

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
ELECTION PETITION NO. 017 OF 2016
AISHA KABANDA NALULE ::::::::::::::::::::PETITIONER

VERSUS

- 1. ELECTORAL COMMISSION**
- 2. RETURNING OFFICER, BUTAMBALA DISTRICT**
- 3. LYDIA MIREMBE DAPHINE ::::::::::::::::::::RESPONDENTS**

BEFORE: HON. JUSTICE VINCENT OKWANGA

JUDGMENT

The petitioner, who was one of the three candidates who were nominated and did contest for the seat of Woman Member of Parliament for Butambala District in the February 18th 2016 elections, petitioned this Hon. Court under the Constitution, the Parliamentary Elections Act, the Electoral Commission Act, and the Parliamentary (Election Petition Rules) SI 141-2. She challenged the results and the entire process of that election in which the 3rd respondent was declared winner by the 1st respondent contending that the 1st and the 2nd respondents conducted the elections for the Butambala District Woman Member of Parliament in complete disregard of the provisions of the Parliamentary Elections Act and the principles enshrined therein and prays that the Uganda gazette of 3rd March 2016, Exhibit PE5, through which the 3rd respondent was gazetted as a validly elected District Woman Member of Parliament for Butambala be declared null and void and be accordingly expunged and or set aside, a recount be ordered for preliminary to the delivery of the judgment of this Hon. Court, and in the alternative, that she be declared the validly elected District Woman Member of Parliament for Butambala, the 1st and 2nd respondents be found guilty of and responsible for promoting election irregularities, malpractices and fraud which benefited the 3rd respondent and prejudiced the petitioner, a declaration that the 3rd respondent was not validly elected the District Woman Member of Parliament for Butambala, the election results for Butambala District Woman Member of Parliament and the victory of the 3rd respondent be set aside and the seat for the Butambala District Woman Member of Parliament be declared vacant, and a by-election be ordered.

The petition is supported by the affidavits in support, rejoinder and other various documents attached as annexures to support the petitioner's case.

In the results of the election declared on 19/02/2016, the 2nd respondent returned the 3rd respondent as winner with 14,760 votes, the petitioner 14,693 votes and Mariam Nalubega, the other contestant in the said election with 3,381 votes. The winning margin between the petitioner and the 3rd respondent was 67 votes.

The petitioner promptly requested for a recount by the 2nd respondent which recount was declined prompting her to petition the Chief Magistrate Mpigi for such a recount.

Consequently she obtained an order of recount from that court dated 26/02/2016, which order was stayed by the said court prompting her to apply for a judicial review at Nakawa High Court.

The 2nd respondent having transmitted the results of such election to the Electoral Commission on 20/02/2016, the latter gazetted the 3rd respondent as winner of the Butambala District Woman Member of Parliament in the Uganda Gazette of 03/03/2016. The 3rd respondent was subsequently sworn in and took her seat in Parliament as Woman Member of Parliament, Butambala District.

The petitioner then petitioned this Hon. Court challenging the results and the conduct of such elections.

At the hearing, the issues for determination as agreed to between all the parties herein were;

- 1) Whether the election of the Butambala District Woman Member of Parliament was conducted in compliance with the electoral laws and practices.
- 2) If not, whether the non-compliance, if any, affected the results in the said elections in a substantial manner.
- 3) Whether the 3rd respondent, either personally or through her agent(s) with her knowledge and consent or approval, committed or indulged in the commission of any election offences, and or malpractices.

4) What remedies are available to the parties?

The petitioner contends that the February 18th 2016 elections of the Butambala District Woman Member of Parliament was characterized by glaring irregularities, malpractices, and that the said election was not conducted in compliance with electoral laws. The petitioner supported her claims with a host of affidavits sworn by various witnesses many of whom were cross-examined before this Hon. Court.

Among her various complaints as raised in her petition, the petitioner contends that the 1st and the 2nd respondents, by themselves, through their agents or officers, conducted the said election in total disregard and non-compliance with the electoral laws, in that polling at some polling stations were deliberately closed earlier than the official closing time of 4.00 p.m., and that some registered voters who turned up to cast their votes were turned away at some polling stations, thus disenfranchising many voters at those polling stations. She also faults the 3rd respondent for knowingly participating in a number of election malpractices and irregularities by herself, her agents, and her husband, with her consent, like bribing of voters with cash and other material gifts and donations of various kinds to influence the voters to vote her.

The petitioner contends that such irregularities and malpractices committed by the 3rd respondent and her agents and the non-compliance by the 1st and the 2nd respondents did affect the results of that election in a substantial manner.

On their part the three respondents all deny the various allegations of non-compliance, malpractices and irregularities cited and contend severally that any irregularities, non-compliance, or malpractices alleged, if any, did not affect the results of the election in a substantial manner. They contend that the allegations of non-compliance and the election being marred with massive irregularities and malpractices have not been proved. They have also supported their respective answers to the petition with affidavits of various witnesses many of whom were also cross-examined here in court. They all pray that the petition be dismissed with costs.

Issue No. I;

Whether the election of the Butambala District Woman Member of Parliament was conducted in compliance with the electoral laws and practices.

Mr. Frank Kanduho, lead Counsel for the petitioner submitted on this point that the failure of the 1st and the 2nd respondents to conduct a recount of the votes cast as requested for by the petitioner as one incident of non-compliance with the electoral laws. It was argued that the petitioner having obtained a recount order from the Chief Magistrate, Mpigi on 26/02/2016, and such order of recount having been brought to his notice, the 2nd respondent ought to have delayed transmission of results to the 1st respondent until he, the 2nd respondent had received a certificate of the results of recount from the court which had issued the order of recount. Counsel faulted the 2nd respondent on this point, contending that though he was made aware of the recount proceedings which were underway, the 2nd respondent refused to delay transmission of the results and report for the Butambala District Woman Member of Parliament election in contravention of section 58(3) of the Parliamentary Elections Act, 17 of 2005, thus frustrating the recount process.

The 2nd respondent, who is the Returning officer, (RO) for Butambala District, appeared before this Honourable Court and testified as RW1.

In his evidence in cross-examination, RW1 admits receiving an order for recount from the Mpigi Chief Magistrate's court and testified further that, in compliance thereto, he delivered the thirteen (13) Ballot Boxes to Mpigi Chief Magistrate's Court on 26/02/2016. He identified the said court order in court and his own letter dated 26/02/2016 forwarding the thirteen Ballot Boxes to Mpigi Court. Both documents were admitted in evidence as Exhibits PE1, and PE2, respectively.

This witness (RW1) further clarified that the recount at the Chief Magistrate's court Mpigi, was not frustrated by his own actions or inaction, as it was the very same court which had issued the order for recount which subsequently issued a further order staying the recount. RW1 further explains that, although the petitioner made a written request to him to carry out a mandatory recount on 19/02/2016 immediately after his declaration of the results, he could not carry out such recount as the winning margin of the sixty seven (67) votes between the petitioner and the 3rd respondent was far beyond his

legal authority to conduct a mandatory recount under section 54(1)(b) of the Parliamentary Elections Act, 17 of 2005 which limits his mandate to recount to a votes margin of fifty (50) votes between the winner and the runner up. He told Court he accordingly advised the petitioner to petition court, which she did. This witness went on to clarify further that, although he received the notice of recount from court on 26/02/2016, he could not delay transmission of the results and the returns for the Butambala Woman Member of Parliament election, as by that date, 26/02/2016, the results and return for that Constituency had already been made by him, having done so on 20/02/2016, almost a week prior to the receipt of such notice. He explained to court that he made the transmission to the Electoral Commission through electronic transmission the physical proof of which he did not have. This was the electronic results transmission and dissemination system (ERTDS).

When challenged by Counsel for the petitioner in cross-examination, RW1 admitted that he never gave any copies of seals nor serial numbers of seals or those for the ballot boxes to the 3rd respondent. He further admits that although some new polling stations were gazetted within Butambala Constituency for the February 2016 elections, he did not circulate the list of such new polling stations gazetted within Butambala to the 3rd respondent but added that the petitioner, as a candidate sponsored by a political party, she was supposed to get such information from her political party offices where such list was circulated, the same for the other details of serial numbers of seals, copies thereof, and serial numbers of ballot papers, etc. He also feigns ignorance of the legal requirement that results must be transmitted physically through the Results Form provided and not electronically under section 58(2) of the Parliamentary Elections Act, 2005.

From the evidence before this Hon. Court, I find as a fact that by 03/03/2016, when the results for the Butambala District Woman Member of Parliament was gazetted by the 1st respondent, the recount proceedings at the Mpigi Chief Magistrate's court had been stayed by the same court. It had already ended.

I also find as a fact and hold further that such recount proceedings at the Chief Magistrate's court was halted by an order of that very court which stayed the recount as ordered.

Accordingly, the failure to conduct such recount at the Chief Magistrate's Court was not circumvented or frustrated by, nor was it due to any act nor non action of the 1st and, or the 2nd respondents herein, and none of them can be faulted on this point. Neither can the 2nd respondent be

faulted for failure to carry out the mandatory vote recount as requested for by the petitioner vide her letter dated 19/02/2016, Exhibit PE6, in which she complains of clear irregularities and alteration of results on some of the DR Forms as this process was far beyond his jurisdiction which is limited to a vote margin of fifty (50) votes and below.

Accordingly, I do find that the failure to conduct any vote recount by the 2nd respondent and or the Mpigi Chief Magistrate's court was not an irregularity nor do such failures to do so amount to any non-compliance with any electoral laws by the 1st or 2nd respondents that affected the results of the Butambala District Woman Member of Parliament elections of February 18th 2016 substantially. In any case, by 03/03/2016, when the 3rd respondent was gazetted by the 1st respondent, the recount proceedings at the Chief Magistrate's court had been halted by the same court. Consequently no certificate of results of recount was ever received by the 2nd respondent from that court as none was ever issued by that court to date.

In further cross-examination, the 2nd respondent denied recruiting unqualified election officials to preside and handle the election process in the Butambala District election of February 2016 as the minimum qualification for such election officials and polling assistants were clearly published in the public media and recruitment of those polling officials and assistants were done on merit after the successful candidates satisfying all the necessary academic qualifications and other requirements, and consequently, none of the registered voters in Butambala Constituency was disenfranchised as a result of the alleged incompetency or the alleged employment of unqualified polling officials by the 1st and the 2nd respondents in that election.

The petitioner further complained in her paragraph 12 (c) of her petition that the 1st and the 2nd respondents arbitrarily and illegally commenced and closed voting at many polling stations with the result that many registered voters were disenfranchised. Counsel for the petitioner cited the case at Hidaya Primary School polling station, Bulu Sub-county, Butambala Parish, Code: 04 as an example of a glaring irregularity where polling was arbitrarily and illegally closed before the official closing time of 4.00 pm. The petitioner relies on Exhibit PE3, the DR Form from that particular polling

station. In her petition the petitioner cites cases of twenty two (22) polling stations in which polling were allegedly closed before 4.00 p.m., the official time for closure of polls.

In regard to the polling at Hidayat Primary School polling station, Counsel for the petitioner contends that the polling at that station did not only close earlier than 4.00 pm, but earlier than 3.00pm To Counsel, by signing the DR Form at 3.00 pm, as indicated on the DR Form, Mr. Kanya Mohammed (RW10), the presiding officer at that polling station should have actually closed polling at that station earlier than 3.00 pm, as he actually signed the DR Form, Exhibit PE3 finally at the end of the entire exercise of closure of the polling, sorting, assembling of the voting materials, counting the ballots, then filling the DR Form for each category of elections, that is, the presidential election and declaring that results, followed by the directly elected Member of Parliament's election and conclude with the District Woman Member of Parliament election following the same sequence as enumerated above. Counsel emphasized that the presiding officer at that polling station, Mr. Kanya Mohammed who testified here in court as RW10 filled Exhibit PE3 only after he had finished the above ritual of formal closing of polling followed by sorting, assembling of voting materials, counting of the ballots, filling the DR Forms by all concerned, and finally him signing lastly and indicating the time of closure as 3.00pm, which actually means that the said presiding officer actually did close the polling earlier than the 3.00 pm, indicated therein because, with all the above list of rituals for the Polling officer to follow in all the three different categories of elections involved on that day, 18/02/2016, the above sequence of rituals named above could not be physically and practically done manually in zero minutes as it must have consumed some time such that for the polling officer to do the signing of the DR Form for the District Woman Member of Parliament finally at 3.00 pm, he must have actually closed the polling earlier than 3.00 pm, then have sometime to first sort, assemble the voting materials, count the ballots manually, then proceed to fill the DR Form for the presidential, then turn to the directly elected Member of Parliament elections before following the same ritual for the District Women Member of Parliament, to conclude by signing Exhibit PE3 finally at 3.00 pm. Counsel repeated this argument to support his contention for the other twenty one (21) polling stations whose DR Forms indicate closing time as 4.00pm, considering all the physical and manual work rituals involved as listed above herein the polls at those stations must have all been closed

earlier than 4.00 pm, contrary to the law, as the time indicated therein actually indicates the affixing of the last dot, so to say, in the whole ritual involved, as indicated above.

With all due respect to the learned lead Counsel for the petitioner, I do not buy that proposition for the reasons that the time indicated therein at the bottom, the last paragraph of each DR Form; at page 2/2, in my most considered opinion, actually indicates and signifies the last act, or last ritual of the activity to be filled on that form. There is absolutely no provision made to note and indicate the time other polling activities like sorting, assembling of ballots, etc, took place.

For instance, there is no provision on the DR form where the time the polls opens should be indicated, the same for the other activities like when the counting, tallying, sorting, etc, began and when it ended. It would therefore be wrong for learned Counsel for the petitioner to assume that since the presiding officer has indicated the time as 4.00 pm, considering the nitty gritty details of all the activities involved, each of such activities should be categorically apportioned and allotted its own duration of time computed mathematically to fit in with the time Counsel for the petitioner is suggesting.

From the court records, PW13 Balintuma Dirisa, PW14, Nsereko Mutumba and Nyanzi Mohammed, PW15, all swore affidavits in support of the petition in which each of them aver to the early closure of polling at their respective polling stations before the official closing time of 4.00 pm.

PW13, Balintuma Dirisa, who affirms that he was appointed as Polling Assistant at Kitimba A polling station and on the polling day was assigned the role of verification and identification of voters using the Biometric Voter Verification Kit, (BVVK) machine, avers further that, at that polling station at Kitimba 'A' where he was working, the polling was closed between 2.00 and 3.00 pm, when the presiding officer mooted the idea of closing the poll earlier as there was no indication of any more voters turning up to vote, but after they had closed the polls and had taken on counting the votes for the Presidential elections, about seventeen voters turned up to vote only to find the polling closed, and these seventeen voters were turned away and could not vote. He concludes his affidavit in paragraph 11, thus; quote;

“11. I make solemn affirmation to confirm that when (17) seventeen voters turned up to vote at 3.40 p.m., they could not because polling had already closed.”

However, on cross-examination by learned Counsel for the respondents, he contradicts himself by saying that he did not look at the watch when they were closing and further that since nobody talked to the seventeen (17) people, none of whom he knew by name, he would not know whether they were voters or non voters, but goes on to add belatedly that some of those seventeen (17) people were on the voters register. He admits in further cross-examination that at that time there were very many people and a bit of commotion at the polling station and so they chased themselves away.

In the case of PW14, Nsereko Mutumba, he affirms in his affidavit filed on the same date as those of the other two witnesses, PW13, and PW15, that he was also present at the Kitimba ‘A’ polling station after the polling there had closed on the polling day.

However, I find the affidavit of PW14, contradictory and inconsistent in its averments in many respects.

For instance, in paragraph 2 thereof, though he affirms that he is a registered voter at Kitimba B polling station, he avers in paragraph 7 that at the polling station, ***“Kitimba ‘A’ where my name was reflected had already initiated the vote counting process.”***

I find such averments from this witness disturbing for many reasons.

Firstly, while admitting in cross-examination that he did not show any of the polling officials his voter’s card, he still insists that his name is reflected at Kitimba ‘A’ polling station. He further admits in cross-examination that none of the polling officials he found at Kitimba A polling station checked for his name in the voters’ register.

The question that remains unanswered is, having averred in his paragraph 2 of the affidavit he affirmed on 31/03/2016, how did he know that being a registered voter at Kitimba B polling station as affirmed, his name was actually reflected at Kitimba A polling station when he never checked in the said the voters’ register for Kitimba A polling station, and none of the polling officials he found

thereat checked the register to verify that his name is actually on that register. How sure is he of the facts and affirmation he is purporting to affirm to in paragraph 7 of that affidavit? He avers further in paragraph 8 that he had travelled in the company of (19) nineteen other voters who equally never voted.

This clearly contradicts the averment of PW13 who admits that he could not tell whether the seventeen (17) people he saw were voters or non-voters. Furthermore, according to PW14, he had heard a radio announcement on Voice of Africa Radio Station on 17/02/2016, calling upon the Butambala people who were in Kampala, quote; **”to make use of free transport from Kampala to Butambala, to vote. We organized ourselves and set off from Natete to Butambala. We set off at around 2.00 pm. and reached Butambala at around 3.50 pm. and found when voting at Kitimba A had closed while, polling at Kitimba B was still ongoing. I had around other 19 voters whom, I had travelled with in the coaster who equally never voted.”**

If the above averment could be believed, one may wonder then and ask, were all these 17, 19, 20, or 50 voters who travelled all the way from Kampala to Butambala to vote all registered at Kitimba A polling station? If so why Kitimba A polling station only and not any other polling station in Butambala? Who organized such free transport for the Butambala voters? And, having been organized and mobilized through such a radio announcement a day earlier, as averred in the affidavit of PW14, it is even more strange why would such a big number of voters wishing to go and vote in their local area, having organized themselves to go and vote in Butambala set off from Kampala in a coaster motor vehicle, start such a journey by road as late as 2.00 pm. on the very polling day, a journey that ordinarily takes one hour fifty minutes, almost two hours, according to paragraph 6 of PW14’s affidavit? Is such a person a serious voter travelling a distance that takes an hour fifty minutes by an average taxi when he/she is aware the polling closes at 4.00 pm, on that polling date?

In the case of PW15, Nsereko Mohammed, who is a registered voter at Kitimba B polling station, having voted at the Kitimba B polling station as early as 9.00 am, as he testified, he allegedly stayed at the polling station and was more inclined towards Kitimba A polling station. One may ask then, what was his major interest in Kitimba A, which was not his polling station?

This witness's evidence and demeanour during cross-examination is even more telling as noted by court. He contradicts the petitioner's evidence before this Hon. Court where she admits in her cross-examination that she is related to all the four Mohammed Nyanzi's in Kitimba village, with the one who swore the affidavit in support of her petition, that is, PW15, being a cousin brother.

By denying in open court under oath during his cross-examination that he is related to the petitioner, Aisha Kabanda Nalule, coupled by his questionable demeanour during his testimony in court, I find the entire evidence of PW15 in court, and his evidence by way of affidavit in support to the petition, sworn on 31/03/2016 heavily tainted with lies.

The sum total of it all is that, the entire evidence by the petitioner of closure of polling at Kitimba A polling station before the official closing time of 4.00 pm is not convincing to court.

Accordingly, the entire story of the 17 or more registered voters from Kitimba A polling station who were allegedly disenfranchised because of the alleged early closure of the polling at that station by officers of the 1st respondent before the official time of 4.00 pm, appears to have been a well made up story by the petitioner's witnesses for partisan motives. I reject their evidence as full of lies purposely intended to mislead this Honourable Court.

Regarding closure of polling at Hidayah Primary School polling station, the presiding officer, Mr. Kanya Mohammed, RW10, was cross-examined before this Hon. Court by the learned Counsel for the petitioner and he conceded that the time of 3.00 pm. indicated on exhibit PE3, the DR Form which he admits signing at the closure of polling at that station was an inadvertent error occasioned by him due to the high volume of work, and the many DR Forms they had had to deal with on that polling day. He emphasized that apart from that single DR Form, there is no other DR Form from the polling station where he presided which bears such an error.

In re-examination, RW10 did clarify that on polling day, polling at their station was closed at 4.30 pm, and that he filled Exhibit PE3 after sorting, counting and tallying of the scores for each candidate in each category of the February 18th elections.

I have noted that all the six candidate agents of the three Woman Parliamentary candidates that contested the Butambala District Woman Member of Parliament elections of February 18th 2016, all signed and endorsed Exhibit PE3, and apart from RW10, there is no other witness who came forward to testify on the time polling at this station was closed.

On the balance of probabilities, I am satisfied with the explanation of RW10 that, being overwhelmed with too much work and having filled that DR Form together with the other polling officers and other people could have caused such error.

As I said hereinbefore, there is no other evidence before court apart from that of RW10 who testified about the way voting was conducted at Hidaya Primary School Polling station and the time at which polling at that station closed. During this inquiry, Court was able to watch the demeanour of RW10 here in court as he gave his evidence in cross-examination, he appears calm and gave his answers in a very straight forward manner. He appeared to be honest and convincing to court. I accordingly accept his explanation that the time 3.00 pm, indicated on the DR Form, Exhibit PE3, was an inadvertent error as no witness came forward to testify that he or she or any other registered voter was disfranchised thereby as a result of the closure of the polls at Hidaya Primary School polling station at 3.pm.

I find that such an error did not substantially affect the results of the poll in the Butambala District Woman MP elections of February 18th 2016.

Concerning this same issue of closure of polling before 4.00 pm. in the other twenty polling stations complained of in paragraph 17 of the petition, these are; Mayongwe Primary School polling station, Kitimba B, Ndeese Local Council I centre, Nakatooke L.C. I centre, Kasoso HC 2, Nawango COU Primary School, Kirokola, Lakalongo, Kamugombwa, Kyabadaaza HCII, Mbanda, Saaza, Kikunyu B, Bamulonze (A-M), Kibibi Sub-county play ground, Kasozi Babenga playground, Lugali play ground, and Gwatiro Butajja polling stations, I find that all the DR Forms for each of those polling stations show clearly that those DR Forms were signed at 4.00 pm, respectively. There is no other convincing evidence before me to suggest that polling in any of those stations closed earlier than 4.00

pm, thus disenfranchising any registered voter thereby. Accordingly, I reject such submission that polling at those stations closed earlier than 4.00 pm, which are clearly indicated in each of the DR Forms for each of such stations. I further find no evidence of non-compliance with the electoral laws at any of those polling stations by either the 1st and or 2nd respondents in that regard, or otherwise, as alleged by the petitioner in her petition, in any case, I find that none of the alleged non-compliance or irregularities complained of has been proved.

Before I take leave of this issue of early closure of polling before the official closing time of 4.00 pm, I should specifically refer to the mathematical method of voter analysis lead Counsel for the petitioner, Mr. Frank Kanduho adopted in emphasizing his submission of alleged voters' disenfranchisement. On this point, Counsel referred to Exhibit PE10, which is the National Voters' Register for Kasoso Health Centre II polling station and requested court to compare the same with Exhibit PE9, which is the certified copy of the DR Form for the same polling station.

In his submission, Counsel pointed out to court that according to Exhibit PE10, the total number of registered voters at that polling station is four hundred ninety six (496), while an analysis of Exhibit PE9, the DR Form for that same polling station, shows that only (386) three hundred eighty six people voted, meaning that 110 (one hundred ten) registered voters did not vote. Counsel attributed this phenomenon to early closure of polling before the official closing time of 4.00 pm.

With all due respect to learned Counsel for the petitioner, I am not persuaded by such kind of mathematical analysis because many registered voters may fail to turn up to vote on polling day due to various reasons, sometimes due to circumstances beyond their own making; for instance death, sickness, absence from the country or constituency, emergency situations one cannot even think of and all kinds of inability, etc. That explains why it is very rare, in practical terms, to have a situation of 100% voters turn up at a particular polling station in any election in Uganda, thus; attributing the failure of the other registered voters to vote on polling day to one particular factor like an alleged early closure of polls before the official time, even on the balance of probabilities, would be seriously misleading to this Hon. Court.

I therefore do not agree that the 110 registered voters whose names appear in the National Voters Register for Kasoso HC 2 polling station who did not vote for the Butambala District Woman MP elections on 18/02/2016, failed to vote due to closure of polling at that station earlier than 4.00 pm, on polling day.

That also settles all the other submissions advanced by the petitioner in similar terms for the same reasons for all the other polling stations; though I am in full agreement with Counsel for the petitioner that earlier closure of polling before the official closing time of 4.00 pm, constitutes an irregularity, it must be shown by the petitioner, on the balance of probabilities, that such irregularity did affect the results of the election in a substantial manner.

In the instant case, I do find and hold that, on all the irregularities and various incidents of non-compliance with the electoral laws attributed to the 1st and the 2nd respondents like failure to conduct a recount, refusing and or failure to delay transmission of results after receipt of notice of recount, alleged failure to wait for certificate of recount from the Chief Magistrate's court, alleged irregular gazetting of the 3rd respondent, failure to supply serial numbers of seals and serial numbers of ballot papers, failure to supply list of gazetted polling stations in Butambala district alleged closure of polling before the official closing time of 4.00 pm, at various polling stations respectively, none of them has been proved before me on the balance of probabilities, neither do I find that any such irregularities, if any, did affect the results of the elections of the Butambala District Woman MP in a substantial manner to alter the results of that election. That disposes off the 1st and the 2nd issues above.

I now turn to consider the third issue as framed by the parties herein during the scheduling conference;

Whether the 3rd respondent personally, or through her agents with her knowledge; consent or approval or indulged in the commission of any election offences in that election;

The petitioner accuses the 3rd respondent of bribery of voters by way of cash in monetary terms and bribery in material and non-monetary gifts like hoes, wheelbarrow, metallic goal posts, men's

sportswear and plastic plates allegedly given to the voters by the petitioner herself or through her agents with her knowledge and consent.

As rightly pointed out by the petitioner's Counsel Mr. Frank Kandhuo, being involved in any act of vote bribery in an election is an offence under section 68 of the Parliamentary Elections Act, 2005.

Regarding the alleged bribery in monetary terms, the petitioner presented the affidavit of Juma Kisinzi filed in court on 04/04/2016, who later on testified in court during cross-examination as PW9, and that of Francis Mujunga, PW10, filed the same date as that of PW9.

According to paragraph 3 of his affidavit, PW9 avers that on the polling day, 18/02/2016, the 3rd respondent and her husband turned up at his polling station of Ntolomwe polling station, Ntolomwe Parish, around midday and found him outside the polling ring preparing to advance to the polling area to vote, and she called him aside and made him sit in her car, then she started talking to him into the idea of voting her and immediately pulled out cash, shillings two thousand, in two bank notes of the denomination of one thousand shillings each, and gave it to him. This witness goes at length to clarify that he had kept the said money, Shs. 2,000.00, which the 3rd respondent gave to him on polling day, 18/02/2016, and had then photocopied to be exhibited in court in the petitioner's case.

In cross-examination, PW9 testified that he later on took the money to Kandhuo's office, meaning the petitioner's lead Counsel, for the latter to look at the money when he went to swear his affidavit. He says he gave that money to Mr. Kandhuo on 31/03/2016, when Mr. Sserwadda who administered the oath to him, took him, (PW9) together with the petitioner to Mr. Kandhuo's office. In that cross-examination he gravely contradicts his averment in paragraph 4 thereof, by saying that the 3rd respondent gave him the alleged bribe of Shs. 2,000 between 10.00 and 11.00 am, and yet in his averment in paragraph 4 of his affidavit, he says the 3rd respondent came to his polling station at around midday, (i.e. 12.00 p.m.). Neither does this witness mention in his affidavit or cross-examination any of his friends who advised him to keep the money as proof of the bribery to him by the 3rd respondent and neither does he say whether he did vote at all on that day and whether as a

result of the Shs. 2,000= bribe, his allegiance was influenced thereby, making him vote for a different candidate other than the candidate he had intended to vote, had his support not been influenced.

Furthermore the petitioner's team, having kept that money since 18/02/2016, one may wonder, why didn't they tender in the actual money, whether by way of annexures rather the photocopies of the said bank notes which were annexed to PW9's affidavit?

As rightly pointed out by learned Counsel for the petitioner, giving or causing to be given any money, gift or other consideration, before or during an election with intent to either directly or indirectly influence another person to vote or to refrain from voting for any candidate is an offence under S. 68 (1) & (2), (4), (5), (6), (7) and (8) of Parliamentary Elections Act.

Even a person who receives any money, gift, or other consideration under sub-section 68 (1) also commits an offence under that section.

During his cross-examination before this Hon. Court, court noted the demeanour of this witness, PW9 on record, and he did not impress me as an honest and reliable witness; he appeared hesitant in answering many of the questions put to him and appeared unsure of what he was testifying about. Under S. 68(2) Parliamentary Elections Act, he is a self confessed criminal who should not have any right to accuse another person of committing any crime before this Hon. Court. I do not see any justification of believing him, PW9, as against the 3rd respondent whom he accuses of bribing him. Certainly the biblical principle of "**he who has no sins should be the first one to throw the stone ...**" **would** clearly apply to such a witness.

Regarding the evidence of PW10, Francis Mujunga, his evidence on this allegation of bribery in monetary terms is even more shaky.

Although he, PW10, depones on oath that he is a registered voter at Ntolomwe polling station, the same polling station where PW9 also is registered, this witness contradicts himself gravely when he denies taking photocopies of the two Shs. 1,000= notes allegedly given to him as bribe by the 3rd respondent and yet he avers to this fact in his affidavit sworn on 31/03/2016. While denying in cross-

examination that he saw no other person receive such bribes of money from the 3rd respondent, he contradicts his averment in paragraph 5 of his affidavit where he says that the 3rd respondent had parked her motor vehicle along the way to the polling station and she would call person after person and talk to them inside her car. Although he avers in his paragraph 6 of that affidavit that the 3rd respondent called him into her car and offered him money and asked him to vote her, PW10 conspicuously does not make any mention of the 3rd respondent's husband who was allegedly seen in that car by PW9. That leaves a lot of questions unanswered like, did he, PW10, ever enter the 3rd respondent's motor vehicle as he avers? If so, how did he miss seeing her husband who was said to have been with her in her said car? Was he, PW10 lying or testifying on what he was just told other than what he witnessed, or was it PW9, or both of them lying? How would it possible that, after seeing the 3rd respondent call person after person, into her car and talked to them inside her car, this same witness, PW10, would fail to see any other person receive such bribery money from the 3rd respondent as well? What then would be the 3rd respondent's motive of calling and talking to them inside her car one after another, if not to give them the alleged bribery money in order to influence them into voting her?

Such questions actually beg for more clarifications in their evidence than convincing, and all go to show that the credibility of PW10 as a reliable witness is seriously wanting. The most plausible explanation would be that either he did not see the 3rd respondent at his polling station on the polling day as he alleges or he never talked to her nor enter her car as alleged, and or, she never gave him any bribe of money as alleged. No wonder, the alleged bank notes of Shs. 2,000= were never attached nor tendered in evidence except some alleged photocopies thereof.

On the balance of probabilities, I find no concrete evidence to show that such photocopies are copies of the bank notes of the cash money, the 3rd respondent used to bribe him. His credibility and demeanor in court during cross-examination was far from convincing. For that reason, I equally reject his entire evidence as a frame up. How could he have travelled to Jinja road alone on his own money and looking for the telephone number of the petitioner and then calling her on phone to show his displeasure at the alleged bribery and yet he did not think of reporting the alleged bribery to the local council officials or the police if that alleged bribery had affected him so much! No wonder a

self confessed bribe taker cannot be more credible in his demeanor and character than the bribe giver. Under section 68(2) of the Parliamentary Elections Act, such a person is equally guilty as the alleged bribe giver.

I find no merits in the allegations of bribery in monetary terms in the evidence of PW9 and PW10 respectively. I accordingly reject such evidence as a cooked up story geared towards propping up the petitioner's case by witnesses who are partisan.

Further evidence of alleged bribery was presented through PW7, Nabukenya Jane, PW8, Haruna Kawooya and PW12 Ssentongo Brian to support the allegation of bribery by way of a wheelbarrow by the 3rd respondent to the members of the Kyabadaaza Market Traders Association. The most interesting thing about these three witnesses respective testimonies in court are that; whereas both PW8, Haruna Kawooya aged 36 years and Ssentongo Brian, aged 31 years, both grew up and lived in Kyabadaaza village of Budde Parish in Butambala, all their respective lives till now, one of them, PW8, Haruna Kawooya, the elder of the two claims in his cross-examination of not having heard of the Buganda Kingdom self help programme of "**Bulungi Bwansi**", while PW7, Jane Nabukenya, in very evasive way, cautiously admits having heard of the term 'Bulungi Bwansi' on the CBS and Bukedde Radios only; she denies knowledge of what it actually is. This witness admits stealing the alleged wheelbarrow which the 3rd respondent allegedly donated to the small income traders in Kyabadaaza to take to the petitioner's home without the knowledge of the other members. In her affidavit, filed in court on 02/05/2016, PW7, avers in her paragraphs 4 and 7 of her affidavit that she vividly recalls that the 3rd respondent came and campaigned in Kyabadaaza Trading centre on 10/12/2015, and at the close of the meeting, the 3rd respondent intimated to them that she had offered to them a wheelbarrow for helping them in garbage collection and "she asked us to return the favour and support her candidature in the Butambala District Woman Member of Parliament race."

I find a very serious problem with her (PW7) said affidavit in that, although she claims to have very vivid recollection of what transpired at Kyabadaaza Trading Centre, she, PW7, conspicuously makes no mention of any other members of the Kyabadaaza Market Vendors Association who attended the alleged meeting held after her campaign rally in Kyabadaaza in which she allegedly intimated to them that she had offered them a wheelbarrow to help them in garbage collection and allegedly asked

them to return the favour by supporting her candidature in the Butambala District Woman Member of Parliament race. That is very strange and questionable.

Furthermore, no mention of any other person, whether member or not of the Kyabadaaza Market Traders' Association who was present and also witnessed the delivery of the alleged wheelbarrow. A photograph, black and white, of a wheelbarrow with the inscription; donated by Mirembe Lydia Kalule is attached on PW7's affidavit to show that it was a bribe intended to sway their allegiance and influence the members of the Kyabadaaza Market Vendors' Association to vote her in the Butambala District Woman Member of Parliament elections of February 18th 2016.

As submitted by Counsel for the respondents on this issue, I find that the petitioner did not plead this alleged bribery by way of a donation or gifting of the alleged wheelbarrow to the members of the Kyabadaaza Market Traders' Association in her petition in paragraph 14 or anywhere else in her petition filed before this Hon. Court on 04/04/2016.

A petition is the petitioner's pleading in court and like a plaint, a party cannot be allowed to depart from nor be allowed to prove or succeed on any matter he or she did not plead in her, or his petition.

In any case, I find that the 3rd respondent did deny the allegations of bribery generally in her paragraph 7(i) of her affidavit in support of her answer to the petition.

On the authority of *Inter freights Forwarders Ltd Vs East African Development Bank Ltd (C.C) Civil Appeal No. 33 of 1992; (unreported)* and *Dr. Epetait Francis Vs Dr. Isamat Abraham; EP Appeal No. 12 of 2011; (COA)*; I find and hold that the allegations of bribery by way of the alleged wheelbarrow allegedly donated to the Kyabadaaza Market Traders' Association has not been proved for the above reasons.

Further evidence of alleged bribery of voters by way of donation of sixty (60) plastic plates, two metallic goal posts, bribery by way of eight (8) hand hoes allegedly given to three different local groups, and the allegation of one Kalule Richard, husband to the 3rd respondent giving out bottles of

water, soft drink popularly known as soda, and beer to influence the voters to vote his wife, the 3rd respondent during such election was presented by the petitioner in her petition.

In support of such allegations, the petitioner relies on the evidence of Walakira Yunus, PW11, Sewaggudde Sulaiman, PW2, Geoffrey Mukalazi, PW4 and Baker Kinobe.

According to the petitioner during her cross-examination in court, she only came to learn of the allegations of voter bribery with hoes, plastic plates, wheelbarrow, etc, during her pursuit of the votes recount in the Chief Magistrate's court in Mpigi. She confirms further that by the time she cast her vote at Bukandaganyi Polling station, she had never heard of any allegations of bribery. She says she never moved to any other polling station other than Bukandaganyi where she cast her vote on polling day.

I find that the petitioner's evidence in this point gravely contradicted by that of Baker Kinobe, PW3 who testified in cross-examination confirming that he informed the petitioner of the allegation of bribery by way of the alleged metallic goal posts on 31/01/2016. This further contradicts that of PW2, Sekibala Dirisa who says he told the petitioner about this particular bribery allegation by way of metallic goal post on 31/03/2016. He said this after changing from December 2015, which he had earlier on mentioned in court during his cross-examination. The significant parallel I can draw and deduce from the affidavits of PW2 and PW3 regarding this alleged bribery by way of metallic goal posts is the date 31st in both their evidence respectively. From my deduction, I would observe that these two witnesses cannot both be talking of the same thing because as of 31/01/2016, PW3 could not have been able to meet the petitioner in her lawyer's office on Jinja Road as the petitioner, by January 31/01/2016, had not even heard about any allegations of voter bribery in whatever form, and I believe she had not yet gone to see a lawyer in regard to this petition. Having observed the demeanor and the manner in which the three witnesses, PW2, PW3 and PW4 all gave their evidence here in court during cross-examination and re-examination, I find that what these three witnesses testified to in court was a clear attempt to reproduce in court a well rehearsed position agreed to, rather than facts and matters they have witnessed being recounted from their knowledge and information known to them as they testified in court, hence the shifting position of PW3 in saying January then shifting to December and later to January 31st 2016.

Regarding the affidavit of Sewagude Sulaiman filed in this court on 02/06/2016; I find that such affidavit is not dated at all. Furthermore, I see a clear discrepancy therein where the position where the commissioner for oaths who allegedly administered the oath to the deponent/affirmant shows a clear white out which covers an earlier signature different from the signature of the commissioner therein.

In matters based on evidence by affidavits like in the instant petition, this Hon. Court places a lot of weight on every detail and shall not overlook or ignore even a minor error like failure to insert a date on which the affirmant/deponent affixed his, or her signature thereon, as that is very important to verify whether the witness actually signed and swore the affidavit at the time of commissioning or just merely signed it elsewhere, and the commissioner also signed the same without seeing the witness sign the affidavit before him.

In this regard, this Hon. Court finds it unsafe to assume the date on which the alleged affidavit was allegedly sworn and accordingly this Hon. Court shall not place any reliance on such defective affidavit.

PW11, Mr. Walakira Yunus was the only witness, for the petitioner who testified on the alleged bribery by way of the alleged donation of sixty (60) plastic plates by the 3rd respondent, while RW10, Nakintu Jidah testified on this point on the side of the respondents, I find it very strange and arguable that PW11 who could not remember the date the 3rd respondent allegedly gave his group, the Sosolye Kitimba Farmers Group the sixty plastic plates as a bribe for their members to vote her, could not even remember whether the 3rd respondent had participated in the NRM party primary elections with the petitioner or when such a primary election took place, could not know nor remember anything concerning the nomination of candidates, and the campaigns in this election would clearly remember the date he made his affidavit from Total House on Jinja Road on 31/03/2016. In any case, his standing and membership in the Sosolye Kitimba Farmers' Group has been greatly curtailed with his name being relegated from the original number two (2) on the list of members to the second last at the bottom at number 58 out of a total membership of 60 people. This came about as a result of him not making any savings at all with the group, and for not regularly attending the weekly meetings of the members as required. There is the unchallenged evidence of RW10, Jidah Nakito that he, PW11,

had never attended the group's weekly meetings since October 2015. Being a non-regular and a relegated member as such, I find his evidence most unreliable.

On the balance of probability, I would reject his evidence on this allegation of bribery by way of donation of sixty plastic plates and accept the one of Jidah Nakito, RW10 who impressed me as a more honest and truthful witness who gave her evidence before this Hon. Court in a straightforward and well composed manner and not shaken in her cross-examination.

Accordingly, I find no evidence of voter bribery by the 3rd respondent by way of plastic plates as none has been proved before me.

Finally, in all these allegations of bribery, the petitioner further avers in her paragraph 14(vii) of her petition and paragraph 16 of the affidavit in support of her petition that the 3rd respondent bribed some members of the women self help group of Muno Mukabi, found in Gwattiro village, with some eight (8) hand hoes and a (mobile) cell phone set.

In support of such allegations, the petitioner presented the evidence of PW5, Nakibuka Shifra, PW6 Mwamini Naiga, and the affidavit of Namusisi Nakabugo. This particular allegation was denied by the 3rd respondent in her answer to the petition and her affidavit in support of the answer as well.

According to the evidence of PW5, Nakibuka Shifra, the photographs marked 'HH' annexed to her affidavit dated 31/03/2016, filed in court on 04/04/2016, on 11/01/2016 at Makulungu, when they were taken by a photographer whom she had called to take the photographs.

She says she decided to have those photographs taken because Aisha Kabanda, the petitioner had come to their village and told them that she was cheated of her votes so those who have been given tangible things could come forward and help give evidence of such gifts. She went on to testify that she was hurt in her heart pondering how can a vote cheater lead them that is why she took the photographs. She continues in cross-examination that the 3rd respondent stole the petitioner's votes in court.

I find a lot of problems with the evidence of PW5, mainly on two reasons:

Firstly, if indeed it is true that she decided to take those photographs to show proof of voters bribery or vote cheating as she calls it, then they could not have been taken on 11/01/2016 as she alleges in her cross-examination, because by January 11/01/2016, the elections for which the petitioner lodged this petition had not taken place and the petitioner had not come to their village complaining of having been cheated of votes in court. In her affidavit in support of the petition dated 31/03/2016, PW5 does not mention anywhere in her said affidavit when these (8) eight hoes were given to her, neither does she mention the other members of the alleged Muno Mukabi Women's Group in Gwatiro village who also benefitted. She does not even remember the person she called to her place to take those photographs. There is further evidence from her, and PW6, Naiga Mwamini, that four other people rejected the four (4) unused hoes. These four hoes (unused) are said to have been kept at a local mosque in Makulungu. If such a claim is true, why were these hoes themselves not shown to court instead of the photographs which were annexed to the affidavit of PW5?

PW6, Mwamini Naiga says in her cross-examination that the photographs were shown to her by PW5 because they had amused PW5 who wanted to share the amusement with them. Both witnesses contradict themselves in equal measure by first asserting that the photographs were taken in March 2016 before both changing their respective positions and saying they were taken on 11/01/2016. Having observed the demeanour of these two witnesses in court, I was not impressed by their shifting positions whenever a question is put to them in cross-examination. In my honest assessment, their respective credibility was far from impressive. No wonder, PW5 told court that she was hurt in her heart because a person elected as their leader had stolen votes in court.

PW6 further contradicts the evidence of PW5 when the former alleges that the hoes were delivered in the presence of all the members of the Muno Mukabi Women's Group, Contrary to what PW5 alleges. This is further contradicted by the affidavit of Nakabugo Namusisi dated 31/03/2016 who depones in her paragraph 5 of her affidavit that some group members were present including Nayiga and Hawah Nalubega.

Although the said Nakabugo Namusisi was not cross-examined by the respondents' Counsel, still, I find her affidavit lacking in a number of respects. It does not give the facts of who and when the hoes were delivered and who distributed the alleged hoes. I further find that although the said affidavit is also drafted and follows the same form and format in both contents, none of the three witnesses above, PW5, PW6 and Nakabugo Namusisi who testified about the alleged donation of the 8 hoes by the 3rd respondent makes any averment regarding the taking of the photographs and the alleged rejection of the four unused hoes by the other members said to be supporters of the petitioner and where they are being kept by the time they made their respective affidavits.

In the end, I find that the evidence of the alleged voter bribery by the 3rd respondent by way of the alleged hand hoes is not convincing at all, and so I reject it as well.

The same goes for the alleged bribery of voters by way of a mobile phone whose particulars, details of where it is currently, whether it is being used or not, and by whom, if at all.

Such allegations of bribery by all the various witnesses who appeared for the petitioner before this Honourable Court herein appear to have been an organized and triumphed up story hatched up by the partisan witnesses who are bent of misleading court because they are aggrieved that the votes of the candidate they supported or do support, were allegedly stolen during the aborted vote recount at the Chief Magistrate's court.

No wonder many of them only came forward to make such allegations of voter bribery after hearing announcements being aired on the local FM radios or via public loudspeakers.

Allegations of voter bribery is such a serious thing, a criminal offence in fact, such that any responsible citizen who has evidence of such allegations, as many of these witnesses who appeared before Court for the petitioner have alleged, could not have waited from December 2015, or January 2016, up to March, 2016, after the elections is over and their candidate has lost the elections, then such evidence is collected or mobilized through public meetings and public broadcast in the mass media as in the instant case. Such witnesses being partisan are likely to exaggerate what happened

during the elections exercise rather than presenting the true position of what transpired during the campaign and the election exercise.

In the *Dr. Epetait Francis Vs Dr. Isamat Abraham; EP Appeal No. 12 of 2011; (COA)*; the Court of Appeal observed that;

“the agents of the respondent were partisan witnesses who are likely to exaggerate. The trial Judge ought to have looked for some independent evidence from an independent source to support the allegations of invalidation of votes at Kapir and Odwarat polling stations. Lack of independent evidence leaves the evidence of the respondent insufficient to prove the allegations he made to the satisfaction of court.”

See *JB Kakooza Vs EC & Yiga Anthony, EP Appeal No. 11 of 2007* for further emphasis on this.

Finally, on a very important note, this Hon. Court has noted that the petitioner’s petition filed before this Hon. Court on 04/04/2016, was signed by the Counsel for the petitioner on 31/03/2016, and not by the petitioner herself. I find this strange and irregular because, a petition being a pleading on oath or affirmation, must be signed by the petitioner himself or herself and not by a Counsel acting for him or her, as such information averred to in the petition are on oath.

The form of every petition under S. 60 (2) of the Parliamentary Elections Act, 2005, must conform to the strict format laid down under regulation 4, (1), (2), (4) and (7) of the Parliamentary Elections (Interim Provisions) Rules – SI 141-2.

None of the Counsel who appeared before me on both sides made any submission or reference on this, but I feel that this being an important inquiry, this Honourable must address the issue. Though this Hon. Court has observed this as an error on the part of the petitioner and her Counsel, this Hon. Court decided to consider the petition on its own merits and make this observation at the conclusion, not that this Hon. Court had ignored or overlooked the same.

In conclusion, I shall emphasize the observations made by their Lordships, the justices of the Court of Appeal to the effect that in an election there is a lot to be done and concluded by a declaration of the

results within a specific time and the officials are confronted with volumes of task to accomplish in which case errors are bound to occur.

In **Masiko Winifred Komuhangi Vs Winnie Babihuga J.**, EP Appeal No. 9 of 2002, Court of Appeal, their Lordship stated thus;

“the decision of Court should be based on the cogency of evidence adduced by a party who seeks judgment in his or her favour. It must be that kind of evidence that is free from contradictions truthful so as to convince a reasonable tribunal to give judgment in a party’s favour. Without going to the defence evidence, therefore, the court should first determine whether the evidence of the petitioner adduced in proof of the alleged bribery and holding a rally at Nyakatunga warranted a decision in favour of the respondent (petitioner in the lower court). The standard of proof required is on a balance of probabilities...”

In the instant case, I find that all the allegations of voter bribery and other illegal acts attributed to the 3rd respondent, her agents, and her husband through her consent and knowledge have not been proved. The 3rd respondent’s husband, one Kalule having been implicated in the alleged voter-bribery himself, I find that, since he is not one of the respondents against whom this petition has been presented, I find that he is not obliged to defend himself by way of an affidavit in answer, or in reply to this petition as submitted by the petitioner’s Counsel. He is not a party in this petition and so not obliged to file any answer or reply for that matter.

I have found further guidance in the recent decision of the Supreme Court in **Amama Mbabazi Vs Yoseri Kaguta & Others EP No. 01 of 2016**; (Supreme Court) where their Lordships made the following observations;

“Court has been guided by the principle that in a democracy, the election of a leader is the preserve of the voting citizenry and that court should not rush to tamper with the results which reflect the expression of the population’s electoral intent.We must, however, emphasize that although the mathematical impact of non-compliance is critical in determining whether or not to annul an election, the court’s evaluation of evidence and the resulting decision is not exclusively based on the qualitative test. Court must

also consider the nature of the non-compliance. Annulling of ...election results is a case by case analysis of evidence adduced before court. If there is evidence of such substantial departure from constitutional imperatives that the process could be said to have been qualitatively devoid of merits and rightly be described as a spurious imitation of what election should be, the court would annul the outcome.

On the one hand, the court must avoid upholding an illegitimate election result and on the other it must avoid annulling an election result that reflects the free will of the majority of the electorate.”

In the instant case I find that none of the non-compliance complained of have been proved to the satisfaction of this Hon. Court, and further find and hold that no eligible voter who ever turned up to vote in time, was ever turned away from the polling station. I therefore find that no disenfranchisement of any voters occurred during that election.

The petitioner prays that the petition be allowed with costs, the extraordinary the Uganda Gazette Vol. CIX No. 14 of 03/03/2016 herein marked as PE5, in which the 3rd respondent was gazetted as a validly elected District Woman Member of Parliament for Butambala be declared null and void and be accordingly expunged, and or set aside, a recount be ordered for preliminary to the delivery of the judgment of the court, and in the alternative, that the petitioner be declared a valid elected District Woman Member of Parliament for Butambala, the 1st and the 2nd respondents be found guilty of promoting election irregularities, malpractices and fraud which benefited the 3rd respondent to the prejudice of the petitioner, the election results for Butambala District Member of Parliament and the victory of the 3rd respondent be set aside, a declaration that the 3rd respondent was not validly elected the District Woman Member of Parliament for Butambala and that the parliamentary seat for the Butambala District Woman Member of Parliament be declared vacant and a by-election be ordered for. Counsel for the petitioner also prayed for a certificate of two Counsel in this petition for the petitioner's Counsel.

Some of the prayers made by the petitioner as above are practically impossible to grant even if this Hon. Court were to find for the petitioner; for instance, the Uganda Gazette of 03/03/2016, Exhibit

PE5, cannot be declared null and void and cannot be expunged as the publication thereof was done by the 1st respondent in exercise of its mandate under the law.

A recount preliminary to the judgment of this Hon. Court cannot be done now as the whereabouts of the 33 ballot Boxes complained of, and their security and contents thereof, as of now, are not known and cannot be guaranteed by this Hon. Court. The prayers and requests above are hereby declined.

Having made due inquiry in this petition, and basing on the findings I have made herein above, this Hon. Court finds and I declare that the 3rd respondent was a validly elected District Woman Member of Parliament for Butambala District.

The petition is accordingly dismissed with costs under S. 63 (4) (a) of the Parliamentary Elections Act, 2005.

HON. JUSTICE VINCENT OKWANGA
JUDGE
02/09/2016

ORDER

1. A certificate of two Counsels are hereby issued in respect of the Counsel for the respondents.
2. A certificate of two Counsels hereby issued in respect of M/S Kanduho Frank of M/S Kanduho & Co. Advocates, lead Counsel for the Petitioner and M/S Celia Nagawa of M/S Nagawa Associated Advocates only.
3. Mr. Kiwanuka Abdallah Advocate who had originally appeared and represented the petitioner in this trial, having absconded from his duty of representing the petitioner in this trial in court

without any leave of this Hon. Court more so after his application to withdraw from representing the petitioner in this trial was rejected by this Hon. Court on 08/06/2016, shall not benefit from that certificate of two Counsels. Having abdicated his duty before this Hon. Court as an officer of this court should not be paid any professional fee in this matter.

It is hereby directed!

HON. JUSTICE VINCENT OKWANGA

JUDGE

02/09/2016