

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

THE NATIONAL YOUTH COUNCIL ACT, CAP 319

THE NATIONAL YOUTH COUNCIL (AMENDMENT) ACT, 2003

THE PARLIAMENTARY ELECTIONS ACT, 2005 (AS AMENDED)

THE PARLIAMENTARY ELECTIONS (INTERIM PROVISIONS) ACT, CAP 141

**THE PARLIAMENTARY ELECTIONS (INTERIM PROVISIONS) (APPEALS TO THE
HIGH COURT FROM COMMISSION) RULES, S.I 141-1**

ELECTION PETITION APPEAL NO. 9 OF 2021

ODOI BENARD ONEN MUTUSA:..... PETITIONER

VERSUS

**1. THE INDEPENDENT NATIONAL
ELECTORAL COMMISSION**

2. WANYAMA JUDAS THADEO RESPONDENTS

3. NABUYANDA JOHN SOLOMON

4. KAPISI DOUGLAS

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

JUDGMENT

This appeal is by way of petition under Article 61 of the Constitution of the Republic of Uganda 1995, Sections 99, 33 and 38 of the Judicature Act, Cap 13, Section 98 of the Civil Procedure Act, Cap 71, Section 1 (g) of the National Youth Council Act, Cap 319, Section 8 (3) of the National Youth Council Act (as amended), Sections 15 and 12 (1) (j) of the Electoral Commission Act, Cap 140, Section 172 of the Local Government Act, Cap 243 and rule 5(1) of the Parliamentary Elections (interim provisions) (Appeals to the High Court from Commission) Rules SI 141-1 in which the petitioner Odoi Benard Onen Mutusa is challenging the decision of the 1st respondent, the Independent National Electoral

Commission dated 31st December 2020 for cancelling his nomination/denominating him from the elective office of the Eastern Region representative of the Youth to Parliament on the ground that;

- **The Petitioner was ineligible to be nominated as a candidate in the Eastern Region Youth Member of Parliament elections since he was above the age of 30 years.**

The petitioner in his affidavit in support of the petition stated that;

1. He was nominated by the 1st respondent on the **22nd day of December, 2020** as a National Resistance movement (NRM) flag bearer candidate to contest for the elective office of Eastern Region Representative of the Youth to parliament which elections are scheduled for the **31st day of January, 2021** and the **1st day of February 2021**.
2. The petitioner was and is still below the age of 30 years when he was nominated by the 1st respondent on 22nd December 2020 in compliance with **Sections 1 (g) and 8 (3) of the National Youth Council Act, Cap 319** (as amended) and duly legible to contest for the elective office of eastern region representative of the youth to parliament
3. The petitioner prior to the nomination submitted to the 1st respondent a National Identification Card indicating that he was born on **28th August 1991** as evidence to prove that he was a youth and upon satisfaction, the 1st respondent duly nominated him.
4. The 2nd 3rd and 4th respondents filed separate complaints with fabricated unauthentic photocopies of evidence against the petitioner to the office of the 1st respondent seeking to cancel the petitioner's nomination on malicious allegations that the petitioner is not a youth.
5. The 1st respondent in its decision dated **31st December, 2020** disregarded the petitioner's official evidence of a birth certificate and National Identity Card issued by NIRA and rather relied on the fabricated and uncertified photocopies in the form of evidence by the 2nd 3rd and 4th respondents to reverse the petitioner's nomination and shockingly decided that the petitioner was ineligible to contest for the elective office of the eastern Region Representative of the Youth to parliament.

The petitioner being dissatisfied with the decision of the 1st respondent denominating him petitioned this honorable court by way of appeal.

GROUND OF APPEAL

- **Whether the Petitioner was ineligible to be nominated as a candidate in the Eastern Region Youth Member of Parliament elections and if so, whether he was above the age of 30 years.**

REPRESENTATION

The petitioner was represented by Mr. Soita Jesse together with Ms. Nyachieo Mary while the 1st respondent was represented by Mr. Kayondo Abubaker together with Ms. Gilda Katutu, the 2nd respondent was represented by Mr. Were David Mukoche together with Mr. Okello Bernard Were, the 3rd respondent was represented by Mr. Galisonga Julius, and the 4th respondent was represented by Mr. Muhumuza Ben.

At the time of hearing, all counsel agreed to file written submissions by **29th January 2021** at 4:00pm.

It should be noted that the 3rd respondent did not file an affidavit in reply neither did he file written submissions as per the agreed schedule.

DETERMINATION OF GROUND 1

- **Ground 1: Whether the Petitioner was ineligible to be nominated as a candidate in the Eastern Region Youth Member of Parliament elections and if so, whether he was above the age of 30 years.**

Counsel for the petitioner submitted that the petitioner attached certified copies of his birth certificate, National identification card and passport to prove that he was born on **28th August 1991**. (See annexures 'E', 'A' and 'F' respectively).

Further that in relation to the alleged O-Level certificate (**Senior Four Certificate**) relied on by the 1st Respondent to arrive at its decision. Counsel submitted that the Petitioner has never submitted the said document to the 1st Respondent, and neither did the 1st Respondent ask for the same to be provided by the Petitioner. Counsel submitted that the source of the concocted O-Level Certificate should have been investigated and the 1st Respondent misdirected itself in making a decision to

prove the age of the petitioner basing on the alleged certificate without considering the official documents to determine the age of the petitioner.

Counsel added that the rules relating to documentary evidence are clearly provided for under **Section 63 and Section 64 of the Evidence Act Cap 6**. Which state that?

‘Documents must be proved by primary evidence except in the cases hereafter mentioned.’

Section 64 provides for instances where secondary documentary evidence may be admitted which include; where the document is lost/destroyed or damaged or where the author or the person it was written to is unavailable or refuses to confirm it.

Counsel for the petitioner submitted that the petitioner presented a copy of a form showing correction of his date of birth with NIRA and a letter from NIRA confirming his date of birth as 28th August 1991. (See annexure ‘B’ and ‘C’ respectively).

Counsel concluded that the 1st Respondent ignored the official evidence to prove the age of the petitioner like a Birth Certificate, National Identity Card issued by NIRA and a passport indicating the date of birth as **28/08/1991** and erroneously relied on the fabricated photocopies of unauthentic documents presented by the 2nd, 3rd and 4th Respondents as evidence to maliciously reverse the Petitioner’s nomination.

On the other hand, Counsel for the 1st respondent submitted that according to the voter registration details, the petitioner’s date of birth is **27th August, 1990** and this made him 30 years and four months by the time he was nominated (see annexure ‘A’ to the 1st respondent’s submissions).

Counsel also submitted that the same date of Birth of **27thAugust, 1990** is captured as such in the Village Youth Council Nomination Register for the period July/August, 2020 ;(see annexure ‘B’).

Counsel further submitted that upon further scrutiny of the documents tendered in proof of the petitioner’s age, both the enrolment forms duly filled on **3rd June, 2014** and an application for replacement of lost, defaced or damaged National

Identification Card with **NIN CM860391023NJK**, and tendered to the National Identification and Registration Authority show the candidate's Date of Birth as **28th August, 1986**; (see **annexure 'C'**).

Counsel submitted that the complainants presented a birth certificate of the petitioner issued on **10th March, 2005** by the Tororo District Administration showing that the petitioner was born on **28th August, 1982** ;(see **annexure 'D'**).

Counsel for the 1st respondent also submitted that the petitioner presented corrected particulars of his date of birth as **28th August, 1991**, with **NIN CM860391023NJK**. However, the correction was made in or before **October, 2019**, after the participation of the candidate in the recently concluded National Youth Council and Committee elections. (See **annexure 'F'**).

It was counsel's submission that the foregoing changes, are at variance with the Voter Registration Details in the possession of the Commission.

Counsel also submitted that the commission based on the different pieces of evidence placed before it, which had inconsistencies as to the date of birth of the Petitioner and found him not to be a youth within the meaning of the law and therefore, reversed the Returning Officer's decision of nominating him; thereby denominating the petitioner.

Counsel for the 2nd respondent submitted that the O'Level certificate with the names of the petitioner shows that the petitioner completed his O'Level in 1999.

Counsel also submitted that the form of enrollment shows that the petitioner was born on **28th August 1986**. (See **annexure A9**).

Counsel submitted that all these pieces of evidence put the petitioner's age at 36 years at the time of nomination having been born in 1986.

It should be noted that counsel for the 3rd respondent was given an opportunity to file written submissions by **29th January 2021** but he opted not to file the same.

Counsel for the 4th respondent submitted that the petitioner at the time of nomination was 37 years which was proved by evidence as per **annexure A, B, C, D and E of the 4th respondent's affidavit in reply**.

Counsel also submitted that it was not possible for a person born in 1991 to sit for his UCE exams in 1999.

Counsel submitted that the petitioner therefore was above the age of 30 years by the time he was nominated thus ineligible to be nominated for the youth member of parliament.

ANALYSIS OF COURT ON GROUND 1.

Whether the Petitioner was ineligible to be nominated as a candidate in the Eastern Region Youth Member of Parliament elections and if so, whether he was above the age of 30 years.

Section 1 (g) of the National Youth Council Act, Cap. 319 (As Amended) defines a youth *“to mean a person between the age of eighteen and thirty years.”*

Further S.8 (3) of the National Youth Council Act provides as follows;

“That a person shall not be eligible to be elected a member of a Youth Committee unless he or she has attained the age of eighteen years, and a person shall not be eligible to be so elected in a Youth Committee if he or she has attained the age of thirty years.”

Section 39 (3) of the Registration of Persons Act, 2015 provides that;

“The information contained in a certificate of birth issued under this Act is presumed to be correct and it may be received as evidence in any judicial proceedings.”

Also Section 69 (2) of the Registration of Persons Act, provides that;

“A national identification card is prima facie proof of the particulars contained in it.”

Section 5 (1) (h) of the Registration of Persons Act, 2015 provides that;

“The functions of the Authority are—

(h) to verify and authenticate information relating to the registration and identification of persons;

In the instant case the petitioner stated that he was born on the **28th day of August 1991** and he attached copies of his birth certificate, National identification card and passport marked as Annexures 'E' 'A' and 'F' respectively to prove that he was born on the **28th August 1991**.

Further the petitioner presented a copy of a form from NIRA showing correction of his date of birth and a letter from NIRA showing his date of birth as **28th August 1991**.

The petitioner stated that prior to his nomination, he submitted his National Identification card to the 1st respondent which indicated that he was born on **28th August 1991** and upon satisfaction of his age, he was duly nominated by the 1st respondent.

The 2nd, 3rd and 4th respondents alleged that the petitioner was above 30 years and attached copies of the village youth council voters register 2020/2021 and voters information details showing that the petitioner (**Odoi Benard Onen Mutusa**) was above 30 years.

This honorable court has weighed the evidence provided by all parties to prove age of the petitioner and in my considered view, the different pieces of evidence placed before the commission which the 1st respondent based on to denominate the petitioner don't hold water or prove the date of birth of the petitioner. These are mere speculations which did not go to the root of the matter to prove the age of the petitioner.

The mandated/authorized body to issue birth certificates and National Identification cards is the National Identification Registration Authority (NIRA), and the petitioner produced a copy of his birth certificate and National identification card issued by NIRA and a letter confirming his age. The evidence from NIRA overrides all other documents to prove the age of any person, which is in line with **Section 5 (1) (h) of the Registration of Persons Act** and for the benefit of doubt, I shall re-produce the section below;

Section 5 (1) (h) of the Registration of Persons Act, 2015 provides that;

"The functions of the Authority are—

(h) to verify and authenticate information relating to the registration and identification of persons;

The petitioner presented both the birth certificate, National Identification card from NIRA and a passport No. **A00223920** issued by the National Citizenship and Immigration Board, the authorized bodies to issue the said documents which have helped this court to reach a just decision to prove the age of the petitioner.

The petitioner also presented a notification of change of error in the information from NIRA regarding his date of birth.

This court is therefore bound by the official documents issued by NIRA and the National Citizenship and Immigration Board about the date of birth of the petitioner since they are the authorized bodies with bio-data in Uganda to validate such information in line with **Section 5 (1) (h) of the Registration of Persons Act**, cited above.

In the final result, court finds that the official Birth certificate, National identification card and passport prove that the petitioner was born on the **28th August 1991**.

Basing on the above analysis, this appeal succeeds with the following orders;

1. The official birth certificate, National identification card and passport prove that the petitioner was born on 28th August 1991.
2. The Petitioner is a youth within the meaning of the **National Youth Council Act, Cap. 319** and the **National Youth Council Act, Cap. 319 (as amended)**;
3. The Petitioner was validly nominated by the 1st Respondent on the **22nd day of December, 2020** to contest for the elective office of Eastern Region Representative of the Youth to Parliament.
4. The decision of the 1st Respondent dated **31st December, 2020**; was wrong and improper to determine the petitioner's age basing on allegations.

5. The Petitioner is eligible to contest for the elective office of Eastern Region Representative of the Youth to Parliament.
6. Costs of the petition are awarded to the petitioner.

DATED, signed and delivered by email at Kampala this 31st day of January, 2021

Emmanuel Baguma

Judge