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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

CIVIL SUIT NO. 0069 OF 2016

ASIIMWE FIONA RWAKISEETAPLAINTIFF

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VERSUS

THE LAW DEVELOPMENT CENTRE.....DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGEMENT

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The Plaintiff, Asiimwe Fiona Rwakiseeta, filed this suit against the Law Development Centre, (hereinafter called the Defendant), seeking for orders and declarations of this Court that the Defendant’s act of cancelling her Post Graduate Diploma in Legal Practice was arbitrary and contrary to the principles of natural justice, that the Defendant was responsible for the marks indicated on her commercial transactions examination paper, that this Court upholds her Post Graduate Diploma in Legal Practice, orders that a permanent injunction be issued restraining the Defendant from cancelling her Post Graduate Diploma in Legal Practice and that in the alternative, her paper be re-verified and that this court awards her general damages, aggravated damages, interest and costs of the suit.

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Background to the suit

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The brief background to this suit is that the Plaintiff enrolled for the Bar Course, (Post Graduate Diploma in Legal Practice), at the Defendant Institute for the academic year 2007/2008. After her graduation in 2010, the Defendant carried out a Forensic Audit and set up a probe subcommittee of the management committee (MCSC) to investigate allegations of examination malpractices within the period 2004 – 2011.

30 The MCSC came up with findings and made a report to the Defendant recommending the recall of the Plaintiff's Diploma in Legal Practice, among others. The Defendant, upon receipt of the report recalled the Plaintiff's Diploma, hence this suit.

Representation

Learned Counsel Okalang Robert appeared for the Plaintiff while M/s Tibaijuka & Co. Advocates and M/s Akampumuza & Co. Advocates were for the Defendant. After filing its
35 Written Statement of Defence, the Defendant filed a witness statement but did not participate in the court proceedings. This court proceeded ex-parte under Order 9 rule 20 (1) (a) of the CPR which provides that where the Plaintiff appears and the Defendant does not appear when the suit is called for hearing, if the court is satisfied that the summons or notice of hearing was duly served, it may proceed ex- parte.

40 Written submissions have been filed by counsel for the Plaintiff as directed by court.

Issues set out for trial are: -

1. Whether the Management Committee SubCommittee adhered to the principles of natural justice while conducting its proceedings and determining the allegations against the Plaintiff
- 45 2. Whether the Defendant's Management Committee in relying on the Management Committee Sub Committee report and without hearing the Plaintiff, lawfully cancelled the award of the Plaintiff's Post Graduate Diploma in Legal Practice
3. Whether the Defendant has lawful authority to cancel the award of a Post-Graduate Diploma in Legal Practice after graduating the Plaintiff
- 50 4. Remedies available to the parties

Resolution of issues

Issue 1: Whether the Management Committee Subcommittee adhered to the principles of natural justice while conducting its proceedings and determining the allegations against the Plaintiff

55 **Submissions**

Counsel relied on the case of *Balondemu David –v- The Law Development Centre, MC No. 61 of 2016* where court defined the terms irrationality and procedural impropriety. The Court went on to note that unfairness may be in none observance of the rules of natural justice or to act with procedural unfairness towards one to be affected by the decision. He explained that in this case, the Plaintiff informed court that when she was summoned to appear before the Defendant’s MCSC on the 17/8/2015, she was not told the reason why she was required to appear. That she was only informed that she would be briefed upon appearance. That when she appeared, the Committee asked her how her Commercial Transaction paper was verified. That after giving her explanation, she was given her answer sheet and asked if anything was wrong with it. That the Plaintiff informed the Committee that she saw marks on question 1 and 2 crossed from 16 to 18 and 13 to 16 respectively and hand written words at the bottom of the page stating that marks recounted and confirmed as 34/50. That there was also a signature and a date. That the plaintiff informed the Committee that she did not see anything irregular as the crossings had been counter signed. That the committee then thanked her and asked her to leave without telling her what was wrong with her results. The Plaintiff said that she was later informed by the Defendant that the probe committee made a report recommending cancellation of her Diploma on grounds that it was inappropriately obtained.

Counsel submitted that the Defendant’s probe committee acted irrationally in determining the allegation against the plaintiff. He relied on the case of *Balondemu David (supra)*, where court noted, while relying on the case of *Kwazulu-Natal South Africa in Botswana –v- University of Kwazululu-Natal, High Court Case No. 5347 of 2012 ZAKZHC1 (24th January, 2014)*, where the Applicant sought to set aside the decision of the senate of the Respondent to withdraw the Applicant’s PhD degree that;

80 *"if the University has found fault with the process and procedures not followed by its own*
academic staff this is hardly reason to prejudice the applicant by revoking her degree. It
was not proved at all that the applicant was in any position to influence any of the decisions
made in the process leading to her graduation as she could not have known that less time
85 *was spent than necessary in reviewing her thesis... a decision to confer a degree on a*
student should never be permitted to be revoked save in exceptional circumstances where
the student is guilty of fraud or misconduct affecting the qualification at the time of award."

Counsel argued that the above holding applies to this case. That verification was done by
the officials of the Defendant in the course of their employment and as such the Plaintiff
cannot be penalized by the actions of the Defendant. The Defendant should be held
90 responsible.

Analysis.

Section 101(1) of the Evidence Act, Cap 6, provides that whoever desires any court to give
judgement as to any legal right or liability dependent on the existence of facts which he or
she asserts must prove that those facts do exist.

95 In the case of ***Yoswa Kityo –v- Eriya Kaddu [1982] HCB 58***, cited with approval in ***Jack***
Rwihandagaza –v-Paul Sengendo & 4 others, MA No. 145 of 2015, Court noted that;
"whether a matter proceeds ex - parte or not, the burden on the part of the plaintiff to
prove the case to the required standard remains."

In this case, much as the matter proceeded ex-parte, the Plaintiff will have to proof her case
100 on the balance of probabilities.

In the case of ***Dr. Nobubele Potwana –v- University of Kwazulu- Natal High Court Case***
No. 5347 of 2012 ZAKZHC1 of 24th January, 2014, the court noted inter alia that: -

105 *"A decision to confer a degree on a student should never be permitted to be revoked save in exceptional circumstances where the student is guilty of fraud or misconduct affecting the qualification at the time of award."*

I have looked at the evidence on record and the submissions of Counsel for the Plaintiff, in the case of ***Balondemu David –v-the Law Development Center(supra)***, Balondemu was one of the students whose Post Graduate Diploma in Legal Practice was recalled by the Defendant on the basis of recommendations made by the Defendant's Management Committee Subcommittee, (MCSC) report of July- November, 2015. Following the recall of his Diploma, Balondemu filed for judicial review, faulting the Defendant for not following the principles of natural justice. He argued that he was not given a fair hearing. That the Committee faulted him without inviting the Internal and External Examiners who marked his exam and altered his marks after verification, to testify and that he was not given a chance to hear their evidence and cross examine them. The Court ruled in his favour on this ground. I agree with the court's finding in the Balondemu Case. I'm fortified by the Supreme Court holding in the case of ***Charles Harry Twagira -v- Uganda, Criminal Appeal No. 27 of 2003*** where it was stated, among others, that: -

120 *"The right to a hearing before being condemned is enshrined in article 28 of the constitution. A fair trial or a fair hearing under this article of the constitution means that a party should be afforded the opportunity to, inter alia, hear the witnesses of the other side testify openly; that he should, if he chooses, challenge those witnesses by way of cross examination; that he should be given an opportunity to give his own evidence if he chooses to do so in his defence; that he should if he so wishes call witnesses to support his case"*.

125 **(the underlining is mine for emphasis). (See also *Kampala University –v- National Council for Higher Education, MC No. 53 of 2014*).**

In this case, the evidence on record shows that the MCSC summoned and heard the Plaintiff. On page 22, paragraph 4 of the report, it is reported that when the MCSC raised the issue

of the Plaintiff's marks being in question due to multiple alterations, the Plaintiff informed
130 the Committee that alterations were effected by the examiners. Evidence on record does
not implicate the Plaintiff for altering the marks on her script. The finding of the MCSC on
page 21 shows that it is the Internal Examiner, (IE), P.M. Mugisha who effected the
alterations on the Plaintiff's script and not the Plaintiff. There is no evidence to show that
the Plaintiff influenced the examiners to alter her marks. All that is shown and admitted by
135 the plaintiff is that she applied for verification of her marks. Verification of marks was a
practice allowed by the Defendant in case one was in doubt of the awarded marks. There
is no evidence to show that the Plaintiff was accorded an opportunity to attend hearing
when Mr. P.M. Mugisha, the Internal Examiner who altered her marks was giving evidence
regarding alteration of marks on her script, neither is there evidence to show that the
140 Plaintiff was given opportunity to cross-examine the examiner.

In the *Dr. Nobubele Potwana –v- University of Kwazulu, (supra)* case, a decision to confer
a degree on a student can only be permitted to be revoked where the student is guilty of
fraud or misconduct affecting the qualification at the time of the award. In this case, there
is no evidence in the MCSC report to show that the Plaintiff was guilty of fraud or
145 misconduct in effecting alterations of marks on her script. It is the Internal Examiner, Mr.
P.M. Mugisha who is said to have admitted to altering the Plaintiff's marks and Mr. Kkaaya,
the Head Bar Course, who was accused of failure to ensure that the right procedure is
followed during the verification exercise.

In view of the above therefore, I would find that the MCSC never adhered to the principles
150 of natural justice in its proceedings against the Plaintiff in that it did not accord the Plaintiff
an opportunity to attend proceedings when the Internal Examiner's evidence against her
was given and to cross examine him if she so wished. The Plaintiff was therefore denied a
fair hearing and as such, the Committee arrived at a wrong finding that the Plaintiff was
guilty of examination malpractice and wrongly recommended to the Defendant that the
155 Plaintiff's Post Graduate Diploma in Legal Practice should be recalled.

Issue 2: Whether the Defendant Management Committee in relying on the Probe Committee report and without hearing the Plaintiff lawfully cancelled the award of the Plaintiff's Post Graduate Diploma in legal Practice.

Plaintiff's submissions

160 Counsel submitted that the Management Committee ought to have summoned the plaintiff for a hearing before recalling her certificate. He relied on the case of ***Muhumuza Mugimba Moses –v- Law Development Centre, MC No. 028 of 2016*** where it was held that;

165 *“the Probe Committee had done its part to investigate and made a report and the Management Committee ought to have summed up the case in a well drafted notice of intention to cancel his diploma clearly informing the applicant that he is free to challenge the evidence copies of which would be attached to the notice with a copy of the impugned script. A notice would also disclose that he is free to challenge the evidence in any way as he deems necessary and given a reasonable time to make his case. It is then and only then that one would say that the Management Committee conducted a fair hearing.”*

170 Counsel also relied on the cases of ***Lubega Joseph –v- Law Development Centre, Misc. Cause No. 323 of 2016, Balondemu David (supra), Amuron Dorothy –v- Law Development Centre, Misc. Cause No. 042 of 2016 and Muhumuza Mugimba Moses –v- Law Development Centre, Misc. Cause No. 028 of 2016*** and submitted that it was wrong, unlawful and improper for the defendant to cancel the plaintiff's Diploma based on
175 the Probe Committee Report.

Analysis

In the American case of ***Waliga -v- Board of Trustees of Kent State University, No. 85-133 The Supreme Court of the State of Ohio February 05 1986***, Court held that a college or University has inherent authority to revoke an improperly awarded degree for good

180 cause, such as fraud, deceit or error, provided that a fair hearing procedure has been made available to the recipient of the academic award.

In the case of ***Ebiju James-v-Umeme Ltd, HCCS No. 0133 Of 2012***, on the right to a fair hearing, court noted that: -

“it is now trite that the defendant would have complied if the following was done.

185 *(1) Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.*

(2) The notice should set out clearly what the allegations against the plaintiff are and his rights at the oral hearing were.

190 *(3) Such rights would include the right to respond to the allegations against him orally and/or in writing, the right to be accompanied at the hearing, and the right to cross-examine the defendant’s witnesses or call witnesses of his own.*

(4) The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant.”

I have already established that there was no fair hearing in this case by the subcommittee.

195 Be that as it may, I would also add that the MCSC’s inquiry was not intended to lead to a final decision for the Defendant’s action, but was designed only for receiving information for the purpose of a reporting/making recommendations to the Defendant. It was now incumbent upon the Defendant to accord a fair hearing to the Plaintiff and come up with its own findings and actions.

200 The 3rd issue on whether the Defendant has lawful authority to cancel the award of Post-Graduate Diploma in law after graduating the Plaintiff is answered in the cited case of ***Waliga -v- Board of Trustees of Kent State University, (supra)*** where it was stated that a

university can recall a degree already awarded if there is good cause. See also the case of ***Dr. Nobubele Potwana –v- University of Kwazulu, (supra)***.

205 **Issue 4: Remedies available to the parties**

Plaintiff's submission

Counsel submitted that the plaintiff adduced evidence showing that she suffered damages. He relied on the book of Harvey McGregor in *McGregor on Damages; 2014 edition, at page 9*, where the author points out that before damages can be recovered in an action, there
210 must be a wrong committed. He also relied on the case of ***Saladin Media Advertising T/a OMD Uganda –v- Pioneer Easy Bus Limited, H.C.C.S No. 435 of 2012*** where court held that: -

“the award of general damages is presumed to be the natural and probable consequence of the defendant's act.”

215 He explained that the Plaintiff suffered damages as a result of the Defendant's actions and prayed for general damages amounting to a sum of Shs. 100,000,000.

On the ground of aggravated damages, Counsel relied on the case of ***Obongo and Anor – v- Municipal Council of Kisumu [1971]1 EA 91*** where court noted that: -

220 *“It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature.”*

225 Counsel submitted that the defendant maliciously cancelled the Plaintiff's Post Graduate Diploma and run an advert in a wide circulating newspaper. That the Defendant was high handed in its actions and should be condemned to aggravated damages amounting to Ugx.

50,000,000/= (Fifty Million Shillings). Counsel also prayed for interest at a rate of 27% per annum from the date of filing this suit until payment of the damages and costs of this suit.

Analysis.

230 In **Luzinda –v- Ssekamate & 3 Ors HCCS No.366 of 2017**, court noted that;

“As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result
235 *of the defendant’s actions.”*

The Plaintiff pleaded but did not prove the damages as alleged. There is no evidence of threats of loss of her job as claimed. Neither are there newspaper adverts showing recall of her Diploma as stated in paragraphs 12 and 15 of the plaintiff. I have already referred to S. 101(1) of the Evidence Act, Cap 6. that whoever desires any court to give judgement as to
240 any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts do exist. I have not found the Newspaper Adverts referred to, neither has the Plaintiff presented evidence of threats to her job. I find no basis to award the Plaintiff the general and aggravated damages as claimed.

On the ground of costs, I would rely on S. 27 Civil Procedure Act. The Plaintiff being a
245 successful party is entitled to costs of the suit. I find no reason to deny her the costs.

In the final result therefore, judgement is entered for the Plaintiff with the following declarations: -

1. **The Defendant’s act of re-calling the Plaintiff’s Post Graduate Diploma in Legal Practice was arbitrary and contrary to the principles of natural justice.**
- 250 2. **A Permanent Injunction be and is hereby issued restraining the Defendant from re-calling the Plaintiff’s Post Graduate Diploma in Legal Practice.**

3. The Defendant will pay costs of this suit.

I so order.

Dated, signed and delivered at Kampala by mail this 27th day of January, 2023.

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Esta Nambayo

JUDGE

27th/1/2023.