

**THE REPUBLIC OF UGANDA**  
**AT THE EQUAL OPPORTUNITIES COMMISSION TRIBUNAL**  
**HOLDEN AT KAMPALA**  
**COMPLAINT EOC/CR/020/2018**

**BWENGYE DEUSDEDIT:.....COMPLAINANT**

**VERSUS**

**BISHOP STUART UNIVERSITY:..... RESPONDENT**

**DECISION**

This decision arises from complaint **Ref: EOC/CR/020/2018** brought under Section 23 of the **EQUAL OPPORTUNITIES COMMISSION ACT, 2007** for orders that: -

1. The impugned provisions of Bishop Stuart University's Guild Constitution are discriminatory and /or amount to impairment of equal opportunities.
2. The discrimination or impairment of equal opportunities complained of is unjustifiable.
3. The complainant is entitled to the remedies sought.

**Background**

The Complainant is a law student at the Respondent University. The Respondent is a private university established by Ankole Diocese of the province of the Anglican Church of Uganda.

The Complainant's case is that some provisions of the Respondent University's Guild Constitution are discriminatory because they ring-fence certain



positions on the Guild Executive exclusively for students who belong to the Anglican faith.

These positions include; -

- a) Chairperson and Vice Chairperson of the Electoral Commission under Article 6 (i), (vii) a), b) of the Guild Constitution
- b) Guild President under Article 6 (3) (1) (i), (vii), (xiii), (xv) of the Guild Constitution
- c) Guild Vice President under Article 6 (4) (v) of the Guild Constitution
- d) Guild Speaker and Deputy Guild Speaker under Article 6 (3) (a) (b) of the Guild Constitution.
- e) Minister of Religious Affairs under Article 6 (3) (v) of the Guild Constitution.
- f) Minister of Justice and Constitutional Affairs under Article 6 (3) (v) of the Guild Constitution.

The Complainant's case is that for a student to contest for any of the posts stated here-above listed, he or she must belong to the Anglican faith; and for the positions of Chairperson and Vice Chairperson of the Electoral Commission of the Guild, as well as the Guild Speaker and Deputy Guild Speaker, the prospective candidates are required to seek clearance from the University Chaplain as well as their home Parish. Contestants for the office of Guild President are additionally required to include baptism cards and marriage certificates on their applications for nominations.

The complainant therefore contends that the provisions and requirements referred to herein are discriminatory and amount to nullification of equal opportunities as they seek to exclude students who do not belong to or profess the Anglican faith from contesting for the listed Guild positions. The Complainant consequently prays that the Commission declares the impugned provisions discriminatory and accordingly nullifies them.

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On the other hand, the Respondent's case is that the restrictions embedded within the impugned provisions are for good reason and intended to preserve the Christian identity of the University in line with the philosophy of the Anglican Church of Uganda as captured in Part 2 (11) of the University Charter.

The Respondent's argument is that all students admitted to the University must comply with its Instruments of Identity. It is also the Respondent's contention that the exclusion of other students from assuming certain offices of the University Guild administration is allowed by the limitations contained in the Constitution of Uganda. The Respondent further argues that the exclusion is intended to ensure that the values and morals of the Anglican faith are advanced at the University through the Students' Guild. The Respondent therefore submits that the impugned provisions are an example of positive discrimination.

Although Commission Counsel had prayed to halt the Guild Election slated for 28<sup>th</sup> April 2018, this Tribunal declined to grant the application on grounds that preparations for the Guild elections were long underway and a lot of resources had been committed to this cause and that proceeding with the scheduled election would not cause any prejudice to the Complainant.

At the beginning of the trial both parties agreed to file written submissions instead of proceeding by way of oral evidence.

**The following issues were framed for determination by this Tribunal, namely; -**

- i) Whether the impugned provisions of the Respondent's Guild Constitution are discriminatory and/or amount to impairment of equal opportunities.
- ii) If issue (i) is answered in the affirmative, whether the discrimination or impairment of equal opportunities complained of is justifiable.
- iii) Whether the Complainant is entitled to the remedies sought.



I will deal with the framed issues in their chronological order as set out above.

1. **Whether the impugned provisions of the Respondent's Guild Constitution are discriminatory and/or amount to impairment of equal opportunities.**

Article 21 of the Constitution of the Republic of Uganda, 1995, guarantees equality of all persons before and under the law, and prohibits discrimination of any person on the basis of ethnicity, tribe, creed or religion, social or economic standing, political opinion or disability. Article 2(1) of the International Convention on Civil and Political Rights to which Uganda is a state party also recognizes the right to all persons to enjoy the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex or religion. Article 26 of the Covenant provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

The African Charter on Human and Peoples' Rights similarly prohibits discrimination and unequal treatment in all spheres of life in Articles 2 and 3 thereof. In like terms, Article 2 of the Universal Declaration of Human Rights entrenches the principle of equality and non-discrimination before and under the law.

Discrimination under Article 21(3) of the Ugandan Constitution means to give different treatment to different persons attributable only or mainly to their respective description by sex, race, color, ethnic, origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Similarly, Section 1 of the Equal Opportunities Act 2007, defines discrimination to mean;

**“any act, omission, policy, rule, law, practice, .....  
exclusion or preference which directly or indirectly  
has effect of nullifying or impairing equal  
opportunities or resulting in unequal treatment of**



**persons in the enjoyment of rights and freedom on the basis of sex, age, .... religion among others.”**

The Equal Opportunities Commission is enjoined by Article 32 (3) and (4) of the Constitution of the Republic of Uganda as well as the Equal Opportunities Commission Act, 2007, to give effect to the State’s constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the grounds of creed or religion, among others.

I have carefully considered the submissions of both counsel and also analysed the Students’ Guild Constitution as well as the University Charter to establish the extent of their compliance with the law and authorities cited by Commission Counsel and the Respondent’s Counsel respectively.

The purpose of the Guild as stated in Article 1 (3) of the Guild Constitution, **is to seek, promote and protect the interests and rights of all its members.** Under Article 1(4) (ix) of the Constitution, one of the Aims and Objectives of the students’ Guild is **to create equal opportunities for leadership development.**

It is provided under Article 3 (1) (a) of the same Constitution **that all students are equal before and under the Guild laws in all spheres of academic, political, economic and social life and every other respect and shall enjoy equal protection of the Guild law.**

The supremacy of the Guild Constitution in the affairs of the students’ Guild is entrenched in Article 2 (1) (i) and provides that it shall have binding force on all authorities and persons under the Students’ Guild. Article 3(iv) of the same Guild Constitution confers an unfettered right upon all members of the students’ Guild to elect and be elected to any organ of the Guild. Article 1(5) of the Constitution provides that all registered students of Bishop Stuart University shall be members of the Guild. Part 8(48) of the Respondent’s Charter equally provides that all students shall be eligible to become members



of the Students Guild upon admission and registration in the University. Moreover, each member is required to pay subscription fees to the students' Guild under Article 1(5) (e) of the Guild Constitution.

The mission of the Respondent as stated in Part 2(9) of its Charter is to produce multi-sectoral leaders/operators who know the way, show the way and go the way.

However, in sharp contrast to the above provisions, the same Constitution provides in Article 6 that the Chairperson and Vice Chairperson of the Guild Electoral Commission shall be a member of the Anglican Communion and shall be nominated after getting clearance from the University Chaplain and home Parish. Similarly, contestants for the office of Guild President, Vice Guild President, Guild Speaker, Deputy Guild Speaker, Minister for Justice and Constitutional Affairs, and the Minister for Religious Affairs must mandatorily be members of the Anglican Communion, and must equally be cleared by the University authorities and their home parishes.

I strongly agree with the submission of Commission Counsel that the impugned provisions are discriminatory within the meaning of Article 21 of the Constitution of the Republic of Uganda, Sections 1 and 14 of the EOC Act 2007, Article 2 of the Universal Declarations of Human Rights, Article 2(1) of the International Covenant on Civil and Political Rights 1966; Articles 2 and 3 of the African Charter on Human and Peoples Rights, and the Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief (UNGA Resolution 36/55 of 25<sup>th</sup> November 1981.) Article 2 of the Declaration provides that;

**“No one shall be subject to discrimination by any state, institution, group of persons or person on the ground of religion or belief.”**

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By giving unequal treatment to its students on the basis of religion, the Respondent does not only offend Uganda's Constitution and the other laws (including international and regional Instruments) listed above, but contradicts its own Constitution whose provisions on equal opportunities for all students are clear cut. Reading the provisions of the Guild Constitution together, it is clear that the impugned provisions are out of sync with the overall purpose of that document and the students' Guild generally which seeks to allow all students to showcase their leadership abilities and competences.

This is in view of the fact that students are admitted from all walks of life and no reference is made to religion as a mandatory requirement for admission to the Respondent University. It is discriminatory for students who profess the Anglican faith to be given preferential treatment, especially with regards to offering themselves to contest for leadership positions.

The unconstitutional practice of ring fencing and allowing only students who belong to the Anglican faith to contest and occupy key offices of the Guild administration to the exclusion of others has the adverse effect of killing natural endowments of leadership skills of the non-Anglican students, who are rudely denied the opportunity to harness their skills so as to develop into future leaders.

Some of the objects of the Respondent as captured in Part 3 (a) (d) and (m) of the Respondents' Charter of 2014 are: -

- a) To develop effective strategies for preservation and extension of knowledge through teaching and research
- b) To guide students to understand and accept themselves, their individual needs and talents, and to develop their potential for quality and productive life and service
- c) To provide a balanced programme and experience for harmonious and holistic development of students and staff



I take notice of the fact that student leadership plays an important role towards the fulfillment of all the above stated objects. Sadly, however, the impugned provisions discriminately apply these objects to students who belong to the Anglican Communion, to the detriment of others who then cannot access the benefit and experience of harmonious and holistic development.

Counsel for the Respondent passionately submits at page 3 of his submissions that;

**“The purpose of the University therefore among others is to advance and promote Anglican ethos and values. To this extent, the university enjoys the fundamental right to hold to this Anglican faith and the right to manifest this belief which entails that those holding ring fenced positions live up to the Anglican ethos and values and practice the same. It would be a negation of these rights if for instance the position of Guild President was held by an atheist. What message would this convey? It would run counter to the very objective and purpose of setting up an Anglican based University.”**

This indeed is an expression of discrimination in as far as the Guild Constitution purports to allow only students of the Anglican faith to contest for the most important offices in the Guild administration, while relegating non-Anglican students to the less privileged and insignificant positions in the Guild administration.

I entirely agree with Commission Counsel that the measures taken by the Respondent to ring fence certain positions in the Guild administration are indeed unfair, irrational and unreasonable.

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The Respondent, as correctly submitted by Commission Counsel, has alternative ways of promoting values of the Anglican faith and other desirable elements of Christian philosophy without discriminating against sections of its students. It would be understandable if only the Guild Minister for Religious Affairs was mandatorily required to belong to the Anglican faith because looking at Article 5(3) (h) of the Guild Constitution, the incumbent's roles are purely religious in nature. Other positions that are secular in nature and the holders' efficiency and competence ought to be measured by practical leadership talents and not their respective religious affiliations. Such leadership talents are not only found in students of the Anglican denomination but are available to atheists and persons of other denominations alike.

The impugned provisions are therefore segregative and do not promote diversity, tolerance and respect for students' respective beliefs and orientations.

The first issue is therefore answered in the affirmative, with the finding that the impugned provisions of the Respondent's Guild Constitution are discriminatory and amount to impairment of equal opportunities contrary to Article 21 of the Constitution of Uganda, Sections 1 and 14 (1) and 23 of the Equal Opportunities Act, 2007; Articles 2 and 3 of the African Charter on Human and Peoples Rights, Articles 2 (1) and 26 of the International Covenant on Civil and Political Rights, 1966, and Article 2 of the Declaration on the Elimination of all Forms of Discrimination Based on Religion or Belief, 1981.

**2. Whether the discrimination or impairment of equal opportunities complained of is justifiable.**

It is important to note that the limitations that are permissible in the enjoyment of the right to equality and non-discrimination are expressly provided under Article 21 (4) and (5) and Article 43 of Uganda's Constitution of 1995.

- i) Article 21 (4) and (5) deals with matters which are within the realm of the legislative arm as well as permissible discriminatory actions



which are specifically provided by the Constitution. These two provisions are not applicable to this complaint.

- ii) Article 43 (1) provides that “In the enjoyment of the rights and freedom prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedom of others or the public interest.” Article 43 (2) (c) provides that public interest shall not permit any limitation of the rights under Chapter IV beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the Constitution.

In considering the constitutionality of a policy, **Justice MUKASA KIKONYOGO** in the case of **DIMANCHE SHARON AND TWO OTHERS Vs MAKERERE UNIVERSITY, Constitutional Case No. 01/2003** held that “Court has to consider both the purpose and effect of the policy together.”

The first question therefore is whether the Respondent’s discriminatory practices serve a legitimate purpose. In my view they do not because as already stated, all students in the University can offer leadership, and the Respondent has other non-discriminatory avenues by which it can promote the Anglican values. In any case as already pointed out, the Respondent’s Charter clearly defines its purpose as being holistic in the training of students in various fields of life to enhance the status of their communities.

Counsel for the Respondent variously makes reference to the Christian identity of the university. It is clearly understood and commonly known that there are numerous Christian denominations that subscribe to similar values and ethos like those of the Anglican Communion. With the greatest respect to counsel, excluding students from those other denominations simply because are not Anglican amounts to dangerous and unconscionable discrimination. The effect is unjustified denial of useful talent and human resources needed for growth and development of society.



What is acceptable and demonstrably justifiable in a free and democratic society was settled in the case of **CHARLES ONYANGO OBBO AND ANOTHER Vs ATTORNEY GENERAL, Constitutional Appeal No. 2 of 2002** where **Mulenga JSC (as he then was)** set out the criteria for such justifiable limitation to guaranteed rights as follows; -

- ❖ The legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right
- ❖ The measure designed to meet the objective must be rationally connected to it and must not be arbitrary, unfair or based on irrational considerations
- ❖ The means used to impair the rights or freedom must be no more than necessary to accomplish the objective

The impugned provisions, however, fall short of this criteria and are a clear unjustified breach of the right to equality and non-discrimination. Looking at the Respondents' Charter, the core object of the Respondent is to offer education, foster research, as well as provide holistic training to students, including providing them with leadership opportunities and professional training in various areas that are relevant to social growth and development. Restricting non-Anglican students from rising to the most important positions in the Guild for the sole reason that the office holders advance the Anglican philosophy of the Respondent is a misnomer.

The State is enjoined by Objectives II (i) and (ii) of the National Objectives and Directive Principles of State Policy to promote democratic principles which empower and encourage active participation of all citizens at all levels in their own governance; and to ensure that all the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution. Objectives III (ii) and (iii) make it equally mandatory to integrate all the peoples of Uganda while recognizing the existence of their ethnic, religious, ideological, political and cultural diversity; and to promote a culture of cooperation,



understanding, appreciation, tolerance and respect for each other's customs, tradition and beliefs.

The impugned provisions do not guarantee access to leadership for all; they are segregative and intended to impair equal opportunities for a section of the students' community. Instead of promoting unity in diversity, tolerance and respect for each other's religions or other beliefs, they are an undesirable creation of intolerance and division among students who would otherwise live in harmony and enjoy equal treatment especially in offering leadership.

On its part, Objective XVIII provides that religious bodies shall be free to found and operate educational institutions if they comply with the general educational policy and to maintain national standards. The general educational policy of Uganda does not condone discrimination. I agree with Commission Counsel that even if it did, this Tribunal would be required by Section 14(1) of the EOC Act, 2007 to streamline it and ensure that it complies with equal opportunities. The Respondent, like any other private University must therefore comply with the general education policy and maintain national standards which are not unjustifiably discriminatory.

Thus, the impugned provisions glaringly offend the spirit and letter of these Objectives and Principles in as far as they exclude and deny participation of non-Anglican students in the key areas of the Guild leadership.

It should be recalled that Article 2 of the Constitution of Uganda is crystal clear on the supremacy of the Constitution and provides that the Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda; and that if any other law or any custom is inconsistent with any of the provisions of the Constitution, the constitution shall prevail, and that other law or custom shall, to the extent of its inconsistency be void.

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Consequently, in as far as the impugned provisions of the Respondents' Guild Constitution do not conform to the National Objectives and Directive Principles of the State Policy (which are by virtue of Article 8(A) part of the Constitution), and Article 21 of the Constitution of the Republic of Uganda cited herein above, they are void and of no legal effect.

The Respondents' contention that the impugned provisions constitute positive discrimination is malafide as clearly supported by the observation of **Justice Stephen Mubiru** in the recent case of **AYIKORU GLADYS Vs BOARD OF GOVERNORS OF ST. MARY'S EDIOFE S.S. (CIVIL SUIT No. 26 OF 2016)** where he stated that;

**“Disparate impact might offend against a substantive principle of equal opportunity. The principle of fair equality of opportunity requires that all those with the same ambition and the same native endowment of talent should have the same prospects for competitive success. If otherwise unobjectionable actions and policies bring it about that fair equality of opportunity is not satisfied, these policies will be regarded as wrong if the fair equality of opportunity principle is assigned moral priority over the principles that justify these policies. However, where such disparate treatment is motivated by feelings of resentment, detestation, hostility, prejudice, spiteful or malevolent ill will, in other words animus, such segregation becomes repugnant to natural justice, equity and good conscience. It is offensive, heartless, selfish, and distasteful.**

**Discrimination on the basis of an unwarranted stereotypical assumption will be found to exist where the available information does not provide direct substantiation of the conclusion reached or where such perception may have distorted the application of neutral and reasonable criteria**



**used to evaluate the compliant belonging to a disfavored group.”**

In view of the above, I am persuaded by Commission Counsel that the discrimination complained about is unjustified, wrongful and simply premised on prejudice against the non-Anglican students. This Tribunal is not satisfied that there is any other justification for discriminating against them. In addition, Counsel for the Respondents does not indicate that the discrimination complained of is intended to benefit the Anglican students perhaps because they have previously faced discrimination in accessing the Guild leadership, or even suffered any other disadvantage in the past, hence validating the positive discrimination argument. The learned counsel does not indicate how belonging to the Anglican faith as opposed to other qualities and attributes of leadership are relevant and necessary for office bearers to perform the functions of the ring-fenced positions of the Guild administration.

For all intents and purposes therefore, I do not find any good will in the impugned provisions and accordingly hold that the discrimination and impairment of equal opportunities complained of are unjustified.

With the greatest respect to counsel, to argue that the Complainant chose to go to an Anglican based university, submitted himself to observe and abide by those impugned provisions of the Guild Constitution and therefore cannot turn around and challenge them is to seek to hold him as a slave of his own conscience contrary to Article 29 (1) (b) of the Constitution of the Republic of Uganda. The purported taking of an oath by the Complainant to abide by the Rules and Regulations of the Respondent is thereby rendered nugatory in the context of this case, by the very illegality in which the impugned provisions are rooted.

This Tribunal is therefore enjoined by law to nullify the impugned provisions. It cannot be seen to condone baseless discrimination as this would be an undesirable betrayal of its core function under Section 14 of the Equal



Opportunities Act, 2007 to ensure that laws and practices of organs of state and private entities at all levels are compliant with equal opportunities.

I therefore hold that the discrimination or impairment of equal opportunities complained of is unjustifiable, illegal and against the Constitution of Uganda.

**3. Whether the Complainant is entitled to the remedies sought**

Fundamental and other Human Rights and freedoms are generally protected and promoted under Chapter 4 of the Constitution of the Republic of Uganda. The same Constitution provides for the right to remedy in case of violations of guaranteed rights. That is the same spirit in which this Commission was set up.

Thus, this Tribunal is empowered by Sections 14 and 23 of the Equal Opportunities Commission Act to inquire into and hear complaints of discrimination, marginalization or impairment of equal opportunities and make decisions or awards in accordance with Regulation 22 of the Equal Opportunities Regulations, 2014.

Having carefully read the submissions of both parties and cognizant of the importance of students' leadership to the overall development of a student in any University, I am inclined to make the following findings and orders.


1. That the impugned provisions of the Respondent's Guild Constitution are discriminatory and amount to impairment of equal opportunities contrary to Article 21 of the Constitution of Uganda, Sections 1 and 14 (1) and 23 of the Equal Opportunities Act, 2007; Articles 2 and 3 of the African Charter on Human and Peoples Rights, Articles 2 (1) and 26 of the International Covenant on Civil and Political Rights, 1966, and Article 2 of the Declaration on the Elimination of all Forms of Discrimination Based on Religion or Belief, 1981.

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2. That for all intents and purposes, there is no justification for the impugned provisions of the Respondent's Guild Constitution to stand and it is accordingly declared that the discrimination and impairment of equal opportunities complained of by the Complainant are unjustified.
3. The Respondent is hereby ordered to delete the impugned provisions of its Guild Constitution and cause amendments thereto with clear provisions guaranteeing equal opportunities and non-discrimination in respect to all affairs and activities of the students' community including but not limited to students' leadership.
4. It is ordered that a duly amended copy of the Respondents' Guild Constitution in the terms directed in paragraph 3 above, shall be submitted to the Tribunal Registry at Plot 7 Luthuli Close, Bugolobi Kampala not later than 90 days from the date of this Decision.
5. The Respondent has a right of appeal as provided for under Regulation 29 of the Equal Opportunities Commission Regulations, 2014
6. No award is made as to costs.

I so order.

Dated at Kampala this 18<sup>th</sup> day of JULY 2018.

  
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**Joel Cox Ojuko**  
**PRESIDING MEMBER OF THE TRIBUNAL**  
**EQUAL OPPORTUNITIES COMMISSION**