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**THE REPUBLIC OF UGANDA,
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
(CORAM: KAKURU, OBURA, MUSOTA, MADRAMA, KASULE, JJA)
CONSTITUTIONAL PETITION NO 0009 OF 2013**

KENNETH ADRAPI} PETITIONER

10

VERSUS

- 1. HON DRITO MARTIN ANDREW}**
- 2. ATTORNEY GENERAL}**
- 3. THE ELECTORAL COMMISSION}RESPONDENTS**

JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA, JCC

15 I have had the benefit of reading in draft the judgment of my learned brother
Hon. Mr. Justice Remmy Kasule, JCC and I generally agree with the facts
set out in the judgment and the outcome that the petition fails. I would
however, only strike out the petition for want of jurisdiction.

20 This is because the facts averred in the petition *prima facie* show that the
petitioner's grievance arises from the disqualification of the 1st respondent
after his election as a member of Parliament and the allegation that the seat
of MP he occupied had become vacant. The basis of the assertion that there
is a vacancy is the allegation that circumstances had arisen wherein the
25 academic certificate of the first respondent by which he qualified for
election had been canceled after his election and circumstances had arisen
which would have disqualified the first respondent for contesting for
election as a member of Parliament.

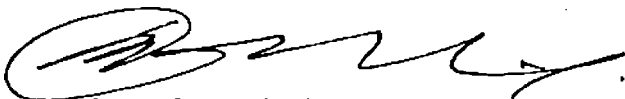
Article 80 of the Constitution deals with qualification of members of
Parliament and this is not controversial. Article 80 (1) (c) provides that a
30 candidate must have completed a minimum formal education of Advanced
Level Standard or its equivalent which shall be established in a manner and
at a time prescribed by Parliament by law.

5 person or authority is inconsistent with or in contravention of a provision of the Constitution.

10 The petition cannot be for mere interpretation or construction of an article of the Constitution but for declaration of inconsistency or contravention of a provision of the Constitution by the law, anything done under the authority of the law, or any act or omission by any person or authority. On that basis I find that petition does not disclose a cause of action and I would strike it under Order 7 rule 11 of the Civil Procedure Rules with no order as to costs.

In the final result, I find that this court has no jurisdiction to entertain this petition and I strike it out on that ground alone with no order as to costs.

15 Dated at Kampala the 25th day of May 20 21



Christopher Madrama

Justice of Constitutional Court

AT KAMPALA

CONSTITUTIONAL PETITION NO. 0009 OF 2013

Kenneth Adrapi :::::::::::::::::::::::::::::::::::::: Petitioner

Versus

1. Hon. Drito Martin Andrew
2. The Attorney General
3. The Electoral Commission

.....:Respondents

**Coram: Hon. Mr. Justice Kenneth Kakuru, JCC
Hon. Lady Justice Hellen Obura, JCC
Hon. Mr. Justice Stephen Musota, JCC
Hon. Mr. Justice Christopher Madrama, JCC
Hon. Mr. Justice Remmy Kasule, Ag JA**

Judgment of Hon. Justice Remmy Kasule, Ag. JA

The Petition was filed in this Court pursuant to the provisions of **Articles 80(1)(c) and 83(1)(b) of the Constitution** of the Republic of Uganda. The Petitioner contends that the Parliamentary Elections Act has a lacuna in so far as he claims that it does not provide for the procedure for disqualification of an already elected Member of Parliament. The Petitioner prayed for some declarations and orders, inter alia, that the 1st respondent be disqualified and forthwith cease to be a Member of Parliament, that the Speaker of Parliament ceases to recognise him as a Member of Parliament and an order seeking the 3rd respondent to conduct fresh elections.

35 By way of background the 1st respondent was elected a Member of
Parliament on 18.02.2011 for Madi-Okollo Constituency, Arua
District. However, subsequent to his election and long after the
expiry of the period for challenging his election through an Election
Petition under Sections 61 and 62 of the Parliamentary Elections
40 Act, the National Council for Higher Education (NCHE), which had
on 11.01.2006 issued to the 1st respondent a certificate of formal
education of Advanced Level standard, thereby qualifying him, as
relate to minimum academic qualification, to be nominated and
elected a Member of Parliament, withdrew and cancelled the said
45 certificate on 01.10.2012 when the 1st respondent was already a
sitting Member of Parliament. The 1st respondent refused to vacate
his seat in Parliament. The Petitioner lodged this Constitutional
Petition.

The Issues:

50 The relevant issues for determination, given the time this
Constitutional Petition is being determined, are:

1. Whether the Petition raises any questions for constitutional interpretation.
2. Whether Section 60 and 61 of the Parliamentary Elections Act
55 have a lacuna in them in so far as they fail to provide for the
procedure of disqualification of a sitting Member of Parliament,
which failure contravenes the Constitution.

Legal Representation:

At the hearing, learned Counsel Natukunda appeared for the
60 Petitioner holding brief for learned Counsel Joseph Kyazze while
Adongo Imelda, learned State Attorney was for the 2nd respondent.

Learned Counsel Ntambirweki Kandeebe had filed written submissions for the 1st respondent. He was however absent when the petition was called for hearing. The 3rd respondent also filed
65 written submissions through its legal department. No Counsel was present for the 3rd respondent when the petition was called for the hearing.

Issue 1:

It was submitted by learned Counsel for the petitioner that the
70 Constitutional Petition discloses a cause of action in as far as the Constitutionality of the continued stay of the 1st respondent in Parliament as a Member of Parliament, Madi-Okollo Constituency, Arua District, is being challenged as being contrary to **Articles 80(1)(c), 83(1)(b) and 62 of the Constitution**

75 **Issue 2:**

Learned Counsel for petitioner contended that the withdrawal and cancellation of the academic certificate of equivalence by the National Council for Higher Education (NCHE), upon which the 1st respondent had been nominated and elected Member of Parliament
80 Madi-Okello Constituency, Arua District, in 2011 disqualified the 1st respondent as a Member of Parliament under **Articles 80 and 83 of the Constitution**. The continued stay of the 1st respondent for the rest of the life of that Parliament was in contravention of the Constitution.

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Submissions for the Respondents:

1st Issue:

90 Counsel for the 1st respondent maintained that the Parliamentary Elections Act had no lacuna at all as to the procedure for disqualification and removal from Parliament of such a one like the 1st respondent. **Section 86 of the Parliamentary Elections Act** provides for what ought to be done. The Constitutional Petition of
95 the Petitioner therefore disclosed no cause of action of constitutional interpretation. Counsel relied on **Ismail Serugo vs Kampala City Council: Constitutional Appeal No. 2 of 1998.**

Issue 2:

Learned Counsel for the 1st respondent maintained that once
100 Sections 60 and 61 of the Parliamentary Elections Act are considered together with Section 86 of the same Act, then there is no lacuna in the law as regards the situation of the 1st respondent. Accordingly, the Petition had no merit and ought to be dismissed.

Learned Counsel for the 2nd and 3rd respondents in their respective
105 written submissions also agreed with the submissions of Counsel for the 1st respondents on both the 1st and 2nd issues. They too prayed for dismissal of the petition

Resolution of the Issues:

Issues 1 and 2 are inter-related. The two will be dealt with
110 together.

It is necessary to set out and or paraphrase the law involved in the 2 issues.

The Constitution:

**Article 80: Qualifications and disqualifications of
115 Members of**

Parliament.

**(1) A person is qualified to be a Member of
Parliament if that person –**

(a) is a citizen of Uganda

120 **(b) is a registered voter; and**

**(c) has completed a minimum formal
education of Advanced Level standard or
its equivalent which shall be established
in a manner and at a time prescribed by
125 parliament by law.**

Article 83: Tenure of office of Members of Parliament

**(1) A member of Parliament shall vacate his or
her seat in Parliament –**

(a).....

130 **(b) If such circumstances arise that if that
person were not a Member of Parliament
would cause that person to be
disqualified for election as a Member of
Parliament under Article 80 of this
135 Constitution.**

**Article 86: Determination of questions of
membership.**

(1)The High Court shall have jurisdiction to hear and determine any question whether –

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(a)A person has been validly elected a Member of Parliament or the seat of a Member of Parliament has become vacant;

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(2)A person aggrieved by the determination of the High Court under this Article may appeal to the Court of Appeal.

(3)Parliament shall by law make provision with respect to –

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(a)The persons eligible to apply to the High Court for determination of any question under this Article; and

(b) The circumstances and manner in which and the conditions upon which any such application may be made.

Article 137: Questions as to the interpretation of the Constitution.

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(1)Any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

160

(2).....

(3)A person who alleges that –

(a)An Act of Parliament or any other law or anything in or done under the authority of any law; or

165

(b) Any act or omission by any person or authority,

is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

170 **The Parliamentary Elections Act [17 of 2005]:**

Section 4: Qualifications and disqualifications of Members of Parliament.

(1) A person is qualified to be a Member of Parliament if that person –

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(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.

180

(2).....

(3).....

(4).....

(5) For the purposes of paragraph (c) of subsection (1), any of the following persons wishing to stand for election as a Member of Parliament shall establish his or her qualification with the Commission as a person holding a minimum qualification of Advance Level or its equivalent at least two months before nomination day in the case of

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a general election, and two weeks in the case of a by-election –

(a) Persons, whether their qualification is obtained from Uganda or outside Uganda, who are claiming to have their qualification accepted as equivalent to Advanced Level education;

(b).....

(c).....

(6) A person required to establish his or her qualification under subsection (5) shall do so by the production of a certificate issued to him or her by the National Council for Higher Education in consultation with the Uganda National Examinations Board.

(7).....

(8).....

(9) A certificate issued by National Council for Higher Education under sub-section (6) shall be sufficient in respect of any election for which the same qualification is required.

Sections 60 and 61 are herewith paraphrased

Section 60 Provides:

An Election Petition is to be filed within 30 days from the gazetting of the election results in the High Court by one who loses an election or by a registered voter in the Constituency

supported by not less than 500 voters registered in the Constituency.

Section 61 sets out the grounds for setting aside an election.

220 *These include non compliance with the provisions of the Act*
or that a person other than the one declared elected won the
election or that a candidate at the election committed an
illegal practice or an offence under the Act or that the same
225 *was committed with the knowledge and consent or approval*
of that candidate or that the candidate was at the time of
the election not qualified or was disqualified for election as
a Member of Parliament

Section 84: *Tenure of office of Members of Parliament.*

(1)*A Member of Parliament shall vacate his or*
230 *her seat in Parliament –*

(a).....

(b)if such circumstances arise that if that
person were not a Member of parliament
235 *would cause that person to be*
disqualified for election as a Member of
Parliament under Article 80 of the
Constitution.

(c).....

240 *(d).....*

Section 86: *Determination of questions of membership.*

(1)The High Court shall have jurisdiction to
hear and determine any question whether –

245 (a) *a person has been validly elected a
member of parliament or the seat of a
member of parliament has become
vacant;*

250 (2) *a person aggrieved by the determination of
the High Court under this section may
appeal to the Court of Appeal.*

255 (3) *Subject to the provisions of this Act in
relation to Election Petitions, and to the
provisions of Article 137 of the Constitution,
the Attorney General may petition the High
Court under Article 86 of the Constitution
for the determination of the question
referred to in that article.*

260 (4) *If upon application to the Attorney General
in writing signed by not less than fifty
registered voters stating that a question
referred to in subsection (1) has arisen
stating the ground for coming to that
conclusion the Attorney General fails to
petition the High Court within thirty days
after receipt of the application, any one or
more of the persons who made the
application may petition the High Court for
determination of the question.*

270 (5) *Any party aggrieved by the decision of the
High Court may appeal to the Court of*

Appeal against the decision and subsequently appeal to the Supreme Court.

(6) The High Court, Court of Appeal or the Supreme Court shall proceed expeditiously to hear and determine any question or as the case may be, any appeal before it under this section and may for that purpose suspend any other matter pending before it.

(7) In any case the High Court shall determine a question under this Section within twelve months after the petition in relation to the question was lodged in that Court.

Article 137 (3) of the Constitution provides for constitutional interpretation.

The Supreme Court has held in **Ismail Serugo vs Kampala City Council: Constitutional Appeal No. 2 of 1998** that a cause of action of a constitutional interpretation is established in a constitutional petition, if the said petition describes the act or omission complained of and shows the provision of the Constitution which the act or omission is alleged to have been contravened by the act or omission and prays for a declaration to that effect. The jurisdiction of the Constitutional Court is restricted to only matters requiring interpretation of the Constitution under **Article 137(3) of the Constitution**. See: **Attorney General vs Major General David Tinyefuza: Supreme Court Constitutional Appeal No. 1 of 1997**. If in the course of interpreting the Constitution, the Constitutional Court finds that

it is necessary to grant an order of redress to any party to the constitutional petition then the Constitutional Court may grant
300 such an order of redress under **Article 137(4)(a) of the Constitution.**

An issue for constitutional interpretation arises where the Constitutional Court is being called upon to discover and ascertain the meaning of a provision of the Constitution in its whole context
305 vis-à-vis that of any other statutory law or act or omission so as to be able to determine whether or not the statutory provision or act or omission is in contravention of that particular provision of the Constitution.

The duty of the Constitutional Court is to interpret, not to amend
310 or re-write the Constitution. The Constitutional Court (and other Courts) should resist the temptation to venture into unnecessary judicial interpretations of the Constitution contrary to its clear provisions. See: **Tumukunde vs Attorney General and Another [2005] 2 EA 291 at 293 para g.**

315 The petitioner seeks in this petition, amongst other prayers, many of them now overtaken by events, interpretation as to whether Sections 60 and 61 of the Parliamentary Elections Act,[17 of 2005 are inconsistent and/or contrary to Articles 80(1)(c) and 83(1)(b) of the Constitution in as much as the said sections fail to provide for
320 the procedure of removal of an elected Member of Parliament who becomes disqualified as a Member of Parliament, long after the completion of elections, but before the life span of that Parliament comes to an end.

I find and hold that to this extent the petitioner's constitutional
325 petition, on the face of it discloses a cause of action for
constitutional interpretation. Issue 1 is therefore answered in the
affirmative.

Issue 2:

Article 80(1)(c) of the Constitution sets out as one of the
330 qualifications of a Member of Parliament being completion
academically of a minimum formal education of Advanced Level
Standard or its equivalent established in a manner prescribed by
Parliament. **Section 4(1)(c) of the Parliamentary Elections Act
[17 of 2005]** is a repeat of **Article 80(1)(c) of the Constitution**.

335 Through **Article 83(1)(b)** a Member of Parliament vacates his/her
Parliamentary seat if circumstances arise disqualifying him/her
for election as a Member of Parliament. This article of the
Constitution is reproduced as **Section 84(1)(b) of the
Parliamentary Elections Act [17 of 2005]**.

340 As to the jurisdiction of which Court is to determine questions of
membership of Parliament under **Article 86 (1)(a) of the
Constitution**, reproduced as **Section 86(1)(a) of the
Parliamentary Elections Act [17 of 2005]** vests this jurisdiction
in the High Court.

345 **Article 86(3) of the Constitution** vests in Parliament power to
enact a law as to who is eligible to apply to the High Court and as
to the circumstances, manner and conditions upon which the
application to determine the question may be made.

Pursuant to **Article 86(3) of the Constitution**, Parliament
350 enacted **Section 86(3)(4)(5)(6) and (7) of the Parliamentary
Elections Act [17 of 2005]**, which provisions have already been
reproduced.

The procedure under these provisions is that not less than fifty
voters of the constituency of the Member of Parliament whose seat
355 is alleged to have become vacant have to apply in writing to the
Attorney General stating that the Parliamentary seat in question
has become vacant. The ground alleged to have made the seat
vacant must be stated in the application. The Attorney General is
requested by the application to petition the High Court to declare
360 the said Parliamentary seat vacant. The Attorney General on
receipt of the application, has to petition the High Court within
thirty days from the date of receipt of the application. If the
Attorney General refuses to petition within the thirty days, then
any one or more of the applicants may directly petition the High
365 Court. The High Court must determine the petition within twelve
months from the date of its lodgement in Court.

It has to be appreciated that the Constitution and the
Parliamentary Elections Act [17 of 2005] provide for a number
of ways under which a seat of a Member of Parliament can be
370 vacated. These are set out in **Article 83 of the Constitution** and
**Sections 60, 61, 84, 85 and 86 of the Parliamentary Elections
Act [17 of 2005]**. These are resignation, becoming disqualified as
Member of Parliament, upon dissolution of Parliament, being
absent from the requisite number of parliamentary sittings without
375 the permission of the Speaker, being made to vacate the

parliamentary seat by reason of having violated the Leadership Code of Conduct, being recalled by the constituency electorate, leaving or joining a political party or becoming independent, thus changing allegiance under which a member was elected to
380 Parliament, and being appointed a public officer.

Article 84 of the Constitution and **Section 60 and 61 of the Parliamentary Elections Act [17 of 2005]** provide for challenging the result of an election of a Member of Parliament through lodging an election petition in the High Court within thirty days after the
385 day the result of the election being challenged has been published by the Electoral Commission in the Gazette.

Article 86(1)(a) providing that “..... ***or the seat of a member of parliament has become vacant***” and subsections (3)(4)(5)(6) and (7) are the law applicable where, after the election
390 and the expiry of the period of thirty days from the gazetting of the result of the election, when an election petition is supposed to be lodged in the High Court, circumstances arise, when the five-year period of that Parliament is still going on, a sitting member of that Parliament is stated to be disqualified as a member of parliament
395 due to the absence of any of the requirements of **Article 80(1)(c) of the Constitution** and **Section 4(1)(a)(b) and (c) of the Parliamentary Elections act [17 of 2005]**.

Therefore the right course of action for the petitioner was for him to act under **Section 86(1)(a)(3)(4)(5)(6) and (7) of the**
400 **Parliamentary Elections Act [17 of 2005]** by himself and not less than forty nine registered voters from Madi-Okollo Constituency, Arua District, presenting an application to the Attorney General of

Uganda. The application would pray the Attorney General to petition the High Court to declare the seat of Parliament for Madi-
405 Okollo Constituency occupied by the 1st respondent to be vacant as from the 1st October, 2012 when the National Council for Higher Education (NCHE) withdrew and cancelled the certificate of equivalence of formal education of Advanced Level standard that it had issued to the 1st respondent thereby qualifying him to stand,
410 be nominated and elected for Parliament for Madi-Okollo Constituency.

Had the Attorney General rejected the application to petition Parliament, within thirty days from the date of receipt of the application, then the petitioner, and any others, of his supporters
415 who would have made the application to the Attorney General, ought to have petitioned the High Court direct for determination of the question under **Section 86(4) of the Parliamentary Elections Act [17 of 2005]**.

The Petitioner, contrary to the law as set out above, lodged this
420 Constitutional Petition to this Court for constitutional interpretation, which in real effect, was a prayer to grant the petitioner reliefs which the High Court ought to have determined under **Section 86(4) of the Parliamentary Elections Act [17 of 2005]**. In so acting the petitioner acted contrary to the law.

425 The only aspect of this petition, which as a by the way, has come to this Court's attention for constitutional interpretation, in respect of which none of the parties addressed this Court, is **Section 86(5) of the Parliamentary Elections Act [17 of 2005]** which provides that any party aggrieved with the decision of the

430 High Court may appeal to the Court of Appeal against the decision and subsequently appeal to the Supreme Court.

I find Section 86(5) of the Parliamentary Elections Act [17 of 2005] to be inconsistent with **Article 86(1)(a) and (2)** of the Constitution that provides that one aggrieved by the determination of the High
435 Court under this Article may appeal to the Court of Appeal. The Constitution does not provide for any further appeal to the Supreme Court. Article 2 makes the Constitution to be the Supreme law and if any other law is inconsistent with any provision of the Constitution, the Constitution shall prevail and
440 the other law, to the extent of the inconsistency, shall be void. Therefore **Section 86(5) of the Parliamentary Elections Act [17 of 2005]** is void to the extent that it purports to provide a right of Appeal to the Supreme Court. The appeal must stop at the Court of Appeal in compliance with **Article 86(1)(a) and (2) of the**
445 **Constitution.**

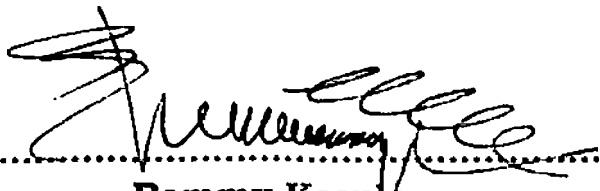
In conclusion I find no merit in this petition. The same stands dismissed.

As to costs, the determination of this petition though relevant and appropriate for the future, is being made eight years after the
450 lodgement of this petition in this Court, when circumstances pertaining to the petition have long been overtaken by events. It is a matter of regret that due to special problems pertaining to adjudication work before this Constitutional Court this petition could not be determine earlier than this time. The crucial issue
455 involved is still however worthy being addressed. This Court has done so. This Court has also, as a by the way, had the opportunity

to clarify as a matter of constitutional interpretation the issue as to which highest Court a dissatisfied party can appeal against a decision of the High Court under **Article 86(2) of the Constitution** and **Section 86(5) of the parliamentary Elections Act [17 of 2005]**.

Given all the above stated circumstances it is only fair that none of the parties to the petition is burdened with the payment of costs. It is accordingly ordered that each party to the petition bear their own costs.

Dated at Kampala this day of 2021.


.....
Remmy Kasule
Ag. Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 09 OF 2013

10 **KENNETH ADRAPIPETITIONER**

VERSUS

1. HON. DRITO MARTIN ANDREW

2. THE ATTORNEY GENERAL

3. THE ELECTORAL COMMISSION.....RESPONDENTS

15

Coram :- Hon. Mr. Justice Kenneth Kakuru, JA/JCC
Hon. Lady Justice Hellen Obura, JA/JCC
Hon. Mr. Justice Stephen Musota, JA/JCC
Hon. Mr. Justice Christopher Madrama, JA/ JCC
20 **Hon. Mr. Justice Remmy Kasule, Ag JA/JCC**

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC

I have had the benefit of reading in draft the Judgment of my learned brother Kasule Ag. JA, I agree with him that this petition had no merit and ought to fail.

25 This Court is required to answer the question as to “whether Section 60 and 61 of the Parliamentary Elections Act have a lacuna(sic) in so far as they fail to provide for a procedure of disqualification of a sitting member of Parliament which failure contravenes the Constitution.”

30 The petitioner does not state the Article of the Constitution in respect of which Sections 60 and 61 for the Parliamentary Elections Act are in contravention and inconsistent with. This is a requirement under Article 137 upon which every

5 constitutional petition is premised. See:- *Ismail Serugo vs Kampala City Council: Constitutional Appeal No. 2 of 1998* and *Attorney General vs Major General David Tinyefuza: Supreme Court Constitutional Appeal No. 1 of 1997*.

It is that specific averment under Article 137 that makes the petition disclose a cause of action. The affidavit in support of the petition does not allege anywhere
10 that Section 60 and 61 of the Parliamentary Elections Act are inconsistent with or contravenes any specific articles of the Constitution. It is not alleged that any act or anything has been done under the said law or any other law that is in contravention of or inconsistent with the Constitution. Neither has it been alleged that any act or omission by any person or authority is inconsistent with or in contravention of the
15 Constitution. The petition therefore on the face of it discloses no cause of action under Article 137 (3) of the Constitution under the Constitutional Court (Petitions and References) Rules 2008.

The jurisdiction of this Court is to answer specific questions set out in the petition and in so doing determine the constitutionality of specific legislation or acts of any
20 person or authority.

This jurisdiction does not extend explaining the meaning of articles of the Constitution generally simply because the petitioner does not understand them.

The purpose and intention of the petitioner herein can be discerned from the orders and declarations he seeks. They are set out in the petition as follows:-

25 ***FOR REASONS WHEREFOR;*** *your Petitioner prays for the following declarations and orders:*

- *A Declaration that the 1st Respondent is not possessed with the minimum academic qualifications to continue serving and or occupying the office of Member of Parliament of Madi-Okollo Constituency, the certificate of
30 equivalency granted to the 1st Respondent by the National Council for*

- 5 *Higher Education upon which the 1st Respondent was nominated and elected having been withdrawn by the National Council for Higher Education and both UNEB and the Ministry of Education and Sports having confirmed that the 1st Respondent could not have obtained the O' and A' Level qualifications claimed by him.*
- 10 • *A declaration that circumstances have occurred subsequent to the election of the 1st respondent as Member of Parliament, which disqualify the 1st Respondent as a Member of Parliament for Madi -Okollo Constituency.*
- 15 • *An order that the 1st Respondent be disqualified, and forthwith, ceases to be a Member of Parliament for Madi-Okollo Constituency.*
- 20 • *An order that the 2nd respondent causes the speaker of the Parliament of Uganda to cease recognition of the 1st respondent as a member of Parliament of Madi-Okollo Constituency, stop according him any benefits accruing to a member of Parliament.*
- 25 • *An order directing the 3rd respondent to conduct fresh elections in Madi-Okollo constituency.*
- *Costs of the Petition be born by the 1st Respondent.*

30 The orders and declarations reproduced above reveal what is clearly a disguised election petition appeal. This Court has no jurisdiction to issue the orders and delectations sought as they do not relate to the provisions of Article 137 of the Constitution. In *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi, Constitutional Petition No. 0028 of 2012* this Court dismissed that petition for the reasons that, it

5 was a disguised election petition appeal. We find that this petition falls in the same category.

The petitioner could have obtained orders and declarations set out from a competent Court under Article 50 of the Constitution or any other applicable legislation.

10 Accordingly, I find this petition on the face of it raises no questions as to interpretation of the constitution and as such this Court has no jurisdiction to entertain it. I would strike it out with costs to the first respondent who was put to unnecessary expense to defend it.

I would make no order as to costs in respect of the 2nd and 3rd respondent.

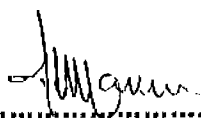
15 **Final decision of the Court**

This petition is struck out.

By majority decision Obura, Musota, Madrama, JJA/JJCC and Kasule Ag. JA/JCC each party shall bear its own costs.

It is so ordered.

20 **Dated at Kampala** this25.....day ofMay..... 2021.



.....
Kenneth Kakuru
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0009 OF 2013
KENNETH ADRITO ::::::::::: PETITIONER

VERSUS

- 1. HON. DRITO MARTIN ANDREW**
- 2. ATTORNEY GENERAL**
- 3. THE ELECTORAL COMMISSIONER ::::::::::: REPONDENTS**

CORAM: Hon. Justice Kenneth Kakuru, JA/JCC
Hon. Lady Justice Hellen Obura, JA/JCC
Hon. Justice Stephen Musota, JA/JCC
Hon. Justice Christopher Madrama, JA/JCC
Hon. Justice Remmy Kasule, AG. JA/JCC

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/JCC

I have had the benefit of reading in draft the judgment by my brother
Hon. Mr. Justice Remmy Kasule, Ag. JA/ JCC.

I agree with his findings but wish to add that the entire petition raises no
issues for Constitutional interpretation. The petitioner ought to have
moved under section 86 (1) (a), (3), (4) (5) (6) and (7) of the Parliamentary
Elections Act 17 of 2005 and petitioned the Attorney General of Uganda
asking him/her to petition the High Court to declare the seat of
Parliament for Madi-Okollo constituency occupied by the 1st respondent
vacant as from the date when National Council for Higher Education
withdrew and cancelled the certificate of equivalence to Advanced level
standard it had issued to the 1st respondent. If the Attorney General did
not act, then the petitioner or any of his supporters would invoke section
86(4) of the Parliamentary Elections Act and directly petitioned the High
Court for a decision.

I have also had the opportunity to read the opinion of my learned brother Hon. Justice Christopher Madrama JA/JCC regarding **Articles 83 (1) (b) and 83(1)** of the **Constitution**. It is true that **Article 83** of the Constitution provides that a Member of Parliament shall vacate his or
5 her seat of parliament upon occurrence of the instances or events stipulated therein which would cause one to be disqualified for election as a Member of Parliament under Article 80 of the Constitution.

However the circumstances under which the 1st respondent found himself in are quite peculiar, in my view. Here is a person who was
10 certified as holding the requisite qualification to stand as Member of Parliament by the mandated authority, the NCHE, he contested and won the election becoming a Member of Parliament.

Subsequently, the same NCHE withdrew its accreditation to the Member of Parliament declaring that he does not hold the equivalent of Advanced
15 level of education. The 1st respondent could not voluntarily invoke Article 83 and leave parliament because the two conflicting decisions clearly became controversial and could only be adjudicated upon through the courts of law. That is why in my view, the provisions of S.86 was rightly enacted in the Parliamentary Elections Act.

20 This petition stands dismissed with each party bearing its own costs.

Dated this 28th day of May 2021



Stephen Musota

25 **JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 09 OF 2013

KENNETH ADRAPIPETITIONER

VERSUS

1. HON. DRITO MARTIN ANDREW

2. THE ATTORNEY GENERAL

3. THE ELECTORAL COMMISSION.....RESPONDENTS

Coram :- Hon. Mr. Justice Kenneth Kakuru, JA/JCC
Hon. Lady Justice Hellen Obura, JA/JCC
Hon. Mr. Justice Stephen Musota, JA/JCC
Hon. Mr. Justice Christopher Madrama, JA/ JCC
Hon. Mr. Justice Remmy Kasule, Ag JA/JCC

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC

I have had the benefit of reading in draft the Judgment of my learned brother Kasule Ag. JA, I agree with him that this petition had no merit and ought to fail.

This Court is required to answer the question as to “whether Section 60 and 61 of the Parliamentary Elections Act have a lacuna(sic) in so far as they fail to provide for a procedure of disqualification of a sitting member of Parliament which failure contravenes the Constitution.”

The petitioner does not state the Article of the Constitution in respect of which Sections 60 and 61 for the Parliamentary Elections Act are in contravention and inconsistent with. This is a requirement under Article 137 upon which every

5 constitutional petition is premised. See:- *Ismail Serugo vs Kampala City Council: Constitutional Appeal No. 2 of 1998 and Attorney General vs Major General David Tinyefuza: Supreme Court Constitutional Appeal No. 1 of 1997.*

It is that specific averment under Article 137 that makes the petition disclose a cause of action. The affidavit in support of the petition does not allege anywhere
10 that Section 60 and 61 of the Parliamentary Elections Act are inconsistent with or contravenes any specific articles of the Constitution. It is not alleged that any act or anything has been done under the said law or any other law that is in contravention of or inconsistent with the Constitution. Neither has it been alleged that any act or omission by any person or authority is inconsistent with or in contravention of the
15 Constitution. The petition therefore on the face of it discloses no cause of action under Article 137 (3) of the Constitution under the Constitutional Court (Petitions and References) Rules 2008.

The jurisdiction of this Court is to answer specific questions set out in the petition and in so doing determine the constitutionality of specific legislation or acts of any
20 person or authority.

This jurisdiction does not extend explaining the meaning of articles of the Constitution generally simply because the petitioner does not understand them.

The purpose and intention of the petitioner herein can be discerned from the orders and declarations he seeks. They are set out in the petition as follows:-

25 ***FOR REASONS WHEREFOR;*** *your Petitioner prays for the following declarations and orders:*

- *A Declaration that the 1st Respondent is not possessed with the minimum academic qualifications to continue serving and or occupying the office of Member of Parliament of Madi-Okollo Constituency, the certificate of
30 equivalency granted to the 1st Respondent by the National Council for*

- 5 *Higher Education upon which the 1st Respondent was nominated and elected having been withdrawn by the National Council for Higher Education and both UNEB and the Ministry of Education and Sports having confirmed that the 1st Respondent could not have obtained the O' and A' Level qualifications claimed by him.*
- 10 • *A declaration that circumstances have occurred subsequent to the election of the 1st respondent as Member of Parliament, which disqualify the 1st Respondent as a Member of Parliament for Madi -Okollo Constituency.*
- 15 • *An order that the 1st Respondent be disqualified, and forthwith, ceases to be a Member of Parliament for Madi-Okollo Constituency.*
- 20 • *An order that the 2nd respondent causes the speaker of the Parliament of Uganda to cease recognition of the 1st respondent as a member of Parliament of Madi-Okollo Constituency, stop according him any benefits accruing to a member of Parliament.*
- 25 • *An order directing the 3rd respondent to conduct fresh elections in Madi-Okollo constituency.*
- *Costs of the Petition be born by the 1st Respondent.*

30 The orders and declarations reproduced above reveal what is clearly a disguised election petition appeal. This Court has no jurisdiction to issue the orders and delectations sought as they do not relate to the provisions of Article 137 of the Constitution. In *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi, Constitutional Petition No. 0028 of 2012* this Court dismissed that petition for the reasons that, it

5 was a disguised election petition appeal. We find that this petition falls in the same category.

The petitioner could have obtained orders and declarations set out from a competent Court under Article 50 of the Constitution or any other applicable legislation.

10 Accordingly, I find this petition on the face of it raises no questions as to interpretation of the constitution and as such this Court has no jurisdiction to entertain it. I would strike it out with costs to the first respondent who was put to unnecessary expense to defend it.

I would make no order as to costs in respect of the 2nd and 3rd respondent.

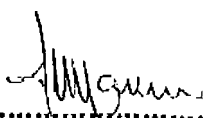
15 **Final decision of the Court**

This petition is struck out.

By majority decision Obura, Musota, Madrama, JJA/JJCC and Kasule Ag. JA/JCC each party shall bear its own costs.

It is so ordered.

20 **Dated at Kampala** this25.....day ofMay..... 2021.



.....
Kenneth Kakuru
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0009 OF 2013

KENNETH ADRITO ::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

1. HON. DRITO MARTIN ANDREW

2. ATTORNEY GENERAL

3. THE ELECTORAL COMMISSIONER ::::::::::: RESPONDENTS

CORAM: Hon. Justice Kenneth Kakuru, JA/JCC

Hon. Lady Justice Hellen Obura, JA/JCC

Hon. Justice Stephen Musota, JA/JCC

Hon. Justice Christopher Madrama, JA/JCC

Hon. Justice Remmy Kasule, AG. JA/JCC

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/JCC

I have had the benefit of reading in draft the judgment by my brother
Hon. Mr. Justice Remmy Kasule, Ag. JA/ JCC.

I agree with his findings but wish to add that the entire petition raises no
issues for Constitutional interpretation. The petitioner ought to have
moved under section 86 (1) (a), (3), (4) (5) (6) and (7) of the Parliamentary
Elections Act 17 of 2005 and petitioned the Attorney General of Uganda
asking him/her to petition the High Court to declare the seat of
Parliament for Madi-Okollo constituency occupied by the 1st respondent
vacant as from the date when National Council for Higher Education
withdrew and cancelled the certificate of equivalence to Advanced level
standard it had issued to the 1st respondent. If the Attorney General did
not act, then the petitioner or any of his supporters would invoke section
86(4) of the Parliamentary Elections Act and directly petitioned the High
Court for a decision.

I have also had the opportunity to read the opinion of my learned brother Hon. Justice Christopher Madrama JA/JCC regarding **Articles 83 (1) (b)** and **83(1)** of the **Constitution**. It is true that **Article 83** of the Constitution provides that a Member of Parliament shall vacate his or
5 her seat of parliament upon occurrence of the instances or events stipulated therein which would cause one to be disqualified for election as a Member of Parliament under Article 80 of the Constitution.

However the circumstances under which the 1st respondent found himself in are quite peculiar, in my view. Here is a person who was
10 certified as holding the requisite qualification to stand as Member of Parliament by the mandated authority, the NCHE, he contested and won the election becoming a Member of Parliament.

Subsequently, the same NCHE withdrew its accreditation to the Member of Parliament declaring that he does not hold the equivalent of Advanced
15 level of education. The 1st respondent could not voluntarily invoke Article 83 and leave parliament because the two conflicting decisions clearly became controversial and could only be adjudicated upon through the courts of law. That is why in my view, the provisions of S.86 was rightly enacted in the Parliamentary Elections Act.

20 This petition stands dismissed with each party bearing its own costs.

Dated this 25th day of May 2021



Stephen Musota

25 **JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 09 OF 2013

10 **KENNETH ADRAPIPETITIONER**

VERSUS

1. HON. DRITO MARTIN ANDREW

2. THE ATTORNEY GENERAL

3. THE ELECTORAL COMMISSION.....RESPONDENTS

15

Coram :- Hon. Mr. Justice Kenneth Kakuru, JA/JCC
Hon. Lady Justice Hellen Obura, JA/JCC
Hon. Mr. Justice Stephen Musota, JA/JCC
Hon. Mr. Justice Christopher Madrama, JA/ JCC
20 **Hon. Mr. Justice Remmy Kasule, Ag JA/JCC**

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC

I have had the benefit of reading in draft the Judgment of my learned brother Kasule Ag. JA, I agree with him that this petition had no merit and ought to fail.

25 This Court is required to answer the question as to “whether Section 60 and 61 of the Parliamentary Elections Act have a lacuna(sic) in so far as they fail to provide for a procedure of disqualification of a sitting member of Parliament which failure contravenes the Constitution.”

30 The petitioner does not state the Article of the Constitution in respect of which Sections 60 and 61 for the Parliamentary Elections Act are in contravention and inconsistent with. This is a requirement under Article 137 upon which every

5 constitutional petition is premised. See:- *Ismail Serugo vs Kampala City Council: Constitutional Appeal No. 2 of 1998 and Attorney General vs Major General David Tinyefuza: Supreme Court Constitutional Appeal No. 1 of 1997.*

It is that specific averment under Article 137 that makes the petition disclose a cause of action. The affidavit in support of the petition does not allege anywhere
10 that Section 60 and 61 of the Parliamentary Elections Act are inconsistent with or contravenes any specific articles of the Constitution. It is not alleged that any act or anything has been done under the said law or any other law that is in contravention of or inconsistent with the Constitution. Neither has it been alleged that any act or omission by any person or authority is inconsistent with or in contravention of the
15 Constitution. The petition therefore on the face of it discloses no cause of action under Article 137 (3) of the Constitution under the Constitutional Court (Petitions and References) Rules 2008.

The jurisdiction of this Court is to answer specific questions set out in the petition and in so doing determine the constitutionality of specific legislation or acts of any
20 person or authority.

This jurisdiction does not extend explaining the meaning of articles of the Constitution generally simply because the petitioner does not understand them.

The purpose and intention of the petitioner herein can be discerned from the orders and declarations he seeks. They are set out in the petition as follows:-

25 ***FOR REASONS WHEREFOR;*** your Petitioner prays for the following declarations and orders:

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30 equivalency granted to the 1st Respondent by the National Council for*

- 5 *Higher Education upon which the 1st Respondent was nominated and elected having been withdrawn by the National Council for Higher Education and both UNEB and the Ministry of Education and Sports having confirmed that the 1st Respondent could not have obtained the O' and A' Level qualifications claimed by him.*
- 10 • *A declaration that circumstances have occurred subsequent to the election of the 1st respondent as Member of Parliament, which disqualify the 1st Respondent as a Member of Parliament for Madi -Okollo Constituency.*
- 15 • *An order that the 1st Respondent be disqualified, and forthwith, ceases to be a Member of Parliament for Madi-Okollo Constituency.*
- 20 • *An order that the 2nd respondent causes the speaker of the Parliament of Uganda to cease recognition of the 1st respondent as a member of Parliament of Madi-Okollo Constituency, stop according him any benefits accruing to a member of Parliament.*
- 25 • *An order directing the 3rd respondent to conduct fresh elections in Madi-Okollo constituency.*
- *Costs of the Petition be born by the 1st Respondent.*

30 The orders and declarations reproduced above reveal what is clearly a disguised election petition appeal. This Court has no jurisdiction to issue the orders and delectations sought as they do not relate to the provisions of Article 137 of the Constitution. In *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi, Constitutional Petition No. 0028 of 2012* this Court dismissed that petition for the reasons that, it

5 was a disguised election petition appeal. We find that this petition falls in the same category.

The petitioner could have obtained orders and declarations set out from a competent Court under Article 50 of the Constitution or any other applicable legislation.

10 Accordingly, I find this petition on the face of it raises no questions as to interpretation of the constitution and as such this Court has no jurisdiction to entertain it. I would strike it out with costs to the first respondent who was put to unnecessary expense to defend it.

I would make no order as to costs in respect of the 2nd and 3rd respondent.

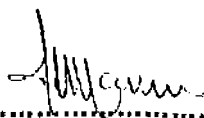
15 **Final decision of the Court**

This petition is struck out.

By majority decision Obura, Musota, Madrama, JJA/JJCC and Kasule Ag. JA/JCC each party shall bear its own costs.

It is so ordered.

20 **Dated at Kampala** this25.....day ofMay..... 2021.



.....
Kenneth Kakuru

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Kakuru, Obura, Musota, Madrama, JJA/CC & Kasule, Ag. JCC)

CONSTITUTIONAL PETITION NO. 0009 OF 2013

KENNETH ADRAPI

}.....PETITIONER

VERSUS

1. HON. DRITO MARTIN ANDREW }+

2. ATTORNEY GENERAL }

3. THE ELECTORAL COMMISSION }.....RESPONDENT

JUDGMENT OF HELLEN OBURA, JA/JCC

I have had the benefit of reading in draft the judgment of my learned brother, Hon. Justice Remmy Kasule in the above petition. I agree with him on issue 2 that this petition is devoid of merit and ought to be dismissed.

It is abundantly clear that the jurisdiction to determine questions of membership of Parliament under Article 86 (1) (a) of the Constitution and section 86 (1) (a) of the Parliamentary Elections Act is vested in the High Court and not this Court. The procedure for moving the High Court under section 86 of the Parliamentary Elections Act is also well laid out in section 86 (3), (4), (5), (6) & (7) of that Act. It was therefore not necessary for the petitioner to bring a petition to this Court whose jurisdiction is exclusively derived from Article 137 of the Constitution.

It was succinctly stated by the Supreme Court in *Ismail Serugo vs Kampala City Council & Attorney General Constitutional Appeal No. 2 of 1998* (as per Wambuzi, CJ) that;

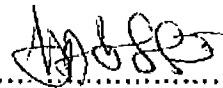
"In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated."

I would dismiss this petition on this ground alone.

As regards issue 1, I respectfully do not agree with the conclusion of my learned brother Hon. Justice Remmy Kasule that this petition discloses a cause of action for determination of questions as to interpretation of the Constitution. For a petition to disclose a cause of action, it must allege that an Act of Parliament or any other law or anything in or done under the authority of any law; or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution. This is clearly set out under Article 137 (3) of the Constitution.

The petition that was presented before this Court does not allege any of the acts or omissions stipulated under Article 137 of the Constitution. I therefore find that the petition does not disclose a cause of action for constitutional interpretation. For that reason, I would find this petition lacking and strike it out.

Dated at Kampala this.....25th.....day of.....May.....2021



Hellen Obura

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0009 OF 2013

KENNETH ADRITO ::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

1. HON. DRITO MARTIN ANDREW

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CORAM: Hon. Justice Kenneth Kakuru, JA/JCC

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Hon. Justice Stephen Musota, JA/JCC

Hon. Justice Christopher Madrama, JA/JCC

Hon. Justice Remmy Kasule, AG. JA/JCC

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/JCC

I have had the benefit of reading in draft the judgment by my brother
Hon. Mr. Justice Remmy Kasule, Ag. JA/ JCC.

I agree with his findings but wish to add that the entire petition raises no
issues for Constitutional interpretation. The petitioner ought to have
moved under section 86 (1) (a), (3), (4) (5) (6) and (7) of the Parliamentary
Elections Act 17 of 2005 and petitioned the Attorney General of Uganda
asking him/her to petition the High Court to declare the seat of
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not act, then the petitioner or any of his supporters would invoke section
86(4) of the Parliamentary Elections Act and directly petitioned the High
Court for a decision.

I have also had the opportunity to read the opinion of my learned brother Hon. Justice Christopher Madrama JA/JCC regarding **Articles 83 (1) (b)** and **83(1)** of the **Constitution**. It is true that **Article 83** of the Constitution provides that a Member of Parliament shall vacate his or
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However the circumstances under which the 1st respondent found himself in are quite peculiar, in my view. Here is a person who was
10 certified as holding the requisite qualification to stand as Member of Parliament by the mandated authority, the NCHE, he contested and won the election becoming a Member of Parliament.

Subsequently, the same NCHE withdrew its accreditation to the Member of Parliament declaring that he does not hold the equivalent of Advanced
15 level of education. The 1st respondent could not voluntarily invoke Article 83 and leave parliament because the two conflicting decisions clearly became controversial and could only be adjudicated upon through the courts of law. That is why in my view, the provisions of S.86 was rightly enacted in the Parliamentary Elections Act.

This petition stands dismissed with each party bearing its own costs.

Dated this 25th day of May 2021



Stephen Musota

JUSTICE OF APPEAL