

TRUST KGANYAGO
versus
BINDURA UNIVERSITY OF SCIENCE EDUCATION

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 2 November 2017 & 22 November 2017

Unopposed Application

Ms P. Chigumba, for the applicant

MUREMBA J: I dealt with this matter as an unopposed application after the respondent which had initially filed a notice of opposition and opposing affidavit did not file heads of argument and did not appear at the hearing despite having been served with the notice of set down.

The respondent not having attended the hearing, the applicant's counsel, *Ms Chigumba* applied for a default judgment. However, looking at the order the applicant wanted me to grant, I was not convinced that this was an order that I could grant at law. I thus asked *Ms. Chigumba* to address me on the merits of the matter, and she did. Still I was not convinced that this is an order that I could grant. Because of this, I have had to write the present judgment dismissing the application.

The facts of the matter are as follows. From August 2004 to July 2008 the applicant studied at Bindura University of Science Education (the respondent) and was awarded an Honours Bachelors Degree in Accountancy. At that time the applicant was using the name Trust Mumanyi. As a result, his degree certificate and academic transcript were issued in this name.

In April 2015 the applicant appeared before a notary public and executed a Notarial Deed of Change of Name, which deed was officially registered on 7 May 2015. Consequently, the applicant changed his name from Trust Mumanyi to Trust Kganyango. He then had his birth certificate changed to reflect his new name in terms of s 18 (2) (a) and (b) of the Birth and Death

Registration Act [*Chapter 5:02*]. He also obtained a new national identity card issued in his new name.

In August 2015 the applicant's legal practitioners wrote to the respondent asking it to issue the applicant with replacement academic certificates bearing his new name. Initially the respondent acceded to the request and asked the applicant to submit his original degree certificate, academic transcript, national identity card, birth certificate and a fee of US\$60.00. The applicant tendered all the requested documents and made payment of the fee. However, to date the respondent has not issued the applicant with replacement academic certificates bearing his new name. It is on this basis that the applicant filed the present court application seeking an order directing the respondent to issue him with replacement academic certificates. To be precise he seeks the following order.

"It is ordered that:

1. The refusal by respondent to amend applicant's identity particulars be and is hereby declared unlawful and in breach of section 3 (1) (b) of the Administrative Justice Act.
2. The respondent be and is hereby directed to within 14 days of receipt of this order, alter the name appearing on the applicant's degree certificate and transcript from Trust Mumanyi to Trust Kganyago.
3. The respondent shall bear the costs thereof on a legal practitioner to client scale."

The application is being made in terms of Order 32 rule 226 (1) (a) and rule 230 of the High Court Rules, 1971 as read with s 3 (1) (c) and 4 (1) and (2) (d) of the Administrative Justice Act [*Chapter 10:28*]. It is the applicant's averment that the respondent is failing, neglecting or omitting to amend his academic certificates and as such it has violated his right to administrative justice. He averred that in terms of s 3 (1) (c) of the Administrative Justice Act, the respondent as an administrative authority with the power to take administrative action that affects his interest, failed to act within a reasonable period after being given the request. He further averred that in terms of s 68 (2) of the Constitution of Zimbabwe as a person whose right or interest has been adversely affected by the administrative conduct of the respondent, he had the right to be given promptly and in writing the reasons for the failure to issue him with amended academic certificates and more than two years have passed with no reason having been proffered. He averred that this conduct negates the purpose of fair, just and transparent administrative action.

The applicant averred that the delay in issuing him with new academic certificates has caused him to be deemed a person with no academic qualifications as he has none in his name. He averred that this has prejudiced him in applying for jobs as he has to constantly provide extra documentation to prove that he is the same person who attained the qualifications on the academic certificates. He averred that this has caused him to lose some employment opportunities as prospective employers doubt his qualifications.

The applicant made an averment that the respondent has lacked the decency to respond to his request and to provide the reasons for the refusal to grant him his request. The applicant averred that it is settled law that once a person changes their name every person and every institution such as the respondent has an obligation to amend their records and identify the person by such new name.

Although the respondent was barred I had an interest in knowing why it had not issued the applicant with replacement academic certificates particularly in view of the fact that it had asked for his documents and a fee in order to issue him with replacement academic certificates. At the same time I was also wondering if at law the respondent can actually issue the applicant with replacement academic certificates following the change of name.

The respondent's opposing affidavit shows that it is true that the respondent asked the applicant to furnish it with his original academic certificates, identification documents and to pay \$60.00 which he did. However, after being furnished with these, on 9 October 2015 the respondent's legal practitioners, Manyurureni & Company then wrote a letter to Messrs Mvingi and Mugadza, the legal practitioners who were representing the applicant in the matter then. In that letter the respondent's counsel indicated the respondent's willingness to have the applicant's degree certificate and academic transcript amended to reflect his new name, but it was stated that it was having a challenge in finding the "statutory basis and procedural requirements it needed to follow for purposes of effecting the intended changes". The respondent's lawyers further indicated that they had also failed to find this. They were requesting the applicant's erstwhile legal practitioners to guide them "on the substantive and procedural aspects of the said process".

In the opposing affidavit the respondent maintained that it was not refusing to grant the applicant's request, but said that all it needed was the legal framework within which such action

could be lawfully executed. It said that it wanted to help the applicant to the best of its ability, but within the parameters of the law.

In his answering affidavit the applicant acknowledged receiving the respondent's letter. He averred that the respondent was then furnished with legal authorities in correspondences dated 30 March 2017 and 11 July 2017, but it still did not issue him with new academic certificates. However, the said correspondences were not attached to the answering affidavit.

In the applicant's answering affidavit and heads of argument it is stated that in effecting the name change on the academic certificates, the respondent should be guided by the principles established under common law, s 3 of the Administrative Justice Act and s 68 of the Constitution of Zimbabwe. The applicant further averred that it is the registrar of the respondent who is privy to the process that is followed in issuing new academic certificates and as such he should not be asking to be assisted by the applicant and his lawyers. The applicant stated that if the Registrar General of Births and Deaths has confirmed his name change by issuing him with a new birth certificate and national identity card, then the registrar of the respondent has no authority or power to deny him the same change on his academic certificates.

Administrative actions and decisions that are taken by administrative bodies must be lawful and as such they must be duly authorised by the law. In this regard administrators may only exercise powers that have been lawfully reposed in them. *Police and Prisons Civil Rights Union and Others v Minister of Correctional Services and Others* 2008 (3) SA 91. In other words administrators are controlled by empowering provisions which govern their decisions according to set rules. Therefore in a case where an administrator is accused of violating a person's right to administrative justice by failing to act, the person making the complaint should furnish the court with the law that empowers the administrator to take the action requested. In *casu* it was therefore necessary for the applicant to furnish this court with the law that empowers the respondent to issue him with replacement academic certificates following his change of name. I say this because it does not necessarily follow that because the Registrar General of Births and Deaths effected the name change in its records therefore universities and colleges automatically do that to their records. Effecting a name change on a high school certificate, college certificate or an official professional

document retrospectively is one of the most difficult processes¹. My research on the internet revealed that university policies vary from one university to another on whether or not they issue replacement academic certificates to previous students following a change of name. With some universities once a student has graduated, it is not possible to retrospectively change the name held on the academic certificates except in very few instances. Under the law in England, Wales and Northern Ireland, once you have graduated it is not possible to retrospectively change the name held on your record or produce documentation in your new name and academic transcripts and degree certificates will not be reissued unless the name change is related to a gender reassignment². At the University of Oxford for example, the only retrospective changes that can be made are where an administrative error has occurred in writing the name and in cases where a previous student has undergone gender reassignment surgery (transgender)³. With other universities it is possible to get replacement certificates with new names subject to the previous student meeting certain requirements, however the name change was effected. So what is crucial in a matter of this nature is to look at the policy of the particular university in issue. It is unfortunate that during my research I could not find anything from our local universities on their policies on issuing replacement academic certificates retrospectively following a change of name by previous students.

The respondent is established in terms of the Bindura University of Science and Technology Act [*Chapter 25:22*]. Pursuant to this Act there are regulations that have been promulgated to deal with policy issues. Despite the applicant's heads of argument being 10 pages long, they did not address the pertinent or crucial issue of the law which empowers or authorises the respondent which is a creature of statute to issue the applicant with a replacement degree certificate and academic transcript following a name change. Even during the hearing, the applicant's counsel could not furnish this court with the legal authority or authorities which empower or authorise the respondent to take the administrative action which the applicant wants it to take. From the correspondence that was written by the respondent's lawyers to the applicant's lawyers on 9 October 2015 asking to be assisted with the legal framework and from what the

¹ <https://www.marriagenamechange.com> downloaded on 21/11/17

² <https://www.york.ac.uk/students/studying/manage/student-record-name-change> downloaded on 21/11/17

³ <https://www.ox.ac.uk/students/life> downloaded on 21/11/17

respondent's registrar deposed to in the opposing affidavit, it is clear that the respondent has no set policy which deals with the issue of replacement of academic certificates retrospectively if a former student changes their name. If this was there, the respondent's registrar would have issued the replacement certificates as soon as the applicant furnished the documents he was asked to furnish and paid the fee he was asked to pay. It is clear that at the time the applicant was asked to pay the fee and supply documents, the person who made those demands had not realised that the respondent has no policy in place dealing with such an issue. This explains why after receiving the documents and the fee, the respondent started seeking the assistance of the applicant on how to go about the process. It was foolhardy for the respondent's employee to ask the applicant to supply his documents and to pay a fee without first ascertaining if it was possible for the respondent to issue replacement academic certificates retrospectively following a change of name. However, in the absence of a legal framework which empowers the respondent to issue replacement degree certificates and academic transcripts, I cannot grant an order compelling it to do that which it is not empowered do as this will be an ineffectual order. The best that the applicant can ask for is a refund of his money.

In view of the foregoing, I hereby dismiss the application.

Lawman Chimuriwo Attorneys at Law, applicant's legal practitioners