

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
[CORAM: Buteera, Egonda-Ntende & Owiny-Dollo JJA]

ELECTION PETITION APPEAL NO. 98 OF 2016
[Arising from the High Court of Uganda at Mbarara Election Petition
No. 003 of 2016]

Michael Mawanda=====Appellant

Versus

1. Electoral Commission=====Respondent
2. Honourable Andrew Martial=====Respondent

(On appeal from the judgment of the High Court of Uganda,
(Nabisinde, J.), delivered on the 18th day of October 2016 at Mbarara)

JUDGMENT OF COURT

Introduction

1. The appellant contested as an independent candidate in the parliamentary elections for Igara County East Constituency together with the 2nd respondent and a number of other candidates. The petitioner polled 15,091 votes. The second respondent polled 15,983 votes and was declared winner and Member of Parliament for Igara Country East constituency. The appellant dissatisfied with that result petitioned the High Court of Uganda seeking to annul that election. The petition was dismissed on the 18th October 2016 and he has now appealed to this court against the decision of the High Court. He sets forth 20 grounds of appeal.
2. Both respondents opposed the appeal.
3. Though it is not inconceivable that there could be justification for raising 20 grounds of appeal against a decision of the lower court counsel doing so needs to rethink twice or more times before filing such a memorandum of appeal as it is likely to be prolix, containing matters that may diminish attention to otherwise 4 or 5 arguable and good grounds of appeal that may exist. There are errors that may be

raised that have no reversible consequence to the decision appealed from. Other grounds are simply repetitive. Others are simply too generalised rather than concise and distinct objections to the decision below as required by the rules of the court.

4. The words of Lord Templeman in Ashmore v Corporation of Lloyd's [1992] 2 All ER 486 at page 488 come to mind.

'The parties and particularly their legal advisors in any litigation are under a duty to co-operate with the Court by chronological, brief and consistent pleadings which define the issues and leave the judge to draw his own conclusions about the merits when he hears the case. It is the duty of counsel to assist the judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of ten bad points the judge will be capable of fashioning a winner. In nearly all cases the correct procedure works perfectly well. But there has been a tendency in some cases for legal advisors, pressed by their clients, to make every point conceivable and inconceivable without judgment or discrimination.'

5. At the outset we urge counsel prone to this habit and bad practice to desist from doing so to allow the court concentrate on reversible errors. Without putting a cap on the number of grounds a party can present we would suggest that counsel be careful and comply with the rules of court in formulating grounds of appeal.

Pleadings

6. In the court below the petitioner attacked the conduct of the elections by the first respondent contending under multiple heads that it did not comply with the election law. The relevant portion of the petition provided the following particulars,

(a) Failing in its duty to observe the principles of freedom and fairness in the conduct of the Parliamentary election for Igara County East Constituency.

(b) Abnegating its responsibility under Article 61(1)
(e) of the Constitution of the Republic of Uganda.

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- (c) Recruiting election officers sympathetic to the candidature of the 2nd respondent.
- (d) Recruiting election officers who indulged in vote rigging and ballot stuffing in favour of the 2nd respondent.
- (e) The actions of its returning officer and election officers who denied him and his authorised agents copies of the declaration of results forms at some polling stations.
- (f) Commencing and or closing of voting contrary to the timelines set by Parliamentary Elections Act at 22 polling stations that were named.
- (g) Refusing to use and rely on the use of Bio-metric voter verification machine.
- (h) Using GISOs and NRM structures to recruit and vet election officers thus interfering with and or undermining the impartiality of the elections.
- (i) Okaying the deployment and use of Special Forces Command (SFC) in the management of the election exercise.
- (j) Falsifying entries in the tally system and according the 2nd respondent unfair advantage over him.
- (k) Using its election officers to interfere with the franchise of eligible, willing and able voters.
- (l) Refusing to train election officers and thereby delivering the bogus election results.
- (m) Conducting elections at polling stations over and above the gazetted ones.
- (n) Refusing to deliver to him serial numbers of seals featuring on all ballot boxes used in the Constituency.
- (o) Refusing to deliver to him all ballot papers used in the election of exercise at every polling station in the Constituency.

(p) Its election officers refusal to avail report books in respect of their polling stations in the constituency.

(r) Promoting multiple voting.

(s) Condoning all manner of election malpractices, the particulars whereof are born out in the affidavits in support of the petition.'

7. As against the 2nd respondent the petitioner launched a 2 pronged attack. Firstly he contended the 2nd Respondent and or through his agents was guilty of acts of bribery of voters on polling day at Rwemirabyo village, in Kantunda Trading Centre; between 29th and 31st December 2015 the 2nd respondent indulged in acts of voter bribery at Kitabi Catholic Church; further acts of bribery were committed at Njeru Village, Numba Parish; and at Rutooma, Kyeizoba.
8. Secondly the petitioner contended that the 2nd respondent had caused to be published of the petitioner and distributed posters containing the petitioner's photograph which were odious and defamatory of the petitioner which painted the petitioner as 'a person only bent on impoverishing the people who he aspired to represent in Parliament and called on the voters to shun him for the good of their future. This had the effect of undermining and it did undermine the political prospects of the petitioner.'
9. The 1st Respondent denied that it failed to conduct the election in accordance with the law. The second respondent denied the acts of bribery as well as publishing and disseminating defamatory posters of the petitioner.
10. Each party provided affidavit evidence in support of its position and some of the deponents were subjected to cross examination and re-examination.

The Trial in the Court Below

11. There were two significant matters during the course of trial which form part of the grounds of appeal before this court. The petitioner had attached electronic evidence to its petition and supporting affidavits. In the course of the trial the court arranged to play these pieces of evidence and it concluded that the CD's or whatever medium the video recording was on were empty. The court thus expunged the video



evidence from record of the court. Secondly it admitted a judgment of the Supreme Court of India and newspaper articles objected to by the petitioner for identification and then treated it, without more, as documentary evidence in the case. The petitioner takes issue with the admissibility and reliance on the said documents.

Judgment of the Trial Court

12. The learned trial judge examined the evidence brought by all the parties and concluded that the petitioner had failed to establish a case against both respondents on the grounds set out in the petition for reasons she provided in the judgment.

Submissions of Counsel on appeal

13. Mr Frank Kanduhoo and Mr Owen Murangira appeared for the appellant while Mr Erick Sabiti appeared for the 1st respondent and Mr Richard Mwebembezi and Mr Ronald Tusingwire appeared for the 2nd respondent.

14. Mr Kanduhoo addressed the court beginning with the matter of bribery grounded in section 68 of the Parliamentary Elections Act which forbids a candidate from indulging in bribery. He submitted that the trial judge ignored the evidence of Kakama David, Muhereza Charles, Tumusime Joanace, Kasingye Mary, Byabitanga Charles, Beineki Hasson Asio, Barirere James and Mugisha Fred. The trial judge rejected the evidence of David Kakama calling him a disgruntled bad loser bent on vengeance. David Kakama was not a candidate in Parliamentary elections and could not therefore be a disgruntled loser. He ought to have been regarded as an independent witness who had set out to get evidence of election malpractices on behalf of the FDC. His party had given him a camera to capture incidents by way of video and that he captured a series of meetings where money was being dished out as bribes to voters. He enumerated those incidents and he ought to have been believed.

15. The evidence of David Kakama had been corroborated by the evidence of Barirere James, Mafari Albert, Byarutanga, and Mary Kasingye.

16. Mr Kanduhoo further submitted that the learned trial judge ignored the evidence of Barirere James, an agent of the 2nd respondent, who swore an affidavit in support of the allegations of bribery. He paid Shs.20,000.00 to Mugisha Fred. Both these witnesses were never cross

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examined. The 2nd respondent did not deny the agency role of Barirere James. Neither did he deny the appointment letter as an agent. The principal and agent relationship was proved.

17. The learned trial judge faulted the appellant for failing to exhibit the uniforms that the 2nd respondent supplied to KIPACYA. The uniform could not be attached to the affidavit given that the mode of evidence was affidavit evidence and a number of copies had to be filed. One could not attach a copy of the uniform. However pictures of the same were attached.
18. Turning to false statements Mr Kanduhoo submitted that the learned trial judge ignored the evidence of Muchunguzi Erias and Tumwujukye Arthur which established that the 2nd respondent caused the distribution of flyers that contained false statements against the appellant. Mr Muchunguzi Erias was hired personally by the 2nd respondent to take Gumisiriza Dominic to several trading centres in Bumbeire sub county to distribute the flyers. This witness was never cross examined.
19. Mr Kanduhoo further submitted that the learned trial erred in law when she allowed inadmissible evidence presented by the 2nd respondent's counsel in cross examination of the appellant and took the same into account in arriving at her decision on the question of false statements published against the appellant by the 2nd respondent. This inadmissible evidence included a copy of court decision alleged to be from the Supreme Court of India, and online publications of the Observer Newspaper and the New Vision newspaper. The decisions and order of the Supreme Court of India had nothing to do with the appellant. The newspaper paper cuttings contained no evidential value.
20. In relation to the video and oral recordings on DVDs and CD that the learned trial judge found to be empty he submitted that this was an error. Copies of the DVD and CD had been watched and listened to by the 2nd respondent's witness Mr Isaac Kayemba who swore an affidavit and indicated that the DVDs and CD contained video and oral recordings. This evidence was totally ignored by the trial judge and the evidence ought to have been taken into account.
21. Mr Sabiti for the 1st respondent opposed the appeal. He attacked the memorandum of appeal and in particular grounds 9, 10, 11 and 12 for offending rule 86 of the rules of this court. There were argumentative and repetitive and ought to be struck out on that account.

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22. The appellant in ground 8 attacked the trial court for accepting in evidence the tally sheet. This was essential evidence to prove whether or not there was voting at places other than the gazetted places as the appellant had contended. It had rightly been admitted by the trial judge.
23. Mr Sabiti further submitted that the appellant was contending that the errors on the Declaration of Results Forms (DRFs) were evidence of ballot stuffing. The returning officer in his evidence had shown that it was impossible to stuff two ballot booklets in the ballot box as had been alleged by the appellant's witnesses. The DRFs for all polling stations were availed showing that the appellant's polling agents had signed all of them and more importantly had never complained to any of the presiding officers of any malpractices at those polling stations. The DRFs show when the polling stations were closed and answer the claim of early closures of polling stations. There was no malpractice on the part of the 1st respondent in the conduct of the elections. This appeal should be dismissed with costs to the 1st respondent.
24. Mr Mwebembezi for the 2nd respondent opposed the appeal. He submitted that for a petition to succeed there must be cogent evidence provided by the petitioner free from contradictions. The petitioners' evidence fell short. The evidence in relation to bribery was insufficient to reach a determination that bribery had occurred. When you consider the bribery alleged to have been hatched at Mafari's home the video that was allegedly taken of the meeting by David Kakama was not produced. The DVD on which it was alleged to have been copied was empty when played by court. Mr Kakama does not mention the sum of Shs.1,500,000.00. This is raised by James Barirere who claims to have been an agent of the 2nd respondent. There is evidence that he was not an agent of the 2nd respondent and the letter he used is quite different from the letters that the 2nd respondent used to appoint agents. No connection is made to show that the money came from the 2nd respondent. There is no evidence to show what is alleged to have occurred did occur with the knowledge, consent and approval of the 2nd respondent. The 2nd respondent denied the allegations of bribery against him. The evidence of Mugabe Gregory, Muhumuza Serian and Mugisha Robert buttress the evidence of the 2nd respondent.
25. The 2nd respondent denies that he appointed James Barirere as an agent and even if he had been appointed as an agent he was not authorised to do illegal acts.

26. Turning to the alleged bribery committed on the 17th February 2016 at a home in Kantosho the appellant had stated in his affidavit that a one Edwin Karugaba had been bribed as well as other people by the 2nd respondent with the sum of shs.1,600,000.00 as he was canvassing for votes. However, in the evidence of Edwin Karugaba, Karugaba did not accept that he was bribed but that it was other people present in that meeting whose names are not given and who have not sworn any affidavits. This evidence was insufficient to prove bribery.
27. Turning to the alleged bribery at a bar in Kantunda the appellant claims to have been informed about it by Mary Kasingye and Dominic Murezi, an agent for the 2nd respondent. Kasingye did not mention the names of those bribed. Dominic Murezi swore an affidavit and denied that he was an agent of the 2nd respondent. He stated that he was an agent for the Presidential Candidate General Museveni. He denied being involved in any bribery incident at that bar as alleged. Grace Nabale swore an affidavit denying that any bribery occurred at Kantunda on that day. The oral recording of what occurred was never played. The CD was empty. All that shows that there was no bribery as alleged.
28. With regard to the alleged bribery at Kitabi Catholic Church Mr Mwebembezi submitted that the evidence of David Kakama had been contradicted by the evidence of Charles Byarutanga. Secondly the alleged uniforms that had been delivered were never produced in court. Mr Kakama was found by the learned trial judge to be untruthful, unreliable and a bad disgruntled loser.
29. The 2nd respondent adduced the evidence of other members of KIPACYA, Kushaba, Natuhwera Evelyn, Tubenawe Oswald, Javiira Bone, Ahimbisibwe, Byarutanga Charles, Nuamanya Moses, Tumwijushe Innocent and Bimanywugaba Timothy, all of which proves that there was no bribery committed by the 2nd respondent. Those members were present at Kitabi Catholic Church on the day in question participating in the cleaning exercise and did not see at all the alleged bribery.
30. With regard to the defamation Mr Mwembebezi submitted that this was not proved to the satisfaction of the court. The appellant himself admitted in cross examination that he did not see the 2nd respondent distributing the documents in question.



Duty of first Appellate Court

31. It is the duty of a first appellate court to subject the case below to a re-evaluation of the evidence adduced in the case so as to reach its own conclusions. This is in line with Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, hereinafter referred to as the Rules of this Court. It provides,

'1. On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may-- (a) reappraise the evidence and draw inferences of fact; and '

32. This duty has been echoed in many previous decisions of the Supreme Court of which Fredrick Zaabwe v Orient Bank Ltd and others S C Civil Appeal No. 4 of 2006 [unreported] is one of the more recent decisions.

Analysis

33. We shall review the evidence under the issues that the trial court framed with the parties. These are:

- '1. Whether there was non-compliance with the provisions of the Parliamentary Elections Act No.17/2005, the Electoral Commission Act and the principles therein;
2. Whether the non-compliance affected the results of the elections in a substantial manner.
3. Whether the 2nd respondent personally or through his agents with his knowledge, consent or approval committed any illegal acts and or electoral offences;
4. Whether the evidence covered in the videos and audio recordings is credible and authentic;
5. What remedies are available to the parties.'

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Whether there was non-compliance with the provisions of the Parliamentary Elections Act No.17/2005, the Electoral Commission Act and the principles therein

34. Before we go on to consider the substance of this issue we must start with the nature of the pleadings upon which this ground is raised. The appellant just set out outline headings of the matters complained of without setting out the facts which the appellant intended to prove in order to succeed on its claim. In effect it is questionable whether a cause of action was made out for the majority of items listed. Even if we are generous to conclude from the last item that incorporated by reference the affidavits filed in support of the petition these affidavits concentrated only on the allegation that some voters were prevented from casting their votes with the alleged early closure of polling at some stations.
35. The quality of drafting the petition is simply scandalous. Out of 18 items listed under this head only 4 items can be regarded to have substantiating affidavits which purport to set out both the facts and evidence that these items rest upon. For the rest of the items, including (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l), (o), (p), and (r) it is clear that no cause of action is made out to support the same, however, generously one can look upon all the papers filed by the appellant, that is the petition and supporting affidavits.
36. We wish to remind the parties that for a cause of action to be made out the pleadings must set out the facts, (and not the evidence by which they are to be proved,) which the party that wishes to succeed needs to prove in order to succeed on its claim. The facts set out must show the right that the petitioner enjoyed, the violation or breach of that right and that as a result of such breach and / or violation the petitioner is entitled to relief. No facts that show how the appellant's rights under the above referred 14 items were set out in the petition or the accompanying affidavits. Those claims failed from the outset.
37. We are surprised that no objection was taken at the beginning to these items which ought to have been struck out.
38. With regard to the allegations that a number of polling stations were closed before 4.00pm while voters were still in the line and were chased away the appellant filed affidavits of Amon Twinomugisha, Dick Mukudane, Enid Rutukunda, Muhanguzi Nelson, Tumwesigye Muruma, Mugerwa, Juma Salompasi, Arikyiriza Enid, Miseera

Kyakuba, Namara Jackson, Member Francis and Ssemakula Swaibu. These witnesses basically claim that they were prevented from voting when they were already in queue, waiting to vote, and the voting was stopped before 4.00pm.

39. The 1st respondent contended otherwise with the returning officer Mr Godfrey Mbabazi, and all presiding officers at the polling stations complained of, swearing affidavits to the contrary, asserting that voting was done in accordance with the law. No person who was already in the queue at 4.00pm was turned away. All were allowed to vote save those who may have arrived after 4.00pm. They produced Result declaration forms that had been signed by the polling agents of the appellants that showed that voting had ended between 4.00 pm and 8.59 pm for different polling stations. No objections from the appellant's polling agents were recorded. It was contended that this implied that the appellant's polling agents agreed with what was written on the RDFs.
40. The following swore affidavits in support of the 1st respondent's version of events: Ninsima Agnes, Tumwesigye Geoffrey, Twesigye Ronald, MbabaziJackline, Rev Perez Byaruhanga Kaburuku, Rev Martin Ahimbisibwe, Rev Stanely Banyenzaki, Isingoma David, Nahabwe Esther, Muhwezi, Ronald, Mwesigye Edson, Bashushana Gordon, and Aruho David attaching result declarations forms.
41. It is only one station whose RDF shows that the polling stopped at 1300 hours. Mr Mbabazi, the returning officer, put this one down to human error given the number of voters who voted at this station. 638 voters voted at this station and it was not possible that they could have completed voting by 1.00pm.
42. We have read the affidavits of either side on this issue. We have considered the viva voce evidence adduced by way of cross examination of the several deponents on each side. We find that the version of the 1st respondent is more persuasive given the detailed nature of the affidavits and the contemporaneous records in the form of RDFs that are more consistent with that version than the appellant's version and were signed by the polling agents of the appellant without recording any objection. We are inclined to accept the explanation of the Returning Officer with regard to the one polling station that showed that polling had closed at 1.00pm.

43. The affidavit of Mr Muhirwa Rajab for the appellant states that at around midday he saw the presiding officer a one Twesigye Ronald stuff two booklets into the ballot box. He attached the DRF for Kasa Primary School polling station which he stated bares the inconsistencies complained of during polling. In his rebutting affidavit Mr Twesigye denied that he stuffed any votes in the ballot box. He contended that apart from not doing so it was not simply physically possible to force 2 ballot books into the ballot box as the size of the hole can hardly take in more than 5 votes at a time. Each ballot book had 50 ballots.
44. Mr Muhirwa was required to be brought for cross examination and the appellant's side failed to produce him. The veracity of his evidence is therefore untested by cross examination and should be approached with caution. It is correct that the RDF for Kasa shows that the balance of ballot papers is more than would ordinarily be possible given the number of voters and ballot papers issued. This was explained as an arithmetical error and not evidence of vote stuffing by the 1st respondent.
45. We note that there are a number of RDFs where it is apparent that there is some discrepancy if you reconcile the figures provided. It is contended for the 1st respondent that these were simply arithmetical errors made by the presiding officers which did not affect the integrity of the poll results.
46. The only way to fully explain these 'errors' was for a physical examination of the results; votes cast and the ballot papers that remained including the ascertainment of the seal /batch numbers; the serial numbers of the ballot papers released; serial numbers of the votes cast and serial numbers of the ballot papers that were not used for that polling station. The appellants could have used the procedure available in the Civil Procedure Rules for interrogatories, discovery and notice to produce documents to obtain this evidence from the 1st respondent at the pre-trial stage. So could the 1st respondent have produced the same to clear the air. Neither side did so. It is the appellant who stood to lose by not doing so as his explanation for inconsistency remains simply speculative.
47. The errors on those forms are capable of different explanations be it human error or indicative of fiddling with the votes. It was incumbent on the appellant to exclude human error and irresistibly point to fiddling with the votes. In our view he did not succeed in doing so.

48. The next item to consider under this issue is the allegation that voting was carried out at ungazatted station at Rwakahuka. No affidavit evidence to support this contention was filed by the appellant. This is picked from affidavits of the 2nd respondent's witnesses, Alen Kahangire, Byamukama Joseph and Abbie Kamugyene, who claimed to have voted at Rwakahuka. The 1st respondent's returning officer denied that any voting took place at Rwakahuka as it was not a gazetted polling station and indeed did not appear in the tally sheet for results from the 80 polling stations in the constituency.
49. Rwakahuka was a polling station during the NRM primaries and the affidavits of Allen Kahangire and Byamukama Joseph seem to suggest so rather than as a reference to the national parliamentary elections. Notwithstanding those affidavits there is evidence from the 1st respondent, including the tally sheet that shows that Rwakahuka was not one of the polling stations in the national parliamentary elections. The evidence of the 1st respondent is to be preferred corroborated by the contemporaneous records made at the time. This allegation fails.
50. The last item we shall consider under this issue is the allegation that the 1st respondent returning officer refused to give to the petitioner serial number of seals on ballot boxes used in the constituency yet this is mandatory with the result that ballot stuffing was promoted. The 1st respondent accepted that it did not supply the said information as the appellant did not request for the same.

51. Section 28A of the Parliamentary Elections Act states,

'1. Political parties, political organisations, and independent candidates taking part in an election may, through their duly appointed representations, be present during the packing and dispatch of election materials.

2. The commission shall provide political parties, political organizations and independent candidates taking part in an election with:

(a) The serial numbers of ballot papers supplied to each polling station; and

(b) The serial number of ballot papers seals affixed to and closed in the ballot boxes supplied to all polling stations.

(c) As soon as practicable after packing and dispatch of the election materials, and in any case, not later than twenty-four hours before polling day.'

52. The language of this provision makes the availing of the said serial numbers of the ballot papers supplied to each polling station and serial numbers of ballot paper seals affixed to and closed in the ballot boxes supplied to polling stations mandatory. The commission has an obligation to supply this information not later than twenty four hours before polling day. The commission may invite, in case of independent candidates, as well both political parties and organizations to a particular venue and previously notified time, for them to be availed the said materials. Or it may choose to deliver to the known addresses of the said candidates and organizations. Whichever way or manner it decides to comply with its obligation it must do so in order fulfil its statutory duties prior to the holding of the election.
53. The justification for this provision is very simple. It is to ensure that the candidates, political parties and organizations involved in the election are in a position to police the election process and be assured in a transparent manner that no malpractices are committed. Or to put it differently it is intended to ensure transparency of the electoral process, granting the participants an opportunity to check out malpractices that may be committed during the voting process. The 1st respondent lamely contended that the appellant did not request for this information. This is unacceptable. The law imposed a duty on the Commission, through its officers, especially the returning officer for a constituency who was in charge of the local process to supply this information.
54. The learned trial judge took the view propounded by the respondents that the appellant had not asked for this information and therefore no infraction was made of this statutory duty. This is erroneous. The duty of the court is not to re write the law. It is the duty of the court to point out the law as it is. Clearly the first respondent was at fault and this needs to be pointed out, if for no other reason, so as to avoid repetition of this breach of a statutory duty.

Whether the non-compliance affected the results of the elections in a substantial manner

55. Save for the last item, all the other items raised under this head of non-compliance with the Parliamentary Elections Act and or any other law by the 1st respondent have not been proved.
56. With regard to the last item which we find that the 1st respondent did not comply with section 28A(2) of the Parliamentary Elections Act, we

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note that the appellant has not shown whether this non-compliance, affected the results of the elections in anyway, let alone in a substantial manner. He suggested that it made possible vote stuffing. This remained a suggestion without proof to conclude so. In the result we hold that non-compliance with section 28A(2) of the Parliamentary Elections Act did not affect the results in a substantial manner.

Whether the 2nd respondent personally or through his agents with his knowledge, consent or approval committed any illegal acts and or electoral offences

57. Basically two categories of electoral offences were alleged against the 2nd respondent. These were bribery of different groups of people and individuals and the making or causing the publication of false statements.

58. We shall start with the question of false statements. Of first concern to us is the nature of the pleading in respect of the false statements complained of by the petitioner against the 2nd respondent. We shall set out the relevant portions of the petition.

‘11. Your humble petitioner further contends that the 2nd respondent caused the printing, circulation and distribution of odious and defamatory material / posters which painted a picture of him as a person only bent on impoverishing the people who he aspired to represent in Parliament and called on the voters to shun him for the good of their future. This had the effect of undermining and it did undermine the political prospects of the petitioner.

12. Your humble petitioner contends that the 2nd respondent is guilty of election malpractices and or offences set out in the Parliamentary Elections Act, the particulars will be canvassed in the affidavits of in support of the petition.’

59. The supporting affidavit of the Petitioner made reference to one poster which it attached as PS. The attachment has a picture of the petitioner and words both above the photograph and below it, which we presume were in the local vernacular language spoken in the area. The words were, ‘AYAYIBIRE ESENTE ZA C.O.W.E.??’ (above the photograph) and below ‘Webare ssebo kukora Abantu beitu aboro.’

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60. The affidavit of one Mucunguzi Elias headed filed in rejoinder states that the 2nd respondent had hired Mucunguzi Elias on 12th February 2016 to transport a one Gumisiriza Dominic to distribute flyers, copies of which came into his possession and he attached both of them to his affidavit. In paragraph 7 of his affidavit he stated that,

‘On one such copy there was a message that the petitioner herein was a wanted man in India for stealing money and on the other copy, there were words to the effect that Hon. Mawanda had locally robbed people of their money through an organization called C.O.W.E. Copies of the the said posters are hereto attached and marked as annexures “B1” and “B2” respectively.’

61. These posters were distributed in many areas of Bumbaire Sub county and adjacent areas.

62. B2 was the same as annexure PS set out above. B1 has a picture of the petitioner with the following words on top, ‘HON. MAWANDA POLICE YA INDIA NEMURONDA.’ And below the picture was the words, ‘AHABWE ESENTE EZIYAYIBIRE OMURI INDIA.’

63. The 2nd respondent in his answer to the petition denied that he caused the printing, circulation and distribution of the said flyers or posters. He also denied committing any electoral offence or illegal practice.

64. Though the petition does not directly set out verbatim the false statements which we note were most probably in the local vernacular language spoken in the constituency and an English translation of the same no objection was taken at the trial to this lacuna. We shall assume that the requirement for setting out verbatim the libellous statements was done by reference or incorporation to the affidavits which were filed by the petitioner in support to the petition and or in rejoinder to the answer. These affidavits qualify to be part of the pleadings.

65. In Col (Rtd) Kiiza Besigye v Electoral Commission and Anor Election Petition No. 1 of 2006 (unreported) Odoki, CJ., stated,

‘I accept the submission of Dr. Byamugisha that the charges in the petition relating to false, malicious or defamatory statements were defectively framed as they did not set out verbatim the statements complained of in the Petition. Words take their meaning from the context, and if the context or

background is not provided or the full statement reproduced, their malicious or defamatory effect may not be easy to discover. The particulars of the statement also enable the respondent or defendant to know what case he or she has to meet and defend. **In the present statement, the Petitioner made bare assertions of what was said by the 2nd Respondent and the Court was only lucky that the 2nd Respondent volunteered to reproduce verbatim the statements he made which were allegedly complained of, which in effect offered the context and explanations why they were made.'**

66. In the foregoing case the Supreme Court was able to consider the claim for false statements as the words complained of were actually set out by the 2nd respondent in his affidavits in response to the petition. This apparently cured the defect. And the matter was considered on its merits.
67. We shall in the circumstances of this case accept that a cause of action has somewhat ineptly been made out by incorporation or reference to the other affidavits that the petitioner caused to be filed and relied upon during the hearing of this case which contain the exact statements complained of and the substance of the English translation thereof. We note that no objection was raised both at the trial and on appeal in respect of this point. The issue of false statements was vigorously pursued in the cross examination of the appellant at the trial. And the trial court made substantive conclusions on the issue.
68. At the trial counsel for the 2nd respondent cross examined the petitioner vigorously on the appellant's visit to India and association with a Mr Musumba whom the Indian Police had interest in. Several documents in relation to proceedings before the Supreme Court of India taken by Mr Musumba were presented by the 2nd respondent's counsel in cross examination and admitted for identification purposes as RID2. So were Newspaper reports connected with the incident both of the Observer Newspaper (admitted as RID1) and New Vision (admitted as RID3 and RID4). The intent of this line of cross examination was to justify the libellous publications contending that they were not false. This was strange. The 2nd respondent had not admitted authorship, publication or distribution of the flyers. This was irrelevant to his case which was that he had nothing to do with the authorship, publication and distribution of these flyers.

69. We agree with the appellant's counsel that the said documents were wrongly admitted onto record and the court ought not to have admitted the same. Not only were the documents irrelevant to the case set out by the 2nd respondent the documents themselves were inadmissible. The makers of the documents were not called to prove the same.
70. Having admitted the documents for identification this implied that there was further evidence to be brought to prove the said documents in accordance with the law relating to documentary evidence. No such evidence was intended to be produced and in fact no such evidence was ever produced. The trial court's reliance on the same was in error as those documents had no evidential value whatsoever both for failure of being proved in the ordinary way and for relevance to the facts in issue.
71. The libellous statements complained of in flyer B2 are clearly defamatory as they impute the commission of a crime in India. The statement that the appellant was wanted by the Indian Police in India for theft of money is clearly libellous without more. The issue is whether the 2nd respondent was responsible for distribution of the said flyers. The evidence for this is mainly from Mr Mucunguzi Elias. It states in part,

'2. Kakama has drawn my attention to the affidavit of Martial Andrew in support of his answer to the petition and he has read and explained to me the contents of the same. I join in issue with contents of paragraph 22 and I rejoin as follows;

3. I own a motor cycle Registration No. UDH 655W, which I use to do bodaboda business in Kantunda trading centre, Kiyaga parish, Bumaire Sub County.

4. On the 12th day of February 2016, I was hired by the 2nd respondent to take a one Gumisiriza Dominic, his campaign agent around trading canters in Bumaire Sub county.

5. While we were riding from one trading center to another, I realized that the said Dominic a mission of and was actually distributing posters / flyers bearing the name and photo of Hon. Michael Mawanda with defamatory words.

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6. Upon close scrutiny of the said posters/flyers, I found out that they were all similar in content and nature.

7. On one such copy there was a message that the petitioner herein was a wanted man in India for stealing money and on the other copy, there were words to the effect that Hon. Mawanda had locally robbed people of their money through an organization called C.O.W.E. Copies of the said posters are hereto attached and marked as annexures "B1" and "B2." Respectively.

8. Upon finding out the content of the said posters/flyers, I declined to ride the said GUMISIRIZA DOMINIC further as he was circulating false information but he promised to add me more money as were about to finish and to which I obliged.'

72. The 2nd respondent never sought to cross examine Mr Mucunguzi Elias.

73. There is the affidavit in rejoinder of Tumwijukye Arthur, a registered voter and resident of Katonya village, Numba Parish Bumbaire Sub County in Igara County East, Bushenyi District. He runs a shop in Katonya trading centre. He stated that sometime in February 2016 a gentleman called Muhangi Lucas who had been introduced by the 2nd respondent as his agent, came on a boda boda distributing flyers "B1" and "B2". He walked into his shop and gave copies of the said flyers and told him it would be a waste of his vote to vote for Hon. Mawanda.

74. Mr Tumwijukye Arthur was cross examined and his story remained virtually intact.

75. The evidence for the 2nd respondent is contained in his affidavit in reply and in particular paragraphs 22 and 23.

'22. That I did not print circulate and or distribute defamatory materials or posters stating that the Petitioner was the cause of poverty in the Constituency.

23. That I did not commit any election malpractices and /or offenses nor was any committed by authorised Agents with my knowledge, consent and or approval.'

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76. It would appear to us that the evidence of Mucunguzi Elias is largely unanswered by the 2nd respondent. Against it we only have a bare denial by the 2nd respondent that he did not circulate or distribute the said flyers. The 2nd respondent chose not to cross examine Mr Mucunguzi. Mr Mucunguzi states that the 2nd respondent hired him to drive his boda boda and take a person who distributed the flyers B1 and B2 in about 12 villages.

77. The learned trial judge rejected this evidence on account of paragraph 8 of Mr Mucunguzi's affidavit. He faulted him for changing his mind of not continuing with the exercise he had been hired to do when he was promised more money. The trial judge chose not to believe his evidence.

78. We find nothing inherent in paragraph 8 of the said affidavit that makes it unworthy of credit especially when the affidavit as a whole was not challenged by way of cross examination. We are satisfied that it firmly establishes the link, with regard to the distribution of the libellous flyers, B1 and B2, and the 2nd respondent. The person he hired to transport the person distributing the same has provided unchallenged evidence of his retention for this purpose.

79. The evidence of Mucunguzi Elias is augmented by one of the persons who received the flyers from Gumisiriza Dominic. This is Arthur Twijukye. Though he was cross examined the creditworthiness of his evidence was not dented. Kyokunzire Sedres, Tugumisirize Nicholas and Timeteyo Alfred received these 2 flyers from a one Muhangi Lucas, an agent of the 2nd respondent. Publication of the libellous material to third parties is thus proved.

80. The learned trial judge held in part,

'Turning to this petition, PW1 in cross examination admitted unequivocally on oath to the information circulated in the articles 1.D RW1, WW2 RW3 and RW4. To that extent they cannot be taken to be defamatory as they reflect the truth of events / information published. The media houses that published the said articles are well known as registered and operating in Uganda, however PW1 who claims he was defamed never complained against the any of them. From the evidence adduced before me, it is not possible to prove that the 2nd respondent published those words in I.D RW1;'

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81. We disagree with the learned judge. Firstly she takes into account documentary evidence admitted for identification which was not proved before her. Documents admitted for identification cannot be relied upon as evidence as they are not admitted in evidence. Secondly the 2nd respondent was not accused of having caused the publication or circulation of those documents. The documents he was accused of causing circulation were B1 and B2. The learned judge did not address herself to these publications. Thirdly the defence of the 2nd respondent was that he had not written, or distributed the flyers complained of. The 2nd respondent had not pleaded justification and or truth of the statements complained of. This was irrelevant to the case he had put forward on this matter. It ought not to have been taken into account. Fourthly the appellant never accepted in cross examination that the contents of flyer B1 and B2 were truthful. He asserted that he was not wanted in India for any crime. And that he had never been arrested when he visited India. There is no information available to contradict his evidence. Lastly whether the appellant did not institute defamatory actions against media houses in Uganda that may have published defamatory statements of him similar to those peddled in B1 and B2 does not diminish the libellous nature of flyers B1 and B2 nor does it provide justification for distribution of the libellous flyers B1 and B2 to voters.

82. Section 73 of the Parliamentary Elections Act provides inter-alia as follows:

'73. False statements concerning character of candidates

A person who, before or during an election for the purpose of effecting or preventing the election of a candidate, makes or publishes or causes to be made or published by words whether written or spoken, or by song in relation to the personal character of a candidate, a statement which is false--

(a) Which he or she knows or has reason to believe to be false; or

(b) In respect of which he or she is reckless whether it is true or false, commits an offence and is liable on conviction to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both.

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(1) This Section does not take away the right of a person to sue for defamation of character.'

83. The law makes it an offence to publish false statements about a candidate with the intent of preventing the election of that candidate. The person making such false statements must know or have reason to believe that they are false or be reckless as to whether or not such states are true or false.

84. It has not been proved that the 2nd respondent made the said flyers. However it has been proved that he caused the distribution of the said flyers prior to the election in the constituency of Igara County East where both the appellant and 2nd respondent were candidates. What has to be proved in this particular case is that the 2nd respondent

'caused to be published by words whether written or spoken, in relation to the personal character of the appellant, a statement which was false for which he knew or had reason to believe it was false or of which he was reckless whether it is true or false.'

85. We have the evidence that the 2nd respondent hired a boda boda rider to ferry the person who distributed these libellous flyers around the constituency. This, in our view, is sufficient to conclude that the 2nd respondent caused the publication of the said flyers to voters. By the 2nd respondent's actions these flyers were brought to the attention of third parties who would not otherwise have received them were it not for his action.

86. Section 61(1)(c) of the Parliamentary Elections Act provides,

'(1) The election of a candidate as a Member of Parliament shall and only be set aside on any of the following grounds if proved to the satisfaction of the court:-

(a)

(b).....

(c) that an illegal practice or any other offence under the Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.'

87. We accept that on the evidence before us it has been established that the 2nd respondent committed the electoral offence of causing the

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publication of a false statement which he had reason to know that it was false under Section 73 of the Parliamentary Elections Act.

Bribery

88. We shall now turn to the allegations of bribery against the 2nd respondent. It is convenient at this stage to deal with the issue of the video and oral recordings that were expunged from the evidence on account of the fact that the learned trial judge concluded that the mediums availed to the court on which these recordings had been recorded were empty. The learned trial judge came to the conclusion when the court organised a viewing session and the recordings failed to play.

89. We have examined the said DVDs and found that they were not actually empty. Each of them had a file. Isaac Kayemba, the expert witness for the 2nd respondent had similarly found files on the said DVDs. VR had a file with .dat extension which we were able to open and we watched a video recording in the local vernacular language spoken in the area. We were able to watch the mp4 file that was on the other DVD. As Isaac Kayemba pointed out it had one scene. We were able to play the oral recording which was also in the local vernacular language.

90. We must fault the appellant for the manner in which this evidence was presented. Given that it was either to be viewed or listened too and it was clearly not in the language of the court, it was incumbent on the person who wanted to produce the same to have prepared not only copies of the recordings, but transcripts of the same in the actual language in which the recording was and then a translation thereof in the language of the court, and the persons transcribed and or translated the same should have sworn affidavits attaching the transcript and the translations done. It was not enough just to produce copies of the recordings. It had to be transformed into a form that would have assisted the court and parties to appreciate the content of the evidence of the recordings. This is so especially in light of the requirement that the trial of these election petitions shall be based on affidavit evidence.

91. If the video recording contained no discernible oral recording the person transcribing the same would say so.

92. When dealing with information technology parties and the court need to remember adage popularly known as Murphy's law which is that

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‘Anything that can go wrong will go wrong.’ When a viewing session was prepared it could easily go wrong for a variety of reasons including the computer on which the DVDs were played not being able to read the DVDs if it did not have the right software in relation to the software that was used to copy and save the recordings.

93. As it is the evidence is available but not transformed into a form that the court can make use of. Had the appellant’s counsel followed the traditional way such evidence is introduced in court which is by way of transcription of the recording and translation into the language of the court well before the hearing date of the cause in which it is required to be adduced and played or watched we are sure that they would not have suffered the mishap they fell into. Or it would have been possible to avert the same.
94. We turn to the allegations in respect of the 31st December 2015 at Kitabi Catholic Church. The appellant’s evidence in this regard is provided by a number of witnesses including David Kakama, Charles Byaratunga (who swore another affidavit for the 2nd respondent recanting his affidavit in support of the petition), Tumusiime Joanness, Consolanta Tumuhairwe, Lawrence Barugahare and Muhereza Charles.
95. David Kakama, Tumusiime Joanness, Consolanta Tumuhairwe, Lawrence Bagaruhare and Muhereza Charles were cross examined.
96. For the 2nd respondent evidence in relation to the bribery allegations at Kitabi Catholic Church on the 31st December 2015 to KIPYACA were the affidavits of the 2nd respondent, Natuhwera Evalyne, Kushaba Dinavence, Tubenawe Osward, Kapokya Gyaviira, Bonny Ahimbisibwe, Byarutanga Charles, Nuwanyama Moses, Twijukye Innocent, Bimanywarugaba Timothy and Ndyomugyenye Maxima responded to the allegations of bribery.
97. From a reading of all the affidavits in question it is clear that both the 2nd respondent and Mr David Kakama were present at Kitabi Catholic Church on the 31st December 2015 where preparations were being made for the visit of the President of the Republic of Uganda to the church. David Kakama was the head of a youth catholic organisation known by its acronym of KIPACYA. The 2nd respondent was involved in preparation of the President’s visit and he spent the whole day at the church. There was general cleaning and decoration to prepare for the visit and members of KIPACYA were involved in the cleaning and decoration which lasted for the whole day.



98. In the course of the said activities David Kakama swore that he was called by the 2nd respondent who told him he was not receiving support for his campaign from KIPACYA. The 2nd respondent asked him to invite his committee to meet with him. There were at the Priest's office. Kakama called his executive members to meet the 2nd respondent. These included Kakama himself, Tumusiime Joanness, Consolanta Tumuhairwe, Lawrence Barugahare, Charles Byarutunga and Muhereza Charles. The 2nd respondent gave them Shs.150,000.00 to buy a goat for their football competition; Shs.100,000.00 to buy 2 footballs and promised them uniforms to be delivered later. He urged them to vote for him and urge their members to vote for him as well.

99. Kakama later gave the money to the Treasurer and subsequently 17 pairs of uniforms were delivered and kept by the treasurer. The goat was purchased by the Treasurer and Mr Muheraza Charles.

100. The affidavits for the appellant witnesses supported that of David Kakama, save for Charles Byarutunga who recanted his supporting affidavit in another affidavit sworn for the 2nd respondent.

101. For the 2nd respondent there was a denial that the 2nd respondent ever paid any money to David Kakama on that day or that he donated uniforms to KIPACYA. The affidavits were by persons who claimed to be members of KIPACYA and had participated in the cleaning exercise on that day at the Catholic church for preparation of President's visit.

102. Lawrence Barugahare claimed in his affidavit that he had been invited to the 2nd respondent's home together with Charles Byarutunga. The 2nd respondent attempted to persuade him to change his mind and swear another affidavit for him contradicting the earlier one he had sworn for the appellant. The 2nd respondent offered to pay him some money. The witness refused to change his mind. He stated that he was not surprised that Charles Byarutunga had sworn another affidavit as he had presumably succumbed to the overtures from the 2nd respondent.

103. In cross examination he stated categorically that Charles Byarutunga had not attended the meeting on the 31st December 2015 when the money was paid to the members. He claimed that anyone who said to the contrary was a liar. This is in contradiction to the evidence of David Kakama. This raises a question as to who of the two was telling the truth in this matter.

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104. Charles Byaratunga, having sworn an affidavit for the petitioner should not have been approached by the 2nd respondent, the adverse party in this to swear an affidavit, recanting his earlier affidavit. Ethical rules bar one side from approaching the witnesses of the other side. They ought to have waited for him in court and under cross examination expose the falsehoods in his earlier affidavit. In our view this affidavit should have been rejected for being wrongly procured.

105. Notwithstanding the foregoing it appears that Lawrence Barugahare in denying that Mr Charles Byaratunga had been present at the meeting in question when David Kakama states that he had been present might have been deliberately telling a lie given the u-turn executed by Byaratunga. This would be deliberate. His evidence becomes questionable if he was telling a deliberate lie. In any case if Lawrence Barugahare was telling the truth then David Kakama must have been telling a lie on an important aspect of the case as to who were present at the time of giving the bribe.

106. Given this unexplained contradiction the evidence for the appellant becomes suspect and unable to cross the threshold necessary for proof of bribery alleged.

Bribery at Kantunda Trading Centre on 18th February 2016

107. The appellant alleged that on voting day there was bribery of voters at Grace Nabale's bar in Kantunda Trading Centre, 200 metres from the polling station. He had the evidence of 2 witnesses; Mary Kasingye and Asanasio Beineki. Mary Kasingye stated that she visited this bar on voting day and one Dominic Murezi, a known agent of the the 2nd respondent gave Shs.100,000.00 to the bar owner, Grace Nabale and ordered to supply drinks to the patrons that were to vote for 2nd respondent. She took an oral recording of what went on in that bar and the same was attached to her affidavit. Mr Beineki stated that he had been bought drinks by one Dominic Murezi who insisted on accompanying him to the polling station and ensured that he voted for the 2nd respondent.

108. For the 2nd respondent Grace Nabale the bar owner denied that anything of the sort as alleged by Mary Kasingye had taken place in her bar. She denied receiving any money from one Dominic Murezi. Dominic Murezi, denying what was alleged, indicated that on the day in question he never visited Nabale's bar as he was the polling agent



for President Museveni at Kantunda and spent the whole day at the polling station.

109. The learned trial Judge found CD 'AR' on which the alleged recording was made empty. We have listened to both the copies in our respective files and the court file and found that indeed they bear a file which was able to play. The language on the recording was the vernacular language of the area we presume. This tape was not transcribed. Neither was it translated. For evidential purposes we are unable to make use of the same save perhaps to say that the evidence of Mary Kasingye cannot be attacked on account of a so called empty recording as the 2nd respondent's advocates did in the court below.

110. When all evidence is considered on this incident which we have done it is clear that it is not the 2nd respondent that is indicated to have personally participated in this incident. Neither has it been proved that the person alleged to have paid for the drinks was the agent of the 2nd respondent or that he did so with the knowledge and or authorisation or permission of the 2nd respondent. Agency has not been established.

Bribery at Mafari Albert's home

111. It was contended for the appellant that there was a meeting at Mafari Albert's home where the 2nd respondent paid shs.1,500,000.00 for distribution to the people present in order for them to vote for the 2nd respondent and shun the appellant. David Kakama came across that meeting and present were the 2nd respondent's agents. He observed the meeting and made a video recording of the same that was annexed to his affidavit as 'VR'. At that meeting he saw Barirere James, AmunsimireAnnet, Vincent, Edna Kyomukama, Basyamuka and other people present. The sole purpose of the meeting was to discuss bribery of voters on behalf of the 2nd respondent. He talked to Barirere James and Mafari Albert who told him they were agents of the 2nd respondent and produced letters of appointment which he annexed to his affidavit.

112. Barirere James swore an affidavit confirming the evidence of David Kakama. He stated that on the instructions of the 2nd respondent he distributed the money he received to Wabula Mohamed, Prutazio, LoycoMasiga and Fred Mugisha. Mr Mugisha Fred stated that he was a registered voter at Parish headquarters, Numba parish, Bumbaire Sub county, Igara East County, Bushenyi District. On the night of the 17th February 2016 an agent of the 2nd respondent, a one Barirere came to his

home and gave him Shs.20,000.00, asking him to vote for the 2nd respondent.

113. To rebut the evidence of the appellant the 2nd respondent adduced the affidavits of Fulgence Kimunyu Kyohire, Muhumuza Serian, Mugisha Robert, Mugabe Gregory Rampakani Mary and his own affidavit. The 2nd respondent states that he never appointed Barirere James and Mafari Albert as his agents and that the letters of appointment are a forgery. Fulgence Kimunyu states that Barirere James and Mafari Albert were not agents of the 2nd respondent as they did not have sub county and parish agents but only supervisors and coordinators. That no meetings were held at Mafari Albert's home. The meetings were held at Mugarura Ephraim. The 2nd respondent's campaign supervisor for Bumaire Sub county was Fulgence Kimunyu.

114. At the trial the evidence in relation to this incident was partly discredited on account of the fact the video recording of the incident in Mafari's home had not played and the court concluded that this was hoax. We have found that indeed there was a recording which is available but it is not in the form that we can make use of it as it is neither transcribed nor translated from the vernacular language to English the language of the court. The failure to play this recording during the trial does not necessarily lend credence to the 2nd respondent's defence that this incident did not take place. The failure to play the same is capable of other explanations.

115. We have examined the appointment letter of Berirere James as an agent of the 2nd respondent and the signature on it of the 2nd respondent is similar to the 2nd respondent's signature on the letters of appointment of agents attached by his own witnesses like Fulgence Kimunyu. The 2nd respondent called it a forgery but did not demonstrate in any way how we can conclude that it is a forgery.

116. None of the witnesses for the 2nd respondent participated in the meeting in Mafari's home and could not have been privy to what went on there. The claim that the Mafari's home did not host meetings of the 2nd respondents agents fails in light of the evidence available that a meeting took place.

117. Mr Barirere James stated that together with Mr Mafari Albert they received money from the 2nd respondent for distribution to voters, especially the agents of the appellant. They held a meeting in Mafari Albert's home and distributed the money to the agents of different

areas. Barirere paid a voter, Mr Mugisha Fred, shs.20,000.00 and asked him to vote for the 2nd respondent.

118. We are satisfied that Barirere James's evidence is credible and together with Mugisha Fred it is sufficient to establish that on the instructions of the 2nd respondent Mr James Barirere paid out bribes to several people including Mr Mugisha. We are therefore satisfied that the 2nd respondent, through an agent, committed the illegal act of bribery of a voter, on the night of 17th February 2016, contrary to section 68(1) of the Parliamentary Elections Act.

Bribery at Kantojo Village, Rutooma Parish on 17th February 2016

119. The only evidence in support of this allegation is Mr Edwin Karugaba. He states in his affidavit that he found a group of people gathered in the home of the LC1 chairman of Kantojo village. The 2nd respondent arrived and gave the group Shs.1,600,000.00 and told them to share this money. The group was composed of the appellant's supporters who had apparently been gathered to receive some money.

120. No names are provided as to who were in this group. It is not indicated how the money was distributed and who was paid. Neither is it asserted they were voters. This evidence falls of establishing the illegal practice of bribery.

Whether the evidence covered in the videos and audio recordings is credible and authentic

121. This has already been covered. We may repeat that this evidence was not in a form that we could make use of. It was neither transcribed nor translated to English the language of the court. We could not therefore determine whether or not it was credible and authentic.

What remedies are available to the parties?

122. This Court held in Election Petition Appeal No. 24 of 2006 Kirunda Kivejinja Ali v Electoral Commission that

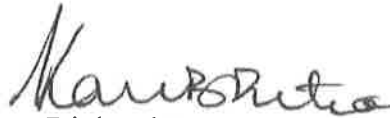
'The commission of an illegal practice once proved to the satisfaction of the court, is sufficient in itself under section 61(c) of the PEA, to set aside the election of a candidate as a Member of Parliament.'

123. This Court has found that the 2nd respondent committed the illegal practice of bribery contrary to section 61(1) of Parliamentary Elections Act which is sufficient cause for annulling the election.

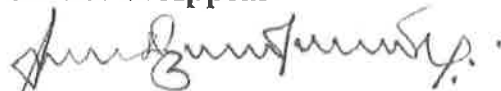
124. This Court has also found that the 2nd respondent committed the offence of making a false statement concerning the character of a candidate contrary to section 73 (1) of the Parliamentary Elections Act. This too is sufficient cause in itself to annul the election under section 61(1) (c) of the Parliamentary Elections Act.

125. This appeal is allowed with costs against the 2nd respondent. The election of the 2nd respondent is annulled and fresh parliamentary elections are ordered for the Igara County East Constituency. As the appeal against the 1st respondent failed the appellant shall pay the 1st respondent's costs here and below.

Signed, dated and delivered this 3rd day of October 2017



Richard Buteera
Justice of Appeal



Fredrick Egonda-Ntende
Justice of Appeal



Alfonse Owiny-Dollo
Justice of Appeal

3/10/2017

Queen Mwanza for Appellant
Ronald Tumwine for 2nd Respondent
Eric Salubi for 1st Respondent
Ct. Judgment read in Court