IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC CIVIL CAUSE NO. 3 OF 2015

(In the matter of an Application for orders of certiorari, mandamus and prohibition against the respondent

AND

In the matter of section 2(3) of the Judicature and Application of Laws Act, Cap 358 (RE: 2002) and section 17 (2) of the Law reform (Fatal Accidents and Misc. Provisions Act, Cap. 310 (RE. 2002)

AND

In the matter of challenging the resolution and decision by the Council of the University of Dodoma expelling the applicant from studies

BETWEEN

PHILIPO J. MWAKIBINGA ..... APPLICANT

VERSUS

THE UNIVERSTIY OF DODOMA.....RESPONDENT

RULING

22/8/2016 & 15/12/2016

A. MOHAMED, J.

Before me is an application for orders of certiorari, mandamus and prohibition filed under the provisions of section 2 (3) of the Judicature and Application of Laws Act [Cap 358 RE. 2002] and section 17 (2) of the Law Reform [Fatal Accidents and Miscellaneous Provisions) Act [Cap 310 RE 2002].

On 11/8/2016, the parties agreed to dispose of the application by way of written submissions according to the schedule set out by this court.

The brief background leading to this application is that applicant was a student of the University of Dodoma studying for a Bachelor of Arts degree majoring in Kiswahili and Linguistics. On 14/1/2015, he was arrested by the police following unrest at the University. He was given an expulsion letter the following day (Annexture MPA – 1) pursuant to a decision by the 2nd respondent made on 14/1/2015.

The applicant's 1st complaint is to the effect that the respondent has breached principles of natural justice by contravening section 2.1 of the University of Dodoma Students' By Laws (as amended in September 2012). He then enumerated elements of natural justice to include;

i. The right to be head
ii. Hearing to be by an impartial body
iii. The right to be informed of an offence
iv. The right to defend oneself
v. The right of appeal

He supported his argument with Article 13(16) (a) of the United Republic Constitution of 1977 (as amended from time to time) as well as the case of **Sadiki Athuman V. R [1986] TLR 235** where Samatta, J (as he was then) said;

(i) The requirement that a party to proceedings must be given the opportunity to state his views is a fundamental principle of natural justice.

(ii) Once an appeal is admitted to hearing, the appellant is, regardless of the chances of success of the said appeal, entitled to be heard against the judgment, decision or order he has appealed against and must be given the opportunity to exercise that right."

In view of the above observation, the applicant argued he was denied his right to be heard or be informed of the offence he was alleged to have committed on his arrest on 14/1/2015. This, he said, contravened section 78 of the Dodoma University Charter of 2007 ("hereinafter the Charter") that proscribes any disciplinary action to be taken unless a disciplinary charge has been laid against a student.

He went on to say section 50 of the Charter requires formal proceedings to be instituted against a student only after he or she has been served with formal charges. And further, investigations must precede the charges vide section 13 (1) (ii) of the University of Dodoma By Laws and section 47 of the Charter. He supported his argument with the case of **Simon Manyaki V. Executive Committee and Council of the Institute of Finance Management [1984] TLR 304**.

The applicant's 2nd complaint is to the effect that the respondent acted ultra vires. He pointed out that section 17 of the Charter

establishes the University Council as a governing body and the principal policy making organ of the University, but it has no disciplinary mandate. He argued the disciplinary authority is established vide section 46 (1) of the Charter comprising of the Deputy Vice Chancellor for Resource Management, the Dean of students, three members elected by student organizations and two members elected by the Senate. He concluded on this point by stressing the respondent has no mandate to deal with the matter and had acted ultra vires.

The applicant invited this court to consider the case of **Sanai Murumbe and Another Vs. Muhere Chacha [1990] TLR 54** where the Court of Appeal held that the High Court can investigate lower courts, tribunals or public authorities' decisions on a number of grounds including the violation of rules of natural justice and the illegality of procedure and decisions.

Finally the applicant urged this court to allow his application as the respondent failed to adhere to rules of natural justice in dealing with him.

In resisting the application, the respondent maintained that the application is misconceived and is improperly before this court as it has been filed against respondents different from those whose leave was granted for prerogative orders to wit the Vice Chancellor of the University of Dodoma, the Chairman of the Council of the University of Dodoma and the Attorney General of the United Republic of Tanzania. He therefore argued, the applicant cannot proceed

without leave of the court in an application against a different respondent from whom leave of the court was granted. This, he argued, is a requirement under section 181 (1) of Cap 310 and Rule 5(1) of the Law Reform (Fatal Accidents Miscellaneous Amendment Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. He also referred to the case of **the Republic Ex–Parte Peter Shirima Vs. Kamati ya Ulinzi na Usalama, Wilaya ya Singida, the Regional Commissioner and the Attorney General [1983] TLR 375 (HC)** where it was held;

> ***"The practice of seeking leave to apply for prerogative orders has become part of our procedural law by reason of long use."***

The respondent further brought to the attention of this court the fact that the applicant had incited a similar unrest in 2013. But that he was lenient on him by allowing him to continue his studies on condition he did not repeat his act. And that the applicant had sworn an affidavit stating he would not engage in any act contrary to the students' By Laws in the future. Nevertheless, the respondent submitted that he was willing to summon the applicant to the Disciplinary Committee if this court deems it fit to order so.

In reply to the allegation of breaching principles of natural justice, the respondent argued it expelled the applicant for being the ring leader of a student unrest in activities that could disrupt peace and stability and hinder the University to smoothly run its core

missions. He relied on **Conrad Berge vs. Registrar of Cooperatives [1998] TLR 22** in support of his argument. The Court had said;

> ***"In an organized human society the rights of the community take precedence over the rights of the individual member, and this is more so where the rights of the individual derive from the abstract legality bereft of tangible benefits."***

In regard to the applicant's claim that his acts were ultra *vires*, the respondent submitted that the decision to expel the applicant was made under Article 4 (6) (e) of the Charter that confers the Council with powers to maintain peace to enable the University to meet its core objectives. And therefore, he argued, the decision was in accordance with the basic laws by the respondent's highest organ. He went on to argue that the decision followed due diligence, was both rational and reasonable and in line with **Provincial Picture houses Ltd Vs. Wednesbury Corp [1919] 1 KB 176** where the court held that;

> ***"A court would interfere with a decision that was so unreasonable that no reasonable authority could ever have done it. Irrationality refers to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it."***

Lastly, the respondent submitted that before granting prerogative orders, courts should consider a number of factors including the applicant's conduct. In this case he was a known ring leader and had a history of committing similar disciplinary offences and was expelled from studies in 2013. The respondent argued, the applicant has failed to learn his lesson. He then urged this court to consider **Conrad Berage Vs. Registrar of Cooperatives [1998] TLR** where the court said;

> ***"Although a decision made without jurisdiction or in breach of natural justice is void, it does not follow that certiorari shall issue to quash it; in deciding whether to issue certiorari or not, the court will consider a number of factors including the conduct of the applicant, the possibility of implementing the decision, whether any useful purpose will be served by it, and even the practical consequences of the order."***

Finally, the respondent submitted that the University of Dodoma Councils decision to expel the applicant was done in the heat to prevent a breach of the peace, unrest and student boycotts within the University in accordance with Article 4 (6) (e) of the Charter.

After hearing the parties' respective contentions, I find that there are two questions for this court's consideration. The 1st is whether the respondent failed to observe rules of natural justice before expelling the applicant and the 2nd is whether the respondent's decision was ultra vires.

I will deal with the 1st question, that the respondent breached principles of natural justice in making his decision. I state from the outset that I am in complete agreement with the applicant that indeed, the respondent breached the applicant's right to be heard as it is clear he was afforded none. After his arrest on 4/1/2015 by the police, the applicant was not formally charged nor did the respondent appoint an impartial tribunal to conduct any proceedings where the applicant could have had been heard. As was admitted by the respondent in his submissions, and I quote him;

> ***"... it is the respondent's submission that the decision of the Council of the University of Dodoma was done with the heat (sic) of the necessity to prevent a breach of the peace, unrest and student boycotts within the University and in accordance to Article 4 (b) (e) of the University of Dodoma Charter, 2007."***

I do agree with the powers of the Council vide the above cited Article. However the said power does not confer the Council any power to expel a student without following the students' by Laws that categorically require a student to be charged and be heard by the formal disciplinary authority stipulated under Article 46 (1) of the Charter. Article 78 of the Charter requires a formal disciplinary charge to be laid against an officer or student and he has to be afforded opportunity to be heard. Article 50 (1) of the same provides for formal proceedings to be held in respect of a disciplinary offence.

It is clear the respondent contravened the above requirements before making his decision. I am of the opinion, even if the applicant was a notorious offender, the law requires that he has to be afforded an opportunity to be charged and be heard in defense before a decision is reached to expel him. It is also clear, even if his case was hopeless; nonetheless he has the right to be heard before the respondent passed any decision against him.

I need not need belabor on the 2nd question of whether the respondent's decision was made ultra-vires the University's By Law as the 1st question suffices to dispose of the application.

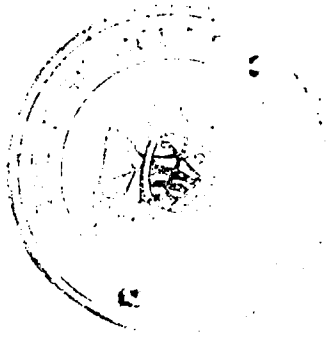
However before parting with the above discussion, I should note in the words of **Lord Atkin LJ** in **Republic Vs. Electricity Joint Committee Co. (1920) Ltd [1924] I KB 17** at 206 where he said;

> ***"I can see no difference between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction."***

Bearing the above proposition in mind, I am of the view the order of prohibition sought by the applicant cannot be invoked at this stage as the impugned decision had already been made by the respondent.

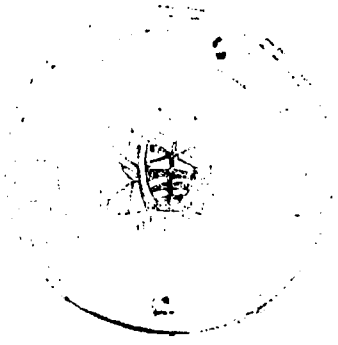
I accordingly issue the order of certiorari to quash the respondent's decision to expel the applicant from the University of Dodoma and issue the order of mandamus to re-admit the applicant to the University to complete his studies with costs.

It is so ordered.



A. MOHAMED
JUDGE
15/12/2016

The right of appeal to the Court of Appeal of Tanzania explained.



A. MOHAMED
JUDGE
15/12/2016