



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 58 of 2012

REPUBLICAPPLICANT
VERSUS

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE &
TECHNOLOGYRESPONDENT**

EX-PARTE

KINGURU MAINA MARK

JUDGEMENT

Through the notice of motion dated 29th February, 2012 the ex-parte applicant (King'uru Maina Mark) prays for orders as follows:-

- (a) An Order of Certiorari to remove into this Honourable Court for the purposes of being quashed the decision contained in the Respondent's letters dated 1st September, 2011 and 6th January, 2012 cancelling the applicant's result in BIT 2318–Information Systems Audit and expelling him from Jomo Kenyatta University of Agriculture and Technology.**
- (b) An Order of Mandamus directed at the Respondent commanding it to release the Applicant's Transcripts for the four years and to award and release the degree certificate of Bachelor of Science in Information Technology to the Applicant.**

The application is supported by the statutory statement and the applicant's verifying affidavit which were filed in support of the application for leave.

Although the respondent (Jomo Kenyatta University of Agriculture and Technology) was duly served, it did not file any response to the application. This judgment is therefore solely based on the evidence presented to the court by the ex-parte applicant.

From the documents filed in court it is clear that the applicant was a student at the respondent's Institute of Computer Science & Information Technology pursuing a degree in Bachelor of Science and Information Technology. On 26th April, 2011 the applicant was seated in an examination room with other students as they waited to sit for a paper known as BIT 2318–Information Systems Audit when he was accused together with two other students of having a leakage in the said paper. Two university officials confiscated his phone and demanded for the details of his email and Facebook accounts. The entire class did not sit the said exam on that day.

On 17th May, 2011 the applicant was informed to attend a committee meeting on 19th May, 2011. At the meeting he was questioned about the events of 26th April, 2011. He did not receive any communication about the outcome of that meeting and on 1st July, 2011 a notice was put up inviting members of his class to sit for the BIT 2318–Information Systems Audit exam which had earlier been cancelled. They did the exam on 4th and 5th July, 2011 and he thereafter proceeded to the Ministry of Youth Affairs and Sports for attachment. On 13th July, 2011 a lecturer by the name Mr. Njagi went to supervise him and in the course of the supervision informed him that he was required to attend a Disciplinary Committee hearing on 20th July, 2011. He appeared before the Disciplinary Committee on the appointed date where he was interrogated.

On 10th September, 2011 he received a letter from the Deputy Vice Chancellor, Academic Affairs informing him that the Disciplinary Committee had cancelled his result for the BIT 2318–Information Systems Audit paper. He was through the same letter informed about his expulsion from the university.

The applicant appealed against the said decision through his advocates. The Appeals Committee heard his appeal on 13th December, 2011 and on 6th January, 2012 he was informed that his appeal was unsuccessful and the decision of the Disciplinary Committee had thus been upheld. Nevertheless, on 16th February, 2012 the respondent released the applicant's marks for the cancelled paper.

When one reads the applicant's papers filed in court it becomes clear that the applicant is complaining that the respondent's decision breached the rules natural justice, was ultra vires, unreasonable and violated his legitimate expectation. In support of these allegations the applicant claims he was not given an opportunity to appear with his advocate or guardian both at the hearing level and at the appeal stage. The applicant also alleges that he was not served with the examination rules he was alleged to have breached and neither was he served with the statements of witnesses. The applicant also complains of breach of constitutional rights. He alleges that his right to privacy was breached when he was forced to surrender his mobile phone and the details of his email and Facebook accounts. He alleges discriminatory treatment by saying that the other students who had been suspected of participating in the leakage of the exams had been cleared of any wrongdoing. The applicant also complains of not being accorded adequate time to prepare his defence. The applicant attacks the decision for failing to give reasons for his expulsion. The applicant also says there was unexplained delay in the delivery of the decision. The applicant cites the fact that the result was later released to show that the respondent had acted in bad faith.

Since the application was undefended, this court will have to consider the evidence placed before it by the applicant before deciding whether the orders sought should be granted.

The applicant has made several allegations against the respondent. In the first place he alleges that the notice given to him in respect of his appearance before the Disciplinary Committee was not adequate. In his affidavit, he averred that the letter dated 4th July, 2011 summoning him to appear before the Examination Disciplinary Committee on 20th July, 2011 was brought to his attention on 13th July, 2011. He therefore had six days to prepare for the case and according to him the said notice was too short. In my view the notice was adequate. The ex-parte applicant was familiar with the circumstances of the charges that had been brought against him. He did not ask the Committee to give him more time to prepare his defence and the respondent cannot therefore be accused of breaching the rules of natural justice on this score.

The applicant also complained that he was never supplied with the university regulations he was alleged to have breached. I have looked at the letter dated 4th July, 2011 and it clearly states the particular regulations the applicant was alleged to have breached. The offence alleged to have been committed is also clearly stated. The respondent discharged its obligation by clearly informing the applicant about the offence he was alleged to have committed. The claim by the applicant that the respondent breached the rules of natural justice by not supplying him with the university regulations therefore fails.

The applicant also alleged that he was not given an opportunity to cross-examine his accusers. He averred

that two university officials who had on 26th April, 2011 claimed there was a leakage did not turn up for the hearing. This particular claim has not been controverted by the respondent. The principles of natural justice demand that an accused person should be accorded an opportunity to challenge the case against him. One of the methods of challenging an accusation is through cross-examination of witnesses. It is therefore easy to agree with the applicant that the rules of natural justice were not complied with during the hearing of his case.

The applicant also alleged breach of constitutional rights. The court can only make a firm finding after hearing evidence and looking at the documents. It is difficult from the evidence placed before the court alone to conclude that the applicant's constitutional rights were breached. The court cannot confirm that there was discriminatory treatment without looking at the reasons which the respondent gave for dismissing the cases against the other students who had been suspected of having a leakage of the exam.

Finally, the applicant claimed that he was denied the opportunity of being accompanied by his guardian or advocate both at the initial hearing and during the appeal. The advocates for the applicant presented an appeal to the respondent on 14th September, 2011 and asked the respondent to notify them of the **“date, time and venue when the appeal will be heard”**. There is no evidence to show that the respondent complied with this request. This again is sufficient evidence of breach of the rules of natural justice.

The applicant attached to his application as “KMM 10” a statement of result. The said statement shows that the applicant obtained a grade “D” for the course unit known as BIT 2318–Information Systems Audit. The applicant averred that the statement of result was issued to him after he had been told that his appeal was unsuccessful. It therefore appears that the respondent may not have acted on the decision contained in the letters dated 1st September, 2011 and 6th January, 2012. Since the respondent did not participate in these proceedings it is difficult to understand the reasoning behind the release of the result whereas the applicant had been informed that the same had been cancelled. However, the fact that the result was released adds weight to the applicant's cause.

Whatever the case, the applicant has succeeded in demonstrating that the respondent did not comply with the rules of natural justice. That being so, his application succeeds and the same is allowed as prayed. Since this matter was not defended and the applicant did not ask for costs, I do not make any order as to the payment of costs.

Dated and signed at Nairobi this 24th day of October, 2012

W. K. KORIR,
JUDGE