

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT

NO. 17 OF 2005 AS AMMENDED

ELECTION PETITION NO. 004 OF 2011

1. NTAMBAAZI MARGARET NABAGGALA }
2. NASSIWA JANAT } :::::::::::PETITIONERS

VERSUS

1. KINTU FLORENCE }
2. ELECTORAL COMMISSION } :::::::::::RESPONDENTS

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

Ms. Ntambaazi Margaret Nabaggala and Ms. Nassiwa Janat (the Petitioners); the 1st respondent, Ms. Kintu Florence, and Ms. Kiberu Jameo contested for election for Woman Member of Parliament for Kalungu District held on 18th February 2011. The 2nd respondent, the body charged with organizing general elections country wide, declared the 2nd respondent as the validly elected Member of Parliament for the said constituency, having obtained 21,788 votes as against 5,428 votes for the 1st Petitioner; 10,437 votes for the 2nd Petitioner; and 8,462 votes for Ms. Kiberu Jameo.

The Petitioners were aggrieved by the said declaration and prayed court to:

- a) Set aside the election of the 1st respondent as the Kalungu District Woman Member of Parliament (MP);
- b) Order that fresh elections be held;
- c) Set aside any consequential orders of the 2nd respondent; and
- d) Order the respondents to pay costs to the petitioners.

The grounds upon which this Petition is based are:

The 1st respondent who was declared winner is/was not qualified for election at the time of her election in that:

- 1) The 1st respondent did not possess a minimum formal education of Advanced level standard or its equivalent.
- 2) The 1st respondent presented academic documents which the 2nd respondent relied on despite protests from the 1st Petitioner but the 2nd respondent went ahead to have her nominated and later declared winner.
- 3) A certificate of completion of formal education of Advanced level standard or its equivalent was erroneously issued by the National Council for Higher Education to the 1st respondent on a basis of:
 - a. A certificate and transcript in Records Management allegedly obtained in Kabarole College of Commerce and Computer Center in 1977/1979 which certificate and transcript have never been issued by the said college.

- b. A Diploma in Business Management, Nkumba College of Commerce and Advanced Studies obtained in 1983 which from the records of Nkumba University, the successor of Nkumba College of Commerce and Advanced Studies does not exist as the names mentioned on record are not the true and full names of the 1st respondent.
- 4) The 1st respondent committed an illegal practice and or an electoral offence contrary to Section 76 (a) of the Parliamentary Elections Act when she presented forged academic documents to the National Council for Higher Education, the returning officer and the 2nd respondent knowing it to be forged.
- 5) The 1st respondent personally and by her agents with her knowledge, consent and approval committed an illegal practice and or an electoral offence when she, before and during the election, attacked the character of the 1st petitioner as a prostitute who was not morally fit to be elected.
- 6) The 1st respondent personally committed an electoral offence when she minimized the status of the petitioners by calling them her daughters indicating that they were not ready for the political job of being Member of Parliament.
- 7) The elections were not conducted in compliance with the electoral laws and the non-compliance affected the results in a substantial manner in that there was ballot stuffing, and the 2nd respondent's agents in connivance with the 1st respondent's agents obstructed agents of the petitioners to sign declaration of results form and compromising the principle of holding a free and fair elections.

In their respective answers to the Petition, the respondents disputed the above allegations and contended that the election was transparent, free and fair, and conducted in strict compliance with the provisions of the constitution, the Parliamentary Elections Act, the Electoral Commission Act, and other electoral laws in force. In particular the 1st respondent asserted that she had the requisite academic qualification, and she did not commit any electoral offence or illegal practice as alleged or at all.

The Petitioners filed respective affidavits in support of the Petition to which they attached several annextures. The 1st respondent filed an affidavit in support of her answer, and another one in reply. She also filed 5 further affidavits in support. The second respondent filed one affidavit in support of his answer.

At the Scheduling Conference it was agreed that all affidavits filed by either side by the agreed date, were all deemed as read. The following facts were agreed:

1. On 18/2/2011 the 2nd respondent conducted a general election throughout Uganda for Parliamentary Elections. In this particular case, for the seat of Kalungu District Woman Member of Parliament, there were 4 candidates i.e. the 2 petitioners, the 1st respondent and one Kiberu Jameo.
2. At the close of the voting exercise the 2nd respondent returned the 1st respondent as duly elected for the seat. Her name has since been published in the Uganda Gazette of 20th February 2011 as the Woman Member of Parliament elect for Kalungu District.

3. Petitioners were not satisfied with the results, and also questioned the qualification of the 1st respondent hence this petition.

The following issues were agreed:

1. Whether the 1st respondent was qualified to contest for election as Member of Parliament.
2. Whether the elections were conducted in accordance with the principles set by the electoral laws, and if not, whether the non-compliance affected the results in a substantive manner.
3. Remedies available to the parties.

At the hearing, Counsel for each party cross-examined witnesses of their choice from the other side, as well as re-examining their own. Both at hearing and during submission, however, counsel for the Petitioners canvassed only issues of qualification and remedies. The rest were taken as abandoned. It therefore follows that the only issue for determination is whether the 1st respondent was qualified for election as Woman Member of Parliament for Kalungu District.

The Law

Section 61 of the Parliamentary Elections Act states:

“61 (1); 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 court: -

- a)***
- b)***
- c)***

d) that the candidate was at his or her election not qualified or was disqualified for election as a Member of Parliament”.

The standard of proof is stated under Section 61 (1) and (3) to be “***to the satisfaction of court***” and “***on a balance of probabilities***”.

The qualifications of a Member of Parliament are laid down under Article 80 (1) (c) as follows:

“A person is qualified to be a Member of Parliament if that person is: -

a) Is a citizen of Uganda.

b) Is a registered voter.

c) 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.”

Sub-articles (1) (a) and (b) above are not in issue. The borne of contention is sub-article (1) (c). Parliament did prescribe the same qualifications under Section 4 (1) (a), (b) and (c) of the Parliamentary Elections Act, Act 17 of 2005 (PEA). Section 4 (5) (a) and (6) state that any person claiming to have his/her qualifications accepted as equivalent to Advanced Level education shall establish their qualification by production of a certificate issued to him or her by the National Council for Higher Education (NCHE) in consultation with the Uganda National Examinations Board (UNEb).

Section 4 (9) is to the effect that a certificate issued by National Council for Higher Education shall be sufficient in respect of any election for which the same qualification is required.

Article 86 (1) (a) vests in the High Court jurisdiction to hear and determine any question whether a person has been validly elected as a Member of Parliament.

The burden of proof lies with the Petitioner. (Section 101 of the Evidence Act, Cap 6). However, once an allegation is made challenging qualifications of a candidate/Member of Parliament, then the burden shifts to the party who claims to have the qualifications to prove so. Katureebe JSC in *Nakendo Vs Patrick Mwendha Katureebe JSC SCEP 09/2007*.

In cases where a certificate of equivalence was issued by NCHE, there is a basic assumption that the qualifications so equated were in existence and valid. If the National Council for Higher Education (NCHE) equates valid qualifications, then the courts of law may not interfere with its decision. But where the certificate (NCHE) purported to equate is what is being challenged, then the High Court has power to enquire into that question. It is not the equating that is being enquired into but the validity of the qualifications that were equated. (See Katureebe JSC's judgment in Nakendo's Case (Supra).

I will proceed to determine the issues in this petition on the basis of the above principles of law, starting with the case against the 2nd respondent.

At the beginning of his submissions, Mr. Ntambirweki Kandebe, who appeared for both respondents, started by submitting on the case against the 2nd respondent. He stated that not a

single blame had been laid on the 2nd respondent, the Electoral Commission, and hence no case had been proved against it. Issues of qualification were for an individual and whether they were forged or not, the Electoral Commission looked at the certificates as presented. No evidence was led to show that the Electoral Commission nominated the 1st respondent without presenting any certificates.

Counsel further submitted that a respondent was defined by Rule 3 (e) of the Section 1 of the Parliamentary Elections (Election Petitions) Rules S.I. 141-2 as the person of whose election a complaint is made in a petition. Where the petitioner complains of the conduct of the Commission or Returning officer it includes the Commission or Returning officer. From the address of the petitioner's Counsel no blame or complaint had been proved against the Electoral Commission by any scintilla of evidence. The Electoral Commission was, therefore, wrongfully added. He concluded by asking court to dismiss the petition as against the 2nd respondent with costs.

The petitioners had pleaded under paragraph 5 (e) that the elections were not conducted in compliance with the electoral laws and the non-compliance affected the results in a substantial manner in that there was ballot stuffing, and the 2nd respondent's agents in connivance with the 1st respondent's agents obstructed agents of the Petitioners to sign declaration of results forms thereby comprising the principle of holding a free and fair elections.

In both their paragraph 5 of their respective affidavits in support of the Petition, the petitioners alleged that in a number of polling stations there were several irregularities in that several of their agents were denied a chance to sign on the declaration forms and no reasons were indicated by the presiding officer on the form. The copies of the DR forms allegedly affected were attached.

The petitioners further alleged that the 2nd respondent nominated the 1st respondent despite their protests regarding the academic documents presented by the 1st respondent.

There were no further affidavits filed in support of the said allegations. Neither were the allegations canvassed during submissions. Counsel for the petitioners only mentioned in his rejoinder that they had protested to the 2nd respondent. There was no evidence to prove any of the above allegations.

I find that the case against the 2nd respondent was not backed by any evidence, and must, therefore, be dismissed with costs to the 2nd respondent.

The petitioners had also pleaded under paragraph 5 (e) that the 1st respondent had personally committed an illegal practice or illegal offence when she, before and during the campaign attacked the character of the 1st petitioner labeling her a prostitute who had separated with her husband; and not morally fit to be in Parliament. Paragraph 5 (d) of the Petition alleged that the

1st respondent had minimized the petitioners' status by calling them her daughters indicating that they were not ready for Parliament. The petitioners repeated the allegations in their affidavits.

During cross-examination, the 1st respondent denied ever calling the petitioners her daughters with the intention of minimizing them. She only used the term in response to their pleas to her as their "Mummy" to leave the seat for them.

The above two allegations were left at that, and were not canvassed in submissions. They were therefore, taken as abandoned. This left only one issue for determination, i.e. whether the 1st respondent had the requisite qualifications to be elected Member of Parliament.

The 1st issue is whether the 1st respondent was qualified to contest for election as Member of Parliament.

Paragraph 5 (a) and (b) of the petition allege that the 1st respondent did not have the requisite qualification for election to Member of Parliament, in that she did not possess the required minimum formal education or its equivalent. The Petition further states that the 1st respondent presented academic documents which the 2nd respondent relied on despite protests from the petitioners.

The Petitioners swore affidavits in support of their case. The 1st respondent refuted these allegations and also called witnesses. Court also called two witnesses from NCHE to clarify on some discrepancies in the certificate issued by the Council to the 1st respondent.

The NCHE Certificate:

Exhibit C2 was a Certificate of Completion of Formal Education of 'A' Level Standard or its equivalent issued by NCHE on 24/6/2011 in NCHE indicating that the certificate was issued on the basis of a Diploma from Nkumba University, 1982 and Certificate in Records Management, Kabarole College of Commerce 1979. It was issued because according to NCHE the 1st certificate, Annexure 'F' to the Petition, issued on August 10, 2010, had typographical errors. This was communicated in a letter dated 24/6/2011 of Executive Director, NCHE, Court Exhibit 1 in which he clarified that NCHE had realized some typographical errors on the face of the earlier certificate as follows:

- 1) The Diploma from Nkumba was indicated as a Diploma in Business "Management" instead of "Administration", and;
- 2) The certificate in Records Management was indicated as an award of UNEB instead of Kabarole College of Commerce.

These errors were corrected and a new certificate was issued dated 24/6/2011. It was presented to court by court witness No. 1, Ms. Farida Bukirwa, the Legal officer of NCHE.

The Petitioners took issue with the new certificate. Mr. Alaka, Counsel for the petitioners contended that the certificate issued by NCHE and admitted as Court Exhibit 2 was false as it referred to a Diploma in Business Administration, Nkumba University 1982, which was not submitted to NCHE. He submitted there was no such a Diploma, as Court Exhibit 3 is an award of a Higher Diploma in Business Education, Diploma in Business Administration dated 29/1/1983. Further, Court Exhibit 4 was a Certificate in Records Management from Kabarole College of Commerce and Computer Centre, issued in 1990.

Counsel therefore questioned where NCHE got a 1982 Diploma in Business Administration of Nkumba University, and a Certificate in Records Management from Kabarole College of Commerce of 1979 on which they based to issue the new certificate which was not stated as a transcript but a certificate. Further, although the Certificate in Records Management was expected to have been issued by Kabarole Progressive College of Commerce in 1979, the one in place was from a different College, that is to say, Kabarole College of Commerce and Computer Studies, and was dated 1990. He finally submitted that Court Exhibit 2 (the Diploma from Nkumba) and Court Exhibit 4, the Certificate in Records Management, were false because they were issued on basis of qualifications that did not exist.

Counsel took further issue with the Certificate in Records Management issued by Kabarole College of Commerce and Computer Studies, a College which was not registered in 1977 – 1979 when the 1st respondent studied there. Exhibit P1, a letter from the Ministry of Education, indicated that the school was classified and registered in 1987. Counsel therefore submitted that non-registration of the College rendered the resultant award invalid.

Counsel further relied on Annexure J to the Petitioner's affidavits which was a Report on investigations carried out by Police, also supported by a letter to Police from the Principal of the College (Annexure D1 to the affidavit in support) to the effect that the Certificate in Records Management was not obtained from Kabarole Progressive College. Although the same Principal, Mr. Francis Kasangaki, later swore an affidavit for the 1st respondent retracting what he had told police, Counsel submitted that the Principal's retraction evidence should not be believed because, apart from the above said letter to the Police dated 8/12/2010, Kasangaki had written another letter to M/s Kasumba, Kasule and Co. Advocates on the 20/3/2011, raising issues with the transcript from that College which the 1st respondent had presented to the Returning officer for nomination; which all point to one inference that the certificate in Records Management was forged and/or acquired fraudulently.

Counsel also referred to the three different Box office numbers of the said College of Commerce as used in different communications, and concluded these were different Colleges and not one College.

In addition, Mr. Muyizzi, for the Petitioners, while also attacking the credibility of the NCHE Certificate and Diploma, contended that it was not possible for the 1st respondent to be admitted to Nkumba College of Commerce in 1980 on basis of a certificate in Records Management obtained in 1990. Although the 2nd respondent stated in her testimony that she was admitted to Nkumba College on the basis of a recommendation of Kabarole College of Commerce, the same was not availed to court. Counsel concluded that the 1st respondent, who had problems with her Primary Leaving Examinations judging from the very poor marks she scored, could not have

been accepted for a Certificate course; and that the certificate was never used as the basis for admittance for a Diploma Course. As such NCHE was misled into issuing a certificate of equivalence.

In reply to the above, Mr. Kandebe, for the 1st respondent, submitted that the 1st respondent was duly qualified for nomination, and that the qualifications for election are the actual certificates she obtained from school which she is required to present to NCHE for equating. The certificates which the 1st respondent presented for nomination were what the petitioners obtained from Electoral Commission, as confirmed by the NCHE. The same documents that NCHE looked at and investigated and consulted various institutions about are the same ones that were presented to court as Court Exhibit 3, Court Exhibit 4, Court Exhibit 6 (a). For Annexure D2, the academic transcript from Kabarole College of Commerce, Court witness No. 1 confirmed under cross-examination that NCHE looked at it since it was part of the documents submitted by the 1st respondent.

Counsel submitted that the 1st respondent had duly presented her academic qualifications to NCHE before presenting them for nomination. The 1st respondent had no reason to believe that NCHE could make an error which was only realized during the hearing of the petition. It was for this reason that court summoned NCHE to explain the inconsistencies. NCHE had gone through their records on getting summons, and found errors which they went ahead to correct. The said errors did not go to the root of the original qualifications of the 1st respondent. It remained as a fact that the 1st respondent attended Nkumba College of Commerce and Advanced Studies from July 1980 – July 1982. The Nkumba University Academic Registrar had confirmed that the

qualifications were true and authentic and were awarded by Nkumba College of Commerce and Advanced Studies. Counsel further contended that NCHE took the year 1982 in its Certificate of Equivalence because by September 1982, the 1st respondent possessed a Diploma.

The 1979 appearing on Certificate of Equivalence in respect of the Certificate in Records Management, as explained by Court witness No. 1 was based on the fact that the course in Records Management according to the transcript was completed in 1979. The transcript, Annexure D2 to the Petition showed that the Certificate was done between 1977 and 1979, hence NCHE using that year.

Counsel concluded that the red flag raised, regarding the dates on the NCHE certificate, was highly exaggerated and not justified. Court witness No. 1 under cross-examination by Counsel for 1st respondent said that the NCHE looked at the documents submitted by the 1st respondent as a whole.

On the letters written by RW2, Mr. Kasangaki, the Principal of Kabarole College to Police and M/S Kasumba Advocates, Mr. Kandebe submitted that these did not amount to evidence as they were not on oath. His retraction of the same was on oath before court. Mr. Kasangaki admitted in court that he had not researched the records when he wrote the letters.

Counsel further submitted that Kabarole Progressive College was in existence at the relevant time and to prove this, RW1, Mr. Ongom, the Director of the College had produced the results of the students, Exhibit R.1. The allegation of non-registration of the school was not sustainable in law because there are preliminary stages under which an institution went through before registration and classification. Section 25 of the Education Act, which required that after one school year, an application for the provisionally licensed school had to be made in writing to the Chief Education Officer (CEO). The Section did not state what would happen in case the school applied and was not granted the license or registration status, or if it took the Chief Education officer 10 years to respond. He concluded that since under Exhibit P.1 the Chief Education Officer did not indicate when the application was lodged, the proper construction was that the College was provisionally licensed before it made the application. An award from a provisionally licensed College is recognized in law. There is no evidence to the contrary and the burden was on the petitioners. Counsel relied on *Kyamanywa A.K. Tumisiime Vs IGG at page 11* to state that a student could not be faulted for attending a College whose doors were open, with no indication to the student that it was not licensed/registered.

On the police investigations into the 1st respondent's certificates resulting in the report attached to the Petition as Annexure J, Counsel submitted that neither was the 1st respondent ever questioned by Police on the certificates; nor did the maker of the report file any affidavit in this matter.

I have considered the pleadings and the respective affidavits in support, the testimonies in court, the law and authorities relied on; and the submission of learned Counsel on both sides.

As indicated earlier, the qualification requirements for election to Parliament is “A” Level or its equivalent, and the equivalent is to be established through relevant certificates being presented to National Council for Higher Education for equating to “A” level certificate.

In the present case the 1st respondent presented her qualifications to NCHE and to the Returning officer prior to nomination. These were:

- 1) A certificate in Records Management issued by Kabarole College of Commerce and Computer Centre, dated 25/9/1990 (Annexure E to the Petitioner’s affidavits in support).
- 2) A Higher Diploma in Business Administration issued by Nkumba College of Commerce and Advanced Studies, dated 29th January 1983. (Annexure H to the Petitioner’s affidavits in support).
- 3) An academic Transcript by Kabarole College of Commerce and Computer Centre, dated 29/06/2010. (Annexure D to the Petitioner’s affidavits).

The certificate of equivalence issued by NCHE to the 1st respondent on 10/8/2010, Annexure F, was found to have mistakes which were pointed out by Counsel for the Petitioner as follows:

- 1) The Diploma from Nkumba University was indicated as a Diploma in Business “Management” instead of “Administration”.

The court called a witness, the Executive Director of NCHE to clarify on the 1982 that appeared on their certificate of equivalence. He instead sent the Legal officer, Court witness No. 1, with the letter acknowledging the above as typographical errors. NCHE replaced Annexure F with Court Exhibit 2, a new certificate of Formal Education of Advanced Level Standard or its equivalent, dated 24/6/2011.

The Counsel for the Petitioner found fault with the new certificate too in that: -

- 1) It talked of Nkumba University 1982 yet the certificate attached as Court Exhibit 3 was from Nkumba College of Commerce and Advanced Studies.
- 2) Court Exhibit 4 is a Certificate in Records Management from Kabarole College of Commerce and Computer Center issued in September 1990. Exhibit 2, the NCHE Certificate, talks of a certificate in Records Management from Kabarole College of Commerce of 1979.

I have examined the above said documents. Court witness No. 1, when cross-examined by Counsel for the respondents explained the origin of the year 1979 in respect of Certificate. She said that NCHE looked at all the documents presented to them by the 1st respondent among which was the transcript (Annexure I) of Kabarole College of Commerce. The transcript indicated that the 1st respondent completed the course in 1979. Further, although the Diploma certificate showed 1983, the Testimonial from Nkumba College of Commerce and Advanced Studies, (Court Exhibit 6 (a)) indicated that the 1st respondent finished her course in 1982. Hence the 1982 appearing on the NCHE certificate beside the Diploma qualification. The court also took judicial notice that Nkumba College of Commerce became Nkumba University, and it is the latter who did all the verifications required by NCHE.

I am satisfied with the explanation given by the Court witness No. 1 as to the dates appearing on Exhibit C.2, the certificate of equivalence. I am fortified by the fact that the certificates presented to court by the Court Witness No. 1, that is to say, Court Exhibit 3 and Court Exhibit 4, are the same ones which were also verified by the Nkumba University on 14/7/2010 as authentic and awarded by Nkumba College of Commerce and Advanced Studies. Although Mr. Alaka had also complained further that the signature of the Academic Registrar appearing on the verification stamp on Court Exhibit 3 was different from the same person's signature on Court Exhibit 7, (the verification letter) no evidence was brought to prove that the author of the letter was not the one who signed in the verification stamp. I found this latter complaint rather very trivial, and not touching on the efficacy of the qualifications.

I don't agree that the errors on the NCHE Certificates either the 1st or the second one, were incurably defective as Counsel for the petitioners urged court to find. The NCHE Certificate is not the qualification. The Certificate and Diploma that were equated by NCHE are the very documents that the 1st respondent presented to NCHE. Any errors on the NCHE Certificate did not change the nature of the Certificates submitted by the 1st respondent. As long as the qualification itself is authentic, errors on the NCHE certificate will not affect its authenticity.

The name "Kabarokole":

Mr. Alaka made reference to a letter from Nkumba University Academic Registrar dated 24/11/2010 to the Assistant Inspector General of Police, CID, Annexure F, in which the Academic Registrar, referring to their records stated that the 1st respondent joined Nkumba College of Commerce in July 1980 as Kintu Florence Kabarokole. Counsel took issue with the

additional name of Kabarokole and insisted that the person who was at Nkumba who was awarded the Diploma was not the 1st respondent because she was not Kabarokole.

In her affidavit in support of the answer, the 1st respondent deponed in paragraph 10 thus:

“That the name Kabarokole that appears in the correspondence of Nkumba University was the 1st respondent’s nickname while at the College as a savedee.....”.

The 1st respondent further relied on the evidence of Jacob Kembo, who also filed an affidavit in support of the 1st respondent to the effect that he studied at Nkumba College of Commerce at the relevant time, and the 1st respondent was in the same College. He also confirmed that the name Kabarokole was the 1st respondent’s nickname which came as a result of her involvement in the Scripture Union.

The court is satisfied from the available evidence that the 1st respondent is the owner of the Diploma certificate presented from Nkumba College of Commerce. She is Florence Kintu, and the Diploma certificate bears only those two names. I see no reason for court to bother much about the name Kabarokole, although the 1st respondent has said it was also her nickname. Moreover, the petitioners have not produced any other person who claims to be Kabarokole, and at the same time is Kintu Florence who studied at Nkumba at the relevant time, and awarded a similar certificate.

The certificate in Records Management and the attendant Transcript; There were several challenges raised by Mr. Alaka regarding the validity of the above certificate. It was alleged under paragraph 5 (a) (III) (a) of the Petition that the said certificate and transcript were never

issued by Kabarole College of Commerce, and Computer Centre. As stated earlier Counsel relied on the Police report, and the letters by the RW2, Principal, Exhibit PII, and PIII denying that the certificate was issued from that college, and raising serious issues with the transcript. During submissions, Counsel added that the College was non-existent at the time the 1st respondent allegedly undertook studies there. As stated earlier, the Principal retracted the stated statements in the two letters in his affidavit. During cross-examination he stated that when he wrote Exhibit PII and PIII he was under pressure by police and the lady who later came to the school; who demanded that he gave them answers according to their favoured line of questioning. He had, however, later checked thoroughly through the school records and found evidence of the 1st respondent having attended the College between 1977 - 1979. The director of the school, Mr. Ongom (RW1) also swore an affidavit and later testified that the Police and lady put them under so much pressure to give them the answers they desired, and they had succumbed; but later the truth was discovered on further search without the undue pressure; that is to say that the 1st respondent was a student at the College from 1977 up to 1979. The director, further tendered Exhibit R1, the results for the College for several years including 1977/78, and 1978/79. The two also stated in their respective testimonies that the College had changed names from Kabarole Progressive College of Commerce and Computer Centre to Kabarole College of Commerce and Computer Centre; but that everything else had remained the same. There was no evidence to controvert this evidence.

The two above witnesses revealed that although the college had been in existence much earlier, it was only registered on 2nd October 1987 as per Exhibit P.1. It was Mr. Ongom's evidence that prior to the registration, the Ministry officials knew about the existence of the college since they used to attend the school functions, and they had not closed the school due to non-registration.

On consideration of the petitioner's complaint and the evidence relied on by the petitioners vis-à-vis the evidence relied on by the 1st respondent, I have found no evidence to prove the allegation that Kabarole College of Commerce was not in existence at the time the 1st respondent said she undertook her studies there. She said the school was in existence. RW1 and RW2 also confirmed that there were records at the college to confirm the above fact. Furthermore, RW1, Mr. Ongom, produced evidence of results of the school for several years including the period when the 1st respondent was at the school i.e. 1977 – 79 (Exhibit R1). The authenticity of the said results was not put in issue. I therefore find that the school existed at the time the 1st respondent is alleged to have attended the same.

As to whether the certificate in Record Management was issued by Kabarole College of Commerce and Computer Centre, I also find this to be so. The principals' earlier contradictory letters were explained away in court on oath. They were written under pressure from police and one of the petitioners who went to the college at different times and demanded for letters couched in the terms they wished. Furthermore, I agree with Mr. Kandebe that the alleged police report cannot be relied on as it was compiled without interviewing the 1st respondent. Neither did the maker of the report swear an affidavit in this matter to present the report, and also make himself available for cross-examination.

I find that Kabarole Progressive College and Computer Centre existed at the relevant time, and that the certificate and transcript in issue were issued by the said school, which was the same institution that had changed names over the years.

One of the more serious challenges related to the non-registration of Kabarole Progressive College and Computer Centre at the time when the 1st respondent studied there. The principal of the College, RW2 and the director RW1 joined the College in 2008 and 1989 respectively. Each attested to the fact that according to available records including Exhibit R1, the College was in existence in 1977 when the 1st respondent joined it, and that she completed in 1979; she graduated and was issued a certificate in 1990. By this time the College had changed names from Kabarole Progressive College and Computer Centre to Kabarole College of Commerce and Computer Centre. It was common ground that the College was registered in 1987, and that the 1st respondent only graduated, and was issued the certificate in Records Management in 1990.

The petitioners' case is that non-registration of the College at the time the 1st respondent undertook the studies invalidated any subsequent award by the College. The 1st respondent's case on the other hand is that although the College was registered only in 1987, according to the law, before registration there is a given period when an institution operates under a provisional license, and the proper construction here was that prior to 1987 the College was operating under a provisional license. Moreover the Act did not state what would happen if one applied and the Chief Education officer took 10 years to respond; or what would be the fate of the award, as the Act only punished offending operators of the school.

I have perused the Education Act of 1970 Cap. 127, which, though now repealed by the Education Act of 2008, was the law in operation at the relevant time. The object is stated to be an Act to amend and consolidate the law relating to the development and regulation of education, the registration and licensing of teachers in public and private schools and for other matters related thereto. A perusal of the Act shows that the “other related matters” include classification, registration and licensing of schools.

School is defined in Section 1 as:

***“An institution in which not less than ten pupils receive regular instruction or an institution which provides instruction by correspondence*”**

The scope of application of the said Act is given under Section 45 as:

“45; Application:

(1) This Act shall not apply to Makerere University or any College, school or institution declared by the Minister, by statutory order, to be exempt from the application of this Act.”

Section 24 states:

“24. Permission to operate a new school.

Permission to operate a new school shall be given, in the first instance, in the form of a license to operate a provisionally classified school for one school year”.

Section 25. Classification of school;

- (i) *After one school year, an application for the classification of the provisionally licensed school shall be made in writing to the Chief Education officer and shall contain the following particulars:*
- a) *The name of the owner;*
 - b) *The type and range of education proposed to be provided in the school.*
 - c) *The classes, standards or forms to be provided in the school;*
 - d) *The staff list and their qualifications”.*

Section 26. Registration of private schools;

“If after one year, the Chief Education officer is satisfied:

- a) *That the school provisionally licensed is properly run and organized, then he shall issue the certificate of Registration and classification;*
- b) *That all or any of the conditions set up under this Act have not been fulfilled, he or she may:*
 - i) *Extend the provisional license for a further period not exceeding one school year; or*
 - ii) *Order the school to be closed”.*

Failure to register is punishable under Section 32.

Section 32; offences relating to private school:-

Any person who:

- a) *Establishes or maintains any school which is not classified and registered in accordance with this Act.*
- b)
- c)
- d)

Commits an offence and is liable on first conviction to a fine not exceeding six thousand shillings and on a second or subsequent conviction, to a term of imprisonment not exceeding 6 months”.

The Act applied to schools, Colleges and other Institutions like Kabarole Progressive College of Commerce and Computer Studies, because there is no evidence that it was exempt by the Minister under Section 45 (supra). And although Sections 24, 25, and 26 (supra) appear to be applicable to new schools established after the Act, Section 32, the punitive section, appears to apply to new and already existing schools. The court takes it therefore that the requirements were meant for both new and existing schools.

As stated, it is not in issue that the college was not registered at the time the 1st respondent studied at the college. There is no evidence adduced by either side as to when a provisional license if any, was issued to the college and for how long it had operated for, although going by the provisions of the Act, such a license was expected to operate for a maximum of two years.

Court witness No. 2, Ambassador Acato, informed court he had checked with Mr. John Agaba of Ministry of Education and confirmed that the college was licensed by the Ministry of Education although he did not find out when the license started operating. On what formed the basis of the

respondent's admission for the certificate course, Mr. Acato informed court that NCHE had received a letter from the principal, (Court Exhibit 7) indicating that Ms. Florence Kintu did not have an "O" level certificate which was the basic requirement for entrance to a one year Records Management Course; that she had dropped out after Senior Three; and that cases as hers who did not complete "O" level had to do the Records Management course for two years. She did the course for two years.

The court finds that there is evidence that the 1st respondent studied for two years and sat and passed examinations in respect to the course in Records Management. This is according to her own uncontroverted evidence in court, and the Exhibit R1 which were the results of the school exams for the two years she attended the college. Her award did not come until the college was registered. She was graduated in 1990, after the college was registered. Should court conclude that the award of 1990 was null and void since at the time the 1st respondent attended the college it was not registered, or even probably licensed?

When Mr. Acato was asked whether NCHE would issue a certificate of equivalence if the certificate in Records Management was awarded by an institution which was not registered/licensed at the time the 1st respondent undertook the studies, he stated that the education system in Uganda had evolved and had been changing and varying from time to time, and that what was applicable today could not be used to judge what happened 30 years ago. Mr. Acato recounted the political circumstances of the 1970's where law and order had broken down with the result that people running private institutions were finding it very difficult to comply with certain requirements; but that over time, the system had been streamlined and order restored in the country. The Universities and other Tertiary Institutions Act 2001, was now in place to

regulate Universities and Colleges. It is clear that NCHE's decision to issue a certificate of equivalence to the 1st respondent without laying too much emphasis on whether at the time the 1st respondent attended the College 30 years ago it was registered, was informed by the various changes the education system has gone through since then, and the political circumstances of the day.

I agree that 30 years ago is a very long time ago and under the circumstances of anarchy and total lawlessness that prevailed then, as also indicated by Mr. Acato, it would not be fair to unseat a Member of Parliament just because a school she attended 30 years ago was not registered then. If NCHE, in their wisdom, deemed it fit not to subject the qualifications obtained during anarchy 30 years ago from an unregistered institution, to the stringent standards/requirements of today when law and order has been restored and the education system streamlined, the court cannot fault them. NCHE should be given the latitude to make decisions taking into account all circumstances of the qualifications without the court unduly taking on the role of second guessing what NCHE's decision ought to have been. In this particular case, although the 1970 Act criminalized the operation of a school without registration/license by punishing the operator of the school, the fate of the awards to the unsuspecting students is not stated. I am more fortified in my resolve not to upset the election because of my finding that although the 1st respondent studied at the college before it was registered, the certificate in this case was not awarded to the 1st respondent until 1990, after the college had been registered in 1987.

As to the entrance to Nkumba College of Commerce in 1980 by the 1st respondent, she clearly stated in her evidence that she was admitted to the College on the basis of a recommendation from Kabarole Progressive College of Commerce and Computer Studies. There was no contrary

evidence from Nkumba University adduced to disprove this. There is no evidence that Nkumba College of Commerce, now Nkumba University, did not have its own admission policy and procedures at the time; or whether such policy was violated by the admission to the College by the 1st respondent on the basis of a recommendation. The fact that the 1st respondent did not produce the stated recommendation was of no consequence, as the same was meant for Nkumba College of Commerce, and not for the 1st respondent to keep. Even if the 1st respondent had been given a copy, which has not been proved, I doubt if she could at the time have envisaged a petition like the present one where such copy would be required, for her to keep the copy as a treasure.

In *Kyamanywa Andrew K. Tumusiime Vs IGG HCMA 243 of 2008*, Bamwine J, as he then was, agreed with the view that graduation was a mere ceremony which did not have to take place before one enrolled for another degree.

I find that without proof that any of the certificates was a forgery, NCHE was right to issue a certificate of equivalence to the 1st respondent.

Lastly, the Petitioners raised issues regarding the Primary Leaving Examination (PLE) certificate of the 1st respondent. The 1st respondent presented to the District Registrar/Returning officer, a Verification Statement from the Uganda National Examinations Board addressed to the Chief Administrative Officer, Kalungu District Local Government dated 13/10/2010 in respect of one Kintu D.N. Florence who sat for her PLE in 1973 at Gayaza Girls' Catholic School, and obtained 58 in English, 38 in General Paper and 28 in Mathematics. (Grade 2). The Petitioners in their affidavits deponed that the certificate referred to in the verification statement was a forgery in so

far as it bore the initials D.N. in addition to the names Kintu Florence, the names she relied on to get nominated.

The 1st respondent responded both in her affidavit in support and in her testimony that she was the “Kintu D.N. Florence” referred to in the UNEB statement, D.N. standing for Deborah Nakintu which were also her names; which initials she had abandoned when she went for the certificate course. She also relied on the affidavit of her former schoolmate at the said school, Florence Nalumansi, who stated that she knew the 1st respondent as they went to the same school, Gayaza Girls Catholic School, at the relevant time although she had been ahead of the 1st respondent.

From the evidence of the 1st respondent and her schoolmates, I am satisfied that the verification statement from UNEB referred to the 1st respondent. No other person, answering to the name of Florence D.N. Kintu was produced by the petitioners to controvert the applicant’s evidence as to her previous identity. In court’s view, a forgery would have returned higher marks than the ones in the verification statement.

The above brings me to a related issue raised by Mr. Alaka allegedly pointing to the integrity (or lack thereof) of the 1st respondent. In the process of NCHE’s equating the certificates of the 1st respondent’s certificates, NCHE wrote to the Principal, Kabarole College of Commerce on the 7/7/2010 asking him to confirm the authenticity and ownership of the Certificate in Records Management presented by the 1st respondent to NCHE; and the qualifications that merited her admission to the college. On the 9/7/2010, the Principal, Mr. Kasangaki, RW1, responded vide Court Exhibit 6 (b) stating that the academic award attached to the letter belonged to Kintu

Florence obtained from Kabarole College of Commerce and Computer Centre. He further stated that the qualifications that merited her admission to the course was because she had passed Mathematics with 55 %, English with 64%, SST with 71% and Science with 69%. These results are different from the ones in the Verification Statement from UNEB which the 1st respondent presented for nomination, the former being exaggerated.

Mr. Alaka argued that from the above two conflicting results, either the 1st respondent did not attend Kabarole College of Commerce, or that the person who sat PLE in 1973 at Gayaza was different from the one who was nominated.

It is not clear to court where the Principal got the results he communicated to NCHE. The exhibits were retrieved from the NCHE file at the end of the trial when the Principal had already testified. In any case none of the parties applied to recall him to explain this. One may indeed be tempted to deduce that the 1st respondent could have had a hand in the forwarding of the exaggerated results to NCHE. However, what the same 1st respondent submitted to the 2nd respondent for nomination was the Verification Statement from UNEB which indicated such low marks and not any other exaggerated results. It is, therefore, not likely that the same person could have asked the Principal to communicate results different from the ones she submitted for nomination. It would not make any sense. It remains a mystery where the Principal got the said results. In any case I cannot put the blame on the 1st respondent without proof connecting her to the communication from the Principal, which is Court Exhibit 6 (a), which was not even copied to her, and over which she was not even cross-examined. The principal's antiques will not be used by court to question the integrity of the 1st respondent as Mr. Alaka asked court to do, for lack of credible evidence to that effect. Indeed when Mr. Acato, Court witness No. 2, was

questioned on the response to their letter of enquiry to the principal, regarding the qualifications that merited the 1st respondent's entry to the College, he referred court to a different letter from the Principal, that is to say Court Exhibit No. 7, dated 02/08/2010, which to the effect that 1st respondent joined the College after having sat Primary Seven Exams, that since she had not completed her secondary education, (Senior three leaver) she was admitted for a two year course in Records Management, and that the 2 year course was mandatory for her as a Senior three leaver.

It is therefore apparent that reliance was placed by NCHE on Court Exhibit 7 rather than Court Exhibit 6 (a), which has in any case not been linked to the 1st respondent. I find that Court Exhibit 6 (a) does not therefore point to any lack of integrity on the part of the 1st respondent. Further, and in any case, there is no legal requirement for one to have passed Primary Leaving Examinations in order to become a Member of Parliament. Moreover, if the qualifications the 1st respondent had before she entered Kabarole Progressive College were found permissible by the College, how far back should one go to trace the pre-entrance qualifications especially where it is not a matter of statutory requirement that, whether PLE or whatever, must be this or that?

All in all, I have not been able to find any forgeries on the part of the 1st respondent. She studied at Kabarole Progressive College of Commerce and Computer Studies and passed examination in the two years she was there. She then proceeded to Nkumba College of Commerce, based on the studies she undertook and the recommendation from the school. At Nkumba she studied from 1980 to 1982 and completed her studies for the Diploma Course in 1982. The NCHE Certificate which the 1st respondent submitted for nomination could have had typographical, or other errors as pointed out by NCHE in their letter attempting to rectify the errors on 24/6/2011; and even the

certificate issued in replacement of the earlier one could also have had some errors regarding the years they were issued. These errors don't go to the root of the qualifications themselves. The certificate and diploma remained authentic, and unaltered by the errors on the NCHE certificate. If the 1st respondent achieved as she did, qualifications truly regarded as an equivalent, without using someone else's requests or forging certificates, this court will not fault her.

The court finds that the 1st respondent was duly qualified for election as Member of Parliament. The 1st issue is answered in the affirmative.

The second issue, as to whether the elections were conducted in accordance with the principles set by the electoral laws, and if not, whether the non-compliance effected the results in a substantial manner.

As stated earlier, the petitioners did not canvas this issue either during the hearing or submissions. The issue was therefore taken as abandoned.

The last issue is to do with remedies available to the parties. I have found that the certificate in Records Management from Kabarole College of Commerce and Computer Centre, and the Diploma in Business Administration from Nkumba College of Commerce, presented for nomination were valid documents. The ensuing nomination and election of the 1st respondent as Woman Member of Parliament were valid. Ordinarily, the costs would follow the event. In this case, however, despite my above findings, I found that the complaints raised by the petitioners were not completely unmeritorious. I therefore order that in as far as the petitioners and the 1st

respondent are concerned; each party will bear their own costs. However, since the suit against the 2nd respondent was not justified, the petitioners shall pay costs to the 2nd respondent.

In conclusion this petition is dismissed with orders as to costs as spelt out above. It is so ordered.

Elizabeth Musoke

JUDGE

19/09/2011