



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 10 OF 2015

JUMA CHARLES AUMAAPPLICANT

VERSUS

MASENO UNIVERSITYRESPONDENT

J U D G M E N T

The *ex- parte*' applicant filed a Judicial Review application via Notice of Motion dated 22nd October 2015 seeking an order of certiorari to bring to the High Court the decision of Maseno University, the respondent herein , communicated via a letter dated 25th June 2015 expelling the applicant from the said University for purposes of it being quashed.

EX-PARTE APPLICANTS' CASE

The Motion is premised on the grounds set out in the statutory statement filed herein on 22nd October 2015 and applicant's supporting affidavit sworn on the same day. According to the applicant, he was a student at Maseno University and the president of the Students Organisation of Maseno University(SOMU). On 15th May, 2015 he received a letter from the respondent stating that he had been suspended from the University indefinitely. It is his contention that the letter took him by surprise as he had done nothing wrong.

On 5th June, 2015 he appeared before the University's disciplinary committee where the charges levelled against him were read out to him. He contended that he was not allowed a chance to be heard and neither was he allowed a chance to call any witnesses. The applicant contended further that the committee quorum was improper as some of the members had conflict of interest and they were thus biased. That the procedures to be followed in disciplinary cases as set out in the students handbook and more specifically rules 17.4, 17.5 and 17.5.7.1 were not adhered to thus prejudicing the applicants case. That the resultant expulsion was thus unfair considering that he was a fourth year student and was left with only one semester before completion of his studies. The applicant contended further that he appealed against the decision of the disciplinary committee and his appeal was dismissed. He urged this court to grant his prayers .

RESPONDENT'S CASE

In opposition to the application, the respondent filed an affidavit sworn by Professor Joseph S. Chacha, the Acting Vice Chancellor of the Respondent herein on 16th November, 2015. Prof. Chacha deposed that it was true that the ex-parte applicant was expelled from the University but that no procedure was flouted. He deposed that the Maseno University Students handbook provides for the procedure to be followed when enforcing disciplinary actions against students and the procedure was duly followed. He stated that the applicant was invited to appear before the disciplinary committee and was even allowed a chance to

call witnesses. Further that the applicant was also allowed a chance to file an appeal and he therefore should have raised the issue of biasness in the appeal.

PARTIES' SUBMISSIONS

Parties opted to file written submissions. In summary Mr. Amondi counsel for the applicant submitted that expulsion of the applicant was irrational, unfair and illegal as the right procedure was not followed. That there were no investigations carried out by the respondent herein and the applicant was not allowed a chance to defend himself. Counsel was of the view that the expulsion was a denial of a dream and a future which the applicant had worked hard for. He submitted that the disciplinary committee's decision was marred with illegality as some of the members of the committee had personal vendetta with the applicant and as such they could not have arrived at a fair decision.

Counsel submitted further that the applicant's constitutional right to a fair administrative action guaranteed under Article 47 of the Constitution was thwarted and that is the more reason why the application should be allowed.

The respondent also filed written submissions. It was submitted for the respondent that the applicant was allowed an opportunity to be heard. That a letter was written to him inviting him to make a statement and he was also allowed to call witnesses in support of his case. It was submitted further that at the hearing, the procedure laid out in the Maseno University Statutes were followed to the letter and the applicant has failed to show how procedure was flouted.

ANALYSIS AND DETERMINATION

In addressing the issues set out above, it is important to bear in mind the principles applicable to a matter such as is currently before the court and by which the Court should be guided. In the case of **KAMANI VS. KENYA ANTI-CORRUPTION COMMISSION [2007] 1 EA 112**: the court expressed itself on issue of the scope of Judicial Review as follows:

“The remedy of judicial review is concerned with the reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the Judiciary or individual Judges for that of the authority constituted by law to decide the matters in question....”

The Court concluded thus:

The mandate of the Court is to ascertain if the implied duty to act fairly has not been discharged and if the implied duty to act fairly has not been discharged the court would have the power to quash the decision so that [the authority] can make it again in accordance with the law. The Court cannot, however substitute its own decision and impose its own conditions, as this would be a usurpation by the Court of the power clearly vested in [the authority]. Similarly, [the authority's] decision and conditions can be attacked on being unreasonable or that irrelevant considerations taken into account or relevant considerations having been ignored.”

In **PASTOLI VS. KABALE DISTRICT LOCAL GOVERNMENT COUNCIL AND OTHERS [2008] 2 EA 300** the Court held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety ...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public

servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

In the present case, the applicant alleges that he was not allowed a chance to be heard. He also claims that some of the committee members were biased and could therefore not have arrived at an impartial decision. On the other hand it is the respondent's case that the applicant was heard. He was invited to make his statement and during the hearing he was allowed a chance to call witnesses. The respondent has annexed the letter inviting the applicant to make his statement. The respondent further avers that the proceedings were carried out according to procedure set out in the respondent's statute. That the applicant had a chance of raising the issue of biasness during the initial committee hearing and on appeal but he did not.

The applicant has not disputed the respondent's allegations. He has also not demonstrated that he presented his witnesses and the committee refused to hear them. All the applicant has done is to make allegations. The applicant had another chance of making out his case on appeal but it was dismissed. It is also not demonstrated that the applicant raised the issue of biasness and the committee failed to act on it. It is therefore my finding that this court cannot be an alternative forum to run to when all the other avenues have failed and allegations alone cannot make a case. It is not the place of this court to interfere with the disciplinary process as outlined in the respondent's statutes.

J.G Nyamu in **REPUBLIC V VICE CHANCELLOR JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY [2008]** eKLR while quoting from **the Supreme Court Commentary on Judicial Review** stated as follows:

"...The function of the Court is to see that lawful authority is not abused by unfair treatment. If the Court were to attempt itself the task entrusted to that authority by the law the court would under the guise of preventing the abuse of power be guilty itself of usurping power. Lord Bringman in Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155 P 1173."

From the above analysis I think I have stated sufficiently to show that the application is unmeritorious the same is dismissed with costs.

Dated, signed and delivered this 18th day of May 2016

H. K. CHEMITEI

J U D G E