THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 2005

ELECTION PETITIONS NO.03 OF 2021

LUTANYWA JACK ODOUR---------- PETITIONER

VERSUS

1. **ELECTORAL COMMISSION**
2. **KARUBANGA JACOB ATEENYI----------RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The petitioner filed an election petition challenging the election of Karubanga Jacob Ateenyi for the position of Member of Parliament representing Kibanda South County Constituency in Kiryandongo District.

The petitioner-Lutanywa Jack Odour, Kizza Jaber and the respondent Karubanga Jacob Ateenyi contested in the election for Kibanda South County Constituency for Directly Elected Member of Parliament held on 14th January 2021 and obtained the following votes in their favour; Karubanga Jacob Ateenyi-(NRM) (10,298), Lutanywa Jack Odour -(Independent) (8,586), Kizza Jaber (Independent) (427) and which results were duly gazetted on 17th February 2021.

The petitioner contends that the 2nd respondent purported to present a Nomination paper to the Returning Officer of the 1st respondent on 15th October , 2020, at 01:05pm, the said nomination paper was fatally invalid and the same invalidity was brought to the attention of the 1st respondent dated 16th October, 2020 and the 2nd respondent responded to the same on 27th October 2020. The 1st respondent heard the complaint on 28th October, 2020 and no decision was made thereon or communicated until 2nd February, 2021.

The petitioner contends the winning candidate Karubanga Jacob Ateenyi was not a duly nominated candidate and was not a candidate at the said election because;

(a) Contrary to section 11(1)(d) of the Parliamentary Elections Act, and Article 80(1)(2) of the Constitution, no oath was ever made by the respondent as required by law.
(b) The respondent does not possess an Advanced level of education or its equivalent as the purported academic certificates did not belong to him.
(c) There was no proof as required by law that the 2nd respondent was qualified for election as Member of Parliament.

The petitioner in the alternative contends that the 2nd respondent on 15th October, 2020, personally committed the following electoral offences and/illegal practices under section 76 of the Parliamentary Elections Act-by failing to pay registration fees for a statutory declaration and deed poll and uttering a false and forged statutory declaration/deed poll bearing a forged signature and stamp.

The 1st respondent in their Answer to the petition contended that the entire electoral process and/or elections were conducted in compliance with the provisions and principles laid down in the Electoral laws of Uganda. In regard with the discrepancy of the 2nd respondent's name, a complaint was lodged and it was heard and determined following which a decision of the Returning Officer in nomination of the 2nd respondent was upheld and it was communicated to the petitioner immediately. The 1st respondent has no knowledge of the allegations of forgery on the part of the 2nd respondent and there was never any complaint lodged with Electoral Commission.

The 2nd respondent in his Answer to the petition contended that he was validly nominated and elected as a Member of Parliament for Kibanda South County Constituency with 10,298. The issues raised in the petition were raised to Electoral Commission, which heard the complaint on the 28th day of October 2020 and a decision duly delivered on the 30th day of October 2020. The petitioner ought to have appealed the decision of Electoral Commission. The 2nd respondent contended that he did not change his names at all but only expounded on the initials in his names in a duly commissioned statutory declaration.

The parties during scheduling of the case agreed to the following facts and issues for court's determination;

Agreed Facts:

(1) The election for Kibanda South Constituency was held on 14th January 2021.

(2) The 1st Respondent declared and gazetted the 2nd Respondent winner with 10,378 votes, the Petitioner obtained 8,506 votes and Kizza Jabel obtained 427 votes.

Agreed Issues:

1. *Whether the 2nd Respondent was validly nominated as a candidate?*

2. *Whether the issues raised in the Petition were raised and determined by the Electoral Commission, if so, what is the effect of the decision of the Electoral Commission?*

3. *What remedies are available to the parties?*

The 1st petitioner was represented by Counsel *Alauterio Ntegyerize* & Counsel *Agwang Harriet* holding brief Counsel Richard Nsubuga and Mr. Kandeebe Ntambirweki while Counsel *Kanyiginya Angella* appeared and represented the Electoral Commission while Counsel John Paul Baingana and Ahumuza Edward represented the 2nd respondent.

At the hearing, the affidavits of the parties were deemed read and the annextures thereto were admitted in evidence. Thereafter, the respective counsel sought leave to file written submissions which they have filed and I have considered the same in this judgment.

BURDEN AND STANDARD OF PROOF

S.61 (1) of the Parliamentary Elections Act provides that:

The Election of a Member of Parliament can only be set aside on any of the following grounds if proved to the satisfaction of the Court ……

Odoki CJ(as he then was) in his elaborate reasons for the Supreme Court Judgment in the **Col. (RTD) Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission Election Petition No. 1 of 2001** Supreme Court has the following to say on this important point;

> *"In my view, the burden of proof in an Election Petition as in other Civil Cases is settled. It lies on the Petitioner to prove to the satisfaction of Court ……."* at Pg 16 of the Reasons.

The same principles have been reiterated in the case of ***Col. (RTD) Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission Election Petition No. 1 of 2006*** *citing* ***Election Petition No.1 of 2001***

Odoki, CJ(as he then was) in his Judgment cited with approval the following observation of Lord Denning in the English case of *Blyth -vs- Blyth [1966] AC 643*:

> *"My Lords, the word "satisfied" is a clear and simple one and one that is well understood. I would hope that interpretation or explanation of the word would be unnecessary. It needs no addition. From it there should be no subtraction. The courts must not strengthen it; nor must they weaken it. Nor would I think it desirable that any kind of gloss should be put upon it. When parliament has ordained that a court must be satisfied only parliament can prescribe a lesser requirement. No one whether he be a judge or juror would in fact be "satisfied" if he was in a state of reasonable doubt……."*

Having quoted the above, Odoki, C.J. goes on to state:

> *"I entirely agree with those observations by Lord Denning. The standard of proof required in this petition is proof to the satisfaction of the court. It is true court may not be satisfied if it entertains a reasonable doubt but the decision will depend on the gravity of the matter to be proved….since the legislature chose to use the words "proved to the satisfaction of the court", it is my view that that is the standard of proof required in an election petition of this kind. It is a standard of proof that is very high because the subject matter of the petition is of critical importance to the welfare of the people of Uganda and their democratic governance."*

In this petition, therefore like in all Election Petitions, it is the petitioner who bears the burden of proving his allegations to the satisfaction of Court. It is only after the Court is duly satisfied that the grounds raised have been proved to its satisfaction that it will invoke its powers under Subsection (1) of Section 61, read together with Subsection 4 (c) of S. 63 of the Parliamentary Election Act of 2005

S.62 (3) of the Parliamentary Elections Act *provides that any ground specified in Subsection (1) should be proved on the basis of* *a balance of probabilities.*

The only crucial aspect of this issue which this Court must emphasize and bear in mind throughout the trial of an Election Petition, is the degree of a probability which must be attained before the Court can regard itself as satisfied that the ground or allegation is proved under S. 61 (1) and S. 61 (3) of the Parliamentary Election Act of 2005.

In the Case of **Karokora Katono Zedekia vs Electoral Commission Kagonyera Mondo HC-05-CV-EP 002 – 2001** Justice V.F. Musoke-Kibuuka (RIP) noted at Pg 6;

> *"It is quite critical to emphasize and bear in mind the crucial fact that, setting aside an election of a Member of Parliament is, indeed, a very grave subject matter. The decision carries with it much weight and serious implications. It is a matter of both individual and national importance. The removal of the elected Member of Parliament renders the affected Constituency to remain without a voice in Parliament for some time.*
>
> *Parliament will continue to carry out is legislative function on matters of public national importance without any representation of the Constituency affected. When the election is set aside, the Member of Parliament affected suffers both serious personal remorse as well as adverse financial effects…… Thus, the crucial need for Courts to act in matters of this nature only in instances where the grounds of the Petition are proved at a very high degree of probability".[Emphasis mine]*

In order to merit an order setting aside the election of a Member of Parliament the evidence produced by the Petitioner must be such as would, in the circumstances, compel the Court to act upon it.

Although the standard of proof is on the balance of probability, it must be slightly higher than in ordinary cases. The authority for this observation is **Election Petition No. 9 of 2002 Masiko Winfred Komuhangi vs Babihuga J. Winnie.** This is because an election is of a great importance both to the individuals concerned and the nation at large.

Similarly in the case of **Sarah Bireete and Another vs Bernadette Bigirwa and Electoral Commission. Election Petition Appeal No. 13 of 2002** (unreported) it was noted by the court of Appeal "*A Petitioner has a duty to adduce credible evidence or cogent evidence to prove his/her allegation at the required standard of proof"*

The respondent carries no burden to discharge as long as the petitioner has not produced sufficient evidence required to show the truth of the allegations is highly probable. In other words the burden of proof on the petitioner is high and it does not shift. See ***Akurut Violet Adome v Emurut Simon Peter EPA No. 40 of 2016***

This court has a duty to look at the affidavits in support of the Petition and evaluate the same against the respondents answer and supporting affidavits in order to satisfy itself of the allegations made in the petition.

With regards to numerical strength, the general rule is that no number of witnesses shall be required for proof of any act. Evidence is to be weighed but not counted. The direct evidence of one witness if believed by the Court is sufficient proof of a fact but a line of hearsay evidence cannot be sufficient to prove any fact.

Sarkars' Law of Evidence 14th Edition 1993 Reprint 1997 at pg. 87. States according to Wigmore, the common law in repudiating the numerical system lays down 4 general principles;

1. *Credibility, does not depend on number of witnesses.*
2. *In general, the testimony of a single witness, no matter what the issue or who the person may legally suffice as evidence upon which the Jury may find a verdict.*

3. *The mere assertion of any witness does not of itself need not be believed even though he is unimpeached in any manner, because to require such belief would be to give qualitative and impersonal measure to testimony.*
4. *All rules requiring two witnesses or combination of one witness are exceptions to the general rule.*

It is trite law that the decision of Court should be based on the cogency of evidence adduced by a party who seeks judgment in his/her favour. It must be that kind of evidence that is free from contradictions, truthful so as to convince reasonable tribunal to give judgment in a party's favour. ***Paul Mwiru v Hon Igeme Nathan Samson Nabeta & 2 others EPA No. 6 of 2011***

In addition, it is incumbent upon the petitioner to prove or to produce cogent evidence to prove the allegations and not to rely on the weakness of the respondent's case. See ***Odo Tayebwa v Bassajjabalaba Nasser & Electoral Commission Election Petition Appeal No.013 of 2021***

Determination of Issues

Whether the issues raised in the Petition were raised and determined by the Electoral Commission, if so, what is the effect of the decision of the Electoral Commission?

The petitioner's counsel submitted that the issues for trial in court are different from what was before the Electoral Commission as a tribunal-uttering a forged Statutory Declaration, a forged Deed poll that were not one of the complaints then, failure to make and present an oath was not part of the complaint.

It was the petitioner's contention in the alternative that even if the Electoral Commission made and communicated the decision before 14th January, 2021, Election that does not take away the jurisdiction of this court from inquiring into the qualification and nomination of a candidate that was declared elected. Counsel relied on the case of *Abdul Balingira Nakendo v Patrick Mwondha Supreme Court Election Petition Appeal No. 09 of 2007 Gole Nicholas Davis v Loi Kageni Kiryapawo Supreme Court Election Petition Appeal No. 19 of 2007.*

The 2nd respondent's counsel submitted that the petitioner through his counsel M/s Kiwanuka, Kanyago and Co. Advocates,presented- a complaint which was heard and determined on 30th October, 2020.According to the complaint and the Petition, it is clear that the issues raised at the Commission and the Petition are the same. Article 61 of the Constitution the functions of the Electoral Commission are detailed one of which is to hear and determine election complaints.

The Electoral Commission decision stands unless the High Court sets it aside on appeal under Article 64 (1) of the Constitution. Section 15 (1) of the Electoral Commission Act, Cap. 140 provide for a complaint submitted in writing with regard to any irregularity with any aspect of the electoral process at any stage. Section 15 (2) of the Electoral Commission Act, provides for an appeal to the High Court against the Commission's decision.

Counsel for the respondents submitted that the decision of the Electoral Commission sitting in its capacity to exercise its judicial or quasi-judicial powers under Article 61 of the Constitution should never be litigated in the High Court sitting as a Court of first instance in electoral matters. It has to go there on appeal in keeping with Article 64 of the Constitution.

The respondent contends that the Electoral Commission in handling complaints under Article 61 (1) (f) of the Constitution and Section 15 of the Electoral Commission Act exercises civil jurisdiction. Therefore the doctrine of *res judicata* is applicable in all matters, which have been determined in the Electoral Commission and it was duly resolved and the only remedy the Petition has is under Article 64 (1) of the Constitution and Section 15 (2) of the Electoral Commission Act.

ANALYSIS

The petitioner made a complaint on 16th October, 2020 through his lawyers contending that the 2nd respondent was illegally nominated on ground that;

1. *The act of nominating a candidate whose names defer on different nomination credentials.*

2. *Failure of the nominee to swear, register and gazette a deed poll rectifying the change of names of the different nomination credentials presented before the Registrar's office.*

3. *The act of misleading the District registrar by presenting illegal nomination credentials*

The 1st respondent in exercise of their quasi-judicial powers under the Constitution, Electoral Commissions Act and Parliamentary Elections Act on 28th October 2020 determined the complaint and observed as follows;

1. *In accordance with Article 61(1)(f) of the Constitution, Section 15 of the Electoral Commission Act and Section 16 of the Parliamentary Elections Act, the power Commission has power to confirm or reverse the decision of a Returning Officer.*

2. *In light of the observations, the Commission was satisfied that Mr. Karubanga Jacob Ateenyi has consistently used the same names on the documents presented to the Returning Officer for nomination, even though they were initialised in some instances. This was not a major variation in the names to require a Deed Poll and they could be cured by a Statutory Declaration.*

3. *The decision of the Returning Officer, Kiryandongo District to nominate Mr Karubanga Jacob Ateenyi is, therefore upheld.*

The Electoral Commission is mandated to investigate any complaint raised before them and make necessary orders in resolving such disputes that arose at nomination under Article 61(1)(f) of the Constitution and Section 15 of the Electoral Commission Act. This was specifically done in accordance with the law.

What is surprising in this case the petitioner and his counsel have deliberately decided to insist that the complaint was never determined and that no decision thereon was made or communicated to the parties until 2nd February, 2021 more than 2 weeks after declaration of results.

This submission is totally flawed and misleading since there is a decision on record as reproduced herein and I do not understand the why the petitioner and his counsel are contending otherwise. They have attached the said decision but they have not attached the alleged decision made on 2nd February, 2021. There is no basis for saying what they are alleging that they were disadvantaged in pursuing their rights of appeal from the decision and it was intended to mislead or hoodwink court.

The petition against the 2nd respondent is clearly a complaint which arose at nomination and was duly determined. This court does not agree with the submission of the petitioner's counsel that the complaints in the petition are any different from the complaint made at Electoral Commission. The petitioner was satisfied with the decision and never pursued it any further in spite of the fact that the law allowed him to appeal to the High Court. The only complaint which he tried to change was in respect of section 11(d) of the Parliamentary Elections Act but the same ought to have been lodged with the original complaint on names since it arises out of the nomination process.

The act of regurgitating complaints already determined at the pre-polling stage to be re-heard after elections as new matters is an abuse of court process and should be discouraged since it contributes heavily on case backlog and is wastage of courts valuable time and tax-payers money. Every person who petitions the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective.

The powers conferred to the Electoral Commission under Article 61 (1) (f) of the Constitution and Section 15 of the Electoral Commission Act, Cap. 140 were interpreted in the case of ***Akol Ellen Odeke vs. Okodel Umar; Election Petition Appeal No. 006 of 2020*** in that case the Court of Appeal analyzed the context of the powers of the High Court on unlimited jurisdiction vis-à-vis the judicial or quasi-judicial powers given to statutory bodies and the Supreme Court position in ***Uganda Revenue Authority vs. Rabbo Enterprises (U) Ltd; Supreme Court Case No. 012 of 2002.***

The lead judgment of *Hon. Justice Muzamiru Mutangula Kibeedi* on page 14 says;

"It is equally applicable to the determination of the scope of the unlimited original jurisdiction of the High Court in respect of election related disputes arising before and on polling day with the necessary modification. I opine that the unlimited original jurisdiction conferred upon the High Court by Article 139 of the Constitution first and foremost is subject to Article 61 (1) (f) of the Constitution.
The import of this is that the mandate to hear and determine election complaints arising before and during polling as a "Court" of first instance is vested in the Election Commission."

He goes on to state thus;

"Article 139 (1) of the Constitution is also subject to Article 64 (1) of the Constitution which expressly vests the High Court with jurisdiction to hear appeals from decisions of the electoral commission made pursuant to Article 61 (1) (f) of the Constitution."

He concluded thus;

"Accordingly, it is my finding that the High Court sitting at Soroti did not have jurisdiction to hear and determine the Respondent's application as a court of first instance."

This court agrees with the respondents' counsel that the Petitioner was supposed to lodge an appeal against the decision made by the 1st respondent in their quasi-judicial capacity if at all he felt the decision of Electoral Commission was erroneous. This should have been done under ***Article 64(4) of the Constitution, Section 15(2) of the Electoral Commission Act.*** Once a party decides to take a prescribed procedure to achieve a remedy, then they are bound by that procedure without taking other recourse even if other recourse may be available otherwise the failure to pursue an appeal as prescribed by the Constitution and Electoral Commission Act becomes an abuse of court process to file fresh matters as if they were never determined. The Court of Appeal in ***EPA No. 01 of 2018 Kasirye Zzimula Fred v Bazigatirawo Kibuuka Francis Amooti & EC*** held as follows;

"From the reading of the above provisions of the law, it appears to us that the intention of the legislature in enacting Section 15 of the Election Petition Act was to ensure that all disputes arising prior or during nominations before voting are resolved with finality before the election date, except where the law otherwise specifically provides. Timely complaints will avoid undue expense and inconvenience to the parties inclusive of the electorate who do not have to vote where nomination is contested. Issues of nomination should be resolved before elections.

It appears to us that, the appellant waived his rights to complain when he failed to bring the complaint within the stipulated period and as such would be estopped from doing so after the election."

Election disputes should be premised on strong and compelling reasons properly investigated and interrogated in order to achieve the ends of justice not only for the petitioners but for the entire constituency or voters. The determination by the Electoral Commission once appealed would limit the appeal to only High Court since such decision is final under ***Article 64(4) of the Constitution*** which provides; *A decision of the High Court on appeal under clause (1) and (3) of this article shall be final.*

The rationale of this limitation of appeals is to stop or bar petty and small electoral complaints like the present one from clogging the judicial appeal system to determine a dispute or complaint of this nature of misspelling of names which may now end up in Court of Appeal. It bears emphasis that electoral laws have limited appeals to only one court and this was done for a purpose to avoid over-litigation in electoral matters.

The petitioner waived his rights to challenge the 2nd respondent when he failed to lodge an appeal and this petition becomes an afterthought which was crafted with the sole purpose of trying to achieve an intended aim of overturning a duly concluded election. I'm fortified by the majority decision of the Supreme Court in the case of ***Joy Kabatsi v Anifa Kawooya & EC EPA No.25 of 2007*** where *Justice Kanyeihamba G.W (Rtd)* observed that;

"Although they had an immediate right to object to the illegalities that had occurred, in their enthusiasm and anticipation of being the ones to be elected, they connived in the unlawful electoral malpractices. They should have opted for court proceedings under Section 15(2) of the Electoral Commission Act but they did not do so……By failing to utilise the above provision at the earliest opportunity and choosing to proceed with the elections instead, the appellant must be deemed to have accepted to take a chance and to abide by any outcome thereafter. In my view, by doing so doing the appellant consented to the outcome of the exercise and should not be heard to complain. The candidates cannot be approbate and probate the exercise. They chose willingly to participate and wallow in the flawed elections. They must now abide by the outcome."

In the case of ***Giruli David Livingstone v Mulekwa Herbert & EC Election Petition Appeal No. 76 of 2016*** the Court of Appeal observed and re-echoed similar views as follows;

"However before take leave of this ground of appeal as a whole we need to observe that it appears illogical in matters such as in these elections for one to contest the eligibility of another candidate in an election after the actual election has taken place and not before. Candidates appear to be willing to contest against others they consider ineligible to contest with in elections as long as they ultimately win the said election. However, in an apparent afterthought, when they lose the election they then contest the said illegibility. A period to contest such eligibility should be provided before the elections and where there is no contest then a candidate should be estopped from raising the same issue again simply because he lost the election."

The two cases cited and relied upon by the petitioner's counsel of *Abdul Balingira Nakendo v Patrick Mwondha Supreme Court Election Petition Appeal No. 09 of 2007 and Gole Nicholas Davis v Loi Kageni Kiryapawo Supreme Court Election Petition Appeal No. 19 of 2007* are distinguishable and not applicable to the facts and principles of law espoused in this case. In the present case, the contention is about the right of Appeal created under the Constitution-Article 64(4) and

Electoral Commission Act Section 15(2) while in the two decisions it was about the right of appeal created in the Parliamentary Elections Act-Section 4(11).

The petitioner is merely a bad loser who is bent at overturning the will of the people of Kibanda South County Constituency at whatever cost. He is actually seeking to 'smuggle' himself in Parliament by seeking to be declared a winner inspite of the fact that the 2nd respondent obtained 53.33% of the valid votes cast against his 44.46%. He wants to disenfranchise more than half of the voters (10,298) or votes cast in the entire constituency of Kibanda South County who cast their vote in favour of the 2nd respondent.

This petition on this issue alone would fail since the petitioner did not appeal against the decision of Electoral Commission and he is bringing the same complaint to court. However, for completeness I will proceed to determine the remaining issue.

Whether the 2nd Respondent was validly nominated as a candidate?

The petitioners counsel submitted that the 2nd respondent was not validly nominated and contends that his nomination papers do not bear or have a statement under oath which is contrary to section 11 of the Parliamentary Elections Act.

The respondents' counsel submitted that the 2nd respondent possesses the minimum academic qualifications which are in his names and that he always used the same documents. In further support he lined up other witnesses including his former head master and old students/classmates at the respective schools.

The respondent further contends that he duly made a statement under oaths as required by law and the same is duly signed by His Worship Alule Augustine Koma Chief Magistrate

Analysis

The main issue for determination is whether the 2nd respondent made a statement under oath as required under Section 11(1)(d) of the Parliamentary Elections Act. The other issue of possession of minimum academic qualifications

appears to have been abandoned and the petitioner's counsel has not made any submissions in respect of that issue. Although the petitioner's counsel re-introduced it in his submissions in rejoinder.

No Statement Under Oath

The petitioners' case is that the 2nd respondent never made a Statement under oaths under section 11(d) of the Parliamentary Elections Act. It is my analysis that the petitioner's counsel and the petitioner were trying to set a trap which failed to get the 2nd respondent on how he made the statement under oath. They expected the 2nd respondent to explain how he took oaths or made the statement under oath and this would have enabled them to attack the nomination papers and heavily rely on the decision of the Supreme Court of ***John Baptist Kakooza v Yiga Anthony [2008] ULR 172*** which the petitioners counsel has vehemently submitted that binds this court that no oath was ever administered on the 2nd respondent.

The 2nd respondent either deliberately or ignorantly never made any specific response to this weird allegation which formed no basis for challenge since the nomination papers clearly showed that there is Statement under Oath as required by law. The petitioner and his counsel ought to have given more evidence to prove their allegation of the statement not being made under oath and not merely to argue it out as a point of law. Even if the 2nd respondent never made any specific response to the allegation, the petitioner was under a duty to prove their case on balance of probabilities. It is incumbent upon the petitioner to prove or to produce cogent evidence to prove the allegations and not to rely on the weakness of the respondent's case. See ***Odo Tayebwa v Bassajjabalaba Nasser & Electoral Commission Election Petition Appeal No.013 of 2021***

The evidence on court record clearly shows that the nomination papers of the 2nd respondent have both an Oath Authenticating Statement and the Statement Under Oaths by a Person to be nominated as a Parliamentary Candidate which were duly signed by His Worship Alule Augustine Koma a Chief Magistrate-Kiryandongo. Any dispute as to how the oath was administered could have been countered with cogent evidence and not mere speculations, conjectures and surmises. The 2nd respondent should have been cross-examined on the documents

and explain how the oaths were taken if at all the petitioner's snare was to succeed in trapping the 2nd respondent.

The nature of the complaint further confirms that the petitioner was indeed a bad loser who was trying with the help of his lawyers to find any reason to overturn an election successfully conducted. This allegation had no basis whatsoever but rather an ingenious way of trying to dupe or mislead the court in the petitioner's fruitless effort of getting into parliament at whatever cost.

Minimum Academic Qualification.

The 2nd respondent listed his academic qualifications for standing for parliamentary elections as follows;

- *Masters of Arts in Rural Development-Makerere University*
- *Bachelor of Arts in Development Studies-Bugema University.*
- *Diploma in Project Planning and Management.*
- *Uganda Advanced certificate of Education-Kitunga High School*
- *Uganda certificate of Education-Kabalega Secondary School*
- *Primary Leaving Education-Kizibu Primary School.*

The only would be complaint was about the spelling of the 2nd respondent's name in the national register and his academic documents i.e *KARUBANGA JACOB ATEENYI* and *KARUBANGA JACOB ATENYI* or *KARUBANGA J ATENYI* on the academic documents from UNEB and the Universities.

Since the petitioner is deemed to have abandoned this ground and made no specific submission on it, I will take it that the decision of Electoral Commission stands and is conclusive on this matter: "*In light of the observations, the Commission was satisfied that Mr. Karubanga Jacob Ateenyi has consistently used the same names on the documents presented to the Returning Officer for nomination, even though they were initialised in some instances. This was not a major variation in the names to require a Deed Poll and they could be cured by a Statutory Declaration.*"

The 2nd respondent duly attached a statutory declaration to explain the minor discrepancy in his names and the Electoral Commission was satisfied with what was presented. I wish to add that even if there was no statutory declaration to explain away the discrepancy in names on academic documents, the same are very clear and consistent. The misspelling of the names or abbreviations could not take away the fact that the 2nd respondent was duly qualified or is the rightful owner of those documents in absence of any evidence to the contrary. The 2nd respondent in his affidavit in support stated as follows;

"I do hold the required academic qualification for Member of Parliament of Uganda: *whereas my Uganda Advanced Certificate of Education refers to me as* ***"KARUBANGA J ATENYI"*** *and the Uganda Certificate of Education refers to me as* ***"KARUBANGA JACOB ATENYI"****, I am one and the same person and both duly verified by Uganda National Examination Board: from the very time I joined elective politics, I have presented the same academic papers in the years 1998, 2002, 2006, 2011, 2016 and 2021".*

The petitioner did not present any evidence to the contrary or to prove the academic papers do not belong to the 2nd respondent; In the case of ***Hashim Sulaiman vs. Onega Herbert; EPP/Civil Appeal No. 001 of 2021***, the Court of Appeal was faced with a decision where the High Court had held that the Appellant required a deed poll or a statutory declaration to explain that *Hashim Sulaiman, Hashim Salaiman or Okethwengu Achim* were one and the same person or a deed poll in the case of change of name. The Learned Justices of Appeal framed the relevant question as: *Whether the certificates in the various names were that of the Appellant.* After re-evaluating all the evidence on record of the Appellant's certificates and all affidavit evidence court found that the Appellant had used different names in his academic life.

"Failure to do a deed poll and subsequently have the register amended would not change of the person.

Using different names in different academic papers does not change the identity of anybody but only causes doubt as to whether the person who presents the papers is the same person named in the academic papers.

Evidence can be led to prove that such a person is the same person as named in the academic papers or otherwise. Failure to do a deed poll would not nullify the academic papers or qualification, as this can be established. The evidence of a deed poll or statutory declaration is therefore not the only evidence that can be used to prove that the person who sat for the academic qualification of A-level and whose names are stated in the certificate of education for the Advanced standard is the same person who is nominated. It is simply a question of fact." (Emphasis mine).

The 2nd respondent has adduced evidence of his old students with whom he went to school to explain that he is one and the same person whose names are misspelt or initialised on the academic documents. Therefore, the 2nd respondent was duly qualified to stand as candidate for Member of Parliament for Kibanda South County Constituency.

While interpreting statutory provisions on disqualification of candidates, courts have to be mindful of the consequences of disqualifying a candidate for being chosen as a candidate in an election. The court has to bear in mind that, what is at stake is the right to contest in an election and to be a member of the legislature; it is indeed a very important right in any democratic set up.

The success of a winning candidate at an election cannot be lightly interfered with or taken away without any justification rooted in law.

The petitioner has failed to produce cogent evidence to prove that the 2nd respondent was not validly nominated as a candidate. This petition would have failed on this issue as well. The 2nd respondent is the duly elected Member of Parliament .The same is dismissed with costs to the respondents

I so order

SSEKAANA MUSA
JUDGE
28th/09/2021