

KARREN DUBE

APPLICANT

Versus

LUPANE STATE UNIVERSITY

1ST RESPONDENT

And

MCLEAN BHALA

2ND RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 16 JANUARY & 21 FEBRUARY 2013

J Tshuma for the applicant
S Chamunorwa for the respondents

Judgment

CHEDA AJ: The applicant was appointed by the 1st respondent, initially as a lecturer, then later as a Dean of Studies in the same institution.

While she was in occupation of this position on the 12th day of December 2012 she received a letter from the second respondent who is Acting Vice-Chancellor of the 1st respondent, advising her that the second respondent intended to appoint certain persons to the position of Acting Dean of Agricultural Sciences and Acting Dean of Humanities. She says such appointments are a breach of the express terms, alternatively, the implied terms of her contract with the first respondent.

She said her letter of appointment as Dean of Studies granted her authority over the Faculties of Agricultural Sciences and Humanities and Social Studies, and the effect of the purported appointments will limit the scope of her authority in so far as she will only have oversight over certain departments within the Faculty of Humanities.

She also pointed out that in terms of Clause 5.1 of the Faculty of Governance Ordinance 23, the Dean is the Chief Academic, Administrative and Finance Officer for the Faculty. She went on to state that the appointments are unlawful as the 1st respondent is a statutory body and its members are bound by the provisions of the Lupane State University Act [Chapter 22:25] and appointments made in contravention of the Act are invalid. She said the second respondent does not have the power to make the appointments and is acting *ultra vires* the provisions of the Act. She said such powers are held by the Senate.

Prior to this, she had once been suspended, and Acting Deans were appointed, but when she challenged the appointments she was reinstated and the appointments of Acting Deans were set aside, but despite a memorandum to that effect they were allowed to continue in occupation of the offices they had been granted and enjoying the benefits that accrued to those positions. She instituted a court application for contempt of court which is still pending under case number HC 2311/12. She complained that she will suffer prejudice as the purported appointments of Acting Deans will unlawfully usurp certain of her powers and responsibilities as Dean of Studies and affect her ability to perform her duties.

She seeks, in a provisional order, that the 2nd respondent be interdicted from making those appointments, and that if the appointments have been made, that such persons be removed from those appointments.

The 2nd respondent who deposed to the opposing affidavit on behalf of the 1st respondent by virtue of his position as its Acting Vice Chancellor said only the 1st respondent should have been sued. He said the applicant has no *locus standi* to challenge the appointments of Acting Deans and it was not within her right to challenge the appointments. He said she had not established that she has a *prima facie* right or that any of her rights have been violated and that there is no other remedy. He said since the appointments have been effected she cannot use an interdict to address perceived past wrongs. He went on to state that the applicant will not suffer any financial prejudice as she will continue to receive her pay in terms of her contract of employment. He prayed for the dismissal of urgent applicant with costs.

The 2nd respondent also submitted that the University Act does not deal with the smooth running of the university such as interim measures and appointments of persons in acting capacities.

After hearing both parties I make the following observations:

1. The Acting Vice Chancellor had to be included as the appointments were made by him.
2. The fact that the Acting Deans continue to occupy offices allocated to them does not affect or violate the applicant's rights. She does not own those offices.
3. The fact that the 1st respondent has advanced some persons to positions of Acting Deans does not violate the applicant's rights.
4. The fact that the appointments of the Acting Deans may not have been made in accordance with the provisions of the University Act does not violate the applicant's rights.
5. In my view, what violates the applicant's rights is the allocation of responsibilities, that is, if the appointed Acting Deans interfere with the rights and powers of the applicant to carry out her officially allocated functions in terms of her contract.

It seems correct that the applicant has no *locus standi* to challenge any appointments of other members of staff or their advancements by the 1st respondent.

It is clear from the papers that the applicant is concerned with the possible interference of her authority to carry out her functions as Dean of Studies. Her concern should be limited to that and that only.

The Acting Deans concerned were not cited in these papers, and it would therefore not be proper to make an order that adversely affects them when they have not been cited.

The 1st respondent is an autonomous entity. This court cannot take it upon itself to interfere with the exercise of its autonomy. If the exercise of such powers are challenged by a person or persons who have proper *locus standi* to do so then the use of that authority can be put under scrutiny.

In this case the applicant can only seek relief against what directly affects her. What the 1st respondent wants to do with the appointed Acting Dean is up to it. This court cannot order that their appointments be reversed. The order that the applicant is entitled to is one concerning the exercise of her authority over the Faculty as granted to her by her contract of employment.

The main grievance of the applicant is clearly stated in paragraph 5(e) of her founding affidavit where she says.

“I will suffer prejudice in so far or as the purported appointments will unlawfully usurp certain of my powers and responsibilities as Dean of Studies and affect my ability to perform my duties.”

In my view the following order grants her the relief she seeks:

Order

1. The first and second respondents are interdicted from interfering with or usurping the applicant's powers, authority and functions granted to her by the terms of her contract as Dean of Studies.
2. In the event that such powers have been removed or altered they must be restored.
3. The respondents are to pay the cost of this application.

Judgment No. HB 39/13
Case No. HC 4251/12
X REF HC 1008/12; 2311/12

Webb, Low & Barry, applicant's legal practitioners
Calderwood, Bryce Hendrie & Partners, respondents' legal practitioners