TAKUDZWA CALVIN NYAZEMA
versus
THE UNIVERSITY OF ZIMBABWE
and
THE VICE CHANCELLOR, UNIVERSITY OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 25 & 28 OCTOBER 2024

Urgent Chamber Application

T Chakurira, for the applicant
T Chagonda with *T Chagudumba*, for the respondents

MUNANGATI-MANONGWA J: The applicant a student at the University of Zimbabwe has approached this court on an urgent basis seeking the following relief:

Terms of the Final Order Sought

1. That the decision of the second respondent in his capacity as the Vice Chancellor of the second respondent to suspend the applicant be and is hereby declared unlawful and is accordingly set aside.
2. That the letter of suspension be and is hereby declared null and void and of no force or effect and is hereby set aside.

Terms of the Interim Order

That pending the confirmation of the Provisional Order the applicant is granted the following relief:

1. That the decision by the first respondent, through the second respondent, to suspend the applicant dated 3 October 2024 for alleged breach of r 3.1.4 of the Rules of Student Conduct and Discipline Ordinances, Ordinance No 30, be and is hereby set aside.
2. That the decision to bar the applicants from writing his examination(s) be and is hereby set aside.

3. Pending finalization of this matter first and second respondents, and their agents, be and are hereby ordered to allow the applicant to sit and write his end of semester examination(s).
4. The first and second respondents, and any of their agents, are directed to allow the applicant access to his online e-mhare platform.
5. The first and second respondents, and any of their agents, are directed to return to applicant his student card.
6. The first and second respondents and any of their agents, are directed to allow the applicant to take those examination(s) which he has already missed as a consequence of his suspension from studies.
7. The respondents shall pay costs on an attorney client scale.

The application is opposed. In opposition thereof the respondent raised two points *in limine* to the effect that:

- the matter is not urgent and moot.
- the relief sought is incompetent.

I dismissed both points for lack of merit and furnished reasons in an *ex tempore* judgment. The parties agree that I need not repeat the reasons thereof herein. The matter therefore proceeds on merit.

The facts of the case are common cause. The applicant is a first year student at the first respondent. On 21 October 2024 upon he was served with a letter of suspension dated 3 October 2024. He was suspended barely 24 hours before his first end of course examinations which were scheduled for 22 October 2024 at 10:00. The applicant was suspended for an indefinite period and barred from attending lectures, and to be on the first respondent's premises pending a disciplinary hearing scheduled at an unknown date.

The reason behind the suspension is that the applicant is alleged to have shared a cake laced with marijuana with another student at the first respondent's Harare Campus sometime in September 2024. It is alleged that the applicant acted in common purpose with one student Farai Nyakunzu in baking ganga cakes. He was therefore charged with breaching r 3.1.4 of the Rules of Student Conduct and Discipline, 1984, Ordinance 30.

The applicant argued that he was not accorded the opportunity to be heard, hence the suspension was unlawful. The applicant relied on *Fanele Maqele & 2 Ors* v *Vice Chancellor, Professor N.M. Bhebhe N.O. & Anor* HB129/16 and submitted that an indefinite suspension cannot be lawful. He further avers that the decision by the first respondent is of no legal force because it was not ratified by Council of the first respondent in terms of s 8(3)(e) of the University of Zimbabwe Act [*Chapter 25:16*] which states:

> "Any action taken by the Vice Chancellor in terms of subsection (3) shall be subject to ratification by the council."

He submits that he made an admission to committing the alleged misconduct under duress from respondent's security officers. The applicant believes that his suspension is premised on procedural unfairness undermining his right to a lawful, reasonable, substantively and procedurally fair administrative conduct.

The applicant avers that the decision by the respondents deprives him of his privileges, rights and benefits of being a student at the first respondents' institution. He further states that he stands to miss the end of course examinations which were due to commence on 22 October 2024. In a bid to seek recourse, the applicant filed this application on urgent basis on 22 October 2024.

In opposition, the second respondent contends that in suspending the applicant, he was exercising his administrative powers as lawfully conferred to him by s 8(3)(e) of the University of Zimbabwe Act. The respondents argue that the decision was ratified by the first respondent and is an administrative action which this court cannot at this stage interfere with by setting it aside. They further argued that the applicant cannot complain of suffering any prejudice when the decision by the applicant was taken in terms of the law. The applicant has also been deprived of attending his lectures like any other students. The applicant therefore will be exposed to the risk or possibility of losing the whole academic year as a consequence thereof.

On the issue of whether the applicant's right to fair administrative action was impaired, the question is whether the applicant upon being served with a notice of suspension, he was given an opportunity to present his case. The applicant avers that he involuntarily admitted to having baked the ganga cakes during interrogation the very same day he was man handled by the first respondent's security personnel. This averment is not contested. Given that, the respondents chose not to answer every paragraph of the founding affidavit, it is taken that what is not denied is taken

to have been admitted (see *Fawcett Security Operations P/L* v *Director of Customs and Excise & Ors* 1993 (2) ZLR 121 (S) at 127F).

The right to an administrative action which is lawfully, reasonable and procedurally fair is a constitutionally recognized right in terms of s 68(1) of the Constitution as read with s 3(1) of the Administrative Justice Act [*Chapter 10:28*] which ought to be adhered to (see *Chani* v *Mwaera & Ors CCZ* 02/20). Almost a month has lapsed after an administrative action was taken, and other students have been engaging in their studies whilst the applicant is placed in a situation where he is indefinitely suspended. In determining this matter the court notes that it took almost a month from the day the applicant was accused of misconduct up to the date he was served with the notice of suspension. During this material time, the applicant had been attending classes and there is no evidence whatsoever that he engaged in any conduct that warrants intervention by the respondents. If there was a danger to other students the respondents should have acted immediately on 25 September 2024 rather than leave the applicant on campus for nearly a month.

The court is cognizant of the fact that the charge levelled against the applicant is serious and poses a threat in a school setup. However the court cannot ignore the unchallenged averments by the applicant that the ganja cake was not recovered on the applicant. No evidence either has been advanced to the effect that the ganja cake slice recovered had been tested and confirmed that it indeed contains the drug. Further the court takes note of the fact that a suspension cannot be indefinite. To this court, the applicant has established a *prima facie* case that entitles him to protection against what seems to be an arbitrary decision taken by the first respondent.

Considering it took almost a month for the respondents to suspend the applicant after they had knowledge of his misconduct and he has been attending lessons, only to suspend him a day before sitting for his examinations points to such arbitrariness. Failure to sit for his examinations would mean that the applicant will have to repeat and would not be able to progress to the second year of his studies yet he has not been found guilty of any offence yet. Arguments advanced by the respondent's that this application should be dismissed because the examination which created the urgency had been written, cannot bar this court to give an order that safeguard oncoming examinations. The necessity emanates from the fact that, the suspension is indefinite hence it remains unclear when the disciplinary hearing will be heard and finalized. No concrete evidence

has been placed before the court by the respondents as to a precise date when the hearing will be held, the court does not rely on hearsay.

The respondents contended that the action taken is lawful, hence the court cannot interdict conduct that is lawful. Whilst courts are reluctant to interfere with administrative processes, where it is clear that such process is not in line with the provisions of the Administrative Justice Act nor in line with the *audi alteram partem* rule such interference is warranted. This is one case which warrants interreference to ensure fairness and avert prejudice that may be suffered by the applicant. Exercise of administrative authority is subject to strict scrutiny as rightly put by MAKARAU JP (as she then was) wherein she held in *U-Tow Trailers (Pvt) Ltd* v *City of Harare and Anor* 2009 (2) ZLR 259 (H) 267 F-G. This is buttressed and further elucidated in the cyclostyled judgment of *Fanele Maqele & 2 Ors* v *Vice Chancellor, Professor N.M. Bhebhe N.O. & Anor* HB 129/16 by MATHONSI J (as he then was) it was held that:

> "While the respondent has the power to suspend a student, that power must be exercised within the framework of law, a law which recognizes the right of the applicants to administrative justice, a concept which is now embedded in our Constitution. Its elements are that official decisions must be lawful, rational in that they must comply with the logical framework created by the grant of power under which they are made; consistent , fair in that they should be arrived at impartially in fact and appearance giving the affected persons an opportunity to be heard, and be made in good faith in the sense that the official making the decision must act honestly and with conscientious attention to the task at hand having regard to how decisions affects those involved."

Given the aforegoing, the balance of convenience in this case warrants that the applicant be allowed to sit for his examinations. Should the applicant be found to be innocent he would have suffered great prejudice as he will have to rewrite the examinations in the following year thus having been robbed the opportunity to progress to the next level.

As regards the argument pertaining ratification of the decision, this is an argument which the court can consider on the return date as it pertains to whether the decision by the second respondent should be set aside.

This is a proper case to grant the relief sought albeit with amendments to the relief sought. It is noted that the court cannot grant an order which has a final effect at this stage. Thus, the respondents were correct in challenging a clause in the interim relief sought which seeks to declare the second respondent's decision as unlawful and that it be set aside. Such relief cannot be granted as interim relief as it has a final effect, this requires interrogation on the return date. Equally the

prayer for costs at this stage cannot be legally tenable. Accordingly, an amended order is granted as follows:

Accordingly, the following provisional order is granted:

TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1. That the decision of the second respondent in his capacity as the Vice Chancellor of the second respondent to suspend the applicant be and is hereby declared unlawful and is accordingly set aside.
2. That the letter of suspension be and is hereby declared null and void and of no force or effect and is hereby set aside.

INTERIM RELIEF GRANTED

That pending determination of this matter, the applicant is granted the following relief:

1. The decision by the first respondent, through the second respondent, to suspend the applicant dated 3 October 2024 for alleged breach of r 3.1.4 of the Rules of Student Conduct and Discipline Ordinances, Ordinance No. 30, be and is hereby suspended.
2 The decision to bar the applicants from writing his examination(s) be and is hereby set aside.
3. First and second respondents, and their agents, be and are hereby ordered to allow the applicant to sit and write his end of semester examination(s).
4. The first and second respondents, and any of their agents, are directed to allow the applicant access to his online e-mhare platform.
5. The first and second respondents, and any of their agents, are directed to return to applicant his student card.
6. The first and second respondents and any of their agents, are directed to allow the applicant to take those examination(s) which he has already missed as a consequence of his suspension from studies.
7. There is no order as to costs.

SERVICE OF PROVISIONAL ORDER

The applicant's legal practitioners are authorised to serve this order upon the respondents' or the respondents' legal practitioners.

MUNANGATI-MANONGWA J:……

Zimudzi and Associates, applicant's legal practitioner
Atherstone & Cook, respondents' legal practitioners