



at the close of the 1979/80 academic year.

At the beginning of the academic year 1981/82, applicant was admitted and enrolled for a B.A. (Law) programme of study at the Respondent University. The programme of study for the B.A. (Law) of the Respondent University normally took four years to complete. The applicant, however, applied for and was granted exemption from the common First Year. In addition, he obtained exemption in four of the courses that he had already passed during the time he was studying for the Diploma in Law. They were Criminal Law (L202-8), Family Law (L301-8), the Law of Property (L401-8) and the Law of Evidence (L404-8) which collectively carried a total of 32 units. In recognition of the exemptions he had obtained in those four courses, the applicant was in fact registered as a third year student as reflected by the University's official acknowledgment of his registration Annexure 'A'.

For the academic year 1981/82, the applicant studied and passed the Law of Contract (L201-8), Constitutional Law (L203-8), Administrative Law (L204-4), 8 optional units of a non-law course and 4 optional units of a non-law course.

Assuming the correctness of applicant's averment, it may be observed at this juncture that it would appear that the total number of units he obtained at the end of 1981/82 academic year was, therefore, 32. However, according to annexure 'A', applicant was supposed to have registered for 36 units. He was, therefore, short of 4 units.

Applicant further averred that at the beginning of the academic year 1982/83, he was registered as a fourth year student as reflected by the University's official acknowledgement of his registration, annexure 'B', of the founding affidavit. During that year he

3/ registered for ....

registered for study the following courses :

Delict (L302-8),  
Mercantile Law I (L303-4)  
Conflicts of Laws (402-4)  
Civil Procedure (L403-8),  
Criminal Procedure (L304-8)  
Law of Business Associations  
(L405-4) and  
8 optional units of a non-law  
course.

That would give applicant a total of 44 units and not 39 units as reflected in the official acknowledgement of his registration, Annexure 'B'. Moreover, a total of 44 units seems to be conflicting with the provisions of regulation 10.422 of the 1981/82 and the 1982/83 calendars. That regulation reads :

"Normally, a full-time semester load shall be 18 units and the number of units taken in any one year by a full-time student shall be not less than 33 and not more than 39. Any deviation from this must be approved by the Dean of the faculty and the Head of the Department concerned."  
(my underlining)

I have undelined the word "shall" to indicate that, in my view, the use of that term makes the requirement of between 33 and 39 units a year peremptory unless, of course, a diviation is authorised by the Dean of the Faculty and the Head of Department. In the present case, there is no averment that such a diviation had been duly authorised.

Be that as it may, the applicant further deposed that during his studies for the 1982/83 academic year, he was advised that he had never been exempted from units but from courses, namely, Criminal law, Family Law, the Law of Property and the Law of Evidence. Consequently he would have to study for 32 units of courses of his choice in other disciplines. Notwithstanding the fact that he was studying the remaining courses for the B.A. (Law) programme, the Head of the Faculty of Law, therefore, regarded him as being in the 3rd year of  
4/study ....

study for the B.A. (Law) Programme.

The applicant did not agree with this contention as, in his submission, he had satisfied all the requirements for the B.A. (Law) programme of the Respondent University and entitled, therefore, to the degree. He, therefore, prayed for an order of this court as aforementioned.

On 9th September, 1983, the respondent intimated the intention to oppose this application. The opposing affidavit was filed on 19th September, 1983 by the Deputy Dean of the Faculty of Law, one Kelebene Mape who conceded that during the 1978/79 and the 1979/80 academic years applicant had enrolled with the Respondent University for a Diploma in Law which he passed with credit. For his Diploma in Law, applicant had studied, inter alia, Criminal Law, Family Law, The Law of Property and the Law of Evidence which courses admittedly carried collectively a total of 32 units.

In 1981/82, applicant enrolled with the Respondent University for the B.A. (Law) programme. He was exempted from the common First Year of study and in addition from four of the law courses he had done for his Diploma in Law, namely, Criminal Law, Family Law, the Law of Property and the Law of Evidence. The mistake that applicant was making was that he was entitled to be exempted to more than one year of study and the course units in respect of the courses in which he had obtained exemption. No student can be exempted from more than one year of study. The exemption from courses did not mean that a student was exempted from the course units. He still had to substitute the units of the courses from which he had been exempted by units from other courses of his choice in some other disciplines.

In 1981/82 academic year, applicant was enrolled as a 2nd year and not 3rd year student. In

5/fact an attempt .....

fact an attempt was made to draw up a three years programme of study for the applicant. The programme was, however, not completed.

As regards annexures 'A' and 'B' to the founding affidavit, which annexures show that applicant had been registered as third year and fourth year student for the academic years 1981/82 and 1982/83 respectively, the deponent averred that it was the mistake of partly the computer and partly the applicant who had fed the computer with wrong information as reflected by the non-education students registration forms annexures "G" and "H".

It was during the second year of his study that applicant claimed to be in the fourth and final year of his studies. A letter dated 25th November, 1983 (annexure E) was written to applicant by the Faculty Tutor, a certain A.N. Hercy who advised him that he was in the third year and not the fourth year of his B.A. (Law) of study programme.

Applicant had omitted to state that in 1981/82 he also wrote but failed Mercantile Law I (L.303-8) which he had to repeat in the following academic year. Again in 1982/83 academic year, applicant wrote but failed Mercantile Law (303-8) and Law of Business Associations (L405-4). He had been allowed to supplement the two subjects and the scripts were still with the external examiners. Until the gradings of the external examiners had been released, it would not be possible to know conclusively whether or not the applicant had passed the two courses in which he had written the supplementary examinations. Even if the rest of applicant's averments were accepted, therefore, the degree could not be conferred on him before the final grading of the two subjects in which he had written supplementary examinations had been released by the external examiners.

6/ For these reasons ....

For these reasons, the application was premature and ought to be dismissed with costs as between attorney and client.

Applicant filed a replying affidavit in which he adhered to the contents of his founding affidavit. He, however, conceded that he had had to write supplementary examination in Mercantile Law (L303-8) and the Law of Business Association (L405-4). The Senate Executive of the Respondent University had already considered his supplementary examinations and its decision annexure "J" was that he had passed the two courses and was therefore qualified to proceed to the next year of study. The Senate could not have taken the decision if his results from the External Examiners were still awaited. Applicant, therefore, prayed for an order as aforesaid.

It is significant that applicant joined the Respondent University to read for a B.A. (Law) degree in 1981/82 academic year. His programme of study for the degree, therefore, falls to be governed by the regulations obtainable in the 1981/82 calendar of the Respondent University. In terms of O.2 of the Preamble to the Academic Regulations in the 1981/82 calendar, it would appear that no subsequent changes to the disadvantage of applicant in these regulations could affect the applicant's programme of study. O.2 of the Preamble reads .

" O.2. No student who has started a degree, certificate or diploma course following one set of regulations shall be set at a disadvantage by a regulation subsequently framed."

It is common cause that when he joined the Respondent University for the B.A. (Law) programme of

7/study in .....

study in 1981/82 academic year, the applicant was exempted from four of the courses that he had already passed with credit for his Diploma in law. The question is whether or not he was necessarily exempted from the corresponding units of those courses. In terms of regulation 10.42 in the 1981/82 calendar of the Respondent University, it would appear that courses are built up of units. That being so, it would appear that one cannot be exempted from courses without being necessarily exempted from their corresponding units. Indeed, the last paragraph of Regulation 16.21 in the 1981/82 calendar specifically provides :

" - the holder of a Diploma in law shall be exempted from the common First Year. Such a person may also be exempted from a maximum of 36 units of law courses where he has obtained at least a pass with credit in each course."

(my underlining)

From the words I have underlined, the exemption is clearly from the units.

One other reason advanced in support of the contention that applicant was exempted from courses but not from units was that the courses from which he had been exempted were taken at a Diploma level which is of a lower standard than that of a degree. There can be no doubt that a Diploma in law is a lower standard of qualification than a Degree. In its wisdom, the Senate of the Respondent University has, however, deemed fit to exempt, as it is perfectly empowered to do, degree students from course units taken at a diploma level. It cannot be seriously argued that in terms of the University Act and Statutes, the Senate is the

8/ competent body .....

competent body to do this and it will be preposterous, therefore, to challenge the legality of its decision in this regard.

It seems to, me, therefore, that the question whether or not by exempting him from the courses he had passed with credit for his Diploma, applicant was necessarily exempted from their corresponding units must be answered in the affirmative.

Reference was made by the Respondent to Regulation 16.215 (d) at page 111 in the 1982/83 calendar and a suggestion made that applicant should have read this regulation in conjunction with pages 104 and 105 of that calendar. I am not sure if I understand what the Respondent had in mind about pages 104 and 105 of the 1982/83 calendar. I can only assume that he was referring to regulation 16.105 at page 104 and regulation 16.11(b) (iii) at page 105. Assuming the correctness of my assumption, it must be observed that regulations 16.105 and 16.11 (b) (iii) did not exist in the 1981/82 calendar in 1981/82 academic year when applicant first enrolled with Respondent University for his B.A. (Law) programme of study. They are new amendments clearly inserted by the Senate under the powers vested in that body by the provisions of O.1 of the Preamble to the Academic Regulations of the Respondent University. If the interpretation of these new amendments is such that it puts the applicant at a disadvantage in his studies towards the attainment of a degree he had already started it seems to me that they cannot be applicable to his case in terms of regulation O.2 under the Preamble to the Academic Regulations 1981/82 also embodied in the 1982/83 Academic Regulations.

Having decided as a fact that applicant was exempted from course units in four of the courses he had passed with credit for his Diploma studies, it becomes

9/opposite to .....



apposite to determine the question whether or not that had the effect of exempting him from the 2nd year of B.A. (Law) programme of study. Respondent's contention is that this cannot be done. I am unable to reconcile this contention with the provisions of Regulations 13.73 et seq. In particular Regulation 13.75 embodied in the 1981/82 calendar of the Respondent University reads :

"A certificate or Diploma holder may be exempted from the common first year in toto or from the common First Year and the Second Year of a degree programme in toto but not from any part of either."

(my underlinings)

In my view, the regulation makes sense for as any one who has ever applied for an exemption at a University Institution is aware, the effect of exemption is to shorten the number of years which one has to take to complete whatever qualification one is studying for. I should know. Again if it were suggested that under the 1982/83 academic regulation, the position has been changed that will clearly place the applicant at a disadvantage and in terms of O.2 of the Preamble to the 1981/82 Academic Regulations under which the applicant had enrolled with the Respondent University for his B.A. (Law) programme of study cannot be applied to applicant's case.

That when, in 1981/82 academic year, he joined the Respondent University for the B.A. (Law) programme of study applicant was enrolled as a third year student seems to be supported not only by the Respondent's own Academic Regulations but also annexures 'A' 'B' 'G' and 'I'. The argument that the annexures are incorrect and both the computer and the applicant are to blame for the wrong information in these documents is a suggestion that Respondent University does not ensure that its records are correctly

10/ maintained .....

maintained. That would be a poor reflection of the Respondent's own efficiency on this point and I consider it highly improbable in an Institution of a Higher learning such as the University.

It is common cause that of the courses applicant sat for examination at the close of the academic year 1982/83, two had to be supplemented. Following the supplementary examination, the applicant was informed per annexure 'J' that at its meeting held on 25th August, 1983, the Senate had decided that he should "proceed". Applicant interpreted that as meaning that he had definitely passed the two courses in which he had sat for the supplementary examination. The Respondent denied and argued that the normal procedure followed at the Respondent University was that after examinations have been written, scripts are marked internally and then sent to external examiners for moderation. The final and official results are released after the external examiners have completed their work. In the supplementary examinations, the students are, however, informed to "proceed" to the next year of study if according to the internal marking of their scripts they have passed. The reason behind this is that sometimes the results of the external examiners delay and are released after the academic year had started. Annexure 'J' was, therefore, released on the basis of internal marking of applicant's supplementary scripts and does not represent the final and official results of his supplementary examination. It was, so to speak, interim results on the basis of which no degree of any class could be conferred on the applicant.

I have had the opportunity to look at annexure 'J' and noticed that all what is written opposite applicant's name is the word "Proceed".

Whatever that means, there is no indication of any symbols in whatever courses applicant may have sat for the supplementary examinations. It may well be true, therefore, that annexure 'J' is an interim and not the final results which are still awaited from the external examiners. That being the case, I do not, for the time being, see in what grade the degree can be conferred on the applicant.

After all that has been said, it must be pointed out that the National University of Lesotho has been established by Act No. 10 of 1976 enacted by Parliament. In terms of S.5 (e) of that Act, one of the functions of the University is, subject to the Statutes and Academic Regulations, to award and confer degrees. Whether or not the University properly carries out this all important function is, truly speaking, a matter within its domestic government. For anybody aggrieved by the manner in which the University takes decisions to confer degrees to its students there should be domestic remedies which, in my view, must be exhausted before the courts of law can interfere.

On the papers before me the decision that applicant has not satisfied all the requirements for the award and conferment of a B.A. (Law) Degree was made by the Law Faculty of the Respondent University. If the applicant felt unhappy with that decision, I can see nothing in the Regulations to prevent him from approaching in that regard, the Senate and the Council, which bodies are respectively the Principal Academic Authority and the Supreme Governing Authority of the University. This he has not done. He has instead filed the present application with the Courts of Law. He has, so to speak, taken a short circuit which, in my opinion, cannot be allowed. The available domestic

12/ remedies must .....

remedies must first be exhausted lest the courts of law are accused of usurping the powers of the University.

I come to the conclusion that the application is ill-conceived and accordingly dismiss it with costs.

B.K. MOLAI,  
JUDGE

30th September, 1983.

For the Applicant · Mr. Sello  
For the Respondent Mr. Maqutu.