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DEPARTMENT OF PUBLIC AND COMPARATIVE LAW

Your Ref:

Our Ref:



25th January 2019

- To:
1. The Vice Chancellor, Makerere University
 2. The Chairperson, Makerere University Council
 3. The Chairperson, MUASA
 4. The Chairperson, MASA
 5. The Chairperson, NUIE

c.c. The Ag. Principal, School of Law



Dear Sirs/ Madam,

RE: LEGAL OPINION ON THE SUSPENSION OF THE CHAIRPERSON MUASA, CHAIRPERSON AND SECRETARY, MASA BY THE VICE CHANCELLOR

We refer to the above subject. As staff in the School of Law, we wish to offer a legal opinion on the matters that have arisen as a result of the said suspensions. These include:

- i) Freedom of association for Makerere University employees;
- ii) Academic freedom; and
- iii) The legality and legitimacy of the suspensions of Association leaders.

1.0 The Facts

On 21st December, 2018 the Chairperson of MASA (Makerere Administrative Staff Association), Mr. Bennet Magara and the Secretary of MASA, Mr. Joseph Kalema were suspended by the Vice Chancellor from University Service as employees on allegations relating to their work as MASA leaders, namely, writing a letter to the University Secretary stating that University management should not meddle in the affairs of staff associations and that on 20th December 2018, the two led a mob to disrupt a session of the University Council. There are other allegations citing "security reports", that these leaders were "inciting other staff to disrupt University activities". The two leaders were suspended as University employees in the Directorate of Internal Audit and the Directorate of Human Resources respectively. The suspension is indefinite.

We have learnt that the above allegations stem from the fact that the two leaders were informing University management that the leadership and affairs of staff associations are a mandate of the



relevant members of those associations. On 20th December 2018, the two leaders simply escorted their newly elected council representative to Council Room but all of them and their elected representative were turned away. There was no mob.

On the other hand, MUASA has made a number of demands addressed to the University Council which included salary arrears, disputing the membership of two specific individuals on the University Council (Mr. Bruce Kabaasa and Hon. Thomas Tayebwa), changes in the Human Resource Manual and irregularities in the dismissal of some critical members of academic staff. In the course of interactions and exchanges between MUASA and management regarding these issues, the Vice Chancellor suspended Dr. Deus M. Kamunyu as a Lecturer in the Department of Forestry, Biodiversity and Tourism. This suspension was also indefinite.

2.0 Legal Opinion

2.1 Freedom of Association

We wish to state that every Ugandan has a constitutional right of freedom of speech, and expression and freedom of association which includes “freedom to form and join associations, or unions, including trade unions and political and other civic organisations.” (Article 29 (1) (a) and (e) of the Constitution). This freedom is further emphasized in Article 40 (3) (a) of the Constitution which gives every worker in Uganda, a right to form trade unions to protect their economic and social interests, “a right to collective bargaining and representation” and the right to collectively withdraw labour (i.e. the right to strike).

With respect to Universities specifically, members of staff have the right to form staff associations under sections 68 and 93 of the Universities and Other Tertiary Institutions Act, 2001 as amended.

Section 93 provides that:

“There shall be an academic staff association whose aims shall be to promote the academic and welfare interest of the academic staff.”

We wish to add that members of staff are also free to form and join trade unions of their choice under the provisions of the Constitution referred to above as well as under the Labour Unions Act 2006. In particular, section 3 of the Labour Unions Act gives all workers the right to organise themselves in any labour union for purposes of collective bargaining, doing any lawful act or participating in industrial action. Section 4 of the Act is very categoric and provides that an employer **shall not**:

- a) “Interfere with, restrain or coerce an employee in the exercise of his or her rights guaranteed under this Act;
- b) Interfere with the formation of a labour union or with the administration of a registered organization;
- c) Discriminate in regard to the hire, tenure or any terms or conditions of employment in order to discourage membership in a labour union;

- d) Discharge an employee on account of his or her lawful involvement or proposed involvement in the activities of a labour union including his or her participation in industrial action...
- e) Prevent or otherwise hinder a labour union official from having access to his or her employee's representative or otherwise omit to accord any labour union official facilities to enable him or her discharge their responsibilities promptly and efficiently."

The Labour Unions Act defines the labour union as "any organization of employees created by employees for the purpose of representing the rights and interests of employees...." (Section 2 of the Act).

Therefore, MUASA and MASA as well as the union, NUEI (National Union of Education Institutions) have constitutional and statutory mandate and rights to represent all Makerere University academic staff. It is also equally clear that nobody, including University management can challenge the legality of MUASA, MASA or NUEI.

2.2 Academic Freedom

We wish to note that the suspension of the leaders of MUASA and MASA is a direct attack on, not only freedom of association of University staff, but is an attack on academic freedom guaranteed by the Constitution. This is because Article 29 (1) (b) guarantees every person's right to "freedom of thought, conscience and belief which shall include **academic freedom in institutions of learning.**"

By suspending and gagging the leaders of MUASA and MASA, the university management is sending a message that staff leaders should not be independent and autonomous. The leaders were suspended as employees of the university yet the allegations made against them relate to their work as leaders of employee associations. It appears that the University is not accusing them of failure to perform their duties as employees, gross misconduct as employees or incompetence as employees. They are being attacked for doing their work as association leaders. The work of associations include, as indicated in section 93 of the University and Other Tertiary Institutions Act, the promotion of academic and welfare interests. It is therefore unlawful and illogical to accuse association leaders of wrongs allegedly committed in the course of their leadership activities- which activities are within their mandate and lawful- but proceed to suspend them as employees deployed in their respective units.

We therefore believe that the act of suspending the association leaders is unacceptable as it is an attack on freedom of association and academic freedom, not only of those leaders but the entire academic and administrative staff of the University.

2.3 The legality and legitimacy of the suspensions of Association leaders

We note that the suspension of the Association leaders was done under section 5.9 (b) of the Makerere University Human Resources Manual. This means that the Association leaders as indicated above were suspended as University employees.

In the case of Dr. Deus Kamunyu, the letter stated that “during your suspension, you will receive half pay and you will not be allowed to access University premises, offices or property.”

In the case of MASA leaders, the suspension letters also stated “during your suspension, you will receive half pay. Please therefore prepare a handover report and handover all University property in your possession to your supervisor.”

We wish to observe that an association or union leader enjoys the protection of the law and in particular, under the provisions of the Labour Unions Act quoted above, in that no employer is allowed to interfere with the administration of a labour union or to discriminate in regard to terms and conditions of employment or to discharge any employee on account of their involvement in union activity. Above all, the employer is not allowed “to prevent or otherwise hinder a union official from accessing other employees or to fail to accord any such official facilities to enable them discharge their responsibilities promptly and efficiently.” The provisions of the Labour Unions Act apply to both labour/ trade unions and staff associations.

We wish to note that collectively withdrawing labour is a constitutional right of all workers, including all Makerere University workers. For a leader to mobilize employees to collectively withdraw labour cannot constitute “incitement with intent to cause disobedience and/or strikes to undermine the University administration.” In fact, all the allegations against the staff association leaders relate to their lawful acts in leading and representing staff.

It is therefore both unconstitutional and unlawful for University management to suspend or otherwise purport to discipline any leader or official of a staff association or union for any act done in furtherance of staff association or union interests or the interests of the staff members of those associations or unions.

3.0 Conclusion

We wish to reiterate that the legality and legitimacy of MUASA, MASA and NUEI cannot be challenged.

In addition, as indicated above, the act of suspending the association leaders is an attack on freedom of association and academic freedom, not only of those leaders but the entire academic and administrative staff of the University.

In conclusion, we wish to advise that it is unconstitutional and unlawful for University management to suspend or otherwise purport to discipline any leader or official of a staff association or union for any act done in furtherance of staff association or union interests or the interests of the staff members of those associations or union.

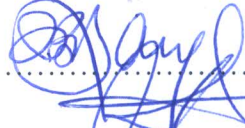
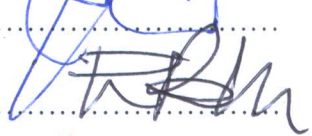
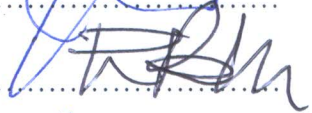


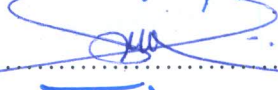









We therefore accordingly advise that the Vice Chancellor, Makerere University withdraws the suspensions of the Association leaders, namely, Dr. Deus M. Kamunyu (Chairperson, MUASA); Mr. Bennet Magara (Chairperson, MASA); and Mr. Joseph Kalema (Secretary, MASA). Following the lifting of the suspensions, it will then be possible for the Associations and University management to sit down and discuss the existing substantive grievances of staff in a calm and peaceful atmosphere.

We so advise.

Sincerely,

NAME

SIGNATURE

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|----------|-----------------------------|---|
| 1. | Prof. JOHN-JESAY BARYA |  |
| 2. | F. Igwale |  |
| 3. | Prof. Emmanuel Kasimiro |  |
| 4. | Ronald Kakungulu-Munyambala |  |
| 5. | W. T. KIRYABWIRE |  |
| 6. | DANIEL R. RUTWEZA |  |
| 7. | Frederick J. Mpanja |  |
| 8. | PHIONA MUTWEZI MUKA |  |
| 9. | Dianah Alumba Abanyi |  |
| 10. | Dr. Nassali Maria |  |
| 11. | DR. ZAHARA NAMPEWO |  |
| 12. | ROSE NAKATI |  |
| 13. | J. Oloka-Onyango |  |
| 14. | YVIVF NSIBAMBI |  |
| 15. | SYLVIA TAMALE |  |

16. JOSEPH KYAZZE

17. BUSINGYE KABUMBA

18. ROBERT KIRUNDA

19. FAISAL MUKASA

20. BENSON TUSASIRWA

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James Kahle

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