

IN THE HIGH COURT OF LESOTHO

In the matter of :

KHOSI LESUTHU

- Applicant

V

NATIONAL UNIVERSITY OF LESOTHO - Respondent

REAPONS FOR JUDGMENT

Delivered by the Hon. Acting Mr. Justice J. L. Kheola  
on the 30th of September, 1983

This is an application for an order in the following terms:-

- (1) (a) Directing the Respondent to take into account the final marks obtained by the applicant in L304-8 (Criminal Procedure) towards the applicant's final assessment for the requirement of L L.B. Degree.
- (b) Directing the Respondent to consider and/or publish the applicant's final marks in the supplementary examinations on L507-4 (Bookkeeping and Accounts) and L606-4 (Interpretation of Statutes) towards the applicant's final assessment for the requirements of L L.B. Degree.
- (c) Having complied with rules 1(a) and (b), directing the Respondent to publish and/or communicate to the Applicant in relation to the satisfaction of the requirements of L L.B. Degree.

(2) Further and/Alternative Relief.

/(3) Directing ...

- (3) Directing Respondent to pay costs of the suit in the event of opposition.

It is common cause that the applicant sat for his final examinations for the L.L.B. Degree in May, 1983. He obtained an "E" in three courses namely L304-8 (Criminal Procedure), L507-4 (Bookkeeping and Accounts for Legal Practitioners) and L606-4 (Interpretation of Statutes and Documents). These grades were awarded by the internal examiner, Mr. Mphutlane and were subsequently submitted to the external examiner, Professor Austin, who reviewed them and confirmed them before making a recommendation to the Faculty of Law. The internal examiner has no power or authority to review grades which have been awarded by the external examiner.

The results went to the University Senate which confirmed the grades and ruled that the applicant had failed and that he would have to repeat all the courses for the relevant year of study. The applicant was not happy with this decision and appealed to the Senate Executive Committee to review the grades awarded to him on the grounds that just before the examinations he had witnessed an accident which adversely affected his studies and performance during the examinations. His appeal was duly considered but rejected.

On the 22nd July, 1983 Mr. Mphutlane wrote a letter to Mr. K. Maope who was then the Acting Dean of the Faculty of Law. The letter reads as follows:-

/22nd ...

22nd July, 1983.

The Faculty of Law,  
N.U.L.  
ROMA.

Sir,

RE: L304 : MR. LESUTHU

Mr. Lesuthu has brought to my attention the fact that assessment for MOOT Court participation was not included in his Course Work Mark I have checked the Moot Court participation results and when included in Course Work assessment his Course Work Mark changes to 85%. The result is that he obtains 54% in final examination made up of: Course Work 28 + Final External mark 26.

FROM : S. MPHUTLANE

TO : MR. K. MAOPE

Pursuant to this letter Mr. Maope wrote a letter to the Assistant Registrar (Academic) which reads as follows:

FROM : Acting Dean, Law

TO : Assistant Registrar (Academic)

22-7-83

MR. KHOSI LESUTHU

I am enclosing a copy of a report to me from Mr. Mphutlane, a law lecturer concerning the computation of Mr. Lesuthu's final marks in the May examination. This matter has to be settled by the Senate on the recommendations of the Law Faculty, and that process has yet to take place. But on behalf of the Law Faculty and without prejudice to the final outcome of the matter Mr. Lesuthu may be permitted to sit for supplementary exams in L507 and L606.

/K.MAOPE ..

K. MAOPE

On the strength of Mr. Maope's letter the Assistant Registrar (Academic) permitted the applicant to sit for a supplementary examination. In his opposing affidavit Mr. Maope states that he showed the applicant this letter and made it clear to him that the decision of the Senate would be final. Applicant accepted it as such. He says that he allowed the applicant to sit for the supplementary examinations so as to avoid prejudice to the applicant in the event of the Senate accepting what Mr. Mphutlane had suggested, i.e. that Moot Court participation marks should be included in the applicant's Course Work Marks.

On the 11th August, 1983 the matter was considered by the Faculty Board which noted the following disturbing factors relating to applicant's results:

- (i) Acting on applicant's complaint relating to Moot Court participation, Mr. Mphutlane had awarded him an additional 11 marks which brought his mark to 54% thereby giving him a pass in Course L304.
- (ii) Applicant was the only student who had been given a grade for Moot Court participation when Course Work Marks were computed.

As a result of these findings the Faculty Board reaffirmed its earlier decision that the applicant had failed and had to repeat the entire year. On the 22nd August, 1983 the Senate confirmed the Faculty Board's decision.

In his founding affidavit the applicant says that he was informed by the Tutor of the Faculty of

/Law ...

Law that the Respondent's Senate Executive has disregarded his final grade in the said L304-8 Course as made by Mr. Mphutlane, and has as a result disregarded his supplementary examination grades in the said two courses. He further says that Mr. Mphutlane was not making a suggestion but was bringing to the attention of the Faculty the error he had made unintentionally by omitting to include the marks for participation in the Moot Court.

The most important document in these proceedings is Mr. Maope's letter to the Assistant Registrar and what interpretation one puts to it. My interpretation of this letter is that Mr. Maope did not want to commit himself whether or not Mr. Mphutlane's computation of applicant's marks by including marks for participation in the Moot Court was right. He made it quite clear that the decision in this matter lay with the Senate on the recommendations of the Law Faculty. He merely allowed the applicant to sit for the supplementary examination to avoid prejudice to him (applicant) in the event of the Senate accepting what Mr. Mphutlane had suggested. The applicant says that Mr. Mphutlane was not making any suggestion but telling the Faculty a mistake he had made. I do not agree with that suggestion because the Faculty Board found that the applicant was the only student who had been awarded marks for Moot Court participation when Course Work marks were computed and that participants in Moot Courts have never been awarded any marks. If the applicant contends that the practice of the University has been to award marks for such participation he had to file an affidavit by Mr. Mphutlane to refute the allegation that marks are never awarded for participation in the Moot Courts. Mr. Pheko, who appeared for the applicant, disclosed that Mr. Mphutlane

/was seriously ...

was seriously ill in hospital and was not in a position to make an affidavit. Be that as it may the allegations that the applicant was the only student awarded marks for participation in the Moot Court and that marks are never awarded for such participation remain unchallenged.

It is true that according to the Regulations of the University of Lesotho the Course Criminal Procedure includes Moot Courts. (See the National University of Lesotho Calendar 1982-83 page 106). But that does not necessarily mean that the University is bound to take into account the marks for participation in the Moot Courts. The computation of the examination<sup>mark</sup> is such an internal matter to the University that I do not think this Court has the power to order the University how to go about it. In CIV/APN/82/82 Selina Kena v National University of Lesotho and another (unreported) it was held that as a matter of broad public policy the Court could not interfere in a matter of that nature. The applicant had been ordered to vacate a room which had been allocated to her. He had been given a proper hearing and there was nothing to show bad faith on the part of the Dean. In the present case the applicant never appealed to the Senate but decided to come to this Court. And he does not claim that in their decision that he had failed the Senate violated any rules of natural Justice. He is merely asking this Court to order the respondent to conduct its examinations in a manner that has never been done before.

In 'Maseabata Ramafole v National University of Lesotho and others 1980(2) L.L.R. 412 the applicant had actually passed her examinations but for a certain breach of discipline she was rusticated from the University and her examination results were withheld for a period of

six months. In granting the application Cotran, C.J. said :

"I have been asked to make an order that the date of Miss Ramafole's examination results be made "retrospective" so that she can be "deemed" to have graduated, if she had passed, on the 27th September, 1980. I am not sure I have such powers. The conferring of degrees is a matter of the Senate and is not fortunately a judicial function, not yet any way. I can only order that her examination results be now published. If she had passed and Senate is disposed to give her a degree it can be sent by post. If she wants glory she may have to wait for the next ceremony in 1981."

In the present application the applicant is not asking this Court to order the respondent to release his examination results, but he is asking this Court to order the Senate to conduct its examinations in a certain manner. I think that is not a matter for the Courts of law but for the Senate to decide how it is going to conduct its examinations in order to confer its degrees on the people who are well qualified for that honour. The Senate has decided that the applicant has failed his courses and has to repeat the whole year. The applicant prays this Court to make an order to estop the respondent from disregarding "his final grade in L304-8 which was given by Mr. Mphutlane". This grade can never be described as "a final grade" because it was never reviewed and confirmed by the external examiner. The applicant seems to make much of the fact that he was allowed to sit for the supplementary examination by Mr. Maope because he qualified under rule 16.19 which reads as follows.

/(a) ...

- (a) A student who achieves a final grade of E for a Law course may be allowed to write a supplementary examination.
- (b) A student shall not be allowed to supplement more than two law courses in any one year."

I do not agree with the applicant that when he sat for the supplementary examination it was because the Senate had already confirmed the grade that was given to him by Mr. Mphutlane. He was allowed to sit for the supplementary examination so that in case the Senate approved what Mr. Mphutlane had done he should not be prejudiced. The applicant must have understood clearly that his supplementary examination results could be released on condition that the Senate approved or confirmed the grade given to him by Mr. Mphutlane. The condition never materialised because the Senate rejected it and the whole exercise of sitting for a supplementary examination became a nullity. The applicant willingly took the risk of sitting for the supplementary examination before the matter was finally settled by the Senate on the recommendations of the Law Faculty.

For the reasons I have stated above the application is dismissed with costs.

*J. h. Kheaf*  
ACTING JUDGE  
30th September, 1983

For the Applicant : Mr. Pheko

For the Respondent : Mr. Koornhof