

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 034 OF 2023

Mugisa Douglas Alison:.....Applicant

Versus

Makerere University:.....Respondent

Before: Hon Justice Dr. Douglas Karekona Singiza

RULING

1 Introduction

I have said it before and I will say it again, that the framework and policy guide for judicial review for administrative bodies is anchored in the constitutional principle of legality. This principle requires that all legal persons including public universities follow due process in arriving at decisions such that they are legally sound and less oppressive. The courts will almost certainly find fault with a decision of a public university, whenever there is breach of our country's laws and the university's regulations. Particularly, the courts will also show concern in event of any failure to adhere to the procedural safeguards in place.

This motion is brought under the provisions of articles 28, 42, 44 and 50 of the Constitution as amended. The motion also relies on section 98 of the Civil Procedure Act Cap 71, sections 33 and 38 of the Judicature Act Cap 13 and Rules 8 of the

Judicature (Judicial Review) Rules S.I No 11 of 2019 and seeks several judicial reviews writs.

1.1 Representation

At the commencement of the application, *M/s Nakagga & Co Advocates* represented the applicant while *M/s Makerere University Directorate of Legal Affairs* represented the respondent. This court maintains its usual stance of always acknowledging counsel's work whenever the pleadings and arguments are neatly presented to the court. Just like I have done elsewhere, I do find the pleadings in this motion and arguments from both sides to be of good quality. Because of space and time considerations, the court has not adopted all the arguments put across.

2 Background

Mr. Mugisa Douglas is a fourth-year law student at Makerere University who was due for graduation on the 13th of February 2023. It is alleged by Makerere University that Mr. Mugisa sexually harassed a female student when he posted her photographs on different social media platforms contrary to section 2(17) of the Makerere University Policy and Regulations against Sexual Harassment 2006 as amended. On receipt of the sexual harassment complaint, the applicant was invited to appear and interact with the Vice Chancellor's *ad hoc* committee of Makerere University on 13th April 2022.

On the 9th May 2022, during the interaction with the committee, Mugisa denied the allegations against him and requested for evidence concerning the allegations against him, a request which was never granted. Instead, on the 7th February 2023, he was suspended from the University vide letter dated 16th January 2022 concerning the allegations of sexual harassment against him that he made during the university's elections. Because of the suspension, Mugisa missed on the graduation list which had been scheduled for the 9th of February 2023, hence this motion.

2.1 Affidavit evidence of the applicant

Mugisa's story is that on the 7th of February 2023, he learnt from his colleague that his name was not on the Makerere University's updated graduation list. He verified this information from the registrar, School of law Makerere University. He then received a suspension letter dated 16th January 2022, from gender mainstreaming directorate. The suspension letter concerned with the leaking of private messages of a female student for political gain. The leakage of private messages was construed as a sexual harassment act in accordance with the Makerere University framework against sexual harassment.

On the 13th April 2022, Mugisa was invited to interact with the vice chancellor's ad hoc committee and indeed on the 9th May 2022, Mugisa responded to the allegation with a firm denial and requested to be shown evidence against him. After waiting for the report of the ad hoc committee for a while, he continued with his studies and completed his studies. He imputed bias against the ad hoc committee and questioned the correct procedure that was adopted.

It was his evidence that the suspension letter impeached his right to fair hearing, rules of natural justice, and amounted to an abuse of administrative powers and therefore manifestly unfair. He took fault with the ad hoc committee that investigated sexual harassment complaint, maintaining that such a committee was not clothed with the authority to determine the applicant's guilt. Rather, the committee's role should have been to investigate and forward the outcome of its investigation to the appropriate organ.

2.2 Reply by the respondent.

The Makerere University replied to the motion by relying on the affidavit Mr. Yusuf Kiranda, the University Secretary (US). His main contention was that the motion in its present form was premature because Mugisa had not exhausted internal remedies.

Detailing the import of Regulation 2(17) of the Makerere University Policy and Regulations against Sexual Harassment 2006 as amended, he explains that the Vice Chancellor constituted an ad hoc committee to investigate the allegations against Mugisha. Mugisa was invited to appear and in fact presented a detailed response against the allegations against him on 22nd April 2022. Karanda informed this court that after the investigations, the *ad hoc* committee recommended to the Vice Chancellor to refer the complaint to the University Students Disciplinary Committee (USDC). On receipt of the ad hoc committee report dated 16th January 2023, the Vice Chancellor suspended Mugisha. It was Karanda's evidence that Mugisa did not attend the USDC hearing on the 21st of February 2023 at 9:30 am. The hearing was then re-scheduled to 21st March 2023 at 9:00am.

3 Dealing with the preliminary points first

As noted, the Makerere University in reply raised a preliminary objection that the application was premature before this court. The main contention was that Mugisa had not exhausted all local remedies.¹ I will discuss the preliminary point before going into the merits of the application.

The position of Mugisa was that no remedies were available in the first place to exhaust, because at the time the decision was taken to suspend him, he had been to several offices requesting for the ad hoc report with no success. Besides he had even completed his studies waiting to graduate but only for his name to be taken off the graduation list at the last minute. Indeed, the reasons why Mugisa's name was not on the list of the students to graduate at the time is found in paragraph 11 of Kiranda's affidavit in reply thus: "that since the applicant is still undergoing

¹ Rule 7A of the Judicature (Judicial Review) Rules as amended requires that an applicant should have exhausted the existing local remedies before approaching a high court for judicial review writs.

disciplinary procedures, he is ineligible to graduate”. The process to hear Mugisa’s dispute was still on going at the time of filing this motion.

4 The nature of local remedies in the dispute at hand

I am mindful that courts take exception whenever a party attempts to circumvent readily available mechanisms to resolve disputes by rushing to courts prematurely.² The courts’ rationale is not difficult to decipher. The costs of litigation and the ever-increasing workload of judges are probably the most prominent considerations.³

I have previously adopted Chenwi’s more flexible approach on the rule of exhaustion of local remedies. The learned author, while writing about the African human rights court, explains that the rule on exhaustion of local remedies, as reflected in the decisions of the African Court of Human and Peoples’ Rights, shows a preference for a flexible approach. She argues that the more flexible approach is meant to facilitate access to the courts by litigants.⁴

That notwithstanding, however, Chenwi criticizes the court for exercising its *propria motu* power on the rule restrictively and hence limiting access to itself. She gives the following as the exceptions: (1) where no remedies exist at all; (2) where the available procedure is unduly delayed; (3) where the available procedure is unfair; and (4) where the available remedies cannot remedy the wrong complained⁵. Applying the above test, in terms of clause 27(a) of the Makerere University Policy

² Microcare Insurance Limited v Uganda Insurance Commission CV-MC No. 218 of 2009

³ Classy Photo Mart Limited v Commissioner Customs Uganda Revenue Authority CV-MC No. 30-2009 per Kiryabwire J.

⁴ Chenwi L ‘Exhaustion of local remedies rule in the jurisprudence of the African Court of Human and Peoples’ Rights’ *Human Rights Quarterly John Hopkins University Press* 41(2) May 2019 pp 374–398.

⁵ Ibid.

and Regulations against Sexual Harassment, 2006 (as amended) this court examines in brief the available remedies that Mugisa could have explored.

5 Makerere University anti-sexual harassment framework

The framework under which the Makerere investigated and suspended Mugisa pending an inquiry is summarized below.

Regulation 17 of the Policy provides for the procedures for handling reported complaints of sexual harassment. The framework has several guarantees that are protective of the right to fair hearing. For instance, any conflicted person is excluded thus protecting the work of the ad hoc committee against allegations of biases. It is for this reason the old grassroot anti-sexual harassment committees were replaced by the more inclusive ad hoc committees which are now drawn from a roster of 100 persons of integrity.

All complaints dealing with sexual harassment are received by the directorate of gender mainstreaming, and then forwarded to the Vice Chancellor before any respective ad hoc committee can be established to investigate the complaint. After the investigations, the report with details of its findings is then submitted to the Vice Chancellor, who in turn must submit it to the USDC for consideration and determination.

6 Right to fair hearing at the stage of suspension

Mugisa attacks the decision of the Vice Chancellor to suspend him as unfair because it was communicated to him late. He seems to argue that the decision to suspend him was made long after his name was taken off from the graduation list. In the paragraphs below, I explain the nature of the rights that should have been available to Mugisa during his suspension.

A suspension, as a tool does three things that distinguishes it from other students' disciplinary measures within Makerere University.⁶ While it is short in its life span, its consequences are very serious. For instance, a suspension results into the removal of a student from the university for short period. A suspension may also interfere with a student's access to university learning facilities such as lecture rooms and libraries and other online portals. A suspension is therefore comparable to an arrest of an individual citizen suspected to have committed an offence. Even with all its rough edges, a suspension is not a disciplinary sanction but a step towards a disciplinary process.

6.1 A suspension as a preparation for an investigation

A suspension triggers a systematic examination of facts to establish the truth that may be hidden from the university administrators and therefore prepares a ground for an investigation. There are probably good public policy reasons why an individual student that is under a suspension may be denied access to the university and its related facilities. The key consideration is that a suspension suggests that there are potential risks that the evidence under review may be destroyed or compromised.

Where there is evidence that continuous stay in a university may scandalize the learning institution, then a suspension of the student becomes reasonable notwithstanding its intrusive character. It does not become irrational or procedurally improper simply because of its apparently harsh nature for the time being.

A distinction must also be drawn between a suspension in labour relations and a suspension within the context of a university-student relationship. While a

⁶ The *Cambridge Advances Learners' Dictionary* Cambridge: London 2020 defines the term "suspension" with reference to the temporary nature of stopping a student from attending regular classes. See generally *Barungi Chris vs Attorney General* Miscellaneous Cause No. 0180 Of 2022 Per Singiza, J pp 10-12.

suspension in labour relations is in fact a penalty decision that can be legally reviewed by courts, a suspension of a student from a university is a temporally measure adopted pending an investigation of a complaint.

In my view, the right to be heard as a constitutional imperative is only triggered during the stage of inquiry into the alleged sexual harassment act by the USDC and not during the stage of investigation by the ad hoc committee.⁷

7 Determination

Very clearly, the anti-sexual harassment framework of Makerere University has strict timelines, and this is probably intended to ensure that complaints of this nature do not disrupt to the learner's educational rights.⁸ Even with all the above potential risks, this court finds no evidence that Mugisa's motions falls under the exceptions on the rule of exhaustion of local remedies. First there are clearly stated remedies that Mugisa should have explored. These remedies were not unreasonably delayed by Makerere University and there is no evidence that these remedies were unfair. Besides, this court is of the opinion that the availed remedies could address the wrongs complained of.

In the result, I allow the Makerere University preliminary objection with the results that the entire application must collapse, and it is hereby dismissed.

I make no orders as to costs.

⁷ See Singiza, D *Constitutional Law, Democracy and Development: Decentralisation and Governance in Uganda* Routledge: London 2019: 122.

⁸ See Clause 19 (c) of the Makerere University Policy and Regulations against Sexual Harassment, 2006 (as amended) which provides that a complaint shall be investigated, and a report forwarded to the appropriate organ for further action within three (3) months after lodgment.

Douglas Karekona Singiza

A handwritten signature in blue ink on a white background. The signature is written in a cursive style and reads "Douglas-K. Singiza". The first part of the signature is a stylized, looped initial that resembles "DK".

Acting Judge

24th October 2023