

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
ELECTION PETITION APPEAL NO. 14 OF 2016

(Arising from the judgment and orders of Hon. Margret Mutonyi J, in High Court Election
Petition No. 12 of 2016 sitting at Jinja dated on 13th June 2016)

MULINDWA ISSAC SSOZI:..... APPELLANT

V E R S U S

LUGUDDE KATWE ELIZABETH:..... RESPONDENT

CORAM:

HON. MR. JUSTICE ALFONSE OWINY-DOLLO, DCJ
HON. MR. JUSTICE S.B.K. KAVUMA, JA
HON. MR. JUSTICE RICHARD BUTEERA, JA ✓

BRIEF FACTS:

The appellant, the respondent and 7 Others were candidates for the post of the
directly elected Member of Parliament for Lugazi Municipality Constituency
during the February 18th 2016, general elections.

The appellant was returned and gazetted by the Electoral Commission as the
winner of the said elections.

The respondent being dissatisfied with the outcome of the said elections,
petitioned the High Court of Uganda at Jinja and challenged it.

The Election Petition was heard by the High Court sitting at Jinja. In her judgement the learned trial Judge found that the appellant had not committed any election offences. She found that the appellant did not possess the requisite minimum qualifications to contest for the office of Member of Parliament. The Court set aside the said election and ordered that a fresh election be conducted; Costs of the Petition were awarded to the respondent.

The appellant herein being dissatisfied with the outcome of the trial court's decision preferred this Appeal against part of the judgment on the following grounds.

- 1) The learned trial judge erred in law and fact when she found that the academic papers do not belong to the Appellant.
- 2) The learned trial judge erred in Law and fact when she held that the appellant was not validly nominated.
- 3) That the learned trial Judge erred in law and fact when she engaged in assumptions, speculations and conjecture in her conclusions.
- 4) The learned trial Judge erred in law and in act when she failed to evaluate evidence.

The appellant proposed to ask this Honourable Court to make the following orders:-

1. To allow the appeal and set aside the judgment and order of the High Court in Election Petition No.12 of 2016.
2. To order the respondent to pay the costs in this Court and High Court, (sic)

25

Representation:

Learned counsel, Mr. Mularira Faisal Umaru together with Mr. Ambrose Tebyasa and Mr. Kasozi Ronald and appeared jointly for the appellant.

5

Learned counsel, Mr. Sserunjogi Brian Alfred, Ms Justine Nakajubi Mufumbya together with Ms Nsereko Saudha appeared for the respondent.

Before the hearing of the Appeal, the appellant sought and was granted leave to adduce additional evidence. The appellant himself adduced evidence and the Academic Registrar of Makerere University, Mr. Alfred Masikye Namoa; and the Principal Examination Officer of Uganda National Examinations Board, Mr. Anywar Peter Howard. The three witnesses had sworn affidavits and they were all cross-examined.

15

In the handling this Appeal we shall proceed to fulfil our duty under Rule 30(1) of the Rules of this Court to consider the record of appeal, the Judgment of the lower court and the submissions of counsel for all the parties. We shall also consider the fresh additional evidence adduced in this Court.

20

We shall re-evaluate and analyse all the evidence and draw our own inferences of fact in the process of resolving the Appeal.



Submissions of counsel or the appellant.

25

Counsel Tebyasa for the appellant combined grounds 1, 2 and 4 in his submissions and argued them together.



Counsel submitted that the petitioner, now respondent, alleged in the lower trial court that the appellant did not have the required academic qualifications to stand for the post of Member of Parliament but relied on academic papers of another person called Mulindwa Hassan who stays somewhere in the village.

The allegation in the Petition was that the papers that the appellant used belonged to another person and that they were forged.

Counsel submitted that the petitioner in cross-examination had admitted that he did not know and had never seen the Mulindwa Hassan who she alleged was the owner of the academic documents that the appellant used for his nomination.

Counsel contended that the respondent, having alleged that the papers belonged to the Hassan Mulindwa who was not the appellant, had a duty to produce evidence to prove it.

She failed to discharge that burden when she failed to produce in court the Hassan Mulindwa who she claimed was the owner of the academic qualifications.

Counsel submitted that the appellant was academically qualified and had the requisite academic qualification to stand and be nominated as a Member of Parliament. The appellant had presented the requisite academic papers and the Electoral Commission was satisfied that the appellant had the required academic qualification and thereafter had properly allowed his nomination.

A handwritten signature in blue ink, appearing to be 'AD', is written above a set of initials 'AD' also in blue ink.

Counsel submitted further that the appellant had, through additional evidence, demonstrated the chain of his academic journey from Primary School, through Ordinary Level (O`Level) and Advanced Certificate of Education (A Level) to
5 Makerere University. He had personally studied at the relevant institutions and was the holder of the academic qualifications he possessed and had used for nomination.

Counsel submitted that the appellant had changed his name from Mulindwa
10 Hassan to Isaac Ssozi Mulindwa. He presented a deed poll to explain that the person who previously held the academic documents in the names of Mulindwa Hassan was the same person Isaac Ssozi Mulindwa who presented himself for nomination and that person was the appellant.

15 Counsel faulted the trial Judge for her construing the purpose of the deed poll that was presented to the EC for nomination as proof of the nexus between Mulindwa Hassan and Isaac Ssozi Mulindwa by her believing that that is what was presented to prove that he was qualified to stand as a Member of Parliament.

20

Appellant's submissions on ground 3

Counsel faulted the learned trial Judge for delivering a judgment based on
extraneous materials in form of assumptions, speculations and conjectures and
25 making her conclusions from material borne outside the party's pleadings thus arriving at a wrong decision.

Counsel submitted that the trial Judge's holding that the appellant's name Isaac can be used by both Muslims and Christians and therefore, there was no need to change the name was not pleaded. It was speculative and mere conjecture. The Judge's holding about the birth certificate that there was no need to re-baptize the appellant was also unjustified since the matter had not been pleaded and there was no evidence on the issue.

Submissions of counsel for the respondent.

Counsel submitted that the trial Judge was correct when she found that the appellant used forged papers for nomination. According to counsel, the appellant was not the one who sat Primary 7 examinations. It was not him who did the O`Level and A Level examinations nor was it him who went to Makerere University and got a Degree.

The appellant has been changing his names using different names for different purposes which shows that he is not truthful, he is fraudulent and there is doubt as to whether he is the owner of the academic qualifications.

Issue No.3

On speculation and conjecture, counsel submitted that although the court may, in some instances, call experts as witnesses, the Judge is an Expert of Experts on everything. In the instant case, the trial Judge did not need to call experts on issues like the Baptism card which she was familiar with personally being a Christian.

The decision of the Court

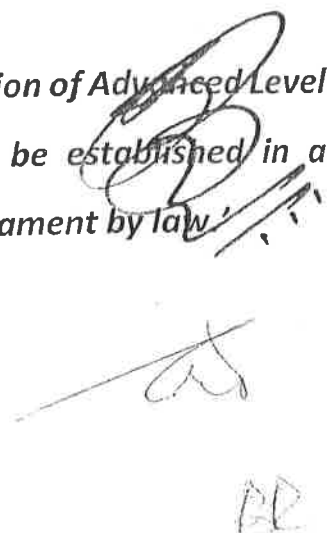
We have carefully perused the trial court record and the court judgment. We have studied the submissions of all counsel for the parties and the relevant authorities this Court was referred to and others that we found relevant. We shall now proceed to fulfil our duty as a first appeal court.

We find that the main issue in contention is whether or not the appellant had the relevant qualifications to be nominated to contest as a Member of Parliament. The other issues arise from this as they relate to how a decision in determining this main issue was arrived at by the trial Judge.

This Court has had occasion to set out the law on the academic qualifications required for one to be nominated as a Member of Parliament in the case of **Election Petition Appeal No.6 of 2011 Paul Mwiru versus Hon. Igeme Nabeta Samson** when it held:-

“Article 80 of the Constitution provides for qualifications and disqualifications of members of Parliament. For purposes of the matter now before us, it states:

(1) A person is qualified to be a Member of Parliament if that person
(a).....
(b).....
(c) has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.



Parliament enacted the Parliamentary Elections Act and provided in section 4 (1) thereof that:

'A person is not qualified to be a Member of Parliament if that person:-

5 (a)

(b)

(c) *has completed a minimum formal education of Advanced Level standard or its equivalent.'*

10 The respondent contended in paragraph 6 of her Petition that "contrary to Section 4(1)(c) of the Parliamentary Elections Act, petitioner states that the 2nd respondent was at the time of his election not qualified for an election as a Member of Parliament" (sic) and went further to allege in subsequent paragraphs 20 and 21:

15 "20. Petitioner seriously challenged the authenticity of the academic certificates of 2nd respondent at UNEB and UNEB confirmed issuing these two certificates to Mulindwa Hassan but not Mulindwa Ssozi Isaac. That they were not verifying for the identity of Mulindwa Hassan.

20 21. There is another man called Mulindwa Hassan, petitioner alleges that 2nd respondent hired his documents". (sic)

25 The main challenge was that the academic documents the appellant presented for nomination belonged to someone else and not the appellant.

The appellant had changed his names and he swore and filed a deed poll.

The decision of the Court

We have carefully perused the trial court record and the court judgment. We have studied the submissions of all counsel for the parties and the relevant authorities this Court was referred to and others that we found relevant. We shall now proceed to fulfil our duty as a first appeal court.

We find that the main issue in contention is whether or not the appellant had the relevant qualifications to be nominated to contest as a Member of Parliament. The other issues arise from this as they relate to how a decision in determining this main issue was arrived at by the trial Judge.

This Court has had occasion to set out the law on the academic qualifications required for one to be nominated as a Member of Parliament in the case of **Election Petition Appeal No.6 of 2011 Paul Mwiru versus Hon. Igeme Nabeta Samson** when it held:-

"Article 80 of the Constitution provides for qualifications and disqualifications of members of Parliament. For purposes of the matter now before us, it states:

(1) A person is qualified to be a Member of Parliament if that person
(a).....
(b).....
(c) has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.

This Court and the Supreme Court have in numerous cases had occasion to consider the issues of contestants for elective posts who have changed their names.

5 A situation of change of names and academic qualifications of a candidates who has changed his names, which is the main issue in this case, was considered by this Court in **Election Petition No.43 of 2016 Mutembuli Yusuf versus Nagwomu Moses Musamba** and the Court quoted from **Col. (Rt.) Dr. Besigye Kizza versus Museveni Yoweri Kaguta Election Petition No.1 of 2001** and stated the
10 following:-

“In Supreme Court Election Petition No.1 of 2001 the names were set as follows:

Col. (Rt.) Dr. Besigye Kizza (Petitioner) vs. Museveni Yoweri Kaguta (respondent)

15 *This is how the order of the names were written upon nomination and the same order was used through the 2001 election. In 2011 elections the same person’s names were set out as follows Kifefe Kizza, Yoweri Museveni Kaguta. In 2016 the presidential elections, the above person’s names were set out as follows; Kizza Besigye Kifefe, Yoweri Kaguta*
20 *Museveni.*

We know that the order of the names of those parties have been changing almost on every election at the instance of the Election Commission. We do not agree with the proposition that the order of names would have any effect on the candidate’s academic qualifications
25 *on their own. More evidence must be adduced to prove to the satisfaction of the Court, that a person who sat and obtained certain academic qualification is not the same person who was nominated for*

an election. In this case the only evidence presented was that of discrepancy in names. That discrepancy was ably explained away by the 1st respondent when he proved that he had only added his father's names on to his own names.

5

This is what Shakespeare wrote in his book Romeo and Juliet 'what is in a name? A rose by any other name would smell just as sweet!'

10

In otherwise a label, or name cannot alter the character or substance of the subject. A qualified doctor does not cease to be one simply because the name at his door is misspelt or includes a name that does not appear on his degree certificate. The question to be answered is whether or not the person behind that door is one who qualified from the medical school. The answer to that question must inevitably go far beyond the order to the name on paper qualification. In this case there must be proof provided by the appellant that the 1st respondent did not obtain the required qualifications. That proof was lacking."

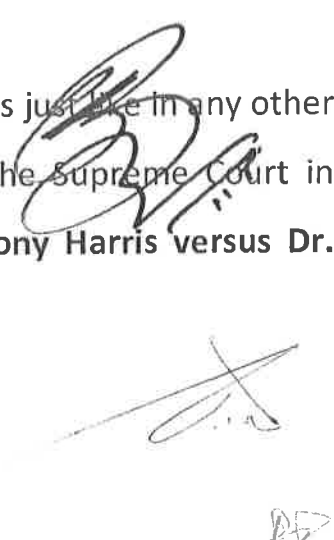
15

The respondent in the instant Appeal who was the petitioner at the High Court prayed Court to cancel the election of the appellant on the ground of lack of academic qualifications. He alleged that the qualifications the appellant relied upon for nomination belonged to somebody else who lived in the village.

20

It is trite law that the burden of proof in election petitions just like in any other claims, lies upon the petitioner. This was stated by the Supreme Court in Election Petition Appeal No.18 of 2007 Mukasa Anthony Harris versus Dr. Bayiga Michael Philip Lulume when it held:-

25



"It is settled that the burden of proof in an election lies upon the petitioner who is required to prove every allegation contained in the petition to the satisfaction of court. The standard of proof is a matter of regulation by Subsection 3 of Section 61 of the PEA, 2005. The Subsection provides that the standard of proof required to prove an allegation in an election petition is proof upon the balance of probabilities."

The burden of proving that the academic qualifications that the appellant produced for nominations belonged to somebody else who lived in the village as alleged by the petitioner was on him.

At the trial, during cross-examination the respondent stated that she did not know the person she alleged was the owner of the academic qualifications that the appellant relied upon for nomination. We reproduce the relevant part of the court proceedings:-

"Court:

Do you have any questions? Madam Lugudde I just have one question for clarification; refer to paragraph 21 of your petition; read it aloud. There is another man called Mulindwa Hassan, petitioner alleges that second respondent hired his documents. Is that your statement? Can you help this court to produce this man? Can you explain why this man has not been produced as one of your witnesses to claim the documents the respondent is using?

Petitioner:

This so called Mulindwa Hassan is hiding. He cannot come before court on the advice of Mulindwa Ssozi Isaac.

Court:

How are you going to prove that statement? It is today when you are presenting your case. It is an allegation which you have to prove by producing Mulindwa Hassan, whose documents the respondents is allegedly using. You stated it you must know this man and you must have talked to this man and he was ready to come and support you in this case. This is a very serious allegation and very crucial to your case.

Where is this man?

Petitioner:

I don't know where he is but he exists.

Court:

When did you see him?

I have never seen him but everybody knows him. People out there know.

Court:

Have you ever talked to him?

Petitioner:

I have never talked to him?"

The petitioner did not produce the alleged owner of the academic qualifications. Clearly, from her own words the petitioner/respondent did not know the person called Mulindwa Hassan and had never seen him.

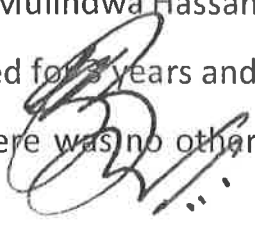
We find this to have been a serious flaw on her part as the party who had a duty to prove her assertion that the academic qualifications the appellant used for

nomination were hired from somebody else and they did not belong to him. The duty of proving her assertion was not discharged.

5 The appellant adduced additional evidence. One witness was Oboi Amos who swore an affidavit that he studied together with the appellant at Makerere University from 2001 to 2004 and they completed the a course and graduated with Bachelor of Arts in Social Sciences.

10 According to the witness, the appellant then used the name Mulindwa Hassan. They belonged to the same discussion group. According to this witness, some of their course mates used to call the appellant Ssozi and he would respond with ease.

15 The witness stated in his affidavit that Mulindwa Hassan and the appellant now going by the names Mulindwa Isaac Ssozi are the same person he studied with at Makerere University and he is the appellant.

20 The appellant adduced additional evidence also from Alfred Masikyeye Namoah, the Academic Registrar of Makerere University who swore an affidavit in that capacity. In his affidavit, the Academic Registrar affirmed that Mulindwa Hassan did apply and was admitted at Makerere University. He studied for 3 years and was granted a Bachelor of Arts (Social Sciences) Degree. There was no other student awarded that degree by those names in that period. 

25 The appellant adduced further additional evidence of Anywar Peter Howard who is the Principal Examinations Officer in charge of Scripts and Records at Uganda National Examinations Board (UNEB). He heads the Secondary

Department of UNEB. He retrieved and produced in Court the Academic Scripts for the appellant for Senior 4 and Senior 6. For Senior 6 he also produced the Photo Album of the appellant. He explained to Court that Photo Albums had not been introduced by UNEB when the appellant did Senior 4.

5

In their submissions, counsel for the respondent stated that they are not contesting that the appellant went to Makerere University and got a degree and that they are not contesting that he did Senior 6. What they are contesting was that he climbed to those levels using somebody else's results.

10

According to counsel the appellant changed his name by the deed poll to cover up these facts that it was not him who did Primary 7 and Senior 4. He went to do Senior 6 and to University on the academic qualifications of another person.

15 The respondent failed to produce the owner of the academic qualifications. It is her who made the assertion. She had the evidential burden in law to prove what she challenged in her Petition. She failed to do so. Her Petition would not succeed on the basis of assertions she failed to prove.

20 The Supreme Court in **Election Petition Appeal No.25 of 2007 Joy Kabatsi versus Anifa Kawooya and The Electoral Commission** when handling a case in a similar situation held:-

25 *"In my view, where a candidate presents a qualification which is higher than the minimum required for nomination or any post, it is not enough for his or her opponents to argue that the same higher qualification was based on a forgery or something irregular, nor is it sufficient for a spokesperson of the Institution in which the higher qualification was*

obtained to suggest that had the Institution known that fact they would not have admitted the candidate or awarded the said qualification. Those who make such allegations need to do more than merely allege. They need to show that as a result of their allegations, the awarding institution of the higher qualification or any other equivalent to 'A' Level or some other classification subsequently cancelled or withdrew the award of the disputed qualification.

I would therefore agree with the learned trial Judge that the appellant failed to prove that the respondent was not qualified to stand as a Woman Member of Parliament."

We adopt the above position.

In the instant case, the respondent has not contested that the appellant studied and got the qualifications for Senior 6 and University. On the authority of **Joy Kabatsi versus Anifa Kawooya** (supra). His qualifications were sufficient for his nomination as a Member of Parliament.

He did change his names by way of a deep poll. The appellant has not demonstrated that the appellant is a different person from the person who contested in the elections and was voted for and did win the elections.

We find it relevant to consider what the Supreme Court of India stated in **Ruhim Khan vs. Khurshid Ahmed and Others [1975] AIR 290:**

"An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible

evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency.

5 *Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced."*

10 We find the appellant was duly qualified for nomination as a candidate for election as a Member of Parliament. There is no sufficient reason for nullifying his election.

15 Grounds 1, 2 and 4 are answered in the positive. Our findings on those grounds wholly disposes of this Appeal. We therefore do not find it necessary to consider ground 3 which is resolved by our decision above.

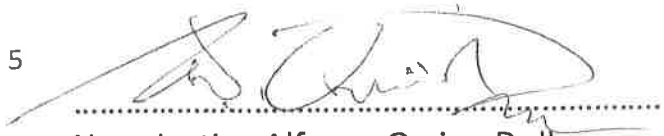
20 We find merit in the Appeal. Accordingly, the decision of the High Court is set aside and is substituted with the judgment of this Court in favour of the appellant.

In the result, we make the following orders:-

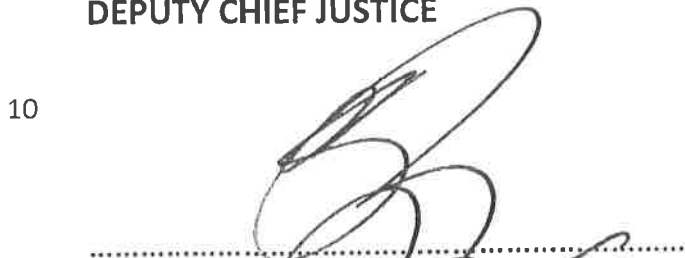
25 (1) The appellant is declared the duly elected Member of Parliament for Lugazi Municipality Constituency.

(2) The respondent shall bear the costs of this Appeal and those in the court below.

Dated at Kampala.....29.....this day of.....December.....2017.

5 

Hon. Justice Alfonse Owiny Dollo
DEPUTY CHIEF JUSTICE

10 

Hon. Justice S.B.K. KAVUMA
JUSTICE OF APPEAL

20 

Hon. Justice Richard Buteera
JUSTICE OF APPEAL

25

30



2

29/12/17.

Sarrungogi Brian for the Respondent.

for the Appellant

Mula Lira Faisal

together with

Nakajoshi Goshie

Mr Fumbyg

for the Appellant

Respondent is the

Comd

ve

Mellisa

me tsasa.

Sarrungogi:

For

Outp.

Comd

Supp

red and

comd

by

D/K

ESK

Handing



29/12/17.