

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT CAP 177, THE  
PARLIAMENTARY ELECTIONS (INTERIM PROVISIONS) (APPEAL TO THE HIGH COURT  
FROM COMMISSION) RULES SI 141-1, THE ELECTORAL COMMISSION ACT CAP  
176.

ELECTION PETITION APPEAL NO 10 OF 2025  
(AN APPEAL ARISING FROM THE DECISION OF THE ELECTORAL COMMISSION  
COMMUNICATED TO THE PETITIONER ON THE 9<sup>TH</sup> DAY OF DECEMBER 2025)

WALUKAGA MATHIAS\_\_\_\_\_ PETITIONER

VERSUS

1. ELECTORAL COMMISSION

2. LUBOWA JOHN KILIMIRO\_\_\_\_\_ RESPONDENTS

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE

JUDGMENT

## **INTRODUCTION**

1. The petitioner brought this petition under section 15 of the Parliamentary Elections Act, rules 2 and 5 of the Parliamentary elections (interim provisions) (Appeal to the High Court from Commission) Rules and section 45 of the Electoral Commission Act for the following orders;
  - a) That court allows this Appeal and sets aside the decision of the 1<sup>st</sup> Respondent denominating the Petitioner's nomination for Member of Parliament representing Busiro East Constituency.
  - b) An order that the Petitioner be renominated/reinstated as a candidate for the post of Member of Parliament representing Busiro East Constituency.
  - c) An order directing the 1<sup>st</sup> Respondent to reinstate the Petitioner as duly nominated candidate for the position of the Member of Parliament representing Busiro East Constituency.
  - d) Costs of this suit be provided for.
  
2. The grounds for the same are contained in the affidavit of the petitioner **Walukaga Mathias**, avowing that;
  - a) The Petitioner, a Ugandan adult, who was duly nominated on 23<sup>rd</sup> October 2025 to contest for Member of Parliament for Busiro East Constituency.
  - b) His nomination was based on a mature age/aptitude certificate issued by the Islamic University in Uganda on the 12<sup>th</sup> June 2023, which was equated by

**National Council for Higher Education (NCHE)** to Advanced Level standard and a certificate of completion of formal education of advanced level standard or of its equivalent was on the **11<sup>th</sup> day of June 2025** issued to him.

- c) The certificate of mature age/aptitude test by the Islamic University in Uganda was issued to the Petitioner on the **12<sup>th</sup> day of June 2023** with the expiry date of the **12<sup>th</sup> day of June 2025**.
- d) The said certificate expires after two (2) years if the candidate has not used it to enrol for further studies otherwise the certificate remains valid.
- e) Upon issuance of mature entry certificate to the petitioner, he immediately enrolled at St. Lawrence University in **August 2023** where he is currently a third-year student pursuing a bachelor's degree in public administration.
- f) A registered voter (2<sup>nd</sup> Respondent) challenged the Petitioner's nomination in MIN.COMP/048/2025, alleging lack of requisite academic qualifications.
- g) After hearings in November 2025, the **Electoral Commission (1<sup>st</sup> Respondent)** issued a decision on the 25<sup>th</sup> November 2025 denominating the Petitioner for lack of minimum formal qualifications.
- h) The **1<sup>st</sup> Respondent** is empowered under **Article 60 of the 1995 Constitution** and the **Electoral Commission Act (Cap 140)** to among others; verify that candidates meet the Constitutional and statutory qualifications for nomination.
- i) In execution of the said mandate, the **Electoral Commission (E.C)** relies on competent bodies for specialized matters such as the **National Council for Higher Education (NCHE)** regarding academic verification.

- j) The Petitioner's mature entry certificate was equated to formal education of advanced level standard by the **National Council for Higher Education (NCHE)** in consultation with **Uganda National Examination Board (UNEB)** on the **11<sup>th</sup> day of June 2025**.
  - k) On the basis of the certificate of completion of formal education of advanced level standard or of its equivalent, the Petitioner was duly nominated to vie for the position of a member of parliament representing Busiro East Constituency.
  - l) The Petitioner is dissatisfied with the decision of the Electoral Commission tribunal because he has the requisite academic qualifications, a certificate of mature age/aptitude test which was equated to formal education of advanced level standard by the **National Council for Higher Education (NCHE)** in consultation with **Uganda National Examination Board (UNEB)** on the **11<sup>th</sup> day of June 2025**.
  - m) The 1<sup>st</sup> Respondent entertained the matter without jurisdiction in reviewing the petitioner's academic documents which had already been verified by the **National Council for Higher Education (NCHE)** in consultation with **Uganda National Examination Board (UNEB)** on the **11<sup>th</sup> day of June 2025**.
  - n) The decision was unjust, unfair, and illegal.
3. The 1<sup>st</sup> Respondent made an affidavit in reply sworn by Kayondo Abubaker briefly stating that;-

- a) On 4<sup>th</sup> November 2025, the 2<sup>nd</sup> Respondent petitioned the Electoral Commission seeking nullification of the Petitioner's nomination for Busiro East Constituency, alleging lack of requisite academic qualifications.
- b) Both parties, represented by counsel, appeared before the Commission in November 2025.
- c) The Petitioner presented only two documents for nomination:
  - i. Certificate of Mature Age/Aptitude Test from IUIU (issued 12 June 2023, expiring 12 June 2025).
  - ii. Certificate of equivalence from NCHE (dated 11 June 2025).
- d) The certificate explicitly indicated a two-year validity period, consistent with **Legal Notice No. 12 of 2015**, Paragraph 9(b).
- e) A letter from IUIU dated the 11<sup>th</sup> of November 2025 confirmed the Petitioner scored 54% in the test and suggested the certificate remains valid if used for further studies.
- f) The Commission, however, emphasized that the law and the certificate itself limit validity to two years from issuance.
- g) By 23<sup>rd</sup> October 2025 (nomination date), the Petitioner's Mature Age/Aptitude certificate had expired.
- h) Consequently, he lacked the minimum formal qualifications required under **Section 4(1)(c) of the Parliamentary Elections Act**.
- i) The Commission denominated the Petitioner, holding he was not validly nominated.

- j) The Commission has jurisdiction under **Article 61(1)(f) of the Constitution** and **Section 15 of the Electoral Commission Act, Cap 176** to determine complaints regarding candidate qualifications.

4. The 2<sup>nd</sup> Respondent in reply through the affidavit of Lubowa John Kilimiro briefly states that;-

- a) The deponent is an adult Ugandan citizen, registered voter in Busiro County East Constituency, resident of Kkona East Village, Wakiso District.
- b) He inspected nomination papers on 27<sup>th</sup> October 2025 and discovered irregularities in the Petitioner's nomination.
- c) The Petitioner was nominated on 23<sup>rd</sup> October 2025 using only two documents:
  - i. Certificate of Mature Age/Aptitude Test (IUIU, issued 12<sup>th</sup> June 2023, expired 12 June 2025).
  - ii. Certificate of Equivalence by NCHE (11<sup>th</sup> June 2025).
- d) The Mature Age certificate had expired before nomination, under Legal Notice No. 12 of 2015, Paragraphs 3, 8(1&2), and 9(b).
- e) Expired qualifications cannot support nomination under Section 4 of the Parliamentary Elections Act.
- f) The NCHE is the only body mandated to equate qualifications, but the law itself fixes the validity of Mature Age certificates to two years.

- g) The certificate is not a perpetual qualification; it is conditional and time bound.
- h) Admission letters or student IDs cannot substitute for the required A-level or equivalent qualification.
- i) The Electoral Commission has jurisdiction under Article 61(f) of the Constitution and Section 15 of the Electoral Commission Act to hear nomination disputes.
- j) The Commission found that the Petitioner lacked requisite qualifications and denominated him.
- k) The IUIU letter of 11<sup>th</sup> November 2025 was not before the Commission and cannot override statutory provisions.
- l) The Petitioner's nomination was invalid as his only qualification had expired and the Electoral Commission rightly denominated him.
- m) The current petition challenging that decision is without merit.

## **REPRESENTATION**

- 5. The petitioner was represented jointly by **Ms. Nalukoola Advocates & Solicitors, Ms. Alaka & Company Advocates, and M/s Ahamark Advocates**. The 1<sup>st</sup> respondent was represented by the **Electoral Commission, Legal Department** while the 2<sup>nd</sup> respondent was represented by **M/s Signature Advocates**.

## **ISSUES**

1. Whether the petition is properly before the Court in light of the preliminary objections raised regarding the validity of the Commission's decision, the alleged jurisdictional bar under Section 15 of the Electoral Commission Act, and the alleged incompetence of the petition for want of distinct and concise grounds of appeal.
2. Whether the Electoral Commission (EC) had jurisdiction to entertain a complaint to nullify the petitioner's nomination based on the validity/expiry of the petitioner's Mature Age/Aptitude Test certificate that was equated by the National Council for Higher Education (NCHE).
3. Whether the Petitioner has qualifications to vie for the post of Member of Parliament for Busiro East Constituency.
4. What are the remedies available?

### DETERMINATION

6. All parties filed written submissions which I have duly considered in arriving at this decision. The same will not be reproduced verbatim. While I agree with the authorities cited by all parties, I may herein depart with the manner and context in which the same have been applied by the parties. Additionally, given that this is a matter of public importance, I have tried as much as possible to simplify this decision to enable the electorate understand the same.



7. I also acknowledge that the parties raised three preliminary points of law. I however note that the same do not determine this petition and the basis of the conflict between the parties.

**8. My understanding of the petition is that;-**

- a) The Petitioner submitted his nomination papers to contest for the position of Member of Parliament representing Busiro East Constituency in Wakiso District. He was duly nominated on the 23<sup>rd</sup> day of October 2025. Following this nomination, the 2<sup>nd</sup> Respondent filed Petition No. MIN.COMP/048/2025 before the 1<sup>st</sup> Respondent, seeking to have the Petitioner's nomination cancelled.
- b) This appeal arises from the decision of the 1<sup>st</sup> Respondent (the Electoral Commission) dated 25<sup>th</sup> November 2025. The decision followed a petition lodged by the 2<sup>nd</sup> Respondent on 4<sup>th</sup> November 2025, which sought the nullification of the nomination of Mr. Walukaga Mathias (the Petitioner) on the grounds that he allegedly lacked the requisite academic qualifications to contest for the position of Member of Parliament for Busiro East Constituency.
- c) For purposes of nomination, the Petitioner presented two documents:
  - o A Certificate of Mature Age/Aptitude Test awarded by the Islamic University in Uganda (IUIU) on 12th June 2023.

- A Certificate of Equivalence issued by the National Council for Higher Education (NCHE) on 11th June 2025.
- d) In its decision, the 1<sup>st</sup> Respondent noted that the Mature Age/Aptitude Test Certificate was issued on 12<sup>th</sup> June 2023 and indicated an expiry date of 12<sup>th</sup> June 2025. It held that, by the nomination date of 23<sup>rd</sup> October 2025, the certificate had expired, and therefore the Returning Officer had wrongly nominated the Petitioner.
- e) During the hearing, the Petitioner produced a letter from IUIU dated 11<sup>th</sup> November 2025. The letter confirmed that he sat the Mature Age Aptitude Test on 25<sup>th</sup> February 2023, obtained a score of 54%, and clarified that the certificate only expires after two years if it is not used for enrolment into further studies.
- f) The 1<sup>st</sup> Respondent nonetheless relied on Paragraph 9(b) of the Universities and Other Tertiary Institutions (Benchmarks for Verifying, Determining and Recognizing Academic Qualifications as Equivalent to Advanced Level) Legal Notice No. 12 of 2015, which provides that a Mature Age Certificate is valid for two years from the date of award.
- g) After hearings conducted on 7<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> November 2025, the 1<sup>st</sup> Respondent concluded that the Petitioner's certificate had expired by 23<sup>rd</sup> October 2025 and accordingly cancelled his nomination for lack of the requisite qualifications. This appeal was therefore instituted.

## Burden of proof

9. The burden of proof in election petitions lies on the petitioner (See; **Akugizibwe v Muhumuza and 2 Others** (Election Petition Appeal No. 52 of 2021) [2022] UGCA 126 (25 April 2022)).
10. This burden of proof remains on the petitioner throughout the trial to prove the assertions in the petition to the satisfaction of court. The burden does not shift, save in a few circumstances for example proof of academic credentials where the burden shifts to the holder of the academic credentials. (see; **Mutembuli v Nagwomu and Another** (Election Petition Appeal No. 43 of 2016) [2017] UGCA 170 (27 July 2017)).
11. Under section 61 (3) of the Parliamentary Elections Act cap 117, the burden of proof placed on the petitioner is to the satisfaction of court on a balance of probabilities and not beyond a reasonable doubt. (See; **Ikiror v Orot** (Election Petition Appeal No. 105 of 2016) [2019] UGCA 10 (1 March 2019)).

ISSUE 1: WHETHER THE PETITION IS PROPERLY BEFORE THE COURT IN LIGHT OF THE PRELIMINARY OBJECTIONS RAISED REGARDING THE VALIDITY OF THE COMMISSION'S DECISION, THE ALLEGED JURISDICTIONAL BAR UNDER SECTION 15 OF THE ELECTORAL COMMISSION ACT, AND THE ALLEGED INCOMPETENCE OF THE PETITION FOR WANT OF DISTINCT AND CONCISE GROUNDS OF APPEAL.

12. The petitioner raised two preliminary objections;

- (i) Invalidity of the Commission's "decision" for lack of quorum.
- (ii) Lack of jurisdiction due to breach of Section 15 of the Electoral Commission Act on procedure.

13. The 1<sup>st</sup> respondent also raised a preliminary objection that;

- (iii) The petition is grossly incompetent for failure to disclose distinct, specific and concise grounds of appeal against the decision of the 1<sup>st</sup> respondent.

(i) **Validity of the Electoral Commission's Decision**

14. **Petitioner's Objection:** The Petitioner contends that the decision denominating him was invalid because it was signed only by the Chairperson, lacked quorum, and was unsupported by minutes, contrary to Section 8 of the Electoral Commission Act and relevant case law.

15. **Respondents' Reply:**

Hearings were conducted on 7<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> November 2025 with quorum duly constituted.

- Counsel for Petitioner raised the issue of quorum before the Commission, and it was addressed prior to the hearing.
- Petitioner's advocates participated fully in all hearings; it is misleading to now claim the Chairperson acted alone.

- The cited case (*Okabe Patrick v Opio Joseph Linos*) is distinguishable: in that case, there was no evidence the Commission sat. Here, all parties acknowledge the Commission sat and rendered a decision.
- The form of communication (signature by Chairperson) does not invalidate the substance of the decision.
- Section 8(8) of the Electoral Commission Act empowers the Commission to regulate its own procedure, including how decisions are communicated.
- The burden of proof lies on the Petitioner to obtain and present the record of proceedings; failure to do so cannot be blamed on the Respondents (*Besigye v Museveni*, EPA No. 1 of 2001).

**16. Section 8 of the Electoral Commission Act Cap 176. Provides for the Procedure of Commission. It provides that;-**

- [1] *Every decision of the Commission shall, as far as possible, be by consensus.*
- [2] *Where on any matter consensus cannot be obtained, the matter shall be decided by voting; and the matter shall be taken to have been decided if supported by the votes of a majority of all the members of the Commission.*
- [3] *In any vote under subsection [\(2\)](#), each member of the Commission shall have one vote, and none shall have a casting vote.*
- [4] *The quorum of the Commission at any meeting shall be five.*
- [5] *The Commission may act notwithstanding the absence of any member or any vacancy in the office of a member.*
- [6] *The Secretary shall cause to be recorded minutes of all proceedings of the Commission.*

[7] *The Secretary shall have custody of the minutes of the Commission.*

[8] *Subject to this Act and the Constitution, the Commission may regulate its own procedure”.*

17. The case of **Okabe v Opio & Anor (Election Petition Appeal No. 87 of 2016) [2017]**

**UGCA 12 (8 May 2017)** provides that the Commission must act collectively, not individually.

18. The Supreme Court in **Constitutional Petition No. 46 of 2001, Sam Kuteesa &**

**Others v Attorney General** held that bodies exercising quasi-judicial powers must act jointly, not through a single member.

19. When several persons are appointed to exercise judicial powers, they must all act together; there can be only one adjudication, and that must be the adjudication of the entire body.

20. The Electoral Commission, being a collegiate body, is bound to sit as a Commission, not act through its Chairperson alone.

21. I agree with the above decisions and find no justifiable reason to depart from them. I however find that the said cases are distinguishable from the facts of this particular petition because in the case of **Okabe v Opio & Anor (Election Petition Appeal No. 87 of 2016) [2017] UGCA 12 (8 May 2017)**, there was no evidence to show that the commission was fully constituted at the sittings. There were no

minutes of the sitting, and it was the conclusion of court that the commission acted contrary to the provisions of the law.

22. In the instant petition, the petitioner has not demonstrated the absence of the minutes of the commission while handling MIN.COMP/048/2025. It is also vital to note that the burden lies on the petitioner and does not shift to the respondent.

23. The parties here in agree that the commissioners were all present during the hearings. The contention of the petitioner is that the communication of the decision is invalid because it was only signed by the chairperson of the commission. I take note of Section 8(8) of the Electoral Commission Act which allows the Commission to regulate its own procedure. Because all the commissioners were present during the sitting and hearing there is no evidence or reason to doubt that the letter signed by the chairperson communicating the decision, doesn't represent the decision of the commission as a whole. The chairperson as the head of the institution is well within his mandate to communicate the decision of the commission. That as it maybe I find that this issue whether decided in favour of the petitioner or the respondents does not resolve the core of the complaint against the petitioner.

24. Also, the failure to raise or deal with pre-election issues at this point may preclude the 2<sup>nd</sup> respondent from raising them in the future leading to an injustice. It may also lead to unnecessary litigation, a potential annulment of an election and unnecessary waste of taxpayers' money to conduct another

election. It is for this reason that it is imperative that this dispute is handled and concluded at this level. (See; **Grace Nalubega v Juliet K. Suubi Kinyamatama and Another (Election Petition Appeal No. 27 of 2021) [2022] UGCA 383**). I therefore find no merit in this preliminary objection.

(ii) **Jurisdiction to Entertain Complaint MIN.COMP/048/2025**

25. **Petitioner's Objection:** The Petitioner argues that the complaint should have first been lodged with the lower authority like the district Returning Officer, and only escalated to the Commission if unresolved, per Section 15 of the Electoral Commission Act.

26. Section 15(4) underscores this hierarchy by making the High Court's decision final, since it is intended to be the third tier of dispute resolution.

27. Section 15 (4) of the Electoral Commission Act Cap 176 provides that;-

*"On hearing a petition under subsection [\(2\)](#), the High Court may make such order as it thinks fit, and its decision shall be final."*

28. **Respondents' Reply:**

- Article 61(1)(f) of the Constitution empowers the Electoral Commission to hear and determine election complaints arising before and during polling.
- **Section 32(c) of the Parliamentary Elections Act** provides a dual forum: a registered voter may lodge a complaint with either the Returning Officer or directly with the Commission.



- The 2<sup>nd</sup> Respondent's complaint was properly filed directly with the Commission under this provision.
- Section 30(c) & (e) of the **Parliamentary Elections Act** allows the Commission to invalidate a nomination if the candidate is not qualified under Section 4.
- Therefore, the Commission acted within its jurisdiction in entertaining and determining the complaint.

29. Section 15 (1) and (2) of the Electoral Commission Act Cap 176 provides that;-

*[1] A complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the Commission; and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and any effects it may have caused.*

*[2] An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity.*

30. This provision would presuppose that a complainant would first lodge his complaint with a lower-level authority and revert to the commission if dissatisfied. However,

Article 61 (1) (f) of the 1995 Constitution provides that; -

*[1] “The Electoral Commission shall have the following functions—(f)to hear and determine election complaints arising before and during polling;”*

31. **Section 32(c) of the Parliamentary Elections Act Cap 177 32.** Provides that;  
*“A voter registered on the voters roll of a constituency may—(c)lodge any complaint with the returning officer or the Commission in relation to any nomination in respect of the constituency challenging the qualifications of any person nominated.”*

32. **Section 30(c) & (e) of the Parliamentary Elections Act** allows the Commission to invalidate a nomination if the candidate is not qualified under Section 4.

33. From the above provisions, the spirit of the law generally allows a registered voter the right to lodge a complaint either with the returning officer or directly with the Commission. I also find that a statutory provision cannot override a constitutional provision. Since **Article 61 (1) (f) of the 1995 Constitution** gives the 1<sup>st</sup> respondent the right to hear and determine election complaints arising before and during polling, I agree with the respondents that the commission had the jurisdiction to entertain the 2<sup>nd</sup> respondent’s petition.

(iii) **failure to disclose distinct, specific and concise grounds of appeal**

34. The **1<sup>st</sup> Respondent** argues that the **Petition is grossly incompetent** because it fails to present **distinct, specific, and concise grounds of appeal** against the Electoral Commission's decision.

35. The objection relies on **Order 43 Rule 1(2)** of the Civil Procedure Rules, which requires grounds of appeal to be clearly numbered and stated without narrative or argument.

36. Cited authorities include:

- a. **Attorney General v Florence Baliraine (SCCA No. 7 of 1993)**: Grounds must give clear notice of the complaint.
- b. **Dr. Baveewo Steven v Kaggwa Anthony (Civil Appeal No. 001 of 2020)**: Grounds must challenge a specific holding or legal conclusion.
- c. **Katumba Byaruhanga v Edward Kyewalabye Musoke (CACA No. 02 of 1998)**: Appeals must pinpoint errors that caused injustice; vague grounds are improper.

37. The Respondent contends that the Petition merely raises generalized grievances without identifying the specific findings or legal errors being challenged, leaving both the Respondent and the Court uncertain about the case to be met.

38. The petitioners reply;

- a) **Legal Framework Governing Election Appeals**. Section 15(3) of the *Electoral Commission Act*, Cap 176, clearly provides that an appeal shall be made by way of a petition supported by affidavit evidence. Crucially, the petition must

specify the declaration sought from the High Court—not a memorandum of appeal or notice as erroneously cited by the 1st Respondent.

Section 15(6) of the same Act empowers the Chief Justice, in consultation with the Attorney General, to enact procedural rules governing appeals under this section. These rules are distinct from the *Civil Procedure Rules* and reflect the sui generis nature of election-related litigation.

- b) The petition before this Honourable Court was filed in accordance with the specific statutory requirements governing election appeals. It is supported by affidavit evidence and clearly sets out the declaration sought. The 1<sup>st</sup> Respondent's reliance on Order 43 Rule 1(2) of the *Civil Procedure Rules* is therefore misplaced and inapplicable to the present proceedings.
- c) **Nature of Election Petitions.** Election matters are governed by a unique procedural regime tailored to their constitutional and statutory context. Attempts to import general civil procedure rules into this framework undermines the legislative intent and risk procedural injustice.

39. From a read of the petition, one can identify the grounds of appeal. The major ground of appeal revolves around the denomination of the petitioner by the 1<sup>st</sup> respondent pursuant to a complaint by the 2<sup>nd</sup> respondent for lack of the requisite academic documents. His contention is that the certificate of mature age entry having been equated by the National Council for higher education was

sufficient and that the 1<sup>st</sup> respondent did not have the jurisdiction to disregard the same and denominate the petitioner.

40. Section 15 (3) of the Electoral Commission Act Cap 176 provides that;-

*“The appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration that the High Court is being requested to make”.*

41. I find that this petition is in compliance with the provisions of **Section 15(3) of the Electoral Commission Act, Cap 176**. Therefore, this preliminary objection is misconceived and I overrule the same.

**ISSUE 2: WHETHER THE ELECTORAL COMMISSION (EC) HAD JURISDICTION TO ENTERTAIN A COMPLAINT TO NULLIFY THE PETITIONER’S NOMINATION BASED ON THE VALIDITY/EXPIRY OF THE PETITIONER’S MATURE AGE/APTITUDE TEST CERTIFICATE THAT WAS EQUATED BY THE NATIONAL COUNCIL FOR HIGHER EDUCATION (NCHE).**

42. The parties agree that:

- a) The petitioner was duly nominated on 23<sup>rd</sup> October 2025 using Mature Age/Aptitude Test Certificate (IUIU, issued 12 June 2023).
- b) Certificate of Equivalence (NCHE, 11 June 2025), equating the qualification to Advanced Level standard.

- c) Parliamentary Elections Act (PEA), Section 4(1)(c): Qualification requires minimum formal education of Advanced Level or equivalent.
- d) Subsection 6: Qualification is established by producing a certificate issued by NCHE in consultation with UNEB.
- e) Subsection 9: Such certificate is sufficient for any election.
- f) Subsection 11: Appeals against NCHE's grant/refusal lie to the High Court, not the Electoral Commission.
- g) Universities and Other Tertiary Institutions Act, Section 5(k): NCHE determines equivalence of qualifications.
- h) NCHE is the sole body with technical capacity to equate and validate academic documents.
- i) Once NCHE issues a certificate, EC cannot disregard it (*Kakooza John v EC, EPA No. 11 of 2002*).
- j) Neither IUIU, NCHE, nor UNEB cancelled or disowned the Petitioner's documents.
- k) Certification letter (IUIU, 11 November 2025) confirmed validity of the Mature Age certificate, noting it remains valid if used for further studies.
- l) Petitioner had enrolled at St. Lawrence University in August 2023, satisfying that condition.

## Core Divergence

### 43. Petitioner's position:

- a) Jurisdiction lies with NCHE (and High Court on appeal) on issues of academic credentials and therefore the EC overstepped its powers.
- b) *Joy Kabatsi v Anifa Kawooya & EC, SCEPA No. 25 of 2008*: Allegations about qualifications must be supported by cancellation/withdrawal by the awarding institution.
- c) *Uganda Railways Corporation v Ekwaru D.O & Others, SCCA No. 07 of 2019*: Proceedings undertaken without jurisdiction are null and void.
- d) *Makula International v Cardinal Nsubuga (1982)*: An illegality once brought to court overrides all pleadings.
- e) The Electoral Commission acted ultra vires by nullifying nomination based on academic qualifications already equated and certified by NCHE.
- f) EC lacked jurisdiction to overturn NCHE's decision; only the High Court has that mandate under Section 4(11) PEA.

### 44. Respondent's Position

- a) Jurisdiction lies with EC as the first instance body for election complaints; NCHE's role is limited to equivalence, but EC must assess validity at nomination.

- b) **Jurisdiction is statutory:** Nobody can assume jurisdiction unless expressly conferred by law (Baku Raphael v AG, SCCA No.1 of 2005).
- c) **Constitutional mandate:** Article 61(1)(f) of the 1995 Constitution and Section 15 of the Electoral Commission Act empower EC to hear and determine election complaints arising before and during polling.
- d) **Nature of complaint:** The 2<sup>nd</sup> Respondent did not challenge NCHE's equivalence certificate itself, but the validity of the underlying qualification (Mature Age certificate) at the time of nomination.
- e) **Expiry principle:** NCHE's equivalence certificate collapses once the underlying qualification ceases validity.
- f) **Gole Nicholas Davis v Loi Kiryapawo (2007):** NCHE certificate only establishes equivalence; it is not itself the academic qualification.
- g) **Gaddafi Nassur v Sekabira Denes (2021):** EC has mandate to hear election complaints before and during polling; appeals lie to High Court under Article 64(1).
- h) **Akol Ellen Odeke v Okodel Umar (2020):** High Court's jurisdiction is subject to EC's original mandate under Article 61(1)(f).
- i) **Kasirye Zzimula Fred v Bazigatirawo Kibuuka Francis Amooti (2018):** Court of Appeal affirmed EC's jurisdiction as court of first instance in election complaints. Qualification disputes fall within EC's competence; EC decisions are final unless appealed to High Court.



j) Court intervention is only available after exhaustion of EC's processes; it cannot intervene midstream in the electoral process. The High Court's role is appellate, not original, in such matters.

45. I agree with the parties that the roles of the Electoral Commission and The National Council for higher education (NCHE) are distinct. While the cardinal role of the NCHE is to accredit and equate academic credentials, the role of the Electoral commission is to act as an arbiter (tribunal) to adjudicate election related disputes. It is for this reason that if a party fails to raise these disputes with the Electoral Commission before elections, the party may be barred from raising the same in an election petition under Section 61(1)(d) of the Parliamentary Elections Act after the elections. (See; **Grace Nalubega v Juliet K. Suubi Kinyamatama and Another (Election Petition Appeal No. 27 of 2021) [2022] UGCA 383**).

46. For purposes of disputes adjudicated upon by the Electoral Commission, the High Court exercises appellate jurisdiction as the final arbiter in the matter. There is no limitation as to the nature of complaints that the Electoral Commission can entertain. Therefore, in as far as a complaint relates to the election and or its integrity during and before, the Electoral Commission has jurisdiction to adjudicate the same dispute and come up with a resolution.

47. The question before the Electoral Commission was whether the academic credentials presented by the petitioner were valid for purposes of nomination. The discussion revolved around the expiry of the same. It is upon this basis that

the Electoral Commission made a decision to denominate the petitioner. I find that the first respondent did not overstep its jurisdiction as it did not equate and or attempt to exercise the jurisdiction of the National Council for Higher Education. I find that what the Electoral Commission did was to adjudicate a conflict based on whether the said certificate was valid.

48. I also take cognizance of the fact that a party may be able to procure a certificate of equivalence from the National Council of Higher Education erroneously or before the date of nomination. As usual and as expected, the National Council of Higher Education will issue a certificate of equivalence if the certificate of mature entry is still valid. However, should the certificate of mature entry expire before nomination, it is my opinion that the certificate of equivalence equally collapses and cannot be used for purposes of nomination. However, if the same was valid at the time of nomination the 1<sup>st</sup> respondent cannot invalidate the nomination.

49. In the circumstances, it is the holding of this court that, challenges to a candidate's academic qualifications or eligibility must be raised before elections, unless the defect was not reasonably discoverable at that time. Post-election challenges under **Section 61(1) of the Parliamentary Elections Act** are only valid if the invalidity of qualifications was not apparent during nomination.

50. **Section 15 of the Electoral Commission Act** intends for all nomination disputes to be resolved before election day, to avoid unnecessary expense and inconvenience to voters. It is thus illogical to contest a candidate's eligibility after losing an election. Such challenges must be made prior to voting.

51. **Article 61(1)(f) of the Constitution and section 15 of the Electoral Commission Act** require nomination complaints to be submitted to the Electoral Commission. Only if defects were undiscoverable at nomination can they later form the basis of an election petition under **Section 61(1)(d) of the Parliamentary Elections Act**. **Section 15(a) of the Parliamentary Elections Act** allows registered voters to inspect nomination papers on nomination day, ensuring irregularities can be identified early.

52. In short, nomination disputes must be resolved before elections via the Electoral Commission, unless the defect was unknowable at nomination. Post-election challenges are barred if the issue could have been raised earlier. (See; *Grace Nalubega v Juliet K. Suubi Kinyamatama and Another* (Election Petition Appeal No. 27 of 2021) [2022] UGCA 383).

53. I therefore resolve this issue in favour of the respondents.

### ISSUE 3: WHETHER THE PETITIONER HAS QUALIFICATIONS TO VIE FOR THE POST OF MEMBER OF PARLIAMENT BUSIRO EAST CONSTITUENCY.

#### 54. Legal Framework

- a) Article 80(1)(c), Constitution of Uganda (1995): Requires completion of Advanced Level or its equivalent.

- b) Section 4(1), Parliamentary Elections Act (Cap 177): Same requirement; equivalence determined by NCHE in consultation with UNEB.
- c) Legal Notice No. 12 of 2015: Mature Age Entrance Examination Certificate is recognized as equivalent to Advanced Level, valid for two years unless used to enroll for further studies.

#### 55. The Petitioner's view

- a) Mature Age/Aptitude Test Certificate was issued by IUIU on the 12<sup>th</sup> June 2023).
- b) Certificate of Equivalence was issued by NCHE on 11<sup>th</sup> June 2025, equating the certificate to Advanced Level.
- c) Letter from IUIU Academic Registrar dated 11<sup>th</sup> November 2025 confirms certificate validity if used for further studies before the expiry of two years.
- d) Petitioner enrolled at St. Lawrence University in August 2023, pursuing a Bachelor's in Public Administration.
- e) That the Literal interpretation by EC that the certificate expired on 12<sup>th</sup> June 2025 leads to absurdity.
- f) Golden Rule of Interpretation (Charles Onyango Obbo v AG, Const. Appeal No. 2 of 2002): Courts may depart from literal meaning to avoid unjust or illogical outcomes.
- g) Expiry applies only where certificate is unused for further studies. Since Petitioner enrolled, certificate remained valid.

- h) Analogy: A-Level results valid for government sponsorship for three years, but remain valid qualifications beyond that period.
- i) Ssekajja v Ssebikali, C.A EPA No. 69 of 2021: “Completed” means achieving requisite standard, not necessarily with a pass grade. “Equivalent” means comparable level, not identical.
- j) Kakooza John v EC (EPA No. 11 of 2002): Once accredited institution confirms certificate, EC cannot disregard it.
- k) NCHE v Anifa Kawooya (Const. Appeal No. 04 of 2011): Improper for one institution to usurp powers vested in another.
- l) Under Article 28, Constitution, NCHE cannot be condemned unheard.
- m) Respondents should have challenged NCHE’s equivalence decision in High Court, not before EC.

**56.The Respondents’ view;-**

- a) By nomination date (23<sup>rd</sup> October 2025), the petitioner’s certificate had expired (12<sup>th</sup> June 2025).
- b) Once expired, both the certificate and the NCHE equivalence lost legal effect.
- c) Counsel for the petitioner cannot “amend” the law by claiming continued validity beyond two years.
- d) The doctrine of approbate and reprobate prevents the petitioner from relying on Legal Notice No. 12 of 2015 for equivalence while rejecting its expiry

condition. (*Lissenden v Bosch* (1940), *Muhammed Walusimbi v Bombo Hussein* (2020), and *Energo (U) Co. Ltd v Rubaramira* (2013))

- e) *Gole Nicholas Davis v Loi Kiryapawo* (2007) clarifying NCHE's role: equivalence certificates only establish equivalence, not confer academic qualifications.
- f) Section 30(c) & (e) of the Parliamentary Elections Act: nomination void if candidate lacks required qualifications.
- g) The petitioner's qualification expired before nomination.
- h) Enrollment in a Bachelor's program or letters from universities do not substitute for the constitutional requirement.
- i) Therefore, the petitioner was not validly nominated for Parliament, as he lacked the minimum academic qualification at the time of nomination.

## Decision of court

57. **Mature age entry** refers to pathways that allow individuals over the age of 22 years to access higher education without needing to sit for A level. This entry scheme is designed for prospective students who may not have completed traditional schooling or who do not meet the minimum admission criteria based on the great results. The certificate of Mature Age Test has been held by the National Council for higher education in consultation with the Ugandan national examination board to be equivalent to a level which is the minimum requirement for one to contest for the position of member of parliament. However, the connotation raised by the 2nd respondent was that the certificate used by the

petitioner for purposes of nomination had expired and as a result, the petitioner did not have the minimum academic qualifications. Therefore, for this issue to be resolved, it's imperative for court to look at the timeline from the date the petitioner sat for the Mature Age Test to the date of nomination.

58.The timeline is as follows. **The Petitioner;-**

- a) Sat for the Mature Age Test on 25<sup>th</sup> February 2023 and scored 54%.
- b) The Certificate was issued on 12<sup>th</sup> June 2023,
- c) The same expired on 12<sup>th</sup> June 2025.
- d) National Council for Higher Education (NCHE) issued equivalence certificate on 11<sup>th</sup> June 2025, one day before expiry.
- e) Nomination occurred on the 23<sup>rd</sup> October 2025—four months after expiry.

59.From the above timeline, I note that the petitioner's only qualification had expired by nomination date, rendering both the certificate and NCHE equivalence invalid. Legal Notice No. 12 of 2015 sets strict conditions with no provision for extension or exception. It provides that a mature age entrance examinations certificate awarded to a person aged at least 22 years who has passed the mature age entry examination should be valid for two years from the date of award.

60.The letter from IUIU dated 11<sup>th</sup> November 2025 suggesting conditional validity if the certificate is used to enrol for further studies cannot override the express legal framework.

61.I therefore find that;-

- a) An expired certificate at the time of nomination cannot lead to a legitimate nomination.
- b) The petitioner did not possess a valid academic qualification at the time of nomination.
- c) His nomination was invalid and rightly set aside by the 1<sup>st</sup> respondent for the above reasons.
- d) The 1st Respondent rightly denominated the petitioner.

62.In the end I dismiss this petition.

#### ISSUE 4: WHAT REMEDIES ARE AVAILABLE TO THE PARTIES.

63.Section 27(2) of the Civil Procedure Act, provides that a successful party is entitled to costs unless for good cause Court orders otherwise. In **Lyamulemye David Vs Attorney General SCCA No.4 of 2013** it was held that, it is trite law that the award of costs is in the discretion of Court, the award of costs must follow the event.

64.I decline to award the respondents costs because this petition raised an issue of public importance and one that has not been tested by our legal jurisprudence. Therefore, all parties shall bear their costs.

I so order.



Dated this 21<sup>st</sup> day of December 2025 and delivered electronically via ECCMIS pursuant to the Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025.

A handwritten signature in blue ink, reading "SPKinobe".

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SIMON PETER M. KINOBE

Ag. JUDGE