

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
ELECTION PETITION NO. 22 OF 2006

SSEBINA DANNIEL ::::::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

KIZITO NKUGWA SIRAJE ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE ELDAD MWANGUSYA:

JUDGMENT:

The petitioner and respondent were candidates during the Local Government Elections held in 2006. They stood for election as Chairperson, Kiboga District. There were two other candidates, namely, Byaruhanga Katumba Edward and Mutyaba Anatolius Mukiibi. At the end of the election the respondent was declared the winner. He assumed the chair of the District.

The petitioner challenges the validity of that election on the grounds that:-

The respondent at the time of his nomination and election lacked the requisite academic qualifications of a minimum formal education of advanced level standard or its equivalents to stand as LCV Chairperson for Kiboga District as required by Article 80 (1) © of the constitution of the Republic of Uganda 1995 and S.4 of the Parliamentary Elections Act 2005 for the following reasons:-

- (i) That the respondent at his nomination, presented an Ordinary Diploma (Building and Civil Engineering) UNEB 1988, a certificate in Plumbing in Tropical Countries, UNEB 1983, and a Uganda Certificate of Education UNEB 1980 to Uganda National Examination Board (UNEB) for equating his academic qualifications and the petitioner asserts that the certificate of Education UNEB 1980 was forged and altered in as far as Kizito Nkugwa Siraje was never a student at Makerere High School as alleged and that the said Uganda Certificate of Education relied on by the respondent was not issued at Makerere High School for that time what was being

awarded to students completing “O” level was the East African Certificate of Education (EACE).

- (ii) That the respondent relied on the above certificate to secure admission at St. Joseph’s Technical Institute, Kisubi from where he obtained a certificate in plumbing in Tropical Countries UNEB 1983, which he presented to National Council for Higher Education for equating as being equivalent to advanced Level standard or its equivalent.

- (iii) That the said admission at St. Josephs Technical Institute was irregular as the Respondent did not possess “O” level standard which was required for admission and did not present any original certificate and recommendations thereof from Makerere High School.

On the above grounds the petitioner prayed court to declare that the respondent was not validly elected as LCV Chairman Kiboga District and that the said election be annulled and set aside and a fresh election be conducted in the said District.

He prayed for costs of the petition.

In his answer to the petition the respondent denied the above allegations. He contended that he was a student at Makerere High School where he obtain his Uganda Certificate of Education and proceeded to St. Joseph Kisubi where he obtained a certificate in plumbing in Tropical Countries. His qualification in plumbing was equated with A level by the National Council for Higher Education. He therefore prayed to court for dismissal of the petition and a declaration that he was validly elected as LCV Chairperson for Kiboga District.

He also prayed for costs of the petition. Two issues were framed for determination of this court:

1. Whether the respondent had the requisite qualifications to stand as a candidate for the Kiboga District LCV Chairman.
2. What are the remedies available to the petitioner in case the first issue is answered in the positive.

In an election petition the burden of proof rests on the petitioner to prove each of the allegations made by him or her to the satisfaction of the court. So in the instant case the petitioner is required to establish as a fact that the respondent did not have the qualifications which he presented for equating his qualifications as required under the Local Government and Parliamentary Elections Act. According to S.12(2)(a) of the Local Government Act (Cap.243) the qualifications of a District Chairperson are the same as those of a person to be elected a member of parliament and according to S.4(5) of the Parliamentary Elections Act qualifications of a member of Parliament is Advanced Level or its equivalent and by virtue of S.172 of the Local Government Act the provisions of S.4 of Parliamentary Elections Act are operational. In order to establish

as to whether or not the respondent had the requisite qualifications it will be necessary to examine each of the allegations made against him together with his own explanation or determine the facts pertaining to his certificates in order to determine their authenticity which is questioned by this petition. These certificates included the Uganda certificate of Education, a certificate in plumbing in Tropical countries and an ordinary Diploma in Building and Civil Engineering.

The first allegation was that the certificate of Education UNEB 1980 was forged and altered in as far as Kizito Nkugwa Siraje was never a student of Makerere High School as alleged and that the said certificate of Education relied on by the respondent was not issued at Makerere High School for at that time what was being awarded to the students completing "O" level was the East African Certificate of Education (EACE).

First of the allegation of forgery or alteration of the certificate cannot be proved unless the forged or altered certificate is produced in evidence. None was produced in this case and the

allegation of forgery or alteration of the certificate cannot be sustained.

The second leg of the allegation was that **KIZITO NKUGWA SIRAJE** was never a student at Makerere High School as alleged. The basis for this allegation is simply that all records at Makerere High School show that the student who studied at Makerere High School and obtained the “O” level certificate was **KIZITO NKUGWA**. The name of **SIRAJE** does not feature anywhere. The respondent explained that he was the person who studied at Makerere identified as **KIZITO NKUGWA**. He had dropped his other name of **SIRAJE** but re-introduced it when he joined St. Joseph’s Technical School Kisubi where he did his certificate in plumbing in Tropical countries. The Principal St. Joseph’s Technical Institute, Kisubi testified at this trial and produced a record which showed that initially the person who applied to the school was **KIZITO NKUGWA**. This can be seen from a hand written application of **KIZITO NKUGWA** and an interview entry form in the same name. Later the name **SIRAJE** is introduced in the record of the student which is consistent with the

respondent's explanation that he entered Kisubi with the name **KIZITO NKUGWA** and left with the name of **KIZITO NKUGWA SIRAJE**. He gave an explanation as to the circumstances under which he re-introduced his name of **SIRAJE**. The explanation was that when he joined Kisubi he was asked as to whether the name of **KIZITO** was a catholic name because the catholic religion have the name as a Christian name. He explained that **KIZITO** was not his Christian name because he was a Muslim. The name of **SIRAJE** was included in the record and the records show the introduction of the name. So to me this is a plausible explanation and the identify of the person who did his examination at Makerere High School from where he proceeded to Kisubi is not in doubt.

The authenticity of the certificate obtained from Makerere High School is also questioned because according to the petition the certificates being issued in 1980 were East African Certificate of Education and not Uganda Certificate of Education. The authority at Makerere High School clearly states that the certificates issued at the time were Uganda Certificate of Education and not East

African Certificate of Education. The petitioner did not produce any evidence of a certificate that was issued at the time and I do not understand the basis for his contention that the certificates being issued were not Uganda Certificate of Education as claimed by the respondent and supported by the school. The respondent explained that his certificate was misplaced and UNEB is due to issue him with a replacement. But a letter from UNEB to the National Council for Higher Education indicates that **KIZITO NKUGWA** sat for Uganda certificate of Education of Education.

On the certificate of plumbing in Tropical countries obtained from St. Joseph's Technical School, Kisubi the 1st problem was that the respondent did not qualify to go to the school because he did not obtain an "O" level certificate. This has already been answered. The second problem was that he did not take a recommendation from Makerere High School as required by the Technical Institute. The current Principal of the Institute testified that the applicant, **KIZITO NKUGWA** was required to bring a recommendation from the previous school. But if the institute admitted the applicant and allowed him in the institute for the duration of the course

and at the end awarded him a certificate it means that the recommendation was not that essential and to me the fact that the student under went the course and passed it overrides the requirement of a recommendation and the qualifications of the respondent cannot be impeached on the ground that he did not produce a recommendation more that twenty five years ago.

The respondent also presented an ordinary Diploma (Building and Civil Engineering) UNEB, 1988. This Diploma has been queried because according to a letter from the Executive Secretary UNEB addressed to Criminal Investigations Department the certificate in question was wrongly obtained. This letter was tendered as an exhibit "C" by the petitioner. The contents of this letter are as follows: _

"1. Reference is made to your communication CID/37/7 dated 6th February 2006 regarding the above.

KIZITO NKUGWA appeared for 1998 (sic) Ordinary Diploma Examinations U06 Uganda Technical College Kichwamba and

he did not pass. So there is no way he could have been issued with a Diploma Certificate.

Ordinary Certificates issued to Uganda Technical College Kichwamba were eight and have serial numbers from DOO2560 - DOO2567 inclusive. **KIZITO NKUGWA**'s copy of the certificate has serial No.002877. The copy of the certificate presented by **KIZITO NKUGWA** is not genuine. He does not hold an Ordinary Diploma in Building and Civil Engineering of Uganda National Examinations Board.

2. **KIZITO NKUGWA**'s results for Plumbing in Tropical Countries Craft Part 1 as per our letter EA/GEN/43 dated 23rd November 2005 are correct.

MR. KIZITO NKUGWA's Craft Certificate Part I was obtained after a two years study and it is therefore equivalent to "A" Level."

The effect of this letter is that even without the Diploma in Building and Civil Engineering the respondent had the equivalent of "A" level which is the minimum qualification for Chairman LCV.

My problem with the contents of the above letter is not with the conclusion. It is rather the shoddy manner in which the investigation about that qualification was done. Unlike the certificate in plumbing in Tropical Countries where the investigations involved the institute at Kisubi no evidence was adduced from Kichwamba Technical College where the respondent allegedly obtained the certificate which is in his possession and was exhibited at this trial. There were no affidavits from the signatories to the certificate and the respondent was not given any opportunity to explain the circumstances under which he obtained it. As it is the matter is still under investigations and until those investigations are concluded one way or the other this court is unable to say that the Diploma is not genuine.

I must emphasize that this does not in any way exonerate the respondent because if there was any wrong doing on his part he should be brought to book. This is only possible if the Director of C.I.D. and the IGG who are already investigating the matter get to the root of the circumstances under which the respondent obtained the Diploma in question because if it had been proved

that he presented a false Diploma from Kichwamba it would vitiate the validity of his qualifications notwithstanding that the other one from Kisubi is “A” Level equivalent. I therefore order for a thorough investigations into the circumstances under which the respondent obtained the Diploma from Kichamba if only to prevent a ‘fraudster’ from taking leadership position in future.

As it is this court has not found any ground to nullify the Election of the respondent as prayed by the petitioner because it has not been proved that he did not have the requisite qualifications. On the contrary the evidence before the Electoral Commission was that he had the requisite qualifications and on that basis he was validly nominated and elected.

Before I take leave of this case I wish to comment on two matters that featured in this trial. The first is the Shoddy manner in which UNEB conducts their investigations into serious matters like forgeries of their documents because of this mal practice is to be curbed the examination body must investigate and prosecute culprits of such practices. For example the letter referred to was

written in February 2006 but upto now no action has been taken against the respondent if they were so certain that he was involved in a malpractice.

Secondly the Electoral Commission should have data of every candidate they nominate so that a candidate does not have to go for equating of qualifications every time there is an election. For example the respondent was nominated for the 2001 LCV elections and if the qualifications have not changed the fact of his qualifications should not arise in an election in 2006 because that fact would have been established in 2001.

In conclusion the petitioner has not proved the petition to the satisfaction of this court as he is required by law. It is dismissed with costs to the respondent.

Eldad Mwangusya

JUDGE

13/9/2006