

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT SOROTI**

**ELECTION PETITION NO. 0008 OF 2006**

**ONGOLE JAMES MICHAEL.....PETITIONER**

**VERSUS**

**1. ELECTORAL COMMISSION**

**2. EBUKALIN SAM.....RESPONDENTS**

**BEFORE THE HON MR. JUSTICE MUSOTA STEPHEN**

Through the superintendence of the Electoral Commission, the newly created District of Bukedea conducted elections of Chairperson LC.V on 28<sup>th</sup> August, 2006. Amongst the candidates who contested for the post were the Petitioner, Ongole James Michael and the 2<sup>nd</sup> Respondent Ebukalin Sam. The Petitioner contested as an independent candidate while the 2<sup>nd</sup> Respondent contested as National Resistance Movement Party candidate.

This petition is not against the conduct and/or the results of the election. It is against the nomination of the 2<sup>nd</sup> Respondent who emerged winner after the polls. This petition is filed by M/S Twarebireho & Company Advocates. It is brought under Article 183 (2) and 80 (1) of the Constitution, Sections 111, 138 and 139 (d) of the Local Governments Act Cap. 243 and the Electoral Commission Act Cap. 140.

The Petition is premised on two complaints that:-

- (1) The second respondent, Ebukalin Sam, was not qualified for nomination as a candidate.
- (2) The second respondent, Ebukalin Sam, was not qualified for election as Chairperson LC. V. Bukedea District.

It is sought by the petitioner that this Court declares that the second respondent was not validly elected and the election thereby be set aside and a new election be held. That the costs be awarded to the Petitioner. At the commencement of the hearing of this petition, I declined to allow the petitioner rely on an affidavit filed late and without leave of the court. The said affidavit was smuggled onto the record after pleadings were completed and a hearing date fixed. Allowing such an affidavit would go contrary to orderly proceedings and the Parliamentary Elections (Election Petitions) Rules SI-141-2 Litigation, especially where advocates are involved, must be conducted in an organised manner for justice to be done to all parties. (See s. 172 of the Local Government Act cap 243, and Rules 6,8,10,12,13,15 of S1 141-2).

The petition is supported by the affidavit deposed by the Petitioner Ongole James Michael. In the said affidavit he contends that on nomination day, he was told by one Aguma Gerald, whom he verily believed, that the second respondent's nomination had been stayed for failure to produce his 'O' and 'A' Level Certificates. That later on, the second respondent was nominated without presentation of the said certificates. That as a candidate, the petitioner took keen interest to ascertain whether all candidates satisfied the requirements for nomination. That on 7<sup>th</sup> August, 2006, he lodged a complaint with the Electoral Commission about the irregular nomination of the second respondent (annexture B) but the Commission refused failed and neglected to attend to the complaint.

The Petitioner further deposed that since he was in campaigns, he delegated one Odeke Moses and Atukei Betty to follow up the complaint. These people went to the Electoral Commission and were told to write another complaint (annexture C). That they were given nomination documents in respect of the second respondent which were passed onto the petitioner. When the petitioner scrutinised the documents, he realised that 'O' and 'A' Level certificates were not attached to the second respondent's nomination Form EC2. That only an uncertified academic transcript from Arapai Agriculture College dated 29<sup>th</sup> November, 1994 was attached. The said transcript was in the names of Rev. Ebukalin Sam L'Kwiisk.

The Petitioner further avers that he believes that the second respondent is not the same as Ebukalin Sam L'Kwiisk. That the second respondent does not validly hold and 'O' and 'A' Level certificates which renders him not qualified for nomination and subsequent election as Chairperson LC. V Bukedea District.

In answer to the petition through the Attorney General's chambers, the first Respondent denied the contents of paragraphs 3 and 4 of the Petition. In reply thereto, the first respondent contended that the second respondent was and is qualified to contest for the position of LC. V. Bukedea District and that he was properly nominated by the Returning Officer Bukedea District having met the legal and academic qualifications. That the second respondent possesses Ordinary and Advanced Level qualifications and also a Diploma from Arapai Agricultural College which is qualification over and above advanced level.

In the supporting affidavit to the reply, Atwijukire Ismaeil Takih the Acting District Registrar Bukedea District deponed that the second respondent was nominated on the basis of an original Diploma qualification obtained from Arapai Agricultural College a copy of which was left with the Returning Officer. That the said Diploma is a qualification over and above advanced level.

In answer to the petition the second respondent through his lawyers M/S Bakkidde, Hannan and Ssekaana Advocates denied the allegations by the Petitioner. He contends that he is a holder of a National Diploma in Agriculture and a National Certificate of Agriculture awarded by Arapai Agricultural College which is under the Ministry of Education and Sports. That he holds an advanced level Certificate obtained from Jinja Senior Secondary School vide Index No. U0018/530 issued by UNEB in 1982 and an ordinary level certificate from the same school of 1978.

In answer to paragraph 4 of the petition, the second Respondent avers that he did not need a certificate of equivalence from the National Council for Higher Education.

In his supporting affidavit the second respondent deponed that he was dully nominated after satisfying all the requirements and that his academic papers did not require certification. He further explained that on nomination day, he was allocated time between 11.00 a.m. and 12.00 noon but he arrived slightly late. He carried with him photocopies of his academic documents of Arapai Agricultural College. Because of this, his nomination was stayed pending production of his original documents. He secured his original testimonial of Arapai Agricultural and his advanced level certificate from his home which is a few kilometres from the nomination centre. That he was nominated on the same day after producing his documents

The second respondent further avers that the complaint by the petitioner to the Electoral Commission was found baseless since he had presented his advanced level certificate. The second respondent contends that the law requires minimum 'A' Level qualification because no admission is made to 'A' Level without 'O' Level qualification. That the allegations in the petitioner's affidavit are baseless and/or deliberate falsehoods intended to mislead court. That the elections were conducted in accordance with the Constitution.

During the hearing of this petition, each of the witnesses who deponed to the admitted respective affidavits was cross examined.

In Cross-examination by Mr. Ssekaana learned Counsel for the second respondent, the petitioner testified that he did not resign as Councillor before he contested for Chairmanship in the elections. That the reason he did not resign was because he was not a Civil Servant. That he did not scrutinize papers presented by the other candidates. After Aguma had given him information, he ascertained it himself. That when the second respondent came for nomination for the first time, he was not present. He was present when the second respondent came the second time. That the second respondent presented an uncertified copy of academic transcript which rendered it unauthentic.

The petitioner acknowledged that if someone presented originals of certificates which were not certified, he/she could be nominated. That if there is no suspicion, then, an 'A' Level Certificate can be enough to have one nominated. He did not ascertain if there exists another person by the names of Ebukalin Sam L'Kwiisk. That the onus lies on the second respondent to prove that those names are actually his. The Petitioner went on to say that he challenged

the second respondent because he did not prove that he went to Jinja Senior Secondary School and there is discrepancy in his names. He never wrote to UNEB to verify the ownership of the certificates.

When the Petitioner was cross examined by Mr. Philip Mwaka, learned Counsel for the first respondent, he said he is a holder of Diploma in Cartography from the school of Lands and Surveys Entebbe. That he joined the said school after completion of his 'O' Level. He is of the view that his Diploma is equivalent to 'A' Level and it did not require verification by the National Council for higher education. That the Diploma in Cartography is the qualification he presented for nomination. He also presented a certificate in Procurement and Logistics Management of Makerere University, and Master in Crafts Programme Certificate. He did not present an 'A' Level Certificate since he believed the Diploma in Cartography is an equivalent to an 'A' Level Certificate.

In further answer to questions in cross examination by Philip Mwaka, the petitioner said he had no idea as to what L'Kwiisk means in Ateso. That the second respondent's father's names are Okwii Ernest. He did not know that initials L.K.R. belong to the second respondent. When he went to Jinja Senior Secondary School to verify the claims by the second Respondent, he discovered that he attended the school but under the names Ebukalin Sam and was in the school for two years only.

That during his nomination, the Petitioner presented his original certificates to the Returning officer. Originals were returned to him after nomination. He did not check nomination papers for the second respondent soon after he was nominated. He did so after he had complained to the Electoral Commission.

When the Petitioner was re-examined by Mr. Twarebireho he clarified that as a Councillor he was not required to resign his job before nomination. That he did not see the second respondent present his 'O' and 'A' Level Certificates. That during nomination, the Returning Officer did not display candidates' papers. That the Returning Officer did not fault the Petitioner's papers. This was the close of the case or the Petitioner.

Mr. Philip Mwaka presented Mr. Atwijukire for cross examination by Mr. Twarebireho. He testified that he works as the District Registrar Bukedea. While on duty on 2<sup>nd</sup> August, 2006

at 2.36 p.m; the second respondent presented himself for nomination having been sent away in the morning because he did not have his 'O' and 'A' Level Certificates. He only had a Diploma transcript in photocopy form. The stay of nomination was noted on his papers. That what was required during nomination was to present originals or equivalents to 'O' and 'A' Level qualifications.

Mr. Twijukire further revealed that when the second respondent came back for nomination in the afternoon he came with the original academic transcript of the Diploma of Arapai Agricultural College. They compared the original with the copy; got satisfied, nominated him and returned the original to the second respondent. The second respondent did not present his 'O' and 'A' Level Certificates. This witness was satisfied with the identity of the second respondent. That a candidate can have names which are initialled or written in full.

In re-examination by Mr. Mwaka, Atwijukire told court that the second respondent's surname is Ebukalin which is the common factor in his names. That during nomination, nobody raised any objection to the nomination of the second respondent. That the Electoral Commission was sure of the person who was being nominated because the second respondent presented original documents. That during nomination the Petitioner Presented a Diploma Certificate in its original and photocopy form but the originals were returned to him. The copies the petitioner presented were not certified.

The second respondent was cross examined by Mr. Twarebireho who told court that on the 2<sup>nd</sup> August, 200, he was not nominated in the morning because he was required to produce the originals of his academic transcripts of the Diploma. The Returning Officer indicated on his nomination papers that he wanted 'O' and 'A' Level Certificates. That he came back in the afternoon with the original transcript for the Diploma only he did not present the 'A' Level Certificate because it was not attached to his nomination papers. He got annexure 'F' after nomination because that was the time the Petitioner queried the papers.

The second respondent further revealed that he joined 'A' Level in 1980 and obtained the Certificate in 1982 March. He joined Arapai Agricultural College in 1982. That he used the same names when he was nominated to contest during the Constituent Assembly Elections in 1994. During the recent nomination, he used his Diploma because it is a higher qualification than 'O' and 'A' Level Certificates. When the Returning Officer was satisfied, he crossed the

order staying nomination and replaced the same with one indicating that he had been nominated.

The second respondent further revealed that he lost his original 'O' Level Certificate during insurgency regarding the discrepancy in the names second respondent explained that Okwii is his father's name . So he decided to refer to himself as Okwiison. That this was influenced by his youthful enthusiasm. When he grew older he turned the reference into Ateso that is to say L'Okwiisk meaning 'son of'. That people abbreviated his name as (L.K) That the letter 'R' refers to his title' Reverend' That they grew together with the Petitioner who also happened to be best man during his wedding.

I admitted in evidence the original documents relied upon during this trial.

These included:-

- (i). A letter of verification of results.
- (ii). The Uganda Advanced Certificate of Education.
- (iii). National Diploma in Agriculture.
- (iv).The Academic Transcript.

At the conclusion of the hearing, I allowed each party to file written submissions. They did so and filed elaborate submissions which I do not intend to reproduce here but suffice to mention that I have dutifully perused the same and noted the views expressed therein by respective Counsel.

The issues agreed upon by the parties for determination in this petition are:-

- (1). Whether the second respondent was properly nominated.
- (2). What remedies are available.

Under Section 139 of the Local Government Act, the election of a candidate as a Chairperson or a member of council shall only be set aside on four grounds listed therein if proved to the satisfaction of the court.

One of such grounds is in section 139 (d) which enacts:

“That the candidate was at the time of his or her election  
Not qualified or was disqualified from election.”

This burden of proof was explained in detail in the case of Col (RTD) Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission Election Petition No. 1/2001 (SC) Odoki C.J.had this to say:-

“In my view, the burden of proof in an Election Petition as  
in other civil cases is settled. It lies on the Petitioner to  
prove to the satisfaction of court .....But it is the  
standard of proof that is very high because the subject  
matter of the petition is of critical importance to the  
welfare of the people of Uganda and their democratic  
governance”.

Although this quote is from a petition from an election of a President, I am of the view that it applies with equal force to any level of elections in this country.



The Petitioner therefore has the burden of proving his allegations to the satisfaction of court. The standard of proof should be above a balance of probability but not beyond reasonable doubt. It is after this that court would invoke its power to interfere with the electoral process.

**Masiko Winfred Komuhangi v. Babihuga J. Winnie, Election Petition 9 of 2002.**

The Respondent has no burden to discharge as long as the petitioner has not produced enough evidence to show the truth of his allegations or that the allegations are highly probable because it is he who seeks to have an election declared void. **Mbowe V. Elinfoo (1967) E.A. 240.**

**S.111** of the Local governments Act Cap. 243 stipulates what qualifies one to be nominated to contest in an election of Chairperson of a district. Amongst the prerequisites are that such candidate must be at least 30 years of age and not above the age of 75 years and/or a registered voter who completed a minimum education of an Advanced level or its equivalent. Any person claiming to have an equivalent of a minimum 'A' level qualification from Uganda or outside or any other advanced level qualification obtained outside Uganda is required to produce a certificate issued to him or her by the National Council for Higher Education (NCHE) in consultation with the Ugandan National Examinations Board (UNEb), after proof to the satisfaction of HCHE and UNEb that such higher qualification was obtained on the basis of Advanced Level standard of education or its equivalent.

Section 138 of the Local Government Act provides for petitions against a declared elected candidate. Under sub-section (1) and (3) thereof:

“(1) An aggrieved candidate for Chairperson may petition  
The High Court for an order that a candidate declared elected as Chairperson  
of Local Government Council  
was not validly elected;

- (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.”

In the instant petition, it is abundantly clear that the petitioner invoked section 138 (3) (a). He petitioned as a candidate who lost the election. However, in cross examination during the trial, the petitioner revealed that he did not study ‘A’ Level. That he is a holder of Diploma in Cartography from Lands and Surveys Entebbe where he was admitted on the basis of his ‘O’ Level Certificate. He has no ‘A’ Level Certificate. He presented the said Diploma as the basis for his nomination. That he believed the said Diploma to be an equivalent of ‘A’ Level which did not require verification by the National Council for Higher Education.

Parties to this petition did not pursue this matter very much but I will comment on it. In my view, since the petitioner did not study ‘A’ Level but was admitted to study for a Diploma in Cartography on the basis of his ‘O’ Level Certificate, it was mandatory that such Diploma be verified by the National Council for Higher Education to confirm that it is an equivalent of ‘A’ Level. (See section 111 (3A) (a) of the Local Government Act). Since verification was not done, it follows that the petitioner’s nomination was not validly done. He was therefore not a valid candidate who could legally challenge the election of a Chairperson for Bukedea District as envisaged under section 138 (3) (a) of the Local Government Act. It would follow that the Petitioner, Ongole James Michael had no *locus standi* to sue in this matter. This unsolicited finding has come about because this court could not ignore such illegality after its mind had been drawn to the same during trial. This petition could fail on this ground.

In his supporting affidavit to the petition, paragraphs 10 and 11, the petitioner swears that he lodged a complaint with the Electoral Commission about the second respondent’s irregular nomination (annexture B) but the Electoral Commission refused, failed and neglected to attend to the complaint.

From the Petitioner's affidavit, paragraphs 12, 13, 14, it would appear that action was taken by the Electoral Commission. The Electoral Commission responded and asked the petitioner's representatives to write a fresh complaint. It is not disclosed why the petitioner was asked to do so. When they wrote, they were given the documents they wanted. The said documents were annexed to the petition as 'D'. In my view although the petitioner did not make sufficient disclosure about his encounter with the Electoral Commission, the latter responded to what the petitioner apparently wanted. At that stage, if the Petitioner was not satisfied, he ought to have appealed to the High Court for review under the Parliamentary (Appeals to High Court from Commission) Rules. These rules are applicable to the Local government Elections with necessary modifications.

If an appeal is lodged in this prescribed form then court could use its discretion to temporarily halt the electoral process until the question complained of is resolved.

The electoral laws in this country stipulate various stages to be followed by the Electoral Commission while conducting elections. At each stage, procedure for complaints is stipulated. In my considered view, it is imprudent to wait until the nomination process is over and elections are completed then one complains about an initial stage in the process. After elections are held and results declared a reasonable complaint should be against the conduct of the election and not against an earlier segment of the process.

In his submission, Mr. Philip Mwaka, learned Counsel for the first respondent, raised a preliminary point of law regarding the petitioner's pleadings. He submitted that the said pleadings were different from his testimony and submissions by his advocate. That during his testimony, the petitioner seemed to accuse the second respondent of using academic qualification which belonged to someone else which would amount to fraud. According to Mr. Mwaka, fraud if alleged must be specifically pleaded and proven and the standard of proof is higher than in ordinary suits although below that in criminal cases. That failure by the petitioner to plead fraud renders his pleadings defective which should be struck out with costs. Learned Counsel did not provide a barking for his propositions. That notwithstanding, I am in agreement with him. When adducing evidence, litigants must confine to their pleadings. Evidence adduced must relate to the cause of action as contained in the claim.

In the instant petition, therefore, if the petitioner intended to accuse the second respondent of fraud he ought to have pleaded the same specifically to put the respondent on alert as to what to expect during trial. Fraud if alleged should be pleaded with greater specificity and particulars. However, I do not agree that the pleadings be struck out because fraud was not pleaded yet the petitioner adduced evidence to prove it against the second respondent regarding his academic qualifications.

This court is alert to such scenarios. However, a remedy lies in its regulatory capacity to vet evidence and consider that which is only relevant to the facts in issue. I will therefore concern myself with the relevant evidence to support the pleadings.

Having dealt with the above preliminary points and despite my pronouncements therein, I will go ahead and decide on the issues framed as if this petition was properly before court.

**Issue 1: Whether the second Respondent was properly nominated.**

In his submissions, Mr. Twarebireho for the petitioner went at great length to summarize what transpired at the trial. He reproduced the answers in cross examination by the second respondent and the witnesses for the first respondent. He emphasised that the second respondent did not present his 'A' Level Certificate during nomination. That the second respondent presented an uncertified copy of a Diploma transcript. That the nomination of the second respondent was stayed and the returning officer required him to produce his 'O' and 'A' Level Certificates to clear any doubts. That the second respondent did not present the said certificates yet he said he did in his affidavit.

That the evidence by Atwijukire be disregarded because of the inconsistencies contained in their affidavits. That because of the inconsistencies in the names on the documents presented by the second respondent, it remains unclear whether they belong to him. It is the contention by learned Counsel that the documents presented during nomination do not belong to the second respondent. That there was no explanation as to the differences in the names yet it is the duty of the one who claimed to use them to show they belong to him/her through a Deed Poll. That the first Respondent was notified in time of the irregular nomination but took no effective action.

In his submission, Mr. Philip Mwaka for the first Respondent submitted that when the second respondent's nomination was stayed, he returned in the afternoon with an original transcript of the Diploma obtained at Arapai Agricultural College which was above 'A' Level. That the returning Officer compared the original Diploma with the photocopy the second Respondent had left behind and he was satisfied that they were the same. Thereafter, he stamped the same and nominated the second respondent. Mr. Mwaka further submitted that the returning officer cancelled the writing on the nomination paper requiring him to bring his 'O' and 'A' Level Certificates because the Diploma was over and above 'A' Level. That if one alleges that the names or academic qualifications belong to someone else other than the person who presents them as his own, then it is incumbent upon him to produce the person he alleges is the genuine individual. That the petitioner has not proved that the names do not belong to the second respondent.

In his submission, Mr. Ssekaana for the second respondent substantially agreed with what was submitted by Mr. Mwaka. It is his contention that the rejection of the second respondent's nomination papers for lack of copies of 'O' and 'A' Level Certificates had no basis in law. That is why the petitioner was nominated in similar circumstances. That the law does not prescribe ways in which proof of qualification can be made. That once a document is produced in his original form, there is no need for certified copies. Mr. Ssekanna further submitted that the petitioner did not file any affidavit from any body claiming he is the true Ebukalin Sam. That the petitioner relied on mere suspicion which is baseless. That the second respondent ably explained the inconsistencies in his names and no one had come up to claim the said names.

I have carefully considered the evidence adduced by either side in this petition. I have studied all the documentation presented by both sides. I have taken into account the respective and well researched submissions by respective Counsel. The law relating to nominations and election of Chairpersons as quoted above has been put into perspective. It is true as submitted by learned Counsel for the respondents that it is not mandatory for a prospective candidate for nomination to contest LC. V elections to produce original 'O' and 'A' Level Certificates as a basis for nomination. What the law requires is proof or evidence of completion of a minimum advanced level qualification or its equivalent. I agree with the Ssekaana that proof of this can be done in a number of ways which can be

determined by the Electoral Commission. Statutory Declarations and/or affidavits are the methods outlawed in proof of an academic qualification. (See section 111 3E).

When the second respondent appeared for nomination, the returning officer stayed the same because he did not present both his 'O' and 'A' Level original Certificates. I am of the view that this rejection and requirement had no basis in law. Since the Electoral commission has the discretion to determine what satisfies it as proof of 'A' Level qualification in cases where there is no ambiguity, and then it was right to nominate the second respondent on production of an original Academic Transcript for a Diploma which is a higher qualification than 'A' Level. Given that the Diploma was obtained from Uganda after 'A' level, it did not require any verification by the National Council for Higher Education. As rightly pointed out by learned Counsel for the respondents, if photocopies presented by the second respondent on his first appearance were rejected as if it was a legal requirement, then this was done in error because, as stated earlier, the law does not prescribe ways in which proof of qualifications must be made. This can be by presentation of originals or otherwise and it leaves options open to the Commission to even accept or rely on photocopies. Evidential details may be left for trial sessions like the instant one. Of course there could be a fear that some unscrupulous people could present fake papers but this was dealt with by my brother D.K. Wangutusi J. in a similar case of **Kabaale Kwagala Olivia vs. Beatrice Zirabamuzaale Magoola and Electoral Commission, Electoral Petition No. 3/2006 at Jinja**. In this petition which was premised on academic qualifications, it was held inter alia that:

“To completely rely on photocopies was to run a risk of Forgeries and all sorts of inaccuracies. The best procedure Would be for the intending candidate to have the documents Certified at their sources as authentic documents. The Question is, would non- authentication render the nomination Proceedings null. To get the answer to this question one has to look at the purpose for authentication. Un-authenticated Documents cause suspicion especially where there are no originals. . The absence of originals does not necessarily render them false. But authentication removes suspicion.....

The Petitioner's fears are well understood. This however would not render the presenter of the photocopy unqualified or lacking in Requisite qualifications if he or she could prove that she or he was Indeed a holder of requisite qualifications."

I agree with this proposition.

In the instant case, the second respondent presented an original academic transcript and was accordingly nominated after the Returning Officer was satisfied that the same was over and above the required standard for nomination. There was no need to either present an 'O' or 'A' Level Certificate unless the Returning Officer was not satisfied with the proof of qualification provided by the second respondent.

I agree with Mr. Twarehireho that the petitioner had, in some respects, genuine concerns especially as regards the discrepancy in the names describing the second respondent. However, the burden remained on the petitioner to prove to the required standard that indeed the challenged identity belong to someone else. After studying the evidence adduced by the petitioner it is apparent he has not discharged this burden.

In his testimony, the petitioner acknowledged he did not present an 'A' Level Certificate during his nomination because he had none. He was however nominated meaning that proof of qualification can be by other means. The Petitioner also acknowledged that he knows no other person in the names Ebukalin Sam. The petitioner erroneously expected the second respondent to produce another person known as Ebukalin Sam that is why he did not bother to trace such person. The allegation that the second respondent spent only 2 years at Jinja Senior Secondary School was not contained in the petitioner's affidavit. It is unfortunate that the petitioner sought to rely on his suspicion and perception to prove that the documents presented by the second respondent were not his. Court cannot rely on such plain allegations to prove forgeries without contrary proof from credible authorities such as UNEB. What is interesting, however, is that the petitioner acknowledges that the second respondent is a holder of a Certificate in Agriculture from Arapai Agricultural

College. He was only targeting discrediting qualifications that would be used at all costs to pull down the second Respondent.

The second respondent emphatically claimed the names and the documents presented for nomination. He deposed in his affidavit confirming the said names are his. He explained to Court in an impressive demeanour and a straight forward and confident manner how the interchange of the names occurred. He rendered in court all the originals of the documents relied on by both parties. I noted that the academic documents were issued by authentic bodies. My attention has concentrated on the Diploma qualification on the basis of which the second respondent was nominated. In his letter ref.A/STU/4 dated 27th September, 2006, Dr. Morris Ocweda, the Academic Registrar Arapai Agricultural College confirms that the second respondent obtained the disputed qualifications from that college. A photograph of the second respondent is attached.

He wrote thus:

“TO WHOM IT MAY CONCERN.”

RE: EBUKALIN SAM L

I write to certify that EBUKALIN SAM L joined Arapai  
For a two (2) years course in National Certificate in  
Agriculture in 1982. He successfully completed the  
Training in 1984, sat for the national final examination  
(index No. NC/84/26) and qualified for award of National  
Certificate in Agriculture Grade 11 (Two-serial number of  
the Certificate is C/1128/84.  
In 1992, Rev. Ebukalin Sam L.K.R returned to the College  
To upgrade on the 2 year Diploma Programme, Reg.  
No. D/11/92, and successfully completed the training in  
1994, sat for national final examinations (index No. nda/20/94)  
and qualified for the award of National Diploma in Agriculture  
Grade 11-Serial number of Certificate is D/490/94.



Rev. Ebukalin Sam L.K.R. has since received his both Certificates and transcripts. Attached please find Photocopies of the Diploma Transcript and Certificate appearances on all examinations mark sheets for the diploma course and registers of certificate and diploma papers.

The College remains grateful for all forms of assistance Rendered,

Signed,

Dr. Morris Ocweda”

Academic Registrar.’

I did not doubt the authenticity of this verification. In absence of any credible evidence to the contrary, I am satisfied with the explanation given by the second respondent regarding his identity as the same is confirmed by this verification. True as observed before, the discrepancy in the names used by the second respondent creates a lot of suspicion but that alone cannot be bases for saying the names refer to somebody else who has not been availed by the petitioner. The petitioner did not attempt to get contrary verification of the second respondents’ papers from UNEB. The Ministry of Education or Arapai Agricultural College.

I am further persuaded by the holding by **D.K. Wangutusi J** in Magoola’s case (Supra) where at P.12 he observed thus, and I agree,

“Counsel for the Petitioner also doubts whether documents Belonged to the first Respondent since in one year one had Four names and in another she had three and yet in other documents she had two with an initial as the third. What court noticed however is the consistence of some of the names which Appear on all documents .....

Furthermore no one has come up to claim the use of her names as to show they are not all names of the first Respondent. No one has come up to say she is the rightful owner of the Diploma, From the evidence, court is convinced that the names belong to the first Respondent.”

The above observation is on all fours with the instant case. As I have said, I am convinced that the academic documents presented belong to the second respondent Ebukalin Sam, who at times adds the name of Okwiison or L’kwiisk or Rev. He is one and the same person who went through Jinja Senior Secondary School and Arapai Agricultural College and obtained a Diploma. He was therefore qualified to be nominated at the time it happened.

I will answer issue 1 in the affirmative.

## **Issue 2: What remedies are available?**

Since I have held that the Petitioner has failed to prove the allegations made in his petition to the satisfaction of court, I found that the nomination and election of Chairman LC.V Bukedea were conducted in accordance with the law. Therefore, the petitioner cannot get any remedies sought.

Before I take leave of this matter, I must say that it is quite dangerous for Ugandans not be systematic with their names. It creates suspicion and a crisis of identity. Those concerned must do something regarding identity during admissions especially for courses which come later in time when people acquire different titles.

Having found that the second respondent was possessed of the requisite qualification and was duly nominated I will find no merit in this petition. I will dismiss it as against both Respondents and with costs.

**Musota Stephen,**

**AG. JUDGE**

**08/1/2007**