MISC./APP. 15 /22 2022 S. NO. 2

IN THE HIGH COURT OF SIERRA LEONE

(SUPERVISORY JURISDICTION)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

PURSUANT TO ORDER 52 OF THE HIGH COURT RULES 2007

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI

AND OTHER CONSEQUENTIAL ORDERS AND DIRECTIONS

AND

IN THE MATTER OF AN APPLICATION AGAINST THE DISMISSAL

OF THE APPLICANT BY THE UNIVERSITY OF SIERRA LEONE

BETWEEN:

HENRY SCHENKS - APPLICANT

AND

THE UNIVERSITY OF SIERRA LEONE - RESPONDENT

Counsel:

A. S. Marrah Esq. & B.J. Reffell Esq. for the Applicant

E. Kargbo Esq. for the Respondent

JUDGMENT DELIVERED THIS 2nd DAY OF FEBRUARY 2024 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J. A.

INTRODUCTION

1. By an Originating Notice of Motion dated 28th October 2022, the Applicant applied for the following orders:
    1. The grant of an order of Certiorari directed to the Respondent to quash their decision to dismiss the Applicant by letter dated 15th September 2022.

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2. An order that the Applicant be restored to his position ante his dismissal or be restored to the position previous to his elevation/promotion by virtue of his impugned academic qualification.
3. Damages for wrongful or unlawful dismissal.
4. Any other order or orders as this Court may deem fit and just.

2. The Originating Notice of Motion is supported by the affidavit of Henry Schenks herein referred to as the Applicant, sworn to on the 28th October 2022 together with the several exhibits attached thereto. The Applicant also filed a statement of case.
3. The Respondent filed an affidavit in opposition and supplemental affidavit. It also filed a statement of case.
4. Both Counsel for the parties addressed the Court on the law and facts.

EVIDENCE FOR THE APPLICANT

5. In summary and germane to the application, the affidavit evidence disclosed that the Applicant was employed by the University of Sierra Leone (USL) the Respondent herein on 1st May 2004 as Audit Assistant evidenced by Exhibit A, his letter of appointment. This was based on his Technician Diploma in Accounting qualification acquired in 2002, Exhibit B. Whilst employed he acquired a post graduate diploma in Logistics and Procurement in 2009 Exhibit C. He enrolled in a distance learning program offered at the Licssal Business College through its affiliate Irish University Business School and was awarded a Bachelor of Business Administration with honours in Accounting. A copy of the Irish University Business School ID Card and the said degree certificate are exhibited as Exhibits D and E respectively.
6. Exhibit F is pertinent and states as follows:

"Government of Sierra Leone
Ministry of Technical and Higher Education

PRESS RELEASE

Following a joint communique on unaccredited universities and award of fake degrees in Sierra Leone on Tuesday 26th April 2022, all academic and administrative staff in Higher and Technical Education Institutions who acquired their certificates, diplomas and degrees in unaccredited institutions and used same for employment and or promotion in their respective institutions are to resign within the next two weeks i.e. from 12th May to Wednesday 26th May 2022.
Any staff who fails to comply with this instruction will be in breach of the joint communique and will be summarily dismissed.
Gilbert Cooper
PERMANENT SECRETARY
12/5/2022"

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7. Paragraphs 7 – 11 of the affidavit of the Applicant state as follows:

"7. That the process /exercise of assessment of degrees and certificates by the University of Sierra Leone lasted well beyond 26th May 2022 and I was and still unaware of the alleged invalidity of my degree acquired from an affiliate of the University of Sierra Leone as at 26th May 2022 [and] could not have resigned against the said date.

8. That by a letter dated 25th August 2022, I was summarily dismissed from the service of the University of Sierra Leone. A copy of the said letter is exhibited and marked Exhibit G.

9.That in the Respondent letter of dismissal, it states that " .... the report from the verification exercise done internally and the subsequent findings, which shows (sic) that the Irish University Business School, from which you obtained your degree, is not recognized in its home country (the U.K.) as a degree granting institution".

10.That the Respondent also indicated that because I did not resign by 26th May 2022, the decision was taken to summarily dismiss me from the service of the USL.

11. That by virtue of the said dismissal, I was informed that I am not entitled to any benefits despite eighteen years of diligent service to the USL Respondent".

8. The contents of Exhibit G referred to are worth setting out as follows:

"

USL/PF/272

Mr. Henry M. Schenks
Internal Audit
USL

DISMISSAL FROM THE SERVICE OF THE UNIVERSITY OF SIERRA LEONE

We refer to the report from the Verification exercise done internally and the subsequent findings, which shows that the Irish University Business School from which you obtained your degree, is not recognized in its home country (the UK) as a degree granting institution, (Document attached). The University of Sierra Leone therefore cannot accept degrees awarded by the said University.

Please be informed that according to the directives received by the Government of Sierra Leone, (copies attached) all individuals with academic awards from unaccredited/recognized Universities/Tertiary Institutions should resign by 26th May 2022 otherwise they would be dismissed.

In view of the fact that you have not resigned, we are constrained to inform you that you have been dismissed from the service of the University of Sierra Leone with immediate effect.

In keeping with the terms and Conditions relating to dismissal from services, you will not be entitled to any benefits.

You are requested to hand over all University property you may have in your possession to the internal Auditor.

On behalf of the Vice-Chancellor and Principal, University of Sierra Leone, I wish to thank you for your services to the University.

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Yours sincerely
Olive A. K. Barrie
Registrar
cc. The Vice Chancellor & Principal
The Finance Director, USL
The Internal Auditor, USL..."

9. In concluding his affidavit evidence, the Applicant referred to Exhibit H from LICCSAL Business College an affiliate of USL dated 26th August 2022 which confirmed he was an approved student of the Irish Business School and by Exhibit J of the same date, the Applicant wrote to the Audit Dept. USL outlining his various other qualifications. These were Post Graduate Diploma in Logistics and Procurement 2009, Technician Diploma in Accounting 2002 and Audit Service Sierra Leone Merit Certificate 2015. Exhibit K dated 15th September 2022 is a letter from Applicant's Solicitors contesting his dismissal and Exhibit L is a letter from Respondent dated 16th September 2022 referring the matter to the Tertiary Education Commission for verification. The latter by Exhibit N dated 7th October 2022 verified that the Irish British School is "unaccredited in Ireland and therefore cannot be recognized by the TEC".
10. In his affidavit, the Applicant stated that the mandatory procedure of investigations by the University Court as laid down in section 15 of the Universities Act 2021 was not followed and as such the dismissal was never approved by the University Court, therefore the Respondent acted ultra vires its powers in the Act, and its decision was in violation or excess of its authority, and in the interest of justice the said dismissal be quashed, overturned or otherwise rescinded and the orders prayed for granted.

EVIDENCE FOR THE RESPONDENT

11. The Respondent filed an affidavit in opposition by Joseph M. French an associate partner in the firm of Betts and Berewa, Solicitors for the Plaintiff sworn to on 9th February 2023 and a supplemental affidavit by the same deponent sworn to on 17th July 2023 with several exhibits attached thereto.
12. In his affidavits Mr. French referred to the afore-mentioned Press Release and the ultimatum it gave. I will set out paragraphs 6, 10, 14, 15, 16 and 17 of the principal affidavit in opposition which state thus:
"6. That the Applicant herein was aware of the said Communique and Press Release but he willfully and unlawfully failed and/or refused to resign even though he used a degree which is from an unaccredited institution to gain acting positions and promotions (a status) that could only be held by a degree holder from a recognized University. Copies of the Communique and Press Release are exhibited as Exh JMF4 1&2
10. That it is very clear that prior to the Applicant herein being promoted to his current employment with the University of Sierra Leone, he used an unrecognized institution's degree to wrongfully influence the University Authorities to promote him within the period 2008 – 2010 knowing fully well that such degree especially having regard to the

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accreditation by the Tertiary Education Commission and the supervisory body of the Government of Sierra Leone, the Ministry of Education confirmed the non-recognition of the institution. Copies of his application form for promotion, annual performance, appraisal reports, personal data form, audit form are exhibited and marked as Exh JMF8.

14. That the mode of commencement of this action is totally wrong in an employment action especially when establishing the issue as to who is right or in relation to the dismissal of an employee. An opportunity should therefore be granted to the Respondent herein to file a counter-claim to prove same and reclaim all salaries paid for a status which the applicant does not deserve and/or dishonestly obtained.

15.That the applicant, Henry Schenks is completely in breach of his employment contract. He deceived the university in believing that he has a degree in a recognized University and sought his promotion to a position he doesn't deserve. He accepted that he was not in a position to verify his degree as issued from a recognized University. Such offences are therefore punishable by dismissal especially when it is a conduct that is dishonest, mistrust, fraud etc. The disciplinary action taken by the University that affect a private right, professional misconduct cannot be dealt with by such an action.

16.That the said applicant was employed by the University to fully comply with his terms and conditions of service, code of discipline, the University Act and its statutes. The applicant accepted some before commencement of his employment but failed to comply with same.

17. That it will therefore be in the interest of Justice that the said action be dismissed with costs to be paid by the applicant herein."

13. Mr. French in the supplemental affidavit produced Exhibit AA. It is important at this stage to review this exhibit. It is an undated document titled "Report from Meeting with the Registrar and Mr. Henry Schenks" signed by Calvin O.A.T. Macauley. Present at that meeting as recorded, were Mrs. Olive Barrie the Registrar, Mr. Henry Schenks the Applicant and Mr. Calvin O.A.T. Macauley the HR. At this meeting the Applicant was informed about the report of the Verification Committee regarding his certificate and the decision of the Administration to dismiss him. The Applicant was reported to have informed the meeting that he is legally registered at the College and went through the exams before he was awarded the certificate and the college was recognized in the United Kingdom. In addition, he reportedly stated that he will send a request to the local college to do an attestation to USL that the college they are affiliated with was recognized, and stated he should not be dismissed but demoted to the position and rank befitting the TDA Certificate.

EVIDENCE OF THE APPLICANT IN REPLY

14. In reply, the Applicant filed an affidavit sworn to on 18th July 2023 stating that a Verification Committee report recommended that he should be demoted to the position of Audit clerk and not dismissed marked Exhibit B to that affidavit, that he was

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an administrative staff and not an academic staff, that the Registrar invited him to her office on 25th August 2022 and dismissed him a day after by letter dated 25th August 2022 and until his dismissal he was not aware that his credentials were from an unrecognized University and adequate time was not given to him to resign from his position, and no staff resigned voluntarily upon the said press release and communique.

15. He exhibited the Verification Committee Report. The said Committee was set up to verify the credentials of all Academic and Senior Administrative staff of the University. Let me comment on the said Report. The Applicant's name appears at No 4 in the Respondent's Verification of Administrative Staff with the recommendation that *'he be demoted to Audit Clerk and made to refund for the years he was promoted with an unrecognized qualification'*.

SUMMARY OF SUBMISSIONS BY COUNSEL FOR THE PARTIES

16. **Counsel for the Applicant**, Mr. Reffell, relied on the affidavits and the Statement of Case dated 9th November 2022. He stated that the Respondent is governed by the University Act of 2021 and that it summarily dismissed the Applicant who had served for close to 20 years without been informed why he was dismissed or that certain proceedings were taken relating to his dismissal. He submitted that the Respondent did not follow its standards and procedures in dismissing the Applicant and in that case, section 134 of the Constitution of Sierra Leone gives supervisory jurisdiction over inferior courts and tribunals as well as Order 52 of the High Court Rules 2007.
17. He stated that the Respondent who formed the Committee to enquire into the academic correctness of the Applicant was acting as a quasi-judicial body. He pointed out that the Respondent being created by the Act any orders or any decision especially when it acts as a quasi- judicial body is subject to judicial review. He submitted that the Committee set up by the Respondent lacked jurisdiction to summarily dismiss the Applicant without being offered an opportunity to defend himself, and notes that the rationale for the dismissal was the Press Release of 12th May 2022. He opined that the Respondent did not follow the Act but derived authority for its action on the press release.
18. He referred to section 1(1) of the Constitutional Instrument Act 1999 (see paragraph 5 of the Statement of Case) and questioned whether the press release was a statutory instrument having the force of law. He stated that it was a press release, a notice, did not have the force of law, and lacked punishment that can ensue from it. He referred to the definition of Statutory Instrument in section 171(1) of the Constitution, (see paragraph 6 of the statement of case).
19. He referred to *Augustine Sorie Sengbeh Marrah v Inspector General of Police* Supt. Ct. case 8/2018 (see para. 8 of the statement of case) which endorses his submission that a press release which is not a statutory instrument cannot attract force of law or punishment.

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20. He maintained that all issues of dismissal must be directed to the University Court for its determination and he referred to section 15 (1) (b) (ii) of the University Act 2021 and section15(3) para. 10 which requires that even with suspension the person has to be given an opportunity to defend himself. He referred to section 15(4) of the said Act about what it meant to "defend oneself". Counsel stated that sections 15(1) & 15(4) were not followed and the Respondent became judge and jury without the Applicant being given an opportunity to defend himself, call witnesses, lead evidence and make submissions on the law.
21. On the issue of jurisdiction, he submitted that the Respondent acted as a quasi-judicial authority but had no authority to do so. He relied on the cases of *The King v Stafford Justices Exparte Stafford Corporation* 1940 2 KB 33 at p.43, *Guaranty Trust Company of New York v Hannay & Co* 1915 2 KB 536 and maintained that the University Court is the only body robed with the garment of exercising the power of dismissal and no other person can do so. He also referred to *Anisimic v Foreign Compensation & anor.* 1996 AER 2018. He submitted that doing something they had no right to do or basing their decision on something they had no right to do was a nullity.
22. On the issue of natural justice, Counsel referred to the Act which stated that dismissal must be subject to natural justice and the Applicant should be heard and is entitled to Solicitors. He referred to and relied on the principles of natural justice followed by the Courts in Sierra Leone in the unreported cases of *Dr. Kaifala Marah v Attorney General & Minister of Justice* Civ. App No.45/2020 dated 21st October 202 and, *Osman B. Conteh v Sierra Leone Dock Workers Union* S.C. No. 5/84 dated 8th July 1994. He also referred to *Isatu Kamara v Attorney General* S/C Misc. App No.4/92. In respect of the application of the principle in other jurisdictions he referred to the Kenyan case of *Republic v Chairman (BOG) Sigalagalah Polytechnic exparte* 2013 Eklr and in the U.K to *Ridge v Balwin & Others* 1964 AC 40.
23. Concluding, Counsel submitted that the Respondent acted ultra vires its powers conferred in the University Act by summarily dismissing the Applicant from gainful employment, conducting investigations whilst failing to give notice to the Applicant, thereby due process was not followed in accordance with the said Act and with the requirements of natural justice, the Committee failed to heed the fact that a press release or public notice had no force of law. He therefore urged the Court to grant the reliefs claimed.
24. **Counsel for the Respondent,** Mr. Kargbo referred to the affidavits in opposition and the several exhibits attached thereto as well as his statement of case filed on behalf of the Respondent. He submitted that after submitting a degree and working in a promoted capacity based on his degree for almost 15 years, and upon discovery it was not from a University with accreditation, the Applicant is asking the Court for restoration to a junior position which in itself, is wrong. He referred to the application for promotion dated 6th October 2021, JMF8, a personal data form completed by the Applicant indicating that he had a degree in accounting.

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25. According to him this is an employment contract and if there is a breach the proper procedure is to seek redress by Writ and not by Originating Notice of Motion adopted by the Applicant. This he submitted contravenes O5 R2 (c) & Rule 4 (2) (a.) of the High Court Rules. He relied on *Alicia Benjamin v University of Sierra Leone*, Misc. App 296/19 a decision of this Court, a totally different situation in which the process initiating action was not by a Writ which was correct, as it was not an employment matter.
26. He stated that the issue in dispute was whether the dismissal of the Applicant was lawful and whether the University had a right to dismiss. This he submitted cannot be done by affidavit evidence. (see written submission). He relied on *Aiah Momoh v Sahr Samuel Nyandemoh* Civ/App 1/76 and *Crispin George v USL*. Counsel argued you cannot come to the Court with a private right by Originating Summons rather you should come by writ.
27. Counsel referred to the press release issued by the Ministry of Education as well as the Communique and submitted that despite those documents the Applicant did nothing and did not provide the institution evidence of the institution in which he got the degree. He referred to the enquiries from the Respondent and the letter from TEC to the effect that it recognized LICSSAL for only certain programs, and the said University that issued Applicant with a degree was unaccredited. He submitted that the Respondent were diligent in handling the matter and communicated to the Applicant about what was going on and his Solicitor was informed of the position.
28. The question Counsel posed is, can the Applicant be kept in the Respondent's employment? He said the answer was no and this was because of the policy of the Respondent and TEC's findings tasked with validating diplomas certificates etc..
29. On the issue whether the Applicant was aware that his degree was unaccredited and refused to take steps after the press release, Counsel submitted that the Applicant was aware and ought to have known, and it was negligent for him not to have known. He submitted that he was aware and referred to the letter from his Solicitors addressed to LICSSAL headed verification of the status of Irish University dated 5th September 2022 and to his demand.
30. Counsel confirmed that the Respondent did not just take a decision, a Committee was set up to review and assess academic credentials within the Respondent. The Applicant submitted a certificate to the Committee but could not show to the Respondent that he got the degree from a recognized University but left the issue with the Committee. Counsel submitted that the Applicant in view of the foregoing, Counsel for the Applicant cannot come to this Court about the principles of natural justice. The Respondent decision to dismiss he stated was based on its investigations and as a corporate body it can take a decision on its own. He maintained that the Respondent action was within the law and mandate of the University Act. See Statement of Case para. 22. He stated that the Applicant in his letter of employment clearly stated he must respect the University Act of 1972, 2005 and 2021. See para. 23, 25, 26 and 27 of the Statement of Case.

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31. He stated that the Applicant's action for judicial review was totally wrong as due process was observed and Respondent did not act outside the law, see para 29 Annex iv.2.0, the code of conduct referred to Art iv & 40, page 42 – 1.0. He emphasized that the Respondent was in compliance with all of its Acts, the terms and conditions of service of the Plaintiff and the University Code of Conduct. Therefore, he said the Respondent acted within its powers and never exceeded its powers.
32. **Counsel for the Applicant in Reply** relied on the affidavit in Reply sworn to on 18th July 2023 by the Applicant and the exhibits. He referred to the recommendations in paragraph 4 regarding the Applicant; to demote him to Audit Clerk and made to refund. Counsel submitted that there was no mention that he should be summarily dismissed. He also noted that there was no evidence submitted to show that the Applicant knew his degree was false. He said that at the time of the press release the Applicant was of the belief that he was fit and proper and had valid credentials and submitted his credentials as he was required to do. He maintained that the press release and joint communique cannot replace an Act of Parliament.
33. He stated that it was not the University but the University Court which should have taken the decision as constituted under section 11 and was the highest authority and referred to section 12 & 13 on the functions and powers of the Court and section 15 which deals with suspension, removal and retirement of members of staff. He submitted that no other person whether appointed by the University had the mandate to dismiss. He maintained that under section 15 (2)(b) it is the "Court" that can dismiss therefore all the procedures taken offends the Act.
34. He also mentioned that the 2005 Act referred to by Counsel for the Respondent had been repealed and the duty and obligation thereunder ceased and only the 2021 Act is in force.
35. He submitted that they were properly before the Court by instituting the Originating Notice of Motion filed on 28th October 2022, appearance was entered on 5th December 2022 and an affidavit in opposition and statement of case was filed by the Respondent. He submitted that if the Respondent had objections he should not have filed an affidavit in opposition and should have objected, and by filing the said papers he had taken a fresh step thereby waiving his right to raise the issue.

FINDINGS AND DECISION

36. The procedure on applications for judicial review is set out in Order 52 of the High Court Rules 2007. Rule 1 (2) of the said Order provides that the Court may grant the declaration or injunction claimed if it considers that, having regard to-

" (a) The nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,

(b) the nature of the person and bodies against whom relief may be granted by way of such an order; and

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(c) all the circumstances of the case

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review"

37. Rule 3 provides that the application for judicial review shall be made not later than three months from the date of the occurrence of the event giving grounds for making the application. Rule 4 stipulates that the application shall be by originating notice of motion supported by an affidavit providing specific particulars. Rule 5 requires the motion to be served on all parties named in the applicant's affidavit as being directly affected by it and the court may order it to be served on any person not named as being directly affected if it is desirable to do so.
38. A person who is served with a notice of the motion may file an affidavit in response to the application not later than 7 days after service of the notice. Rule 6 (9) provides that the application shall be considered and disposed of by the Court on the basis of the papers filed and if considered necessary by the Court, oral submission from the parties or their solicitors may also be received and considered by the Court.
39. In an application for an order of certiorari, Rule 8 (1) provides that the Court if satisfied that there are grounds for quashing the decision or proceedings to which the application refers, may quash it and may in addition to quashing it remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and proceed in accordance with the findings of the court.
40. Having regard to the documents filed, I hold that the Applicant has fulfilled all the procedural requirements laid down in the said Rules and that the submission of Counsel for the Respondent that the Applicant was wrong to have come to this Court by an Originating Notice of Motion rather than by a Writ is without merit.
41. Another related submission of Counsel for the Respondent is that this is an employment matter which should have been instituted by a Writ of Summons which will enable the Respondent to file its Defence and Counter-claim. This action is instituted under the supervisory jurisdiction of the High Court and it is necessary to consider the process of judicial review.
42. Judicial Review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached, or abuses its powers". See *Regina v Inland Revenue Commissioners, Ex-parte Preston* 1985
43. According to the *Supreme Court Practice 1999* Volume 1 at 902 paragraph 53/14/19, a decision of an inferior court or a public authority may be quashed where that court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there is an error of law on the face of the record, or the decision is unreasonable in the *Wednesbury* sense. The court on a judicial review application, will not act as a court of appeal nor will it interfere in any way with the exercise of any power or discretion

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which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction or the decision is Wednesbury unreasonable.

44. In *Ridge v Baldwin* (1963) 2 All ER 6 at page 25, the court adopted the view expressed in a previous decision of the court which states as follows:

> *"The Court of Queen's Bench, has always considered that it has been open to that court, as in this case it appears to have considered, to correct a court or tribunal or body of men who may have a power of this description.... if it should be found that such persons have disregarded any of the essentials of justice."*

45. In *Halsbury Laws of England* 3rd Edition Volume 11 at page 55 paragraph 114 under the rubric "Certiorari and prohibition lie only in respect of judicial acts," it states as follows:

> *"The orders of certiorari and prohibitions will lie to bodies and persons other than courts stricto sensu(s). Anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of justice, exercised by means of these orders....."*

46. In *The King v Stafford Justices* supra at page 43, the Court of Appeal Sir Wilfrid Greene MR opined *"that the order for the issue of the writ of certiorari is, except in cases where it goes as of course, strictly in all cases a matter of discretion. It is perfectly true to say that if no special circumstances exist, and if all that appears is a clear excess of jurisdiction, then a person aggrieved by that is entitled ex debito justitiae to his order. That merely means this, in my judgment, that the Court in such circumstances will exercise its discretion by granting the relief."*

The Issues

47. The gravamen of the Applicant's case is set out in its Statement of Case as follows:

> *"20. The evidence before the court shows that the Applicant was summarily dismissed from his gainful employment with the Respondent. A purported investigation which directly touched and concerned the Applicant was conducted by the Respondent but a notice of same was not brought to the attention of the Applicant until the Respondent reached its final decision.*
>
> *21. The evidence also adduced proves that the due procedure by the University Act 2021 for summary dismissal was arbitrarily dispensed with by the Respondent.*
>
> *22.The Respondent acted as a quasi judicial body when it investigated the academic credentials of the Applicant. While donning such robe, the Respondent failed to pay any attention to the fact that the public notice did not have the force of law pursuant to which actions such as dismissals or suspensions can be grounded. Additionally, the Respondent constituted itself into the Prosecutor and Judge in that it did not offer any opportunity to the Applicant to defend himself before the University Court as mandated by its governing law.*
>
> *23.It is submitted that the Respondent acted ultra vires its powers and authority conferred on it by the University Act 2021 by dismissing the Applicant based on the*

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Public Notice by the Minister of Technical and Higher Education and violated the eternal rules of natural justice when it did not offer an opportunity to the Applicant to defend himself before the University Council which is empowered by the governing Act in regard investigations for dismissals."

48. There are many issues in this matter centered around the dismissal of the Applicant based on the conclusion that his Accounting degree was from an unaccredited institution. All of this was occasioned by a government notice and press release issued to address the use of "*fake degrees from unaccredited institutions*" for employment, promotion and other benefits. I will restrain myself from expressing a view in respect of "*fake degrees from unaccredited institutions*" and or the actions taken by government or the Respondent to address the issue and its negative consequences on the State and society, as any reasonable person will agree that this issue however understood is an issue of very serious concern. I will thus limit my consideration to the particulars of the Applicant's case and whether he is entitled to the reliefs sought.
49. Based on the Originating Notice of Motion, affidavits and exhibits, statement of case filed by both parties, the issue for this Court's determination is whether the Respondent as a creation of statute, in particular the Universities Act of 2021 (hereinafter referred to as the Act) acted within the provisions of the said Act in dismissing the Applicant herein, and if it did not whether the Applicant is entitled to a grant of Certiorari under Order 52 of the High Court Rules 2007 quashing its decision and the consequential orders prayed for in the Originating Notice of Motion.
50. The University Act of 2021 Act No. 5 of 2021 gives the Respondent the power to dismiss any of its staff by complying with the provisions and procedures enshrined in it. Relevant provisions of the said Act state as follows:

    "Section 15(1)(b) (ii) The Court may, after due investigation and for good cause shown remove any such person by dismissal.

    15(3) A person shall not be suspended or removed by the Court, during the period of the contract unless he has been given a reasonable opportunity to defend himself.

    15 (4) A reasonable opportunity to defend oneself means that the laws of natural justice and equity shall be observed and the person concerned shall be entitled to be legally represented, to call witnesses in his own defence and to cross-examine any adverse witness and to adduce such evidence as he deems necessary for his defence; and if the decision of the Court is to suspend or remove him, he may appeal to the Chancellor who, after examining the evidence may request the Court to constitute a new panel to review the case."
51. By virtue of the interpretation provisions in section 1 of the Act, "Court" means the Court of a University constituted under section 11 as the highest administrative authority of the University. Section 11 states that the "Court" shall consist of the Chancellor who shall be Chairman and other members listed and in the case of Class 1

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Ex officio members: the Vice Chancellor and Principal, Pro Vice Chancellor and Deputy Vice Chancellors.

52. It is not in dispute and remains uncontroverted that the action to dismiss the Plaintiff was based on the Press Release and the Joint communique as well as the response from enquiries made by the Respondent in relation to authenticity of the degree of the Applicant. In the process leading up to the dismissal a Committee was set up to act as a quasi-judicial body and though its recommendations were in fact not followed by the Respondent, it is submitted by Mr. Reffell Counsel for the Applicant that it was not authorized to take decisions regarding disciplinary measures as that was the prerogative of the University Court.
53. Notwithstanding that it was unauthorized, it is also submitted that the procedure it adopted require scrutiny to ascertain whether in the process of determining the rights of the Applicant whether due process was followed i.e. whether at every stage he was given the opportunity to defend himself.
54. It is important to review the application of the principles of due process, natural justice and fairness as enunciated in several decided cases. In the unreported Supreme Court of *Isatu Kamara v. The Attorney General* S.C. Misc. App. No. 4/92 Chief Justice Kutubu of the Supreme Court stated thus:

    "Indeed there are fundamental principles which govern judicial and quasi-judicial inquiries and one of these is "audi alteram partem", that is a party to judicial proceedings should not be condemned unheard..... A judicial or quasi-judicial decision reached by a tribunal in violation of the rules of natural justice may be quashed on certiorari".
55. I have also held in the case of *Marion Kabba v. Police Council Misc. App 302/2021* dated 4th April 2022, at paragraph 44 where I stated thus:

    "Based on the affidavit evidence, in contravention of the principles of natural justice, I find that the Respondents contravened the said Regulations, the principles of natural justice, fairness, as it failed to inform the Applicant about any disciplinary action instituted against her and the nature and particulars of any offence(s) she might have committed; nor was any charge(s) communicated to her in respect of same. She was never made aware nor informed about any investigation that was undertaken of any offence(s), charge(s), or any panel or disciplinary proceedings that was/were set up or held to look into allegations, breaches or offences she may have committed; never given an opportunity to defend herself against any complaint, offence, charge, or misconduct allegedly committed by her or allegations that might have been levied against her in any disciplinary proceedings before any constituted panel."
56. In the House of Lords case of *Ridge v Baldwin* the Court stated thus:

    "The watch committee were under a statutory obligation (see Police Act, 1919, s 4(1)) to comply with the regulations made under the Act. They dismissed the appellant after finding that he had been negligent in the discharge of his duty. That

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was a finding of guilt of the offence of neglecting or omitting diligently to attend to or to carry out his duty. Yet they had preferred no charge against the appellant and gave him no notice. They gave him no opportunity to defend himself or to be heard. Though their good faith is in no way impugned they completely disregarded the regulations and did not begin to comply with them. My lords, I cannot think that any decision so reached can have any validity and unless later events have made it valid it ought not to be allowed to stand. Had the regulations been applied but if there had been some minor procedural failure different considerations might have applied. There was however, no kind of compliance with them. In my judgment once there was a report or allegation from which it appeared that a chief constable might have committed an offence it was a condition precedent to any dismissal based on a finding of guilt of such offence that the regulations should in essentials have been put into operation. They included and incorporated the principles of natural justice which, as Harman LJ [1962] 1 All ER at 850), said it is only fair play in action. It is well established that the essential requirement of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself and in order that he may do so that he is made aware of the charges or allegations or suggestions which he had to meet; see Kanda v Government of the Federation of Malaya. My lords, here is something which is basic to our system the importance of upholding it far transcends the significance of any particular case."

57. Bearing in mind the provisions of the Act governing the Respondent regarding the procedures to be followed in the dismissal of the Applicant and the principles of natural justice to be followed as espoused in the case referred to above, I have reviewed the affidavit evidence and have been persuaded to make the following findings:
    1. That the Respondent failed to follow the provisions in the Act firstly that its decision to dismiss or remove the Applicant was not taken by the duly constituted body "the Court" as mandated by section 15 of the Act set out above. (See letter of dismissal above.)
    2. The Applicant was thus deprived from having a fair hearing by "the Court", from having a reasonable opportunity to defend himself and from the right of appeal all of which he was entitled to under section 15 (4) of the Act.
    3. The Verification Committee and later the meeting between the Registrar and the Human Resource Personnel and the Applicant who deliberated on the Applicant's case and allegations against him culminating in his letter of dismissal, acted as quasi-judicial bodies and violated the principles of natural justice as they did not give the Applicant a proper hearing with the opportunity to adequately defend himself.
    4. The Applicant was not also given the information and opportunity to resign or be demoted to the position he had held prior to his accounting degree if at all his Accounting degree had been impugned through no fault of his.

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5. Consequently, the decision to dismiss the Applicant as evidenced in the letter of dismissal cannot be held to be valid and should not stand.

CONCLUSION

58. In view of the above, I am therefore satisfied on a balance of probabilities that the Applicant has made a case for the granting of the orders and reliefs prayed for in his Originating Notice of Motion and I pronounce judgment in his favour and order the following:
    1. An order of Certiorari is granted directed to the Respondent quashing their decision to dismiss the Applicant by letter dated 15th September 2022.
    2. The Respondent shall restore the Applicant to his position ante his dismissal or to the position he held previous to his elevation/promotion by virtue of his impugned academic qualification.
    3. Should the Respondent fail to comply with Order 2 above within 30 days of this Order, the Respondent shall pay to the Applicant damages for wrongful or unlawful dismissal as follows:
        i. End of Service and other terminal benefits provided in the Act and the terms and conditions of employment of the Applicant.
        ii. Interest thereon at the rate of 25% from 15th September 2022 until Judgment.
    4. Costs to the Applicant to be taxed if not agreed.

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HON. MRS. JUSTICE JAMESINA E. L. KING J. A.

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