

PhD thesis including nomination and appointment of the Applicant's Doctoral Committee.

- iv. An order of mandamus directing the first Respondent's college of humanities and social sciences and the Directorate of research and graduate training to take over the administration, supervision and examination of the Applicant's PhD thesis including nomination and appointment of the Applicant's Doctoral Committee.
 - v. An order to the first Respondent/MISR to pay the Applicant's tuition and related logistical requirements for his continued stay on the PhD program.
 - vi. General damages equivalent to the loss occasioned including legitimate expectation to graduate on time, lost opportunities, emotional and financial drain.
 - vii. Costs of the application.
2. Mr. Adam Kyomuhendo of M/s. Byaruhanga & Co. Advocates represented the Applicant and the Respondents were represented by Mr. Hudson Musoke from the first Respondent Legal Directorate.
 3. The application was supported by the affidavit in support and a supplementary affidavit of the Applicant. The grounds were briefly that in 2012, he was admitted by the first Respondent on a study program leading to an award of PhD in social studies at MISR, its affiliate. About 30th August 2017, the academic Board of MISR being manipulated by the second Respondent appointed Dr. Virgine Tallio to replace Assoc. Prof. Okello Ogwang as the Applicant's main supervisor as well as the second Respondent together with Dr. Samson Bazabeh as members of the Applicant's doctoral Committee. The decision of the MISR Board breached the principles of natural justice, was shrouded in illegality, procedural impropriety, irrationality and breach of legitimate expectation and should be declared inoperative, null and void.
 4. On 6th October 2017, the Applicant appealed the Institute Board's decision to the Examinations, Irregularities and Appeals Committee of the College of Humanities and Social Sciences (herein after the Appeals Committee) under which MISR falls. The Appeals

Committee partly allowed his appeal and forwarded the matter to the first Respondent's Directorate of research and graduate training for implementation. The Applicant was aggrieved by this decision because it was grossly irrational and unreasonable to him. As a result, the Applicant has suffered and is likely to continue suffering irreparable harm through the violation of his right to education, equality and non-discrimination.

5. The application was opposed by the Respondent through affidavits in reply of Dr. Ernest Okello Ogwang, the Deputy Vice Chancellor (Academic Affairs) of the first Respondent and the second Respondent. Dr. Okello deponed that he believed the application is frivolous and vexatious, brought with ill intentions and ought to be dismissed with costs. The Applicant was aware that his matter was being considered by the internal organs of the first Respondent before he prematurely instituted these proceedings. Since filing the instant application, the Respondents have not discussed this matter. The recommendation of the Appeals Committee are in the Applicant's interest and will help him complete his course within a timely period with the course schedule.
6. The second Respondent affirmed that MISR set in place all the requisite facilities, supervisors and committees to enable the Applicant successfully complete his studies in the prescribed time. At the 19th meeting of the academic Board held on 30th August 2017, two deficiencies in the Applicant's second draft of his thesis were observed to the effect that "the candidate had been funded for a year's fieldwork and would have to make up the deficiency of at least 5 months" and the candidate was "lacking ... competence in the language of research." The Board gave the candidate the option to shift the focus from popular culture to historical and political issues which would not require as deep expertise in the Somali language. The Applicant agreed to return to Somaliland for further field research and to London for archival research.
7. Instead of the Applicant appreciating the best-intended action by his supervisor and members of his committee, he resorted to appealing. The MISR academic Board upheld the decision of the supervisor and the Committee which prompted an appeal to the Appeals Committee. The Appeals Committee duly heard and accorded the Applicant a right to be heard and

maintained the earlier decision of the supervisor and the Committee. The Committee put in place sufficient safeguards to enable the Applicant proceed with his studies. The Respondents are not guilty of any dilatory conduct, the application is frivolous, vexatious, brought with ill intentions and should be dismissed with costs.

b) Law applicable

8. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374.**

c) Analysis

9. The Respondents raise preliminary objections saying that the Applicant's supplementary affidavits were filed without leave of court and should be struck out. The Respondent counsel raised this issue orally and after hearing from both sides, I admitted the same as part of the record. Leave was granted to file the affidavits. This matter was closed at that stage albeit orally. It is therefore disingenuous of the Respondents to raise it at this final stage as if it was not addressed. In any event, it would be a miscarriage of justice to disregard these pleadings when they formed part of the record at the time of writing this ruling. So even in my inherent powers under section 98 of the Civil Procedure Act, I would grant the said leave to avoid a miscarriage of justice.
10. After several meetings between the parties in an effort to settle this matter, in a letter dated 3rd October 2019 and received in court in 4th October 2019, the Respondents came up with a new set of supervisors and doctoral committee members for the applicant's PhD study. In this new arrangement, the Respondents proposed Dr. Ssali Simba Kayunga and Dr. Samson Bezabeth as the supervisors and Dr. Pamela Khanakwa, Professor Peter Atekyereza, Prof. (Sr) Dominic Dipio and Associate Professor Patrick Mangeni as the doctoral Committee.
11. When the parties appeared in court at the next sitting, the Applicant expressed that he remained strongly opposed to Dr. Samson Bezabeth as his supervisor. His biggest concern

was that the said Bezabeth is a prodigy of the second Respondent with whom the Applicant totally fell out and which led to the application in court. According to the Applicant, to have the said Bezabeth on his PhD supervisory team is to retain the biased, prejudiced and unreasonable influence of the second Respondent which he came to court for in the first place.

12. The Applicant suggests that one of his original supervisors Prof. Abasi Kiyimba be reinstated on the team of his supervisors since he was unreasonably removed yet he is fully conversant with the nature of his topic.
13. It is not normal for a student to choose their PhD supervisors. However it is also not normal for the University to insist on persons being supervisors of a PhD student when communication has irretrievably broken down between the two and the student is very suspicious of every action of the said supervisor. This abnormality and suspicion extends to any other person the student perceives to be in the camp of the supervisor he falls out with.
14. So when choosing a supervisor or a replacement, the first Respondent must ensure that the integrity of these processes is protected. In this case Prof. Abasi Kiyimba was initially part of the Applicant's supervisory team and the supervision was going on well with him. He only left the team because he was going for medical treatment. He has since returned from the said treatment, is conversant with the Applicant's thesis and the Respondents have presented no worthy objection regarding him. On the other hand, the Applicant appears to have a better working relationship with him and prefers that he replaces Bezabeth on the supervisory team. I find this replacement fair, reasonable and rational in the circumstances of this case. As a result, the Applicant's PhD team shall be picked from the following list of persons who have demonstrated to be neutral persons with no prejudice to the Applicant. These include (1) Prof. Abasi Kiyimba, (2) Dr. Simba Ssali Kayunga, (3) Drs. Pamela Khanakwa, (4) Dr. Suzan Kiguli, (5) Professor Peter Atekyereza and (6) Prof. (Sr) Dominica Dipio.

15. It would be unfair to make the Applicant pay fees and other related costs for the years this impasse has existed when he was not formally working on his PhD. So in the interest of justice I hereby direct waiver of any requirement of fees from the Applicant for the years he has been on the fall out with his supervisors. Instead the Applicant shall pay fees for only one academic year within which his supervision should be completed and if he passes, allowed to graduate.
16. Put simply, it is irrational, irregular and unreasonable to force supervision of a PhD student by someone he has fallen out with, or any considered proteges of such person. Supervision for PhD should be by someone he has trust and confidence in.
17. For the inconvenience, loss of opportunities and time, the Applicant is entitled to general damages.
18. Based on the above, the application is allowed in part as hereunder:
- i. An order of certiorari is issued quashing the decision of the examinations, irregularities and appeals committee of the college of humanities and social sciences irrationally taken on 12th December 2017 arising from the Applicant's appeal regarding administration, supervision and examination of his PhD thesis.
 - ii. An order of certiorari is issued quashing the entire proceedings and decision of the academic board of Makerere Institute for Social Research (MISR) appointing Dr. Virgine Tallio to replace Dr. Okello Ogwang as the Applicant's new main supervisor and the second Respondent together with Dr. Samson Bezabeth as members of the Applicant's doctoral committee reached at its meeting held on 30th August 2017.
 - iii. An order of prohibition barring the second Respondent and MISR from involving themselves in the administration, supervision and examination of the Applicant's

PhD thesis including nomination and appointment of the Applicant's Doctoral Committee is issued.

- iv. An order of mandamus is issued directing the first Respondent's College of humanities and social sciences and the Directorate of research and graduate training to take over the administration, supervision and examination of the Applicant's PhD thesis including nomination and appointment of the Applicant's Doctoral Committee. The same should be picked from the list of persons below who have been demonstrated to have no bias to the prejudice of the Applicant: (1) Prof. Abasi Kiyimba, (2) Dr. Simba Ssali Kayunga, (3) Dr. Pamela Khanakwa, (4) Dr. Suzan Kiguli, (5) Professor Peter Atekyereza and (6) Prof. (Sr) Dominica Dipio.
- v. The Applicant is awarded general damages of Ug. shs: 25,000,000/= (Uganda shillings twenty five million only).
- vi. The Applicant is also awarded costs of the application.
- vii. The application is denied in all other respects.

I so order.

Lydia Mugambe.
Judge.
11 June 2020.