

5. Tibakunirwa Omega
6. Kifamulusi Erisa
7. Lutalo Brian
8. Ndikabona Hassan
9. Kaijuka Charles
10. Sekitto Shafiq
11. Kanabi Lawrence
12. Obuin Denis Rad
13. Yiga Robert
14. Semugga Frank

All the fourteen are represented by M/s Lukwago & Co. Advocates. However, during the pendency of this matter, some of the applicants to wit the 2nd, 3rd, 4th, 9th, 11th and 14th lost interest and withdrew from the case. The withdrawal was confirmed and accepted by court. This left the applicants to include the 1st, 5th, 6th, 7th, 8th, 10th, 12th and 13th applicants.

The respondent is The Governing Council of Uganda Institute of Allied and Management Sciences- Mulago (Formerly, Mulago Paramedical Training Schools) represented by M/s Kibedi & Co Advocates.

The application is for orders that:-

1. A writ of certiorari quashing the decision of the Respondent communicated by the Deputy Principal to the students on 2nd January 2013 dissolving the Guild Leadership.
2. A writ of certiorari quashing the decision of the Respondent communicated by the Deputy Principal on 14th January 2013 authorising the Institution Electoral Commission headed by its Chairman to take charge of the student's leadership responsibility of the Guild Leadership till the next election are carried out.
3. A writ of certiorari quashing the decision of the Respondent Principal in appointing leaders to fill the Guild Executive gap.

4. A writ of certiorari quashing the decision of the Respondent in appointing the Institution Electoral Commission headed by the Chairman to take charge of the student's leadership responsibility of the Guild Leadership till the next election are carried out and appointing student's representatives to the Governing Council for the rest of the semester contrary to the procedure of electing student's leaders prescribed in the Guild Constitution.
5. A writ of certiorari quashing the decision of the Respondent communicated to the students by the Deputy Principal on 2nd January 2013 changing the process of registration contrary to the procedure set out in the Rules and Regulations governing the registration of students at the Institution.
6. A writ of certiorari quashing the decision of the Respondent requiring all students to sign a declaration against their wish undertaking not to participate in any strike and to uphold the principle of discussion and dialogue as means of solving problems.
7. A writ of certiorari quashing the decision of the Respondent dismissing Lutalo Brian, Ndikabona Hassan, Ssekitto Shafiq from the Institution.
8. A writ of certiorari quashing the decision of the Respondent offering a dead year to Mutebi Benjamin and Kaijuka Charles.
9. A declaration that the conduct and acts of the respondent in dissolving the Guild Leadership, authorizing the Institution Electoral Commission headed by its Chairman to take charge of the student's leadership responsibilities of the Guild till next election are carried out.
10. An order of prohibition stopping the respondent from acting beyond its powers.
11. Payment of General Damages.
12. Costs of the application.

The Notice of Motion is supported by the affidavit and supplementary affidavit of Isamat Moses, the then Guild President and one of the applicants which reiterated the above grounds and averred that the respondent's actions are irregular, procedurally improper, irrational, unconscionable, malafide, unjustifiable and were ultravires its powers. Further that the acts and conduct of the respondent undermine the mandate given to the guild leadership by the student community and the order sought should be given for the ends of justice to be met. The detailed affidavit in support is as follows verbatim:-

I MOSES ISAMAT of M/s Lukwago & Co. Advocates, Media Plaza building, Plot 78 Kira Road Kamwokya, P.O Box 980 Kampala, do hereby solemnly swear and state as follows;

1. That I am a male adult Ugandan of sound mind, the Guild President of the Student community at **Institute of Allied Health and Management Sciences – Mulago (formerly, Mulago Paramedical Training Schools)** and the 1st Applicant herein and have been authorized by the rest of the Applicants to swear this affidavit on their behalf in which capacity I do swear this affidavit.
2. That I was elected the Guild President of the institution in 2012 and took oath of office on the 8th day of June 2012 and resumed office from the month of June 2012.
3. That since I became the Guild President, the institution and students at large have been facing the following problems.
 - (a) Lack of electricity from 8th September 2012, resulting from the disconnection of power by Umeme due to non payment by the institution and the power provided by Generator is not only insufficient but occasional as the Generator is faulty.
 - (b) Inadequate accommodation that resulted from forcing all students to become residents yet there is no sufficient space for all of the students, giving out of Block "A" which was occupied by students to members of staff, closure of Block B on the ground that it was meant for staff, letting out premier hostel to outsiders and a few students who could afford paying Ug Shs 150.000= per month. The above led to congestion in hostels and some students are now sleeping on the ground.

- (c) Poor quality and inadequate meals.
 - (d) Maladministration of the institution ranging from the un cooperative character of the Dean of Students and dictatorship by the Principal of the institution.
 - (e) Poor health conditions ranging from poor toilet facilities, un renovated structures infested with rodents and bed bags.
 - (f) Withholding students' Academic transcripts for those who completed their studies
4. That when the following problems were brought to the attention of the Guild Executive, the guild executive referred the same matter to the attention of the Administration, which has been giving endless promises.
 5. That due to the accumulation of the above grievances, students went on a sit down demonstration and refused to attend lectures till their grievances are settled by the institution management. The Administration called in police which talked to the students but failed to reach a compromise with them.
 6. That by a letter dated 19th November 2012, the deputy principal directed all the students to leave hostel premises by midday which the students refused to do as they wanted their grievances determined by the administration.
 7. That as a result of the above, the institution was on 20th November 012 declared closed by the Deputy Principal and students responded by leaving the hostels after police had been deployed to effect the vacation of hostels. The students were supposed to be informed of further developments using existing media. **(See copy of the letter closing the institution attached hereto and marked Annexure "A")**

8. That in an advertisement that appeared the New Vision of December 2012, all students were informed that the institution would open on 7th, 8th, 10th, and 11th January 2013. **(See copy of the news paper cutting attached hereto and marked Annexure “B”)**
9. That by a general circular dated 2/1/2013 from the Deputy Principal, the Respondent took an irregular, procedurally improper, irrational, unconscionable decision communicated to the students on 2/1/2013 dissolving the Guild Leadership, directing the Chairman of the Electoral Commission to commence the process of selecting leaders to fill the Guild Executive gap and directing the Chairman of the Electoral Commission to elect students’ representatives to the Governing Council, dissolving the Guild leadership, which decision is beyond its powers. **(See copy of the circular attached hereto and marked Annexure “C”)**
10. That on 14th January 2013 the Respondent’s Principal appointed Waiswa Paul the Chairman of the Institution’s Electoral Commission, Ms Kamara Linda, Ms Aciro Dorcus, Mr. Ntale John Bosco and Ms Karugaba Adrienne as to fill the Guild Executive gap with immediate effect till the next Guild elections are carried out. **(See copy of the document appointing members of the Electoral Commission to take over students’ affairs attached hereto and marked Annexure “D”)**
11. That in the same circular, the Respondent took decision of the changing the process of registration contrary to the one set in the Rules and barring all students access to accommodation except through the registration and clearance procedure set for the semester’s reporting exercise. **(See copy of the Rules and Regulations attached hereto and marked Annexure “E”)**
12. That by a general circular dated 11th January 2013 from the Principal of the Institution, Management took a decision forcing some government sponsored students to pay for their accommodation and feeding yet the same is paid for by the Government for all government sponsored students. **(See copy of the circular attached hereto and marked Annexure “A”).**

13. That by the same circular management took a decision requiring some of the students whose names are listed therein to first interface with the Governing Council before embarking on the registration exercise. The same circular directed the Dean of students to schedule the students' interface with the Governing Council. The invitation to interface with the Governing Council has not been scheduled to date thereby denying the listed students the opportunity to register.
14. That by the letter dated 14th January 2013 from the Principal of the institution, the Respondent Management took a decision authorizing the institution Electoral Commission headed by its Chairman to take charge of the students' leadership responsibilities of the Guild leadership till the next election are carried out. (See copy of the letter attached hereto and marked Annexure "G")
15. That the said interface is not only strange to the administration of the institution but also the same has not been scheduled to the present date a fact that has denied the students listed for the interface to register in consequence of which they missed the progressive exams that were done at the institution.
16. That the Respondent in its attempt to frustrate the students, it has allowed students on government sponsorship to register whose fees was all fully paid by the Government.
17. That to make matters worse, the Respondent in its bid to further frustrate the Applicants from continuing with their studies, has made a decision to forward the names of some of the Applicants and other students to the Ministry of Education and Sports purportedly for further consideration. (See copy of the letter dated 14th February 2013 attached hereto and marked Annexure "H")
18. That the requirement to interface, which has not taken place to date has denied the Applicants a chance to register, continue with studies in consequence of which they missed to sit their Semester I exams, which commenced early February 2013 which Semester is

closed on 8th March 2013 and the final semester has now commenced. (See copy of the letter closing the institution attached hereto and marked Annexure "I")

19. That Lutalo Brian, Ndikabona Hassan, Ssekito Shafia have without being given a chance to defend and without any justification were dismissed from the institution.
20. That Mutebi Benjamin and Kaijuka Charles have without being given a chance to defend themselves and without any justification were offered a dead year.
21. That unless court intervenes, the Applicants are likely to finally fail their courses as a result of the deliberate acts and conduct of the Respondent by refusing them to register, continue with their studies and sit exams which are a condition for passing their courses.
22. That the conduct and acts of the Respondent in dissolving the Guild Leadership, directing the Chairman of the Electoral Commission to commence the process of selecting leaders to fill the guild Executive gap, directing the Chairman of the Electoral Commission to elect students' representatives to the Governing Council, authorizing the institution Electoral Commission headed by responsibilities of the Guild leadership till the next election are carried out, forcing students to pay for their accommodation and feeding are irregular, procedurally improper, irrational, unconscionable, malafide, unjustified and ultravires its powers.
23. That as a result of the Respondent's conduct I and the rest of the applicants missed progressive exams, end of semester exams and the final semester that has commenced and have been subjected to mental and psychological torture, inconvenience, insults from the parents and have lost the trust of our parents by reason of which we shall seek for general damages.
24. That I swear this affidavit in support of the application and whatever is stated hereinabove is true and correct to the best of my knowledge and belief.

In the respondent's affidavit in reply deponed by one Otim Alfred the Deputy Principal, he deponed and I reproduce the same verbatim, that:-

I **OTIM ALFRED** C/o M/s Kibeedi & Co. Advocates of P.O Box 5780 Kampala, do solemnly swear and state as follows:-

1. That I am an adult Ugandan of sound mind, and the Deputy Principal of the Respondent herein I am duly authorized to make this affidavit.
2. That I have read and understood the contents of the Amended Notice of Motion and the Affidavit in support sworn by Moses Isamat on the 07th day of May 2013 and I reply to them as below.
3. That the reply to paragraph 1 of Isamat's affidavit, Isamat Moses is no longer the guild president of the respondent as he absconded from office and did not ever show up despite several communications to him from the respondent. Currently we even have a new guild president by the names of Waman Benson who is actually the 2nd after the vacation from office by Isamat.
4. That in reply to paragraph 3(a) of Isamat's affidavit concerning lack of electricity, I have the following to say;
 - a. That since 1998, all the respondent's utility bills had been catered for by the Ministry of Education.
 - b. That in the year 2011, Ministry of Education stopped paying for the respondent's utility bills but that information was not brought to the attention of the respondent.
 - c. That in July 2012, Umeme issued the respondent with an exorbitant bill of about 915 Million Shillings (Nine Hundred Fifteen Million Shillings) to the shock and dismay of the respondent and this bill was actually delivered with a disconnection order.
 - d. That that was when the respondent actually discovered that Ministry of Education had stopped paying for her utility bills.

- e. That considering the amount of money in the bill from Umeme, the respondent arranged for meetings with officials from Umeme to seek for an explanation as to the amount of money in the bill.
- f. That that was when it dawned on the respondent that the original meter had been removed without the knowledge of the respondent and replaced with a bulk meter.
- g. That the new bulk meter covered many areas that were outside the jurisdiction of the respondent such as the Mulago Hospital Staff quarters, Cancer Institute, and sickle cell unit yet the bill was solely in the names of the respondent.
- h. That Umeme officials insisted that the respondent had to pay all the money and even disconnected power from the respondent.
- i. That the respondent then decided to deal with Electricity Regulatory Authority and that was when the issues were resolved and it was discovered that the respondent was supposed to pay about 159 Million Shillings (One Hundred Fifty Nine Million Shillings). A copy of the letter from Electricity regulatory Authority clarifying the amount to be paid by the respondent is hereto attached and marked **“OA1”**.
- j. That all these issues were brought to the knowledge of the students including the applicants herein through their leaders.
- k. That the respondent installed solar panels which were lighting the common areas such as the bathrooms, staircases and the reading areas and the respondent was also operating a generator alongside the solar panels when power was disconnected.
- l. That the respondent thus asserts that despite the unforeseeable power problem faced, the respondent really endeavored to make sure that the students were catered for.

5. That in reply to paragraph 3(b) of Isamat's affidavit about inadequate accommodation, the respondent contends as below;
- a) That since the respondent is not able to accommodate all her students, the system of accommodation at the respondent is in three categories i.e. self accommodating and self catering students, self accommodating but institutional feeding, and finally the full board students, and all these categories apply to different categories of students and it is therefore not true that all the students were forced to become residents.
 - b) That about allocating the hostel to non staff, in February 2011, the respondent expanded her students' accommodation capacity by completing a hostel housing up to 650 students and this hostel was opened by his Excellency the President of Uganda on 14th February 2011.
 - c) That this made the respondent secure enough space in a small block which was converted into residence for non teaching staff who give emergency and night services to students and these staff include the computer laboratory and library attendants, electrician, plumber and warden and this was clearly done in good faith to provide better services to the students of the respondent.
 - d) That about letting out Premier Hostel to outsiders, the hostel in question was developed by the governing council of the respondent with the knowledge of the Ministry of Education and Sports for generating income to supplement the institutional budget and as a matter of fact, the Ministry of Education contributed half of the cost of construction of the hostel with full knowledge of its purpose.
 - e) That the respondent has enough accommodation and it is not true that some students are sleeping on the ground.

6. That in reply to paragraph 3(c) of Isamat's affidavit about poor quality and inadequate meals, the respondent actually gives the students food which is enough and of high quality as the students are actually provided with meat, chicken, eggs, fruits, matooke, rice among others.
7. That in reply to paragraph 3(d) of Isamat's affidavit about maladministration, the respondent denies its existence.
8. That in reply to paragraph 3(e) of Isamat's affidavit about poor health conditions, the health conditions at the respondent are of the required standard and infact the respondent has a contractor who is responsible for cleaning the institution and therefore the applicants' claims of poor health conditions are baseless.
9. That in reply to paragraph 3(f) of Isamat's affidavit about withholding students' academic transcripts, every student who clears all the institution's dues is given his or her transcript and its only the defaulters whose transcripts are withheld. In addition to this, transcripts of MLT students of 2008 and 2009 are the ones which are not yet issued but they are supposed to be issued by Makerere University and therefore it is clearly not the respondent's fault though the respondent has been pushing for the transcripts to be issued.
10. That in reply to paragraph 5 of Isamat's affidavit, it is not true that the respondent has been giving endless promises concerning the alleged problems of the students. As already stated, the major problem was with the power disconnection and the respondent's officials have been working tirelessly to ensure that the problem is solved.
11. That in reply to paragraphs 6,7,8 and 9 of Isamat's affidavit, on 19th November 2012, the students of the respondent refused to go to class and poured food that had been prepared for them, as well as breaking into the food store which prompted the respondent to call in police to control the situation which had already gone out of condition. The respondent denies that the actions of the students were a "sit down demonstration" as claimed in paragraph 6 of Isamat's affidavit.

12. That on the next day of 20th November 2012, the students still became so rowdy, refused to go to class or practical areas and caused so much damage to the institution and this prompted the respondent after consulting with the Management of the respondent, the governing council and the Ministry of Education, to close the institution until further notice.
13. That after carrying out some investigations, the respondent then announced in the New Vision News Paper informing students to return to the respondent and a task force was formed to establish the causes of the strike at the respondent which came up with a report.
14. That one of the recommendations made by the task force was that the governing council of the respondent should identify the ring leaders of the strike using various methods and subject them to the disciplinary committee of the governing council. A copy of the final report of the task force is attached hereto and marked **“OA2”**.
15. That in reply to paragraph 10 of Isamat’s affidavit, the guild council was dissolved by the Governing Council of the Respondent as a result of their engineering the destructive strike that took place at the respondent’s premises instead of officially communicating with the administration of the respondent about the alleged problems that were being faced by the students. A copy of the letter written by the principal of the Respondent dated 10th October 2012 addressed to the 1st Applicant who was the guild president then pointing out the problems with students’ leadership is hereto attached and marked **“OA3”**.
16. That the respondent admits the contents of paragraph 11 of the amended notice of motion.
17. That in reply to paragraph 12 of Isamat’s affidavit, the respondent like any other institution has regulations for doing some activities and the time frame within which

those activities should be done and in the present instance, registration process ended on 30th September 2012 and the respondent was kind enough to extend the process for eight days. So there was no irregularity whatsoever with the process.

18. That in reply to paragraph 13 of Isamat's affidavit, the respondent states that accommodation at the respondent is available to only the registered students and therefore only the students including the applicants who refused to register were not given accommodation by the respondent and the allegations of the applicants are not true as Government students at the respondent don't pay for their accommodation as alleged by the applicants or at all.
19. That in reply to paragraph 14 of the affidavit sworn by Isamat Moses, the students who were found out to have participated in the strike were summoned to appear before the Governing Council and they were informed through the notice board which is the major form of communication with the students and the said students were also given letters to that effect. In addition to that, the affected students were even called on their mobile phones on the day of the interface but still some of them opted not to show up for the interface with the governing council. Copies of some of the letters inviting the participants in the strike are attached hereto and collectively marked **"OA4"**.
20. That in response to the said communication issued by the respondent, some students actually appeared and they were questioned and then the governing council came up with appropriate action for the students who showed up as some were pardoned, others suspended and some expelled depending on the levels of their participation in the strike. A copy of the minutes of the governing Council is attached hereto and marked **"OA5"**.
21. That the respondent admits the contents of Paragraph 15 of Isamat's affidavit and the respondent adds that since the institution had to appoint someone to carry out the duties of the guild that had ceased to function and yet its responsibilities had to be executed.

22. That in reply to paragraph 15 of Isamat's affidavit, all the students of the respondent except those who were discontinued due to their involvement in the strike and those who refused to appear before the Governing Council, have actually been able to go back to the respondent and they have either resumed or completed their studies.
23. That the respondent denies the contents of paragraph 16 of Isamat's affidavit and shall put the applicants to strict proof thereof.
24. That in reply to paragraph 17 of the affidavit of Moses Isamat, having invited the applicants and their other colleagues for the interface and they refused, the respondent then decided to forward their names to the Ministry of Education for consideration.
25. That in reply to paragraph 18 of the affidavit of Moses Isamat, only the students who refused to attend the interface missed the exams and this is entirely their fault.
26. That the respondent denies the contents of paragraphs 19 and 20 and the applicants shall be put to strict proof thereof.
27. That in reply to paragraph 22 of Isamat's affidavit, all the actions carried out by the respondent's governing council as seen above are all intravires their powers and they were actually carried out for the good of the institution and the student community including the applicants herein.
28. That from what I have stated herein, I verily believe that the applicants' application for judicial review is without any lawful or factual basis and that they are not entitled to the remedies sought.
29. That I make this Affidavit in opposition to the declarations and orders sought by the applicants in the above suit.
30. That whatever is stated hereinabove is true to my knowledge.

On behalf of the applicants, Moses Isamat, deposed to an affidavit in rejoinder as follows:

4. That Respondent has deliberately delayed the determination of this matter with the sole purpose of keeping the Applicants out of school and inflicting more misery and loss onto them as indicated below.

(a) Notice of Motion was signed and sealed by court, it was served onto the Respondent on 22nd day of February 2013. The Respondent duly instructed m/s Kibeedi & Co. Advocates who filed a Notice of instructions on the 25th day of February 2013 but did not file an affidavit in reply.

(b) The matter came for hearing on two occasions without the presence of the Respondent and its counsel finally the matter was fixed for 10th September.

(c) When the matter came up for hearing on 10th day of September 2013, the Respondent and its counsel were absent despite the fact that there was proof of service of court process onto counsel for the Respondent. Court was moved to allow the Applicants proceed ex parte and court granted the Application allowing the Applicants proceed ex parte and directing the filing of written submissions.

(d) As the matter was awaiting the delivery of a judgment, the Respondent filed an affidavit in opposition and the matter was again fixed for hearing.

5. That in reply to paragraph 3 of the affidavit of Otim Alfred, I wish to state that:

(a) As Guild President, I did not abscond from office as alleged but my office was rendered redundant after the illegal dissolution of the Guild leadership and appointed the institution's electoral commission to take charge of students' leadership till the next election.

(b) After the dissolution of the guild leadership, the guild offices were locked up by Mr. Ndaa, the tutor in charge of infrastructure and principal health tutor school of

environment health science under the company of police. I and the rest of the guild leaders were ordered out of school on 20th November 2012 and strict instruction were given to security guards not to allow any leader within the school compound. Since then none of the guild leader was ever allowed access to the school.

(c) To date, I have never received any communication from the Respondent.

7. That in reply to paragraph 4 of the affidavit of OTIM ALFRED, I wish to state that

(a) whereas some half-baked information regarding power were brought to the attention of the guild leadership, who also passed it over to the students, the Respondent used to make endless but unfulfilled promises to rectify the problem without success and when the principal eventually compelled by Mr. Akiria, the OPC Wandegeya Police Station, before the demonstration, he merely added salt to an injury when he addressed the student community arrogantly without any promise as to when the problem would settled.

(b) that the generator was faulty and eventually broke down and the same was not repaired.

The solar panels were only installed to light up the corridors, staircase in the new Block and dining hall in Gadaffi hostel only but the same could only last for around three hours of the night. The rest of the halls of residence to wit; Block “A”, “B”, “D”, Upper hostel and premier hostel remained in total darkness.

8. That in response to paragraph 5 of the affidavit of OTIM ALFRED, I wish to state as follows;

a) all students were forced to become residents yet there was no enough accommodation for all of them, a fact which is admitted in the report of the task force (oa2) resulting from the interviews of the staff, Mr. Ndaa, the tutor in charge of infrastructure and staff welfare who admitted that the best of his knowledge the requirement making all private students reside in the hostel caused the unrest.

b) in the academic year 2011/2012 and there before, accommodation was enough for students after the construction of the new hostel when blocks A & B were housing students and not staff. However at the start of the academic year 2012/2013, the respondent imposed a very strict requirement for all students to be residents and made it worse by evacuating students from blocks “A” & “B” to create accommodation for non-teaching staff thereby creating inadequacy for student accommodation. This fact is acknowledged by Samuel Kayondo (tutor) in his interview as indicated in Annexure “OA2” by stating that students were sleeping in common rooms and open spaces.

9. That in response to paragraph 5 of the affidavit of OTIM ALFRED. I wish to state that there was no respectable menu in any sense as posho and beans were the traditional meals for both lunch and supper from Monday to Monday with the exception of Public holidays or whenever the respondent had a function at her premises.
10. That in response to paragraph 8 at the affidavit of OTIM ALFRED, I wish to state that by Students being housed in a common room and open spaces is clearly a poor a health condition, a fact admitted by considering the report of the task force in Annexure “OA2” when it was recommended that the aspects of infrastructure maintenance, room identification and allocation, cleanliness, discipline and security should be addressed by management.
11. That in response to paragraph 10 of the affidavit of OTIM ALFRED, I wish to state that the respondents have been giving endless promises to settle the student’s problems of poor quality and quantity meals, poor health conditions, forced residence, inadequate space for accommodation among others from the time the guild leadership of 2012/2013 assumed powers and the disconnection of UMEME was a final blow.
12. That paragraph 11 of the affidavit of OTIM ALFRED is denied and the Respondent shall be put to strict proof and in response thereto, the students merely went on a sit down demonstration.

13. That in response to paragraph 12 of the affidavit of OTIM ALFRED, I wish to state that the students only stuck to their position of not attending classes till their grievances and concerns were to be addressed by the respondents and the Principal abruptly closed of the institution, without consulting the Ministry.
14. That in response to paragraphs 13 and 14 of the affidavit of OTIM ALFRED, I wish to state that the task force formed to establish causes of the demonstration was biased, not independent as it represented views of the Respondent as evidenced by its constitution committee membership which follows as below;
- i) Dr. Chalres W. Matsiko (Chairperson of the Governing Council) and also a respondent.
 - ii) Mr. Alfred Otim (Deputy Principal of the institution) who deposed to affidavit in opposition, yet he participated in making findings of the committee which was meant to be independent and impartial.
15. That paragraph 15 of the affidavit of OTIM ALFRED is denied and in response thereto, I wish to state that the demonstration was peaceful and observed by the police for the two days (19th and 20th November) police profiled a report, copies of which were given to various higher authorities including the office of the Resident City Commissioner (RCC) who informed me which information I verily believe to be true that he report exonerated students for causing any damage to school property.
16. That in response to paragraph 17 of the affidavit of OTIM ALFRED, I wish to state that the changing of registration process was illegal as it contravened the institution's Rules and Regulations governing the registration of students **(See copy of the Institution's Rules and Regulations attached and Marked Annexure "N")**
17. Paragraph 18 is denied and the Respondent will be put to strict.
18. That in response to paragraph 19 of the affidavit of OTIM ALFRED, I wish to state that I have been informed by the rest of the Applicants who informed me which information I

verily believe to be true that none of applicants has ever been served with letters of invitation of interface by the Respondent since all the applicants were kept out of school and blocked from accessing the school premises from the 20th day of November 2012 to date.

19. That in response to paragraphs 20 and 26 of the affidavit of OTIM ALFRED, I wish to state that **students' fate was well decided before the alleged interface as indicated in the report on the students' involvement in the strike dated 16th January 2012** authored by the Disciplinary Committee Chairperson, Dr. Birabwa Male Doreen (Deputy Director Mulago Hospital **(See copy of the said report attached hereto and marked Annexure "O")**)

20. That in response to paragraph 23 of the affidavit of OTIM ALFRED, I wish to state that Erisa Kifamulusi, Lutalo Braina, Ndikabona Hassana and Sekitto Shafiq are government sponsored students but were denied a chance to register.

21. That in response to paragraph 25 of the affidavit of OTIM ALFRED, I wish to state that Mutebi Benjamin, Lutalo Brian, Ndikabona Hassan, Kaijuka Charles and Sekitto Shafiq, Dhatemwa Fred Muyinda, Akankwasa Obed, Mugeru Douglas Cliff, Wassawa Hassan Mibirizi attended the interface but missed exams.

22. That in response to paragraphs 25 of the affidavit of OTIM ALFRED, I wish to state that the actions of the Respondent were illegal, irrational, and procedurally improper in consequence of which the Applicants have missed their education, suffered psychological torture, mental stress, and inconvenience.

Court allowed respective counsel to file written submissions in support of their respective cases. Although issues for determination in this application were not framed at the beginning both learned counsel and court are agreeable that the issues for determination are:-

(1) Whether the actions by the respondent of dissolving the student leadership headed by the 1st applicant was rational, legal and procedurally proper.

- (2) Whether the decision of the respondent requiring some of the students to interfere with the Governing Council before embarking on registration exercise was not rational and legal
- (3) Whether or not the decision of the respondent to dismiss the 7th 8th and 10th applicants from the institution and referring the 1st, 5th, 6th, 7th, 8th, 10th, and 12th applicants to the Ministry of Education for further consideration was rational legal and procedurally proper.
- (4) What remedies are available.

From the outset, I will note that learned counsel for the applicants correctly outlined the law regarding applications for Judicial Review. Judicial Review is an arm of administrative law which involves an assessment of the manner in which a decision is made. It is not an appeal. Its jurisdiction is exercised in a supervisory manner to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. If the High Court finds that anybody holding public office acted illegally, unfairly and irrationally it would intervene to put matters right.

For an application for Judicial Review to succeed, there must be proof of illegality, irrationality and procedural impropriety. These terms have been severally defined by this court as follows:-

Illegality arises when a decision making authority commits an error of law in the process of making a decision for instance where an authority exercises power that is not vested in it or has acted without jurisdiction or in an ultravires manner. It is also an illegality if a decision maker incorrectly informs himself/herself as to the law or acts contrary to the principle of the law.

**YUSTUS TINKASIMIRE & 18 OTHERS Vs ATTORNEY GENERAL & DR. MALINGA
STEPHEN MISC CAUSE NO. 35 OF 2012.**

Irrationality refers to a situation when the decision made is outrageous in defiance of logic or acceptable moral standards that no reasonable person could have arrived at that decision. It refers to a situation when a decision making authority acts unreasonably that in the eyes of court, no reasonable authority addressing itself to the facts and law before it would have made such a decision.

Procedural impropriety occurs when a decision making authority fails to act fairly in the process of its decision making process. It includes failure to observe the rules of natural justice towards the one to be affected by the decision. It also involves failure by an administrative authority or tribunal to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

With the above legal background I will go ahead to address the issues as argued by respective counsel.

Issue 1:

In his submission, learned counsel for the applicant made reference to the Guild Constitution of Mulago Paramedical Training School and also that although the constitution does not provide for the tenure of office of the Guild representative council, it should be assumed that its term of office is 12 months like that of the Guild President since its election is held concurrently with the guild president as provided by Article 21 thereof. That the Principal or the Governing council is not given any mandate to dissolve the Guild Leadership. That by dissolving the Guild Leadership the respondent Governing Council acted irrationally, illegally and its actions were procedurally improper. Further that by asking the Chairman Electoral Commission to lead a process of selecting five capable leaders to fill the Guild Executive gap to the end of the semester and urgently electing three students representative to the governing council within five working days starting from 15th January 2013, the management of the respondent acted illegally. That the Electoral commission does not have powers to select students representative to the governing council since its function is limited to organization and management of elections. It has no mandate to hold student's leadership responsibilities. Finally that it was irrational and illegal for the Deputy Principal and Management to direct the electoral commission to select three students'

representatives to the Governing council and authorize the institution Electoral Commission to take charge of the students' leadership responsibilities till the next election is carried out.

Mr. Kibeedi learned counsel for the respondents submitted to the contrary and insisted that court is being dragged to adjudicate on facts which have since been overtaken by events. He contended that it is a settled principle that courts adjudicate only on issues which actually exist between litigants and not academic ones because court orders must have practical effect and must be capable of enforcement. Learned counsel referred to the case of **The Environment Action Network Ltd & Eryau Civil Application No. 98 of 2005 at Pg 7.**

After carefully analyzing the affidavits on both sides i.e the one in support and in rejoinder by Isamat Moses and that of the respondent sworn by Mr. Otim Alfred, it has become undisputed that the following facts emerge:-

- (i) Mr. Moses Isamat was elected Guild president for a term of one Academic year and he took office in June 2012.
- (ii) On 10th October 2012 the Respondents Principal wrote to Mr. Moses Isamat raising concern that ever since his government was sworn in on 8th June 2012, he had not established the Guild structure and Committees that are essential in facilitating students' representation to the Governing council, students' service delivery, and facilitating communication between students' and management as per annexure OA3 to the respondent's affidavit.
- (iii) In the same letter the Respondent's principal also observed *inter alia* that Mr. Isamat had not registered for the semester and "instead of communicating to management students' problems he was spending his time planning hooliganism".
- (iv) The Principal ended his letter by warning Mr. Moses Isamat that "*You will be held responsible for any consequences that may arise from your inefficiency and conduct*".

- (v) About a month after the warning, students went on strike on 19th November 2012 and police was called in on 20th November 2012, the students became rowdy again and refused to go to classes.
- (vi) On 20th November 2012, the respondents' institution was closed to return to their respective homes.
- (vii) On 23rd November 2012 the respondents' Governing Council formed a four member committee to investigate the causes of the strikes. Mr. Otim Alfred the respondents' Deputy Principal was the Secretary to the committee. The Committee Report is attached to Mr. Otim's affidavit in opposition as 'OA2'.
- (viii) The recommendations and findings of the committee were addressed by the Respondent and modalities for re-opening the institute were put in place.
- (ix) After the re-opening of the institute in January 2013, the students who reported were re-registered and they commenced studies.
- (x) In January 2013, the Principal of the institute issued a General Circular setting out a list of students who had to first interface with the Governing council before they could embark on registration. This is confirmed by annex 'F' to Isamat's affidavit.
- (xi) On 16th January 2013 the Chairperson of the Disciplinary Committee wrote a Report to the Chairman of the Governing Council giving the names of the students involved in the strike and the offences or rules violated. This is alluded to by Mr. Isamat in his affidavit in rejoinder.
- (xii) On 11th January 2013, the Chairperson of the Disciplinary Committee wrote to the Chairperson of the Electoral Commission (Student Guild) informing him that since the time for next elections was too close (April 2013) the Electoral Commission

headed by its Chairman takes charge of the students' leadership responsibilities of the Guild Executive "*until next elections are carried out*".

- (xiii) The term of the interim Guild students' leadership ended after election of the current students' leadership ended in April 2013.
- (xiv) The present Guild President is Waman Benson as shown in Mr. Otim's affidavit in opposition. His term is also for one year.
- (xv) The applicants commenced these proceedings for Judicial Review on 18th January 2013.
- (xvi) On the 4th February 2013 the Chairman of the respondent wrote a letter to the Permanent Secretary of the Ministry of Education and Sports giving a comprehensive report on the status of the institution after the strike as per annex AO5 to Mr. Otim's affidavit.
- (xvii) The said Report indicated that out of the 39 students who were scheduled to appear before the Governing Council only 32 appeared and 7 did not appear.
- (xviii) The Report also sets out the specific recommendation or action in respect of each of the concerned 39 students.
- (xix) The interface between the Respondent and the said students has been ongoing and this accounts for the big number of applicants who continued to withdraw from the court case. Only students who have refused to appear before the respondent are still in court.

I agree with the submission by Mr. Kibeedi learned counsel for the respondents that indeed the term of Guild President and leadership of the institute is one year. The applicant and his students' government took office in June 2012. The said term would expire in June 2013. Secondly even the term of the interim leadership that was put in place after the contested

dissolution of the Guild Students' Leadership headed by the first applicant in February 2013 was expressly stated in annexure 'D' to the 1st applicant's affidavit to be for the period "*until the next elections are carried out*". The same annex 'D' indicated that the next elections were for April 2013. The life of the latter government has also expired. According to the respondent and I have no reason to doubt this, as of now the institute has a new Guild Government headed by the new Guild President called Waman Benson (see paragraph 3 of Mr. Otim Alfred affidavit in opposition). Clearly, this court is being dragged into adjudicating on facts which have since been overtaken by time and events. I am not convinced by the rejoinder by learned counsel for the applicants that since the applicant is not seeking reinstatement, then this application is valid and important.

One may argue that court has been complicit in delaying the conclusion of this matter but this is not the case. The delay was caused by the applicants' own infighting. Some of the applicants kept on withdrawing from the case and thereafter denying their withdrawals while others settled their grievances with the respondent. It is worth noting that as late as 09.09.2013 the applicants were filing supplementary affidavits in support of the application. This delayed the conclusion of this matter.

Consequently I will resolve issue No. 1 in favour of the respondents. What is being sought in issue 1 is in vain.

Issue 2:

Whether the decision of the respondent requiring some students to interface with the Governing council before embarking on registration exercise was not rational and legal.

In his submissions learned counsel for the applicants said that because of the respondent's decision, the 1st, 8th, 10th, 6th, 7th and 5th applicants lost a chance to continue with their studies and are still being affected unless the decision is quashed. That the invitation to interface was handled selectively by the Dean of student with the result that some students had not interfaced. That this indicates bias and a deliberate move to deny the affected students a chance to register which may result into their dismissal for non-compliance with the rules of the course. That the 1st

applicant has never been allowed access to the school since 20th November 2012 and has never received any communication from the respondent. Learned counsel denied his clients ever been invited to interface with the institution. That there is no proof that letters attached as annex 'AO4' were served. That the allegations that applicants were called on phone is not proved by revealing the phone numbers used. Further that there are no minutes for the Governing Council interface and the procedures used by the respondents are impracticable.

On the other hand learned counsel for the respondents submitted that all the decisions by the respondent interface with *inter alia* the applicants was rational and legal. That no illegality has been proved by the applicants in respect of the contested decision by the respondent. That no law which has been breached has been pointed out by the applicants.

From the evidence on record, the contested decision is reflected in the General Circular issued by management of the respondent institute on 11th January 2013 annexed to Mr. Isamat's affidavit of 7th May 2013 – annex 'F' complaining that the procedure of the concerned students interfacing with the Governing Council before embarking on the registration exercise was not rational and legal.

In order to appreciate whether the decisions by the respondent were rational and legal, one has to look at what was contained in the circular complained of and the committee report which is annexed as 'OA2' to Mr. Otim Alfred's affidavit in opposition. It is apparent and has not been rebutted by the applicants that:

1. On 19th and 20th November 2012 the applicants and other students went on strike.
2. On 23rd November 2012 the respondent's Governing Council formed a four member committee to investigate the cause of the strike. Mr. Otim Alfred the respondent's Deputy Principal was the Secretary of the Committee. The report is marked 'OA2'.
3. The persons interviewed by the committee before issuing its report included the 1st to 6th applicants. This is found at pg. 12 of the Committee report.
4. The Committee established that the damage to the institute's property arising for the strike was about 49,775.000=. The report made a recommendation that the respondent's Governing Council identifies the ring leaders of the strike using various methods and

subject them to the disciplinary committee of the council (Pg 11 of the Committee Report)

5. The findings and recommendations of the committee were reported to the Respondent's council on 13th December 2012 and were adopted. They included modalities on re-opening the institute.
6. On 18th December 2012 the respondent notified the students through an advert in the New Vision Newspaper that the institute would re-open and that the students would report back from 7th to 11th January 2013.
7. On 11th January 2013 the management of the respondent institute issued a General Circular shifting the reporting dates for students to interface with the Governing Council to between 15th -18th January 2013. In the same circular 20 names of students were listed who needed to interface with the Governing Council.
8. On 19th January 2013, the applicants commenced court action and the General Circular is one of the attachments annexed to Mr. Isamat's affidavit as annex 'F'.

As rightly submitted by learned counsel for the respondent this was a clear indication that by 17th January 2013, the applicants had already received effective notification of the contents of the circular but opted to come to court.

From what I have outlined above and after considering the evidence on both sides, I am inclined to agree with learned counsel for the respondent that the respondent was well within its mandate as set out in S. 78(1) of the Universities and Other Tertiary Institutions Act No. 7 2001 to manage the strike. Although no regulations exist to expressly guide the respondent on how to manage a strike, S. 78(1) gives it general mandate to do so provided it acted fairly in accordance with Article 28 of the Constitution. In so doing the respondent had to give opportunity to the applicants and any other affected students to interact with it and get their side of the story. The word used was interface which according to **Oxford Advance Learners Dictionary of current English 6th Ed** is a scientific word meaning;

“the point where two subject systems etc meet and affect each other...”

Being a science based institution this word meant interaction and was used to imply that the respondents had in mind the legal jargon of Natural Justice or hearing the applicants' side.

I think this was a rational and legal decision or action taken by the respondents before finally determining the fate of the applicants at all stages be it registration or discontinuation. The claim by the applicant that they did not receive effective communication of the respondent's decision before 31st January 2013 has been contradicted by the applicants themselves because;

1. The circular containing the respondent's decision was already in possession of the applicants by the time their Notice of Motion was signed on 17th January 2013 and was annexed as 'F' to Isamat's affidavit which was commissioned on 18th January 2013. Infact the circular was communicated using the usual procedure of pinning on the institute's Notice Board. The Institute was reopened on 5th January 2013 and access to the Notice Board was free for all by the time (see Mr. Otim's affidavit in opposition para 19) and annex 'OA5' which shows that of the 39 students scheduled to appear before the respondent 32 appeared. Only 7 did not/or refused to appear.

I was not convinced by the applicants' argument that the interface was handled selectively by the Dean of students or that the interface was never scheduled because this assertion is not based on evidence before court. The applicants' affidavit in support is contradictory on this fact that no reasonable court could rely on it to uphold their arguments. For example in paragraph 15 and 18 of the affidavit in support, it is stated that the interfacing has not been scheduled at all while paragraph 14 indicates that the invitation to interface has been done but "*selectively*" and some students' interface with the Governing Council has not been scheduled to date.

To further weaken Mr. Isamat's affidavit is that most of the contents of the same comprise hearsay statements which are inadmissible in law. It is trite law that hearsay evidence is inadmissible except where the affidavit is in respect of an interlocutory matter. (See O. 19 r 3 of the Civil Procedure Rules). This matter is not interlocutory. That evidence in Mr. Isamat's affidavit will accordingly be struck and severed from the rest of his affidavit.

See: **Mubiru Charles Vs Attorney General Constitutional Petition No. 1 of 2011**).

I also agree with the submission by learned counsel for the respondent that it was gravely erroneous for Mr. Isamat to purport to make an affidavit on behalf of the other applicants. The other applicants had the obligation to make their own affidavits in proof of the facts relating to their specific situations rather than purporting to inform Isamat as he claims. Failure to file affidavits to prove the matters which were in each one of the applicant's knowledge regarding whether or not each was effectively served left the said issue unproved. This meant that the only admissible evidence on record regarding the aspect of interaction with the respondent is that which relates to Isamat only. Although this is the only admissible evidence left on this issue, I am not convinced that it proved his claim either. The fact that Mr. Isamat already had a copy of the General Circular annexed to his affidavit as 'F' by the time his application was signed on 17th January 2013 is conclusive evidence that communication to him and his colleagues had been effective. This confirms the truthfulness of Mr. Otim's assertion in para 19 of his affidavit in opposition that the applicants were notified through the Notice Board, a major form of communication with students.

It is correct as stated by Mr. Kibeedi learned counsel for the respondent that the mode of service of letter and other conduct of proceedings expected of Quasi-Judicial bodies is not identical to service of court process and court trials. The House of Lords summarized the standard and mode of operation of quasi-judicial bodies in **Board of Education Vs Rice [1911] AC 179, 182** thus:

“.....Recent statutes have extended, if not originated, the practice of imposing upon departments or officers of state the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion involving no law. It will, I suppose, usually be of an administrative kind, but sometimes it will involve matters of law as well as matters of fact, or even depend upon matters of law alone. In such cases, the board of education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though they were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who

are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.” (Emphasis added)

Therefore the mode of service of communication to the student fell within the acceptable standards applicable to quasi-judicial bodies.

The applicant tried to cast doubt on the effectiveness of communication by phone to the applicants but especially to the 1st applicant because his phone number is not indicated in Mr. Otim’s affidavit. However the Report of the Task Force of the Respondent on the causes of the strike a copy of which is annexed to Mr. Otim’s affidavit as ‘OA2’ sets out Mr. Isamat Moses’ phone numbers at P.12 thereof as 0788631498/0701579590. Isamat was one of the people interviewed by the Task force and the respondent had dealt with him before as a student and Guild President. The parties hereto were not strangers to each other and it is common knowledge that the institution keeps records of their students’ phone contacts and those of their Parents & Guardians. Therefore failure to quote the 1st applicant’s number in the respondent’s affidavit does not mean the latter did not have it. It remains clear that although contacted, Mr. Isamat’s non-appearance was because he had declared that he would never go for the interface.

Consequently, I am unable to find that the decision of the respondent requiring some of the students to interface with the Governing Council before embarking on Registration exercise was irrational or illegal. The said decision was in all fairness rational and legal.

Issue 3:

Whether or not the decision of the respondent to dismiss the 7th 8th and 10th Applicants from the institution and referring the 1st, 5th, 6th, 7th, 8th, 10th and 12th Applicants to the Ministry of Education for further consideration was rational, legal, and procedurally proper.

In the applicants’ submissions, the reference to the Ministry of Education of the 1st, 5th, 6th, 7th, 8th, 10th and 12th applicants and the dismissal of the 7th, 8th and 10th applicants is contained in Isamat’s affidavit and has not been rebutted by the respondent. That those referred to the Ministry of Education were not informed of their offences. Further that there is no evidence his

clients were summoned. That fair hearing requires that a person should not only be informed of the case against him/her, but should be informed of the case against him but should be informed well in advance to allow him or her prepare a defence. That this was not done contrary to Article 28 the constitution. Therefore the dismissal and reference to the Ministry of Education without hearing the students concerned violated their right to be heard and was irrational and procedurally improper. That the decision of the Governing Council was irrational because it was based on acts which had no bearing to the causes of the strike.

Learned counsel for the respondent submitted to the contrary. The respondent insists that the applicants' evidence is not sufficient to discharge their burden regarding the invitation to the applicants'. Learned counsel adopted the submissions on Ground 2.

Both parties agree that the applicants' evidence in proof of this issue is contained in paragraph 17.19 and 20 of Isamat's affidavit in support of the application. These paragraphs were however denied in the respondent's affidavit in paragraphs 24 and 26.

I therefore agree with the respondent submission that the applicants' evidence is not sufficient to discharge the evidential burden of proof imposed on them yet the respondent clearly explained the basis for its decision thus showing that it was legal, rational and procedurally proper. The process which led to the contested decisions started with inviting the applicants to interface with the respondent Notices to this effect were effectively served as shown in paragraphs 19 and 20 of Mr. Otim's affidavit. The process complained of was not a one day's affair but stretched over a long time even after this application was filed. Therefore the impugned decisions were arrived at in full compliance with the standards of a fair trial by a quasi-judicial body as set out in the case of **Board of Education Vs Rice** (supra).

I agree with the respondents that they could not go beyond inviting the applicants to appear before it. The respondents obligation extended to only doing what was reasonable in the ordinary way of conducting its affairs with its students. It had to avail the students an opportunity to appear before it to give their side of the story. I wish to repeat what I said while resolving issue two that in any case the applicants did not file in court credible evidence in proof of their claims

even under this issue. The only person who could adduce admissible evidence to the effect that they were not notified about the interface with the respondent, or that they never received phone calls from the respondent or that the reason for failing to appear before the respondent was the non-effectiveness of communication modes used by the respondent had to be the respective applicants or concerned students individually.

Clearly, phone calls and personal letters are made to specific persons. Therefore, another person is not in a position to depone upon such a fact which is from a direct personal knowledge. Any evidence from a person other than the actual recipient of the phone call or letter is clearly hearsay evidence and is inadmissible under O. 9 r 2 of the Civil Procedure Rules. Isamat's evidence regarding this fact is inadmissible and cannot prove the facts relating to the effectiveness of communication between the applicants and the respondents.

Since I have held that Isamat chose to lock himself out, he must bear the full consequences of his action.

Consequently, I will find issue 3 in favour of the respondents as well.

Issue 4: Remedies

Since I have found that the applicants have not made out a case to entitle them to any of the remedies sought, they are not as well entitled to any general damages. In view of the findings against the 1st applicant, no damage or injury was occasioned to him by the respondent. If he has suffered any damage or injury, it was self inflicted.

Before I take leave of his matter I will adopt the views expressed by learned counsel for the applicants that what the respondent did was within its mandate to protect the property and reputation of its institute for the benefit of the current and future generations of students. Without discipline, the future of the services that Ugandans should expect from the health and allied sector service providers is doomed. The most dangerous thing in the world is not the lion or python but an educated person without character and discipline. Therefore the respondent as an

institution training health and allied professionals has a duty to protect the unsuspecting Ugandan Public from unleashing onto it indisciplined products.

Consequently I will order that this application lacks merit.

It will be dismissed with costs.

Stephen Musota

J U D G E

28.04.2014