

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

ELECTION PETITION APPEAL NO. 42 OF 2016

(Arising from an Appeal from the Judgment and Orders of Hon. Justice Albert Rugadya Atwoki at the High Court of Uganda Holden at Kampala dated 15th July 2016)

1. Dr. Mayanja Bernard }
2. Acan Joyce Okeny } Appellants

VERSUS

1. Hon. Hood Katuramu }
2. Hon. William Wilson Nokrach } Respondents

Coram: Hon. Mr. Justice Remmy Kasule, JA
Hon. Lady Justice Elizabeth Musoke, JA
Hon. Lady Justice Catherine Bamugemereire, JA

JUDGMENT OF THE COURT

This is an Election Petition Appeal arising from the Judgment and Orders in High Court Election Petition No. 22 of 2016. Being dissatisfied with the decision of Hon. Justice Albert Rugadya Atwoki passed at the High Court of Uganda at Kampala on 15th July 2016 the Appellants appealed against the whole decision.



Background:

35 The Appellants and Respondents were candidates for
Member of Parliament for Persons with Disability,
hereinafter referred to as PWDs, in the election held on
22nd February, 2016 at Colline Hotel, Mukono. Dr.
Bernard Mayanja and Mr. Hood Katuramu contested for
the Western Region seat while Ms. Joyce Okeny Achan
and Mr. William Wilson Nokrach contested for the
40 Northern Region seat.

The Electoral Commission returned the 1st Respondent,
Hood Katuramu and the 2nd Respondent, William Wilson
Nokrach, as the ^{duly}only elected Members of Parliament. The
First Respondent polled 301 votes against the 1st
45 Appellant/Petitioner who polled 178 votes, while the 2nd
Appellant/Petitioner polled 255. The said Hood
Katuramu and William Wilson Nokrach were gazetted,
sworn in, and have since taken their seats as Members of
Parliament representing the disabled for Western and
50 Northern regions respectively

The losers, being dissatisfied with the conduct and results of the election, filed in the High Court at Kampala Election Petition No. 22 of 2016. They, as Petitioners complained that both the 1st and 2nd Respondents were involved in illegal practices of bribery before and during the election and that the 2nd Respondent did not possess the requisite academic qualifications to stand as a Member of Parliament. They sought declarations that the election of the Respondents be annulled and that they, the Appellants, be declared winners of the election. The petitioners subsequently lost the petition in the High Court. Hence this appeal.

Grounds of the Appeal:

The grounds of appeal are as follows:

- 1. That the learned trial Judge erred in law and in fact when he held that the 2nd Respondent possessed academic qualifications to stand as a Member of Parliament.***



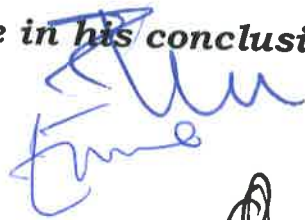


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2. That the learned trial Judge erred in law and in fact when he found that David Mutungi was not an agent of the 1st Respondent.

3. That the learned trial Judge erred in law and in fact when he held that the 1st Respondent did not commit acts of bribery during the elections.

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4. That the learned trial Judge erred in law and in fact when he held that the 2nd Respondent did not bribe 85 voters whom he had sent money via mobile money system.

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5. That the learned trial Judge erred in law and in fact when he failed to properly evaluate all the evidence on record and therefore came to a wrong decision.

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6. That the learned trial Judge erred in law and in fact when he engaged in assumption, speculation and conjecture in his conclusions.

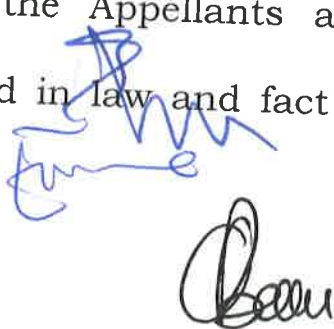



Powers of the Appellate Court:

90 Being the 1st Appellate Court, our duty is to re-hear, re-examine, re-evaluate and review the evidence and Judgment of the High Court. In arriving at our conclusion, we bear in mind that we did not have the benefit of seeing the witnesses testify first hand and as such we did not have the opportunity to assess their demeanour. Rule 30(1) of the Court of Appeal Rules enjoins us to carry out this duty. See also **Luwero Green Acres Ltd v Marubeni Corporation (1995-1998) 2 EA 168 (ASCU)** and **Kifamunte v Uganda Criminal Appeal No. 10 of 2007 (SCU)**.

100 At the hearing of the appeal learned Counsel Musa Ssekaana and Odokel Opolt Deogratus appeared for the Appellants while Ambrose Tebyasa, Ochieng Evans and Ojok were for the Respondents.

105 Under Ground No. 1 the Appellants allege that the learned trial Judge erred in law and fact when he held

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that the 2nd Respondent possessed academic qualifications to stand as a Member of Parliament.

110 In arguing this ground Counsel Ssekaana for the Appellants submitted that the 2nd Respondent did not possess an "O" level Certificate and therefore had no requisite academic papers. He further submitted that if in fact the 2nd Respondent was possessed of the said East African Certificate then it was not his since it did not bear his true names. Counsel for the Appellant further
115 stressed that the existence of two "O" level Certificates and the anomaly in the names, difference in number of subjects and schools at which the examinations were taken was evidence that the school leaving certificates did not belong to the 2nd Respondent.

120 Counsel premised his submission on the fact that the 2nd Respondent was in possession of a supplementary "O" level certificate for the year 1974. His other certificate of the year 1972 was said to have been lost during the war. The supplementary certificate was a certificate attained

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during a subsequent attempt of examinations by the candidate.

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According to the 2nd Respondent he sat supplementary examinations at Gulu Secondary School in Gulu but yet at the same time he appeared to have sat at Caltec Academy in Kampala. Counsel thus questioned the possibility that the 2nd Respondent sat these supplementary examinations at all. In reply, Mr. Evans Ochieng for the Respondents contended that the grounds of appeal on this were misconceived since the learned trial Judge had properly evaluated all the academic documents and as such the Judge's findings could not be faulted.

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The other contentious issue arising out of the academic documents was whether the said William W. Nokrach possessed a grade III Teachers' Certificate.

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Counsel for the Appellant argued that the 2nd Respondent had no Certificate of Registration issued under the Education Act because he was not possessed of a Grade

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145 III Teachers' Certificate of Education. It was alleged by
the Appellants that the Teacher Training College the 2nd
Respondent is said to have attended was non-existent
and that if indeed the Teacher training college was
existent, then the 2nd Respondent did not prove that he
received a certificate therefrom. The submission for the
150 appellants was that the Respondent had never qualified
and thus did not receive a Grade III Teacher qualification.
Counsel for the Appellants invited this Court to follow the
decision in **Muyanja Mbabali v Birekerawo Nsubuga:**
Court of Appeal Election Petition Appeal No. 36 of
155 **2011** where this Court found that the Appellant in that
appeal had fraudulently presented false documents at
the time of his nomination and subsequent election. The
Court annulled the election. Counsel for Respondents in
reply to the above submissions contended that the
160 Appellants' arguments were superfluous since all the
documents in question had been verified. Counsel added
that the learned trial Judge had thoroughly traversed the

proceedings and the evidence and arrived at a just decision.

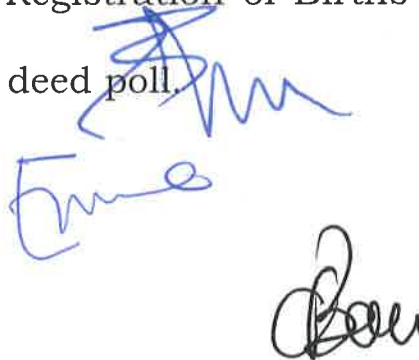
165 Counsel argued that if there were discrepancies apparent on the 2nd Respondent's "O" level certificates, then the Appellants should have summoned UNEB to explain as the examining body and the author of the certificates. Such a discrepancy could not be visited upon the 2nd Respondent. Counsel relied on the evidence availed at 170 the trial of Hon. Ogenga Latigo, a classmate of the 2nd Respondent, as an illustration that the 2nd Respondent went to Sir Samuel Baker Senior School, Gulu, for "O" level.

175 Regarding the Grade III Teachers' Certificate, Counsel for the Respondents invited the Court to consider the falsehoods in the Appellants' affidavits. Counsel for the Respondents submitted that the Appellants had no evidence to prove that the Grade III qualification had 180 been obtained fraudulently or without requisite

certificates. There was also no evidence to prove that the Grade III Certificate was issued in error.

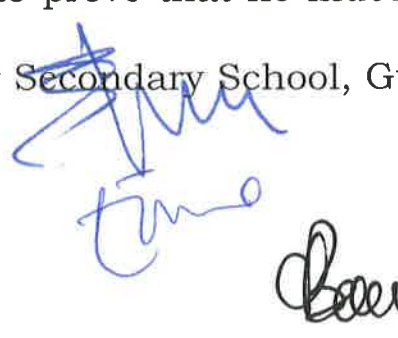
Counsel for the Respondents contended that Masindi Teachers' College existed. Counsel also maintained that UNEB had considered the two certificates and found them to be proper and an equivalent of an "A" level qualification. At any rate, the 2nd Respondent did not need verification since he had a Diploma in Education from (ITEK), a recognized institution.

Mr. Tebyasa for the 2nd Respondent contended that the issue of names was not crucial and that the 2nd Respondent only changed the short form of his name from Willy to William. Since the birth of the 2nd Respondent was not registered he had no obligation under S.7 of the Registration of Births and Deaths Act, Cap 12 to make a deed poll.



The Court's Decision on the Names used on Academic Documents:

200 There were allegations made against the 2nd Respondent regarding his ordinary ("O") level qualifications. The 2nd Respondent relied on an "O" level certificate issued in 1972 but also relied more on the supplementary "O" level certificate issued in 1974. There were discrepancies in 205 the names "Willy, William, Wilson Nockrach and Nokrach", discrepancies which were interpreted to mean that this candidate was not one and the same person and that the real person exists somewhere else or is dead. The 2nd Respondent had stated that the original 1972 "O" 210 level certificate was lost during the war. This sounded believable since he had copies of the lost certificate. The 2nd Respondent did produced a witness in the person of Hon. Ogenga Latigo to prove that he indeed attended Sir Samuel Baker Senior Secondary School, Gulu, for his "O" 215 level.



As the 1st Appellate Court we have closely followed the arguments put up by both sides regarding the “O” level qualification of the 2nd Respondent. We agree with the learned trial Judge’s findings on the “O” level qualifications. We too do find that there was no evidence to prove that the “O” level certificates were fraudulent. We agree with the learned trial Judge that some of the objections by the Appellants were based on insufficiently researched assertions. One of these was the disparity in names “William” and “Willy”. As noted by the trial Judge, and correctly so in our view, this was mere hair-splitting. The change from “Willy” to “William” or “Nockrach” to “Nokrach” appears to have been fanciful youth fads which were unfortunately played out on school certificates. Such changes were, in our view, minor. We indeed agree with the learned trial Judge that the evidence of Hon. Ogenga Latigo was not rebutted. His testimony proved that William Wilson Nokrach, the 2nd Respondent, attended Sir Samuel Baker Senior



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Secondary School, Gulu, and was therefore not an imposter of that school.

We find, as the learned trial Judge did, that there was nothing irregular about Nokrach using his supplementary "O" level certificate since it proved that he was trying to improve his capacity by sitting subsequent examinations in subjects where he was weak and had thereafter passed all his subjects. We therefore find the allegations regarding his supplementary examination to be unsubstantiated.

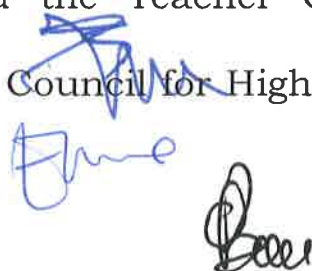
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We now turn to the question whether the 2nd Respondent was possessed of a Grade III Teachers' Certificate. The basic argument was that the teacher registration certificate issued by the Ministry of Education was not proof that Nokrach possessed a Grade III Teachers' Certificate. Counsel for the Appellants invited this Court to find that the learned trial Judge had erred to so hold and that indeed the 2nd Respondent did not possess the requisite academic qualifications to be nominated or

255 elected Member of Parliament. Counsel contended that a Certificate of Teacher Registration could not be equated to a Grade III Teachers' Certificate since it was not an academic qualification and neither was the Ministry of Education an academic institution.

260 The case for the 2nd Respondent was that he was fully possessed of the requisite qualifications. Counsel for the 2nd Respondent relied on the certificate of Teacher Registration whose wording was thus:

265 **“.....This is to certify that Wilson William Nokrach having completed satisfactorily a teacher training course approved by this Ministry has been registered as a Grade III Trained Teacher with effect from 1st January, 1981. His/Her Registration No. is 111/80/857. Dated 1st January, 1981.**”

270 It was on the basis of the East African Certificate of Education UACE (1974) and the Teacher Certificate of Registration that the National Council for Higher Education



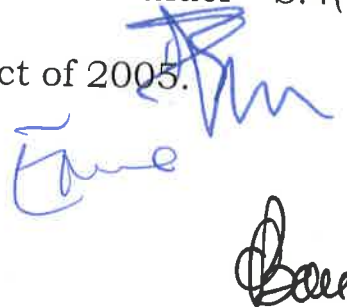
awarded Nokrach the 2nd Respondent, certificate of
equivalence granted under S.4(8) of the Parliamentary
Elections Act, 2005. The Certificate stated as follows:

***“I certify that William Wilson Nokrach who was
born on 30/09/1952 has satisfied the National
Council for Higher Education in consultation with
the Uganda National Examinations Board that he
has completed formal education of advanced level
standard or its equivalent in that he holds the
following qualifications:***

- 1. East African Certificate of Education, UACE,
1974***
- 2. Grade III Teachers’ Certificate, 1980***

Dated, signed and sealed on February 14, 2011.”

In ruling on this matter, the trial Judge relied on Art. 80
of the Constitution of Uganda (1995). Article 80 of the
Constitution was re-enacted under S.4(1)(c) of the
Parliamentary Elections Act of 2005.



Section 4(1) states as follows:

“4. Qualifications and disqualifications of Members of Parliament.

(1)A person is qualified to be a Member of Parliament if that person-

.....

.....

(c) has completed a minimum of formal education of Advanced Level standard or its equivalent.”

The learned trial Judge found that UNEB had properly evaluated the documents and that NCHE had lawfully issued the candidate with a certificate of completion of formal education of advanced level standard or its equivalent. In his own words the learned trial Judge ruled thus:

“The argument of the need to present a certificate, and not the registration

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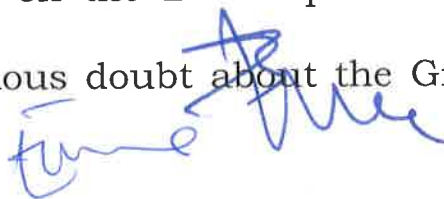
310 *certificate was, to any mind merely splitting*
hairs It makes sense if at an earlier
contest a candidate presented academic
papers and they were verified and found
proper and on the strength of those papers
315 *such a candidate was nominated, to present*
the same at a later contest, unless an
intervening circumstance had rendered them
inadmissible. There was no evidence of any
change in the status quo “

320 We agree with the learned trial Judge that the 2nd
Respondent was not responsible for the paper showing that
he might have sat “O” levels at Caltec Academy, Kampala.
We agree that these allegations appeared wild and
speculative and were still under inquiry and therefore not
conclusive.

325 We have carefully examined the academic papers presented
by the 2nd Respondent to prove that he was in possession of
an “A” level qualification or its equivalent. In this case he

relied on a certificate of equivalence. Upon closer scrutiny
of the said papers, we found that whereas the 2nd
330 Respondent relied on the Grade III Teachers Registration
Certificate as his Grade III Certificate and it was not
queried, this was an error glossed over by the NCHE. It did
not cease to be an error because he was relying on the
questioned certificate in a subsequent election that this
335 anomaly was brought to light. The Courts are entitled to
torch into these qualifications and find out if indeed the
candidate was qualified to stand as a Member of
Parliament.

In our view, it was speculative and erroneous of the NCHE
340 to pass off a teacher registration certificate as a Grade III
Teachers' Certificate. The two are categorically separate
documents. It was imperative to prove that the 2nd
Respondent earned a Grade III Teacher Education. That
evidence was never availed to the trial Court. The onus to
345 produce such evidence was on the 2nd Respondent. The
Appellants had raised a serious doubt about the Grade III



Teacher Education qualification of the 2nd Respondent. The onus remained on the 2nd Respondent to rebut that allegation that he did not possess a Grade III Teachers' Certificate the same way he proved that the "O" levels were his qualification.

In the case of **Muyanja Mbabali (Supra)** it was held that the burden of proving the authenticity of an impugned academic qualification or document rests with the one who relies on it. This position of the law was settled by the Supreme Court of Uganda in the decision of **Abdul Bangirana Nakendo vs Patrick Mwendha, Supreme Court Election Petition Appeal No. 9 of 2007**, where Katureebe JSC, as he then was, in his lead Judgment, accepted by the rest of the Court, authoritatively pointed out that:

".....the duty to produce valid certificates to the Electoral Authorities lies with the intending candidate for elections. Where the authenticity of those certificates is




questioned, it can only be his burden to show that he has authentic certificates.”

370 In the case of **Haji Muluya Mustapha v Alupakusadi Waibi Wamulongo, High Court Election Petition No.22 of 1996**, Byamugisha, J as she then was, stated that the respondent simply had to throw a reasonable doubt on the respondent, and the evidentiary burden of proof would shift to the Respondent. Though a decision of the High Court, the same is persuasive to this Court as it is very relevant to the issue before this Court. In the instant case the 2nd Respondent did not attempt to prove that at the material time he had ever successfully undergone teacher training and that he ever had in his possession a Grade III Teachers' Certificate.

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380 It was not in contention that Masindi Teachers' College existed. The issue was whether the 2nd Respondent ever undertook a teacher training course at this institution while it existed and whether at the end of the course he obtained a Grade III Teachers' Certificate of Education.

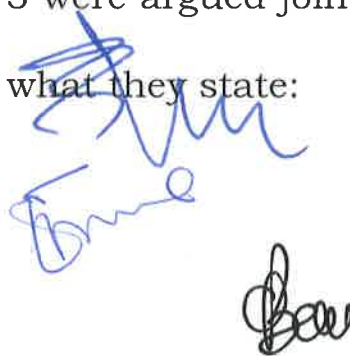
385 We note that the 2nd Respondent did not obtain a straight
"A" level standard of education and therefore he was
nominated on the basis of a "Certificate of Completion of
Formal Education of Advanced Level or its equivalent"
popularly known as the "Certificate of Equivalence", issued
by the NCHE. As a result, we find that it was improper for
390 the NCHE to issue a certificate of equivalence based on a
Teacher Registration Certificate instead of a Teachers'
Certificate of Education, which is an academic qualification.
It is comparable to stating that a lawyer in Uganda is
qualified to practice on the basis that, that lawyer has a
certificate of having been registered at the Law Development
395 Centre, without verifying that he is in possession of a Post
Graduate Diploma in Legal Practice ^{from} ~~form~~ the Law
Development Centre. A registration certificate is premised
on possession of a qualification which qualifies the person
400 to be registered.

Similarly, it is presumptuous to assume that someone is
qualified as a Grade III Teacher when he has produced no

proof that indeed he possesses a Grade III Teachers' Training Certificate of Education. It is therefore our finding
405 that it was the responsibility of the 2nd Respondent to prove that he possessed a Grade III Certificate. We have found that the 2nd Respondent did not prove to the satisfaction of Court at the requisite standard of proof on balance of probabilities that he was possessed of a Grade III Teachers' Certificate.
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We find that it was therefore erroneous of the NCHE to have found that the 2nd Respondent was in possession of an equivalent of "A" level. We do agree with the Appellants that the learned trial Judge erred in law and in fact when he
415 held that the 2nd Respondent possessed the requisite academic qualifications to stand as a Member of Parliament. Ground 1 of the appeal is therefore allowed. Grounds No. 2 and No. 3 were argued jointly by Counsel for the Appellants. Here is what they state:

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Ground No. 2

That the learned trial Judge erred in law and in fact when he found that David Mutungi was not an agent of the 1st Respondent.

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Ground No. 3

That the learned trial Judge erred in law and in fact when he held that the 1st Respondent did not omit acts of bribery during the elections.

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Counsel for the 1st Appellant submitted that credible evidence was adduced at the trial to prove that while at Jobiah Hotel, the 1st Respondent bribed voters during the election period. That one David Mutungi gave out money and key holders belong to the 1st Respondent to Twinomujuni Nicholas. When the matter regarding election bribery was reported to the police and one David Mutungi and two undisclosed veiled women were arrested, the 1st Respondent was seen to closely follow up the matter of

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bribery against Mutungi. One Gabriel Kato identified David Mutungi as a political assistant to Hood Katuramu, the 1st Respondent.

The 1st Respondent denied knowledge of the two veiled women and claimed that David Mutungi was not his agent.

445 Counsel for the Appellants argued that bare denials by the 1st Respondent were redundant since there was irrefutable evidence of bribery. He relied on the authorities of **Odo Tayebwa v Bassajjabalaba Nasser and Electoral Commission: Court of Appeal Election Petition Appeal No. 13 of 2011 and Fred Badda and Another V Prof. 450 Muyanda Mutebi: Election Petition Appeal No. 25 of 2006 (Court of Appeal).**

In the **Fred Badda** case Court had occasion to observe:

455 *“Though elections are not supposed to do away with social events....., the shifting of the dates for the tournament to coincide with the campaign period raises some doubts as to*

the bonafides of the 1st appellant, which was its sponsor”

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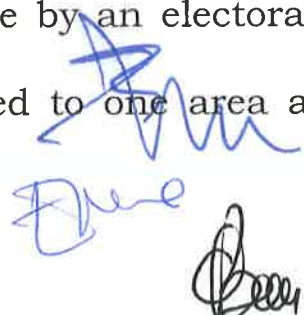
Counsel invited this Court to find that the persons found in the process of bribing voters were agents of 1st Respondent. He thus submitted that the learned trial judge erred in law and in fact when he found that the 1st Respondent did not commit acts of bribery during the elections. Counsel pointed to the evidence of one Burton Otto whose evidence was that he received a bribe of UGX. 200,000= from the 1st Respondent and that it was intended to induce him to vote. The learned trial Judge did not believe the evidence of Otto on the grounds that Otto belonged to a different camp than that of the 1st Respondent and therefore the enemy camps were too biased. It was Counsel’s submission that the conclusion by the learned trial Judge was erroneous and did not arise from the evidence on the record.

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Counsel invited this Court to note that elections for members with disabilities were by an electoral college of a few voters who are transported to one area and have one



polling station. He submitted that the delegates are wooed by all candidates from any part of the country since it is a national election. Counsel further submitted that the learned trial Judge failed to properly evaluate the evidence on record and arrived at the wrong conclusion on the issue of bribery of voters.

Regarding the issue of bare denials Counsel for the Appellants relied on **Fred Badda and the EC v Professor Muyanda Mutebi Court of Appeal Election Petition Appeal No. 25 of 2006** where once again Mpagi Bahigeine DCJ, held:

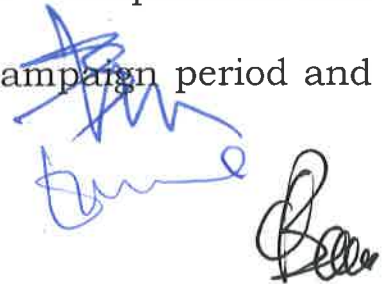
“The 1st Respondent generally denied knowledge of Mama Kana. I do not believe his bare denial. There is overwhelming evidence that bribery took place at Bido”.

Counsel entreated this Court to review and cautiously appraise the evidence adduced in light of what transpired at Jobiah Hotel and find in favour of the Appellants.

Counsel for the Appellants argued Ground No. 4 separately.

That the learned trial Judge erred in law and in fact when he held that 2nd Respondent did not bribe 85 voters who he had sent money via mobile system.

Ground No. 4 was based on the allegation that the 2nd Respondent specifically and directly bribed voters through mobile money. The names of all those to whom money was sent by mobile phone were given in evidence.¹ It was further alleged that some voters were bribed more than once by the 2nd Respondent. They included persons who received money ranging from UGX. 410,000= to UGX. 855,000=.² It was argued for the Appellants that the 2nd Respondent sent money to registered voters during the campaign period and



¹ Oledo Maxwell, Omolo John Bosco, Abili Nelson, Munyolo Gersom, Tsesili Rogers, Osiga Moses, Lakwey Stephen Etyanga James, Barungi Edith, Komakech Patrick, Lochap Elijah, Ekwnyu Simon, Basalirwa Asuman, Kyaye Wilberforce, Kiirya Hamuza, Kalule Ali Ssalongo Musisi Fredrich Kantu, Mbabazi Teddy, Okecha Charles, Maliamungu Ramdhan, Akello Sarah, Moding Janet, Locheng Peter, Cherotwo Jackson, Nyandera John, Mugerwa William Mwesige, Odong Emmy Joe, Ojok Rechard, Kilama Samson, Mwongyezi Tofiri, Mpande Charles Kyobe, Lopron Philip, Anidraku William, Asiimwe Eunice, Sande Sylvester Ogutti, George William Mulumba, Adoto David Oboi, Kinyera Solomon Ibango, Libinga Francis Xavier, Matsiko David John, Eudu John Robert, Elietu Raymond, Atusime Catherine, Dhongu Micheal.

² Ojok Richard of Lamow District 8 times 855,000=, Tselili Rogers of Bududa District 6 times 805,000=, Lochap Elija of Kaabong District 8 times 710,000=, Ekwanyu Simin of Kaberamaido District 6 times 645,000=, Chelain Dorcus of Amudat District 3 times 510,000=, Anidraku William Moyo District 3 times 505,000=, Mwogyezi Tofiri Mitooma District 7 times 475,000=, Ariaio Donald of Adjuman District 2 times 410,000=.

that there was no evidence that money was sent to these persons after the campaign period.

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Counsel relied on the case of **Mukasa Anthony Harris V Dr. Bayiga Micheal Phillip Lulume: Election Appeal No. 18 of 2007 (Supreme Court)** where Justice Tsekooko JSC, held as follow:

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“In any case it is hardly reasonable to imagine that a Parliamentary candidate can give out money to people who are not voters in a particular locality. Nor is it reasonable to imagine, as argued by Counsel for the appellant, that money could have been given out for anything else other than to persuade the voters to vote the appellant. There is ample evidence showing that money was released by the appellant for bribing.”

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Counsel for the Appellant invited Court to find that the 2nd

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Respondent bribed 45 voters which number would have

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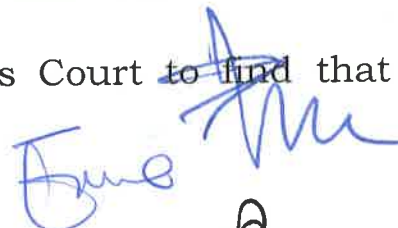

substantially altered the election result in favour of the 2nd Appellant.

In reply to the bribery allegations, Counsel for the Respondents argued grounds 3 and 4 together and briefly referred to ground No.5. According to Counsel for the Respondents, the trial Judge correctly found that David Mutungi was not an approved agent of the 1st Respondent. We were invited to accept the finding that the 1st Respondent had specifically denied David Mutungi being his Political Agent and that on the basis of this denial, Mutungi was not his agent. Counsel submitted that the evidence available was not bare denial but rather that the Appellants had made baseless and wild allegations against the 1st Respondent since no single voters stated by way of affidavit that he or she had received any money or any form of gift from David Mutungi on the instructions of the 1st Respondent. Therefore the principal/agent relationship between David Mutungi and the 1st Respondent was not proved by the Appellants. Counsel contended that the case

of **Odo Tayebwa V Bassajjabalaba: EPA 13 of 2011**
(**Supra**) should not be relied upon by this Court since it was
distinguishable by fact and issue.

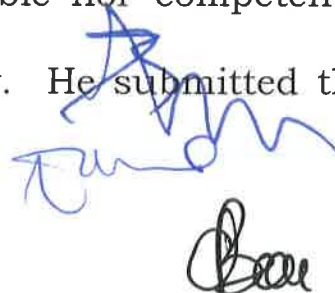
**Regarding allegations of bribery as against one Otto
Burton** the 1st Respondent had specifically denied
550 knowledge of one Otto Richard Burton. The fact that the 1st
Respondent resided at Jobiah Hotel was not sufficient
reason to prove or even to suggest remotely that he bribed
voters at that hotel. Regarding PW15's testimony that Dr.
Mayanja lodged a complaint of voter bribery against the 1st
555 Respondent, Counsel for the Respondents contended that
the allegations made by the said AIP Nabeta against the 1st
Respondent were to say the least, scandalous, false and
outrageous. AIP Nabeta had alleged that the 1st Respondent
was in one of the rooms in Jobiah Hotel, the venue of the
560 alleged bribery. Counsel for the Respondents questioned
why no police statement was obtained from the 1st
Respondent. He invited this Court to find that the trial

Judge properly evaluated all the evidence on record and reached a proper finding.

565 **Regarding Ground No. 4, Counsel** submitted that the 2nd
Respondent did not bribe voters by use of mobile money as
alleged and that the evidence of one Napakol John Gaston
was largely hearsay and therefore incapable of proving the
alleged offence of bribery. In respect to the evidence of
570 Laparon Philip whose evidence was that he received UGX.
250,000= on mobile phone No. 0775-1444000 from the 2nd
Respondent, Counsel argued that the said evidence was not
credible because Laparon did not state which phone line the
money was sent from. Counsel invited Court to find that
575 the allegations of Laparon were wild and unsubstantiated.
He had not proved that there was earlier or subsequent
communication between him and the 2nd Respondent.

Counsel for the 2nd Respondent further invited this Court to
find as unreliable the evidence of one Lomongin Abdallah
580 because it was neither credible nor competent enough to
prove an allegation of bribery. He submitted that the trial



Judge correctly found that the evidence adduced was unauthentic and legally inadmissible and that the trial Judge was correct in declining to rely on the source of the mobile money records. Counsel urged the Court to find that the mobile money statement produced was not authenticated by its source of origin since the same had not been signed by MTN.

The 2nd Appellant stated that she relied on a statement obtained from the police. It was noted that AIP Nabeta did not produce the Court Order he obtained in order to have the MTN Mobile money statement. Counsel further distinguished **Mukasa Anthony V Bayiga Michael Philip Lulume: Election Petitions Appeal No. 18 of 2007 (SCU)** from this case because in that case of **Mukasa Anthony-v-Bayiga** there had been proof of bribery established which was lacking in this case.

530
Court's Decision on Allegations of Bribery

Bribery is defined under S.68 (1) and 2(4) of the Parliamentary Elections Act as an illegal practice. S.61 (1) provides for grounds for setting aside an election as follows:

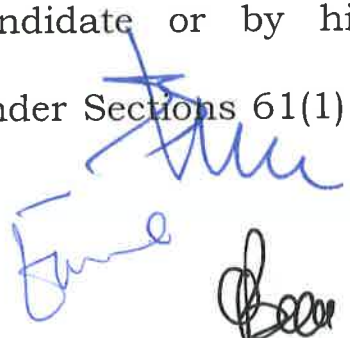
605 ***“(1) The election of a candidate as a Member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the Court,***

(a).....

(b).....

610 ***(c) That an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.”***

615 In order to prove that the illegal practice of electoral bribery was committed by a candidate or by his agents, a combination of elements under Sections 61(1) (c) and 68 of

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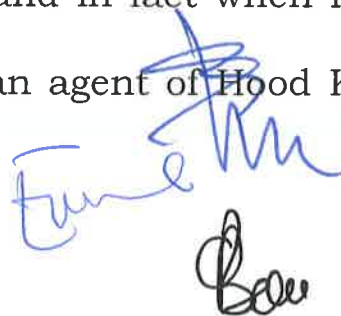
the PEA have to be proved on a balance of probabilities.

These elements include:

- 620 a) that a gift, money or other consideration was given to
a person
- b) that a gift, money or other consideration was given to
the voter with intent to influence such a person to vote
or refrain from voting a candidate
- 625 c) the gift, money or other consideration is given by the
candidate personally or by his agent with his
knowledge and consent or approval.

The above mentioned elements are equally well
expounded by case law and therefore in listing elements
630 of electoral bribery we are fortified by decision of this
Court in **Odo Tayebwa V Naser Bassajjabalaba &
Another: Election Petition Appeal No. 013 of 2011
(COA) (Supra).**

Counsel for the Appellants submitted that the learned
635 trial Judge erred in law and in fact when he found that
David Mutungi was not an agent of Hood Katuramu. It



640 was further submitted that the learned trial Judge erred
in law and in fact when he found that Hon. Hood
Katuramu did not commit acts of bribery. In
reappraising the evidence for and against Hood
Katuramu this Court has re-examined the affidavits on
record.

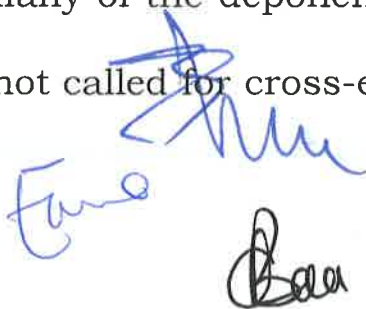
645 The petitioner's case was supported by the affidavits of
Mayanja Bernard, the 1st Appellant, Joyce Okeny Achan,
the 2nd Appellant, Gabriel Katto, Nicholas Twinomujuni,
James Mayanja, Wilber Baale Mayanja, Richard Burton
Otto, Julius Jacan, John Gaston Napakol, Phillip
Loporon and Abdallah Lomongin and Ronald Jarac
Onechan.

650 Suffice it to say that in order for this Court to arrive at its
own independent finding, all the evidence whether oral
(verbatim), affidavit, documentary or by way of exhibits,
has to be re-examined. We have reconsidered the
testimonies of the key witnesses referred to by both sides
655 as already stated above. We have thoroughly scrutinized

the transcribed evidence that was the oral examination in chief, cross-examination and re-examination of Appellants/Petitioners' witnesses at the trial including that of AIP Nabeta and that of the Respondents and their witnesses. Additionally, we have scrutinized the exhibits in form of currency notes, police report and the mobile money printouts.

We note that on the part of the Respondents, the answer to the Petition was supported by the affidavits of Hood Katuramu the 1st Respondent, William Nokrach the 2nd Respondent, Rhamadhan Maliyamungu and Richard Ojok. Supplementary affidavits were made which include those of Emmy Joe Odong and Morris Wodamida Ogenga-Latigo. The affidavits in support of the Petition and in reply to the petition are instructive in painting a picture of what possibly occurred or did not occur in as far as the bribery allegations were concerned.

It should be noted that many of the deponents including the 1st Respondent were not called for cross-examination.

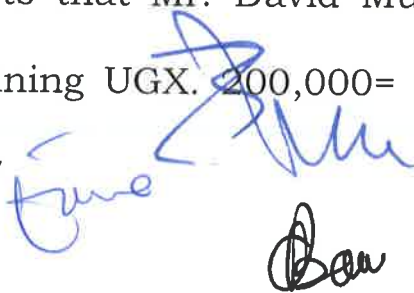


This would mean that either their affidavits were not contested or that probably they were rebutted by some other evidence. Bribery evidence is fact-sensitive and therefore facts have to be closely examined.

Allegations of Electoral Bribery against Hon. Hood Katuramu the 1st Respondent:

The allegations of electoral bribery against the 1st Respondent were premised on information which was received by some voters. One of such voters was Nicholas Twinomujuni. The evidence of Twinomujuni was that on 21st February, 2016 the eve of the election, he had checked into Colline Hotel Mukono where he was being housed. Upon receiving a phone call from the Chairperson of Mitooma District at about 1800hrs, he proceeded to Jobiah Hotel where he found Mr. David Mutungi and some other person in one of the hotel rooms.

Mr. Twinomujuni asserts that Mr. David Mutungi gave him an envelope containing UGX. 200,000= and stated



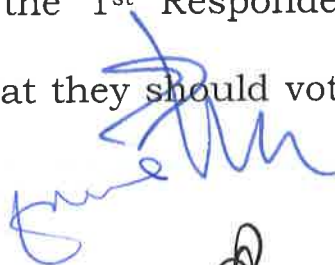

695 that this was his transport and refreshment while at
Colline Hotel. He also handed to him key holders with
pictures of the 1st Respondent and with all these he
encouraged him to vote for the 1st Respondent. Two
700 ladies dressed like Muslim women (with hooded head
gear) advised him to also vote for the 2nd Respondent and
a one Sofia Nalule Juuko. The evidence of this witness
was merely denied but the Respondents did not provide
any reason to disbelieve him. By far, the evidence of
Twonomujuni provides the clearest account of how voters
were bribed at Jobiah Hotel.

705 The other evidence worthy of re-appraisal is that of
James Mayanja. He averred that while he was in
residence at Colline Hotel Mukono, the Chairman of
Persons with Disabilities, one Gabriel Katto informed him
that the 1st Respondent and David Mutungi were
710 distributing money to voters at Jobiah Hotel. He too
rushed to Jobiah Hotel where he found lots of people
with disabilities receiving khaki envelopes containing

money, key holders and small fliers bearing pictures of the 1st Respondent.

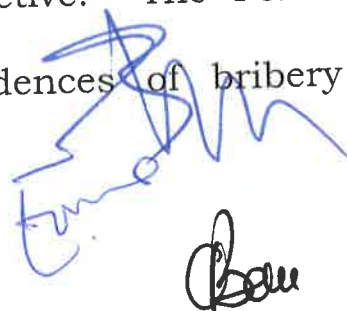
715 He hurriedly approached Mukono Police Station who sent one officer first and then sent a back-up team. He saw women dressed in Islamic attire and some men distributing khaki envelopes. After police re-enforcement arrived the policemen arrested the persons who were
720 distributing money in khaki envelopes and key holders and fliers of the 1st Respondent. Among the persons arrested was the Political Assistant of the 1st Respondent. The witness had earlier on interacted with this political assistant of the 1st Respondent during the NRM party
725 primaries at Nambole stadium. The political assistant was David Mutungi.

The other affidavit that deserves mention is that of Richard Burton Otto who was equally led to Jobiah Hotel at Mukono by Lamwo Ojok. He avers that at Jobiah
730 Hotel, Hood katuramu, the 1st Respondent, while on bended knees, pleaded that they should vote for him, for

735 the 2nd Respondent and a one Sofia Nalule Juuko. The witness was given an envelope of UGX. 200,000= and key ring bearing a photograph and a sign of a ball of the 1st Respondent. The money was said to be in denominations of UGX. 20,000=. He returned to his room in Colline Hotel. The same witness stated that about midnight another knock came from Ojok. He was asked to proceed to Karen Resort Hotel with the team from Kitgum. The witness stated that while at Karen Resort Hotel, Mukono, 740 the 1st and 2nd Respondents addressed delegates and once again reiterated the need to vote for them and dished out envelopes containing UGX. 200,000= to each person. Burton Otto decided to inform the Appellants about the acts of bribery that occurred on the night 745 before the voting day. This witness confirmed that he recorded a police statement at Mukono Police Station.

The evidence of the investigating officer AIP Mathias Nabeta is equally instructive. The Police at Mukono 750 received reports of incidences of bribery of election



delegates at Jobiah Hotel. The Police went to the hotel. Delegates were found leaving a room in Jobiah Hotel each with a brown envelope. The witness together with other policemen arrested six suspects who had altogether Uganda Shillings two million and took witness statements. AIP Nabeta explained that the suspects including David Mutungi were released on Police Bond on the intervention of the 1st Respondent. He further noted that the 1st Respondent declined to make a Police Statement. This witness was strongly advised by his police bosses not to compel the Respondents into making police statements.

In answer to these allegations, the 1st Respondent, Hood Katuramu denied ever bribing or in any way influencing a voter. He stated that he did not bribe any delegates personally or indirectly through any other person with his knowledge, consent or approval. He stated that he knew about the Police Case that was opened at Mukono Police Station, but he could not be a

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suspect since he had never been summoned as a suspect
and had never been required to make a police statement.
He denied knowledge of Richard Otto. He denied offering
Otto UGX. 200,000= in an envelope. He denied
knowledge of any agents who were arrested for allegedly
bribing voters.

775
The 1st Respondent categorically denied knowledge of
David Mutungi. He refuted the allegations that David
Mutungi was his agent as being false and baseless. He
also denied that any key holders bearing his photograph
were given out at Jobiah Hotel. He stated that he neither
had agents who bribed voters with fliers, nor did he have
agents who bribed voters and were arrested. He stated
that he had never instructed, let alone permitted the said
David Mutungi to offer any bribes to any election delegate
or anyone else or at all.

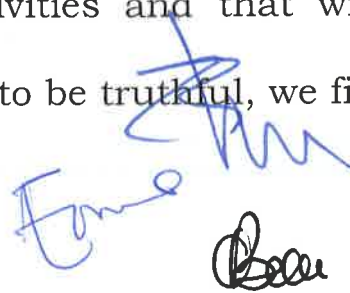
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785
The 1st Respondent equally denied knowledge of the
money amounting to UGX. 2,040,000= recovered by the
police while investigating the alleged acts of bribery. The

Time
Ben

790 1st Respondent claimed that Nicholas Twinomujuni was a supporter of the 1st Appellant and that this made his evidence to be partisan. The 1st Respondent further claimed that he was unaware of the veiled ladies who were bribing voters to vote candidates Sofia Nalule Juuko. Katuramu affirmed that he validly won the 795 election to represent in Parliament persons with disabilities and that he won by a large majority.

Court's Finding:

800 As a 1st Appellate Court we have subjected the evidence that was adduced at trial to a fresh scrutiny. Our finding is that some illegal practices occurred at Jobiah Hotel prompting the 1st Appellant and his agents to file a police report at Mukono Police Station. No doubt when the police arrived at the scene they arrested persons who had fliers and key holders bearing the 1st Respondent's 805 picture. While indeed we are cautious that elections are emotionally charged activities and that witnesses may sometimes be too partial to be truthful, we find that there

The page contains two handwritten signatures. The first is in blue ink and appears to be 'James' with a large flourish above it. The second is in black ink and appears to be 'Babu'.

was independent evidence in the form of police reports and police statements. Bribery incidences were reported to the police, the Police came to the scene, investigated and arrested some of the voters and some of those working for some voters and also collected some exhibits. The circumstances of this case provide proof on a balance of probabilities that the police in arresting persons involved in voter bribery did so in a professional and non-partisan manner.

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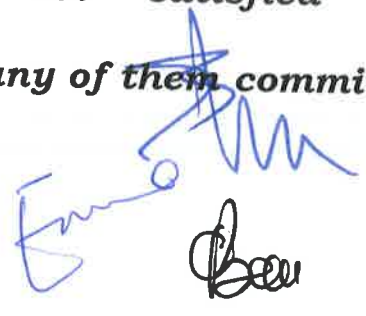
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Nicholas Twinomujuni's affidavit was very clear that gifts of money were given to voters with the intent to influence them vote for the 1st Respondent. He was urged by one Daniel Mutungi to vote for the 1st Respondent. This was equally the case with Gabriel Katto. The 1st Respondent dismissed the Appellants' evidence as fabricated and lacking in truth. The learned trial Judge believed the 1st Respondent and found as follows:

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".....I was not satisfied that the respondents or any of them committed illegal

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practices of bribery personally or with their knowledge and consent or approval.”

830 The trial Judge arrived at the above finding because, according to the Judge, he had found no evidence that David Mutungi was an agent of the 1st Respondent. We however find that the fact of the matter is that voter bribery occurred at Jobiah Hotel in Mukono. There is evidence of this on the Court record. The Police Officer AIP Nabeta who
835 was at the scene stated that the corridors of Jobiah Hotel were busy with election delegates flocking in and out of rooms with brown envelopes containing money on the eve of an election.

We further note that the trial Judge held that:

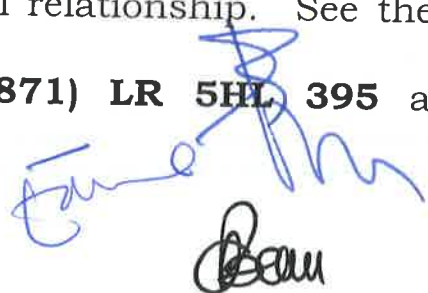
840 ***“The fact that a person was found in a hotel with key holders of a candidate will not necessarily translate into such a person being an agent of the candidate. Similarly, close relationship and by which names or
845 nomenclature such a relationship is***



designated, on its own is not evidence of agent for purposes of the electoral process”.

850 The trial Judge could only be correct only as far as stating that not every person found at Jobiah Hotel was an agent of the 1st Respondent. The trial Judge, however, failed to examine the levels of proximity this small Electoral College formed. The numbers were small and it was possible to identify persons who were acting for others.

855 An agent is a person authorized by another to act for him/her in his/her place. Agency is created by agreement, estoppels or by presumption. Where the agency relationship is established, then the principal is responsible for the foreseeable consequences of the acts of his/her agent. Agency is an area of law which creates obligations and legal relationship between third parties and a person called their agent. Agency is created either by a formal written contract, a quasi-contractual relationship or simply by fiduciary non-contractual relationship. See the case of
860 **Ireland V Livingstone (1871) LR 5HL 395** and also



**European Asian Bank AG V Punjab and Sind Bank No. 2
(1983) ICLR 642.**

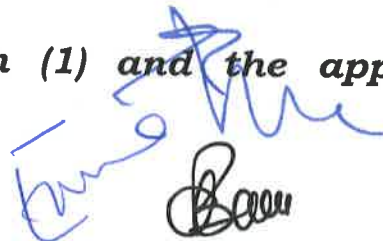
Contracts when expressly stated, form a valid relationship between an agent and a principal. An agent may be told expressly that he or she may act on behalf of a principal.

See: **Lockyer and Hely-Hatchinson V Brayhead Ltd [1967] QB 549.** The trial Judge in this case assumed that all agents are given actual authority stipulating the limits to which they can bind their principals. Under S. 32 of the PEA a polling agent is described. The section states as

follows:

(1)A candidate may be present in person or through his or her representative or polling agent at each polling station for the purposes of safeguarding the interests of the candidate with regard to the polling process.

(2)Not more than two representatives or polling agents shall be appointed by a candidate under subsection (1) and the appointment



shall be in writing addressed to the presiding officer of the polling station.

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(3).....

(4).....

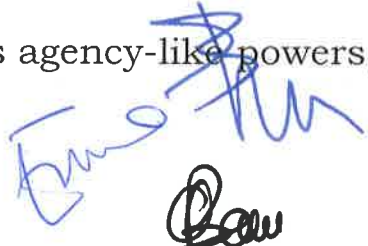
The agent referred to under S. 32 of the PEA is one who is procured specifically for purposes of safe-guarding the interests of the candidate with regard to the polling process. Such persons are therefore procured in writing, as polling agents, for a specific period. The purpose of requiring the agency to be in writing is to avoid political clashes and to maintain order at a polling station. Furthermore, for audit purposes, public funds can be appropriated to these persons and accounted for.

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With all due respect to the trial Judge, the polling agent is not the same as the political agent described by the evidence adduced at the trial in this Election Petition. There are agencies which are created by words and/or actions. Where for instance a politician appoints a person to a position which manifests agency-like powers, those who

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know that this agent is acting on behalf of the principal are entitled to assume that there is ostensible authority granted by the principal to this person to act on his/her behalf.

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If, as in this case a politician standing for Parliament creates the impression that a certain political assistant is his/her agent and is authorized to act when there is no actual authority, third parties who act on the impressions of the agent, will be protected by estoppels. The principal will be stopped from denying the existence of the agency to third parties. In the case of **Rama Corporation Ltd V General Investment Ltd 1952 (2) QB 147** Slade J held that:

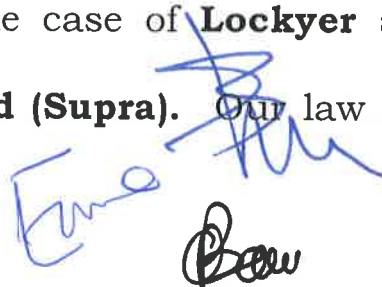
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“ostensible or apparent authority is merely a form of estoppels; indeed it has been termed agency by estoppels.....”

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The principal is liable for all the acts of the agent which are within the authority usually confided to an agent notwithstanding the limitations. Actual authority may be express or implied. See the case of **Lockyer and Hely-Hatchinson V Brayhead Ltd (Supra)**. Our law in Uganda

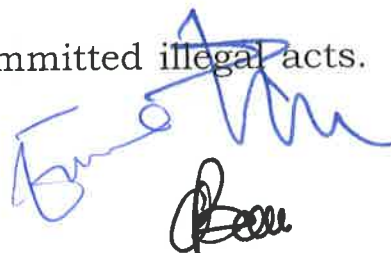
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is based on common law. Under common law contracts can either be written or unwritten.

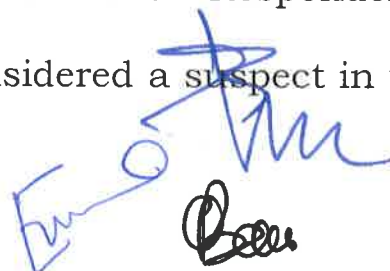
925 Similarly, agency relationships may be written or unwritten contracts. Indeed, while an agent at the polling station will, for the reasons stated earlier, ordinarily require a written contract most agents have ostensible power. In our view such was the case between David Mutungi and the 1st Respondent. As Counsel for the Appellants submitted, the 930 witnesses were right in relying on the representations of David Mutungi. He was held out at all material times as the 1st Respondent's agent as he gave out money in khaki envelopes, key holders and fliers bearing the photograph of the 1st Respondent to voters. It must be noted that the said 935 David Mutungi had earlier been seen at Namboole Stadium acting as the political agent of the 1st Respondent when the NRM party primaries were being held. This assertion was not rebutted with any credible independent evidence.

940 It is convenient to deny ostensible authority to an agent when he is found to have committed illegal acts. That way

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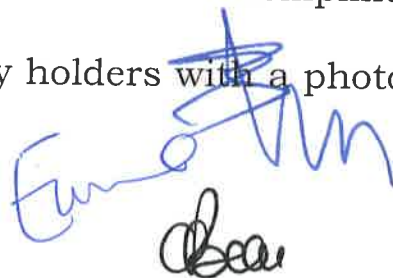
the principal assumes that the acts of impunity will not be visited on him. On his arrest Mutungi was found with paraphernalia such as key holders and leaflets with the pictures of the likeness of the 1st Respondent. On being arrested by Mukono Police Station, it was the 1st Respondent who went to the police station and secured his release. Indeed, the totality of the circumstances surrounding David Mutungi's conduct and arrest prove that he was ostensibly an agent of 1st Respondent. The trial Judge therefore erred in not finding so.

The final issue was whether there was voter bribery. Money in amounts of UGX. 200,000= was handed out in brown envelopes to potential voters such as Gabriel Katto, Nicholas Twinomujuni, James Mayanja, Wilber Baale Mayanja and Richard Burton Otto. Their evidence by way of affidavits remained credible. The trial Judge found the 1st Appellant not to be responsible for the acts of an unknown person. He accepted the reasoning of the 1st Respondent that he himself was after all not considered a suspect in the case of



960 bribery and was never required to appear for questioning by
the police.

965 Having re-evaluated all the relevant evidence, we find fault
with the reasoning of the learned trial Judge on this issue.
First, David Mutungi was known to the 1st Respondent not
just as his political assistant but as his agent and on being
arrested by Mukono Police Station, the 1st Respondent put
aside all pretences as he rescued David Mutungi from
police custody as one who was very close to him (1st
Respondent). The learned Judge's finding was therefore in
970 suppression of this evidence. Furthermore, the trial Judge
erred by associating police inaction against the 1st
Respondent with his (1st Respondent) innocence. The fact
that the police failed and/or neglected to take a statement
from Hood Katuramu, the 1st Respondent, did not mean
975 that he could distance himself from the illegal acts which
were perpetuated by his agent David Mutungi with his
implied knowledge and approval as was exemplified by the
distribution of leaflets and key holders with a photograph of



the 1st Respondent to those voters who also received brown envelopes containing money.

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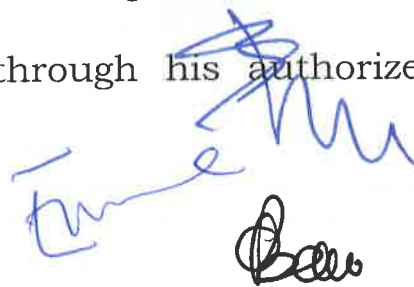
The 1st Respondent did not deny that he was at Jobiah Hotel at the time David Mutungi was carrying out his acts of bribery and campaigning on his behalf. No satisfactory explanation was given as to how David Mutungi came to be in possession of large quantities of key holders and flyers bearing the picture of the 1st Respondent as well as articles bearing his political symbol of a ball which he dished out to the PWD election delegates well-knowing that the 1st Respondent was a candidate in the race. The reasonable inference that can be drawn from the acts of Mutungi is that he was an agent of the 1st Respondent.

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Consequently, we find that indeed the learned trial Judge erred when he held that the 1st Respondent did not commit acts of bribery during the elections for persons with disabilities. We find that the 1st Respondent committed acts of bribery personally and through his authorized agent David Mutungi.

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**Allegations of Bribery against Hon. William Nokrach, the
2nd Respondent:**

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In order to prove the allegations of bribery against the 2nd Respondent, the Appellants relied on several affidavits. The evidence of John Gaston Napkol was that one Abdalla Lomogin looked for, found him and handed him UGX. 50,000=.

He stated that Lomogin said Nokrach had sent UGX. 50,000= for each of the five delegates from Moroto. Abdallah Lomogin in his affidavit stated that he had received UGX. 50,000= and another UGX. 50,000= from on Loporon and the extra UGX. 50,000= was to be given to Napakol. Lomogin stated that on arrival at Colline Hotel on the 21st of February, 2016 he received an envelope with UGX. One Million from Nokrach the 2nd Respondent as promised. He was urged to vote the 1st and 2nd Respondents and one Sofia Nalule Juuko. He shared the money amongst the five delegates from the Karimojong region, each receiving UGX. 200,000=.

On his part Lopron Philip stated that he received UGX. 250,000= by mobile money from William Nokrach the 2nd Respondent. He further stated that a call from Nokrach followed soon thereafter. He added that he shared the money equally among the five delegates of Moroto District who included John Gaston Napakol, Abdallah Lomogin, Joseph Lakoru and Veronica Lokes. Loporon further testified that on 21st February, 2016 Lomogin handed him UGX. 200,000= as money from one Hon. William Nokrach, the candidate to represent Lira PWDs in Parliament. He was convinced by one Emmy Odongo to vote the Respondents and Sofia Nalule Juuko.

The 2nd Respondent in his defence against the allegations of voter bribery states that he did not engage in any acts of bribery whether personally or through his agents, with his knowledge and/or consent or approval. He added that he did not de-campaign the candidature of the 2nd Appellant or any other candidate while at Colline Hotel, Mukono or elsewhere. The 2nd Respondent further stated that he did



not send mobile money to any delegates as an inducement for them to vote for him or to refrain from voting his opponents. He claimed that he did not hand out UGX. 1,000,000= to Jacan, neither did he send one Maliyamungu Ramadhan to call the said Jacan. He prayed that the evidence of Julius Jacan be discarded on account of bias. The 2nd Respondent added that he had never been to Karen Resort Hotel in Mukono and certainly not on the 22nd February, 2016. He thus denied meeting Jacan, Maliyamungu and one Achile Anguyo and or bribing them with Uganda shillings one million.

The 2nd Respondent further claimed that he was not aware of any complaint raised against him at Mukon Police Station regarding alleged voter bribery. He stated that he had never been summoned by the police or arraigned before any Court of law over allegations of bribery. He denied distributing envelopes containing UGX. 200,000= to voter delegates at Karen Resort Hotel. He further stated that he remained unaware of voter bribery arrests made whether at

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Jobiah Hotel or at Karen Resort Hotel. He maintained that he was a validly nominated, elected and winner of the election for persons with disabilities, Northern Uganda.

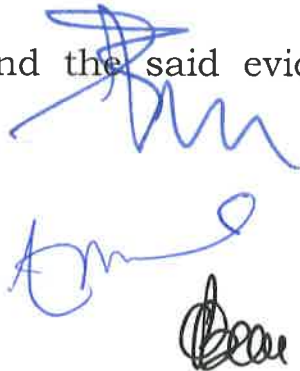
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Counsel for the 2nd Respondent relied on the evidence of Emmy Odongo and submitted that the evidence of Abdallah Lomogin and Philip Laparon had been rebutted when Emmy Odongo denied knowledge of Lomogin and Laparon. The 2nd Respondent further denied ever giving or receiving UGX. 1,000,000= to share with other delegates. The 2nd Respondent maintained that the allegations by Lomogin and Laparon were based on falsehoods and lies aimed at annulling the genuine and legitimate election victory of both Respondents.

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We have carefully examined the evidence of the witness for and against the 2nd Respondent. Emmy Odongo's evidence did not do much in denting the affidavit evidence of Napakol Laparon and Lomogin. We find the said evidence to be credible.

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Ground No. 4 stipulated that the learned trial Judge erred in law and in fact when he held that the 2nd Respondent did not bribe eighty-five voters to whom he had sent money via mobile money systems.

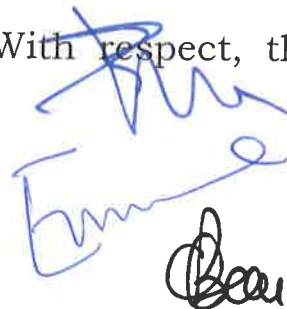
We observe that the trial Judge, in his Judgment stated simply that he was not satisfied that the Respondents or any of them committed illegal practices. He relied on the case of **Kiiza Besigye V Museveni: Presidential Election Petition No. 1 of 2006 (SCU)** where Katureebe JSC, as he then was, held:

“It is therefore not enough for a petitioner or agent or any person to merely allege that agents gave money to voters. A high defence of specificity is required. The agent must be named, the receiver of the money must be named and he or she must be a voter. The purpose of the money must be to influence this voter.”

The learned trial Judge had observed that PW15 (AIP Nabeta) had stated that he obtained a Court Order to access the MTN mobile money transaction print out for the 2nd Respondent. The print out had more than 400 entries and amongst the recipients were 85 voters. The trial Judge then noted,

“what was not stated was the purpose of the money transfers. It was not stated either whether these were not campaign agents of the sender, or whether the purpose of the transaction were other than lawful.”

Under S.8 of the Electronic Transaction Act 2011, a mobile money print-out is a form of data arising out of an electronic transaction and should be regarded as evidence of an electronic transaction. This information was given by MTN on request of the police. There was no reason to deny its existence simply because the Court Order related to the request was not provided. With respect, the trial Judge



ought to have admitted the mobile money transaction print
out as a piece of evidence.

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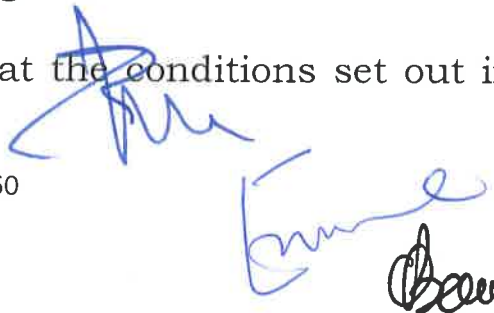
The evidence of D/AIP Nabeta on this matter was
compelling. He stated that he communicated with MTN
offices and was proved with the mobile money print outs
relating to the 2nd Respondent. The evidence before the
Court was that of the eighty-five recipients of the mobile
money transmitted by the 2nd Respondent, forty-five (45)
were voters. It was further proved that the mobile money
transfers took place between December, 2015 and
February, 2016 which time was the election period.

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While witnesses such as Lomogin and Napakol did
specifically state that the money they received was cash,
Laparon stated that he received a mobile money transfer on
mobile phone which was immediately followed by a phone
call from the 2nd Respondent. The witness stated that they
were instructed by the 2nd Respondent to share the money
equally with all the delegates from Moroto District. The
above evidence proved that the conditions set out in **Kiiza**

1125

The page contains three handwritten signatures in blue ink. The top signature is a stylized, cursive name. Below it is another signature that appears to be 'Laparon'. To the right of the second signature is a third signature, possibly 'Bee'.

Besigye v Museveni case were satisfied. (Supra). The giver and receiver of the money were named. The receivers were voters and the purpose was declared namely; to influence the voting by choosing a particular candidate in consideration of the gratification received.

In his evidence the 2nd Respondent accepted that Emmy Odongo was his agent. He further accepted that he knew the Electoral College voters from Moroto District. His defence was that persons such as Jacan and Otto were so opposed to him that Curt should disbelieve anything they said.

What cuts across all the testimonies of all the witnesses is that they stated that the candidates dished out money and gifts to voters. On further scrutiny, we find that the 2nd Respondent did offer to voters money via mobile phone transfers with the intention of influencing them to vote for him. We accordingly allow ground 4 of the appeal.

Under Ground No. 5 the Appellants' Counsel faulted the trial Judge for not properly evaluating the evidence before

him and thus arriving at wrong conclusions. We have
scrutinized the record, evidence, submissions and
Judgment of the High Court. Our findings are that had the
1150 learned trial Judge properly scrutinized the evidence before
him, he would have probably arrived at different
conclusions. This however was not the case.

In ground No. 2 we found that the learned trial Judge erred
in law and in fact when he found that David Mutungi was
1155 not an agent of the 1st Respondent when in fact the
evidence adduced ostensibly held him out to be an agent of
the 1st Respondent.

In ground No. 1 we concluded that the learned trial Judge
erred in law and in fact when he held that the 2nd
1160 Respondent possessed academic qualifications to stand as a
Member of Parliament whereas not.

We further find that after subjecting all the evidence to
fresh scrutiny, both Respondents personally and through
their agents, with their knowledge and consent or approval
1165 implied or actual, with the intention to influence voters,

involved themselves in an illegal practice of bribery of voters. We accordingly allow ground 5 of the appeal.

Under S.61(1) (c) evidence of illegal practices renders an election null and void.

1170 Consequently, we find that the 1st Respondent and 2nd
Respondent were not validly elected as Members of
Parliament representing Persons With Disabilities (PWDs).

1. We therefore set aside the elections and nullify the
election to Parliament of the 1st and 2nd Respondents;
1175 namely Hon. Hood Katuramu, the Member of
Parliament, PWDs representative for Western Uganda
and Hon. Nokrach William Wilson, PWDs
representative for Northern Uganda.

2. We hereby order that fresh elections for PWDs be
1180 conducted for Western and Northern Uganda.

3. The Appellants are awarded the costs of the appeal
and those in the Court below with a certificate for two
Counsel.



Two handwritten signatures in blue ink are present at the bottom right of the page. The upper signature is a stylized, cursive name, possibly 'Funde'. Below it is another signature, possibly 'Ben'.

1185 4. Having found that bribery was committed under
Section 68 of the PEA Court directs the Registrar of
this Court to prepare a written report and forward the
same together with a copy of this Judgment to the
Director of Public Prosecutions to take appropriate
action as regards the two Respondents as well as one
1190 David Mutungi, and any other persons, as the DPP
may decide upon, as regards the bribery committed as
found by this Court in this Election Petition Appeal.

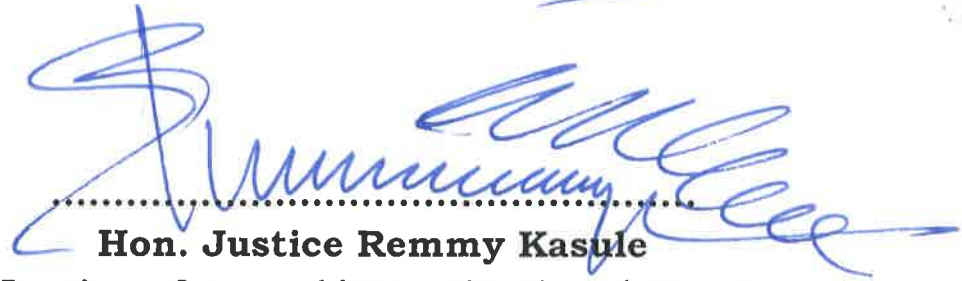
Per-incuriam:

1195 Before we take leave of this Appeal we would like to
recommend to Parliament that a law be passed or a
section included in the respective Election Laws which
precludes a person who is found to have committed
illegal acts during an election from standing for office for
at least two terms or ten years like it is in the Anti-
1200 Corruption Act.

As it is now, the law does not prevent any of the parties against whom illegal practices are imputed in an Election Petition Judgment from contesting in an election re-run.

Dated at Kampala this ^{25th} day of ^{May} 2017

1205



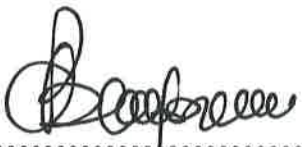
.....
Hon. Justice Remmy Kasule
Justice of Appeal/Constitutional Court

1210



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Hon. Justice Elizabeth Musoke
Justice of Appeal/Constitutional Court

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Hon. Justice Catherine Bamugemereire
Justice of Appeal/Constitutional Court

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