THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. CAUSE NO. 12 OF 2019

MUSISI NTEGE SIMON PETER======== APPLICANT

VERSUS

MAKERERE UNIVERSITY ======== RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an Application brought under the rules 3,4,6,7 and 8 of the Judicial Review) Rules 2009, Article 21, 28 and 42 of the 1995 Constitution of the Republic of Uganda and all enabling laws for orders that;

a) AN ORDER OF CERTIORARI dot issue calling for the proceedings of the Respondent's central Ad hoc Examination Irregularities and Malpractices (Alteration of Marks) Committee that led to a decision dated 20th August, 2018 and communicated to the Applicant on 29th October,2018 for purpose of quashing the said decision in which the applicant was dismissed from Makerere University for being irrational, illegal and compounded with procedural irregularity.
b) An order of prohibition be made prohibiting the Respondent from cancelling the Applicant's marks duly obtained upon completion of his studies at the respondent institution.

c) A declaration that the applicant passed his degree as his faculty/school testimonial amplifies.
d) A permanent injunction doth issue restraining the Respondent, its agents, officials or assigns or at all from cancelling the Applicant's final marks.
e) An order that the respondent graduates the Applicant and list him for the next graduation ceremony.
f) General damages for anguish an suffering
g) Costs of the application.
h) Interest on the general damages and costs.

The grounds of the application are specifically set out in the Notice of Motion and also in detail in the affidavit of Musisi Ntege Simon Peter the Applicant herein, which shall be read and relied on at the hearing but briefly are that;

1. The Respondent's decision to nullify the Applicant's award/ marks was not motivated by well-founded concerns but by farcical, irrational and irresponsible hollow suspicion consequently punishing the Applicant for the Respondent's own weakness et al.
2. The Respondent's decision cancelling the Applicant's marks is manifestly biased discriminatory, incoherent and should be purged for contravention of Articles 21, 28 and 42 of the Constitution, and rules of natural justice and for failure to tally with principles of uniform treatment.
3. The admission of forgery assertions by the Respondents was vague and baseless making the investigations process lax, voidable and or assailable for failure to act judiciously
4. The Applicant as a student did not participate in the marking of exams at Makerere University nor did he have access to the mark sheets at all material times.

5. The decision to dismiss the Applicant from the university by the respondent was harsh with no form of evidence to implicate the Applicant in any acts of forgery.
6. It is in the interest of justice and equity to quash the decision of the Respondent.

The Respondents filed an affidavit in reply sworn in by Patience Rubabinda Mushengyezi of C/o Directorate of Legal Affairs Makerere University, opposing the application whose grounds are briefly that;

1. That in response to paragraphs 3,4,5,6,7 of the Affidavit in support. In 2014 before the Respondent's Senate approved the 2nd Semester results for students and the graduation list, information came in to the effect that the result had been tempered with and the results of students on online system were different from results on hard copies.
2. That I further response, due to this alarming situation , Senate set up an adhoc examination irregularities and malpractices committee to investigate the matter and the committee found that about 400 students had actually had their examination marks altered.
3. That a report of the committee was finally submitted to senate in June 2015 and students of the college of Engineering Design Art and Technology (CEDAT), including the Applicant , were the most implicated
4. That after making preparations for hearing of cases of all students implicated, March 2016 Senate set up another Committee, the Central Adhoc examinations irregularities and malpractices (variation of marks) committee to hear all matters relating to implicated students and determine the same.
5. That students came in as scheduled and some pleaded guilty to their charges, illustrated to the committee how they had managed to alter their marks on the system and were sentenced. Others denied charges. The Applicant was among

this category as a result the committee started hearing these students' cases in 2071.

6. The Committee found that this change was executed by a highly organized racket involving students and some members of staff in the Academic Registrar's office. These staff were dismissed from the University service.
7. That in special response to paragraph 4 of the Affidavit in support, the Testimonial was issued before the Respondents' organs discovered that students, including the Applicant had altered marks. The Testimonial that was issued was based on the online system that was corrupted.
8. That in response to paragraph 8, 9 and 10 the mandate to schedule, call, charge and hear the Applicants case was with the Central Adhoc Examinations irregularities (Alteration of marks) Committee.
9. That in further, response to paragraph 8,9,11.12 of the Affidavit in reply, the CEDAT committee on examination malpractice and irregularities immediately had internal investigation in the matter to verify the findings
10. That in specific response to paragraph 13, the alleged 'Recommendation' is a forgery and is full of falsehoods in as far as it stated the applicants CGPA and the graduation date as the CGPA is based on the falsified examination results and the applicant has never graduated from the Respondent.
11. That in specific response to paragraph 14 and 15 of the Affidavit in reply, on the 24th May 2016 the Applicant was invited to appear before the committee to answer the charges of falsification or alteration of marks. The Applicant appeared on the 8th day of June 2018 and charges were read to him, he pleaded not guilty. The matter was adjourned for hearing.
12. That in further response to paragraph 15, the Applicant was invited for hearing of his case, two Witnesses for the Respondent were called and gave evidence

including the Head of Department, the applicant was a given an opportunity to cross examine the Witnesses and he refused and neglected to do so.

13. That in specific response to paragraph 17 of the Affidavit in support, the Respondent responded to the Applicants Notice of intention to sue.
14. That in further reply to paragraphs 18,19,20,21,22,23 and 25 of the Affidavit in support, the committee heard two witnesses including the Head of Department and the IT personnel attached to the academic registrar department of the Respondent. The Applicant refused and or neglected to cross examine the witnesses.
15. That in further reply, all the witnesses supported their evidence which overwhelming implicated the applicant as participant in the fraud that led to alteration of his marks on the online results management system.
16. That in specific response to paragraph 24, the Applicant was never asked by the Central Adhoc Committee to 'accept the offence and be given a soft landing'. He was never victimized and his conviction by the committee was based on the unrebutted by all Respondents witnesses against the Applicant.
17. That in his defense, the Applicant stated that he was not the custodian of the online results system and that he had never checked his results for the entire period of his study until when he requested for his testimonial.
18. That at the hearing, the committee found that the Applicant had passed and that his marks from the school were authentic while the marks that appear on the testimonial that were printed from the online results management system are not: that the marks were changed to one direction for the benefits of the Applicant; that this change could only have been done through the 'back end' that the Applicant was privy to the alteration of his marks as no one could have randomly to into the system and targeted the Applicants results; that it is not possible for a student to progress from one semester to another and from one

academic year to another without knowing or ascertaining their marks; that the backend has many records and no one can access it without particular interest. Accordingly, the Applicant was found guilty of the offence as charged.

19. That in further reply, the applicants authentic marks gave the Applicants lower CGPA than the altered marks on the online results management system which gave him a substantially higher class of degree and CGPA and therefore the Applicant stood to benefit from this alteration of marks.
20. The Application has not registered any retakes to justify the change of marks.
21. That based on the Committee findings, the Adhoc committee recommended to senate that all six (6) altered marks or results of the Applicant be nullified; that the record of his results be corrected to reflect the correct marks; that his affected examinations be cancelled; that the Applicant be dismissed from Respondent; and that he informed of his right to appeal against the conviction and the sentence.
22. That Senate noted that the punishment should be harsh and agreed that the recommendations of the Adhoc committee be upheld.
23. That in specific response to paragraphs 25 of the Affidavit in support of the Application, I am informed by our Lawyers, whose information I verily believe to be true, the Adhoc Committee was established under the mandate of the University senate as provided by law and exercised its mandate as such.
24. That in specific response to paragraph 26,27,28,29, 30 the Respondent is a Public Institution with core values of allegiance to the institution, integrity and professionalism and to sanction the Applicants conduct would be to undermine the Respondents' examination process and its integrity.
25. That it is just and equitable that his Honorable Court finds in favour of the Respondent.

Analysis

All parties were directed to file submissions of which they did, however, Court noted from the submissions of the Respondent that the Applicant had not exhausted all the internal remedies/ or structures of appeal of the Respondent which was a decision from the appeal that was made to the Council. Court thereby directed the Respondent giving them a timeline to have the Appeal heard and determined. The said decision was filed in court on the 4th day of December, 2019 which was carefully perused and also considered among other evidence on court record in the determination of this matter.

According to the ***Black's Law Dictionary*** at page 1013 **11th Edition Thomson Reuters, 2019** Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

The power of Judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of Administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

When a person feels aggrieved at the hands of the Administration because of the infringement of any of his rights, or deprivation of any of his interests, he wants a remedy against the Administration for vindication of his rights and redressal of his grievances. The most significant, fascinating, but complex segment in judicial review is that pertaining to judicial control of administrative action and the remedies and reliefs which a person can get from the courts to redress the injury caused to him or her by an undue or unwarranted administrative action in exercise of its powers.

The effectiveness of a system of judicial review under Administrative law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the administration but generally for the maintenance of regime of Rule of Law in the country.

The weakness of the "remedial and redressal" aspect of administrative law will directly contribute to administrative lawlessness and arbitrariness. According to ***WADE & FORSYTH Administrative Law, 29, 10th Edition*** 2009, "Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law.

In Uganda, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration within the confines of the law. It has been felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual. he courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

It may be emphasized that judicial review has a significant role to play even in a parliamentary system where, in theory, government is regarded accountable to Parliament. In the first place, in practice, parliamentary supervision over the government is not effective. Secondly, government is accountable to Parliament only in respect of matters of policy and not efficiency and not legality of action which the courts can probe into. In the case of ***Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93 at 107*** Lord Diplock noted; *"government officers and departments 'are accountable to Parliament for what they do as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do and of that the court is the only judge."*

The scope and extent of power of the judicial review would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative.

Procedural impropriety connotes to procedural fairness and requires that persons affected by any acts, decisions or proceedings are given an opportunity to make representations, notice. Public authority is deemed to act fairly and objectively unless the contrary is established, and would act consistent with public interest.

In the present case, the Respondent in the filed an appeal to the University Council in Court overturned the decision of Senate to dismiss the Appellant on the ground that the Applicant's genuine results qualify him to graduate and ordered that the Appellant graduate at the next graduation ceremony. Based on the above reasoning and determination of the Council this application was overtaken by events since the University Council ordered that the Applicant to be included on the next graduation list.

Each party shall bear its costs.

I so order.

SSEKAANA MUSA
JUDGE
18th December 2020