

UGANDA / JUDGMENT

Nakato Vs Babirye (Election Petition Appeal No. 0089 of 2016) [2017] UGCA 53 (7 August 2017)

[2017] UGCA 53

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Election Petition Appeal No. 0089 of 2016

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO. 0089 OF 2016

(ARISING FROM HIGH COURT ELECTION PETITION NO. 18 OF 2016)

NAKATO MARY ANNET:.....

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VERSUS

1. BABIRYE VERONICA KADOGO
2. ELECTORAL COMMISSION :.....

CORAM: HON. JUSTICE REMMY KASULE, JA

HON. JUSTICE BARISHAKI CHEBORION, JA HON. JUSTICE PAUL KAHAIBALE MUGAMBA, JA

JUDGMENT

This is an Election Petition Appeal from the Judgment of the High Court of \$20\$ Uganda before Hon. Godfrey Namundi J, sitting at Jinja, delivered on the 11th of August 2016.

Background

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Briefly, the background to this appeal is that the Appellant Nakato Mary Annet, the 1st Respondent Babirye Veronica Kadogo and Nawegulo Sarah contested in the elections for Woman Member of Parliament for Buyende District held on the 9th of March 2016 wherein the 1st Respondent emerged winner and was declared

as such by the 2nd Respondent. She was gazetted and is currently serving as the \$ \mathsf{S} \$ woman member of Parliament for Buyende District.

The Appellant being dissatisfied with the results of the election petitioned the High Court contending that the election was marred with illegalities and malpractices by both respondents and as such did not comply with the electoral

laws. The trial Judge dismissed the petition with costs and held that the elections 10 complied with the laws and principles governing elections and that there was no noncompliance that had a substantial effect on the final outcome of the election. The appellant still being discontented appealed to this court.

The memorandum of appeal comprised of the following grounds:

- 1. The Learned trial Judge erred in law when he placed a higher burden and 15 standard of proof on the petitioner than is required by law in election *petitions.*
- 2. The learned trial judge erred in law and fact when he required that the Appellant's evidence be corroborated by evidence of independent witnesses.
- 3. The learned trial judge erred in law and fact when he failed to properly evaluate the evidence on record and thus came to a wrong decision.
- 4. The learned trial Judge erred in law and fact when he failed to apply the law relating to donations as an illegal practice, thereby arriving at the wrong decision.
- 5. The learned trial judge erred in law and fact when he held that the 1st Respondent did not personally and/or through her agents with her

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- knowledge, consent and approval, commit various acts of donation or any other illegal offence before and during the election period.

- 6. The learned trial judge erred in law and fact when he held that the election of the woman Member of Parliament for Buyende District was conducted in compliance with the parliamentary elections laws and principles governing the conduct of election in Uganda and that any non-compliance did not affect *the results of the election in a substantial manner.*
- 7. The learned trial Judge erred in law when he ordered the Appellant to pay the costs of the petition to both respondents in the given circumstances.

Representation

15 At the hearing of the appeal Mr. Allan Nshimye and Mr. Robert Kirunda were counsel for the appellant while Mr. Julius Galisonga and Mr. John Isabirye were counsel for the 1st respondent. The 2nd respondent was represented by Mr. Enoch Kugonza.

Duty of this Court:

20 Before considering the arguments advanced for either side, we acknowledge the duty of this court as the first appellate court which is to review the evidence on record and reconsider the materials before the trial Judge and arrive at its own conclusion as to whether the finding of the trial court can be supported. We bear in mind however that this court does not share the unique advantage of the trial

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Judge who perceived and appreciated the demeanor of the witnesses as they \$\mathsf{S}\$ testified. See *Pandya v R* [1957] EA 336.

We also bear in mind the provisions of Section 61(1) of the Parliamentary Elections Act to the effect that the election of a candidate as a Member of Parliament shall only be set aside on grounds stipulated in the section if those grounds are proved to the satisfaction of court and also section 61(3) that provides that any of the grounds specified in section 61(1) of the Act is to be proved on the basis of a balance of probabilities.

Specifically in the petition giving rise to this appeal, the petitioner, now appellant alleged that section 61 (1) (c), that is commission of an illegal practice or offence

and section 61 (1) (a) failure to conduct the election in compliance with the Act 15 were the basis of the grounds for challenging the election.

Submissions of counsel

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Counsel for the appellant elected to argue all the 7 grounds separately. Counsel for the respondents on the other hand argued grounds 1, 2, 3, 4 and 5 together and argued grounds 6 and 7 separately. We shall follow the order adopted by the \$20\$ respondents.

Grounds 1, 2, 3, 4 and 5

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Of those grounds above, we note that ground 3 as set out does not meet the requirements of Rule 86(1) of the Rules of this Court. The ground is couched in the following words;

"The learned trial judge erred in law and fact when he failed to properly evaluate the evidence on record and thus came to a wrong decision."

This ground is too general and does not specify in what way and in which specific areas the learned trial Judge failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned trial Judge. Rule 86(1) of the Rules of this Court provides:

"86(1). Contents of memorandum of appeal. 15

- (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of $\left\| \mathbf{r} \right\|$ the order which it is proposed to ask the court to make.

In our view, Rule 86(1) which is mandatory is intended to ensure that the court adjudicates on specific issues complained of in the appeal and to prevent abuse of court process. The general nature of ground 3 as presented allows a possibility of the appellant to ambush both or any of the respondents with issues they would

not have contemplated. Consequently, we strike out ground 3 as being wrong in S law.

As to ground one, it was contended for the appellant that the learned trial Judge erred in law when he placed a higher burden and standard of proof on the petitioner than what is required by law in an election petition. Appellant's counsel faults the trial Judge for relying on the authority of Dr. Kizza Besigye $\text{\$10}$ Vs Museveni Yoweri Kaguta and the Electoral Commission, Presidential Election Petition No. 1 of 2001, which places the standard of proof to be higher than on a mere balance of probabilities. Thus relying on that decision, the trial Judge placed upon the petitioner to prove the assertions in the petition to the satisfaction of court at a standard higher than mere balance of probabilities that 15 is required in ordinary civil suits. Counsel submitted that the position in Dr. Kizza Besigye Vs Museveni Yoweri Kaguta and the Electoral Commission (supra) applied only to presidential and not parliamentary elections in respect of which now section 61(3) of the Parliamentary Elections Act provides that proof of the grounds to set aside an election shall be on a balance of probabilities. $\text{\$20}$ Counsel referred Court to the cases of Nsubuga V Kavuma (1978) HCB 307, Toolit Simon Akecha V Oulanya Jacob Lokori and another Election Petition Appeal No.19 of 2011.

Concerning ground 2 counsel for the appellant faulted the trial Judge for requiring all the evidence of the appellant to be corroborated adding that there was no such rule of law requiring corroboration of the evidence in election

- matters. He argued that by requiring that every evidence be corroborated the trial Judge raised the standard of proof beyond what is required. It was his submission that the witnesses in this case were credible and so was their evidence and as such no other independent evidence to corroborate the same was needed.
- For the respondent as regards ground one, it was submitted that the learned trial Judge properly evaluated the evidence before him and applied the appropriate standard and burden of proof. He maintained that the position of the law in the **Kizza Besigye case (supra)** was still the proper law applicable.

In resolving ground one of the appeal, we note that the trial Judge when dealing with the issue of burden and standard of proof stated:

"The Petitioner bears the legal burden to prove the grounds upon which she challenges an election and court will take up its decision upon the provisions of section 61 of the Parliamentary Elections Act only if the petitioner has presented before court sufficient and substantial evidence that will warrant court to set aside the election, the evidence adduced must not raise suspicion rather it must prove the allegations to the satisfaction of court."

He then relied on the authority of Col. (Rtd) Dr Kizza Besigye Vs Museveni Yoweri Kaguta and EC, Election Petition No. 1 of 2001 to explain the meaning of the words 'satisfaction of Court' where the Supreme Court held:

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"In my view, the burden of proof in the election petition as in other civil cases is settled. It lies on the Petitioner to prove to the satisfaction of Court....since the legislature chose to use the words "proved" to the satisfaction of court.' it is my view that that is the standard of proof required in an election petition of this kind. It is a standard of proof that is very high because the subject matter of the petition is of critical importance to the welfare of the people of Uganda and their

Although the trial Judge gave his understanding of the above quotation that the petitioner had a heavy duty not only to prove to the satisfaction of court but also at a standard higher than what is required in ordinary civil suits, in evaluating the evidence as will be shown below, he did so on a balance of probabilities and not beyond doubt.

Looking at the authorities relied on by the Judge to arrive at the impugned conclusion, clearly the Judge placed the burden of proof on the Petitioner to prove the grounds upon which she challenges the election. He stated the standard to be to the satisfaction of court.

Election petitions are of critical importance to the public and raising mere suspicion is not enough. Satisfaction of court is key. Appellant's counsel would have court to take the standard of proof to be only on a balance of probabilities even where there are allegations of illegal practices and offences. No court would be satisfied if they were in a state of reasonable doubt.

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democratic governance."

In Blyth Vs Blyth [1966] AC 643 Lord Denning related to the import and S meaning of the word "satisfied". He observed:

> 'The courts must not strengthen it, nor must they weaken it. Nor would I think it desirable that any kind of gloss should be put upon it. When Parliament has ordained that a court must be satisfied only Parliament can prescribe a lesser requirement. No one whether he be a judge or juror would in fact be "satisfied" if he was in a state of reasonable doubt.....!'

The trial Judge in no way raised the standard of proof beyond the required standard as alleged by the appellant. Section 61(1) and (3) of the Parliamentary Elections Act requires that the grounds must be proved first to the satisfaction of Court and second on a balance of probabilities. The satisfaction of court and a balance of probabilities go hand in hand. It has been settled in a number of cases that the balance of probabilities in election petitions is higher than that in ordinary civil suits though not beyond reasonable doubt. In Kamba Saleh Moses Vs Hon. Namuyangu Jeniffer, Election Petition Appeal No. 27 of 2011, it was held:

"... This court is alive to the fact that bribery is such a grave illegal practice and as such it must be given serious consideration. The standard of proof is required to be slightly higher than that of the ordinary balance of probabilities and applicable to ordinary civil cases. It does not, however, call for proving the bribery beyond reasonable doubt as in the case in criminal cases. What is required is proof to the satisfaction of court."

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In Rtd Col. Dr. Kizza Besigye Vs Museveni Yoweri Kaguta and EC, Election S **Petition No. 1 of 2001**, Odoki CJ had this to say on this same issue;

> "In my view the burden of proof in an election petition as in other cases is settled. It lies on the Petitioner to prove to the satisfaction of Court. "

In our view, the trial Judge quoted the decisions above to explain the requirement 10 in section 61 of the Parliamentary Elections Act which provides that the alleged noncompliance, election offences or non-qualification of a candidate must be proved on a balance of probabilities to the satisfaction of Court.

We find no error on the part of the Judge. He rightly directed himself and placed the appropriate burden and standard of proof on a balance of probabilities to the satisfaction of Court.

The Appellants contended that the trial Judge raised the standard by requiring that every evidence be corroborated.

For this court to appreciate whether and why the trial Judge needed corroboration of evidence presented we have to look at the evidence presented in respect to each allegation to determine whether it was sufficient on its own to prove the allegations.

Before the trial Judge, the petitioner's allegations against the 1st respondent were:

- 1. That the 1st respondent or her agents with her knowledge, consent and or approval was involved in acts of bribery in contravention of section 68(1), (4), (7) and (8) of the Parliamentary Elections Act.
- 2. That during her campaigns in Buyende District the 1st respondent made false statements regarding the character of the petitioner contrary to section 73 (1) of the Parliamentary Elections Act.

The trial Judge considered the position of the law that proof of a single act of bribery to the required standard by or with the knowledge and or consent or approval of the candidate, however significant, is sufficient to invalidate the election. The trial Judge considered also that a receiver must be a voter otherwise he/she cannot be influenced to vote or refrain from voting.

Thereafter court went ahead to digest the evidence of the different incidents where it was alleged the 1st respondent and her agents committed acts of bribery.

Donation of money at Makanga on 1st February 2016.

The evidence adduced in support of this allegation was in the affidavits of Isiko Peter, Sajjabi Aloysius and Chellangat.

Isiko's evidence was that the 1st respondent at Makanga Polling Station at the end of her speech opened her car boot and removed a saucepan. She proceeded to give out money to people and asked them to vote for her. That these items and money were given to Ms. Namuyima Margret, vice chairperson LC1 and Mrs Paulo. The Judge also considered the evidence of Sajjabi Aloysius and Chellangat

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which was adduced to corroborate the evidence of Isiko. Sajjabi deponed that the \$5\$ ¹respondent on the ¹February 2016 between 3pm and 4pm visited the Town Council office of Makanga. In this respect he attached to his affidavit a copy of the visitors book the ¹respondent had signed. That signature was analyzed by Chellangat Sylvia a hand writing expert who deponed that indeed the hand \$10\$ writing belonged to the ¹respondent.

The Judge considered the submission for the ¹respondent that there were no affidavits from Namuyima Margret and Mrs. Paulo confirming receipt of money from the \$1^{st}\$ respondent.

The trial Judge also considered the ¹respondent's response in her affidavit where she stated that she passed by the Mayor's office in the morning on the ¹15 of February 2016 on her way to Kagulu sub county where she was due to campaign. In his holding, the trial Judge found that it was true that the ¹respondent visited the Mayor's office in Makanga Town Council and that she provided an explanation as to how and why she came to be there. The nexus \$20\$ between being at the Mayor's office and at a rally was however not explained. Court observed also that there was no evidence from the people who were alleged to have received the donation from the respondent and as to whether they were registered voters, particularly Namuyima and Mrs. Paulo.

The trial Judge noted that in petitions, where there are accusations and counter accusations from both sides, evidence from an independent source is required \$25\$ to confirm what really happened. Such independent evidence he found missing.

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- He concluded that he was not convinced that the ¹respondent on the ¹February 2016 at Makanga Polling station donated a sauce pan and money to persons who were registered voters with the intent to influence them to vote for her.
- Upon re-evaluation of the evidence of Isiko Peter and Sajjabi Aloysius against the evidence of the \$1^{st}\$ respondent, it is not in doubt that the \$1^{st}\$ respondent was at \$10\$ the Mayor's office on ¹February 2016. She admitted to this fact herself. She however denied allegations of donating sauce pans and money from her car boot. There is no other evidence on record or any other person present at the rally that deponed to witnessing the same incident of donation as alleged by Isiko. The donations were alleged to have been given out in the open to several persons. 15 One would therefore expect such recipients or witnesses of the same to appear and depone to such. We noted earlier that bribery is a grave illegal practice which must be given serious consideration. Cogent and credible evidence must be adduced in proof and not mere raising of suspicion. The trial

Judge found the evidence adduced lacking such proof and required further or independent \$20\$ evidence in support of the allegations. We agree with his conclusion. No evidence was led to prove that Namuyima Margret and Mrs. Paulo were registered voters. It is important to prove that the recipients of the money/gift were registered voters. This Court held in **Kamba Saleh Moses Vs Hon. Namuyangu Jeniffer \$25\$ (Supra)** that:

"... The timing of the donation of the money for hoes may raise questions, but none $\overline{\$5}$ of the recipients was proved to be a registered voter. The appellants' act in donating the money for the purchases of hoes, therefore, in my view, can only amount to an error of judgment on his part and no more. There is no motive established on the appellant's part to influence the voting pattern of voters since \$10\$ none of the recipients was proved to be a voter."

On reviewing all the relevant evidence on this point, we too come to the same conclusion as the trial Judge did that the allegation of donation of money at Makanga on 1st February 2016 was not proved to the satisfaction of the Court.

Donations of mosquito nets at Iyingo by the 1st respondent in January 2016. 15

To prove this allegation, the trial Judge considered the evidence of Rose Musasizi and Tizoomu Geoffrey who stated that they attended a rally at Iyingo where the 1st respondent donated 250 mosquito nets to families at Iyingo and that Rose Musasizi received a net from Anthony Muzeyi who was tasked by the 1st respondent to distribute them.

Muzeeyi Anthony deposed and rebutted that allegation as false, stating that Musasizi never received any net from him. This rebuttal evidence was supported by the affidavit of Bene Kangudu.

We note that the evidence of Rose Musasizi and Tizoomu Geoffrey was the only evidence alleging that the 1st respondent donated 250 mosquito nets to families \$25\$

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- at Iyingo, with Anthony Muzeyi assigned to distribute them. The trial Judge held \$ \mathsf{S} \$ that he was unable to find independent evidence to enable court to verify the authenticity of the allegations. The trial Judge held that there was doubt as to whether the 1st respondent ever donated mosquito nets to voters at Iyingo landing site as alleged. He was not satisfied by the two testimonies alleging the donation of mosquito nets especially in light of the evidence in rebuttal by \$10\$ Anthony Muzeyi. Once the person accused to have distributed the nets denied the act, it left a gap that needed to be filled by cogent evidence. There was no evidence from any of the voters said to have received the 250 nets confirming such receipt. Proof remained lacking in this respect. We therefore agree with the finding of the trial Judge that this allegation was not proved. 15
- Donation of money at Iringa by the 1st respondent in March 2016.

The trial Judge considered the evidence of Bakaki Mathias, Bengo Yokana and Mukyala Irene who deponed that they saw the 1st respondent donating money to groups of elders, women and youth at the end of a rally at Kabonge trading center which money was given to Justine Nangobi to distribute. The Judge also considered the evidence of Mulina Godfrey Taylor and Mirembe Sarah, residents of Kabonge trading center, who deponed that the 1st respondent neither held any rally at Kabonge trading center in March 2016 nor did she distribute any money as alleged.

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The Judge held rightly in our considered view that the petitioner bore the burden \$25\$ to prove that Justine Nangobi was given money to distribute to women. He \$15\$ | Page

observed that the evidence adduced by the petitioner in this regard left doubt as to whether the 1st respondent actually had a rally at Iringa during the month of March where she gave out money to Nangobi Justine to distribute. No registered voter at Iringa gave evidence to prove that she or he received any such money from the 1st respondent. The 1st respondent denied the allegations. Nangobi Justine did not swear an Affidavit confirming the allegations either. None of the \$10\$ alleged beneficiaries adduced evidence in support of the allegation.

Since the Judge required some other independent evidence to prove the allegations he was not convinced that there were donations of money by the 1st respondent at Iringa in the month of March 2016.

Evidence in support of these allegations was that of Bakaki Mathias, Bengo 15 Yokana and Mukyala Irene. Yet Mulina Godfrey Taylor and Mirembe Sarah also residents of Kabonge trading centre deponed to the contrary. This clearly creates doubt as to whether the alleged incidents occurred. Clearly there was need for independent evidence from the recipients of money or even from Nangobi Justine. In absence of such evidence, we too find that the trial Judge's finding \$20\$ that the allegation had not been proved was justified.

Donation at Buyumba landing site by agent in January 2016.

The evidence presented before the trial Judge was that of Balifunaki David LC1 Chairperson of Buyumba Landing Site, Amego Zainabu and Joseph Kalema who deponed that the 1st respondent's husband Kaddu Sirage represented the 1st

respondent at a campaign rally at Buyumba Landing Site and gave out Shs. \$90,000/\$ = to be divided in 3 equal installments to the elders, youth and the women at the rally. It was Balifunaki's evidence that he received the money and divided it as assigned.

Ndibuza Biti Jumaa resident of Buyumba rebutted that evidence and stated that no campaign was arranged and held in Buyumba in January 2016 by Mr. Kaddu and that no money was given out on the day of the campaign event.

The Judge held that no evidence was adduced by the petitioner to prove that the alleged husband of the 1st respondent was her agent in the act of giving out this alleged sum of money and that the alleged acts were done with her knowledge, consent and approval. Court noted that there was no evidence from any of the persons alleged to have received the money confirming that any one of them received the money and that such alleged recipients were registered voters. Court concluded that in the absence of cogent and credible evidence it would be wrong to attribute the alleged act of bribery to the 1st respondent.

It is trite law that to succeed on an alleged act of bribery by an agent one must adduce evidence which proves the existence of the agency relationship. Evidence was necessary to prove knowledge, consent and approval by the candidate of the acts of the alleged agent. The 1st respondent deponed in her affidavit in rebuttal that the said Nsubuga was not her agent and further that she was not aware of the allegations. There was need for evidence to show that Mr. Kaddu was the 1st respondent's agent and therefore carried out the said acts on behalf of the 1st

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respondent and that the same were carried out with her knowledge, consent and approval. The allegation of the relationship of wife and husband between the 1st respondent and Mr. Kaddu were not proved either. In the absence of cogent evidence attributing Mr. Kaddu's actions to the 1st respondent, the allegation lacking sufficient evidence and the trial Judge rightly came to the conclusion that the allegation had not been proved at the requisite standard of proof. 10

Bribery at Irundu

The trial Judge considered the evidence of the Petitioner who alleged that on the 16th of January 2016, the 1st respondent in Irundu Township polling station gave out money and saucepans at a rally. Mutebe John Mukembo also deponed that the 1st respondent gave him money to distribute among the youth which he did. 15 Mivule Sam Tigawalana too deponed to seeing the 1st respondent give out saucepans and money to local council chairpersons of Irundu and that among the recipients were Kitamirike, Ngenda James and Balinakwe. He attached pictures in proof of the same. Lwanga Bashiri stated that he saw the 1st respondent distribute 100,000/= to a group led by Mutembe John and saucepans to another group. He also attached a photograph showing the 1st respondent giving out money.

Waako Karim the LC1 Chairperson deponed that there was no function at Irundu on the 16th of January 2016 and that the 1st respondent was not at Irundu on that day but at Bugaaya where she was scheduled to campaign. He added that no acts of bribery occurred as alleged. That evidence was corroborated by the

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evidence of Mwagala Emmanuel from Irundu Township who stated that the 1st \$ \mathsf{S}\$ respondent never came to Irundu on the 16th of January 2016 but that she had been there earlier on the 7th of August 2015 before the campaign period to meet the electorates and carry out developmental programs as the then Member of Parliament for Buyende. Baziba Loy Irene and Mpata Benard all denied witnessing any acts of voter bribery by the 1st respondent. On 16th January 2016, 10 Mukama Moses deponed that he was a camera man and covered the event on 7th August 2015 when the 1st respondent was at Irundu primary school and took the photos that had been exhibited.

The 1st respondent in her answer to the petition stated that she was at Irundu Primary school earlier on 7th August 2015. She added that on the 16th of January \$15\$ 2016 she was campaigning elsewhere in Bugaya Sub County following the campaign schedule attached and marked A to the 1st respondent's affidavit in reply. The appellant in cross examination confirmed that the candidates followed their campaign schedules during the campaign period for the 9th March 2016 elections. This piece of evidence from the appellant portrays the 1st respondent's \$20\$ evidence in that aspect as being truthful. In her affidavit, the 1st respondent deponed that the photographs attached by Mutembe, Mivule and Lawanga are in respect to an earlier event during her tenure as woman Member of Parliament for Buyende before the campaign period of 2016. This evidence is corroborated by the evidence of Mukama Moses, who deponed to taking pictures for an event \$25\$ on 7th August 2015 when the 1st respondent was at Irundu Primary School. The same evidence was also supported by the evidence of Mwagala Emmanuel and

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- Mpata Benard to the effect that the event at Irundu Primary School occurred on \$ \mathsf{S}\$ 7th August 2015. The trial Judge dismissed the allegations on behalf of the petitioner for lack of evidence from any beneficiaries or any independent evidence to corroborate the allegations. A further reason was that there was no evidence to show the recipients were registered voters.
- The 1st respondent's evidence creates doubt as to whether the alleged rally ever 10 occurred. The evidence was rebutted strongly and required more evidence in proof. We find no error on the part of the trial judge when he came to the conclusion that this allegation had not been proved.

Bribery at Buzama Nakibizi Kapioko Polling station

Taabu Godfrey deponed to seeing supporters of the 1st respondent led by 15 Onyango John distributing money to voters. Onyango denied on oath the accusations and stated that he did not go to Buzama Nakibizi Polling station on the 9th of March 2016 and did not give out any money. Mugweri Fahdi Mbalule also denied the allegations by Taabu and

claimed there was no incident of voter bribery and that Taabu was not at the polling station because he was not one of \$20\$ the petitioner's agents at that station. The trial Judge held that Taabu Godfrey's evidence was not corroborated and he rejected it. There was no proof that Onyango John was an agent of the 1st respondent. The recipients of the said money were not mentioned nor did any one of them swear any affidavits confirming receipt of the money. Here again we find no reason to fault the trial \$25\$ Judge for the conclusion he reached.

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- For bribery at Bulembo Primary School Polling stations, the only evidence \$S\$ presented was that of Kato James who claimed to have seen Kalimba Robert and Mitakule Micheal taking part in acts of voter bribery. There was no evidence led by Kato James that he received money from the 1st respondent. There was no evidence of bribery by the 1st respondent nor was there any evidence that Kalimba Robert and Mitakule Micheal were agents of the 1st respondent. There \$10\$ was no evidence to confirm the allegation from the presiding officer of Bulembo
- polling station, one Akankwasa Alex, who was alleged to have received the money from the agents of the 1st respondent. Instead this presiding officer deponed that voting at Bulembo went on freely and fairly with no incidents of bribery. On our reviewing of the evidence, we find that these allegations had no basis and were 15

not proved and so the trial Judge was right to reject the same.

For Bulungu Polling station, Katamirike Ephraim deponed to have seen the 1st respondent's chief campaigner Kagomba Mathias give out 5000/= at Bulungu polling station. The 1st respondent denied all the allegations as false and stated that she was not aware of any of her agents engaging in any acts of bribery. \$20\$ Again there was no evidence from any alleged receipts or other independent evidence in support of the accusations. Also lacking, was evidence that the persons alleged to be the 1st respondent's agents were indeed proved to be such. The trial Judge concluded that there was no sufficient evidence to support the allegations of bribery of voters by the 1st respondent and we have no reason to \$25\$ fault him for so holding.

- \$S\$ We particularly note that illegal acts, as grave as those alleged, should have been reported to the police by the alleged observers. At every polling station there is a police officer/constable, charged with the duty of keeping law and order. The appellant and her agents neither reported to the police about such illegal acts and they did not also report to the Electoral Commission. The allegations
- cropping up later can only be considered as an afterthought not supported by \$10\$ evidence. We find on our reviewing all the evidence that the learned trial Judge was correct when he held that all the allegations were not proved to the satisfaction of court. The trial Judge's requiring corroboration of such evidence was done as an endeavor on his part to determine whether he could place any

- credibility on this evidence. He rightly evaluated in detail all the evidence and 15 gave his reasons for rejecting the same. We are unable to find any fault on the trial Judge in the way he went about the evaluation of this evidence and the conclusion he reached of rejecting the same.

Appellant's counsel argued that there was no hard and fast rule on how to prove that one is an agent of the candidate, that what must be proved is that in \$20\$ committing the electoral offense the person was acting for the benefit of the candidate and that they were so acting during the campaign time. We do not accept such a submission. The one who alleges an agent/principal relationship must adduce credible evidence to prove that relationship. It cannot be a matter \$25\$ of mere alleging.

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- Also the persons alleged to be recipients of money and other items must be $\$$ proved to be registered voters capable of being influenced to vote for the 1st respondent or to refrain from voting. The appellant failed to provide evidence to support her allegations as observed above and thus the same remained unproved.
- Audio recordings were presented before the lower court by Joseph Kalema in an attempt to prove the allegations presented by the petitioner. These recordings were expunged from the record due to glaring contradictions. The affidavit of Mr. Kalema however remained on record. We consider it gainful to this case at this stage to analyze the evidence as presented by Mr. Kalema.
- Mr. Kalema deponed to the donations made at Iyingo on the 1st of January 2016, 15 at Iringa and at Buyumba landing site. It was his evidence that he attended the rallies at Iyingo, Iringa and recorded the proceedings on his mobile phone.

These recordings were analyzed by Noah Baalesanvu, a Computer Forensic Analyst who deponed a supplementary affidavit to his findings. He was cross examined and attached his report to his affidavit containing the metadata he produced from the recordings.

From his supplementary affidavit, Mr. Baalessanvu portrayed to be equipped with experience in the field of cyber security and forensics. He deponed that he received a request for audio forensic analysis of four recordings from Messrs Kirunda and Wasige Advocates and that his mandate was to ascertain the

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authenticity of the recordings, specifically to determine if there had been any $\$$ post recording tampering and whether the recordings were definitive reflecting of the events at which they were made. He said he had followed the standard operating procedures in obtaining the digital artifacts. He went ahead and examined that the accuracy of the data is verifiable. He explained how he examined the audio recordings with SIFT (Sans Investigative Forensic Tool Kit)

\$10\$ which is used on forensic investigations and like audio forensic examination. In his conclusion he found that there was no evidence to show that there was post recording tampering with the digital files and that the recordings were an accurate representation of the events at which they were made. In his cross examination Mr. Baalesanvu defined meta-data, as a set of facts which describes 15 other facts which stores the date and time when the same information was made. He then testified that the recordings he analyzed were made on 1st January of 2014 and on 1st January of 2011.

On analyzing the Preliminary Examination Report it reflects on the 1st page that the analysis is in respect to a file name 'Kadogo denting Annet's \$20\$ the date formats \$as\$ reflect name.wav.</Name>' and goes \$\overline{on}\$ to ="yyMMdd">20140101/</Date>, the second analysis shows file name to be 'Kadogo gave out a full lorry of mosquito nets and a sauce pan. wav.</Name>' and reflects date formats as ="yyMMdd">20140101/ \$\langle\$ /Date>, the 3rd analysis shows file name as '<Name>Kadogo Speech During Campaigns.wav.</Name>' and \$25\$ reflects date formats as ="yyMMdd">20110101/ \$\langle\$ /Date> and lastly the 4th analysis shows file name as '<Name> 'Kadogo Kaqdogo'as husband was following

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\$\mathcal{L}^{\mathcal{B}}(t)\$

up on the nets sent and also gave a saucepan.wav.</Name>' and reflects date \$\mathsf{S}\$ formats as ="yyMMdd"> \$20140101\$ /</Date>.

This is expert evidence which was not discredited. We have no basis to doubt its veracity. Mr. Baalesanvu was cross examined and was consistent. This evidence proves that the said recorded incidents at Iyingo, Iringa, Buyumba Landing Site as presented by Mr. Kalema occurred on 1st January of 2014 and on 1st January of 2011 respectively and not during the election period in 2016 and in no way constituted an illegal act under sections 61(1) (c) and 68 of the Parliamentary Elections Act. This corroborates the 1st respondent's testimonies that during her tenure in office as Woman Member of Parliament for Buyende District she carried out programs to help her constituency as pointed out in her affidavit in support of the answer to the petition and affidavit in rebuttal. This evidence, which the trial Judge accepted as credible, and we too find to be so, further renders in addition to the other evidence already considered, the appellant's evidence to be not very credible.

Concerning grounds 4 and 5 counsel for the appellant contended that the Judge \$20\$ failed to apply the law relating to donations as an illegal practice. Counsel faulted the trial judge for considering the offence of bribery and its ingredients instead of the offence of donation as pleaded. In response, counsel for the 1st respondent submitted that all the allegations of bribery or donations are construed as bribery whether it is a gift or money. He added that the learned trial Judge \$25\$ properly addressed himself on the law of donations and rightly applied the same.

\$25\$ | Page

\$10\$

Before resolving the allegations of bribery/donations, the Judge clearly set out $\$ \text{the}$ relevant law. He cited Section 68(1) of the Parliamentary Elections Act which states that:

'A person who, either before or during an election with intent, either directly or for indirectly to influence another person to vote or to refrain voting from any candidate, gives or provides or causes to be given or provided any money, gift or other consideration to that other person commits the offence of bribery conviction.....' and is liable on

He also cited Section 68 (7) and (8) which provides that:

- A candidate or an agent of a candidate shall not carry on $\$(7)\$$
- fundraising or giving donations during the period of campaigning.
- A candidate who contravenes subsection (7), commits an illegal $\$(8)\$$ practice.'

The Judge then listed the ingredients the petitioner needed to prove bribery as being: $\$20\$$

- a. the respondent or his agents gave out money or gifts.
- b. the giving was to a person who was a registered voter.
- c. the giving was with intent to influence the voter to vote or refrain from voting.

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- d. the $\$1^{\text{st}}\$$ respondent committed bribery personally or through his agent with his knowledge, consent and approval.

Counsel for the appellant contended that his pleadings were in respect to the offence of donation and not bribery. We do not agree with this submission. The acts complained of whether money or other articles or other considerations which, if given during the period of campaigning all go to contribute to the offence $\$10\$$ provided for under section 68 of the Parliamentary Elections Act depending on the purpose and intention of the one giving. The major consideration which court looks at, be it bribery or donation in as far as elections are concerned, is the intention or motive of such giving which would be to influence voters to vote for the candidate or refrain from voting. The law is to prevent undue influence of 15 voters to vote in a particular direction beneficial to a candidate that gives or donates gifts. The burden of proof rested on the appellant as the petitioner to prove the alleged malpractices or illegalities to the satisfaction of court. The standard of proof is on a balance of probabilities but being bribery the burden of proof is slightly higher than mere balance of probabilities, though not as high as $\$20\$$ beyond reasonable doubt. See *Achieng Sarah Opendi & EC Vs. Ochuro Nyakecho Keziah*, Election Petition Appeal No. 39 of 2011 and *Mukasa Harris Vs Dr. Lulume Bayiga* Election Petition Appeal No. 18 of 2007. We $\$ \text{;}\$$ find that the trial Judge clearly considered and applied the appropriate law.

Grounds 1, 2, 4 and 5 were not proved and accordingly fail. $\$25\$$

$\$S$

- The complaint in ground 6 was that the learned trial judge erred in law and fact $\$S$ when he held that the election of the Woman Member of Parliament for Buyende District was conducted in compliance with the Parliamentary Elections laws and that any non-compliance did not affect the results of the election in a substantial manner.
- Counsel for the appellant pointed to the election being conducted on 9th March 2016, 45 days after nomination contrary to section 18(2) of the Parliamentary Elections Act. He argued that the election was therefore a nullity. He submitted that the law provides that when elections are not held at a polling station due to violence the election is to be held the next day but that this was not done. Counsel added that instead results from 7 polling stations were cancelled in $\$15$ contravention of **Article 59** of the Constitution and section 45 of the Parliamentary Elections Act.

Counsel also argued that results from unsigned DR forms were included in the tallying. He said such actions were in breach of the law. He relied on the authority of Joy Kabatsi Kafura vs Anifa Kawoya Bangirana, Court of $\$20$ Appeal, Parliamentary Elections Appeal No. 25 of 2007. Counsel submitted that a procedure mandatory in law was not followed and that that went to the fundamentals of the election.

For the 1st respondent it was submitted that the learned trial Judge properly evaluated the evidence in respect of the alleged noncompliance and came to the $\$25$

right conclusion. He added that if there was any noncompliance the same did $\$S$ not affect the result in a substantial manner.

Counsel for the 2nd respondent associated himself with counsel for the 1st respondent's submissions and on noncompliance admitted that results for the said 7 polling stations were cancelled and the 2nd respondent considered competing rights of the voters and went with the greater percentage.

The complaints of noncompliance before the lower court were contained in paragraph $\$5(c)$ and $\$6(m)$ to (t) of the petition and briefly were that:

- 1. Failure to manage and ensure that there was adequate supply and distribution of election materials including a correct number of ballot papers as per the registered voters in the various polling stations, Declaration of Results Forms and that the same were transported securely in the ballot bags.
- 2. Failure to ensure that the symbols per candidate were placed on ballot papers and failing to correct the error in time leading to the cancellation of the polls on 18th February 2016, which was detrimental to the petitioner/appellant.
- 3. Failure to adequately deploy BVVK/BVVS systems with the necessary PINS to make them operational thus compromising the integrity of the election process.

\$15\$

\$10\$

justice. See *Mbogo and Another v. Shah [1968] E. A. 93.* We have reviewed all $\$$ the circumstances of this case as regards the issue of costs and we find that the trial Judge had justifiable cause to dismiss the petition with costs with the orders that he made. We have no reason to fault him. Ground 7 also fails.

This appeal lacks merit and is accordingly dismissed with costs to the respondents in this Appeal and, as earlier determined, in the High Court. \$10\$

Dated at Kampala this day of

HON. JUSTICE REMMY KASULE

JUSTICE OF APPEAL

HON. JUSTICE BARISHAKI CHEBORION

JUSTICE OF APPEAL

HON. JUSTICE PAUL K. MUGAMBA

JUSTICE OF APPEAL Krimme ar. eprole

\$15\$

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Prepared on 14 October 2026 · Esheria