

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF MBARARA**  
**ELECTION PETITION NO. 008 OF 2016**

**TURYAMUREEBA PAUL KAHIGI ..... PETITIONER**

**VERSUS**

-05

**1. BASAJABALABA JAFARI**

**2. THE ELECTORAL COMMISSION.....RESPONDENTS**

**BEFORE: HON. JUSTICE DAMALIE N. LWANGA**

**JUDGMENT**

This election petition arises from the elections for District Chairpersons of Local Council (LCV) which were held on 24<sup>th</sup> February 2016 throughout the country. The Petitioner and the 1<sup>st</sup> Respondent participated in the elections as candidates for the position of LCV Chairperson of Bushenyi District Local Government Council.

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The elections were organized by the 2<sup>nd</sup> Respondent under its Constitutional mandate as provided in Article 61(1)(a) and (2), of the Constitution. At the end of the voting the 1<sup>st</sup> Respondent was declared the winner with 29,862 votes, representing 55.05% of the total votes cast, and was gazetted by the 2<sup>nd</sup> Respondent under General Notice No. 256 of 2016 in Vol. CIX No. 26 of the Uganda

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Gazette dated 25<sup>th</sup> April, 2016. The Petitioner got 24,379 votes, which translates into 44.95% of the votes cast.

The Petitioner being dissatisfied with the outcome filed this petition on 9/5/16 against the Respondents. In summary he alleges that the election was conducted contrary to and in contravention of the Constitution, The Electoral Commission Act, The Local Governments Act (LGA) and The Parliamentary Elections Act. He further contends that the election of the 1<sup>st</sup> Respondent was invalid on grounds that the entire election was tainted with numerous electoral malpractices, illegal practices, wide spread rigging in favour of the 1<sup>st</sup> Respondent, commission of election offences and general failure by the 2<sup>nd</sup> Respondent to organize and conduct the election in a free and transparent manner in accordance with the law, which affected the overall result of the election in a substantial manner.

The particulars of the Petitioner's allegations were set out in the petition and in his affidavit in support of the petition, in which he averred that he was informed about incidents of bribery, intimidation, violence, issuing of threats, undue influence, harassment by the agents of the 1<sup>st</sup> Respondent; and disenfranchisement of voters by the agents of the 2<sup>nd</sup> Respondent. He further stated that the declaration of results forms reveal incidents of falsification/change of results where the 2<sup>nd</sup> Respondent gave his results to the 1<sup>st</sup> Respondent at some polling stations, and added more votes to the 1<sup>st</sup> Respondent than what he had got in another case. He alleged that the 1<sup>st</sup> Respondent was the direct beneficiary of all the illegal practices and electoral offences, which were committed by his agents with his knowledge and

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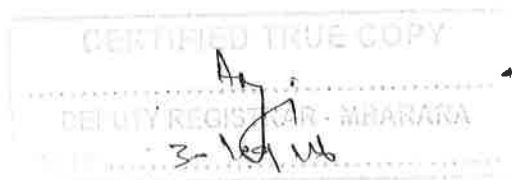
approval. Affidavits of three other witnesses were filed in support of the petition.

The Petitioner sought the following declarations, that:

- i. The 1<sup>st</sup> Respondent was not validly elected Chairperson of Bushenyi District. - 65
- ii. The Petitioner is the validly elected Chairperson of Bushenyi District.
- iii. Alternatively that election results for the District Chairperson Bushenyi be set aside and or nullified and a new election held. - 70
- iv. New, independent and impartial Returning and Polling Officials should conduct the new election.
- v. The Respondents pay costs of this petition.

The 1<sup>st</sup> Respondent filed his answer to the petition on 20/5/16. The answer was supported by the affidavit of the 1<sup>st</sup> Respondent in which he denied all the allegations in the petition and pleaded that the election was conducted in a peaceful, free and fair manner; in accordance with the principle of transparency; and in compliance with the electoral laws of Uganda. He specifically denied the allegations of bribery, voter buying, intimidation, violence, threats, undue influence, harassment and disenfranchisement of voters; and falsification or change of results. Eight other people deponed affidavits in support of the 1<sup>st</sup> Respondent's answer to the petition. - 15

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The 2<sup>nd</sup> Respondent also filed an answer to the petition on 23/5/16 and denied all the election irregularities alleged by the Petitioner. Its answer was supported by the affidavit of Mr. Mbabazi Godfrey, the Returning Officer of Bushenyi District. He averred that the election was conducted in accordance with the provisions and principles laid down in the Parliamentary Elections Act and Local Governments Act, and the outcome is a true reflection of the will of the people of Bushenyi District. He denied pre-ticking of ballot papers and falsification of results; and explained that the alleged falsification was actually typographical errors that occurred due to human mistakes, but they were minor and did not affect the results in a substantial manner. -05

On 16/6/16 the Petitioner filed 9 additional affidavits in support of the petition. However, his application to have them allowed and validated by court was declined, and they were expunged from the record as they were found to be prejudicial to the Respondents. This left the three affidavits of the Petitioner, Baryaraha Yerima, and Nuwagira Elias which were initially filed with the petition as the only evidence in its support. It also left the allegations of intimidation, harassment, arresting of agents and disenfranchisement of voters unsupported. Here below listed are the affidavits which were expunged: -10

Byaruhanga Yerima -20

Mutasingwa John Bosco

Beyongyeire Hannington

Kyomuhangi Justine

Kankiriho Deogratias



Ahimbisibwe Dezi

Kasiime Abert

Bahabuka Michael

Kasimbura Bernard

The Petitioner was represented by Mr. Bwiruka Richard while the first Respondent was represented by Mr. Paul Tusubira, Mr. Joseph Kyazze and Mr. Alexander Kibandama. Mr. Edwin Tabaro, Mr. Justus Karuhanga and Mr. Andrew Mausso represented the 2<sup>nd</sup> Respondent. - 05

At the trial the following issues were framed for court's determination:- - 10

1. Whether there was non-compliance with the law in the election held on the 24<sup>th</sup> day of February, 2016 for Chairperson Bushenyi District LCV.
2. If so whether such non-compliance with the law affected the results of the election in a substantial manner. - 15
3. Whether the 1<sup>st</sup> Respondent personally or with his knowledge and consent or approval committed any illegal practice or election offence of bribery.
4. What remedies are available to the parties? - 20

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At the scheduling court granted leave to the parties to cross examine all the witnesses of the other parties. However, some witnesses of the 1<sup>st</sup> Respondent were never availed for cross examination by the Petitioner. Learned counsel for the Petitioner submitted that the affidavits of those witnesses who were not produced for cross examination are unreliable. Learned counsel for the 1<sup>st</sup> Respondent however, contended that the court is entitled to consider the evidence of those deponents, since the burden of proof lies not on the Respondents but on the Petitioner to prove his case, and the strength of his case depends on the cogent evidence he adduces, not on the weakness of the Respondent's case. -09

It is true that the burden of proof lies on the Petitioner. However, if the Respondents decide to file affidavits in support of the answer to the petition, they must avail the deponents of those affidavits for cross examination by the Petitioner if court so directs. I agree with counsel for the Petitioner that failure by the 1<sup>st</sup> Respondent to avail his witnesses for cross examination renders their affidavit evidence the weakest and unreliable. See **Paddy Kabagambe & Another Vs. Bwambale Bihande Yokasi & Another, Fort Portal Election Petition No. 11 of 2006.** -10

Mr. Bwiruka also prayed that the affidavit of RW3 Mohammed Lukwago be struck out for lack of the required *Jurat* yet the witness is an illiterate. On the other hand learned counsel for the 1<sup>st</sup> Respondent argued that there is no evidence that RW3 is illiterate within the meaning of **The Illiterates' protection Act.** -15

**Section 1(b) of The Illiterates Protection Act** defines an illiterate as a person who is unable to read and understand the script or language in which the document is written or printed. In reference to what transpired in court RW3 was asked to read paragraph 4 of -20

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his affidavit. He tried to read did it, but with a lot of difficulty, and wrong/unclear pronunciation of many words. When asked what the contents of that paragraph meant he could not understand them, and he gave court the wrong interpretation. In fact he said that the paragraph means that the elections were not free and fair, which is the direct opposite of what is stated there. Since the witness cannot understand the contents of his own affidavit, his affidavit should have been recorded, read and translated to him as required under **Section 3 of The Illiterates Protection Act**, and the **Oaths Act**, with the required *Jurat*. The non-compliance with the law in this respect cannot be treated as a mere technicality, since cross examination revealed that the witness actually does not know or understand the contents of his affidavit. The affidavit of Mohammed Lukwago is therefore not reliable. It is accordingly struck out for non-compliance with the law.

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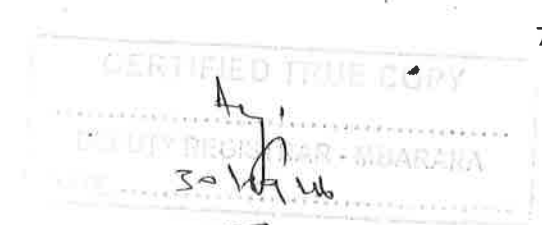
After the hearing counsel for all the parties filed written submissions, with leave of court.

The position of law on the burden and standard of proof in election petitions was well stated by counsel for the Petitioner and counsel for the 1<sup>st</sup> Respondent. The burden of proof lies with the Petitioner who has to prove the allegations set out in the petition to the satisfaction of court. Under **Section 61(3) of the Parliamentary Elections Act** the standard of proof is on a balance of probabilities; but the degree of probability is higher than in ordinary civil suits because of the nature of the dispute and the allegations, as held in **Mukasa Anthony Harris Vs. Dr. Bayiga**

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Michael Lulume, Supreme Court Election Petition Appeal No. 18 of 2007; Mugema Peter Vs. Mudiobole Abedi Nasser, Court of Appeal Election Petition Appeal No. 30 of 2011; and Byamukama James Vs Kaija William and Another, High Court Election Petition No. 09 of 2006. -05

**Issue No. 1 - Whether there was non-compliance with the law in the election**

In his submissions learned counsel for the Petitioner addressed bribery, campaigning beyond the campaign period, and falsification of results as evidence of non-compliance with the law. -10  
However, counsel for the 1<sup>st</sup> Respondent argued that since bribery is an election offence which is an illegal practice and one of the grounds under which an election may be set aside, considering it as an aspect of non-compliance with electoral laws which should be in regard to failure by the Electoral Commission to carry out its electoral duties and is also a ground for setting aside an election is a misnomer. -15  
He cited **Lanyero Sarah Ochieng & Another Vs. Lanyero Molly, Court of Appeal Election Petition Appeal No. 032 of 2011**. In that case the Court of Appeal emphasized the need to draw a distinction between non-compliance with the provisions of the Act relating to elections, and bribery as an illegal practice which does not amount to non-compliance but is a ground for setting aside elections; and held that the two cannot be interchangeably used to support conclusions on the two situations. -20

Applying the above interpretation of the Court of Appeal to this case, I will not address bribery as an aspect of non-compliance with the law, as submitted by counsel for the Petitioner. It will be -25

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discussed under issue No. 3 where it fits as an election offence/illegal practice, which is a distinct ground under which an election may be set aside.

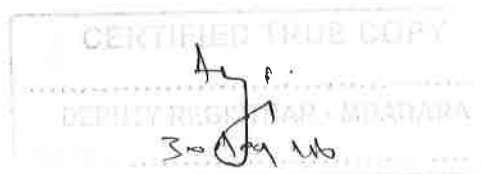
I will now proceed to consider the evidence adduced in respect to the allegations of the Petitioner. As rightly conceded by learned counsel for the Petitioner there is no evidence on record to support the allegations of Intimidation, Harassment, Arresting of agents and Disenfranchisement of voters for this court to consider. I will not address them. Similarly, the allegation of a promise by Basajabalaba to treat children below 5 years of age free at Kampala International University (KIU) Hospital was not supported by evidence. It is therefore not worthy of consideration by court. - 05 - 10

For convenience I will address the allegation of Campaigning beyond the campaign period together with Issue No. 3. - 15

### **Falsification of results**

The Petitioner alleged falsification of results at two polling stations namely Bumbaire Sub county Headquarters polling station and Nyanga Parish Headquarters polling station. He averred in paragraph 9 of his affidavit in support of the petition that at Bumbaire polling station he polled 142 votes and the 1<sup>st</sup> Respondent got 115 votes but the 2<sup>nd</sup> Respondent interchanged the votes and indicated on the tally sheet that he got 115 votes and the 1<sup>st</sup> Respondent polled 142 votes. At Nyanga polling station the 1<sup>st</sup> Respondent - 20

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Respondent got 247 votes but on the tally sheet he is shown to have got 347 votes. The declaration forms indicating the correct results and the tally sheets where the wrong information was recorded, were attached to the Petitioner's affidavit as **Annextures A3, A4 and A5.**

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The alleged anomalies are clear on those documents as stated by the Petitioner, and they were admitted by RW6 the returning officer responsible. At Bumbaire the swap in the votes of the two candidates benefited the 1<sup>st</sup> Respondent by 27 votes, while at Nyanga he benefited by 100 votes, making the total additional votes that he got 127. Learned counsel for the Petitioner argued that the Petitioner was much affected by the errors of the returning officer, which he never corrected although he had powers to correct them before gazetting the winner, under **Section 137 of the Local Governments Act.**

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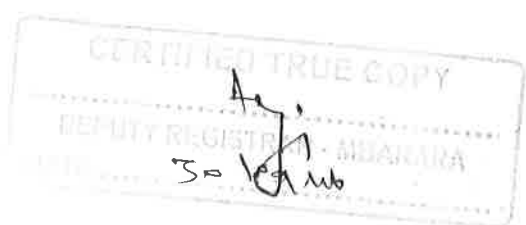
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However, the Returning officer of Bushenyi District swore an affidavit in support of the 2<sup>nd</sup> Respondent's answer to the petition, and testified as RW6. He explained that those were typographical errors, and they did not substantially affect the result of the election. In cross examination he said that he only noticed the errors after declaration of results and that at that stage he had no power to make any corrections on the tally sheets. In Re examination he stated that they were human errors which always arise in the process of computing results. He also explained that even if the errors were corrected and the 127 votes added back to the Petitioner's votes it would not substantially change the results because the 1<sup>st</sup> Respondent scored 29,862 votes overall while the Petitioner scored 24,379 votes; that Addition of the 127 votes

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would not raise his percentage to reduce the 1<sup>st</sup> Respondent's 10% winning percentage by even 2%.

RW6 further told court that similar errors were registered at Bijenje Parish headquarters and Kakira Primary School polling stations. Indeed the results declaration forms and the tally sheet (Annexures A1, A2 and A3 on the 1<sup>st</sup> Respondent's answer to the petition) show that at the Bijenje polling station where the 1<sup>st</sup> Respondent polled 106 votes and the Petitioner 88 votes the votes were swapped as those of the 1<sup>st</sup> Respondent were given to the Petitioner and vice versa. At Kakira polling station the Petitioner got 188 votes and the 1<sup>st</sup> Respondent got 207 but on the tally sheet they were interchanged to indicate that the Petitioner polled 207 votes and the 1<sup>st</sup> Respondent 188 votes. These errors benefited the Petitioner.

It is clear from the above evidence that there were errors made by the 2<sup>nd</sup> Respondent in the election, which point to non-compliance with the laws. I so find.

**Issue No. 2 - Whether such non-compliance with the law affected the results of the election in a substantial manner.**

I have already found that there were errors in the results of both the Petitioner and the 1<sup>st</sup> Respondent. The errors are admitted by all the parties. The Petitioner was asked about the errors at Bijenje and Kakira during cross examination and he said he was aware that at Bijenje and Kakira the higher votes of the 1<sup>st</sup> Respondent were swapped with his lower votes in his favour, but he had not seen those errors and he was not party to the falsification. He also admitted that even if all the errors on the tally sheet were to be

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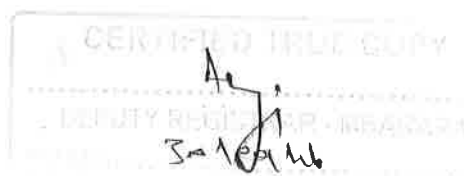


corrected the 1<sup>st</sup> Respondent would still beat him by a margin of over 4,500 votes.

Basing on the above evidence I am satisfied that the wrong votes entered for the Petitioner and the 1<sup>st</sup> Respondent on the tally sheet were due to inadvertent errors that occurred during the recording, which affected both parties. In some instances these errors benefited the 1<sup>st</sup> Respondent while in others they benefited the Petitioner. I find no evidence to show that the errors were deliberate and intended to falsify results or to give the 1<sup>st</sup> Respondent advantage over the Petitioner, as he argued. It is also clear that the errors that were registered on the tally sheet did not substantially affect the results of the election, since even if they were to be corrected the 1<sup>st</sup> Respondent would still remain the winning candidate with a wide margin.

**In Hon. Oboth Marksons Jacob Vs. Dr. Otiam Otaala Emmanuel, Election Petition Appeal No 38 of 2011** the Court of Appeal found that since the Appellant had been declared and gazetted with a winning majority after the election, the exclusion of the results of the 5 polling stations notwithstanding, and given the fact that the Appellant won at all the said 5 polling stations, the Appellant won by an overall majority of 1,176, and he would still remain the winning candidate whether the results of the 5 polling stations were included or excluded in the overall results of the election in the constituency. Hence whatever non-compliance with the law and the principles therein did not affect the winning majority of the Appellant in any substantive way. The court cited **Supreme Court Presidential Election Petition No. 01 of 2006, Col. Dr. Kizza Besigye Vs. Electoral Commission & Yoweri**

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Kaguta Museveni where it was held that 'substantial' is a question of numbers. The Supreme Court also said:

*“.....some non-compliance or irregularities of the law or principles may occur during the election, but an election should not be annulled unless they have affected it in a substantial manner. The doctrine of substantial justice is now part of our constitutional jurisprudence. Article 126(2)(e) of the constitution provides that in adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the principle, among others, that substantial justice shall be administered without undue regard to technicalities. Courts are therefore enjoined to disregard irregularities or errors unless they have caused substantial failure of justice”.*

The same case was also cited in **Businge Fred Police Vs. Kithende Kalibogha & Another, Fort Portal High Court Election Petition No. 05 of 2006**, that it cannot be said that numbers are not important; and that the provision of the law can only mean that the votes of a candidate obtained would have been different in a substantial manner if it were not for the non-compliance.

In this case the 1<sup>st</sup> Respondent won with a total of 29,862 votes representing 55.05% of the total votes cast while the Petitioner polled 24,379 votes, which represents 44.95%. The difference between the 1<sup>st</sup> Respondent and the Petitioner was 5483 votes. If the 127 votes which were wrongly given to the Respondent were to be deducted from him the difference would be 5356 votes, and he would still be the winner, with a wide margin. I therefore find that whatever non-compliance with the law that did occur cannot be a

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The petitioner alleged two incidents of bribery:

### 1. Bribery at St. Kaggwa Catholic Parish

The witness on this allegation of bribery is PW1 Baryaruha Yerima, a Catechist of Bwera Hiika. He swore an affidavit in support of the petition in which he averred that on 22/2/16 he attended a meeting organized by Hassan Basajabalaba who was in company of 5 other people at St. Kaggwa Catholic Parish. He named 4 other people who attended the meeting with him. He said that each of the catechists was given 50,000/= by Hassan Basajabalaba to vote for the 1<sup>st</sup> Respondent. -05

Deogratiuous Banturaki one of the catechists alleged to have attended the meeting swore an affidavit in support of the 1<sup>st</sup> Respondent's answer to the petition. He averred that he attended the meeting, but neither he nor any other person was given any money in order to vote for the 1<sup>st</sup> Respondent. In court he testified as RW5 and during cross examination he made a correction that the meeting he attended was at Kanyamabana Primary School and not at St. Kaggwa Catholic Parish. His explanation for the incorrect statement of the venue in his affidavit was that it was a mistake. I however, do not find that explanation plausible. He told court that his affidavit had been read and translated to him before he signed it, as was stated in the *jurat*. Since RW5 admitted that his affidavit was read back to him before he signed it, he had the opportunity to correct any mistakes found in it. This departure by RW5 from some facts in his affidavit raises issues of credibility of his evidence. A witness cannot be allowed to change the facts that -10  
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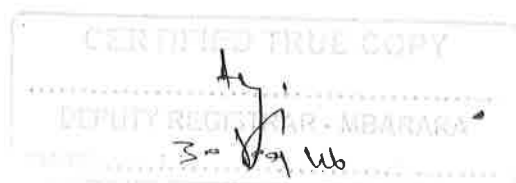


he stated on oath in such circumstances. I find RW5 to be an unreliable witness. I will therefore disregard his evidence.

RW4 Silver Nkahikaho the Chairman of St. Kaggwa Catholic Centre is another person who is alleged to have attended the said meeting. He also deposed an affidavit in support of the answer to the petition and denied the allegations by PW1 that he attended the meeting with him and that they were all given money, to vote for the 1<sup>st</sup> Respondent. However, during cross examination he told court that on that day he saw Hassan Basajabalaba and the other people said to have been in his company, meeting people at a rally at St. Kaggwa playground, which is not far from St. Kaggwa Catholic Parish. Learned counsel for the Petitioner argued that this corroborates the evidence of PW1.

The above evidence shows that Hassan Basajabalaba and his team held a rally near St. Kaggwa Catholic Parish on 22/2/16. The issue however, is whether that is sufficient corroboration of the allegation that he held a rally at St. Kaggwa Catholic Parish, where he bribed each catechist with 50,000/= so that they vote for the 1<sup>st</sup> Respondent. I note that none of the catechists who PW1 alleged to have attended the meeting swore an affidavit confirming the meeting, or the bribe. The Chairman of St. Kaggwa Catholic Parish (RW4) testified that he was around but he never attended the meeting alleged by PW1. He also said that he never saw PW1 at all on 22/2/16. Noteworthy is the fact that PW1 made no mention of the rally at St. Kaggwa playground. The total sum of this evidence is that PW1 and RW4 saw Basajabalaba in the same area, but at different venues of rallies. The alleged corroboration is therefore not of much use to court.

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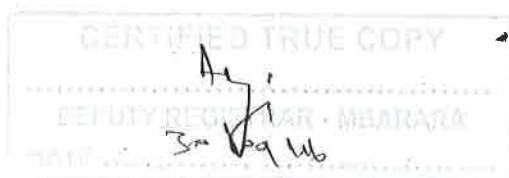


During cross examination PW1 testified that meetings for Catechists are usually called by the Head Catechist, and are attended by the Parish Priest who is the custodian of the parish premises, and his assistant. Noting that Basajabalaba is a Muslim, he admitted that it is not usual for a non Catholic to call a meeting for Catechists. He further told court that permission for meetings in the parish premises is given by the Parish Priest or the Head Catechist in consultation with the Parish Priest. As submitted by counsel for the 1<sup>st</sup> Respondent, there is no explanation as to how Hassan Basajabalaba, a Muslim came to organize a meeting for Catechists who are Catholic Church leaders, at a Catholic Parish. Although PW1 said that the Head Catechist attended the meeting the said Head Catechist never swore an affidavit, and there is no evidence of who gave permission for the meeting.

Further, PW1 is a self professed criminal and an accomplice under **Section 147(1) and (2) of the Local Government Act**, because he received and accepted the bribe of 50,000/= from Basajabalaba. The bribery evidence of such a witness requires corroboration. I am persuaded by the following statement in the case of **Kadama Mwogezaddembe Vs. Wambuzi Gagawala & Another, Election Petition No. 02 of 2001** which was cited by counsel for the 2<sup>nd</sup> Respondent:

*“Second, bribery is a criminal offence and indeed an election offence. Both the giver and the receiver of a bribe are culpably responsible. Byansi as alleged receiver of a bribe becomes an accomplice, a person associated with another person in the commission of an offence. Evidence of an accomplice is admissible. However, as a matter of prudent practice, it requires corroboration, evidence which confirms and supports other*

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*evidence. In the absence of corroboration, it remains a confession of the alleged receiver of a bribe, which I have already stated is not conclusive. In the instant case, the evidence of Byansi about receiving a bribe from Bwire or Kintu to vote for candidate Wambuzi lacks corroboration. Byansi's evidence about bribery is therefore not of much help to court."*

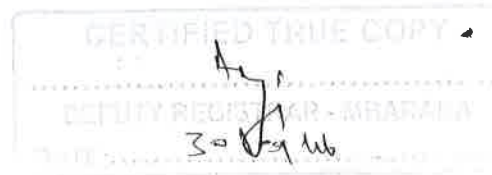
In the present case too since the evidence of PW1 lacks corroboration yet he is an accomplice, it is not sufficient to prove the bribery at St. Kaggwa Catholic Parish.

## **2. Campaigning beyond the campaign period; and bribery at Hassan Basajabalaba's Home**

Learned counsel for the Petitioner correctly stated that campaigns should have stopped 24 hours before polling day. RW6 confirmed this and told court in cross examination that lawful campaigns ended on 22/2/16; and that any campaigns on 23/2/16 would be in breach of the law. Counsel for the Petitioner relied on the evidence of PW2 that the 1<sup>st</sup> Respondent held a meeting at the home of Hassan Basajabalaba on 23/2/16, and argued that the said meeting was a campaign meeting which occurred outside the campaign period, therefore the 1<sup>st</sup> Respondent acted in breach of the law.

PW2 Nuwagira Elias averred in his affidavit that on 23/2/16 he attended a meeting organized by Basajabalaba at his home at Rwemirokora, together with Musiime Babinyangira and Beteth Magezi, among others. He alleged that at the meeting Basajabalaba was in company of the 1<sup>st</sup> Respondent, Magyezi Raphael (MP), Matia Mbebembire (RW2), Mwebiha Olden and many other dignitaries, and it was attended by all village NRM Chairpersons,

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NRM Youth Chairpersons and NRM Women Chairpersons from Bushenyi District. He stated that at the meeting Basajabalaba asked them to vote for the 1<sup>st</sup> Respondent and promised to give a cow to the cell which voted highest, and each Chairperson including himself was given 305,000/= of which 25,000/= was for the Chairperson while the balance was for distribution to voters in their respective villages. He acknowledged receipt of the money in writing. - 05

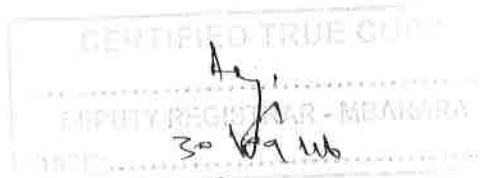
Learned counsel for the Petitioner submitted that the bribery at Basajabalaba's home was proved as PW2 was specific and unshaken in cross examination, and his evidence should be believed, since Basajabalaba never appeared for cross examination. He implored court to find that Basajabalaba was an agent of the 1<sup>st</sup> Respondent, and that he committed the offence of bribery. - 10

However, learned counsel for the 1<sup>st</sup> Respondent challenged the evidence of PW2 for lack of evidence that he and the other recipients are registered voters; failure by the other recipients to swear affidavits to corroborate his accomplice evidence; and his failure to report the alleged bribery to the authorities. - 15

Counsel for the 2<sup>nd</sup> Respondent also submitted that the allegations by PW2 cannot stand in absence of corroboration since it is accomplice evidence, which is not corroborated. They also pointed out that "campaigning beyond the campaign period" was never pleaded as a malpractice. Further that the affidavit of PW2 does not disclose the type of meeting he attended at the home of Basajabalaba, whether it was a consultative or campaign meeting. - 20

It is true that the allegation of campaigning outside the campaign period was never specifically pleaded, but the affidavit of PW2 - 25

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stated that he attended a meeting at the home of Basajabalaba on 23/2/16, which was outside the campaign period. I however, note that PW2 gave no details of the meeting. He did not state the time of the meeting, the role played by the 1<sup>st</sup> Respondent, or anything else that transpired at the meeting, apart from the allegation of bribery by Basajabalaba; yet the meeting was denied by the 1<sup>st</sup> Respondent. -05

The evidence of PW2 was rebutted by the 1<sup>st</sup> Respondent who averred in his affidavit that neither him nor Basajabalaba ever distributed money at his home. During cross examination he denied having attended the alleged meeting at the home of Basajabalaba on 23/2/16, and said that he was not aware about such a meeting; in fact on that day he was busy preparing for the election day with his agents. He denied that Basajabalaba was his agent and told court that he never attended any rallies with him, except that Basajabalaba campaigned for him like all NRM officials campaigned for all NRM flag bearers at rallies organised by themselves (NRM officials); but that he never attended those rallies because he had his own campaign programme. He said that he does not know PW2 or Olden Mwebiha. He also testified that he knows Matiya Mbebembire (RW2) but he never attended any campaign meeting or rally with him, because he was busy with his own campaigns. -10  
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RW2 Matiya Mbebembire who was alleged to have attended the meeting at Basajabalaba's home also swore an affidavit in support of the 1<sup>st</sup> Respondent's answer to the petition in which he averred that the allegations of bribery by the 1<sup>st</sup> Respondent and Basajabalaba are false. During cross examination he told court that he has never attended any rally with the 1<sup>st</sup> Respondent, and also -25

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that he never attended any rally with Basajabalaba during the 2016 election campaigns. During re examination he denied having gone to the home of Basajabalaba for a meeting on 23/2/16, and said that he was never invited for the said meeting. He told court that the allegations by PW2 that he attended a meeting with him are -05  
lies.

There was no rejoinder to the affidavit of the 1<sup>st</sup> Respondent's affidavit in support of his answer to the petition in which he denied being invited to or attending the meeting at the home of Basajabalaba, or that of RW2. Further none of the people who -10  
allegedly attended the said meeting swore an affidavit to corroborate the evidence of PW2.

The evidence of PW2 lacks corroboration yet he is a self professed criminal who received a bribe, hence the need for corroboration of his evidence as held in **Kamba Saley Moses Vs. Hon. Namuyangu Jennifer** (supra); and **Kadama Mwogezaddembe Vs. Wambuzi Gagawala & Another** (supra). It was also stated by the Court of Appeal in the case of **Odo Tayebwa Vs. Basajabalaba Nasser and Another, Election Petition Appeal No. 013 of 2011** which was cited by counsel for the 1<sup>st</sup> Respondent, that clear and unequivocal proof is required before a case of bribery will be held to have been proved; and that the trial judge correctly held that the confession of the person alleged to have received a bribe is not conclusive to meet the required standard of proof. -15  
-20

Learned counsel for the Petitioner admitted that since an election is an adversarial event, corroboration would be necessary before allowing evidence of bribery where there is only one witness, as held in **Dr. Bayigga Michael Philip Lulume Vs. Hon. Mukasa** -25

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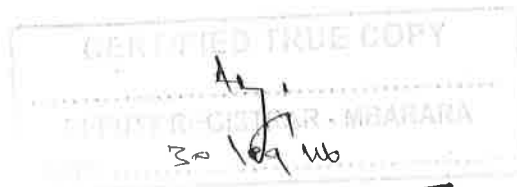
**Anthony Harris and Another, Jinja High Court Election Petition No. 06 of 2006.** He however, relied on the decision of the court as it accepted the evidence of the sole witness to a bribery allegation as having proved it without corroboration.

However, upon perusal of that case I note that the court considered several factors before believing the single witness including the fact that he was an independent witness, not a supporter or agent, and he was very exhaustive in the particularities he gave of the incident. The witness gave the time of the rally at which the bribe was given to have been 10.00 am; he said he was the Master of Ceremony at the rally; he gave the point at which the 1<sup>st</sup> Respondent offered 250,000/= as being after his address; that he handed the money to Kimali who in turn handed it over to Kiwanuka Mukasa who distributed it to each village representative; the money was in 50,000/= notes; the witness counted it together with Kiwanuka Nuwa; he (witness) received 20,000/= as the share for Lubongi village; that the 20,000/= was used by Lubongi village to buy a saucepan to be used by residents during family functions, but they had to top it up with 5,000/= as the saucepan cost 25,000/=; among others.

I must say that the instant case is distinguishable as no such particulars were given by PW2, which would compel court to accept his evidence without corroboration. PW2 did not even mention the time that the alleged meeting took place, at what stage the money was given, or what role was played by who.

It must also be noted that in the same case of **Dr. Bayigga Michael Philip Lulume Vs. Hon. Mukasa Anthony Harris and Another** (supra) the court commented on two allegations of bribery which were testified to by single witnesses, that since the bribes were

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given out at functions which were attended by scores of people, the allegations should have been corroborated by other people who were present.

All in all I find that the Petitioner has failed to prove that the 1<sup>st</sup> Respondent held a campaign meeting at the home of Basajabalaba outside the campaign period. The allegation of bribery at the said meeting is also not proved to the required standard. My finding is that no illegal act or election offence of bribery has been proved to justify setting aside the election. This disposes of issue No. 3. -05

In conclusion this petition fails and it is hereby dismissed. The Petitioner shall pay the costs of the 1<sup>st</sup> Respondent. Since I found evidence of non-compliance with the law, I award no costs to the 2<sup>nd</sup> Respondent. As between the Petitioner and the 2<sup>nd</sup> Respondent each party shall bear its own costs. -10

Dated the 26<sup>th</sup> day of August August 2016. -15



Damalie N. Lwanga

**JUDGE**

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