BATSIRAYI BENJAMIN NYABUNZE
versus
THE UNIVERSITY OF ZIMBABWE
and
THE VICE-CHANCELLOR N.O. (LEVY NYAGURA)
and
THE REGISTRAR N.O. (S. M. CHEVO)

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 2 October 2014 & 17 May 2017

Opposed Application

T. R. Tanyanyiwa for the applicant
G. Mhlanga for the respondent

ZHOU J: The applicant in this matter is seeking an order in the following terms set out in the draft order:

> "IT IS ORDERED THAT
> 1. The 2nd and 3rd Respondents release the applicant's transcript immediately upon service of this order.
> 2. The respondents to pay cost of suit jointly and severally one paying the other to be absolved."

The application is opposed by the respondents.

The basis of the application, as set out in the applicant's founding affidavit is as follows. The applicant was admitted to the University of Zimbabwe's Bachelor of Science Honours Degree in Engineering from August 2005. This is a four-year degree programme which he was to complete August 2009. The applicant's case, which is fraught with inconsistencies and contradictions, is that following his admission to the University of Zimbabwe he paid his fees in full "until completion of my studies". The applicant states that he duly wrote all the examinations set by the University "and passed with the exception of Engineering Mathematics IE Paper 1 which I eventually passed in 2009." The applicant states that after that he considered himself a "graduated student (*sic*) and I duly got my degree and transcript". The applicant states that sometime in 2012 he was advised by telephone that his courses were "incomplete" and that he

was not supposed to have graduated. At that time he was employed at Chinhoyi University as a civil engineer. He states that he queried the issue raised. He further states that the second respondent caused his arrest in December 2012 on allegations of having used fraudulent results to get employment. He appeared before the Magistrates' Court at Chinhoyi and was convicted and sentenced to a fine of US$300 which he duly paid. After the conviction the applicant wrote to the respondents on 8 February asking to be provided with a "partial transcript". He states that he requires the transcript for use at another institution because the respondents refused to release his transcript.

The respondents dispute that the applicant graduated from the University of Zimbabwe and state that he forged the documents which he produced as his results. The records at that university showed that he still had outstanding courses.

The applicant is clearly mistaken as to what he is entitled to. He submits in his affidavit that he "cleared" his name with the court, yet he was convicted of fraud. It is difficult to understand what transcript or "partial transcript" he wants yet by his own admission he was convicted of fraud in that he had forged University of Zimbabwe results in circumstances where he failed to complete that degree programme. In para 5 of his founding affidavit he states: "I duly got my degree and transcript". That averment is repeated in para 2 of the heads of argument filed on his behalf. He has not attached a copy of the degree certificate which he was awarded or the transcript which he got. And if he received the transcript so what is he asking for from this court? Why would he be asking for a "partial transcript" (whatever that means) if he already his transcript?

The applicant's case is very incoherent and contradictory, and represents an abuse of the procedures of this court by a person who has been caught on the wrong side of the law. The respondents have stated that they cannot provide him with the transcript or partial transcript because he has fraudulently tempered with the records concerning his results at the University.

The relief which the applicant is seeking is in the form of a mandatory interdict as he asks the court to compel the respondents to release a transcript of results to him. He must satisfy the requirements for such a final interdict, which are:

(a) a clear right;

(b) an injury actually committed or reasonably apprehended; and

(c) the absence of similar or adequate protection by any other ordinary remedy.

See *Setlogelo* v *Setlogelo* 1914 AD 221 at 227.

Whether the applicant has a right is a matter of substantive law; whether that right is clearly established is a question of evidence. See Herbstein and Van Winsen *The Civil Practice of the High Courts and the Supreme Court of South Africa* 5th Ed. Vol. 2, p. 1457. The applicant for the interdict bears the onus to prove on a balance of probability the facts and evidence which establish a clear and definite right in terms of substantive law. FIREDMAN AJP expressed the position as follows: "The right which the applicant must prove is also a right which can be protected. This is a right which exists only in law, be it at common law or statutory law." In the present case the applicant has not established any legal right to a transcript. He has not completed the degree programme. If what he wants to know are his results then he clearly has that information contained in the slips copies of which are annexed to his founding affidavit as annexures "L", "M", "N", "O", and "P". Annexure "L" is a clearly questionable document as it does not state the "overall decision". In his heads of argument the applicant claims that he has a "personal right" without stating the basis for claiming the existence of a personal right. He is clearly mistaken as to the meaning of the expression "personal right" as such right does not arise at all in the circumstances of this case.

The applicant has no legitimate expectation to be given a transcript of results which are now questionable because of his own fraud. His expectation to be given a transcript in these circumstances is clearly illegitimate.

As the applicant has not established any right to be protected by the interdict sought, it is not necessary for the court to consider the other two requirements.

I need to point out too, that the applicant's conduct constitutes a very serious threat to the credibility of the education system in this country. In this day and era when the integrity of the education system is being threatened by persons brandishing degrees obtained in questionable circumstances or from institutions which are not accredited, the court cannot be seen to be lending itself to a fraudulent scheme which undermines that same system of education. The court is entitled to take judicial notice of the concerns by the Minister responsible for Higher and Tertiary Education regarding the proliferation of institutions which are not accredited yet they purport to offer educational qualifications whether

presented as "Honorary" or by some other designation. The country cannot accept a situation where the streets are littered with persons calling themselves "Doctors" or "Professors" yet they have never seen the interior of a library. A nation's system of education defines its people, and the integrity of the system must be jealously protected by the courts. Institutions of learning and those involved in their administration must be sensitive to any threat to the integrity of the country's system of education and are entitled, as the respondents did *in casu*, to withhold the results where there is evidence of or reasonable grounds for suspecting a fraud or other form of manipulation of the results by a student. By his own admission the applicant has been convicted of fraud involving forging university qualifications. Yet he makes a startling submission that he "cleared" his name by being convicted and paying the fine imposed. Nowhere in his affidavits has he challenged the conviction. Instead, he celebrates it as an act of clearing his name.

In all the circumstances, this application is without merit. It is an unacceptable abuse of the procedures of this court. If costs on the attorney-client scale had been asked for the court would have considered making such an order of costs.

In the result, the application is dismissed with costs.

Manase & Manase, applicant's legal practitioners
Chihambakwe, Mutizwa & Partners, respondents' legal practitioners