THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

IN THE MATTER OF APPLICANT FOR PREROGATIVE ORDERS BY WAY OF JUDICIAL REVIEW AND IN THE MATTER OF

TWINAMATSIKO ELLY::::::::::::::::::::::::::::::::::APPLICANT

VS

1. **MAKERERE UNIVERSITY COUNCIL**
2. **MAKARERE UNIVERSITY SENATE EXAMINATIONS IRREGULARITIES AND APPEALS COMMITTEE**
3. **MAKERERE UNIVERSITY FACULTY OF SOCIAL SCIENCES EXAMINATIONS IRREGULARITIES AND APPEALS COMMITTEE ::::::::::::::::::::::RESPONDENTS**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The applicant Twinamatsiko Elly, brings this application under Order 46A Rules 6 of the Civil Procedure Rules SI 1-1 of 2003. He prays that:

1. An order of certiorari quashing for the decision of the University Senate Examinations Irregularities and Appeals Committee and the Academic Registrar contained in a letter dated 2nd January 2008, communicated to the Applicant from the University canceling his examination results for the course SOA/1204/SW1209 and for the whole of Semester 1 Academic Year 2006/2007.

2. An order of certiorari quashing the decision of the Faculty of Social Sciences Examination Irregularities and Appeals Committee dismissing the applicant for the University.

3. Prohibition against the Respondents for further imposition of illegal and unreasonable decisions to the Applicant in future.

4. Mandamus directing the Respondents to reinstate the Applicant as a student of the Respondents and to release his results for the course SOA/1204/SW1209 and results for the whole of Semester 1 Academic Year 2006/2007.

5. The Respondents pay general damages for the said actions and the embarrassment, stigma, inconveniences occasioned by the above actions and

6. An order of costs against the Respondent.

The grounds of the application are, in summary that:

a) The decision taken by the University Senate Examinations Irregularities and Appeals Committee and the Academic Registrar dismissing the Applicant is arbitrary and illegal.

b) The decision taken by the University Senate Examinations Irregularities and Appeals Committee and the Academic Registrar dismissing the Applicant was premature and bad in law as it pre-empts the decision of the Faculty Examinations Irregularities and Appeals Committee.

c) The decision taken by the University Senate Examinations Irregularities and Appeals Committee was in complete disregards of the rules of Natural Justice and is null and void.

d) The decision of the respondents is in direct violation of the Applicants Right to Education as enshrined in the Constitution.

e) The decision to dismiss the Applicant was not based on the known University rules on the examination Malpractice and irregularities and hence is ultra vires the law.

f) The decision to dismiss the Applicant was based on allegations unknown to the Applicant and not proven against him.

g) Alternative, the penalty handed over to the Applicant is harsh, excessive, illegal and out of the ordinary norm of punishment.

h) Owing to the colossal sums of money and time invested in the University by the intended Applicant, the loss and inconveniences suffered, it is just and equitable that the orders sought be granted.

i) It is fair and equitable that the impuned decision of the Respondents be set aside.

The applicant filed an affidavit in rejoinder dated 20 March 2009 in support of the application.

The applicant considers 3 issues:

1) Whether the 1st respondent is properly joined as a party to the suit?

2) Whether the respondent followed the right procedure at the hearing of the applicant before reaching the decision to dismiss him from the University?

3) What remedies are available?

Issue No. 1

The 1st respondent is properly joined in the suit. Under Section 40 (2) (a) of the Universities and other Tertiary Institutions Act 2001, the University Council is vested with a responsibility of the direction of the administrative, financial and academic affairs of the University.

Under S. 41 (a) of the same Act, the University Council is responsible for representing the University in all legal suits.

To represent the University in this suit is whiting the mandate of the University Council being that the suit apart from administrative implications, this suit might also lead to financial obligations which the Council is responsible for.

Issue No. 2

The applicant was summoned by the Faculty Committee to answer the allegations of submitting/handing in two answer scripts in an exam of Course SOA1204/SW1209. The committee decided to dismiss him and communicated their decision to the Senate and to him in accordance with the Examination Rules. The applicant appeals against it in accordance with the Examination Rules.

The act of submitting two answer scripts does not constitute an offence under the Examination Rules. Member of the Faculty committee were much aware that this act did not constitute an offence under Rules 3 and 5 of the Examination Rules.

The Faculty Committee noted that it was a new form of cheating. It was also part of the communication of the Faculty Committee to the Senate in their letter communicating their decision.

In addition to the above prerogative orders, the applicants have prayed to be awarded general damages, interest thereon and costs.

Mr. Twinamasiko Elly, the applicant swore an affidavit in support of the application dated 4/4/2008. He further swore another affidavit in rejoinder on the 19th January 2009.

For the respondents, Mr. Amos Olal Odur, the Academic Registrar, Makerere University and Secretary to the Senate, swore an affidavit in reply and in opposition to the application on 1st December 2008.

Counsel for both parties made written submissions to court.

In an application for Judicial Review the affidavits filed in court by and for the respondent constitute the record with regard to the decision or act complained of and the subject of Judicial Review. See ***R. Vs Southampton Justices Exparte Green [1976] QB 11 at 22 and John Jet Tumwebaze Vs Makerere University and 2 others HCCA No. 353/2003 (***unreported).

According to the Joint Memorandum of Scheduling dated 27/2/2009, there were three agreed issued, to wit:

1) Whether the first respondent is properly joined as a party to the suit.

2) Whether the respondents followed the right procedure at the hearing of the applicant before reaching the decision to dismiss him from the university.

3) Remedies available to the parties, if any.

In their pleadings and submissions, the respondent raised a preliminary objection that the 1st respondent, the Makerere University Counsel was not a proper party to the suit, as the Council never participated in any of the contested by the applicant, and the University has its own corporate personality and could therefore sue or be sued. Further that the committees that who made the impugned decisions were not committees of the 1st Respondent. The respondents prayed that the case against be struck out with costs, and that any prayer to substitute the 1st respondent with Makerere University at this late stage should not be allowed as it will occasion miscarriage of justice.

The applicant on the other hand submitted that the first Respondent was properly joined to the suit as under S.40 of the Universities and Tertiary Institutions Act 2001 (UTIA), the University is rested with the responsibility for the direction of the administrative, financial and academic affairs of the

University. This is on top of being responsible for representing the University in all legal suits.

The applicant further prayed in the alternative that court invokes its inherent powers under S.98 of the Civil Procedure Act to make such orders as are necessary to for the ends of justice. Alternatively still, the applicant prayed that Makerere University be substituted for the first Respondent.

I have given due consideration to the submissions of both Counsel and the laws referred to. I note that the University Council is the Supreme Organ of the University and the University Senate is the next organ.

I further note that the Faculty of Social Sciences and Senate Examinations Irregularities and Appeals Committees of Makerere University are committees of the University Senate. It is also true that the Makerere University is a body Corporate that can sue and be sued in its own nature (S. 23 (1) of the UTIA, while S. 41 of the UTIA confers on the University Council responsibility to represent the University in all legal suits by and against the Public University.

So did the applicant add the wrong party to the suit, and if so could this be rectified.

The two organs of the University interface in such a way that the Council is overall responsible for the direction of academic affairs among other things, while the Senate is responsible for the organization control and direction of the academic matters, and as its main role (S. 45 of UTIA) and it considers reports to the Council any matter relating to or in connection with the academic work of the University (S. 45 (2) (h) of UTIA). In some instances e.g. cancellation of awards, are appealable to the Council. One can therefore safely say that the Senate is not detached from the Council in as far as the former is overall responsible for direction of academic matters and the latter is by law bound to report academic matters to the Council.

For the above reasons, I find that the joining of the University Council as a party is not far fetched. It is true that Makerere University is the body clothed with corporate personality, to be by law represented by the Council. However, where Judicial Review is concerned there is nothing in S. 36 (1) of the Judicature Act to say that prerogative orders issue only against bodies

clothed with corporate personality, otherwise the legislative would have stated so expressly.

S. 36 of the Judicature Act states as follows:

> ***"36 Prerogative Orders***
>
> ***1) The High Court may make an order, as the case may be of;***
>
> ***a) Mandamus, requiring an act to be done.***
>
> ***b) Prohibition, prohibiting any proceedings or matter, or***
>
> ***c) Certiorari, removing any proceedings or matter to the High Court".***

In my view, since these are Judicial Review proceedings, Makerere University need not to be added as a party, although there would be nothing wrong with its addition if the applicant had. And as I already found, the Council is also a right party to these proceedings.

In ***Jet Tumwebaze Vs Makerere University Council and another, HCCA 353 of 2005, at page 16,*** Kasule J. stated that both certiorari and prohibition are not dependent upon the applicant showing a specific personal right. The reference to ***Auto Garage Vs Motokor (No.3) 1971 EA 514*** by the respondents does not therefore seem to have relevance here.

The first issue is therefore answered in the answered in the positive.

The second issue is whether the 2nd and 3rd respondents followed the right procedure at the hearing of the applicant before reaching the decision to dismiss him from the University.

Before I can meaningfully determine the above issue, it is pertinent to give the brief back ground facts that gave rise to this application are as follows:

The applicant was at all material times a private student at Makerere University, Faculty of Social Sciences. In the academic Year 2005/06, Semester II, the applicant used two scripts while writing an examination in one of the subjects he was undertaking. He alleges that he used one copy as a rough copy and the other as a fair copy and he allegedly erroneously handed in both scripts.

The applicant was summoned and he defended himself before the Faculty Examinations Irregularities and Appeals Committee against the allegation of submitting two scripts. The committee decided to dismiss him from the University, and he was duly informed of the decision and of the option he

had to appeal to the Senate Committee. He did appeal to the Senate Committee.

Before the Senate Committee could communicate any decision to him or call him to defend his appeal, the applicant was again summoned in Academic Year 2006/2007 Semester II to defend himself before the Faculty Examinations/Irregularities and Appeals Committee (Faculty Committee) on another allegation that he wrote exams for another student. He defended himself and awaited the committee's decision.

On 10/01/2008 the applicant received a letter from the Senate Committee dismissing him from the University.

In his submissions the applicant argued that the allegation that he submitted two scripts, which also formed the basis for the decision of the Faculty Committee as confirmed by the Senate Committee to dismiss him did not constitute any offence under the examination rules. The rules referred to by the committee, that is to say Rule 3 and Rule 5 of the Examination Rules were not applicable to the present case.

The Faculty Committee called it an emerging type of cheating. The Committee therefore acted ultravires by putting the applicant on defence for a non-existing.

As to why he submitted two scripts, he had answered offence at the hearing that he had misfired in 2 questions so he asked for a second answer script.

In answer to the above the respondents submitted that the applicant admitted to handing in two answer scripts at the Faculty hearing, and requested for pardon, implying that there was an offence committed. They relied on Rule 8 of the Examination Rules all rough work has to be done in the answer script and cancelled; and Rule 3(g) which makes it an offence to fail to follow lawful instructions/orders issued by the invigilator.

On the appeal process, the applicant submitted that he appealed and was invited to appear before the Senate Committee on 30th May 2007, which he did. His appearance is admitted in paragraphs 11 and 16 affidavit in reply. He only got a response from the Senate Committee in January 2008 dishonoring him. Rule 30 provides for expeditions hearing, and this was violated by the Committee, occasioning injustice to the applicant.

The Senate meeting minutes indicated that they suspected that the 2nd script was deposited in the pile long after the end of the examination. Minute 26.12.3(4), the applicant was never presented with this allegation to enable him to respond to it, hence violating the rules of natural justice.

On the other hand, the respondents deny that the applicant was preferred an appeal against the decision of the Faculty Committee. The academic Registrar had no knowledge of such appeal. Hence rule 30 is not relevant here. Further the Faculty Committee only makes a recommendation for dismissal according to Rule 26 which must be confirmed by the Senate Committee before the student is officially informed of the decision of the Senate Committee. It is then that the student can appeal against the decision. So if there was any appeal preferred, it was premature and ineffectual.

On the hearing of the second allegation, the applicant stated that he was made to defend himself against a non existent offence under the Rules. Their action was therefore ultravires.

Further, the applicant complained that after defending himself before the Faculty Committee, he was never informed of their decision or availed a copy of the decision and record of proceedings, or informed of his right of appeal and the procedure to follow, as required under Rule 24 and 25. The applicant argues that he was thereby deprived of his right to appeal, occasioning him an injustice.

In the alternative the applicant argued submitted that the punishment handed by the Senate was harsh, excessive, illegal and out of the ordinary norm of punishment, based on mere suspicion.

The respondents on the other hand submitted that the acts by the applicant of writing answers for another candidate, and being found with 2 answer scripts and one question paper for the examination in question, contravened Rules 3(g), 4(e) and 5(d) of the Examination Rules which made it an offence to neglect, omit, or in any way fail to follow lawful instructions or orders issued by the invigilator, or to exchange answer scripts with another candidate or impersonating another student/candidate.

Further, Rules 3(g) and 3(iii) provided that such offences would render the offender liable to have his exams cancelled and him dismissed from the University.

As for the alleged failure by the Faculty Committee to inform the applicant of its recommendation, the respondents averred that there is no Rule requiring the Faculty Committee to do so before confirmation by the Senate Committee. Rule 26 requires the Senate Committee to officially inform the applicant of its final confirmation of recommendation for dismissal.

The respondents further state that Rules 23, 24 and 25 that require informing the student of their decision providing record of proceedings, and informing him of right of appeal only applied to decisions other than dismissal. Rule 26 clearly states that the student shall be informed of the decision to dismiss after it is confirmed by the Senate Committee. This is what happened in this case, and hence the Senate Committee's decision was not premature, or bad in law.

Neither was the decision of the Senate Committee harsh or severe, according to the respondents. The fact that this was a second conviction was an

aggravate factor under Rule 7 of the Examination Rules. Hence the dismissal as the appropriate punishment.

Basing on his complaints above the applicant sought remedies by way of prerogative orders of certiorari, prohibition and mandamus as stated at the beginning. Citing ***Ridge Vs Baldwin [1964] AC and Engineer William Kaya Kizito Vs Attorney General HCMC No. 382 of 2006,*** the applicant prayed that the decision of the Senate Committee be quashed on grounds of error on the record and procedural impropriety and irrationality in that the applicant was not informed of the allegation of depositing the script log after the exam ended, not informing him of the Faculty decision, and charging him with non existent offences, thereby breaching the rules of natural justice.

The applicant further prayed for mandamus to direct the respondents to release the results in the affected papers.

He prayed for Shs. 10,000,000= as general damages for inconvenience and embarrassment and a refund of a total of Shs. 652,500= spent on tuition for a Semester he didn't sit exams and academic costs, and costs of the suit.

Relying on ***J. Shah Vs Attorney General HCMC 31/69, Hoffman La Roche Vs Secretary of State for Trade and Industry [1975] AC 295, Gardner Vs Jay [1885] 29 Ch. D50 at 58, and John Jet Tumwebaze Vs Makerere University Council and 2 others HCCA 78/2005,*** the respondents submitted that the applicant was heard by both the Faculty and Senate Committees in accordance with the provisions of the Examination Rules. He was positively identified by one Kankunda as the person who helped her cheat. By his conduct the applicant is not entitled to the reliefs prayed for. They prayed that the suit be struck off with costs.

I have read the submissions filed by both sides and the laws and rules referred to. The principles governing Judicial Review were well stated by both parties. Regarding the principles, I would wish to state as follows:

It is important, at this point, to review the law relating to judicial review. The high Court derives the power to grant prerogative orders from Section 36(1) of the Judicature Act Cap 13. Order 46A of the Civil Procedure Rules regulates the procedure for the application for Judicial Review.

Prerogative orders are remedies for the control of the exercise of powers by those in public offices, and the remedy is available to give relief where a private person is challenging the conduct of a public authority or public body, or any one, acting in the exercise of a public duty. The orders, which may be for declaration, mandamus, certiorari or prohibition are discretionary in nature, and in exercising its discretion, the court must act judicially and according to settled principles. Such principles may include common sense and justice, whether the application is meritorious, whether there is reasonableness, vigilance and not any waiver of rights by the applicant. ***See John Jet Tumwebaze Vs Makerere University Council and 3 others - Civil Application 353 of 2005.***

The said orders are discretionary remedies which a court may refuse to grant even when the requisite grounds exist. The Court has to weigh everything against the other to see whether or not the remedy is the most efficacious in the circumstances. The discretion, being a judicial one, must be exercised on the basis of evidence and sound legal principles. ***See Republic Vs Judicial Service Commission exparte Pareno, Nairobi High Court Miscellaneous Application No. 1025 of 2003.***

Further the Court Appeal in Kenya ***National Examination Council Vs Republic, Civil Appeal No. 266 of 1996*** is quite instructive on when these orders will issue. The Honourable Judges had this to say:-

On Mandamus:

"an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed".

On Certiorari:

"Only an order of certiorari can quash a decision already made an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with, or such like reasons".

On Prohibition:

"It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for the excess of jurisdiction or absence of it, but also for a

departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings.

Having set out the guiding principles, I will now consider the facts of this case and whether an appropriate case has been made out to justify the granting of the remedies prayed for.

According to Paragraph 5 of the affidavit in reply of Mr. Odur Amos Olal, he knew from reading the minutes of the Faculty Committee meeting held on 8/2/2007 that the applicant was summoned to appear before the said committee on charges that he handed in two scripts during the Semester II 2005/06 exam for the course of SOA 1204/SW1209, and that this contravened sections 5 (h) of the University Rules on Examination Malpractices, and the offence is punishable by dismissal.

Rule 5(h) reads as follows:

"It shall be an offence for a student/candidate involved in an examination to deliver to the Examiner's office or residence an examination script/booklet outside the scheduled time for delivery without due authority".

What the above rule makes an offence is clearly different from what he was charged with, and indeed what he defended himself against, according to the minutes of the Committee under Annexture "A001" to the affidavit in reply.

According to the letter of dismissal by the Academic Registrar dated 2/1/08, paragraph 1, because of the variations in the scores on the two scripts and the Examiner's testimony, were confirmation of the Committee's suspicion that the second script was deposited into the pile of 800 copies long after the examination had ended.

According to the Academic Registrar's affidavit, the offence for which dismissal was based on the first offence was under 8 Rule 5 (h) but as it turn out it was a suspicion, confirmation upon which by the Senate, was never put to the applicant to defend himself against. This complaint was not contravened in the submissions, which instead referred to different Rules as having been violated by the applicant, i.e. Rule 8 and Rule 3(g).

The above inconsistencies put the applicant at a disadvantage in putting up his defence. The case against the student who is alleged to have violated the Examination Rules should be put to him very clearly with the Rules he is alleged to have violated clearly indicated. In the present case, the minutes referred to no rules. The case put to him by Faculty is different from the one which his dismissal was based. This is with regards to the alleged first violation.

The application further complained that the Faculty Committee did not inform him of their decision in the second alleged offence.

Further, under Paragraph 8 of the affidavit in reply, the Academic Registrar states that he is conversant with the Examination Rules and he knows that the Faculty Committee does not have the mandate to dismiss student but can only make a recommendation to the Senate Committee which confirms the decision.

Under paragraph 9, the Academic Registrar averred that he knows the applicant had not preferred any appeal against the decision of the Faculty Committee to discontinue him from the University and there had not been

any meeting of the Senate Committee at which the applicant's alleged appeal was allegedly considered.

Further under paragraph 10, that there was no rule in the Examination Rules that requires the Faculty Committee to inform the applicant of their recommendation for dismissal before such dismissal is confirmed by the Senate Committee; and that it was the latter's duty to inform the applicant of the final decision after confirmation of the Faculty Committee's recommendation.

What happened in real life is far different from what the Academic Registrar deponed to in his affidavit. By a letter dated 12/3/2007 addressed to the Academic Registrar Makerere University by the Deputy Dean, Faculty of Social Sciences, the Registrar was informed of the Faculty Committee's decision to discontinue the applicant from his studies. The last paragraph states this:

> ***"By copy of this letter, Twinamatsiko Elly is informed of the Committee's decision and if he is not satisfied with the committee's decision, he is free to appeal directly to the Senate Irregularities and Appeals Committee".*** See

Annexture “A” to the Notice of Motion (Application), also attached to the affidavit in reply as “A0002”.

And indeed, although the Academic Registrar in his affidavit, denied this, the applicant did appeal. A copy of his appeal is attached to the main application as Annexture “B”. It is dated 4/4/2007. On 23/5/07, the Academic Registrar invited the applicant to appear before the committee on 30/5/09. Under Paragraph 11, of the respondent’s affidavit in reply, the Academic Registrar deponed that he knew that the applicant appeared before the Senate Committee and the Committee agreed to up hold the Faculty Committees recommendations.

So if the applicant appeared before the Senate Committee, was it not in response to his appeal, which he had been advised to prefer? Surely without an appeal, the applicant would not have appeared before the Senate Committee. Indeed when the Senate Committee was considering the second allegation against the applicant, he did not appear before that committee.

It appears to me that the respondents are confused about the correct procedures. In one communication, they tell the applicant to appeal against

the Faculty Committee's decision, while in their affidavit in reply and the submissions, they are emphatic that the applicant is not supposed to be informed of the Faculty Committee decision until it is confirmed by the Senate Committee. Indeed it is the Senate Committee to convey the final decision.

The above is another area where procedures used proved to occasion an injustice as different procedures were used for the different alleged offences. Further, the different committees also appear to have different interpretations of the Rules. I see this as an injustice to the applicant whose right to fair and just treatment in administrative decisions is guaranteed under Article 42 of the Constitution of the Republic of Uganda.

Further the Court takes a serious view of the respondents' lies to court through the affidavit in reply by denying that the applicant made an appeal, when Annexture "C" to the main application is a letter of the Academic Registrar inviting the applicant to the Senate Committee meeting and under Paragraph 11 of the affidavit, the Academic Registrar admits that the Senate Committee met the applicant.

I have had occasion to look at the Examination Rules which were annexed to the affidavit in reply as Annexture A003. Rules 23, 24, 25 and 26 talk about the procedure after the Faculty Committee hearing. When the Faculty Committee makes a decision to dismiss a student, this decision has to be confirmed by the Senate Committee and then the student is informed of the decision. Rules 27 though to 37 deal with the procedure for appeals. Rule 27 states thus:

> ***"A student/candidate who is dissatisfied with the decision of a Committee may appeal to the Senate Examinations Committee within 30 days from the date of the letter communicating the decision".***

The respondents in their submissions stated that the applicant could only appeal after the Senate Committee had confirmed the decision of the Faculty Committee to dismiss him, and not before.

This is despite the fact that the letter from the Deputy Dean (Supra) advised him to appeal against the Faculty Committee decision. Apparently the rules are twisted to suit the respondents' needs and as and when it is to their advantage so to do.

Be the above as it may, I note that the appeals are supposed to be heard by the same Senate Committee that confirmed the decision of the Faculty Committee. Where is the justice in this? How can the Senate Committee be expected to handle fairly an appeal against a decision they have themselves confirmed? Is there any just raid fair treatment here?

And if, as per the respondents' submissions, the right of appeal only accrued after the Senate Committee's decision was communicated to the applicant, why was the applicant summoned to appear before the Senate Committee before any decision of the said committee was ever communicated to him?

From the above observations, it is evident that the University committees charged within the responsibility of dealing with cases of Examination malpractices themselves are not at par with regard to the application of the rules. The rules themselves don't offer the first and fair treatment in that the Senate Committee is expected to be a judge in its own cause since the rules make the same committee hear appeals from its own decisions. Without going further into the other complaints of the applicant, I find that with the above confusion in the procedures, as manifested through communications

to him and the pleadings, the applicant could not get fair and first treatment from the committees. The ensuring decisions are therefore no decisions and they are hereby quashed. It is possible that the allegations against the applicant may be true, but there has to be due process in dealing with the violations. Indeed it is immaterial that if the committees had applied proper procedures, they would have reached the same decisions. The committees' decisions on the two allegations were no decisions at all.

Having quashed the decisions of the Senate Committee and Faculty Committees, I don't find it necessary to consider the issue and the orders of mandamus and prohibitation that had been applied for.

Section 10 (4) of the Judicature (Judicial Review) Rules 2009, SI No. 11 of 2009, is to the effect that where the relief sought is an order of certiorari and the High Court is satisfied that there are grounds for quashing the decision to which the application relates, the court may, in addition to quashing the decision, remit the matter to the lower tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the High Court. However, due to the peculiar facts of this court, including the lies manifested by the respondents in their pleadings, the court

is not inclined to make such an order for the remission of the proceedings to the 2nd and 3rd respondents, knowing that the applicant is not likely to get justice from them.

As for the special damages claimed of Ug. Shs. 452,500= spent on tuition for a Semester when he didn't sit for exams, and Ug. Shs. 200,000= as academic costs, it is trite law that special damages must be specifically proved. In this case, there was nothing to prove the payment of these monies to the respondents. They are accordingly not awarded. Though in the last page of the applicant's submissions, he referred to copies of the students registration form dated 17/5/07; copy of his statement of account with the University dated 17/5/07, cash deposit slip dated 16/5/07, none of these were availed to court.

The applicant also prayed for general damages. It was submitted that the applicant, being a student, was affected by the decisions as a result of which he has missed, and continues to miss, his studies for almost 2 years now. The time has been longer because he had kept on going back to the University authorities seeking for a solution to no avail. Counsel added that

because of the embarrassment and inconvenience suffered by the applicant for a all this period without studies, he deserved an award of Shs. 10 million.

Geoffrey Kiryabwire J., stated in ***Kasibo Joshua Vs The Commissioner of Customs, and Uganda Revenue Authority – HCMA 844 of 2007,*** that the general principle in the award of general damages is that these are pecuniary compensations given on proof of a wrong or breach. In this regard, the claimant must be able to prove some loss.

In the present case, the applicant has been able to prove that the respondent acted in contravention of the principles of natural justice causing him an injustice and loss of almost two years without studies. The results that were withheld may not be found in which case he may have to even repeat these examinations. For the time he has lost and the suffering and mental anguish he has gone through, the court awards the applicant general damages of Ug. Shs. 3,000,000= (Three million only).

Finally the application is allowed in part with costs to the applicant.

Elizabeth Musoke

JUDGE

07/09/2009

Ruling read in the presence of:

1. Mr. Twinamatsiko Elly, the Applicant
2. Counsel for Applicant
3. Imelda Naggayi, Court Clerk

Elizabeth Musoke

JUDGE

07/09/2009