

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
ELECTION PETITION NO. 0005 OF 2016

MARTIN KIZITO SERWANGA..... PETITIONER

VERSUS

NAMUJJU DIONIZIA CISSY.....1st RESPONDENT

THE ELECTORAL COMMISSION.....2nd RESPONDENT

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

JUDGMENT

The Petitioner brought this petition for declarations/orders that;

1. The 1st respondent was not qualified to be nominated and elected in the 18th February 2016 general elections.
2. The 2nd respondent failed in its duty when it nominated the 1st respondent and failed to invalidate her nomination which was null and void abinitio.
3. A declaration that the 2nd respondent failed in its duty to ensure a free and fair election and to properly vet the academic papers of the 1st respondent.
4. A declaration that there were electoral offences committed by the 1st respondent and her agents acting in her interest with her full knowledge, consent, and approval/sanction to wit;

I. Election violence.

II. Bribery.

5. An order setting aside the election.
6. An order for fresh elections to be conducted for the seat of Woman Member of Parliament, Lwengo District.
7. Costs of the petition be awarded to the petitioner.

BACK GROUND

The second respondent returned the 1st respondent as the winner for the position of Woman Member of Parliament, Lwengo District in the 18th of February 2016 elections. The petitioner contests the nomination, election and declaration of the 1st respondent as the winner for non-compliance with the electoral Laws, arguing that the non-compliance and irregularities substantially affected the outcome of the said election.

The specifics of the complaint are;

- I. The 2nd respondent failed to vet the 1st respondent's academic certificates to ascertain their conformity with Article 80 (1) of the Constitution and Section 4 (1) (c) of the Parliamentary Elections Act thereby failing to conduct the elections in accordance with those Laws.
- II. The said academic documents do not meet the standards set out under the law for purposes of nomination and election as a Member of Parliament.
- III. The first respondent's Primary leaving, Ordinary and Advanced level certificates bear different names from those appearing in the Church baptism record, and from the nomination papers she submitted to the second respondent, rendering all academic documents inconsistent, suspicious and invalid.
- IV. The first respondent's purported Deed Poll adopting the names of **Namujju Cissy Dionizia** is illegal, inconsistent and riddled with forgeries.
- V. The Diploma certificate that the first respondent attached to her nomination forms is not only a forgery and riddled with inconsistencies but was also obtained erroneously as she did not possess the minimum requirements for admission for a

diploma program and neither was the awarding institution licensed at the time of her admission and/or graduation.

In response, the first respondent asserted that the Elections were conducted in compliance and in accordance with all electoral laws and that she was dully qualified to be elected as a Member of Parliament. She argued that if there was any non-compliance with the law, the same did not affect the election results in a substantial manner.

The specifics of her response are that;

- a) She qualified for admission to 'A'-level having passed 'O'-Level. She therefore holds a valid 'A'-Level certificate. Her academic documents bear no irregularities and are not forged.

- b) Her 'O' and A' - level Certificates bear the same names but when she went for a diploma course, she added her childhood name of '**Cissy**'. It is not true that her names on the various certificates are fundamentally different. There is nothing illegal in adding another name to ones names and there no is requirement that one must keep the names that she was baptized with.

- c) She undertook the Diploma course after obtaining a certificate in information technology (**Annexture D**). She was under no duty to ascertain whether the Institution she attended was accredited or not. The schools and institutions she attended were operational and at no time were they closed by any authority. Her Diploma certificate is therefore authentic.

- d) The Deed Poll is not illegal, inconsistent and riddled with forgeries. The Deed Poll and the Statutory Declaration were meant to confirm the change in her names and explain the inconsistencies in the certificates. She was however later advised that the Deed Poll was not required since she was only explaining an additional name and inconsistencies in her certificates and not changing her names. The Statutory Declaration was sufficient for that purpose.

- e) She did not engage in bribery or any electoral offence or malpractice and no offence or malpractice was committed by any person or her agent with her knowledge, consent or approval.

- f) It is not true that there was any election violence throughout the campaigns and on voting day. If any such violence took place it was not with her knowledge, consent or approval.

- g) Any non-compliance with the law did not affect the results in a substantial manner.

The **second respondent** relying on the affidavit of **Anna Ahebwa (Returning Officer, Lwengo district)** maintained that the elections were conducted in compliance with the provisions and principles laid down in the Constitution, the Parliamentary Elections Act 2005, the Electoral Commission Act Cap 140 and all other relevant laws. If there was any non-compliance the same did not affect the result of the elections in a substantial manner. It was contended that the 1st respondent had the relevant minimum academic qualifications for nomination. The Commission was not aware of any forgery in her academic documents or of any electoral offences she or her agents allegedly committed. No illegal practices and offences allegedly committed by the first respondent or her agents were reported to the second respondent. She was duly nominated and elected as a woman Member of Parliament for Lwengo District.

BURDEN AND STANDARD OF PROOF.

In election petitions the burden of proof lies with the petitioner-(see **Hon Abdul Katuntu Vs. Hon Kirunda Kivejinja Ali, Election Petition No. 7 of 2006**). A petitioner has to prove the allegations in the petition to the **satisfaction of the court**.

The standard of proof is on a balance of probabilities (**S. 61(3) P.E.A**). This has been interpreted in **Col. Rtd Dr. Besigye Kiiza Vs. Museveni Yoweri & 1** cited in **Hon Abdul Katuntu Vs. Hon Kirunda Kivejinja Ali, Election Petition No. 7 of 2006**, to mean a preponderance of probability, the degree of the probability depending on the importance of the subject matter.

The nullification of the election of a Member of Parliament is a very important matter since it involves interfering with the Constitutional right of the people to elect leaders of their choice. The court must therefore before making any adverse orders be satisfied by the evidence on record that the allegations in the petition have been proved with a high degree of preponderance.

The parties framed the following issues;

1. Whether the 1st respondent possessed the requisite academic qualifications to contest for the position of Member of Parliament.
2. Whether any illegal practices or other electoral offences were committed by the 1st respondent or by her agents and supporters with her knowledge and approval.
3. Whether the elections were conducted in compliance with the provisions and principles of the Constitution, the Parliamentary Elections Act and Regulations, and the Electoral Commission Act.
4. Whether the non-compliance (**if any**) affected the result of the elections in a substantial manner.
5. Whether the petition was competently filed before the court.
6. Remedies.

It is pertinent to resolve the preliminary issues raised by Counsel for the respondents before we delve into the issues framed by the parties.

- a. For the respondents it was argued on the basis of the petitioner's evidence that he did not collect any signatures to support the petition and that the petition is incompetent and should be struck out.**

It is however in evidence that the petitioner instructed his lawyers to get the signatures and the documents in issue. The law does not require him to personally get the signatures as counsel seems to suggest. This argument is without merit.

- b. The petitioner's affidavits in support.**

The petitioner swore two affidavits. The first one dated 14th of April 2016 was sworn before **Isaac Dylan Jjombwe**, and one dated 14th June 2016 was sworn before **Mbabaali Jude**. In cross examination the Petitioner said that he swore both affidavits in the same place.

For the respondents it was argued that the petitioner did not appear before a commissioner for oaths in Masaka as the second affidavit seems to suggest, and that both his affidavits are incurably defective and should be struck out. Once they are struck out the petition remains unsupported and should be struck out as well.

I looked at the affidavits in issue and it is clear that they were sworn on different days and at different places. Having observed the witness testify in court I was not convinced that he deliberately told lies. The inconsistency in his evidence could be

explained by the fact that he was undergoing rigorous cross examination. I will not make an adverse finding on that basis.

- c. Lack of sufficient supporting signatures to the petition.**

Section 60 (2) of the Parliamentary Elections Act requires that a Petition shall be supported by not less than 500 signatures. I counted the signatures in the lists attached to the petition and agree with the submission that they are **469** or there about and not **500** as required by the Law.

Other preliminary issues that were raised included;

- Arguments that detailed particulars of the supporters to the petition (e.g., the Constituencies in which they are registered, their registration numbers, ages, sex, parishes, and villages) were not given in contravention of **Regulation 2 of S.I 141-3**.
- A contention that the last date for filing the petition was 4th April 2016 (**S. 60(3) P.E.A**) on which date this petition was filed but without the signatures and that it should be struck out for the absence of the signatures since they could not be submitted out of time.
- An argument that there is no indication that the signatories were aware that they were supporting a petition. The 21 sheets of paper on which the supporters signed don't fulfill the legal requirements of **S.60 (2) (b) P.E.A**.
- It was further argued that even if deviation from the form in some instances might not vitiate the content, the missing information in this case e.g. the age, is important.

All these arguments are aimed at having the petition struck out at the preliminary stage. I however don't think that the ends of justice will be met by striking out the

petition on the basis of preliminary points of law. The allegations in the petition centre on issues of illegality of election by reason of presentation of false documents. It would be a travesty and an affront to justice for the court to strike out the petition without inquiring into such serious allegations.

Courts have increasingly taken a liberal stance in the interpretation of legal provisions which if strictly interpreted would place procedural imperatives on a higher pedestal than substantive justice. **Article 126 (2) (e) of the Constitution** which provides that substantive justice shall be administered without undue regard to technicalities has provided a good refuge in this regard.

In **Besigye Vs Museveni, EP No. 1 of 2001 pages 145-147 KALR's** the Supreme Court was clear that reliance on technicalities is not desirable as it offends Article 126 of the Constitution.

In **Makula International Vs Cardinal Nsubuga and Anor, (1982) HCB 11** it was held that a court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleading, including any admissions made thereon.

The Supreme Court had occasion to consider a similar issue in **SITENDA SSEBALU Vs. SAM NJUBA & E.C, Civil Appeal 26 of 2007 SEBALU.**

The court pointed to the public interest of having allegations in election petitions subjected to a fair trial and determined on merit.

This petition raises issues relating to the authenticity of the academic credentials of a Member of Parliament. It is in the public interest that such allegation be

investigated and fully inquired into considering the nature of office of an MP and responsibilities attached to it.

In my view, the requirement for example that a petition be supported by not less than 500 signatures which is only meant to ensure that frivolous and vexatious petitions are not brought to the court should not be placed ahead of the substantive issues presented in the petition. In this case 469 supporters signed in favor of this inquiry. Though short of the required 500, the number of supporters who signed the petition is big enough to form a basis for the inquiry. A contrary view will tantamount to enslaving justice to procedure, and subjecting the 469 supporters to the will of the unknown/silent 31 voters. The 469 people have a right to be heard and locking them out of the court system borders to suffocating justice under the weight of the **nays**.

A petition which presents issues bordering to fraud cannot be said to be frivolous, vexatious and/or an abuse of court process considering that it concerns membership of the National Legislative assembly. The court would be failing in its '**gate-keeper**' role if it refused to determine a complaint of this magnitude on merit on account of technicalities.

In my view, that the particulars of the supporters to the petition were not given, that there is no indication that the signatories were supporting an election petition and that the last date for filing the petition was 4th April 2016 yet this petition was filed on that day and without the signatures are all secondary to the all-important issue of suspicious academic documents which were presented for the nomination of a Member of Parliament.

For those reasons, while agreeing that procedural requirements were not fulfilled in the presentation of the petition, the omissions are not sufficient grounds for striking out the petition in the circumstances of this case. I therefore overrule the objections.

While still dealing with the preliminary issues I should dispose of the issue of affidavits of witnesses who failed to turn up for cross examination. I promised to make a ruling on whether the court could consider the affidavit evidence of such witnesses. The law is that once a witness is required for cross examination they should be summoned for the purpose, and if they are not produced their affidavits are expunged from the record.

I did not need to refer to those affidavits as shall be seen. I however only register my concern over allegations of interference with those very witnesses by the defense. There was no proof of this but if it happened it was treacherous and most unfortunate.

THE MAIN ISSUES.

1. Whether the 1st respondent possessed the requisite academic qualifications to contest for the position of Member of Parliament.

In this complaint the petitioner assails the 1st respondent's academic credentials on three fronts;

- a. The documents were insufficient in the sense that she **failed** both her 'O' and 'A' level.

- b. The Institution she allegedly joined (**APTECH**) was not accredited at the time and could not therefore award the Ordinary and Diploma certificates she presented for nomination.

- c. The documents bear inconsistencies bordering to forgery which render them suspicious and unreliable.

a). The insufficiency of the 1st respondent's qualifications

S. 4 (c) of the Parliamentary Elections Act provides that a person is qualified to be a member of Parliament if that person has **completed** a minimum formal education of Advanced Level or its equivalent.

One of the aspects of the petitioner's complaint is that the 1st respondent **failed** both her 'O' and 'A' levels by operation of the **Ministry of Education Policy Guidelines and Criteria for S.5/PTC/TIs admission, 2006**.

Part 2.0 of the above Guidelines provides that to be admitted to Senior Five;

1.1 A candidate must have obtained a minimum of at least credit 6 in all the three subjects which form a combination for a course in senior five,

1.2 A candidate is considered on the basis of three (3) subjects, which form a combination,

It was argued that the 1st respondent could not legally pursue 'A'-level on the basis of her 'O' level results and that she could not legally pursue a certificate course, and thereafter a Diploma course on the basis of her 'A'-level results by operation of the **University and other Tertiary Institutions (minimum entry requirements for admission to Universities or other Tertiary Institutions)**

Regulations 2007. These Regulations provide that for one to pursue a certificate course they must have scored at least three credits at the 'O'-level.

For clarity I here below display the 'O' and 'A'-Level grades in issue.

THE 'O'- LEVEL

SUBJECT	SCORE
English	8
C.R.E	x
History	7
Geography	9
Political Education	8

Mathematics	8
Biology	9
Art	6
Commerce	9

Subjects recorded.....9

Aggregates.....49

Result.....4

THE ADVANCED LEVEL

SUBJECT	SUBJECT GRADE
General paper	fail
History	fail
Economics	fail
C.R.E	O
Art	O

Subjects recorded.....5

Result.....5

THE LEGALITY OF THE ‘O’-LEVEL RESULTS.

For the petitioner it was argued on the basis of the **Ministry of Education Policy Guidelines and Criteria for S.5/PTC/TI’s admission, 2006** that the candidate in this case failed her ‘O’-levels. I should however point out that those are mere **guidelines on the admission criteria** to senior five, P.T.C’s and T.I’s. They can neither form the basis for a finding that the candidate failed ‘O’-level nor that the candidate’s decision to pursue A-level was illegal. The decision to join Senior Five can only be faulted as having been against a policy guideline, but cannot be said to have been illegal.

The relevant instruments for this inquiry are S.4 (1) (c) of the **Uganda National Examinations Board Act (Cap) 137** and the **Uganda Certificate of Education Examinations Regulations and Syllabus 2012-2016**.

S.4 (1) (c) of the **U.N.E.B Act** provides that the Board shall award certificates to **successful** Candidates.

Who is a successful candidate?

The **Uganda Certificate of Education Examinations Regulations and Syllabus 2012-2016** provide that successful candidates in P.L.E and U.C.E (**‘O’-level**) are those who have passed the examinations and have been awarded grades 1(highest) to 4 (lowest).

Was the candidate whose results we are considering successful?

The candidate passed with grade 4 and was therefore successful and entitled to a certificate.

‘A’- level

The first issue is whether the candidate could legally pursue A-level on the basis of her ‘O’-level Grades. The **Ministry of Education Policy Guidelines and Criteria for S.5/PTC/TT’s admission, 2006** clearly **discourage** it. I have deliberately used the word ‘**discourage**’ knowing that those are mere guidelines with no force of Law. The candidate by deciding to pursue ‘A’-level was not on the wrong side of the Law, but only went against guidance/policy.

The Law only affects her at two levels;

1. Whether she qualified to get an A-level certificate (**this is purely a question of her intellectual ability**).
2. Whether, considering the quality of her grades at ‘O’-level she could proceed to an Institution of higher learning.

Whether she qualifies to get an A-level certificate on account of grades.

Under the **Examinations Regulations and Syllabus for the Uganda Advanced Certificate of Education**, a candidate who scores at least a **subsidiary pass in a subject offered at a principal** level is entitled to a certificate. Since the candidate in this case passed with Grade ‘O’ in C.R.E she satisfied the requirements for the issuance of an ‘A’-level certificate. The ‘A’- level certificate in issue therefore passes the criteria of grades.

The issue as to whether the candidate who scored the grades in the documents before court has valid ‘O’ and ‘A’- level certificates is therefore answered in the affirmative.

By this I find that it is possible for one to hold valid 'O' and 'A' level certificates even when they can't legally use them to pursue an Ordinary Certificate course from an Institution of Higher Learning in Uganda.

Relating the above position to the key issue at hand, I find that since both the 'O' and the 'A'-Level certificates are valid (**on the criteria of grades only**) their owner fulfils the requirements of Article 80 of the Constitution and S. 4 of the Parliamentary Elections Act.

Whether considering the quality of her grades at 'O'-level she could proceed to an Institution of higher learning. (This is the issue of the legality of the Ordinary and Diploma Certificates).

The relevant Law is the **University and other Tertiary Institutions (minimum entry requirements for admission to Universities or other Tertiary Institutions) Regulations 2007** which provides that for one to pursue a certificate course they must have scored at least three credits at the 'O'-level.

Since the candidate in this case scored only one credit, she could not legally pursue the certificate course. The APTECH certificate is therefore invalid.

It is the law (**Muyanja Mbabaali Vs Birekerawo Mathias Nsubuga (C/A) Election Petition No.36 of 2011**) that since that Certificate, the basis for enrollment for the Diploma course was invalid, it could not form the basis for the issuance of a valid Diploma. The Diploma certificate that was presented for nomination is also invalid.

Since I have found that the Certificates purportedly issued by **APTECH** are invalid it is not necessary to delve into the issue of whether or not **APTECH** was an accredited Institution at the time the Certificates were issued.

In conclusion, I find that on the **criteria of grades**, the 'O' and 'A' level certificates in issue are valid, and that it is possible for one to hold valid 'O' and 'A' level certificates even when they

can't legally use them to pursue a Certificate course from an Institution of Higher Learning in Uganda.

b). whether the academic documents the 1st respondent presented contain inconsistencies which render them to be suspicious and unreliable.

In compliance with the strict requirement of the law that particulars of any fraud alleged in a party's pleadings must be set out therein, the Petitioner particularised the alleged acts of fraud as follows;

- I. The first respondent's Primary leaving, Ordinary and Advanced level certificates bear different names from those appearing in the Church baptism record, and from the nomination papers she submitted to the second respondent, rendering all academic documents inconsistent, suspicious and invalid.
- II. The first respondent's purported Deed Poll adopting the names of **Namujju Cissy Dionizia** is illegal, inconsistent and riddled with forgeries.
- III. The Diploma certificate that the first respondent attached to her nomination forms is not only a forgery and riddled with inconsistencies but was also obtained erroneously as she did not possess the minimum requirements for admission for a diploma program and neither was the awarding institution licensed at the time of her admission and/or graduation.

It is common cause that the 1st respondent was baptized '**Gusaba Dionizia**'. The P.7, 'O' and 'A'-Level certificates she presented for nomination are in the names of '**Namujju Dionizia**'.

She explained that the name '**Gusaba**' was given to her by her mother and that the name '**Namujju**' was given to her by her father. Further that when her mother died in 1983 she abandoned the name '**Gusaba**' and started school at 9 years as '**Namujju Dionizia**'.

Counsel argued that it is not illegal for one to use names other than those she was baptized with. Further that since there is no evidence that the documents she presented are for another person,

there is no basis for doubting that they are hers. Since the documents are in the names of ‘**Namujju Dionizia**’ who the 1st respondent says she is, there is no inconsistency in them.

I however don’t think it is as easy as that. While I agree with counsel Kandebe that it is not illegal for one to use names other than those she was baptized with, there is an injunction which is that the use of those other names must be within the law. Moreover, the issue here is more serious than mere using ‘other’ names. The implication of the allegation is that the certificates the 1st respondent presented do not belong to her. Resolving this issue requires that we look at what the law says about how names are changed.

THE LAW ON CHANGE OF NAMES

Counsel Kandebe argued that the 1st respondent did not have to formally change her names from **Gusaba Dionozia** to **Namujju Dionozia** when enrolling for Primary School since she had not formally registered the names **Gusaba Dionozia**. First of all, we know that the 1st respondent was born and baptized as **Gusaba Dionizio**. We also know that at least two other categories of people in addition to her family members (*the petitioner and the church community who even have a church Baptism Register in which the names ‘Gusaba Dionizia’ was recorded*), have always known her as **Gusaba Dionizia**.

Could she freely change her names by reason of the fact that she had not registered them?

The argument that names can be changed at will if they are not registered is self-defeating since one cannot change what she does not have. The mere fact that she changed the names means that she had them in the first place. The names **Gusaba Dionizia** could not be just wished away as counsel wants the court to believe.

Having a name is a matter of fact in the first place even before one can be registered, since for one to be registered they should have the name. In this case the 1st respondent had the name **Gusaba Dionizia** as a matter of fact and she was known by some people as such. The law was aimed at informing such people of changes in names of others with a view to curtailing fraud among other reasons.

It was/is mandatory to register births/names (the **Registration of Births and Deaths Act Cap 309 (the law then)** the **Registration of Persons Act 2015**. That her birth/name was not registered was an illegality which could only be cured by compliance with the Law.

The name change could only be done after full compliance since it is also a matter of law. One cannot change names she does not have. In order for her to have legally changed her names, she had to formally register as **Gusaba Dionizia** so that she first owns the names as a matter of law, then (formally again) change to **Namujju Dionizia**. Her purported change of names to **Namujju Dionozia** in such a casual manner was of no legal consequence.

The legality of the academic document's she presented for nomination.

The petitioner alleges that the documents the 1st respondent presented for nomination are forgeries. By evidence he has shown that she was born and baptized **Gusaba Dionizia** and I have found that the purported casual change of names was of no legal consequence.

The Evidential Burden

There is a wealth of authority for the positions that once a prima facie case has been made out, the evidential burden shifts to the opposite party, and that facts in the special knowledge of any person should be proved by that person.

The cases of;

- *Abdul Balingira Nakendo vs Patrick Mwendha, Supreme Court Election Petition Appeal No. 9 of 2007,*
- *Haji Muluya Mustafa vs Alupakusadi Waibi Wamulongo, Election Petition No. 22 of 1996 at p.13,*

- *Rashid Bovule Iga & Manoa Achille Milla vs Olega Asaf Noah & Ors, Election Petitions No. 1&2 of 2001*, at p.8 and
- *Babu Edward Francis vs The Electoral Commission & Elias Lukwago; Kampala Election Petition No. 10 of 2006*,

are all to the effect that the burden of proof may shift to the Respondent when a prima facie case has been established by the Petitioner and that where the authenticity of academic certificates is questioned, it can only be the respondents duty to show that she has authentic certificates.

The petitioner adduced sufficient evidence (**that the 1st respondent was born and baptised Gusaba Dionizia, and that she has never changed those names**) to show that, *prima facie*, the 1st respondent is not the owner of the academic documents that she presented for her nomination. The 1st respondent had to adduce evidence to discharge the evidential burden in keeping with S. 106 of the **Evidence Act** which provides that ***“In civil proceedings, when any fact is especially within the knowledge of any person the burden of proving that fact is on that person”***. She had the burden of proving that she is **Namujju Dionizia**, a fact in her special knowledge.

She however merely denied the allegations, only maintaining that she is **Namujju Dionozia**. In my view that was not enough. She should have adduced evidence beyond mere denials to prove that she is **Namujju Dionizia**. The evidence of her father, Primary school/Class mates, Teachers and Headmaster would have been

handy. That she did not even think of such evidence raises more questions. I find that she failed to discharge the burden of proof.

Given the back ground that she was born and baptized **Gusaba Dionozia**, and that she did not legally change the names to **Namujju Dionozia** yet she has academic documents in those names, I am satisfied that the allegation that the P.7, ‘O’ and ‘A’-level certificates in the names of **Namujju Dionozia** do not belong to her has been proved with a high degree of preponderance.

Having made that finding the resolutions of the other issues is only for academic purposes. I will nonetheless consider them.

THE NAME CISSY

The issue of changing names in this case however becomes more questionable when she tries to add/further change her identity by adding a third name, '**CISSY**'.

Counsel Kandebe argued that by the 1st respondent adding the name '**CISSY**' she did not **change** her names but only added another name.

I don't agree with that position and I am fortified by the decision in **Sserunjogi Mukiibi Vs Lule Umar Mawiya Election Appeal No. 15/2006** in which the addition of initials to the appellant's names was held to be a change in his names. Indeed in cross examination the 1st respondent herself rightly testified that '**Namujju Cissy Dionizia**' and '**Namujju Dionizia**' are different persons.

Counsel argued that she did not need the Deed Poll since she was not changing her names. My view is that she needed it in fact since she was actually changing her

names. Moreover the Deed Poll cannot be wished away through mere submission of counsel since it was actually made and is on the court record.

The Deed Poll.

The document is dated 5th February 2015 and shows that **KAYAGA ASHA** is the name that was being substituted. The 1st respondent explained that this was a mistake. Even if I accepted it as a mistake, the document is null and void by the fact that it speaks lies about itself. It is not what it purports to be. This renders it ineffective for purposes of the addition or change in the name.

The Statutory Declaration.

Counsel Kandebe argued that the Statutory Declaration was sufficient to effect the desired change in the names. I however found problems with this document as well for two reasons;

1. The 1st respondent's evidence was that she signed the Deed Poll and Statutory Declaration on the same day. The documents however bear different dates, the 5th

February 2015 and **8th May 2015** respectively. This fact raises credibility issues on her part and is an affront to the integrity of the two documents.

2. The **APTECH** Certificates which she presented for her nomination were obtained on **25th November 2008** and **1st July 2010** and are in the names of '**Namujju Cissy Dionizia**'. The Deed Poll and Statutory Declaration under which she claims to have adopted that combination of names are dated **5th February 2015** and **8th May 2015** respectively. That she sought to add or

adopt names she had been using for close to seven years [**if we are to go by those certificates**] is suspicious and raises more credibility questions.

Still on the issue of the suspicious academic documents, the petitioner adduced the evidence of **PW3 (Mulumba Edward)** who said that in 2011 the 1st respondent informed the voters that she is an engineer and that she even issued posters which bore the abbreviation '**ENG**' under her name. One such poster is on the court record. The 1st respondent while denying that she stood for elections in 2011 admitted that the picture looks familiar but that she did not know its origin. Looking at the picture I had no doubt that it was hers. The picture bears the names '**Namujju Cissy Dionizia**'. This fact raises questions as to when she in fact legally adopted the names of '**Namujju Cissy Dionizia**' given that the Statutory Declaration was made in 2015.

Further scrutiny of the poster shows that she described herself as an **Engineer**. It brings into question why she did not maintain the same description in 2016, and leads to only one conclusion that she is not what she purports to be. This evidence taken together with that of her baptism by the names of '**Gusaba Dionizia**' makes it likely that the documents she presented are not in fact her documents.

Turning to the key issue at hand, for the reason that the two documents (the Deed Poll and the Statutory Declaration) bore false information such as the names **KAYAGA ASHA** which admittedly don't belong to the 1st respondent and bear false dates, I find that they were

ineffective for purposes of effecting the desired change, with the effect that the 1st respondent failed by those documents to effect the change or add the name '**CISSY**' to her names.

The evidence is that consequent upon her purported change of names she was nominated for the elections as '**Namujju Cissy Dionizia.**' There is however no 'A'-level certificate or its equivalent in those names on the court record, and there is no evidence that '**Namujju Cissy Dionizia**' obtained an 'A'-level certificate.

On the basis of this, I find that the petitioner has discharged the burden of proof. He has proved with a high degree of preponderance and to my satisfaction, that the 1st respondent is not a holder of 'A'-level certificate or its equivalent as required under Article 80(1) (C) of the Constitution and Section 4 of the Parliamentary Elections Act. She should not have been nominated since she wasn't qualified to contest for a seat in Parliament.

2. Whether any illegal practices or other electoral offences were committed by the 1st respondent or by her agents and supporters with her knowledge and approval.

The petitioner's complaints relate to alleged violence and bribery of voters. No evidence was adduced to prove the allegation of violence.

As for bribery, **PW4 (Luyinda Paddy)** gave evidence that he is a registered voter from Kanyogoga polling station. On the polling day while he was in the line waiting to vote, one **Namata Christine** came and took one **Walakira Jackson** and **Kiyimba Francis** aside. She gave 50,000/= to Kiyimba Francis and 30,000/= to **Walakira Jackson** to distribute to the voters.

They distributed the money and gave him two thousand shillings. After the voting people were saying that they had voted for Namujju who had given them some money.

PW5 (Mugerwa Vicent) a voter at Kibuye polling station also said that while he was in the line **Namata Christine** gave voters money. To some she gave two thousand shillings and to some five

thousand shillings. The people then said that they will vote for the person who had given them something, meaning Hon. Cissy Namujju.

The 1st respondent denied the allegation of bribery. It is the law that he who alleges must prove. I have carefully considered the evidence of the two witnesses and note that none of them told court who **Namata Christine** was in relation to the 1st respondent.

Secondly while Pw4 claimed that he was given 2,000/= he did not tell the court what he was told it was for, and whether he in fact voted for the 1st respondent. Pw4's evidence was the best opportunity the petitioner had to prove this allegation. Unfortunately the key issue as to who Namata Christine was acting for was not highlighted in the evidence.

The two witnesses only said was that the voters were saying that they had voted for the 1st respondent who had given them money. This in my view is not sufficient to ground an adverse finding. I am not satisfied that the 1st respondent by herself or through **Namata Christine** and with her knowledge offered bribes to the voters.

3. Whether the elections were conducted in compliance with the provisions and principles of the Constitution, the Parliamentary Elections Act and Regulations, and the Electoral Commission Act.

The complaint that the 1st respondent did not have the requisite academic qualifications was proved. I find that the elections were not conducted in compliance with the provisions and principles of the Constitution, the

Parliamentary Elections Act and Regulations. The Second Respondent (the Electoral Commission) is under a duty to ensure that candidates are **duly** nominated. In this case they failed in this duty since the discrepancy in the names on her academic documents was obvious. They ought not to have nominated her. I find that the elections were not conducted in compliance with the provisions and principles of the Constitution, the Parliamentary Elections Act and Regulations, and the Electoral Commission Act.

4. Whether the non-compliance (if any) affected the result of the elections in a substantial manner.

That a Member of Parliament presents false academic documents for nomination hits at the core of her legislative role. That she does not have the requisite qualifications renders her election illegal and this is regardless of whether or not she got the majority votes. The 1st respondent's continued stay in Parliament is an affront to the integrity of the whole institution. The illegality and/or non-compliance in this case hit at the center of the concept of democracy and therefore qualitatively affected the result of the elections in a substantial manner.

I set aside her election and declare the seat for woman member of Parliament for Lwengo District vacant. I order that fresh elections be conducted.

Costs to the petitioner with certificates for two counsels considering the complexity of the issues that were raised.

Margaret Tibulya

Judge

7th July 2016.