IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL DIVISION
IN THE MATTER OF AN APPLICATION FOR REVIEW OF THE UNIVERSITY OF MAKENI'S DECISION NOT TO ALLOW CERTAIN STUDENT TO GRADUATE
And
IN THE MATTER OF THE UNIVERSITY OF MAKENI EXAMINATION POLICY
AND
IN THE MATTER OF SECTION 47 OF THE UNIVERSITY ACT OF 2021

BETWEEN:

OSMAN KEH KAMARA	-	1ST APPLICANT
JOSEPH ABDUL KMARA	-	2ND APPLICANT
RADICLIFF DELE-TAYLOR	-	3RD APPLICANT
BILKISU MANSARAY	-	4TH APPLICANT
FODAY KANU	-	5TH APPLICANT
HANNAH RAINATU TURAY	-	6TH APPLICANT
ABUBAKARR KANU	-	7TH APPLICANT
SALOME B. FOFANAH	-	8TH APPLICANT
YVONNE MACARTHY	-	9TH APPLICANT
FRANICS GREENE	-	10TH APPLICANT
MABINTY KAMARA	-	11TH APPLICANT
CHRISTIAN TARAWALLY	-	12TH APPLICANT
RAMATA LILIAN SACCOH	-	13TH APPLICANT
C/O NO.4 HILLSIDE BYE-PASS ROAD		
OFF PADEMBA ROAD, FREETWON		
AND		
THE UNIVERSITY OF MAKENI	-	1ST RESPONDENT
THE CHANCELLOR UNIVERSITY OF MAKENI	-	2ND RESPONDENT
THE VICE CHANCELLOR UNIVERSITY OF MAKENI	-	3RD RESPONDENT
THE REGISTRAR UNIVERSITY OF MAKENI	-	4TH RESPONDENT
C/O FATIMA CAMPUS		
AZOLINI HIGHWAY, MAKENI		

COUNSEL

J. T. MANSARAY for the Applicants

B. S. KAMARA for the Respondents

RULING

HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.
15TH DAY OF MARCH 2024

BACKGROUND

1. This is an application by way of notice of motion, in which the applicants are seeking injunctive orders to temporarily restraint the 1st respondent, from holding or organizing the 2024 undergraduate convocation ceremony due on March 16th, 2024, while this application is pending. The application which is supported by the affidavit of John T. Mansaray, counsel on record for the applicants is dated the 7th of March 2024. On March 13th, 2024, B. S. Kamara made enquiries concerning the assignment of this application to this court and demonstrated that they were the ones the applicants were seeking to injunct.

2. I indicate to Mr. Kamara that the court's diary contains no such application. But if it is a fresh assignment a date for hearing would be fixed and the parties be notified, except in cases of real urgency. Mr. Mansaray then responded that it was. The court registrar also intimates the court he had earlier received the said application. So, a hearing time was slated at 1.00p.m. and the application changes character from ex parte to inter parte. However, there is no time for Mr. Kamara to file papers, so he appears as counsel. At 1.00p.m. J. T. Mansaray, of counsel for the applicants moves this court pursuant to O.35 r.1(1) and (7) of the High Court Rules[1], hereinafter called the Rules.

Submissions of Counsel

3. I turn now to the submissions of counsel, and I shall be brief without parroting their words. Mr. Mansaray submits that the applicants were students of the 1st respondent and there was an operational manual

[1] The High Court Rules, 2007 (CI No.8 of 2007)

guiding students in their respective programs. He refers to Ex. "JTM2". This is a student hand book which according to Mr. Kamara was given to each student as a welcoming package. Mr. Mansaray argues that this hand books contained no policy preventing students from writing a reference examination. In addition, he states that no such policy existed. He maintains that if any existed, which he strongly denies, yet the conduct of the respondents had waived same.

4. He catalogues the following steps as conducts waiving any such policy if ever existed. The publishing of a refence examination timetable; receiving payments of reference examination fees; conducting the examination; publishing of results; and the issuing of promotional transcript. He then refers to Ex. "JTM4" and Ex. "JTM6" which are the reference examination timetable and statement of results respectively. Mr. Mansaray argues on this point that it was unfair on the applicants after all the above stages for the respondents to deny them and remove their names from the list of graduands for the convocation. He argues further that the applicants had met all academic requirements of the respondents for their names to be on that list.

5. Mr. Mansaray refers the court to the American Cyanamid case and states that the application satisfied the legal requirements outline in the said case for the granting of injunctive orders. As regards the seriousness of the case he refers to the Originating motion which he says was clear on that. As to the adequacy of damages he submits that no amount of compensation would be enough if the applicants were not awarded their respective degrees which they had toil for several years; he equates same to denying them their basic human right. And as regards the balance of convenience Mr. Mansaray says it was in favour of granting the injunctive prayers. He advances two reasons.

First, the respondents could choose other date to hold the convocation ceremony. Second, if the applicants were denied their rights to be part of the ceremony they would not know when or whether their degrees would ever be awarded.

6. Mr. Kamara, as stated earlier in this ruling, did not file any papers but appears as counsel on behalf of the respondents and responded on a point of law. He canvases the court not to grant the discretionary relief sought by the applicants. Rather urges the court to tilt the balance of convenience in favour of the 1000 and more students who have been approved by the Senate of the 1st Respondent to be awarded their various degrees. He submits that the preparation of those students and their parents for the ceremony could not be quantified in monetary terms. He argues further that consideration should be given to special factor under the stated authority – American Cyanamid case.

7. One special factor he emphasizes is that of public policy and the interest of the public in general. He points out it would not be in the interest of the public to grant the injunction on the eleventh hour to the convocation. He contends that the absence of the applicant in the forthcoming ceremony was not in any way prevent the respondents to award them their degree. Thus, he continues that the injunction in of itself would be an hinderance to their application for the award of their degree. Mr. Kamara calls upon the court to refuse the prayers for injunction as the applicants did not give deference to the order they relied upon.

8. He argues that the applicants had failed to make an undertaking as to damages. What was exhibited he argues was an undertaken by the solicitors. He refers to order 35 r. 9(1) of Rules. He states the

respondents had no fallback position should it turn out, the injunction ought not to have been granted. Mr. Kamara further contends that the originating notice of motion disclosed the chances of the applicants succeeding at the trial was very unlikely. He submits that the applicants placed reliance on the conduct of the respondents in allowing them to take the examination and not including their names on the graduation list.

9. He refers to the hand book, Ex. "JTM2" at para.5.15.3 and submits that the applicants had no business in writing that examination, but to repeat the module. He concludes by stating that the body empower to sanction the validity of any result was the Respondent's Senate. He maintains that Ex. JTM6 did not carry the approval of the Senate. He urges the court to strike out the application with serious costs for causing trauma on the respondents. In reply, Mr. Mansaray concedes that the number of approved students for the graduation far outweighed the number of the applicants but submits that such a submission was untenable as same was not a bar on the applicants to seek redress from the court which they had done.

10. He refers to a Jamaican case authority which he promises to furnish the court but fails to. In reply to the undertaking given by the solicitors of the applicants, he submits that same was regular until this court said otherwise. As regards costs he asks that cost be in the cause as Mr. Kamara did not file any paper but appeared as counsel.

Consideration of the Court

11. I turn now to the application and the role of the court in such cases. The guiding principle the court should follow in the exercise of its discretionary powers has been laid down in the well-known case -

American Cyanamid v. Ethicon[2] per Lord Diplock. The first is whether there is a serious issue to be tried. It is not the business of the court at this stage to investigate whether the applicant has any chance or likelihood to succeed in the trial. So, this displaces the submission of Mr. Kamara that looking at the applicants' originating notice of motion it discloses an unlikely chance to succeed. It is also not the function of the court currently to resolve conflicts of evidence as to fact which the claims of the applicants depend.

12. It is however, and undoubtedly so, as stated by Lord Diplock: "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, there is a serious question to be tried."[3] The concern of this court in this regard is whether the removal or not including the names of the applicants on the list of graduands of the 2024 convocation ceremony constitutes an infringement of the rights of the applicant. In the opinion of this court paras. 1, 2, 3, and 4 of the originating notice of motion are serious issues for the court to determine in the trial of the main. This now takes the court to the next consideration which is the balance of convenience.

13. The question is this. Where does it lie? The court must determine whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. The first part of the scale in my mind poses the following questions for consideration. Whether compensation would be adequate as an award of damages if the applicants herein were to succeed at the trial; whether damages would be an adequate remedy; and whether the defendant is financially capable to pay damages. In the present application the first

[2] [1975] 1All ER 504
[3] Ibid p. 510

two questions above have been answered by the applicants. In para. 6 of their originating notice of motion the applicants are asking this court, as one of their prayers, to punish the 1st respondent in damages in the sum of NLe2,500,000.

14. By that prayer, in the opinion of the court, the applicants have quantified and anticipated the loss they would suffer in monetary terms if, the 1st respondent proceeded with the ceremony contrary to what Mr. Mansaray submits before this court. In answer to my third question, it is the opinion of the court that even the applicants are of the view that the 1st respondent, being the University of Makeni, is financially capable to pay damages if awarded by the court in the event the applicants are successful at the trial. These questions when answered in the affirmative according to the lay down principle, the injunction should not be granted.

15. However, on the other end of the scale, also poses similar questions to assist the court in determining where the balance lies. These are, whether, in the case of the plaintiff succeeding, damages would not be an adequate remedy; whether the defendant would be adequately compensated under the plaintiff's undertaking as to damages if the defendant succeeds at the trial; and whether the plaintiff would be in financial position to pay. Well, the first question has been answered in considering the first part of the scale, that the applicants have put a quantum to any would-be loss they might suffer. On the second question, it is my opinion that adequacy of anything is completely a different realm altogether. However, there would be always something to make up for loss incurred or suffered.

will lose confident on the respondent's ability to hold any such ceremony in the future. Hence, their academic calendar would be disrupted for a very long time, if not forever. The public and the would-be graduands will always be jittery whether to go ahead and make preparations for any forthcoming event.

19. That fear will always be there. And year in year out there would be students whose names would not be included on the list, the public and the greater number of the approved graduands would be at the mercy of those removed or unlisted students. Hence public interest dictates that the general good is best served if the application is refused. Considering the above reasons I hereby hold that the application, the notice of motion dated the 7th of March 2024 is incompetent and immature and it is therefore struck out. Costs shall be in the cause. This matter is adjourned to Monday 22nd April 2024 at 10:00a.m. for hearing and determination of the Originating notice of Motion.

HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.