

THE REPUBLIC OF UGANDA
IN THE HIGHCOURT OF UGANDA
AT MBALE
ELECTION PETITION NO. 0023 OF 2016

GIRULI LIVINGSTONE DAVID.....PETITIONER

VERSUS

1. MULEKWA HERBERT PADIE.....1ST RESPONDENT

2. THE ELECTORAL COMMISSION2ND RESPONDENT

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

(JUDGE)

JUDGEMENT.

This is an Election Petition brought challenging the Elections conducted on the 24th day of February, 2016 for the post of LC5 Chairman Sironko district.

The brief background of the petition is that the election of the post of LC5 Chairman Sironko was held on the 24th February, 2016.

The Petitioner, the 1st Respondent and Another were candidates in the said election for LC5 Chairperson Sironko district held on the 24th February, 2016.

The 1st Respondent Mulekwa Herbert Padie was declared by the 2nd Respondent as the validly elected LC5 Chairperson Sironko district and was gazetted on the 25th April, 2016.

The Petitioner being dissatisfied with the election of the 1st Respondent filed this petition challenging the 1st Respondent's Academic qualifications.

The allegations as contained in the petition was supported by an Affidavit deponed by the Petitioner himself.

The 1st Respondent filed an affidavit in support of his answer to the petition. And an affidavit of Bukirwa Faridah, *Senior Legal and Corporate Affairs officer of NCHC* to support his answer to the petition.

The 2nd Respondent too filed an Affidavit deponed by Kayabwe Kenneth, the Returning officer Sironko district.

The Petitioner filed this petition on the ground that;

The 1st Respondent was at the time of his election not qualified to be elected for the post of LC5 Chairperson because he did not have the minimum Academic qualifications as required by Law.

At scheduling, the parties agreed on the following issues

1. Whether the 1st Respondent was at the time of his election qualified for the election of LC5 Sironko district.
2. What remedies are available to the parties?

At the hearing of the Petition, the Petitioner was represented by Mr. Mutembuli Yusuf while the 1st Respondent was represented by Mr. Orono Emmanuel together with Mr. Makada Fred and Mr. Kyazze Joseph together with Mr. Serunjoji Nasser represented the 2nd Respondent.

Both parties agreed to make written submissions which I shall refer to.

Issue No. 1:

Whether the 1st Respondent was at the time of his election qualified for the election of LC5 Sironko district.

Counsel for the Petitioner on this issue submitted that the 1st Respondent at the time of his nomination and election did not have a Certificate in

public and Local Administration issued by a legally recognized Institution in 2001.

The Petitioner in his paragraphs 3,4,5,6, 9 and 10 of the petition and paragraphs 4,5,8,9,11and 13 of the Petitioner's Affidavit in support of the Petition states that the 1st Respondent did not present a Certificate or Academic Qualifications Equivalent to 'A' level but presented a statement of results for the year 2000 which is not dated and it was upon that statement of results which has one semester that he acquired a Diploma statement of results of Academic year 2001-2003, which is also undated but having four (4) semesters (*See: annexure 'B' & 'C' attached to the Petitioner's Affidavit in support*).

Counsel submitted further that both annexure 'C' & 'B' were issued by IMSAT.

That whereas the statement of results in respect of the Diploma bears the year / banch 2001-2003, which implies that the student studied from 2001-2003. Annexure 'B' which is the statement of results in respect of a certificate in public and local Government Administration bears year/ banch 2000, implying that the student studied and completed in 2000.

That if the student studied beyond 2000, the statement would have reflected 2000.

Counsel for the Petitioner submitted that annexure 'B' speaks for itself.

That where it is not dated, then the only inference is that it was issued in 2000.

Mr. Mutembuli, Learned Counsel for the Petitioner submitted that in cross examination, the 1st Respondent admitted that he had never seen his certificate in Public and Local Government Administration until the 11th July, 2016 in the morning when his Lawyer showed him the same and he admitted that he had never presented his certificate for nomination but that he only presented his statement of results.

Counsel further submitted that without a valid certificate equivalent to 'A' Level, the subsequent academic qualifications such as a Diploma and Degree have no foundation.

That annexure 'B' clearly shows that the 1st Respondent studied for one semester and his explanation in cross examination that the results are for two semesters is against the Law of Evidence where oral evidence does not over ride documentary evidence.

That the 1st Respondent informed Court in cross examination and admitted that he was admitted to IMSAT in September, 2000 for a certificate in Public and Local Government Administration and he completed in August 2001.

That when asked whether he did Administrative Law as a course unit for a Certificate and at Diploma Level, he answered in the affirmative but could not recall any three topics that he covered under Administrative Law.

That the Academic Registrar of IMSAT in cross examination presented what he called Admission list of 2000 which was not dated, stamped or bore a letter head of IMSAT that the same was received on record and marked 'PDZ'.

Counsel submitted that the same cannot be relied upon as admission list of students of 2000 as the same was not authentic and genuine *prima facie*.

That the Academic Registrar IMSAT Kalema Ismail confirmed to Court that he was the author of the letter annexed as 'F' to the 1st Respondent's Affidavit in support of the answer to the petition dated 16th June, 2016 where he stated that IMSAT was registered and classified on 16th August, 2001 and he attached the Registration certificate.

Counsel submitted further that by the time the 1st Respondent was admitted and completed the certificate in Public and Local Government Administration, IMSAT was illegally operating since the only document

attached to both the 1st and 2nd Respondents' Affidavit in support of the answer is a Certificate of Registration issued on 16th August, 2001.

That there is no evidence to the effect that he completed in 2001 since his statement of results reflects only one Academic year of 2000 and not 2000/2001 as he claims.

Counsel then cited section 24 of the Education Act, 1970 which was the Applicable Law by 2000, which is to the effect that for one to operate a new school, he had to obtain permission in the 1st instance in the form of a license to operate a provisionally classified school for one year.

That there is no evidence that between 2000 upto August 2001 IMSAT had a license but only obtained registration on the 16th August 2001 and by this time , the 1st Respondent had been purportedly admitted and completed the certificate of Public and Local Government. So if at all he was admitted and studied from September 2000 to August 2001, then he studied in an Institution which was illegally operating contrary to the provisions of section 24 of the Education Act, 1970.

Counsel argued that it is trite Law that any certificate/award from an Illegal enterprise cannot have the force of Law and has no Legal value is invalid, null and void. He referred to the case of **Muyanja Mbabali Vs Bilekelawo Mathias Nsubuga C.A Election Petition No. 36 of 2011**, to support his contention.

Mr. Mutembuli submitted that the certificate in Public and Local Government Administration purportedly obtained by the 1st Respondent upon study between September 2000 and August 2001 (which is strongly challenged) when IMSAT was illegally operating cannot be a valid certificate as per the Authority of **Muyanja Mbabali** (supra)

Counsel argued that without a valid certificate in Public and Local Government Administration, the subsequent qualifications based on this certificate that is Diploma and Degree are of no Legal Value.

Counsel then cited the case of ***Labeja Bob Williams Vs Independent Electoral Commission High Court Election Petition No. 2 of 2015***, where Lady Justice Margaret Mutonyi at page 38 stated that;

"All the Petitioner needed was a minimum requirement of Advanced Level Certificate not the Diploma.

That even if he is a holder of a Diploma he had the burden to prove the following;

- 1. That he was qualified to acquire that Diploma. In Uganda, before one acquires a Diploma, one must be a holder of a certificate in a given discipline or a holder of a certificate of Education issued by UNEB."*

Counsel submitted that without a valid certificate in Public and Local Government Administration, the Diploma and Degree are of no Legal Value and Court should find so.

Counsel prayed that in accordance with section 111 (3) e of the Local Government Act, Court finds that the 1st Respondent lacked the minimum education of Advanced level standard or its equivalent at the time of his nomination and election because he had not presented a valid certificate in Public and Local Government Administration equivalent to A' Level but presented suspicious ,unauthentic, undated statement of results of only one academic year of 2000 containing one semester which results were obtained when IMSAT was illegally operating.

On his part counsel for the 1st Respondent while citing the ***Local Government Act Cap 243 section 111 (3) e*** which provides that;

3 "A person shall not qualify for election as Chairperson of district or city unless that person-

e) Has completed a minimum education of Advanced Level standard or its equivalent,

Contended that the 1st Respondent at the time of Nomination as LC5 Chairperson for Sironko district presented a Diploma in Public and Local Government Administration obtained from IMSAT in 2003. A degree in Public Administration obtained from IUIU in 2010, his O'Level Certificate from UNEB and a statement of results leading to the award of a certificate in Public and Local Government Administration obtained from IMSAT in 2001 and therefore had the requisite qualification for nomination and Election as LC5 Chairperson Sironko District.

Counsel contended that it is not in contention that the 1st Respondent possesses a Diploma in Public and Local Government Administration of IMSAT 2003, and a Bachelor's Degree in Public Administration from Islamic University in Uganda 2010.

That that means that the 1st Respondent possesses qualifications higher than a minimum required for nomination that is A' Level or its equivalent.

That that position was well laid out in the case of **Joy Kabatsi Kafura Vs Anifa Kawooya EPA No. 25/2007 (SC)** referred to in the 2nd Respondent's submissions which they associate with.

He then invited Court to take notice of the fact that the 1st Respondent possess qualifications higher than the minimum required of A' Level or its equivalent since he possesses a Bachelor's Degree in Public Administration from Islamic University of Uganda in Uganda.

Counsel contended that it would be erroneous to require the 1st Respondent to prove artillery of his prior Academic Qualifications given that he possesses more than the minimum required of A' Level or its equivalent.

That what is important is that the 1st Respondent had acquired the necessary Academic qualifications required for his nomination.

Counsel contended further that that position was highlighted in the case of **Butime John Vs Muhumuza David and Electoral Commission EPA NO.11/2011**, where it was noted that;

"Reverting to section 4(1) of the PEA, I am of the considered opinion that the plain or literal meaning of the provision is that a person qualifies to be a member of Parliament on proof of having completed or gone through A'Level education or its equivalent as such for one to be said to have attained A'Level education, the person had to prove a string of prior qualifications leading to A' Level standard."

That while the Petitioner alleges that at nomination, the 1st Respondent did not present a Certificate or its equivalent issued by NCHE, he has however failed to lead evidence to prove this allegation which was explained by the 1st Respondent in his answer and Affidavit.

Counsel contended that the 1st Respondent's Academic documents and qualifications were equated by NCHE in consultation with UNEB during the 2011 elections and he used the same academic qualifications for nominations for the 2016 elections as LC5 Chairperson for Sironko district.

That that was clearly explained in the Affidavit of Bukirwa Faridah, (*Senior Legal and Corporate Affairs officer of NCHE*) in support of the 1st Respondent's answer to the petition that there was no need again to equate the 1st Respondent's academic qualifications since NCHE had equated the same in 2011. And all that was needed is certification of NCHE issued in 2011.

That Courts have held such positions as sufficient in Law as stated in the case of ***Baleke Peter Kayiira Vs Electoral Commission and Kakooza Joseph EP No. 004/2016***, which they associate with to support their argument.

That the Petitioner's submissions that the 1st Respondent never had his academic qualifications equated is not tenable.

Counsel argued that the Petitioner's main point of contention is that the 1st Respondent is not qualified for lack of a valid certificate in Public and Local Government Administration that he used for Admission for a Diploma in

Public and Local Government Administration and subsequently the degree in public Administration of Islamic University of Uganda.

Counsel for the 1st Respondent on this contention argued that the 1st Respondent's Academic qualifications are all valid and authentic since none of the awarding Institutes challenged their qualifications and validity in court during the subsistence of the Petition.

That the Academic Registrar of IMSAT, the Institution which awarded and issued the 1st Respondent a Certificate in Public and Local Government Administration upon invitation to Court , testified confirming that the Certificate and the Diploma presented by the 1st Respondent was issued by IMSAT and the same was genuine, valid and authentic contrary to the Petitioner's allegation that the 1st Respondent was not qualified for the nomination and election and thus not validly elected as LC5 Chairperson Sironko District which argument the Petitioner miserably failed to disprove.

Counsel contended further that the 1st Respondent at the time of his nomination qualified for election as LC5 Chairperson Sironko as he possessed the requisite academic qualifications as presented and attached in his Affidavit in support of his answer to the petition filed on 11/7/2016, that the same academic documents had been equated and verified by NCHE in consultation with UNEB.

Counsel then cited the case of ***Nicholas Davis Vs Loi Kagenu Karyapawo Election Petition Appeal No. 19 of 2007***,(SC) where Katureebe (JSC) observed at pg 80 that ,

"It is true that the equivalent must be determined in a manner stipulated by Law. But there is a basic assumption that the qualification has to be equated,must be in existence and valid.

If NCHE equates valid qualifications then the Courts of Law cannot interfere with its decision.

But where the Certificate it purported to equate is what is being challenged, then the High Court has power to inquire into that question.

It is not the qualification which is being inquired into but the validity of the qualifications that were equated.

The Court is not questioning the criteria or method used by NCHE for equating qualifications. That would be the preserve of NCHE.

What is being questioned and inquired into is whether the qualifications equated by NCHE existed in the 1st place, if NCHE is found to have equated none existent or fraudulent qualifications that the person elected on the basis of such certificate would not have been validly elected to Parliament."

Counsel contended that the documents that were equated by NCHE are valid and indeed do exist and were presented to Court as evidence by the 1st Respondent in his sworn Affidavit in support of his answer to the petition which were all dully certified by the issuing and awarding Institution to confirm their validity and authenticity.

Counsel further submitted that the said academic qualifications indeed exist and existed even at the time of equating them by NCHE as expounded in the Supreme Court case of **Abdul Balingira Nakendo Vs Patrick Mwondha Election Petition Appeal No. 9 of 2007 (SC)** where Justice Katureebe observed at pg 12 that;

"There must be a presumption that the above Certificates must be genuine and dully issued by the bodies named therein. If it were proved that those Certificates on which NCHE based its decision to issue its own were not genuine, then it would follow that NCHE Certificate would be a nullity as the person would not have the necessary qualifications."

In reply on this issue, **Counsel for the 2nd Respondent** contended that it is an uncontested Legal position that to qualify for nomination and election, all the 1st Respondent had to present to the 2nd Respondent was proof of completion of a minimum education of Advanced level standard or its

equivalent. He referred to **Article 183(2) & 80(1) c of the Constitution of 1995 of Uganda as amended and section 111(3) e of the Local Government Act Cap 243.**

Counsel contended further that contrary to the Petitioner's argument, none of the aforementioned provisions prescribes the manner of proof of qualifications.

That it is therefore not a mandatory requirement that such proof must be by production of academic Certificates.

For as long as the documents availed to the Electoral Commission constitute proof of academic qualifications of the requisite standard and so long as such qualifications havenot been proved to be cancelled or unauthentic according to their view suffices.

As regards the recent decision of **Mutembuli Yusuf Vs Nagwomu Moses Musamba EP No.13 /2016**, pages 40,43,44,49 and 50.

Counsel submitted that for his nomination as LC5 Sironko district, the 1st Respondent presented evidence of completion of Diploma in Public and Local Government Administration obtained from IMSAT in 2003, a Degree of Bachelors of Public Administration obtained from Islamic University in Uganda in 2010. The O' level certificate issued by UNEB and statements of results upon which he had been admitted for the said Diploma in lieu of the Certificate inPublic and Local Government Administration obtained from IMSAT in 2001and that this is not in contention.

Counsel contended further that the 1st Respondent's Academic qualifications had been equated by National Council for Higher Education in consultation with UNEB during the 2011 elections and he used the same academic qualifications for his nomination, during the 2016 elections for LC5 Chairperson for Sironko District.

That National Council for Higher education explained that all it has been doingwas to certify the Certificate issued in 2011 as confirming the same

status. He referred Court to the Affidavit of Bukirwa Faridah in support of the 1st Respondent's answer to the petition.

That such certification by NCHE of the Certificate issued in 2011 has been acknowledged as sufficient by the Court as per the case of ***Baleke Kayira Peter Vs EC & Kakooza Joseph EP NO. 004/2010.***

That in that contest, the authority of ***Paul Mwiru Vs Hon. Igeme Nabeeta & 2 others CA EP No. 6 of 2011,*** excitedly cited by the Petitioner is clearly inapplicable.

That in that case what had been equated in 2006 was the Respondent's O' Level which could not be equivalent to A'Level and in 2011 no further documents were submitted to NCHE for equating to A'Level failure whereof was rendered fatal.

That in this case, the NCHE in the Affidavit in support of the 1st Respondent's answer to the petition deponed by Bukirwa Faridah explicitly explained that the qualifications equated in 2011 had not changed and thus all the NCHE did was to certify its original Certificate.

That besides that, upon obtaining the degree from IUIU, the 1st Respondent possessed a qualification higher than A'Level from an Institution in Uganda which need not be equated by NCHE.

That the degree is over and above the academic qualifications.

Counsel contended also that the Petitioner does not dispute the other qualifications of the 1st Respondent save for the certificate in Public and Local Government Administration obtained from IMSAT in 2001.

That according to the Petitioner, the Certificate was not authentic and could not be a basis for to the Diploma and subsequently the degree from Islamic University in Uganda.

That it is not in contention that the degree possessed by the 1st Respondent is a qualification Higher than the minimum required for nomination.

That the position of the Law as stated by the Supreme Court in **Joy Kabatatsi Kafura Vs Anifa Kawooya EPA NO. 25/2007(SC)** cited in the case of **Hon. Kipoi Tony Nsubuga Vs Ronnie Waluku & Anor EPANo.007/2011**, specifically the highlighted parts at page 108, is that

"Where a candidate presents a qualification which is higher than the minimum required for nomination for any post, it is not enough for his or her opponent to argue that the same higher qualification was based on a forgery or something irregular. That those who make such allegations ought to do more than merely allege. They need to show that as a result of their allegations, the awarding Institution of higher qualification or any other equivalent to A' Level or some other classification subsequently cancelled or withdrew the award of the disputed disqualification".

Counsel contended that in that context, where the 1st Respondent in addition to the Certificate and Diploma submitted a degree certificate, it is not enough as the Petitioner has submitted to merely plead without any cogent evidence that the qualifications of the 1st Respondent are invalid and then the burden shifts.

That the burden lies on the Petitioner not merely to allege but to adduce evidence *prima facie* sufficient to establish the allegations that the impugned qualifications are not valid or authentic.

That until sufficient evidence is adduced by the Petitioner, the onus cannot shift to the Respondents. Counsel cited the case of **Hon. Oboth Marksons Jacob Vs Dr. Otiam Otaala Emmanuel EPA No. 38/2011**, to support his contention.

Counsel further contended that in view of the above authorities of **Nicholas Davis Vs Loi Kageni Kiryapawo, Election Petition Appeal**

19 of 2007, Abdul Balingira Nakendo Vs Patrick Mwondha Election Petition Appeal No.9 of 2009 (sc, Muyanja Mbabali Vs Birekerawo Mathius Nsubuga Election Petition Appeal No. 36 of 2011, placed in their proper context clearly confirm that the Petitioner's adduced cogent evidence of the invalidity and fraudulent nature of the respective Respondent's academic qualifications , calling for a rebuttal from the Respondent and the Petitioner has failed in this case.

Counsel for the 2nd Respondent also contended that the Petitioner's contention is twofold;

Firstly that the 1st Respondent did not present the impugned Certificate in Public and Local Government Administration obtained from IMSAT in 2001, instead he produced a statement of results with results for only one semester.

Secondly that IMSAT was not licensed at the time the 1st Respondent obtained the qualification.

Counsel contended that the contentions of the Petitioner are legally and factually flawed.

First because there is no requirement to prove a qualification by production of a certificate that all that is required is evidence of possession of the qualification. Counsel cited the case of ***Mutembuli Yusuf Vs Nagwomu Moses Musumba EP No. 13/2016***.

That secondly the statement of results was confirmed by the Academic Registrar of IMSAT Kalema Ismail as having originated from the Institute.

That in cross examination, the Academic Registrar informed Court that the 1st Respondent was admitted for a certificate in Public and Local Government Administration in August and completed in August 2001.

Counsel further stated that Mr. Kalema Ismail the Academic Registrar of IMSAT , confirmed that the Institute issued a Certificate in Public and Local Government Administration for the 1st Respondent though he never

collected it. That the admission letter for the 1st Respondent was exhibited in Court. And that his evidence is corroborated by that of the 1st Respondent.

That the Petitioner's suspicions that no certificate existed were clearly rebutted.

That it is also the evidence of the said Registrar that the 1st Respondent was admitted to the Diploma Course on the basis of the statement of results since it is the same Institution that had the results of the 1st Respondent for the Certificate Course.

That the Registrar explained the inadvertent error that indicates one semester instead of two semesters and the 1st Respondent explained that he had four subjects per semester.

That the statement of Results indicated 8 subjects and he told court that it was 4 subjects he took in each of the 2 semesters.

Counsel with regard to the Petitioner's faulting the 1st Respondent for failure to name the subjects and the concepts of the subjects attended, contended that the Law requires proof of qualification not memory of the relevant aspects or courses covered. That the 1st Respondent who studied in 2000-2003 at his age can't be faulted for not being able to instantly remember the topics covered.

On the 2nd leg of the Petitioner's contention that the 1st Respondent's academic qualifications are invalid on account that at the time he obtained the Certificate in Public and Local Government Administration, IMSAT, was allegedly not registered. That it was only registered in August 2001 but that no evidence was led to show that it had a provisional License.

That the Petitioner interestingly relies on the Education Act of 1970 and the case of ***Muyanja Mbabali Vs Birekerewo Mathias Nsubuga Election Petition Appeal No. 36 of 2011 Court of Appeal*** pg 55 where the Court held that;

"The Judge also referred to and applied the Education Act 1970, which was the Law applicable at the material time to the facts and the evidence before him. *The Act provided that the registration and classification of educational Institutions comes after and not before licensing...(emphasis is ours)* .

Counsel thus contended that it is thus evident that by the time of Registration and classification in August, 2001 IMSAT must have been licensed before as Registration and classification are premised on earlier license under the Act. That the Petitioner had the opportunity of cross examining the Academic Registrar of IMSAT on whether it had been licensed before Registration and classification and he did not. That it was the Petitioner who applied to have him in Court and the Petitioner did not specify in his Application and summons that a license be produced by the witness neither did he inquire from him whether the license had been obtained before the Registration.

That certainly the decision in ***Muyanja Mbabali Vs Birekerawo Mathias Nsubuga*** (Supra) suggests and correctly so that the Registration and classification is only premised on the existence of a license. That the Petitioner failed to produce a witness from the Licensing and Registration Entity at the time, being the Ministry of Education and sports to prove the allegation that IMSAT was not licensed.

Counsel contended that fortunately and unlike in the ***Mbabaali's case***, the 2nd Respondent attached to his answer the list of licensed and Registered Institutions marked as Annexure 'B' to support the affidavit of the Returning officer of the 2nd Respondent.

That it is evident from Annexure 'B' that IMSAT which is highlighted on the list was licensed under ME/22/2297 and registered under Reg. PT1/131 registered on the 17th August, 2001.

That that confirms that as stated in the case of **Mbabaali** (supra) by the time of Registration and classification, on the 16th August, 2001 IMSAT was operating under a license *No.ME/22/2297*.

And that by the time the 1st Respondent obtained the qualification, IMSAT had been registered and classified.

That the Petitioner's argument that IMSAT was operating illegally and could not issue valid Certificates is thus devoid of any merit.

That further that the allegation that the only document attached to both the 1st and the 2nd Respondent's Affidavit is a certificate of Registration is a bare lie as annexure 'B' shows both a license number and a Registration number.

That the allegation that there is no evidence that between 2000-2001 IMSAT had a license is also wild as annexure 'B' confirms the license number which as per the case of **Mbabaali** (supra) comes before registration.

Counsel for the 2nd Respondent further contended that in view of the fact that the Petitioner's only challenge on the Certificate was fundamentally premised on the misconception that IMSAT was not licensed, renders the allegation that that the subsequent qualifications are not valid legally and factually untenable.

Counsel then cited the case of **Labejah Bob Williams Vs Independent Electoral Commission Election Petition No. 002 of 2015**, where in that case it was proved that the certificate upon which the Respondent was admitted was for the Diploma was illegally issued at the time. That no evidence has been led in this case.

Counsel contended further that the contention that the 1st Respondent was not qualified for nomination and election and is not validly elected as the LC5 Chairperson Sironko district is evidently misconceived.

Counsel contended that the Petitioner never lodged a written complaint before the 2nd Respondent challenging the qualifications of the 1st Respondent and he has failed to take benefit of the provisions of Section **15 & 16 of the PEA** applicable by virtue of **Section 172 of the Local Government Act**.

Counsel for the 2nd Respondent thus submitted that the 2nd Respondent on the basis of evidence of qualification presented by the 1st Respondent and in the absence of any proof that the said qualifications were not authentic was entitled to and indeed lawfully nominated the 1st Respondent. That the 1st Respondent was therefore at the time of nomination and election duly qualified for election as Chairperson LC5 Sironko district as he possessed the requisite academic qualifications.

In rejoinder, Mr. Mutembuli , Learned Counsel for the Petitioner, submitted that the crux of the petition is that the 1st Respondent's purported Certificate in Public and Local Government Administration and Diploma thereafter obtained from IMSAT when it was not legally operating are null and void.

Counsel submitted that there is no evidence on record that between 2000 - 2001 IMSAT was licensed and registered by Ministry of Education as per the **Education Act, 1970**.

That **S. 24 of the Education Act 1970**, required a license before a school is operated.

That without a license on record, the school was operating illegally.

That as per the Authority of **Muyanja Mbabaali** referred to in their earlier submissions, it was held that an award from an illegal Institution is null, void and is invalid.

Counsel further submitted that the Academic Registrar in the summons was called upon by Court to bring all documents relating to IMSAT including the license and Registration Certificate.

That he produced the classification and Registration Certificate (*Annexure 'F'*) which shows that IMSAT was first Registered on 16th August, 2001 and that by this time, the 1st Respondent had completed his studies.

That by the time he was admitted in 2000, IMSAT was not licensed and therefore operating illegally yet he said that he completed the course around August, 2001. Which is strongly challenged because his statement of results has only one Academic year 2000.

Counsel submitted that Counsel for the 2nd Respondent has argued that because the classification and Registration Certificate issued on the 16th August, 2001, has a license number, it shows that the license was given earlier than Registration.

That there is no evidence on record to this effect.

Mr. Mutembuli submitted that Counsel for the 2nd Respondent submitted at the bar that Ref No. *ME/22/2297* of Ministry of Education and sports on annexure 'F' dated 29th August 2001, is the License number of IMSAT. That no evidence was adduced to that effect.

And also that annexure 'F' attached to the 1st Respondent's answer to the petition dated 16th June, 2016 addressed to the Ministry of Education written by Kalema Ismail the Academic Registrar, clearly states that IMSAT was registered and classified on 16th August, 2001 and does not refer to whether IMSAT was licensed before Registration.

Counsel submitted that it is true that IMSAT was to first get a license before Registration but it was irregularly operating as it had not been earlier registered. There was no need to adduce evidence to that effect which is lacking on Court record.

Counsel submitted that Court finds that between 2000-16th August 2001, IMSAT was operating illegally when the 1st Respondent was admitted to pursue a certificate in Public and Local Government Administration and any award from an illegal entity is null, void and invalid.

Counsel submitted that while the 1st Respondent also claims to have pursued his Diploma in Public and Local Government Administration between 2001-2003, the Universities and other Tertiary Institutions Act, 2001 commenced on 6th April, 2001 and by coming into force of this Act, the Ministry of Education ceased to have powers to Register Institutions.

That by the 16th August, 2001, when the Ministry issued a pre-Registration certificate, it had no mandate to do so.

That the 1st Respondent in cross examination told Court that he completed the Certificate in August, 2001 implying that he studied the Diploma thereafter.

That even the Registration Certificate by 16th August, 2001, issued by the Ministry of Education was irregularly issued and Counsel submitted that the Court should be pleased to allow the petition and grant orders / remedies sought in the Petition.

In the instant case, for his nomination, the 1st Respondent presented evidence of completion of Diploma in Public and Local Government Administration obtained at IMSAT in 2003, a Degree of Public Administration obtained from Islamic University in Uganda in 2010, an O' Level Certificate issued by UNEB and a statement of Results upon which he obtained the said Diploma in lieu of a Certificate in Public and Local Government Administration from IMSAT in 2001.

The Diploma and Degree are not in contention.

The 1st Respondent's Academic qualifications had also been equated by NCHE in consultation with UNEB during the 2011 elections and he used the same qualifications for nomination during the 2016 elections for LC5 Chairperson Sironko District.

In this instance, NCHE explained that all that it did was to certify a certificate it issued in 2011, as confirming the status of the 1st Respondent's qualifications (*See: the Affidavit of Bukirwa Faridah in*

support of the 1st Respondent's answer to the Petition) which includes a certificate issued in 2011.

In this case in the Affidavit of Bukirwa Farridah, she explained that the 1st Respondent's qualifications acquired in 2000, had not changed and NCHE was to certify the certificate as an original certificate.

In obtaining the Degree from Islamic University in Uganda (IUIU), the 1st Respondent possessed qualifications higher than A' Level from an Institution which need not be equated by NCHE.

The Degree in this case is over and above the minimum required academic qualification of A' Level Certificate.

The Petitioner in this case does not dispute the other qualifications of the 1st Respondent save for the Certificate in Public and Local Government Administration obtained from IMSAT in 2001.

The Petitioner's contention is that the Certificate is not authentic and could not be the basis for admission for the Diploma and subsequently the Degree from Islamic University of Uganda.

There is no contention that the 1st Respondent has a qualification higher than the minimum required for Nomination which is A' Level Certificate or its equivalent as held in the case of ***Joy Kabatsi Vs Anifa Kawooya*** (supra).

Counsel for the 1st Respondent contended that that the Petitioner must not merely allege but adduce evidence to establish that the impugned qualifications are not valid and authentic.

That until sufficient evidence is adduced by the Petitioner, one cannot shift the onus to the Respondent's as held in the case of ***Oboth Marksons Jacob Vs Dr. Otiam Otaala Emmanuel*** (supra)

That the Petitioner failed to adduce evidence to rebut cogent evidence by the 1st Respondent to show the fraudulent nature of the Respondent's academic qualifications.

1. That he did not present a certificate in Public and Local Government Administration obtained from IMSAT in 2001 but instead procured a statement of Results for only one semester
2. That IMSAT was not licensed at the time the 1st Respondent obtained the qualification.

With regard to the Law, according to **Article 183(2) of the Constitution** of Uganda,

(2) A person is not qualified to be elected as the District Chairperson unless he or she is-

(a) Qualified to be elected a Member of Parliament.

According to section **111(3) e of the Local Government's Act Cap 343,**

(3) A person shall not qualify for election as Chairperson of a district or city unless that person-

(e) has completed a minimum education of Advanced Level standard or its equivalent.

The 1st Respondent as stated above submitted a Diploma Certificate from IMSAT and a Degree Certificate from Islamic University in Uganda (IUIU), including a statement of results from IMSAT, he obtained in 2001 together with his O'Level certificate.

The contention here is on the Statement of Results from IMSAT which he submitted in lieu of a certificate from IMSAT.

The certificate course was supposed to be for one year, broken into two semesters in which the 1st Respondent was supposed to study 8 subjects, four each semester.

The Statement of Results stated one semester but with 8 subjects studied.

The 1st Respondent explained that though the statement showed one semester, they studied all together 8 subjects , broken into two semesters and he went on to name the 4 subjects studied in each semester.

His evidence was corroborated by the Academic Registrar IMSAT, Mr. Kalema Ismail who confirmed that these results originated from the Institute.

He also confirmed that the Institute issued a Certificate in Public and Local Government Administration to the 1st Respondent although he never collected it.

The Admission letter of the 1st Respondent was exhibited in Court and owned by the Academic Registrar as originating from IMSAT.

He testified in cross examination that the 1st Respondent was admitted for the Diploma on the basis of the statement of Results which was issued by the same Institution.

In my opinion, the above evidence sufficiently showed that the 1st Respondent had a certificate in Public and Local Government Administration issued by IMSAT and it has never been cancelled or recalled.

As regards the 1st Respondent's failure to name the subjects studied and the concepts of the subjects, what is required by the Law is proof of a qualification and not for the 1st Respondent to have memorized all the concepts or courses he covered during the study.

He can't because of his age and the long period of which he has been out of school 2000-2003 to 2016 be expected to remember the subjects covered and therefore I disregard that contention.

As regards the 2nd contention that at the time he got the qualification, e IMSAT was not licensed. That it was only registered in 2001.

According to section 24 of the Education Act of 1970, operating a new school starts with a license to operate a provisionally classified school. If after one year the Chief Education Officer is satisfied that the school provisionally licensed is properly run and organized, then he shall issue a certificate of Registration and classification.

In the instant case, Registration and classification of IMSAT was in August, 2001 and there is no contention about it.

According to the Act, Licensing comes before Registration and Classification.

It therefore means that by the time of Registration and classification, IMSAT must have been licensed, so by the time the 1st Respondent took his Certificate course IMSAT was licensed to teach and grant Certificates in Public and Local Government Administration.

So the Certificate on which the Diploma and Degree held by the 1st Respondent are based is valid and authentic.

I am fortified in my finding by the Court of Appeal case of **Muyanja Mbabali Vs Birekerawo** in which the Court of Appeal on page 216, held while considering the Education Act of 1970, that ,

"The Act provided that Registration and classification of Educational Institutions comes after and not before licensing."

In fact Counsel for the Petitioner had the opportunity to cross examine the Academic Registrar referring to the issue of Licensing Visavis Registration and Classification and he did not do so after he had invited him.

Besides that, he had an opportunity to call a witness from the Ministry of Education to clarify on that issue but he did not.

Above all, the Petitioner did not lodge a written complaint before the 2nd Respondent challenging the qualifications of the 1st Respondent under the provisions of Sections **15 & 16 of the PEA** which are Applicable to **Local**

Council Elections by virtue of section 172 of the Local Government's Act. No one else could volunteer investigating into the 1st Respondent's qualifications to ascertain the allegations now being made.

In view of the above, Court is of the considered opinion that the 1st Respondent at the time of his election was qualified for election as LC5 Chairperson Sironko District.

Issue2:

That brings me to the 2nd issue as to what are the remedies available to the parties.

On this issue Mr. Mutembuli Learned Counsel for the Petitioner submitted that under section **142(3)c of the Local Governments Act**, after due inquiry, the Court can set aside elections and Order a new election under S. **142(5) c**, the Court declares the seat vacant and the Court notifies the Electoral Commission and the speaker Sironko District Local Council and Court orders Electoral Commission to arrange fresh elections and awards costs to the Petitioner.

I reply, Counsel for the 1st Respondent contended that under **Section 142(3) of the Local Government Act, Cap 245**, as amended provides for the remedies available after the due inquiry by the Court hearing an election Petition. That the Court may;

- i) Dismiss the petition
- ii) Declare that a candidate other than the one declared as elected was validly elected; or

iii) Set aside the election and conduct a new election.

Counsel thus prayed that the Petition be dismissed with costs with a certificate for 2 Counsel.

On his part, the 2nd Respondent prayed that the honorable Court be pleased to invoke the Powers conferred upon it under section **142(3) of**

the Local Government's Act Cap 243 as amended and dismiss the Petition with costs to the 2nd Respondent.

According to Section 142(3) of the Local Government's Act Cap 243, after due inquiry, the Court hearing an election Petition may-

- i) Dismiss the Petition*
- ii) Declare the Candidate other than the candidate declared elected earlier to have been validly elected or*
- iii) Set aside the election and declare a new election.*

In view of my finding under issue 1 above, I am compelled to find and Court finds that the 1st Respondent was validly elected and makes the following Orders;

1. The Petition is hereby dismissed
2. The 1st Respondent is confirmed as validly and Lawfully elected LC5 Chairperson Sironko District
3. The Petitioner is to pay the Respondent's costs and a Certificate is accordingly granted to the two Counsel.

The parties have a right to Appeal.


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M.C OGULI OUMO

(JUDGE)

15/8/2016

Presence

1. Denis Magonda holding brief for Counsel Mutembuli Yusuf for the Petitioner
2. Petitioner absent

3. Makada Fred and Orono Emmanuel Counsel for the Petitioner in Court
4. 1st Respondent present
5. Makada Fred holding Brief for Joseph Kyazze Counsel for the 2nd Respondent.