

ABEDNICO BHEBHE

Versus

LUPANE STATE UNIVERSITY

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 19 NOVEMBER 2018 AND 23 JANUARY 2020

Opposed Application

K Ngwenya, for the applicant
L Nkomo, for the respondent

MAKONESE J: This court application for review was filed on the 19th January 2018. The parties appeared before me on the 19th November 2018 and argued the matter. After hearing argument I dismissed the application with costs.

I have been asked to provide reasons for my decision. These are my reasons.

The applicant filed an application in terms of section 26 of the High Court Act (Chapter 7:06) for the Review of the decision of Respondent's Academic Board reversing the granting of an exemption from undergoing or undertaking industrial attachment. The grounds for review were set out in the following terms:

1. The respondent's Academic Board lacked jurisdiction to reverse the granting of the applicant exemption to undergo and undertake industrial attachment after the applicant had been assessed using formal and normal channels of assessing students on industrial attachment.
2. The respondent's Academic Board's decision to reverse the granting of the applicant exemption from undergoing or undertaking industrial attachment is grossly irregular and unreasonable in that it is *ultra vires* the respondent's Guidelines on Exempting Students from attachment.

The relief sought in the Draft Order was set out in the following terms:

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1. The respondent's Academic Board's decision which appears in a letter dated 25 November 2017 to reverse the granting of applicant exemption to undergo or undertake industrial attachment be and is hereby set aside and substituted with an order confirming the granting of applicant exemption from undergoing or undertaking industrial attachment.
2. The respondent registers applicant for fourth year first semester courses on payment of the requisite registration fees, and that the respondent sets and applicant writes fourth year first semester examinations, and respondent marks and releases applicant's results for the fourth year first semester examinations within fourteen (14) days of the granting of this order.
3. The respondent pays the costs of this application on an attorney and client scale.”
This application was opposed by the respondent who filed a detailed response to the application.”

Background

The applicant is a student at Lupane State University, studying for a Bachelor of Science (Honours) Degree in Environmental Science. The programme of study is for a four year period. At third year, if one has passed his first and second year, a student is required to undergo industrial attachment. There is provision for one to apply for an exemption from undertaking such industrial attachment. If an application for exemption is granted, the student is then assessed by his or her Department using certain formal channels of assessment. Towards the end of applicant's second year of study he applied for an exemption to undertake industrial attachment. Applicant made this application for exemption in accordance with respondent's Guidelines on exempting students from attachment. The guidelines provide that once a student is granted exemption the Department will proceed to assess the student using formal and normal channels of assessment for industrial attachment. If the exemption is denied, such a student will proceed to do one full year of industrial attachment. The respondent's own interpretation of the guidelines is that once a preliminary decision is taken to grant an exemption, the relevant Department must proceed to assess the student. As far as the respondent is concerned it would not make sense that the Department first approves the application for exemption and then after having given its approval, it proceeds to assess the student. The respondent's contention is that the initial assessment of the student is to enable the respondent to evaluate the application and make a decision on it. The respondent admits that the applicant was assessed but disagreed with applicant's

contention that “assessments are only extended to students who have been granted exemption.” Respondent further strenuously disputed that “Assessments are conducted after a student has been granted exemption.” Respondent argued that the applicant was assessed after the Department made a preliminary decision to assess him for an exemption. The respondent took the firm position that the applicant was never granted an exemption, and that what was granted was the right to be assessed. The applicant went on to pay fees for the fourth year first semester courses and wrote assignments. All this he did without the express approval of the University. He was not registered as a fourth year student. Having been advised that his application for exemption had not been approved by the Academic Board and that he was expected to proceed on industrial attachment (the third year of his course), applicant tried and failed to register for the fourth year. Instead of overcoming that hurdle through legal process applicant took it upon himself to simply attend fourth year classes and undertake assignments. At the end of the first semester, applicant realised that his unilateral conduct had its own limitations. He would not be able to enter the examination room for his end of semester examinations unless there was proof that he was a registered fourth year student. Applicant made an Urgent Chamber Application under case number HC 2873/17 seeking an order that would have allowed him to write those examinations. The Chamber Application did not find favour with the court and was dismissed. This then is what led to this review application.

Whether the applicant had made a case for the order sought

The first issue for determination is whether the applicant made a proper case for the order sought in the Draft Order. The applicant’s degree programme for a Bachelor of Science (Honours) Degree fell under the Department of Agriculture. This is the department which made an assessment of the application for an exemption. The applicant submitted his application for exemption and the department made a preliminary decision to assess him. This preliminary decision was confirmed and the department instructed two lecturers to assess the applicant. Applicant attained a 75% mark. This mark was not supposed to have been disclosed to the applicant. Somehow applicant got to know his mark. According to procedure the result of the assessment became applicant’s mark for the third year. This is what would have appeared in his final results. This is what would have also appeared in his overall transcript of results that go towards his degree classification. What applicant seemed to have missed is that the application for exemption is considered by his department. The

department had to refer its findings to the Faculty Board but only as a recommendation. In turn, the Faculty Board would refer the results and recommendations to the Academic Board. It is the Academic Board that would have the final say. It was proper that applicant's application in respect of the exemption ended up with the Academic Board. It was the decision of the Board not to approve the application that became the final outcome of the application for exemption. The Academic Board was not required to accept without question the recommendations of the Faculty Board. All these procedures were followed by the respondent. The applicant did not pass his third year because the exemption application was not confirmed by the Academic Board. The unilateral attendance of classes by the applicant when he was fully aware that he was not a registered fourth year student was therefore of no force and effect. The applicant placed himself in a difficult situation. The applicant placed reliance on the guidelines, on exemptions and read them in isolation. Critically the assessment he relied on constituted an examination result that would be taken into account by the University in his final results.

It is clear that the application for review was wrongly premised and there was no legal basis to grant the order sought in the Draft Order.

Conclusion

From a perusal of the papers filed by the applicant and the opposing affidavits there can be no doubt that the processes and procedures outlined in respect of the manner in which the applicant's application for exemption was handled by the University was correct. The Academic Board received recommendations and had the final say on the outcome. The Board had the right to agree or disagree with the recommendations. It was the decision of the Board that applicant's work experience insofar as it related to the area of Environmental Science, was not sufficient to exempt him from going for industrial attachment.

This court has the discretion to review the decisions of all inferior courts of justice, tribunals and administrative authorities in terms of section 26 of the High Court Act. The grounds for review are set out in section 27 of the Act. These are:

- (a) absence of jurisdiction.
- (b) interest in the cause, or bias, malice or corruption.
- (c) gross irregularity in the proceedings or the decision.

Nothing in the applicant's papers justified the granting of the relief sought. The point must be made that the fact that someone does not like the outcome of an administrative decision does not give rise to grounds for review. The respondent in this matter set out the processes leading to the outcome of their decision. It is a trite principle of our law that the onus is on the party alleging irregularity in any decision or proceedings to establish such irregularity. It is not the function of the court to interfere with processes of tribunals or administrative bodies unless gross irregularity can be established.

See: *Bailey v Heath Professions Council* 1993 (2) ZLR (S). In this cited case the court adopted the test whether there was real bias on the decision maker. The court adopted the "reasonable danger" test in assessing whether the review was merited.

In this matter, I did not detect any irregularity in the proceedings or the decision by the respondent. There was no allegation of bias.

In the result, and for the foregoing reasons, I dismissed the application with costs.

T J Mabhikwa & Partners, applicant's legal practitioners
Calderwood, Bryce Hendrie & Partners, respondent's legal practitioners