THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.385 OF 2018

FEDERATION FOR UGANDA MEDICAL INTERNS---- APPLICANT

VERSUS

1. **THE MINISTER OF HEALTH**
2. **THE ATTORNEY GENERAL---------- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36 of the Judicature Act as amended, Rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 Section 98 of the Civil Procedure Act for Orders of Judicial reliefs as follows;

1.) A prerogative order of Certiorari issues against the respondents to call for and quash the decision of Ministry of Health regarding the change in the rotation program for medical internship training contained in the letter dated 2nd October 2018.

2.) A declaration that the procedure adopted by the respondents while changing the rotation for medical internship training from a three months rotation in the four disciplines to two major disciplines was

ultra vires, unlawful, procedurally wrong, unjustified, inoperative, null and void.

3.) An order of prohibition barring the respondents from implementing the purported new rotation changes in the medical internship training programme or any other policy without due consultation of the responsible parties.

4.) General damages to atone the medical anguish and inconvenience occasioned to the medical interns by the decision of the respondents.

5.) An Injunction issues barring respondents from implementing the impugned decision of Limiting rotation in four disciplines.

The grounds in support of this application were stated briefly in the Notice of Motion and in the accompanying affidavit of Mirembe Joel generally and briefly state that;

1) The applicant is a body for the medical interns who successfully completed the requisite degree programmes from the accredited Universities.

2) The members of the applicant were issued with appointment letters as interns by the 1st respondent with terms and conditions to be fulfilled by both the members of the applicant and the 1st respondent.

3) The cardinal objective of medical internship training is to transform the theoretical knowledge the medical interns gained from different training institutions into hands on practical skills, to impart

competency to the intern through supervised practices and produce responsible, reliable and respectable health professionals.

4) According to the East African Community Council of Health Ministries the medical interns rotates in four major discipline areas of internal medicine, general surgery, paediatrics and children health, and obstetrics and gynaecology for a period of three months each and interns should acquire the prescribed competences at the end of the internship training.

5) The medical interns proceeds for training immediately after qualifying from the University to transform into highly competent health care providers within and outside Uganda by providing quality training supervision.

6) The goal of the internship program is to produce competent, responsible and respectable health care professionals that contribute to improvement of the health services in Uganda and beyond.

7) In disregard of the above grounds the 1st respondent issued a memo limiting the medical interns from acquiring skills in the four disciplines and limiting them to only two disciplines.

8) The medical interns acquired the theoretical knowledge in the four disciplines without majoring in any as it has been and still a practice of the training Universities putting in mind of the scarcity of doctors in mainly upcountry facilities.

9) The impugned decision was arrived at by the 1st respondent without due consultation with the affected medical interns and therefore

breached their legitimate expectation and discriminatory to only the medical interns.

10) The impugned decision communicating changes in the medical internship programme would if implemented fundamentally alter the established practice and usage in the medical internship programme applied to all cohorts of medical interns for the last decade.

11) The decision if implemented would be against the medical practitioner's path of saving lives of people who will be suffering from diseases outside the skilled disciplines as the affected intern will not be able to handle emergencies in a situation where it happens that they are the only ones at the facility.

12) The decision if implemented would severely impair the scholarship opportunities of the medical interns after the internship and limit practical skills of the medical interns who intend to join private practice.

13) The internship program is the sole pathway to the labour market for prospective medical practitioners in Uganda and out of Uganda, who are the backbone of the nation's health sector thus the respondent is duty bound and refrained from making arbitrary, secretive, unfair, unjust and illegal changes in the internship programme as this would have serious negative impact on the quality of the health care provided to Ugandans.

14) The respondents intend to unjustifiably keep the career plans of the applicants and other graduates or prospective health professional

not in line with their interests through the introduction of the memo dated 5th October 2018.

15) If the reliefs sought are not granted, the impugned decision will greatly limit detailed hands on exposure and experience to the medical interns.

The respondents opposed this application and they filed an affidavit in reply through the Acting Director General of Health Services in the Ministry of Health and currently is the Chairperson of the Internship Committee in the same ministry Dr Henry .G. Mwebesa and Dr Byarugaba Baterana the Executive Director of Mulago National Referral Hospital.

1. Under the internship programme, medical interns are required to undergo training in the Surgical Discipline and Medical Discipline. The Surgical Discipline is comprised of one major discipline and one sub-discipline (surgery and obstetrics/gynaecology respectively) The Medical discipline comprises of one major discipline and one sub-discipline (medicine and paediatrics respectively).

2. Previously Medical interns were required to undergo training in the surgical Discipline and Medical Discipline for 6 months each. This was referred to as the 6months rotational system. However ten years ago the Ministry of Health changed the internship rotation from 6 months in Surgical and Medical discipline, to a 3 months, rotation in each of the four disciplines (surgery, obstetrics/gynaecology, medicine, paediatrics) This was done with the aim of achieving uniformity in medical internship training in East African countries, as recommended by the East African Community.

3. In the course of assessing and evaluating the effectiveness of the Medical Internship program, the Ministry of Health made consultations with heads of internship training centres, and senior medical consultants and specialists who are involved in training and supervising interns, and established the following;

    a. That over the last ten years there has been a high increase in the number of graduates from the various accredited medical schools, who are eligible for the internship programme. However the Ministry of Health is understaffed with specialists who are mandated to train and supervise the interns in government hospitals which are the major internship training centres. This has adversely affected the quality of intern training and supervision.

    b. That whereas interns are required to undertake supervised practice under the guidance of a specialist, however due to the overwhelming number of interns, it is difficult for the specialists to effectively supervise and offer one-on-one mentorship to interns while also performing their routine duties, within the 3 month rotation period. It was established that due to high number of interns assigned to wards, some supervisors were even unable to physically interact with some of the assigned interns by the end of the 3 month rotation.

    c. The major challenge reported by the heads of internship centres/intern supervisors was that the 3 months period did not allow interns a reasonable opportunity to be adequately exposed and mentored in the surgical and medical disciplines.

d. In the circumstances there was a risk that the 3 months rotation would give interns false confidence which would result in serious medical errors to the detriment of patients.

4. The Ministry of Health after consultations resolved that it was necessary to increase the rotation period to 6 months because it would allow interns to be adequately trained and mentored in the surgical and medical disciplines and the period was reasonably sufficient time for a supervisor to observe an intern's judgment in handling tasks allocated to them and determine if the intern had satisfactorily completed all components of internship.

5. Thereafter the Ministry's proposal to increase the rotation period to 6 months was discussed by the relevant inter-Ministerial Committee. The Committee pursuant to its Resolution of April 2018, approved the 6 month rotation period on the basis that the 3 months rotation is not sufficient time to allow adequate supervision of the high number of medical interns and that many practitioners trained under the 3 months rotation were not measuring up to the minimum standards expected of a competent medical practitioner.

6. That at the time Government made the decision to change the rotation system in April 2018, the current 2018/2019 medical interns were still undergraduate students in different universities and there was no legitimate expectation for the Ministry to consult them about the structure and schedule of future internship programs. Indeed the Ministry did not consult them about the structure and schedule of future internship programs. Indeed the Ministry did not consult any undergraduate medical students 10 years ago when it opted to

implement the EAC Recommendation by changing from the 6 month to the 3 month rotation.

7. That after some interns raised queries about the details of the new rotation program, the Director General wrote the circular dated 5th October 2018 clarifying to all the internship centres and the interns on the method of implementing the 6 months rotational program. Thereafter the interns proceeded with the internship program which was based on 3 month rotation period.

8. The applicant filed this matter on 21st December 2018, three months after the internship program had commenced based on the 6 month rotation system which had been implemented in all internship training centres as the effective date of the internship program is 1st October 2018 as specified in their appointment letters dated 26th September 2018.

9. That the scholarship opportunities for postgraduate training opportunities are based on a student's undergraduate performance level and do not depend on the particular disciplines in which interns were trained during internship.

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 procedure of arriving at the decision of introducing the 6 months rotation in one major surgical discipline and the next 6 months in one medical discipline was arrived at illegally, irrationally and with procedural impropriety?

2. Whether there are any remedies available?

The applicant was represented by *Ms Farida Ikimaana* whereas the respondent was represented by *Ms Mutesi Patricia*.

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

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

ISSUE ONE

Whether the procedure of arriving at the decision of introducing the 6 months rotation in one major surgical discipline and the next 6 months in one medical discipline was arrived at illegally, irrationally and with procedural impropriety?

The applicant's counsel submitted that the applicants' members were not given hearing before the decision to change the internship policy could be changed.

The applicant contended that the impugned decision was arrived at by the 1st respondent without due consultation with the affected medical interns and therefore breached their legitimate expectation and discriminatory to only the medical interns.

It was the applicant's case that 1st respondent never did not carry out extensive consultations to involve the primary stakeholders, who are the medical interns and medical students, yet the policy affected them directly.

The 1st respondent in response to the issue of failure to consult those affected stated as follows; *"That at the time Government made the decision to change the rotation system in April 2018, the current 2018/2019 medical interns were still undergraduate students in different universities and there was no legitimate expectation for the Ministry to consult them about the structure and schedule of future internship programs. Indeed the Ministry did not consult them about the structure and schedule of future internship programs. Indeed the Ministry did not consult any undergraduate medical students 10 years ago when it*

opted to implement the EAC Recommendation by changing from the 6 month to the 3 month rotation".

That after some interns raised queries about the details of the new rotation program, the Director General wrote the circular dated 5th October 2018 clarifying to all the internship centres and the interns on the method of implementing the 6 months rotational program. Thereafter the interns proceeded with the internship program which was based on 3 month rotation period.

It can be seen and deduced from the above statements that the 1st respondent did not consult or hear the applicants or involve them in the process of change of policy in the internship program.

In the case of ***Twinomuhangi vs Kabale District and others [2006] HCB130*** Court Held that;

> *"Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural fairness towards one affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."*

The applicant indeed legitimately expected to be heard as the key stakeholders before any such change of policy. The 1st respondent could have made consultations with some concerned officials in government departments but the consultation was not wide enough to cover the medical students.

A person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit.

The principle of legitimate expectation is concerned with the relationship between public administration and the individual. It seeks to resolve the basic conflict between the desire to protect the individual's confidence in expectations raised by administrative conduct and the need for the administrators to pursue changing policy objectives.

The principle means that expectations raised as a result of administrative conduct may have legal consequences. Either the administration must respect those expectations or provide compelling reasons why the public interest must take priority.

Therefore the principle of legitimate expectation concerns the degree to which an individual's expectations may be safeguarded in the face of a change of policy which tends to undermine them. The role of the court is to determine the extent to which the individual's expectation can be accommodated within the changing policy objectives.

At the root of the principle of legitimate expectation is the constitutional principle of rule of law, which requires regularity, predictability and certainty in Government's dealings with the public.

The origins of this ground of review is traced in the case of **Schmidt vs Secretary of State for Home Affairs [1969] 1 All ER 904**. Lord Denning noted that;

> "*It all depends on whether he has some right or interest or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say*"

Applying this principle to the facts of the case, Lord Denning said:

> "*A foreign alien has no right to enter this country except by leave, and if he is given leave to come for a limited period, he has no right to stay for a day longer than the permitted time. If his permit is revoked before time expires, he ought, I think, to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right-and, I would add, no legitimate expectation-of being allowed to stay. He can be refused without reasons given and without a hearing. Once his time has expired, he has to go*"

In the case of **AG of Hong Kong vs Ng Yuen Shiu [1983] 2 All ER 346**, the Privy Council held that, in light of the statement by the Government, the respondent had a legitimate expectation of being accorded a hearing.

It can be deduced from the above cases that legitimate expectations may include expectations which go beyond legal rights, provided that they have some reasonable basis. Secondly, the legitimate expectation may be based on some statement or undertaking by, or on behalf of, public authority which has the duty of making the decision, if the authority has through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied an inquiry. Thirdly, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it would act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.

See also ***World Point Group Ltd vs AG & URA HCCS No. 227 of 2013***

One of the requirements for a legitimate expectation to be effective is that the promise, the representation that gave rise to the expectation, should be clear, unambiguous and unqualified.

When the applicant members joined the Medical School or as finalists who were expected to become the medical interns in the year 2018/2019 they expected to continue with the current rotational system of 3months but the abrupt or sudden change of policy substantively affected him. The applicant members never expected the change of policy to affect their internship program under the 3months rotational system.

The change of the internship program could indeed occur but after the affected parties are given a hearing or prepared for the change. They legitimately expected to be accorded a hearing or consulted as the persons who were to be directly affected to raise objections to the proposed new internship policy.

The respondents argument is premised on the previous conduct that 10 years ago, when the policy was changed to 3 months rotation system the then students where never consulted about the change.

It should be noted that two wrongs do not make a right. If it was not done 10 years it did not mean that the Ministry of Health or Director General of Health Services should change medical internship program without consulting or hearing the applicants members or the respective medical schools where those students where carrying out medical studies.

The applicant member' left the medical schools with the old system in mind and accordingly prepared themselves mentally for the 3months rotational system and where surprised when the same had been changed.

Indeed, the very officer confirms that when the students raised queries about the change that is when the Director General of Health Services had

to write to the Circular dated 5th October 2018. This is clear that the applicants or the stakeholders were never involved or heard or consulted about the change of internship program.

The question of whether there is a legitimate expectation call for one to ask whether the duty to act fairly requires a hearing in a particular instance. Such a question is more than a mere factual one; the expectation must be a legitimate one in an objective sense.

The question whether an expectation is legitimate and will give rise to the right to a hearing in any particular case depends on whether, in the context of that case, procedural fairness requires a decision-making authority to afford a hearing to a particular individual before taking a decision. To ask the question whether there is a legitimate expectation to be heard in a particular case is, in effect, to ask whether the duty to act fairly requires a hearing in that case. The question whether a 'legitimate expectation of a hearing exists is therefore more than a factual question. It is not whether an expectation exists in the mind of a litigant but whether, viewed objectively, such expectation is, in a legal sense, legitimate; that is whether the duty to act fairly would require a hearing or consultation in those circumstances. See ***President of the Republic of South Africa v South African Rugby Football Union (SARFU) 1999(10) BCLR 1059(CC); 2000(1) SA 1***

Legitimate expectations would include expectations which go beyond enforceable legal rights, provided they have some reasonable basis.

The applicant members' where never given any notice before admission for internship and the said contracts which were executed between the 1st respondent and themselves never mentioned any change of policy. Such a major change in the Internship policy which had been passed in April 2018 ought to have been communicated by the 1st respondent before admission. Some of the medical student who felt greatly affected could have opted out

of the internship program for other countries within the East African Community.

It is indeed true that the decision-maker is entitled to act inconsistently with a legitimate expectation which he created, provided that he gave adequate notice of this intention and gave an opportunity for those affected to state their case. See ***Fisher v Minister of Public Safety and Immigration (No.2)[2000] 1 AC 434***

Doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such expectations. The existence of legitimate expectation may have a number of consequences and one of such consequences is that the authority ought not to defeat the legitimate expectation without some overriding reasons of public policy to justify the doing so.

Before adopting any new policy affecting the benefit or advantage, the parties likely to be affected by any change of consistent past policy are entitled to an opportunity to make representation before the Government.

This court finds that the applicant members were not consulted or given a hearing during the change of the internship policy and this was in breach of their legitimate expectation.

What remedies are available to the parties?.

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

The decision of the Ministry of Health through the Acting Director of Health Services was reached in breach of the legitimate expectation of applicant's members and was procedurally improper but the said decision was made 2018 and took effect during the September 2018 internship intake. By the time the applicant came to court on 21st December 2018, the new internship policy had taken effect.

The decision made would not serve any purpose except that it would guide the respondents in future conduct of their activities which involve change of policy or systems.

This court declines to issue any Orders of Certiorari, Prohibition or Injunction against the decision of the Ministry of Health regarding the change in the rotation program for the medical internship training contained in the letter dated 2nd October 2018.

This court makes a declaration that the decision of the Ministry of Health-through the Acting Director of Health Services while changing the rotation for internship training from a 3 months' rotation in the four disciplines to two major disciplines was procedurally wrong.

General damages

Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See ***Bendicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

The applicant did lead any evidence guide court on the nature of the loss suffered apart from stating that they are seeking general damages for mental anguish and inconvenience occasioned to the medical interns by the decision of the respondents. The general damages sought are not envisaged under judicial review applications. The law only provides for damages in exception circumstances and they are not granted automatically.

This court declines to award any general damages sought by the applicant.

The application is allowed with to costs.

SSEKAANA MUSA
JUDGE
20th /12/2019