THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

ELECTION PETITION APPEAL NO. 19 OF 2007

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

BETWEEN

GOLE NICHOLAS DAVIS:::::::::::::::::::::::::::: APPELLANT

AND

LOI KAGENI KIRYAPAWO:::::::::::::::::::::::::: RESPONDENT

(Arising from the majority decision of the Court of Appeal S.G. Engwau, S. Kavuma, and Mpagi-Bahigaine JJ.A dissenting dated 29th March 2007, in Election Petition Appeal No. 10 of 2006).

JUDGMENT OF KATUREEBE, JSC.

This is a second appeal to this Court arising from the majority decision of the Court of Appeal dated 29th March 2007 whereby the Court of Appeal allowed the Respondent's appeal against the decision of the High Court nullifying her election to Parliament pursuant to a Petition filed by the Appellant herein.

The background to the appeal is that the Appellant and the Respondent were among 12 candidates who contested election for the Parliamentary Constituency of Budaka County, Pallisa District, during the 23rd February 2006 Parliamentary Elections. At the end of the election, the Electoral Commission declared and gazetted the Respondent as the winner and duly elected Member of Parliament for that seat, having obtained 10,245 votes against the Appellant's 9,896 votes. Not being satisfied with the election result, the Appellant Petitioned the High Court on one main ground that the Respondent, at the time of her nomination and election, was not academically qualified to be so nominated and elected as a Member of Parliament as envisaged in Article 80(1)(c) of the Constitution and Section 61(1)(d) of the Parliamentary Elections Act 2005 (PEA). It was contended for the Appellant that the Respondent did not possess the requisite academic qualifications in that she did not possess the Advanced Level Certificate, and that the certificate of equivalence granted by the National Council for Higher Education (NCHE) had been based on a Diploma in Management studies, Huron

University, USA in London, which in turn was based on the Diploma in Animal Husbandry which was forged.

The trial Court found that the Respondent had presented to the Huron University, USA in London, among other documents, the said Diploma in Animal Husbandry for her admission to that University. The Court believed the evidence that that Diploma was in fact forged. Basing itself on the decision in ***MAKULA INTERNATIONAL LTD –VS- HIS EMINENCE CARDINAL NSUBUGA & ANOTHER, [1982] HCB 11***, the trial Court held that in so far as that Diploma was fraudulent, it tainted the subsequent Diploma in Management studies with fraud rendering it also null and void. Therefore the NCHE could not have equated a Diploma that was tainted with fraud. In consequence thereof the trial Court found that the Respondent did not possess valid academic qualifications to be elected Member of Parliament, nullified the election and declared the Parliamentary seat vacant.

The Respondent successfully appealed to the Court of Appeal. By majority decision, the Court of Appeal reversed the decision of the trial Court, 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, and that there was no evidence that the admission of the Respondent to Huron University, USA in London, had been based on that Diploma. Hence this appeal.

The appellant filed four grounds of appeal as follows:-

"1. That the learned Justices Hon. Mr. Justice S.G. Engwau and Hon Mr. Justice S.B.K Kavuma of the Court of Appeal erred in law and in fact where they found that the respondent was qualified to stand for Election as a Member of Parliament.

2. ***That the learned Justices Hon. Mr. Justice S.G. Engwau and Hon. Mr. Justice S.B.K. Kavuma of the Court of Appeal erred in law and in fact where they found that trial court did not properly evaluate the issue of fraud by the respondent regarding her entry and registration for the Diploma in Management Studies.***

3. ***That the learned Justices Hon. Mr. S.G. Engwau and Hon. Mr. S.B.K. Kavuma of the Court of Appeal erred in fact and law where they found that the respondent's Diploma in animal Husbandry is not tainted by fraud***

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4. ***That the learned Justices Hon. Mr. S.G. Engwau and Hon. Mr. S.B.K. Kavuma of the Court of Appeal erred in law ain in fact n failing to properly evaluate the overwhelming evidence that weighed against the respondent and thus came to the wrong conclusions."***

Counsel for the appellant, Mr. Ntende, filed written submissions, while counsel for the respondent, Mr. Nangwala made oral submissions in reply. Both counsel combined the grounds and argued them together. I intend to deal with them in like manner in this judgment.

In his written submissions, learned counsel for the appellant, after reproducing the above grounds, submitted that the pertinent issue to be resolved in this appeal was:

> ***"whether the Court of Appeal came to the right findings on the evidence and, if there are valid reasons for this Honourable court to interfere with the findings of the Court of Appeal"***

Counsel then proceeded to break down the above issue into sub-components which are:

> ***" a) whether the Diploma in Animal Husbandry is valid***

b) ***Whether the presentation by the respondent of the said Diploma to Huron University was not an act of fraud affecting the subsequent studies and Diploma.***

c) ***Whether in evaluating the evidence of findings of the High Court, the Court of Appeal came to the right conclusion to overturn the High Court decision."***

Counsel submitted that the Diploma in Animal Husbandry was not valid because of the evidence of the Principal, Bukalasa Agricultural College, one Mubiru Moses who was called by Court, which showed 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 or that she had been awarded the said diploma in animal Husbandry. Counsel supported the findings of the trial court that this witness was truthful and that the Diploma presented by the respondent was a forgery.

Counsel criticised Engwau J.A for finding that the said Diploma had ***"discrepancies which were questionable"*** and yet did not find the Diploma to be a forgery. He equally criticised Kavuma, J.A, for finding that there was no justification for the condemnation of the said Diploma

and declaring the said Diploma to be free from fraud. This, according to counsel, was serious misdirection in re-evaluating the evidence and he called upon this court to re-evaluate the evidence and come to the right conclusion.

Counsel further submitted that the respondent had used that impugned Diploma to gain admission to Huron University, U.S.A in London to study for the Diploma in Management studies. Since the first Diploma was fraudulent, any subsequent qualifications were tainted with fraud and could not be valid. In his view, the majority in the Court of Appeal had failed to properly analyse the evidence, as the trial court had done, and had come to the wrong conclusion. He prayed this court not to depart from the principle in the ***MAKULA INTERNATIONAL*** case (supra) that:-

> ***"A court of law cannot sanction what is illegal, and illegality once brought to the attention of the court overrides all questions of pleading, including admission made thereon."***

In conclusion counsel asserted that even though the NCHE had equated the Diploma in Management Studies, that did not affect the fraudulent and illegal nature of the Diploma in Animal Husbandry upon which admission for the subsequent Diploma had been based. Therefore there was no valid diploma to equate. Counsel prayed this court to allow the appeal with costs with a certificate for two counsel.

In his oral submission in reply, Mr. Nangwala, contended that the majority Justices of Appeal had properly analysed the evidence on record and come to the right conclusions and decision. He argued that the respondent was nominated on the basis of possessing the equivalent of A-Level standard certificate which she did after obtaining a certificate of equivalence issued by the NCHE. That certificate showed that it had been issued based on the Diploma in Management Studies, Huron University U.S.A., in London, 2005 and East African Certificate of Education, EAEC, 1969. He contended that the arguments of the appellant were therefore misconceived in so far as they were based on the Diploma in Animal Husbandry which was not the basis for the issue

of the certificate of equivalence. He contended further that the certificate of equivalence had been issued by the authorised body in a manner determined by law pursuant to Article 80(1) (c) of the Constitution. Therefore, according to him, the decision of NCHE as an administrative body could not be impeached except if it was proved to have been made in bad faith without diligence, which was not the case in this instance. In his view, if the Court to impeached that decision, it would be tantamount to the court usurping the powers of an administrative body that had properly discharged its statutory duties.

Counsel supported the evaluation of the evidence by the majority in the Court of Appeal and their conclusion that it was not proved that the admission to Huron University, U.S.A. in London, had been based on the Diploma in Animal Husbandry. In any case, he argued, the question of the fraudulent nature of that diploma had not been investigated into by the NCHE since it had not been the basis for the issuance of the certificate of equivalence.

Counsel submitted further that this was not a proper case where this court as a second appellate court should interfere with evaluation of evidence by the Court of Appeal since it was clear that the majority in the Court of Appeal had subjected the evidence to adequate scrutiny, applied correct principles and come to the right conclusions. He cited the decision of this court in ***GOUSTAR ENTERPRISES LTD -Vs- JOHN KOKAS OUMO, S.C.C.A. NO. 8 OF 2003*** which sets out the principles upon which this court as a second appellate court may interfere with the Court of Appeal's re-evaluation of the evidence.

Counsel prayed for the appeal to be dismissed with costs with a certificate for two counsel.

I wish to state from the outset that I agree with counsel for the appellant that the real pertinent issue in this appeal is whether the Court of Appeal came to the right findings on the evidence and whether there are valid reasons for this court to interfere with the findings of that Court. Be that as it may, I wish to first deal with the submission by counsel for the respondent that once the NCHE issued the certificate of equivalence it

cannot be interfered with by any court of law as this would tantamount to the court usurping the powers of the administrative body. I must point out that similar arguments were made, and rejected by this court, in the recent case of ***ABDUL BALINGIRA NAKENDO -Vs- PATRICK MWONDHA (S.C. ELECTION PETITION APPEAL NO 09 OF 2007).***

This court held, inter alia, that section 4(11) which provides for appeals to the High Court by a person aggrieved by the grant or refusal to grant of a certificate of equivalence by NCHE does not ouster the jurisdiction of the court to inquire into any question as to whether a person was validly elected a member of Parliament. This is a mandate given to the High Court by Article 86(1) of The Constitution which states:-

> 86(1): ***"The High Court shall have jurisdiction to hear and determine <u>any question</u> whether a person has <u>been validly elected</u> a Member of Parliament or the seat of a Member of Parliament has become vacant."*** (emphasis added).

In my view, it is important to make a clear distinction between the procedures that may be invoked **before** nomination for the election takes

place and those that may be invoked **after** the election. Section 4(11) clearly is a procedure that has to be invoked before the nomination for election. That is why it empowers the court to "confirm, modify or reverse the decision" of the NCHE in granting or refusing to grant the certificate of equivalence. That certificate is supposed to be presented at the nomination process. So procedures relating to its validity should be settled before the nomination of candidates for election. The question to be answered is whether after the nomination and election if evidence were to be found that in fact the academic qualifications 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 qualifications and therefore the validity of the election of the person concerned. In my view, certainly not. That is the essence of Article 86(1) of the Constitution. Furthermore, the qualifications for being elected as spelt out in Article 80 of the Constitution is that one must have A-Level standard or its equivalent. It is true that the equivalence must be determined in a manner stipulated by law. But there is a basic assumption that the qualifications to be equated must be

in existence and valid. If the 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. In the lead judgment in the NAKENDO case (supra), I stated as follows:

> ***"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 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 certification 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."***

I reiterate that view of the law. A person elected to Parliament on the basis of a certificate of equivalence based on non-existent or fraudulent qualification would not have been validly elected for the simple reason that he would not be in possession of valid academic qualifications, the NCHE certificate of equivalence not withstanding. I therefore, find the submissions of counsel for the respondent in that respect totally misconceived. With great respect I also find the view held by Kavuma, J.A in the Court of Appeal misconceived when he states:-

> ***"The Constitution required Parliament to prescribe the method of establishing academic qualifications and Parliament did so comprehensively. It also gave power to equate academic qualifications to the National Council. Nobody or authority can validly take on that task outside the provisions of the law. Any attempt by anybody or authority to do so would be tantamount to usurping the statutory powers of the National Council and attempting to substitute its own opinion for that expert body in the field. Where a statute gives power to a body or authority to carry out some function, a court of law should resist the temptation to appear to, or to actually, carry out that function itself. The court's role should where necessary, be to review the decision of the body so entrusted with the power."***

In my view, the above view misses the point that the court is not questioning the criteria or method used by NCHE for equating qualifications. That would be the preserve of the statutory body, NCHE. What is being questioned and inquired into is whether the qualifications equated by NCHE existed in the first place. If NCHE were found to have equated a non-existent or fraudulent qualification, then the person elected on the basis of such certificate would not have been validly elected to Parliament. Clearly, the learned Justice of Appeal did not address the concerns of Article 86(1) of Constitution.

In this case, the gist of the submissions by counsel for the appellant is that since the respondent used, among others, the impugned Diploma in Animal Husbandry, to apply for admission to Huron University, U.S.A in London, whatever qualifications she subsequently obtained from that university were tainted with the fraud allegedly connected with the diploma, and therefore could not be valid. In his view, therefore, the diploma in Management Studies which the respondent presented to NCHE and which was used for equating to A-Level standard was tainted

with fraud and therefore null and void. He cites the MAKULA'S case (supra) to advance the argument that the court cannot ignore the fraud or the illegality pertaining to that certificate and must declare that certificate null and void.

The question is whether the majority in the Court of Appeal subjected the evidence to close scrutiny and re-evaluation before coming to the decision to set aside the decision of the trial judge. In his lead judgment, Engwau, JA after reviewing the decision of the trial judge, states as follows:-

> ***"With the greatest respect, I would like to differ with the trial judge's findings as stated above. In the first place, the respondent should have inquired what criteria the Huron University, U.S.A in London used before appellant's admission for the Diploma in Management Studies. The appellant had presented ten documents to the university. If the Registrar of the University was asked to explain which documents were relevant before admission, he would have done so as he readily gave the respondent the list of the documents when asked. That, in my view, was a crucial evidence in the respondent's case. Since that crucial evidence was lacking, I would be inclined to accept the appellant's explanation.***

> ***In cross-examination, the appellant stated that in fact the Diploma in Animal Husbandry(Uganda) was neither considered nor was it relevant for her admission to the university. She clearly stated that the East African Certificate of Education was the only relevant document for her admission. In the absence of evidence in rebuttal to that explanation, it was wrong and speculatory to hold that the appellant's admission was on the basis of the Diploma in Animal Husbandry that was allegedly forged. Both the respondent and the trial judge jumped to that conclusion simply because there were irregularities on that diploma."***

I agree. It is to be noted that the instant case is distinguishable on the facts from the Nakendo case (supra). In the latter case, it is the very certificates upon which the NCHE had based itself to issue the certificate of equivalence that were under challenge. Once evidence was adduced to prove that those certificates were not genuine then it followed that the certificate of equivalence could not stand.

In the instant case, what the appellant is challenging is not the Diploma in Management Studies upon which NCHE issued the certificate of equivalence. In fact the evidence obtained from the Registrar, Huron University, U.S.A in London was that this diploma was genuinely issued to the respondent with merit.

In my view, to make the case that the Diploma from the University was tainted with fraud, the appellant had to adduce evidence to prove a direct link between the alleged fraud of the Diploma in Animal Husbandry to the Diploma in Management Studies. Among the documents the respondent presented to Huron University, U.S.A in London before admission was her East African Certificate of Education (O-Level) whose validity was never under challenge in anyway. Evidence should have been adduced to rebut her evidence that it is that certificate that was the basis for her admission to the Diploma in Management Studies Course. The appellant would have had to prove that for that University one needed a previous Diploma in Animal Husbandry to be admitted to a course leading to the award of another Diploma, and that it was that Diploma that was the basis of her admission.

In her dissenting judgment, Mpagi-Bahigaine, J.A, in supporting the judgment of the trial court states:

> ***"It is apparent that the appellant's admission to Huron University was based on a false document amongst others, the rest being a number of attendance certificates at workshops and conferences apart from the "O" Level Certificate from Gayaza High School.***
>
> ***The false Diploma in Animal Husbandry, in my view, tainted her subsequent Diploma in Management Studies and the other qualifications obtained at Huron University with illegality. The would-be foundation was void and the situation could not be rectified by the "O" Level certificate which accompanied it. The suggestion that the university might not have based its decision to admit her on it is in my view not sustainable."***

In my view, and with great respect to the learned Justice of Appeal, this statement is based on speculation and not on evidence. No evidence was ever adduced as to the admission policy and criteria for admission for a Diploma course at Huron University. No evidence at all was adduced that admission to a Diploma Course could not be based on "O" Level certificate. As observed the evidence of the respondent that she was admitted on the basis of that certificate was not rebutted. There was therefore no evidence directly linking the Diploma in Animal Husbandry

to the Diploma in Management studies. The respondent appears to have presented to the university all that she regarded as her qualifications. As Mpagi-Bahigaine J.A, rightfully observed, many of them were mere certificates of attendance at workshops and conferences. One could not therefore pick out one and say it was the basis of admission to the Diploma course, simply because it had been presented. In my view, it should be necessary to take a pragmatic view of the issue at hand and decide which certificate, on the evidence, was relevant for admission. It is significant to note that the purpose of the exercise was to equate the Diploma in Management Studies to "A-Level" standard. One must also assume that the purpose of presenting the Diploma in Animal Husbandry would have been for it also to be equated to "A-Level" standard. If these Diplomas are equivalent to "A-Level" standard, it would appear to me that the University would not therefore require the equivalent of A-Level in order to admit a student to a programme leading to the award of a qualification that is equivalent to the qualification that formed the basis of the admission to that programme. A lower qualification would normally be required for admission to a programme leading to a higher

qualification. It is common knowledge in Uganda, for example, that the "0" Level certificate is used as a basis for admission to "A-Level" courses. In that context and in absence of evidence to show that Huron University, U.S.A in London required possession of a Diploma in Animal Husbandry before admission to a course for another Diploma in Management Studies, the majority of the Court of Appeal was right to accept the evidence of the respondent that she was in fact admitted on the basis of her "0-Level" certificate.

In the result, I find that there was no evidence to prove the direct linkage between the allegedly fraudulent Diploma in Animal Husbandry with the Diploma in Management Studies. The NCHE investigated both diplomas and decided to equate only the latter to A' Level equivalent. Apart from the remote manner in which the appellant has sought to clothe that Diploma with fraud and illegality, there is no evidence to show that the Diploma in Management Studies is itself fraudulent. In my view the case is distinguishable from the ***Makula International Ltd Case*** (supra).

I see no reason to interfere with the majority decision of the Court . of Appeal, and I would dismiss this appeal with costs in this Court and in the Courts below. I am not persuaded by the argument of counsel in his prayer for costs for two counsel. Accordingly I award costs for one counsel.

Delivered at Mengo this 6th day of March 2008.

B. M. Katureebe
JUSTICE OF THE SUPREME COURT

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment of my learned brother, Katureebe JSC, and I agree that this appeal should be dismissed. I concur in the order he has proposed as to costs.

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

Dated at Mengo this 6th day of March 2008.

B J Odoki
CHIEF JUSTICE

JUDGMENT OF TSEKOOKO, JSC.

I have had the advantage of reading in advance the judgment prepared by my learned brother, Katureebe, JSC., and I agree with his conclusions that this appeal should be dismissed.

I wish to comment on the question of costs. I notice that the Court of Appeal certified costs for two counsel but gave no reasons for this order. I find no basis for this.

I note that during the hearing of the appeal in that Court, counsel for the appellant asked for costs for two counsel. He never gave reasons to justify such a prayer. As if to outdo his counterpart, counsel for the respondent, likewise, asked for costs for three counsel. Like his counterpart, he never gave reasons in support of that prayer.

In this Court positions of parties had changed. In his written statement of arguments, counsel for the present appellant asked for certificate for two counsel. He did not say why. On the other hand, Mr. Nangwala, for the present respondent, in his oral submissions, prayed for costs for two counsel. He supported his prayer with the

contention that the case impeaches a sitting Member of Parliament, that the case is novel and that the record was voluminous.

In granting the certificate, the Court of Appeal did not give any reasons to justify a certificate for two counsel. In my view, a certificate of costs for more than one counsel must be supported by sound reasons such as the complexity or difficulty of the case. One rationale for this, to my mind, is to ensure that losing parties in litigation only meet reasonable costs of the winning parties. Costs are awarded upon exercise of judicial discretion based on sound reasons. I do not agree with Mr. Nangwala that this appeal presents novelty of any kind in as much as parliamentary election petitions are normal and I should think an expected hazard of Members of Parliament. That is why **Article 86 of the Constitution and Sections 60 and 61 of the Parliamentary Elections Act, 2005,** were enacted. Nor do I find the record so voluminous as to warrant employing two counsel in this appeal.

I would therefore set aside the order of the certificate for two counsel. I would award costs to the Respondent for only one counsel. I would dismiss the appeal with costs for one counsel here and in the two courts below.

Delivered at Mengo this 6th day of March 2008.

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

JUDGMENT OF MULENGA JSC.

I concur in the judgment my learned brother Katureebe JSC has just delivered and I agree that the appeal ought to be dismissed with the orders he proposes. I however like to comment briefly on two points for emphasis.

It is evident that the learned trial judge in his judgment and the learned Mpagi-Bahigeine J.A., in her minority judgment, misconstrued the evidence in holding that the respondent's Diploma in Management Studies was tainted with illegality. While I share their understandable disapproval of the respondent's repeated presentation of an apparently false Diploma in Animal Husbandry among her qualifications, I am unable to find any evidence in support of their respective conclusions that the false diploma was the "foundation" of the qualification that the National Council of Higher Education (NCHE) certified to be equivalent to formal education of advanced level standard. Although the appellant proved and

the respondent admitted that on application for admission to Huron University she submitted the false diploma along with many other certificates, it was not shown that her admission to that University and to the course that led to the award of the Diploma in Management Studies was based on the false diploma let alone that the latter was a requirement for the admission.

The appellant had the burden to prove that the respondent was not qualified to be a Member of Parliament because she lacked the required standard of formal education. In order to discharge the burden he had to show that the diploma from Huron University, which NCHE certified to be equivalent to the required qualification, was illegitimate. He only proved that before her admission to the University she had uttered a false document. He fell short of establishing a nexus between that false document and the diploma course the respondent was admitted to. He only invited the court to infer the nexus and hold that the diploma subsequently awarded to the respondent, was illegitimate. In my opinion, there was not sufficient material from which to make the inference, not to mention that the respondent testified that her admission to the University was not based or dependent on the false diploma. Although the trial judge disbelieved her testimony, as was within his power and discretion to do, that did not fill the gap of the missing nexus.

My second comment is on the import of the certificate of equivalence issued by NCHE under section 4 (6) of the Parliamentary Elections Act. The NCHE issues the certificate in execution of its function set out under section 5 (k) of the University and Other Tertiary Institutions Act, namely to determine the equivalence of one academic or professional qualification with another. In the instant case, the certificate that NCHE issued to the respondent was to the effect

that because the respondent was holder of the Diploma in Management Studies of Huron University and the East African Certificate of Education, she had completed formal education equivalent to that of Advanced Level standard. The NCHE is not concerned with determining if the holder of a degree, diploma or certificate in fact completed the formal education stated therein. Where that fact is put in issue it has to be determined by the court.

To that extent I would with due respect hold that the following two passages in the judgment of the learned Kavuma J.A. are misdirection, namely first, where he opines that –

> ***"The Court's investigation should be confined within the boundaries of ascertaining whether the National Council acted ultra vires the law, whether in exercising its discretionary power it acted corruptly or in bad faith or whether the Council considered alien and irrelevant matters, in which case the National Council's act would be a nullity."***

And secondly where he finds –

> ***"That certificate, being No.NCHE/PAR/05/150, is <u>in fact and in law,</u> the academic certificate required in establishing the appellant's academic qualification for nomination and election as a member of Parliament for the constituency."***

The power to hear and determine any question whether a person has been validly elected a member of Parliament, including whether the person is qualified to be elected is vested in the High Court, and is not in any way modified or qualified by the power of NCHE to determine equivalence of qualifications. 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 alleged illegitimacy therefore, the court is not usurping the function of NCHE.

DATED at Mengo this 6th day of March 2008

J.N. Mulenga
Justice of Supreme Court

JUDGMENT OF KANYEIHAMBA, JSC.

I have had the benefit to read in draft the judgments of my learned brothers, Hon. Justice Katureebe, J.S.C. and I am in agreement with his findings and reasons. I agree with him that this appeal ought to be dismissed and with the orders he has proposed. I also agree wit the judgment of Hon. Justice Tsekooko, J.S.C, with regard to certification of one counsel's costs.

Dated at Mengo, this 6th day of March 2008.

G.W. KANYEIHAMBA
JUSTICE OF SUPREME COURT