VICTOR MADZIVANYIKA
versus
THE REGISTRAR N.O, ZIMBABWE EZEKIEL GUTI UNIVERSITY
and
ZIMBABWE EZEKIEL GUTI UNIVERSITY

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 28 April & 4 May 2022

Urgent Chamber Application

Ms *L Makumbe*, with her *M Mandevere*, for the applicant
T Kabuya, for the respondents

ZHOU J: This is an urgent chamber application for an order staying the withdrawal of the applicant from the Bachelor of Laws (LLB) degree programme at the second respondent. The withdrawal was communicated to the applicant by letter dated 13April 2022. Applicant also seeks reinstatement into the LLB degree programme pending the return date. On the return date, the applicant seeks a declaration that the letter of 13 April 2022 is null and void and of no force and effect. Costs on the attorney client scale are being sought against all the respondents. Applicant instituted a court application for review separately to challenge the revocation of his admission.

The instant application is opposed by the respondents.

The background facts to the application are as follows. Applicant states that he applied for admission to the LLB degree programme through the second respondent's Mature Entry system. He was given an offer letter dated 25 March 2022, which detailed the fees required and gave the account details. He was also advised by telephone that a place had been reserved for him in the LLB programme. He then paid the fees. On 13 April 2022 he received by email a letter revoking his admission to the LLB programme, hence he instituted the present application to vindicate his offer.

In opposition, the respondents state that the applicant was irregularly given an offer of admission to the LLB programme and his unauthorised admission was only discovered when he started to attend lectures. Respondents state that the applicant was probably corruptly given

the offer letter through the involvement of some staff members. In this respect, the respondents state that the applicant's application was never received and considered by the Faculty of Law in accordance with the laid down procedure. They state that the applicant was not interviewed and he did not write and pass a test set by the Faculty as is required for all Mature Entry students. The applicant admits that he did not write any test.

The applicant is essentially seeking an interim interdict reinstating him to the Law programme based on the declaratory relief which he seeks on the return date and the application for review filed under Case No. HC 2666/22. The requirements for such an interdict are as follows:

1. that the right which is sought to be protected is clear; or
2. that (a) if it is not clear, it is *prima facie* established through open to some doubt; and (b) there is a well – grounded apprehension of irreparable harm if interim relief is not granted and the applicant ultimately succeeds in establishing his right;
3. that the balance of convenience favours the granting of interim relief and
4. the absence of any other satisfactory remedy.

See *Nyambi &Ors* v *Minister of Local Government and Anor* 2012 (1) ZLR 559(H) at 574 C, and the cases cited therein.

The authorities show that the words "clear" and "*prima facie"* do not qualify the nature of the right, but relate to the degree of proof required. What is required is for the applicant to establish the existence of a right as a matter of substantive law. In this case the applicant relies on the letter of 25 March 2022 as the document creating that right. The respondents submit that, that letter was irregularly issued to the applicant in circumstances probably tainted by corruption. The applicable regulations in clause 7:3 which are attached to the application require a Mature Entry applicant to write and pass a test set by the second respondent's Faculty of Law. The applicant did not write such a test which means that his admission was irregular for want of compliance with a mandatory procedure. The applicant states, but leads no evidence to prove, that no written test was given to the other Mature Entry applicants. This disputed allegation does not sanitize the applicant's admission.

In addition, the applicant's name does not even appear on the list of the applicants who were considered for interviews. That list which is attached to the opposing affidavit has seventy –four names of applicants. This shows that the applicant's name was not even among those who applied. The applicant's name also does not appear among the fifty successful applicants

who were admitted to the LLB programme. Whoever gave him the offer letter was therefore conniving with the applicant, and only added the applicant to the list of students after the selection process had been completed.

All in all the applicant has failed to establish a *prima facie* right which would warrant protection by way of an interdict. On the common cause facts, he did not follow the procedures laid down in the regulations for him to be admitted to the LLB programme. His assertion that he submitted an application and was interviewed has been disputed. The documents produced show that he was not even on the list of those who were considered for the interviews. Given the respondent's case, which I accept, that the second respondent has no contractual or administrative relationship with the applicant, the provisions of the Administrative Justice Act are of no relevance in this case.

In the absence of a right, the applicant has no basis to allege any apprehension of harm. In any event the exclusion from Law programme perse does not constitute irreparable harm since the applicant can always proceed with his studies in the event that he was able to prove the right. The delay in completing the programme would not constitute irremediable harm.

The balance of convenience does not favour the granting of the relief sought. Allowing a student who did not follow the laid down procedures in gaining entry into the university to continue attending lectures will undermine the integrity of the education system. It also dents the reputation of the second respondent.

Before concluding, there are certain facts which are apparent from the documents submitted by the respondents which must be commented upon. I informed counsel during argument that I would draw the attention of the Council for Legal Education to the judgment in this case and a related matter which I heard together with this matter. The first aspect is the very existence of loopholes in the admission system which can be manipulated in the manner revealed by the two cases. The second aspect is the number of admitted students who do not have a grade B or better in English Language at Ordinary Level. According to the produced copy of the regulations this is a mandatory requirement for normal and special entry students. Only mature entry students seem to be exempted from this requirement. Yet out of the fifty applicants who were accepted sixteen of them have a grade 'C' in Ordinary Level English Language. It would be worrying if such a huge number – representing thirty –two (32) percent- would be of mature entry students. The regulations state that not more than five applicants may be admitted through the mature entry procedure in any intake. The last observation

pertains to the requirements for admission through the Mature Entry. No basic or minimum qualification is required. "Suitable or relevant post – school experience'' is not defined anywhere in the regulations, which exposes the system to abuse, as appears to have been the situation *in casu*. The integrity of the qualification and education system which entitles one to practise Law must be jealously guarded, just like the integrity of the country's system of education in general.

In all the circumstances, the application *in casu* has no merit.

In the result the application is dismissed with costs.

Kadzere, Hungwe and Mandevere, applicant's legal practitioners
Matsikidze Attorneys – At- Laws, respondent's legal practitioners.