THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO. 108 of 2016

(Arising from Election Petition Appeal No. 40 of 2016)

(Also arising from the decision of the Chief Magistrates Court before His Worship Elias Kakooza in Election Petition No. 06 of 2016)

KWOBA HERBERT ::APPELLANT

VERSUS

SSEBUGWAWO TADEO::RESPONDENT

(Coram: Alfonse C. Owiny Dollo, DCJ, Remmy Kasule, & Hellen Obura, JJA)

JUDGMENT OF THE COURT

Introduction

This is a second appeal against the decision of Her Lordship H. Wolayo, J dated 9th December 2016 in which she allowed the appeal of the respondent, set aside the judgment and orders of the lower court and declared the respondent validly elected as Councilor for Kazo-Angola Parish, Kawempe North Constituency, Kawempe Division, Kampala District.

Background to the Appeal

The facts as ascertained from the court record are that the appellant and 7 others including the respondent contested as candidates for election to the seat of directly elected Councilor representing Kazo-Angola Parish, Kawempe North Constituency, Kawempe Division, Kampala District. The Local Government Elections organized by the Electoral Commission, were held on 2/03/2016. The Electoral Commission declared the respondent as the winner of the said elections with 1,193 votes against the appellant's 585 votes. Being dissatisfied with the results, the appellant contested the above results in the Chief Magistrates' Court of Nabweru vide *Election Petition No. 06 of 2016* and judgment was entered in his favor on the

19/09/2016 whereby the respondent was declared invalidly elected and was ordered to vacate the seat. Being dissatisfied with the decision of the Chief Magistrate, the respondent appealed to the High Court vide *Election Petition Appeal No. 40 of 2016* and judgment was entered in his favor. The 1st appellate Judge set aside the judgment and orders of the lower court and declared the respondent validly elected as Councilor for Kazo-Angola Parish, Kawempe North Constituency, Kawempe Division, Kampala District.

Subsequently, the appellant being dissatisfied with the appellate Court's decision appealed to this Court on the following grounds;

1. *The learned appellate Judge erred in law when she applied the provisions of the Parliamentary Elections Act and Rules thereby setting a wrong standard of proof and thus coming to a wrong conclusion.*
2. *The learned appellate Judge erred in law when she faulted the Trial Magistrate for relying on unchallenged evidence.*
3. *The learned appellate Judge erred in law when she held that there was need for corroboration of the affidavit evidence of the appellant's witnesses.*
4. *That the learned appellate judge erred in law and fact when she failed to properly re-evaluate the evidence on record and as a result she came to a wrong and erroneous decision.*

Representations

During the hearing of this Appeal, Mr. Frank Owesigire represented the appellant while Mr. Luyimbazi Nalukoola appeared for the respondent assisted by Mr. Kigongo Kassim.

Applications

The appellant filed a notice of this appeal on 9th December 2016 and the memorandum of appeal on 15th December 2016. He then filed Miscellaneous Application No. 16 of 2017 on 6th April 2017, seeking for an order that time for service of the record of appeal to the

respondent be extended and costs of the application be provided for. The application was supported by an affidavit sworn by Kwoba Herbert, the applicant (appellant in this appeal).

The gist of the grounds of the application were that the applicant's lawyers obtained the record of appeal from the court but inadvertently never served the same onto the respondent's advocates since counsel in personal conduct of the appeal was indisposed and away from office for a long period of time. Furthermore, that the failure to serve the record of appeal within time was an error of the applicant's counsel in personal conduct of the appeal for which the applicant should not personally take the blame. He prayed that the application be allowed and time extended since the appeal has substantial matters of law and questions which ought to be heard and determined on their merits.

A supplementary affidavit sworn by one Kasadha David an advocate who stated that he was in personal conduct of the applicant's case was filed on the day the application came up for hearing but it was withdrawn by counsel for the applicant prior to the hearing of the application.

The respondent opposed the application based on the grounds stated in his affidavit in reply the summary of which is that the record of appeal, in respect of which the applicant now seeks extension of time within which to serve, was filed outside the prescribed time which is a sufficient ground for striking out the appeal. He prayed that the application be dismissed and the appeal be struck out with costs.

The respondent had also filed Election Petition Application No. 18 of 2017 on 13th April 2017 seeking for an order that this Election Appeal No. 108 of 2016 be struck out and the costs of the application be provided for. An affidavit in reply was sworn by Kwoba Herbert and a supplementary affidavit sworn by Kasadha David, his lawyer, was also filed on the day the application came up for hearing but later withdrawn before commencement of the hearing.

The affidavit in reply alludes to the same facts averred in the affidavit in support of Miscellaneous Application No. 16 of 2017 already summarized above.

Both applications were fixed for hearing on the date this appeal also came up for hearing. Miscellaneous Application No. 16 of 2017 was called for hearing first and upon hearing the arguments of both counsel, we allowed the application, extended the time for serving the record of appeal and validated service of the record of appeal which had been done outside the prescribed time. This decision also took care of Election Petition Application No. 18 which sought an order to strike out the appeal with costs. We then reserved the reasons for our decision to be given in our judgment in the appeal, which we now proceed to do.

First of all, we wish to point out that the Local Governments Act is silent about the timeframe for filing local council election appeals. Counsel for the applicant relied on the timeframe for filing election petition appeals provided under the Parliamentary Elections (Interim Provisions) Rules made under the Parliamentary Elections Act. This Court has held that the Parliamentary Elections Act and the Rules made thereunder are not applicable to local council elections and rule 2 of those Rules is very explicit on the application of the Rules. It provides as follows;

> *"2. Application of Rules.*
>
> *These Rules shall apply to the conduct of election petitions in respect of Parliamentary elections held under the statute."*

See also the decision of this Court in ***Peter Odok W'oceng vs Markly Vicent Ojidid & 4 ors, Election Petition Application No. 29 of 2011 (unreported)*** and ***Makatu Augustus vs Weswa David and anor, Election Petition Appeal No. 73 of 2016 (unreported).***

In the absence of specific rules governing the filing of local council election appeals, the applicable Rules would then be the Judicature (Court of Appeal Rules) Directions. It was our finding that by operation of rule 83 (2) & (3) of the Judicature (Court of Appeal Rules) Directions, the record of appeal in this case was lodged within the prescribed time. However,

it is conceded by the applicant that the record of appeal was served on the respondent outside the prescribed time.

The main issue for determination in the application is therefore whether the applicant was prevented by sufficient cause from serving the record of appeal within time. The reason given by the applicant was that the failure to serve the record of appeal in time was due to the inadvertence of counsel in personal conduct of the case who was indisposed and absent from office for a long period of time. It was argued for the applicant that the mistake of his counsel should not be visited on him. This Court was urged to validate service of the record of appeal which had already been done; albeit out of time.

Conversely, it was contended by the respondent that this Court should not entertain errors of advocates as an excuse for extension of time among other remedies.

In allowing the application, we looked at the history of this case and noted that the applicant filed the notice of appeal on the day the judgment was delivered and requested for a typed record of proceedings from the lower court on the same day. He also filed a memorandum of appeal within 6 days from the date of filing the notice of appeal. Immediately the record of appeal was supplied to the applicant on 17th February 2017, it was lodged in this Court on the same day. However, it was not served on the respondent within the prescribed time. Therefore on 6th April 2017, the applicant had filed this application for extension of time within which to serve the record of appeal. Before the application could be heard and determined, the applicant served the record of appeal on the respondent on 11th April 2017. He also filed his conferencing notes on 18th April 2017.

Our conclusion from the above chronology of events was that the applicant had exercised due diligence in taking the essential steps in filing his appeal and prosecuting it. We are therefore persuaded to accept that the applicant's counsel in personal conduct of the case

who was all along diligently handling the case was indeed indisposed as stated by the applicant in his affidavit in support of the application.

We also considered the fact that the record of appeal had already been served on the respondent, though out of time, and all that was required was extension of the time, a matter in respect of which this Court is clothed with wide powers to do under rule 5 of the Judicature (Court of Appeal Rules) Directions, to validate the service. In the premises, we allowed the application and indicated that the issue of costs would be handled herein the main appeal. We shall determine costs in our conclusion of the judgment.

Having given the reason for our decision in Miscellaneous Application No. 16 of 2017 and 18 of 2017, we now proceed to determine the substantive issues in the appeal.

Appellant's Case

Counsel for the appellant adopted the conferencing notes in as far as the facts and grounds of the appeal are concerned and he argued all grounds together.

Counsel submitted that the 1st appellate court erred in law when it applied the standard of proof as provided under section 61 (4) of the Parliamentary Elections Act on the basis of section 172 of the Local Governments Act which empowers court to apply the Parliamentary Elections Act on matters not provided for in that Act. He contended that the Parliamentary Elections Act does not apply to the local government election petitions and therefore it was an error for the appellate Judge to rely on the standard of proof stipulated thereunder, which is on a balance of probabilities. Counsel argued that it is clear that section 172 of the Local Governments Act permits only the Electoral Commission to apply the Presidential Elections Act and the Parliamentary Elections Act in so far as handling of elections are concerned and this has nothing to do with the election petitions that arise therefrom.

Counsel submitted that the applicable law is section 143 (1) of the Local Governments Act which provides that in the hearing of a petition, the powers of the court and the rules of

procedure shall be those which apply to a civil action in a court of law and section 139 of the Local Governments Act which sets the standard of proof to be to the satisfaction of the court. He relied on the Supreme Court decision of ***Dr. Kiiza Besigye vs Y.K Museveni and Electoral Commission, Supreme Court Presidential Election Petition No.01 of 2001*** in which proof to the satisfaction of court was held to imply that the matter had been proved without leaving room for court to habour any doubt about the occurrence or existence of the matter.

On grounds 2 and 3, counsel submitted that the evidence on record as per the affidavit of a one Luyombya did not require corroboration as it was never at all disputed or challenged by any contrary evidence and the trial Chief Magistrate could not be faulted for that. He added that this evidence was not at all denied or controverted through cross examination of the deponents and as such there was no error for the same to be taken as a whole. Counsel also submitted that failure to deny that money and cement was released to the people of Kazo during voting period as stated in the affidavit of Ssemakula Moses alludes to no other facts other than the facts of bribery by the respondent. He relied on section 2 of the Evidence Act which is to the effect that if evidence is placed on record and it is not controverted, like it was in this case, it should be taken as the truth.

He prayed that this Court exercises its discretion to determine this appeal in favour of the appellant.

On re-evaluation of evidence, counsel submitted that the trial Chief Magistrate made no error in finding the appellant guilty of the offence of voter bribery. He argued that the evidence adduced as per the finding of the trial Chief Magistrate was sufficient to sustain the claim of bribery as was duly proved. He relied on the case of ***Mudiobole Abed Nasser vs Mugema Peter and anor, Election Petition No. 007 of 2011,*** where Lameck N. Mukasa, J stated that as a general rule, due proof of a single act of bribery by or with knowledge and consent or approval of the candidate, or by the candidate's agents, however insignificant the act may be, is sufficient to invalidate the election.

Respondent's Reply

Mr. Luyimbazi submitted that the learned appellate Judge was justified in law when she applied the provisions of the Parliamentary Elections Act and the Rules made there under while determining Election Appeal No. 40 of 2016 and applied the standard of proof provided therein to arrive at the right decision. He relied on section 172 of the Local Governments Act which provides for the application of the Parliamentary Elections Act for any issue not provided for in that Act. He argued that since the Local Governments Act is silent on the standard of proof, section 61 (1) and (3) of the Parliamentary Elections Act which provides for proof to the satisfaction of court on the basis of a balance of probabilities, applies. He relied on ***Dr. Kiiza Besigye vs Y.K Museveni and anor (supra)*** to support his submission.

On grounds 2 and 3, counsel submitted that even without hearing from the respondent, a court that had been guided well on the principles that govern evidence in regard to the offence of voter bribery would dismiss the allegations of Luyombya and Ssemakula Moses. He added that Ssemakula's affidavit had no evidential value since his allegations were baseless and therefore, the appellate Judge was justified in overturning the decision of the trial Chief Magistrate. Further that the important elements of the offence of bribery were not proved by the appellant at the trial since Luyombya upon whose affidavit the offence of bribery was found was not a voter and neither was Mulumba an agent of the respondent. In addition, it was also not proved that Mulumba gave any money to Luyombya with the knowledge or consent of the respondent.

Counsel further submitted that the appellate Judge was justified in holding that there was need to corroborate the affidavit evidence of the appellant especially where the same was affirmed by Luyombya who admitted to having received a bribe from Mulumba, an alleged agent of the respondent. He added that the respondent denied having an agent by the name Mulumba Mathius and authorising him to bribe any voters which the appellant failed to prove to the contrary. He argued that by the trial Chief Magistrate holding that the respondent had

to adduce his list of agents to prove that Mulumba Mathius was not one of them, the burden of proof was shifted to the respondent which is contrary to the provisions of section 101 of the Evidence Act that places the burden of proof on the one who alleges.

On re-evaluation of evidence, counsel submitted that the duty of the 1st appellate Court was to look at all the pleadings from the start of the case to the end and make its own findings without isolations and this was rightly done by the learned appellate Judge when she re-evaluated the evidence on record at pages 28-32 before overturning the judgment of the trial Chief Magistrate as it had been made erroneously. He prayed that this appeal be dismissed with costs to the respondent and a certificate for 2 counsel be given accordingly.

In rejoinder, counsel for the appellant submitted that the need for the court to warn itself before relying on uncorroborated accomplice evidence is applicable in criminal cases where the standard of proof is beyond reasonable doubt unlike in an election matter where the standard of proof is lower.

Court's Findings

This being a second appeal, we shall start by stating the scope of duty of the 2nd appellate court as discussed in the case of ***Milly Masembe vs Sugar Corporation and Anor, Civil Appeal No. 01 of 2000,*** where Mulenga (JSC) stated that;

> *"In a line of decided cases, this court has settled two guiding principles at its exercise of this power. The first is that failure of the appellate court to re-evaluate the evidence as a whole is a matter of law and may be a ground of appeal as such. The second is that the Supreme Court, as the second appellate court, is not required to, and will not re-evaluate the evidence as the first appellate court is under duty to, except where it is clearly necessary"(emphasis added)*

Further, it was held on in the case of ***Kakooza Godfrey vs Uganda, SCCA No 3 of 2008*** where it was observed that;

"As a second appellate court, we are aware that the two lower courts reached concurrent findings of fact.....we can only interfere in those concurrent findings if we are satisfied that the courts were wrong or applied the wrong principles of law"(emphasis added)

Bearing in mind our scope of duty as a 2nd appellate court in this matter, we shall proceed to consider the submissions by both counsel and resolve the grounds of this appeal. We shall consider ground 1 in two parts and then discuss and resolve grounds 2, 3 and 4 together to avoid repetition as they all relate to proof of allegations of bribery.

Ground 1 (Part 1)

Counsel for the appellant faults the learned appellate Judge for applying the provisions of the Parliamentary Elections Act and the Rules made thereunder, thereby setting a wrong standard of proof and subsequently reaching a wrong conclusion. Conversely, counsel for the respondent submitted that the learned appellate Judge was justified in law when she applied the provisions of the Parliamentary Elections Act and the Rules thereunder while determining the petition and as such set a standard which resulted into the right decision.

We note that at page 4 of the judgment the learned appellate Judge while dealing with the standard of proof stated thus;

"By section 61(4), any ground under section 61 (1) shall be proved on a balance of probabilities. This is the standard of proof for grounds in this election dispute. "

In reaching the above conclusion she relied on sections 138 and 172 of the Local Governments Act.

She stated thus;

"While section 138 of the LGA places on the court the responsibility to be satisfied before setting aside an election, it does not assign the burden of proof.

This means the court must turn to section 172 of the LGA that empowers the court to apply Parliamentary Elections law where there is a lacuna."

This Court has on various occasions dealt with and determined the applicability of section 172 of the Local Governments Act in local government council election petitions. In ***Peter Odok W'oceng vs Markly Vicent Ojidid & 4 ors, (supra)*** this Court held that section 172 of the Local Governments Act refers to the Electoral Commission and no other body and it is the function of the Electoral Commission under the Electoral Commission Act (140) to conduct elections and not hear appeal.

Similarly, in ***Makatu Augustus vs Weswa David and anor, (supra),*** this Court found that section 172 applies to Part X of the Local Governments Act which relates to conduct of elections of local councils by the Electoral Commission and not to the trial of appeals arising from those elections.

On the basis of the above cited authorities, and as earlier stated herein above, we agree with counsel for the appellant that the Parliamentary Elections Act and the Rules made thereunder do not apply to local government council election petitions because section 172 of the Local Governments Act permits only the Electoral Commission to apply the Presidential Elections Act and the Parliamentary Elections Act in as far as conduct of elections are concerned. We therefore accept the submission of counsel for the appellant that the applicable law regarding the standard of proof in local government council election petitions is section 139 of the Local Governments Act which requires the grounds to be proved to the satisfaction of court. Ground 1 therefore succeeds to the extent that the 1st appellate court misdirected itself when it found that the Parliamentary Elections Act is applicable to local government council elections by virtue of section 172 of the Local Governments Act.

Ground 1 (Part 2)

Counsel for the applicant argued that because the 1st appellate court applied the standard of proof provided in section 61 of the Parliamentary Elections Act, a wrong standard of proof was set and a wrong conclusion was reached in this case. We must observe that both sections 139 of the Local Government Act and 61 (1) of the Parliamentary Act prescribe the same standard of proof, namely; "proof to the satisfaction of the court" except that section 61(3) of the Parliamentary Elections Act clarifies it further by providing that any ground specified in subsection (1) shall be proved on the basis of a balance of probabilities.

The standard of proof in election matters generally and specifically the meaning of the phrase, *"proof to the satisfaction of the court"* has been considered in a number of cases. In ***Col. (Rtd) Dr. Kiiza Besigye vs Museveni Yoweri Kaguta & anor (supra)***, the Supreme Court discussed the phrase, "proved to the satisfaction of the court" as provided in section 59 (6) of the Presidential Elections Act and reviewed a number of authorities on the subject, including the decision in the English case of ***Blyth vs Blyth [1996] AC 643***, where the observation by Lord Denning was quoted with approval and their Lordships held thus;

> *"The standard of proof required in this petition is proof to the satisfaction of court. It is true that a court may not be satisfied if it entertains a reasonable doubt, but the degree of the proof will depend on the gravity of the matter to be proved. An election matter is not a criminal proceeding. .....If the legislature intended to provide that the standard of proof in an election petition shall be beyond reasonable doubt, it would have said so. Since the legislature chose to use words "proved to the satisfaction of the court", it is my view that that is the standard of proof required in an election petition like 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 democratic governance."*

Although the Supreme Court was handling a presidential election petition in that case of ***Col. (Rtd) Dr. Kiiza Besigye vs Museveni Yoweri Kaguta & anor (supra)***, it is our firm view that,

the standard of proof in election petitions as provided in the Presidential Elections Act, the Parliamentary Elections Act and the Local Governments Act and discussed in the cases reviewed by the Supreme Court are the same irrespective of whether it is a presidential election, parliamentary election or a local government council election. We are of course alive to the fact that the stakes are usually higher in the presidential elections and the parliamentary elections but the law provides the same standard of proof to the satisfaction of court even in local government council elections because they are all of critical importance to the welfare of the people of Uganda and their democratic governance.

For the above reasons, we are of the view that even though the 1st appellate court erroneously applied the provisions of the Parliamentary Elections Act to this case, in principle the decision arrived at was not affected because the standard of proof is the same as that prescribed under the Local Governments Act. We are therefore not persuaded by the argument that the 1st appellate Judge set a wrong standard of proof and reached a wrong conclusion. Ground 1, part 2 of the appeal therefore fails.

Grounds 2, 3 and 4

In these grounds, counsel for the appellant submitted that the 1st appellate court erred when it faulted the trial Chief Magistrate for relying on unchallenged evidence and held that there was need for corroboration of the affidavit evidence of the appellant's witnesses. It was contended that there was uncontroverted evidence as contained in the affidavits of Luyombya and Ssemakula Moses to prove the allegation of bribery. Furthermore, that the 1st appellate court failed to properly re-evaluate the evidence on record thereby arriving at a wrong and erroneous decision

We must observe from the onset that it is now settled that the burden of proof in election petition lies on the petitioner. In ***Mukasa Harris vs Dr. Bayiga Michael Lulume, SC EPA***

No. 18 of 2007, the Supreme Court held that the burden of proof in election petitions lies on the petitioner who seeks to have the election of the respondent annulled and set aside.

One of the grounds of the appellant's petition was voter bribery and the appellant brought evidence of a one Luyombya Seid Alsaid to prove this. Luyombya averred in his affidavit in support of the petition that as he was going to cast his vote, a one Mulumba Mathius the Chairman LC.1 Kazo-Angola and a brother to the respondent gave him 10,000/= (Ten thousand shillings) to vote for the respondent. The respondent denied this allegation and deposed in his affidavit in reply that he knows Mulumba as the Chairperson of Corner Zone LC1 but not Kazo-Angola Zone as alleged. He added that Mulumba has never been one of his agents and he has never authorized him to effect any transaction on his behalf during the campaigns and the voting day. The trial Chief Magistrate believed the appellant's evidence based on the affidavit of Luyombya and found that the offence of bribery against the respondent had been proved.

However, on appeal the learned appellate Judge disagreed with the trial Chief Magistrate's finding and she held as follows:

> *"It is now settled that for bribery to be proved, a gift must be offered to a voter with the intention of influencing the voter to vote for the respondent and it must be with his knowledge and consent or approval. The appellant in his answer denied that Mulumba was his agent while Mulumba denied giving Luyombya any money on polling day. The fact that Luyombya is a willing participant in the bribe transaction makes him an accomplice whose evidence is treated with caution. This means there was need for independent testimony to support his claim. That Mulumba threatened not to process his village identity card is a grave allegation of extortion of a vote. This evidence also required corroboration because it is Luyombya's word against Mulumba's...*

My conclusion is that without some other independent testimony, the evidence of Luyombya, an accomplice is unreliable and cannot be the basis for finding that an illegal practice of bribery was committed."

The offence of bribery under Section 147 (1) of the Local Governments Act is defined as follows;

"Any person who, with intent, either before or during an election, either directly or indirectly influences another person to vote or to refrain from voting for any candidate, or gives, provides or causes to be given or provides any money, gift or other consideration to another person, to influence that person's voting, commits an illegal practice of the offence of bribery."

In the case of ***Achieng Sarah Opendi vs Ochwo Nyakecho Kezia (CA) EPA No. 39 of 2011*** this Court relying on the case of ***Col. (Rtd) Dr. Kiiza Besigye vs Museveni Yoweri Kaguta & anor (supra)*** held that for the petitioner to prove bribery, it must be proved that; a gift was given to a voter; the gift was given by a candidate or his agent; and the gift was given to induce the person to vote for the candidate. The court added that there is need for corroborative evidence from an independent source to confirm the truthfulness or falsity of the allegation of bribery.

In ***Paul Mwiru vs Igeme Nathan Nabeta Samson & Election Commission & Anor, CA EPA No. 6 of 2011***, the court stated that it is essential in allegations of bribery for the party alleging the same to prove on a balance of probabilities to the satisfaction of court that the person or the persons allegedly bribed were registered voters. ***Also see: Mukasa Harris vs Dr Lulume Bayiga(supra); Bakaluba Peter Mukasa vs Nambooze Betty Bakileke, Election Petition Appeal No.4/09***(SC); and ***Fred Badda vs Prof. Muyanda Mutebi , EPA No.21/07(SC)*** all unreported.

Courts in other jurisdictions have also discussed the burden and standard of proof in election petitions regarding the offence of bribery. In ***Jugnauth vs Raj Direvium Nagaya Ringadoo [2008] UKPC 50*** the Court of Appeal of Mauritius observed as follows;

> *"An election petition is unquestionably a civil proceeding. Their Lordships are persuaded that, when the legislature used the language which it did in section 45(1), by contrast with the language used in section 64(1), it was deliberately choosing to approach the matter, not as one where the criminal standard should apply, but as one in which the court should adopt the civil standard of proof…*
>
> *If that is right and the legislature was adopting the civil, as opposed to the criminal, standard of proof, then, even though what is in issue is whether or not the election should be avoided on the ground of bribery, there is no question of the court applying anything other than the standard of proof on the balance of probabilities. In particular, there is no question of the court applying any kind of intermediate standard…*
>
> *It follows that the issue for the election court is whether the petitioner had established, on the balance of probabilities, that the election was affected by bribery in the manner specified in the petition..."*

In the instant appeal, Luyombya claimed to have received money as a bribe from Mulumba the alleged agent of the respondent with his (the respondent's) consent and knowledge. Also Ssemakula Moses, one of the candidates in the elections, averred in his affidavit that towards the date of the polls the respondent gave the people of Kazo-Angola cement and the Rodo Group Ushs. 10,000/= to influence them to vote.

During the hearing of this appeal, counsel for the appellant argued that the evidence of Luyombya did not require corroboration as it was never at all disputed or challenged by a contrary evidence and the trial Chief Magistrate could not be faulted for relying on it. He argued that although it is not in evidence that Mulumba was an agent of the respondent but

rather his brother who according to the witness was supplying money, that relationship put him in the bracket of agency. However, counsel later conceded that there was no agency relationship between Mulumba and the respondent and as such he would have no influence over the actions of Mulumba of giving out money to Luyombya on the day of voting.

The 1st appellate court re-evaluated the above evidence as presented before the trial court and, in our view, rightly found that there is no proof that Mulumba was in fact an agent of the respondent and there is also no supporting evidence that the respondent gave out bribes to either Luyombya, or the people of Kazo-Angola or the Rodo Group. She found the evidence to prove this incident of bribery totally lacking.

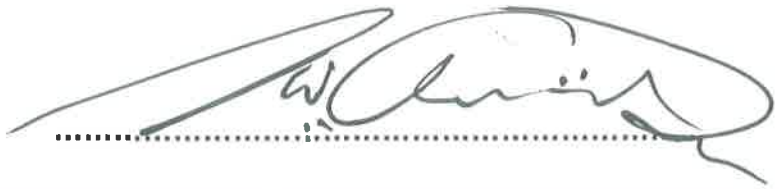
We agree with the appellate Judge that the offence of bribery was not proved to the required standard. We therefore cannot fault her for finding that the learned trial Chief Magistrate erred when he found that bribery had been proved to the required standard. In the result, grounds 2, 3 and 4 of the appeal fail.

On the whole, this appeal only succeeds in the 1st part of ground 1. The 2nd part of ground 1 and the rest of the grounds fail and they are accordingly dismissed with orders that:

1. The Judgment of the first appellate Court is upheld.
2. The respondent was validly elected as Councilor for Kazo-Angola Parish, Kawempe North Constituency, Kawempe Division, Kampala District.
3. Costs of this appeal and those in the lower courts are awarded to the respondent.
4. Costs of Miscellaneous Application No. 16 of 2017 filed by the appellant and Election Petition Application No. 18 of 2017 filed by the respondent shall be borne by each party.

We so order.

Dated at **Kampala** this.....17th.....day of.....January.....2019



Hon. Mr. Justice Alfonse C. Owiny-Dollo

DEPUTY CHIEF JUSTICE

Hon. Mr. Justice Remmy Kasule

JUSTICE OF APPEAL

Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL