

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MBALE**

**PARLIAMENTARY ELECTION PETITION NO.10 OF 2006**

**OFWONO YERI APOLLO }:::::::::::::::::: PETITIONER**

**VERSUS**

**1. ELECTORAL COMMISSION }:::::::::::::::::: RESPONDENTS**  
**2. SANJAY TANNA }**

**BEFORE: HON. JUSTICE E. K. MUHANGUZI**

**JUDGMENT.**

**ISSUES:**

At the scheduling conference, on 08.8.2006, the parties in consultation with court, agreed that the issues herebelow be determined by court in this petition, namely: -

1. Whether there was noncompliance with the laws as alleged by the petitioner.
2. If so, whether the alleged noncompliance affected the result of the election in a substantial manner.
3. Whether illegal practices/offences were committed by the 2<sup>nd</sup> respondent as alleged personally or by his agents with his knowledge and consent or approval.
4. Whether the petitioner is entitled to the remedies sought.

## FACTS:

At the said scheduling conference the parties also agreed on the following facts namely: -

1. The 1<sup>st</sup> respondent, on 23.2.2006 conducted an election for Member of Parliament for Tororo Municipality constituency in which the petitioner and the 2<sup>nd</sup> respondent were candidates and the 1<sup>st</sup> respondent returned the 2<sup>nd</sup> respondent as the winner of the election with a difference of 2,875 votes.
2. The total number of registered voters in Tororo Municipality at the time of the election was 19,993 with 36 polling stations.
3. At the time of the election the petitioner was the incumbent Member of Parliament for Tororo Municipality.

In addition to the above facts agreed upon at the scheduling conference the clear record of the court shows that the petitioner, being aggrieved by the 1<sup>st</sup> respondent's declaration of the 2<sup>nd</sup> respondent as the winner of the election in issue, filed this petition in court on 25.4.2006 seeking to set aside the election on the grounds of noncompliance with provisions and principles of electoral laws and commission of illegal practices and offences in relation to the election in issue.

In support of the petition no less than 39 affidavits in support, supplementary affidavits and affidavits in rebuttal were filed and relied upon by the petitioner.

In their respective answers to the petition filed in court on 03.5.2006 and 08.5.2006, the 1<sup>st</sup> and 2<sup>nd</sup> respondents denied the allegations in the petition and relied on no less than 19 affidavits in support of their answers to the petition and affidavits in reply. On 01.8.2006 at the end of the scheduling conference court directed that 15.8.2006 would mark the close of pleadings in the petition, which of course in this case included filing of affidavits.

Although the parties had initially indicated their wish to cross-examine some of the deponents of affidavits on either side, on 28.8.2006, when the petition was called on for mention, court was informed that counsel for all the parties had no intention to cross-examine any witness and court gave all counsel a time frame for filing and serving upon each other with written submissions. The petitioner was given up to 25.9.2006 to file and serve written submission upon the respondents who in turn were given up to 30.9.2006 to serve their submissions upon the petitioner. Thereafter court would give judgment on notice.

While the petitioner, duly filed his written submissions on 19.9.2006 both respondents belatedly filed theirs on 03.10.2006. Among the several correspondences on record by 06.10.2006, when court commenced writing this judgment, none was complaining about this belated filing of submissions. So court took it that, for some consideration or reason the petitioner had no objection about this and court will not dwell on this point.

#### Preliminary matters.

As stated earlier ,on 01.8.2006 both parties were given upto 15.8.2006 to file all their documents. On 28.8.2006 however, the 2<sup>nd</sup> respondent, somehow, was able to put two affidavits in the court file. These affidavits are of **Ochulu Francis Abusulum** and **Otim Sulaiman** both dated 28.8.2006. Besides bearing the court's received stamp the two affidavits were not entered in the file diary which the Registrar is supposed to endorse and indeed no fees were paid on filing them.

Since these two affidavits were irregularly put on file beyond the time specified for filing all documents and without paying fees thereon and perhaps without serving them upon the petitioner court will disallow them. To accept them would

be to condone an irregularity which would definitely prejudice the petitioner who would not have a chance of replying to them appropriately.

Accordingly court rejects the two affidavits sworn by **Ochulu Francis Absulum** and **Otim sulaiman** on 28.8.2006.

### **Advocates**

**Mr. Siraj Ali** from **M/s Muwema & Mugerwa** for the petitioner;

**Mr. Edmund Wakida** from **M/s Lex Uganda** and **Mr. P.M. Mugisha** from **M/s Kamugisha, Byamugisha** both for 2<sup>nd</sup> respondent;

**Mr. Alfred Okello Oryem** for the 1<sup>st</sup> respondent.

### **ANALYSIS**

A. **The Law:** Grounds, burden and standard of proof.

The election of a candidate as a Member of Parliament shall only be set aside on any of the grounds set out in Section 61 of the Parliamentary Elections Act (No.17 of 2005), if proved to the satisfaction of the court.

The grounds which the petitioner in this petition relies on in his quest to set aside the election of the 2<sup>nd</sup> respondent, as candidate as Member of Parliament for Tororo Municipality in the 23.2.2006 elections, are those set out in section 61(1) (a) and (c), namely: -

*“(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 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.*

By virtue of sections 101 – 103 of the Evidence Act, Cap. 6 the party that asserts the existence of certain facts on which judgment is sought to be based and in absence or failure to prove such facts such party would fail, is the party that has the burden of proof. In this case the petitioner asserts, the existence of facts constituting the grounds for setting aside the election, namely: -

1. that there was noncompliance with the provisions of and principles laid down in the Act and that such noncompliance affected the result of the election in a substantial manner; and
2. That the 2<sup>nd</sup> respondent personally or with his knowledge and consent or approval committed illegal practices and or offences in relation to the election.

The above facts have to be proved to the satisfaction of the court, and in absence of such proof the petitioner would fail. Therefore the petitioner is the party on whom the burden of proof of such facts rests.

Section 61(3) provides: -

*“(3) Any ground specified in sub section (1) shall be proved on a balance of probabilities.”*

It therefore appears that the expressions

*“...if proved to the satisfaction of the court”*

And

*“(3) Any ground specified in sub section (1) shall be proved on the basis of a balance of probabilities”*

Contained in Section 61(1) and (3) of the Parliamentary Elections Act put the standard of proof at that of balance of probabilities when the whole of section 61 of the Act is read together.

B. **Evidence:** Court deemed the affidavits filed by each party as read in court and will proceed to analyse evidence therein in light of various ingredients of each ground relied upon in the petition on which the framed issues are based.

1. Non-compliance by the 1<sup>st</sup> respondent with provisions and principles laid down in the Act were alleged by the petitioner in various ways as below.
  - (1) Failure to keep a clean and updated voter's Register (paragraph 4(a) and 5(b) of the petition);
  - (2) Failure to take steps to ensure that there was no multiple voter Registration and or registration of non-residents and other unqualified persons on the Register (Paragraph 4(b) of the petition);
  - (3) Failure to prevent subsequent multiple voting in the constituency (paragraph 4(c) of the petition);
  - (4) Failure to take steps to ensure that the whole election process was free, fair and transparent. (paragraph 4(d) of the petition.)

The ground of noncompliance with electoral laws in this petition essentially is that several persons who were not eligible to vote in Tororo Municipality were recommended by various parish tribunals for deletion from the voter's Register prior to the election day but that the 1<sup>st</sup> respondent did not delete such persons' names and the election was held using the same Register with those names. Further that those persons that were ineligible to vote actually voted. Those people were alleged to be either not residing or not originating from the Municipality or all together non-citizens of Uganda.

To prove this allegation the petitioner relied on the affidavits of the petitioner himself dated 25.4.2006 in paragraphs No.4, 6, 10 and 12 thereof and 19 others, namely of : - **Oburu Charles, Magara Stephen, Othieno Charles, Omeja Ochieng, Akello Christine, Okongo Michael, Mugaba Joseph, Ochoko Okello,**

**Kamunyamure Rukuka, Ofwono Christopher, Okello J.J, Okoth Donosio, Oyamo Yamo, Were Moses, Okoth Boniface and Tabitha N. Alecho** all dated 15.5.2006 and one of **Olanya Joseph** dated 29.7.2006.

Apart from **Olanya Joseph** all the other above witnesses attached form CLN9 for various Polling stations showing names of all persons recommended for deleting from the Register.

It was contended that all the names recommended for deletion were not deleted from the Register.

On behalf of the petitioner it was submitted that by not deleting these names from the Register the 1<sup>st</sup> respondent failed in its duty to ensure that regular, free and fair elections are held and to compile, maintain, revise and up-date the voters' Register and to hear and determine complaints arising before and after polling day.

Further it was submitted for the petitioner that by not removing from the Register the names compiled in form CLN9 by the Parish Tribunals, the 1<sup>st</sup> respondent facilitated the persons who had registered more than once also to be able to vote more than once. The petitioner contended that the Register contained more than 1500 instances of multiple registrations leading to 1500 multiple voting. This contention is based on the sample of voters register analyzed by **Olanya Joseph** and deponed to in his affidavit dated 29.7.2006.

In rebuttal to the petitioner's affidavits dated 25.4.2006 **Eng. Dr. Badru Kiggundu** and the 2<sup>nd</sup> respondent each deponed to affidavits dated 02.5.2006 and 05.5.2006 respectively. Each deponed that the voter's Register was duly up-dated and displayed prior to elections on 23.2.2006 with petitioner's participation.

In addition seventeen (17) Presiding officers and two (2) Polling Assistants, namely: - **Odongo Sam, Deborah Onyango, Wakameli Robert, Ojambo John** and **Wanyama George** all in their affidavits dated 01.6.2006, Wambede Rogers in his affidavit dated 02.6.2006, **Natuhwera Medrine, Otweyo Christiano, Birungi Mary, Kakari Rose, Nalukoye solome , Opio Damiano, Wesamoyo Richard** and **Mulondo Miriam** all in their affidavits dated 31.5.2006 deponed that at respective polling stations elections on 23.2.2006 were transparent free and fair. That candidates were represented by their polling agents who looked after their interests during the conduct of the polling exercise. That upon arrival at the Polling station the polling officials and the candidates agents would check the hand of each voter to ensure that it was not marked with indelible ink, or prove that the person had not yet voted. That following the counting and tallying of votes at the polling station the candidates' agents accepted the results and duly signed the declaration forms. That the petitioners' agents accepted the results and signed the declaration forms. That whichever voter finished voting their hand would be marked with indelible ink.

The petitioner in attempted rebuttal of the above affidavits deponed on 28.7.2006 that the election was not transparent, free and fair because there was multiple registration by virtue of the fact that all persons listed as ineligible in form CLN9 continued to appear in the voter's Register (Exhibit P.1) which was used to conduct the election.

Court has carefully considered all the evidence in support of the allegation of multiple registration and multiple voting as well as the evidence in support of the respondent's answer to that allegation.

First, court is unable to confirm the authenticity of the voluminous lists of the so called ineligible voters in form CLN9 attached to the petitioners' witnesses'

affidavits. They were not certified by any authority who either authored or received them.

Secondly, all the CLN9 forms are dated 17.01.2006 while the un-contested evidence on record is that the period of up-dating the Register was between 29.9.2005 and 30.10.2005 while that of display was from 22.12.2005 to 17.01.2006 and that thereafter ineligible voters were deleted from the Register. This would mean that the CLN9 forms dated 17.01.2006 were compiled on the day the display exercise closed and well after the up-dating exercise had closed and as such those CLN9 forms were too late for updating a Register for use in the next one month's time, on 23.2.2006. Perhaps those CLN9 forms could be useful for the continuous up-dating exercise for future elections. Similarly the evidence of **Joseph Olanya** is un-acceptable because it is based on a mere sample of voters but not on the over-all Register. The authority for this proposition is Election Petition No.9/2002, ***Matsiko W. Komuhangi V. Babihuga J. Winnie*** (C.A)

Apart from the foregoing the evidence in the affidavit of **Eng. Badru Kiggundu** dated 2.5.2006 and the 2<sup>nd</sup> respondent's affidavit dated 5.5.2006 confirm that there was Register up-dating and display in that Municipality prior to the election in issue. Court accepts that evidence. Court does not find the petitioner's evidence on Register up-dating credible and convincing enough and accordingly rejects it. The petitioner as the incumbent member of parliament for that constituency ought to have fully participated in that exercise. From the correspondences in exhibits P.6, P.5 P.4, P.3 and P.2 court is satisfied that the petitioner's complaint about ineligible voters in the constituency was sufficiently investigated and dealt with by the 1<sup>st</sup> respondent in conjunction with the relevant authorities both at the district and Central Government level. In the circumstances the petitioner cannot be heard to complain on the same issue, especially on the basis of CLN9 forms whose authenticity and dates suggest that they are not proper.

Regarding the allegation that the 1<sup>st</sup> respondent failed to take steps to prevent multiple voting, the evidence of the petitioner in his affidavit dated 29.4.2006 vindicates the 1<sup>st</sup> respondent. The correspondence exchanged between the petitioner, the 1<sup>st</sup> respondent, the Minister in charge of security, the District Registrar, Returning officer and Resident District Commissioner all prove that the petitioner's complaints and or concerns were received, acknowledged and dealt with after which the petitioner was informed and given assurances by the 1<sup>st</sup> respondent. See exhibits P.2, P.3, P.4, P.5 and P.6.

On the basis of this evidence alone court is satisfied that the 1<sup>st</sup> respondent did not fail to address complaints regarding both multiple registration and registration of ineligible voters such as non-citizens.

With regard to alleged voting of ineligible persons including Kenyan citizens (students from Millennium Universal College) there is the evidence of **Obbo Richard** and **Michael George Oguga Oduol**.

In his affidavit dated 15.5.2006 Obbo Richard deponed that he was the Ag. Headmaster of Millennium College. That he received a list of names of students of the College from the petitioner who requested him to confirm their nationality. That he checked with his school records, namely admission forms and school Register and confirmed that the students were Kenyan citizens.

Court notes that the report of findings is not signed by this witness but by someone else for the witness, which suggests that the witness did not personally author the report as deponed in his affidavit. Secondly court notes that the school records such admission forms and school Register are not necessarily authoritative sources for determining citizenship of persons from other countries. Thirdly whoever in the

school or elsewhere signed the document for **Obbo Richard**, purportedly confirming the citizenship of the students in issue as Kenyans, did not establish his or her competence to do so authoritatively.

Fourthly no evidence was led to prove that the said students actually voted or voted for any particular candidate.

The evidence of **Michael George Oguga Oduol** in his affidavit dated 22.5.2006 is equally unhelpful in this regard. He deponed that he is a Kenyan citizen with Kenya National identity Card No.24529318 purportedly attached to his affidavit but actually not so attached.

Further, that he is a student of Tororo Progressive School (not Millennium College) but registered for voting at Ogutti Primary Polling station. That his name appeared in the National Voters' Register and he voted on 23.2.2006. That his fellow Kenyans who were also students at the same Tororo Progressive School registered and voted on 23.2.2006. He purportedly attached UACE results, showing some of the names of those students, on his affidavit but actually did not so attach the said document.

Court finds this evidence incomplete and unhelpful because supposedly crucial annexures like the deponent's National identify card and the UACE results showing some of the Kenyan students who allegedly registered and voted were not actually attached to the affidavit as purported. Secondly on exhibit P.1 (annexture "A" to petitioner's affidavit in rebuttal dated 29.7.2006) which was admitted by consent of the parties the particulars of **Michael George Oguga Oduol** are missing. The nearest names on the Register are on page 21 of the Register. Those names are "**Oguga Michael**" of the voter No.12867568.

Since the witness did not state even his voter number, court cannot assume that the **Michael Oguga** on page 21 of the Register is the same as **Michael George Oguga Oduol**, the witness.

Consequently court rejects this evidence since neither this witness nor his alleged fellow Kenyan students can be ascertained and verified first as Kenyan citizens and then as having registered and voted in the election of 23.2.2006 as claimed.

Apart from the alleged Kenyan citizens there was no evidence, even if court were to hold that there was other multiple registrations, that there was multiple voting or voting of other ineligible voters. On the contrary there is un-controverted evidence from the seventeen (17) Presiding officers and two (2) Polling Assistants referred to earlier to the effect that every voter, on arrival at the station to vote, was checked to see if he or she had indelible ink on their hand or not to ascertain whether or not they had voted already and that after voting the voters hand would be marked with indelible ink to ensure against multiple voting.

For the reasons court has endeavored to give above, court finds that the petitioner has not proved to court's satisfaction on a balance of probabilities the four allegations of noncompliance set out hereinabove as constituting issue No.1 in this petition.

**ISSUE NO.2      If so whether the alleged noncompliance affected the result of the election in a substantial manner.**

It is now settled that in election petitions it is not enough for the petitioner to allege and even prove that there was noncompliance with or contravention of electoral provisions or principles. The petitioner must go further and show that the result of the election was thereby affected and not merely affected but affected in a substantial manner.

This position has been codified in section 61(1) (a) of the Act itself in the last line which provides: -

*“-----and that the noncompliance and the failure affected the result of the election in a substantial manner.”*

In Election Petition No.1/2001 (S.C), **Col (Rtd) Dr. Kizza Besigye V. Museveni Y.K. & Anor., B.J.Odoki, C.J.**, emphasized that the entire election process should be in an atmosphere free of anything intended to subvert the will of the people. But matters concerning validity of elections are matters of great public concern. These are matters with far reaching implications. They call for and indeed deserve the most diligent inquiry possible so that a party, who emerged victorious in a rather hotly contested election, is not denied the fruits of his/her victory on flimsy grounds. Such inquiry must therefore involve cogent evidence that applies directly to the facts in issue.

Further the Supreme court in that case held that, in determining whether noncompliance with or contravention of electoral laws affected results of elections in a substantial manner, court may apply either the quantitative or the qualitative tests or both depending on the circumstances of each case.

The quantitative test is said to be relevant where numbers or figures are in issue while the qualitative test is said to be relevant where the quality or standard of an election on the whole is in issue, in relation to transparent, free and fair standard of an election.

In applying first the qualitative test, learned counsel for the petitioner repeated his submissions based on the allegations that there was no up-date of the voter Register, there were multiple registrations and registration of ineligible voters that

led to multiple voting and voting by ineligible voters. That as such the elections were not free and fair. He relied on the case of **Morgan V. Simpson**, [1974] 3 A11E.R.722 and the statement of the court therein that: -

*“The objection must be something substantial. Something calculated really to affect the result of the election.”*

Court has already given reasons and held that the petitioner failed to prove to court’s satisfaction on a balance of probabilities the said allegations. On the contrary court found that there was un-contested evidence that there was voter Register up-date from 29<sup>th</sup> September, 2005 to 30<sup>th</sup> October, 2005 and there was voter Register display from 22<sup>nd</sup> December, 2005 to 17<sup>th</sup> January, 2006. And that the petitioner participated in these activities.

Court also found that the CLN9 forms copies of which petitioner’s witnesses exhibited were not authenticated by any authority and were dated 17.01.2006 a date when the voter Register display ended long after the end of the period of updating the Register. As such the CLN9 forms were apparently suspect, out of time for the voter Register up-date exercise and of no use. Court accordingly rejected those forms and as such there was no evidence to challenge the Register consisting of exhibit P.1 (annexure “A” to the petitioner’s affidavit of 29.7.2006)

Finally the petitioner failed to prove, to court’s satisfaction, that any ineligible voters voted or that any other voters voted more than once. In the circumstances the petitioner failed to prove that the election was not transparent, free and fair as alleged or at all.

Applying the quantitative test learned counsel for the petitioner again submitted, on the basis of the CLN9 forms and the sampled evidence of **Olanya Joseph**, that 1443 names were supposed to be deleted from the Register but were not and that

there were 1500 instances of multiple voting as proof that the Register for the Municipality was inflated by 2,943 ineligible voters. That this figure exceeds the margin of 2,875 votes (by only 8 votes, any way).

Court has already rejected the evidence contained in the CLN9 forms for the reasons given. Court also rejected the evidence of sampling voters by **Olanya Joseph** as unacceptable on the authority of the case of ***Matsiko W.K. V. Babihuga J.W. election Petition No.9/2002 (C.A)***

Moreover it was an agreed fact that the total number of registered voters in the Municipality was 19,993. The petitioner's evidence (annexure "YAI" to his affidavit dated 25.4.2006) shows that the total votes cast in the election were 11,192 only 56.0% of the Registered voters which shows that 46.0% of the registered voters did not turn up to vote. If the voter turn up was so much less than the uncontested total registered number of voters how can anybody talk of multiple and ineligible voters voting? it does not make sense to do so.

Having agreed to the above stated figures the petitioner is estopped from turning around and arguing that there was multiple voting and ineligible voting.

The results of the election were 6,148 votes for the 2<sup>nd</sup> respondent and 3,273 votes for the petitioner. If the petitioner's alleged inflated figure of nearly 3000 voters were to be deducted from each of the 6 candidate's votes proportionately to their scores of 31.1%, 56.6%, 11.5%, 0.4% and 9.0% then their reduced votes would not affect the percentage scores. In other words, assuming that court accepted the figure of inflated voters suggested by the petitioner, the final percentage of votes scored by each candidate would not be affected even if such inflated figure was deleted from the register because nobody knows whom those votes would have gone to.

In any case the petitioner has not proved and cannot, in a secret ballot system, prove who the alleged multiple and ineligible voters voted for among the candidates. They could have voted for the petitioner or any of the other four candidates apart from the petitioner and the 2<sup>nd</sup> respondent. For the reasons given above the petitioner has not proved to court's satisfaction on a balance of probabilities that there was such noncompliance as would affect the result of the election in a substantial manner.

**ISSUE NO.3: Whether illegal practices/offences were committed by the 2d respondent, as alleged, personally or by his agents with his knowledge and consent or approval.**

Bribery:

As a general rule, due proof of a single act of bribery by or with knowledge and consent or approval of the candidate or by the candidate's agents, however insignificant the act may be, is sufficient to invalidate the election. Court is not at liberty to weigh its importance nor can it allow any excuse, whatever the circumstances may be. For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive. See *Halsbury's Laws of England*, 4<sup>th</sup> Edn. Vol. 15, page 534.

The petitioner in paragraph No.4 (e) and 5(a) of the petition alleges: - "*that the 2<sup>nd</sup> respondent personally and or his known agents either before or during the said Parliamentary Elections engaged in illegal practices such as acts of bribery by giving gifts, monetary and or other form of considerations to induce the people qualified to vote in the Tororo Municipality for the 2<sup>nd</sup> respondent*"

And in paragraph 5(a) that: -

*“There was excessive, rampant and daring illegal acts of bribery of the qualified persons of Tororo Municipality in the late hours on the election eve and on the election day itself in broad day light by the 2<sup>nd</sup> respondent personally and or by his known agents at and or near the polling stations in the full view of the presiding officers.”*

Evidence in support of this allegation is in two main categories of affidavits. The first category is of those witnesses who allege that they received materials from the 2<sup>nd</sup> respondent to go and distribute them to voters in parishes. These witnesses claimed to be either campaign or Polling Agents of the 2d respondent.

The second category of witnesses are persons who alleged to have been bribed by receiving materials from witnesses in the first category with a message to vote for the 2<sup>nd</sup> respondent. Perhaps the other category is composed of those who received bribes but instead of just keeping them allegedly reported the matter to the police.

In the first category of witnesses are two witnesses, namely Ochulu Francis Abusulum of Bison “A” village, Bison Maguria Parish, Western Division, Tororo Municipality and **Obbo Michael** of Bison “B” village, Maguria Parish, Western Division, Tororo Municipality.

**Ochulu Francis Abusulum** deponed in his affidavit dated 22.5.2006 that he was appointed by 2<sup>nd</sup> respondent as his campaign agent for Bison “A” village (attached his appointment letter copy). That on 22.2.2006 at 7:30 p.m. the 2<sup>nd</sup> respondent invited all his agents to his residence at Bazaar street in Tororo town. That he went to the said residence along with other campaign agents. That at 1:45am the 2<sup>nd</sup> respondent gave them each, 240 basins of assorted colours, 10 boxes of shoes containing 200 pairs of shoes each, 24 bars of laundry soap and transport back to

Bison “A” village for distribution to fellow voters of Bison “A” to induce them to vote for 2<sup>nd</sup> respondent.

**Obbo Michael** deponed also in his affidavit dated 22.5.2006 that he was appointed by the 2<sup>nd</sup> respondent as his campaign agent for Bison “B” village (attached copy of his appointment letter). That on 22.2.2006 the 2<sup>nd</sup> respondent invited all his campaign agents to his residence at Bazaar street in Tororo town at 7:30 p.m. That he went to the said residence along with other campaign agents from other villages within the municipality (no single agent is named).

That at about 2:00 p.m. the 2<sup>nd</sup> respondent gave him 240 basins made by Mukwano Industries, 100 pairs of ladies shoes, 20kg of sugar, 40kg of rice, 10 shirts and posters and a commuter vehicle to transport him to Bison “B” to distribute items to fellow voters of Bison “B”.

That he arrived with the items at Bison “B” village at 2:30 a.m. in the morning and immediately started distributing them to voters urging them to vote for the 2<sup>nd</sup> respondent in exchange for the said items. That he believes by distributing those items to voters the 2<sup>nd</sup> respondent intended to influence the voters to vote for him.

Court finds that the affidavits of these two witnesses is the only direct evidence tending to connect the 2<sup>nd</sup> respondent with bribery allegations. No Presiding Officers are alleged by these witnesses to have been present and indeed the alleged bribery deponed to in these affidavits is not stated to have taken place either in broad day light on polling day or in late hours of polling eve (22.2.2006) or any where near any polling station as alleged in paragraph 5(a) of the petition. No money was involved either.

Court therefore finds that bribery allegation set out in paragraph 5(a) of the petition have not been proved at all.

Even in those bribery allegations set out in paragraph 4(e) of the petition the aspect of monetary consideration does not appear to be born out by the evidence of either **Ochulu** or **Obbo**.

Upon closer analysis of the evidence of those two witnesses court notes some gaps. For instance **Ochulu** deponed that at 7:30 p.m. on 22.2.2006 the 2<sup>nd</sup> respondent invited all his campaign agents to the 2<sup>nd</sup> respondent's house while **Obbo** deponed that on that day the 2<sup>nd</sup> respondent invited all his agents to the 2<sup>nd</sup> respondent's residence at 7:30 p.m.

Secondly though each of those two witnesses stated that all the campaign agents of the 2<sup>nd</sup> respondent were invited and each of these witnesses deponed that he went to the 2<sup>nd</sup> respondent's said residence along with other 2<sup>nd</sup> respondent's campaign agents from other villages within the Municipality, neither of these two witnesses dared name any of the other campaign agents they went along with, not even one.

Thirdly, apart from these two witnesses, only one other agent of the 2<sup>nd</sup> respondent namely **Otim Sulaiman** deponed on 28.7.2006 to such evidence to confirm that there was such a meeting as alleged by these two. Indeed none of the witnesses, who allege to have been given the items allegedly from the 2<sup>nd</sup> respondent, received such items from any other agent of the 2<sup>nd</sup> respondent except **Ochulu** and **Obbo**. It appears therefore that **Ochulu** and **Obbo** never met each other or any other agent at the 2<sup>nd</sup> respondent's residence as alleged in their affidavits. All of those who allegedly received items, for example **Osukuru James, Anyango Rose, Akongo Margaret, Omollo Ponsiano, Nyadoi Terezia** and **Namutebi Harriet** received items only from either **Ochulu** or **Obbo** and not from any other agent of the 2<sup>nd</sup> respondent.

For the three reasons given above there is reasonable doubt about the credibility of the evidence of these two witnesses in this first category.

Besides the doubt, the 2<sup>nd</sup> respondent in rebuttal on 26.7.2006 deponed in his affidavit of that date that neither **Ochulu** nor **Obbo** have ever been his agents. That he never invited them or his other agents to his residence on 22.2.2006. That his residence is not at Bazaar Street as alleged. That he never distributed any items to the two witnesses or others and that therefore if **Ochulu** or **Obbo** or any other person distributed or received any items they did not do so with his knowledge and consent or approval.

In an apparent effort to rebut the above 2<sup>nd</sup> respondent's affidavit of 26.7.2006 **Ochulu Francis Abusulum** and **Onama Lawrence** swore other affidavits dated 28.7.2006 and 29.7.2006 respectively in addition to their earlier affidavits dated 22.5.2006 and 15.5.2006 respectively. To a marked extent these two witnesses brought out contradictions in their affidavits. For instance in **Ochulu's** later affidavit he deponed in paragraph No.3 thereof that the 2<sup>nd</sup> respondent supervised the distribution of the items the witness obtained while in the earlier affidavit the same witness had deponed that the 2<sup>nd</sup> respondent actually gave the witness those items. Also another agent, on **Otim Sulaiman** made an effort to bolster the evidence of the first two, namely **Ochulu** and **Obbo**, by swearing an affidavit in support of the petition on 28.7.2006. He deponed in paragraphs 6 and 7 thereof that he saw the 2<sup>nd</sup> respondent supervising the distribution of the earlier named items to the agents for distribution to voters in various parishes. That among the agents he claimed to be an agent of the 2<sup>nd</sup> respondent also, he does not depone to receiving any items for distribution like the others he witnessed. He deponed that the 2<sup>nd</sup> respondent supervised the distribution but did not do the actual distribution or giving of items to the agents contrary to what **Ochulu** and **Obbo** claimed in their first affidavits dated 22.5.2006.

Apart from the inconsistencies and contradictions in the alleged agents evidence more contradictions, gaps and inconsistencies are apparent in the evidence of witnesses who claimed to have received items from **Ochulu** and **Obbo**. For instance **Osukuru James** in his affidavit dated 22.5.2006 deponed that he saw **Obbo** also waking up his neighbours and giving them same items as he had been given but this witness did not specify or name any of his alleged neighbours. This witness alleged that he saw other agents of the 2<sup>nd</sup> respondent but he does not name or identify any of them. The same witness deponed that **Obbo** gave him, among other items, sugar and yet according to **Obbo's** affidavit sugar is not among the items he allegedly got from the 2<sup>nd</sup> respondent.

The evidence of **Anyango Rose** in her affidavit dated 22.5.2006 contains similar inconsistencies and contradictions as those just referred to above in the one of **Osukuru James**. Among the items **Ochulu** allegedly got from the 2<sup>nd</sup> respondent there was no sugar and yet **Anyango Rose**, in her affidavit dated 22.5.2006, deponed that **Ochulu** gave her, among other items, sugar. Others who deponed to receiving sugar from **Ochulu**, when he did not claim to get it from the 2<sup>nd</sup> respondent, are **Akongo Margaret** and Nyadoi Terezia.

There is also inconsistency between the affidavits of Ochulu and Obbo in as far as what each agent allegedly got from the 2<sup>nd</sup> respondent. Thus while Ochulu in his affidavit dated 22.5.2006 deponed in paragraph No.6 thereof that the 2<sup>nd</sup> respondent gave each of the agents 240 basins, 10 boxes of shoes containing 200 pairs of shoes each, 24 bars of laundry soap, **Obbo** on the other hand, stated different number of pairs of shoes, sugar, rice, shirts and posters, contrary to what **Ochulu** received. **Obbo** did not receive soap contrary to the evidence of **Ochulu**.

Apart from the contradiction and inconsistencies, some of which only have been illustrated above, other aspects of the alleged agents' evidence are just difficult to believe. For instance what was the purpose of distributing the posters of the 2<sup>nd</sup> respondent in the morning of election day? If **Obbo** and **Ochulu** were given vehicles to take and distribute the items to voters in their villages how come that those to whom such items were given and eventually swore affidavits none of them makes reference to seeing any vehicle being used by any of the two alleged agents? Since, the 2<sup>nd</sup> respondent is alleged to have invited all his agents and either distributed or supervised the distribution of items to them how come only two or three agents from only two or three villages swore affidavits and only recipient voters from only these two villages of one parish swore affidavits from a total of eight parishes of the Municipality? This is a municipal constituency. It is incredible that a candidate's agents can carry and distribute huge consignments of items on election eve and election day without security detection even after police has been alerted as alleged by witnesses like **Onama Lawrence** in his affidavits dated 15.5.2006 and 29.7.2006 and **Omollo Ponsiano** in his affidavit of 22.5.2006.

In the final analysis court finds that the evidence of the three alleged agents, namely: - **Ochulu Francis Abusulum, Obbo Michael and Otim Sulaiman** is too full of contradictions, inconsistencies and un-explained aspects to be true. Equally the evidence of alleged recipients of bribes is too full of contradictions, inconsistencies and un-explained aspects to be true.

Court therefore concludes that all the evidence about the allegation of bribery is not cogent and not true and therefore rejects it. In effect the petitioner has failed to prove to court's satisfaction that the 2<sup>nd</sup> respondent personally or others with the knowledge and consent or approval of the 2<sup>nd</sup> respondent committed offence of bribery as alleged or at all.

## **DISPOSITION**

**ISSUE NO.4: Whether the petitioner is entitled to the remedies prayed for.**

The petitioner has failed to prove to court's satisfaction all the allegations in the petition. As such he is not entitled to the remedies he prayed for. The petition is hereby dismissed with costs and the 2<sup>nd</sup> respondent is declared the duly elected member of Parliament for Tororo Municipality constituency in the elections held on 23.2.2006.

Court hereby certifies costs for two counsel for the 2<sup>nd</sup> respondent in this petition.

**E. K. Muhanguzi**

**Ag. Judge**

18/10/2006:

Mr. Siraj Ali for petitioner

Mr. Dagira Suza on brief of Mr. Okello Oryem for 1<sup>st</sup> Respondent and for Mr. Edmund Wakida for 2<sup>nd</sup> Respondent

Petitioner in court

2<sup>nd</sup> Respondent in Court.

Court: judgment delivered and signed.

**E.K. Muhanguzi**

**Ag. Judge**

**18/10/2006.**