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**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**

**MISC. CAUSE NO.53 OF 2020**

**SSERUMAGA GODFREY:.....APPLICANT**

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**VERSUS**

1. **MAKERERE UNIVERSITY COUNCIL**
2. **MAKERERE UNIVERSITY SENATE EXAMINATIONS**
3. **MAKERERE UNIVERSITY ACADEMIC POLICIES**  
**AND APPEALS COMMITTEE**

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4. **MAKERERE UNIVERSITY COLLEGE OF VETERINARY**  
**MEDICINE, ANIMAL RESOURCES AND BIOSECURITY**  
**EXAMINATION IRREGULARITIES AND APPEALS**

**COMMITTEE:..... RESPONDENTS**

**BEFORE: JUSTICE ESTA NAMBAYO**

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**RULING**

The Applicant, Sserumaga Godfrey filed this application under **Article 28, 42, 44 and 50 of the Constitution of the Republic of Uganda, Section 98 of the Civil Procedure Act, Section 3 of the Judicature (Amendment) Act No.3 of 2002 and Rules 3, 4, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009** against  
25 Makerere University Council, Makerere University Senate Examinations, Makerere University Academic Policies and Appeals Committee and Makerere University College of Veterinary Medicine, Animal Resources and Biosecurity Examination Irregularities and Appeals Committee, (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively) seeking for: -

- 30 1. An order of certiorari quashing the decision of the University Academic Policies and Appeals committee that upheld the decision of the college of veterinary medicine, Animal Resources and Biosecurity examination irregularities and Appeals committee dismissing the Applicant from the University.
- 35 2. An order of certiorari quashing the decision of the college of Veterinary Medicine, Animal Resources and Biosecurity Examinations Irregularities and Appeals Committee and the College Deputy Principal in a letter dated 7<sup>th</sup> May, 2019 communicated to the Applicant from the University cancelling the examination results for the course BVN2018 (Bacteriology and Mycology) for  
40 Semester 1,2018/2019.
3. An order of certiorari quashing the decision of the college of Veterinary Medicine, Animal Resources and Biosecurity Examination irregularities and appeals committee dismissing the Applicant from the Bachelor of Veterinary Medicine (BVM) programme and the University.
- 45 4. Prohibition against the 2<sup>nd</sup> Respondent from continuance with the delayed appeal and consideration, earlier appealed against by the Applicant on the 3<sup>rd</sup> December, 2019.
5. Prohibition against the 2<sup>nd</sup> Respondent from further imposition of illegal and unreasonable decisions to the Applicant in future.
- 50 6. Mandamus directing the Respondents to reinstate the Applicant as a student of the Respondents and to release his results for the course BVM2018 (Bacteriology and Mycology) results for the whole of semester 1 academic year 2018/19.
7. The Respondents pay specific and general damages for the said actions, embarrassment, stigma and inconvenience occasioned by the above actions.
- 55 8. An order of costs against the Respondents.

The grounds upon which this application is based are set out in the Applicant's affidavit in support of the application but briefly are that: -

- 60 i. **The Applicant is a former 3<sup>rd</sup> year student of the Respondents pursuing a Bachelor of Veterinary Medicine, Animal Resource and Biosecurity.**
- ii. **He was charged with soliciting the services of a one Michal Oketch to sit a continuous assessment test/course work on his behalf.**
- iii. **In total and complete disregard of the Rules of Natural Justice and due  
65 process, the college Examinations irregularities and Appeals Committee discontinued him from the course and University and also cancelled his examination results for Semester 1, 2018/19.**
- iv. **The Applicant appealed to the University Academic Policies and Appeals Committee that similarly without regard to due process  
70 upheld the decision of the college irregularities and Appeals Committee.**
- v. **The decision taken by the University Academic policies and Appeals Committee was arbitrary and illegal.**
- vi. **The decision taken by the college of Veterinary Medicine, Animal  
75 Resources and Biosecurity Examination irregularities and Appeals Committee and Deputy Principal dismissing the Applicant was in complete disregard of the rules of natural justice and is null and void.**
- vii. **The failure of the University Senate Examinations to hear and determine the appeal since 3<sup>rd</sup> December 2019 is an inordinate delay  
80 that has cost the Applicant two semesters equivalent to one academic year without any response or results of the Appeal which raises questions in the expected outcome and fairness of the proceedings.**

- viii. The decision of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is in direct violation of the Applicant's right to Education as enshrined in the Constitution.
- 85 ix. The decision to dismiss the Applicant was not based on the known University rules on examination malpractice and irregularities and are ultra vires.
- x. The decision to dismiss the Applicant was based on allegations unknown to the Applicant and is harsh, excessive, illegal and out of the
- 90 ordinary norm of punishment.
- xi. Owing to the colossal sums of money and the time invested in the University by the Applicant, the loss and inconvenience suffered, the Applicant is entitled to specific and general damages and it is just and equitable that the order sought be granted.
- 95 xii. It is only fair and equitable that the impugned decision of the Respondents be set aside.

Mr. Alfred Masikye Namoah, the Academic Registrar, Makerere University, and Yusuf Kiranda, the Acting University Secretary to the 1<sup>st</sup> Respondent, swore affidavits opposing the application.

#### 100 **Brief facts of the Application**

Briefly, the facts of this application are that the Applicant was in his 3<sup>rd</sup> year at Makerere University at the College of Veterinary Medicine when he was accused of academic irregularities and dismissed from the University by the College Academic Irregularities and Appeals Committee. His appeal to the Academic Policies and

105 Appeals Committee of Senate was unsuccessful. He then appealed to the University Senate which is yet to pronounce itself on his case, hence this application.

## Representation

Learned Counsel Ahimbisibwe Federico was for the Applicant, while Learned Counsel Esther Kabinga, appeared for the Respondents. Counsel for the parties filed their  
110 written submissions as directed by this Court.

Issues for determination are: -

1. Whether the Respondents are properly joined as parties
2. Whether the Respondents followed the right procedure at the hearings before reaching the decision to dismiss the Applicant from the University
- 115 3. What remedies are available?

In their submissions, Counsel for the Respondents raised a preliminary objection contending that this application was prematurely filed before this court. She relied on Order 15 Rule 2 of the Civil Procedure Rules, where it is provided that: -

120 "Where issues both of law and fact arise in the same suit, and the court is of opinion that the case or any part of it may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."  
Counsel also relied on Section 45 (3) and (4) of the Universities and Other Tertiary Institutions Act, 2001 (as amended) which provides that: -

125 "(3) The Senate may deprive any person of a degree, diploma, certificate or other award of a Public University if after due inquiry it is found that the award was obtained through fraud or dishonorable or scandalous conduct; and

(4) A person deprived of an award under subsection (3) may appeal to the University Council against the decision of the Senate.”

130 Counsel then explained that the Applicant filed an appeal to the University Senate shortly after his dismissal was upheld by the Academic Policies and Appeals Committee that sat on the 1<sup>st</sup> and 7<sup>th</sup> of October 2019. That the University Senate was unable to hear the appeal owing to the COVID-19 outbreak that resulted in the temporary closure of Universities by the Central Government. Counsel submitted  
135 that until that time, the Respondents had handled the matter diligently and tried to dispose it off as quickly as possible as the Rules of Natural Justice dictate. That the Irregularities and Appeals Committee of the College of Veterinary Medicine, Animal Resources and Biosecurity which heard the matter at first instance sat on the 24<sup>th</sup> January, 2019 and 17<sup>th</sup> April 2019 and its verdict was given on the 7<sup>th</sup> May, 2019 and  
140 the Applicant appealed to the Academic Policies and Appeals Committee and thereafter to the senate on the 4<sup>th</sup> March 2020. That before the Senate sat to consider the Applicant’s appeal, the Applicant filed this application before this Court on the 4<sup>th</sup> March, 2020, barely two months after appealing to the Senate. Counsel explained that by the time of filing this application, the Senate had not sat to  
145 consider the Applicant’s appeal. Counsel averred that there was no unreasonable delay on the part of the Respondents as the proceedings were delayed by the COVID- 19 lockdown. Counsel further explained that even if the Applicant was aggrieved by the Senate’s failure to sit, he should have appealed to the University Council in accordance with Section 54 (4) of the Universities and Other Tertiary  
150 Institutions Act, 2001. He also relied on the cases of ***Nasinyama Benard -v- Makerere University HCCS No.17 of 2019***, where court noted that;

"Rather than this Court going through the same issues that were heard by the Senate adhoc committee, the plaintiff should pursue relief from the [University] Council. A suit is not the right procedure for dealing with specialized issues like exam malpractices as the University is the best placed to determine these issues and dissatisfied students can come to Court by Judicial Review after exhausting all remedies under the Universities and Other Tertiary Institutions Act", and in the case of **Catherine Kanabahita -v- Makerere University, Misc. Cause No.92 of 2014**, where Hon. Justice Lydia Mugambe noted that;

"I, like other judges of this Court, have expressed in other cases that there is no presentation in the Judicial Review Rules of 2009 that Judicial Review as a corrective remedy is meant to interfere with the proper and legitimate functioning of administrative authorities. Judicial Review has never been meant to sabotage or in any way interfere with the proper and legitimate functioning of administrative authorities like the Respondents in the case before me."

Counsel emphasized that this application is premature and intended to undermine the organs and processes of the University. He prayed that this court be pleased to dismiss this application with costs to the Respondents.

### **Applicant's submissions in reply to the preliminary objection**

In reply, Counsel for the Applicant submitted that considering the circumstances of the Applicant's case and how it was handled by the Respondents, it was not necessary for the Applicant to wait for the University Senate to hear him and make a decision before filing this application. That the 4<sup>th</sup> and 3<sup>rd</sup> Respondents' decisions were reached without according the Applicant a fair hearing and without following the rules of natural justice and therefore, legally, there is no legitimate decision at all that the Senate could handle.

Secondly, that the University Academic Registrar who by law is the Secretary to the University Senate, sat on the Academic Policies and Appeals Committee that upheld the decision of the College Examination Irregularities and Appeals Committee and he swore an affidavit expressing his opinion that the actions carried out by the committees were legal and within the law and that the rules of natural justice were followed. Counsel further submitted that at the time this application was filed, 4 months had already passed before the covid-19 lockdown was imposed in March 2020 and that the Applicant was not given any response in regard to the appeal. Counsel submitted that this appeal ought to have been handled with the necessary expediency it deserved and therefore, the excuse of a lockdown does not hold. He relied on the case of *Twinamatsiko Elly -v- Makerere University & 2 Others*, and submitted that if the Applicant is to be required to first wait for the hearing of the said appeal before the Senate, he is not likely to get any justice. Counsel prayed that this court over rules the objection raised so that this application is heard on its merits.

**Analysis:**

**Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019**, 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 performance of public acts and duties.

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected to. (See the case of *Chief Constable of North Wales –v- Evans [1982] 3 ALLER 141*).



**Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019**, provides that: -

205 *(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*

210 *(c) That the matter involves an administrative public body or official.*

In the case of **Fuelex Uganda Ltd -v- AG and 2 Others High Court Misc. Cause No.48 of 2014**, Hon Justice Stephen Musota (as he then was) while referring to the case of **Micro Care Insurance Limited -v- Uganda Insurance Commission Misc. Cause No.218 of 2008** wherein Justice Bamwine (as he then was) cited with  
215 approval the case of **Preston -v- IRC [1995] 2 All ER327 at 330**, noted that;

*"a remedy by way of judicial review is not available where an alternative remedy exists. This is a position of great importance. Judicial review is a collateral challenge, where Parliament has provided appeal procedures, as in taxing state, it will only be rarely that the Court will allow collateral process of judicial review to be used to*  
220 *attack an appealable decision"*

While in **Charles Nsubuga -v- Eng Badru Kiggundu & 3 Others HCMC No.148 of 2015**, the case of **Bernard Mulage -v- Fineserve Africa Limited & 3 Others Petition No.503 of 2014** was quoted, in which Musota J (as he then was) held inter alia that;

225 *"There is a chain of authorities in from the High Court and the Court of Appeal that where a Statute has provided a remedy to a party, this Court must exercise restraint and first give an opportunity to the relevant bodies or state organs to deal with the dispute as provided in the relevant statute. This principle was well articulated by the Court of Appeal in Speaker of National Assembly -v- Ngenga Karume [2008] 1*

230 **KLR 425** where it was held that; 'where there is a clear procedure for the redress of  
any particular grievance prescribed by the Constitution or an Act of Parliament, that  
procedure should be strictly followed."

In this case, **Section 45 (3) and (4) of the Universities and Other Tertiary  
Institutions Act, 2001** (as amended) provide as follows;

235 (3) *The Senate may deprive any person of a degree, diploma, certificate or other  
award of a Public University if after due inquiry it is found that the award was  
obtained through fraud or dishonorable or scandalous conduct.*

(4) *A person deprived of an award under subsection (3) may appeal to the University  
Council against the decision of the Senate."*

240 The Applicant states under paragraph 19 of his affidavit in support of the application  
that he filed his appeal with the University senate and that the matter was yet to be  
heard by the time of filing this application. I find that the Applicant has not  
exhausted all the existing remedies available under the law as required under rule  
7A (1) b of the Judicature (Judicial Review) (Amendment) Rules, 2019 and S. 45 (4) of  
245 the Universities and Other Tertiary Institutions Act, 2001. Therefore, I find that this  
application is improperly brought before this court as it was filed prematurely. I  
uphold the objection raised by counsel for the Respondents and dismiss this  
application with costs.

I so order.

250 **Dated, signed and delivered by mail at Kampala on this 17<sup>th</sup> day of May, 2022.**

**Esta Nambayo**

**JUDGE**

**17<sup>th</sup> /5/2022**