

5
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

ELECTION PETITION NO. 024 OF 2016

THE LOCAL GOVERNMENTS ACT CAP. 243 (AS AMENDED)

THE LC5 LOCAL GOVERNMENT COUNCIL CHAIRPERSON

10 **ELECTIONS HELD ON THE 24TH FEBRUARY, 2016**

KWEEN DISTRICT

BANAN KISSA PATRICK:..... PETITIONER

VERSUS

1. PAPCHEMEIKO PAUL MACHINJACH

15 **2. THE ELECTORAL COMMISSION :..... RESPONDENTS**

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

J U D G M E N T:

BANAN KISSA PATRICK (*hereinafter referred as the "Petitioner"*)

brought this petition against KAPCHEIMEIKO PAUL MACHINJACH

20 and the ELECTORAL COMMISSION (EC) (*hereinafter referred as the*

1st" and "2nd" Respondent respectively) seeking orders that;

(a) The election of the 1st Respondent as LC5 Chairman Kween District be set aside and a fresh/new one be ordered.

(b) Costs of this petition be provided for by both Respondents.

25 (c) Any other remedy available to the petitioner under the
electoral laws, as the court considers just and appropriate in
the circumstances.

Background:

The Petitioner contested for the seat of LC5 Chairman for Kween
30 District as an Independent candidate along with the 1st Respondent
on the NRM Party ticket; Cheptai Rashid on FDC Party ticket; and
Chelimo Nelson also as an Independent candidate. The 1st
Respondent was declared winner and gazetted by the 2nd
Respondent. The Petitioner was dissatisfied with the result of the
35 election and filed the instant petition.

The major ground advanced is that the 1st Respondent was at the
time of his election not qualified for election as LC5 Chairman
Kween District. The Petitioner primarily contends that the
1st Respondent does not possess the required minimum academic
40 qualifications of A' Level or its equivalent. That the certificate in
Entrepreneurship Skills Development and a diploma in Project
Planning & Management which the 1st Respondent presented for
nomination are invalid qualifications for having been obtained from



Business Skills Trust Institute (BSTI) which is not legally recognized
45 by NCHE.

The 1st Respondent denied the allegation contending that he
possessed the required academic qualifications for office of LC5
Chairman, Kween District. That BSTI from which he obtained the
certificate and diploma was duly registered and licensed by Ministry
50 of Education & Sports (MoE) then and the institute and its awards
are recognized by NCHE. Further, that his diploma in Project
Planning & Management was equated by NCHE and found to be
higher than UACE which is the minimum required academic
qualification for the office of a district Chairman under the **Local**
55 **Governments Act (Cap. 243).**

The 2nd Respondent also denied the allegation that it failed to
disqualify or cancel the nomination of the 1st Respondent after it
was notified that he does not qualify for election by the Petitioner.
The 2nd Respondent contends that the same issue concerning the
60 academic qualifications of the 1st Respondent currently being raised
by the Petitioner was raised earlier during the 2011 election, but
that it was found by NCHE that the 1st Respondent was in
possession of qualifications higher than the A' Level qualification,

and that the same academic qualifications were presented for his
65 nomination and found to be authentic, and that nothing has since
changed.

The parties supported their respective averments with affidavits
which were read and relied upon at the trial. Witnesses were
summoned from NCHE and also from BSTI; the latter of which
70 awarded the impugned certificates to the 1st Respondent. They gave
their testimonies in court even though they had not sworn the
affidavits. At the scheduling conference two issues were framed for
determination as follows;

***(1) Whether at the time of his election the 1st Respondent
75 was not qualified for election for LC5 Chairman for
Kween District.***

(2) What remedies are available to the parties?

Mr. Mutembuli Yusufu represented the Petitioner, Ms. Agnes
Kanyago the 1st Respondent, and Mr. Kyazze Joseph and Mr.
80 Nasser Serunjogi the 2nd Respondent. Counsel made oral
submission to argue the petition which I will constantly refer to
while resolving the issues above.



Resolution of issues:

85 **Issue No. 1: Whether at the time of his election the 1st
Respondent was not qualified for election for LC5 Chairman
for Kween District.**

The Petitioner avers that the 1st Respondent lacks of the requisite minimum qualification in paragraph 3, 4, 5, 6 of the petition and in
90 paragraphs 7, 8, 9 and 10, 11 of the affidavit supporting the petition. In the main the Petitioner contends that the 1st Respondent was at the time of his election not qualified for election as LC5 Chairman as he did not have the minimum qualification of “A” Level or its equivalent as required under **Section 12(2) (a);**
95 **111(3) (e) LGA** and **Article 80 (i) (e) and 183(2) (e)** of the **Constitution**. Secondly, that the 1st Respondent did not establish his qualification with the 2nd Respondent as a person holding a minimum qualification of “A” Level or its equivalent at least two months before the nomination day as required under **Section**
100 **111(3a) (a) LGA** in that he only possessed a certificate and diploma purportedly the equivalent of A’ Level qualification form BSTI. Thirdly, that the 1st Respondent did not produce to the 2nd Respondent on nomination day a certificate of equivalence issued to

him by NCHE in consultations with Uganda National Examination
105 Board (UNEB) as required under **Section 111 (3b) LGA**. The
Petitioner specifically avers that the certificate and diploma awarded
by BSTI are null and void as the said institute was by 2002/2004
not recognized as an institute awarding recognized certificates and
diplomas.

110 The Petitioner's complaint against the 2nd Respondent is that it
ought to have known and detected that the academic documents
which the 1st Respondent presented for nomination were from an
unrecognized institute as this fact was brought to the 2nd
Respondent's attention before election which was supposed to
115 cancel the 1st Respondent's candidature, but maintained him until
elections on 24th February, 2016. The Petitioner thus faults the 2nd
Respondent for ignoring and failing to address his complaint.

Mr. Metembuli Yusufu submitted that BSTI which awarded the
impugned certificate and diploma (*Annexure "A1" and "A2"* to the
120 2nd Respondent's affidavit respectively) is not a recognized
institution even as of now. That under **Section 24 of the
*Education Act***, which was the applicable law, to operate a school it
was a requirement to obtain a license and operate for one year. That

in this case BSTI first got its license, *Annexure "F"* to affidavit of 2nd
125 Respondent, in 2000 and got its certificate of registration.
Annexure "E" on 22nd May, 2002. That the license number which
appears on *Annexure "F"* is *ME/22/3435* dated also of 22nd May,
2002, with postal address as, "*P. O. Box 26616, Kampala*".

Further that *Annexure "G"*, a letter from MoE upon which the
130 Academic Registrar of BSTI testified that the institute was granted a
license is in reference to License No. *ME/22/3455*, but the letter
was in fact addressed to a different institute by names of Business
Skill Institute (BSI) and not Business Skill Trust Institute (BSTI).
Mr. Mutembuli argued that letter *Annexure "G"* was addressed to
135 BSI and the MoE has never issued the proprietors of BSTI with
such documents in the names of BSI.

Mr. Mutembuli further submitted that the license number on
Annexure "G" (supra) is *ME/22/3455* which the academic Registrar
claimed to belong to BSTI issued by MoE. Further that *Annexure*
140 "*F"* (supra) also originating from MoE referring to BSTI has the
license number as *ME/22/3435* and that there is no such license
on record of that license number.



Also, that whereas the postal address on *Annexure "G"* (supra) for BSI is "*P.O.Box 26337, Kampala*", the postal address of BSTI on *Annexure "F"* is "*P.O. Box 26616 Kampala*" and is what is registered in MoE. Counsel opined that there was no license that was issued to BSTI since *Annexure "G"* (supra) refers to BSI which is a different institute.

Mr. Mutembuli further submitted that the certificate in Entrepreneurship Skills Development (*Annexure "A2"*) was issued by BSTI on 25th March, 2002, well before 22nd May, 2002, when the institute got registered with the MoE, and hence it was operating illegally and continues to operate illegally even as of to date as it is not registered with NCHE. Mr. Mutembuli argued that since the 1st Respondent obtained his certificate before the institute was registered by MoE, the certificate issued by a non - existent institution is invalid and cannot be the basis of the diploma in Project Planning & Management the qualification which the 1st Respondent presented to the 2nd Respondent for nomination as the equivalent of "A" Level qualification.

Counsel also relied on testimony of PW2 Dr. Pamela Tibihikirira - Kalyegira, the Director, Quality Assurance at NCHE, to the effect

that any award that was issued before the coming into operation of NCHE is recognized provided the school was legally operating.

165 Counsel argued that it means that the certificate *Annexure "A2"* (supra) awarded on 25th March, 2002 before BSTI was registered and obtained a license on 22nd May, 2002 pursuant to **Section 24 of the Education Act** (supra) is invalid. That even *Annexure "A1"*, the diploma which was awarded on basis of the of an invalid

170 certificate cannot stand. Mr. Mutebuli fortified his argument with the case of ***Labeja Bob Williams vs. UNEB & Electoral Commission, HC EP No. 2 of 2015***, where court held, inter alia, that before one holds a diploma he has a burden to prove he had a certificate in a particular discipline equivalent to advanced

175 certificate issued by UNEB. Mr. Mutembuli further relied on the case of ***Muyanja Mbabali vs. Birekerawo Mathias Nsubuga, CA EPA No. 36 of 2011***, where the Court of Appeal held that the effect of a qualification from an unrecognized institution is that it is null and void as it is from an illegal enterprise and cannot have a force

180 of law.

In effect, the Petitioner's contention is at the time it awarded the certificate in Entrepreneurship Skills Development to the 1st

Respondent in 2001, BSTI was not a licensed and registered
institute under the law with the MoE. That it was operating illegally
185 and the certificate is invalid which also renders the diploma based
on it invalid. That at the time of nomination for election what the 1st
Respondent presented to 2nd Respondent was not the equivalent of
UACE; and that he did not qualify within the meaning of **Section**
111 (3)(e) 139(d) and 12(2)(a) LGA; Article 80(i)(c) & 183(2)(a) of
190 **the Constitution.**

Further, that the duty of the Petitioner is to throw doubt on the
academic qualifications and the evidential burden would shift to the
1st Respondent since he is a person relying on them. For this
proposition Counsel cited the case of **Muyanja Mbabali** (supra)
195 arguing that the Petitioner has proved his case, but that the 1st
Respondent has failed to discharge the evidential burden of proof
cast upon him.

In respect to the 2nd Respondent Mr. Mutembuli argued that it
failed in its duty to cancel the nomination or not to nominate the 1st
200 Respondent after being made aware that 1st Respondent lacked the
required minimum academic qualifications for nomination and
election as LC5 Chairman.

The 1st Respondent, in paragraph 5 of the affidavit supporting his answer to the petition, attached *Annexrure "R1B"*. These are collectively copies of testimonials and certificates which he submitted to the 2nd Respondent for nomination. Most relevant to the issue under consideration is a letter dated 24th July, 2015 from UNEB addressed to the Chairman Electoral Commission in respect of the equating of the diploma in Project Planning & Management issued to the 1st Respondent by BSTI in 2004. The letter indicates that the 1st Respondent, in 2001 obtained a certificate in Entrepreneurship Skills Development from BSTI and states that:

"The academic standard achieved by KAPCHEMEIKO PAUL MACHINJACH is equivalent to Uganda Advanced Certificate of Education (UACE). Rights and privileges of a UACE holder may be accorded to him."

In the collective *Annexrure "R1B"* is also a letter from MoE signed by the Permanent Secretary addressed to the Director NCHE. It is in reference to the accreditation of BSTI. The letter shows the date of registration of the institute as 22nd May, 2002 under license No.*ME/22/3435*. It further shows the institute is owned by Mr. Dhibikirwa Nelson of P.O. Box 26616 Kampala. Also attached is the

Certificate of Registration for Private Education Institution in respect of BSTI showing that the institute was registered on 22nd May, 2002
225 vide Registration No. *PBI/B/156*. The 1st Respondent averred that BSTI is registered with MoE and that its awards were accredited and recognized by NCHE and that he duly presented the required qualifications to the 2nd Respondent for nomination for election as LC5 Chairman.

230 Ms. Agnes Kanyago learned counsel for the 1st Respondent submitted that based on the content of *Annexure "R1B"* (supra) the 1st Respondent obtained a diploma from BSTI a legally recognized institute and that he had the required qualifications for nomination and election as LC5 Chairman. Ms. Kanyago also made reference to
235 *Annexure "H2"* to the affidavit of the 2nd Respondent, a letter dated 12th October, 2012, written by A.B.K. Kasozi the Executive Director NCHE to the Chairman EC. It is to the effect that NCHE recognized the 1st Respondent's qualification as being above "A' Level. Counsel submitted that on the basis of these facts the petition should be
240 dismissed with costs.

Mr. Kyazze Joseph learned counsel for the 2nd Respondent also submitted that at the time of nomination the 1st Respondent

possessed the requisite academic qualifications under **Section 111 (3)(e) LGA**. That the 1st Respondent presented to 2nd Respondent a
245 diploma in Project Planning & Management and a certificate in Entrepreneurship Skills Development, and the 2nd Respondent carried out due diligence as demonstrated by *Annexure "D" and "C"* (supra) which are correspondences the 2nd Respondent got from BSTI and NCHE on the subject matter. That NCHE confirmed to
250 the 2nd Respondent that they recognized the diploma in Project Planning & Management of the 1st Respondent as being well above UACE. Counsel further cited *Annexure "H16"* to the affidavit of the 2nd Respondent, a letter from NCHE clarifying and confirming the registration status of the BSTI and awards as being recognized. Mr.
255 Kyazze also referred to *Annexure "F"*, a letter from MoE to the Director NCHE further confirming the registration and license status of BSTI as an existing institution with the MoE. Counsel also referred to *Annexure "E"*, the certificate of registration with the details of registration of BSTI.

260 Mr. Kyazze went on to submit that the 1st Respondent previously presented to the 2nd Respondent the same qualifications in the earlier election of 2011. That in absence of any communication

presented by the Petitioner before the election to the 2nd Respondent from UNEB or MoE or NCHE expressly disowning BSTI or
265 invalidating its awards to the 1st Respondent, there was no reasons for 2nd Respondent to disqualify or cancel the 1st Respondent's nomination.

Mr. Kyazze also argued that the duty was on the Petitioner to adduce sufficient evidence before the 2nd Respondent to prove the
270 allegations regarding the 1st Respondent's qualification to enable the 2nd Respondent determine the complaint. Further, that it was if he was not satisfied with the 2nd Respondent's decision that the Petitioner would be entitled under **Section 15 of the Electoral Commission Act**, to appeal to the High Court. That he did not take
275 that step and the 2nd Respondent cannot be blamed on account of not prosecuting the Petitioner's complaint. That even if it were found that the BSTI did not legally exist, the 2nd Respondent should not be faulted because it cannot assume the mandate of the licensing and registration authorities of institution of higher
280 learning in Uganda.

Mr. Kyazze went on to argue that since the Petitioner contests only the certificate in Entrepreneurship Skills Development (*Annexure*

“A2”) but concedes to the authenticity of the diploma in Project Planning & Management (*Annexure “A1”*), and the NCHE under
285 *Annexure “H2”* (supra) categorically confirmed that the 1st Respondent’s diploma is a qualification well above the UACE, there is no evidence that this position has changed. Counsel submitted that based on that the petition should be dismissed with costs.

Opinion:

290 In election petitions the burden of proving each and every allegation lies on the petitioner who seeks to have the election of the respondent annulled. See: ***Mukasa Harris vs. Dr. Bayiga Michael Lulume, SC EPA No.18 of 2007.*** . The petitioner is under duty to discharge that burden on balance of probabilities to the satisfaction
295 of court.

The Petitioner herein is challenging the election of the 1st Respondent as LC5Chairman primarily on the ground that the he lacked the minimum academic qualifications of “A” Level education of its equivalent at the time of nomination for election. The Supreme
300 Court in ***Abdu Balingira Nakendo vs. Patrick Mwendha SC EPA No. 9 of 2007,*** held that 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 his burden to show that he has authentic certificates.

305 Further in ***Kabatsi Joy Kafura vs. Bangirana Kawooya Anifa & An 'or, HC EP No.001 of 2006***, per Mukiibi J; ***Babu Frances vs. EC & Elias Lukwago, HC EP No. 10 of 2006***; and ***Haji Muluya Mustafa vs. Alupakusadi Waibi Wamulongo HC EP No. 22 of 1996*** per Byamugisha (as she then was)(RIP) it was held that the
10 petitioner simply had to throw a reasonable doubt on the facts in dispute since they were within his knowledge and the evidentiary burden of proof would shift to the respondent. Similar position was restated in ***Muyanja Mbabali vs. Birekerawo Mathias Nsubuga case*** (supra).

315 Applying the principles to facts of the instant petition, this court is satisfied that the Petitioner duly established a reasonable prima facie case to cast doubts on the authenticity of the academic qualifications of the 1st Respondent. The evidentiary burden thus shifts on the 1st Respondent to prove that he possessed the required
320 academic qualifications at the time of his nomination for election as LC5 Chairman.



Under **Section 111 (3) (a) LGA** (supra) it is provided that a person shall not qualify for election of a chairman of a district unless that person has completed a minimum education of Advanced Level
325 standard or its equivalent.

Under **subsection (3a)** thereof, it is also a requirement that a person wishing to contest elections as district chairperson shall establish his or her qualification with the EC as a person holding;

**“.....a minimum qualification of advanced level or its
330 equivalent at least two months before nomination day...”**

Under **subsection (3b)** (supra) it is further provided that a person shall establish his or her qualification by production of a certificate issued by NCHE in consultation with UNEB. However under **subsection (3d)** (supra) it is provided that;

**“For avoidance of doubt, if a candidate has an advanced
335 level certificate obtained in Uganda or qualifications higher than the prescribed qualification obtained in Uganda or obtained from a former University of east Africa or any of its constituent colleges, then there shall
340 be no need for the verification of his or her qualifications by the National Council for Higher Education.”**

In the instant petition, the 1st Respondent established to the 2nd Respondent the equivalent of UACE qualification by production a diploma in Project Planning & Management, *Annexure "A1"* awarded by BSTI on 25th March 2004. According to *Annexure "B"* to the affidavit of the 2nd Respondent, which is a letter dated 24th July, 2015 written by UNEB to the Chairman EC in reference to the subject matter of equating the 1st Respondent's diploma with UACE, the UNEB categorically stated that the 1st Respondent completed one - year certificate in Entrepreneurship Skills Development in 2001 at BSTI and a two -year diploma course in Project Planning & Management in 2004, and that the academic standard achieved by the 1st Respondent is equivalent to UACE.

Besides the above, a letter from NCHE, *Annexure "C1"* to the affidavit of 2nd Respondent dated 16th November, 2011, is in reference to the subject matter of; "*Recognition of Academic qualifications*" of the 1st Respondent. Yet again the diploma, *Annexure "A1"* (supra) was in issue and NCHE unequivocally stated that it recognized the qualifications of the 1st Respondent awarded by BSTI. This position was further reinforced by letter dated 12th October, 2012, written by the Executive Director NCHE to

Chairman EC on the subject matter of the 1st Respondent's diploma in Project Planning & Management. Once more NCHE confirmed that it recognized the qualification as being well above UACE. In
365 that letter the ED, NCHE actually quoted verbatim provisions of **Section 111(3d) LGA** cited above.

The 1st Respondent also attached to his affidavit *Annexure "R1B"* which is the same as *Annexure "D"* to the affidavit of the 2nd Respondent, which is a letter written *"TO WHOM IT MAY CONCERN"*
370 by Academic Registrar BSTI Ltd. dated 07th October, 2011, in reference to the 1st Respondent as a person who was a student at *"Business Skills Trust Institute*, who successfully completed his courses in 2001 and 2002 -2004 respectively. The letter was written on a headed paper of *"Business Skills Trust Ltd"*; a registered
375 company, but made specific reference to BSTI as the registered training institute as per the *Education Act*, vide Registration No. *PB1/B/156*.

With all the above evidence, it is clear that the 1st Respondent left
no doubt by proving that he properly established his academic
380 qualification as being the equivalent of A' Level with 2nd Respondent
within the meaning of **Section 111(3b)**(supra). In fact the evidence

shows that he established qualifications higher than the required minimum qualification for election as LC5 Chairman. Therefore, he discharged the evidential burden of proof cast on him by proving
385 that he had the qualifications required under the law.

I am acutely alive to the testimony of PW1 Dr. Pamela Tibihikirira-Kalyegira the Director of Quality Assurance at NCHE that she wrote a letter *Annexure "E"* to the affidavit of the Petitioner, stating that BSTI and its awards are not recognized by NCHE because the
390 institute is not registered with NCHE. This rhymed with another letter *Annexure "F"* to the affidavit of Petitioner, written by the Executive Director NCHE to Nelson Dhibikirwa the proprietor of BSTI clarifying on the circumstances under which PW1 wrote *Annexure "E"* (supra). He stated that NCHE does not recognize
395 BSTI since it was not registered with NCHE as required by law.

The ED further noted that it was acknowledged that prior to the establishment of the NCHE, the then MoE was legally mandated for the licensing of all higher education institution, and that BSTI may have indeed obtained the requisite license then. That with the
400 coming into force of ***University and Other Tertiary Institutions Act, 2001***, the mandate of licensing institutions of higher

education wishing to issue awards in their own name was taken over by NCHE, and all institutions of higher education were expected to registered with NCHE.

405 Notwithstanding the apparently contradictory previous and current positions taken by NCHE regarding the status of BSTI and its awards as is evident from the various correspondences, it cannot be found that BSTI not being registered with NCHE renders invalid its awards prior to the coming into operation of NCHE. In its earlier
410 correspondences under *Annexure "C1", "C2", "H2", "H3", "H7", "H8", "H10", "H11", "H12", "H13", "H14", "H15", and "H16"*, NCHE unequivocally recognized BSTI and its awards of certificates and diplomas; and specifically made reference to the awards to the 1st Respondent. The diploma awarded by BSTI to the 1st Respondent
415 which NCHE recognized as being higher than UACE was the basis for his earlier nomination for election to the same office in 2011. Nothing has since changed and it is the same diploma that the 1st Respondent presented for nomination as the "A" Level equivalent qualifications for 2016 elections. It would hence be futile to attempt
420 to impeach the same qualifications of the 1st Respondent.

The testimony of PW1 Dr. Pamela Tibihikirira - Kalyegira that BSTI and its awards are not recognized by NCHE was solely premised on the institute not being registered with NCIIE. Indeed the evidence points to the fact that BSTI has not yet secured its registration with NCHE up to date. PW2 Nelson Dhibikirwa, the proprietor of BSTI in his testimony vehemently stated that the institute made its application for registration with NCHE and paid the necessary dues a long time ago, but that NCHE has not performed its statutory mandate to register BSTI. PW2 indicated that he was contemplating legal action against NCHE.

While the threatened legal action is not within the immediate domain of the instant petition, I cannot fail to observe that the evidence of PW2 on that point was not denied or challenged. Where the institute performed its part; the failure to register it by NCHE cannot surely be blamed on the institute. If NCHE does not perform its statutory mandate and it does not assign any reason whatsoever, the law on registration for those institutions that are victims of the failure in NCHE can only be construed liberally with common sense. Courts cannot be seen to condone NCHE stifling the other institutions' operations merely because of its systemic

ineffectiveness in executing its statutory mandate. It must be emphasized that the failure of NCHE to decide is legally challengeable under the process of judicial review.

The above aside, the Executive Director NCHE in his letter
445 *Annexure "F"* (supra) acknowledged that there existed institutions prior to establishment and coming into operation of NCHE in January 2003, and that these institutions may have obtained licenses issued to them by MoE and operated legally. Therefore, the testimony of PW1 Dr. Pamela Tibihikirira - Kalyegira should be
450 understood in that context. In fact, she precisely stated in her testimony that she wrote letter *Annexure "E"* to affidavit of Petitioner and that it should be understood in the same context.

Also to note is that NCHE started its operations in January 2003. That naturally means that it would be incapable of pronouncing
455 itself on the institutes and awards of institutes which were licensed and registered by the then MoE prior to coming into operation of NCHE. PW1 Dr. Pamela Tibihikirira - Kalyegira was particularly specific that at the time she wrote *Annexure "E"* (supra) she had not had the benefit of reading the other correspondences from MoE
460 to NCHE regarding the licensing and registration of BSTI, and again

that her letter must be understood against that background. The same would be said of *Annexure "F"* (supra) the letter written by the Executive Director NCHE to the proprietor BSTI. The license and registration of BSTI was obtained in May, 2002 before the
465 commencement of the mandate of NCHE which letter *Annexure "F"* (supra) was referring to.

Given the above facts evidence, I find that the non registration of BSTI with NCHE merely constituted a statutory administrative formality that could not in the least invalidate awards properly
470 obtained from the institute prior to the coming into operation of NCHE. I fully agree with the proposition of Mr. Mutembuli that for the award to be recognized, the institute must have been illegally operating. I however must emphasize that even assuming that *Annexure "A2"*; the certificate in Entrepreneurship Skills
475 Development awarded on 25th March, 2002 by BSTI was awarded when the institute was not legally operational, the certificate would be irrelevant for purposes of equating it with UACE. What is relevant for that purpose is *Annexure "A1"*; the Diploma in Project Planning & Management awarded on 25th March, 2004 well after
480 BSTI had been duly licensed and registered by MoE.

My findings above are fortified by the fact that all the other *Annextures* in collective correspondences to and from NCHE are in reference to the equating and or recognizing the diploma as the equivalent to UACE. Mr. Mutembuli conceded that much that he
485 does not contest the diploma but certificate. He relied on the case of ***Labeja Bob Williams vs. UNEB & EC*** (supra) that before one acquires a diploma one must be a holder of a certificate in a given discipline or holder of advanced certificate of education issued by UNEB or its equivalent as graded by NCHE and UNEB.

490 Indeed *Annexture "B"* to 2nd Respondent's affidavit; which is a letter written by Executive Director UNEB shows that the 1st Respondent possesses East African Certificate of Education (EACE) obtained from Sebei S.S. in 1973. This alone would qualify him to obtain a higher qualification of advanced certificate of education. In this
495 case the qualification was the diploma he obtained from BSTI. When it was equated by NCHE, it was duly pronounced to be the equivalent to the UACE (See: *Annexture "B"* (supra). In *Annexture "E"* (supra) NCHE whose mandate it is to equate the qualification stated that it recognized the diploma of the 1st Respondent as being
500 well above UACE (A-Level). Therefore, for purposes of equating the

qualifications, the certificate in Entrepreneurship Skills Development and was irrelevant.

Even assuming the certificate was obtained illegally as Mr. Mutembuli submitted, which is not true, still it would not render
505 the subsequent diploma of 1st Respondent invalid because it is not in the evidence that the diploma was premised on the award of the impugned certificate. The EACE would still suffice as the basis for the diploma from BSTI. I find that the 1st Respondent has satisfactorily discharged the evidentiary burden of proof cast on him
510 to prove that he was in possession of the required academic qualifications for election as Chairman LC5.

Counsel for the Petitioner raised issue of some discrepancies in the license numbers and the postal address of BSTI; and also of the letter written by MoE to "*Business Skills Institute*" which is not the
515 same as BSTI.

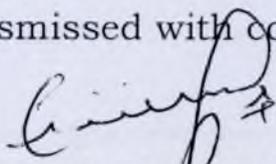
It is true that in *Annexure "F"* to affidavit of 2nd Respondent the license number quoted is *ME/22/3435* and the registration number is *PBI/B/156* and the date of registration 22nd May, 2002 and the postal address is P.O. Box 26616 Kampala; yet in *Annexure*
520 "*G*"(supra) it refers to a license to operate "*Business Skills Institute*

supporters of the 1st Respondent. There is clearly no basis for the Petitioner having generated that particular allegation.

In addition, that the trio mentioned were arrested by police and released on police bond is also merely a redundant averment. There is no record of the arrest or police bond adduced in evidence; let alone that the release was secured by the 1st Respondent and his agents. None of the other affidavits supporting the petition mentions this incident at all. The Petitioner fails the standard of proving the allegation on balance of probabilities to the satisfaction of the court.

Issue No. 4: Whether the Petitioner is entitled to the remedies sought?

An election petition of a MP can only be set aside when the Petitioner has proved to the satisfaction of the court any of the four grounds set out under Section 61(1) of the PEA. The Petitioner in the instant petition has not proved any of those grounds to the satisfaction of this court. The petition fails, and it is dismissed with costs to the Respondents.


BASHAIJA K. ANDREW
JUDGE
29/07/2016