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Legal Issues on Higher Education Students' Management: What the Administrator Must Know

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Abstract: *The university education is deemed as a world of its own, guided by laws establishing it and internal rules and regulations aimed at promoting discipline and effective management. Oftentimes, these rules and regulations are overbearing thereby infringing on the inalienable rights of the students and that of the constitution. The courts as interpreters of the law, in many cases have frowned at the overbearing of institutions laid down rules and regulation to the extent of infringing on the rights of citizens. The Administrator must bear in mind that, although it is the responsibility of the university to set out its guidelines for the behavioural conduct of students, the students shall also rise in the protection of their rights thereby leading to protests, shut down of universities' gates and academic activities and above all infringing on the rights of the student who is entitled to a quality, unhindered education.*

Introduction

Education is the bedrock of development for every society. As stated in Article 26 of the United Nations Universal Declaration of Human Rights (UNDHR), 1948 and Section 18 of the Constitution of Federal Republic of Nigeria, as amended under Chapter II, Fundamental Objective and Directive Principles of State Policy: the right to a quality, unhindered education is an inalienable right of all citizens. However, although the Chapter II of the constitution has been adjudicated as non-justiciable, that provision of the constitution has prescribed a free and compulsory education for all citizens of Nigeria. Thus, since the government cannot be held accountable to this provision of the constitution, parents and guardians bear the brunt in sending their children and wards to institution of higher learning.

The university education is deemed as a world of its own, guided by laws establishing it and internal rules and regulations aimed at promoting discipline and effective management. Oftentimes, these rules and regulations are overbearing thereby infringing on the inalienable rights of the students and that of the constitution. The universities always in defence of these draconian rules and regulation hide under the cover of 'awarding certificates in character and in learning'. The courts as interpreters of the law, in many cases have frowned at the overbearing of institutions laid down rules and regulation to the extent of infringing on the rights of citizens. For instance, under Section 10 of the University of Ibadan Act, where it appears to the Vice-Chancellor that any student at the university has been guilty of misconduct, the Vice-Chancellor may, without prejudice to any other disciplinary powers conferred on him by regulation, direct that such student should not partake in any activity of the university, or the student be rusticated for a specified period or that the student be expelled from the university. This provision is

similar tothat of other universities. Importantly, it must be noted that the University of Ibadan Act doesnot make any provision for the establishment of a Disciplinary Committee. However, there is astanding Students' Disciplinary Committee established by regulation, and this is not contrary tothe powers given to the Vice-Chancellor in S. 10 of the University of Ibadan Act.

It is pertinent to state that some institutions laws, rules and regulations instead of curbing the menace of breach of the constitution, have rather made Administrators Lords over the institution. Thus Eyike (1984), advised that the school with its members and activities should be regulated by constitutional principles and provisions for its effective organization, administration and performance of its complex and essential functions. Also, Mbipom (2004) stressed that, the effective management of school is the pivot upon which the success of the entire educational effort of the nation revolves. Therefore, for the school management to perform its functions efficiently and effectively, it is essential that its decisions are in congruent with the constitutional provisions as they impact on the rights and responsibilities of students. Obi (2004), maintained that, the knowledgeofthe legal provisions as they relate especially to the rights and responsibilities of students should be a prerequisite and in fact, should be of a special interest and concern not only to the school management, but to all members of society who are involved directly or indirectlyintheeducationoftheNigerianyouth.

Thus, breach of fundamental rights of students and constitution are oftentimes the end result of effective management of students in higher institutions of learning.

The school Administrator should know that in as much as there is need to regulate students and ensure that students adhere strictly with the school laid down rules and regulations, the courts have always stood up to the protection of the students once an infringement on the rights of students are perceived by the court. These rights overtime have been decided by several courts of competent jurisdiction to include but not limited to the right to quality and unhindered education, right to fair hearing, right to hold peaceful protest to air their voices, right to freedom of association and right to have unhindered access to the school management in order to discuss issues affecting the students etc. It would be stated here that in order to protect students from the draconian rules and regulations by the school management, the Students Bill of Rights, 2022 which has currently passed 2nd Reading at the floor of the National Assembly. The Bill amongst other objectives seeks to protect the rights and safety of students in higher institutions of learning, promote campus ethics, and other matters incidental thereto, 2020.

This paper shall elucidate on the legal issues of higher education students 'managementand what the Administrator involved in the management of the students should know.

Legal Issues Prevalent in the Management of Higher Institution

The overbearing and draconian management style of higher institutions which often infringes on the rights of students and encroaches on the duties of courts of competent jurisdiction, has given rise to some legal issues in our institutions ofhigher learning for consideration by Administrators, hence the essence of this paper. In as much as the courts of law will not usurp the responsibilities of universities as held in the cases of

MAGIT V. UNIVERSITY OF AGRICULTURE, MARKURDI *and* ***O. A. AKINTEMI V. PROF. C. A. ONWUMECHILI***, the courts will not also fold its arms and watch institutions go beyond its bounds. Where in cases the courts are in direct confrontation with the university, wherein the university have gone beyond its bounds then their actions and decisions will be declared null and void and of no effect as held in the case of ***GARBA V. UNIVERSITY OF MAIDUGIRI***. In the case, a total of 500 students alleged to have been in a riot that led to looting and destruction of properties including the residence of the Vice-Chancellor were expelled from the university after they were found guilty for alleged arson, stealing and indecent assault by the Disciplinary Committee. The Supreme Court upon appeal squashed the expulsion of the students. The apex court frowned at the manner the Students' Disciplinary Committee usurped the powers of the courts.

While the universities argues that it has the sole prerogative to discipline her students in line with the laid down rules and regulations of the university, the courts have reiterated the need for these universities to act within the ambit of the constitution and other statutory relevant laws. This has given rise to legal issue now to be considered.

ISSUE OF FAIRHEARING

The most often quoted reason for this right is the statement of Fortescue J. in ***R V. CHANCELLOR OF UNIVERSITY OF CAMBRIDGE***some 300 years ago. In his wors, His Lordship said succinctly thus:

> The law of God and man both give the party an opportunity to make his defence if he has any. I remember even God Himself didnot pass sentence upon Adam before he was called upon to makehis defence…

The right to fair hearing is to ensure justice and equality. It is geared to enhance the two pillars of democracies: ***Audi Alterem Parterm*** which means "hear the other side" and ***NemoJudex in CausaSua*** meaning "a person cannot be a judge in his own case". Thus by this principle, no citizen can be punished for any alleged actions or inaction without first granting the citizen the right to be heard and such right being exercised in an open court or tribunal or students' committee as in this case. The universities in any attempt to enforce its draconian rules and regulations, must adhere first to the simple right to fair hearing as stipulated under the constitution which is the ground norm. The university is duty bound to first institute a Disciplinary Committee to first investigate and invite the student to defend him/herself from the allegation. The committee must be thorough in their adjudication and such proceedings must be open to all. Although, administrative panels, like a university Disciplinary Committee, are not usually bound by the strict rules of the court, the right to fair hearing is an exception. A University Disciplinary Committee may decide to admit in evidence the testimony of a single witness to discipline a student who has been alleged to have over sped without corroboration, something a court would never admit, however, a University Disciplinary Committee, just like the court, cannot deny any individual their right to fair hearing. In ***ASEIN V. UNIVERSITY OF IBADAN****; and* ***JACOB V. UNIVERSITY OF IBADAN***, the courts have held that University Disciplinary Committees, just like the courts, are bound to observe the rules of fair hearing.In the above cases held at the court of first instance i.e., trial court, the issue before the court was involvement in cultism within the university campus. The Disciplinary Committee set

up by the university never invited the alleged students but only reported to the police and expelled the students. The students approached the court, and the court in anger held the act of the university as an infringement into the rights of fair hearing of the students. In its words, the trial court held that the Disciplinary Committee just like the courts are duty bound to follow the principle of fair hearing and thereafter held the expulsion as overbearing.

Students and university staff are obliged to follow the law and the university regulations. They are to know that as they have rights under the law, the rights and freedom of others must also be respected. If this simple principle is punctiliously observed, most of the brouhaha emanating from students' protests would have been averted because students, while appreciating they have the right to protest, would also respect the rights of others to use the roads and not to be chased off it or molested by demonstrating students. Under the fair hearing principle, a student alleged to have committed a crime should be deemed innocent until proven guilty in line with Section 36(5) of the 1999 constitution as amended.

In **UNIVERSITY OF UYO V. ESSEL**, the Court of Appeal held that before a decision to discipline a student in a university is taken, he/she is entitled to a fair hearing right from the inception to the conclusion of the investigation. The student must know the type and nature of the allegation against him and the kind of statements made against him/her so that he or she can be accorded time and opportunity to correct them in his or her defence. In this case, Linda Onyebuchi Essel a Law student of the University of Uyo was alleged to have been involved in examination malpractice. The university set up a panel which found out that Linda had pre-knowledge of the examination question in PUL 211 titled Constitutional Law. It was found by the panel that the student had a pre-written exam answers and just submitted same after the exam. The university expelled her after her appeal against the University Senate Appeal Panel was unsuccessful. The student approached the court claiming that her expulsion from the university was unconstitutional. Both the trial and Appeal courts found in her favour holding that examination malpractice is an issue of crime and only the courts of law can adjudicate such matter and not by a university panel.

Where the action of the student involves criminal actions or inactions, then the student must be tried by the courts of competent jurisdiction and not by mere Disciplinary Committee set up by the university. The court will not waist its time but to nullify every decision taken by such panel. In **GARBA & ORS V. UNIVERSITY OF MAIDUGURI (supra)** per Uwais JSC have this to say:

> "It is the view of this court that where a person is accused of committing a criminal offence, he must be taken before a court of law for trial and not merely be dealt with by a tribunal"

Thus, the court will exercise its inherent powers over any acts of university that run fowl or contrary to the provisions of the constitution.

ISSUE OF DRACONIAN RULES AND REGULATIONS

The 1999 constitution as amended, is the ***grundnorm*** and ***fonesterigo*** of all laws in Nigeria, which means all other laws derives its existence from the constitution. As such

university rules and regulations which solely are enactments of legally constituted body of the university should not run contrary to the dictates of the constitution. By Section 1 of the constitution which provides for the Supremacy of the constitution states as follows:

1(1) “this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”

1(3) “if any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law to the extent of its inconsistency be void”.

The above provision shows that no law whether rules and regulations geared towards regulating the behaviour of students can go contrary to the constitution. Where this happens, the courts will waste no time in declaring such law, or conduct null and void. In the case of ***GARBA & ORS V. UNIVERSITY OF MAIDUGURI (supra)*** the Supreme Court recognises the right of the university to set its rules and regulations and that the courts cannot usurp the internal duties of a university but however frowned at the flagrant disrespect to the constitution through its draconian rules and regulations thereby infringing on the fundamental rights of citizens. In ***ABIA STATE UNIVERSITY V. ANYAIBE*** a panel acting under the Abia State University Law usurp the powers of the courts by adjudicating on alleged crime, the court dismissed all the decisions of the panel frowning at the attitude of a panel not adhering to the provisions of the constitution. In the case, the student was alleged to have beaten two female students during a confrontation on campus. The student was expelled but the court reversed the action of the university as been overbearing.

Issue of Discrimination

One basic prevalent issue in higher education of learning is the issue of discrimination. The act of discrimination by higher institutions of learning during the process of admission and payment of tuition fees is a menace that has eaten deep into the fabric of universities. For instance, state universities in Nigeria tend to favour indigenes of that state than non-indigenes. Also, the tuition fees for non-indigenes to pay upon their admission into the university till their graduation seem to be higher than what their indigent counterpart pays. A look at the recent admission list of both the Rivers State University and the Ignatius University of Education and tuition fees paid by both indigenes and non-indigenes add credence to this assertion.

A look at these institutions shows less than 45% of admission slots granted to non-indigenes, whereas in tuition fees, these non-indigenes also pay 35% higher tuition fees than their indigent counterpart.

There are incidents where admission is given to students whose parents are from states other than those in which they reside, the students are made to pay higher school fees. Such practices undoubtedly violate Sections41 and 42 of the Nigerian constitution. Johnson and Collins (1979) maintained that, in developed nations such as the United States of America, the only prerequisite to free tuition is residence requirement. This means that any American child is free to attend any primary and post- primary institutions anywhere in the U.S.A. without payment of tuition provided that the student must reside in theschool district in which heor she desire to attend school.

Thus, according to Human Rights Watch, the refusal of the Federal Government of Nigeria to prevail on States in this menace, has relegated many non-indigenes to the status of second-class citizens, a disadvantage they can only escape from by moving to whatever part of Nigeria they supposedly belong in. Although, the supreme court being the apex court need to rise to this injustice done to Nigerians in their home country since the Federal Government has failed, the Administrator should know that this act by states universities is a total breach on the Fundamental Rights provisions of the constitution especially Sections 41 and 42 which guaranteed the freedom of movement and the freedom from discrimination respectively and that the court always rise in the defence of the constitution when issues of breach are presented before it.

ISSUES OF DISCIPLINE AND AWARD OF PUNISHMENT

Although, universities can exercise discipline and award punishment on her students such is required to be in line with the law of the state. The visitor of the university i.e., President or Governor has enormous power over the university that their decisions are final and must be adhered to. In the case of ***UNIVERSITY OF ILORIN V. AKINOLA***, the Apex Court elucidated the visitorial powers of the Visitor of the University, in this case, the President of the Federal Republic of Nigeria, to include the following: (a) appointing other persons to act on his behalf (b) To deal with any affairs of the University (c) To overrule any decision of the Council of the University. (d) To overrule any decision of the Senate of the University.In this case, Akinola was a student of the Appellant university. He completed his B.sc (Hons) degree in Statistics but was refused the award of the said degree. The visitor of the university, President of Nigeria set up a reconciliation committee called, **"Resolution Committee on Politically Victimized and Rusticated Students"** headed by Chief S. K. Babalola wherein the Respondent student was pardoned. With all that, the university withheld the student results and the court held that the university cannot act in contravention with the decision of the visitor to the university who is the President.

Although the court would refuse to meddle into the affairs of the internal mechanism of any university, punishments and any form of discipline should be done in line with the grundnorm. The university can discipline and punish students in line with its rules and regulations as stated by the court in the case of ***O.A. AKINTEMI & ORS V. PROFESSOR C.A.ONWUMECHILI (supra)*** where the apex court per OBASEKI JSC held thus:

> *Upon reviewing the provisions outlined in Section 17 of the University of Ife Law and Statute, it is evident that both the Senate and the Council of the University hold authority over the academic fate of students. The Senate, in particular, serves as the Supreme Academic Authority of the University. As no decision has been made by these governing bodies regarding the recommendations made by the faculty board on the results of the Part IV law examination, the application for an order of mandamus is deemed misconceived and cannot be granted.*
>
> *The jurist further emphasized that courts should not interfere with the functions of the Senate, Council, and Visitor of the University in the selection of suitable candidates for passing examinations and the awarding of certificates, degrees, and diplomas. However, should there be a breach, denial, or abridgment of the civil rights and obligations of students or*

> *candidates during the execution of these functions, the courts are empowered to grant remedies and relief to protect those rights and obligations.*
>
> *In the present case, it has not been demonstrated that such a breach, denial, or abridgment occurred. Therefore, the appeal fails to establish grounds for intervention by the court.*

In the above case, three female students amongst eight students of the university of Ife brought an application for mandamus to compel the university to publish their Final LL.B 5 examination result. However, the Faculty of Law realized that the exam questions leaked and the students had a prior knowledge of them as such withheld same and expelled the students. On appeal to the Supreme Court, the court held that it is the sole prerogative of the university to decide on whom to award certificate based on certain conditions.

However, the Administrator must realize that despite the above decision of the apex court, the court will not fold its arms where any punishment or disciplinary measures awarded run fowl of the constitution and other state laws. The courts must stand to the infringement of students' rights where it is confronted with such breach. For instance, the university have the prerogative to decide whose student's result to publish, but the court would wade in where it perceives certain breach of a student's fundamental rights in cases where the university does not have valid reasons for withholding a student's result or gives a flimsy excuse for such conduct.

The university also cannot award punishment where a student is involved in a crime which ordinarily is within the purview of a court of competent jurisdiction. The Administrator should know that universities are not to meddle into the inherent powers of the court because the outcome of such trial, no matter how logically conducted will be dismissed by the courts as seen in the case of ***GARBA & ORS V. UNIVERSITY OF MAIDUGURI (supra).***

By S. 6 of the 1999 constitution as amended, the courts cannot share its inherent jurisdictional powers with any authorities or institution.

Thus, it would be pertinent to state here that, care should be taken by universities in discipline and award of punishment of students. This is due to the fact that the constitution is supreme and any actions, inactions and statutory provisions that contravene its provision shall not stand due to the other's inconsistency.

Conclusion

The Administrator should as a matter of importance take cognizance of these legal issues in a desire for efficient management of students in higher education of learning. One basic concern for the Administrator should be the protection of students' legal rights in the administration process.

Rules and regulations are geared towards curbing the menace of students/Management confrontation in campuses but this should not be enacted to the detriment of the student who would also be desirous to have his fundamental rights protected and his voice heard.

One prevalent issue that comes to mind is the banning of the female Islamic students from wearing their hijabs in universities and other technical/vocational institutions of higher learning. When the female Islamic students with support from their male Islamic folks stood against such guidelines of higher institutions, it led to several civil unrest across the country. This compelled the Supreme Court to give a landmark judgement putting the issue to rest.

Therefore, the Administrator must bear in mind that, although it is the responsibility of the university to set out its guidelines for the behavioural conduct of students, the students shall also rise in the protection of their rights thereby leading to protests, shut down of universities' gates and academic activities and above all infringing on the rights of the student who is entitled to a quality, unhindered education.

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