

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. CAUSE NO. 175 OF 2007

THE CIVIL PROCEDURE (AMENDMENT) (JUDICIAL REVIEW)

RULES S.1 95 OF 2003

**IN THE MATTER OF THE CIVIL PROCEDURE (AMENDMENT) (JUDICIAL
REVIEW)**

RULES S.1 95 OF 2003

**IN THE MATTER OF SECTION 36 OF THE JUDICATURE ACT, CAP 13 AS
AMENDED BY THE JUDICATURE (AMENDMENT) ACT, NO.3 OF 2002**

**IN THE MATTER OF THE
APPLICATION FOR STATEMENT AND AFFIDAVIT IN SUPPORT THEREOF FOR
LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION AGAINST
THE DISMISSAL AND CANCELLATION OF THE APPLICANT'S ADMISSION FROM
MAKERERE UNIVERSITY**

AND

**IN THE MATTER OF APPLICATION FOR LEAVE FOR JUDICIAL REVIEW BY:
MULUNGWA MONICA EUNICE FOR AN ORDER OF CERTIORARI QUASHING THE
DECISION OF THE ACADEMIC REGISTRAR CANCELING THE APPLICANT'S
ADMISSION AND DISMISSING HER FROM THE UNIVERSITY**

MULUNGWA MONICA EUNICE ::: APPLICANT

VERSUS

1. MAKERERE UNIVERSITY

2. **MAKERERE UNIVERSITY SENATE**
3. **ACADEMIC REGISTRAR ::::::::::::::::::::::::::::::: RESPONDENTS**
MAKERERE UNIVERSITY

BEFORE: HON. JUSTICE J.P.M TABARO

RULING

On 16-1-2008 Court heard an application filed by Monica Mulungwa for leave to apply for judicial review with the intention of securing Orders Certiorari, Prohibition, Injunction and Mandamus, Under S.36 of the Judicature Act (Cap.13 Laws of Uganda as amended by the Judicature (Amendment) Act (No.3 of 2002), and 0.42A of the Civil Procedure Rules (CPR) as amended by Rule 4(1) and (2) of the Civil Procedure (Amendment) Judicial Review Rules (S.I 75 of 2003). As is required by law by virtue of Rule 44 of the Civil Procedure (Amendment) (Judicial Review) Rules, 2003 the application was presented, by Chamber Summons, ex-parte. After hearing the chamber summons that day the application was granted and reasons for the decision of the Court were scheduled for today.

The applicant is a student of Makerere University one of the respondents in this matter. The other respondents are Makerere University Senate, and The Academic Registrar of the same university. She alleges that in 2004 she was admitted to the University to pursue a course for the award of Bachelor's degree in Adult and Communication, under the Mature Age Entry Scheme. As a matter of fact there are more than 200 applicants seeking a similar remedy, from the same university, with same or similar complaints. It was a greed that this serves as a test case. The decision in this matter shall be availed to the Deputy Registrar and Counsel as well as all the parties pursuing the remedy/remedies in issue.

In the affidavit in support of the chamber summons she alleges that she sat and passed the requisite examination on 18-12-2004 after which she was issued with an identity card to signify membership of the university as a student. According to her the final semester commenced on 4-

12-2007 and an examination permit was issued to her and a timetable set and a copy thereof given to her. However, on 26-11-2007 she received a letter stating that her admission had been cancelled. The letter of cancellation, “Annexure E” to the application chamber summons, is clear – it states that the cancellation was based on fraud or scandalous conduct. The Mature Age Certificate which had been awarded to her was withdrawn.

The basis for the chamber summons as advanced by Counsel for the applicant, Mr. Matovu, is that she was not given notice of the cancellation of her admission and, secondly that she was not given any opportunity to be heard in the matter. Counsel, as already indicated seeks leave of Court to challenge the actions of the University and the rest of the respondents.

The authority of this Court, Fr. Francis Bahikirwe Muntu and 15 others, Miscellaneous Application No. 643 of 2005 before Kasule Ag. J. (as he then was) was quoted in support of the proposition that an administrative decision taken without giving an opportunity to the effected person to be heard is a nullity. This is the position in English law as well – R Vs. University of Cambridge – [1973] which rather like the position before Court now concerned an applicant whose degree was cancelled without giving an opportunity to the applicant to be heard before the adverse decision was taken.

After perusal of the papers concerning the present applicant’s complaint it is clear that, prima facie, she was not asked to answer to the allegations of fraud and scandalous conduct. I am satisfied that the grounds are established to justify an enquiry to establish whether or not the applicant was discontinued from her in accordance with the law. The application is granted with costs in the cause.

J.P.M. Tabaro

Judge

25-1-2008

25-1-2008 Applicant present, Respondents absent
 Mr. Matovu for applicant.
 Counsel for respondents absent

Parties and their Counsel were in Court when this date was fixed.
Ruling/reasons read.

J.P.M. Tabaro

Judge

25-1-2008