

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 4 OF 2019

TERZOL JOBEY :.....:APPLICANT

VERSUS

- 1. INTERNATIONAL UNIVERSITY OF EAST AFRICA UNIVERSITY COUNCIL**
- 2. INTERNATIONAL UNIVERSITY OF EAST AFRICA DEAN OF STUDENTS**
- 3. INTERNATIONAL UNIVERSITY OF EAST AFRICA**
UNIVERSITY DISCIPLINARY COMMITTEE :.....: RESPONDENTS

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This is the ruling on the preliminary objections raised by counsel for the Respondents that; (1) the application does not disclose a cause of action against the Respondents; (2) the Respondents are nonexistent in law thus the application cannot stand; and (3) fraud as a cause of action cannot be sustained through an application by way of notice of motion. Counsel prayed that the objections be upheld and the application be dismissed with costs.
2. The Applicant was self-represented and the Respondents were all represented by Mr. Mayambala Michael of M/s. Kasolo & Khiddu Advocates.

3. In reply, the Applicant submitted that the application disclosed a cause of action against the Respondents. All the Respondents were properly joined and are competent Respondents. He also submitted that the aspect of fraud comes out of a substantive issue which negates the Respondents' defence that the Applicant had not paid 50% in tuition.
4. Section 103 of the Universities and Other Tertiary Institutions Act of 2001 as amended provides that "on the publication of a Charter under section 102, the Private University to which the Charter is granted shall be – (a) accredited and certificates, diplomas, degrees and other academic awards by the University shall be recognized as of comparable and equivalent merit with those of other accredited and Public Universities in Uganda; (b) a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and may for and in connection with its objects and functions - (i) purchase, hold, mortgage and dispose of any property whether movable or immovable. (ii) enter into any contract or transaction as may be expedient; and (iii) do or suffer any other act or thing as bodies corporate may lawfully do or suffer; (c) registered by the National Council."
5. In **HCMA No. 576 of 2006 Murangira Ssimbwa v. The Board of Trustees Miracle Center & Anor**, it was held that "the law is now settled. A suit in the names of a wrong plaintiff or defendant cannot be cured by amendment. While Order 1 Rule 10 (2) empowers court to add or strike out a party improperly joined; and Order 1 Rule 10 (4) allows an amendment of a plaint where the Defendant is added or substituted, such amendments of the plaint can only be made if they are minor matters of form, not affecting the substance of the identity of the parties to the suit: Where the amendment by way of substitution of a party purports to replace a party that has no legal existence, the plaint must be rejected as it is no plaint at all: See also **High Court Miscellaneous Application Number 503 of 2000. Aristoc Booklex Limited Vs. Vienna Academy Limited**, unreported."
6. It is not in dispute that the Applicant is a student of the International University of East Africa which is accredited and can sue and be sued under section 103 of the Universities and Other tertiary Institutions Act. Although the preliminary objection contends that the

Respondents are not legal persons under the law, it is not disputed that the same exist as the University's governing bodies and persons of the University. More important, the Respondents in this capacity were the ones specifically concerned with the Applicant's suspension which he is challenging in court.

7. For purposes of effectively apportioning damages and costs, it would have been safer for the Applicant to bring this application against the University at least as one of the Respondents. However for purposes of judicial review, I find it difficult to throw out the judicial review application simply because the Applicant sued the specific institutions that took the decision he challenges instead of suing the university itself. Whether the action is brought against the University or its governing institutions, the decision that the Applicant is challenging remains the same. Because the Applicant properly sued the internal governing institutions that were concerned with the decision he is challenging, I find the preliminary objections moot, the judicial review application can safely stand and be heard.
8. After looking at the judicial review application, I am satisfied that it is more about challenging the suspension decision of the Respondents than any claim of fraud that the Respondents allude to. Moreover, there is a suspension decision, the Applicant feels aggrieved by it and has challenged the same. This makes it a proper case for judicial review. Based on the above, the preliminary objection are dismissed. Costs shall be in the cause.

I so order.

Lydia Mugambe.
Judge.
11 June 2020.