

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
ELECTION PETITION NO.06 OF 2006

JOHN COSSY ODOMEL PETITIONER

VERSUS

1. THE ELECTORAL COMMISSION)
2. LOUIS OPANGE)RESPONDENTS

BEFORE: AG. JUDGE REMMY KASULE

JUDGMENT:

The Petitioner brought this Petition to challenge the results of the Parliamentary Election for Member of Parliament for Pallisa County Constituency in the Parliamentary General Elections held throughout the country on 23rd February, 2006.

The Petitioner, second Respondent, and four others, were candidates for the parliamentary seat of this Constituency.

The first Respondent organized and conducted the elections.

According to the final declaration of the election results, the second Respondent was declared and gazetted the winner with 23,143 votes; the Petitioner was run-up with 19,090 votes. Each of the other candidates got less than 5000 votes each.

Petitioner contends that he is aggrieved by the result of the election and, as such, he petitions to set aside the election of the second Respondent; and for an order for a re-election in the Constituency.

The grounds for contesting the result are that the election was conducted in contravention and contrary to the specific provisions and/or principles of the Constitution, the Electoral Commission Act, Cap 140 and the Parliamentary Elections Act [17 of 2005].

Petitioner contends that the non compliance with the electoral laws and the principles laid down therein, affected the result of the election in a substantial manner. Specific instances of non-compliance are set out in the petition.

The petition is supported by Petitioner's affidavit and another in Rejoinder. Petitioner also filed in Court 35 affidavits, contained in three Volumes, deponed to by his witnesses.

The first Respondent filed an answer to the petition, contending that the elections were conducted in accordance with all the electoral laws and principles. The voters register had been updated, the results properly tallied and the polling process conducted in accordance with the law. In the alternative, the first Respondent pleaded, that if there were any irregularities or non compliance with the electoral laws, such non-compliance or irregularities did not affect the outcome of the election in a substantial manner. The first Respondent denied any knowledge of the electoral offences allegedly committed by the second Respondent.

The Returning Officer, Jackson Higenyi Pabire, as well as Counsel for first Respondent, R. B. Kabayiza, deponed to and filed affidavits in support of the case for first Respondent.

The second Respondent, too, filed an answer to the petition. He denied that Petitioner was an aggrieved party. To him, the election results were valid: the same having been held in accordance with the provisions and

principles of the Electoral Laws. Second respondent further denied that, any acts of intimidation, harassment, or violence, were done by himself or his agents or that he or his agents had committed any electoral illegal practices and/or offences, or had had knowledge of any irregularities or non-compliance committed by the first Respondent.

The second Respondent deponed to and filed an affidavit in support of his answer to the petition, and another affidavit in Rejoinder. Another 51 affidavits were deponed to by various witnesses and filed in Court, also in three Volumes, in support of the second Respondent's case.

In this Judgment witnesses will be referred to, as much as it is practically possible, as they appear in the respective Volumes of affidavits of the respective parties filed in Court.

At the hearing, Learned Counsel, Byamugisha Kamugisha, appeared for Petitioner, Ssekaana for first Respondent and Twarebireho for second Respondent.

The following were taken as agreed upon facts at the conferencing:-

- (i) Both Petitioner and second Respondent were candidates for Pallisa Constituency in Parliamentary elections held on 23rd February 2006.
- (ii) The first Respondent declared the second Respondent the winner of the election; with second Respondent getting 23,143 votes, Petitioner, 19,090 votes; and the margin of votes between the two being 4,053 votes.
- (iii) The contest of the Election was amongst six candidates; and, in addition to the Petitioner and second Respondent, the rest of the contestants were:
 - Adome Anthony: who got 4904 votes.
 - Itiko Moses : who got 603 votes
 - Wamuseke Padere Claudius : who got 1261 votes
 - Ourum Okiror Sam: who got 1092 votes.

The parties framed the issues as follows:-

1. Whether the Parliamentary Election for Pallisa County Constituency was held in contravention of the provisions of the Electoral Laws.
2. Whether non-compliance with the laws, if any, affected the result of the election in a substantial manner.

3. Whether any illegal practices or other election offences were committed by the second Respondent personally or by his agents or supporters with his knowledge, consent or approval.
4. Whether the Petitioner is entitled to the remedies sought.

On the whole the documents attached to the affidavits filed in the Petition were admitted as exhibits of the party filing or for whom the affidavit was filed. Only annexure "C" of report on Parliamentary Elections, 2006, for Pallisa County by Pallisa Police Station dated 27th June, 2006 to the affidavit of Mr. Joseph Mwengi, dated 5th July 2006, was not admitted as an exhibit this way. Later the police report of "complaints recorded at Pallisa Police Station" dated 30.06.06, was admitted in evidence by consent of all Counsel.

With leave of Court, each Counsel was allowed to cross examine those witnesses identified by respective Counsel, on the contents of their affidavits. Both Petitioner and second Respondent were amongst those Cross-examined.

The election of a Member of Parliament can only be set aside on the grounds set out in Section 61(1) of the Parliamentary Elections Act, [17 of 2005] if proved to the satisfaction of the Court.

For purposes of this particular Petition the relevant grounds in the section are:-

“

- (a) **noncompliance with the provisions of this Act relating to elections, if the Court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and the failure affected the result of the election in a substantial manner;**
- (b)
- (c) **That an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval;”**

The petitioner bears the burden of proof to prove to the satisfaction of Court the ground(s) of the petition, if he is to succeed. **See: Supreme Court**

Election Petition No.1 of 2001: Rtd. Dr. Besigye Kiiza vs. Museveni Yoweri Kaguta and The Electoral Commission. The grounds have to be proved on the basis of a balance of probabilities: **Section 61(3), the Parliamentary Elections Act [Act 17 of 2005].** Because setting aside an election of a Member of Parliament is such a grave matter, since it questions the decision of choice of a parliamentary representative of the electorate, after such electorate has exercised their democratic right to do so, and when the election is set aside, the Member of Parliament affected, suffers serious personal remorse and adverse financial effects, the court must ensure, that a petition is only allowed, where the grounds of the Petition, have been proved at a very high degree of probability. See: **HC-05-CV-EP 002-2001 Karokora Katono Zedekia vs. Electoral Commission and Kagonyera Mondo: (Musoke-Kibuuka .J)**, unreported. The first issue is whether the Parliamentary Election for Pallisa County Constituency was held in contravention of the provisions of the Electoral laws.

The case of the Petitioner is that the election was conducted in Contravention of the electoral laws, namely, the Constitution, the Electoral Commission Act and the Parliamentary Elections Act. There was non-

compliance with the principles laid down in the said laws and the non-compliance affected the result in a substantial manner, rendering the election of the second Respondent invalid.

The instances of non-compliance, according to Petitioner were massive and widespread. These consisted of acts of harassment, intimidation, violence, bribery against the Petitioner's supporters and agents, during the campaigns and at election, massive rigging of votes through ballot stuffing, multiple voting, pre-ticking of ballot papers for voters; and manipulation of declaration of results forms. There was also falsehoods in the counting, tallying and declaration of results in a partial manner, signing blank results declaration of results forms, failure to up-date the voter's register, denial of voters with voters' cards from voting, transfer of voters to other polling areas without their knowledge and failure to sensitize voters of changes in polling stations and registers in a timely manner, resulting in 15,405 voters, all supporters of Petitioner being disenfranchised. There was also use of abusive and sectarian language against Petitioner in campaigns, votes were counted beyond the time allowed under the law; and there was failure to deal with Petitioner's complaints.

The court will proceed to deal with these instances and determine, whether on the basis of the evidence adduced, the same have been proved or not.

Harassment, intimidation and violence:

The evidence for petitioner, of an instance of harassment, intimidation and violence, is provided by Charles Odere, [Petitioner's Volume 1 witness No.10], who deponed that on 23.02.06 at 2.00 p.m he met the District Security Officer, [DISO], Lt. Tumuhimbise, who was with second Respondent and Lt. Teopista Opar travelling in a pick-up. There were also other armed soldiers on the pick-up. The DISO warned Mr. Odere about ferrying voters. Mr. Odere explained to DISO that he was not carrying voters. Thereafter Mr. Odere lodged a complaint to Pallisa police, the RDC and Movement Chairman. Mr. Odere's evidence was in the main supported by that of his hired driver, George Webomba in an affidavit of 28.07.06. However, Mr. Odere did not state in his affidavit where exactly this encounter, with DISO took place. George Webomba stated that the same happened while they were driving on Gogonyo Road from Pallisa Town at about 4.00 p.m. To Mr. Odere the encounter was at about 2.00 p.m. This complaint is not recorded as one of the complaints received by Pallisa Police Station in their report of 30.06.06, tendered as exhibit P1 in

the proceedings. The discrepancies in the evidence of the two remained unexplained.

The DISO Lt. Aaron Tumuhimbise, in his affidavit dated 26.07.06, stated he was in office on voting day of 23.02.06, when the 2nd Respondent went to him complaining that Mr. Odere was transporting voters. He noted the matter, did not arrest Mr. Odere, as the report was received too late in the day. According to him, there were no soldiers moving about during the election. The exercise was peaceful. No one else deponed that he was threatened by DISO or UPDF soldiers.

The discrepancies in the evidence of Mr. Odere and that of his driver, Mr. Webomba, raise doubt about the genuineness of this incident. However, even if, the versions of Mr. Odere and his driver Mr. Webomba, were to be believed, it is difficult to see how their meeting the DISO influenced the result of the election. Neither Mr. Odere nor Mr. Webomba was prevented from voting. None of the two asserts that any one of those they were with, was, in any way, hindered from voting or directed to vote in a particular way. Both witnesses do not state that any of the armed soldiers on the pick-up harassed any one. Court received no other evidence that DISO or UPDF soldiers threatened any one at the election anywhere in the

Constituency. The court, on the basis of this evidence, is unable to hold that this instance of alleged intimidation is established to the court's satisfaction.

The further claim by Petitioner, that other state agents and functionaries interfered with the electoral process through acts of violence, intimidation and harassment of Petitioner's supporters and agents remained unsubstantiated and thus not proved.

As to another incident of harassment, intimidation and violence, Mr. Ramszani Dongo [Petitioner's Volume 1 witness No.11], of Rwatama, Apopong sub-county, deponed that second Respondent's agents threatened his wife that she would fail council elections because she did not support the second Respondent. Who these agents of second Respondent were is not disclosed. The deponent does not explain whether his wife was in any way prohibited from voting the way she wanted to vote by this threat. There is no evidence that any of the respondents authorized the threat. To the extent that the threat was communicated to the deponent by his wife, who never herself made an affidavit, the same is hearsay evidence. Court holds such a threat as not proved.

Then there is the assertion of Juma Pari, [Petitioner's Volume 1 witness No.24], of Morukokume village, Agule Sub-County who deponed, in support of the petition, that on 22.02.06, at Agule Trading Centre, while with the second Respondent, the crowd demanded that he, the witness be handed over to them so that they beat him. But he was saved from such a beating by Mzee Apuron. Later, however, he was beaten by Midadi Okello, Okoboi, and Agoa Sam, all supporters of second Respondent.

Mr. Juma Pari does not say that, at any one time, second Respondent ordered his being beaten; or that, those who beat him, did so on the instructions of second Respondent; or with second Respondent's knowledge and consent. He also does not claim to have reported his being beaten to any authority. He does not claim that what happened to him influenced him, or any other voters, as to how he or they voted. Court does not find his evidence to have proved any harassment, intimidation or violence.

Tom Eiyat, Tatambuka Rogers, [Petitioner's Volume 1 witness Nos 2, and 27], Peter Omeke, all, in support of the petition, deponed that the second Respondent intimidated them at Sarope Petrol Station. Second

Respondent is alleged to have told them on 23.02.06 that since they did not support him, he will deal with them after the elections. None of the three explained to court whether the second Respondent's threat was uttered before or after each one of them had voted; and whether any one of them was affected by the threat as far as the election was concerned.

The second Respondent admits meeting the three at the said Petrol Station, but maintains that all that he told them was that he would respect the results of the election.

Court had the opportunity of observing the demeanour of Tom Eiyat and Peter Omeke; as well as that of the second Respondent during their cross examination on this issue. Tatambuka Rogers was not cross examined. The second respondent was straightforward and confident, in explaining, what happened in this incident. Tom Eiyat and Peter Omeke were not forthright in their answers. They offered no explanation as to how the threat, if any, affected them; and why they had not pursued the complaint with Pallisa police since Peter Omeke reported the same on 23.02.06 to date.

Court prefers to believe, as truthful, the evidence of second Respondent and rejects that of Tom Eiyat, Peter Omeke and Tatambuka Rogers. Court holds the Sarope Petrol Station incident not proved and therefore not to have affected the result of the election.

The Petitioner alleged that, in the campaigns, the second Respondent engaged a gang of criminals/suspects and or youth brigades, to unleash terror, violence, intimidation and threats upon Petitioner's agents and supporters. Some of these criminals/suspects had been arrested on 27.03.06 after the election and charged with murder. The second Respondent had, in apparent fulfillment of a promise he made at the election campaigns, gone to their rescue by protesting their arrest in Parliament as per the Hansard of 28.03.06.

The court received no concrete evidence of the second Respondent recruiting these criminals/suspects and/or youth brigades, to harass the Petitioner and his supporters during elections. As an elected Member of Parliament, second Respondent was entitled to make the remarks he made in Parliament concerning people of and from his constituency. He made

the remarks after the election had already taken place and therefore could not have had a bearing on its result.

There was no substantial evidence, worthy considering by court, to support the allegation of drunkards sponsored by second Respondent taking over Polling Stations, intimidating and stopping voters from voting for Petitioner, and the first Respondent failing to stop them. These allegations, Court finds, are also not proved.

Bribery by use of money:

The case of the Petitioner is that money was used to bribe voters in the election to vote for the second Respondent against the Petitioner.

This bribery according to Petitioner was done by the second Respondent in person; and/or by his agents and supporters with his knowledge and consent.

Emmanuel O'neil (Petitioner's Volume 1 witness No.1), the constituency election co-ordinator of Petitioner, testified that Pallisa Police Station told him that there was voter buying in Kameke, Agule, and Gogonyo Sub-counties.

Oloit Robert, (Petitioner's Volume 1 witness No.5), of Adal village, Pallisa Sub-county, deponed in support of the petition, that he saw second Respondent at Adal village give Louis Okwatum Shs.120,000/= to give to the people so that they vote for him. Tukei Robert, (second Respondent's Volume II witness No.7), received shs.80,000/=, of this money, to distribute to men, and Dolosi Takali received shs.80,000/=, to distribute to women. The witness saw Okoyo Gilifasio, Otuba Moses, Nakirya Rose and Apolot wife of Opolot receive some of this money.

Other Petitioner's witnesses, Ayisu Clement and Ochola Peter, (Petitioner's Volume 1 witness Nos 6 and 7), both of Rwatama village, Apopong Sub-county deponed that on 22.02.06 at Kaukura Primary School, second Respondent, gave Shs.110,000/=, in denomination of shs.1000/= to his agent to distribute, the youth to take shs.30,000/=, women shs.60,000/= and the men shs.20,000/=. Ayisu Clement saw both Ayisu and Ogada receive shs.500/= each. Ochola Peter also saw Odong and Opio get some of this money.

It is further asserted for Petitioner that the second Respondent was heard on 22.02.06 by Ekaba Charles (Petitioner's Volume 1 witness No.8) at Kamolo, Apopong Sub-county, announce that he had given his agent, Okwatum Louis, (2nd Respondent's Volume III witness No.14), Shs.40,000/= who in turn had handed over the money to Adongoto Micheal and it was distributed. Amongst those who received, were Agule Clement, Okilangole and Opolot Francis.

Tukei John Bosco, Kowa Joseph and Itabai Joseph of Akumi village, Apopong Sub-county, saw on 22.02.06, the second Respondent give Shs. 200,000/= in denomination of Shs.1000/= to Otim Martin, [2nd Respondent Volume 1 witness No.2], who took Shs.100,000/= and the rest to Okello, the Youth leader, to distribute to the youth. The money was distributed there and then. Itabai Joseph saw Okurut Charles, Nasoyo Seganyi, Omio and Ochan; amongst others, receive some of this money.

Okiria Willy, [Petitioner's Volume 1 witness No.20], saw second Respondent at Kadumire village, Apopong Sub-county, leave shs.150,000/= with Osakan Sam, his agent, who distributed the same; and witness received shs.1000/=.

According to Opio Ekwenye [Petitioner's Volume 1 witness No.25], second Respondent gave out money at Agule High School, Kameke Sub-county.

Adome Anthony, [Petitioner's Volume 3 witness No.1], also testified that he was informed that second Respondent gave out shs.250,000/= at Katukei Trading Centre.

The Petitioner and Adome Anthony, both Parliamentary candidates, admitted that, neither of them, reported any bribery case to police or to the first Respondent. The Petitioner stated that he raised the issue of bribery at the candidates meeting. According to evidence on record, the candidate's meeting was there on 03-02-06. Yet the stated evidence of alleged bribing of voters with money gives the dates of 21.02.06 and 22.02.06 as to when it took place. This was long after the Candidate's meeting of 03.02.06. Court therefore infers that Petitioner and Mr. Odome Anthony did not report to police or first Respondent or to any authority, whatsoever, the bribing that they allege took place after 03.02.06; and particularly on 22.02.06. The non-reporting of such a crime throws doubt on the truth of allegations of bribing voters.

Martin Otin, who deposed for second Respondent and was with him at campaigns, saw no bribing at all in Gogonyo, Kasodo, Puti-puti and Kamege Sub-county. He was supported in this by Martin Isiret, in his affidavit, dated 27.07.06, and Joseph Ekanya Obiya, (2nd Respondent's Volume 1 witness No.20), NRMO Chairman, with regard to Puti-Puti Sub-county.

Amoding Betty, (2nd Respondent Volume 1 witness No. 3), was at a rally at Kaukuru Primary School and she saw no bribing of voters at all. Samson Osakan, (2nd Respondent Volume 1 witness No.1) co-ordinator of elections for second Report saw no bribery in the Campaigns and the election. Lawrence Olinga, [2nd Respondent Volume 1 witness No.18), a village defence secretary in Kalaki Sub-county, did not witness any bribing. So too did Jerome Eriamu, LCI Chairman, Kalaki village. John Bosco Obete [2nd Respondent's Volume 1 witness No. 7], a District Councillor, and outgoing LCIII Chairman saw no bribing at Kaukuru Primary School. William Emurwon, LCIII Secretary for security, Agule Sub-county, saw no, and received no reports of any bribery. So too did Robert Otuju, John Opio

and Tukei Akwach (2nd Respondent Volume 1 witnesses Nos 9, 10 and 11), all of Kameke Sub County.

As regards Kamuge Sub-county, Fred Mugoda and Hamuza Onepur (2nd Respondent Volume 1 witnesses Nos 12 and 13), deponed that there was no bribing in the Sub County. Charles Ocai and John Auk did not see or experience any bribing in Kasodo Sub-county.

According to Muhammed Anguria and Madina Namaja, (2nd Respondent Volume 1 Nos.16 and 17), no bribing took place in Gogonyo Sub-county.

Jackson Higenyi Pabire, the Returning Officer, deponed that the elections in Pallisa County were peaceful, free and fair, and there was no denial of the right to vote. He was not called, by choice of Petitioner and his Counsel, to be cross examined, or to have it put to him, that there was bribing of voters, by second Respondent and his agents, by payment of money or otherwise. His evidence remains unchallenged.

The second respondent testified that he stopped his campaigns on 21.02.06 at 5.00 p.m; and he left for Kampala, on that day, to obtain funds

for his agents. He returned on 22.02.06 at 3.00 p.m; passed through Kibale District, away from his constituency, and went straight to his home in Kameke Sub-county, where he stayed up to voting on 23.02.06. He never distributed money, salt or any other article, to any voters, for purpose of bribing them. He only gave money to his agents by way of facilitation for transport and lunch during polling.

Specifically with regard to the shs.160,000/=, stated by Oloit Robert to have been given to Louis Okwatum, by the second Respondent, at Adal village, Pallisa Sub-county, the said Louis Okwatum was cross-examined in Court by petitioner's Counsel. Okwatum admitted, being agent of second respondent, and also having received money from second Respondent, being money for lunch for the second Respondent's agents in Agule Sub-county. He received this money on 21.02.06. On 22.02.06 he remained at his home.

Robert Tukei, alleged to have received shs.80,000/= of this money, denied such receipt. He was cross-examined by Petitioner's Counsel. He denied any knowledge of Oloit Robert of Adal village. He was not cross-examined, specifically on the assertion, that he had received shs.80,000/=

from second Respondent to bribe voters. Gilifasio Okoyo, alleged to have received some of this money, deponed an affidavit dated 24.07.06 denying any such receipt.

Dolosi Takali, Otuba Moses, Nakirya Rose, and Apolot wife of Opolot, also alleged to have received some of this money, never made any affidavits, to confirm and/or explain the receipt.

Court observed the demeanour of Okwatum Louis and Robert Tukei. They were steady and straightforward in their answers to questions put to them. They appeared to be telling the truth. Court believes their evidence as truthful. The evidence Oloit Robert, who never reported the alleged bribery to any authority, and offered no explanation for his not doing so, is suspect and therefore cannot be relied upon by Court.

Aisu Clement, Ochola Peter and Okiror Ibrahim claimed that second Respondent gave shs.110,000/= to bribe voters to vote for him and to reject Petitioner, at Kaukura Primary School, Apopong Sub-county. According to Aisu Clement and Ochola Peter, the second Respondent gave this money to Opus Constant, his agent, to distribute to the youth, women and men.

According to Okiror Ibrahim, the money was given to Okwatum Louis, a different agent, of second Respondent. This discrepancy as to whom the money was given raises doubt about the truth of the allegation.

Aisu Clement, in paragraph 3 of his affidavit, states that the second Respondent asked people to vote for him; and not the Petitioner whom he had already given a job to distribute drugs in hospitals in the Constituency. Before Court the witness stated that second Respondent did not address a rally and he did not talk much; just requested every one to elect him and then he went away. The witness gave no explanation as to why his version in Court was different from what he stated in the affidavit.

Yet, another deponent, supporting the petition, Ramaszani Dongo, who was at the same meeting, heard second Respondent state that Petitioner had been a failure as Inspector General of Police; and that he never gave jobs to people from the Constituency. The same witness saw second Respondent, before leaving the rally, hire bicycles to be used for Campaigning and to ferry people to various polling stations on 23.02.06. This is not what Aisu Clement saw and heard of the second Respondent. The two witnesses are therefore contradicting each other.

The second Respondent denied giving any money at Kaukura Primary School. Okwatum Louis admitted receiving money for lunch of agents of Agule Sub County from second Respondent on 21.02.06. Constant Opus (2nd Respondent Volume III witness No.1), was cross-examined in Court. He stated that on 22.02.06 he was at his home, except for the period from 2.00p.m to 5.00 p.m. when he went to the Trading Centre. He did not meet the second Respondent on that day of 22.02.06. It was not put to this witness, and he was not cross-examined; on the allegation that second Respondent had given him shs.110,000/= money to bribe voters to vote the second Respondent and reject the Petitioner.

None of those alleged to have received some of this money deposed any affidavits. The evidence of Aisu Clement, Ochola Peter, Okiror Ibrahim and Ramaszani Dongo is contradictory as to what was said and done by the second Respondent. It is, in the view of court, unsafe to rely on it, as establishing, the allegation of bribing voters by the second Respondent.

The evidence of Ekaba Charles that on 22.02.06 at Komolo village he heard second Respondent announce that he had given them shs.40,000/=

is too weak to be acted upon by this court. Mr. Ekaba Charles does not say that he saw second Respondent give the said amount of money. None of those alleged to have received the money deponed any affidavit. The purpose why the money was given is not stated. The second Respondent and Okwatum Louis denied having distributed any money to bribe voters. The court prefers to believe their evidence and rejects that of Mr. Ekaba Charles as regards this particular allegation.

With regard to the alleged bribe at Arikodi's home, Apopong Sub County, the second Respondent denied the same. Martin Otin, deponed, in opposition to the petition, that he was with the second respondent at his rallies. The second respondent or his agents never left any money for distribution to the people generally. Samson Osakan, who is alleged to have been driving the second Respondent on a Motor-cycle, also denied that any money to bribe voters was being given out by second Respondent and or his agents. These two witnesses were never required, by Petitioner and his Counsel, to appear and be cross-examined about their denials.

The court notes also that Tukei John Bosco, Kowa Joseph and Itabai Joseph all assert, that the second Respondent was at Arikodi's home rally

in Akumi village, between 5 and 5.30 to 6.00 p.m. on 22.02.06. This is more or less the same time that the second Respondent is also said to have been at Kaukura Primary School Rwatama village. The same person could not have been at two different places at the same time. Okurut Charles, Nasoyo Seganyi, Omio and Ochan, named as some of those who received the money, never deposed to any affidavit to confirm the allegation.

Court prefers to believe the evidence of the second Respondent and his witnesses, that he did not hold any rally at Arikodi's home on the 22.02.06 and that no money was given out by him and or his agents to bribe voters.

With regard to the alleged bribing of voters at Kadumire village, Apopong Sub-county, where the second Respondent is alleged to have left shs.150,000/= with Osakan Sam, who distributed the same, with Okiria Willy, Petitioner's witness, receiving shs.1000/=, the date when this was done is not stated. Okiria Willy did not report the incident to any authority. The second Respondent and Osakan Sam denied the allegation. Court prefers to believe the evidence of second Respondent and his witnesses,

to that of the Petitioner and his witnesses, and holds that, the alleged bribing has not been proved to its satisfaction.

Bribery by use of salt:

In support of Petition William O'neil, Petitioner's co-ordinator of the election, testified that he learnt that second Respondent's agents were to distribute salt to voters on the night of 22.02.06 at Agule Trading Centre, at Martin's shop. Later he came to know that Opesen Midad of Morukokume village, Agule Sub-county, had been arrested in connection with salt distribution.

Midad Opesen (2nd Respondent Volume 1 witness No.8) denied being involved in distributing salt, and explained that he had been arrested at the instigation of Petitioner's supporters, one of them being Eiyat Okutui Tom, Petitioner's coordinator of election in Agule sub county. A polythene bag was placed on him, and then those arresting him called Pallisa Police Station who arrested him. They by-passed the local police post, who apparently knew of his innocence. He made a statement at Pallisa Station; was told to get medical treatment; and was told to go away. He has never been required to report back since February 2006 to date.

No explanation was given as to why the case of Midad Opesen had to be referred to Pallisa Police Station, by passing the local police post, that was operating at the very scene of the alleged bribery. This tends to suggest that the arrest was being done on instructions of someone with some influence with Pallisa Police Station. At any rate, the fact that Pallisa Police Station took no further action against Midad Opesen tends to suggest that the police found the allegation to be unfounded. This court, for the same reasons, comes to the same conclusion.

Mr. Oloit Robert, petitioner's witness, alleged that on 22.02.06 at night, agents of second Respondent, one of them being Okimata son of Okwerede, distributed salt to women in Adal village, Kamoto Sub-county. The witness does not explain how he came to see, at night, the distribution. He does not name any one as having received any salt. He provided no proof that Okimata, son of Okwerede, one of those alleged to be distributing the salt, was an agent of second Respondent. The second Respondent denied the allegation. Court is unable to hold that there was bribery by use of salt, in Adal village, merely on the evidence of Oloit Robert.

The other allegation of bribery by use of salt, is that five cartons of salt were distributed on polling day by Constant Opus at Kaukura Polling Station. The allegation is made by Petitioner's witnesses Aisu Clement and Ochola Peter; whose evidence as to bribery by use of money has already been found wanting by Court. The second Respondent and Opus Constant denied this allegation. Court notes, in particular, that both Aisu Clement and Ochola Peter, assert that the salt was distributed on polling day without any explanation, as to where and how such distribution was done. It is also not explained, how the security and first Respondent's officials, just left the distribution to go on while polling was taking place. Court does not believe this evidence to be truthful. The allegation is not proved to Court's satisfaction.

Ekaba Charles, Petitioner's witness, asserts that 4 cartons of salt were given by second Respondent to Adong, wife of Semei, an agent of second Respondent, to be distributed at Komolo village, and that, Adong, the distributor, was knocked down. Okwatum Louis, who is alleged to have been around denied witnessing any bribery by second Respondent. Adong, the salt distributor, did not depone to any affidavit confirming the distribution and her being knocked down. No report was made of this

distribution to police or any election officials. The court, on the basis of this evidence, is unable to hold that, it is satisfied, that the allegation of bribery by distribution of salt at Kamolo village, has been proved.

Ojangole Pius Bonex, deponed for Petitioner, that at Adal village, Apopong Sub-county, on 22.02.06 starting at 8.00 p.m, salt was distributed door to door by Osakan Samson, most of the night. This witness does not state in his affidavit that second Respondent instructed or was even aware of the distribution. No one in particular is named as having received the salt. Court finds this evidence very wanting to prove an allegation of bribery.

Another Petitioner's witness Charles Ocan, (Petitioner's Volume 1 witness No. 12), of Kalaki village, Pallisa Town Council, deponed having seen second Respondent moving in a vehicle distributing salt on 22.02.06. The witness rang up the Petitioner and reported the incident to him. Witness offered no explanation, as to how he was able to identify only second Respondent seated in the Pajero vehicle UAD 192Y. No evidence was adduced as to who was the owner and/or driver of this vehicle. No one is stated as having received this salt. No one is stated as having been with the second Respondent. Court does not accept this evidence as credible.

Kabibu Bin Shaban, (Petitioner's Volume 1 witness No.13), of Kalaki village, Pallisa Town Council, another petitioner's witness deponed that on 23.02.06, after he had voted at 10.00a.m. he met seven women, who informed him, that LCI Chairman, Jerome Eriamu, (2nd Respondent Volume 1 witness No.19) had distributed salt to them, with a request that they vote second Respondent. He saw the salt with the women. He met other women whom he found picking their share of the salt at the said Chairman's home. Kote Fatuma, also of Kalaki village supported Kabibu Bin Shaban. She had been invited the previous evening of 22.02.06, by the Chairman LCI, to pass by and collect her salt and soap, that second Respondent had provided. She did so the following morning before voting. She found other women there. So too did Betty Agoyet, [Petitioner's Volume 1 witness No.15] also of Kalaki village, who too, deponed an affidavit in support of the petition.

None of these witnesses reported to police or to any election official what the LCI Chairman was doing. There is no evidence that the second Respondent is the one who supplied the salt and soap; or that the distribution was with his knowledge and consent. It was not established

whether the LCI Chairman was an election agent of the second Respondent.

Jerome Eriamu, Chairman LCI, Kalaki village deponed to an affidavit and was cross examined in Court. He denied the allegation of his having distributed salt to the women at his home. He was confident and firm in his answers to questions put to him. Court finds him a witness of truth. Court holds the allegation of bribery of voters by distributing salt by Jerome Eriamu, Chairman LCI, Kalaki village, as not proved.

Petitioner's witnesses Tukei John Bosco, Kowa Joseph and Itabai Joseph, deponed in their respective affidavits, that second Respondent at Arikodi's home, Apopong, gave 5 cartons of salt and Agoi Stella was in charge of distributing the same. Among those who received the salt were Okello, Ariongo and Otin.

The evidence of these witnesses has already been considered and found not sufficient to support an allegation of bribery by use of money against the second Respondent.

Specifically with regard to salt, both Tukei John Bosco and Kowa Joseph do not name any one as having received this salt from Agoi Stella, in charge of distributing the same. Itabai Joseph's affidavit evidence, is vague and contradictory, as it is to the effect that, the salt was handed apparently by second Respondent, to Okello, Ariongo and Otin, while at the same time, it states that Agoi Stella was the one in charge of distributing it.

Osakan Samson, the one alleged to have been transporting the second Respondent on a motor-cycle, and therefore ought to have witnessed what was going on, denied witnessing any salt distribution.

For these reasons, in addition to those relied upon in case of bribery by use of money, the court rejects the evidence of Tukei John Bosco, Kowa Joseph and Itabai Joseph, as being not reliable enough to satisfy court that the allegation of bribery of voters by use of salt, at Arikodi Sam's home, has been proved.

Tatambuka Rogers of Napetete village, Kamuge Sub County, a Petitioner's witness, deponed that on the eve of polling day, he saw second Respondent's agent, Hamza Onepur, distributing salt to voters in Puti-Puti and he also learnt from petitioner's agents, that another second Respondent's agent, Fixton Okoya, distributed salt in Kalaki. What this

witness learnt from other agents is hearsay evidence and therefore no evidence at all. The witness does not name any one to have received salt from Hamza Onepur. It is also not proved, that what Hamza Onepur was doing, was with the knowledge and permission of second Respondent.

Hamza Onepur, in his affidavit, denied distributing any salt. He is a person of some responsibility, as he is NRMCO Chairperson, Kamuge Sub-county. Joseph Ekanya, NRMCO Chairperson, Puti-Puti Sub County, also denied that there was any bribing in Puti-Puti. Court, on evaluating the evidence with regard to the allegation of bribery by distributing salt in Puti-Puti Sub-county, prefers to believe the evidence of the second Respondent and his witnesses to that of Tatambuka Rogers, as more reliable. This allegation is therefore not proved to satisfaction of Court.

The evidence of Adome Anthony that he was informed of distribution of salt to have taken place at Apopong, Agule and Kasodo Sub-Counties on the eve of voting, is hearsay. Such type of evidence is of no use to Court in proving an allegation of bribery.

Bribery by use of Soap, Motor-cycles and Tarpaulins

Petitioner's witness Kabibu Bin Shaban of Kalaki village, Pallisa Town Council, deponed that the women, on polling day, had also been invited and did pick pieces of soap in addition to salt from Jerome Eriamu, LCI Chairman's home, Kalaki village. The reasons of Court for rejecting the evidence of bribery by use of salt, also apply with equal force and effect, with regard to this witness's evidence as regards bribery by use of soap. The allegation is thus not proved.

Adome Anthony deponed and stated in Court that he had been informed of distribution of soap on eve of voting at Apopong, Agule and Kasodo Sub-Counties. He did not report to police or any other authorities. As already held, this evidence, being hearsay, is of no value.

Tatambuka Rogers deponed that he saw second Respondent promise to give Motor-cycles to his agents during campaigning. He gave one to Hamza Onepur. It is not shown by Petitioner how such an act affected the election. At any rate, both the second Respondent and Hamza Onepur denied the same. The court believes them. The allegation of second respondent promising Motor-cycle to his agents has not been proved to have happened. Even if it had happened, Petitioner has not shown, to the

satisfaction of court, as to how the same would have affected the election result.

Inyalio Peter, (Petitioner's Volume 1 witness No.3), of Agule Sub-county, deponed in support of the petition, that the second Respondent promised to give tarpaulins to voters, if he is elected. Second Respondent denied having made this promise. Inyalio Peter, was cross-examined before Court. He admitted he never reported any complaint to police or to the election officials. He gave different names of the village he comes from: Kalemene to Court, and Akwamoru in his affidavit. Though a presiding officer at Okoit Mango Tree polling station, he could not explain to Court whether or not, it was an offence for a candidate to hold a political rally beyond 5.00 p.m. He was not an impressive witness before court. Court is unable to hold on the basis of his evidence, that any allegation of bribery by promising to give tarpaulins to voters, has been proved against the second Respondent.

Up-Dating the Voters Register:

A witness for Petitioner who was also a parliamentary candidate, Adome Anthony, testified that in Pallisa County, there was no voters updating exercise.

His evidence is contradicted by the Returning officer, Higenyi Pabire, who maintains that there was display of the voters register and civic education was conducted for 26 days form 22.12.05.

Affidavits were also filed, and were not seriously challenged, stating that there was display of voters' Register in many of the Sub-Counties of Pallisa County. These affidavits were of Martin Isiret of Puti-Puti, Samson Osakan, co-ordinator of elections in the Constituency for second Respondent, Martin Otin of Apopong, Vincent Okello of Angolal, William Emurwon, LCIII Secretary for Security of Agule, Robert Otuju of Kameke, Hamza Onepur of Kamuge, John Auk of Kasodo, Muhammed Anguria of Gogonyo, and Lawrence Olinga of Kalaki. Samson Osakan, constituency co-ordinator of the election for second Respondent, asserted that the exercise of updating voters Register as well as conducting civic education was carried out in the whole constituency. Joseph Ekanya Obiya, the Chairman

of the National Resistance Movement Organisation Party in Puti-Puti physically saw both exercises being carried out in the sub-county.

The court received no explanation from the petitioner and Mr. Adome Anthony, both Parliamentary candidates, why, if, the exercise of updating the voters register and giving civic education did not take place in the Constituency, none of them expressly made a complaint to the first Respondent; and demand that the same takes place before the election date. The evidence that the exercise took place is from witnesses of different sub counties and of various responsibilities in the Constituency. It is most unlikely that they are all lying. The court believes the evidence of the Returning Officer and those other witnesses, testifying to the effect that, there was, in Pallisa County, an update of the voters Register; followed by the conduct of the Civic education exercise.

DISENFRANCHISEMENT

William O'Neil, in support of the petition, deponed that in Pallisa town, at Kawucho and Odwarat Olua polling stations, voters were turned away from voting because their names were not in the Register. Charles Odere, who too, supported the petition, received similar allegations in respect of

Odwalet, Odule Church of Uganda, Industrial Area, Pallisa High School and Supa Agric polling stations. Okou Opolot, of Pallisa Municipal Council, annexed to his affidavit, names of those voters, who went to him complaining they had not voted because their names were not on the Register. Janasan Echakara of Osupa village and Olupot Okisoferi, of Pallisa Town Council, (Petitioner's Volume 1 witnesses No. 22 and 23), deponed that they did not vote because their names were not in the Register. Adome Anthony, the parliamentary candidate, asserted that, on 03.02.06, at a meeting of the Candidates, security and elections officials, it was found out that voters of Adodio had been wrongly posted to Chelekura Parish; instead of Odusai parish, those of Kadumise to Kapali, Apopong Sub parish; and those of Kadengano village to Walugege Mangoe tree polling station. The first Respondent had undertaken to take remedial action and to inform the affected voters of such action. The first Respondent however, did nothing; and as a result, 15,000 voters were disenfranchised. Tom Okutui Eiyat's evidence was that voters whose names were transferred from Adodoi to Kadodio and vice-versa; or to the newly created Okunguro polling station did not vote, for their names were missing in the Register. The petitioner too, claimed in his evidence, that 15,408 voters did not vote and that these were all his supporters.

Court has already held that the voters register, was updated and civic education held in the Constituency. The evidence of William O-neil and Charles Odere, about voters who are said to have not voted because their names were missing from the Register is hearsay evidence and therefore of no value.

The evidence of Okou Opolot (Petitioner's Volume 1 witness No.21), of the names of those who went to him complaining that they had not voted is also suspect. He was not an agent of any candidate. He was not an election official. He does not explain why he did not refer each one of these people to those responsible for conducting the election. Even after registering with him, he did not forward the matter to the first Respondent as a complaint. The evidence that there were investigation desks by the first Respondent, throughout the constituency, was not controverted. Mr. Okou Opolot gives no explanation as to why he did not refer this matter to these investigation desks. There is also no evidence, as to what Mr. Okou Opolot did himself, to verify that what each one of these people was telling him was the truth. He did not refer the matter to police for investigation. The Court, given the standard of proof required to prove an election

petition, is unable to hold, on the mere evidence of Mr. Okou Opolot, that each of the people who gave a name to him, did not vote because such name was not on the Register.

The evidence of Adome Anthony as regards voters of Adodio, Chelekura, Odusai, Kadumise and Kapali, being misplaced as to the right polling stations where to vote, is not well founded to be credible. According to Mr. Adome Anthony, this matter came up at a meeting of all Parliamentary Candidates, Election officials of first Respondent and security personnel. No minutes of this meeting were produced to Court to show that the issue came up and was established to have existed as Mr. Adome Anthony puts it. The Returning officer was not called to be questioned about the matter. Even assuming that the issue was raised at the 03.02.06 meeting and that the first Respondent undertook to remedy the situation, Mr. Adome Anthony does not give any basis for his assertion, that the first Respondent did nothing about it. He does not claim to have physically witnessed these voters failing to vote. Likewise, he provides no basis for his assertion that 15,000 voters did not vote. The court rejects Mr. Adome Anthony's evidence on this issue, as speculative.

As to the evidence of Mr. Tom Okutui Eiyat to the effect that in Kadodoi, voters found that their names were transferred to Adodoi polling station without their knowledge, and those of Adodoi to Kadodio, 8kms away; and that some voters reached the polling station after closure of the polls, is too generalized to be of value. There is no evidence as to who these voters were and how many they were in number. Mr. Tom Okutui Eiyat does not disclose whether these voters directly gave him this information; when and where. He does not explain what he did about the matter. The court is unable to rely on such evidence as having established, to its satisfaction, what is alleged.

As to the two voters, Janasan Echakara of Osupa village and Olupot Okisoferi of Pallisa Town, who claim that they did not vote because their names were missing from the Register, none of them offered an explanation as to why this matter was not reported to the presiding officers or to one of the inquiry desks in the Constituency on polling day or soon thereafter. The first Respondent was not aware of their case. At any rate they are only two voters. Their failure to vote, given the fact that the majority of the voters in the Constituency cast their votes, and the margin of votes between the second Respondent and Petitioner is more than 4000

votes, cannot be said to have affected the result of the election in any substantial way.

ABUSIVE, SECTARIAN AND DEFAMATORY LANGUAGE

The Petitioner's case is that the first Respondent failed to stop the second Respondent and his agents from using abusive, sectarian and defamatory language against the Petitioner during the campaigns.

Petitioner's witnesses Tukei John Bosco, Kowa Joseph, Itabai Joseph deponed that on 22.02.06 at Akumi village, Arikodi's home, second respondent stated that Petitioner was a failure who was dismissed as Inspector General of Police and that he, second Respondent, had got him a job to distribute drugs to hospitals and health centres.

Okou Opolot John, Mayor elect, Pallisa Town Council, and Adome Anthony, Parliamentary candidate, deponed that second Respondent used abusive language while campaigning.

According to Opio Ekwenye, also Petitioner's witness, at a rally at Agule High School, second Respondent accused Petitioner of being a failure as

Uganda's Inspector General of police. Second Respondent also falsely claimed to have repaired the Opadai-Okisiram Parish road, built four classrooms at Agule High School and reserved money for a laboratory at the same school. This, according to witness, was false for it was Northern Uganda Social Action Fund who funded the school construction, and Local Government Development Programme funds were used for the road and borehole.

According to Tatambuka Rogers, Petitioner's official agent, the second Respondent had, at a rally, described the Petitioner as a failure, a thief, chased away by the President as Inspector General of police, one who has been bought by Bagwere; and the Iteso were not to vote for him. Petitioner had even been deserted by his friend, Charles Odere.

James Peter Omeke, supporter of Petitioner, deponed that second Respondent, falsely claimed at a rally in Kadidio village, Agule Sub-county that he was the one paying school fees for the witness and that he was to withdraw such support because witness supported Petitioner.

By way of contrast, Martin Isiret of Kutai village Aguli Sub-county, Tukey Okwach of Kameke Sub-county, John Auk, and Charles Ocai, both of Kasodo Sub-county, Mohamad Anguria and Madina Namaja, and Martin Otim of Gogonyo sub-county, Joseph Ekanya Obia of Puti-Puti Sub-county, Samson Osakan, Apopong Sub-county, Betty Amoding, John Bosco Obete of Kaukura polling station, Robert Otuju of Agulo, Fred Mugoda of Kamege Sub-county and Hamza Onepur of Kamuge Sub-county, all deponed to the effect that second Respondent never used abusive, sectarian and defamatory language. He called upon the electorate to return him to parliament so that he continues to pursue the developments he had brought to the constituency while member of the Seventh Parliament.

The court has already considered the evidence of Tukey John Bosco, Kowa Joseph and Itabai Joseph and found it wanting to prove the allegation of bribery by use of money and salt against the second Respondent.

Court notes that, even in this instance of use of abusive language, none of the three witnesses made any complaint to police or election officials. Court has also already found that the second Respondent did not hold a rally at Arikodi's home on 22.02.06. For these reasons, Court holds that

the allegation that second Respondent used abusive, Sectarian and defamatory language at Arikodi's home is not substantiated.

The evidence of Okou Opolot and Adome Anthony is of little value to Court as the two witnesses do not state what second Respondent actually said so that Court can decide whether it was abusive or not.

With regard to the assertions of Petitioner's witness Opio Ekwenye, the witness is silent, as to when this rally took place. This evidence is in contrast to that of Robert Otuju, John Opio and Tukei Akwach, all who assert that the election exercise in Kameke went on well without incident. Given the fact that Mr. Opio Ekwenye did not disclose, when the rally he alleges took place, and the fact that he never reported any complaint to police or any other authority, court is unable to take his evidence as sufficient to prove, to the court's satisfaction, that the second Respondent used the alleged language against the petitioner. Court is also not satisfied that, apart from the alleged abuse that the petitioner had been a failure as Uganda's Inspector General of Police, the rest of the allegations attributed to the second Respondent amount to abusive, sectarian or defamatory language. The statements are, in the view of the court, innocent

statements of claim, whether rightly or not, of what developments a Member of Parliament has contributed to in a constituency. It is the holding of court, therefore, that this particular allegation of use of abusive, sectarian and defamatory language at Agule High School, Kameke Sub-county, is not proved against second Respondent.

Witness Tatambuka Rogers's evidence of use of abusive, sectarian and defamatory language by second respondent, is silent as to when and where the rally, where these words are alleged to have been uttered by second Respondent, took place. The evidence is also silent as to who attended this rally. Coupled with the fact that the witness did not report these allegations to police or to any election officials, the evidence remains suspect. Court is not satisfied, on the basis of such evidence, that the second Respondent uttered the alleged words couched in such language.

As to the assertions of James Peter Omeke, allegedly made by second Respondent, in Kadidio village, Agule Sub-county, even if true, they do not amount, in law, in the considered view of the court, to abusive, sectarian or defamatory language.

The court received no credible evidence of second Respondent abandoning his manifesto and attacking Petitioner's family, that Petitioner's wife had separated from Petitioner, deserted the Matrimonial home following a disagreement over campaign money. This assertion of Petitioner in paragraph 14 of his affidavit of 07.04.06 in support of Petition was based on information. The Petitioner never provided any evidence in support of the same. It was thus not proved. So too are the matters alleged by Petitioner in paragraphs 15, 16 and 17 of the same affidavit.

Ballot Stuffing, Multiple voting, pre-ticking of ballot papers for voters and manipulation of declaration of results forms

The Petitioner asserts that in Rwatama and Apopong polling stations, Apopong Sub-county, in order to steal his votes, the first Respondent procured signatures of agents, unto blank declaration of results forms, well in advance of the counting of the votes or before the conclusion of the voting exercise, with the result that Petitioner's results were substituted for those of the second Respondent or tampered with to improve the second Respondent's vote margins. He relied on annexures P4 and P5 to the Petition. P4 is a photocopy of the Declaration of Results Form No. 14330 for Rwatama Polling Station, Apopong Sub-county. It has, in hand written

form, names of the Parliamentary candidates, signatures of their respective agents and signature of presiding officer, but with no results of the election. P5 is also a photocopy of the Declaration of Results Form No. 14321 with no particulars of name of polling station parish/ward, sub-county district, and constituency filled in. But the particulars of the number code of each are filled in. It has also in handwritten form the names of Parliamentary candidates, the results of the election for each and signatures of the agents of the respective candidates. The signature of the Returning officer is also there.

The Petitioner stated, in cross examination, that he did not know whether the one who signed annexure P4 was his agent. He did not secure an affidavit from the person who signed on this form as his agent. Later on, Petitioner stated that his agent, got the form, annexure P4, for him. The Petitioner did not know the results for Rwatama polling station. Petitioner did not disclose the source of annexure P5.

If the source of annexures P4 and P5 are Petitioner's agents, then the said agents, or one of them, ought to have explained by way of affidavit or otherwise as to how the two annexures came to be signed by all the

candidate's agents, without any objection from any one of them. There is no evidence that any one of them was forced or tricked into signing any one of the two annexures. There is no evidence that the signing or the making of annexures P4 and P5 was, and did, in fact deprive the Petitioner of any votes. There is no evidence that annexures P4 and P5 were done with the knowledge and consent of the second Respondent. Indeed, even if the votes from Rwatama polling station are all given to the Petitioner, this would not affect the result of the election, as the second Respondent would still be the winner of the election by way of majority of votes. The Court finds this Petitioner's complaint not proved.

The Petitioner then complains that the agents of first and second Respondents tampered with his valid votes by declaring most of them invalid.

Jackson Higenyi Pabire, the Returning officer, in his supplementary affidavit, paragraph 13, explained that the invalid votes were agreed upon by the presiding officer, candidates' agents and all the voters present at counting, at the time. This is supported by the fact that Petitioner's agents freely signed the Declaration of Results Forms agreeing with the results;

and never put in writing any reasons for disagreeing with the same. The Petitioner and/or his agents did not challenge any invalid votes in accordance with the law. Indeed, under cross-examination by Counsel for first Respondent, Petitioner admitted that he did not know the procedure of contesting an invalid vote. Petitioner stated that, he had instructed his agents not to sign the Declaration of Results Forms where they were not satisfied with the result; and that he was not aware of any agent (s) who had not signed such forms.

This being the state of evidence as regards this specific allegation, the Court holds that the same is not proved.

It is then contended by Petitioner that, first Respondent, ought to have cancelled results of polling stations where there were false declarations or malpractices by presiding officers. Petitioner names these polling stations to be those where candidates' agents or some of them, did not sign the Declaration of Results Forms. These were Agurur, Kapala Market in Gogonyo Sub-county, Kaukura in Apopong Sub-county, Komolo GSC Ltd, Pallisa Sub-county and Adwarat Olua, Pallisa Town Council.

There was no evidence that any of the Petitioner's agents, at any of the named polling stations, contested the results of the election. Mere failure of an agent to sign a Declaration Result Form, in the absence of a valid reason, does not invalidate an otherwise, valid result at a polling station.

A figure of 1,287, of his valid votes, is claimed by the Petitioner as having been invalidated. The Petitioner gave no explanation as to how he came to this conclusion and this number. In the petition, the Petitioner had pleaded that he would move court for an order of discovery and production of the packing list, polling Registers, Result Tally Sheets, declaration of results forms and for a recount of votes. These orders were not pursued by Petitioner and his Counsel at the hearing. Counsel for Petitioner, rightly so, in the view of the court, must have realized that pursuing such orders would have no impact on the overall case of the Petitioner. The Court holds that the Petitioner has failed to substantiate this particular allegation of the petition.

Interfering with the electoral process:

The Petitioner petitions that, first Respondent failed, in the course of campaigns, to prevent and deter second Respondent and/or his agents,

from interfering with the electoral process, through alleged acts aimed at preventing voters from supporting and voting the Petitioner.

Kibeddy Okwatum (Petitioner's Volume1 witness No.4) of Odusai, Agule Sub-county, deponed for Petitioner, that on 23.02.06, he saw Tukei Robert, second respondent's agent campaign for second Respondent at Odusai primary school polling station. The same agent also ferried voters on a motor-cycle for second Respondent. The witness also saw Maduda Silver, second Respondent's agent, together with Opio Samuel, a polling assistant, directing the illiterate and/or elderly voters to vote for the second Respondent.

This witness failed to avail himself to court to be cross-examined by Counsel for Respondents, on the contents of his affidavit. Cross examination is a means to test the credibility of a witness. The court also gets the opportunity to assess the demeanour of the witness by physical observation in the course of cross examination. The affidavit evidence of a witness who, without justifiable reason, fails to turn up to court to be cross-examined, is suspect; and it is dangerous for Court, in the normal course of things, to rely on it: See: **Uganda Court of Appeal Election Petition**

Appeal Number 12 of 2001: AMAMA MBABAZI vs. JAMES MUSINGUZI GARUGA & ANOTHER; unreported. This witness, apart from failure to come to court, did not state that he reported what he saw going on to the police or any other appropriate authority. His evidence is not supported by any other person who was at the polling station at the time.

The Returning Officer did not receive any report that what this witness states happened at this polling station. The agents of all candidates signed the Declaration of Results Forms for this station. None complained of what the witness states to have happened. Court, for the reasons given, is unable to accept the evidence of this witness as reliable.

The evidence of Ramaszani Dongo, who deponed supporting the petition, that on 22.02.06, at Karukura polling station, second Respondent hired bicycles to campaign and ferry voters has already been considered and rejected by court.

Tatamba James deponed for Petitioner that on 23.02.06 second Respondent's agents Omunyokol Alex and Okiria Namatala campaigned for second Respondent at Oduse Primary School polling station and also

ferried voters. The witness did not explain how he knew that these two were second Respondent's agents; and that what they were doing, was with his knowledge and consent. He does not name any voter as having been campaigned to, to vote for second Respondent. No one is named as having been ferried, and from what and to which polling station. The witness did not report what was happening to the presiding officer at the station. The Petitioner, whom the witness rang to inform, does not state that he (Petitioner) informed police, or took up the matter with the presiding officer. The evidence of this witness, is therefore, not sufficient, on its own, to prove the allegations made.

Adome Anthony, the Parliamentary candidate, deponed that second Respondent's agents purported to stop him from addressing a rally at Nyakoyo, but the Kameke LCII Chairman, arrested the situation. The witness does not name and he does not explain, how he knew that whoever did this were the second Respondent's agents. At any rate, it appears that the LCII Chairman, Kameke, solved the problem to the satisfaction of the witness. Court cannot take this evidence as having proved the allegation.

Complaints:-

Petitioner alleges that the first Respondent did not deal with his complaints lodged on 27.02.06. Petitioner does not state what he wanted the first Respondent to do. The complaints were after the election had been held. The Petitioner had a right in law to petition. He did so through this petition. He has no cause to complain against the first Respondent as regards complaints of 27.02.06.

Having considered the evidence relating to the first issue, the court holds that the Parliamentary Elections for Pallisa County Constituency were held in substantial compliance with the provisions of the Electoral laws.

The second issue is whether the non-compliance, if any, affected the results of the election in a substantial manner.

The test the court applies to determine whether or not the non compliance with the Electoral laws affected the result of the election in a substantial manner, is both qualitative and quantitative; with each case, ultimately, being decided upon its own facts. In **Kiiza Besigye versus Museveni**

Kaguta Yoweri & Another: Supreme Court of Uganda Election Petition

Number 1 of 2001; unreported,

Tsekooko, JSC, stated:-

“I think each case must be decided on its own facts”, and then proceeded to adopt a passage in Mbowe’s case:-

“ The summary of the evidence about allegations in (a) and (d) in that petition alleged that there were campaigns or canvassing at or inside polling station as well as intimidation of voters. The court held that the witnesses who testified about these allegations were not reliable. According to Georges, CJ, as above stated, if these witnesses had been reliable, the winning majority of over 13,820 by the respondents in Mbowe would not have mattered.”

Order, JSC, expounded that in determining this issue: -

“.....arithmetical numbers or figures are not the only determining factors in deciding whether non-compliance with the provisions and principles of the Act did or did not affect the result in a substantial manner.

Numbers or figures of course are terribly important, but to me, they are not the only yard stick for assessing the quality and purity of an election. Whether or not non-compliance with the provisions and principles of an Act, in the instant case, affected the result of the election with substantial manner is, in my considered opinion a value Judgment. Figures cannot tell the whole story.

In my considered opinion an accumulated or sum total of the non-compliance with the provisions and principles of the Act, is the yardstick for measuring the effect of non-compliance with the provisions of and principles laid down in the Act.”

Okello, JA, of the Court of Appeal, in a lead Judgment, in **Election petition Appeal No. 12 of 2002: Amama Mbabazi & Electoral Commission vs. Musinguzi Garuga James, (supra)** relying on the above Supreme Court decision stated:

“Whether there must be proof by arithmetical means or such a degree can be inferred from the extent of the proved non-compliance, the Supreme Court of Uganda was not

definite about it. Three Justices out of five: - Order, Tsekooko and Mulenga, JSC, were of the view that the quantitative test could be applied where proved non-compliance was extensive and widespread. I agree with them. Ultimately however, each case must be decided on its peculiar facts.”

It is the considered view of this court that, as already held in respect of the first issue, the Petitioner has not proved that, in this election, there was such non-compliance with the electoral laws, so as to substantially affect the election results whether quantitatively or qualitatively. Court is satisfied, on the basis of the evidence adduced, that the election exercise was generally free of harassment, intimidation, violence and bribery. The voter's registers were up-dated, Civic Education was carried out, and the candidates' campaigns were generally well conducted. The election exercise also appears to have gone on well without use of abusive, sectarian and defamatory language. There was no credible evidence adduced by Petitioner of pre-ticking of ballot papers, multiple voting, ballot stuffing or intimidation. The counting and tallying of votes and results was properly done and in time. The Court therefore holds, as regards the

second issue, that whatever non-compliance with the Electoral laws there might have been, the same did not affect the result of this election in a substantial manner.

The third issue is whether any illegal practices or other electoral offences were committed by the second Respondent personally or by his agents or supporters with his knowledge, consent or approval.

The court has already considered and made a finding that the illegal practices of bribery of voters, use of abusive, sectarian and defamatory language, have not been proved against the second Respondent.

Further, the court received no credible evidence to support, and therefore holds as not proved, the allegations that, the second Respondent and/or his agents, procured prohibited persons to vote; and displayed on vehicles at polling stations posters, campaign literature and other campaign materials on polling day.

Counsel for the Petitioner has submitted that the second Respondent campaigned beyond the 21st February 2006, at 5.00p.m; and the whole of 22.02.06 when the campaigns should have closed.

Court notes that this ground was not specifically pleaded in the Petition and therefore, it is not right of the Petitioner, to rely on the same. Be that as it may, the evidence for the Petitioner, as to this ground, is that of Inyalio Peter, who alleged that second Respondent so campaigned at Okoit's Mango tree, Agule Sub-county on 21.02.06 "at about 5.00p.m." There is nothing in this evidence to show any breach of the law given the way the time is described. Oloit Robert, Aisu Clement, Ochola Peter, Ekaba Charles, Ramaszani Dongo, Tukei John Bosco, Kowa Joseph, Itabai Joseph and Okiror Ibrahim, all testified having seen the second Respondent campaign on 22.02.06 at Adal village, Pallisa Sub-county, Rwatama Kamolo, Akumi, Kaukura Primary School, villages, in Apopong Sub-county. The campaigning was on the whole between 5.00 p.m and 6.00 p.m. It remains unexplained as to how the second Respondent could be at all these places almost at the same time on 22.02.06. There is no evidence that any of these witnesses reported this illegal campaigning to the police or any other authority. Being on the eve of elections, it is most

unlikely that the police and other security agencies would all stand by, without taking any action, against second Respondent, or any other candidate, holding such rallies. The evidence of most of these named witnesses has been considered and rejected by Court in respect of bribery, intimidation and use of abusive language allegations. The second Respondent denied holding any rally on 22.02.06. He was supported by the Returning Officer, who received no reports of such rallies being held. He was also supported by a number of his own witnesses who deponed on oath that no such rallies were held. On an overall assessment of the evidence, court prefers to believe the evidence of the second Respondent and his witnesses, to that adduced by and for the Petitioner on this allegation. The same is held as not proved by the Petitioner.

As to the third issue, the holding of Court is that Petitioner has not proved, to the satisfaction of Court, that the second Respondent personally or by his agents or supporters with his consent or approval, committed any illegal practices or other electoral offences in this election.

The fourth issue is whether Petitioner is entitled to the remedies sought.

The finding of Court is that the Petitioner has not proved, to the satisfaction of Court, any of the grounds of the Petition. He is therefore not entitled to the remedies sought in the Petition. The Petition fails and the same is dismissed with costs to both Respondents.

Remmy Kasule

Ag. Judge

22nd September 2006