

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT SOROTI**  
**ELECTION PETITION NO. 002 OF 2021**

**OSSIYA SOLOMON ALEMU:.....PETITIONER**

**VERSUS**

- 1. KOLUO JOSEPH ANDREW**
- 2. ELECTORAL COMMISSION:.....RESPONDENTS**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The petitioner and 1<sup>st</sup> respondent, together with 9 other candidates participated in an election organized by the 2<sup>nd</sup> respondent for the directly elected Member of Parliament for Toroma County Constituency in Katakwi District on the 14<sup>th</sup> day of January 2021. The 1<sup>st</sup> respondent, Koluo Joseph Andrew was declared the winner with 9,179 votes polled and this was gazetted on 17<sup>th</sup> February 2021. According to the results declared and gazetted by the 2<sup>nd</sup> respondent, the petitioner polled 8,013 votes and came second in the race.

Being aggrieved by the election and declaration by the 2<sup>nd</sup> respondent, the petitioner instituted this petition on the 15<sup>th</sup> of March 2021 contesting the election and declaration of the 1<sup>st</sup> respondent as the elected candidate for the Toroma constituency.

The petitioner contended that the election was not conducted in accordance with the principles laid down in the Constitution, The Parliamentary Elections Act, 2005 and the Electoral Commissions Act, Cap. 140. That it was tainted and marred by several illegalities, election offences and malpractices including; violence, assault, threats, intimidation, obstruction of the petitioner's supporters, voters and agents, chasing away of the petitioner's agents from polling stations during voting, vote counting and tallying, bribery, unauthorized voting, multiple voting, personation, improper distribution of ballot papers, breach of the official duty to

carry out the election with fairness, failure/abandoning of the use of the biometric voter verification kits, among others.

On the other hand, the respondents contended that the 2<sup>nd</sup> respondent lawfully declared the 1<sup>st</sup> respondent as the winner of the said election with 9,179 votes whereas the petitioner obtained 8,013 votes.

This petition was heard before and the high court struck it out after the respondent's raised a preliminary objection that the affidavit in support of the petition was incompetent. The petitioner successfully appealed to the Court of Appeal which ordered for a retrial in ***EPP No. 15 of 2021; Ossiya Solomon Alemu v Koluo Joseph Andrew & EC.***

The following issues were agreed upon and framed for determination by the court.

- 1. Whether there was noncompliance with the electoral laws and the principles laid down in them during the conduct of the election for Member of Parliament Toroma County constituency.***
- 2. Whether the noncompliance affected the results of the election in a substantial manner.***
- 3. Whether the 1<sup>st</sup> respondent committed any illegal practices and /or electoral offences personally or through his agents with his knowledge and consent or approval.***
- 4. Whether the 56 affidavits out of the 60 affidavits filed by the petitioner offend the provisions of the illiterates Protection Act and oaths Act.***
- 5. Whether the 20 affidavits in support of the petitioner's petition ought to be expunged on account of variations of the witnesses' signatures on the attached photocopies of the National Identity Cards.***
- 6. Whether the petitioner is entitled to the remedies sought.***

Issue 4 was abandoned by all the parties and will therefore not be dealt with. The 1<sup>st</sup> respondent raised issue 5 as a preliminary objection and the same was raised as issue 4 by the 2<sup>nd</sup> respondent in their submissions. The court will deal with this issue as issue 4.

At the trial, *Counsel Lester Kaganzi, Omoroi Ivan and Emmanuel Kassa* represented the petitioner. *Counsel Jude Byamukama* for the 1<sup>st</sup> respondent whereas the 2<sup>nd</sup> respondent was represented by *Counsel Jude Mwase*.

The affidavits of all the parties were deemed read and admitted as evidence. No witnesses were cross-examined on their affidavits. The parties were directed by court to file written submissions which have been considered by the court in determination of this matter.

***Whether the 20 affidavits in support of the petitioner's petition ought to be expunged on account of variations of the witnesses' signatures on the attached photocopies of the National Identity Cards.***

The 1<sup>st</sup> Respondent objects to the competence of 20 affidavits annexed to the Petitioner's petition on grounds that such witness' evidence cannot be credible due to suspicious identity. The said affidavits are clasped into two categories; that is, on one hand, *affidavits with obvious variations to the naked eye in the signatures on the deponent pages and attached National Identity Cards* and on the other hand, *affidavits with signed deponent pages with attached National Identity Cards which reveal that such witnesses are unable to sign.*

Affidavits of deponents whose signatures are manifestly different from the signatures on the attached National Identity Cards. The said affidavits are 13 in number and they are; *Amoding Jenifer (Affidavit No.4); Amodoi Jane Frances (Affidavit No.5); Amulen Josephine (Affidavit No.6); Apolot Emachulet Nabyambi (Affidavit No.7); Otimong Angella (Affidavit No.9); Ogong Vicent (Affidavit No.27); Ojakol Micheal (Affidavit No.28); Olinga Tom (Affidavit No.35); Onyede Joseph (Affidavit No.41); Opio George Patrick (Affidavit No.42); Oucho George (Affidavit No.48); Wabwire John Musana (Affidavit No.51); Ojakol Bernard (Affidavit No.56)*. It is not clear who signed these affidavits and the manifest variations in the signatures on the deponent pages and attached National IDs cannot be said to be an error or inconsequential to the evidence supporting this petition. The said omission is an outright illegality that goes to the root of the petition that this trial court should not overlook.

The courts have taken a firm view that affidavits whose signatures on the deponent page are manifestly different from the signatures attached to the

National Identity Cards should be treated as suspect, unreliable and given no probative value. Further to this, such an illegality is so fatal that such affidavits cannot be cured under the court's liberal standard that affidavit evidence is generally treated with.

The petitioner's counsel vehemently opposed the objection on differing signature and stated that the Respondents' allegation that the deponents of the 13 impugned affidavits are different from the ones that appear on their national IDs, and goes ahead to jump to the conclusion that the Deponents of 13 impugned affidavits or the ones who signed these affidavits are different from the holders of the national IDs.

Firstly this allegation is not backed by any evidence confirming that the impugned signatures are different or that the ones who signed the impugned 13 affidavits is different ones who signed the National IDs. The Respondents did not submit a handwriting expert report and neither did they submit any other piece of evidence to prove this allegation.

The Respondents' allegations have no merit whatsoever, since they are based on conjecture and not backed by any evidence. On this basis we invite this honourable court reject these unproven claims of the Respondents.

The Respondents' allegations of variance in signatures of the deponents of the 13 impugned affidavits vis a vis their signatures on their national IDs is not backed by any evidence on court record questioning the said signatures or identities of these deponents and as such should be rejected.

Further, the Respondents did not even bother to cross examine the deponents of these affidavits; to test and confirm whether the signatures belong to the deponents of the impugned affidavit or even whether the deponents of the impugned affidavits are the actual holders of the National IDs attached to these affidavits. Having waived their right to cross examine, the Respondents cannot now start bringing these issues in submissions.

### ***Analysis***

The authenticity of the affidavit is challenged on ground of identity of the deponents. The petitioner does not deny the fact that the signatures on the different affidavits seriously differ except that he contends that there is no

evidence. This court has equally examined the same affidavits and it is glaringly clear that the signatures on the affidavits are different from what is on the National Identity cards.

The Court of Appeal in the case of ***Muyanja Simon Lutaaya v Kenneth Lubogo and EC Election Petition Appeal No. 82 of 2016*** noted as follows;

*“Identity of a deponent to an affidavit is extremely important.*

***The Supreme Court had the occasion to state the law on the issue of identity of deponents to affidavits in Makula International Ltd v Cardinal Nsubuga Wamala [1982] HCB 1 and held:-***

***“Given the importance of affidavits in election petitions generally, it is equally the case that the identity and integrity of deponents of such affidavits is a matter of keen interest to the court, given that an election can only be set aside, if it is proved to the satisfaction of the court.***

***Indeed the identity and integrity of the deponent goes to the root of the substance and probative value of his or her affidavit and this cannot be regarded as a mere technicality in any way”***

*We find a persuasive decision on the issue in the case of the High Court Election Petition 17/2016 Kalazani Charles v Musoke Paul Sebulime when it held:*

***In respect to the signatures of the deponents that are inconsistent with those on the National Identity Card, it is my view that such inconsistency that is apparent on the face of the record, makes the affidavit to be suspect and unreliable.***

***A suspicious document is inherently unreliable and no probative value can be attached to it at all by court in respect to its contents.***

***Such affidavits will be ignored by the court as they are inherently unreliable and with no probative value that a court can attach to them in consideration of whether or not an election ought to be set aside”***

Similarly in ***EPA No. 0068 of 2016; Hon. George Patrick Kassaja Versus Fredrick Ngobi Gume & Electoral Commission on pages 17-18*** where the deponents’ signatures varied from the signatures on their National Identity Cards. The learned Justices of Court of Appeal found that the impugned affidavits were

rightly rejected and upheld the trial Judge's reasoning that court cannot ignore the need to determine that the deponents of those affidavits are persons who they claim to be, through scrutiny of identification documents that they had provided to the court for the purpose.

This court agrees and is bound by the above decisions, it is important the identity of a deponent to an affidavit is not in doubt. Honourable Lady Justice Monica Mugenyi (*as she then was*) noted in the case of ***Paul Mwiru vs Igeme Nabeta & EC Election Petition No. 3 of 2011*** at Jinja noted that:

*I am mindful of the fact elections are highly polarized disputes that evoke deep sentiments in parties and witnesses alike, raising the possibility of untruthful and possibly non-existent evidence. Mulenga JSC did allude to this in Besiqye vs Museveni & EC.*

The parties may try all manner of tricks to win an election petition including impersonation of persons who may indeed produce the differing signatures in the affidavits. It is not clear who signed these affidavits and the manifest variations in the signatures on the deponent pages and attached National IDs cannot be said to be an error or inconsequential to the evidence supporting this petition. The deponents should have explained any variations in the signatures in their identity cards or why the national identity card shows they could not sign in their affidavits and yet they had appended their signatures instead of thumbs as used in national identity card.

The following affidavits are struck off and shall not be relied upon:

*Amoding Jenifer; Amodoi Jane Frances; Amulen Josephine; Apolot Emachulet Nabyambi; Otimong Angella; Ogong Vicent; Ojakol Micheal ; Olinga Tom ; Onyede Joseph ; Opio George Patrick ; Oucho George ; Wabwire John Musana ; Ojakol Bernard* for differing signatures.

The following affidavits of deponents whose jurat pages are signed and yet the attached National Identity Cards indicate that they are unable to sign are also struck off:

*Akorikin Adam ; Ebileng Matayo ; Elungat John Micheal ; Ocero Paul ; Okello Charles ; Okiria Joseph ; Ololomo Charles.*

## **BURDEN AND STANDARD OF PROOF**

S.61 (1) of the Parliamentary Elections Act provides that:

The Election of a Member of Parliament can only be set aside on any of the following grounds if proved to the satisfaction of the Court .....

Odoki CJ(as he then was) in his elaborate reasons for the Supreme Court Judgment in the ***Col. (RTD) Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission Election Petition No. 1 of 2001*** Supreme Court has the following to say on this important point;

*“In my view, the burden of proof in an Election Petition as in other Civil Cases is settled. It lies on the Petitioner to prove to the satisfaction of Court .....”* at Pg 16 of the Reasons.

The same principles have been reiterated in the case of ***Col. (RTD) Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission Election Petition No. 1 of 2006*** citing ***Election Petition No.1 of 2001***

Odoki, CJ(as he then was) in his Judgment cited with approval the following observation of Lord Denning in the English case of *Blyth -vs- Blyth [1966] AC 643*:

*“My Lords, the word "satisfied" is a clear and simple one and one that is well understood. I would hope that interpretation or explanation of the word would be unnecessary. It needs no addition. From it there should be no subtraction. The courts must not strengthen it; nor must they weaken it. Nor would I think it desirable that any kind of gloss should be put upon it. When parliament has ordained that a court must be satisfied only parliament can prescribe a lesser requirement. No one whether he be a judge or juror would in fact be "satisfied" if he was in a state of reasonable doubt.....”*

Having quoted the above, Odoki, C.J. goes on to state:

*“I entirely agree with those observations by Lord Denning. The standard of proof required in this petition is proof to the satisfaction of the court. It is true court may not be satisfied if it entertains a reasonable doubt but the*

*decision will depend on the gravity of the matter to be proved....since the legislature chose to use the words "proved to the satisfaction of the court", it is my view that that is the standard of proof required in an election petition of this kind. It is a standard of proof that is very high because the subject matter of the petition is of critical importance to the welfare of the people of Uganda and their democratic governance."*

In this petition, therefore like in all Election Petitions, it is the petitioner who bears the burden of proving his allegations to the satisfaction of Court. It is only after the Court is duly satisfied that the grounds raised have been proved to its satisfaction that it will invoke its powers under Subsection (1) of Section 61, read together with Subsection 4 (c) of S. 63 of the Parliamentary Election Act of 2005

S.62 (3) of the Parliamentary Elections Act *provides that any ground specified in Subsection (1) should be proved on the basis of a balance of probabilities.*

The only crucial aspect of this issue which this Court must emphasize and bear in mind throughout the trial of an Election Petition, is the degree of a probability which must be attained before the Court can regard itself as satisfied that the ground or allegation is proved under S. 61 (1) and S. 61 (3) of the Parliamentary Election Act of 2005.

In the Case of **Karokora Katono Zedekia v Electoral Commission Kagonyera Mondo HC-05-CV-EP 002 – 2001** Justice V.F. Musoke-Kibuuka (RIP) noted at Pg 6;

*"It is quite critical to emphasize and bear in mind the crucial fact that, setting aside an election of a Member of Parliament is, indeed, a very grave subject matter. The decision carries with it much weight and serious implications. It is a matter of both individual and national importance. The removal of the elected Member of Parliament renders the affected Constituency to remain without a voice in Parliament for some time.*

*Parliament will continue to carry out its legislative function on matters of public national importance without any representation of the Constituency affected. When the election is set aside, the Member of Parliament affected suffers both serious personal remorse as well as adverse financial effects..... Thus, the crucial need for Courts to act in matters of this nature only in instances where the grounds of the Petition are proved at a very high degree of probability".[Emphasis mine]*



In order to merit an order setting aside the election of a Member of Parliament the evidence produced by the Petitioner must be such as would, in the circumstances, compel the Court to act upon it.

Although the standard of proof is on the balance of probability, it must be slightly higher than in ordinary cases. The authority for this observation is **Election Petition No. 9 of 2002 Masiko Winfred Komuhangi v Babihuga J. Winnie**. This is because an election is of a great importance both to the individuals concerned and the nation at large.

Similarly in the case of **Sarah Bireete and Another v Bernadette Bigirwa and Electoral Commission. Election Petition Appeal No. 13 of 2002** (unreported) it was noted by the court of Appeal “*A Petitioner has a duty to adduce credible evidence or cogent evidence to prove his/her allegation at the required standard of proof*”

The respondent carries no burden to discharge as long as the petitioner has not produced sufficient evidence required to show the truth of the allegations is highly probable. In other words the burden of proof on the petitioner is high and it does not shift. See **Akurut Violet Adome v Emurut Simon Peter EPA No. 40 of 2016**

This court has a duty to look at the affidavits in support of the Petition and evaluate the same against the respondents answer and supporting affidavits in order to satisfy itself of the allegations made in the petition.

With regard to numerical strength, the general rule is that no number of witnesses shall be required for proof of any act. Evidence is to be weighed but not counted. The direct evidence of one witness if believed by the Court is sufficient proof of a fact but a line of hearsay evidence cannot be sufficient to prove any fact.

**Sarkars’ Law of Evidence 14<sup>th</sup> Edition 1993 Reprint 1997 at pg. 87.** States according to Wigmore, the common law in repudiating the numerical system lays down 4 general principles;

1. *Credibility, does not depend on number of witnesses.*

2. *In general, the testimony of a single witness, no matter what the issue or who the person may legally suffice as evidence upon which the Jury may find a verdict.*
3. *The mere assertion of any witness does not of itself need not be believed even though he is unimpeached in any manner, because to require such belief would be to give qualitative and impersonal measure to testimony.*
4. *All rules requiring two witnesses or combination of one witness are exceptions to the general rule.*

It is trite law that the decision of Court should be based on the cogency of evidence adduced by a party who seeks judgment in his/her favour. It must be that kind of evidence that is free from contradictions, truthful so as to convince reasonable tribunal to give judgment in a party's favour. ***Paul Mwiru v Hon Igeme Nathan Samson Nabeta & 2 others EPA No. 6 of 2011***

In addition, it is incumbent upon the petitioner to prove or to produce cogent evidence to prove the allegations and not to rely on the weakness of the respondent's case. Therefore, an election petition cannot be permitted to derive strength from the weakness, if any, of the other side. See ***Odo Tayebwa v Bassajabalaba Nasser & Electoral Commission Election Petition Appeal No.013 of 2021; Jeet Mohinder Singh v Harminder Singh Jassi, AIR [2000]AIR SC 256***

The sum effect of the above analysis is that the success of a candidate who has won at the election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. However, equally well established is the proposition that though election of a successful candidate is not to be lightly interfered with one of the essential requirements of the election law is to safeguard the purity of the election process and also see that people do not get elected by flagrant breach of electoral laws or the Constitution.

Purity of election must be maintained at all costs. Any attempt to procure success by unfair and foul means should be ruthlessly suppressed. Crooked and illegal methods employed by a candidate, his workers or agents, must be suitably dealt with and sternly put down by enforcing the law of elections. But at the same time, allegations must be proved to the satisfaction of the court.

***Whether there was noncompliance with the electoral laws and the principles laid down in them during the conduct of the election for Member of Parliament Toroma County constituency.***

In paragraphs 3, 4, 5, 6 and 7 of the petition, the petitioner pleaded a plethora of incidents of non-compliance with the electoral laws as well as the principles of a free and fair election. The particulars of non-compliance with electoral laws were set out in paragraphs 4 and 5 of the petition as follows:

- a) Contrary to Article 61 of the Constitution and S. 12 (1) (e) and (f) of the Electoral Commission Act, the 2<sup>nd</sup> Respondent failed and, or neglected to ensure secure conditions necessary for the conduct of the election when registered voters were variously threatened and failed to exercise their right to vote freely or at all
- b) Contrary to Article 61 of the Constitution, S. 12 of the Electoral Commission Act and S. 27, 32, 48, 50, 51, 52, 53, 58, 59, 71, 76, 77, 78; 79, 80(1) and 83 of the Parliamentary Elections Act, the 2<sup>nd</sup> Respondent failed in its duty to:-
  - i. Generally ensure that the election was transparent, free and fair;
  - ii. Properly distribute electoral materials;
  - iii. Secure and protect Polling Agents of the Petitioner and their work under the Law;
  - iv. Accurately declare results of the election at the Polling Stations by completing DRF Forms;
  - v. Collect and transmit election results;
  - vi. Keep safely election materials and records;
  - vii. Tally all election results and declare the winning candidate;
  - viii. Ascertain and declare the winning candidate; and
  - ix. Make proper and correct returns of the election.
- c) Contrary to Article 61 of the Constitution, S. 12 of the Electoral Commission Act and S. 27, 32, 48, 51, 52, 53, 58, »?; 71, 76, 77, 78, 79, 80(1) and 83 of

the Parliamentary Elections Act, the 24 Respondent failed in its duty to prevent: -

- i. Making wrong returns of the election;
  - ii. Unauthorized voting or voting more than once
  - iii. Multiple voting and personation
  - iv. Obstruction of election officials –
  - v. Offences relating to voting
  - vi. Breach of official duty to conduct the election with fairness;
  - vii. Improper distribution of ballot papers;
  - viii. Chasing away of candidates’ agents; and
  - ix. Obstruction of voters.
- d) Contrary to Articles 59 and 61 of the Constitution, S. 12 of the Electoral Commission Act and S. 27, 32, 51, 52, 53, 58, 59, 71, 76, 77, 78, 79, 80(1) and 83 of, the Parliamentary Elections Act, the 2<sup>nd</sup> Respondent’s Presiding Officers and the Returning Officer willfully, intentionally and unlawfully tampered with, altered by increment and edited Declaration of Results Form (DR Forms) in favour of the 1<sup>st</sup> Respondent at 10 Polling Stations of Apule, Damasiko Borehole, Ariet, Kelin/Kapujani, Kelim/Orimai borehole, Adodoi, Osuko, Apuuton P/S, St. Augustine Catholic Church, and Ongatunyo Pri. School, thereby affecting the result of the election in a substantial manner by usurping the will of voters in favour of the 1<sup>st</sup> respondent.
- e) The Petitioner further avers and contends that the election was invalid on grounds that offences and illegal practices under the Parliamentary Elections Act were committed by the 1<sup>st</sup> respondent personally or with his knowledge and consent or approval when: -
- i. Contrary to Article 61 (1) (a) of the Constitution, S. 12 of the Electoral Commission Act and S. 80 (1) of the Parliamentary Elections Act, the 1\* Respondent personally or through his agents, with his knowledge and consent or approval variously directly and indirectly unduly influenced and threatened registered voters in order to impede or

prevail upon them or in order to induce or compel them to vote for him and or refrain from voting for the Petitioner.

- ii. Contrary to Article 61 (1) (a) of the Constitution, S. 12 of the Electoral Commission Act and S. 80 (1) of the Parliamentary Elections Act, the 1\* Respondent personally or through his agents, with his knowledge and consent or approval variously directly and indirectly unduly influenced and threatened registered voters in order to impede or prevail upon them or in order to induce or compel them to vote for him and or refrain from voting for the Petitioner at Angodingod Parish, Akisim Parish, Akulume Village, Orimai Parish, Kokorio Parish, Oregia Polling Station, Agule Ormmai Polling Station, Atete Parish, Atete Borehole Polling Station, Angisa Parish, Apopong Village, Adungulu Polling Station, Adungulu Parish, Ominya Parish, Akoboi Village, Kapujan Parish, Adodoi Polling Station, Tank Cell Village, Angisa Parish, Kelim 1 Village, Moru Parish, Angaro Village, Omasia Parish, Akurao Parish, Ajelele Polling Station, Olupe Lake View Polling Station, Ariet Polling Station, Adungulu Parish, Aparisa Parish, Akurao Village, Akurao Primary School Polling Station, Kelim Mango Polling Station, Ajelele Polling Station, Atete Parish, Atete Polling Station and many other areas.
- iii. Contrary to Article 61 (1) (a) of the Constitution, S. 12 of the Electoral Commission Act, S. 71 and S. 83 of the Parliamentary Elections Act, the 1<sup>st</sup> respondent personally or through his agents, with his knowledge and consent or approval variously directly and indirectly willfully obstructed
- iv. Election officers and voters at Angodingod Parish, Akisim Parish, Akulume Village, Orimai Parish, Kokorio Parish, Oregia Polling Station, Agule Orimai Polling Station, Atete Parish, Atete Borehole Polling Station, Angisa Parish, Apopong Village, Adungulu Polling Station, Adungulu Parish, Ominya Parish, Akoboi Village, Kapujani Parish, Adodoi Polling Station, Tank Cell Village, Angisa Parish, Kelim 1 Village, Moru Parish, Angaro Village, Omasha Parish, Akurao Parish, Ajelele Polling Station, Olupe Lake View Polling Station, Ariet Polling

Station, Adungulu Parish, Aparisa Parish, Akurao Village, Akurao Primary School Polling Station, Kelim Mango Polling Station, Ajelele Polling Station, Atete Parish, Atete Polling Station and many other areas.

The 1<sup>st</sup> respondent in their answer to the petition denied the allegations of alleged tampering, bribery, and altering of results by the petitioner and stated that if there were any acts of non-compliance with electoral laws they had not affected the outcome of the election in a substantial manner.

The 2<sup>nd</sup> respondent also denied the allegations of the petition and stated that the election had been conducted in a transparent manner. That the 2<sup>nd</sup> respondent had no knowledge of the contents of the allegations of commission of electoral offences of undue influence, intimidation, obstruction of polling stations, voter bribery, making sectarian, tribal statements, being a homosexual, land grabber, or any mud-slinging utterances, campaigning outside the legally prescribed period an or at ant polling station by the 1<sup>st</sup> respondent as none was ever reported before or during the election period.

We shall now individually deal with each alleged noncompliance with the electoral laws as contended by the petitioner.

**Tampering and altering of declaration of results forms by increment in favour of the 1<sup>st</sup> respondent**

The petitioner contended and submitted that the 1<sup>st</sup> respondent or his agents with the 1<sup>st</sup> respondent's knowledge, consent and approval unlawfully tampered and altered by increment, declaration of results forms in favour of the 1<sup>st</sup> respondent at 10 polling stations that is;

1. Apule Polling Station - the 1<sup>st</sup> respondent's total was altered/increased from 123 to 237 votes
2. Damasiko Bore Hole Polling station – 1<sup>st</sup> Respondent's total was altered/increased from 107 to 437 votes
3. Ariet Polling Station – 1<sup>st</sup> Respondent's total is altered/increased from 237 to 537 votes

4. Kelin/Kapujani Polling Station – 1<sup>st</sup> Respondent's total was altered/increased from an illegible number that looks like 105 to 285 votes. The total number of ballot papers issued to polling station was less than it should be/incorrect which did not tally with the figures indicated in the DR form.
5. Kelim/Orimai Borehole Polling station – 1<sup>st</sup> respondent's total was altered/increased from 230 to 497 votes
6. Adodoi Primary School Polling Station – 1<sup>st</sup> respondent's total was altered/increased from 381 to 681 votes. The total number of ballot papers issued to polling station was less than it should be/incorrect and did not tally with the figures indicated in the DR form.
7. Otuko Polling Station – the 1<sup>st</sup> respondent's total was altered/increased from 102 to 202 votes. The total number of ballot papers issued to polling station was less than it should be/incorrect and did not tally with the figures indicated in the DR form.
8. Apuuton P/S polling station – the 1<sup>st</sup> respondent's total was altered/increased from 182 to 282 votes. The total number of ballot papers issued to the polling station was less than it should be/incorrect and did not tally with the figures indicated in the DR form.
9. St. Augustine Catholic Church – the 1<sup>st</sup> respondent's total was altered/increased from 97 to 210 votes
10. Ongatunyo Pri. School Polling station – the 1<sup>st</sup> respondent's total was altered/increased from 111 to 211 votes. The total number of ballot papers at this polling station did not match the totals indicated.

For the 1<sup>st</sup> respondent, counsel submitted the allegation of tampering with DR Forms was false and must be rejected for two reasons; firstly, the petitioner relied on his own set of fabricated DR Forms instead of the certified copies issued by the 2<sup>nd</sup> respondent, the Electoral Commission. Secondly, the petitioner did not bring any evidence to suggest that his own set of DR Forms were authentic.

Counsel submitted that on the contrary, the DR Forms held by the 1<sup>st</sup> respondent's agents and passed over to him were in complete harmony with the

certified DR Forms held by the 2<sup>nd</sup> respondent and which were duly certified. That the DR Forms held and presented by the petitioner before this court were not certified which was contrary to the law. That there was no justifiable reason or any evidence that has been led by the petitioner to show that there were attempts to secure certified records from the 2<sup>nd</sup> respondent who refused to avail them. Further that, no formal notice to produce documents was ever filed on the court record and there were absolutely no exceptional reasons advanced for the attempt by the petitioner to rely on uncertified and consequently, inadmissible DR Forms.

Counsel prayed that the DR Forms be expunged off the court record since they were not certified and could not be the basis from which this court nullified an election.

On the flipside, counsel argued that the above notwithstanding, even if the court were to consider relying on the same as his evidence, the petitioner had not presented any exceptional circumstance like a commission of fraud by either the 2<sup>nd</sup> respondent for the court to overlook the certified copies annexed to the supplementary affidavit of the Returning Officer Martin Musoke filed in court on 8<sup>th</sup> June 2021.

Counsel argued that it was only the petitioner's set of DR Forms that had material alterations and strangely, the 1<sup>st</sup> respondent's results at these polling stations were the only ones that were altered with dribbles and writings in ink in an attempt to alter the figures which pointed to the petitioner having tampered with his own DR forms to fabricate a case against the respondents.

Counsel also noted that all three sets of DR Forms including the petitioner's altered ones showed that the petitioner's own agents had signed and authenticated the results contained therein.

Counsel submitted that in this case, the petitioner's agents at the 10 impugned polling stations had acknowledged and endorsed the results at these polling stations without any complaint. Further that the evidence of aforementioned agents who were self-confessed supporters of the petitioner certainly required corroboration.



In conclusion, counsel submitted that save for the four partisan affidavits from the petitioner's agents at these impugned polling stations, the petitioner had not led any other independent affidavit evidence to complain about malpractices/illegalities at the 10 (ten) impugned polling stations. Additionally, the 2<sup>nd</sup> respondent, the custodian of the electoral process refuted receiving any complaint regarding these polling stations from the petitioner or any of his agents.

The 2<sup>nd</sup> respondent submitted that they had from the onset objected to the petitioner's 10 uncertified DR forms which he claimed were obtained from his polling agents for the respective polling stations and prayed that this court rejects them since the petitioner or his lawyers did not give any notice whatsoever to the 2<sup>nd</sup> respondent to produce the certified copies of the 10 DR Forms.

In the alternative, counsel argued that the petitioner's case on alterations of DR forms was not backed by evidence and was without merit since the purported alterations were outright forgeries by the petitioner in furtherance of the frivolous and vexatious petition before this court. That the contents of the petitioner's DR forms did not make logical sense. For instance;

The petitioner's DR form for **Ongatunyo Primary School polling station** gives the 1<sup>st</sup> respondent 211 (Two Hundred Eleven) votes. On the other hand, the certified DR form and the results tally sheet consistently reflected that the 1<sup>st</sup> respondent obtained 111 (One Hundred Eleven) votes which was less by 100 votes.

This equally applied to **Adodoi P/s polling station** where the petitioner's DR form portrays 681 (Six Hundred Eighty-One) votes in favor of the 1<sup>st</sup> respondent yet the certified DR form and the final results tally sheet consistently attributed lesser votes of 381 (Three Hundred Eight One).

The petitioner's DR form for the **Apule polling station** was equally questionable since it attributed 230 (Two Hundred Thirty) votes to the 1<sup>st</sup> Respondent yet the Certified DR form and final results tally sheet consistently reflected 234 (Two Hundred Thirty-Four) votes. Counsel submitted that if at all alterations were made at the polling station as alleged by the petitioner, then all the copies of the DR forms including the certified DR form and those issued out to agents of the candidates in the race must have been consistent with each other.

The petitioner's DR form for **St. August Catholic Church polling** station was also suspicious because the presiding officer did not sign it as opposed to the certified DR form where the said 2<sup>nd</sup> respondent's official's signature was appended. That it is trite that the minimum legal requirement for the declaration of result form is that it must be signed by the presiding officer to be used as a basis for declaring results at the polling station. ***See article 68 (4) of the 1995 Constitution. See also Section 47 (5) of the Parliamentary Elections Act. See also EPA No. 19 of 2011; Toolit Simon Akecha v Oulanyah Jacob L'Okori & Anor on pages 8-9.***

Counsel invited the court to look at the tally sheet which was annexure "B" attached to the affidavit of the petitioner in support of the petition *vis a vis* the second respondent's supplementary affidavits and its annexures sworn by Martin Musoke dated 28/05/2021 which would prove that contrary to the allegations of the petitioner, the results reflected in the tally sheet were all in tandem with the certified Declaration of Results Forms attached to Martin Musoke's affidavit and all the petitioners polling agents signed on them.

Counsel concluded therefore that it was not true that there was any willful, intentional and or unlawful tampering , alteration by increment and or editing of Declaration of Results Form (DR Forms) for Apule, Damasiko Borehole, Ariet, Kelin/Kapujan, Kelim/Orimai, Adodoi P/S, Otuko, Apuuton P/S, St. Augustine Catholic Church and Ongatunyo Pri. School polling stations in favour of the 1<sup>st</sup> respondent. That the petitioner's declaration of Results Forms attached to the petition were clearly a forgery and un-authentic and were as such unreliable.

Counsel also noted that the petitioner put forth conflicting positions on the point of alterations of DR forms. On one hand, he pleaded that the tampering and alterations by an increment of the DR forms in favour of the 1st respondent were committed by the 2nd respondent's presiding officers and the Returning officer, and on the other hand that it was the 1st respondent or his agents with his knowledge, consent and approval who unlawfully tampered and altered by increment the DR forms for the impugned 10 polling stations. That this in essence was a material contradiction that created confusion on who was culpable for the allegations of falsification of DR Forms and amounted to departure from pleadings.

Counsel submitted that the petitioner had not adduced any evidence to prove collusion or connivance between the 2nd respondent's officials and the agents of the 1st respondent to tamper with or falsify the DR Forms for the impugned polling stations. That in absence of such evidence, the 2nd respondent was not liable for any irregularity or election malpractice.

### ***Analysis***

To prove falsification of results of an election, two sets of results—one genuine and the other false must be put in evidence by the party making the accusation. After putting in the evidence, the two sets of results, a witness or witnesses conversant with the entries made in the declaration of result form must be called by the party making the accusation of falsification or forgery of the results of the election to prove from the election how the results of the election were falsified or made up. Falsification of election results has to do with unjustified reduction of votes scored by the petitioner, and unjustified enlargement or jacking up of results or increment of the votes scored by the respondent.

This court has examined the declaration of results for the said polling station which the petitioner contended that the results were altered or forged. The DR forms the petitioner produced in court indeed show that the results of the 1<sup>st</sup> respondent were altered on his DR forms. The ones produced by the returning officer do not show any crossings. In comparison of the two sets, the petitioner had a duty to explain the discrepancies in his DR forms.

In spite of the crossings in the results of the 1<sup>st</sup> respondent on all the DR forms which are in possession of the petitioner, the rest of the figures properly tally with the ***Total Number of Valid Votes Cast for Candidates*** and the same are not crossed or altered. It would not be possible to only tamper with the 1<sup>st</sup> respondent's results and the total votes cast remain unchanged. Systematically, the petitioner brought out the alleged crossings as the basis for the petition and yet he does not explain why the rest of the figures on the same DR forms do not change when it was allegedly altered.

The petitioner's DR forms are clearly signed by all his agents at this polling station and none of them ever indicated that the results at these polling stations were altered or forged as the petitioner contends. The petitioner has not mentioned any single agent who claims that his or her signature on the DR form was forged or that the results were falsified. The Petitioner must explain the source of the

'doctored' DR forms and cannot hoodwink this court to believe his version of uncorroborated evidence which is highly suspect.

It is clear that the Petitioner's agents counter-signed the declaration of results forms and no complaints of irregularities were recorded with the presiding officer, the Returning Officer or with police. By signing the forms, they confirmed the results therein. Courts have established that irregularities at the polling station or on results which a candidate obtained can only be deduced from the declaration of results forms. What is important is that the record is transmitted to the Electoral Commission. In the case of ***Hon. Gagawala Nelson Wambuzi v Electoral Commission and Kenneth Lubogo HCT-03-CV-EP-0008/2011*** where Hon. Lady Justice Flavia Senoga Anglin held that; *"when an agent signs a declaration of results form, he is confirming the truth of what is contained therein. He is confirming to the principal that this is the correct result of what transpired at the polling station. The candidate in particular is therefore stopped from challenging the contents of the form because he is the appointing authority of the agent".* Further that *"even an agent who refuses to sign a declaration form but does not state the reasons for not signing as prescribed on the form is also estopped from claiming that there were irregularities at the polling station when he had an opportunity to complain but did not".*

The petitioner's agents duly signed on the DR forms and confirmed the results and it is not clear why the petitioner is disputing the results. There must be evidence, direct or circumstantial, from which to infer the other fact that the election was not conducted in accordance with the election laws. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the facts which it is sought to establish. Therefore, the court must only make inferences from cogent evidence and circumstances in order to avoid getting in conjectures and speculation. If there is no positive proved facts, oral, documentary or circumstantial from which the inferences can be made then court cannot make findings based on mere speculation and conjecture that the election was marred by election irregularities as the petitioner would wish this court to believe. The only inference that can be drawn is that the petitioner is responsible for the alterations on the DR forms which he presented to court.

The petitioner as an affected party of alterations and forgery did not make any formal complaint to Electoral Commission about this grave anomaly which he wants to use to overturn the 1<sup>st</sup> respondent's election victory. Fraudulent

alteration of results on the declaration of results forms is a criminal offence and must be proved to satisfaction of the court.

*On the declaration form after the table for the signatures of candidates agents there is provided a clause which is to the effect; (Where any agent refuses to sign /he or she should record reasons in the space below)*

*All this is intended to inform the electoral commission and concerned candidates about any incidents like electoral malpractices and failure by the agents to indicate these acts on the declaration of forms and after they duly signed on the declaration of results forms and did not indicate any malpractices their allegations after the electoral exercise become highly suspect as being a creation of the petitioner and an afterthought to justify the loss of an election.*

### **Threatening and Intimidation of voters.**

The petitioner contended that there was threatening and intimidation of voters with the sole aim of forcing the voters to vote for the 1<sup>st</sup> respondent or stop campaigning, voting or supporting the petitioner.

Counsel for the petitioner lined up several witnesses to prove the harassment and intimidation of voters: Akileng David, Akorikin Adam, Amoding Jeniffer , Amodoi Jane Frances, Atimong Angella, Apolot Emachulet Nabyambi ,Ebulu Constant,Ebileng Matayo,Edangat Charles,Okwi Emma,Emuron James Peter, Etole Augustine, Oucho George – paragraph 4, a team of the 1<sup>st</sup> Respondent's supporters led by one called Chemukutu, Onyede Joseph, Ediko Moses, Wabwire John Musana, Okello Charles, Okiria Joseph, Okiror John Robert, Okwele Augustine, Okworo Gabriel, Olinga Tom, Ololomo Charles, Omutia Charles, Opio Joseph, Opio George Patrick, Opokir John, Opudi John Robert, Musana Panteleo, Omagor Pius, Acelam Michael, Bwalatum Michael Okiring, Ojakol Bennard, Moko Joseph Isaac, Iyeset Augustine, Akileng Filbert

Counsel submitted that apart from the denials of the 1st respondent and Egasu Ben who filed affidavit No.28 for the 1st respondent, the evidence of the petitioner is not substantially rebutted.

In response, counsel for the 1st respondent submitted that that the petitioner's pleadings in regard to the above were deficient, lacked the relevant particulars and should be struck out with costs. The affidavits of Akorikin Adam, Amoding

Jennifer, Amodoi Jane Francis, Atimong Angella, Apolot Emachulet Nabyambi, Ojakol Michael, Opio George Patrick and Ojakol Bernard were inadmissible for suspicious identity.

Counsel submitted that the above affidavits fell short in proving intimidation or harassment of registered voters. The “self-confessed voters and witnesses” whose affidavits were on the record had no conclusive proof that they were registered voters as no single voters’ registers are attached to any of their affidavits. That all the affidavits had no actual or factual proof in form of photos, medical reports, police report or even video evidence to substantiate the serious offences and claims of damage of property, threats and physical injury.

Counsel submitted that there was no effort by counsel for the petitioner to adduce evidence to demonstrate that whatever happened to the stated witnesses was done with the consent and approval of the 1<sup>st</sup> Respondent. It was important for the petitioner to cast away all doubt in form of alleged threats and intimidation by proving that the 1<sup>st</sup> respondent knew of, and consented to violence, threats and intimidation during the election. **See EPA No.083 of 2016 Ocen Peter and Anor v Ebil Fred at page 44.**

Counsel argued that the petitioner did not provide even a scintilla of evidence that any registered voters were intimidated. The petition simply made bare allegations referring to some individuals. There was no proof in form of voters’ registers or certified extracts from the voters’ registers to prove that the people allegedly intimidated or bribed were registered voters. Counsel argued that the law is settled; Proof must be brought in form of voters’ registers or certified extracts from the voters’ registers in order to show that a witness or individual referred to is a voter. See ***EPA No.13 of 2016 Nabukeera Hussein Hanifah v Kusasira Peace K Mubiru and Anor at page 22*** and ***EPA No.3 of 2018 Simon Kinyera vs Taban Amin & EC at pages 15 to 16.***

Counsel argued that the above notwithstanding, the petitioner’s counsel in a desperate attempt to mislead the court through their submissions attempts to insinuate that this allegation has been proved because the 1<sup>st</sup> respondent did not rebut all their allegations by affidavit was noted. That is already submitted, the irregular manner of pleading adopted by the petitioner denied the 1<sup>st</sup> respondent an opportunity to ably defend himself. Secondly, the evidential burden in election

matters never shifts, even if the 1<sup>st</sup> respondent had not responded to the petition, it would still be incumbent on the petitioner to prove his case to the required standard.

### ***Analysis***

The allegations of intimidation and harassment have been made by several witnesses and some of such persons their affidavits were struck off. This appears to be a general allegation made in order to cause a cancellation of the election.

Intimidation is an offence under the electoral laws and a party should have reported to police or electoral commission when such offences were committed. It would be very unfair for a party to come up with a scenarios and stories that allegedly occurred during elections or on the voting day after the whole election process.

The said allegations are quite unbelievable and appear to be cooked up in order to justify nullification of this election. A petitioner in an election petition who alleges misconduct or non-compliance must satisfy the court that the non-compliance is substantiated and substantially affects the result of the election.

The allegations set out under this limb of the petition are all bordering on criminality which ought to have been treated as criminal acts and must be proved to the satisfaction of the court. The court can only consider facts proved before it in the evidence adduced. When a petitioner in the election petition has alleged a particular non-compliance like intimidation and harassment of voters which are alleged in this case, such petitioner must strive to satisfy the court that these are genuine complaints and not mere afterthoughts after the election.

By virtue of the Evidence Act, any party who asserts in his pleading the existence of a particular fact is required to prove such fact by adducing credible evidence to prove the pleaded facts, he is said to have discharged the burden of proof that rest on him. The petitioner in this case has failed to discharge this burden in order to shift the burden to the respondents to prove that the fact established by the evidence result in the court giving judgment in favour of the party. The type evidence adduced to prove this fact is so hollow and incredible. The argument of petitioner's counsel that the evidence was not rebutted does not entitle him to judgment.

It is incumbent upon the petitioner to prove or to produce cogent evidence to prove the allegations and not to rely on the weakness of the respondent's case. Therefore, an election petition cannot be permitted to derive strength from the weakness, if any, of the other side. See ***Odo Tayebwa v Bassajjabalaba Nasser & Electoral Commission Election Petition Appeal No.013 of 2021; Jeet Mohinder Singh v Harminder Singh Jassi, AIR [2000]AIR SC 256***

The petitioner's evidence cannot be taken as the gospel truth merely because the 1<sup>st</sup> respondent never made specific answer or response to his wild and baseless allegations. It is his duty to prove the case. Similarly, In the **Presidential Election Petition No. 1 of 2006 between Anderson Kambela Mazoka, Lt General Christon Sifapi Tembo & Godfrey Kenneth Miyanda vs Patrick Mwanawasa, The Electoral Commission & The Attorney General** the Zambian Supreme Court had this to say

*"It follows that for the petitioners to succeed in the present petition, it is not enough to say that the respondents have failed to provide a defence or to call witnesses but that the evidence adduced establishes the issues raised to a fairly high degree of convincing clarity in that the proven defects and electoral flaws were such that the majority of voters were prevented from electing the candidate whom they preferred; or that the election was so flawed that the defects seriously affected the results which could no longer reasonably be said to represent the true choice and free will of the majority of voters."*

Therefore, the alleged intimidation, violence or harassment has not been established to the satisfaction of court and the same has remained unsubstantiated and thus not proved. The same was never reported to the Electoral Commission or police in order to give it any credence and corroboration.

***Non-compliance with Article 61, section 12 (1) (e) and (f) and sections 24 (a) (c) and (e), 29 (4), 31 (1), 37(1), (4) and (5), 69, 76 (c), 77 (a) and (b) and 79 (1) and 83 of the PEA Multiple voting, interference with electioneering activities, chasing away voters, voting by prohibited and unauthorized persons, obstruction of voters and personation.***

The petitioner in simple terms contended that the following acts were committed in breach of the electoral laws: Unauthorized voting or voting more than once; Multiple voting and personation; Obstruction of election officials; Offences relating to voting; Breach of official duty to conduct the election with fairness;



Improper distribution of ballot papers; Chasing away of candidates' agents; and Obstruction of voters. Several witnesses were lined with the stories to prove these facts and breaches of the law. The witnesses contended that there was multiple voting, interference, voting by prohibited and unauthorized persons and personation. Voting for people who had already passed away. During voting the 1<sup>st</sup> Respondent's supporters and agents told voters to vote for the chair which was the symbol for the 1<sup>st</sup> Respondent. On Election Day she was denied entry to the polling station by the presiding officer. At 4:00 pm, the 1<sup>st</sup> respondent's escort called Owitu Brian Mark came and ordered people around to vote again. On voting day agents of the 1<sup>st</sup> Respondent escorted elderly voters to vote and coerce them to vote the 1<sup>st</sup> Respondent. 1<sup>st</sup> Respondent's agents were carrying symbols of the 1<sup>st</sup> Respondent on the voting day and telling people to vote the 1<sup>st</sup> respondent.

In response, counsel for the 1<sup>st</sup> respondent reiterated that the petitioner's pleadings in regard to the above were deficient and lacked the relevant particulars. Counsel submitted that the affidavits of Amodoi Jane Frances, Atimong Angella, Apolot Emachulet Nabyambi, Amulen Josephine, Opio George Patrick and Ojakol Bernnard were inadmissible for suspicious identity as already highlighted above.

Counsel argued that with regard to multiple voting, all the stated witnesses save for **Okwele Augustine** and **Omer Simon Peter** are **partisan** and their evidence requires some independent corroboration because they were the Petitioner's agents and supporters at **Apule, Ocelakweny, Adodoi, Agule Orimai, Apule, Adodoi, Kelim/ Kapujan, Damasiko Borehole** polling stations.

**Okwele Augustine** asserts that he was an agent of one of the other contestants, **Imaligant Robert** at **Ariet Polling Station** but attached no proof certifying so. He claimed that on polling day, a certain gentleman called Okope was responsible for bringing all manner of unregistered voters to the polling station to vote for the 1<sup>st</sup> Respondent but there was no proof that the said Okope is associated with the 1<sup>st</sup> Respondent or was acting with his knowledge, consent or approval.

In addition to this, there was equally no complaint from either the petitioner or any of his agents at Ariet Polling Station of the stated illegalities. Counsel prayed court find his evidence insufficient to support the claim.

Further still, the said affidavits were very general and did not disclose any particulars to enable a proper response. They did not mention the alleged underage people that were voting at these polling stations and there was no evidence of a complaint on record to the 2<sup>nd</sup> respondent, the custodian of the electoral process.

Counsel argued that most importantly, there was no evidence linking the 1<sup>st</sup> Respondent to this under age voting whether personally or through agency. Counsel submitted that the allegation had no evidence and should fail on the said grounds.

Counsel concluded that the petitioner's case on multiple voting and the voting of ineligible voters had no merit in light of the evidence on record. He submitted that the 2<sup>nd</sup> respondent's witnesses' evidence was intact and unshaken since the election for Toroma County Constituency was conducted in compliance with the laws as to elections and the principles laid therein. That the petitioner had not discharged his burden since his evidence was largely uncorroborated and wholly lacking in specificity as well.

Counsel prayed that this court dismisses all the allegations against the 2<sup>nd</sup> respondent.

### ***Analysis***

The petitioner's counsel tried to find evidence for every known offence under the Electoral laws in Uganda. Indeed, he tried to make the election of Toroma County Constituency to have been one of the worst ever organized elections in Uganda. This would show the level of desperacy the petitioner had in order to win the election and also to ensure that the same is overturned at whatever cost.

The allegations made under this part are in relation of the manner in which the elections were conducted and these would have been witnessed by the several people around the polling station including the petitioners duly authorized agents.

The ultimate responsibility of adducing evidence to establish a case as disclosed from the pleadings lies on that person who will lose if no evidence is led at all in the trial. This principle applies evenly to all cases including election petitions where the burden of establishing or proving certain specific facts has been placed

on any particular party by law. The petitioner has the primary onus of producing evidence to the satisfaction of the court to prove the allegations contained in the petition. Any party who asserts in his or her pleading the existence of a particular fact is required to prove such fact by adducing credible evidence.

The nature of the evidence presented by the petitioner in this case is not credible or believable. The petitioner's agents duly signed the declaration of results forms and none of them ever indicated that there was any multiple voting, non-voting obstruction of voters, or campaigning at polling stations. An agent is the representative of the candidate in the polling station. He sees all activities and hears every talk at the polling station. Agents are in the most vantage points to give evidence of wrongdoings in a polling station. Voters or supporters may not have the full benefit which the agent has in order to give a full account of what transpired. In the case of **Babu Edward Francis vs Electoral Commission and Elia Lukwago** Election Petition no.10 of 2006 at pg 25-28 Justice M.S Arach-Amoko held that;

*"When an agent signs a DR-Form, he is confirming the truth of what is contained in the DR-Form. He is confirming to his principal that this is the correct result of what transpired at the polling station. The candidate in particular is therefore stopped from challenging the contents of the form because he is the appointing authority of the agent, Justice C.K Byamugisha JCA had this to say, in CA No.11/02 **Ngoma Ngime vs EC & Winnie Byanyima** at pg 22 on this point:*

*"All the 66 declaration of results forms that I have examined contained essential information that the law requires. The agents of each candidate signed the forms. None of them deposed any affidavit to show that the information contained in these forms is not correct.....if the agents of the appellant were not satisfied with the results that were declared by the presiding officer at the polling station they could have declined to sign the declaration of results forms. They did not."*

In the case of **Shaban Sadiq Nkutu vs Asuman Kyafu & EC HC-03-CV-EP 0008 of 2006** Justice Wangutusi found that since the declaration of results forms had been signed by the agents of the petitioner and the persons who signed the DR-

Forms were the petitioner's agents and the petitioner himself had not denied them court could only conclude that these were the petitioner's agents and what they endorsed was a correct reflection of what the voters in the area decided. He further found that on the DR-Forms there is provision for recording mishaps: and since none were recorded the allegations by the petitioner had not been proved.

The allegations that the 1<sup>st</sup> respondent committed several offences by causing disturbance at polling, obstructing voters, campaigning at polling station, helping people in voting the 1<sup>st</sup> respondent and others connected with interference with election process are all criminalities. The petitioner or his agents or supporters ought to have reported the same to polling officials, police or other authorities. The evidence is uncorroborated and none of the deponents states that they ever reported to the petitioner or police or electoral commission. How did the petitioner learn of all these allegations?

The law requires that complaints should be lodged with the electoral officials; Sections 46(1) Parliamentary Elections Act allows Candidate's Agent who is dissatisfied with the polling process to raise an objection in writing.

**S.47(4), (5) and (7)** of the same Act provides for the vote counting and recording procedure and process where the votes cast each candidate should be recorded both in figures and words and thereafter agents countersign the DR Forms in confirmation.

**S.48(1)** provides for complaints in writing by Candidate's Agent during counting of votes. The results garnered by each candidate are deduced from the DR Forms. The above provisions are intended to avoid creation of stories or manufacturing of evidence after the election exercise like in this case.

It is very unfair for a Party /person (petitioner) who has not officially complained to Electoral Commission or the Police to turn up in Court later after the elections and claim that the Electoral Commission failed in its duty to prevent or stop something that was never brought to their attention. In the same vein to lay all sorts of allegations after the elections and yet these had not been raised before the election or during campaigns or during voting. This would only mean that these allegations are an afterthought by the petitioner after he had lost an election and are not corroborated at all by independent bodies like Electoral

commission and the Uganda Police which would have investigated such complaints or allegations.

The petitioner's counsel argued that the witnesses were never cross-examined. It should be noted that none cross examination of the petitioner's witnesses doesnot infer that whatever they stated was the truth. The petitioner's evidence must be evaluated as a whole to establish the truth. ***Akileng Abu Meric v Olirah Peter Musao Election Petition No. 27 of 2011*** Justice Rugadya Atwoki noted; *"An affidavit in an election petition will not be taken as telling the gospel truth, whether or not there is evidence in rebuttal. In such a case, each affidavit will be treated cautiously and on its own merit along with and in relation to all other evidence and in consideration of all the circumstances of the case before deciding whether or not to accept it as truthful."*

The court should be cautious of the allegations made by the petitioner and the evidence in support, since they are highly suspect as noted in this evaluation and this honourable court to relies on this statement by Justice V.F Musoke-Kibuuka (RIP) in the case of ***Karokora v Electoral Commission and Kagonyera Election Petition No. 0002 of 2001*** at P 15 he stated:

**"A court of law does not operate at Meta-physical level" .... It acts at human evidence laid and at a human level. It would be difficult intended for a Court to believe that supporters of one of candidate behaved in a saintly manner, while those of the other candidate were all servants of the devil".(Emphasis mine)**

The petitioner has not led any iota of evidence to prove noncompliance through multiple voting, interference with electioneering activities, chasing away voters/agents, voting by prohibited and unauthorized persons, obstruction of voters, under age voting and personation committed by the 1<sup>st</sup> respondent either by himself or through any other person with his knowledge, consent or approval to the satisfaction of court.

***If so, whether the non-compliance affected the result of the election in a substantial manner?***

Counsel submitted that Section 61(1)(a) of the Parliamentary elections Act, provides that an election of a candidate as a member of parliament shall be set aside on the ground, if proved to the satisfaction of the court, that non-

compliance with the provisions of the Parliamentary Elections Act relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and the failure affected the result of the election in a substantial manner.

A trial court must be satisfied that the effect of the non-compliance with the election law or the irregularities in the election produced a substantial effect such as, for example, if there are no votes cast in a given situation, the court would be left in such a situation that there is no clear way of establishing the winner. The effect on non-compliance is substantial if the votes the candidates obtained would have been different in substantial manner, if it were not for the non-compliance.

The result may be said to be affected if after making adjustments for the effect of proved irregularities the contest seems much closer than it appeared to be when first determined. That means that to succeed, the petitioner does not have to prove that the declared candidate would have lost. It is sufficient to prove that the winning majority would have been reduced. Such reduction however would have to be such as would put victory in doubt.

Substantial effect can also be achieved if the proven defects were such that the majority of the voters were prevented from electing the candidate whom they preferred or that the election was so flawed that the defects seriously affected the result which could no longer reasonably be said to represent the true will of the majority of the voters. In order to assess the effect the court has to evaluate the whole process of election to determine how it affected the result, and then assess the degree of the effect. In this process of evaluation, it cannot be said that numbers are not important just as the conditions, which produced those numbers, are useful in making adjustment for the irregularities.

The test to be applied in determining the effects of the irregularities on the result of the election depends on the particular facts of the case. It may be the quantitative or the qualitative approach, or both of them.

The quantitative approach concerns numbers while the qualitative looks at the quality of the whole electoral process of the particular election. It is the nature of

the evidence before the court that is used as a yardstick in deciding which test to use, or whether to use both of them. These points have been exhaustively settled by our Courts including the Supreme Court.

Counsel submitted that in the instant case the evidence of non-compliance on record demonstrates that the election was a sham in terms of the quality of it at the affected polling stations, and also that the numbers of ballot papers as tallied do not represent the will of the people. All the known principles of a free and fair election were violated by officers of the 2<sup>nd</sup> respondent in concert with the 1<sup>st</sup> respondent personally and through his agents whom he personally superintended.

Counsel for the 1<sup>st</sup> respondent submitted that the petitioner's case could not succeed on noncompliance particularly on the quantitative test. The above notwithstanding, the rest of the grounds in the petition as already submitted are too general, lacking in specificity and incapable of proving anything. The court should strike them out with costs for revealing no cause of action against the 1<sup>st</sup> respondent. Once the said grounds are struck off the petition, the whole petition collapses and cannot succeed on the qualitative test as well.

That there is no cogent, credible or independent evidence on record that the Petitioner has adduced save for conjecture, speculation, and partisan affidavits from his agents to support the allegations in his petition. Counsel prayed that the court be pleased to find that the evidence adduced by the Petitioner fell way short and could not over turn the 1<sup>st</sup> respondent's victory whether qualitatively or quantitatively.

The 2<sup>nd</sup> respondent also submitted that the petitioner has not proved any form of non-compliance and as such both, the quantitative and qualitative approaches are not available in assessing the effect on the outcome of the election.

In rejoinder counsel reiterated their submission that the evidence on court record regarding the glaring illegal and unconstitutional acts complained of is sufficient to prove that as a result of these acts, the results of the elections were affected in substantial manner since all the known principles of a free and fair election were violated by the officers of the 2<sup>nd</sup> respondent in concert with the 1<sup>st</sup> respondent personally and through his agents whom he personally superintended.

## ***Analysis***

The duty lies on the court to determine whether or not an election was conducted substantially in accordance with the Constitution and the Electoral laws. The court will look at the circumstances of the case including the state of pleadings, especially the credibility of the petitioner's position and nature and substance of the complaints of the petitioner, the attitude of the functionaries charged with the conduct of the elections and whether the omissions complained of by the petitioner, even if proved, affected the conduct of the elections.

There are certain non-compliances that go to the root of an election in that they are absolute in the sense that once established the purported election is invalid and as such there will be no result to be substantially affected by the non-compliance.

The onus is on the person who denies the genuineness and authenticity of an election to rebut the presumption by showing that there was a substantial effect that renders the election questionable and a nullity. Acts which may be regarded sufficient to substantially affect the result of an election need not be widespread non-compliance. It may be acts which occur only in one or few places, yet their effect are so significant to the overall result of the election between the candidates.

When a petitioner alleges non-compliance, he must satisfy the court that such non-compliance was substantial enough to affect the overall result of the election. It invariably means that cogent and compelling evidence must be adduced to establish that the election was substantially affected by such non-compliance.

Irregularity in an election can only ground a petition if it has substantially affected the result of the election. When a petitioner questions the result of an election on ground of non-compliance with the provisions of the electoral laws, sufficient particulars must be given to show how the non-compliance affected the results substantially. Likewise where the petitioner questions an election result on the ground that the respondent was not elected by majority of lawful or valid votes cast at the election, the petitioner must go further to show the votes accredited to the respondent and the number of votes alleged to be invalid and the reason(s) for their invalidity and that if such allegedly invalid votes are subtracted from the respondents score the remaining valid votes will qualify the petitioner as a winner



of the election against the respondent who has been returned. A mere allegation of electoral malpractice or invalidity of votes without showing how the result of election will thereby be affected substantially will not constitute a reasonable cause of action. See ***Abdulkarim & Others v Shinkafi & Others (2008) 2 LRECN 536 CA***

Irregularities at an election which is neither the act of a candidate nor linked to him cannot affect his election. The Petitioner through adducing evidence must prove two things which are that whether the irregularities particularly allotment of votes have been established, and whether the allotment of votes can be attributed to the respondent.

It is now well established that in order to overturn an election on the basis of non-compliance under s.61 (1)(a) of the Parliamentary Elections Act as amended, it is not enough to merely show non-compliance in an election. Instead, it must be demonstrably shown by the Petitioner that non-compliance affected the results of the election in a substantial manner and in appraising the question of substantiality both quantitative and qualitative approaches must be used to appraise the entire process of the election.

In support of this position, the Court of Appeal in ***Muhindo Rehema v Winifred Kiiza & the Electoral Commission Election Petition No.29 of 2016*** observed as follows: *“It is well settled that non-compliance with electoral law per se, however, is not enough to overturn an election. Rather the non-compliance must be so significant as to substantially affect the results of the election – Section 61(1) PEA. 2005. While the learned judge considered the effect of each category of non-compliance individually, with respect she should have assessed the effect of non-compliance as against the entire process of the election as was stated by Odoki, Chief Justice: “In order to assess the effect, the court has to evaluate the whole process of the election.”– Besigye vs. Museveni (supra). In that case the Justices of the Supreme Court used both the qualitative and quantitative approaches. The quantitative approach takes a numerical approach to determining whether the non-compliance significantly affected the results. In this case, at least 13,426 votes (over 7%) have been rendered doubtful where the margin of victory was only 1,484 votes (less than 1%). Under the quantitative test, therefore the non-compliance appears to have affected the results substantially. On the other hand, the qualitative approach looks at the overall process of the election especially the transparency of registration, chaos at polling stations, voter information, the*

*process of counting, tallying, and declaring the results; and the ability of each voter to cast their vote.”*

It should be noted that non-compliance with the electoral provisions or commissions of electoral offences occur in many instances. But the law is more concerned with the extent, which is how far and wide it occurs and also how substantially did it affect the election result. Not just any slight or inconsequential electoral malpractice or irregularity will secure invalidation of the result of a victorious respondent.

The petitioner attempted to add up the 10 polling stations results and concluded that the 1<sup>st</sup> respondent got an additional 1890 votes from the alteration of results. Once these votes are deducted then the petitioner would emerge the winner and the court would nullify the election. The petitioner failed to show any non-compliance which would have led this court to nullify the results at the said polling station in order to show substantial effect. Like in every election there could be some irregularities in the election but the same would not be used to nullify or overturn the will of the people. Like discrepancies in figures of male and female voters which did not tally at the alleged polling stations. This cannot be used to cancel the results of the votes cast or nullify the election at those polling stations. The petitioner was only trying to make ‘a mountain out of a mould’.

In ***Akugizibwe Lawrence v Muhumuza David & 2 Others Election Petition Appeal No.22 of 2016***, the Court of Appeal referred to the decision of the Supreme Court wherein the learned Chief Justice cited with approval, the case of Borough of Hackney Gill v Reed [1874] XXXI L.J. 69

*“An election should not be upset for informality or for a triviality. It is not to be upset because the clocks at one of the polling booths was five minutes too late or because some of the voting papers were not delivered in a proper way. The objection must be something substantial, something calculated to affect the result of the election..... so far as it appears to me the rational and fair meaning of the section appears to be to prevent an election from becoming void by trifling objections on the ground of informality, but the judge is to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a rational mind to produce a substantial effect”*

Nullification of an election is a very serious sanction which can be inflicted on an election already conducted. It should only be imposed in very rare situations and only after well-established reasons have been adduced in support of such a decision.

The success of a winning candidate at an election cannot be lightly interfered with or taken away without any justification rooted in law and cogent evidence. The court has no business in interfering with the choice of the people unless it can show the rules for such an election as laid down under the electoral laws have been seriously flouted.

Therefore, any non-substantial error or departure ought not to be the yardstick for a Court to interfere with the will of the people. In resolving the issue of the election being marred with irregularities, the court should be mindful that an election conducted substantially in compliance with the electoral laws could not be avoided for insignificant errors which are mere irregularities. Such errors or minor irregularities could not adversely affect the result of the election as the election of a candidate is a direct responsibility of the voters. Irregularities at an election which are neither the act of a candidate nor linked to him cannot affect his election.

An election in this country is not a carnival, it is a gargantuan waste of tax-payers money, it involves logistic planning, time and morale consuming. People must learn to accept defeat graciously.

***Whether the 2<sup>nd</sup> Respondent personally or through his agents, with his knowledge or consent and approval, committed the alleged electoral offences and illegal acts***

In paragraph 6 of the petition, the petitioner pleaded that in violation of Article 61 (1) (a) of the Constitution, S. 12 (1) (e) and (f) of the Electoral Commission Act and direct contravention of sections 20 (5), 21, 22, 23 (1) and )3), 24, 44, 68 (1) and (2), 71, 73 (1), 80 (1), 81 (1) and (2) and 83 of the Parliamentary Elections Act, the 1<sup>st</sup> respondent personally or through his agents, with his knowledge and consent or approval variously committed the offences and illegal practices set out under those provisions of the electoral law.

The petitioner contends that the 1<sup>st</sup> respondent during the election committed various election offences personally and through his agents, with his knowledge

and or approval. The offences committed and pleaded are prescribed under sections 71, 76, 77, 80 (1) and 83 of the PEA. The fore going offences were proved by affidavit evidence of the following witnesses and he invited this honourable court to consider the evidence of all the affidavits in support of the petition.

***Illegal practice of bribery of voters contrary to section 68 (1) of the PEA.***

The petitioner pleaded that the 1<sup>st</sup> respondent personally or through his agents, with his knowledge and consent or approval variously bribed registered voters with money and other items at Akisim Parish, Akulume Village, Aparisa Polling Station, Atete Parish, Atete next to the Borehole Polling Station, Apule Polling Station, Adungulu Parish, Adungulu Polling Staion, Akisim Parish, Olupe Lake View Polling Station, Damasiko Polling Station, Akoboi Polling Station, Kokorio Parish, Tank Cell Village, Angisa Parish, Angaro Village, Moru Parish, Akurao Parish, Kelim 1 Polling Station, Akisim Parish, Angodingod - Parish, Ajelele Village, Ominya Parish, Kapujan Parish, Kokorio Parish, Atinri Parish, Oregia Polling Station, Akurao Parish, Orimai Parish, Asuret Parish, Atete Parish, Atete Polling Station and many other areas.

Counsel directed the court to the petitioner's affidavit which in his view gave details of the various accounts of instance where the 1<sup>st</sup> respondent or his agents, with the 1<sup>st</sup> Respondent's knowledge, consent and approval gave money or other items like tea, bread etc. to voters and asked them to vote for the 1<sup>st</sup> respondent.

Counsel submitted that the witnesses proved that the 1<sup>st</sup> respondent in connection with the election and at various places bribed registered voters personally and through his agents, with his knowledge and consent or approval. To prove the alleged bribery the petitioner lined several witnesses including Okello Charles, Icumar Charles, Ebulu Constant, Okwi Emma and Emuron James Peter, Esiat Nathan, Etole Augustine, Oucho George, Opwanya Peter, Ediko Moses and Musana Pantaleo, Oceru Paul, Olupot Michael, Omutia Charles, Opio Joseph, Omer Simon Peter, Omagor Pius, Inyangat George William

Counsel submitted that the evidence on record proved that contrary to S. 68 (1) and (2) of the Parliamentary Elections Act, the 1<sup>st</sup> respondent personally or through his agents, with his knowledge and consent or approval variously bribed

registered voters in connection with the election, with money and other items during the campaign period and on polling day.

However, it was the 1<sup>st</sup> respondent's case that the petitioner had miserably failed to adduce any evidence to prove a single electoral offence or illegal practice purportedly committed by the 1<sup>st</sup> respondent either by himself or through any other person with his knowledge, consent or approval.

Counsel noted that the evidence brought forth by Counsel for the Petitioner in proof of this offence were affidavits of witnesses who claim to be registered voters but did not provide proof in form of their names in the voters' register or certified extracts from the Voters' Register.

That the offence of bribery by agent is deemed to be complete if the Petitioner is able to prove through nonpartisan evidence that the bribe or the gift given is given to a registered voter. The law deems a person to be a registered voter if their name is entered onto the voters' register. Therefore, bearing in mind the standard of proof in election matters, other brooks of evidence like voter location slips and National Identification Cards are not conclusive proof that a person is a registered voter. Section 1 of the Parliamentary Elections Act read together with Section 18 of the Electoral Commission Act.

Counsel concluded that in the instant case, the entire body of evidence adduced by the Petitioner to prove this allegation was deficient as there is no proof on record that any of the persons the Petitioner alleges were bribed are registered voters.

### ***Analysis***

The election process is often influenced by money power. Under election laws the term 'Bribery' has special significance with reference to the electoral rights of a person since there may be so many ways to corrupt election process by offering bribe in terms of money or otherwise.

The gist of illegal practice of bribery lies in attempting to do something for those opposed to the candidate with a view to change their votes and as a bargain for votes. The substance of the illegal practice of bribery is that money or other gratification is passed or promise is made for influencing the manner of voting or

standing or not standing for an election. The illegal practice of bribery may be committed both by giving and by taking.

The allegations of illegal practices must be very strongly and narrowly construed to the very spirit and letter of the law, therefore such allegations must be specific and complete and such allegations should not be vague. Therefore, in order to constitute illegal practices and especially bribery, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings; 1. Direct and detailed nature of the illegal practice as defined under the Act. 2. Details of every important particular must be stated giving specifics like time, place, and names of persons (voters). 3. It must clearly appear from the allegations that the illegal practices alleged were indulged in by (a) candidate himself, (b) his authorized election agent or any other person with his/her express or implied consent. If the allegation of illegal practices/bribery are vague and general and lack in requisite facts and details and particular of practice in question then the trial cannot proceed for want of cause of action. ***See Dhartipakar v Rajiv Ghandi AIR [1978] SC 1577: (1987) Supp .SCC 93***

The petitioner in his petition does not give the detailed nature of the allegations of illegal practice of bribery. He lists areas where the alleged bribery occurred but does not state any of the persons (agents) who gave such information since he was never at any of these places. It is very easy to list places and later you work backwards to concoct evidence depending of supporters or agents. If the petitioner very well knew the areas where the alleged bribery occurred, then it would have been easy to categorically give particulars of the persons who availed this information of bribery. In absence of such particulars (details, person bribed and time of bribery), this allegation becomes highly suspect and probably an afterthought.

Since a single illegal practice of bribery committed by a candidate or by his election agent or by another person with the consent of the candidate or his agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice (bribery) cannot be supplied later. See ***Daulat Ram Chauhan v Anand Sharma, AIR [1984] SC 621; [1984] 2 SCC 621***

The courts should generally be reluctant to hold illegal practice to be merely established on the basis of oral evidence/affidavit evidence without support from documentary or circumstantial evidence mainly because bribery is a criminal offence provable to the standard required which is to the satisfaction of court. The evidence of bribery is usually led by agents or supporters of the losing candidate, therefore, they are partisan witnesses or interested witnesses. The courts must look for serious assurance, unlying circumstances or un-impeachable documents to hold grave offence of bribery which might not merely cancel and election result, but extinguish many a man's public life.

In the case of ***Bantalib Issa Taligola vs Electoral commission & Wasugirya Bob Fred*** Election petition No.15 of 2006 Honourable Mr Justice Yorokamu Bamwine (as he then was) noted:

*“But matters concerning validity of elections are matters of great public concern. These are matters with far reaching implications. They call for and indeed deserve the most diligent inquiry possible so that a party, who emerged victorious in a rather hotly contested election, is not denied the fruits of his victory on flimsy grounds. Such inquiry must therefore involve cogent evidence that applies directly to the facts in issue”.*

The credibility and veracity of such witnesses must be seriously considered in the circumstances of the case. It is well known that the factious feelings generated during elections continue even after the election and hence the contesting parties are able to produce before Court large number of witnesses who are their supporters, although some of whom may be presented seemingly as disinterested witnesses. But that by itself may not be a guarantee of telling the truth about bribery claims.

The petitioner's counsel has submitted like in all other arguments before this court that the 1<sup>st</sup> respondent never responded or rebutted to allegations made by the petitioner's witnesses. The position of the law as articulated earlier is that a party who sets up illegal practice/bribery has to succeed on the strength of its own evidence. It cannot derive any advantage from weaknesses of the evidence of the other side.

It is not safe to base conclusion regarding bribery on unreliable, fabricated and manipulated evidence like in this present case. The nature of witnesses produced in court appears partisan and the allegations they make of bribery were never reported to any person including the petitioner at the time or immediately thereafter it had occurred. They have volunteered the information of bribery after the petitioner had lost the election or upon inducement.

The nature of the evidence produced by the petitioner is of nebulous nature and it is not of such quality which would be of a high standard to prove bribery and find the 1<sup>st</sup> respondent guilty of the same. The petitioner in his pleadings, i.e petition and affidavit in support does not disclose any single name or the particulars of the persons who availed this information on bribery and when they actually gave such information.

An election is a politically sacred act, not of one person or an official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent evidence compelling the court to uphold the illegal practice of bribery alleged against the returned candidate is adduced.

In ***Election Petition No. 1 of 1996. Engineer Yorokamu Katwiremu Bategana Vs Elijah Dickens Mushemeza. The Returning Officer and Interim Electoral Commission.*** Justice Musoke-Kibuuka (RIP) at PP 17-18 while considering allegations and evidence of bribery stated;

*“First, as a matter of necessary caution, I think that the Judicial analysis of the evidence brought before Court during the trial of an Election Petition, should take into serious account the fact that most evidence given for either party to the Petition, is in most instances, by person who at the time were either supporters or agents of the candidates. This fact is even more important in relation to evidence involving bribery of voters. The acts constituting bribery of voters are most times carried out secretly and quite often under the safety of the cover of the night. It is therefore important to subject that evidence to serious scrutiny before the Court acts upon it.*

*And, unless there exists compelling and aggravating circumstances, on the allegation of a Commission of an illegal practice or election offences should be*



taken to have been proved to the satisfaction of the Court, by the evidence of a single witness to the act even when that person is a self-confessed recipient of the bribe in question”.

Allegations of bribery made by the petitioner and his witnesses were done on the voting day and sometimes around the polling stations. The petitioner had polling agents at all the polling stations but none of them ever reported any act of bribery around the polling stations. The petitioner failed in his duty of getting the credible and satisfactory evidence to prove bribery if at all it ever happened. In the case of **George Patrick Kassaja v Fredrick Ngobi Gume and Anor EPA 68 of 2016 at pages 21 to 22** the Court of Appeal noted that absence of a complaint to police as well as protests by agents on the DR Forms all point to the fact that the allegation of bribery is usually an afterthought after declaration of results and as a consequence, courts should be very reluctant to accept it.

The petitioner’s witnesses have not shown in their fabricated evidence whether the persons allegedly bribed were indeed registered voters and that any alleged giving of the money was intended to induce them to vote the 1<sup>st</sup> respondent. It is not enough to merely allege bribery, but the bribery must be to persons who are registered to vote. The petitioner attempted to extend his political contestation in court through his team of supporters peddling obvious falsehoods and lies.

The Court of Appeal has noted in several cases the need to be cautious in evaluation of such evidence; **Hon Nakate Lillian Segujja & EC vs Nabukenya Brenda Election Petition Appeals 17 & 21 of 2016**

*“The need for caution is due to the fact that Election Petitions present peculiar and out of ordinary situation where parties and their supporters extend political contest right up to the Courts of law. In this contest, not infrequently, the parties and their witnesses do everything possible, including blatant fabrication of evidence, to ensure victory for their cause”*

**Kamba Saleh vs Namuyangu Jeniffer Election Petition Appeal No.27 of 2011;**

*“In determining election matters involving bribery allegations, the law requires caution on the part of court to subject each allegation of bribery to thorough and high level scrutiny and to be alive to the fact that in an election petition, in which*

*the prize is political power, witnesses may easily resort to telling lies in their evidence, in order to secure judicial victory for their preferred candidate”*

The evidence of the petitioner leaves several questions in the mind of this court and thus renders all the allegations of bribery not proved to the satisfaction of the court; *How did the petitioner obtain such evidence which he produced in court after elections?; When and how did the petitioner get to know about the bribery after elections?; How did the petitioner get in touch with the deponents in support of bribery from the entire constituency?; Where the deponents of bribery his agents, supporters or sympathisers? Why didn't the petitioner report the alleged bribery to Electoral Commission or Uganda Police?*

**Electoral offence of making false statements concerning the character of the petitioner contrary to section 73 of the PEA.**

The petitioner in paragraphs 19 and 20 of his affidavit in support of the petition, categorically stated that the allegations that he is not an Itesot, had no home in the area, was a land grabber, homosexual, had grabbed people's land and would grab people's land once elected were false and only intended to malign his character in the eyes of the voters. That the petitioner's evidence in this regard was never controverted by any of the affidavits in reply and we pray that court takes it as such.

Counsel submitted that all the allegations stated herein above were not true and the 1<sup>st</sup> respondent and his agents knew and or had reason to believe that the said statements were false and reckless at best. No affidavit evidence had been adduced to prove that any of these allegation are true. Counsel invited this honourable court to find that the 1<sup>st</sup> Respondent and or his agents with the 1<sup>st</sup> Respondents, knowledge, consent or approval indeed uttered the fore mentioned false statements and as such committed this electoral offence contrary to Section 73 of the PEA.

Counsel submitted that the alleged false statements were not pleaded anywhere in the petition or any of its many accompanying affidavits. The said statements remained unknown to date which greatly prejudiced the 1<sup>st</sup> respondent in answering a ghost allegation.

That without the specific words, it is safe to conclude that the said statements were never made and the Petitioner in a desperate attempt to fabricate

nonexistent evidence picked a few of his supporters to give him affidavits and mislead court into questioning the 1<sup>st</sup> Respondent's valid victory. Counsel implored court to believe the affidavit evidence of the 1<sup>st</sup> Respondent, Olupot John Francis and Imaligant Joseph annexed to his answer to the petition.

***Electoral offence of sectarian campaign contrary to section 23 (1) and (3) of the PEA.*** The petitioner contended that the 1<sup>st</sup> respondent cautioned voters not to vote for the petitioner because he was not a muteso.

On the other hand counsel for the respondent submitted that there was no evidence on record to support the claims of Amoding Jennifer and Ediko Moses that Omongole Moses, Okiror John Robert, Olupot John Francis, Imalingat Joseph, Aleper Joseph, Odeke Moses or Akol Simon made statements to the effect that the Petitioner is not Itesot. Most importantly, there is equally no evidence that the said persons stated so with the knowledge, consent or approval of the 1<sup>st</sup> Respondent. Besides, the affidavit evidence of Amoding Jennifer and Okello Charles who are agents to the Petitioner is highly partisan and needed some independent corroborative evidence to stand.

In addition, there was no evidence adduced to prove that the petitioner lost because he was rejected for not being an Itesot. Counsel implored the court to believe the affidavits of the 1<sup>st</sup> Respondent, Olupot John, Imalingat Joseph Francis in support of his answer to the petition and reject the evidence adduced by the petitioner.

That contrary to S. 20 (5) and S. 81 (1) and (2) of the Parliamentary Elections Act, the 1<sup>st</sup> Respondent personally or through his agents, with his knowledge and consent or approval variously canvassed for votes, uttered slogans, engaged in public campaigns within 24 hours to polling day and within 100 meters of polling stations on polling day at Olupe Lake View Polling Station, Ominya Parish, Omosingo Polling Station, Kokorio Parish and many other places. Counsel drew court's attention to affidavits number: 8, 9, 38, 41, 47, 52 and 63 all of which detail instances where the 1<sup>st</sup> Respondent personally or through his agents, with his knowledge and consent or approval variously canvassed for votes, uttered slogans, engaged in public campaigns within 24 hours to polling day and within 100 meters of polling stations on polling day.

The petitioner also contended that the 1<sup>st</sup> respondent was guilty of the following offences;

Offence of obstruction of voters c/s 71 of the PEA

Offences relating to voting c/s 76 (1) (c), (e), (f), (g), (h) and (j), The Law of the PEA

Offence of personation c/s 79 of the PEA

Offence of undue influence c/s 80 of the PEA

Offence of Obstruction of election officers c/s 83 of the PEA

The 1<sup>st</sup> respondent implored court to believe the affidavit evidence attached to the 1<sup>st</sup> respondent's answer to the petition explaining the more accurate version of what really transpired, the said affidavits include that of the 1<sup>st</sup> Respondent, Olupot John Francis, Opolot Charles, Ikaa Simon Peter, Okiror Max, Okiror Emadu Bosco, Okido Max, Opule Emmanuel, Oridok Joseph, Kongai Jane Frances, Elianu Frances and Okello Stephen.

Counsel submitted that there was no evidence linking any of the said allegations to the 1<sup>st</sup> respondent. There is nothing on court record to suggest that the alleged acts were done with his knowledge, consent and approval. On this front, alone, all the allegations miserably fail. Counsel concluded that the petitioner had failed to discharge the burden of proof imposed on him by law to the required standard.

### ***Analysis***

The rest of the offences alleged to have been committed have not been proved to the satisfaction of court. The petitioner opted to list every offence under the Parliamentary Elections Act in the petition but failed to lead any evidence to support any of those alleged offences.

The alleged offences of false statements and Sectarian campaign happened during the campaigns but the petitioner did not report any of these serious offences to police or electoral commission. The electoral laws have a mechanism of ensuring that the election is free and fair, which system must be explored to address the grievances at the earliest opportunity.

The petitioner was never affected by the said statements and that is the reason he never reported to the concerned authority. It would be very unfortunate for this court to be engaged in interrogating statements made and were never investigated by police or electoral commission. There are no particulars of the

time and place where these statements were made and no reason is advanced why the petitioner never reported to police.

It appears the rest of the offences are equally an afterthought and devoid of any credible evidence and this court has already addressed them under one of the issues in this judgment.

The petitioner has failed to prove that the 1<sup>st</sup> respondent committed any illegal practice or bribery and other electoral offences to the satisfaction of this court.

This petition fails and is dismissed with no order as to costs.

***Obiter Dictum***

*“There is need for candidates in an election to imbibe the spirit of good sportsmanship; this silent principle in my humble opinion is that the spirit of good sportsmanship should be exhibited by all the electoral players (candidates and supporters). When an election is conducted in substantial manner compliance with the electoral laws, producing a winner, other contestants should concede and accept defeat. This concession will strengthen our fragile strides towards democratic governance. A few concessions here and there will enable the electoral process to progress on **terra firma**. In furtherance of this principle, it is expected that where the basic requirements of an election are met, insistence upon fine details which do not constitute deliberate exclusion or infringement of the electoral law are unnecessary and could amount to frivolity”.*

***I so order.***

**SSEKAANA MUSA**

**JUDGE**

**20<sup>th</sup> January, 2023**