

polled 208 votes. The results of the election were gazetted by the 2nd Respondent on 12th April 2021.

[2] The Petitioners, being aggrieved with the outcome of the elections, brought two separate petitions contesting the nomination, election and declaration of the 1st Respondent as the winner. Both petitions were against the same Respondents. By consent of the parties and their Counsel, vide M.A No. 0052 of 2021, it was ordered that the two petitions be consolidated and heard as one, with the Petitioner in EP No. 005 of 2021 as the 1st Petitioner and the Petitioner in EP No. 006 of 2021 as the 2nd Petitioner. Both petitions sought for declarations that the 1st Respondent was, at the time of nomination and election, not qualified for election as LCV District Chairperson; that the 1st Respondent was not validly elected as LCV Chairperson for Obongi District; an order annulling and setting aside the election of the 1st Respondent and ordering fresh elections to be organized by the 2nd Respondent; in the alternative, the 2nd Petitioner prayed to be declared as the duly elected candidate having been the runner-up in the said elections; and for costs of the petition.

Grounds of the Petition

[3] The thrust of the grounds in both petitions is that the 1st Respondent lacked the requisite academic qualification of a minimum formal education of advanced level standard or its equivalent and was therefore not qualified for nomination and election as LC V Chairperson for Obongi District. The Petitioners stated that owing to the variations in the names appearing on the academic documents presented by the 1st Respondent as against the names that appeared on the 1st Respondent's nomination

papers and other forms of identification, the 1st Respondent was not the owner of the said academic documents and his identity is in question.

[4] The petitions were supported by affidavits deposed by the Petitioners respectively verifying the grounds of the petition plus some supplementary affidavits.

Opposition to the Petition

[5] The 1st and 2nd Respondents filed answers to the petition respectively accompanied with affidavits in support of the answer to the petition. The 1st Respondent's answer is accompanied by an affidavit deposed by himself and supplementary affidavits deposed by Odiambo D.G Rembe, Tabusa Musa Ismail, Anguyo A. Marjan, Badru Alahai, Moga Siliman Yassin, Lagu Samuel, Adomati Dickson, and Adaku Edward. The 1st Respondent also deposed to a supplementary affidavit. The affidavit in support of the 2nd Respondent's answer to the petition was deposed by Meru Gilbert, the Returning Officer for Obongi District.

[6] The gist of the 1st Respondent's answer to the petition is that the names that appear on the academic documents presented by the 1st Respondent at the time of nomination belong to the 1st Respondent and all the names refer to one and the same person. The 1st Respondent explained the variation in the names and in his date of birth as it appears on his National Identity Card (National ID) as against his nomination papers. The 1st Respondent averred that he was lawfully nominated, elected and declared as the duly elected Chairperson LC V for Obongi District. The 1st Respondent prayed for dismissal of the petitions with costs.

[7] The 2nd Respondent's case is that the nomination of the 1st Respondent to stand for the position of LC V Chairperson for Obongi District was conducted in accordance with the electoral laws; it was based on documents presented by the candidates; and there was no complaint as far as the academic documents of the 1st Respondent were concerned. The 2nd Respondent stated that the whole process was free, fair and transparent. The 2nd Respondent prayed for dismissal of the petitions with costs.

[8] The Petitioners filed affidavits in rejoinder to the respective answers to the petition and the accompanying affidavits. The 2nd Petitioner also filed a supplementary affidavit in rejoinder and two other supplementary affidavits deposed by Draru Grace Manaseh, the Head Teacher of Muni Girls Secondary School (Muni Girls SS) and one Goro Grace.

Representation

[9] When the petitions came up in the Court for scheduling and hearing, the Petitioners were represented by Mr. Mbaha Mesach, Mr. Kepo Alfred Kazimoto and Mr. Magara Robert; the 1st Respondent by Mr. Bundu Richard; and the 2nd Respondent jointly by Mr. Ali Hassan Kato and Mr. Nasur Mohamed Buga.

Agreed facts

[10] The following facts were agreed upon by the parties and Counsel:

(a) An election was held on 20/01/2021 for the LC V Chairperson of Obongi District where both Petitioners and the 1st Respondent together with one other candidate participated.

(b) The said election was organised by the 2nd Respondent.

(c) The 2nd Respondent's Returning Officer returned the 1st Respondent as the winner of the said election with the 1st Petitioner as second runner-up and the 2nd Petitioner as the 1st runner-up.

Issues for Determination by the Court

[11] Two issues were raised and agreed upon for determination by the Court, namely:

i) Whether the 1st Respondent was qualified for nomination and election as LC V Chairperson.

ii) What remedies are available to the parties?

Evidence and Hearing

[12] The affidavits referred to herein above were all taken as read in Court. The documents attached to the respective affidavits were accordingly admitted and marked as indicated on record. Both Petitioners were cross examined by Counsel for the 1st Respondent. Counsel for the Petitioners cross examined the 1st Respondent and five of his witnesses, namely, Moga Siliman Yassin, Anguyo Marjan, Badru Alahai, Tabula Musa Ismail and Buga Ismail.

[13] It was agreed and directed that the hearing proceeds by way of written submissions. A schedule was set and Counsel made and filed the submissions as directed. I have reviewed the submissions by Counsel

and the authorities cited and have taken them into consideration in the course of resolution of the issues before the Court.

Burden and Standard of Proof

[14] The burden of proof in election petitions lies on the Petitioner to prove the assertions raised in the petition. This is in line with the rule of evidence under Section 101 of the Evidence Act Cap 6 to the effect that he who alleges must prove. See: ***Kyakulaga Bwino Fred & EC vs Waguma Badogi Ismail, Election Petition Appeals Nos. 15 and 20 of 2016*** and ***Akuguzibwe Lawrence vs Muhumuza David & 2 Others, Election Petition Appeal No. 22 of 2016***.

[15] The burden of proof remains on the Petitioner throughout the trial and does not shift to the Respondent. See: ***Mutembuli Yusuf vs Nagwomu Moses Masamba & EC, Election Petition Appeal No. 43 of 2016***. It is only in a few specific instances, depending on the grounds relied upon in a particular petition, that the burden may shift. One of the few exceptions relates to situations where the authenticity of one's academic credentials is challenged, in which case the burden of proving the authenticity of the impugned academic credentials rests on the person that relies on those credentials. See: ***Acen Christine Ayo vs Abongo Elizabeth, Election Petition Appeal No. 58 of 2016*** citing ***Abdul Balingira Nakendo vs Patrick Mwondha, Supreme Court Election Appeal No. 9 of 2006***.

[16] The standard of proof required in a Local Council Election Petition is provided for under Section 139 of the Local Governments Act, Cap 243. It is provided under Section 139 of the Local Governments Act that;

“The election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court –

- (a) that there was failure to conduct the election in accordance with the provisions of this Part of the Act and that the noncompliance and failure affected the result of the election in a substantial manner;*
- (b) that a person other than the one elected purportedly won the election;*
- (c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or*
- (d) that the candidate was at the time of his or her election not qualified or was disqualified from election. [Emphasis added]*

[17] The grounds relied upon in the present petitions fall under paragraph (d) above. The Petitioners are required to prove to the satisfaction of the Court that the 1st Respondent was at the time of his nomination and election not qualified to stand for the position of Local Council V Chairperson. It is only after the Court is duly satisfied that the grounds raised in the petition have been proved to its satisfaction that it will invoke its powers under the above cited provision. The Court of Appeal in the case of **Magombe Vincent vs Electoral Commission & Mujasi Masaba Bernard Elly, Election Petition Appeal No. 088 of 2016**, stated that the meaning of the phrase “to the satisfaction of the Court” was settled by the Supreme Court in **Presidential Election Petition No. 1 of 2001 Kizza Besigye vs Yoweri Museveni** which adopted the House of Lords proposition in **Blyth vs Blyth 1966 AC 643**

that it means that ***“the Court must be satisfied to the extent that the Court is without being left in any state of reasonable doubt”***.

[18] The Court of Appeal, in the above cited case of ***Magombe Vincent (supra)***, in agreement with an earlier decision of the Court in ***Makatu Augustus vs Weswa David & EC, EPA No. 73 of 2016***, however expressed the view that there is urgent need for legislative reform in regard to the provisions of the Local Government Act on election related matters especially adjudication of disputes for the reason that ***“it is clearly odd and rather unlikely that Parliament could have intended to set a higher standard of proof in election petition matters arising out of local council elections as opposed to parliamentary election petitions”*** under which the standard of proof is clearly set out by the law as being on a balance of probabilities.

[19] Bearing the above views in mind, which in any case are binding on this Court, taking into consideration that this is a civil dispute, and taking into account the nature and importance of elections to society, I will assign to the phrase “to the satisfaction of the court” the natural and ordinary meaning of the words. The Court has to be satisfied that the allegations in the petition are made out upon cogent and credible evidence being adduced before the Court.

Preliminary Issues

[20] In their submissions in reply, Counsel for the 1st Respondent raised two preliminary points of objection. The first objection is in regard to a supplementary affidavit sworn on behalf of the 2nd Petitioner by one Draru Grace Manaseh, the Head Teacher of Muni Girls SS, filed on 31st

May 2021. The other objection is directed against the affidavit in rejoinder deposed by the 2nd Petitioner.

The 1st point of objection – the affidavit of Draru Grace Manaseh

[21] I will first point out that this point of objection ought to have been raised by the 1st Respondent's Counsel during the proceedings at the time the affidavits were considered and taken as read in court. The matter was however not raised and was belatedly raised during submissions. Be that as it may, since the point raised is a point of law and one that questions the competence of the impugned affidavit, I will allow it to be taken and resolved by the Court.

[22] It was submitted by Counsel for the 1st Respondent that the Supplementary Affidavit of Draru Grace Manaseh was commissioned by Counsel Nasuru Mohamad Buga whose practicing certificate was not yet renewed by 31st May 2021 when he commissioned the said affidavit. Counsel submitted that the fact of Counsel Nasuru Mohamad Buga's practicing Certificate not being renewed by May 2021 was subject of a ruling of this court in this same matter dated 2nd September 2021. Counsel for the Petitioners were in agreement with learned Counsel for the 1st Respondent on the position of the law as cited and on the fact that the said Commissioner for Oaths, Mr. Nasur Mohamad Buga, did not possess a valid practicing certificate at the time of commissioning the affidavit of the said witness. Counsel thus conceded to the objection and pointed out that the Petitioners did not place any reliance on the evidence of the said witness and that if the court were to expunge the evidence of Draru Grace Manasseh, it shall not affect the Petitioners' case.

[23] Since both Counsel are agreed as to the position of the law and facts concerning the subject of this objection, I will not need to belabor the point. This is especially so since I have already pronounced myself on the same position of the law and on similar facts in this same case albeit in relation to other affidavits. It follows therefore that the said decision applies to the affidavit in issue herein with similar force. In acknowledgement of the law and facts on the matter, and of the earlier decision of this Court, Counsel for the Petitioners have conceded to having the said supplementary affidavit expunged from the record. The objection is therefore upheld and the supplementary affidavit of Draru Grace Manaseh is accordingly expunged from the record. For avoidance of doubt, however, and as submitted by Counsel for the Petitioners, the letter which was attached to the expunged affidavit but which was also introduced to the Court by the 2nd Petitioner and admitted on record as PE23, is not affected by the decision to expunge the impugned affidavit. The Petitioners are in position to rely on the said exhibit and the Court shall evaluate the evidence contained in the said letter.

The 2nd Point of Objection – the Affidavit in Rejoinder sworn by 2nd Petitioner

[24] It was submitted by Counsel for the 1st Respondent that the Affidavit in rejoinder by the 2nd Petitioner dated 25th May 2021 was unfounded in law. He submitted further that there was no such a thing as affidavit in rejoinder in election petitions and that the only exception is under **Rule 8(5) & (6) of the Parliamentary Elections (Interim Provisions) (Election Petition) Rules SI 141-2** where the respondents have applied

for further and better particulars which never took place in the instant case. Counsel relied on the case in ***Election Petition No. 4 of 2016, Mugisha Vincent Versus Kajara Aston Peterson & 2 Others***, where in **Justice Henrieta Wolayo** expunged and or rejected an affidavit in rejoinder filed by the Petitioner on the same ground. Counsel prayed that the said affidavit in rejoinder be expunged from the record.

[25] In reply, Counsel for the Petitioners submitted that the 1st Petitioner had a right of reply to the 1st Respondent since the 1st Respondent had traversed new issues in his answer to the petition and there was therefore need to clarify on the same. Counsel further submitted that the right to reply through an affidavit in rejoinder in election petitions is provided for by law and the Court of Appeal was faced with an issue regarding affidavits in rejoinder in the case of ***Nabukera Hussein Versus Kusasira Peace K. Mubiru & Electoral Commission Election Petition Appeal No. 72/2016*** wherein the appellant had faulted the trial court for relying on the affidavit in rejoinder of the 1st respondent. The court held that an affidavit in rejoinder could be filed but could not be permitted to introduce new matters or issues of fact that were never raised by the affidavit in reply or those supplementing it. Counsel therefore concluded that the correct position of the law is that affidavits in rejoinder are acceptable in as long as they do not introduce new matters or issues.

[26] I need to first point out that given that both Petitioners filed affidavits in rejoinder, I do not understand why the objection by Counsel for the 1st Respondent was only directed towards the affidavit in rejoinder filed by the 2nd Petitioner. Incidentally, Counsel for the Petitioners made

their submissions in reply in respect of the 1st Petitioner's affidavit in rejoinder. Therefore, I will deal with the objection as it relates to both affidavits in rejoinder.

[27] Neither the Parliamentary Elections (Interim Provisions) Rules SI 141-2 nor the Local Governments Act Cap 243 outlaw the filing of affidavits in rejoinder after the filing by the respondents of the answer to the petition with accompanying affidavits. As such, there is no legal bar to filing of an affidavit in rejoinder or an affidavit in reply to the answer to the petition, whatever name a petitioner chooses to use. According to decided cases, the right or option to file an affidavit in rejoinder is not in question. What is in question is as to what matters should or should not be contained in an affidavit in rejoinder; and who may depone to an affidavit in rejoinder in election matters.

[28] ***In Chebrot Stephen Chemoiko vs Soyekwo Kenneth & EC, Court of Appeal Election Petition Appeal No. 56 of 2016***, it was held that affidavits in rejoinder were essentially for the purpose of giving an opportunity to the petitioner to rejoin to and controvert or dispute the contents of the affidavits in reply sworn by the respondent or on behalf of the respondent. The decisions in ***Betty Muzanira Bamukwatsa vs Masiko Winnifred Komuhangi & 2 Others, Election Petition Appeal No. 65 of 2016*** and ***Nabukeera Hussein Hanifah vs Kusasira Peace Mubiru & EC, Election Petition Appeal No. 72 of 2016*** also clearly bring out the point that the issue is not whether the option is available to a petitioner to depone to an affidavit in rejoinder but rather who may depone to an affidavit in rejoinder; and what should or should not be contained in an affidavit in rejoinder. As such, I am not persuaded by the

finding to the contrary in the decision in ***Mugisha Vincent Versus Kajara Aston Peterson & 2 Others, HC Election Petition No. 4 of 2016*** which has been relied upon by Counsel for the 1st Respondent.

[29] Further, the rules of evidence in election petitions are clear. Under rule 15(1) of the Rules (SI 141-2), evidence at the trial shall be by way of affidavit. The mere fact that the Rules did not make specific provision for the filing of affidavits in rejoinder does not change the known procedure in a proceeding based on affidavit evidence. In fact, in my view, the proper construction of the law is that, based on the above cited provision of the Rules, the provision necessarily imports the known law on procedure and evidence which allows a party commencing an action to rejoin after receiving the reply of the respondent. This is because, this being evidence, where matters are raised in a reply which the initial supporting affidavit did not aver to, the petitioner or applicant would have no opportunity to explain or lay such a matter to the court. The only crucial limitation is that such a rejoinder should not introduce new matters. This position is further supported by the provision under Rule 17 of the EP Rules which allows the general application of the rules of procedure to election petition matters; and Section 143(1) of the Local Governments Act which provides that in the hearing of a petition, *“the powers of the court and the rules of procedure shall be those which apply to a civil action in a court of law”*.

[30] In ***Mutembuli Yusuf Vs Nagwouu and the Electoral Commission, Election Petition No. 13 of 2016***, court held thus:

“The procedure and practice in election petitions takes after the same format. Although the rules do not specifically

provide for or require the Petitioner and other deponents who initially swore affidavits supporting the petition to file affidavits in rejoinder, the Petitioner and those other deponents may file affidavits in rejoinder pursuant to the practice and procedure under the Civil Procedure Rules by virtue of the operation of Rule 17 ...”

[31] In the present case, Counsel for the 1st Respondent did not point out anything that was offensive in the affidavits in rejoinder filed by the Petitioners. On basis of the position of the law as highlighted above, the said affidavits in rejoinder cannot be impugned. As such, this objection is devoid of merit and is accordingly dismissed.

[32] I now turn to the merits of the matter before the Court.

Issue 1: Whether the 1st Respondent was qualified for nomination and election as LC 5 Chairperson.

Submissions by Counsel for the Petitioners

[33] Counsel for the Petitioners submitted that the 1st Respondent was not qualified for nomination and his subsequent election as LC 5 Chairperson for Obongi District was illegal. Counsel cited the provisions under *Article 183(1), Article 182(2), Article 80(1) of the Constitution of the Republic of Uganda as amended, Section 4(1) of the Parliamentary Elections Act, 2005 as amended, and Sections 12 and 111(3) of the Local Governments Act Cap 243* which provide for the qualifications of a person who shall be eligible to stand for election as a District Chairperson.

[34] Counsel submitted that according to the evidence adduced by the 2nd Petitioner in his affidavit in support of the Petition and during Cross-examination, the 2nd Petitioner instructed his lawyers to write to Muni Girls' Secondary School where the 1st Respondent purportedly sat for his A level but **Ms. Draru Grace Manaseh**, the head teacher of the school, wrote back denying knowledge that the 1st Respondent sat for his A level at Muni Girls Secondary school in 1996. The letter is '**annexure C**' to the 2nd Petitioner's affidavit. The 2nd Petitioner also adduced evidence through the supplementary affidavit of **Mrs. Goro Grace**, a former student of Muni Girls Secondary School, who stated that she joined the school in 1994 and sat for A level at the said school in 1996 and that, to the best of her knowledge, she does not remember doing the said exams with any student from another school and that she did not see the 1st Respondent at the school during the exams.

[35] Counsel submitted that this evidence was never challenged during the hearing as the said witness was not subjected to cross-examination. He submitted further that although the 1st Respondent attempted to justify his impugned qualification by stating that his result was clarified by UNEB in its letter attached to the affidavit in support marked E2, UNEB had disclaimed the said verification letters in its last paragraph where it is indicated clearly that '*The Board is not responsible for the Identity of the Candidates*'. Counsel submitted that it was incumbent upon the 1st Respondent to show that the person holding the certificate was none other than him and that could only be achieved by challenging the evidence of the Head teacher and the former student, which he did not do.

[36] Counsel for the Petitioners further submitted that the evidence of the witnesses produced by the 1st Respondent was full of inconsistencies and contradictions. Counsel highlighted the inconsistencies and contradictions in the evidence of the 1st Respondent and the five witnesses that were cross examined. Counsel submitted that all the said inconsistencies and contradictions pointed to the fact that the 1st Respondent did not attend Advanced Level of Education and the court stood a high risk of awarding someone else's qualifications to the 1st Respondent if at all the 1st Respondent is declared to be the holder of the said certificates.

[37] Counsel submitted that in trying to justify the inconsistency in his names, the 1st Respondent in his affidavit accompanying the answer to the petition explained the initials **A. B. K** in the name **ABIBU A. B. K HAWADI** as a short form for his names **ABIB BUGA KHEMIS**. When the 2nd Petitioner challenged the acronym A. B. K in his affidavit in rejoinder, the 1st Respondent, through an afterthought, filed supplementary affidavits deposed by **Moga Siliman Yassin, Badru Alahai, Anguyo A Marjan, and Aniku Majid** who all deviated from the 1st Respondent's earlier position by stating that the acronym **A.B.K** instead stands for **Adebuga Buga Khemis**. The 1st Respondent also filed another belated supplementary affidavit dated 3/9/2021 where in paragraph 4, he reversed the meaning of his names A.B.K from **ABIB BUGA KHEMIS** to **ADEBUGA BUGA KHEMIS** and faulted his Advocate for a typing error. Counsel submitted that this was a grave contradiction that cannot be treated as a typo error. Moreover, the same was not explained, at least through an affidavit from the advocate who was said to have made the error.

[38] The other inconsistency pointed out by the Petitioners' Counsel related to the place of sitting for UACE Examinations. Counsel submitted that the 1st Respondent in his affidavit in support in paragraph 11 deponed that he studied at Arua Academy school but sat for his A level in Muni Girls Secondary School. However, his witnesses such as **Badru Alahai and Anguyo. A. Marjan** stated that due to limited space at the school, the students of Arua Academy S.S were allocated to the present day Muni Church of Uganda to sit for the examinations. He prayed that such contradictory statements made on oath by the 1st Respondent should not be taken for granted. Counsel relied on the case of ***Uganda Microfinance Union Ltd Versus Sebuufu Richard and Another HCMA No. 0610/2007*** where the court held that *"inconsistencies in affidavits cannot be ignored however minor since an affidavit is not a document to be treated lightly"*. Counsel therefore invited the court to find that such inconsistencies are grave and should only lead to an inference that the 1st Respondent did not sit for the A' Level Examinations in 1996 as alleged but tried to cover up, which attempt failed in the process.

[39] On the issue of change of names, Counsel for the Petitioners submitted that the 1st Respondent has used the names **ABIB BUGA KHEMIS HAWADI, ABIBU A. B. K AWADI** and **ABIBU BUGA KHEMIS AWADI**. He has also used **ADEBUGA BUGA KHEMIS**. Counsel noted that the 1st Respondent did not adduce any evidence to show that he had followed the due process of the law to legally change his name and renounce all others. Counsel submitted that the current law governing change of names is the **Registration of Persons Act 2015**, particularly **Section 36(1)** which is couched in mandatory terms. Counsel submitted

that the 1st Respondent sat for O' Level Examination in the names of **ABIB BUGA KHEMIS HAWADI** but changed his name to **ABIBU A.B.K HAWADI** and no evidence was adduced to show that he complied with the above provision or the then *Births and Deaths Registration Act Cap 309*.

[40] Counsel further submitted that the 1st Respondent got nominated in the names of **ABIBU BUGA KHEMIS AWADI** which name is distinguished from that on both Academic Certificates and the name change did not comply with the aforementioned laws. Counsel submitted that even the deed poll claimed to have been made by the 1st Respondent before the magistrate at Moyo was ineffective in law since the same was not registered with Uganda Registration Services Bureau (URSB) and neither was it gazetted as is required by Section 36 of the Registration of Persons Act 2015. The said deed poll was only registered with URSB as an afterthought on 23rd Feb, 2021 and published in the gazette on 26th March, 2021 after elections were concluded. Secondly, the 1st Respondent grossly lied on oath for stating that the Deed Poll was part of the documents submitted for nomination. Counsel submitted that even if the court was to find that the deed poll was valid, the 1st Respondent's nomination would still be illegal since he was so nominated without complying with the legal requirements for change of name.

[41] Counsel cited the cases of ***Wakayima Musoke Nsereko & Electoral Commission Versus Kasule Robert Sebunya Election Petition Appeal No. 0050 and 102/2016*** and ***Serunjogi James Mukiibi versus Lule Umar Mawiya, Election Petition Appeal No. 15/2006*** and ***Supreme Court Election Petition Appeal No. 007/2007***

for the submission that the mandatory requirement to comply with the law in as far as change of name is concerned has been dealt with by the superior courts. Counsel submitted that the argument that no one has come out to claim the 1st Respondent's various names was rejected by the Court of Appeal in ***Serunjogi James Mukiibi versus Lule Umar Mawiya (supra)***. Counsel invited the court to find that the above position of the law is the correct one and to take note that this is a binding case being a case decided by the Court of Appeal and confirmed by the Supreme Court on further appeal. Counsel concluded that the 1st Respondent did not legally change his name as at the time of nomination and his participation in the name **ABIBU BUGA KHEMIS AWADI** as a candidate in the elections was an illegality because he was ineligible for nomination and subsequent election since he did not legally change his name at the time of nomination.

[42] The other area of alleged inconsistency concerned the 1st Respondent's age. Counsel for the Petitioners submitted that the 1st Respondent was nominated on the strength of his national identity card which he attached on his nomination papers wherein he took oath and affirmed that all particulars he submitted at nomination which included his name, age, and date of birth were all correct to the best of his knowledge and belief. Counsel submitted that according to the 1st Respondents' national identity card issued by NIRA, his date of birth was 20/08/1981. Counsel argued that it was impractical that a person born on 20th/08/1981 could sit for the UCE in 1992 at the age of 11 years as the 1st Respondent wants court to believe. This logically meant that the 1st Respondent joined Primary one when he was one-year-old which is impracticable. Counsel further submitted that in trying to explain the glaring gaps, the 1st Respondent stated during cross examination that he

had sworn an affidavit to correct that error but did not adduce evidence to show that the said affidavit was served either on the 2nd Respondent or on NIRA. Counsel concluded that these anomalies point to only one inference that the 1st Respondent did not sit for UCE exams.

[43] In conclusion, Counsel submitted that the court cannot perpetuate an illegality which goes against the well-established principle of the law. Counsel relied on the leading case of ***Makula International Versus Cardinal Nsubuga 1982 HCB 11***. Counsel prayed that the Court finds that the 1st Respondent was not duly qualified for nomination and election as LC V Chairperson and answers this issue in the negative.

Submissions by Counsel for the 1st Respondent

[44] In reply, Counsel for the 1st Respondent submitted that the Petitioners have not discharged the burden and standard of proof required of them in an election petition. Counsel relied on *Articles 183 and 80 of the 1995 Constitution of the Republic of Uganda as amended, Section 4 of the Parliamentary Elections Act 2005 as amended and Section 12 of the Local Government Act Cap 243 as amended*, which when read together provide for the required qualifications for election of a District Chairperson.

[45] Counsel submitted that according to the evidence adduced by the 1st Respondent, he sat 'O' level from Obongi SS in 1992 and the certificate and the verification letters by UNEB and Obongi SS were admitted as DE1, DE4 and DE16 respectively. The 1st Respondent further showed that he studied 'A' level from Arua academy SS but sat UACE from Muni Girls SS in 1996 because Arua Academy SS did not have a UNEB Center

Number at that time. The certificates and verification letters by UNEB and Arua Academy SS were admitted as DE2, DE3, DE15 and DE17 respectively. The 1st Respondent's academic documents in question were further clarified in 13 defense exhibits numbered as DE20 and DE24-DE32. Counsel submitted that even upon request by the Petitioners themselves, the Uganda National Examinations Board (UNEB), Obongi Senior Secondary School and Arua Academy Secondary School confirmed that the academic documents in contention belong to the 1st Respondent.

[46] On the issue of identity of the owner of the academic documents, which is said to have been disclaimed by UNEB, Counsel submitted that the 1st Respondent had identified himself as the owner of the academic documents in contention through supplementary affidavits deposed to by himself and other witnesses, namely, Moga Siliman, Adomati Dickson, Edward Adaku, Buga Ismail, Odiambo Rembe, Lagu Samuel, Tabusa Ismail, Anguyo A Marjan and Badru Alahai. The 1st Respondent also explained why him and some of his witnesses that studied at Arua Academy SS sat for their UACE Examinations at Muni Girls SS. Counsel submitted that the Petitioners appear to have been misled by the fallacy that the 1st Respondent being a man could not have academic certificates from Muni Girls SS which is a girls' school and also by the letter from the uninformed Head Teacher of Muni Girls SS, Draru Grace Manaseh. Counsel submitted that based on the various consistent correspondences from UNEB confirming that the papers in issue belong to the 1st Respondent, the Court should establish as to who between UNEB and the uninformed Head Teacher of Muni Girls SS qualifies to talk about the 1st Respondent's academic documents in contention. Counsel asserted

that to them, it is UNEB not the Head Teacher that is more competent to do so.

[47] Counsel for the 1st Respondent further submitted that in their view, the supplementary affidavit of the Petitioners' witness, Goro Grace dated 30th August 2021 strengthens the 1st Respondent's case. This is because, Goro Grace's certificate attached to her affidavit is similar and consistent with that of the 1st Respondent, Badru Alahai, Anguyo A Marjan and Tabusa Ismail. Secondly, she is among the students on the list DE24 that was certified and or issued by UNEB upon request by the 1st Respondent's Counsel. The evidence by the said witness that she did not sit UACE exams with the students of Arua Academy SS is false. She was a student who had no capacity to contract on behalf of Muni Girls SS. Even then, the evidence of the 1st Respondent and his witnesses is that the students of Arua Academy sat for the exams from the church while the students of Muni Girls were within the school itself.

[48] Counsel also submitted that in cross examination, both Petitioners were asked if they know of anyone claiming the contested academic documents and names, to which they answered in the negative. Counsel submitted that by failing to produce any person claiming the names and academic documents in contention, the Petitioners failed to discharge the required standard of proof and in the result, this petition must fail. Counsel relied on the decisions in the cases of ***Election Petition Appeal No. 0001 Of 2021, Hashim Sulaiman Versus Onega Robert; Election Petition Appeal No. 6 of 202, Akol Hellen Odeke Versus Okodel Umar; Election Petition Appeal No. 088 of 2016, Magombe Vincent Versus Electoral Commission & Mujasi Masaba Bernard Elly; and***

Election Petition Appeal No. 0002 of 2021, Muheirwe Daniel Versus Twinomujuni Francis Kazini & Electoral Commission.

[49] Counsel submitted that in the above stated cases, the position derived from the decisions of the Court of Appeal is that in an election petition challenging the academic documents or qualification of a candidate, the petitioner must, among others, show that there is any person other than the 1st respondent claiming the academic documents in contention. Counsel argued that in the instant case, since the Petitioners have failed to bring any person claiming the contested academic documents, the court is invited to hold that the documents belong to the 1st Respondent.

[50] On the issue of varying names on the academic documents, Counsel for the 1st Respondent submitted that the 1st Respondent deposed that the names ABIB BUGA KHEMIS HAWADI, ABIBU A.B.K AWADI and, ABIBU BUGA KHEMIS AWADI are his names and they all refer to him and no one else. The 1st Respondent further deposed that he is a Muslim by faith and that in Islam, the same name can be called in various ways and that explains why he kept on interchanging his names. This evidence was corroborated by all his Muslim witnesses herein who deposed to the supplementary affidavits. Counsel relied on the Court of Appeal decision in ***Hashim Sulaiman versus Onega Robert (supra)***, in which the Court held that names which are phonetically equivalent cannot be interpreted as forgery or fraud. Counsel therefore submitted that the names ABIB and ABIBU on one side and AWADI and HAWADI on the other are phonetically similar and should be interpreted as such.

Counsel also submitted that the abbreviations in the names of the 1st Respondent were also well explained in evidence.

[51] On the issue of the deed poll, Counsel for the 1st Respondent submitted that whereas it is good to depone a deed poll to clarify such names, failure to do so is not fatal. Counsel submitted further that all the 1st Respondent needed to do was to show that he is the owner of the academic documents by calling witnesses to identify or link him to the documents which he has ably done in this petition. Counsel relied on the decisions in ***Election Petition Appeal No. 0001 Of 2021, Hashim Sulaiman Versus Onega Robert; Election Petition Appeal No. 6 of 2021, Akol Hellen Odeke Versus Okodel Umar; Election Petition Appeal No. 088 of 2016, Magombe Vincent Versus Electoral Commission & Mujasi Masaba Bernard Elly; and Election Petition Appeal No. 0002 of 2021, Muheirwe Daniel Versus Twinomujuni Francis Kazini & Electoral Commission.***

[52] Counsel further submitted that, even then, what the 1st Respondent did was not change of name that warranted a deed poll. He simply interchanged the order of his names and abbreviated some. Counsel relied on *Section 36 of the Registration of Persons Act* and on the recent decision of **Justice Ssekana Musa** in ***Muheirwe Daniel versus Twinomujuni Francis Kazini & Another*** and another decision of **Justice Christopher Madrama** in the ***Hashim Sulaiman case (supra)*** which interpreted and explained that the purpose of the said section is to correct and update the national register of persons with NIRA and not for this kind of case.

[53] Counsel also submitted that, the foregoing notwithstanding, the 1st Respondent actually deponed to a deed poll before the Grade one magistrate of Moyo and gave a copy to the 2nd Respondent during his nomination except that by the time of his nomination the same was not registered with URSB and or gazetted. The 1st Respondent further deponed that he eventually registered and gazetted the deed poll after the elections. Counsel argued that the case of ***Serunjogi James Mukiibi versus Lule Umar Mawuya EP Appeal No. 15 Of 2006*** was distinguishable from the instant case and prayed that the court finds no merit in this ground.

[54] On the issue of the 1st Respondent's age, Counsel cited *Section 12 of the Local Governments Act* which provides that the required minimum age of an LC5 Chairperson is 18 years. Counsel submitted that the 1st Respondent averred in paragraph 21 of his affidavit in support of the answer to the petition that he was born in 1974 not 1981. This meant that he was around 47 years old and that he qualified for the office. Counsel also pointed out that the 1st Respondent averred in paragraphs 21-23 of his affidavit that the appearance of his date of birth as 1981 on his national ID was an error made by NIRA for which he deponed to an affidavit that was admitted as DE9 to correct the error. Counsel concluded that the Petitioners' argument on age does not have any merit and the same ought to be rejected by the Court.

[55] On the alleged inconsistencies in the evidence adduced by the 1st Respondent, Counsel submitted that they are unable to see the inconsistencies complained of. Even if any existed, it is neither relevant nor does it go to the root of this case bearing in mind the ground of this

petition being the 1st Respondent's academic qualifications. In all, Counsel invited the Court to find that the 1st Respondent was duly qualified for nomination and election as LC5 Chairperson of Obongi District.

Submissions by Counsel for 2nd Respondent

[56] It was submitted by Counsel for the 2nd Respondent that the Petitioners' contention herein purely relates to inconsistencies or variations in the 1st Respondent's names on the submitted nomination documents as against the names in the academic documents and the National Identity Card. Counsel submitted that the Petitioners are relying on the said variation in the 1st Respondent's names to challenge the outcome of the Local Council 5 Chairperson of Obongi District Local Government elections. Counsel submitted that to do so successfully, the Petitioners are under duty to prove three things in their petition, namely that; the names in the Academic documents or nomination documents presented by the 1st Respondent do not belong to him and that there is a person genuinely owning and going by the said names used by the 1st Respondent; that the academic documents presented for nominations were not genuine; and that the names were changed fraudulently and the 1st Respondent benefited from the fraud.

[57] Counsel for the 2nd Respondent submitted that the 1st Respondent at the time of nomination and elections was in possession of the requisite academic qualifications which he presented during nomination and it was on that basis that the agent of the 2nd Respondent duly nominated him for election as Local Council 5 Chairperson of Obongi District Local Government. Counsel submitted that despite the variation in the names

of the 1st Respondent, there is still uncontroverted evidence that the identity of the 1st Respondent is the same, he genuinely owns all those academic documents and was physically recognized and identified by the Petitioners and voters during nomination and elections of Local Council 5 Chairperson of Obongi District Local Government.

[58] Counsel further submitted that there was no credible evidence adduced by the Petitioners to prove that the said academic documents do not belong to the 1st Respondent but just a mere belief and suspicion that the papers could not have existed or belonged to a different person. Counsel noted that no evidence was adduced by the Petitioners showing that there was another person genuinely going by the said same names who submitted the said nomination papers other than the 1st Respondent. Counsel argued that in the absence of any credible evidence by the Petitioners of any other person claiming the said set of names and claiming to have been nominated as such, other than the 1st Respondent, the Petitioners' contention is, at best, merely trivial to warrant the nullification of the 1st Respondents nomination and election. Counsel referred to the case of ***Baleke Kayiira Peter-v-Electoral Commission and Kakoza Joseph Election Petition No 004/2016***.

[59] As to whether the academic documents presented by the 1st Respondent were genuine, Counsel submitted that it was not in doubt that the 1st Respondent presented before the Returning Officer of the 2nd Respondent a letter of verification of results issued by UNEB showing that he sat for "A" level in 1996 at Muni Girls Secondary School with Examination Centre No. UO420 and "O" level in 1992 at Obongi Secondary School with Examination Centre No. UO480 as shown in

Exhibits PEX 16, PEX 17, DEX 15, and DEX 16. Counsel also submitted that several correspondences were written to UNEB by Alaka & Co. Advocates, Mucheka & Co. Advocates, Okurut, Magara & Co. Advocates, Kazimoto, Kiwa & Co. Advocates to confirm the authenticity of the academic documents presented by the 1st Respondent for nomination and UNEB, in a very consistent reply to all those correspondences, confirmed that the academic documents presented were genuine and authentic and they belong to the person whose name appears on them as seen in Exhibits PEX 26, PEX 27, PEX 28, PEX 30, PEX 31, PEX 32, DEX 12, DEX 13.

[60] Counsel cited the case of ***Abdul Balangira Nakendo -v- Patrick Mwondha, Supreme Court Election Petition No. 9 of 2007*** in which it was held that ***“the evidential burden of proving authenticity of an impugned certificate lies on the person relying on that certificate”***. Counsel argued that there was credible evidence before the court showing that the academic documents presented by the 1st Respondent for nomination and election were genuine and all the names that appear in those documents belong to the 1st Respondent.

[61] On whether the 1st Respondent followed the legal requirements under *Registration of persons Act 2015*, Counsel submitted that the said Act only applied with regard to names that had already been registered in accordance with the Act and there was no proof from the Petitioners that the names of the 1st Respondent were registered under the Registration of Persons Act and hence qualifies to follow the legal requirements under the Act. Counsel submitted that where, like in the instant case, the 1st Respondent’s name was not registered in accordance with Registration of

Persons Act, he is at liberty to change his names without recourse to the provisions of Registration of Persons Act.

[62] Counsel for the Petitioners also filed submissions in rejoinder which I have also taken into consideration.

Court determination

[63] The consolidated petitions were both premised on the ground of lack of the minimum academic qualification on the part of the 1st Respondent. It is not in dispute that the required qualification for a candidate standing for election as Chairperson Local Council V (LC V) is a minimum formal education of Advanced Level Standard or its equivalent. This is well laid out by the provisions under *Article 183(2)(a) and Article 80(1)(c) of the Constitution of Republic of Uganda; Section 4(1)(c) of the Parliamentary Elections Act, 2005 as amended; and Sections 12(2)(a) and 111(3)(e) of the Local Government Act Cap 243.*

[64] It is clear on the evidence before the Court that the 1st Respondent presented himself for nomination for the office of Chairperson LC V in the name of “Abibu Buga Khemis Awadi”. He presented two sets of academic documents; one being the Uganda Certificate of Education (UCE) in the name “Abib Buga Khemis Hawadi” and the other being the Uganda Advanced Certificate of Education (UACE) in the name “Abibu A.B.K Hawadi”. It comes out in evidence that the name in which the 1st Respondent was nominated is also the name that appears on his National Identity Card (National ID) and on the voter’s register.

[65] As such, the thrust of the dispute in the consolidated petitions is whether the names on the academic qualifications belong to the Respondent as one and the same person. If so, whether the variation in the said names amounted to change of names on the part of the 1st Respondent which was required to be in compliance with the provisions of the Registration of Persons Act 2015. It is the case for the Petitioners that the academic documents presented by the 1st Respondent at nomination did not belong to the 1st Respondent; that the 1st Respondent is impersonating someone else; that in case all the various names refer to the 1st Respondent, the latter did not follow the law that govern change of names; and lastly, that the disparity in the 1st Respondent's age as stated on his National ID as against his nomination papers provided further proof that the 1st Respondent was not the owner of the academic documents in issue.

[66] It appears to me that there is no question on the authenticity of the academic documents presented by the 1st Respondent. No claim was made or established by the Petitioners that the said qualifications were not genuine qualifications duly issued by the National Examinations Board (UNEB). The issue is whether the names on those qualifications refer to the 1st Respondent or to someone else. It is therefore principally a question of the 1st Respondent's identity. It was argued for the Petitioners that in the letters verifying the academic papers, UNEB clearly disclaimed identity of the 1st Respondent as the owner of the said academic papers. It was further argued that 2 witnesses produced by the Petitioners, namely, Draru Grace Manaseh and Goro Grace, gave evidence discounting the 1st Respondent's identity; which evidence was

not controverted by the 1st Respondent since he chose not to cross examine the two witnesses.

[67] Let me first point out that the evidence of Draru Grace Manaseh was expunged from the record under the first preliminary objection. It is therefore not part of the evidence before the Court. Secondly, the disclaimer by UNEB and the evidence of Goro Grace requires some examination by the Court. The disclaimer by UNEB appears on the respective letters of verification of results issued by UNEB on request in respect of a particular candidate. Examples are the letters on record as PE 17 and PE 27. In the letter, after confirming that the named candidate sat for the named examinations and obtained the indicated results, the letter bears an inscription at the bottom that “The Board is not responsible for the identity of the candidate”. This is a standard disclaimer on all letters of verification of results issued by UNEB. I will return to this later for the meaning and import of this disclaimer.

[68] On the other hand, the evidence of Goro Grace in her affidavit filed on 30th August 2021 is, in part, as follows;

- “2. That I have been approached by Mr. MAIKU DIDI PAUL through his lawyers ... for purpose of answering the question whether Mr. ABIBU BUGA KHEMIS AWADI ... is our former student and if he attended and sat for his Uganda Advanced Certificate of Education at Muni Girls Secondary School.*
- 3. That I joined Muni Girls Secondary School in the year 1994 and completed the Uganda Advanced Level of Education and sat for the exam in 1996 at the said school ...*
- 4. That I wish to state that Muni Girls Secondary School has always been a girls’ school and when we sat for the ... UACE exams at the school in the*

year 1996, I did not see the 1st Respondent or any other male students from Arua Academy School do the exam together with us.

- 5. That I also wish to state that to the best of my knowledge Muni Girls Secondary School is a girls' school that does not admit boys to study or do exams at Muni Girls SS as a center.*
- 6. That I also wish to state that to the best of my knowledge no students from other schools particularly Arua Academy Secondary School sat for the (UACE) at Muni Girls Secondary School or near the church in the year 1996 as alleged by the Respondent ...”*

[69] In my view, the two above pieces of evidence do not so much constitute evidence discounting identity of the 1st Respondent. The above highlighted disclaimer by UNEB is not evidence confirming that the academic papers do not belong to the candidate named therein. It is evidence to the effect that the Board cannot attach face to the names in the academic papers. It is understandable, in my view, that once UNEB has verified the authenticity of the results on a particular certificate, that verification is in respect of the names of the candidate as indicated on the certificate and not about who that candidate is in person. That, in my view is the import of the disclaimer. The evidence proving the identity of the named candidate has to come from somewhere else and not from the issuing authority of the academic papers. It is for that reason that I find that this piece of evidence cannot be used to discount the 1st Respondent's identity as the owner of the academic documents herein in issue.

[70] Similarly, the evidence of Goro Grace is not so much to prove that someone else other than the 1st Respondent sat for Exams at Muni Girls SS. The evidence appears to be so much hinged on whether any male

students, particularly the 1st Respondent and his witnesses, studied and/or sat for their examinations at Muni Girls SS. It would be evidence of identification if it was agreed that some male students sat for exams at the Centre and the doubt was as to whether the 1st Respondent was among the students who sat at the Centre. But as it is, the question here is whether any male students sat for exams at the Centre. Once it is ascertained that some male students sat for exams at Muni Girls SS, no further evidence was led by the Petitioners to prove that the 1st Respondent was not one of those students. The evidence of Goro Grace falls short of proving this aspect of the 1st Respondent's identity. The same applies to the evidence in the letter by Draru Grace Manaseh (PE 23 on record). It is for that reason that I have found that the said evidence is not so much about discounting the 1st Respondent's identity in relation to the academic papers in issue.

[71] In the verification letters issued by UNEB, one attached to the 1st Petitioner's petition (and marked in Court as PE 27) and another attached to the 1st Respondent's affidavit accompanying the Answer to the Petition (Annexure A4), UNEB confirms that the candidate under the name "Abibu A.B.K Hawadi" sat for the UACE Examinations and obtained the indicated results. The Centre Name indicated on the letter/certificate is "Muni Girls Secondary School". This constitutes evidence by UNEB, the issuing authority, that some male students sat for exams at Muni Girls SS. This evidence was not controverted by the Petitioners. There is no proof, let alone any evidence, challenging the authenticity of the certificates and letters of verification issued by UNEB on the ground either that they were not issued by UNEB or that they do not state the correct information.

[72] The above evidence is simply contradicted by the evidence of one witness of the Petitioners (Goro Grace) and a letter from the Head Teacher of Muni Girls SS (Draru Grace Manaseh) that is attached to the supplementary affidavit sworn by the 2nd Petitioner. As indicated earlier on, although the said Head Teacher's affidavit was expunged from the record, her letter had been introduced in evidence by the 2nd Petitioner. The Petitioners are therefore able to rely on the said letter and the same shall be evaluated for any evidential weight it bears.

[73] The fact established through the verification letters and certificates issued by UNEB to the effect that some male students sat for exams at Muni Girls SS is further corroborated by evidence adduced by a number of witnesses led by the 1st Respondent through supplementary affidavits that are on record. This evidence is by witnesses who assert that they studied with the 1st Respondent at Arua Academy SS and sat for exams at Muni Girls SS. These include Tabusa Musa Ismail, Anguyo A. Marjan and Badru Alahai. The 1st Respondent also led evidence of Adomati Dickson, the Proprietor and Director of Arua Academy SS who confirmed that at the time, Arua Academy had no UNEB Centre and his students were assigned by UNEB to four different schools with Centres including Muni Girls SS.

[74] Further evidence was obtained from Adaku Edward who was, at the time of testifying, a School Bursar at Arua Academy SS. The witness identified the 1st Respondent as one of the students who sat for UACE Exams at Arua Academy SS in 1996 at the four different Centres to which the students of the school were allocated including Muni Girls SS.

The deponent also made a number of averments that are crucial to this case, namely that; a school Centre number does not belong to a school but to UNEB and UNEB has the discretion to withdraw or allocate a center number in regard to a given school; UNEB also has discretion to allocate students to a school that has a center for sitting of examinations regardless of the sex of the students studying in such a school; and that is why in 1996, the 1st Respondent, among other male students, were allocated to Muni Girls SS.

[75] It is important to note that the above evidence was not controverted or in any way challenged by the Petitioner. Even when three of the above named witnesses, namely, Tabusa Musa Ismail, Anguyo A. Marjan and Badru Alahai were cross examined, no challenge was established as to whether or not they studied at Arua Academy and sat for Exams at Muni Girls. The focus of the cross examination appears to have been on whether they had attended school and sat for UACE Examinations together with the 1st Respondent. It should be noted that each of these witnesses attached a copy of their respective UACE Certificates which indicate Muni Girls SS as the School under which they sat for their exams. I find this conclusive evidence capable of establishing that the person named in the UACE Certificate as “Abibu A.B.K Hawadi” sat for his UACE Examinations at Muni Girls SS. The claim by the Petitioners that no male students sat for their examinations under the Centre for Muni Girls SS has not been made out and it fails. The question as to whether the person named in the UACE Certificate is the 1st Respondent is subject of the consideration to follow.

[76] It follows therefore that upon confirming that the person named in the UACE Certificate sat for the said examinations and obtained the results indicated on the Certificate, the Court would then proceed to deal with the question of identity. The question therefore is whether the 1st Respondent was one of the male students who sat for the said year's examinations under the Centre for Muni Girls SS. This would then lead to the question as to whether the names "Abibu A.B.K Hawadi" and "Abibu Buga Khemis Awadi" refer to one and the same person. The Court also has to investigate whether the name "Abib Buga Khemis Hawadi" that appear on the UCE Certificate refer to the 1st Respondent as one and the same person.

[77] The Petitioners' evidence disputing the 1st Respondent's identity was based on the variation in the said names and the disparity in his age as stated on the National ID as against the statement in his nomination papers. The 1st Respondent led evidence explaining the anomalies and asserting that he was one and the same person. In paragraph 13 of the 1st Respondent's affidavit in support of the answer to the petition (EP 005/2021), the 1st Respondent avers that all the said names refer to him and not any other person or persons. In paragraph 20 of the affidavit in support of the answer to the petition (EP 006/2021), the 1st Respondent avers that he knows of no one else that claims the said names which exclusively belong to him. I have not seen any evidence by the Petitioners that negatives these averments.

[78] In paragraph 18 of the 1st Respondent's affidavit in support of the answer to the petition in EP 006/2021, the 1st Respondent further explained that in the Muslim faith, the name "Abibu" is at times written

as “Habibu” or “Abib”; and the name “Awadi” is sometimes written as “Hawadi”. It is also clear to me that written either way, the names are phonetically similar. I would therefore agree that the variation in spelling in the said names does not amount to change of name. Like was held by **Justice Madrama** in ***Hashim Sulaiman Versus Onega Robert, Election Petition Appeal No. 0001 Of 2021***, such a variation does not necessarily disprove the identity of the owner of such documents in absence of conclusive evidence disproving such identity.

[79] In paragraph 5 of the 1st Respondent’s supplementary affidavit filed on 23rd August 2021, the 1st Respondent explained the initials “A.B.K” as they appear on his UACE Certificate and also explained the error by his advocate in the affidavit in support of the answer to the petition in which it was stated that the letter “A” in the abbreviation meant “Abib” whereas it stood for the name “Adebuga”. In my view, this explanation is not out of place. It is consistent with the other evidence on record. I have found no reason to doubt it and I have thus found it believable. In ***Magombe Vincent vs The Electoral Commission & Mujasi Masaba Bernard Elly, Election Petition Appeal No. 088 of 2016***, it was held that usage of abbreviations and interchanging of order of names does not amount to change of name. Merely pointing out disparities arising out of abbreviations or addition of a prefix were not sufficient to discharge the burden on the appellant to prove the alleged claims to the satisfaction of the court. The Court of Appeal also took judicial notice of the fact that usage of a father’s name alongside one’s names is a widespread practice and that alone cannot amount to change of name.

[80] The 1st Respondent also led evidence through a number of supplementary affidavits in support of his answer to the petition in which assertions were made towards proof of his identity. It should be noted, for the record, that these affidavits were first filed but were found to have defects related to commissioning. It was therefore ordered by the Court that the said affidavits be re-commissioned. I will therefore refer to the dates on which the re-commissioned affidavits were filed. The affidavits containing the relevant evidence of identification were deposed by the following persons;

- **Lagu Samuel** in an affidavit filed on 3rd September 2021, stated that he is a Town Clerk for Adjumani District, a close friend to the 1st Respondent and former schoolmate at Obongi SSS between 1989 and 1992 (O' Level). In para 8 of his affidavit, the deponent states that while at Obongi SSS, the 1st Respondent was *"variously called Abibu (sometimes pronounced as Abib) Buga Khemis Awadi (sometimes pronounced as Hawadi) though he formally registered with the school in the name, Abib Buga Khemis Hawadi"*. The deponent further stated that after O' Level, the 1st Respondent joined Arua Academy SS for his A' Level, while the deponent went to Mukono Town Academy. He attached a copy of his UCE Certificate as proof of his averments.
- Similar averments are also made by **Odiambo D.G Rembe**, in an affidavit filed on 3rd September 2021 who stated that he is currently a teacher by profession and an Acting Head Teacher for Ombechi Primary school in Yumbe District. He stated that he was also a school mate at Obongi SSS at the same time and was a close friend of the 1st Respondent.

- **Buga Ismail**, in an affidavit filed on 3rd September 2021, stated that he is currently a teacher at Obongi SSS. He confirmed that the 1st Respondent attended his O' Level at the school between 1989 and 1992 when he sat for his UCE. He attached a list of all the students who sat for UCE at the school in 1992 with the 1st Respondent. At the time he appeared in Court for cross examination, he was serving as the Director of Studies at Obongi SSS.
- **Adomati Dickson**, in an affidavit filed on 3rd September 2021, stated that he is a lawyer by profession but currently working as the Deputy RDC for Arua City and the Proprietor and Director of Arua Academy SS. He confirmed that the 1st Respondent was his former student for his A' Level. He explained that the school then had no UNEB Centre and the students were distributed in four schools among which was Muni Girls SS where the 1st Respondent sat for his exams. The deponent attached a list of all the students of Arua Academy that sat for UACE Exams in 1996 which includes the 1st Respondent. This is crucial evidence of identification from the proprietor of the 1st Respondent's former school. The same was not challenged by the Petitioner in any way.
- **Adaku Edward**, in an affidavit filed on 3rd September 2021, stated that he is an accountant by profession and currently working as the School Bursar for Arua Academy SS. He identified the 1st Respondent as one of the students who sat for UACE Exams at Arua Academy SS in 1996 at the four different Centres to which the students of the school were allocated including Muni Girls SS.
- **Tabusa Musa Ismail**, in an affidavit filed on 3rd September 2021, stated that he is currently a Head Teacher at Lodonga Seed Secondary School in Yumbe District. He studied with the 1st

Respondent at Arua Academy SS and sat for UACE Exams at the same Centre with the 1st Respondent (Muni Girls SS). He shared a similar subject with the 1st Respondent. He also testified to the variations in the 1st Respondent's names including the abbreviations. A number of other affidavits to the same effect were sworn by the 1st Respondent's contemporaries, namely, **Anguyo A. Marjan**, in an affidavit filed on 3rd September 2021; and **Badru Alahai** in an affidavit filed on 3rd September 2021.

- **Moga Siliman Yassin**, in an affidavit filed on 3rd September 2021, stated that he is a paternal uncle to the 1st Respondent. He testified as to the 1st Respondent's identity starting from his date of birth, through the variations in his names to his academic life.

[81] It was claimed by the Petitioners that the supplementary affidavits deposed to on behalf of the 1st Respondent, as above summarized, raised new matters and that the facts raised therein were an afterthought. This claim is found in the 2nd Petitioner's supplementary affidavit in answer to the supplementary affidavits of the 1st Respondent filed on 30th August 2021 and the submissions of the Petitioners' Counsel. I do not find this contention correct since it is clear to me that the averments in the said supplementary affidavits were made in answer to the dispute that was cast on the 1st Respondent's identity and the variations in his names. The two aspects being answered are the basis of the grounds set out in the petitions. Adducing additional evidence in answer to such grounds as disclosed both in the petitions and the answers to the petitions cannot amount to raising new matters or to deposing to facts based on an afterthought. In my view, the averments are central to the gist of the dispute before the Court.

[82] It was further submitted by Counsel for the Petitioners that the witnesses of the 1st Respondent that were cross examined gave inconsistent evidence which discredits the 1st Respondent's evidence and invited the Court not to place any weight on the evidence adduced by the named witnesses. The witnesses that were subjected to cross examination included the 1st Respondent himself, Moga Siliman Yassin, Anguyo Marjin, Badru Alahai, Tabula Musa Ismail and Buga Ismail. Counsel for the Petitioners pointed out a number of aspects disclosing inconsistencies and contradictions in the evidence adduced by the said witnesses. For the 1st Respondent, Counsel submitted in reply that the alleged inconsistencies were minor and immaterial to the question before the Court.

[83] Looking at the highlighted inconsistencies, I am able to discern that most of them can be accounted for on basis of passage of time and faded memories; rather than deliberate untruthfulness. The period between 1995/96 is over 25 years now. It is forgivable for any ordinary memory not to recall particular details of what one studied in school 25 years ago; for example, the number of papers in a given subject, the name of teachers, etc. Some of the alleged inconsistencies are actually not inconsistencies. For instance, the evidence regarding when the 1st Respondent and some of the witnesses joined S.5 at Arua Academy. It is stated that while some stated 1994, others stated 1995. It is a fact that can be judicially noticed by the Court that around that time, the academic year started in August of the year and ended in March of the following year. As such, one did S.5 between August 1994 and March 1995 and S.6 in August 1995 to March 1996. The disparity in evidence

concerning such years therefore do not amount to any material inconsistency.

[84] Similarly, Counsel for the Petitioners also pointed out that there was an inconsistency regarding the place of sitting for examinations by the students of Arua Academy SS; that is, between Muni Girls SS and Muni Church of Uganda premises. The evidence which I find consistent is that the students of Arua Academy SS sat under the Centre of Muni Girls SS but physically sat for the exams at Muni Church of Uganda. This only means that although they sat under Muni Girls SSS, they did not physically sit within the premises of Muni Girls SS. I do not find any contradiction in this evidence. The argument that the 1st Respondent should have led evidence from the Church to prove that they permitted Arua Academy students to sit their exams at the church is misguided. This is because the 1st Respondent bore no burden to prove any such assertions. His duty was to lead credible evidence in response to the Petitioners' claims. The duty lies on the Petitioners to prove their assertions. It is the allegation of the Petitioners that the 1st Respondent did not sit any UACE Exams or that if he did, he did not sit for them at either Muni Girls SS or at the Church premises. As such, the duty lay on the Petitioners, and not on the 1st Respondent, to prove those assertions.

[85] Regarding the issue of the discrepancy in the age of the 1st Respondent, Counsel for the Petitioners vehemently submitted that this Court should take the same line on the subject as was taken by the Court of Appeal in the case of ***Serunjogi James Mukiibi vs Lule Umar Mawiya, EPA No. 15 of 2016***. A reading of the above decision discloses that the findings in the case were based on the particular facts of that

case. After reviewing the evidence before the court, the court found that in that case, ***“... the change of names and the explanation given by the appellant was contradictory ... The contradictions in the appellant’s explanation were not minor and could not be glossed over. They were deliberate lies that were intended to suit the circumstances of the petition. The trial Judge was therefore right to reject the testimony of the appellant and those of his witnesses...”***

[86] As can be seen from the above excerpt, the finding of the Court of Appeal in the ***Serunjogi case*** was against the background of inconsistent and contradictory evidence of the appellant in that case; which the court actually classified as deliberate lies. As such, the Court’s finding regarding the discrepancy in the evidence concerning the appellant’s age was premised on absence of any credible evidence supporting or corroborating the appellant’s explanations. Where the Court was already convinced that the appellant had told deliberate lies, it could not be expected that the same court would treat lightly inconsistencies in the same appellant’s evidence regarding his age and any explanations he had made thereby. It is therefore clear to me that the finding of the court does not amount to a general principle of the law to the effect that a discrepancy in evidence relating to age cannot be explained. It was a finding of fact that in the circumstances of that case, the discrepancy was such that it could not be explained. The two situations are different and, clearly, the facts and circumstances of the present case are different.

[87] To the contrary, in the present case, the 1st Respondent's explanation regarding the discrepancy in the evidence concerning his age is premised on other credible and cogent evidence establishing his identity. The Court has satisfactory evidence before it showing that despite the variation in the names on the various documents before the Court, all the names belonged to one and the same person, that is the 1st Respondent. Against the background of such evidence, the Court is in position to evaluate this piece of evidence and come to a conclusion that the inconsistency in the 1st Respondent's evidence regarding his age is minor and sufficiently explained by the 1st Respondent. The relevance of the 1st Respondent's age in as far as this case is concerned was to cast a doubt on the identity of the 1st Respondent. Where such identity is sufficiently established, it becomes unnecessary for the Court to attach any due weight on the disparity in the evidence concerning the 1st Respondent's age. In other words, such disparity alone cannot negative the other available evidence establishing the identity of the 1st Respondent. This is especially so where the discrepancy is explained, like in the instant case.

[88] It follows therefore that I have not found any material inconsistency in the evidence led by the 1st Respondent in a bid to establish his identity. As I have already stated herein above, this evidence has not been controverted by the Petitioners. Neither did the Petitioners lead any cogent and credible evidence to the contrary. I have, therefore, found the 1st Respondent's evidence reliable and I have believed it. There is sufficient evidence to make the Court believe that the person in the names of "Abibu A.B.K Hawadi" that sat for UACE Examinations at Muni Girls SS in 1996 and "Abib Buga Khemis Hawadi" that sat for UCE

Examinations at Obongi SSS in 1992 is the same as “Abibu Buga Khemis Awadi”, the 1st Respondent.

[89] Consequently, I have not found any credible evidence from the Petitioners to prove that the 1st Respondent was not the owner of the names that variously appear on the academic certificates in issue. Neither have I seen any evidence implicating the 1st Respondent for impersonating anyone else that has a claim on those names. Similarly, the Petitioners have not led any evidence to prove the bare allegation that the 1st Respondent may have forged the said academic papers including the letters of verification of results from UNEB. Both Petitioners were asked, during cross examination, as to whether any of them knew of any other person who claimed the names in issue and both answered in the negative. They neither knew of any nor could they produce any such other person claiming those names.

[90] Regarding the formalities for change of name, it was argued for the Petitioners that before the 1st Respondent changed his name from “Abib Buga Khemis Hawadi” that appear on his UCE certificate to “Abibu A.B.K Hawadi” that appears on his UACE certificate, the 1st Respondent ought to have complied with the provisions under Section 12 of the Births and Deaths Registration Act which was the law in force then. It was, however, not shown by the Petitioners that the name “Abib Buga Khemis Hawadi” had been entered on the said register so as to necessitate an amendment to the said register. The same applies to the change from “Abibu A.B.K Hawadi” which appears on the UACE certificate to “Abibu Buga Khemis Awadi” in which name the 1st Respondent was nominated and which name appeared on the voter’s register. In either case, under the law,

there was no strict requirement on the part of the 1st Respondent to swear a deed poll.

[91] The first question is whether the variation in the names attributed to the 1st Respondent amounted to change of name. The second question is whether the 1st Respondent was required to comply with the provisions of the Births and Deaths Registration Act during the period before 2015 and with the Registration of Persons Act during the period after 2015. It is true that change of a name is currently governed by Section 36 of the Registration of Persons Act, 2015 which provision is *pari materia* with Section 12 of the Births and Deaths Registration Act Cap 309, an Act that was repealed by the Registration of Persons Act, under Section 86 (1) thereof.

[92] Under the Registration of Persons Act, just as it was under the Births and Deaths Registration Act, the requirement for taking formal steps for change of names was occasioned by the need to amend the register to effect the change. This presupposes that such a name must have been on the register in the first place. As such, the requirement to make and gazette a deed poll was only mandatory where the name being changed had been entered on the register and a change thereof had also to be entered by way of amendment of the register. Where the name sought to be changed had not been entered on the register, a change in the person's name could sufficiently be explained by any other means and not necessarily by a deed poll.

[93] This position is fortified by a number of decisions passed by the Court of Appeal. In ***Namujju Dionizia Cissy & EC vs Martin Kizito***

Sserwanga, Election Petition Appeal No. 62 of 2016, the Court of Appeal, faced with a case with somewhat similar variation in names, had this to say:

“The 1st Appellant had never been registered in the national registration of births until the year 2015, when the Births and Deaths Registration Act, Cap 309, had already been repealed and replaced by the Registration of Persons Act, 2015 that came into effect on 26th March 2015. Consequently, it was erroneous to require the 1st Appellant to fulfil the requirements of a repealed law. As a further consequence, a deed poll was therefore not necessary to explain the changes in the 1st Appellant’s names from Gusaba Dionizia at baptism, to Namujju Dionizia within the academic documents and finally Namujju Cissy Dionizia as per election-related documents.”

[94] In **Ssembatya Edward Ndawula vs Alfred Muwanga, Election Petition Appeal No. 34 of 2016**, the Court of Appeal also held that for one to register a change of name, one should have, in the first place, registered it under the Births and Deaths Registration Act. The same holding was made in **Ninsiima Grace vs Azairwe Dorothy Nshaija Kabaritsya & EC, Election Petition Appeal No. 5 of 2016**.

[95] On the case before me, it has been established as a matter of fact that the names as they appear on the academic papers presented by the 1st Respondent for his nomination on the one hand and the name on the National ID, the voters’ register and the nomination papers on the other hand all belong to the 1st Respondent as one and the same person. As

such, when the 1st Respondent's name appeared as "Abibu A.B.K Hawadi" on the UACE Certificate, which varied from "Abib Buga Khemis Hawadi" that appeared on the UCE Certificate, the same did not amount to change of name and did not require making and gazetting a deed poll. Similarly, when the 1st Respondent registered his name on the National Register as "Abibu Buga Khemis Awadi," he did not have to do so by deed poll. The 1st Respondent obtained a National ID in his current name. The National ID is issued pursuant to the provisions of the Registration of Persons Act. This means that according to the Register compiled under the Registration of Persons Act, the name of the Petitioner on the register is "Abibu Buga Khemis Awadi".

[96] As I stated in ***Leku James Pilli vs Anyama Ben & 2 Others, Election Petition No. 004 of 2021 (Arua High Court)***, when the Registration of Persons Act came into force, by operation of the law, any name previously held by any person was deemed changed to the form in which it was entered on the Register under the Registration of Persons Act. Therefore, as from the year 2015 when the Act came into force, and the name of the 1st Respondent was entered thereon upon issue of his National ID, the 1st Petitioner obtained a right to the use of the name "Abibu Buga Khemis Awadi". At the same time, the Petitioner did not forfeit the rights he obtained under the names in which he obtained his academic documents. The Court of Appeal decision in ***Tinka Noreen vs Bigirwenkya M. Beatrice & Anor, Election Petition Appeal No. 007 of 2011*** underscores that point.

[97] In the present case, since the name "Abibu Buga Khemis Awadi" appears on the National ID, on the voter's register and on the nomination

papers of the 1st Respondent, there is no material variation that was capable of affecting the 1st Respondent's nomination. The variations in the academic papers have been well explained. Under the law, the person who is on the national register and the voters' register is the person who was nominated. This is the major concern of the law. As it has been highlighted by the Court of Appeal in a number of decisions, the Court takes a strict approach where the disparity is between the candidate's name on the nomination paper and the name on the voter's roll. While a disparity between the name on the academic documents and the name on the nomination paper or voter's roll may be explained, a disparity between the name on the nomination paper and that on the voter's roll is not envisaged as it would suggest that a candidate has unlawfully changed their name. The name on the voter's roll can only be changed in accordance with the procedure laid out in the Registration of Persons Act 2015. See: ***Wakayima Musoke Nsereko & Electoral Commission Versus Kasule Robert Sebunya, Election Petition Appeal No. 0050 and 102/2016*** and the analysis in **Lillian Tibatemwa-Ekirikubinza & Busingye Kabumba, Enhancing Electoral Justice in Uganda's Parliamentary Elections: The Search for Dependable Precedent, 2021 at page 11.**

[98] It follows, therefore, that once the 1st Respondent's name was entered in the National Register and on the Voter's register, the 1st Respondent obtained rights over the same and was in position to lawfully use the same. At the same time, he did not forfeit the rights he obtained through use of his previous names. It has already been established that all the names in issue belonged to the 1st Respondent as one and the

same person. As such, any variation in the said names would not have any material effect.

[99] In ***Mutembuli Yusuf vs Nagwomu Moses, Election Petition Appeal No. 43 of 2016***, the Court of Appeal held that writing of the same name in a different order cannot affect one's qualifications and that alone cannot constitute proof of invalidity. Further, addition of a name does not amount to change of a name. More evidence, beyond a discrepancy in names, must be adduced to prove that a person who sat and obtained certain academic qualifications is not the same person nominated for election. This decision was cited with approval by the Court of Appeal in ***Magombe Vincent vs The Electoral Commission & Mujasi Masaba Bernard Elly, Election Petition Appeal No. 088 of 2016***; ***Ninsiima Grace vs Azairwe Dorothy & EC, EPA No. 05 of 2016***; and ***Mulindwa Isaac Ssozi vs Lugudde Katwe Elizabeth, EPA No. 14 of 2016***.

[100] In the premises, I have found no evidence by the Petitioners to prove that the academic documents presented by the 1st Respondent at the time of nomination did not belong to the 1st Respondent. It has also not been proved by the Petitioners that the names that variously appear on the said academic documents did not refer to the 1st Respondent as one and the same person. Similarly, there is also no proof by the Petitioners that the 1st Respondent effected any name change that was not in compliance with the law. As such, the nomination and election of the 1st Respondent was in accordance with the law. There is also no proof that the 2nd Respondent acted in disregard of any law.

[101] That being the case, the Petitioners have not proved the grounds of the petitions to the Court's satisfaction. The 1st Respondent was duly qualified for nomination and election as LCV Chairperson for Obongi District. The 1st issue is accordingly answered in the affirmative.

Issue 2: What remedies are available to the parties?

[102] Given the above finding that the 1st Respondent was lawfully nominated and elected for the position of LC V Chairperson of Obongi District, the grounds of the petition have not been proved by the Petitioners. The consolidated petitions are accordingly dismissed. It is accordingly declared that the 1st Respondent, Abibu Buga Khemis Awadi, was duly elected by the people of Obongi District and declared by the 2nd Respondent as the Local Council V Chairperson for Obongi District. Under Section 27 of the Civil Procedure Act, costs follow the event unless otherwise, for good cause, it is ordered by the Court. In absence of any cause to the contrary, it is ordered that the costs of the consolidated petitions shall be paid to the Respondents by the Petitioners. The Petitioners shall meet the costs in two equal parts.

It is so ordered.

Dated, signed and delivered by email this 20th day of October, 2021 to the parties and their Counsel.



Boniface Wamala
JUDGE