



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 24 of 2013

DANIEL TALENG'O

KIPTUNEN .....PETITIONER

AND

REPUBLIC OF KENYA.....1<sup>ST</sup> RESPONDENT

HON ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

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

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .....4<sup>TH</sup>  
RESPONDENT

REASONS FOR THE DECISION

1. After hearing the petition on 31<sup>st</sup> January 2013, we dismissed the petition with no order as to costs. We now proffer our reasons.

2. The petitioner's case relates to educational qualification as prospective candidate for the Narok County Governor's seat. In readiness to present his papers, he applied to the Commission for Higher Education for authentication and or equation of his degree certificates.

3. By a letter dated 21<sup>st</sup> January 2013, the Commission for Higher Education ("CHE") informed him that his Bachelor of Business Administration (BBA) Awarded by Pacific Western University in California is not recognised in the USA and by convention in Kenya.

4. It is the petitioner's case that **section 22(2)** of the *Election Act 2011* and **Regulation 47** of the *Elections (General) Regulations 2012* provides that where the body that issued the degree certificate is not based in Kenya, a certified copy of the certificate must be authenticated and or equated by CHE. It is the petitioner's argument that the CHE does not provide for accreditation nor is accreditation required by law. In the circumstances, his rights to contest the election under **Article 38** were violated.

5. We considered the argument by the parties and took the view that this matter must be determined by reference to the terms of **Articles 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 if the person (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament.*"

6. **Section 22(1)** of the *Elections 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. [Emphasis mine]*

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*”. Thus authentication and equation of degrees must be consistent with recognition.

8. 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* mandates 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*. Under **Guideline 1.1** of the *Guidelines on the Procedures for Obtaining and Equation of Qualifications* set out by CHE, a degree awarded by a foreign university to be recognised in Kenya, the *degree qualification should have been obtained at an accredited or recognised institution*.

9. Taking into account these provisions, it follows therefore, the decision by the CHE to recognise the degree issued to the petitioner was within its statutory authority. We therefore dismissed the petition.

**Dated and Delivered at Nairobi** this 5<sup>th</sup> February 2013

**D.S. MAJANJA**

**JUDGE**

**W. KORIR**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**