

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA**  
**ELECTION PETITION NO. 003 OF 2016**

**PAUL OMARA=====PETITIONER**

**=VERSUS=**

- 1. ACON JULIUS BUA**
- 2. THE ELECTORAL COMMISSION**
- 3. UGANDA NATIONAL EXAMINATIONS BOARD**
- 4. NATIONAL COUNCIL FOR HIGHER EDUCATION.**

**RESPONDENTS**

**BEFORE HON. JUSTICE WILSON MASALU MUSENE.**

**JUDGMENT.**

The petitioner, Paul Omara was a candidate together with six others for the directly elected Member of Parliament for Otuke Constituency in the Parliamentary Elections held on the 18<sup>th</sup> February 2016. The 1<sup>st</sup> respondent was also a candidate in the said Elections and was declared and gazetted by the 2<sup>nd</sup> Respondent (Electoral Commission) on the 3<sup>rd</sup> March 2016 as the successful Member of Parliament for Otuke Constituency having polled **11,409 votes** while the petitioner was gazetted by the 1<sup>st</sup> respondent to have polled **5, 569 votes.**

The petitioner, Paul Omara stood as an Independent Candidate while the 1<sup>st</sup> respondent, Acon Julius Bua stood on National Resistance Movement party ticket.

The other four candidates, namely Jacinto Ogwal Deusdedit Ogwal (Independent) obtained **1,659 votes**, Makmot Kibwanga Adam (Independent) obtained **1,589 votes**, Okello Richard Ecun (UPC)

obtained **2,582 votes**, and Daniel Omara Atubo (Independent) obtained **4,340 votes** respectively.

The petitioner's case was that the 1<sup>st</sup> respondent was illegally nominated as NRM party flag bearer, declared and gazetted by the 2<sup>nd</sup> respondent, the Electoral Commission of Uganda, on the 3<sup>rd</sup> March 2016 as the Member of Parliament for Otuke Constituency having polled **11,409 votes** (Eleven thousand four hundred and Nine) and while the petitioner was gazette by the 2<sup>nd</sup> respondent to have polled **5,609** (Five thousand six hundred and Nine votes). The petitioner came second in the election and is aggrieved by the election and declaration of the 1<sup>st</sup> respondent as the elected Member of Parliament for Otuke Constituency in the February 18<sup>th</sup> Parliamentary Election.

The petitioner further states that there was non-compliance with the provisions of the Parliamentary Elections Act, 17 of 2005 (PEA), the Electoral Commission Act (ECA), the Universities and other Tertiary Institutions Act, 2001 and the Uganda National Examinations Board Act, Cap 137, National Council for Higher Education Act and the Universities and other Tertiary Institutions (Equation of Degrees, Diplomas and Certificates) Regulations S.I No. 84/2005 or any Regulation in substitution and relating to the conduct of the said elections and principles laid down in the said Acts and Statutory Instruments, and that the non-compliance affected the results of the elections in a substantial manner.

## **REPRESENTATION.**

The petitioner was represented by Counsel Makmot Kibwanga from M/s Makmot Kibwanga & Co. Advocates together Mr. Peter Kibilango from

Orima & Co. Advocates. The 1<sup>st</sup> respondent was represented by Counsel Oyugi Onono Quirinus of M/s Oyugi Onono & Co. Advocates, the 2<sup>nd</sup> respondent by Mr. Paul Kuteesa and Mr. Justus Nuwamanya from Arcadia Advocates, the 3<sup>rd</sup> respondent was represented by Mr. Ssemakula and the 4<sup>th</sup> respondent was represented by Mr. Asuman Nyonyintono together with Ms. Fiona Kunihira.

**ISSUES:**

During the scheduling conference, issues to the petition were modified by court and agreed upon by the parties as follows:-

1. Whether the 1<sup>st</sup> Respondent was at the time of his nomination and election possessed of the minimum academic qualifications for election as Member of Parliament.
2. Whether or not there was non-compliance with the electoral laws in the elections for Member of Parliament of Otuke Constituency.
3. If so, whether the non-compliance affected the results in a substantial manner.
4. Remedies available.

All the parties filed written submissions which are on record. In summary, counsel for the petitioner as far as the 1<sup>st</sup> issue is concerned submitted that the 1<sup>st</sup> respondent did not possess the ordinary level qualification leading to an 'A' Level award as the purported qualification from Southern University at New Orleans does not qualify as an equivalent of Uganda Certificate of Education.

He added that a careful scrutiny of the enrollment history marked as Annexure 3 and the supporting transcript marked as Annexure 4(1) to

the 1<sup>st</sup> respondent's affidavit exposes the forgery and fraud orchestrated by the 1<sup>st</sup> respondent and condoned by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

He added that the 1<sup>st</sup> respondent never attended any course at Southern University at New Orleans. That the enrolment documents presented by him bears the name "Julius Achon" with 'H' included as opposed to the names used in the elections for Member of Parliament. He added that the certificate issued by UNEB annexed to the 1<sup>st</sup> respondent's affidavit described the respondent as Acon Julius without "H" and yet UNEB claimed that the transcript of Southern University at New Orleans was the basis for issuance of the certificate of equivalence. He added that the same applies to his undated transcript from Southern University at New Orleans which is styled as "Achon Julius" with "H."

Counsel further added that the hand written entries on the anticipated graduation date as opposed to the computer generated claims by the witness confirms the illegal alterations which compound the assertion of forgery and fraud. And further claims that the 1<sup>st</sup> respondent graduated whereas in his own testimony in cross examination he denied ever graduating also casted doubt in 1<sup>st</sup> respondent's case. On Advanced Level academic qualifications, it was submitted by counsel for the petitioner that the 1<sup>st</sup> respondent further orchestrated forgery and fraud when he presented a fake transcript from George Mason University. And that "To begin with the name of the student is Julius Achon whereas the document is issued to Julius Acon." Meanwhile UNEB describes the candidate as "Julius Acon" in their certificate of equation of 'A' Level without 'H' in the Annexure 22 of the 1<sup>st</sup> Respondent's affidavit, without proof that his name was officially changed.

He further added that in the George Mason transcript, the student ID number is no longer social security number as was in Southern University of New Orleans and that it was another clear identification of fraud.

On University qualifications, it was submitted that as it has been the conduct of the 1<sup>st</sup> respondent, he presented a transcript and certificate in the name of Julius Bua Acon without any nexus with Julius Achon from George Mason University and Southern University of New Orleans. That this only indicates that the student called Julius Bua Acon is different from the one called Julius Achon as the purported affidavit changing names was only sworn in 2014 after all the qualifications had been attained. Counsel concluded that the documents are fake.

Counsel for the petitioner also lamented at the inadequate authentication of documents from foreign Universities, alleging that they were tainted with falsehoods.

On the second issue of non-compliance with the electoral laws, counsel submitted that there had been a serious issue of contempt of court in that the 1<sup>st</sup> respondent caused himself to be nominated as NRM flag bearer in total disregard of a consent order executed before the Deputy Registrar of the High Court of Uganda at Lira.

He quoted many decided cases on contempt of court, adding that not only was the 1<sup>st</sup> respondent stopped from being nominated as NRM flag bearer, but the 2<sup>nd</sup> respondent (Electoral Commission) was made aware of the court order that stopped the 1<sup>st</sup> respondent from being nominated as a flag bearer of the NRM.

Learned counsel for the petitioner concluded his submissions emphasizing principles of democratic governance under Article 70 and Article 2 of the Constitution of Uganda. He added that the nomination of the 1<sup>st</sup> respondent in light of the court order was *void abinitio*, and that that was non-compliance with the law.

In reply, counsel for the 1<sup>st</sup> respondent denied the allegations of the petitioner. He quoted Article 80 (1) of the Constitution of Uganda which provides for qualifications and disqualifications of Members of Parliament as follows:-

- 1. A person is qualified to be a Member of Parliament if that person;***
  - a) Is a citizen of Uganda.***
  - b) Is a registered voter; and***
  - c) Has completed a minimum formal education of Advanced Level standards or its equivalent.***

Counsel also highlighted the provisions in the **Parliamentary Elections Act, No. 17 of 2005** as amended. He outlined the contradictions in the testimony of PW2, Tommy Ogwang, a Legal Assistant attached to Orima & Co. Advocates who testified that he did a lot of research in the documents and what was submitted for nominations and other various researches in this case. Reference was made to paragraphs 1, 2, 5 and 10 of PW2's affidavit. He added that however, during cross examination, it was established that Tommy Ogwang did a poor, inadequate and unreliable work. That Ogwang admitted before this Honourable court that the Electoral Commission (2<sup>nd</sup> respondent) acts of information from National Council for Higher Education (4<sup>th</sup> respondent) in consultation

with UNEB (3<sup>rd</sup> respondent). He went further to testify that he has never questioned National Council for Higher Education (4<sup>th</sup> Respondent) how it equates qualifications and how it equated the 1<sup>st</sup> respondent's qualifications. PW2 Ogwang Tommy admitted having been duly provided with all the academic documents of the 1<sup>st</sup> respondent used during his nomination for MP Otuke Constituency. **(See Annexure B document Ref. CF/UNEB/50 dated 14<sup>th</sup> August 2015** written to the Chairman of the 2<sup>nd</sup> respondent by Mr. Kagaba Peter for Executive Secretary of the 3<sup>rd</sup> respondent. He emphasized that this was together with the Certificate of completion of formal education of Advanced Level Standard or its equivalent dated **3<sup>rd</sup> day of August 2015** signed by Prof. Opuda Asibo John after conducting due diligence.

Counsel added that PW2, Tommy Ogwang never questioned the 4<sup>th</sup> respondent how it arrived at the decision to issue to the 1<sup>st</sup> respondent a certificate of formal education of Advanced Level or its equivalent **Ref. NCHE/GR/QE/19 dated 3<sup>rd</sup> day of August 2015** and what the 4<sup>th</sup> respondent's Executive Director Prof. Opuda Asibo John considered.

Counsel for the 1<sup>st</sup> respondent further submitted that the affidavits in support of the petition and against it were filed in this court by the parties and their witnesses. He pointed out that the 1<sup>st</sup> respondent deponed an affidavit in support of his answer to the petition upon which he was cross-examined and re-examined during the hearing of this petition.

He added that Mr. Kiyaga John, Deputy Chairperson, National Resistance Movement (NRM) Electoral Commission deponed a supplementary affidavit in support of the 1<sup>st</sup> respondent's case.

According to paragraphs 6 and 7 of his affidavit, Hon. Acon Julius Bua obtained academic qualifications from the Southern University at New Orleans, Louisiana (SUNO), George Mason University, Virginia and University of Phoenix all located in the United States of America (USA) and that he holds transcripts and certificates from the said institutions.

As far as equivalent of 'O' Level qualification was concerned, it was submitted that the 1<sup>st</sup> respondent obtained that qualification from Southern University of New Orleans, Louisiana (SUNO) where he studied for one year (2 semesters). Annexures 3, 4, 4(2) from the 3<sup>rd</sup> and 4<sup>th</sup> respondent's (UNEB and National Council for Higher Education) respectively.

Counsel reiterated that it was the mandate of the 4<sup>th</sup> respondent in consultation with the 3<sup>rd</sup> respondent to issue certificates of equation of foreign qualifications according to **Section 4 (6) & (7) of the Parliamentary Elections Act, (PEA)** which was done.

On the Advanced Level equivalent, counsel for the 1<sup>st</sup> respondent submitted that after having obtained the Southern University at New Orleans (SUNO) qualification, that the 1<sup>st</sup> respondent proceeded to join George Mason University, Virginia where he studied for two years (4 Semesters). And that the official transcript was given to 3<sup>rd</sup> respondent (UNEB) and 4<sup>th</sup> respondent (NCHE), whereupon a certificate of equivalent dated **3<sup>rd</sup> August 2015** was issued.

On degree qualifications from University of Phoenix, counsel submitted that according to paragraph 6 of the 1<sup>st</sup> respondent's affidavit in support to his answer, he deposes that he obtained yet another qualification which is a Bachelor of Science from the University of Phoenix in the

United States of America, attached to that affidavit as Annexure 5(4) which is the Degree Certificate and Annexure 5(6) and 5(7) which is the transcript. The 1<sup>st</sup> respondent submitted these documents to the 4<sup>th</sup> respondent and requested in writing by way of a letter dated **16<sup>th</sup> June 2014** that those qualifications be equated.

In response, Dr. Pamela Tibihikirra – Kalyegira, the Director Accreditation and Quality Assurance wrote to the 1<sup>st</sup> respondent informing him that his Bachelor of Science in Communication awarded by the University of Phoenix was authentic and equivalent to a similar Bachelor of Science in Communication awarded and Accredited by Higher Education Institutions in Uganda.

Counsel for the 1<sup>st</sup> respondent further submitted that since the 1<sup>st</sup> respondent provided all the transcripts and certificates which were identified and inspected by court that it was baseless for petitioner's counsel to allege that they did not exist. He emphasized that education system in the US operates differently from that of Uganda and so court should reject counsel for the Petitioner's misleading and unjustified submissions in so far as allegations of fraud, forgery and authenticity of the 1<sup>st</sup> respondent's academic documents are concerned.

On the 2<sup>nd</sup> issue of whether or not there was noncompliance with the electoral laws, counsel for the 1<sup>st</sup> respondent submitted that NRM is a political party established under the Political Organizations Act. And that it has a Constitution of its own with regulations and guidelines for its operations and activities including how the party can choose a flag bearer for National Elections. He added that a complaint should have been lodged against the decision of the NRM Election official Dr. Odoi

Tanga, Chairman of NRM Electoral Commission who had declared that the 1<sup>st</sup> respondent was the rightfully elected flag bearer for NRM for 2016 elections.

He further submitted that it is clear from the regulations 20(21) of the Regulations of the NRM primary Elections that the finality of the results declared by the District Registrar is only conclusive where there is no dispute or complaint. And that where there is a complaint, it is the declaration of the NRM Electoral Commission upon handling the petition that brings the matter to finality.

Learned counsel quoted the case of ***Fox Odoi v National Resistance Movement & Another (Constitutional Application No. 32 Of 2015)*** before a panel of Justices Steven B. Kavuma, DCJ, Hon, Justice Elizabeth Musoke, Hon. Justice Cheborion Barishaki. He added that they found that the orders sought by the Applicant (Fox Odoi) for court to restrain the respondents (National Resistance Movement and Attorney General) from removing him from his position as the NRM flag bearer had been overtaken by events and there is no status quo to be maintained in that regard.

He added that the Constitutional Court Judges considered the affidavit of the Chairperson of the NRM Electoral Commission that the National nomination dates for Members of Parliament were fixed for the 2<sup>nd</sup> and 3<sup>rd</sup> December 2015. And that being so, it would, in their view, be virtually impossible for the NRM Electoral Commission to conduct elections to secure a flag bearer within these remaining few hours and therefore held that the balance of convenience tilted in favour of the 1<sup>st</sup> respondent

(National Resistance Movement). And that the application in the Constitutional Court by Fox Odoi was dismissed with costs.

He was further submitted that in this country, one is free to join any political party of one's choice or to remain independent. And that by joining a party, one signifies one's acceptance of its constitution, regulations and practices.

He concluded that this court disregards and finds that there was no breach of court order and that there was compliance with the electoral laws namely, Provisions of the Parliamentary Elections Act as amended, the Electoral Commission Act, The Universities and other Tertiary Institutions Act, 2001, and the Uganda National Examinations Board Act Cap.137.

Lastly on whether the non-compliance affected the results in a substantial manner, counsel for the 1<sup>st</sup> respondent submitted that the evidence on record in comprised of affidavit evidence filed by all the parties pursuant to the provisions of **Rule 15(1) of SI 141-2** and documentary evidence filed as Annextures to the affidavit evidence. He submits that the petitioner has not adduced sufficient evidence to show any non-compliance. He added that counsel for the petitioner has also failed to show how any non-compliance, if any, affected the outcome of the election in a substantial manner. He quoted the case of **Joy Kabatsi Kafura v Anifa Kawooya Bangirana & Electoral Commission; Election Petition Appeal No. 25 of 2007**, where the Supreme Court held inter alia that the issue of non-compliance affecting the results substantially should be premised on proved irregularities of non-compliance.

Similarly, that ***Kisakye JSC in Sitenda Sebalu v Sam Njuba, Election Petition No.6 of 2009***, observed that the petitioner must satisfy the court that there was a failure to conduct the election in accordance with the electoral laws and the principles laid down in those laws. It was emphasized that ***Section 61(1) (a) of Parliamentary Elections Act 17 of 2005 provides that an election shall only be set aside if proved to the satisfaction of court.***

And on remedies, counsel for the 1<sup>st</sup> respondent prayed for the dismissal of the petition with costs.

The submissions by counsel for the 2<sup>nd</sup> respondent were similar to those of the 1<sup>st</sup> respondent's counsel as far as academic qualifications to contest for Member of Parliament were concerned.

The 2<sup>nd</sup> respondent in reply denied the said allegations and stated that it rightfully nominated the 1<sup>st</sup> respondent in accordance with the Law and was not in any way biased or fraudulent and that the 1<sup>st</sup> respondent duly presented a Certificate of Equivalence which was obtained from Uganda National Council for Higher Education dated **3<sup>rd</sup> August 2015**. Reference was made to paragraphs 16, 17 and 18 of the affidavit of Moreen Akullo in support of the 2<sup>nd</sup> respondent's answer to the petition which according to the submissions was not contested or challenged by the petitioner in cross examination.

Counsel for 2<sup>nd</sup> respondent further submitted that the Certificate of Equivalence was attached to the affidavit of Prof. Opuda Asibo John, the Executive Director of National Council for Higher Education as Annexure 'H'. He added that the 4<sup>th</sup> respondent duly consulted the 3<sup>rd</sup> respondent and as a result authenticated that the 1<sup>st</sup> respondent's

qualifications were equivalent to 'A' Level and issued with him a Certificate accordingly. And that based on this certificate, the 2<sup>nd</sup> respondent duly nominated him and that there was no basis for challenging the nomination.

They added that the petitioner did not challenge the authenticity of the Certificate of Equivalence and that in any event the Petitioner never presented any evidence to the contrary that the 1<sup>st</sup> respondent did not attain the said qualifications or that he did not go to the Institutions talked about in the United States of America.

Counsel for 2<sup>nd</sup> respondent added that the petitioner made allegations of fraud against the 2<sup>nd</sup> respondent in paragraph 17 (b) of the Petition and Paragraphs 20 (b) of the affidavit in support of the petition sworn by the Petitioner. They submitted that the allegations of fraud against the 2<sup>nd</sup> respondent are baseless and were never proved at the hearing. That the petitioner did not bring any cogent evidence by affidavit or otherwise to prove the allegations of fraud against the Electoral Commission.

They concluded that under the provisions of **Section 4(9) of the Parliamentary Elections Act**, the certificate of Equivalence issued by National Council for Higher Education is final and conclusive on the question of academic qualifications and the 2<sup>nd</sup> respondent was bound to act on it and it nominated the 1<sup>st</sup> respondent.

On the issue of whether there was non-compliance with the Electoral laws, counsel for the 2<sup>nd</sup> respondent submitted that the Petitioner and the 2<sup>nd</sup> respondent were not parties to Civil Suit No.2 of 2015 in Lira High Court which resulted into the Court Order complained of by the Petitioner.

They added that since the petitioner was not a member of the National Resistance Movement party, then how could he know how the 1<sup>st</sup> respondent could have been presented as one sponsored by NRM party.

Counsel for the 2<sup>nd</sup> respondent submitted that the Interim Order and Consent Order in Civil Suit No.2 of 2015 stopped the parties from presenting themselves as NRM party in the Constituency pursuant to the Elections that were held on **27<sup>th</sup> October 2015** and not any other elections. Counsel for the Electoral Commission wondered why the petitioner, who is not a member of NRM party, could interfere or influence as to who should stand or not for that party in the National Parliamentary Elections and that since the 2<sup>nd</sup> respondent was never a party to **HCCS No.2 of 2015**, and the same was never served on them, then they cannot be cited in contempt of court and nor can the same constitute non-compliance for purposes of setting aside a validly nominated and duly elected Member of Parliament.

On the issue as to whether non-compliance affected the Election in a substantial manner, counsel for the 2<sup>nd</sup> respondent submitted that given the margin between the votes of 1<sup>st</sup> respondent and the petitioner, of over 5,000 votes, that it cannot be said that non-compliance if any affected the results. The second respondent therefore prayed for the dismissal of the petition with costs.

Counsel for the 3<sup>rd</sup> respondent on their part stated that it is the mandate of the 4<sup>th</sup> and 3<sup>rd</sup> respondents in consultation to equate qualifications and not any other party. They wondered why the petitioner wanted to strip the 4<sup>th</sup> and 3<sup>rd</sup> respondents off their legal duties. Reference was made to **Sections 4(5) and 4(6) of the Parliamentary Elections Act**

and under Universities and other Tertiary Institutions Act 2001, which sections read together mandates the 3<sup>rd</sup> and 4<sup>th</sup> respondents to equate specific qualifications.

They added that the Executive Director of the 4<sup>th</sup> respondent both in Viva Voca evidence and in evidence in his affidavit dated **15<sup>th</sup> May 2016** rightly explained typographical errors placed in the said Certificate and once the same were noticed, the Certificates were withdrawn and the witness brought original copies and also rightly reflected the correct position in the new certificate of **3<sup>rd</sup> August 2015**. Reference was made to paragraphs 14, 15, and 16 of the 4<sup>th</sup> respondent's affidavit.

Further submissions were that nothing at the time ever aroused the mind of the 3<sup>rd</sup> and or 4<sup>th</sup> respondent in fraud or forgery of the 1<sup>st</sup> respondent's qualifications. All in all, it was submitted for the 3<sup>rd</sup> respondent that the 4<sup>th</sup> respondent consulted with the 3<sup>rd</sup> respondent as required by law and that there was no evidence at all to show any fraud or forgery on the part of the 3<sup>rd</sup> respondent.

On issues of compliance or non-compliance, it was stated that the 3<sup>rd</sup> respondent was requested by the 4<sup>th</sup> respondent to equate the qualifications obtained by the 1<sup>st</sup> respondent to a Uganda Advanced Certificate of Education and that the 3<sup>rd</sup> respondent did analyze the George Mason University Student's transcript and based on the accumulated credit results therein, equated the same to Uganda Advanced Certificate of Education. The 3<sup>rd</sup> respondent was satisfied that the 1<sup>st</sup> respondent had obtained the required contact hours and cumulative grade points as indicated in the transcript. The 3<sup>rd</sup>

respondent is said to have done its work using due diligence hence compliance with the Electoral Laws.

Finally, it was submitted that the 3<sup>rd</sup> respondent was never a party to any of the party primaries and that the case in which the court order is said to have been breached.

The submissions by counsel for the 4<sup>th</sup> respondent (National Council for Higher Education) were similar to those of 3<sup>rd</sup> respondent and so I shall not repeat the details.

But briefly, the 4<sup>th</sup> respondent reiterated their mandate and added that the burden of proving that a candidate was not possessed with the minimum academic qualifications squarely rests on petitioner as provided under **S.61(3) of the Parliamentary Elections Act**. He also quoted the case of ***Joy Kabasi vs Hanifa Kawooya & Electoral Commission, Supreme Court Election Petition Appeal No. 25 of 2007, where Kanyeihamba JSC*** at page 62 held that,... ***“Those who make such allegations need not to do merely allege. They need to show that as a result of their allegations, the awarding Institutions of the higher qualification or any other equivalent to ‘A’ Level or some other qualification or some other classification cancelled or withdrew the award of the disputed qualification.”***

They added that in the present case, since the petitioner alleges fraud and forgery of the qualification, he needs to do more than alleging but advance evidence to support his allegation before the burden can ever shift.

On the second qualification which the petitioner claims the 1<sup>st</sup> respondent does not possess is Advanced standard, they submit that this is totally untrue and unfounded. That the 1<sup>st</sup> respondent having attained the SONU qualification proceeded to join George Mason University, where he studied for two (2) years (4 semesters). The official transcript was given to the 3<sup>rd</sup> respondent (UNEB) which consequently equated the George Mason University qualification to a Uganda Advanced Certificate of Education (UACE) as seen from their letter to the 4<sup>th</sup> respondent dated 3<sup>rd</sup> August 2015 which was issued to that effect.

The Executive Director's affidavit of the 4<sup>th</sup> respondent demonstrated the satisfaction after consultation with UNEB that indeed the said qualifications were equivalent to 'A' Level. Reference was made to paragraphs 7, 8, 9, 10, 12 and 18 of the affidavit. The Executive Director of the 4<sup>th</sup> respondent further addressed court in cross examination about the originals which had self-authentication security marks as was shown to court and demonstrated by him.

They submitted that while the petitioner and his counsel allege that there is no evidence that the 4<sup>th</sup> respondent consulted UNEB or sought advice on the 1<sup>st</sup> respondent's University of Phoenix Degree and ever produced results as no single written letter from UNEB to NCHE to the University of Phoenix Degree has surfaced and that NCHE issued a certificate of equivalence in respect of the University of Phoenix degree without input from UNEB.

To the contrary, they submitted that the affidavit of Prof. Opuda Asibo under paragraphs 10 & 11 clearly states and refers to Annexure 'G' where UNEB was consulted and rightly advised NCHE to the qualitative

value of the 1<sup>st</sup> respondent's qualifications in as far as the minimum requirements are concerned. And further that whereas the petitioner alleges fraud and forgery on the part of the 4<sup>th</sup> respondent and 3<sup>rd</sup> respondent in equating and specifically against the 4<sup>th</sup> respondent that there was no certificate of equivalence issued by NCHE dated 24<sup>th</sup> June, 2016 and that it included qualifications that were non-consistent.

Nevertheless that the Executive Director of NCHE both in his testimony in open court and in his affidavit evidence dated 15<sup>th</sup> May 2016 rightly explained the typographical errors placed in the said certificate and once the same were noticed, they were withdrawn and the witness brought original copies and also rightly reflected the corrected position in the new certificate of **3<sup>rd</sup> August 2015**. Reference was also made to paragraphs 14, 15 & 16 of his affidavit.

Counsel for the 4<sup>th</sup> respondent added that on the part of alleged forgery because of the alleged errors in the certificates, that the only exception to perfection in human nature for which the Executive Director is human and owned up the error but that does not invalidate the Certificate.

Their final submission was that there is no invalidity in the certificate where the truthful part exhaustively and sufficiently describes well the process that led to the award and thus that the document is valid.

I have considered all the submissions by all the Advocates of all parties, and I have also studied all the pleadings on record including supporting affidavits and cases relied on. I now resolve on the issues in the order they were agreed upon. But before I do so, I wish to restate the principles on burden and standard or proof. It is now settled law that in election petitions, the burden lies on the petitioner to prove his case.

The burden lies upon the petitioner who is required to prove every allegation contained in the petition to the satisfaction of the court. There are no special circumstances warranting any shift in the burden of proof as submitted by counsel for the petitioner in the present case. And as far as this Petition is concerned, it was incumbent upon the petitioner to adduce evidence to prove the allegations of fraud, forgery and non-compliance with the electoral laws.

As was authoritatively laid down by Wambuzi C.J as he then was, in the case of ***Kampala Bottlers Ltd vs Damanico (U) Ltd; S.C Civil Appeal No.22 of 1992***, “***for a plea of fraud to succeed, the fraudulent act must first be proved and it must be attributable to the person benefiting from it, either by direct involvement, or by necessary implication that such person had knowledge of the fraud and took advantage of it.***”

The standard of proof is a matter of statutory regulation under **Section 61 of the Parliamentary Elections Act 2005. Section 61(3) of the PEA** provides that the standard of proof required in an election petition is upon the balance of probabilities. However, it is also well established that given the public importance of Parliamentary and other elections, that the degree of proof is relatively higher than the one required in ordinary civil suits although lower than in criminal cases. All allegations must be proved to the satisfaction of the court. In the judgment of ***Mulenga JSC (RIP) in Kiiza Besigye*** case when dealing with the phrase “***proved to the satisfaction of court***” he said: “***I do share the view that the expression “Proved to the satisfaction of court” connotes absence of reasonable doubt,... the amount of proof that produces the***

***court's satisfaction must be that which leaves the court without reasonable doubt."***

The learned Judge also referred to the Judgment of Musoke–Kibuka J in the case of ***Abdu Katuntu v Kirunda Kivejinja Ali, Election Petition No. 7 of 2006*** in which the learned Judge judicially stated what constitutes ***"proof on the balance of probabilities."*** Musoke–Kibuka said:- ***"The Court trying an Election Petition such as this one, has the duty to ensure that before issuing an order for setting aside the election of a Member of Parliament, it is duly satisfied, by the evidence before it, that the allegations made in the Petition has been proved to the high degree of preponderance."***

**ISSUE NO 1: WHETHER THE 1<sup>ST</sup> RESPONDENT HAD THE MINIMUM ACADEMIC QUALIFICATIONS TO CONTEST AS A MEMBER OF PARLIAMENT.**

Under Article 80(1) (c) of the Constitution of Uganda, it is stated as follows:-

***"A person is qualified to be a Member of Parliament if that person completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by Law."***

The provision of the Constitution is restated in section 4 (1) (c) of the Parliamentary Elections Act.

Section 4(6) of the same Act states that the candidate to prove her qualification shall do so by presenting a certificate issued by the National

Council for Higher Education in consultation with UNEB. Under Section 4(9), the presentation of the said certificate is sufficient.

The petitioner in this petition and supporting affidavits alleges that the 2<sup>nd</sup> respondent wrongly nominated the 1<sup>st</sup> respondent as a Member of Parliament yet he did not have academic qualifications.

Needless to emphasize, it is the mandate of the 4<sup>th</sup> respondent in consultation with 3<sup>rd</sup> respondent to issue certificates of equivalence after equation of foreign qualifications as provided under **Section 4 (6) & (7) of the Parliamentary Elections Act.** Through a letter (Annexure 6) dated 21<sup>st</sup> March 2016 written by the 3<sup>rd</sup> respondent and addressed to Mr. Tommy Ogwang who was one of the petitioner's witnesses, UNEB gave their correct position regarding the 1<sup>st</sup> respondent as follows:

***“The correct position is that Acon sat an examination conducted by the Southern University of New Orleans in the United States of America in 1995 under Index Number 444001212 and was accordingly awarded a Certificate to this effect. It is the Certificate awarded by the University that was equated to be equivalent to Uganda Certificate of Education (UCE). Please note that the words “equated” and “equivalent” are hereby emphasized. UNEB proceeded to equate this Certificate to a UCE equivalent having satisfied itself that the required contact hours and cumulative grade points aggregate were met by the said candidate.”***

The second qualification which the petitioner claims the first respondent did not possess is that of Advanced Level standard. I find that this is not true and is unfounded as counsel for the petitioner has alleged. The 1<sup>st</sup>

respondent having obtained the Southern University of New Orleans qualification proceeded to join George Mason University, Virginia where he studied for two (2) years (4 Semesters).

During cross examination, the 1<sup>st</sup> respondent ably explained this to the court the process. Attached to the 1<sup>st</sup> respondent's affidavit is the official transcript of George Mason University which is Annexure 5(1) and (2). That official transcript was given to the 3<sup>rd</sup> respondent (UNEB) which consequently equated the George Mason University qualification to a Uganda Advanced Certificate of Education (UACE) as seen from their letter to the 4th respondent (National Council of Higher Education) dated **24<sup>th</sup> July 2015**. A Certificate of Equivalence dated **3<sup>rd</sup> August 2015** was issued to that effect.

Furthermore, the certificate of Equivalence dated **3<sup>rd</sup> August 2015** was issued to the 1<sup>st</sup> respondent in respect of his equated qualifications and it reads as follows:

***“...I certify that JULIUS BUA ACON who was born on the 12/12/1976 has satisfied the National Council for Higher Education in consultation with the Uganda National Examinations Board that he has completed formal education of Advanced Level standard or its equivalent, in that he holds the following qualification(s):***

***Bachelor of Science in Communication, University of Phoenix in 2011,...”***

A careful analysis of the evidence on record reveals that apart from the allegations raised, the petitioner did not prove the allegation of lack of

required academic papers or forgery of the same. Instead, he had purported that the burden of proof shifts to the 1<sup>st</sup> respondent which has already been overruled. It is not the law and practice in election petitions. Besides, the petitioner himself testified in cross examination in this court that he is not qualified in equating qualifications, detecting forgery and has no experience in equating qualifications and was just working on many suspicions with no cogent evidence.

In the case of ***Paul Mwiru Vs Nathan Samson Igeme Nabeta, Uganda National Examination Board and National Council for Higher Education, Jinja High Court Civil Misc. Cause No. 62 of 2015***, my sister Justice P. Basaza Waswa while quoting S.43 of the Evidence Act held as follows:-

***“A witness like the Applicant who is neither scientifically, professionally, or technically trained or skilled in such a specialized subject as equating of Academic qualifications does not qualify to testify on this. The weak conjectural and highly speculative attacks by the Applicant on the 3<sup>rd</sup> Respondent’s qualifications in the present case are distinction from strong attacks made on qualifications of Parliamentary aspirants in the cases earlier referred to of Gole Nicholas vs Loi Kiryapawo and Abdu Nakendo vs Patrick Muwonda.”***

I entirely agree with the Judgment of my sister in the above case and I find and hold that the circumstances in that case squarely apply to the present case. The petitioner in this case is not in any way qualified in the field of equating academic qualifications and his guess work or suspicion cannot be allowed by this court. I accordingly find and hold that the

petitioner has failed to discharge this burden of proof to the required standard as stipulated under **Section 61 (3) of the Parliamentary Elections Act.**

On the other hand and given the requisite experience and knowledge of Uganda National Examination Board (3<sup>rd</sup> respondent) and the National Council for Higher Education (4<sup>th</sup> respondent), this court is completely satisfied that a thorough job was done on the academic qualifications of Acon Julius Bua, the 1<sup>st</sup> respondent. This court was particularly impressed by the experience, demeanor and expertise of Prof. Opuda Asibo from National Council for Higher Education. He impressed this court as a witness of truth.

I am further satisfied that the 4<sup>th</sup> respondent consulted with the 3<sup>rd</sup> respondent as required by the law and there is no evidence at all to show fraud or forgery on the part of the 3<sup>rd</sup> and 4<sup>th</sup> respondents. I accordingly find and hold that the 1<sup>st</sup> respondent possesses the minimum academic qualifications and was lawfully nominated for Member of Parliament. The 1<sup>st</sup> issue is therefore resolved in the affirmative.

**ISSUE NO. 2: WHETHER OR NOT THERE WAS NON COMPLIANCE WITH THE ELECTORAL LAWS IN THE ELECTIONS FOR MEMBER OF PARLIAMENT OF OTUKE CONSTITUENCY.**

As far as this issue of non-compliance was concerned, counsel for the petitioner made a repeated allegation of fraud and forgery against the respondents alleging that it was non-compliance with electoral laws. I have already discussed the matters of alleged fraud and forgery under the 1<sup>st</sup> issue, so I shall not repeat.

The 2<sup>nd</sup> leg of alleged non-compliance was in respect of the Consent Judgment made in ***Lira High Court Civil Suit No.2 of 2015, Odongo John Bosco & 3 others Vs National Resistance Movement & 4 others***. In paragraph 10-14 of the petition, the petitioner relied heavily on the consent order in the above case to impute Contempt of Court and non-compliance on the part of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The consent order Annexure 'F' to the petitioner's pleadings decreed that NRM Elections for Otuke Constituency was nullified by the consent of the parties and that the 1<sup>st</sup> respondent was to run for Parliamentary Elections as an Independent Candidate except where NRM organizes a fresh primary elections and that NRM was not supposed to sponsor or permit the 1<sup>st</sup> respondent to run as its flag bearer.

Counsel for the petitioner submitted at length and quoted many cases on contempt of court. The 2<sup>nd</sup> respondent's defence was that they were not a party to the case and were never served with the same court order. Surprisingly, even the petitioner himself was not a party to that Lira High Court Suit No.2 of 2015 and so notwithstanding the obvious fact that the Electoral Commission could not interfere with the internal affairs and administration of political parties and with due respect to learned Advocate for the petitioner, I find that ground of contempt of court very wanting.

This is because the only ground to set aside an election petition is set out in **S.61 of the Parliamentary Elections Act**. In my view and as correctly submitted by counsel for 2<sup>nd</sup> respondent, contempt of an order of court in a Civil matter involving the parties is not one of the grounds upon which this court can set aside an election. Contempt of court does not amount to an illegal practice within the meaning of the Parliamentary

Election Act. The illegal practices are set out in **S.68 to 83 of the Parliamentary Elections Act, 17 of 2005** and contempt of court is not one of them.

Whereas court order should no doubt be obeyed at all times, failure to do so cannot be used as a ground to set aside an election. Any person who alleges disobedience of a court order should bring it to the attention of the court that issued the order that is the rightful court to handle the alleged disobedience or contempt. The cases cited by counsel for the petitioner relating to contempt of court though correct were cited in vain.

Furthermore, I find and hold that sponsorship by a political party or an irregularity in the sponsorship by political party does not invalidate the nomination of a candidate at all. In the recently decided case of ***Amama Mbabazi vs Yoweri Kaguta Museveni & 2 others, Supreme Court Election Petition No.1 of 2016***; it was held that the aspect of wrongful nomination of the 1<sup>st</sup> respondent by the NRM sponsoring party was not one of the grounds that could invalidate a candidate's nomination.

I have also studied the supplementary affidavit of Mr. Kiyagi Arimpa John, the Deputy Chairperson of the National Resistance Movement party under paragraph, he states that the lawyer Mr. Enos Mugabi who purportedly signed the consent order dated 16<sup>th</sup> November 2015 on behalf of NRM did so without instruction and authority. Mr. Enos Mugabi is said to have apologized to the NRM party.

In such circumstances, the authenticity of the court order in Lira HCCS No. 2 of 2015 is in doubt and as submitted by counsel by the 1<sup>st</sup> respondent, it is doubtable whether a consent order can oust the

constitutional rights and freedoms of the people (**Freedom of Association**) and whether it can be enforced by court.

In *Makula International Vs His Eminence Cardinal Nsubuga & Another [1982] HCB at page 11*, it was held that a consent agreement where fraud and misrepresentation exists can be varied or set aside.

In any case, the Lira HCCS No.2 of 2015 was concerned with NRM primaries and yet this petition is about the National Parliamentary Elections. The two are completely different. All in all and in the circumstances, I find and hold that there was compliance by the 1<sup>st</sup> and 2<sup>nd</sup> respondents with all the electoral laws and that none was breached as alleged by the petitioner, so the 2<sup>nd</sup> issue is resolved in the negative in that there was compliance as opposed to non-compliance.

**ISSUE NO. 3: WHETHER NON-COMPLIANCE AFFECTED THE RESULTS IN A SUBSTANTIAL MANNER.**

Having held under issue 2 that there was compliance with the Electoral laws, then the results cannot be said to have been affected in a substantial manner. The issue of non-compliance affecting results substantially should be based on proved irregularities of non-compliance. Such irregularities include bribery, forgery or fraud which as I have already held has not been proved to the satisfaction of this court by the petitioner. In the affidavit on record and other oral evidence adduced in court, there is nothing to show that the nomination of the 1<sup>st</sup> respondent as NRM party candidate was the reason why the petitioner polled **5,569 votes** as opposed to **11,409 votes** of the 1<sup>st</sup> respondent.

And moreover the petitioner contested as an independent having lost in the primaries of the Uganda People's Congress. There is no connection with the 1<sup>st</sup> respondent who contested on NRM party ticket therefore; the 3<sup>rd</sup> issue is also resolved in the negative.

**ISSUE NO. 4: REMEDIES.**

Having found and held that the 1<sup>st</sup> respondent possesses the minimum academic qualification for Member of Parliament, and further having found and held that the 1<sup>st</sup> respondent was validly nominated and elected for the position of Member of Parliament of Otuke Constituency in Otuke District; I do hereby dismiss the petition with costs. The petitioner is to meet the costs of all the respondents.

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**HON. JUSTICE WILSON MASALU MUSENE**

**JUDGE**

**15<sup>TH</sup> JUNE 2016**

**12:27 PM.**