THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

MISCELLANEOUS CIVIL CAUSE NO. 01 OF 2022

IN THE MATTER OF APPLICATION FOR ORDERS OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, CAP 310 R.E. 2019

AND

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW AGAISNT THE DECISION OF MBEYA UNIVERSITY OF SCIENCE AND TECHNOLOGY.

BETWEEN

HAJI JUMA HUSSEIN.....APPLICANT

VERSUS

MBEYA UNIVERSITY OF SCIENCE AND TECHNOLOGY.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of Last Order: 13/04/2022
Date of Ruling : 25/05/2022

MONGELLA, J.

This is an application for judicial review in which the applicant, **Juma Haji Hussein**, is seeking for orders of certiorari and mandamus against the decision of the **Mbeya University of Science and Technology (MUST)**, the

1st respondent herein. The order of certiorari is sought to quash and set aside the decision of MUST contained in letter with Ref. MUST/2018101123/2018/MST/07 dated 21st May 2021, which disqualified the applicant from appearing in any University examination for a period of three (3) years. The order of mandamus is sought to compel and direct MUST to act according to the law and thereby allow the applicant to resume classes and complete first and second semester examinations for the Academic Year 2020/2021.

The application is preferred under **section 2 (3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019; section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R.E. 2019 and Rule 5 (1) and Rule 8 (1) (a), (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014**. It is supported by the affidavit of the applicant.

The application was argued by written submissions for purposes of serving time as the presiding judge had to attend criminal sessions cases between March and April 2022. I commend counsels for both sides for filing the written submissions within time prescribed by the Court.

The brief facts giving rise to the matter at hand are as follows: The applicant was a student at the 1st respondent's academic institution pursuing a Diploma Course in Biomedical Equipment Engineering. He was in his third year studies. On 17th March 2021, in morning hours, he was set to do Semester Examination on the subject of Conics and Differential Equations, Module 06101. It was alleged by the 1st respondent that on that

particular examination, the applicant was found with unauthorised material, in a handwritten booklet whereby he was charged of cheating in examination and discontinued from studies.

Consequently, he was disqualified from appearing in any University examination for a period of three (3) years starting from 19th May 2021 by the MUST Senate. He appealed to the Vice Chancellor setting up reasons as to why the MUST Senate was unfair, however on 31st May 2021 he received a letter with reference number MUST/2018101123/2018./MST/09 informing him that the decision made by the University Senate was final. Aggrieved by the decision, he filed the application at hand seeking for orders of certiorari and mandamus as mentioned earlier herein.

The applicant had legal services of Mr. Stanslaus Michael, learned advocate. In his written submission, Mr. Michael advanced three reasons for challenging the respondent's decision. These are:

One, that there is an error of law whereby he claims that the procedures of law before nullification of the applicant's semester one examination results and disqualifying him from appearing in any University Examination for a period of three years were not adhered to. The basis of his arguments as depicted from his submission is that the MUST Senate did not accord the applicant the right to natural justice as the applicant was never sufficiently informed, summoned and appraised of the particulars of the pre-judicial allegations made against him so that he could effectively present his case to rebut the accusation leveled against him. He was of the stance that the MUST Senate made its decision as a quasi-judicial

body and as such it was bound to adhere to procedures of natural justice before reaching its decision.

Two, is on ground of unreasonableness whereby he challenged the investigation conducted by the 1st respondent. He contended that the 1st respondent failed to properly investigate the matter and come up with reasonable findings. He disputed the investigation alleged to have been conducted by the 1st respondent through a panel of investigation team on 21st April 2021 in which the applicant was interviewed concerning the allegations of examination irregularity. He disputed the investigation on the ground that there was no any investigation report attached by the respondents in their counter affidavit and statement. In the circumstances, he was of the view that the decision by the MUST Senate was unreasonably reached. He complained that he challenged the Senate decision before the Vice Chancellor, but his claim was not entertained on reason that the University Senate's decision was final.

Three, which is connected to the first, is that there was breach of natural justice by the 1st respondent. He argued that the rules of natural justice are the minimum standards of fair decision making imposed on persons or bodies acting in judicial capacity. He said that where a person or body is required to determine questions of law or fact in circumstances where its decisions will have a direct impact on the rights or legitimate expectations of the individual concerned, an implied obligation to observe principles of natural justice arises and infringement thereof can be interfered by the court. He referred the Court to the case of ***Ally Linus and Others vs. Tanzania Harbours Authority and Another*** [1984] TLR 4.

He further maintained his stance that the 1st respondent never issued a notice of the allegations facing the applicant and denied him the right to defend himself. That, he was surprised to be issued with a letter dated 21st May 2021 tilted "*Disqualification due to Cheating*." He added that there was no witness produced, especially the invigilator who caught the applicant thereby denying him the right to cross-examine the witnesses, thus breaching the fundamental principle of natural justice. He referred the case of ***Mbeya-Rukwa Autoparts and Transport Limited vs. Jestina George Mwakyoma*** [2003] TLR 251 in which it was ruled that the principle of natural justice is an enshrined constitutional principle. He prayed for the orders sought to be granted with costs.

On his part, the respondent was represented by Mr. Joseph Tibaijuka, learned state attorney. He opposed the application. Addressing the question of error of law he referred to the University Prospectus (annexture "MUST 01"), which contains Examination Regulations. He submitted that under the Examination Regulations, candidates are prohibited from possessing or accessing unauthorised materials such as papers, books, notes, electronic devices and any other devices not approved and of which can be of assistance to the student.

Regarding the allegation that the applicant was not informed of the allegations facing him, he contended that the applicant was sufficiently informed of the allegation of entering the examination room with unauthorised material which was a booklet with solutions of different questions. That, an examination irregularity form (Annexture MUST 01) was filled and the applicant signed together with the invigilator and a witness

who was a nearby candidate. Considering what transpired, Mr. Tibaijuka was firm that the applicant was well informed of the allegations of the irregularity he committed during the examination.

He submitted further that after one month from the date the applicant was informed of the allegation, the 1st respondent through its Senate elected a subcommittee to investigate on the issue of examination irregularity involving the applicant. He said that the investigation team interviewed candidates, witnesses, invigilators, heads of departments, principal of the college and students' organisation leaders. Referring to page 6 of the investigation report, he added that the applicant was also interviewed, which proves that he was summoned and appeared before the investigation team. He had a stance that all the procedures enshrined under the prospectus were adhered to the letter, particularly regulations 16:10:14, 16:10:15, and 16:10:16 on handling examination irregularities.

On the claim of unreasonableness, Mr. Tibaijuka first referred to the case of ***Sanai Murumbe and Another vs. Muhere Chacha*** [1990] TLR 54, which settled the grounds for judicial review. He contended that in accordance with the said decision, the court in determining unreasonableness, looks as to whether the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it, as one of the reasons for the court to allow the judicial review and order for certiorari and or mandamus. In consideration of the authority, he contended that the conclusion reached by the 1st respondent to the effect that the applicant was guilty for being found with unauthorised materials in the examination room is reasonable.

He argued so on the ground that the investigation team interviewed almost 11 people, to wit, the applicant, witnesses, invigilators, heads of department, principal of the college and three students' organisation leaders. He said that a student witness informed the investigation team that the applicant was in front of him and was found with unauthorised materials after more than one hour from start of the exam. He added that the evidence showed the applicant was given only one booklet with no. 30583 and his examination number was UE/TBEE/20/3103. That, if he was given an extra booklet the registration form should have reflected that. He further commented on the character of the applicant saying that the applicant has a character of cheating which is proved by the fact that he filled a fake examination number in the examination irregularity form. He supported the penalty imposed on the applicant.

Lastly, on the issue of breach of natural justice, he concurred with the legal position that failure to accord a party the right to be heard can render the decision of an administrative body to be quashed. He as well referred to the case of ***Ally Linus and Others vs. Tanzania Harbours Authority & Another*** (supra); and that of ***Charles Christopher Humphrey Kombe vs. Kinondoni Municipal Council***, Civil Appeal No. 81 of 2017 (CAT at DSM, unreported). In appreciation of the legal position, he argued that the 1st respondent on being aware of the important legal principle facilitated and afforded the applicant the right to be heard. He contended that by filling the examination irregularity form, the applicant was made aware of the charges from the initial stage.

He added that the applicant was further accorded the right to be heard when summoned by the sub-committee which summoned the applicant on 20th and 21st April 2021. That he was heard together with his witnesses, the student organisation leaders. He referred the case of ***Dr. Jean Bosco Ngendahimana vs. The University of Dar es Salaam***, Civil Appeal No. 304 of 2017 (CAT at DSM, unreported) in which the Court found that the appellant was afforded the right to be heard because he was invited to the Board Committee concerning his examination irregularity. Reverting to the case of ***Ally Linus*** (supra), he had a view that in the event this Court finds that the applicant was not accorded the right to be heard, the remedy should be to quash the decision and direct the 1st respondent to adhere to principles of law and not to order for the applicant to resume studies.

After careful consideration of the counsels' arguments on the grounds of review, I am of the settled view that all the three grounds revolve around the issue of right to be heard. I shall therefore confine my deliberation on this issue.

The applicant claims that he was not given the right to be heard, never cross examined the witnesses involved in investigation and never given the investigation report prior. On the other hand, the respondent contends that the applicant was given the right to be heard. Mr. Tibaijuka relied on the investigation report which shows that the applicant was interviewed. It should be taken into consideration that the applicant was disqualified on account of misconduct, to wit, examination irregularity. The offence alleged to have been committed is a disciplinary offence. In

the premises, I am of the considered view that a disciplinary hearing ought to have been conducted taking into account the punishment that goes with the alleged misconduct whereby the applicant was disqualified. I have gone through the examination regulations presented in annexture "MUST 01" and found no procedure provided in conducting hearing in cases of examination irregularity. In the premises, I shall base my deliberation on minimum practical standards.

The 1st respondent conducted an investigation through an investigation team it formed. In my settled view, investigation is not hearing. Even if the investigation team had interviewed the applicant, it cannot be taken to amount to a hearing. A leaf can be borrowed from criminal procedure whereby the suspect of a criminal offence is usually among those interrogated by the investigating officer and is still taken to court to defend himself. This is because the suspect/offender has to know the nature of the case facing him by hearing the evidence provided by the prosecution witnesses and defend against such evidence.

Tough the University is not expected to conduct a hearing like the one conducted in courts of law, a minimum standard of hearing ought to have been adhered to. That is, after the investigation, in my view, the 1st respondent ought to have convened a disciplinary panel whereby the witnesses involved in gathering the evidence that led to the disqualification of the applicant should have adduce their evidence before the panel and the applicant be given the opportunity to ask questions, if any, and to defend himself against the evidence provided.

In the alternative, the investigation team should have questioned the witnesses in the presence of the applicant for him to know the nature of evidence against him, ask the witnesses questions and defend accordingly. I have gone through the investigation report, annexture "MUST 01" and I find that the investigation team called one witness after the other and then called the applicant. There is nowhere indicating that the applicant knew what the witnesses had stated before the investigation team and was given a chance to ask any of the witnesses questions. This is was a serious infringement of the applicant's right to be heard, thus affecting negatively the decision by the 1st respondent. See: ***Ally Linus & Others vs. Tanzania Harbours Authority*** **& Another** (supra) cited by both counsels.

I agree with the position settled in the case of ***Dr. Jean Bosco Ngendahimana vs. The University of Dar es Salaam*** (supra), cited by Mr. Tibaijuka to the effect that courts should not lightly interfere with academic processes and decisions so as to preserve academic integrity and excellence. In the premises, the interference by the courts is limited to serious procedural irregularity, mainly involving the right to be heard. In that respect, I am in consensus with Mr. Tibaijuka's argument that the remedy is not to rule that the applicant be reinstated in his studies, but to order for a proper disciplinary hearing to be conducted for the applicant to be accorded the right to be heard. This is because doing so shall amount to stepping into the University's exclusive monopoly and this Court is not in any position to do that.

Following my observation as hereinabove, I quash the 1st respondent's decision disqualifying the applicant to appear in any university examination for a period of three years and order for a proper disciplinary hearing to be conducted by the 1st respondent by according the applicant the right to be heard. Thereafter, the 1st respondent through its relevant organs shall make a decision as it deems fit. In the event the University maintains its previous decision, time should start to run from the date the previous decision was made. Considering the fact that the review has partly succeeded, I make no orders as to costs.

Dated at Mbeya this 25th day of May 2022.

L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 25th day of May 2022 in the presence of Mr. Stanslaus Michael, learned counsel for the applicant.

L. M. MONGELLA

JUDGE