

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.386 OF 2018

ANGUTUKO BOSCO BAKOLE----- APPLICANT

VERSUS

KYAMBOGO UNIVERSITY----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Articles 20, 28,30,40(2), 42 & 50 (1) of the Constitution and Section 33, 36(1)(a) and 37 (1),(2) of the Judicature Act and Section 98 of the Civil Procedure Act, Rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following Judicial reliefs;

- 1.) A declaration that the continued non issuance of the Degree Certificate of Bachelor of Education to the Applicant by the Respondent and or its Vice Chancellor and Academic Registrar is illegal, irregular and or unlawful and as such infringes on the Applicants' Constitutional rights.
- 2.) An order that the Vice Chancellor and the Academic Registrar of Kyambogo University the Respondent issue the Applicant his Degree Certificate of Bachelor of Education of Kyambogo University.
- 3.) General damages for inconvenience suffered by the Applicant as a result of the Respondent's unlawful acts.

4.) Costs of this Application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant but generally and briefly state that;

- 1) The applicant was admitted on the 12th day of July 2012 to the respondent University to pursue the Bachelor of Education Degree which programme was to last for 2 years since he was a diploma holder.
- 2) The applicant completed studies and was to graduate in January 2015 but the respondent staff informed him that his results were misplaced.
- 3) The Applicant research results which had been misplaced where subsequently found and he was able to graduate on the 29th day of January 2016.
- 4) The applicant was only issued with a transcript and not the Degree certificate. He continued checking with academic registrar's office whether the degree certificate was ready for the whole of 2017 and 2018.
- 5) The applicant and other students who were affected wrote a joint letter to the Vice Chancellor of the respondent demanding for the certificates to be printed since Ministry of Education & Sports had advertised regularization of graduate officers currently appointed as Assistant Education Officers.
- 6) That the applicant requested for the cover letter which he could submit to the Ministry of Education to allow his scale to be increased from U5 to U\$ which was availed and submitted the said letter submitted but the same was rejected and they only required a Bachelor's Degree certificate.

- 7) That sometime thereafter, there was another internal advertisement for the various positions which the applicant had intentions to apply for the position of Education Officer.
- 8) That the applicant made several attempts through various correspondences to the respondent to comply with its legal mandate all in vain and with no certainty on when they will comply.
- 9) That as a result of the failure to give the applicant his Bachelor of Education degree certificate, he has been deprived of the right to work and practice his profession at a higher level and get more income.

The applicant contended in his submissions that the respondent had not filed an affidavit in reply, but I have seen an affidavit in reply on record filed on 19th February 2019 by Dr Annie Begumisa.

She contended that the Academic Certificate of the Applicant was printed on 22nd January 2019 following a consent Order and the same has been ready for collection from the University but the applicant has never picked the said certificate.

That the allegations of failure to graduate in 2015 due to misplacement of his Research results are untrue and without any factual basis. The University was in the process of printing all Certificates of Students who graduated before 2016.

The applicant filed an affidavit in rejoinder to the said affidavit and contended that;

- 1) There was never any consent order reached between the applicant and respondent and any attempt to retrieve the certificate after the court mentioned the case on 16th January 2019 proved futile.
- 2) That he was informed that he had to withdraw his case in court before he could access his degree certificate.
- 3) That the applicant went and met the Academic registrar who confirmed to him that she was not in custody of his certificate.
- 4) That the applicant cannot have any reason why he should not collect his degree certificate if at all it is available.

5) That the respondent called for a meeting where they only offered the applicant damages of 14,000,000/= for the entire period of 4 years he was inconvenienced and costs of 2,500,000/= which proposal he rejected.

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.

The applicant did not formulate any issues for determination but rather argued the whole application *omni bus*. I shall resolve this application in that manner. The applicant was represented by *Mr Ben Ikilai* whereas the respondent was represented by *Claire Ninsiima*.

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.

DETERMINATION

It is not in dispute that the respondent failed to give the applicant his degree certificate in time and the applicant was justified in absence of any cogent reasons to apply to court seeking orders of Mandamus.

The respondent has a statutory duty and obligation to issue certificates to the persons who have graduated promptly.

It may be true that the University had challenges in procuring the same in time but they have a duty to the students who have successfully completed their degrees to enable them hit the job market search with all the necessary academic documents.

This court is also mindful that the failure to give the degree certificates was not a deliberate act but rather a general problem and there is no basis of personalising the same as if it was only done to the applicant arbitrarily.

Students have a legitimate expectation that once they graduate, they would be availed all the necessary academic documents in time to enable them move on to the next level. The same obligation the University extends to the students to follow the University rules and statutes should be extended to the University to act prudently.

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 University policy on issuance of degree certificates must consistent and not be changed to the detriment of the students who struggle to complete the degree programme within a time frame.

The applicant is entitled to issuance of his degree certificate without any excuses and the University administration must ensure to uphold this at their financial detriment whether to make only one copy.

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d)** Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See *Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016*

The applicant has satisfied the above requirements and the respondent has given a meaningful rebuttal to the failure to give the applicant his degree certificate within a reasonable time.

An Order of Mandamus does issue compelling the respondent to issue the applicant with his degree certificate within 30 days. Any prolonged delay after 30 days shall attract shs 50,000/= per day.

The applicant has sought general damages for the inconvenience suffered by the applicant as a result of the respondent's unlawful acts.

The habit of seeking damages as if it is an automatic right in every application for judicial review should be discouraged. Judicial review is more concerned with

correcting public wrongs and not a way to demand or seek to recover damages or enrichment by way of damages.

An individual may seek compensation against public bodies for harm caused by the wrongful acts of such bodies. Such claims may arise out of the exercise of statutory or other public powers by statutory bodies.

The fact that an act is *ultra vires* does not of itself entitle the individuals for any loss suffered. An individual must establish that the unlawful action also constitutes a recognizable tort or involves a breach of contract. See ***Public Law in East Africa by Ssekaana Musa pg 245-249***

The nature of damage envisaged is not necessarily categorized as special or general or punitive/exemplary damage. But such damage is awarded for misfeasance or nonfeasance for failure to perform a duty imposed by law.

The tort of misfeasance in public office includes malicious abuse of power, deliberate maladministration and perhaps also other unlawful acts causing injury. Such abuse of power may arise where the act is done maliciously, that is with the intention of injuring the claimant, or knowing that the act is *ultra vires* the powers of the public body and knowing that the claimant will probably suffer loss. See ***Three District Council v Governors of the Bank of England (1998) 11 Admin L. Rep 281***

A breach of a statutory duty may give rise to a civil action for damages by a person who has suffered harm as a result of that breach. However not all statutory duties give rise to a right to damages.

The nature of actions by the respondent entitle the applicant to some damages and this court awards the applicant a sum of 20,000,000/= for the inconvenience and delay to be given his degree certificate.

The applicant is awarded costs of the application.

I so order

SSEKAANA MUSA

JUDGE

16th /08/2019