

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS CAUSE. NO. 62 OF 2015

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE NATIONAL COUNCIL FOR HIGHER EDUCATION (NCHE).

MWIRU PAUL.....APPLICANT  
VERSUS

1. NATIONAL COUNCIL FOR HIGHER EDUCATION
2. UGANDA NATIONAL EXAMINATIONS BOARD
3. NATHAN SAMSON IGEME NABETA.....RESPONDENTS

BEFORE: - HON. LADY JUSTICE P. BASAZA WASSWA

RULING

[1] The Applicant brought this Application by Notice of Motion under Section 4 (11) and (12) of the Parliamentary Elections Act, No. 17 of 2005 (as amended); Sections 33 and 39 (2) of the Judicature Act Cap. 13 (as amended), Section 19 and 98 of the Civil Procedure Act, Cap 71, and O. 52 rules 1, 2, and 3 of the Civil Procedure Rules, S. I No. 71- 1. He seeks the following orders;

- a) An Order to set aside the decision of the 1<sup>st</sup> Respondent of issuing to the 3<sup>rd</sup> Respondent a certificate of completion of formal Education of Advanced Level Standard or of its equivalent, Certificate Number NCHE/ PAR/05/148, dated 24<sup>th</sup> June,

2015. Hereinafter referred to as *the impugned decision*.

- b) A permanent injunction to issue against the 3<sup>rd</sup> Respondent restraining him from using or uttering in any manner whatsoever, the said certificate of completion of formal Education of advanced Level Standard or of its Equivalent Number NCHE/PAR/05/148, issued by the 1<sup>st</sup> Respondent. Hereinafter referred to as Certificate No. NCHE/PAR/05/148.
- c) A permanent injunction to issue against the 1<sup>st</sup> Respondent, restraining it from further issuance of any certificate of completion of Formal Education of Advanced Level Standard or its Equivalent solely based on the academic qualifications always submitted by the 3<sup>rd</sup> Respondent.
- d) An order of payment of punitive, aggravated and general damages to the Applicant.
- e) An order for Costs of the application against the Respondents.

### Background

[2] The undisputed facts are that Pursuant to the requirements of section 4 (1) (c), (5) & (6) of the Parliamentary Elections Act, 2005 (PEA, 2005), the 3<sup>rd</sup> Respondent who intends to stand in the upcoming national elections of 2016 for the seat of directly elected Member of Parliament for Jinja Municipality East Constituency, wrote to the 1<sup>st</sup> Respondent on 11<sup>th</sup> May 2015 seeking that the 1<sup>st</sup> Respondent issues to him a Certificate of completion of formal education of Advanced Level Standard or its Equivalent. The 3<sup>rd</sup> Respondent claims to possess three qualifications; a Uganda Certificate of Education (UCE), a High School Equivalency Certificate (HSEC) issued by the California State Board of Education and a Bachelor of Science in Business Administration (BSBA) international Business from Oklahoma State University. In consultation with the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent equated the 3<sup>rd</sup> Respondent's said qualifications with a Uganda Advanced Certificate of Education (UACE) and

granted to the 3<sup>rd</sup> Respondent Certificate No. NCHE/PAR/05/148 under section 4 (8) of the PEA, 2005.

The Applicant contends that as a registered voter and the current sitting Member of Parliament for Jinja Municipality East Constituency, he is aggrieved by the 1<sup>st</sup> Respondent's impugned decision to grant to the 3<sup>rd</sup> Respondent a Certificate of completion of formal education of Advanced Level Standard or its Equivalent (Certificate No. NCHE/PAR/05/148) and hence this appeal.

[3] The grounds relied on by the Applicant that were contained in his affidavit dated 10<sup>th</sup> November 2015 and summarized in his Notice of motion, are briefly that;

- a) The qualifications referred to in Certificate No. NCHE/PAR/05/148 are not equivalent to formal education of Advanced Level Standard in Uganda as per the benchmarks now published as Legal Notice No. 12 of 2015 and the Universities and other Tertiary Institutions (Equating of Degrees, Diplomas and certificates) Regulations, 2005, S. 184 of 2005.
- b) The 3<sup>rd</sup> Respondent has never qualified for election as a Member of Parliament for he only holds a Uganda Certificate of Education (UCE) issued by UNEB, 1989
- c) The HSEC issued by the State of California is equivalent to UAC and not to UACE. According to the benchmarks published in Legal Notice No. 12 of 2015 and of the Universities and other Tertiary Institutions (Equating of Degrees, Diplomas and certificates) Regulations, S.I 84 of 2005, for a certificate to be equated to the UACE, the Applicant must have attended a course of a minimum duration of two years under Legal Notice 12 of 2015 and of 3-6 months under S.I 84 of 2005, which standard the HSEC does not meet
- d) The 3<sup>rd</sup> Respondent attended Oklahoma State University from 11<sup>th</sup> January 1999 to 15<sup>th</sup>

December 2000, approximately two years, yet S.I 84 of 2005 provides inter alia a minimum course duration of 3 years for undergraduates thus the 3<sup>rd</sup> Respondent's BSBA does not qualify to be equated to a degree. The BSBA does not qualify to be recognized as a degree also as the 3<sup>rd</sup> Respondent was admitted on the basis of the HSEC which is equivalent to UAC and not UACE.

- e) There was non-compliance with the Law relating to the conduct and equating guidelines and the decision of the Court of Appeal in *Election Petition No. 6 of 2011 (Paul Mwiru vs. Igeme Nathan Nabeta & 2 Others)*. The impugned decision was in breach of the 1<sup>st</sup> Respondent's statutory duty of diligently vetting and equating the said qualifications and such failure tainted the process with illegality, irrationality and procedural impropriety and was therefore erroneous, invalid, ultra-vires, illegal and ought to be set aside.

[4] The 1<sup>st</sup> Respondent filed two affidavits; one in reply dated 24<sup>th</sup> November, 2015 and the other; a supplementary affidavit filed on 3<sup>rd</sup> December, 2015. Both affidavits were sworn by Professor Opuda —Asibo John, as the 1<sup>st</sup> Respondent's Executive Director. The gist of which affidavits was that;

- a) The 3<sup>rd</sup> Respondent submitted to the 1<sup>st</sup> Respondent his academic qualifications below for purposes of obtaining a Certificate of Equivalence;
- i) O' Level certificate awarded by the 2<sup>nd</sup> Respondent
  - ii) High School Equivalency certificate (HSEC) awarded by California State Board of Education.
  - iii) Bachelor of Science degree in International Business from Oklahoma State University
  - iv) HSEC / General Education Development (GED) transcripts

- v) University and college transcripts
- b) The 1<sup>st</sup> Respondent carried out actual consultation with the 2<sup>nd</sup> Respondent on the totality of the 3<sup>rd</sup> Respondent's qualifications prior to the issuance of Certificate No. NCHE/PAR/05/148 to the 3<sup>rd</sup> Respondent. A letter dated 14<sup>th</sup> May 2015 from the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent and a reply thereto dated 12<sup>th</sup> June 2015 from the latter to the former were attached.
- c) By a letter dated 6<sup>th</sup> November, 2015, the 1<sup>st</sup> Respondent replied to the Applicant's letter of 13<sup>th</sup> October, 2015 by which the Applicant requested for details pertaining to the issuance by the 1<sup>st</sup> Respondent of Certificate No. NCHE/PAR/05/148 to the 3<sup>rd</sup> Respondent.
- d) According to the electoral laws, the mandate to equate qualifications is the preserve of the 1<sup>st</sup> Respondent in consultation with the 2<sup>nd</sup> Respondent.
- e) The Equating of Degrees, Diplomas and Certificates Regulations of 2005 were revoked and have no force of law.
- f) The 1<sup>st</sup> Respondent followed due process and exercised due diligence in executing its mandate before issuing Certificate No. NCHE/PAR/05/148 to the 3<sup>rd</sup> Respondent.
- g) On 6<sup>th</sup> January 2006, the 1<sup>st</sup> Respondent had received official verification from Oklahoma State University that the 3<sup>rd</sup> Respondent had studied there and was awarded a Bachelor of Science (BSBA) degree in International Business
- h) The 1<sup>st</sup> Respondent equated the 3<sup>rd</sup> Respondent's (BSBA) degree in International Business to a degree having considered the transfer credits from Los Angeles City College and Tulsa College.
- i) The duration of the 3<sup>rd</sup> Respondent's degree is eleven months and not one and a half years
- j) After receiving a complaint from the Applicant dated 13<sup>th</sup> October, 2015, the 1<sup>st</sup> Respondent;
- i) Re-examined the documents leading to the grant of the HSEC
  - ii) On 14<sup>th</sup> October, 2015 inquired about the cumulative grade point average of the transfer

credits from Oklahoma State University on 16<sup>th</sup> October, 2015, Oklahoma State University sent communication on the cumulative grade point average of transfer credits that it relied on to admit the 3<sup>rd</sup> Respondent

- iii) On 19<sup>th</sup> October, 2015 the 1<sup>st</sup> Respondent sent an email to the High School Equivalency Office which directed the 1<sup>st</sup> Respondent to the official verification website for the HSEC, which it obtained
- iv) Having been satisfied that the 3<sup>rd</sup> Respondent's qualifications were authentic, there was no need for the 1<sup>st</sup> Respondent to revoke *Certificate No.* NCHE/PAR/05/148.
- k) The 1<sup>st</sup> Respondent issued *Certificate No.* NCHE/PAR/05/148 to the 3<sup>rd</sup> Respondent on 24<sup>th</sup> June 2015 before the Benchmarks referred to in paragraph of the Applicant's affidavit were gazetted on 23<sup>rd</sup> October, 2015 l) The decision of the Court of Appeal in Election Petition No. 6 of 2011 was totally misconceived by the Applicant. There was no evidence adduced in the judgment which nullified the 3<sup>rd</sup> Respondent's qualifications.

[5] The 2<sup>nd</sup> Respondent filed an affidavit in reply dated 27<sup>th</sup> November, 2015 sworn by Mr.

Mathew B. B. Bukenya, as it's Executive Secretary, the gist of which was that;

- a) By its letter dated 14<sup>th</sup> May, 2015, the 1<sup>st</sup> Respondent duly consulted the 2<sup>nd</sup> Respondent on the totality of the 3<sup>rd</sup> Respondents qualifications; the High School Equivalency Certificate (HSEC) from the State of California and the bachelor of Science (Business Administration) from Oklahoma State University.
- b) The 2<sup>nd</sup> Respondent did verify the authenticity of the (HSEC) and found it to be authentic. By a letter dated 12<sup>th</sup> June 2015 the 2<sup>nd</sup> Respondent wrote back to the 1<sup>st</sup> Respondent advising that the (HSEC) is equivalent to the Uganda Certificate of Education (UACE) and that the rights and privileges of a UACE holder may be accorded to the 3<sup>rd</sup> Respondent.

- c) The 2<sup>nd</sup> Respondent considered the standards established by the California State Board of Education for successful completion of tests of General Educational Development (GED) and was satisfied that they are sufficient and indeed are equivalent to UACE.
- d) Upon a detailed examination of the academic qualifications presented by the 3<sup>rd</sup> Respondent, the 2<sup>nd</sup> Respondent held the view that the HSEC was equivalent to UACE and therefore the 3<sup>rd</sup> Respondent possessed the equivalent of Advanced level standard of Education.
- e) Equating of the Bachelors of Science Degree in Business Administration by Oklahoma State University is the preserve of the 1<sup>st</sup> Respondent.
- f) Any qualification approved by the 1<sup>st</sup> Respondent in consultation with the 2<sup>nd</sup> Respondent as equivalent to UACE shall by law be recognized as equivalent to Advanced Level Standard of Education.
- g) The 2<sup>nd</sup> Respondent duly complied with the duties and obligations imposed upon it under the law and the Court of Appeal of Uganda.

[6] The 3<sup>rd</sup> Respondent filed an affidavit in reply dated 23<sup>rd</sup> November, 2015 the gist of which was that;

- a) He holds an O'level UCE certificate issued by the 2<sup>nd</sup> Respondent.
- b) He sat for and successfully completed tests of GED and was awarded a High School Equivalency Certificate (HSEC) and was subsequently admitted to Oklahoma State University where he completed and was awarded a Bachelor of Science in Business Administration International Business as per his transcript attached.
- c) All his qualifications are genuine and pass the test to qualify for the issuance of Certificate No. NCHE/PAR/05/148, and at all times he has qualified for election for

Member of Parliament.

- d) The GED he offered to be issued with HSEC tested him in the following areas: social studies, Mathematics, Science, language arts and reading, reading and writing.



- e) The HSEC was awarded to him upon meeting of the passing score requirements.
- f) The HSEC is the same as a High School diploma by many universities. The US Department of Education indicates that the High School Program assists in the acquisition of an equivalent of a High School diploma to gain post-secondary education or training.
- g) As per Wikipedia, the free online encyclopedia, the High School attendance is until the ages of 17-18 years, the same age of completion of senior six within Uganda's education system. A High school diploma or GED certificate is required for entry into university or other post-secondary programs within the USA
- h) The HSEC is equivalent to Advanced level within Uganda.
- i) He holds a Bachelor of Science in Business Administration International Business degree which is much more than the qualifications for running and being elected as a Member of Parliament in Uganda.
- j) Within Uganda, the successful sitting of a mature entry examination leads one to University.
- k) He attended Los Angeles City College, Tulsa Community College where he acquired credits which were transferred to Oklahoma State University from which he properly graduated.
- l) It is the 1<sup>st</sup> Respondent in consultation with the 2<sup>nd</sup> Respondent that has the statutory mandate to equate his qualifications, and the statutory duty of issuing Certificate No. NCHE/PAR/05/148.

[7] The Applicant filed three affidavits in rejoinder dated 25<sup>th</sup> November, 2015, @7<sup>th</sup> November 2015 and 8<sup>th</sup> December, 2015. The latter in rejoinder to the 1<sup>st</sup> Respondent's supplementary affidavit in reply. He stated briefly that;

- a) The attachments "B", "C", "D", "H" and "I" to the 1<sup>st</sup> Respondent's supplementary affidavit in reply; (the HSEC / GED transcripts and the University and college transcripts and information on the cumulative grade point average of transfer credits considered by Oklahoma University when admitting the 3<sup>rd</sup> Respondent), were never availed nor considered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents before issuing Certificate No. NCHE/PAR/05/148.
- b) At the time of the issuance of Certificate No. NCHE/PAR/05/148;
  - i) The 1<sup>st</sup> and 2<sup>nd</sup> Respondents only had in their possession the California Equivalency Certificate and that Certificate obtained after 3 %> hour tests, on subjects not known

to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents then, is equivalent to the High School in the USA (Ugandan O'level standard) not Advanced Level Standard.

- ii) There was no material provided by the 3<sup>rd</sup> Respondent to the 1<sup>st</sup> Respondent on the 3<sup>rd</sup> Respondent's admission criteria to Oklahoma State University. The 3<sup>rd</sup> Respondent has never undertaken any course of study equivalent to Advanced level standard and his degree was obtained illegally.
- c) The Equivalency tests in the GED transcript (annexture "B to the 1<sup>st</sup> Respondent's supplementary affidavit) were all done on 16<sup>th</sup> June 1991 on the most basic subjects of reading, writing, science, mathematics and social studies.
- d) The tests for the California State certificate of Equivalence of High School were allegedly done on 16 May, 1991 when the 3<sup>rd</sup> Respondent was 18 years & 7 months old at a Centre not approved by the 1<sup>st</sup> Respondent, and were done after the 1<sup>st</sup> Respondent had allegedly started studying at Los Angeles City College in September 1990.
- e) Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not carry out due diligence with the California State Board of Education on the authenticity of the Certificate of Equivalency of High School and Curriculum of the subjects covered by the tests.
- f) There are glaring discrepancies between the alleged transferred credits on the Oklahoma State University transcript and the transcript from the Los Angeles City College including non-existent subjects, different credit numbers and different dates of study and if these documents were considered a diligent analysis would have shown that the 3<sup>rd</sup> Respondent was not legible to join University.

- g) The 1<sup>st</sup> Respondent's conduct before and after issuing Certificate No. NCHE/PAR/05/148 shows that the 1<sup>st</sup> Respondent did not act rationally, carefully, diligently or fairly and that it improperly issued the said certificate.
- h) The 3<sup>rd</sup> Respondent has never sat a mature age entry examination in Uganda or elsewhere.
- i) The 3<sup>rd</sup> Respondent never provided to the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents any certificates, credits or documents relating to the admission criteria to Oklahoma State University and where not considered by the second Respondent.

[8] This application / appeal came up for hearing on 30<sup>th</sup> November, 2015 and on 14<sup>th</sup> & 15<sup>th</sup> December, 2015. The Applicant was represented by Mr. Peter Mukidi Walubiri and Mr. Edward Kyeyago, while the 1<sup>st</sup> Respondent was represented by Ms. Faridah Bukirwa and Ms. Fiona Kunihiro, the 2<sup>nd</sup> Respondent by Mr. Mathias Ssekatawa and the 3<sup>rd</sup> Respondent by Mr. Isaac Bakayana, Mr. Robert Bautu and Mr. Kassim Kigongo. On 30<sup>th</sup> November, 2015 the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' Counsel raised two preliminary objections, both of which I overruled. The First preliminary objection raised by Mr. Ssekatawa for the 2<sup>nd</sup> Respondent was to the effect that the Applicant's appeal as presented seeks no orders against the 2<sup>nd</sup> Respondent which is relevant, more as a witness than as a Party and the application should therefore be struck out as against the 2<sup>nd</sup> Respondent.

In reply the Applicant's Counsel argued that the 2<sup>nd</sup> Respondent was properly sued as a Statutory assistant to the 1<sup>st</sup> Respondent in the process of equating academic qualifications.

The 2<sup>nd</sup> Respondent is a necessary party to this suit under 0. 1 rule 10 (2) to enable court effectually and completely adjudicate upon and settle all questions involved in the suit. I overruled the arguments of the 2<sup>nd</sup> Respondent's counsel on the basis that since the 1<sup>st</sup> Respondent made the impugned decision to issue Certificate No. NCHE/PAR/05/148 to the 3<sup>rd</sup> Respondent in consultation with the 2<sup>nd</sup> Respondent, it was necessary that the 2<sup>nd</sup> Respondent was joined as a Party to assist court finally and effectually determine this appeal to avoid a multiplicity of legal proceedings. The 2<sup>nd</sup> Respondent had also not shown that it would suffer any prejudice by the said joinder.

In the 2<sup>nd</sup> Preliminary objection Mr. Bakayana and Mr. Bautu for the 3<sup>rd</sup> Respondent argued that the grounds in support of this application are all questioning the criteria used by the 1<sup>st</sup> Respondent in exercising its statutory mandate of equating the 3<sup>rd</sup> Respondent's qualifications, and are not questioning the document itself. Sections 4 (6), (7) & (8) of the PEA, 2005 as

amended confer the mandate of equating the qualifications on the 1<sup>st</sup> Respondent in Consultation with the 2<sup>nd</sup> Respondent and it is therefore the preserve of the 1<sup>st</sup> Respondent. To support their argument Counsel cited the Supreme Court cases of Gole Nicholas Davis vs. Loi Kiryapawo Election Petition Appeal No. 19 of 2007 and Attorney General vs. Tinyefuza Constitutional Appeal No. 1 of 1997.

The Applicant's Counsel; Mr. Walubiri replied that the 3<sup>rd</sup> Respondent does not have the equivalent of Advanced level Education nor a valid degree since he did not have as required under S. 4 (7) of the PEA, 2005 the minimum qualifications. He argued that what is passing off as a Degree and a certificate of equivalency, are illegalities. He cited the Gole Nicholas vs. Kiryapawo case (Supra) stating that the court did not restrict the court's inquiry into the certificate only to fraud but gives fraud as one of the circumstances that court will consider on appeal. He cited Section 4 (11) of the PEA, 2005. He further argued that the section is very broad and the court has to listen to the grievance on a case by case basis which grievance may be any legitimate concern and need not be restricted to fraud. Counsel referred to the case of Abdul Balingira Nakendo vs. Patrick Mwonda S/C Election Petition No. 09 of 2007 and argued that if everybody produced a certificate for what it purports to be, they would render the right of appeal useless.

In rejoinder Mr. Bakayana argued that the Applicant is bound by its pleadings and in its Affidavit in support the Applicant is questioning the procedure of equating and seeks to substitute the 1<sup>st</sup> Respondent for himself. That duty is conferred on the 1<sup>st</sup> Respondent and not on the Applicant nor on this court.

I overruled this 2<sup>nd</sup> preliminary objection on the basis that Articles 80 (1) (c) and 86 (1) of the Constitution and Section 4 (11) of the PEA Act, 2005 (as Amended) give this court jurisdiction to inquire into any question as to whether a person has been validly elected, which includes any question as to the validity of the qualification that was equated by the 1<sup>st</sup> Respondent. I held that this court has the requisite jurisdiction to entertain this appeal as it is not the equating by the 1<sup>st</sup> Respondent of the 3<sup>rd</sup> Respondent's qualifications that the Applicant is questioning in this appeal, but rather the Applicant is questioning the validity of the qualifications that were equated. I was guided by the Judgment of Katureebe JSC (as he then was) in the Gole Nicholas vs. Loi Kiryapawo case (supra) I allowed the Applicant to proceed with his appeal.

## Submissions of all Counsel

[9] Counsel for the Applicant; Mr. Walubiri made very spirited and lengthy submissions. His submissions are summarized as follows;

1. The Applicant is a registered voter, a Member of Parliament and an aspiring candidate and is aggrieved that it would not be free and fair for him to stand with a person not qualified to stand for a seat of Parliament in violation of Article 80 (1) (c) of the Constitution. Counsel relied on Abdu Katuntu and Anor vs. MTN Uganda Ltd and 6 Others- HCCS No. 248 of 2012.
2. The 3<sup>rd</sup> Respondent's BSBA degree and his certificate of HSEC are illegalities. The BSBA degree does not qualify to be equated as an equivalent degree as it was based on the HSEC which is equivalent to a high school diploma and O 'level in Uganda and not to the Advanced level standard required as the minimum standard under section 4 (7) of the PEA Act. His BSBA degree was also not obtained for the minimum of three years.

[10] The 3<sup>rd</sup> Respondents' Counsel; Mr. Bakayana, Mr. Bautu and Mr. Kigongo submitted in reply that;

1. The 1<sup>st</sup> Respondent (NCHE) has the statutory authority and duty to determine the equivalence of all type of academic and professional qualifications; degrees, Diplomas and certificates obtained elsewhere. The proper person to deal with these certificates is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Counsel cited Sections 4 (5), (6) of the PEA, 2005 and Section 5 (K) of the Universities and other Tertiary Institutions Act No. 12 of 2015 (U&I) Act 2015, and Section 4 (1) of the National Examinations Board Act (UNEB Act) Cap. 137). Counsel also relied on Section 101- 103 of the CPA and the Judgments of the Supreme Court and other judgments in;

- a) *Gole Nicholas vs. Davis (supra)*
  - b) *NCHE vs. Anifa Kawooya (supra)*
  - c) *Abdul Nakendo vs. Mwondha (supra)*
  - d) *Threeways Shipping Services Group Ltd vs. MTN Uganda Ltd Misc. Applic. No. 584 of 2013*
  - e) *Fem Construction Co. Ltd vs. Nkululeko Karanja Tanzania H/ C Civil Appeal No. 168 of 2005*
2. The Applicant's application is premised on S. I No. 84 of 2005 and legal Notice No. 12 of 2015. Legal Notice No. 84 of 2005 was revoked by S.I 62 of 2007 and legal Notice No. 12 of 2015 does not apply as the Law does not act retrospectively. Parties are bound by their pleadings and the Applicant has not made any amendment to his pleadings.
  3. The guidelines for equating qualifications are contained in S. I No. 62 of 2007; the Universities and other Tertiary Institutions (Equating of Degrees, Diplomas and other Certificates) Regulations. All these guidelines were complied with by the 1<sup>st</sup> Respondent. The Applicant's submissions on annexure RB 2 (an internet sourced description of the education system of the USA) was misdirected. The USA education system is not the same as Uganda's Education System.
  4. Reference to the Education (Pre-primary, Primary and Post Primary) Act, 2008 by the Applicant is misconceived as it is only applicable within Uganda. The 3<sup>rd</sup> Respondent's qualifications were obtained outside Uganda and the said Act does not apply.
  5. The procedure by Notice of Motion is wrong. The Applicant must have adopted the procedure set out under section 4 (12) to bring the matter to this court. No rules were made under section 4 (12), and were made under section 93 of the PEA Act and section 15 of the Election Commission Act. Any complaints or grievance under the PEA Act or the Election Commissions Act should be by way of a Petition or by ordinary Plaint as regulated by those sections. Counsel *cited Monsukhal Ramji Karia vs. Attorney General & Makerere Properties*

6. This application falls short of the requirements to particularize allegations as provided under 0. 6 rule 3 of the CPR. Counsel cited Charles Nsubuga vs. Engineer B. Kiggundo Misc. Cause No. 148 of 2015.
7. The Applicant is not an aggrieved party.
8. The Applicant ought to have lodged a complaint with the National Election Commission under section 15 of the Election Commission Act and if dissatisfied, he would then appeal to the High Court. Counsel relied on the Kiryapawo case (supra). The Application before this court is premature, incompetent and should be struck out.

[11] The 2<sup>nd</sup> Respondent's Counsel; Mr. Ssekatawa submitted in reply that;

1. The preserve of the 1<sup>st</sup> Respondent is to equate qualifications over and above A 'Level. The 2<sup>nd</sup> Respondent stopped at doing the due diligence in respect of the certificate of equivalence submitted by the 3<sup>rd</sup> Respondent. The 2<sup>nd</sup> Respondent does not examine beyond "A" level.
2. The 1<sup>st</sup> Respondent sought the views of the 2<sup>nd</sup> Respondent and complied with the duty for consultation under section 4 (5) & (6) of the PE Act. The 2<sup>nd</sup> Respondent is only a resource person to be consulted. The 2<sup>nd</sup> Respondent makes no decision and was wrongly joined to these proceedings.
3. The antidote ought to have been evidence by way of affidavit from a body created by Cap. 135 "the National Curriculum Centre' (NCC). The NCC is responsible for

curricular and related materials for various levels of Education. The courts should not be used to fight Political Competition.

4. The procedure used in this application is fatally flawed. The procedure is by way of a Petition and not the way it is brought as stated in Constitutional Appeal No. 04 of 2011 Hanifa Kawooya and NCHE
5. The Applicant has not shown that the 2<sup>nd</sup> Respondent acted unreasonably or without due diligence.

[12] The 1<sup>st</sup> Respondents' Counsel; Ms Fiona Kunihira and Ms. Faridah Bukirwa largely repeated elements already raised by the 3<sup>rd</sup> and 2<sup>nd</sup> Respondents' Counsel. They added that;

1. The Applicant's allegations on the authenticity of the 3<sup>rd</sup> Respondent's qualifications are not backed by any evidence to discredit the authenticity of the 3<sup>rd</sup> Respondent's qualifications.
2. The provisions of section 5 (b) (c) of the PEA, 2005 apply to the 3<sup>rd</sup> Respondent who has foreign qualifications after he completed the GED tests and a Bachelor of Science degree from Oklahoma University.
3. NCHE has the mandate under s. 4 (6) of the PE Act, 2005 and section 4 under section 5 (k) of the Universities and other Tertiary Institutions Act No. 7 of 2001, NCHE has the mandate to determine the equivalence of degrees, diplomas and certificates obtained elsewhere. The Applicant has no mandate to equate.
4. It is not the duration but the content which was found to be satisfactory by the 1<sup>st</sup> Respondent in consultation with the 2<sup>nd</sup> Respondent that the 3<sup>rd</sup> Respondent HSEC was equivalent to Advanced level education.
5. Legal Notice No. 12 of 2015 was only gazetted on 23<sup>rd</sup> October 2015 and is not applicable to the present application. There are different types of certificates provided for under those benchmarks of varying durations.
6. NCHE was rational conscious and followed due process and exercised due diligence before issuing Certificate No. NCHE/PAR/05/148. NCHE inquired from the High School Equivalency Office, and it is within the preserve of NCHE to contact reliable sources from abroad.



[13] The Applicant's Counsel argued in rejoinder that;

1. This application is not res Judicata.
2. On procedure for appeals under Section 4 (11) of the PEA, 2005, no rules have been made under section 4 (12). Where no rules are made, a party is allowed to use any available means to access court and even if the wrong procedure is used, the court as mandated by Article 126 (2) (e) of the Constitution should entertain the matter unless injustice shall be occasioned by the procedure adopted. To support his proposition Counsel relied on the following cases;
  - i) *Mohan M. Kiwanuka vs. Asha Chand SCCA No. 14 of 2002*
  - ii) *Charles Harry Twagira (supra)*
  - iii) *General Parts (U) Ltd vs. NPART C/A No. 9 of 2005 at pages 10 & 12*
3. The Applicant disclosed sources of his information from a particular website, which is knowledge acquired from a known and disclosed source. The 3<sup>rd</sup> Respondent availed himself of the same and other internet sources and made extensive use of that material including annexure "RB 2" to the Applicant's affidavit in rejoinder. NCHE too relied on internet sources.
4. Jurisdiction of the court under section 4 (11) of the PEA, 2005 is set out in the *Abdul Nakendo case (supra)*. The 1<sup>st</sup> Respondent's mandate is subject to the scrutiny by this Court.
5. The 3<sup>rd</sup> Respondent was admitted in Los Angeles Community College in 1990 September before even doing the controversial tests in May 1991. What he had at the time was an O' level certificate from Busoga College Mwiri, he can't be said to have fall under section 4 (7) of the Parliamentary Elections Act
6. Parliament made specific legislation on elections under section 4 (5), (6) and (7) of the PEA, 2005 and not Section 5 (k) of the Universities and other Tertiary Institutions Act.

#### Decision of court

[14] Before delving into the merits of this application, I will first deal with the questions raised

by the Respondents' Counsel on the following;

- a) Whether the Applicant has locus to bring this application?
- b) Whether this application is res judicata?
- c) *Whether legal Notice No. 12 of 2015: the Universities and Other Tertiary Institutions (Benchmarks for Verifying, Determining and Recognizing Academic Qualifications as a person holding a minimum qualification of Advanced Level or its Equivalent) Notice, 2015, is applicable to this application?*
- d) Whether the procedure adopted by the Applicant by Notice of motion is proper?

[15] Does the Applicant have locus to bring this application? Section 4 (11) of the PEA Act, 2005 provides that;

*"A person aggrieved by the grant or refusal to grant a certificate by National Council for Higher Education under this section is entitled to appeal to the High Court against the decision and the High Court may confirm, modify or reverse the decision"*

By virtue of this section, the question therefore is whether or not the Applicant is an aggrieved person to entitle him to bring this application? An aggrieved person is defined in Black's Law Dictionary, 9<sup>th</sup> ed. at pages 77 and 1232 as;

*"a person having legal rights that are adversely affected; having been harmed by an infringement of legal rights"*.

Legal rights are defined in Black's Law Dictionary, 9<sup>th</sup> ed. at pages 979 and 1436 as;

*"1. That which is proper under law, morality, or ethics, know right from wrong"*

*2. Something that is due to a person by just claim, legal guarantee, or moral principle, the right to liberty"*

In his affidavits, the Applicant contends that he brings this suit in his capacity as a registered voter and the current sitting Member of Parliament for Jinja Municipality East Constituency. While the 3<sup>rd</sup> Respondent contends in paragraph 6 and annexure N2 of his affidavit in reply that he intends to participate in the upcoming National Elections of 2016 for the same seat of

Member of Parliament for Jinja Municipality East Constituency. I hold the view that as a registered voter and citizen of Uganda, (refer to the Applicant's National ID card as annexure "A" to his affidavit in support) the Applicant has a Constitutional right and duty to defend the Constitution of the Republic of Uganda (*Article 3 (4) of the 1995 Constitution*). He also clearly has an interest in the affairs of Jinja Municipality East Constituency as the current sitting Member of Parliament. The latter is underpinned by his inherent Civic rights that are protected under the law. It therefore follows that since the Applicant contends that the 3<sup>rd</sup> Respondent is not qualified to be a Member of Parliament in contravention of *Article 80 (1) (c) of the Constitution of Uganda* as alledged, then indeed he qualifies to be a person aggrieved by the 1<sup>st</sup> Respondent's impugned decision under section 4 (11) of the PEA Act, 2005. I accordingly find that the Applicant has the requisite locus.

[16] Whether this application is res judicata?

The 3<sup>rd</sup> Respondents' Counsel Mr. Bakayana and Mr. Bautu submitted that this matter is res judicata. They argued that the matter has been the subject of litigation in Election Petition Appeal No. 6 of 2011. They cited page 10 of the judgment in that Election Petition Appeal and argued that the Applicant by his Counsel conceded that the validity of the certificates were not in issue. Mr. Kyazze was the Applicant's agent in the said Election Petition Appeal and under *paragraph 1603 of Halsbury's Laws of England 4<sup>th</sup> Ed. Vol. 16* a representation made by an agent would be as effectual as if made by his principal. They further argued that the Applicant is purporting to appeal against the 1<sup>st</sup> Respondent's decision basing on the qualifications of the 3<sup>rd</sup> Respondent which were in issue in the previous suit. In support off their submissions, they cited *Boutique Shazam Ltd vs. Norrattam Bhatta & Anor C / A Civil Appeal No. 36 of 2007*

Mr. Ssekatawa for the 2<sup>nd</sup> Respondent supplemented the arguments of the 3<sup>rd</sup> Respondents' Counsel on this point. He argued that there is a glaring admission by the Applicant in Election Petition No. 6 of 2011 (supra), who did not seek to challenge the validity of the 3<sup>rd</sup> Respondent's qualifications, and attacked the aspect of consultation. He submitted that it is res-judicata and the Applicant is estopped from turning around to attack the 3<sup>rd</sup> Respondent's qualifications after having made an admission on record.

In answer, Mr. Walubiri submitted that this application is not res Judicata. He argued that it is a new cause of action. He also argued that a new right of appeal arises for each election, the academic qualifications have to be equated.

[17] The doctrine of res judicata is embodied in section 7 of the Civil Procedure Act, Cap

71 which provides that;

*“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court. ”*

Explanation 3 under section 7 of the CPA provides that:

*“The matter above referred to must in the former suit have been alleged and either denied or admitted, expressly or impliedly, by the other”*

The court of appeal in Posiyano Semakula vs. Susane Magala & Others, 1993 KALR at 213 held that the doctrine of res judicata is a fundamental doctrine of all courts that there must be an end to litigation. Justice requires that every matter should be once fairly tried and having been tried once, all litigation about it should be concluded forever between the parties. The test for deciding whether a suit is res judicata, is whether the Plaintiff in the subsequent suit is trying to bring before court in another way in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which have been adjudicated upon. If so, the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time. (Emphasis added)

The Court of Appeal in Maniraguha vs. Nkundive-Civil Appeal No. 23 of 2005 [2014] UGCA 1, followed the decision in the Ponsivano Semakula case (supra) and quoted what the Justices of Appeal said therein;

*“The Privy Council ruled that to apply the law of estoppels by judgment, the judgment must be looked at; the Decree is usually insufficient for showing what had been heard and finally decided..The Indian authorities are in conformity with English law of this matter, Halsbury’s Laws of England (3<sup>rd</sup> Edition) para. 388:*

*“In order to ascertain what was in issue between the parties in the earlier proceedings the judgment itself must of course be looked at and the verdict, if any, on which it is founded: and where there have been pleadings, these should also be examined being in fact part of the record”*

[18] I have carefully looked at the judgment in Election Appeal No. 6 of 2011 (supra). Five issues were framed in the lower court. Issue No. 1 was recorded as;

*“\_Whether the 1<sup>st</sup> Respondent was at the time of his nomination and election possessed of the minimum academic qualifications for election as Member of Parliament”.*

This issue was, like all the other issues in the lower court, answered in the negative and the petition was dismissed. On appeal, eight issues were agreed upon by the parties and of which issue 4 and 6 are relevant in determining the question of res judicata now before me. Issues 4 and 6 were framed as follows;

Issue 4:

*“Whether the learned trial Judge erred in law and fact when she held that the 1<sup>st</sup> Respondent was possessed with minimum academic qualifications for nomination and election as a Member of Parliament based on the certificate of Advanced level study or its equivalent dated 4<sup>th</sup> August, 2010 issued to him by the 3<sup>rd</sup> Respondent”*

Issue 6:

*“Whether the learned trial Judge erred in law and fact when she held that the elections for Member of Parliament of Jinja Municipality East was subsequently held in*

*accordance with electoral laws and any non-compliance did not affect the elections in a substantial manner”*

Mr. Kyazze for the Appellant; Paul Mwiru, who is also the Applicant in this case, submitted on the 1<sup>st</sup> Respondent’s academic qualifications, that the concern of the Appellant is not that the certificates were not genuine, but that they were not equated by NCHE in consultation with UNEB. Mr. Wakida for the 3<sup>rd</sup> Respondent (NCHE) argued that Mr. Igeme Nabeta the 1<sup>st</sup> Respondent therein, presented to NCHE a certificate of High School equivalency issued by the State of California and a Degree of Bachelors of Science in Business Administration by Oklahoma State University. He claimed that UNEB was given sufficient information and it cleared the 1<sup>st</sup> Respondent.

In her Judgment, Byamugisha, JA disagreeing with the trial Judge, held that a general inquiry doesn’t satisfy the requirements of section 4 (6) of the PEA, 2005. The evidence on record proved that there was no consultation between UNEB and NCHE before the issuance of the certificate dated 4<sup>th</sup> August, 2010. The only inquiry made was about the authenticity of the 1<sup>st</sup> Respondent’s O’level certificate to which UNEB replied it was genuine. No other evidence showed that UNEB participated in the equating exercise.

[19] I hold the view that although the Court of Appeal in Election Petition Appeal No. 6 of 2011 (supra) held that the learned trial Judge erred when she held that the 1<sup>st</sup> Respondent was possessed with minimum academic qualifications for nomination and elections, that finding was based on the failure by NCHE to consult UNEB as required under section 4 (6) of the PEA, 2005. Both in the lower court and in the court of appeal there was neither an attack by the Applicant on the genuineness or validity of the academic qualifications of the 1<sup>st</sup> Respondent (Mr. Igeme Nabeta), nor was there an assessment of the said qualifications by the courts. In these circumstances, I find that this application is not res judicata. The allegations by the Applicant and issues between the parties in the earlier proceedings; Election Appeal No. 6 of 2011 (supra), were different from this application and the judgment and verdict in that case based on inter alia the issue of absence of consultation between NCHE and UNEB, will substantially differ from the ruling in the present matter which is based on the validity of the 3<sup>rd</sup> Respondent’s (Mr. Igeme Nabeta’s) academic qualifications.

[20] Whether Legal Notice No. 12 of 2015; the Universities and Other Tertiary Institutions (Benchmarks for Verifying, Determining and Recognizing Academic Qualifications as a person holding a minimum qualification of Advanced Level or its Equivalent) Notice, 2015 is applicable to this application?

The relevant law governing this question is sections 14 & 17 of the Interpretation Act Cap. 3. Sections 14 & 17(1), (2) & (3) of the Interpretation Act provide that;

Sec. 14

*“ Where any Act confers on the President, a Minister or any other authority, a power to make or a power exercisable by making proclamations, rules, regulations, byelaws, statutory orders or statutory instruments, any document by which that power is exercised shall be known as a statutory instrument, and the provisions of this Act shall apply accordingly”*

Sec. 17

- (1) *“Subject to this section,*
- (a) the commencement of a statutory instrument shall be such date as is provided in or under the instrument or, where no date is so provided, the date of its publication as notified in the Gazette;
- (b) every statutory instrument shall be deemed to come into force immediately on the expiration of the day next preceding its commencement.
- (2) *“A statutory instrument may be made to operate retrospectively to any date which is not earlier than the commencement of the Act under which the instrument is made.*
- (3) *Nothing in this section shall be deemed to empower the making of a statutory instrument so as to make a person liable to any penalty in respect of any act committed before the date on which the instrument was published in the Gazette...”.*

My understanding of these provisions is that since NCHE is an authority created by Statute; (the Universities and Other Tertiary Institutions Act, 2001) and since NCHE has power under section 5 and 6 of the same Statute to make regulations in respect of minimum requirements for admission of persons in the different types of institutions of Higher Education, Legal Notice No. 12 of 2015 made by NCHE under this Act, therefore qualifies under Section 14 of the Interpretation Act to be a Statutory Instrument.

Although Legal Notice No. 12 of 2015 was issued on 18<sup>th</sup> September, 2015, by virtue of section 17 (2) of the Interpretation Act, it can be made to operate retrospectively, though not earlier than 6<sup>th</sup> April, 2001 when the Parent Act commenced. I hold therefore that Legal Notice No. 12 of 2015 is applicable to this application.

[21] Whether the procedure adopted by the Applicant in bringing this application by notice of motion was proper?

I fully agree with the submissions of Mr. Walubiri on this point, that no rules have been made under section 4 (12) of the PEA, 2005 for Appeals under that Act and that where no rules are made, a party is allowed to use any available means to access court and even if the wrong procedure is used, the court as mandated by Article 126 (2) (e) of the Constitution should entertain the matter unless injustice shall be occasioned by the procedure adopted.

I see no injustice or prejudice against the Respondents by the procedure adopted by the Applicant. Rules of procedure are only meant to assist courts in the administration of justice and cannot overshadow the Courts' duty and mandate to adjudicate over cases.

[22] I will now turn to the merits of this appeal. The main issue for my determination is; whether the grounds in support of the Applicant's appeal are sufficient to warrant this court to set aside the 1<sup>st</sup> Respondent's impugned decision and grant to the Applicant the other reliefs sought? To determine this question, there are two other questions that must be determined;



- a) *Whether court can interfere with the mandate of the 1<sup>st</sup> Respondent of equating the 3<sup>rd</sup> Respondent's qualifications with UACE?*
- b) *Whether the qualifications of the 3<sup>rd</sup> Respondent are valid / legitimate?*

[24] *Whether court can interfere with the mandate of the 1<sup>st</sup> Respondent of equating the 3<sup>rd</sup> Respondent's qualifications with UACE?*

The 1<sup>st</sup> Respondent issued a certificate of completion of formal education of advanced level standard or its equivalent (Certificate No. NCHE/PAR/05/148) to the 3<sup>rd</sup> Respondent under Section 4 (8) of the PEA, 2005. The wording of Certificate No. NCHE / PAR/05/148 is as follows:

*"I certify that IGEME SAMSON NATHAN NABETA, who was born on the 27/09/1972, has satisfied the National Council for Higher Education in consultation with Uganda National Examinations Board that he has completed formal Education of advanced level standard or its equivalent, in that he holds the following qualification/s:*

*Bachelor of Science (Business Administration), Oklahoma State University, 2000  
High School Certificate, State of California, 1991 Uganda Certificate of Education,  
UNEB, 1989 Executive Director  
National Council for Higher Education 24<sup>th</sup> -06- 2015"*

The Applicant contends in his appeal (see ground No. 2 in his notice of motion) that the qualifications referred to in Certificate No. NCHE / PAR/05/148 are not equivalent to formal Education of Advanced Level Standard in Uganda. On the other hand, the Respondents contend that NCHE considered the 3<sup>rd</sup> Respondent's qualifications and was satisfied that the 3<sup>rd</sup> Respondent has the equivalent of UACE. They also contend that according to the Electoral laws, the mandate to equate qualifications is the preserve of NCHE in consultation with the 2<sup>nd</sup> Respondent.

[25] I must quickly clarify here that this question was already determined as shown earlier in this ruling. It was raised by the 2<sup>nd</sup> Respondent by way of a preliminary objection and I overruled his objection. I held that Articles 80 (1) (c) and 86 (1) of the Constitution and Section 4 (11) of the

PEA, 2005 (as Amended) give this court jurisdiction to inquire into any question as to whether a person has been validly elected, which includes any question as to the validity of the qualification that was equated by the 1<sup>st</sup> Respondent. I further held that this court has the requisite jurisdiction to entertain this appeal as it is not the equating by the 1<sup>st</sup> Respondent of the 3<sup>rd</sup> Respondent's qualifications that the Applicant is questioning in this appeal, but rather the Applicant is questioning the validity of the qualifications that were equated. I was guided by the Judgment of Katureebe JSC (as he then was) in the Gole Nicholas vs. Loi Kiryapawo case (supra).

To expound more on this question, I will point out more detail in the Gole Nicholas vs. Loi Kiryapawo case (supra) and other relevant cases. In the Gole Nicholas vs. Loi Kiryapawo case (supra) NCHE issued a certificate of equivalence based on the Respondent's diploma in management studies from Huron University. The Appellant at the trial in the High court contended that the Respondent's said Diploma from Huron University was based on a diploma in Animal Husbandry which was forged. The trial Judge held that the Diploma in Animal Husbandry was in fact forged and found that the Respondent did not possess valid academic qualifications. The Court of Appeal reversed the High Court decision, holding that the certificate of equivalence issued by NCHE had been based on the Diploma in management studies and not on the impugned Diploma in Animal Husbandry. The Supreme Court upheld the decision of the court of appeal. In his Judgment, Katureebe JSC (as he then was) stated thus:

*“...the question to be answered is whether after nomination and election if evidence were found that in fact the academic qualification upon which the certificate of equivalence had been based were non-existent or fraudulent, the court would be prevented from inquiring into the validity of such qualification and therefore the validity of the election of the person concerned, in my view, certainly Not. IF NCHE equates valid qualifications, then courts of law may not interfere with its decision, but where the certificate it purported to equate is what is being challenged, then the High court has power to inquire into that question. It is not the equating which is being inquired into, but the validity of the qualifications that were equated” (Emphasis added)*

Still in the same Gole Nicholas vs. Loi Kiryapawo case (supra), in his Judgment J.N. Mulenga JSC (RIP) stated thus;

*“The certificate issued by NCHE only establishes that the questioned qualification is*

*equivalent to the required qualification. It is not the academic certificate required. If the certificate or diploma held is for any reason other than equivalence alleged to be illegitimate, it is not protected by the certificate of equivalence issued by NCHE. In investigating the alledged illegitimacy therefore, the court is not usurping the function of NCHE*” (Emphasis added).

In another case; Election Petition No. 09 of 2007 - Abdul Balingira Nakendo vs. Patrick Mwondha, Counsel for the Appellant made the same argument that court had no jurisdiction to interfere in the decision of NCHE. The Respondent’s Counsel argued that court had the jurisdiction, the Appellant had been nominated on the basis of the certificate of Equivalence issued by NCHE which in turn was based on certificates that were not genuine which were presented to it by the Appellant from the Uganda Police Force. The court of Appeal affirmed the finding of the trial Judge and in her Judgment Mpagi-Bahigeine, JA stated that;

*“both certificates do tell blatant lies about themselves”.*

The Supreme Court agreed with the judgment of the lower courts and in his judgment; Katureebe JSC (as he then was) stated that;

*“...the court has power to hear and determine a petition where it is alleged that a person was not qualified for election on the grounds that the papers he presented in order to obtain a certificate of equivalence for nomination purposes were NOT valid. The allegations if proved to the satisfaction of the court, would go to the very root of the process leading to his nomination and subsequent election. It is a legitimate question that the court must inquire into...” (Emphasis added)*

It is trite from these authorities among numerous other authorities that the courts have no jurisdiction to interfere with the equating mandate by NCHE under sections 4 (6) of the PEA, 2005 and 5 (k) of the Universities and other Tertiary Institutions Act, 2001. Court can only inquire into the legitimacy of the qualifications presented to NCHE.

Section 4 (6) of the PEA, 2005 provides that;

*“A person required to establish his or qualification under subsection (5) shall do so by the production of a certificate issued to him or her by the National Council for Higher Education in consultation with the Uganda National Examinations Board”*

5 (k) of the Universities and Other Tertiary Institutions Act, 2001 provides that:

*“The functions of the National Council shall be to determine the equivalence of all types of academic and professional qualifications of degrees, diplomas and certificates obtained elsewhere with those awarded by Uganda institutions of Higher Education for recognition in Uganda.*

This issue therefore is answered in the negative in part only. On the instruction of the judgments and the law cited, this Court is accordingly restricted only to the grounds relied on by the Applicant questioning the validity of the papers presented by the 3<sup>rd</sup> Respondent to NCHE that formed the basis of the grant of Certificate No. NCHE/PAR/05/148.

[26] *Whether the qualifications of the 3<sup>rd</sup> Respondent are valid / legitimate?*

The Applicant contends that the 3<sup>rd</sup> Respondent's BSBA degree obtained from Oklahoma State University and his HSEC issued by the California State Board of Education, are illegalities. Mr. Walubiri argued for the Applicant that;

- a) For a degree to be valid under section 4 (7) of the PEA, 2005, one must be admitted on the basis of A' level or its equivalent. The 3<sup>rd</sup> Respondent's BSBA degree was not obtained on the basis of the A 'level requirement stipulated under Section 4 (7) of the PEA, 2005.
- b) The 3<sup>rd</sup> Respondent's BSBA degree was not obtained for the minimum of three years. It was obtained in 1 % years and offended Legal Notice No. 12 of 2015: The Universities and Other Tertiary Institutions (Benchmarks for Verifying, Determining and Recognizing Academic Qualifications as a person holding a minimum qualification of Advanced level or its Equivalent) Notice, 2015. That when applying to equate his BSBA degree, the 3<sup>rd</sup> Respondent gave false information in annexure "J" to his affidavit in reply that he attended Oklahoma State University between 1998 and 2000. This information was false compared to the information from the said University that the 3<sup>rd</sup> Respondent attended from 11<sup>th</sup> January 1999 to 15<sup>th</sup> December, 2000 (1year and 11 months). The 3<sup>rd</sup> Respondent was not at Oklahoma University in 1998.
- c) The GED tests were done when the 3<sup>rd</sup> Respondent was only 18 years and 7 months and the Pass mark is below 50% which would not qualify him for mature entry that would require him to get 50%.

- d) The 3<sup>rd</sup> Respondent's degree transcript from Oklahoma State University has no original official seal nor signature, and would require certification. This transcript was not a transcript given to the 3<sup>rd</sup> Respondent on graduation, it is just a record of what is purported to exist in the data base of Los Angeles City College as of 19<sup>th</sup> November, 2015. It is possible with modern technology to create some form of website, form of signature. The Los Angeles transcript ought to have been issued in 1986 and not after the court proceedings and printed from the internet.
- e) The 3<sup>rd</sup> Respondent claimed to have attended at Los Angeles City College and Tulsa Community college where he got some credits that were transferred to Oklahoma State University. The said transfer of credits from Tulsa community college is not backed by a transcript, or other document. Only one transcript of the colleges referred to has been availed.
- f) The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in making the impugned decision to issue Certificate No. NCHE/PAR/05/148 acted negligently, irrationally and without due diligence. If both the transcripts from Oklahoma State University and Los Angeles Community College (annextures "C" & "D" of Prof. Opuda-Asibo's supplementary affidavit) were available to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents before making their impugned decision, a diligent perusal and analysis would have shown the glaring discrepancies between the two. Some of the subjects allegedly transferred to Oklahoma State University do not even exist on the Los Angeles Community College transcript. The other discrepancies  
are different credit numbers and dates of study that clearly show that these documents are NOT authentic, not valid documents.

[27] In answer the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' Counsel argued that:

- a) There is no evidence brought before this court to challenge or assail the original HSEC and Degree certificates of the 3<sup>rd</sup> Respondent. The Applicant has not shown that the said certificates are fraudulent or not authentic or that they were procured illegally or that the 3<sup>rd</sup> Respondent did not attend any of the institutions that he claims to have attended. The Applicant has no qualification that would confer unto him the authority to question a university. There has been no evidence from any expert on American Educational system,

nor from the National Curriculum Development Centre (NCC) in Uganda to come to sustain the Applicant's assertions. The NCC is responsible for curricular and related materials for various levels of Education. The Applicant's averments in his affidavits offend 0. 19 rule 3 of the CPR and ought to be struck out.

- b) The duration of the 3<sup>rd</sup> Respondent's BSBA degree was clarified by Oklahoma State University in annexure "L" to the Applicant's affidavit in support of his Application. Any error made by NCHE on this duration can be severed, an erroneous description does not vitiate a document. Counsel relied for this proposition on Election Petition No. 44 of 2011-Kikulunkunyu Faisal vs. Muwanga Kivumbi and Presidential Election Petition No. 1 of 2001- Kizza Besigye vs. Museveni.
- c) The transfer credits in the 3<sup>rd</sup> Respondent's transcript from Oklahoma State University were taken into consideration by the said University
- d) It is not true that the transcript from Tulsa Community College was never availed to NCHE and UNEB before the issue of Certificate No. NCHE/PAR/05/148. It is not the first time that the 3<sup>rd</sup> Respondent has submitted his academic qualifications to the 1<sup>st</sup> Respondent to be equated. On all occasions in 2010, 2011 & 2015 the 3<sup>rd</sup> Respondent has submitted his academic certificates and the 1<sup>st</sup> Respondent complied with the law and was satisfied that the 3<sup>rd</sup> Respondent had the equivalent of A 'level

[28] As a starting point, it is important to point out that the Applicant acknowledges in his affidavit dated 10<sup>th</sup> November 2015 in support of his application, particularly in paragraphs 5 and 9, that the 3<sup>rd</sup> Respondent holds a Uganda Certificate of Education (UCE) and that Oklahoma State University wrote a letter dated June 1<sup>st</sup> 2006 to NCHE certifying that the 3<sup>rd</sup> Respondent attended Oklahoma State University and earned a BSBA degree in international Business with a minor in Marketing. This letter is attached to the Applicant's own affidavit as Annexure "L".

The Applicant therefore does not dispute that these two certificates were in fact genuinely issued by the respective issuing authorities.

In respect of the 3<sup>rd</sup> Respondent's HSEC issued by the California State Board of Education, the Applicant questioned its equivalency to UACE here in Uganda but not its validity. It is needless for me to repeat here that I shall not stray into interfering with the equating mandate by NCHE

for which I have no Jurisdiction as earlier discussed. The Applicant's argument that the 3<sup>rd</sup> Respondents BSBA degree is illegal because it was not obtained on the basis of the A 'level requirement stipulated under Section 4 (7) of the PEA, 2005 is therefore not a question for this court. This position also applies to the Applicant's argument that the duration of the 3<sup>rd</sup> Respondent's BSBA was obtained in only 1year and 11 months and not three years.

[29] Be that as it may, I have studied Legal Notice No. 12 of 2015: The Universities and Other Tertiary Institutions (Benchmarks for Verifying, Determining and Recognizing Academic Qualifications as a person holding a minimum qualification of Advanced level or its Equivalent) Notice, 2015 and I find that the contents of paragraphs 9 (b) & (j) thereof that are relied on by the Applicant are not applicable to the 3<sup>rd</sup> Respondent's qualifications, the applicable paragraph is 9 (k). Paragraphs 9 (b), (j) and (k) provide respectively as follows;

*“National Council recognizes the following qualifications as equivalent to Advanced Level;*

*(b) “Mature Age Entrance Examinations Certificate awarded to a person aged at least twenty two years who has passed the mature entry examinations with*



*50% marks, by a mature entry examinations centre authorized by the National Council, which Certificate shall be valid for two years from the date of award”*

*(j) “a Certificate awarded by a competent authority that has lasted two years”*

*(k) “any other qualification approved by National Council in Consultation with the Uganda National Examinations Board as equivalent to Advanced Level”*

I find that the Applicant’s arguments about the duration of the Applicant’s BSBA degree, about his age at 18 years and 7 months when undertaking the GED tests and about the pass mark of 50 % that are founded on paragraph 9 (b) & (j) above, were merely misplaced. The relevant part of paragraph 9 is clause (k).

[30] In respect of the 3<sup>rd</sup> Respondents degree transcripts from Oklahoma State University and his transcripts from Los Angeles City College and Tulsa Community college, all the Applicant’s arguments are void of merit. With all due respect to the Applicant and his Counsel, it seems to me that the Applicant was simply on a fishing expedition, to wit; “trying everything under their sleeve and at least hoping that they may catch something, approach”

First, my own assessment of the original transcript from Oklahoma State University, which was availed to court, is that it bears an original official seal and signature.

Second, the allegation that the transcript from Los Angeles City College was not a transcript given to the 3<sup>rd</sup> Respondent on graduation and is just a record of what is

**44**

purported to exist in the data base of Los Angeles City College as of 19<sup>th</sup> November, 2015, is only wishful thinking. It is not a matter within the Applicant’s knowledge. I agree with the Respondent’s Counsel that by making such an allegation in his affidavit in rejoinder dated 8<sup>th</sup> December, 2015, the Applicant offended 0. 19 rule 3 (1) of the Civil Procedure Rules. Order 19 rule 3 (1) of the CPR provides that:

*“Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated”*

I therefore find no evidential value in the averments made by the Applicant on this point.

Third, the Applicant's arguments about the 3<sup>rd</sup> Respondent's credits transferred from Los Angeles City College and Tulsa community college to Oklahoma State University, again are matters to which the Applicant is not competent to give an opinion on or to depone to. It is a cardinal rule of evidence that opinion evidence is inadmissible except that made by an expert witness. (Sec. 43 of the Evidence Act, Cap 6) A witness like the Applicant who is neither; scientifically, professionally or technically trained / skilled in such a specialized subject such as the equating of academic qualifications, does not qualify to testify on this. I subscribe to the position taken by Butagira Ag. J (as he then was), in Charles Kamywa vs. Arua Motor Dealers' Ltd 1977 HCB at 133 when he held that;

*“No person should be allowed to give evidence as an expert witness unless his profession or course of study gives him opportunity. However, it is for the Judge to determine whether the witness has undergone such a course of special study or experience as will render him an expert in a particular subject and it is necessary for the expertise to have been acquired professionally”*

I have notwithstanding the above, carefully studied the said transcripts. I find that all the allegations that there are discrepancies in the subjects, credit numbers and dates of study are not true. I saw no such discrepancies. I agree with the Respondents' Counsel that in the absence of evidence from any expert on the American Educational system, or from the National Curriculum Development Centre (NCC) in Uganda, the Applicant's allegations cannot be sustained.

[31] The weak, conjectural and highly speculative attacks by the Applicant on the 3<sup>rd</sup> Respondent's qualifications in the present case are distinguishable from the strong attacks made on the qualifications of Parliamentary aspirants in the cases earlier referred to. In the Gole Nicholas vs. Loi Kiryapawo case, (supra) the attack was that the Diploma in Animal Husbandry was forged, albeit not relied on by NCHE. The forgery of that Diploma in Animal Husbandry was proved by the evidence of the Principal, Bukalasa Agricultural College a one Mubiru Moses who showed court that the records obtained from the Veterinary Institute at Entebbe upon its merger with Bukalasa Agricultural College, did not show that the Respondent had been a student there nor that she had been awarded the said diploma in Animal Husbandry. In the Abdul Balingira Nakendo vs. Patrick Mwendha case (supra),

the attacks of forgery of the certificates in Police training relied on by NCHE were proved by showing that the officers indicated therein did not actually sign on the certificates, although the certificates bore their names. No authorized person from Police signed the certificates. One of the Police Officers whose names appeared on the certificates, but did not sign, and who swore an affidavit was silent on as to why he did not sign nor could he name the Officer who signed for him.

[32] *My conclusion is that the grounds in support of the Applicant's application are insufficient to warrant this court to set aside the 1<sup>st</sup> Respondent's impugned decision.*

The 1<sup>st</sup> Respondent's impugned decision is accordingly upheld. The Applicant's appeal fails. There is no need therefore for me to discuss the other reliefs sought by the Applicant as they were premised on the setting aside of the 1<sup>st</sup> Respondent's impugned decision, which has failed.

[33] In the final result, this application is dismissed with costs to all the Respondents against the Applicant.

P. BASAZA WASSWA

JUDGE

25/01/2015

48