THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LIRA

MISC. CAUSE NO. 27 OF 2018

IN THE MATTER OF ARTICLE 42 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA,1995

AND

IN THE MATTER OF SECTION 38 OF THE JUDICATURE ACT CAP.13, LAWS OF UGANDA

AND

IN THE MATTER OF RULE 3 OF THE JUDICATURE (JUDICIAL REVIEW) RULES, STATUTORY INSTRUMENT NO.11 OF 2009

AND

IN THE MATTER OF AN APPLICATION BY ALOBO JENNIFER AND ANYANGO HARRIET (Hereinafter jointly referred to as 'THE APPLICANTS) FOR JUDICIAL REVIEW FOR AN ORDER OF CERTIORARI AND MANDAMUS

1. ALOBO JENNIFER
2. ANYANGO HARRIET ESTHER::::::::::::::::::::::::APPLICANTS

VERSUS

LIRA UNIERSITY::RESPONDENT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

[1] The respondent raised a preliminary objection during the pendency of the application herein to wit; *that the applicant failed to exhaust local remedies; the application was brought under improper procedure; and that the application lacks*

jurisdiction as the applicants failed to exhaust the available local remedy

[2] In regard to **exhaustion of local remedies**, it was submitted by the respondent that the applicants are prematurely before this court as they ought to have filed an appeal with the Academic Registrar under **(Rule 9.6 (1) & (2) of the Lira University Examination Rules** and if not satisfied thereafter, to the University Council under **Section 45 of the Universities and Other Tertiary Institutions Act**. That as such it would be injudicious for this Court to assume jurisdiction in exclusion of the administrative bodies above. That Court should take Judicial notice of the fact that University communications are made through newspapers of wide circulation and thereafter students ought to take the necessary steps. These instances include; *call for applications, admission lists, semester results, graduation lists and the university calendar.* That the discontinuation of the students was advertised and the affected people were asked to pick their discontinuation letters. The applicants however, never picked their letters even after the newspaper publication. That the applicants are not being truthful since

there is no evidence to show that the office of the Registrar denied the applicants a discontinuation letter; there is evidence showing that the applicants were aware of the decision of the Examination Malpractice and Irregularities Committee (EMIC) and Senate; there is no evidence that the applicants were denied the said letter; finally, that there is no reason advanced by the applicants to show why the office of the Academic Registrar should deny them the discontinuation letter. That one wonders why the applicants went to the Dean of Faculty's office, then went to the Dean of Student's office and ignored the Academic Registrar's office who had even authored the said letter. That one further wonders why the 2nd applicant went to the office of the University Secretary with her father yet all communications to wit; admission letter, summons, and discontinuation are put on the notice board of the Academic Registrar and still picked from the same office. That the applicants are lying to court to create a ground for Judicial Review.

[3] That as such the respondent never flouted any regulation in line with examination malpractice and that the respondent did not deny the applicants the right of appeal and the

applicants have just failed to pay heed to appeal proceedings since they have not picked their letters and the said time for appeal starts running upon receipt of such letter. That the applicants just wanted to avoid the rule of exhaustion of local remedies in judicial review proceedings. See **Rule 7A of the Judicature (Judicial Review) (Amendment Review) Rules 2019**. See **Dullo & Anor Vs Board of Governors, Aga Khan Education Services (Uganda) & Anor High Court Misc. Cause No. 266 of 2017**. The respondents, in conclusion stated that **Lira University Examination Rules and Regulations** and **Section 33 of the Universities and other Tertiary Institution's Act, 2001** as amended has an inbuilt mechanism for addressing non-compliance with the act including appeals under regulations **9.6(1) & (2)** that lays out all the procedures for appeal in case of exam malpractice.

[4] As for the **wrong procedure and alternative remedies** it was submitted that the applicants should have filed an appeal or an ordinary suit as the local remedy. See **Katabaazi Vs Uganda Christian University Misc. Cause No. 268 of 2017.** That since the applicant's allegations are based on misrepresentation or wilful default, bad faith or negligence by

the officers of the respondent, they are required to be specifically pleaded and proved by way of viva voce hearing through an ordinary suit and not affidavit evidence. See **Order 6 rule 3 of the CPR**. That for this court to make a pronouncement on the basis of a restricted procedure like notice of motion and affidavit to determine a substantial matter which requires specific proof would amount to a violation of right to a fair hearing of the respondent.

[5] In response thereof it was submitted by the applicant that the respondent unfairly treated them and discontinued them from the university without following appropriate procedure as provided in the **Lira University Examination Rules and Regulations** and so, violated their rights. See **Regulation 9.4 (10,11& 12)**. That in respect of appeals, the respondent intends to mislead this court since appeals whether before tribunal, committee or courts, are a creation of the statute and where the statute governing body is quiet on the appeal process, then the right of appeal is curtailed and that in the instant case, the respondent has its regulations that provide for hearing malpractices, conduct of business during hearing and the appeal process which stops at the senate level. See

Regulation 9.6 (10 & 11). That the said regulation does not make provision for any other stage of appeal thereafter thus making the senate the final decision making body in issues of malpractice. That according to the notice on the University Notice Board, it was indicated that the office of the Academic Registrar was still processing the letters of discontinuation following the decision of EMIC and consequently Senate. Also that the office of the academic registrar declined giving the affected students discontinuation letters yet they knew that they ought to have given them. Further that the allegation that the applicants were called by the Academic Registrar is a total lie to this court.

[6] It was also submitted that the EMIC made its decision on 24/07/2018 and the Senate made its decision on 28/07/2018 barely three days later which was contrary to natural justice processes and that the internal memo doesn't inform the students (applicants) about their right to appeal but rather just told them not to attend any lectures at all until further notice. That by all standards, the applicants had exhausted all internal remedies as the respondent denied the applicants opportunity to follow due process through its final

appellate body and had already dismissed the applicants from the university. That the University appeal process ends with Senate and yet the Senate had already made its decision, as such the applicants could not make any appeal to the senate as it had made the final decision.

[7] The applicants also contended that under **Regulation 9.4 (10), (11) & (12)** thereof, the senate makes a decision on recommendation of the EMIC and the Quality Assurance, Timetable and Examination Committee (QATEC) and the Academic Registrar notifies the affected student. That these rules in themselves defeat the rules of Natural Justice and fair hearing. The applicants still contended that they were never notified or served with letters about their discontinuation from the University as is confirmed by the internal memo which stated that the letters were not ready. The applicant prayed that the court finds that the respondent denied the applicants a right to a fair hearing and that they were treated unjustly.

[8] It was also submitted that **Section 45(4) of the Universities and Other Tertiary Institutions Act, 2002** is only specific to those that have already been awarded certificates, diploma

or degrees from public universities and where those awards were obtained fraudulently or through dishonourable or scandalous conduct and not to continuing students. The applicant prayed to court to find that this was the only available avenue to get a remedy. The applicants further stated that they are in agreement with the authorities cited by the respondents but that however, each institution has its own internal mechanisms for dealing with internal disagreements and each case should be taken on its own facts.

[9] In rejoinder, it was stated that the gist of the respondent's preliminary objection is that the applicants did not exhaust the available local remedies in the Lira University Examination Rules and Regulations before filing the application in court. That indeed appeal is a creature of statute and the Regulations are not silent about the right to appeal. See **Regulation 9.6 (2) and Regulation 9.6 (10).** That it is important for court to satisfy itself, in an application for Judicial review, that the aggrieved person has exhausted all the local remedies available to them. See **Rule 7A of the Judicature [Judicial Review] [Amendment Review], Rules**

2019. That the applicants upon learning of their dismissal through the newspapers, they went to the notice board at the Academic Registrar's Office and they found their names on the list of the discontinued students. However, that the applicants declined answering the call from the Academic Registrar to pick their letters of discontinuation. That by doing so, the applicants sat on their right to appeal and thus filed this application in court without exploiting all the local remedies available to them.

[10] In its further submission the respondent contended that the applicants intend to mislead this court by suggesting that upon the decision of the senate being handed down **(Regulation 9.4(10,11,12)**, the applicants had no other university body to appeal to. That the senate has special committees that can hear the said appeals and as such, the applicants ought to have appealed to the said special committees since they are independent and not constituted by the same members of the senate who act on the recommendations of QATEC. The respondent prayed that for this failure, Court ought to allow this preliminary objection

and the applicants' application for judicial review be struck out with costs.

[11] According to **Rule 7A of the Judicature (Judicial Review) Amendment Rules 2019**, there are a number of considerations to be made by court before hearing and disposing of an application for judicial review. These are reproduced hereunder;

> ***7A. 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 to judicial review;*
>
> *(b) that the aggrieved person has exhausted the existing remedies available within the public body;*
>
> *(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*

[12] For an application for judicial review to be considered, one ought to show that the institution whose decisions are being reviewed is a public body and the decisions complained of are of a public nature. See **Katabaazi Vs Uganda Christian University [2018] UGHCCD 96**. It is beyond the ground of contention that Lira University is a Public University which started as a Constituent college of Gulu University and thereafter attained autonomy as a fully-fledged public University through an Act of Parliament under **S.I No. 35 of 2015.** As such, the actions of Lira University can be subjected to Judicial Review.

[13] The applicants having been discontinued from Lira University, applied to this Court for judicial review for the afore mentioned orders. The respondent has raised objections in that respect stating that the first recourse that ought to have been sought by the applicants in this instance was an appeal to the University Council and thereafter to the Senate. See Regulation 9.6 (1) and (2).

[14] **Rule 9.6 (1) and (2) of the Lira University Examination Rules** provide that;

1) *All appeals* ***against examination results*** *shall be lodged with the Academic Registrar.*

2) *An appeal* ***against discontinuation of a student shall be lodged within one month, by the affected student effective from the date of receiving the discontinuation letter from the Academic Registrar*** *on approval of results by Senate.*

[15] The applicants however insist that they were treated unfairly by the respondent who denied giving them the discontinuation letters and further intend to mislead this court on an appeal process which ends with the senate. However, upon deliberations by EMIC with recommendations to QATEC, the final decision is made by Senate and is afterwards communicated to the student by the Academic Registrar. See **Regulation 9.4 (10-12) of the Lira University Examination Rules and Regulations** which reads thus;

(10) The Examination Malpractice and Irregularities Committee shall make appropriate recommendation after deliberating on the student in his or her absence.

(11) The recommendations of EMIC shall be presented to QATEC for appropriate decision and recommendations to Senate.

(12) The decision of Senate shall be communicated to the student by the Academic Registrar.

[16] **Regulation 9.6 (10) of the Lira University Examination Rules and Regulations** is instructive on the said query by the applicants. It provides thus;

"10. Senate or its special committee shall hear the appeal of the student and make appropriate decision." (Emphasis mine).

[17] As such, even though Senate makes the final decision as regards examination malpractice, it is apparent from this regulation that Senate can constitute another special committee to hear an appeal, once one is lodged.

[18] Further, though the applicants insist that they were denied discontinuation letters by the Academic Registrar, no such evidence has been presented to this court to confirm and or ascertain such allegation.

[19] I will agree with the applicants that indeed **Section 45(4) of the Universities and other Tertiary Institutions Act, 2001 as amended** was cited out of context as it is specifically tailored for instances where one has been denied an award and not a continuing student like the applicants.

[20] In conclusion of this issue therefore, I find that the applicants did not exploit or exhaust all the available local remedies in the institution and that renders this application not amenable to Judicial Review.

[21] Unless otherwise, I find it unnecessary to discuss the other issue as this application lacks merit and is hereby dismissed. The applicants are advised to first exhaust the remedies available to them in Lira University before proceeding to seek Judicial Review. Perhaps I should emphasize that by making provisions for other remedies before finally allowing an aggrieved party to file for judicial review in the High Court the framers of the relevant law or rules had a number of reasons including saving the High Court's precious time from hearing unworthy cases that could be heard and resolved by other quasi-judicial bodies at that stage. Moreover, the appeal

process is availed for to provide opportunity and wider chances for the aggrieved party to get justice by having their case re-looked at and considered by more decision makers and also to minimize mistakes.

[22] Given the unique facts and circumstances of this case and in the interests of justice I shall make no order as to costs.

I so order

Dated, signed and delivered at Lira this 22nd day of August, 2023.

Duncan Gaswaga

JUDGE