

TANZANIA / JUDGMENT

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- • Copy' ff / IN THE HIGH COURT OF TANZANIA REGISTRY OF MBEYA AT MBEYA
MISCELLANEOUS CIVIL CAUSE NO. 3 OF 2015 A IN THE MATTER OF ELECTION PETITION
UNDER THE NATIONAL ELECTIONS ACT, CAP 343 AND THE NATIONAL ELECTIONS
(ELECTION PETITIONS) RULES, 2010; DR. LUKA JELAS
SI'Y'Afrle ...•..... PETITIONER VERSUS THE HONOURABLE ATTORNEY
GENERAL 1ST RESPONDENT DAVID ERNEST SILINDE 2ND RESPONDENT THE
RETURNING OFFICER MOMBA PARLIAMENTARY f " 3 RD RESPONDENT
CONSTITUENCY

JUDGMENT

141h April & 161h May,'2016 MGETTA, J: On 25th October 2015, general elections were held and conducted throughout the United Republic of Tanzania by the National Electoral 1 Commission, hereinafter referred by its acronym as NEC. This was after an election campaign period which started on 22nd August to 24th October

2015. It involved presidential, parliamentary and Councilors' elections. Momba district was created from Mbozi district and consists of two constituencies namely Momba and Tunduma. The electoral map of Momba constituency during the 201:5 general elections had a total of 207 polling stations, which were spread out in fourteeh (14) adniinistrative wards \ '_\ namely Chilulumo, Chitete, Ikana, Ivuna, Kamsamba, Kapele, Mkomba, Mkulwe, Mpapa, Msangano, Myunga, Ndalambo, Nkangamo and Nzoka. At regional level, NEC had Regional Election Codrdinator; at Constituency level the representative of NEC were the Returning Officer, three Assistant Returning Officers and one Election Officer. At ward level the representative of NEC were two Assistant Returning Officers; while in each and every polling station NEC had one presiding officer, polling assistant, direction clerk, security officer, polling agents and candidates from contesting olitical parties. At Momba constituency, a total of three candidates contested for Momba parliamentary seat namely David Ernest Silinde, Dr.Luka Jelas Slyame, and Weston Allam Simwelu and a total of 55,179 electors 2 r voted. At the end of the exercise, David Ernest Silinde, the 2nd respondent was declared the winner with 26, 468 votes. His main challenger was Dr. Luka Jelas Slyame, the petitioner, who was declared to have received 26,260 votes. The difference was 208 votes. And, Weston Allam Simwelu got 1,156 votes, while 1,295 votes were rejected. The 2nd

respondent was elected on the ticket of Chama cha Demokrasia na Mendeleb, hereinafter referred by its acronym as CHADEMA, and the petitioner ran on the ticket of Chama cha Mapinduzi, hereinafter referred by its acronym as CCM; while, Mr. Weston Allam Simwelu ran Momba parliamentary election under the sponsorship of Alliance for change and Transparency, hereinafter referred by its acronym as ACT. Mr. Weston Allam Simwelu was a member of CCM party until September, 2015 when he defected to ACT party. The petitioner, Dr. Luka Jelas Siyame was dissatisfied with the 25th election results. On November, 2015 according to the exchequer receipt No. 1505743 of the same date, through a legal service of Mwakolo and Company; Advocates of Lupaway street, Mbeya, he filed this petition to challenge the outcome and validity of Momba Constituency election. He made the Attorney General his 1st respondent as per Rule 6(1) of the National Elections (Election petitions) Rules 2010, GN No. 447 of 3 (2010) (henceforth Election Rules 2010), which provides that in every petition, the Attorney General shall be made a respondent. In his amended petition filed on 4th January, 2016, the petitioner prays for:-

- A declaration that the election of the 2nd respondent as a Member of Parliament for Momba Constituency is null and void;
- An order that the petitioner had majority of the lawful votes, by a scrutiny;
- An order that a by-election for Momba Parliamentary Constituency be conducted;
- The 2nd and 3rd respondents be ordered to pay the petitioner costs and the incidentals of this petition, and,

- / 5 Any other relief(s) this court may deem fit to grant Those petitioner's prayers and/or allegations in the amended petition based on various grounds, but mainly that votes counting, tallying, and adding processes of parliamentary results and a declaration of the 2nd respondent as a winner on 26th October, 2015 by the Returning Officer for Momba Constituency (the 3rd respondent) were fraught with irregularities (and a number of non-compliances with the electoral laws; that election results were obtained from fake polling stations; that forms displaying the results were altered, forged and or fraudulently written aiming at distorting the election results; that the 2nd respondent involved in malpractices and bribery and or corrupt practices which had substantially compromised the integrity of the election; and, therefore that Momba constituency Parliamentary election was unfair and un-free, null and void, and have denied him of his right to be declared as the lawful elected member of Parliament for Momba Constituency. In their respective replies to the Amended Petition, all three respondents pleaded that the claims by the petitioner seeking the avoidance of the election results of Momba Constituency have no basis. They contended that Momba Parliamentary election was conducted in accordance with the electoral laws; was free and fair; and its results were accurate and verifiable. Therefore, they prayed for the dismissal of the petition with costs. The reply for the 1st and 3rd respondents was drawn and filed through the State Attorney of the Attorney General Chambers, Mbeya; while the 2nd respondent's reply was drawn and filed through BM Attorneys of Makunganya Street, Dar es Salaam. Upon completion of the pleadings, on 14th March, 2016 the matter was called on for preliminary hearing in accordance with the provisions of rule 19 of the Election Rules 2010 in the presence of Mr. Simon Mwakolo, the learned advocate for the petitioner; of Mr. Renatus Mkude, the learned Senior State Attorney assisted by Mr. Daniel Nyakiha, the

learned State Attorney, for the 1st and 3rd respondents; and in the presence of Mr. Adrian Mhina, the learned advocate for the 2nd respondent. Then Memorandum of agreed matters was prepared as hereunder: Parties' addresses and residences are as reflected in the pleadings; The National Parliamentary election was conducted on 25th October, 2015; : The petitioner contested in Mombasa Parliamentary election on CCM party ticket; while the 2nd respondent on CHADEMA party ticket;

4. The 2nd respondent has declared a successful candidate, while the petitioner, an unsuccessful candidate; (The 3rd respondent was the returning officer of Mombasa Constituency under the auspices of National Electoral Commission; and, There were 207 polling stations at Mombasa Constituency as being approved by the National Electoral Commission (NEC). On the same date, after the conclusion of the preliminary hearing, and in accordance with the provisions of the Election Rules 2010, it was agreed that the petition be determined based on the following issues: Whether there were fake polling stations at Mombasa Constituency; Whether there were irregularities and non compliance with electoral laws and procedures; Whether there was bribery and or corrupt practices; Whether Mombasa Constituency parliamentary election was free and fair; Whether the 2nd respondent won majority votes in the Mombasa Constituency Parliamentary election; and, What reliefs the parties are entitled to. 7 (On 21st March, 2016 when the matter was called on for hearing in open court as required by Rule 15 (3) of the Election Rules 2010, Mr. Simon Mwakolo, the learned advocate, who was later on joined and assisted by Mr. Sambwe Shitambala, the learned advocate, were representing the petitioner and prosecuted the petitioner's case; Mr. Renatus Mkude, the learned Senior State Attorney assisted by Mr. Daniel 3rd Nyakihia, the learned State Attorney were representing the 1st and 3rd respondents; while, the 2nd respondent was represented by Mr. Benjamin Mwakagamba, the learned advocate. In support of his claims, the Petitioner called a total of thirty one (31) witnesses. They are Dr. Luka .Jelas Siyme, himself as petitioner witness No. 1 (PW1), Samuel Leonard Siame as PW2, Weston Adam Simwelu as PW3, John Heaven Nswulla as PW4, Stanley Simbeye as / 1 PW5, Yuda Mi Sichone as PW6, Daniel Siwiti as PW7, Abia Piason Sichone as PW8, Zakias Adolph Sichula as PW9, Jofrey Aloyce Snyangwe as PW10, Gabriel Lupa as PW11, Prisca Stephan Sindano as PW12, Dismas Luka Siame as PW13, Merisiana Juma Misale as PW14, Colleta Bernard Simwanza as PW15, Anna Solomon Mwampelwa as PW16, Christopher Mgawe as PW17, Germanus Mshoka as PW18, Watson Simkonda as PW19, Elmina Kaheza as PW20, Epifanus Kadule as PW21, Pius Mange as PW22, Costantine Choma as PW23, Emmanuel Kyomo as PW24, Yunas Kapwa as PW25, Fulgence Kauzen as PW26, Apolinary Anthon Simbill as PW27, Amon Sichaiwe as PW28, Petro Simundwe as PW29, Geled Simchimba as PW30, and Joseph Chapa Simponde as PW31. On the part of the 1st and 3rd respondents, the following four (4) respondent witnesses testified: Anton Albert Mwantona as respondent witness No. 1 (RW1), Alfred Simpoli as RW2, ASP. Abdallah 4) Shabani Nyandula as RW3 and Jane Julius Tungu as RW4. While, 2nd the following five (5) respondent witnesses testified in favour of the respondent: David Ernest Silinde as respondent witness No. 5 (RW5), Frank George Mwakajoka as RW6, Vicent Levi Siame as

RW7, Claudio Nicolaus Ngomani as RW8, and Zamana Watson Simkwayi as RW9. It is worthy to note that all above mentioned witnesses before giving their respective testimonies, had earlier delivered to this court sworn and/or affirmed affidavits in compliance with rule 21 A of the National Elections (Election Petitions) (Amendments) Rules, 2012 (henceforth Election Rules, 2012). During the trial, each of those affidavits was received and adopted as part of evidence in chief of each and every respective witness who testified before me. All pieces of evidence adduced by all witnesses are in the proceedings of this case. Now the following is the summary of evidence on the part of petitioner. Supporting his claims, the petitioner (PW1) VS the first to give his testimonies. He asserted that, the assertion which was supported by PW2 and PW3, in Momba Constituency 207 polling stations were arranged by NEC and each polling station was given its own name and number. He added that there was a discovery of 110 fake polling stations in 13 wards in Momba Constituency. The assertion was shared by PW3. They were fake because forms No. 21B titled 'Matokeo ya Uchaguzi wa Bunge katika kituo cha kupigia kura' for those polling stations did not bear the correct polling station numbers as provided in the list, exhibits P2 titled 'Orodha ya Vituo vya Kupigia kura' issued and distributed to candidates and or their respective political parties by Momba District Council on behalf of NEC. He insisted that the main feature distinguishing fake and genuine polling stations is polling station number, that is to say that polling station numbers assigned by NEC were correct and consists of 14 digits each, while the numbers written by presiding officers or polling assistants on forms No. 21B at polling stations were not correct as they had few digits ranging from 6 up to 12. Those forms No. 21B for fake polling stations were given to and signed by their respective polling agents present, and were also used during the addition of all votes in the vote's addition hall at Ukwile village, Momba District. To substantiate his allegation, the petitioner had tendered various forms no. 2113 containing the results for each of 110 Polling Stations christened as fake and the court admitted them as exhibits as follows: 17 forms from Kamsamba ward as exhibit P3 collectively; 14 forms from Myunga ward as exhibit P4 collectively; 8 forms from Chitete ward as exhibit P5 collectively; 9 forms from Mpapa ward as exhibit P6 collectively, 6 forms from Kapele ward as exhibit P7 collectively, 4 forms from Mkulwē ward as exhibit P8 collectively; 20 forms from Ivuna ward as exhibit P9 collectively; 1 form from Nkangamo ward as exhibit P10; 4 forms from Ndalamba ward as exhibit P11 collectively; 16 forms from Nzoka ward as exhibit P12 collectively; 4 forms from Msangano ward as exhibit P13 collectively; 10 forms from Mkomba ward as exhibit P14 collectively; and, 2 forms from Chilulumo ward as exhibit P15 collectively. When cross examined by Mr. Nyakiha, the petitioner stated that the results from fake polling stations did affect the amount of his valid or genuine votes. - As regards to the incidents of corruption and malpractices, he said the 2nd respondent committed bribery during campaign period on various dates at the villages namely Mpapa, Mkonko, Yala, Usoche, Muuyu, Chilulumo and Ipata. He admitted that he did not witness such corrupt practices, but he was told that they were committed at those villages by the 2nd respondent or his representatives. He said he reported such corrupt incidents to NEC, the National Intelligence Agency, the Mombasa ODC, and to Mr. Antony A. Mwantona,

- . S S the Returning Officer , the respondent. He also reported such corrupt practices made by 2nd respondent to NEC. It was PW4's assertion also that he was instructed by the petitioner on 12th October, 2015 to deliver complaint letter to 3rd respondent about 2nd respondent's corrupt practices committed during campaign period on various dates and at various places within Momba Constituency. He also informed by telephone, the OCD Momba, OCS Tunduma police station and intelligence units. 12 The petitioner went further stating that after the election results were made open to the public by declaring the 2nd respondent as a winner for Momba Constituency Parliamentary Seat with 26,468 votes, while he was declared as 2nd runner up with 26,260 votes which made a difference of 208 votes, he asked the 3rd respondent to give him a copy of the results, but he refused to provide the same to him as a result he was compelled to leave votes addition hall leaving behind his agent, PW2. -On the other hand PW4 who was seated about 7 meters outside the hall furthered that the 3rd respondent ordered electricity light to be switched off and vote's addition hall became dark when the petitioner asked for a copy of the results. Upon complaining, the 3rd respondent ordered the electricity to be switched on PW4 said on 27/10/2015 after election, he was instructed by petitioner to first submit complaints regarding election flaws and irregularities committed during votes addition process in the hall to NEC via email. Second, he was to submit a complaint letter to 3rd respondent who had to forward the same to NEC to the effect that election rules at Momba were violated so that election result could be voided. Thus on the same date he went to 3rd respondent at about 2:30 pm to submit petitioner's complaint letter to him but he refused to receive it and then left with the car without listening to him. As a result PW4 left the complaint letter to Assistant Returning officer for Momba constituency one Donesia Kafuka. PW1 testified further by tendering a copy of form No. 24B with serial number 00032, titled 'Matokeo ya Uchaguzi wa Bunge katika Jimbo la Momba' containing final election results for total votes cast from all 14 wards consisting of 207 polling stations, fake polling stations inclusive. It was produced and admitted as exhibit P1. It was signed by Returning Officer, RW1, petitioner agent (PW2), the agent of PW3 of ACT party and by the 2nd respondent himself. The petitioner lamented that his agent (PW2) who remained in the vote's addition hall was forced by RW1 to sign it against his will PW2 also lamented that RW1 forced him to sign exhibit P1 by threatening him that if he could not sign the police would be ordered to beat and kick him outside the hall and as a result he signed exhibit P1 accepting that parliamentary final election results were correct. When cross examined PW2 admitted that he was however not beaten or kicked out the votes addition hall and that he did not know the whereabouts of the petitioner at the time he was signing on exhibit P1. Apart from the foregoing, the petitioner asserted that there were more other irregularities and non compliance with electoral laws and 14 (14) procedures. He stated that some of Forms No. 21B collected from some polling stations by his agents were found with serious irregularities such as forgery and/or overwritten election results by presiding officers or polling assistants at the respective polling stations. He also stated that the arrangement by NEC and 3rd respondent was that vote addition process would begin after all ballot boxes containing Votes results from all wards and polling stations had already arrived or been received by 3rd respondent

in votes addition hall at Ukwii village in the building used as 3rd respondent's offices. On the contrary, the 3rd respondent ordered vote's addition process to begin before the arrival of all ballot boxes as well election results from Kapele, Nzoka, Ndalamba, Nkangamo and Myunga wards; and also before the arrival of forms No. 21B with results from the following polling stations: one from Mpui Primary School— 1 1 Myunga ward; one from Ikana Primary School - 2, Ikana ward; one from Ofisi ya Iwenyekiti Kitongoji cha Ipatikana, Nzoka ward; and one from Ipata Primary School— 1, Msangano ward. The petitioner's testimonies were supported by that of PW3. Both of them concluded that those were serious irregularities which affected the whole Momba constituency parliamentary results. 15 I However when cross examined he admitted that some of ballot boxes were forwarded to the 3rd respondent after the process of adding votes had started. He also admitted that he didn't take any action by complaining against such irregularities to a relevant authority. Furthermore, he admitted that on 26th October, 2015 at 5 pm they started to add presidential votes, the process that took them about 6 hours. "Thereafter at 2:30 they started to add Parliamentary vote," but yet some form No. 21B had not yet been received by 3rd respondent although were later on received and the results therein recorded in form No. 24B. He also testified, the testimony that was supported by PW3's evidence, that there was a problem experienced in the IT system votes addition hall. During the process, he heard 3rd respondent uttering words that "system a IT inagoma" without giving further explanation. Another irregularity is that he lured all candidates, their agents, election observers and all legally allowed persons present in votes addition hall to go out for lunch, leaving behind IT expert and public relation officer in the hall. On return from lunch and just before proceeding with votes addition process, as testified by both PW1, PW2 and PW3, they heard the 3rd respondent joyously uttering words that "system ya IT imekubali". Such utterances 16 (made them doubtful and asked themselves what was the problem and how and who solved such problem in absence of other persons especially the candidates and their respective agents. There was no answer given by 3rd respondent to clear such doubts. Again, being supported by the evidence of PW2, PW3 and PW4, the petitioner pointed out that the 3rd respondent's failure to prevent Frank Mwakajoka to enter into vote's addition hall on 26th October, 2015 was an irregularity. He entered and uttered words "tumes Linda jimbo la Tunduma na Momba lazima tushide." Mwakajoka was a person not legally allowed to be in the vote's addition hall, but he was not prevented by the 3rd respondent. As regards to this issue, PW2 and PW3 who were inside the hall stated. that he arrived with 3 persons and left the hall after two minutes; while, PW4 who was outside, about seven meters from the entrance of the hall said that at around 5:30 pm he saw Frank Mwakajoka with 7 persons entering the hall and they left after half an hour. In contrast to PW2 and PW3, PW4 further said that later on after an hour Frank Mwakajoka came again to the very hall and stayed there until the results were announced by the 3rd respondent. 17 (When cross examined PW1 reiterated that the utterance of Frank Mwakajoka amounted to political statement that had impact to addition of votes process. When cross examined by Mr. Mwakagamba in respect of paragraph 5.4 of Maadili ya Uchaguzi wa Rais, Wabunge na Madiwani ya Nlwaka 2015, PW1 admitted that he did not forward his complaints to the responsible offices within 72 hours. He even never filled in any

complaint forms. / Apart from the evidence given by petitioner himself, more testimonies on fake polling stations were given by the following 13 petitioner witnesses: PW5, PW6, PW7, PW8, PW16, PW22, PW23, PW24, PW25, PW26, PW29, PW30 and PW31. All of them were petitioner's polling agents at their respective polling stations. Their respective testimonies are more or less similar that they presided over polling stations late - on were discovered by CCM party ward secretaries to be fake polling stations simply because polling station numbers written on forms No. 21B respectively were not matching with numbers that were assigned by NEC. That was discovered immediately after the CCM Party ward Secretaries had received copies of form no 21B from them from various polling stations and cross checked them in 18 comparison with the list of polling station numbers in their hands. Some of the said CCM Party ward Secretaries who discovered and thereafter told them of the existence of fake polling stations were mentioned as follows: Mr. Modesta Mizengo (mentioned by PW16, PW22 and PW23), Mr. Janai Sinkamba (mentioned by PW24) Mr. Fortunatus Kisanga (mentioned by PW25), Mr. Clemence Mapunda (mentioned by PW26) and Mr. Kanyama Sichone (mentioned by PW29) The 13 petitioner witnesses however admitted that voting and counting processes went on very well at their respective polling stations. The respective forms No. 21B were filled in by polling assistants or presiding officers, then given to them to write their respective names and put signatures therein on their own volition without any force. Their acts confirmed that voting and counting processes at their respective polling stations went very well to the end and that the recorded parliamentary results were correctly filled in. They did identify exhibits PW3 to PW15 containing the forms bearing their respective names and signatures. They asserted that those fake polling stations are those indicated in respective forms No. 21B bearing numbers with fewer digits (some 6 or 12 digits) than the numbers with fourteen (14) digits as assigned by NEC. 19 They reiterated, when cross examined that voting and counting processes went very well at their respective polling stations and that there were no other polling stations than those they were presiding over as polling agents. They also reiterated that the results were very correct except the polling station numbers filled in by polling assistants on form No. 21B as communicated to them by CCM Party ward Secretaries that were different from the polling station numbers assigned by NEC, hence fake polling Stations. They concluded that whichever done or reached at such fake polling stations also became fake. Others went further testifying to the extent that they were also fake; except the results which were correct. As regards to bribery and corrupt practices, the petitioner alleged that Momba parliamentary campaign process, as he was told, was tainted with corrupt practice committed by the 2nd respondent, his representatives or campaigning team. To support his allegation he brought the following 16 petitioner's witnesses: PW3, PW4, PW9, PW10, PW11, PW12, PW13, PW14, PW15, PW17, PW18, PW19, PW20, PW21, PW27 and PW28. They testified that the 2nd respondent corrupted or bribed the villagers by giving them money and water pump machines during the 20 campaign period or meetings while he was insisting that those villagers should vote for him in the 2015 general election. The villages which were affected by 2nd respondent's corrupt practices include: Mpapa, Mkonko, Yala, Usoche, Muuyu, Chilulumo and Ipata villages. PW10 a pastor as well village chairperson and

PW13, :both residents of Yala village told this court that on 6th October, 2015 at Yalá village during campaign meeting, the 2nd respondent gave T 170,000/= to the villagers through the village chairman (PW10) for purposes of purchasing cement for construction village dispensary. Likewise at Epifani Simwala's pombe club, Yala village, he gave TZS 30,006/= to pombe elder drinkers to buy pombe, TZS 30,000/= to youths who were dancing near pombe club, and TZS 20,006/= to wôrren who were cooking. At Vicenti Sikanzya's pombe club, he gave dpombe drinkers TZS 30,000/=. Both PW10 and PW13 asserted that they witnessed him bribing the villagers. When cross-examined, PW10 stated that Yala villagers asked the 2nd respondent to make a contribution for the construction of Yala village dispensary. But, the money TZS 170,000/= was not used and was still in village office. 21 (On the other hand, PW9 and PW11, residents of Usoche village told this court that on 19th September, 2015 at Usoche village, at a campaign meeting, the 2nd respondent gave TZS 200,000/= through village chairperson (PW9) for purchasing cement for construction of village dispensary. While, PW11 said that 2nd respondent gave TZS 170,000/= without being asked, PW9 said he gave money to villagers after he had heard their speech .asking him to contribute soñie, money. for the construction of village dispensary. . . Testifying on corruption practices, PW17 and PW18, residents of Muuyu village stated that on 17/9/2015 at F1uuyu village at the campaign meeting, they witnessed the 2nd respondent giving the villagers TZS 40,000/= through Mr. Raphael Emili Chipinka village chairperson for construction of villagedispesary. .PW19 and PW28 residents of Ipata village, testified that on September, 2015 at Ipata village during campaign meeting, they saw the 2nd respondent giving TZS 170,000/= to villagers. It was PW28, the village chairperson who received the money on behalf of the Ipata villagers and handed such money over the village executive officer who went to purchase bags of cement for construction of village dispensary. 22 I It was stated by PW15, resident of chilulumo village that on 10th October, 2015 at Chilulumo village, during campaign meeting, the 2nd respondent gave TZS 2,000/= to each woman. They were about 600 women from various villages of Chilulumo ward who gathered following the respondent's promise that he would give each woman loan for economic activities if elected as Member of Parliament. PW15 was one of them. She said instead of giving loan, he was calling .ohe after another woman to go and bow before him, touched on her back and gave her TZS 2,000/=. The venue where the said Women were receiving money from 2nd respondent was Chilulumo Roman Catholic Church starting at 4 pm and ending at 5 pm on 10th,, October, 2015. . On the other hand, PW27, also a resident of Chilulumo village stated that on 11th October, 2015 t Chilulumo village during campaign meeting, about 600 yOuths, being one of them from various villages of Chilulumo ward gathered inside Chilulumo Roman Catholic Church at about 2 pm. The 2nd respon'denf arrived and personally started to give each youth TZS 2000/= promising to give them more loan after election. When cross examined by Mkude and Mwakagamba, PW27 admitted that church is a place for worship, but on 11th October, 2015 (Sunday) at 2 23 C pm it was turned as campaign venue. He however insisted that it was inside RC Church and not TAG Church, while, PW3 asserted that on 11th October, 2015 the event took place inside TAG Church at Chilulumo village where the 2^d respondent distributed TZS 2000 to each youth, who were about 600 youths. He informed

Momba OCD about such malpractice. However, when cross examined by Mr. Mwakagamba, PW3 'chaned his statement and said that he saw people outside but hedid not ee the 2nd respondent personally at the TAG Church.. He added that he was told that he bribed villagers who gathered at TAG Church. Coming to the eviderice of PW21, Mpapa village chairman, and PW20, both residents of Mapa village, it was stated that on 10th August,. 2015, in pre campaign period the 2nd respondent donated water pump machine to Mpapa villagers to be used to pump water from old existing drilled wells. The'sad water pump was brought to the village by the 2nd respondent's representative from CHADEMA Party. N When cross examined by Mr. Mkude and Mr. Mwakagamba, the two p.etitioner witnesses admitted that the 2nd respondent denoted the water pump machine to Mpapa village before the campaign period had began, but just before it had started. 24 (In the same vein, PW12 and PW14 testified on the donation of water pump machine by the 2nd respondent to their village of Mkonko. PW12 stated that he handed over the said water pump machine to village chairman during campaign period. According to PW12, it was brought in late August, 2015, while PW14 said it was brought on 30th August, 2015. When cross examined by Mr. Mkude PW12 said she was tbld by village chairperson, a member of CHADEMA Party who was tèlephbnd by the 2 nd respondent in her presence to go and ?llect the aid water pump machine. She admitted further she never witnessed the same being brought. When cross examined by Mr. Mkude, PW14 admitted that she was told by Mkonko village chairperson, member of CHADEMA Party about the arrival of water pump machir.le. Having outlined the foregoing let me briefly state what was 4 adduced by the repôndent witnesses. RW1, the District Executive Director of Momba District was a returning officer of Momba Constituency (the 3rd respondent) appointed in July, 2015 on the eve of general election of 2015. He admitted that there were 207 polling stations in 14 wards as approved by NEC, and all were genuine and legal as there were no any other polling stations rather than 25 the 207 at Momba constituency. The same were given names and numbers as shown in exhibit Ri. By and large, exhibit Ri, shows the region, district, constituency, ward, name and number of a polling station. NEC brought a list of registered voters for each and every polling station. Both lists were sent to each political party which accepted and there v/ias no problem or complaint. '. He went on asserting that before a date of election, each political p £ party that contested for parliamentary election at Momba nominated a polling agent for the purpose of representing a party that nominated him/her in voting, counting i(and votes- addition processes. At each polling station, there was a polling, assista nt duly appointed by him (3 rd / respondent) to be officer in ècharge of such particular polling station. He testified further that after voting and counting processes were ' .7 \ done at each paticula"rpolling station, all ballot boxes, forms No. 21B of all pollin stations were submitted to vote's addition hail at .Ukwile where •4 .'- Momba District-Council officers situate. In that hail, he was present with other persons namely election officer, Assistant election officers, three agents of the three respective political parties, OCD, Party contestants, one IT expert responsible with Result Management System (RMS) as well a 26 (public relatiOn officer responsible with scanning of form no. 21B. There was also operation officer of Momba District - ASP Mwadula. He went on asserting that upon arrival of all ballot boxes, the exercise of adding

votes started with form No. 21A for presidential candidate. Such exercise started at 5 am, early in the morning of 26 October, 2015 in the presence of all persons legally allowed to be in votes addition hall. At about 10 00 am they had a break for , , 'O/reakfast which was taken inside the hall, then the votes addition exercise resumed until 2:19 pm when the presidential results were released and announced. Thereafter at about 2:30 pm addition, pf votes of parliamentary candidates started. The process involved forms Nb. 21B from all polling stations and continued up to 4 pm when they broke for lunch which took them half an hour to finish at a nearby restaurant. They returned and addition of votes process resumed at 4:30pm in respect of results from the remaining wards. He testified that when they went for lunch a public relation officer who was responsible with scanning forms No. 21B and the IT expert who was making the operation of the RMS were left inside the hall for security purposes. During that time, votes addition process was halted. He stated further that votes addition process and the processes of posting and 27 (scanning of forms No. 21B from all 207 polling stations were accomplished at 8:50 pm in the night. The verification of the results in the Result Management System (RMS) to ensure that results from all 207 polling stations were already in the system was done. The projector were used to display the results in the process. Then, form No. 24B, exhibit R2, with serial No. 00032 was filled in by himself and then signed. Thereafter, responsible persons in the votes addition hall agreed that the results were correct and thereafter announced whereby the respondent became a winner, followed by the petitioner. Thereafter people and followers of the winning political party, CHADEMA, approached votes addition hall in a cheering mood. After , the processes of election and announcement of results were over; he received no complaint from any political party or from any contestant indicating dissatisfaction of the electoral process RW1 Wet on asserting that forms No. 21B containing results from all polling stations were bearing genuine serial numbers, names and polling station numbers and were all signed by and bearing the names of polling agents of political parties as well of polling assistant. His duty was to add only the results contained in forms No. 21B from all polling stations and then fill in form No. 24B, exhibit R2, which is for parliamentary candidate 28 (results. He put his names and signature. It was also signed by agents of CCM party and of ACT Party. The 2nd respondent signed by himself as his agent was already outside the hall. Even, the petitioner was already outside at the time of signing exhibit R2. He reiterated that signing of form No. 24B by political parties participated in 2015 general election was an indication that Momba parliamentary election was free and fair and the results were very correct. He also stated that he could not dispute that some of forms No. 21B contained polling station numbers with fewer digits than which were assigned by NEC in exhibit Ri. That is because during election there are excitement and hurried movements which could cause polling assistants not to write all digits of a polling station number in forms No. 21B. But, the > results were very carefully checked in form No. 21B and the respective agents signed to confirm its correctness. When cross examined, RW1 admitted that complete polling station number ought to have fourteen (14) digits and not less, which were supposed to be filled in form No. 21B. The fourteen digits of polling station number have a meaning. For example, number 12100105050301 of Shule ya msingi senga - 1 polling station, which contains 14 digits mean

the 29 (follows: First two (12) digits show the region i.e Mbeya as being the 12th region in Tanzania Mainland, the next two (10) shows Momba District, the next two (10) shows Momba Constituency, the next two (05) shows a ward in the District, the next two (05) shows a village in ward, the next two (03) shows a sub village within a village, and the next two (01) digits show a polling station. He insisted that so long as polling station number is there, \ when one skips to write a digit or some digits of a polling station number , that would not be fatal to the results. He reiterated that to have incomplete polling station number or fewer digits than that provided on form No. 21B does not have effect at all, to the results. When cross examined by Mr.

- \ Mwakolo, the learned advocate for the petitioner, RW1 vehemently refuted : that there were fake polling stations in Momba constituency. He insisted that all of them were genuine. In a further cross examination by Mr. Shitabala; RW1 'admitted that it is true that polling station numbers ought to correspond with numbers contained in exhibit Ri However, he said if they don't- correspond that amounts to human error or mistake which can be committed by anybody in a hectic situation like the time of election. In our situation he stated that he could not agree that such error, defect or mistake on forms No. 21B could invalidate the results so long as each and every polling agent representing a political party or candidate did sign and put their respective names on forms No. 21B to confirm or agree that the results were very correct. Not only that but also so long as each and every form No. 21B bears a genuine serial number and other important particulars are there, Momba parliamentary results were unaffected. In further cross examination RW1 agreed that one Frank Mwakajoka entered votes addition hall after he (RW1) had announced the parliamentary results and not before. Before the results, who were in the votes addition hall include himself as a Returning Officer, Election Officer, Assistant Election Officers, Party Agents, Candidates, NEC Official, Regional Election Coordinator, IT experts responsible with RMS and police officers for security purposes. : .. RW2 1 Information Technology Assistant Stationed at Momba District \ court, stated that 'he was appointed to specifically operate the system called Result Management System (RMS) prepared for specific activity and supplied by NEC during 2015 general election. The system applied in adding votes by using computer, scanner and projector. Projected wall was used to display the results from form No. 21B in the votes addition hall. The system involves three stages: capture, validation and verification. He stated that on 26th October, 2015 at 5 am they started first to add presidential candidates election results contained in forms No. 21A from all polling stations. After completion of that exercise, at about 2:30 pm they started to add the parliamentary candidates election results contained in forms No. 21B from all polling stations. What was being done in the addition process was first to capture form No. 21B in the scanner. 7 The contents of form No. 21B were displayed by a projector on the projected wall for persons, candidates and polling agents to see it openly by their own naked eyes. Then, the results of each and every form No. 21B were validated by comparing the contents in form No. 21B physically in hands and that is displayed by the projected wall. Each candidate has to satisfy that what was displayed on the projected wall from an original form was what contained in

acpppy he/she was holding in hand. The last stage was to veilfy vcihich&er' was done after all persons in the votes addition hail had aOreed that all the results from all polling stations in a ward concerned were correct:and genuine. Then they shifted to the results from polling stations in another ward. He insisted that the process went on and on until votes addition process for the whole Momba constituency was complete; and, then the returning officer (3 rd respondent) went on announcing the 32 (results which were already filled in form No. 24B signed by agents or candidates themselves. He insisted that votes addition process went smoothly and there were no complaints made as regard to IT system. Except PW3's problem in one form No 21B which was later on sorted out and he became satisfied. He stated further that if the entries in the Result Management system are verified no one could change the entries because' the system becomes locked, even IT expert couldn't change anything from the system. As to the petitioner's allegation that there was a possibility for him to temper with the system in favour of 2 nd respondent, he 'ehemently stated that it was not true. He said when other persons went for lunch the system was halted and remained under him as IT expert until they came back. Thus, he and public relation officer remained in votes addition hall for taking care of the equiphients or ?ather for security purposes. When cross examined by Mr. Mwakolo, RW2 stated that during the votes addition process the computers or rather the system did not stop or became unfunctioning. The system went on very well from the beginning up the end of votes addition process. 33 As regards to Mr. Frank Mwakajoka's arrival into addition hail when the process of adding votes was being in progress, RW2 said if at all he entered the hall he could not see him. He was just busy concentrating to enter the results and or entries in the system. In connection to the foregoing, RW6 a member of parliament for Tunduma constituency under the auspice of CHADEMA Party stated that he was, on 26th October, 2015 between 10:00 'and 11:60 am, declared a winner of parliamentary seat for Tuncluma constituency,nd thereafter he held a meeting at Tunduma Primary School grounds to thank his followers and those who voted in his favour. He therefore did not appear in votes addition hall at Ukwile while vOtes additiOn process for Momba constituency \\ was in progress. However,, he admitted that having heard that his fellow CHADEMA Parts' .,rnumber, the 2 n6 respondent was declared a winner for Momba pariimentaryseat, he with other member of CHADEMA went to Ukwile village not bnlly to congratulate him but also to pick him up by a car to Tundurna ocnv where they continued with cerebration for the victories they obtained. RW3 had the following to tell the court that he was one of the persons who were in votes addition half to ensure that peace and security 34 are observed during votes addition process. Others present in the hail included candidates, agents, polling assistants and police officer. His other duty was to ensure that whoever entered votes addition hail was legally allowed and no one who was not allowed, did enter in the hail at the time votes addition process was in progress. He did not let anyone bring any sort of disturbances or threats during the vOtes addition process. Therefore, nobody whether inside or outside the votes additiõñ hail was beaten or forced to do anything against his or her own will or volition. RW4 testified to the effect that she is employed by NEC and during 2015 election she was the head of -Southern Zone Election Officer, the Zone which includes seven regions namely Iringa, Ruvuma, Mbeya, Njombe,

Rukwa, Katavi and now Songwe. Amongst her duties was to coordinate and supervise electoral officials about electoral procedures and rules. At regional level, she said NEC was represented by regional electoral coordinator, at constituency level, NEC was represented by returning officer, three assistant returning officers, and one election officer. At ward level, NEC was represented by two assistant returning officers. At a polling station, NEC was represented by one presiding officer and Polling Assistant who are also responsible to fill in the forms such as form No. 21B. There were also Direction Clerk, and Security Officer. There were also agents and candidates from political parties contesting. She averred that according to electoral law and rules, a polling station is identified by either its name or number or both (name and number) approved by NEC and which are written in form No. 2113, and in other forms by either presiding officer or polling assistant at the completion of business of polling station. The same is also signed by all polling agents

- S from contesting political parties. Those agents do by their own volition also write their respective names and signatures in form No. 21B. RW4 however insisted that a polling station cannot just be termed as fake or invalid because its number filled in by polling assistant or presiding officer has missing digits or mistakenly written number, provided that the results were accepted by all polling agents present representing candidates from political parties. She however reiterated that to be a valid one, polling station must be the one approved by NEC and having name, number, polling assistant, presiding officer, agents, voters register and relevant forms. All these together make a polling station to be valid and differentiate one polling station from the other. 36 When cross examined by Mr. Shitambala, RW4 insisted that parliamentary election at Momba Constituency was conducted well and with conformity with electoral laws as she was told through a phone by Regional Election Coordinator, assistant returning officers as well by RW1. She insisted that polling station number does differentiate one polling station from the other as it applies to the name of polling station. That is the essence of putting the number and name. If both name and number are there that become enough to identify the station; if the name is there and the number is missing or mistakenly written, then that is enough to identify a polling station; and if the number is there and the name is missing or mistakenly written then that is also enough to identify a polling station. However, she stated if both number and name are missing or mistakenly written on form No 21B or any form, NEC's position is to correct such mistake, error or defect. NEC Officials at Constituency level are mandated to correct such minor human errors or defects only. When cross examined by Mr. Mwakolo, RW4 stated that with all mistakes, errors, and defects on form No. 21B as exhibited in exhibits P3 to P15, NEC recognized that the polling stations were valid and lawful. Such mistakes, errors or defects are correctable, but cannot invalidate the results which was accepted and agreed by all polling agents present at polling station. In his testimony, RW7 talked of whether the 2nd respondent was involved in corrupt practices at Yala village. He said on 6th October, 2015 he attended CHADEMA campaign meeting at Yala village; during the entire period of campaign at the village, the 2nd respondent was not seen or did not give any money to the villagers as a bribe solicited for votes. His testimony was supported by pieces of evidence of RW9 and

RW8. Both testified that the 2nd respondent never personally or through somebody else bribed the villagers or any one during campaign period. , \ f RW8, the retired Primary Court Magistrate, stated that water pump machines were donated by the 2nd respondent before the campaign for 2015 general election. As incumbent member of parliament for Mbozi west ' ' \ \ at that particular time, the 2nd respondent, through his friend called Pirimin ' Juma Chonde, donated and gave such machines to Mkonko and Mpapa villages. And this was pre campaign period. The purpose of such donation was to assist the villagers easily pump water from water hole/wells which were drilled in 2004 (Mkonko village) and in 2007 (Mpapa village) by Paul Pavel, an European Missionary who arrived at Kamsamba Parish in 2001 38 from Czech Republic as his offer to the villagers who had been facing water problem for quite some time. RW8 said that he was the one who coordinated that project as that particular time he was a chairperson of Mkonko village council. Actually it was RW8 who on 5th July, 2015 received the two water pump machines from Pirimin Juma Chonde on behalf of 2nd respondent, the incumbent Member of Parliament, at that time and delivered them to the two villages. He actually, handed the water pump machines to village chairpersons: Mr. Potea Lugwisha of Mkonko village on 15th July, 2015 and Epifanus Kadule of Mpapa village, on 8th July, 2015. On his part, RW9 testified that on 7th September, 2015 he attended CHADEMA Party campaign at Ipata village and that he was present throughout the campaign on that day. The campaign ended at 3 pm and then the 2nd respondent left for Ntinga village for another campaign meeting. He stated very strongly that he did not see the 2nd respondent giving to Ipata villagers money for construction of village dispensary or to any other persons in the course of soliciting votes. Finally, hereunder is a brief of testimony given by the 2nd respondent, RW5. He generally denied pieces of evidence adduced by petitioner witnesses and he asserted that he fully participated in the whole process of 39 campaign, voting, tallying and announcement of election results for Momba constituency in the 2015 general election. He stated that during the vote addition process, presidential results were added first from 5:00 am, then followed by that of parliamentary results which were added from 2:30 pm on 26th October, 2015. Before and at the beginning of votes addition process, all ballot boxes for presidential and parliamentary results were already received by RW1 in the votes addition hall. There was no delay of arrival of ballot boxes as alleged by the petitioner witnesses. The votes addition process began while all the ballot boxes were already received. He then explained to this court how the votes addition process went on supporting what was explained by IT expert, RW2. He asserted that during the entire votes addition process, he never heard 3rd respondent uttering words "System ya IT imegoma" nor the words "System ya IT imekubali" as alleged by the petitioner witnesses. The process of addition of votes went on well until its completion. Form No. 24B was filled in and signed by 3rd respondent who let the CCM Party and ACT Party agents to sign and he also signed it signifying the consent and correctness of Momba parliamentary results. After announcement of results, petitioner agent, ACT party candidate and himself were given 40 (opportunities to give a word of thanks and he never heard anyone complaining against the whole Momba Parliamentary election process. Neither there was anyone who filled in complaint form No. 16B which is normally filled in by a complainant. As regards to Frank

Mwakajoka, RW5 said that he is Momba District Chairman of CHADEMA Party. On the date of votes addition process, he was at Tunduma constituency, and not in the vâtes addition hail for Momba constituency. But, upon being informTed that he won Momba Parliamentary seat, Mwakajoka came to congratulate him and pick him up by a car and left to Tunduma for further cerebration for victories achieved. As regards to the existence of fake polling stations at Momba constituency, he stated there were no fake as alleged by petitioner. All 207 polling stations were genuine, except minor mistakes, error or defects which resulted from filling in polling station numbers in some of forms no. 21B at polling stations As regards to corrupt practices, he vehemently refuted the allegation and added that neither himself nor any person authorized by him was involved in corrupt practices during campaign period at the alleged time 41 (and places. For example, he stated on 19th September, 2015 he was not conducting campaign at Usoche, on 10th and 11th, October, 2015, he was not at Chilulumo village. He however admitted that on 10th October, 2015 he slept at Mkuwe Roman Catholic hostel and on the following day (11th October, 2015) he attended church mass in the morning in:RC Church. As regards to water pump machines, he admitted that through his friend called Pirimin Juma Chonde, a businessman in Dar es Salaam but a resident of Mkonko village, he donated sad rñachins to Mpapa and Mkonko villages to assist in pumping water from existing well or water holes that were drilled way back 2004 and 2007. He supplied them in July, 2015 before the campaign had started, but at the time he was Member of Parliament for Mbozi west .constituency which included also Momba Villages. 'S // •, \; He went on asserting that during the campaign, voting, counting, and addition of result, election procedures and rules were complied with There were no irregularities or non compliance with electoral law. However he repeated that there were small defects which could not go to the extent of affecting Momba Parliamentary results. Such defects or errors were discovered in polling station numbers, which defects or errors alone could 42 not make a polling station to be fake, as alleged by petitioner witnesses. As regards to the petitioner's claims, he stated that such claims have no basis at all. He asked the court to dismiss the petition with costs. As he was trusted by Momba people to represent them as Member of Parliament, this court be pleased to declare him as a lawfully elected member of parliament for Momba Constituency. I now highlight some principles of law and case iais whIch I think, are relevant to guide me towards the dettriintion of th,s case However, ll A before that I wish to say that this judgment has greatly been enriched by the industrious research and commitments shown by the five learned Counsel. I am thereforé indebted to positively comment on the principles of law written dotin their réspecdve submissions which were filed on 29th - April and 2 May 2016 to support their respective positions \ Now, as hinted\while acknowledging what the counsel did in their submissions, aftrI have outlined in summary pieces of evidence adduced by a total6f 40 witnesses from both sides, in order to make my task of arriving at a fair and just decision, I am constrained to underscore some pertinent legal principles as laid down in the statues as well in case law. 43 (From the outset it is worthy to point out that unlike in an ordinary civil suit where, in order for the plaintiff to succeed must prove his claims to the standard of balance of probability, in a petition case, although being a civil suit in nature, the standard of proof required by the

petitioner in order to succeed is to prove his claims beyond reasonable doubt. In other

- 5 words, unlike a plaint in an ordinary civil suit, the petition must be construed more strictly than a plaint. In this petition therefore a burden of proof beyond 'reasonable doubt' lies on the petitioner. He has a duty to prove to the satisfaction of this court to warrant to this court make a decision in his favour. That high standard of proof is explicated in the case of *Mbowe versus Eliufoo* -
- (1967) E. A. 240 where by 5 Georges, CJ citing the case of *Bater versus N. Bater* [1950] 2 All E.R. 458 held that: standard of proof is one which involves proof "to the satisfaction of the court". In my view, these words in fact mean the same thing as satisfying the court one cannot be satisfied where there is doubt. Where a reasonable doubt exists, then it is impossible to say that one is satisfied The same principle was cemented by the Court of Appeal of Tanzania in the case of *Manju Salum Msambya versus The Attorney General and Kifu Gulam Hussein Kifu*; Civil Appeal No. 2 of 2002 (CA) (Mwanza) (unreported). The Court of Appeal propounded that: '..... The burden of proof placed on a petitioner is a heavy one. he is required to prove his allegations to the satisfaction of the court, which has been interpreted as proof of beyond / reasonable doubt. .. / N The reason for putting the standard that high is not far to seek. An Election is the exercise of a constitutional right and the fulfillment of an obligation by the citizenry. The courts, therefore, have a duty to respect the people's conscience and not interfere (in their choice except in the most compelling circumstance'. Next is a legal principle propounded by the court of Appeal of Tanzania in the case of *Goodluck Kyando Versus The Republic*; Criminal Appeal No. 118 (CA) (unreported) that "Every witness is entitled to credence and must be believed and his evidence accepted unless there good and cogent reasons for not believing a witness" S. / A On the same vein, the Court of Appeal in the case of *Mathias S Bundala Versus the Republic*, Criminal Appeal No 62 of 2004 (CA) (unreported) commented as follows:
- "Good reasons for not believing a witness include "
 - "\.7 the fact that the witness has given improbable evidence or the evidence has been materially contradicted by another witness or witnesses' Furthermore, another legal principle of law related to witnesses is the rule against Hearsay. In the book of Justice Y.V. Chandra Chund; 2006 THE 46 (LAW LEXICON/THE ENCYCLOPEDIAIC LAW DICTIONARY WITH LEGAL MAXIMS, LATIN TERMS, WORDS AND PHRASES; 2nd edition, Wadhwa Nagpur; at page 829, Hearsay is referred to: "that which one has heard from another without himself having any direct knowledge thereof" Again as per page 12 in the book of SPENCER, J. (2008) *Hearsay Evidence in Criminal Proceedings*. North America (US & Canada): Hart Publishing, Oxford & Portland Oregon), the rule against hearsay is expressed as: "rule which provides that a witness giving oral evidence to the court is not allowed to tell the court about a fact of which he or she heard from someone else". [I am also persuaded with the Privy Council decision in *Subramaniam Public Prosecutor* (1956) W.L.R.965, where it was held that the evidence is hearsay and inadmissible when, the object of the evidence is

to establish the truth of what is contained in the statement. In Tanzania the rule against hearsay is provided under sections 61 and 62 of Evidence Act, Cap 6 R.E. 2002. For easy reference section 61(1) a-d is hereunder quoted in extensor "62. —(1) Oral evidence must, in all cases whatever, be direct; that is to say- if it refers to a fact which could be seen, it 'N must be the evidence of a witness who says h. sawit; if it refers to a fact whIch could ie heard, it must be the evidence of a witness who says he heardit; if it reférc to a fact which coUld be perceived by any other sense, , or many other manner, it must be the evidence of awitness who says he perceived it by that sense or in that manner; if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion 48 or as the case may be, who holds it on those grounds: Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found,fr has become incapable of giving evidence, orannot be called as a witness without an amount of delay or expeñsé which the court regards as unreasonable." The rationale of hearsay rule is first, to protect the respondent's right to cross examine his ccusers\who could have given direct evidence so that he carl get 'fair \trial. Secondly, it is to protect the respondent against the prosecution thatbuld use evidence against him which is dubious and less reliable. átl/is'that hearsay, unlike direct evidence, invites risks of errors in transmission of information such that one may have misheard or misunderstood someone, consequently may mislead the court resulting to 49 I injustice. As such all evidence which is hearsay is not admissible and cannot be based upon in law. Moreover, the court of Appeal in the case of Ally Linus and 11 others Versus Tanzania Harbors Authority and Labour conciliation. Board of Tonche District [1998] TLR 5 that: "It is not a matter of courtesy but 'a matter of duty to act judicially that requires a judge nt lightly to discern from the coñsidered opihion of his brethren". Now carefully looked at, the petitioner's claims can conveniently be split into two main partsPart one constutes ' complaints against the 1st and 3rd Respondents, naThely fakeóHing stations, luring the candidates, agents, election observers ándothèr legally allowed persons to witness the addition .4- \ process of votes.going for lunch outside the room leaving the IT officer and public relation officer in votes addition hall Another complaint is on irregularities and non compliance with-electoral procedures and law, hence rendering the election not free and fair. The second part is on corrupt practices allegedly committed by the 2 nd Respondent. 50 I will now look into issues framed upon and agreed by parties and endorsed by this court seriatim. The first issue is whether there were fake polling stations at Momba constituency; As prefaced in this judgment, and as agreed in the memorandum of agreed facts, Momba Constituency during 2015 general election had a total of 207 polling stations. In their evidence, 13 peitionr Mtnessès testified that out of 207 polling stations, 110 were fake because their numbers written on form No 21B containing fewer digits either 6 or 12 digits instead of 14 digits as assigned by NEC as peréxhibits P2 and Ri. To satisfy this court, forms no 21B containing results from the purported 110 fake Polling Stations, exhibits P3715 (each in its collectivity) were tendered. However their evidence suffers from several critiques. First, they were told so by I CCM party wrd secr'etaries that they were presiding over fake polling \ VA stations,which make their evidence hearsay which

as a general rule is not admissible in law. Second, the CCM party ward secretaries, who were mentioned to be inventors of the whole idea of fake polling stations, for reasons not availed to this court were not summoned to testify as to whether the idea is their brain child. Few of them were mentioned such as 51 (1 Modesta Mizengo, Janai Sinkamba, Fortunatus Kisanga, Clemence Mapunda and Kanyama Sichone. Since their existence was not challenged summoning them to come and testify as petitioner witnesses could have enhanced the petitioner's case. Since they were not brought, this court considers their crucial role in this issue and draws an adverse inference against the petitioner's case for failure to summon them. Thirdly, had it been that this idea of fake polling station was a brain child of the petitioner's polling agents who testified as witnesses, there is no evidence that they did fill in prescribed forms, complaining of their dissatisfaction on filling in polling station numbers. This could be in compliance with section 79A (1) (c) of The National Elections Act, here in after referred to as Cap 343 which provides - "Upon conclusion of the counting of votes in accordance with section 73, the presiding officer shall require the polling agents or, if present, a candidate to state in the prescribed form any complaint or to confirm satisfaction with the counting of votes" Without prejudice to the foregoing it is my considered view that if they would have discovered that mistakenly written polling station numbers and considered it to be a serious mistake or error vitiating the election results, obviously they could have raised it at respective polling stations before assigning form no. 21B. On the contrary their testimonies lead that they did not discover it as a mistake or an error neither at polling stations nor at the time they submitted copies of form no. 21B to CCM party ward secretaries. Neither as stated hereinbefore there is to prove that they filled in the complaint form which could have added weight to their evidence as filling in such forms would serve as material for testing their credibility in respect of electoral process. I am not stressing this position out of nowhere but supported with the decision of the Court of Appeal in *Silvester Masinde vs Pius Msekwa and Another* [1999] TLR 42, where the court had this to say: The correct legal position is that the prescribed forms are intended to serve only as material for testing the credibility of complaints made in respect of the electoral process. This means that the evidence of a witness who could have recorded his or her complaint in a prescribed form but fails to do so would not be relied upon unless he or she explains the failure to record the complaint at the appropriate stage of the electoral process" - In this case there is no explanation given by the petitioner witnesses why didn't they register the complaint, so their evidence would not be relied upon. It is also in evidence and both parties agreed that the process of addition of results at Ukwile hail for parliamentary results started at 2 30 pm on 26/10/2015. It therefore goes without saying that at this time it had come to the petitioner's and PW2's knowledge that some forms had fewer digits than the polling agents or the said CCM party ward secretaries. Surprisingly, the petitioner and PW2 went on with the process of addition of all the results including the results from the now portrayed as fake polling stations, without objection or complaint!! On the other hand, PW3, had his form wrongly recorded as zero results, but it was successfully resolved as he did raise it during addition of votes at Ukwile hail. At this juncture, the crucial question arises is why the petitioner and PW2 did not raise it during addition of votes

that the results from fake polling stations should not be considered or otherwise? Questions always demand answers and since this question is left unanswered, it raises a serious doubt which is left lingering in my mind. Hence considering their evidence as afterthoughts. Instead of answering such important question, the petitioner insisted in his written final submission that 110 polling stations were fake because forms No.21B contained fewer digits than the 14 digits which were issued by NEC (see exhibit Ri). I wish to correct the petitioner here that, his assertion that exhibit P3-15 contained 'either 6 or 12 digits' was a misleading one and therefore untenable. I say so because upon perusal of the said exhibits P3-15 I discovered the truth that only 20 forms no. 21B contained 6 digits. Said 82 forms contained 12 digits. Other forms were bearing 10 digits (1 form), 11 digits (3 forms), 13 digits (2 forms) and 14 digits (7 forms). Taking example, the petitioner deliberately misled this court by tendering exhibit P15 which contained forms no. 21B for two polling stations at Chilulurno ward with less digits while the truth is that both two forms contained 14 digits as assigned by NEC. 55 (Another important question that cannot escape from a mind of any reasonable person is that were there really fake polling stations? Again this question is left unanswered on the following parameters. Firstly, the forms no. 21B were filled in by presiding officers or polling assistants who were part and parcel of NEC. Despite the errors or mistakes pointed out, NEC recognized the 110 polling stations as valid polling stations and never declared them as fake polling stations. The position could be different had it been NEC - which declared so, unfortunately it was the petitioner. Secondly, the petitioner did not tell from the mouth of which river did he come up with such temerity to brand 7/ that the said 110 polling stations as fake. Thirdly, the petitioner was quick to christen the polling stations by the word fake without taking into account semantics. I say so because the word 'fake' is used by the petitioner as an adjective to the noun polling station; thus forming a noun phrase 'fake polling station(s)'. The crucial question here is what is the word 'fake' as an adjective tells more about the noun. According to Cambridge Advanced Learners Dictionary 3rd Ed, the word fake means "not real but made to look or seem real" 56 (9th Again according to Black's Law Dictionary Ed. Pg 722 is defined to mean "the act of fraudulently altering, authenticating, issuing, or transferring a writing without appropriate authorization" From the foregoing one, I am of the opinion that the idea of fake polling stations presupposes that there must be genuine polling stations in their existence or with resemblance to the fake ones. I therefore find that to the petitioner the fake was in the polling station number and not the polling stations as a whole. As such the petitioner's correct use of the word could be justified had the 110 polling stations existed besides 207 which arithmetically could add into 317 polling stations. The petitioner did not establish this fact and fraud if any as he used the list of polling stations from NEC (exhibit Ri) only which was not and cannot be a yard stick. On the contrary, I find it as a grave misdirection on the part of the petitioner by using the adjective fake in the noun polling stations on such defects which were plainly speaking may be caused by a slip of a pen or human error considering the nature of the occasion itself and the persons involved after short and crash programmed seminar and the exercise itself was a 57 hectic one. What I see is that the petitioner was so consumed by the idea of fakeness such that he totally forgot that human beings are not angels when it comes to

perfection or otherwise. Fourthly, how the results were affected. The respondents for instance, did not dispute that forms no. 21B in exhibits P3-14 contained numbers with less digits. However they did not agree that it rendered to fake polling stations but anticipated human error. In his written submission, Mr. Mwakagamba, the learned advocate for the 2nd respondent submitted that the petitioner failed to state how this inconsistency as so called affected the results let alone the fact that neither himself nor his agents rose at appropriate stage as required by law and complained. As a result it was correct for the 2nd respondent to say that the petitioner is estopped to complain now. Since not a single voter testified as a witness who either failed to vote or faced hardship to vote because of such errors, the results were correct and were not affected. From the findings, what I can say is that there were errors, mistakes or defects on Exhibits P3 -14 which did not affect the results. It is my opinion that such defects or human errors or mistakes existed in forms number 21B as per exhibits P3 to 14. What the petitioner did was to make 58 (a mountain out of the mole hill as not every error or mistake in an election petition will justify court's interference with the will of electors. The error or mistake or defect must have adversely affected election results to warrant such interference by this court. For example in the case of Mujuni Joseph Kataraiya vs. Samwel Ntambala Luangisa And Another; [1986] TLR 53 (CA) where there was more or less similar defect an account was made to the effect that failure of Assistant Returning Officer to follow guidelines to record on counterfoils of ballot papers the number- the registration centre number, constituency number and Voters serial number- not fatal as the Elections Act required only that number of voter be recorded. It is therefore my conclusion that the petitioner failed to prove this allegation to the standard required as stated herein above. The first issue is answered in a negative. The second issue, poised for determination is whether there were irregularities and non compliance with electoral procedures and law. Section 108(2)(b) of Cap 343 (supra) provides that an election can be voided upon being established of irregularities on electoral laws. Now in order to succeed, the petitioner is required to show to the satisfaction of the court that the election was not conducted in accordance with the 59 electoral law, regulations and any directives issued under such law. He must also show that non compliance with electoral procedure and law did affect election results. As regards to non compliance of electoral law and procedure, I should make it clear from the outset that the petitioner's allegations should be so grave going into the roots affecting the results. Likewise, the petitioner is duty bound to prove beyond reasonable doubt that irregularities or election malpractices complained of were deep rooted to have affected the results. On first part of this issue, the petitioner alleged that Returning Officer did not comply with regulation 61 of the National Elections (Presidential and Parliamentary Elections) Regulations, 2015 hereinafter referred to as GN 307 of 2015, because he started to add votes immediately after the arrival of votes, but without notifying the candidates, and that irregularity was fatal. Regulation 61 of GN. 307 of 2015 provides as follows; "The Returning Officer shall, after receiving election results from all polling stations within the constituency, notify in writing political parties or candidates as to the date, time and venue for addition of all votes cast." This petitioner's complaint needs not to detain me for so long since all allowed persons were present during addition of presidential

votes (at 5.00 am) and thereafter parliamentary votes (at 2:30 pm). I say so because on one hand there was no evidence from the petitioner, that candidates were not notified in writing as to the date, place and venue for addition of votes. On the other hand what is in evidence is that when the addition of votes started at (5 am), all candidates and their agents were present at Ukwile hall. Reference is made to the evidence of RW1, PW1, PW2, RW2, PW3, and RW5. The proof is wanting here to the standard required. The second part of irregularity is contravention of regulation 60 (4)

- (c) GN no 307 of 2015 which requires the returning officer to receive \ . \ ballot boxes first before the votes additional process begins. PW3, PW2 and PW1 said that addition of votes started before arrival of ballot boxes and results from Kapele, Ndalambo, Nkangamo and Myunga wards. In his submission, the petitioner was of view that respondents did not cross examine PW3 in this respect. His inference was that the respondents admitted it to be true. However, while I agree that that failure to cross examine the witness on a particular fact, is tacitly referred to an acceptance of the truth of evidence in chief on that matter (see case of Paul Yusuph Nchia v. National Executive Secretary of CCM and another, Civil Appeal no. 83 of 2005 (CAT) (DSM) (unreported). But in the instant case, the situation was different as the records clearly show that PW3 was cross examined in that respect by Mr. Mkude and replied the / following: "At the time of addition of votes we relied Upon form No.218 but the forms were supposed to be received along with ballot boxes" In this respect and as per the cited regulation 60 (4)(c) of GN 307 of 2015 the evidence of PW1, PW2 and PW3 needed to be corroborated. That is to show that what they said was true. I say so because the presiding officers or polling assistants as per law were mandatorily required to submit to the Returning Officer ballot boxes containing votes and not the opposite of it: they were therefore better placed to corroborate the evidence of PW1, PW2 and PW3. However for reasons not explained to this court they were not called to say at what time exactly they handed over the results or ballot boxes to the Returning Officer. Therefore the petitioner has failed to shake the evidence of RW1 who testified that the exercise of adding the results at Ukwile hall started after all ballot boxes were received. On third part of the second issue, the petitioner capitalized on complaint by PW3, ACT candidate of having his votes reduced in form no. 21B with serial number 33399, as justification that that amounted to irregularity affecting parliamentary results. This argument by petitioner that the complaint by PW3 that his form showed a zero results at first place was solved by returning officer (RW1) at the stage of addition of votes so that cannot be termed as irregularity in this court while it was successfully solved. The Returning Officer acted correctly by rectifying the mistake and did not contravene any law as coordinator of the election in the constituency. In contrast, had the petitioner learned from PW3 he could also have raised his complaints if any at the very stage, and may be, things could have been resolved. The said error cannot be used to prove petitioner's case. Moreover PW3's form referred herein was not tendered in court to support such allegation. Hence the court does not know what contained therein. 63 I now turn to the fourth part of issue number two. Regulation 11(1) of GN 307 of 2015 (supra) provides that the Returning Officers shall be responsible for conducting, coordinating and supervising

elections in constituencies. To the petitioner, the Returning Officer had contravened regulation 11(1) of GN 307 of 2015 (supra) as alleged that the RW1 lured the candidates, agents, election observers and other legally allowed persons who were supposed to witness the addition of votes process to go for lunch outside the hall leaving IT expert (RW2) and public relation officer in the hall in their absence. Pertinent to this, there was also an allegation that when they were going out, the 3rd respondent was heard uttering words that the system was not working but after lunch he joyously said the system was up. While PW1, the petitioner insisted in his evidence that they were lured to go outside, his co-witness PW2, on cross examination by Mr. Mkude, seemed not sure as to whether they were lured. In contrast, on re-examination he said they were ordered to go outside for lunch. This was corroborated by PW3. As stated hereinbefore the third respondent was the Returning officer who was appointed to ensure that the electoral process goes well to its finality. In his evidence, he testified that by consensus they had a lunch 64 break outside the addition hall. The reasonable doubt here is whether his being in charge is what made PW2 and PW3 to say they were ordered to go for lunch. Again I see the petitioner in conflict with semantics. According to Cambridge Advanced Learners Dictionary (supra) the word to lure means; "to persuade someone to do something or go somewhere by offering them something exciting" This is in contrast to order which means; "to have been told that you must do something by someone in authority" So while PW1 said they were lured for lunch, PW2 and PW3 state that they were actually ordered to go for lunch. Now it is doubtful as there is contradiction which is material as to whether they were lured or ordered. This doubt ought to be solved by the petitioner but he did not. It is not evidence of PW1 that the system was left not working but 3d respondent. Yet as per PW3 and PW4 they later it worked quoting the say the exercise was going on when others went for lunch. Again he said the act affected the validity of the whole process of adding votes. However 65 RW1 in his evidence and on cross examination by Mr. Shitambala, the learned Advocate admitted to have posed the issue of breaking for lunch; and, his evidence in chief is clear on the reason that the two officers were left in the votes addition hall for security purposes. The same is corroborated by RW2, who added that if one verifies the entries in the system, no one can change the entries because the system becomes locked, even IT expert can't change anything from the Results Management System. RW2 said that: "It is not true that I tampered with the system we did break at afternoon for lunch and the system was under me as IT expert. The process of addition of votes was halt and we waited for the return of those who went for lunch" There is no reason why should this court turn down this evidence by the 3rd respondent that the exercise was smoothly done and the petitioner's allegation is mere speculation. I also do not agree with the complaint that the two persons who were IT and Public relation officer were not legally allowed due to the following reasons; one, MAELEKEZO KWA VYAMA WA SIASA NA WAGOMBEA published by NEC and spearheaded by petitioner to list those who were legally allowed has no binding force in law. Two, their presence was required and so the Returning Officer was right to have them as he is empowered by section 7(4) of Cap 343 (supra) to choose other staffs as may be necessary for the purposes of conducting an election in the constituency. IT expert was vital for the purposes of ensuring election results were posted in RMS provided by NEC for

specific activity during 2015 general election. No law was therefore contravened. In respect of the allegation that RW6 ushered in the hall contrary to law is also a fallacy. I say so because there is no proof but contradictions. For instance, while PW2 instigates that RW6 entered in the hall, PW2 said RW6 arrived at about 5 pm. On cross examination by Mr. Mwakagamba he said RW6 stayed for 2 minutes while PW4 said that RW6 stayed thereat for half an hour. RW6 in his testimony was clear, that he arrived at Ukwile d respondent) to Hall after 8:45 pm to congratulate and pick up RW5 (the 2 Tunduma town for celebration of their victories (for Tunduma and Momba). Besides even on cross examination by Mr. Mwakagamba, PW3 replied that he did not know at what time Frank Mwakajoka ushered in the Hall. Such material contradictions created doubt; hence the burden of 67 4 proof was not discharged as the unshaken evidence of RW3 show that there was tight security such that it was impossible for unauthorized people to get in the hall. RW6 was also firm even when cross examined by Mr. Mwakolo as he reiterated that he went at Ukwile hail after 8:45 pm, which was corroborated by RW5, the 2 respondent. Another irregularity pointed out in respect of the second issue was that upon the petitioner's refusal to sign form no.24B and going but leaving his agent inside vote addition hall, his agent was forced to sign form no. 24B and did so as he was threatened that if he would not sign he would be beaten and kicked outside the hall by police. On cross examination, he said that he agreed to sign and never reported to police of the alleged threat. I am hesitant to agree with PW2 because there was no reason advanced that could make Returning officer to do so. I say so because the law is aware of these circumstances and it consequences. Regulation 68 of the G.N no 307 of 2015 provides: "The absence or refusal to sign by political parties' agents or a candidate at the appointed time and place of polling, counting and addition of votes shall not stop, delay or in validate the election process ' Reading between the lines of this regulation, one may find that there was and cannot be justified in any way that the third respondent could force PW2 to sign the final election results while upOn refusal then regulation 68 (supra) could come into play. I mean the third respondent had nothing to loose either way. As regards to allegations that there were forms no.21B with incorrect votes and or overwritten or forged to the extent of making its contents erroneous, the petitioner failed to substantiate such allegation by production of such form no. 21B with serial no. 33368 and with polling station no. 12100105010303. As such this court was deprived of the right to have a look on the said forms and make a decision on whether the alleged forgery and overwriting were meritorious. In conclusion, the second issue is also answered negatively as the petitioner has failed to prove beyond reasonable doubt that there were actually irregularities and non compliances with electoral procedures and law. In the case of Azim Suleiman Premji Vs. Attorney General And Dr. Aman Walid Kaborou; Civil Appeal No.63 of 1998 (CA) (DSM) (unreported), the Court of Appeal of Tanzania stated that under section 108(2)(b) of the National Elections Act, the irregularity must be proved and its effect on the result, beyond any reasonable doubt. Having canvassed the first and second issues, now I came to the third issue as to whether there was bribery and or corrupt practices by the 2 nd respondent. To be precise, the petitioners' complaints include the 2nd respondent's distribution or dishing out of hard cash to the potential villagers and water pump machines during campaign period in

order to induce them to vote for him. Section 108(3) of Cap 343 (supra) which is quoted in extensor hereunder provides: "(3) Notwithstanding the provisions of subsection (2), where upon trial of an election petition in respect of an election under this Act, the High Court finds that the corrupt or illegal practice in connection with the election has been committed by or with the knowledge and consent or approval of any of the candidate's agents and the High Court further finds, after giving the Attorney General or his representative an opportunity of being heard, that the candidate has proved to the High Court- That no corrupt or illegal practice was committed by the candidate himself or with the knowledge and consent or approval of such candidate The candidate took all reasonable means for preventing the commission of any corrupt or illegal practice at such an election; and That in all other respects the election was free from any corrupt or illegal practice on 1. the part of the candidate, then, if the High Court so determines, the election of such candidate shall not by reason of any such practice be void." The above quoted law requires this court to make findings if the alleged corrupt practice was committed by the second respondent himself 71 or with his knowledge and consent or approval by his agents or representatives for an election to be voided. If that is lacking then the election of the second respondent cannot be voided by simply saying there was corrupt practices by him. Again the law is settled that the proof of corrupt practices is beyond reasonable doubts. This was heavily stressed by Samatta J.A. (as he then was) in Lutter Symphorian Nelson vs. AG and Ibrahim Said Msabaha (supra) in the following language:- corruption is a grave misconduct, and the allegation of it is a very serious charge. When it is proved in an election petition serious consequences follow. It must therefore, be strictly proved Cogent and clear evidence is required to prove corrupt practice in an election petition" It goes without saying that cogent and clear evidence is required to prove a corrupt practice in an election petition. In the case of Charles Muguta Kagege Vs. Mutamwega Bhatt Mugahywa, Civil Appeal no. 39 of 2008 (Court of Appeal) (Dar Es Salaam) (unreported) at page 18, it was held that corruption has to be proved beyond reasonable doubt. 72 The first part of third issue refers to event of donation of water pump machine at Mpapa village on 10th August, 2015. The evidence in this respect suffers the following critiques; first is that PW21 (Mpapa village chairperson) and PW20 never saw the 2nd respondent donating water pump machine to Mpapa viHagers' already drilled well. PW21 received the water pump machine from CHADEMA representatives but never said whether the 2nd respondent had knowledge of it. PW20 and PW21 never reported to either ethics committee, PCCB, Police or to the 3rd respondent. Again if at all they believed that to be bribery that was donated in pre campaign on 10th August, 2015 while the campaign for 2015 general elections commenced on 22nd August, 2015. The two witnesses, when cross examined agreed that the event of donation of water pump machines took place before campaign period while the 2nd respondent was incumbent Member of Parliament for Mbozi west constituency. This corroborates the evidence of RW8 who said he received the machine in pre campaign from Pirimin Juma Chonde (2hld respondent's friend) and handed it to Mpapa village on 9/7/2015. Further to that there was allegation on Mkonko village donation of water pump machine. Again the evidence in this respect suffers from 73 similar defects as PW12 (Mkonko village chairperson) and PW14 did not see the 2 respondent donating water

pump machine. PW14 for instance, testified to have been told by the chairperson at the meeting that the 2nd respondent did donate the pump on 30th, 8/12/2015. Yet still PW12 did not say whether the representative brought the pump in the knowledge or consent of 2nd respondent in late August 2015. On the top of that PW14 voted for 2nd respondent since he was his home boy. As such there is no evidence to counter RW8's evidence that the pump was handed over to Mkonko village chairperson on 15th July 2015 and this is corroborated by RW5 who stated as follows: "When I was visiting the villages in May, 2015 I found the hand pump of the well at Mkonko Village Kamsamba Ward and the Villagers asked me to assist them. As Member of Parliament, I asked Pirimin Juma Chonde, a business man of Dar es salaam but a resident of Mkonko who used to travel to China to bring water pump with generator. He supplied the pump in July, 2015. Likewise, in Mpapa Village 74, In more or less similar scenario, the court in the case of Silvester Masinde vs. Pius Msekwa and Another [1999] TLR, 42, it was held that: "Disclosing the existence of a fund for construction of water wells, which was established by the first respondent long before the election period, is exempt from being treated as a corrupt practice by virtue of the provisions of section 97(4) of the Elections Act 1985" I see the same here that the transaction done long before campaign period is exempt from being treated as corrupt practice. I am compelled to hold that petitioner had totally failed to prove beyond reasonable doubts that the 2nd respondent did corruptly bribe the intended voters to vote for him by giving them water pump machines. 11th of I now turn to the events which took place on 10th and October, 2015 the incidence took place at Chilulurno Village. In this respect, PW15 wants me to believe that on 10/10/2015 (Saturday) at Chilulumo village, in RC church the 2nd respondent gave Tzs.2,000/= to each woman, one after another (about 600 women in total) soliciting for 75 votes. On the other hand PW27 also wants me to believe that on 11/10/2015 (Sunday), at Chilulumo village, inside RC church the 2nd respondent gave each youth one after another Tzs.2000/= about 600 of them soliciting for votes. Their pieces of evidence encounter the following critiques namely, contradiction in respect of venue. Whereas PW 27 said the venue was inside RC church, PW3 said it was at TAG church. Secondly, it is doubted whether campaign were conducted at church premises. Besides I find lingering doubt as to whether they were actually given money as alleged on such dates to such number of people by the 2nd respondent in person and tiredly distributing the money for two consecutive days to about 1200 persons!! I doubt. As in respect of the event on 8/9/ 2015 at Ipata village where by the 2nd respondent during campaign meeting did allegedly dish out hard cash to wit Tzs.170,000/=. I find them not established because of the following reasons; PW28 and PW19 who testified on the same first said the money was for construction of village dispensary. However PW19 seemed not to be sure of when this event took place between 8th September, 2015 and 8th March, 2015. I say so because it took a great deal for PW19 to rectify the date of 8th March, 2015 which he stated in his affidavit and, repeated on 76 I cross examination only to state in re examination that the same was an error. As for PW28 despite of saying that the cement was bought with receipts' he had no such receipts and nothing was tendered in that respect to support his assertion. It is therefore unconceivable that the 2nd respondent could dish out money publically without being held responsible. Coming on 17/9/2015 the 2nd

respondent was said to have dished out money at Muuyu Village. it was portrayed by PW17 and PW18. Their testimonies were that the 2nd respondent handed over hard cash of Tzs.40,000/= to one Raphael Emili Chipinka, the Village Chairperson at Muuyu Village for the purpose of constructing Muuyu dispensary. I doubt this kind of evidence because: first, the said chairperson whom they said was given money, for the reason not explained to this court was not summoned to testify. I say so because he could avail this court an answer if at all the money was given and for what purposes, since PW17 said for dispensary purposes while PW18 he said on cross examination that the money was for development programs, but it was diverted to construction of the dispensary. Again the incidence was not reported anywhere despite the fact that PW18 had a Dutch courage to say that he voted for the 2nd respondent because of that money. I thus seriously doubt whether the 77 allegation are true hence I find this fact not established to the standard required in law. I now turn to the events allegedly took place on 19th September,

2015. That was evidenced at Usoche Village for construction of the dispensary by PW9 (Usoche Village chairperson) and PW11. Their testimonies were palling despite of the fact that all testified to have been at the said meeting from beginning to the end. For instance while PW9 said they made him (2nd respondent) a speech and which was read over by Village Executive Officer in respect of their needs which was cement for construction of village dispensary, PW11 on contrast denied that they made a speech asking for such money. Again it was PW11's view that the 2nd respondent gave the money so that they could vote for him only as villagers. Further to that he also replied that there was no speech read by the chairperson. I expected him to at least agree that there was a speech. What was more astonishing was that PW11, on re examination confirmed that campaign meeting took place on 19/2/2015. This created material contradictions between them as to whether it was on 19/2/2015 or on 19/9/2015. 78 Lastly on 6th October, 2015 at Yala Village the 2nd respondent was alleged to dish out hard cash to wit Tzs.170,000/= for the construction of village dispensary. It was also adduced that other cash was dished out to pombe drinkers to wit Tzs.110, 000/= at pombe club. PW10 (a village chairperson) and a Pastor of African Church Mission of Tanzania wants this court to believe that he was given the money and accompanied 2nd respondent all the time on dishing out money at pombe clubs and PW13 was in charge of receiving money for local brew. This evidence upon cursory glance, does not cross my mind that PW10, a partisan to the petitioner under the auspices of CCM could openly accompany an opposing party candidate to dish out money so that people could vote for him and much worse without reporting anywhere. Yet PW13's evidence do not even corroborate him instead there is contradiction, let alone that the two do not acknowledge each other. For instance, how was it possible for PW10 to say that he was asked by villagers on his failure to fulfill his promise and PW13 say nothing about it, while all the two were at campaign meeting? Besides, if the money was given to what PW10 referred to as the money keeper (at the village office) why didn't he produce it before the court as proof? This raises a serious doubt as the evidence is unclear to me. 79 In conclusion, I find that there are reasonable doubts as to whether the 2nd respondent committed bribery or corrupt practices

on the following reasons: first, it is just unconceivable that in all places he was alleged to dish out money, it was not given to villagers but for construction of the dispensaries. Whether this is a coincidence, the question, is how possible was this noting that the court was not told whether dispensary was their dare need as opposed to other needs, such as schools etc. A serious doubt which is clear here is that the witnesses may be confusing dates of campaigns and that before the 2nd respondent's tenure as Member of Parliament for Mbozi west constituency had ended. Above all they did not report the matter anywhere in the authorities. Secondly, it is unconceivable as that there was no government, intelligence unit, police, PCCB to arrest the 2nd who was giving them' the money openly at campaign meetings during campaign period and left to go court free in all those many meetings. It is unconceivable under normal circumstance in our jurisdiction. The only evidence was that of PW4 who said he was instructed to report allegation of corruption sometimes on 12/10/2015 but his evidence was unsupported by any document to show that he did report. Thus there is no substance in this Me allegation at all. As for the petitioner, he replied on cross examination that he phoned to OCD and intelligence unit while opting out PCCB, again this is doubtful. Hence I find the allegation not established at all as the evidence raises a reasonable doubt considering that the witnesses are partisan to the petitioner. Thirdly, it does not click in my mind that all witnesses were not able to report the matter to the authorities, a coincidence which is not possible. Again all witnesses were CCM members hence partisan to the petitioner who said plainly that they voted for 2nd respondent because they were corrupted, I doubt it. Hence, third issue is answered in the negative. The fourth issue is whether the second respondent had majority votes in the Momba parliamentary election. This issue is dependent on answers 3rd issues hereinabove which was answered negatively to the 1st, 2nd and the effect that the petitioner failed to substantiate allegations against the respondents. As such nothing changes the election results, whereby as per exhibits R2 and P1 the second respondent got the majority votes of 81 26,468 over the petitioner who got 26,260 and PW3 obtained 1,156 votes. This issue is therefore answered in the affirmative. The fifth issue is whether the parliamentary election at Momba was free and fair. Looking at the first issue to the third, which were all answered in negative, there is no evidence that the election at Momba constituency was not free and not fair. It has already been stated in *Manju Salum Msambya V. A.G & Another*; (supra) that: "The Courts therefore have a duty to respect the peoples' conscience and not to interfere in their choice except in the most compelling Circumstances ' As matters stand, I find no compelling circumstances to warrant this court's interference to the seemingly Momba peoples' choice. I have analyzed and seriously considered the evidence adduced, and am honestly satisfied that the parliamentary election at Momba constituency was conducted in accordance with the electoral laws; was free and fair; and its results were accurate and verifiable. In sum, the prayers sought by petitioner in the amended petition are 2d declined and the petition is accordingly dismissed in its entirety. The 2d respondent, David Ernest Silinde of CHADEMA Party is accordingly declared as a validly elected member of parliament for Momba constituency. Thus, a certificate shall issue forthwith to certify to the Director of Elections that David Ernest Silinde was validly elected and declared a

member of parliament for Momba constituency. The petitioner is accordingly condemned to pay costs of this petition to the respondents. It is accordingly ordered. '(p ..1_ i • - . ' g• , 1-IJ II J. S. MGETTA JUDGE 16.5.2016 Court: This judgment is delivered in open court today 16th May, 2016 at Momba District Court in the presence of the petitioner and his advocate, Mr. Simon Mwakolo, the learned advocate; in the presence of Mr. Basilius Namkambe, the learned State Attorney representing the 15t and 3Id respondents; and, in the presence nd of 2 respondent and Mr. Loth Joseph Mwampagama, the learned advocate holding a brief for Mr. Benjamin Mwakagamba, the learned advocate for the 2nd respondent. 83 g J. S. MGETTA JUDGE 16.5.2016 Court: Right of Appeal to the Court of Appeal is fully explained.

3. S. MGE11'A JUDGE 16.5.2016 * 84

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