



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No: 1683/14

In the matter between

DUDUZILE DLAMINI-NHLENGETHWA

APPLICANT

And

THE UNIVERSITY OF SWAZILAND

RESPONDENT

Neutral citation: *Duduzile Dlamini-Nhlengethwa v The University of Swaziland (1683/14) [2015] SZHC 06 (19 February 2015)*

Coram: M. S. SIMELANE, J

Heard: 03 December 2014

Delivered: 19 February 2015

Summary: Civil Procedure – Review application – failure to respond to Application – unreasonable delay in issuing decision on appeal – matter reviewable.

Judgment

SIMELANE J

[1] The application herein came by way of urgency for an order in the following terms:-

- “1. Condoning the applicant for non-compliance with the Rules of Court and manner of service and enrolling the matter to be heard as one of urgency.**
- 2. The decision of the respondent refusing the applicant to register for the 2013/2014 academic year is hereby reviewed and/or set aside;**
- 3. The respondent is ordered to register the applicant for the 2013/2014 academic year and allow her to sit for her examinations;**
- 4. Pending finalization of this matter, the respondent is ordered provisionally register the Applicant and allow the applicant to sit for her exams commencing on the 2nd day of December 2014;**

5. **The respondent is ordered to pay the costs of this application.**

6. **The applicant is granted such further and/or alternative relief as the above Honourable Court may deem fit in the circumstances.”**

[2] The genesis of this application is that the Applicant enrolled with the University of Swaziland in the year 2012 to pursue a Diploma in Law Programme.

[3] The Applicant is paying for her tuition fees from her retainer and sitting allowance as a full time member of the Industrial Court of Swaziland.

[4] It is the Applicant’s contention that she had anticipated to receive her gratuity from the Swaziland Government on or around August 2014 which she had intended to use in paying her tuition fees and the previous year’s outstanding fees in order to register as a student with the Respondent.

[5] Applicant was unable to register with the Respondent in August 2014, because the payment of her gratuity by Swaziland Government was delayed due to financial difficulties on the part of Government.

[6] As a result of financial difficulties at the time the Respondent was not paid tuition fee for most of the students that are sponsored by

Government. As a result then the Respondent extended the deadline for Registration for all the students to 26 September 2014.

[7] Prior to the extension of the registration deadline the Applicant on the 15th day of September 2014 wrote to the Vice Chancellor requesting for an extension of time for Registration. In her letter of application the Applicant stated that the reason she could not pay timeously was because the Swaziland Government had not paid her gratuity in time, the said correspondence is annexed on her application in Court and marked DH2. It is of paramount importance to mention that the Respondent has not denied receipt of this letter.

[8] It is further the Applicant's contention that the Respondent did not bother responding to the Applicant's letter for extension of time notwithstanding that clause 2.12 of the Financial Regulations of University of Swaziland, states that the Vice Chancellor may allow a 7 days period provided evidence of official delay beyond the control of the student is produced. It reads as follows:-

“2.12 Late registration is permitted for up to seven (7) working days after the commencement of lectures as stipulated in the University Calendar. Registration beyond this grace period may be permitted by the Vice Chancellor for a evidence of official delay beyond the control of the student is produced.”

[9] It is Applicant's further submission that she was only advised verbally on the 11th day of October 2014 that her request has been refused. No

reasons were stated why it was refused and no evidence adduced to prove that the Respondent considered the merits of the application.

[10] The Applicant not content with the decision of the Respondent then noted an appeal with the Respondent's Council and paid some outstanding fees for the previous year and part of the tuition for the current Academic year. It is pertinent for me to mention *en passant* that these amounts were duly accepted by the Respondent per annexure DH6 and which monies are still with the Respondent.

[11] The Respondent argued *au contraire* that on 28 November 2014 the Council dismissed the Applicant's appeal stating that she was accorded sufficient period to register up until the 26 September 2014 with all the students.

[12] The Respondent further stated that it did not respond to the Applicant's letter of the 15th day of September 2014 because it had already extended the registration period to 26 September 2014 for all the students.

[13] The Respondent submitted that it properly applied itself to the matter and considered the evidence adduced by the Applicant together with her application for late registration. The Respondent further submits that a grace period was granted to the studentry for an extension of time consideration being heard to the fact that a number of students were in the same predicament. The extension and or grace period was up to the 26th day of September 2014.

- [14] It is further the Respondent's contention that the Applicant paid her tuition in October 2014 way after the registration deadline and contrary to paying on or about 19 September 2014 as she had requested.
- [15] The Respondent also submits that applications for late registration to the Vice Chancellor are guided by University Regulation 2.12 of the Regulations which stipulates that late registration is permitted for up to 7 working days after the commencement of lectures as stipulated in the University Calendar. Registration beyond that period may be permitted by the Vice Chancellor for a period of up to 7 working days provided evidence of official delay beyond the control of the student is produced.
- [16] The Respondent submits that the first day of lectures was on Monday 18 August 2014 hence the deadline for late registration was on 27 August 2014 the Vice Chancellor could thereafter exercise his discretion on extension in accordance with Regulation 2.12 only up until 5 September 2015. The Vice Chancellor had no powers to grant the late registration after 5 September 2014. The Respondent further avers that she considered the evidence adduced by the Applicant regarding the delay for payment of tuition fee in its totality. The Respondent relies on annexure SS1 which are the minutes of the council meeting dated 20 November 2014.

[17] I am inclined to agree with the Applicant that if she does not write the examination she will be extremely prejudiced. This I say because she will be compelled to repeat.

[18] The Applicant has been religiously attending all lectures, writing tests and assignments for the duration of the semester and as expected to do so by the Respondent which tests and assignments were set and marked by the lecturers who are under the employ of the Respondent. I find that it is gross injustice for the Respondent to turn around and argue that the Applicant is not recognized as a student and deprive her the opportune time of writing the examination. The very same Respondent recognized the Applicant as a student by allowing her to attend lectures, write tests and assignments. The Court cannot condone a situation where on the eve of the examinations the Respondent would then disown the Applicant as a student of the Respondent.

[19] To further buttress the Applicant's case I fail to comprehend why the Respondent accepted the payments which were made by the Applicant if they knew that she will not be registered as a student. When making the payments she had already filed the application for an extension and she had not been given any response by the Respondent.

[20] I find that she had a legitimate expectation that the University will accede to her request or application for an extension. The

Respondent's conduct of accepting the payment made her very much optimistic that she will be allowed to write her examination.

[21] The Respondent states that every student was granted the grace period of up to 26 September 2014. I beg with respect to differ and find that this argument by the Respondent is flawed. I say this because the Respondent has not produced an iota of evidence to show that the rest of the studentry had applied for extensions, hence they granted the extension.

[22] I find that the Applicant's case was unique in the sense that realizing that there are circumstances beyond her control compelling her not to meet the deadline for payment, she wrote to the Respondent and applied for an extension. The Respondent should have responded in writing and that is what one would reasonably expect from an establishment of the Respondent's caliber and the expectation in the corporate world. It was wrong for the Respondent not to respond in writing. How would the Applicant know whether the application had been successful or not?

[23] I reject the contention by the Respondent that they ran an advert in the print media in particular in the Times of Swaziland dated 24 September 2014 purporting to grant the extension sought. As stated *ante* I find that this was not enough as the Applicant's case was unique as alluded to above. The Respondent had an obligation to respond to her application not to lump her up with the rest of the students as the Respondent argued. I find that the Respondent is

merely clutching at straws by this contention. With respect it does not hold any water and I consequently reject it. It must be noted that the Respondent failed, at least out of courtesy to call the Applicant and advise her that she would also fall in the same category of students who were in that predicament and that her registration deadline would also be the 26th September 2014.

[24] The Constitution of Swaziland Act on the rights to administrative justice, at Section 33 (1) and (2) states as follows:-

“33 (1) A person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved.

(2) A person appearing before any administrative authority has a right to be given reasons in writing for the decision of that authority.”

[25] I find that the Respondent failed to adhere to Section 33 (1) and (2) of the Constitution.

[26] Furthermore, in the case of **Dlamini v The President of the Industrial Court and Another** a decision of the Court of Appeal case No. 23/1997 the Court adumbrated the law on review as follows:-

“The fact that the decision in question was arrived at arbitrarily or capriciously or mala fide, or as a result of unwarranted adherence to a fixed principle, or in order to further an ulterior or improper purpose or that the Court misconceived its function or took into account irrelevant considerations or ignored relevant ones, or that the decision was so grossly unreasonable as to warrant the inference that the Court had failed to apply its mind to the matter... Those grounds are not exhaustive. It may also be that an error of law may give rise to a good ground for review.”

[27] The Court is at liberty to review and or set aside a decision that is grossly unreasonable. I accordingly adopt with respect the decision of the Court of Appeal.

[28] In the case of **Dlamini v The President of the Industrial Court (supra)** the Court held that there are two common law grounds of review; firstly, it was held that a decision may be set aside where it can be shown that the decision maker had a duty to act fairly towards the Applicant and did not do so. Secondly, it was held that the notion that a decision can only be set aside where it can be shown that the decision maker acted “grossly unreasonable” must be jettisoned and that a decision should be set aside if it is unreasonable.

[29] *In casu*, the letter for extension of time that was written by the Applicant to the Respondent was not responded to by the Respondent, consequently the Applicant did not register timeously. The failure by the Respondent to respond to the Applicant’s letter resulted in grave

injustice to the Applicant hence I find that the decision of the Respondent warrants to be reviewed and or set aside.

[30] The contention by the Respondent that due consideration of the application and merits therein was done by the Council is rejected. This is so because the annexure SS1 reflects that the University Council deliberated on the matter on 20 November 2014 and only communicated it's to her on 28 November 2014 per DH8. The said consideration of the application for an extension was out of time. This was way after the registration deadline on the purported extension by the Respondent which was on 26 September 2014.

[31] Furthermore, Section 21 (1) of the Constitution Act 2005, reads as follows:-

“21 (1) In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law. (emphasis added)

[32] I find that this was an inordinate delay regard being heard to the nature and circumstances of the application by the Applicant for an extension of time and the fact that it is evident that this decision was issued on the eve of the examinations.

[33] The inaction of the Respondent is the sole cause of the proceedings before this Court. Had the Respondent acted timeously on the application, the Applicant would not be in this predicament. On the issue of the regulation 2.12 I find that the Applicant was indeed faced with circumstances beyond her control and did well by bringing this to the attention of the Respondent. The confirmatory affidavit of the Industrial Court Registrar clearly demonstrates that she was faced with circumstances beyond her control as she had not been paid by Government of Swaziland. It is evident that at the beginning of the academic year and on being admitted as a student she would not have known that she will not be paid her gratuity by the Government of Swaziland which is her employer.

[34] **CONCLUSION**

It is hereby ordered as follows:-

- (1) The decision of the Respondent refusing the Applicant to register for the 2013/2014 academic year is hereby reviewed and/or set aside;
- (2) The Respondent is ordered to register the Applicant for the 2013/2014 academic year and allow her to sit for her examinations;
- (3) No order as to costs.

**M. S. SIMELANE J
JUDGE OF THE HIGH COURT**

For the Applicant: Mr. N. D. Jele

For the Respondent: Mr. Z. Shabangu