



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ELECTION PETITION NO. 6 OF 2003**  
(ORIGINAL NAIROBI EP 8 OF 2003)

MUBWANA YUSUF HASSAN.....PETITIONER

=V E R S U S=

1.MICHAEL GITHAGA.....1ST RESPONDENT

2.NGOZI ABDALLA JUMAA.....2ND RESPONDENT

3.ELECTORAL COMMISSION OF KENYA.....3RD RESPONDENT

R U L I N G

By Certificate of Urgency dated 5/5/2004 the Applicant, the 2nd Respondent on this Petition brought an application under the provisions of the Election Petition 2nd Schedule 2 & 4 and under Order VI rule 13 Civil Procedure Code and Section 3A Cap.21 Civil Procedure Rules, Section 22 National Assembly & Presidential Elections Act, Cap.7, seeking orders that the Petition filed herein be struck off for being frivolous, vexatious and an abuse of court process, an order that criminal investigations be ordered to investigate the validity of the Petitioner's academic documents. The matter was argued inter-partes and upon considering all submissions and reading the application and supporting and replying affidavits it appears to me that this is an Election Petition to determine the validity of the election to National Assembly of 2nd Respondent who is the sitting Member of Parliament. The jurisdiction of court is donated under Section 44 of the Constitution. The Petitioner was not elected and therefore he is not subject of this Petition. Petitions are under Part VI of the Act, Cap.7. The rules of Civil Procedure are not applicable to petitions unless specifically directed under the Act. There are general authorities on this issue and it is frivolous and an abuse of court to bring an application under Order 6 rule 13 of Civil Procedure Code. The issue of whether a voter is qualified academically is in the jurisdiction of the Election Commission who conduct proficiency tests and issue certificates. The jurisdiction of this court is to investigate the election of the 2nd Respondent and it is not said he is not academically qualified.

The allegations against the Petitioner are not proven and this court has no jurisdiction to convict the Petition on such allegations.

I find the application without merit and the same is dismissed with costs.

Dated this 21st day of June, 2004.

**JOYCE KHAMINWA**

**J U D G E**

Now Maurice Kilonzo appears for Mutula Kilonzo, Jnr.

I have instructions to take dates.

By Consent –

Mr. Gikandi

Mr. Anyanzwa

Mr. Monda – State Counsel

Mr. Kilonzo – for Petitioner

Hearing fixed for 5th July, 2004 – 16th July, 2004.

JOYCE KHAMINWA

J U D G E