

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
ELECTION APPEAL NUMBER 333 OF 2016

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5 **GIRULI DAVID LIVINGSTONE :::::::::::::::::::::::::::::::::: APPELLANT**

VERSUS

1. MULEKWA HERBERT

2. THE ELECTORAL COMMISSION :::::::::::::::::::::::::::::::::: RESPONDENT

10 **CORAM: HON. MR. JUSTICE RICHARD BUTEERA, JA**

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. LADY JUSTICE HELLEN OBURA, JA

JUDGMENT

15 This appeal arises from the Judgment of Hon. Lady Justice Margaret C. Oguli Oumo, J delivered on the 15th August, 2016 at Mbale High Court.

The facts are that on 24th February 2016, Local Council Five (LC 5) Chairperson elections were held in Sironko District. The appellant (an Independent candidate), the first respondent of the National Resistance
20 Movement (NRM) party and a one Nabende Amuramu James of the Forum for Democratic Change (FDC) party all participated as candidates in the said election. The first respondent garnered 28,066 votes while the appellant got 8,949 votes and Nabende Amuramu got 19,966 votes. The second respondent, Electoral Commission declared the first respondent as the
25 validly elected LC5 Chairperson of Sironko district on the 25th February 2016 and subsequently gazetted him on 25th April 2016 in the Uganda Gazette.

Though the appellant was satisfied with the final outcome of the results, he remained aggrieved because he alleged that the first respondent did not

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have the minimum academic qualifications ("A" Levels) under the provisions of Section 12(2)(a), 111(3)(e) of the Local Government Act as amended and Articles 80(1)(c) and 183(2)(a) of the Constitution of the Republic of Uganda, 1995 as amended) at the time of his election to run for
5 the position of LC5 Chairperson for Sironko District.

The appellant filed a petition in the High Court Mbale on 9th May 2016 challenging the academic qualifications of the first respondent. The Court upon hearing the evidence from both parties and their respective counsel dismissed the said petition on 16th August 2016 in favour of the first
10 respondent finding that he was indeed academically qualified at the time of his election and therefore validly elected as LC 5 Chairperson Sironko district. The appellant being dissatisfied with the said decision appealed to this Court on the following grounds:

1. *The learned trial Judge erred in law and fact when she held that the*
15 *1st respondent was possessed with the required academic qualification to be elected LC 5 Chairperson Sironko district.*
2. *The learned trial Judge erred in law and fact when she held that*
before 16th August 2001 Institute of Management and Technology
(IMSAT) was a recognized institution that could teach and award
20 *certificates and diplomas.*
3. *The learned trial Judge erred in law and fact when she failed to*
properly evaluate the evidence on record and thereby reached an
erroneous decision.

Representations

25 At the hearing of the appeal, Mr. Mutembuli Yusuf represented the appellant. Mr. Edmond Wakida and Mr. Fred Makadda represented the first respondent while Mr. Orono Emmanuel who held brief for Mr. Joseph Kyazze represented the second respondent.

Ground 1:

The learned trial Judge erred in law and fact when she held that the first respondent was possessed with the required academic qualification to be elected LC 5 Chairperson Sironko district.

5 The Appellant's case

Counsel for the appellant submitted that the only document (Annexure 'B') a statement of results, presented by the first respondent for nomination in lieu of a certificate is suspect.

First, counsel for the appellant contended that the document is not dated only showing that it is a document dated 2000; meaning and, or assuming that it was issued in 2000.

Secondly, the document only reflects the exam results of the first semester and does not include second semester results.

Counsel for the appellant pointed out that previously in 2010 when the first respondent had contested for the same position, he presented his documents to National Council for Higher Education (NCHE) for equating including a Bachelor of Public Administration from Islamic University in Uganda (IUIU) Degree of 2009, a Diploma from IMSAT in Public and Local Government Administration of 2002 and a Uganda Certificate of Education (UCE) of 1989. However, counsel argued that the first respondent did not submit the impugned 2000 certificate or statement of results from IMSAT; thus implying that the said certificate was non-existent.

Counsel further pointed out that during the nominations for the currently contested election, the first respondent instead presented a Diploma in Public and Local Government Administration of 2003 (Annexure A3 attached to the first respondent's answer to the petition). Furthermore, that the first respondent also presented a Degree for the year 2010, which was in contradiction to the earlier degree for 2009 that was presented in 2010.

It was also pointed out by counsel that the record shows that during cross-examination, the first respondent admitted that it was his first time to see the photocopy of the said Certificate in Public and Local Government Administration; which he claims he pursued and was granted by IMSAT in
5 2002.

Having pointed out these inconsistencies, counsel for the appellant submitted that a statement of results for only one semester cannot lead to the award of a certificate.

Counsel for the appellant attacked the evidence of the Academic Registrar of IMSAT Mr. Kalema Ismail for failing to explain the said inconsistencies in
10 the first respondent's Statement of Results and Certificate from IMSAT. Counsel submitted that the admission list of 2000 which was produced by the said witness carried no evidential weight since it was unsigned, not dated and was not stamped. Counsel also submitted that the Academic
15 Registrar conceded to not knowing much about the first respondent's admission into IMSAT because he had not come across any records of admission. It is the contention of counsel for the appellant that the Academic Registrar simply assumed that the results were for the year 2010 and yet the first respondent had testified in Court that he pursued his certificate for
20 one year in 2000 and 2001.

Counsel for the appellant therefore contested the authenticity of the certificate though he admitted that the contents therein are for the year 2000.

More importantly, counsel argued that there could not have been a
25 certificate awarded without the second semester results and that the subsequent Diploma & Degree issued to the first respondent are of no legal consequence since the said certificate was later used to pursue further academic qualifications.

Counsel concluded by submitting that it therefore follows that the first respondent did not have the requisite minimum academic qualifications for the office of Chairman LC 5 Sironko district and consequently invited this Court to allow this ground.

- 5 Counsel relied on the cases of **Mukasa Anthony Harris vs Dr. Bayiga Michael Philip Luluwe**, SC EPA No. 18/2007; **Abdul Bangirana Nakendo v Patrick Mwonda**, SC EPA No. 9/2007; **Muyanja Mbabali v Birekalewo Mathias Nsubuga**, COA EPA No. 36/2011; **Paul Mwiru vs Hon. Igeme Nathan Nabeta Samson** COA EPA No. 6/2011 to support his submissions.

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The First Respondent's case

Counsel for the first respondent specifically responded to three issues under ground number one namely; the verification process, the student's identity and the academic qualifications of the first respondent.

- 15 He pointed out that the first respondent had attained the following academic qualifications, namely;

- "O" level at Bugwere SS in 1989,

- A Certificate in Local and Public Administration at IMSAT awarded on 16th October 2002,

- 20 - A Diploma in Public and Local Administration at IMSAT awarded on 6th December 2003 and

- A Degree of Bachelor of Public Administration at the Islamic University in Uganda (IUIU) awarded on the 20th February 2010. Counsel made reference to the respective academic documents on record.

- 25 Counsel submitted that there is no evidence on record whatsoever that the said academic documents were forgeries or not authentic or that they were doctored.

Counsel then referred to the certificate of equivalence from National Council for Higher Education (NCHE) Serial No. NCHE EAR 10/53 obtained by the first respondent which he considered crucial and submitted that NCHE clarified that it made a typing error in the Certificate of Equivalence by stating the Diploma was awarded in 2002 instead of 2003. Counsel made further reference to the affidavit of one Farida Bukirwa which supported this assertion and argued that she was neither cross examined nor was her evidence challenged.

Counsel further argued that the verification process by NCHE was done in consultation with Uganda National Examinations Board (UNEB) which found the first respondent's academic qualifications to be authentic and no one from UNEB was called to contest and or deny the said academic documents.

Regarding the contested statement of results, counsel pointed to the evidence of the IMSAT Academic Registrar, Mr. Kalema Ismail who clarified that while the document referred to one semester, the said statement of results contained all the subjects for the two semesters with the results for each subject. He emphasized that Mr. Kalema was a credible person because he had been called by the Court as an independent witness.

In response to the issues of identity of the first respondent in the admission list produced by the IMSAT Academic Registrar, counsel submitted that there is evidence that the first respondent attended the said institution because he could recite the names of his former classmates and lecturers. He argued that had the first respondent not qualified from IMSAT, he would not have such useful information.

Counsel prayed that this Court should re-evaluate the evidence on record and find that there is no merit whatsoever.

The Second Respondent's case

Counsel for the second respondent relied on their conferencing notes. It is the case for the second respondent that since the first respondent presented at his nomination, his Degree of Bachelor of Public Administration obtained from Islamic University in Uganda which was a higher qualification to the requisite minimum "A" level, the contentions about irregularity of the Certificate and Diploma were unnecessary. He relied on the case of **Joy Kafura Kabatsi vs Hanifa Kawooya Bangirana EPA No. 25/2007 (SC)** cited in **Hon. Kipoi Tonny Nsubuga vs Ronny Waluku Wataka EPA No. 07/ 2011** which is to the effect that it is not enough for an opponent to argue that the higher qualification was based on something irregular. That it is also necessary to show that as a result of the allegations of irregularity, the institution awarding the higher qualification or any other qualification equivalent to "A" level, subsequently canceled or withdrew the award of the disputed qualification.

It was also submitted that the appellant in this regard had failed to discharge the burden of proof to show that the previous qualification obtained by the first respondent from IMSAT and or the first respondent's degree certificate had been recalled or canceled.

It is also the case of the second respondent that, the evidence of the Academic Registrar IMSAT explained the inconsistencies in the documentation and prayed that this ground be dismissed for lack of merit.

Duty of the Court

This is a first appeal. Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions (S.I. 13-10 hereinafter referred to as "the Rules of this Court") provides:

"... (1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

(a) *reappraise the evidence and draw inferences of fact; and in its discretion, for sufficient reason, take additional evidence...*

This provision was further interpreted in the case of **Mugema Peter V Mudiobole Abedi Nasser, Election Petition Appeal No. 30 of 2011** where it was held that:

10 *“... on first appeal, an appellant is entitled to have the appellate court’s own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to re-hear the case and to consider the materials before the trial judge. The appellate court must then make up its mind by carefully weighing and considering the evidence that was adduced at trial...”*

15 It is also necessary to bear in mind that in an election petition, the bulk of the evidence is adduced by affidavit. In this regard the Justices in the **Mugema Peter case (supra)** further held:

20 *“...The duty of a first appellate court to re-appraise or re-evaluate the evidence applies to both oral testimony of a witness as well as to affidavit evidence where the deponent is not cross-examined on the evidence in court, the issue of demeanor of a witness does not arise...the court ought to have cautioned itself that in re-appraising and re-evaluation the evidence adduced at trial, regard must be had to the fact that witnesses, though not necessarily always, tend to be partisan in supporting their candidates against the rivals in the election contest. This may result in deliberate false testimonies or exaggerations and to make the evidence adduced to be subjective. This calls upon court to have the authenticity of such evidence to be tested from an independent and neutral source by way of collaboration...”*

Burden and Standard of proof

30 The **Mugema Peter case (supra)** also sets out what the burden and standard of proof is in election petitions as follows:

5 *"...the burden of proof lies on the petitioner to prove the assertions in the election petition and the standard of proof required is proof on a balance of probabilities according to Section 61 (1) and (3) of the Parliamentary Elections Act...Though the standard of proof is set by the statute to be on a balance of probabilities, because of the public importance of an election petition, the facts in the petition must be proved to the satisfaction of the court. A petitioner has a duty to adduce credible and/or cogent evidence to prove the allegations to the stated standard of proof..."*

10 With the above position of the law in mind, we shall now proceed to resolve the grounds in this election appeal.

Decision of Court

This ground essentially contests the verification process of the first respondent's academic documents and admission to IMSAT at the time of his nomination for elective office.

15 From the onset, we agree with the trial Judge's holding, that the Diploma in Public and Local Government Administration obtained from IMSAT as well as the Degree of Bachelors of Public Administration from IUIU are not in contention. The appellant's first line of attack against the first respondent's academic qualifications is in relation to the Statements of Results pertaining to the Certificate in Public and Local Government Administration from
20 IMSAT as being incomplete.

The first respondent provided a Statement of Results from IMSAT (Annexure "C") in lieu of a Certificate in Public and Local Government Administration. This statement was criticized by counsel for the appellant
25 because it was not stamped, not dated (but reflects the year 2000) and that the document reflects only results of the first semester but does not include second semester results.

It is a well-established principle under **Section 63** of the **Evidence Act, Cap 6** that documentary evidence is proved by the document itself save for certain exceptions given under the Act.

In this regard, the trial Judge held that:

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

...

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

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

We agree with this finding.

15 First, in as much as there were some inconsistencies with the Statement of Results presented by the first respondent for nomination by the second respondent, these were ably and satisfactorily explained by the first respondent. We find the evidence of the Academic Registrar, IMSAT to be particularly crucial in resolving doubt as to the validity of the Statement as
20 he explained why the Statement of Results shows subjects and results under one semester. In the Registrar's view, this *"could have been an error for not dividing the papers"*.

Secondly we find that there was no further evidence from the appellant to prove that the said Statement of Results pertaining to the Certificate in
25 Public and Local Government Administration was forged, doctored or not authentic in anyway.

Regarding the Certificate of Completion of Formal Education of Advanced Level Standard or its Equivalent issued by NCHE (Annexure "D"), the contention is that the certificate from NCHE was obtained through
30 misrepresentation since it shows that the first respondent's Diploma from

IMSAT was obtained in 2002 yet the copy annexed to his reply shows that it was obtained in 2003.




In this regard the trial Judge held:

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

10 *In this instance, NCHE explained that all that it did was to certify a certificate it issued in 2011, as confirming the status of the 1st respondent's qualifications"*

However, this holding did not address the alleged contradiction pointed out by the appellant about the different years in the two documents. We make reference to the affidavit of Faridah S. Bukirwa in support of the 1st respondent's answer to the petition. This witness deponed the affidavit as
15 the Senior Legal and Corporate Affairs Officer, NCHE and her evidence (paras. 7-9 of affidavit) is to the effect that an error- was made by NCHE and that the correct year that the first respondent completed his Diploma in Public and Local Government Administration from IMSAT is 2003 and not
20 this discrepancy is explained by that evidence which was uncontroverted by the appellant.

In addressing the issue of identity of the first respondent having been a student at IMSAT, counsel for the appellant attacked the evidence of Mr. Kalema Ismail, Academic Registrar at IMSAT for producing an admission list
25 lacking in evidential value and furthermore for failing to produce the examination roll of 2000. We agree with the submission of counsel for the first respondent and find that besides the evidence of Mr. Kalema, the evidence given by the first respondent himself during cross-examination shows that he attended the said institution and knew his former classmates
30 and lecturers names. Here again the burden of proof to show that the first respondent did not attend IMSAT was not discharged.



Having re-evaluated the evidence on record as a whole, we find that the first respondent was academically qualified to be nominated and elected for the position of District Chairperson Sironko district under the law.

This ground accordingly fails.

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Ground 2:

The learned trial Judge erred in law and fact when she held that before 16th August 2001 Institute of Management and Technology (IMSAT) was a recognized institution that could teach and award certificates and diplomas.

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The Appellant's case

Counsel for the appellant invited this Court to look at Sections 23 & 24 of the Education Act which provided for the establishment of a private school and the requirement to apply for a license.

15 Counsel submitted that IMSAT was never issued with a license since there is no evidence on record to that effect. Instead, counsel pointed out that what was on record was a certificate of classification or registration issued on 16th August 2016 by the Ministry of Education.

Counsel referred to the evidence of the first respondent where he testified that IMSAT was registered in August 2001 at the time he was doing exams and this fact was corroborated by the Academic Registrar. Counsel also submitted that according to Section 130 of the Universities and other Tertiary Institutions Act, all other laws or Acts that governed tertiary institutions were repealed; meaning that the Education Act ceased to operate as at 6th April 2001 when The Universities and other Institutions Act, 2001 commenced.

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Counsel argued that the certificate of registration as issued by the Ministry of Education on 16th August 2001 was not legally recognized because it was no longer the mandate of Ministry of Education to issue such certificates pursuant to Section 131(1)(b) of the Universities and Other Tertiary Institutions Act, 2001.

Counsel further argued that if at all by 6th November 2001 IMSAT was in operation and had a license, there would be no need for them to get a certificate of classification from Ministry of Education since Section 131 of the Universities and Other Tertiary Institutions Act, 2001 required that once there was a provisional license, the institution would continue to operate until such an appropriate time as provided by the Act.

Counsel submitted that since the Certificate of Classification from the Ministry of Education was the only document/ evidence produced to show the existence of IMSAT and since no license was tendered in Court, Court should find that IMSAT is not a recognized institution that can teach and award certificates and diplomas.

Counsel prayed that this ground be allowed.

The First Respondent's case

Counsel for the first respondent submitted that in order to address this ground, this Court should look at the licensing process before the National Council for Higher Education (NCHE) came into existence.

Counsel elucidated that according to Sections 23, 24 and 25 of the now repealed Education Act, Cap 127, an application to run a school was divided in 5 stages which commenced with being approval under Section 23(1) of Cap 127, making an application to operate a school, issuance of a provisional license to operate a school for one school year after which an application for classification and registration would be made and finally, the certificate of

classification or registration would be issued. In that regard, he submitted, provisional licensing is different from classification and registration as one precedes the other. Counsel fortified his submissions by relying on the case of **Muyanja Mbabali vs Mathias Nsubuga, EPA No. 36 of 2011**.

- 5 In response to the arguments by the appellant's counsel that IMSAT should have obtained the Certificate of Classification from NCHE instead of the Ministry of Education, Mr. Wakida invited this Court to look at the transition provision under the Universities and Other Tertiary Institutions Act, 2001 and the case of **Benan Kissa Patrick vs Kapchemeiko Paul Machinjach &**
10 **Electoral Commission, EPA No. 24 of 2016** which he submitted is on all fours with the instant case and explains the transition from Ministry of Education to the operation of NCHE.

Counsel also cited Section 131 of the Universities and Other Tertiary Institutions Act, 2001 which he submitted puts the questions relating to
15 registration, recognition and operation of tertiary institutions to rest.

Counsel for the appellant prayed that the decision of the trial Judge be upheld and that this appeal be dismissed with costs since this appeal is devoid of merit.

20 **The Second Respondent's case**

Counsel for the second respondent submitted that the appellant's contention that the first respondent did not avail court with a copy of IMSAT's license is legally and factually flawed because the burden of proof was not on the first respondent to prove that IMSAT was licensed but on the
25 appellant to show otherwise which the appellant failed to do.

Counsel added that the appellant's counsel has over emphasized (albeit erroneously) the provisions of the Universities and Other Tertiary Institutions Act, 2001 as a basis for contention that IMSAT was not licensed

and duly registered. Counsel contended however that since IMSAT was established in 2000 the said Act cannot be applied retrospectively. He cited the case of **Mashate Magomu Peter vs Electoral Commission & anor, EPA No. 47 of 2017** in support of his submission.

- 5 Counsel contended that the issue of Ministry of Education ceasing to have powers to register institutions after 6th April 2001 when the Universities and Other Tertiary Institutions Act, 2001 commenced was never an issue that arose before the trial Judge.

Counsel proceeded to make similar submissions as those made by the 1st
10 respondent's counsel which we shall not reproduce here and prayed that this ground be dismissed.

Decision of Court

In order to resolve this ground, it is necessary to consider the transition or
15 window period when the mandate of licensing institutions of higher learning and tertiary institutions ceded from Ministry of Education to National Council of Higher Education (NCHE).

The crux of the appellant's contentions is that between 2000 to August 2001, IMSAT was operating illegally when the first respondent was admitted to
20 pursue a Certificate in Public and Local Government Administration and hence any award from an illegal entity is null and void.

We find on the evidence that contrary to the appellant's allegations, Annexure "F" (of the first respondent's Affidavit in Reply to the Petition) which is a Certificate of Registration and Classification dated 29th August
25 2001 shows that IMSAT was registered under Reg No. PTI/I/31, the date of classification being 16th August, 2001 and was classified as a Science and Technical Institute. This certificate was signed and issued by the Permanent Secretary, Mr. Y.K Nsubuga, Ministry of Education and Sports.

Counsel for the appellant contends that the Ministry of Education had no mandate to license institutions of higher learning and tertiary institutions following the coming into force of the Universities and Other Tertiary Institutions Act, 2001. In the case of **Benan Kissa Patrick v Kapchemeiko Paul Machinjach & anor**, EPA No. 63 of 2016 decided by this Court, which
5 counsel for the second respondent relied on, it was held that:

10 *"... The Universities and Other Tertiary Institutions Act, 2001 sets out under Part XXI transitional provisions, regulating the transition of institutions licensed and registered under the laws that were repealed by that Act to the new legal regime it established.*

Section 131 of that Act sets out the law regarding the status of institutions existing prior to the coming into force of that Act. The relevant parts stipulate as follows:

15 ***131 (1) A University or Tertiary Institution operating before the commencement of this Act shall-***

a) where it was established by Law, apply for Charter or Certificate of Classification within twelve months from the date of commencement;

20 ***b) where it was operating under a valid provisional license, continue to operate under that license and shall apply for a Charter or Certificate of Classification at the appropriate time as is provided under this Act***

25 ***c) where it was operating without a valid provisional license, apply for, a provisional license within twelve months from the date of commencement.***

(2) Where, at the commencement of this Act, a University or Tertiary institution had a valid provisional license, but had not started operating, the license shall expire and the University or Tertiary

Institution shall be required to apply for a provisional license under this Act.

5 *(3) The National Council shall, after the period of twelve months or such other period referred to under subsection (1), prepare and publish by legal notice in the Gazette the registers of all Universities and Tertiary Institutions registered and recognised at the time..."*

10 From the evidence on record, it is evident that IMSAT was in operation at the time the Act came into force in 2001 and so Section 131 (1) (b) above applies. The case of **Benan Kissa Patrick** (*supra*) noted that NCHE commenced its operations sometime in 2003. The evidence available in respect of publication of recognised institutions by NCHE as required under Section 131 (3) of the 2001 Act, is an advertisement in the New Vision newspapers dated Thursday March 17th 2016 in which IMSAT appears as having been registered by NCHE in 2015.

15 Central to this appeal though is the time frame or year in which the first respondent obtained the disputed Certificate in Public and Local Government Administration from IMSAT. There is an assumption that IMSAT must have had a provisional license before it was subsequently issued with the Certificate of Classification from the Ministry of Education
20 which at the time continued to license universities and tertiary institutions before NCHE started its operations; this is even after the coming into force of the Universities and Other Tertiary Institutions Act, 2001. We agree with counsel for the first respondent that a provisional license preceded a Certificate of Registration and Classification according to Sections 23, 24
25 and 25 of the now repealed Education Act, Cap 127 thus the Certificate of Classification on record does not necessarily point to the lack of a license.

We further agree with the finding of the trial Judge (at pages 690 & 691 of the record). He holds in part;

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

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

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

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

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

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

15 We find therefore that the operations of a provisionally licensed school (IMSAT) where the first respondent was awarded a Certificate in Public and Local Government Administration in the year preceding the registration date of IMSAT on the 17th August 2001, that year being 2000/2001 were legal and valid by virtue of Section 24 of the Education Act.

20 In any case, **Section 131 (6)** of the Universities and Other Tertiary Institutions Act, 2001 provides that:

25 *"The provisions of subsections (2) and (3) relating to the registration, recognition and operation of a University or Tertiary Institution under this Act shall not affect the validity or other status of any certificate, diploma, degree or other academic award granted by the University or Tertiary Institution in question before the commencement of this Act."*

This ground therefore also fails. However before we take leave of this ground and indeed this appeal as a whole we need to observe that it appears illogical in matters such as in these elections for one to contest the eligibility
30 of another candidate in an election after the actual election has taken place and not before. Candidates appear to be willing to contest against others they consider ineligible to contest with in elections as long as they ultimately win the said election. However, in an apparent after thought, when they lose the election they then contest the said eligibility. A period to

contest such eligibility should be provided before the elections and where there is no contest then a candidate should be estopped from raising the issue again simply because he lost the election. This is an area for possible legislative reform.

- 5 Secondly, legal advisors should read the precedents of this Court carefully and apply them when giving legal advice and not simply file a petition for this Court to restate what it has already stated as in the case here on the operation of the Universities and Other Tertiary Institutions Act, 2001. This will save precious judicial time and costs to the parties.

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Final Result

In the result, this appeal is dismissed with costs. We accordingly uphold the Judgment and orders of the High Court.

We so Order.

- 15 Dated at Kampala, this 18th day of December 2017.



HON. JUSTICE RICHARD BUTEERA

- 20 **Justice of Appeal**



HON. JUSTICE GEOFFREY KIRYABWIRE

Justice of Appeal

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HON. LADY JUSTICE HELLEN OBURA

Justice of Appeal

22/12/17.

Fred maka de for the 1st Respondent

Agassi with Benjamin Kaddu

holding brief for Edmund wakida.

for the celebrant

Joseph Kyagabwa
Commission.

1st Respondent is in court.

Appellant and counsel are absent.

de Ann.

maka de For Proof.

Court Proof read out in
cont.


22/12/17.