

UGANDA / JUDGMENT

Beatrice Lagada v Rosemary Kerwegi and Others (Election Petition No. 1 of 1996) [1996] UGHC 84 (4 October 1996)

[1996] UGHC 84

COURT

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Election Petition No. 1 of 1996

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THE REPUBLIC OP UGANDA

IN THE HIGH COURT OP UGANDA HOLDEN AT LIRA

ELECTION PETITION NO* <sup>1</sup> OP 1996

BETWEEN

BEATRICE LAGADA PETITIONER

AND

1 . ROSEMARY KERWEGI)

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2. THE RETURNING OPPICER)... RESPONDENTS

3; THE INTERIM ELECTORAL COMMISSIONER)

BEFORE.: -THE HONOURABLE JUSTICE, <sup>G</sup> *M* OKELLQ

JUDGEMENT ^j •—•* - - —

Thiis is an Election Petition. It was 'brought by Beatrice Lagada seeking to set aside the results of the Apac District Women's Parliamentary Representative Election held on 20th June 1996. Beatrice Lagada hereinafter referred to as the Petitioner was one of the three contestants for the Apac District Women's Parliamentary Representative ^j seat. The other two contestants were Rosemary Kerwegi and Mrs Santa ¹ Ajep. Rosemary Kerwegi was declared the winner in that contest with the Petitioner as the runner up. According to the evidence of the Re-burning Officer for Apac District, the vote margin between the win- ⁱ

sup> ner and the runner up was slightly over 1,000 votes. " ,^a

Pour grounds were given by the Petitioner for her petition. They wre:-

- a) that during the conduct of the said election, there was noncompliance with the provisions of the Parliamentary Elections (Interim Provisions) Statute 1996 relating to elections, and particularly (and without limiting the aforesaid) in that many persons qualified to vote being non-members of the electoral college wore allowed to vote and your petitioner says that these irregularities affected the result of the election in a substantial manner.
- "k) that the said election was characterised by the 'bribery of voters by the first Respondent in person or by her agents acting with her knowledge and consent or approval.
- c) that there was non-compliance with the provisions of the Provisions of the Parliamentary Elections (Interim Provisions) Statute ¹⁹⁹⁶ relating to registration of voters, voting procedures, display of registers and membership of the electoral college with a result that the entire election result was influenced in your petitioner's disfavour.
- d) that the election exorcise was inarred by grave irregularities and illegal practices committed by the first and second respondents personally or by other people with their knowledge, consent and/or approval particulars of which are set out in the affidavit of the petitioner annexed hereto".

Tho petition was supported by several affidavits. One was deponed by tho Petitioner on 25th July ¹⁹⁹⁶ and ³⁵ other affidavits deponed by various agents of the petitioner between 10th and 23rd of September 1996.

In their answers to the petition the Respondents denied all the allegations made therein against them and filed a total of ³³ affidavits sworn by various witnesses including the 1st and 2nd Respondents in reply to the affidavits sworn in support of the petition

In Uguada, the law governing the Elections of District Vomen's Parliamentary Representatives and the Fetitions arising from them are do be found in the Parliamentary Elections (Interial Provisions) statute No. 4 of 1996 and the Rules for the Election of District Women Representative in the third schedule to that statute. Section §90(1)\$ of the Statute defines the court in which Election Fetition shall be filed. Section 90(2) defines who has the right to file such Petition. Section 91 (1) gives the circumstances when the election of a candidate as a member of Parliament shall be set aside. It reads thus,

- " (1) the election of a candidate as a member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the court:-
- \$(a)\$ non-compliance with the provisions of this statute relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the noncompliance and such failure affected the result of the election in a substantial manner.

- \$(b)\$ that a person other than the one elected won the election.
- \$(c)\$ that an illegal practice or any other offence under this statute was committed in connection with the election by the candidate personally or with his knowledge and consent or approval or
- \$(d)\$ that the candidate was at the time of his or her election not qualified or was disqualified for election as a member of Parliament"

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Rule ³ (1) in the third schedule to the statute provides that the woman representative for every district

" shall be elected by an electoral college."

The composition of the electoral college is: to include):-

- (a) all councillors at R. C. II and R. C. III level within the district and
- (h) all members of the Women Councils and sub-county Women Councils within the district.

Women Councils were established by statute No. ³ of 1993.

It is clear from the above that the Petitioner in her Petition seeks to set aside ⁴ the Election of the 1st. Respondent as a member of Parliament under Section ⁹¹ (a) and (c) of Statute 4 of 1996. Under Sections ¹⁰¹ and 102 of the Evidence Act (Cap 43) Laws of Uganda, the burden of proof lies on the Petitioner who would like the election Result of Apac District Women ¹ s Parliamentary Representative set aside.

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only be set aside on any of the following grounds if proved to the satisfaction of the court. The term "proved to the satisfaction of the court" was considered in *Howe... Vs. Eliufu* (1967) EA 240 and was held to mean that where a reasonable doubt existed, then it was impossible to say that one was satisfied and that the standard of proof must be such that one had no reasonable doubt.

It follows therefore that in view of the wordings of section (91(1) of the Parliamentary Elections Statute 4 of 1996. The standard of proof required to establish to the satisfaction of the court an allegation made to set aside an election of a member of Parliament, is beyond reasonable doubt. That means that for a Petitioner to succeed in her/ his Petition, to secure an order of the court to set aside an election of a Member of Parliament, the Petitioner had to prove beyond reasonable doubt not only one or all the grounds he/she had alleged but also that one or all affected the result of the election in a substantial manner.

On the voting procedure, rule 7(1) in the third schedule to statute 4 of 1996 provides that "the voting procedure laid down in the provisions of the statute shall apply to elections for women representatives." That means that the voting procedure for the election of women representative shall be in accordance with the provisions laid down in the Parliamentary Election (Interim Provisions) statute No. 4 of 1996.

At the commencement of submission, for reasons of convenience, the following issues were agreed to and framed as under for guidance:-

> (1) whether there was non-compliance with the principles laid down in the provisions of the statute No. 4 of 1996.

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At the commencement of submission, for reasons of convenience, the following issues were agreed to and framed as under for guidance:-

- (1) whether there was non-compliance with the principles laid down in the provisions of the statute No. 4 of 1996.
- (2) If so, whether the non-compliance affected the result of the Election in a substantial manner.
- (3) whether illegal practices in the election were committed by the first Respondent or by her agents.
- (4) If so, whether the illegal practices were committed with the knowledge consent or approval of the first Respondent.
- (5) whether the Petitioner is entitled to the remedies sought in the Petition.

As regards the first issue above, the Petitioner alleged non-compliance in four categories. They were:—

- (a) In preparation of voters Registers. This was alleged to have been incomplete and unsatisfactory.
- (b) In the display of voters Registers. It was alleged there had been non display of voters Registers all over Apac District.
- (c) In the handling of voting materials. It was alleged that unauthorised persons were permitted and did handle election materials on voting day.
- (d) In regards to voting. It was alleged that a good number of the women councillors were wrongfully barred from voting.
- (a) Preparation of Voters Register

It was the Petitioner¹ case that the preparation of Registers of the members of the electoral college was

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incomplete and unsatisfactory.* It was averred that in some Parishes in Apac District, such Registers were not prepared by the Returning Officer as required of him. under rule 4(1) in the tinrd schedule to the statute.* Relianacc was placed on the affidavits sworn by some Agents of the Petitioner. Cypriano Anap of Orupo Parish of Iconic Sub-county deponed that in his parish five villages did not vote because their names were omitted from the Register.* He named the villages as Ajalo.* Br, Ajalo '^A', Ogony Dao, Adag Ani and Ayita.* The said Cypriano Anap deponed that lie was the Petitioner's Polling agent at Alcwangi P.7 School Polling Station.

Kellen Amodo of Aungu Parish, deponed that she was the Petitioner's Polling Agent at Akuti Polling Station in Aungu Parish. In paragraph ⁴ of her affidavit, she named three villages in Aungu Parish which had no Register and whose members of the electoral, college were turned away on the polling day. The named villages were Aimto, Ajobi and Abura.

Okello Omara of Ayara Parish of Alito Sub-county deponed that he was a campaign manager for the Petitioner.* He named two villages where the ^Docel^L Council and Women Council did not vote because their Registers were missing. The villages named in Paragraph ⁸ of his affidavit were Tekworo and Agoma.

Dawercncc- 01d.no of Agweng Nylon village, Atek Ober Parish of Acaba Sub-county deponed in his affidavit sworn at lira on ¹⁰th. Sept. ¹⁹⁹⁵ that he was the General Secretary of Docal Council ¹ of Agweng Nylon -Tillage. According to paragraph ⁵ of his affidavit, the four villages of Obot, Wigweng, Ojul and Agweng Nylon had no Registers and consequently the electorates in those villages were denied to vote by Okello Yang the presiding Officer (P0)« He further deponed in paragraph ⁶ of his said affidavit that women councils of the entire Atek Ober Parish, did not vote because of the faulty

Registers. Names of many members of the electoral college did not appear on the Rc/ictors;

La?. Kiapi submittod from 'ho above evidence that the 2nd Respondent had failed in his duty to preparc Registers of voters.* That the failure constituted non compliance since the law requires him to prepare Registers of the members of the electoral college within each Parish of the District. He accused the Returning Officer of Apac District of incompetence for lack of record of women council in various Parishes in the District because according to him, the Returning Officer had the duty to provide those record since Women Councils throughout the country were established by Statute No. ³ of 1993.

Ur. Dongc Opar for the 1st. Respondent did not agree with Mr. IQapi. He submitted that there was no such failure on the part oi the Re turning Officer to prepare the Registers of members of the Electoral College. He argued that the Returning Officer had to prepare such Registers from available informations. ^He Ind no duty to hold elections of RC or Woman Council. That where such informations were missing because the elections of D. C. or Women Councils

had not been held, the Returning Officer would not prepare air. According to Dongc, it was proved that there were Registers of members of the Electoral college in Apac District, that was why the election of Women Representative was held. He finally submitted that non compliance in this regard had not been proved.

Dyamugisha Kamugisha who represented the 2nd. and 3rd. Respondents agreed with Dongo's argument. He stressed that the duty to conduct elections of DC and Y/C did not rest with the Returning Officer but with other arms of the Government.

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He argued that the argument of Kiapi that by 1993 the Women Council throughout the country were elected was misleading and erroneous. According to Byawugisha Kamugisha, Statute No. 3 of 1993 had set up offices of Women Councils but did not go ahead to set up time limit when these vacancies would be filled, People were free to hold elections to fill those offices, but that in so far as places the offices remained vacant. He added that person compiling the Register of members of the electoral college would not include any name where the vacancies had not been filled.

In reply, Sokabanja who assisted Kiapi in representing the Petitioner, submitted that rule 4(3) of the 3rd Schedule to the statute was irrelevant because it referred to vacancy created by a member moving to a higher council but not where council had not been elected. He concluded that the 2nd Respondent committed non-compliance when he failed to prepare the Registers of Members of Electoral college where the council had not been elected since it was his duty to hold the election.

The gist of the Petitioner's argument would appear to be that the Returning Officer had a duty to elect Local Councils or Women Councils set up by Statute 3 of 1993 where they had not been elected and to include the names of those elected in the Registers of members of the Electoral college. I find that argument devoid of any legal support because nowhere in the Parliamentary Election Statute No. 4 of 1996 or in the Rules in the 3rd Schedule to that statute has the Returning Officer been charged with the duty while preparing the Registers of members of the Electoral college, to elect LC or WC where they had not been elected before. I think rule 4(3) in the 3rd Schedule to the statute is sufficiently clear. "Any vacancy occurring in any council referred to in Rule 3 shall not affect the result of an election." That in my view meant that whereas the Returning Officer is charged under

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rule 4(1) in the 3rd Schedule to the statute to prepare Registers of members of the Electoral college, where the offices either in the 10 or in the Y/C had not been filled by election, any such vacancy shall not affect the election. The vacancy is not limited to where a member has moved to a higher council. But it includes where election for example in the Women Council had not been held since Statute No. 3 of 1993 came into force 4

In that regard, I agree with Counsel for the Respondents that the Returning Officer's duty was to prepare the Registers of the members of the Electoral College from the information available. Where such informations were lacking because no elections were held to fill the vacancies, no names would be included. By the standard of proof required in this case, to establish non compliance in this regard, the Petitioner had to show beyond reasonable doubt that there were available informations from which the Returning Officer could prepare the Register but that he did not. None of the affidavits referred to by Mr. Kiapi or any other in this regard over mentioned that records of elections of the members of the Electoral college in those Parishes were available but that the Returning Officer did not prepare their Registers. In the absence of such proof, I am unable to find that the Petitioner had proved beyond reasonable doubt that the Returning Officer committed non compliance by not preparing Registers of members of the Electoral college in those Parishes referred to or any others.

(b) Noil. display of Voters' Registers of members of Electoral College:-

It was the case for the Petitioner that there had been a wide spread non displays of Registers of members of Electoral

relied on nearly all the 36 affidavits sworn by her agents or supporters in support of the Petition. About the same number of Counter affidavits were also sworn by the Respondents and their witnesses in rejoinder to those filed in support of the Petition. They denied that there were such non displays at all over the constituency. Mr. Kiapi invited me to reject the blanket denial made in the Counter affidavits sworn in support of the Respondents' case. According to Kiapi, most of those affidavits filed by the Respondents and their witnesses did not specify when and where those displays were made. He pointed out that the evidence of the Returning Officer in cross-examination brought out non compliance with the provisions of the Parliamentary Election Statute No. 4 of 1956 when he stated that the displays were made at the homes of the Parish Chiefs and that the displays were done for between 6 and 9 days only. ICLapi argued that the above evidence contravened Section 25(2) of the Parliamentary statute which requires the displays to be in public places. I think a more realistic practical view needed to be taken to consider this section 25(2) of the statute since the term Public place has not been defined in this statute. In most Parishes in this part of the country, Parish Chiefs do not have office premises to be regarded as Public places. In some cases there may be too distant a public place like market, Trading centre or school within a Polling Division to be convenient for display of Registers of members of the Electorate college of a given Parish to enable members to travel to the place to inspect the Registers. In such cases where a Parish Chief uses his home as his office such a home should in my view be deemed for the purpose of this section to be a Public place, but there is evidence that there was a public place for example, market, trading centre or a school but that the displays were nevertheless made in the chiefs' home, such a display would be non compliance with the provisions of this

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section 25(2) of the statute. In the instant case, the affidavits available did not disclose that where the displays were made in the homes of the Parish Chief, public places were available but were not used.

J.R. Kiapi submitted that there were no displays. In support he cited the affidavit of Cranimo Onyik Parish Chief of Aunso parish who deposed in paragraph 5 of his affidavit that the Registers were displayed by the LC II Chairman. Accoi' din to Kiapi that contradicted the evidence of the Returning officers who had told court in cross examination that the displays were made by Parish Chiefs yet the Parish Chief did not specify where and when the displays were made but instead deposed that the displays were made by the LC Chairman.

Both Messrs Don-e Opar and Dyamugisha Kamugisha did not agree with the view that there were no displays of Registers of voters in Diechoral College throughout the constituency. They contended that there were such displays throughout the District. They relied on equally numerous counter affidavits sworn by various deponents to that effect. Mr. Donge Opar cited the affidavit of Raymond Ajobo (33) which was filed in support of the Petition. According to Donge, the deponent of that affidavit swore that Registers were displayed in the chiefs' office. In Council's view, that affidavit which was filed in support of the Petition, supported the Respondents' case that there were displays of voters. Counsel further pointed out that the Returning Officer's evidence in cross-examination also revealed that Displays of Registers of voters were made.

Mr. Donge further relied on Annexure A to the answers of the 2nd and 3rd Respondents to the Petition to show that there were displays of voters Registers throughout the

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Constituency. The Annexure A is a letter dated 10th. June, 1996 by L. S. Sa'ita Ajc-p m. i Rosen...ry Kcrwegi who were contestants for seat in that constituency. They were complaining in that letter against the Petitioner and the RDC Apac for the voters Registers at various Sub-county offices. Donge argued that such a letter would not have been issued if there were no displays of voters Registers in the district.

Byamugisha Kamugisha relied on the affidavits of Dr Ongu Elim who was the Election Supervisor in Kole County; of Sadat Ojok the Vice Chairman IC II Atura Parish; of Paulino Angara Chairman T-C II of Cnuye Parish of Bala County; and of Ogyal Odor living in Tororo Secretary 5. or Inior-a -ion LC II of Agcge Parish also deposed that there had been displays of Registers of voters. According to Byamugisha Kamugisha those affidavits only confirmed the evidence of the Returning Officer who told court in cross-examination that he went around the District to supervise displays and found that Registers of voters were being displayed.

In reply L^{*}r. Kato Sel-abanja submitted that the Returning Officer claimed on oath that he went around and saw the Registers displayed at the Chiefs¹ horns. But that in his affidavit of 12/8/96 paragraph ⁵ the Returning Officer deposed that he was informed by the Election Supervisors that the Registers were displayed throughout the District. According to Sokabanja the above contradiction showed that the Returning Officer was not truthful.

It is to be noted that the display of Registers of members of the Electoral college is a serious allegation, so the proof must be clear. There were several affidavits in favour and equally several, against, Mr. Kiapi urged me not to believe the affidavits stating that there were no displays because they did not specify the place and the time when the displays were

made. I think that argument had the effect of shifting the burden of proof from the Petitioner to the Respondent. Yet the Petitioner on whom the burden of proof lies had to show beyond reasonable doubt that in fact there were no displays of Registers of members of Electoral College. To do so he had to specify the steps that had been taken to confirm that there were no displays in the areas alleged. It was not enough to merely assert that there was no display without substantiating it. None of the affidavits sworn in support of the Petitioner's case that there were no displays included information as to the steps taken to verify that there were no displays.

The Returning Officer was subjected to one of the most cruel cross-examinations I have seen but he remained firm. He told court that he went around the District to supervise the display and that he found that there were displays. I found this humble officer a truthful witness because he did not even pretend that he covered the whole District by himself. He told court that he reached most of the stations except a few. I find no contradiction between his verbal evidence under cross-examination and his affidavit of 12/8/96 as alluded to by Mr. Sekabanja. As he did not cover the whole District, he was justified in relying on information from Election Supervisors to cover the whole District. He was specifically asked if he went to Cheger^e to which he replied that he did between 11th. and 12th of June, 1996 where he found that the Registers were displayed. The evidence of the 2nd. Respondent and those other affidavits which indicated that there were displays of the Registers of the names of members of Electoral college, raised reasonable doubt as to whether there were no displays as alleged. In those circumstances I am unable to find that the Petitioner had proved beyond reasonable doubt that there were no displays of Registers of members of the Electoral college throughout the ^c district as alleged.

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\$(c)\$ Devial of Women Council to Vote:-

The Petitioner's case was that a greater number of the members of the Women Council did not vote either because their names did not appear on the Registers or because they were denied to vote on the strength of a circular letter written by the 2nd Respondent to the presiding officers. The letter was annexed to the Position and was marked annexure 'A'. It is dated 15/3/96. In that letter the Returning Officer told the presiding officer and under N. B. thus,

> "there is very little record on Parish Women Council as a result of lack of information on election at L. C. I. You are therefore instructed to ignore Parish Women Council. Exception is where a village comes with complete record list of 1994 Women Council Election since after C. A. Election, no election of village Women Council continued. The fielding came in after nomination of Parliamentary Candidates on 21/5/96. This fielding has been declared null and void as per circular/ Press release from IEC. In the same Parish and Sub-county, Local Councils in (a) above (village L. C. I Executives who flow Parish Council, Parish L. C. II Executives who are Sub-county Councillors and Sub-county Executives members originating from respective Parishes) who are not democratically elected either in normal or by-elections disqualify. Stand unshaken on this issue please."

That letter was copied amongst others to the Chairman I. E. C. I shall revert to this letter later.

For evidence to prove denial of Women Council to vote, The Petitioner relied mainly on the information she received from her agents like, Okello Omara, Ojuka Dickson and Alex Tino to mention a few. According to the Petitioner's affidavit, Okello Omara informed her that in Alito Sub-county Kileleshwa, Women Council were stopped from voting. Ojuka Dickson and Sophia Comy informed her of the same occurrence at Adyeda Polling Station in Abalo Sub-county. She was also informed by

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Ogwang Acura that the same happened in Aboke Sub-county where 30 members of the electoral college did not vote. Time Alex informed her that at Ajok Parish in Kwamia, though the Parish Clerk declared that Women Council in his Parish had been duly elected in 1994, Paulo Odom, O stopped them from voting.

Okello Omara Fingeli swore an affidavit in which he confirmed that Women Council 3 members were barred from voting at Lwala P.7 School Polling Station. He did not talk of the Women Council in the whole of Alito Sub-county being stopped from voting.

Alex Fino also swore an affidavit but discussed the information attributed to her in the Petitioner's affidavit. Attempt was then made by counsel for the Petitioner to have the said Alex Fino declared hostile witness.

Even Neulo Odongo swore an affidavit refuting the averment made in Lagada's affidavit against him.

Reverting to the Returning Officer's letter referred to above, it is to be pointed out that the Petitioner blamed the denial of Women Council to vote on this letter. It was argued that the latter was unlawful since the Returning Officer had no authority to issue such an instruction. It was the view of the Petitioner that by that letter, the Returning Officer gave the presiding officers unlimited powers to bar the Women Council from voting. It was further argued that by that letter, the Returning Officer usurped the powers which should have been exercised by the Tribunal.

Counsels for the Respondents did not agree with the above arguments. They contended that the letter was lawfully written by the Returning Officer as an Agent of the I. B. C. That the letter was not, intended to confuse the presiding

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officers but to caution them to screen the eligible voters only to vote.* According to counsels for the Respondents, the letter merely expressed what had been agreed on at meeting by the candidates and the Returning Officer in the latter's office on 19/3/96.

I have had the chance to read that letter and the opinion ^I formed is that ^a correct interpretation of it does not give the meaning that the Returning Officer intended. The presiding officers to stop or prevent eligible voters from voting. It merely gave a caution or advice to the presiding officers to screen only eligible voters to vote. I think this was compatible with the spirit of ensuring a free and fair election contained in the Statute. In doing so, the Returning Officer acted as the agent of the I.B.C. The letter was copied to the Chairman I. P. C. and there was no evidence that he objected to it. I would not therefore hold that the Returning Officer acted illegally in issuing that letter.

As regards the proof of denial of Women Council to vote, there had been counter affidavits stating that there were no such denial where the councillor's name appeared on the Registers. That means that, a better evidence is called for to establish beyond reasonable doubt that Women Council members whose names were on the Registers of Electoral College were denied to vote. This type of evidence in my view is the Registers of voters. Unfortunately the Registers had not been produced in evidence. Without such evidence, it is not easy to say that those claimed to have been denied voting were eligible voters.

(d) Respondent-Eligible members of the Electoral College were allowed to vote.

The case for the Petitioner was that a sizeable number of

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non-eligible members of the electoral college were allowed to vote while a good number of eligible members were refused to vote. In support, the affidavits of the following people were cited:-

- (1) Elida Ogi.no of Apao Town Council Eastern Ward, She deponed that Anna Aide, Hetty Clwit and Margaret Oyoo who were all non members of t.'u electoral college wore allowed by the presidin.';; officer upper central Polling Station Apac Town Council to vote. She further named Hrs. Okcllo Ammon and Erina Ogwang as -ion number of doctoral College both from Agulu who were allowzed to vote.
- (2) Ogwan. of I.oro Sub-county, deponed that he was the Petitioner¹ s Polling Agent at Loro Headquarters Polling Station, He -wed Sylvia Olwata as a non member of electoral college who was allowed to vote.

The Respondents denied that non-cligible members of 'the electoral college were ever dlowod to vote, lire. Pose Ctīm deponed denying that t.- oso nailed by PiIda Ogino voted. The learned counsels for the Respondents submitted that the allegation had .not been adequately jproved. They argued that in the absence of the Registers of r.e?d.^rs of the Electoral college, it was difficult for court to accurat'cly decide on who was and who -was not eligible r.cj'i.bcr of the electoral college•

^Z agree with that argumoa because as I .had already mentioned earlier in this judgment, the best evidence- to prove the eligibility or othoi'wise of a person alleged to have voted when not cligiblo to do so is the Register of members of the Electoral college. This would reveal the names of those eligible mom"jors. It was alluded by the Petitioner that the 2nd Respondent was to produce the Register of the Electoral college because he had their possession- In my view the /19.

Petitioner oujit in the first place to have sent notice to t?ic 2nd Respondent to produce the Resistor if she wanted the production of the same unless the ease was an exc..ption to that general rule of eviduic.. But no argument was led to tlirow light to that fact. Bor that I would not blame the 2nd Respondent .for not producing the Register when no . notice had been sent to him to produce the scone.

I havu hr.d »c c.-ancu to read 'ho affidavits filed in support of •' - al.? nation particularly those of Pilda <O15i.no> a d George Ongoru Both ■Kpono.uts did not disclose the source of thoir laiowlodgc that the persons they named were ?ion-eligible members of the Electoral college. Theii affidavits neve?? disclosed for exa.-iplc whether they had read the Registers 03? the members of the Electoral college and found that the names of those nai?.ed were not included or how they camo to know that they were non-cligable members. Without a clear and cogent avid.,neo as to how they came to the conclusion that those -"hey named were non eligible members of the electoral college, their mere assertion that those wore non eligible mombors of the leetoral college would .not do. It was not enough. Such evidence c m not amount to preof; beyond reasonable doubt. The Registers of members of the Electoral ^colioge re: tains t'■ be-^st ^evi cl.. .nco.

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it was the ease for the Petitioner that the 2nd Respondent having refused or failed to publish the names of t ^e presiding officers, consequently on polling day, unauthorised persons wore allowed to and actually handled election loato.rials and even sujx'rviscd the exorcise. In proof, the Petitioner relied on the afilr^/it *oy.* Phoebi ICLduli of Ongo cung Parisjh i.n ACrJcu Sub-county.

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She demoned that she was the Potitioner's Agent at Ongorong Polling Station. Station. Stational in her affidavit Okello Omach. Ewranuel Amuse and Olong Diek as non-authorised persons who handled election unterials. According to her affidavit, they brought ballot papers in Comman Adyebo's Vehicle.

The Respondents defined that unauthorised persons over handled election interials. To mustantiate their denial. Old To Onach and Remanuel Amute swore addidavits. In their affilavits that each denied involvement. There was also an affidavit of Ofwary Adaa who was the Presiding Officer of Ongocong Polling Station. Me demied that ballot papers were brought by the persons named by Kidulu. According to Adaa's affidavit, the extra ballet papers were brought by Abal Patrick on Assistant Returning Officer who came in his (the officer's own) vehicle but not in Adyebo's vehicle as sworn by Kiduli. Ogwang further demied that Okello Onach and Emhamuel Asute came to the Polling Station. We attached to his affidavit a declaration of Results Form (FORM DR) which showed that the number of ballot papers issued tallied with the numbers of ballots used as under:-

| | Humber of ballot papers issued | | 128 |

|--|-----|--|-----|

| | Number of ballot papers east | | 125 |

| | Number of ballot papers spoilt | | \$\sim\$ 2 |

| | Number of ballot papers used | | \$128 \ldots\$ |

The above reflatd the averant in paragraph 10 of Kiduli's affidavit the number of ballot papers issued and those used did not tally. at Choocag Polking Station.

It is trite law that affidavit being document on eath must be taken seriously. If it contains falsehood it is bound to be rejected. In the instant case, the affidavit of Phoebe Kiduli states what the number of votes east did not tally with

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the number of ballot papers issued at Ongocng Polling Station. ¹ find this to be a false statement in view of the Declaration of Results form, which Kidull herself had signed. Per the *c* reason I do not believe her affidavit# it is not truthful- I do not therefore find, as sufficiently proved the allegation that unauthorised persons handled election materials#

(f) Other irregularities#

It was ^a further case of the Petitioner that the election exercise was marred by other grave irregularities and illegal practices by the first and second Respondents personally or by other people with their knowledge, consent and approval-In the particulars of the allegation, these irregularities were named as: -

- (a) Wrongful doband for voters Card by presiding officers.
- (b) Allow/iv, so: e voters to vote twice#
- (c) Late commencement of Polling at some stations#
- (d) Issuance of ballot papers haphazardly#
- (s) Wrongful, pieced by 9X£^g.^ hoards from. Voters:-

It was contended for this Petitioner that some presiding Officers were demanding voters Card before voters could be allowed to vote. He submitted that such demands were illegal because it was not the requirement in the election for Women Representatives #

Th?# Donga did not agree with that submission. He contended that the demand for voters Card was a requirement in the election for Women# He cited rule 7(1) in the 3rd# Schedule to the Statute# This rule says that "Voting procedure laid

down in the provisions of the statute shall apply to the election for Women Representatives" He

also cited Section 63(1) of the Statute No. 4 of 1996 which is to the effect that a voter visiting to obtain a Ballot Paper shall produce his/ her Voters Card.

Section 25 of the Parliamentary Election Statute No. 4 of 1996, provides for the issue of voters Cards. There is no provision in the statute for the issue of voters cards to the members of the electoral college for the election of Women Representatives. Even the Rules in the 3rd. Schedule to the statute did not make reference to the issue of such card. In that regard, I am of the view that a demand for such card from members of the Electoral college was improper. That was an irregularity since production of voters card was not a requirement for Election of Women Representatives. There was however no evidence as to the number of voters turned away because of want of voters card.

- (b) Allowing some Voters to Vote twice:-There had not been adequate proof of this allegation.
- (c) Late Commencement of Polling:-

There had been allegations of late commencement of voting in some Polling Stations for various reasons. Evidence in proof were provided by Catherine Obura of Akalo, Okello Omara of Alito and Fedrick Luker of Atongtidi. But none of these witnessed stated in their affidavits that because of the late commencement of the polling, some voters went without casting their votes. Even the number of voters who did not vote on this ground were not disclosed.

Issuance of Ballot Papers: -

It was the case for the Petitioner that the Returning Officer having failed to prepare voters Registers, ballot

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papers were issued haphazardly. It was argued for the Petitioner that the effect of that issuance of ballot papers, was that voting in some stations were interrupted where ballot papers got finished.

The Respondents denied that ballot papers were issued haphazardly. They contended that there was no proof of that allegation.

I could find no evidence that ballot papers were issued by the Returning Officer haphazardly. There was however, evidence that in some Polling Stations ballot papers not finished but that such shortages were quickly remedied. Examples of that is the affidavit of Ongodo Ogoro Alfonse. He deposed that he was the presiding Officer in Opetia Parish where voting stopped at 3.00 p.m. when all had voted. Amuju Geoffery replied the affidavit of Anna Edule. He deposed that
<pre>complaint
by anybody of missing voting because of</pre> there was no delay. According to him voting closed at 4.00 p.m. when all had voted.

From the evidence available therefore, I find that the allegation of non compliance with the principles laid down in the provisions of the statute 4 of 1996 had not been proved beyond reasonable doubt. Consequently I hold that there was substantial compliance.

In view of that finding, issue No. 2 is also answered in the negative.

The next is issue No. 3 - whether illegal practice was committed by the first Respondent personally or by her agents with her knowledge, consent or approval.

It was the case for the Petitioner that illegal practices were committed by the 1st. Respondent personally during

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the election on by her agents with her knowledge, consent or approval. The kind of illegal practices complained of were bribery of voters, obstruction of voters, undue influence and unauthorized handling of election materials.

The Respondents denied those allegations.

I have perused all the 37 affidavits sworn in support of the Petitioners Case. I could find none of these affidavits pinpointing the first Respondent with the Commission of any of the illegal practices complained of.

Cejoria Ogwong of Amii Patish deponed in paragraph 7 of her affidavit that

"during the polling exercise, one Achanga Otee, an agent of the 1st. Respondent did engage in the bribery of voters in the very presence of Ogwang Veto the Presiding officer."

The above evidence is unhelpful to prove such a serious allegation because it did not disclose what act of bribery the said Achanga Oteo actually did to the voters. Secondly, the affidavit did not disclose whether the alleged act of bribery was committed by the agent with the knowledge, consent or approval of the 1st. Respondent.

Raymond Ajeb of Anwangi Parish Massico also deponed that Etim Armaphroy arraigned to an assembled voters that they should be proposed to vote for the 1st. Respondent and later Left with then \$30,000/= \$. This affidavit had the same shortcoming. It did not disclose whether that act was condoned with the knowledge or approval of the 1st. Respondent.

Leo Otoma of Alido Parish Cawente also deponed in his affidavit that

"Bosco Oyotta, (Farish Chica) Fabiano Adul dad Ojwang agents and supporters of the 1st Respondent openly distributed money at the Polling Station and further threatened to assault the Telling Constable."

Similarly the above evidence does not connect the 1st. Respondent with the alleged act of bribery since it was not disclosed whether the act was condoned with the knowledge, consent or approval of the 1st. Respondent.

An allegation of under influence was also made. Peter Ogwong provided the evidence. He deponed in his affidavit that Opio Augustian an agent of the 1st. Respondent brought a 20 litres Jerrican of Crude Waragi within 50 meters of the Polling station of Awir P.7 School in Apac Sub-county Maruzi County. He further deponed that the Waragi was used to intoxicate and influence the voters before they casted their votes.

That evidence is also lacking in that it did not connect the 1st. Respondent to the act. It was stated in the affidavit that the 20 Litres Jerrican of Waragi was taken close to the Polling Station. Taking Liquor within such a distance from the Polling Station on Polling day is an offence. But to establish it, requires clear and cogent evidence. There was no evidence that the 1st. Respondent took it there, nor that he had included it, consented to it or approved of it.

From the above evidence, I find that no illegal practice has been adequately proved to have been committed by the first Respondent personally or by her agent with her knowledge, consent or approval.

This leads me to issue No. 4 - \$ If so whether the said

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acts were committed with full knowledge, consent and approval of the first Respondent# This
¹ ns already been covered in answer- to issue lie, 3* The answer is in the negative.

Thus final issue is whether the Petitioner is entitled to the remedies sought in the; Petition#

That the Petitioner ^sought two re•. io di ^c s: -

(a) that the election Result of the Apac District Women Parliamentary Representative be set aside and a, fresh election be held#

(b) that cost of this Petition be provided for.

As I had pointed out earlier in this Judgment, the Petitioner brought • t thi^s Petition under Section ^c tion ⁹¹ (1) (a) and (c) of the Parliamentary Elections Statute of 1996# Those were the grounds on which she fought this Petition# Under Section ⁹¹ (1), the election of a Candidate as a member of Parliament shall only be valid if those grounds are proved to the satisfaction of the court#

In the instant case, the grounds on which the Petition was fought were not proved beyond reasonable doubt. Consequently the Election of Apac District Women Parliamentary Representative shall not be set aside#. The Petitioner is therefore not entitled to the remedies sought in the Petition Instead, the petition shall be and is hereby dismissed with cost#

Order of the Court, 4/10/96

Judge 4/10/96

Mr. Mwesigwa Rubutama holding brief for Mr. Kiapi for the Petitioner.

Mr. Dongo Opar for the 1st. Respondent. Mr. Byemugisha for 2nd. and 3rd. Respondents. \$
\overline{a}\$ Mr. Opio Edward - Court Clerk.

Court Judgment Delivered.

\$\cdot\$

\$C\$ Chile
G. N. CICELLO Judge

4th October, 1996

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Prepared on 14 October 2026 · Esheria