IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON THURSDAY THE 25TH DAY OF JUNE 2015
BEFORE THE HONOURABLE JUSTICE A.O. FAJI
JUDGE

FHC/IL/CS/25/2014

BETWEEN

MISS FADIPE IFEOLUWA GRACE .....PLAINTIFF

AND

(1) UNIVERSITY OF ILORIN
(2) THE GOVERNING COUNCIL, UNIVERSITY OF ILORIN
(3) PROFESSOR A.G. AMBALI, VICE CHANCELLOR, UNIVERSITY OF ILORIN
(4) MR. E.D. OBAFEMI, REGISTRAR, UNIVERSITY OF ILORIN

...DEFENDANT

JUDGMENT

The Plaintiff claims as per writ of summons filed on 18/6/14 as follows:

a. A declaration that the Defendants' letter dated 28th April, 2014 to the Plaintiff titled "LETTER OF EXPULSION" purporting to expel the Plaintiff from the first Defendant is in bad faith, malicious, vindictive, ultra vires, illegal and in violation of University of Ilorin Students Information and Regulations Handbook and therefore null and void and of no effect whatsoever.

b. A declaration that the Plaintiff is still a student of the Defendant.

c. A declaration that the purported expulsion of the Plaintiff by the Defendants negates the Plaintiff's fundamental rights provisions of the Constitution of Federal Republic of Nigeria 1999 as amended.

d. An Order compelling the Defendants to reinstate or restore the Plaintiff's studentship.

e. The sum of N5,000,000.00 (Five Million Naira) only as damages for the wrongful expulsion, time lost in the Plaintiff's academic year(s) and for mental agony and shame suffered by the Defendants' illegal acts.

Plaintiff filed a statement of claim witness statement on oath with her writ of summons. A statement of defence was filed on 22/8/14. A witness statement and documentary exhibits were filed therewith. The Plaintiff filed a reply to statement of defence along with a witness statement on oath on 23/10/14.

Parties called one witness apiece. Trial commenced on 8th December 2014 with the Plaintiff as PW1. Dr. Aderemi Babatunde Alabi was sole defence witness.

The gist of this matter is that Plaintiff was alleged to have been involved in examination malpractice sequel to which she was expelled by the Defendants.

Defendants' Counsel's position is that it is not in dispute that Plaintiff was caught with an incriminating piece of paper in the course of an examination. Plaintiff made a written confession and appeared before two panels to wit: Faculty of Science Committee on examination malpractice and

the Students Disciplinary Appeals Committee (SDAC). The Student Disciplinary Appeals Committee recommended that Plaintiff be expelled and she was. Plaintiff's Counsel wrote a letter of appeal to 1st Defendants' Council but did not wait for a resolution of same before filing this action.

Counsel submitted that the Court lacks jurisdiction because even though Plaintiff appealed to 2nd Defendant, she did not wait for a decision on the said appeal to be communicated to her before filing this action. She has therefore not exhausted the internal remedies available before rushing to Court. Counsel relied on **MAGIT-V-UNIVERSITY OF AGRICULTURE, MAKURDI (2005) 19 NWLR (part 959) 211 @ 244E; UNIVERSITY OF ILORIN-V-IDOWU OLUWADARE (2006) 14 NWLR (part 1000) 751**. Counsel submitted that having appealed vide section 18(2) of the University of Ilorin Act, the Plaintiff must await the outcome of the appeal before coming to Court. Not having done so, the Court lacks

jurisdiction. The Court was urged to strike out or dismiss the action.

On Plaintiffs' complaints that the time-lines prescribed for the disciplinary process in the students' handbook were not followed, Counsel submitted that if the cause is incompetent, the issue cannot arise. In any event, the requirement is a mere regulatory or directory provision and is thus not mandatory. The purpose is to ensure that the student involved in an allegation of examination malpractice is not exposed to delay in knowing his fate. It should thus not have a nullifying effect on the proceedings of the faculty panel and the Student Disciplinary Appeals Committee.

The Court should consider the subject-matter, the importance of the provision and its relationship with the general objectives of the enactment which it is intended to be cured by a provision in determining whether the said provision is mandatory or directory. Counsel referred to **BAMGBOYE-V-UNILORIN.** The provision on time-lines cannot therefore be

intended to be mandatory. It is therefore an irregularity which should not vitiate the disciplinary process. It is also a matter within the domestic arena of the University and cannot be a subject of appeal before this Court.

I must pause at this point to consider the reaction of Plaintiff's Counsel to these two issues. This is because if Defendants' Counsel's objection has merit, it would be inappropriate for this Court to consider the merits since that is exactly what forms the substratum of the appeal to 2nd Defendant.

On the issue of Plaintiffs' appeal, Plaintiff's Counsel submitted that DW1 testified that the appeal must be made by the affected student and not his/her Counsel and thus the appeal is invalid, even though under cross-examination he admitted that the appeal is valid and that it complied with the University of Ilorin Students' Information and Regulation handbook **(Exhibit F)**. The Defendants have not shown the acceptable type and procedure for appealing. Any such procedure is an infringement

of Plaintiff's right to defend herself or by Counsel of her choice.

On the issue of jurisdiction, Counsel submitted that Defendants having contended that the appeal is not valid, cannot now rely on same as divesting the Court of jurisdiction. The issue of incompetence of the action was not an issue in the pleadings and thus amounts to springing a surprise on the Plaintiff. The contention by Defendant that the appeal is invalid seems also to be the decision of the Defendant on the appeal. They are thus estopped from raising the issue of not waiting for the outcome of the appeal. This also shows that the failure to communicate the decision that plaintiff's appeal is not valid on time is malicious.

Plaintiff filed her appeal within 10 days even though she had a 48 day window. She waited for 40 days for a decision before she now approached the Court. The Defendants having delayed in communicating their decision have not approached

the Court with clean hands. They should thus not be indulged.

Counsel distinguished the authorities cited by Defendants' Counsel. In the **MAGIT** case, the appellant did not file an appeal at all. The issue of waiting for a decision did not therefore arise. **UNILORIN-V-IDOWU OLUWADARE** has to do with mode of commencement of the action challenging a students' expulsion by way of Fundamental Rights procedure. In any event, the issue of not giving the University time to consider the appeal was raised in the counter-affidavit. In the instant case, Defendants position is that the appeal is invalid. The University had therefore taken a decision to invalidate the appeal, but however unjustifiably failed to communicate the decision. In **AKINTEMI-V-ONWUMECHILI (1985) 1 NWLR (part 1) 68** the Supreme Court reiterated the need to exhaust internal remedies and stressed that if in the course of pursuing those internal remedies, there is an infraction of fundamental rights, resort can be had to the Courts. Plaintiff complains that

there was a breach of fair hearing in the process that led to her expulsion. The Defendant cannot therefore contend that the Court lacks jurisdiction.

On the second issue, Counsel submitted that Plaintiff's case goes beyond failure to comply with time-lines but has to do with the unfair nature of the trial before the Panel and the Committee. Counsel referred to arguments on the merits by Defendants.

Replying, Defendant's Counsel submitted that the validity of the appeal is not in issue because that was not what Plaintiff approached the Court for. On validity or otherwise of the appeal, Counsel submitted that Defendants' contention is that the cause of action has not crystallized because as at that time the decision on the appeal had not been made. The case is thus premature. Estoppel cannot also avail because an issue of jurisdiction can be raised at any time.

In oral argument, Plaintiff's Counsel urged the Court to strike out paragraphs 3.02-3.07 for not being issues of law. I do not agree. I think those

paragraphs raised issues of law. Defendant's Counsel submitted that because Defendants raised issue about the validity of the appeal does not mean that the appeal has been determined. Without a determination of the appeal, the Court lacks jurisdiction. Plaintiffs' Counsel's reaction was that if the time-lines in the hand-book can be regarded as irregularities also the issue of appeal which is also in the hand-book should also be an irregularity. In reaction, Defendant's Counsel referred to paragraph 20 of the statement of claim which has resolved the matter.

The Defendants have raised an issue of jurisdiction to wit: failure to exhaust internal/domestic avenues. This in my view is an issue of jurisdiction because it is being alleged that a condition-precedent to the seising of the Court has not been fulfilled. Paragraph 20 of the statement of claim shows that even though Plaintiff appealed to Council, the appeal has either not been considered or the decision has not been communicated to Plaintiff.

The appeal has thus not been resolved one way or the other.

It has been contended that Defendants by alleging that the appeal is invalid are blowing hot and cold. I do not think so. The issue in paragraph 20 is one of jurisdiction and cannot in my view be waived. Plaintiff's Counsel also contends that since the time-lines in the hand-book according to Defendants are irregularities, then the issue of appeal is also one. If one however looks at the object of the requirement of an appeal, it would seem that the purpose is to ensure as much as possible that disputes of a particular nature especially when they are academic issues be left within the domestic forum of the University which is best suited for it. That to my mind shows that the provision on appeals is mandatory and its breach cannot be an irregularity. I think the decision in **UNIVERSITY OF ILORIN-V-IDOWU OLUWADARE** (supra) is on the point. The decisions in **AKINTEMI-V-ONWUMECHILI** (supra) and **MAGIT-V-**

UNIVERSITY OF AGRIC, MAKURDI are also on the point.

Even though Plaintiff has submitted that the issue was not raised in the defence but at address stage, I do not think that is fatal. The statement of claim itself shows the incompetence of the action. There is thus no surprise at all. Whether or not a condition-precedent has been satisfied is a matter of jurisdiction which can be raised at any stage of the proceedings and in any manner. The time and manner it is raised does not therefore matter. Plaintiff having averred facts which show that the internal mechanism has not been exhausted cannot accuse a Defendant who contends that the appeal is invalid of blowing hot and cold when the claim ex-facie shows incompetence.

This action, to my mind, has actually given Council (2nd Defendant) more reason for not determining Plaintiff's appeal before now since Council cannot act on Plaintiff's case until this action has been disposed of.

I think it is better for Plaintiff to await Council's decision or at best write a reminder to Council to take action on her appeal. Fortunately, Plaintiff has not posited that Council has refused to consider her appeal. She merely posits that Council has not considered or communicated its decision on her appeal to her.

I think this action is premature and ought to be struck out.

Even though the merits have been argued, since Council has not taken a decision on the appeal, I must refrain from commenting on the merits of this case as that may be pre-emptive of the decision of Council on the pending appeal.

This matter is accordingly hereby struck out.

A.O. Faji
Judge
25/6/15

Counsel:
Akin Akintoye II Esq;