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Contents

Disciplinary Measures Within The University System: The case of Dr. Tunde Bamigboye Vs. University of Ilorin Considered <i>Wahab O. Eghewole</i>	1
The Subject of Law: An Appraisal <i>I. O. Omoruyi</i>	9
Mandatory Continuing Legal Education Programme in Nigeria <i>E.S. Nwanche</i>	21
Rape As A War Crime <i>John Ademola Yakubu</i>	27
Library Utilization By Members of The Legal Profession in Nigeria: The Case of Lagos State <i>Ibrahim Haruna</i>	36
The Continuing Challenge of The Right to Worship in England: A Teacher's Dilemma Revisited <i>Oba, A.A.</i>	44
Fundamental Rights and their Educational Implications in Nigeria <i>Ogumu, M. A.</i>	56
Copyright Law and the Book Publishing Industry in Nigeria <i>Oshiose Andrew Okwilagwe</i>	64
Liability of School Proprietors for Injuries to Pupils <i>Emeka Chianu</i>	76

An Appraisal of the Right to Strike in Nigeria <i>Richard Idubor</i>	86
Cardiovascular Abnormalities in the Athlete: The Role of the Physician <i>Adesola, Adefemi Muritala</i>	92
Some Risk Factors in Swimming and Tennis: Legal Responsibility of Coaches <i>Odewumi, G. I. & Alabi, K. B.</i>	96
An Appraisal of the Role of Permanent Court of Arbitration <i>Idubor Richard</i>	104
The Role of Private Persons in the Enforcement of Criminal Law on University Campuses <i>John O. A. Akintayo</i>	111
Administrative Control of Judicial Action: The Authority of Section 220(2) of the Nigerian Evidence Act <i>F. S. Erhonsole</i>	126
Ethical, Legal and Practical Considerations Impacting Medical Decision-Making in Competitive Athletes <i>Adesola, Adefemi Muritala</i>	134

Disciplinary Measures Within The University System: The Case of Dr. Tunde Bamigboye Vs. University of Ilorin Considered

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Abstract

The University system in Nigeria is bedeviled with a lot of crisis principal among which is the very recurring examination malpractices among the students and lecturers alike. This attitude naturally attracts disciplinary measures by the university authority and this has become another area of constant controversy with regard to both procedural and substantive issues.

This paper intends to examine the various statutory and judicial positions with regards to the discipline of university staff, with particular attention to the decision of the Supreme Court in the case of Dr. Tunde Bamigboye Vs. University of Ilorin and proffering solutions to the constant recourse to court to resolve the problem.

Introduction

The University as an institution has built-in mechanisms to deal with issues that emanate from within the system and come to conclusion on such issues. This is made possible essentially by the enabling Act setting up the various universities in Nigeria. Coupled with this is the relationship between the University and the employees there in as regards the appointments and determination of same which has been held to be in a special class of its own¹.

It is equally instructive to determine from the onset, the major employer-employee relationship recognized by our laws. There are three categories. They are those guided by common law. This is generally referred to as master-servant relationship². Also recognized are employments regulated by contract which is determined by the spirit and letters of the contract entered into by the parties³. The third category is employment with statutory flavour which is our concern in this paper, as that is the category in which employment within the University system fall into⁴. These

categorisation was popularised by Oladipo O. Sholanke⁵. It may be important to note that generally all the three facets are seen as master-servant or employer-employee while the details of each distinguishes them from one another.

Facts of Bamigboye Vs University of Ilorin (1999) 6SCNJ 295:

The Appellant was a reader at the University of Ilorin⁶. He challenged, by a writ of Summons, dated 27th January, 1989 the validity and legality of his dismissal from the University of Ilorin. The appellant was dismissed from the University based on his alleged involvement in examination malpractices in the department of Chemistry with two students of the Department, Miss Maduneme and Miss Kuye whose scripts were found in the office of the appellant consequent upon a search for same.

It was discovered that Miss Maduneme had two examination scripts one written under examination condition and the other obviously written under a more relaxed atmosphere. It was equally found out that Miss Kuye's examination scripts had many alterations of the examination marks from low to high marks. It was also in evidence that Miss Kuye had the key to the appellant's office in her custody with all these facts, a Department Investigation Panel was set up to look into the issues involved and an appeal from the Department Investigation Panel report was heard by the Faculty Investigation Panel which reports were tendered as Exhibits D1 and D2 respectively. Another panel was set up to further investigate the allegations and the panel issued Exhibit D3. The appellant had the opportunity of appearing before all these panels and made representations.

Three different allegations of examination malpractices were levied against the appellant, two of the panels found him liable on all the three charges while two exonerated him of two of the charges. The appellant also appeared before the Senior Staff Disciplinary and Appeals Committee (hereinafter referred to as SSD & AC) which was chaired by the then Vice-Chancellor of the University, Professor Adeoye Adeniyi. While the appellant was appearing before the SSD & AC, he was suspended vide Exhibit P2 and after the conclusion of its assignment the suspension was revoked by the committee and he was reinstated through Exhibit P3. In November, 1988, the Governing Council of the University of Ilorin invited the appellant to appear before it on the same set of allegations. He appeared personally, made representation and submitted a document in his defence.

At the Council meeting, the appellant was confronted with the student's scripts for which he offered his defence after which the Council did not find any merit in his defence and consequently dismissed him from the services of the University of Ilorin.

The appellant thus challenged the dismissal maintaining that the dismissal was illegal and invalid, having been denied fair hearing and that the Council having delegated its responsibility to SSD & AC cannot turn back and undo what SSD & AC had done. It is against this background that this paper shall discuss the disciplinary power of the University.

Wahab O. Egbewole

Special Status of

As stated earlier, contractual or statutory provision of the 15 of the Act⁴ was what had this to say.

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The Supreme Court three months period rejection was based allotted because concluded its assignment. Hon. Justice Onu months which is other justices of the to say:

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Special Status of University Staff

As stated earlier, a relationship between employer and employee could be either contractual or statutory and where the latter is the situation in any particular employment, the provision of the statute must be adhered to strictly⁷. In this particular case, section 15 of the Act⁸ was called into question. The learned trial judge with regard to this issue had this to say.

"Section 15 of the University of Ilorin Act confers on the University staff a "Special Status" over and above the normal contractual relationship of master and servant, consequently the only way to terminate such a contract of service with statutory flavour is to comply religiously with the procedure laid down in the statute"⁹

The area which called for scrutiny with respect to whether or not the University had complied strictly with the provision of S. 15 of the Act under consideration was whether the council took into consideration the condition that all investigations must be concluded within three months as provided by S. 15(4) of the Act which states

"Any person suspended pursuant to subsection (2) or (3) of this section shall be on half pay and the council shall before the expiration of a period of three months after the date of such suspension, consider the case against that person and come to a decision to..."

The Supreme Court rejected the argument of the appellant that the council exceeded the three months period within which it was expected to conclude the investigation. The rejection was based essentially on the view that the Council did not exceed the period allotted because by virtue of sS. 15 (4) (d) of the Act, the Council is at liberty to conclude its assignment within six months. In delivering the lead judgment in the case, Hon. Justice Onu JSC held that the Council concluded its assignment in less than 5 months which is well within the provision of S.156 (4) (f). This view was supported by other justices of the Supreme Court and specifically Hon. Justice Uwaifo, JSC had this to say:

I think it is a complete misconception of that provision of the Act, I believe one can say that the purpose of giving a time limit in that provision is to ensure that a person on suspension during a disciplinary proceeding is not made to suffer undue hardship by an excessive length of suspension when he is placed only on half pay. I do not see how by exceeding 3 months the disciplinary proceeding is rendered a nullity¹⁰.

The general rule of statutory interpretation is that a statute is to be construed in such a manner as not to commend doing what is impossible¹¹. This is in line with the maxim *LEX NON COGIT AD IMPOSSIBILIA* i.e. the law does not compel doing of impossibilities. Equally, the provision of a statute should not be read or interpreted in isolation¹². If these two positions are taken together, it will be seen that strict interpretation of the provision will be tantamount to commanding the impossibility. It is important to note that the Council of a University is the highest decision making body

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thereof and does not meet frequently thus to construe that the 3 months period must be strictly adhered to may be cumbersome and possibly do great injustice to the University. Secondly, since there is a latter provision which allows for an extra 3 months period especially in a case which calls for further suspension of a staff in that category, then the extra 3 months could be utilised to accomplish this. In agreeing with Hon. Justice Uwaifo JSC on the point that the non-compliance with 3 months provision should not render the proceedings a nullity, I respectfully submit that if an affected employee is to be reinstated, the University has a duty to pay the remaining half salary to him and thus he cannot be said to have lost anything which would have been a basis for justice or injustice of the case, this however is without prejudice with the preceding position.

It is equally important to note that not all seemingly mandatory provisions in statutes are interpreted as mandatory but rather they are given more liberal interpretations depending on the circumstance of each case¹³.

In spite of this interpretation, it is however apposite to call attention of the university councils to the need to apply themselves to the provisions of this particular section or similar provisions in their enabling status in order to avoid any uncomplimentary comments. Apart from the legality of the issues usually involved, the equity of such matters dictate that the Councils should come up with their position in good time in order to put a stop to the usual psychological trauma such people concerned are put through in such circumstances as justice delayed is not denied but virtually murdered.

Declaration of Powers by Councils

The contention of the appellant in this regard is that SSD & AC having considered the matter and resolved same, the council which jointly set up the committee with the Senate of the University cannot over rule the decision of the Committee. It is instructive to note that the committee had earlier exonerated the appellant and a letter reinstating his appointment had been issued to him. The Supreme Court did not buy this argument though it was acknowledged as ingenious and the basis of its rejection was based on the maxim DELEGATUS NON POTEST DELEGARE meaning a delegate of power cannot sub-delegate same to another authority¹⁴ and this proposition was given judicial approval in Nigeria in the case of MAJIYAGBE V. ATTORNEY GENERAL AND OTHERS¹⁵.

In the lead judgement, Hon. Justice Onu JSC had this to say on this issue:

An agent, in my view mean more or less the same thing as a delegate similarly, I hold that SSD & AC is a committee of council and an agent or delegate of council of the University. The principle of law is that the person to whom an office or duty is delegated cannot lawfully devolve the duty upon another unless he be expressly authorised so to do¹⁶

The Supreme Court had opportunity to consider the issue of delegation of authority in the case of Hon. JUSTICE KALU ANYAH & OTHERS V DR. FESTUS IYAYI¹⁷ where Karibi-White JSC had this to say;

Where statute confers specific or special powers on any person or authority for the performance of certain acts, it is only that person or authority and no other that is contemplated in the performance of the duties under the law'¹⁸.

A mere study or reading of this case may seem to have pitched the Supreme Court against its decision in the case of ONDO STATE UNIVERSITY & ANOR V DR. EZEKIEL ADEKUNLE FOLAYAN¹⁹ where Hon. Justice Onu JSC held that

It is a trite principle of administrative law that where a power has been delegated, the delegating authority will be bound by the decision of its delegate and will therefore be incapable of rescinding that decision.²⁰

The position of the Supreme Court however remains valid and unassailable if one considers that fact that the statute under consideration in Folayan's case especially Regulation 22 thereof, the committee set up was given full powers and did not require ratification or approval. The issue was pointed out thus:

It would therefore seem clear that from Regulation 22 of exhibit F, there is no requirement whatsoever for the ratification or approval of Council (before or after its exercise) once a decision has been taken by the Board and such a requirement cannot be implied²¹.

This clearly distinguishes it from the powers conferred on the University of Ilorin Council by section 15(1) (c) (1) which requires any committee set up to investigate any allegation to report back to the council. Apart from this, the matter in question in this case is a disciplinary act which cannot be delegated ordinarily and this is compounded by the statutory status of that power²². Given the totality of the powers under which both SSD & AC and the Council acted, as contained in the university Act, it is clear that argument of delegation of such powers as canvassed by the appellant does not exist.

Criminal Jurisdiction of the Council

In its bid to knock the bottom off the decision of the Council, the appellant contested forcefully at the apex court that the matter tried by the Council was beyond its jurisdiction because it had criminal content and thus the council was incompetent and that only a validly constituted court of law can validly try same. The argument that any matter which has a criminal content cannot be tried by any administrative body but only by a competent court of law had been well settled and requires no further debate. The locus classicus in this regard, the case of Sofekin V Akinyemi²³ where it was clearly stated that where in an allegation against an individual, there is an element of crime, same must be proved beyond all reasonable doubt and that it is only a competent Court of law that is in position to try the person so accused.

This position had basis in the fair hearing principle of an accused person being properly charged and tried before a competent court and this position cannot be faulted.

In this particular case however, the Supreme court was of the view that the issues

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at stake was examination malpractice which was a misconduct which fell within the domestic jurisdiction of a university administrative competence and thus this body can attend to it. This position was replicated by Hon. Justices Iyuh JSC thus.

I agree entirely that the various allegations of examination malpractices established against the appellant amounted to grave acts of misconduct which in my view belong to the domestic jurisdiction of the university of Ilorin Governing Council"²⁴.

His lordship went further to condemn the act in very strong words thus:

I cannot end this judgment without condemning in the strongest possible terms the unbelievable acts of gross misconduct established against the appellant in this case. Without doubt, they point at the extreme and abysmal decline in the conduct, I hope of a microscopic percentage of the academic staff of our institutions of higher learning. It is a situation so disgusting deplorable and unthinkable that if not seriously checked must necessarily destroy all academic standards and values in our institutions of higher learning."²⁵.

Hon. Justice Ayoola JSC on this issue equally posited as follows:

"In my view, where gross misconduct can be proved without the need to find the member of staff guilty of acts amounting to a criminal offence, a tribunal conducting disciplinary proceeding cannot rightly be held to be trying a criminal charge. A breach of examiners ethics in the conduct of an examination or a falling below the standard of behaviour expected of a university teacher may depending on the depravity of the act, amount to gross misconduct. It does not necessarily need to amount to a crime for it to be visited by disciplinary measures. My view of the charges leveled against the appellant is that they are in substance not of criminal nature"²⁶.

There is equally the need to re-examine this aspect of the case in relation to the division of the Court in the celebrated case of GARBA & ORS V UNIVERSITY OF MAIDUGURI wherein the appellants were among the students tried by the Disciplinary Investigating Board. Set up by the Vice Chancellor and headed by the Deputy Vice-Chancellor who was one of the victims of the students rampage which occurred in the institution on 2nd February, 1983.

The Supreme Court per Obaseki JSC in reviewing the criminality of the allegation against the appellants said,

The use of the term culprits implies a finding of guilt and any finding of guilt without a trial is a breach of all rules of natural justice. The investigating Panel is therefore turned into prosecutor, witness and judge.

This is a fundamental omission on the part of the University by taking up the prosecution of the appellants without allowing them to face the trial before a competent court of law.

This act was deprecated and frowned at by the Supreme Court when it held.

Without subjecting any criminal allegation against any student to the machinery provided by the state for ascertaining the truth of the allegation, a very painful denial of fundamental right is inflicted on the students albeit laudable or sympathetic the intention of the authorities might be. Mistakes do occur. An innocent student might in such circumstances suffer undeserved punishment... but the pronouncement of guilt from the current of unsifted, untested and undistilled mass of evidence which did not pass through well informed professional minds will do more harm than good to the integrity of the student.²⁹

It is important to recall that one of the issues which weighed on the mind of the Court was the fact that the Chairman of the investigating panel was one of the victims and raised the presumption of likelihood of bias. This is another major point in determining the justice of any matter³⁰.

Conclusion

Examination malpractice in our universities is gradually crawling to an issue of national importance and all hands must be on deck to exterminate the cankerworm. The Supreme Court has played its role in placing the issue in their proper perspectives and it is left to the University administrators and members of the ivory tower to complement it by being on guard as it seems there is no longer a hiding place for perpetrators of this dastardly act.

It may be aposite to recall that if the universities are deprived of opportunity of nipping in the bud such mal-practices, the implication for the larger society may not be qualifiable especially if same is studied from the background of the fact that the University is expected to serve as the check on the society.

End Notes

1. A long line of cases have laid down this principle especially *Olaniyan & Ors. V. University of Lagos & Anor* (1985) 4 NWLR (pt. 9) 599; *Eperokun V. University of Lagos* (1986) 4 NWLR (Pt. 334) 162; *Shittu Bav V. Federal Public Service Commission* (1981) 1 SC 40.
2. See *Currie V. Misa* (1875) L. R. 10 Exch. 153; *Botton V. Maddem* (1813) L. B. Q.B. 55.
3. *Thomas V. Thomas* (1842) 2 Q. B. 851
4. *UBN C. Ogboh* (1995) 2 SCNJ 1 at 15; *Union Beverage Lid. V. Owolabi* (1988) 1 NWLR (pt. 68) 128; *Ajayi V. TEXACO* (1987) 3 NWLR (pt. 62) 577.
5. Sholanke, Oladipo - The status of University employees on probation 1995/96 *LASU LAW JOURNAL* p. 41 at 43.

6. Established by University of Ilorin Act Cap. 455, Laws of the Federation. 1990.
7. Olatunbosun V. NISER (1988) NWLR (pt. 80) 25; *University of Nigeria Teaching Hospital Management Board V. Nwoji* (1994) 10 SCNJ at 91.
8. CAP 455 1990 Laws of the Federation
9. *Bamigboye V. University of Ilorin* (1999) 6 SCNJ 295 at 340.
10. *Ibid* at P. 350
11. *C.O.P.V. Okoli* (1966) NNLR 1
12. *Council of University of Ibadan V. Adamolekun* (1967) 1 ALL. NLR 213
13. *Liverpool Borough Bank V. Turner* (1961) 3 Ch. 379 at 3380; *Howard V. Bodington* (1877) 2. P. D. 20 at 211.
14. This is a 16th Century proposition which has become part of our law till date see P. W. Duff & Duff & H. Whiteside (1929) Carnell L. Q. 168 at 173 cited on *DeSmith's Judicial Review* P. 298.
15. (1957) NRNLR 158 at 161
16. *Ibid* at page 327
17. (1993) 9 SCNJ (Pt. 1) 533
18. *Ibid* at p. 73
19. (1994) 7 & 8 SCNJ 186
20. *Ibid* at p. 220
21. Per Onu JSC at p. 21
22. *Vine V. National Dock Labour Board* (1956) 3 ALL. E.R. 939.
23. *Abia State University V. Anyaibe* (1996) 3 NWLR (pt. 439) 646 at 665; *Dangote V.C.S.C. Plateau* (1995) 7 NWLR (pt. 408) 448.
24. 23(9) (1980) 5-7SC 1; the same position was held in the case of *Denloye V Medical 1 and Dental Practitioner Disciplinary Committee* (1968) IANLR 3Q6.
25. *Ibid* at p. 346
26. *Ibid* at p. 347
27. (1986) INWLR (pt. 18) 550
28. *Ibid* at p. 572
29. *Ibid* at p. 576 per Obaseki JSC
30. The issue of likelihood of bias on the part of a person sitting in judgment was given consideration in the cases of legal practitioners. *Disciplinary Committee V. Gani Fawehimi* (1985) 2NWR (pt. 7) 300 at 307, *Salawu Oyefade V. Sanni Araoye* 1968 NMIR 41. *Obadara & Ors V. The President, Ibadan West District Council Grade "B" Customary Court* (1965) NMLR 39.