



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MC-0027-2023

5 JOCKUS BWAMBALE ----- APPLICANT

VERSUS

BISHOP STUART UNIVERSITY ----- RESPONDENT

Before: Hon. Justice Nshimye Allan Paul M.

10 RULING

REPRESENTATION

15 The Applicant was represented by Advocate Owakiro Lydia Paula holding brief for Advocate Rebecca Nambafu from M/s Nambafu, Namungalu & Co Advocates, while the Respondent was represented by Advocate Arthur Kamujaulusi from M/s Butagira & Co Advocates.

BACKGROUND

20 This application was brought under Section 36 of the Judicature Act Cap 13 (as amended), Rules 3, 6, 7, 7A & 8 of the Judicature (Judicial Review) Rules SI No.11 of 2009 (as amended by SI No. 32 of 2019), Sections 121 & 123 of the Universities and tertiary Institutions Act 2001 (as amended) and Section 98 of the Civil Procedure Act Cap 71; seeking orders that;

- 25 a) A declaration that the Respondent's decision of removing the Applicant's name from the graduation list for its 18th graduation slated for 24th March, 2023 was irrational, illegal, ultra vires, unreasonable and against the principles of natural justice.

- b) A declaration that the Respondent's decision not to graduate the applicant for the academic program of Bachelor of Nursing Science is irrational, illegal, ultra vires, unreasonable and against the principles of natural justice.
- c) A declaration that the Respondent's decision of offering to re-enroll the applicant for Bachelor of Science in Public Health to be studied within a period of one year is irrational, illegal, ultra vires, unreasonable and against the principles of natural justice.
- d) A declaration that the Respondent was in breach of the Applicant's legitimate expectation to graduate in March, 2023 after completion of his studies and complying with all University requirements.
- e) The prerogative order of certiorari doth issue quashing the Respondent's decision to not graduate the applicant for the academic program of Bachelor of Nursing Science.
- f) The prerogative order of certiorari doth issue quashing the Respondent's decision to re-enroll the applicant for Bachelor of Science in Public Health to be studied within a period of one year.
- g) A permanent injunction doth issue restraining the Respondent, its agents, servants, departments, authorities and/or officials from threatening the applicant.
- h) An order of mandamus doth issue compelling the Respondent to award the Applicant a Bachelors Degree in Nursing Science.
- i) An order of mandamus doth issue compelling the Respondent to issue the Applicant with the documents for the award of Bachelors Degree of Nursing Science.
- j) An award of damages for breach of legitimate expectation.
- k) General damages.
- l) Punitive damages of UGX150,000,000/= (Uganda Shillings One Hundred Fifty Million only).
- m) The Respondent pays the costs of this Application.

The application was supported by an affidavit deponed by the Applicant; and it was opposed in an affidavit deponed by Asiimwe Annah Tibazindwa, the University Secretary of the Respondent, as well as a supplementary affidavit deponed by

Nakidde Gladys – the head of Department of Nursing Science at the Faculty of Nursing and Health Sciences of the Respondent.

GROUNDS

5 The grounds as set out in the notice of motion are;

- 1) That on 17th June, 2018 the Respondent admitted the Applicant under Reg. No.18/BSU/BN/027 for the academic program of Bachelor of Nursing Science.
- 10 2) That before admission, the Respondent confirmed that the Applicant had met all the requirements for admission to the program of Bachelor of Nursing Science thereby admitting him.
- 3) That upon successful completion of the four-year course, the Respondent cleared the Applicant for graduation and forwarded his name to the Uganda Nurses and Midwives Council for registration and issuance of a temporary licence for internship.
- 15 4) That the Uganda Nurses and Midwives Council queried the applicant's admission for Bachelor of Nursing Science on grounds that his admission was in error because his Diploma in Laboratory Science is not a medical lab Diploma and he lacked a Principal Pass in Biology at 'A' Level.
- 20 5) That the Respondent consequently removed the Applicant's name from the graduation list for its 18th graduation without according him his right to be heard and decided to not to graduate him for the academic program of Bachelor of Nursing Science having cleared him for graduation which act was illegal, ultra vires, unreasonable and offended the rules of natural justice.
- 25 6) That the Respondent offered to re-enroll the Applicant to the academic program of Bachelor of Science in Public Health to be studied within a period of one year under duress and undue influence which was illegal, irrational, and with procedural impropriety.
- 30 7) That the Applicant has exhausted all internal remedies to seek redress from the Respondent which have all proved unfruitful.
- 8) That the Respondent's actions have caused the Applicant psychological torture, loss of dignity and reputation, embarrassment, inconvenience,

disruption of academic progress, risk of loss of sponsorship and job opportunities and financial loss.

- 9) That it is urgent, just and equitable that the remedies sought in this application be granted.

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SUBMISSIONS

Applicant's submissions

10 The Applicant filed submissions on 23rd October, 2023. The Applicant raised a preliminary objection contending that the Respondent's affidavit in reply was filed out of time contrary to Order 8 Rule 2 of the Civil Procedure Rules SI 71-1 which restricts affidavits in reply to be filed within 15 days. He relied on **THE RAMGARHIA SIKH SOCIETY & 2 OTHERS VS THE RAMGARHIA SIKH EDUCATION SOCIETY LTD & OTHERS HCCS MISC APPLICATION NO.352 OF 2015** for the importance of adhering to timelines.

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The Applicant framed three issues for determination, as noted below;

- 1) Whether this is a proper case for judicial review?
- 2) Whether the impugned decision by the University Senate and University Council constituted illegality, was irrational and procedurally improper and violated the principles of natural justice.
- 20 3) What remedies are available.

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On the first issue, it was submitted for the Applicant that having been aggrieved by the Respondent's Senate and University Council not to graduate him without according him a right to be heard, this case is proper for judicial review. He added that he exhausted all available remedies with the Respondent given that there is no right of appeal against the decision of the University Council in the Respondent's structure.

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On the second issue, the Applicant argued that the University Senate and Council's decision were illegal in as far as they recommended the Applicant to change course after four years, yet the Respondent's General Academic Policy prohibits change of course beyond two weeks after commencement of studies. He contended that the said was irrational for denying him a fair hearing as well as coercing him into taking

another one-year course in lieu of graduation. He added that there was procedural impropriety in the run up to the decision because he was never call for a meeting to discuss his graduation or non-graduation, in addition to there being no provision for appeal in the General Academic Policy 2018.

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Regarding the last issue, the Applicant prayed for an award of general damages, damages for legitimate expectation, declaratory orders as noted in the motion, and prerogative orders of certiorari and mandamus, a permanent injunction and punitive damages worth UGX150,000,000/=.

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Respondent's submissions

The Respondent's submissions were filed on 8th November, 2023. The Respondent started by raising a preliminary objection that the application is time barred under Section 36(7) of the Judicature Act Cap 13 and Rule 5 of the Judicature (Judicial Review) Rules 2009 which stipulate that an application must be lodged within three months from the date when the grounds first arose. The Respondent submitted that the decision not to graduate the Applicant and the decision to offer re-enrolment to the Bachelor of Science in Public Health were made by the University Senate on 2nd March, 2023 and the time for seeking judicial review expired on 2nd June, 2023 yet this application was commenced on 4th August, 2023.

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In response to the Applicant's preliminary objection, the Respondent submitted that Order 8 Rule 2 and Order 12 Rule 3(2) of the Civil Procedure Rules SI 71-1 are inapplicable to this matter because they pertain to set offs and counterclaims respectively.

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On the merits of the application, it was submitted for the Respondent on the second issue that there was no illegality in the decision of the Respondent's Senate since it is mandated by the Respondent's Charter to determine which individuals have achieved the required level of proficiency in each examination for a degree. Counsel contended that there was no irrationality in the Respondent's decision snice the Applicant was given an offer of another course after which he would graduate after one year and further argued that there was no procedural

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impropriety given that the Respondent as an education institution, could not be compelled to engage in violation of its academic standards. Counsel prayed for dismissal of the application with costs.

5 **Applicant's rejoinder**

The Applicant's submissions in rejoinder were filed on 24th November, 2023. In reply to the Respondent's preliminary objection, the Applicant contended that the decision complained of was arrived at on 22nd May, 2023 when the Respondent sent him a letter officially informing him of its decision not to graduate him and
10 since the application was filed on 4th August, 2023, it was well within the statutory 3 months.

In rejoinder, the Applicant reiterated his earlier submissions.

15 **DETERMINATION**

I have considered the evidence and submissions on court record. I shall first dispose of the preliminary objection raised by the respondent since it relates to time within which to file the application.

20 The Respondent raised a preliminary objection that this application is time barred under Section 36(7) of the Judicature Act Cap 13 and Rule 5 of the Judicature (Judicial Review) Rules 2009 which stipulate that an application must be lodged within three months from the date when the grounds first arose.

25 The Respondent contended that the decision not to graduate the Applicant and the decisions to offer re-enrolment to the Bachelor of Science in Public Health were made by the University Senate on 2nd March, 2023 and the time for seeking judicial review expired on 2nd June, 2023 yet this application was commenced on 4th August, 2023.

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The Applicant, in reply, argued that the decision complained of was taken on 22nd May, 2023 when the Respondent sent him a letter officially informing him of its

decision not to graduate him and since the application was filed on 4th August, 2023, it was well within the statutory 3 months.

5 The law in RULE 5(1) AND (2) OF THE JUDICATURE (JUDICIAL REVIEW) RULES, SI NO.5 OF 2009 provide as follows;

"5. Time for applying for judicial review.

10 (1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.

15 (2) Where the relief sought is an order of certiorari in respect of any judgement, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings if that decision is delivered in open court, but where the judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates, (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by registered post." (emphasis mine)

20 The key import from sub rule (1) is that in determining the timeline for filing an application for judicial review, regard should be had to the date when the grounds or events leading up to the application first arose.

25 The Applicant avers in his affidavit in support under paragraphs 8, 9 and 10 that the Uganda Nurses and Midwives Council declined his application for internship on 24th February, 2023 and two weeks thereafter, he was rung by the head of the Nursing Department of the Respondent informing him that the University Senate had removed his name from the 18th graduation list. Two weeks after 24th February, 2023 puts the date of arise of the grounds of this application at 10th March, 2023 –
30 as per the Applicant's evidence.

The Respondent's University Secretary averred in her evidence contained in paragraphs 11, 17 and 18 and of the affidavit in reply, that the decision not to

graduate the Applicant was arrived at by the Respondent's Senate on 2nd March, 2023 (see minute extract from the 103rd Senate meeting marked annexure 'E' to the affidavit in support) and the same was communicated to the Applicant in a Top Management meeting wherein the Applicant was in attendance on 24th April, 2023 (see minutes of the meeting of Top Management marked annexure 'E2' to the affidavit in support).

Whether this Court adopts 10th March, 2023 or 24th April, 2023 as the first date on which grounds of this application arose, the time limit set by Rule 5(1) of The Judicature (Judicial Review) Rules, SI No.5 of 2009 would still be violated.

I find that the application was filed outside the timeline set out in the law. This court cannot entertain an application that was filed out of time stipulated in Rule 5(1) of The Judicature (Judicial Review) Rules, SI No.5 of 2009. I am fortified in this view by holding of my learned brother Hon Justice George Okello's in **OBOL JAMES HENRY AND 2 OTHERS VS GULU UNIVERSITY AND ANOTHER MISC CAUSE NO.16 OF 2021** that the issue of time bar is synonymous with Court lacking jurisdiction and therefore cannot grant any judicial review remedy at all.

In conclusion, I uphold the Respondent's preliminary objection which wholly disposes off the application and I thereby dismiss this application with no order as to costs. I so order.



NSHIMYE ALLAN PAUL M.

JUDGE

20-12-2023