

5
THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
ELECTION PETITION APPEAL NO. 35 OF 2016
(Arising from election petition No.018 of 2016)

10 HON. KEVINA TAAKA WANHA WANDERA ::::::::::: APPELLANT

VERSUS

1. MACHO GEOFFREY

2. THE INDEPENDENT ELECTORAL COMMISSION

15 3. NATIONAL COUNCIL FOR IDGHER EDUCATION ::: :::::RESPONDENTS

(Appeal from the Judgment and Orders of the High Court (Hon. Lady Justice P. Basaza Wasswa) delivered on the 5th day of July, 2016 at Mbale in Election Petition No. 014 of 2016)

20 CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF THE COURT

25 The appellant was a petitioner in High Court election petition No.14 of 2006 in which the respondents herein were also respondents. On 5th July of 2016 the High Court dismissed the petition hence this appeal.

This appeal first came up for hearing on 15th November 2016, before Richard Buteera Paul Mugamba and Owiny-Dollo, JJA as they all were at that time.

5 Before Judgment could be delivered justices Buteera and Mugamba were elevated to the Supreme Court.

A new Coram was constituted as follows:- Alfonse C. Owiny-Dollo, Kenneth Kakuru, Christopher Madrama, JJA. On the 8th October 2018 this Coram re-heard the appeal. Counsel for all parties sought and were allowed to adopt the earlier oral
10 submissions and written conferencing noted on record. On the basis of those submissions and conferencing notes that this Judgment has been written. This explains the delay in the delivery of this Judgment which we regret.

The appellants set out his grounds of appeal as follows:-

- 15 1. *The learned trial judge erred in law and fact when she failed to properly evaluate the evidence on record and held that the mismatch of dates on the National Council for Higher Education "NCHE" Certificate purportedly issued to the 1st respondent did not affect the validity of the 1st respondent's academic qualifications for election as a Member of Parliament.*
- 20 2. *The learned trial judge erred in fact and in law when she failed to conclusively consider the allegation that the properly evaluate the evidence on record and held that the National Council for Higher Education "NCHE" did not consult UNEB before issuing the purported Certificate equating the 1st respondent's academic qualifications to Advanced Level education. (Sic)*
- 25 3. *The learned trial judge erred in fact and in law when she failed to properly evaluate the evidence on record and held that the 1st respondent properly resigned from his public service office when he addressed his letter of resignation to the secretary to the President.*
- 30 4. *The learned trial judge erred in law when she misconstrued Article 203 of the Constitution and thereby failed to properly apply the provisions of Article 203 of the Constitution to determine the issues framed in Election Petition No. 014 of 2016.*

- 5 5. *The learned trial judge erred in fact and in law when she held that the Appellant's allegation that the 1st respondent lacked and or did not submit for his nomination the minimum academic qualification of UACE or its equivalent was in conflict with the Appellant's allegation that the 1st respondent forged academic documents and uttered them for nomination, as*
- 10 *consequently failed to consider the merits of the latter allegation.*
6. *The learned trial judge erred in fact and in law when she failed to properly evaluate the evidence on record and held that the 1st respondent was duly and properly' nominated as a candidate for election as a Member of Parliament.*
7. *The learned trial judge erred in fact and in law when she failed to properly*
- 15 *evaluate the evidence on record and held that the 1st respondent was at the time of his election qualified for election as a Member of Parliament.*
8. *The learned trial judge erred in fact and in law when she failed to properly evaluate the evidence on record and held the 1st respondent did not commit the illegal practice of bribery contrary to Section 68 of the Parliamentary*
- 20 *Elections Act.*
9. *The learned trial judge erred in fact and in law when she failed to properly evaluate the evidence on record and held the 1st respondent did not commit the electoral offence of making false statements concerning the character of the appellant contrary to Section 73 of the Parliamentary Elections Act.*
- 25 10. *The learned trial judge erred in fact and in law when she failed to properly evaluate the evidence on record and held the 1st respondent did not commit the electoral offence of undue influence contrary to Section 80 of the Parliamentary Elections Act.*
- 30 11. *The learned trial Judge erred in law and fact when she engaged in conjecture and speculation and reached the wrong conclusions.*

5 **Briefs facts**

We shall adopt the brief facts giving raise to this appeal as set out in the appellant's conferencing notes. They are as follows:-

This is a first appeal arising from the original decision of the High Court at Mbale delivered on 5th July, 2016 dismissing the petition.

10 On 18th February, 2016 the 2nd respondent conducted the Presidential general elections for directly elected Members of Parliament and District Woman representative throughout the country. The appellant, the 1st respondent and 4 others were nominated and participated as candidates in the elections for Members of Parliament for Busia Municipality. The 1st respondent was declared by the 2nd
15 respondent as winner of the election with 6,930 votes while the appellant emerged second with 6,510 votes. Subsequently, the results were published in the Uganda Gazette of 3rd March, 2016.

Upon being dissatisfied with the outcome of the election, the appellant and 2 others namely Armado Sammy Gilbert and Mukasa Abdallah Tiff Bbale instituted Election
20 Petition No. 018 of 2016 against the respondents seeking the following declarations and orders namely; that the 1st respondent was not validly elected as the Member of Parliament for Busia Municipality; that the election of the 1st respondent as a direct Member of Parliament be annulled or set aside and a new election be organised; that the 2nd respondent did not hold elections in compliance with the law; that the
25 certificate issued by the 3rd respondent was void for want of or non-consultation with UNEB; and the respondents pay costs to the petitioners.

The respondents filed separate answers denying the allegations in the petition contending that there was compliance with the provisions of the Constitution and all electoral Laws. During the Scheduling Conference, four issues were framed for

5 Court's determination; whether the 1st respondent was at the time of his election
qualified for election as Member of Parliament; whether the election for Busia
Municipality was held in non-compliance with the provisions of the electoral laws,
and if so whether such non-compliance affected the elections in a substantial
10 manner; whether the 1st respondent during the elections personally or through his
agents, with his knowledge and consent or approval committed illegal acts and
offences as alleged and what are remedies available to the parties.

At the conclusion of the trial, the learned trial Judge dismissed the petition with
costs. Hence the instant appeal.

From the grounds set out earlier at the scheduling conference, the following issues
15 were agreed upon for determination by this Court.

1. *Whether the learned trial Judge erred in law and fact when she held that the 1st
respondent was at the time of his election qualified for election as a Member of
Parliament.*
2. *Whether the learned trial Judge erred in law and fact when she held that the 1st
20 respondent properly resigned from his public service office when he addressed
his letter of resignation to the secretary to the President.*
3. *Whether the learned trial Judge erred in law and fact when she held that the 1st
respondent did not, during the election, personally or through his agents, with
his knowledge and consent or approval commit the election offences of bribery,
25 making false statements against the characters of the appellant and undue
influence contrary to Sections 68, 73 and 80 of the Parliamentary Elections Act;
and*

5 4. *Whether the learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence on record and thereby arrived at the wrong conclusions on the issues framed for determination by the High Court.*

The Appellant's case

Issue 1

10 *Whether the learned trial Judge erred in fact and in law when she held that the 1st respondent was at the time of his election qualified for election as a Member of Parliament*

It was submitted that the appellant adduced sufficient evidence showing that, the 1st respondent did not fulfill the academic requirements required under Article 80
15 (1)(c) of the Constitution and Section 4 (1)(c) of the Parliamentary Elections Act before being nominated. Counsel submitted that, the 1st respondent did not have a UACE qualification at the time of the nomination as he did not submit a certificate issue by CRE equating his other qualification to UACE.

Counsel contended that, the glaring errors both the nomination forms and academic
20 documents presented by the 1st respondent were an indication that the academic papers were either were forged or they did not belong to him.

It was argued that, the learned trial Judge erred and misdirected herself on the law when she held that Article 80 (1) (c) of the Constitution and Section 4 (1) (c) of the P.E.A, 2005 to which the 1st respondent's academic qualifications are subject, is
25 concerned with the authenticity of academic qualifications and or documents and not with extraneous references to academic documents that do not affect their validity. The Judge was of the view that the errors on the nomination papers and Certificate of Equivalence did not affect the validity of 1st respondent's documents.

5 Issue 2

Whether the learned trial Judge erred in fact and in law when she held that the 1st respondent properly resigned from his public service office when he addressed his letter of resignation to the secretary to the President

10 *It was contended that the 1st respondent was not at the time of his nomination and election as Member of Parliament of Busia Municipality constituency qualified for elections.*

It was further contended that, the 1st respondent was required to resign from his public service a Member of the Parliament. The requirement is under Article 80 (4) of the Constitution, and Section 4 (4) of the Parliamentary Elections Act (PEA).
15 Counsel argued that, the 1st respondent did not do so and as such was not at the time of his election, eligible to be nominated as a candidate, and was not eligible for subsequent election as a Member of Parliament.

It was contended that, the appellant adduced credible evidence to prove that the 1st respondent did not properly resign in accordance with the law and thus
20 contravened the law when he showed up for nomination. Article 203 of the Constitution establishes the office of the Resident District Commissioner as a public official appointed by the President. Therefore, an R.D.C is subject to the provisions governing resignation of public officials before participating in elections. The 1st respondent addressed his resignation letter to the Secretary to the President. He
25 testified under cross examination that he addressed the letter to the correct office. The evidence on record proves that the office called "the secretary to the president" was non-existent. The 1st respondent ought to have addressed his letter to either the Permanent Secretary Ministry for the Presidency or the Principal Private Secretary to H.E the President. There is also evidence on record to prove that the 1st

5 respondent continued to use the official vehicle of the R. D .C's office and an armed
body guard attached to the said office during campaigns.

Issue 3

10 *Whether the learned trial Judge erred in law and in fact when she held that
the 1st respondent did not, during the election, personally or through his
agents, with his knowledge and consent or approval commit the election
offences of bribery, making false statements against the character of the
appellant and undue influence contrary to Sections 68, 73 and 80 of the
Parliamentary Elections Act.*

15 Counsel submitted that, a single incident of the illegal practice of bribery once
proved to the satisfaction of the court suffices and the weight or significance of the
incident is irrelevant, but there must be proof that the purpose of the bribe was to
influence a voter to vote for the candidate or to refrain from voting or another
candidate.

20 It was submitted that, the essential ingredients of the illegal practice of bribery must
include; money or gift being given out by the candidate personally or through him or
his agents with his or her knowledge, consent or approval; the recipient being a
registered voter and the giving was with intent to influence the voter to vote for the
candidate or to refrain from voting for another candidate.

25 It was submitted that, the appellant adduced credible evidence to Court which
indicated beyond reasonable doubt that the 1st respondent committed the electoral
offences of bribery and making false statements against the character of the
appellant contrary to Sections 68 and 73 of the Parliamentary Elections Act. The
appellant adduced his own evidence which was corroborated by affidavit evidence
30 of Abu Bakar Wesonga, Balikowa Harnza, Barassa Rogers, Bwire James, Efumbe
Yeko Juma, Gimono Mariam, Gongga Muhammed, Kalema Badru, Katto Yassin

5 Abdalla, Kulusulum Alice Kuri, Magala Joseph Basalirwa, Nabwire Mariam Ibrahim,
Nafula Fatuma, Nakago Sarah, Sande Jone Stone Mulumbi, Wabwire John, Wabwire
Juma, Wandera Aramathan, Wangira Dennis Okhikha and Wesonga Wilson and
Mayanja Bazirio on these allegations. It was further submitted that, the learned trial
10 Judge failed to properly evaluate the evidence on record and thereby came to the
wrong conclusion that the 1st respondent did not commit the alleged offences under
the Act.

Counsel asked Court to allow the appeal and set aside the High Court decision.

1st and 2nd respondent's reply

15 Issue No.1

*Whether the learned Trial Judge erred in fact and in law when she held that
the 1st respondent was at the time of his election qualified for Election as a
Member of Parliament*

This issue encompasses grounds; 1, 2, 5, 6, 7 and 11 of the Appeal.

20 It was contended that the learned trial Judge rightly addressed herself to the law
and facts and properly evaluated the evidence to come to the right conclusion.
Counsel submitted that, the position of the NCHE certificate in as far as this appeal
is concerned was settled by the Supreme Court in the case of *Gole Nicholsa Dvis vs
Loi Kageni Kiryapawo Supreme Court Civil Appeal No.19 of 2007* in which Justice
25 Mulenga (JSC) (RIP) rightly noted that:

*"The certificate issued by NCHE only establishes that the questioned
qualification is equivalent to the required qualification. It is not the academic
certificate required. If the certificate or diploma held is for any reason other
than equivalence alleged to be illegitimate, it is not protected by the certificate
30 of equivalence issued by NCHE".*

5 Counsel argued that, the record clearly indicates that, the appellant was not challenging the academic certificate required but rather purported to challenge the NCHE certificate itself. However, these inconsistencies were cleared away by the respondents. The 1st respondent noted during cross examination that the age he filled in was an error. He further noted his second error and stated that instead of
10 writing 1986 as the year he sat his Primary Leaving Examinations, he wrote 1987. During re-examination, he affirmed that his birthday is 12.10.1973. He availed documents including his Birth certificate, Passport No. B1130360, National ID No. CM73042100DQMK, National Voters ID and Driving permit all bearing his date of birth as 12.10.1973.

15 It was submitted that, the 3rd respondent admitted that the NCHE had issued documents before, some of which it had to correct because of typo errors. It was contended that, there was no reason to depart from the learned trial Judge's findings as the appellant did not challenge the Uganda Certificate of Education of the 1st respondent and neither did he challenge the Grade III Teachers' certificate from the
20 Institute of Teachers Education, Kyambogo of May 1996 issued to the 1st respondent. It is not surprising that the appellant conceded at the trial court that the documents were genuine.

Counsel submitted that, the Executive Director of the National Council for Higher Education affirmed that, the 3rd respondent duly consulted UNEB and attached the
25 said letters on consultation between NCHE and UNEB as Annexure B. This information was not shaken during cross examination of the said Professor and no evidence was brought forward to dispute the consultation process.

Issue No.2

5 *Whether the Learned Trial Judge erred in fact and in law when she held that the
1st respondent properly resigned from his public service office when he
addressed his letter of resignation to the secretary to the President*

10 It was submitted that, *Article 252* of the Constitution 1995, provides that, a Public
Officer may resign from office by writing. The resignation is deemed to take effect
when the writing signifying the resignation is received and signed by the person or
authority to whom it is addressed or by any person authorised to receive it.

15 It was contended that, the learned trial judge noted at that, the letter was addressed
to the correct office despite the error in semantics. The learned trial judge noted
further that, the Office of the President is a ministry of Government and that the
Secretary to the office of the President was indeed the officer authorised to receive
and sign the resignation by the 1st respondent. Counsel submitted that, although the
20 title of the office had minor grammatical construction errors, the address of the
office was well laid out as well as the stamp of the office that received the said
resignation letter. Indeed the same office address replied to the 1st respondent
accepting his resignation and as such the resignation letter on court record was in
line with the requirement under Article 252 of the Constitution.

Issue No.3

25 *Whether the Learned Trial Judge erred in law and in fact when she held
that the 1st respondent did not, during the Election personally or through
his agents, with his knowledge and consent or approval commit the
election offences of bribery, making false statements against the
character of the appellant and undue influence contrary to Sections 68,
30 73 and 80 of the Parliamentary Elections Act.*

5 It was further argued that, the appellant failed to adduce evidence in respect of the
alleged bribery of voters, the identity of the registered voters was not disclosed,
neither did he adduce any other evidence to support the alleged bribery. Bribery is
a serious offence and the ingredients laid out in the case law ought to be disclosed
by the appellant through affidavit evidence and any other additional evidence. This
10 failure was also noted by the learned trial Judge.

Counsel submitted that, the alleged defamatory statements on Court record in the
affidavits of Sande Johnstone and Wabwire John in support of the Petition were bare
and were not supported by any other evidence on the record. It was argued that the
1st respondent denied having made any defamatory statements, and the appellant
15 did not adduce any evidence to rebut the 1st respondent's defence. This left the
allegation basic, plain and deficient in substance. Indeed, the learned trial Judge
noted this deficiency and stated that, the allegations were not supported by other
evidence and that the averments lacked specificity. Counsel submitted that, the
appellant's assertions were unsubstantiated, he failed to prove all the allegations he
20 raised.

On the issue of the alleged Undue Influence, it was submitted that, the appellant
raised various allegations of acts of violence and intimidation allegedly carried out
by the 1st respondent. However, these allegations were plain in nature and not
supported by any other evidence. Counsel submitted that, the learned trial judge
25 was right when she found that evidence on record did not meet the required
standard of proof.

The 3rd respondent's reply

It was submitted for the 3rd respondent that, the appellant did not challenge the
Grade III Teachers' Certificate from the Institute of Teachers Education, Kyambogo,
30 of May 1996 issued to the 1st respondent vide candidate *No.T065/039* and as such

5 the appellant's allegations were a fishing expedition and baseless. The appellant didn't bring any cogent evidence to disprove the existence of the said qualifications which were equated by the same awarding authority: (UNEB) and neither did any person ever come up to claim the said qualification.

10 It was further submitted that, both 1st respondent and the Executive Director of the 3rd respondent Prof Opuda-Asibo John admitted in court that, there was a documentary error in typing the birth date. The Executive Director stated that, such was a human error which was correctable and which did not affect the validity of the qualifications equated. It argued that *in Sebugwawo Henry Vs Tropical Micro Entrepreneurs Savings and Credit Society Ltd Revision Cause No.14 of 2013* it was
15 held that mistakes can be made by humans particularly in this computerized era where in the instant case, 12th/10/1973 was typographically entered in error as 12th /10/1978. Therefore, that mistake did not affect the validity of the qualifications that were equated by the 3rd respondent. Besides, the Appellant did not dispute the true date of birth of the 1st respondent having accessed the same on the Electoral
20 Commission Website.

Further the 1st respondent adduced identification documents which were admitted in Court, these included his Birth Certificate, National Identification Card, Driving Permit and Voters Identification Card and Passport all having a date of birth as
25 12th/10/1973, and the same date was viewed by the Appellant on the Electoral Commission's Website.

He asked Court to find that, the typographical error on the date of birth indicated on the Certificate of Formal Completion of Advanced Level Standard or its equivalent issued by the 3rd respondent to the 1st respondent did not invalidate the 1st respondent's qualifications that were equated by the 3rd respondent or cause any
30 injustice to the appellant as alleged.

5 It was further submitted that, the appellant's allegations that the 3rd respondent did not consult UNEB ought to fail for being unfounded as there is evidence of consultation on the record attached as annexure B on the 3rd respondent's affidavit in support of its answer to the petition which is uncontroverted. It was argued that, the appellant's allegations on the lack of consultation between UNEB and the 3rd 10 respondent are completely baseless and mere hearsay. Counsel asked Court to dismiss the appeal.

Resolution of issues

15 This Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. See: *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002* and *Uganda Breweries vs Uganda Railways Corporation, Supreme Court Civil Appeal No. 6 of 2001*

Issue One

20 The appellant contends that, the learned trial Judge erred when she did not hold that the 1st respondent was not qualified for election as a Member of Parliament. The appellant contended that the 1st respondent did not resign his public employment as Resident District Commissioner days prior to his nomination as required under Article 80(4) of the Constitution and Section 4(4) of the Parliamentary Elections Act, 2005.

25 We have perused the record. The 1st leg of this issue concerning the 1st appellant's resignation was resolved by the trial Judge as follows;-

30 *"The 1st respondent's resignation letter addressed to the Secretary to the President, instead of the Secretary, Office of the President was notwithstanding the error in semantics, was addressed to the correct office and his resignation was therefore effective when the said office received his resignation on 14th May,*

5 2005 (See the stamp on annexure C1 indicating President's office, bearing the
date of 14th May, 2015). I am satisfied that the Secretary, Office of the President
who received and responded to do so by the 1st respondent's resignation letter
(refer to annexures C1 and C2) was authorised to do so by the authority who
10 appointed the 1st respondent. Refer to the second Schedule to Section 2 of the
Public Service Act, 2008 in which the Office of the President is listed as a
Ministry of Government. The Secretary, Office of the President is indeed the
officer authorised to make and receive correspondence on behalf of that
Ministry.

15 In addition, I also find that there is no evidence on record shown by the
Petitioners either that the 1st respondent continued to serve as RDC in that
office or to draw any of his emoluments, salary, allowances etc. after his
resignation. There was also no evidence that the Government of Uganda
continued to pay the 1st respondent any of the said emoluments and or that the
20 relationship between the 1st respondent as RDC and the Government of Uganda
was not served after his resignation. The Aggrey Awori vs Mugenyi Wasike case
in the High Court, (supra) that was cited by the Petitioner's Counsel is
distinguishable from the present case. In the Aggrey Awori case, Katusi, J found
that the 1st respondent erroneously addressed his resignation letter to the Town
Clerk, Busia and not the correct office which was the District Service
25 Commission. He also found that there was uncontroverted evidence to show that
although the 1st respondent purported to have resigned, he tenaciously kept
hold of the reigns of office as shown in Exhibit P.9 a letter from the Ag. Town
Clerk to the O/C Police, Busia requesting for Police to intervene in witnessing a
forceful access to the office from the 1st respondent. In the present case, the 1st
30 respondent addressed the correct office and the evidence presented alleging the
1st respondent's conduct to be inconsistent with his resignation, lacked

5 *probative value. I rejected the petitioner's allegation stated in paragraphs 16 &*
17 *of the 1st petitioner's affidavit in support of the petition, that the 1st*
respondent continued to use the official vehicle and army man/body guard
attached to the office of the RDC. The allegation was not substantiated, but in
converse, it was rebutted by the 1st respondent. Refer to paragraph 8 of the 1st
10 *respondent's affidavit in answer to the petition."*

We are in agreement with the learned trial Judge's analysis of the facts as stated
above and her application of the law. A wrong address or an error in the name of the
office is a mere technicality that cannot vitiate nomination of a candidate in a
general election. We would apply *Article 126 (2) (e)* of the Constitution uphold the
15 decision of the trial.

The second aspect of this issue is in regard to the qualifications of the 1st
respondent. We agree with the learned trial Judge that, the appellant failed to prove
on a balance of probabilities that the 1st respondent did not possess the required
academic qualifications. We have studied the record, we note that the evidence
20 adduced by the appellant to prove the said allegations pales in the face of evidence
from the National Council for Higher Education the 2nd respondent , who fully stated
and produced evidence that they were satisfied with the qualifications of the 1st
appellant having equated them with "A" level certificate.

They also provided evidence then before doing so they had consulted UNEB. We
25 agree that, the error and or inconsistencies on the face of the documents and the
nomination form could not have vitiated them that the 1st respondent's academic
qualifications. The 1st issue therefore is answered in the affirmative.

Issue 2

While resolving this issue the trial Judge found and held as follows:-

5 “[27] I have carefully scrutinized the evidence on record and I shall evaluate each allegation made by the Petitioners and their witnesses in the following categories: -

10 *Nomination papers: The Petitioners' allegations that the 2nd respondent allowed the 1st respondent's nomination papers with many inconsistencies was not substantiated. No evidence of what the inconsistencies were was adduced by the Petitioners. Just one error was pointed out about the 1st respondent's date of birth and this error was addressed under issue No. 1 and found to be of no legal effect.*

15 *(ii) Gazetted place and time. This allegation was two-fold, first the Petitioners contended that the nomination of the 1st respondent was done at 8: 25am before the gazetted time of 9am, and second; that his nomination was done inside the Electoral Commission offices of the Returning officer in Busia and not in the tent in the compound of the same offices. The Petitioners asserted that the inside of the said offices was not gazetted for nomination while the tent in the compound of the said offices was the gazetted place. It is not in dispute that the 1st respondent was nominated in the Electoral Commission offices. I find that the said Electoral Commission office is indeed a public office in the electoral district as provided for under Section 9 (1) (a) & (b) & (2) of the PEA, 2005. In respect of the time the 1st respondent's nomination, the 1st respondent ably rebutted the Petitioners' allegations. The 1st respondent showed this court a copy of his nomination form which had a handwritten insertion in the left hand top corner showing that he was nominated at 9: 25am and not as alleged. (See paragraph 7 and annexure D of his affidavit dated 12th April, 2016). I note that the Petitioners' copy of the same form at page 19 of the petition, also bears the same insertion. I am also satisfied that the 1st respondent's nomination was*

5 done in compliance with the time stipulated by the law. I also bear in mind that even if the nomination of the 1st respondent was done outside the prescribed time as alleged, such nomination is not one of the grounds under Section 13 of the PEA, 2005 that would invalidate a nomination.

10 iii. Access: The Petitioners allegations that their agents were denied the DRs forms, denied access and or chased away from polling stations, to and from the tally centre, were also un-substantiated. Neither the polling stations, save Calvary Church Polling station, nor the agents allegedly chased away, save Oboth Owori Bosco, were named. These were very serious allegations, yet no
15 evidence was adduced to show that complaints in respect of them were lodged - either with the Police or with the Electoral commission under Section 48 of the PEA, 2005 nor under Section 15 (1) of the Electoral Commission Act. Cap. 140 as amended.

20 iv. Illegal voters: The Petitioners averred that there were no voters' registers and the 1st respondent's supporters who were not voters were allowed to vote. This allegation too, was not substantiated. Neither were names of affected voters produced, nor was evidence produced showing which polling stations were referred to.

25 [28] As shown above, the Petitioners failed to discharge their burden to prove their said allegations. This issue is accordingly answered in the affirmative, the Election for Busia Municipality was held in compliance with the Provisions of the Electoral-Laws."

30 We agree entirely with the above analysis. We have found no reason to fault her reasoning, that the application of law and the conclusion she arrived at.

5 The third issue in respect of electoral offences of bribery, making false statements against the character of the appellant and undue influence.

At this Court learned Counsel for the appellant repeated the arguments made in favour of the respondent at the trial Court.

10 He submitted that the learned trial Judge inspite of evidence adduced against the respondent, did not resolve them in favour of the appellant in the result she arrived at a wrong conclusion.

We have carefully studied the Court record. We have perused the affidavits in support of the petition at the High Court and related evidence. We have also applied our hands to the legal authorities on this issue from the authorities cited to us and
15 others which were not.

We have also read the Judgment of the trial Court.

While resolving this issue the trial Judge after evaluating all the evidence before her found as follows at pages 29-31 of her Judgment.

20 *"I have scrutinized all these allegations and answers in response thereto. I am not satisfied that the acts alleged were committed. These are my reasons;*

25 *1. The averments of the Petitioners and their witnesses are weak. These allegations were not supported by other evidence. The allegations of beating people, damage to vehicles and injures. ought to h.ave been accompanied with evidence of either reports lodged with and received by Ute Police or the Electoral Commission, or with vehicle damage assessment reports, damage repair reports or medical reports of any injuries.*

5

None of these were produced.

10

2. *The averments of the Petitioners and their witnesses lacked specificity. They made several blanket and general statements, referring for example to "many voters", "The different people" on their way to "voting places", "over 300 people" were injured.*

15

Law is clear, he who asserts must prove. It is not a matter of making assertions that cannot be substantiated. (See Sections 100-103 of the Evidence Act, Cap 6 and Section 61 (3) of the PEA, 2005) In Kamba Saleh Moses vs. Namuyangu Jennifer Election Petition Appeal No. 27 of 2011 [2012], the Justices of the Court of Appeal stated that it should be proved to the satisfaction of the court by 'those alleging the bribery, that the people allegedly bribed were registered voters at the time, of the alleged bribing. The motive of the giver of the bribe is also relevant. (Emphasis added). In the present case not even the names of the voters allegedly bribed were disclosed.

20

3. *There were several contradictions by the Petitioners' witnesses in respect of the dates and time of the alleged acts of violence and intimidation.*

25

4. *Throughout his cross-examination, I observed the demeanor, gestures and conduct of 1st petitioner (PW1) who was lead Petitioner, I found him to be evasive and unsure of his answers.*

30

5. *The Petitioners failed to establish and demonstrate that the persons they claimed were agents of the 1st respondent through whom he allegedly bribed voters, were indeed his agents.*

5

6. *The averments by the 1st respondent in rebuttal to the Petitioners' allegations were not challenged either by way of affidavits in rejoinder or during cross-examination of the 1st respondent. No question about his answers in rebuttal to these serious allegations of acts of violence, intimidation, bribery and unlawful donations were put to him, I found this strange.*

10

Having held as I have under [34] above, this issue is answered in the negative.'

15

We find that the learned trial Judge dealt with this issue exhaustively. She looked at all the facts and the evidence before her. She applied the relevant law. We have no reason to fault the manner and extent of her evaluation and the conclusion that she arrived at.

20

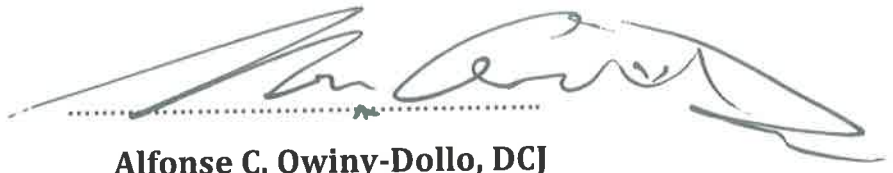
We too on our own have found that the evidence adduced by the appellant at the trial was insufficient to sustain the allegations set out in the petition in regard to bribery, making false statement against the appellant and under influence.

Accordingly we dismiss this ground. We also find no merit in ground 3 which has been resolved in our evaluation of this appeal.

25 Accordingly we find no merit in this appeal which we hereby dismissed with costs.

We so order.

5 Dated at Kampala this 20th day of March 2020.



Alfonse C. Owiny-Dollo, DCJ
JUSTICE OF APPEAL

10



Kenneth Kakuru
JUSTICE OF APPEAL

15



Christopher Madrama
JUSTICE OF APPEAL