



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
JUDICIAL REVIEW CAUSE NO. 63 OF 2021**

BETWEEN

**THE STATE (On application of STANLEY
LEONARD TADEYO CHIPETA) CLAIMANT**

AND

COUNCIL OF MZUZU UNIVERSITY DEFENDANT

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Mr. Kadzipatike, Counsel for the Claimant
Mr. Chibwe, Counsel for the Defendant
Mr. Henry Kachingwe, Court Clerk**

JUDGEMENT

Kenyatta Nyirenda, J.

Introduction

This is my judgement on an application for judicial review brought by the Claimant under Order 19, rules 20(1) and 23, of the Courts (High Court) (Civil Procedure) Rules [Hereinafter referred to as the "CPR"].

The Case of the Claimant

The Claimant is challenging the Defendant's failure to process his academic grades up to date despite the fact that the Claimant completed his studies in 2020.

The Claimant seeks the following two reliefs:

- “1. *An Order like to Mandamus compelling the Defendant's Senate to immediately process the Claimant's grades in the Doctor of Philosophy in Theology and Religious Studies program and compelling the Defendant thereafter graduate the Claimant within a reasonable time;*
2. *An order for costs.*”

The grounds upon which reliefs are being sought have been stated as follows:

“The Defendant's failure to process the Claimant's academic grades up to date despite the Claimant herein completing his studies in 2020 is unconstitutional, procedurally improper, and unreasonable for:

- a) *For negatively affecting the Claimant's constitutional rights and freedoms including the rights to education and to economic activity;*
- b) *Not being accompanied, explained and or justified by valid reasons in writing to the Claimant, despite this failure negatively affecting the Claimant's constitutional rights and freedoms including the rights to education and to economic activity as indicated in paragraph (a) above;*
- c) *Not being preceded by the granting of a chance to be heard to the Claimant as to why the Defendant could take a very long time before processing the Claimant's academic grades*
- d) *Being discriminatory in the sense that other students who also completed their various studies in 2020 like the Claimant herein have had their academic grades processed and later permitted to graduate;*
- e) *Contravening the Defendant's mandate under Statute law to process academic grades for students including the Claimant and to thereafter award them distinguished Degrees and or Certificate;”*

The Claimant's sworn statement in support of his application for judicial review is couched in the following terms:

- “3. **THAT** *the Defendant offered me admission to its Doctor of Philosophy in Theology and Religious Studies program on the 1st day of September, 2015. There is now produced to me my offer letter from the Defendant, **MARKED** and **EXHIBITED** herein as **SLTC 1**.*
4. **THAT** *I duly accepted this offer and enrolled in the Defendant's said Doctor of Philosophy in Theology and Religious Studies program in the 2015/2016 Academic Year.*

5. **THAT** I completed my said studies in the year 2020. There is now produced to me my Certificate of Completion from the Defendant which is dated the 09th day of November, 2020, **MARKED** and **EXHIBITED** herein '**SLTC 2**'.
6. **THAT** the Defendant's Senate has up to the present day not yet processed my academic grades.
7. **THAT** the Defendant herein has not provided me with any reasons in writing as to why my academic grades are not being processed by its Senate up to the present day despite my completion of studies in the year 2020.
8. **THAT** neither has the Defendant herein also called me for a hearing as regards the circumstances, if any, that are making it impossible for my academic grades to be processed by its Senate up to the present date.
9. **THAT** noticing that time is running out with the Defendant not making any arrangements so that my academic grades are processed or that I indeed graduate, I have approached my Department and the University Registrar but to no avail.
10. **THAT** I recently engaged my lawyers who wrote the Defendant's Registrar on this anomaly. There is now produced to me the recent letter to the Defendant's Registrar, **MARKED** and **EXHIBITED** herein as '**SLTC 3**'.
11. **THAT** I repeat the contents of paragraphs 7 and 8 above and further depone that I verily believe that the Defendant's conduct herein is thus unjustifiable, improper, unreasonable and illegal.
12. **THAT** this said conduct by the Defendant is also seriously inconveniencing me and in the same fashion negatively affecting my Constitutional freedoms, legitimate expectations and rights including the rights to economic activity and education.
13. **THAT** for example, I am failing to apply for and or secure jobs requiring a Doctorate Degree in Philosophy in Theology and Religious Studies.
14. **THAT** I have also been reliably informed by my Legal Practitioners that the Defendant has a Statutory duty and or function to process students' academic grades and thereafter to award the successful students Degrees and Diplomas, and other academic distinctions, including Honorary Degrees and distinctions.
15. **THAT** in full view of paragraph 14 above, I am of the fortified view that the Defendant's unjustifiable failure to process my academic grades, myself having completed my studies in the year 2020, is a clear abdication of its said statutory duty and or function, procedurally improper, unreasonable, made in bad faith, and unconstitutional.
16. **THAT** I have further been reliably informed that other students who completed their studies at the Defendant's institution have had their academic grades

processed and permitted to graduate in the recent graduation ceremony which the Defendant presided over on or around the 03rd day of December, 2021.

17. ***THAT*** I repeat the contents of paragraph 16 and further depone that the Defendant is thus discriminating against me, more so when no valid reasons in writing have been proffered to me by the Defendant as to why only my grades are not being processed by the Defendant's Senate like those of my previously fellow students who have proceeded to graduate.
18. ***THAT*** in full view of the foregoing, I maintain that the Defendant's failure to process my academic grades up to the present date despite my completion of studies in or around the year 2020 is unconstitutional, unreasonable, procedurally improper and unlawful. I thus hereby apply for Judicial Review of the Defendant's said failure to process my academic grades.
19. ***THAT*** I further seek Judicial Review on the grounds and for reliefs contained in Form 86A filed herewith."

The Case of the Defendant

The Defendant is opposed to the application and it filed the following Defence:

1. The Defendants refer to the Grounds of Notice of Application for judicial Review the Grounds on which the Relief is sought and the Sworn statement in support of the Application for judicial Review by Stanley Leonard Tadeyo Chipeta and avers that:
 - 1.1 The Defendant is student at Mzuzu University and is currently studying for a Doctor of Philosophy in Theology and Religious studies under the Faculty of Humanities and Social Sciences.
 - 1.2 After the completion of his studies, the Department of Theology and Religious studies submitted the end of program results to the Graduate Studies Committee, which is a committee of the Senate responsible for post graduate Studies, a Committee for consideration and recommendation of the results to the Senate for approval upon satisfaction of the requirements.
 - 1.3 Unfortunately, on its meeting on 16 March 2020, the Graduate Studies Committee, observed that:
 - 1.3.1 The Faculty of Humanities and Social Sciences did not present a copy of the candidate thesis, reports from the supervisor and examiners and minutes of the faculty assessment committee.
 - 1.3.2 The faculty did not present a marking scheme with examiners feedback showing how the candidate addressed questions and comments.

- 1.4 *As a result of these observations, the results of the Claimant were sent back to the faculty results and the faculty was requested to resubmit the results together with the comprehensive examiners reports.*
- 1.5 *On 5 August 2021, the faculty resubmitted the results but the same were sent back as well as the committee further observed that:*
 - 1.5.1 *Minutes of the viva voce were missing.*
 - 1.5.2 *There were no clear assessment criteria for the viva voce.*
 - 1.5.3 *The main supervisor for the Claimant did not have a Doctorate Degree, which was a serious anomaly.*
- 1.6 *Up to date, the Faculty of Humanities and Social Sciences is yet to re-submit the revised reports for confirmation by the Graduate Studies Committee so that it can submit them to Senate for approval.*
2. *The Defendants further avers that:*
 - 2.1 *The process of awarding a Post Graduate Degree to a candidate is strict and the Defendant ensures that all the processes regarding academic quality assurance are followed before a degree is conferred to a candidate.*
 - 2.2 *The results of the claimant are being processed by the Senate and once the Faculty of Humanities and Social Sciences implements the recommendations made and submits the requisite reports, the Senate will approve the said result and the Registrar of the Defendant will duly communicate the same to the Claimant.*
 - 2.3 *The claimant has always been appraised of the status of his results and the delays thereto through the Dean of Faculty of Humanities and Social Sciences.*
3. *Save as herein expressly admitted, the Defendants deny each and every allegation of fact contained in the application for judicial Review, the Grounds on which the Relief is sought and the Sworn statement in support of the Application as if the same were set out herein and traversed seriatim."*

The Defendant also filed with the Court a statement sworn by Mr. Wezi Galera Shaba. Mr. Shaba holds the post of the Assistant Registrar (Academic and Planning) for the Defendant and he depones as follows:

1. *The Claimant is still a student at Mizuzu University (hereinafter simply referred to as the University) and he is currently studying for a Doctorate of Philosophy in Theology and*

Religious Studies under the Faculty of Humanities and Social Sciences and as a student he is bound by the rules and regulations within the University including the Mzuzu University Student Information Handbook

2.

Per Clause 2.3. of the Mzuzu University Student Information Handbook, results are supposed be approved by the Senate of the University first and it is only after such approval that the University Registrar will notify him in writing of the outcome of the results. The said clause provides that:

2.3 Publication of End of Semester Examination Results

2.3.1 The University Registrar shall be responsible for the publication of the end of semester examination results as approved by the Senate.

2.3.2 Lists of successful candidates shall be posted on University notice boards and the University Registrar shall notify every candidate in writing.

2.3.3 The results obtained by a candidate in any examination shall not be published unless and until he/she has paid all fees and other monies due and payable to the University

I now produce a copy of the Handbook marked as "WGS 1"

3.

Before the results can be approved by the Senate, they have to go through first the Graduate Studies Committee. This is a Committee of Senate, made up of Deputy Deans of Faculty and Programme Coordinators of post graduate studies of all faculties in the University and is responsible for the management of all post graduate studies in the University, and which is tasked to verify that the respective departments and faculties have assessed the results of the candidates following standards set by the University in compliance of the National Council of Higher Education (NCHE) guidelines at all times, and that all programme requirements have been fulfilled.

4.

The process of awarding a postgraduate qualification to a candidate is very strict and the University through the said Committee ensures that all the processes regarding academic quality assurance are followed before a degree is conferred to a candidate. This is done to ensure that all established procedures are adhered to and to maintain quality standards within and throughout all the faculties of the University.

5.

Per the requirements of the University, after the Claimant had completed his course work and submitted his thesis, the Department of Theology and Religious studies proceeded to assess his work and submitted the end of program results to the Graduate Studies Committee, for its consideration, and upon satisfaction, recommend the results to Senate for approval.

6.

Unfortunately, at its meeting on 16 March 2020, the Graduate Studies Committee, observed that the Faculty of Humanities and Social Sciences at the time it submitted the said results did not present:-

- 8.1. *A copy of the Claimants thesis*
- 8.2. *Reports from the Claimants supervisor and Examiners*
- 8.3. *Minutes of the Faculty Assessment Committee.*
- 8.4. *Marking scheme with Examiners feedback showing how the candidate addressed the questions and comments.*

I now produce minutes of the Graduate Studies Committee meeting dated 16 March 2020 marked as "WGS 2"

7.

As a result of these observations, the results of the Claimant were sent back to the Faculty of Humanities and Social Sciences, and the faculty was requested to resubmit the results together with the comprehensive examiners reports and other documents it had highlighted. I now produce a letter from the Dean of the Faculty of Humanities and Social Sciences to the Head of Department of Theology and Religious Studies dated 18 March 2020 marked as "WGS 3"

8.

On 5 August 2021, the Faculty of Humanities and Social Sciences re-submitted the Claimants results but the same were sent back to the said Faculty as the committee further observed that:

- 10.1. *The minutes of the viva voce assessment done by the faculty were missing and there were no clear assessment criteria for the same which compromised the quality of the theses*
- 10.2. *The main Supervisor for the Claimant, Mr Jonathan Nkhoma, only has a Master's degree and yet he was supervising a Doctorate student, which was a serious anomaly and below the standards that the University set as well as those set by the National Council for Higher Education*

9.

Despite the said observation, the Graduate Committee nevertheless recommended to Senate for approval of the Claimant to be awarded a PhD in Theology and Religious Studies subject to the Faculty of Humanities and Social Sciences making amendments that it had observed during its meeting of 16 March 2020 which included comprehensive reports from examiners and a completed marking scheme. I now produce a copy of the re submission letter from the Faculty of Humanities and Social Sciences dated 25 February

2021 and minutes of the Graduate Studies Committee dated 3 August 2021 marked as "WGS 4" and "WGS 5" respectively.

10.

Since making the said observations and recommendation, the Faculty of Humanities and Social Sciences is yet to re-submit the comprehensive reports and completed marking schemes as requested.

11.

During this whole process, the claimant has always been apprised of the status of the status of his results by the Head of Department of Theology of Religious Studies who is directly responsible for the Claimant as his supervisor. The Claimant has as well participated in coming up with the some of the reports that the Graduate Studies Committee has requested from the said faculty.

12.

If by any chance the Claimant was all along not informed on why his results have not been approved yet by the Senate, as a student of the University it was within his rights and open to him to complain to the Dean of the Faculty of Humanities and Social Sciences in accordance with Clause 2.4 of the Mzuzu University Student Information Handbook which provides that:

2.4. Procedure for Academic Appeals

2.4.1 There shall be an Academic Appeals Committee which shall hear and decide on appeals against the decision of Senate.

2.4.2 Any complaint on academic grounds shall, in the first place be directed to the respective Dean who shall consider the complaint in consultation with the aggrieved student's head of department. Such a complaint shall be made within 21 days of the announcement of results.

2.4.3 Where the complaint has been resolved, the respective Dean shall report the outcome directly to Senate. If the student is dissatisfied with the Dean's decision, the student shall be advised to direct his/her complaint to the Vice Chancellor, who shall institute an appeals committee.

2.4.4 The appellant shall be heard on his/her appeal either orally or in writing and shall where necessarily bear the cost of his/her travel, accommodation and upkeep during the appeals proceedings.

2.4.5 The appellant shall pay all the necessary fees related to appeals as shall be determined by the Council.

2.4.6 The decision of Appeals Committee shall be final.

13.

Unfortunately, there has been no such complaint from the Claimant herein and in absence of such a complaint, the Defendant could not give be expected to give the Claimant a chance to be heard or to give him reasons for the alleged failure to process his academic grades.

14.

In accordance with the University and to ensure academic quality assurance, the results of the Claimant are not ready to be processed by the Senate and they can only be processed by the Senate once the Faculty of Humanities and Social Sciences implements the recommendations made and submits the requisite reports.

15.

In view of the above, there is no basis warranting the reliefs being sought by the Claimant herein and granting the said reliefs will result in the University processing results or producing candidates that do not meet the minimum academic standards set by the University for the said qualifications in breach of the National Council of Higher Education (NCHE) requirements.

WHEREFORE the Defendants pray that the application herein be dismissed.”

The Burden and Standard of Proof

The Court reminds itself that our system of litigation is adversarial and that the party that alleges the existence of certain facts bears the burden of proof in respect of such facts: see **Commercial Bank of Malawi v. Mhango [2002-2003] MLR 43 (SCA)**. Further, as these are civil proceedings, the required standard of proof is proof on a balance of probabilities. This is a lesser standard than that required in criminal proceedings which is proof beyond reasonable doubt.

Issues for Determination

To my mind, there are two main issues to be determined by the Court in this case, namely:

- (a) whether or not the Defendant has inordinately delayed to process the Claimant’s academic grades?

- (b) whether or not the Defendant's failure to process the Claimant's academic grades is unconstitutional, unreasonable, procedurally improper and unlawful?

In arguing their respective cases, the two issues were argued together

It is the case of the Claimant that the Defendant has inordinately and inexcusably delayed to process the Claimant's academic grades. It is thus argued that this conduct by the Defendant is absurd, illogical, unjustifiable and unreasonable. Paragraphs 4.3 to 4. of the Claimant's Closing Submissions are relevant:

- 4.5 *Your Lordship, the Claimant herein completed his studies for the award of a Doctorate of Philosophy in Theology Religious Studies on or around the 09th day of November, 2020. The Claimant has since this said date been waiting for the Defendant to process his grades and thereafter have him graduate with the Doctor of Philosophy in Theology and Religious Studies.*
- 4.6 *No valid and or plausible reason for this inordinate delay has however been communicated in writing to the Claimant by the Defendant.*
- 4.7 *Noticing that time is running out with the Defendant not processing the Claimant's academic grades, the Claimant approached his Department and the University Registrar. All these exercises only emerged futile. The Claimant also recently engaged his lawyers who wrote the Defendant's Registrar on this anomaly.*
- 4.8 *Surprisingly, the Defendant's Senate recently processed academic grades of other students who have graduated on the 03rd day of December, 2021. Leaving out the Claimant herein.*
- 4.9 *Your Lordship, it the Claimant's contention that this conduct by the Defendant is absurd, illogical, unjustifiable and unreasonable. More so when there are no valid and or plausible reasons in writing communicated to the Claimant by the Defendant.*
- 4.10 *Secondly, the Defendant has also at no point in time granted the Claimant audience as to why it is taking too long to process the Claimant's academic grades, the Claimant having completed his studies in the year 2020.*
- 4.11 *For purposes of emphasis, Your Lordship, this conduct by the Defendant negatively affects the Claimant's Constitutional freedoms, legitimate expectations and rights including the rights to economic activity and education. How so?*
- 4.12 *The Claimant cannot, for instance, apply for and or secure employment and subsequent remuneration requiring a Doctorate of Philosophy in Theology and Religious Studies which he could have applied for and secured had he been awarded the Doctorate herein, upon processing of his academic grades.*

- 4.13 *As already stated above, good practice required that the Defendant at least do grant the Claimant a chance to be heard as regards this inordinate delay in processing his academic grades and or that the Defendant do furnish the Claimant with valid reasons in writing accompanying its failure to process his academic grades in time.*
- 4.14 *In sum, Your Lordship, the only conclusion that a reasonable bystander and or tribunal can reach in the premises is that the Defendant is only guided by bad faith. This conduct, as already stated above, also being procedurally improper, illegal and unreasonable in Wednesbury sense.*
- 4.15 *It is the Claimant's humble prayer that this Honourable Court should equally find as such.*
- 4.16 *Going through the Defendant's Defence on the record, Your Lordship, the following will be noticed.*
- 4.17 *Firstly, Your Lordship, the Defendant is not denying the fact that up to date, it has not processed the Claimant's academic grades despite the fact that the Claimant's completion of studies in the year 2020.*
- 4.18 *Secondly, Your Lordship, the Defendant has not pleaded any valid reason for this inordinate delay in processing the Claimant's academic grades. In all fairness, the Claimant should not be penalized in any way for the Defendant's own wrong doings and or maladministration.*
- 4.19 *For the record, Your Lordship, it was not the Claimant who picked his supervisor who, according to the Defendant, was not competent to be the Claimant's research supervisor for want of having a Doctorate of Philosophy Degree. It was the Defendant itself. It thus nonsensical to now start attributing its failure to process the Claimant's academic grades to the Claimant's said supervisor and or the Claimant himself. Surely, these are internal matters which should have no any effect on the Claimant's Constitutional right to education.*
- 4.20 *Going further, Your Lordship, the Defendant is not justified in Defence in asserting that the processing of the Claimant's academic grades has delayed because the Defendant itself failed to submit the Claimant's academic documentation to its [the Defendant's] Graduate Studies Committee on the 16th day of March, 2020.*
- 4.21 *The Defendant knew and or ought to have known that it was in fact supposed to submit all necessary documentation of my scholarship to its said Graduate Studies Committee for purposes of processing my academic grades. Needless to mention that a reasonable learning institution in the foot of the Defendant could not have sent grades for marking without submitting to the markers, the student's necessary academic documentation.*
- 4.22 *Your Lordship, even the timing itself is improper. From the said 16th day of March 2021 to the present day, the Defendant could have made sure that in the shortest*

time, it submits the Claimant's said academic documentation to its said Graduate Studies Committee upon noticing the anomaly in paragraphs 4.20 and 4.21 above.

- 4.23 It is thus the Claimant's prayer that this Honourable Court should find and hold that the Defendant's conduct in the said paragraphs 4.20 and 4.21 above was and remains grossly unreasonable in the *Wednesbury* sense.
- 4.24 Your Lordship, it is also surprising that the Claimant's fellow students who completed studies together with the Claimant in the year 2020 have had their academic grades processed and thereafter permitted to graduate. With the Claimant, only left behind. Clearly and as shown from the foregoing, there is no justification for this unfairness on the part of the Claimant as occasioned by the Defendant.
- 4.25 It is the Claimant's I humble prayer before this Honourable Court for a finding that the Defendant has in the premises discriminated against the Claimant.
- 4.26 Your Lordship, Defendant herein is also not being honest before this Honourable Court in its Defence in asserting that the Claimant has always been appraised of the status of the processing of his academic grades.
- 4.27 Your Lordship, the Defendant herein is also not being honest before this Honourable Court in asserting that the Claimant herein has always been appraised of the status of the processing of my academic grades.
- 4.28 It is common place that the Claimant herein could not have written the letter to the Defendant's Registrar, the same letter which is exhibited in the Witness Statement of **LEONARD TADEYO STANLEY CHIPETA** in support of the present Judicial Review proceedings as '**SLTC 3**' and or commencing the present Judicial Review proceedings for the Defendant could have, then, valid reasons for delaying the processing of the Claimant's academic grades.
- 4.29 Your Lordship, as if the contents of paragraph 4.28 above are not enough, the Defendant herein has also not brought before this Honourable Court any evidence that the Claimant has indeed always been duly appraised of the progress in its alleged processing of my academic grades.
- 4.30 It is the Claimant's prayer that this Honourable Court should disregard this assertion by the Defendant that it has always appraised the Claimant herein as regards the processing of his academic grades.
- 4.31 Your Lordship, evengoing through the Sworn Statement of the Defendant's Assistant Registrar Wezi Galera Shaba which verifies the Defendant's Defence which up to now carries its assertion that I have always been notified of what is obtaining in as far as the processing of my academic grades is concerned, Your Lordship will notice that no evidence has been brought forward solidifying the Defendant's false assertion that the Claimant has indeed always been notified of the said progress of the processing of my academic grades by the Defendant.

- 4.32 *In full view of the foregoing, Your Lordship, I remain of the fortified view that the Defendant's unjustifiable failure to process the Claimant's academic grades, the Claimant himself having completed his studies with the Defendant in the year 2020, is a clear abdication of its said statutory duty and or function to process and thereafter to let the Claimant graduate, procedurally improper, unreasonable, made in bad faith, and unconstitutional.*
- 4.33 *The Claimant thus humbly prays that this Honourable Court should proceed to grant him all the reliefs as rightly contained in his Form 86A on the record."*

The position of the Defendant is that much as it admits that it has taken long to process the Claimant's academic grades this is due to a number of factors as listed in paragraphs 1.3 to 2.2 of the Defence. In the interest of parity of treatment, the relevant part of the Defendant's submissions will also be quoted:

- 4.1 *The evidence before this court shows that the Defendants Senate, through the Graduate Studies Committee, has since the time the Claimant finished his studies considered the grades that the Claimant has had after the same were submitted to it by the Faculty of Humanities and Social sciences. Unfortunately, the said grades have been sent back due to lack of supporting documents which go to the root of how the grades that the Claimant got were assessed.*
- 4.2 *The importance of Quality assurance in a university cannot be emphasized. Quality assurance is a driver for institutions to achieve excellence in higher education and this can only be done if a university ensures the successful implementation of its standards and policies in the University as a whole*
- 4.3 *If at all there has been a delay, the said delay is a reasonable and a justifiable in the circumstances considering that the Defendant being an institution of higher learning, needs to ensure that grades that it is approving or processing are grades that have passed the minimum standards it has set within the own policies and regulations.*
- 4.4 *Assuming that the Claimant was not appraised of the developments or progress of his grades, surely one would expect the Claimant to inquire from the relevant Faculty as to the hold up of his results. From the evidence, there is no evidence from the Claimant herein that in any way he complained to either the Dean of the Faculty of Humanities and Social Sciences or the head of Department of Theology and Religious Studies which were in any way persons directly under his Program of study.*
- 4.5 *There is no evidence of any requirement for the University to communicate to a student before the results are processed. The University will only communicate concerning the results when the same have been approved by the senate and the same is done by the university Registrar.*

- 4.6 *It would be absurd to expect the University to furnish the Claimant with reasons or to give him a chance to be heard in the absence of a complaint directed to the Dean of the Faculty of Humanities and Social Sciences from the Claimant highlighting or complaining about the Universities Senate failing to process his academic grades in time.*
- 4.7 *Considering issues of academic quality assurance, the results of the Claimant can only be processed by the Senate once the Faculty of Humanities and Social Sciences implements the recommendations made and submits the requisite reports.*
- 4.8 *For the Claimant herein, to qualify for the award of any degree being taught at the University, there is a requirement that his results should be approved by the Senate of the University first and it is only after such approval that the University Registrar will notify him in writing of the outcome of the results.*
- 4.9 *There is therefore no basis warranting the granting of the reliefs being sought by the Claimant herein and the evidence herein shows that granting the reliefs sought will clearly result in the University processing the Claimants grades when the same do not meet the minimum academic standards set by the University for processing the said grades."*

I have considered this matter, including the respective sworn statements, skeleton arguments and oral submissions. A number of points are not in question. Firstly, it is commonplace that the Claimant completed his studies in November 2020.

Secondly, it is expected that in the ordinary course of things the grades of an earlier class of students have to be processed prior to those of a latter class of students. Thirdly, it is not in dispute that other students who completed their studies well after the Claimant had done so have had their academic grades processed and permitted to graduate.

Fourthly, as rightly submitted by the Claimant, the delay or failure by the Defendant to process the Claimant's academic grades is of the Defendant's own making. It is not the Claimant but the Faculty of Humanities and Social Sciences that failed to present to the Graduate Studies Committee at its meeting on 16 March 2020 the documents listed in paragraph 6 of the sworn statement of Mr. Shaba. More importantly, no explanation whatsoever has been put forward by the Defendant for its failure to present these documents. Needless to say, it is mind boggling how the Defendant expected the Graduate Studies Committee to do its job without having recourse to (a) a copy of the Claimants thesis, (b) reports from the Claimants supervisor and Examiners, (c) minutes of the Faculty Assessment Committee and (d) marking scheme with Examiners feedback showing how the candidate addressed the questions and comments.

Fifthly, it is not uninteresting to observe that much as the request to the Faculty of Humanities and Social Sciences to resubmit the Claimant's results together with the other relevant documents was made on 18 March 2020, the re-submission was not made until 5th August 2021. No explanation whatsoever has been given why it had to take more than one year and four months to make the re-submission.

Sixthly, it appears that inertia is the norm when it comes to the Defendant's handling of the Claimant's issue as evidenced by the fact that the things that the Graduate Studies Committee, at its meeting held on 3rd August 2021 recommended to be done, that is, re-submission of the comprehensive reports and completed marking schemes have yet to be done: see paragraphs 15, 16 and 17 of the sworn statement by the Mr. Shaba. Here again, there is no explanation why it has to take more than six months to make the re-submission.

In view of the foregoing, it is my finding and holding that the Defendant is guilty of inordinate and inexcusable delay in processing the Claimant's academic grades. This being the case, it would be unfair and inequitable to allow the Defendant to rely on its own mistakes to hang the Claimant without the Defendant suffering any consequences itself.

I am also persuaded by the submissions made by the Claimant that the Defendant's failure to process the Claimant's academic grades is unconstitutional, unreasonable, procedurally improper and unlawful, as pleaded and argued by the Claimant.

Whether or not the Claimants are entitled to the reliefs being sought?

As already mentioned, the main relief being sought by the Claimant is an order *"compelling the Defendant's Senate to immediately process the Claimant's grades in the Doctor of Philosophy in Theology and Religious Studies program and compelling the Defendant thereafter graduate the Claimant within a reasonable time"*

The Court has already found and determined that there is inordinate and inexcusable delay on the part of the Defendant in process the Claimant's grades in the Doctor of Philosophy in Theology and Religious Studies program. The Claimant is entitled to an effective remedy. When asked by the Court how long it would take to re-process the Claimant's grades, Counsel Chibwe (acting on advice of the Defendant's representatives present in Court during the hearing) stated that a period of at least three months would be needed. I, accordingly, order the Defendant, acting through itself or its lawful agents, to process the Claimant's grades in the Doctor of Philosophy in Theology and Religious Studies program within 90 days of the date hereof. It is so ordered

It goes without saying that the criteria to be used in processing the Claimant's grades have to be the ones that were legally in place at the material time, that is, when the Claimant enrolled in the Defendant's Doctor of Philosophy in Theology and Religious Studies program in the 2015 and when he completed his studies in 2020. For example, it would be disingenuous for the Defendant to start demanding at this stage that the Claimant should have a research supervisor who holds a Doctorate of Philosophy Degree. As already discussed hereinbefore, the research supervisor for the Claimant was not chosen by the Claimant but by the Defendant itself.

For the sake of clarity, the powers of the Court cannot go beyond ordering the completion of the processing of the Claimant's grades in the Doctor of Philosophy in Theology and Religious Studies program.

Costs

Regarding costs, these normally follow the event and since the Claimant has succeeded in his application for judicial review, the costs of these proceedings have to be borne by the Defendant. I so order.

Pronounced in Court this 5th day of April 2022 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE