

3. A declaration that the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted with material irregularity with procedural impropriety;
4. A declaration that the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted irrationally, unfairly and acted against the rules of natural justice;
5. An order of certiorari quashing the decision of the Management Committee of the respondent of cancelling the applicant's Diploma in Legal Practice;
6. An order directing respondent to confirm the Diploma in Legal Practice awarded to the applicant on 3rd September 2010;
7. General Damages;
8. Costs of the application.

I must observe that the facts in this case are undisputed. What is in dispute is the law and whether on the facts the respondent complied with the requirements of the law.

Briefly the back ground to this application is that the applicant is a former student in the respondent institution for the academic year 2007-2008. She was admitted after completion of her Bachelor of Laws Degree from Makerere University Kampala. On admission to the respondent's institution she was given student registration No. BAR/35/2007. While at the respondent's institution she pursued her studies up to the final term where she was required to take supplementary examinations in two subjects of commercial transactions and criminal proceedings. When the results of that supplementary examinations were released, she had to verify her marks in criminal proceedings. She then applied for verification of her marks to the Head of the Bar course in the respondent institution in a letter dated 10th August 2007 attached as annexure "A" to the affidavit in support of this application. This verification was conducted by the head of the bar course who also was the head of criminal proceedings subject. She was later informed that her results had been verified and she was on the list of persons who qualified for the graduation and award of a Post Graduate Diploma in Legal Practice. She went on to apply for a certificate of eligibility for enrolment and was enrolled as an Advocate of the High Court of

Uganda. In 2015 she received a letter (annexture “C” to the affidavit in support) from the respondent institution requiring her to appear before the subcommittee of the Management Committee of the respondent to inquire and investigate allegations of examination malpractice. On the 10th August 2015 she appeared before the said committee and was asked questions in relation to her criminal proceedings examination paper for some minutes and she was told by the said committee that theirs was not a hearing but just an inquiry. On 26th February 2016 the respondent institution advertised in the new vision news paper that the applicant’s Post Graduate Diploma in Legal Practice has been cancelled with immediate effect. She later received a call from the respondent institution requiring her to surrender the original copy of the Post Graduate Diploma in Legal Practice (see annexture “E” to the affidavit in support of this application). The applicant took issue with manner in which her Post Graduate Diploma in Legal Practice was cancelled and filed this application.

The grounds of the application are briefly set out in the application and in summary are that the applicant was never involved in any examination malpractice. That the said cancellation of the applicant’s Post Graduate Diploma in Legal Practice was irregular, illegal and ultravires. That the applicant was never afforded a fair hearing by the management committee before they cancelled the applicant’s diploma. That the hearing of the subcommittee was conducted irregularly, unfairly, was ultravires, and the decision of the management committee of the respondent is null and void. Lastly that it is in the interest of justice that the applicant’s Post Graduate Diploma in Legal Practice be confirmed by the respondent.

The application is supported by the affidavit of the applicant dated 24th March 2016 expounding on the grounds of the application. The respondent filed an affidavit in reply dated 20th April 2016 sworn by Frank Nigel Othembi the Director of the respondent institution. The applicant filed an affidavit in rejoinder dated 6th May 2016 and a supplementary affidavit dated 25th July 2016. The respondent replied in affidavit dated 25th July 2016.

Written submissions were filed by both the applicant's and respondent's counsel. Applicants filed on the 25th July 2016. The respondents filed on 18th August 2016. The applicant filed a rejoinder on the 29th August 2016.

I have carefully considered the application, the affidavits on record and submissions of both parties.

The principles governing Judicial Review are well settled. Judicial Review is concerned with Prerogative Orders which are basically remedies for the control of the exercise of power by those in public offices. They are not aimed at providing final determination of private rights which is done in normal civil suits. The said orders are discretionary in nature and court is at liberty to refuse to grant any of them if it thinks fit to do so even depending on the circumstances of the case where there had been clear violation of the principle of natural justice: **John Jet Mwebaze Versus Makerere University Council & 2 others Misc Application No. 353 of 2005.**

The discretion alluded to here has to be exercised judicially and according to settled principles. It has to be based on common sense as well as justice: **Moses Semanda Kazibwe Versus James Ssenyondo, Misc. Application No. 108 of 2004.**

Factors that ought to be considered include; whether the application has merit or whether there is reasonableness, vigilance without any waiver of the rights of the applicant. Court has to give consideration to all the relevant matter of the cause before arriving at a decision in exercise of its discretion. It was held in the case of **Koluo Joseph Andres & 2 others vs Attorney General Misc Cause No. 106 of 2010** and I agree that:

“It is trite law that judicial review is not concerned with the decision in issue per se but with the decision making process. Essentially judicial review involves the assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that

public powers are exercised in accordance with the basic standards of legality, fairness and rationality”.

The purpose of judicial review was summed up by Lord Hailsham St Marylebone in ***Chief Constable of North Wales Police Vs Heavens [1982] Vol.3 All ER*** as follows:-

“The purpose of judicial review is to ensure that the individual receives fair treatment not to ensure that the authority after according a fair treatment reaches on a matter it is authorized or enjoined by law to decide from itself a conclusion which is correct in the eyes of the court.”

This court agrees with the above principles. This application raises two issues for determination:

1. *Whether the application raises any grounds for judicial review?*
2. *Whether the applicant is entitled to the remedies sought in the application?*

Issue 1: Whether the application raises any grounds for judicial review?

This court agrees with counsel for the applicant and counsel for the respondents that, there are three broad grounds for judicial review which court must consider. That is illegality, irrationality and procedural impropriety. Proof of any of the grounds is sufficient for the application to succeed.

This was the position in the case of ***Pastoli Vs. Kabale District Local Government Council and Others [2008] 2 EA 300*** where it was held while citing ***Council of Civil Unions Vs Minister for the Civil Service [1985] AC 374*** and ***An Application by Bukoba Gymkhana Club [1963] EA 478 at 479*** that:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety“Illegality is when the decision - making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission“Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

I agree. It is also important to note that proof of one ground is sufficient for the application for judicial review to succeed.

I shall deal with the grounds in the order in which they have been submitted upon by counsel for the applicant.

Procedural Impropriety:

This ground requires thorough examination of the facts of the case.

It was the submission of counsel for the applicant on this ground that the subcommittee of the management committee of the respondent was established under *Section 16 (1) of the Law Development Centre Act Cap 132*. Counsel also added that the management committee is established under ***section 7 of the Law Development Centre Act Cap 132***. And the proceedings before the subcommittee were not a hearing but rather an inquiry or investigation about allegations of examination malpractice. Counsel submitted that in paragraph 7 of the proceedings the lead counsel of the subcommittee told all the persons who appeared before it that the proceedings were a probe, an inquiry of administrative nature and that all the issues of cross examination of witnesses are not applicable and that there were no charges but allegations. That this was also included in the summons that the meeting with the applicant was to be a mere interaction which is in line with the mandate of a subcommittee under *Section 16 (1) of the Law Development Centre Act Cap 132*. That therefore the subcommittee had no powers to conduct a hearing but only to conduct an inquiry. Counsel relied on the ***Black's Law Dictionary*** to define an inquiry which is to inquire into a matter or make an official inquiry.

Counsel further submitted that even if the proceedings of the committee were to be taken to be a hearing it was not a fair hearing. Counsel relied on page 43 of annexure "A" to the supplementary affidavit in support of the application. Counsel also relying on Article 28 (1) and 42 of the Constitution submitted that the right to a fair hearing is a constitutional right and so the decision of the management committee can be subjected to judicial review. Counsel also relying on the case of ***Consolidated Contractors Ltd & 3 ors Vs PPDA MA No. 81 of 2014*** submitted that under the law a fair hearing means that a party should be afforded an opportunity inter alia to hear the witness of the other side testify openly and such witnesses may be challenged by the cross-examination. That it also means that a party be given an opportunity to give his or her own evidence if he so chooses in his or her defence and that he should if he or she so wishes call witnesses to support their case.

Counsel relying on the case of ***Miscellaneous Application No. 252 of 2013 Bwowe Ivan & 4 ors Vs Makerere University*** before my learned brother Kabiito J stated that the universal principles of a fair hearing are prior notice, adjournments, cross examination, legal representation, disclosure of information, which counsel submitted the management committee flouted.

To demonstrate this counsel submitted:

First that the subcommittee did not allow cross examination and took information from third parties in absence of the applicant. That the management committee based its decision on the findings of the subcommittee management committee in a meeting of 11th February 2016 and summarily canceled the applicant's Post Graduate Diploma in Legal Practice. That the subcommittee under *annecture "f" page 76 of the report* heard Mr. Kafuko Ntuyo, Mr. Mubiru and Mr. Expedito Kaaya who were the examiners of the applicant's paper. Further that the applicant did not know these people and did not know that they had given information which was prejudicial to her rights. All the hearings were conducted in the absence of the applicant. Counsel also submitted that the testimony of the said examiners was unreliable because at *page 76 of the report of the committee* they contradict each other.

For these submissions Counsel relied on the case of **De souza Vs Tanga Town Council citing Errington Vs Minister of Health [1961]EA 377** where it was held that it is a matter of highest importance that where a quasi judicial function is being exercised under circumstances as it had to be exercised in that case, with the result of depriving people of their property, especially if it is done without compensation, the person concerned should be satisfied that nothing unfair has been done in the matter, and that *exparte* statements have not been heard before the decision, has been given without any chance for the persons concerned to refute those statements.

Counsel further submitted that the respondent's submission that the applicant ought to have known that they could call witnesses for cross examination is an absurdity because the applicant was not aware Of the nature of the case against her and did not know the said examiners had given evidence and what that evidence was. That according to the case of **Hon. Kipoi Tonny Nsubuga Vs Ronny Waluku Wataka & 20 Ors Election Petition No. 07 of 2011** it is the duty of the quasi judicial body to ensure that a party gets a fair hearing. That it was unfair that the evidence against the applicant was taken in her absence because according to **Wade in his Book "Administrative Law" page 534** at an inquiry any person who might be affected by the adverse findings should be given a fair hearing so that he can defend himself against them at the hearing.

Counsel also submitted that under the law the right to a fair hearing includes the right to hear the witnesses of the other side testifying openly and such witnesses may be challenged by way of examination see: *Rosemary Nalwadda Vs Uganda Aids Commission HCMC 0045 of 2010.* Further counsel submitted that *Lord Denning MR in R Vs Gaming Board For Great Britain Exp Benaim and Khalid [1920] QB 417* summed up that it is no longer the position that the principles of natural justice only apply to judicial Proceedings and not to administrative proceedings as that was scotched in *Ridge Vs Baldwin.* Further that in *AG Vs Ryan [1987] AC 78* court found that since the minister was a person having authority to determine a question affecting the rights of individuals he was required to observe the principles of natural justice when exercising that authority and if he fails to do so his purported decision is a nullity. Counsel submitted that the respondent having acted in cancelling the applicant's diploma should have done so following the principles of natural justice.

Secondly counsel submitted that the respondent did not disclose information/forensic audit report. That when the applicant appeared before the subcommittee management committee, they pulled out and showed her the Forensic Audit Report which the committee kept on referring her to as per page 43 of the proceedings of the committee. That this was the first time she was seeing the report. counsel further submitted that the respondent committee ought to have disclosed and furnished this report to the applicant before the purported hearing or proceedings as is the principle in the cases of *De Souza Vs Tanga Town Council* (supra) and *B. Sunder Singh Kanda Vs Government of Federation of Malaya [1962] AC.*

To support his submissions further, counsel cited the case of *R Vs Kent Police Exparte Goddon [1971] QB 662* where a medical report and documents containing the police officer's mental state were relied on to determine whether he should be compulsorily retired. Lord Denning held that when a medical practitioner is making a decision which may lead to a man being compulsorily retired he must act fairly. He is not acting simply as a doctor to a patient. He is not diagnosing illness or prescribing treatment. He is not saying merely whether a man is fit for duty. He is deciding something which affects the man's whole future. He must beyond doubt act fairly. A man's mental state is at issue. It affects not only his personal rights and payments

to him, it affects his standing in the community, his ability to get other work and the like. It is quite plain to me that the person concerned is entitled to have a fair opportunity of correcting or contradicting any statement made to his prejudice and a fair opportunity of calling in his medical consultants and getting him to give his own opinion to the deciding person. His medical consultant should also be allowed to have before him all material which the other doctors have.

I agree with this reasoning and find that this was a serious case which affects not only the applicant's personal rights and payments to her, it also affects her standing in community, her ability to get other work and the like. Therefore in this case the applicant should have been availed all the testimony and evidence of the experts produced and allowed to produce her own evidence to contradict the other witnesses. The duty to do this was on the management committee not subcommittee.

Counsel also submitted that thirdly there was no fair hearing because the applicant was not given a hearing at all by the management committee before her Post Graduate Diploma in Legal Practice was cancelled, yet such right is under Article 28 (1) and 44 of the Constitution sacrosanct and non-derogable. Fourthly that there was no fair hearing because no reasons were given for the cancellation of the applicant's diploma. Fifthly counsel also submitted that the communication of the decision in the print media showed the bad faith and unfairness of the respondent because it was malicious. That the respondent even sent copies of the report to the judiciary, the Uganda Law Society, The Law Council, among others yet they did not send the same to the applicant. Sixthly that there was no fair hearing because the respondent was biased in as far as three members of the subcommittee were also members of the management committee yet the subcommittee made recommendations to the management committee. They were prosecutors and again judges in their own case which is unfair as per the case of ***Twinamasiko Vs Makerere University Council & 2 others (Null) [2009] UGHC 233*** per Elizabeth Musoke (as she then was).

In reply counsel for the respondent opposed the application. He submitted that the applicant's case is full of contradictions. He said she applied for verification of her marks in the criminal

proceedings paper on 10th August 2013 in paragraph 5 of her affidavit in support but that date does not feature anywhere in annexure “A” and the said annexure “A” shows the verification was on 16th August 2010 over 3 years before the applicant applied for it. Further that the applicant was awarded a Diploma in Legal Practice and enrolled before she applied for verification.

I do not agree with this submission because clearly this was a mere typographical error. I find that counsel for the respondents in raising this issue was being petty. The annexure is clear that the verification was done on 16th August 2010.

The respondent also submitted on the right to a fair hearing that the applicant’s submission that the management committee didn’t hear the parties first before cancelling the Post Graduate Diploma in Legal Practice is misconceived and baseless. The applicant’s separation of the management committee from the subcommittee of the management committee is erroneous according to the cases of *George Osgood Vs Thomas James Nelson [1872] LR 5 H.L 636* and *Hon. Mukasa Fred Mbidde & Anor Vs Law Development Centre Civil Appeal No. 15 of 2013*. That therefore the management committee heard the applicant and it did not say at any one time that the proceedings were a mere investigation and not a hearing. Counsel also submitted that the applicant on appearing before the subcommittee of the management committee sat on her rights. She never asked about anything that had happened before she was called into the committee, she never sought an adjournment, or even to have some of the witnesses. She did not even intimate to the committee that she wished to cross examine any of the witnesses regardless of whether they had appeared before the committee or not. That other vigilant persons who were invited were able to seek an adjournment, and information and re-appeared on different dates and were able to secure before the committee of persons they desired to cross examine as per the annexure “c” to the applicant’s supplementary affidavit in support of the application pages 19-21, 91, 107-112.

On whether the summons issued were adequate or not, counsel submitted that it is an erroneous submission for the applicant to challenge the summons on grounds that they did not specify which rules she flouted. Because all they needed to do was to give the substance of the subject matter which the respondent's subcommittee did. On the issue of bias as a result of the members of the subcommittee being on the management committee that revoked the diploma of the applicant counsel submitted that this is not true because the management committee is not separate and distinct from the subcommittee that did the inquiries. They are one and the same. On the issue relating to the applicant's submission that the respondent institution did not give her reasons as to why they cancelled her diploma, the respondent submitted that reasons were given and for this he relied on annexures "D", "E" and "F" to the affidavit in support of the application. That the letter sent to the applicant by the respondent institution referred to the report of the management committee therefore by reference the report was incorporated in the letter which leaves no doubt that a reason was given that she was a beneficiary of malpractices.

On whether management committee acted with malice and unreasonableness and arbitrarily, in an unfair manner when they sent copies of the report to stake holders, counsel submitted that the respondent institution is a public institution with stake holders and was under obligation to send copies of the report to them. That therefore there was no malice or wrongdoing in publishing the resolutions of the committee in the news papers and sharing them with stake holders.

In rejoinder the applicant submitted that she was never heard because the subcommittee heard Mr. Kafuko on 30th July 2016 as per page 14 of the proceedings of the committee in respect of the applicant, then Mr. Mubiru on 31st July 2016 still in respect of the applicant. On 10th August when she appeared before them nothing was mentioned about the two examiners and no names were given so she had no opportunity to call them because it was not brought to her attention that the two had given evidence. She was not there when the evidence was being given and did not know who her examiners were. Then a one Mr. Kaaya spoke about her on 11th August 2016 the day after she had been before the committee yet he is the person who carried out the verification, see pages 120, 122, 123 and 124 of the record of proceedings of the subcommittee. That this

shows the committee was already biased as they heard one side behind the back of the other which is contrary to the principles in the case of *Nestor Gasasira Vs IGG*.

Further counsel submitted that the opportunity to cross examine is what is important and in this case it was not given. The most important evidence was given after the applicant had appeared before the committee therefore no opportunity was given for cross examination. That the principal judge in the case of *Nestor Gasasira Vs IGG* explained that as in the *University of Ceylon Vs Fernando (1960) ALL ER* case the opportunity to cross examine may not be held to have been denied while the complainant is given a chance but does not take it up. This was a case of dismissal of a student for examination malpractice. The principle is not that one must cross examine but that he must be given a chance to cross examine. Lastly counsel submitted that the respondent institution was under obligation to provide information to the persons appearing before it.

The parties to this case largely do not disagree as to the facts. What comes out clearly from the application, affidavits and their submissions is that the applicant successfully attended and passed the bar course and was conferred a Post Graduate Diploma in Legal Practice. On the strength of that qualification she went ahead to be enrolled as an advocate of this High Court of Uganda and practiced law with M/s Ayigihugu & Co. Advocates to date. Around 6 to 8 years later the respondent suspected examination malpractices and started an inquiry which cast doubt on the marks that the applicant had been awarded on her criminal proceedings paper. The management committee then put in place a subcommittee to investigate and report to it. That committee summoned the applicant and had a conversation with her on the matter and also obtained the testimonies of other witnesses. Basing on the findings of the subcommittee, the management committee revoked the applicant's Post Graduate Diploma in Legal Practice and published the decision in the print media. The applicant only got to know of this decision through the media stating that her Post Graduate Diploma in Legal Practice had been cancelled. The applicant was dissatisfied and filed this application. It is also not in dispute that the evidence of the other persons which cast doubt on the applicant's results was done in her absence. It is also clear that the management committee while communicating its decision did

not state expressly the reasons as to why the applicant's diploma had been revoked but made reference to the findings of the subcommittee which reports and records the applicant had no access to. The applicant argues that the management committee ought to have heard her before the decision was made. The respondent argues that the subcommittee and the management committee were one and the same so there was no need for a further hearing. The applicant says that even if the said hearing was to be taken as a hearing, still the respondent would be guilty of being a judge in its own case and flouting rules of natural justice.

The question is, was this a fair hearing? I must say it was not. It is true as submitted by counsel that a quasi judicial body need not meet the standards of a full trial but it is also undisputed that fairness must prevail and good cause must be shown for the decision given or made.

This court in *Moses Isamat & Ors Vs The Governing Council of Uganda Institute of Allied and Management Sciences – Mulago (Formerly Mulago Paramedical Training Schools) Misc Cause N. 5 of 2013* agreed that the standard of Quasi-Judicial bodies is not the same as that of the court where a full trial with examination of witnesses is required. The standard was stated in the case of *Board of Education Vs Rice [1911] AC 179, 182 by the House of Lords as follows:*

“.....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)

I agree and in this case I must state that the applicant was never fairly given that chance to challenge the evidence. She got to know about the issues with her results that day when she appeared before the committee. This court however does not agree that the applicant should have been present when the evidence was being given. However she ought to have been informed that she had a right to be there, or if not possible that such evidence had been given and that she could, if she wished, challenge in any way by cross examination or producing witnesses to contradict the said evidence. This was neither done by the management committee or the subcommittee.

In **Kampala University Vs National Council for Higher Education Misc Cause No. 53 of 2014**

I held that a fair trial or a fair hearing under the constitution means that a party should be afforded the opportunity to inter alia hear the witnesses of the other side testifying openly and that he should if he chooses challenge those witnesses.

In this case this was not possible before the subcommittee of the management committee because the applicant was not even aware that such evidence would be given against her. Before the management committee it was even worse. She only got to know about the decision in the news paper like any other commoner.

I have also come across a very persuasive authority which is like none in our own local jurisprudence. The case of **James Edward Jeffs & Ors Vs New Zealand Dairy Production and Marketing Board & Ors [1967] AC 551.** In this case a 3 member committee was set up by the Board to investigate questions of supply. The committee held a public hearing at which the appellants and all farmers gave evidence. The committee then made a report to the board in

writing making certain recommendations. The board accepted the committee's recommendations without alteration and made the orders.

The court held *inter alia* that while the board could regulate its procedures as it thought fit for example by hearing the interested parties orally or by receiving written statement from them, or by appointing a person to bear and receive evidence or submissions from interested parties for its own information but in determining zoning questions affecting the rights of individuals it was under a duty to act judicially and it had failed to discharge that duty in that it had reached its decision without consideration of and in ignorance of the evidence and had thus failed to hear the interested parties. The court also found that the board had no powers to delegate its judicial function to a committee, but assuming that the board had the powers to delegate, the committee should have acted merely as a recoding machine recording to the full board all the evidence, the submissions and the notes of the hearing. Instead it gave the board no precise of the evidence and of the submissions and merely gave its recommendations. That the committee's report standing alone was not a sufficient compliance with the principles of natural justice because it was the only material the board had before it when reaching its decision. The board failed to discharge its duty to act judicially and hear interested parties. The committee was appointed only to investigate and report, and was not charged with the duty of collecting evidence for consideration by the board and was not expressly authorized to hold a public hearing it did so on its own initiative. Court also observed that in the case of ***Osgood Vs Nelson [1872] L.R 5 H.L 636*** the deciding body had before it the whole of the evidence presented. Court also following the case of ***General Medical Council Vs Spackman [1943] A.C 627, 637 -639, 644*** held that those to whom the legislature delegates the duty of deciding any particular matter should make the decision. The Privy Council then found merit in the appeal and overturned the decisions of the Court of Appeal and the Supreme Court. It upheld the decision of the High Court.

In this case the management committee also had only the report of the subcommittee and even when if it were to have the record of proceedings, if that record was the basis of the decision of the management committee, then I must state that it was not a fair hearing. This is because for the management committee to base itself on such an incomplete record of proceedings which

reduce the most crucial parts of the evidence of the applicant to one phrase that “recording not clear” amount to breach of principles of natural justice. The incomplete record is evidenced in pages 45, 46 and 38, 39, 40 of the record of proceedings of the MCSC.

Therefore I am inclined to find that the appellant has proved that the whole process was tainted with procedural impropriety the applicant was not given a fair hearing.

In the case of *National Council for Higher Education Vs Anifa Kawooya Bangirana Supreme Court Constitutional Appeal No. 04 of 2011* court held that *Audi Alteram* rule which is the same as the right to fair hearing and quoted with approval in the authority of *Russell Vs Norfolk (1949) 1 ALLER 109* wherein it was stated thus:

“The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, and the subject matter that is being dealt with.”(emphasis added)

In this case the subject matter is a very serious one as it involved a consequence of taking away the livelihood of the applicant, it also involved an advocate of the High Court, it involved exercise of powers not expressly provided for in the Act creating the respondent institution. Many years had passed from the date of graduation to the time of the inquiry. The applicant had rooted her life on the award from the respondent institution and the findings of the subcommittee found no fault whatsoever on the part of the applicant except for the claim that she had benefited from an illegality. This alleged illegality was orchestrated by the respondent’s own staff and adopted as a practice in the respondent institution. Such were the circumstances of this matter before the management committee of the respondent institution. It is my view that these circumstances should have invoked a higher standard of care and higher duty to hear more from the applicant before the management committee could revoke the applicant’s diploma.

Illegality:

The submissions of the applicant here is that the management committee had no powers to revoke the applicant's diploma. The respondent submits that the management committee has the powers to revoke the Post Graduate Diploma in Legal Practice. I have considered the submissions of counsel.

It is important to note that:

...“Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...

I agree with the submissions of counsel for the applicant that the decision of the respondent institution is illegal. In my view the respondent has no statutory power to revoke Post Graduate Diploma in Legal Practice. If it has any powers those powers are implied. Even then such power can only be exercised where there was malpractice fraud or gross misconduct which was done before the award was made. Such must be attributed to the affected person.

It is undisputed in this case that the management committee of the Law Development Centre has the powers to confer diplomas because under section 4 (c) LDC Act Cap 132, the respondent has powers to conduct examinations and confer diplomas, prizes and certificates in accordance with any law in force or as may be required by the Law Council, but the Act does not provide for powers to revoke a diploma.

Under the ***Universities and other Tertiary Institutions Act 2001 as amended, S 45(3)*** gives the senate of a university powers to deprive any person of a degree, diploma, certificate or other award of a public university if after a due inquiry it is found that the award was obtained through fraud or dishonorable or scandalous conduct. But the respondent is not a university and it

doesn't have a university senate, it was not created by the minister and there is no Statutory Instrument creating it under **section 22 Universities and other Tertiary Institutions Act 2001 see definition section of the Act**).

The respondent has its own Act creating it, meaning that it can only run in accordance with that Act. I hold this opinion because under section 11 of the 2003 amendment to the Universities and other Tertiary Institutions Act 2001 an amendment was added to specify that the Islamic University in Uganda shall be recognized and comply with the requirements of the national council for higher education, but would continue being run in the manner provided for in the Islamic University in Uganda Act. This means that it is a special university with different structures although it must maintain standards set by the Council just as the respondent institution.

Perhaps the respondent is a tertiary institution but even if it were, the **Universities and other Tertiary Institutions Act 2001** does not confer on tertiary institutions powers to revoke or deprive persons of their diplomas by recalling or cancelling them. It only under section 81 (d)(e) **Universities and other Tertiary Institutions Act 2001** allows them to set standards of proficiency and determine who has met such standards. The only provision on powers to revoke or deprive an award is section 45 (3) & (4) **Universities and other Tertiary Institutions Act 2001**.

I must say that in the interpretation of statutory powers especially where the power is power to decide questions affecting legal rights, the decision once validly made, is an irrevocable legal act and cannot be recalled or revised. See Administrative law 7th Edition by Sir William Wade at page 261. This principle is applicable where a power is vested in a public body to make the decision once and finally for example power to confer upon a student a degree or in this case a Post Graduate Diploma in Legal Practice. It is not applicable to a power to be exercised regularly from time to time like for example power to regularly maintain roads from time to time.

This is so because citizens whose legal rights are determined administratively are entitled to know where they stand and not live in constant uncertainty all their lives. A holder of a Post Graduate Diploma in Legal Practice or any other professional qualification should not live in constant fear that any time the awarding institution may recall its diploma in a news paper advert.

It is not always that once a mistake is discovered a revocation order must follow. In the case of **Livingstone Vs Westminster Cpn [1904] 2 KB 109** the Westminster Council was held to be unable to vary an excessive award of compensation to a redundant employee following this principle. The court held that the duty to find the relevant facts was on the council and that even if they had done so wrongly they had no power to reconsider or reduce the award.

It is therefore the finding of this court that when the Parliament confers on a body such as the Law Development Centre's management committee a duty of determining or deciding any question, the deciding or determining of which affects the rights of the subject (in this case alumni) such decision or determination made and communicated in terms which are not expressly preliminary or provisional is final and conclusive, and cannot in the absence of express statutory power or consent of the person or persons affected, be altered or withdrawn by that body. Therefore the decision was made ultravires and in total disregard of fairness thereby making it illegal.

Another case I found very persuasive is the case of **Waliga Vs Board of Trustees of Kent University in the Supreme Court of the state of Ohio No. 85- 133 February 05th 1996**. In this case the sole issue was whether the university has the authority and power to revoke improperly awarded degrees. The court held that the University had powers to do so for good cause after affording the degree holder constitutionally adequate procedures.

In all these cases the court found the institutions to have statutory power to revoke an award but went ahead to dictate not only the procedures to be adopted but also the grounds on which the award may be revoked. The respondent institution appears to have taken this matter lightly and did not put into consideration the consequences of its decision. The procedure adopted was illegal and the decision was illegal.

I therefore find that the respondent institution had no just cause to revoke the applicant's diploma in Legal Practice. It was illegal for the respondent institution to make that decision in the manner in which it did yet there was no express statutory power conferred on it to do so. At least without such expressly conferred statutory power they ought to have afforded the applicant a fair hearing.

Counsel for the respondent submitted that the doctrine of estoppels is not applicable to this case and that the respondent had the powers and right to revisit its award to the applicant since it was improperly done. That it doesn't matter what the applicant did after the award was given as long as the diploma was improperly awarded the respondent had powers to withdraw it. Counsel also submitted that the cases cited by the applicant support the submissions of the respondent.

I do not agree with this reasoning because the principle that an illegality once brought to the attention of court must overtake all matters of consideration is treated differently in public law cases because these cases involve exercise of power against often helpless citizens. The decision of the respondent institution was therefore an illegality.

As such I find that the applicants have proved the ground of illegality.

Irrationality:

It was the submission of counsel for the applicant on this ground that the decision of the management committee was irrational. Counsel faults the rationale of the decision on the following grounds in his submissions pages 49 – 58.

1. That the decision was made by the management committee without hearing the applicant. The management committee did not exercise its mind or apply its mind in making the decision.
2. That the decision was made against the applicant yet she was not at fault at all and there was no evidence to show that she had influenced the results. No examination malpractice was found on the part of the applicant. Other students were cleared by the same management committee on the basis that there was no evidence on the part of the 12 candidates as per page 112 of the report of the committee.
3. That the decision was also irrational in as far as it imputed examination malpractice on the applicant yet there was no evidence at all showing that she was involved in any malpractice before, during or even after the examination. Further that the rules which the applicant flouted were never put to her. The subcommittee report in fact states that at the time when the applicant did her examinations there were no proper definition of what amounts to malpractice.
4. That the decision was also irrational in as far as it blames the applicant for applying for verification. That the respondent in the affidavit in reply states that verification was an illegal procedure not provided for in the rules of passing the bar course. That it is an absurdity for the committee to blame the applicant because some of the students who passed and were also cleared by the management committee applied for the same verification. If the said verification procedure was illegal then why were those other persons diplomas not cancelled? (*See pages 65 and 31 of the subcommittee report and pages XII and VII*). If it was illegal then the mistake was on the staff of the respondents. Counsel for the submission that the decision was irrational, learned counsel relied on the South African case of ***Potwana Vs University of Kwazulu-Natal*** where court held that if the university has found fault with the process and procedures not followed by its academic staff this is hardly a reason to prejudice the applicant by revoking her degree.

That therefore the decision of the management committee was irrational and should be quashed.

In reply counsel for the respondents submitted that these submissions by the applicant are going into the merits of the decision which is beyond the scope of judicial review. For this submission counsel relied on the case of ***Pius Nuwagaba Vs Law Development Centre Civil Application No. 18 of 2005 Court of Appeal*** where the court held that the remedy of judicial review is not an appeal from the decision but a review of the manner in which the decision was made. I agree with this principle. But it is also trite law that irrationality is one of the grounds for judicial review and Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards see ***Pastoli Vs. Kabale District Local Government Council and Others [2008] 2 EA 300.***

Therefore this ground goes to the decision itself given the evidence or facts before the administrative body. The court in deciding this ground must balance between on the one hand the general interests of the community and the legitimate aims of the state and on the other hand the protection of the individual's rights and interests. Therefore what this court usually does is to adopt the four question tests. If all are answered in the affirmative then the ground must fail. The four questions are:

1. Is the public body's objective legitimate?
2. Is the measure taken by that body suitable for achieving that objective?
3. Is it necessary in the sense of being the least intrusive means of achieving the aim?
4. Does the end justify the means overall.

The onus to prove that these conditions can be met lies on the administrative body in this case the respondent.

The objective of the respondent in this case is to ensure that the respondent institution reforms itself to eliminate malpractices. In my view this is a legitimate objective. However the measure

taken of cancelling the applicant's diploma is not suitable for achieving that objective. It is also not necessary in as far as it isn't the least intrusive means of achieving the objective. The facts ascertained by the respondent's subcommittee placed the misconduct squarely on the respondent's academic staff therefore to clean up the respondent institution requires that the staff be reprimanded; the institution sets its rules clearly for its staff and revises its procedures. Therefore the end did not require the cancellation of the diploma as the only solution. This makes the decision irrational basing on the facts and law available to the management committee of the respondent institution.

I also agree with the reasoning in the decision of the *High Court of KwaZulu-Natal South Africa in Potwana Vs University of KwaZulu-Natal case No. 5347 of 2012 ZAKZHC 1 DECISION OF 24TH January 2014* cited by counsel for the applicant. In this case the applicant sought to set aside the decision of the senate of the respondent to withdraw the applicant's PHD degree which had been conferred on her. Court held that if the university has found fault with the processes and procedures not followed by its own academic staff, this is hardly a reason to prejudice the applicant by revoking her degree. It was not proved at all that the applicant was in any position to influence any of the decisions made in the process leading to her graduation. How was she to know that less time was spent than necessary in reviewing her revised thesis?

Court also accepted that once a final decision is made and conferred on the persons affected by it, then it becomes irrevocable because the decision maker is *functus officio*. *The decision is only revocable before it becomes final. Court then concluded that a decision to confer a degree on a student should never be permitted to be revoked save in exceptional circumstances where the student is guilty of fraud or misconduct affecting the qualification at the time of award. The court went on to set aside the decision of the respondent institution. I agree with this reasoning.* (underling for emphasis)

This case in my view lays down very important standards required to confer power on an institution to revoke an award. First it must be statutorily provided for, secondly it must be established that the student was personally guilty of malpractice, misconduct or fraud at the time

of award which caused an erroneous award or made him or her unfit for the award. All these are all lacking in this case.

I therefore find that on the evidence available to the management committee and the findings of the subcommittee no reasonable tribunal would let the decision of the management committee to stand. So the applicant has proved the ground of irrationality.

In summary this court finds that;

- (i) the cancellation of the applicant's Diploma in Legal Practice awarded on 3rd September 2010 was illegal and unlawful;
- (ii) the cancellation of the applicant's Diploma in Legal Practice awarded on 3rd September 2010 was without legal justification, irregular, ultravires and a nullity,
- (iii) the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted with material irregularity with procedural impropriety,
- (iv) the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted irrationally, unfairly and acted against the rules of natural justice.

Issue 2: Whether the applicant is entitled to the remedies sought in the application?

The applicant sought several remedies. For the reasons in this judgment this court grants the following remedies:

A declaration that the cancellation of the applicant's Diploma in Legal Practice awarded on 3rd September 2010 was illegal and unlawful.

A declaration that the cancellation of the applicant's Diploma in Legal Practice awarded on 3rd September 2010 was without legal justification, irregular, ultravires and a nullity.

A declaration that the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted with material irregularity with procedural impropriety;

A declaration that the Management Committee of the respondent in cancelling the applicant's Diploma in Legal Practice acted irrationally, unfairly and acted against the rules of natural justice;

I decline to grant an order directing the respondent to confirm the Diploma in Legal Practice awarded to the applicant on 3rd September 2010 because it is not one of the prayers envisaged in a Judicial Review application. It appears like a prayer for Mandamus but even if it were to be I find that this is not a proper case for grant of this prayer.

Certiorari:

Where a prejudicial decision has been made by a public authority in the course of exercise of its statutory authority without according the affected party a right to be heard then a writ of certiorari should often freely be granted by the courts. See: **Ridge Vs Baldwin [1964] AC** and **Eng. William Kaya Kizito Vs AG HCMC No. 38 of 2006**. I accordingly grant the same to the applicant herein. An order of certiorari quashing the decision of the Management Committee of the respondent of cancelling the applicant's Diploma in Legal Practice is hereby granted.

Prohibition:

I am inclined to grant the applicant an order prohibiting the respondent from cancelling the applicant's Post Graduate Diploma in Legal Practice because of procedural errors and mistake of its own staff.

Damages:

Damages are available as a remedy in judicial review in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available there must be either, a recognized 'private' law cause of action such as negligence or breach of statutory duty or a claim under express written law or Human Rights statute.

I still do not find it proper to grant general damages in a matter proceeding on affidavit evidence. I therefore decline to grant this prayer. The applicant is free to file a fresh suit with clear cause of action to claim and prove damages.

Costs:

The respondent shall pay the applicant the costs of this application.

I so order.

Stephen Musota

J U D G E

05.12.2016