REPUBLIC OF MALAWI

MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

MZUZU DISTRICT REGISTRY

CIVIL CAUSE NO. 15 OF 2015

BETWEEN

THE STATE

AND

COUNCIL OF MZUZU UNIVERSITY.....RESPONDENT

EXPARTE:

DENNIS KAYIRA AND 8 OTHERS.....APPLICANTS

Coram : Honorable Mr. Justice D.T.K. Madise
Mr. G. Kadzipatike Counsel for the Applicants
Mr. G. Nyirenda Counsel for the Respondent
Mr. A.M. Mhone Official Interpreter
Mr. C.B. Mutinti Court Reporter

Madise, J

JUDGMENT

1.0 Introduction

1.1 On 12 March 2015 the Applicants all students at Mzuzu University sought leave exparte to move for judicial review under Order 53 RSC against the Respondent's decision suspending them from University. I granted leave on the same day and an order of interim relief was also granted allowing the Applicants to sit for examinations on condition that results will only be released after the determination of the disciplinary hearings. The notice of originating motion for judicial review and form 86A were also filed on 12th March 2015.

1.2 Grounds upon which reliefs are sought

1) The decision of the Respondent suspending the Applicants from Mzuzu University and requiring the Applicants to pay K200,000.00 before registration without affording them the right to be heard, is unconstitutional and illegal.
2) The said decision is contrary to section 43 of the Constitution as the Applicants have not been given any reason in writing for the said decision and as the decision has fundamentally breached the Applicant's legitimate expectations were violated.
3) The said decision is unreasonable and unlawful as no reasonable person can suspend many people from university and require all of them to pay K200,000.00 before registration as costs for the alleged damaged items, without affording person to be affected reasons in writing and an opportunity to be heard and without first ascertaining whether he/she broke any property and the cost of the property that the specific individual broke.

4) The said decision is void as it was made by an improperly constituted disciplinary committee.
5) The said decision is also void in respect of the 1st, 2nd and 3rd Applicants as there was no quorum.
6) The said decisions are as aforesaid and/or otherwise, unreasonable, unlawful and unconstitutional.

1.3 Statement of facts

The 9 Applicants herein filed an affidavit verifying facts contained in the statement of facts. We reproduce the statement in total.

1) That the Applicants are students of Mzuzu University in different levels of their studies and coming from different faculties and departments.
2) That they were called to a disciplinary hearing where they were not allowed to cross examine the Respondent's witnesses and for some of them they were even denied an opportunity to invite their witnesses.
3) That subsequently, the Respondent suspended them from Mzuzu University for a period ranging from one to two years. There is attached hereto the Applicants' suspension letters.
4) That the Applicants verily believe that their right to be heard was seriously breached by denying them an opportunity to cross examine Respondent's witnesses to contradict and disprove the lies which they testified upon coached by the Respondent.
5) That the Applicants also verily believe that their right to be heard was also breached by denying some of them a chance to call their witnesses.
6) That the Applicants verily believe that the decision suspending them from Mzuzu University is void as it was made by a disciplinary committee which was improperly constituted. This is so because of the following facts:

a) There were some members who ought not to be on the disciplinary committee as clearly stated by the Mzuzu University Students Information Hand Book Regulation 5.3.2. for instance, the two Masters students, Mr. Oswald Mkanda, Mr. Allan Kafosa who purported to be students representatives, were not supposed to be on the disciplinary committee in issue as they were not chosen by MUSU as required by Regulation 5.3.2(iv) of Mzuzu University Students Information Hand Book, Professor Mwabumba a mere lecturer from Forestry Department and Dr. Singini in respect of the 1st, 2nd, 3rd, 4th and 5th, since he was not a Dean from their respective Faculty as such he was not eligible to be a member or indeed to be a chair in respect of these five Applicants as required by Regulation 5.3.2(i) of Mzuzu University Students Information Hand Book. There is attached hereto the relevant provisions for the Mzuzu University Students Information Hand Book and Mzuzu University Students Union Constitution. Marked and exhibited DSPGWUMA 1 and DSPGWUMA 2.

b) Secondly, there was no quorum as the two masters students, Mr. Oswald Mkanda, Mr. Allan Kafosa, who purported to be representatives of Students in the said disciplinary hearing, were not appointed by MUSU as required by Regulation 5.3.2(iv) of Mzuzu University Students Information Hand Book. Furthermore, Professor Mwabumba was also not eligible member and Dr. Singini in respect of the first five Applicants as he was not a dean of their faculty. All these were not supposed to be there to make a quorum. Besides these illegible people, the two wardens, the matron and the co-opted member on ad-hoc basis, were not present. Thus in case of the first five Applicants there were only two eligible members, namely Mr. Alfred Gunda (for the Registrar) and Mrs. Febe Chibambo (Head of Department of Education Teaching Studies) instead of 6 members and in

relation to the 6th, 7th and 8th Applicant there were only three eligible members namely Mr. Alfred Gunda (for the Registrar) and Mrs. Febe Chiwambo (Head of Department of Education Teaching Studies), and Dr. Singini (Dean of Environmental Science) instead of 6, to form a quorum as per Regulation 7.4.1 of the said Students Hand Book.

7) That the Applicants also believe that the Respondent breached Regulation 5.5.1(ii) of the Mzuzu University Students Information Hand Book since they failed to furnish the Applicants full and fair opportunity to meet the false allegations brought against them. This was the case because the Respondent denied the Applicant an opportunity to cross examine the Respondent's witnesses.

8) That the Applicants verily believe that the Respondent has breached their legitimate expectations as the Applicants have always been made by the Respondent to believe that, they will be accorded an opportunity to cross examine Respondent's witnesses and also to be allowed to call witnesses as per practice of the Respondent, but also as required by the rules of natural justice which the Respondent ought to abide by pursuant to Regulation 5.5.1 of Mzuzu University Students Information Hand Book.

9) That the Applicants believe that the Respondent has violated their right against discrimination, contrary to section 20 of the Republic Constitution, by failing to accord the Applicants herein an opportunity to cross examine the Respondent's witnesses and also to call witnesses, which all other Mzuzu students who have appeared before disciplinary hearings are given.

10) That the Applicant hereby applies for leave to move for judicial review against the decisions of the Respondent suspending the Applicants from Mzuzu University, ordering the residential Applicants that they will not be accommodated in the University halls of residence on return from suspension and ordering them to pay K200,000.00

before registration and they pray for interlocutory reliefs of stay and injunction as particularized in form 86A filed herewith pending the determination of the judicial review.

11) That the Applicant has filed this action within time and has acted promptly per the requirements of Order 53 of the Rules of the Supreme Court.

12) That their fellow students will be sitting for their examinations this coming Monday, the 16th day of March, 2015 and that registration is coming to an end this Friday, the 13th day of March, 2015.

13) That if the orders for injunction and stay will not be granted, the Applicants herein will miss the said examinations as a result of the unprocedural, unlawful and unconstitutional suspension of the Applicants herein.

14) That this honourable court will be standing to its duties if it grants the orders for stay and injunction as the injustice/inconvenience that will be suffered by the Applicants in case the order of injunction is not granted and they succeed at trial, outweighs the injustice/inconvenience that will be suffered by the Respondent if an injunction is granted and later this court dismisses it.

15) That the Applicant further undertakes to indemnify the Respondents in damages if the orders of injunction and stay sought herein are obtained without legal basis.

16) That the Applicants pray for leave to apply for judicial review as aforesaid and they also pray for orders and reliefs as particularized in form 86A filed herewith.

2.0 <u>Affidavit in Opposition</u>

2.1 In opposition to the affidavit in support of the originating motion for judicial review, Mr. Yonamu Ngwira, a Senior Assistant Registrar (Academic) deponed as follows:

1) That I depone to matters of fact from my personal knowledge and those gathered through my conduct of this matter, the truth of which I verily believe in.
2) That on 29th November and 1st December 2014 Mzuzu University witnessed violent demonstrations by students that led to the suspension pending disciplinary hearing of level 2, 3 and 4 government sponsored students on 2nd December 2014.
3) That a declaration was made that all 2nd, 3rd and 4th level government sponsored students had to leave campus by 12:00 of the same day.
4) That a total number of 23 students were identified as suspects who took part in the said violent demonstrations.
5) That as a result of the violent demonstrations the university had incurred costs in excess of K40,000,000.00.
6) That on 16th February 2015 the Vice Chancellor appointed a Student Disciplinary Committee based on the authority vested in him through the Statutes made under the Mzuzu University Act, in particular Statute IV 4(a) and (c).
7) That the said Statute empowers the Vice Chancellor to appoint members of the disciplinary committee as he deems appropriate to assist him in maintaining and promoting the reputation, efficiency and good order of the university including the discipline of the students. It is now produced to me and marked exhibit YN1.
8) That the Vice Chancellor, per the Statute referred to in paragraph 6 hereof, has all such powers as are necessary or expedient for him to perform his duties.
9) That in appointing the Student Disciplinary Committee the Vice Chancellor followed all the guidelines both under the Statutes and under the Student Information Hand Book as regards its composition. It is produced to me and marked exhibit YN2.

10) That in any case where there is a conflict between the policy documents, such as the Student Information Hand Book, and the Act and the Statutes the latter take precedence.

11) That where members of Mzuzu University Student Union and the Mzuzu University Students Representative Council have been suspended the office of the Speaker takes charge.

12) That on 9th February 2015 the 23 students were written letters inviting them to attend disciplinary hearings scheduled for 18th to 20th February 2015 and the letters clearly indicated to the students to provide any relevant facts or witnesses capable to give testimony relevant to their case. It is now produced to me and marked YN3(i) to (ix).

13) That on 12th February 2015 the office of the Speaker of the Students' Union submitted two names of students as representatives to the Disciplinary Committee, namely Oswald Mkanda and Allan Kamfosi. It is produced to me and marked exhibit YN4.

14) That the quorum of the committee throughout the meeting comprised of not less than two-thirds majority as shown by the attendance list. It is now produced to me and marked YN5.

15) That every student was given a chance to ask each witness questions after such witness' testimony.

16) That consequently some asked questions while others did not, out of their own wish.

17) That out of the 23 students, the Disciplinary Committee found that it was proved to its satisfaction that 12 students, including the Applicants, were part of a group of students who made the violent demonstrations that led to loss of property and disturbances.

18) That the Disciplinary Committee recommended suspensions ranging from 1 to 2 years, withdrawal from university accommodation on return from suspension, and payment of fines for the offences and the damages caused.

19) That the disciplinary measures the university may impose according to the Student's Information Hand Book include but shall not limited to one or combination of the following: warning, counseling, fine, community service, replacement or cost of damaged property, withdrawal from halls of residence for a given period or for the rest of the programme, suspension from the university and dismissal from the university. It is produced and shown to me and marked exhibit YN6.

20) That 11 students were acquitted of the charges because there was insufficient evidence given implicating them.

21) That9the Vice Chancellor approved the recommendations of the Disciplinary Committee with regard to the punishments and all the concerned students were written letters informing them of the outcome of the disciplinAry hearings. It is now produced to me and marked exhibit YN7(i) to (ix).

22) That I refer to paragraph 21 hereof and state that the said letters also contained a clause reminding the suspended students of their right to appeal to the Vice Chancellor who then appoints an Independent Appeals Committee.

23) That all the Applicants except Austin Kajawa have since appealed against their suspensions. It is produced to me and marked exhibit YNB(i) to (viii).

24) That the Vice Chancellor has since written all the appealing students informing them that he has referred their appeals to the Appeals Committee. It is now produced to me and marked exhibit YN9(i) to (viii).

25) That Appeals Committee is expected to sit any day within this month of May and come up with its decision on the matter.

26) That in any case, in view of the pending hearing of the appeals by the Appeals Committee at Mzuzu University, and in the absence of any exceptional circumstances, it is premature for the court to exercise

the residual jurisdiction by commencing hearing of this action for judicial review.

Response to Applicants' Affidavit in Support

27) That I refer to paragraph 1 of the Applicants' statement of facts and admit the contents thereof.

28) That I refer to paragraphs 2 and 7 of the statement of facts and deny the contents thereof and state that the Applicants were given a chance to cross examine the Respondent's witnesses as clearly indicated in the notice of appeal by one of the Appellants, Samuel Phiri, dated 10th March, 2014.

29) That I further refer to paragraph 2 and 5 of the Applicants statement of facts and state that in the letters inviting the Applicants to disciplinary hearings it was clearly indicated to them that they were entitled to invite their witnesses. Therefore, that they were denied an opportunity to invite their witnesses is incorrect.

30) That I refer to paragraph 3 of the Applicants' statement of facts and admit the contents thereof.

31) That I refer to paragraph 4 of the Applicants' statement of facts and state that the Applicants were afforded the right to be heard as they asked witnesses questions and further provided their side of the story as clearly evidence by the notice of appeal by one of the Applicants, Pearson Sauzande, dated 11 March 2015. It is further denied that there was any coaching of witnesses and put the Applicants to strict proof of the same.

32) That there is ample evidence that the Applicants colluded in their submission that they were not given a chance to cross examine witnesses or call their own as seen from notice of appeal by William Mkwanda and Mwenecho Msukwa where many paragraphs have word by word similarities. This would not have been possible if there was no collusion.

33) That I refer to paragraph 6 of the Applicants' statement of facts and deny the contents thereof and put the Applicant to strict proof of the same.

34) That I further refer to paragraph 6(a) of the Applicants' statement of facts and state that Mr. Oswald Mkanda and Mr. Kafosa are bonafide students of Mzuzu University and members of the Mzuzu Students Union and their names were duly submitted to the Disciplinary Committee by the office of the Speaker for Students Union.

35) That I further refer to paragraph 6(a) of the Applicants' statement of facts and state that Associate Professor Mwabumba was appointed as a co-opted member on an ad hoc basis. Dr. Singini presided over the hearings as chair in his capacity as a faculty Dean specifically appointed by the Vice Chancellor. These positions are clearly outlined in section 5.3.2 of the Mzuzu Universtiy Students Hand Book.

36) That I further refer to paragraph 6(b) of the Applicants' statement of facts and state that the warden, Mr. Fiskani Ngwira, was present at the hearing that the matron extended her apologies but that this did not affect the quorum of the committee and that the co-opted member on ad hoc basis, Associate Professor Mwabumba, was present. I aver that alL the required members were available per the minute of the hearing as shown by exhibit marked YN5 above.

37) That I refer to paragraph 6 of the Applicants' statement of fact and their reference to certain sections of the Hand Book and aver that they are referencing an unapproved version of the Hand Book and that I am referencing the only approved and official version of the hand Book. It is produced to and marked exhibit YN10.

38) That I further aver to the fact that Statute IV 4 empowers the Vice Chancellor to appoint members of the disciplinary committee as he deems appropriate and that if there is any inconsistency between Statutes and the Hand Book then the Statutes take precedence.

39) That I refer to paragraph 8 of the Applicants' statement of facts and state that there was no breach of the Applicants' legitimate expectations to cross examine Respondent's witnesses and call their own witnesses as that opportunity was duly provided to the Applicants. As such the Respondent complied with all the rules of natural justice.

40) That I refer to paragraph 9 of the Applicants' statement of facts and state that the Applicants having been afforded opportunity to cross examine Respondent's witnesses and, further, having been advised to call witnesses of their choice, cannot turn now and claim discrimination as failure to call witnesses was on their own volition.

41) That in any case, had the Applicants not been provided with an opportunity to cross examine witness or call their own witnesses, it would have been impossible for the Student Disciplinary Committee to acquit some and find the Applicants guilty.

42) That the Respondent, therefore, did abide by the requirements of the law and the grounds upon which reliefs are sought cannot stand in law.

43) Wherefore I humbly pray to this honourable court to dismiss the Applicants' motion for judicial review, with costs, both for being prematurely brought before court and for being without legal basis.

3.0 <u>Affidavit in Response</u>

3.1 In response to the affidavit in opposition to the motion for judicial review the Applicants made oath and stated as follows:

1) That we are the Applicants in this matter, of full age and, therefore, competent to swear this affidavit on our own behalf.
2) That the matters deponed to herein are from our personal knowledge, information and belief.
3) That we have read what purports to be the affidavits in opposition to motion for judicial review, hereinafter referred to as affidavit in

opposition, sworn by Yonamu Ngwira and we responded to the same as follows:

4) That we have looked at the minutes of our disciplinary hearings and the people who were present in our Disciplinary Committee and we have noted that Mr. Yonamu Ngwira, who has sworn the affidavit in opposition, was not present in our disciplinary hearings.
5) That the issues before this honourable court are focusing on what transpired inside the disciplinary hearing room, in which room, Mr. Yonamu Ngwira, was not there.
6) That accordingly, whatever evidence contained in the affidavit in opposition which is sworn by Mr. Yonamu Ngwira, is hearsay and guessed evidence especially in relation to the issue concerning to what was happening during the disciplinary hearing and should, accordingly, be disregarded, per the advice of our legal practitioners.
7) That we are saying that it is also guessed evidence because we were not at any point in time during the disciplinary hearing allowed to call our witnesses or indeed to cross examine the Respondent's witnesses, besides the fact that Mr. Fiskani Ngwira, a warden, was not present in the said disciplinary hearing.
8) That Mr. Yonamu Ngwira was just really guessing that since the procedure is to allow us to call our witnesses to cross examine the Respondent's witnesses but also that the wardens have to be present, he thought that was the case, which unfortunately was not the case herein.
9) That relying on his hearsay and guessed evidence will not only be prejudicial and unfair to us and this honourable court, but it will also be unjust and unlawful and aN affront to justice.
10) That consequently, the Respondent has no affidavit in opposition and this honourable court should proceed to grant the Applicants herein, the reliefs sought in Form 86A.

11) That alternatively, in case this honourable court is of the view that the said affidavit in opposition, which contain hearsay and guessed evidence, should still be regarded as the Respondent's evidence xxxxx.

4.0 The Issues

There are four issues for determination before me.

1) Whether the Applicants were presented with the charges before hand prior to the hearing.
2) Whether the SDC was properly constituted.
3) Whether the Applicants were afforded an opportunity for cross examine witnesses and call their own witnesses
4) Whether the decision suspending the students was unreasonable within the Wednesbury sense.

5.0 The Law

5.1 Burden and Standard of Proof

The burden and standard of proof in civil matters is this: He/she who alleges must prove and the standard required by the civil law is on a balance of probabilities. The principle is that he who invokes the aid of the law should be the first to prove his case as in the nature of things, a negative is more difficult to establish than a positive. Where at the end of the trial the probabilities are evenly balanced, then the party bearing the burden of proof has failed to discharge his duty. Whichever story is more probable than NOT must carry the day. As Denning J, stated in *Miler vs. Minister of Pensions* [1947] 2 A II E.R. 372.

> *If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not*

5.2 Similarly the degree of probabilities will depend upon the subject matter. When a civil court is deciding on a charge of fraud, it naturally follows that a higher degree of probability is required than when deciding an issue of negligence. However the standard does not reach as high as that required in a criminal court which is beyond a reasonable doubt.

5.3 The general principle is that the court must require a degree of probability which suits the occasion and is commensurate with the law and facts. In this matter the charges which were laid against the Applicants were more or less criminal in nature and the allegations made against the Respondent are constitutional in nature, therefore a high degree of probabilities is required in this matter.

5.4 What is Judicial Review?

5.4.1 Judicial Review is the most effective means by which courts control administrative actions and stops abuse by public persons/bodies. (Including inferior courts and tribunals.) Section 108 (1) and (2) of the Constitution is the starting point.

> *(1) There shall be a High Court for the Republic which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law.*
>
> *(2) The High Court shall have original jurisdiction to review any law and any action or decision by government for conformity with this constitution save as otherwise provided by this constitution and shall have such other jurisdiction and powers as may be conferred on it by this constitution or any other law.*

5.4.2 The concept of Judicial Review is enshrined in section 43 of the Constitution of Malawi which is lead provision in this case. The section provides as follows:

> *Every person shall have the right to:*
>
> *a) Lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and*
>
> *b) Be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected or threatened if those interests are known.*

5.4.3 Judicial review is a supervisory jurisdiction which reviews administrative actions by public bodies rather than being an appellatE jurisdiction. For judicial review proceedings to be entertained by courts the following preliminary issues must be satisfied.

5.5 Public Law

5.5.1 Only decisions or actions which are made in a constitutional or public law context are amenable to judicial review. This therefore means that even if a body is susceptible to judicial review not every decision will be reviewable if it is outside the ambit of public law. A clearer example will be matters of employment which are generally regulated by contract within the ambit of private law. On the issue of public law and judicial review Lord Diplock stated in *O'Reilly vs*. *Mackman* [1983] 2 AC 237.

> *It would in my view as a general rule be contrary to public policy and as such an abuse of process of the court, to permit a person seeking to establish that a*

decision of a public authority infringed rIghts to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions (governing judicial review) for the protection of such authority.

5.6 The Parties

5.6.1 Judicial review can and must not be brought by or at the instance of the government. In general, judicial review only lies against anybody charged with the performance of a public duty in a public law context.

5.7 Locus Standi

5.7.1 An Applicant in a judicial review proceeding must have *"sufficient interest"* in the matter. The purpose is to exclude the so called busy bodies. There must be a direct or personal interest. Whether a general interest qualifies within the meaning of *locus standi* is a question of law and fact. However courts have in recent times adopted a much broader and flexible approach. The more important the issue and the stronger the merits, the more readily will a court grant leave to move for judicial review notwithstanding the limited personal involvement of the Applicant.

5.8 The Grounds

5.8.1 Judicial review proceedings must not issue merely because the decision maker has made a mistake. The Applicant must show that there has been a departure from accepted norms. That the decision making process has been characterized by illegality, procedural impropriety and irrationality. This is called the tripartite distinction. Based on the above this Court is convinced that this is suitable case for judicial review.

6.0 The Wednesbury principle

6.1 In *Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation* [1947] All ER 680, *Lord Green MR* stated as follows

> *Decisions of persons or bodies performing public duties or function will be liable to be quashed or otherwise dealt with by an appropriate order in Judicial Review proceedings where the court concludes that the decision is such that not such person or body properly directing itself on the relevant law and acting reasonably could have reached that decision.*

6.2. A court when reviewing a decision making process will not simply quash a decision because it does not agree with it, but that it was unreasonable regard being had to the circumstances of the case and the dictates of administrative law. The court must be satisfied that no decision maker properly directing his mind to the law and facts before him could have made such an absurd decision. Once the decision is adjudged to be unreasonable it must be declared null and void within the Wednesbury test and must be quashed.

7.0 The Finding

7.1 In this matter several issues have been raised by the Applications alleging that the Respondent violated the law when they suspended them from the university. I will proceed to bring out the issues which are not in dispute.

7.2 It is not in dispute that on 29 November and 1 December 2014 Mzuzu University witnessed violent demonstrations by students over allowances that led to the suspension pending disciplinary hearing of level 2, 3 and 4 government sponsored students on 2nd December, 2014.

7.3 The students were ordered to leave campus by 12:00 of the same day. After investigation a total of 23 students were identified as suspects who caused the violent demonstrations. On 16 February 2015 as per statutes,

the Vice Chancellor hereinafter referred to as the VC appointed a Students Disciplinary Committee hereinafter referred to as thE SDC.

7.4 Statute IV(a) (b)iv (c) Mzuzu University Statutes under S. 35 Mzuzu University Act

> *(a) The Vice Chancellor shall be responsible to the Council for maintaining and promoting the reputation, efficiency and good order of the University including the discipline of the students, and shall have all such powers as are necessary or expedient for him to perform these duties.*
>
> *(b)subject to such regulations as the Council may approve, the Vice Chancellor may in the performance of his duties -*
>
> > *(iv) dismiss or suspend, for such period as he shall specify, any student or group of students.*
>
> *(c) the Vice Chancellor may appoint a disciplinary committee, with membership as he deems appropriate, to assist him in the performance of his duties under this Statute.*

7.5 Students' Information Handbook 2004. Students Disciplinary Committee Regulation 5.3.1

> *Student Disciplinary Committee is a Committee of the Vice Chancellor. Cases of misconduct shall be referred to the Chairperson of the Student Disciplinary Committee.*

7.6 Composition of the Students Disciplinary Committee Regulation 5.3.2

(i) A faculty dean appointed by Vice Chancellor – Chairperson,

(ii) The University Registrar or her/his representative – Secretary,

(iii) The Matron and the Wardens,

(iv) Two student representatives appointed by MUSU,

(v) One head of department and

(vi) One co-opted member on an ad hoc basis.

7.7 In this matter, in exercise of his powers under the statutes the VC appointed a Students Disciplinary Committee which comprised of the following individuals according to the report of the disciplinary proceedings:

1) Dr Singini: Dean/ Chair
2) Mrs. Chibambo: Head of Department
3) Prof Mwabumba: ad hoc member
4) Mr. Gunda: Assistant Registrar: secretary
5) Mr. Ngwira: warden
6) Two students appointed by MUSU

7.7.1 I'm mindful that the general principle is that when power to exercise certain functions is developed upon a group of persons, it should be exercised by those people upon whom it is confirmed.

7.8 Appointments by MUSU

7.8.1 5.3.2 Student Information Hand Book 2004 clearly stipulates that the two students representatives on the Students Disciplinary Committee shall be appointed by MUSU. The Applicants have told this Court that the two students who sat in the SDC were not appointed by MUSU. The Respondent on the other hand argue that the office of the Speaker submitted the names to the SDC on behalf of MUSU.

7.8.2 MUSU comprise of the whole students body which has MUSREC as its Executive Council which represents students at Management level. It would be absurd to expect the whole students' body to converge at the VC office for a meeting. MUSU delegated its day to day managerial functions to MUSREC. There is no dispute that MUSREC is under MUSU and to argue that the two students representative were not appointed by MUSU is to question which came first between an egg and a chicken. MUSU on its own cannot transact any business whatsoever in the absence of the executive arm which is the council to wit MUSREC.

7.8.3 The letter YN4 the Applicants are referring to must be read and understood in its context. The letter simply states that MUSREC has appointed two students representatives to sit in the SDC as by statute. The headed paper used is that of the Office of the Speaker. The allegation that the Office of the Speaker did not issue that letter has not been supported by affidavit evidence.

7.8.4 Statute I Mzuzu University Statues under S. 35 Mzuzu University Act. "student" is defined as an under graduate or a graduate of the university or any other person who is currently registered full time or part time or in service for a DEGREE, Diploma or Certificate of University or a person who is in a category of persons classified by the Council as students for any purpose.

7.8.5 The words "in service for a degree should be read broadly and purposively and not restrictively. The statute does not mention the type of degree e.g. a Bachelors' degree. It is silent. In my considered view degree can mean a Bachelors, Masters or Doctoral degree. All these are degrees and the prayer by the Applicants that the two representatives in the SDC were not students per se in the strictest sense because they were pursuing a

masters course and therefore not in touch with the general students population must fail.

7.9 Associate Professor Mwabumba

7.9.1 The Applicants argued that he was not supposed to sit on the SDC as he was not a head or dean of any department or faculty and regulation 5.3.2 (Students Information Handbook 2004) does not mention a lecturer. In response the Respondent told the Court that the Professor was on the SDC as a co-opted member on an ad hoc basis and not a permanent member. In the absence of any evidence to the contrary, I'm inclined to agree with the Respondent. His membership on the committee at the material time can not be faulted.

7.10 Dr. Wales Singini

7.10.1 The Applicants questioned his membership on the committee on the premises that he was not a dean in respect of the 1st, 2nd, 3rd, 4th, 5th and 9th Applicants. Regulation 7.3.2 (Students Information Handbook) clearly states that the SDC shall be chaired by a dean of faculty to whom the students belongs.

7.10.2 What this means is that each student was supposed to appear before his/her dean as chair during the hearing. What the Applicants are saying is that the VC was supposed to constitute several SDCs to hear all the students involved or that all students belonging to the same faculty were supposed to appear before a similar committee.

7.10.3 Much as the argument sounds persuasive, unfortunately the regulations the Applicants have cited have not yet come into force. The regulations cited are a mere working document which was being used to solicit views from staff and students with the view to come up with a comprehensive new handbook which would carter for the shortfalls in the

current students Information Handbook. The relevant regulations which are still in force are those published in 2004 and end with regulation 5. and not 7. Once gain the prayer challenging Dr Singini's presence must fail as the current regulation in force simply says a Faculty Dean appointed by the Vice Chancellor - Chairperson.

7.11 Quorum of the SDC

7.11.1 The composition of the SDC is nine and the quorum is formed with six members. The regulations do not say that a particular officer must always be present. As long as a quorum is formed and a chair is present the SDC is properly constituted. Nowhere is the regulations is it mentioned that a warden or Head of Departments must always be present.

7.11.2 As long as the Chair or his deputy in his absence is present and a quorum is formed the SDC is deemed properly constituted in law. In this matter the SDC comprised of the following members who were at all times present noting that the one member would come and go.

Dr Singini: Dean/ Chair
Mrs. Chibambo: Head of Department
Prof Mwabumba: ad hoc member
Mr. Gunda: Assistant Registrar: secretary
Mr. Mkanda: student. MUSU
Mr. Kamfosi: student. MUSU.

7.11.3 In these premises whether Fiskani Ngwira (warden) was absent during the hearing of the other cases that in itself does not affect the quorum. I therefore find that the SDC for all intents and purposes was properly constituted in law.

7.12 Right to cross examine

7.12.1 The Applicants alleged that they were not afforded an opportunity to cross examine witnesses or call their witnesses. The Respondent has branded all this as lies. In the letters that were sent to the students inviting them for the disciplinary hearing dated 9 February 2015, the Respondent provided the charge and the particulars against each student involved, and at the end made clarification on attendance.

> *It is in your own interest that you attend the hearing in person. Your attendance will provide you an opportunity to present your side of the case and to provide any relevant facts or witnesses capable of giving testimony relevant to the case.*

7.12.2 Now therefore for those students who attended in person what evidence is therefore to convince me that they were denied the opportunity to crOss examine witnesses or indeed call their own witnesses when the invitation letter containing the charge clearly stipulated as such? Which story makes more sense? I'm of the view that the Applicants have failed to substantiate their claim. In my considered view, the rules of natural justice were following during the hearing.

8.0 <u>Conclusion</u>

8.1 Looking at the evidence presented before me I'm of the view that the SDC was properly constituted at appointment by the VC and MUSU. I find that the SDC formed a quorum and it followed the correct procedures during its hearings and finally I'm convinced that the outcome of the hearings and its recommendations to the VC were reasonable within the <u>wednesbury sense</u> and did not violate any law.

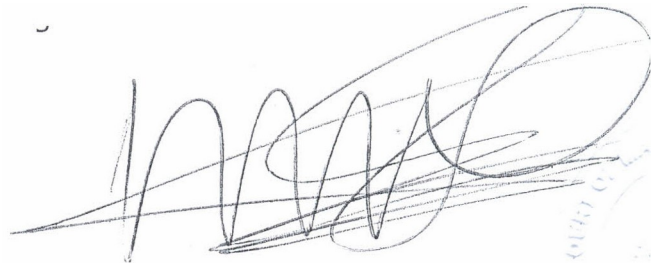
8.2 It is not the duty of this court to make administrative decisions. Our duty is to check that public bodies charged with a public duty follow the law

in arriving at a decision. In these premises the motion for judicial review against the decision of the Respondent to suspend the Applicants must fail.

9.0 Costs

9.1 The Applicants are students and of limited means. Secondly this application was necessary as it allowed me with the assistance of counsel from both sides to adjudicate on all the issues fully so that the matter can be put to rest. I'm heavily indebted to counsel from both sides. I therefore order each party to pay their own costs.

Pronounced in Open Court at Mzuzu in the Republic on 5 January 2016.



Dingiswayo Madise

JUDGE