IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

(MAIN REGISTRY)

MISCL.CIVIL APPLICATION NO. 91 OF 2017

HILALIUS ANATORY.....1ST APPLICANTS

SOSPETER MAHUMBI.....2ND APPLICANT

VERSUS

THE HUBERT KAIRUKI

MEMORIAL UNIVERSITY (HKMU) .....RESPONDENT

RULING

29/01- 5/02/2018

Khaday, J.

The applicants; Hilalius Anatory and Sospeter M. Mahumbi are seeking leave of the court to file an application for prerogative orders to wit; Certiorari and Mandamus. Their common intention is to challenge the decision of the respondent; the Hubert Kairuki Memorial University (HKMU), in which the applicants' studies were discontinued and their names removed from the students' register.

According to the applicant's affidavit and the statement in support of the application, it is stated that on 14/3/2017 while sitting for their examination, the 2nd applicant was found in possession of

the 1st applicant's answering sheet. That upon being asked, the 1st applicant had said that he had dropped the same, while the 2nd applicant had explanation that he had picked up the document in view of returning it to the 1st applicant. All the same, the duo was subjected to interrogation in order to justify their actions. However, at the end, the Examination Appeal Committee found them guilty of contravention of the examination irregularity, thus explosion from the college. The decision of the Examination Appeal Committee was reached on 14th July 2017.

Dissatisfied the applicants are now before this court challenging their discontinuation from the studies. Their basic complaint is that they were not fairly heard of their defence, hence against cardinal rule of natural justice. They had similar complaints that they were not given formal charge reflecting particular irregularity said to have been committed and that they were not represented by any representative of the students. They also expressed their discontent with lack of independent evidence to confirm what actually happened at the time of the alleged commission of the offence against the Examination Regulations.

The application has been brought to court under the provision of Section 2 (1) and 2 (3) of the Judicature and Application of Laws Act, Cap 358 [RE: 2002], Section 17 (2) of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act, Cap 310 [RE: 2002]. Rule 5 (1), (2) and (3) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014 and Section 95 of the Civil Procedure Code, Cap 33 [RE: 2002]

On the other hand, the respondent resisted the application and filed a counter affidavit to that respect. He denied liability and stated that the action or the decision of the respondent was fair and justified since the applicants were found guilty of contravening examination regulations. He also said that the applicants were afforded adequate opportunity to be heard of their defence, hence observation of the principles of natural justice.

The matter was argued by way or written submissions

In support of the application, the applicants though Mr. Joseph Rutabigwa learned advocate re-narrated what has earlier been averred by the 1st applicant in his affidavit to suggest or to support chronological events of the subject matter. Learned counsel further

submitted that under Rule 4 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, a person whose interest has been or believes to has been adversely affected by any act or omission by other party may apply for judicial review. That it is from this view that the applicants find their interests being affected by the respondent's decision for unfair discontinuation of their studies from the College. Mr. Rutabingwa maintained that the respondent acted unfairly when he condemned the applicants without formal charge and without being give an opportunity to be heard on the alleged examination irregularity committed by the applicants. He further said that since the decision of the respondent's Examination Appeal Committed is considered final and un-appealable, the application for leave to apply of review has to be granted.

In response to the above submission, the respondent being represented by Mr. Mohamed Tibanyendera learned advocate said that the applicants were given fair hearing during the saga. In that he said, the duo was taken to the Dean of Faculty of Medicine and were instructed to submit their respective explanations on the entire situation in the examination room. That they did so and the 1st

applicant did admit to had his answering sheet found with the 2nd applicant. Mr. Tibanyendera further said that in this matter, the applicants have conceded to the charges, and that they were given an opportunity to be heard as they provided their defence case before the respondent's Examination Appeal Committee.

In conclusion, the respondent's counsel said that the application for leave that is sought by the applicants lacks merit.

In a brief rejoinder, Mr. Rutabingwa challenged the submission by his counterpart and said that the same is not relevant at this stage of leave application. He said that there is no substantive challenge advanced by the respondent to suggest that the applicants have violated any legal procedure in pursuing their rights through judicial review.

The issue to determine here is whether the application at hand warrants allowance.

In order for the application for leave to be allowed, there are some conditions to be met by the applicant. These include the establishment that the applicant has an interest in the subject matter and that he has no other remedy found outside the court. It also involves the issue of time limitation. In that it is whether the

applicants have taken action within statutory period so set. Furthermore, there has to be established a prima face case against the respondent.

With this in mind, let us look at the application before the court.

There is no dispute that the present applicants were students with the respondent's college. Also no dispute is that the appliants were expelled from the studies for some reasons now in dispute. They took a step of filing this application within 6 months from the date the aggrieving decision was made. The period for the purpose has been set by Section 6 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014.

Going by the affidavit and submission by the respondent's counsel, there is no challenge against the way the application has been filed. In other words, there is no procedural irregularity claimed to have been committed by the applicant. Instead, the respondent is challenging the merit of the application for leave. I find this wrong. The challenges so advanced by the respondent's counsel seem to have been brought prematurely, since the same are potentially for

the application for judicial review and not at this early stage of the leave.

In brief, I find the application on for leave worth allowance The applicants have met the requisites conditions for application for leave to file an application for judicial review. It is hereby granted Let the applicants file their application for judicial review so that the same would be deliberated and determined on its merit.

It is so ordered.

P. B. Khaday
Judge
5/2/2018

Delivered in Chambers today 5th Day of February 2018 in the presence Mr. Rutabingwa learned counsel for the applicants, also holding brief for Mr Tibanyendera learned counsel for the respondent.

P. B. Khaday
Judge
5/2/2018