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**THE REPUBLIC OF UGANDA,  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
(CORAM: CHEBORION, MADRAMA AND LUSWATA JJA)**

**ELECTION PETITION APPEAL NO 69 OF 2021**

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**ARISING FROM MUBENDE HIGH COURT ELECTION PETITION NO 004 OF  
2021**

**SSEKAJJA RONALD} ..... APPELLANT**

**VERSUS**

**1. SSEBIKALI YOWERI JOEL}**

**2. THE ELECTORAL COMMISSION} .....RESPONDENT**

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**(Appeal from the Judgment of Hon. Justice Emmanuel Baguma, delivered  
on 2second October, 2021 at the High Court of Uganda Holden at Mubende)**

**JUDGMENT OF CHRISTOPHER MADRAMA, JA**

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The facts of this appeal are that the appellant, the first respondent, Mr. Monday Edward and Konde Wilson were nominated by the second respondent to participate as candidates for directly elected member of Parliament for Ntwetwe County in Kyankwanzi district.

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Elections were held on 14<sup>th</sup> of January 2021 and the second respondent declared and published the first respondent as the winner of the elections with 13,466 votes while the appellant came second with 7832 votes. Monday Edward polled 6918 votes and Konde Wilson polled 1113 votes.

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The appellant petitioned the High Court for nullification of the election of the first respondent on the ground that it was null and void ab initio because at the time the first respondent was nominated, he had not completed the minimum formal education of advance level standard or its equivalent as required by article 80 (1) (c) of the Constitution of the Republic of Uganda and section 4 (1) (c) of the Parliamentary Elections Act 2005. The petition

5 was contested by the respondents and the learned trial judge found that the first respondent fulfilled the requirements of article 80 (1) (c) of the Constitution of the Republic of Uganda and was a qualified person whereupon he dismissed the petition with costs to the respondents.

10 The appellant was aggrieved and appealed to this court on four grounds of appeal that:

1. The learned trial judge erred in law and fact when he held that the first respondent duly completed a minimum formal education of Advanced level standard as provided for in section 4 (1) (c) of the Parliamentary Elections Act, 2005.

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2. The learned trial judge erred in law and fact when he held that the first respondent at his nomination presented evidence of completion of minimum formal education of Advanced level of education as required by the law.

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3. The learned trial judge erred in law and fact when he held that the first respondents RW1B, RW1C, RWD and RW1E remain unchallenged and intact which documents were not considered by the second respondent in determining whether the first respondent held the requisite academic qualifications as at the time of the first respondent's nomination.

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4. The learned trial judge erred in law and fact when he failed to evaluate the evidence on record thereby coming to a wrong conclusion that the first respondent completed Advanced level of education.

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At the hearing of the appeal, learned counsel Mr Katumba Chrysostom appeared for the appellant while learned counsel Mr Severino Twinobusingye represented the first respondent. Learned counsel Mr Godfrey Musinguzi appeared for the second respondent. The appellant, the first respondent and Dr Jennifer Angeyo, Head Legal for the second

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5 respondent were present in court when the appeal was mentioned for hearing.

All counsel for the parties had filed written submissions and opted to rely on their written submissions on record as their address to this court and the appeal was adjourned for judgment on notice.

10 The applicant's Miscellaneous Application Number 14 of 2021 for validation of service of the memorandum of appeal was allowed with consent of the parties and the appeal proceeded on the merits.

**Submissions of the appellant's counsel.**

15 The appellant's counsel addressed the court on the standard of proof under section 61 (3) of the Parliamentary Elections Act 2005 as amended and the case law. Secondly, the appellant's counsel also addressed the court on the duty of this court to subject the evidence adduced at the trial to fresh and exhaustive scrutiny and to reach its own conclusions.

20 The appellants counsel further framed issues for resolution of the grounds of appeal starting with grounds 1 and 2:

1. Whether the learned trial judge erred in law and fact when he held that the first respondent duly completed the minimum formal education of Advanced Level standard as provided for in Section 4 (1) (c) of the Parliamentary Elections Act, 2005?
- 25 2. Whether the learned trial judge erred in law and fact when he held that the first respondent at his nomination presented evidence of completion of minimum formal education of Advance Level of education as required by the law?

30 The appellant's counsel submitted that under article 80 (1) (c) of the Constitution of the Republic of Uganda 1995 as amended and section 4 (1) (c) of the Parliamentary Elections Act, 2005, a person is qualified to be elected a member of Parliament if that person has completed a minimum formal education of advanced level standard or its equivalent. The appellants

5 counsel further relied on section 1 (c) of the Uganda National Examinations Board Act cap 137 which defines a certificate to mean a document awarded by the board which is duly signed by the authorised officers showing the results obtained by a particular candidate in examinations sat by him or her.

10 Further under section 4 (1) (c) of the Uganda National Examinations Board Act, the functions of the board shall be to award certificates or diplomas to successful candidates in such examinations.

The appellant's counsel relied on **Namujju Dionizia Cissy and Another v Martin Kizito Sserwanga; Election Petition Appeal No 62 of 2016** where this court approved the findings of the trial court that under the examinations regulations and syllabus of Uganda Advanced Certificate of Education, a candidate who scores at least a subsidiary pass in a subject offered at principle level is entitled to a certificate. Since the candidate had passed with the grade "O" in CRE she satisfied the requirements for the assessment of an "A" level certificate in issue and therefore had passed the criterion for grades.

20 The appellants counsel submitted that the first respondent's letter of verification for his "A" level results shows that the first respondent failed to score at least a subsidiary pass in any subject offered at 'A' level. He confirmed that he failed all subjects when he was cross examined. Counsel further urged the court to get to the real intention of legislature by carefully attending to the whole scope of the statute under scrutiny.

25 The appellant's counsel submitted that alternatively a candidate may prove completion of Advanced Level Standard by production of a certificate of equivalence issued by the National Council for Higher Education in consultation with UNEB as provided for under section 3 (b) of the Universities and Other Tertiary Institutions Act 2001. Further that one of the objects of the Act is to equate the same professional or other qualifications as well as award of degrees, diplomas, certificates and other awards by different institutions.



5 The appellant's counsel invited court to look at the evidence where the  
appellant indicated that the first respondent presented the results slip and  
not a certificate which was the basis upon which the second respondent  
nominated him. Further in cross examination the first respondent stated  
that he presented a letter of verification from Uganda National  
10 Examinations Board.

The appellants counsel submitted that the first respondent attempted to  
rely on a certificate of equivalence of his diploma in Medical Laboratory  
Techniques to Uganda Advanced Certificate of Education and that the  
equation was done by Uganda National Examinations Board contrary to  
15 section 3 (b) of the Universities and Other Tertiary Institutions Act, 2001  
which gives the mandate to equate academic qualifications to the National  
Council for Higher Education in consultation with the Uganda National  
Examinations Board (UNEB).

The appellant's counsel further relied on the evidence of the first  
20 respondent that among his educational qualifications for standing for  
parliamentary elections, he presented to the second respondent certain  
academic papers or certificates for his nomination and this included the  
Bachelor in Social Work and Social Administration, Diploma in Medical  
Laboratory Technology, UACE, UCE and PLE. Notwithstanding the above, the  
25 appellants counsel submitted that the learned trial judge erred in law and  
fact when he held that the first respondent completed the minimum formal  
education of Advanced Level Standard or its equivalent without any proof  
to that effect in the form of a certificate awarded to the first respondent by  
UNEB as envisaged under section 4 of the UNEB Act.

30 Further the appellants counsel contends that it was erroneous on the part  
of the second respondent to accept the first respondent's letter of  
verification of his 'A' level results as proof of completion of advance level  
standard or its equivalent.

With regard to the qualifications of the first respondent by way of the  
35 Diploma in Medical Laboratory Technology and Bachelor in Arts in Social

5 Work and Social Administration from Bugema University, counsel maintained that these qualifications were illegally and erroneously held to prove completion of Advanced Level Standard or its equivalents for purposes of nomination on 15<sup>th</sup> October 2021. He further prayed that he elaborates on this in the submissions in grounds 3 and 4.

10 **Grounds 3 and 4:**

The appellant's counsel submitted that the appellant adduced evidence on apparent irregularities leading to the first respondent's admission to study medical laboratory technicians diploma and the subsequent award of a certificate coupled with the first respondent's fraudulent admission to  
15 Bugema University where he graduated with a Bachelor of Arts in Social Work and Social Administration. He submitted that the said qualifications had no basis for the nomination of the first respondent by the second respondent. According to the appellant, these qualifications were irregularly and illegally obtained.

20 Counsel submitted that it is the mandate of the Electoral Commission to nominate candidates for parliamentary elections under section 9 of the Electoral Commission Act, 2005 and article 61 of the Constitution of the Republic of Uganda. It was in the exercise of that mandate and on 15<sup>th</sup> October 2020, the second respondent's returning officer upon looking at the  
25 first respondent's educational qualifications came to a decision on the basis of the first respondent's verification letters that he had presented proof of completion of Advanced Level Standard or its equivalent as required by Article 80 (1) (c) of the Constitution of the Republic of Uganda and section 4 (1) (c) of the Parliamentary Elections Act, 2005. In cross examination, the  
30 first respondent testified that certificates for "O" and "A" levels were not a requirement for nomination process. Further, the first respondent conceded that he presented letters of verification for UNEB during nomination.

The appellant's counsel further submitted that the second respondent's  
35 officials erroneously construed the first respondent's verification letters as



5 satisfying the evidence of completion of the required standard under the law. Further the appellants counsel relied on the second respondents answer to the petition to the effect that the first respondent presented certain documents which were marked and these were RW1B, RW1C, RW1D, & RW1E.

10 Counsel further submitted that certain precedents of **Hon. Kipoi Henry Nsubuga Vs Waluku Wataka and Others; Election Petition No. 007 of 2011** and **Kalemba Christopher & Electoral Commission Vs Lubega Drake Francis** were misapplied by the trial court. In **Hon. Kipoi Henry Nsubuga Vs Waluku Wataka and Others** (supra), the question for determination was whether the  
15 certificate of equivalence that had been awarded by the National Council for Higher Education had been irregularly obtained by the appellant owing to contradictions in his identity while he was at the mature entry exams at Makerere University. The Electoral Commission based its decision upon the certificate of equivalence which had never been cancelled by the awarding  
20 institution.

The appellant's counsel contended that the matter for determination of the trial court was limited to whether or not the verification letter was proof of completion of Advanced Level Standard or its equivalent to justify the nomination of the first respondent as member of Parliament by the second  
25 respondent.

Further, the appellant's counsel submitted that the learned trial judge usurped the powers of the second respondent to consider certain documents as proof of completion of Advanced Level or its equivalent which the second respondent had not considered as the basis for nominating the  
30 first respondent to contest for the office of member of Parliament. That the trial judge constituted himself to the Electoral Commission to exercise its mandate of verifying academic qualifications for purposes of nomination.

Further, the appellant's counsel submitted that had it been the second respondent's opinion that it relied on the first respondents diploma and  
35 degree in arriving at its decision, the principle applied in **Hon. Kipoi Henry**

5 **Nsubuga Vs Waluku Wataka and Others** (supra) on the aspect of non-cancellation by the respective awarding institutions would be perfect authority in support of the trial court's decision. The appellant's counsel submitted that the trial judge erred in law and fact when he failed to evaluate the evidence on record in light of the mandate of the second  
10 respondent as at 15<sup>th</sup> of October 2020 in relation to the academic qualifications presented by the first respondent to the second respondent and thereby came to a wrong conclusion that the first respondent completed advanced level of education or its equivalent and was duly nominated and subsequently elected as member of Parliament.

15 The appellants counsel further submitted that in light of the decision of this court in **Namujju Dionizia Cissy and Another Vs Martin Kizito Sserwanga** (supra), it is the duty of this court to try to get at the real intention of legislature by carefully attending to the whole scope of the statute under scrutiny. He submitted that the trial judge failed to evaluate the evidence on  
20 record and thereby came to a wrong conclusion that the first respondent completed the Advanced Level or its equivalent contrary to the evidence on record. He prayed that this court allows the appeal with costs to the appellant in this court and in the court below.

**Submissions of the first respondents counsel in reply.**

25 In reply, the first respondents counsel compressed the grounds of appeal into the issue of **whether or not the learned trial judge erred in law and fact when he held that the first respondent was lawfully nominated and subsequently elected to the position of member of Parliament for Ntwetwe, Kyankwanzi district.**

30 Counsel *inter alia* submitted on the burden of proof, the duty of the first appellate court and the standard of proof applicable.

On the major issue of whether or not the learned trial judge erred in law and fact to hold that the first respondent was lawfully nominated and subsequently elected member of Parliament, the first respondents counsel  
35 submitted that the law governing qualifications for parliamentary elections



5 is article 80 (1) (c) of the Constitution of the Republic of Uganda as amended  
and section 4 (1) (c) of the Parliamentary Elections Act, Act No 17 of 2005 as  
amended. Counsel emphasised that the wording of the laws relevant to the  
effect that a person is qualified to be member of Parliament if that person  
10 "*has completed*" a minimum formal education of Advanced Level standard  
or its equivalent. Further subsection 6 of section 4 of the Parliamentary  
Elections Act provides that a person required to establish academic  
qualification by production of a certificate issued to him or her by the  
National Council for Higher Education in consultation with the Uganda  
National Examinations Board. The first respondents counsel also relied on  
15 section 4 (9) of the Parliamentary Elections Act, which provides that a  
certificate issued by the National Council for Higher Education is sufficient  
in respect of an election for which the same qualification is required.

With regard to the submission of the appellant on whether the first  
respondent complied with the requirements of section 4, the respondent  
20 submitted to the Electoral Commission evidence of completion of Ordinary  
Level and Advanced Level indication awarded by UNEB and this was a letter  
of verification of results. Further, the law required the first respondent to  
adduce evidence of completion of a minimum formal education of Advanced  
Level Standard or its equivalent. The letter of verification of results for "A"  
25 and "O" level was sufficient.

Counsel relied on the Court of Appeal decision in **Paul Mwiru Vs Hon. Igeme  
Nabeta Samson and Electoral Commission; Election petition Appeal No. 6 of  
2011** for the interpretation of section 4 (1) (c) of the Parliamentary Elections  
Act, 2005 that a person qualifies to be a member of Parliament on proving  
30 to the satisfaction of the Electoral Commission to have completed the  
Advanced Level of Education or its equivalent and in so doing must produce  
the certificate from the National Council for Higher Education. This did not  
make the Uganda National Examinations Board a component in equating  
academic papers and each candidate must be issued with the certificate by  
35 the National Council for Higher Education in consultation with the Uganda  
National Examinations Board.

5 Further all the additional academic qualifications namely the diploma in  
medical laboratory technician awarded by the Ministry of Education and  
Sports and the Bachelor of Arts in Social Works and Social Administration  
awarded by Bugema University evidence that the first respondent enjoyed  
an added advantage of being in possession of additional higher academic  
10 qualifications over and above the minimum requirements of the law.

In the premises, the first respondent's counsel prayed that the court be  
pleased to find that the learned trial judge did not err to hold that the first  
respondent possesses the qualification of a minimum formal education of  
Advanced Level Standard or its equivalent and was lawfully nominated and  
15 subsequently elected to the office of member of Parliament.

Further the first respondent's counsel submitted that the main issue for  
determination is whether the first respondent adduced evidence before the  
Electoral Commission as required by law to the effect that he had completed  
the formal education of Advanced Level Standard or its equivalent. Counsel  
20 emphasised that the evidence required by the law is evidence of completion  
and the operative word to be considered is the word "completion". He  
contended that the examination grades in the subjects one sat for A level  
are not a legal qualification requirement to contest for the office of MP. He  
submitted that this is the crux of the appeal and the gist of article 80 (1) (c)  
25 of the Constitution of the Republic of Uganda as well as sections 4 (1) (c) (6)  
(9) and (13) of the Parliamentary Elections Act, 2005.

Further, the first appellants counsel submitted that the institution that is  
legally empowered to provide evidence of completion is the Uganda  
National Examinations Board. Secondly, the Uganda National Examinations  
30 Board is a legal custodian of "A" level certificates as it is the one that sets  
exams, marks them and issues certificates to persons that sat for an exam  
to that effect. In the premises, a letter of verification of results from UNEB  
is sufficient and conclusive evidence of completion. Counsel further  
submitted that once the law states so, there is no room for any contrary  
35 interpretation.



5 Further the documents considered by the court included all the academic  
certificates of the first respondent referred to above inclusive of the degree  
certificate. The first respondents counsel submitted that this can only be  
invalidated by UNEB or the Ministry of Education and Sports or the  
University acting in their official capacities. There is no evidence from those  
10 institutions impeaching the certificates.

The first respondent's counsel further relied on **Kalemba Christopher &  
Electoral Commission Vs Lubega Drake Francis; Election Petition Appeal  
number 32 of 2016** where it was established that a candidate possesses the  
requisite minimum academic qualifications verified by the lawfully  
15 mandated body and in that case the UNEB. In the event of a party who is  
desirous of cancelling or impeaching such clarification, the effort cannot be  
done through an election petition but by ordinary suit against the awarding  
body.

In relation to the grades that the first respondent got, the first respondents  
20 counsel submitted that the law under article 80 (1) of the Constitution of the  
Republic of Uganda as well as section 4 (1) of the Parliamentary Elections  
Act, 2005 only requires one to show proof of completion which the first  
respondent did and it was verified by UNEB. Secondly, the law does not  
make academic grades a requirement for nomination to offer oneself for  
25 election as a member of Parliament (See **Kalemba Christopher & Electoral  
Commission Vs Lubega Drake Francis** (supra) where it was held that in  
essence, the section does not provide that a pass mark is a requirement  
and presentation of a valid UACE certificate or its equivalent should suffice  
to qualify one to be a member of Parliament).

30 The first respondent's counsel asked the court to find that the appellant  
failed to discharge the legal burden of proof to the required standard of  
proof by producing credible or cogent evidence to prove the allegations to  
the required standard. He prayed that the court be pleased to find that the  
first respondent did and does possess the minimum formal education of  
35 Advance Level Standard and he was therefore validly nominated and  
elected.

5 On the issue of remedies, the first appellants counsel submitted that a  
critical analysis of the law and the facts shows that the appeal is incurably  
incompetent and grossly misconceived. The first respondents counsel  
submitted that this is a classic example of abuse of the court process and  
fundamentally devoid of any merit. He prayed that the appeal is dismissed  
10 with costs to the first respondent.

### **Submissions of the second respondent.**

The second respondent's counsel further addressed the court on the duty  
of a first appellate court in re-evaluation of the evidence, the burden of  
proof in election petition matters under section 61 of the Parliamentary  
15 Elections Act, 2005 and various authorities.

According to the second respondent's counsel, the core issue is whether  
the trial judge erred in law and fact when he held that the first respondent  
duly completed the minimum formal education of Advanced Level Standard  
as provided for in section 4 (1) (c) of the Parliamentary Elections Act 2005.

20 The second respondents counsel addressed the court on the provisions of  
article 80 (1) (c) of the Constitution of the Republic of Uganda and the  
wording that a person is qualified to be a member of Parliament if he or she  
has *"completed the minimum formal education of Advanced Level Standard  
or its equivalent which shall be established in a manner and at the time  
25 prescribed by Parliament by law."* This was re-enacted in section 4 (1) (c) of  
the Parliamentary Elections Act 2005. Counsel further relied on section 1 (c)  
of the Uganda National Examinations Board Act cap 137 for the definition of  
a certificate as a document awarded by the board which is duly signed by  
the authorised officers and shows the results obtained by a particular  
30 candidate in examinations sat by him or her. He contended that this  
provision gives the function of the board to award certificates or diplomas  
to successful candidates in such examinations. Counsel further relied on  
**Kalembe Christopher Vs Lubega Drake Francis; Election Petition Appeal No  
32 of 2016** (supra).



5 The second respondent's counsel submitted that from the law, the question  
is whether the first respondent completed his advanced level standard or  
obtained an equivalent qualification. With reference to the evidence on  
record, the first respondent completed his studies and obtained a  
10 verification document from the only authority authorised to issue it  
signifying the completion of the advance level standard. He submitted that  
there is no room for any speculation whatsoever on the question of whether  
there is any other authority to prove the qualifications of the first  
respondent. He invited the court to uphold the findings of the trial judge  
regarding his extensive evaluation of the evidence on the minimum  
15 qualifications. Finally, counsel prayed that the court makes a finding that it  
was proved to the satisfaction of court that the first respondent duly  
completed the minimum formal education of Advanced Level Standard.

#### **Grounds 2, 3 and 4.**

20 The second respondents counsel argued the issues concurrently on the  
ground that the address the same issue.

He submitted that the record of appeal shows that the learned trial judge  
clearly evaluated the evidence presented before him of the academic  
qualifications in the exhibits admitted which remained unchallenged.  
Therefore, the question was that this documents were not considered when  
25 the second respondent determined that the first respondent held the  
requisite academic qualifications at the time of his nomination. On this point  
the learned trial judge found that the first respondent presented his  
evidence on the basis of his nomination papers which showed evidence of  
completion of a minimum formal education of Advance Level standard that  
30 he presented at the time of his nomination as required by law.

With regard to the letter of verification, the second respondent's counsel  
submitted that the authority does not issue duplicate certificates and in case  
of loss or damage of result slips, a letter of verification of results is issued  
to serve the same purpose. At the nomination, the first respondent  
35 produced his nomination paper together with the Bachelor of Arts in Social

5 Works and Social Administration from Bugema University. The second respondent maintains that what is required is a minimum formal education of Advanced level or its equivalent.

10 With regard to nomination as a vital step in the electoral process, the respondent's counsel submitted that it was sufficient to obtain verification of the Uganda Certificate of Education from the Uganda National Examinations Board. He submitted that the first respondent completed a minimum formal education required in the law. He was therefore validly nominated for election as a member of Parliament. The second respondent maintained that all the persons who contested were eligible, properly  
15 identified, verified and qualified as candidates and were validly nominated in accordance with the law.

He prayed that the court be pleased to dismiss the appeal with costs to the respondents in this court.

### **Consideration of appeal**

20 I have carefully considered the memorandum of appeal, the record of appeal, the submissions of counsel as well as the law.

This is a first appeal arising from the decision of the High Court acting in the exercise of its original jurisdiction in an election petition. As such, the Court of Appeal has discretionary powers on whether to exercise its mandate to  
25 reappraise the evidence in the printed record of proceedings by subjecting that evidence to fresh scrutiny and arriving at its own inferences on matters of fact. In reappraisal of evidence, a first appellate court should caution itself regarding the shortcoming of not having had the advantage of seeing and hearing the witnesses testify in contrast to the trial judge who had the  
30 advantage of having seen and heard the witnesses testify (See **Pandya v R [1957] EA 336, Selle and Another Vs Associated Motor Boat Company [1968] EA 123**, as well as **Kifamunte Henry Vs Uganda; SCCA No. 10 of 1997**). The duty of this court in reappraisal of evidence is specified in rule 30(1)(a) of the **Judicature (Court of Appeal Rules) Directions, S.I No. 13-10**, in terms of



5 its directive that the court may reappraise the evidence and draw inferences of fact.

Where trial is by affidavit evidence, then caution can only be exercised in evaluation of the cross examination and re-examination evidence as this court is at par with the trial judge on evaluation of affidavit evidence.

10 Before considering the main controversy, the appellant filed a petition in the High Court seeking a declaration that the first respondent's nomination by the second respondent and his subsequent election as member of Parliament was illegal and contrary to article 80 (1) (c) of the Constitution of the Republic of Uganda and section 4 (1) (c) of the Parliamentary Elections Act 2005 as amended. Secondly for declaration that the first respondent was not the validly elected member of Parliament. Thirdly, an order annulling the declaration of the first respondent as the elected member of Parliament for Ntwetwe County. Fourthly for a declaration that the petitioner is the duly elected member of Parliament and in the alternative  
15 the appellant prayed that fresh elections are conducted for the position of member of Parliament for the above named constituency. Last but not least the appellants sought for an order for the respondents to jointly and severally pay the costs of the petition.  
20

The petitioner further averred that he was aggrieved by the nomination and election and declaration of the first respondent by the second respondent as an elected member of Parliament since at the time of his nomination and subsequent election he lacked the requisite academic verification of the minimum formal education of advance level standard or its equivalent contrary to the law. Further the petitioner averred that after the determination of the first respondent as a candidate in the election, the petitioner requested the second respondent to avail him with certified copies of the first respondent's nomination papers and academic documents. On 20<sup>th</sup> November 2020 the second respondent availed the petitioner's lawyers with the first respondent's academic documents and  
25 nomination papers which included:  
30  
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5 A degree certificate from Bugema University, a diploma in Medical  
Laboratory Techniques, a letter verification of results from Uganda national  
Examinations Board of Uganda for the Uganda Advanced Certificate of  
Education and the letter of verification of the results. The petitioner stated  
that he scrutinised the documents and established the grades of the first  
10 respondent from St Joseph Senior Secondary School Vumba. Secondly, he  
considered the grades for the “A” level in Aga Khan High School where the  
first respondent failed all the papers in physics, chemistry and biology. That  
the first respondent did not present certificates to the second respondent  
at the time of his nomination.

15 The petitioner opposed the claims in the petition and denied the facts and  
for purposes of this judgment I refer to the joint scheduling memorandum  
signed by counsel for all the parties and filed in the High Court on 20<sup>th</sup> of  
August 2021 in which the main issue before the court was:

20 **Whether the first respondent was at the time of his nomination and  
election possess to have the requisite academic qualifications of a  
minimum of Advanced Level of Education or its equivalent for election  
as Member of Parliament for Ntwetwe County Kyankwanzi District.**

The second issue was “what remedies are available to the parties? In the  
judgment, the learned trial judge framed the same issue for consideration  
25 and found that the first respondent was lawfully nominated and  
subsequently elected the position of member of Parliament. Among other  
things the learned trial judge held that what was required of the first  
respondent was to produce evidence of completion of the minimum formal  
education of advance level standard which he presented at the time of his  
30 nomination as required by the law and it was on that basis that he was  
nominated. He further found that allegations of invalidity of academic  
qualifications of a candidate can only be done by the Uganda National  
Education Board and the Ministry of education and sports or the University.

In this appeal, there seems, on the face of the submissions, to be novel  
35 questions about interpretation of article 80 (1) (c) of the Constitution of the



5 Republic of Uganda which provision is enacted under section 4 (1) (c) of the Parliamentary Elections Act, 2005. For purposes of this appeal I will set out the provisions of the Constitution as well as section 4 of the Parliamentary Elections Act 2005. Part of Article 80 of the Constitution as far as is relevant provides that:

10 80. Qualifications and disqualifications of members of Parliament.  
(1) A person is qualified to be a member of Parliament if that person—  
(a) is a citizen of Uganda;  
(b) is a registered voter; and  
(c) has completed a minimum formal education of Advanced Level standard or its  
15 equivalent which shall be established in a manner and at a time prescribed by Parliament by law.

Article 80 clause (1) and paragraph (c) speaks for itself. One should emphasise the word "*minimum*" which clearly and without ambiguity means that what is expected is a minimum formal education. This does not stop  
20 someone from presenting a higher level qualification than the minimum required. Secondly, section 4 (1) (c) also word for word the repeats article 80 of the Constitution of the Republic of Uganda, save for the provisions that Parliament shall prescribe the law, in that it provides that:

4. Qualifications and disqualifications of members of Parliament.  
25 (1) A person is qualified to be a member of Parliament if that person—  
(a) is a citizen of Uganda;  
(b) is a registered voter; and  
(c) has completed a minimum formal education of Advanced Level standard or its equivalent.

30 For purposes of this appeal, it is sufficient to refer to part of article 80 (1) (c) of the Constitution of the Republic of Uganda as also appears word for word in section 4 (1) (c) of the Parliamentary Elections Act, 2005 quoted above.

5 I have carefully considered the grounds of appeal. The first ground of appeal is that the learned trial judge erred in law and fact when he held that the first respondent duly completed the minimum formal education of advance level standard as provided for in section 4 (1) (c) of the Parliamentary Elections Act, 2005. Obviously, if the court were to find that the appellant  
10 had duly completed a minimum formal education of advance level standard, there would be no basis to continue with the other grounds of appeal as this is the express requirement for qualification under article 80 (1) (c) of the Constitution of the Republic of Uganda. Nonetheless, the appellant introduced a novel point of law relating to the word “completed” under  
15 article 80 (1) (c) of the Constitution of the Republic of Uganda. Does the word “completed” mean completed with a pass? Secondly, there is the aspect of whether a higher qualification than “A” level standard is sufficient to fulfil the requirements of article 80 (1) (c) of the Constitution as well as section 4 (1) (c) of the Parliamentary Elections Act. If the court were to find that it  
20 was sufficient to prove that somebody had attained a standard higher than that which is the minimum requirement under the above cited laws, there would be no need to proceed with the other grounds of the appeal. However, the appellant introduced another subtle point which is that at the time of nomination, what was required was for the first respondent to have satisfied that the Electoral Commission that he had completed a minimum  
25 required standard. In other words, the appellant wants to hold the parties and the court to the interpretation that at the time of nomination, the Electoral Commission ought not to have been satisfied because the only had a verification letter from the relevant authority that the first respondent had  
30 completed the minimum of “A” advance level standard stipulated in the law. Interposed in this analysis is the assertion that to be able to have attained the standard, one ought to have passed and been issued with a certificate. That it was not sufficient to merely complete the course when the student failed the exams and that the degree and diploma have a faulty and  
35 erroneous foundation due to the failure to qualify for admissions to the courses leading to the awards and the certificates of qualifications were therefore irregularly issued.



5 The second ground deals with the question of evidence and it is intertwined  
with the first ground of appeal. The question is whether at the time of his  
nomination, the first respondent had presented evidence of completion of  
the minimum formal education of advance level as required by law. The 3<sup>rd</sup>  
ground of appeal is further intertwined with the first ground of appeal  
10 because it deals with the further qualifications of the first respondent and  
whether the documents were lawfully considered by the second respondent  
in determining whether the first respondent had the requisite academic  
qualifications. Grounds 2 and 3 of the appeal deal with the powers of the  
Electoral Commission as to what kind of evidence should have satisfied it  
15 as to the requirements for the qualifications of candidates for nomination.  
Finally ground 4 of the appeal is about whether the learned trial judge erred  
in law and fact by not considering the evidence on record or failing to  
evaluate the evidence on record and coming to a wrong conclusion.

It is not a fact in dispute that the first respondent for his "A" obtained the  
20 following marks for his papers which he sat for the "A" level exams.

|        |                        |   |
|--------|------------------------|---|
| (a)    | General paper          | 6 |
| (b)    | subsidiary mathematics | 9 |
| (c)    | Physics                | F |
| (d)    | Chemistry              | F |
| 25 (e) | Biology                | F |

These results were for the year 1998. According to the affidavit in support  
of the petition, the appellant attached Annexure "D", the nomination papers  
of the first respondent. Further in paragraph 9 of the affidavit in support of  
the petition, the petitioner deposed that the first respondent presented  
30 certain academic documents at the time of his nomination. This includes a  
degree certificate from Bugema University in Bachelors of Arts in Social  
Work and Social Administration obtained in 2014. Secondly, a diploma in  
Medical Laboratory Techniques issued in 2001 by the Ministry of Education  
and Sports. Thirdly the deponent stated that there was a letter verification  
35 of results from Uganda National Examinations Board for Uganda Advance  
Certificate of Education from Uganda National Examinations index number

5 U0001/596 for the year 1998. Most importantly, the petitioner attached copies of the nomination documents which included the degree certificates, the diploma and the letter of verification. It is clearly asserted that this were the documents which accompanied the nomination papers.

10 In paragraph 10 of the affidavit in support of the petition, the appellant analysed this documents and stated in paragraph 10 (c) and (d) as follows:

15 c) At the time of nomination, the first respondent did not present certificates for the Uganda Certificate of Education Examination and Uganda Advanced Certificate of Education Examinations to the second respondent but merely presented letters of verification from Uganda National Examinations Board upon which the second respondent relied to nominate the first respondent as having fulfilled the academic requirements to stand as a Member of Parliament.

d) That the first respondent declared on oath and swore that he had the education qualifications for standing for the position of member of Parliament whereas not.

20 The deponent further asserted in paragraphs 11 and 12 that at the time the first respondent was admitted for admission for a diploma course in the medical laboratory technology, the requirements for admission were not fulfilled by the first respondent. The entry requirements were a minimum of principle pass in biology, and two subsidiary purses in chemistry, physics or mathematics obtained at the same sitting for advanced level of education.  
25 Clearly the contention was that the first respondent ought not to have obtained the diploma.

30 I have carefully analysed the law under article 80 (1) (c) of the Constitution of the Republic of Uganda which is echoed in section 4 (1) (c) of the Parliamentary Elections Act, 2005 and I can see from a plain reading that the requirement for a minimum formal education of advance level standard or its equivalent is a requirement for a minimum qualification.

35 The court can take judicial notice of the fact that a degree certificate is higher than the minimum qualification of advance level standard that is stipulated in the law and I will further set out the law at a later stage in this judgment. Secondly, the facts asserted by the petitioner both in the petition



5 and in the affidavit in support clearly show that at the time of his nomination,  
the first respondent had presented to the Electoral Commission a diploma  
obtained in 2001 as well as a degree certificate obtained in 2014 from a  
university in this country. This was over and above the “advanced” level  
certificate of education which is the minimum requirement for qualification  
10 for election as a member of Parliament under section 4 of the  
Parliamentary Elections Act, 2005.

I further wish to emphasise that the law provides for the minimum formal  
education of advanced standard or its equivalent. It is not mandatory that a  
person who wants to vie for the post of member of Parliament should  
15 produce for purposes of his nomination, an “A” level certificate issued by  
Uganda National Examinations Board. It is sufficient to produce a degree  
certificate without any other certificate provided the degree certificate is  
from an accredited university or from a recognised University under the  
Universities and Other Tertiary Institutions Act 2001.

20 I was referred to the meaning of a certificate under the Uganda National  
Examinations Board Act, cap 137 which provides in section 1 (c) as follows:

1. Interpretation.

In this Act, unless the context otherwise requires—

(b)

25 (c) “certificate” means a document awarded by the board which is duly signed by  
the authorised officers showing the results obtained by a particular candidate in  
examinations sat by him or her;

In my judgment, and the word “certificate” as defined above was defined for  
purposes of the Uganda National Examinations Board Act and is not meant  
30 to be a universal definition of the word “certificate”. According to the  
**Osborn’s Concise Law Dictionary, Eleventh Edition** the word “certificate”  
means:

A statement in writing by a person having a public, or official status concerning  
some matter within his knowledge or authority.

5 Further according to the **Cambridge International Dictionary of English**, a certificate is:

An official document which states that the information on it is true

The important element in those definitions is the fact that the statement has to be in writing in a public or official capacity which indicates that the information contained in the certificate is true. In relation to academic  
10 qualifications, a certificate testifies or represents a statement about something else. A certificate of academic qualifications is a presentation on paper of a level of education and perhaps the standard obtained in that level of education attained by the person it certifies. The educational level is  
15 attained by the person to whom the certificate is awarded and relates. The certificate is therefore evidence from the appropriate authority of *inter alia* the level of education attained by the person as it certifies that the person attained the grades mentioned therein and did the course and qualified with the standard or the grade specified in the certificate.

20 With reference to article 80 (1) (c) of the Constitution of the Republic of Uganda, what is provided for is a minimum formal standard of advanced level or its equivalent attained by a person for purposes of qualification or eligibility to contest for election as a member of Parliament. The words in the article "*has completed a minimum standard*" when understood in  
25 context mean that the person has attained a certain minimum standard of education of "A" level or its equivalent. In that context also the word "equivalent" in the means or connotes a similar level of education and does not have to be classified as "A" level but which is comparable to or equivalent in standard to "A" level. The Constitution deals with the standard  
30 of education as a minimum requirement to contest for the office of member of Parliament.

Further relevant to the controversy is the issue of how the attainment of the requisite standard is to be proved for purposes of parliamentary elections. Article 80 (1) (c) of the Constitution of the Republic of Uganda  
35 expressly commands that the requisite standard shall be established in a



5 manner and at a time as prescribed by Parliament by law. The time when it is to be established and the manner of establishing it is supposed to be prescribed in an Act of Parliament as we shall establish below.

10 In the premises, emphasis should be had on the attainment of the standard of education and not necessarily on the certificate proving what that standard or level of education is. The above notwithstanding, we shall in due course examine the provisions of section 4 of the Parliamentary Elections Act on the question of whether there is any requirement for a person who has a degree certificate to produce an "A" level certificate or its equivalent as well. We shall also examine the controversy as to whether there has to be any certification by the National Council for Higher Education.

15 Before we do that, I would like to state that it would be a futile exercise to indulge in establishing the meaning of the word "*completed*" or the meaning of *advance level standard* under article 80 (1) (c) of the Constitution or section 4 (1) (c) of the Parliamentary Elections Act, 2005, since those provisions give the minimum requirement but do not provide a ceiling for qualifications. It is preposterous to suppose that a person with a doctorate needs to prove that they passed their "A" level before they obtained their doctorate unless fraud is alleged as a basis for disqualification. The standard of the statutory law is that it is sufficient for the court to find that the first respondent obtained a degree certificate which has not been successfully challenged as against the first respondent or the institution which issued it and the candidate does not need to produce his or her "A" Level certificate. I have considered the petitioner's summary of evidence that he intended to adduce at the trial which I will quote as follows:

30 At the trial, the petitioner shall adduce evidence to prove that the first respondent, at the time of his nomination to contest for the position of member of Parliament Ntwetwe county constituency and subsequent election, he lacked the requisite academic qualification of minimum formal education of advance level standard or its equivalent to stand as a member of Parliament.

35 Evidence that the trial was adduced by affidavit evidence and particularly the petition itself in paragraph 19 and 20 averred as follows:



5 19. The first respondent was admitted to Bugema University for a Bachelor of Social works and Administration in 2011 on the basis upon presentation of a Diploma transcript and Certificate issued by the laboratory technicians school in Jinja together with a UAC result slip No. A236601 of 1998 in his name with a score of two principal purses in the subject site in a much 1998.

10 20. However, a close scrutiny of the first respondents UACE results as indicated in the letter of verification of results from Uganda National Examinations Board for UACE for the year 1998 which the first respondent presented at the time of nomination indicate that the first respondent failed and did not get the alleged 2 principal purses as reflected a UACE result slip number A236601 of 1998 with a  
15 score of 2 principal purses in the subject site in March 1998 which is one of the documents relied upon to admit the first respondent to Bugema University.

Clearly in this petition, the appellant in the lower court was trying to question the qualifications of the first respondent in a tertiary institution and in a University on the basis of admission requirements. Should the court  
20 proceed to consider whether the first respondent was properly admitted to these other institutions? The duty of this court is limited to establishing whether the first respondent had the minimum qualifications under article 80 (1) (c) of the Constitution of the Republic of Uganda as echoed in section 4 (1) (c) of the Parliamentary Elections Act 2005. The admission  
25 requirements of Bugema University or the Laboratory Technicians School of Jinja cannot be the subject matter of this appeal or the petition in the High Court. What is material being that those institutions found that the first respondent was worthy of the award of a diploma and a degree certificate respectively as stated above. The matter cannot be in issue in this petition  
30 or the appeal arising therefrom. To do so would require summoning the schools and trying the criteria they used to admit grant access to their students for the courses they did before they awarded them their diplomas or degree certificates. I accept the submissions of the first and second respondent's counsel that the validity of those degrees or diplomas can be  
35 challenged in another forum and with the participation of the relevant tertiary and university institution. These institutions have a fundamental right to be heard, which is a component of the right to a fair hearing on the matter and there can be no derogation from the right to fair hearing under



5 article 44 (c) of the Constitution. It follows that such a controversy is not lawful for consideration in this appeal.

Further, section 2 of the Universities and Other Tertiary Institutions Act, 2001; Act 7 of 2001 defines the word "tertiary institution" to mean:

10 any Public or Private Institution, School or centre of Higher Education and other than a University, one of the objects of which is to provide postsecondary education offering courses of study leading to the award of certificates or diplomas and conducting research and publish;

15 Clearly, a tertiary institution that awards a diploma certificate is a postsecondary education institution for higher education that is higher than the "A" level standard. In the very least it may offer an equivalent standard of education to "A" level, if certified so by the appropriate authority. Secondly, the Universities and Other Tertiary Institutions Act, 2001 also in section 2 thereof defines the word "University" to mean:

20 any Institution, School, Institute or centre of Higher Education, other than a Tertiary Institution, one of the objects of which is the provision of postsecondary education offering courses of study leading to the award of certificates, diplomas and degrees and conducting research and publish;

25 Again a university as defined by the law conducts and essentially has one of the objects of conducting the provision of postsecondary education. It is an institute or school for higher education other than a tertiary institution. It is therefore higher than the "A" level secondary schools.

30 Section 4 of the Parliamentary Elections Act sets out an elaborate procedure for establishing level of education and the manner of establishing the level of education and what need not be established. For purposes of "A" level, the procedure is provided for under sections 4 (5) – (12) of the Parliamentary Elections Act, 2005 and I do not need to reproduce those provisions. Further, section 4 (5) requires certification of qualifications from the National Council for Higher Education for the following category of persons:

- 5 (a) whether their qualification is obtained from Uganda or outside  
Uganda, who are claiming to have their qualification accepted as  
equivalent to advanced level education;
- 10 (b) claiming to have advanced level qualifications from outside  
Uganda;
- (c) claiming to have academic degrees which were obtained from  
outside Uganda.

15 The above categories only are required to be certified by the National  
Council for Higher Education. The first respondent did not have to prove an  
equivalent level to "A" in light of his degree certificate. Secondly the diploma  
was from a higher post-secondary school and therefore from a tertiary  
institution. On the other hand, section 4 (13) of the Parliamentary Elections  
Act, demonstrates that there is no need to obtain the certificate of the  
20 National Council for Higher Education if a person obtains higher  
qualifications than the "A" level standard in Uganda. Section 4 (13) of the  
Parliamentary Elections Act, 2005 provides as follows:

25 (13) For the avoidance of doubt, if a candidate has an advanced level certificate  
obtained in Uganda or qualifications higher than the prescribed qualifications  
obtained in Uganda or obtained from the former University of East Africa or any  
of its constituent colleges, then, there shall be no need for the verification of his  
or her qualifications by the National Council for Higher Education.

30 It is clearly provided that if the candidate obtained in Uganda a higher  
qualification than that prescribed, there would be no need for verification of  
his or her qualifications by the National Council for Higher Education. That  
is the case in the petition and the appeal arising therefrom.

35 The degree and diploma of the first respondent respectively were only  
challenged on the ground that the first respondent failed his "A" level final  
exams and did not qualify to be admitted to the tertiary institution or  
university.



5 In the premises, the evidence before the court clearly demonstrates that  
the first respondent was over qualified in that he had more than the  
minimum qualification and in fact had a diploma and a degree certificate  
which were higher than the "A" level standard. For that reason, the  
petitioners petition and the appeal arising therefrom has no merit. The  
10 learned trial judge reached the correct conclusion that the first respondent  
was duly qualified for nomination and to offer himself to the electorate for  
election as a member of Parliament and he was duly elected on the basis  
of that nomination.

15 There is no need to consider the rest of the grounds of the appeal. The  
appeal has no merit and I would make an order dismissing it with costs.

Dated at Kampala the 6<sup>th</sup> day of May 2022



**Christopher Madrama**

**Justice of Appeal**

