

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO.100 OF 2017

VINCENT VESSY NUWAGABA----- APPLICANT

VERSUS

- 1. MAKERERE UNIVERSITY**
- 2. PROFESSOR MAHMOOD MAMDANI**
- 3. ASSOC. PROF. ERNESR OKELLO-OGWANG---- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 28, 42, 44(c) & 50 and Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act and Rules 3(1)(a), 5 & 6 of the Judicature (Judicial Review) Rules, 2009 and Order 52 rr 1 & 3 for the following reliefs;

- (a) **A WRIT OF CERTIORARI** doth issue quashing the decision of the 1st Respondent's Board of Research and Graduate Training reached at its 16th Meeting held on 4th and 7th March, 2017 discontinuing the Applicant from the Program of Study leading to the award of an Interdisciplinary MPHIL/PHD in Social Studies at the Makerere Institute of Social Research.
- (b) **A WRIT OF CERTIORARI** doth issue quashing the decision of the 2nd Respondent and/or Makerere Institute for Social Research

suspending the Applicant's scholarship/fellowship and thereby discontinuing the Applicant from the Program of Study leading to the award of an Interdisciplinary MPHIL/PhD in Social Studies at the Makerere Institute of Social Research.

(c) **AN ORDER OF MANDAMUS** directing the Respondents to unconditionally reinstate and promptly register the Applicant as a student in the Program of Study leading to the award of an Interdisciplinary MPHIL/PHD in Social Studies at the Makerere Institute of Social Research.

(d) **A PERMANENT INJUNCTION** doth issue restraining the Respondents, their officers, employees or servants and/or any other person or organ acting on the authority or on behalf of the 1st Respondent from harassing, hounding, intimidating, persecuting, discriminating segregating against and/or in any other way interfering with the Applicant's studies in the Program of Study leading to the award of an Interdisciplinary MPHIL/PHD in Social Studies at the Makerere Institute of Social Research.

(e) **AN ORDER** that the 1st Respondent pays General and Exemplary Damages to the Applicant for its arbitrariness and inconvenience wrought upon the Applicant as a result of the impugned decision to discontinue him from the Program of Study leading to the award of the said Mphil/PHD in Social Studies at Makerere Institute of Social Research (the PhD Program).

(f) **COSTS** of the Application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant but generally and briefly state that;

- 1) The applicant was admitted by the respondent for the program of study leading to the award of an Interdisciplinary MPhil/PhD in Social Studies at Makerere Institute for Social Research-A Respondent's affiliate.
- 2) That the applicant duly accepted the admission and complied with all the requirements of the Respondent which made him a fully fledged student of the Respondent's above-described MPhil/PhD program in Social Studies.
- 3) That however, the respondent's Board of Research and Graduate Training at its 16th Meeting held on the 4th and 7th March, 2017 made the decision to discontinue the Applicant from the stated MPhil/PhD Program.
- 4) That the decision reached by the 1st respondent's Board of Research and Graduate Training at its 16th Meeting held on 4th and 7th March, 2018 and belatedly communicated to the Applicant by the 2nd and 3rd Respondents discontinuing him from MPhil/PhD study in Social Studies at Makerere Institute of Social Research (MISR) was reached in flagrant disregard of the rules and principles of natural justice.
- 5) That the decision of the 2nd respondent or MISR revoking the applicants' fellowship, thereby effectively discontinuing the applicant from the program of study leading to the award of an Interdisciplinary MPhil/PhD in Social Studies at Makerere Institute of Social Research was in flagrant disregard of the rules and principles of natural justice.

6) That the applicant, as a direct result of the above illegal events, suffered manic depression culminating into admission to Butabika Psychiatry Hospital and detention at various Police Stations within Kampala and at Luzira Maximum Prison-Kampala Remand, for an extended period of time.

The respondents opposed this application and the respondents filed an affidavit in reply through Professor Mahmood Mamdani and Prof. Ernest Okello Ogwang.

The 2nd respondent contended the applicant was one of the 12 recipients in the third cohort (2014) of the MPhil/PhD in Social Studies that were also recommended by the MISR to Makerere University for admission to the Interdisciplinary MPhil/PhD in Social Studies starting 6th January 2014.

That after the applicant had received his scholarship offer from MISR, the MISR Library staff noted that during the month of November specifically between 18th-22nd and 25th -29th November, he was the cause of significant disruption in the library causing agony to users and staff. Their complaints ranged from verbal abuse, to bullying, disregard of library rules and procedures, violence and making death threats which were investigated by the PhD Administrator and Acting Administrator.

That several attempts were made by the PhD Administrator to talk to the applicant and also Makerere University Police to control his abusive behaviour which all failed.

That the PhD Administrator wrote a notice and warning letter to the applicant on 25th November and the applicant replied by email on November 26th stating that it was only Prof Mamdani who could stop

him from accessing the MISR Library and insulted the MISR Library staff.

That the applicant due to his mental condition temporarily withdrew from academic obligations and was admitted at Butabika Hospital where he has been a known mental patient since 2008.

That the applicant's application to the MPhil/PhD program was reconsidered in 2016 after he submitted medical evidence that he was in a state fit to commence the M.Phil/PhD studies as he had been admitted to in 2014 and accordingly his old application of 2013 was reconsidered and the MISR Higher degrees Committee agreed his Scholarship offer suspended in 2013, be reinstated so he could join the 2017 cohort.

That the applicant was one of the seven scholarship awardees for cohort2017 whose particulars were submitted by MISR to CHUSS and DGRT, and who were recommended to the Interdisciplinary MPhil/PhD in Social Studies. He reported back for studies at the start of MISR academic year but could not proceed with the course owing challenges caused by his aforesaid mental health issues which rendered him unable to register.

That whereas there were medical clearances, there was never any assurance that the mental health was not subject to deterioration. Indeed the mental health of the applicant deteriorated, rendering him unable to register or continue with the same.

That the final decision on admission status remained pending the Directorate of Research and Graduate Training (DRGT)'s decision and admission to the MPhil and the grant of the fellowship would not independently subsist when the applicant was not a student of the University.

There was no discontinuance of the applicant because he was never a registered student in the first place.

That the applicant lost the MISR fellowship because he failed to register as a Makerere University student, his mental health issues among others.

Prof Ernest Okello Ogwang also stated that given the applicant's mental status, he would not be able for him to pursue and successfully fulfil the requirements of the course.

That the said mental status made the applicant destroy University property including computers. He also used a knife and grievously injured Mr. Musoke who was the Administrator of the programme leading to his hospitalisation. This matter was reported at Makerere University Police station who deployed, restrained and arrested him.

That it would be dangerous to the other students and staff to have the applicant as a student in his current mental state. The applicant failed to register as a student because of his aforesaid mental status.

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 framed by the applicant for court's determination;

- 1. Whether the application discloses any grounds for judicial review and if so whether the applicant's discontinuance was illegal and thus unconstitutional?*
- 2. Whether the Applicant is entitled to the remedies sought?*

I shall resolve this application in the order of the issues so raised. The applicant was represented by *Mr Adam Kyomuhendo* whereas the respondents were jointly represented by *Mr Mwebe Henry and Mr Tom Magezi*.

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 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 is trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public.

ISSUE ONE

1. *Whether the application discloses any grounds for judicial review and if so whether the applicant's discontinuance was illegal and thus unconstitutional?*

The applicant's counsel submitted that the decision sought to be impeached by the Applicant in this Application is one but has to it two sub-components, namely, the decision by the 1st Respondent's Board of Research and Graduate Training (BRGT) arrived at its 16th Meeting held on 4th and 7th March, 2018; and, secondly, the decision by the 2nd Respondent and/or Makerere Institute for Social Research (MISR) to suspend the Applicant's fellowship/scholarship thereby resulting into the discontinuance of the Applicant from the Program of Study leading to the award of the Interdisciplinary MPhil/Ph.D.

The sum effect of these two decisions was the Applicant's discontinuance from his studies by the 1st Respondent University and that is why they are both challenged.

THE Board of Research Graduate Training-DECISION

The respondent submitted that the decision of the 1st Respondent's **Board of Research and Graduate Training** (BRGT) at its 16th Meeting held on 4th and 7th March, 2018 discontinuing the Applicant from his studies was arrived at in unmitigated disregard of the principles of Natural Justice as well as the Applicant's Constitutional rights.

It was the Applicant's case that prior to reaching the decision to discontinue him, the 1st Respondent University's **Board of Research and Graduate Training** did not and/or never invited him for and/or accorded him his Constitutional right to be heard.

The Common Law principle of *Audi Alteram Partem* or 'hear the other side' is of cardinal importance in our Constitutional order and must strictly be complied with at all times without exception. Several important **Articles** of our Constitution such as **28** and **42** coalesce around the entrenchment

and protection of this right for every citizen. **Article 44 (c)** goes as far as elevating it to sacrosanct status by stating that it must never, under any circumstances, be derogated from. Moreover, the 1st Respondent, exercising its functions through the Board of Research and Graduate Training as it did on 4th and 7th March, 2018 at its 16th Meeting, had a Constitutional enjoinder to treat the Applicant fairly as an Administrative Organ. It fell far short of this obligation when it failed to accord the Applicant a hearing prior to reaching the impugned decisions. This, we submit, must never be allowed.

The Court of Appeal in the case of **MARKO MATOVU AND TWO OTHERS -vs- MOHAMMED SSEVIRI AND ANOTHER, CIVIC APPEAL NO. 7 OF 1978** cited with approval by **Hon. Mr. Justice V.F Musoke-Kibuuka** in **KAUMA KAGERE ROSE vs NAMUTUMBA DISTRICT LOCAL GOVERNMENT HCMC NO. 443 OF 2008** is instructive on this point to support the proposition that the **Audi Alteram Partem Rule** is so central to Uganda's system of Justice that it must be observed by both Judicial and *administrative* tribunals. It is derived from the principle of natural Justice that no man should be condemned unheard. This is the imperative noticeably encapsulated under Article 42 of the Constitution of Uganda.

It was the applicant's counsel's contention that had the Applicant been accorded a hearing prior to his discontinuance by the BRGT in the manner and terms described, the Applicant would have shown that he was prevented to register as a Student of the 1st Respondent by sufficient cause or reason(s). These he describes in **Paragraphs 20 and 21** of his Affidavit Supporting his Application; **Paragraphs 5, 6 and 7** of his Affidavit in Rejoinder placed on the record of this Honourable Court on 18th June, 2018.

The Applicant therein avers that he did not register as a Student for the Academic Year beginning January, 2014 because he was deliberately targeted and personally prevented from doing so by the 2nd Respondent and MISR who/which whimsically, irregularly, highhandedly and capriciously withdrew his fellowship without justification, instead gifting it

away to another candidate, one Ms. Judith Ikiring Obore. Accordingly, his fees were not paid as they were supposed to by MISR on account of that decision.

Secondly, the Applicant did not register because he was personally prevented from doing so by the 2nd Respondent and the MISR Ph.D. Administrator one Simon Musoke who not only confiscated his admission letter issued to him by the University at the critical hour of registration knowing too well that it was a requirement for the process but also but also caused or exercised their undue influence bear upon various organs of the University including the Academic Registrar's Department which is in-charge of the registration component to see to it that the Applicant failed to register anyway.

In the email trail attached to the 2nd Respondent's Affidavit in Reply to this Application, proof of this is clear where in an email to Simon Musoke dated 2nd December, 2013 the 2nd Respondent as MISR Director unequivocally instructs the Ph.D. Administrator to "make sure that the Academic Registrar's Office does not issue [another] letter of Admission in the name of Mr. Vincent Nuwagaba". The 2nd Respondent then demands the Cell Phone number of a contact employee [James Okello] in the Academic Registrar's Office so that he could personally follow through this scheme.

It was the applicant's submission that he was prevented by sufficient reason from registering as a Student of the 1st Respondent University and had this been inquired into by the 1st Respondents BRGT in the form of according him a hearing prior to arriving at the decision to discontinue him from his studies, the course that matters took culminating into this Application could perhaps have been different. And we submit that this is the whole purpose or rationale for the cardinal requirement to always hear the other side was violated.

The applicant's submission prayed that this court should hold and find that the failure by the 1st Respondent not to accord the Applicant a hearing prior to deciding in his case was fundamentally fatal, unfair, unconstitutional,

procedurally improper, offended the rules of Natural Justice and— as such, vitiated the decision.

THE 2ND RESPONDENT'S DECISION REVOKING THE FELLOWSHIP

The applicant also submitted that the **2nd Respondent's decision** dated **26th November, 2013** suspending the Applicant's scholarship/fellowship thereby ostensibly discontinuing the Applicant from the Program of Study leading to the award of the Interdisciplinary Mphil/Ph.D. in Social Studies at the 1st Respondent's Institute for Social Research (**MISR**) was illegal and was arrived at in fundamental violation of the rules of Natural Justice— and, the Applicant's Constitutional rights.

ILLEGALITY

The decision was *illegal* because the Applicant as an individual and in his capacity as the Director of 1st Respondent's Institute for Social Research (**MISR**) does not have or is not vested with the power to suspend a Student such as the Applicant. He did that in the excess of his power and thus the decision was made *ultra vires*. The Applicant deposes and demonstrates that he suspend the Applicant's fellowship "*pending the decision of the Ph.D. Teaching Staff*".

It is the submission that the power or authority to suspend the Applicant's fellowship lies solely with the **MISR Academic Board** established by **Regulation 42 of the Universities and Other Tertiary Institutions (Management of Constituent Colleges of Makerere University) Statute, 2012** established by **Legal Notice No. 6 of 2012**. The functions of the Board in this regard are set out under **Regulation 43(1)** and these include *regulating* the attendance of students, the system of courses and the admission of students. The composition of this Board is set out in Regulation 42 and must comprise of the Dean or Director (in this case the 2nd Respondent) who is the Chairperson, the Deputy Dean or Director, heads of Department within the School, such number of students as the University Council may prescribe, a representative of the teaching staff, among others. The constitution of the Board is widely representative and

includes as many stakeholders as possible to avoid, in our view, abuse of power or authority by administrative heads as happened in the present circumstances. Nowhere in the regulations is power or authority, even if temporarily, vested in the 2nd Respondent to suspend or indeed take any decision concerning student admission or matters ancillary thereto such as revocation of fellowship/scholarship.

Indeed, even in exercising its functions, the Institute Academic Board must consult closely with the College Academic Board established under Regulation 38 and whose functions are aptly set out under **Regulation 40**. **Regulation 40 (1) (a)** complements this function when it provides that the College Board shall direct and regulate instruction and teaching at the College. This multi-tier approach in the applicant's view is intended to curtail abuse of administrative power or authority or avoid a scenario such as exactly played out when the 2nd Respondent usurped the functions of these Board when he purported to suspend the Applicant's fellowship.

In the present circumstances, the Parent College of MISR is the College of Humanities and Social Sciences (CHUSS). The relevant Academic Board which had the authority, function and/or power to complete the suspension of the Applicant's fellowship/scholarship and thus status as a student was the CHUSS Academic Board. Indeed, when the decision to reinstate the Applicant was made by the MISR Academic Board, the minutes of the same board the same was duly forwarded to the CHUSS Academic Board by MISR to take appropriate action.

It was the applicant's submission that the 2nd Respondent's decision to suspend the Applicant's fellowship/scholarship was mired in *illegality* and in *excess* of his powers as the Director of the 1st Respondent's Institute for Social Research. Therefore, the decision was *ultra vires* and we pray that it be declared to be no decision at all. It was nothing but a naked usurpation of the statutory functions of both the MISR Academic Board and the CHUSS Academic Board. Except to add in ending that the MISR Academic Board did not actually sit to "make the final decision", in the 2nd

Respondent's words, concerning withdraw or otherwise of the Applicant's fellowship or scholarship.

PROCEDURAL IMPROPRIETY

The applicant contended that he was not given a hearing before his fellowship was suspended, however he was given notification and was suspended from accessing the MISR Library facilities in what was passed off as a Notice and Warning Letter. Prior to suspension of these privileges, the Respondents did not put on record any evidence that the Applicant was called for a hearing.

That on **26th November, 2013 at 12:31:01PM (Mid-day)**, the 2nd Respondent wrote to the Applicant suspending his fellowship/scholarship in the terms and tone above-described. It was after he had been suspended that the Applicant wrote an impassioned appeal to the 2nd Respondent in regard to his Notice and Warning Letter served on him the previous day.

The 2nd respondent noted in his affidavit in reply that after thorough investigations, he received a report from the Ph.D. Administrator that the Applicant was the cause of significant disruption in the Library premises. That following this report, the above-stated Notice and Warning Letter was issued and it was on this basis that he took action to suspend the Applicant. The applicant challenges the said report since it was authored on **29th November, 2013** three full days after the Applicant was suspended on **26th November, 2013**.

The applicant submitted that he was never accorded a hearing by the 2nd Respondent prior to making the impugned decision.

IRRATIONALITY

This Court has established that *irrationality* constitutes in there being such *gross unreasonableness* in the decision taken or act done that no reasonable authority addressing itself to facts and the law before it could have made

such a decision. Such decision is always in absolute defiance of logic or acceptable moral standards.

First of all, prior to the Applicant's suspension, the 2nd Respondent, an extremely learned man and highly regarded senior citizen did not see any need to seek a Professional opinion from a Psychiatrist to test the Applicant's state of mind to confirm whether indeed the Applicant had mental health issues.

It was *irrational*, whimsical, highhanded, unfeeling, illegal and capricious to suspend the Applicant on the basis of his mental status prior to obtaining a report from a specialist that the same had deteriorated and that the Applicant was therefore not in position to partake of the rigorous demands of the Ph.D. Program. The 2nd Respondent does not have the technical competence to assess the psychiatric state of mind of the Applicant. He is only a Political Scientist by training.

The Applicant averred that at all material times, he was in proper mental state and was only suspended because his scholarship was gifted away to another candidate, one Judith Ikiring Obore. The Applicant was suspended on 26th November, 2013 and on 29th November, another admission letter was written out for the said person.

To further show you the 2nd Respondent's *irrationality*, *dishonesty* and *double sidedness*, when it came to making the decision to reinstate the Applicant after his several petitions to various offices and organs of the 1st Respondent University, the 2nd Respondent chaired Meetings of the MISR Higher Degrees Committee which made the recommendation that the Applicant should avail MISR with Medical Clearance letters from Makerere and Butabika National Psychiatric Hospitals (a professional opinion) for him to be reinstated. This means that he was at all times acutely aware of the importance of a professional opinion regarding the Applicant's case even before suspending him but instead chose to act *irrationally* simply because his mind was made up to achieve a certain result.

It was the submission the applicant, the 2nd Respondent's decision was grossly unreasonable, in breach of common sense and defiance of logic.

Respondent's submissions

Illegality

The respondents in their submission contended that the 2nd respondent as the Director of MISR is vested with powers as the administrative head of MISR, to ensure the smooth and proper running and management of MISR. By such powers, the 2nd respondent must ensure the safety of equipment, employees and users (students) of MISR.

The further submitted that the applicant was offered a scholarship in August 2013, to undertake the degree program. The said programme was to commence on January 2014. However, before registering for such a programme in November 2013 the applicant developed a mental condition that exhibited itself in violent episodes. This was noticed when the applicant was using the Library facilities of MISR.

The applicant damaged damaged/destroyed computer equipment in the library and other library materials. The applicant broke furniture in the Library. The applicant attacked the Programme Administrator, a one Simon Peter Musoke with a knife causing him grievous bodily injury. The applicant became very unruly and generally very disruptive to the smooth operations in the Library.

The applicant's behaviour was brought to the 2nd respondent's behaviour and as the head of MISR, the second respondent had no other lawful alternative than to ensure that the applicant is barred from accessing MISR facilities, in order to protect the Library equipment, employees and Users.

It was the submission of the respondents that the 2nd respondent acted within the required mandate for the benefit of the institution and other students inclusive of the applicant. In addition they contend that any failure by the 2nd respondent to take immediate remedial action would have amounted to abdication of his administrative respondent and would thus give rise to sanctions against him as being incompetent and unfit to run and manage the affairs of MISR and protect its staff, students and property.

They further contended that MISR facilities are not used by Ugandans only but also foreign students and researchers. If such persons were physically injured by the applicant it would have been a disastrous incident, with far reaching consequences on the integrity of the respondents.

The applicant was admitted to Butabika Mental Hospital for treatment. Upon his discharge, the applicant re-applied to be considered to undertake the programme in 2016. In good faith, MISR Higher Degrees Committee agreed to re-instate the applicant's earlier suspended scholarship to commence instruction in 2017, hoping the applicant had stabilised.

However, the applicant became mentally unstable, which led to his failure to register for the programme. Another appeal was lodged to the Directorate of Research and Graduate Training, but due to lack of conclusive medical assurance that the applicant had healed, the same could not be successful. The applicant was asked to give this conclusive evidence from the mental health specialist that the applicant had healed and that there would be no episodes of violence, but the applicant failed to do so.

The respondents' counsel further contended that the applicant was never registered for the programme. Therefore, he was not a registered student to the programme, in order to qualify for suspension in the context of this application since a person only becomes a student of the University upon registration.

Irrationality

The respondents counsel submitted that this ground of Judicial review rotates around a decision taken devoid of logic or moral justification/standards. The test is, what would a person vested with authority have done or considered before arriving at such a decision complained of?

It was the contention of the respondent that the applicant admits by way of affidavit and submissions that, the applicant was prone to violent episodes as a result of his mental condition. The deterioration of the mental state of the applicant took place before registration or suspension of the applicant's scholarship. The suspension of the scholarship only occurred after the applicant became mentally unstable.

The programme to be undertaken under this scholarship required full-time study. In effect this was a rigorous and intensive programme, requiring that the participant ought to devote his or her physical and mental faculties to it.

The applicant before embarking on the programme or register for the same, he started experiencing mental instability. That meant that the sponsorship would not have been put to optimum utilisation, by the applicant. This sponsorship is solicited for from the donors. It would be illogical and morally repugnant to put such sponsorship to waste well knowing the mental instability of the applicant which in future would jeopardise chances of further sponsorship donations.

According the respondents' counsel, would a person vested with the authority, such as the 2nd respondent have logically acted in the same way? Any person with the proper logic and moral standard would have suspended the scholarship of the applicant. The suspension of the

scholarship was not an end in itself but rather to allow the applicant to undergo proper and adequate medical treatment for the benefit of the applicant.

That it was for the same reason the applicant's sponsorship was reinstated in 2016; only for the applicant again to fail to register due to the same occurrence. Therefore according to the respondents' counsel the respondents' actions were justified in the circumstances.

Procedural Impropriety

The respondents counsel contended that the applicant admitted his proneness to violent mental instability at the material time, before the sponsorship was suspended. The implication of this is that the applicant could not be held liable for his actions by reason of insanity.

It was the respondents' counsel submission that for one to be accorded a right to be heard, such a person ought to be in full control of his full mental faculties. It was a wonder, how the 2nd respondent was expected to accord a fair hearing to a person with violent mental disorders, as the applicant, a person who was not in the right state of mind.

They further submitted that even if the 2nd respondent would have conducted such a hearing, the same would have been held to be a farce. It would be dangerous for the respondents to conduct such a hearing. There was no ideal condition in which to conduct a fair hearing, without first ascertaining the sanity of the applicant.

The respondents counsel submitted after the applicant had undergone treatment, the applicant's sponsorship was re-instated, only for the applicant again to lapse in the same state of mental disorder and the resulting violence. A fair hearing could not have been conducted in the circumstances.

Determination

Upon perusal of the pleadings and evidence on record, the applicant is challenging a decision reached by the 1st respondent on 7th & 4th March 2017. This would imply that the applicant's claim or cause of action arose on that given date. The respondent filed this application on 3rd May 2018, which was approximately 14 months after the decision had been made.

This would imply that the application for judicial review was made out of time there is no evidence for any application for enlargement or extension of time.

Rule 5 of the Judicature (Judicial Review) Rules 2009 provides;

“An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”

In absence of any order of this court extending the time for allowing this application renders this application for Judicial review incompetent before the court and would be struck out for this reason.

However, for completeness, I shall proceed to determine the merits as if it had been properly brought before the court.

The applicant was admitted to a MPhil/PhD programme and before he could resume his studies under the said programme he developed mental disorder. It is an admitted fact that the applicant was a mental patient since 2008.

Due to this mental condition in 2013, he temporarily withdrew from his academic obligations as he underwent treatment at Butabika.

The applicant's application to the MPhil/PhD programme was reconsidered in 2016 after he submitted medical evidence that he was in a state fit to commence the MPhil/PhD studies he had been admitted to in 2014 and accordingly his old application of 2013 was reconsidered and the MISR Higher Degrees Committee agreed his scholarship offer suspended in 2013, be reinstated so that he could join 2017 cohort.

That the applicant reported back for studies at the start of the MISR academic calendar year but could not proceed with the course owing to challenges caused by his mental health issues which rendered him unable to register.

That whereas there medical clearances, there was never any assurance that the mental health was not subject to deterioration. The mental health of the applicant deteriorated, rendering him unable to register or continue with the same.

In a letter from Butabika Hospital dated 27th January 2017, it was stated that;

“Mr Nuwagaba has been unwell since 8/12/2016. He was re-admitted in the hospital on 10/12/2016 with features of relapse.

He was initiated on treatment and he is showing signs of improvement.

I have continued to attend to him on OPD basis and he is settling down and appears to be compliant to the treatment.

Any help given to him will be highly appreciated.

*Dr Sylvia Nshemerirwe
Consultant Psychiatrist “*

The decision of the Board of Research and Graduate Training at its 16th Meeting held on 7th and 4th March 2017, they noted as follows;

Mr Vincent Nuwagaba
P.O.Box 11027
Kampala
Dear Mr Nuwagaba,

3rd April 2017

“The Board of Research and Graduate Training at its 16th Meeting held on 7th and 4th March 2017 while reviewing M.Phil/PhD admission for 2016/2017 Academic Year noted that;

- a) You were admitted for the M.Phil/PhD starting January 2014 but you never registered.*
- b) You never applied for 2016/2017 admission therefore you could not be issued with an admission letter.*

The Board Agreed that;

- a) You were not a University student since you never registered with the University. The University therefore had no obligation towards your demands.*
- b) You are free to apply for any programme of your choice when the University advertises.*

This therefore, to communicate to you the board’s decision.

Yours Sincerely

Okello Ogwang (PhD)

According to the minutes out of which these resolutions arose, it is clear it was a meeting of the Directorate of Research and Graduate Training. The applicant’s case before the committee was considered and the following was noted;

- a) *The 15th Board of Research and Graduate Training recommended that Mr Nuwagaba should apply for the withdrawal and resume studies in 2017/2018 academic year.*
- b) *However Mr. Nuwagaba was not willing to withdraw and demanded for another admission letter. He had moved to many offices and written many abusive letters.*
- c) *Mr Nuwagaba could not get a new admission letter because he was not a new applicant. However, he was free to apply when the University advertises.*
- d) *Mr Nuwagaba was not a University student since he did not register in 2013/2015 and the University had no obligation towards him.*

Agreed that:

Mr Vincent Nuwagaba was not a University student and was free to apply for any programme when the University advertises."

It can be deduced from the minutes that the applicant was advised on what is supposed to be done in order to be able to continue with his studies and he rejected what the Board of Research and Graduate Training had proposed. It appears he wanted to get a new admission letter which the board rejected according their rules and regulations.

It is not a rule of law that every decision taken by a decision maker must be taken after according a party a hearing. Holders of public office, make decisions in their everyday work and to require them to give a hearing to whoever is affected by their decision would be to demand for such.

The requirements of natural justice or fair hearing must depend on the circumstances of the case, nature of the inquiry, the rules under which the body is acting and the subject matter to be dealt with.

The decision of the Board of Research and Graduate Training cannot be impeached for not hearing the applicant rather the applicant ought to use the internal mechanisms to appeal the said decision instead of challenging the same under the judicial review for failure to be accorded a fair hearing that is not envisaged under their law.

Therefore, once the applicant was found not to have been registered as a student, then he could not be allowed to continue as a fellow. The fellowship would not independently subsist when the applicant was not a student of the university.

This application fails and dismissed with no order as to costs.

I so Order.

SSEKAANA MUSA
JUDGE
21st/12/2018