IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 5TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/2874/19

BETWEEN:

LEO ENOBONG EKPENYONG ---------- PLAINTIFF

AND

BAZE UNIVERSITY LIMITED ---------- DEFENDANT

JUDGMENT

Mr. Leo Enobong Ekpenyong a Mass Communication Post Graduate Student of Baze University instituted this action against his Alma mater – Baze University where he had acquired B.Sc Mass Communication with a first class sometime in 2018.

In the Originating Summons which he filed on the 12th day of September, 2019 he sought the following questions and the consequential Orders which are:

(1) Whether by virtue of the provision of paragraph 2.9 of the Baze University Policies, Procedures and Regulations Student Hand Book – (Here in after called the Hand Book) the Defendant is bound to

arrange and convene an Academic Appeal Panel in respect of the complaint by the Claimant on his 19 A semester result in MSC 801 and MSC 803 Theories and Research methods of Mass Communication respectively (herein after called the courses).

(2) Whether by virtue of the said paragraph 2.9 of the Handbook, the refusal to accede to the Claimant's request for review of the said courses, does not amount to an act in breach of Claimant's right to fair-hearing as provided and guaranteed under S. 36 of the 1999 Constitution as amended.

(3) Whether the said paragraph 2.9 which provides for the finality of the decision of the Academic Appeal Panel (herein after called the Panel) in respect of Appeal on grounds of alleged procedural or administrative irregularity, is not contrary to the provisions of S. 36 of the said Constitution and the right of the Claimant to seek redress before a Court of competent jurisdiction.

(4) Whether having regard to the status of Baze University Handbook, a regulation which guides the relationship between Applicant and Defendant, the conduct of the Defendant does not amount to a breach of its own regulation which guides its internal affairs.

(5) Whether the Defendant's Panel will not be biased in its arbitration, taking into consideration the refusal of the Defendant to respect and abide by the provisions of paragraph 2.9 of the Handbook as enacted by the Defendant.

(6) **Whether the Defendant should be compelled to compensate the Claimant in terms of Damages for the setback suffered on account of the Defendant's highhandedness and refusal to comply with the provisions of the paragraph 2.9 of the Handbook as enacted by the Defendant.**

The Claimant also seeks for the following consequential Order, should the Court answer the above questions in the affirmative.

(1) **A Declaration that by virtue of the extant provision of paragraph 2.9 of the Handbook the Defendant is bound to arrange and convene an Academic Appeal Panel for considering of his complaint for considering of the said compliant in the 2 courses.**

(2) **A Declaration that the Defendant's refusal to accede to his request to review of the 2 courses is contrary to the provision of paragraph 2.9 of the Handbook and a breach of his right to fair-hearing under S. 36 of the 1999 Constitution as amended.**

(3) **A Declaration that the paragraph 2.9 which provides for finality of the decision of the Panel in respect of Appeal on grounds of alleged procedural or administrative irregularity runs contrary to the S. 36 of the 1999 Constitution as amended and the Claimants right to seek redress before the Court.**

(4) **An Order compelling/directing the Defendant to arrange and convene a Panel in respect of the said complaint.**

(5) **An Order directing the Defendant to set up an Independent Panel of Examiners as recognized by NUC and globally acceptable practice in accordance with the paragraph 2.6 of the Handbook.**

(6) **General Damage of Twenty Million Naira (₦20, 000,000.00) for all the psychological trauma caused by the refusal of the Defendant to review the said result.**

He supported the application with an Affidavit of 28 paragraphs. He also attached 12 documents which included the Handbook – EXH LE 7 and several correspondences he had with the Defendant and NUC.

In the Written Address he raised Five (5) Issues for determination which are:

(1) **Whether the facts and circumstances of the case of the Defendant is in a breach of paragraph 2.9 of the Handbook when it refused to accede to the Claimant's request to review the said courses.**

(2) **Whether the Defendant's refusal constitutes a breach of his right to fair-hearing as per S. 36 of the 1999 Constitution as amended.**

(3) **Whether paragraph 2.9 of the Handbook which provides on the finality of the decision of the Academic Appeal Panel oust the jurisdiction of the Court and therefore contravenes S. 36 of the 1999 Constitution as amended.**

(4) **Whether the action of the Defendant does not foreshadow the inability of the panel to be fair, unbiased and equitable in its verdict thereby calling**

for the need to have a Panel of Independent Examiners to attend, to the Claimant's appeal in accordance with the marking scheme and course outline earlier provided.

(5) Whether from the refusal of the Defendant to adhere to its extant Rules as contained in paragraph 2.9 of the Handbook which regulates student management relationship, the Defendant has not orchestrated grave academic set back to the robust ad burgeoning academic career of the Claimant, thereby entitled the Claimant to damages.

On Issue No.1 the Claimant submitted **EXH LE 7** clearly intended to be a binding document as the Handbook is meant to be regulatory and binding on both students and the university (including the Defendant and the Claimant in this regard) as it pertains to academic matters as listed therein. He referred to the case of:

Oparaji V. Ahihia
(2012) LPELR (PT. 1290) 266 @ 281

That he complied with the provision of 2.9 by writing a petition, complaint and protest within 48 hours after the publication of the Result but that the Defendant failure to accede to the request is a clear breach of paragraph 2.9.

That the Handbook is a contract between the Defendant and himself and its provision are binding on the parties. That the Defendants are in breach of the contract terms as contained therein when they failed to accede to his request to review the said courses.

On Issue No. 2 he submitted citing S. 36 of the 1999 Constitution as amended that the Defendant has the responsibility to convene panel which should look into any allegation of procedural or academic irregularities of all constituted Assessment Board. That rather than set up a panel, the Defendant referred him to the University Senate Regulation in EXH LE 8, which the University Handbook does not provide for. That the refusal by the Defendant to do so amounts to denial of his right to fair-hearing. He urged the Court to so hold. That it is his right to ask for the remark of the courses since he was unsatisfied with his result issued to him.

That shutting out the Claimant by Defendant is breach of his right to fair-hearing under S. 36 of the 1999 Constitution as amended. He referred to the following cases:

FMC Ado Ekiti V. Alabi
(2012) 2 NWLR (PT. 1285) 447 paragraph C

Vinctino Fixed Odds Limited V. Ojo
(2010) All FWLR (PT. 524) 35 paragraph C – D

Garba & ors V. University of Maiduguri
(1986) 1 NSCC 245 @ 248

On Issue No.3 on the finality or otherwise of the decision of the Academic Panel, the Claimant submitted it is an infringement on the right of the Claimant to seek redress where it turns out that the decision reached by the Panel on an appeal raised by the Claimant is unsatisfactory. That

the finality of the decision of the Panel limits access of the Claimant to seek redress against the decision of Panel because paragraph 2.9 of the Handbook makes the decision of the Panel final on issue of any complaint or reassessments.

That the provision of paragraph 2.9 is an attempt by the Defendant to oust the jurisdiction of the Court in relation to his academic matters which is contrary to constitutional provision and democracy and good governance and administration. He relied on the case of:

Ebebi V. Speaker BSHA
(2012) 5 NWLR (PT. 1292) 1 @ 48 paragraph G – H

He urged Court to scrutinize the language of the paragraph 2.9 in EXH LE 7 and resolve same in the favour of the Claimant by holding that finality of the decision of the Panel ousts the jurisdiction of the Court and therefore is unconstitutional.

On Issue No.4 the Claimant submitted that having written a petition to NUC against the Vice Chancellor and the fact that same Vice Chancellor or his Nominee is to clear the Panel if convened, there will be a likelihood of bias against him in its proceed if a Panel is convened. He referred to the case of:

Essien V. Essien
(2009) 9 NWLR (PT. 1146) 306 @ 342

Bamgboye V. University of Ilorin
(1999) 10 NWLR (PT. 622) 290 @ 355 – 6

Alh. Baba M. Saleh V. Alh. Lawal Mmongunu & ors
(2003) 1 NWLR (PT. 801) 221 @ 249 – 250

He also referred to **paragraph 2.6** of the Handbook which pertains to External Examiner Assessment of Program to ensure that assessment is fairly conducted in accordance with the University regulations to ensure that justice is done.

He urged Court to order Defendant to set up a Panel of Independent Examiners to review the courses in tandem with the provision of the paragraph 2.6 of the Handbook.

On Issue No.5 he submitted that the Defendant's failure to comply with the provision of **paragraph 2.9** of the Handbook, they have orchestrated grave academic set back to his robust and burgeoning academic career, thereby entitling him to damages as occasional by the Defendant's refusal to accede to the reassessment of the courses. That he has suffered a psychological trauma as a result of the Defendant's conduct. Hence he is entitled to compensation. He referred to the case of:

Wema Bank PLC V. LIT Limited
(2012) All FWLR (PT. 606) 436 @ 460 – 1

That action of Defendant is a breach of the contractual agreement as contained in paragraph 2.9 of the Handbook. He urged Court to hold that Defendant are reliable to pay damages to him. He urged Court to grant all his claims as sought.

Upon receipt of the Originating Summons the Defendant filed a Counter Affidavit of 18 paragraphs and a Written Address.

In the Written Address they raised 3 Issues for determination and also adopted the issues raised by the Claimant/Applicant. The 3 Issues raised by the Defendant are as follows:

(1) Whether the issues raised and addressed by the Claimant do not amount to academic exercise?
(2) Whether the Court would interfere with the domestic affairs of the Defendant or than for a breach of Fundamental Right to Fair-hearing.
(3) **Whether Suit of the Claimant is competent before this Court.**

On Issue No.1 on the Suit being an academic exercise the Defendant submitted that the paragraph 2.9 does not deal with any material relevance with the subject complaint of by the Claimant who had claimed bias against the Defendant had at the same time asked the Court to order the Defendant to set up an Independent Panel to reassess his course when he had showed lack of confidence in the same Panel to be set up by the Defendant.

That the Claimant had asked Court to act in vein as he has embarked upon this Suit in what is clearly an academic and hypothetical exercise. That this Suit is set to waste the time and resources of the Court. He referred to the case of:

Oke V. Mimiko

(2014) 1 NWLR (PT. 1388) 255

They urged Court to so hold and dismiss the case.

On Issue No.2 the Defendant submitted that the Claimant failed to show that he made out a case before the Defendant which the Defendant without hearing him decided upon in order to justify that his right to fair-hearing was actually breached. That failure of the Claimant to do so makes his claim to be without merit. That the ground upon which the Claimant based his case is baseless and lacks merit, hence the decision of the Defendant refusing his request for reassessment of the Result of the courses. They urged Court to hold that the case of the Claimant does not border on infringement of fair-hearing and breach thereof and should therefore refuse to interfere with the decision of the Defendant in this case. The Defendant referred to the case of:

W.A.P.G.M.C V. Okojie
(2004) 2 NWLR (PT. 857) 232

On Issue No.3 they submitted that the Originating Summons by Claimant contravenes the procedure laid down for the enforcement of Fundamental Right and therefore not instituted by due process of law. That this Suit is incompetent and is liable to be dismissed. They urged Court to dismiss the Suit as it is incompetent and Court lacks jurisdiction.

Having also adopted the 5 Issues raised by the Claimant, the Defendant responded thus taking the issues seriatim:

On Issue No.4 which is Issue No.1 by Claimant that if the Court is said to have jurisdiction that the Claimant failed to establish the applicability of paragraph 2.9 of the Handbook to his claim. That he failed to show that there is any allegation of procedural or administrative irregularity and particulars of such irregularity. By his failure to do so he left the Court and Defendant to guess and conjecture up his complaint and to embark on voyage of discovery. He only left the issue of allegation of breach of fair-hearing and delved into the issue of breach of contract. Meanwhile he did not raise facts as to breach of contract in his averment in the Affidavit in support of the Originating Summons. That the Claimant did not prove and establish his claim in that regard and as such the case should be dismissed.

On Issue No.5 which is Issue No.2 by Claimant the Defendant responded thus:

That there was no allegation of procedural and administrative irregularities raised in EXH LE6 that would have lead to the award of marks which the Claimant claimed to be dissatisfied with. That the only ground upon which the claim is based is on exceptional intelligence. He did not refer to any competently constituted Assessment Board which is the decision he seeks to Appeal against to line with the paragraph 2.9 of the Handbook. That for the Claimant claim on fair-hearing to succeed there must have been a completely constituted Assessment Board, and that the decision of such board must have been taken without granting the Claimant an opportunity to be heard.

The mere fact of the Claimant being dissatisfied with his result in the 2 courses is not a ground in fact or law to entitle the Claimant for review of his examination script in the courses. That Review of examination script is not a denial of Fundamental Right which can amount to a breach. That there is no breach of the fair-hearing of the Claimant as he failed to lead credible evidence in support of his claim on breach of fair-hearing by Defendants.

On Issue No.6 which is same as Issue No.3 of the Claimant the Respondent submitted that the provision of paragraph 2.9 of the Handbook on the finality of the decision of the Panel ousting the jurisdiction of the Court and contravenes S.36 of the Constitution. They also relied on the same case cited by the Claimant:

W.A.P.G.M.C V. Okojie (Supra)

That the said letter of the decisions of the Court in that case had confirmed that finality of the decision of the Defendants except on cases where breach of fair-hearing was proven. That in this case the Claimant did not prove any breach or infringement of his right to fair-hearing.

On Issue No.7 on bias on the part of the Panel based on action of the Defendant, the Defendant responded and submitted that the claim of the Claimant is only to make Court to be an appendage of the Defendant's administration where any student could raise any fear against the decision of the University and run to Court to arm-twist the University decision. That he is seeking to use the instrumentality of the Court for his personal

aggrandizement. They urged the Court not to succumb to that.

On Issue No.8 which is same as Issue No.5 by Claimant they submitted that Claimant has failed to prove his case on preponderance of evidence and as such his claim has collapsed. That Claimant's case is particularly weak and should therefore be dismissed with cost of Ten Million Naira (N10, 000,000.00) awarded to Defendant against him.

COURT:

After the summary of the stances of the parties this Court has this to say:

It is trite that whoever asserts must prove. Again to be entitled to any award of damages it is incumbent on the Applicant to establish same through his facts and credible evidence in form of Exhibit if any. Again it is at the discretion of the Court to award damage after due consideration of the case before it following due diligence judicially and judiciously in the interest of justice.

For proper understanding of the case before the Court it is pertinent to cite in full details the provision of paragraph **2.9** of EXH LE7 as well as paragraph 2.6 of the same Handbook EXH LE7.

Paragraph 2.9:

A student may appeal a decision of a competently constituted Assessment Board on the ground of alleged procedural or administrative irregularity. In such circumstance the student should lodge the appeal in writing with the Registrar within 14 days of the publication of the decision, who will issue an acknowledgement of receipt of the Appeal.

On receipt of an Academic Appeal the Registrar will arrange for an Academic Appeal Panel to be convened normally within 10 working days. Academic Appeal Panel will be chaired by the Vice Chancellor or nominee and will include the Registrar (or nominee), the Dean of Faculty other than the student's own and at least one other senior member of academic staff not directly involved in the case. The Panel will review the evidence presented and may call Witnesses including the Appellant. The decision of the Academic Appeal Panel is final.

From the above it is clear that a student has a right to appeal a decision of an Assessment Board once that board is completely constituted. The Examination Assessment Board of the Defendant which awarded and assessed the result of students in the University is a competently constituted Assessment Board once the person listed in paragraph 2.9 formed the Appeal Panel. But the marks given to a student upon the examination taken are usually awarded by the teacher or lecturer who tutored the student.

But once the whole result is submitted to the Exam Board and the comprehensive result of all subjects is issued to student, it is said to be a result from Result Assessment Board of the school.

In this case the Claimant has exhibited the result issued by the University, the Defendant. He is challenging the 2 results. He had written to the Registrar. He wanted the Registrar to form a Panel. But Registrar wrote EXH LE8.

Again the appeal must be based on allegation of procedural or administrative irregularity. The question in this case is can the complaint of the Claimant be said to be based on grounds of procedural or administrative irregularity since he said that the ground is on his exceptional intelligence. Can such exceptional intelligence be reviewed and regarded or interpreted to be administrative and procedural irregularities?

It is the humble view of this Court that exceptional intelligence is NOT procedural and administrative irregularity.

It is also the provision of paragraph 2.9 that the appeal should be in writing and the appeal should be directed to the Registrar within 14 days. It is on record going by EXH LE4 that Claimant claimed he made the appeal within 24 hours after he got the said results – EXH LE5.

But it is important to state that there is no date in EXH LE5 to show the date it was released. But going by the date

at the bottom of EXH LE6 the letter of protest was dated by hand on 6/5/19.

Again the first paragraph of the said letter of protest shows that the result of the 2 exam courses was released about 24 hours earlier. So by that the complaint came within the stipulated time going by **paragraph 2.9.**

By the same paragraph 2.9, the Registrar upon receipt of the complaint must ensure that an Appeal Panel is set up or convened within 10 days of receipt of the complaint. But in this case the Registrar instead of setting or convening a Panel wrote to the Claimant a letter – **EXH LE8.** In the letter the Registrar of the Defendant stated thus:

> **"I am directed to convey management's regret over its inability to accede to your request as the University Senate Current Regulation on reassessment of already approved examination Result do not allow for your requested review".**

This letter was written on the 24th day of May, 2019 about 18 days after the EXH LE6. Going by the provision of **paragraph 2.9 – Guideline of the Defendant,** the Registrar ought to have convened an Appeal Panel to look into the complaint made by the Plaintiff. But by the letter it is obvious that the Defendant failed to live up to the provision of the paragraph 2.9. But 2.9 provides that the challenge can only come after the Assessment Board has deliberated on a matter and come up with a decision.

In the letter LE8 they referred to **"University Senate Current Regulation".**

This means there is a new regulation different from paragraph 2.9. It is different from the one from which the paragraph 2.9 of EXH LE7. Although the Defendant did not attach any such Regulation. So the Court holds that the only existing, known and binding Regulation of the Defendant is that attached by Plaintiff as **EXH LE7.** Since that is the case this Court holds that by failure of the Defendant's Registrar to abide by the provision of **paragraph 2.9** of **EXH LE7** is a violation of the said provision. By not forming Appeal Panel to review the complaint is equally denial of the Plaintiff's right to fair-hearing.

The submission of the Defendant in paragraph 3 of their Counter Affidavit that the decision of the Senate of the Defendant on approved student result is final and does not allow further review or assessment is contrary to the provision of paragraph 2.9 of the Defendant's Regulation and it is also anti-fair hearing because the paragraph 2.9 allows aggrieved student to complain in writing. After receipt of the complaint the Registrar should convene an Appeal Panel which will look into the complaint within 10 days of receipt of the complaint. The said Panel is to be chaired by the Vice Chancellor or his nominee, the Registrar or his nominee, Dean of the Faculty of any other faculty rather than that of the complainant. Again the Panel will have at least one other senior member of the Academic staff which is not directly involved in that case.

From all indications the composition of the Appeal Panel is to avoid any undue influence or bias. Going by the said provision, the Panel may call Witness which may include the student complaint.

It is only after the review of the complaint that the decision can be said to be final. That is whatever the outcome of the view Panel is final and of course binding.

But in this case there was no Panel under paragraph 2.9 convened to review the complaint of the Plaintiff. Since there has not been any such Panel, the Plaintiff's right is still open and any denial or failure of the Defendant to convene Appeal Panel as required by paragraph 2.9 is a contravention of the said paragraph and a denial of the Plaintiff's right to fair-hearing as far as the issue complained of is concerned in the Regulation.

This Court therefore holds that since the Defendant failed for reason best known to it, to convene the Appeal Panel as required by paragraph 2.9 of the Regulation, it is a violation and denial of the Plaintiff's right to fair-hearing. After all such decision of the Senate can only be final where a complaint is made, after the Assessment/Appeal Panel has been convened and after deliberation on the issue raised in the complaint they come up with its decision.

The failure of the Defendant to follow that procedure as contained in the paragraph 2.9 is a violation of the right of the Complainant as far as the Regulation is concerned. So also the fact that the Senate Approved Result is final can only stand where there is no complaint or that the

complaint has been reviewed by the Panel and not challenged in Court.

In this case there has not been any such Panel set up to look into and deliberate on the complaint made by Plaintiff in this Suit.

It is important to state that by **paragraph 2.9** of the Guideline the ground for complaint upon which a Panel will be set up must be based on Procedural and Administrative ground. But in this case the Plaintiff had stated that his complaint is based on his exceptional intelligence. The question is can this exceptional intelligence of the Applicant be said to be within the meaning of Administrative and Procedural grounds as stipulated in the paragraph 2.9?

As already stated, it is the humble view of this Court that such ground – exceptional intelligence, is not a ground that can be considered to fall within Procedural and Administrative ground as stated in paragraph 2.9 of the Guideline.

This Court therefore holds that since the Senate in **EXH LE8** had informed the Plaintiff that based:

"based on the Senate Current Regulation"

reassessment of already approved examination result do not allow for requested review, the Plaintiff should have tried to find out what the details of the Current Regulation is and the reason behind it instead of still anchoring on the

non-existent Regulation to base his application on rather than come to Court based on the "Old" Regulation.

Yes everyone is entitled to fair-hearing in accordance with the laid down rules.

In this case the University has the right to assess a student base on the set standard of the University. No student is allowed to assess himself. Yes if there is a glaring evidence to show that the result was manipulated, it should be reported to the Registry base on what I will call Old Regulation which is the Regulation where in **paragraph 2.9** a student can write to Registrar and Panel convened. But by the tone of the **EXH LE8,** that result if I may call it that does not exist any longer. That Current Regulation is not binding on the Defendant. Moreover the ground upon which the application is based – exceptional intelligence, does not fall within the context of Procedural and Administrative ground stated in the "old" Regulation particularly **paragraph 2.9.**

A citizen's right is not absolute because where citizens feel that their right is absolute may lead to lawlessness and anarchy. Where a right is not checkmated it leads to lawlessness and disobedient to Constituted Authority. So where a citizen becomes disobedient to constituted authority in the name of exercise of freedom, it becomes lawlessness.

In this case it is important to point out that the same University had in their wise assessment awarded the Plaintiff a First Class Degree in Mass Communication. The

same assessor of the University deemed it fit to so award based on the Plaintiff performance. But it is very surprising that the same student will turn around and accuse as it is, the Defendant of not assessing the 2 courses properly. I do not think that that allegation and the stand of the Defendant in this Suit is an abuse of the Fundamental Right of the Plaintiff because it is not. So this Court boldly holds.

The University has its Rules and Regulations. It also has its stand and way of doing things. They cannot single out the Plaintiff to punish or under assess him in those courses. The Plaintiff should know that the standard of assessment in the Undergraduate years is not same standard in the Graduate years because the higher the Degree the higher the standard of assessment and the tougher it becomes.

So the expectation of a student who want to use the rating or assessment of the Undergraduate years to judge Graduate years cannot stand. No student no matter how highly personally rated can assess himself. The body of assessor must have been eminently qualified to seat as such.

Since the Defendant had said that under the new Regulation, the request of the Plaintiff cannot be done. So be it. But they should make available to their students the said New Regulation.

Every student must abide by such existing Regulation laid down by such body like the Senate of the Defendant. The same Senate has a right to change the Regulation for the

betterment of the student and in order to maintain Law and Order in the school. These measures are done to checkmate lawlessness.

Since the Senate had notified the Plaintiff based on the new Current Regulation, he should have taken it in good faith.

The allegation of the Plaintiff that the Vice Chancellor had rejected the Plaintiff's request is all hearsay. So also the statement that NUC had asked him to explore internal option within the University.

All in all, the Defendant did not violate the Plaintiff's right to fair-hearing as claimed. That is the decision of this Court. The Plaintiff has to abide by the Rules and Regulation of the school and accept the Result as the true assessment of his performance.

No citizen's right is absolute and Plaintiff's right is not an exceptional in this regard. Again exceptional Intelligence is not a ground to challenge as that is not an administrative and procedure issue.

This is the Judgement of this Court.

Delivered today the ____ day of _____ 2020 by me.

_____

K.N. OGBONNAYA
HON. JUDGE