

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

MISC. CAUSE NO. 028 OF 2016

MUHUMUZA MUGIMBA MOSES ::::::::::::::::::::::::::::::: APPLICANT

Versus

LAW DEVELOPMENT CENTRE ::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application by Notice of Motion for Judicial Review of the decision of the Management Committee of the Law Development Centre made on 25th February 2016 cancelling the applicant's Post Graduate Diploma in Legal Practice published in the media on 26th and 27th February 2016.

The applicant seeks for the prerogative orders of mandamus, prohibition, certiorari, damages and costs of the application. The application is brought under Article 28(1) and 42 of the Constitution of the Republic of Uganda, Section 36 of the Judicature Act, Rules 3 and 6 of the Judicature (Judicial Review) Rules and Section 98 of the Civil Procedure Act.

Briefly the background to this application is that the applicant is a former student in the respondent institution for the academic year 2008/2009. While at the respondent institution, he sat for a supplementary examination in commercial transactions in 2010. When the results of the supplementary examination were released, they indicated that he had not passed. Being dissatisfied with those results, he applied for verification of his results. Upon verification, it was ascertained that he had passed the said examination. He was then subsequently awarded a Post

Graduate Diploma in Legal Practice in 2010. He then went on to practice law. In August 2015, the applicant was summoned by the respondent's institution Management Committee Subcommittee (MCSC) to answer allegations of unofficial entry of marks on his commercial transactions answer sheet. He appeared and gave his side of the story. On the 26th February 2016, the respondent communicated its decision to cancel the applicant's post graduate diploma in legal practice. He was dissatisfied with the manner in which the decision was made hence this application.

The grounds of the application are briefly set out in the application. In summary they are that:

1. The summons issued to the applicant by the respondent did not contain the particulars of allegations against the applicant and so were in total disregard of the principles of adequate notice.
2. During the hearing, he was not allowed a chance to cross examine witnesses.
3. The respondent acted irrationally when it failed to factor in relevant information that no marks were altered inside the applicant's script at the time of verification save for the marks that had been miscalculated.
4. That the whole proceedings were conducted in total disregard of the principles of natural justice and fair hearing rendering it illegal.
5. That it is in the interest of substantive justice that the application be granted.

The application is supported by the affidavit of the applicant dated 10th March 2016. He also filed further supplementary affidavit in support of the application dated 24th May 2016 and 26th July 2016, the respondent filed an affidavit in reply dated 29th March 2016 sworn by the director of Law Development Center, Frank Nigel Othembi. He swore a supplementary affidavit dated 18th April 2016 and an affidavit in reply to the applicant's further supplementary affidavit in support of the application dated 1st August 2016. The applicant filed an affidavit in rejoinder dated 1st April 2016.

Written submissions were filed. The applicants filed theirs on 1st August 2016, the respondent filed on 19th August 2016. The applicant filed a rejoinder on 2nd September 2016 and lists of authorities were also filed.

I have considered the submissions of both parties and affidavits on record.

Counsel for the respondents raised preliminary points of law. He faulted the applicant's affidavit for having no evidence to support them. For this submission, learned counsel relied on Order 19 rule 3(1) of the Civil Procedure Rules which requires that affidavits must be confined to such facts as the deponent is able of his or her own knowledge to prove except on interlocutory applications where statements of belief are allowed. Counsel further submitted that this is not a technicality which can be overlooked by invoking Article 126(2)(e) of the Constitution. Counsel then prayed that the affidavits of the applicant be struck out and the application be accordingly dismissed with costs.

Counsel also submitted that the supplementary affidavit filed on the 26th July 2016 was filed with leave of court but the earlier affidavit in support of the Notice of Motion filed on 24th May 2016 was filed without leave of court. That it should therefore be struck out.

In reply, counsel for the applicant submitted that they concede to the fact that paragraph 23 of the affidavit in support of the application is based on information not on knowledge of the applicant. However, learned counsel prayed that this court allows the rest of the affidavit to stand and sever paragraph 23 from the rest of it. For this submission, counsel relied on the case of ***Caroline Turyatema & 4 others Vs Attorney General, Constitutional Petition No.15 of 2006***. I agree with learned counsel for the applicant, I will therefore strike out paragraph 23.

The further affidavit in support of the Notice of Motion filed on 24th May 2016 was filed without leave of court and the applicant conceded, therefore that affidavit is struck out. But since the applicant conceded, I make no order as to the costs.

The applicant in submissions in rejoinder also raised a point of law claiming that the director of the respondent stated matters not in his knowledge because he stated in his affidavit that he discussed the application with Mr. Tibaijuka and Dr. Pamela Tibihikira who chaired the committee before making a reply. I do not find any merit in this objection. The director of the respondent institution had all the right to discuss this application and any affidavits with the persons involved.

The principles governing Judicial Review are well settled. Judicial Review is concerned with prerogative orders which are basically remedies for the control of the exercise of power by those in public offices. They are not aimed at providing final determination of private rights which is done in normal civil suits. The said orders are discretionary in nature and court is at liberty to refuse to grant any of them if it thinks fit to do so even depending on the circumstances of the case where there had been clear violations of the principles of natural justice. This was pronounced in the case of **John Jet Tumwebaze versus Makerere University Council & 2 Others Misc. Cause No. 353 of 2005.**

The discretion I have alluded to here has to be exercised judicially and according to settled principles. It has to be based on common sense as well as justice. See: **Moses Semanda Kazibwe versus James Senyondo Misc. Application No.108 of 2004.**

Factors that ought to be considered include whether the application has merit or whether there is reasonableness, vigilance without any waiver of the rights of the applicant. Court has to give consideration to all the relevant matter of the cause before arriving at a decision in exercise of its

discretion. It was held in the case of *Koluo Joseph Andres & 2 Others versus Attorney General, Misc Cause No. 106 of 2010* and I agree that:

“It is trite law that Judicial Review is not concerned with the decision in issue per se but with the decision making process. Essentially Judicial Review involves the assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality”.

The purpose of Judicial Review was summed up by Lord Hailsham St Marylebone in *Chief Constable of North Wales Police Vs Heavens [1982] Vol.3 All ER* as follows:

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

This court agrees with the above laid down principles. Although the applicant raises four issues to wit;

1. Whether the application is properly before this court?.
2. Whether the failure by the management committee to hear the applicant violated the applicant’s right to be heard.
3. Whether the applicant was accorded a fair hearing by the respondent’s subcommittee
4. Whether the applicant is entitled to the prayers sought.

This application being for Judicial Review, I find the most important issues to be the grounds and remedies. As such, this application raises two issues for determination which cover all the issues raised by the parties in their submissions;

1. Whether the application raises any grounds for Judicial Review.
2. Whether the applicant is entitled to the remedies sought in the application.

Issue 1: Whether the application raises any grounds for Judicial Review?

This court agrees with counsel for the applicant and counsel for the respondents that, there are three broad grounds for Judicial Review which court must consider. That is illegality, irrationality and procedural impropriety. Proof of any of the grounds is sufficient for the application to succeed.

This was the position in the case of **Pastoli Vs. Kabale District Local Government Council and Others [2008] 2 EA 300** where it was held while citing **Council of Civil Unions Vs Minister for the Civil Service [1985] AC 374** and **An Application by Bukoba Gymkhana Club [1963] EA 478 at 479** that:

“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety“Illegality is when the decision - making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission“Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards Procedural impropriety is when there is a failure to act fairly

on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

It is also important to note that proof of one ground is sufficient for the application for Judicial Review to succeed.

I shall deal with the grounds one by one. The applicant’s complaint is only on two grounds of procedural impropriety and irrationality.

Irrationality:

On this ground, learned counsel submitted that in view of the contents of the report of the subcommittee of the management committee of the respondent marked annexure H2 (page 49, line 1 and 2) in the affidavit in support of the application, the findings in the forensic audit report were upheld. The findings were that when the impugned mark on the answer script of the applicant is counted as “1” the total score in question “2” is 12 and when counted as “4”, the mark would be “15”. Counsel submitted that such analysis was erroneous as it was based on mere suspicion not backed by any forensic analysis of alteration and was intended to victimize the applicant. The applicant in paragraph 16 of his affidavit in rejoinder did depose that “1” mark as well appears thrice in the same question “2” which if also counted would make the mark “15” and without which would make the mark 12. The committee was guided by the evidence of Mr. P.M. Mugisha the then internal examiner and head of the subject who owned up the 15 marks. He confirmed in his affidavit that he at the instance of the applicant’s petition to the then Head bar course Mr. Kaaya Exedit, recounted the marks on the applicant’s script and established that the correct total in question 2 was 15 marks. He then corrected the error from 12 to 15 and counter signed against the correction as per annexure ‘F’ to the affidavit in support of the application. That this evidence was not challenged by the respondent. Instead the respondent’s

director in paragraph 14 of his affidavit contended that the head of subject had no powers or mandate to alter the applicant's marks because as stated in paragraph 4 of the affidavit in rejoinder and page 126 paragraph 3 of the report of the Management Committee Subcommittee, it was stated that the board of examiners delegated their responsibility to the Secretary/Registrar and Heads of Department.

Learned counsel submitted that paragraph 4 and annexure "A" of the affidavit in support of the Notice of Motion clearly explains that the applicant addressed his application for verification to the Head bar course who at the time was Mr. Expediit Kaaya. The applicant's role stopped at submission of the letter requesting for verification and at that point, he had no mandate to regulate the verification process. Even if the person who had conducted the verification had no mandate, this cannot be imputed on the applicant who had no role to play in the verification process.

Further learned counsel submitted that the forensic audit committee then concluded that it was highly likely that the mark was adjusted by those who acted on the students' petition and retrieved the script for verification. The subcommittee duly analyzed the evidence before it and did not implicate anyone who is alleged to have altered the impugned mark from 1-4. There had to be someone who effected the alleged alteration from 1-4. Further that it was illogical for the subcommittee to say at page 48 paragraphs 1, 2, 3, 4 and 5 of the report that the alteration was made by those who acted on the petition without specifying the person.

Counsel further submits that the respondent is the sole custodian of the examination scripts to which the applicant did not have access. Patrick M. Mugisha the then internal examiner in his affidavit confirms that the impugned 4 marks had been awarded to the applicant during the marking of the script. The subcommittee did not have contrary evidence. That therefore no reasonable tribunal properly directing itself on the law and the evidence would have come to the conclusion arrived at by the forensic audit committee and the subcommittee of the management

committee and the management committee itself. That this court should quash the decision of the respondent.

The respondent submissions are very cumbersome to comprehend in relation to this application. I expected the respondent to submit in reply to the applicant's submissions. The applicant raised issues but the respondent did not follow the same order. It was therefore difficult for this court to point out exactly which part related to irrationality as a ground for Judicial Review. However, paragraphs 146 and 147 the respondent submits that the applicant's diploma was awarded as a result of an illegality so the decision of the respondent is justified. This was also in the affidavit in reply of the Director Law Development Centre in paragraph 18.

I have considered the submissions of both parties.

Irrationality is when there is such gross unreasonableness in the decisions taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.....

I substantially agree with the submissions of learned counsel for the applicant. In my considered view, it defies logic why the management committee decided to cancel the applicant's post graduate diploma in legal practice without fault on his part. It is an undisputed fact in this case that the management committee of the law development has the powers to confer diplomas under section 4(c) Law Development Centre Act, Cap 132. It also has powers to conduct examinations and confer diplomas, prizes and certificates in accordance with any law in force or as may be required by the law council and to appoint subcommittees See: **Section 16, Law Development Centre Act, Cap 132.** The subcommittees appointed under Section 16 of the Act are supposed to only investigate and report to the management committee. Therefore the real decision making must be done by the management committee which under Section 7 of the Law Development Centre Act is the governing body of the centre. As a governing body therefore, the decisions made by that body must be rational.

It was the submission of counsel for the respondents that this court must refrain from interfering with the decisions of academic institutions and that once an illegality is brought to the attention of court, it overrides all matters of pleadings.

I agree with his submissions but it does not mean that whenever an illegality is alleged it must prevail and decisions must not be based on reasonable cause. It was suspected that the applicant could have been guilty of examination malpractice by altering marks on his answer script after final marking had been done. However it is not clear who altered the marks because in paragraph 91-98 of the Management Committee Subcommittee of July–November 2015 record of proceedings annexure ‘M2’ where the applicant met with the committee and was interviewed, there was no evidence brought out to show that the applicant did anything to influence the results. All he did was to make an application for verification which was accepted by the respondent institutions officials. Although the respondent attempts to argue that at the time of the applicant’s request for verification the rules did not allow verification, it does not make any sense because all through the years investigated, the facts are clear that applications for verification were submitted and considered. This was confirmed by the former director of the respondent at page 20 of the record of proceedings of the Management Committee Subcommittee. At page 40 of the same proceedings, the Head bar course also confirmed that verification was a procedure available to the students during his stay at the Law Development Centre.

It further doesn’t make sense why the Management Committee of the Law Development Centre cancelled a diploma because in pages 91-98 of the Management Committee subcommittee July-November 2015 record of proceedings annexure ‘M2’ to the applicant’s supplementary affidavit, several portions of the record of proceedings are indicated with the words ‘*record not clear*’. The applicant claimed that the Management Committee did not give him a fair hearing but the respondent says that the hearing before the subcommittee was sufficient. If it was the basis for the decision of the Management Committee, then I must state that it was irrational for

the Management Committee to base itself on such a record of proceedings which reduces the most crucial parts of the evidence of the applicant to one phrase that ‘*record not clear*’.

In **James Edward Jeffs and others Vs New Zealand Dairy Production and Marketing Board and others [1967] AC 551** court found that the subcommittee having presented only the report without the record of proceedings was wrong because it violated the right to a fair hearing where no proper recording is done the resultant decision cannot be said to be rational. I therefore find that the applicant has proved the ground of irrationality.

Procedural impropriety:

This is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in none observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises the jurisdiction to make a decision.

It was the case of the applicant that the management committee of the applicant violated the applicant’s right to be heard because they condemned the applicant without giving him a hearing. For this submission, counsel relied on Article 28, 42, and 44(C) of the Constitution of the Republic of Uganda. The applicant also submitted that the management committee of the respondent took a decision in a case it did not hear which is contrary to the principle that he who hears must decide as enunciated in the case of **Muhammad Muhammad Hamid Vs Roko Construction SCCA No.1 of 2013**. Counsel also submitted that although that case was in respect of court proceedings still the same Article 28(1) is applicable to administrative tribunal.

Counsel then submitted that instead of the management committee of the respondent hearing independent evidence and according the applicant a hearing, they elected to entirely rely on the

hearing of the sub-committee, adopted and upheld its recommendations in its decision dated 11th February 2016 as per minute 13-15 of the Minutes of the Management Committee.

The other arm of learned counsel's argument is that the respondent's management committee subcommittee committed several procedural irregularities in as far as;

- (a) They did not adequately notify him of the allegations against him.
- (b) They denied him an opportunity to present, hear and cross examine persons that testified against him.
- (c) They acted in an irrational manner by taking into account irrelevant considerations before it and ignored relevant considerations.
- (d) The proceedings were tainted with bias.

I shall not consider irrationality in "C" because it was covered under the 1st ground of irrationality.

On the issue of adequate notice the applicant submitted that there was no full disclosure to the applicant of the evidence against him. He was given the summons informing him that he should appear on allegations that unofficial entry of marks were made into his commercial transactions examination answer script after results had been verified by the external examiner. That since the applicants sat for several commercial transactions examinations while at Law Development Centre he could not point out which script he was being invited to talk about and explain his involvement. The issue here according to counsel for the applicant is not that the summons were not issued but that there was absence of disclosure of all materials placed before the committee. That he was ambushed with information which he could not have expected to find.

I agree with the case for the applicant that he was not given adequate disclosure of information and the nature of proceedings against him. The purpose of adequate notice in proceedings before quasi judicial bodies cannot be underestimated. In this case it was underestimated partly because

the committee did not see the need to fully inform the applicant why he was being summoned. The respondent submits that the applicant should have been vigilant enough to ask for all the information he needed but the respondent's subcommittee did not inform him of his right to access the information. The applicant was made to appear as a mere witness who was helping the committee in its investigations yet he actually was the accused. See: pages 91-98 of the management committee subcommittee July-November 2015 record of proceedings annexure 'M2' to the supplementary affidavit in support of the application. Had it been put to him clearly that they were using this inquiry to find a case against him he would have acted differently before the committee. The respondent cannot use what happened before its committee in the case of another witness to treat the applicant as having been indolent. I therefore find that the applicant was not given adequate notice.

In ***B. Surinder Singh Kanda Vs Government of the Federation of Malaya [1962] AC 322*** court held that the failure to supply the appellant with a copy of the report of the board of inquiry which contained a matter highly prejudicial to him and which had been sent to and read by adjudicating officer before he sat to inquire into the charge amounted to a failure to afford the appellant a reasonable opportunity of being heard.

I will go to the issue of whether the committee denied the applicant to be present, hear and cross examine persons that testified against him.

On this point I find that the Management Committee of the respondent institution did not accord the applicant any such chance but even if the proceedings before the Management Committee Subcommittee were to be taken as the hearing it still didn't meet the required standard especially where academic qualifications of former students who are practicing law as the source of their livelihood on the basis of the qualification granted by the respondent were in issue. The standard should have been higher. It is expected that the committee should have warned the applicant when he appeared before it that they were driving him into the slaughter house. He was made to believe that he was merely there to assist them yet actually he was the target. I therefore find that having obtained evidence against the applicant, the least they could do was to make it known to

him that such evidence had been obtained. This court would have expected such a step to be taken by the management committee of the respondent before the decision to cancel the diploma was taken.

After the Management Committee Subcommittee had done its part to investigate and made the report 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 to the applicant that he has a choice either to challenge the evidence in any way he deems necessary and give him reasonable time to make his case. It is then and only then that one would say that the Management Committee conducted a fair hearing. Most of the evidence against the applicant was recorded in the absence of the applicant. When the applicant appeared, he was not informed that such evidence even existed. He therefore had no opportunity to challenge it. All he had was a forensic audit report.

In this application the applicant presented an affidavit in support of the application sworn by one of the examiners a one Mr. P.M Mugisha who the Management Committee Subcommittee claims denied making any alterations on the answer script. Instead in the affidavit he says that the Management Committee Subcommittee misrepresented his testimony in the report. This could be correct because even in the testimony of the head bar course at page 40 of 293 Management Committee Subcommittee July-November 2015 record of the proceedings last paragraph, Mr. Kaaya the then Head bar course stated that there was a time when the internal examiner was involved in verification. Had the Management Committee given the applicant that chance to make his case before it and not through the eyes of the Management Committee Subcommittee perhaps their decision would have been different. Even if the decision would have been the same at least this court would be satisfied that the applicant was accorded a fair hearing.

Whether the proceeding were tainted with bias.

On this point learned counsel for the applicant submitted that from the applicant's affidavits and the record of proceedings of the Management Committee Subcommittee marked annexures 'M2' page 91, the subcommittee already had the forensic audit report and the applicant's script for the impugned examination in commercial transactions by the time the applicant appeared before it and the applicant was seeing these documents for the first time. That inevitably the exclusive access to these documents by the Management Committee Subcommittee created a very likelihood of pre-determined mind by the subcommittee.

The second leg of bias according to counsel is the manner in which the respondent selectively and discriminatively invoked the mandate of the then head bar course and head of subject specifically in paragraph 14(a) of the affidavit in reply challenges the mandate of the then head of subject in verifying the applicant's script and under paragraph 6 of the affidavit in reply, it alleges that as per the applicable rules which governed the passing of the bar course, the board of examiners was the relevant body vested with the powers to conduct verification. This goes to the route of the decision which is not within the mandate of this court in the applications of Judicial Review.

Counsel also submitted that student No.BAR/203/2007, BAR/528/2008 and BAR/22/2007 were governed by the same regime of regulations as regards passing the bar course, they were equally and initially listed to have failed the course by the same board of examiners. Being dissatisfied with the results, they petitioned the same head bar course in the same year 2010. The same Head Bar Course acted and upon verification they passed. Further that in the case of one Kirumira Arthur Nicholas as deposed by the applicant in his affidavit in rejoinder, he applied for verification and was confirmed to have passed after a recount by the same Mr. PM Mugisha who in the same manner corrected the final result on the face of the script from 47 to 54. The Pamela committee that investigated Kirumira Arthur selectively and discriminatively absolved him of any wrong doing despite its suspicions of alleged alterations without which he would not allegedly have passed. Counsel then submits that it is bias to cancel the applicant's diploma on

grounds that the person who verified had no powers yet confirm Kirumira's diploma yet his was also verified by the same person.

Counsel also claims that there was bias on the part of the Management Committee because two of the persons involved in the Management Committee Subcommittee were also in the Management Committee to make decisions. The two members, Mr. James Mukasa Ssebugenyi and Pamela Tibihikira are too influential so they influenced the decision. That Mr. Ssebugenyi was also the prosecutor in the investigation meetings. According to counsel this manifests bias. For this submission, counsel relies on a book of **Sir William Wade on Administrative Law, paragraph 485** where he opines that where functions are delegated or entrusted to committees or subcommittees an overlap of membership may be objectionable on grounds of bias.

In reply to this, learned counsel for the respondents submitted that the submissions of the applicant are misleading because the committee handled each of the suspected students on a case by case basis. He added that each student script had different issues and alleged manner of tampering. In some cases, the examiners took responsibility for the alteration of marks while in others they acknowledge the existence of alterations but denied having made them. All according to counsel comes out clearly in the proceedings annexure 'M'. That therefore the applicant was not treated with bias because the circumstances for his case were different from the others.

I do not think that just because the Management Committee Subcommittee made a different decision in another case from that made in the applicant's case it amounts to bias. I also do not think that without any positive evidence of prejudice, the respondent's Management Committee Subcommittee can be said to have been biased. In my opinion, despite the flaws identified the Management Committee Subcommittee did a very good job as an investigative committee. In the Law Development Centre Act, the management committee of the respondent has powers to sit in its own case because the Act does not provide for an independent tribunal.

I therefore find that there was no bias against the applicant either in the management committee subcommittee or in the management committee itself.

For the reasons in this ruling, this court finds that the decision of the respondent to cancel the applicant's post graduate diploma in legal practice was irrational. This court also finds that the applicant has failed to prove bias on the part of the Management Committee of the respondent. It is also the finding of this court that the applicant was not given a fair hearing and was not given adequate notice of evidence and accusations against him. He was not given an opportunity to cross examine the witnesses. The applicant has therefore proved that the whole process was tainted with procedural impropriety.

Issue 2: Whether the applicant is entitled to the remedies sought in the application.

Certiorari:

Where a prejudicial decision has been made by a public authority in the course of exercise of its statutory authority without according the affected party a right to be heard then a writ of certiorari should often freely be granted by the courts. See: **Ridge Vs Baldwin [1964] AC** and **Eng. William Kaya Kizito Vs AG HCMC No. 38 of 2006.** I accordingly grant the same to the applicant herein. I will accordingly grant the same to the applicant herein. The decision of the management committee of the respondent canceling the applicant's Post graduate diploma is hereby quashed.

Mandamus:

I find that this is a proper case for the order of mandamus because the applicant seeks to compel Management Committee of the Law Development Centre to give him a fair hearing with a

chance to cross examine witnesses and challenge evidence as well as obtain full disclosure of materials available to the Management Committee which incriminate him. To issue or not to issue a Post Graduate Diploma in Legal Practice granted by the respondent is at the discretion of the Management Committee of the respondent institution but the decision to issue or not to issue must be done fairly. Judicial Review is not about the decision but rather the decision making process. So the order of mandamus is not compel the respondent institution to confirm the diploma of the applicant but to adopt a procedure which respects the principles of natural justice in granting or denying the same and grant the applicant a fair hearing as discussed in this ruling.

Prohibition:

I decline to grant this order because there is no future decision to be made by the Management Committee.

Injunction:

An injunction is hereby issued against all stake holders as served with copies of the decision restraining them from acting on the decision of the Management Committee until a proper hearing is given to the applicant within the rules of natural justice.

Damages:

I don't find it proper to grant general damages in a matter proceeding on affidavit evidence. I therefore decline to grant the same.

Costs:

The respondent shall pay the applicant the costs of this application.

I so order.

Stephen Musota

J U D G E

05.12.2016