

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF TANGA)**

AT TANGA

MISC. CIVIL APPLICATION NO. 41 OF 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
PREROGATIVE ORDERS OF CERTIORARI AND MANDAMUS**

AND

**IN THE MATTER OF THE DECISION OF THE SENATE OF SEBASTIAN
KOLOWA MEMORIAL UNIVERSITY**

BETWEEN

JAMES KUSAGA APPLICANT

AND

**SEBASTIAN KOLOWA MEMORIAL UNIVERSITY
(SEKOMU).....RESPONDENT**

RULING

MKASIMONGWA, J.

This is an Application for an order granting leave to the Applicant to apply for prerogative orders of certiorari to call into the Court and quash the decision of the Respondent to discontinue the Applicant from studies and of Mandamus, to compel the Respondent to among others, reinstate the Applicant into studies and allow him to sit for the second semester of the second year and third year examinations, and correctly release the Applicant's examination results in respect of all semesters he attended.

The Application is brought by James G. Kusaga and it is made Ex-parte by Chamber Summons in terms of Section 2 (3) of the Judicature and Application of Laws Act [Cap 358 R.E 2002] and

Rule 5 (1) of the Law Reform [Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules G.N No. 324 of 2014. The Chamber Summons is supported by Affidavit sworn by James G. Kusaga and it is also accompanied by the Statement of facts.

At the hearing of the Application, the Applicant enjoyed the legal services of Ms. Elisia Paul, the learned advocate who appeared on behalf of the Applicant. On being invited so to do, the learned counsel argued the matter in line with what is averred in the Affidavit and to what is stated in the Statement of facts. She stated that in the 2014/2015 the Applicant was admitted as full time student in the Respondent University to pursue a three years Bachelor Degree of Education Special Needs Course. He was registered and assigned to a Registration Number SEK/BEDSN/241/2014. He successfully completed the first year and first semester of the second year of the course. The applicant was however not allowed to sit for the examinations pertaining the second semester of the second year for what the Respondent alleged that he had not attained the requisite GPA and he was discontinued by a letter which cited a wrong student's Registration Number. His complaint to that effect ended by the Respondent correcting the letter by showing the Applicant's correct Student Registration Number. The Respondent again changed their subject and on 04/07/2016, she issued the Applicant with a fresh discontinuation letter. The Applicant did successfully complain on the trend to the Tanzania Commission for Universities (TCU). The Commission

ordered for reinstatement of the Applicant to the studies. The Respondent however forced the Applicant to simultaneously take subjects for the second semester of the second year and those for the third year. He again ended into being discontinued which decision was confirmed by the University Senate on appeal he preferred to. Upon complaining to the TCU and the Ministry of Education, Science and Technology, the Applicant was advised to take legal action hence this Application.

The Application contended that the grounds upon which the Application is brought are that:

1. The Applicant was not accorded with a fair hearing.
2. That Applicant was wrongly, unlawfully, maliciously and severely discontinued from studies for an act the Respondent admitted to be own mistake.
3. The Senate which resolved for the Applicant's discontinuation was composed of unqualified members according to the law.

Based on the above submission Ms. Elisia Paul prayed the court that it grants this Application.

I have considered the submissions as well as the records. As said this is an application for leave to apply for prerogative orders. Generally, an application for judicial review is based on three grounds. They are **One:** Illegality, **Two:** procedural unfairness and **Three:** Irrationality. It follows therefore that in an application for leave the Applicant must have among others material which suggest that the decision challenged tainted with illegality, or that it was reached without adhering with the procedures which ensure for

fairness such as failure to observe the principles of natural justice, and thirdly that the decision is irrational. In the case at hand the applicant complained of having not been accorded with a fair hearing and that the decision was wrong, unlawfully, malicious and that the same was made by incompetent members of the organ which made it. In my considered opinion, the grounds justify for application for prerogative orders.

In event, therefore, this Application is therefore granted that the applicant is granted with leave to apply for prerogative orders as he intends to do.

Dated at Tanga this 22nd of October, 2020.



E. J. Mkasimongwa

JUDGE

22/10/2020

Date: 22/10/2020

Coram: E. J. Mkasimongwa, J.

For Applicant: Miss. Elisia Paul (Adv)

For Respondent: Absent

C/C: Alex

Court: Ruling delivered in Chambers this 22nd of October, 2020 in the presence of Miss Elisia Paul (Adv) for the Applicant and of the Applicant.




E. J. Mkasimongwa

JUDGE

22/10/2020