

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01- CV- EP- 0005- 2016

NINSIIMA GRACE

⋮

PETITIONER

VERSUS

1. HON. AZAIRWE DOROTHY

NSHAIJA KABARAITSHYA

⋮

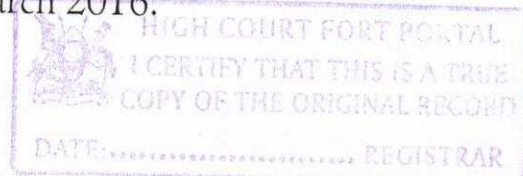
RESPONDENTS

2. THE ELECTORAL COMMISSION

JUDGEMENT

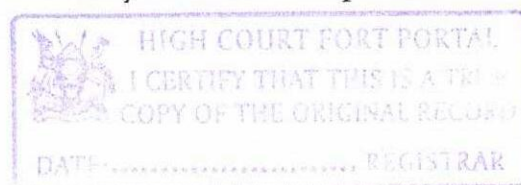
BEFORE; THE HON. LADY JUSTICE E. K KABANDA

Ninsiima Grace (hereinafter called '*the petitioner*') and Hon. Azairwe Dorothy Nshaiija Kabaraitshya (hereinafter called '*the 1st respondent*') among others contested for election of the Parliamentary seat for Woman Member of Parliament for Kamwenge District Constituency held on 18th February 2016. The 1st respondent obtained 104932 votes or 86.84% of votes cast for candidates. The petitioner garnered 11897 or 9.85% votes cast for candidates. The remaining candidate Emily Tukambone garnered 4003 or 3.33% of votes cast for candidates. The Electoral Commission (herein after called '*the 2nd respondent*') returned the 1st respondent as the successful candidate for Woman Member of Parliament for Kamwenge District Constituency. The results were published in the Uganda Gazette of 3rd March 2016.



The petitioner being dissatisfied with the outcome of the election, petitioned the High Court of Uganda at Fort Portal on two grounds. Firstly, it is generally alleged in paragraphs 4 & 5 of the petition and paragraphs 6 to 11, and 13 of the affidavit in support to the petition that the 1st respondent was not qualified to be validly elected as the Woman Member of Parliament for Kamwenge District Constituency. In particular, the petitioner alleged in paragraph 4 (a) to (e) of the petition that the 1st respondent does not possess the minimum academic qualification for election as Member of Parliament since since the Uganda Certificate of Education for 1991 the 1st respondent relied on for admission to Senior 5 at Kampala Secondary School and subsequent completion of 'A' Level or Uganda Advanced Certificate of Education (UACE) at Kampala Secondary School in March 1995 belonged to Azairwe Dorothy who by then was a student of Kitagwenda Secondary School. The petitioner contended that Azairwe Dorothy and Azairwe K. Dorothy who is the 1st respondent are not the same person. Paragraph 4 (h) of the petition indicates that at the time of birth, the 1st respondent was named Kazairwemu Doreca and not Azairwe Dorothy. She averred that the 1st respondent's nomination and subsequent election based on invalid certificates and illegal certification is null and void and ought to be set aside and/or cancelled.

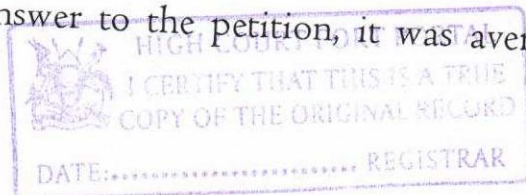
Secondly, it is alleged that the process of elections for Woman Member of Parliament for Kamwenge District Constituency was not conducted in compliance with the law, compromised the principle of impartiality and transparency and handed victory to the 1st respondent on a silver plate.



The petitioner prays for declarations ,

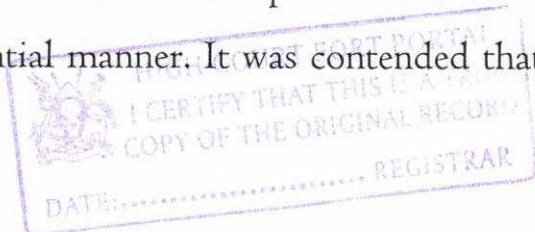
- a. The Ist respondent was not qualified for nomination as candidate for the position of Member of Parliament as the documents presented and accepted for nomination by the 2nd respondent are invalid under the law.
- b. The ~~Ist~~ respondent was not validly elected as Member of Parliament for Kamwenge District.
- c. The election of the Ist respondent as Member of Parliament be annulled and instead the petitioner who came second in the election be declared winner of the Parliamentary election for Kamwenge District Woman Member of Parliament.
- d. In the alternative, a fresh election be conducted in the said constituency.
- e. The respondent pays costs of the petition
- f. Such other remedies as the court may deem fit

The Ist respondent in answer to the petition denied the petitioner's allegations. In particular, it was averred in paragraph 4 (g) of the answer to the petition that Azairwe Dorothy and Azairwe K. (Kabaraitnya) Dorothy and Azairwe Dorothy Kabaraitnya Nshaija who sat Ordinary level and 'A' level at Kitagwenda High School is one and the same person who sat A- Level at Kampala Secondary School in 1995 and all refer to the Ist respondent who was duly elected as Woman Member of Parliament for Kamwenge District in the election held on 18th February 2016. In paragraphs 6 (a), (c), (g) & (j) of the Ist respondent's affidavit in support to the answer to the petition, it was averred that the Ist



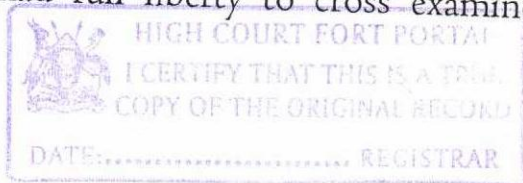
respondent is and was duly qualified for election as Member of Parliament. The Ist respondent further averred in paragraphs 5 & 8 (sic) of the answer to the petition and the accompanying paragraphs 3, 7, & 10 (sic) of the affidavit in support that the election was conducted in compliance with the provisions and principles laid down in electoral laws. It was contended that if there was noncompliance with the provisions and /or principles laid down in electoral laws which is denied, such noncompliance did not affect the results of the elections in a substantial manner as the Ist respondent won with 84.86% of the valid votes.

In answer to the petition, the 2nd respondent denied allegations by the petitioner. In paragraphs 3 & 4 (a) of the answer to the petition, the 2nd respondent contended that the Ist respondent was properly nominated having presented the minimum academic qualification of 'A' level certificate besides other qualifications she holds, and was duly elected Member of Parliament. It was further contended that the Ist respondent explained the minor variances in names on her certificates by presenting a statutory declaration at nomination. It was further averred by the 2nd respondent that she conducted the election in compliance with the principles and provisions laid down in the electoral laws. In particular, the 2nd respondent averred in paragraph 5 of the answer to the petition and paragraphs 9, 10 & 11 of the accompanying affidavit in support that there were no election malpractices and irregularities in the election, and if there was any noncompliance with the provisions and /or principles laid down in electoral laws which is denied, such noncompliance did not affect the results of the election in a substantial manner. It was contended that the 2nd respondent duly



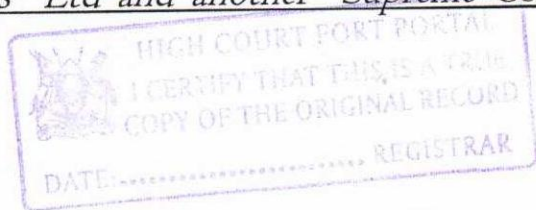
returned the 1st respondent as the validly elected Woman Member of Parliament for Kamwenge District having polled the majority of valid votes cast.

The petitioner presented five affidavits in support to the petition. In addition the petitioner presented an affidavit in rejoinder dated 12th May 2016. It appears that two of the affidavits in support Mukonyezi Paul dated 11th April 2016 and Bwomezi Elizeusi dated 11th April 2016 were never effected onto the respondents. This notwithstanding, upon persistent instance of the petitioner herself, the court reluctantly allowed the petitioner's witness, deponent Mukonyezi Paul to be cross examined in order to conclusively resolve all matters in dispute. The said Mukonyezi Paul had sworn an affidavit in the matter and besides, the respondents had no objection to the said petitioner's witness being called for cross-examination as it turned out to be the case. The petitioner's affidavit in support deponed by Mukasa Leo was abandoned in due course of hearing of the petition for reasons that can only be gathered from paragraph 8 (xii) of the petitioner's affidavit in rejoinder in that *'he was paraded and offered to give evidence on my behalf claiming that he was a brother of Azairwe Dorothy whereas not'*. For her part, the 1st respondent presented 3 affidavits in rebuttal to the petitioner's affidavits that included the affidavit in support of the answer to the petition and two further affidavits in rejoinder. And in addition, ten affidavits in reply were filed on behalf of the 1st respondent's witnesses. For her part, with the exception of the affidavit in support to the answer to the petition, the 2nd respondent presented no other affidavit evidence in answer to the petition. Furthermore, both parties had full liberty to cross examine and re-examine



witnesses present in court who had prior filed affidavit evidence. The petitioner and Ist respondent were present in Court. The petitioner was represented at the hearing by Mr. Musana Johnson and Mr. Businge Victor jointly. The respondents were represented by two counsel from the firm of Ntambwireki, Kandebe and Co advocates by names of Godfrey Kandebe and Christine Ntambwireki.

It should be noted from the onset that the Petitioner's affidavit in the one support to the petition and that in rejoinder offered the provisions in Rule 8 of the Commissioner for oaths Rules. It provides that all exhibits to affidavits shall be securely sealed to the affidavits under the seal of the Commissioner and shall be marked with serial letters of identification. The form of Jurat is set out in schedule 3 of the said Rules. The annexed documents to the petitioner's affidavits in support to the petition and the petitioner's affidavit in rejoinder are not so marked. To my mind, given the peculiar public importance of Parliamentary Election Petitions, courts ought to treat the omission to subject to the procedures in section 7 of the Commissioner for Oaths (Advocates) Act, Cap. 5 and schedule 3 of the Rules made there under as a technicality that relates to form of the affidavit, curable under article 126(e) of the Constitution, 1995- see Egypt Air Corporation T/A Egypt Air Uganda vrs Surfsh International Food Processors Ltd and another Supreme Court application No. 14 of 2000 (SCU).



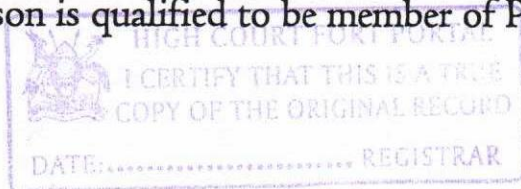
Order 15 (5) (1) of the Civil Procedure Rules, S-I 71-I, permitting, the issues for determination can be summarized as follows,

- I. Whether the 1st respondent did not have the required minimum academic qualification at the time of her nomination and election as the Woman Member of Parliament for Kamwenge District Constituency.
 2. Whether the election of the Woman Member of Parliament for Kamwenge District was not conducted in compliance with the provisions and principles laid down in the Constitution, the Parliamentary Elections Act, 2005 and the Electoral Commissions Act, Cap.I40, and if so, whether such noncompliance (if any) affected the results of the election in a substantial manner.
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- I. Whether the 1st respondent did not have the required minimum academic qualification at the time of her nomination and election as the Woman Member of Parliament for Kamwenge District

So far as is relevant, Article 80 (1) of the Constitution of the Republic of Uganda, 1995 stipulates that,

“80. Qualifications and disqualifications of Member of Parliament

- (1) A person is qualified to be member of Parliament if that person-
 - (a) ...
 - (b) ...



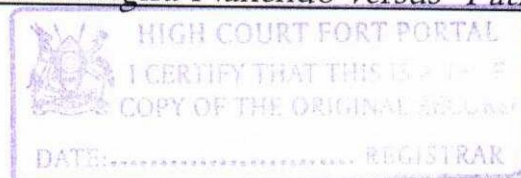
- (c) Has ^{was} completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.”

Article 80 (I) of the Constitution above was re-enacted in section 4 (I) of the Parliamentary Elections Act, No. 17 of 2005. Furthermore, section 6I of the same Act re-emphasizes the import of the provision thus,

“6I. Grounds for setting aside election,

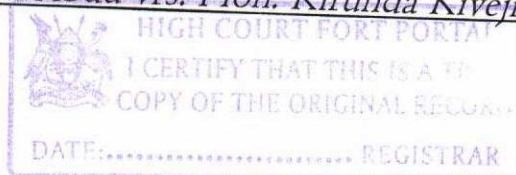
- (I) The election of a candidate as a Member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the Court-
- (a) ...
 - (b) ...
 - (c) ...
 - (d) That the candidate was at the time of his or her election not qualified or was disqualified for election as a Member of Parliament.”

The law is settled that where there is contention on the authenticity of academic qualifications of a candidate for election, the duty to produce valid certificates to the electoral authorities lies with the intending candidate for election. Where the authenticity of those certificates is questioned, it can only be the burden of that candidate to show that he or she has authentic certificates. This was the decision in the cited cases of Abdul Balingira Nakendo versus Patrick Mwendha, E.P



Appeal No. 09 of 2007 (SCU) echoed in other cases such as Muyanja Mbabari versus Birekerawo Mathius Nsubuga E.P Appeal No. 36 of 2011 (COA) and Electoral Commission and 3 others versus Chelimo Nelson Kappokuto E.P Appeal No. 12 of 2011 (COA).

In the present case, the authenticity of the UCE and UACE academic certificate presented to the 2nd respondent for nomination of the 1st respondent as Member of Parliament is not in issue. See- paragraph 6 of the affidavit accompanying the petition, and evidence during course of cross examination of the petitioner. The relevant certificates in names of Azairwe Dorothy and Azairwe K. Dorothy respectively are annexed to the petitioner's affidavit accompanying the petition- see annexures 'A', 'C', 'D', 'F', 'G' and 'H'. The same academic documents were presented to the 2nd respondent for nomination of the 1st respondent as candidate for Woman Member of Parliament for Kamwenge District constituency - see annexure RAI to the 2nd respondent's answer to the petition. It is not disputed that the 1st respondent is the Azairwe K. Dorothy mentioned in the 'A' level or UACE Certificate of March 1995 from Kampala Secondary School (Annexure 'D' to the petition). Apparently, the pertinent question in this case is whether the 1st respondent is the same person named in the 'O' level certificate or UCE Certificate for 1991 from Kitagwenda Secondary School in names of Azairwe Dorothy under Index No. UOI48/015 (annexure 'C'). Therefore in this case, the evidential burden of proof lies on the petitioner under section 61 (3) of the Parliamentary Elections Act, 2005 – see the Case of Hon. Katuntu Abdu vrs. Hon. Kirunda Kivejinja Ali and Anor. EP



No 7 of 2006 (HCT Kampala). Section 61 (3) of the Parliamentary Elections Act is consistent with ss. 101 and 102 of the Evidence Act, Cap. 6 which provide;-

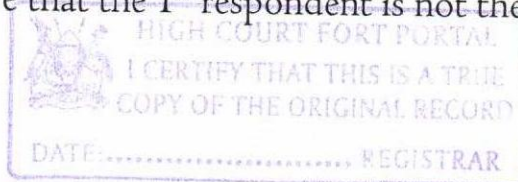
“101. Burden of Proof

- (1) Whoever desires any court to give Judgment as to any legal right or right dependent on the existence of facts which he or she asserts must prove that those facts exist
- (2) When the person is bound to prove the existence of any fact, it is said that the burden of proof lies on the person.

102. On whom the burden of proof lies

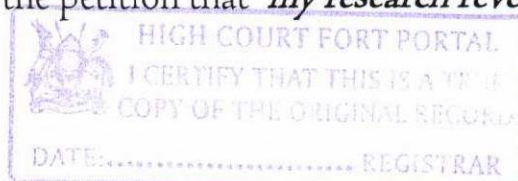
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side”

Therefore, in this case, the burden is on the petitioner who alleges that the UCE certificate of 1991 from Kitagwenda Secondary School does not belong to the 1st respondent to adduce satisfactory evidence of the fact on the balance of probabilities. . In a nutshell, the submission by learned counsel for the petitioner is that Azairwe Dorothy who completed UCE and UACE from Kitagwenda High School is not the same person as Azairwe K. Dorothy who subsequently completed ‘A’ Level and obtained the UACE certificate of March 1995 from Kampala Secondary School. In reply, it was submitted that the petitioner’s witnesses did not prove that the 1st respondent is not the same person as Azairwe



K. Dorothy who is the true owner of the UCE and UACE certificates under scrutiny. Learned counsel for the respondents further contended that the evidential burden on the 1st respondent to prove that she owns the relevant academic documents was discharged. It was their contention that the 1st respondent's witnesses were availed for cross examination but the petitioner opted not to cross examine some of them. Counsel relied on the cases of Hon Kipoi Tonny Nsubuga vrs Ronny Waluku and 2 other E.P Appeal No. 7 of 2011 (COA) and submitted that whenever a party has obtained leave to cross-examine parties in an election petition and the witness is not availed, their affidavits must be expunged. Respondents' counsel invited court to have the affidavits of the petitioner's witnesses expunged. To my conviction, the Hon Kipoi Tonny Nsubuga case involved a witness who was present in court when others were testifying. He was allowed to give evidence but he was not availed to the appellant for cross examination. It was held that the trial Judge erred in law and fact when he relied on the testimony of the witness without availing the witness for cross examination by the appellant. Accordingly, there is no usefulness of the Hon Kipoi Case to the case at hand. The case of Besigye verses Electoral Commission and another E.P Appeal No. 1 of 2006 (SCU) was cited to support the submission that the court ought to reject the petitioner's affidavits as hearsay.

In a bid to prove that the 1st respondent is not Azaiwe Dorothy who completed 'O' level from Kitagwenda from Secondary School, the petitioner averred in paragraph 6 of the answer to the petition that ***'my research reveals that there were***



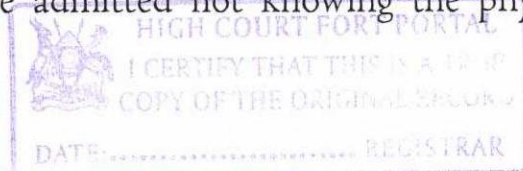
two Azairwe Dorothy at Kitagwenda High school in 1988, the other Azairwe being Azairwe K. Dorothy, the 1st respondent. The petitioner averred in paragraph II of the affidavit in support to the petition that *'in joining 'A' – level, Azairwe K. Dorothy must have used the name and index number of Azairwe Dorothy.'*

To the contrary, the statutory declaration dated 15th April 2008 - annexure 'I' to the petition - indicates that during Primary 7 examinations, the 1st respondent is said to have added the name of her father Kabaraitshya to the names Azairwe Dorothy until the time of marriage which contradicts with the petitioner's allegation that Azairwe Dorothy is not the same person as Azairwe K. Dorothy. Besides, as rightly observed by learned counsel for the respondents. Primary 7 examinations are not a requirement for nomination as candidate for election as Member of Parliament. However, the 1st respondent denied knowledge of the said annexure 'I' to the petition.

In paragraph 7, the petitioner contends,

'Azairwe K. Dorothy dropped out in senior 3 after getting pregnant and did not therefore sit her "O'-level...'

To the Petitioner, the true Azairwe Dorothy completed "O' Level at Kitagwenda High School, passed during 1988. To the contrary, when cross examined, the petitioner could provide concrete proof of the death of purported Azairwe Dorothy. She admitted not knowing the physical person by the names of

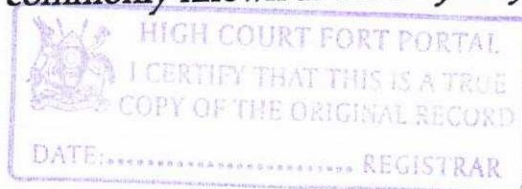


Azairwe Dorothy. In due course of course of cross examination, the petitioner also informed court that,

"It is true there was one person called Azairwe Dorothy in Kitagwenda High School. I do not have an affidavit to show that Azairwe Dorothy is not the 1st respondent in court."

According to the petitioner, the 1st respondent dropped out of Kitagwenda Secondary School in senior 3 due to pregnancy. It is the petitioner's further contention in paragraph 8 (iv), (v) and (ix) of the affidavit in rejoinder that Winfred Kihembo is the purported daughter of the true Azairwe Dorothy who has since passed on. However, when cross examined, the petitioner could not explain with precision when Winfred Kihembo the purported daughter of the true Azairwe Dorothy was born. Upon further cross examination, the petitioner said that she has never seen Winfred Kihembo. On the other hand, in answer in paragraph 3 (c) of the affidavit in reply to the petitioner's affidavit in rejoinder, the 1st respondent contends that it is not true that she produced a Child called Kihembo Winfred. The 1st respondent adduced evidence by Rev. Fr. Leo Baryabuza who personally baptized Kihembo Winfred in the Catholic Church at Kitagwenda Parish on 10th September 1987. In particular, paragraph 13 of Rev. Fr. Leo Baryabuza shows that,

"that I know Winfred Kihembo the granddaughter of the late Mutabazi and her late mother was known as Stella Maris Kusemererwa commonly known as KABAJANJABI ..."



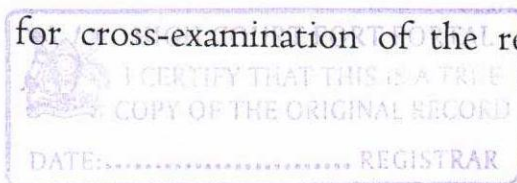
Apparently, averments in Kihembo's affidavit which show that she is aged 30 were never challenged. The 1st respondent's evidence during cross examination shows that she is aged 42. Moreover, Kihembo Winfred was present in court and the petitioner declined to subject Kihembo's affidavit evidence to the test of cross examination. Therefore it has to be judicially noticed that the 1st respondent could not be the biological mother of Kihembo Winfred at the apparent age of 12. Hence looking at the evidence as a whole, I accept the evidence from the 1st respondent that she could not be the biological parent of one Kihembo. Therefore, the petitioner failed to prove that there is another Azairwe Dorothy.

M/s Bamukugize Mary deponed an affidavit on behalf of the petitioner in the capacity as a friend of Winfred Kihembo. Deponent Bamukugize Mary averred in paragraph 6 & 7 that she was informed by Winfred Kihembo that her mother was Azairwe Dorothy who has since passed on. On the other hand, Winfred Kihembo deponed an affidavit on behalf of the 1st respondent whereby she disputes paragraph 8 (ix) of the petitioner's affidavit in rejoinder above. According to paragraph 8 of Winfred Kihembo' affidavit, *'it is not true that my mother was known as Azairwe Dorothy as the Azairwe Dorothy I know is my paternal aunt, the current Woman Member of Parliament, Kamwenge District.*

'What is more, in paragraph 4, Kihembo states that,

"I don't know the said Bamukigize Mary and she is neither my friend nor is she my relative"

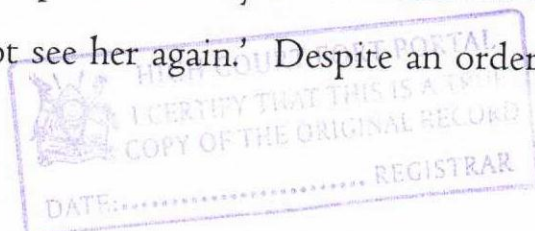
For yet unexplained reasons, the petitioner could not present the purported Bamukugize Mary to court for cross-examination of the respondents, upon



request thus rendering the affidavit evidence of Bamukugize Mary significantly unreliable.

Anakereti Bitariho is a retired catechist of Bunena Parish in Kitagwenda between 1981- 1985. According to Anakereti Bitariho, the 1st respondent is known as Kazwirwemu Doreca also popularly known as Dorcus. In paragraphs 7 and 8, the deponent states that he knows the 1st respondent's God Parents at Ntuutu Church where the 1st respondent was first baptized one of whom has since passed on and the other is senile. Upon cross examination, it was established that deponent Anakereti Bitariho has never been to Ntuutu Church of Uganda. He informed court that *'I do not know whether the names Azairwe Dorothy are in the baptism books of Bunena Parish as I signed this affidavit before looking at the book'*. the said deponent did not know if the 1st respondent's names of Azairwe Dorothy are in the baptism books of Bunena Parish. Therefore the evidence of the said Anakereti Bitariho is not useful to the claims in the petition.

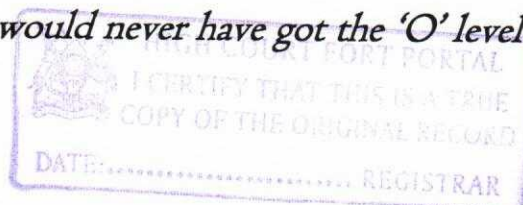
Tumuheire Leticia deposed an affidavit on behalf of the petitioner. In paragraph 2, Tumuheire stated that she studied with the 1st respondent at Uganda College of Commerce Kabale- Her purported Identity Card from the said Institution (marked Annexure 'A') is not attached). Averments in Tumuheire Leticia's paragraph 3 indicate that the 1st respondent's name appeared on the notice board among persons to be discontinued because of unexplained contradicting academic papers. The deponent merely believes that the 1st respondent was sent away because 'I did not see her again.' Despite an order from court, deponent



Tumuheire Leticia could not provide concrete proof to rebut 1st respondent's paragraph 3 (e) of the affidavit in reply to the Petitioner's rejoinder which indicates that the 1st respondent could not recall a person called Tumuheire Leticia from Kabale College of Commerce as alleged thus rendering affidavit evidence from the said Tumuheire Leticia to lack credibility.

On the other hand, in answer in paragraph 4 (a), (e) & (h) of the 1st respondent's the answer to the petition and during cross examination, it is revealed that the 1st respondent studied 'O' level and 'A' level in 1991-1994 at Kitagwenda High School under her names Azairwe Dorothy. Subsequently, the 1st respondent repeated 'A' level at Kampala Secondary School beginning 31st August 1994 and sat the 'A' level examination of March 1995. When cross examined, the 1st respondent said;-

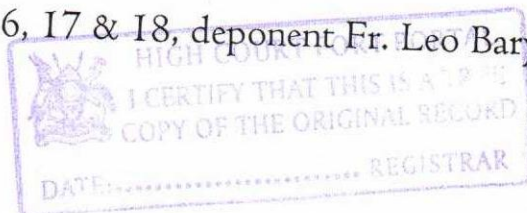
" it is true I sat for senior 4 under index No. UO 148/015 under the names Azairwe Dorothy at Kitagwenda High school. Am the same person who went to Kampala Secondary School in August 1994 and repeated senior 6 under Azairwe K. Dorothy. I jinxed Kampala Secondary School on 31/8/1994. Am not certain but the curriculum of the time was that sitting of exams were always in March of every year. Am the owner of all the academic documents. I did not use the "A' level results of Kitagwenda because I had not performed well. I have never been expelled from Kitagwenda in senior 3 or else I would never have got the 'O' level certificate."



The omission and addition of names to the Ist respondent's academic documents are also explained in a statutory declaration to the 2nd respondent for nomination of the Ist respondent as a candidate for Parliamentary election. The Statutory Declaration is annexed to the affidavit in support of the 2nd respondent's answer to the petition – see annexure "RAI". The Ist respondent provided this same explanation during cross examination when she said that *'as for the letter 'K' I did not use it at Kitagwenda at all. I used it at Kampala Secondary School. I abbreviated it because it could not fit.'* The 2nd respondent was convinced that that the certificates belong to the Ist respondent and the differences in names were minor as declared in the statutory declaration – see paragraphs 7 & 8 of the 2nd respondent's affidavit in support. The said statutory declaration by the Ist respondent received no challenge from the petitioner.

Sidoni Baryendahiro, Rwabazoteire was the God Parent when the Ist respondent was baptized by Rev. Fr. Tibaijuka in the catholic faith at Kitagwenda Catholic Church Bunene on 20th August 1984 a fact not rebutted by the petitioner. The deponent has since then known the Ist respondent by the names Azairwe Dorothy. Rev Fr. Leo Baryabuza has known the Ist respondent since childhood. He supervised the confirmation classes of the Ist respondent into the catholic faith in 1985 at Kitagwenda parish Bunene. The Azairwe Dorothy that deponent Rev Fr. Leo Baryabuza knows is the Ist respondent.

Furthermore, in paragraphs 16, 17 & 18, deponent Fr. Leo Baryabuza states,



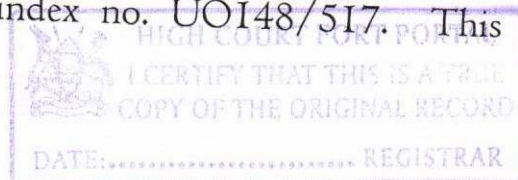
*“ 16. the late Kusemererwa never attended Kitagwenda High School at any one time and she did not reach secondary school in her carrier.
17. that I recall very well that the 1st respondent was at Kitagwenda High School for both ‘O’ and ‘A’ level and I paid part of her school fees at Kitagwenda High School while in senior 3 and senior 4.
18. The late Stella Marce Kusemererwa could not have sat ‘O’ level at Kitagwenda High School in 1991 as she had already passed on earlier in 1988”*

In due course of cross examination deponent Fr. Leo Baryabuza (PW3) said;

“when I was the seminarian at the catholic Church at Kitagwenda , she (the 1st respondent) was given fresh baptism in the catholic Church as Azairwe Dorothy. Am not the one who baptized the 1st respondent Stella Marce Kusemererwa”

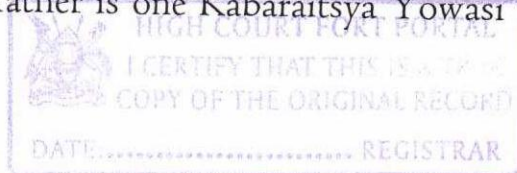
Accordingly, the petitioner failed to disprove the 1st respondent’s evidence above that Stella Marce Kusemererwa is the biological mother of Kihembo Winfred and not the 1st respondent.

Abanaitwe Adred deponed an affidavit as a classmate of the 1st respondent during ‘Level & ‘A’ level between 1989-1994 at Kitagwenda High school. They both obtained UCE certificates after sitting for ‘O’ level examinations in 1991 at Kitagwenda High school which the 1st respondent sat under names of Azairwe Dorothy. Under index no. UOI48/517. This fact is not denied by the



petitioner - see the UNEB results report in annexures 'AI to the Ist respondent's supplementary affidavit and 'B6' to the Petitioner's affidavit in rejoinder. Kyooma Xavier Ankampurila is the Member of Parliament for Ibanda North Constituency. He was a classmate of the Ist respondent between 1992-1994 during 'A' level at Kitagwenda High School. They both obtained UACE certificates in 1994. Beijuke William Zinkuratire is the Member of Parliament for Ruhama County Constituency in Ntungamo District and a former student of Kampala Secondary School. He has known the Ist Respondent as Azairwe Dorothy Nshaija Kabaraitshya since 1994 when the Ist respondent was a student in senior six at Kampala Secondary School. Deponent Beijuke William Zinkuratire states that after 'A' level at Kampala Secondary School, the Ist respondent joined Kabale College of Commerce.

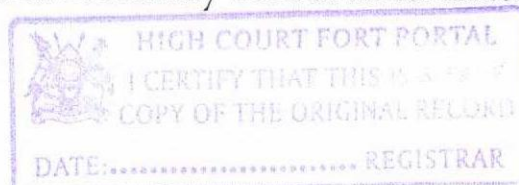
Lastly on the Ist issue the petitioner contended that Kabaraitshya Yowasi is not the biological father of the Ist respondent. My understanding of the said allegation is that the respondent is not known by the name Kabaraitshya because one Kabaraitshya Yowasi was not the Ist respondent's biological father. According to the petitioner, the Ist respondent's biological parents are late Mutabazi Deogratoius and Pulkaria Kamateeka in order to prove that the Ist respondent is not Azairwe Dorothy. To the contrary Abainaitwe Adred, Rev. Fr. Leo Baryabuza (PW3), Sidoni Baryendahiro Rwabazoteire, Kenganzi Marion a biological sister to the Ist respondent and Mugume Wilberforce a paternal cousin brother of the Ist respondent, are all consistent with the evidence that the Ist respondent's biological father is one Kabaraitshya Yowasi who is living. The



Ist respondent's evidence by Mugume Wilberforce evidently shows that the purported Azairwe Dorothy referred to by the Petitioner is in fact his late sister Stella Marce Kusemererwa also known as Kabajanjabi whose parents were parents are late Mutabazi Deogratoius and Pulkaria Kamateeka. The former is a brother to the Ist respondent's father one Kabaraitnya Yowasi. Therefore the parenthood of the Ist respondent is undoubtedly proved. It follows that the Ist respondent is the same person as Azaiwe Dorothy.

Looking at the evidence as a whole, the petitioner has largely failed in the onus to prove that the Ist respondent is not Azaiwe Dorothy who obtained a UCE certificate for 1991 of Kitagwenda High School under index No. UOI48/015. The Ist respondent has disproved with sufficiency the petitioner's unsupported and wild claims that the Ist respondent is not the person who completed 'O' level in 1991 from Kitagwenda Secondary School in names of Azairwe Dorothy under Index No. UOI48/015. Consequently am in agreement with the submission of learned counsel for the respondents that the petitioner's said averments are inadmissible hearsay.

After exhaustively analyzing the evidence as a whole, am inclined to hold that the petitioner has failed in the onus to prove that the Ist respondent is not Azaiwe Dorothy mentioned in the UCE certificate of 1991 from Kitagwenda Secondary School. There wasn't any supporting evidence to the petitioner's averments that the Ist respondent is not Azairwe Dorothy who obtained UCE Certificate for 1991 from Kitagwenda Secondary School under Index No. UOI48/015. It can

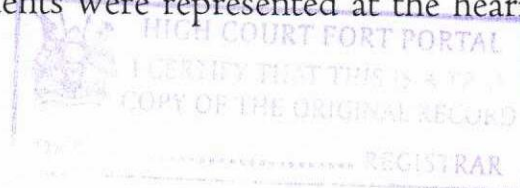


be comfortably concluded that the 1st respondent had the required minimum academic qualification at the time of her nomination and election as the Woman Member of Parliament for Kamwenge District. Therefore, the election of the 1st respondent as Woman Member of Parliament for Kamwenge District Constituency ^{is} ~~was~~ valid.

2. Whether the election of the Woman Member of Parliament for Kamwenge District was not conducted in compliance with the provisions and principles laid down in the Constitution, the Parliamentary Elections Act, 2005 and the Electoral Commissions Act, Cap.140, and if so, whether such noncompliance (if any) affected the results of the election in a substantial manner.

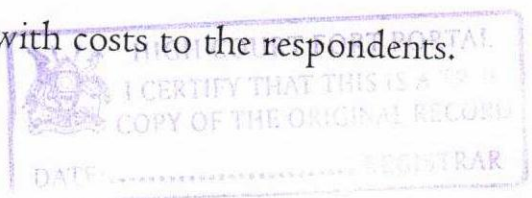
In view of the finding that the election of the 1st respondent as Woman Member of Parliament for Kamwenge District Constituency was valid, the 2nd respondent cannot be faulted in the manner in which the nomination of the 1st respondent as candidate for Kamwenge District Constituency was done. No evidence was adduced to support the Petitioner's claim that the 2nd respondent did not conduct the election for Woman Member of Parliament for Kamwenge District in accordance to electoral laws. Accordingly, the 2nd issue is bound to fail for lack of evidence.

The 1st respondent's counsel prayed for certificate of two, counsel. In the event that the respondents were represented at the hearing by counsel from the same



firm of advocates, there is no justification for this. As costs follow the event, petitioner shall pay the respondents costs of the Petition.

The final outcome of the decision is that the 1st respondent possessed the required minimum academic qualification of Advanced Level Certificate at the time of nomination and election as the Woman Member of Parliament for Kamwenge District.. The election of the 1st respondent as Woman Member of Parliament for Kamwenge District constituency was conducted in accordance with electoral laws in force in Uganda. In the net result, Election Petition No. 0005 of 2016 (HCT Fort Portal) is dismissed with costs to the respondents.



Dated the 27th day of May 2016


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E.K KABANDA

Judge