

IN THE HIGH COURT OF SWAZILAND

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Evelyn Kamugisha

Vs

The Registrar - University of Swaziland                      1st Respondent

The University of Swaziland                                      2nd Respondent

Case No. 1175/97

Coram                                                                      S.W. Sapire, ACJ

Judgment

(18/7/97)

The applicant approached the court on the 28th April 1997 seeking and obtaining the rule nisi calling on the respondent to show cause why the deregistration of the applicant as a student on the second respondent should be set aside and why the respondent should not be interdicted from preventing the applicant from continuing as a student of the 2nd respondent and write her examination. The rule so drafted was to operate forthwith as interim interdict pending the return day

The rule was served and the applicant by the time the return day of the rule nisi was heard by me had written her exams and was awaiting her results. The non-payment of her fees which was the course of her being deregistered or suspended had been remedied.

When the matter was argued on the return day I understood that the only issue was one of costs. This may have been a misunderstanding for during the period that I had reserved

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judgment a further application was made by the applicant in terms of which he sought relief arising out of the respondents having withheld the results of the examination. On that application I ruled that the respondents were indeed acting contrary to the terms of the order as the applicant was to continue as a student of the University while the application was still to be decided.

Reverting to the return day of the original rule nisi, nothing was indicated to me which entitled the respondents to suspend or deregister a student for non-payment of fees.

In Sipiwe Tsabedze vs the University of Swaziland the point was made that a contract or relationship exists between the University and the students This was in accordance with what was said in Mkhize vs Rector University of Zululand and Another 1986 (1) SA 901.

There is no regulation or contractual provision which allows the University to take the action it did and in terms of the statutes governing the relationship of the University with the students the only sanction

for non-payment of fees is that a degree may be withheld until such time that the fees are paid.

In view of this it is quite clear that the University was in breach of its contract with the applicant in suspending her and refusing to allow her to write her examination. She was obliged to come to court to seek redress. She is entitled to such redress and therefore the rule nisi is confirmed and the respondents are to bear the costs of this application.

S.W. SAPIRE

ACTING CHIEF JUSTICE