REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 105 of 2014

REPUBLIC.....APPLICANT

VERSUS

COUNCIL OF LEGAL EDUCATION.....1ST RESPONDENT

ATTORNEY GENERAL .....2ND RESPONDENT

EX-PARTE

UGANDA PENTECOSTAL UNIVERSITY

JUDGEMENT

The ex-parte Applicant, Uganda Pentecostal University is a private university established under the laws of Uganda. The 1st Respondent, the Council of Legal Education is a body corporate established under the Legal Education Act No.27 of 2012, Laws of Kenya and one of its functions is to equate legal education standards of foreign universities to local standards. The 2nd Respondent is the Attorney General of the Republic of Kenya and is the legal advisor to the government and government agencies.

Through the notice of motion application dated 18th March, 2014 and filed on 21st March, 2010 the Applicant prays for:

> **"1. AN ORDER OF CERTIORARI to remove into this Honourable Court for purposes of the same being quashed the decisions of the 1st Respondent contained in a letter dated 18.9.2013, suspending the recognition of the Applicant's Bachelor of Laws Degree programme.**
>
> **2. An order of prohibition, prohibiting the 1st Respondent from non-recognition of Applicant's Bachelor of Laws Degree in Kenya.**
>
> **3. THAT costs of this application be provided for."**

The application is supported by the statutory statement and the verifying affidavit of the Applicant's Vice-Chancellor Mr John Ntambirweki filed together with the chamber summons application for leave.

The Applicant's case is that it is a private education provider offering a Bachelor of Laws degree

programme among other courses. It does so with the authorization of and recognition by the legal education regulator, the Law Council of Uganda.

On 24th January, 2013 the 1st Respondent's Quality Assurance Compliance and Accreditation Committee (the Committee) visited the Applicant institution and carried out investigations. The Applicant asserts that the "partial investigation" lasted twenty minutes. Out of the investigations the Committee generated a report dated 19th August, 2013 titled **"Report of the Benchmarking Visit – Legal Education Providers of the Uganda Pentecostal University by the CLE Secretariat carried out at Uganda Pentecostal University on 24.1.2013."**

The Applicant claims that it was neither notified of the said report nor the decision contained in a letter dated 18th September, 2013 until sometimes in late January, 2014, when the Applicant came to know of the same from its former students whose admissions to the Kenya School of Law had been revoked on the strength of the report and the decision contained in the letter.

On 26th January, 2014, the Applicant through its Vice-Chancellor wrote to the Director of the Kenya School of Law/Chief Executive Secretary of the Council of Legal Education enquiring about the refusal to admit its students to the bar course for the year 2014. The 1st Respondent replied through a letter dated 26th January, 2014 and posted through the ordinary mail of 12th February, 2014. It gave the reasons for the decision and enclosed photocopies of the report dated 19th August, 2013 and the letter dated 18th September, 2013. It was claimed that the report was sent to the Applicant through G4S courier services on 24th October, 2013 with the consignee being Prof Fredrick Ssempebwa, Law Council of Uganda, Kampala but with no details of delivery to the Applicant from the purported courier services provider.

Firstly, the Applicant contends that the decision of the 1st Respondent to suspend the recognition of its Bachelor of Laws programme as conveyed in the letter dated 18th September, 2013 was arrived at without observing the principles of natural justice in that it was not notified of the findings of the Committee and the decision to suspend recognition of its Bachelor of Laws programme. Further, the Applicant asserts that it was not given sufficient or reasonable notice of the proceedings that led to the suspension of its law programme. The Applicant asserts that it was not given a fair opportunity to present its case to enable it correct or contradict the findings of the Committee. It is the Applicant's case that it was not shown the evidence in support of the allegations against it before the decision to suspend the recognition of its law programme was reached.

Secondly, the Applicant asserts that in arriving at the decision, the 1st Respondent acted *ultra vires* the Legal Education Act and in particular sections 8, 11, 15, 42 and 46. It is alleged that the 1st Respondent failed to recognize prior learning and experience in law to support progression in legal education. Further that it acted without following the procedure prescribed by the law. The Applicant contends that the 1st Respondent's mandate is limited to advising and making recommendations to the government and authorities in matters relating to legal education and training by foreign institutions. Further, that the 1st Respondent acted *ultra vires* by failing to give notice of its visit to the Applicant.

Thirdly, the Applicant contends that the 1st Respondent acted unfairly and unreasonably as there was no evidence to support the decision taken.

Fourthly, the Applicant submits that the Respondent's decision breached the principle of proportionality as it failed to strike a fair balance between the adverse effects the decision would have upon the Applicant vis-à-vis the purpose the suspension was meant to achieve.

Fifthly, the Applicant argues that the 1st Respondent's decision violated the doctrine of legitimate expectation. The Applicant contends that its legitimate expectation was that the 1st Respondent would adhere to the regulations governing the conduct of its business and that its Bachelor of Laws degree programme would be recognized in Kenya by the 1st Respondent.

The 1st Respondent opposed the application through a replying affidavit sworn on 14th May, 2014 by its Secretary, Prof Wanyama Kulundu-Bitonye. In his affidavit, Professor Wanyama Kulundu-Bitonye avers that one of the objectives of the 1st Respondent is to regulate and accredit legal education providers in Kenya. In doing so, it is guided by the Legal Education Act, 2012 and the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009 (the Regulations). Regulation 11 sets the standards for accreditation of legal institutions whereby an elaborate checklist is provided in the Third Schedule of the Regulations. That although the Regulations are applicable to accreditation of providers of legal education in Kenya, Regulation 19 of the Regulations however obligates and designates the 1st Respondent as the agency to assess and recognize academic awards in legal education by foreign institutions that are recognized by the Commission of Higher Education or any other authority with the mandate under any written law to recognize foreign qualifications.

In order to discharge this mandate, the 1st Respondent keeps an inventory of all recognized foreign institutions offering legal education and continuously follows upon and watches on the compliances of these institutions using the benchmarks of accreditation and as a result enable it to accurately and effectively exercise its discretion as to whether to recognize or reject foreign academic awards in legal education. Further, that any institution in Kenya that has failed to meet the criteria for accreditation has been denied accreditation or has had its accreditation suspended pending compliance. That the academic awards of any foreign institution offering legal education that has failed to maintain standards for accreditation under the Regulations are not recognized in Kenya. The 1st Respondent submits that its objective has been to maintain high standards of legal education qualification and effectively regulate acquisition of knowledge and practice in the legal sector.

As for universities in East Africa, 1st Respondent states that there is in place a memorandum of understanding for partnership of the legal education regulators to enable uniformity in the quality and standards of legal education. In line with the said memorandum of understanding, Uganda and Tanzania have allowed the 1st Respondent to visit legal education providers in those countries and conduct inspection of the institutions with a view to ascertaining compliance with the accreditation standards and enable the 1st Respondent make a decision as to whether to recognize the academic qualifications of those institutions. This has enabled the 1st Respondent to assess legal education providers in Kenya and aboard using the same benchmark.

It is the 1st Respondent's case that its Committee with the permission of the Government of Uganda and the Law Development Centre of Uganda being the regulator of legal education in that country, visited the Applicant institution on 24th January, 2013 with a view to establishing its level of compliance. As required by the Regulations, the Committee inspected conditions and facilities at the University in the following areas: (a) physical facilities, (b) library and other academic resources, (c) staffing and staff development, (d) ICT and e-resources, and (d) research and development.

The Committee later prepared a report on its findings and concluded that the Applicant fell short of the benchmarks. The report was forwarded to the Applicant who was informed that the 1st Respondent would not accept for training for the bar at the Kenya School of Law its graduates until the issues raised in the report were addressed. The 1st Respondent's case is that it exercised its mandate under Regulation 19 of the Regulations by not recognizing awards from the Applicant pending compliance with standards for accreditation. Further, that the Applicant's faculty of law was represented during inspection and it took charge of the tour by taking the inspectors around the institution and responding to specific questions from inspectors. Further, that the decision to suspend the recognition of the Applicant was arrived at after due consideration of the facts gathered during the inspection and in accordance with the law.

The 1st Respondent asserts that the moment the Applicant complies with the conditions imposed then its accreditation will be restored. The 1st Respondent denied that its decision is unreasonable, an abuse of power, based on improper motive, violates the rules of natural justice, breaches legitimate expectation and is a breach of the duty to act in good faith.

The 2nd Respondent on its part opposed the application through grounds of opposition dated 14th May, 2014. In summary, the 2nd Respondent's case is that the 1st Respondent is mandated by law to oversee the quality of legal education in Kenya and that it acted in accordance with the law when it made the decision to suspend the recognition of the Applicant's law degree.

The decision that has brought the Applicant to Court is contained in the letter dated 18th September, 2013 in which the 1st Respondent addressed the Applicant's Vice-Chancellor Professor John Ntambirweki as follows:

> **"REPORT OF THE BENCHMARKING VISIT - LEGAL EDUCATION PROVIDERS**
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> **Council of Legal Education is pleased to forward a report of its findings following the visit carried out at your institution on 24th January, 2013. We apologise for the inadvertent delay.**
>
> **We wish to thank the University Management and particularly, the Faculty of Law for the warm reception and openness that was accorded to us. As we promised, we are now sending you this report to document our findings, which you may find useful to enhance your capacity.**
>
> **On overall, we found the University lacking in several critical areas. These includes:-**
>
> **i. The institution did not satisfy us that it possessed the capacity to deliver its programmes, particularly in terms of:**
>
> - **Physical facilities**
> - **Library and other academic resources**
> - **Staffing and staff development**
> - **ICT and e-resources**
> - **Research and development**
>
> **ii. Review of the curriculum to address emerging issues. The review should be structured within a cycle, noting to have the input of a wide range of stakeholders.**
>
> **iii. The student examination process was not up to date.**
>
> **In view of the above, the Council has decided that it shall not accept for training for the bar at the Kenya School of Law, graduates from your institution, until these issues, and those others raised in the report are addressed.**
>
> **By this letter, we are also advising the Law Council of Uganda of our findings for their further action."**

From the papers filed in Court I find that the issues for the determination of the court are:

1. Whether the 1st Respondent's Committee was legally constituted when it carried out the inspection on 24th January, 2013;
2. Whether the 1st Respondent has the statutory mandate to suspend the recognition of a legal education institution;
3. Whether the 1st Respondent acted contrary to the principles of natural justice; and
4. Who should meet the costs of the application?

The Applicant's Vice-Chancellor averred that he only got to know of the decision of 1st Respondent after his students filed **Judicial Review No. 58 of 2014.** It was then that he wrote a letter dated 26th January, 2014 to the 1st Respondent seeking to know the reasons behind the decision to suspend the recognition of

the Applicant's law degree. The letter was replied to by Prof. W. Kulundu-Bitonye on 30th January, 2014. The letter stated, inter alia:

> **"REVOCATION OF ADMISSION TO THE BAR OF GRADUATES FROM UGANDA PENTECOSTAL UNIVERSITY**
>
> **Reference is made to your letter dated 26th January, 2014.**
>
> **Kindly note that the letters under reference were sent to you via securicor and attached is a copy of our mailing record for your information. We have also herewith attached a copy of the said letter and the Report of our visitation for your information and consideration.**
>
> **Further note that the Council of Legal Education does not have an accreditation jurisdiction over your institution as it is outside Kenya. However, we have a mandate to equate the qualifications you award and the facilities you enjoy as a legal education provider with those that we have jurisdiction over through visits and other parameters available to the Council. The equation of qualifications and awards need not be preceded by prior information and consideration."**

The copy of the Securicor G4S mailing record was exhibited by Prof John Ntambirweki as "JN6" and he averred at paragraph 6 of his verifying affidavit that:

> **"The said Report and the decision is alleged to have been send to the Applicant through G4S Courier Services on 24.10.2013 with the address of the consignee being "Prof. Fredrick Ssempebwa, Law Council of Uganda, Kampala" and no details of delivery to the Applicant from the purported courier services provider."**

I have looked at G4S courier services cash sales/collection sheet and confirm that the information given by Prof. John Ntambirweki is correct. Although his name is on the sheet it does not appear as a consignee. That means the adverse decision made against the Applicant was never communicated. The 1st Respondent informed the Applicant that it needed not have contacted it before equating the certificates awarded by it to those awarded by institutions providing legal education in Kenya. That may be the correct position but in this situation the 1st Respondent had conducted an inspection on the Applicant's facilities and the Applicant was entitled to know the outcome of that inspection.

The other question is whether the 1st Respondent followed the law in suspending the recognition of the Applicant. The Applicant submits that the 1st Respondent did not follow the law. There are many provisions of the Legal Education Act, 2012 governing the mandate of the Applicant when it comes to supervision of legal education in the country.

Section 4 of the Act establishes the Council of Legal Education and provides for its membership. According to Section 6 the proceedings of the Council shall be governed by the First Schedule. Among the provisions of the First Schedule is that the Council shall meet not less than four times in every financial year and that the quorum for the conduct of business at a meeting of the Council shall be six. Where a unanimous decision has not been reached, a decision on any matter before the Council shall be by a majority of votes of the members present and in the case of equality of votes, the chairperson shall have a casting vote.

The Council may appoint committees from among themselves or otherwise, to carry out such general or special functions as may be specified by the Council. Without evidence to show that the Committee was not appointed by the Council, it would be difficult to conclude that the Committee was not legally constituted.

The Council opted to subject the Applicant to the provisions of the Legal Education Act. The Council mentioned that it did so as a result of a memorandum of understanding with the other bodies of equivalent

jurisdiction in East Africa. Interestingly, this document was not exhibited in Court. What came out is that the memorandum of understanding was aimed at standardising legal education in the region. If this is so, why would the Council not be satisfied with the certification of the Applicant by the body charged with such responsibility in Uganda? I need not answer that question as it was not asked by any of the parties. It is however clear that the Council decided to judge the Applicant using the Kenya standards.

Regulation 3 of the Regulations clearly provides that the Regulations are to be applied to legal education providers in Kenya. Since the Council opted to subject the Applicant to Kenyan laws, then it had no option but to use the same Kenyan laws in deciding not to recognise the Applicant as a legal education provider. You cannot apply the law when it suits you and fail to apply it where it favours the other party. The Applicant was subjected to the law applicable to the registration of legal education providers in Kenya. Inbuilt in that law is the right to a fair hearing. Section 21 provides:

> **"21. (1) Where the Council has reasonable grounds to believe that a legal education provider is not complying with the terms and conditions of the licence, the Council may, after giving the legal education provider an opportunity to be heard, by notice in writing require the legal education provider to take the corrective action specified in the notice within the period specified in the notice, to the satisfaction of the Council.**
>
> **(2) If the legal education provider fails to comply with a notice issued under subsection (1) within the period specified in the notice, the Council may, after calling upon the legal education provider to show cause why the licence should not be cancelled, cancel the licence.**
>
> **(3) The Council may, if it determines that a legal education provider is not carrying out its functions in a proper manner or is in breach of the terms and conditions of its licence-**
>
> **a. suspend the licence for such period as the Council considers necessary; or**
>
> **b. revoke the licence."**

The Applicant ought to have been asked to take corrective measures before the decision not to recognise its law degree was made. It is only after it failed to carry out the corrective actions that it ought to have been given notice to show cause why its recognition status should not be revoked. The important thing to note is that the Applicant was entitled to a hearing before the decision was made but this was not the case in this matter.

I am doubtful that the 1st Respondent had the authority to inspect the Applicant's facilities in the manner it did. However, without the benefit of the alleged memorandum of understanding, I cannot firmly say that the 1st Respondent's inspection was outright illegal.

Considering the material placed before the Court, I am convinced by the Applicant that an adverse decision was made against it without an opportunity of being heard. This was contrary to the rules of natural justice.

A case for the issuance of an order of certiorari has been made and such an order shall issue as prayed. Having issued an order of certiorari, I find the issuance of an order of prohibition not only superfluous but also aimed at curtailing the exercise of a statutory mandate by the respondents. An order of prohibition will therefore not issue. There will be no order as to costs.

Dated, signed and delivered at Nairobi this 30th day of October, 2014

W. KORIR,

JUDGE OF THE HIGH COURT