

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 109 OF 2015

KIGGUNDU JOHN BAPTIST AND OTHERS.....PLAINTIFF

V

NDEJJE UNIVERSITY.....DEFENDANT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

After obtaining two orders to file a representative suit on their own behalf and on behalf of 224 others, nine plaintiffs filed an amended plaint on 10.2.2016.

In paras 1,2, and 3 of the amended plaint, the plaintiffs are described as Electrical and Civil Engineering Students of the defendant University.

The nine plaintiffs sued on their own behalf and 224 others who are 2nd and 3rd year students Kampala campus weekend program .

The plaintiffs sued the defendants in contract . In summary, the plaintiffs claim that they were admitted to the university as holders of ordinary diplomas and on that account, were exempted from not studying first year .This meant that they were admitted directly to year two . The plaintiffs complained that after completion of the second year studies, exemption fees were imposed in 2015 by the defendant for not studying first year .

For those with higher diplomas, the claim is that they were exempted from studying year one and two and therefore admitted to year three and that exemption fees were imposed in 2015 for all course units exempted.

The plaintiffs also claim that they missed some exams in 2015 when they declined to pay exemption fees.

The plaintiffs sought the following relief:

1. A declaration that the exemption fees levied for the years exempted from study is unlawful and illegal
2. An injunction restraining the defendant from implementing collection of the exemption fee.
3. General damages
4. An order directing the defendants to arrange a special sitting for the missed exams in 2015.
5. Costs of the suit.

The defendants denied the plaintiffs' claim for breach of contract and averred that at their admission, the requirement to pay exemption fees for not studying first and second years was in place.

The defendants further averred that a special sitting of exams is the prerogative of the university and that the policy dictates that if a student misses an exam, it is done as a repeat paper the following year and semester when it is scheduled to be sat.

Three issues were framed for trial

- 1) Whether the imposition of exemption fees by the defendant against the plaintiffs is unlawful or illegal
- 2) Whether the plaintiffs are liable to pay the exemption fees charged by the defendant.
- 3) What are the remedies available to the parties?

Both Ms. Omongole & Co. Advocates for the plaintiffs and Ms. Kalenge, Bwanika, Sawa & Co. Advocates for the defendants filed written submissions that I have carefully considered.

Both parties adduced documentary and oral evidence. The plaintiffs called six witnesses while the defendant called three witnesses to prove their respective cases.

Burden of proof

Section 101 of the Evidence Act stipulates that whoever asserts the existence of a fact has the duty to prove it and that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Therefore, the burden of proof in civil cases is on a balance of probabilities.

Issue 1: Whether the imposition of the exemption fees by the defendant against the plaintiffs is unlawful or illegal.

Admission letters

It was not disputed that the plaintiffs were admitted in the 2012/13 and 2013/14 intake to second or third year depending on whether a student had attained a diploma or higher diploma in engineering from a recognised institution. It was also admitted by the defendant through DW1 Academic Registrar Mr. Sekabembe, that the Kampala campus is for students who hold diplomas.

It was established by the plaintiffs through PW1 Tugume Davis that he was admitted for the 2012/13 academic year by admission and given an admission letter that broke down the fees as follows:

		Semester 1	Semester 2
A	Tuition	1,000,000	1,000,000
B	Registration	40,000	40,000
C	Examination	40,000	40,000
D	Library	100,000	100,000
E	Development	100,000	100,000
F	Computer	100,000	100,000
H	Guild	50,000	
I	Identity card	15,000	
J	UNISA & NCHE	21,000	

K	Medical fees	50,000	
L	Chaplaincy fees	10,000	
M	Bank charges	2,500	
	Total	1,518,000	1,382,500

It was his evidence that he was admitted to second year because he possessed a diploma in Telecommunication engineering from Uganda Information Technology 2011 . It was further his evidence that the qualification for admission to weekend program is an ordinary diploma in engineering or a higher diploma.

Pexh. 1 , reproduced above in part, shows the fees structure on admission. Apart from information that Industrial training, field attachment, research and school practice fees are charged separately, there is no information on exemption fees.

It was the position of the defendant as testified through DW1 Sekabembe that the exemption policy has always been in place and that it is an optional policy in that a student must first apply for exemption otherwise the student starts in year one. It was Mr. Sekabembe's testimony that once a student is exempted from studying year one and or year one and two, the student must pay exemption fees per unit exempted. According to Mr. Sekabembe, he often sent circulars to remind students to pay but only one unsigned memo dated 14.1.2015 was admitted in evidence by PW1 Tugume .No evidence of previous memos or letters to pay exemption fees was tendered by the defendant.

It was the defendant's case that on admission, each student is given a package of regulations and policies and that the exemption policy first published in 2011 and then 2014 was availed to students on admission.

Tugume PW1 was firm that he had never seen the exemption policy document of 2011 and 2014 and that he first saw it in January 2015 when the memo dated 14.1.2015 required them to pay exemption fees. This was when those who started in 2012 were in their fourth year and those who started in 2013 were in their third year.

Rogers Sendawula PW3 heard about the exemption policy on 14.1.2015 when the circular was written.

The requirement to pay exemption fees was communicated in an unsigned memo from the office of the Academic registrar dated 14.1.2015.

The memo reads in part

‘All students are required to pay all the tuition and exemption fees of the semester prior to the beginning of the semester. ..’

The fees were broken down as follows :

Exemption	Academic papers attained	Charges
Cost per paper exempted	Ndejje university	100,000
Cost per paper exempted	Other institutions	150,000

Students were required to pay these exemption fees before sitting exams.

Admission letter for Anywar Christopher Eloong for the 2013/14 academic year has total fees payable as 1,968,500/ for the first semester and 1,817,500/ for the second semester.

An analysis of these admission letters shows that fees structure varies from semester to semester. For instance while Tugume did not have to pay for communication skills in August 2012, Anywar was required to pay for it in August 2014 because it was contained in the fees structure on admission.

These admission letters make no reference to exemption fees.

PW1 Tugume also tendered P.3 which is a sample admission letter for 2015 . This admission letter clearly states that *‘students wishing to be exempted shall apply to the faculty Dean for consideration’* which means the affected students are bound by the terms in the admission letter. The plaintiffs’ admission letters had no such condition .

On a balance of probabilities, I find as a fact that the admission letters for the plaintiffs are silent on the requirement to pay exemption fees.

Policy on exemption

The existence of a policy on exemption was highly contested . Documents were produced to show that it existed as early as 2011 but plaintiffs had never seen them until the dispute developed in January 2015.

The defendant produced a policy document published in 2011 and a reprint dated 2014. The plaintiffs' witnesses took issue with the picture of a building that appears on both copies yet the building was not complete in 2011 according to PW 1 Tugume who testified that in 2013, it had not been plastered.

An examination of these two documents shows that the 2011 document is titled '*exemption and credit transfer policy*' while the 2014 document is titled '*supplementary and optional fees policy , senate general rules and regulations for students' academic progress*' , July 2014.

Paras 3 and 4 of the *Exemption and credit transfer policy 2011* make exemption of course units optional and a student is required to apply to be exempted.

Para 6 gives the exemption fees structure as 60,000/ for Ndejje university graduates and 100,000/ for students from other universities .

Para. 4 of the *supplementary and optional fees policy 2014* requires an eligible student to apply for exemption and fees payable is indicated at page 15 as 100,000/ and 150,000/ respectively.

It was counsel for the defendant's submission that students were handed policies, and regulations on admission and therefore they cannot deny knowledge of the exemption policy but no student was called to confirm that this was the case.

I find that the exemption policy was in place as early as 2011 because that is how the plaintiffs were admitted directly to year two or three on account of being diploma holders.

However, what is critical is that the requirement to pay fees for exemption to study some course units was never communicated to the plaintiffs.

The fact that the plaintiffs got to know of the existence of the exemption fees requirement on 14.1.2015 when it was translated into exemption fees of 100,000/ per unit exempted for local

students and 150,000/ per unit for international students means that parts of the policy document had never been operationalized until 14.1.2015. The other part not operationalized was the requirement for students to apply for exemption . The defendant adduced evidence of application for exemption from specific course units but these applications at page 6 of defendant's trial bundle were for 2015 and 2016.

Further the exemption application form of Bagazi Robert was issued in 2011 and indicates the exemption fee as 150,000/= yet according to the testimony of DW1 Sekabembe and DW2 Dr. Kakembo , the fee was 60,000/= at the beginning and was later revised to 150,000/= in 2014. These inconsistencies cast doubt on the credibility of the defendant's case.

For any part of the policy to be effective, it must be operationalized . The absence of the exemption fee in the admission letters of the plaintiffs and the direct admission without a condition to apply for exemption means part of the policy documents were not yet operationalised by the time the plaintiffs were admitted to the university.

In cross examination DW1 Sekabembe testified that they admit every student in year one but on application for exemption they are allowed to start from year II and III respectively and that this is done within the 1st month of reporting but contradicted himself when he testified that the Kampala Campus does not admit year I students. This statement is not credible in light of the finding that the application forms adduced by the defendant were made in 2015 and 2016.

In the absence of a clear statement in the admission letter that a student had to pay exemption fees for the exempted course units or to apply for exemption, the belated requirement to pay an exemption fee for each unit not studied was not binding on the plaintiffs.

Law of contract

In **Steinberg Vs. Chicago Medical School 69 III 2nd 320 [1977] Supreme Court of Illinois** , it was held that an offer and acceptance of tuition and other fees created a binding admissions contract.

The student in this case applied for admission to medical school and paid application fees, the application was rejected and he sued claiming breach of contract. He alleged the officials had not evaluated his application based on the criteria stated in the school's bulletin but based on

his financial ability among others. The Supreme Court of Illinois held that because the publication of the criteria created a contractual relationship between the student and institution, its terms obligated the officials at medical school to evaluate applicants according to the criteria published in its catalog..

In the instant case, the admission letter constituted an offer which was accepted by the plaintiffs on payment of fees stipulated therein. It is a requirement of sections 3 and 4 of the Contract Act 2010 that an offer and acceptance must be communicated and that communication is complete when the offer or acceptance comes to the knowledge of the acceptor and the offeror respectively.

The failure of the defendant to communicate the exemption fees policy to the plaintiffs at the time of admission means the plaintiffs are not bound by the exemption policy irrespective of when it was formulated.

I find that while the exemption fees policy is not unlawful, it does not bind the plaintiffs because it was not a contractual term between them and defendant on their admission .

Approbate and reprobate

Counsel for the defendant argued the principle of reprobate and approbate, i.e, that one cannot take a benefit from an arrangement and then deny it. Counsel for the defendant argued that the plaintiffs did not have to study year one / and year two , therefore they cannot turn round to say they should not pay exemption fees for units not studied.

This principle does not apply in this case because I have found that the requirement to pay exemption fees was not a clear contractual term at the time of admission to the university.

In summary, I find that while the imposition of exemption fees is not unlawful, it is not binding on the plaintiffs as it was not one of the conditions for their admission.

Issue No. 2: Whether the plaintiffs are liable to pay the exemption fees charged by the defendant.

Having found that the requirement to pay exemption fees is not binding on the plaintiffs, they are not liable to pay the exemption fees imposed in 2015.

Counsel for the defendant made reference to documentary evidence of bank slips that show that some students paid exemption fees . For instance Asaba Patrick, Sande William, Bananuka William, and others.

The bank slip of Josephine Asimute at page 47 of defendant’s trial bundle is stamped with a date of 10/10/ 2014 with the exemption fee payable being 60,000/= which conflicts with the application form of Odongo Stanley at page 50 that is stamped on the same date with the fee being 150,000/= .

The bulk of these bank slips are for deposits made in 2014 which is quite odd given that the circular on payment of these fees was published on 14.1.2015.

Even if exemption fees were paid by some students, it does not negate my finding that the payment of these fees was not a contractual term on admission of the plaintiffs to the university.

In **University of Texas Health science center at Houston Vs Babb 646 S.W 2nd 502 [1982] Texas Court of Appeal** a student enrolled in a nursing program under the terms of the 1979 catalog and received Ds in two grades. In 1981 the catalog promulgated a new regulation that students who accumulated more than two “Ds” would be terminated from the program. The plaintiff sued on grounds that she should be subject to the catalog under which she was admitted and not the provisions of the new catalog. The appellate court in Texas affirmed in favor of the student. Court further held that the catalog created a binding contract between the student and the institution even though the institution was free to modify its academic standards students should be allowed to progress through their programs under the terms of the catalogs that were in effect at the time of their enrolment, she was entitled to complete her studies. Although the case is of persuasive authority only, the facts are on all fours with the instant case. I find that the requirement to pay exemption fees cannot have retrospective effect .

Therefore the plaintiffs are not liable to pay exemption fees to the defendant.

Issue No. 3: Whether the students who signed the consent judgment and those who paid the exemption fees withdrew from the suit.

This issue was framed by counsel for the defendant in her submissions.

The students affected by this issue are in three categories. Those who entered into disclaimer notes with the defendant and paid exemption fees; those who entered into a consent judgment and those who withdrew from the suit. Tugume Davis PW1 in his evidence testified that the consent judgment and disclaimer notes were procured through coercion and therefore those persons should not be bound by them.

I find this analysis flawed because none of those affected came forth to testify that the consent judgment or disclaimer notes or the withdrawal from the suit was a result of duress. **In Mark Kamoga v AG SCCA. NO. 8 of 2004** , the Supreme Court held that a consent judgment can only be set aside if there is duress, fraud and misrepresentation. The evidence of Tugume is of little probative value because he is not one of those affected. In the absence of credible evidence to prove the alleged misdeeds by the defendant, I find that those plaintiffs who withdrew from the suit or entered into consent judgment or disclaimer notes with the defendant are no longer party to this suit and cannot benefit from the final judgment .

Issue 4 :What are the remedies available to the parties?

The defendant produced a list of 30 students who decided to pay the exemption fees in a document entitled ‘disclaimer note’ and dated 11.5.2015 with a the defendant’s stamp indicating 9.5.2015 as the date decision to pay was made.

Pw2 Ategeka Rashid testified that on 11.5.2015, some plaintiffs did not sit for human resource management paper because they declined to sign the disclaimer note discussed above. The paper has not been done to date.

Having found that the requirement to pay exemption fees did not bind the plaintiffs, the defendant acted unfairly when the plaintiffs were denied access to sit exams.

In their defense, the defendants averred that special sitting of exams is a prerogative of the university.

However, I find that under section 121 of the Universities and Other Tertiary Institutions Act 2001 , the defendant is under an obligation to train and assess students on merit. In the instant case, special sitting of exams will not be a prerogative but an obligation .

General damages

The plaintiffs prayed for general damages. Tugume testified that he missed graduation and this means he cannot apply for jobs that require a Bachelors degree.

Counsel for the plaintiffs submitted that the failure to graduate has caused the students mental anguish and suffering.

He cited **Ahmed Ibrahim Bholm v CAR and General Ltd SCCA NO. 12 of 2002** it was held that *'damages is compensation in money terms through a process of law for a loss or injury sustained by the plaintiff at the instance of the defendant'*.

Obviously the plaintiffs have been inconvenienced by the protracted litigation but that comes with the territory of litigation . Moreover, they will recover expenses through an award of costs.

As counsel for the defendant submitted, the notion that the plaintiffs have missed out on better job opportunities is merely speculative .

An award of general damages is in the discretion of the trial court and I decline to award the same.

In the result I make the following orders.

1. The plaintiffs are not bound by the exemption fees policy as it was not stipulated in their admission letters .
2. The plaintiffs are therefore not liable to pay the exemption fees under that policy.
3. The defendant is under a duty under the Universities' and Tertiary Institutions Act to set exams missed by the plaintiffs on account of this dispute.
4. The defendant shall set the missed exams well before the next graduation ceremony to enable the plaintiffs participate in the graduation ceremony.
5. The defendants are prohibited from imposing punitive fees on the plaintiffs for sitting these special exams .
6. Costs of this suit to the plaintiffs

DATED AT KAMPALA THIS 13TH DAY OF JULY 2017.

HON. LADY JUSTICE H. WOLAYO