

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ELECTION PETITION NO. 10 OF 2016

SEKIGOZI STEPHEN.....PETITIONER

VERSUS

1. SEMATIMBA PETER SIMON)

2. ELECTORAL COMMISSION)

3. NATIONAL COUNCIL FOR

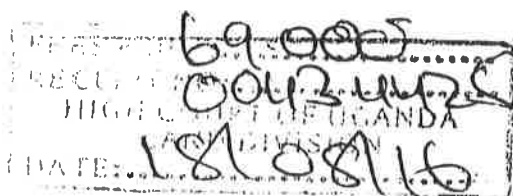
HIGHER EDUCATION).....RESPONDENTS

JUDGMENT

BEFORE: HON LADY JUSTICE LYDIA MUGAMBE

a) Introduction

1. This is the judgment in election petition No. 10 of 2016. The Petitioner and the 1<sup>st</sup> Respondent together with three others contested for Member of Parliament for Busiro South Constituency during the general elections held in the country on 18<sup>th</sup> February 2016. The 1<sup>st</sup> Respondent was declared winner of the said election by the 2<sup>nd</sup> Respondent with 24,298 votes and the Petitioner came second with 19,266 votes. The second Respondent gazetted the results vide Gazette CIX No. 14, General Notice No. 144 of 2016.



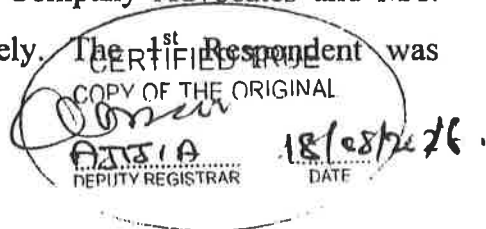
2. The Petitioner, dissatisfied with the outcome of this election filed this petition. Although couched in repetitive, lengthy and in many places argumentative grounds the petition is based on two discernible broad grounds; electoral malpractices which the Petitioner blames on the 2<sup>nd</sup> and 1<sup>st</sup> Respondent and lack of authenticity and validity of the 1<sup>st</sup> Respondent's academic qualifications which the 3<sup>rd</sup> Respondent relied on to issue a certificate of completion of advanced level standard or its equivalent (herein after a certificate of equivalent) that the 2<sup>nd</sup> Respondent relied on for the 1<sup>st</sup> Respondent's nomination and subsequent election.

3. Consequently the Petitioner prays for a declaration that the 1<sup>st</sup> Respondent was not validly nominated; a declaration that he was not validly elected; his election be annulled and the Petitioner who was first runner up be declared winner; alternatively a fresh election be conducted and costs.

4. The petition is supported by the affidavit of the Petitioner and 17 supplementary affidavits. In multiple affidavits and answers, all the Respondents oppose the petition. The 1<sup>st</sup> Respondent's answer to the petition is supported by 18 affidavits, the 2<sup>nd</sup>'s answer is supported by 11 affidavits and the 3<sup>rd</sup> Respondent's answer to the petition is supported by 2 affidavits.

5. Globally, the Respondents argue that the certificate of equivalent utilized by the 1<sup>st</sup> Respondent in the elections was valid and any errors thereon do not vitiate this validity and that there were no electoral malpractices that affected the results in issue in a substantial manner. Consequently they submit that the petition should be dismissed with costs.

6. At the hearing the Petitioner was represented jointly by Mr. Rashid Ssemambo and Mr. Renato Kania of M/s. Kalenge, Ssemambo & Company Advocates and M/s. Kania & Alii Advocates & Solicitors respectively.

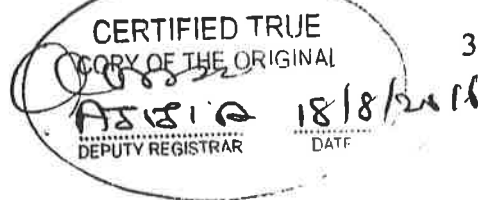


represented by Mr. Arnold Kimara and Ms. Barbara Akullo of M/s. Muganwa, Nanteza & Co. Advocates; the 2<sup>nd</sup> Respondent was represented by Mr. Brian Kabayiza of M/s. Kabayiza, Kavuma, Mugerwa and Ali Advocates and the 3<sup>rd</sup> Respondent was represented by Ms. Faridah Bukirwa from its Legal Department, Mr. Asuman Nyonyintono and Mr. Ben Wagabaza of M/s. Wagabaza & Co Advocates.

7. The following issues were framed for determination:

- i) Whether the 3<sup>rd</sup> Respondent is a rightful party to the petition
  - ii) Whether the academic qualifications of the 1<sup>st</sup> Respondent that were relied upon by the 3<sup>rd</sup> Respondent to issue him a certificate of equivalent were valid and authentic.
  - iii) Whether the 3<sup>rd</sup> Respondent exercised its statutory duty with due diligence before issuing the certificate of equivalent to the 1<sup>st</sup> Respondent.
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- iv) Whether the certificate of equivalent issued to 1<sup>st</sup> Respondent is authentic and valid.
  - v) Whether the 1<sup>st</sup> Respondent was validly nominated.
  - vi) Whether the 1<sup>st</sup> Respondent personally and/or by his agents with his knowledge, consent and approval committed any election offences and illegal practices during the election process.
  - vii) Whether the 2<sup>nd</sup> Respondent failed to conduct the Busiro South Parliamentary elections in compliance with electoral laws and if so whether the non-compliance affected the results in a substantial manner.
  - viii) What are the remedies available to the parties.

8. The affidavits in support and opposition of the petition were admitted to form part of the record. There was cross examination of the Petitioner, Bashir Kabakubya for the Petitioner, the 1<sup>st</sup> Respondent and Prof. Asibo Opuda - the Executive Director of the 3<sup>rd</sup> Respondent on their affidavits. The parties then filed written submissions and there



was oral clarification of issues. An affidavit of Bashir Kabakubya regarding a mayoral debate involving the 1<sup>st</sup> Respondent was struck out at the hearing with the consent of all since the Petitioner did not attach the video clips that were being discussed therein. I have read all the pleadings and submissions from the parties.

**b) Resolution of issues**

9. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents raised preliminary objections regarding the admissibility and reliability of annexures to Mr. Kabakubya's supplementary and rejoinder affidavits and requested their expunging from the record basing almost entirely on the Evidence Act. Strictly speaking even the Respondents' certificates and documents from abroad which do not meet the standard in S. 84 of the Evidence Act should be rejected. However for the justice of this case, I will not order that much.

10. The Petitioner objected citing the Electronic Transactions Act of 2011. I am alive to these objections which are largely hinged on their being sourced electronically online as part of Mr. Kabakubya's research. However the Electronic Transactions Act No.8 of 2011 allows admissibility of such electronic data messages. Ss. 5(1), 2(1)(b), 7 (2) (a), 8(1) (a) and (b) are instructive here. In particular, S. 7 (2) (a) provides for the assessment of authenticity of a data message by considering whether the information has remained complete and unaltered. S. 8(1) (a) and (b) provide for admissibility and evidential weight of a data message or an electronic record thus:

“(1) in legal proceedings the rules of evidence shall not be applied so as to deny the admissibility of a data message or an electronic record - (a) merely on the ground that it is constituted by a data message or an electronic record; (b) if it is the best evidence that the person adducing the evidence could reasonably be expected to obtain.”



11. To a large extent, I am of the view that considering the agreed fact that Pacific Coast Institute closed, such information as presented by Mr. Kabakubya was the best he could reasonably obtain for purposes of the petition. This is particularly the case when you consider the time he had for filing the petition after elections. However I am also alive to what is admissible in affidavit evidence and what is not. Order 19 r 3 (1) of the Civil Procedure Rules provides that:

“Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.”

12. Clearly this election petition is not an interlocutory matter. It is substantive. The affidavits in support thereto must by law contain matters that can be proved by the deponent of his or her own knowledge.

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13. The Court in *Uganda v. Commissioner of Prisons, Ex parte Matovu* [1966] EA 514 stated that;

“As a general rule of practice and procedure, an affidavit for use in court, being a substitute for oral evidence, should only contain statements of facts and circumstances to which he believes to be true. Such an affidavit must not contain an extraneous matter by way of objection or prayer or legal argument or conclusion”

14. In the case of *Mayers and Anor v. Akira Ranch Ltd* [1974] EA 169, the High Court of Kenya explained that;

“A witness cannot be called, in proof of a fact, to state that he heard someone else state it to be one. Care must be taken to distinguish between evidence which is tendered to prove that someone else has



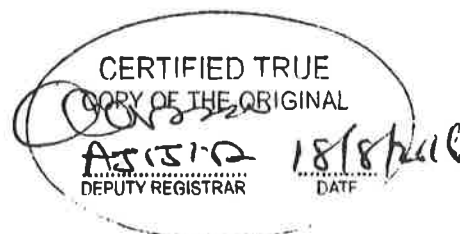
spoken certain words when the fact of which proof is required is merely the speaking, and evidence which is tendered to prove that someone else has spoken certain words as leading to a conclusion that the words spoken were true. The former is admissible... the latter is not"

15. With these authorities I will not order such omnibus expunging as the 1<sup>st</sup> and 3<sup>rd</sup> Respondents want. Rather if I chose to rely on a particular annexure, I will make a case-by-case analysis of its reliability within the standard above. Besides O. 19 rule 3(1) applies across board to all affidavits before me and not just Mr. Kabakubya's.

16. The preliminary objection on use of different letter heads by M/s. Cabelus from the USA cannot stand in the absence of any demonstration that the said Law firm denies the said letter heads or contents therein the letter as its own.

17. In reference to the objection regarding paragraph 22 of Mr. Kabakubya's supplementary affidavit, any unattached annexures cannot be relied on but the paragraphs referring to them shall be assessed on a case by case basis to determine whether the context therein is easily discernible from the rest of the affidavit in issue. If not then it won't be relied on.

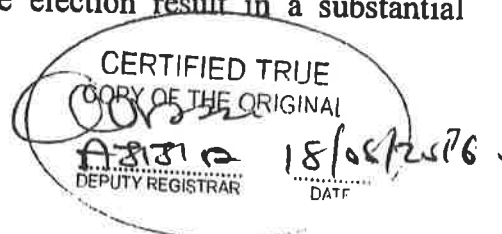
18. Whereas there is a requirement for certified copies under S. 73, 75 and 76 of the Evidence Act, in the interest of justice, because the 3<sup>rd</sup> Respondent does not deny that the uncertified record of proceedings attached from the Igeme case by Mr. Kabakubya was not filed by it, also considering I can easily verify the authenticity of the record being a record of court, in my discretion I will not deny Mr. Kabakubya's reliance on the same. This however does not diminish the requirement of certified copies to be attached ordinarily.



19. Also without the 1<sup>st</sup> Respondent's passport at the time of the alleged study in the USA, the Petitioner has not demonstrated that the 1<sup>st</sup> Respondent did not have the requisite student visas.
20. To the extent it is a public office, the 3<sup>rd</sup> Respondent was wrong in denying the Petitioner's lawyers access to the 1<sup>st</sup> Respondent's application file for the certificate of equivalent claiming some kind of blanket protection under the Access to Information Act, moreover without giving the section relied on. This information should have been availed the way the 2<sup>nd</sup> Respondent did for the information it had.
21. The 3<sup>rd</sup> Respondent abandoned issue i) whether the 3<sup>rd</sup> Respondent is a rightful party to the petition. Nonetheless for clarity I am satisfied that the 3<sup>rd</sup> Respondent was properly joined as a Respondent for its actions regarding the issuance of the certificate of equivalent that the 1<sup>st</sup> Respondent used for nomination and subsequent election as Member of Parliament. I am fortified also by the said inclusion of the 3<sup>rd</sup> Respondent in many other previous petitions where similar involvement of the 3<sup>rd</sup> Respondent has been challenged and it has been included as a Respondent. Moreover, by its inclusion, the 3<sup>rd</sup> Respondent had the opportunity to be heard regarding the claims against it and it gives me the opportunity to take account of its answer in the determination of the petition.

**c) Electoral malpractices**

22. I will first address issues 6 and 7 on malpractices and do so jointly. For coherence they are: (6) Whether the 1<sup>st</sup> Respondent personally and/or by his agents with his knowledge, consent and approval committed any election offences and illegal practices during the election process and (7) Whether the second Respondent failed to conduct the Busiro South Parliamentary elections in compliance with electoral laws and if so whether the noncompliance affected the election result in a substantial manner.



23. The Petitioner asserts from paragraphs 35 – 44 that the election was not conducted in compliance with the provisions and principles of the law and that there were several election malpractices. However, in cross examination he clarified that he did not personally witness these malpractices. I will therefore turn to his supplementary affidavits for his evidence on the same. Again here I wish to point out that any allusion to striking out the Petitioner's affidavit because these claims are in other affidavits is unwarranted in the interest of justice.

**i) Bribery**

24. The Petitioner's witnesses Mikka Mukasa, Nakatte Justine and Luttamaguzi Magala Stephen, all residents in the Busiro South Constituency claimed they were voters there and that variously at their different locations, prior to the elections sometime around January 2016, the 1<sup>st</sup> Respondent bribed them using the *Kubonga nawe* fist sign and gave them 1000shs each while asking each of them to vote for him in the elections. Habimana Joseph claimed that a one Matovu Vicent gave out 20,000 and 30,000 Shs to individuals to vote for President Museveni and the 1<sup>st</sup> Respondent. Muwonge Simon and Namatovu Prossy also point to claims of bribery.

25. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents witnesses; Bukirwa Sarah, the Returning officer for Wakiso District, Olwo Godfrey and Matovu Vincent NRM polling supervisor for Nalugalala Parish denied these claims. Olwo said he never witnessed bribery at his polling station and no such claims were reported to him and that Vicent Matovu was not an agent to any candidate at his polling station and that the 1<sup>st</sup> Respondent's agents at his polling station were Nsale Joseph and Nabukalu Christine. In response to Habimana's claims, Matovu Vicent explained that no polling station in Nalugalala parish is called Bulega polling station but rather Bulegambiro polling station under his responsibility. He denies that he ever gave out any money to the voters and asked them to vote for the 1<sup>st</sup> Respondent. He was mandated with the duty of taking care of



and ensuring that all NRM polling agents in the area received meals on polling day as they went about discharging their duties. He claims that he went to Bulegambiro polling station only to facilitate the NRM agents and did not mobilize any voters as alleged by Habimana. After discharging his duties, he left the station. In my discretion I believe Habimana and Matovu are talking about the same polling station but I note Matovu's denials.

26. Bribery is a serious election malpractice and a single act of proven bribery could suffice to overturn an election. It must be proved however that a person alleged to have been bribed is a registered voter in that particular area. In **Kizza Besigye v. Yoweri Kaguta Museveni** (2006) Odoki CJ held that absence of evidence that the person alleged to have been bribed was a voter was a serious flaw, because unless one is a voter, he or she cannot be influenced to vote for a candidate.

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27. Court in **Babu Edward Francis v. Electoral Commission and Elias Lukwago** HCEP No. 10 of 2006 (Kampala) explained that:

“When an agent signs a DR Form, he is confirming the truth of what is contained in the DR form. He is confirming to his principal that this is the correct result of what transpired at the polling station. The candidate in particular is therefore stopped from challenging the contents of the form because he is the appointing authority of the agent.”

28. In the case before me, the Petitioner's witnesses claim to be voters in the Constituency but adduce nothing in proof thereof. They should have proved their voter status by voter ID cards/polling slips or voter registration numbers or some other proof but did not. I have no proof they were voters there. Moreover, without any evidence that Habimana Robert reported these bribery claims at the material time, they easily pass off as baseless after thoughts. Habimana, the agent of the Petitioner at

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the polling station where he witnessed bribery should have raised the bribery claims with electoral officials at the time but did not. Better still, he should not have signed the DR form and given his reason as the bribery claim he adduces now but did not. Here I am guided by the Court of Appeal in **Mbaghadi Frederick Nkayi and anor v. Dr. Nabwiso Frank Wilberforce, Election Appeal No. 14 and 16 of 2011**, where it was found that the agents who are candidates representatives having signed the documents with no evidence of complaints whatsoever, the results could not be interfered with even where the presiding officers had not signed on some of the Declaration forms.

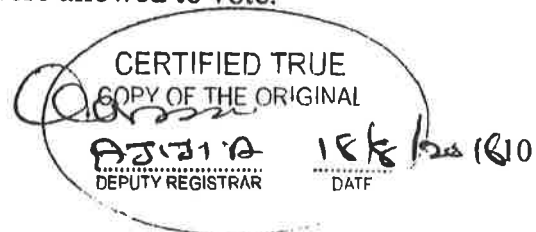
29. As a whole the bribery evidence is scanty, far and wide in between; it is not cogent. In these circumstances, the claim of bribery has not been proved to my satisfaction.

**ii) Multiple voting and ballot stuffing**

~~30. The Petitioner claims there was multiple voting including by unregistered voters.~~

Petitioner witness Kayiru Bakali contends in paragraphs 7 and 8 of his affidavit that a one Majera Lukalaga, the alleged 1<sup>st</sup> Respondent's agent ferried unregistered voters to polling stations where the presiding officer together with the LC 1 chairman - Joseph Ernest worked closely in circumventing the biometric machine and recording of people who didn't appear in the voters register. He claims that the presiding officer allowed a person who was unknown in the area to vote and didn't appear on the voters register.

31. Galiwango James Wilson Kigumba, the overall supervisor of the Petitioner for Kasanje sub county avers that during the voting process at Ziba Mabamba, Bulete and Kategula, the military were allowed to vote more than once with the approval of the presiding officer, a one Milly Nakamate and that unregistered voters were ferried in motor vehicles including a Toyota Ipsum and were allowed to vote.

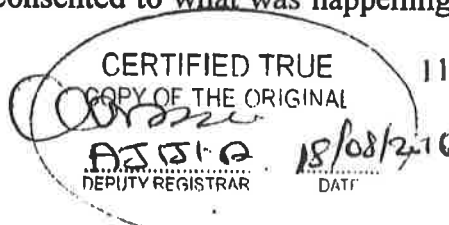


32. Muwonge Simon the polling agent of the Petitioner at Divine Primary School (A-K) polling station contends that the presiding officer at Divine polling station failed to operate the biometric voting machine and as a result, verification of some voters was done manually using the voters register with the unfortunate result that even persons who were ineligible to vote would vote after they overrode the presiding officer.

33. Habimana Robert also testifies that the biometric machine at Bulega polling station N-Z failed to work and the presiding officer told them to use the voters register which paved way for unregistered voters to engage in the voting process. Furthermore, the polling officials from the 2<sup>nd</sup> Respondent issued out more than one ballot paper to people who came to the polling station and who were unknown to the residents of Bulega village. Also that the NRM agent Matovu Ronald took charge of the polling station at Bulega giving orders to the presiding officer and that one unregistered voter called Mrs. Mpungu was allowed to vote.

34. Nanyonjo Saidat, a voter and polling agent of the Petitioner at a polling station that she does not disclose avers that the presiding officer together with the NRM mobilizers like Matovu Ronald were seen to work closely. She saw people with multiple votes and voiced her concerns to the presiding officer. The presiding officer told her that there was no problem in adding an extra 10 people to vote because she had money to give her so that she could live happily with her children.

35. The 2<sup>nd</sup> Respondent denies all the claims of multiple voting levelled against it. Bukirwa Sarah in paragraph 7 of her affidavit denies the ballot stuffing, multiple voting, voting by unregistered voters as alleged in the Petitioner's affidavits and explains that no complaint was received by the 2<sup>nd</sup> Respondent from the Petitioner or his agents concerning the alleged illegalities and non compliance. Nakamatte Milly contends that she was not the presiding officer at Bulete and Kategula polling stations as alleged and so she could not have ascertained or consented to what was happening

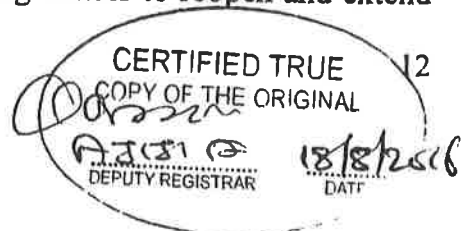


at those polling stations as alleged in paragraphs 5, 6 and 7 of Galiwango's affidavit. She adds that no unregistered voter was allowed to vote and that she was never involved in the ferrying of any voters as alleged.

36. Nankinga Faridah responding to Muwonge Simon's affidavit averred that all voters who turned up without voter slips had to first be cross-checked in the physical voters register before they could be allowed to vote and no unregistered voter was allowed to vote as alleged in paragraph 9 of Muwonge's affidavit.

37. Olwo Godfrey responding to Habimana Robert avers that during the election process, voters passed through the biometric machine and those who did not possess a voter slip or identification had their names cross-checked in the manual register and no unregistered voter was allowed to vote. He contends that not all people who cast their votes were known to Habimana Robert. Furthermore, that he remained in charge of Bulegambiru Primary School N-Z polling station at all times and not the said Ronald Matovu as alleged and who was not an agent of any candidate at the station and that Habimana did not raise any complaint to him or any other electoral official. At the end of the process, he signed and endorsed the results without reservations as demonstrated in the Declaration form Annexure A. He also contends that a one Mrs. Mpungu is not known to him and that no unregistered voter was allowed to vote.

38. Matovu Ronald the polling agent for NRM presidential candidate at polling station N-Z of Bulegambiru in specific response to Habimana Robert and Nanyonjo Saidat averred denying in broad terms the allegations and contending that he didn't work closely with the presiding officer in the manner in which the said Petitioner witnesses convey. He contends that his role was specific to being NRM presidential candidate agent and he did not extend to the NRM parliamentary candidate for Busiro South. He specifically denies taking over or assuming responsibility over Bulegambiro polling station N-Z. He also denies engaging with the presiding officer to reopen and extend



the voting hours at the station as alleged by Habimana. He avers that there were no such acts of multiple voting or voting by unregistered voters.

39. Nakamya Florence polling agent of the 1<sup>st</sup> Respondent at Luby Kategula-Butoole polling station in specific response to Galiwango James Wilson asserts that the allegations that military officers were allowed to vote more than once are false. That at Luby Kategula-Butoole polling station, the polling agents of the Petitioner manned and were in charge of the voters register and all other polling agents would look from it to verify a voter before they were cleared to cast their vote. She avers that as an agent of the 1<sup>st</sup> Respondent, she monitored and observed while the presiding officer was issuing ballot papers to only registered voters in the register. That it was impossible for unregistered voters to vote seeing that the said polling agents of the Petitioner manned the voter register all through the polling period.

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40. Musenda Julius, polling agent of the 1<sup>st</sup> Respondent at Ziba Mabamba-Buti polling station in response to Galiwango James Wilson averred that the area of Ziba Mabamba-Buti had 3 polling stations and Milly Nakamate the presiding officer specifically manned one polling station, Ziba Mabamba -Buti. That the said Nakamate did not aid, abet or condone any unregistered voter to participate in the voting exercise and she did not at any time allow any registered voter to vote more than once. That it was in fact Nakiyinjiri Mary, the assistant presiding officer who was in charge of ballot papers for Member of Parliament for Busiro South.

41. From the evidence above, clearly most of the Petitioner's claims are unsubstantiated hearsay which is inadmissible. Moreover the 2<sup>nd</sup> Respondent deponents who were mainly electoral officials in the exercise give reasonable explanations for non-use of biometric machines where it happened. They also clarify which presiding officer was in charge of which polling station to correct mistaken representations in the Petitioner's evidence. Moreover there is no evidence of reports of these malpractices



by the Petitioner's agents at the polling stations at the material time. Note worthy too is the fact that the Petitioner's agents signed the Declaration forms without any complaint. Overall I am not satisfied that there was multiple voting, ballot stuffing or misuse of the biometric machines.

### iii) Disenfranchisement

42. Through the affidavits of Kayiru Bakali, Wanganda Rashid, Muwonge Simon Habimana Robert and Galiwango James Wilson Kigumba, the Petitioner contends that many voters were disenfranchised by voter materials arriving late when most voters had left the polling stations, and in some places where time was extended, presiding officers and police manning the station stopped voters before the extended time. The 2<sup>nd</sup> Respondent through affidavits of Nakamatte Milly and Olumbe Alfred, made specific responses to each of these claims denying all of them and explaining that there were instances where voting materials arrived late but time was extended and all voters present were allowed to vote before closing.

43. I have no satisfactory explanation why voting materials arrived late at some polling stations. It is also not a good explanation that where voting time had been extended, the polling officer closed it before the said extended time simply because there were no more voters in line. However on the whole, the claims of the Petitioner are largely hearsay which is inadmissible and with no reports of these claims while the Petitioner's agents signed the Declaration forms as if everything went well, I am reluctant to believe their questioning of the process at this stage. Most glaring, the Petitioner adduces no evidence from anyone who was turned away from the polling lines or disenfranchised as alleged. This claim is not proved to my satisfaction.

### iv) The incident of ballot boxes in a Mercedes Benz

44. Salongo Zziwa Charles and Wagaba Godfrey for the Petitioner averred that they received information of suspected ballot stuffing and pre-ticked ballot papers in a

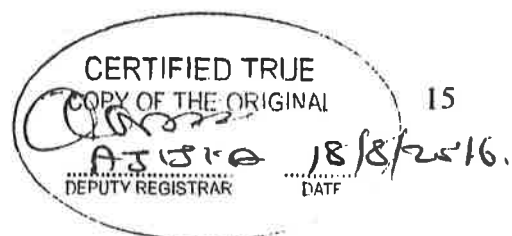
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Mercedes Benz ML class which belonged to a one Mubiru at Kajjansi Dispensary Polling station. They proceeded there and this car was towed to Kajjansi polling station and the returning officer later directed that the car proceeds to Nakigalala A where it was destined and on arrival there the boxes were publicly opened in the presence of voters, candidates' agents, polling officials, police and observers and pre ticked ballot papers in favour of the 1<sup>st</sup> Respondent were found in the presence of Wagaba.

45. The 2<sup>nd</sup> Respondent denies this account of things through the affidavits of Bukirwa Sarah the returning officer, Naluggwa Maldrine and Kijjampola Elia the police officer who investigated the incident. Bukirwa said the incident never compromised the integrity of the polling materials in the relevant ballot boxes in a substantial manner or at all and refers to the police report annexed as A. She clarified that there were no pre-ticked ballot papers used and polling went on freely at both Nakigalala A and B polling stations. Kijjampolla Elia the police officer who investigated tendered his police report. In it, it is explained that on the day in issue, the electoral supervisor requested the said Mubiru to transport two ballot boxes to Nakigalala A which the people present were opposed to and reacted because Mubiru was an NRM supporter. Later the two ballot boxes were retrieved taken to Nakigalala and they were opened in the presence of agents of all candidates and there were no pre ticked ballot papers in them. Later voting went on smoothly.

46. Voting materials in Nakigalala B were also intact and there was no incident. Naluggwa confirmed that she requested the said Mubiru, a resident of Nkungulutale parish for a lift to take voting materials to Nakigalala because there were many more deliveries to be made before Nakigalala. The materials were loaded in his car a Mercedes Benz ML but before they set off an angry mob gathered and beat up Mubiru until the police intervened.



47. Namaweje Aisha the sub county supervisor of Ssisa sub county Wakiso District, Sentongo Charles, an agent of the 1<sup>st</sup> Respondent at Nakigalala A polling station, Byakatonda Robert agent of the 1<sup>st</sup> Respondent at Nakigalala B polling station, Kansiime Agnes polling agent of the 1<sup>st</sup> Respondent at Kajjansi C and Mubiru Kenneth registered voter at Kajjansi C polling station and crime preventer attached to Kajjansi Police station pretty much agree with the testimony of Naluggwa, Kijjampolla and Bukirwa and aver that the voting in Nakigalala A and B and all the other polling stations went on smoothly and uninterrupted by the Mercedes Benz incident.

48. It was wrong for Naluggwa an electoral official to request a known NRM supporter to transport polling materials in his Mercedes car. No wonder this aroused discontent in the gathered crowd of voters who objected. However, beyond this anomaly, I have no reliable evidence that there were pre ticked ballot papers in the said ballot boxes. The evidence of Salongo Zziwa Charles and Wagaba Godfrey which is thin on detail and not so coherent on pre-ticked ballot papers is not believable or reliable when placed against the consistent evidence of the many 1<sup>st</sup> and 3<sup>rd</sup> Respondent witnesses. I am not convinced that only Wagaba would come to testify on such a public incident of pre-ticked ballot papers which were witnessed by many voters if at all.

49. Besides the Petitioner's agents should have utilised the opportunity of pre ticked ballots not to sign the DR forms if they affected the polling process and their reasons recorded therein, but did not. Annexures Y and A demonstrate that all the Petitioner's agents signed these forms, this ostensibly was in confirmation of the results with no complaint. It becomes so hard to believe them now. This allegation is not proved to my satisfaction.

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**v) Campaigning on polling day**

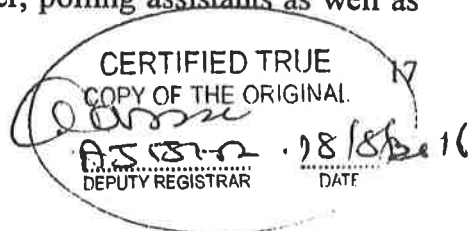
50. Kayiru Bakali, Namatovu Prossy, election supervisor of the Petitioner in charge of all polling stations in Kisubi Parish and Namugonde polling station respectively and Nanyonjo Saidat, a voter and polling agent of the Petitioner at a polling station that she does not disclose averred that persons supporting the 1<sup>st</sup> Respondent like a one Majera Lukalanga, the area chairperson and a one Badru Mulumba were soliciting votes for the 1<sup>st</sup> Respondent from voters in lines. Nanyonjo adds that when she tried to complain she was threatened with arrest.

51. In response, Badru Mulumba LC 1 chairperson for Kakindu said the claims were false and fabricated. That on the contrary, on voting day, in the area of Namugonde, it was Namatovu Prossy who was distributing and serving eats and drinks to voters lining up to cast their votes at Namugonde polling station. She was not asking any of them to pay for eats and drinks which conduct he found suspicious. He adds that the voters being given eats and drinks were not agents of the Petitioner. He confronted her about the conduct but she allegedly didn't take it in good spirit. Without a rejoinder, the evidence of campaigning on polling day is scanty and unsatisfactory. This allegation is not proved to my satisfaction.

**vi) Tampering with and lack of Declaration Forms**

52. Through Kayiru Bakali, Galiwango James Wilson Kigumba and Muwonge Simon, the Petitioner contends that the presiding officer took advantage of late closure of the elections to tamper with the seals and committed other forgeries on the declaration forms since the 2<sup>nd</sup> Respondent's officials had no lighting equipment; a one Sekamatte was denied access to the declaration forms by the presiding officer Milly Nakamatte which action they believe compromised the Petitioner's final result.

53. Muwonge Simon also asserts that because election materials arrived without declaration forms, he together with the presiding officer, polling assistants as well as



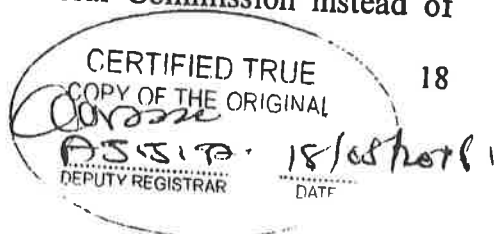
agents agreed to record the election results for their polling station on a plain sheet of paper which was duly done and was signed by all agents. Because they didn't sign any declaration format that polling station, their results were not included in the final tally sheet and that as an agent of the Petitioner, he was never given a copy of the sheet of paper on which they had recorded the results.

54. Bukirwa, Milly Nakamatte and Nankinga Faridah on behalf of the 2<sup>nd</sup> Respondent explained that all the DR forms were endorsed by the Petitioner's agents save for Bwerenge (N-Z) polling station where the Petitioner's agents did not sign because they were not at the polling station at the time of signing. Milly Nakamatte avers that after she had declared the results, the 2 agents of the Petitioner walked away without signing the DR form and neither did they bother to take their copy with them. Agents of other candidates however signed as evidenced in Annexure A.

55. Nankinga Faridah avers that it is true that the ballot boxes did not contain DR Forms at Divine primary polling station but the results were entered on a plain piece of paper with the consent of all agents of all candidates as demonstrated by Annexure A. She also adds that the same results were entered on the tally sheet and that she didn't give the agents a copy of the alternative paper where results had been entered because she expected to get a DR form and transfer the results thereon. It was late at night and they had nowhere to photocopy from. She explained further that after sealing off other ballot boxes excluding those of MP, she requested the agents for the respective candidates to follow her but only one called Bruno Katende for a candidate not the Petitioner complied and thus signed alone.

56. Here again I see the typical poor preparation and management of the electoral process by the Commission by having no or less DR forms. However I am not convinced that the Petitioner's agents were denied access to the DR forms when other candidates had access. Besides even with the difficulties of the Electoral Commission instead of

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walking away the Petitioner's agents should have gone with the presiding officer as she requested to protect their candidate's votes. Their choice not to go along in the circumstances cannot be blamed on anyone else but themselves. This ground is not proved to my satisfaction.

**vii) Pre-ticked ballot papers at Tuzuukuke Primary school**

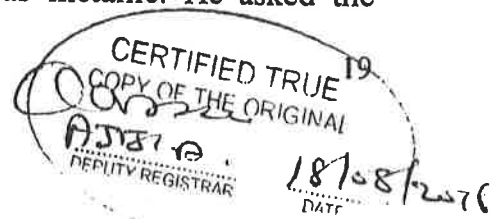
57. The Petitioner's witness Kavuma Lawrence said Sewano Mukasa and Kato informed him that the presiding officer at Tuzuukuke primary school polling station, a one Nsiko Robinson was issuing pre-ticked ballot papers.

58. Nsiko Robinson replied on behalf of the 3<sup>rd</sup> Respondent denying this. Nsoby Richard who was in charge of issuing ballot papers for the parliamentary seat testified that apart from a rumour he had there was no pre-ticking of ballot papers. Nakyanzi Jaccant Mayanja a polling agent of the 1<sup>st</sup> Respondent at the said station also denies any pre ticking claims.

59. One wonders why the said Sewano and Kato did not swear affidavits. Coming from Kavuma, this pre-ticking evidence is inadmissible hearsay. Moreover if there was any pre-ticking, the Petitioner's agents at this station should not have signed the DR forms and stated their reasons therein. Instead in the DR forms annexed as A and X from the 2<sup>nd</sup> and 1<sup>st</sup> Respondent, the Petitioner's agents at that particular polling station Baagala Benjamin and Nalubanjwa Cissy unreservedly signed the same. This claim has not been proved to my satisfaction.

**viii) Broken seals at Ssisa sub-county**

60. Lubuuka Joseph Tezikuba, the Petitioner's agent for Ssisa sub-county avers that electoral materials arrived at about 11 o'clock. He observed that many ballot boxes that were being off loaded had broken seals and majority of them having broken covers and yet the material used to make the boxes was metallic. He asked the



supervisor in charge to have the opened and/or broken boxes excluded and not dispatched to polling stations but this was not done.

61. Further that the sub-county supervisor wrote a report about receipt of broken ballot boxes without seals which was circulated around to all agents to view and save personal copies. This was attached as Annexure A1. Lubuuka then took photos of some of the electoral materials being ferried on motor cycles with broken edges and also ballot boxes with tampered seals which he annexed as A2.

62. In response thereto Namaweje Aisha the supervisor of Ssisa sub-county Wakiso District replied Lubuuka averring that voting materials there arrived at 9:30am and not 11am as alleged by Lubuuka. On arrival materials were immediately dispatched to the various polling stations. She confirms that only two ballot boxes arrived unsealed and the rest were sealed. He took note of this and advised the presiding officers and polling agents to verify the integrity of the other materials. The option of rejecting the materials would be presumptive therefore the polling officials were left to verify before polling which was done and the results duly endorsed by all agents.

63. It was wrong for ballot boxes to arrive with broken seals, no doubt. However this is not sufficient evidence that the election was affected in a substantial manner. This allegation is not proven to my satisfaction.

**64. Based on the above analysis, issues 6 and 7 are resolved in the negative.**

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COPY OF THE ORIGINAL

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ATB  
DEPUTY REGISTRAR

18/08/2016  
DATE

**d) Authenticity and validity of the academic qualifications of the 1<sup>st</sup> Respondent**

65. I will address issues ii, iii, iv and v jointly under this section because they are all related thereto. Under this leg, in my discernment from the pleadings and submissions, the Petitioner claims that: the 3<sup>rd</sup> Respondent illegally issued the certificate of equivalent to the 1<sup>st</sup> Respondent without carrying out the requisite due diligence required in its mandate to verify the authenticity of his academic qualifications; the 3<sup>rd</sup> Respondent illegally availed an application form under the repealed Universities and other tertiary Institutions (Equating of Degrees, Diplomas and Certificates) Regulations of 2005 instead of the applicable Regulations of 2007 that required attachment of certified copies of certificates to the application for a certificate of equivalent; the 3<sup>rd</sup> Respondent did not consult UNEB before issuing the certificate of equivalent as required under S. 4(6) and (7) of the Parliamentary Elections Act 2005 (hereinafter PEA); the 1<sup>st</sup> Respondent's partial transcript from Azusa Pacific College in the United States of America was not a qualification to be considered as part of the 1<sup>st</sup> Respondent application for a certificate of equivalent within the meaning of S. 5 (k) of the Universities and Other Tertiary Institutions Act 2001 (herein after UOTIA); the certificate of equivalent issued to the 1<sup>st</sup> Respondent is unauthentic because it includes the Advanced Diploma in Theology, International College of Excellence, 2005 which was not correctly reflected and is allegedly awarded by an unaccredited institution and aimed at confusing; the certificate of equivalent signed by only the Executive Director of the 3<sup>rd</sup> Respondent is invalid as S. 4(3) (b) of the UOTIA of 2001- the parent Statute, requires such seal to be authenticated by the signatures of the Chairperson and Executive Director or a person acting in any of the two offices. I will address each of these in turn and finally round up the discussion on authenticity of the 1<sup>st</sup> Respondent's qualifications used for the certificate.

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COPY OF THE ORIGINAL.  
*[Signature]*  
18/5/2016  
DEPUTY REGISTRAR DATE

**i) Fraud**

66. As a preliminary issue in this section, I will address the claims of fraud in the petition.

The Petitioner made claims of fraud against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents in para j of the petition. Apart from stating these particulars, the Petitioner never effectively substantiated the same specifically in the affidavits in support of the petition. They have not clearly been followed through in the affidavits and submissions or sufficiently proven to the standard of fraud, which is higher than on a balance of convenience. I will therefore not consider the specific fraud claims.

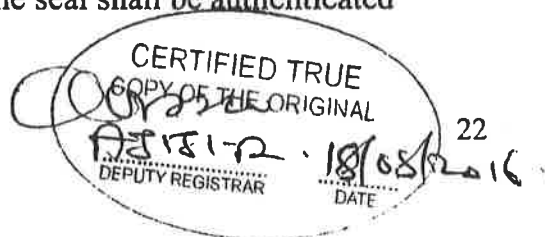
**ii) Consultation with UNEB**

67. The Petitioner claims that the 3<sup>rd</sup> Respondent did not consult UNEB as mandatorily required by S. 4(6) of the PEA. The 3<sup>rd</sup> Respondent insists it consulted UNEB. Prof. Opuda-Asibo, the Executive Director of the 3<sup>rd</sup> Respondent also confirmed this in cross examination and Annexures B and C attached to his first affidavit demonstrate this consultation, particularly in respect to the 1<sup>st</sup> Respondent's East African Certificate of Education 1978 and the Diploma in Electronic and Computer Technology, Pacific Coast Technical Institute, USA, 1988. Without going into the nature of the consultation, I am satisfied that the 3<sup>rd</sup> Respondent carried out the mandatory consultation with UNEB before issuing the certificate of equivalent as required by S. 4(6) of the PEA.

**iii) Signatures authenticating the seal of the 3<sup>rd</sup> Respondent**

68. The Petitioner takes issue with the single signature of the Executive Director of the 3<sup>rd</sup> Respondent on the certificate of equivalent issued to the 1<sup>st</sup> Respondent saying this invalidates it. Under the parent Statute of the 3<sup>rd</sup> Respondent, the UOTIA of 2001, S. 4 (3) (b) requires that:

"The seal of the National Council shall be such device as the National Council may determine and the affixing of the seal shall be authenticated



by the signatures of the **Chairperson and Executive Director** or a person acting in any of the two offices.” (Emphasis mine)

69. On the other hand, S. 4(7) of the PEA which the 3<sup>rd</sup> Respondent claims to have relied on provides that:

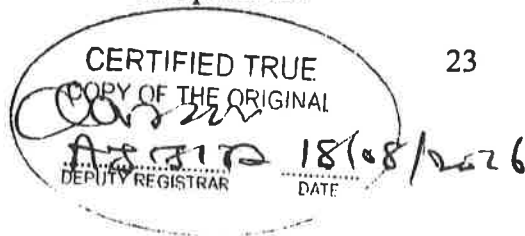
“A person who claims to possess a qualification referred to in sub-section (5)(c) of this section shall before the issue of the certificate prove to the satisfaction of the National Council for Higher Education that admission to that qualification was obtained on the basis of Advanced Level Standard of Education or its equivalent.”

70. S. 4(8) also ostensibly relied on by the 3<sup>rd</sup> Respondent in submissions at p.9 provides the form of the certificate of equivalent in the PEA as the one in the 2<sup>nd</sup> Schedule to the PEA. This is the form the 3<sup>rd</sup> Respondent used for the 1<sup>st</sup> Respondent’s certificate of equivalent.

71. Interestingly, S. 4(7), which the 3<sup>rd</sup> Respondent, at page 9 of its submissions insists it used for the 1<sup>st</sup> Respondent, by referring to persons with qualifications under S. 5 (c) concerns equation of academic **Degrees** and not Diplomas from outside Uganda, yet the 1<sup>st</sup> and 3<sup>rd</sup> Respondents insist that the 3<sup>rd</sup> Respondent only relied on the 1<sup>st</sup> Respondent’s **Diploma** and O Level certificates for the certificate of equivalent. There is a clear anomaly here but I will return to it later.

72. At this point, I believe there is a need to reconcile any inconsistency between the requirement under the parent Statute (the UOTIA) for signatures of the Executive Director and Chairperson of the 3<sup>rd</sup> Respondent to authenticate the seal of the 3<sup>rd</sup> Respondent and the requirement of only the Secretary of the 3<sup>rd</sup> Respondent under the form in the second schedule to the PEA. Be that as it may, I will not use this discrepancy in the legal provisions to the prejudice of the 1<sup>st</sup> Respondent.

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**iv)Retrospective application of Legal Notice 12 of 2015**

73. The Petitioner seeks to rely on the well laid out bench marks aimed at assisting the 3<sup>rd</sup> Respondent in authenticating academic qualifications in the process of equation contained in Legal Notice 12 of 2015. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents are particularly opposed to this reliance arguing that Legal Notice 12 of 2015 which was gazetted and came into force on 25<sup>th</sup> October 2015 while the 1<sup>st</sup> Respondent's equation was in May 2015 should not be applied retrospectively.

74. I am aware that S. 17 of the Interpretation Act creates discretion to apply a legal instrument retrospectively so long as the said application does not predate the parent Statute's inception, in this case the UOTIA which came into force on 6<sup>th</sup> April 2001. I am also in agreement with the 1<sup>st</sup> Respondent submission that, generally, Statutes have no retroactive application unless their retrospective effect is specifically expressed in the Statute.

75. This position is also well buttressed by Bashaija J in **Bishenga Silagi v. Bataha Joselin HCCA No. 5 of 2011**, a case the 3<sup>rd</sup> Respondent ably relies on where it was explained that: "retrospective is somewhat ambiguous and a good goal of confusion has been caused by the fact that it is used in more senses than one. In general however, the Courts regard as retrospective any statute which in general operates on cases of facts coming into existence before its commencement in the sense that it affects even if for further only the character or consequences of transactions previously entered into or other past conduct. Needless to add, as a general rule, all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective effect is not to be given to them unless by express word or necessary implication. It appears that this was the intention of the legislation." (Emphasis mine).



76. Considering the importance of elections in Uganda, the nature of the 3<sup>rd</sup> Respondent's mandate in the electoral process and the content of the benchmarks in therein, I am convinced that the retrospective application of Legal Notice 12 of 2015 is by necessary implication. In fact I am left wondering why the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are opposed to it. In particular, I wonder why the 3<sup>rd</sup> Respondent is opposed to the retrospective application of the benchmarks aimed at enhancing its efficient functioning in regard to equation of qualifications and opts to oppose the application and defending the 1<sup>st</sup> Respondent. Nonetheless, in my discretion, I will not apply it to avoid any possible prejudice, imagined or otherwise that may derive from such application.

77. Instead, I agree with the 3<sup>rd</sup> Respondent, and in its own words in submissions at page 8, I will use the standard the 3<sup>rd</sup> Respondent ought to have considered using the legal and practicable regime at the time of equation. This is the standard that would reasonably have been expected of the 3<sup>rd</sup> Respondent.

**v) Use of the partial transcript from Azusa College**

78. The Petitioner takes issue with the 3<sup>rd</sup> Respondent's reliance on the 1<sup>st</sup> Respondent's partial transcript from Azusa College as a basis for admission to Pacific Coast Technical Institute where he allegedly obtained a Diploma that was used for the certificate of equivalent. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents insist that the partial transcript was properly utilized but also submit that it was not one of the certificates or documents considered for the certificate of equivalent by the 3<sup>rd</sup> Respondent.

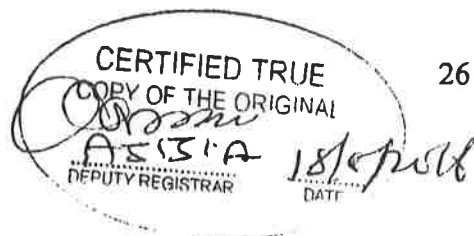
79. This Azusa transcript was attached to Prof. Opuda's supplementary affidavit as one of the enclosures to the 1<sup>st</sup> Respondent's application for a certificate of equivalent. To the extent this partial transcript was not utilized for the issuance of the certificate of equivalent, as explained by Prof. Opuda in cross and re-examination, demonstrated on the certificate itself and acknowledged by the 1<sup>st</sup> Respondent as such, I find its



reliance on immaterial and inconsequential to the petition. Only I will address its relative authenticity together with all other incidental qualifications later.

**vi) Errors on the certificate of equivalent**

80. The Petitioner challenges the validity of the certificate of equivalent the 3<sup>rd</sup> Respondent gave the 1<sup>st</sup> Respondent because it includes the 1<sup>st</sup> Respondent's Christian Degree of Advanced Diploma in Theology as one of the qualifications relied on for the said issuance.
81. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents explain that this qualification was never meant to be relied on for the certificate of equivalent and was included only out of human error. Prof. Opuda and the 1<sup>st</sup> Respondent explained as much in cross examination. Prof. Opuda explained further that this mistake was only realized at the time of the petition after the Petitioner served the 3<sup>rd</sup> Respondent. This certificate is also included in Form NP received by the 2<sup>nd</sup> Respondent as one of the educational qualifications for standing for parliamentary elections. The 1<sup>st</sup> Respondent explained that he only included this certificate among his certificates to the Electoral Commission to demonstrate to his electorate that he is a man of God. It was also conceded at the hearing that this qualification is from an unaccredited Institution- the International College of Excellence, allegedly an affiliate of Life Christian University.
82. To the extent this certificate was not among the certificates considered in the consultation between UNEB and the 3<sup>rd</sup> Respondent and the 3<sup>rd</sup> Respondent submission that it was not among the qualifications used for equation together with the 2<sup>nd</sup> Respondent submission that it did not rely on it, I will not consider it as part of the qualifications in issue for the certificate of equivalent.



83. However, in the circumstances of this case, on a balance of probabilities, I am not convinced that its inclusion in the certificate of equivalent without the full disclosure of its title and origin was out of human error. I will return to this later.

**vii) Authenticity and Validity of the 1<sup>st</sup> Respondent's certificate of equivalent**

84. Article 86 (1) (a) of the Constitution empowers the High Court to hear and determine the question whether a person has been validly elected a Member of Parliament or the seat of a member of Parliament has become vacant. Article 80 provides for qualifications of members of Parliament. It states:

"A person is qualified to be a Member of Parliament if that person-

- (a) is a citizen of Uganda;
- (b) is a registered voter; and
- (c) has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law."

85. In tandem, Parliament enacted the PEA, in which S.4 (1) is crafted like the first part of Article 80 above. S. 4 (1) (c) in particular provides that: A person is qualified to be a Member of Parliament if that person has completed a minimum formal education of Advanced Level standard or its equivalent.

86. S. 4(5) provides that " for purposes of paragraph (c) of subsection (1), any of the following persons wishing to stand for an election as a member of Parliament shall establish his or her qualification with the commission as a person holding a minimum of Advanced Level or its equivalent at least two months before nomination day in case of a general election and two weeks in case of a by election-

- (a) persons whether their qualifications are obtained from Uganda or outside Uganda who are claiming to have their



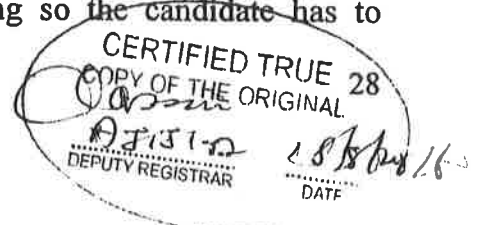
qualification accepted as equivalent to advanced level education;

(b) persons claiming to have advanced level qualifications from outside Uganda;

(c) persons claiming to have academic degrees which are obtained from outside Uganda.”

87.S.4 (6) provides that a person required to establish his or her qualification under subsection (5) shall do so by the production of a certificate issued to him or her by the National Council for Higher Education in consultation with the Uganda National Examinations Board and S.4 (8) provides that the certificate shall be in the form in the Second Schedule to this Act. S. 4 (13) provides that for the avoidance of doubt, if a candidate has an advanced level certificate obtained in Uganda or qualifications higher than the prescribed qualification obtained in Uganda or obtained from the former University of East Africa or any of its constituent colleges, then, there shall be no need for the verification of his or her qualifications by National Council for Higher Education.

88. The provisions of Articles 80 and 86 of the Constitution and Section 4 of the PEA have been considered in several cases, particularly by the Supreme Court and Court of Appeal, for example in **Nicholas Gole v. Loi Kiryapawo Election Petition Appeal No. 7 /09 (SC)**; **Abdul Nakendo v. Patrick Mwondo Election Petition Appeal No. 9/2007**, **Ahmed Kawoya Kaungu v. Bangu Aggrey Election Petition Appeal No. 9/ 2006** and **Paul Mwiru v. Hon. Igeme Nathan Nabeta Samson, the EC and National Council for Higher Education, Election Appeal No. 6/2011**. From these cases, the plain and literal meaning of S. 4 (1) (c) of the PEA is that a person qualifies to be a member of Parliament on proving to the satisfaction of the Electoral Commission to have completed Advanced Level standard of education or its equivalent as the minimum level of education. In doing so the candidate has to



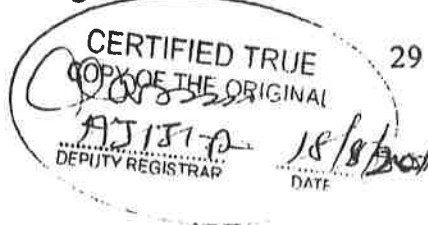
produce a certificate issued by the 3<sup>rd</sup> Respondent in consultation with UNEB and such certificates which are presented for equating must be **valid and authentic**. (See lead appeal judgement of Byamugisha J in the Igeme case at p.9.) (Emphasis mine).

89. **Black's Law Dictionary** defines authenticate at p. 142 as "to prove the genuineness of a thing and authentication is defined to mean, broadly the act of proving that something (as a document) is true or genuine. **Black's Law dictionary** also defines the term "valid" at p. 1586 to mean legally sufficient, binding or meritorious.

90. In the case before me, the 1<sup>st</sup> Respondent's O Level certificate is not being questioned and it is not in dispute that the 1<sup>st</sup> Respondent does not have the Advanced Level Certificate of Education but he allegedly has a Diploma in Electronic and Computer Technology from Pacific Coast Technical Institute, Van Nuys, California USA awarded on 16<sup>th</sup> September 1988. Therefore he needed a certificate of equivalent for the same from the 3<sup>rd</sup> Respondent for his nomination by the 2<sup>nd</sup> Respondent and subsequent involvement in the election for the seat of Member of Parliament, Busiro South.

91. Although the 1<sup>st</sup> Respondent submitted other certificates, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents explained that for the purpose of this equivalence, only the 1<sup>st</sup> Respondent's O Level Certificate, i.e. the East African Certificate of Education, 1978 and the Diploma from Pacific Coast Technical Institute were used for the certificate of equivalent. For clarity these are the only two certificates I will consider for this equation.

92. However, it is not satisfactorily explained why the "Degree in Diploma" certificate from an unaccredited institution was included in the certificate of equivalent from the 3<sup>rd</sup> Respondent and the nomination papers submitted to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent. I am not convinced that human error accounts for such inclusion by the 3<sup>rd</sup> Respondent but intended for the purpose of demonstrating that he is a man of God



to his electorate by the 1<sup>st</sup> Respondent as explained by Prof. Opuda and the 1<sup>st</sup> Respondent respectively in cross examination. Considering Prof. Opuda's explanation that the error was only noticed when served with the petition and that the 1<sup>st</sup> Respondent's certificate has never been recalled for correction, on a balance of probabilities, I view the human error explanation as an afterthought aimed at patching up.

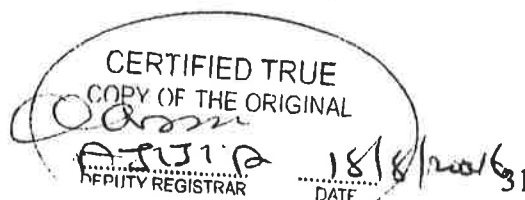
93. The said certificate of equivalent is signed by the Executive Director of the 3<sup>rd</sup> Respondent whereas the 2<sup>nd</sup> Schedule to the PEA that the 3<sup>rd</sup> Respondent claims it utilized requires the signature of the Secretary of the 3<sup>rd</sup> Respondent. The 2<sup>nd</sup> Respondent attempted to explain this anomaly in submissions but I am not convinced it was well placed to make the explanation since it did not issue the certificate. The 3<sup>rd</sup> Respondent failed to explain it to my satisfaction. It does not even matter that the Executive Director at the time of issuance of this certificate was the Secretary of the 3<sup>rd</sup> Respondent. The requirement in the 2<sup>nd</sup> Schedule is unequivocally clear; the signature required is of the Secretary and not the Executive Director. However this anomaly alone cannot be sufficient to invalidate the certificate in my view in the circumstances of this case.

94. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents explained at length that they proceeded under the PEA. S. 4 (1) (c) therein qualifies the 1<sup>st</sup> Respondent with his Diploma from the USA to be a member of Parliament so long as he can have it equated to A level standard.

95. Because the 3<sup>rd</sup> Respondent says he relied on the 1<sup>st</sup> Respondent's Diploma from Pacific Coast Technical Institute for equation to A Level, I agree with the 1<sup>st</sup> Respondent submission that he falls under S. 4 (5) (a) of the PEA.



96. However, while the PEA provides the form of the Certificate of equivalent the 3<sup>rd</sup> Respondent issues, it does not provide the form of the application an applicant like the 1<sup>st</sup> Respondent is to use for such application for the certificate of equivalent.
97. The 1<sup>st</sup> Respondent's application which the 3<sup>rd</sup> Respondent in submissions at p. 5 calls a "standard application" was attached to Prof. Opuda's supplementary affidavit as Annexure A. Like the 2005 and 2007 Rules on equation, this application form derives from the UOTIA of 2001. By calling it a standard form the 3<sup>rd</sup> Respondent avoids clarifying which Rules apply to this application form. The 1<sup>st</sup> Respondent also explained in submissions that he filled out the form that the 3<sup>rd</sup> Respondent availed him.
98. The material preliminary question here however is whether the 2005 or 2007 (The Universities and other Tertiary Institutions (Equating of Degrees, Diplomas and Certificates) Regulations apply to applications for a certificate of equivalent like that of the 1<sup>st</sup> Respondent filed in 2014. Both these Regulations are created under S. 5(i), (k) and 128 of the UOTIA of 2001 which is also the parent Statute for the 3<sup>rd</sup> Respondent. Moreover there is nothing in the PEA that bars their application. So clearly one of these sets of Rules applied at least for purposes of the form of the application that the 1<sup>st</sup> Respondent used for the certificate of equivalent. In my analysis it was therefore dishonest of the 3<sup>rd</sup> Respondent not to clarify which Rules applied.
99. Under Rule 7 of the 2007 Rules, the 2005 Rules are revoked by the gazetting of the 2007 Rules on 28<sup>th</sup> December 2007. It follows therefore that the 2007 Rules applied to the 1<sup>st</sup> Respondent at the time of his application for the certificate of equivalent from the 3<sup>rd</sup> Respondent in 2014.



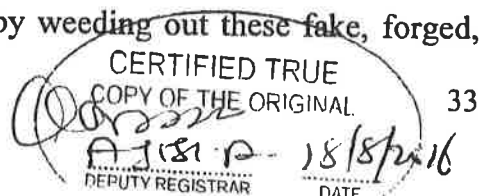
100. I have looked at the 2007 Rules carefully. Under Rule 3, the application for equating a degree or diploma shall be in the form set out in the Schedule 2 and Rule 4 requires the 3<sup>rd</sup> Respondent to comply in its equation of Degrees, Diplomas and Certificates with the guidelines prescribed in Parts I, II, and III respectively of schedule 3. The applicable part for Diplomas is II.
101. Within the meaning of Rule 3, under Schedule 2, paragraph 18 lists the required enclosures to the application to include **certified photocopies** of Uganda Advanced Certificate of Education or its equivalent and Degree or diploma certificate (in English or foreign language) and other certificates. I believe this is the devil in the detail the 3<sup>rd</sup> Respondent was concealing. (Emphasis mine).
102. It is noteworthy that the content of the application filed by the 1<sup>st</sup> Respondent for the certificate fits almost perfectly with that in the form in the 2<sup>nd</sup> schedule. The difference is that his application requires copies and not certified copies as enclosures. The Petitioner submits that the 3<sup>rd</sup> Respondent illegally used the form under the revoked 2005 Rules which only required copies in contravention of the 2007 Rules requiring certified copies as enclosures.
103. On a balance of probabilities, even if the 3<sup>rd</sup> Respondent accepted an application outside the strict form in this schedule, the requirement for certified copies of the certificates attached under the 2007 Rules cannot be waived. In cross examination Prof. Opuda explained that on receipt of the application, it is forwarded to the Department of quality Assurance and Accreditation which calls a meeting of the accreditation committee to examine the application, seek any clarification and thereafter make recommendations to the Executive Director to approve and issue a certificate of equivalent. In my view, the Department of quality assurance and accreditation should have realised the anomaly of no certified copies at the preliminary stage and requested the 1<sup>st</sup> Respondent to avail the same but there is no

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demonstration this was done by it or at any other stage before the certificate was awarded.

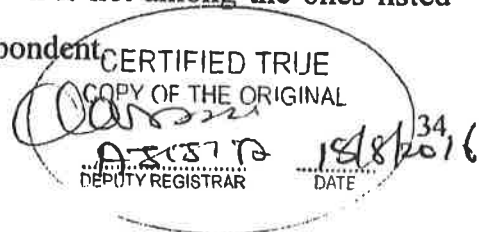
104. Applying the standard presented by the 3<sup>rd</sup> Respondent, this is what would reasonably and legally be expected of the 3<sup>rd</sup> Respondent in the execution of the equation mandate vested in it as a national body.
105. Moreover, such certified copies for purposes of this equation by the 3<sup>rd</sup> Respondent and within the meaning of authentication and validity in Black's law dictionary above should be only from the awarding Institutions. The reason here is simple, they are the only ones capable of certifying that the applicant attended their college and received the qualifications he/she claims, or that the certificate in issue was actually awarded by them. This too is what is reasonably expected of the 3<sup>rd</sup> Respondent in its equation mandate.
- 
106. The purpose of this certification is not a simple one and should not be taken lightly or disregarded in the electoral process. It is aimed at verifying the authenticity and validity of the certificates presented by applicants like the 1<sup>st</sup> Respondent before the issuance of a certificate of equivalent which is then used for nomination and election.
107. Moreover even after such presentation of certified copies of qualifications, the 3<sup>rd</sup> Respondent has an implicit and inherent duty to independently carry out due diligence to verify such authenticity and validity of the qualifications presented by applicants.
108. The election process is a serious national exercise. There is a duty incumbent on applicants to present valid and authentic qualifications. However in the struggle to win the elections, many applicants will produce all manner of qualifications including for equation; these may be fake or forged, unauthentic and invalid. The role vested in the 3<sup>rd</sup> Respondent therefore is to ensure quality by weeding out these fake, forged,



unauthentic and invalid ones from the genuine ones. The 3<sup>rd</sup> Respondent carries out this mandate in trust for the people of Uganda. By requiring certified copies under the applicable 2007 Rules and independently verifying authenticity and validity, the 3<sup>rd</sup> Respondent ensures that only those with the requisite qualifications find their way into Parliament. When the 3<sup>rd</sup> Respondent fails to carry out this legal obligation and due diligence, it abdicates its duty, opening the gates for persons without the requisite qualifications to find their way into Parliament, which is very unfortunate.

109. The 1<sup>st</sup> Respondent in affidavit, cross examination on oath and submissions explained that he had a self-authenticating Diploma Certificate which he presented to the 3<sup>rd</sup> Respondent in addition to the uncertified copies he attached to his application. In submissions, he particularly explained that since he had the self-authenticating certificate in original which is the primary evidence, there was no need for certified copies. He also demonstrated the self-authenticating properties on the said certificate to me in Court. Particularly in submissions at p.6, the 3<sup>rd</sup> Respondent appears to acknowledge that there was sufficient verification of authenticity and validity by the self-authenticating properties on the 1<sup>st</sup> Respondent's certificate while referring to Prof. Opuda's cross examination. I find this a lowly and abominable explanation from the 3<sup>rd</sup> Respondent, with the mandate it holds, in the circumstances of this case.

110. After all is said and done, there is no exception to the requirement of certified copies of Diploma certificates as part of the application under paragraph 18 of schedule 2 to the 2007 Rules for self-authenticating certificates. Moreover all manner of certificates, including the self-authenticating type that the 1<sup>st</sup> Respondent claims to hold can be forged, unauthentic and invalid. So to use the same certificate to verify its authenticity or validity is self-defeating. Yet this is what the 3<sup>rd</sup> Respondent submits it did. By inference, S. 4 (13) of the PEA also requires verification of certificates like the 1<sup>st</sup> Respondent's Diploma certificate in issue which is not among the ones listed therein for exception from verification by the 3<sup>rd</sup> Respondent.



111. The implicit duty on the 3<sup>rd</sup> Respondent to independently carry out due diligence and verification of authenticity and validity before relying on the same for the issuance of the certificate of equivalent cannot be taken lightly or waived. It is aimed at ensuring the quality of qualifications required. However in the case before me, the 3<sup>rd</sup> Respondent appears to have meticulously avoided to independently verify authenticity of the 1<sup>st</sup> Respondent's Diploma qualification before relying on the same to issue the Certificate of equivalent. Prof. Opuda in cross examination unequivocally conceded that the 3<sup>rd</sup> Respondent never verified this authenticity and validity.
112. In submissions at p. 6 (unnumbered para 2 at the top), the 3<sup>rd</sup> Respondent explains that it actually did all that was in its means to authenticate the documents by first ascertaining the accreditation status of the College that offered the 1<sup>st</sup> Respondent's Diploma award. Here it refers to Annexure A referred to in para 9 of Prof. Opuda's affidavit in support of answer to the petition.
113. I have carefully looked at this Annexure A. It is an email *prima facie* from Jean Franklin, I presume of the Council for Higher Education Accreditation in America dated 23<sup>rd</sup> November 2010. It appears to be a response to an inquiry from the 3<sup>rd</sup> Respondent and, if believed, confirms that Pacific Coast Technical Institute was accredited by NATTS (now known as the ACICS due to name change) a career related accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) and the United States Department of Education (USDE).
114. The inquiry talked about in this annexure was by email. So I wonder why this 3<sup>rd</sup> Respondent inquiry was not attached for this Court to understand the context of this reply. I strongly believe that if this reply could be traced in the 3<sup>rd</sup> Respondent electronic data then the inquiry that was sent out first was also easily traceable.



111. The implicit duty on the 3<sup>rd</sup> Respondent to independently carry out due diligence and verification of authenticity and validity before relying on the same for the issuance of the certificate of equivalent cannot be taken lightly or waived. It is aimed at ensuring the quality of qualifications required. However in the case before me, the 3<sup>rd</sup> Respondent appears to have meticulously avoided to independently verify authenticity of the 1<sup>st</sup> Respondent's Diploma qualification before relying on the same to issue the Certificate of equivalent. Prof. Opuda in cross examination unequivocally conceded that the 3<sup>rd</sup> Respondent never verified this authenticity and validity.
112. In submissions at p. 6 (unnumbered para 2 at the top), the 3<sup>rd</sup> Respondent explains that it actually did all that was in its means to authenticate the documents by first ascertaining the accreditation status of the College that offered the 1<sup>st</sup> Respondent's Diploma award. Here it refers to Annexure A referred to in para 9 of Prof. Opuda's affidavit in support of answer to the petition.
113. I have carefully looked at this Annexure A. It is an email *prima facie* from Jean Franklin, I presume of the Council for Higher Education Accreditation in America dated 23<sup>rd</sup> November 2010. It appears to be a response to an inquiry from the 3<sup>rd</sup> Respondent and, if believed, confirms that Pacific Coast Technical Institute was accredited by NATTS (now known as the ACICS due to name change) a career related accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) and the United States Department of Education (USDE).
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115. There is also a date at the bottom of the page that is intriguing. It gives a date of December 15<sup>th</sup> 2008, yet at the top the date of the reply is 23<sup>rd</sup> November 2010. For anyone with some knowledge about computers and printing, which I do, the date at the bottom is usually the date of printing the email or document in issue. If this is followed then such date could not have been in 2008, but rather a date after 23<sup>rd</sup> November 2010 when the reply was received. The Petitioner takes issue with this discrepancy but the 3<sup>rd</sup> Respondent fails to give me a satisfactory explanation for the same.

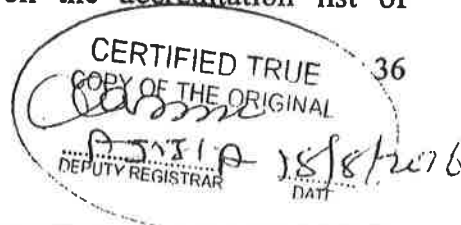
116. Be that as it may, this reply even if believed only verifies accreditation of Pacific Coast Technical Institute without a time for the same and not the authenticity or validity of the Applicant's Diploma qualification from the same. So the question of authenticity and validity of the 1<sup>st</sup> Respondent's said qualification remained unresolved by Annexure A.

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117. The 3<sup>rd</sup> Respondent in submission at p.6 contends that it actually did all in its means to authenticate the Diploma certificate by first ascertaining the accreditation status of the awarding Institute. I am not satisfied on a balance of probabilities that it actually did all in its means, or that there was anything useful done beyond the Annexure A email on accreditation.

118. Although not dated, Annexure B to Prof. Opuda's supplementary affidavit is the electronic data showing the accreditation status of Azusa Pacific University by the Western Association of Schools and Colleges. It does not indicate the accreditation status of Azusa Pacific College in 1978-1979, when the 1<sup>st</sup> Respondent alleges to have attended the same before it became a University. Annexure B to Prof. Opuda's first affidavit contains the consultation response from UNEB to the 3<sup>rd</sup> Respondent dated 23<sup>rd</sup> April 2014. In it UNEB passed the 1<sup>st</sup> Respondent's O Level certificate. It also explained that Pacific Coast Technical Institute is on the accreditation list of

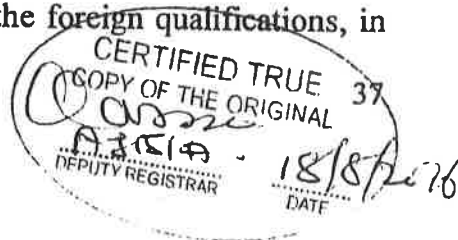
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September 2008 and left this Institute's accreditation by 1988, the year the 1<sup>st</sup> Respondent was awarded the Diploma certificate, to be determined by the 3<sup>rd</sup> Respondent. What UNEB did not and could not do is verify the authenticity and validity of the 1<sup>st</sup> Respondent's Diploma certificate from Pacific Coast Institute or that he actually attended the Institute from 1987 to 1988. It appears the email dated 23<sup>rd</sup> November 2010 attached as Annexure A to Prof. Opuda's first affidavit discussed above was the verification done by the 3<sup>rd</sup> Respondent. It does not confirm that Pacific Coast Institute was accredited in 1988 nor does it verify authenticity and validity of the 1<sup>st</sup> Respondent's Diploma certificate or his attendance there for the same at all.

119. Ms. Juliet Muyingo also swore an affidavit in support of the 1<sup>st</sup> Respondent. She avers that she attended the same Pacific Coast Institute with and was a classmate of the 1<sup>st</sup> Respondent, included an Annexure of a graduation photo which has the 1<sup>st</sup> Respondent in a graduation gown with her. She also annexes a copy of her own Diploma certificate from the same Institute. As a friend and colleague of the 1<sup>st</sup> Respondent with the same Diploma certificate, she may be biased in her evidence so I am reluctant to believe Ms. Muyingo's testimony on its own. Nonetheless even if I did, it does not vitiate the implicit duty in the 3<sup>rd</sup> Respondent's mandate to independently verify the authenticity and validity of the 1<sup>st</sup> Respondent's said qualification before relying on it for the certificate of equivalent. Moreover nothing in Ms. Muyingo's affidavit vitiates the legal requirement to enclose certified copies as part of the 1<sup>st</sup> Respondents application for the certificate of equivalent.

120. I have looked at similar cases that the 3<sup>rd</sup> Respondent handled. In the **Paul Mwiru v. Igeme Nabeta Election Petition 6 of 2011**, Ms. Bukirwa who is Counsel for the 3<sup>rd</sup> Respondent now before me swore an affidavit for the 3<sup>rd</sup> Respondent. The same was analysed on appeal by Byamugisha J. Ms. Bukirwa explained that for the O level certificate, the 3<sup>rd</sup> Respondent consulted UNEB and for the foreign qualifications, in



that case from Oklahoma University, the 3<sup>rd</sup> Respondent consulted Oklahoma State University and the US Council for Higher Education Accreditation. She also said that for the certificate of equivalent, the 3<sup>rd</sup> Respondent consulted UNEB on the totality of a candidate's qualifications.

121. In fact the consultation letter to UNEB regarding Mr. Igeme Nabeta's O Level certificate was annexed. It read in part:

**"Re: Igeme Samson Nabeta- Reg . No. U0059009**

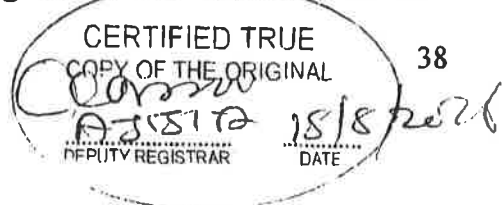
**The above named person has presented to this Council the document mentioned below:**

**Uganda Certificate of Education, Busoga College Mwiri (1989).**

**The purpose of this letter is to request you to confirm to this Council whether the said qualification was awarded to him by UNEB."**

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122. I have verified this record from the Appeal judgment and it is also attached as an authority to the 1<sup>st</sup> Respondent's submissions. This excerpt is at the top of p. 9 of the appeal judgment.

123. In the case of **Muyanja Mbabali v. Birekerawo Mathias Nsubuga Election Petition 6 of 2011 and Election Petition Appeal 36 of 2011**, the authenticity and validity of the academic qualifications of Muyanja Mbabali from SIT International College in Malaysia were in issue. Ambassador Yeko Acato from the 3<sup>rd</sup> Respondent explained in court that they investigated the Malaysian Diploma and couldn't pass it. They contacted the Institution in Malaysia which allegedly awarded the Diploma, used emails process from the internet address. They wanted to establish whether the Applicant attended the institution and obtained the award presented to the 3<sup>rd</sup> Respondent. There was also an affidavit of Hajah Noraihan Mohamed Adran, the Honorary Consul of Uganda to Malaysia who stated that in 2010, she received communication from the 3<sup>rd</sup> Respondent inquiring about the existence of SIT

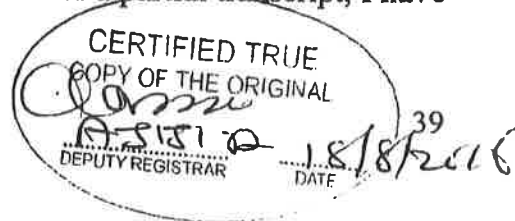


International College in Malaysia, about whether Muyanja Mbabali had been their student and whether the college offered a course in Public Administration and Management.

124. The common thread in both the above cases is that the 3<sup>rd</sup> Respondent verified the authenticity and validity of the applicant's foreign qualifications by going to great lengths to contact the foreign institutions directly. It did not just, in a haphazard manner, cross check the accreditation status of the institutions like in the case of the 1<sup>st</sup> Respondent before me but meticulously sought to establish whether the applicants it had then had attended the colleges and obtained the qualifications they claimed. It used the Ugandan foreign consul in the Mbabali case and this assisted it greatly. Action like this is what is reasonably expected of the 3<sup>rd</sup> Respondent in the execution of its mandate. However there is no demonstration at all that it did so in the case before me.

125. It also appears that although the 3<sup>rd</sup> Respondent did not use the 1<sup>st</sup> Respondent's partial transcript from Azusa for the equation, it and UNEB relied on this transcript to base the admission of the 1<sup>st</sup> Respondent to the Pacific Coast Institute where he allegedly obtained the Diploma that was used for the equation by the 3<sup>rd</sup> Respondent. In such circumstances, there was need to verify the authenticity and validity of this partial transcript as well and that the 1<sup>st</sup> Respondent actually attended Azusa to obtain the said partial transcript. However there is no demonstration that the 3<sup>rd</sup> Respondent or UNEB carried out this due diligence in regard to the partial transcript.

126. So while I am content from the general explanations of Prof. Opuda, Mr. Kabakubya, Ms. Muyingo and my own research in the course of writing this judgment, that a candidate in the USA can get admitted to a Diploma course like the one in issue for the 1<sup>st</sup> Respondent based on GEDs, SATs or a partial transcript, I have



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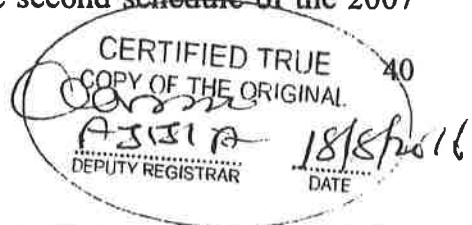
no satisfactory demonstration that the 1<sup>st</sup> Respondent in the case before me actually attended Azusa College to validly obtain the partial transcript in issue.

127. I agree with the 3<sup>rd</sup> Respondent submission at p.5 of its submissions that the mandate to equate academic qualifications solely lies with it. However, I make haste to add that this mandate has to be exercised not arbitrarily, but transparently and in consonance with principles of fairness, legality, due diligence and good conscience. The requirement to verify the authenticity and validity of the 1<sup>st</sup> Respondent's Diploma certificate was a mandatory prerequisite in this rubric. I have no demonstration this was done in the case before me.

128. I also generally agree with the 3<sup>rd</sup> Respondent submission based on Kanyeihamba J in **Joy Kabatsi v. Hanifa Kawooya and the EC SCEPA No. 25 of 2008** that "those who make such allegations need not to do merely allege. They need to show that as a result of their allegations, the awarding institution of the qualification in issue cancelled or withdrew the award of the disputed qualification. However the circumstances of the case before me are distinguishable, it appears the Petitioner's contention is that the 1<sup>st</sup> Respondent has never attended the college. As such there would be nothing to cancel, withdraw or recall.

129. On authority of the **Nakendo and Gole** cases, the requirement for verification of authenticity is mandatory; it is not discretionary to the 3<sup>rd</sup> Respondent. This in my discernment was also the intention of the drafters of the Constitution, PEA and UOTIA. Failure to verify authenticity and validity is fatal to the certificate issued. Without verification in this case, the 3<sup>rd</sup> Respondent had no authentic Diploma certificate for equation and issue of the certificate of equivalent. Without this verification of authenticity and validity, the issued certificate was based on a non-existent Diploma certificate. All in all, the 1<sup>st</sup> Respondent's certificate of equivalent was issued illegally in violation of paragraph 18 of the second schedule of the 2007

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Rules and without the expected exercise of due diligence by the 3<sup>rd</sup> Respondent. It was also contrary to S. 4(13) of the PEA as the Diploma certificate in issue is not one of the listed certificates for exception from verification. It is accordingly invalid, null and void.

**viii) Burden of proof**

130. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents have extensively accused the Petitioner of shifting the burden of proof, particularly to the 1<sup>st</sup> Respondent. Under S. 61 (3) of the PEA, the standard of proof in election petitions is on a balance of probabilities. And this is what I have applied all through, save for the analysis of fraud.
131. S. 106 of the Evidence Act provides that in civil proceedings, when any fact is specifically within the knowledge of any person, the burden of proving that fact rests upon that person. In line with this, the facts concerning the authenticity and validity of the 1<sup>st</sup> Respondent's qualifications can only be in the 1<sup>st</sup> Respondent's specific knowledge and the duty to prove the same rests with him and requiring him to prove the same does not shift this burden.
132. The jurisprudence has also established that the burden of proving the authenticity of impugned academic qualifications or documents rests with the one who relies on them. This position was settled in the *locus classicus* case of **Abdul Bangirana Nakendo v. Patrick Mwondah, Supreme Court Election Petition Appeal No. 9 of 2007** where Katureebe JSC in his lead judgement authoritatively pointed out that: "the duty to produce valid certificates to the Electoral Authorities lies with the intending candidate for elections. Where the authenticity of those certificates is questioned, it can only be his burden to show that he has authentic certificates."
133. In the case before me given that the authenticity, validity and integrity of the 1<sup>st</sup> Respondent's Diploma qualification which the 3<sup>rd</sup> and 2<sup>nd</sup> Respondents respectively

relied onto issue a certificate of equivalent and for his nomination and election is in question, then within the terms of S. 106 and **Nakendo** case (supra) it is the 1<sup>st</sup> Respondent's burden to prove that the questioned qualification is actually authentic and valid, but he failed.

134. The certificate as presented, in circumstances where its integrity is being questioned, could not prove this authenticity and validity. Not even Ms. Muyingo attempted. All that the 1<sup>st</sup> Respondent does is insist that the certificate he adduced is authentic. This is not satisfactory on a balance of probabilities. Perhaps if the 1<sup>st</sup> Respondent had presented copies certified by the Institute, his admission letter or some other kind of confirmation from the Institute that he actually attended Pacific Coast Institute and obtained the Diploma certificate he presented.

135. I take cognizance of the agreed fact that the said Pacific Coast Institute was closed in 1989. In clarification in Court, the 1<sup>st</sup> Respondent explained to me that it filed for bankruptcy and wound up in 1989. Mr. Kabakubya in furtherance of this thesis explained in para 33 of his supplementary affidavit that the only source of credible information in such circumstances would be the Custodian of Records which his team had not obtained yet. The 3<sup>rd</sup> Respondent at page 6 of its submissions seems to concur although indirectly with this position.

136. Whether it is the Custodian of Records or by some other name, I know for certain that all over the world, a liquidator, a receiver or someone other person is appointed on bankruptcy or closure of a company or institution like the one in issue. Such person takes over management and custody of the records. I have no demonstration that the 1<sup>st</sup> or 3<sup>rd</sup> Respondents bothered at all to verify authenticity and validity of the Diploma qualification in issue at the material time from such person or body.

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137. In fact unlike the Petitioner's lawyers who picked interest in this case at the time of instructions after the elections in February 2016, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had much more time from at least when the 1<sup>st</sup> Respondent submitted his application for the certificate on 25<sup>th</sup> March 2014 to reach this custodian of records but there is no demonstration they did. I therefore find that the 3<sup>rd</sup> Respondent did not do what was reasonably expected of it before issuing the certificate of equivalent and there is no shifting of the burden of proof.

138. Overall, on a balance of probabilities, I am satisfied that without attachment of certified copies of the Diploma certificate to the application or verification of authenticity and validity of the same as a prerequisite, there was in effect no existent certificate for the equation process.

**ix) Effect of reliance on the certificate of equivalent by the 2<sup>nd</sup> Respondent**

139. In the Nakendo case (supra) and in Gole case (supra) at p.13, Katureebc J explained that:

"In my view, the court has power to hear and determine a petition where it is alleged that a person was not qualified for election on the grounds that papers he presented in order to obtain a certificate of equivalent for nomination purposes were not valid. The allegation, if proved to the satisfaction of the Court, would go to the very root of the process leading to his nomination and subsequent election. It is a legitimate question that the court must inquire into. It would not require proceedings for certiorari. It is an election matter and the court has jurisdiction to hear and determine it. If the high court finds on evidence that the decisions of an administrative body like NCHE were irrationally made or were not based on proper diligence, the Court can, and should so declare. In my view, the NCHE certification of equivalence is not the qualification for election to

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Parliament. It is meant to be evidence but not conclusive evidence of the qualification set out in the Constitution. It is therefore subject to court's evaluation or scrutiny." Persuaded by this reasoning, I will proceed with this scrutiny or evaluation.

140. Based on my analysis above I am satisfied on a balance of probabilities and hereby declare that the 3<sup>rd</sup> Respondent's issuance of the certificate of equivalent to the 1<sup>st</sup> Respondent was in contravention of S. 4(13) of the PEA, para. 18 of the 2007 Rules and unreasonably and irrationally made because it was not based on proper due diligence.

141. On authority of the **Nakendo** case above I do not agree with the 2<sup>nd</sup> Respondent submission in para (i) at page 3 that such certificate is conclusive evidence of the 1<sup>st</sup> Respondent's qualifications. So I will consider what else the 2<sup>nd</sup> Respondent had available to it. The 2<sup>nd</sup> Respondent also had before it the qualification from the International College of Excellence that was included in the certificate of equivalent and as part of the documents before it. However all the Respondents concede it was erroneously included in the certificate and was never meant to be considered as part of the 1<sup>st</sup> Respondent's papers for the certificate or nomination. It is also conceded that it is from an unaccredited institution and there is no certificate of equivalent for the same from the 3<sup>rd</sup> Respondent. It was therefore not relevant or useful for the nomination and subsequent election of the 1<sup>st</sup> Respondent.

142. From the evidence of Sarah Bukirwa in the affidavit in support of the 2<sup>nd</sup> Respondent's answer to the petition of 5<sup>th</sup> April 2016 and the 2<sup>nd</sup> Respondent submissions para (i) at p.6 as well as the 1<sup>st</sup> Respondent who confirmed during cross examination that "for me Electoral Commission needed a certificate of equivalent for A Level as a minimum and I submitted this and it formed the basis of my nomination", it is clearly demonstrated to my satisfaction that the 2<sup>nd</sup> Respondent had

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and relied solely on the certificate from the 3<sup>rd</sup> Respondent and his O Level certificate to nominate the 1<sup>st</sup> Respondent for election.

143. In these circumstances, such issuance of and reliance on the certificate of equivalent which was illegally awarded and invalid went to the very root of the process leading to the nomination and subsequent election of the 1<sup>st</sup> Respondent to Parliament for Busiro South Constituency.

144. It had the effect of the 1<sup>st</sup> Respondent being elected to Parliament without satisfying the Electoral Commission that he had completed a minimum formal education of Advanced Level standard or its equivalent in contravention of S. 4 (1) (c) of the PEA and Article 80 (1) (c) of the Constitution. This non-compliance affected the result of the election in a substantial manner.

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145. Since the certificate of equivalent was not based on a legally authentic, valid or existent Diploma certificate, the subsequent nomination and election of the 1<sup>st</sup> Respondent as Member of Parliament based on the same were also not legal or valid.

#### **e) Remedies**

146. Consequently, this petition is allowed with the following orders:

i) The certificate of equivalent illegally and invalidly issued to the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent is null and void.

ii) The nomination, subsequent election, return and gazetting of the 1<sup>st</sup> Respondent as Member of Parliament for Busiro South Constituency based on the illegally and invalidly issued certificate of equivalent were in contravention of Article 80 (1) (c) of the Constitution and S. 4 (1) (c) of the PEA and are hereby annulled.

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iii) The seat of the 1<sup>st</sup> Respondent is declared vacant.

v) The Electoral Commission is directed to conduct fresh nominations and elections for Busiro South Constituency in accordance with the law.

vi) Costs for the Petitioner are to be paid by the 3<sup>rd</sup> Respondent because it is largely its actions or omissions that resulted in the petition. Counsel for the Petitioner have not demonstrated to my satisfaction that this petition was a complex case deserving of a certificate of two Counsel. The prayer for the same is accordingly denied.

147. Before I take leave of this petition I wish to caution the 3<sup>rd</sup> Respondent to evaluate and realign itself to the very important mandate vested in it in the electoral process. It should mind that it does its work independently and without favour to anyone, as anything short of this is a breach of the confidence and trust vested in it for the people of Uganda.

I so order



LYDIA MUGAMBE

JUDGE

10<sup>th</sup> JUNE 2016

Judgment delivered by the Deputy Registrar this 10<sup>th</sup> day of June 2016.



AJIJI ALEX

DEPUTY REGISTRAR/CIVIL DIVISION.

