IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. CAUSE NO. 237 OF 2016

AKIM ALI OJOK……..APPLICANT

V

1. **UGANDA TECHNOLOGY AND MANAGEMENT (UTAMI) LTD**
2. **THE UNIVERSITY MANAGEMENT OF UTAMI LIMITED**
3. **THE MANAGEMENT COMMITTEE ON STUDENT'S AFFAIRS AND DISCIPLINE UTAMI LIMITED**
4. **THE VICE CHANCELLOR OF UTAMI LIMITED……..RESPONDENTS**

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicant seeks prerogative orders of certiorari against the respondents quashing their decision of 29th August 2016 to suspend the applicant for a period of one semester and to cancel the applicant's exam of NW 301 Network Security.

The applicant also seeks a declaration that the respondents acted illegally and with procedural impropriety when they cancelled the applicant's Network Security exam and suspended the applicant; an order prohibiting the respondents' jointly and severally from implementing their decision; an injunction ; damages and costs.

The application was supported by affidavits in support and in rejoinder of the applicants. Professor Jude Lubega , the Deputy Vice Chancellor filed an affidavit in reply .

I have carefully considered submissions of both counsel , examined the affidavits in support, in reply and in rejoinder and the supporting documents. I have also addressed myself to the relevant law.

It is now settled law that for an application for judicial review to succeed, the applicant must show that the act or decision complained of was tainted with illegality, procedural impropriety or irrationality.

At the commencement of the hearing , four issues were framed for trial and I will start with the preliminary issue.

1. **Whether the applicant sued wrong parties.**

It was counsel for the respondent's submission that under section 116 of the University and Tertiary Institutions Act 2001, universities are conferred corporate status with capacity to sue and be sued. They are distinct from the owners who establish them. That therefore, the reference to all the respondents as limited companies should be read as if the wrong parties were sued.

Counsel Kania for the applicant submitted that the right parties were sued arguing that whether the respondents are body coporate or individuals, they can be cited as respondents in an application for judicial review. Obviously counsel missed the point advanced by counsel Mutabingwa that it was a misconception to sue the respondents as corporate entities with limited liability when the capacity of the university to be sued is conferred by Act 7 of 2001 and not by registration under the Companies Act. There was therefore no need to refer to the 1st respondent as UTAMI limited.

The authority **of John Jet Tumwebaze v Makerere University and others MA 353 of 2005** cited by counsel Kania supports the position that in judicial review the individuals or bodies involved in the impugned decisions can be cited as respondents. Therefore the 3rd and 4th respondents ought to have been cited but without reference to limited liability.

It is not clear why the University Management , 2nd respondent, was sued when it was sufficiently represented by the 3rd and 4th respondents.

The reference to UTAMI limited makes the respondents the wrong parties because the decisions complained of were made by the university employees and not the company that set it up.

However, this being an application for judicial review of administrative decisions, I will not strike out the application but invoke article 126(2)(e) of the Constitution and determine the application on substantive matters.

2. Whether the applicant was given a fair hearing

The applicant complained that

1. The 3rd and 4th respondents on 29th August 2016, made a decision to suspend the applicant from the 1st respondent University for a period of one semester effective September 2016 and cancelled his examination in Network Security paper.
2. The applicant was not accorded a fair hearing before making the decision because he was not issued with a notice of the charges nor a date for the disciplinary hearing and was denied the right to cross examine the lecturers and students who testified against him.

In response, Prof. Jude Lubega affirmed that

1. UTAMI conducted an examination for Network family on 18.4.2016 and the applicant sat the exam.
2. The exams are governed by rules which among other regulations, forbid students from entering the examination room with mobile phones.
3. The applicant was found with unauthorized material and the phone was confiscated by the invigilator. Anexture F shows a photograph of the Phone that was taken. The phone screen has notes.
4. On 29th August 2016, the applicant appeared before the disciplinary committee . Typed and audio proceedings were availed to court.
5. The committee, after hearing from him and different persons, found the applicant culpable and advised him of the right to appeal.
6. The applicant did not pass the examination.

The gist of the applicant's complaint is that he was not informed of the charges against him well in advance to enable him prepare for the disciplinary proceedings; that he was not given

a chance to cross examine witnesses and the committee members were the investigators, prosecutors and judges in their own cause.

a) Failure to inform the applicant the charges against him in advance

In his affidavit in support, the applicant admits that on 4th August 2016, the Director , Academic Affairs Dr. Rehema Baguma called him to appear before the Disciplinary Committee on the morning of 5th August 2016 to answer allegations of examination malpractice but that she did not specify them.

That on 5th August 2016 , he appeared before the Management Committee on students Affairs and the Deputy Vice Chancellor Prof. Lubega and Dr. Rehema Baguma inquired from him if he recalled the incident when he was caught with a phone in the examination room. That thereafter, he was told to leave .

Counsel Kania cited Halsbury's Laws of England 9th edition , in support of the argument that notice is required.

In **Kisomose Nicholas v Academic registrar Mbarara university MA 89 of 2009**, cited by counsel Kania , the applicant was informed of examination irregularities on 15th June 2009 and on 31.7.2009, the Examination Committee heard the applicant's defense.

To the extent that the applicant admits that he was informed on 4th August 2016 of impending disciplinary proceedings on alleged exam malpractice was to take place on 5th August 2016, the applicant's complaint that he was not informed in advance of the charges against him collapses.

b) No opportunity to cross examine witnesses

With respect to the complaint that he was not given an opportunity to call witnesses, the respondent's Deputy Vice Chancellor adduced both typed record of the minutes of the proceedings and the audio recording of the proceedings which was played in chambers in the presence of both parties.

Without doubt, the applicant was given an opportunity to respond to the allegations to which he offered denials.
A photograph of the screen of the phone that was confiscated from the applicant during the Network family exam was attached to the affidavit in reply of Prof. Lubega and it had notes.

In the **Kisomeso case (supra**) , where the applicant was disciplined for forging a signature on a log book, only the applicant appeared before the Examination Irregularities Committee . The committee relied on documentary evidence and the statement of the applicant in defence . The High Court in that case found that the applicant was given a fair hearing.

In the instant case, the committee had confiscated the phone, a photograph of which was annexed to the affidavit in reply as annexture F. Moreover, the invigilator who confiscated it gave evidence during the proceedings. This phone had notes on Network security.

At page 4 of the disciplinary proceedings, it is recorded that it was Mr. Mersian Tulyahabwa who was the invigilator and it is him who confiscated the phone. The said lecturer confirmed this information during the disciplinary proceedings (page 7).

Therefore, even if the applicant was not availed the opportunity to cross examine two witnesses who were fellow students, the disciplinary committee had credible
evidence of the confiscated phone and the invigilator to arrive at a decision.
One of the students Nkoba Sidney gave hearsay evidence while Mugarurua Martin was an accomplice who was also caught cheating with a phone.
Their evidence was therefore worthless to the committee and no injustice was occasioned to the applicant .

c) The disciplinary committee was the investigator, prosecutor and judge

The members of the committee were: Prof. Lubega; Dr. Ngubiri; Dr. Kamuganga; Mr. Busulwa and Dr. Rehema Baguma.

The applicant in his affidavit in rejoinder affirmed that Prof. Lubega was the invigilator in the examination room who confiscated the phone but as found above, it is Mr. Tulyahabwa Mersian who confiscated the phone.

At page 3 and 4 of the typed disciplinary committee minutes, it is acknowledged that

a) The mobile phones were returned to the students by the Dean , School of Computing and Engineering .
b) The Deputy Vice Chancellor took photos of the three phones and the content that was displayed.

While it is true that the Dean and the Deputy Vice Chancellor participated in the committee proceedings, their role prior to the hearing was to store the evidence against the applicant which evidence was the phone with notes .

A prosecutor is defined by **Osborn's Law dictionary 8th edition** as a person who commences criminal proceedings on behalf of the Crown. The disciplinary proceedings were not criminal proceedings and therefore the applicant was not being prosecuted when he appeared before the disciplinary committee. Neither were the Dean and deputy vice chancellor judges in their own cause as they simply stored the evidence against the applicant.

Having found that the applicant was informed of the allegations against him; that he was given an opportunity to defend himself; and that the committee members did not investigate him ; I find that the applicant was given a fair hearing .

Contrary to the applicant's statements in his affidavit in rejoinder that the minutes of the disciplinary meeting were a concoction, I find that the typed minutes and audio recording of the proceedings are conclusive evidence that a hearing did take place , the lack of clarity on the date notwithstanding.

3. Whether the applicant passed his network security exam

On this issue, the applicant affirmed that he passed the exam and referred to annexture E to the affidavit in rejoinder as proof. Annexture E is a document that shows results of students by their index numbers.

From the bar, counsel for the applicant stated that this was a print out from the university website. However, annexture E is neither certified correct by the issuing authority nor commissioned by a commissioner of oaths as a true copy of the original . It is therefore a worthless piece of evidence.

The respondents on the other hand tendered the answer sheet of the applicant attached to the affidavit in reply marked annexture E and annexture G the results of students by name . Both documents are commissioned by a commissioner for oath. Both show that the applicant scored 49.3 which means he did not pass the Network security paper, according to affidavit of Prof. Lubega. It follows that the applicant did not pass the exam as alleged.

3. **Whether the applicant is entitled to any of the remedies**

As all the issues have been resolved in favour of the respondents, the applicant is not entitled to any of the remedies.

This application is dismissed with costs to the respondents.

DATED AT KAMPALA THIS 28TH DAY OF SEPTEMBER 2016.

HON. LADY JUSTICE H. WOLAYO