

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 20 OF 2018

SHABIBU BADI MRUMAAPPLICANT

VERSUS

1. MZUMBE UNIVERSITY.....1ST RESPONDENT

2. THE ATTORNEY GENERAL.....2ND RESPONDENT

Date of the Last Order: 05.12.2018

Date of Ruling: 14.03.2019

R U L I N G

Feleshi, JK

The applicant filed this application seeking for an order of certiorari to quash the decision of the 1st respondent's Senate dated 25th November, 2016 of withdrawing his Bachelor of Laws Degree (LL. B) awarded to him in 2013. He also prays for costs of the application and any other relief this court may see it fit and just to grant. The application is supported by the applicant's affidavit and statement.

Whereas Mr Audax Kahendaguza Vedasto, Advocate of Auda & Company Advocate represented the applicant and argued the application on 5/12/2018, Mr Benson Hoseah, learned State Attorney from the Solicitor General's Office represented the respondents.

At the outset, Mr Vedasto submitted that, whereas the facts regarding the award of the LLB Degree to the applicant by the 1st Respondent in 2013 and its subsequent withdrawal on 25/11/2016 were not disputed, the basis of the applicant's complaint are those contained in

clause 5 (a)-(d) of his statement accompanying his Chamber Summons and Affidavit which read: -

- a. The 1st Respondent never served him with the summons, charge to appear before the Authority which made the decision of withdrawing his degree hence the procedure was tainted with illegality;
- b. The decision of the 1st Respondent to withdraw his degree was reached with no opportunity to him to be heard;
- c. The decision to withdraw his degree does not state the kind of acts or omission he committed to justify the withdrawal of his degree;
- d. The decision on its face does not contain any reasonable and or probable ground to point to a possibility of the alleged offence being committed by him

During hearing, Mr Vedasto combined grounds 5 (a) and (b) and submitted that the process that led to the withdrawal of the applicant's LL. B Degree by the 1st Respondent was made without serving him with any charge, summons and or according him an opportunity to be heard. He said, the only document he came across is the Mwananchi Newspaper cutting which is an Annexure AA3 to the applicant's affidavit. In that newspaper, the 1st Respondent stated to have made her decision because the applicant had forged some of his academic results which led to that award of his LL.B. So, quoting paragraph 6 of the applicant's affidavit, Mr Vedasto stressed that, as the applicant was not served with any documents and nor was he heard at all, the principle of natural justice was violated.

Regarding paragraphs 5 and 7 of the Respondents Counter Affidavit deposing that the applicant was aware as he was involved in all the procedures employed by the 1st Respondent's investigation team which interrogated him and finally established that the allegations were true and

it reported to the 1st Respondent who further instructed the Appointment and Staff Development Committee (ASDC) to proceed with inquiry per University Inquiry procedures including the appointment of the *ad-hoc* inquiry officer, Mr Vedasto contended, those averments are a misconception because the dispute was/is not an employment dispute but rather was/is on the withdrawal of the applicant's LL.B) Degree.

He said, even if it is to be assumed that there was connection between his employment and his academic qualification, which is not a case, the court have not been supplied with any materials at all showing what was the charge all about and what was the findings of the 1st respondent's investigation organs.

He added, the organs mentioned by the Respondents in paragraph 7 of their Counter Affidavit such as Appointment and Staff Development Committee, Investigation Team and Ad-hoc Inquiry officer apart from bare assertions by Benson Edward Hoseah's Counter Affidavit, are not supported by any record/report or affidavits from those who participated in the inquiry processes. He said, Mr Hoseah who by practice had deposed the affidavit by virtue of his employment stated in his verification clause that he received the information from the 1st Respondent's Vice Chancellor and not from the members of the organs mentioned in paragraph 7 of the Respondent's Counter Affidavit. In addition, he said there is no evidence showing that the Vice Chancellor was a member in those organs.

To buttress his submission, Mr Vedasto cited decisions of the Court of Appeal and this Court in **Institute of Finance Management v/s Simon Manyaki**, Civil Application No. 13 of 1987 (CAT) and **Ami Tanzania Ltd. v/s Dorin Donald Dabria**, MCA No. 304 of 2014 (HC) where it was held that: the court cannot rely on hearsay evidence where

the nature of the matter shows that there was evidence of person directly connected to the matter which for no reason at all on record is not supplied to the court.

He reasoned that, even if it is true that the applicant was interrogated, which is not the case, that would not be enough so far as the requirement of a right to be heard was not complied with. In that regard, the right to be heard in the 1st place required the accused person to be given an opportunity to adduce his defence against the allegations mounted against him by his accusers. Secondly, he was entitled to cross examine his accusers. This means, even where no counter facts have been given the accused has a right to test the veracity of the allegations mounted against him through cross-examination as was underlined at page 6 in the decision of the Court of Appeal in **Godfrey M. Makori v. His Excellency, the President of the United Republic of Tanzania and the Attorney General**, Civil Appeal No.67 of 2008, CAT, Dar es Salaam, unreported.

It was in view of the above Mr Vedasto invited this court to find that the right to be heard was not observed and make an order nullifying the 1st Respondent's decision to withdraw the applicant's LL. B Degree under the authority of **Mbeya-Rukwa Autoparts and Transport Ltd. v. Jestina George Mwakyoma** [2003] TLR 251.

In respect of grounds 5(c) and (d) of the applicant's statement in support of his application, Mr Vedasto said they are to the effect that, the decision affecting persons' right should be supported by reasons. To that effect, he referred the court to decisions of the Court of Appeal and this Court in **Sanai Murumbe and Another v/s Muhere Chacha** [1990] TLR 54, **Tanzania Air Services Ltd. v/s Minister for Labour,**

Attorney General and the Commission for Labour [1996] TLR 217 (HC) and **James F. Gwagilo v/s AG**, [1996] TLR 218 (HC).

Besides, he contended, even where the decision may have reasons, such decision can still be quashed if it is so outrageous in defiance of logic or its moral standards such that no reasonable man applying his mind to it could have made it. He said, in the present case the respondent did not disclose the reason and the materials on which the 1st respondent's decision to withdraw the applicant's LL. B degree was reached.

He said, as until now only the Mwananchi Newspaper cutting dated 10/3/2017 is the only device that was used to inform the public on the 1st Respondent's decision to withdraw the applicant's LL. B Degree on 25/10/2016 it is thus not known how the applicant forged his results. In the event, he invited the court to issue an order of Certiorari to quash the impugned 1st Respondent's decision with costs.

In his reply, Mr Hoseah adopted the respondents' counter affidavit and reply statement. He vehemently opposed the application and submitted that, though it is not disputed that the applicant was the employee of the 1st Respondent, his allegations that he was not heard are incorrect because he was accorded with a right to be heard during the inquiry into the forgery of his degree transcript which he used to obtain employment fraudulently from the 1st Respondent that is, he presented a transcript bearing deceitful grade and GPA not earned through a legally established University assessment system.

He added that, upon being subjected to the inquiry and interrogation as encountered in paragraph 7 of the Respondents' Counter Affidavit, the applicant tendered a resignation letter that culminated the

employer and employee relationship. Prior to that the applicant was suspended from work to pave way to the investigation process through a letter dated 10/8/2016 a letter which had made him aware of allegations mounted against him. It was upon his resignation, that the matter was taken over by the 1st respondents Senate that finally decided to withdraw his LL. B Degree.

Regarding the reasons for the 1st respondent's decision to withdraw the applicant's LL. B Degree, Mr Hoseah submitted that the applicant was made aware of the reasons through a letter dated 10/1/2017 which was served to him and was latter attached to the respondents' counter affidavit as Annex AGC1. The reason was that, he forged his academic results which led to the award of his LL. B Degree.

He stressed that, forgery of academic results being a serious issue justified the withdrawal of the applicant's Degree and there is no any doubt that such decision being reasonable would have warranted any reasonable authority to make it. He thus urged the Court not to grant the application. He invited it to dismiss it with costs.

In his brief rejoinder, Mr Vedasto asked the court to take note that the letters dated 10/1/2017 (annexture AGC1) and 10/8/2016 (suspension notification) respectively, referred to by Mr Hoseah, were not attached to the Respondent's counter affidavit hence non-existent.

In addition, even if annexture AGC1 could have been attached the same could not have resolved the applicant's complaint and justify the 1st respondent's decision because: whereas annexture AGC1 is alleged by Mr Hoseah to have been dated 10/1/2017, the impugned decision was made some time back on 25/11/2016. He otherwise reiterated his submission

and prayers in chief that the applicant was not heard and no reasons were assigned why the applicant's degree was withdrawn by the 1st respondent.

Having heard the counsel representing the parties in this application and paid regard to the court record, the following is the deliberations of this Court in disposal of the application. Whereas the applicant's complaints are on violation of his right to be heard over the allegations of forgery of his degree transcript and failure by the 1st respondent to assign reasons to back up his decision, the respondents, as presented above, have plainly dismissed both complaints. I will thus find out whether the application is meritorious.

It is a common knowledge that the applicant was 1st respondent's employee whose LL. B Degree was withdrawn on 25/11/2016 on allegation that he forged the examination results that is, he presented a transcript bearing deceitful grade and GPA not earned through a legally established University assessment system. This allegation, if true, according to the applicant and Mr Vedasto's submission above, was not served and answered by the applicant before the withdrawal of his LL. B Degree by the 1st Respondent.

Ordinarily, when confronted with the application of this nature I beg to remind that, it is trite law that the holding of examination or conferring of certificates, diplomas and degrees are not matters that where this court can interfere with because they are under the exclusive jurisdiction of the concerned higher learning institution. Interference is limited to examining whether that statutory body like the present 1st respondent acted within her legal confines, even where the matter to be reviewed is of purely academic matter. Secondly, 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 (see: Page 625, H.W.R Wade-Administrative Law, 6th Edition, 1988 and **Teresia Rugeiyamu Yamo v. The Institute of Social Work and Attorney General**, Miscellaneous Civil Cause No. 27 of 2009, High Court Main Registry, Dar es Salaam, unreported at pp.7-8).

Turning to the application at hand, having summarized the submissions by the learned counsel above, a further scrutiny over the respondents' counter affidavit, reply statement and Mr Hosea's submission provide substantial materials which I find directly addressing the issue framed above.

Part of the respondents' adopted evidence contained in the Counter affidavit which is substantially the contained in respondents' statement in reply presents the following: -

"RESPONDENTS COUNTER AFFIDAVIT.....

6....the 1st Respondent was tipped of the Applicant's shenanigans by the Ministry of Education Science and Technology which made the 1st Respondent appointed (sic) an investigation Team to investigate the matter.

7. ...the 1st Respondent's Investigation Team interrogated the Applicant and finally established that thee allegations against him were true thus reported to the 1st Respondent who instructed the Appointment and Staff Development Committee (ASDC) to proceed as per University Inquiry procedures including the appointment of the ad-hoc inquiry officer.

8....the Applicant tendered a resignation letter to the 1st Respondent which effectively pre-empted the imminent disciplinary action against him due to resultant cessation of the employee-employer relationship between the Applicant and the 1st Respondent.

9. The Appointment and Staff Development Committee (ASDC) then directed for the submission of the mater to the 1st Respondent's Senate so that the Applicant's fraudulently obtained degree could be withdrawn, and indeed, it so happened during the 67th Meeting of the 1st Respondent's Senate. The Applicant was informed by the 1st Respondent through a letter dated 10th January, 2017. A letter is attached and marked as Annexure AGC1..."

According to Mr Hoseah's verification in the respondents' Counter Affidavit, he got the information he deposed in those paragraphs amongst others from the 1st Respondent's Vice Chancellor whose name was undisclosed.

In **Sanai Murumbe and Another v/s Muhere Chacha** (supra) the Court of Appeal of Tanzania held *inter alia*: -

(i) "N/A....

(ii) **the High Court is entitled to investigate the proceedings of a lower court or tribunal or *public authority* on any of the following grounds apparent on the record:**

a) N/A;

b) **not taking into account matters which it ought to have taken into account;**

c) N/A;

d) **conclusion arrived at is so unreasonable that no reasonable authority could ever come to it;**

e) **rules of natural justice have been violated;**

f) **illegality of procedure or decision"**

In view of the clear averments by the respondents through their Counter Affidavit and statement in reply and the principle laid in **Sanai Murumbe's** case above, this court is obliged to investigate whether there were aspects the 1st respondent's Senate was duty bound to have considered before arriving to her decision. That definitely will inform whether her decision was reasonableness and legal.

Guided by the court record and submissions, I pose to ask if there is any evidence that the 1st respondent ever served the applicant with the charge and how the same was laid to him. Is there any evidence informing this court that the allegations were set down for hearing or if there is any electronically or manually recorded proceedings or decision? That is to

say, are the processes mentioned in paragraphs 6 and 7 above regarding the involvement of the 1st Respondent's Investigation Team, Appointment and Staff Development Committee (ASDC), ad-hoc inquiry officer and the 1st Respondent's Senate are substantiated by evidence?

It is patent clear and queer that the respondents defence and Mr Hoseah's submission did not resolve those questions. It is worth noting that paragraphs 8 and 9 and Mr Hoseah's submission above are clear that, due to the applicant's resignation the disciplinary proceedings came to an end due to the cessation of the employee-employer relationship between him and the 1st Respondent. That means, even if we are to agree with the respondents' averments in paragraphs 6 and 7 above and assume that the disciplinary proceedings were duly commenced, though there is no evidence to that effect, we have to agree that in terms of what is deposed in paragraphs 8 and 9 above, the same were prematurely terminated following the applicant's resignation. That therefore would mean no adequate hearing was conducted.

The next niggling question is- if the 1st respondent found herself that she was unable to continue with the disciplinary proceedings due to the cessation of the employee-employer relationship between her and the applicant why didn't she refer the forgery allegations to other relevant authorities under section 7(1)(a) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (CPA) for it to adequately inquire into it? That provision mandatorily requires every person who is or becomes aware of the commission of or the intention of any other person to commit any offence punishable under the Penal Code to forthwith give information to a police officer or to a person in authority in the locality for him/her to convey the information to the officer in charge of the nearest police station.

In my unfeigned view therefore, it is clear from the above provision that the alleged cessation of the employment relationship between the applicant and 1st respondent under the given circumstance was not a bar for the alternative mechanism to be taken by the 1st respondent under the aforementioned provision of the law. That would have, in no way prejudiced the applicant's right to be heard since he could have attended through provisions such as section 9,10,57 or 57 or 58 of the CPA (supra).

At this juncture, it becomes unopposed that the 1st respondent's Senate being duty bound to consider whether the disciplinary proceedings were properly initiated, did not pay regard to that key aspect of fair hearing and her decision was unreasonable, unfounded and illegal.

In this application, it was queer as earlier on queried by Mr Vedasto above, that the respondents did not bring to court evidence, by way of supplementary affidavits or inquiry reports, of those who attended the allegations of the applicant's forgery. It is also worth noting that by his failure to disclose the name of 1st Respondent's Vice Chancellor in the verification clause of the respondents' counter affidavit Mr Hoseah debilitated the evidence contained in the paragraphs quoted above. This is because, disclosing the source of information under the law governing affidavit is obligatory.

So, the failure to parade such vital evidence rendered the 1st respondent's decision unfounded. Unlike in **Teresia Rugeiyamu Yamo v. The Institute of Social Work and Attorney General** (supra) where this court was satisfied that the Institute of Social Work had properly acted within her confines and adequately heard the applicant, the materials before this court in the present application have proved the opposite.

In **Mbeya-Rukwa Autoparts and Transport Ltd. v. Jestina George Mwakyoma** (supra) the Court of Appeal underlined at page 265 that in Tanzania natural justice is not merely a principle of the Common Law but rather has become a fundamental constitutional right under Article 13(6)(a) and a decision reached without regard to the principles of natural justice and or in contravention of the Constitution is void and of no effect (see also- **Godfrey M. Makori v. His Excellency, the President of the United Republic of Tanzania and the Attorney General** (supra)).

Since in the present matter no one can give more accurate defence and submission in reply than the respondents, I have no flick of doubt that the applicant's grounds 5(a)&(b) above have not been controverted by the respondents. As alluded to above, a failure to accord him a right to be heard renders the 1st respondent's decision to withdraw his degree void and of no effect.

Likewise, I agree with Mr Vedasto that, as it is, the alleged annexure AGC1 which I have satisfied myself is not to be part of the court record contrary to Mr Hoseah's averment in paragraph 9 and his submission in court above, is a non-existent piece of evidence. So, as this court cannot discuss a non-existent evidence, I find Mr Vedasto's alternative argument that, even if annexure AGC1 were there the same could not have founded the 1st Respondent's decision, a misplaced one.

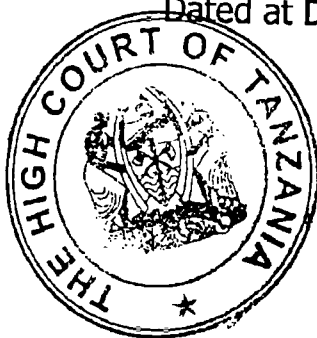
In the case of **Tanzania Air Services Ltd. v/s Minister for Labour, Attorney General and the Commission for Labour** (supra) this Court underscored at page 224 that failure to give reasons for the impugned decision is a serious irregularity which makes the decision a nullity in law.

In the upshot, with the above analysis in unison, there is no gainsaying that the application is meritorious. The order of certiorari is hereby granted. The decision of the 1st respondent's Senate dated 25th November, 2016 of withdrawing his Bachelor of Laws Degree (LL. B) awarded to him by the 1st respondent in 2013 is quashed.

However, the respondents are at liberty, if they still wish, to lawfully deal with the issue of forgery on the applicant's allegedly fraudulently obtained LL. B degree. Considering the nature of the matter I issue no order as to costs

I order accordingly.

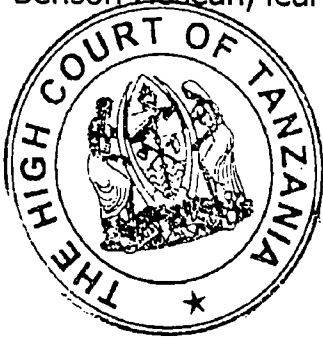
Dated at Dar es Salaam this 14th Day of March, 2019




E.M. FELESHI
JAJI KIONGOZI
14/03/2019

COURT:

Ruling delivered this 14th day of March, 2019 in the presence of Mr Paschal Mshanga, Advocate, for the applicant and Mr Benson Hoseah, learned State Attorney for the respondents.




E.M. FELESHI
JAJI KIONGOZI
14/03/2019