

RAC

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 42 OF 1984

In the matter of application by Simeon Manyaki for leave to apply for an order of certiorari and mandamus;

and

In the matter of the Executive Committee and Council of the Institute of Finance Management.

RULING

MAPIGANO, J.

The applicant Simon Manyaki is a senior accountant with the National Shipping Agencies. He wants this court to exercise its discretion and grant two orders, namely (1) an order of certiorari to quash the decision of the Executive Committee of the Council of the Institute of Finance Management dated 2 May 1984; and (2) an order of mandamus requiring the Council of that Institute to award him a certificate of Advanced Diploma in Accountancy. The application has been stoutly contested by the Institute.

Most of the salient facts are not in dispute. The applicant was a student at the Institute in Dar es Salaam, pursuing a course of study in accountancy conducted by the Institute during the 1983/84 academic year. He and other students sat for final examinations in January, 1984. Sadly, an outrage had taken place in connection with the examination papers and model answers and the examinations had been extensively leaked. A good number of the candidates had obtained unauthorised prior access to the examination papers and model answers. The examiners were not slow to apprehend that there had been such a leak. It was perhaps inevitable, for some of the candidates were so naive, nay thoughtless, that they reproduced the model answers verbatim. It was considered to be a case where the examination as a whole could not properly be said to be a reliable measurement tool of knowledge and expertise of the candidates. A decision was thus made to (1) nullify the results and require the candidates to re-take the examinations in April, 1984; (2) set up a committee to probe the leakage and prepare a report; and (3) seek assistance of the state security organs to investigate the matter. It was also decided that the results of the April examinations should be tied to and tabled together with the report of the probe committee and to ^{postpone} any disciplinary or punitive action against any individual who may have been involved in the affair, including the nullification of the April examination results, until the final results of the investigations have been submitted.

The applicant and the other candidates resat the examinations in early April when the probe committee that was formed was carrying out investigations. On 27 April, 1984 the applicant was officially informed that he had passed the examinations. However, on 2 May 1984 he received a distressing letter from the Acting Director of the Institute which read as follows:

"Re TERMINATION OF ADVANCED DIPLOMA STUDIES

1. You may remember that the Institute in January, 1984 encountered problems in the final examination process of the 1983/84 Advanced Diploma in Accounting third year students of the fact that a good number of the students in that class had unauthorised access to some of the exam papers and/or model answers. Subsequent to this the Institute set up an independent probe committee to investigate this whole affair.
2. The Executive Committee of the IFM Council which set up this investigation received and deliberated the probe committee report in its fortieth (extra-ordinary) meeting held on Friday, 1984. According to the findings and conclusions of this report you are one of the students who are highly implicated.
3. The Committee noted with grave concern that you are depicted as one of the primary clique member in your class who participated and/or assisted contrary to Institute's rules of examination and good discipline in the commercialized distribution and propagation of the examination papers and/or model answers which leaked. The Committee observed further that, as if that was not enough, you subsequently did not want to tell the truth to the investigators; during the investigation which ensued; you were nonrepentant; you were intransigent if not arrogant and you were obdurate if not -thoroughly uncooperative in this investigation. It was noted also that the wide propagation of the leaked exams caused a lot of problems to the community and entailed enormous financial costs to the Institute. All these behavioural patterns, it was observed by the Committee, are not consistent with good discipline and are contrary to professional ethics and integrity in your field of training.
4. Because of the above reasons the Executive Committee of the Institute's Council has decided to terminate your studies at the Institute with immediate effect and also to bar you from attempting any IFM examinations in future as well as nullify whatever results you may have had in this year's April 2-6 examinations, if you happened to sit for these examinations etc".

This letter was copied to the applicant's employer, among others. His employer reacted by writing to him on 23 May, 1984 rebuking him and informing him that the fact that he had undergone the course of study would not be recognized.

At this juncture I pause to notice, only to reject, an argument that was advanced by the applicant to the effect that the Institute had no legal competence to terminate his studies, nullify his results of the April examinations and bar him from future enrollment and attempting any of its examinations. For one thing, examinations such as these, are meant to be honestly and honorably set and taken for they are contemplated to be, as the Institute observed, a reliable measurement tool of knowledge and skill of the candidates. For another, it cannot be denied that the Institute stood embarrassed and disgraced by the leak and its integrity stood tainted. The leak thus bore viewing with seriousness and those who were involved in it should surely expect to be severely dealt with and visited with deterrent or exemplary penalties. I entirely agree with the Institute that under both the IIM Act, 1972, in particular section 7 thereof, and the general rules governing such examinations, it has the discretion to treat the applicant in the manner it did.

The probe committee that was formed by the Executive Committee of the Council of the Institute was given the following terms of reference: (1) to find out whether there was a leakage of the examinations; (2) if so, to establish and indicate when, how, where and by whom the examinations were leaked, what papers and/or model answers leaked and to what extent; (3) to find out weaknesses, if any, in the examination administration system that might have contributed to the leakage, in particular, to examine the circumstances of setting, marking, external examining and invigilation of examinations; (4) to make observations on the above points and any others that might be pertinent thereto, draw conclusions thereof and recommend appropriate action to be taken; (5) to determine and regulate its proceedings as it deems fit and to co-opt any other person or persons who in its opinion may facilitate the execution of its tasks.

In discharging its assignment the probe committee examined a host of documents and conducted interviews with 24 people, who included students, examiners and officials of the Institute and NBAA, the acronym for National Board of Accountants and Auditors. It was standard procedure to send the examinations papers to NBAA for moderation. The applicant was one of the students who was interviewed by the probe committee.

At the conclusion of the investigations the probe committee stated, in sum, that it profoundly suspected one Chandrasekharan, a moderator with NBAI, and one Mashenene, a co-ordinator with the Institute, to be the source of the leak. It opined that either of the two had surreptitiously given one Angela Mpanduji (who was a candidate) the examination papers and that the said Angela had in turn passed them to the applicant and two other candidates who, in turn, in the words of the committee, constituted themselves as distribution agents and made them available to other candidates in consideration of cash or kind.

The first main question that arises is whether the Council had authority to establish the Executive Committee that set up the probe committee, and if the answer be yes, whether the Executive Committee had competence to exercise such powers. By paragraph 10 of his affidavit the applicant contends that the IFM Act, 1972 does not provide for the creation of such a committee and that, therefore, the creation of the committee by the Council was an illegal exercise of the powers conferred on the Council by the Act. Mr. Marando who appeared for the applicant has submitted that the only body that could have acted against the applicant was the Students' Disciplinary Committee established under rule 37 of the IFM Student Rules set out in the IFM 1983/84 Prospectus. Against that submission Miss. Mjasiri of the Tanzania Legal Corporation, counsel for the respondent Institute, replied that the Executive Committee had a legal status and that under the IFM Act the Council enjoyed discretion to establish such a committee. With regard to the IFM Student Rules, it was her argument that those rules did not apply to academic matters.

As indicated, the Institute was established by an Act of Parliament, i.e. Act No.3 of 1972. The objects and functions are to be found in section 4. By section 6(1) the Council is the body vested with the governance and control of the Institute. Now the Executive Committee was created by the Council in its meeting held on 24 September 1974. It is a smaller body than the full Council, it being composed of only half of the members of the Council.

Among other things, the Executive Committee was charged with the functions of dealing, in emergency cases, with such matters as are normally considered by the Council, in between Council meetings. It was expressly stipulated that the decisions of that Committee are subject to ratification by the full Council.

In my view section 6(2)(f) of the IFM Act is wide enough and gives the Council power to establish such a Committee and to invest it with such authority. I take the view that this was not an instance of abdication of power by the Council, but a valid exercise of its statutory discretion. As aforesaid, the Council prescribed that all decisions of that Committee would be subject to ratification by the full Council. Essentially, by that proviso the Council retained complete control over all the functions assigned to the Committee and the Council intended to continue to address its own mind to the exercise of the powers delegated to the Committee.

I also take the view that the Executive Committee did not encroach on or usurp the powers of the Students' Disciplinary Committee. It is not true that the Students' Disciplinary Committee has any power to deal with academic matters. I have perused the IFM Student Rules and I have come to the conclusion that such matters as the leakage of examinations fall outside the purview of those Rules. I am satisfied that the jurisdiction of the Students' Disciplinary Committee is confined to what may be described as domestic matters such as those pertaining to accommodation, kitchen, drunkenness, nuisance and the misuse of music instruments.

I pass to the second main question, which is whether the proceedings of the probe committee was conducted in accordance with the rules of natural justice. The applicant has averred, vide paragraphs 11 and 13 of his affidavit, that he was denied natural justice in that (a) he was not informed, throughout, that he was a subject of suspicion or investigation; and (b) that he was not afforded opportunity of being heard. This has been denied by the Institute.

The parties seem to be acutely aware, and it is trite to remark, that an administrative body exercising functions that impinge directly on legally recognised interests owes it as a duty to act judicially in accordance with the rules of natural justice, which basically means the adoption of fair procedure, which fundamentally demands freedom from interest and bias on the part of the administrative body and the right to a fair hearing for those who are immediately affected by its decision. And it is common ground that this court has discretion to intervene and award appropriate reliefs where the rules of natural justice have not been observed.

Quite clearly, and again it is common ground, the probe committee was investigating an enormous matter and the authorities must have apprehended that the effect of its findings was bound to have substantial adverse impact and consequences on the interests of certain individuals. The

applicant is certainly one of the people who have been detrimentally affected by the findings of the probe committee. That is patently evident from the severity of the penalties that were eventually handed out to him by the Executive Committee and by his employer. I hold the view that the applicant, whose rights and legitimate expectations stood to be so adversely affected by the inquiry had the right to have an adequate opportunity of knowing the case he had to meet, of answering it, of putting forward his own case, and of being fairly and impartially treated. In other words, he had the right, first, of being sufficiently apprised of the particulars of the prejudicial allegations that were to be made or had been made against him, so that he could effectively prepare his answer and collect evidence necessary to rebut the case against him; secondly, subject to the need for withholding details in order to protect other overriding interests, and in my opinion there was none here, of being accorded sufficient opportunity of controverting or commenting on the materials that had been tendered or were to be tendered against him; thirdly, of presenting his own case; and fourthly, of being given a reasonable and fair deal.

It matters for nothing that these were proceedings initiated by an Institute of higher learning. The weight of modern authorities is in favour of the view that disciplinary proceedings in higher educational institutions have to be conducted in conformity with natural justice, provided at least the penalty imposed or likely to be imposed is severe: see R v Aston University Senate, Ex p. Roffey and Another, (1969) 2 QBD 538, a decision that has been referred to by both sides; Glynn v Keele University, (1971) 1 WLR 407, a case of summary suspension from residence on the campus for disciplinary offence; and more helpful, Ceylon University v Fernando, (1960) 1 WLR 223, a case of disqualification from degree for alleged cheating in examination.

With due respect, it is, in my considered opinion, not an exaggeration to say that the applicant was deprived of his right. It cannot be seriously denied that there is nothing in the record that shows that he was apprised of the particulars of the allegations that were to be made or had been made against him. It will be remembered that the probe committee carried out its assignment by scrutinizing several documents and interviewing scores of people. I have gone ^{through} those documents and in regard to the applicant I see nothing damning in them. The record of the proceedings of the committee shows that it met on several occasions to conduct the interviews. About the only interviewee who implicated the applicant was one Ancilla Kilinda.

This Ancilla Kilinda was also a candidate and, as the idiom goes, the canary who sang. She admitted that she had prior access to the examination papers. She stated that she had purchased the papers from Angela Mpanduji for shs.1,500/-. She disclosed that the papers she acquired were handwritten. She said she destroyed them immediately after sitting the examinations. She was had to examine several scripts and, according to the report of the probe committee, she singled out the scripts of the applicant, claiming that they were similar with the handwriting on the examination papers she had purchased from Angela Mpanduji. That was a serious allegation and it was regarded by the probe committee as high-grade information and in no small way led the committee to infer that the applicant was a party to the scandal. The committee might be right. But what is objectionable is that the substance of that adverse information was not put to the applicant at all. He had, therefore, no opportunity to deny or admit it. Of course a party cannot deny or admit that of which he is unaware. This is not to say, however, that Ancilla Kilinda was uncandid with the probe committee.

Angela Mpanduji appeared before the probe committee for interview. She did not in the least implicate any body, let alone the applicant. In actual fact she was not asked anything about the applicant. The information provided by one or two other candidates was in the last analysis either marginal or what they had picked up second hand and I am unable to see anything probative in it.

On 5 April, 1984 the applicant was interviewed by the probe committee. I will set out in extenso what transpired:

" Q. Can you tell us anything strange or unusual you heard about the exam before the exam was done?

A. The students worked very hard to prepare themselves for the exams. But I heard no rumours.

Q: Do you have a study group?

A: Yes.

Q Who are your study group?

A. I do not have any specific study group. I usually study on my own.

Q. Who in your class, have you, for example, been studying with?

A. It all depends on the topic. My group change with the topic.

- Q. Any girls you are used to in your class?
- A. I was used to Maira in first and second year and Angela Mpanduji in third year.
- Q. Angela was selling exams, did she sell to you also?
- A. No. I never buy exams. I pass on my own effort.
- Q. Did you know that Angela was selling exams or she had exams?
- A. No.
- Q. One day you were studying in your room with some colleagues, someone came and knocked at the door. You locked him out. You were digesting an exam you had laid hands on.
- A. This is 100% lie.
- Q. When Angela got the papers she was looking for someone to assist her with solutions. You assisted her.
- A. That is not true.
- Q. Is Angela your friend?
- A. That is what people think. But she is no more than someone I study with.
- Q. But she is surely more than that to you.
- A. Yes, at one stage she introduced me to her father, and I once escorted her to the airport when her sister was passing through from Seychelles".

This interchange is drawn from pages 54 and 55 of the report of the probe committee. On a careful reading one may probably discern some inconsistencies, even evasiveness, in the answers of the applicant. But, as pointed out supra, there is, from start to end, nothing in that interview which shows that the identification of the scripts by Ancilla Kilinda was intimated, much less announced, to the applicant.

What's more, it is plain, I think, there is nothing to show that the applicant was informed that he was one of the distribution agents of the leaked examinations, contrary to what is deposed in paragraph 7 of the counter-affidavit. Equally plain is that there is nothing that shows that the applicant had, during the course of the interview, been made to understand that he was appearing before that committee to answer such a charge, and certainly there is nothing in his answers that can validly be said to have tangibly and credibly established that he was a party to that illegal enterprise. More likely than not the applicant was one of the candidates

who had access to the information, the fact that it is well to keep in mind that the investigation for which he was appointed was what the Acting Director described as "the investigation into the disclosure and propagation of the leaked examination papers and/or model answers."

It may be successfully asserted that under its terms of reference the probe committee was not expected to conduct a disciplinary proceeding as such. It is plausibly arguable that it was only asked to investigate but not to give a binding decision. Even if that was the case, it was, in my view, still placed under obligation to observe the rules of natural justice because it was investigating what was essentially a serious public scandal, and since it had in its possession the resolutions of the Executive Committee it was aware throughout that the investigation and its report were part of a process that could terminate into action adverse to the interests of some of the interviewees, as indeed they did. Re Permanon Press Ltd. (1971) is a case in point.

In the final event this application is granted. The decision of the Executive Committee is hereby quashed and the Council of the IFM is directed to award the applicant a certificate of Advanced Diploma in Accountancy. Costs are to follow the event.

Delivered and dated 12 September, 1986.

Miss. Mjasiri for Mr. Marando for Applicant.

Miss. Mjasiri for Respondent.


(D.P. MAPIQANO)
JUDGE.