

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-089-2009

KISOMOSE NICHOLAS.....APPLICANT

VS

1. THE ACADEMIC REGISTRAR MBARARA UNIVERSITY OF SCIENCE
& TECHNOLOGY)

VS

2. MBARARA UNIVERSITY OF SCIENCE
AND TECHNOLOGY).....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE LAWRENCE GIDUDU

R U L I N G

This is a Ruling in an application for Judicial review specifically for orders:-

1. of certiorari to remove, set aside or quash the order/decision of the 1st and 2nd Respondents to discontinue the Applicant from the University.
2. of Mandamus directing the 1st and 2nd Respondents to reinstate the Applicant into the University.

The matter is brought under S. 36 of the Judicature Act and Rules 6, 7 and 8 of the Judicial Review Rules 2009.

The major complaint of the Applicant is that he was denied a fair hearing before the decision to dismiss him was made and that the 1st Respondent acted ultra vires his powers when he wrote to the Applicant dismissing him from the University.

The Respondents opposed the application contending that the Applicant was given a fair hearing after an investigation revealed malpractices on his part and that the 1st Respondent had powers to communicate a decision to dismiss him in his capacity as Secretary to the Senate.

The brief facts of this matter are that the Applicant was a student of Medicine in Mbarara University of Science and Technology where he was in his 3rd year. He was accused of forging his lecturer's signature in the log book during ward rotations in the Obstetrics/Gynaecology dept.

He was summoned and appeared before the Examination Irregularities Committee to defend himself and after this encounter, he was discontinued from the course in a communication by the 1st Respondent dated 3/8/09

Mr.Kahungu-Tibayeita - learned counsel for the Applicant contended that the Applicant was not given a fair hearing and that the communication by the 1st Respondent is without jurisdiction

Learned counsel argued that a report containing the allegations was not availed to the Applicant and consequently he was denied the right to be treated fairly and justly as provided for in Article 42 of the Constitution. He also referred to *Wade on Administrative*

law at page 538 that the Applicant was denied the right to know his case.

As regards the second ground that the 1st Respondent acted without jurisdiction it was counsel's contention that the Academic Registrar has no powers to dismiss the Applicant and referred to Rule 30 of the University Rules and argued that the power lies with the Vice Chancellor who suspends and then seeks approval of the Students Welfare and Disciplinary Committee of Council. Further, that the Examination Irregularities Committee should have recommended the dismissal to the University Council.

He prayed that the decision to dismiss the Applicant be quashed and general damages be paid to the Applicant for the inconvenience plus costs of this application.

In Reply, Mr.Kwizera learned counsel for the Respondents disagreed with the Applicant's submissions and relied on the affidavits of Busingye Gertrude, Mbabu Elizabeth, Stephen BabigumiraBazirake, Dr. Mugyenyi Godfrey and Dr. Ndiwalana Billy to canvass the point that in the circumstances and nature of this case, the rules of procedure were followed to the letter. That Rule 30 of the University Rules does not apply to examinations which are under the mandate of Senate to which the 1st Respondent is secretary by virtue of being Academic Registrar.

Mr.Kwizeralabored the point that the Applicant was informed of the charges and asked to respond which he did. That the relevant committee of the University sat and heard his oral defence after which the committee found him guilty and discontinued him.

Minutes of this meeting and the log book of the forged signatures were annexed to the 1st Respondent's affidavit in reply. He defended the decision by relying on the affidavits of Mbabu who denied signing the log book. Busingye also denied signing the log book and Dr. Mugyenyi denied participating in the procedures claimed by

the Applicant.

Further, that the 1st Respondent was the right person to communicate the decision of the committee and that Rule 30 does not apply to examinations as in this case. That Examinations Regulation for semester system 2008-2011 particularly paragraphs 2.5.14 and 2.5.15 applied.

I have perused the motion, its affidavit in support and those in reply and given considerable thought to this matter given what is at the stake. The future of a young Applicant in his academic career and the need for the University to maintain standards to ensure that only qualified doctors handle the delicate lives of patients. I shall endeavour to balance these two important factors in arriving at my decision. The agreed issues in this matter are whether the Applicant was denied a fair hearing and whether the dismissal was ultra vires the powers of the officer who communicated the same.

There is no dispute as to the principles of law applicable to reliefs pleaded in this matter and I am grateful to both counsel in this regard.

The Remedy of Judicial Review is concerned not with the decision of which review is sought but with the decision making process.

See. *R. vs Chief Constable of North Wales Police ex. P Evans*. The Times, July 24th 1882 (HL)

As regards the first issue in this case, it is trite law that rules of natural justice have to be observed where there is a duty to act judicially and this duty is not confined to the procedure of a court of law but exists where anybody of persons has legal authority to determine questions affecting the rights of others.

See. *Ridge vs B a I dewin* (1964) AC. 40.

Therefore, procedural impropriety is a legal ground for judicial review and the Right

to a fair hearing if denied must result in the decision being reviewed.

In the instant case, it is not in dispute that once the department of Obstetrics and Gynaecology discovered the malpractices in the Applicant's log book, they duly informed the Academic Registrar who demanded an explanation from the Applicant. This was on 15th June 2009. Five charges were labelled as follows:

1. You claimed that your log book was lost and it was replaced on 18/2/09, about 3 weeks after the beginning of a 7.5 weeks rotation.
2. No evidence of attendance in any section of the ward where students rotated.
3. Over 43 forged supervisors' signatures.
4. There are photo copied tutorials' signatures which is not proper
5. Rubbing of the supervisors' signatures.

On 19/6/09, the Applicant responded to the above charges and addressed each specific charge therein.

He denied losing the log book but said he got it late since he reported late for the semester.

He said he attended though his attendance is not acknowledged by the signature of the supervisor. He said his supervisors can confirm his attendance.

He denied forging signatures and contended that those in his log book are genuine.

He admitted photocopying parts of the log book because he found some papers missing in his original book and finally concluded that he rubbed 2 signatures because the person who signed them was not a supervisor but a fellow student.

On 31/7/09, the Examination Irregularities Committee chaired by the Vice Chancellor sat and heard the Applicant's oral defence and resolved to discontinue him from the course.

On 31/8/09 the 1st Respondent who is the Academic Registrar communicated this

decision hence this application.

It is the Applicant's contention that this process was not fair or just and that his right to a fair hearing was denied and that the 1st Respondent acted ultra vires his powers to dismiss him.

Lord Hail Sham of St. Marylebone.LC laid down the test to be followed in determining whether the courts can not intervene in a matter or not. That proposition is relevant and applied in our jurisdiction.

“Since the range of authorities, and the circumstances of the use of their power, are almost infinitely various, it is of course unwise to lay down Rules for the application of the remedy which appear to be of universal validity in every type of case. But it is important to remember in every case that the purpose of remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the Judiciary or of individual Judges for that of the authority constituted by law to decide the matter in question.

The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.

The purpose of Judicial review is to ensure that the individual receives fair treatment and not to ensure the authority, after according fair treatment, reaches on a matter which it is authorized or joined by law to decide from itself a conclusion which is correct in the eyes of the court.

See. Chief Constable of North Wales Police vs Evans (1982) 3.All ER. 141 at 143-144

Applying the above test on the matter before me, I find that the Applicant was

availed full opportunity not only to know the charges against him in advance, but also to write back to the 1st Respondent and appeared in person to give an oral defence.

There was no fault in the process and the prayer that this court should intervene is unjustified.

The document (log book) that was relied upon to fault the Applicant was at all material times in possession of the Applicant. Trouble stated when the Applicant handed it over to his supervisors that they detected forgeries in some signatures and attendances to certain procedures they did not supervise the Applicant in. At all material times, the Applicant knew the contents of his log book and the charges he faced were from the contents of his log book.

It is, with respect, not valid for the Applicant to argue that there was insufficient information from which he could make a proper defence. On the contrary there was enough material from which the committee chaired by the Vice Chancellor himself was able to make the decision it made. It is not the duty of the court to say that decision was right or wrong. The duty of this court is to find out if he was fairly and justly treated and the answer to that question is yes. That ground must fail as it does.

Did the first Respondent act ultra vires his powers when he wrote the letter of 3rd August 2009 (Annexure B)? It was submitted for the Applicant that Rule 30 of the University Rules (Annexure D) empowered only the Vice Chancellor to suspend a student and seek approval of his action at the next meeting of the Students' Welfare and Disciplinary Committee of Council. The Respondent's case was that that Rule was not applicable to the Applicant's situation. Again, both counsel argued correctly submissions of the law on the Rule of ultra vires and I need not repeat details here.

Suffice to say that for a public body to take a decision or to embark upon a decision-making process without authority or power means that it acts ultra vires or without jurisdiction.

See R. vs Secretary of State for the Home depart. Ex. P Leech(1994) Q.B.198.

I have perused the University Rules contained in annexure “D” and I find no where therein where matters of academics are covered. The Rule deal with vacations and leave of absence, visits, University property, cleanliness, payment of dues, withdraw from course, correspondences, dances and other similar functions, demonstrations, conduct likely to cause a breach of peace, pregnancy and illness. It is from those subjects that the Vice Chancellor may suspend a student and seek approval under Rule 30 of the same Rules. The Applicant’s case is not covered by Annexure “D”.

The Applicant’s dilemma is, on the contrary, covered by the Examination Regulations for Semester system for 2008-2011 published in June 2008 which was annexed as “E”.

Paragraph 2.5.11 provides that an invigilator or supervisor shall report examination malpractices to the Academic Registrar - the 1st Respondent.

Paragraph 2.5.12 requires such a report with details to be in writing.

Paragraph 2.5.13 requires the Academic Registrar to inform the candidate in writing within 24 hours after receiving the report. Paragraph 2.5.14 requires the candidate to appear before the Examination Irregularities Committee.

Paragraph 2.5.15 provides for expulsion of a candidate who contravenes examination regulations and is found guilty.

If it is the Academic Registrar who is authorized to receive the report on malpractices and is the one authorized to write to the candidate and receives the candidate’s reply, why should it not be him/her to inform the same candidate about

a decision taken by the Committee which the Vice Chancellor chaired? The Academic Registrar of a University is not a junior officer. It is he/she who admits students and must have the jurisdiction to communicate their discontinuance from University courses.

A faint attempt was made to fault the 1st Respondent's communication to the Applicant that it was not done within 24 hours as per paragraph 2.5.13 but apart from this submission coming from the bar, there was no evidence that the 1st Respondent sat on the report for more than that time.

Though the report is dated 11/6/09, it is not clear when it reached the 1st Respondent. It is not the date of the report of malpractice that is material, but the response to it within 24 hours of its receipt.

For reasons contained above, it is my finding that the 1st Respondent acted within his powers to communicate the decision to the Applicant. This ground also fails. Consequently, the Applicant is not entitled to any remedies and the application is dismissed with costs.

Judge
22/10/2009

Applicant in court Respondent in court
Kwizera for Respondents Kahungu for
Applicant Tushemereirwe - clerk Ruling
delivered in open court.

Lawrence Gidudu

J u d g e
22/10/2009