

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISC. CAUSE NO. 15 OF 2017
FOR JUDICIAL REVIEW
AND
IN THE MATTER OF AN APPLICATION BY

SYLVIA NAKITTO:.....:APPLICANT

Versus

10 **THE MANAGEMENT COMMITTEE OF**

ST. LAWRENCE CITIZENS HIGH SCHOOL (CREAMLAND CAMPUS-NABBINGO):.....:RESPONDENT

BEFORE: HON. JUSTICE WILSON MASALU MUSENE

RULING

The Applicant, **Sylvia Nakitto** filed this application against the Respondent, The Management Committee of St Lawrence Citizens High School (Creamland Campus-Nabbingo).

20 The applicant was represented by Mr. Gedeon Munungu, while the Respondent was represented by M/S Florence Nagawa of M/S Asiimwe, Namaweje &Co. Advocates.

The Application by **Notice of Motion under Article 42 of the constitution, Section 36 of the judicature Act and Rules 6,7,8 of the judicature (Judicial Review) Rules** was seeking for orders/ reliefs that:-

- 1) A declaration that the indefinite suspension of the applicant from the Respondent School without affording her a hearing is null and void in so far as it contravened the rules of natural justice.
- 2) An order of certiorari be granted and the order of indefinite suspension be removed to the high Court and quashed.
- 3) An order of mandamus be granted ordering the Respondent to admit the applicant back into school.
- 4) An order of prohibition be granted prohibiting the Respondent from harassing, intimidating and or molesting the applicant in any way while at the respondent school.
- 10 5) An order that the respondent pays damages for wrongfully suspending the applicant indefinitely, anxiety, mental stress and inconvenience.

The Application was supported by the affidavit of **Sylvia Nakitto** the Applicant and **Deogratius Kibirige** the father, but briefly the grounds are:-

- a) That the Applicant was not given any hearing before being indefinitely suspended from school .
- b) That the applicant had been sent home to pick a balance of school fees only to learn while at her home in Lira district that she had been indefinitely suspended from school.
- c) That the Applicant was never told about any wrong that she could have committed not of her impending indefinite suspension.
- 20 d) That the applicant only came to learn about her indefinite suspension from her father who also learnt of the same when he went to school to clear the applicant's school fees.
- e) That failure by the respondent to inform the applicant about the school rules she had broken and failure to give her a hearing before dismissal was arbitrary , irregular, high handed and null and void for contravening the rules of natural justice
- f) That it is fair and equitable that this application is granted.

Counsel for the Respondent opposed the Application vehemently, and also relied on the affidavit in reply sworn by Nakimuli Angella, the head teacher of St Lawrence Citizens' High School,

(Cream land Campus), Nabbingo. The salient points are contained in paragraphs 3,4,5,6,8,9,10,13,15,18,22,25 and 27.

They are reproduced herein below:-

- 3) That I have been advised by our aforesaid lawyers which advice I verily believe to be true that the applicant's application is grossly misconceived, bad in law, an abuse of court process, frivolous and vexatious, brought in bad faith and court shall be moved on a point of law at a preliminary stage to have the same struck out with costs.
- 4) That the above notwithstanding, the contents of paragraphs 1,2 and 3 of the affidavit of the applicant are correct and confirm that she has been pursuing her "A" Level at the school and subscribed to strictly adhere to the school rules on 8/6/2016. (See copy of her admission form attached hereto and marked "A").
- 5) That reply to paragraphs 4,5,6,7,8,9,10,11,12,13 & 16, on the 12th October 2017,I and my Deputy Mr. Opumar Onyait Godfrey, signed several school fees demand notices for students to take home for their parents to clear the outstanding school fees balances.
- 6) That these notices were handed to the respective students who immediately left the school premises to collect the outstanding balances of their school fees, and the Applicant was among them. (See the cop of the demand notice attached hereto & Marked "B").
- 7) That the Applicant left the school premises shortly before I was briefed about the events of the previous nights' school dance on 11th October, 2017.
- 9) That the trio with the assistance of the other present members of staff, lined up students according to their campus and gender and smelt each students breath for alcohol intake against School rule 11 which is Strictly forbidden.
- 10) That by the end of the screening exercise some alcohol was recovered and about 20 students were implicated their breach having been found smelling alcohol and that included the applicant who had been screened by Ms Nalikka Victoria and her breach smelt alcohol, a fact that was confirmed by Matron who together with Ms Nalikka were conducting the girls screening.

- 13) That we then summoned all the implicated students at the office and signed them each of them a pass out form indicating the reason of their release and the date of return to school for their DC hearing among other details like name etc.
- 15) That in light to the foregoing, I personally called the applicants' father Mr. Deogratiou kibirige and informed him that the applicant had been implicated for alcohol intake at School contrary to the school rules and regulation and was required to report back with her on the 16th October, 2017 to appear before the Disciplinary Committee.
- 18) That on the 16th October, 2017, engaged in administrative duties, I delegated my Deputy who also deputizes me on the DC and who had been present on 11th October during the screening, to convene the committee for Nakitto's hearing.
- 22) That the applicant's absence and her father's election to appear without the applicant contrary to our instructions to appear with her, was construed as lack of defence on the applicants' part, utter content to the DC and school administration and DC they indefinitely suspended the applicant. (See copy of the letter handover to the applicant's father dated 16/10/2017 marked "D").
- 25) That in further reply to paragraph 14, the Applicant is a very indisciplined and rebellious student even after several warnings, defiantly continued to contravene the school rules and regulations and has become unfit to interact with the rest of the other students, as she could influence them negatively..
- 27) That in reply to paragraph 15, applicant is not likely to suffer any irreparable damages as she has been allowed to sit her exams escorted by a parent to ensure strictly adherence to the rules and regulation for the school and the exams and avoid any further bad influence of the other students. (See annexure "D").

Mr. Gedeon Munungu for the Applicant emphasized that the decision to suspend the applicant indefinitely contravenes the rules of Natural justice as the applicant was not informed of the school rules she had broken and was not heard in her Defence.

He also added that the applicant is about to sit for her Senior six exams and her parents stay in Lira, very distant from the school. Counsel emphasized that the Respondent is created by the

statute and governed under the Education Act and Regulations and therefore Amenable to judicial review. He also prayed for General damages of shs 50,000,000/= for the inconvenience caused and costs. Counsel for the Respondent raised a preliminary point that the decision of disciplining the Applicant is private in nature and does not constitute exercise of statutory power necessitating Judicial Review, and therefore the application was not proper.

She emphasized that Judicial Review concerns decisions made by Public bodies and not discipline of students and staff by schools. She also talked of the school being private and not public school under government.

10 In the alternative, she submitted that the applicant was summoned with the father but did not come and that the applicant is unfit to interact with other students as she can influence them negatively.

I have carefully considered the oral submissions on both sides and studied the pleadings on record. I hasten to point out that the law on Judicial Review in Uganda is now settled. The powers of Judicial Review by the High court do not only cover Judicial and **Quisi Judicial bodies** but also Administrative decisions and actions of statutory bodies, authorities or persons exercising Statutory Authority. The Respondent in this case, St Lawrence and its Management Committee are created by the Education (Pre-Primary, Primary and Post Primary) Act of 2008 to manage a school declared or authorized by the Ministry of Education, or District Education Officer as enshrined of the Act. There is no distinction between government owned or privately
20 owned schools as counsel for the Respondent was trying raise in her preliminary objections. All schools and institutions of Higher learning are governed and licenced under the Education Act and the Regulations made there under and they are all public institutions which attract all types of students from all over the country and outside. There is therefore no distinction between private or government owned schools as far as the laws of Uganda, including the Supreme Law, (the Constitution) are concerned. St Lawrence Citizens High School, duly licenced to operate in Uganda under the Education Act and Regulations there under is therefore a body whose actions are subject to judicial Review. The case of **Harriet Grace Bamale, through next friend vs Board of Governors of Makerere College School (1993) KALR 10**, is in point. The preliminary objection by counsel for the Respondent is therefore hereby
30 rejected.

I now turn to the merits of the case. Judicial Review can only be granted on three grounds, namely illegality, irrationality and procedural impropriety. This has been emphasized in many cases, including by the Court of appeal of Uganda in **Aggrey Bwire vs Attorney & another [2009] 1, U.L.R 240**. Procedural impropriety is a procedural ground which aims at the decision making procedure rather than the content of the decision itself. In the present application, the concern of this Court is not whether or not the decision to suspend the applicant, **Slyvia Nakitto** was right or wrong. The concern of this court is whether proper process and procedure was followed leading to the indefinite suspension of the applicant, and moreover at such a critical time when she is about to sit for her final Senior six exams.

10 Counsel for the applicant has submitted that the applicant was never informed of any offence she had committed and was never heard by the disciplinary committee of St Lawrence Citizens High School, Creamland Campus, Nabbingo. He concluded that failure to act with procedural fairness was not proper and was a violation of Natural Justice.

In response and from the affidavit in reply, under paragraphs 5,6, and 7, the Applicant was on the 12/10/2017 sent home to collect the balance of school fees. Then under paragraphs 9,10,11 and 12, it was after the applicant had been sent home for school fees when the matron one M/s Nakalyowa Gladys and Warden Mr. Joseph Mukisa informed the Head teacher, Nakimuli Angella that the applicant had been among the students whom they smelt alcohol from. Surely for all practical purposes and intends, the applicant and the other students implicated in
20 alcohol consumption should have been arraigned before the head teacher, Nakimuli Angella, immediately with evidence of alleged waragi sachets before being sent home. The alleged offence of alcohol consumption was therefore an afterthought. In any case, both M/S Nakalyowa Gladys and Mr. Joseph Mukisa who allegedly informed the head teacher, Nakimuli Angella have not sworn any affidavits to that effect. That leaves the affidavit evidence of Nakimuli Angella hanging, unsupported allegations, hearsay and not admissible or believable by any court or tribunal.

In such circumstances, I find and hold that the submissions by counsel for the Respondent that the applicant was heard before suspension are not supported by any credible evidence and accordingly rejected

Counsel for the Applicant submitted that the right to fair hearing under Article 28 (3) of the constitution is a non-Derogable right under the constitution. That is indeed the correct position of the law, which is in accordance with the principles of natural Justice. As was held in **Kulwo Joseph Andrew & others vs Attorney General & 6 others Miscellaneous Application No. 106 of 2010** by **Y Bamwine J** as he then was, judicial Review, involves the assessment of the manner in which the decision is made. The jurisdiction is exercised in supervisory manner, not to vindicate the rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality.

I entirely agree with the holding in the above case and it is applicable to the present case
10 whereby the powers of the Disciplinary committee of St Lawrence Citizens' High School have to be exercised with all fairness and due process and not high handedly and hatefully as was done.

The other Humanitarian point to consider is that the applicant is a senior Six student who is about to sit for her final exams. And neither the school Administration or counsel for the Respondent have disputed the fact that she stays in Lira in Northern Uganda. It is a fact that Lira is hundreds of miles away from St Lawrence Citizens High School and this court will therefore not stand by and allow the Applicant who, in a period of one month or so will be done with her revision and exams, to be subjected to such a harsh suspension without having been heard. To do so would be unfair and result into grave injustice. The allegation that the
20 applicant will influence other students negatively is unsupported and evidence from the bar which is not allowed by this Court.

In conclusion therefore, I do hereby allow the application and make the following orders:-

- 1) The indefinite suspension of **Sylvia Nakitto** from the Respondent School is nullified.
- 2) An order of mandamus is hereby granted directing the Respondent to admit the Applicant back to school till she completes her Senior Six U.A.C.E examination.
- 3) An order prohibiting the Respondent from harassing, intimidating or molesting the Applicant, **Sylvia Nakitto** while at the school. The apparent hatred of the applicant must stop.

4) Costs of this application be paid by Respondent.

I decline to make an order for general damages against the Respondent in the interests of peaceful co-existence and reconciliation.

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W. Masalu Musene

Judge

7/11/2017.