IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 10 OF 2021

IN THE MATTER OF AN APPLICATION FOR ORDER OF CERTIORARI AND MANDAMUS.

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT (CAP310)

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES,2014 (G.N NO. 324)

AND

IN THE MATTER OF GOODLUCK MANDES WHO IS APPLYING FOR JUDICIAL REVIEW

BETWEEN

GOODLUCK MANDES ..... APPLICANT

AND

THE UNIVERSITY OF DODOMA ..... 1st RESPONDENT

THE CHAIRMAN OF TE SENATE

OF THE UNIVERSITY OF DODOMA .....2nd RESPONDENT

THE DEPUTY VICE CHANCELOR ACADEMIC

RESEARCH AND CONSULTANCY ..... 3rd RESPONDENT

THE PRINCIPAL OF COLLEGE OF

EARTH SCIENCES ENGINEERING,

THE UNIVERSITY OF DODOMA ..... 4th RESPONDENT

HON. ATTORNEY GENERAL ..... 5th RESPONDENT

RULING

23/2/2021 & 02/08/2021

Masoud J.

The Applicant herein brought this application under Rule 8(1)(a) and (b), (2), (3), (4) and (5) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review, Procedure and Fees) Rules, 2014 (G.N. no. 324), section 17(2) and 18(3) of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act (Cap 310)1, praying for the following orders: -

a) That, this honourable court may be pleased to issue prerogative order of certiorari to quash the decision of the 2nd respondent made on 12th December, 2020 which disapproved the applicant's request for appeal against the University of Dodoma Examination Results for 2019/2020 academic year without disclosing or giving reasons for decision for the decision, which is an action fatal to the decision so reached.

b) That, this honourable court be pleased to make an order that the decision of the 2nd Respondent so reached on 12th December, 2020 to discontinue the applicant from the study at the 1st Respondent without reasonable and sufficient cause being shown in their letter 6th January, 2021 and sent to the Applicant to notify him the decision is in violation of proper procedure and rules of natural justice, illegality, irrationality, and is procedural unfairness.

c) That, this honourable court be pleased to issue prerogative order of mandamus requiring the respondents to act in accordance with law which

governs the right to access to education and training and the applicant be given an opportunity by the 1st and 2nd respondents to continue with his study at the University of Dodoma, College Earth Science and Engineering in a Bachelor of Science in Metallurgy and Mineral Processing Engineering within the prescribed registration period of six years.

d) Costs of the application.

e) Any other relief(s) as this court may deem fit and just to grant.

The application was opposed by the respondents who filed a counter affidavit deponed by one Dr Ryoba Marwa, Secretary to the Council in the office of the first respondent. Pursuant to the order of this court, the application was heard by way of written submissions. Parties on the both sides of the application duly filed their respective written submissions through Mr Gidion Kaino Mandesi, Advocate for the applicant, and Mr Charles Mtae, State Attorney, for the respondents. In dealing with and deliberating on the rival submissions, the court confined itself to matters that reflected the respective affidavit and counter affidavit.

In support of the application, Mr. Gidion Mandesi, Advocate for the Applicant submitted that the applicant was a university student registered by the 1st respondent with registration No. T/UDOM/2018/06629 pursuing a Bachelor of Science in Metallurgy and Mineral processing Engineering at the College of Earth Science and Engineering of the university of Dodoma. Because of errors which were apparent on the face of the record of his second year university

examination results, he made reasonable efforts to resolve the problem by appealing before the University Senate so as to correct the errors which occurred during marking and granting his marks.

On 12th December, 2020 the 2nd respondent disapproved the applicant's request for appeal without giving the right to be heard and without disclosing reasons for which the impugned decision was based. As the result, the applicant was discontinued from his studies by the 1st respondent. The discontinuation of the applicant from his studies is in breach of the rules of natural justice, and abused the available proper procedure contrary to article 13(6)(a) of the Constitution.

Mr. Mandesi went on saying that, the decision to discontinue the applicant was communicated three weeks after the date of the decision by a letter signed up by Dr. Victor M. George who is not the chairman of the University Senate and who has no jurisdiction to do so. The University Senate decision ought to be signed by the Chairman of the Senate and be authenticated with its seal as per the requirements of Order XX, rule 3 of the Cap 33. He insisted that, since the decision of the Senate was signed by an unauthorized person, there is no valid decision to be relied upon. Thus, the applicant, it was submitted, has never been discontinued.

Further, Mr. Mandesi submitted that the law which was in effect when the applicant lodged the appeal before the University Senate is the University of Dodoma Regulations for Undergraduate Programmes, 2019. He wanted the 2nd

respondent to adhere to the requirements of the provisions of regulation 18.4(iii) and (iv) of the said Regulations which was, in his view, the relevant provision. The provision stipulates that grading 'CVR' shall be pass grade 'C'. It is his argument that contrary to the requirements of the regulation, the 2nd respondent decided intentionally to grade the subject MN 224 grade 'F' instead of 'C', and hence reducing the overall average of GPA of the applicant from 1.8 to 1.7. In his view, the 1st and 2nd respondents were bound to let the applicant know in good time any amendment if at all effected on the regulations before its application. Failure to do so is a bad administrative practice and is unacceptable in law.

Responding to the submission by the applicant, Mr.Charles Mtae, learned State Attorney, submitted on the right to be heard. The learned State Attorney contended that the applicant failed to obtain 16 marks out of 40 from the course work assessment. He argued that the marking of the course work on the subject in dispute was fair and credible. He added that the argument on the right to be heard would be valid if the applicant disputed unfair marking in which case he ought to have been given opportunity to explain why he thought that the marking was unfair.

The learned State Attorney further brought the attention of the court to regulation 11.2 of the Regulations. The said regulation has it that if the candidate fails to get 16 marks out of 40 allocated to course work assessment, he is automatically considered to have failed the course. Accordingly, the

learned State Attorney contended such outcome leads to carryover of the course by the candidate and being also barred from sitting for the end of university examination. He reasoned that the regulation reflected what had happened in this matter in respect of the applicant. The learned State Attorney submitted that the applicant is in this application trying to invite the court to grant him grade 'C' for the course which he failed.

Submitting on the right to give reasons for the decision, the learned State Attorney submitted that the duty to give reason arises when the basis for the decision is unknown to the person against whom the decision is made. In the case at hand, the applicant knew even before the examination that he failed the course work in the subject in dispute. He equally knew that because of failing the course work, he was ineligible to sit for the end of university examination in the relevant course. It was therefore argued that there was neither abuse of power by the respondents nor unfair marking which is being disputed by the applicant. Accordingly, the alleged absence of reasons in the letter rejecting the appeal has not resulted in any procedural unfairness as it was automatic discontinuation on the academic merits, of which the Chairman of the Senate does not require to provide reasons expressly.

Regarding the letter alleged to have been signed by an unauthorized person, the learned State Attorney submitted that the letter in itself is not a decision, hence it can be signed by any officer of the first respondent who has authority to convey that message to the applicant. In addition, he told the court that the

applicant was aware of the decision reached on 12th December, 2020, which is again nowhere attached in the statement or affidavit. It was argued that the omission to attach the decision by itself would result into a dismissal of the instant application. In this argument, the learned State Attorney cited Miscellaneous Civil Cause No. 29 of 2018 between **Hafidhi Shamte and 4 others vs DPP, TCRA and AG**; Miscellaneous Civil Cause No. 79/2018 between **Sembeti Village Council and Mshiri Village Council vs Moshi District Council and AG**; and Misc. Application No. 55 of 2016 between **the Prime Minister of United Republic of Tanzania, RC of Dar es salaam and AG**.

Further, the leaned State Attorney submitted in relation to the University of Dodoma Regulations, 2019 as amended in 2020 saying that there was no retrospective application of the said regulations. He argued that following the amendment of 20th April, 2020, the regulations came into effect immediately after the approval by the Senate and not on 1st December, 2020.

In relation to the arguments on illegality, irrationality and procedural impropriety, the learned State Attorney submitted that the application is not fit for prerogative orders as the grounds advanced were unfounded. The authority which made the decision derived its mandate from the University of Dodoma Regulations for Undergraduate Programmes, 2019 as amended 2020. The authority therefore acted within its jurisdiction. The court was told that a prerogative order is issued where a decision is made in error or in contravention

to the principle of natural justice. Two cases, namely, **Ally Linus and Others vs THA and Another** (1990) TLR 5, and **Sanai Murumbe and Another vs Muhere Chacha** (1990) TLR,54 were cited in support of the above submissions.

In so far as the applicable procedure for appeal is concerned, the provision of regulation 23 of the said Regulations was referred. The provision provides for a procedure of appeal when a candidate wishes to appeal and emphasis was made that the appeal was handled in accordance with the procedure. As such, the impugned decision was rational and logical because the standards established by the law (University of Dodoma Regulations for Undergraduates Programme, 2019 as amended in 2020) were observed and the means employed was reasonable through established law and procedure. Attention was however drawn to the court that the applicant did not make any reference to the appeal procedure and how the same was not adhered to as alleged.

Towards the end of his submissions, the learned State Attorney made it clear that the essence of judicial review is to check that the public bodies do not exceed their jurisdiction and carry out their duties in the manner that is detrimental to the public at large.

In line with the above position, the case of **Republic vs Permanent Secretary/Secretary to the Cabinet and Head of Public Service of the president and 2 others** (2006) EKLR cited in **Law's Creek Treated Timber**

(PTY) Limited and Another vs PPAA and 2 others and George Luagga Maliyamkono vs Principal Secretary of the Ministry of science, Technology and High Education and Others (2000) TLR 44 was relied on.

In rejoinder, the counsel for the applicant reiterated that the respondents applied the law retrospectively as there is no proof of the date of commencement of the regulation. Academic year commenced in October/ November 2019 and ended in the same months in the year 2020 after the university examination results were released. So, it was improper to amend the law in the midterm of the same academic year.

I have gone through submission by both parties. The following issues need to be answered. These are as follow. Firstly, whether there was breach of the Regulations (University of Dodoma Regulations for Undergraduate Programmes, 2019). Secondly, whether the 2nd respondent was duty bound to give reason for the decision, and thirdly, whether the 2nd respondent violated rules of natural justice and acted without jurisdiction.

At the outset, I should point out that the gist of the application was premised on the appeal which the applicant preferred to the Senate of the first applicant challenging his automatic discontinuation on the reasons of alleged errors of not marking subject MN224 as grade C. He alleged that he was not accorded right to be heard in his appeal and no reason was given in support of the decision disapproving his appeal.

Despite the complaint which sought to challenge the examination results, the court was not shown by the applicant the machinery for appeal which was invoked by the applicant and how the alleged appeal was made in conformity to the machinery. The absence of such material or information denied this court material with which the court could have ascertained appropriateness of the argument that there was no reason given supporting the decision disapproving the appeal and not affording a right to be heard in the said appeal. There is as such in my view no materials to determine in the favour of the applicant on the issue as to whether the second respondent had fallen outside its mandate.

The court was not even told what were the precise grounds of the appeal and how the same was preferred. Again, in the absence of such information, it is logical and proper to assume that applicant's right to be heard was met when he was accorded the chance to file his appeal to the Senate. It is not correct to assume that his right to be heard is only available to him through an oral presentation on a complaint about incorrect application of the alleged regulation. In my view therefore the requirements of procedural fairness were met with respect to the applicant.

From the affidavit and the submissions of the applicant, it is crystal clear that the applicant directed this court to regulation 18.4(iii)and (iv). He told the court that the 2nd respondent intentionally contravened the said regulation by grading 'F' instead of 'C' subject MN224 referred in annexure A3 of his affidavit. In this respect, there was annexure A3, shown to the court which is in my view a piece

of paper lacking proper citation for it to be relied upon. Comparing the averments by the respondents with the averments of the applicant as to the relevant regulations, I was convinced that the proper regulations were those reflected in annexure UDOM1 annexed to the Respondents' counter affidavit.

Apart from being certified and sealed, the Regulations are clearly cited the Regulations for Undergraduate Programmes, Revised Third Edition. Regulation 18.4 of the said Regulations is completely different from what is alleged by the applicant to be the relevant regulations applicable pertaining to the case at hand. Thus regulation 18.4 referred by the learned State Attorney provides and reads thus:

> *no candidate shall be allowed to repeat any year of study on academic grounds, except with special permission or approval of the senate upon recommendation of a college, school, or Institute Board, and SUSC.*

No provision in the above quotation which entitles the applicant to a pass mark of grade 'C' in subject MN 224. As such, the allegation of contravening the regulations by the 2nd respondent is unfounded and has no merit. As it was also shown by the respondents' learned State Attorney, the amended regulations were also clear that the CVR is graded as F in computing the GPA and not C as alleged by the applicant. In respect of this, I have had regard to regulation 18.5 of the amended Regulations.

The applicant is disputing the decision of the 2nd respondent on the reason of alleged violation of the right to be heard and the failure to assign reasons for the decision. This allegation was strongly disputed by the respondents saying that the duty to give reason arises when the basis for the decision is unknown to the person against whom decision is made which was not the case in the present matter. In the present instances, the decision was and ought to have been known by the applicant. Regulation 32.0 (v) of the amended Regulations provides:

> *A candidate whose overall GPA is below 1.8 in the first sitting shall be discontinued from the study.*

Indeed, the gist of the affidavit of the applicant is quite clear that the applicant knew that he was automatically discontinued because of attaining a GPA of 1.7 which was less than a minimum GPA of 1.8. His argument which I do not buy in view of my findings herein above, was however that the outcome was a result of an errors of not marking subject MN224 as grade C.

This court was to a considerable extent inspired by a more or less similar position which was held by this court in the case of **Joshua Samwel Nasari vs The Speaker of the national Assembly of the United Republic of Tanzania and AG, Misc. Civil Case No. 22 of 2019.** The court held that disqualification of the Applicant from membership of Parliament was not the decision of the speaker but an operation of the supreme law of the land. In the

present instant, the discontinuation of the applicant from studies is a result of an automatic operation of the relevant regulation of the University regulations.

The impugned letter (annexure A1) is in fact a mere letter communicating the information about the operation of the relevant regulation and its outcome. The letter with reference number T/UDM/2018/06629 signed by Dr. Victor M. George aimed at conveying the message and not making any decision was appropriately signed by one Dr. Victor M. George, an officer of the respondents. In any case, there was no regulation shown mandating such a letter to be only signed by the Chairman of the Senate.

In the light of the above deliberations, the question is whether the applicant has made his case on the application for orders of certiorari and mandamus. In answering the question, I have had regard to the principles governing judicial review of administrative bodies as set out in the case of **Associated Provincial Pictures House Ltd vs Wednesburry Corp [1947]2 All.ER 680** and a famous case of **Senai Murumbe and another vs Muhere Chacha (1990) TLR 54**, which essentially relate to be illegality, violation of principles of natural justice, irrationality, and proportionality (reasonableness).

I have had also regard to the decision of this case in **Theresia Rugeiyamu Yomo vs The Institute of Social Work and AG**, Misc Civil Cause No. 27 of 2009 in which the court stated and I hereby quote thus:

> *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, 6 th Edition, 1988.

I was in the end satisfied that the applicant did not make a case for judicial review. The alleged grounds were in my view not established to warrant the exercising of the discretion of this court in judicial review as prayed in the chamber summons.

In the upshot, the application is without merits for the reasons herein above stated and it is hereby dismissed with costs.

Ordered accordingly.

Dated and Delivered at Dar es Salaam this 2nd day of August 2021.

HIGH COURT OF TANZANIA

B.S.Masoud