



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Petition 93 of 2013**

**IN THE MATTER OF ARTICLE 20, 22, 23, 24, 38 and 159 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED AND CONTRAVENTION OF FUNDAMENTAL RIGHT AND FREEDOMS**

**OF THE CONSTITUTION UNDER ARTICLES 20, 22, 23, 24 AND 38 OF THE CONSTITUTION OF KENYA, 2010**

**AND IN THE MATTER OF THE ELECTION (GENERAL) REGULATIONS, 2012**

**BETWEEN**

**MABLE MURULI.....PETITIONER/APPLICANT**

**VERSUS**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....RESPONDENT**

**J U D G E M E N T**

**1.** By a Chamber Summons dated **11<sup>th</sup> February 2013** the Petitioner petitioned this court for the following orders:-

- 1)** This application be heard *ex-parte* at the first instance and be certified as urgent.
- 2)** A mandatory injunction do issue compelling the Respondent to accept the Petitioners' nomination papers and issuer her with a clearance certificate for her to contest the Kakamega County Governor seat as an independent candidate on the 4<sup>th</sup> March 2013 general elections.
- 3)** A mandatory injunction do issue compelling the Respondent to accept, include and incorporate the Petitioner's name in the list of candidates on the ballot papers as an independent candidate for the Kakamega County Governors' seat in the 4<sup>th</sup> March 2013 general elections.
- 4)** A temporary injunction do issue against the Respondent to halt the printing of ballot papers for the Kakamega county seat pending the hearing and determination of this application.

5) Such other orders be made and direction given by the court in the interest of justice.

6) Costs of this application are borne by the Respondent.

2. The petition is premised on the grounds set out in the Petition among them that:-

1) The Petitioner is a holder of a degree from the City of London College which she is yet to pick but has got transcripts.

2) The degree held by the Petitioner is recognized by the Kenya's Commission for Higher Education.

3) The Petitioner has fully complied with the Provisions of the Constitution, Section 22 (2) of the Elections Act No. 24.

4) The Respondents Returning Officer for Kakamega Country and the Committee on Nomination Disputes Tribunal has rejected the Petitioner's nomination papers citing that she doesn't possess a formal degree.

3. The issue before the court is whether or not the Petitioner is qualified and has fully complied with the provisions of the Constitution and Section 22 (2) of the Elections Act. **Section 22 (2) of the Elections Act No. 24** states thus:-

**“(22) (2) Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognized in Kenya.”**

4. The issue then is whether or not the Petitioner has complied with the law and is entitled to be listed for the candidature of the Governorship of Kakamega County.

5. The institution in this country which has the authority to verify the qualification of candidates under the Elections Act is the Commission for Higher Education. When the matter came before the court on 11<sup>th</sup> February 2013 I directed that the Commission for Higher Education be made a party to these proceedings and be served accordingly. That was done and the institution appointed an advocate Mr. Omwambu who represented it in these proceedings.

6. The Petitioner alleges that she attended the City of London College and studied a course in Extended Diploma in Strategic Management and Leadership (which is equivalent to a Bachelors Degree). This is confirmed by a letter of that college dated 28<sup>th</sup> January 2013 in the following terms:-

“28 January 2013

Student ID: 000110721

### **STUDENT STATUS LETTER**

**Student's name:** Mrs. Mable Skith MURULI

**Address:** 113 Chamberlyne Avenue  
Wembley  
London  
HA9 8SS

**National of:** Kenya

**Date of Birth:** 23-June-1962

**Course:** Extended Diploma in Strategic management and Leadership (Awarded by Edecxcel)

**Duration:** 07-May-2012 – 28-Dec-2012

This is to confirm that the above named person has been enrolled as a Supplementary student at this College for the above academic session.

Mrs. Muruli has successfully completed the above stated programme and is waiting for her award to be issued.

Should you require further information please do not hesitate to contact the College.

**Signed:**

**(SIGNATURE)**

**Mrs. S. Saunders BSc (Hons)**

**Admissions Secretary”**

7. Vide their letter dated 31/01/2013 the Commission for Higher Education wrote to the Petitioner in the following terms:-

“31/01/2013

CHE/10/9/Vol.145

Mable Skith Muruli

P.O. Box 71,  
KAKAMEGA

**RE: INSTITUTIONAL ACCREDITATION STATUS:**

Thank you for your letter dated 31<sup>st</sup> January 2013, regarding the above subject.

We confirm that the City London College is a recognized institution in the United Kingdom (UK). The degree awarded by the said institution are recognized in the UK and by convention in Kenya.

Do note nonetheless, that in addition, you may be called upon to meet other requirements set by Kenyan professional organizations.

**(SIGNATURE)**

**DANIEL O. OGUTU**

**FOR: COMMISSION SECRETARY/CHIEF EXECUTIVE OFFICER”**

8. A further letter from the Commission followed in the following terms:-“04/02/2013

CHE/10/9/Vol. 1/146

Mable Skith Muruli

P.O. Box 71,

SHINYALU

**RE: RECONGINITION OF QUALIFICAITONS:**

**MABEL SKITH MURULI**

Thank you for your application dated 4<sup>th</sup> February 2013, requesting for the recognition of the Extended Diploma in Strategic Management and Leadership awarded by City of London College in United Kingdom (U.K.)

We confirm that City London College is a recognized institution in the UK. The Extended Diploma in Strategic Management and Leadership (equivalent to a Bachelors degree) awarded by the said institution is recognized in U.K. and by convention in Kenya.

Do note nonetheless, that in addition, you may be called upon to meet other requirements set by Kenyan professional organizations.

**(SIGNATURE)**

**DANIEL O. OGUTU**

**FOR: COMMISSION SECRETARY/CHIEF EXECUTIVE OFFICER”**

9. It is the case for the Petitioner that these letters establish beyond doubt not only that the Petitioner has a Degree and is qualified under Section 22 (2) of the Elections Act, but also that the said Degree is recognized in Kenya by the Commission for Higher Education.

10. The Respondent opposed the Petition stating that the said letters from the Commission for Higher Education do not amount to a Degree Certificate and that in the absence of an abstract Certificate the Petitioner is not qualified to vie for the Governorship position. The Respondent submitted that there is nothing on record to show that the Petitioner has a degree, and in the absence of the same the Petition must be dismissed.

Mr. Ongonya for the Petitioner philosophically argued that the intention of the law is not to have the Applicant show a physical degree but to prove that she has achieved the relevant degree qualifications to enable her discharge her duties as a Governor. He submitted that where it can be proved that an Applicant has concluded the process leading to the award of a degree envisaged under the law, it is irrelevant that the Applicant is yet to graduate and be issued with a physical certification. Certification is merely an outside evidence of that which has already taken place. In his view, the counsel submitted that the letter from the City of London College which confirms that the Petitioner is a student and has successfully completed the relevant course is enough. That the said University is recognized by the Commission for Higher Education in Kenya is final proof that the Petitioner is indeed qualified.

11. The issue for this court is then to determine whether or not, after a person has successfully gone through the process leading to the acquisition of a degree, he is qualified under Section 22 (2) of the Act even when no physical certificate has been conferred. In my Judgement, the Respondent has made a very superficial interpretation of Section 22 (2) of the Elections Act. In my view, a certificate is merely a confirmation of what is already in existence. The Petitioner has successfully completed the course programme. That programme has been acknowledged by the Commission for Higher Education.

12. There are many circumstances where people have been admitted to employment or to a further study course on the basis of what they have proved to have achieved even where the graduation and certification is yet to take place. For the Respondent to flagrantly disregard this peculiar position is to arrogantly violate the rights of the Petitioner and it is the duty of this court to restore the same.

13. In my Judgement the Petitioner has successfully undergone a process leading to the acquisition of the qualification required under the Elections Act and the Constitution. That process has been recognized by Commission for Higher Education and the Respondent has no option but to admit the Petitioner to the relevant candidacy.

14. Pursuant to the foregoing I enter Judgement as follows:-

**(a)** A declaration that the Petitioner is a Degree holder within the meaning of Section 22 (2) of the Elections Act 2012 No. 24 and is entitled for the position of County Governor, Kakamega county upon meeting other requirements as set by the C omission/Statue.

**(b)** A mandatory injunction compelling the Commissioner to accept the Petitioner's nomination papers and issue a clearance certificate to her for her to contest the seat of County Governor, Kakamega County in the general elections slated for 4<sup>th</sup> March 2013.

**(c)** A mandatory injunction compelling the Commission to accept and incorporate the Petitioners' name in the list of candidates and ballot papers as an independent candidate for the County Governors' seat, Kakamega County.

**(d)** Costs of this application are borne by the Commission.

That is the Judgement of the court.

**DATED, READ AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2013**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Nyabera for the Petitioner

Ndeti H/B for M/s Ndegwa for the Respondent

Teresia – Court Clerk