicit statutory
language specifies the election is voided because of the
failure.

It was also held by a majority of 5 to 4 that (if) the elections were conducted **substantially** in accordance with the principles laid down in the Constitution, and all governing law and there was no breach of law such as to affect the results of the elections, **the elections (would have) reflected the will of the Ghanaian people.** (Our emphasis).

We note that Ghana's law does not have an equivalent of Uganda's Section 59 (6) PEA but nevertheless, in its decision the Court imported the concept of **substantial adherence** to the election law as a guide to whether an election would be considered valid.

It was further held that: in deciding whether to disturb the outcome of the Presidential election, the broad test to guide the Court is whether the Petitioner clearly and decisively shows the conduct of election to have been so devoid of merit as not to reflect the expression of the people's electoral intent.

The case of Nigeria:

Article 139 (a) (i) of the Constitution of the Federal Republic of Nigeria, 1999, provides that:

The National Assembly shall by an Act make provisions as respects persons who may apply to the Court of Appeal for the determination of any question as to whether any person has

been validly elected to the office of President or Vice-President.

Pursuant to this constitutional provision, the National Assembly enacted Section 139 (1) of the Electoral Act No.6 of 2010
5 which provides that:

**An election shall not be liable to be invalidated by reason of noncompliance with the provisions of this Act if it appears to the Election tribunal or Court that the election was
10 conducted substantially in accordance with the principles of this Act and that the noncompliance did not affect substantially the result of the election.**

It is noted that like it is in Uganda, the concept of substantial
15 adherence was absent in the Constitution but was introduced in the Electoral Act. Although couched in the negative, the Nigerian provision is at par with Uganda's Section 59 (6) (a) of the PEA which we have applied in this petition.

In line with Section 139 of the Electoral Act, the Supreme Court
20 of Nigeria held in the cases of **Abubakar V Yar' Adua [2009] All Fwlr (Pt.457) 1 Sc; Buhari Vs Obasanjo (2005) CLR 7 (k)** that the burden is on the Petitioner to prove not only noncompliance with the election law, but also that the noncompliance affected the results of the election.

The case of Kenya:

Article 82(1) (d) of the 2010 Kenyan Constitution provides that:

5 **The parliament shall enact legislation to provide for the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, including the nomination of candidates for elections.**

10 Following the constitutional authority granted to parliament, the Parliament enacted the **National Assembly and PEA**. In particular, **Section 28** provides that:

15 **No election shall be declared to be void by reason of a noncompliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in that written law, or that noncompliance did not affect the result of the election.** (Emphasis of Court)

20 Whereas the Kenyan legislature did not use the phrase “substantial effect”, the relevant part of the Section still attaches nullification of an election to proof that the non-conformity with the law had an effect on the result of the election. It is this principle that guided the Supreme Court in

resolving the contestation of the election results in the case of **Raila Odinga V The Independent Electoral & Boundaries Commission & 3 Others [2013] KLR**. The brief facts of the case are that, four petitions were filed in the Kenyan Supreme Court challenging the 2013 Presidential results which led to the declaration that Uhuru Kenyatta had got the highest number of votes and thus was the winner of the 2013 presidential elections.

The (4th) petition filed by Raila Odinga was designated as the pilot petition. It was based on the allegation that the electoral process was so fundamentally flawed, that it was impossible to ascertain whether the presidential results declared were lawful. Four broad issues for the Court's determination were agreed upon by all the parties.

The two issues relevant to our discussion are:

1. *Whether the Attorney General and the 4th respondent were validly elected and declared as the President-elect and Deputy President-elect of the Republic of Kenya*
2. *Whether the Presidential election was conducted in a free, fair, transparent and credible manner in compliance with the Constitution and the Law.*

In resolving the two issues, the Kenyan Supreme Court *inter alia* held:

1. Where a party alleges non-conformity with the electoral law, the Petitioner must not only prove that there had been noncompliance with the law, but that such failure of compliance had affected the validity of the elections ...

5

The conduct of the presidential election was not perfect, even though the election had been of the greatest interest to the Kenyan people who had voluntarily voted. Although there were many irregularities in the data and information capture during the registration process, they were not so substantial as to affect the credibility of the electoral process and besides, no credible evidence had been adduced to show that such irregularities were premeditated and introduced by the 1st Respondent, for the purpose of causing prejudice to any particular candidate.

10

15

It is noted that whereas Section 28 of Kenya's National Assembly and PEA requires that for an election to be declared void it must be proved inter alia that the noncompliance affected the result of the election. The Court in its decision imported the phrase "substantial" effect.

20

25 The case of Zambia:

Article 101(4) (a) of the Zambian Constitution, 2006 provides that:

5 **A person may within seven days of the declaration made, petition the Constitutional Court to nullify the election of a presidential candidate who took part in the initial ballot on the ground that the person was not validly elected.**

10 In **Anderson Kambela Mazoka and 3 Others Vs. Levy Patrick Mwanawasa And 3 Others, Presidential Petition No. SCZ//01/02/03/2002**, the Zambian Supreme Court held that, on the evidence presented before Court, the elections had not been totally perfect. The Court nevertheless refrained from annulling the election because:

15 **... while not being totally perfect as found and discussed, (the elections) were substantially in conformity with the law and practice. The few partially-proved allegations are not indicative that the majority of the voters were prevented from electing the candidate whom they**
20 **preferred or that the election was so flawed that the dereliction of duty (by Electoral Commission) seriously affected the result which could no longer reasonably be said to**

reflect the free choice and free will of the majority of the voters.

Similar to Courts in other jurisdictions, the Zambian Court considered the important question to be: did the irregularities
5 so affect the outcome of the election that the result could no longer reasonably be said to reflect the free choice and free will of the majority of the voters?

Beyond African Jurisdictions.

We must make mention of the fact that the test of substantial
10 effect is not limited in its use to jurisdictions on the African continent.

The United Kingdom

As already discussed in the **Morgan vs. Simpson** case (supra), the principle is applied in the United Kingdom.
15 According to the 1983 U.K. Representation of People Act, no local government election and no parliamentary election “shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election if it appears to the tribunal
20 having recognizance of the question that:

- a) The election was so conducted as to be substantially in accordance with the law as to elections; and
- b) The act or omission did not affect the results”

It is from this provision that Lord Denning deduced the principles enunciated in the Morgan case.

The United States of America.

Furthermore, the principle is also applied in several states in
5 the United States of America. The United States is composed
of 50 states and the District of Columbia, each with their own
laws surrounding presidential elections. We have analyzed
election petition laws from the top five most populated states
in the United States, along with the burden of proof and
10 standard of proof required for each.

California

California law states that any elector may contest any election
held in their county or city for several reasons, including
illegally cast votes, error in vote counting, and ineligibility for
15 the person who has been declared elected.

CAL. ELEC. CODE § 16100 provides that:

“When any election held for an office exercised in and for a
county is contested on account of any misconduct on the part
of the precinct board of any precinct, or any member thereof,
20 **“the election shall not be annulled or set aside upon
any proof thereof, unless the rejection of the vote of
that precinct would change the result as to that office**

in the remaining vote of the county.” Cal. Elec. Code § 16202 (Deering 2016) (Emphasis of Court).

Texas:

In **Gonzales v. Villarreal, 251 S.W.3d 763, 773** the Texas
5 Court of Appeal held that: **“To overturn an election, an election contestant must demonstrate by clear and convincing evidence that voting irregularities materially affected the election results.”** (Emphasis added). Here the word used is “materially”. So it is not only a question of
10 affecting the results – the impact must be material or, in our context, substantial.

New York:

In **Stevenson vs. Power, 27 N.Y.2d 152, 154 (1970)**, the Court of Appeals of New York stated that:

15 **... an unsuccessful candidate (who challenges the results) has the burden of proving that the irregularities (in the election process) were of such a nature so as to establish the probability that the result of the election would be**
20 **changed by a shift in, or an invalidation of, the questioned votes.**

Florida:

Florida's election petition laws are of particular interest because of their historical relevance in American history. One of the closest presidential elections occurred in the year 2000 between George W. Bush and Al Gore. In Florida, George W. Bush lead the vote by only 1784 votes, which was less than one-half of a percent margin. In **Gore vs. Harris, 772 So. 2d 1243, 1255-56 (Fla. 2000)**, Al Gore petitioned the results of the election because certain counties had miscounted votes and had not completed their recounts by the time the legal deadline had passed. The Court held that "Gore was required to show that there was "[r]eceipt of a number of illegal votes or rejection of a number of legal votes **sufficient to change or place in doubt the result of the election.**" It was held that it was proven that there were 9,000 votes that had not been counted. In an election where the number of votes separating the candidates was less than 2,000 votes, the Court held that the results of the election had surely been placed "in doubt," warranting a manual re-count of the votes.

It is noted that although the ruling was reversed in **Bush v. Gore, 531 U.S. 98 (2000)**, the reversal was on other grounds and therefore the principle laid out in **Gore v. Harris** remains good law – for the Petitioner to succeed, the proven irregularities must be sufficient to change or place in doubt the result of the election.

Illinois:

Illinois state law will only deal with result-dispositive fraud or mistake (See Ill. Elec. Law § 13.3 (2012)). In other words, if the mistakes are insufficient to change the result of the elections, the Petitioner's case will be dismissed. The Petitioner bears the
5 burden of proof to show it is "**more likely that the loser won the election.**" *Id.*

As already stated earlier in this judgment, Section 59 (6) of the PEA authorizes the Court to annul an election only if the allegations made by the Petitioner are **proved to the**
10 **satisfaction of the Court.** But we must again emphasize that annulling of presidential election results calls for a case by case analysis of the evidence adduced before the Court. In line with what Courts in several other jurisdictions have established we subscribe to the principle that on the one hand, the Court
15 must avoid upholding an illegitimate election result and on the other, it must avoid annulling an election result that reflects **the free will of the majority of the electorate** - the majority whose rights are inherent in **Article 1 (4) of the Constitution.** As stated by the Supreme Court of the United
20 States of America, Courts must be conscious of the vital limits on judicial authority and the fact that the constitution leaves the selection of the President to the people and to the political sphere. (See **Bush v Al Gore 531 U.S 98 (2000).**)

In the matter before us, we find that the few instances of
25 proved **compliance failures did not automatically void**

the election since there is no explicit statutory language which specifies that proof of failure *per se* voids an election. We are also not satisfied that the few proven compliance failures affected the result in a substantial manner.

5 **ISSUE NO 4: Whether the alleged illegal practices or any electoral offences in the petition under the PEA, were committed by the 1st Respondent personally, or by his agents with his knowledge and consent or approval.**

Section 59 (6) (c) of the PEA provides that the election of a
10 candidate as President shall be annulled if it is proved to the satisfaction of the Court that an offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.

15 As earlier stated, for the Court to be satisfied that an electoral offence/illegal practice was committed, the Petitioner must prove the allegation beyond reasonable doubt.

The Petitioner alleged a total of 7 electoral offences by the 1st Respondent and/or his agents. However two of the offences
20 were abandoned by the Petitioner's counsel during the oral submissions. These were the allegation that while campaigning in Busoga Region the 1st Respondent gave 500 hectares of a Forest Reserve to voters with a view of inducing them to vote for him thereby contravening Section 64 of the PEA which

creates the offence of bribery and the allegation that contrary to Section 69 of the PEA which makes it an offence for a person to make false statements concerning the character of candidates, the 1st Respondent had referred to the Petitioner and Kizza
5 Besigye as wolves and the Petitioner's supporters as mad.

We have discussed each of the remaining (5) allegations and made specific findings. In his affidavit in reply the 1st Respondent denied all the allegations. He stated that he knew that no illegal practices and or offences as alleged in the
10 amended petition and the affidavits in support were committed by him personally or with his knowledge, consent or approval.

1. Bribery:

The offence of bribery is dealt with by **Section 64 of the PEA** and we have herein reproduced the subsections which are
15 relevant to the allegations made by the Petitioner.

Section 64 (1) provides that:

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 provides any money gift or other consideration to that other person, commits the offence of bribery and is liable on conviction to a fine not exceeding
20

**seventy two currency points or imprisonment
not exceeding three years or both.**

Section 64 (2)

Section 64 (3) creates an exception to the general rule and
5 states that:

**Subsection (1) does not apply in respect of the
provision of refreshment or food-**

**(a) offered by a candidate or candidate's agent
who provides food as an election expense at a
10 candidate's campaign planning and organization
meeting or**

**(b) offered by any person other than a candidate or
a candidate's agent who at his or her own expense
provides the refreshments or food at a candidate's
15 campaign planning and organization meeting.**

**(4) An offence under subsection (1) shall be an illegal
practice.**

(5).....

(6).....

20 A reading of Section 64 (1) together with Section 59 (6) (c) is
to the effect that for the Court to annul an election on the
basis that a bribe was given with the intention of influencing

the voting choice of a voter or voters, the prohibited act must have been personally committed by the candidate declared winner or by another person with the consent or approval of the candidate.

5 The specific allegations of bribery against the 1st Respondent were:

(i) **That contrary to Section 64 (1) and (4) of the PEA, the 1st Respondent and his agents with the knowledge and consent or approval gave a bribe of hoes to the voters of West Nile with intent that they should vote the 1st Respondent and to refrain from voting the Petitioner and other Presidential candidates.**

10

In the affidavit supporting the petition, the Petitioner repeated the allegation as stated above. There was no other evidence adduced in support of the allegation.

15

Although the Petitioner deponed that a video footage would be produced to support the allegation, this was not done.

In reply to the allegation, the 1st Respondent deponed that, while he was campaigning in Terego, West Nile, he told the people that Government was going to give pupils exercise books, mathematical sets and sanitary pads and that the people would remain with only two tasks. When he asked them if they would manage, they answered that they would manage those tasks if they had hoes.

20

He stated that he informed them that there was already an ongoing Government programme under which hoes were to be distributed to the people of Northern Uganda. He promised to inquire into what had happened to the implementation of the
5 programme.

He stated that thereafter, he wrote a letter dated 20th November, 2015 to the Prime Minister in which he directed that purchase of 18 million hoes be included in the 2016/2017 financial year budget.

10 The Prime Minister, Hon. Ruhakana Rugunda averred in his affidavit that he received the above mentioned letter from the 1st Respondent in his capacity as President. He then travelled to Terego and informed the people that the hoe programme was ongoing. He presided over and witnessed the distribution
15 of hoes.

The Ministerial Policy Statement for Financial year 2013 – 2014 presented by the office of the Prime Minister to Parliament for debate on estimates for Revenue and Expenditure was attached to the affidavit of Ruhakana Rugunda as Annexure D.
20 This policy statement showed *inter alia* what the office of the Prime Minister expected to achieve. The list of things to be done in Northern Uganda including procurement and distribution of hoes in Northern Uganda was shown. The Ministerial Policy statement for 2014- 2015 which highlighted
25 the achievements of 2013 – 2014 and outputs delivered during

2014 – 2015 was also annexed. Furthermore, the 2015 – 2016 Ministerial Policy Statement which was presented to Parliament for Financial year 2015–2016 was also attached.

Exhibit F showed the achievements for Financial Year 2014 –
5 2015 and highlighted the outputs to be delivered during financial year 2015 – 2016. The key achievement relayed under each of the projects implemented in Northern Uganda was that there was procurement and delivery of 31,000 hand hoes for women and youth groups. At page 66 item 3
10 indicated that 34,000 hand hoes had been procured for women and youth farmers.

We note that the 1st Respondent's letter to the Prime Minister was to the effect that hoes should be budgeted for in the next financial year, which would be after the campaign period and
15 elections.

The 1st Respondent did not instruct the Prime Minister to distribute hoes to the people during the campaign period. The evidence on record also indicates that the supply of hoes to people in Northern Uganda commenced in 2013/14 Financial
20 Year.

In further support to the 1st Respondent's reply, it was deposed by Ekachellan Esau, the Chief Administrative Officer of Arua District that in January 2016, he received hoes from

the Office of the Prime Minister, for distribution as he had done on two previous occasions long before the campaign period.

In their oral submissions counsel for the Petitioner argued that the 1st Respondent's reply to the allegation, as well as the
5 affidavit of Ruhakana Rugunda and the affidavit of Ekachellani Esau amounted to admissions that the offence of bribery was committed.

Analysis of Court

We carefully considered the said affidavits, and came to the
10 conclusion that the affidavits of the 3 witnesses do not amount to an admission of the offence of bribery. To be specific, the 1st Respondent denied the allegations stating that he did not personally or through his agents with his knowledge and consent or approval, give hoes to the voters of West Nile or
15 any other place with the intent that they should vote for him and refrain from voting for the Petitioner or other Presidential candidates. On the contrary, the evidence adduced by the 1st Respondent brought out the fact that the distribution of hoes was an ongoing Government Programme which commenced in
20 2013 - 2014. At that point in time, no person could be described as a candidate for the 2016 Presidential election.

The definition of Candidate is given in Section 1 of the PEA as meaning a person duly nominated as a candidate for a presidential election under Section 10.

We accept the submission of counsel for the 1st Respondent that the distribution of hoes was not an isolated one-off event as per the evidence adduced. The letter which the 1st Respondent wrote to the Prime Minister on 20th November, 5 2015 had a long time background as the evidence showed. The communication was to the effect that in the following financial year (2016 - 2017), 18 million hoes were for distribution. On the other hand, the hoe distribution witnessed by Ruhakana Rugunda was for financial year 2015 - 2016 as 10 part and parcel of what was Government's on-going implementation programme.

Counsel for the Petitioner argued that the 1st Respondent who was the President of the Republic of Uganda did not need to wait for the campaign period to effect Government 15 programmes. That he must have intended to induce the voters to vote for him.

But the evidence of the 1st Respondent to the effect that the distribution of hoes was part of an ongoing Government programme as already stated in this judgment remained 20 unchallenged. The 1st Respondent was elected President of the Republic of Uganda in 2011 and his term of 5 years was still running at the time of the alleged offence. There is no provision in the Constitution providing for stepping aside during election period of the sitting President if he or she 25 decided to contest in the elections.

The 1st Respondent cannot be said to have plotted to induce voters all the way from 2013 even when there were no Presidential candidates or aspirants at the time.

Arising from the above analysis of the evidence presented and
5 of the law, we found that the Petitioner failed to prove the allegation of bribery of the voters from West Nile with hoes, to the satisfaction of the Court.

**(ii) That contrary to Section 64 (1) and (4) of the PEA, between mid-2015 and the 16th and 18th February 2016, the 1st Respondent through his agents and with his knowledge and consent or approval gave a bribe of shs.250, 000/= (Uganda shillings) to voters in every village throughout Uganda on two occasions with intent that they should vote for the 1st Respondent and
10 refrain from voting for the Petitioner and other candidates.**
15

The Petitioner repeated the above allegation in his supporting affidavit. There were 19 other affidavits in support of the petition. Only 3 of them were referred to in the submissions
20 by counsel for the Petitioner. The three affidavits were of Kyeyago Ivan, Gerald Busomu and Ngandha Samuel.

Kyeyego Ivan deponed that he was a registered voter and he voted at Namagere polling station. He stated that in the month of February he received Ushs.250,000/= from one Isaac

Kamuli the NRM Chairperson of Namagera LCI. That he was told that the said money was sent by President Yoweri Kaguta Museveni the 1st Respondent to vote for him in return.

Paragraph 4 which admittedly contained hearsay evidence was
5 severed by counsel during his submissions. The evidence of Gerald Busomu a registered voter of Lwamata Kiboga District was that on the 17th February 2016, he saw one Mulalo distributing money to veterans between 5000/= to 25,000/= depending on the age of the recipient. He stated that Mulalo
10 promised the veterans gratuity if they voted for President Yoweri Kaguta Museveni. The evidence of Ngandha Samuel was to the effect that he was a polling agent of the Petitioner. He was a registered voter. He also stated that he witnessed Sgt Dumba Musa Mutayisa distributing money to the tune of
15 1000/= to women registered voters on 18 / 02/ 2016. He said that Sgt Dumba was asking the women to vote for the 1st Respondent. That he also witnessed Sgt Dumba on the 9th and 10th of February 2016 distributing money to voters amounting to Ushs.270,000/= telling them to vote for the 1st
20 Respondent. He further averred that the said Sgt Dumba Musa Mutayisa was in the company of the 1st Respondent's agents Sam Okirya and Major Faruk Kaweri Daba.

There were other affidavits from the petitioner which were not referred to by counsel for the Petitioner in their submissions.
25 We found it necessary to summarize them as hereunder:

Dhamuluka Farouk stated that he was the coordinator of the Go Forward Team of Kasozi Sub-county Kamuli District. He did not state whether he was a registered voter and he never attached a copy of his ID to the affidavit. He stated that
5 Bamwole Samuel the NRM Chairman summoned them to a village meeting in Busiti Kamuli District and reported that the 1st Respondent had sent them Ushs. 250,000/= for soda so that they vote for him.

Kazoora Ivan stated that Rtd. Lt. General Tumukunde while in
10 Tooro Resort had paid out a lot of money between 2000/= to 20,000/= so that the people do not attend the Petitioner's rallies and refrain from voting for the Petitioner. Hope Mwesigye stated that on the 16th of September 2015 she received intelligence information that Captain Guma
15 Gumisiriza was stationed at Kapchorwa calling people and was giving them money not to attend the Petitioner's rally. Kyokunda Annette stated that between 8th and 17th of February 2016, Hon Nasasira while in a meeting at Kinoni Kiruhura District told them that candidate Museveni had sent a
20 small thing (*Akantu Kanyu*) to support his sole candidature. She stated that Nasasira had instructed all Chairmen to go and see his personal secretary "*Baleebe Nandebba Naboth*" who was paying out Shs. 250,000/= to each of them. That she met the LC I Chairman Jerevasio Tumushabe giving out Shs 2000/=
25 to each person.

Wairagala Godfrey Kamba stated that he was the coordinator of the Petitioner's campaign team in Kibuku, Kibaale District and also in the two neighbouring Districts of Pallisa, Budaka and Butaleja. He stated that he had witnessed one Aisha, an agent of the 1st Respondent, bribing voters and asking them to vote for the 1st Respondent. He stated that she was giving them shs 1000/= to 2000 to vote for the 1st Respondent. Wataka Abbas stated that on the 11th of February 2016 at Mbale SS, he witnessed voter bribery in favour of the 1st Respondent by one Lt Hussein Zandya an NRM agent of the 1st Respondent. Katende John stated that on the 18th February 2016 at Lubaga Division Kampala District he witnessed Katongole Singh Murwaha giving money to voters at Namirembe Bakuli asking them to vote the 1st Respondent.

Roy Peterson Mugasa made various statements in relation to bribery by the First Lady. He stated that the First Lady asked him and the group he was with to abandon the Petitioner. He averred that he made a budget of Ushs.243, 000,000/=. That he was referred to Molly Kamukama, a Personal Assistant to the 1st Respondent. He stated that he later reported to Ambrose Mwesigye the Deputy RDC of Hoima and an agent of the 1st Respondent on the 13th February 2016, who gave him Ushs.23,000,000/= and asked him to vote for the 1st Respondent.

Butita Paul stated that he was the Coordinator of the Petitioner in Manafwa District. He stated that on the 18th February, 2016 at 7:30 a.m. Hon. Simon Mulongo and Jackson Wati plus some other plain clothed people stormed his home at Nandubusi B. Village. He stated that they asked him not to issue appointment letters to the agents of the Petitioner in exchange for Ushs.5, 000,000/=. That he was kept hostage as a result. Tumuhimbise Nzaavu who was responsible for Kisoro, Kibaale and Rukungiri District, stated that Hon Kamanda Bataringaya was buying agents by paying them off. Benon Muhanguzi stated that while in Bushenyi Hon. Mary Okurut offered him Shs.30,000/= to defect to NRM.

The 1st Respondent filed an affidavit in reply in which he denied the allegation. He deponed that to his knowledge that the money was paid out by the National Resistance Movement Party to all its branches to support its activities in August 2015. He went further to state that the NRM had undertaken the update process of its members' register and the money was sent to each NRM branch to the tune of Ushs.250,000/=. The 1st Respondent's evidence was supported by Justine Kasule Lumumba's evidence. She averred that the Ushs.250, 000/= was for facilitation of the party branches activities, like compiling village registers, purchase of writing materials, food and refreshments.

There were other affidavits in support of the 1st Respondent's answer or response and in rebuttal of the allegations by the Petitioner.

5 Tumushabe Jerevazio stated that he knew Kyokunda Annet. That she met him when he was holding a village meeting at Rwamagufa village. He stated that she asked him to allow her to speak to the residents so that she requests for votes. He did allow her. He stated that he also attended the rally at Kanoni Engari sub county, Kiruhura District which was
10 convened by Hon. Nasasira John. He stated that he did not see any person distributing money to any one present and that Kyokunda's allegations were false.

Hon. Nasasira's evidence corroborated Tumushabe Jerevasio's evidence. He denied having instructed the Chairman present
15 to go behind the tent to see his Personal Assistant Nandeeba Naboth to give them Ushs.250, 000/=. He also stated that he was aware that the NRM party had sent Ushs.250,000/= to all the village branches for lawful activities several days after the Kanoni rally. That he was not involved in the exercise. He
20 stated that he never asked Kyokunda Annet to denounce her connections with candidate Mbabazi.

Nandeeba Naboth the Personal Assistant to Hon. Nasasira stated that she attended the rally where Hon. Nasasira was in Kanoni. He averred that Hon Nasasira did not say that the 1st
25 Respondent had sent his supporters "*Akantu Kanyu*" (small

thing) for supporting his sole candidature. He also denied that Hon. Nasasira had instructed him to distribute Ushs.250,000/= to any person and he also denied having distributed any money to any one as alleged by Kyokunda Annet.

- 5 Jamil Kibalama refuted the allegations and stated that the veterans were never paid money in order to vote for the 1st Respondent so that they could be paid their gratuity by one Mulalo, the coordinator of Operation Wealth Creation in Kiboga District. Rtd Lt Nkwanzu Jackson refuted the allegations of
- 10 Busomu Gerald to the effect that on the 15th February, 2016 the veterans camped at Kitagwenda P.S. and demanded payment of money from President Museveni. He said that was false. He averred that there was no such gathering or meeting of veterans anywhere in Kiboga. He also stated that it was not
- 15 true that the veterans had received money from Lt. Col. Mulalo on the 17/02/2016 to vote for President Museveni. He denied having received any money from Mulalo and stated that he did not receive any report that any veterans had received any money.
- 20 Mugulusi James the presiding officer at Musa Borehole Polling Station Buseta refuted the allegations of Wairagala Godfrey Kamba by stating that he never witnessed any bribery incident and there was no report made to him to that effect. Ashida Kaako a supervisor and a registered voter at Musa Borehole
- 25 Polling Station Buseta, stated that she knew Wairagala Godfrey

as a village mate. She stated that it was not true that she had bribed voters at the polling station or any other place as alleged. She averred that her role was to ensure that the agents of the 1st Respondent were alert.

5 Major Guma Gumisiriza refuted allegations by Hope Mwesigye. He stated that he went to Kapchorwa to see his friend Hon. Chebrot whom he failed to meet. He mentioned the people he had talked to directly and Hope Mwesigye who called him on phone when he was on his way back to Kampala.

10 Magombe Hussein Zandya refuted the evidence of Wataka Abbas. He denied having distributed any money to bribe any voter in Mbale District to induce them to vote for the 1st Respondent. He said it was false for Wataka Abbas to state that he had bribed voters. Katongole Singh Marwaha denied
15 having given any money to voters in Namirembe Bakuli. He also denied having asked any person to vote for the 1st Respondent as was deposed by Katende John.

Kamol Joseph Miidi Chairman, LC V of Kaabong refuted allegations by Sekitoleko David. He stated that at no time did
20 he bribe any person with money from the NRM or T-shirts to persuade them not to attend the Petitioner's rally. He averred that he was not aware of any army officers who allegedly bribed the voters or persuaded them not to attend the Petitioner's rally. He further stated that he never received any
25 reports of bribery from the Petitioner, his agents or supporters.

Ambrose Mwesigye the RDC Hoima refuted Roy Peterson Mugasa's evidence. He stated that he was not an agent of any candidate or party. He also averred that he did not throughout the campaign period receive any money from anybody for campaign activities. He further stated that he only met Roy Peterson Mugasa in security meetings and never had any dealings with him whatsoever. He dismissed the allegations as false and baseless.

Mary Karoro Okurut stated that she was not aware of any meeting that took place and no such bribery took place as alleged by Benon Muhanguzi in paragraph 10 of his affidavit. That there was no such meeting at Mr. Basajjabalaba's home in her presence. Hon. Simon Mulongo refuted the allegation by Butita Paul. He stated that it was not true that on the 18th February, 2016 he went to Butita Paul's home as he did not know him. He averred that the allegation was false. He denied having offered Ushs.5,000,000/= to Butita Paul not to issue appointment letters to the Petitioner's agents.

Analysis of Court

We analyzed the evidence of both the Petitioner and the 1st Respondent and we considered the submissions of counsel. It was observed by the Court and indeed conceded by counsel for the Petitioner particularly in respect of the evidence of

Kyagaba Ivan, that the affidavits by the Petitioner's witnesses in support of this allegation contained basically hearsay statements which cannot be admitted in law as evidence.

We also further noted that the explanation by the 1st respondent is in line with what is allowed by the law. Section 64 (3) of the PEA provides that the offence of bribery does not apply in respect of provision of money to cover expenses of a candidate's organization meetings or campaign planning.

It was therefore our finding that the 1st Respondent did not engage in bribery of voters with Ushs, 250,000/= as alleged.

In addition to allegations of bribery, the Petitioner also averred that the 1st Respondent violated **Section 26(b) of the PEA** as follows:

2. The 1st Respondent organized a group under the Uganda Police Force a Political partisan militia, the so called 'Crime Preventers' under the superintendence of the Inspector General of Police, General Kale Kayihura, a paramilitary force-cum-militia, to use force and violence against persons suspected of not supporting candidate Yoweri Kaguta Museveni thereby causing a breach of peace, disharmony and disturbance of public tranquility and induce others to vote against their conscious in order to gain unfair advantage for candidate Yoweri Kaguta Museveni.

Section 26 (b) of the PEA provides:

A person who, before or during an election for the purpose of effecting or preventing the election of a candidate either directly or indirectly-

Organizes a group of persons with the intention of training the group in the use of force, violence ... calculated to malign, disparage, condemn, insult or abuse another person or candidate or with a view to causing disharmony or a breach of the peace or to disturb public tranquility so as to gain unfair advantage in the election over that other person or candidate commits an offence.

The ingredients which the Petitioner had to prove were that:

- a) The 1st Respondent had organized a group of persons to be trained in the use of force or violence
- b) The conduct of the organized group was aimed at abusing the Petitioner in order to cause breach of peace or to disturb tranquility so that the 1st Respondent would gain unfair advantage over the other candidates.

In support of this ground, the Petitioner averred in his affidavit that on 23rd September 2015, under the directive of the 1st Respondent, the Inspector General of Police – Kale Kayihura and his officers prevented the Petitioner from conducting
5 consultations with voters.

Further that the 1st Respondent indirectly organized his supporters, aided by the security organs, to cause disharmony and breach of peace whilst interfering with his electioneering activities.

10 In support of this allegation were the affidavits of Tumusime Gerald, Juma Bayi, David Mubiru, Sewanyana Joseph, Tito Sky, Banda Silimu who belonged to a group known as KIFACE, a jobless group in Katwe that was allegedly hired by Tindyebwa an NRM mobilizer on 16th February 2016 to beat up non-
15 supporters of the 1st Respondent in various Kampala suburbs and to protect the 1st Respondent's votes at various polling stations.

Further, Mugumya Lawrence averred that on the day before the polling date, at about 2.00 a.m., soldiers, Crime Preventers
20 and Police went around the village patrolling the area and beating up people.

Similarly, Kasirye Joseph averred that there was a group called city Motors Mukono under Hon. Ronald Kibuule that would beat up people and Go-forward supporters in Mukono municipality.

Mugabe Lawrence stated that on 21st December, 2015 when he was at the Go Forward offices at Nakasero, four plain clothed men forced their way into the premises and began arresting people in the compound. They were taken to
5 Mbarara, screened and photographed. On 27th December, 2015 they were driven to Ntungamo Police Station and were charged and taken to Court at Ntungamo. Ezekiel Mbejja also stated to the same effect as Mugabe Lawrence.

Sewanyana Joseph stated that he belonged to a jobless group
10 called Kiface based in Katwe. He also stated that he was contacted by one Tindyebwa an NRM mobiliser to help him protect the 1st Respondent's votes at Polling Stations. He further stated that they would beat and harm anybody who seemingly was against the 1st Respondent. He also averred
15 that he thoroughly beat opposition supporters in Lugala, Nakulabye, Kawaala and Nansana in full view of the Police but he was untouchable.

Ibanda Silimu stated that he was the coordinator for the Petitioner's campaign team in Kamuli District. He also stated
20 that one Tito an NRM mobilizer in Kamuli District went to his house with a group of youth wearing NRM T-Shirts. These people beat him up and asked him to tell them all the Go Forward parish coordinators who were in Mbulamuti. He refused to disclose any information so they continued to beat
25 him.

Kasirye Joseph stated that there was a group called City Motors Mukono under Hon. Ronald Kibuule. That this group would beat up people and Go Forward supporters in Mukono Municipality. The evidence of Tumusiime Gerald, Juma Bayi,
5 and David Matovu was also the same as it was general.

In reply, the 1st Respondent denied this allegation. He denied directing the Inspector General of Police (IGP)-Kale Kayihura and any of his officers to prevent the Petitioner from conducting consultations with voters in preparation for his
10 nomination as a presidential candidate. He further averred that he did not direct any officers under the command of Kale Kayihura or any Police Officers to arrest, humiliate or detain the Petitioner or any members of his convoy to his own advantage.

15 He also stated that he knows Crime Preventers is a Reserve Force, a concept of Community Policing where people work with Police by volunteering to ensure that there is no crime in their villages. He further stated that the Police gives some rudimentary training. That in other countries they are
20 conscripted, whereas in this country they are simply volunteers.

In support of the 1st Respondent's reply, the Inspector General of Police - Kale Kayihura averred that policing strategies are operational matters and are under the sole responsibility of the
25 IGP and not the Presidency.

In further support, the Assistant Commissioner of Police and Regional Police Commander of East Kyoga- Steve Acaye and the Assistant Inspector General of Police and Director of Human Rights and Legal Services at Uganda Police - Erasmus
5 Twaruhuka gave a detailed account of the operations of Crime Preventers. Acaye and Twaruhuka both averred that the main role of Crime Preventers is to give the Police any crime related information in their localities.

10 They further averred that Crime Preventers are community volunteers and have no command structure but relate to their respective lowest Police units in their localities. They stated further that the purpose of deploying Crime Preventers during the Presidential elections was to assist the Police in specific
15 policing activities such as crowd control and intelligence gathering. That the Police Act allows the recruitment of Special Police Constables (SPCs) to reinforce the Police.

Counsel for the 1st Respondent in his submissions argued that
20 there was no evidence adduced by the Petitioner linking the 1st Respondent to the alleged offence.

Analysis of Court

We carefully evaluated the evidence adduced by the Petitioner
25 and we considered the 1st Respondent's evidence in rebuttal to the allegation. We accepted Counsel for the 1st

Respondent's submissions that there was no evidence linking the 1st Respondent to the alleged offence. We found that there was no evidence which showed that the 1st Respondent was involved in organizing or training Crime Preventers.

5 Similarly, we found no evidence which showed that the persons or groups were under the command or instruction of the 1st Respondent or that he had ordered the IGP to use the group to interfere with the electioneering activities of the Petitioner as alleged.

10

3. That Contrary to Section 24 (5) (a) (i) (ii) (b) (c) and (d) and 7 of the PEA, the 1st Respondent on several occasions threatened to arrest the Petitioner and Candidate Kizza Besigye and used derogatory and reckless language when he stated that the Petitioner and his supporters had touched the 'anus of the leopard' and would see what would happen to them and this had the effect of scaring voters to vote for the 1st Respondent for their own safety.

15

20 Section 24 (5) (a) of the PEA provides that-

A candidate shall not while campaigning do any of the following:-

(a) Make statements which are false -

(i) Knowing them to be false or

(ii) In respect of which the maker is reckless whether they are true or false

(b) Making malicious statements

(c) Making statements containing sectarian words or using words or innuendos.

(d) Making abusive, insulting or derogatory statements.

Section 24 (7) provides that contravention of Section 24 (5) is an offence.

10 In reply, the 1st Respondent denied having used derogatory and reckless language. He denied having threatened to arrest the Petitioner and/or Kizza Besigye.

The 1st Respondent however admitted having used a Runyankore proverb which can be translated as touching the
15 anus of a leopard at a Press Conference in Mbale but denied the allegation that he had used the proverb in reference to the Petitioner. He averred that he spoke those words at a press conference in Mbale on 20th December, 2015 referring to violence which had erupted between NRM supporters and
20 supporters of the Petitioner while the Petitioner was campaigning in Ntungamo. He averred that at the said Press Conference a journalist asked him thus:

5 *We saw fighting between people said to belong to the NRM Party and those supporting one of the other candidates in the race. ... Some Ugandans are worried that the situation could escalate in the near future. Even if you are a candidate during this period, you remain the President of the country. What assurances do we have that the situation like that described will not continue which is worrying the citizens?*

10

The 1st Respondent averred that in answer to the question by the journalist, he had said:

15 *I think he is talking about the incident in Ntungamo where thugs attacked NRM supporters ... now the thugs are being rounded up, they are being arrested. ... if you put your finger in the anus of a leopard ... you are in trouble.*

20 *... We are going to round up all those criminals. ... Those individuals and whoever sent them will also regret if we come with evidence ... beating is a criminal offence but also sending a criminal is a criminal offence ...*

25 The 1st Respondent then explained that what he meant was that anybody breaching the law, taking the law into his hands or engaging in acts of violence would face the full extent of the law, would be arrested and prosecuted. He averred that the

phrase “touching the anus of a leopard” was borrowed from a Runyankore saying to illustrate the recklessness of engaging in such acts of violence against Ugandan citizens.

5 The Attorney General’s answer to the Petition supported the 1st Respondent’s reply. He stated that several people who were suspected of having engaged in acts of violence but were yet to be arrested were currently required before the Chief Magistrate’s Court in Jinja to answer charges of assaulting a Police Officer in execution of his duties, contrary to the
10 provisions of the Penal Code Act.

Counsel for the Petitioner submitted that the words were directed to the Petitioner and his supporters immediately after the Ntungamo incident. He argued that when the 1st Respondent said that those who had tampered with his
15 supporters had touched the anus of a leopard, the Petitioner was in Ntungamo and his being there was enough to prove that it was the Petitioner that the 1st Respondent was referring to.

He further submitted that the Petitioner had provided sufficient
20 evidence on which the Court could make a finding that an election offence was committed.

Counsel for the 1st Respondent submitted that there was no offence or illegal practice proved as having been committed by the 1st Respondent either personally or with his knowledge

and consent or approval. He argued that the provision refers to a candidate while campaigning and the statements complained of were not made while the 1st Respondent was campaigning. He argued that the 1st Respondent was
5 addressing a press conference in Mbale on the 20th December 2015. He contended that a question was put to the 1st Respondent as the President of Uganda and he had given his responses. He submitted further that the 1st Respondent was incensed at the way Ugandans beat other Ugandans without
10 lawful authority. That when the 1st Respondent used the Kinyankole proverb referred to, he explained that he was referring to those who breach the law by taking it into their hands. That they would face the full extent of the law. He submitted that if the Petitioner thought that those words
15 referred to him or his supporters then it could only be that he found his supporters fitting within the description.

Analysis of Court

Upon careful analysis of the evidence and submissions of Counsel for both the Petitioner and the 1st Respondent, we
20 found no evidence to prove the alleged offence.

We considered the affidavit in response by the 1st Respondent and we found that the words referred to did not have the meaning attached to them by the Petitioner.

We also noted that the statement which was the subject of the complaint did not mention either the Petitioner or Kiiza Besigye.

Consequently we came to the conclusion that the 1st
5 Respondent did not commit the alleged offence.

**4. Contrary to Section 24 (5) (a) (i) (ii) (b) (c) (d) and 7 of the PEA, the 1st Respondent on various occasions threatened that if the voters elected the Petitioner or anybody else, Uganda would go back to war and this
10 had the effect of influencing the voters to vote the 1st Respondent so as to maintain the status quo.**

The Petitioner adduced evidence to the effect that mobilizers of the 1st Respondent's political party were moving around telling the voters to vote for the 1st Respondent to prevent the
15 country from going back to war.

Roy Peterson Mugasa, a resident of Kibiito Sub-County, Kabarole District deposed that on the 3rd of December 2015 he was invited by Lt. General Tumukunde for a meeting to mobilize people from the nearby villages so that he could talk
20 to them on the issue of demobilizing the Petitioner. That while at that meeting Tumukunde threatened the people that if they voted for the Petitioner, Uganda would return to war.

Kenneth Kasule Kakande a resident of Kavule Village Katikamu sub-county Luweero District and an agent of the Petitioner at

A-M Kinyogoga Barracks in Nakaseke District deponed that on voting day at around 3.30 p.m., around 50 youths (boys) dressed in UPDF uniform seemingly below 18 years arrived at the Polling Station in a single file line with a commander in front. That the commander instructed the boys to vote for President Museveni and warned them that anyone who voted for another candidate would face dire consequences.

Kasirye Joseph, a resident of Mukono and chairman Go-forward Youth team in Mukono deponed that at Ntawo Ward Polling Station, Mukono Industrial Village, he heard a Crime Preventer telling voters that if they did not vote for the 1st Respondent, then they would witness what had been broadcast on TV as the advert of the 1st Respondent. The advert specifically referred to skulls.

In response, the 1st Respondent, averred that he had made no threats to the effect that if voters elected the Petitioner or anybody else, Uganda would go back to war. That what he had said during his campaigns was that NRM because of its management style had been able to unite Ugandans and had brought peace to the country and that good management removed causes of war. He further averred that NRM meant peace and stability because it had the ability to keep the peace. Furthermore that he had urged Ugandans to exercise their vote carefully to protect the gains and progress the country had achieved since 1986.

Analysis of Court

Court noted that apart from the affidavit of Roy Mugasa, the other affidavits which were filed in support of the Petitioner's case do not make specific mention of war.

- 5 In determining whether what the 1st Respondent said while campaigning contravened Section 24 (5) as alleged, we are guided by the authority of **KIZZA BESIGYE V YOWERI KAGUTA NO.1 OF 2006**, where Odoki CJ held at page 209 that:

10

In considering the statements complained of the context in which they were made has to be taken into account instead of analyzing each offensive word. As we have seen use of hyperbole or colourful language may be employed to drive points home or to counter criticisms from other candidates.

15

20

In our view, the statements complained of were but part of the campaigning style of the 1st Respondent and could not be said to have been made with the intention to threaten any voter.

We are further guided by the statement of Katureebe JSC as he then was, in the same petition wherein he held:

In any country, elections are fought on issues and the strengths of candidates to tackle those issues. If the issue of security for the country arises, and one candidate in promoting himself holds himself out as being in a better position to provide security than other candidates, would, in my view be legitimate. If he goes further and makes reference to past history where a failure in leadership of the country has led to war, again I would not regard this as intimidation or threatening war. On the other hand if he states that he will fight or cause chaos, if he should lose the election then this would offend the above quoted provision of the law. Reminding people of the past turbulent history, in my view, is legitimate. The Preamble to the Constitution states:

‘WE THE PEOPLE OF UGANDA:

RECALLING our history which has been characterized by political and constitutional instability;

5 **RECOGNISING our struggle against the forces of tyranny, oppression and exploitation;**

10 **Clearly, the fathers of the Constitution did not shy away from reminding themselves and all the people of Uganda about the turbulent history of Uganda. I do not see how being reminded about it when an important event like choosing the leadership of the country is about to take place can constitute intimidation or threat of war.**

15 We concur with the above view.

We considered the evidence adduced by the parties and the case law referred to above and found that the allegation had not been proved to the satisfaction of the Court.

5. Use of State Resources.

The Petitioner alleged that: Contrary to **Section 27 of the PEA, the 1st Respondent made use of Government resources which are not ordinarily attached to and utilized by the President without proper authorization**
5 **by law thereby having unfair advantage over your Petitioner.**

Section 27 provides that:

(1) **Except as authorized under this Act, or authorized by law, a person shall not use**
10 **Government resources for the purpose of campaigning for any candidate, party or organization in an election.**

(2) **Notwithstanding subsection (1), a candidate who holds the office of President, may**
15 **continue to use Government facilities during the campaign, but shall only use those Government facilities which are ordinarily attached to and utilized by the holder of that office.**

(3) **For purposes of subsection (2), the Minister responsible for public service shall lay before**
20 **Parliament a statement of those Government facilities which are attached to and utilized by the President.**

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding forty-eight currency points or imprisonment not exceeding two years or both.

5

The Petitioner repeated on oath what was stated in the petition. In particular he stated that the 1st Respondent involved Public officers such as Allen Kagina, Executive Director of Uganda National Roads Authority and Jennifer
10 Musisi, Executive Director of Kampala Capital City Authority in his political campaign in Kanungu and Kampala respectively.

Ms. Allen Kagina and Jennifer Musisi filed affidavits in reply to this allegation. They both denied having been involved in the 1st Respondent's campaigns. In her affidavit, Ms. Allen Kagina
15 detailed the functions of the Executive Director of Uganda National Road Authority (UNRA) under the law. She stated that starting from the month of October, 2015 the roads were severely damaged by the Elnino rains and required immediate attention by the Authority. She further stated that on the 17th
20 November 2015 the Authority issued Public Notice assuring the General Public that the authority was aware of the damage that had been caused by torrential rains and that efforts were under way to address the major trouble spots around the country.

A copy of the Notice was attached and marked "A". That in December 2015, a delegation from Kanungu District went to the Authority's Head Office and sought the intervention of the authority with regard to the deplorable state of the roads in their district. That thereafter, the Authority drew up programmes for road inspection around the country and that the programmes focused on roads affected by the torrential rains. The programme indicated that the roads in Kanungu were the most affected by the rains. She went further to state that on the 6th January 2016 His Excellency the President called her to explain why the Rukungiri - Kihhi - Ishaka-Kanungu Road was in bad state and why construction works had been delayed. She went to the venue where the President was and informed the gathering that the road works would commence in March, 2016 upon execution of the agreement with the contractor.

She denied that the 1st Respondent involved her in his political campaigns as alleged by the Petitioner. That it was her duty and role as a Public Officer to explain Government Programmes and give information on activities as and when called upon.

Similarly, the affidavit of Ms. Jennifer Musisi denied having been involved in the 1st Respondent's campaigns. In her affidavit Musisi detailed the functions of the Executive Director of Kampala Capital City Authority. She deponed that she was a

Public Officer who had a duty to explain ongoing Government Programmes as and when she is called upon to do so. That the Authority had for several years planned the construction of Kibuye-Busega-Mpigi Road with funding from the African
5 Development Bank. That one of the concerns that arose as a result of the construction was the need to relocate individuals working around the Kibuye Market.

That on 6th February 2016, the President asked her to update residents of Rubaga North what the progress of the
10 resettlement plans was. That she had consequently made the information available as requested. That in availing the information, she had not campaigned for the 1st Respondent.

The evidence of Kagina and Musisi was corroborated by Hon. Ruhindi, the Attorney General's affidavit in support to the 1st
15 Respondent's answer. Hon. Ruhindi deposed that Ms. Kagina and Jennifer Musisi were Public officers and were not Government Resources. That they were called upon by the 1st Respondent to explain ongoing programmes and never campaigned for him.

20 The question here is whether an offence was committed under the law.

What is clear from their evidence is that both of them were public officers with specified public duties. They acted in the

course of their duty as such Public officers to give information on ongoing programmes in line with their duties.

Having analyzed this evidence, we came to the conclusion that Ms Kagina and Ms Jenifer Musisi were public officers who were
5 executing their duties in accordance with the law. We therefore found that the 1st Respondent did not commit the offence as alleged.

Be that as it may, we would like to state that it is inappropriate to involve public officers in political campaigns.

10 It is a time honoured principle that public officers should not be involved in partisan politics. The non-partisan nature of public service should be protected. Whereas public officers may have political views and are entitled to participate in voting for a political party or candidates of their choice, they are required
15 to publicly maintain their neutrality and to present an image of non-partisanship to the general public whom they serve. Speaking at a candidate's political campaign undermines this image. There are more appropriate avenues for public officers who are not politicians to explain their programmes than in a
20 candidate's political campaigns. A level playing field must be maintained at all times.

ISSUE NO 5: Whether the Attorney General was correctly added as a respondent in this election petition.

The Petitioner contended that the petition variously points out the role of security organs, specifically the Inspector General of Police (IGP), Uganda Police and UPDF, in interfering with his consultative meetings and campaigns. That these complaints
5 justified the need to join the Attorney General as a party to the petition.

The Attorney General contended that he was wrongly joined to the petition since the PEA Rules describe a “respondent” to the petition as the person whose election is complained about and
10 the Commission, where the complaint includes the conduct of the Commission. That the Attorney General should be struck out from the petition with costs for that reason.

As already stated in our judgment, the Presidential Elections (Election Petitions) Rules do not provide for the Attorney
15 General to be a respondent in a Presidential Election Petition. Rule 3 interprets “respondent” to mean **“the person whose election is complained of in a petition; and where the petition complains of the conduct of the Commission, includes the commission.”** Clearly this definition excludes
20 the Attorney General.

However, under Rule 5(2) on the mode of presentation of the petition, the Petitioner is required to have a copy of the petition served on the Attorney General. Rule 6(1) obliges the Registrar of the Court to send a copy of the Petition to the
25 Attorney General. Likewise, Rule 8 requires the Respondent’s

answer to be served on the Attorney General. Rule 10(5) requires the Registrar to serve a notice of hearing on the Attorney General. Even where a petition is withdrawn under Rule 20, the Attorney General must be served with the copy
5 of the application for leave to withdraw, and the Attorney General or his/her representative **“may appear at the hearing and oppose the withdrawal and the Court may receive the evidence of any person if the Attorney General or his or her representative considers it**
10 **material.”**

It is clear that the Rules require the Attorney General to be fully involved in a Presidential Petition, even when he is not named as a respondent. The underlying reason for this must be found in the Constitutional position of the Attorney General.

15 Article 119 of the Constitution provides for the position of Attorney General and makes him **“the Principal Legal Adviser of the Government.”** There must be a realization that whatever happens in a Presidential Petition is bound to affect the Government of Uganda. First, the Government of
20 Uganda provides the funds to the Commission to organize and manage elections. The Government provides security during elections. Most of the Legislation governing election will have been introduced by Government. There must also be a realization that there are matters that may arise out of the
25 petition which directly point to Government responsibility.

If, for example, allegations are proved about the misconduct of the security officers and personnel, or misconduct of public officers, the Attorney General, on behalf of the Government should be able to take full responsibility.

- 5 In the 2006 Presidential Petition, Katureebe, JSC, (as he then was) opined thus:

10 **... perhaps in future petitions, the law should provide for the Government (Attorney General) to be made a party to the petition so that such complaints if pleaded by a Petitioner can be answered and be fully inquired into by the Court.**

We think that even if the law were to remain as it is, there clearly is a role for the Attorney General.

- 15 It would follow that if there were orders or recommendations made by the Court regarding the responsibility of Government, the Attorney General ought to be served with those orders or recommendations. This would be a natural consequence of the requirements, stated above, to serve all the Court documents
20 on the Attorney General. Relevant orders and recommendations should, *a fortiori* be served on the Attorney General, and the Attorney General must comply with those orders or recommendations, or provide the Court with answers as to the outcome of such compliance.

In that regard we must observe that this Court, in the two previous Presidential Petitions, made a number of recommendations with regard to amending the law to make the filing, presentation and adjudication of Presidential
5 election Petitions much more equitable and simpler to meet the ends of justice. None of these recommendations were ever heard of again, yet the Attorney General had been served with all the Court documents

It was our finding that as the rules stand now, the Attorney
10 General should not have been made a respondent in the petition.

Nevertheless, in light of the constitutional and statutory roles of the Attorney General, we will later on in this judgment, make our recommendations for what we see as a lacuna in the
15 Rules.

ISSUE NO. 6: Whether the Petitioner is entitled to any of the reliefs sought.

The Petitioner prayed for four reliefs as follows: an order for recount of votes in 45 districts, a declaration that the 1st
20 Respondent was not validly elected as President, an order that the election of the 1st Respondent be annulled and an order that costs of the petition be awarded to the Petitioner. In our judgment, we disposed of three of the reliefs as follows:

1) *That having made due inquiry into the petition and on the basis of our findings set out in the judgment and in accordance with Article 104 (5) (b) of the Constitution and Section 59 (5) (b) of the PEA, the*
5 *1st Respondent was validly elected as President.*

2) *That accordingly, the petition was dismissed.*

3) *We made no order as to costs.*

We do not intend to say more in regard to the said 3 prayers.

However we must now deal at length with the prayer for a
10 recount of votes.

The Petitioner in his amended petition included a prayer for recounting of votes in 45 districts. An actual count however revealed that the districts that were actually named in the petition were 43, the list having repeated the districts of Arua
15 and Rakai. The Petitioner claimed that a recount of the votes cast in the named districts was necessary and practical to determine the substantial effect of the malpractices and acts of noncompliance of the Commission in the conduct of the impugned election.

20 In answer, the 1st Respondent stated that the Petitioner had not established any factual or legal basis to warrant a recount of the votes in the named districts. The Commission's answer was to the same effect. The Attorney General stated that the

claims were not within his knowledge and made no admission thereto.

No specific submissions were made by Petitioner's Counsel on the issue of recount beyond merely reiterating the Petitioner's prayer in the petition. The Respondents' Counsel were opposed to the prayer for recount. The matter, though not specifically framed as an issue in the petition, was left for Court's determination.

Court was of the view that the law makes provision for a vote recount where it is deemed necessary and practical in the prevailing circumstances. The Petitioner however had to lead evidence to satisfy the Court that a vote recount was necessary and practical in the circumstances.

The law as to vote recount in a Presidential election is found in Section 59 (8) of the PEA which provides as follows:

Where upon hearing a petition and before coming to a decision, the Court is satisfied that a recount is necessary and practical, it may order a recount of the votes cast.

The same wording is repeated in Rule 21 of **The Presidential elections (Election Petitions) Rules, 2001.**

What is important to note is that to order a recount, the Court must first hear the evidence, be satisfied and come to a

conclusion that a recount is necessary and practical before coming to the final decision. The evidence must be such as may satisfy the Court that for it to reach a just decision on the petition, it is necessary to order a vote recount. The Court
5 must also be satisfied that it is practical to do so, to have a recount of votes cast. It also comes out that if the Court was satisfied as to order a recount, the recount exercise would have to be done within the period of 30 days stipulated for hearing of the petition and the result thereof would contribute
10 to the final decision to be made by the Court.

Neither the Act nor the Rules lay down the criteria or the procedure to be followed in the recount of votes. One also has to bear in mind that the decision of the Court must be made and declared within 30 days from the date the petition was
15 filed. Therefore in addressing the question as to whether the recount is practical, the Court would have to bear in mind the period between the completion of the hearing and the date for the delivery of the decision. The Court would have to determine how much time would be needed for the conduct of
20 the vote recount.

By way of analogy, Sections 55, 56 and 63 (5) of the PEA with regard to vote recounting make a fairly elaborate provision over the issue of vote recount under parliamentary elections. The period within which the recount should be done is
25 provided for four days after receipt of the application (in case

of a recount under Sections 55 and 56 thereof). The law also makes provision on the issue of eventual costs.

As earlier indicated, neither the PEA nor the Rules made there under sets out the criteria upon which a recount can be
5 ordered. The situation has not arisen before in this Court with regard to a Presidential election. However we think that decisions made in other jurisdictions as well as by the High Court in Uganda are illustrative and useful in that regard.

The Supreme Court of India had occasion to pronounce itself as
10 to when a Court can order a recount.

In the case of **Km. Shradha Devi vs. Krishna Chandra Pant and others Supreme Court of India Civil Appeal No. 277 of 1980**, the Supreme Court of India held that:

**For an election petition to succeed for a
15 recount, prima facie proof of errors in counting must be shown and if errors in counting were established, by providing proof of some errors in respect of some ballot papers, scrutiny and recounting could not be
20 limited to those ballot papers only and that a recount could be ordered of all disputed ballot papers.**

In V.S Achuthanandan vs. P.J. Francis & Anor Supreme Court of India Appeal (Civil) 4681 of 2000, the Supreme

Court of India set out a number of principles before disallowing the appeal and declining a prayer by the Petitioner for an inspection of the ballot boxes and a recount of the ballot papers. The principles, in as far as they are relevant to the
5 matter before us, are as follows:

**1. The secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and merely for asking or on vague and indefinite allegations or averments of general
10 nature. At the same time purity of election process has to be preserved and therefore inspection and re-count shall be permitted but only on a case being properly made out in that regard.**

**2. A petition seeking inspection and re-count
15 of ballot papers must contain averments adequate, clear and specific making out a case of improper acceptance or rejection of votes or noncompliance with statutory provisions in
20 counting. Vague or general allegations that**

valid votes were improperly rejected or invalid votes were improperly accepted would not serve the purpose.

3. The election Petitioner must produce trustworthy material in support of allegations made for a re-count enabling the Court to record a satisfaction of a prima facie case having been made out for the grant of the prayer. The Court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.

4. The power to direct inspection and re-count shall not be exercised by the Court to show indulgence to a Petitioner who was indulging in a roving enquiry with a view to fish out material for declaring the election to be void.

5. By mere production of the sealed boxes of ballot-papers or the documents forming part of record of the election proceedings before the Court the ballot papers do not become a part of the Court record and they are not liable to be inspected unless the Court is satisfied in accordance with the principles stated hereinabove to direct the inspection and re-count.

6. In the peculiar facts of a given case the Court may exercise its power to permit a sample inspection to lend further assurance to the prima-facie satisfaction of the Court regarding the truth of the allegations made in support of a prayer for re-count and not for the purpose of fishing out materials.

7. Once a re-count is validly ordered the statistics revealed by the re-count shall be

available to be used for deciding the election dispute. (Emphasis ours).

In Uganda, the High Court has in a number of decisions expounded on the issue of vote recount under the
5 Parliamentary Elections Act.

In the case of **Byanyima Winnie vs. Ngoma Ngime, HC Civil Revision No. 009 of 2001**, Musoke-Kibuuka, J, had this to say:

**A recount under S. 56 of the [Parliamentary
10 Elections] Act is intended to serve as a
filtering mechanism. It is intended to be more
secure and reliable than the first count carried
out by Presiding officers at the various polling
stations in the field at the end of polling time,
15 on polling day. A recount is a legal function,
performed under the neutrality of the Court in
order to untangle the numerical questions of
the results. It is intended to be carried out at a
higher level of scrutiny and to produce**

uncontestable figures of the results of each candidate. (Emphasis ours).

The learned Judge further held:

5 **It is, therefore, difficult to reconcile a**
recounting of any votes from ballot boxes,
which have not been secured in accordance
with the law, with those values and
aspirations or even with the goals and
purposes of S. 56 of the Act ... To pretend to
10 **conduct a recount where some of the ballot**
boxes have been found open is mere false
pretense. It is an abuse of Court process. It
amounts to second-guessing the results.
Section 56 was never intended to create an
15 **illegitimate mechanism of second-guessing the**
results in a Parliamentary election. A recount
cannot be mechanically and purposelessly
carried out ... (Emphasis ours).

In the case of **Akidi Margaret vs. Adong Lilly & Anor Election Petition No. 004 of 2011 (HC Gulu)**, Rubby Aweri Opio, J, (as he then was) considered the issue of a vote recount made under Section 63 (5) of the Parliamentary Elections Act.

5 The Section states thus: **“The High Court before coming to a decision under sub-Section (4), may order a recount of the votes cast.”**

The learned Judge stated:

10 **In the instant case there were no such irregularities to warrant a recount ... All in all I find that this is not a deserving case for a recount. Even if it was I do not think a recount would deliver justice as there was no evidence to establish that the integrity of the ballot**
15 **boxes were intact and well secured.** (Emphasis ours).

In **Bagoole John Ngobi vs. Kyobe Luke Inyensiko, Misc. Cause No. 06 of 2016 (Jinja HC)**, Basaza Wasswa, J, while reviewing the orders of the Chief Magistrate who had
20 ordered a recount, stated as follows:

... clearly the learned Chief Magistrate had not satisfied himself of any numerical errors, or at all, for which he conducted the vote recount. He simply ordered and simply conducted a recount. With all respect, it is my view that an aimless and unfocused recount of votes, without numerical points of reference against the backdrop that some ballot boxes were found without seals and tampered with, was an exercise in futility. To echo the words of Musota, J, in Kamba Saleh - vs- Namuyangu Jennifer Byakatonda, C/A No. 19 of 2011, ‘there was nothing for the learned Magistrate to scrutinize.’ In the Kamba Saleh case, the grounds raised by the candidate for a recount had nothing to do with numerical questions. Musota J held that Court cannot be called upon to scrutinize all the votes cast in favour of candidates which are in tens of thousands nor can it go into ballot boxes on a hunting

expedition in the hope that it will chance on ballot papers in favour of the Applicant that were not counted as hers. I agree with this holding. (Emphasis ours).

- 5 Our view was that the above Court decisions echo sound legal principles and give clear guidance as to what to consider when faced with an application for a recount of votes under the Parliamentary Elections Act. We think that, mutatis mutandis, the principles can be applied in considering an application for a
- 10 vote recount under the PEA. In a Presidential election, the stakes are higher and the whole country is involved, unlike a constituency where a single Parliamentary seat is at stake. The votes to be recounted may be in millions, not just thousands or tens of thousands.
- 15 In our view, the evidence required to satisfy the Court must be compelling. The evidence must show the numerical strengths involved in the Petitioner's claims, the polling stations affected, the nature of the irregularities and how they affected the votes cast and counted. The evidence must raise grounds
- 20 that call for a review of what the presiding officers did at the time of counting and tallying of results. Further, evidence must be brought to show that the integrity of the ballot boxes has not been compromised. If there is a possibility that the ballot

boxes have been interfered with, any recount of the ballots therein would be too unreliable and unnecessary.

In the case before us, the Court has to consider whether the Petitioner adduced sufficient evidence in Court to satisfy the
5 Court that it was necessary and practical to order a recount of the votes cast in the 43 districts in which a recount was sought. The districts are Kiruhura, Kampala, Wakiso, Kabale, Nakaseke, Rukungiri, Kasese, Ntungamo, Soroti, Kisoro, Kaabong, Jinja, Gulu, Arua, Lira, Nakasongola, Sembabule,
10 Isingiro, Butambala, Kalungu, Bundibugyo, Apac, Moroto, Mpigi, Pallisa, Amuru, Kamwenge, Rakai, Sironko, Kanungu, Gomba, Kyankwanzi, Butambala, Luwero, Mubende, Serere, Sheema, Amuria, Lamwo, Kyenjojo, Kween, Rubirizi and Buhweju.

15 Rule 14 (1) of the Presidential elections (Election Petitions) Rules provides that: **“Subject to this rule, all evidence at the trial, in favour of or against the petition shall be by way of affidavit read in open Court.”**

We carefully perused all the affidavits filed by the Petitioner in
20 this petition as a whole and the responses filed by the Respondents. All the said affidavits have been discussed elsewhere in this judgment and we do not need to repeat them.

The Petitioner filed one affidavit in respect of Kiruhura District sworn by one Annette Kyokunda which contained allegations of bribery and interference with his campaign rallies in Kiruhura. The affidavit was answered by the affidavits of Nowomugisha
5 Sedrick Nzaire, Alex Kotungire, Naboth Nandeeba, Katemba Reuben Kenneth Muhoozi and Hon. John Nasasira. The affidavits have already been considered in this judgment.

Clearly none of the allegations put up for the Petitioner in respect of Kiruhura District pertain to matters that call for a
10 vote recount. The allegations of bribery and interference with the campaign rallies of the Petitioner have already been adequately dealt with by the Court. No case for recount was therefore made out in respect of Kiruhura District.

In Kampala, the Petitioner filed 12 affidavits by Moles Capsule
15 Ssegululigamba, Mugabe Lawrence, Margaret Lukowe, Ezekiel Mbejja, Tumusiime Gerald, Magumba Micheal, Juma Bayi, David Mubiru, Sewanyana Joseph, Mikidadi Yusuf, Tito Sky and Katende John, alleging various malpractices including intimidation, unequal media coverage by UBC and bribery. The
20 affidavits were responded to by Tony Geoffrey Owana, Fred Kyomuhendo, Kawonawo Baker, Baguma Aron Siringi, Odong Mak Paul, Atuhairwe Gerald, Muganga Nathan, Samuel Mission, Sankara Adam, Asimwe Amos Bangi, Marwaha Katongole Singh Parminder, and Nyangoma Everage Grace, in which they
25 denied the said allegations.

The allegations in respect of Kampala generally pertain to issues that have already been considered and disposed of by the Court elsewhere in our judgment. They bring out no issues that would call for a review of the counting process of the
5 ballots in the said district. They therefore make out no case for vote recount.

For Wakiso District, five affidavits were filed. The first affidavit was that of Mutogo Duncan who was appointed as the Petitioner's agent at the National Tally Centre at Namboole. He
10 stated that when the first provisional results were announced, the Chairperson of the Commission did not avail him with the Declaration of Results Forms or Tally Sheets from which the results announced were originating.

The second affidavit was that of James Okello who was also
15 appointed as the Petitioner's agent at the National Tally Centre at Namboole. He stated that Declaration of Results Forms or Tally Sheets were never availed to him and that he never did any tallying or saw any results coming in from the respective districts but only heard what was being read and uploaded to
20 the computers and displayed on the screens at the Tally Centre.

The third affidavit was that of Matanda Fred, a registered voter and resident of Kasangati in Gayaza, who stated that when he proceeded to Wampewo polling station to cast his vote, he
25 found that his name had already been ticked on the register

purporting that he had already voted and yet he had not voted. The deponent stated that he witnessed late delivery of ballot boxes to the polling station which left many people unable to cast their vote by the end of day. He further stated
5 that he witnessed Crime Preventers stopping some voters from casting their votes.

The fourth affidavit was that of Ssendagire Gerald, a registered voter at Mukalazi polling station in Zzana and a member of Power Ten, a pressure group based in Zzana, Wakiso District
10 who stated that he witnessed late delivery of voting equipment at the polling station. The deponent stated that voting started at 12.30pm and that by 4.00pm the Police men at the polling station informed the people that casting of votes had ended. The deponent stated that at the time of vote counting, the
15 presiding officer did not display the ballot papers to ascertain and verify which particular candidate had been ticked on the ballot paper. He added that the presiding officer had refused to provide to the polling agents of the respective candidates the number of the particular votes cast for each candidate.

20 The fifth affidavit was that of Walusimbi Isma who was a coordinator of the Petitioner's campaigns in Gayaza Parish in Wakiso District. He stated that he was denied to vote on the basis that he had already cast his vote since his name was already ticked. The deponent stated that the voters' register
25 did not show the number of polling stations that physically

existed in Manyangwa. He further stated that at Saza ground polling station, the presiding officer did not show the ballot papers as he was counting them.

5 No affidavit in reply was filed by the Respondents to these affidavits.

The only allegations in respect of Wakiso District that would pertain to the issue of vote recount are the failure by presiding officers failing to display to the persons present the ballot papers when counting and refusal to provide to the polling
10 agents of the respective candidates the number of the particular votes cast for each candidate. This could raise a possibility that votes cast in favour of one candidate were counted in favour of the other. The above evidence by Ssendagire Gerald and Walusimbi Isma was in respect of two
15 polling stations, one in Gayaza in Nangabo Sub-county and the other in Zzana in Makindye Ssabagabo Sub-county. The evidence was unsupported and uncorroborated by any other evidence. It gave an impression of isolated incidents that could not suffice to prove an allegation that at the said polling
20 stations, the votes for the Petitioner were counted as those of the 1st Respondent which would have made out a case for recount of the ballots at those polling stations. The other allegations in respect of this district pertained to matters that have already been dealt with and disposed of by the Court. No

case for recount was therefore made out in respect of Wakiso District.

For Kabale District, the Petitioner filed two affidavits by Mwesigye Hope and Nkurunungi Felix Giisa in which they made
5 a number of allegations including arrest, intimidation and torture of the Petitioner's supporters as well as starting voting late, lack of transparency during vote counting and ballot stuffing.

The above allegations were responded to by 4 affidavits filed
10 by Shesa Juma Adam, SP Bindeeba Dickens, Nzeirwe Denis Ndyomugenyi and Twongyeirwe Frank, in which the allegations were denied.

The allegation made by Nkurunungi that there was counting of ballots by a presiding officer without him showing the ballots
15 to the people present was in respect of one polling station in Kabale District. The deponent also alleged that he had witnessed the presiding officer open and remove the ballot papers and declaration forms then stuff them with their own ballot papers and declaration forms. This evidence was not
20 supported or corroborated by any other evidence even in respect of that particular polling station. It did not prove to Court that there were numerical questions that could be answered if an order for recount of the votes at the said polling station was made.

The same deponent claimed to have witnessed the arrival of ballot boxes from Kandango polling station to Kabale District headquarters when some of the boxes were broken and the results were not matching with what the opposition agents had reported from the declaration forms.

In accordance with the principles governing a recount exercise set out herein above, such evidence by itself did not suffice to persuade the Court to grant an application for recount. Therefore no case for ordering a recount was made out for Kabale District.

For Nakaseke District, the Petitioner filed two affidavits. The first affidavit was by Kenneth Kasule Kakande who alleged that, at his polling station, he saw ballot boxes that were not sealed and that voters would not drop their ballot papers through the hole on the cover of the ballot box but rather they would open the entire cover and during tallying, about 10 invalid votes were counted in favour of Candidate Museveni even though the marks were clearly covering two candidates.

The second affidavit was by Sezibeza Moses who alleged that he had seen an underage voter and a non registered voter being allowed to vote. He also noticed campaigning during voting and the presiding officer ticking ballots and ordering illiterate people to place them in the box. This evidence was in respect of what has already been covered.

Two affidavits in reply were filed by Kwijuka Godfrey and Asiimwe Justus, denying the above allegations.

The allegation by Kenneth Kasule Kakande that he saw about 10 invalid votes being counted in favour of Candidate Museveni even when the marks thereon were clearly covering two candidates would probably raise numerical questions that would have a bearing on an application for a recount of votes. The evidence however was in respect of one polling station in an entire district, it was unsupported and uncorroborated by any other evidence and as such its effect on the entire body of evidence before the Court was insignificant. It could therefore not suffice to make a case for recount either at the particular polling station or in the district. The other allegations raised in respect of Nakaseke District had no bearing to the application for a recount of votes and were already adequately handled by the Court in respect of other allegations.

In respect of Rukungiri District, the Petitioner filed one affidavit of Bishop Melekzedich Rugogamu who made allegations of threatening violence and intimidation by Hon. Jim Muhwezi. The affidavit was responded to by Hon. Jim Katugugu Muhwezi who denied the allegations.

Clearly, the allegations put up by Bishop Melekzedich Rugogamu had no bearing with the application for a recount. They pertained to matters that have already been sufficiently

canvassed by the Court. No case for recount was therefore made out in respect of Rukungiri District.

For Kasese District, the Petitioner filed one affidavit by Baluku Benson Kikumbwa who alleging bribery by General Tumukunde
5 of the Petitioner's supporters and asking them not to vote for the Petitioner. He also alleged other acts of bribery against Dr. Chrispus Kiyonga. That allegation was also denied by Dr. Kiyonga and Annet Kategaya. The same person also alleged that the official tally of the Commission showed that the 1st
10 Respondent had obtained 715 votes against 4 votes for the Petitioner at Old Taxi Park polling station in Kasese Municipality, which had only 268 officially registered voters.

This allegation appeared serious. However, the allegation was unsupported by any evidence. No evidence was led by the
15 Petitioner of either the said official tally of the Commission or of proof that the said polling station had only 268 registered voters. This allegation could therefore not be relied on by the Court. The mere statement by the Petitioner's witness to that effect did not satisfy the Court to conclude that the results of
20 that polling station had been interfered with. The other allegations raised in respect of Kasese District point to irregularities that were already adequately dealt with by the Court.

For Ntungamo District one affidavit was filed, of the Petitioner
25 himself, alleging violence against himself and his supporters.

The allegations raised by the Petitioner in respect of Ntungamo District clearly had no bearing on the application for a recount and the matters raised therein had received ample consideration by the Court earlier on in this judgment.

- 5 For Soroti District, there were two affidavits. The first affidavit was by Hope Mwesigye who alleged that while in Soroti town, she and other supporters of the Petitioner were denied entrance to their meeting place at Kennedy Square in Soroti Municipality; the venue was cordoned off by the Police yet they
- 10 had paid for it. The deponent further stated that at another meeting of the Petitioner at Soroti Sports Ground, immediately after prayers the Police fired tear gas canisters and people ran for their lives leaving some people injured and others hospitalized.
- 15 The second affidavit was that of the Petitioner alleging harassment by the Police and Crime Preventers against him and his supporters.

Two affidavits in reply were filed denying the allegations by Okaja Emmanuel and ACP Steve Acaye Phillip.

- 20 The above allegations raised in respect of Soroti District also had no bearing to the prayer for recount of votes. The allegations were sufficiently dealt with and disposed of by the Court earlier in our judgment.

For Kisoro District, one affidavit was filed of one Tumuhimbise Nzaana Desmond who alleged that the appointment letters of the Petitioner's polling agents were being bought by supporters of the NRM including David Bahati. The same
5 person also claimed that he was denied access to Declaration of Results Forms. He further also alleged intimidation of the Petitioner's supporters in Bufumbira North by one Colonel Kaita.

The Respondents filed three affidavits in reply by Kamara John
10 Nizeyimana, Hon. David Bahati and Col. Deo Kaita, denying the allegations.

The above allegations raised in respect of Kisoro District also did not bear any relevance to the application for a recount. They raised the same matters that had been sufficiently
15 considered by the Court earlier in this judgment.

One affidavit was filed in respect of Kaabong District by Benon Muhanguzi who alleged that there was a lot of intimidation of masses by placement of various roadblocks and heavy deployment of the military on the roads leading to the
20 Petitioner's campaign venues and removal of his campaign posters during campaigns. Two affidavits in reply were filed by the Respondents denying the allegations: Simon Lolim and Cekerom Peter.

The above allegations raised in respect of Kaabong District too have no relevance to an application for a recount. The matters raised therein were given ample consideration by the Court elsewhere in our judgment.

- 5 Jinja District was referred to in the affidavit of the Petitioner who stated that while in Jinja his meeting was dispersed by some members of the Uganda Police Force acting under the directives of the 1st Respondent. No specific response was made by the Respondent. This allegation also has no bearing
10 on an application for recount.

Gulu District was mentioned in the affidavit of Benon Muhanguzi in respect of an allegation of intimidation of the Petitioner's supporters by state agents and disruption of the Petitioner's rally.

- 15 There was one affidavit in reply, sworn by Okoyo Martin, the DPC of Gulu District, who stated that ample security was provided to all candidates and their supporters and there was no disruption of the Petitioner's rally as alleged. This allegation also had no bearing to the application for recount.

- 20 No single affidavit was filed and no other evidence was led by the Petitioner in respect of the application for vote recount in the following Districts: Arua, Lira, Nakasongola, Sembabule, Isingiro, Butambala, Kalungu, Bundibugyo, Apac, Moroto, Mpigi, Pallisa, Amuru, Kamwenge, Rakai, Sironko, Kanungu,

Gomba, Kyankwanzi, Butambala, Luwero, Mubende, Serere, Sheema, Amuria, Lamwo, Kyenjojo, Kween, Rubirizi and Buhweju.

Therefore, out of the 43 districts for which vote recount were
5 demanded, there was no evidence at all to be considered by
the Court in 30 of the districts. The affidavit evidence that was
filed in respect of the 13 districts as summarized above was
analyzed in regard to its sufficiency and relevance to the issue
of vote recount. It was our considered view that an application
10 for a recount cannot just be a demand based on general
allegations of malpractices making it appear as if the
Petitioner's hope was that if a recount was made, some
evidence of irregularity might be found. To demand for a
recount of votes in 43 districts, involving thousands of polling
15 stations, without specific evidence as to which particular
polling stations are in issue, and to have no evidence at all in
respect of 30 of the districts, was in our view, asking this Court
to embark on a fishing expedition.

It is indeed noteworthy that in his lengthy submissions on the
20 petition, Counsel for the Petitioner did not dwell on the matter
of vote recount let alone point out the evidence upon which
the Court could be satisfied to grant the prayer for a vote
recount.

Our view, therefore, was that the Petitioner did not discharge
25 the burden of satisfying the Court that it was necessary to

order a recount of the votes cast in the named 43 districts or any of the districts thereof. Consequently, the Court did not need to embark on the aspect of whether it was practical to conduct a recount in the circumstances.

5 We therefore declined to grant the prayer.

Recommendations

Before we take leave of this matter, we would like to point out a number of areas of concern. We must note that in the past two Presidential Petitions, this Court made some important
10 observations and recommendations with regard to the need for reform in the area of elections generally and Presidential elections in particular. Many of these calls have remained unanswered by the Executive and the Legislature.

At the hearing of this petition, we allowed, as *amici curiae*, a
15 group of prominent Constitutional Scholars from Makerere University. They gave us a brief on issues pertaining to the holding of free and fair elections in Uganda. We have considered their proposals.

In the instant petition we have also identified additional areas
20 which in our view call for reform.

Arising from the above, we recommend as follows:

1. The Time for filing and determination of the petition:

In the course of hearing this petition, the issue of the inadequacy of the time provided in Article 104(2) and (3) of

the Constitution for filing and determining of presidential election petitions came up. The same issue was also pointed out by this Court in the two previous presidential election petitions. The 10 day period within which to file a presidential election petition and to gather evidence and the 30 days within which the Court must analyze the evidence and make a decision as provided under Article 104 (2) and (3) of the Constitution and section 59 (2) and (3) of the PEA is inadequate. We recommend that the period be reviewed and necessary amendments be made to the law to increase it to at least 60 days to give the parties and the Court sufficient time to prepare, present, hear and determine the petition, while at the same time being mindful of the time within which the new President must be sworn in.

2. The nature of evidence: Whilst the use of affidavit evidence in presidential election petitions is necessary due to the limited time within which the petition must be determined, it nevertheless has serious drawbacks mainly because the veracity of affidavit evidence cannot be tested through examination by the Court or cross-examination by the other party. Affidavit evidence on its own may be unreliable as many witnesses tend to be partisan. We recommend that the Rules be amended to provide for the use of oral evidence in addition to affidavit evidence, with leave of court.

3. The time for holding fresh elections: Article 104(7) provides that where a presidential election is annulled, a fresh

election must be held within 20 days. We believe this is unrealistic, given the problems that have come to light in the course of hearing all the three petitions that this Court has dealt with to-date. In all these petitions, the Commission has
5 been found wanting in some areas. Importation of election materials has sometimes been a problem. Securing funds has also often provided challenges. Therefore, to require the Commission to hold a free and fair election within 20 days after another has been nullified is being overly optimistic. A
10 longer and more realistic time frame should be put in place.

4. The Use of technology: While the introduction of technology in the election process should be encouraged, we nevertheless recommend that a law to regulate the use of technology in the conduct and management of elections
15 should be enacted. It should be introduced well within time to train the officials and sensitize voters and other stakeholders.

5. Unequal use of State owned media: Both the Constitution in Article 67 (3) and the PEA in section 24 (1), provide that all presidential candidates shall be given equal
20 time and space on State owned media to present their programmes to the people. We found that UBC had failed in this duty. We recommend that the electoral law should be amended to provide for sanctions against any State organ or officer who violates this Constitutional duty.

6. The late enactment of relevant legislation: We observed that the ECA and the PEA were amended as late as November, 2015. Indeed the Chairman of the Commission gave the late amendment of the law as the reason for
5 extending the nomination date. We recommend that any election related law reform be undertaken within two years of the establishment of the new Parliament in order to avoid last minute hastily enacted legislation on elections.

7. Donations during election period: Section 64 of the PEA
10 deals with bribery. We note that Section 64 (7) forbids candidates or their agents from carrying out fundraising or giving donations during the period of campaigns. Under Section 64 (8), it is an offence to violate Section 64 (7). However, we note that under Section 64 (9) a candidate may
15 solicit for funds to organize for elections during the campaign period. Furthermore, a President may in the ordinary course of his/her duties give donations even during the campaign period. This section in the law should be amended to prohibit the giving of donations by all candidates including a President who
20 is also a candidate, in order to create a level playing field for all.

8. Involvement of public officers in political campaigns: The law should make it explicit that public servants are prohibited from involvement in political campaigns.

9. The role of the Attorney General in election petitions:

The Attorney General is the principal legal advisor of Government as per Article 119 of the Constitution. Rule 5 of the PEA Rules also requires the Attorney General to be served with the petition. We found that several complaints were raised against some public officers and security personnel during the election process. However, the definition of “respondent” in Rule 3 of the PEA Rules as it currently is, does not include the Attorney General as a possible Respondent. Further, Rule 20(6) of the PEA Rules, provides that even when a Petitioner wants to withdraw a petition, the Attorney General can object to the withdrawal. The law should be amended to make it permissible for the Attorney General to be made Respondent where necessary.

10. Implementation of recommendations by the Supreme Court:

We note that most of the recommendations for reform made by this Court in the previous presidential election petitions, have remained largely unimplemented. It may well be that no authority was identified to follow up their implementation. We have nevertheless observed in this petition that the Rules require that the Attorney General be served with all the documents in the petition. We have further noted that the Attorney General may object to withdrawal of proceedings. Therefore the Attorney General is the authority that must be served with the recommendations of this Court for necessary follow up.

We accordingly order as follows:

1) The Attorney General must follow up the recommendations made by this Court with the other organs of State, namely Parliament and the Executive.

5

2) The Attorney General shall report to the Court within two years from the date of this Judgment the measures that have been taken to implement these recommendations.

10 **3) The Court may thereafter make further orders and recommendations as it sees fit.**

Dated at Kampala this 26th day of August 2016

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**B.M. KATUREEBE,
CHIEF JUSTICE.**

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20 **JOTHAM TUMWESIGYE,
JUSTICE OF THE SUPREME COURT.**

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**JUSTICE DR. ESTHER KISAAYE,
JUSTICE OF THE SUPREME COURT.**

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5 **JUSTICE STELLA ARACH-AMOKO,
JUSTICE OF THE SUPREME COURT.**

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10 **JUSTICE AUGUSTINE NSHIMYE,
JUSTICE OF THE SUPREME COURT.**

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15 **JUSTICE ELDAD MWANGUSYA,
JUSTICE OF THE SUPREME COURT.**

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20 **JUSTICE OPIO-AWERI,
JUSTICE OF THE SUPREME COURT.**

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25 **JUSTICE FAITH MWONDHA,
JUSTICE OF THE SUPREME COURT.**

.....
5 **JUSTICE PROF. DR. LILLIAN TIBATEMWA-EKIRIKUBINZA,**
JUSTICE OF THE SUPREME COURT.