THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 272 OF 2022

ATABUA LETIA SHAMIL :: APPLICANT

VERSUS

1. **CAVENDISH UNIVERSITY UGANDA LTD (CUU)**
2. **OKOPA MICHEAL :: RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this suit by Notice of Motion under Section 36 of the Judicature Act and Rules 6 and 8 of the Judicature (Judicial Review) Rules, seeking for orders that;

a) A prerogative order of certiorari be granted quashing the respondent's decision to indefinitely suspend the applicant without granting him a fair hearing.

b) An order for interim injunction restraining the respondent from indefinitely suspending the applicant until the disposal of the main application for judicial review.

c) An order for damages for inconveniences and loss suffered by the applicant.

d) Costs of the application be provided for by the respondent.

The grounds supporting this application are contained in the affidavit of Atabua Letia Shamil; the applicant attached to the application which briefly state that;

a) The applicant is a student of the 1st respondent and has for prolonged periods of time raised several complaints about the lecturers' discriminatory conduct without redress.

b) Without giving the applicant a fair hearing or any hearing for that matter, the 2nd respondent in a letter dated 5th October, 2022 indefinitely suspended that applicant.

c) The applicant's indefinite suspension issued by the respondent was illegal, irrational and contravened the university regulations embedded in the student's handbook and all national laws.

d) That the orders prayed for are necessary for the dispensation of justice.

The respondents filed an affidavit in reply deponed by David Mutabanura, opposing this application wherein it was indicated that the respondents shall preliminary objections that; the application is time barred, raises no cause of action against the 2nd respondent, raises no decision by the respondents to challenge by way of judicial review initiated by the applicant, is premature and that the respondents are both private persons that cannot be subjected to judicial review proceedings.

The respondents contended that the applicant was enrolled as a student with the 1st respondent at the faculty of law where he was admitted on an LLB course leading to the award of bachelor of laws degree. While pursuing the course, the applicant had challenges with meeting some of the academic requirements and was required to re-sit some course units after not performing satisfactorily. In addition to his poor performance, the applicant also misconducted himself on several occasions and sent offensive emails to the 1st respondent's staff laced with extremely foul language bringing disrepute.

The respondents contend that on the 5th October, 2022, the 1st respondent suspended the applicant on account of his offensive emails with the objective to give him an opportunity to reflect on his misconduct, reform and attend a hearing

before the disciplinary committee to ascertain the reasons for his misconduct. While on suspension, the applicant issued a notice of intention to sue the 1st respondent who responded to the letter and assured the applicant that he was to be invited for a hearing before a final decision is taken.

The applicant represented himself whereas the respondent was represented by Mr. Walukagga Isaac.

The applicant proposed the following issues for determination by this court.

1. ***Whether the applicant is entitled to the reliefs sought under judicial review.***
2. ***What remedies are available to the parties?***

Both the applicant and respondents raised several preliminary objections for determination by this court that I believe shall be resolved concurrently. The parties were ordered to file written submissions which was accordingly done.

Determination

Whether the applicant is entitled to the reliefs sought under judicial review.

The applicant submitted that the 2nd respondent constituted himself into a judge, jury and executioner created his own evidence, convicted him and the filed an appeal on his behalf. He further submitted that had the respondents carried out an investigations prior, then there was no way the applicant could have killed a one Susan Alweny. The applicant stated that the respondent went ahead in the letter dated 27th January, 2023 to organize a dryfus affair wherein they insisted that he murdered a one Susan Alweny.

The applicant also submitted that the respondents are tasked with the responsibility to maintain high standards of professionalism and a higher burden to observe the rule of law. He submitted that the 2nd respondent in a letter dated 5th October, 2022 indefinitely suspended him from the university in which letter the former made assertions of the applicant being a criminal and murderer and thereby convicted him without any disciplinary hearing. The applicant submitted

that the 2nd respondent redrafted the contents of student hand book to create an offensive and profane language.

He submitted that judicial review is concerned with the process of arriving at an administrative decision by a statutory body. He relied on the book; Administrative Action by Hilary Delony Maxwell which states that judicial review involves an assessment of the manner in which a decision is made and jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality. The applicant while relying on Pastoli vs Kabale District Local Government Council and Ors [2008] 2 EA noted that proof of any of the grounds is sufficient for the application to succeed.

The applicant submitted that failure to implement the student handbook and subjecting a student before subjecting him to a disciplinary hearing proves breach of law and an illegality. He stated that the suspension until further notice pending disciplinary discussion was designed to confuse and deceive the public and intended to commit fraud as defined in the case of Fredrick Zaabwe vs Orient Bank & Ors SCCA No. 4 of 2006. He stated that it is trite law that the judicial review extends to the decision itself where the administrative body has made an unreasonable decision.

In regards to irrationality, the applicant submitted that the use and reclassification of the student hand book to create non-existence offence by the respondents amounted to such. He stated that the letters issued by the 2nd respondent are fake and forged illegal documents. He further submitted that the respondents' affidavit is full of lies and should be struck out.

For the respondent, counsel submitted that the 1st respondent is a private university sued and operating as a private limited liability entity while the 2nd respondent is a private individual sued in the same capacity by the applicant. He stated that it is not in dispute that both the 1st and 2nd respondents are not public entities and while relying on the case of Anny Katabazi- Bwengye v Uganda

Christian University Misc. Cause No. 268 of 2017 (Unreported), noted that court held that judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Therein, the court stated that its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.

He submitted that in the instant case, the applicant seeks to quash his suspension from the university which is a personal and private law right that is disguised as a public law right. He therefore submitted that the applicant has no legal basis to invoke the powers of Court by way of judicial review proceedings as the applicant's grievance in any event is a private law claim that can be enforced by way of an ordinary suit. Counsel further stated that the 2nd respondent is an individual and employee of the 1st respondent and has no public duty rendered to the applicant to trigger judicial review proceedings against him. He therefore prayed that court dismissed the application with costs.

Counsel relied on Dr. Lam Lagoro James vs Muni University Misc. Civil Cause No. 0007 of 2016 (unreported) to submit that it is trite law that judicial review is a process by which administrative or quasi-judicial functions are challenged on grounds of irrationality, illegality or procedural impropriety. He stated that the applicant sent out abusive emails to the 1st Respondent's staff and was warned and later suspended after he escalated the same habit of insulting staff of the 1st respondent. Pursuant to paragraph 3 (vii) of the respondents' affidavit, the applicant while on suspension issued a notice of intention to sue the 1st Respondent to which the latter responded and informed the Applicant that he would be invited for a hearing so that a final decision is made.

Counsel submitted that illegality occurs where the decision making authority commits an error of law in the process of making the decision or act that is the subject of the complaint. While relying on the case of Master Links Uganda Limited & Anor vs Attorney General Misc. Cause No. 167 of 2022, counsel defined procedural impropriety as the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who shall be affected by

the decision and irrationality usually refers to arriving at a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided would have arrives at the same decision. He stated that on the basis of the foul language used by the applicant in the emails, the 1st Respondent was justified to suspend the applicant to ensure that his misconduct is investigated and a decision is made after due process. This action was not illegal, irrational or devoid of procedural propriety and neither was it ultra vires.

It was further submitted for the respondent that judicial Review is concerned with the decision-making process and that the applicant's suspension was an interim measure of which he was duly informed of this measure. Counsel argued that the 1st respondent was yet to pronounce itself on whether to discontinue the Applicant from the University or caution him. He further noted that the applicant was invited as conceded in his Affidavit for hearing which he shunned and elected to file this Application.

Counsel therefore submitted that in this case, there is no decision to impugned by way of judicial review. The Applicant's Application was premature as the 1st respondent had not made any decision by the time this application was filed. In the absence of a decision-making process that would be interrogated by Court, the application is unfounded and we pray that it fails on this account.

Analysis

The applicant challenges the respondents' actions for procedural impropriety, irrationality and illegality for failure to conduct a disciplinary hearing before his suspension.

In Uganda, the principles governing Judicial Review are well settled. ***Rule 3 of the Judicature (Judicial Review) Amendment Rules***, 2009 defines judicial review as the process by which the High court exercises jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry

out quasi-judicial functions or who are charged with the performance of public acts and duties.

Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall.

The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc. Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc. Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc. Cause No.61 of 2016.***

For one to succeed under Judicial Review it is trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety. A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: ***ACP Bakaleke Siraji v Attorney General, HCMC No. 212 of 2018, Council of Civil Service Unions vs Minister for the Civil Service (1985) AC 375, Mugabi Edward v. Kampala District Land Board & Wilson Kashaya, Misc. Cause No. 18 of 2012, Twinomuhangi vs Kabale District & Others (2006) HCB Vol. 1 page 130***

In the circumstances before this court, the applicant was issued with a suspension for his breach of the 1st respondent's policies which included use of foul language and issuance of threats to the 1st respondent's officials and staff. The respondent

contended that this was to ensure the safety and security of the members of the university as well as a conducive teaching environment. The 1st respondent further informed the applicant that he would be invited before the disciplinary committee for further discussion on the matter on a date to be communicated. It is the applicant's submission that the respondent's violated his right to fair hearing.

I disagree with the applicant's submission on the violation of his right to a fair hearing in the circumstances. It is uncontested by the applicant that he was informed by the 1st respondent that he would be invited for a disciplinary hearing. Thus, it is clear that the respondent had not made an administrative decision on the applicant's alleged misconduct but rather it was preserving and trying to protect the University staff who were under verbal attacks and insults by the applicant.

Article 42 of the Constitution provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her. In working out what is fair the courts are wary of over-judicialising administrative process. They recognize that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures of such court.

The 1st respondent's actions of informing the applicant of the disciplinary hearing was procedurally sufficient to constitute an opportunity to be heard or a hearing of the applicant in the circumstances of the present case. This court in the case of ***Natukunda Tracy Bamanya vs St. Peter's Senior Secondary School Naalya Limited Misc. Cause No.178 of 2022*** while citing the case of ***Kenya Revenue Authority vs Menginya Salim Murgani; Civil Appeal No. 108 of 2009*** noted that there is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task, it is for them to decide how they will proceed.

The court should look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to a question of whether a decision properly taken would have been any different or would have benefited the applicant. It is clear that the 1st respondent informed the applicant of his right to a fair hearing upon suspension and reasons why he could not be heard until the date to be communicated. Despite this, the applicant chose to defer the opportunity to be heard and instead filed this application for judicial review.

The requirement fairness and to follow rules of natural justice must be tailored in a manner that has regard to all circumstances of each case or particular circumstances and varies according to the context. Therefore, what fairness requires is "essentially an intuitive judgment". In order to ascertain what must be done to comply with the principles of natural justice in a particular case, the starting point is the statute creating the power. See: ***Kioa v Minister if Immigration and Ethnic Affairs (1985) 65 ALR 231. Sheridan v Stanley Cole (Wainfleet) Ltd [2003] EWCA Civ 1046 [2003] 4 All ER 1181; Principal Reporter v K [2011] 1 WLR 18; R (on application of Shoesmith) v Ofsted [2011] EWCA Civ 642; R v Secretary of State for Home Department, ex parte Doody [1993] 3 All ER 92.***

As has been held by this court in the case of ***Natukunda Tracy Bamanya vs St. Peter's Senior Secondary School Naalya Limited*** (supra), in cases involving indiscipline of students at any learning institution or school, it is only fair that the student is first suspended as the school constitutes a disciplinary hearing. It cannot be a wise idea for the institution to continue hosting such a suspected indiscipline case among the rest of the school community. What the applicant is demanding from the respondent i.e to be heard or follow rules of nature justice which has to be appreciated in the circumstances of the case and the nature of the decision that was made.

In the celebrated case ***of Maneka Gandhi v Union of India [1978] 1 SCC 248*** court noted; "The rules of natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a greater extent on the facts and circumstances of that case, framework of the law under which the

enquiry is held and constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court must decide whether the observance of that rule was necessary for a just decision on the facts of the case." This court accepts that fairness is variable concept and fairness is not something that can be reduced to a one-size-fit all formula.

The circumstances of the present case did not require the applicant being given a hearing before being indefinitely suspended since the University has a wider duty to protect the rest of the students and the University community at large. This was a temporary corrective action as the investigations were being concluded by the administration or management of the 1st respondent. Therefore, no hearing would have been expected in such circumstances before the conclusion of the investigations. The pre-decisional stage should not be made after a hearing and it is only in exceptional circumstances that it can be considered.

The right to a hearing may be excluded if prompt action needs to be taken by administration in the interest of public safety, public health, or public morality, or broadly in public interest. The reason is that hearing may delay administrative action, defeating the very purpose of taking action in the specific situation. The applicant was justifiably suspended indefinitely without a hearing due to the nature of the alleged offences of breaching the 1st respondent's rules and regulations and his continued verbal attacks and insults or use of foul language or offensive & vulgar language to fellow students and University staff.

The actions of the applicant did not only constitute a breach of university rules and regulations but it is also a criminal offence under the Computer Misuse Act. The University management needed to protect the rest of the students from the applicant in the interest of broader public interest to the University community promptly since the applicant had become a nuisance and created a toxic university environment with the several abuses and insults to fellow students and university staff.

Therefore, the pre-decisional stage before the disciplinary hearing should require a short measure of addressing the problematic situation adjusted, attuned and tailored to the exigency of the situation. The question (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the urgency, if any, evident from the facts and circumstances of the particular case. When it is viewed pragmatically, the intended hearing as demanded by the applicant, would paralyse the administrative or disciplinary processes or frustrate the need for utmost promptitude of addressing the problem created by the applicant of a toxic work or university environment for everybody.

The court is alive to the fact that the applicant was to appear before the disciplinary committee or body of the University to answer any charges levelled against him at a later date. Any disciplinary action has an adverse impact on the career of the student concerned, courts have of course taken the view that before the concerned authority takes a disciplinary decision against such a student to be expelled from the school or the University or their university examination is cancelled, they ought to be accorded a hearing. The disciplinary hearing should not be a mere formality but rather it should be thoroughly investigated to enable the student make meaningful response to the allegations. This will only happen after a process of investigations is concluded in order to form an opinion of whether to summon the student to appear for disciplinary or not. The decision of the disciplinary committee to expel a student from school or university could blast the entire career of the student for life and place a serious stigma on him or her which might damage him/her in their later life. See ***Bhupesh Gupta v Himachal Pradesh [1990] AIR 56***

Be that as it may, it is important to note that **Rule 7A (b) of the Judicature (Judicial Review) (Amendment) Rules** that provides that the court must satisfy itself in considering an application for judicial review that the aggrieved person has exhausted all existing remedies available within the public body and under the law See: ***Magezi vs Commissioner Land Registration Misc. Cause No. 172 of 2017, Leads Insurance Limited vs Insurance Regulatory Authority & Another, CACA 270 No. 237 of 2015.*** From the evidence on the court record, it is clear that the

applicant did not exhaust all the available remedies which included the disciplinary hearing that was to be held by the 1st respondent. This application was therefore brought prematurely as the 1st respondent had not made a decision on the matters concerning the applicant and as such, there was no decision making process for this court to examine under the tenets of judicial review. As has been held by this court on many occasions, judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. I am not convinced that the 1st respondent had made a decision over the matters of the applicant since there was a pending disciplinary hearing for the opportunity for the applicant to be heard.

This court notes that the applicant dragged some senior judicial officers in his case and to some extent defamed them which is unacceptable. In the same vein, he used abusive language or derogatory language against the respondents and their counsel in his submissions which this court found to be very derogatory and was advised to have the same removed. The acts of the applicant scandalize court and is an affront on the integrity of court or court decorum. The applicant is directed to stop abusing court process in all his other matters pending before court since the court process is not an avenue of defaming, insulting or abusing fellow litigants or judicial officers.

Therefore, this application stands dismissed with costs.

I so order.

SSEKAANA MUSA
JUDGE
12th January 2024