

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO 427 OF 2017**

**AGABA PATIENCE=====PLAINTIFF
VERSUS
MAKERERE UNIVERSITY=====DEFENDANT
AND
MAKERERE UNIVERSITY BUSINESS SCHOOL=====THIRD PARTY**

BEFORE: HON.JUSTICE SSEKAANA MUSA

JUDGMENT

The Plaintiff filed this claim against the defendant for the failure to include her name on the graduation list so as to graduate upon the successful completion of the Master's Degree program in Human Resource, general damages, punitive and costs arising out of the suit.

On the 18th day of August 2010, the defendant admitted the plaintiff to a master's degree Programme in Human Resource Management vide REG NO 2010/HD10/26220. The plaintiff was registered at the defendant's institution at MUBS(3rd party) as a student pursuing a master's degree of Human Resource Management, paid all the necessary school dues and under took the academic work upon receipt of the admission, upon successful completion of the Master's degree, the plaintiff was on the graduation list of MUBS but missing on Makerere University, the plaintiff claims that she passed her exams.

On the other hand, the defendants contend on the 29th/January/2010 the Defendants University put up an advert calling for suitable applicants for admission to inter alia Master's Degree programmes for academic year

2010/2011. The advert categorically stated that persons to apply should have graduated from Chartered University, the plaintiff applied and was on 18th/ AUG/2010 provisionally admitted to Masters of Human Resource Programme subject to verification of her academic documents before full Registration could be affected.

Upon verification of the plaintiff's academic documents, it was discovered that the plaintiff had graduated before Uganda Martyrs University was chartered, something which led to cancellation of her admission on ground of ineligibility and breach of admission policy. The Plaintiff was notified of her cancellation on the 28th April 2011 and required to take a refund of all her monies so far paid. The Third-Party MUBS was notified to cease any relationship with the plaintiff

The defendant further contend that whatever happened between the plaintiff and the third party, was not binding on the defendant and was not done on behalf of the defendant.

The third-party states that is an affiliation of the defendant which is mandated to conduct courses on behalf of the defendant. The defendant herein admitted the plaintiff on the 18th August 2010 to a Master's degree Programme in Human Resource Management and subsequently the plaintiff started studies at Makerere University as a student. The third-party further states that the defendant discontinued the plaintiff from studies by letter dated 28th APRIL 2011 addressed to the plaintiff, a copy of which was served on to the third party and the same was duly noted in the council meeting.

The third party contends that despite discontinuation, the plaintiff continued studies at MUBS. The third party was under no further obligation to discontinue the plaintiff since the principal (defendant) had already instructed the plaintiff to stop studies.

The parties filed a joint scheduling; the following issues were framed for determination by this court:

1. *Whether the cancellation of the plaintiff's admission to the Master's programme by the defendant was lawful?*
2. *Whether the defendant's failure to graduate the plaintiff was lawful?*
3. *Whether the defendant is entitled to any indemnity from the Third Party*
4. *What are the remedies available to the plaintiff?*

The plaintiff was represented by *Counsel Musende John and Masika Sandra* whereas the defendant were represented by *Counsel Musoke Hudson & Counsel Christine Anyango* and *Counsel Ssekajja Ukasha* represented the third party.

The plaintiff led evidence of three witnesses in support of her claim with 2 witnesses whereas the defendant & 3rd party led evidence of one witness each.

The parties filed submissions and were considered by this court.

DETERMINATION.

Whether the cancellation of the plaintiff's admission to the master's Programme by the defendant was lawful?

The plaintiff contends that the failure to include her name on the graduation list so as to graduate upon the successful completion of the Master's degree program was un lawful as she wasn't heard whether the before cancellation of her admission.

Counsel for the plaintiff submitted that, the plaintiff wrote a letter to the defendant petitioning against the cancellation of her admission and further sought for the defendant's decision and audience towards her complaint and this was admitted in court as PEX4.

Counsel for the plaintiff further states in his submissions that the plaintiff wrote a letter dated 20th May 2011 to the National Council for Higher Education petitioning against the defendant's action and a letter was written by NCHE on the 24th May 2011 to the defendant advising it to re-visit the cancellation of the plaintiff's admission.

It wasn't disputed that the plaintiff was admitted in the academic year of 2010 for a Masters in Human Resource Management, however the defendant's counsel contends in their submissions that the plaintiff was provisionally admitted to a Masters of Human Resource Programme subject to verification of her academic documents. Counsel states that it's a requirement for an applicant to a master's degree to first have graduated from a chartered university and the plaintiff was well aware of the qualifications.

The defendant's counsel further states that, section 45 of the Universities and Other Tertiary institutions Act 2001 confers direction of all academic matters to the University Senate, making it the ultimate body in regards to academic matters of the university.

Counsel for the third-party states in their submissions that from the process of admission to registration to cancellation or discontinuation and final graduation are reserve of the defendant and the only role of the third party plays in the academic cycle of a student admitted from Makerere University is to teach those posted to the institution.

Once Makerere University decides to discontinue a student and the student gets information, Makerere University Business School (Third party) can't change decisions of the main Senate since it's just an affiliation.

ANALYSIS

The plaintiff was indeed admitted to pursue a programme of study leading to the award of Master of Human Resource Management (by Coursework and Dissertation) effective 14/08/2010 and ending 15/08/2012 as per Exhibit PE-1. According to the admission letter of the applicant he was admitted provisionally; *“Please NOTE that your admission to this programme is provisional and subject to verification of your academic qualifications stated in the application form at the time of registration”*

DW 1 testified that in year 2008, the University Senate sat on the 10th December, resolved to recognize awards from, inter alia, accredited or chartered Universities for purposes of admission to graduate programmes. *“ That the awards to be recognized are the awards a student received after the date the institution was chartered”*

The advert for the admission of the students for the Master of Human Resource Management set out the qualifications for admission to the programme which included among other a Bachelor’s degree from a Chartered University.

According to the evidence on court record, Uganda Martyrs University was Chartered on 2nd April 2005. The plaintiff graduated from Uganda Martyrs University in 2001 well before the university was chartered.

The plaintiff seems to argue that she was not given a hearing before the decision to cancel her admission was made and even after it had been made. They contended that the plaintiff breached none of the parameters set out in the admission letter to warrant cancellation of her admission.

The right to be heard is not cast in stone and it is not in every situation that the decision-maker that the applicant must be heard. The defendant University set out criteria for admission of persons for the degree programme and once you attempt to be join the programme outside the set

criteria, automatically you have to be disqualified with demanding for a hearing. It matters not whether you had already started on the degree programme since the admission letter is issued provisionally until the academic documents are verified.

The plaintiff seems to be premise her case on promissory estoppel since she had attended classes and had gone half way into the programme. A student who is ineligible under the rules and guidelines for admission could not invoke promissory estoppel against the University as the University could not be forced to do something illegal. See *Mukesh Kumar v Rani Durgawati Vishwavidyalaya [1989] AIR MP 292*

The university advert calling for interested applicants clearly specified that the University should have been a Chartered University and the admission of the plaintiff was provisional subject to verification of the academic documents. It is clear the plaintiff was admitted subject to the verification of her Bachelor's degree certificate which included among others verification of status of the university. Thus, there was no unequivocal assurance by the University that her admission was final and conclusive. The plaintiff ought to have established that her qualifications fall within the set out criterion.

The university indeed has a duty to approve or reject the provisional admission within a reasonable time. There was some delay on the part of the University in effecting the cancellation which occasioned the plaintiff some financial hardship. However, this should not be used to break the set rules of admission as this would create a bad precedent in future admissions policy. The plaintiff states in her witness statement that she went for Registration of second semester in May 2011 and was informed that she was admitted in error. She had completed a semester studying before she learnt of her admission being cancelled.

This court has opted to adopt a strict, legalistic attitude favouring the University due to the peculiar circumstances rather than adopting a flexible, humane and equitable attitude to favour the plaintiff due to her conduct in the matter. She insisted on continuing to register to study for the programme even after she became aware of the cancellation of her provisional admission.

The plaintiff therefore was informed of the cancellation but went ahead to study and even paid tuition after the cancellation of the admission; the plaintiff was as well served with a cancellation of admission order dated 28th April 2011.

I, therefore find that the cancellation of the plaintiff's admission to a Master's degree programme was lawful since the plaintiff didn't possess the necessary qualifications needed by the defendant university and was given notice of cancellation of her admission but still went on to study on her own peril.

Whether the Defendant's failure to graduate the plaintiff was lawful?

The plaintiff's counsel contends in the Submissions that, when the plaintiff received the cancellation letter, she acted reasonably by opting to go back and study as she petitioned the defendant to go back and withdraw the unlawful decisions.

The plaintiff's counsel further state that the fact that the defendant and the 3rd party continued to receive and share the tuition/fees, what the defendant's academic registrar in his evidence referred to as functional fees from the plaintiff through 3rd party, is a clear manifestation that actually the defendant had by its own action rescinded the cancellation of the plaintiff's admission and was accordingly estopped from declining to graduate the plaintiff.

The Defendant's counsel contends in the submissions that, the defendant university admitted the plaintiff to a master of Human Resource Management Degree Programme provisionally, the Defendant had to first subject the plaintiffs' academics documents to verification then after be registered as a student of the defendant.

Furthermore, the defendant's counsel states that, upon verification the academic documents of the plaintiff revealed that she had obtained her first degree from a university that had not been chartered something which was in breach of the admission policy that had been set by the University senate, as regards chartered universities something which led to cancellation of the plaintiff's admission.

ANALYSIS

The defendant university issued a cancellation letter dated 28th April 2011 which terminated the services of the defendant to the plaintiff. Furthermore, the defendant was admitted provisionally to the defendant university something which meant that the documents of the plaintiff were subject to verification by the defendant as stipulated under **section 45 of the Universities and Other Tertiary Institutions Act of 2001** as amended that a university senate shall be responsible for the organization, control and direction of the academic matters of the university.

Therefore, for one to be admitted by the defendant for a Masters in Human Resource Management must have graduated from a chartered university yet the plaintiff holds a bachelor's degree of Ethics and Developmental Studies from Uganda Martyrs' University before it was chartered which led to cancellation of the plaintiff's admission.

Additionally, under section 45(2) (a) of the University and Other Tertiary Institutions Act of 2001 as amended, the university can initiate the

academic policy of the university and advise the university council on the required facilities to implement the policy. The defendant university had all powers to cancel the admission of the plaintiff since she had been provisionally admitted.

In the instant case, the third party is affiliated to the defendant and thus its only mandated to perform courses on behalf of the defendant. Under section 71(2) (b) of the Universities and Other Tertiary Institutions Act of 2001 as amended, “an affiliated university shall be independent of the university to which it is affiliated to and only depend on the university to the extent agreed upon; in conformity with this act, regulations made there under and statutes made and guide lines issued by the university relating to institutions affiliated to it. That means that the defendant university provides instructions to the third party as agreed upon and the third party has no powers to nullify the decisions made by the defendant.

I, therefore find that the defendant’s failure to graduate the plaintiff was lawful since she continued to study after she had been duly notified of the cancellation of her admission.

The plaintiff’s case is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

31st October 2022