

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.23 OF 2017

IN THE MATTER OF APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF APPLICATION FOR AN ORDER OF PROHIBITION

- 1. SSENTAMU HALIDI**
- 2. TWINOMUJUNI WENCESLAUS**
- 3. SENKABIRWA KIZITO ----- APPLICANTS**
- 4. ATAGWIRWEHO CHARLES**
- 5. NUWAMANYA HILARY**
- 6. KIYIMBA HENRY**

VERSUS

MAKERERE UNIVERSITY ----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36 of the Judicature Act as amended, Rule 3(1) (a) and 6 of the Judicature (Judicial Review) Rules, 2009 seeking orders that;

- a) An order of Certiorari doth issue to quash the decision of the respondent's senate admission committee dated 12th April 2017 cancelling the Applicants' admissions to the university.
- b) An order of prohibition doth issue to prevent the respondent from cancelling the admissions of the applicant.
- c) An order of mandamus doth issue compelling the respondent to allow the applicant to continue with their courses.

The applicants as well prayed for costs of this application. The grounds in support of this application were stated in the supporting affidavits of the applicants but generally and briefly state that;

- I) The applicants in response to the Respondents advert for available courses for academic year 2016/2017, and using the respondent's online application procedure CEMAS applied for bachelor of Medicine and Bachelor of surgery as privately sponsored students.
- II) The applicants with their respective qualifications were accordingly admitted by the Respondent.
- III) On 14th October 2016, the applicants were in receipt of an invitation letter to appear before the Respondent's representative to show cause why their respective admissions should not be cancelled on account of misrepresentation, falsification of documents and giving false or incomplete information.
- IV) The applicants averred that the misrepresentations were not their making but the faulty online application system of the respondent, the aides used to apply and that the same cannot and should not be visited on them.
- V) The respondent's Adhoc Committee invited the applicants for a hearing where it made the decision to cancel their admissions on grounds that they had used forged documents.
- VI) The applicants possess the required qualifications and are eligible to study the course they enrolled for.

The respondent opposed this application and averred that the applicants were accorded a fair hearing before the decision to cancel their respective admission was reached at.

To appreciate the decision of this court I find it proper that I lay down the chronological sequencing of the events leading to this application as shown from the pleadings.

- a) The respondent on 25th April 2016 advertised in New Vision paper for the undergraduate admissions available for the year 2016/2017 together with details and guidelines for suitability to apply for the respective courses.
- b) The applicants using the respondent's online application system accordingly applied and were admitted for the course of Bachelor of Medicine and Bachelor of Surgery.
- c) Later on 5th October 2016, a one Ivan Basungware requested for a change/correction of his name on the admission letter where it was allegedly realised that his CGPA of 3.35 was far below the cut-off point of CGPA of 4.00 for a diploma holder. This led to the respondent's investigation into admissions of Diploma holders.
- d) On 14th October 2016 the applicants received letters inviting them to appear before the respondent's Undergraduate and Records Division Department of the Academic Registrar to show cause in writing why their respective admission should not be cancelled on grounds of misrepresentation, falsification of documents and giving false or incomplete information.
- e) On 20th October 2016 (*annexure MUK 4*) the applicants appeared before the respondent's representative where it was allegedly observed that the applicants' respective CGPAs did not tally with those submitted by the same on application. It was accordingly recommended by the respondent's Academic Registrar department that the applicants are forwarded to the Respondent's Admissions Committee for appropriate action.
- f) On 21st March 2017 (*annexure MUK 6*) the applicants appeared before the Adhoc committee of the Senate Admission Committee where the decision to cancel each of the applicant's admission on grounds of using forged documents to get admitted into the Respondent was reached at.
- g) The applicants dissatisfied by the decision have now come to this court for redress under Judicial Review.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Two issues were proposed for court's resolution;

1. Whether the applicants raise any grounds for Judicial review
2. Whether the applicants are entitled to the remedies sought in the application.

I shall resolve this application in the order of the issues so raised. The applicants were represented by Mr John Mike Musisi whereas the respondent was represented by Mr Anyuru Simon.

ISSUE ONE

Whether the applicants raise any grounds for Judicial review.

Mr Musisi for the applicants submitted that the applicants basing on the Respondent's advert *Annexure 'ZA'* applied for various courses and after being evaluated as eligible were admitted for those respective courses. That the qualification need per *Annexure ZA* was one to be a holder of a second class or credit (or equivalent) Diploma from a recognized chartered institution relevant for the programme. For which the applicants all possessed.

He further submitted that the applicants all used the Respondent's online application procedure evidenced by *Annexure B* to affidavit of Kiyimba Henry. That it follows therefore that the applicants cannot be held liable for the results which do not show on the forms which they submitted to the Respondent. I find this submission rather very suspect for counsel to draw a conclusion of a single private applicant the same as for other private individual applicants.

Mr Musisi further submitted that the applicants when they appeared before the Respondent on 20th October 2016 were not accorded a fair hearing but were arrested and taken to police which in its report exonerated the applicants and found the respondent's online registration problematic see *annexure MUK 6*. He further submitted that when the applicants 2nd appeared before the respondent's Adhoc Committee on 21st March 2017 for another hearing, they were found guilty and a decision was arrived at to cancel their admissions. Counsel submitted that

the decision was arrived at erroneously as all the issues raised and based upon by the respondent to dismiss the applicants were never communicated in the advert published in New Vision Paper on 25th April 2016.

Mr Anyuru Simon for the respondent in opposition submitted and contended that the applicants have failed to prove that the decision making process of the respondent's academic Registrar Department, Ad hoc committee of the Admissions Board committee and/or the Senate Committee were illegal, irrational or procedurally improper.

Mr Anyuru submitted further that the impugned advert annexure ZA was not conclusive but directive as to further requirements of Diploma holders could be viewed on the Notice Board of the Undergraduate Admissions office. That the alleged hearing on 20th October 2016 before the Academic Registrar Department was a meeting whose purpose was to decide whether or not to convene a hearing for the applicants before the respondent's Admission Board Committee see *annexure MUK 4*. Further that the legality of the respondent's Ad hoc committee on 21st and 28th March 2017 was not disputed as it was fully constituted and the respondent acted within the ambit of Section 45(1), (2) and (3) of the University and Tertiary Institutions Act 2001 as amended.

Mr Anyuru submitted further that the Applicants possessed qualifications that were below the respondent's cut off points CGPA (4.00) for Bachelor of Medicine and Bachelor of Surgery and thus would never have qualified for the above programme see *Annexure MUK 6* minutes of the Ad hoc committee meeting. Further that the applicants were accorded a fair hearing and the respondent followed the law and prescribed procedure pursuant to Section 46 (3) University and Tertiary Institutions Act 2001 as amended.

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 Mwebaze Vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd Vs Attorney General Misc Cause No.125 of 2009, Balondemu David Vs The Law Development Centre Misc Cause No.61 of 2016.***

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

The gist of the Applicant's submissions and complaint is in respect to irrationality/unreasonableness in the decision taken by the respondent to withdraw the applicants' admissions from their respective programmes on grounds of impersonation, falsification of documents or giving false/incomplete information at the time of registration.

It is the applicants' complaint that they should not be victimised for the respondent's flawed online application system which they used to apply for and get admitted for their respective courses. It is thus the applicants' contention that given the imperfections in the application system the respondents should not have arrived at the decision withdrawing their admissions from the respective courses.

Rationality/unreasonableness has been defined to mean when there has been such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and law before it would have made such a decision. Such a decision is said to be in defiance of logic and acceptable moral standards. ***See: Council of Civil Unions Vs Minister of the Civil Service [1985] AC 374.***

The question that this court must answer is whether the impugned decision of the respondent was tainted with gross unreasonableness given the circumstances of this case as presented and discussed above.

The circumstances of this case are that the applicants using the Respondent's online application system applied for and were admitted for their respective course as qualified applicants. Later the Respondent allegedly discovered the inconsistent CGPA of the applicants prompting a meeting and hearing that culminated into the impugned decision.

The applicants state that they should not be victimised for the flawed respondent's online application system. I do not agree with this submission for reasons that; the onus is upon an applicant for a job/admission /position/offer to ensure that the relevant information needed/requested for is that which is submitted to the relevant authority.

It was the evidence of the applicants that they used the respondent's online application system and that they were assisted by a person in a tent next to senate building Makerere University to complete the process for them as the lines were very long. That they left with the man there scanned and photocopies of their academic transcripts.

None of the applicants mention the name of this man nor identify him as an agent of the respondent. The onus lay upon the applicants seeking admission to the Respondent University to ensure that the necessary requirements were met. To now or then rise up and allege that the fault was the online system and yet they admittedly left the application process to another unknown person to complete the said task for them later rewarding the same holds no water. I fail to neither believe this evidence nor place any evidential weight to it.

If indeed the applicants had presented their true CGPA (*respondent's annexures A*) when applying as admitted to be the true CGPA and presented the same during the meetings and /or hearings of 21st and 28th March 2017 before the Respondent Ad hoc committee, then why the anomalies reflected in their application forms having admittedly left true copies of their academic transcripts with a man to

complete the application process for them. Even yet what interest would this alleged man have had in whether or not the said applicants got admitted for the respective courses at the Respondent University save for if the applicants were involved which would in turn explain the anomalies in the CGPAs.

This however begs the question why the anomalies, and this leads me to the second argument presented by the applicants. It was argued for the applicants that they were eligible candidates possessed with the necessary academic qualifications per the New Vision Paper advert (*annexure ZA*). It was contended by the respondent that the applicants did not meet the required qualifications for the respective course which required a diploma holder to have a minimum CGPA of 4.00. Thus could this have precipitated the anomalies discovered?

The New Vision Paper Advert annexure ZA read as follows;

“The academic registrar, Makerere University invites applications from Ugandan, East African, S. Sudan and International applicants. Each applicant should either;

(a)-----or

***(b) Hold at least a Second Class or Credit (or Equivalent Classification) Diploma from a recognised Chartered Institution, relevant to the programme applied for. Certified copies of academic transcripts (not photocopies of certified copies) from the awarding institution MUST be attached to the application form. (Details of the Diploma holders’ requirements for the 2016/2017 Academic year can be viewed on the notice board of the Undergraduate Admissions office or on Makerere University Website www.mak.ac.ug).*”**

My simple interpretation of this advert is that an applicant for the respective course on offer had to either hold a Second Class or Credit(or its equivalent classification) Diploma from a recognised Chartered institution. That further details for the relevant course applied for by Diploma holders could be viewed on the notice board of the undergraduate Admissions office or Makerere University Website. This in my interpretation would mean issues related to requirements for

the particular course on offer. In other words different course demanded a different criterion of selection which explains the bare minimum of CGPA 4.00 for Bachelor of Medicine and Bachelor of Surgery as indicated by the Respondent.

The argument and contention for the applicants that the basis upon which the decision to cancel the applicants admission was not communicated is rather misleading and wrong, given that the said advert was very directive as to where to find further requirements for the respective courses.

This in itself would explain why the applicants to wit SsentamuHalidi (4.83), Twinomujuni Wenceslaus (4.76), SenkabirwaKizito (4.77) AtagwirwehoCharlse (4.69), Nuwamanya Hilary (4.75) and Kiyimba Henry (4.69) all had CGPAs that fell within the requirements and yet their true CGPAs fell way below the required minimum.

It would also suggest that the applicants did indeed view the specific requirements for Bachelor of Medicine and Bachelor of Surgery requiring a bare minimum of CGPA 4.00 for which none of them met hence the fraudulent CGPAs presented during the application process. And even if the applicants had not viewed the bare requirement, I find it very unlikely that any of them would still have been considered for admission given that their true admitted CGPAs(*not classified, 3.36, 3.29, not classified, 3.41 and 3.64 respectively*)fell way below the required minimum and had different diploma awards from those submitted before the Respondent Academic Registrar Departmental meeting of 20th October 2016 (*Annexure A minutes of the special meeting*).

In that regard I find that the decision arrived at by the Respondent in this case was reasonable and any authority or right thinking person presented with the similar facts and law would have arrived at the same conclusion.

Further, I agree with the submission for the respondent that the Applicants did not lead any evidence to show that the respondent's Academic Registrar Department, Ad hoc Committee of the Admissions Board Committee and or the Senate Admission Committee failed to follow the right procedure before making their respective decisions nor was any illegality pleaded by the Applicant.

In the result this issue is resolved in the negative for the Applicants.

ISSUE TWO

Whether the applicants are entitled to the remedies sought in the application.

Having resolved in the negative the aforementioned issue for the Applicant, it therefore falls that this issue is as well resolved in the negative.

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

The respondent also prayed for costs of this application.

In light of section 27 of the Civil Procedure Act, given the fact that the Applicants used the Respondent's online application system which was admittedly discovered to have some imperfection as per the Respondent's annexure MUK 4 recommendation I hereby order that each party bears its own cost.

SSEKAANA MUSA

JUDGE

13th/07/2018