

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA
IN THE MATTER OF THE LOCAL GOVERNMENTS ACT CAP 243
AND
IN THE MATTER OF THE PARLIMENTARY ELECTIONS ACT, 2005 AS
AMENDED
AND
IN THE MATTER OF THE LOCAL GOVERNMENT COUNCIL
ELECTIONS FOR LOCAL COUNCIL V CHAIRPERSON FOR ADJUMANI
DISTRICT HELD ON THE 20TH DAY OF JANUARY 2021
ELECTION PETITION NO. 004 OF 2021

LEKU JAMES PILLI :: PETITIONER
VERSUS

- 1. ANYAMA BEN**
- 2. ELECTORAL COMMISSION**
- 3. UGANDA NATIONAL EXAMINATIONS BOARD :::::: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Petitioner (Leku James Pilli), the 1st Respondent (Anyama Ben) and another Agwe Solomon contested as candidates in the Local Government Council Elections for the position of Local Council V Chairperson for Adjumani District held on 20th January 2021. The Returning Officer of the 2nd Respondent (the Electoral Commission) returned the 1st Respondent as the validly elected candidate having polled 21,166 votes as against the Petitioner who, who was the runner-

up, having polled 17,545 votes and Agwe Solomon who polled 1,531 votes. The results of the election were gazetted by the 2nd Respondent on 12th April 2021.

[2] The Petitioner, being aggrieved with the result of the said election, brought this petition claiming that the 1st Respondent was not validly nominated for the position of Local Council V Chairperson for reason that he was not qualified for election as such in accordance with *Articles 183 (2) (a) and Article 80 of the 1995 Constitution, Section 111 of the Local Governments Act and Section 4 of the Parliamentary Elections Act, 2005 (as amended)*.

Grounds of the Petition

[3] It was stated by the Petitioner that the 1st Respondent was, at the time of nomination and election, not qualified for election as Local Council V Chairperson as he had not lawfully completed a minimum formal education of Uganda Advanced Certificate of Education (UACE) or its equivalent having not sat for Primary Leaving Examinations which is a mandatory requirement under the law. The Petitioner stated that contrary to Section 10 of the Education Act, the 1st Respondent sat for the Uganda Certificate of Education (UCE) without proof of having sat for Primary Leaving Examinations (PLE). He stated that the 3rd Respondent (the Uganda National Examinations Board) unlawfully allowed the 1st Respondent to sit for the UCE and UACE Examinations without proof of compliance with the above said mandatory requirement. He further stated that the 3rd Respondent arrogated powers to itself to grant such permission to the 1st Respondent in contravention of the law.

[4] The Petitioner prayed for grant of a declaration that the 1st Respondent was not validly elected and that the Petitioner was the validly elected Local Council V Chairperson for Adjumani District; a declaration that at the time of the Petitioner's election as Local Council V Chairperson for Adjumani District, the 1st Respondent was not qualified to be a Local Council V Chairperson having not completed the minimum academic qualification for the position; an order that the election of the 1st Respondent as the Local Council V Chairperson for Adjumani District be set aside and the Petitioner being the runner up in the said elections be declared as the validly elected Local Council V Chairperson for Adjumani District; an order that, in the alternative, the Court doth order the 2nd Respondent to organise fresh elections in compliance with the Law; and an order that the Respondents pay the costs of the petition.

[5] The petition was supported by an affidavit deposed by the Petitioner verifying the grounds of the petition.

Opposition to the Petition

[6] The 1st, 2nd and 3rd Respondents filed answers to the petition respectively accompanied with affidavits in reply to the petition opposing the petition. The 1st Respondent's answer is accompanied by an affidavit deposed by himself and a Supplementary affidavit deposed by Mpeirwe Jane Frances Muhumuza, the Academic Registrar of Makerere Day & Evening Adult School. The affidavit in support of the 2nd Respondent's answer to the petition was deposed by Omona Joseph, the Returning Officer for Adjumani District. The affidavit in support of the 3rd Respondent's answer to the petition was deposed by Peter Anywar, the

Principal Examinations Officer in charge of Scripts and Records of the 3rd Respondent.

[7] The Petitioner filed affidavits in rejoinder to the respective answers to the petition and the accompanying affidavits thereto.

Representation

[8] When the petition came up for scheduling and hearing, the Petitioner was represented by Mr. Jonathan Kirumira and Mr. Byabakama Blasto from Atigo & Co. Advocates; the 1st Respondent was represented by Mr. Madira Jimmy from Madira & Co. Advocates together with Mr. Magara Robert from Okurut Magara Associated Advocates & Mr. Kazimoto Alfred from Kazimoto & Kiwa Advocates; the 2nd Respondent was represented by Mr. Ali Hassan Kato from Osilo & Co. Advocates; and the 3rd Respondent by Mr. Eriya Mikka from MMAKS Advocates.

Agreed Facts

[9] The following facts were agreed upon by the parties and Counsel:

- (i) Both Petitioner and Respondent participated as candidates in the Local Council V (LCV) elections for Adjumani District.
- (ii) The 1st Respondent was declared the winner of the said election with 21,166 votes as against 17,545 votes for the Petitioner who was the runner up.
- (iii) The minimum required qualification for the LCV candidate is UACE or its equivalent.
- (iv) The 1st Respondent was in possession of a UACE certificate at the time of his nomination.

(v) The 1st Respondent was not in possession of a PLE certificate at the time he registered for UCE Examination Certificate.

(vi) The 1st Respondent was granted permission by UNEB to sit for UCE Exams without possession of a PLE certificate.

(vii) The 1st Respondent was duly nominated by the 2nd Respondent on basis of the documents he presented.

Issues for Determination by the Court

[10] Counsel for the 1st Respondent indicated that they intended to raise preliminary points of law regarding the petitioner's *locus standi* to bring the petition and the frivolous and vexatious nature of the petition. It was agreed that the said objections be framed into issues and be resolved at the same time as the merits of the application. Four issues were therefore agreed upon for determination, namely;

- a) Whether the Petitioner has *locus standi* to bring this petition.**
- b) Whether the petition is frivolous and or vexatious.**
- c) Whether the 1st Respondent was, at the time of nomination, qualified to stand in LCV Elections.**
- d) What remedies are available to the parties?**

Evidence and Hearing

[11] The affidavits referred to herein above were all taken as read in Court. All Counsel opted not to cross examine any of the witnesses. The documents attached to the respective affidavits were all agreed to and admitted on record, to be referred to as marked in the respective affidavits. It was further agreed and directed that the hearing would proceed by way of written submissions. A schedule was set and Counsel made and filed the submissions as directed. I have studied the

submissions by Counsel and the authorities cited and have taken them into consideration in the course of resolution of the issues before the Court.

Burden and Standard of Proof

[12] The burden of proof in election petitions lies on the Petitioner to prove the assertions raised in the petition. This is in line with the rule of evidence under Section 101 of the Evidence Act Cap 6 to the effect that he who alleges must prove. See: ***Kyakulaga Bwino Fred & EC vs Waguma Badogi Ismail, Election Petition Appeals Nos. 15 and 20 of 2016*** and ***Akuguzibwe Lawrence vs Muhumuza David & 2 Others, Election Petition Appeal No. 22 of 2016***.

[13] The burden of proof remains on the Petitioner throughout the trial and does not shift to the Respondent. See: ***Mutembuli Yusuf vs Nagwomu Moses Masamba & EC, Election Petition Appeal No. 43 of 2016***. It is only in a few specific instances, depending on the grounds relied upon in a particular petition, that the burden may shift. One of the few exceptions relates to situations where the authenticity of one's academic credentials is challenged, in which case the burden of proving the authenticity of the impugned academic credentials rests on the person that relies on those credentials. See: ***Acen Christine Ayo vs Abongo Elizabeth, Election Petition Appeal No. 58 of 2016*** citing ***Abdul Balingira Nakendo vs Patrick Mwendha, Supreme Court Election Appeal No. 9 of 2006***.

[14] The standard of proof required in a Local Council Election Petition is provided for under Section 139 of the Local Governments Act, Cap 243. Under Section 139 of the Local Governments Act;

“The election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court –

- (a) that there was failure to conduct the election in accordance with the provisions of this Part of the Act and that the noncompliance and failure affected the result of the election in a substantial manner;*
- (b) that a person other than the one elected purportedly won the election;*
- (c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or*
- (d) that the candidate was at the time of his or her election not qualified or was disqualified from election. [Emphasis added]*

[15] The ground relied upon in the present petition falls under paragraph (d) above. The Petitioner is required to prove to the satisfaction of the Court that the 1st Respondent was at the time of his election not qualified to stand for the position of Local Council V Chairperson. It is only after the Court is duly satisfied that the grounds raised in the petition have been proved to its satisfaction that it will invoke its powers under the above cited provision. The Court of Appeal in the case of **Magombe Vincent vs Electoral Commission & Mujasi Masaba Bernard Elly, Election Petition Appeal No. 088 of 2016**, stated that the meaning of the phrase “to the satisfaction of the Court” was settled by the Supreme Court in **Presidential Election Petition No. 1 of 2001 Kizza Besigye**

vs Yoweri Museveni which adopted the House of Lords proposition in *Blyth vs Blyth 1966 AC 643* that it means, **“the Court must be satisfied to the extent that the Court is without being left in any state of reasonable doubt”**.

[16] The Court of Appeal, in the above cited case of *Magombe Vincent (supra)*, in agreement with an earlier decision of the Court in *Makatu Augustus vs Weswa David & EC, EPA No. 73 of 2016*, however expressed the view that there is urgent need for legislative reform in regard to the provisions of the Local Government Act on election related matters especially adjudication of disputes for the reason that **“it is clearly odd and rather unlikely that Parliament could have intended to set a higher standard of proof in election petition matters arising out of local council elections as opposed to parliamentary election petitions”** under which the standard of proof is clearly set out by the law as being on a balance of probabilities.

[17] Bearing the above views in mind, which are binding on this Court, taking into consideration that this is a civil dispute, and taking into account the nature and importance of elections to society, I will assign to the phrase “to the satisfaction of the court” the natural meaning of the words. I have to be satisfied that the allegations in the petition are made out upon cogent and credible evidence being produced before the Court.

Resolution of the Issues by the Court

Issue 1: Whether the Petitioner has *locus standi* to bring this petition.

[18] This issue, having arisen from a preliminary objection, it ought to have been raised by Counsel for the 1st Respondent in their submissions. However, unconventionally, Counsel for the Petitioner in their initial submissions made arguments over the same based on the pleadings. Counsel for the 1st Respondent thus submitted as though they were responding to the Petitioner's submissions on the preliminary points of objection. Then Counsel for the Petitioner made a rejoinder even on the preliminary objections. It ought to have been the other way round. This becomes odd for purpose of determination by the Court. As such, I will set out the submissions of the 1st Respondent's Counsel first and then set out both submissions by the Petitioner's Counsel on the first two issues as the submissions in reply. The 2nd and 3rd Respondents made no submissions on the 1st issue. Counsel for the 2nd Respondent made submissions on the 2nd issue (second preliminary objection).

Submissions of Counsel for the 1st Respondent

[19] Counsel for the 1st Respondent submitted that the Petitioner did not have *locus standi* to bring this petition. Counsel relied on the definition of the term *locus standi* in **Osborn's Concise Law Dictionary 11th Edition, Sweet and Maxwell** which defines it as "a place of standing. It is the right to be heard in court or other proceedings. Usually, the issue of *locus standi* is technically a preliminary one..." Counsel submitted that the Petitioner was registered and nominated in the names LEKU JAMES

PILI on the 30/09/2020 which nomination was premised on the strength of a deed poll dated 30/09/2020 and gazetted on 1st October 2020 when the petitioner formally abandoned the name LEKU JAMES and adopted in lieu of that name LEKU JAMES PILI way after nomination.

[20] Counsel for the 1st Respondent questioned whether the 2nd Respondent was right to nominate the Petitioner with names that conflicted with the ones that appeared on his academic documents without complying with the provisions of the Registration of Persons Act 2015. This, considering that the Petitioner was nominated upon the strength of verified academic qualifications all in the name of LEKU JAMES for both “O” and “A” level but the he was nominated in the names of LEKU JAMES PILI. Counsel contended that the person in the names of LEKU JAMES PILI whose name appears on the voter’s register is a different person from the Petitioner since by the close of the voter’s register update in 2019, the Petitioner was still known by his original names as LEKU JAMES.

[21] Counsel submitted that the current law governing change of names is the Registration of Persons Act 2015 and particularly Section 36(1) which is couched in mandatory terms. Counsel further argued that since the above provision was not followed by the petitioner before the update of the voter’s register, it is very certain that the Petitioner either got nominated using the name of another person or he got himself on the roll of voters illegally without following the due legal process of name change. Counsel relied on the cases of **Wakayima Musoke Nsereko & Electoral Commission Versus Kasule Robert Sebunya, Election Petition Appeal No. 0050 and 102/2016** and **Serunjoji James Mukiibi versus**

Lule Umar Mawiya, Election Petition Appeal No. 015/2006 (a decision upheld by the **Supreme Court** on appeal in ***Serunjoji James Mukiibi versus Lule Umar Mawiya, Supreme Court Election Petition Appeal No. 007/2007***) to emphasize the mandatory nature of the requirement to comply with the law in as far as change of name is concerned.

[22] Counsel concluded that the Petitioner did not legally change his name as at the time of nomination and his participation in the name LEKU JAMES PILI as a candidate in the elections was an illegality because he was ineligible for nomination and cannot therefore have locus before this court as envisaged by law. As such, the registration, nomination, and his subsequent participation in the election was hinged on an illegality and thus a nullity and void ab-initio.

[23] Counsel also submitted that even if court was to rely on the deed poll of the Petitioner dated 30/09/2020, the said deed poll was signed by the Petitioner on 30th September, 2021, the same day the Petitioner was nominated contrary to Section 36 (2) & (3) that requires the expiry of 7 days' notice before the Applicant can apply to the registration officer to cause amendment to his or her names upon payment of a prescribed fees. Counsel submitted that on the case at hand, the Petitioner rushed to use the names LEKU JAMES PILI before it could lawfully be amended in the Register. Thus the premature use of the name LEKU JAMES PILI before the expiry of the 7 days and before applying for amendment before the Registrar rendered the nomination of the Petitioner in the said names a nullity.

[24] Counsel also submitted that the impugned Deed Poll was gazetted belatedly on the 1st/October/2020 after the nomination of the Petitioner had already been concluded, the same was submitted and received by the Electoral Commission on the 03/October/2020 four days after the Petitioner was already nominated on the 30/09/2020 (*emphasis on the receiving stamp*). Counsel argued that it was clear that the Petitioner was aware that his nomination was invalid but only tried to rectify the illegality by belatedly filing the said deed poll. This was also despite the Oath Authenticating Statement signed by the Petitioner upon his nomination documents declaring that the particulars of his name, age, address, and occupation were true and correct; which he swore using the name Leku James Pilli knowing very well that he had not legally assumed the name by then.

[25] Counsel therefore concluded that this Court cannot be seen to perpetuate an illegality which goes against the well-established principle of the law, especially in the leading case of ***Makula International Versus Cardinal Nsubuga 1982 HCB 11*** that an illegality once brought to the attention of court cannot be allowed to stand and supersedes all questions of pleadings and courts of law cannot and should not be seen condoning the same.

Submissions of Counsel for the Petitioner

[26] Counsel for the Petitioner submitted that the Petitioner has *locus standi* to bring this petition before this Court. Counsel relied on *Section 138(1) of the Local Government Act Cap 243* which provides that an aggrieved candidate for chairperson may petition the High Court for an order that a candidate declared elected was not validly elected; and

Section 138 (3) (a) thereof which provides that an election petition may be filed by a candidate who loses an election.

[27] Counsel submitted that the Petitioner was a participant in the Local Government Council elections that were held on the 20th day of January 2021 and was gazetted by the 2nd Respondent as one of the candidates in the said elections with 17,545 votes. Counsel cited the decision of Court in the case of ***Oyuru Anthony vs Okello P. Charles Engola & Anor, Election Petition Appeal No. 009/2016***, wherein the court observed that an election petition can be filed by a candidate who loses an election.

[28] Counsel further submitted that the 1st Respondent has not provided any evidence to show that the person who was nominated is different from the one who stood to be elected. The requirement under Section 36 (1) of the Registration of Persons Act was met by the Petitioner by causing any changes to his name to be published in the gazette. Counsel relied on the decision in the case of ***Tinka Noreen vs Bigirwenkya M. Beatrice & Anor, Election Petition Appeal No. 007 of 2011*** where in court noted, among others, that swearing a deed poll would not make the 1st Respondent forfeit all the rights attached to the former name.

Court Determination

[29] According to **The Black's Law Dictionary, 8th Edition, page 2754**, *locus standi* is defined as the right to bring an action or be heard in a specific forum. **The Osborn's Concise Law Dictionary, 11th Edition, Sweet and Maxwell**, states that *locus standi* is "a place of standing. It is

the right to be heard in court or other proceedings. Usually, the issue of *locus standi* is technically a preliminary one...”

[30] In an election petition, the requirement for *locus standi* translates into the right of a party to bring a petition or any other proceeding challenging the result of an election. Such right is always specifically set out in the law governing the conduct of the particular election. In the case of local council elections, the governing law is the Local Governments Act Cap 243. Section 138 (1) and (3) of the Local Governments Act makes the following provisions:

“(1) An aggrieved candidate for chairperson may petition the High Court for an order that a candidate declared elected as chairperson of a local government council was not validly elected.

(2) ...

“(3) An election petition may be filed by any of the following persons—
(a) a candidate who loses an election; or
(b) a registered voter in the constituency concerned supported by the signatures of not less than five hundred voters registered in the constituency.”

[31] In the instant case, the Petitioner brought this petition as an aggrieved candidate who participated in the local council elections and he lost. Prima facie, that would give him *locus standi*. However, the contention by the 1st Respondent is that while the verified academic documents presented by the Petitioner for nomination were in the name of Leku James, the name on the voter’s register and on the nomination papers presented by the Petitioner was Leku James Pilli who is a

different person from Leku James who is the Petitioner. The 1st Respondent contended that at the time of registration on the voter's register and of nomination, the Petitioner had never lawfully changed his name in accordance with the mandatory requirement under Section 36 of the Registration of Persons Act, 2015. In effect, the argument by the 1st Respondent is that the Petitioner was not qualified as a candidate and, as such, he could not bring a petition under Section 138 (1) and (3) (a) of the Local Governments Act.

[32] This contention by the 1st Respondent takes us to the essential qualifications for one to stand as a Chairperson of a District as set out under Section 111 (3) of the Local Governments Act. Under Section 111 (3) (d) and (e) of the Act, the qualifications relevant to this contention are that the person has to be a registered voter and must have completed a minimum education of Advanced Level standard or its equivalent. The contention by the 1st Respondent is that the Petitioner herein was not possessed of the above named qualifications owing to the discrepancy in his name as between his academic papers on the one hand and the entry on the voter's register and on his nomination papers on the other hand.

[33] In my view, to resolve this contention, the crucial issue is whether the use of the name Leku James Pilli by the Petitioner in absence of a valid deed poll was illegal and ineffectual. Secondly, it is whether the disparity between the name Leku James and Leku James Pilli was such that the two names did not belong to one and the same person. It is true that change of a name is currently governed by Section 36 of the Registration of Persons Act, 2015 which, under sub-section (1) states that;

“Any person, being over the age of eighteen years or a widower, widow, divorced person or a married person, who wishes to change his or her name, shall cause to be published in the Gazette a notice in the prescribed form of his or her intention to do so”.

[34] The above provision is *pari materia* with Section 12 (1) of the Births and Deaths Registration Act Cap 309, an Act that was repealed by the Registration of Persons Act, under Section 86 (1) thereof. The prescribed form is what, over time, has come to be known as a deed poll. Under the Registration of Persons Act, just as it was under the Births and Deaths Registration Act, the requirement for taking formal steps for change of names was occasioned by the need to amend the register to effect the change. This presupposes that such a name was on the register in the first place. As such, the requirement to make and gazette a deed poll was only mandatory where the name being changed had been entered on the register and change thereof had also to be entered by way of amendment of the register. Where the name sought to be changed had not been entered on the register, a change in the person’s name could sufficiently be explained by any other means and not necessarily by a deed poll.

[35] In the instant case, it is shown through a copy of the National Identity Card of the Petitioner that the Petitioner was registered under the name Leku James Pilli. The copy of the National ID is attached to the 1st Respondent’s affidavit in reply as part of Annexure “A”. The National ID is issued pursuant to the provisions of the Registration of Persons Act. This means that according to the Register compiled under the Registration of Persons Act, the name of the Petitioner on the register is Leku James Pilli. There is no evidence that the name Leku James had

been entered on the Register under the Births and Deaths Registration Act. But even if it had, when the Registration of Persons Act came into force, by operation of the law, any name previously held by any person was deemed changed to the form in which it was entered on the Register under the Registration of Persons Act. Therefore, as from the year 2015 when the Act came into force, and the name of the Petitioner was entered thereon upon issue of his National ID on 28th September 2015 as Leku James Pilli, the Petitioner obtained a right to the use of the name Leku James Pilli. At the same time, the Petitioner did not forfeit the rights he obtained under the name Leku James in which he obtained his academic documents.

[36] I am fortified in the above position by a number of authorities which I shall review here below. In the case of ***Namujju Dionizia Cissy & EC vs Martin Kizito Sserwanga, Election Petition Appeal No. 62 of 2016***, the 1st Appellant had been the successful candidate in the elections for Woman Member of Parliament for Lwengo District. Her victory was set aside by the High Court on the ground that she was not academically qualified to be nominated and elected as a Member of Parliament, among other reasons, on account of discrepancies in names as they appeared on her academic documents as against other documents. It was indicated in evidence that on her baptism certificate, the 1st Appellant's name appeared as "Gusaba Dionizia". On her PLE, UCE and UACE certificates which she presented for nomination, her name appeared as "Namujju Dionozia". She had explained when and how she dropped the name "Gusaba" and adopted the name "Namujju". The 1st Appellant further showed that when she went for her diploma, she added her childhood name of "Cissy". She subsequently registered as a

voter in the name “Namujju Cissy Dionizia” and was nominated under the same name. The High Court upheld the petition and set aside her election. On appeal to the Court of Appeal, the Court held as follows:

“The 1st Appellant had never been registered in the national registration of births until the year 2015, when the Births and Deaths Registration Act, Cap 309, had already been repealed and replaced by the Registration of Persons Act, 2015 that came into effect on 26th March 2015. Consequently, it was erroneous to require the 1st Appellant to fulfil the requirements of a repealed law. As a further consequence, a deed poll was therefore not necessary to explain the changes in the 1st Appellant’s names from Gusaba Dionizia at baptism, to Namujju Dionizia within the academic documents and finally Namujju Cissy Dionizia as per election-related documents.”

[37] The above same principle was reiterated by the Court of Appeal in the case of ***Ssembatya Edward Ndawula vs Alfred Muwanga, Election Petition Appeal No. 34 of 2016*** in which the Court held that for one to register a change of name, one should have, in the first place, registered it under the Births and Deaths Registration Act. Also see: ***Ninsiima Grace vs Azairwe Dorothy Nshaija Kabaraitnya & EC, Election Petition Appeal No. 5 of 2016***. The other principle is that even where a person changes a name, they do not forfeit the rights acquired under the previous name. This principle was fortified in the Court of Appeal decision in the case of ***Tinka Noreen vs Bigirwenkya M. Beatrice & Anor, Election Petition Appeal No. 007 of 2011***.

[38] On the case before me, it is conceded by the 1st Respondent that the Petitioner's National ID is in the name Leku James Pilli. There is no dispute that the Petitioner's name was entered on the voter's register as Leku James Pilli. It is also agreed that the Petitioner was nominated in the same name of Leku James Pilli. As such, the issue of a deed poll does not and cannot arise. The moment the Petitioner's name was entered on the Register (both the National Register and the Voter's Register) as Leku James Pilli, he had full rights to that name. Secondly, the academic documents acquired by the Petitioner, just like any other rights thereby, under the name of Leku James were not extinguished by the adoption by him of the name Leku James Pilli.

[39] The decisions cited by the 1st Respondent's Counsel in the cases of ***Wakayima Musoke Nsereko & Electoral Commission Versus Kasule Robert Sebunya, Election Petition Appeal No. 0050 and 102/2016*** and ***Serunjoji James Mukiibi versus Lule Umar Mawiya, Election Petition Appeal No. 015/2006*** clearly are not applicable to the facts and circumstances of the present case. In ***Wakayima Musoke Nsereko & Electoral Commission Versus Kasule Robert Sebunya (supra)***, the *ratio decidendi* was premised on the fact that the Appellant was nominated in a name that was different from that which appeared on the voter's register. As can be discerned from the decision, the Court takes a strict approach where the disparity is between the candidate's name on the nomination paper and the name on the voter's roll. It is clear from this and a number of other decided cases, some of which have been cited herein above, that while a disparity between the name on the academic documents and the name on the nomination paper or voter's roll may be explained, a disparity between the name on the nomination paper and

that on the voter's roll is not envisaged as it would suggest that a candidate has unlawfully changed their name. The name on the voter's roll can only be changed in accordance with the procedure laid out in the Registration of Persons Act 2015. Also see: **Lillian Tibatemwa-Ekirikubinza & Busingye Kabumba, Enhancing Electoral Justice in Uganda's Parliamentary Elections: The Search for Dependable Precedent, 2021 at page 11.** Clearly, this situation is distinguishable from the facts and circumstances of the present case. The facts, circumstances and *ratio decidendi* in the ***Serunjoji James Mukiibi versus Lule Umar Mawiya*** case are even farther from the matter now before the Court.

[40] In light of the foregoing, it is clear to me that the disparity between the names of the Petitioner on the academic documents on the one hand and on the National ID, the voter's roll and the nomination papers on the other hand was not only immaterial but also had no legal effect on the Petitioner's qualification for nomination and election as a candidate in the Local Council V elections. The Petitioner was, therefore, qualified and was validly nominated as a candidate in the election in issue, in which he participated and was returned as the runner up. The Petitioner was therefore seized with *locus standi* to bring this petition. The first issue is resolved in the affirmative.

Issue 2: Whether the petition is frivolous and or vexatious.

Submissions by Counsel for the 1st Respondent

[41] Relying on the definition of the words 'frivolous' and 'vexatious' in the **Black's law Dictionary, (8th Edition 2004), page 1969 and 4842**

respectively, Counsel for the 1st Respondent submitted that the Petition before the Court is frivolous and vexatious. Counsel submitted that the petition lacks merit as it stretches beyond the legal standards set by the law to disqualify someone from running for the position of L.C V office as laid down under Section 139 of the Local Governments Act Cap 243.

[42] Counsel argued that the gist of this petition is founded on paragraphs 10 & 11 of the Petitioner's Affidavit in support where he faulted UNEB for allowing candidates to sit for Uganda Certificate of Education Examinations without proof of Primary Leaving Examinations. Counsel stated that the Petitioner's complaint is against the 3rd Respondent for allowing the 1st Respondent to sit for UCE without proof of PLE which act is not orchestrated by the 1st Respondent and neither is the 1st Respondent a party to the alleged violation of the lawful mandate, if at all any existed. Counsel argued that the Petitioner should have filed a civil suit against the 3rd Respondent to challenge its legal powers under the UNEB ACT instead of burdening the 1st Respondent with a remote Petition.

[43] Counsel further submitted that the Petitioner in his pleadings did not set out clearly facts that challenge the election of the 1st Respondent in accordance with *Section 139 of the Local Government Act Cap 243*. He stated that the Petitioner did not plead facts to dispute that the 1st Respondent attended and completed both O' and A' level education from Makerere Day and Evening Adult School and neither did he challenge the authenticity of the 1st Respondent's academic documents. Counsel argued that no forgery or impersonation was pleaded to challenge the 1st Respondent's qualifications. Counsel concluded that this issue can only

be answered by UNEB through a civil suit or an independent constitutional petition without necessarily dragging the 1st Respondent through a frivolous petition. Counsel prayed to Court to dismiss the petition with costs.

Submissions by Counsel for the 2nd Respondent

[44] Counsel for the 2nd Respondent also submitted that the petition before the Court was frivolous and vexatious. Counsel relied on the definition of frivolous in the **Black's Law Dictionary 11th Edition** and the case of ***Gardner v. Queen Insurance Company of America, 232 Mo. App. 1101, 115 S.W.2d 4*** for the definition of the term vexatious. Counsel submitted that the petition lacks merit and is only intended to annoy the Respondents and cannot lead to any practical result.

[45] Counsel further submitted that the petition against the 2nd Respondent revolves around the 2nd Respondent nominating the 1st Respondent who allegedly did not possess a Primary Leaving Examination certificate, which is not a requirement under Articles 183 (2)(a) and 80 of the Constitution of the Republic of Uganda. Counsel argued that the insistence by the Petitioner on Section 10 of the Education Act, 2008 which is gazetted, quoted and cited as *The Education (Pre-Primary, Primary and Post-Primary) Act, 2008* is misplaced. Counsel further stated that Section 10 falls under PART IV of the Act which is the STRUCTURE OF EDUCATION and provides for four levels of education. He argued that it is not stated anywhere that it is mandatory for one to first sit PLE so as to contest in an election. Counsel prayed to the Court to dismiss the petition with costs for being frivolous and vexatious.

Submissions by Counsel for the Petitioner

[46] For the Petitioner, Counsel submitted that the petition before this Court is neither frivolous nor vexatious. He relied on the case of **General Parts (U) Ltd Vs. Middle North Agencies Ltd & Anor, HCCS No. 610 of 2013**, wherein **Justice Madrama** defined a frivolous and vexatious suit to mean a suit which lacks merit and has no basis. Counsel submitted that the petition does not fall within the definition given in the above cited case. Counsel argued that the petition raises very pertinent issues of law and fact that require to be meritoriously adjudicated upon by this Court. Counsel submitted that this petition raises an issue as to “*whether primary education is mandatory as per the formal education structures set up by the Education Act*” and that the petition is based upon the law on the qualifications of a District Chairperson.

[47] Counsel for the Petitioner further submitted that the argument by Counsel for the 1st Respondent that the Petitioner ought to have filed a civil suit or a constitutional petition without dragging the Respondent into an electoral petition is not founded in law. Counsel argued that this petition is based on the qualifications set by the relevant laws on the matter. It is upon the bedrock of qualifications that this petition is premised challenging the nomination and subsequent election of the 1st Respondent who did not have the required academic qualifications. This Court primarily has the mandate to interpret laws which is the basis of this petition.

Court Determination

[48] The **Black's law Dictionary, (8th Edition 2004), page 1969** defines the term "frivolous" to mean "lacking a legal basis or legal merit, not serious and/or not reasonably purposeful" and at **page 4842**, the term "vexatious" to mean "without reasonable or probable cause or excuse, harassing, annoying". In the case of ***Maximo Oleg Petrovich versus Petra Chandra and Another, HCCS No. 802 of 1997*** (unreported), the Learned Judge while quoting **Lush J** in ***Norman versus Mathews (1916) 87 L.J K.B 857 at 859*** stated:

"In order to bring a cause of action within the description of frivolous and vexatious, it is not sufficient merely to say that the plaintiff has no cause of action. It must appear that his alleged cause of action is one which on the face of it, is clearly one which no reasonable person could properly treat as bona fide and contend that he had a grievance which he was entitled to bring before court."

[49] On the case before me, the Petitioner in the petition raises the issue as to whether Primary Education and sitting for the Primary Leaving Examination are mandatory as per the formal education structures set up by the Education Act of 2008; such that one cannot validly possess UCE or UACE certificates without having sat for the Primary Leaving Examination. I take note of the fact that this same argument is central to the merits of this petition. As such, it would not be proper and just for the Court to determine the same at a preliminary level. It is clear from the submissions of Counsel on both sides that during their submissions

on this issue, they delved into the merits of the grounds raised in the petition.

[50] That being the case, I will not consider these arguments in detail at this level; except to point out that I would agree with the Petitioner's argument that the petition raises quite pertinent issues of law and fact that would require to be adjudicated upon on the merits. It concerns a matter that has not been subject of adjudication since the coming into force of the Education Act 2008. It deals with circumstances that are different from what the Court considered in the case of ***Butime Tom vs Muhumuza David & Anor Election Petition Appeal No. 11 of 2011***. In my view, it is not one that can be described as frivolous and or vexatious. The petition is, in my view, well-grounded and merits to be considered and determined on its merits. It is therefore not frivolous and vexatious as alleged by the 1st and 2nd Respondents. The second issue is answered in the negative.

Issue 3: Whether the 1st Respondent was, at the time of nomination, qualified to stand in LCV Elections.

Submissions by Counsel for the Petitioner

[51] It was submitted by Counsel for the Petitioner that the gist of this case rests on the thread of qualifications that ties the formal education structure of Uganda such that when one knot is missing, the structure cannot be complete. Counsel submitted that the 1st Respondent was not qualified to be a candidate in the L.C 5 Elections because he lacked the thread of qualifications leading to the attainment of the A-Level Certificate which is the minimum academic requirement for a candidate

who is desirous of becoming an L.C. 5 Chairperson. Counsel cited the provisions under *Article 183(2) of the Constitution, Section 4(1) of the Parliamentary Elections Act, 2005 as amended, and Sections 12 and 111(3) of the Local Government Act Cap 243* which set out the qualifications for a person to stand as a candidate for election as an L.C. 5 Chairperson. Counsel also referred to the decisions in ***Abdul Balingira Nakendo Vs. Patrick Mwondha Supreme Court Election Petition Appeal No. 09 Of 2007*** and ***Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti & Electoral Commission Election Petition No.08 of 2016.***

[52] The Petitioner's Counsel referred to the definition of formal education under Section 2 of the Education Act and further submitted that the levels of formal education in Uganda are well stipulated under *Section 10(1) of the Education Act, 2008*. Referring to the requirements applicable to Primary Education under *Section 10(3) of the Education Act*, Counsel submitted that primary education is mandatory. Counsel stated that in the instant case, the 1st Respondent neither attended primary education nor sat for Primary Leaving Examinations prior to sitting for U.C.E and U.A.C.E levels. This was in breach of the mandatory requirement of the law.

[53] Counsel relied on the cases of ***Butime Tom Vs. Muhumuza David & Electoral Commission, Election Petition Appeal No. 11 of 2021*** and ***Achen Christine Ayo Vs. Abongo O. Elizabeth, Election Petition Appeal No. 58 of 2016*** wherein the Court held that under the new legal regime, consequent to the enactment of the Education Act 2008, Primary Education is mandatory. The Court, however, could not apply the 2008

Education Act retrospectively to candidates who had sat for O-Level pre-2008. Counsel argued that in the case of the 1st Respondent herein, however, the requirement to go through formal education in a structured manner applies because he sat for O-Level in 2017 and A-Level in 2019. As such, the provisions of the Education Act 2008 were applicable to him.

[54] Counsel also submitted that the 1st Respondent studied O-level for two years in complete violation of *Section 10(4)(a) of the Education Act* which requires that a candidate ought to have studied lower secondary for a period of 4 years. He submitted further that the O-level results/certificate of the 1st Respondent was unlawfully acquired and improperly issued by the 3rd Respondent. Counsel asserted that the 1st Respondent lacked a thread of qualifications leading to his A-level and thus lacks the requisite minimum qualifications of an L.C.5 Chairperson under the law.

[55] On whether the 3rd Respondent has powers to waive a mandatory level of education set out under *Section 10 of the Education Act*, Counsel submitted that the 3rd Respondent has no such powers. Counsel submitted that the functions of the 3rd Respondent zero down to organization of examinations and the Board is not empowered to waive a mandatory requirement under the law. Counsel further submitted that the Registration of Candidates for 2017 U.C.E and U.A.C.E Examination Guidelines were not the Regulations or Rules envisaged under *Section 4(1) (i) of the UNEB Act 1983*. He submitted that the mode of operation of the 3rd Respondent is well stipulated under *Section 20 of the UNEB Act* which is to the effect that “*the board may by statutory instrument with*

approval of the minister make byelaws regulating among others, the qualification of candidates". Counsel stated that the 2017 guidelines ought to have been a proper statutory instrument and not a circular to head teachers.

[56] Counsel relied on *Sections 2, 14 and 16 of the Interpretation Act, Cap 3* for the meaning and requirements for making of a statutory instrument. Counsel cited the case of ***Petnum Pharmacy Limited Vs. National Drug Authority, Misc. Cause No. 56 of 2018*** for the submission that where a regulation is made ultra vires the enabling law, the same is liable to be treated as an illegality and having no legal effect. He submitted that the guidelines herein were made without approval of the minister and were never gazetted. They also purported to amend *Section 10(3) of the Education Act 2008*, which is an illegality. Counsel argued that the guidelines seem to introduce an aspect of age, which is not provided for under the law. Age cannot be a justification for one to qualify from one to another or jump a level. Counsel relied on the decision in ***Muyanja Mbabali Vs. Birekerawo Mathias Nsubuga Election Petition Appeal No. 36 of 2011***.

[57] Counsel further submitted that the Executive Secretary of the 3rd Respondent had no powers to grant permission to the 1st Respondent to sit for U.C.E Exams without proof of P.L.E Exams. He stated that the office of the Executive Secretary is established under *Section 12 of the UNEB Act* and the functions of the same stipulated therein. He noted that there is no provision allowing the Executive Secretary to waive the requirement of Primary Education and his purported permission is not only illegal but also ultravires. Counsel concluded that the 1st

Respondent lacked the minimum academic qualifications and invited the Court to set aside his election and grant the remedies prayed for in the petition.

Submissions by Counsel for the 1st Respondent

[58] Counsel for the 1st Respondent submitted that the 1st Respondent qualified to be a candidate in the L.C .5 Elections because he attained A-Level Certificate of Education, which is the minimum academic qualification required for a candidate to stand for elective position of an L.C. 5 Chairperson of a District. Counsel referred the Court to the provisions under *Article 183(1) & (2) and Article 80(1) of the Constitution of Republic of Uganda as amended*. He also cited *Section 4(1) of the Parliamentary Elections Act, 2005 as amended, Sections 12 and 111(3) of the Local Government Act Cap 243*. Counsel submitted that in light of the above cited provisions of the law, the 1st Respondent was clothed with and met all the pre-requisite requirements at the time he stood as a candidate in the L.C.5 Elections.

[59] Counsel submitted that the alleged lack of Primary Leavers Certificate relied on by the Petitioner is not the minimum academic qualification required to contest for an elective post of District LCV Chairperson. Counsel argued that the issue as to whether Primary Education is mandatory as per the formal education structures set up by the Education Act of 2008 is a remote one and, as such, the Petition is not based on any law relating to the qualifications of a District LCV Chairperson.

[60] Regarding the submission on the thread of qualifications, Counsel for the 1st Respondent submitted that there is no such a thing in law as a “thread of qualifications”. He stated that *S.10 (1) of the Education Act, No. 13 of 2008* simply outlines the different levels of education in Uganda and nowhere does the law make it mandatory to qualify to be a thread of sorts. Counsel argued that if, Indeed, it were a “thread of qualifications” as alleged by the Petitioner, the attendance of Pre-Primary Education would have been made compulsory, and the Government would not have relegated the duty to provide Pre-Primary Education to private agencies and persons, to provide education to children aged two to five years.

[61] Counsel argued that going by the Petitioner’s argument of “thread of qualifications”, one would expect him to also ask about the 1st Respondents lack of Pre-Primary Leavers Certificate. Counsel argued that the fact that there is no Pre-Primary Leavers Certificate goes to confirm that there is no “thread of qualifications”. Counsel concluded that the fact that the 1st Respondent did not attend Pre-Primary School and Primary School does not render his UCE and UACE certificates invalid as the Petitioner would want this Court to believe. Counsel submitted that the Petitioner’s Counsel have misunderstood and misrepresented the import of *S. 10 of The Education Act 2008*.

[62] Counsel cited the decision in ***Sitenda Sebalu versus Sam K. Njuba & The Electoral Commission, Supreme Court Election Petition Appeal No. 26 Of 2007*** on the construction of the word “shall” as used in a statute and when it should be construed as importing a mandatory as against a directory sense. Counsel invited the Court to apply the

principle set out in the case to determine whether the use of the word “shall” in *S. 10 (1) and (3) of the Education (Pre-Primary, Primary & Post Primary) Act, No. 13 of 2008* necessarily meant that non-compliance or failure to go through all the 4 (four) levels of education invalidates one’s subsequent qualifications attained at Post Primary Education level (UCE and UACE), and tertiary or University Education.

[63] Counsel invited the Court to find that such non-compliance with the alleged “thread of qualifications” does not necessarily invalidate the subsequent qualifications which is borne out by the fact that under our Education system, we have a system of direct entry to University under the “mature entry scheme”. Counsel submitted that if the legislature intended to create a mandatory “thread of qualifications” then the “mature entry scheme” would be illegal and unlawful for failure to comply with the mandatory “thread of qualifications” which unfortunately is not the case, as one can attain a valid University Degree or Tertiary Education Qualification under the “mature entry scheme”, without going through the other levels of education to wit Pre-Primary, Primary and Post Primary Education.

[64] Counsel submitted that the case law /authorities of ***Kasamba Kalifani vs Uganda Revenue Authority C.S No. 579 of 2009; Butime Tom Versus Muhumuza David & Electoral Commission, Election Petition Appeal No. 11 of 2021; Achen Christine Ayo versus Abongo O. Elizabeth, Court of Appeal Election Petition Appeal No. 58 of 2016; Nakendo versus Mwendha (supra)*** cited by the Petitioner’s Counsel were either wholly inapplicable and or distinguishable.

[65] Counsel further submitted that although the Act is silent about adult education, it does not necessarily make it illegal. The Board has powers under S. 4(1) (i) of the Uganda National Examinations Board Act 1983 to make rules regulating the conduct of examinations and for all purposes incidental thereto. The Board, as a matter of fact, has broad and unfettered powers under S. 5 of the Uganda National Examinations Board Act 1983 to do all such things and to act in all ways necessary for or incidental to, the purposes for which it is established, and without prejudice to the generality of the aforesaid delegate any of its functions to be performed by an officer of the Board, as it may deem necessary. Counsel submitted that, on the other hand, Section 20 of the UNEB Act 1983 is not mandatory and the same ought to be read together with the functions and powers of the Board enshrined in S.4 and S.5 of the UNEB Act 1983, whose net effect does not outlaw the issuance of circulars and Guidelines by the Board.

[66] Counsel submitted that the office of the Executive Secretary of the 3rd Respondent as the Chief Executive Officer of the Board is established under *S. 12 of the Uganda National Examinations Board Act 1983* is responsible for implementing the Policy decisions of the Board as well as the daily management of the affairs of the Board. Any function performed by the Executive Secretary in the name of the Board is deemed to be delegated by the Board unless the contrary is shown.

[67] Counsel concluded that in the final result, there is no doubt that the 1st Respondent has the minimum A- Level Certificate of Education required to stand for the elective position of District Chairperson which fact has been conceded to by the Petitioner. The Certificate was verified

by the 3rd Respondent and found to be genuine and authentic and the 1st Respondent presented the same for his nomination which is a mandatory requirement of the law. On the basis of his nomination, the 1st Respondent won the elections and was duly declared and gazetted as the ultimate elected District Chairperson of Adjumani District and the Petitioner has no valid claims in law against the 1st Respondent to annul the results of the said elections. Counsel invited the Court to find this issue in the affirmative.

Submissions by Counsel for the 2nd Respondent

[68] Counsel for the 2nd Respondent's submitted that the 1st Respondent was validly nominated to contest as a candidate in the LCV Chairperson elections of Adjumani District because he possessed the required minimum formal education of Advanced Level standard as per the relevant provisions of the law. Counsel submitted that it was among the agreed facts by all parties during the scheduling that the minimum academic qualification for the position of LCV District Chairperson is a UACE certificate and that the 1st Respondent was nominated by the 2nd Respondent on the basis of the documents presented which included the required UACE certificate which was admitted and exhibited on court record. Counsel relied on the case of ***Labeja Bob Williams vs. The Independent Electoral Commission, High Court Election Petition No. 2 of 2015, Lady Justice Margaret Mutonyi*** in which she stated that; ***"All the Petitioner needed was a minimum requirement of Advanced Level Certificate not the Diploma"***

[69] Counsel submitted that the insistence of the Petitioner on the "thread of qualifications" is not legally tenable as the same is not a

requirement under the laws governing the election of District Chairperson. Counsel further submitted that the Petitioner did not, at any point, during or after the nomination, raise any issues with the 2nd Respondent regarding the 1st Respondent's nomination as envisaged in *Section 15 of the Parliamentary Elections Act* on alleged invalid nomination and or lack of qualifications. Counsel relied on the decision in ***Giruli Livingstone David vs. Mulekwa Herbert Padie & Electoral Commission, Election Petition No. 23 of 2016***, wherein the court having found that the Petitioner did not lodge a written complaint before the 2nd Respondent challenging the qualifications of the 1st Respondent under the provisions of Sections 15 & 16 of the PEA which are applicable to Local Council Elections by virtue of section 172 of the Local Government's Act, the court was of the considered opinion that the 1st Respondent at the time of his election was qualified for election as LC5 Chairperson Sironko District.

[70] Counsel therefore prayed that Court finds that the 1st Respondent was, at the time of his nomination, qualified to stand as a candidate for election under Section 111 of the Local Government Act.

Submissions by Counsel for the 3rd Respondent

[71] Counsel for the 3rd Respondent submitted that at the time of the 1st Respondent's nomination, he was qualified to stand as a candidate in the L.C.5 election as he possessed the minimum academic qualification of Uganda Advanced Certificate of Education as per the relevant provisions of the law. The Petitioner agreed to this fact. Counsel prayed that the Court finds that the 1st Respondent was at the time of nomination

qualified to stand as a Candidate in the L.C.5 election without further ado.

[72] On the *thread of qualifications argument*, Counsel submitted that in Uganda's education system and legal framework, there is nothing such as thread of qualifications. Counsel submitted that the Petitioner's argument that one level of education leads to another is erroneous especially in so far as it relates to primary education being a necessary for one to sit for Uganda Certificate of Education Examinations. Counsel argued that the said argument is not founded in law and does not consider the current Government policy and programs on functional adult education and the past insecurities suffered in parts of the country. Counsel argued that such an interpretation of the current legal framework would lead to absurdity if upheld by the Court. Counsel further argued that the Petitioner's argument that Section 10(1) of the Education Act establishes a requirement to study in a structured manner before one can lawfully attain UACE level or its equivalent is fundamentally flawed.

[73] Counsel also submitted that when interpreting a statute, the Court ought to apply the literal rule of statutory interpretation such that where the words of the statute are clear and unambiguous, they are conclusive evidence of the legislative intention. Counsel cited the case of ***Mrs. Seforoza Nyamuchoncho & Anor versus Attorney General & Anor: Miscellaneous Cause No. 241 of 2017*** as authority for the above proposition. Counsel submitted that Section 10(1) of the Education Act is clear and unambiguous and should be interpreted literally; which is to the effect that the legislature intended to spell out the four levels of

education in Uganda. The provision does not set out any compulsory requirement to study in a structured manner as argued by the Petitioner and thus the thread of qualification does not arise.

[74] On the question whether Primary Education is a pre-requisite for obtaining post primary education, Counsel submitted that there is no provision in the Education Act or under any other legislation that makes it mandatory for a person sitting for the Uganda Certificate of Education to have sat for Primary Leaving Examinations. Counsel faulted the Petitioner's interpretation of *Section 10 (3) (a) of the Education Act* as being erroneous simply because the provision makes primary education universal and compulsory for pupils aged 6 years and it is intended to last 7 years. The literal meaning of the provision is that all children aged six years and above are required to enrol and obtain primary education. Counsel further argued that *Sections 10 (2), (3) and (4) of the Education Act* are all merely descriptive provisions of the levels of education set out in Section 10 (1). On its part, Section 10 (3) (a) of the Act only describes what primary education should comprise of. Counsel argued that the provision does not make the acquisition of primary education a mandatory pre-requisite for one to attain post-primary education.

[75] Counsel further submitted that the provision should be read and understood in relation to Uganda's international obligations to ensure the realization of the right to education guaranteed under various international instruments to which the state is party. Counsel submitted that these international instruments are considered extraneous aids to statutory interpretation and should aid the Court when interpreting Section 10(3)(a) of the Education Act. Counsel made reference to the

right to education which is guaranteed under *Article 26 of the Universal Declaration of Human Rights (‘UDHR’)*, *Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, (the ‘ICESCR’)* and *the UNESCO Convention against the Discrimination in Education* to all of which Uganda is a party or signatory. Counsel made further reference to *Goal 2 of the Millennium Development Goals* which was to achieve Universal Primary Education by 2015 in all Countries and *Goal 4 of the Sustainable Development Goals* which requires states to ensure inclusive and equitable quality education and to promote lifelong learning opportunities for all.

[76] Counsel also cited *Article 34 of the Constitution of Uganda* which states that “*A child is entitled to basic education which shall be the responsibility of the State and the parent of the child.*” Counsel further pointed out that under the *National Objectives and Directive Principles of State Policy (Objective XVIII)*, in the Constitution, the State undertook to promote free and compulsory basic education.

[77] Counsel submitted that it was on the premise of the above cited obligations that *Section 10 (3) (a) of the Education Act* stipulates that primary education is compulsory for pupils aged 6 years and above. It was not the intention of the legislature to make primary education a pre-requisite for a person to obtain post-primary education. The intention of the legislature was to put in place measures to ensure that children aged 6 years access universal primary education and to create an obligation on their parents to enrol children of that age in primary school. Counsel further submitted that this intention can further be discerned from *Section 51 (1) of the Education Act* which states that any person,

organization, or agency who refuses to enrol or deters a child from being enrolled for Universal Primary Education in accordance with *Section 10 (3)(a) of the Education Act* commits an offence.

[78] Counsel argued that the Petitioner's argument would defeat various government policies such as the Functional Adult Learning program geared at ensuring that persons who failed to obtain a primary education can go ahead and obtain formal education at post-primary level. Counsel submitted that in the present case, "annexure B" is a list of 311 candidates in 2017 who together with the 1st Respondent benefited from the adult education scheme to attain the UCE qualification. Counsel submitted that if the Petitioner's interpretation is extended to subsections (2), (3) and (4) of Section 10 of the Education Act, it would lead to absurdity and it would be to re-enact the said provisions which are clear and unambiguous. Counsel prayed that the Court finds that *Section 10 (3) (a) of the Education Act* does not make it a mandatory prerequisite for one to obtain primary education to pursue post primary education.

[79] On whether the 3rd Respondent's Registration of Candidates for 2017 U.C.E and U.A.C.E Examination Guidelines are the Regulations and/or Rules envisaged under the UNEB Act 1983, Counsel submitted that the Guidelines were rules of the Board duly made to regulate the conduct of examinations in 2017. Counsel submitted that the Board had the power to make rules regulating the conduct of examinations pursuant to *Section 4 (1) (i) of the Uganda National Examination Act, 1983 'UNEB Act'* and that the provision conferring on the Board such powers did not require these rules to be gazetted or take a particular form. Counsel

argued that the powers given to the Board under *Section 4 (1) (a) of the UNEB Act* are distinguishable from the powers given under *Sections 20 and 21 of the Act*.

[80] On the allegation that the Executive Secretary had no power to waive the requirement for primary education, Counsel for the 3rd Respondent submitted that the Circular in issue was issued by the Executive Secretary exercising delegated power from the Board under *Section 4 (1) (i) of the UNEB Act* and pursuant to *Section 5 (h) of the UNEB Act*. This decision was guided by the fact that there is no legal requirement under any law for one to have obtained primary education before going on to pursue post primary education. Counsel invited the Court to find that the Circular issued by the 3rd Respondent was duly issued pursuant to *Section 4 (1) (i) of the UNEB Act*.

[81] Counsel for the Petitioner made and filed submissions in rejoinder which I have reviewed, as well, and taken into consideration in the course of resolving this issue.

Court Determination

[82] This petition was brought upon the ground of lack of the minimum academic qualifications on the part of the 1st Respondent. It is agreed between the parties that the required qualification for a candidate standing for election as Chairperson Local Council V (LC V) is a minimum formal education of Advanced Level Standard or its equivalent. This is consistently provided for under *Article 183(2)(a) and Article 80(1)(c) of the Constitution of Republic of Uganda; Section 4(1)(c) of the*

Parliamentary Elections Act, 2005 as amended; and Sections 12(2)(a) and 111(3)(e) of the Local Government Act Cap 243.

[83] It was also agreed between the parties that at the time of nomination, the 1st Respondent was in possession of a Uganda Advanced Certificate of Education (UACE). It is equally agreed that when the 1st Respondent sat for his Uganda Certificate of Education (UCE) and for UACE, he had not undergone primary education and was not in possession of Primary Leaving Examination (PLE) results. Also agreed was that the 3rd Respondent, the Uganda National Examinations Board (UNEB), had granted permission to the 1st Respondent to sit for UCE Examinations without being in possession of PLE results.

[84] Given the above facts, it is clear that the petition is not challenging the ownership or authenticity of the Petitioner's academic papers. Rather, the argument by the Petitioner is that because the 1st Respondent had not undergone primary education and had not sat for Primary Leaving Examinations, he had illegally been allowed to sit for UCE and UACE Examinations and, as such, his UCE and UACE Certificates are invalid. The 1st Respondent's academic qualifications are therefore being challenged on the ground of invalidity which, if upheld, would make his nomination and election invalid and illegal. The Petition also challenges the power of the 3rd Respondent (UNEB) to waive the requirement of studying and passing Primary Leaving Examinations before one can enroll for secondary education.

[85] I wish to first point out that a few decided cases have dealt with the issue of the imperative nature of primary education in regard to

subsequent post-primary education. I refer to the Court of Appeal decisions in ***Butime Tom Vs. Muhumuza David & Electoral Commission, Election Petition Appeal No. 11 of 2021*** and ***Achen Christine Ayo Vs. Abongo O. Elizabeth, Election Petition Appeal No. 58 of 2016***. In both cases, the candidates had enrolled for post-primary education before the coming into force of the Education Act, 2008. In ***Butime Tom Vs. Muhumuza David & Electoral Commission (supra)***, the Court of Appeal agreed with the finding of the trial Judge to the effect that ***“while policy proposals were in place since 1963, there was no law that required one to undergo a course of study in a structured manner until when the Education Act ... No.13 of 2008 was enacted with specific legislation as to what formal education is.”*** The Court further observed that in 1997 when the 1st Respondent completed his education, there was no law in place that required one to undergo primary education and attain P.L.E results before joining O-level and consequently A-level. That this went on until 2008, when the Education Act No. 13 of 2008 was enacted setting up the structures of formal education and defining what actually “Formal Education” is. The same position was taken by the Court of Appeal in the ***Achen Christine Ayo Vs. Abongo O. Elizabeth*** case.

[86] What makes the present case un-determined by the two previous decisions of the Court of Appeal is that by the time the 1st Respondent herein underwent his post-primary education in 2017 and 2019 respectively, the Education Act 2008 was already in force. The Petitioner in the present case is indeed relying on the statement of the Court of Appeal in reference to the structured manner of education introduced by the Education Act 2008 for his argument that completion of primary

education is mandatory before one can get enrolled to post-primary education. This is in addition to the Petitioner's reliance on provisions under Section 10 of the Education Act. This, therefore, is the gist of the dispute in this petition.

[87] I will first deal with the sub-issue as to whether Section 10, among other provisions of the Education Act, makes primary education mandatory before one can enroll for post-primary education. *Section 10 of the Education (Pre-Primary, Primary & Post-Primary) Act No. 13 of 2008* (to be referred to as the "**Education Act 2008**") provides for the different levels of education. *Section 10 (1) of the Act* provides as follows:

"There shall be four levels of education as follows —

- a. pre-primary education;*
- b. primary education;*
- c. post primary education and training; and*
- d. tertiary and university education."*

[88] *Section 10 (3) of the Education Act 2008* provides as follows:

"(3) The following shall apply to primary education—

- (a) primary education shall be universal and compulsory for pupils aged 6 (six) years and above which shall last seven years;*
- (b) all children of school going age shall enter and complete the primary education cycle of seven years; and*
- (c) Government shall ensure that a child who drops out of school before completing primary education cycle attains basic education through alternative approaches to providing that education".*

[89] Relying on the two above cited provisions under Section 10 of the Education Act 2008, Counsel for the Petitioner argued that the above law establishes a formal structure of education that has to be followed by everyone undertaking education in Uganda. Particularly invoking sub-section (3)(a) above, Counsel argued that the provision makes primary education compulsory and, as such, a person cannot lawfully undergo post-primary education without completing primary education.

[90] It is true that the provisions of the Education Act 2008, particularly those cited above, establish a formal education structure in Uganda. The Act in Section 2(1) thereof defines formal education to mean “*a package of learning made available by recognised schools and institutions following approved curriculum standards and guidelines*”. The structure of education is provided for under Part IV of the Act; which are the provisions under Section 10 of the Act. While Section 10 (1) of the Act sets out the four levels of education under the structure, there is no provision under Section 10 (which is Part IV of the Act) that expressly provides that every person in Uganda must undergo all the four levels sequentially. The fact that the law maker uses the word “shall” in sub-sections (1) and (3)(a) of Section 10 is not sufficient to lead to the construction suggested by Counsel for the Petitioner. I will explain why.

[91] It is because it is clear to me that the word “shall” in sub-section (1) is used to denote the existence or establishment of the four levels of education. It definitely has nothing to do with the said levels being undertaken by everyone, let alone sequentially so. The word “shall” as used in sub-section (3)(a) of Section 10 has been subject to extensive argument by Counsel on both sides. Upon reviewing and considering all

the submissions on the matter, I am of the view that it is necessary to give the provision a purposive interpretation by looking for the intention of the law maker when enacting the said provision. I am not in agreement with Counsel for the 3rd Respondent that the provision is clear and unambiguous and that the literal rule is sufficient to give a proper construction of the same.

[92] In my view, the provision suffers from some ambiguity that would make the literal rule insufficient to lead to its meaningful construction. The ambiguity is in the sense that when the provision states that “*primary education shall be universal and compulsory for pupils aged 6 (six) years and above which shall last seven years*”, one meaning is that the compulsory nature of primary education is restricted to enrollment of all pupils of school-going age. This is the view taken by the Respondents. But the provision is also capable of being interpreted to mean that everyone who undertakes formal education in Uganda must undergo primary education. This is the line towed by the Petitioner and is actually the gist of the current dispute. That being the case, this ambiguity calls for application of other rules of interpretation beyond the literal rule.

[93] Traditionally, there are four main rules for statutory interpretation, namely, the literal rule, golden rule, the mischief rule and the *ejusdem generis* rule. Over time, the courts have developed an integrated approach that is known as the purposive approach. The purposive approach attempts to integrate any or a combination of the above four rules and does not conflict or compete for space with them. Basically, the purposive approach seeks to look for the intention of the legislature from the words used in a statute. Where the words are clear and

unambiguous and the court is capable of assigning meaning and purpose to the said words, the court will look no further than the literal rule. However, where the language of the statute sought to be interpreted is imprecise or ambiguous, a liberal, generous or purposeful interpretation is applied by the court. **See: *URA V Siraje Hassan Kajura & Others, SCCA No. 9 of 2015* and *NSSF vs URA, HC Civil Appeal No. 29 of 2020*.**

[94] I intend to apply the purposive approach in the instant case but mostly taking recourse to the mischief rule to enable me arrive at the intention of the legislature in enacting the provision in issue. The mischief rule was established in the ***Heydon's Case [1584] EWHC Exch J36***. The law is that the mischief rule should only be applied where there is ambiguity in the statute. Under the mischief rule, the court's role is to suppress the mischief the Act is aimed at and advance the remedy. It is a rule that judges can apply in statutory interpretation in order to discover Parliament's intention. The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent.

[95] On the matter before me, it was argued by Counsel for the 3rd Respondent that the intention of the legislature in enacting the provision in *Section 10(3)(a) of the Education Act* was to put in place measures to ensure that children aged 6 years and above access universal primary education and to create an obligation on their parents to enrol children of that age in primary school. The intention was not to make primary education a pre-requisite for a person to obtain post-primary education as was argued for the Petitioner. I am in agreement with this argument

by Counsel for the 3rd Respondent. Like it was pointed out by Counsel, the law was made against the background of many children of school going age not being able to attend school on the one hand and on the other, the need to comply with international and national obligations regarding fulfilment of the right to education for all.

[96] This obligation is reflected under *Article 26 of the Universal Declaration of Human Rights (‘UDHR’)*, *Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, (the ‘ICESCR’)* which specifically provide for a right of everyone to education and the requirement that education shall be free and compulsory at elementary or primary level. Uganda is also party to the *UNESCO Convention against Discrimination in Education* which also emphasizes education for all. *Goal 2 of the Millennium Development Goals* was purposed to achieve Universal Primary Education by 2015 in all Countries. *Goal 4 of the Sustainable Development Goals* requires states to ensure inclusive and equitable quality education and to promote lifelong learning opportunities for all. *Article 34 (2) of the Constitution of Uganda* provides that “A child is entitled to basic education which shall be the responsibility of the State and the parent of the child.” *Objective XVIII (i) of the National Objectives and Directive Principles of State Policy* in the Constitution provides that the “State shall promote free and compulsory basic education”.

[97] In light of all the above cited obligations and undertaking to promote free and compulsory basic, elementary or primary education, it is clear to me that the use of the words “primary education shall be compulsory” in Section 10(3)(a) of the Education Act was intended to ensure compulsory

enrollment of all children of school-going age **and not** to make it mandatory for everyone who aspires to attain formal education to undergo primary education and to pass primary leaving examinations. I find the former the true and expressed intent of the legislature.

[98] I am also persuaded to arrive at this construction by taking into account the Government Policy and Programs on Functional Adult Learning to which reference was also made by Counsel for the Respondents. According to the **National Report on the Development and State of the Art of Adult Learning and Education in Uganda, issued by the Ministry of Gender, Labour and Social Development, April 2008 at page 6**, adult education includes learning processes, activities or programs intended to meet the needs of various individuals considered by society as adults, including out of school youths forced by circumstances to play the roles normally played by adults. It is important to note that these policy and programs have been in place before and after the coming into force of the Education Act 2008. They were not outlawed by the Act. They are well grounded in the objectives and the international and national obligations towards the achievement of education for all. It is obvious that in pursuance of the right to education to all, the State cannot only focus on children of elementary school going age. Adults who were unfortunate not to undergo primary education during their childhood cannot be left out simply because they cannot follow all the levels of formal education. Similarly, it cannot be the objective of the law that all such adults desirous of attaining formal education should be subjected to all levels of formal education starting from pre-primary education. It is clear to me, therefore, that the concept of adult education is well grounded in our law.

[99] I am further persuaded to find that if the law intended to create a mandatory structure in the form of a ‘thread of qualifications’ as suggested by the Petitioner’s Counsel, pre-primary and secondary education would also have been equally made compulsory expressly. That way, a provision equivalent to sub-section (3)(a) of Section 10 of the Education Act would have been enacted as a general provision applicable to the entire Section 10 or it should have been replicated in each of the sub-sections laying out the requirements for each level; i.e. sub-section (2) for pre-primary; sub-section (3) for primary; and sub-section (4) for post-primary education and training. The fact that the said requirement was only incorporated under sub-section (3) gives a lead to the intention of the legislature; that is, that it is not a provision of general application to all the levels under S. 10. It cannot, therefore, be the basis for a requirement for all persons in Uganda to undergo all the levels in a structured manner.

[100] In light of the foregoing therefore, I do not agree with the proposition by Counsel for the Petitioner that it is a requirement under the Education Act for every person attaining formal education in Uganda to undergo primary education and to pass primary leaving examinations. Indeed, the same requirement does not exist in respect of any of the other three levels of formal education. The governing bodies and implementers of the Education Act have discretion to follow programs and curricula that are lawfully in place to facilitate the attainment of any qualification applicable to each individual. The definition of formal education under Section 2(1) of the Act makes reference to “*approved curriculum standards and guidelines*”. These standards and guidelines

are not embedded in the Act. They are developed and implemented by the Authorities established under the law to implement the Education Act.

[101] This brings me to the challenge by the Petitioner of the power of the 3rd Respondent to waive a mandatory requirement of the law. It has already been established that there is no mandatory requirement of the law for one to undergo primary education before undertaking secondary education. I have also looked at the Uganda National Examinations Board Act, Cap 137, particularly Sections 4 and 5 thereof and I am able to establish that the Board has wide powers and discretion in matters concerning the conduct of examinations and to do all such things and to act in all ways necessary for, or incidental to, the purposes for which it is established. As long as the 3rd Respondent has acted lawfully and within its powers, its decision is lawful and binding.

[102] In the instant case, the remaining contention by the Petitioner is that the 3rd Respondent acted outside its mandate and used a wrong procedure when permitting the 1st Respondent to undergo secondary education without undergoing primary education. It was argued for the Petitioner that the law permits the 3rd Respondent to do so by way of rules yet the 3rd Respondent did so through a circular and guidelines to head teachers. Counsel for the Petitioner argued that this was illegal and, as such, the said guidelines had no force of law and the resultant act was a nullity.

[103] I need to point out that the challenge by the Petitioner of the rules made by the Board on the ground whether they were the rules envisaged under Section 4 of the UNEB Act cannot be taken in these proceedings.

This is because the power of a statutory authority to make decisions in line with the law empowering such authority can only be appropriately challenged by way of invoking the High Court's supervisory power through the judicial review function. The Court cannot exercise these functions casually, and certainly not when its jurisdiction is being exercised in a different forum so specific as an election petition proceeding. Election petitions are special proceedings with specific laws and rules of procedure. On the other hand, the power of judicial review is invoked upon specific grounds under the law. The nature of hearing in an election petition cannot, therefore, permit this court to turn itself into a court hearing a judicial review application.

[104] Secondly, such a procedure would prejudice the 3rd Respondent's right to a fair hearing since they would not have properly responded and been properly heard on the real questions before the Court. When the 3rd Respondent was summoned to Court, it was to answer allegations in an election petition. That is what they responded to and defended. If the Court was to take the route suggested by the Petitioner, the 3rd Respondent would be expected to have led evidence on how they made the impugned rules and how they have over time applied the power and discretion endowed to them under Sections 4 and 5 of the Act. Such a course cannot be expected to be within the parameters of an election petition hearing. It would definitely offend the principles of natural justice and fair hearing. This line of argument by the Petitioner is accordingly rejected as being ultra vires these proceedings.

[105] As such, unless and until the decision of the 3rd Respondent has been competently challenged and set aside in an appropriate court

action, its decision to permit the 1st Respondent to undergo secondary education without having undergone primary education cannot be impugned. As shown in evidence, the 1st Respondent was duly permitted by the 3rd Respondent to undertake adult learning whereupon he obtained UCE and UACE qualifications. As already shown herein above, the ownership and authenticity of these qualifications were not in issue. Their challenge on the basis of their validity has not been successfully established by the Petitioner and the same has failed. There is also evidence that the 1st Respondent presented the said academic papers before the 2nd Respondent on the basis of which he was nominated. He stood in the elections subject of this matter and won.

[106] In light of the foregoing, the Petitioner has not satisfied the Court that the 1st Respondent was illegally nominated and elected as the Chairperson LC V for Adjumani District. To the contrary, the Court is in position to reach a finding that at the time the 1st Respondent was nominated, he was qualified to stand as a candidate in the LC V elections for the Chairperson of Adjumani District. The third issue is therefore answered in the affirmative.

Issue 4: What remedies are available to the parties?

[107] Given my finding that the 1st Respondent was lawfully nominated and elected for the position of LC V Chairperson of Adjumani District, the petition has not been proved by the Petitioner. The petition is accordingly dismissed. The 1st Respondent, Anyama Ben, is accordingly declared as the duly elected candidate for the position of Local Council V Chairperson of Adjumani District. Since costs follow the event and there

is no reason to the contrary, the costs of the petition shall be paid by the Petitioner to the Respondents.

It is so ordered.

Dated, signed and delivered by email this 8th day of October, 2021 to the parties and their Counsel.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE