

1. MUNYAMBABAZI BRIAN

2. MASEREKA RONALD :::::::::::::::::::: APPLICANTS

VERSUS

1. UGANDA MEDICAL AND DENTAL PRACTITIONERS COUNCIL

2. ATTORNEY GENERAL :::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE SEKAANA MUSA

RULING

The applicant brought this application for judicial review under Article 28 (1), 42, 44 (c), 50 (2) of the Constitution of Uganda, 1995, Sections 36 and 38 of the Judicature Act, Cap13, Rules 3 and 6 of the Judicature (Judicial Review) Rules, 2009, and Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019. The application seeks the following judicial reliefs by way of Judicial Review:

1. An order of Certiorari issues against the respondents quashing their decision not to deploy medical graduates of King Ceasor University to the medical internship programme;
2. An order of Prohibition prohibiting the respondents, their members, officers, agents and all persons acting under their authority from enforcing the impugned decision, and from undertaking any action

detrimental to the applicants and all medical graduates from King Ceasor University who finished their medical course and are due to start medical internship;

3. An order of Permanent Injunction restraining the respondents, their members, officers, agents and all persons acting under their authority from enforcing the impugned decision, discriminating against the applicants and all medical graduates from King Ceasor University, taking any steps that are detrimental to the medical graduates from King Ceasor University in their pursuit for medical internship.
4. A declaration that the applicants and all medical graduates from King Ceasor University who duly completed Bachelor of Medicine and Bachelor of Surgery (MBCh.B) have a right to be deployed for internship.;
5. A declaration that the 1st respondent's decision to exclude the applicants and graduates from King Ceasor University in the internship placement is unfair, illegal, unlawful, biased, unreasonable, unenforceable, irrational, null and void and of no legal effect.
6. An order of Mandamus doth issue compelling the respondents to deploy the medical graduates from King Ceasor University for medical internship.
7. Costs of the application.

The application was supported by an affidavit by Munyambabazi Brian 1st applicant and medical graduate from King Ceasor University. The grounds for this application were briefly that;

1. The applicants are medical graduates who completed their Bachelor of Medicine and Bachelor of Surgery (MBCh.B) from King Ceasor University.
2. The 1st Respondent is a professional Body for the medical and dental practitioners under the Medical and Dental Practitioners Act Cap 272.
3. On the 27th July 2023, the Ministry of Health issued a press release wherein it communicated that it had received clearance to deploy Medical Interns to 58 internship centers across the country and that the Ministry had released a deployment list for the interns under revised terms as guided by government and that the deployment was occasioned by factors beyond the control of the Ministry.
4. The press release further noted that Government was to deploy 1,901 Medical interns within the available budget of a net monthly allowance of UGX 1,000,000 per intern to facilitate accommodation and feeding and that all interns are expected to report to their various training centers by 3rd August 2023.
5. On the 28th July 2023, the Ministry of Health vide a letter dated 28th July 2023 Ref; ADM: 145/01 forwarded the list of the Medical Interns to the internship placement centers. The list had medical graduates from all Universities teaching Bachelor of Medicine and Bachelor of Surgery (MBCh.B) in Uganda and outside Uganda with the exception of medical graduates from King Ceasor University.
6. The applicants completed Bachelor of Medicine and Bachelor of Surgery (MBCh.B) and are eligible for internship placement however they were excluded from the list of medical internship placement released by the Ministry of Health.

7. The applicants and other graduates from King Ceasor University cannot be registered as medical practitioner by the 1st respondent unless they have undertaken the mandatory medical internship.
8. The respondents have never communicated the reasons for excluding the applicants and other graduates from King Ceasor University from the list of internship placement.
9. The respondents in refusing to place the applicants and other medical graduates from King Ceasor University for internship have not treated the applicants and other medical graduates from King Ceasor University justly, fairly and not complied with the principles of natural justice , have violated the constitutional rights of the applicants and other medical graduates of King Ceasor University to a just, fair and impartial hearing and have failed to exercise their powers judiciously and reasonably.
10. The applicants and other medical graduates from King Ceasor University studied for a period of five years to obtain a Bachelor of Medicine and Bachelor of Surgery (MBCh.B) and to practice medicine however they cannot achieve this unless they undertake the mandatory medical internship and the respondents have unreasonably and illegally denied them an opportunity to undertake the internship.
11. The applicants and other medical graduates from King Ceasor University have been greatly disadvantaged by the discriminatory treatment occasioned by the respondents' decision.

The respondents opposed the application through an affidavit in reply of Ass. Prof Joel Okullo, the Chairperson of Uganda Medical and Dental Practitioner's Council contending that;

1. The 1st respondent is statutorily obligated to monitor and exercise general supervision and control over and maintenance of professional medical and dental educational standards, including continuing education.
2. That in that regard, the law entrusts the 1st respondent with the crucial task of safeguarding society against ill trained, unqualified and inexperienced medical practitioners. In the execution of this role, the 1st respondent oversees the entry of medical and dental practitioners onto the register.
3. The 1st respondent fulfils its mandate by rigorously and enforcing educational standards upon all medical schools in Uganda. Additionally, the 1st respondent gate keeps the integrity of the medical profession by ensuring that the students admitted for internship and later registered meet the medical practice standard.
4. The 1st respondent oversees and supervises both provisional and ultimate Full Registration of medical graduates take on a mandatory one-year internship roles in hospitals approved by the Council. It is a part of their training and is mandatory. When they undertake this internship training and pass it, these students obtain a post-internship certificate which they present to the Council who then issues them Full Registration certificate that allows them to practice as licensed doctors. The two certificates and processes are different and mandatory.
5. The 1st respondent's crucial aim in maintaining high standards on who gets both provisional and ultimate registration is to ensure that she protects innocent patients from the devastating consequences of delicate medical procedures arising from the practice by unqualified and inexperienced medical practitioners.

6. While exercising its mandate, the 1st respondent has inspected King Ceasor University and the inspection have long revealed that King Ceasor University does not have a fit and proper training program from which the 1st respondent can certify properly trained medical doctors.
7. That the 1st respondent raised these issues to the National Council for Higher Education as a matter of concern to her in the exercise of her statutory duty to monitor, exercise general supervision and control over and maintenance of professional medical and dental educational standards.
8. That the 1st respondent held several engagements with King Ceasor University and in one of these engagements, the parties initially agreed to subject these students to an examination to assess the adequacy of their training. The 1st respondent believed that this was well within its wider mandate to maintain high medical educational standards. The 1st respondent wrote to the Attorney General seeking his legal guidance on whether the 1st respondent could indeed conduct pre-registration examination.
9. The Attorney General informed the 1st respondent that they had no mandate to conduct the proposed examination under section 20 of the Uganda Medical and Dental Practitioners Act, Cap 272. The Attorney General did not opine on whether the 1st respondent can conduct the said examination as part of its wider statutory mandate under section 3 of the same statute. However, he did advise that the 1st respondent had the duty to satisfy itself as to whether or not the students qualify for internship and duly pronounce itself.

10. That the 1st respondent has not forwarded the applicants' names and those of the several others for registration for internship purposes. They also show that the 1st respondent has acted in its wider statutory mandate, within the law, rationally and without any basis to justify the grant of the reliefs that the applicants seek.
11. That in 2019, the 3rd Joint East African Community Medical and Dental Practitioners Councils/Boards Inspection team conducted an inspection of the University and found that it did not meet the minimum standards for training medical students registrable in the East African Community.
12. On 24th September 2020, the respondent and NCHE conducted a re-inspection of the University and found that the University had not complied with the recommendations of the 3rd Joint East African Inspection. Consequently, on 14th December 2021, the 1st respondent and NCHE met the top management of the university and established that the university had not complied with the said recommendations.
13. Sometime in 2022, the NCHE issued a directive to King Ceasor University to stop its operation of the Bachelor of Medicine and Bachelor of Surgery MBChB program until all the issues previously raised were resolved.
14. Subsequently on March 2nd, 2023, the NCHE, the 1st respondent in exercise of its statutory duty unanimously agreed that the graduates from King Ceasor University of the MBChB program could not be forwarded for the pre-registration. The 1st respondent premised this decision on the fact that these graduates had graduated from an institution whose ability to train medical practitioners was found to be wanting.

The applicants in an affidavit rejoinder by Munyambabazi Brian contended that;

1. The applicants joined King Ceasor University in 2017 and pursued Bachelor of Medicine and Bachelors of Surgery and graduated. The University is accredited to teach Bachelors of Medicine and Bachelors of Surgery and throughout their studies for five years the University was supervised by National Council for Higher Education.
2. That all medical students are deployed for internship and the 1st respondent has been deploying graduates from King Ceasor University. All graduates from King Ceasor University previously deployed for internship successfully finished their internship and they are currently practicing.
3. That medical internship is a continuous education process where medical graduates are trained and tested by the 1st respondent and if a graduate fails internship he or she cannot be registered to practice medicine. The 1st respondent by closing out the applicants of the internship process has denied them an opportunity to pass this test and to subsequently be registered to practice medicine.
4. That the 1st respondent has been deploying medical graduates from King Ceasor University and all of them have successfully passed internship and have been registered by the 1st respondent as doctors and there has never been any case of malpractice or negligence involving a medical graduate from King Ceasor University.
5. That the University's medical school was accredited by National Council for Higher Education to teach Bachelor of Medicine and Bachelor of Surgery and this accreditation has never been withdrawn. The University has all the facilities to teach the course and during the

3rd, 4th and 5th years the students do clinicals in Mulago hospital, Kiruddu Hospital and Kawempe Hospital together with students from Makerere University. During the these clinicals the students are taught by the same staff at these hospitals and some of the 1st respondent's staff have taught the students of King Ceasor University throughout this period of five years.

6. That the 1st respondent has never communicated any reason why they refused to register or deploy the medical graduates or how it intends to satisfy itself that the applicants were properly trained and competent.
7. That the issues raised by the Joint East African Community Medical and Dental Practitioners Council affected all medical schools in Uganda with exception of Makerere University and this was confirmed by Ministry of Education.
8. That the inspection of all Universities is a continuous process and whenever recommendations are done by the inspection team, the University implements the recommendations in a gradual process and the University is given a roadmap for the implementation.
9. That the NCHE carried out a verification exercise on the 24th April 2023 and informed the University that qualifications of the 84 graduates had been verified and their qualification recognized and the recognition of 56 graduates had been halted pending submission of the additional information. The list of graduates whose qualification had been recognised was brought to the attention of the 1st respondent by the University in a letter dated 25th May 2023 and the 1st respondent was requested to register them for internship.

10. That in a letter dated 20th June 2023, National Council for Higher Education informed the University that 29 graduates of the 84 graduates whose qualifications had been recognized needed further scrutiny and the letter noted that a total of 48 graduate's qualifications were recognized. The University requested the 1st respondent to register these for the graduates for internship.

11. That following the submission of more information as requested by NCHE in a letter dated 2nd August 2023, 35 graduates' qualifications were recognized after the joint verification exercise.

12. That the 1st respondent is attempting to distance itself from the joint verification exercise of the graduates of King Ceasor University is an act which is unfair and unreasonable and irrational.

The applicants were represented by *Alex Kibandama & Saddam Solomon* of M/S ORTUS ADVOCATES while the 1st respondent was represented by *Robert Kirunda and Moses Muziki* and the 2nd respondent was represented *Harriet Nalukenge (SSA) and Henry Obbo (SSA)* from the Attorney General Chambers.

Three issues were framed for determination by this court;

1. *Whether this application is appropriate for judicial review?*
2. *Whether the respondent's decision to deploy medical interns with the exception of medical graduates from King Ceasor University is tainted with illegality, irrationality and procedural impropriety?*
3. *What remedies are available to the parties?*

Preliminary Consideration

The 2nd respondent submitted that the applicants have no cause of action against the AG and was wrongly joined to the respondent since the list of graduates is forwarded to the Ministry of Health for deployment by the Medical and Dental Practitioners' Council which is mandated to register medical graduates of internship.

Analysis

This court agrees with the 2nd respondent's counsel that the applicants have no cause of action against the Attorney General since the decision not to send the applicants names to Ministry of Health was done by the 1st respondent which is a body corporate with capacity to sue or be sued. Section 2 of the Medical and Dental Practitioners Act provides; *There shall be a Council known as Uganda Medical and Dental Practitioners Council which shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.*

The 2nd respondent's principal- Ministry of Health is only responsible for deployment of medical interns whose names are forwarded to them by the Uganda Medical and Dental Practitioners' Council. Ministry of Health would only be culpable where the Medical and Dental Practitioner Council sent them the list and out of that list, the Ministry of Health refused or failed to deploy particular graduates either as graduates from a particular university or certain graduates.

The application is incompetent against the 2nd respondent since there is no cause of action against it and is accordingly dismissed with costs.

Determination

Whether this application is appropriate for judicial review?

The applicant's counsel submitted that judicial review is provided for under Article 42 of the 1995 Constitution of Uganda as amended, and it provides that;

“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.”

He relied on Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 (S.I 2019 No. 32) which defines “judicial review” as:

“ The process by which the High Court exercises its supervisory jurisdiction over the 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.”

The applicant’s counsel further submitted that in ***ALTX East Africa Limited v Capital Markets Authority, Miscellaneous Cause No. 426 of 2019***, where Justice Ssekaana Musa set out the scope of Judicial Review applications, that 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 persons/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fail.”

Analysis

Under rule 7A of the Judicature (Judicial Review) Rules, 2019 it provides for;
Factors to consider in handling applications for judicial review

(1) The court shall, in considering an application for judicial review, satisfy itself of the following-

- a. That the application is amenable for judicial review;*
- b. That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
- c. That the matter involves an administrative public body or official.*

(2) The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment.

The facts of this case show that the 1st respondent being a public body with the mandate to supervise, monitor, advise and recommend government on matters relating to the medical profession prompted that the applicants and medical graduates from King Ceasor University be excluded from being deployed for the mandatory medical internship.

In the present case, the entire dispute is based on the allegation that the 1st respondent gave clearance to the Ministry of Health to deploy medical interns. The applicants' counsel submitted that the Uganda Medical Internship Committee is one of the committees of the 1st respondent in charge of deployment of medical interns and it selected and deployed medical interns from all medical schools except those from King Ceasor University despite the fact that they had applied for registration and deployment.

There is a decision that was made not to deploy the applicants and other fellow graduates of King Ceasor University for internship and this is the basis of the challenge for illegality, unreasonableness and irrationality and the said decision being procedurally improper.

To bring an action for judicial review it is a requirement for the Applicant to satisfy court that there is a decision being challenged and that decision is made by a public body on matters of public law and this decision was made without following due process, it was irrationally and illegally made for such an action to have any chance of success in court.

This application is entirely based on the 1st respondent's recommendation to the Ministry of Health that Medical graduates from King Ceasor University are not deployed for the mandatory medical internship. The functions of the

Uganda Medical Council are provided for under Section 3 of the Medical and Dentals Practitioners Act Cap 272;

Functions of the council

The functions of the council shall be —

- a) to monitor and exercise general supervision and control over and maintenance of professional medical and dental educational standards, including continuing education;*
- b) to promote the maintenance and enforcement of professional medical and dental ethics;*
- c) to exercise general supervision of medical and dental practice at all levels;*
- d) to exercise disciplinary control over medical and dental practitioners;*
- e) to protect society from abuse of medical and dental care and research on human beings;*
- f) to advise and make recommendations to the Government on matters relating to the medical and dental professions;*
- g) to exercise any power and perform any duty authorised or required by this Act or any other law;*
- h) to disseminate to the medical and dental practitioners and the public, ethics relating to doctor patient*
- i) rights and obligations; and for the purposes of discharging its functions under this Act, to perform any other function or act relating to medical or dental practice as the Minister may direct.*

The facts of this case are clear and show that the 1st respondent as a public body exercised its statutory function and denied the applicants and other medical graduates of King Ceasor University from being deployed for internship.

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.

This case is therefore a proper case for judicial review.

Whether the respondent's decision to deploy medical interns with the exception of medical graduates from King Ceasor University is tainted with illegality, irrationality and procedural impropriety?

The applicants' counsel submitted that the refusal by the 1st respondent to recognize the degree awarded by King Ceasor University is illegal since the said university is accredited by National Council for Higher Education and the action of the 1st respondent through The Uganda Medical Internship Committee is contrary to the powers vested under Medical and Dental Practitioner's Act.

It was counsel's submission that the 1st respondent has no power not to recognize or refuse to deploy students from Universities accredited by National Council for Higher Education which is solely mandated under the Universities and Other Tertiary Institutions Act.

The applicants also contended that they were denied a fair hearing or they were not informed of the refusal to register and deploy them as medical graduates and there is communication or any reason for their exclusion from the internship deployment.

The applicants' counsel submitted that the 1st respondent's decision not to deploy the applicants was irrational and so unreasonable that it cannot be justified in the circumstances of the present case. The applicants like all other Medical students and graduates have studied 5 years and the refusal to deploy them for internship is illogical.

The respondent's counsel submitted that the 1st respondent has a duty to ensure that the standard for the medical profession is upheld and this cannot

be achieved if some medical schools fail to meet the standard expected by the regulator. The 1st respondent is mandated to gate keep and protect the integrity and propriety of medical and dental practice through the registration of the medical and dental practitioners.

The 1st respondent is entrusted with the crucial task of safeguarding society against ill trained, unqualified and inexperienced medical practitioners. The 1st respondent fulfils its mandate by rigorously monitoring and enforcing educational standards upon all medical schools and students in Uganda. Section 17(2) provides very specifically that “in addition to the requirement in subsection (1) a holder of a degree of Bachelor of Medicine shall satisfy the council that she has completed internship.

Section 19(1)(b) then provides for a provision register. This is the register on which persons intending to undertake internship are being entered. These provisions are read together with sections 23 and 24 on provisional registration. In 1st respondent counsel’s view, in providing for all this the medical council must satisfy itself that a person is adequately trained. This is the import of section 3 of the Medical and Dental Practitioners Act. No such detailed criteria exist in the Universities and Other Tertiary Institutions Act. In Other words, the University and Other Tertiary Institutions Act regulates the institution while the Medical and Dental Practitioners Act regulates or governs the individual’s competences.

The 1st respondent further contended that there was no procedural impropriety and no legitimate expectation violated since there was multiple violations of multiple legal obligations, noncompliance issues and appalling education standards. The 1st respondent actions were done and executed in the best interest and that there was no decision or communicated to the applicants and others in that category. The 1st respondent further contends that no pronouncement has been made whether the applicants and other graduates qualify for internship, but she was rather in the process of satisfying herself of the applicants’ qualification.

The 1st respondent further submitted that she acted rationally, logically and within accepted moral standards. The 1st respondent while exercising her mandate, has inspected King Ceasor University several times and has found that it does not have a fit and proper training programme from which the 1st respondent can certify properly trained medical doctors.

In April 2023, the NCHE carried out a verification of the results of the graduate students from King Ceasor University but the University failed to avail crucial documents in testament of education standards and the process of the students. The 1st respondent submitted that in light of the recommendation from Attorney General and all the deficiencies established in the course of verification exercise, the 1st respondent believes that the graduates from such a flawed training programme should not be added to the pre-registration process, as they would in effect have been let through the last safety valve before being unleashed to the public.

The 1st respondent contended that she acted rationally towards the applicants and all other graduates of King Ceasor University. The respondent falls within a range of possible, acceptable outcomes which are defensible in respect of the facts, the law and her statutory duty towards the public.

Analysis

The applicants contend that the decision of the 1st respondent not to allow them and other medical graduates of King Ceasor University was illegal and irrational since the University was licensed and approved to teach such a course by the National Council for Higher Education. This court should apply the legislations that provide for the regulation of higher education in the medical profession in harmonious way to give effect to the will of Parliament.

The applicants are graduates of King Ceasor University which is duly licensed by the National Council for Higher Education which the national

regulator of all universities in Uganda. However, the Medical and Dental Practitioner's Council is equally mandated under Section 3(a) of the Mental and Dental Practitioners Act; *to monitor and exercise general supervision and control over and maintenance of professional medical and dental educational standards, including continuing education;*

The Universities and Other Tertiary Institutions Act provides for the establishment of the National Council for Higher Education which is mandated to regulate all public and other private institutions of Higher Education among the functions as set out under section 5;

- *To advise the Minister on the establishment and accreditation of public and private institutions of Higher Education.*
- *To receive, consider and process applications for;*
 - (i) *the establishment and accreditations of private Tertiary Institutions, private other degree awarding institutions and private universities and*
 - (ii) *the accreditation of the academic and professional programmes of those institutions of those institutions in consultation with professional Associations and regulatory bodies.*
- *To monitor, evaluate and regulate institutions of Higher Education.*
- *To ensure minimum standards for the course of study and equating degrees, diplomas and certificates awarded by the different public and private institutions of Higher Education.*

The reading of the two legislations is clear that the 1st respondent can only exercise the function of *monitoring and exercising general supervision and control over and maintenance of professional medical and dental educational standards, including continuing education* over the higher institutions of learning like King Ceasor University through the National Council for Higher Education and not through questioning the degree awards after the students have been conferred their degree. The 1st respondent should be able to make any intervention of ensuring quality before the degrees are awarded and not to question degrees thereafter.

The 1st respondent is mandated to gate keep and protect the integrity and propriety of the medical and dental practice through the internship programme which ensures that only those students who meet the medical practice standards are registered as doctors after the internship period. The medical interns proceed 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.

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.

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 1st respondent is duty bound and refrained from making arbitrary, secretive, unfair, unjust and illegal decisions which constrain medical graduates from being admitted for the internship programme as this would have serious negative impact on the medical graduates who have been fully awarded the degree-Bachelor of Medicine and Bachelor of Surgery (MBCh.B) for no fault of their own.

The 1st respondent is only allowed to satisfy itself of the standard before the award of degrees to the applicants or other medical graduates. It would be extremely wrong to question an awarded degree from a University which was duly accredited by National Council for Higher Education and whose charter/provisional licence has not been revoked. This would lead to a lot of uncertainties in the education sector if the degrees are awarded and later rendered useless because a professional regulator who deems it at their discretion not satisfactory to their standard.

The 1st respondent should be proactive to arrest any situation of substandard medical education at the University before the students have graduated through regular supervisions and monitoring with clear warning and

rectification process to avoid absurdities of denying degree-holders admission to internship. The actions of the 1st respondent refusing to recognize medical graduates of King Ceasor University would amount to usurping the powers of National Council for Higher Education which is mandated to accredit Universities to teach medical courses. The exercise of the power conferred under the Medical and Dental Practitioner's Council should not be interpreted to render another statutory body useless or subservient to their authority. See *Alex Byaruhanga & Others v Law Development Centre & AG* High Court Miscellaneous Causes 267 of 2017

Statutes may place on a public body a duty to have regard to some desirable goal. The Medical and Dental Practitioners Council is empowered to *monitor and exercise general supervision and control over and maintenance of professional medical and dental educational standards, including continuing education*. It was not sufficient for the Medical and Dental Practitioners Council to show merely that it made its decision with a general awareness of its duty to protect the public, a substantial, rigorous and open-minded approach is required. The test whether a decision-maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking, and the duty must be performed with vigour and an open mind. See *R. (on the application of Buyejo) v Barnet LBC* [2009] EWHC 3261 (Admin); *R. (on the application by Domb) v Hammersmith and Fulham LBC* [2009] EWCA Civ 941

The Medical and Dental Practitioners Council's duty required a conscious directing of the mind to the obligations to public as well as to the graduate students who have successfully been awarded Bachelor of Medicine and Bachelor of Surgery after 5 years and their parents who have paid for their education to that level. Due regard must be given before and at the time that a particular policy will or might affect such students and such due regard to the duty must be an essential preliminary to any important policy decision that was stopping the applicants as well as other graduates of University being considered for internship.

The 1st respondent is given responsibility of applying the law to each situation as it arises. Any wide application of the discretionary power in executing their functions under the Act is incompatible to the rule of law, for what the rule of law requires is not that wide discretionary power would be totally absent but the law should be able to control its exercise so that there may not be any abuse of discretion. It is well settled that all power has its legal limits and that the court should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of citizens like the applicants in this matter.

The courts have laid down the principle which requires the statutory power as to be exercised reasonably and in good faith and for proper and authorized purpose only and that, too, in accordance with the spirit as well as the letter of the empowering Act. The 1st respondent should never have done as they wish or please without regard to the spirit of the law in considering whether the applicants should be deployed for internship. The primary rule is that discretion should be used to promote the policies and objects of the governing Act.

The 1st respondent is only mandated to ensure education standards of medical standards through the regulator and not to subject the graduates to another level grading their degree awards in form of examinations as proposed or contemplated. The exercise of discretionary power should not be exercised arbitrarily and dishonestly. Where the legislation gives the decision-maker like the 1st respondent to 'act as he thinks appropriate', or 'as he believes', or 'thinks fit', or 'satisfy itself' the courts nowadays tend to require those thoughts or beliefs to be reasonably and objectively justified by relevant facts. *See Office of Fair Trading v IBA Health Ltd [2004] EWCA Civ 142; [2004] All ER 1103*

The Medical and Dental Practitioners Council is granted power to ensure maintenance of medical and dental educational standard which purpose would only be achieved through the National Council for Higher Education

and that is the only way of satisfying itself before the award of the said degrees. Such power should not be interpreted to confer power of questioning medical degrees duly awarded otherwise such exercise of power would be contrary to spirit of the law. The 1st respondent pursued a purpose outside the four corners and took in irrelevant considerations and they have failed to set out reasons for the decision of denying the applicants and other graduates of King Ceasor University. The absence of reasons may infer that the 1st respondent pursued a purpose that is different from the one that is empowered under the law.

The decision of the 1st respondent not to forward the applicants names and those of other graduates of King Ceasor University was illegal.

What remedies are available to the parties?

The applicants prayed that an order of certiorari is issued against the 1st respondent quashing their decision not to deploy medical graduates of King Ceasor to the medical internship programme.

The applicants further prayed that the court exercises its powers under section 36(1) and 38 of the Judicature Act to issue other orders like Mandamus and declarations.

Analysis

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 prerogative order of certiorari is designed to prevent the excess of or the outright abuse of power by public authorities. The primary object of

certiorari is to make the machinery of government operate properly according to the law and public interest.

The main role of the order of mandamus is intended to compel public bodies or officers to exercise their jurisdiction that they have wrongfully declined and to enforce the statutory duties and discretion in accordance with the law as in the present case.

This court having found for the applicants grants the following orders:

- The court issues an order of Certiorari against the 1st respondent quashing their decision not to deploy the applicants and other medical students of King Ceasor University to the National Medical Internship programme.
- This court also issues a Declaratory order that the applicants and all the medical graduates from King Ceasor University who duly completed Bachelor of Medicine and Bachelor of Surgery (MBCCh.B) have a right to be deployed for internship.
- This court further issues an order of Mandamus compelling the 1st respondent to forward the names of the applicants and other medical graduates from King Ceasor University for medical internship.
- Each party should bear its costs

I so order.

SSEKAANA MUSA

JUDGE

30th November 2023