



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 65 of 2013

MUSA TIPAPE

NAINI .....PETITIONER

AND

TOM MBOYA.....1<sup>ST</sup> RESPONDENT

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....2<sup>ND</sup>  
RESPONDENT

COMMISSION ON HIGHER EDUCATION.....3<sup>RD</sup> RESPONDENT

JOSIAH TARAIIYA KIPELIAN OLE KORES.....4<sup>TH</sup>  
RESPONDENT

JUDGMENT

1. The petitioner herein challenges the nomination of the 4<sup>th</sup> respondent Joash Tarayia Kiraiya Ole Kores as a candidate for the position of County Governor for Kajiado County on a National Alliance Party ticket.

2. Although several grounds have been advanced, we shall limit our inquiry to the qualification of the candidate, that is, whether the 4<sup>th</sup> respondent had the requisite qualification to be eligible for nomination. It is the petitioner's contention that the candidate does not have a genuine degree from **Universidad Empressrial Del Costa Rica** which University is not recognised in Kenya.

3. When the 4<sup>th</sup> respondent presented his papers to the returning officer, he presented a letter dated 11<sup>th</sup> September 2012 from the Commission for Higher Education ("CHE") which states as follows;

**11<sup>th</sup> September 2012**

**Founder and Group Chairman**

**DALC Education Trust  
P O Box 5172 – 00506  
Nyayo Stadium  
Nairobi**

## ACCREDITATION STATUS OF UNIVERSIDAD EMPRESSARIAL DE COSTA RICA

Thank you for your request on above subject matter dated 26<sup>th</sup> August 2012.

Universidad Empressarial De Costa Rica (UNEM) that is Business University of Costs Rica (BUCR) is an accredited University and recognised by the Commission for Higher Education. Indeed it is in the International data base at the Commission as an Accredited University namely.

- International handbook of Universities Vol 1 22<sup>nd</sup> Edition UNESCO'S international Association of Universities and

- World List of Universalities 25<sup>th</sup> Edition, UNESCO.

Yours faithfully,

PROF EVERETT M STANDA, MBS

### COMMISSION SECRETARY/CHIEF EXECUTIVE OFFICER

4. From the depositions before us the letter was in response to an inquiry from DALC, in their letter dated 26<sup>th</sup> August 2012 which was titled, “*Accreditation status of Universidad Impressarial de Costa Rica*” and is stated, “*Kindly confirm to us the accreditation status of the above university, which wishes to enter into a collaboration with us*”

5. We dealt with a similar issue in the case of ***Daniel Katelng’o Kiptunen v Republic & Others Nairobi Petition No. 24 of 2013 (Unreported)*** wherein we stated that in our view, this matter must be determined by reference to the terms of **180 and 193. Article 180(2)** provides that “***to be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.***” **Article 193 (1)** states that “***a person is eligible for election as a member of a county assembly of the person (b) satisfies any education moral and ethical requirements prescribed by this Constitution or an Act of Parliament.***”

6. **Section 22(1)** of the *Election Act* provides;

**22. (1) A person may be nominated as a candidate for an election under this Act only if that person—**

**(a) is qualified to be elected to that office under the Constitution and this Act; and**

**(b) holds a post secondary school qualification recognized in Kenya.**

7. The relevant provisions of the Act require recognition and therefore, **regulation 47** of the ***Election (General) Regulations, 2012*** must be read subject to the Act which provides for “*recognition*”.

8. As we stated in the ***Daniel Taleng’o Kiptunen Case (Supra)***, the relevant institution charged with recognising degrees is the CHE which conducts this exercise by reference to accreditation. **Section 5** of the **Universities Act, 2012** mandates the CHE to recognise and equate degrees awarded by foreign universities and institutions in accordance with the standards and guidelines set by it from time to time. **Section 5(1)(g)** of the **Universities Act, 2012** mandate CHE to recognise and equate degrees awarded by foreign universities and institutions ***in accordance with the Standards and guidelines set by it from time to time.***

9. It is apparent that that letter dated 11<sup>th</sup> September 2012 was in response to a letter of inquiry not from the candidate but from DALC, it was not a letter contemplated under **regulation 47** of the ***Election (General) Regulations, 2012.***

10. According to the replying affidavit sworn by Prof. Florence Lenga of CHE, the CHE wrote to the 4<sup>th</sup> respondent the letter dated 22<sup>nd</sup> January 2012 on the following terms;

22/01/2013

Joash T. O. Kores  
P O Box 220  
Kajiado

**RE: RECOGNITION OF QUALIFICATIONS:**

**JOASH T O KORES**

Thank you for your application dated 21<sup>st</sup> January 2013, requesting for recognition of the degree of Bachelor of Business Administration awarded by Universidad Empresarial de Costa Rica.

We have established that the degree of bachelor of Business Administration was obtained at the Digital Advisory Learning Centre (DALC), Nairobi and **NOT** at the Universidad Empresarial de Costa Rica. The Commission on University Education (CUE) has **NOT** granted DALC authority to collaborate with Universidad Impresarial de Costa Rica according to Universities Act 2012.

The degree of Bachelor of Business Administration (BBA) is therefore **NOT** recognised by the Commission.

**PROF DAVID K SOME**

**COMMISSION SECRETARY/CHIEF EXECUTIVE OFFICER**

11. This letter is consistent with the authority of the CHE and it deals with the specific inquiry/request by the 4<sup>th</sup> respondent for recognition. It appears that the Returning Officer did not have this letter at hand when he made the decision to accept his papers and declare him duly nominated. In any event the letter of 11<sup>th</sup> September 2012 was not one of '**recognition**' but one dealing with the '**accreditation status**' of the Costa Rican University. It was irrelevant for purposes of the election. We also note that the 4<sup>th</sup> respondent either did not disclose or concealed the existence of this document from the Returning Officer.

12. We think this issue is sufficient to dispose of this matter. Before we turn to the relief we should grant, we note with concern that the Chief Executive Officer of the IEBC purported to issue a letter dated 31<sup>st</sup> January 2013 titled, '**Clearance of Josiah Turaiya Ole Kores.**' We think that this conduct is to be deprecated. The returning officer exercises quasi judicial authority and he is not subject to the direction of any person hence it was improper for him to act of the letter addressed by the Chief Executive Officer or anyone else. He is required to direct his mind to the papers presented to him and make a decision. The decision of the returning officer is then subject of appeal to the IEBC Dispute Resolution Committee if there is a dispute or a party is dissatisfied with it.

13. The High Court in a proper case has authority to intervene in the decision of the returning officer as he is subject to our supervisory jurisdiction. (See **Robert Akumu Asembo vs Political Parties Tribunal**) Nairobi Misc. Appl. 62 of 2013 (Unreported)). In view of the non-disclosure of 4<sup>th</sup> respondent's recognition certificate issued by the Commission for Higher Education we order as follows;

(i) **We quash the certificate of the returning officer dated 1<sup>st</sup> February 2013 forthwith.**

(ii) **We direct the Returning Officer to reconsider whether to accept or reject the 4<sup>th</sup> respondent's nomination papers in light of the Letter of Recognition issued to Joash T O Kores dated 22<sup>nd</sup> January 2013 by the Commission for Higher Education.**

(iii) We order the 4<sup>th</sup> respondent to pay the 3<sup>rd</sup> respondent's costs.

Dated and Delivered at Nairobi this 7<sup>th</sup> February 2013.

**D.S. MAJANJA**

**JUDGE**

**E.K.O. OGOLA**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**

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