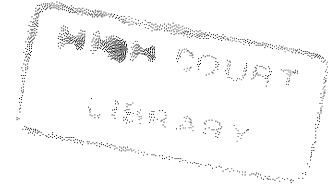


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REPUPLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 163 OF 2018

Before the Honourable Mr. Justice D. Madise

BETWEEN

BISWICK JUMBE.....CLAIMANT

AND

DMI ST JOHN BAPTIST UNIVERSITY.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE D. MADISE

Mr. HARA, Of Counsel for the Claimant

Mr. ALIDE, Of Counsel for the Defendants

Mr. Mathanda, Official Court Interpreter

Madise, J

JUDGMENT

Introduction

1. The claimant in this matter took out a writ of summons against the defendant on 22nd June, 2018 praying for several reliefs as follows:
 - (a) The award of his degree of Bachelor of Engineering in Software Engineering.
 - (b) An order that the withholding of his degree is unlawful, unconstitutional unreasonable and substantively and procedurally unfair.
 - (c) An order that the conduct of the defendant amounts to violation of the right to education.
 - (d) An award for damages and costs.
2. The defendant have denied the claim stating that the claimant had committed the offence of plagiarism under Part II of the Students Handbook and the university could not award him the degree in question. The defendant has called on the claimant to prove his case.

The Facts

3. Biswick Jumbe told the court that he had enrolled into the defendant's university from 2012 to 2017 under Student No. 123001051005. In his final year he was required to prepare and present an Industrial Project in fulfillment of his program requirements. He then worked on his project titled Energy Efficiently in Wireless Sensor Networks using Packet Splitting Technique. He exhibited BJI being a copy of the project.
4. The defendant allocated Mr. Anton J. Bose as his Project Supervisor who was studying for his PhD. The defendant then approved the project and the claimant started working on his project. He later finalized the project under a new supervisor Mr. Ram Kumar after Mr. Bose had left the Institution. He stated that his project had passed through all the approval stages and he had submitted the work after it had been certified as bonafide work by the defendant. He exhibited BJ 2 being the approval by the defendant.
5. That when he went to inquire about his results, he was informed his project got a grade of 54% which was a pass but the defendant failed him the programme see BJ 5. The claimant denied ever plagiarizing the work of

Anton Bose in a letter marked BJ 6. That he received the plagiarisms report on 27th September, 2017 after the software analysis on 21st September, 2017. That this meant that the Defendant declared the project plagiarized before the analysis was done. The claimant stated that the plagiarism analysis faulted the words in the report and not the ideas he had presented.

6. He stated that the defendant gave him a course completion certificate for his degree (BJ 8). In conclusion he stated that the defendant was unlawfully withholding his degree with "damaging consequences" and running his chances of getting employment.

7. In cross examination the claimant stated that the title of the project was Energy Efficiency in Wireless Sensor Network using Packet Splitting Techniques and that this title was also used by Anton Bose for his PhD work. However the title passed when Kumar was the Supervisor. He admitted that the Student Handbook empowers the defendant to withhold the award of a degree due to plagiarisms but that the defendant had no power to withhold an already awarded degree.

8. He told the court that Anton Bose allowed him to use his title verbally and that the software that was used to analyse his work was faintly. He insisted that Kumar was aware there was a go ahead to use the title by the original author via email although he was unable to produce copies. He maintained that his project went through all the stages and approvals and he had passed the exams. He stated that he was not given a hearing about the alleged offence he committed.
9. As for the diagrams in his project he stated that he had verbally requested Anton Bose to use the diagrams from his PhD research and that had acknowledged them in his reference. In conclusion he said that the defendant had edited his project and marked it down. That marked the close of the claimant's case.
10. In response the defendant called Dr Michael Savariapt Chai the Dean of academics. He told the court that he joined the defendant on 1st June, 2017 as a lecturer but he was assigned to assist the Vice Chancellor. He recalled that the claimant herein was enrolled as a student in 2012. That in 2017 the issue of the claimant was referred to the Vice Chancellor's office. That as part of the fulfillment of his degree

the claimant was supposed to submit a project report in his final year. At that time the university had one Anton Bose who was doing his PhD.

11. In the process of marking the claimant's work, the defendant realized that the claimant had not submitted his original work contrary to the defendant's requirement and academic practice. That these observations were noted by an external examiner Dr N. Prabakara of St Joseph College of Engineering and Technology in Tanzania.
12. That the defendant noted that the claimant had submitted the work of Anton Bose without acknowledgement. That the claimant had copied and pasted diagram from Anton Bose as illustrated on pages 4874 – 4877 of Anton Bose's article in the International Journal of Computer Science and Information Technology Vol 6 (6) 2015. The defendant used plagiarism check tools which revealed that the claimant's project report was plagiarised. The Witness exhibited MS. That the defendant's student handbook which was made available to the Claimant stated in Clause 9 of Part II.

9.0 A candidate who appropriates the writings or results of other

persons whatever the medium text, written or electronic, computer, programs, data sets visual images whether still or moving and then dishonesty presents them as his/her own shall be considered as guilty of plagiarisms.

9.2.1 The candidate has submitted or presented the work of another person as his or her own.

9.4 Depending on the extent or seriousness of the confirmed plagiarism the following sanctions shall be approved.

9.4.1 Rejection of the research project proposal.

9.4.2 Discontinuation from studies.

9.4.3 Deprivation of a degree.

13. That the claimant was informed by the defendant that his work was plagiarised and he was offered to rewrite or retake the search work which he denied. The defendant then declined to offer the Claimant a degree. That the defendant was also mandated to withhold an already awarded degree. That the claimant passed internally but failed externally. In cross examination the witness stated that the university approved the project and that the claimant passed internally but failed externally in that

he needed a 25 in every exam stage to make it to 50. That the external examiner gave the claimant a mark of 22 which was a fail. That marked the close of the defence's case.

The issues

There are three main issues for determination before me.

- (1) Did the claimant pass his degree?
- (2) Did the defendant unlawfully withhold the claimant's degree?
- (3) What remedies are available to the claimant if the answers to the above are in the affirmative?

The Law

The burden and standard of proof.

14. The burden and standard of proof in civil matter is this. He who alleges the existence of given facts must be the first to prove as a positive is earlier to prove than a negative. He who alleges must prove. The burden of proof rests on the party (the plaintiff) who substantially asserts the affirmative. It is fixed at the beginning of the trial by the state of pleading and remaining uncharged through the trial. See **Joseph Constantine**

Steamship Line vs. Tamperial Smelting Corporation Limited [1942]

AC 154,174. In Joseph Jonathan Zinga vs. Airtel Malawi Limited, Civil Cause No. 74 of 2014 (Mzuzu District Registry) (unreported), the court said:

"In civil matters there are two principles to be followed.

Who is duty bound to adduce evidence on a particular

point and what is the quantum of evidence that must

be adduced to satisfy the court on that point? The

law is that he who alleges must prove. The standard

required by the civil law is on a balance of probabilities.

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 the other carry the day". [Emphasis added]

15. The standard required is on a balance of probabilities. If the evidence is such that the tribunal can say; we think it more probable that not the burden is discharged but if the probabilities are equal it is not. Denning J in Miller vs. Minister of Pension [1947] All E.R 572.

What is plagiarism?

16. According to Black's law Dictionary 6th ed, plagiarism is the act of appropriating the literary composition of another, or parts or passages his writings as or the ideas or language of the same and passing them off as the product of one's own mind. If the material is protected by copyright such act may constitute an offence of copyright infringement. The wrong doer need not copy the ensure work but substantial portion which render his work not to original.

The Claimant's arguments

17. The claimant submitted that according to the evidence as submitted by the claimant and the defendant establish that the claimant was a deserving student for the award of his Degree. He was not at any fault in what happened during and after his submission of his Project for assessment. That it is not in dispute that defendant approved his project Project titled "Energy Efficiency in Wireless Sensor Networks Using Packet Splitting Technique"
18. That it is not in dispute that the Supervisor Anton Bose recommended this project for the claimant and the next supervisor also approved the same to the extent that it had to undergo all assessments and passed.

That it is not in dispute that the claimant cited the article of Anton Bose in his project and/or reference section/Bibliography and that it is not in dispute that the purported external examiner's report carries no date, no signature, no letterhead of an institution under which the external examiner made his findings. That it is not in dispute that we do not know at what time the external examiner made his report. Was it after the claimant was failed to cover up? Otherwise this report was not shared with the claimant at all.

19. The claimant stated that it is not in dispute that the plagiarism reports submitted by the defendant are not dated and do not carry any signatures. At what point were they made? No one knows. That it is not in dispute that the claimant was told he was failed on August 30, 2017 on account of plagiarism. However, the purported plagiarism report was only submitted on 21st September, 2021. This does not add up. How was he failed before the test was carried out? And finally, it is not in dispute that the defendant gave the claimant a Course Completion Certificate dated 08/06/2017 certifying that he was a Student at the defendant's institution and he had duly completed his Degree Program and he was a good student (BJ8) and signed by the Assistant Registrar-Academics.

20. That it is therefore clear that the defendant is unlawfully withholding the claimant's Degree with damaging consequences and ruining his chances of gaining employment.

Plagiarism

The claimant submitted that the defendant would like the court to believe that the claimant failed as he plagiarized his Industrial Project. He did not. The Claimant provided references for his Project. And there cannot be plagiarism. In addition, the claimant's ideas have not been faulted at all. Clearly, he did not plagiarize any work. Plagiarism is provided for under clause 9 of part II of the Students Handbook.

"9.1. A candidate who appropriates the writings or results of other

persons, whatever the medium (text, written or electronic, computer programs, data, sets, visual images, whether still or moving) and then dishonestly presents them as his own shall be considered guilty of plagiarism.

9.2 A candidate shall be deemed to have committed an act of

plagiarism where the following is observed

9.2.1. *The candidate has submitted or presented the work of another person as his own.*

9.2.2. *The candidate has submitted the same or substantially the same work more than once at the same institution*

9.2.3. *The candidate has fabricated or falsified data....etc.*

9.3 *All cases of plagiarism shall be reported to the COE who shall refer them to the Examination Board for Investigations.*

9.4 *Depending on the seriousness of the confirmed plagiarism, the following sanctions shall be applied:*

9.4.1 *Rejection of the Research Project proposal and the candidate shall be required to re write the research work.*

9.4.2. *Discontinuation from Studies.*

9.4.3. *Deprivation of the degree.*

21. That in the academic world, it is almost settled on what constitutes plagiarism. Academic authors have described plagiarism as the omission of acknowledgements when you use ideas or data from other

sources or when you advance work of others as your own. **See Neville, C. (2007). The complete guide to referencing and avoiding plagiarism. New York: Open University Press.**

22. That Selemenani et al, 2018 adopted the definition of plagiarism by Ellis et al, 2018 who defined it as presenting another author's ideas without providing any acknowledgement. **Selemani, A., Chawinga, W. D., & Dube, G. (2018). Why do postgraduate students commit plagiarism? An empirical study. International Journal for Educational Integrity, 14(1), 1-15.**

23. In other words, plagiarism constitutes the misappropriation and misrepresentation of the ideas, work and words of someone else by passing it off as your own. It furthermore includes the inappropriate re-use of your own work, which was previously presented, marked or published, without proper referencing and transparent indication and justification explaining such use. Therefore, to avoid committing plagiarism students use these rules of thumb: if it is not your own ideas(s), cite; if it is not your own words, quote and cite; if it is your own, previously presented, marked or published work, cite and explain use; and if in doubt, cite.

24. The claimant stated that it is therefore important that when students undertake any form of academic writing, they must acknowledge and properly reference the work of others that they have u
25. It is therefore dishonest to copy and paste or use another author's work as ones original work. **Agu NN, Olibie E, (2009) Evaluating Students Plagiarism in Higher Education Institutions. Afr Res Rev 3(4).** It is an academic theft. **Pecorari, D., & Petrić, B. (2014). Plagiarism in second-language writing. Language Teaching, 47(3), 269-302.**
26. The claimant submitted that plagiarism is categorized into intentional or deliberate plagiarism and unintentional plagiarism. Intentional plagiarism occurs when one commits plagiarism with the knowledge and awareness of what plagiarism entails and how one can avoid committing it. Unintentional Plagiarism is committed where the offender lacks knowledge and skills to avoid it. Intentional plagiarism is usually committed where an author omits to provide in text citation; omits to provide sources in the reference list and/or the refence list all together Unintentional plagiarism on the other hand can be committed where you provide inaccurate and incomplete in text citations,

incomplete reference list, poor summarizing, quoting and paraphrasing See Neville, C. (2007). **The complete guide to referencing and avoiding plagiarism.** New York: Open University Press; Mahmood, S. T., Mahmood, A., Khan, M. N., & Malik, A. B. (2010). Intellectual property rights: Conceptual awareness of research students about plagiarism. *International Journal of Academic Research*, 2(6), 193-198.

27. That in the instant case, the claimant properly acknowledged the work of Anton Bose in his work/ reference/Bibliography. The Claimant did not appropriate Anton Bose's work. Where he referred to his work, he properly cited. The bibliography is clear. There was no plagiarism.
28. Secondly, the software analysis was flawed in that it faulted every word in his work as it is found in any work on the internet. The analysis did not fault ideas as should be the case. Thirdly, the analysis further faulted his work references. It does not make sense that a reference at the end of one's work should be faulted as plagiarism by software analysis.

29. That from the above, the claimant did not appropriate the writings and ideas of other persons at all. He did not dishonestly present any writings of other persons as his own. His work was his own as approved by the Supervisors and the Defendant and he had proper references for his project. He did not submit the same work twice at the Defendant's institution. He did not falsify any data. Furthermore, this being an academic charge or crime, the claimant was not heard at all for any plagiarism offence or otherwise.

30. Surprisingly, amidst all this, the defendant gave the claimant a Course Completion Certificate that he was a Student at the Defendant's institution and he had duly completed his Degree Program and he was a good student.

31. Clearly, the defendant is unlawfully withholding the claimant's Degree with damaging consequences and ruining his chances of gaining employment. Accordingly, the claimant discharged his burden of proof that he should be awarded his Degree and consequent damages for the withholding of the degree to be assessed by the Registrar. The consequences of withholding a degree are dire. These include missed

job opportunities and a failure to earn substantial living commensurate with fellow Degree holders since 2017

32. That the claimant did not make any mistake. No wonder, the defendant wanted the claimant to just retake the Project. Even though they failed to communicate in writing to the claimant just to cover up their mistakes in bad faith.

Defendant's Submission

33. In submission the defendant disputes the claimant's claim herein and insists that the claimant's work was plagiarised. That the claimant was offered, pursuant to the defendant's rules and regulations contained in the student's handbook, to re-write or re-take the research work but the claimant refused. **Section 44 of the Constitution of Malawi** provides for the limitation of rights and freedoms as follows:

"(1) No restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in this Constitution other than those prescribed by law, which are reasonable, recognized by international

human rights standards and necessary in an open and democratic society."

34. That in **Samper vs. University of Rochester, 528 N.Y.S. 2d 958, 962 (N.Y. Sup. Ct. 1987)** the Court held that:

"academic judgments are subjective – they are made in an educational, not adversarial environment and the courts... have reserved those judgments to educators, not judges and juries."

35. In **Board of Curators of University of Missouri vs. Horowitz, 435 U.S. 78 (1978)** the Supreme Court acknowledged a sharp line between academic and disciplinary misconduct by holding that:

"the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making."

36. That similarly the Supreme Court in Board of Curators of University of Missouri vs. Horowitz, 435 U.S. 78 (1978) added that:

"Courts are particularly ill-equipped to evaluate academic performance."

37. The defendant agreed with the claimant that there are different types of plagiarism and the same can be categorized in the following manner;

a) Self-plagiarism (including salami-slicing)

- arises when an author reuses her or his own material, usually without acknowledgment. This can include salami-slicing where the author submits several articles with slightly different interpretations of the same subject matter or based on the same research.

b) Literal, or word for word plagiarism.

- Involves the reuse of the whole section of text, usually without acknowledgment. The most obvious and flagrant example is when a contributor to a journal changes only

the name of the author, and perhaps the abstract and first paragraph.

c) Image plagiarism

- is a sub-species in itself, ranging from tables and diagrams to artwork and photographs

d) ideas plagiarism

- the author reuses the ideas of another author without acknowledgement

e) scattergun plagiarism

- involves a selective plundering, whereby the author borrows words, ideas or other context from a variety of other originators.

f) citation plagiarism (or citation amnesia)

- involves a cavalier approach to acknowledgment in references, either not giving credit for sources, or lifting someone else's citations as a shortcut.

g) wholesale plagiarism (or piracy).

- involves the copying of a whole book, or journal, or multiple articles from multiple journals.

38. See Joss Saunders, Plagiarism and the Law, Learned Publishing Volume 23 No. 4, October 2010 at pages 280 and 281.

That software can help to identify some kinds of plagiarism, and applies an element of science, but is not able to spot other kinds of plagiarism. See Joss Saunders, Plagiarism and the Law, Learned Publishing Volume 23 No. 4, October 2010 at 280.

39. Clause 9.1 of the Defendant's Students Handbook cited above has provided what constitutes plagiarism

The broadest definition of plagiarism is the unattributed copying of another's work. See Ralph D. Mawdsley, Brigham Young University Education and Law Journal, Volume 2009 Number 2 Article 3 at page 248.

40. The defendant argued that they had established plagiarism, and that the Defendant had powers under Clause 9.4 to either, reject the Research Project and require the candidate to re-write or re-take the

research work, discontinue the student from studies or deprive the student of a degree, non-degree award or any other academic credentials already awarded by the University.

41. That it therefore follows that the limitation to the right to education of any of the defendant's students on the ground of plagiarism as per Clause 9.4 of the Students Handbook which is a by-law is in line with Section 44 of the Constitution and where the Defendant withholds a degree from a student due to plagiarism, the same would not be tantamount to an infringement of the right to education.

42. In the foregoing circumstances, what needs to be established is whether the withholding of the claimant's degree by the defendant on grounds of plagiarism is justified. In other words is the claimant guilty of plagiarism? The answer to this question will determine whether or not the Court should order and/or declare that the withholding of the claimant's Degree of Bachelor of Engineering in Software Engineering is unlawful, unconstitutional, unreasonable and substantively and procedurally unfair;

Plagiarism

43. The defendant stated that they identified that the claimant's work was plagiarized in two ways. One was by the use of an external examiner and the other was through the use of software. That the claimant had tried at arm's length to demonstrate to the court that the decision that the claimant's work was plagiarized was made before subjecting the claimant's work to the said software analysis. This the claimant had attempted to prove through the email dated 30th August 2017 when the decision was made on plagiarized work and the 21st September 2017 when the claimant's work was subjected to the software analysis.

44. However, in re-examination DW 1 **Dr. Michael Savariapitchai** clearly explained that the plagiarism report was based on the external examiner's report and the email of 30th August 2017 was based on the external examiner's findings. Accordingly, the email of 30th August 2017 had nothing to do with the software analysis of 21st September 2017.

45. That much as the external examiner's report from page 243 to 245 and the mistakes noted in the project from page 189 to 191 of the Trial Bundle are not dated, signed nor on the defendant's letter head that does not take away the fact that the same originated from the external

examiner. The claimant during cross-examination admitted the fact that he was aware that the marking of his project work involved an external examiner. Further, Clause 9.2 of the Students Handbook found on page 208 of the Trial Bundle does not require a letterhead, date or signature of the one who has identified plagiarism for a candidate to be deemed to have committed an act of plagiarism. In fact, the by-laws go further to state that any person can observe an act of plagiarism.

46. That additionally, what was observed in the External Examiner's plagiarism report and the mistakes in the project report do tally with what is contained in the claimant's project work and the claimant confirmed the same i.e. the abstract mismatching with the conclusion. Again, the details contained in the external examiner's report pertaining to the claimant project work especially the name of the claimant, the registration number as well as the PRNO number match those of the claimant.

47. Some of the plagiarism in finer detail

Title of the project

The defendant submitted that it was observed by the external examiner that the title of the claimant's project had already been published by **Mr. Anton Bose in the international journal of computer science and information technology, Vol. 6 (6), 2015, pp. 4874-4877 (Appendix 1).**

48. The Claimant admitted to the said findings by the external examiner and testified that the title of his project was not his original work. The claimant testified that Mr. Anton Bose who was the claimant's supervisor and working on his PhD project advised him to have a more similar title for ease of guidance. However there was no evidence before the Court proving that Mr. Anton Bose indeed advised him to have a similar project. The claimant then testified that the advice from Mr. Anton Bose was rather verbal.

49. That the claimant intended to justify his assertion by stating that he cited the article of Anton Bose in his project and/or reference section/Bibliography. However, a closer look at the said bibliography reveals that the claimant did not even quote the journal where the title had already been published by Mr. Anton Bose, the volume, year, pages and the appendix. All the claimant did was to mention the name

J. Anton Bose with the title and the qualification that Mr. Bose is an assistant lecturer at the defendant's institution plus providing an email address.

50. That the referencing part ought to provide a reader with accurate information to a reader so as to locate the original data. The claimant did not provide the said details.

Mismatch between abstract and conclusion.

51. That it was further discovered by the defendant through the external examiner that the claimant's project abstract mismatched with the conclusion in that the abstract seemed to be an application oriented project but the conclusion reflected a research oriented project. There was no correlation between the two when in fact the two have to correlate. The claimant did not propose any Chinese Remainder Theorem (CRT) and forwarding algorithm in his abstract but he mentioned it in his conclusion.

52. That the claimant admitted during cross-examination that the abstract and the conclusion in his project mismatched. However he blamed the mismatch on Mr. Kumar, his supervisor, who allegedly edited the

conclusion of his research project. Despite the claimant acknowledging the fact that he did declare on page 81 of the Trial Bundle that the work in the project was his, he still blamed Mr. Kumar for allegedly changing his project conclusion.

53. However, despite having proof read the contents of the project and having noted the mismatch, the claimant stated that he signed his project since the Head of Department told him so. Again as before, the direction from the Head of Department was verbal. Clearly, the claimant copied from Mr. Anton Bose's work since Mr. Anton Bose had already implemented and published the Chinese Remainder Theorem in his journal aforementioned.

54. Figures, designs and diagrams

The defendant argued that through the external examiner it was noted that the claimant had copied the figure 1 in his project on page 150 of the Trial Bundle from the internet. Again the claimant did not make any reference to such a website in his bibliography and portrayed the said figure 1 as his original work. Similarly the defendant through the external examiner further identified plagiarism in respect of the claimant's project in relation to the system design on page 164 of the

Trial Bundle as well the data flow diagram on page 165 of the Trial Bundle.

55. The said system design and data flow diagram are already published on the internet and the claimant used the very same to include in his project and portrayed them as his since he did not reference them in his bibliography. The websites where the Claimant obtained such were not cited.

56. That again figure number 4 in the claimant's research project on page 161 of the Trial Bundle was red flagged by the defendant through the external examiner. The very same figure was already published by Mr. Anton Bose in his 2015 journal. The claimant admitted that indeed the figure is the same and it was already published by Mr. Anton Bose in his journal. However, the claimant attempted to justify the same by alleging that Mr. Anton Bose advised him to copy the figure and use it in his project.

57. That the alleged agreement that he should use the figure in the project was in writing but the Claimant did not bring the said piece of evidence before the court to prove that Mr. Anton Bose indeed advised him to do so. Clearly the claimant copies the figure from Mr. Anton Bose's

work and used it in his project as his own. Even in the Bibliography, the claimant did not made any reference to such a figure.

58. Again the table design marked 3.4 on page 166 of the Trial Bundle used by the Claimant in his project was red flagged for plagiarism. The said design is for wireless sensor network however the said design was already available on the internet and was published in 2012. The claimant admitted the same but insisted that he referenced it in his bibliography.

59. The defendant stated the claimant did not reference the same in the bibliography. He further failed to provide the website where he got the design. Clearly, the Claimant intentionally published the said design as his original work when it was not.

60. That the design on page 166 of the Trial Bundle is not the claimant's original work. All the claimant did was to take a screenshot of the design and paste it in his project. The claimant admitted to the same and testified that it was Mr. Kumar who had advised him to do so. Again, as is the trend, the advice was verbal and the claimant has no evidence to prove that indeed Mr. Kumar advised him to copy and paste the said design. Further, the said design was shot from software

which software is readily available online. The claimant did not reference the same in his bibliography and made it appear as if it was his original work.

61. That in addition to the above, the software used by the defendant also identified plagiarism in the claimant's work. The claimant had the option of submitting his research work before another software analysis to disprove the defendant's findings which he did not do.

62. That from the foregoing, it is clear that as per the provisions of the Students Handbook, the defendant through the examiner established plagiarism in the claimant's work and pursuant to clause 9.4.1 of the Students Handbook, rejected the claimant's project work by failing him and offered him to re-sit or re-take the research project to which he refused.

63. Having failed his research project due to plagiarism, the defendant could not award the degree to the claimant. The course completion certificate is only meant to demonstrate that the student has completed the 4 year programme. However, for the final award of the degree, the claimant had to submit a research project report. The claimant however failed in his project.

64. That even if the claimant had been awarded the degree prior to plagiarism being established, the Students Handbook mandates the defendant to deprive one of a degree, non-degree award or any other academic credentials already awarded by the defendant. Therefore the argument that the claimant had been awarded a course completion certificate therefore had to be awarded a degree despite being guilty of plagiarism does not hold any water.

65. In conclusion the defendant submitted that they had established that the claimant failed in his research project due to plagiarism hence withholding the award of a degree to the claimant pursuant to the by-laws contained in the Students Handbook. That, where a student has failed what right to be heard can one be given apart from re-writing or re-sitting the exam? In the instant case, the claimant failed his project due to plagiarism and this reason was made known to him by the Defendant. The option made available to the claimant was to either re-write or re-take the research work. That is well contained in the Students Handbook as per Clause 9.4.1

66. Accordingly, the Defendant argued that they did not infringe on the claimant's right to education herein. It therefore follows that the defendant's withholding of the claimant's Degree of Bachelor of Engineering in Software Engineering is not unlawful, unconstitutional, unreasonable or substantively and procedurally unfair. In other words the defendant is lawfully withholding the degree from the Claimant;

67. That having established that the defendant is lawfully withholding the claimant's degree, it therefore follows that the claimant cannot and ought not to be awarded his degree unless he completes the requirement for the award of a degree by re-writing or re-taking the research work and passing the same. That in the circumstances the defendant submitted that there would be no material on which this Honourable Court should award damages to the claimant for deprivation of the degree since the said deprivation by the defendant is lawful the claimant having failed his research project work therefore not being entitled to an award of a degree.

The finding

68. There is no dispute that the claimant was a student at the defendant's university where he was studying for a degree in Software Engineering

for a period of four years. There is no dispute that the claimant submitted a research project report whose title was similar to the one Mr. Anton Bose used for his PhD studies. Mr. Bose was his first supervisor. Mr. Kumar who took over from Mr. Bose as supervisor advised the claimant to seek permission from Anton Bose on the use of his title. The claimant claims the consent was sought and given verbally.

69. The defendant has disputed this. The defendant told the court that the claimant plagiarized Anton Bose's title and work including diagrams, figures and designs. The defendant stated that an external examiner from Tanzania marked the claimant's research report he found that it was plagiarized.

69 The findings were sent to the defendant who refused to award the claimant his degree unless the work was resubmitted. I have looked at the totality of the evidence and I find on a balance of probabilities that the claimant has failed to satisfy this court that his work must that of Anton Bose. He has miserably failed to convince me that his work was original. The claimant even had the courage to copy the title and present it as his own. The claimant has failed to adduce evidence to

substantiate the claim that he received a verbal consent from Anton Bose. Plagiarism is a serious academic crime and no one should be allowed to earn a degree through copying the work of others.

70. I therefore find that there was serious plagiarism of Anton Bose's title and work. In these premises I find that the actions of the defendant were not unlawful or constitutional. The mere fact that his research proposal was approved does not mean anything vis – a – vis the final outcome of the research paper. The fact that he had received a certificate of completion does not in itself entitle him to an award of a degree.

71. I therefore find that even if the claimant had been awarded a degree, in the first place, the defendant was perfectly entitled to withdraw it once there was a breach of regulations as stipulated in the Student Handbook. The claimant passed his exams internally but failed externally when an examiner from St Joseph College of Engineering and Technology in Tanzania found that there was massive plagiarism. The claimant was offered to rewrite his research paper but he declined the offer and decided unwisely to come to court. The court does not

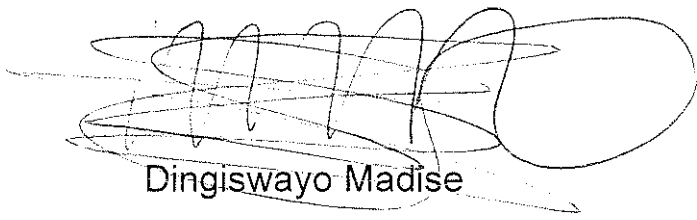
award academic degree. This case was not supposed to see the light of day in my Court. The claimant's case must fail with costs.

Order

Since the defendant allowed the claimant to use Aton Bose's title they must be faulted for giving the approval in the first place. The defendant contributed to this mess. The defendant gave the claimant false hopes. I therefore order the claimant to rewrite his research paper if he so wishes using a different title and submit his findings to the defendant. The cost of re submission will be borne by the claimant at the rate he could have paid when the offer was made. Once he has passed he should be awarded his degree. The claimant and the defendant have 21 days to agree on the calendar of events. I make no order as to costs.

I so order.

Pronounced in open court at Blantyre in the Republic on 24th January 2022.



Dingiswayo Madise

Judge.
James vs Danl