

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO.216 OF 2016

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW BY ATWOGYEIRE
ROBERT AGAINST THE DECISION OF BOARD OF GOVERNORS OF KYAMBOGO
COLLEGE SCHOOL**

ATWOGYEIRE ROBERT ----- APPLICANT

VERSUS

BOARD OF GOVERNORS KYAMBOGO COLLEGE SCHOOL----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36,37,38 of the Judicature Act as amended, Rules 3,5,6,7 and 10 of the Judicature (Judicial Review) Rules, 2009 seeking orders that;

- a) An order of Certiorari to quash and declare as null and void, or otherwise illegal, and/or a nullity the decision of the respondent dismissing the applicant's son EZRA ZEREHIAH from school and denying him right to do the exams for second term.
- b) A declaration that the decision of the respondent dismissing the applicant's son from school and denying him right to do the exams despite having paid fees was an error and the respondent failed or refused to follow the due process was an error and the respondent's failed or refused to follow the due process by refusing to accord the applicant a hearing in opposition to their decision.
- c) An order of mandamus against the respondent mandating them to allow the applicant's son complete second term studies for the term exams.

The applicant as well prayed for costs of this application. The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- I) The decision of the respondent dismissing the applicant's son from school and denying him a right to do examinations despite paying fees was an error in law and breach of the principles of Natural justice and fairness.
- II) That the decision of the respondent dismissing the applicant's son from school and denying him right to do exams despite having paid fees without allowing the applicant due process and hearing in opposition was unlawful because the respondent failed/ refused or neglected to accord a hearing to the applicant when they refused to adequately entertain the applicant's objection.
- III) That the respondent's decision was in breach of the Applicant's legitimate expectations from the school seeing as fees for second term were full paid and his son did no other thing to warrant a denial from the school to complete the term.

The respondent opposed this application and averred that the applicant failed to pay the school fees for 1st and 2nd term in breach of the rules and regulations for the admission and forfeited his place at Kyambogo College School.

According to the rules and regulations of the school, any child who has not paid fees is not permitted in the school.

To appreciate the decision of this court I find it proper that I lay down the chronological sequencing of the events leading to this application as shown from the pleadings.

- a) The applicant's son was admitted at Kyambogo College School in Senior 2W for academic year commencing 02-02-2015.
- b) The applicant's son was required to read the school regulations very carefully and sign them with his parent/guardian. You should should promise to strictly abide by those regulations as a student of this school by signing the undertaking attached.
- c) The applicant's family had major financial constraint that made it impossible for them to afford his school fees at Kyambogo College School for the whole term. He therefore opted out of the term until we could find money to pay for the fees.
- d) The applicant's son reported for second term and made payment for the school fees in two instalments.
- e) On the 3rd day of August 2016, the school administration sent back the applicant's son and demanded that unless he pays the school fees for 1st term that was not attended at all, he would not be allowed to complete the second term or do examinations for that matter.
- f) The applicant on the 4th day of August 2016 went and met the school Headmistress to seek an explanation and she in turn asked him to put his complaint in writing which he did on 16th August 2016.
- g) The applicant waited for a response to his complaint in vain and then sought the advice of his advocates who also wrote a letter to the school and they also got no response.
- h) The applicant's son did not sit the end of second term examinations in August 2016.

- i) The applicant is dissatisfied by the decision to refuse his son from sitting these examinations and yet he had paid for the school fees of second term although he had never paid for first term examinations which he claims his son never attended school and did not get any services from the school.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Three issues were proposed for court's resolution;

- 1. *Whether the application is amenable for judicial Review?***
- 2. *Whether the respondent's actions of refusal to allow the applicant's son to sit for senior three second term examinations and dismissing him from school was lawful, proper and in line with principles of natural justice.***
- 3. *Whether the applicant is entitled to the remedies sought?***

Counsel for the respondent has raised some preliminary objections for consideration and I shall resolve them first. The applicant was represented by Mr Arthur Ayorekire whereas the respondent was represented by Mr Arinaitwe Tonny jointly with Mr Justus Nuwamanya.

Preliminary Objections

The respondent has raised an objection of lack of authority of the applicant to bring this application for judicial review. Secondly, he also claims that the applicant brought this application on behalf of a minor without authority of a next friend. Thirdly, the principle of Privity of contract, since the applicant does not have any contract with the school.

The applicant clearly states that he brings this application as the father of the Ezra Zerehiah who was denied a right to sit examinations after he had duly paid the school fees of his said son. The applicant is aggrieved by the decision of the school to refuse him from sitting he examinations after satisfying the requirements of the school. In addition he states that the decision of the school was in breach of his legitimate expectation that his son would be allowed to sit examinations after paying the school fees of his son.

The nature of this application is a special application governed by the Judicial review rules and the civil procedure rules apply with necessary modifications and to some extent they are inapplicable. The applicant has not stated that he is an agent of his son in order to bring him within the ambit of Order 3 of the CPR. Similarly, this application was not brought as a suit for a minor but as a father of the minor who indeed pays fees and demands to know why his son was not allowed to sit examinations after satisfying all the requirements.

Lastly, on privity of contract, the letter of admission is quite clear, that the parent or guardian is supposed to sign rules and regulations that bind parents to pay school fees as required under the rules. According to the admission letter, paragraph 2 it provides; *You are advised to read the school rules and regulations carefully and sign them with your parent/guardian.*

If counsel for the respondent had bothered to read this admission letter carefully, then he should not have raised this objection.

I find that the above objections are misplaced, baseless and devoid of merit.

Defective affidavit

The respondent has also raised an objection in respect of two of the paragraphs in the affidavit in support that they are based on information of his advocate and therefore according to him this offends Order 19 rule 2.

The two paragraphs state;

“ that we are further informed by our lawyers that the actions of the respondent at best constitute an abuse of due hearing process, are unlawful and a nullity and the decision thereof, is illegal, null and void.”

“that my lawyers inform me that such actions abuse fairness and other principles of natural justice and are a punitive beach of my and my son’s legitimate expectations of the school.”

I do not see how these paragraphs offend the provisions of Order 19 rule 3.

The applicant has indicated his source of knowledge to what he has deposed. Knowledge can be acquired through human senses like seeing, hearing, smelling, tasting or touching followed by understanding and perceiving what one has sensed.

Where the averments in an affidavit are not based on personal knowledge, the source of information should be stated. The nature and source of knowledge has to be stated or disclosed with sufficient particularity. See ***Civil Procedure and Practice in Uganda 2nd Edition by Ssekaana M & Ssekaana N.S***

It appears counsel for the respondent confused information based on knowledge for hearsay which is strictly not allowed. What is stated in the two paragraphs is not hearsay and the case cited by counsel of ***Julius Maganda vs National Resistance Movement*** is quoted out of context since in that matter the objection on the affidavit was about hearsay evidence.

I wish to note that the respondent’s affidavit in reply of Dr Ayikoru Joyce Asiimwe on the other hand is full of hearsay since she cannot prove to her knowledge what transpired between the applicant and the Headmistress. This was rectified by the Headmistress Annie Tumwesigye Makaru deposing a supplementary Affidavit.

The respondent's objections are devoid of merit and are dismissed with costs.

ISSUE ONE

Whether the application is amenable for judicial Review?

Counsel for the applicant submitted that the respondent as an administrative body made a decision denying the applicant's son-Ezra Zerehiah from sitting his end of 2nd term examinations for senior Three and also dismissed him from school claiming he did not pay fees for first term.

The applicant's son did not pay fees for first term because he did not study that term. It was the basis for refusing him to sit the second term examinations and was later dismissed from the school.

It was this decision that led the applicant to file this application seeking to quash the same for being unfair, illegal and done with procedural impropriety.

Counsel for the respondent in reply submitted and contended that there was no decision taken by the respondent. He stated that the applicant has not shown that the respondent made any decision as alleged in the applicant's affidavit and have not presented the same to court.

He submitted further that the respondent did not dismiss the student from the school. The administration merely demanded for the unpaid school due from the applicant's son who was sent to go and pick the dues in observance of the School rules.

It is clear from paragraph 6 of the headmistress; the least acceptable conceivable position was that the child pays all the fees for the first and second terms lest he would not be allowed in school.

The headmistress further states in paragraph 7; The applicant was given a hearing and proper advise which he failed to appreciate but threatened that he would institute court proceedings.

In paragraph 8 she states that the applicant was given due and proper hearing and the reasons why the child had been stopped from attending school.

It can be deduced from all the above three paragraphs of the headmistress that there is decision that was taken demanding that the applicant pays the fees for first term or else his son could not be allowed from attending school.

I do not agree with the submission of the respondent's counsel that there was no decision by the school.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and

control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze Vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd Vs Attorney General Misc Cause No.125 of 2009, Balondemu David Vs The Law Development Centre Misc Cause No.61 of 2016.***

For one to succeed under Judicial Review it is trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public.

This issue of the applicant is therefore resolved in the positive.

Issue Two

Whether the respondent's actions of refusal to allow the applicant's son to sit for senior three second term examinations and dismissing him from school was lawful, proper and in line with principles of natural justice.

The gist of the Applicant's submissions and complaint is in respect to this issue is that the applicant's son did not attend first term and neither did he do exams for first term. He therefore could not pay fees for a term he did not attend.

Secondly, that nowhere in the school rules was it stated that where a student does not attend a term of the school he should pay fees for that term.

Counsel for the applicant further submitted that when the applicant's son paid fees for second term and started school, he reasonably and legitimately expected to have exams at the end of the term. He was however deprived of this legitimate expectation. Nothing would be wrong with chasing a child from school for failure to pay fees, however chasing a child stating he did not pay fees for the term he did not study, without a warning and having it indicated anywhere in the school rules, is where the problem is.

The respondent's counsel in his submissions elected to argue the two issues together, but on close scrutiny I do not see any submission in respect of this issue.

He has only contended in his view that this issue is a departure from his pleadings before court.

The case before the court and the decision that was made by the Headmistress was in respect of second term examination and not end of senior three year examinations the said issue was accordingly amended to reflect the proper position as per pleadings.

The school rules provide for fees obligations/school dues;

All students must pay school fees and other specified requirements on the first day of the term.

Any student who fails to pay school fees or to meet other school requirements shall be automatically disqualified from attending school and sitting both internal and external examinations, and forfeits his/her place in the school.

It is therefore clear that when the applicant's son failed to pay the school fees of term one of senior three was automatically disqualified from attending school. However when the applicant made a plea before the Headmistress about his position and fate of his son towards the end of 2nd term, he was advised to pay the school fees for first term in order to be required to continue attending school.

The applicant's contention that he was not supposed to pay for the fees for the term his son did not attend school is untenable. At the time he was admitted in the said school, it was clear that he had to attend all terms of the school and failure of which he would forfeit his position in the school.

If at all the parent had financial problems as he contends, he was duty bound to inform the school administration and they agree on a clear position and status of his son. It was wrong for the parent to just stop his son from attending school for a whole term and later turn up in a second term and claim that he was unwilling to pay since his son had not attended school for a whole term and therefore he is not indebted.

The schools plan for a whole academic year with a view of the number of available students and the said amounts are broken down per term for better management and also approval of the Ministry of Education. This implies that the non-attendance of a student would seriously impact on the school programme and the same is recoverable in order to fill the deficit.

In case the applicant wanted a waiver for non-attendance of school for a whole term, he was duty bound to inform the school administration in writing in order to be advised appropriately on how this situation was to be handled instead of assuming that since his son did not attend then he had no financial obligation to the school. Indeed such situations may arise when a parent fails to meet the schools fees or when a student is very sick and unable to attend school for the whole term. The school administration may make a special arrangement outside the school rules and regulations to address the problem.

The above is buttressed by 'annexture D' to the affidavit of the applicant under the title head of School fees payment: *Any challenges in school fees payment should be discussed by the parent*

himself or herself and the administration. The payment of fees should not be at wish of every parent. The rule stipulates that fees is payable on the 1st day of the term. The payment of school fees should not be pegged on the days attended. Upon admission you are expected to attend school for all the days and are liable to pay the fees due to the school.

The applicant in his pleadings contended that he had a legitimate expectation that his son would be allowed to sit end of second term examinations. The principle of legitimate expectation arises from a promise and conduct or representation.

The principle of legitimate expectation is concerned with the relationship between public administration and the individual. It seeks to resolve the basic conflict between the desire to protect the individual's confidence in expectations raised by administrative conduct and the need for the administrators to pursue changing policy objectives. The principle means that expectations raised as a result of administrative conduct may have legal consequences. Either the administration must respect those expectations or provide compelling reasons why the public interest must take priority.

Therefore the principle of legitimate expectation concerns the degree to which an individual's expectations may be safeguarded in the face of a change of policy which tends to undermine them. The role of the court is to determine the extent to which the individual's expectation can be accommodated within the changing policy objectives.

The origins of this ground of review is traced in the case of **Schmidt vs Secretary of State for Home Affairs [1969] 1 All ER 904**. Lord Denning noted that;

“It all depends on whether he has some right or interest or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say”

Applying this principle to the facts of the case, Lord Denning said:

“A foreign alien has no right to enter this country except by leave, and if he is given leave to come for a limited period, he has no right to stay for a day longer than the permitted time. If his permit is revoked before time expires, he ought, I think, to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right-and, I would add, no legitimate expectation-of being allowed to stay. He can be refused without reasons given and without a hearing. Once his time has expired, he has to go”

In the case of **AG of Hong Kong vs Ng Yuen Shiu [1983] 2 All ER 346**, the Privy Council held that, in light of the statement by the Government, the respondent had a legitimate expectation of being accorded a hearing.

It can be deduced from the above cases that legitimate expectations may include expectations which go beyond legal rights, provided that they have some reasonable basis. Secondly, the legitimate expectation may be based on some statement or undertaking by, or on behalf of, public authority which has the duty of making the decision, if the authority has through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied an inquiry. Thirdly, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it would act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.

The applicant does not show any basis for any legitimate expectation which he claims to have had after he failed to meet the school obligations of payment for the fees

One of the requirements for a legitimate expectation to be effective is that the promise, the representation that gave rise to the expectation, should be clear, unambiguous and unqualified.

This is an essential requirement because the person cannot claim to have expected the public authority to act in a particular way if the representation was unclear or was ambiguous or qualified-in such circumstances, it would not be reasonable for the applicant to have relied on such an expectation.

The decision to stop applicant's son from attending school due to non-payment of fees of the previous term was taken in accordance with the school rules and it was legally taken.

The decision taken by the school administration was not irrational as counsel for the applicant contends.

Irrationality/unreasonableness has been defined to mean when there has been such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and law before it would have made such a decision. Such a decision is said to be in defiance of logic and acceptable moral standards. ***See: Council of Civil Unions Vs Minister of the Civil Service [1985] AC 374.***

The question that this court must answer is whether the impugned decision of the respondent was tainted with gross unreasonableness given the circumstances of this case as presented and discussed above.

The circumstances of this case as set out herein above are very clear, the school administration attempted to accommodate the applicant by allowing his son to continue provided he pays school fees for the first term. The applicant's son had forfeited his admission to Kyambogo College and was only subject to readmission on new terms by the schools and he cannot turn around to call such terms irrational or unfair.

In the result this issue is resolved in the positive against the Applicant.

ISSUE THREE

Whether the applicant is entitled to the remedies sought in the application.

In the result I find this application to be lacking in merit and it's hereby dismissed.

I hereby order that each party bears its own cost of the application but the respondent shall meet costs of the dismissed preliminary objections.

**SSEKAANA MUSA
JUDGE
16th /08/2018**