

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
ELECTION PETITION NO. 0010 OF 2006
FLORENCE MUTYABULEPETITIONER

VERSUS

1. NYAGO LYDIA KIBWIKI
2. ELECTORAL COMMISSIONRESPONDENTS

BEFORE THE HON. MR. JUSTICE V.T. ZEHURIKIZE

JUDGEMENT

On 28/8/2006 the 2nd Respondent conducted Parliamentary Elections for District Women Representatives Namutumba District. The Petitioner and the 1st Respondent were candidates at these elections, and thereafter the 2nd Respondent declared the 1st Respondent dully elected Member of Parliament.

The Petitioner has contested the 1st Respondent's election on the ground that she was at the time of her election not qualified for election as a Member of Parliament.

She prayed court to declare that:

- a) The first Respondent was not validly nominated and could not therefore participate in the elections.

- b) The election of the 1st Respondent be set aside as having been null and void
- c) The Petitioner being the 2nd runner up was a winner in the said election.
- d) The Respondents pay the Petitioner's costs.
- e) Any other relief the court may deem fit and proper to grant.

In a bid to prove her case the Petitioner swore an affidavit in support of the petition filed on 6/10/06. She also presented affidavit evidence from four other deponents at the filing of the Petition.

On 1/12/06 the Petitioner filed an affidavit in rejoinder which she had sworn on 30/11/06. Finally on 23/3/07, she swore and filed a supplementary affidavit.

On the other hand the 1st Respondent denied the petitioner's allegation. In her answer to the Petition the 1st Respondent stated that she was qualified to stand as Woman Member of Parliament for Namutumba District on grounds that:

- (i) She is a holder of a Uganda Advanced Certificate of Education (UACE) and Uganda Certificate of Education (UCE) duly obtained in the names of Nyago Lydia.
- (ii) She sat her Uganda Certificate of Education at Wanyange Girls School under index number U0005/110 and also sat for her Uganda Advanced Certificate of Education at St. Francis SSS under index number U0237/536.

In view of the above she contended that at the time of her nomination she possessed the required qualifications as provided for under the Parliamentary Elections Act and that the 2nd Respondent properly accepted her nomination. She prayed that the petition be dismissed with costs.

In support of the answer to the petition the 1st Respondent filed an affidavit in support. Then in reaction to the Petitioner's supplementary affidavit she also filed a supplementary affidavit in rejoinder.

In a bid to fortify her assertions in answer to the petition she further presented affidavit evidence from nine deponents.

The 2nd Respondent also disputed the Petition and relied on the affidavit evidence of one Ngobi Monica the District Registrar for the 2nd Respondent in Namutumba District, in support of their answer to the Petition.

At the commencement of the trial the following issues were agreed upon for determination.

- 1- Whether the 1st Respondent at the time of her nomination and election was qualified to be a Member of Parliament.
- 2- The remedies available to the parties.

Upon perusing the pleadings by the parties and the affidavit evidence on record and also the 1st respondent's evidence in court adduced during cross examination by counsel for the Petitioner, the case for the petitioner is based on the following pieces of evidence.

It is her case that the 1st Respondent's true names are **Sarah Nyago** and not **Lydia Nyago**. That she was a pupil at Namutumba Primary School where she sat for her Primary Leaving Examination in 1983. That the true "**Lydia Nyago**" was a pupil at Nansololo Primary School at the same time. It is further the petitioner's case that upon completing Primary seven at Namutumba the 1st Respondent joined Kisiki College where she dropped out at Senior one. It is not stated as to where she went after this.

It is however, her case that the 1st Respondent did not complete formal Education of Advanced Level or its equivalent and that she was nominated on the basis of documents which do not belong to her.

According to the petitioner the academic documents presented at the time of nomination belong to the true Lydia Nyago who completed her Primary seven at Nansololo Primary School. What I can gather from the petitioner's supplementary affidavit filed on 23/3/07 is that the actual Lydia Nyago after Nansololo Primary School went to Wanyange Girls School where she studied from 1985 to 1988 when she obtained Uganda Certificate of Education number 185952 index No. U005/110. That therefore the Uganda Certificate of Education

(UCE) Index No. U005 which the 1st Respondent presented to the 2nd Respondent for nomination does not belong to her but to Lydia Nyago now a teacher at Kyaliwajala Umea Primary School in Wakiso District.

In the supplementary affidavit the Petitioner alleges that the said Lydia Nyago was trained as a Grade III Teacher at Kaliro Primary Teachers' College from 1991-1993.

It should be noted here that the Petitioner does not allege that the alleged Lydia Nyago after obtaining her UCE in 1988 went anywhere to study for Uganda Advanced Certificate of Education. Further it should be noted that the alleged Nyago Lydia did not adduce evidence in this Petition.

On the other hand the 1st Respondent adduced affidavit evidence to the effect that her true names at birth were Nyago Sarah Lydia and that she has always used these names interchangeably.

As regards her education she answered that she was a pupil at Namutumba Primary school where she sat for the Primary Leaving Examination in 1983.

That having obtained low grades her parents made her repeat Primary seven at Nansololo Primary School in 1984 in order to get admitted in a good school. When repeating P.7 she used the name of **Lydia**

Nyago thus dropping "Sarah". Hence forth her subsequent academic qualifications bear the names of Lydia Nyago.

Having passed well with good grades she was admitted to Wanyange Girls Senior Secondary School in 1985. Through the headmistress of that school she annexed an application form for admission to Secondary level marked "APP-Form" which is the same as annexure "E" to the Petitioner's affidavit in support of the petition.

From 1985 she attended her secondary education till 1988 when she sat for her examinations leading to an award of Uganda Certificate of Education. She passed in Division III. An original copy of the certificate was produced in court and admitted in evidence as exhibit D1.

Immediately she joined Bukoyo Secondary School in 1989 to 1991 when she sat for the examination for the Uganda Advanced Certificate of Education and obtained the award of Uganda Advanced Certificate of Education. An original copy of the certificate was admitted in evidence and marked exhibit DII.

But as she did not pass well she repeated Senior six in 1992-1993 at St. Francis Senior Secondary Mengo where she obtained another Uganda Advanced Certificate of Education. The original copy of this Certificate was presented to court and admitted in evidence. It is marked exhibit. DIII.

She further exhibited the pass slips of UCE 1988, UACE 1991 at Bukoyo Secondary school, and UACE 1993 when she repeated Advanced Level Education at St. Francis S.S. Mengo. The original copies of the above pass slips were received in evidence and marked exhibits DVI, DVII and DVIII respectively.

The other documents presented by the 1st Respondent in support of her studies are an identity card issued by Bukoyo Secondary School which is marked exhibit DIV and another identity card issued to her by ST. Francis Senior Secondary School Mengo marked exhibit DV.

The above Certificates and pass slips are in the names of Lydia Nyago and so are the identity cards which in addition bear her passport photographs.

She states that later she enrolled at Busoga University but pulled out in order to participate in the by-elections that arose after the death of the late Basoga Nsadhuh. That she is now a student at Nkumba University.

It is also her evidence that at the time of nomination, she presented the UCE from Wanyange and the UACE from St. Francis Senior Secondary School in their originals. She contended that if at all there exists another person by name of Lydia Nyago and who claims to have gone through the same schools like herself, then she is an

impostor or impersonator. She denied ever using any other person's qualifications at her nomination.

In his final submissions Mr. Komakech counsel for the petitioner went at length to demonstrate that the academic papers the 1st Respondent presented for her nomination did not belong to her. That they belonged to one Lydia Nyago who after completing P7 at Nansololo Primary School in 1984 was admitted to Wanyange Girls Secondary School where she obtained the UCE in 1988.

The basis of his argument is that, the 1st respondent completed P7 at Namutumba P/S in 1983 under the names of Sarah Nyago. He referred to the affidavit evidence in support of the Petitioner's case. That Lydia Nyago whose papers the 1st Respondent is using completed Primary Seven at Nansololo P/S in 1984 and applied to join and was admitted to Wanyange Girls Secondary School as per annexure "E". He gave various reasons why this application form for admission to Secondary level could not have been for the 1st Respondent.

I have carefully considered submissions by counsel and perused the evidence on record.

On the outset it should be noted that the UACE (Exhibit DIII) was the basis upon which the 2nd Respondent nominated the 1st Respondent for the election in issue. As already stated no evidence was led to show

and counsel did not point out any evidence to the effect that this academic qualification belonged to another Lydia Nyago other than the 1st Respondent.

Instead the evidence led by the Petitioner discloses that the Lydia Nyago she fronts never went for Advanced Level of Education. Her evidence shows that after UCE she was admitted to Kaliro Primary Teachers College from 1991-1993 where she qualified as a grade III Teacher.

However, the Petitioner's case and counsel's submission appears to be that the 1st Respondent used the alleged Lydia Nyago's UCE to go for the Advanced Level of Education, leading to her UACE which she presented for her nomination.

It is on this basis that the Petitioner challenges the 1st Respondent's qualifications. Without being explicit, the Petitioner is asking this court to find that since the 1st Respondent used another person's UCE to go for higher education, the UACE she presented was wrongly obtained. She was not qualified to go for Advanced Level of Education.

I believe, it is for this reason that counsel for the Petitioner in his final submissions dwelt heavily on the 1st Respondent's Primary and Secondary education. It is this evidence that I have got to examine

carefully to determine whether the UCE (Exhibit D1) belongs to the 1st Respondent or another person by the names of Lydia Nyago.

PRIMARY EDUCATION FOR 1ST RESPONDENT

The Petitioner's case is that the 1st Respondent was a pupil at Namutumba Primary School where she completed P7 in 1983. In proof of this she presented affidavit evidence from the following deponents namely: **Damali Kawala** who is currently a teacher at Namutumba P/S. She deponed that she was with the 1st Respondent in that school from Primary 5 to 7 and that she knew her official name as Sarah Nyago and not Lydia Nyago. The evidence of this deponent is rather suspect in that while all other deponents stated that the 1st Respondent completed P7 at Namutumba in 1983, this Damali Kawala's evidence is to the effect that the 1st Respondent completed P7 in 1984 - see paragraph 3 and 4 of the affidavit.

Further this witness claims that after P7 the 1st Respondent joined Kisiki College and that she dropped out at Senior one. It is not disclosed how this was known and where the 1st Respondent went or did after dropping out in senior one.

The next allegation is a bold and blanket statement that the 1st Respondent never completed the UCE and UACE. Court is not told how this deponent came to know such a thing especially when the witness does not tell court what happened to the 1st Respondent after dropping out at Senior one.

Connected with the above is the affidavit evidence of Namwase Irene. She alleges that after P7 at Namutumba in 1983, the 1st Respondent joined Kisiki College in 1984 and dropped out at the end of senior one. She does not tell us where she went after dropping out of school as alleged.

This deponent does not explain how she came to know this as she does not disclose that she was also a student at the same college. She even goes ahead to assert in paragraph 6 of her affidavit that even at Kisiki College the 1st Respondent was referred to as Sarah Nyago and not Lydia Nyago.

In my view such details could only be known by a fellow student at that college or some one close to the 1st Respondent. The deponent does not tell court whether she also went to the same college or that she was closely associated to her.

It is worth noting that no evidence was obtained from the alleged Kisiki College to prove that indeed the 1st Respondent was a student there and that she was known as Sarah Nyago and that she dropped out of S.1.

I find the evidence of Namwase Irene rather suspect for these reasons.

The evidence of other deponents namely Nakamya Kasongo and Dauson Wambi was to emphasise the fact that the 1st Respondent completed P7 at Namutumba P/S in 1983 under the names of Sarah Nyago and not Lydia Nyago.

It should be noted that the 1st Respondent does not dispute the fact that she was a pupil at Namutumba and completed P7 there in 1983. It is her evidence that she was a pupil at Namutumba from 1981 to 1983 when she completed P7 under her original names of Lydia Sarah Nyago.

It is further her evidence that after obtaining low grades her parents made her repeat P7 at Nansololo Primary school in 1984 in the names of Lydia Nyago in order to be admitted to a good secondary school.

Her evidence that she repeated her P7 at Nansololo Primary school in 1984 and sat for her Primary Leaving Examinations that year is supported by six deponents, namely Mpabulungi Leah Proscovia. This deponent is the Headmistress of Wanyange Girls Secondary school. In paragraph 2 of her affidavit she states that the 1st Respondent applied to be admitted from Nansololo Primary school to her school. She attached a copy of the application form for admission to Secondary level institution.

Her evidence is not controverted. I will be referring to the application form in more detail later in this judgment.

Next is the affidavit evidence of Musango Stephen Martin. In 1984 he was a class teacher of P7 at Nansololo P/S and that the 1st Respondent was one of his students. As a class teacher he signed on her application form for admission to secondary level institution. It is the same form that Mpabulungi Leah attached to her affidavit.

Then there is evidence of Kalende Moses, presently the Headmaster of Nansololo Primary school. In 1984 he was a student teacher at the same school and he avers that the 1st Respondent was one of his pupils in P7.

He averred that the Headmaster at that time was Nakueira John and the class teacher was Musango Stephen Martin.

Nakueira John also swore an affidavit in support of the 1st Respondent's case. His evidence is to the effect that he is a former Headmaster of Nansololo Primary school between 1983-1985 and confirmed that the 1st Respondent was a pupil at that school in 1984 and sat for her Primary Leaving Examinations at that school. He signed, as a headmaster, on the 1st Respondent's application for admission to Secondary institution.

Lastly there is affidavit evidence of Mr. Isabirye Thomas and Kakaire Grace who aver that they were classmates of the 1st Respondent at Nasololo Primary in P7 in 1984 where they sat their P7 examinations.

All the above deponents averred that they knew the 1st Respondent as Lydia Nyago. Their evidence was not controverted. Especially the evidence of her class teacher and Headmaster who signed on the application form which the Petitioner seeks to attribute to another Lydia Nyago. If the evidence of these two deponents was false it should have been challenged. It fundamentally perforated the Petitioner's case in that it showed the application form she tried to interpret as belonging to her Lydia Nyago, actually belonged to the 1st Respondent.

Unfortunately no iota of evidence was presented to cast the slightest doubt on the evidence of the above two deponents. Further no attempt, as submitted by Mr. Sekaana counsel for the 1st Respondent, was made to get evidence from either teachers or former pupils of Nansololo P/S to refute the 1st Respondent's evidence as supported by the said deponents that she was a pupil at Nansololo P/S in 1984 using the names of Lydia Nyago.

Further, no evidence was adduced by the Petitioner to show that in 1984 there was another "Lydia Nyago" different from the 1st Respondent who was a pupil at that school and sat for her Primary Leaving Examination and that she applied to join Wanyange Girls Secondary School.

The only attempt in that direction was the Petitioner herself. In paragraph 7 of her affidavit in support she averred that she was

informed by the Headmaster of Nansololo Primary school Mr. Nakueira that the said Sarah Nyago was never a student at Nansololo Primary School.

Though spelt as **Nakwoira** I have no doubt that this headmaster is the same as Nakueira John whose evidence has been referred to above. He was the former Headmaster of Nansololo P/S.

This deponent specifically refuted the petitioner's alleged information attributed to him. In paragraph 2 of his affidavit, this former Headmaster of Nansololo P/S states that he has read the petition and the accompanying affidavit in support and replies thereto in paragraph 3 as follows:

"3- That the contents of paragraph 7 of the affidavit in support of the Petition are false and I have never informed or talked to the Petitioner about Sarah Nyago or Lydia Nyago."

In paragraph 4 he insists that the Petitioner is not known to him and he has never interacted and talked to her at all. Then he goes ahead to support the 1st Respondent's assertions as already referred to above.

In my view the above statements were very serious challenge to the Petitioners averments in paragraph 7 of her affidavit in support. There is no affidavit in rejoinder to refute such direct attack on the veracity of the Petitioner's evidence. The Petitioner's failure to salvage her

allegations did not only render her evidence hearsay but showed that she had deliberately told a lie on oath to mislead court.

It is clear to me that the petitioner by the said allegation pushed herself in a position where she could not wriggle out of this hard and bitter truth from Nakueira John.

The 1st Respondent's assertion that she sat for P7 examinations at Nansololo Primary school in 1984 as support by her said witnesses remains unchallenged. She was then using the names of Lydia Nyago and she applied to join Wanyange Girls Secondary school.

The Petitioner having told a lie in this important aspect of her case, the whole of her affidavit becomes suspect and unreliable.

It might be useful here to point out her other averments which serve to taint her creditability.

For instance in paragraph 5 of her affidavit in support, the Petitioner states that she was informed by the Headmaster of Namutumba P/S (1981-1983) that the 1st Respondent was a student at that school and completed P7 in 1983 in the names of **Sarah Nyago** and not **Lydia Nyago - the one who was at Nansololo Primary school at the same time.** This last portion of the statement attributed to the Headmaster is false.

The Headmaster at the material time was Dauson Wambi and swore an affidavit in support of the Petition. It is on record. This deponent never anywhere in his affidavit allege that he was aware of a Lydia Nyago at Nansololo Primary school around the same period he was the Headmaster of Namutumba Primary School.

He does not even make any mention of or reference to Nasololo Primary School in his affidavit. Thus the alleged information to the Petitioner attributed to this deponent as the source is a deliberate lie. The Petitioner does not stop here in her desire to discredit the 1st Respondent's education.

She goes further in her affidavit in support to make bold and unsubstantiated statements to the effect that the UCE and UACE presented by the 1st Respondent for her nomination did not belong to her. To whom for instance did the UACE (Exhibit DIII) belong?

These statements were not based on evidence. They were based on arguments regarding the 1st Respondent's application to join Wanyange Girls Secondary school. The arguments centred on some details of the contents of annexure "E" to the Petition.

I will consider these arguments in more details later in this judgment.

The Petitioner further boldly alleged that the 1st Respondent did not complete formal education of advanced level or its equivalent.

But surprisingly in the same affidavit she annexed UACE as annexure "H" which will be remembered is exhibit DIII in the names of Lydia Nyago. Throughout her case she never claimed that her Lydia Nyago ever went to ST. Francis SSS for higher education or any other school.

It is therefore difficult to understand what the Petitioner meant when she bluntly stated that the 1st Respondent had no formal education of Advanced Level or its equivalent. What can court make out of such averments? Her evidence is to the effect that the Lydia Nyago she is talking about after her Ordinary Level of Education went to be trained as a Grade III Teacher at Kaliro Teachers' College. No evidence was led to assert that she is the owner of the UACE (Exhibit DIII).

The Petitioner's evidence becomes more suspect and unreliable when one considers the fact that her Lydia Nyago never gave evidence on her behalf. If she wanted court to believe that there was another Lydia Nyago who completed P7 at Nansololo Primary school in 1984 there was no reason why she did not get an affidavit from her, or from her former teachers or students from Nansololo Primary School or from her parents or relatives if such other Lydia Nyago indeed existed.

Instead she sought to create such a person by commenting on the history of the 1st Respondent's names and analysing her application form to join Wanyange Girls SS. She sought to find another person

by pointing out discrepancies in the 1st Respondent's date of birth and in change of her names.

The Petitioner swore several affidavits. In these affidavits and more particularly the supplementary affidavit filed on 23/3/07 she failed to give reasons why she could not get any evidence from the alleged Lydia Nyago. Her evidence was critical to show in which primary and secondary schools she studied and what qualifications she acquired.

I would therefore reject Mr. Komakech's statement that when the Lydia Nyago got wind of these proceedings she disappeared from Kyaliwajala Umea Primary School Wakiso District where she is a teacher.

I have no doubt that counsel was only trying to give reasons why he had filed the supplementary affidavit on 23/3/07 well out of time. I declined striking out that affidavit as prayed by counsel for the respondents mainly on grounds that I could not ignore the evidence that was already on record in a matter of this nature-an election petition. Otherwise there was no genuine reason for the late filing.

If it were true that the Lydia Nyago had disappeared on learning of these proceedings there is no reason why the Petitioner did not say so in her lengthy supplementary affidavit.

Instead she indulged in parking her affidavit with hearsay evidence. All her averments from paragraphs 3 to 12 point to that direction. She talked about Lydia Nyago's appointments in Wakiso District, her qualifications, her posting, her training as a teacher and about her present working station.

And while making the above statements the petitioner purported to be deposing from the best of her knowledge. This is not true as she was not involved in any of the alleged activities in relation to Nyago.

It is only officials from Kaliro Teachers' College or Wakiso District Administration or the Headmaster from the school where it alleged she is teaching that could give evidence from their knowledge.

It is not sufficient to present copies of documents which were not authored by her, not belonging to her and not even addressed to her and which were not under her custody and then go ahead to state that she was swearing from her own knowledge.

I find that the averments in her supplementary affidavit were sheer hearsay evidence and not admissible. They only, further, served to demonstrate that the Petitioner's evidence is unreliable.

In conclusion and having considered all the evidence I have endeavoured to analyse above, I am inclined to believe the 1st Respondent's evidence that she first sat for P7 examinations in 1983 at

Namutumba Primary school and repeated P7 at Nansololo P/S in 1984 using the name of Lydia Nyago. It is this time that she dropped "Sarah" as one of her names. I will now move to her Secondary education.

1ST RESPONDENT'S SECONDARY EDUCATION

The allegations and arguments that the 1st Respondent did not go to Wanyange Girls Secondary school are based on the contents of annexure "E" to the affidavit in support of the petition which is also annexure "APP-FORM" to the affidavit of the said Mpabulungi Leah Proscovia, the Headmistress of Wanyange Girls Secondary school. The document in issue originates from the Ministry of Education and it is titled **"Application for Admission to secondary level institution 1985"**

Mr. Komakech rigorously argued that the applicant's names on this form are Lydia Nyago and not Lydia Sarah Nyago. That the date of birth is stated to be 22/4/71 and not 22/4/69 which is the date of birth for the 1st Respondent. That the applicant on the form is said to have been a pupil in that school from 1978 to 1984 while the 1st Respondent claims to have been to Nansololo P/S only in 1984. Lastly that the applicant on the form was from Kamuli District while the 1st Respondent is from Iganga District.

In view of the above differences counsel invited court to find that the application form was not in respect of the 1st Respondent but another

Lydia Nyago. It should be noted, however, that besides these arguments no evidence was adduced to buttress this analysis.

A) Names and Date of birth

The 1st Respondent's evidence is to the effect that she was born on 22/4/69 and acquired the names of Lydia Sarah Nyago. She annexed to her affidavit in support of the answer, a baptism certificate issued by Karamoja Diocese -Church of Uganda. It is marked annexure "BC". This document is not disputed. She also annexed the "Short Birth Certificate annexure "SBC". Both documents are in the names of Lydia Sarah Nyago and the date of birth is stated as 22/4/69.

The Baptism certificate further shows that she was baptised on 5/7/70 and her parents are recorded as Mulabe Aggrey-father and her mother is Wabulembo Lizupa. She swore an affidavit in support of her daughter's answer which is on record.

In view of the above evidence there is no doubt that the 1st Respondent's date of birth is 22/4/69 and her names were Lydia Sarah Nyago.

However, as submitted by Mr. Komakech, on the application for admission to Secondary level the applicant's name are recorded as **"Nyago Lydia"** whose date of birth is stated to be 22/4/71.

I have already found and I do believe that when repeating P7 at Nansololo Primary school in 1984 she dropped the name of "**Sarah**" from her set of names. It is for this reason that when filling the form-annexture "E"-only the names of Lydia Nyago do appear.

As regards the date of birth being recorded as 22/4/71 and not 22/4/69 the 1st Respondent explained this during the rigorous cross examination by counsel for the Petitioner in court on 12/4/07. She stated that the forms used to be filed with the guidance of the class teacher and the Headmaster of the school, thus 22/4/71 was entered in error as a result of that guidance. She said she was then so young. That later she resorted to her true age.

It is even possible that on repeating P7 the 1st Respondent could have been tempted to even reduce her age. But that is not her evidence. It is a possibility as will be seen later.

Besides the above explanations a further look at the application form is quite revealing. The copy of the application form annexture "E" and also annexture "APP-FORM" bears a copy of the 1st Respondent's passport photograph. The name of the applicant's father is said to be WABULEMBO E.

In the aforesaid cross examination she explained that in fact the person indicated as her father is her maternal uncle whose full names

are Wabulembo Ekedu with whom she was staying when repeating P7 at Nansololo P/S.

It should be remembered that her mother's surname is also Wabulembo, the other being Lizupa rendering credence to her assertion that this was a family name on the mother's side.

Faced with these details it cannot be said that this application form was in respect of another Lydia Nyago, different from the 1st Respondent.

There is no evidence to suggest that the Lydia Nyago counsel wanted court to infer from the application form had similar features as those of the 1st Respondent and hence a similar copy of the passport photograph or that the Lydia Nyago he wants to create from the said application form had a father whose name was WABULEMBO E.

I find that despite the apparent discrepancies in names and date of birth, all of which an explanation is availed by the evidence on record, annexure "E" to the petition or annexure "APP-FORM" to the defence evidence was an application by the 1st Respondent to join Wanyange Girls Secondary school.

This view is further fortified by the affidavit of the then Headmaster of Nansololo P/S and the class teacher who both signed on the said

application form. They swore affidavits in support of the 1st Respondent's claim

B) Duration of 1st Respondent's stay at Nansololo Primary School

Counsel argued that while the 1st Respondent claims that she was at Nansololo P/S for P7 in 1984, the form shows that the pupil named therein had been in the school from 1978 to 1984 and as such that could not have been the 1st respondent.

I do not find any merit in this argument. The evidence on record is that the form was filled with the guidance of the class teacher and the Headmaster. It was in consequential that they decided to make it appear as if she had been in this school for the whole period of her primary education.

What is important is whether she was a pupil at this school in 1984 and the application form in issue was in respect of her application to join Wanyange Girls Secondary school.

Her evidence and that of the six deponents are clear proof that in 1984 she was a pupil at Nansololo P/s in P7. But in particular I would like to refer to the evidence of the aforesaid Musango Stephen Martin. He was her class teacher and in paragraph 7 of his affidavit states that the 1st Respondent applied to be admitted to Wanyange Girls Secondary school and that as her class teacher he signed on the application form.

Another deponent Mr. Katende Moses who was a student teacher at the time the 1st Respondent was in P7 at Nansololo P/S averred in paragraph 7 of his affidavit that she put her first choice at Wanyange Girls Secondary school.

Ms. Mpabulungi Leah Proscovia the Headmistress of Wanyange Girls SS deponed in paragraph 3 of her affidavit that the 1st Respondent was admitted to her school in 1985. As already stated she also attached a copy of the application form bearing her passport photograph.

It will be remembered that Mr. Nakueira the former Headmaster of Nansololo Primary school when the 1st Respondent completed P7 in 1984 at that school stated that she applied to join the said secondary school. On 20/11/84 he signed on her application in his capacity as the Headmaster and sent it to the Ministry of Education.

All the above witnesses were talking about the same application form on which was affixed the 1st Respondent's passport photograph and the name of Wabulembo, E is indicated on it as her father.

All this evidence was not controverted by the Petition. This was very strong evidence and it proved that the application form in issue was in respect of the application by the 1st Respondent to join Wanyange Girls SS where she completed her UCE in 1988. It was on the basis of

this qualification that she was able to go ahead and study for the UACE.

In view of this evidence counsel's submissions based on mere arguments and inviting this court to read or infer another Lydia Nyago in the said application cannot be sustained.

This court has no option but to rely on the unchallenged evidence rather than sheer academic discourse based on minor discrepancies which are not backed by any iota of evidence to show that the application form in issue was in relation to another person.

C) District of origin

I find no merit, either, in the argument that while the 1st Respondent is from Iganga District while the application form indicates that the applicant was from Kamuli District and so the form was not ⁱⁿ respect of the 1st Respondent.

But the evidence on record shows that Nansololo P/s was at Naikore Kaliro in then Kamuli district. She was staying with her maternal uncle in the same District and he was treated as her father in filling the form. It is immaterial that now she hails from Iganga District where she is married. In my view this was another example of splitting hairs in a bid to create a non-existent Lydia Nyago.

D) Other allegations against the 1st Respondent

In further bid to discredit the 1st Respondent, in paragraph 9 of her affidavit in support, the Petitioner cast doubt as to which person the 1st Respondent was married - that it was Kasiida Azimafesi and not Kibwika Kasinda Azimafesi. Kibwika Kasinda Azimafesi was obliged to swear an affidavit to refute the Petitioner's misrepresentations.

Again on the 1st Respondent's date of birth, the Petitioner sought to discredit her by pointing out that in her application to Busoga University she declared she was born on 22/4/70 and to the Light University Seguku she indicated she was born on 22/4/73 and yet her date of birth is said to be 22/4/69.

Like the issue as to who is her husband, I fail to understand the relevance of discrepancies in the above dates of birth to this Petition.

The 1st Respondent applied to join Busoga University on 1/10/2002 (see annexure "F" to the petition) and to Light University Seguku on 8/10/96. The UACE she presented for nomination was for the examinations of March 1993.

Thus her false presentation of her age at different occasions, in my view, did not affect the qualifications she had acquired earlier in 1993. The 1st Respondent's bad habit of lowering her age from time to time was not relevant to the petition. In fact it serves to clarify that in 1984 when she repeated P7 at Nansololo and dropped her other name of

"Sarah" she also lowered her age to be 22/4/71 as indicated in the application form already referred to above.

These had nothing to do with her qualifications. Court cannot cancel her academic qualification simply because the 1st respondent was in the habit of lowering her age or find that the papers she presented to the 2nd Respondent belonged to another person. The petitioner was under a duty to adduce evidence to prove that the academic papers that the 1st Respondent presented for her nomination belonged to a different person but not to rely on minor discrepancies like age to attribute them to an unknown person.

The Petitioner further raised doubt as to how the 1st Respondent could have attended her A' level at St. Francis SSS Mengo while at the same time attending a course at Kenya Accounts and Secretaries.

I find the above argument also irrelevant to this petition. It is not the concern of this court as to how she combined two courses. Suffice to say that during cross examination she explained how she was able to do so.

It is also important to note that the Petitioner does not claim that her Lydia Nyago also went for Higher Education and that she is the owner of the UACE (Exhibit DIII). Her case is that after Wanyange Girls SS the Lydia Nyago went to Kaliro Primary Teachers' College.

The most interesting allegation aimed at discrediting the 1st Respondent is contained in paragraph 6 of the petitioner's affidavit in rejoinder to the effect that she was baptised on 9/11/1986 three years after completing P7 at Namutumba PS in order to justify the usage of someone else's name (Lydia Nyago).

I find this averment a fantasy of fertile imagination. According to the Petitioner the 1st Respondent completed P7 in 1983. Thus under normal progress she was in Senior III when she purportedly got baptised. Still if we go by the Petitioner's evidence that the other Lydia completed P7 in 1984 then in 1986 she was in Senior II. The questions that arise are quite many. Where was the 1st Respondent studying or what was she doing when she decided to get baptised in order to use Lydia Nyago's names? Why would she think of using somebody's papers who was a year behind her, assuming she was herself in S.III? Why wouldn't she plan to use papers of classmates? How did she know that a certain Lydia Nyago exists and that she would pass the exams for the UCE?

In other words for one to go for such a baptism as part of a design to commit such a grand fraud she had to know the other Lydia Nyago very well to be able to prepare two years in advance to use her papers.

It is not clear how prophetic the 1st Respondent was to know that the alleged Lydia would get UCE result worth investing in some two or three years in advance.

The letter (annexture "B") disclosing this fantastic baptism was written by Rev. Allan Robert Waako. The address is ST. John's Ivukula C.O.U Parish P.O. Box 36 Kaliro. It is handwritten on a ruled piece of paper. No evidence was obtained from the purported writer or from Rev. N.B Magoola who allegedly conducted the baptism. There is nothing authentic about this document.

I find this evidence not only hearsay but also a combination of speculations conjecture and out right falsehood as Mr. Mwaka counsel for 2nd Respondent remarked on the whole of the petitioner's case.

It is also interesting to note that while it is being speculated, as there is no credible evidence to back the claim, that the alleged Lydia Nyago completed her O-level at Wanyange in 1988, it is also asserted that she went to Kaliro Primary Teachers' college from 1991-1993. There is no explanation as to where she was or what she was doing for some three years before going for the alleged training.

This issue is left to speculation. Can court imagine that she first allowed the 1st Respondent to use her UCE to pursue the Higher Education? What would be the driving factor, love or money?

Further it should be remembered that the petitioner's case is that the 1st Respondent after P7 at Namutumba she went to Kisiki College where she dropped out at S.I. Could such a drop out be able to do UACE

simply because she had got a UCE from some body with similar names? Is it not true therefore that the 1st Respondent actually attended her full secondary education and got the UCE (Exhibit D1)? Is it not true that it was on the basis of the knowledge acquired and the qualifications she attained that she was able to go for the UACE?

This court cannot rely on speculations and imagination. It is duty bound to rely on evidence adduced before it.

The duty of proving that the 1st Respondent at the time of her nomination was not qualified for election as a Member of Parliament lay on the Petitioner. She has to discharge this burden on a balance of probabilities. (s.61 (3) of the Parliamentary Elections Act 2005).

The Petitioner's case, in a summary is based on the evidence that the 1st Respondent completed P7 at Namutumba Primary School in 1983. This fact is not denied.

But the unchallenged evidence is that the 1st Respondent repeated P7 at Nansololo P/S in 1984. The supportive evidence has already been pointed out above.

The Petitioner's further argument is that the 1st Respondent never attended Wanyange Girls Secondary School. The argument is based in what they called discrepancies in the application form. I have already found that the application form was in respect of her

application to join Wanyange girls School in view of the overwhelming evidence to that effect and especially the evidence of her class teacher and also of the Headmaster of Nansololo Primary School, the evidence of the Headmistress of Wanyange Girls SS and the fact of her passport photograph was affixed to the form and the name of Wabulembo E. her uncle filled on it.

She was admitted to that school where she passed the UCE in 1988-see exhibit D1.

Lastly the 1st Respondent produced documentary evidence in the form of identity cards that she was a student at Bukoyo SS and St. Francis SS Mengo for her UACE. These are exhibits D.IV and D.V respectively. To fortify her case she exhibited two UACE's in their originals. These are exhibits D.II & D.III. She relied on her UACE (exhibit D.III) for her nomination.

The Petitioner's case on the other hand is mainly based on unsubstantiated allegations. There is no reliable evidence that there exists another person by the name of Lydia Nyago. She never led any evidence to substantiate the allegation that such a lady was a pupil at Nansololo Primary School. No evidence that she ever studied at Wanyange Girls SS was endeavoured. The whole case was founded on sheer allegations, falsehood, mere arguments especially with respect to the 1st Respondent's application form. It is also based on speculation and conjecture.

I find, in such circumstances, that the Petitioner failed to prove her case on a balance of probabilities. On the other hand the 1st Respondent, with cogent evidence, proved that she was qualified to contest for the elections, though she had no such burden.

From the evidence on record I have no option but to find that at the time of her nomination the 1st Respondent was qualified to be elected a Member of Parliament. This finding disposes of the 1st issue in the affirmative.

Consequently the petition is dismissed with costs to the Respondents.



V.T. ZEHURIKIZE

JUDGE

17/5/2007