IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(MAIN REGISTRY)

MISCELLANEOUS CIVIL APPLICATION NO. 83 OF 2017

SHABIBU BADI MRUMA.....APPLICANT

VERSUS

MZUMBE UNIVERSITY .....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

8/2 – 21/3/2018

Khaday, J.

The applicant; one Shabibu Badi Mruma is seeking for extension of time within which to apply for leave to apply for the order of *Certiorari.* His intended application for prerogative order is in challenge of the decision of the 1st respondent, Mzumbe University college dated 25/11/2016, in which the applicant's LL.B degree was cancelled on the ground that the same was obtained fraudulently.

In his affidavit in support of the chamber application, the applicant narrated how he graduated from the respondent's college and how on 13/12/2013 he was awarded LL.B decree

thereat. That about four (4) years thereafter, on 31/7/2017 to be precise, the applicant met his friend one Alpha Boniphace who informed him of an existence of an advertisement in a Newspaper of about 4 or 5 months earlier, in which the 1st respondent was informing the general public of withdrawal of the applicant's LL.B degree. That it was the first time the applicant learned about the matter. That on the following day he managed to get hold of the Mwananchi Newspaper (Annexture A3), dated 10/3/2017 and thereby confirmed the information he got from Alpha. That the applicant decided and indeed filed this matter at hand on 21/9/2017. The applicant further said that it is under this background that he could not file the application at hand within six (6) months; the time prescribed by the law, thus this application for extension of time.

Along the affidavit sworn by the applicant, is another affidavit sworn by Alpha Boniphace in support of what has been averred by the applicant in his own affidavit. Alpha's averment is in relation to how he informed the applicant about the relevant

advertisement by the 1st respondent on the cancellation of the applicant's degree. Also in support of the applicant's affidavit are the affidavits of Mr. Audax K. Vedasto and Mr. Dismas Muganyizi, both advocates who entertained or attended the applicant in their Law firm over the matter at hand. Mr. Vedasto is also the one who actually drew and filed the applicant's affidavit and other related documents for this application.

On the other hand, the respondents being advocated by Ms. Lydia Thomas learned State Attorney, resisted the application. Along with a counter affidavit sworn by another learned State Attorney one Ms. Eveline Elikira Kweka, the respondents raised a preliminary objection on points of law to the effect that;

(1) the academic claims are not entertained by way of Judicial review, hence untenable in law, and

(2) that the application is incompetent for contravening the provisions of Order XLIII

Rule 2 and Order XIX Rule 3 of the Civil Procedure Act (sic), Cap 13 [RE 2002].

The matter was argued by way of written submissions.

In support of the 1st ground of the preliminary objection, learned State Attorney submitted that this court is not enjoyed with powers to entertain any matter relating to academic awards. She has the case of David Joseph Jumbe & Others vs the Council, Dar es Salaam Institute of Technology & Others Misc. Civil Cause No. 112 of 2004 (DSM H/C, unreported) to support her point. Learned State Attorney further suggested that to maintain consistency, this matter be dismissed as it was done to the above cited case.

In the alternative, and on the 2nd limb of the preliminary objection, Ms. Thomas submitted that the applicant's affidavit is in contravention of Order XIX rule 3 (1) of the Civil Procedure Code, Cap 33. In that, she said that the affidavit should have the facts capable to be proved by the deponent. In our case, the learned State Attorney submitted that while the applicant claims

to have been informed by one Alpha Boniphace of the advertisement on the Newspaper, there is no annexed affidavit of this Alpha verifying the claims by the applicant. She further said that with the missing affidavit of Mr. Alpha, the averments of the applicant remains hearsay, thus contravening the provision or Order XIX rule 3 (1) of Cap 33.

With the above view, Ms Thomas said that the matter should be found incompetent for being supported by incurably defective affidavit. She called for striking out of the application with costs.

Lastly, Ms. Thomas learned State Attorney said that at the verification clause, the applicant had averred that all what he had stated in his affidavit is true to the best of his knowledge. However, she said that at paragraph 5 of the same affidavit, the applicant had stated that he had received the information from his friend Alpha Boniface. She said that this shows that the applicant is telling lies, hence going contrary to the said Order XIX rule 3 (1) of Cap 33. Again, she said that the lies render the

affidavit defective hence making the whole application incompetent.

Responding to the above submission, Mr. Audax K. Vedasto challenged the preliminary objection so raised and submitted that the same has been hinged on a wrong law and that we have no Civil Procedure Act in our laws. Learned counsel further challenged the submission by his counterpart for arguing on the merits of the potential application for prerogative orders and not centred on the application for extension of time that is before the court. He said that the submissions by the respondents are therefore out of place and that the same have been made prematurely. He called upon the court to dismiss it with costs.

Regarding jurisdiction of this court to handle matters relating to academics, Mr. Vedasto said that the respondent's counsel has misconstrued the holding of the High Court in the case of Joseph Jumbe (supra). He further said that in that case, the court noted that under certain circumstances, the academic matters cannot be reviewed and that the instances cited are those where the

applicants had slept on their rights. Mr. Vedasto further said that in the same case, the High Court indicated reluctance in interfering in academic matters where there are other remedies in form of declaration through normal suits. Learned counsel further submitted that the situation in Jumbe case is quite different from the case at hand. He said that in any case, Jumbe case did not establish a principle that judicial review cannot lie on a decision made by an institute engaged in academic activities.

The learned counsel for the applicant further said that there are incidents whereby decisions of the institute that affect the right of the subjects have been quashed through judicial review. To support his point, learned counsel referred to the case of Simeon Manyaki vs Institute of Finance Management (IFM) (1984) TLR 304, the case which he said, its facts resemble the one at hand. He has another case of Nyongese and others vs Edgerton University College (1990) KLR 693, in which it was clearly stated that courts are *loath to interfere with the domestic bodies and tribunals, including college bodies.* Learned counsel

conceded that the court finds itself reluctant to interfere with the academic matters if the subject matter involves marking the students' examinations. However, he hastily said that in our case, the subject matter is not about examinations but cancellation of the degree already awarded to the applicant, and main the complaint being that the applicant was not given an opportunity to be heard before the decision to cancel the degree was made.

Mr. Vedasto further said that the application intends to challenge the administrative decision of the 2nd respondent which denounced the applicant's degree many years after the graduation. He said that the allegation that the applicant had forged some examinations result does not make sense because the examination results upon the Senate base to confer the degrees are given to it by the lecturers of an academic institution and not by a student. He said that it is therefore not known how the forgery if any was committed by the applicant.

On the 2nd ground of the preliminary objection, Mr. Vedasto challenged the argument by the State Attorney for being based

on wrong facts. In that, he said that the affidavit of one Alpha Boniface and two others were there in support of the chamber summons filed by the applicant. He therefore said that a question of hearsay should not arise in this matter.

Furthermore, Mr. Vedasto said that there is no irregularity committed by the deponent in paragraph 5 of his affidavit. In that, he said that what the applicant stated in his affidavit is the fact that he met his friend Alpha Boniphace on 31/7/2017 and that this Alpha informed him of the material advertisement on a Newspaper. Learned counsel therefore finds no hearsay here. He said that the averment tallies with what had transpired on the material day of 31/7/2017. He challenged the interpretation given by the respondents through the preliminary objection in which it was implied that the applicant has averred that he has knowledge of the truth of what he was told by Alpha.

In any case, Mr. Vedasto submitted that in case the court finds the paragraph offensive to any law, the remedy is to have the paragraph expunged from the record and to proceed with the

remaining ones. He has the Court of Appeal case of Tanzania Electrical Supply Co. Ltd vs Mafungo Leonard Majura & 14 Others, Civil Application No.94 of 2016 (unreported) to support his point on available remedy to a defective paragraph within the affidavit.

In rejoinder, learned State Attorney Ms. Thomas learned State Attorney insisted that this court lacks jurisdiction to handle the matter at hand. She again made reference to the case of Joseph Jumbe and emphasized that at page 6 of the said case, the court clearly stated that the court should be reluctant to interfere the matters relating to academics. She offered the meaning of the word *reluctance* as provided in Oxford Dictionary to mean *state of being unwilling or resistance to do something.* From this definition, Ms. Thomas submitted that the court should be *unwilling* and *resistant* hence *should not entertain any matter which is academic in nature.* Learned State Attorney also challenged the application of the case of Simeon Manyeki (supra) in our case. In that, she finds it too old to be relevant here. She finds other recent cases that have overruled Simeon case.

However, she could not mention those recent ones and those which have overruled Simeon case.

On the 2nd ground of the preliminary objection, learned State Attorney insisted that there is no affidavit of Alpha that has been filed to support the applicant's chamber summons. She further reiterated that paragraph 5 of the applicant contains hearsay information.

The issue for determination here is whether the preliminary objection so raised has merit. In that, it is whether this court has jurisdiction to handle the matter that has academic nature and whether the affidavit of the applicant has a defect to render it incurably incompetent to support the application.

On the 1st ground of the preliminary objection, we have submission of the State Attorney that the court has no jurisdiction to entertain the matter and has based her point on the case of Joseph Jumbe (supra). On the other hand, the Mr. Vedasto could not concede to the preliminary objection and said that what we can gather from Joseph Jumbe case is that in certain cases,

courts find themselves reluctant to interfere with matters that involve academics.

I had an ample time to go through the cited case of Joseph Jumbe and I have considered all that has been argued by both counsel. Having done so, I find no difficulty in overruling the preliminary objection on this ground.

I have two reasons for that. First, there is no law; statute or case law that ousts the jurisdiction of the court to entertain matters of academic nature. My understanding of the decisions in Joseph Jumbe case is far from the interpretation given or suggested by the learned State Attorney. Throughout my study of the case so cited, I could not find a place where it has been stated that court should not entertain the matters relating to academics. What I have gathered from the said decision is a mere caution that in certain circumstances, and where there are other remedies found outside the court, the court should have reluctance to interfere with matters of academics. As hinted before, I am not convinced by learned State Attorney when she

interpreted the word *reluctance* used in the case to mean *unwilling* and *resistant* on the part of the court, and her conclusion that the court therefore *should not entertain* any matter which is of academic nature.

With this finding, and having in mind the decision of the High Court in the case of Simeon Manyaki (supra), I am confident to hold that, provided the application for prerogative orders meets requisite conditions set by the law, the court can entertain the same even if it has academic nature. After all, the intended application is not about the marking of the examinations, but is against the administrative measures taken against the applicant's award. The 1st ground is therefore overruled.

Similarly, the 2nd ground of the preliminary objection so raised is found with no merit. This is because it is on record that the affidavit of the applicant has been supported by three other affidavits; one being that of Alpha Boniphace. I tend to think that the documents supplied to the respondents lack the disputed affidavit. In that case, I would expect learned State Attorney to

come to court and to peruse the relevant court record especially after being served with the submission of the applicant. This is because, thorough reading of the applicant's written submission, would have made the counsel for the respondent to think that Alpha's affidavit is there only that (perhaps) she has not been served or supplied with. Well, provided she has not raised that concerned even in her rejoinder submission, the court takes for granted that documents were properly served to the parties. My conviction is based on the fact that the document in question is in the court file.

The ground is as well overruled.

Lastly, in his submission, Mr. Vedasto complained that the preliminary objection has been raised under unknown law. He said that we have no law cited as *Civil Procedure Act* in our statutes. On the other side, learned State Attorney could not respond to that in her rejoinder.

Indeed, the 1st ground of the preliminary objection referred to the Civil Procedure Act, Cap 33 [RE: 2002] as an offended law.

However, I find the same a slip of pen that should not vitiate the whole proceedings on the part of the respondents. This is because throughout the submission by the respondents, the law was properly cited as the Civil Procedure Code, Cap 33 [RE: 2002] and not otherwise. Therefore, the irregularity is found and held not fatal at all.

Let the application for extension of time that has been filed by the applicant be heard and determined on its merit.

Costs in the cause.

P. B. Khaday,

Judge

21/3/2018

Ruling delivered in the presence of both parties

P. B. Khaday,

Judge

21/3/2018