THE HIGH COURT OF SWAZILAND

Elijah Dlamini & 47 Others

Applicant

Vs

University Senate

1st Respondent

Chairman Of The University Senate

2nd Respondent

University of Swaziland

3rd Respondent

Civ. Case No. 1621/99

Coram S.W. Sapire

For Applicant Mr. Mdladla

For Respondent Mr. P. Dlamini

JUDGMENT

(14/07/99)

The application was brought as one of urgency. The relief claimed is that the decision of the 1st respondent of the 14th and 15th June 1999 directing the applicants to re-write their courses save for SOL 304 be stayed pending finalisation of this application.

The second claim is that the decision of the Senate of the 14th and 15th June 1999 be reviewed with immediate effect and be set aside as grossly irregular and prejudicial to the Applicant.

The notice of motion requires that the Registrar Secretary of the University of Swaziland and/or Secretary of Senate and/or any other Senate or officer responsible as the case may be, to dispatch a record within a period to be stated by the court after receipt of the Notice of Motion. Prayer 2 was to operate with immediate effect and that the rule was to be returnable on a specified date.

The matter was opposed and the outcome of the initial hearing was that no rule was issued and an interim order was not granted. When the matter was argued before me I indicated that I would give my judgment as soon as possible. This I am now doing. Within the time available it has not been possible to prepare a written judgment which can be handed down and I will briefly state the reasons for the decision to which I have come.

The applicants are about two thirds of a class of students registered in BA Law third year of study. They along with others of their class who are not applicants wrote examinations with a view to selection for promotion to the following year of study. It came to the knowledge of the University authorities that there were allegations of a leak of the examination papers and that some students, had had prior knowledge of the contents of the examination papers. If the reports were true, the results of the examination would they considered for that reason be unreliable.

The initial information came from two anonymous letters. Following on these letters investigations

were undertaken and the Vice-Chancellor pointed a number of people to investigate the allegations and to report to the Senate. This "Committee" acted in terms of the mandate given to it by the Vice-Chancellor, interviewed some of the students and made a report thereon which was due course presented to the Senate. The applicants complained that this action of the appointment of a Board or Committee to investigate the allegation was ultra vires the Vice Chancellor and by reason of that the whole procedure is per force to be set aside.

3

I have studied the statutes and the regulations relating to the conduct of the University and the conduct of the examinations and have found nothing irregular in what was done. The committee reported to the Senate and the Senate adopted the report of this committee and acted on it. In so doing the Senate can be said to have confirmed the appointment of the committee or rectified any deficiencies in such appointment as there may have been.

The content and conclusions of the report were sufficient for the senate to come to entertain sufficient doubt as to the reliability of the examination. It was then faced with the problem of how this was to be overcome. The Senate decided require the students to re-write the papers and appointed dates for the sitting of the examinations. The students complained that this course was irregular and highly prejudicial to them. It must be noted in the first instance that this was not a punitive measure and that there was no tribunal, which judged whether anyone or more of the students was guilty of the conduct in relation to the examination, which was reprehensible.

It would be impossible in the time available, to determine which of the students took advantage of the leak. The evidence on which the Senate came to the conclusion that there had been a leak of the papers, and that the examination was on that account undeniable is a matter for the senate and it is not for this court to determine whether the Senate of the University was right or wrong in coming to the conclusion which it did.

There was sufficient suspicion cast on the results of the examinations which reasonably raised in the collective mind of the senate a suspicion and apprehension that something untoward had taken place.

I do not propose to analyze the evidence but there was evidence that indicated that irregularities had taken place. It was proper then for the senate and it alone to decide on the reliability of the examination and the results, which were produced. There seems to be no reasonable solution in the matter but to have everybody re-write these papers as directed.

4

It has been argued that the results of such a decision are prejudicial. This may depend what one means by "prejudicial" because those students who re-write the examination and in the light thereof and perhaps taking comparison with the previous results and the year's work in general will pass. There may be those who fail this examination and their results can be moderated by the University having regard to the circumstances. Even those who the University eventually decides cannot be promoted as a result of writing the second examination may have a remedy if there have been any irregularities. Those who are not promoted on account thereof may have their relief. But at the present time it does not appear to me that there is any basis on which I can overrule the ruling of the Senate that the examination has to be rewritten.

The application will be dismissed with costs.

S.W. SAPIRE, CJ