

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT, 2005 (AS AMENDED)**

**AND**

**IN THE MATTER OF THE PARLIAMENTARY ELECTION PETITION RULES**

**ELECTION PETITION No. 0016 OF 2011**

**LULE UMAR MAWIYA .....  
PETITIONER**

**VERSUS**

**1. SSEMPIJJA VINCENT BAMULANGAKI }**

**2. THE ELECTORAL COMMISSION } .....  
RESPONDENTS**

**BEFORE THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO**

**JUDGMENT**

In the Parliamentary elections held on the 18<sup>th</sup> February 2011, seven candidates, including the Petitioner herein and 1<sup>st</sup> Respondent, contested for the Kalungu East County Constituency representation; in which the 1<sup>st</sup> Respondent was returned by the 2<sup>nd</sup> Respondent as the person duly elected to represent the constituency in Parliament. The Petitioner was however aggrieved and therefore contested the return on three broad grounds; namely that: –

1. The 1<sup>st</sup> Respondent lacked the requisite academic qualification to contest for a Parliamentary seat.
2. The 2<sup>nd</sup> Respondent secured his victory through illegal and prohibited means.
3. The 2<sup>nd</sup> Respondent, in collusion with the 1<sup>st</sup> Respondent, falsified the results to the benefit of the 1<sup>st</sup> Respondent.

The Petitioner therefore pleaded with Court for: –

- (i) A declaratory order that the 1<sup>st</sup> Respondent was not qualified to contest for Parliament.
- (ii) A declaration that the 1<sup>st</sup> Respondent and his agents acting with his knowledge and sanction committed electoral offences such as violence and bribery.
- (iii) The 2<sup>nd</sup> Respondent failed to conduct a free and fair election; and to subject the academic papers of the 1<sup>st</sup> Respondent, to adequate scrutiny.
- (iv) An order setting aside the election return.
- (v) An order awarding costs to the Petitioner.
- (vi) Any further and better relief the Court may deem fit to grant.

The Petitioner swore an affidavit, dated the 28<sup>th</sup> March, in support of and accompanying the petition. In it, he deposed that the 1<sup>st</sup> Respondent's 'O' Level certificate had been impeached by the Uganda National Examinations Board (UNEB) in 2002; and relied on the affidavit deposed to by one Mathew Bukenya in 2002 in support of this. He also alleged that during the campaign period, the 1<sup>st</sup> Respondent moved from village to village in his motor vehicle Reg. No. UAF 982Q, and meted out acts of violence while unleashing terror on the Petitioner's and other candidates' supporters.

The Petitioner further accused the 1<sup>st</sup> Respondent of having committed acts of bribery of voters at Kamunga village in the constituency, by giving each household shs. 5000/=. Furthermore, he blamed the 2<sup>nd</sup> Respondent for its failure to restrain the 1<sup>st</sup> Respondent from committing the acts of violence stated above; and also for its agents – the Returning Officer and the Polling Assistants – falsifying the results and altering the tally sheets. Accordingly, he deposed that the nomination and election of the 1<sup>st</sup> Respondent was tainted with blame. Attached to his affidavit were: a copy of the Constituency tally sheet, copies of Declaration of Results forms, and two copies of a summary of results from two polling stations.

The 1<sup>st</sup> Respondent answered the petition, contending that he was properly and validly nominated to contests the election which he won. He denied that the UNEB has ever impeached his 'O' Level certificate; but instead that, in 2002, this certificate was found by Court to be valid, which led the party impugning it to withdraw ***Election Petition No. 1 of 2002 – Dr Shannon Kakungulu vs V.P. Ssempijja*** with a written apology. He admitted being in possession of a gun since 1994 when it was lawfully given to him for his personal security as an R.D.C. He however vehemently denied any misuse of the gun ever since; and contended further that even in 2002, when he first stood for elections, he never misused the gun at all.

He conceded that he surrendered the gun to the D.P.C of Kalungu District at the District Headquarters, and at her demand that he did so; and that in doing so, the D.P.C, a friend of the Petitioner, was misusing her authority to intimidate him. He denied that he ever moved with the gun to any of his rallies, or used it to intimidate the Petitioner's supporters as alleged by the Petitioner. He denied that there were any incidents of bribery by himself or by his agents with his knowledge and consent; and further denied that there were any irregularities or falsification of results which could have affected the results in any substantial manner.

In his supporting affidavit, he deposed that he qualified to contest for the Parliamentary seat which he won as he possesses qualifications well above the 'A' Level certificate, this being a Bachelor of Arts in Public Administration & Management as well as Masters of Arts in Public Administration & Management of Nkumba University; both of which he attached to the affidavit. He deposed that he obtained his 'O'Level in 1974 at St. Lwanga Secondary School Kasasa, and his 'A' Level certificate in 1976; both of which, he deposed, are valid and not tainted by any fraud. He denied that any of his certificates has ever been impeached by UNEB and that instead Mr. Mathew Bukenya admitted in Court that his certificate was genuine and valid.

He also deposed that Mr. Bukenya's concession as to the validity of his certificate, and the Court's finding to that effect, led to Dr. Shannon Kakungulu, the petitioner in the 2002 petition, withdrawing the petition with costs; after which the petitioner wrote him a letter apology which he attached to the affidavit. He denied that he was arrested during the campaign period, or that he was terrorising supporters of the Petitioner or anybody in the constituency with a gun; but that he had to give his gun, which he has lawfully had since 1994, to the District Police Commander Kalungu, a friend of the Petitioner, who had asked

for it. He denied knowledge of any criminal case reported against him, but that the police wanted to investigate the source of the gun and why he was in possession of it.

Otherwise, he deposed, it is well known to people including the Petitioner that he has always had this gun, and that he has never used it to terrorize anyone. He deposed that there was no criminal or electoral offence pending against him to the best of his knowledge. He also denied any bribery of voters or household by giving money. He deposed further that he wrote to the Returning Officer upon realising that there was an error in the electronic tallying of the results which had given the Petitioner a lesser total number of votes than the ones that had in fact been cast in his favour; but that even the adjusted vote tally did not affect the final outcome of the election.

The 2<sup>nd</sup> Respondent answered the petition denying the allegations made against therein. Its Chairperson, Dr. Eng. Badru Kiggundu, made an affirmation in support, contenting that the 2<sup>nd</sup> Respondent duly satisfied itself that the 1<sup>st</sup> Respondent possessed the requisite academic qualification for nomination as a candidate. Furthermore, the answer and Dr. Kiggundu's contention was that it managed the electoral process in accordance with the law; and no allegation of commission of any illegal acts committed by the 1<sup>st</sup> Respondent, or his agents, or even by the agents of the 2<sup>nd</sup> Respondent such as the alleged falsification of results, were brought to the 2<sup>nd</sup> Respondent's attention before it made the declaration of results. He also contended that any non compliance with the electoral laws was not substantial; and could not alter the outcome of the election.

After these replies, the parties traded a number of affidavits in support of their respective contention; and to these I shall revert in the course of resolving the issues framed for determination. In a joint scheduling memorandum, the facts agreed to were that six candidates contested for the Kalungu East parliamentary seat, in the election conducted by the 2<sup>nd</sup> Respondent and held on the 18<sup>th</sup> February 2011; and of which the 1<sup>st</sup> Respondent was returned as the elected candidate, while the Petitioner was the runner up. The following issues were agreed upon for Court's determination; namely: –

1. Whether there was non compliance with the provisions of the electoral laws; and if so, whether the said non compliance affected the results of the election in a substantial manner.

2. Whether there were any illegal practices and or election offences committed by the 1<sup>st</sup> Respondent personally or by his agents with his knowledge and consent or approval.
3. Whether the 1<sup>st</sup> Respondent had the minimum academic qualification for nomination and election as Member of Parliament at the time of his nomination.
4. The remedies available to the parties.

After the filing of affidavit evidence, the deponents whom the opposite parties wished to cross examine were summoned and appeared in Court and duly examined. Upon the close of the cross examinations, I directed that learned Counsels for the parties file written submissions within a given time frame, and then adjourned the case for judgment to be delivered on notice. In determining the issues framed with the assistance of Counsels, I will follow the order in which they were proposed under agreement of the Counsels.

**Issue No.1.                    Whether there was non compliance with the provisions of the electoral laws; and if so, whether the said non compliance affected the results of the election in a substantial manner.**

Namuli Hanifa, the Petitioner's polling agent for Nnunda polling station deposed that at her polling station, the Petitioner got 117 votes against the 1<sup>st</sup> Respondent's 87 and she signed the declaration of results form indicating this; but that during the announcement of the final results, the Returning Officer converted the vote tally for the polling station, swapping the two candidates' votes. Jemba Zefaniya the Petitioner's polling agent for Kyato polling station deposed that at his polling station the Petitioner got 105 votes against 99 for the 1<sup>st</sup> Respondent, which was recorded in the Declaration of Results form which he duly signed.

However when the final results were announced, the Petitioner's votes at the polling station was announced to have been only 5, and that it was the 1<sup>st</sup> Respondent who had got 105 votes! Nakasi Haisha, the Petitioner's polling agent at Kiseesa Church of Uganda polling station affirmed in her affidavit that the Petitioner got 281 votes thereat, which was recorded in the Declaration of Results form and she signed; but that the Returning Officer declared that the Petitioner had only got 21 votes at that polling station.

Nabulya Aida, the presiding officer at Kiwesa Church of Uganda polling station, deposed that at her polling station, the Petitioner got 281 votes while the 1<sup>st</sup> Respondent got 41; but that during the final declaration of results by the Returning Officer, the two candidates' votes at

her polling station were swapped. She also deposed that during the course of the polling and after the close of the polling, there were some strange activities by the police with regard to the movement of the ballot box from the polling station to its final place of storage.

By consent of the parties, the 2<sup>nd</sup> Respondent availed Court certified record of all the Declaration of Results forms, transmission of results form, and tally sheet for the contested election. The records show that the figures which formed the basis of the returns of the election in which the 1<sup>st</sup> Respondent was declared winner entirely agree with the figures stated by the witnesses of the Petitioner who allege that there was falsification of vote tally at the declaration of results stage by the Returning Officer. I do not know if the witnesses merely misheard the announcements or the Returning Officer in reading the vote tally mixed up the votes.

What is important is that the record transmitted to the 2<sup>nd</sup> Respondent has no evidence of falsification or swapping as alleged. The only mistake which was discovered by the 1<sup>st</sup> Respondent from his tally of the votes was in the computation of the total of the Petitioner's vote; a matter which the 1<sup>st</sup> Respondent duly brought to the attention of the 2<sup>nd</sup> Respondent. Suffice it to say that even with this favourable adjustment in the total number of votes garnered by the Petitioner, it did not change the final outcome of the election as it only brought him nearer to the 1<sup>st</sup> Respondent. I therefore find that there was no proof of non compliance with the electoral laws with any substantial effect on the final outcome of the results.

**Issue No. 2.                    Whether there were any illegal practices and or election offences committed by the 1<sup>st</sup> Respondent personally or by his agents with his knowledge and consent or approval.**

The Petitioner alleged that the 1<sup>st</sup> Respondent committed two illegal practices and election offences. These were: intimidation meted out on the Petitioner's supporters, and bribery of voters to solicit for their votes. The Petitioner's affidavit in support of the petition alleging these were based on hearsay; but were admissible owing to the rule that affidavits accompanying election petitions are equated with pleadings, hence may allege matters based on information or belief. The direct evidence alleging these malpractices, necessary to prove the allegations, came from other witnesses who deposed in rejoinder to the Respondents' affidavits in support of their respective answers to the petition.

(a) Allegations of intimidation

Makya Muhamadi, Kavuma Asuman, and Mayanja Peter in their respective affidavits in rejoinder dated 6<sup>th</sup> May 2011, deposed that on the 27<sup>th</sup> January 2011 around 6.00 p.m. a vehicle blocked theirs carrying a public address system they were using to announce the Petitioner's rallies in the villages. The Deputy RDC and the 1<sup>st</sup> Respondent, who had guns in their hands, came out of the other car with Kigongo Habineza the 1<sup>st</sup> Respondent's agent, and threatened to shoot them if they continued announcing the Petitioner's rallies in the villages. Makya affirmed further that he rang the Youth Desk Coordinator for the Petitioner's Task Force who came to the scene.

Mayanja Peter deposed further that the following day, at Birongo Trading Centre, the Deputy RDC who was in the company of the 1<sup>st</sup> Respondent, in a vehicle with a Government registration number, ordered her driver to drive through people if they did not give way. Jingo Fazil, the Youth Desk Coordinator for the Petitioner's Task Force during the campaigns affirmed in his affidavit that on the 27<sup>th</sup> January 2011 at around 6.10 p.m., he was called and found the Deputy RDC Ms. Aisha Sekindi, the 1<sup>st</sup> Respondent holding a gun, and others, in the Deputy RDC's vehicle which had blocked a vehicle carrying the Petitioner's public address system.

He challenged them, but they merely described him as a cantankerous young man. The following day, at Birongo Trading Centre, the said Aisha Sekindi and the 1<sup>st</sup> Respondent attempted to forcefully place the 1<sup>st</sup> Respondent's poster on a structure which had been constructed for candidate Yoweri Museveni who was due to address a rally at the place that day. When the residents of the place objected, he deposed further, one Kawunde a brother of the 1<sup>st</sup> Respondent pushed him towards a vehicle carrying the 1<sup>st</sup> Respondent, from which the 1<sup>st</sup> Respondent showed him a gun placed between his legs in the vehicle and threatened to kill him if he did not stop frustrating his campaigns.

Kawunde then picked a gun from the 1<sup>st</sup> Respondent's car, and threatened to shoot the people gathered who fled in terror, and to shoot him too forcing him to phone the DPC who deployed three police officers till morning. He affirmed further that a week later, Sekagya an aide of the 1<sup>st</sup> Respondent took him to the 1<sup>st</sup> Respondent's vehicle Reg. No. UAN 982Q and showed him *'the gun which was being used to wreak havoc in the constituency'*. He took pictures of the gun then notified the DPC Mrs Rehema Samanya who was with candidates in

a security meeting. The DPC confirmed the presence of the gun in the 1<sup>st</sup> Respondent's car, had the car driven to her office where the gun and ammunition were removed and kept; all of which episodes he captured in his camera.

Kabuye Sarah Nabiryo, a polling agent for the Petitioner deposed that on the 3<sup>rd</sup> September 2011, after celebrating the Petitioner's election as the NRM flag bearer for Kalungu East County Constituency in the Parliamentary elections then imminent, she went home and was resting when she heard a gun being cocked and Deputy RDC Aisha Syekindi commanded her to come out of her house. She however refused, and only did so when her LC1 was brought; and the Deputy RDC then ordered her into her car. Abbineza Kyigongo the district NRM Chairperson advised the Deputy RDC to take her to Bukumula police station, but she argued that she preferred to be taken to Kwabenge police station. This was done, wherefrom the Deputy RDC alleged she had stolen ballot papers, for which she was detained for sometime then released.

Several people swore affidavits in rebuttal of the depositions made by witnesses for the Petitioner. Joseph Lukwago, Chairperson LC1 Luzira village, and as well Chairperson LC2 Buganzi Parish deposed that on the 27<sup>th</sup> January 2011, from around 1.00 p.m., he was in the company of the 1<sup>st</sup> Respondent who campaigned in Bugonzi Parish the whole of that afternoon; after which they had dinner together at one Nampeera's residence at Mukoko Bukulula along with other persons such as Mr Muyanja Chairperson LC3 Bukulula, and Baker Kiyemba Chairperson LC2 Mukoko Parish. He therefore vehemently rebutted the adverse depositions in the affidavits of Jingo Fazil, Mayanja Peter, Makya Muhamadi, and Kavuma Asuman, as false.

The 1<sup>st</sup> Respondent, in his affidavit in surrejoinder dated 13<sup>th</sup> June 2011, rebutted the adverse allegations made against him by the witnesses for the Petitioner. He denied having been in the company of the Deputy RDC as alleged, or that he was anywhere at Birongo or blocked the Petitioner's campaign vehicle as alleged. He corroborated the deposition of Joseph Lukwago setting up an alibi as to his movements and whereabouts during the afternoon of the 27<sup>th</sup> January 2011; and asserted that he never met any of those witnesses who have made allegations adverse to him, and never blocked the Petitioner's campaign vehicle as alleged.

With regard to the 28<sup>th</sup> January 2011, when candidate Yoweri Museveni addressed a rally at Birongo, the 1<sup>st</sup> Respondent denied that he was at Birongo around 11.00 a.m. as he was at



Masaka Referral Hospital from 10.00 a.m. waiting for the President who came and laid a foundation stone for a new theatre around 12.00 noon. After this function he left Masaka around 3.00 p.m. and drove in a convoy with the Regional Police Commander Mr. Sekiwere; and when his vehicle broke down on the way, the said Police Commander gave him a lift and they arrived together at Birongo at around 4.00 p.m.; and at this time the Presidential Guard Brigade had already placed the trading centre under their security control.

He vehemently denied that he had a gun on him that day; explaining that having been an RDC and District Chairperson for over 25 years, in which capacity he has been on the District Security Committee, he knows only too well that, save for the presidential guards, nobody, not even the Chief of Defence Forces, or Ministers, is permitted to go with a gun to any place where the President is. He also denied that he has a brother called Kawunde who is alleged to have picked a gun from him and threatened people with on the 28<sup>th</sup> January 2011; explaining that this could never have happened since the personnel of the Presidential Guard Brigade were all over the place manning security.

He also denied that he had an aide called Ssekajja who was alleged to have led Jingo to the car where his gun was, and it was then taken away by the DPC. He denied ever having threatened anyone with a gun; and termed the adverse depositions by the Petitioner's witnesses in that regard as false. David Kawunde in his affidavit denied the allegations by Jingo Fazil that he is a brother to the 1<sup>st</sup> Respondent. He also denied that the 1<sup>st</sup> Respondent, who resides at Lukaya Town Council as he, has a brother called Kawunde.

He also deposed that on the 28<sup>th</sup> January 2011, he was distributing candidate Museveni's T-shirts at Birongo Trading Centre where security, by the presidential guard brigade which was checking everyone and vehicles approaching the venue, was so tight. He denied that the 1<sup>st</sup> Respondent had any gun that day or that he picked a gun and threatened with anybody; something that was impossible owing to the presence of the Presidential Guard Brigade manning security at the place. He also deposed that he never saw the 1<sup>st</sup> Respondent in the morning hours that day, but only did so when the President introduced him to the people during the rally around 5:40 p.m.

The evidence adduced by either side with regard to the alleged acts of intimidation are characteristic of what one would expect in election petitions, especially when the deponents are known supporters of either side to the contest. Each side is known to do anything possible

to establish their case. In effect, it is usually a continuation of the political contest extended to the Courts of law. A close evaluation of the evidence for the Petitioner brings out a few things. The use of the gun by the 1<sup>st</sup> Respondent to wreak terror was said to have been all over the constituency; yet there is no evidence that the electoral authorities were notified of this very serious electoral offence.

In fact it does appear that the issue of the gun was only raised with the DPC during the candidates' meeting at the District headquarters which is located in another constituency. However, since the 1<sup>st</sup> Respondent contended that during the campaigns he continued to perform his other functions as the Chairperson for Masaka District and moved with his normal security apparatus whenever he was not campaigning, as was the case with the meeting at the district headquarters from where the gun was removed from him, there was need for cogent independent evidence that he truly moved with the gun during his campaign tours, and misused them as alleged.

Furthermore, no cogent and independent evidence either from the police or elsewhere was adduced that the gun was removed from the 1<sup>st</sup> Respondent due to his alleged misuse during his rallies; and that he was made to give a statement in explanation. His contention that the DPC favoured the Petitioner as a friend, and that the gun was taken from him to explain how it had come into his possession was not rebutted. I am of the persuasion that because the police took the 1<sup>st</sup> Respondent's gun from the district headquarters, the Petitioner's supporters found it convenient to belatedly allege that this gun was in fact misused in the course of the campaign to terrorise supporters of the Petitioner.

Mr. Jingo the Youth Desk Coordinator for the Petitioner would have certainly raised this with the Petitioner who would have in turn raised it with the 2<sup>nd</sup> Respondent if the alleged misuse all over the constituency was true. I am not satisfied that this was so. Similarly, the allegation that the 1<sup>st</sup> Respondent moved with a gun to the venue where the President was due to hold a rally sounds far fetched. It is public knowledge that the President's visits to any place is meticulously secured by security personnel. It is unthinkable that the 1<sup>st</sup> Respondent and the Deputy RDC could have acted in such a clear breach of security arrangement, and were not apprehended.

Had the 1<sup>st</sup> Respondent been in possession of a gun at the President's rally, and his aide had used it to terrorise people as alleged, it would most probably have caused such a fracas that it would have hit the national headlines. If the residents could deny the 1<sup>st</sup> Respondent the

attempt to place his poster on the structure they had made specifically for the President, they would surely have made his being in possession of a gun an extremely serious matter which would not have only resulted in the deployment of three policemen as alleged; but instead led to the arrest and detention of the Deputy RDC, the 1<sup>st</sup> Respondent, and Mr. Kawunde.

Similarly, the allegation that the Deputy RDC invaded the home of a voter after the close of the NRM primaries, arrested her and took her to a police station which the voter, a prisoner, had the liberty to decide sounds like a joke. In any case this period, and I am prepared to accept that this was September 2010 rather than 2011 which must have been a genuine mistake, was before the nominations; and even if the incident did take place it was not covered by the electoral laws as there were no candidates. There was no evidence that the Deputy RDC was acting on behalf of the 1<sup>st</sup> Respondent, and with the latter's knowledge and sanction so as to visit the Deputy RDC's actions on him.

In sum, what the Petitioner needed to do to satisfy me of the alleged acts of intimidation, was some cogent and or independent evidence that the 1<sup>st</sup> Respondent himself or his agents with his knowledge and sanction, did carry out any of the electoral offences alleged. It is now settled that proof of such allegations has to be done on a balance of probabilities; and at a standard much higher than that required in ordinary civil suits. This was not the case with the evidence adduced here; hence I have to resolve this part of the issue in favour of the 1<sup>st</sup> Respondent.

(b) Allegations of bribery of voters

Jemba Zefaniya the Petitioner's polling agent for Kyato polling station deposed that on the night of 17<sup>th</sup> February 2011, the 1<sup>st</sup> Respondent visited the home of Godfrey Lubambula and gave him money to distribute to his supporters so that they could vote for him. The 1<sup>st</sup> Respondent vehemently denied this. For an allegation of electoral bribery to succeed, the Petitioner must name the person bribed, and prove that such a person was a voter. What I have here does not satisfy these criteria. It is not shown if Godfrey Lubambula was a voter, or that in fact the money he was given if at all it happened was given to any registered voter.

If I were to accept that such money was given, which I don't, it would have amounted to an intention to bribe; falling short of the actual act of bribery. As for the alleged distribution of shs 5000/= by the 1<sup>st</sup> Respondent to each household at Kamunga village, the Petitioner does not state that he was there to witness the prohibited act. His testimony in this regard is

therefore of no evidential value. It is also not clear to whom specifically the money was given at each household. Households are not registered as voters; rather specific persons within households, and almost always not all the members, are the ones who are registered. It was thus necessary for the Petitioner to name the recipients and show that they were registered voters for such a serious allegation to stand. This was not so. I therefore find that the allegation of bribery was idle talk; not sufficient to pass the standard of proof required in such cases.

**Issue No. 3.            Whether the 1<sup>st</sup> Respondent had the minimum academic qualification for nomination and election as Member of Parliament at the time of his nomination.**

This issue, I think, was at the core of the petition; and its determination in the affirmative would alone result in the nullification of the election of the 1<sup>st</sup> Respondent, followed with an order for fresh elections in the Kalungu East Constituency. In challenging the 1<sup>st</sup> Respondent's 'O' level certificate issued by the now defunct East African Examinations Council (E.A.E.C.), the Petitioner relied on the affidavit deposition by Mr. Mathew Bukenya the Executive Secretary of the Uganda National Examinations Board (U.N.E.B.), which is the Ugandan successor body to the E.A.E.C. and the repository for all results issued by the E.A.E.C. This affidavit had been deposed by Mr. Bukenya in a similar petition in 2002; but which however was aborted.

It was not in dispute that the E.A.E.C. issued one Vincent Ssempijja of St. Lwanga Secondary School, Kasasa, with an 'O' level certificate in 1974. Mr Bukenya, in his affidavit dated the 20<sup>th</sup> May 2011, confirmed that the U.N.E.B records showed that a candidate, whose results were the same as those in the impugned certificate in the 1<sup>st</sup> Respondent's possession, existed. However basing on the scrutiny and comparison made by one Anywar Peter, the in charge Secondary Education Department of U.N.E.B., it was established that the impugned certificate differed from other E.A.E.C. certificates in its word spacing, alignment, and size. He was thus unable to state where the 1<sup>st</sup> Respondent got this impugned certificate from.

When he appeared in Court for cross examinations, and was confronted with the certified proceedings of the 2002 case of ***Dr. Shanon Kakungulu vs Vincent Ssempijja***, Mr. Bukenya made an about turn and conceded that the 1<sup>st</sup> Respondent's impugned certificate was genuine. He explained that the affidavit he swore in 2011, was on the basis of a photocopy of his 2002

affidavit and a photocopy of the 1<sup>st</sup> Respondent's certificate, both of which were supplied to him by the Petitioner's Counsels. Otherwise in view of the 2002 Court record, (exhibited as **DE<sub>6</sub>**), and other original certificates from St Charles Lwanga Kasasa, (exhibited as **DE<sub>1</sub>**, **DE<sub>2</sub>**, **DE<sub>3</sub>**, **DE<sub>4</sub>** and **DE<sub>5</sub>**), he had no reason to doubt the authenticity of the 1<sup>st</sup> Respondent's 'O' level certificate.

This in effect made him a hostile witness of the Petitioner; and Court exercised its discretion in accordance with the provisions of section 153 of the Evidence Act, and allowed the Petitioner's Counsel to cross examine him; which was done. What emerged was that his deposition in the affidavit was in any case hearsay evidence as he confessed that he had relied on the scrutiny and findings of his experts at the U.N.E.B who are trained to verify the validity of certificates. In fact I had to exercise patience and allowed him to consult with his technical team in Court; which he repeatedly did. Upon realising that this would not enable Court get to the root of the matter so as to render substantive justice, I directed the U.N.E.B. technical personnel, named by Mr Bukenya, to testify in Court himself.

Mr Anywar Peter the Exams Officer Records at the U.N.E.B., who testified as Court witness (CW1), clarified that Mr. Bukenya based his affidavit of 2011 on his advice which had itself been informed by comparing the impugned certificate with a certificate from Lubiri and Nabisunsa Girls SSS for the year 1974, supplied to them by the Petitioner's Counsel. However, his second report was based on the five original certificates from St. Lwanga Kasasa, including that of the 1<sup>st</sup> Respondent, which Court availed him, and other certificates from that school which U.N.E.B. obtained independently, and as well other certificates of candidates from other examination centres which had not been collected from E.A.E.C., and were still in the possession of U.N.E.B.

These included three original certificates of 1974 from Lugogo Examination Centre, which was U0140 and run the Ministry of Education. From this wider field of comparison, he established that the E.A.E.C. had used '*at least three different fonts to produce authentic certificates for the year*'; and also that the font used to print the certificate of one C. Grace Magoola Lukalango of U0140/618 was identical to the font used to print the certificates for St. Lwanga Secondary School. Accordingly he concluded that the certificates from St. Lwanga SSS, including the impugned certificate of the 1<sup>st</sup> Respondent, tendered by Court for examination, were issued by the E.A.E.C.; hence were authentic.

Although Counsel for the Petitioner had earlier indicated that they would be willing to go by the findings of the technical personnel of U.N.E.B., and would abandon this ground of the petition if it were not favourable to the Petitioner, he still urged me to allow them seek a second opinion from Nairobi, Kenya. This I allowed; and ordered U.N.E.B. to allow such a person access to the certificates required for that purpose. However, on the date to which I had adjourned the case, Counsel still pleaded with Court for more time to enable their independent expert look at the certificates that had formed the basis of U.N.E.B's findings in favour of the 1<sup>st</sup> Respondent.

I however declined to allow any further adjournment; and undertook to give my reason for doing so, in this judgment. My reasons were twofold. First, was that there had been an inordinate delay in disposing of this otherwise straight forward and rather simple petition in terms of size and subject matter in contention; yet the law demands expeditious disposal of election petition, and within a very limited time frame. Second, the earlier undertaking by the Petitioner's Counsel to abandon this ground of the petition in the event that the findings by UNEB technical personnel was unfavourable to the Petitioner, was the wiser and noble thing to do.

Determining the validity of the impugned certificate did not at all require the services of any professional or technical person; whether from U.N.E.B. or from without. The evidence that St. Lwanga Kasasa had other original certificates of candidates who sat with the 1<sup>st</sup> Respondent, and identical with his, should have resolved the matter; unless there was evidence of fraud on the part of the 1<sup>st</sup> Respondent with regard to these certificates from St. Lwanga Kasasa; which was here not the case. The further evidence that U.N.E.B. had in their possession uncollected original certificates for candidates from other examination centres, all issued by the same E.A.E.C., and all identical with the 1<sup>st</sup> Respondent's impugned certificate, conclusively and affirmatively sealed the issue of the authenticity of the 1<sup>st</sup> Respondent's 'O' level certificate.

The 1<sup>st</sup> Respondent satisfactorily explained the slight variation in the name **Vincent**, appearing in his 'A' level certificate as **Vicent**. I would be exercising my judicial function in denial if I didn't acknowledge that such mistake, as this, does happen even with the examination bodies. Indeed, the law envisages that Courts themselves do commit errors; hence the provision for the slip rule, in the Civil Procedure Act. The 1<sup>st</sup> Respondent presented his Masters in Public Administration & Management degree award for his nomination. He

also explained, in a statutory declaration attached to his affidavit that the additional name of Bamulangaki he used for his nomination he inherited from his grandfather whom he succeeded as a clan head.

I agree that the burden to prove the validity of his impugned certificate shifted to him in accordance with the provisions of section 106 of the Evidence Act, once it was, on a prima facie case as was the case here, established that the certificate was questionable. Proof of the authenticity of his certificate was a fact within his personal knowledge. I am satisfied that he has fully discharged that burden, and satisfied this Court that his 'O' level certificate impugned by the Petitioner is wholly valid. Therefore I find that he possessed the requisite qualification to be nominated to contest for the Parliamentary seat, as he was; and which he won.

**Issue No. 4.                    The remedies available to the parties.**

I have found on all the issues that the Petitioner has failed to prove his case to the standard required in an election Petition. The law places on an election Petitioner a standard much higher than in ordinary civil suits. Elections are contested to be won by somebody; and when the voters have spoken, and returns made, the Courts of law must only overturn the results basing on concrete evidence of some breach of the electoral laws. This not being the case here, I am left with no option but to dismiss this petition with costs to the Respondent.

Before I take leave of this matter, I must express my utmost displeasure with Counsels here for the lack of civility they exhibited against each other in the pursuit of their respective clients interest in this petition. I thought there was really no need to remind Counsels of their responsibility to this honourable Court; which they are, first and foremost, officers of; and by reason of which they are certified – not licensed as is the case with commodity merchants – to offer professional services to the less advantaged members of our society on matters pertaining to the law. It is therefore inappropriate for Counsels to behave as if they are merchants bent on selling their merchandise at all costs.

Counsels should always keep in mind that society will judge the worth of this Court from, inter alia, the decorum with which they appear before it. Name calling and use of unsavoury language against each other is wholly unacceptable; and is conduct which is in fact forbidden

by the laws regulating the legal profession. In any case, such conduct does not in any way advance the cause or interests of their client. Should I ever again be confronted with this type of conduct, I will be compelled to bring down the judicial hammer with very unpleasant ramifications to the perpetrators.

A handwritten signature in dark ink, appearing to read 'Alfonse Chigamoy Owiny', with a stylized, flowing script.

**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**30 – 11 – 2011**