

UGANDA / JUDGMENT

Uganda Management Institute Governing Council and Another (Civil Appeal 97 of 2013) [2022] UGCA 324 (3 March 2022)

[2022] UGCA 324**COURT**

Court of Appeal of Uganda

BEFORE

Madrama Izama, JA, Mulyagonja, JA, Monica K. Mugenyi, JA

CASE / FILE NUMBER

Civil Appeal 97 of 2013

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THE REPUBLIC OF UGANDA,**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA****(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)****CIVIL APPEAL NO 97 OF 2013****I. UGANDA MANAGEMENT INSTITUTE****GovERNtNG COUNCtL)**

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2. UGANDA MANAGEMENT tNST|TUTE) APPELLANTS**VERSUS****O DR. BENoN BAsHEKA) RESPONDENT**

(Appeal against the Ruling of the High Court, Execution Division (Anglin, J) in Miscellaneous Application No. 2803 of 2016)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my [earned sister Hon. Lady Justice Monica K. Mugenyi, JA.

I agree with her that the appeal ought to substantially succeed with substantial costs for the reasons she set out in the judgment and I have nothing useful to add. Since Hon. Lady Justice Irene Mutyaogonja, JA also agrees, the following orders issue:

- 1. A declaration does issue that a PhD is not designated as a mandatory requirement or qualification for the appointment and renewal of the contracts of the Directors of UMI per se, but is advisable for the Position of Director of UMI that is responsible for academic affairs.
- 2. The appeal therefore substantially succeeds but the orders of the trial court with regard to the irregularity of the contract of renewal are

sustained in so far as they pertain to the position of Director of Programs and Student Affairs.

- 3. The renewal of Mr. Kasozi Mulindwa's appointment as Director Programs and Student Affairs by the First Appellant on the 15th of December 2011 was irrational and irregular, and ought to be quashed.
- 4. An order of certiorari does issue to call and quash the irregular appointment and Minutes of the First Appellant in which the said appointment was made.
- 5. The costs in this Court and the trial court are awarded to the appellants.

| Dated at Kampala the | 7 | o'clock day of
VY1 | 2022 |

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| Christopher Madrama Izama ||||

Justice of Appeal

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REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
Coram: Madrama, Mulgagonia & Mugengi, JJA CIVIL APPEAL NO. 97 OF 2013

BETWEEN

| 1. UGANDA MANAGEMENT INSTITUTE ||

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| GOVERNING COUNCIL | i ::::::::::: ::::::::::: APPELLANTS |

| 2. UGANDA MANAGEMENT INSTITUTE- | I |

AND

DR. BENON BASHEKA RESPONDENT

(Appeal from the Ruling of the High Court Execution Division (Anglin, J) in Miscellaneous Application No. 2803 of 2016)

JUDGMENT OF IRENE ESTHER MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my sister Hon Justice Monica K. Mugenyi. I agree that this appeal partially succeeds and with the orders that she has proposed.

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JUSTICE OF APPEAL

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THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: MADRAME, MULYAGONJA AND MUGENYI, JJ

CIVIL APPEAL NO. 97 OF 2013

BETWEEN

- 1, UGANDA MANAGEMENT INSTITUTE GOVERNING COUNCIL
- 2. UGANDA MANAGEMENT INSTITUTE APPELLANTS

AND

DR. BENON BASHEKA RESPONDENT

(Appeal from the Ruling of the High Court (Musoke, J) in Miscellaneous Cause No. 7 of 2012)

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JUDGMENT OF II/IONIC\ I(. MUGEN'I. JA

A. Introduction

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- ¹ In 2007 and 2008, Messrs. Lukonji Bbosa and Kasozi Mulindwa were respectively appointed as Director of Finance and Administration and Director of programs and Students Affairs in the Uganda Management Institute (UMI) ('the second Appellant') on contract. Their respective contracts were renewed by the UMI Governing Council ('the First Appellant') on 16th December 2011. Dr. Benon Basheka ('the Respondent'), himself a Senior Lecturer and Head of Higher Degrees Department at UMI, challenged the renewal of the Directors, appointments for alleged illegality and procedural impropriety in so far as they supposedly flouted the First Appellant's Frameworks and procedures for the Appointment and Renewal of contracts of Directors at UMI ('the UMI Frameworks and Procedures').
- 2. By an application for judicial review lodged in the High Court, ^Miscellaneo us Cause No. 7 of 2012, the Respondent sought the following Orders (reproduced verbatim)
- (a) A declaration that the appointment of Kasozi Mulindwa as Director Programs and Students Affairs and Deo Lukonji Bossa as Director of Finance and Administration by the 1st Respondent on re .16th day of December 2011 was illegal and irregularly and wrongly made in contravention of the Frameworks and Procedures of the Council and were irrational and unfair and ought to be quashed.
- (b) An Order of certiorari to call and quash the irregular and illegal and irrational appointments and minutes of the 1st respondent of the appointment of the aforesaid Directors.
- (c) An Order of mandamus directing the 1st respondent to desist from exercising their powers in contravention of the established Frameworks and Procedures in contravention of the rules of natural justice.
- (d) An order of permanent injunction prohibiting, restraining, preventing and stopping the respondents from executing, implementing, enforcing or in any way giving effect to the decision, Order or direction of the 1st respondent appointing the Directors aforesaid.
- 3. The application was supported by an affidavit deposed by the Respondent that attests to the First Appellant having on 2nd September 2011 put in place the UMI Frameworks and Procedures, which inter alia prescribe the appointment of ^a Search Committee to oversee the appointment of UMI Directors. It additionally proposes that a UMI Head of Department should be at the rank of Senior Lecturer, and opines that the Quality Assurance and Framework for Universities and Licensing Process for Higher Education Institutions of the National Council for Higher Education (NCHE) ('the NCHE Quality Assurance Framework') requires such senior lecturer to hold a PhD. The Respondent further avers that the renewal of Messrs. Mulindwa and Bossa's appointments was made without the

appointment of s Search Committee, and in the absence of either advertisements of the positions or interviews in respect thereof, thus depriving him the possibility of appointment therefor, for which he is aggrieved.

- 4. The application was opposed by both of the present Appellants who, relying on the affidavit of Mr. C. G. Kiwanuka Musisi - the Chairman of the UMI Governing Council, in a nutshell contend that the guidelines of qualifications set out by the National Council for Higher Education, such as the requirement for PhD, only pertain to academic staff and not administrative staff. Hence the formulation of the UMI Frameworks and Procedures in respective of Directors, which were based on performance without need for search committees, advertisements or interviews. The said Frameworks and Procedures having come into effect in September 201 "1, they could not have been applicable to the initial appointment of the Directors in 2007 and 2008 respectively.
- 5. By way of rejoinder, it was averred that not all Directors' roles are administrative, the function of the Director of Programs and Students Affairs being singled out as purely academic in nature. The Respondent attested to the Second Appellant having run an advertisement in respect of that position prior to the appointment of Mr. Kasozi Mulindwa thereto, where a PhD had been designated as the minimum qualification therefor.
- 6. In a Ruling dated 25th March 29013, the trial court allowed the Application; granted a declaration that the impugned appointments were indeed illegal and irregularly

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made in contravention of the Frameworks and Procedures of the Council, and granted an Order of certiorari quashing the said appointments, as well as the Minutes of a meeting of the First Respondent in which the appointments had been made.

B. The Appeal

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- 7. Dissatisfied with the trial court's decision, the Appellants lodged this Appeal before this Court, proffering the following grounds of appeal:
- The learned Trial Judge erred in law and in fact in holding that a PhD was a basic requirement for appointment to the office of Director of Finance and Administration (DFA).
- Il. The leamed Trial Judge erred in law and in fact in not holding that the office of the Director of Finance and Administration (DFA) being administrative and not academic, the renewal of the appointment of Mr. Deo Lukonji Bossa as DFA wlthout a PhD was not Irregular.

- III. The learned Trial Judge erred in law in holding that Mr. Bossa being 63 years of age should not have been considered for renewal of the appointment as DFA which ought to be for 5 years.
- IV. The learned Trial Judge erred in law in not holding that section 32(2) of the Universities and Other Tertiary Institutions Act (as amended) which provided for a renewal of the term of office of the Directors of the appellants for 5 years is directory and did not disqualify the appellants from granting Mr. Deo Lukonji Bossa a lesser term as DFA.
- V. The learned Trial Judge erred in law and in fact in holding that the office of Director of Programs and Students Affairs (DPSA) was not an administrative post, but majorly an academic one,
- VI. The learned Trial Judge erred in law and in fact when she failed to clearly distinguish between a renewal and an appointment of directors and thereby coming to a conclusion that was injudicious.
- VII. The learned Trial Judge erred in law and in fact in failing to appreciate that the law and procedure applicable to fresh appointments for directors of the appellants was distinct from the law and requirements for contract renewals of the directors of the

appellants and thereby came to a wrong conclusion nullifying the renewal of the appointments of Mr. Kasozi Mulindwa as DPSA and Mr. Deo Lukonji Bossa as DFA by the appellants.

- VIII. The learned Trial Judge erred in fact and in law in holding that the appointment of Mr. Kasozi Mulindwa as Director of Programs and Students Affairs and Mr. Deo Lukonji Bossa as Director of Finance and Administration by the 1st Appellant on the 16th day of December 2011 was illegal and irregularly and wrongly made in contravention of the Frameworks and Procedures of the Council and were irrational and unfair and ought to be quashed.
- IX. The learned Trial Judge erred when she failed to properly evaluate the evidence adduced before her and thereby came to a wrong decision of granting the Application.
- X. The learned Trial Judge erred in granting the remedies sought by the Respondents
- 8. The Appellants have since abandoned Grounds 3 and 4 above. They addressed the outstanding grounds of appeal together. At the hearing of the Appeal, the Appellants were represented by Ms. Faith Atukunda, while Mr. Max Mutabingwa appeared for the Respondent. The Parties solely relied upon written submissions filed in the matter.

C. Determination

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- 9. This being a first Appeal, this Court is enjoined to reappraise the evidence and draw its own inferences of fact therefrom. See Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions, Sl 13-10. The duty upon a first appellate court as stated in *Henry Kifamunte v Uqanda*, Criminal Appeal No. 10 of 1997 (Supreme Court) may be summed up as follows:
- 1. The appellate court is required to subject the evidence and any other materials that were before the trial court to fresh judicial scrutiny then draw its own conclusions therefrom, with appropriate regard for bona fides of the judgment appealed from.

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- 11. Even where the court unearths errors by the trial court, it should only interfere with the lower court's judgment where the errors have occasioned a miscarriage of justice.
- 111. Where the demeanor of witnesses does not arise other factors may be considered to determine the credibility of the evidence and warrant a departure from the trial judge's position.
- ¹0. The foregoing principles are applicable to the re-appraisal of both oral and affidavit evidence and hence applicable to the evidence on record in this case. See *Banco Arab Espanol v Bank of Uqanda*. Civil Appeal No. 8 of 1998 (Supreme Court)
- 11. Turning to the Appeal, the Appellants subsumed all the subsisting grounds of appeal into the single issue: whether a PhD was a mandatory requirement for the appointment and renewal of the contracts of the Directors of the 2nd Appellant. The trial court rendered itself as follows on the issue.

I am therefore of the firm view that the post of DPSA requires a PhD holder, and that it is not an administrative job. The fact that Mr. Kasozi was appointed in 2008 without a PhD was explained to the Council by the then Director General of UMI, Dr. Kiyaga Nsubuga in his letter referenced DOC B/16/2008. The Council did appoint Mr. Kasozi accordingly. I am of the strong view that since Mr. Kasozi did not have the basic qualifications at his appointment; the renewal ought not to have been automatic (based on performance). There must have been a reason why the law requires the Senior Lecturer/ Head of Department at ^a University or other Tertiary Institution to be holder of a PhD and I have stated that DPSA is not an administrative post. It is mainly academic. Since Mr. Kasozi did not possess a PhD at the time of his appointment, and at the completion of his 5-year term, and there was now an elaborate procedure for the appointment of the holder of the post of DPSA, the 1st and 2nd respondents should have followed that procedure.

- 12. With regard to Mr. Lukonji Bossa, the trial judge held

In the case of a DFA, I would agree that his post is administrative not academic, but if the basic requirement for the job of Head of Department is a Senior Lecturer, who must also have a PhD, then the renewal for a person without a PhD was irregular. Section 54(3) of the Principal Act provides that the minimum requirement

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for election to the post of Head of Department shall be the rank of Senior Lecturer. And the National Council for Higher Education Quality Assurance Framework states that, if a Senior Lecturer shall possess a Doctorate Degree... Like I stated the case of Mr. Kasozi, the law ought to have been strictly followed. Although one may not challenge the earlier appointment of Mr. Bbosa, the renewal should have been treated like a fresh appointment, and advertised.

- 13. It is the Appellants' contention that the pleadings before the trial court restricted the matters in contention to the renewal of the Directors' contracts on 16th December 2011, as opposed to their initial appointment to the offices in question in 2007 and 2008. The Court was referred to the Notice of Motion in Miscellaneous Cause No.7 of 2012, paragraphs (a) of the grounds of the application as well as the reliefs sought making specific reference to the validity of the 'appointments' made on that day and no other.
- 14. The trial judge is thus faulted for applying what was termed 'extraneous laws' in determination of the legality of the impugned contract renewals. In learned Counsel's view, the trial court should have restricted itself to the UMI Frameworks and Procedures. It is proposed that the trial judge should have ignored affidavit evidence by the Respondent that veers beyond the confines of the matters in contention between the parties as delineated in the Notice of Motion. Reference in that regard was made to the position espoused in *Goustar Enterprise Ltd v John Kokas Oumo*. Civil Appeal No. 8 of 2003 (Supreme Court) that no decision may be made or relief granted by any court of law on a ground that was not pleaded.
- 15. Learned Counsel argues that the PhD is not stated in the UMI Framework and Procedures as a requirement for the appointment of Directors or renewal of their contracts, neither is it so designated in any of the laws that were cited by the trial court in its judgment. It is opined that section 54 of the Universities and Other Tertiary Institutions Act ('the Principal Act') and the NCHE Quality Assurance Framework in its entirety are inapplicable to the post of Directors of UMI. UMI Directors are postulated to be neither academic heads of department nor elected

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¹Act No. 7 of 2001

by academic staff as envisaged under section 54 of the Act, but rather are the equivalent of Second Deputy Vice Chancellors that are appointed by the UMI

Council in accordance with its Framework and Procedures. Counsel further faults the trial court for its approbation of an opinion by the Solicitor General's office for the qualifications of a UMI Director to be at the level of a PhD, arguing that the said advice and the ensuing conclusion by the trial court on the basis thereof were not grounded in in any law.

- 16. In turn, the Respondent restates the position that any appointment of UMI Directors with effect from 2nd September 2011 was required to conform to the provisions of the UMI Frameworks and Procedures promulgated on that date. I understood learned Counsel for the Respondent to contend that in so far as the impugned contract renewals in issue presently were made under the hitherto non-existent regime of the UMI Frameworks and Procedures, they should have been treated as fresh appointments thereunder and not as supposedly disguised renewals. In his view, since the Directors' original appointments were made under the pre-Frameworks and Procedures regime they could not be renewed under the new legal regime; the only renewals that would have been amenable under the new regime being in respect of appointments initially made thereunder. The Appellants' failure to follow the UMI Frameworks and Procedures in the (re)appointment of the Directors is thus opined to have rendered nugatory the purported renewal of their contracts.
- 17. In addition, the impugned contract renewals are challenged for being extended to persons that did not hold PhDs and were therefore neither Senior Lecturers nor eligible to be Heads of Department at UMI. It is proposed that the post of Director of Programs and Student Affairs (DPSA) is academic in nature given that the holder thereof supervises lecturers and professors, and thus must hold a PhD himself, a qualification Mr. Kasozi Mulindwa lacked. It is opined that in accordance with the UMI Frameworks and Procedures, the position should have been advertised, failure of which, it was illegal for the Second Appellant to appoint a person as DPSA that lacked the minimum qualification of a PhD. Mr. Lukonji Bossa's contract renewal/ (re)appointment is similarly challenged on account of his lack of a PhD.

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- 18. Learned Counsel for the Respondent proposes that in so far as both Directors' original appointments in 2007 and 2008 respectively did not comply with section 32 of the Principal Act they were illegal and, even if the UMI Frameworks and Procedures had not been formulated, their contracts were incapable of renewal because the two Directors were not in office legally. It is his contention that although the law is silent on the qualifications of a Director of UMI, to the extent that section 54(3) of the Principal Act sets the minimum

qualifications of a Head of Department (as a Senior Lecturer) at PhD, it follows that a person employed to supervise a Head of Department would similarly hold a PhD.

- 19. In a brief rejoinder, learned Counsel for the Appellants reiterates her earlier position that the matters in issue presently are contracts of renewal and not fresh appointments, and the said renewals were made in compliance with the UMI Frameworks and Procedures. With regard to the applicability of the Frameworks and Procedures to the contract renewals/ (re)appointments, in the absence of unambiguous provisions to that effect, it is contended to be neither the law nor practice that a new legal framework would necessitate fresh appointments rather than renewals. In this case, where the UMI Frameworks and Procedures are silent, it is opined to be contrary to the plain literal rule of statutory interpretation to infer the treatment of contract renewals as fresh appointments.
- 20. Learned Counsel does also reiterate her earlier submissions on the fallacy of imposing a PhD as a minimum qualification for appointment to the office of Director in UMI. She specifically questions the Respondent's contestations on the original appointments made in 2007 and 2008, arguing that they are not the subject of this Appeal, a fact that was acknowledged by the trial court in its finding that 'the application before me is clear that what is sought to be questioned are the appointments/ renewals of Mr. Kasozi and Mn Bbosa which were made on 16/11/2011.'
- 21. I have carefully considered the rival arguments of the parties in this matter, as well as the pleadings and evidence on record. It will suffice to observe from the onset that the dispute between the parties does indeed relate to the renewal by the First Appellant of Messrs. Kasozi and Bbosa's employment contracts on 16th December

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2011. This is the clear import of the Notice of Motion in Miscellaneous Cause No. 7 of 20'12. The averments in the affidavit in support of the application that relate to the original appointments of 2007 and 2008 would simply provide a useful background to the contract renewals that are in issue presently. In complete agreement with the trial court, I would not consider all matters that are set forth in an affidavit in support of an application to necessarily be in issue as between the parties unless expressly so designated in the application. As to whether the legal regime governing such contract renewals was complied with, an interrogation of the applicable laws would be pertinent.
- 22. IJMI is the successor entity to the Institute of Public Administration (IPA) that was set up in 1969 primarily as an in-service training facility to equip public servants with administrative skills. It was set up under the now repealed Uganda Management Institute Statute. Subsequently, the Universities and Other Tertiary Institutions Act, 2001 was enacted to 'provide for the establishment of the National Council for Higher Education, its function and administration and to streamline the establishment, administration and standards of universities and other institutions of Higher Education in Uganda and other related matters.'² To this end, the Act seeks to inter alia regulate and guide the establishment and

management of institutions of higher education.³ It was later amended under the Universities and Other Tertiary Institutions (Amendment) Act, 2006 to make specific provision for UMI. Whereas section 13 of the Universities and Other Tertiary Institutions (Amendment) Act makes general provision for the establishment of Other Degree Awarding Institutions, section 19 thereof specifically establishes the UMI in the following terms:

- (1) At the commencement of this Act, the Uganda Management Institute shall be deemed to have been established as a public Tertiary Institution having the status of an Other Degree Awarding Institution.
- (2) The National Council shall ensure that the Uganda Management Institute is fully established as an Other Degree Awarding Institution.

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²see the long title to the Act.

³See section 3(a) of the Act.

⁴Act No.3 of 2006

- 23. That *Universities and Other Tertiary Institutions (Amendment) Act* commenced on 12th May 2006 vide clause 2 of the *Universities and Other Tertiary Institutions* (Amendment) Act, 2006 (Commencement) Instrument, 2006.⁵
- 24. Meanwhile, effective 10th May 2006 the Principal Act was adapted to the governance structure of the UMI by clause 3 of the *Universities and Other Tertiary Institutions (Modified Provisions of the Universities and Other Tertiary Institutions Act applicable to Uganda Management Institute) Instrument, 2006,⁶ the offices of the Director General and Director of UMI thereby being equated to the positions of Vice Chancellor and Deputy Vice Chancellor respectively. Clause 3 provides:

The provisions of the Principal Act specified in column 1 of the Schedule to this instrument shall, in their application to Uganda Management Institute, be read with necessary changes and are modified in the manner specified in column 2 of the Schedule.

- 25. Columns 1 and 2 of the Schedule provide as follows with regard to the positions of Director General and Director of UMI:

| Section 31 (providing for the Vice Chancellor of Public University) | (i) There shall be a Director General the Uganda Management Institute to be appointed by the Chancellor of the Institute on the recommendation of the Institute Council and on such terms and conditions as the Council may determine. |

Without prejudice (ii) to the generality of paragraph (i) the Director General shall be offered five year renewable contracts. |

| Section 32 (providing for the |

| Deputy Vice Chancellors) | There shall be Directors appointed by the Institute Council who shall deputise the Director General. The number, other functions and terms and conditions of service of the Directors shall be determined by the Institute Council. |

⁵ Statutory Instrument No. 19 of 2006

⁶ Statutory Instrument No. 22 of 2006

Each Public University shall have not more than three Deputy Vice Chancellors who shall be appointed by the Chancellor on the recommendation of the University Senate with the approval of the University Council.

- 2T. Section 32(1) of the Principal Act, read together with the Schedule to the Universities and Other Tertiary Institutions (Modified Provisions of the Universities and Other Tertiary Institutions Act applicable to Uganda Management Institute) Instrument as highlighted above, provides for the appointment by UMI of not more than three Directors who shall be appointed by the Institute Council to deputise the Director General. The number, other functions and terms and conditions of service shall be determined by the Institute Council.⁷
- 28. Be that as it may, as stated earlier in this judgment, the Directors' initial appointments are not in issue presently. It will suffice to observe that both the NCHE Quality Assurance Framework and the UMI Frameworks and Procedures are inapplicable to those appointments having been formulated in May and September 2011 respectively, way after the 2007 and 2008 appointments.
- 29. However, the contract renewals that are in issue presently were made by the Institute Council (the First Respondent) under the UMI Frameworks and Procedures, 2011. I find nothing in either the Principal Act or the UMI Frameworks and Procedures as would suggest that an appointment made under that law could not be renewed under the latter Frameworks and Procedures. On the contrary, clause 2(iii) of the UMI Frameworks and Procedures is couched in such terms as would suggest that any running contract that was due to expire was susceptible to renewal upon fulfillment of the requisite assessment parameters. It reads:

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⁷See schedule to statutory Instrument (sl) 22 of 2006

Six months before expiry of a running contract, a Director shall indicate to the Director General if he/ she desires to renew the contract.

- 30. There is no provision in the Frameworks and Procedures for fresh appointments in respect of persons that had running contracts under the previous employment regime therefore, with respect, I am unable to impute any such requirement to them.
- 31.1 now turn to the contention that a PhD is a minimum qualification for the post of ^a Director in UMI. I commence my interrogation of this issue from the premise that a Director in UMI is the equivalent of a Deputy Vice Chancellor in a Public University and not a Head of Department, as proposed by the Respondent. That is the import of clause 3 of the Universities and Other Tertiary Institutions (Modified Provisions of the universities and other Tertiary Institutions Act applicable to Uganda Management Institute) Instrument, as highlighted earlier in this judgment. on that basis alone, the Respondent's contestations with regard to the minimum qualification for the office of Director would be flawed. Nonetheless, I shall interrogate them on their merits.
- 32. It is the Appellants' contention that the position of Head of Department is an academic office hence the emphasis on the qualification of a PhD. I am inclined to agree. section 51(1) of the Principal Act demarcates three categories of university staff: academic, administrative and support staff. Academic staff are delineated in subsection (2) of the same section to include:
 - (a) Deans of Faculties or Schools;
 - (b) Directors of Institutes, College or other academic bodies;
 - (c) Professors, Associate Professors, Senior Lecturers, Lecturers, Assistant Lecturers appointed on full term basis for teaching and research.
- 33. For the avoidance of doubt, I must state here that the Directors of Institutes referred to in section 51(2Xb) of the Principal Act are by no means the Directors of an autonomous entity such as the UMI. To the extent that the Directors in reference in section 51(2Xb) are also referred to as staff of a public university, they are envisaged to be Directors of Institutes, colleges and other academic bodies of ^a

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given public university. In any event, in so far as UMI is categorically designated in section 19 of the Universities and Other Tertiary Institutions (Amendment) Act as a 'public Tertiary Institution having the status of an Other Degree Awarding Institution' it cannot by any stretch of imagination be deemed to be an institute of any public university.

- 34. More importantly, it is under such 'faculty, institute, college or other academic body' of a public university that section 54(1) of the Principal Act designates Heads of Departments of public universities to serve. That statutory provision is comparable with section 53(1) of the same Act that similarly demarcates university Deans to serve in a 'faculty, institute, college or other academic body' of public universities. Under sections 53 and 54, both Deans and Heads of Departments serve at the pleasure, behest and election of academic staff in the departments or faculties they serve. It is not surprising, therefore, that section 54(3) of the Act would restrict the academic position of Head of Department to academic staff by way of a Senior Lecturer who, under the NCHE Quality Assurance Framework, would possess the basic qualification of a PhD. Quite clearly, a PhD is a minimum requirement for the academic position of Head of Department of a public university but not necessarily so for the generic position of a Director of UMI.
- 35. The Principal Act; the UMI Frameworks and Procedures, and the NCHE Quality Assurance Framework are all silent on the minimum qualifications of a Director of UMI. With tremendous respect, therefore, I find that the trial court erred in adjudging a PhD to be the basic requirement for a UMI Director on the basis of section 54(3) of the Principal Act and the NCHE Quality Assurance Framework. It thus erred in its conclusion that the renewal of Mr. Bbosa's contract was irregular on that account.
- 36. Nonetheless, I am alive to the dictates of section 32(1), (3) and (4) of the Principal Act that provide for a maximum of three Deputy Vice Chancellors, two of whom would be responsible for academic affairs, and finance and administration respectively. For ease of reference, the said provisions are reproduced below:
 - (1) Each Public University shall have not more than three Deputy Vice Chancellors....

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- (3) The First Deputy Vice chancellor shall:
 - (a) Assist the Vice Chancellor in the performance of his or her functions and in that regard be responsible for the academic affairs of the University,
 - (b)
 - (c).....

- (4) The Second Deputy Vice Chancellor shall:
 - (a) Assist the Vice Chancellor in the performance of his or her functions and in that regard shall oversee the finances and administration of the University.
 - (b)
 - (c)
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- 37. The post of Director in UMI having been equated to that of Deputy Vice Chancellor in a Public University, it follows that at least one of the UMI Directors would similarly be responsible for academic affairs. It would be the counsel of prudence for a Director of UMI responsible for academic affairs to possess a PhD as a minimum qualification, not least because of his/ her supervisory function over academic staff that themselves are so qualified. This indeed was the counsel of the Office of the Solicitor General when approached for a legal opinion on the matter.
 - 38. In the instant case, the trial judge determined the position of the UMI Director Programs and Student Affairs (DPSA) to be academic on the basis of its job specifications and a previous advertisement that had set a PhD as a minimum qualification. In addition, she highlighted an explanation by the Director General of UMI in a letter on record addressed to the Office of the Solicitor General and dated 26th October 2011 that 'the DPSA being the supervisor of lecturers, Senior Lecturers, Associate Professors etc ought to have a PhD academic qualification as specified in the Quality Assurance guidelines by National Council of Higher Education.'
 - 39. Given the job description of the DPSA as highlighted above, I am satisfied that it was indeed an academic position and cannot fault the trial judge for arriving at the same conclusion. I would also agree with the trial judge that the purported renewal by the First Respondent of Mr. Kasozi Mulindwa's contract as DPSA well knowing

that he did not possess the recommended qualifications therefore, and in the absence of a competitive recruitment process as prescribed in the UMI Frameworks and Procedures, did constitute a procedural irregularity. However, I would not go so far as to denote illegality to Mr. Kasozi Mulindwa's re-appointment despite his lack of a PhD given that such a minimum qualification is not explicitly prescribed for the position of DPSA in any law or institutional framework.

D. Disposition

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- 40. The Appellants abandoned Grounds 3 and 4 that pertain to the Mo-year term extended to Mr. Lukonji Bbosa upon renewal of his contract (rather than a five-year term as prescribed in section 32(2) of the Principal Act) on the pretext of their being moot since Mr. Bbosa has since retired from UMI service. The abandoned grounds of appeal are therefore not in contention.
- 41. In any event, in so far as the Schedule to the Universities and Other Tertiary Institutions (Modified Provisions of the Universities and Other Tertiary Institutions Act applicable to Uganda Management Institute) Instrument mandates the First Respondent (Institute Council) to determine UMI Directors' 'terms and conditions of service', the Council was well within its remit to offer Mr. Lukonji Bbosa a two-year contract in light of his then impending retirement. A purposive interpretation of the provision in the Schedule relating to UMI Directors would suggest that, unlike the 5-year renewable tenure of the Director General that explicitly mirrors the provisions of section 32(2) of the Principal Act, the tenure of the Directors was left to the determination of the Institute Council.
- 42. Be that as it may, the sole issue for determination in this Appeal was the question as to whether a PhD is a mandatory requirement for the appointment and renewal of the contracts of Directors of UMI. Having found that a PhD is not a mandatory basic requirement for the position of UMI Director per se, this Appeal substantially succeeds. It is trite law that costs should follow the event unless a court for good reason decides otherwise. See section 27(2) of the CPA. The Appellants would therefore be entitled to substantial costs.
- 43. The upshot of this judgment is that a PhD is not designated as a mandatory requirement or qualification for the appointment and renewal of the contracts of the Directors of UMI per se, but is advisable for a position of Director of UMI that is responsible for academic affairs. The Appeal therefore substantially succeeds but the orders of the trial court with regard to the irregularity of the contract renewal are sustained in so far as they pertain to the position of Director Programs and Student Affairs. I would therefore order as follows:
 - A declaration does issue that the renewal of Mr. Kasozi Mulindwa's appointment as Director Programs and Student Affairs by the First Appellant on the 16th December 2011 was irrational and irregular, and ought to be quashed.
 - II. An order of certiorari does issue to call and quash the irregular appointment and Minutes of the First Respondent in which the said appointment was made.
 - III. An award of 60% of the costs in this Court and the trial court is granted to the Appellants.

Dated and delivered at Kampala this 15th day of May 2022.

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Hon. Lady Justice Monica K. Mugenyi JUSTICE OF APPEAL

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Prepared on 10 October 2026 · Esheria