

IN THE HIGH COURT OF TANZANIA

At DAR ES SALAAM MAIN REGISTRY
MISC CIVIL CAUSE NUMBER 27 OF 2009

TERESIA RUGEIYAMU YOMO... APPLICANT

VS

1. THE INSTITUTE OF

SOCIAL WORK...

1ST RESPONDENT

2. ATTORNEY GENERAL....

2ND RESPONDENT

Date of last Order: 30-06-2011

Date of Ruling: 13-07-2011

RULING

JUMA, J:

The applicant was on 31st March 2009 granted leave of this court by G.P. Shaidi, J. to apply for the orders of *Certiorari* and *Mandamus*. Following that grant of leave, the applicant commenced this main application when she filed an amended Chamber Summons on 6th July 2010. The applicant would now like this court to invoke its prerogative orders of *Certiorari* and *Mandamus* to quash the decision of the Board of Governors of the Institute of Social Work (first respondent) concerning the appeal by the applicant against her discontinuation from her studies. To move this court into granting her prayers, the applicant has employed *section 2 of the Judicature and Application of Laws Act, Cap. 358 R.E. 2002*; sections 17 (2)

*and 17A, 18 and 19 of the **Law Reform (Fatal Accident and Miscellaneous Provisions) Act Cap. 310 R.E. 2002** and section 95 of the **Civil Procedure Act Cap. 33 R.E. 2002.***

This application is supported by a 15 paragraph affidavit sworn by Teresia Rugeiyamu Yomo. The application is accompanied with a statement setting out the grounds upon which the applicant relies for reliefs of *Certiorari* and *Mandamus*. These grounds are hereby summarised-

- (a) The applicant was never given an audience to state her case and she was not heard;
- (b) Ambiguity in the interpretation of examination regulations that is applicable to the applicant;
- (c) Class representatives were not invited as per regulations 9.9.1 and 8.8.2 to attend the hearings of the applicant's appeal;
- (d) Reasons for rejecting the appeals by the applicant were not furnished.

The first respondent is a higher learning institution that was established since 1973 under the **Institute of Social Work Act, 1973 [Cap. 110 R.E. 2002]**. The Institute performs the public duty of conducting academic training programmes at the levels of certificates, diplomas, undergraduate degrees, postgraduate and other awards. The applicant joined the Attorney General as second respondent. The main focus of this application revolves around the interpretation of examination regulations in Prospectus of

2006/2007-2007/2008 which are applicable to the examination results awarded to the applicant.

The applicant was a final year student at the Institute of Social Work pursuing a post graduate diploma in social work. For 2006/2007 academic year, the applicant took her final examination and the advance edition of the results which was released on 29th October 2007 showed that in Social Work Theory and Practice she scored 36% in her course work and 24% in the final exam adding up to 60% which was a pass. This advance edition of the examination results was posted in the notice board. The applicant complains that when she later received the score of the written examination she was marked as failed having scored 24% instead of the pass score of 25%. That she was orally advised to take a supplementary examination if she wanted to be included in the list of students graduating that academic year. She took the supplementary examination but could only manage a score of 23%. Following this score, she was at first told that she had to repeat her year of study. But this position was later changed when she was told that she had been discontinued. Attempts to have her results reviewed failed when on 14th April 2008 the Faculty Appeal Board rejected her appeal. Further, the first respondent's Board of Governors decided against her appeal through a letter dated 10th October 2008.

The applicant has identified a number of errors apparent on the face of the record of proceedings dealing with her appeal against her discontinuation from studies. Apart from written appeal the applicant

claims that she was never given an audience to state her case. The applicant points out that the first respondent failed to honour applicable examination regulation 8.2.6. This regulation states,

8.2.6 Grading of the Examination under the Term system:

All students are required to pass both theoretical and practical examinations. Any student who fails any component of practical course or field work shall be deemed to have failed. Grading shall be given by one of the letter grades A, B+, B, C+, C and D.

For averaging purposes, the grades shall have the numerical value of 5, 4, 3, 2, 1 and 0 respectively. The grade in each of the courses taken shall be that of "C". The grade for absolute fail shall be "D". All candidates must pass both course work (16% out of 40%) and the final examination (24% out of 60%) which when combined will amount to 40% the pass mark for the Institute examination.

(a) Course Work:

Course work is a continuous assessment and it constitutes 40% of the total final examination marks.....

(b) Final Examinations:

The final examination constitutes 60% of the total examination marks. The pass mark for the final examination is 24% of the 60%.

[Pages 107-108, Prospectus 2006/7- 2007/8 Institute of Social Work]

The applicants also contend that the Faculty Appeal Board which decided her appeal on 14th April 2008 and also the Institute Board of Governors that sat on 10th October 2008 did not include Class Representatives as required by Regulations 9.9.1 and 8.8.2. According to Regulation 8.8.2 first respondent's Examiners Board is to include students' representatives.

The replying submissions by the first respondent were filed on its behalf by ZEK Advocates. First respondent contends that the Institute was fully justified to discontinue the applicant because she failed under the examinations regulations which applied to the applicant. According to ZEK Advocates, the first respondent operated two examination systems during the studentship of the applicant. The first examination system applied to students who followed a TERM SYSTEM (page 21, 51, 78 and 107 of the Prospectus). The second examination system was for students who pursued academic programmes under the SEMESTER SYSTEM (page 35 of the Prospectus). That, since the applicant's studentship, was governed by the semester examination regulations she should not bank her application for judicial review on rules governing TERM SYSTEM. Further, the first respondent pointed out that the applicant's suggestion that her examination results should be subjected to remedial measures designed to cater for borderline cases, is uncalled for because these remedial measures are only applicable to candidates who were under the TERM SYSTEM.

Submitting its reply on behalf of the second respondent, the ATTORNEY GENERAL contended that the proper regulation applicable to the applicant is regulation 8.2 (c) and the last sentence of which a pass mark of 25% for the postgraduate courses. The second respondent further submitted that the first respondent was correct to fail the applicant because she scored 24 marks in her examination and scored even lower 21% marks following

supplementary examination. The second respondent also rejected the applicant's claims that she was condemned without a hearing because she was allowed to present her reasons and arguments, which amounted to being heard.

I have carefully considered the submissions made by the parties to this application. I have also carefully considered the 2006/7-2007/8 Prospectus of the first respondent and the authorities which the parties have cited to support their respective positions. I have formulated my own issues for determination and I will identify these as follows:-

- i) whether the applicant has made out a case for an order of *Certiorari* to issue for the decision of the first respondent to be removed into this court for the purpose of being quashed;
- ii) whether the first respondent was within its legal mandate to rely on examination regulations meant for students following a SEMESTER system of studies to determine the pass mark of the applicant; and
- iii) whether the applicant was denied of her fundamental right to be heard.

There are longstanding principles which establish when an applicant for prerogative order can make out a case for a grant of the order of *Certiorari*. For instance, the law is now settled on the proposition that the holding of examinations or conferring of certificates, diplomas and degrees are not the matters for this court to interfere with because they are under the exclusive jurisdiction of the first

respondent, a higher learning institution. However, this court has the power of judicial review to ensure that statutory institutions like the first respondent remain within their legal bounds, even if the matter to be reviewed is of purely academic matter. If the first respondent is found to have fallen out of its mandate, this court can judicially review its action or decision: see page 625, **H.W.R Wade-Administrative Law, 6th Edition, 1988.**

Upon my perusal of the first respondent's **Prospectus for 2006/7-2007/8** academic year, I am of the opinion that the first respondent did not take itself outside its statutory mandate when it applied the examination regulations designed for students following the SEMESTER programme of study. My perusal of the applicable examination regulations found no error apparent on the record of the decision of the first respondent to discontinue the applicant from her studies. The first respondent was within its statutory and public duty mandate, when with regard to the applicant when it applied SEMESTER examination regulations instead of TERM examination regulations. I will with due respect agree with the submissions by the first and second respondents to the effect that the applicant was a postgraduate student governed by the SEMESTER examination system. The applicant was in other words governed by examination regulations prescribing a pass mark of 25%. As long as the first respondent was within its statutory mandate and had not breached the rules of natural justice this court cannot even speculate why the first respondent could fail a candidate by a small margin of 1%.

The law is also settled that prerogative order of *Certiorari* can issue where an applicant establishes that she was denied her right to be heard. I scrutinized the pleadings in light of the examination regulations provided for in the first respondent's **Prospectus for 2006/7- 2007/8** academic year. I am fully satisfied that the applicant's right to be heard was met when she was accorded the chance to file her written submission to the examiners' board. It is not correct to suppose that her right to be heard is only available to her through an oral presentation. The requirements of procedural fairness were met with respect to the applicant.

I therefore make a finding and I hold that the first applicant did not exceed its jurisdiction nor was the applicant denied an opportunity to present her appeal and be heard. I found no ground to warrant the granting of the prerogative order of *Certiorari*.

Having found that the applicant cannot benefit from the prerogative order of *Certiorari*, it is important to determine whether the applicant has laid out a basis for a grant of the prerogative order of *Mandamus*. The order of *Mandamus* has been described as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty to him: **see H.W.R Wade- Administrative Law, 6th Edition, 1988, page 649**. I am of the opinion that the order of *Mandamus* is not open to the applicant. I found neither public nor statutory duty towards the applicant, which this court can compel the first respondent to perform. The first respondent was within its statutory and public

duty to apply the SEMESTER examination regulations with respect to postgraduate students like the applicant. There is neither public nor statutory duty of the first respondent the performance of which the applicant has any sufficient legal interest for this court to issue an order of *Mandamus*.

With my foregoing reasons the prerogative orders of *Certiorari* and *Mandamus* do not lie to quash the decision of the first respondent. I hereby dismiss with costs the application for the prerogative orders of *Certiorari* and *Mandamus*.



I.H. Juma
JUDGE

13th July 2011

DELIVERED IN PRESENCE OF: Ezekiel, Advocate (for the 1st Respondent) and Ms. H. Ngororo (State Attorney) for 2nd Respondent



I.H. Juma
JUDGE

13th July 2011

