

PROSPER MAKUMBE
versus
MIDLANDS STATE UNIVERSITY

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 29 SEPTEMBER 2016 AND 3 NOVEMBER 2016

Court Application

B Masamvu for the applicant

MOYO J: This is an application wherein the applicant seeks to challenge on review his expulsion from the respondent institution and the withholding of his results.

This matter appeared before me on motion roll on 29 of September 2016, and I dismissed it as I held the view that the applicant had not made any case for the relief sought. I stated that my reasons would follow. Here are the reasons.

The applicant in this matter was caught red handed cheating in an examination in that he had brought with him material that was relevant to the examination into the examination room. An alert invigilator discovered this, leading to the applicant being charged for breaching section 12.3.1 of the Rules of Student Conduct and Discipline ordinance 2 of 2014 which prohibits

“Using any unauthorized material, whether relevant to the examination or not, during an examination such as notes, tests, calculators, cellphones, PDAs or other electronic or mechanical communication devices. Abuse of cellular devices with photographic test questions, or other notes and materials.”

The facts of the matter were that he was found during an MBA examination to be in possession of six pieces of paper that contained material that was relevant to the examination.

In response to the charge applicant wrote:

“I mistakenly took with me into the exam room some discussion papers. Around 09:15hours while the invigilator Mr Takaendesa was passing through my desk, she discovered the papers. It wasn’t my intention to use the papers in the examination but it was a sincere mistake due to exam pressure. My apologies to the institution.”

Over and above this acknowledgement of wrong doing, the applicant appeared before the Student Disciplinary Committee in the Company of a legal practitioner one Ms Debra Shirichena and he pleaded guilty to the charge.

In arriving at the appropriate sentence, the student disciplinary committee stated in its reasoning that it had considered the following:

- 1) that applicant is a mature student already working in management position.
- 2) that this was a postgraduate qualification and as such applicant should have been aware of all procedures pertaining to university examinations and the policy of every university as regards cheating.
- 3) that applicant had previously failed the module in which he brought the unauthorized material and that since he had previously failed the module he now wanted to pass same fraudulently.
- 4) that the notes were well detailed indicating pre-planning and they could be used to pass the examination hence the increase in his moral blameworthiness.

The Student Disciplinary Committee recommended that the applicant's result in that exam be nullified and that applicant be expelled from the University. The Vice Chancellor accepted the recommendations and therefore they became final.

The applicant gives as the first ground for review that the respondent institution grossly misdirected itself in giving him four days notice before the hearing date. Applicant has not shown where the minimum number of notice is enunciated such that four days are inadequate. For what is a reasonable period of notice depends on the individual case per G. Feltoe *A guide to Administration of Law* page 36.

Neither has applicant shown how he suffered prejudice as a result. Neither has applicant shown how the four days notice vitiates the proceedings wherein he was legally represented and pleaded guilty to the charge meaning that he had fully prepared.

This is just a spurious ground thrown in out of desperation as it holds no water at all.

Neither has applicant shown that this is a valid ground for review in terms of section 26 of the High Court Act [Chapter 7:06].

The second ground is given as that the respondent institution committed a gross irregularity by charging applicant with an offence and proceeding to sentence him and yet the Ordinance does not provide for a penalty or punishment to be imposed. This ground is non-existent in that section 4.8 of the Ordinance provides for the powers the student disciplinary committee has with regard to offences committed in breach of the ordinance. The punishment provided therein includes expulsion from the University.

Therefore applicant's submission is ill conceived as it is not supported by the Ordinance itself.

The third ground for review is that the respondent institution grossly misdirected itself in that it failed to conduct applicant's hearing within a reasonable time and that this was in violation of section 69 of the Constitution of Zimbabwe.

Firstly, the respondent has not shown how the delay if any was unreasonable, he should prove what he alleges. He should state in his founding affidavit within what reasonable period should the matter have been tried and what then makes the period within which he was tried unreasonable. He went to the hearing with a lawyer, decided to plead guilty to the charges that he considered were brought against him after an unreasonable delay. He let the process kick off and be finalized without raising any objection thereto, and then simply because the penalty is unpalatable, he decides to bring up everything he can, to try and have the decision set aside. The applicant cheated in an examination to his own acknowledgement and plea, he has been convicted and penalized accordingly, now he seeks to clutch at straws in a bid to avoid the reality stemming from the consequences of his actions. He should have precisely put in his affidavit what a reasonable period would be in the circumstances and also show why this particular period delay which vitiated the proceedings warranting that they be set aside. It would appear from the founding affidavit that applicant was just throwing everything in without laying a proper foundation for his case.

The application has absolutely no merit and it should be dismissed with the contempt it deserves.

Dube-Tachiona & Tsvangirai, applicant's legal practitioners