

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, HOLDEN AT GULU

HCT-05-CV-EP-0001 OF 2014

AMONGIN JANE FRANCES OKILI-----PETITIONER

5

VERSUS

1. LUCY AKELLO

2. THE ELECTORAL COMMISSION } -----RESPONDENTS

BEFORE: THE HONOURABLE LADY JUSTICE MARGARET

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MUTONYI, J.

JUDGEMENT

1. Amongin Jane Frances, here in after called the petitioner was a candidate in the
15 parliamentary by-election in Amuru District for woman Member of Parliament that
took place on the 20th of November 2014.

Lucy Akello here in after referred to as 1st Respondent was one of the other
candidates and was declared the winner by the 2nd Respondent as the duly elected
woman Member of Parliament for Amuru District and the results were published in
20 the Uganda Gazette Vol.CV 11 No.70 of 1st December 2014.

2. ThePetitioner being aggrieved and dissatisfied with the results petitioned to this
court under the provisions of **S.60 (2) a** and **c** of the Parliamentary Elections Act

and the Electoral Commission Act where she contends that the outcome of the results was affected in a substantial manner, because the 2nd respondent failed to
25 conduct the by election for woman member of parliament for Amuru District in accordance with the provisions and principle laid down in the above mentioned Acts.

3. The petitioner further contended under paragraph 5 of her petition several alleged electoral offences and illegal practices during the campaigns and on the
30 polling day. The petitioner's counsel did not submit on all the allegations but a petition being a case of public interest and not only for the parties, I will address my inquiry into all the allegations.

I will follow her pleading and affidavit evidence to inquire into the purity and propriety of the election.

35 The complaints starts from paragraph 5.2 of her petition where, she alleged that the 2nd respondent disenfranchised over 1000 voters in the constituency at numerous polling stations by striking off their names from the voters register and denying them a chance to vote.

Similarly she contended under paragraph 5.3, That the 2nd respondent connived
40 with the first respondent to and did turn away over 800 registered voters who are NRM card holders, who had all the intention and purpose of voting for the petitioner, thereby occasioning her loss when she lost by less than 800 votes thereby committing the illegal practice of obstruction of voters.

5.4. That the failure of the 2nd respondent to conduct the Amuru elections in
45 accordance with the principles laid down in the Parliamentary Elections Act and the Electoral Commissions Act affected the results of the said election in a substantial manner.

5.5. That the first respondent during the conduct of the Campaigns for the said Parliamentary Elections personally and through her agents with her knowledge and consent and approval committed various electoral offences and illegal practices in connection with the election.

5.6. That the 1st respondent personally and through her agents with her knowledge, consent and approval bribed voters with money, salt, alcohol and other items in order for them to vote for the 1st respondent.

5.7. That the 1st respondent personally and together with her supporters and campaign agents , with her knowledge, consent and approval defamed the petitioner by making false and tribal statements that she was not an Acholi and that she was planning to evict the people of Amuru District from their land.

5.8. That the officers and agents of the 2nd respondent forged and falsified the elections in favor of the first respondent.

5.9. That the 2nd Respondent permitted unauthorized persons who were not registered voters to vote in the parliamentary elections.

5.10. That the 1st respondent on the polling day and within 10metres of the polling station personally canvassed for votes, uttered slogans against the petitioner's party ,distributed leaflets and pamphlets thereby committing an electoral offence or illegal practice.

5.11. That the first respondent and her campaign agents intimidated the petitioner's voters by labelling them as traitors for supporting the Petitioner.

5.12. That as a result of the irregularities, and illegal practices and election offences committed by the 1st respondent and her agents, the results of its by election were affected substantially.

75 **5.13.** That the 2nd respondent failed to control the use and distribution of the ballot papers and ballot boxes to the responsible officials of the Electoral Commission resulting in ballot papers being in the hands of the first Respondent's agents with the consent, knowledge and approval of the first respondent thereby resulting in multiple voting and ballot boxes stuffing.

80 **5.14.** That the 2nd respondent in connivance with the first respondent stripped the petitioner's polling agents of their duties and denied them access to the polling station and tallying center thereby leaving the petitioner's interests devoid of any protection at the numerous stations, resulting into phony results.

5.15. That the second respondent in connivance with the first respondent illegally and unlawfully appointed new polling agents outside the accepted procedure for appointing polling agents.

85 **5.16.** That the election commenced at 6:00am in the morning at numerous polling stations an hour earlier than the designated time and also closed at 8:00pm in the evening three hours after the closing time thereby occasioning an injustice to the petitioner.

5.17. That the 2nd respondent permitted unauthorized persons to sign the declaration of results forms.

90 The petition was supported by the affidavit evidence of the petitioner and some other witnesses about 17 in number who swore affidavits.

The petitioner seeks from this court an order setting aside the election, where the first respondent was declared winner and order for a new election, costs of petition and any other relief that the court deems fit.

95 3. The first Respondent denies each and every allegation in her answer to the petition dated 5th of January 2015 save for the description of the parties set out in paragraph 2 and 3 of the petition and prayed for the dismissal of the petition.

The second respondent also denied each and every allegation of facts contained in the petition save for those that were admitted as deponed in paragraphs 2 to 4 of
100 the petition.

The second respondent also prayed that the petition be dismissed with costs as it was without merit.

In summary, the first respondent's evidence was to the effect that she did not commit any illegal or electoral offences either personally or through her agents and
105 that at no time did she hold any meeting with the electoral commission to plan and eventually steal the election through accessing ballot papers and boxes, appointing new polling agents and sacking petitioner's agents. That the second respondent being an unnatural person has no mind of itself to agree with the first respondent to carry out the alleged activities.

110 She attached her affidavit in support of her answer to the petition. She also had a few affidavits from her witnesses namely Michael Lakony, Winnie Kiiza, Gilbert Oulanya, Wadri Kassiano and Labalping William.

The second respondent in summary contended that the election was conducted in accordance with the law. Mr. Olet Samuel swore the affidavit in support of the
115 second respondent's answer to the petition. All the presiding officers at the various polling stations also swore affidavit in defence of the allegations against the 2nd respondent which evidence also supported the 1st respondent.

4. At the hearing, both parties agreed that the by-election was held on 20th /11/2014 in respect of woman MP for Amuru District.

120 It was further agreed that the first respondent was declared by the second respondent to have won the by-election.

5. The agreed issues for courts investigation were the following;

1. Whether the by-election was conducted in accordance with the law?

125 2. Whether noncompliance if any affected the results in a substantial manner?

3. Whether illegal practices and other electoral offences were committed during the by-election by the first Respondent personally or by her agents with her

130 knowledge, consent and approval?

4. What remedies are available?

Counsel for the petitioner was to cross examine Lucy Akello, Michael Lakony, Gilbert Oulanya and Winnie Kiiza and Labalpinny William.

135 However they later on changed their mind and abandoned the idea of cross examining the 1st Respondent's witness save for Lakony Michael who was partially cross examined.

Both counsel for the first and second respondent did not wish to cross examine any of the Petitioner's witnesses.

140 They also agreed on how court should deal with affidavits where deponents indicated that they had annexed appointment letters whereas not.

The paragraphs which referred to Annexures were to be severed so that they do not form part of the affidavit.

145 Counsel disagreed on affidavits that were served after the agreed time, of 5/5/2015. They were served on 19th and 26th of May 2015 respectively on both Counsel AFTER the date for closure agreed upon by both parties had elapsed. The petitioner's counsel wanted to open pleadings. Since this kind of case has a time limit within which to be completed, and all parties including court was constrained with time, court did not give them the liberty to operate against the agreed order on time which was by consent. 150 Since they did not apply for leave to extend time with in which to serve the respondent's counsel, those affidavits were not allowed. The details of the ruling on this issue is on record. . These were affidavits of Charles Akena, Jane Frances Okilli, Omonya Dennis, Akena Geoffrey and Steven Abola.

155 They further disagreed on the admissibility of the recordings that were annexed to the affidavits in support of the petition. A detailed ruling about their admissibility was made and it is also on record

160 Counsel for the petitioner applied for leave to appeal against the interlocutory ruling which application was not granted on the ground that interlocutory orders are not appealable since they can form part of the grounds in the main appeal after the petition is concluded.

Both parties filed written submissions in support of their cases which are on record and I will refer to them as and when necessary. No rejoinder was filed by the petitioner's counsel.

165 The petitioner was represented by Counsel James Orima assisted by Counsel Mausso Andrew.

Senior counsel Wandera Ogalo appeared for the 1st Respondent while Counsel Eric Sabiti appeared for the 2nd Respondent.

6. **RESOLUTION OF ISSUES**

170 I am going to resolve the issues in their chronological order save that I will
handle the 3rd Issue before the second because the 3rd issue will give
direction to the course of events.

175 Before resolving the issues, I will start by stating that the basis of this
petition is premised on **S.61 (1) (a) and (c)** of the ***Parliamentary Elections
Act, Act no. 17 of 2005*** which provides for grounds for setting aside an
election.

S.61 (1) provides ***“the election of a candidate as a member of parliament
shall only be set aside on any of the following grounds if proved to the
satisfaction of the court.***

180 ***(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
noncompliance and the failure affected the result of the election in a
substantial manner.***

185 ***(c) That an illegal practice or any other offence under this act was
committed in connection with the election by the candidates personally or
with his or her knowledge, consent or approval.”***

The burden of proof in election petitions is on the petitioner and the standard
of proof is on the balance of probabilities. ***(s.61 (3) of the Parliamentary
Elections Act refers.***

190 The standard of proof is therefore light unlike in criminal offences, where it is beyond reasonable doubt.

Under **rule 4(5)** of the Parliamentary Elections (Election Petitions) Rules, the petition is divided into paragraphs and each of which shall as nearly as maybe, be confined to a distinct portion of the subject.

195 This implies that every paragraph of the petition in reference to an illegal practice, irregularity, noncompliance with the provisions of the law, or offence committed like the allegations in this petition must be proved by way of evidence to the satisfaction of the courts.

Evidence in election petitions is adduced by way of affidavits as provided under
200 **rule 15** of the **Parliamentary Elections (Election Petitions) Rules** and the deponent may be cross examined by the opposite party. Court therefore relies on the affidavits in support of the petition and in answer to the petition to resolve the issues unless it wishes to examine a witness in person depending on issues raised in the affidavit. Court did not find it necessary to summon any witness to appear in
205 person in this petition.

Let me now turn to the issues. I will resolve them according to the allegations raised in the petition.

The essential ingredients of section 61 (1) (a) and (c) of the Parliamentary Elections Act are the following:

- 210
- 1. That the elections were not conducted in accordance with the provisions of the law pertaining to the conduct of elections.**
 - 2. That in the course of the elections, that is during the official campaigns, and on the election day, before the results are declared, the candidate and or her agents with her consent, knowledge and approval were involved in**

215 *illegal acts/or practices (which illegal acts are actually criminalized and
or declared to be illegal under our electoral laws).*

**3. That the noncompliance and the illegal practices affected the outcome of
the results in a substantial manner.**

220 Both the presidential and parliamentary elections Acts do not define
substantial manner. Courts therefore take the literal meaning of the word.
The effect of noncompliance and illegal practices must be of great
magnitude which can be deduced from the evidence adduced in support of
the petition. It must be real and not imaginary. It must be glaringly apparent
that the elected candidate was not the people's choice had there been
225 compliance with the law and absence of illegal practices or acts.

This is because a member of parliament is a representative of the people in
the constituency. He or she represents all the people in that constituency
regardless of their political, religious, racial, ethnic, or tribal affiliations. The
outcome should therefore reflect the people's choice.

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ISSUE NO.1

Whether the by election was conducted in accordance with the law?

Or in other words, whether there was noncompliance with the law during the
electoral process.

235 The 2nd respondent is a body corporate that is entrusted with conducting elections
and ensures that the electoral process is conducted in accordance with the law. This
is a constitutional mandate.

The electoral commission Act chapter 140, Laws of Uganda, under parts 2, 3 and 4
spells out particular functions of the Electoral commission pertaining to the

240 preparations and conduct of elections. If the commission is to be faulted, it must have acted contrary to its statutory obligations under the Constitution and the Electoral laws made thereunder through its known and identified staff since it is a body corporate. It does not have a body and mind of its own. It operates through its employees who are its brain.

245 The first respondent being one of the candidates must be faulted for committing illegal practices in person or through her agent or representatives. Agent is interpreted to mean by reference to a candidate, a representative or polling agent. The relationship of Principal and Agent should therefore exist before a candidate can be held vicariously liable for the conduct of her or his agents and before the
250 conduct of any person can be construed to be with the consent, knowledge and or approval of the candidate. The words spoken by the agent must be construed to be the words of the candidate. Not everybody who campaigns for a candidate qualifies to be an agent of that candidate,

The petitioner must therefore prove the existence of Principal –Agent relationship
255 by way of appointment letters for polling agents since they represent the candidate in the electoral process. This is to avoid anyone holding out as agents and committing electoral offences which would be imputed to a candidate.

The petition under paragraph 5 raises several electoral offences and illegal
260 practices which the petitioner was to prove by way of affidavit evidence as opposed to oral testimony in most cases, according to rule 15 (1) of the Parliamentary Election (election petition)rules.

Let me start with paragraph 5:2 of the petition. ***That the second respondent disenfranchised over 1000 voters at numerous polling stations by striking off their names from the voters register and denying them a chance to vote.***

Counsel for the petitioner submitted that the Parliamentary Elections Act spells out the grounds for setting aside an election which grounds the humble petitioner is seeking to prove. The Act provides that an election shall be set aside if it is proved to the satisfaction of the court that there has been failure to conduct the election in accordance with the provisions laid down in the ACT and that noncompliance and the failure affected the results in a substantial manner.

He went on to submit that during the by-election, numerous voters were denied their right to vote by the 2nd respondent's agents. That according to S.71 of the Parliamentary Elections Act, a person who at an election or on nomination day willfully obstructs a voter at a polling station commits an illegal act. He submitted that the petitioner's voters were obstructed and denied a right to vote by the 2nd respondent's agents jointly and severally which amounted to an illegal practice within the meaning of section 71 of the PEA.

In their submission counsel for the 2nd respondent maintained that the elections was conducted in compliance with the provisions of the law and principles laid down in the electoral laws of Uganda.

In paragraph 5 of the petitioner's affidavit in support she stated "***that I am aware that many of my supporters were unable to vote since they did not find their names in the voters register, yet they had duly registered and were accordingly disenfranchised by the second respondent***".

I suppose, this paragraph was intended to prove the allegation contained in paragraph 5.2 of the petition.

No other affidavit in support is mentioning disenfranchisement of over 1000 voters.

290 *S.18 A of the Electoral Commissions Act* provides;

“the commission shall transmit to every political party and organization taking part in an election an electronic copy of the voters register immediately after the nomination day but before polling day and an updated paper copy of the register containing photographs of the voters to be used on the polling day, two weeks
295 *before polling day.”*

The importance of the above section is to:

- (1) Enable the party or candidate participating in an election know the number of the registered voters. In case of multiple voting or stuffing of ballot papers in ballot boxes, or voting of unauthorized persons, the vice can be detected and
300 proved before the court or tribunal.
- (2) To enable the party, its candidates and supporters know whether their members have been registered as voters or not, since no person shall be qualified to vote at an election if that person is not registered as a voter in accordance with **article 59 of the constitution.**

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To strike off, means to cross out or put a distinct mark on the name. It is done to a name which is already appearing on the list. A name may be struck off from the voters register in accordance with **article 59** of the **Ugandan Constitution**.ie, if a purported voter is below 18 years and not a Ugandan
310 citizen or if he is deceased at the time of voting.

No evidence whatsoever was adduced by way of attachment of the copy of the voters register and or the voters roll for Amuru District or for at least any single

constituency in Amuru district to help court satisfy itself that over 1000 or half
of this number of its registered voters had their names struck off illegally
315 thereby disenfranchising them on that day.

Similar to paragraph 5:2 of the petition is paragraph 5:3 where the petitioner
averred thus;

320 ***“The second respondent connived with the first respondent to and did turn
away over 800 registered voters who are NRM card holders who had all the
intention and purpose of voting for the petitioner and thereby occasioning
her loss when she lost by less than 800 votes thereby committing the illegal
practice of obstruction of voters.”***

325 In paragraph 6 of her affidavit she stated on oath that the 1st and 2nd respondents
connived and turned away over 800 NRM card holders who had all the
intention and purpose of voting for me and thereby occasioning my loss when I
lost by less than 800 votes and committed the illegal practice or offence of
obstruction of voters.

330 To obstruct means to hinder or block. In the instant case, it would mean to
block a registered voter from exercising his right to vote:

S.25 of the Electoral Commissions Act Cap 140 laws of Uganda, provides for
display of copies of the voters rolls and objections to the rolls.

s.25 (1) (b) specifically covers the by-election.

335 ***S.25 (1) (b)*** provides, ***“In the case of a by-election, the commission shall
display the voters roll for a period of ten days and in addition shall allow a
period of six days for a display of the recommendations from the tribunal
during which any objections or complaints in relation to the names included***

340 *or deleted from the voters roll or in relation to any necessary corrections shall be raised or filed.”*

S.25 (3) provides for raising of objections against the inclusion in the voters roll of any name of a person who is not qualified to vote or that the name of a person qualified to vote or to be registered has been omitted.

345 To satisfy court that over 1000 voters were disenfranchised and over 800 NRM party holders were obstructed, the petitioner had to adduce the following evidence by way of affidavits.

1. That during display of the voter’s register, she raised the issue of omission of her supporters who were duly registered as voters with voters cards issued under **S.26 of the Electoral Commission Act**, with the second
350 respondent but second respondent did not take any action.

2. That on polling day, 800 of the registered voters under **article 59 of the constitution, S.26 of the Electoral Commission Act**, and appearing on the voters register and voters roll were obstructed from voting by the second
355 respondent’s agents naming the specific polling stations and officers/agents of the 2nd respondent who obstructed her supporters or voters from exercising their constitutional right.

3. The voters who were denied to vote, should have sworn affidavits attaching certified copies of their voter’s card which is the authentic identity of a
360 voter, mentioning the polling stations where they were obstructed. , showing how they were obstructed, and who obstructed them and at what time.

This is because there is a time limit within which voting is done. If you go to a polling station too early or too late before and after official closure, you will not be allowed to cast your vote even if you have a voter’s card.

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If that evidence was available, then certainly the second respondent would have committed an electoral offence under **S.71 of the Parliamentary Elections Act** through its agent.

370 Counsel for the petitioner relied on the evidence of Richard Opoka, Rose Opoka, Lanyero Christine, Nyeko Richard, Anthony Odongpiny. On page 4, counsel submitted *“The petitioner’s voters were denied their right to vote by being sent away despite their names appearing on the voting register thereby giving the first respondent advantage and more voters leading her to be declared the winner of the by-election.”*

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The respondents attacked the evidence of the petitioner. Counsel for the first respondent in particular, submitted that Opwonya Charles, Lanyero Christine, Nyeko Richard, Komakech Bosco, Omanyo Alfred Obong, Betty Alinga, Richard Opoka and Anthony Odong swore affidavits in support of this complaint.

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He submitted Omanyo Alfred Obong claims his fellow party members did not find their names on the register and were denied the right to vote. He named them as Ayugi Rose, Aryem Jackline, Kilama Charles, and Oola Morris. He submitted the evidence of Omanyo is nothing more than an attempt to circumvent the rule against hearsay by claiming he witnessed the voters being sent away. (He asked, “Why was it so difficult for those mentioned above to swear affidavits that they were disenfranchised?”)

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He further submitted, these persons did not swear affidavits to say they are voters and attach voters’ cards to their affidavits. They are the ones who heard the words denying them the right to vote. The person who sent them

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away is not named and lastly the deponent says, he knows they are voters because they hold party cards.

395 One must hold a voters card and not a party card to be eligible to vote.

Counsel for the second respondent rebutted the allegation of disenfranchisement through the affidavits of Olet Samuel, ODOKI JUSTIN, OPINY FRANCIS, OJOKE CHARLES, L'ADOCH CHRISTINE, OROMA MIRRIAM, and others who were the returning officer and presiding officers
400 during the election.

The Returning officer according to his evidence informed people that all those appearing on the voters register were entitled and should be allowed to vote. He also stated he never received any complaint from the petitioner before, during or on the polling day,

405 As mentioned earlier on, no evidence was adduced to the effect that over 800 registered voters were denied to vote.

It is not enough to state the number. The statement must be supported by evidence.

410 There is no explanation why the persons who were turned away did not swear affidavits attaching their voters' card, since they are ably identified by the deponents. The deponents opted to speak on their behalf and yet they are presumed to be adults and of sound mind to be eligible to participate in elections.

415 Connivance involves to people who agree on a secret plot or a tacit approval of someone's wrong doing. The petitioner had to prove this allegation by naming the two or more persons who acted in connivance. She did not.

420 The evidence of Komakech Bosco in paragraph 3 of his affidavit was to the effect that, ***“very many of my party members did not find their names on the voter register. That of the 370 NRM voters that turned up only 67 were allowed to vote.”***

425 ***He doesn’t state whether NRM party members had the voters cards or were indeed appearing*** on the voters register and denied to vote. All the petitioner’s witnesses on the issue of 800 voters who were obstructed or denied to vote was hearsay and not supported with evidence of registration as voters in the voters register.

430 No single certified copy of the voters’ cards for the alleged persons was attached.

The electoral commission, the second respondent denied the allegation. Since the petitioner did not prove it, I do not have to go into detail of the second respondent’s response.

435 It should be noted that even an illiterate person knows that one cannot be allowed to cast a vote without a voter’s card. They also know that during the time of display, they are supposed to cross check and confirm whether their names and photographs appear in the register. They actually use the voter’s cards for their identification. In fact witnesses in such petitions usually identify themselves by the voter’s card number because if you are not a registered voter, you have no right to complain about elections.

The petitioner has left many questions not answered;

Did her NRM supporters register as voters?

445 ***Did they think, they would vote using their NRM membership cards?***

If they were registered, why were they not armed with that evidence in court?

Why would they not come up to prove they were disenfranchised?

Did the petitioner know the purpose of displaying the voters register?

450 *Did the petitioner think that mere mention of 1000 people allegedly disenfranchised was enough evidence?*

Before I take leave on the issue of obstruction and disenfranchisement, where a witness is not called who would otherwise be helpful in giving
455 direct evidence in a case, for instance, those who were allegedly obstructed from voting, and yet were duly registered as voters, the presumption is that such evidence would not be in favor of the person purporting to rely on it.

In my opinion, the allegation of disenfranchising 1000 voters and
460 obstructing 800 voters has not been proved by evidence before court in the absence of affidavits of the purported registered voters and a certified copy of the voter's roll to identify those who were registered and later on struck off the register or voter's roll.

465 *Counsel for the petitioner further submitted on the allegation of canvassing for votes on the polling day.*

He submitted, **S.81(1)** prohibits a person from canvassing for votes, uttering any slogan, distributing leaflets for or on behalf of any candidate, organizing or engaging in public singing or dancing or using any band or musical
470 instrument within 100 meters of the polling station.

S.81 (2) prohibits a person from seeking to influence in whatever manner any person to vote for any candidate or to ascertain for which candidate any

voter intends to vote or has voted within 200meters of any polling station during voting hours.

475 He submitted, the first respondent's agents with her knowledge and approval were campaigning for her on the day of the election at numerous polling stations.

This allegation is contained under paragraph 5:10 of the petition and paragraph 11 of the petitioner's affidavit in support.

480 She deponed "***that the first respondent on the polling day and within 10 meters of the polling station personally canvassed for votes, uttered slogans against me and my NRM party, distributed leaflets and pamphlets thereby committing an electoral offence.***

485 Of course if proved, this conduct would be in breach of ***S.81*** of the Parliamentary Elections Act.

The petitioner, other than alleging in her petition and affidavit, doesn't indicate or mention the polling station where the first respondent canvassed for votes, doesn't state the slogans used against her and the NRM party, or attach a copy of the leaflets or pamphlets distributed.

490 No single witness swore an affidavit to the effect that they attended any such meeting where the first respondent was canvassing for votes on that day or that they received the leaflets or pamphlets.

495 The petitioner doesn't state where she saw the first respondent personally contravening ***S.81 of the Parliamentary Elections Act.***

Her witness Richard Opoka who should be a man started by saying, "I am a female adult Ugandan of sound mind. "I stand to be corrected if Richard Opoka is not a man.

500 Under paragraph 3, he stated on 22nd November, I went to my polling station
to vote in the by-election of Amuru Woman District Member of Parliament.
In paragraph 6, he stated “That on voting day at around 9:00am Norbert
Mao arrived at the polling station and began campaigning for the first
505 respondent. He stated that at the same time Opira Charles uttered
defamatory statements against the petitioner to wit the petitioner was going
to give away the people’s land if they voted her and that he witnessed the
polling agents campaigning on voting day.

Before Opoka Richard signed his affidavit, the commissioner for oaths
510 Judith Oroma stated, “*before me having first truly, distinctly and audibly
read over the contents of this affidavit to the deponent, her being illiterate
and explained to her the nature of the contents thereof in the Acholi
language, the deponent appeared perfectly to have understood the same and
he made his signature thereto in my presence*”. I have found Opoka’s
515 affidavit wanting. I don’t know whether he is a he or she. Secondly,
according to him or her he went to the polling station on 22nd November. The
year isn’t mentioned. Supposing it was 2014 like there is judicial notice that
the by elections were conducted on 20/11/2014, was he explained to the
contents of his affidavit? Why did he maintain 22 November? Did he
520 therefore witness any campaigning on 20th November 2014? This court can’t
start substituting the dates in the affidavit.

S.81 imposes personal liability and Norbert Mao was not and is not above
the law.

No evidence was adduced to the effect that Norbert Mao’s illegal conduct
525 was reported to the police officers managing the polling station at Tekwi
polling station. Was he using a microphone, who attended the campaign

530 rally on the voting day? This allegation is serious and ought to have been reported to the authorities. Being an offence, which attracts a punishment it must be proved slightly beyond the normal standard of proof in ordinary civil suits and reporting of such cases to the police or evidence of arrest of such persons who commit such crime would be sufficient evidence that indeed they committed the crime. This can help the court make an informed decision to refer such cases for prosecution. There must be a prima facie case.

535 Ojok Charles Lapolo of the electoral commission in his affidavit in reply to Richard Opoka's affidavit stated the polling commenced smoothly in the presence of all candidates. He stated the elections were conducted on 20th not 22nd November 2014 and that the allegations under paragraph 6,7 and 8 were not brought to the attention of the presiding officer. Actually he was the presiding officer. How can a person campaign on polling day at the polling station within 10 meters and agents of a participating candidate just look on? Did they know their duties as polling agents?

545 No single witness came out to state that they were converted at the last minute because of the 1st respondent's campaigns at the polling station or after Norbert Mao's campaign at the polling station.

550 In paragraph 10 he attaches a certified declaration of results form duly endorsed by Opoka Richard where his candidate won by 114 against 89 votes for the first respondent. He didn't refuse to endorse the result for Cooram Tekwir polling station. Where the polling agent, like Opoka Richard witnesses an irregularity, it is his duty to report to the police or cause the

555 irregularity to be reported to the police or presiding officer and where the
presiding officer takes no action, then he shouldn't sign the declaration of
results and give reasons if he believes, the action complained against has
affected the outcome of the results. Supposing Mao campaigned at Co-
Tekwi which allegation has not been proved, did it have any substantial
effect on the result at that station? The petitioner won at that station by 25
560 votes.

Olwedo James in paragraph 8 of his affidavit states: *“That Labalping
William an agent of Lucy Akello actively campaigned at Olwal polling
station and lured voters there to vote for Lucy Akello”*. This election was by
565 secret ballot. How did he know that the voters were lured to vote for the first
respondent on that day and who are those voters. At Olwal polling station,
the first respondent got 90 votes and the petitioner got 83 votes. This was
fair competition. There is no evidence that the difference of the 7 votes or
more were a result of luring on the voting day.

570 In courts view the complaint or allegation under paragraph 5.10 has not
been proved on the balance of probabilities. Much as counsel for the
petitioner claims the evidence of the petitioner was not controverted or
challenged in cross examination, it was controverted in the affidavits in
575 response to the petition and the supporting affidavit. Cross examination
should be done where a witness's untruthfulness is likely to be treated as the
truth. In the instant case the allegations were not supported by evidence that
is credible. There was no need to cross examine witnesses whose evidence
has no evidential value but based on wild imaginations.

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585 Paragraph 5.11 of the petition alleging intimidation and paragraph 12 of the petitioner's affidavit was not proved at all. There is no evidence of intimidation. No persons came up claiming they were intimidated. Intimidation is exhibited in form of coercion, threats and or violence directed at voters. Apart from stating it in the petition and repeating it in the affidavit in support, the petitioner left it hanging in the air. I will not address my mind to it so much since counsel for the petitioner also abandoned it by not making any submission on it. Of course he could not manufacture evidence on it.

590

ISSUE NO.3

Whether illegal practices and other electoral offences were committed during the by-election by the first respondent personally or by her agents with her knowledge and consent and approval?

595 As mentioned earlier, the burden of proof in election petitions lies upon the petitioner who is to prove every allegation set out in the petition to the satisfaction of court.

600 Proof to the satisfaction of court implies that the matter is proved without leaving room for the court to harbor any reasonable doubt that what is alleged may be never occurred or existed.

It was held in the case of **Rtd. Col. Dr. Kiiza Besigye versus Y.K Museveni SCU Election Petition no.1/2001.** That the degree of proof is higher in petitions (election) than that which is required in ordinary suits because of the public importance and seriousness of the allegations normally contained in the petitions.

605 A petition is a pleading and the petitioner must not depart from the pleadings.

Under the third issue, the petitioner is to prove the illegal practice and electoral offences alleged to have been committed by the first respondent or by her agents during the elections as pleaded in the petition.

Paragraph 5:6 of the petition states ***“That during the conduct of the campaigns for the said Parliamentary elections, the first respondent personally and through her agents with her knowledge, consent and approval bribed voters with money, salt, alcohol and other items in order for them to vote for the first respondent.”***

The above allegation if proved would be contravening ***S.68 (1) of the Parliamentary Elections Act no.17 of 2005*** which attracts a fine not exceeding 72
615 currency points or imprisonment not exceeding 3years or both. It is a serious allegation.

Counsel for the petitioner with due respect abandoned this allegation as no evidence whatsoever was adduced in support of it. Bribery of voters is a serious crime and a cancer in the politics of Uganda. I wonder why it was made an
620 allegation and yet the petitioner herself other than stating it under paragraph 18 of her affidavit accusing the presiding officers of the second respondent for permitting the campaign agents of the first respondent to access the polling station and bribe voters who were lining up to cast their votes, without naming the campaigning agents and the respective polling stations, failed to adduce any
625 evidence to that effect.

If the court is to believe the petitioner, which presiding officers and or agents of the first respondent committed the electoral offence?

Her averment under paragraph 18 of her affidavit is not sufficient. Did they give out money, salt, alcohol and other items while the voters were lining up to cast

630 their vote? Did they bribe all the voters at all polling stations? Which fact does the petitioner know when she cannot mention a single name of the agents, polling stations, and presiding officers where bribery took place while people were lining up to vote?

Counsel for the petitioner was actually right not to waste court's time to submit on
635 the allegation of bribery as there is no evidence at all other than alleging it did happen.

In courts considered view, this allegation of bribery appears to have been a copy and paste from where ever it was got from because it is not backed by evidence at all. I know it is a crime for voters to receive bribes as an inducement for their
640 voting for a particular candidate. But where bribery is alleged to have been committed, it must be proved and voters who were bribed identified since it is alleged to have happened in broad day light while voters were lining up to cast their votes.

645 The other allegation which would constitute an electoral offence is under paragraph 5:7 of the petition. ***“The first respondent personally and together with her supporters and or campaign agents, with her knowledge and consent and approval defamed your petitioner by making false and tribal statements that she was not an acholi and that she was planning to evict the people of Amuru District from their land.”***
650

The above statement or allegation if proved would be in contravention of ***S.73 of the Parliamentary Elections Act. S.73 which*** forbids false statements concerning the character of candidates.

Character is defined in advanced learner's dictionary as the inherent complex of
655 attributes that determines a person's moral and ethical actions and reactions or a
person of a specified kind such as referring to capability, friendliness, a person of
good repute and may include describing a person's qualifications and
dependability to help the potential future employer make a decision either to
660 employ a person or not. Of course here it would mean attacking the character of
the petitioner portraying her as a person not capable of representing the people of
Amuru in parliament as their woman MP. The statements must be false or if true
must be said in bad faith with the intention of damaging the good image or
reputation of a candidate. It is also intended to attack the capability of the
petitioner given the fact that being a Member of Parliament calls for a person who
665 will represent the interest of the voters and ably articulate on the issues that
concern the electorate in her constituency and also ably participate in
Parliamentary debates on issues of public interest for the Ugandans as citizens.
The words complained of must be specific words attacking the personal character
of a candidate

670 **S.73** provides;

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

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

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

(2) This section does not take away the right of a person to sue for defamation of character.

680 Counsel for the petitioner ably brought out this section of the law. An aggrieved person is even at liberty to sue for defamation of character.

S.73 is intended to penalize whoever goes out to character assassinate a candidate during campaigns. It forbids defamation of character. The essential ingredient in that section is therefore defamation.

685 The offender must attack the personal character of the candidate. It must be an attack on the good name of the candidate. It must be a malicious misrepresentation of the candidate's words or actions.

Consequently, the exact words complained of must come out clearly in the pleading.

690 The petitioner in her affidavit in support of paragraph 8 repeated the allegation more or less in similar words. Her evidence in support of her allegation is as follows;-

Paragraph 8. **“That the first respondent personally and together with her supporters and or campaign agents with her knowledge and consent and approval defamed the petitioner by making up false and tribal statements that I was not an Acholi and that I was planning to evict the people of Amuru District from their land.”**

If the above evidence is looked at critically, it is a statement by the petitioner. The exact false words and tribal statements are not quoted. It is difficult for court to know which exact words were uttered or made by the first respondent and which exact words were made by the agents and which agents or supporters.

In his submission, counsel for the petitioner mixed or bundled up sectarianism, sexism, racism, tribalism, defamation, false statements, discriminatory acts.

705 Election petitions are matters of public interest that concern not only the parties but also the general body of the electorate in the affected area. Needless to mention, the entire nation learns from what happens in an area by abandoning the bad habits or carrying on the good practices. Elections are the democratic expression of the will of the people as to whom they wish to represent them.

710 When court is handling an election petition, it is expected to be articulate when dealing with issues before it. Each offence should therefore come out clearly and not in an omnibus style. Court decisions are not JUST for individuals but for guidance on future conduct or transactions in similar situations.

It is therefore important that each ingredient of an alleged offence or each alleged offence is dealt with exhaustively.

715 Reverting to paragraph 5:7 of the petition, apart from the petition stating that she was defamed by false and tribal statements, she does not quote the statements in the pleading. This has made it difficult for this court to inquire into the allegation. Court does not operate on speculation or imagination. It operates on the evidence before it and the law applicable. Court cannot start imagining which words that are
720 defamatory were uttered.

Counsel for the first respondent relied on the landmark case on electoral laws of presidential Election Petition No.1 of 2001. ***Rtd. Col. Dr. Kiiza Besigye versus Electoral Commission and Y.K.Museveni*** which had a similar claim but it was not expressed in the exact words complained of. **Odoki CJ** as he then was stated, ***“I***
725 ***accept the submission of Dr.Byamugisha that charges in the petition relating to false, malicious or defamatory statements were defectively framed as they did not***

730 *set out verbatim the statements complained of in the petition. Words take their meaning from the contest or background and if the contest or background is not provided or a full statement not produced, their malicious or defamatory effect may not be easy to discover. The particulars of the statement also enable the respondent or defendant to know what case he or she has to meet or defend.”*

This court is bound by the above decision which lays down the foundation of character assassination during campaigns.

735 S.73 (1) has the following elements that must be proved on the balance of probability.

(1) There must be words either spoken or written;

These words should therefore be pleaded verbatim

(2) The words complained of must be published

740 (3) The words must attack the personal character of a candidate knowing they are either false or true.

(4) The words must be uttered recklessly

(5) The intention must be to prevent the election of a candidate.

745 *The petitioner in my opinion must adduce evidence to the effect that because of the words complained of (specified words) the electorate, who held her or him with high esteem, shunned him or her. The petitioner must adduce evidence that the electorate or a very good portion of it lost all the respect they had for her after the said words.*

In the instant case, no evidence whatsoever has been adduced to the above effect. The offence under **S.73 of the Parliamentary Elections Act** was therefore not
750 proved.

The same paragraph introduces tribal statements on which counsel for the petitioner submitted at length. The tribal statements were that she was not an Acholi and that she was planning to evict the people of Amuru District from their land.

755 Similarly, the exact words about evicting people were not mentioned. However on this second leg of the claim, counsel for the petitioner relied on **S.23 (1) of the Parliamentary Elections Act** which forbids non-sectarian campaign. The section provides, **“A person shall not use a symbol, or color which has a tribal, religious affiliation or any other sectarian connotation as a basis for that person’s**
760 **candidature for election or in support of that person’s campaign.”**

The penalty for sectarian campaign is under S.23 (3) (a) where a fine of 120 currency points may be imposed or imprisonment for 5years or both. This shows how seriously sectarian campaign is treated under our electoral laws.

He also relied on S. 24(a) of the Parliamentary Elections Act which provides that,
765 **“Any person who before or during an election for the purposes of effecting or preventing the election of a candidate either directly or indirectly (a) by words, whether spoken or written, song, sign or any other representation or in any manner seeks to excite or promote disharmony, enmity, or hatred against another person on grounds of sex, race, color, ethnic origin, tribe, birth, creed or**
770 **religion commits an offence.**

Sectarian campaign was identified as an area which should be specifically outlawed or tolerated.

It must in my humble opinion be specifically pleaded. It was not. Nevertheless, if I consider the second leg of paragraph 5:7 as falling under the ambit of **S.23(1) and section 24(a) of the Parliamentary Elections Act**, then evidence adduced must prove the following constituents of the offences created under the above section. Under S.23 (1), the petitioner must prove:-

- (a) That the respondent used a symbol or color with tribal, religious, or other sectarian connotation.
- (b) That the symbol, color or other sectarian connotation was the basis for her candidature or campaign.

Sectarian connotation relate to or are characteristic of a sect. One must have a sectarian mind or conduct herself or himself in a sectarian manner .One must exhibit intolerance of the other or intolerance by the electorate as a result of the sectarian campaign in order to amount to sectarian connotations.

Under **S.24 of the Parliamentary Elections Act** which forbids interference with electioneering activities of other persons, the allegation must also be specifically pleaded.

The petitioner must prove that,

- (1) The respondent used spoken or written words, or presented herself or himself in a manner that interfered with the election activities of another person.***
- (2) The words promoted disharmony, enmity and hatred against the petitioner.***
- (3) That the disharmony, enmity, hatred was based on the petitioner's tribe, sex, race, color, ethnic origin, creed or religion.***

The words which the petitioner is relying on is that it was said she was NOT an Acholi and that she was planning to evict the people of Amuru District from their land.

800 There is no evidence that was adduced showing that the 1st respondent used any symbol or color which was symbolic with the Acholi tribe.

No evidence was adduced to the effect that as a result of the use of a symbol or color, the petitioner was hated and that there was disharmony or enmity between her and her supporters.

805 No evidence was adduced to prove that she lost because she was rejected for not being an Acholi. In fact according to the results, the competition was tight between the petitioner and the 1st respondent. The other candidates were ABER CAROLINE, ACHAN POLINE, ADOKORACH SUSAN BWOT AND ATIM JOSEPHINE.

810 If I may sample a few stations ,*at Ogoro Pii* the petitioner got 60 votes while the 1st respondent got 58 votes, with a difference of only two votes. Achan POLINE got 1 vote Aber Caroline got 0,Adokorach Susan got 2,while Atim got 0.

At *LABLA-OM* polling station, the petitioner got 52 votes while 1st respondent got 60 votes with a difference of only 8 votes. Aber Caroline got 0, Achan Poline got 815 6, and Adokorach Susan got 1.

At *OLWAL-MUCAJA* polling station, the petitioner got 83 votes while the 1st respondent got 90 votes with a difference of only 7 votes. The other candidates went away with 0 and 1 vote each respectively.

At **GIRA-GIRA PRIMARY SCHOOL** polling station, the petitioner got 56 while
820 the 1st respondent got 73 with a difference of 17 votes only. The other candidates
got 1 each with Achan getting 22 votes.

At **Mutema junction**, polling station, the petitioner got 33 votes, 1st respondent 43
votes, with a difference of only 10 votes, Aber Caroline 2 votes, Achan Poline 8
votes, Adokorach Susan 4 votes Atim Josephine 0.

825 At **COO-ROM**, polling station the petitioner got 114, the 1st respondent got 89 with
a difference of 25 votes while Abel Caroline got 0, Achan Poline 7 Adokorach
Susan 0.

The above results show that the petitioner was not rejected or hated for not being
an Acholi. If anything, the candidates who got 00 and or 1 should be the ones to
830 complain because not even their polling agents voted for them. They did not also
vote for themselves where results indicated zero.

The difference between the petitioner and the 1st respondent was not shockingly
overwhelming to bring out the element of possible shunning by the electorate on
tribal basis. The assumption that the petitioner lost because she was from the Itesot
835 tribe from Eastern Uganda which evidence was from the bar in submission was in
the mind of the petitioner.

The electorate in Amuru voted for her except that she lost with small margins.

***Losing an election does not necessarily mean that people or the electorate hate
you. There is no evidence that the supporters of the petitioner turned against her
840 as a result of the sectarian campaign. No evidence was adduced showing that
there was intolerance of the petitioner based on tribal sentiments. She actually
lost honorably unlike those who would get one or no votes at all.***

Counsel for the petitioner submitted as follows;

845 *“the parliamentary by-election held on 20th November 2014 offended all the
above provisions of the Parliamentary elections Act, as well as chapter 4 of the
1995 constitution that provides for “equality and freedom from discrimination”
sexist, defamatory, tribal and sectarian statements were made by the first
respondent personally or with her knowledge and consent or approval. The
petitioner comes from the Itesot tribe of eastern Uganda and is married to an
850 Acholi and therefore lives in Amuru district. The first respondent on the other
hand Is a native of Acholi and she sold herself as such to endear herself to the
voters who are mainly Acholi.*

*Throughout the period before and during the elections, the issue of the
petitioner’s ethnicity was fodder for the public at political rallies, campaigns and
855 on various radio talk shows.*

*The first respondent and her agents capitalized on the fact that the first
respondent was Acholi and the petitioner was a non Acholi.”*

I have looked at the affidavits of the petitioner, Odoki Jenaro paragraph 3, Richard
Opoka, Rose Opoka paragraph 4, Betty Alinga paragraph 6, Anthony Odong
860 paragraph 7, Lanyero Faustine, paragraph 3. None of them brings out the issue of
the petitioner being from the Itesot tribe and that she was discriminated against
because she was from the Itesot tribe of Eastern Uganda. That piece of evidence is
from the bar. Until counsel gave that evidence from the bar, court did not even
know that the petitioner is from the Itesot tribe because none of the witnesses
865 mentions it in their affidavit. Not even the petitioner.

Court is therefore wondering if the first respondent and her agents were using the petitioner's ethnicity against her, why is it that none of the witnesses mentions Itesot tribe in their evidence.

870 Was the Itesot tribe ever mentioned? Is it possible to mention that the petitioner was a non Acholi without mentioning where she came from? If at all the voters did not vote for her because she was Larok (meaning foreigner) is there evidence that the electorate only considered the tribe and nothing else?

875 Was the race between the two only? There were other candidates who actually lost miserably compared to the petitioner as demonstrated above. Were they discriminated because they were Larok? Certainly the answer is in the negative.

Lanyoro Faustin and Anthony Odong claimed that Michael Lakony uttered defamatory and insulting statements that the petitioner was not an Acholi and therefore not fit to lead the people of Amuru and that she had a certificate in cooking and that she had no hair.

880 Court found this evidence very interesting. This was not a beauty contest. What did hair have to do with a parliamentary candidate? Even in today's beauty contest, the panelist look for brain intelligence more than physical looks. One may look stunningly petit but with little intelligence or reasoning capacity. Lanyoro Faustin and Anthony Odong must be living in the 16th century where beauty was an issue.
885 That is why today, Uganda and world over are promoting the education of a girl child to enable her participate in national development.

The issue of the level of education whether one has a certificate or Doctorate in a given field is a question of fact. In campaigns, it is allowed to make comparisons to enable the electorate decide who has the capacity to deliberate on serious

890 national issues in the August house. The minimum education is Uganda Advanced
certificate of education or its equivalent. During campaigns a candidate brings out
their education qualifications which is not a crime. It cannot be said to be
defamatory if a candidate's academic qualifications comes out as a fact. It would
however be defamatory if one came out to say that a candidate is a certificate
895 holder where as she is a degree holder. No evidence was presented in this court
about the education level of the petitioner. Upto now court does not know her level
of education. She did not even make it an issue for investigation. No witness
came up to say they never voted for her because she is a certificate holder.

Michael Lakony denied the above accusation in his affidavit dated 21/05/2015. In
900 paragraph 3, he denied ever telling voters not to vote Amongin because she is not
Acholi. He said, the petitioner sold herself as "Dako gang" meaning "I am your
wife".

Annexure A to his affidavit indeed shows a calendar with the petitioner's portrait
with the wording "DAKO GANG" in capital letters. This was her catchphrase or
905 slogan for the campaign.

***On the other hand, there is nothing to show that the first respondent marketed
herself as the daughter of the soil. That was evidence from the bar. The
petitioner to the contrary marketed herself as a wife of the Acholi. Her fear that
they would not elect her because she was not Acholi, was in the mind. Infact to
910 disapprove her fears, she competed well with the 1st respondent. There had to be
a winner either way. Only the final results could determine the winner.***

Lakony Michael under paragraph 7-8 stated that ***"during campaigns I answered
this by saying that the petitioner was a wife of the Acholi and the first respondent
was a daughter of the Acholi. That both were ours. That I was only answering***

915 *her political strategy to win votes but at no time did I state that the petitioner should not be elected because she is not Acholi.*” The petitioner did not file a rejoinder to controvert his affidavit.

Lakony was also the only respondent’s witness who was cross examined.

Counsel dwelt so much about land in Apaa when even the petitioner did not
920 mention the issue of land in Apaa in her petition. Lakony did not in cross examination confirm that the petitioner was not elected because of the land in Apaa.

Counsel abandoned Lakony’s cross examination to make a futile application compelling court to summon a witness not known to court. He therefore left
925 Lakony off the hook without contradicting himself. The issue of the tribes of the petitioner and 1st respondent was not brought out during cross examination of Lakonyi.

Counsel submitted on the Annexure A to Gilbert Oulanyah’s affidavit of a radio talk show.

930 Gilbert Oulanya’s affidavit was commissioned before Alice Latigo. Alice Latigo did not securely seal the exhibit to the affidavit. This offends **rule8** of **the commissioner** for **oaths rules** under **S.7** in the schedule of the Act which provides **“All exhibits to affidavits shall be securely sealed to the affidavits under the seal of the commissioner and shall be marked with serial letters of identification”**.

935 This rule is meant to identify the exhibit by the commissioner for oaths to certify that they are authentic. An affidavit which does not comply with the provisions of the statute as to a prescribed form cannot be admitted. An affidavit is evidence and evidence must be proved.

That paragraph of Gilbert Oulanya's affidavit attaching Annexure A is not
940 admissible because Annexure A has no author and was not formally tendered and
admitted in court.

However persuasive it may be to either party, court cannot rely on it.

With the above said, court is of the view that the petitioner failed to prove the
electoral offences under **S.23 (1) and S.24 of the Parliamentary Elections Act.**

945 The next electoral offence alleged under the petition is under paragraph 5.8. ***That
the officers and or agents of the second respondent forged and falsified the
results of the elections in favor of the first respondent. This allegation if proved
would contravene S.78 (a) of the Parliamentary Elections Act.***

The above allegation is supported by the affidavit of the petitioner under paragraph
950 9 where she states ***“that the officers and or agents of the second respondents
forged and falsified the results of the election in favor of the first respondent.”***
Other than making the blanket statement there is no other evidence to support the
allegation of forgery or falsification of results.

Forgery is defined as criminal falsification by making or altering an instrument
955 with intent to defraud. The petitioner had to prove that the results were actually
forged. That she was robbed of victory by the forged results.

It follows that the returns that were sent or the results that were declared were
false. This is a serious allegation against the second respondent's officials.

Unfortunately no specific official was named in the forgery, no polling station was
960 named and no genuine results were disclosed to enable court make any
comparisons. No single petitioners polling agent swore an affidavit that the results

declared at his polling station was different from the results released at the tallying center. It is common knowledge that at the close of voting, the ballot papers are counted in the presence of an inquisitive and expectant electorate. The supporters
965 eagerly wait to know the results at least at their polling station. The polling agents if satisfied with the whole process and results then endorse on the DECLARATION OF RESULTS FORM. The petitioners agents signed on the forms and none of them came up to inform court that the results were forged or falsified.

970 The presiding officers of the respondents denied this allegation and stated the agents of the petitioner signed declaration of result forms a sign that they accepted the results. Since counsel for the petitioner did not submit on this allegation, I leave it at that. Court has treated it as a reckless and malicious allegation by the Petitioner against the agents of the 2nd respondent.

975 The petitioner further alleged under paragraph 5.9 that, ***“That the second respondent permitted unauthorized persons who were not registered voters to vote in the parliamentary election.”*** If the above allegation is proved, it would be in contravention of S.69 and 77(a) of the Parliamentary Elections Act. Paragraph 5.9 can be handled together with the allegation in paragraph 5.13 where the
980 petitioner alleges ***that, the second respondent failed to control the use and distribution of ballot papers and ballot boxes to the responsible officials of the electoral commission resulting in ballot papers being In the hands of the first respondents’ agents with the consent, knowledge and approval of the first respondent and thereby resulting in multiple voting and ballot boxes stuffing.”***

985 Again counsel for the petitioner did not submit on this allegation. He was justified to do so because the petitioner did not adduce any evidence to support her claims.

But as earlier mentioned this judgment is not for the parties to the petition. It is for the public and particularly the electorate in AMURU to know whether the allegations of the petitioner have been proved.

990 To prove an offence or illegal practice under S.69 of the Parliamentary Elections Act, the petitioner must show that prohibited or unauthorized persons voted. These include children who are below 18 years, adults who are not registered as voters, either because they didn't register or because they are non-citizens and or ghost voters i.e., if someone ticked against the deceased as the person who has voted.

995 It is not enough to allege an illegal practice just because it appears in our electoral laws. Whatever is pleaded must be specifically proved.

The same applies to S.77 of the Parliamentary Elections Act. The petitioner must prove that a person was allowed to vote when he or she isn't entitled to vote and that some people voted more than once. This can be deduced from the fact that the
1000 ballot papers cast are more than the registered voters or are more than what was supplied.

The petitioner has to prove that ballot papers were in the hands of the 1st respondent's agents who should be named. She has to prove that ballot boxes were stuffed with pre ticked ballot papers. This allegation and or accusation
1005 portrays the 2nd respondent's agents as incompetent, partial and that they abused their office. It is a serious allegation against the 2nd respondent which should not be made casually like in the instant case without any evidence. Needless to mention it is perceived as being noxious and vexatious and unfair to the officers who participated in the electoral process.

1010 It would mean that the second respondent's agents or officers failed to do their job or acted illegally or with negligence, with material irregularity. No evidence was called or adduced to support this serious allegation. Allegation contained in paragraph 5.13 of ballot paper stuffing or multiple voting was therefore not proved at all. It has remained a mere allegation.

1015 The petitioner alleged under paragraph 5.14 that ***“the second respondent in connivance with the first respondent stripped the petitioner’s polling agents of their duties and denied them access to the polling station and tallying centers thereby leaving the petitioner’s interest devoid of any protection at the numerous polling stations and resulting into phony results.”***

1020 Connected or related to the above complaint is that under paragraph 5.17 where the petitioner alleges ***that the second respondent permitted unauthorized persons to sign the declaration of result forms yet they were not authorized to do so.***

The petitioner merely repeated what she stated in paragraph 5.14 under paragraph 14 of her affidavit in support and what she alleged under paragraph 5.17 under
1025 paragraph 17 of her affidavit in support. Her advocate did not make any submissions on the two allegations.

The petitioner does not mention her polling agents who were stripped of their duties and denied access to the polling station and at the tallying centers. She does not mention or prove connivance between the first and second respondent and
1030 doesn't mention the unauthorized persons who signed the declaration of results forms.

None of the witnesses who claimed to be her polling agents attached appointment letters and none of them claimed they were denied access to the polling and tallying centers.

1035 Anthony Odong, Lauyero Christine, Richard Opoka who claimed to be polling agents did not allege they were denied access to the polling or tallying centers.

The second respondent's answer to the petition denied the allegation and through Olet Samuel who was the in-charge at Amuru District by election denied whatever was stated in paragraphs 5-6 and what was claimed in paragraph 8-18.

1040 He specifically under paragraph 8 of his affidavit stated, "That in further reply to paragraphs 9, 10, 13,16,17,18 of the affidavit in support, the second respondent shall contend and prove that the petitioner's agents duly participated in the by election and signed the declaration forms as mandated by the law without registering any complaint at that time of signing and as such the averments
1045 contained therein are denied.

Indeed they attached Declaration of results forms and the petitioner did not controvert them in rejoinder. Her agents signed on them.

The second respondent further contended that the second respondent put in place mechanisms to ensure that the entire electoral process was smooth, transparent,
1050 free and fair and that contrary to what is alleged in the petition, the voters exercised their will in accordance with the constitution.

He further deponed under paragraph 10, that he never received any complaint from the petitioner or her agents before, during or on the polling day. There was no evidence that controverted this affidavit. Counsel for the second respondent has

1055 ably submitted on the areas that affect them. The submission is on record and I
have no reasons to disagree with him.

The petitioner failed to prove the allegation of stripping her agents of their
authority. Her polling agents were the best witnesses to that allegation. Her
evidence under paragraph 14 of her affidavit in support of the allegation in
1060 paragraph 5.14 of her petition is neither direct nor circumstantial evidence. The
avermment is absurd because she needed evidence to support it. Not even her polling
agents supported her on this. Court has remained wondering whether it was an
imagination.

The petitioner further complained that the election commenced at 6:00am in the
1065 morning at numerous polling stations one hour earlier than the designated time and
also closed at 8:00pm in the evening three hours after the closing time thereby
occasioning an injustice to the petitioner.

With due respect to the petitioner, unless the times mentioned in her petition and
under paragraph 16 of her affidavit in support was in a dream, no single polling
1070 agent of hers swore an affidavit to that effect. She does not even mention the
polling agents who informed her. That evidence in paragraph 16 is hearsay
evidence which is not even admissible.

She does not even state under paragraph 21 of her affidavit, the source of that
information but claims it is to the best of her knowledge. The advocate who drafted
1075 her petition was also silent on the issue of voting between 6:00am and 8:00pm. He
did not submit on it at all.

This court has taken this allegation as a manifestation of yet another fanciful
imagination of the petitioner not backed by evidence.

I have carefully looked at the cases/authorities relied upon by counsel for the
1080 petitioner.

1. The Tanzanian case of Cheya Anatori Kasazi v Kaahemeza Phares kabuye and AG Misc Civil Cause No.10 of 2005.
2. Bautalib Issa Taligola vs EC and Wasugyira Bob Fred, Election Appeal No.11 of 2006

1085 In those cases, the petitioner proved the allegations of character assassination and campaigning on tribal and religious grounds respectively.

In the instant case the allegations have not been proved therefore it is not enough to get all the available illegal practices and offences under the electoral laws and list them as complaints or allegations in the petition like it was the case in this petition.

1090 The petitioner must go ahead to prove them on a balance of probabilities which is however slightly higher than in ordinary civil suits. ***This is because the standard of proof required in election petitions are very high because the subject matter is of crucial importance to the welfare of the people of Uganda and their democratic governance.*** This was the holding of CHIEF JUSTICE BENJAMIN
1095 ODOKI IN THE RTD COL DR KIIZA BESIGYE CASE SUPRA.

Not even a well-researched submission can cure the defect of lack of supportive evidence because counsel cannot give evidence from the bar.

This brings me to the second last issue of;

Whether noncompliance if any affected the results in a substantial manner ?

1100 From my findings above, the petitioner failed to prove any of the allegations in her petition about noncompliance and illegal practices or acts against both respondents.

There is no evidence of a tilted playing level field. Both the petitioner and the second respondent competed favorably and the 1st respondent was lawfully declared the winner by the second respondent .The results reflected the majority of
1105 the people’s democratic will at least for those who participated in the election by casting the vote. The by election was conducted in accordance with the law, therefore there was no incidence of non-compliance.

Finally, ***what remedies are available?***

The petitioner prayed for the elections to be set aside. S.61 of the Parliamentary
1110 Elections Act provides for grounds for setting aside an election.

I have brought out the allegations made against the respondents clearly in the body of judgment

As mentioned earlier, election petitions are matters of public concern. The electorate are all interested. The tax payer is also an interested party because the
1115 expenses involved in the elections are enormous.

The Court must therefore be satisfied that the complaints in the petition have been proved on the balance of probabilities. It must be satisfied that the candidate who was declared winner did not actually win the election in a fair and transparent manner but through non-compliance of the electoral laws by the electoral
1120 commission agents and the winning candidate. It must also be proved that the winning candidate, his or her agents committed illegal practices or acts to win the elections. And that as a result, the final outcome was affected in a substantial manner. In short, that the results do not reflect the true will of the electorate but were manipulated by the respondents.

1125 This means that Parliamentary Elections cannot be set aside on trivial or flimsy
grounds. The objection must be based on something substantial. The effect on the
result of the election must be substantial and evidence in support of the grounds or
allegation must be to the satisfaction of court. I am afraid that the petitioner listed
1130 several electoral offences and illegal practices as many as they are provided for
under the law which she failed to prove to the satisfaction of court.

In the result, the petitioner is not entitled to any of her prayers as the petition is
hereby dismissed.

Both respondents prayed for costs. Costs follow the event but at times court may
exercise its discretion and not award costs. In the instant case, however, court is of
1135 the view that the petitioner filed this petition simply because she lost. Losing an
election should be expected in one way or the other for there must be a winner and
loser. It should not be a basis for making wild, unsubstantiated allegations against
the winning candidate and the electoral commission agents. It would be different
if non-compliance and illegal practices were proved but not affecting the results in
1140 a substantial manner. Here all the allegations were not proved at all. Others were
even abandoned but the petitioner did not have the courtesy of withdrawing them
so that court does not waste time on them. It was not enough for counsel not to
submit on them after failing to get evidence. In all respect this petition qualifies to
be described as vexatious litigation. In the result both respondents are awarded
1145 costs of this petition.

MARGARET MUTONYI, J

1150 RESIDENT JUDGE, NORTHERN CIRCUIT, GULU

29/06/2015.

The petitioner is free to appeal against the decision of this court in accordance with rules 29 and 30 the Parliamentary Elections (Election Petition) Rules.

29/06/2015.

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