

SOUTH AFRICA / JUDGMENT

Faleti v University of South Africa and Others (12846/2020) [2021] ZAGPPHC 482 (27 July 2021)

[2021] ZAGPPHC 482

COURT

North Gauteng High Court, Pretoria

BEFORE

M.M.D. Lenyai

CASE / FILE NUMBER

12846/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 12846/2020

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

DATE:

27/07/2021

In

the application between: MR
KAZEEM OLABODE
FALETI
Applicant
and
UNIVERSITY
OF SOUTH
AFRICA
1st Respondent
MRS
LYNNETH
SMITH
2nd Respondent
PRROF
SR
MALEFANE
3rd Respondent
PROF
DARREL
MYRICK
4th Respondent
DR
ZWELIBANZI
MPHELE
5th Respondent
PROF
STEPHENS
MADUE
6th Respondent
PROF
GOONASAGRE
NAIDO
7th Respondent
PROF
GERA
FERREIRA
8th Respondent
PROF
JS (KOBUS)
WESSELS
9th Respondent
PROF
AG
OOSTHUISEN
10th Respondent
PROF
GREG
CUTHBERTSON
11th Respondent
PROF
ANNEMARIE

DAVIS
12th Respondent
MISS
JULIETE
GROSSKOPF
13th Respondent
MRS
BERDINE
VENTER
14th Respondent
MRS
ELENA
SWANEPOEL
15th Respondent
MR
LIEBENBERG
RIEKERT
16th Respondent

JUDGMENT

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and order are accordingly published and distributed electronically. The date and time of hand-down is deemed to be 09h00 on 27 July 2021.

LENYAI AJ

- [1] This is an application wherein the applicant is challenging the decision of the first respondent not to confer on him a Doctorate Degree in Public Administration .
- [2] In this application the following orders are sought against the respondents:
- (a) That the respondents be compelled to immediately release the already completed DPA Qualification and Certificate of Completion between the years 2011 and 2015. This includes the officially approved Research Topic : “The impact of the Budgeting Process on Employment in Nigeria 1990 – 2010”;
 - (b) That the respondents be compelled to dismiss forthwith “Unnecessary Offer of PhD in Public Administration” as option to Administrative and Supervisory lapses;
 - (c) That the respondents be ordered to refund all the expenses incurred by the Applicant between years 2010 and 2020;
 - (d) That the respondents be ordered to desist from harassing the applicant; and
 - (e) That the respondents be ordered to make financial compensation for the psychological trauma suffered by the applicant as a result of being harassed by the respondents.

- [3] The applicant contends that between February 2011 and November 2015, he was registered as a fulltime doctoral degree student in Public Administration (DPA) at the University of South Africa. He satisfied all the academic requirements for a qualification of Doctorate Degree of Public Administration. Despite having met all the requirements, the respondents are not willing, ready nor prepared to release the already completed DPA qualification, Research topic, and the certification of completion.
- [4] The applicant contends that as a result of the negligence and administrative lapses on the part of the respondents, his thesis was tagged as plagiarised and this resulted in two of his professors failing him. He contends that in line with the first respondent's procedures, he gave notice of his intention to submit his DPA Thesis for final examination on the 14th of June 2013 and subsequently submitted his research work on the 18th of September 2013 after a full consent and approval by his supervisors.
- [5] The applicant contends that on the 30th of October 2012, before he left his home for South Africa, he received an official request from his supervisors for a Joint Publication in a peer – review journal, A Mediterranean Journal of Social Sciences, A Predatory Journal published in November 2013, by the Department of Public Administration and Management/College of Economic and Management Sciences/College of Graduate Studies/and University of South Africa but unfortunately, after his submission, directly through his supervisors, a mistake was recorded in his work by the respondents before it was published, while editing it, in order to blend with the Departmental standards and requirements. During the editing, they removed the details of the main author in his work, which consequently resulted in the publication being tagged as plagiarised because of the lack of references. This gross mistake was discovered shortly after he had turned in his research on the 18th of September 2013. Importantly, before any Masters and Doctoral Degrees student's thesis or research work could be sent out for final examination, it has to be submitted to Unisa's (Turn-it-in) system check machine, in order to detect high similarities level and or possible plagiarism.
- [6] The applicant contends that his research work passed the system test. His results showed high similarities level of 13 % of his earlier work published in the University of Abidjan, Nigeria and 11 % of Yang's 2010 works while over hundred sources reflects 1 % each, which was in compliance with the standard requirements of Unisa as approved by the Senate.
- [7] The applicant further contends that thereafter his relationship with the respondents soured and the respondents "tried all things possible" to exonerate themselves from their mistake at his expense and because he would not allow them to do this he was harassed and accused of things he did not do.
- [8] The first respondent denies that the applicant is entitled to any of the orders he seeks nor is he entitled to be conferred a Doctorate Degree in Public Administration.

- [9] The first respondent raises a point in limine that the court does not have jurisdiction to hear this matter. The first respondent is a public institution of Higher Education and is governed by administrative law.
- [10] The first respondent contends that it has administrative procedures in place for students with academic complaints. The complaints procedure provides the following:
- 10.1 Any module related (academic) complaint must first be discussed with the relevant module lecturer to resolve the matter.
- 10.2 If the matter cannot be resolved through a discussion with the lecturer, students can approach the Chair of the relevant department.
- 10.3 If students are not satisfied with the resolution from the Chair of the department, they have the option to direct the complaint to the office of the School Director.
- 10.4 If the student is not satisfied with the resolution from the School Director, they have the option to direct the complaint to the office of the Executive Dean.
- 10.5 If the complaint relates to postgraduate affairs, it will be investigated by the Head of Postgraduate Studies and Research on behalf of the Executive Dean and provide feedback to both the student and the Dean.
- [11] The first respondent contends that the applicant did not follow the abovementioned procedure before approaching this court.
- [12] The first respondent further contends that the applicant followed an incorrect procedure when instituting these proceedings in the High Court. The applicant ought to have instituted review proceedings in accordance with Promotion of Administrative Justice Act No. 3 of 2000 (“PAJA”) and follow Rule 53 of the Uniform Rules of Court.
- [13] The first respondent is a Higher Education Institution created in terms of the Higher Education Act No. 101 of 1997. The first respondent is an administrator as contemplated in section 1(b)(ii) of PAJA.
- [14] The first respondent exercises public power or performs a public function in accordance with the provisions of section 1(a) of PAJA which provides :
- “(1) ‘administrative action’ means a decision taken, or any failure to take a decision, by –
- (a) an organ of state, when –
- (i) exercising a power in terms of the Constitution or a provincial constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation; or
- (b) a natural or juristic person, other than an organ of state, when exercising a power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect but does not include ...”

[15] The first respondent contends that since its decisions constitute an administrative action as contemplated in PAJA, any person in the shoes of the applicant, who wants to challenge its decisions, may do so, in terms of section 6 of PAJA, which reads :

“(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.

(2) A court or tribunal has the power to judicially review an administrative action if –

(a) ...

(b) ...

(c) The action was procedurally unfair”.

[16] Section 7(2)

(a) of PAJA indicates the procedure for judicial review and the section reads:

“ 7 Procedure for judicial review

(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection 2(a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

(2)(a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must, before 28 February 2009, subject to the approval of the Minister, make rules of procedure for judicial review.

[Sub-s.

(3) substituted by s. 27 (a) of Act 55 of 2003 (wef 31 March 2005) and by s.29 of Act 66 of 2008 (wef 17 February 2009).]

(4) Until the rules of procedure referred to in subsection (3) come into operation, all proceedings for judicial review under this Act must be instituted in a High Court or another court having jurisdiction.

[Sub-s.

(4) substituted by s. 27 (b) of Act 55 of 2003 (wef 31 March 2005).]

(5) Any rule made under subsection (3) must, before publication in the Gazette, be approved by Parliament.”

[17] In the matter of Mbuthuma and Another v Walter Sisulu University and Another 2020

(4) SA 602 (ECM), the court was confronted with the question whether the decision of Walter Sisulu University, falls within the ambit of “administrative action” as provided for in section 1 of PAJA . The court held that:

“[45] ... Mr Hobbs argued that ‘the decision to suspend the applicants is administrative action as defined in section 1 of PAJA. Mr Hobbs was referring to s 1(b) of PAJA.

[46] ...

[47] ... Shouldn't the first respondent be the jurisdic person referred to in s 1(b) of the PAJA then? I think it is. In sum total I agree with Mr Hobbs' analysis of s 1(b) of the PAJA. Does this not then resolve the current imbroglio? I think it does.

[48] ... I am of the view that the applicants should have followed the provisions of PAJA in challenging both their suspension and the disciplinary hearing. For this reason, this application should fail.”

[18] The authorities are crystal clear that a university is a public institution of Higher Education and is governed by administrative law as contemplated by PAJA. The applicant is challenging the decision of the first respondent not to confer on him a Doctorate Degree in Public Administration. I am in agreement with the first respondent that the applicant should have exhausted the internal remedies provided by the first respondent, before approaching the above Honorable Court.

[19] The applicant should have instituted review proceedings in accordance with PAJA and followed Rule 53 of the Uniform Rules of Court. I am of the view that the relief sought by the applicant stands to be dismissed

[20] In the premises, the following order is made:

(a) The application is dismissed .

(b) The applicant is ordered to pay the costs of this application on the scale as between attorney and client.

M.M.D. LENYAI

ACTING JUDGE OF

THE HIGH COURT

GAUTENG DIVISION,

PRETORIA

CASE NUMBER:

12846/2020

HEARD ON:

29 April 2021

FOR THE APPLICANT:

Mr KAZEEM OLABODE FALETI

FOR THE FIRST RESPONDENT: ADV L. MGWETYANA

INSTRUCTED BY:

Ngeno & Mteto Inc , Brooklyn, Pretoria

DATE OF JUDGMENT:

27 July 2021

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Prepared on 14 October 2026 · Esheria