

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, C.J., TSEKOOKO, MULENGA, KANYEIHAMBA
AND KATUREEBE, JJ.SC).

ELECTION PETITION APPEAL NO. 09 / 2007

BETWEEN

ABDUL BALINGIRA NAKENDO :::::::::::::::::::::::::::::: APPELLANT

AND

PATRICK MWONDHA :::::::::::::::::::::::::::::: RESPONDENT

[An appeal from the decision of the Court of Appeal at Kampala (Mpigi Bahigeine, Engwau and Byamugisha, JJ.A) dated 18th January, 2007 in Election Petition Appeal No. 23 of 2006]

JUDGMENT OF KATUREEBE, JSC

This is a second appeal arising from an election petition filed in the High Court by the Respondent. The High Court allowed the Petition. The appellant unsuccessfully appealed to the Court of Appeal, hence this appeal. --

The facts of the case are as follows:-

The appellant and the respondent were among the six candidates who contested for the Parliamentary seat of Bukooli North Constituency, Bugiri District, during the Parliamentary Elections that were held on 23rd February 2006. Article 80(1)(c) of the Constitution stipulates that a person is qualified to be a member of Parliament if that person has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law. The appellant had not attained A-Level standard. The National Council for Higher Education (NCHE) which is by law the body authorised to issue a certificate equivalent to A-level standard for the purpose of the said election, issued the appellant with a ***“certificate of completion of Formal Education of Advanced Level or its equivalent”*** With that certificate the appellant was nominated and his nomination was accepted by the Electoral Commission. He contested the election and was subsequently declared winner of the election and duly elected Member of Parliament for the said constituency.

The respondent thereafter petitioned the High Court, at Jinja, seeking the nullification of the election of the appellant on grounds that the appellant was not qualified for election as a member of Parliament due to lack of academic qualifications notwithstanding the fact that he had been issued with the “*certificate of Advanced Level or its equivalent*” by NCHE. The NCHE and the Electoral Commission were cited as co-respondents in that petition.

In his answer to the petition, the appellant maintained that he was duly qualified for election and that he had been validly nominated for participation in the elections. The NCHE asserted that it had carried out the necessary consultations with the Uganda National Examinations Board (UNEB) as well as the Uganda Police Training School, Kibuli, where the appellant had undertaken a Police Course and training, and found his papers authentic. Similarly the Electoral Commission denied any wrong doing, maintaining that the appellant had been duly nominated and elected to Parliament.

The learned trial Judge , in his judgment dated 25th October 2006, found that the appellant's certificates were not authentic and held that the appellant lacked the requisite academic qualifications and decided that he was not qualified to be nominated for election as a member of Parliament. The Court of Appeal upheld the decision, hence this appeal.

In this Court, the appellant filed 10 grounds of Appeal: These grounds are set out in the body of this judgment in the order in which they were argued.

In his written submissions, Mr. F. Mukasa, learned counsel for the appellant, argued the grounds of appeal as follows: Grounds 4, 6 and 7 were argued together: grounds 1,2 and 3 were also argued together; and grounds 5, 8 and 9 were also argued together. Ground 10 was argued alone. I shall deal with them in that order.

Grounds 4, 6, and 7 are worded thus:

“4. The Learned Justices of the Court of Appeal erred in law and fact when they affirmed the Trial Judge’s decision allowing the

respondent to succeed on a case that the respondent had not pleaded and proved.

6. *The Learned Justices of the Court of Appeal erred in law and fact when they allowed the Trial Judge's decision overturning the election based on mere inferences and not facts.*
7. *The Learned Justices of the Court of Appeal erred in law and fact when they affirmed the Trial Judge's declaration that the Appellant's certificates were fake, forgeries, unauthentic and nullity".*

In arguing these grounds, learned counsel submitted that the trial court had allowed the respondent to depart from his pleadings and adduced evidence to support a case that he had not pleaded. He argued that the court in its judgment departed from the respondent's case which was that the appellant had not been validly nominated and that the election should be set aside, the NCHE be found to have failed in its duty to determine whether the appellant was qualified, and that he, the respondent as runner-up should be declared winner of the election. Instead, he argued, the court wrongly decided the case on the basis of the authenticity of the Police certificate and

the duration of the Police courses. Counsel further argued that the trial Judge had further departed from the case by treating it as if it was an application to review the NCHE decision to issue the appellant with the certificate of A-level equivalent. He contended that the court should not have found that the NCHE “*acted unreasonably, in bad faith, dishonestly, irrationally, not diligently*” as none of these allegations had been pleaded or proved. He argued that court had no jurisdiction to intervene in the decision of NCHE, and to give orders which were not prayed for in the Petition. He cited the case of ***ORIENTAL BROKERS LTD –Vs- TRANSOCEAN (U) LTD, SCCA NO. 55 OF 1995*** (unreported) as authority for the proposition that a trial judge cannot introduce new issues while writing a judgment and decide a case on the basis of those issues without being addressed on those issues by the parties. Counsel further contended that the lower courts erred when they found fraud without specifying who had carried it out, when they found that the certificates were fake, forgeries and a nullity and not genuine. He submitted that there was no basis for this finding since there was no law on the signing or the mode of certificates. In any case, he argued, this had to be specifically

pleaded and proved. It could not be presumed. He cited ***OKELLO – OKELLO –Vs- UNEB (SCCA NO. 12/87)*** (unreported) to support his argument. Counsel submitted that there was evidence showing that the certificates were properly signed according to the established practices and therefore the findings were based on mere inferences and speculations and not on facts. Counsel therefore, submitted that the Court of Appeal had erred in confirming the decision of the trial court that the appellant had no qualifications to be elected a Member of Parliament.

On the other hand Mr. Abdul Katuntu, Counsel for the respondent, in opposition to the appeal, first argued grounds 1, 3, 6, 7 and 8 together and fully supported the findings and decisions of the courts below. He prefaced his argument by stating first that, ground one is the main ground of appeal and by itself would dispose of the appeal whichever way the Court decided. He contended ground 3 was irrelevant because it complained about a finding against the NCHE which was a party in the original suit, but not party to the appeal.

Counsel argued grounds 1, 3, 6, 7 and 8 together since, in his view, they were all related to the question of the qualifications of the appellant and were similar to issues 1, 2 and 3 which were agreed by both parties and framed for determination at the trial. Counsel contended further that the qualifications or non-qualification of the appellant was found as a fact by the trial Court and affirmed by the Court of Appeal. The Court found that the appellant had no qualifications at the time of nomination and therefore his nomination was null and void. Counsel urged this Court to uphold the concurrent finding of fact by the two lower Courts. Counsel argued that the appellant had no A-Level certificate and had been nominated on the basis of the certificate of equivalency issued to him by NCHE which in turn was based on the certificates presented to it by the appellant from the Uganda Police Force. Regarding the argument by counsel for the appellant that the appellant did not know the case he had to answer, Counsel pointed out that the appellant had clearly tried in his affidavit in answer to the petition to explain his qualifications in paragraphs 3, 5, 8, 9 and 10 thereof. The respondent adduced evidence to show that the appellant did not have the requisite qualifications. In his view, the

authorities cited by counsel for the appellant were distinguishable from the facts of this case. Learned counsel submitted that the courts below based their decisions on facts but not on inferences and suppositions as argued by the appellant. He submitted that court had carefully perused the certificates that were presented at the trial by the appellant himself and considered the contradictions in the evidence of the appellant. Counsel gave the example, of an affidavit sworn on 20th May 1996 by the appellant whereby he had stated that after attending Police training he had been given a certificate in Law but that it had got lost. Later, in another affidavit he claimed that that claim of a certificate in law was a mistake and he had never had such certificate. The certificates he produced were in fact issued in 2001. Counsel submitted that Court was right to treat the appellant as an unreliable witness given the lies and contradictions in his evidence. Counsel further submitted that the lower courts were right to reject the evidence of Twaruhukwa the Police Officer who had earlier written a letter to say that the persons who had signed on the certificates of the appellant had not been authorized officers, only to attempt to change

this in his evidence in Court. In his view court was correct to conclude that the officer was misleading the court.

As I pointed out earlier, I intend to deal with the grounds in the order they were argued by counsel for the appellant. This is because the grounds and submissions thereon overlap and are quite intertwined. The contention in the 4th ground is that the two courts below allowed the respondent to succeed on a case he had not pleaded and proved. I would point out that an appeal to this Court should be based on objections to the decision of the Court of Appeal. The objection raised in ground 4 was not raised in, and decided by, the Court of Appeal.

Be that as it may, it is clear from the petition that the respondent's case was ***“that the said Balingirira Abdul Nakendo was at the time of his election not qualified for election as a Member of Parliament.”*** The petition sought declarations, inter alia, that the respondent ***“was not validly nominated and could not therefore participate in the election.”*** It prayed

that the election of the appellant ***“be set aside as having been null and void.”*** I am of the view that the respondent’s case was sufficiently pleaded. The appellant responded to it. Both parties called evidence on it upon which the court based its decision. Accordingly I find no merit in ground 4 and it must fail.

Ground 6 alleges that the trial court’s decision to overturn the election was based on mere inferences and not facts, whereas Ground 7 alleges that the trial Judge was wrong to declare that the appellant’s certificates were fake, forgeries, unauthentic and nullity. Both grounds accuse the Court of Appeal of error in affirming these findings and decisions of the trial court.

The respondent in his affidavit supporting the petition alleged a number of anomalies in the certificates that the appellant presented to the NCHE, which, in his view, showed that the appellant did not have the qualifications. The wording of the certificate of equivalency issued by NCHE leaves no doubt that it was issued on the basis of the certificates proffered by the appellant.

It states:-

“I certify that NAKENDO, A.B. who was born on the 24/06/1946, has satisfied the National Council for Higher Education that he has completed formal education of advanced level standard or its equivalent, in that he holds the following qualification/s:

Certificate in Special Branch Course, Special Branch Training School Nairobi Police Training School, 1971.

Certificate in Basic Police Training, Kibuli Training School, 1970., East African Certificate of Education EAEC, 1968”. (emphasis added).

There must be a basic presumption here that the above certificates must be genuine, and duly issued by the bodies named therein. If it were proved that those certificates upon which NCHE based its decision to issue its own certificate were not genuine, then it would follow that the NCHE Certificate would be a nullity as the person would not have the necessary qualifications.

In the trial court, evidence was adduced both oral and by way of affidavit. The certificates were subjected to close scrutiny, as was the oral evidence. The first point to note was that the certificate in Special Branch Course, Special Branch Training School Nairobi, 1971, was actually not issued by that school, but by the Kibuli Police Training School of the Uganda Police Force. There were material contradictions in the evidence of the witness Twaruhukwa who testified as to whether the certificates purportedly issued by the Uganda Police Force were signed by authorized officers. Earlier, in answer to a firm of lawyers concerning the genuineness of the certificates purportedly issued by the Uganda Police Force, this same officer had written a letter (exhibit X) in which he stated:-

“Concerning the genuineness of the certificates of police training, it has been established that the officers indicated did not actually sign on the certificates, although the certificates bear their names. In other words no authorized person from the police signed the certificates.”

Clearly this letter was saying the certificates were not authentic. Yet in

Court and under cross examination this same witness changed his story by stating that in the police it is normal for officers to sign correspondence for other named officers, and that his letter contained a mistake in that he had missed out “*un*” before “*authorised*” so that the last sentence would have read: “*In other words no unauthorized person from the police signed the certificates.*” Similarly another police officer *NDYOMUGYENYI* whose name was actually printed on the certificates as a signatory but did not sign, swore an affidavit to the effect that it was normal for other officers to sign “*for*” other officers. He was silent as to why he himself and the other named officer *ODORA* did not sign, nor could he name the officer who had signed for him. All that appears on the certificates are illegible scribbled signatures by undisclosed persons

The learned trial judge considered the evidence of these two officers and found it useless and only meant to mislead the court. He considered at length Police Standing Orders (chapter 8 paragraph 15) under which these two officers claimed that the certificates could be signed “*for*” other named officers. He states in his judgment:

“I have read the standing orders. The side note to paragraph 15 of chapter 8 is stated as “signatures on letters” and the paragraph states in full:

“115 (a) Officers acting on behalf of Unit Commanders will sign letters “for” the Unit Commander, and not over their own designations.

(b) In order to avoid inconveniences to the public and other officers by the illegibility of signatures, the officers will print or have their names typed below their signatures”.

First I am not persuaded that the above paragraph of the standing orders is relevant to the issuance of documents such as certificates as evidence of academic qualification. It deals with letters emanating from unit commanders. In fact paragraph 1 to 20 of chapter 8 of the Standing Orders are under the sub-heading titled

“CORRESPONDENCE.”

But even if the above paragraph is found to be applicable to signing certificates, then there was clear violation of sub-paragraph (b) which requires the officers signing “for” the unit Commander to print or have their names typed below their signatures. If this had been done one would not be talking of anonymous signatures. It would have been possible to determine whether the signatories were officers authorized to sign on behalf of their unit commanders, in this case the Course Director and Director of Training.”

The learned trial Judge found these witnesses unreliable and misleading to the court. He also did not believe the evidence given by one Birungi from the NCHE. The Court of Appeal having considered the same evidence on record, agreed with the findings of the trial judge that the certificates upon which the NCHE acted to issue a certificate of equivalency were not genuine. As learned counsel for the respondent submitted, these were

findings of fact by the lower courts and this court can only interfere with those findings on exceptional circumstances.

The Court of Appeal in the lead judgment of Mpagi Bahigeine, JA, had this to say after examining the evidence on record; ***“There is no doubt that both certificates do tell blatant lies about themselves. Mr. Mubiru, simply glossed over these apparent crucial anomalies. The learned Judge was correct in his appraisal of the evidence.”***

Having considered the written submissions of counsel for the appellant, the oral submissions by counsel for the respondent, the oral reply by counsel for the appellant, and the evidence on record, I am unable to find fault with the concurrent findings of fact by both the High Court and the Court of Appeal in this matter. The courts were justified to find that the certificates upon which NCHE acted to issue the certificate of equivalency were in fact no certificates at all. Therefore, grounds 6 and 7 must fail.

Grounds 1, 2 and 3 which counsel for appellant also argued together are

worded thus;

- “1. The Learned Justices of Court of Appeal erred in law and fact when they affirmed the Trial Judge’s declaration that the appellant had no qualifications to be nominated to stand as a Member of Parliament.***
- 2. The Learned Justices of the Court of Appeal erred in law and fact when they affirmed the Trial Judge’s decision to review the decision of the National Council of Higher Education.***
- 3. The Learned Justices of the Court of Appeal erred in law and fact when they affirmed the Trial Judge’s decision that the National Council of Higher Education acted unreasonably, dishonestly and in bad faith in issuing a certificate of equivalence, without properly evaluating all the evidence that was before the National Council of Higher Education before it issued the certificate of equivalence.”***

In respect of ground one, counsel argued that in so far as the appellant had been issued with the certificate of A-Level equivalence by NCHE and he had been duly nominated on that basis, the Court could not then find that the appellant was not qualified at the time of his nomination. To him, The Parliamentary Elections Act, (PEA) Section 63(4) and (b) is concerned only with qualification at the time of election not at the time of nomination. He cited ***PHILIP KATABALWA –Vs- NTEGE, ELECTION PETITION NO. 11 OF 1998*** in support of his argument.

In his view, article 80 of the Constitution and Section 4(1) (c) of the Parliamentary Election Act only refer to the completion of education not the attainment of certificates. To him, Section 61(1) (d), of PEA refers to the certificate of equivalency so that once a person has been issued with one, his election cannot be set aside under that section. One can only move to challenge it under section 4(11) of PEA, or if it is forged, under section 5 of PEA. Since the certificate of equivalence issued by NCHE had not been quashed, it could not be found by the court that the appellant had not been qualified at the time of his nomination. This, according to

counsel, was a misdirection on the part of the lower courts. The NCHE was an administrative body with powers to issue the certificate it did. Unless it was quashed by way of certiorari or appeal, the court could not simply quash it by mere declaration. Counsel cited ***HARRY WHITMORE & MARONSON in REVIEW OF ADMINISTRATIVE ACTION*** to support his submission.

Counsel submitted that therefore, since the respondent had filed his case merely seeking declarations and had not sought certiorari or appeal against the decision of NCHE, the certificate of equivalence had to stand and therefore the Appellant was duly nominated. He concluded that the orders given by the lower courts setting aside the election were erroneous and invited this Court to set them aside.

In respect of grounds 2 and 3, counsel while reiterating his arguments under ground one submitted that since NCHE as an administrative body had made its decision, court could not subject that decision to review without following the proper law and procedure, irrespective of whether

there was error in the decision or not. Counsel contended that the grounds upon which a court may review the decision of an administrative body were not followed in this case. He attacked the lower courts for questioning the weight attached to the two certificates issued by the Uganda Police Force by NCHE while refusing to take into account the evidence considered by NCHE and upon which it issued the certificate of equivalence. He asserts that the lower courts misdirected themselves to have found that the NCHE acted without reasonableness, good faith or honesty in awarding the certificate to the appellant.

As already noted, counsel for the respondent in his omnibus response, submitted that ground one of the appeal by itself would dispose of the appeal whichever way court decided. He was of the view that ground 3 was irrelevant since it complained against a finding on the part of NCHE which had not appealed against that finding and was not party to the present appeal. In his view this was a proxy appeal” which should not be allowed.

In answer to the contention by counsel for the appellant that court could not interfere with decisions of statutory administrative bodies, counsel contended that a court of law has a right to interfere with decisions of statutory bodies if those decisions are irrational. In this case, both courts were correct to find that the certificates that the appellant presented to NCHE were not genuine and therefore null and void. Counsel further argued that issues of certiorari did not arise as this was an election petition governed by the election laws. Court was empowered by the Constitution and the Parliamentary Elections Act to inquire into and declare whether a person had been duly qualified when elected to Parliament. He contended therefore that those grounds of appeal based on the procedure for review of decisions of administrative bodies were irrelevant to this appeal.

When considering grounds 4, 6, and 7 I considered some aspects of the arguments raised here. In my view in considering the above grounds of appeal it becomes necessary to examine the law with regard to Parliamentary Election Petitions and the powers of the courts thereunder. Article 80 of the Constitution sets out the qualifications and

disqualifications of members of Parliament. Article 80 (1)(c) states: ***“A person is qualified to be a member of Parliament if that person has completed a minimum formal education of Advanced Level standard or its equivalent which shall be established in a manner and at a time prescribed by Parliament by law.”***

Article 86(1) states: ***“The High Court shall have jurisdiction to hear and determine any question whether a person has been validly elected a member of Parliament or the seat of a member of Parliament has become vacant”*** (emphasis added) Article 86(2) provides for a right of appeal to the Court of Appeal for any one dissatisfied with the decision of the High Court. The Parliamentary Elections Act provides in section 60(1) that a Petition challenging an election shall be filed in the High Court and also sets out the grounds for setting aside a Parliamentary Election. This section 61(1) (d) states: ***“The election of a candidate as a Member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of the court:–***

- d) ***That the candidate was at the time of his or her election not***

qualified for election as a Member of Parliament.”

It is to be noted that section 4(1)(c) of PEA which is in consonance with the Constitution also states that a person must have completed a minimum formal education of Advanced Level standard or its equivalent in order to qualify for election to Parliament.

On the basis of the above I think it is clear that the High Court had jurisdiction to hear and determine the question as to whether the appellant had qualifications to be elected a Member of Parliament. Counsel for the appellant argued that once a person has been issued with the certificate of equivalence by NCHE under subsections 5 and 6 of section 4, that person becomes qualified for nomination as a member of parliament, and that his/her nomination cannot be challenged except as provided for under section 4(11) which states: ***“A person aggrieved by the grant or refusal to grant a certificate by the 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.”***

According to counsel for the appellant, if no appeal was made in accordance with the above provision, then the court can only interfere with the decision of NCHE by way of certiorari or by review. Surely this must beg the question as to what happens if a person is nominated on the basis of the certificate of equivalency issued by NCHE and that person is subsequently elected but it turns out that the certificates upon which the equivalency had been based were forged or fraudulently obtained. Would the High Court be deprived of jurisdiction to inquire into the question whether such candidate had been qualified in the first place? One has to bear in mind that the Constitution in Article 86 mandates the High Court to ***“hear and determine any question whether a person has been validly elected a member of parliament”***

In my view, 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 allegation, 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. It would not require proceedings for certiorari. It is an election matter and the court has jurisdiction to hear and determine it. If the High Court finds on evidence that the decisions of an administrative body, like NCHE, were irrationally made or were not based on proper diligence, the Court can, and should, so declare. In my view, the NCHE certificate of equivalence is not the qualification for election to parliament. It is meant to be evidence but not conclusive evidence of the qualification set out in the Constitution. It is therefore subject to court's evaluation or scrutiny. In this case the Court of Appeal considered the law and counsel's argument that a certificate issued by the NCHE can only be challenged under section 4(11) of the Parliamentary Elections Act. The court rejected that argument. In her lead judgment in which the other Justices concurred, Mpagi Bahigeine, JA states:

“The wording of this subsection does not in any way connote a mandatory procedure as Mr. Mubiru did suggest. It does not bar access to the High Court by way of a petition. All the

provisions cited by Mr. Mubiru, Section 4(1) and (2) highlight the requisite qualifications and disqualification of an aspirant for election. Section 61(1) (d) cites one ground for setting aside an election i.e. when the candidate was at the time of his or her election not qualified or was disqualified for election as a member of Parliament. I would therefore not hesitate to endorse the learned Judge's holding that Section 4(11) does not extinguish appellant's right to petition the High Court. I would also agree with the learned Judge that proceeding immediately by way of appeal would have saved a lot of time and costs. I would however dismiss this ground of appeal."

I agree with the position of the Court of Appeal. Therefore grounds 1, 2 and 3 fail.

Grounds 5, 8, and 9 were worded thus:

"5. The Learned Justices of Court of Appeal erred in law when they affirmed the Trial Judge's decision of putting the burden of proof on the appellant.

8. ***The Learned Justices of the Court of Appeal erred in law and fact when they decided that there was nothing on the basis of which the certificate of equivalence to A-level could have been issued.***

9. ***The Learned Justices of the Court of Appeal erred in law and fact when they failed to find that the Trial Judge did not properly and judiciously evaluate the evidence before court.”***

In respect of ground 5, counsel argued that the lower courts shifted the burden of proof from the respondent. He is the one who had to prove that the decision of NCHE was not ultra vires. In his view, in election petitions the burden lies on the petitioner to prove his case. He cited a number of authorities for his view. To him, the appellant should not have been found to have failed to prove that he had acceptable post O-Level qualifications or who the persons who signed the two Uganda Police Force certificates were, or why he did not go to Nairobi to get a document in proof of his attendance of the course. All these should have been proved by the respondent.

As for grounds 8 and 9, counsel contended that the Court of Appeal erred in declaring that there was nothing on the basis of which the certificate of equivalency was issued by NCHE since it did not have all the evidence that had been available to NCHE. Court should have left that issue to the experts, which it did not do. To him, therefore, the Court of Appeal failed to properly re-evaluate the evidence on record.

In his submissions in reply, counsel for the respondent did not touch on the issue of burden of proof raised in ground 5. But as already noted he supported the finding of the Court of Appeal that the trial court was correct in holding that there was no basis upon which the certificate of equivalence to “A-level” could have been issued. In his view the Court of Appeal, after reviewing the evidence on record, was correct to find that the trial court had properly evaluated the evidence before the court.

With due respect to counsel for the appellant ground 5 is a matter that was not raised in the Court of Appeal and was not decided on by that court.

Be that as it may I will briefly consider it. In my view the import of Article 80 of the Constitution is that the duty to produce valid certificates to the electoral authorities lies with the intending candidate for election.. Where the authenticity of those certificates is questioned, it can only be his burden to show that he has authentic certificates. In this case the appellant indeed tried by both oral and affidavit evidence to prove the authenticity of his certificates, but failed. In my view the question of shifting the burden of proving those certificates does not arise.

In my consideration and conclusion on grounds 4, 6 and 7, I covered grounds 8 and 9. There was ample evidence to support the finding of the trial judge, that the NCHE were not **“guided by considerations of reasonableness, good faith, honesty and diligence”**. Penny Birungi and the documents exhibited provided such evidence. Surely the NCHE could, and ought to have ascertained whether the certificates they were considering were duly signed by authorised officers.

It is inconceivable that the NCHE could accept certificates that were not

signed by both or any of the officers stated on the certificates and that did not indicate the date of issue. In the case of the Special Branch Course allegedly done in Kenya, NCHE accepted a certificate signed by unnamed persons from the Uganda Police Force when the course had not been offered by the Uganda Police itself. The argument by counsel for the appellant that Nairobi was merely a venue as you would have a function take place at a hotel, is speculative and untenable. The more likely practice is that the Special Branch Training School in Nairobi would have issued its certificates to persons who would have attended its course. The relevant authorities in the countries of origin of the course participants would then equate those certificates to their own standards. This would be the situation anticipated by Section 4(5)(b) of the PEA, i.e., recognition of qualifications obtained outside Uganda.

In my view, the Court of Appeal was justified in confirming the decisions of the trial court that the certificates considered by the NCHE were no certificates at all, and that the NCHE had acted unreasonably and without due diligence. I see no reason to interfere with its finding and decision on

this matter. Therefore, grounds 8 and 9 must fail.

Ground 10 was worded thus:-

10. ***The Learned Justices of the Court of Appeal erred in law when they affirmed the Trial Judge's declaration that the Appellant pays costs of the petition to the respondent.***

With regard to this ground, the appellant's Counsel argued that since this is an Election Petition and a matter of public interest, no costs should be awarded. He however contradicted himself by asking for costs to be awarded. On the other hand counsel for the respondent while pointing out the contradiction in the appellant's counsel's submissions, prayed for costs.

I am of the view that, although these are matters of public interest, nonetheless parties do incur costs. The award of costs is a matter of court's discretion and I would not interfere except where it is exercised unjudicially which is not the case here.

In the result I dismiss this appeal with costs to the respondent in this court and in the courts below.

DATED at Mengo this 22nd day of January 2008

B.M. KATUREEBE
JUSTICE OF THE SUPREME COURT

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgement prepared by my learned brother Katureebe JSC, and I agree with it and the orders he has proposed.

As the other members of the Court also agree, this appeal is dismissed with costs here and in the Courts below.

Dated at Mengo this 22nd day of January 2008

B J Odoki
CHIEF JUSTICE

JUDGMENT OF TSEKOOKO, JSC

I have had the benefit of reading in advance the judgement prepared by my learned brother, the Hon. Mr. Justice Katureebe, JSC., and I agree with his conclusions that the appeal has no merit and should be dismissed with costs here and in the Courts below.

Delivered at Mengo this 22nd day of January 2008.

J. W. N. TSEKOOKO
JUSTICE OF THE SUPREME COURT.

JUDGMENT OF MULENGA, JSC

I had the benefit of reading in draft the judgment prepared by my learned brother Katureebe, JSC. I agree that the appeal is without merit. It ought to be dismissed with costs to the respondent.

Dated at Mengo this 22nd day of January 2008

J.N Mulenga
JUSTICE OF THE SUPREME COURT

JUDGMENT OF KANYEIHAMBA, JSC.

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Katureebe, J.S.C. and I agree with his conclusions that the appeal has no merit and should be dismissed with costs here and in the courts below.

Dated at Mengo, this 22nd day of January 2008

**G.W. KANYEIHAMBA
JUSTICE OF SUPREME COURT**