

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 54 OF 2018

1. FLAVIA NALWANGA

2. PHIONAH NAMUTEBI

suing through PROSSY NAKAFERO ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

UGANDA NATIONAL EXAMINATIONS BOARD :::::::::::::::::::::::::::RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

1. The Applicants brought this judicial review application under sections 36(1) (a) and 37 (1) and (2) of the Judicature Act, Rules 6, 7 and 8 of the Judicature (Judicial Review) Rules, Section 98 of the Civil Procedure Act and Order 32(1) and (2) of the Civil Procedure Rules seeking the orders and declarations below:
 - i. A declaration that the withholding and cancellation of the Applicants Uganda Certificate of Education (herein after UCE) results of 2017 is illegal and unfair.
 - ii. A declaration that the Respondent failed to execute its duties in regard to its mandates to the law, examination process and thus violated the rights of the Applicants.
 - iii. A prerogative order of certiorari quashing the said decision withholding and/or cancellation of the results of the Applicants.

- iv. An order of mandamus for unconditional release of the Applicants UCE results of 2017.
 - v. Costs of the application.
2. The Applicants are represented by Mr. Abaine Jonathan of M/s. Abaine – Buregyeya & Co. Advocates and Mr. Mathias Ssekatawa of M/s. MMAKS Advocates represents the Respondent.
3. The Respondent opposes the application saying that there was no violation of the Applicants rights since they were properly listed among the students from Victoria high school Nansana who cheated in their UCE examinations in 2017. They were properly informed of the cheating allegations and the withholding of their results through their head master who informed and summoned them to appear at the Respondent offices where hearings were conducted and they were properly informed.
4. At the beginning of the hearing the Applicants counsel raised issues of the Applicants being erroneously listed among the students said to have cheated. The court directed the Respondent counsel to have this verified. After this verification, the Respondent filed its affidavit in reply by Mr. Abubaker Kakembo - the Chairperson of the Respondent's external security committee in which he explained that results of 57 students including the Applicants with index numbers U2156/103 and U2156/104 were withheld on suspicion of examination malpractices. He also testified that they carried out investigations which included according the Applicants and other suspected students a fair hearing to verify the malpractice suspicion. He also averred that after the investigation, the Respondent was satisfied that the Applicants and other students were indeed involved in examination malpractices and that the Respondent is in the process of recommending cancellation of these students results. Annexures B and C to the Respondent's affidavit demonstrate that the Applicants were among the students who attended the hearing.
5. In fact the Applicants do not deny having attended. Only they contend that they had only accompanied their friends. This explanation is rather wanting. If they had only escorted their

friends, there would be no need to sign the register of those attending the investigation hearings.

6. This court is satisfied that the Applicants were fully made aware of the examination malpractices they were implicated in and during the investigations their right to be heard and fair hearing under Article 28 of the Constitution and other rights concerning fairness were fully executed by the Respondent.
7. Examination malpractices are a serious challenge in the education sector in this country. There is a need for the Respondent to take them seriously as part of the process of cleaning up the sector. It would be unfortunate and unnecessary for this court to block the Respondent from carrying out this cleaning in the sector. Judicial review was never meant to stop institutions from properly carrying out their lawful mandates.
8. This judicial review application wants the court to stop the Respondent from carrying out its statutory mandate. For the above reasons, I am not satisfied that this is a proper case for judicial review and I accordingly deny the same. Considering the Applicants are students with no financial means, I will not sanction them in costs. So each party shall bear its own costs.

I so order

Lydia Mugambe

Judge

20/06/2018