

ABEDNICO BHEBHE
versus
LUPANE STATE UNIVERSITY

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 3 NOVEMBER 2017 AND 8 MARCH 2018

Urgent Chamber Application

K Ngwenya for the applicant
J J Moyo for the respondent

MOYO J: At the hearing of this application I dismissed it and stated that my detailed reasons would follow. Here are the reasons.

The facts of this matter are that the applicant who is a student at the respondent university purportedly did not complete his third year attachment requirements and therefore affecting his eligibility for fourth year registration.

Per applicant's own founding affidavit the BSC degree in Environmental Science is a four year programme. After one has completed his first and second years, he then proceeds to do an industrial attachment at third year. He can also apply for an exemption from this attachment. He did apply in this instance for exemption from industrial attachment. He avers that he underwent an assess merit for this industrial attachment exemption, however, in paragraph 4.4 of his founding affidavit he avers that he never received any communication from the respondent that his application for exemption was unsuccessful. He then took it upon himself to conclude, without any communication from the university that his application for exemption had been successful.

This is where I fail to understand applicant's case, he applies to a university, which obviously has regulation and ordinances governing such applications, he does not receive approval of his application but assumes that it was approved? He avers that it was in July 2017,

when he tried to register for his fourth year, and that he was told that there were problems with his third year as he had no industrial attachment marks.

He says he was advised on 12 July 2017, that it appeared that the respondent's academic board had not approved his application for exemption from industrial attachment. He then sought to appeal against the decision through a letter dated 12 July 2017. The respondent's registrar advised him that there was no procedure providing for an appeal against refusal to be exempted from industrial attachment. Whether applicant was exempted from industrial attachment. From the applicant's own papers, it does not appear that a *prima facie* right has been established from his own narration, I say so for, he was never exempted from doing industrial attachment. This is per his own version. So if the University Academic Board, which is the ultimate authority giving such an exemption did not give it to him, what *prima facie* right is he trying to protect? He cannot create non-existent rights in his mind and then seek to enforce them through these courts. The University is within its rights to apply its policies and regularitions in a manner that it deems fit. It is not for this Honourable Court to usurp the powers of a University and start imposing its views on the University authorities. This court will only interfere with such administrative bodies' decisions on good cause shown. It is my view that no good cause shown has been shown neither do *prima facie* right exists in this matter.

Urgency

Again, the applicant got to know in July 2017 that his registration status was an issue as the authorities communicate to him then that his exemption had not been granted. He sat back from mid July 2017 and decided to file this application on 31 October 2017, five days away from the examination that he seeks this court to compel the University authorities to allow him to write pending his challenge to their failure to grant him an exemption. This is a self-made urgency. It certainly is not the urgency perceived by the rules of this court that a party sits back for more than three months when an issue that affects his rights has clearly arisen and he decides to jump at the last minute. This is certainly not the urgency the rules of this court were crafted to address. See *Kuvarega v Registrar General and Another* 1998 (1) ZLR 188 (H).

In that case Chatikobo J stated thus:

“What constitutes urgency is not only the imminent arrival of the day reckoning, a matter is urgent, if it at the time the need to act arises, the matter cannot wait. Urgency that stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules.”

It is for these reasons that I dismissed the application with costs.

T. J Mabhikwa and Partners, applicants’ legal practitioners

Calderwood, Bryce Hendrie and Partners, respondent’s legal practitioners