

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Buteera, Kiryabwire, Musoke, Obura, Mugenyi, JJCC)

CONSTITUTIONAL PETITION NO. 006 OF 2015

10 **FAIRLAND UNIVERSITY:..... PETITIONER**

VERSUS

NATIONAL COUNCIL FOR HIGHER EDUCATION (NCHE):.....RESPONDENT

JUDGMENT OF JUSTICE HELLEN OBURA, JA/JCC

15 The petitioner brought this petition under Article 137 of the Constitution 1995 of the Republic of Uganda as amended (the Constitution) and the Constitutional Court (Petitions and References) Rules SI No.91 of 2005. The petitioner alleges that it is aggrieved by the following matters which it contends are inconsistent with the Constitution of the Republic of Uganda;

20 (a) The Respondent's decision to revoke the license of the Petitioner contravenes Articles 28(1) and 30 of the Constitution.

(b) The Respondent's directive on February 2, 2015 to close the Petitioner is inconsistent with and or contravenes Article 30 and Article 40(2) of the Constitution.

(c) The Respondent's letter of March 11, 2013 is inconsistent with Section 13(1) and
25 (3) and Section 14(1) and (2) of the Universities and Other Tertiary Institution Act 7, 2001 and is illegal.

(d) The services of the Respondent's Chairperson are inconsistent with Section 8(2) (a) and (b) of the Leadership Code Act 17, 2002; and contravene Article 44(c) of the Constitution, rendering its decisions illegal.

5 The petitioner states that the above acts of the respondent are inconsistent with and or are in contravention of the provisions of the Constitution in that: -

- (a) The Constitution does not provide for denial of the right to education and economic development.
- (b) It is against the spirit of the Constitution for the respondent to deny the petitioner
10 the right to a fair hearing before an impartial tribunal.
- (c) The services of an Acting Executive Director of the respondent are not provided for in the Universities and Other Tertiary Institutions Act 7, 2001 (the Act) and undermines the provisions of the Constitution.
- (d) It is gross abuse of the rule of law, good governance and constitutionalism for the
15 current respondent's Chairperson's services to be tainted with conflict of interest.
- (e) The above mentioned acts of the respondent are illegal, *ab initio* and ought to be struck down once drawn to this honorable Court's attention.

The petitioner seeks for declarations as follows:

- a) That the respondent's purported revocation of the petitioner's licence without
20 affording it the right to a fair hearing violates Article 28 (1) of the Constitution.
- b) That the respondent's directive to the Chief Administrative Officer Jinja District on February 2, 2015 to enforce the closure of the petitioner violates Article 30 and Article 40 (2) of the Constitution and is null and void.
- c) That the respondent's Acting Executive Director does not have the legal mandate
25 to enforce the decision of the respondent and his services are inconsistent with sections 13 (1) & (3) and 14 (1) & (2) of the Universities and Other Tertiary Institutions Act 7, 2001 hence, illegal.
- d) That the respondent Council's Chairman who doubles as a vice Chancellor of a
30 University does not have the legal mandate to chair the respondent's meetings that make decisions against the petitioners or any other university and his services are inconsistent with section 8(2) (a) and (b) of the Leadership Code Act 17, 2002 and do undermine the provision of Article 44 (c) of the Constitution.

- 5 e) That the qualifications and or awards obtained from the petitioner before and after the purported revocation are valid.
- f) That a permanent injunction does issue restraining the respondent and or its agencies from implementing or continuing to do unconstitutional acts in perpetuation of its unlawful decisions against the petitioner.
- 10 g) Costs of this petition be borne by the respondent and a certificate for two counsel be issued in that regard.
- h) Any other and further declarations as Court may be pleased to grant.

The petition is supported by an affidavit sworn by Dr. Solomon Wakabi, the Vice
15 Chancellor of the petitioner. The respondent filed an answer to the petition which was supported by the affidavit deposed by Rev. Canon Dr. Mugisha Kagume, the respondent's Deputy Executive Director on 15th march 2015. A supplementary affidavit sworn by Professor Opuda Asibo John, the Executive Director of the respondent on 13th June 2016 was also filed.

20

Background to the Petition

The background to this petition is that the petitioner was incorporated on 9th November, 2001 as an institution of higher learning and it applied to the respondent to be recognized as a university. On 10th November, 2005, the respondent issued a Provisional License to
25 the Petitioner making it one of the recognized universities in Uganda. On 9th March, 2007, the respondent notified the petitioner of its intention to revoke its provisional license for failing to adhere to the conditions set out in the provisional license but the petitioner did not take any action.

30 After 2 years, on 24th July, 2009 the respondent issued another notice of its intention to revoke the petitioner's license and the petitioner again did not take any action. In 2013, the respondent sent a monitoring and evaluation team to the petitioner's premises to check if the petitioner had rectified the areas pointed out but it had not. The team compiled a

5 report in which it recommended that the petitioner's license be revoked and it is upon that basis that the respondent revoked the petitioner's license. On 2nd February, 015 the respondent's Executive Director wrote a letter under Ref NCHE/U/017 to the Chief Administrative Officer (CAO) of Jinja District Local Government directing him to close down the educational programs, educating activities and awards of the petitioner on
10 ground that the respondent had received various complaints from members of the public against the petitioner's operations. In the same letter, he enclosed a copy of another letter to the petitioner's Vice Chancellor under Ref. NCHE/U/17 dated 11th March, 2013 notifying him of the respondent's revocation of the petitioner's license.

15 Being aggrieved by the respondent's decision, the petitioner brought this petition to challenge the said decision and seek for the declarations outlined above.

Representation

At the hearing, Mr. Rukundo Seth represented the petitioner whereas Franklin Kwizera, State Attorney represented the Attorney General. Mr. Ali Kankaka appeared for the
20 respondent. Mr. Rukundo Seth informed Court that they were unable to proceed with the hearing of the petition on that day because counsel who had instructions to handle the same passed on and the petitioner had not been able to access the documents to enable him instruct another advocate as the chambers were closed. An adjournment was sought and the parties were directed to file written submissions within a given timeline. However,
25 as at the time of preparing this judgement long after the timeline had passed, no written submissions had been filed by either party. This judgment is therefore based on the petitioner's case as stated in the petition and the supporting affidavit, affidavit in rejoinder and sur-rejoinder as well as the petitioner's very brief conferencing notes which had 5 issues.

30 For the respondent, I only considered the response to the petition, the supporting affidavit and the supplementary affidavit since no conferencing notes were filed.

5 Issues

The proposed issues for determination as per the Petitioner's conferencing notes are as follows;

1. *Whether the issues raised in the petition are not res judicata nor pending in the High Court in Jinja.*
- 10 2. *Whether the respondent's Act vide letter dated 11th March, 2013 of purporting to revoke the petitioner's license and directing the Chief Administrative Officer Jinja District Local Government to close the programs, activities, and awards by the petitioner are inconsistent with and or in contravention of Articles 28 (1), 44 (c), 38(1), 40(2) and 30 of the Constitution of the Republic of Uganda 1995 as amended.*
- 15 3. *Whether the acts of the respondent under the chairmanship of Prof. Jack Pen-Mogi Nyeko who also doubles as Vice Chancellor Gulu University are inconsistent or in contravention of Articles 28 (1), 44(c) and 233(2) (b) of the Constitution of the Republic of Uganda 1995 as amended.*
4. *Whether the Constitutional Court has jurisdiction to grant the relief sought.*
5. *Whether the petition merits the relief sought.*

20

Petitioner's case

On the 1st issue as to whether the issues raised in the petition are not res judicata nor pending in the High Court in Jinja, it is the petitioner's case that the petition is not res judicata because the acts complained of took place after the filing of Jinja High Court Civil
25 Suit No. 19 of 2013 between the petitioner and the respondent on 28th January, 2013 and have never been subject of Miscellaneous Cause No. 29 of 2009 between the same parties. Further that the court has never pronounced itself on the constitutionality of the acts complained of in the petition as they arose after the determination of the Miscellaneous Cause. Counsel also added that there is no statutory bar against bringing
30 a Constitutional Petition.

On the 2nd issue, it is contended that the respondent's acts of purporting to revoke the petitioner's licence without affording it the right to a fair hearing were inconsistent with or in contravention of Article 28 (1) and 44(c) of the Constitution. It is argued that the

5 respondent ought to have afforded the petitioner an opportunity to respond to the evaluation and monitoring report, if any. The petitioner asserts that the notices published by the respondent were statutorily deficient as they did not specify the steps required to rectify the alleged shortfalls.

10 On the directives to the CAO to close down the petitioner's educational programs, educating activities and awards, it is submitted that it violates the petitioner's fundamental rights to a fair hearing, civil rights and activities and fair treatment in all administrative decisions. It is also contended that the revocation consequentially affected the rights of the petitioner's employees to employment, practice of their profession and carrying out lawful trade or business as enshrined in Articles 44(c), 38(1), 40 (2) and 30 of the
15 Constitution.

Regarding the 3rd issue, the petitioner submits that section 8(2) (a) and (b) of the Leadership Code Act 2002 regulates the conduct of person(s) holding office of Vice Chancellor as a specified officer. It is then argued that it is inconceivable to expect to be judged fairly before a Council headed by a Vice Chancellor who also heads a University
20 in competition with the petitioner. The petitioner contends that under those circumstances it is difficult to rule out actual or imputed bias in coming to a resolution to revoke the petitioner's license. According to the petitioner, there was a strong likelihood of compromise on impartiality which invariably denied the petitioner the right to a fair hearing.

It was further argued that there is no statutory provision for the respondent's Chairperson
25 to hold that office by virtue of being a Vice Chancellor of a public university that is itself regulated by the respondent while taking decisions that affect other universities. It was contended that this is detrimental to good governance and inconsistent with or contravenes Articles 233 (b) i & iii and 44 (c) of the Constitution.

According to the petitioner, the qualifications it awarded before and after the purported
30 revocation of its license are valid as the revocation did not follow due process hence its wrong, illegal and unconstitutional. In that regard, the petitioner indicated in the

5 conferencing notes that it would further be argued as follows in the written submissions which, as I mentioned from the onset, was never filed;

1. *That the respondent's public notice in the Monitor Newspaper of 13th March, 2013 and the New Vision Newspaper of 14th March, 2013 (as per Annexure E2 and E3 to the respondent's answer to the petition) refer to the revocation of the petitioner's license issued on 18th March, 2005 which*
10 *license is fictitious as it does not exist.*

2. *That the purported revocation was not a proper collective decision of the respondent council.*

3. *That there was no substantive notice to the petitioner and the alleged respondent's notice in*
15 *2007 and 2009 were either unlawful or had been overtaken by events.*

4. *That the petitioner submitted its curriculum for accreditation by the respondent way back in April*
15, 2009 and the respondent has never notified the petitioner that its courses were not accredited
and moreover the respondent in its advert in the Uganda gazette edition of 22th March, 2013 (as
20 *per annexure E4 to the respondent's answer to the petition) validated all courses and*
qualifications offered by the petitioner thus implying that the courses had been duly sanctioned.

5. *That the petitioner has at all material times complied with the conditions for operation of a private*
university as maintained by the respondent's public notice on 15th March, 2013 and the
25 *advertisement on the respondent's website on 21th March, 2013 and government Ministries (as*
per the petitioner's Annexure C, D to the petition and PR20 & PR21 to the petitioner's reply to
the respondent's answer to the petition).

As regards the 4th and 5th issues, it is contended for the petitioner that the declarations
sought by this petition are appropriate since they will be a direct consequence of this
30 Court's interpretation of the impugned actions and omission vis-a-viz the Constitution. The
petitioner prays that this Court gives redress by way of the various orders and an injunction
as pleaded, costs of the suit and any other further relief at court's pleasure.

5 **Respondent's case**

As stated earlier, the respondent neither filed written submissions nor conferencing notes. I have relied on its answer to the petition and the affidavits which address the allegations made by the petitioner in the petition.

10 In regard to the 1st issue, it is the respondent's contention that the dispute before this Court is already pending before the High Court at Jinja under Civil Suit 103 of 2013 and does not raise any new matters for constitutional interpretation. It is further contended that the petition is an abuse of court process as it creates a multiplicity of suits when a similar matter is already before a court of competent jurisdiction and such a decision would be subject of an appeal in the event that either party is dissatisfied.

15 In regard to the 2nd issue, the respondent contends that notices of intention to revoke were duly issued/gazetted and published for the attention of the petitioner in 2007 and 2009 with an indication of what issues the petition had fallen short of.

20 Further that, the petition is wrongly before this Court as the petitioner is not seeking an interpretation of the right to education nor at the very least, the enforcement of that right which the respondent is mandated to ensure that it is enjoyed in a proper, organised and regulated environment. It is also contended that the matters of the petitioner's employees are contractual and do not concern or relate to the respondent's statutory mandate.

25 Regarding the 3rd issue, it is asserted that the personal attack on the respondent's Chairman, Professor Nyeko Pen-Mogi is highly uncalled for and unjustified because he holds that office by virtue of being a Vice Chancellor of a Public University which is a statutory requirement and a condition precedent for election/appointment to membership of the respondent's council and that the same is neither inconsistent with the Constitution nor contravenes the Leadership Code Act.

5 Resolution of the Issues

I have considered each of the parties' case as I could glean from the pleadings and the petitioner's conferencing notes. I have also looked at the laws and the relevant precedents on the issues at hand. I am alive to the duty of this Court as a Constitutional Court under Article 137 of the Constitution of Uganda to hear questions regarding interpretation of the
10 Constitution and allegations by any person that an Act of Parliament or any other law or anything in or done under the authority of any law; or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution.

I must state from the outset, for avoidance of any doubt, that the petitioner is challenging the impugned acts of the respondent as relate to revocation of its provisional licence and
15 not any of the provisions of the Universities and Other Tertiary Institutions Act 7, 2001 under which the respondent was established.

In view of the respondent's averments that the petition does not raise any new matters for constitutional interpretation, I have found it imperative to first of all determine whether this petition raises issues that this Court can determine pursuant to Article 137 (3) under which
20 the petition was brought. The parameters for determining whether a petition rises a cause of action has been succinctly stated by the Supreme Court in a number of constitutional appeals.

In ***Ismael Serugo vs Kampala City Council & The Attorney General, Constitutional Appeal No.2 of 1998 (SC) Mulenga***, JSC observed as follows in regard to Article 137 (3)
25 of the Constitution;

"The petition brought under this provision, in my opinion, sufficiently discloses a cause of action, if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission, and pray for a declaration to that effect."

30 A cause of action was defined by Oder, JSC (RIP) in ***Major General Tinyefuza vs Attorney General (supra)*** as follows;

5 *"A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment in court..."*

In ***Baku Raphael Obudra vs Attorney General, Constitutional Petition No. 1 of 2003*** and ***Anifa Kawooya vs Attorney General and another, Constitutional Petition No. 42 of 2010*** it was held that, where a petition challenges the constitutionality of an Act of
10 Parliament, it sufficiently discloses a cause of action if it specifies the Act or its provision complained of and identifies the provision of the Constitution with which the act or its provision is inconsistent or in contravention, and seeks a declaration to that effect. A liberal and a broader interpretation should be given to the Constitutional Petition than a plaint in an ordinary civil suit when determining whether a cause of action has been disclosed.

15 In ***Center for Health, Human Rights and Development (CEHURD) and 3 others vs Attorney General, Constitutional Appeal No. 01 of 2013*** Kitumba, JSC (as she then was) observed that;

"Whatever is done in Uganda by anybody or authority if it does not conform to the provisions of the Constitution it can be challenged in the Constitutional Court."

20 Guided by the above authorities that expound on the need for a petition to raise a cause of action for this Court to determine under Article 137 (3) of the Constitution, and having carefully studied the averments made in the instant petition and the supporting affidavit, I am persuaded that the petition sufficiently discloses a cause of action against the respondent. This is so because the petition alleges that some acts of the respondent
25 specified in paragraph 3(a)-(d) contravene some specific constitutional provisions and seeks declarations to that effect. I therefore find that this petition raises issues that fall within the ambit of what this Court can handle under Article 137 (3) (a) & (b).

Having so found, I will now proceed to determine the issues raised by the petitioner in its conferencing notes.

5 **Issue 1**

Whether the issues raised in the petition are res judicata or pending in the High Court in Jinja.

The petitioner asserted that the petition is not res judicata and that the acts complained of took place after the filing of Civil Suit No. 19 of 2013 of High Court Jinja on 28th January, 10 2013 between the parties and cannot be addressed through that suit. Further that, Miscellaneous Cause No. 29 of 2009 never pronounced itself on the constitutionality of the acts complained of in the petition as the impugned actions arose after its determination.

Conversely, the respondent averred that the dispute before this Court is already pending 15 before the High Court at Jinja under Civil Suit 103 of 2013 and does not raise any new matters for constitutional interpretation. It is therefore contended that the petition is an abuse of court process as it creates a multiplicity of suits when a similar matter is already before a court of competent jurisdiction and such a decision would be subject of an appeal in the event that either party is dissatisfied.

20 The doctrine of res judicata is stipulated under section 7 of the Civil Procedure Act, which provides as follows: -

“No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the 25 subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court”.

The above provision deters the hearing of a fresh suit on a concluded matter between the same parties who are seeking for the same redress in a different action. The Supreme Court in ***Karia and anor vs Attorney General and others [2005]1 EA 83, at page 93*** 30 discussed the doctrine of res judicata and held that for it to apply, these three conditions must be met;

- 5 1) *There has to be a former suit or issue decided by a competent court.*
- 2) *The matter in dispute in the former suit between the parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.*
- 3) *The parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title.*

10 The test to be applied by the court when determining the question of res judicata was laid down by this Court in ***Cheborion Barishaki vs Attorney General, Constitutional Petition No. 0004/2006*** where it was held as follows:

“Essentially the test to be applied by court when determining the question of res judicata is this: Is the plaintiff in the second or subsequent action trying to bring before the court, in another way and in the form of a new cause of action, a matter which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon?”

15

If the answer is in the affirmative, the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time.”

20

Applying the above conditions and tests to this petition, I note from the court record that Civil Suit No. 19 of 2013 was filed in the High Court at Jinja by the petitioner who claimed that it had complied with the statutory 2 years granted to it to make progress and establish a fully-fledged University. The petitioner prayed that the respondent publicly withdraws all injurious notices and publications against the petitioner in the print and electronic media since 2007 and also inform the public that the courses offered by the plaintiff are accredited. The petitioner also sought for special and general damages for malicious publicity and deliberate omission of the petitioner from the list of recognised universities, an injunction prohibiting the defendant from making injurious statements and publications against the petitioner within the said 2 years and costs of this suit.

25

30

It is clear that the cause of action in that civil suit was different from what was sought in this constitutional petition. The record shows that by the time the petitioner filed this

5 petition the High Court had not yet determined and concluded Civil Suit No. 19 of 2013. I therefore find that this petition is not res judicata in regard to Civil Suit No. 19 of 2013.

As regards Miscellaneous Cause No. 29 of 2009, I note that it was determined and concluded. The petitioner alleges that the impugned actions arose after the determination of Miscellaneous Cause No. 29 of 2009. I shall therefore proceed to determine if this
10 petition is res judicata in regard to the above application.

To that end, I have carefully perused the pleadings and the ruling in Miscellaneous Cause No. 29 of 2009, which is an application for judicial review filed by the petitioner in the lower court to challenge the respondent's decision to revoke the petitioner's provisional licence that had been issued to it to operate an institution of higher learning under the Universities
15 and Other Tertiary Institution Act of 2001. I have also found that Miscellaneous Cause No. 29 of 2009 was brought under sections 36, 38 and 39 of the Judicature Act and rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules No. 11 of 2009. Under those sections, the High Court (Mulyagonja, J (as she then was)) was competent to hear and determine the matter between the parties.

20 In that application, the applicant urged the High Court to quash the respondent's decision and award damages. The issues that were raised by the applicant were as follows;

1. *Whether the application was filed out of time.*
2. *Whether the respondent's notice of intention to revoke the provisional license amounted to a decision for purposes of an application for the issue of the prerogative order of certiorari and if*
25 *so,*
3. *Whether the circumstances stated by the applicant entitle her to the issue of the writ; and finally,*
4. *Whether the respondent is entitled to any of the other remedies claimed.*

Having considered the arguments advanced by both parties on the above issues and all the evidence that was adduced, the learned trial Judge dismissed the application.

30 Upon looking at the issues that were raised in that application, it is my finding that none of them was either for constitutional interpretation and, or alleged that any acts of the

5 respondent or any provisions of the Act of Parliament that established it are inconsistent with and, or in contravention of any provisions of the Constitution. I would therefore find this petition not res judicata in regard to that application and answer issue 1 in the negative.

Issue 2

10 ***Whether the respondent's act vide letter dated 11th March, 2013 of purporting to revoke the petitioner's license and directing the Chief Administrative Officer Jinja District Local Government to close the programs, activities, and awards by the petitioner are inconsistent with and or in contravention of Articles 28 (1), 44 (c), 38(1), 40(2) and 30 of the Constitution of the Republic of Uganda 1995 as amended.***

15 As I resolve this issue, I have found it necessary to first of all examine the nature of the acts of the respondent which the petitioner alleges contravened the said provisions of the Constitution.

I note from the court record (annexure A of the respondent's answer to the petition) that on 10th November, 2005 the respondent awarded a provisional licence to the petitioner who had satisfied the conditions set by the Universities and other Tertiary Institutions Act
20 No. 7 of 2001. The provisional licence reads:

"U1 PL.007

THE NATIONAL COUNCIL FOR HIGHER EDUCATION

(Established Under the Universities and Other Tertiary Institutions Act. 2001)

This is to certify that

25 **FAIRLAND UNIVERSITY**

Having satisfied the conditions set by the Universities and other Tertiary Institutions Act No. 7 of 2001, has been awarded a

PROVISIONAL LICENCE

- 5 6. *Have students and staff support structures and support services e.g clinical/dispensary, student's union, games and support facilities.*
7. *Agree to be inspected and visited by Council whenever the latter feels it necessary.*
8. *Have not given Council untrue information about themselves. Any institution that gives false information may lose its provisional licence and could be prosecuted."*

10 On 9th March, 2007 and 3rd April, 2007, the respondent published in the Uganda Gazette and the New Vision Newspaper respectively, a notice of intention to revoke the petitioner's provisional licence six months after the date of publication and it also stated the reasons for its intended decision. The notice is attached as Annexures 'B' and 'B1' of the respondent's answer to the petition and is as follows:

15 "General Notice No. 98 of 2007

THE NATIONAL COUNCIL FOR HIGHER EDUCATION

NOTICE OF INTENTION TO REVOKE A PROVISIONAL LICENCE

(Under Section 98(1)(b) of the Universities and Other Tertiary Institutions Act, Act No. 7 of 2001).

- 20 1. *The National Council for Higher Education intend to revoke the provisional licence of Fairland University six months after the date of publication of this Notice in the Gazette.*
2. *The following are the reasons for the intended revocation of the provisional licence.*

25 *The University falls short of the standards set by the National Council for Higher Education in the following areas: -*

- (a) *Management and governance;*
- (b) *Academic staff in terms of qualifications and numbers;*
- (c) *The library; and*
- 30 (d) *The infrastructure.*

A.B.K KASOZI, PHD (CALIF.)

Executive Director,

National Council for Higher Education."

5 Two years later, on 24th July, 2009 and 5th August, 2009 the respondent published in the Uganda Gazette and New Vision Newspaper respectively, another notice of intention to revoke the petitioner's provisional licence six months after the date of publication (attached as annexures B2 and B3 to the respondent's answer to the petition). It states;

"General Notice No. 218 of 2009

10

NATIONAL COUNCIL FOR HIGHER EDUCATION

**NOTICE OF INTENTION TO REVOKE PROVISIONAL LICENCE OF A PRIVATE
UNIVERSITY**

(Under 98(1) (b) of the Universities and Other Tertiary Institution Act No. 7 of 2001).

15

*To: The Vice Chancellor
Fairland University
The General Public*

Take Notice that:-

20

1. *The National Council for Higher Education intends to revoke the Provisional Licence of Fairland University six months after the date of publication of this Notice in the Gazette.*
2. *The following are the reasons for the intended revocation of the provisional licence: -*
 - (a) *Failure to comply with university standards set by the National Council for the establishment and operation of a university including, but not limited to*
 - 25 *management and governance, academic staff in terms of numbers and*
 - qualifications, library (materials and staff) and infrastructure:*
 - (b) *Lack of substantial progress towards full establishment of the university;*
 - (c) *Conducting unaccredited programs/courses at the university;*
 - (d) *Lack of adequate financial, human resources and physical infrastructure for the*
 - 30 *smooth running of a university;*
 - (e) *Presenting false documents to the National Council.*
3. *On publication of this Notice, further recruitment of students shall cease.*

PENNY BIRUNGI

On 29th January 2013, a monitoring team was sent by the respondent to visit the petitioner and report on whether the failures indicated in the notice of intention to revoke the licence issued in 2009 had been rectified or not. The team compiled a report in which it recommended that the petitioner's licence be revoked and this was done.

Subsequently, on 11th March, 2013, the respondent's Acting Executive Director Professor Moses L. Golola under the instruction of the respondent wrote a letter to the petitioner informing it that the respondent had revoked its provisional licence which had been issued in 2005. The letter reads as follows:

"Our Ref: NCHE/U/17

11th March 2013

The Vice Chancellor

Fairland University

P. O. Box 2010

JINJA.

Dear Sir,

Re: Revocation of the Provisional Licence to operate a Private University

I have been instructed by National Council for Higher Education which sat in Kampala on Monday 11th March 2013 to inform you that it had decided to revoke the Provisional Licence of Fairland University which was issued to the institution in 2005.

The following are the reasons that led National Council to make the decision referred to above: -

- a) *Failure to comply with university standards set by the National Council for the establishment and operation of a university including, but not limited to;*

The revocation was published in the Daily Monitor Newspaper, New Vision Newspaper and the Uganda Gazette on 13th March, 2013, 14th March, 2013 and 22nd March, 2013 respectively.

- 10 On 2nd February, 2015, the respondents' Executive Director, Professor Opuda-Asibo. J wrote to the Chief Administrative Officer (CAO) of Jinja District Local Government requesting for its assistance in enforcing closure of the petitioner campus as it had continued to operate illegally after revocation of its provisional licence in March, 2013.

- 15 The petitioner alleges that the above highlighted acts contravened Articles 28 (1), 44 (c), 38(1), 40(2) and 30 of the Constitution. I shall reproduce the said Constitutional provisions for a proper appreciation of the petitioner's contention.

Article 28(1) of the Constitution provides thus;

- 20 *"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."*

Article 30 states thus;

"All persons have a right to education."

Article 38(1) states thus;

- 25 *"Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law."*

Article 40 (2) states thus;

"Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business."

Article 44 (c) states thus;

5 *Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—*

(c) the right to fair hearing;

 Upon highlighting the respondent's acts and the constitutional provisions alleged to have been contravened by the said acts as above, the pertinent question I need to address is
10 whether those acts of the respondent indeed contravened the said constitutional provision. I will start by looking at the alleged contravention of the petitioner's right to a fair hearing as guaranteed by Articles 28 (1) and 44 (c) of the Constitution.

 Articles 28 (1) and 44 (c) of the Constitution guarantee every person a right to a fair hearing which is an absolute and non derogable right. The application of Article 28 (1) is very
15 specific about a fair, speedy and public hearing **before an independent and impartial court or tribunal established by law.**

 Section 2 (v) of the Interpretation Act defines court to mean 'a court of competent jurisdiction in Uganda. On the other hand, the ***Black's Law Dictionary 4th Edition*** defines tribunal as 'the seat of a judge; the place where he administers justice. The whole body of
20 judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise.' Similarly, the ***Legal Dictionary*** defines tribunal as 'any court, judicial body, or board which has quasi-judicial functions.

 Needless to emphasize, all bodies exercising judicial and quasi- judicial authority are required to act judiciously and observe the two principles of natural justice, namely; the
25 rule against bias and the right to a fair hearing as envisaged under Article 28(1) and 44 (c) of the Constitution. Obviously the respondent is not a judicial body. However, it is necessary to determine whether or not the respondent is a quasi- judicial body.

Black's Law Dictionary 4th Edition defines '*quasi- Judicial*' to mean the acts of an officer that takes on a judicial quality.

5 From this definition, a body like the respondent can only be regarded as a quasi-judicial
body if it takes a judicial quality. The respondent is established under section 4 of the Act
which according to its long title, is an Act to provide for the establishment of the National
Council for Higher Education, (the respondent) its functions and administration and to
streamline the establishment, administration and standards of Universities and other
10 Institutions of Higher Education in Uganda and to provide for other related matters. The
respondent is a body corporate and it can sue or be sued in its corporate name as per
section 4 (2) of the Act.

The composition of the respondent is provided under section 7 of the Act as follows;

“Composition of the National Council

- 15 7. (1) *The National Councils shall consist of –*
- (a) a Chairperson of the National Council;*
 - (b) a Vice Chairperson of the National Council;*
 - (c) one representative of the Vice Chancellors of public Universities elected from among themselves;*
 - 20 *(d) one representative of the Vice Chancellors of private Universities elected from among themselves;*
 - (e) one representative of Private Universities Senates elected from among themselves;*
 - (f) two students one representing University students and one representing tertiary institutions students and one of whom shall be a female;*
 - 25 *(g) four members of religious non degree awarding institutions appointed by the Minister; (h) three representatives one each from commerce, industry and agricultural sectors;*
 - (i) four persons representing other sectors of higher education, at least one of whom shall be a woman, and one person with disability appointed by the Minister;*
 - 30 *(j) the Officer in charge of higher education or his or her representative, from the Ministry responsible for education;*
 - (k) the Executive Director; and*

- 5 (1) one person from the public appointed by the National Council.
- (2) The National Council shall recommend two members from among themselves from whom the President shall appoint the Chairperson of the National Council.
- (3) The National Council shall elect a Vice-Chairperson from among them.
- 10 (4) Except for the ex-officio members, all members of the National Council shall hold office for a period of five years from the date of appointment and shall be eligible for reappointment for one more term."

The functions of the respondent are also outlined under section 5 of the Act as follows:

"Functions of the National Council

5. The functions of the National Council shall be—

- 15 (a) to implement the objects of this Act;
- (b) to promote and develop the processing and dissemination of information on higher education for the benefit of the people;
- (c) to advise the Minister on the establishment and accreditation of public and private institutions of Higher Education;
- 20 (d) to receive, consider and process applications for:-
- i) The establishment and accreditations of Private Tertiary Institutions, private Other Degree Awarding Institutions and Private Universities and
- ii) The accreditation of the academic and professional programmes of those institutions in consultation with Professional Associations and regulatory Bodies,"
- 25 (e) to register all institutions of Higher Education established under this Act;
- (f) to receive and investigate complaints relating to institutions of Higher Education and take appropriate action;
- (g) to monitor, evaluate and regulate institutions of Higher Education.
- (h) in co-operation with the relevant Government departments, private sector, or the different
- 30 institutions of Higher Education, to evaluate the overall national manpower requirement and recommend solutions to the requirements;
- (i) to ensure minimum standards for courses of study and the equating of degrees, diplomas and certificates awarded by the different public and private institutions of Higher Education;
- (j) to require and ensure that all universities, whether private or public, adhere to minimum criteria
- 35 set by the National Council for admission to under-graduate and higher degree programmes."

- 5 (j) to set and co-ordinate national standards for admission of students to the different institutions of Higher Education;
- (k) to determine the equivalence of all types of academic and professional qualifications of degrees, diplomas and certificates obtained elsewhere with those awarded by Uganda institutions of Higher Education for recognition in Uganda;
- 10 (l) to certify that an institution of Higher Education has adequate and accessible physical structures and staff for the courses to be offered by it;
- (m) to promote national interests in courses of study and professional qualification among the different types of institutions of Higher Education;
- (n) to ensure that adequate facilities and opportunities for career guidance and counselling are provided by the institutions of Higher Education;
- 15 (o) to collect, examine and publish information relating to the different institutions of Higher Education;
- (p) to generally advise the government on policy and other matters relating to institutions of Higher Education;
- 20 (q) to perform any other function incidental to the objects of this Act or relating to higher education in Uganda or that may be conferred upon it by the Minister or any other law."

The powers of the respondent as provided under section 6 of the Act include; to do all such things and acts that are necessary for, or incidental to the objects of the Act.

The objectives of the Act are outlined under section 3 of the Act as follows;

25

"Objectives of the Act

30

3. The objects of this Act are to establish and develop a system governing institutions of higher education in order to equate qualifications of the same or similar courses offered by different institutions of higher education while at the same time respecting the autonomy and academic freedom of the Institutions and to widen the accessibility of high quality standard institutions to students wishing to pursue higher education courses by—
- (a) regulating and guiding the establishment and management of those institutions;
- (b) equating the same professional or other qualifications as well as the award of degrees, diplomas, certificates and other awards by the different institutions."

5 From the construction of the above provisions of the Act, it is my conclusion that the respondent is an administrative body established to perform the various functions under section 5 of the Act. It therefore follows that it is enjoined by Article 42 of the Constitution to act justly and fairly in its decision making.

In ***R vs Commission for Racial Equality [1982] AC 779***, Lord Diplock stated thus;

10 *"Where an act of Parliament confers upon an administrative body, functions which involve it making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decisions."*

In ***Regina vs Race Relations Board, Ex parte Selvarajan [1975] 1 WLR 1686, [1976] 1***

15 ***All ER 12*** Lord Denning MR held as follows;

"In recent years we have had to consider the procedure of many bodies who are required to make an investigation and form an opinion. In all these cases it has been held that the investigating body is under a duty to act fairly: but that which fairness requires depends upon the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely afflicted by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover, it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report." (Emphasis added)

20

25

30 Similarly, the Court of Appeal of Kenya in ***Kenya Revenue Authority vs Menginya Salim Murgani, CACA No. 108 of 2009*** noted as follows;

5 *"There is ample authority that the decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed".*

According to the above decisions which are persuasive, administrative bodies are not
10 bound by the technical rules of procedure that apply to courts of law and tribunals as envisaged under Articles 28 and 44 of the Constitution, which among others, include; adducing evidence, appearing and defending, calling and examining witnesses. They are required to act fairly and justly in the course of making administrative decisions, and in this case that would entail informing the petitioner about what was lacking and giving it
15 opportunity to address it. Any such information whether by a letter or notice in writing would suffice. The whole essence of the rule of fairness is to avoid a miscarriage of justice.

Much as administrative bodies are masters of their own procedures, it suffices to add that in the event an administrative body adopts a judicial procedure in the administration of justice, it is imperative that it follows the rules of fair hearing that apply to courts and
20 tribunals, without which the decision arrived at shall be categorized as an unfair decision.

See: R vs Criminal Injuries Compensation Board Ex. p Cobb [1995] C.O.D 126

In this petition, the respondent did not adopt a judicial procedure. It took an administrative procedure in exercise of its powers under the Act and made a decision to revoke the petitioner's provisional licence in 2013 after it had given adequate notice and ample time
25 for the petitioner to act.

The procedure for revoking a provisional licence is provided for under section 98 of the Act as follows;

Section 98

"(1) The National Council may –
30 *(a) refuse a provisional licence if it is satisfied that the applicant is unlikely to procure the academic, physical or other resources necessary for the operation of the University;*

5 (b) by notice published in the Gazette, and public print media notify the University of the
intention to suspend or revoke a provisional licence if two years after the issue of the licence no
substantial progress is made to establish the University or if established it is unable to meet the
standards set for Universities.

10 (2) On the suspension or revocation of a licence the National Council shall indicate the failure
of the University and the steps required to rectify the failure.

(3) Where a provisional licence is refused or revoked, no application shall be entertained by the Council within two years from the refusal or revocation of the licence.

15 (4) The suspension or revocation of a licence under this section shall not affect the validity or other status of any certificate, diploma, degree or other academic award granted by the University in question when still under provisional licence." (emphasis added)

From the above provision, the respondent has the power to revoke a provisional licence if by the end of two years after its issue no substantial progress is made to establish the University or if established it is unable to meet the standards set for Universities. Such intention to revoke should be by notice published in the Gazette and public print media.

20 The respondent is required to indicate the failure of the University and the steps required to rectify the failure. I shall therefore analyse the procedure used by the respondent to revoke the petitioner's provisional licence in order to determine whether or not it was fair and in line with the above stated procedure.

As already stated earlier, on 10th November 2005, the respondent issued a provisional
25 licence to the petitioner after it had satisfied the conditions set by the Universities and other Tertiary Institutions Act No. 7 of 2001 and its continued validity depended on fulfilment of conditions listed at the back of the certificate. The provisional licence enabled the petitioner to carry out its operation as an institution till 9th March, 2007 when the respondent first published in the Uganda Gazette a notice of its intention to revoke it for
30 reasons that the petitioner fell short of the standards set by the respondent in the areas of management and governance, academic staff in terms of qualifications and numbers, the library and infrastructure. According to the ruling of the trial Judge in Miscellaneous Cause No. 29 of 2009 based on the evidence that was presented before court, the respondent invited Dr. Wakabi, the petitioner's Vice Chancellor to a meeting after the 1st notice of

5 revocation was issued and he was advised to ignore the notice and take steps to improve the conditions at the \\\\\\university.

However, the petitioner did not comply with the requirements pointed out and 2 years later, on 24th July, 2009 the respondent issued a 2nd notice of intention to revoke the petitioner's licence for failing to comply with university standards set by the respondent for the
10 establishment and operation of a university as aforementioned. It was also pointed out in the notice that there was lack of substantial progress towards full establishment of the university and that the petitioner was conducting unaccredited programs/courses of study at the university; lacked adequate financial resources, human resources and physical infrastructure for the smooth running of the University and that it had presented false
15 documents to the respondent.

It is apparent that the petitioner still failed to rectify the areas pointed out in the 2nd notice. Subsequently, the respondent's monitoring team made two visits to the petitioner's campus; the first one on 29th January, 2013 and the second one on 8th March, 2013 with the view of finding out, among other things, whether any progress had been made to rectify
20 the deficiencies that had been indicated in the notice of intention to revoke its provisional licence in 2009. This is contained in the two monitoring visitation reports dated 29th January, 2013 and 8th March 2013 attached to the supplementary affidavit in support of the respondent's answer to the petition. The report of 8th March 2013 compiled by the team sent by the respondent to the petitioner indicates that the purpose of the visit was to
25 specifically look at the following areas;

- (i) *Academic staff list, areas of their expertise and letters of appointment.*
- (ii) *List of Management Staff and letters of appointment.*
- (iii) *Last statements of audited accounts and payroll.*
- (iv) *Minutes of Council meeting for the last two years.*
- 30 (v) *Current students list and their courses of study.*
- (vi) *Graduate list or booklets.*
- (vii) *Land Title, Lease Agreements or Memorandum of Understanding.*
- (viii) *Strategic and Master Plans.*

- 5 (ix) Accredited programmes on offer.
 (x) The physical infrastructure.
 (xi) The governance structures.

The team made the following recommendation in its report;

10 *"In the light of the above observations and in view of the fact that the Management and the proprietors of Fairland University have not demonstrated serious commitment to meeting the requirements of NCHE and have failed to submit the necessary documentation to NCHE, the Team is of the strong opinion that Fairland University does not merit the status of a Provisional Licence holder. Therefore, the Team recommends that the Provisional Licence granted to Fairland University in 2005 be revoked."*

15 Based on the above recommendation, the respondent held a meeting on 11th March, 2013 and according to the minutes of the meeting attached as "S3" to the supplementary affidavit in support of the respondent's answer to the petition, the respondent approved the recommendation made by its monitoring team and the petitioners' provisional licence was revoked with immediate effect.

20 Counsel for the petitioner argued that the petitioner was not accorded a fair hearing before its provisional licence was revoked. First of all, as I have earlier noted, the respondent was/is not required to follow the technical procedures for courts or tribunals in its administrative decision making process. Be that as it may, I find that not only was the petitioner informed of the areas that needed rectification, but it was also given ample time
25 and many opportunities to rectify them, that is, from 2007 up to 2013 when its provisional licence was finally revoked for failing to adhere to the set standards by the respondent. In my view, the respondent followed the procedure laid down in the Act. The onus to prove the allegation was squarely on the petitioner but it failed to do so. I therefore find that the respondent acted justly and fairly in the exercise of its authority as an administrative body
30 in accordance with the mandate it is clothed with under the Act and pursuant to Article 42 of the Constitution.

- 5 Secondly, fairness is decided on the circumstances of each case and courts are reluctant to impose their methods and procedures on administrative bodies. The main question is whether the petitioner was given opportunity to explain its position. It is my finding that the petitioner was given many opportunities to explain to the respondent the reasons for its failure to comply with the conditions upon which the provisional licence was granted.
- 10 On the whole, I find that the respondent made a fair and just decision, the petitioner having been accorded many opportunities and ample time to rectify the deficiencies but to no avail. Having lost those opportunities, the appellant cannot now use the court to sanction compromise of the rules that govern establishment, administration and standards of higher institutions of learning set out in the Act.
- 15 With the above chronology of events, I have failed to see how the respondent's act vide a letter dated 11th March, 2013 directing the Chief Administrative Officer Jinja District Local Government to close the programs, activities, and awards by the petitioner are inconsistent with and or in contravention of Articles 28 (1), 30, 40 (2), 38 (1) and 44 (c) of the Constitution of the Republic of Uganda 1995 as alleged by the petitioner.
- 20 The petitioner's rights, if any, under those constitutional provisions are to be enjoyed within the legal framework that governed it. I must observe that this Court cannot interfere with the decision of the respondent, as a statutory body that has the mandate and technical capacity to regulate institutions of higher learning, if it is not proved that the decision was arrived at arbitrarily and in denial of the petitioner's constitutional rights, like in this case.
- 25 In the premises, I find no merit on issue 2 and resolve it in the negative.

Issue 3

Whether the acts of the respondent under the Chairmanship of Prof. Jack Pen-Mogi Nyeko who also doubles as Vice Chancellor Gulu University are inconsistent or in

5 ***contravention of Articles 28 (1), 44(c) and 233(2) (b) of the Constitution of the Republic of Uganda 1995 as amended.***

Counsel for the petitioner submitted that it is inconceivable to expect to be judged fairly before a Council headed by a Vice Chancellor who also heads a University in competition with the petitioner. He added that it is difficult to rule out actual or real bias in coming to
10 such a resolution and that there is a strong likelihood to compromise on impartiality.

It was further argued that there is no statutory provision for the respondent's Chairperson to hold that office by virtue of being a Vice Chancellor of a Public University and that this is detrimental to good governance and is inconsistent with and or contravenes Articles 233 (2) (b) i & iii and 44 (c) of the Constitution.

15 Article 233 (2) (b) i & iii of the Constitution provides thus;

 “(2) *The Leadership Code of Conduct shall-*

 (a)

 (b) *Prohibit conduct-*

- (i) *Likely to compromise the honesty, impartiality and integrity of specified officers;*
20 (ii) ...
 (iii) *Which is detrimental to the public good or welfare or good governance;”*

Under this issue, the petitioner is basically challenging the decision the respondent made under the Chairmanship of a person who doubled as a Vice Chancellor of another University for being biased and impartial. I must observe that the legal requirement for
25 impartiality of the decision maker is a corner stone for maintaining public confidence in the administration of justice. This is reflected in the maxim that justice should not only be done, but it should be seen to be done.

Black's Law Dictionary, 6th Edition defines bias as a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to connection.

- 5 The principle of bias is expressed in the maxim *nemo judex in sua causa* (no one should be a judge in his own cause) which means that no one shall adjudicate in his own cause or in a matter in which he has a conflicting interest. Procedural fairness requires that the decision maker should not be biased or prejudiced in a way that precludes fair and genuine consideration being given to the arguments advanced by the parties.
- 10 An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices. Fairness also helps in building public confidence in the decision making process. A decision may always be invalidated if actual bias on the part of the decision maker is proved. The courts will look at the circumstances of the particular case to see
- 15 whether there is reasonable ground for believing that the decision-maker was likely to have been biased.

The petitioner is alleging bias premised on a preconceived perception arising from the fact that the respondent's Chairman doubles as a Vice Chancellor of another University. In my view, this fact has nothing to do with the respondent's decision since it was not arrived at

20 by the respondent's Chairperson in his personal capacity but by the Council chaired by him. In addition, even if the respondent's Chairperson heads another University, it is not a justifiable reason to infer bias on the entire respondent's members who jointly and severally took the decision to revoke the petitioner's licence and are presumed to have been independent and impartial unless there is any evidence to the contrary, which in this

25 case was not adduced.

It is also my view that if the petitioner had fears that the respondent's Chairperson would not be impartial in handling its matters, it should have raised this concern at the very beginning when the first notice was issued instead of alleging bias and impartiality after a decision has been taken against it. I would therefore find that the allegation of bias and

30 impartiality in this case, after an adverse decision was made is an afterthought. At any rate, as discussed above under issue 2, the decision to revoke the licence was not

5 arbitrary so as to justify the allegation of bias and impartiality. The magnanimous acts of the respondent of granting the petitioner many opportunities and ample time to address the gaps pointed out in the different notices cannot be construed to have been tainted with bias as alleged.

10 The petitioner has not adduced any evidence to show that the respondent's Chairperson used his position to influence the outcome of the respondent's decision to revoke the petitioner's licence. Therefore, I find that the petitioner's allegations of bias and impartiality are baseless.

15 It was also argued for the petitioner that there is no statutory provision for the respondent's Chairperson to hold that office by virtue of being a Vice Chancellor of a Public University as that would be detrimental to good governance. However, contrary to that argument, section 7 of the Act provides for the composition of the respondent and subsection (1) (c) specifically provides for one representative of the Vice Chancellors of Public Universities elected from among themselves. Under subsection 2, the respondent is required to recommend two members among themselves from whom the president appoints as its
20 Chairperson. The Act therefore permits appointment of any of the members of the respondent, including the Vice Chancellor of a Public University as Chairperson of the respondent.

In the premises, I find that the respondent's Chairperson's appointment is in accordance with the law. I also find that the allegation of bias and impartiality is a mere suspicion that
25 is not backed by any evidence.

For the above reasons, I would find no basis to hold that the acts of the respondent under the Chairmanship of Prof. Jack Pen-Mogi Nyeko who also doubles as Vice Chancellor Gulu University are inconsistent or in contravention of Articles 28 (1), 44(c) and 233(2) (b) of the Constitution of the Republic of Uganda 1995 as amended.

5 I would therefore find no merit in issue 3 and answer it in the negative. Having so found, I will now proceed to resolve issues 4 & 5 together since they are related.

Issues 4 & 5

Whether the Constitutional Court has jurisdiction to grant the relief sought and Whether the petition merits the relief sought

10 The Constitutional Court is established under Article 137 of the Constitution with the mandate to determine any question regarding the interpretation of the Constitution and allegations that an Act of Parliament or any other law or anything in or done under the authority of any law; or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution. It does not necessarily handle
15 enforcement of the Constitution except where upon determination of a petition brought under Article 137 (3) it considers, on its own, that there is need to grant additional redress.

This is provided for under Article 137 (4) as follows;

"Article 137. Questions as to the interpretation of the Constitution

20 (4) *Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may—*

(a) grant an order of redress; or

(b) refer the matter to the High Court to investigate and determine the appropriate redress."

25

In this petition, the petitioner alleged that the acts of the respondent were inconsistent with certain provisions of the Constitution and as a result, it sought for some declarations and reliefs from this Court.

30 Having earlier found that the petition raises a cause of action which I have resolved as above, I find that this Court has jurisdiction to grant the reliefs sought if the petition succeeds. Issue 4 is therefore answered in the affirmative.

5 However, since the main issues in contention in this petition were resolved in the negative,
it follows that the petition does not merit the reliefs sought by the petitioner and I so find,
thus answering issue 5 in the negative.

Declarations and Orders in Accordance with the Findings.

10

Accordingly, I propose the following declarations;

15

a) That the respondent's decision to revoke the petitioner's license was arrived at in
a just and fair manner after giving the petitioner opportunity and ample time to
address the gaps that were brought to its attention through the notice of revocation
of the provisional licence that was issued twice.

20

b) That the respondent's directive to the Chief Administrative Officer Jinja District on
February 2, 2015 to enforce the closure of the petitioner did not violate Article 30
and Article 40 (2) of the Constitution and is not null and void.

25

c) That the respondent's Acting Executive Director has the legal mandate to enforce
the decision of the respondent and his services are not inconsistent with sections
13 (1) & (3) and 14 (1) & (2) of the Universities and Other Tertiary Institutions Act
7, 2001.

30

d) That the Chairman of the respondent who doubles as a Vice Chancellor of a
University has the legal mandate to chair the respondent's meetings and under his
chairmanship decisions affect the petitioner or any other university can be made
and his services are not inconsistent with section 8(2) (a) and (b) of the Leadership
Code Act 17, 2002 and does not undermine the provision of Article 44 (c) of the
Constitution.

5 e) That the qualifications and or awards obtained from the petitioner after the
purported revocation are not valid.

f) That the petitioner is not entitled to any of the remedies, reliefs and declarations
sought and accordingly, they are not granted.

10

In the result, this petition would fail and be dismissed for lacking merit. I would order each
party to bear its own costs.

Dated at Kampala this 17th day of March 2023

15



Hellen Obura

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 06 OF 2015

(Coram: R. Buteera DCJ, G. Kiryabwire, E. Musoke, H. Obura & M. Mugenyi JJCC)

FAIRLAND UNIVERSITY PETITIONER

VERSUS

NATIONAL COUNCIL FOR HIGHER
EDUCATION (NCHE) RESPONDENT

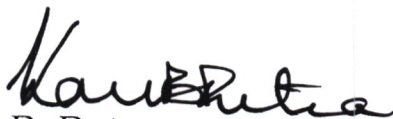
JUDGMENT OF BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment of Obura, JCC in respect of this Petition. I agree with her findings therein.

As Kiryabwire, Musoke and Mugenyi, JCC agree.

This Petition is hereby dismissed with no orders to costs.

17.03.2023



R. Buteera

DEPUTY CHIEF JUSTICE

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 006 OF 2015**

FAIRLAND UNIVERSITY:::PETITIONER

VERSUS

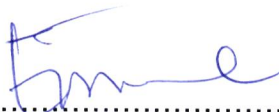
**NATIONAL COUNCIL
FOR HIGHER EDUCATION (NCHE):::::::::::::::::::::::::::::::::RESPONDENT**

**CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. LADY JUSTICE HELLEN OBURA, JCC
HON. LADY JUSTICE MONICA K. MUGENYI, JCC**

JUDGMENT OF ELIZABETH MUSOKE, JCC

I have had the advantage of reading in draft the judgment of my learned brother Obura, JCC. For the reasons she has given therein I agree with her that this Petition ought to be dismissed with no order as to costs.

Dated at Kampala this17th.....day ofMarch..... 2023.



Elizabeth Musoke

Justice of the Constitutional Court



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

(Coram: Buteera, DCJ; Kiryabwire, Musoke, Obura & Mugenyi, JJCC)

CONSTITUTIONAL PETITION NO. 6 OF 2015

BETWEEN

FAIRLAND UNIVERSITY PETITIONER

AND

**NATIONAL COUNCIL FOR
HIGHER EDUCATION (NCHE) RESPONDENT**

JUDGMENT OF MONICA K. MUGENYI, JCC

1. I have had the benefit of reading in draft the judgment of my sister, Lady Justice Hellen Obura, JCC in respect of this Petition.
2. I agree with the findings therein, conclusions arrived at, and the orders proposed.

Dated and delivered at Kampala this 17th day of March, 2023.

Monica K. Mugenyi
Justice of the Constitutional Court