

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISC. CAUSE NO. 269 OF 2017**

1. ASIIMWE ALEX BYARUHANGA

5 2. ODIT EMMANUEL

3. AKELLO PROSSY

4. ANENA SUSAN

5. MUGALA SANCHA MAGDALENE

6. OGWETTA ANDREW OTTO

10 7. ODYEK SAMUEL

.....:APPLICANTS

**V**

1. LAW DEVELOPMENT CENTRE

2. ATTORNEY GENERAL.....

.....:RESPONDENTS

**CONSOLIDATED WITH MISC. CAUSE NO. 235 OF 2017**

15 1. NABUUMA JACKLINE

2. KABEJJA REBECCA MWERU

3. KITONSA RONALD

4. ATUBE JULIAN AKELLO

5. ACHOLA ELIZABETH PHIONA

20 6. MWOSANA CATHY JACKIE

.....:APPLICANTS

**V**

1. LAW DEVELOPMENT CENTRE

2. LAW COUNCIL

25 3. CAVENDISH UNIVERSITY

.....: RESPONDENTS

**BEFORE HON. LADY JUSTICE H. WOLAYO**

## RULING

30 **Introduction**

On 15<sup>th</sup> September 2017 it was the consensus of all parties and the court that these two applications be consolidated because of the commonality of the complaint against Law Council in preventing the applications from sitting the pre –entry exams to the Bar Course at Law Development Centre(LDC)

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The applicants in **MC 269 of 2017** sought orders against Law Council and Attorney General in judicial review under section 3 of the Judicature Act 2002 as amended and judicial review Rules. They prayed for the following orders.

1. A declaration that the refusal by Law Council to admit the applicants to sit pre-entry exams for the post graduate Bar Course was arbitrary and illegal.
2. A declaration that the directive of Law Council that it had not accredited the Law Program at Gulu University where applicants undertook and successfully completed their Law Program is arbitrary and illegal.
3. A writ of Certiorari quashing the decision of the respondents not to admit the applicants to sit pre-entry exams.
4. An injunction restraining the respondents from preventing the applicants, and other former students who undertook or will undertake their Law Program in any University where the Law Program has been accredited by the National Council for Higher education from being admitted to sit the pre-entry exams for the Bar Course .
5. A writ of mandamus issues compelling LDC to admit the applicants to sit the pre –entry exams for the 2017/2018 academic year.

55 6. General damages, exemplary damages and costs.

The applicants in **MC 235 of 2017** sought orders against LDC, Law Council and Cavendish University. They prayed for the following orders.

1. A writ of mandamus issues against LDC and Law Council compelling  
60 them to admit the applicants to sit the pre-entry exams.
2. In the alternative an order compelling LDC and Law Council to admit the applicants to the Bar Course.
3. Exemplary damages against Cavendish University due to its cavalier  
attitude towards the plight of the applicants and the untold suffering  
65 meted against them.
4. Costs.

The applications were supported by affidavits in support and in rejoinder.

The respondents filed affidavits in reply opposing the two applications.

All counsel filed written submissions that I have carefully considered.

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I will appraise the facts of the case in this part of the ruling and address the submissions and law in the main body of the ruling.

### **The applicants' case in MC 269 of 2017**

75 The applicants case in MC 269 of 2017 presented through affidavits in support and rejoinder of Asiimwe Byaruhanga and Odit Emmanuel and through submissions of counsel It was the applicants' case that they are former students of Gulu University a public University established under the Universities and Other Tertiary Institutions Act 2001 as amended ( hereinafter referred to as  
80 UOTI Act . )

According to the applicants, the University was accredited to teach law in 2011.

A letter dated 5.7.2011 to the Vice Chancellor from the Deputy Executive

Director of NCHE shows that Gulu University was accredited to teach law and other Courses.

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It was Asiimwe's evidence that on 20.6.2017, he went to the 1<sup>st</sup> respondent's offices to pick forms to apply for admission to the post graduate Bar Course but was denied these forms and as a result, he and other applicants from Gulu University were prevented from sitting pre-entry exams for the Bar Course.

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The evidence of Odit Emmanuel shows that on 29.6.2017 he was given a form by the 1<sup>st</sup> respondent, he made a payment of 50,000/ at Stanbic Bank and was issued a receipt by the 1<sup>st</sup> respondent. That when he returned a duly filled application form to the 1<sup>st</sup> respondent's offices, one Nancy informed him that the 1<sup>st</sup> respondent was under instructions not to receive forms from students of Gulu University .

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Both Asiimwe and Odit completed their Bachelor of Laws degree in 2017.

### **The applicants' case in MC 235 of 2017.**

100 It was the applicants case presented through the affidavits of Nabbumba Jackline, Kabejja Rebecca Mweru, Kitonsa Ronald, Atube Julian Akello is that they are law graduates from Cavendish University and that on 22.5.2017, the Law Council through its Committee on Legal Education and Training (herein after referred to as the Committee) issued a notice listing Cavendish University as accredited to teach law effective October 2016.

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According to Kabejja, the applicants paid application fees and picked forms from LDC but when they returned forms, Nancy rejected them yet one Benson Kassaja a fellow student from Cavendish University was permitted to sit the pre-entry exam.

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It was further their case that Cavendish University has abandoned them yet they paid all its dues.

### **The case for Law Development Centre (LDC)**

115 The LDC presented its case through the affidavit of Florence Nakachwa Deputy Director , in which she affirms that Law Council is a regulatory body that supervises professional legal education , approves Courses of study and provides for qualifying exams including pre-entry exams .

120 It was the case for LDC that before commencing a law programme, every University that intends to offer law programmes must get a *Certificate of Approval* from the Law Council certifying that its law programme meets the professional requirements for admission to the post graduate Bar Course.

125 According to Ms Florence Nakachwa, Deputy Director of LDC, Cavendish University and Gulu University commenced their Law Program without due regard to the statutory oversight of the Law Council which accredited it with effect from October 2016 but that the accreditation did not have retrospective effect.

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It was the case for LDC that the Bar Course started on 25.9.2017 and that no one by the names of Benson Sekajja was admitted.

### **135 The case for Law Council**

It was the case for Law Council presented through the affidavit of Prof. Ssempebwa that he is the Chairperson of the Committee on Legal Education and Training of the Law Council whose statutory functions are to:

140 ‘To exercise general supervision and control over professional legal education in Uganda; approve Courses of study and to provide for conduct of qualifying exams for purposes of the Act ; and to prescribe the professional requirements for admission to the post graduate Bar Course.’

145 It was the case for Law Council that the Committee is empowered to approve law programs conducted by a University or training institution operating in Uganda and that accreditation by NCHE is done jointly with the Committee.

It was Prof. Ssembepwa’s evidence that it came to the attention of the Committee in 2012 that Gulu University had started teaching law and after 150 inspection, the Committee wrote a letter to Gulu University dated 28.11.2012 indicating that the Committee would not approve its law program.

That by a Memorandum of Understanding (MOU) with Gulu University, the Committee approved its law program with the first intake after that memorandum came into force in October 2016. The MOU is dated 155 12.10.2016.

With respect to Cavendish University, it was Prof. Ssempebwa’s evidence that on 14.6.2015, Cavendish University applied to Law Council to approve its law program and on 20.8.2015, NCHE forwarded the law program of Cavendish to 160 the Committee for approval.

On 12.10.2016, conditional approval by the Committee was given but that it would not have retrospective effect.

165 **The case for Cavendish University**

The case for Cavendish University presented through the affidavit of Prof. John Mugisha its Vice Chancellor is that it is a private University and duly licenced and accredited by NCHE and Law Council to offer law degrees; that it is not responsible for the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and that the prayer for  
170 exemplary a by the applicants is misconceived.

**Emerging facts from the appraisal of the respective cases.**

1. The applicants are law graduates having completed law degrees at the two Universities.
- 175 2. Gulu University is a Public University and its law program was accredited by NCHE on 5.7.2011 and approved by the Committee on 12.10.2016 after declining to do so on 28.12.2012.
3. Cavendish University is a Private University. It is not clear when its law program was accredited by the NCHE but it was approved by the  
180 Committee on 12.10.2016.
4. NCHE consulted the Committee with respect to Gulu University on 22.5.2017.
5. There is no evidence that one Joseph Sekajja from Cavendish University was admitted to LDC.
- 185 6. The Applicants were prevented from sitting pre-entry exams on 1.8.2017 by Law Council a fact admitted in the affidavit of Prof. Ssempebwa.

190 **Issues for trial as agreed by all counsel.**

At the commencement of the trial, seven issues were agreed upon.

1. Whether applicants are qualified to sit for the pre-entry exam

- 195 2. Whether the applicants are entitled to be admitted for the post graduate Bar Course without sitting pre-entry exams
3. Whether LDC has been properly joined in these applications.
4. Whether it is the UAOTI Act or Advocates Act that regulates Courses and content at Universities.
5. Whether Gulu and Cavendish Universities were authorised to teach law.
- 200 6. Whether Law Council exceeded its authority when it prevented the applicants from sitting pre-entry exams.
7. Remedies.

205 **Issue No. 4: Whether it is the UAOTI Act or Advocates Act that regulates law Courses and their content at Universities.**

I have carefully considered the submissions of all counsel on this issue and the authorities in support.

210 Judicial review is concerned with the process for arriving at an administrative decision by a statutory body. A text book on **Administrative Action by Hilary Delony Maxwell** page 5 and 6 states as follows:

215 *‘ essentially, judicial review involves an assessment of the manner in which a decision is made, but it is not an appeal and jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality.*

Therefore, it is the decision making process of Law Council and the reasons it gives for preventing the applicants’ from sitting pre entry exams to LDC that I



220 am principally concerned with. This review will look at the process from the  
perspective of the legal basis of the powers exercised by Law Council and the  
reasonableness of the final decision.

It is now trite law that judicial review extends to the decision itself where the  
administrative body has made an unreasonable decision. The standard is that  
225 of a reasonable authority.

In **Council of Civil Service Unions and others v Minister for the Civil Service**  
**[1955] 1 AC 374**, the court held that administrative action is subject to judicial  
control under three main heads: illegality; procedural impropriety and  
irrationality. *A decision is irrational where the decision making authority has*  
230 *acted so unreasonably that no reasonable authority would have made that*  
*decision.*

### **Professional Legal Education**

It was the contention of the Committee that The Advocates Act 2002 in section  
3 gives authority to Law Council to

235 *‘Exercise through the medium of the Committee on Legal Education and*  
*Training, general supervision and control over professional legal*  
*education in Uganda including continuing legal education for persons*  
*qualified to practice law in Uganda’*

The catchwords here are general supervision and control.

240 From a plain reading of section 3 of the Advocates Act first enacted way back  
in 1970 and amended in 2002, the Committee is empowered by law to  
supervise professional legal education, i.e., professional training at Law  
Development Centre and Continuing Legal Education for advocates in practice.

This point was made in **HC Civil Application No. 589 of 2005 Pius Niwagaba v**  
245 **Law Development Centre (unreported)** by Justice Okumu Wengi .

In that case, Niwagaba was denied entry to LDC on the grounds that the Law  
Council Committee on Legal Education had not recognised Uganda Pentecostal  
University. Citing World Bank funded report on **Legal education in Uganda**  
**(1995) by Justice Odoki**, the learned judge found that the Justice Odoki  
250 report made it clear legal education and training recognizes the training of a  
lawyer consists of three stages:

*‘Academic stage; the professional stage which consists of institutional  
training and in training; and lastly continuing legal education’.*

The report further states that

255 *‘The academic stage should be taken at a university or its equivalent. The  
professional stage should consist partly of organized vocational in an  
institutional setting partly of practical experience in a professional setting  
under supervision. ...’*

Clearly, professional legal education is after university education.

260 **Pamela Kalyegira in her book ‘Liberalization of Legal Education in Uganda’ ,  
published by Law Africa, (page 18)** makes the point that although the  
Advocates Act 2002 did not specifically spell out the role of Law Council in all  
legal education in Uganda, the consensus was that it had a final say for both  
under graduate and professional legal education.

265 This point is important because it shows that the Advocates Act is silent on the  
role of Law Council in under graduate law programs and its perceived role is  
based on consensus. A role based on consensus has no force of law.

On the other hand, **S.I. 78 of 2004 Advocates (Continuing Legal Education) Regulations** empowers the Committee on Legal Education to **accredit**  
270 institutions to offer study programmes for advocates while section 6C ( 1) (c )  
of the 2002 Advocates Act mandates to prescribe professional requirements  
for admission to the Bar Course.

Therefore, while professional legal education and continuing legal education is  
grounded in the Advocates Act, academic training of law students at under  
275 graduate level is not.

### **Approval of Courses of study.**

Counsel for LDC submitted that by section 6C (1) (b) of the Advocates Act 2002  
as amended, the Committee approves course so study.

The section provides as follows:

280 *‘The Committee shall approve courses of study and provide for conduct  
of qualifying examinations for the purposes of the Act’*

Justice Okumu Wengi in **Nuwagaba (supra)** observed in his ruling at page 11,  
that the Committee was able to express satisfaction with Makerere and  
Mukono university law schools but that was all as he was not given any  
285 evidence of regulations on accreditation of law schools by the Committee.

The learned judge concluded that there was goodwill on the part of the  
Committee and institutions to carry forth the tradition in *‘an informal way to  
generate consensus on the legal profession’*.

Therefore , it is not section 6C(1) (b) of the Advocates Act 2002 that gives the  
290 Committee authority to approve Law Programs at universities but mutual

goodwill of all actors keen to maintain high standards of law graduates. Indeed **Kalyegira** ( *supra*) at page 20 states that the Committee would be invited by a prospective Law School and once satisfied the School met minimum requirements to operate, the Committee would then grant  
295 accreditation.

The sum total of this analysis is that the '*accreditation*' of Law faculties by the Committee is not based on statutory law but on invitation by law faculties and on a perception by stakeholders that the Committee has a role in approval of academic law programs .

300 The approval of courses of study in the Advocates Act is to do with Continuing Legal Education hence **S.I 78 of 2004 (Continuing Legal Education Regulations)** which empowers the Committee to accredit institutions to offer study programmes for advocates and the Bar Course.

Counsel for LDC argued that **rule 8 of Legal Notice 17 of 2007** requires every  
305 university to apply to the Committee for a certificate of approval of the law degree which was not done because the two universities had their courses approved by the Committee on 12.10.2016, long after the students commenced studies.

Although I have found above that there is no statutory basis for this approval ,  
310 the fact that the courses were approved by the Committee means that the approval cannot be later interpreted as 'having no retrospective effect' to the disadvantage of the applicants who had no hand in administrative process. An examination of the Memorandums of Understanding signed between the two universities and the Committee makes no mention of the date when the  
315 approval takes effect.

This finding is without prejudice to further analysis of the concept of approval within the context of the Advocates Act discussed later in this ruling.

320 **Accreditation by NCHE in consultation with professional associations and regulatory bodies.**

Statutory Accreditation is only done by National Council for Higher Education (NCHE) in consultation with professional Associations and regulatory bodies under the **UAOTI Act 2006** as amended.

325 Section 3(d) of UAOTI 2006 Act amended **section 5b of the UAOTI Act 2001 (Principal Act)** to empower NCHE to

Receive, consider and process applications for –

- (i) The establishment and accreditations of private Tertiary Institutions, private other degree awarding Institutions and Private universities and
- 330 (ii) *Accredit academic and professional programmes of those institutions in consultation with professional associations and regulatory bodies.*

It is under section 3(d) (ii) that the Committee is to be consulted prior to accreditation by NCHE.

335 The nature of consultations is not spelt out in the Act but what is important is that Law Council must be consulted during the process of accrediting a University to teach law.

The spirit behind this requirement is to ensure quality graduates who are in tune with what is expected of the disciplines that have professional associations and regulatory bodies.

340 Therefore the NCHE and the Committee on Legal education are obliged by law to work together before accreditation of a university to teach law.

Accreditation is a process. Indeed the **Universities and Other Institutions (Institutional Standards) Regulations S.I. 85 of 2005** gives the procedure for accrediting a university. The regulations made by NCHE came into force on  
345 11.11.2005. They prescribe the standards and requirements that must be complied with by institutions under the Act. These include library buildings and services, curriculum and programmes, physical facilities, among others. It is after an institution meets these standards that it is issued with a license or Charter to operate. The charter becomes evidence that the institution meets  
350 standards set by NCHE.

Noteworthy is that these regulations were made in 2005 before the 2006 amendment to the UAOTI Act.

This means these regulations need to be expanded to capture the requirement for NCHE to work with regulatory bodies and professional associations before  
355 accreditation of academic and professional courses.

Counsel for LDC was emphatic that the mandate to accredit is jointly exercised by both institutions. This explains the narrative in the affidavit of Prof. Ssempembwa referring to '*accreditation*'.

An examination of rules 3 and 4 of Legal Notice 17 of 2007 prescribe  
360 qualifications for admission to the Bar course; namely;

*'Holder of a law degree from a university in Uganda; chartered or licensed under the laws of Uganda; the university must comply with standards and requirements for the establishment and operation of a university as prescribed by the National Council for Higher education. '*

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Transposing UAOTI **Regulations S.I 85 of 2005** made under the UAOTI Act in the legal notice did not confer on the Committee authority to accredit Law Programs at universities when no such authority exists in the Advocates Act.

370 ***Section 119A: prior accreditation of academic programmes before operations commence.***

Section 119A of the UAOTI Act 2006 makes it clear that a university will not operate prior to accreditation.

It directs that

375 *'For the avoidance of doubt, no person shall operate a University, Other Degree awarding Institution or a Tertiary Institution without the prior accreditation of its academic and professional programmes by the NCHE'*

The significance of this section is that teaching of Courses before accreditation by NCHE renders those studies a nullity and time will begin running from the  
380 date of accreditation by NCHE. Therefore both accreditation of the institution to operate and to teach all courses including Law is done simultaneously before it opens its door to students.

Once accreditation is evidenced by a charter or Licence, that institution is accredited.

385 Accreditation is defined by the UAOTI Act 2001 as

*'Public acceptance and confirmation evidenced by the grant of a Charter that a University meets requirements and standards of academic excellence set by National Council'.*

### ***The case for Gulu University as a public university.***

390 In his submissions in rejoinder, counsel for the applicants in MC 269 argued that section 3(d) of the UAOTI Act 2006 restricts accreditation to private universities. But section 119A which is under the part for miscellaneous provisions in the Principal Act of 2001 applies to all universities, public and private. Therefore, the Law Programme of Gulu University had to be  
395 accredited by the NCHE in consultation with Law Council.

### **The absence of a framework for the consultative process**

The absence of a framework for the consultative process is the cause of the current crisis that has led to this dispute.

That said, the failure of the NCHE and Law Council to implement their  
400 respective mandates in compliance with section 3(d) (ii) should not be visited on the applicants. Moreover, once a Charter or Licence is issued by NCHE, it is a public pronouncement that the university is open to operate and teach courses.

In conclusion, while Law Council is mandated by law to participate in the  
405 accreditation process before a university is accredited to teach law, the



issuance of a Charter or Licence is the responsibility of the NCHE under the UAOTI Act.

Issue No. 4 is answered in the following terms:

Under graduate law programs and their content is regulated by the UAOTI Act  
410 and not the Advocates Act.

**Issue No. 6 : Whether Law Council exceeded its authority under the law.**

While pre -entry exams are set by Law Council under Advocates Act **Legal Notices 12 of 2010 and 17 of 2007**, it does not mean that the Committee can  
415 whimsically lock out qualified law graduates from sitting the exam.

**Rule 11 of legal notice 10 of 2010** provides that a person shall be admitted to the Bar Course after taking an examination and that the exam shall be based on knowledge obtained from *'an approved law degree, aptitude and the values an applicant attaches to the legal profession.'*

420 The Legal Notice is made under section 6C (1) (c) of the Advocates Act 2002 which prescribes that:

*Committee will prescribe the professional requirements for admission to the post graduate Bar Course and qualifications necessary for eligibility for enrolment as an advocate.*

425 Section 8 (5) of the Advocates Act 2002 as amended on admission and enrolment of advocates prescribes that persons eligible for admission to the Bar include *'a holder of a degree in law granted by a University in Uganda ...'*

This means, legal notice 10 of 2010 prescribes **the professional requirements for admission to the Bar Course** which include exams based *on 'knowledge from an approved law program'*.

This requirement is to be read together with rule 10 (b) of **legal notice 17 of 2007** which prescribes that

*'A post graduate law school or institution conducting post graduate bar course shall only admit a person to the post graduate bar course where that person's degree' is **obtained from an approved university or institution as provided under the Advocates Act , UAOTI 2001 and any other applicable law.***

The reference to 'an **approved** 'law program is redundant because the Advocates Act makes no reference to 'an approved university or law program.'

As the reference **approved law program or university** is not grounded in the Advocates Act, it does not have force of law.

To the extent that rule 10 of legal notice 17 of 2007 acknowledges that persons with degrees under the UAOTI Act are eligible for admission to the Bar Course, the Committee acted irrationally and in an arbitrary manner when it prevented the applicants from sitting pre-entry exams.

### **Rule of law**

As a body tasked with the responsibility to maintain high standards of professionalism in the legal profession, the Committee has a higher burden than anyone else to observe the rule of law. Its own legal notice clearly embraces the role of NCHE as the regulatory body responsible for issuing

charters and licenses to universities in Uganda. The legal notice acknowledges law degrees from universities in Uganda as it is bound to do.

The legal notice is a management tool that gives guidance to the legal profession and of course to the administrators at Law Council. Those tasked  
455 with implementing the Advocates Act have a duty to enforce the Advocates Act and those rules in the Legal Notices that are consistent with the Advocates Act, without discrimination.

Moreover, **in Pius Niwagaba Vs LDC (supra)** Justice Okumu Wengi directed LDC to admit a graduate from Uganda Pentecostal University on the grounds that  
460 its Law Program was accredited by NCHE.

Apart from ignoring its own internal guidelines, the Committee also ignored the High Court decision which is still good law.

### **Legality of legal notice No. 12 of 2010**

Counsel for the applicants in MC 235 of 2017 argued that the Advocates Act  
465 **Legal Notice No. 12 of 2010** is ultra vires in as far as it introduces another qualification for enrolment and yet Law Council does not have powers to amend the Advocates Act. This legal notice introduced the sitting of pre-entry exams prior to admission to LDC.

I find no inconsistency between legal notice No. 12 of 2010 and section  
470 6C (1) (c ) of the 2002 Advocates Act amendment that mandates the Committee to prescribe '**professional requirements**' for admission to the Bar course save for the reference to '**approved law program**' which I said is redundant and of no legal effect. The requirement for exams is one such professional requirement envisaged by the Advocates Act 2002.

475 With respect to the legality of the legal notice', this was not framed as an issue  
and therefore, I will not discuss it.

Issue No. 6 is answered in the following terms:

While the Committee had authority to determine persons who are eligible to  
sit exams within the parameters of rule 10 of legal notice 17 of 2007 and  
480 section 6C (1) (c) of the Advocates Act, it acted irrationally and in an arbitrary  
manner when it locked out the applicants who were qualified to sit the pre-  
entry exam by virtue of rule 10 of legal notice 17 of 2007.

**Issue No. 2 : Whether applicants are entitled to be admitted by the 1<sup>st</sup>  
485 respondent .**

It is admitted by Florence Nakachwa Deputy Director of LDC that the institution  
opened on 25.9.2017.

In her affidavit, she denies the applicants are entitled to admission because  
they have not sat a pre-entry exam. However, the applicants were arbitrarily  
490 denied an opportunity to sit the pre-entry exam without legal justification.

This notwithstanding, to admit the applicants directly to LDC without sitting  
pre-entry exams would give them undue advantage when others had to sit  
exams to get into LDC.

Issue No. 2 is answered in the following terms: This is a court of law that must  
495 observe the principle of equality. Under these circumstances, I am unable to  
hold that the applicants are entitled to be admitted to LDC without sitting pre-  
entry exams.

**Issue No. 1: Whether applicants are qualified to sit pre-entry exam**

500 As submitted by counsel for Law Council, whether the applicants are qualified to sit pre -entry exams is a matter of law. It was counsel’s submission that section 6C (1) (c) of the Advocates Act 2002 empowers the Law Council to

*‘Prescribe professional requirements for admission to the post graduate bar course...’*

505 According to counsel, this section should be read together with section 8 (8) which prescribes that a holder of a degree from a university in Uganda is eligible to be admitted to the bar.

Counsel for LDC submitted that because Gulu and Cavendish Law programme were not accredited by Law Council, the applicants are not qualified to sit pre-  
510 entry exams.

I have already found that the requirement in regulation 11 of Legal Notice 12 of 2010 that only law graduates from ‘approved law programs’, (*read Law Council approved*) are eligible for admission to the Bar Course is redundant as it is not grounded in the Advocates Act 2002 .

515 Issue No. 1 is answered in the following terms: the applicants who are graduates from Law programmes accredited under the UAOTI Act are qualified and eligible to sit pre-entry exams as prescribed by rule 10 of legal notice 17 of 2007.

520 **Issue No. 5: Whether Gulu and Cavendish Universities were authorised to teach law.**

Gulu University 's Law Program was accredited by NCHE on 5.7.2011 and approved by the Committee on legal education on 12.10.2016 after declining to do so on 28.12.2012. Therefore, Gulu University is authorised to teach law.

525 With respect to Cavendish University, it is not clear when its Law Program was accredited by the NCHE but it was approved by the Committee on 12.10.2016.

In the case of Cavendish University, Law Council approved their Course on 12.10.2016 and the evidence of accreditation by NCHE is acknowledged in the MOU is in these terms:

530 *'Whereas the University has been granted a Provisional Licence by the NCHE ...'*

The affidavit in reply of 3<sup>rd</sup> respondent indicates that the Law Program was accredited by the NCHE.

In the absence of contrary evidence showing that Cavendish University was not  
535 accredited in time for the applicants to complete their law degrees, I find that Cavendish university is accredited to teach law.

To hold otherwise would be to place the legal career of the applicants in jeopardy. It would mean they have to repeat the course thereby expending more resources. They should be allowed to enjoy the fruits of education having  
540 successfully completed university education.

Counsel for Law Council submitted that Gulu University was not honest with its students as the Committee had not approved their course.

I have already found that accreditation is the responsibility of NCHE in consultation with Law Council as prescribed by section 3(d) (ii) of the UAOTI  
545 Act 2006.

The failure of the NCHE to consult the Committee prior to accreditation will not be used to penalise the applicants.

This issue is answered in the affirmative as I have found that the two Universities were lawfully authorised to teach law after accreditation by NCHE.

550

**Issue No. 3: Whether LDC was properly joined.**

Counsel for LDC, submitted that it is not the 1<sup>st</sup> respondent who prevented the applicants from sitting exams while counsel for the applicants in MC 269 of 2017 cited order 1 r 3 of the CPR and Judicial review rules in support. As held  
555 In **Gakou and brother's LTD v SGS LTD CCMA. 431 of 2005** cited by counsel for the applicants in MC 235 of 2017, it is the plaintiff to elect which person shall be the defendant. Moreover, it is the 1<sup>st</sup> respondent who would be bound to implement the order to admit the applicants had this order been given.

Therefore, LDC was rightly sued.

560 This notwithstanding, LDC had no hand in the impugned decision by Law Council against the applicants. The application against LDC is accordingly dismissed.

**Issue No. 7 : Whether Cavendish University was properly sued.**

This issue was not among the issues agreed upon but I will address it was  
565 canvassed by counsel for Cavendish University. It was the submission of counsel that Cavendish University is not a statutory body and therefore ought not to have been joined as a party. The 3<sup>rd</sup> respondent is a private university that falls under the UAOTI Act which brings activities of its organs in the public

domain. Its organs are administrative bodies within the meaning of article 42  
570 of the Constitution.

But, as argued by its counsel, it had nothing to do with the impugned decision of the Law Council stopping applicants from pursuing their career goals. The application against Cavendish University is dismissed.

### **Issue No. 8: Remedies**

#### 575 ***Damages***

The applicants in MC 269 of 2017 prayed for damages against Law Development Centre and Attorney General. While applicants in MC 235 of 2017 prayed for damages against Cavendish University.

The Supreme Court in **SCCA 8 of 1999 Robert Coussens v Attorney General**  
580 held that damages are intended to compensate the plaintiff for injury or harm suffered.

The conduct of Law Council was arbitrary and irrational.

By preventing the applicants from sitting pre-entry exams in an arbitrary and  
585 irrational manner, Law Council is liable in damages for denying the applicants an opportunity to advance to the next stage in their legal career.

I agree with counsel for the applicants that it would be illogical to order Law Council to give applicants special pre-entry exam. Given that the Bar Course is already on going, it is not practical to order special exams for the applicants.

590 I will award a sum of 20, 000,000/ to each applicant in both MC 235 and 269 of 2017 to be paid by Attorney General and Law Council.



With respect to Cavendish University, no damages are awarded because it had no hand in the decision making process of the Committee.

By virtue of section 3(d) ii) and 119A of the UAOTI Act 2006, it is imperative  
595 that NCHE and the Committee on Legal Education work together to avoid scenarios such as the present dispute.

### **Orders**

In the result, I dismiss the application against LDC and Cavendish University and allow the application against Law Council and Attorney General.

600 I make the following orders:

1. A writ of Certiorari shall issue quashing the decision of Law Council preventing all the applicants from sitting pre-entry exams for LDC.
2. A Permanent Injunction shall issue restraining Law Council from preventing the applicants, current and future graduates of Gulu and  
605 Cavendish Universities who successfully complete their law degrees, to sit pre-entry exams.
3. The NCHE together with Law Council will develop a framework for consultations on the law curriculum for universities in accordance with section 3 (d) (ii) and 119 A of the UAOTI Act 2006.
- 610 4. This framework must be in place within 90 days from the date of this order.
5. Attorney General and Law Council will pay all applicants in both MC 235 and 269 of 2017 a sum of 20m each as general damages.
6. Attorney General and Law Council to pay costs of both applications.

615 7. Cavendish University and LDC will bear their own costs.

**DATED AT KAMPALA THIS 26TH DAY OF OCTOBER 2017.**

**HON. LADY JUSTICE H. WOLAYO**

**Representations**

Lufunya Associated . Advocates and solicitors for applicants in MC 235 of 2017

620 Rwaganika, Baku & Co. Advocates for the applicants in MC 269 of 2017

Attorney General's chambers for Law Council.

M/S Tibajuka & Co. Advocates for Law Development Centre

MMAKS advocates for Cavendish University.

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