THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 190 OF 2021

LOGOSE FLORENCE JUDITH::APPLICANT

VERSUS

LAW DEVELOPMENT CENTRE::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under Article 42, 21(3) of the Constitution and Section 36 of the Judicature Act and Rules 3(1) (a) and 3A of the Judicature (Judicial Review Rules) 2009 seeking the following order:

> *An Order for Mandamus to retrieve and mark scripts for examinations sat in between December 2018 and April 2019 and to verify her script in Civil Litigation for the 1st term sat in a Supplementary session in between December 2017 and February 2018.*

The application was supported by the affidavit of the applicant and briefly stated that;

1. The applicant failed to raise the required UGX 2,000,000 for the three exams that she was required to repeat and contacted the academic registrar who in turn advised her that he has no authority to permit indigent student to sit for examinations but she was advised to petition the Director or in his absence the Deputy Director.

2. The applicant contends that she managed to secure the clearance to sit the examination and entered the examination of International Commercial transactions, professional advisor added her extra 30 minutes but after 5 minutes he returned and withdrew the offer.

3. In December 2018 Examination release, the applicant was handed a letter showing she had been discontinued having scored 41% in Civil Litigation, 4th term and was advised to see the Deputy Academic Registrar.

4. The deputy Academic Registrar advised the applicant to apply to the director for extension of time within which to accomplish the Bar Course.

5. The applicant petitioned the Chairman Management Committee who responded to the petition and stated that the applicant did not register, therefore lost an opportunity.

6. The decision of the management committee adopted a position that ignored the illegalities visited on the applicant by the Academic Registrar and ratified by the Director and management committee.

7. The applicant exhausted all lower avenues and this court has jurisdiction to hear this matter.

The respondent filed an affidavit in reply sworn by *Lukyamuzi Hamis Ddungu*, the Secretary of the Law Development Centre that briefly stated as follows;

1. The application is incompetent, untenable and ought to be dismissed with costs.

2. The applicant was a student of the respondent in the academic year 2015/2016.

3. The applicant did not pass some examinations of some subjects and was required to sit supplementary examinations in the academic year 2016/2017 but she still did not pass some of them and in some cases did not sit the supplementary exams.

4. The applicant was discontinued for not passing the supplementary examinations but was given an extension of time to enable her to complete the bar course.

5. The applicant did not exercise the above remedy and the same has since lapsed since the students in the academic year 2019/2020 have since graduated and the 5-year period envisaged in the bar course rules has elapsed without her completing her course.

6. The applicant's only available remedy is to apply to do the bar course in its entirety afresh.

At the trial, the applicant was self-represented whereas the respondent was represented by *Counsel Musiime Jones and Agaba Kenneth Mugira*. The parties with the guidance of the court framed issues for determination and were also directed to file submissions.

The issues framed were as follows:

a) *Whether the scripts in dispute can be retrieved and marked.*

b) *Whether the respondent acted justly and fairly when they made a decision that the applicant was out of time to complete the bar course as of December 2020.*

c) *Whether the application is competent before the court.*

d) *What remedies are available to the applicant?*

Preliminary Objections on applicant's affidavit.

Counsel for the respondent raised a preliminary objection that the affidavit in support of the motion was incurably defective. Counsel submitted that the motion and affidavit were laced with hearsay, conjectures, and falsehoods and that it was argumentative contrary to Order 19 rule 3 of the Civil Procedure Rules.

Counsel submitted that Order 19 rule 3 is to the effect that the person swearing an affidavit in support of a matter other than in an interlocutory application must by all means have knowledge of the facts involved. That the instant application was a Miscellaneous Cause (substantive suit) and not an interlocutory matter yet the applicant repeatedly referred to unsubstantiated information from third parties. Counsel referred the court to the cases of *Mpanga v Ssenkubuge & Ano (Election Petition 15 of 2021), Zimula Fred v Bazigatilawo Kibuuka Francis (Election Petition Appeal No. 1 of 2018).*

Counsel prayed that the affidavit is struck out for offending order 19 of the CPR **BUT** should the court not be inclined not to do so, it strikes out the impugned paragraphs and penalizes the applicant with costs.

Analysis

Order 19 rule 3 (1-3) of the CPR provides as follows:

3. Matters to which affidavits shall be confined.

(1)Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

The applicant is guilty of offending order 19 rule 3 in her affidavit in support of this application. Under paragraphs 13 and 14 of the affidavit in support, the applicant relied on information from Mr. Wambuga Sylvester who allegedly informed her that her scripts had been confiscated by the Academic Registrar. This information was hearsay and was never substantiated by the applicant herself. Affidavits should also not be argumentative. The applicant is heavily argumentative in paragraphs 6, 8, 14 and 15. She rumbles on about the alleged illegal acts visited on her by the respondent's staff but doesn't clearly lay down the evidence to be relied on.

The Supreme Court in **Male Mabirizi Vs Attorney General S.C.M.A No. 7 of 2018** ruled that "an affidavit as we understand it is meant to adduce evidence and not to argue the application."

It is quite clear that this affidavit was not skillfully drawn. The applicant was self-represented and also drew and filed all the pleadings. She lacks the proper training to draw an affidavit that meets the required legal standard. The consequence of filing a defective affidavit is striking it off the record which leaves the application incompetent before the court. However, for purposes of resolving this dispute, the court shall exercise its discretion and allow the affidavit in the interest of justice.

The respondent also challenged the competence of the application before this court. Counsel argued that the application was statute barred as it was brought outside the mandatory 3-month time/ period under Rule 5 of the Judicature (Judicial Review) Rules. Counsel argued that the applicant's contention that she had to exhaust all remedies before filing this

application still left her application statute barred. That the applicant petitioned the Management Committee of the respondent on 23rd October 2020, which responded on 1 December 2020. By implication, the applicant had exhausted her remedies on 1st December 2020 and had up to the end of March 2021 or 1st April 2021 to file this suit.

Counsel further submitted that the applicant had not filed an application seeking an extension or enlargement of time within which to file this application. Counsel prayed that the court finds the whole application to be time or statute barred.

The applicant contended that she was required under Rule 7A 1(b) of the Judicature (Judicial Review) Rules to exhaust all remedies available before filing this application. The applicant stated that she petitioned the Law Council on 18th December 2020. She claims that the Law Council responded on the 21st of April 2021 and she filed this application on 23rd of June 2021. On that basis, the applicant was within the 3-month period prescribed under Rule 5 of the Judicature (Judicial Review) Rules.

Counsel for the respondent submitted that the application was wholly misconceived as it seeks a review of the respondent's policies rather than a judicial review of any administrative decisions taken against the applicant. Counsel submitted that the applicant sought an order of mandamus to retrieve and mark scripts sat in between December 2018 and April 2019 and to verify Civil Litigation for 1st Term sat in a supplementary session between December 2017 and February 2018. It was counsel's submission that on the basis of the applicant's own evidence and submissions, it was their submission that she only filed this application to intimidate the respondent into retrieving and remarking several supplementary examinations contrary to the Rules Governing the Passing of the Bar Course (2015) she signed with the respondent.

Counsel submitted that the court had correctly and consistently held that it was not for the High Court to take over the functions of statutory bodies. Counsel prayed that the court dismisses the application and referred the court to the cases *Muhereza Mike Kirungi & Bakesi Jasper Mutalemwa v Management Committee (LDC) & Anor Misc. Cause No. 222 of 2019 and Isingoma Micheal v Law Development Centre Misc. Cause No. 344 of 2019.*

Lastly, the application sought illegal, academic, and impractical orders. Counsel submitted that based on rules 14(2), Rule 18(3) & Rule 19 (2) of the Rules of the passing of the Bar Course (2015), the orders that the applicant sought were no longer available to her. Counsel argued that to grant her those orders would be for this court to extend the applicant's tenure at LDC beyond that provided for in the applicable rules.

I understand counsel's argument here however the validity of the orders sought and whether or not the application is misconceived delves into the merits of the case.

DETERMINATION OF ISSUES

Whether the scripts in dispute can be retrieved and marked.

The applicant contended that completing the bar course entailed ascertaining the status quo in respect of the papers she had sat that the Academic Registrar concocted marks which he posted against her name which marks were denied by the concerned heads of subjects. It was her case that the truth of her marks could only be ascertained by having disputed scripts retrieved and marked by competent examiners.

On the other hand, the respondent contended that the applicant's allegations of illegal acts and manipulation were misplaced and/or unfounded as there were a number of steps taken through various officers/committees of the respondent to cut out any avenue of

manipulation. Further that the remedy of retrieving and personally looking at her scripts were unavailable to the applicant as per the rules governing passing of the bar course 2015 that she signed.

In submissions, the applicant stated that she was seeking to review the processes the results controversially posted against her name and disowned by the respective heads of subjects that did not meet the basic standards of legality, fairness, and natural justice defined in *Sweet and Maxwell in Judicial Review of Administration at page 5 and 6*.

The applicant argued that the conduct of the Academic Registrar's officials before the sitting of these papers, during and after overwhelmingly pointed to the fact that the marks or comments he posted against her name were not authentic on account of the scripts not having reached the respondents marking rooms. That when the said results were released, the academic registrar tactically avoided putting obvious comments against the name of the applicant and the notice of the failed subject was brought to her 30 days after the effluxion of the two weeks within which she was required to appeal again for suspicious reasons.

She further submitted that whereas the chairman of the Management Committee had directed that the said scripts be placed with the Examinations Appeals Committee the same was not complied with due to the negative influence of the Academic Registrar who used his position as the secretary of the Examinations Appeals Committee to mislead the chairman that she had not registered. The applicant further alluded to the probability that the Examinations Appeals Committee did not sit as its composition and the minutes were not availed to the honorable committee and the chairman acted on hearsay.

In response, counsel for the respondent submitted that the policy of the high court in adjudicating judicial review matters of academic

qualifications or grades should be restricted as this would disrupt academic freedom which is an indispensable requisite for unfettered teaching and research in institutions of higher learning like the respondent. Without this freedom, this would promote countless litigation by unsuccessful students thereby undermining the credibility of such institutions.

Counsel submitted that the court should only intervene in exceptional circumstances such as demonstrated bad faith, arbitrariness, irrationality, and constitutional or statutory violations of the student's rights which was not the case here.

Counsel submitted that the Rules governing the passing of the bar course (2015) provided the mechanisms for verifying examination scripts and/or appealing in the event of discontent which the applicant ably exercised but failed the Bar Course. That the applicant cannot years later turn around and ask the court to order the marking of her supplementary examinations or verification of the same in total disregard of the rules she signed and accepted when she was admitted by the respondent.

Counsel also noted that the applicant raises unfounded allegations against some of the Professional Advisors and former heads of the institutions without adducing any evidence to substantiate the claims. That the applicant did not add the persons against whom she made such serious and damning allegations as parties to her application including the Academic Registrar.

That the applicant was on several occasions tasked to adduce all the necessary evidence for her wild allegations which she undertook to avail but none had been availed. None of the persons referred to by the applicant swore any affidavits and as such, there was none to verify or prove the veracity of the allegations.

Analysis

It can be deduced from the evidence on the record the applicant enrolled for the bar course in the academic year 2015/2016. The applicant did not pass some examinations and was required to repeat those subjects. She sat supplementary exams in 2016/2017 but still did not pass some of the supplementary exams. The applicant was readmitted to repeat these exams in the academic year 2017/2018 but still failed some exams. The applicant was discontinued according to the Rules governing the passing of the bar course 2015 but granted an extension of time to complete the course in the academic year 2019/2020.

The applicant now seeks an order to retrieve and mark the scripts of the exams sat in the supplementary session between December 2017 and February 2018 and verify her civil litigation marks.

It is my considered view that an order directing the respondent to retrieve and mark the applicant's scripts would be irregular, academic, and seen to delve into the functions of the respondent. The respondent has a set down procedure according to the rules governing the bar course that are the proper avenue to seek an order for remarking. I concur with the submissions of counsel for the respondent that according to the Rules for passing the Bar Course 2015 signed by the applicant, this remedy is no longer available to her.

I further associate myself with the rulings of my learned brothers and sister in a plethora of authorities on the same subject of passing examinations and request for examination scripts or verification of results to wit *Musanje Joseph v Law Development Centre HCMC No. 29 of 2012; Asobasi Daniel Okumu v Uganda Law Council & LDC HCMC No. 317 of 2017*; *Muhereza Mike Kirungi & Bakesi Jasper Mutalemwa v Management Committee (LDC) & Anor Misc.*

Cause No. 222 of 2019 and Isingoma Micheal v Law Development Centre Misc. Cause No. 344 of 2019.

The learned Judge in ***Muhereza Mike Kirungi & Bakesi Jasper Mutalemwa v Management Committee (LDC) & Anor Misc. Cause No. 222 of 2019*** observed that;

"While courts have a duty to all, nothing under judicial review laws empowers the courts to take over the standing mandate of Law Development Centre, or any other academic institution to determine who has passed or failed……Save for instances of clear violations of Constitutional rights, bias or bad faith, courts will always defer to the examination authorities to apply the relevant rules for passing a course, which students accede to when they join the programme. The court will always normally exercise restraint to interfere unnecessarily...."

In ***Isingoma Micheal v Law Development Centre Misc. Cause No. 344 of 2019*** the learned judge held that;

"…This court holds the same view and re-echoes the position that students must adhere to the requirements of their institutions. They cannot use the court simply as a tool to intimidate their academic institutions into giving them what they want. They must adhere to laid down rules and only seek court's intervention when there is a clear violation of the law or unfairness…"

There is a growing tendency for students to run to court seeking academic orders as seen in this case which needs to stop. Students should only run to court in instances of clear violation of constitutional rights, bias, or bad faith which the applicant has not proved in this case. The student should not try to use court to do something which is illegal or against examination regulations/rules. The allegations that the Academic Registrar of the respondent exercised bad faith towards the applicant were not substantiated.

This issue accordingly fails.

<u>Whether the respondent acted unjustly and unfairly when they made a decision that the applicant was out of time to complete the bar course</u>

The applicant submitted that after she had learned from the concerned heads of subjects that her scripts had been confiscated by the office of the Academic Registrar, she petitioned the Board of Examiners through the Chairman of the Examinations Board with a view to having the Board determine the status quo of the disowned marks but he ignored to table her concerns to the Board of Examiners.

The applicant argued that instead of tabling the alleged illegalities to the board, the chairman collected all her petitions and handed them to his executive assistant with a sticker to study and advise which procedure was improper in light of the alleged crimes committed by the Academic Registrar.

It was the applicant's contention that the Chairman Board of Examiners conspired to gang up with the Academic Registrar and using his Executive Assistant while tactfully avoiding the Deputy Director, Head of Academics, and Board of Examiners for a meaningful investigation of the criminal/illegal acts.

She submitted that the decision of 15th September 2020 was reached unfairly after being carefully tailored along malicious schemes designed to adversely affect the applicant who was seeking the truth relating to the disowned marks the Academic Registrar posted against her. The applicant submitted that as of that date of 15th September 2020, she was within time to complete the bar course.

In response, counsel for the respondent submitted that the applicant was a student of academic year 2015/2016, she failed second term and was

advised to repeat the same. She repeated in or around 2017 and unfortunately failed some of the subjects again and was required to repeat (supplementary) sometime in 2018 but failed some subjects again.

She petitioned the Board of examiners for an extension of time which was granted. According to the extension, she was supposed to complete the Bar Course in two years that is academic years 2018/2019 or 2019/2020. The applicant alleged that she did not have money to pay for supplementary examinations and sought to sit the examinations on leniency and undertook to make payments at the time of sitting the said examinations. Unfortunately, even after she raised part of the fees, she did not sit some examinations and was consequently notified of her failure of the Bar Course as well as the expiry of the extension period.

Counsel submitted that the applicant was disingenuous in alleging that the respondent was unjust and unfair when the decision to discontinue her was made by 1st December 2020. The applicant was given options in response to all her applications and/or requests by the respondent, its Management Committee, and Chairman Management Committee but despite all the available options exercised, she failed the Bar Course.

Counsel concluded that whereas it was unfortunate that the applicant had not been able to raise fees (as she alleged), the respondent was not mandated to waive its fees requirements therefore the respondent acted justly and fairly when it made the decision that the applicant was out of time to complete the Bar Course as at December 2020.

Analysis

The applicant has narrated so many stories to the court but has failed to produce any evidence to substantiate her allegations of unfair treatment, illegality, or procedural impropriety. The applicant was consistently given chances to complete the bar course on various occasions when she

petitioned the administration of the respondent. She was granted an extension of time within which to complete the course but the respondent's records showed that she never reported for it and lost the opportunity. The applicant was advised by the chairman management committee of the respondent to make a fresh application to repeat the bar course.

The decision made by the respondent was made pursuant to a policy formulated for the governance of examinations at Law Development Centre. They were in fact implementing a policy. In ***Council of Civil service Unions v Minister of Civil Service [1985] AC 374 (HL)*** it was held that:

> *"It is not for the courts to determine whether a particular policy or particular decisions taken in fulfillment of that policy are fair. They are only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary greatly from case to case…."*

There is no basis for the applicant to contend that the respondent was unjust and unfair when the decision to discontinue her was made on 1st December 2020. The discontinuation of the applicant was done in accordance with the rules and regulations governing the bar course programme for all the students without any discrimination. In the case of ***Maharashtra State Board of Secondary and Higher Secondary Education vs Kumarstheth [1985] LRC*** court held that:

> *" so long as the body entrusted with the task of farming the rules or regulations acts within the scope of authority conferred on it in the sense that the rules and regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom of the efficaciousness of such rules and regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provision of the statute can best be implemented and what measures substantive as well procedural would have to be*

incorporated in the rules and regulations for the efficacious achievement of the object and purpose of the Act. It is not for court to examine the merits and demerits of such a policy because its scrutiny has to be limited to the question whether the impugned regulations falls within the scope of the regulation-making power conferred on the delegate by statute. The responsible representative entrusted to make bylaws must ordinarily be presumed to know what is necessary, reasonable, just and fair" ***See R v Council of Legal Education Ex parte Edward Onwong'a Nyakeriga Miscellaneous Application No. 529 of 2016(HCK)***

On that premise, I find that the respondent acted justly and fairly in accordance with the rules and regulations governing bar course at LDC when they made the decision that the applicant was out of time to complete the bar course after failing Civil Litigation with 41%.

This application accordingly fails. Each party shall bear its own costs.

I so order

SSEKAANA MUSA
JUDGE
6th April 2023