CIV/APN/48/2012

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

KARABO MOHAU AND OTHERS	Applicant
And	
THE PRINCIPAL (NULIS)	1st Respondent
THE REGISTRAR – NATIONAL UNIVERSITY OF LESOTHO (NUL)	2nd Respondent
THE NATIONAL UNIVERSITY OF LESOTHO	3rd Respondent

JUDGEMENT

Coram	:	Hon. Monapathi J
Date of Hearing	:	30th April, 2012
Date of Judgement	:	13th July, 2012

SUMMARY

While, due to the urgency of the matter failure to exhaust local remedies on the part of the Applicants could be excused, still the impugned decision to increase school fees was a matter of internal management of the Respondents alone. Principles of natural justice had been met in that sufficient consultation had been done. Otherwise it would amount to parents participating in school management in

the way they are not entitled to. The court's jurisdiction ought to be ousted in matters of internal management of Respondents. The matter was on no good grounds reviewable.

[1] I have delivered my decision on this matter on the 22nd June 2012. My reasons are as follows:

[2] The Applicants who are parents of the "minority" of children attending school at National University of Lesotho International School (NULIS) filed this application to say that, amongst others prayers;

a) The First Respondent shall not be interdicted forthwith from dismissing the Applicants children from NULIS for non-payment of fees stipulated in annexure "A" to the founding affidavit pending outcome of the application;

b) The First Respondent shall not be directed forthwith to provide the Applicants' children with stationery, text books and other learning material pending outcome of this application;

c) The decision to implement the fee structure set out in annexure "A" for the year 2012 shall not be reviewed and set aside.

The fee structure was issued on about the 11th December 2011.

[3] The parents are those employed by the University (internal) and those not employed by the University (external). In the past there was a difference in the fees paid between the two categories. The internals were subsidized by the

University. The new fee structure changed that all paid the same fees. The parents were informed or about the 11th December 2011. In terms of an agreed interim order the children were allowed to attend classes and were given all opportunities afforded to other learners at the school.

[4] It was common cause that some of the Applicants are members of the National University of Lesotho which owns and has NULIS as one of its structures. The effect of annexure "A" has been to increase the fees by more than 100% from what was payable in 2003. The "majority" of the payments have already paid school fees for their children i.e despite the said increase and in compliance with the same fee structures.

[5] There was no doubt that on the face of things the said increase of fees was quite hefty and ate into the parents pockets at that time of the year. I agreed that this must have been quite inconvenient, for absence of a better word, when one considered that during the month of November parents had usually made up their minds as to which school to take their children or it could be much earlier than that. If a parent had chosen the NULIS it was difficult to change and fight for places at other schools. In those circumstances where their children were threatened with expulsion and denial of school materials.

[6] The above circumstances are such that they begged the question whether, if they are unreasonable oppressive or outrageous in their effect on the financial abilities of the parents. They are unlawful so that the NULIS would be obliged to

change or to direct otherwise than the way it saw fit. Or most near to the Applicants cases, that the Council ought not to:

> "Turn a blind eye to the fact that the new fees were three times what NULIS had charged all along and are by no means affordable fees for an average Mosotho."

And proper consultation having been not held with the parents, which the Respondents deny.

[7] Most significantly Applicants did not deny that the increases were actuated by budgetary constraints.

[8] Applicants contended that the increased fees were introduced at unreasonable notice. This would disable parents who could not afford the law fees to take their children else.

[9] Secondly, Applicants contended that the difference in the fees payable by internal parents and those payable by external parents was due to a benefit by M2000.00 which had been extended to Third Respondent's staff had been unilaterally taken away without a hearing. Respondents answered that the M2,000.00 was a discount and not a benefit and it should therefore be taken away at anytime without a hearing.

[10] Thirdly Applicants contended that the new fee structure should have been approved by the Third Respondent's Council without which such increase was null and void. Respondents contended that such consultation or approved was not necessary and they did not have to. That was so whether it was before or after consultation.

[11] Lastly, Applicants felt that the new fee structure had been introduced without proper consultation and ought to be reviewed and set aside as prayed. It was however not stated how and to what extend such consultation would be sufficient or satisfactory.

[12] Applicants again felt that for the NULIS much like the University the Council was the only body that had authority and power to determine the fees charged by any section or department in terms of section 10 (2) (h) of the ***National University Act of Lesotho 1992***. The irony in this would clearly be that according to the Applicants themselves the Finance Board while having allegedly failed to recommend anything for "approval of the Council Board of Finance the latter was" "merely informed of and not asked to approve" NULIS fees and indeed not approve such fees. See Section 10 (2) of the Act. I thought this had an answer as to what relationship could have developed or such internal practice could have involved in the relationship of the NULIS and the Council as an internal matter. This is so inasmuch as it is the power to

> "Determine all University fees, after consultation with Senate or Financial and General Purposes Board except that in respect of tuition and residence fees, the Senate shall be consulted."

It can only means that it has power to reject the variation of the NULIS fees. We have not been told that it did. Hence the usefulness of this objection by Applicants has not been proved. Again it seems to be a matter of internal management of the NULIS and University with its organs and within their operations. See similar remarks later in the judgment.

[13] Mr. Molati while relying on Respondents papers submitted that the decision to up the fees is a matter purely of internal decisions. Furthermore that was the court to grant the orders, sought this would be tantamount to directing the NULIS how much school fees should be charged in the circumstances. And still furthermore such direction by the court would not be within its discretion nor would it be exercising its discretion properly. That this was more so when the remedy sought was to review and set aside the fees structure as in prayer [c]. Instantly I wondered if this court would have such power. I thought it would not have such discretion. On this point alone the application ought to be dismissed.

[14] As to the matter of budgetary constraints Mr. Molati pointed out that firstly, there was financial crisis at the NULIS. Secondly, the NULIS was facing closure. Thirdly, the Applicants' children who claim inability to pay could go to alternative schools while accepting that there could be inconveniences in some cases. Counsel also submitted that the NULIS was well entitled to take the steps it took which was unavoidable knowing that it could spell hardship in some cases. Counsel equated such right to ease of ***Lesotho Union of Teachers and Research Union***, (***LUTARU v NUL LAC 1995-1999) 661*** at ***669 B***, where the court found that "on the facts the

Respondents NUL "was entitled to freeze such payments after that date (end of December 1996)". Circumstances may have been different.

[15] Respondents after contending that the court would not have jurisdiction to grant orders sought demurred at the bad and undesirable consequences that would follow considering that NULIS would be run by the Applicants or whoever objected to even to serious and effective steps taken by NULIS management. Secondly parents who have paid school fees and are willing to have their children educated at the NULIS would be sacrificed on bases of a minority of ten (10) objecting parents who had an alternative of taking their children to other schools. Thirdly, the school would be compelled to refund the moneys paid by the majority of parents who are willing to pay hard earned fees. Lastly, the NULIS would be bankrupt in the result.

[16] I repeat a similar remark to those I made earlier. It is that in similar cases where corporate bodies or societies, in their normal working circumstances, have made certain decision even if they affect other people such as Applicants the law requires that the jurisdiction of court be ousted in the internal affairs of such bodies. In this regard the Court of Appeal opened in ***Lesotho Evangelical Church v Pitso LAC (1990-996) 474*** at ***480*** that:

> "The courts of law however will not consider the jurisdiction as ousted, even if the rules of society say so, where the act complained of is *ultra vires* the society or against principles of natural justice for in the last resort the law court can always be appealed to"

I agreed that on the facts natural justice had been following in the best possible way that the parents would co-manage the NULIS) in that firstly, there had been meeting of Management of NULIS and parents and had suggested a bringing about of parity between the internal and external parents. It made sense that it was not very necessary that because internal parents were employees of the University they would be made to loose certain benefits when there were budgetary constraints.

In my view it was correctly submitted that the jurisdiction of the court in this matter be ousted.

[17] After pronouncing that the decision of the NULIS to raise fees was not reviewable and ought not to be set aside, I summarize my decision further that:

17.1 Neither the NULIS nor the NUL were obliged to consult parents when designing the new tariff of fees. In our view the consultation which was made was sufficient.

17.2 Secondly, in our view this change to the fee structure may have been inconvenient, painful or objectively harsh but that did not invalidate the new fee structure.

17.3 Thirdly, nothing irregular or illegal has been proved that may have led to the promulgation of the new fee structure, in that the procedure of bringing about the structure is a matter of the NUL and its structures including the NULIS in the way they interacted to bring about the fee structure. It is not subject to any external manipulation or influence unless, it is on Respondents' own invitation or biding.

17.4 To that extent the way the Respondents interact is a matter between them which is not subject to whims of parents however well intended they may be.

[18] The application ought to be dismissed with costs.

T. E. MONAPATHI
JUDGE

For Applicants : Mr. Mohau
For Respondents : Mr. Molati
Judgment noted by Adv. M. S. Masoabi