

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 51 OF 2013

- 1. HON. MUKASA FRED MBIDDE**
- 2. HON. MICHAEL MABIKKE.....APPELLANTS**

VERSUS

THE LAW DEVELOPMENT CENTRE.....RESPONDENT

CORAM: HON. MR. JUSTICE A.S. NSHIMYE, JA
HON. MR. JUSTICE KENNETH KAKURU, JA
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT OF THE COURT

This appeal arises from the decision of *His Lordship Hon. V.T Zehurikize J* in High Court Civil Division case No. HCT-00-CV-MA-No. 0002 dated 13th February 2013.

The appellants had moved the High Court by way of judicial review proceedings seeking a number of declarations and orders. The suit was dismissed. Being dissatisfied with the decisions of the High Court, they filed this appeal on the following grounds:-

- 1. The Learned Trial Judge erred in law and fact when he found out that The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/2011 challenged by the applicants was not properly appointed in accordance with S. 16 of the Law Development Centre Act and fell short of declaring it null and void and ultra vires The Law Development Centre Act.***
- 2. The Learned Trial Judge erred in law and fact when he decided that The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/***

2011 challenged by the applicants was an internal administrative entity of The Law Development appointed for purposes of gathering information or data in reaction to the judicial and public concern on allegations of impropriety in the respondents examination process and examination results whereas it was an investigative committee which ought to have been Centre appointed under S. 16 of The Law Development Centre Act instead of S. 4 and 5 of the Act

- 3. The Learned Trial Judge erred in law and in fact when he refused to declare the report of The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/2011 null and void, ultra vires The Law Development Centre Act and to give an orders of certiorari quash the said Report prohibition and a permanent injunction to restrain any further investigation and inquiry based on that Report.*
- 4. The learned trial Judge erred in law and in fact when he refused to rule that when The Management Committee of Law Development declared that applicants had passed their final exams, graduated them and awarded them Diplomas in Legal Practice it became a FUNCTUS OFFICIO and cannot not legally appoint any other committee to make any further inquiry and investigations into any possible examination malpractices or other allegations of impropriety leading to the award of such diplomas contrary to The Law Development Centre Act and The Rules Governing the Passing of the Bar Course*
- 5. The Learned Trial Judge erred in law and fact when he found out that The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010 /2011 did not give the applicants a right of fair hearing and follow Rules of Natural Justice but failed to declare it null and void and quash its Report.*

6. *The Learned Trial Judge erred in law and fact when he found out that The Kania Committee appointed to review the recommendation of the Report of The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/2011, was not properly appointed under S.16 of The Law Development Centre Act just like the original Forensic Audit Committee but quashed the former and failed to as well quash the latter.*
7. *The Learned Trail Judge erred in law and in fact when he decided that after the hearing of HCT-OO-CV-MA-NO. 0002 The Law Development Centre could legally appoint another committee to investigate examination malpractices under S.16 of The Law Development Centre Act when it was FUNCTUS OFFICIO after it had passed, graduated and awarded the applicants Diplomas in Legal Practice under The Rules Governing the Passing of the Bar course.*
8. *The Learned Trial Judge erred in law and in fact when he ruled that The Management Committee of The Law Development Centre was legally entitled to appoint another committee to review, examine, investigate the suspected exam malpractice and to review the recommendations of The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/2011 when it did not have jurisdiction to do so as it was FUNCTUS OFFICIO and the applicants are already Practicing Advocates .*
9. *The Learned Trial Judge erred in law and in fact when he allowed Mr. Tibaijuka Atyeenyi counsel for the respondent to continue appearing in the proceedings in HCT-00-CV-MA-NO. 0002 when he gave evidence The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010/2011 contrary to the known principles set out in the Advocates (Professional Conduct) Regulations and other legal provisions that counsel should not be a witness in the same case he is appearing.*

They asked court to make the following orders and declarations.

1. *The appeal be allowed.*
2. *Part of the decision of the Learned Trial Judge declaring The Kania Committee appointed to review, examine, investigate the suspected exam malpractice and to review the recommendations of The Forensic Audit Committee of the Bar Course Examination for the Period 2004/2005 to 2010 /2011 as not properly constituted be affirmed and the order that the respondent was legally entitled to appoint another committee to investigate the matter be set aside.*
3. *A declaratory judgment be made that The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010 /2011 made by an Audit Committee appointed by The Director of The Law Development Center is null and void because the said committee was not dully constituted.*
4. *An order of certiorari be made against The Law Development Centre to quash The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010 /2011 and all the decisions and recommendations made therein.*
5. *A Declaratory order be made to expunge The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010 /2011 from the Records of The Law Development Centre.*
6. *An order of Prohibition docs issue against The Law Development Centre to Prohibit The Committee set up to further examine suspected exam malpractice and to review the recommendations of The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011.*
7. *A Permanent Injunction does issue against The Law Development Centre to restrain the Respondent / and / or any committee appointed by it from conducting a*

detailed inquiry into specific cases of suspected exam malpractice and to review the recommendations of The Forensic Audit Committee in The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010 /2011.

- 8. A declaratory judgment does issue against The Law Development Centre that the applicants were dully declared to have sat and passed their Examinations for the award of a Diploma in Legal Practice and were properly graduated and The Management Committee of The Law Development Centre is now FUNCTUS OFFICIO over the matter.*
- 9. General and punitive damages be paid to the applicants by the respondents for the defamatory statements in The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010 /2011 issued by The Law Development Centre against the applicants for the mental anguish and anxiety created by the publication of the said Report.*
- 10. Costs of the Appeal and the Court Below be awarded to the appellants*

When the appeal came up for hearing, learned counsel **Mr. Tibaijuka** appeared for the respondent The Law Development Centre herein referred to as (LDC) while learned counsel **Mr. Ssemuyaba** appeared for the appellants. Both counsel sought and were granted leave to file written submissions, the basis of which, this appeal has been determined.

It was submitted for the appellants that, both are advocates of the High Court of Uganda in private practice.

That both had been awarded a post graduate diploma in legal practice by the respondent. The 1st appellant attained the diploma on 29th September 2008 while the 2nd appellant had obtained his a year earlier.

That on 4th January 2013 they were both shocked to learn from the press that a Forensic Audit report issued by the respondent had declared their post graduate diplomas invalid and fake. That the respondent had set up a committee to investigate the matter headed by a retired judge Hon. Justice A. Kania. Herein referred to as the Kania Committee.

They both instituted judicial review proceedings to quash the decision of the respondent following the setting up of the Kania Committee and also sought orders to quash the Forensic Audit report. The High Court dismissed the application. Learned counsel for the respondent submitted that status of the Kania Committee is not in issue in this appeal as there is no appeal or cross appeal in respect of the High Court decision regarding that committee.

He stated that the parties had at the scheduling conference in this court agreed on the following:-

- 1. Whether The Forensic Audit Committee was properly appointed.***
- 2. Whether The Forensic Audit Committee observed rules of nature justice***
- 3. Whether The Law Development Centre Management Committee when it declared that the appellants held duly passed their final exams, granted and awarded them Diplomas in Legal Practice in accordance with The Rules Governing the Passing of the Bar Course it become functus officio.***
- 4. Whether the respondent has powers and jurisdiction under The Law Development Centre Act together with The Rules Governing the Passing of the Bar Course to cancel the Appellants Diplomas as they are now Practicing Advocates.***
- 5. Whether Mr. Tibaijuka Atyeenyi counsel for the respondent could be allowed to continue representing The Law Development Center while he is one of the of the of the persons who gave evidence in the proceedings before Forensic Audit Committee***

appointed by The Law Development Center and he could continue to represent it contrary to The Advocates (Professional Conduct) Regulations.

6. Remedies.

Counsel for the appellant submitted on issues 1 and 2 together.

He submitted that the respondent admits having appointed the Forensic Committee under S.4 of Law Development Council Act and not Section 16 of that Act and that none of the members of that committee is a member of the Respondent's Management Board.

Counsel submitted that the Forensic Committee's purpose was to carry out investigations and as such ought to have been appointed under Section 16 of the Law Development Centre Act. Having admitted that the committee was not appointed under that Section, Court ought to have found that the committee had not been properly appointed.

He submitted that the Forensic committee from its terms of reference was final, and it was not merely for collection of data and for internal administrative arrangements only as the learned trial Judge held.

That the Management Committee of the respondent could not have delegated its powers to the Forensic Committee otherwise than under Sections 7, 8, and 16 of the Law Development Centre Act. That there was no evidence adduced as to how that committee was appointed.

Counsel also contended that the Forensic Committee failed to apply the rules of natural justice as the appellants were not given a hearing and that the committee was not properly constituted.

Counsel then went on to address issues 3 and 4 already set out above.

Counsel submitted that once the Law Development Centre Management Committee has within 14 (fourteen) days of publication of provisional results held a meeting to consider the results and has published them by displaying them on the notice board or through the committee's website it becomes *functus officio*.

He cited as his authority to South Africa High Court case, ***Dr. Nobubele Potwana vs The University of Kwazulu-Natal. (5327-2012) 2014 ZAKZHC1***. Counsel went on to set out the common law position in this regard and cited a number of authorities which we have not found necessary to reproduce.

Learned counsel also submitted at great length that the respondent once it had issued a diploma it had no power to revoke or cancel it. He submitted that a learning institution may only refuse to confer a degree or diploma to a student but may not revoke it once issued, especially if the revocation would prejudice the student. In this case he submitted, since the appellants were already practicing advocates it was too late to revoke their post graduate diplomas in legal practice issued by the respondent.

On **issue 5** counsel submitted that Mr. Tibaijuka learned counsel for the respondent ought not to have represented the respondent in court as he was a potential witness and that his appearance offended Regulation 8 of the Advocates (Professional Conduct) Regulations. He asked this court to allow the appeal and to grant the orders and declarations sought by the appellants.

In reply Mr. Tibaijuka started by addressing **issue No. 5**. That is, whether it was proper for him to appear as counsel for the respondent in the proceedings.

He contended that the proceedings before the forensic committee where he is said to have been a witness were different from the High Court proceeds from which this appeal emanates. That the appellants did not object to his appearance at the High Court and could not be heard to complain at this late stage.

That his report as a civil proceedings examiner at The Law Development Centre had nothing to do with the appellants and did not prejudice them in anyway. That he was not among the people interviewed by the Forensic audit committee. That his report was submitted in January 2010 while the committee was set up in 2012.

That Mr. Tibaijuka did not swear any affidavit in respect of the judicial proceedings at the High Court. That Mr. Tibaijuka did not at any one time act as a witness and counsel in those proceedings.

He asked court to dismiss this ground.

On **issue 3** learned counsel submitted that the respondent has never declared that any of the appellants duly passed their post graduate diplomas examinations. That the bar course Rules are not concerned with the award of diplomas and as such the respondent could not have awarded diplomas under those Rules. That the respondent's power to award diplomas is only contained in S. 4(1) of the Law Development Council Act. That the doctrine of *estoppel* does not apply in this case and that it is separate and distinct from that of *functus officio*.

Learned counsel submitted at length and cited authorities to show that the doctrine of approbation and reprobation was not applicable in this particular case as submitted for the appellants.

That even if it did, it could not apply where the transaction in question is tainted by fraud. He submitted that there was fraud unearthed by the Forensic Committee which required a more detailed inquiry. He submitted that fraud vitiates a decision rendering it liable to be set aside on the basis of the principle of rectifying a nullity.

That even if the 2010 bar course Rules applied to the applicants they did not limit the inherent powers of the Management Committee, to make such orders as may be necessary to achieve the ends of justice.

That as an educational institution the respondent possess inherent powers to recall its awards which have been improperly made.

Counsel cited ***Lazarus Estates Ltd vs Beasley [1956] 1 QB 702 (CA)*** for the proposition that courts will not allow a person to keep an advantage which he has obtained by fraud.

He also cited ***Fam International Ltd -vs- Mohamed Hamid El.Fahil (SCCA No. 16 of 1993)*** as authority for the proposition that once fraud is alleged then it is open to the court to extend its inquiry to matters in issue.

He also referred to the authority cited by the appellant's counsel to support the above proposition ***Waliga vs Board of Trustees of Kent State University, No. 85-133 The Supreme Court of the State of Ohio February 05 1986)*** in which an American Court held that a college or University has inherent authority to revoke an improperly awarded degree for good cause, such as fraud, deceit or error provided that a fair hearing procedure has been made available to the recipient of the academic award.

That in the ***Potwana vs The University of Kwazulu-Natal (5327-2012) 2014 ZAKZHC1*** the South African court held that a University once it has conferred a degree upon a student it should not be permitted to reverse that decision unless in the narrow circumstances of fraud, misconduct or a material error. He also cited the case ***Simenon Manyaki vs Institute of Finance and Management (1984) TLR 304*** for the same proposition. All the last three authorities had been cited and relied upon by the appellant. He asked court to dismiss this ground too.

On **issue 4** already set out above counsel submitted that, the issue raised therein had not arisen from the trial or judgment and as such could not be argued on appeal. That it was not even set out in the memorandum of appeal. That no decision regarding that issue had been made by the trial court and therefore the issue is moot and cannot be raised on appeal.

We have not found it necessary to reproduce the rest of the submissions on this ground, suffice it to say he submitted that the Bar course rules are not legal instruments that can be cited as authority in this court but could have constituted evidence at the trial. That at the trial, they were never introduced in evidence and as such do not form part of the record. Counsel submitted that even if the 2010 Bar course Rules had been introduced in evidence they would not have been helpful to the appellants' case as they did not apply to appellants having come into force when the appellants had completed the course at LDC. They came into force one month before the appellants' graduation. That the rules that applied to the appellants were those that were passed and were in force in 2008 which covered the period of the appellants' study and examination.

On issue one, whether the forensic audit committee was properly appointed, counsel submitted that the argument that the committee ought to have been appointed under Section 16 of the Law Development Centre Act was misleading and untenable. That from the pleadings of both parties, it was clear that the intention of the management committee of the respondent was to set up an audit committee as a purely an internal administrative entity.

That the recommendations of the committee could not have changed its character. That the fact that the audit committee report would be followed by a detailed inquiry could not have been part of its terms of reference.

That the audit committee was not a sub-committee of the Respondent's Management Committee within the meaning of S.16 of the LDC Act. That the trial judge did not hold that the audit committee was not properly appointed under S.16 of the LDC Act. That the judge held that the audit committee had been appointed under S.4 and 8 of the LDC Act. That the learned trial judge arrived at different conclusions in respect of the audit committee and the Kania Committee and therefore made different orders in respect of each of the committees. That the issue of the management committee delegating its powers to the audit committee could not arise in view of the findings of the Judge referred to above. That even if the management committee had

delegated its power to the audit committee, there would have been no legal problem as the final decision would still have been made by the management committee its self.

Lastly counsel addressed issue 2, whether the forensic audit committee observed the rules of natural justice. He submitted that the audit committee as held by the learned trial Judge was an internal investigating committee which was to pave way to a full investigation at which the appellants would be accorded a full hearing before a final decision could be made.

That at a preliminary stage of gathering information a formal hearing of evidence is not required. He cited the case of ***Mafabi Richard Vs Attorney General Constitutional Petition No.0014 of 2012*** and the Kenya case of ***Nancy Makokha Baraza vs Judicial Service Commission and 9 Others (2012) KLR*** for the proposition that investigations of this nature are purely preliminary, and are a first step in a sequence of measures which culminate into decision making .

That the intention of the respondent was that the appellants would be heard at a subsequent detailed inquiry as opposed to being heard at the information gathering stage by the forensic audit committee.

That this intention is manifested in the setting up by the respondent of the Kania Committee at the end of 2012, for the purpose of carrying out the detailed inquiry arising from preliminary investigations by the forensic audit. That it was when the Kania Committee had started summoning witnesses and parties mentioned in the Audit committee report that appellants filed a case in court and obtained an order staying the proceedings. That the appellants were not interested in any hearing before any such forum.

He asked the Court to dismiss this appeal with costs.

The respondents filed a long rejoinder mostly repeating the arguments they had earlier made. The rejoinder is 48 pages, most of which is not directly replying to the submissions in reply. It is trite law that in rejoinder counsel restricts himself to the new matters raised in the submissions in

reply. He is not at liberty to raise new matters without the leave of court or to repeat the arguments earlier made in the opening submissions.

Although this court has not set up strict guidelines as to the length of written submissions, the Supreme Court has. The Supreme Court directions *Practice Directions of No. 2 of 2005* as to the length of the written submission ought to act as a guide to the parties and counsel appearing at this court.

We shall therefore refer to only the relevant parts of the submissions in rejoinder. The appellants begin by addressing the reply to issue 5 which relates to the capacity of Mr. Tibaijika to act as counsel for the respondent.

They again referred to Regulation 8 of the Advocates (Professional Conduct) Regulations, which bars advocates from appearing in any court or tribunal in any matter which they believe they may be required to appear as witnesses, except non contentions matters.

They submitted that the matter in issue is a contentious one and that Mr. Tibaijika made a comprehensive report to the forensic committee set up by the respondent. The appellants asked court to uphold this ground. The appellants then addressed issue 3 regarding their earlier contention that the respondents having issued diplomas to the appellant had become *functus officio*. They relied on the provisions of Rule 12 of the Rules governing the passing of the Bar course. They again contended that the forensic committee had no power to review examination results already Board of examiners.

They further contended that the respondent was estopped by Judgment from withdrawing the appellants' diplomas having issued them, as the LDC Act stipulates in Section 5(3) that a certificate once issued is conclusive evidence of that fact, that hold duly certified the requirements from the award.

On issue 4 the appellants argued that since both of them were issued with Postgraduate Law Diplomas and have since been enrolled as advocates and are in private practice, it was too late for the respondent to revoke them. In this regard the submissions in rejoinder did not directly reply to issues raised in reply. They only retaliated their earlier prayers and expounded on their opening submissions.

We find no reason to reproduce those arguments here as they are largely irrelevant in rejoinder having been covered in the main opening submissions. We shall however revert to them in the resolution of the issues.

On issues 1 and 6 the appellants again contended that the forensic committee was not properly appointed and that it did not observe the Rules of natural justice.

Lastly they addressed issue No. 6 which is in respect of remedies sought. They asked court to allow the appeal and to grant the orders and declarations set out in the memorandum of appeal. They also asked to be granted costs in this court and in the court below.

DECISION

We have carefully listened to both counsel and we have also perused the court record, the submissions and the authorities cited to us.

We are alive to the fact that this is a first appeal and as such this court has a duty to re-evaluate the evidence and to make its own inference on all issues of law and fact. We shall therefore proceed to do so.

We shall resolve the issues in the order they were set out in the appellant's written submissions at page 4.

1. *Whether the Forensic Audit Committee was properly appointed.*

The finding of the trial Judge in this issue is set out as pages 14 and 15 of his Judgment as follows:-

“This was purely an internal administrative arrangement for purposes of gathering information or data in reaction to the Judiciary and public concern on allegations of impropriety in the respondent’s examination process and examination results. The report of the audit would then form the basis of subsequent formal inquiry. It was merely a fact finding expedition. It was general I and could not have been an inquiry directed at any individual.

The respondent was entitled to do this internal soul searching exercise in a bid to find out whether the allegations leveled against the institution had any basis.

The respondent did this exercise by appointing the aforesaid committee which they considered independent and probably would have nothing to hide. The respondent was under the Act entitled to conduct such exercise within the help of personalities of their choice.”

The powers of the respondent are set out in Section 4 of the LDC Act which stipulates in part as follow;-

4 POWERS OF THE CENTRE,

The centre shall have power to do all such things as are calculated to facilitate , or as are incidental or conducive to , better carrying out its functions and may, in particular, but without prejudice to the generality of the foregoing-

(a)

(b)

(c) *conduct examinations and confer diplomas, prizes and certificates in accordance with any law in force or as may be required by the Law Council;*

(d)

Under Section 8 of the same Act the Executive Authority of the respondent is vested in the Management Committee which subject to general or specific directions is exercised by the Director of the respondent.

It is not in dispute that the respondent was receiving persistent complaints and concerns from the public and other stakeholders regarding allegation of impropriety in its examination processes and examination results.

In a bid to address the above it set up forensic committee to investigate the allegations. The committee was set up consisting of independent persons not being members of its management committee.

It was contended by the appellant that since the forensic committee was not a sub-committee of the Respondent's Management Committee it was unlawful set. That such a committee could only have been set up under Section 16 of the LDC Act. With respect we do not agree.

The Management Committee of the respondent has very wide powers under Section 4 and 8 of the LDC Act. It was well within its powers to set up a forensic committee to investigate the allegations and come with a report that would form the basis of the decision by the Management Committee as to whether or not there existed substance in the allegations as to require a fully flagged investigation.

We agree with holding of the learned trial Judge that audit committee was an internal arrangement for the purpose of gathering information and data. And that the respondent had powers to set up such a committee. That being a forensic audit committee, it was necessary and prudent that it consists of persons independent for the Management Committee to which the audit report was to be submitted.

The word 'forensic' is defined in the American Heritage Dictionary of English, 5th Edition, Houghton Mifflin Harcourt published in 2011 as follows:-

“Adjective

- 1. Relating to, used in, or appropriate for courts of law or for public discussion or argumentation.***
- 2. Relating to use of science or technology in the investigation and establishment of facts or evidence in a Court of law”***

The online Black's Law Dictionary defines Forensic Audit in the following terms:-

“A forensic audit is the process of reviewing a person's or company's financial statements to determine if they are accurate and lawful. Forensic accounting is most commonly associated with the IRS and tax audits, but it may also be commissioned by private companies to establish a complete view of a single entity's finances.”

From the above definitions it is apparent that forensic audit is concerned with investigation and fact finding and that a forensic audit report may or may not lead prosecution.

We find that the respondent had power to set up such a committee to prepare a report upon which the Management Committee would make decisions.

We therefore find no merit in this ground and we hereby dismiss it.

Issue 2 whether the forensic committee observed Rules of natural justice. We have held on ground one that the forensic committee was set up for gathering information and data relating to the allegations of impropriety in the examination process and examination results.

It was therefore not concerned within the decision making process. There was no requirement for any hearing at this stage. As stated in the affidavit of Joyce Welikhe paragraph 12. The committee was to pave way to a detailed inquiry where the persons affected by the report would be accorded a hearing.

The forensic audit committee therefore was not a tribunal and as such it was not required to take evidence or to make any binding decisions. It was only to submit its findings and recommendation to the Management Committee.

The Supreme Court in the case of ***John Ken Lukyamuzi vs Attorney General and Electoral Commission (Supreme Court Constitutional Appeal No. 2 of 2007)*** defined a tribunal in the following words at P.7 of the Judgment of *Hon. Tumwesigye JSC*;-

“For a body or a person to be called a tribunal there must be an accuser and an accused person or parties with a dispute to resolve. A tribunal will then conduct a hearing and come to a decision binding on the parties”

There was no accuser or accused before the forensic audit committee. There was no dispute before it to resolve. As already stated it was only to gather data and information and as such it was not a tribunal.

In this regard we entirely agree with learned trial Judge when at page 23 of his judgment he held as follows;-

“I have already found that this committee was an internal informal body which went on fact finding expedition to ascertain whether indeed there were cases of exam malpractices. There is no way such a committee could have foreseen that the applicants would be part of those involved in the examination scam so as to have summoned them and afforded them hearing.”

Indeed the respondent went on to set a committee headed by a retired Judge Hon. Justice Kania, to carry out the full investigations. It is this committee that was to accord the appellants a hearing. The challenge to this committee was pre-mature and has in the result occasioned unnecessary delay into the inquiry of the issues referred to above.

We therefore find no merit in this ground it is also dismissed.

Having resolved the first two issues as we have, the remaining issues 3, 4 and 5 become moot or purely academic. Those issues could only have arisen after the full inquiry. At this stage there is no decision made as to the validity or otherwise of the appellants' diplomas. No decision has been reached as whether or not the appellants were involved in any examination malpractices. The forensic committee simply gathered information and submitted a report based on the data and general information obtained. The report was simply a basis upon which action could be taken on the applicants and others mentioned in the report, following a full inquiry at which they all would be accorded a full hearing.

A report resulting from such an inquiry cannot by itself influence the DPP to prosecute or not to prosecute anyone. The DPP by Constitution is independent and does not act upon the influence of any person or body.

As to whether the Rules governing the passing of the bar course were applicable to the applicants is both a question of law and fact that would have to be dealt with at the full inquiry. As already held, the audit committee could not have accorded anyone a hearing and it did not. The report submitted by Mr. Tibaijuka as a lecturer did not in itself make him a potential witness at the judicial review proceeding before the High Court which sought to quash that committee's report and to have it declared illegal.

Mr. Tibaijuka did not swear any affidavit in respect of the proceedings at the High Court from which this appeal emanates. He could therefore not have been a potential witness. The civil

Procedure Rules require that parties annex to their pleadings a list of witnesses. We were unable to see Mr. Tibaijuka's name on the appellants' or respondents' list of witnesses at the High Court.

This ground is clearly misconceived and devoid of any merit.

All in all, this appeal has no merit whatsoever and fails on all the grounds.

We accordingly dismiss it with costs in this court and in the court below.

Dated at Kampala this 14th day of May 2015.

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**HON. A.S. NSHIMYE
JUSTICE OF APPEAL**

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**HON. KENNETH KAKURU
JUSTICE OF APPEAL**

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HON. GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL