

# JUDGEMENT!

**NRM Member of Parliament for Bubulo West County Constituency in Manafwa District, Tonny Nsubuga Kipoi, who had been ordered out of Parliament on grounds of lack of sound academic qualifications, has retained his seat.**

**This followed a-39-page-judgment in which the Court of Appeal stopped the High Court trial judge's orders cancelling Kipoi's certificate from Makerere University.**

**The court also cancelled the High Court trial judge's orders nullifying Kipoi's election as MP for Bubulo West County Constituency and the order to conduct fresh by-election.**

**"The trial judge's order that the appellant's certificate of recognition as a person who sat and past the Makerere University Mature Age Entry Examinations issued to him by the university be cancelled is hereby set aside.**

**The trial judge's orders that the Parliamentary elections for Bubulo West Constituency be nullified and a by-election be conducted in the Bubulo West Constituency are hereby, too, set aside," the court ruled.**

**The court also ordered the petitioners to pay Kipoi the costs of the petition in the High Court and in the Court of Appeal.**

**Justice Steven Kavuma headed the coram. The other members were justices Augustine Sebutulo Nshimye and Remmy Kasule.**

**The court's registrar, Elias Omar Kisawuzi read the judgment on behalf of the court.**

**Kipoi Tonny and Ronny Waluku Wataka together with others contested in the February 2011 Parliamentary elections for Bubulo West Constituency, which Kipoi won.**

**However, being dissatisfied with the results, 803 voters including Wataka, petitioned the High Court at Mbale arguing that Kipoi was not validly elected.**

**At the end of the trial, the court ruled that Kipoi should vacate his seat in Parliament arguing that his nomination and election was invalid on the ground that at that time he lacked the required academic qualifications.**

**The court also said that the certificate of equivalence issued to him by the National Council of Higher Education, (NCHE) had been based on a certificate of recognition as a person, who had passed the mature age entry examinations that he had not sat.**

However, the court agreed with Hassan Kamba and Michael Okecha, who represented Kipoi that unless and until Makerere University recalled or cancelled its certificate of recognition, NCHE had no powers to revoke or cancel his certificate of equivalence, which he used to for nomination and election as MP.

The court also agreed with the lawyers that the trial judge had no power to cancel the Makerere University Mature Age Entry Examination Certificate issued to Kipoi Tonny

They criticized the trial judge arguing that he erroneously evaluated the evidence on record and wrongly concluded that it was not the appellant that sat the mature age entry examinations.

“Justice in the instant case called for a balance between expediency and the need to accord due recognition to the value of expert evidence and opinion in a highly contested and important matter concerning competition for political power and the all-important question of academic qualifications of an individual,” the court observed.

In further agreement with Kamba and Okecha, the court said that it could uphold the trial judge’s findings that it was not the appellant who sat and passed the Makerere University mature age entry examinations that took place in 2010.

The court note further that the trial judge was at fault to allow a witness against the appellant when he was all the time in court when the other witnesses were testifying and; when the appellant wanted to cross-examine him, he was denied the opportunity to do so, on the ground that he was a court’s witness, yet he had given damaging evidence against the appellant.