

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MBEYA SU-REGISTRY)
AT MBEYA
MISC. CIVIL CAUSE NO. 3 OF 2023
IN THE MATTER OF APPLICATION FOR ORDERS OF CERTIORARI
AND MANDAMUS
BETWEEN
HAKILI CHASSAMA..... APPLICANT

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

R U L I N G

Date of last order: 05/10/2023

Date of Ruling: 05/01/2024

NDUNGURU, J.

This is an application for the orders of certiorari and mandamus. The application has been brought by way of a chamber summons lodged under the provisions of 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), Rule 5 (1) and Rule 8 (1) (a) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014.

The application is supported by an affidavit of the applicant herself, together with the statement. In the statement, the reliefs sought are two:

- 1. An order of certiorari: To quash and set aside the decision of the 1st respondent which nullified the applicant's diploma certificate in Civil Engineering as it was published on the University's Notice Board and in the Daily Newspaper.*
- 2. An order of mandamus: To compel and direct the 1st respondent to award the applicant a certificate of diploma in Civil Engineering.*

The grounds upon which those reliefs are based are also as follows:

- 1. That, the 1st respondent failed to issue in time, a notice of allegations facing the applicant, hence she was denied the right to defend herself.*

2. That, the 1st respondent failed to investigate properly on the matter then come up with unreasonable findings.

By way of background based on the pleadings lodged by the parties herein. The applicant, Hakili Chassama was a candidate at the Mbeya University of Science and Technology, pursuing a diploma course in Civil Engineering with Registration Number 201642081. During the academic year of 2019/2020, the applicant like other candidates resat for supplementary examinations and successfully passed the said examinations and completed a diploma course in Civil Engineering. On 18th day of December 2020, she was awarded a diploma certificate in Civil Engineering by the 1st respondent.

Thereafter, on 21st day of December 2020, the 1st respondent through the Student Information Management System (SIMS) discovered that the results of supplementary examinations (including the applicant's result) were changed without the permission of the instructor. Then, the 1st respondent uploaded the correct original marks of UE/ODC/19/3122 and UE/ODC/19/3625, as a result the applicant got supplementary. Then, the 1st respondent nullified the diploma certificate in Civil Engineering No. 0008470, hence the applicant was required to sit for supplementary

examination. Meanwhile 1strespondent initiated the disciplinary proceedings against the applicant by served her with the notice to show cause together with the charge. On 14th day of November 2021, one day before a disciplinary hearing the applicant received a call from the 1strespondent's staff requiring her to collect a letter dated 10th day of November 2021, which notified her to attend the Student Disciplinary Committee hearing on 15th day of November 2021 and 16th day of November 2021 around 09:00 am at MUST old library in Mbeya Region while she was at Kibondo District in Kigoma Region nursing her mother who was sick.

The record also revealed that, on 15th day of November 2021, the 1strespondent through the Student Disciplinary Committee conducted the disciplinary hearing in absence of the applicant, whereby the committee gave two recommendation including uploading the correct original marks in the system, then the disciplinary hearing was adjourned to 16th day of November 2021, but the record is silent if the disciplinary hearing proceeded on 16th day of November 2021. Moreover, the record reveals that, in June 2022, the 1strespondent issued the public notice nullifying the applicant's diploma certificate in Civil Engineering. Then, the applicant

appealed to the appellate body whereby the appeal was dismissed for lack of support evidence, hence this application.

When the application was called on for hearing, Mr. Stanslaus Michael, learned advocate appeared for the applicant whereas Ms. Edina Mwamlima, State Attorney appeared for the respondents. Upon request of the parties, the Court allowed the application be argued by way of written submissions. The Parties complied with filing schedule.

Submitting in support of the application, Mr. Stanslaus commenced his submissions by adopting the contents of the applicant's affidavit and statement to form part of his submissions. He went on explaining the first ground of the application by arguing that the applicant was not afforded the right to be heard. His reason for submitting so was that the letter dated 10th day of November 2021, did not reach the applicant due to the fact that the said letter is address did not belong to the applicant.

He also argued that, the applicant was condemned on mere allegations of forging or falsifying a document or perpetrating forgery with intent to cause loss to any person, university or any other institution whether in cash or otherwise. He sought reliance from the cases of **Ally Linus & others v Tanzania Harbours Authority & another** (1998)

TLR 4 and **Mbeya-Rukwa Auto parts & Transport Limited v Jestina George Mwakyoma** (2003) TLR 251, which discussed the requirement of adherence of the principle of right to be heard. He further contended that, the applicant has no such knowledge to change her results to the system.

In relation to the second ground of application, Mr. Stanslaus submitted that, the 1strespondent failed to respect the requirements of natural justice. He also argued that, the 1strespondent reached into irrational and unreasonable decision by nullifying the applicant's certificate in Civil Engineering without giving her an opportunity to answer her charge. He further prayed to quash the irrational decision, set aside such decision and compel and direct the 1strespondent to award the applicant a diploma certificate in Civil Engineering. In conclusion, he prayed the Court that the application be granted with costs.

In response to the grievance that the applicant was not afforded the right to be heard, Ms. Mwamlima submitted that the applicant was afforded the right to be heard since she was properly served with the letter dated 10th day of November 2021, which required her to attend the disciplinary hearing on 15th day of November 2021 and 16th day of November 2021. She added that, the 1strespondent made a call to insist the applicant to

collect the letter dated 10th day of November 2021, and attend the disciplinary hearing. The counsel for the respondents distinguished the case of **Mbeya-Rukwa Auto parts & Transport Limited** (supra), because in the instant case, the applicant was afforded the right to be heard but she did not appear before the committee.

Ms. Mwamlima, in reply the second ground of the application forcefully argued that, the applicant never pleaded if she informed the 1strespondent that she was at Kibondo District. She cited the case of **Said Sultan Ngalema v Isack Boaz Ngwinawishi & 4 others**, Civil Application No. 362/17 of 2021, CAT at DSM (unreported) to the effect that the statement of fact from the bar is not evidence and therefore the Court cannot action it. She also submitted that, the 1strespondent's decision was not irrational and unreasonable because the applicant was served with the notice of hearing but she decided to sleep over her right.

She further contended that, this Court has no power to compel and direct the 1strespondent to award the applicant a diploma certificate in Civil Engineering rather it has power to quash the decision of the 1strespondent and direct to follow the proper procedures as required by the law. To justify her proposition, she referred the Court to the number of cases

including **Dr. Jean Bosco Ngendahimana v The University of Dar es Salaam**, Civil Appeal No. 304 of 2017, CAT at DSM and **James G. Kusaga v Sebastian Kolowa Memorial University (Sekomu)**, Civil Appeal No. 73 of 2022, CAT at Tanga (both unreported). In the case of **James G. Kusaga** (supra), whereby the Court quashed the decision and the university was directed to follow the proper procedure, specifically the right to be heard. Finally, she prayed the Court to dismiss the application with costs.

In rejoinder, Mr. Stanslaus reiterated what was submitted in his submission in chief. He further distinguished the case of **Dr. Jean Bosco Ngendahimana** (supra), on the ground that the facts of that case are different to the case at hand. Finally, he implored the Court to find merits in his submissions and allow the application and the orders sought in chamber summons be granted with costs.

Having carefully scanned the written submissions filed by the learned counsel for the parties, pleadings and annexure thereto, there are two controversial issues which this Court is required to answer; One, whether or not the applicant was afforded the right to be heard and two, whether or not the 1st respondent's decision was irrational and unreasonable.

Before going to the merit of this application, I see it is very crucial to state that, the judicial review it is a tool that enable the judiciary to counter balance the exercise of powers of the administrative bodies and ensure that all that is done by various state bodies and public officials is within the parameters of the law and the constitution.

Turning to the merits of this application, I should begin my deliberation by answering the first issue as submitted by the counsel for the parties. In determining whether the 1st respondent had established on the balance of probability that the applicant was accorded the right to be heard but slept on her right. I wish to start by stating two legal principles. One, as per section 3 (2) (b) of the Evidence Act (Cap 6 R.E. 2019), the standard is on the balance of probabilities. Two, the right to be heard (*audi alteram partem*), is a fundamental principle the Courts of law guard jealously. In this country, natural justice is not merely a principle of common law it has become a fundamental constitutional right protected under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time. This position is well elaborated in a number of cases including **DPP v S.I. Tesha** (1992) TLR 237.

My scrutiny of the submissions of the parties made it is apparent that both parties are in agreement that the state bodies are required to exercise their powers in accordance to the parameters of the law and the constitution including the adherence of the principle of the right to be heard. At the outset, I wish to state that, in the instant case, there is no proof that the applicant was properly summoned to attend the disciplinary hearing on 15th day of November 2021 and 16th day of November 2021, before the Student Disciplinary Committee the dates mentioned in the letter dated 10th day of November 2021. I hold so because it is apparent on the record that, the letter allegedly to be communicated to the applicant it was directed to the address of P.O. BOX. 131 Mbeya which belonged to the other person and not the applicant. Indeed, the evidence on record reveal that, the said address belonged to the 1strespondent. Furthermore, the evidence on record reveal that, the proper address of the applicant is P.O. BOX. 106 Kibondo, of which even the 1strespondent used the same to communicate with the applicant when she wanted to serve the notice to show cause, charge and result of the appeal emanated from the decision of the appellate body to the applicant. In that regard, the applicant was right to say that she was not summoned to appear before the committee.

Comparing the applicant's version that she was not summoned to appear before the Student Disciplinary Committee for the hearing of her case outweighs the 1strespondent's account that the applicant was summoned vide letter as shown in the record. In the premises, I am of the view that, the letter dated 10th day of November 2021, did not prove that the applicant was summoned to appear for the hearing before the committee as alluded to by the counsel for the respondents. In addition to that, even the 1strespondent's call to the applicant one day before the hearing date cannot amount to be timely and sufficient notice for the applicant to attend disciplinary hearing against her. In the case of **Hemed Said v Mohamed Mbilu** (1984) TLR 113, the Court of Appeal of Tanzania observed that, the person whose weight of evidence is heavier must win.

In this application likewise, I find the applicant's story that was not summoned to appear before the committee and the said letter dated 10th day of November 2021 was not reached to her, is more credible than that of the 1strespondent that the applicant was summoned but absented herself and thus the committee proceed to hear the disciplinary case in absentia, and ultimately nullified her diploma certificate in Civil Engineering. In that regard, this issue is answered in affirmative. I

therefore find that, the first issue sufficiently disposes of the application, hence no need to embark on an academic exercise of determining the remaining issue.

In the upshot, I find merit in this application. Accordingly, I allow the application and hereby quash and set aside the 1strespondent's order nullifying the applicant's diploma certificate in Civil Engineering. Likewise, I quash all the proceedings and decision of the 1strespondent's appellate body. Further, the 1strespondent is ordered through its bodies; the Student Disciplinary Committee and Appellate body to afford the applicant a right to be heard before any decision is reached. Considering the nature of this application, I make no order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
05/01/2024