

IN THE HIGH COURT OF SIERRA LEONE

GENERAL CIVIL DIVISION

IN THE MATTER OF THE CHIEFTAINCY ACT, 2009

BETWEEN:

MOHAMED BAI SAMA KAMARA

- PETITIONER

AND

MOHAMED BAI MARU KAMARA

- RESPONDENTS

THE NATIONAL ELECTORAL COMMISSION

YADA H WILLIAMS ESQ & O JALLOH ESQ for the Petitioner

J B JENKINS-JOHNSTON ESQ & L JENKINS-JOHNSTON ESQ for the 1<sup>st</sup>  
Respondent

R FYNN ESQ for the 2<sup>nd</sup> Respondent

### JUDGMENT

#### INTRODUCTION

1. By Petition dated 10<sup>th</sup> December, 2009 the Petitioner MR MOHAMED BAI SAMA KAMARA Petitioned this Court to Determine that the 1<sup>st</sup> Respondent MR MOHAMED BAI MARU KAMARA was not duly elected or returned by the elections held on 5<sup>th</sup> December, 2009 for the Paramount Chieftaincy of the Lokomasama Chiefdom, Port Loko District; that this Court directs that fresh elections for the Paramount Chieftaincy of the Chiefdom be held on a date to be determined by this Court; any further or other Orders this Honourable Court may deem fit to make; and that the Costs of the Cause be borne by the Respondents, jointly and severally.

#### THE PETITION

2. The Grounds for seeking these reliefs are to be found in paragraph 7 of the Petition. Before the first ballot, the Declaration Officer announced to the Chiefdom Councillors that there will be no second ballot during the elections, and this prompted some of the Petitioner's supporters to leave

for their various villages. They were thus deprived of the opportunity to vote. At about 20.30hrs on the night of the election, the Declaration Officer announced that there should be a run-off between the Petitioner and the 1<sup>st</sup> Respondent, and that they would be given one hour to campaign. Before the hour elapsed, voting commenced in the absence of the Petitioner. The Petitioner protested frantically on his return but he was ignored by the Declaration Officer. About 35 Tribal Authorities who were recognised supporters of the Petitioner were lured by the 1<sup>st</sup> Respondent and his supporters into the residence of Memuna Gassama the widow of the deceased Paramount Chief (allegedly, presently, the wife of the 1<sup>st</sup> Respondent) and kept therein as hostages. It is alleged also, that the said *Chiefdom Councillors* were invited to the said residence by Hon Komboh Kamara, Hon Binneh Bangura and Alhaji Wurie, allegedly, also known as Wurie Palava, who were recognised supporters of the 1<sup>st</sup> Respondent, on the pretext that it was the Petitioner who had requested them to join him for dinner. The 35 *Chiefdom Councillors* were held hostage at the said residence until about 23.45hrs when they were released. The report of false imprisonment was made to one of the Assessor Chiefs, PC Bai Koblo Queen, the Declaration Officer, and the Police. When the Police led by the LUC, Mr Max Kanu intervened, they were chased off by the two Honourable members of Parliament, and by Wurie Palava and their agents. During the second ballot, the Petitioner and his supporters discovered that the vast majority of the people who were voting for the 1<sup>st</sup> Respondent were not *Chiefdom Councillors*. This anomaly was brought to the attention of the Declaration Officer, the Assessor Paramount Chiefs, Mr Quiwa and to the Police, by the Petitioner, but both Mr Quiwa and the Declaration Officer ignored the complaint. Further, the registered number of voters at Polling Station 3 was 127, but the count on the second ballot was 129. During the second ballot, tens of non-registered voters were allowed to cast their votes by the Declaration Officer and his assistants. The second ballot was also marred by widespread intimidation and violence perpetuated by the 1<sup>st</sup> Respondent and his supporters headed by the aforementioned members of Parliament, and Wurie Palava, respectively. The Petitioner was thereby deprived of victory in the run-off.

3. Based on this Petition, on 23rd December, 2009 I granted an Injunction on the Application of the Petitioner, restraining the 2<sup>nd</sup> Respondent from



preparing, or participating in the preparation of the joint report prescribed in Section 17 of the Chieftaincy Act, 2009 which would have led to the Recognition of the 1<sup>st</sup> Respondent as Paramount Chief, until 5<sup>th</sup> January, 2010. This Injunction was extended during the course of the hearing, and to date, I have not been informed that it has been breached

#### ANSWERS AND CROSS-PETITIONS OF RESPONDENTS

4. 1<sup>st</sup> Respondent filed an Answer and Cross-Petition dated 29 December, 2009. Essentially, the 1<sup>st</sup> Respondent categorically denies all of the Petitioner's allegations. He claims that the Petitioner in fact scored more votes in the second round than in the first: that is, 172 as against 166. The 1<sup>st</sup> respondent is precise as to timing of the respective ballots: first round ended at 6.58pm and the reconciliation of ballots ended at 8.10pm. Second round voting commenced at 9.25pm, during which Petitioner and his agent were present throughout. The 1<sup>st</sup> Respondent relies on the Election Report of Mr Quiwa. He also relies on the Petitioner's acquiescence in the Attestation document as proof that the elections were free. He claims that after the first round of voting, the losing candidates, namely Bai Shebora Kamara, Lamin Kamara and Dr Mohamed Ibrahim Kamara, all three of whom were of the Bomboya Ruling House as he was, and had collectively polled 102 votes, gave him their full support, thus ensuring his victory in the second round. He therefore prayed this Court to Declare that he had been lawfully and regularly elected as Paramount Chief of Lokomasana Chiefdom on 5 December, 2009; and that the Petitioner's Suit be Dismissed with Costs. In his Reply and Answer to 1<sup>st</sup> Respondent's Cross-Petition dated 31 December, 2009, the Petitioner joins issue with the 1<sup>st</sup> Respondent, and avers that 1<sup>st</sup> Respondent is not entitled to a Declaration that he is the duly elected Paramount Chief because the second ballot was conducted improperly and irregularly.
5. 2<sup>nd</sup> Respondent also filed an Answer and Cross-Petition dated 5 January, 2010. It is signed by Mr Quiwa, the District Electoral Officer who conducted the election on behalf of the 2<sup>nd</sup> Respondent. In it, Mr Quiwa avers that the elections were conducted according to the guidelines provided to all NEC officials and which had been used in the earlier training and sensitization sessions. The first and second ballots were conducted without any significant incidents. At no point in time did

anybody make a complaint to a NEC official that the integrity of the process had been compromised. Specifically, there was no complaint of intimidation, over-voting or kidnapping of voters. At least 20 NEC officials were present at the scene. Independent observers such as NEW, press-men from Radio Maria, UN Radio and other local stations, and the LUC Lungi together with a contingent of some 40 Police Officers, were also present. Prior to polling day, candidates and voters had been notified that there would be a run-off if no candidate acquired 55% of the votes cast in the first ballot. Neither Petitioner, nor 1<sup>st</sup> Respondent raised any objection when the run-off was announced after the first ballot. There was no announcement that there would be no run-off. Instead, an announcement was put out over the loud-speaker system in both Krio and Temne reporting the result of the first ballot, and notifying the barre packed full of Councillors, voters, candidates and officers that there would be a run-off after a break of one hour. All eligible voters had been previously identified, and their names were published in Volume 54 of the Sierra Leone Gazette, dated 20 November, 2009. Each of the candidates had had a polling agent at each polling station, and one of their roles was to raise objections to ineligible voters. At no point in time did anyone raise objections about anyone else's eligibility or ineligibility to vote. The 2<sup>nd</sup> Respondent only got to know about the "hostage" allegation when the Petition was filed. The voters' list showed that many of the voters who voted in the first round, also voted in the second round. To vote in each round, a voter must produce the tax receipt previously endorsed at the Declaration of Rights Meeting. The voting at polling station numbered 3, was 141 and not 127 as alleged by the Petitioner. There was no over-voting at this station. 137 persons voted in the first round, and 129 in the second round. The 2<sup>nd</sup> Respondent in its Cross-Petition avers that the elections were free, fair and transparent; that the ~~1<sup>st</sup> Respondent~~ <sup>Petitioner</sup> was satisfied with the process up to the reading of the results of the run-off as his agents had signed the reconciliation forms, and he had endorsed the attestation form; that none of the independent observers were aware of the Petitioner's complaints, and that the candidates and Assessor Chiefs certified the process and the results. It therefore Prays this Court to Dismiss the Petition with Costs. with

6. The Petitioner's Reply and Answer to Cross-Petition was eventually filed on 1 February, 2010 as he had entered the Cause for Trial, on 4



January, 2010 that is, the day before 2<sup>nd</sup> Respondent filed its Answer and Cross-Petition. In it, the Petitioner joins issue with the 2<sup>nd</sup> Respondent.

7. Pursuant to Order numbered 5 in my Decision of 23 December, 2009 witness statements were filed by both sides, and the trial commenced on Wednesday 6 January, 2010. The Petitioner called 10 witnesses:

PW1 Mohamed Bai Sama Kamara, the Petitioner

PW2 Mohamed Kamara

PW3 Dauda Kamara

PW4 Osman Bangura

PW5 Morlai Melyli Kamara

PW6 Kadiatu Kamara

PW7 PC Bai Koblo Queen II

PW8 Madam Adama Kamara

PW9 Abu Bakarr Sillah

PW10 ASP Elijah Moses

PW11 Inspector Abdul Rahman Kanu

Counsel should note that the numbering of witnesses in my minutes is wrong, as Madam Adama Kamara is wrongly described as PW7, when in fact PC Queen was PW7.

These witnesses adopted their respective witness statements as their evidence-in-chief, and thus shortened the Court proceedings.

#### TRIAL

8. The evidence of these witnesses, so far as is material to this case, falls into three sections: that relating to events during the first ballot; events occurring during the break between the first and second ballots respectively, particularly the alleged abduction of voters; and lastly, the alleged inflation of voting numbers. Of these witnesses, PW2-6 & 8 may be said to be partisan in the sense that they claim to be supporters of the Petitioner, and would have voted in the second ballot for the Petitioner, if they had been allowed to vote. PW7, PC BAI KOBLO QUEEN was one of

*mbe*

the Assessor Chiefs who conducted the elections, and like his colleague Assessor Chief, who gave evidence on behalf of the 1<sup>st</sup> Respondent, PARAMOUNT CHIEF ALIE BALASAMA MARAH, could be said to be non-partisan; so also is the case for PW 10&11 who are Police Officers.

#### WITNESS STATEMENTS

9. This Trial has also in my view, paradoxically, shown some of the shortcomings of modernising procedures, without in a sense modernising humans. The system of adopting witness statements as the evidence-in-chief of witnesses introduced by the High Court Rules, has its advantages; but one disadvantage is that witness statements become stilted, artificial, and devoid of originality, and, in a sense, the creations of the Solicitors filing them. They have become very much like affidavits, sworn statements prepared and filed by Solicitors, based on instructions received from their clients. The words used, such as, 'luring', could not in my respectful view, have been one used by any of the witnesses who testified as PW2-6 & 8&9; nor could they all, as appears on a perusal of their respective witness statements, use the same words to describe events which they observed differently, and from different positions. Another shortcoming, as will be highlighted shortly, is that parts of some of the witness statements end up contradicting the case presented by a party. In this respect, I have accorded the witnesses' oral testimonies before me, far more weight than their pre-recorded witness statements. The Petitioner's testimony included not only his witness statement, but also his oral testimony in Court.

#### EVIDENCE

10. I shall go through the evidence led for the Petitioner first, before going on to deal with that led by, and for the Respondents, and comment on each witness's testimony as I go along. But first I shall just indicate evidence which might perhaps lend perspective to the case presented for the Petitioner. Amongst the candidates for the Paramount Chieftaincy election in Lokomasama Chiefdom, only Petitioner it appears, came from the Liminaya Ruling House. The 1<sup>st</sup> Respondent and 2 other candidates, it appears, came from the same Ruling House, the Bomboya Ruling House. It is not clear the Ruling House, Messrs Alpha T Kamara and Lamin Kamara came from. During the first ballot, the Petitioner topped the Polls but did not acquire 55% of the votes cast, and so, the 1st Respondent claims,



that after considering the problem from a mathematical perspective, the other candidates from his Ruling House decided it was in the best interest of their House, that they all hang together, or hang separately.

11. PW1, The Petitioner, in his witness statement made on Christmas Eve, 2009 explained what transpired during the election. He said that at the commencement of the election, he was called upon by the Provincial Secretary (PS), MR A R DUMBUYA to sign a document that basically stated that he would respect the results of the elections. According to Petitioner, the PS did this so that there would be no chaos if there was a second round of voting. His agent signed it on his behalf. This piece of evidence effectively destroys the complaint made in sub-paragraphs 7i&ii of the Petition, and in paragraphs 11 and 12 of Petitioner's affidavit sworn to on 14 December, 2009 in Interlocutory proceedings for an Injunction, before me. Going on, Petitioner said that voting commenced at about 11.30am and ended at about 6pm; he explained the voting procedures. He was present when counting took place at the end of the first round, and the results were announced by the PS. He won, but without the required 55% of the votes counted. The PS announced the run-off and gave himself and the 1<sup>st</sup> Respondent who was the runner-up, one hour to campaign for the second ballot. During this interlude, he received information from Mohamed Kamara, PW2 and Bunduka Kanu who did not testify, that ALHAJI WURIE JALLOH otherwise known as WURIE PALAVA had detained some Chiefdom Councillors who were his recognised supporters, at the residence of the deceased Paramount Chief, Bai Sama Lamina Sam I, father of Bai Sama the recently deceased Paramount Chief of the Chiefdom. He immediately related this Report to the PS, who said it was not his business, and that he should report it to the Police. He reported the matter to MR QUIWA who conducted the election on behalf of 2<sup>nd</sup> Respondent, but Mr Quiwa did not respond. Mr Quiwa and other NEC staff were packing the boxes for the second ballot. He then reported the matter to PC Bai Koble Queen who called upon the LUC, Mr Kanu to look into the matter. The LUC then instructed a team of Police Officers led by PW10&11 to look into the matter. Petitioner, PW2 and the Police personnel proceeded to the residence. The house was about a couple of minutes walk away from the Court Barrack where the election was being conducted. Upon their arrival at the house, the Police were confronted by a group of young men led by Hon Kombor Kamara and Hon

Binneh Bangura. They prevented the Police from entering the premises. They were thus, unable to secure the release of the Chiefdom Councillors who were allegedly detained in the premises. During the second ballot, he discovered that some of the people who were voting were not Chiefdom Councillors, and were not therefore entitled to vote. In Polling Station number 3 the number of ballot papers issued by NEC was 127, but the votes cast were 129. The conduct of the second ballot was marred by widespread intimidation and violence perpetuated by the supporters of the 1<sup>st</sup> Respondent headed by Messrs Kombor Kamara, Binneh Bangura and Wurie Palava. The Local Tax Receipt was given a second tick to indicate a voter had voted in both ballots. Messrs Alpha T Kamara, Abdul Salaam Kamara and Pa Komrabai Kanu voted even though their names did not appear in the Gazette as Tribal Authorities.

12. During his testimony in the witness box, the Petitioner adopted his witness statement as his evidence, tendered it as exhibit 1, and gave further evidence. He said that the late Paramount Chief's wife was now the wife of the 1<sup>st</sup> Respondent; that 1<sup>st</sup> Respondent was once the boss of the PS; that when he received news that his supporters had been detained, he first went to the PS who said it was not his business; he also went to Mr Quiwa, whom he now claims perhaps did not hear him - in his witness statement he had indeed said Mr Quiwa did not respond. He went to the two Assessor Chiefs to complain - in his statement, the complaint was made to just one, PC Queen; the Assessors called in the Police and instructed them to break open the place and release the Chiefdom Councillors. When they got to the house where these Councillors were supposed to have been detained they met the two MPs, Wurie Palava and Obai Feth. There were some other people with them. They bect up a Police man, and the Police were not cble to break in. He knew Abu Bakar Sillah who was not in Court. The house where Bai Sama I lived in, was not the same as that in which Bai Sama II lived in.

13. Under cross-examination by Mr Fynn, Petitioner said that he was present throughout the 1<sup>st</sup> ballot, and that he had an agent who supervised the 3 Polling Booths. He was not present when the 2<sup>nd</sup> ballot started. He met his agent there; he was present when counting started; his agent was Idrissa Kamara who signed the Reconciliation form; and as regards the issue of the number of votes in respect of Polling Booth 3, Mr Quiwa had said that the error had arose because 52 ballot papers were issued instead of 50.



However, Idrissa Kamara was not called as a witness to explain why he signed the Reconciliation form if he had doubts about its contents

14. Under cross-examination by Mr Leon Jenkins-Johnston, Petitioner said, inter alia, that one of the Policemen was beaten up, he was slapped - his clothes were torn. He retreated from the place where his supporters had been held because of the tension. The place was in darkness. The PS had said he would crown 1<sup>st</sup> Respondent at all cost; he said the tribal authorities were forcefully camped to vote against their interest; that Messrs Kombor Kamara had terrorised people not to vote for him; they had told the chiefs that wherever they were, so also was the Government; intimidation took place about two weeks before the election; he was in the Court Barray at around 8pm when the PS announced there would be a run-off; it was then he was informed of the detention of his supporters; there were about 7 NEC officials present; he campaigned during the interlude between the two ballots. He was not re-examined by Mr Williams.

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15. Later, Petitioner tendered ~~the~~ Court bundle as exhibit 2 pages 1-95. Five days later, he had to be recalled on 11 January, 2010 to tender in evidence as exhibit 2 pages 96-101 Summonses issued by Wurie Jalloh at the Lungi Magistrate's Court. In those Summonses, Jalloh was asking for the return of monies he had given to the persons charged therein to vote for Dr Ibrahim Kamara, one of the candidates in the election. Later, when he gave evidence for the 1<sup>st</sup> Respondent, Jalloh admitted issuing the Summonses, and that his doing so gave credence to his story that he supported Dr Kamara in the first round, and only supported 1<sup>st</sup> Respondent in the second round so as to ensure the Bomboya Ruling House won the election.

16. My assessment of the Petitioner's evidence is that he was speaking the truth; he narrated what he was told by others as to what had happened to his supporters, but he could not himself testify as to what really happened, because he was never let into the house where they were allegedly detained. As to the conduct of the election itself, save for the complaint about the number of votes counted in booth 3, he has not made any other specific complaint. Crucially, other than saying Mr Quiwa did not respond to the information which he passed on to him about his supporters alleged detention, he said nothing else to support his

contention that the election was improper in the sense contemplated by Section 18 of the Act. And as he has not called Idrissa Kamara, he has not been able to sustain the claim relating voter rigging or manipulation at the polling booths.

17. I shall now go on to deal with the evidence of PW2-6 & 8&9 together i.e. the evidence of Mohamed Kamara, Dauda Kamara, Osman Bangura, Morlai Melyli Kamara, Kadiatu Kamara, Adama Kamara and Abu Bakarr Sillah. PW2 Mohamed Kamara adopted as his evidence-in-chief his witness statement at pages 7-10 of exhibit 2 made on 31 December, 2009. He said after the announcement of the result of the first ballot, there were celebrations in the Chiefdom during which, he was approached by Alhaji Wurie Jalloh, and told to proceed to the house of the late Chief. At the house, he met the two MPs and others whom he did not recognise, and some Councillors who had been with him during the course of the day. Wurie Jalloh told him, the two MPs were the main supporters of 1<sup>st</sup> Respondent. He and the other Councillors were offered food by Jalloh. Jalloh pulled out a bag containing money and said " *this is Le20m; it is yours; all you have to do is to vote for 'MB' in the second ballot.*" Some Chiefdom Councillors agreed, others did not; Jalloh asked for their Local Tax Receipts. He immediately dashed for the door with another Councillor Pa Abdul; both managed to escape with Pa Abdul sustaining an injury to his shoulder. PW2 went to the Petitioner and informed him of what had happened. They proceeded to the house but the Police were unable to enter as they were overpowered by the young men in the premises; his fellow Councillors were not released. To quote him, "*At around 9pm myself and my fellow Chiefdom Councillors queued to vote in the second ballot. I did not see the Chiefdom Councillors who were detained cast their vote in the second ballot. Voting continued until around 10pm. The results were announced after 11pm. Mohamed Bai Maru Kamara was declared the winner. I voted for the Petitioner in the first ballot. That it was my intention to vote for the Petitioner again during the second ballot. I was therefore deprived of my right to vote for the Petitioner in the second ballot.*" What should the Court make of this witness's evidence? His evidence is important because it was he who informed Petitioner of what was going on at this house where people had been detained. Firstly, he went to the house to which he had been instructed to proceed by Jalloh, voluntarily; there was no element of



compulsion; secondly, he could not name any of the persons detained, even though he recognised some of them; thirdly, a bribe was offered by Jalloh which, according to him, was accepted by some Councillors, and rejected by others. Both himself and Pa Abdul were able to leave the premises, even though Pa Abdul was injured; fourthly, he queued to vote in the second round; but curiously, he says he was deprived of the right to vote.

18. In his evidence-in-chief, he said he voted during the second round. He said Jalloh called him to his house; Jalloh was at this time standing outside near the Barray. Jalloh said he wanted to see him. He went to the house where he saw the two MPs, and where he was shown money by Jalloh. Some people accepted money; others did not. Some people produced their voting papers. He forced his way out of the house.

19. Under cross-examination he said he had never said he was deprived of his right to vote in the second ballot. The rest of the cross-examination does not take the case any further. As I have pointed out above, preparing witness statements has its own shortcomings. Stereotyping could be a useful tool, but it could mislead, not only the Court, but also the person who prepares it. Petitioner's case is largely that his supporters were deprived of the opportunity of voting in the second round. Here, is one of his supporters confidently saying on oath he did vote in the second round, even though in his witness statement he had made contradictory statements as to whether he voted or not.

20. PW3 Dauda Kamara, said in his witness statement made on 31<sup>st</sup> December, 2009 that he lived in the house of his deceased grandfather PC Bai Sama I. There are two entrances to the house - one through the front door of the main house; the other through the gate at the side of the main house. He saw Jalloh directing people to go into his residence. He observed Councillors entering his compound. He went there to find out what was happening. Standing in the veranda of the main house, he saw inside the parlour of that house, the two MPs, Jalloh, Obai Feth, some people he did not recognise, and some Councillors. They were about 20 in number. He went to the veranda of the house at the back of the main house and there observed what was going on in the main house. He saw Kombor Kamara calling out names from a piece of paper he held in his hand; he saw Jalloh hold out a bag with money in it, and heard him say the

money was theirs if they voted for 1<sup>st</sup> Respondent in the second round. "When it was announced that voting in the second ballot was about to commence some of the Chieftdom Councillors were let out of the main house whilst others remained in the house. Young men were then stationed inside the parlour of the main house. Both the front and back doors were then shut....the Chieftdom Councillors started shouting calling for help... I stayed home until the said Bai Fet came to the house and opened the door releasing the Chieftdom Councillors who were in the main house." Clearly, this witness was not prevented from voting in the second round; also he did not go anywhere to report what he had seen happen; and if he is to be believed, the door which the Police could not get through, was casually opened by Bai Fet, who let the Councillors out. Most importantly, for the Petitioner's case, he was not able to name one Councillor who had been detained.

21. He also adopted his witness statement as his evidence-in-chief, and his evidence under cross-examination did not disclose much more than he had already said in that statement. He was not called upon to identify anyone of the Councillors he alleged had been detained.

22. PW4 was Osman Bangura. He also made a witness statement 31<sup>st</sup> December, 2009 but I do not have it down in my minutes that he adopted it as his evidence-in-chief. In that statement, he says himself and other recognised supporters of Petitioner were lured by 1<sup>st</sup> Respondent, the two MPs, and Jalloh into a private residence shortly after the results of the first ballot were announced. They were told by the supporters of 1<sup>st</sup> Respondent that that was where the Petitioner had arranged for them to go for refreshment after the first ballot. They were kept in the house as hostages, and only released after the second ballot was over. In his evidence-in-chief, he said he and others were eating when they were locked up. He knew Abu Bakarr Sillah, Morlai Kamara and Adama Kamara. He met these people in the house where they were detained. My assessment of this witness' testimony is that at least, he goes one step further, and names people with whom he was detained. Under cross-examination, he claims, unlike the previous two witnesses, that 1<sup>st</sup> Respondent and Wurie were in the house where the Councillors were detained.



23.PW5 was MORLAI MELYLI KAMARA. In evidence-in-chief, he said he knew Adama Kamara, Abu Bakarr Sillah and Osman Bangura. He did not vote during the second ballot, because he was called to have food by Jalloh. He went there because he was hungry, but he did not get any food. He saw Osman Bangura in the house, but he did not see Abu Bakarr Sillah there. The place was dark. He saw Jalloh speaking, but did not <sup>hear</sup> what he was saying. He was only allowed to leave the house when it was dark. His witness statement made on 4 January, 2010 which again, I did not note was adopted as evidence, was a reprise of Osman Bangura's statement and does not add anything to the Petitioner's case. *note*

24.PW6 was Kadiatu Kamara. In her witness statement made on 31 December, 2009 she said there was jubilation in the town when the result of the first ballot was announced. She and others who were recognised supporters of Petitioner were 'lured' by Jalloh ~~to~~ into a house for dinner. There she met the two MPs, Brima Gassama brother-in-law to 1<sup>st</sup> Respondent and about 20 other Chiefdom Councillors who had been with her earlier in the day and had voted. They were offered food by Jalloh. Whilst they were eating, Jalloh requested their Local Tax Receipts. They gave them to him. Jalloh offered them money, saying the bag he had with him contained Le20m, and that they should vote for 1<sup>st</sup> Respondent in the second round. She and her colleagues protested and demanded their receipts back, but Jalloh refused to return them. The doors to the house were shut, and they were held hostage. They were only released after the second ballot, and were therefore deprived of their right to vote. She reiterated her story whilst giving evidence before me. *note*

25.PW8 was MADAM ADAMA KAMARA. She adopted her witness statement made on 4 January, 2010 as her evidence-in-chief. It was a replica of Osman Bangura's statement. At the end of it, the indorsement states that it was read over and explained to her in krio which she seemed perfectly to understand. But when she came to testify in Court, she said she could only speak Susu, and the Court had to request the services of a gentleman in the public gallery, Abu Mansaray of 28A Fannah Street, Lower Allen Town, to interpret from Susu to krio. In her evidence, she said she was locked up in the house to which she had been invited by Jalloh, and she was thus prevented from voting. She remained unshaken under cross-examination.

26. PW9 was Abu Bakarr Sillah. He adopted his witness statement made on 31 December, 2009. In it, he said that he and 14 other Councillors, all of them supporters of Petitioner, were lured by 1<sup>st</sup> Respondent, the two MPs and Jalloh into a private residence, where they were held hostage until voting in the second ballot was over. He said the single tick on his tax receipt indicated he had only voted once, i.e. in the first ballot. Save for the additional information about the significance of the tick on the receipt, this statement was largely similar to that of Osman Bangura. Significantly, when testifying in Court, he said he and others were resting under a tree when Jalloh came up to them saying food had been prepared, and that they went with him for this food. When they got to the house where the food was, there was confusion. They tried to take their receipts from them, but he held on to his. Later the door was opened, but when he got outside, it was already night-time. Under cross-examination, he said he saw Jalloh during and after the first ballot, but did not know whom he was supporting; that the place where they were taken to, was in a state of confusion and that he did not recognise anybody in the house; and that he did not see the 1<sup>st</sup> Respondent in the room.

27. The sum total of the evidence led through these witnesses, is that Jalloh led or enticed them into the house where the two MPs were; that they were offered money by Jalloh to vote for 1<sup>st</sup> Respondent in the second round; but that the 1<sup>st</sup> Respondent was not himself present when the shenanigan was going on. None of them allege any improper conduct at the Court Barray where the election was being held, or on the part of the 2<sup>nd</sup> Respondent's Officials or personnel.

#### EVIDENCE OF INDEPENDENT WITNESSES

28. I move on to the evidence of the independent witnesses, and I shall commence with that of one of the Assessor Chiefs, PC Queen, PW7. He adopted his witness statement made on 24 December, 2009 as his evidence-in-chief. In that statement he said inter alia, that the polling booths had clothes covering them; that all the Councillors eligible to vote were present; that at about 20.15hrs the PS announced the results; no candidate had acquired 55% of the votes cast; the PS announced the run-off; Petitioner reported to him that some of the Councillors who were his supporters had been held hostage by the two MPs at a residence. He immediately requested the LUC Mr Max Kanu to make enquiries and to



take necessary action. Mr Kanu and Petitioner left for the residence, but he did not report to him subsequently; voting in the second round commenced at 21.30hrs. There were 3 electric bulbs in the entire Court barray; no roll call was conducted; the clothes covering the booths were lifted; voting ended at 22.45hrs; at polling station 3 127 ballot papers were issued, but votes cast were 129. At about 11.15pm the PS announced the results. In Court, he was asked to read the last 3 lines of that statement, and said that 3 of them were in the barray when the report was made, but Mr Kanu did not get back to him.

29. Under cross-examination, he agreed that he had signed the Attestation document, to recognise the new Paramount Chief, and that both Petitioner and 1<sup>st</sup> Respondent were present when he did so; and that the candidates and the other Assessor Chief attested in his presence. He also admitted, when cross-examined by Mr Fynn that the cloths at the Polling Booths were lifted occasionally to assist voters. This is understandable as the second round was conducted at night.

30. PC Queen's evidence is clear and precise. He explained why the cloths covering the polling booths had to be lifted on occasions. He had himself said there were only three bulbs in the barray; the second round voting was conducted at night. What might appear as an irregularity in situations where the polling station is well lit, appears eminently sensible in the situation prevailing at Lokomasama on the night of 5 December, 2009. Save for the inconsistency noted in booth 3, and which was later explained away by Mr Quiwa, he noted no irregularity in the conduct of the election. He had himself signed the Attestation document. PC Queen is a credible witness, and clearly did not intend to take sides in the dispute. He directed the Police to take action when the report of hostage taking was made to him, but the Police, surprisingly, did not get back to him; and it would appear, neither did the Petitioner, which is rather surprising also.

#### POLICE WITNESSES

31. I shall now go on to deal with the evidence of the two Police witnesses, PW10&11 respectively. PW10 ASP Elijah Moses, adopted his witness statement made on 16 January, 2010 as his evidence-in-chief. In that statement he said inter alia, that he was instructed by the LUC Kanu, to mobilise his men and to proceed to a house where Councillors were allegedly being held hostage. He mobilized 20 personnel and moved to the

house with the Petitioner. The house was about 100 yards from the barray. When they got to the residence, they could not enter the premises because they were confronted by a group of young men who said they were at a meeting, and that what they were engaged in, was not the business of the Police. They tried to force their way in, but the young men put up resistance. One of his colleagues Inspector Abdul Kanu, PW11 was slapped and his uniform was torn. As they were overpowered, they retreated to the barray, and he reported to the LUC. He has not said he reported to NEC officials, nor to the Assessor Chiefs, even though, one of his officers had been assaulted.

32. Under cross-examination, he said that second round voting was done in an orderly manner. It was partly done, peacefully whatever this may mean; he saw people being locked up, but he could not go into, nor could he see into the house. He and Mr Kanu, PW11 were present when the second round ballot was being counted. He escorted the two Assessor Chiefs out of the Barray at the end of the counting; 1<sup>st</sup> Respondent went out with the LUC. Now, it seems to me rather strange, that after all the dramatic incidents he had supposedly witnessed, this witness at no time mentioned to anyone other than the LUC who was not called as a witness, that people had been detained against their will.

33. PW11 was Inspector of police Abdul Kanu. He adopted as his evidence-in-chief his witness statement made on 16 January, 2010. His statement mirrors largely that of PW10. Additionally, he stated that he was slapped by one William Kamara of kalangba Town who collared him and tore his uniform. His colleagues arrested him and took him to the Police Station, while PW 10 left to inform the LUC. Now the importance of this witness' testimony, is that the person who assaulted him was identified by him, and that person was taken to the Police Station. What is missing is evidence of what happened to him. The Petitioner's case is that the person who slapped him was one of those who were in the house where his supporters had been held hostage. My view is that evidence as to whether this William Kamara was 1<sup>st</sup> Respondent's supporter or not, would have put the matter of whether or not the persons who held the Councillors hostage were supporters of 1<sup>st</sup> Respondent, beyond dispute. And in view of the absence of the LUC from the witness box, it is hard to accept without more, that notwithstanding the occurrence of such an irregularity, no one made an attempt, save the Petitioner, according to his



testimony, to stop the election proceeding. Not even PC Queen an Assessor Chief made any attempt to stop the election proceeding. At the close of this witness's testimony, the Petitioner closed his case.

#### RESPONDENTS' RESPECTIVE CASES

34. I shall now move on to the evidence presented by both Respondents. The 1<sup>st</sup> Respondent gave evidence himself, and called 6 witnesses; the 2<sup>nd</sup> Respondent gave evidence through its official, Mr Quiwa as DW8.

#### EVIDENCE FOR 1<sup>ST</sup> RESPONDENT

35. The 1<sup>st</sup> Respondent, DW1 started off by adopting his witness statement as exhibit B pages 1-2 as part of his evidence-in-chief, and went on to give further evidence. He said Memuna Gassama was not his wife, but his cousin, and that she had no house in Lokomasama. He said after the first ballot, he went looking for three of the other candidates who were his nephews, Dr Ibrahim Kamara, Bai Sama Shebora Kamara and Lamin Kamara. He was told they had gone to the Kanu brothers' house which was about a quarter of a mile away from the barray. When he got there, he met Hon Alpha Kanu, the two MPs, Hon Buya Kamara, and the Petitioner. Petitioner was on his knees begging the MPs to persuade Bai Shebora to give him his votes. He, 1<sup>st</sup> Respondent beckoned to Bai Shebora to come out, but he did not. He therefore returned to the Court barray. Later, Bai Shebora met him at the barray, and he agreed to support him in the second ballot. He called on his supporters to support 1<sup>st</sup> Respondent as they both came from the same Ruling House.
36. At the end of the second ballot, Petitioner, the Assessor Chiefs and himself signed a document. Petitioner congratulated him in front of journalists: he said "Uncle, congratulations". Nobody complained about supporters being locked up. The LUC and some Police Officers escorted him to Lungi in a vehicle with a siren. Under cross-examination, he said inter alia, that Wurie Jalloh did not support him in the second round, and later, that he did not know whether he supported him. He also said that the two MPs supported him. What I found perplexing about his evidence is the allegation that Petitioner went to the Kanu's house after the first round, and was on his knees begging the MPs. This allegation was not put to the Petitioner whilst in the witness box, for him to deny it; but curiously, Mr Jalloh who conducted the cross-examination on behalf of

the Petitioner, did not suggest that the allegation was untrue. If evidence is not contradicted, it has to be accepted by the Court as true. This led me to ask, after the close of cross-examination, questions of the 1<sup>st</sup> Respondent about whether he went to any house near the Court Barray; his answer was in the negative; also, he said that the two MPs and Wurie Jalloh were not with him in the Court barray; they went there to vote, and left thereafter.

37. Both MPs gave evidence as DW2&5 respectively. Their evidence supports in the main, that given by DW1 about what transpired in the Kanu house, with some additional details about money changing hands in order to secure a win for the Petitioner. Under cross-examination Hon Binneh Bangura reiterated that Petitioner begged him on his knees; and denied that he threatened anybody to vote for 1<sup>st</sup> Respondent.

38. DW3 was Bai Sama Shebora Kamara. He adopted his witness statement as his evidence-in-chief, and gave further evidence. He confirmed that as he had lost out in the first ballot with 93 votes, he requested his supporters to give their votes to 1<sup>st</sup> Respondent. At the Kanu residence, Hon Alpha Kanu had tried to persuade him to give his votes to Petitioner, but he had refused as, according to him, he would not compromise his family for politics. Petitioner belonged to another Ruling House, whilst 1<sup>st</sup> Respondent and himself belonged to the Bomboya Ruling House; he could not therefore support the Petitioner. Under cross-examination by Mr Jalloh, DW3 said that everybody voted on a secret ballot basis.

39. DW4 was the person with the by now well-known name of ALHAJI WURIE JALLOH. He adopted his witness statement as his evidence-in-chief, and gave additional evidence also. He said he supported Dr Ibrahim Kamara during the first ballot; he agreed he gave money to people to support Dr Kamara, but when he lost badly in the first round with only 8 votes, he demanded his money back, and later issued Summonses against these people. He denied all the specific allegations made against him by the Petitioner. Under cross-examination, he said he did not support anybody in the second round, as he did not have the time to campaign for anybody after the first ballot, and again, denied all the specific allegations made against him. He mentioned some meeting he held with Bai Sama Shebora and DW5 at Komrabai on the day before the election about supporting 1<sup>st</sup> Respondent's candidature, but not on election day



itself. What his evidence amounts to, is that he supported the losing candidate Dr Kamara, and that he demanded his money back from those whom he alleges had deceived him. His evidence does not necessarily support the 1<sup>st</sup> Respondent's case. What it does is to detract from the strength of the Petitioner's case. In his attempt to lead evidence to show that DW4 was guilty of dirty tricks in the election, Petitioner merely succeeded in showing that these dirty tricks were employed in support of someone who had lost the election. Perhaps Petitioner's intention here was to invite the Court to believe that if he had on his own admission, through the Court Summonses, bribed people to support Dr Kamara's candidature, he could also have done so in support of 1<sup>st</sup> Respondent. The problem is that he denies bribing on behalf of 1<sup>st</sup> Respondent, but freely admits bribing on behalf of Dr Kamara. The Petitioner's witnesses have given evidence that they saw him with a bag which he claimed to contain Le20m, but none of them said he actually gave money to anybody, or actually took out money to give to anybody. The gesture may have been mere bluff. I agree the evidence shows he is a dodgy character, but much more than this is required to support the Petitioner's case that he attempted to bribe Councillors to vote for 1<sup>st</sup> Respondent.

40. DW5 was Hon Kombor Kamara. His evidence like that of his colleague, MP was a complete denial of the allegations of hostage taking, and attempted bribery. Mr Williams quite rightly took objection to his testimony, that it departed considerably from his witness statement, and I assured him that that being the case, I would at the end of the day accord to it the weight due evidence which the opposite side had not had the opportunity to examine beforehand. What I have relied on is his evidence in cross-examination. There, he said, inter alia, that Bai Shebora was his blood brother, and that he was also related to Dr Kamara; that he had a close relationship with 1<sup>st</sup> Respondent. He also denied the specific allegations made against him

41. My assessment of the evidence given by these witnesses, is that even if it is not partisan on the side of the 1<sup>st</sup> Respondent, it is clearly anti-Petitioner. They all claim not to have been involved in the hostage taking, and in the bribing of supporters. As the incidents surrounding these allegations took place away from the Court barray, it is worthwhile to examine the evidence of DW6 P C ALIE BALAMSAMA MARAH III, the other Assessor Chief. He adopted his witness statement as his evidence-

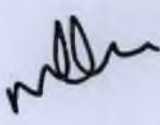
in-chief, and gave further evidence. He said at the end of voting the candidates and their agents were asked whether they were satisfied. The agents said, in the presence of the candidates, that they were satisfied. The first time he had about Petitioner's Petition was on 18 January, 2010. Petitioner never reported to him that his supporters had been taken hostage; nor did the Police do so.

42. Under cross-examination, he said that Petitioner and 1<sup>st</sup> Respondent were seated next to each other during the election. PC Queen did not tell him that Petitioner's supporters had been taken hostage; and to be fair, PPC Queen never said that he did so whilst giving evidence. He said also that the issue of over-voting arose during the election, and that the unused ballot papers were counted out aloud by the NEC official.

43. 1<sup>st</sup> Respondent's last witness was the Provincial Secretary, Northern Province Mr Abdul Dumbuya. He tendered in evidence his witness statement as exhibit B pages 10&11. His Report on the conduct of the election was tendered as C pages 1-8. He said further, that he was not aware of the Petitioner's allegations. At page 4 of exhibit 4, the Petitioner signed acknowledging that the election was held in a free, transparent, credible and violence-free manner, and endorsed the election and the election results' credibility. He said he did not force Petitioner to sign this document. Both Petitioner and 1<sup>st</sup> Respondent had in fact given him the titles they would wish to be known by, if either of them won the second ballot.

44. Under cross-examination, he denied working with the 1<sup>st</sup> Respondent in the civil service; and that 1<sup>st</sup> Respondent had been his boss. He denied hearing or knowing anything about the Petitioner's supporters being abducted. He said exhibit C was prepared after, and not before the second ballot; and that it was prepared before page 7 which contains the run-off results. To my mind, the question arises, if Petitioner was fully aware of the allegations of hostage taking and attempted bribery of voters, why did he sign page 5 of exhibit C? His signature is clear evidence that he agreed on 5 December, 2009 that the election was conducted properly and fairly. He has not, whether directly, or indirectly through cross-examination of DW7 or any other witness, suggested that he did not sign it; nor that he was compelled or falsely induced to sign it. What we have left therefore is the Petitioner's affirmation of the whole



process and the result. His letter of complaint dated 7 December, 2009 therefore becomes all the more perplexing. In that letter, he names Wurie Jalloh and Hon Kombor Kamara as the architects behind the abduction plot; neither the 1<sup>st</sup> Respondent, nor Hon Binneh Bangura is named in this respect; further down the same page of this letter, he alleges that both MPs terrorized and intimidated the Chiefs and tribal authorities not to vote for him. If, as Petitioner said in evidence he had brought these irregularities to the attention of the PS and Mr Quiwa, he has offered no explanation as to why he signed page 5 of exhibit C; and he is duty bound to do so, lest his case fail for leading evidence which contradicts itself at given points. 

## 2<sup>nd</sup> RESPONDENT'S CASE

45. After this witness's testimony, 1<sup>st</sup> Respondent closed his case, and 2<sup>nd</sup> Respondent opened its case, calling Mr Quiwa as DW8. He adopted his witness statement exhibit D pages 1-3 as his evidence-in-chief, and tendered in evidence as exhibit E pages 1-10 the final voters register for station 3. He was extensively cross-examined by Mr Williams on behalf of the Petitioner. Discrepancies in the ticks given to indicate whether a voter had voted once or twice appeared in exhibit E. Osman Bangura's receipt shows just one tick, but on the voting list where his name appears as No. 112, there are two ticks against his name. The same applies to Melyli Kamara, numbered 112 on the voting list. There are two ticks against his name, but his receipt bears only one tick.
46. DW8 also tendered in evidence, as exhibit H pages 1-11 the voting list for station 1; as exhibit J pages 1-10 the voting list for station 2; and as exhibit K pages 1-5 the Gazette. Mr Williams took him through exhibits H and J respectively. Kadiatu Kamara is shown to have voted twice in exhibit H page 4 at number 37. The principal complaint of Mr Williams as far as these exhibits go, is that by recording some voters as having voted twice, when in fact they only voted once, the whole process was vitiated. During re-examination, Mr Quiwa attempted to explain away these discrepancies. His explanation was that ticking is not the only process that shows whether one has voted or not voted that is, in respect of both the tax receipt and the Final Voters Register (FVR). He said during the process human error can occur. The ticks are not conclusive as to whether somebody voted or did not vote. And in answer to a question put

to him through the Court by Mr Jenkins-Johnston, he said the discrepancies were only brought to his attention whilst he was in the witness box. He had not spoken to the people responsible for doing the ticking about these irregularities. At least, it shows that he had not attempted to tamper with, or to manufacture the evidence. That there were discrepancies is beyond dispute; but do they by themselves destroy the credibility of the whole election process, and thus render the election improper in the manner set forth in Section 18? This is what I have been called upon to determine. The 2<sup>nd</sup> Respondent closed its case after Mr Quiwa's testimony.

#### COUNSEL'S RESPECTIVE ADDRESSES

47. Mr Williams for the Petitioner, Mr L Jenkins-Johnston and Mr Reginald Fynn for the Respondents, respectively, submitted written addresses, and addressed the Court orally on 23 March, 2010 and I am indebted to all three of them for the industry and skill in deploying arguments, displayed in their respective addresses. I am also indebted to Mr Williams for the cases cited by him, in particular, the Kenyan case of *MWAKESI v MWAKWERE CHIRAU ALI and 2 others* E.P.No. 1 of 2008, High Court of Kenya. I have read these cases carefully. They are quite instructive, but they must be read with the utmost circumspection, because of the piece of legislation which with this case is concerned. Those cases deal with legislation which specifically proscribes certain kinds of actions and practices at election. The commission of any one of them, either by a candidate at the election, or by his known supporters, could lead to an annulment of the election. The old Electoral Provisions Act, 1962 and the Electoral Laws Act, 2002 set out specifically, conduct which invalidates an election. Section 18 of the Chieftaincy Act, 2009 merely requires, for the purposes of this case, that the election be otherwise improper, paragraph (a) of that Section not having any bearing on this case. I agree with Mr Jenkins-Johnston that what I have to deal with in this case, is the propriety of the election and electoral process itself. I am concerned specifically with the electoral process, and not with its antecedents. This is the first time the provisions of the Chieftaincy Act, 2009 are being tested in the Courts, and I am as it were, sailing in uncharted waters. Clearly, if the Legislature had intended that the practices and conduct which would invalidate a Chieftaincy election should be the same as those which would invalidate, for instance, the election of Paramount Chiefs as



Members of Parliament, as provided for in Parts VII & VIII of the Electoral Laws Act, 2002 it would have stated this in undoubted terms; or it would have incorporated by reference these provisions. As it has not done so, it is fair to assume, that it is for this Court to decide what can be categorised as improper about the election held on 5 December, 2009.

#### THE LAW

48. STROUD'S JUDICIAL DICTIONARY 4<sup>th</sup> Edition states that "*improper*" really means wrongful - that is, otherwise than by inevitable accident. This particular definition is unhelpful in the circumstances of this case. The other definitions given are of no help either. As we are treading new ground, and trying to garner the intention of the Legislature in abjuring all the other types of conduct which have in the past invalidated elections, I shall seek guidance from decided cases. Firstly, about the word improper. The case of *RIDEHALGH v HORSEFIELD AND ANOR* [1994] 3 All ER 848 CA attempts to define "*improper*" in terms of Section 51(6) & (7) of the Supreme Court Act, 1981. At page 849 in headnote (1) it is said that "*improper*" covered any significant breach of a substantial duty imposed by the relevant code of professional conduct. In *MORGAN AND OTHERS v SIMPSON* [1974] 3 All ER 722, CA, cited by Mr Williams, the Court held, in interpreting the applicable election laws in that case, that elections would be declared invalid if irregularities in the conduct of the election had been such that it could not be said that the election had been so conducted as to be substantially in accordance with the law as to elections; or, if the irregularities had affected the result. If breaches of the election rules, though trivial had affected the result, that itself was enough to compel the Court to declare the election void even though it had been conducted substantially in accordance with the election laws. The earlier case of *GUNN AND OTHERS v SHARPE AND OTHERS* [1974] 2 All ER 1058 QBD had decided likewise. In *RE KENSINGTON NORTH PARLIAMENTARY ELECTION* [1960] 2 All ER, 150 Election Court, the issue there was whether the absence of marks against the names of persons who had voted, invalidated the election. The Court held, inter alia, per STREATHFIELD, J at page 152 para H "*It seems to me that the election was conducted substantially in accordance with the law, and that the act or omission did not affect the true result.*" It is true that in that case, the voters concerned did not allege that they had not voted at all; the point there was that the Returning Officer

failed by omission to put marks against their names in the voting register to show that they had indeed voted; and this was held not to invalidate the election.

49. HALSBURY'S LAWS OF ENGLAND 3rd Edition Vol 14 title Elections, is also helpful. At paragraph 261 page 150 the Learned Authors state that: *"An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election if the tribunal is satisfied that the election was notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, was not and could not have been affected by those transgressions."* But if there is reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force, the tribunal is bound to declare the election void.

50. I accept the evidence of Mr Quiwa that there was really no over-voting in station 3. In the first round, 137 Councillors voted; in the second round, 129 voted. I accept also the evidence of Mr Quiwa that he had explained at the Court bar that the reason why it may have appeared that there was over-voting at station 3. 52 ballot papers were in one of the ballot books instead of 50. I also accept his evidence, as it has been un-contradicted, that he refused to allow two people to vote as one, a lady, had said she had gone to pray, and the other, a gentleman, had said he had gone to eat. I recall that PW8 Kadiatu Kamara who was sworn on the Koran, was cross-examined by Mr Jenkins-Johnston as to whether she had said she had not gone earlier to vote because she was attending prayers.

#### CONCLUSION

51. The Petitioner's case is that if his supporters had not been held hostage, they would have voted for him in the second round, and he would have won the ballot. In the Petition, it was alleged 35 Councillors had been held hostage. In evidence, the Petitioner's witnesses referred to 15-20 Councillors. PW2 voted in the second ballot; and PW3 was not prevented from voting. In the first round, Bai Sama Shebora polled 93 votes; and in his evidence in Court, he said he instructed his supporters to vote for 1<sup>st</sup> Respondent in the run-off. If one assumes for one moment that all of



those who voted for him in the first round, swung over to 1<sup>st</sup> Respondent in the second round, it is easy to see how 1<sup>st</sup> Respondent triumphed over Petitioner. Even if PW4,5,6,8&9 had voted for Petitioner, he still would have come second in the second round. Petitioner has not accounted for, nor has he explained why the rest of the 15 alleged hostages were not called to testify. Ordinarily, a party to litigation would not be called upon to call all witnesses supportive of its case; but where, as here, the numbers, and the allegations about the numbers, are hotly contested, I should have thought the Petitioner would go the extra mile, and call all relevant evidence, if not for anything, but to dispel the notion that the absence of certain number of voters, did not deprive him of winning. The principle to be deduced from the cases cited, is whether the transgressions or omissions would affect the result. I have no reason to believe that they would have done so. The credibility of NEC, the 2<sup>nd</sup> Respondent is at stake in this Cause, and it is my view that given the circumstances, having to conduct the second round in near darkness, Mr Quiwa did the best he could, and ought not to be faulted. There is no evidence before that he or any other NEC official was guilty of any corrupt practice; and since there is no credible evidence before me that he was notified of the unlawful arrest and detention of the Petitioner's supporters, I cannot truthfully say, on the evidence led, that the election was improper. The Petition is therefore dismissed with Costs to the Respondents.

  
N C BROWNE-MARKE

Justice of Appeal

26 April, 2010.