

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

ELECTION PETITION NO. 1 OF 2025

NAMBI FARIDAH KIGONGO::::::::::::::::::::::::: PETITIONER

VERSUS

1. LUYIMBAZI ELIAS NALUKOOLA
2. ELECTORAL COMMISSION::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction

1. On the 13th March 2025, the Electoral Commission (“the 2nd respondent”) conducted the Parliamentary by-election for the Directly Elected Member of Parliament for Kawempe Division North constituency in Kampala District. Luyimbazi Elias Nalukoola (“the 1st respondent”) was declared the winner of the election with 17,939 votes. Faridah Nambi Kigongo (“the petitioner”) came second in the election with 9,058 votes. The result of the election was published in the Uganda Gazette Vol. CXVIII No. 24 dated 24th March 2025. There are 199,063 registered voters in the constituency. Only 28,659 persons voted in



the election. The participation rate in the election (voter turnout) was 14.40%.

2. The petitioner contends that there was non-compliance with the provisions of the *Parliamentary Elections Act (Cap. 177)* in the conduct of the election, and the said non-compliance affected the result of the election in a substantial manner. The petitioner seeks declarations and orders of the court, among others, to set aside the election; declare the seat for Member of Parliament of Kawempe Division North constituency vacant; and order the Electoral Commission to conduct a fresh by-election. The 1st respondent defended his victory stating that he was validly elected. The Electoral Commission contended that the election was conducted in compliance with the law and the 1st respondent was validly elected.
3. The petitioner was represented by the following Advocates: Mr. Kalule Ahmed Mukasa, Mr. Kigula Mahiri Muhamood and Mr. Kibirige Ismail. The 1st respondent was represented by the following Advocates: Mr. Mohamed Mbabazi, Mr. Luganda Alex, Mr. Musisi George, Ms. Ainembabazi Eunice, Mr. Bagenda Remmy, Mr. Mbabali Jude, Mr. Abubakar Masoud and Mr. Muyizzi Samuel Mulindwa. The Electoral Commission was represented by Mr. Eric Sabiiti.

Bernard Hamanya

Preliminary points of law

4. During the trial, counsel for the 1st respondent submitted that paragraphs 10, 11, 12, 13, 14, 16, 18, 19 and 20 of the petitioner's affidavit are based on hearsay evidence and should be struck out. In response, counsel for the petitioner submitted that the petitioner disclosed sources of information in the questioned paragraphs and that the persons who gave information to the petitioner also deposed affidavits in support of the petition. I have considered the submissions of the parties and the law. It is trite law that failure to disclose the source of information in an affidavit renders the affidavit inadmissible. However, where the deponent's source of information is revealed and the persons giving the information go ahead to file affidavits in support of the deponent, then such affidavits are admissible. *See Chebrot Stephen Chemoiko v. Soyekwo Kenneth and the Electoral Commission, Court of Appeal of Uganda, Election Petition Appeal No. 56 of 2016 (pp11-14 of the Judgment)*. In the instant case, the petitioner stated her source of information as being her agents at the questioned 14 polling stations. The petitioner's polling agents were named as: Kalemba Herbert, Namatovu Sarah, Ninsiima Maurisha, Mpanga Deogratus, Gordon Salim Saleh, Ssebuggwaawo Doe, Nalumansi Jesca, Kwagala Olivia, Kwoba Victor, Niwamanya Saliva, Rubbe Sarah Sanyu, Zainab Faridah, Namulindwa Grace, and Chikamai Elly. These polling agents deposed affidavits in support of the

petition. On this basis, I reject the submission made by counsel for the 1st respondent that paragraphs 10, 11, 12, 13, 14, 16, 18, 19 and 20 of the petitioner's affidavit is hearsay evidence. The entire affidavit of the petitioner is admissible.

5. Counsel for the petitioner challenged the admissibility of the affidavit of Ben Ntale Mukasa for procuring the affidavits of Mawumbe George and Kyemba Nathan Muwanguzi in support of the 1st respondent through bribery. Although the said offending affidavits have since been expunged from the court record, counsel for the petitioner maintains that Ben Ntale Mukasa cannot be allowed to benefit from the illegality he orchestrated. The view of the court is that considering that the offending affidavits were expunged from the court record, the affidavit of Ben Ntale Mukasa in support of the 1st respondent is admissible.
6. Counsel for the petitioner raised a preliminary point of law to the effect that the affidavits in support of the 1st respondent's answer to the petition predate the answer itself. Whereas the 1st respondent's answer to the petition is dated 23rd April 2025, some affidavits in support of the answer to the petition are dated 22nd April 2025. For this reason, counsel for the petitioner submitted that the 1st respondent's affidavits should be struck out. I have perused the questioned affidavits, and it is true that they predate the answer to the petition. The position of the law is that the court

should take a liberal view of affidavits in election petitions considering the tight schedule under which they have to be filed unless the omission goes to the root of the substance of the affidavit. See *Muhindo Rehema v. Winfred Kizza & Electoral Commission, Election Petition Appeal No. 29 of 2011, Court of Appeal of Uganda (at p11 of the Judgment)*. Therefore, my decision is that the predating of the 1st respondent's affidavits to the answer to the petition is not fatal. The objection is accordingly overruled.

7. Counsel for the petitioner objected to the admissibility of public documents belonging to the Electoral Commission attached to the 1st respondent's affidavit, which are not certified. I agree with counsel for the petitioner that public documents belonging to the Electoral Commission which are not certified are inadmissible. See *Sentamu Betty v. Nayebare Sylvia & Electoral Commission, Election Petition Appeal No. 14 of 2023, Court of Appeal of Uganda (p21 of the Judgment)*.
8. Finally, counsel for the petitioner criticised the affidavit of Nabakooza Ritah in support of the 1st respondent arguing that her oath was not taken in accordance with *Section 5 of the Oaths Act (Cap. 21)*. I have perused the questioned affidavit. It is duly signed, dated and shows that the oath was taken before a Commissioner for Oaths. Considering the case of *Muhindo Rehema v. Winfred*

Kizza (supra), I am of the view that any omissions that may have occurred during the administering of the oath are not fatal. The affidavit of Nabakooza Ritah dated 6th May 2025 is therefore admissible.

Issues for determination by the court

9. The issues are:

- i) Whether there was an illegal practice or any other offence under the Parliamentary Elections Act committed in connection with the election by the 1st respondent personally or with his knowledge and consent or approval.
- ii) Whether there was non-compliance with the provisions of the Parliamentary Elections Act and if so, whether the non-compliance affected the result of the election in a substantial manner.
- iii) What remedies are available to the parties?

Issue No. 1: Whether there was an illegal practice or any other offence under the Parliamentary Elections Act committed in connection with the election by the 1st respondent personally or with his knowledge and consent or approval.

10. Under this issue, the petitioner alleges that prior to and on election day, the 1st respondent personally and/or his agents with his knowledge and consent or approval committed election offences.

Bernard Hamanya

11. *Section 80 (1) (c) of the Parliamentary Elections Act (Cap. 177)* provides that the election of a candidate as a Member of Parliament shall be set aside if it is proved to the satisfaction of the court that an election offence was committed by the candidate personally or with his or her knowledge and consent or approval. The petitioner alleges that some of the election offences were committed by the 1st respondent personally while for others it is alleged that his agents committed the election offences. Under the law, a candidate can only be held liable for the actions of his or her agents if they are committed with his or her knowledge and consent or approval. In *Fred Turyamuhweza v. Muhwezi Jim Katugugu, Election Petition Appeal No. 71 of 2021, Court of Appeal of Uganda (p61 of the Judgment)*, it was held that the petitioner has a burden of proving that election offences were committed by the candidate personally or if it is by agents, then with the knowledge and consent or approval of the candidate. Consequently, in election offences, the petitioner must prove two things: i) that an election offence was committed; and ii) that the election offence was committed by the candidate personally or by his or her agents with his or her **knowledge and consent** or approval.

12. I agree with the decision in *Byamukama James v. Kaija William & Electoral Commission, Election Petition No. 9 of 2006, High Court (Fort Portal)* but only to the extent that under a multiparty political dispensation, political party officials deployed to support an

official candidate are his or her agents. However, I do not agree that the candidate is automatically liable for the actions of political party officials deployed to support the candidate as was argued by counsel for the petitioner. This is because for the candidate to be liable under *Section 80 (1) (c) of the Parliamentary Elections Act (Cap. 177)*, there has to be proof that the actions were committed with his or her knowledge and consent or approval. See *Fred Turyamuhweza v. Muhwezi Jim Katugugu (supra)*.

13. It is the law that every allegation of an election offence must be separately considered by the court, and evidence of the allegations evaluated. The court must state why the evidence of a witness is preferred against another or which evidence needs corroboration. The court must further state which witnesses were untruthful or unreliable. See *Paul Mwiru v. Hon. Igeme Nathan Nabeta Samson, Electoral Commission & Another, Election Petition Appeal No. 6 of 2011, Court of Appeal of Uganda (at p26 of the Judgment)*.
14. In the instant case, for each election offence alleged by the petitioner, the court will evaluate the evidence adduced by the parties having regard to the following questions: Was an election offence committed? If yes, was an election offence committed by the 1st respondent personally or by his agents? If an election offence was committed by the agents, was it done with the 1st respondent's knowledge and consent or approval?

Obstruction of voters from voting

15. The petitioner gave affidavit evidence stating that on election day, the 1st respondent's agents and campaigners with his knowledge and consent or approval obstructed voters from voting at the election contrary to *Section 90 of the Parliamentary Elections Act (Cap. 177)*. The petitioner further stated that she was informed by Babirye Sheerinah, Chikamai Elly and Nassanga Deborah, that the 1st respondent's agents and campaigners; Bukenya Bonny, Hon. Balimwezo Ronald Nsubuga, Sserunjogi Edward, Ssempijja Joseph, Sam Kasirye, Auma Scovia and Kibirango Fred, all belonging to the 1st respondent's political party, obstructed voters from voting at the election; for example, Nassanga Deborah a registered voter at Kalanda's Compound (N – N) polling station.
16. Babirye Sheerinah stated that she was the petitioner's agent deployed at Kalanda's Home (O – Z) polling station. The said polling station is located in the same compound with Kalanda's Compound (N – N) polling station. She stated that at about 11:00am a group of men headed by Kibirango Fred, a known supporter of the 1st respondent attacked and punched her stating that she is just a woman, that they know where she stays and that they shall come to her home at night and demolish it. The police intervened and dispersed the group of men. Because of the violence that ensued, some of the voters that had lined up to vote,

left the polling station without voting for fear of being brutalised. She singled out Nassanga Deborah, a voter at Kalanda's Compound (N – N) polling station who left her polling station without voting. She requested the presiding officer to include this incident in the report for the polling station who declined to do so. She reported a case of assault and threatening violence against Kibirango Fred at Katale Police Station vide SD REF: 25/27/03/2025.

17. Nassanga Deborah, a voter at Kalanda's Compound (N – N) polling station stated that she witnessed a group of men beating up her friend Nabukenya Sheerinah. One of the men pointed at her, and he and three others started following her up. Fearing that she would be beaten up by the group of men, she turned back and did not vote.
18. Yiga Hakim deposed an affidavit stating that he was violently prevented from voting at Kalanda's Home (O-Z) by Stuart Mulindwa and other people belonging to the 1st respondent's political party. Kagumba Wilson, a registered voter at Kalanda's Compound (A-M) polling station gave evidence in support of the petition. He stated that on polling day, he went to cast his vote and when he reached the polling station, he was prevented from voting by the 1st respondent's agents, Kyeswa John David and Semujja Hakim because he did not have a voter's slip.

19. In answer to the above alleged election offence, the 1st respondent affirmed an affidavit on the 23rd April 2025 stating as follows: a) That he did not obstruct any voters from voting at the by-election; and b) That he had no knowledge of any persons who obstructed voters and no person had his consent or approval to obstruct voters.
20. The evidence of Babirye Sheerinah, Nassanga Deborah, Yiga Hakim and Kagumba Wilson on obstruction of voters from voting was unchallenged. The 1st respondent only made a general denial which was inadequate. See *Attan Okia Moses v. Ariko Herbert Edmund Okworo, Electoral Commission & Another, Election Petition Appeal No. 2 of 2023 (at p38 of the Judgment)*.
21. The finding of the court is that the election offence of obstruction of voters from voting was committed. The evidence shows that this election offence was committed by Kibirango Fred, Stuart Mulindwa, Kyeswa John David and Semujja Hakim, who were agents of the 1st respondent. However, there is no evidence to prove that these agents committed the election offence with the knowledge and consent or approval the 1st respondent.
22. The decision of the court is that the petitioner has failed to prove on the balance of probabilities and to the satisfaction of the court, that the 1st respondent committed the election offence of obstruction of voters from voting.

Obstruction of election officers

23. The petitioner alleged that the 1st respondent obstructed election officers employed by the Electoral Commission contrary to *Section 102 of the Parliamentary Elections Act (Cap. 177)*. The petitioner stated that she was informed by Chikamai Elly that on election day, the 1st respondent's agents and campaigners Julius Mutebi, Mathias Walukagga and Hon. Kiyaga Hillary a.k.a Dr. Hilderman, all belonging to the 1st respondent's political party obstructed election officers at Kazo Angola (NAKK – NAMAS) at Bbosa Road polling station by invading the polling station, ordering election officers on what to do, and checking voters' registers to confirm voters even though they were not the designated polling agents for the 1st respondent for that polling station.
24. The petitioner further stated that she was informed by Semata Lawrence Masuuti, that on election day, David Lewis Rubongoya of the 1st respondent's political party together with a group of their supporters obstructed election officers at Kazo Angola polling centre when they attempted to forcefully access it causing commotion and leading to a temporary halt in the voting.
25. Chikamai Elly swore an affidavit in support of the petition stating that he was the petitioner's agent deployed at Kazo Angola (NAKK – NAMAS) at Bbosa Road polling station. He stated that during the voting process, Julius Mutebi; the Mayor of Kira Municipality,

Mathias Walukagga; the Mayor of Kyengera Town Council and Hon. Kiyaga Hillary a.k.a Dr. Hilderman, the Member of Parliament for Mawokota North Constituency, all belonging to the 1st respondent's political party came to the polling station and disrupted election activities by ordering election officials on what to do, checking voters' registers to confirm voters, among others.

26. Ssemata Lawrence Masuti swore an affidavit in support of the petition. He stated that he voted at Kazo Angola (SP – Z) at LCI polling station and after voting as he was exiting the polling station, he saw a group of people led by David Lewis Rubongoya entering the polling station.
27. In answer to the above alleged election offence, the 1st respondent affirmed an affidavit on the 23rd April 2025 stating as follows: a) That he did not obstruct any election officers; b) That he had no knowledge of any persons who obstructed election officers, and no person had his consent or approval to obstruct election officers.
28. David Lewis Rubongoya deposed an affidavit on the 22nd April 2025 stating that he did not either personally or in concert with others obstruct any election officer at Kazo Angola Polling center or anywhere else on polling day.
29. The Electoral Commission was a party to the petition and filed an answer to the petition together with affidavit evidence from

Makabayi Henry, Kakaire Gastervus, Tamale Simon Peter, Kamusiime Danson Ruhemba, Peace Kyogabirwe Mugabe and Ahabwe Phiona. I have evaluated the evidence adduced by the Electoral Commission and did not find any evidence to the effect that its election officers were obstructed by the 1st respondent.

30. The decision of the court is that petitioner failed to prove on the balance of probabilities and to the satisfaction of the court that the 1st respondent committed the election offence of obstruction of election officers.

Bribery

31. The petitioner alleged that the petitioner committed bribery contrary to *Section 87 (1) and (4) of the Parliamentary Elections Act (Cap. 177)*. The petitioner affirmed an affidavit stating that she was informed by Nabukenya Margaret that on the 11th March 2025 between 5:00pm and 6:00pm at Ssekati Zone – Mpereerwe Parish, Nabakooza Ritah, a councillor of Kawempe Division belonging to the 1st respondent's political party, gave bread, soap, salt, rice and tea leaves to Kibuuka Mary Diana, who is a registered voter at Bright Sparks Junior School (A – M) polling station to induce her to vote for the 1st respondent. The petitioner further stated in her affidavit that the 1st respondent and his agents and campaigners committed the illegal practice of bribery by giving money and goods to voters to induce them to vote for the 1st respondent.

32. Nabukenya Margaret supported the petition stating that she was a petitioner's agent at Blessed Church (L – M) polling station. She stated that between 5:00pm and 6:00pm on the 8th March 2025, at Ssekati Zone - Mpereerwe Parish, she saw Nabakooza Ritah, a Councillor at Kawempe Division belonging to the 1st respondent's political party giving bread, soap, salt, rice and tea leaves to Kibuuka Diana Mary, who is a registered voter at Bright Sparks Junior School (A – M) polling station. She took photographs of the said Nabakooza Ritah giving out the said items using her mobile telephone SPARK 10, Kernel version 4.4.83 gcc version 4.8 (GCC) android@kst-08 #1, build number OPM2.171019.012 release – keys. The said photographs were printed at DOCU centre by Ssebalu Tusuubira Martin and are attached to the petition.
33. Ssebalu Tusuubira Martin stated that he is employed by M/s Docu Centre Ltd as the operations manager. On the 9th April 2025, Nabukenya Margaret came with her telephone handset which he connected to a printer and was able to print various photographs as instructed.
34. Wanjala Simon stated that he was the petitioner's agent at Pentecostal Church (NAM – NZ) polling station. On the 13th March 2025, he saw Kawempe Division councillor, Ben Ntale Mukasa, a member of the 1st respondent's political party together with Abdul Malik distributing notes of Shs 5,000 and Shs 10,000

to various voters. The money was distributed from the veranda of the Pentecostal church, a few meters from where he was seated as an agent. He saw Ben Ntale Mukasa giving Shs 5,000 to Wamukubira Geoffrey, who is registered voter at Pentecostal Church (O – Z) polling station. He reported the matter to the presiding officer and the police constable at his polling station who confronted Ben Ntale Mukasa and asked him to leave the polling stations. He obliged and left.

35. Kyemba Nathan Muwanguzi deposed an affidavit on the 9th April 2025 stating that he is a registered voter at Clinton Junior School (KI – M) polling station. He stated that on the 13th March 2025, he went to the parking yard known as Zion and found Kawempe Division councillors Sylvia Nakyobe and Ben Ntale Mukasa distributing money to various people. Sylvia Nakyobe gave him Shs 10,000 and told him to vote for the 1st respondent.

36. Mawumbe George William stated that on the 13th March 2025, he found Kawempe Division Councillor Ben Ntale Mukasa, a member of the 1st respondent's political party at Mr. Ouma's home under a jack fruit tree distributing money to various people. This place is near Zion parking yard in Kiganda Zone LCI near the polling station. Ben Ntale Mukasa gave him Shs 5,000 and told him to vote for the 1st respondent. At 1:00pm, he went and cast his vote.

Bernard Hamanya

37. In answer to the above alleged election offence, the 1st respondent affirmed an affidavit on the 23rd April 2025 stating as follows: a) That throughout the electoral period, he did not commit bribery as alleged by the petitioner; and b) That he had no knowledge of any persons who are alleged to have bribed voters, and no person had his consent or approval to bribe voters.
38. Ben Ntale Mukasa deposed an affidavit in support of the 1st respondent denying that he bribed voters. Nabakooza Ritah deposed an affidavit in support of the 1st respondent stating that she is a woman councillor representing Mpererwe Parish, Kawempe Division and that it is not true that Nabukenya Margaret took the photographs attached to her affidavit using her phone. She denied bribing voters including Kibuuka Mary Diana. She further stated that as a woman councillor of Mpererwe Parish representing zones of Sekatti and Sekanyonyi, she routinely consults her voters and while doing so, she contributes to the general welfare of her voters especially the most vulnerable groups such as the elderly, children and people with disabilities. After the said engagements, she usually shares photographs of her field work on a WhatsApp Forum called “Woman Lord Councillor KWP North 2” as a form of accountability to her supporters. She attached several photographs of her field engagements to her affidavit. She further stated that on the 1st March 2025, she visited an elderly Kibuuka Mary Diana and other women and donated several items including

sugar, soap and tea leaves. Jackline Yerusa, a member of her team took photographs of her donating the items using a Samsung S23⁺ phone. According to her, Nabukenya Margaret is a member of the said WhatsApp group and picked photographs attached to her affidavit from the group.

39. Ssenabulya Denis, an employee of Deno Media at YMCA Campus in Wandegaya gave evidence in support of the 1st respondent. He stated that on the 6th May 2025, Nabakooza Ritah came to his place of work with her telephone handset Samsung Galaxy S23⁺ SM-S916B/DS model with an IMEI No. 350073345330156. He then proceeded to print various photographs that were identified by the said Nabakooza Ritah.
40. Under *Section 87 of the Parliamentary Elections Act (Cap. 177)*, bribery is an election offence. In *Bagala Joyce Ntwatwa v. Nabakooba Judith Kalule & Electoral Commission, Election Petition Appeal No. 68 of 2021, Court of Appeal of Uganda (at pp28-29 of the Judgment)*, it was held that in order to prove bribery, the petitioner must prove three ingredients: i) A gift was given to a voter; ii) A gift was given by a candidate or his or her agent; and iii) the gift was given with the intention of inducing the person to vote.

Bernard Hamanya

41. I have evaluated the evidence adduced by the parties on bribery. The petitioner and Nabukenya Margaret, one of her witnesses contradicted each other. Whereas the petitioner claimed that Nabakooza Ritah was seen bribing Kibuuka Mary Diana on the 11th March 2025, her witness Nabukenya Margaret claimed that she saw Nabakooza Ritah bribing Kibuuka Mary Diana on the 8th March 2025. Secondly, Nabukenya Margaret claimed that she took photographs of Nabakooza Ritah bribing Kibuuka Mary Diana with her mobile telephone and that these photographs were printed out by Ssebalu Tusuubira Martin an employee of M/s Docu Centre Ltd. Nabakooza Ritah challenged this testimony stating that the photographs were taken by Jackline Yerusa using her phone Samsung S23⁺ and posted on a WhatsApp forum “Woman Lord Councillor KWP North2”. Nabukenya Margaret appeared before the court for cross examination. She admitted that she used to be a member of the said WhatsApp forum but exited the group. When pressed on when she exited the WhatsApp group, she could not answer with certainty. When counsel for the 1st respondent challenged Nabukenya Margaret to produce the phone which allegedly took the photographs she claimed that she left it at home. The court adjourned the cross examination to allow her to produce her mobile phone and when hearing resumed, she claimed that the mobile phone had allegedly been taken from her home by her husband who does boda boda business. The failure by Nabukenya Margaret to produce the phone which allegedly took the

photographs coupled with her failure to answer when she exactly left the WhatsApp group for woman councillor create doubt as to whether she took the photographs of Nabakooza Ritah bribing Kibuuka Mary Diana.

42. In *Lanyero Sarah Ocheng & Electoral Commission v. Lanyero Molly*, Election Petition Appeal No. 32 of 2011 (at lines 25-30 of the Judgment), it was held that where a party adduces photographs as evidence of bribery, they must be authenticated. In the instant case, the court is not satisfied that the photograph produced by Nabukenya Margaret allegedly showing Nabakooza Ritah bribing Kibuuka Mary Diana was authenticated by the petitioner. The photograph attached to the affidavit of Nabukenya Margaret is inadmissible to prove the election offence of bribery.
43. Nabakooza Ritah gave further evidence denying the offence of bribery. She stated that she is a division councillor and that as part of her routine duties she visits the elderly and disadvantaged persons to donate relief items. She admitted to visiting an elderly woman Kibuuka Mary Diana and other women, and donated several items including sugar, soap and tea leaves but denied the offence of bribery. Ben Ntale Mukasa also denied the allegation of bribery.

Bernard Olananya

44. In *Fred Turyamuhweza v. Muhwezi Jim Katugugu (supra)* at p36, it was held that the law could not have been intended to turn politicians into mean beasts during the campaign period and that the law does not bar politicians from identifying with their constituents during the campaign period.
45. Kyemba Nathan Muwanguzi who gave evidence to prove bribery appeared in court for cross examination. When challenged on the place where the signing of his affidavit took place, he mentioned that it was at NRM Electoral Commission at Plot 13. However, he later told court that he signed the affidavit at lawyer Kalule's office between Kamwokya and Kololo. When pressed further, he said "I don't know". In my view this contradictory testimony casts doubt on the credibility of the witness and this court cannot rely on his evidence to conclude that the 1st respondent or his agents committed the election offence of bribery. The other evidence on bribery came from Mawumbe George who claimed that he was bribed by Ben Ntale Mukasa with Shs 5,000 to vote for the 1st respondent. He appeared in court for cross examination, and he did not strike me as a credible witness and this court cannot rely on his evidence as proof that the election offence of bribery was committed.
46. The decision of the court is that the petitioner has failed to prove on the balance of probabilities and to the satisfaction of the court,

that the 1st respondent or his agents committed the election offence of bribery.

Campaigning on election day by the 1st respondent's agents

47. The petitioner alleged that the 1st respondent campaigned on election day contrary to *Section 63 (1), (2) (a) and (b), Section 100 (1) (a) to (d), (2) and (3) of the Parliamentary Elections Act (Cap. 177)*.

48. In her evidence, the petitioner stated that Kato Ronald and Nansamba Jane witnessed Kibirige Musa and Nabakooza Ritah campaigning for the 1st respondent on election day at Bright Sparks Junior School (N – N) polling station. The petitioner stated that Nansamba Jane is a registered voter at the said polling station. The petitioner further stated that she was informed by Mulindwa Mike that the 1st respondent's agent, Damba Kezekia campaigned for him at Equatoria Kindergarten (N – Z) polling station. The petitioner's evidence that the 1st respondent's agents campaigned for him on election day was corroborated by several other witnesses.

49. Kato Ronald, a polling agent of the petitioner swore an affidavit dated 9th April 2025 in support of the petition. He stated that on election day, he saw Kibirige Musa, a known supporter of the 1st respondent, come to Bright Sparks Junior School (N-N) polling

station to cast his vote. After voting, Kibirige Musa stayed at the polling station and held a poster of the 1st respondent and urged voters to vote for him. Kato Ronald claimed that he protested to the officers of the Electoral Commission who did not stop him from holding a poster of the 1st respondent.

50. Nansamba Jane stated that she is a registered voter at Bright Sparks Junior School (N – N) polling station. On election day, she went to vote at about 10:00am. She met Kibirige Musa and Councillor Nabakooza Ritah near the gate of the polling station who told her to vote for the 1st respondent.

51. Mulindwa Mike stated that he was a petitioner's agent at Equatoria Kindergarten (A – M) polling station. He stated that the above polling station is located near Equatoria Kindergarten (N – Z) polling station. He stated between 10:00am and 11:00am, he heard Damba Kezekia, a polling agent of the 1st respondent deployed at Equatoria Kindergarten (N – Z) polling station telling voters lined up to vote for the 1st respondent. He further stated that Damba Kezekia had an umbrella with him on their table of agents. He stated that he brought this matter to the attention of the police constable deployed at the polling station who never attended to the issue.

52. Mulindwa Mike deposed an additional affidavit on the 29th April 2025 stating that Damba Kezekia was a polling agent of the 1st

respondent at Equatoria Kindergarten (N-Z) polling station. He attached a Declaration of Results Form to prove that Damba Kezekia was the 1st respondent's polling agent.

53. In answer to the above alleged election offence, the 1st respondent affirmed an affidavit on the 23rd April 2025 stating as follows: a) That he did not campaign amongst voters who turned up to vote at Mbogo Primary School Playground or any other place on polling day as alleged by the petitioner; b) That his campaigns stopped on the 11th March 2025, in accordance with the guidelines issued by the Electoral Commission; c) That he does not know the persons alleged to have campaigned for him on polling day; and d) That if any persons campaigned for him on polling day, they did so without his consent or approval.
54. David Lewis Rubongoya deposed an affidavit on the 22nd April 2025 stating that none of the officials of the 1st respondent's political party with the consent, knowledge and or approval of the party carried out any campaigns on election day as alleged, and that he is not aware of any complaints made by the petitioner to the Electoral commission in regard to the allegations malpractice on polling day.
55. Kibirige Musa affirmed an affidavit on the 22nd April 2025 in support of the 1st respondent. He denied campaigning for the 1st respondent on election day and carrying and displaying the 1st

respondent's posters at Bright Sparks Junior School (A-M) polling station on the date of voting. He further stated he is the chairman LC1 of Sekatti Zone, Mpererwe Parish, Kawempe Division, and after voting, he went on to exercise his duties as chairman of the area.

56. Damba Kezekia was the 1st respondent's polling agent at Equatoria Kindergarten (N-Z) polling station. See certified Declaration of Results Form attached to the affidavit of Mulindwa Mike. Damba deposed an affidavit on the 22nd April 2025 in support of the 1st respondent. He denied allegations that he campaigned for the 1st respondent on election day. In particular, he denied claims of campaigning for the 1st respondent by holding and waving the umbrella, the political symbol for the 1st respondent's political party.

57. Nansamba Jane appeared before court for cross examination. She stated that although her affidavit is not dated, she signed it on the 9th April 2025. She maintained her evidence that Kibirige Musa and Nabakooza Ritah campaigned for the 1st respondent on election day. She testified that she was questioned by Kibirige Musa and Nabakooza Ritah on whether she had voted for the 1st respondent. Under cross examination, she was unshaken and counsel for the 1st respondent failed to rebut her evidence.

58. The 1st respondent's agents, Kibirige Musa, Nabakooza Ritah and Damba Kezekia who were accused of campaigning for the 1st respondent offered general denials. They did not deny being at Bright Sparks Junior School (N-N), Equatoria Kindergarten (A – M) and Equatoria Kindergarten (N – Z) polling stations as alleged by the petitioner.
59. The evidence of the petitioner that his agents campaigned for the 1st respondent on election day was not rebutted. In *Attan Okia Moses & Electoral Commission v. Ariko Herbert Edmund Okworo, Election Petition Appeal No. 7 of 2021 & Election Petition Appeal No. 10 of 2021 (at pp22-23 of the Judgment)*, it was held that when evidence is not challenged by other evidence or in cross examination, it is deemed to be admitted.
60. I, therefore, believe the petitioner's witnesses (Kato Ronald, Nansamba Jane and Mulindwa Mike) that Kibirige Musa, Nabakooza Ritah and Damba Kezekia, agents of the 1st respondent committed the election offence of campaigning for the 1st respondent on election day. However, there no evidence to prove that these agents committed the offence with the 1st respondent's knowledge and consent or approval.



Campaigning on election day by the 1st respondent personally

61. *Section 100 of the Parliamentary Elections Act (Cap. 177) prohibits candidates from campaigning and canvassing for votes on polling day:*

“Prohibition of certain activities on polling day

(1) Without derogation from any other provision of this Act or any other enactment, a person shall not, within one hundred metres of any polling station on any polling day—

(a) canvass for votes;

(b) utter any slogan;

(c) distribute leaflets or pamphlets for or on behalf of any candidate;

(d) organise or engage in public singing or dancing; or

(e) use any band or any musical instrument.

(2) During the hours when a polling station is open on a polling day, a person shall not, within two hundred metres of any polling station—

(a) seek to influence, in whatever manner, any person to vote for any candidate or to ascertain for which candidate any voter intends to vote or has voted; or

(b) sell any intoxicating liquor...”

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62. The petitioner stated that on election day, the 1st respondent campaigned at Mbogo Primary School Playground (KAT – MAJ) polling station. The petitioner was informed by Gordon Salim Saleh who was her agent at the polling station that the 1st respondent personally campaigned at the said polling station on election day.
63. The petitioner was further informed by Niwamanya Saliva who was her agent at Kazo Angola (KAL – KZ) at LCI Office polling station that the 1st respondent personally campaigned at the said polling station on election day. The petitioner was further informed by Kalenzi Medi, a registered voter at the said polling station that he saw the 1st respondent campaigning at the said polling station.
64. Gordon Salim Saleh deposed an affidavit in support of the petition stating that he was the petitioner's agent at Mbogo Primary School Playground (KAT – MAJ) polling station and arrived at the polling station at about 6:00am. At about 3:00pm, the 1st respondent came to the polling station and began chanting the political slogans of his political party and telling voters to vote for him. The 1st respondent's appearance at the polling station caused commotion and voting temporarily stopped.
65. Niwamanya Saliva deposed an affidavit in support of the petition stating that she was the petitioner's agent at Kazo Angola (KAL –

KZ) at LCI Office polling station and arrived at the polling station at about 6:30am. Between 11:00am and 12:00pm, the 1st respondent came to the polling station and caused commotion which disrupted the polling process for a while. She stated that the 1st respondent chanted his party's slogans and told voters lined up to vote for him. Counsel for the 1st respondent cross-examined Niwamanya Saliva but her evidence was not rebutted.

66. Kalenzi Medi, a registered voter at Kazo Angola (KAL – KZ) at LCI Office polling station stated that he was at the polling station between 11:00am and 12:00pm on election day. While at the polling station, the 1st respondent came and his appearance caused commotion and disorganised the voting process. He heard the 1st respondent chanting the party slogans of his political party to the voters including himself.

67. In answer to the above allegations, the 1st respondent affirmed an affidavit on the 23rd April 2025 stating as follows:

“In specific reply to the allegations and contents of paragraphs 16.1 and 16.2 of the petitioner’s affidavit in support of the petition, I did not campaign amongst voters who turned up to vote at Mbogo Primary School playground, or any other places as alleged by the petitioner on the polling day.”

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68. Other than the above general denial, the 1st respondent did not adduce any evidence to challenge the petitioner's evidence of him campaigning on election day at Mbogo Primary School Playground (KAT – MAJ) and Kazo Angola (KAL – KZ) at LCI Office polling stations. Firstly, the 1st respondent did not challenge the evidence of Gordon Salim Saleh, Niwamanya Saliva and Kalenzi Medi that he campaigned on election day at the said polling stations. Secondly, the 1st respondent could have adduced evidence of his polling agents at the above polling stations to challenge the evidence of him campaigning on election day at the above polling stations, but he did not. When the 1st respondent appeared for cross examination, he admitted that after casting his vote at about 11:00am he proceeded to move around the constituency to “inspect the voting process”. Both Niwamanya Saliva and Kalenzi Medi testified that the 1st respondent appeared at their respective polling stations between 11:00am and 12:00pm and campaigned to the voters lined up to vote. This must have occurred shortly after the 1st respondent cast his vote at 11:00am.

69. Under *Order 6 rule 8 of the Civil Procedure Rules*, the 1st respondent is required to provide specific answers to the allegations made by the petitioner. The law does not permit the 1st respondent to deny generally. In *Tubo Christine Nakwang v. Akello Rose Lilly, Election Petition Appeal No. 80 of 2016, Court of Appeal of Uganda (at p20 of the judgment)*, the court held that a

general denial is not an effective answer to a petitioner's allegations. In *Attan Moses v. Ariko Herbert, Election Petition Appeal No. 7 & 10 of 2021 (supra)*, it was held that when evidence is not challenged by any other evidence or in cross examination, it is deemed to be admitted.

70. Basing on the unchallenged evidence of Gordon Salim Saleh, Niwamanya Saliva and Kalenzi Medi, I am satisfied that the petitioner has proved on the balance of probabilities and to the satisfaction of the court, that the 1st respondent personally campaigned on election day at Mbogo Primary School Playground (KAT – MAJ) and Kazo Angola (KAL – KZ) at LCI Office polling stations which is prohibited by *Section 100 of the Parliamentary Elections Act (Cap. 177)*.

71. In *Bantalib Issa Taligola v. Electoral Commission and Orone Derrick, Election Petition Appeal No. 48 of 2021, Court of Appeal of Uganda (at p35 of the Judgment)*, where it was proved that a candidate campaigned on polling day, the court held that such a candidate had committed an election offence which was sufficient to set aside the result of the election.

Issue No. 2: Whether there was non-compliance with the provisions of the Parliamentary Elections Act and if so, whether the non-compliance affected the result of the election in a substantial manner

Disenfranchisement of voters (denial of the right to vote)

72. Under *Article 59 (1) of the Constitution of Uganda*, it is provided that every Ugandan citizen of eighteen years of age or above has a right to vote. Under *Section 20 (3) of the Electoral Commission Act (Cap. 176)*, the Electoral Commission has a duty to protect and promote the right to vote of Ugandan citizens. *Black's Law Dictionary, 12th Edition, Thomson Reuters (2024)* defines disenfranchisement as “the act of taking away the right to vote in public elections from a citizen or class of citizens.”

73. It is the petitioner's case that voters in 14 polling stations in the constituency were disenfranchised. The petitioner alleges that whereas voting took place in the questioned 14 polling stations in the constituency, with a total number of 16,640 registered voters, the Electoral Commission failed to transmit results for the said polling stations. The results tally sheet indicates 0% return for the said 14 polling stations whose particulars are summarised in *Table 1* below:

Table 1: Polling stations whose results were not transmitted

No.	Polling station	Number of voters
1.	Mbogo Primary School Playground (A – KAS)	1,436
2.	Mbogo Primary School Playground (MAK – NAH)	1,420
3.	Mbogo Primary School Playground (NSE – Z)	1,520

4.	Mbogo Primary School Playground (NAI – NAMAT)	1,409
5.	Mbogo Primary School Playground (KAT – MAJ)	1,349
6.	Mbogo Primary School Playground (NAMAU – NSA)	1,438
7.	Kazo Angola (L – M) at LCI Office	1,108
8.	Kazo Angola (SP – Z) at LCI Office	1,002
9.	Kazo Angola (A – KAK) at LCI Office	1,128
10.	Kazo Angola (KAL – KZ) at LCI Office	1,149
11.	Kazo Angola (NAO – SO) at LCI Meeting Place	851
12.	Kazo Angola (NAMAT – NAN) at Bosa's Road	872
13.	Kazo Angola (N – NAKI) at Bosa's Road	1,245
14.	Kazo Angola (NAKK – NAMAS) at Bosa's Road	713
	TOTAL	16,640

74. The petitioner stated that due to the failure by the Electoral Commission to comply with the *Parliamentary Elections Act (Cap. 177)* in the conduct of the election, 16,640 voters were disenfranchised. The petitioner is a registered voter at Mbogo Primary School Playground (NAMAU – NSA). This polling station is one of the 14 polling stations whose results were not transmitted. Therefore, the petitioner herself was disenfranchised.

75. According to the petitioner, despite incidents of chaos and violence, voting took place at the said polling stations between

7:00am and 4:00pm and many people voted. According to her “during the counting of votes at the said polling stations, there was violence, chaos and commotion as a result of which, first, there were no results declared and transmitted for those polling stations and second, that electoral materials and documents were destroyed.”

76. The petitioner stated that despite the Electoral Commission’s failure to transmit results from the 14 polling stations; it went ahead and declared the result of the election. The petitioner stated that the actions of the Electoral Commission in declaring the result of the election without results from the said 14 polling stations disenfranchised her and many other voters. According to the petitioner, there was non-compliance with the law in the conduct of the election and the non-compliance affected the result of the election in a substantial manner.

77. The petitioner’s allegation of disenfranchisement of voters due to chaos and violence is supported by several other witnesses who gave affidavit evidence in support of the petition. They stated that despite voting having taken place at the questioned polling stations; chaos and violence marred the vote counting process, and because of this, there was no result declared. The witnesses who supported the petition include: Kagumba Wilson, Kalembe Herbert, Namatovu Sarah, Ninsiima Maurisha, Mpanga

Deogratius, Gordon Salim Saleh, Ssebigwaawo Doe, Nalumansi Jesca, Kwagala Olivia, Kwoba Victor, Niwamanya Saliva, Rubbe Sarah Sanyu, Zainab Faridah, Namulindwa Grace, Chikamai Elly, Kalenzi Medi and Semata Lawrence Masuuti.

78. The 1st respondent affirmed an affidavit on the 23rd April 2025 admitting that although there was 0% return by the Electoral Commission in respect of the questioned 14 polling stations, this did not affect the result of the election in a substantial manner. He asserted that the constituency has a total of 197 polling stations and the questioned 14 polling stations represent only 7.1% of the total number of polling stations. That out of 28,252 total number of valid votes cast for all candidates, the 1st respondent got 17,939 votes, representing 63.50%, and the petitioner got 9,058 votes, representing 32.06% of the total number of valid votes cast. That considering the general voting trend and pattern, the inclusion of results from the questioned 14 polling stations would only result in increasing the overall majority of the 1st respondent's votes. Finally, that with the turnout in the election of 14.40% and considering the voting trend and pattern in the by-election, the 1st respondent would still obtain the majority votes even if the petitioner won in most of the questioned 14 polling stations.

79. Under cross examination, the 1st respondent admitted that he had polling agents at the questioned 14 polling stations and voters cast

their ballots, but the results tally sheet certified by the Electoral Commission indicates 0% return for him. He further admitted that it is true that voters at the questioned 14 polling stations were disenfranchised.

80. Makabayi Henry, the Returning Officer of the Electoral Commission deposed an affidavit on the 23rd April 2025 admitting that there was 0% return in respect of the questioned 14 polling stations. He stated that the Electoral Commission could not tally results out of votes cast at the questioned 14 polling stations because they were not transmitted.

81. Kakaire Gastervus deposed an affidavit in support of the Electoral Commission stating that he supervised two polling stations (004 Kazo Angola A-KAK at LC1 Office and 007 Kazo Angola KAL-KZ at LCI Office). According to him, voting started on time and was conducted peacefully throughout the day but shortly after counting of votes had begun, a violent mob interfered with the vote counting process and destroyed voting materials including ballots, BVVK machines and ballot boxes making it difficult for the process of vote counting to continue. Because of this, he failed to collect and transmit results for the two polling stations.

82. Tamale Simon Peter deposed an affidavit in support of the Electoral Commission. He stated that on polling day, he was deployed as a sitting supervisor at a polling station situated at

Bosa's Road. According to him voting was conducted peacefully but shortly after vote counting had begun, a group of people interfered with the process making it impossible to count votes. The interruption made it impossible for polling officials to fill in the Declaration of Results Forms.

83. Kamusiime Danson Ruhemba deposed an affidavit in support of the Electoral Commission. He stated that he was deployed as a supervisor at Mbogo Primary School Playground polling station. According to him, voting was conducted peacefully but shortly after vote counting had begun, a violent mob interfered with the process as a result of which polling officials could not fill in Declaration of Results Forms.

84. Peace Kyogabirwe Mugabe deposed an affidavit in support of the Electoral Commission. On polling day, she was deployed as a supervisor at Mbogo Primary School Playground polling station. According to her, voting was conducted peacefully throughout the day but shortly after the start of vote counting, a violent mob interfered with the process making it impossible for polling officials to fill in Declaration of Results Forms.

85. Ahabwe Phiona deposed an affidavit in support of the Electoral Commission. She stated that on polling day, she was deployed as a sitting supervisor for polling stations at Kazo-Angola Parish. According to her, voting was conducted peacefully throughout the

day but shortly after the start of the vote counting, a violent mob interfered with the process and because of this, it became impossible for polling officials to fill in the Declaration of Results Forms.

86. In order to protect and promote the right to vote of Ugandan citizens, several provisions of the law vest power in the Electoral Commission to organise and supervise elections, and to take action to contain the situation if acts of violence occur, including the power to postpone polling, vote counting and tallying of results to the next day.

87. Under *Article 61 of the Constitution of Uganda*, the Electoral Commission has a duty to hold, organise and supervise free and fair elections, and to ascertain, publish and declare the results of the elections. Under *Section 64 of the Parliamentary Elections Act (Cap. 177)* where voting at a polling station is interrupted by a riot or violence or any other event while voters have not completed the polling process, the presiding officer shall adjourn the polling to the next day or to any other time of the same day. Under *Section 76 of the Parliamentary Elections Act (Cap. 177)*, where counting or tallying of votes is interrupted by a riot or violence, the presiding officer shall adjourn the counting of votes or tallying of results to the next day or to any other time of the same day. Where vote counting is adjourned, the ballot boxes shall be kept in safe custody

and the candidates, or their agents shall be entitled to be present to keep watch on the boxes until counting resumes. Under *Section 72 (1) and 77 of the Parliamentary Elections Act (Cap. 177)*, before tallying of the results, the Electoral Commission must confirm that all Declaration of Results Forms from the polling stations have been received.

88. The question is whether the Electoral Commission exercised its power under the law to ensure that the right to vote of Ugandan citizens in the election was protected and promoted. Due to the violence that marred the electoral exercise, the Electoral Commission had the option of postponing polling or vote counting or tallying of results to the next day to ensure that Ugandan citizens exercise their right to vote guaranteed under the *Constitution of Uganda*, but it failed in its duty. During the trial, the Electoral Commission submitted that it lost all electoral materials (ballot boxes, Declaration of Results Forms, BVVK machines etc.) in the ensuing violence. This was a contravention of *Section 71 and Section 76 (3) of the Parliamentary Elections Act (Cap. 177)* which imposes a duty on the Electoral Commission to keep electoral materials in safe custody.

89. In *Electoral Commission v. Mwosuko Jacob, Election Petition Appeal No. 66 of 2021, Court of Appeal of Uganda (at pp16-17 of the Judgment)*, the court considered the provisions of *Section 146*

of the Local Governments Act (Cap. 138) [similar to Section 76 of the Parliamentary Elections Act (Cap. 177)] regarding the duty of the Electoral Commission when counting of votes or tallying of results is interrupted by acts of riot and violence. The court held that the Electoral Commission ought to have followed the procedure under Section 146 of the Local Governments Act [similar to Section 76 of the Parliamentary Elections Act (Cap. 177)] which empowers it to postpone vote counting or tallying of results if there are acts of riot and violence. The court further held that the actions of the Electoral Commission in simply omitting results of the polling station where violence had occurred from the final tally of results, instead of following the procedure prescribed under Section 146 of the Local Governments Act (Cap. 138) [similar to Section 76 of the Parliamentary Elections Act (Cap. 177)], was an act of non-compliance with the provisions of the law

90. The evidence before the court shows that there was chaos and violence at the questioned 14 polling stations. The Electoral Commission failed in its duty under the law to intervene and adjourn polling or vote counting at the questioned 14 polling stations to the next day as provided for under the law. The Electoral Commission also failed to keep safe custody of electoral materials in contravention of the law. It was wrong for the Electoral Commission to declare the result of the election well knowing that results from 14 polling stations were not transmitted due to the

violence that marred the vote counting process. The actions or omissions of the Electoral Commission resulted in the disenfranchisement of 16,640 voters which was a violation of their right to vote as provided for under *Article 59 (1) of the Constitution of Uganda*.

Effect of the disenfranchisement on the result of the election

91. The phrase “non-compliance affected the result of the election in a substantial manner” means that the votes obtained by candidates would have been different in a substantial manner. To succeed, the petitioner does not have to prove that the declared candidate would have lost. It is sufficient for the petitioner to prove that the winning majority would have been significantly reduced so as to put the victory in doubt. See *Bantalib Issa Taligola v. Electoral Commission (supra)* (at p26 of the Judgment).

92. I have perused the results tally sheet certified by the Electoral Commission and the results from the questioned 14 polling stations indicate 0% return for all the candidates that participated in the election. This fact is admitted by both the 1st respondent and the Electoral Commission. The only point of departure between the parties is whether the exclusion of results from the 14 polling stations affected the result of the election in a substantial manner. To answer this question, I will consider various decided court cases.

93. In *Apollo Kantinti v. Sitenda Sebalu, the Independent Electoral Commission and Another, Consolidated Election Petition Appeals No. 31 & 33 of 2016, Court of Appeal of Uganda* (at pp26, 27 & 30 of the Judgment of Hon. Mr. Justice Richard Buteera, JA (as then was), Hon. Mr. Justice Barishaki Cheborion, JA & Hon. Mr. Justice Paul Kahaibale Mugamba, JA (as he then was), where it was argued that results from 9 polling stations that were not tallied did not affect the result of the election in a substantial manner; the court held that:

“Elections are a process and the importance of a vote to a voter does not stop...at voting. If a voter is not allowed to vote he or she is disenfranchised. If he or she casts the vote but the same is not counted or the vote is not given the same weight as other votes, that voter is equally disenfranchised although he or she had cast his or her vote. The process of voting must therefore be looked at a whole inclusive of the phase of casting the votes to the counting of votes up to declaration of results...We agree with the learned trial Judge and find that he was right to have concluded that voters at the 9 polling stations were disenfranchised since their votes were given no value in the elections...In the instant case, the election results in the contested 9 polling stations affected a total of more than 5,000 votes. The results for all those voters were left in doubt as the votes cast were not properly counted in

favour of the candidates for whom the voters cast their votes...the outcome of the results for the whole of Kyadondo East Constituency was left in doubt. The noncompliance therefore affected the outcome in a substantial manner and the trial Judge was justified in annulling the result on this ground.”

94. In *Chebrot Stephen Chemoiko v. Soyekwo Kenneth (supra) (at p23 of the Judgment)*, where counting of votes was disrupted at a polling station, and results at that polling station were not included in the final tally of the results, the court held that:

“Disenfranchisement of voters is one of the instances of non-compliance which may result into an election being set aside if it is proved that the non-compliance affected the results of an election in substantial manner. The right to vote is a constitutional right and denial of the same is against the principles underlying a free and fair election.”

95. In *Betty Muzanira Bamukwatsa v. Masiko Winnifred Komuhangi, Electoral Commission & Another, Election Petition Appeal No. 65 of 2016, Court of Appeal of Uganda (at pp 17-48 of the Judgment)*, the Electoral Commission basing on provisional results and before tallying 5,413 votes, declared the winner of an election. The court held that the Electoral Commission committed a grave act of non-

compliance with the electoral law and the *Constitution of Uganda*, by disregarding a substantial number of votes totalling 5,413 which went to the root of the electoral exercise. It was further held by the court that the Electoral Commission violated the right to vote of 5,413 voters and disenfranchised them. The disenfranchisement of 5,413 voters substantially affected the result of the election.

96. In *Wakayima Musoke Nsereko & Electoral Commission v. Kasule Robert Sebunya, Election Petition Appeal No. 50 and 102 of 2016, Court of Appeal of Uganda (at pp39-40 of the Judgment)*, the winner of the election garnered 25,053 votes and the runner-up had 23,415 votes. The margin between the two candidates was 1,638 votes. The Electoral Commission did not tally results in 24 polling stations with 17,239 registered voters because they were found missing from the tamper proof envelopes in sealed black boxes. The court held that the cancellation of the results of 24 polling stations with a total of 17,239 votes affected the result of the election in a substantial manner.

97. In the instant case, the total number of voters that were disenfranchised are 16,640. The 1st respondent obtained 17,939 votes. The petitioner came second in the election with 9,058 votes. The margin between the winner and the runner-up was 8,881 votes. Considering the disenfranchised voters of 16,640 and the winning margin between the petitioner and the 1st respondent (8,881), it

becomes evidently clear that the winning margin would have been significantly reduced if results from the 14 polling stations had been included. The conclusion is that the exclusion of 16,640 registered voters was an act of non-compliance with the *Parliamentary Elections Act (Cap. 177)* which put the 1st respondent's victory in doubt and affected the result of the election for Member of Parliament for Kawempe Division North constituency in a substantial manner.

98. The 1st respondent's argument that given the voting trend and pattern, he would still have won even if results from the questioned 14 polling stations were included in the result of the election is not only illogical but is not supported by facts, evidence or reason. It is highly speculative and theoretical. In *Okethi Okale v. Republic, Criminal Appeal No. 179 of 1964, Court of Appeal at Nairobi (at p557 of the Judgment)*, it was held that decisions of the court are based on the weight of actual evidence adduced and not on fanciful theories.

99. The fact of the matter is that no one really knows how many people voted at the 14 polling stations. To illustrate this point, it is sufficient to give a few examples of the turnout at selected polling stations: At Mpererwe Primary School (A-KAS), there was a turnout of 87.68%. At Mathel (NAN-NZ) polling station, there was a turnout of 50.96%. At Kisalosalo (NAKAZ-NAMUL) Cleveland

Primary School polling station, there was a turnout of 11.21%. As can be seen from the above example, the turnout percentage fluctuated from one polling station to another which means that the voting pattern at the 14 polling stations was unpredictable contrary to the 1st respondent's argument. Therefore, I reject the argument that the 1st respondent would still have won at the questioned 14 polling stations.

100. Accordingly, the decision of the court is that the disenfranchisement of 16,640 voters put the victory of the 1st respondent (Luyimbazi Elias Nalukoola) in doubt which affected the result of the election in a substantial manner.

Issue No. 3: What remedies are available to the parties?

101. Section 80 (1) (a) (c) (2) and (3) of the Parliamentary Elections Act (Cap. 177) provides as follows:

“Grounds for setting aside election

(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) non-compliance with the provisions of this Act relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-

compliance and the failure affected the result of the election in a substantial manner;

(b) ...

(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; or

(d) ...

(2) Where an election is set aside, then, subject to section 82, a fresh election shall be held as if it were a by-election in accordance with section 3.

(3) Any ground specified in subsection (1) shall be proved on the basis of a balance of probabilities.”

102. It is further provided in *Section 82 (4) (c) and Section 82 (6) (c) of the Parliamentary Elections Act (Cap. 177)* that after hearing an election petition, the court may set aside the election, declare the seat vacant and order a new election.

103. In *Apollo Kantinti v. Sitenda Sebalu (supra)*, it was held that an election of a Member of Parliament may be set aside if it is proved by the petitioner to the satisfaction of the court that there was non-compliance with the provisions of the parliamentary elections law and that the non-compliance affected the result of the elections in a substantial manner.

104. The petitioner has proved on the balance of probabilities and to the satisfaction of the court, that the failure by the Electoral Commission to count, declare and tally results of the 14 polling stations with a total of 16,640 registered voters was act of non-compliance with the provisions of the *Parliamentary Elections Act (Cap. 177)* and the non-compliance affected the result of the election in a substantial manner. Secondly, the petitioner has proved on the balance of probabilities and to the satisfaction of the court that the 1st respondent personally committed an election offence by campaigning and canvassing for votes on polling day at Mbogo Primary School Playground (KAT – MAJ) and Kazo Angola (KAL – KZ) at LCI Office polling stations contrary to the provisions of *Section 100 (1) (a) & (b), 100 (2) (a) and (3) of the Parliamentary Elections Act (Cap. 177)*.

105. Under *Section 80 (1) (a) of the Parliamentary Elections Act (Cap. 177)*, the election of a candidate as a Member of Parliament shall be set aside if it is proved on the balance of probabilities and to the satisfaction of the court, that there was failure to conduct the election in accordance with the principles laid down in the Act and that the non-compliance and the failure affected the result of the election in a substantial manner. Furthermore, under *Section 80 (1) (c) of the Parliamentary Elections Act (Cap. 177)*, the election of a candidate as a Member of Parliament shall be set aside if it is

proved that the candidate personally committed an offence under the Act.

106.Regarding costs, having regard to *Section 27 of the Civil Procedure Act (Cap. 282)* which provides that costs shall be awarded at the court's discretion and *Article 126 (2) (d) of the Constitution of Uganda* which encourages courts to promote reconciliation of the parties, it is my decision that each party shall meet its own costs.

Conclusion

107.This court has reached the decision to set aside the election of Luyimbazi Elias Nalukoola as a Member of Parliament for Kawempe Division North constituency for two main reasons:

- i). 16,640 voters in the constituency including Nambi Faridah Kigongo were denied the right to vote (disenfranchised) which affected the result of the election in a substantial manner.
- ii). Luyimbazi Elias Nalukoola personally campaigned on election day at Mbogo Primary School Playground (KAT – MAJ) and Kazo Angola (KAL – KZ) at LCI Office polling stations which is an offence under *Section 100 (1) (a) and (b) and Section 100 (2) (a) and (3) of the Parliamentary Elections Act (Cap. 177)*.

Bernard Hamanya

Order of the court

108. Therefore, in accordance with *Section 80, 82 (4) (c) and 82 (6) (c) of the Parliamentary Elections Act (Cap. 177)*, I order as follows:

- i). That the election of Luyimbazi Elias Nalukoola as a Directly Elected Member of Parliament for Kawempe Division North constituency in Kampala District is set aside.
- ii). That the seat for the Directly Elected Member of Parliament for Kawempe Division North constituency in Kampala District is declared vacant.
- iii). That the Electoral Commission is ordered to conduct a fresh election for the Directly Elected Member of Parliament for Kawempe Division North constituency in Kampala District.
- iv). That each party shall meet its own costs.

IT IS SO ORDERED



BERNARD NAMANYA

JUDGE

26th May 2025

Delivered by E-mail & via ECCMIS

*Under the Judicature (Electronic Filing, Service and Virtual Proceedings)
Rules, 2025*