COUNCIL OF LEGAL EDUCATION v MORRIS MARCEL CHIKANGE SOKONI
(1986) Z.R. 41 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND SAKALA, JJ.S.
10TH APRIL AND 28TH MAY, 1986
(S.C.Z. JUDGMENT NO. 10 OF 1986)

Flynote
Administrative law - Certiorari - Severity of sanction - Whether appropriate procedure
Legal Practitioners - Council of Legal Education - Student Rules - Revocation of enrolment of student - Procedure on complaint.
Legal Practitioners - Council of Legal Education - Student Rules - Disciplinary procedures - Penalty of revocation.

Headnote
The respondent was enrolled as a student with the Council of Legal Education on 25th August, 1975 after executing Articles of Clerkship, with his principal. During the currency of the student's enrollment, the Council was called upon on three separate occasions to consider disciplinary complaints against him. He was barred from taking his examinations. After considering the complaint and exculpatory statement relating to the third incident, the Council acting under Rule 26 of the Student Rules, decided to revoke the student's certificate of enrollment. The respondent then moved the High Court for an order of certiorari to quash the revocation. The Court granted the order solely on the ground that as the complaint had been brought by the secretary who was not competent there was no complaint before the Council and accordingly its proceedings and decision were nullities.

Held:
(i) Nothing in the Student Rules prevents the Secretary from presenting a complaint reviewed by him nor the Council from being the direct complainant; and having lodged a complaint, the Council is entitled to regulate its own procedure.
(ii) The Council has a general authority and jurisdiction under part III of the Legal Practitioners Act and from the Student Rules to disallow a student from sitting for examinations while considering the complaint against him; this action does not constitute a second punishment.
(iii) Certiorari can be awarded where inter alia
- It is shown that there was a lack of jurisdiction
- there is an error of law on the face of the record
- there is a breach of any applicable rules of natural justice or there has been some fraud or collusion and not on a complaint against the severity of a sentence or sanction

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Legislation referred to:

Council of Legal Education, Student Rules, r.26 (1)(2)
Legal Practitioners Act, Cap. 48, s.7 (6) Part III
Supreme Court of Zambia Rules, Cap. 52 r. 71 (1)(b)

For the appellant: A. M. Hamir, Messrs Solly Patel, Hamir and Lawrence,
For the respondent: No appearance

Judgment
NGULUBE, D.C.J.: delivered the judgment of the court.

On 10th April, 1986 we allowed this appeal and said we would give our reasons later. This we now do. It should also be mentioned that the appeal was heard in the absence of the respondent in accordance with Rule 71 (1)(b) of the Supreme Court Rules since it was shown to our satisfaction that the respondent had been notified. For convenience we will refer to the appellant as the Council and the respondent as the student.

The facts of the case briefly stated were that the student was enrolled as such with the Council on 25th August, 1975 having executed Articles of Clerkship with his principal. During the currency of the student's enrolment, the Council was called upon on three separate occasions to consider disciplinary complaints against him. The first was that in 1979 the student paid his examination fees by cheque which was dishonoured by the bank. The student was reprimanded. The second was that in 1980 he was during an examination in jurisprudence found in possession a booklet on the subject which he should not have taken into the examinations room. He was debarred from taking two subsequent examinations. The third and final incident occurred in February 1982, when two cheques - for K10 and K7 - tendered by the student as examination fees were dishonoured by the bank. He was called upon to explain the dishonour and to show cause why his enrolment should not be revoked. The student duly made written explanation and appealed for leniency and forgiveness. The Council considered the complaint and the exculpatory statement and decided to revoke the student's certificate of enrollment.

The Council acted under Rule 26 of the Students Rules and this reads:

> "(26)(1) If any complaint is made to the Council as to the conduct of any student or any person who, having been enrolled as a student cut whose certificate of enrolment is considered under these Rules to be of no effect and who applies to be re-enrolled (in this rule referred to as a "former student") the Council may, after giving to the student or former student an opportunity to be heard upon such complaint, and if it finds the complaint to have been established:
>
> (a) Admonish the student or former student and cause an entry of such admonishment to be made against his name upon the Roll;
> (b) Refuse to register the articles or further articles of the student or former student, as the case may be;

> (c) Postpone the date upon which the student or former student may sit for any

examination or any Head or Part thereof provided for in these Rules.
(d) Refuse to re-enrol the former student;
(e) Revoke the certificate of enrolment of the student.

(2) Any complaint to the Council shall be made to the secretary who shall refer such complaint to the Council unless he considers it to be frivolous."

The student moved the High Court for an order of certiorari to quash the revocation of his certificate of enrolment. He advanced four grounds and these were as follows:

1. There was no complaint before the Council against the conduct of the Applicant to entitle the Respondent to inquire into the conduct of the Applicant contrary to Rule 26 of the Student Rules 1973.
2. The applicant was disciplined more than once on the same set of facts first before he was asked to exculpate himself after delivery of his exculpatory statement.
3. The Applicant's case was prejudged and the punishment preconceived before the Applicant was given an opportunity to be heard in breach of the rules of natural justice.
4. The decision is generally harsh having regard to all the circumstances of the case.

The case was tried entirely on affidavit evidence and submissions. In relation to the first ground, Counsel for the student in the Court below, argued in effect that when the officials responsible for receipts and banking reported that fact of dishonour of the cheques to the secretary of the Council such report was not a complaint and that when the secretary brought the report to the Council's attention, that did not amount to a complaint being lodged. The learned trial judge upheld this submission though on a somewhat different argument. He found that the Council treated its secretary as a complainant and argued that as subr-ule 2 of Rule 26 contemplated that complaints should be made to the secretary, the latter could never himself be a complainant. The learned trial judge determined to the effect that as the secretary was not a complainant, there was no complaint before the Council and accordingly its proceedings and the decision complained of were nullities. He granted the order sought by the student on that ground alone and therefore found it unnecessary to deal with grounds 2, 3 and 4 which we have set out.

On behalf of the Council, Mr Hamir asked us to reverse the determination by the learned trial judge. He argued that the officials who made the report to the secretary did lodge a complaint and that all the correct procedures were observed in this matter. We have given this issue due consideration and we are quite satisfied that the determination by the learned trial judge cannot be supported and must be reversed. In the first place there is nothing in Rule 26 or any other rule to suggest that a complaint to the Council against the student must take any particular form or that a particular set of words or documents must be employed for what is a complaint in fact to be regarded as a valid complaint. The student's valiant argument that a report made by the responsible officials was not a valid complaint was in our considered view wholly devoid of substance or merit and should not have been entertained. But what is more important is the need for us to correct the erroneous proposition likely to be gathered from the finding that the secretary could not present the complaint to the Council and could never himself be the complainant. Once again there is nothing in Rule

26(2) which precludes the secretary from presenting a complaint received by him. If the facts were that the secretary and through him the Council it self was the direct complainant, such as in this very case where the Council itself must be aggrieved by the misconduct complained of, there is nothing in the rules which can be read as precluding the Council from conducting disciplinary proceedings on its complaint. It cannot follow, as argued by the learned trial judge, that because the sub-rule sets out a procedure to be followed by complaining third parties, the Council is debarred from complaining of misconduct against itself. We are satisfied that to the extent that the rules deal with procedure they cannot be read as shutting the door when a situation arises which is not specifically covered. In any case the Council is entitled to regulate its own procedure by virtue of section 7(6) of the Legal Practitioners Act, Cap. 48.

Having reversed the learned trial judge on the one ground that he did consider, the question arose whether we should remit the case back to him for a determination on the rest of the grounds put forward by the student. However, we agree with Mr Hamir's submission that because all the evidence was contained in affidavits and all the submissions appear in the record before us we are in as good a position as the learned trial judge was to resolve those other issues. For that reason, we now proceed to consider the student's other grounds.

Under the second ground the student alleged that he was punished twice for the same misconduct. When the third incident of misconduct was brought to his attention but before the revocation was imposed, he was barred from sitting for an examination pending the outcome of the disciplinary proceedings which had been set in motion. It was argued that by barring him the Council imposed the penalty prescribed under Rule 26(1)(c). It seems obvious to us, on the affidavits, that when the Council disallowed the student from taking the examination, the Council was not imposing a sanction after finding against the student on the complaint. It was common cause that the complaint was then still under consideration. In our view, the action taken at the time, (which

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suspended the student's rights and privileges), can only have been in the exercise of the Council's general jurisdiction and authority over, inter alia, the student whose conduct and whose entire position as student must necessarily have been in question. This general authority and jurisdiction appears from part III of the Legal Practitioners Act as well as from the Students Rules themselves. It is the function of the Council to be concerned with the personal integrity and fitness of persons aspiring to become legal practitioners and it would be untenable to argue that there was no power to prevent or to suspend participation in its programmes by students facing what the Council considers to be a serious disciplinary charge. We find against the student on this ground as well.

The third ground alleged in effect that, because it was mentioned in the Council's letter calling upon him to exculpate himself that the Council was contemplating the imposition of the most serious penalty of revocation, the student's case was prejudged and a fair hearing unlikely. We do not think that, because an indication was given to the student that the Council viewed the matter as grave enough to attract the maximum sanction, it can then be armed that any representations made would be futile. On the contrary, fair notice having been given, the student must be regarded as having then appreciated the gravity of the position and the need to put in representations appropriate to the occasion. In the event he did make such representations and the record does not support the

contention that these received short shrift. On the contrary, the Council's minutes on the record before us indicate that the matter was considered fully and the particular penalty was imposed because having regard to the student's attendants the Council "took a very serious view of the case". We find against the student on this ground as well.

The fourth and final ground contended that the penalty was too harsh having regard to the circumstances of the case. The penalty was one which the Council had power to impose and there was no suggestions that the Council had acted in excess or without jurisdiction. We do not see how certiorari can be the appropriate procedure for a complaint merely against severity of a sentence or sanction imposed. The complaint in this regard could not therefore afford a ground for certiorari which can be awarded only on certain grounds: for example, where it is shown that there vitas lack of jurisdiction or there was an error of law on the face of the record or there has been a breach of any applicable rules of natural justice or where there has been some fraud or collusion, None of these issues arise. This ground is also to be of no avail.

It was for these reasons that we allowed the appeal; reversed the determination below and entered judgment for the Council with costs both here and below.

Appeal allowed.