

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.317 OF 2017**

**THE JUDICATURE (JUDICIAL REVIEW) RULES No. 11 of 2009**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW BY APPLICANT FOR  
ORDERS OF PROHIBITION, CERTIORARI, INJUNCTION, MANDAMUS AND  
DECLARATIONS.**

**ASOBASI DANIEL OKUMU----- APPLICANT**

**VERSUS**

**1. UGANDA LAW COUNCIL**

**2. LAW DEVELOPMENT CENTRE----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Article 42 and 44 of the Constitution, Section 36 of the Judicature Act as amended, Section 98 of the Civil Procedure Act, Rule 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009 seeking orders that;

- a) An order of Certiorari to move this honourable court to set aside, quash and declare invalid or a nullity the impugned orders, decision and directive of the respondent's committee on legal education and training of setting a pre-entry examination as the yardstick for the applicant to be admitted at Law Development Center to study a postgraduate Diploma in Legal Practice.

- b) An Order of injunction against the respondent's agents department from effecting any actions, policies, directives, instructions and its recommendation to allow the applicant to continue to sit for any unfair, biased, unreasonable pre-bar examination conduct of the 1<sup>st</sup> respondent as a yardstick of admitting the applicant at the Law Development Centre the Law Development Centre to study his Postgraduate Diploma in Legal Practice.
- c) An order of mandamus compelling the agents of the 1<sup>st</sup> respondent the Committee on legal Education and Training to unconditionally admit the applicant to study a postgraduate Diploma in Legal Practice at the Law Development Center the 2<sup>nd</sup> respondent.
- d) An order of damages against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the Highhandedness actions of the Committee on Legal Education and Training for the wanton and unwarranted interference with the applicant's constitutional rights. While denying him in writing to access his pre-bar examination results the marked scripts and it's marking guide to allow him crosscheck and appeal for a remarking within 30 days from the date of release of the results.
- e) An order that the cost of this application for judicial review be provided for.

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- a) The applicant completed a Bachelor of Laws Degree at School of Law, Makerere University in Academic year 2014-2015 and applied , paid all examinations charges and was issued with Index No. PRE-BAR 1405/2017 with instruction to sit the pre-entry examination to be held on 1<sup>st</sup> August ,2017.
- b) The applicant sat the pre-entry examination and on 17<sup>th</sup> August, 2017 when the pre-entry examination was released he was awarded a mark of 40%.

- c) The applicant grossly dissatisfied with his released results of 40%, he wrote a letter to the secretary, Uganda Law Council demanding to access his original marked scripts and the respondent's marking guide to cross-check what, why and how he failed because he believed he passed the exams and makes an appeal for a possible remarking within 30 days as required by law.
- d) The respondent's agents received his demand letter on the 23<sup>rd</sup> August, 2017, but they declined to allow him to access his marked scripts and their marking guide to access and see what, why and how he failed.
- e) The 1<sup>st</sup> respondent staff in a letter dated 3<sup>rd</sup> October 2017, declined and stated that the applicant has no right to view and appeal against his marked results because the his papers were marked and scrutinized by competent lawyers and external examiners yet he has not yet checked and made an appeal to the respondent's agents for remarking.
- f) The applicant received a reply letter from the Secretary Law Council and it was stated that the Committee on Legal Education and Training sat on 28<sup>th</sup> September, 2017 and found no valid reasons to avail him the documents he requested for since it was marked by competent examiners.

The respondents opposed this application and the 1<sup>st</sup> respondent filed an affidavit in reply by Edward Fredrick Ssempebwa while the 2<sup>nd</sup> respondent filed an affidavit by Frank Nigel Othembi.

The 1<sup>st</sup> respondent in its affidavit in reply of contends that the examinations has been conducted for several years and very many eligible persons have sat for it , passed and were thereby admitted to the Bar Course.

That for the examination conducted in the year 2017, 1797 candidates sat for the the examinations and 814 passed and were admitted to the Bar Course and that

the allegation that the examination of 2017, was unfair, biased and unreasonable is not true.

The Committee on Legal Education and Training exercises as much transparency as is practicable including, entertaining appeals arising out of the examination, but it is impracticable and not the policy of the Committee to hand to each and every candidate the examination script so as to review the performance.

It is not a requirement for anyone who is dissatisfied with pre-entry results to first access his/her marked script and marking scheme as a basis of appeal and neither does the dissatisfied person has a right over the same.

That the applicant has had a consistent poor academic performance as per his attachments and it is reflection in his failure to pass pre-entry examinations set by Law Council.

That the applicant is using this court as a vehicle to unfairly be admitted to the bar Course at Law Development Centre without meeting the required standards met by other candidates.

The 2<sup>nd</sup> respondent opposed the application and denied being responsible for supervision and control over professional legal education in Uganda. That the 2<sup>nd</sup> respondent does not set or mark pre-entry examinations or prepare any marking guide or handle pre-entry examinations scripts.

That the applicant's complaint about access to information has no merit or justification whatsoever and has no basis nationally and internationally.

Four broad issues were proposed for court's resolution;

1. Whether the decision of the law council Committee on Legal Education and training of declining to avail the applicant with his marked script and its marking scheme for appeal purposes of appeal purposes was unlawful?
2. Whether the policy of the 1<sup>st</sup> respondent of conducting pre-entry examination as the yardstick of admitting the applicant to Law Development Center is unreasonable, biased and unfair?

3. Whether the applicant should be unconditionally admitted to study his bar course at Law Development Center?

4. Whether the applicant is entitled to damages?

I shall resolve this application in the order of the issues so raised but respondent counsel has raised some preliminary objections which will be considered first. The applicant was represented by Mr Aisu Nicholas whereas the 1<sup>st</sup> respondent was represented by Mr Johnson Natuhwera and Mr Tibaijuka Ateenyi represented the 2<sup>nd</sup> respondent.

### **Preliminary Objections**

#### ***Whether the application discloses any cause of action against Law Development Centre?***

The applicant filed this application challenging the refusal by the Law Council to avail him with his examination scripts. Throughout the pleadings the applicant does not show any grievance she has with the 2<sup>nd</sup> respondent.

The conduct of the Pre-entry examination is conducted by the 1<sup>st</sup> respondent by virtue of Advocates Act and the regulations made thereunder.

Section 3 of the Advocates Act gives the function to 1<sup>st</sup> respondent.( section 3 of the Advocates Act as amended in 2002) include; (a) to approve courses of study and to provide for the conduct of qualifying examinations for purposes of entry to the legal profession; (b) to prescribe the professional requirements for admission to the post-graduate Bar course and qualifications necessary for eligibility for enrolment as an advocate.

I agree with the respondent's counsel that the applicant has no complaint against Law Development Centre. The Law Development Centre plays no role in the admission and the pre-entry examinations.

The 2<sup>nd</sup> respondent was wrongly and erroneously added as a party to these proceedings and therefore there is no cause of action against it. The application is dismissed with costs against the 2<sup>nd</sup> respondent.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze v Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd v Attorney General Misc Cause No.125 of 2009, Balondemu David v The Law Development Centre Misc Cause No.61 of 2016.***

For one to succeed under Judicial Review it is trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

Judicial review is not an appeal from a decision, rather, it is a review of the manner in which the decision was made; its purpose is not to ensure that the decision making body reaches a conclusion that is correct in the eyes of court. The court limits itself to the decision made; otherwise, it would amount to usurping the powers of the decision making body. The court is thus not entitled to consider whether the impugned decision as opposed to the decision making process was fair and reasonable; and it cannot substitute its own decision or impose its own conditions, but it must leave this to the decision making body. ***See YWCA & Others v National Council for Higher Education & Another High Court Miscellaneous Cause No. 579 of 2005***

***Whether the decision of the Law Council Committee on Legal Education and Training of declining to avail the applicant with his marked script and its marking scheme for appeal purposes of appeal purposes was unlawful?***

The applicant's counsel submitted that the decision making process and the decision of the 1<sup>st</sup> respondent declining to avail the applicant with his marked scripts and the applicant's marking scheme was unfair, unreasonable and irrational, this is because it does not relate to the general examination practices acceptable in conduct of national and international examinations standards, therefore unlawful as can be compared and contrasted to the following statutory rules and regulations.

He cited Regulation 7 of the Universities and Other Tertiary Institutions (Quality Assurance (2008) on examinations Regulations and Standardisation by National Council for Higher Education. According to him the 1<sup>st</sup> and 2<sup>nd</sup> respondent are governed by these regulations since they squarely fall in the category of "anybody" conducting Public examination.

The applicant claims that he wanted to be availed the 1<sup>st</sup> respondent's marking scheme and his marked script to help him develop the grounds of Appeal. According to the applicant this is same procedure in courts of law for one to lodge appeal he must first be accorded records of proceedings, therefore in this academic situation the applicant ought to be availed with the materials he requested for before he could lodge appeal for determination. The 1<sup>st</sup> respondent reached a final decision without receiving and attending to his complaints, the decision reached without first receiving the applicant's input, therefore this makes the decision making process to be biased, unreasonable and irrational therefore unlawful in the face of the law.

The applicant also cites regulation 6.9 of the Uganda National Examination Board (UNEB) Corporate Profile of Ensuring Quality Assurance.

The 1<sup>st</sup> respondent's counsel submitted that the law regulating the Admission of candidates for professional training at the Law Development Center is the Advocates Act, CAP 267 and The Advocates (Professional Requirements for

Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010.

In paragraph 4 of Edward Fredrick Ssempebwa's affidavit, who is the Chairperson of the Law Council Committee on Legal Education and Training states that the statutory functions of the Committee, as the medium of the Law Council (as per section 3 of the Advocates Act as amended in 2002) include; (a) to approve courses of study and to provide for the conduct of qualifying examinations for purposes of entry to the legal profession; (b) to prescribe the professional requirements for admission to the post-graduate Bar course and qualifications necessary for eligibility for enrollment as an advocate.

Paragraph 3 of the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010 provides for among qualifications for admission to the bar course to include;

*(c) he or she has passed an examination or examinations, whether oral or written, approved by and conducted under the supervision of the Law Council.*

Paragraph 11 of the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010 provides for the admission examinations to the Post Graduate Bar Course.

It states;

*(1) An examination or examinations under paragraph 3(c) of this Notice shall-*

*(a) be conducted and concluded within thirty days before the commencement of the post-graduate bar course programme; and*

*(b) be based on the knowledge obtained from an approved law degree programme, aptitude and the values an applicant attaches to the legal profession.*

*(2) A person shall pay for the examination, a fee of fifty thousand shillings.*



*(3) A person who fails the examination or examinations under this paragraph may apply to retake the examination at any subsequent examination for admission to the post-graduate bar course.*

*(4) For the purpose of an oral examination, there shall be a panel of examiners, consisting of not less than three persons, drawn from representatives of-*

*(b) the universities or institutions whose law degree programme is accredited by the Committee;*

*(c) the Uganda Law Society;*

*(d) the Judiciary; and*

*(e) the institution offering and conducting the post-graduate bar course,*

*(5) Every panel constituted under subparagraph (4) must have a representative of an institution offering and conducting the bar course referred to in subparagraph 4(e).*

*(6) A person is qualified for appointment as a member of the panel of examiners under subparagraph (4) if that person-*

*(b) for the purposes of a member representing a university or institution under subparagraphs 4(b) and (e), is a lecturer of 5 years standing at the university or institution that he or she is representing.*

*(7) The Law Council shall determine the terms and conditions of service of the members of the panel of examiners."*

In paragraph 9 and 10 of the affidavit in reply, it was contended that the Committee exercises as much transparency as is practicable, including, entertaining appeals arising out of the examination, but it is impracticable and not the policy of the Committee to hand to each and every candidate the examination script so as to review the performance. Further, that it's not a requirement for anyone who is dissatisfied with Pre entry results to first access his/her marked script and marking scheme as a basis of appeal and neither does the dissatisfied persons have a right over the same.

It was further submitted that there was never any appeal by the Applicant to the Law Council and that it has never been a pre-condition that any appeal for remarking (which is not as of right but a privilege) necessitates the applicant to first seek for his marked script and marking scheme to determine for himself what were the correct and incorrect answers for the questions. That negates the purpose and role of the examiners. The duty of examining and marking is entirely to the panel of examiners as established under Paragraph 11(4) of the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010.

The 1<sup>st</sup> respondent finally submitted that the applicant's request is against the examination practice, even then, failure for the Law Council to provide him with his transcript and marking scheme did not preclude the applicant to file in his appeal for remarking as it is never a pre-condition for any appeal in the circumstance.

It can be seen that there are different legal regimes that regulate the conduct of examinations at the different institutions of learning. The submission of counsel for the applicant that the 1<sup>st</sup> respondent is in category of Higher Institutions of Learning governed by National Council for Higher Education is false and devoid of any merit.

The 1<sup>st</sup> respondent operates in accordance with the Advocates Act and the regulations made thereunder. The applicant's effort of challenging the law/regulations through an application of this nature is wrong since the 1<sup>st</sup> respondent was applying the law as it is on the law books. The applicant cannot fault the 1<sup>st</sup> respondent for applying the law without challenging the said law or the same being struck off the law books for what he alleges irrational, biased and unreasonable.

The applicant further submitted the appeal process in the court of law should be applicable to any appeal by availing him his script and marking scheme as the part of the record of record of Appeal.

In the case of ***Kenya Revenue Authority v Menginya Salim Murgani Civil Appeal No. 108 of 2009***, the Court of Appeal delivered itself as follows:

***“ There is ample authority that a decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is them to decide how they will proceed.”***

The 1<sup>st</sup> respondent is regulated by the law and it clearly sets out the appeal process against decision or the results. The applicant is only entitled to lodge an appeal and not to demand for the marking scheme and marked scripts.

The courts should not allow the litigation process to be transplanted in matters of this nature since the 1<sup>st</sup> respondent regulates its procedure of what would amount to a fair hearing as set out under the law.

As was held in ***Simon Gakuo v Kenyatta University and 2 others Miscellaneous Civil Application No. 34 of 2009***:

***“ The audi alteram partem rule should not be interpreted to mean a full adversarial hearing or anything close to it as per the court room situations and as per section 77 of the Constitution. Interpreting the demands of natural justice as requiring an adversarial hearing or anything similar is a serious misdirection in law. There are no rigid or universal rules as to what is needed in order to be procedurally fair. What is needed is what the court considers sufficient in the context of each situation with its own unique facts with the needs of good administration in view. I urge practitioners of law not to rigidly import the hearing requirements in the courtroom situation etc.”***

The submissions of counsel for the applicant are not premised on law although he contended that Legal Notice No. 17 of 2010 does not deny the applicant to access his script and the 1<sup>st</sup> respondent marking scheme.

Similarly the same legal notice does not provide that the applicant should be availed his script before lodging an appeal. The law allowed the applicant to lodge

an appeal but the he did not lodge the said appeal instead he made request to be availed his examination script and the marking scheme.

In the case of ***Musanje Joseph v Law Development Centre High Court Miscellaneous Cause No. 29 of 2012***, the applicant who was dissatisfied with his marks contended that it was unfair for the respondent to refuse to “verify” his results. The rules governing the passing of the Bar Course examination at the time did not provide for the verification of results. The Verification Committee dismissed the application for verification for lack of jurisdiction and the High Court upheld the same and dismissed the application.

The applicant in the present case turned this request for script and marking scheme into a matter for determination for the court since he now contends that in his request to be availed the documents to pursue the appeal was arrived at in the “board room” in his absence by the 1<sup>st</sup> respondent seeing no merit in his request.

The applicant’s request for the examination script and marking scheme of the 1<sup>st</sup> applicant had no legal basis and according to the applicant it was premised on “general practices acceptable in conduct of national and international standards”.

I agree with counsel for the 2<sup>nd</sup> respondent, that the applicant’s resort to the alleged general practices is an attempt to compare entirely different legal entities that are governed by different legal regimes.

The 1<sup>st</sup> respondent was not obliged to accord the applicant a hearing on a mere letter requesting for his examination script and the marking guide of the 1<sup>st</sup> respondent.

In ***R v Aga Khan Education services ex parte Ali Sele & 20 others High Court Miscellaneous Application No. 12 of 2002***, it was held inter alia as follows:

***“On the allegation that there was breach of the rules of natural justice, it is not in every situation that the other side must be heard. There are situations where a hearing would be unnecessary and even in some cases obstructive. Each case must be put on the scales by the court and there cannot be general***

***requirement for hearing in all situations. There will be for example situations when the need for expedition in decision making far outweighs the need to hear the other side and in such situations, the court must strike a balance” .***

There was no basis for the applicant to demand for a hearing before his request could be determined by the 1<sup>st</sup> respondent

The decision of the Law Council to refuse or deny the applicant his script and marking scheme was lawful and made in accordance with the law regulating the conduct of the pre-entry examinations and the applicant had no right to be heard before determining the request for the script and marking scheme.

### **ISSUE TWO**

***Whether the policy of the 1<sup>st</sup> respondent of conducting pre-entry examination as the yardstick of admitting the applicant to Law Development Center is unreasonable, biased and unfair?***

The applicant in his submission contended that the 1<sup>st</sup> respondent ought to have been courteous by attaching the marking guide and answer script of the applicant to show that indeed he failed the examinations. The applicant feels that the response by the 1<sup>st</sup> respondent was not adequate since they stated that the committee conducts fair and transparent pre-entry examinations, including entertaining appeals arising from examination.

The 1<sup>st</sup> respondent’s counsel submitted that the conduct of the Pre entry exams for bar Course at the Law Development Center is not a policy but by a provision of the law. It is regulated by the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010.

The Legal Notice provides for among others qualifications for admission to the bar course to include;

*(c) he or she has passed an examination or examinations, whether oral or written, approved by and conducted under the supervision of the Law Council.*

Paragraph 11 of the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010 provides for the admission examinations to the Post Graduate Bar Course.

It states;

*(1) An examination or examinations under paragraph 3(c) of this Notice shall-*

*(a) be conducted and concluded within thirty days before the commencement of the post-graduate bar course programme; and*

*(b) be based on the knowledge obtained from an approved law degree programme, aptitude and the values an applicant attaches to the legal profession.*

*(2) A person shall pay for the examination, a fee of fifty thousand shillings.*

*(3) A person who fails the examination or examinations under this paragraph may apply to retake the examination at any subsequent examination for admission to the post-graduate bar course.*

*(4) For the purpose of an oral examination, there shall be a panel of examiners, consisting of not less than three persons, drawn from representatives of-*

*(b) the universities or institutions whose law degree programme is accredited by the Committee;*

*(c) the Uganda Law Society; (d) the Judiciary; and*

*(e) the institution offering and conducting the post-graduate bar course,*

*(5) Every panel constituted under subparagraph (4) must have a representative of an institution offering and conducting the bar course referred to in subparagraph 4(e).*

*(6) A person is qualified for appointment as a member of the panel of examiners under subparagraph (4) if that person-*

*(b) for the purposes of a member representing a university or institution under subparagraphs 4(b) and (e), is a lecturer of 5 years standing at the university or institution that he or she is representing.*

*(7) The Law Council shall determine the terms and conditions of service of the members of the panel of examiners."*

In respect of bias, Counsel submitted that in situations of allegations of bias, Lord Denning, M.R. in **Metropolitan Properties Ltd. v. Lannon**, [1968] 3 All E.R. 304, held that it is enough if seemingly there is cause to think that the decision maker must have been biased. The court looks at the impression that would be given to other people.

In his learned treatise **The Discipline of Law** (Butterworth, London, 1979 at 86-87), Lord Denning further addressed the question of judicial bias and referred approvingly to what Devlin J (as he then was) said in **Rep v. Barnsley Licensing ex parte Barnsley and District Licensed Victuallers Association** [1960] 2 QBD 169, where he set out the standard to be applied on the question of bias:

*"In considering whether there was a real likelihood of bias, the court does not look at the Justice himself or at the mind of the chairman of the tribunal or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right minded persons would think that, in the circumstances, there was a real likelihood of bias, then he should not sit, and if he does sit, his decision cannot stand. Nevertheless, there must appear to be real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which no reasonable man would think it likely or probable that the justice or chairman as the case may be, would or did favour one side unfairly at the expense of the other".*

The applicant has failed completely to demonstrate to this Court how biased the Law Council has been to him. It's not just about alleging but the applicant must demonstrate and prove that the body or persons were biased against him in favor of another(s). It is also clear from the selection of panel of examiners, that the Committee exercises as much transparency as is practicable for any form of unfairness, bias and unreasonableness.

It is important that this Court discerns professional Legal Education and Training from Academic training. From a plain reading of section 3 of the Advocates Act first enacted way back in 1970 and amended in 2002, the Committee is empowered by law to supervise professional legal education, i.e., professional training at Law Development Centre and Continuing Legal Education for advocates in practice.

This point was made in **HC Civil Application No. 589 of 2005 Pius Niwagaba v Law Development Centre** (unreported) by Justice Okumu Wengi .

In that case, Niwagaba was denied entry to LDC on the grounds that the Law Council Committee on Legal Education had not recognised Uganda Pentecostal University. Citing World Bank funded report on Legal education in Uganda (1995) by Justice Odoki, the learned judge found that the Justice Odoki report made it clear legal education and training recognizes the training of a lawyer consists of three stages:

*'Academic stage; the professional stage which consists of institutional training and in training; and lastly continuing legal education'*.

The report further states that;

*'The academic stage should be taken at a university or its equivalent. The professional stage should consist partly of organized vocational in an institutional setting partly of practical experience in a professional setting under supervision. ...'*



Clearly, professional legal education is after university education and in this case regulated by the Law Council with the enabling laws as stated above.

Pamela Kalyegira in her book '**Liberalization of Legal Education in Uganda**', published by Law Africa, (page 18) makes the point that *although the Advocates Act 2002 did not specifically spell out the role of Law Council in all legal education in Uganda, the consensus was that it had a final say for both under graduate and professional legal education.*

On the other hand, S.I. 78 of 2004 Advocates (Continuing Legal Education) Regulations empowers the Committee on Legal Education to accredit institutions to offer study programmes for advocates while section 6C ( 1) ( c ) of the 2002 Advocates Act mandates to prescribe professional requirements for admission to the Bar Course.

Therefore, while professional legal education and continuing legal education is grounded in the Advocates Act, academic training of law students at under graduate level is not. It is paramount to take note that professional legal education and training of advocates in Uganda is regulated by the Advocates Act and its subsidiary laws but not any other laws.

According to the 1<sup>st</sup> respondent's affidavit in reply, the said examination has been conducted for several years and very many eligible persons have sat for it, passed, and were thereby admitted to the Bar course. And indeed for the examination conducted in the year 2017, 2018 candidates sat for the examination. Out of these, 814 candidates passed and were admitted to the Bar course. The rest of the candidates who did not achieve the pass grade have the option of presenting themselves for the examination to be conducted this year or subsequent years.

Therefore, in our submissions that the legal framework for conducting Pre-entry examinations as a yardstick of admissions to Law Development Centre is lawful, reasonable, fair enough for any serious lawyers who have appreciated fundamental legal principals at undergraduate to pass such an examination by the Law Council for to be admitted at the bar Course.

The applicant has not made any meaningful submission in respect of this issue and it was like an abandoned issue.

This court agrees with the 1<sup>st</sup> respondent's counsel that this policy of pre-entry examination is the only yardstick that has to be used to determine who is eligible to be admitted to Law Development Centre.

It is clear there is several Universities that offering legal training of lawyers with different standards or grades. The purpose of the pre-entry examination is to select the students from the different Universities on merit rather than on the basis of their respective University Awards. The different Universities have their own standards for the award of degrees, the need to harmonise any possible entrants to the Law Development Centre should only be through pre-entry examination until another system is introduced.

There is loss of confidence in the grades that are awarded by some Universities in Uganda and Other Universities outside Uganda. This requires students to sit for a competitive entrance examination to select the best students to be admitted.

The pre-entry examination is the only yard stick of admitting students including the applicant and it is not in any way unreasonable, biased and unfair as the applicant contends.

### ***ISSUE THREE***

#### ***Whether the applicant should be unconditionally admitted to study his bar course at Law Development Center?***

The applicant's contention is that he contested the examination result of 40% which implied that he had failed this examination since the pass mark is 50%. Since the 1<sup>st</sup> respondent has never attached the applicant's script and marking scheme before court as proof then it implies that he passed and court order the 2<sup>nd</sup> respondent to unconditionally admit him to study his bar course.

According to the applicant, since the 1<sup>st</sup> respondent did not adduce any evidence before court to prove that he failed, they failed to discharge their evidential burden of proof that he indeed failed.

The 1<sup>st</sup> respondent's counsel submitted that the authority to determine as to whether the applicant has satisfied all statutory requirements for admission to the Bar Course at the Law Development Centre is only vested upon no other authority but the Law Council. What this Court ought to do in circumstances is to inquire as to whether in the decision making process, the Law Council acted illegally, irrationally and in any form of impropriety.

Courts should not accept to be misused by individuals to circumvent the statutory procedures vested in particular state bodies for their selfish gains. It's on record as per the academic transcripts attached on the Notice of Motion that the academics of the applicant are quite wanting with about 20 retakes in various course units and with a pass degree. This gives an impression that may be the applicant need to spend more time in acquainting himself with basic legal principles that would help him pass such examinations other than trying to circumvent the legal process for admission to the Bar Course.

In the case of **Katungi Tony v Attorney General Misc. cause No266 of 2016**; Justice Stephen Musota held: ***The applicant prayed for the following orders which this Court cannot grant under the circumstances.***

***1. A declaration that the applicant has fulfilled all statutory requirements under the Advocates Act of 1970 read together with the Advocates (Amendment) Act No. 27 of 2002. This Court declines to grant this order on the ground that the power to make this declaration is by law the preserve of the Law Council. If Court to grants this order then it would be acting ultra vires its Judicial Review Powers.***

***2. A declaration that the applicant has worked and completed the required period of at least one (1) year of work under surveillance and/or supervision in Chambers approved by the Law Council for the purpose of enrolment as stipulated under Section 8 (1)) of the Advocates (Amendment) Act No. 27 of 2002. This Court declines to grant this order as well on the ground that the power to make this declaration is a preserve for the Law Council by Law. For Court to grant this order it would be acting beyond its powers in Judicial Review by determining fundamental rights rather than procedural rights.***

***3. A declaration that the applicant is a fit and proper person to be issued a Certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda and all Courts subordinate thereto. This Court declines to grant this order as well on the ground that the power to make this declaration is a preserve for the Law Council by Law. Doing so would be acting beyond Court's powers***

In all the above, Justice Musota declined to grant such orders and declarations on the basis that the power to make this declaration is a preserve for the Law Council by Law. Doing so would be acting beyond Court's powers.

It is the submission of the 1<sup>st</sup> respondent that the applicant cannot be admitted to a bar course unless he has fulfilled the statutory requirements which include among others sitting and passing the pre entry examination. This Court should decline to grant this order on the ground that the power to make this declaration

is a preserve for the Law Council by Law as doing so would be acting beyond Court's powers.

The 1<sup>st</sup> respondent clearly informed the applicant that he had scored 40% and therefore he failed to score the pass mark of 50% which is required to be admitted to the Bar Course at Law Development Centre.

This court agrees with the submission of counsel for the 1<sup>st</sup> respondent that the applicant cannot be admitted without satisfying the requirements of the Advocates (Professional Requirements for Admission to Post-Graduate Bar Course) (Amendment) Notice, 2007, as amended by Legal Notice No.12 of 2010.

The applicant cannot be admitted to study his bar course at Law Development Centre.

***Whether the applicant is entitled to damages?***

Having resolved upheld the preliminary objection and resolved all the aforementioned issues against the Applicant, the application fails.

In the result I find this application to be lacking in merit and it's hereby dismissed with costs to the respondents.

I so order

**SSEKAANA MUSA**  
**JUDGE**  
**25<sup>th</sup> /09/2018**