**MISS O. A. AKINTEMI AND 2 ORS**

**V.**

**PROF. C.A. ONWUMECHILI AND 2 ORS**

IN THE SUPREME COURT, NIGERIA

18TH JANUARY, 1985

SUIT NO. SC 65/1983

**LEX (1985) – SC 65/1983**

**OTHER CITATIONS**

3PLR/1985/14 (SC)

(1985) 1 NWLR (Pt.378) 393

**BEFORE THEIR LORDSHIPS:**

AYO GABRIEL IRIKEFE, J.S.C.

ANDREWS OTUTU OBASEKI, J.S.C.

BOONYAMIN OLADIRAN KAZEEM, J.S.C.

DAHUNSI OLUGBEMI COKER, J.S.C.

SAIDU KAWU, J.S.C.

**ORIGINATING COURT**

HIGH COURT OF OYO STATE (IBADAN JUDICIAL DIVISION)

**REPRESENTATION**

AFE BABALOLA (with him S.A. ADESANYA and B. ARIBIDO) - for the Appellants

OLISA CHUKURA, S.A.N. (with him Y. ABIOSE and A.A. ADENIYI (Miss) - for the Respondents

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMINISTRATIVE LAW AND GOVERNMENT:- Prerogative writs – Need to distinguish an order of mandamus from certioriari and prohibition – Whether mandamus unlike the other two is not primarily a means of reviewing the decision of an inferior tribunal, but is rather a comprehensive remedy for securing the performance of public duties – Whether mandamus will only issue to control abuse of discretionary powers or where such decision was guided by irrelevant considerations – Whether the court will not normally issue the order where it concerns how to exercise the power.

ADMINISTRATIVE LAW AND GOVERNMENT:- Doctrine of ripeness and Administrative remedies – Where remedies are available in the domestic forum relating to a dispute – Need to exhaust same before any resort to court action – Effect of failure thereto

ADMINISTRATIVE LAW - Order of Mandamus – Powers of Court to grant application for order of prerogative writs – Prerogative of Institutions to award degrees to deserving students

CHILDREN AND WOMEN LAW: *Young Women and Education* – Access to tertiary education attainments and awards - Three female students of the University of Ife refused award of law degrees who ought to compel the school to do so – How treated

CONSTITUTIONAL LAW:- Section 6 (6) (b) of the 1979 Constitution – Right to access to court - Whether does not apply to students of tertiary institutions in relation to award of degrees or disciplinary measures – Relevant considerations

CONSTITUTIONAL AND PUBLIC LAW:- Justiciability - Where a matter is justiciable in Nigeria but statutorily required to follow a domestic conflict resolution process – Whether the domestic nature of the dispute does not, under the 1979 Constitution, oust the jurisdiction of the court even where the process has not been exhausted- Section 6(6)(b) of the 1979 Constitution in review

EDUCATION AND LAW:- Tertiary education – Award of degrees – Whether success in Prescribed examinations is not all that is required for earning a degree – Whether there can be no question of publication of results until the Senate has considered the result of each student and pronounced on his or her fitness to be conferred or awarded the degree of the university – Whether the Senate can be compelled to publish a result or make an award of its degree by a court

EDUCATION AND LAW:- Examination Malpractice – Powers of the university to discipline students over same – Where ‘suspension’ or punitive measure quashed by court by way of certiorari due to procedural error – Whether precludes the institution from taking any further action thereto against those students suspected of examination malpractices

EDUCATION AND LAW:- Tertiary institution established by statute – The Visitor – Powers and functions – Distinction between failure of Visitor to act as required and preferring to act one way or another – Whether court can issue an order of mandamus compelling the Visitor to act one way or the other – Whether court can perform visitorial duties

EDUCATION AND LAW:- Tertiary education and enabling statute - issues deemed to belong to the domestic domain of the University under its Statute establishing it – Award of degree and release of results – Whether not justiciable in a court of law

**PRACTICE AND PROCEDURE ISSUES**

INTERPRETATION OF STATUTE: University of Ife Act – Powers of the Visitor and Senate - Senate as the supreme academic authority of the university.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellants - three female students of the University of Ife-Olajobi Abimbola Akintemi, Numeh Udobi and Elizabeth Iyamabo - jointly in the High Court of Oyo State (Ibadan Judicial Division) sought the following orders against the Vice-Chancellor and the Registrar of the University of Ife as well as the University itself:

“(a) ORDER OF MANDAMUS compelling the respondents to publish and communicate to the applicants the result of the Part IV Final LL.B. degree examinations taken by them in June, 1981 at the Faculty of Law, University of Ife, Ile-Ife.

(b) Declaration that the failure, refusal or neglect of the respondents to publish the result of the applicants/appellants in the June-July 1981 examinations of the University of Ife is illegal.

(c) An injunction restraining the respondents by themselves, their agents, servants and/or privies or howsoever from holding the University Convocation for conferment of or award of degrees, academic titles, honours and or distinctions or from doing anything towards or in pursuance of the ceremony for the conferment of or award of any degrees, academic titles, honours and or distinctions pending the final determination of this action.”

Prior to that application, there had been an earlier application by the appellants against the respondents for an order of certiorari to quash the order of suspension made against the Appellants on the basis of the findings of a panel of enquiry set up by the 1st respondent to investigate an allegation of malpractices during the Part III LL.B. examinations held in July, 1980. It found sufficient evidence to recommend that eight students, amongst whom were the three appellants, be suspended.

They were accordingly suspended for the remainder of that session by a letter worded in identical terms which issued from the Registrar of the University with the approval of the Vice-Chancellor. The order of certiorari was sought to quash the suspension order. This the court did on the grounds that the rules of natural justice had been breached in that the appellants had merely been called as witnesses during the enquiry by the panel without having had properly formulated charges served on them before the commencement of the enquiry to enable them defend such charges, if need be. The court thereupon ordered the University to rescind the order of suspension in respect of each appellant within 7 days. And, they were so restored.

However, results of the examination where they had been allegedly found to be cheating remained unreleased. They therefore brought the mandamus application at the High Court to secure the release of the result. At the end of argument, the learned judge dismissed the action with costs.

DECISION(S) APPEALED AGAINST

The appellants appealed to the Court of Appeal against the decision of the trial court on a number of grounds. The Court of Appeal rejected their contention and affirmed the judgment of the trial court.

ISSUE(S) FOR DETERMINATION ON APPEAL

[Court’s final judgment only gave the grounds for the appeal along with summary of the cases presented by both parties thereunder which are reproduced below]

*BY APPELLANT(S):*

(a) That the university had no right in law to withhold the results of the appellants - without affording them an opportunity of being heard in this regard - and thus there had been a violation of one of the rules of natural justice which enjoins that in any dispute on a fundamental issue - the two parties should be heard. (Audi alteram partem).

(b) That both the court of first instance and the Court of Appeal were in error to treat the issue of non-release of the appellants’ results as a domestic issue for the university and as such non-justiciable in a court of law.

(c) That as the appellants were at no time formally charged by the university with examination malpractices, there could be no legal basis for the withholding of the appellants’ results.

(d) That the combined effect of the provisions of sections 6 of the Constitution of the Federal Republic of Nigeria, 1979 and section 236 thereof is to vest in the State High Court unlimited right of access to prerogative orders and conversely any provisions in any statute such as the University of Ife Edict which purports to exclude such access would be void to the extent of such inconsistency.

*BY RESPONDENT(S)*

(a) That while it might be proper for mandamus to issue to the Senate to consider the results of the appellants, what was being sought in this case was for Senate to publish the results.

(b) That the two matters – consideration of results and publication of results - were distinct and different.

(c) That as a legal proposition, Senate had a public duty to perform in the act of considering results submitted to it by the Faculty Board and that if it failed in doing this, then it could be compelled by mandamus. It could not however be compelled by court to decide one way or the other.

*AS ADOPTED BY COURT*

“The issues raised in this appeal are concerned with the administration of the University of Ife having regard to the provisions of the Statutes and other enabling laws from which the university derived its life.”

DECISION OF [CURRENT] COURT

1. The respondents were justified in law to have, as it were, to withhold results of students suspected of examination malpractices in order to preserve the integrity of the “university’s channel of academic excellence. After all, a university is all about academic excellence.”

2. Matters have remained in status quo since the four years of litigation. However, the appellants remain bona fide undergraduates of the university until a decision is taken on their fate one way or the other. In such a case, they would be entitled to a hearing by the appropriate organ of the university and should not jump the gun.

**MAIN JUDGEMENT**

IRIKEFE J.S.C. (DELIVERING THE LEAD JUDGMENT):

In this appeal, the essential facts grounding the case are not in dispute; the dispute is as to the application of the law to those facts.

These facts, so far as may be relevant, may be summarised thus. Three female students of the University of Ife-Olajobi Abimbola Akintemi, Numeh Udobi and Elizabeth Iyamabo (hereafter to be referred to as the appellants) jointly in the High Court of Oyo State (Ibadan Judicial Division) sought the following orders against the Vice-Chancellor and the Registrar of the University of Ife as well as the University itself:

“(a) ORDER OF MANDAMUS compelling the respondents to publish and communicate to the applicants the result of the Part IV Final LL.B. degree examinations taken by them in June, 1981 at the Faculty of Law, University of Ife, Ile-Ife.

(b) Declaration that the failure, refusal or neglect of the respondents to publish the result of the applicants/appellants in the June-July 1981 examinations of the University of Ife is illegal.

(c) An injunction restraining the respondents by themselves, their agents, servants and/or privies or howsoever from holding the University Convocation for conferment of or award of degrees, academic titles, honours and or distinctions or from doing anything towards or in pursuance of the ceremony for the conferment of or award of any degrees, academic titles, honours and or distinctions pending the final determination of this action.”

Although the above application was not filed until 28th September, 1981, there had been an earlier application by the appellants against the respondents for an order of certiorari to quash the order of suspension made by 1st respondent against them on the basis of the findings of an enquiry set up by the said 1st respondent to investigate an allegation of malpractices during the Part III LL.B. examinations held in July, 1980. It would appear that in July 1980, one Paul Usoro, the President of the Law Society, University of Ife, wrote to the Dean of the Faculty of Law reporting allegations of widespread examination leakages and malpractices in all classes of the Faculty of Law and particularly in Part III, giving the names of students who would be able to give evidence in relation to these matters. Usoro’s report was eventually referred to the Vice-Chancellor who set up a panel of five, headed by a former Deputy-Vice-Chancellor, Professor Adegbola. The panel’s terms of reference were:

“To investigate discreetly:

(a) the alleged examinations leakages and malpractices in the 1980 sessional examinations in law reported by Mr. Paul Uzoro, President of Law Students’ Society in his undated letter to the Dean Faculty of Law;

(b) the causes of such leakages and malpractices if any, and

(c) make recommendations.”

On 22nd January, 1981 a student publication called the “Scorpion” carried a report titled “Investigative Report: Explosive Examination Leakage in Law Faculty” which linked the names of three students (Miss Iyamabo, Miss Udobi and Miss Akintemi) and two lecturers - Dr. L. Aremu and Dr. Fabunmi - with the leakages in Part III. The panel at the end of its work submitted its report. It found sufficient evidence to recommend that eight students, amongst whom were the three appellants, be suspended. They were accordingly suspended for the remainder of that session by a letter worded in identical terms which issued from the Registrar of the University with the approval of the Vice-Chancellor.

The order of certiorari was sought to quash the suspension order. This the court did on the grounds that the rules of natural justice had been breached in that the appellants had merely been called as witnesses during the enquiry by the panel without having had properly formulated charges served on them before the commencement of the enquiry to enable them defend such charges, if need be, The court ordered the University to rescind the order of suspension in respect of each appellant within 7 days. There is an admission by the appellants in affidavit evidence that they had been fully restored to their rights and privileges by the University in consequence of the court order aforesaid.

Thereafter, it would appear that things happened rather quickly. The appellants in their affidavit admitted that they were allowed by the University to sit for the Part IV LL.B. examinations at the end of July 1981 and that they had in fact passed with flying colours. As the complaint which led to the filing of the application for an order of mandamus was the fact that the respondents had failed and/or refused to release the results of the final LL.B. examinations one can only speculate on the state of the totality of the papers filed as to how the appellants became possessed of the information that they had passed as well as they had claimed. Put in another way, if the appellants had indeed had their results legitimately released to them by the appropriate organ of the University, the occasion for the mandamus application would not have arisen. This seems to be the core of the case.

Both parties relied on affidavit evidence, some of which, in respect of matters which needed to be proved, was conflicting in nature and could only have been resolved at the court of first instance by insisting on relevant witnesses being produced for cross-examination, in accordance with the guide-lines laid down by this court in such cases as -Akinsete vs. Akindutire 1966 - 1 All N.L.R. 147 and Eboh & Anor. vs. Oki & Ors. - 1974 S.C. 179 to mention but a few. The record shows that Chief Babalola, learned counsel representing the appellants did, at the hearing of the mandamus application make such an application for leave to cross-examine a material witness, but somehow, it was turned down by the learned trial judge, Fakayode (C.J. Oyo State as he then was) and the matter was no longer pressed. At the end of argument in support of an order to make absolute the order nisi earlier on obtained in the mandamus application, the learned judge reserved his ruling which he delivered on 21st January, 1982. The learned judge dismissed the action with N300 costs, which would in effect mean that the order nisi obtained by the appellants on 7th October, 1981 had been discharged, although the order of dismissal did not expressly so state.

Being aggrieved by the above order the appellants appealed to the Court of Appeal on a number of grounds which are carried in full in the judgment of the Court of Appeal. The appellants also lost in the Court of Appeal and hence the final appeal to this court.

The appeal to this court is based on grounds which were vigorously canvassed In the Court of Appeal but now reinforced by further grounds in respect of which leave of this court was sought and obtained. The original grounds read as follows:

“(a) The learned Justices of Appeal erred in law and misdirected themselves on the facts when they held that the University had not determined the fate of the appellants one way or the other and had not therefore punished them unheard in spite of the fact that the University had released the results of the other students in the appellants’ class and the failure to release their results constitutes a punishment to the appellants whether it is due to a deliberate refusal or a delay due to other circumstances.

(b) The learned Justices erred in law when they ignored the averments in the appellants’ affidavit to the effect that they passed their final examinations with flying colours in spite of the fact that these averments were not denied by the respondents in their counter-affidavit.”

In addition to the above there were the following 12 additional grounds of appeal numbered as:

“(c) The learned appellate Judges erred in law in allowing the respondents’ applications for extension of time (1) to cross-appeal and (2) to give respondents notice of intention to contend that the decision of the court below should be affirmed on grounds of her (sic) than those relied upon by the respondent when there were no special circumstances disclosed in the respondent’s applications to justify the granting of the applications.

(d) The learned appellate Judges erred in law when they rejected the appellants’ contention that a cross-appeal is incompetent under the rules of the Federal Court of Appeal when the only provision in the rule is for appeal by an (sic) party dissatisfied with a judgment of the lower court.

(e) The learned appellate Judges erred in law by allowing the respondent despite objection by the appellants to raise objections to some of the appellants’ grounds of appeal without any notice of motion or of preliminary objection when it is a requirement of nature (sic) justice that a party must know the case he is coming to court to meet.

(f) The learned appellate Judges erred in law when they held that the particulars in support of the appellants’ grounds of appeals (sic) were in the nature a arguments and narratives when the said particulars were what is required by Order 3 rule 2(3 and 4) of the Federal Court of Appeal Rules 1981.

(a) The learned appellate Judges erred in law and misdirected themselves when they held as follows -

‘I am at pains to observe that Chief Afe Babalola’s submissions had postulated more than the trial Judge did consider. He has in fact said more than can be gathered from language of the judgment. No where did the trial Judge say that dispute(s) between the University and the students are only triable by the visitor. There was not throughout the length and breadth of the judgment any mentioning ouster of jurisdiction of the court. What the trial Judge did say, and which hardly calls for any embellishment can be found in the passage I have already quoted above. The clear point that was made, was that domestic dispute such as publication, or non-publication of results, of arrangement for sitting of examination and the marking of examination papers and many more, are all within the competence of the visitor of the University to look into and if, as the learned Judge further observed, “the visitor on demand of the applicants fail to look into the dispute, he can be compelled to do so by order of mandamus” (Italics mine) in the face of such positive averments it is difficult not to hold that all the arguments, relating to the alleged ouster of jurisdiction, are based on wrong premise and/or misconception of the issues. Clearly, to say that students should first take their case to the domestic forum for consideration or possible determination, is not the same as saying that the court cannot entertain the complaint of an aggrieved student or that a student cannot in an appropriate case apply for an order of mandamus to compel the university or any of its officers, or its visitor to do its duty one way or the other.’

Particulars of Error in Law

(i) The common law position of the visitor is no more tenable since the promulgation of 1979 Constitution.

(ii) the issues raised by the appellants in their claim are justiciable;

(iii) Non-exhaustion of an administrative remedy is no bar to the exercise of court’s power to grant the reliefs sought;

(vi) the submission of the appellant’s counsel is limited to the issues raised in the appeal the substance of the holding of the learned trial Judge is to the effect that the court has no jurisdiction to deal with the domestic dispute between members of the university as is manifest from the cases he relied upon (see Thorn Vs. University of London (166) (sic) 2 Q. B. 237, 242. See also the judgment of Dosunmu J.C.A. page 228-229 of the records).

(v) the remedies sought by the appellants are available and applicable in the circumstances of the case.

(h) Having held that the rights and obligations of members and or officers of a university are invariably defined or spelt out in the laws and statutes or the charter creating the university, and having held that it is the duty of the court to interpret and give full effects (sic) to the words used by the legislature free from any interpretation not envisaged by the statute the learned appellate Judges erred in law by failing to interpret properly or at all and in failing to give effect to the sections of the University of Ife (Act) which define the powers of the visitor (P28).

(1) The learned appellate Judges erred in law and misdirected themselves when they held as follows -

‘Nor do I share Chief Afe Babalola’s view that the various sections of the Constitution which he profusely cited, support his contention that the doctrines of the common law, are no longer of any application in this country. None of the sections he referred to can properly be said to have completely made a deed (sic) weight of section 8, 13 and 16 of the High Court Law. Indeed, one may ask -

Where does the High Court derive its powers to grant application for the issuance of the prerogative writ? The procedure for the institution of this action is not in our Constitution. On the contrary the motion was brought not only under sections 2(2) & 5(2) of the Administration of Justice (State Proceedings) Law 1960, but also under Order 53 of the Supreme Court Rules of England. This has to be so for bitter truth is that our courts and a considerable body of our law, practice and procedure are still to a very large extent part of the colonial legacy which the British left behind them. What indeed is often referred to as the “inherent power” of a court, grow out of the common law courts and the courts of equity in England. And I think, for the effective administration of justice, the courts in Nigeria, where by specific provisions of their High Court Laws and other legislations enabled to exercise of such powers (sic); sections 6(6) (a) preserved for the court, these “inherent powers” as well as the power of sanction. The powers so conferred are complementary to the unlimited jurisdiction given to the High Court under section 235(1) Constitution’.

Particulars of Error in Law

The jurisdiction of the Oyo State High Court to issue an order of mandamus which was the matter under appeal derives from the Administration of Justice (State Proceedings) Law 1960 of Oyo State and not the common law or the inherent power.

(j) The learned appellate Judges erred in law and misdirected themselves when they held as follows -

‘as to the charge of being punished unheard, it is difficult to say so now, since the University had not at the time the action was instituted determined the fate of the applicants one way or the other or indicated that their results will not be published’.

When as is made clear at page 108 of the records the respondent had decided not to release the result of the applicants.

(k) The learned appellate Judges erred in law and misdirected themselves when they held that the appellants’ claim for declaration was considered by the learned trial Judge when the only reference to the claim for declaration in the judgment was in the learned trial judge’s pronouncement that the two legs of appellants’ claim must fail and whereas he considered the law relating to the claim for mandamus from page 138 to 142 of the records.

(I) The learned appellate Judges erred in law by holding that the distinction between university created by Charter and ones created by Statute is academic whereas different legal results flaw (sic) from both of them.

(m) The learned appellate Judges erred in law when they held that the joinder of the three applicants in the application was a fundamental defect going to the root of the appeal when Order 15 rule 4 of the Rules of the Supreme Court of England contains (an) adequate provision authorising joinder in the circumstances.

(n) The learned appellate Judges erred in law when in considering the appellants’ counsel’s submissions that by withholding the appellants’ results they were being punished unheard, they at page 3 216 to 217 of the result (sic) when all that was open to them was to consider whether the appellants had a right to be heard before their results could be withheld and if so whether there has been a breach of the rule of natural justice.”

Counsel for both parties filed ample briefs of argument and reinforced the argument contained in the said briefs with oral argument before us.

The issues raised in this appeal are concerned with the administration of the University of Ife having regard to the provisions of the Statutes and other enabling laws from which the university derived its life.

Chief Babalola, learned counsel for the appellants, to whom this court is indebted for his undoubted industry and masterful presentation of his clients’ case, made before us the following submissions which he had already made before the two lower courts, namely:

(a) That the university had no right in law to withhold the results of the appellants - without affording them an opportunity of being heard in this regard - and thus there had been a violation of one of the rules of natural justice which enjoins that in any dispute on a fundamental issue - the two parties should be heard. (Audi alteram partem).

(b) That both the court of first instance and the Court of Appeal were in error to treat the issue of non-release of the appellants’ results as a domestic issue for the university and as such non-justiciable in a court of law.

(c) That as the appellants were at no time formally charged by the university with examination malpractices, there could be no legal basis for the withholding of the appellants’ results.

(d) That the combined effect of the provisions of sections 6 of the Constitution of the Federal Republic of Nigeria, 1979 and section 236 thereof is to vest in the State High Court unlimited right of access to prerogative orders and conversely any provisions in any statute such as the University of Ife Edict which purports to exclude such access would be void to the extent of such inconsistency.

Learned counsel cited a number of authorities both domestic and foreign on the various matters raised by him. The list submitted to court is infinite and I should like to mention, but a few of them as follows: Dr. Sofekun vs. Akinyemi & Ors. - (1980) 5-7 S.C. 1.; Board of High School and Intermediate Exams vs. D.A. S. - All India Law Reports S.C. 1110; Adesanya vs. President of The Federal Republic of Nigeria - (1981) 5 S.C. 5 at 163; Attorney-General of Bendel State vs. Attorney-General of The Federation - (1982) 3 N.C.L.R; His Highness Lamidi Olayiwola - Alafin of Oyo & Ors. vs. Attorney-General of Oyo State & 2 Ors. S.C. 134/82 Unreported delivered on 27th June, 1984.

Chief Olisa Chukura, S.A.N., learned counsel representing the respondents argued that while it might be proper for mandamus to issue to the Senate to consider the results of the appellants, what was being sought in this case was for Senate to publish the results. Learned counsel emphasised that the two matters were distinct and different. He argued that as a legal proposition, Senate had a public duty to perform in the act of considering results submitted to it by the Faculty Board and that if it failed in doing this, then it could be compelled by mandamus. It could not however be compelled by court to decide one way or the other.

In my view, it seems that learned counsel for the appellants did not, as he should, separate the issues which arose for a determination in the certiorari application from those in the mandamus application. The impression one gets from learned counsel’s valiant attack on the decision in this case is that, in as much as the appellants had been restored to their legitimate rights as undergraduates of the university, through the certiorari proceedings, that fact eo ipso, had wiped out the stigma of their being allegedly involved in examination malpractices in the Part III LL.B. examination of 1980 and by implication, of the need for the university to investigate these matters, in view of its statutory powers. Learned counsel for the respondents dealt with this aspect of the case in the following words in his brief:

“The appellants by improper means obtained strictly confidential record of the Faculty Board on which they now base their claims in the mistaken belief that a recommendation of the Board is the same thing as an approval by the Senate.

Until the Senate takes a decision on the recommendation in respect of the results of the appellants it cannot be said that the Senate has acted to the detriment of the appellants. Where the Senate in exercise of its powers under sections 16 and 17 of the University of Ife Act (as the supreme academic authority of the university) takes steps to protect the value standard and credibility of the degrees it awards, no genuine complaint can be made. In the face of the findings of the ‘Administrative Inquiry’ that the appellants were involved in examination malpractice, the Senate had a duty to satisfy itself that the alleged malpractice did not undermine the value of its degrees. The decision as to whether the appellants passed their examination or not cannot be taken by the appellants themselves, but by the Senate after considering the recommendation of the Faculty Board and all the safeguards and provisions contained in sections 16 and 17 of the University of Ife Act. The appellants are not competent to pass themselves in the examination set and/or supervised by the Senate. According to the Examination Regulations which each of the appellants has or knows of, and under which they sat for the examinations in question, the result of the LL.B. examination is not based on one examination but on the cumulative consideration of the course work and examinations based on them. The appellants cannot expect that the entire result will be available, when an administrative inquiry had found that the appellants were involved in examination malpractices in a previous year’s examination; when the Senate had set up an enquiry to ensure that all the requirements for the LL.B. degree have been met (see page 56 paragraph 27); and when the appellants had filed process in court in respect of the same matter, and there is an appeal pending thereon.”

There is considerable force in the above submissions by learned counsel and ample support for same in the affidavit evidence produced by the parties to this application.

One Benjamin Adeagbo Olagunna an Acting Registrar of the University in his affidavit filed on behalf of the respondents and dated 2nd November, 1981 (an exhibit in this case) deposed thus (so far as is relevant):

“(4) There are recognised organs of the university each of which is invested with well-defined functions by Statute: and for any act of the university to be lawful and legitimate it must be performed by the appropriate organ.

(5) Some of such organs are

(1) The Council established under and by virtue of section 15 of the University of Ife Law No. 14 of 1970 (hereinafter) called “the LAW’

(2) The Senate, established under section 16 of the LAW;

(3) The Convocation, established under section 22 of the LAW.

(6) The respondents (i.e. respondents to this appeal) are not competent under the LAW to publish or communicate the results of examinations to the applicants (i.e. appellants herein) or to any one.

(9) The Senate has a discretion in the exercise of its powers and there is by law a right of appeal by an aggrieved party from the exercise of such discretion to the Council of the University.

(16) The order of certiorari which was granted on the applicants, application as per exhibit B attached to the applicants’ affidavit did not (and could not) determine the issue of examination malpractices in which the applicants were involved on the merit, but merely quashed the order of the Vice-Chancellor on procedural grounds.

(27) The Senate, the body which controls examinations, release of examination results and publication of such results after considering recommendations from Faculty Board could not appropriately consider the results of the applicants who were involved in examination malpractice in the 1979/80 session -

(a) until it has fully satisfied itself that all the requirements for the LL.B. degree of the university have been met; in accordance with its responsibility to protect and sustain the integrity of the degrees of the university.

(b) Until it has reviewed in its entirety the whole administrative machinery for handling university examinations including the physical arrangement for examinations, the procedure for drafting and vetting question papers and all other matters relating to overhauling the existing systems and strengthening the regulations by blocking loopholes where identified.

(c) The Senate has requested the Committee of Deans to study the matter and make recommendations to it.”

The averments carried above would appear to have been reinforced and confirmed by some of the documents of the university, obtained presumably by means other than legal and annexed to an affidavit produced by the appellants. These are to be found between pages 99 and 123 of the appeal record. For ease of understanding I reproduce hereunder excerpts of these so far as they are relevant.

“162nd MEETING OF SENATE

MEETING: 26th JULY, 1981

Part I: Minutes: As this is a special meeting of Senate, mainly for the consideration of examination results, no minutes will be taken nor will matters arising from previous minutes be considered. Only the following special items, which the Chairman of Senate has approved for inclusion on the agenda, will be considered in addition to examination results.

Part II:

1. Discipline of Students:

REPORT ON STUDENT DISCIPLINE

Allegation of examination leakages and Malpractice in the Faculty of Law. UNIVERSITY OF IFE, NIGERIA

Meeting 28th JULY, 1981 PAPER NO. 1906

Allegation of Examination Leakages and Malpractice in the Faculty of Law.

In July 1980, Mr. Paul Usoro, President of the Law Students Society, wrote a letter on allegation of widespread examination leakages and malpractice in the sectional examinations in all the classes in the Faculty of Law, but particularly in Part III, and he gave a list of students who would be able to give evidence. Appendix I.

… On or about 22nd January, 1981 a student’s publication called the ‘Scorpion’ carried a report titled ‘Investigate Report: Explosive Examination leakage In Law Faculty.’ which listed the names of three students (Miss Iyamabo, Miss Udobi and Miss Akintemi) and two lecturers Dr. L. Aremu and Dr. Fabunmi with the leakages in Part III Appendix I.

… Action Required

Senate is requested to take appropriate decision having regard to the comments of the Council quoted hereunder and the basis of the court ruling as specified under item 26 above.

Comments of the Council

(A) Observations

(a) Eight students involved were suspended for the rest of 1980/81 academic session:

(b) Four of the students sued the university in court for a breach of the principles of natural justice and the court directed that the order of suspension be withdrawn.

(B) Decisions

Council felt concerned about the consequences which the judgment might have on the discipline of students and the integrity of university examinations and decided that:

(i) in order to prevent creating the impression that the university authority was condoning examination misconduct which might debase the integrity of university action to ensure that the affected students in the examination leakages and malpractice were not allowed to benefit from such malpractices and cheating;

(ii) the results of the four affected students who took the June Part IV 1981 examinations should be withheld until the appeal was finally disposed of;

(iii) Senate should ensure that the integrity of the university examinations was maintained and that cases of examination leakages were identified and plugged;

(iv) Senate should ensure that indiscipline is not in anyway condoned by the university.”

Granted that the above excerpts were the accurate proceedings of the two organs of the university, namely - the Council and the Senate which were produced in evidence by the appellants, the mode of procurement notwithstanding, the respondents herein cannot be justifiably accused of “mala fide” when they asserted as they did in these proceedings that the over-all performance of the appellants had still to be reviewed by Senate subject to the precautionary measures outlined by the Council.

From the foregoing, I am re-inforced in my belief that Akanbi, J.C.A. of the Court of Appeal was on firm ground when he stated thus:

“From all I have said above, I regret to say that the applicants in this case have ‘jumped the gun’; and cannot therefore be heard to talk of the rule of natural justice, in this case - not at least until the Senate has had a chance to deliberate on their case.”

Now section 16(3) of the University of Ife Act provides:

“Without limiting the generality of the provisions of sub-section (2) of this section, the Senate, subject to the provisions of this Edict and the Statutes, shall have the following functions:

(d) to regulate all university examinations, and after considering the recommendations of the Boards of the Faculties concerned respectively, to appoint University and External Examiners;

(f) to award Degrees (other than honorary Degrees) Diplomas, Certificates and other academic titles and distinctions to persons who shall have pursued in the university such courses of study as may be approved by the Senate and shall have passed such examinations of the university and satisfied such other conditions as may be prescribed by Regulations of the University;” (Italics mine).

Pausing here for a while, it would be seen from the above that success in examinations may not be all that is required for earning a degree from this institution.

“(k) to review, refer back, control, amend or disallow any act of any Faculty, Institute, School, Board, Department or other academic body of the University and to give directions to any such body;

(t) to require a student on academic grounds to withdraw from the University.”

I have refrained from dealing with some of the matters raised in this appeal such as the competence of the appellants to institute the instant proceedings as they relate merely to the constitution of the action and are thus matters of a technical nature which could be adequately taken care of by our decision in Surakatu vs. Nigerian Housing Development Society Ltd. (1981) 4 S.C. 26. It is indeed in the interest of all the parties that this matter be dealt with on its merit and its ghost laid to rest once and for all.

The question of the channels of appeal, be it to the Council or to the Visitor as provided for under the University of Ife Act is not also a live issue as the facts here show that that stage would still be in the very remote future. On the whole, it seems to be incontestable that the issues with which this appeal is concerned belong to the domestic domain of the University as enshrined in the Statute establishing it and are as such not justiciable in a court of law. See - Thorne vs. University of London - 1966 2 O.B. 237; R. v. Dunsheath Ex pane Meredith - 1951 1 K.B. 127; University of Lagos & 2 Ors. vs. Or. Dada - 1 University of Ife Law Reports Part III (1971) 344.

On the totality of the facts presented in this appeal, I am in no doubt that the respondents were justified in law to have, as it were, staged a pre-emptive environmental strike against those students suspected of examination malpractices in order to preserve from being polluted the university’s channel of academic excellence. After all, a university is all about academic excellence.

It seems to me that, as matters have remained in status quo since these four years of litigation, the appellants would still qualify as undergraduates of the university until a decision is taken on their fate one way or the other. In such a case, they would be entitled to a hearing by the appropriate organ of the university. See R. v. Senate of University of Aston - Ex-parte Roffey & Anor. 2 All E.R. 964.

I rule that this appeal lacks merit and hereby dismiss it. The orders of dismissal made by the High Court of Oyo State and the Court of Appeal are hereby affirmed. N300 costs are awarded in favour of the respondents jointly against the appellants.

**OBASEKI, J.S.C**.:

The genesis of these proceedings lay in an application made to the High Court of Justice, Ife Judicial Division on the 27th day of October, 1981 by the appellants pursuant to the leave granted on the 22nd day of October, 1981 for:

“(1) Order of Mandamus compelling the respondents to publish and communicate to the applicants the results of the Part IV final LL.B degree at the Faculty of Law, University of Ife, Ile-Ife.

Declaration that the failure, refusal or neglect of the respondents to publish the results of the applicants in the last June-July examinations of the University of Ife is illegal.

An injunction restraining the respondents by themselves, their agents, servants and/or privies or howsoever from holding the University Convocation for the conferment of or award of degrees, academic titles, honours and or distinctions or from doing anything towards or in pursuance of the ceremony for the conferment of or award of any degrees, academic titles, honours, and or distinctions pending the final determination of this action.”

The application was heard by Fakayode, C.J. who, after considering all the affidavit evidence and submissions of counsel for the parties in a well considered judgment, dismissed it and refused the orders and declaration sought in (1) and (2), the order of injunction in (3) having been withdrawn earlier. The main reasons for his decision as set out in the judgment read:

“For all that I have said above and having regard to the authorities I have already cited, I come to the irresistible conclusion that the two legs of the plaintiffs’ claim must fail because the issues of setting, sitting and marking of examination papers and publishing the results of such examinations are matters of domestic dispute within a university and such matters can be looked into by the Visitor. If the Visitor, on the demand of the applicants fail to look into the dispute, he can be compelled to do so by an order of mandamus. But no court in the land can compel the Visitor to decide the dispute one way or the other. His decision on the dispute cannot be looked into by the court. ‘The court cannot perform visitorial duties.”

This decision did not satisfy the appellants. They therefore took the matter to the Federal Court of Appeal as the Court of Appeal was then called. They were equally unsuccessful in their prayers as their learned counsel was unable to persuade the learned Justices of the Court of Appeal to the view that the appellants were entitled to the order of mandamus and declaration prayed for.

**Akanbi, J.C.A.** delivering his judgment, the conclusion of which was concurred in by Ogunkeye, J.C.A. and Dosunmu, J.C.A., said:

“The further contention that with the promulgation of the 1979 Constitution, the jurisdictional powers of the Visitor to determine ‘justiciable issue’ had been done away with appears to me to be tenuous and untenable. The rights and obligations of members and/or officers of a university are invariably spelt out or defined in the laws and statutes or the Charter creating the university. So also are the offices and functions of the Visitor - see section 6 of the University of Ife Law ... But be that as it may, I think the issue here is

(1) whether or not there is a domestic forum from which an aggrieved student may seek a remedy;

(2) whether a case crying for justice has been made in this case;

(3) and if so, whether seeking a remedy in court or making use of the domestic forum of the university will not be more convenient, beneficial and effective.

I approach the matter from the premises that it is the primary, nay, the statutory duty of the university to grant, confer and award degrees to the students and not the court. That duty is essentially for (or of) a domestic nature, to be carried out by the Senate of the University - see section 16 of the University Law. Where however, the Senate falls, neglects or deprives a student of his or her degree, and I suppose without good cause, the student has a right of appeal to the Council see section 17 of the Law.

Clearly, there can be no question of publication of results, until the Senate has considered the result of each student and pronounced on his or her fitness to be conferred or awarded the degree of the university...

The unfortunate situation here is that before the Senate could deliberate on the issue as it affects the applicants they not only failed to adopt a sensible approach of ‘wait and see’ but rushed into court to obtain an order of mandamus. Indeed, they have shown by their various steps that they were not going to appeal to the University Council which in my opinion could offer a more convenient, beneficial and effective remedy ...

The result of all I have said in this appeal is that the applicants failed in the lower court to make out a case for the order of mandamus to issue. Their appeal to this court is also without merit and must fail”

The appellants were still dissatisfied. Convinced that they are entitled to the reliefs claimed, they appealed to this Court on grounds which raised the same questions raised in the Court of Appeal. These questions were 6 in number but in my view, can be condensed into one question which is:

‘Whether the appellants made out a case for the order of mandamus to issue.”

That, in my view, is the real main question before the Court.

The question of the dispute being a domestic dispute and as such results in the exclusion of the jurisdiction of the Court does not arise.

The provisions of the University of Ife Law 1970 relevant to the issue before us as regards the function of the Council of the University can be found in section 15(2), 3(c), (3)(s) and (3)(u). Section 15(2) reads:

“The Council shall be the governing authority of the University and ... shall manage and superintend generally the affairs of the University and in any matter concerning the University not provided for by or under this Edict, the Council may act in such manner as appears to it best calculated to promote the interests objects and purposes of the University.”

Sub-section 3(c), (s), and (u) of section 15 read:

“without limiting the generality of the provisions of subsection (2) of this sec­tion, the Council, subject to the provisions of this Edict and the Statutes, shall have the following functions

(c) to govern, manage and regulate the finances, accounts, investment, property, business and all other similar affairs whatsoever of the University

(s) to call for reports from the Senate on any other matter relating to instruction or teaching or any other academic matter within the University;

(u) to supervise and control the residence and *discipline* of students of the University and to make arrangement for their health and general welfare.”

The Senate is the supreme academic authority of the university. This can be seen from the provision of section 16(2) of the Ife University Law which reads:

“The Senate shall, subject to the provisions of this Edict and subject also to the powers reserved to the Council in all matters affecting the finances of the Univer­sity, be the supreme academic authority of the University and be responsible for all academic matters in the University, and shall organise, control and di­rect the academic work of the University, both in teaching and research, and shall take such measures and act in such a manner as it thinks fit for the ad­vancement of the University as a place of education, learning and research.”

In particular section 16(3)(d), (e) and (f) of the University of Ife Law read:

“without limiting the generality of the provisions of subsection (2) of this sec­tion, the Senate, subject to the provisions of this Edict and the Statutes, shall have the following functions -

(d) to regulate all University examinations and after considering the recommen­dation of the Boards of the faculties concerned respectively, to appoint University and External Examiners;

(e) to regulate the admission of persons to the University and to courses of study in the University and their continuance or discontinuance in such courses and the *conditions qualifying* for matriculation and for admission to the various titles, degrees, *distinctions and* other awards offered by the University;

(f) to award degrees (other than honorary degrees), diplomas, certificates and other academic titles and distinctions to persons who shall have pursued in the University such courses of study as may be approved by the Senate and shall have passed such examinations of the University and satisfied such other conditions as may be prescribed by Regulations of the University; (h) to review, refer back, control, amend or disallow any act of any faculty, in­stitute, school, board, department or other academic body of the University and to give directions to any such body.”

The provisions of section 17 of the University of Ife Law show that the Senate has the power to deprive any person of any degree, studentship or other academic titles in certain circumstances. The section reads:

“(1) Subject to a right of appeal from the decision of Senate to the Council, the Senate shall have power to deprive any person of any degree, diploma, certificate fellowship, scholarship, studentship, bursary, medal, prize, or other academic title, distinction or award whatsoever conferred upon or granted to him by the University, if after such inquiry as the Senate may deem necessary, the Senate is satisfied that he has been guilty of scandalous or other dishonourable conduct in obtaining the same.

(2) Where the Senate is satisfied that on academic grounds, it is necessary so to do, the Senate may as the circumstances may require, withdraw or direct the withdrawal of any fellowship, scholarship, studentship, bursary or other academic award whatsoever granted to any student or other person by the University.”

Under the provisions of statute 13(7)(c) and (d), a faculty board shall have the function:

“(c) to consider the progress and conduct of students in the faculty and to make reports thereon to the Senate;

(d) to make recommendations for the award of degrees (other than honorary degrees), diplomas, certificates, prizes and other academic titles and distinction within the faculty.”

From an examination of the above provisions of the University of Ife Law and Statute, the Senate and the Council of the University have each a say in the academic fortune or misfortune of any student to an extent that cannot be brushed aside when dealing with any complaint in court by an aggrieved student about the publication of her result. The Council is the governing authority of the university and the Senate is the supreme academic authority of the university and since it is clear from the facts deposed to that no decision has been taken by these authorities on the recommendations by the faculty board on the result of each of the applicants in their Part IV law examination, the application for an order of mandamus is misconceived and cannot be granted.

If a matter is justiciable in Nigeria, the domestic nature of the dispute does not, under the 1979 Constitution, oust the jurisdiction of the court. See section 6(6)(b) of the 1979 Constitution.

It can only mean that until the remedies available in the domestic forum are exhausted, any resort to court action would be premature.

The main question set out above, however, requires an examination of the affidavit evidence filed by the parties together with consideration of all the submissions on the matter by counsel. This has been done in the judgment delivered a while ago by my learned brother, Irikefe, J.S.C. the draft of which I had the privilege of reading in advance. I agree with all the opinions expressed therein by my learned brother. The courts cannot and will not usurp the functions of the Senate, the Council and the Visitor of the university in the selection of their fit and proper candidates for passing and for the award of certificates, degrees and diplomas. If, however, in the process of performing their functions under the law, the civil rights and obligations of any of the students or candidates is breached, denied or abridged, it will grant remedies and reliefs for the protection of those rights and obligations. In the instant appeal, it has not been established that there was such a breach or denial or abridgment. The appeal therefore fails.

For the above reasons and the reasons so ably set out in the judgment of Irikefe, J.S.C., I too would dismiss the appeal and I hereby dismiss the appeal and affirm the decision of the Court of Appeal. The appellants shall pay the respondents costs fixed at N300.00.

**KAZEEM J.S.C**.:

I have had the privilege of reading the draft of the judgment just delivered by my learned brother Irikefe, J.S.C. It has lucidly considered and dealt with all the issues canvassed before us on this important case; and my views are in complete accord with those expressed therein. I am therefore entirely in agreement with the conclusions and the reasons therefor. I have nothing more to add than to observe that it is the prerogative of institutions of higher learning such as the University of Ife to grant and award their degrees to all their students if and when they deserve them. It is therefore inconceivable to think that any aggrieved student can invoke the machinery of a court of justice to compel such an institution to grant and award him its degree by obtaining an Order of Mandamus.

In the circumstances, I am satisfied that this appeal lacks merit; and it is hereby dismissed with N300.00 costs to the respondents.

**COKER J.S.C**.:

I agree with the judgment just delivered by my learned brother Irikefe, J.S.C., and for the reasons given, that this appeal should be dismissed. I however wish to make the following contribution only for sake of emphasis.

The facts of the case and questions to be decided in this appeal have been fully stated by my learned brother Irikefe J.S.C. in the lead judgment, and I need not repeat them.

Chief Afe Babalola’s argument seems to have laboured under two principal erroneous conceptions. First, the scope and nature of the remedy of mandamus and secondly, the general power of the visitor. There is also not less important, the provisions of the University of Ife Edict, 1970, No. 14 of 1970 as regards the functions of the relevant officers of the university concerning the release of examination results and the award of degrees by the university to any person be he its student or not.

The Visitor:

Section 6.(2) of the University of Ife Edict 1970, No. 17 of 1970, hereinafter described as the Edict, provides:

“6 (2) The Visitor may from time to time conduct a visitation of the University in person, or after consultation with the Chancellor, direct that the same shall be conducted by such person or persons as he may appoint in that behalf for the purpose of advising on the effective fulfilment of the objects and the due exercise of the functions of the University as prescribed by law.

6 (3) It shall be the duty of all officers, members, authorities, employees of and persons otherwise connected with the University to make available to the Visitor, and to any other person or persons conducting a visitation In pursuance of this section, such facilities and assistance as he or they may reasonably require for the visitation.”

Section 6 does not define the word “visitation.” The concept of the office of a visitor of an educational institution is ancient and its functions are well established by numerous authorities of the courts operating the common law system. Lord Goddard, C.J. in R. v. Dunsheath ex parte Meredith (1950) 2 All E.R. 741 considered some of the cases including whether or not his functions are imposed or defined by statutes or royal charter. It was held that “The question whether an officer of the University had refused to perform a duty placed on him by the statutes of the University was a domestic matter, and therefore, one essentially for the visitor, and that the application for mandamus would be refused.” The court was in the case considering the provisions of the University of London Act 1926. Section 6 provided that His Majesty in Council should be the Visitor of the University.

The statute imposed no limitation on his visitorial power. “The only two statutes which dealt with the powers of the visitors were those in statutes 109 and 119, which were provisions for special powers and duties, but there was nothing in the Act imposing any limitation on the ordinary visitorial powers of the Visitor.” At page 743A-E, he said:

“It is important to remember that mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. This is one of the reasons, no doubt, why, where there is a Visitor of a corporate body, the court will not interfere in a matter within the province of the Visitor, and especially this is so in matters relating to educational bodies such as -

B. Colleges. I see no difference for this purpose between a college and a university. Any question that arises of a domestic nature is essentially one for a domestic forum, and this is supported by all the authorities which deal with visitatorial powers and duties.

D. The authorities on the matter seem to be fairly consistent. In St. John’s College, Cambridge v. Toddington (97 E.R. 245), Lord Mansfield said (1 Burr. 200) -

‘The visitatorial power, if properly exercised, without expense or delay, is useful and convenient to colleges. However (be that as it may), we must take it, as it is now established by law: and it is now settled and established (since the case of Philips v. Bury (90 E.R.198) in the House of Lords) that the jurisdiction of the Visitor is summary and without appeal from it.”

The judgment went further to state that the authorities show the extensive powers of the visitor and at page 744 as follows:

“The court has come to the conclusion that this is a matter within the visitorial jurisdiction of His Majesty in Council, and therefore, this application for a mandamus is refused.”

See also Thorne v. University of London (1966) 2 All E.R. 388 which was referred to in the judgment of Dosunmu, J.C.A., and in the lead judgment of Irikefe, J.S.C. The Court of Appeal in England, Diplock L.J. delivering the judgment of the court observed that the High Court does not act as a court of appeal from university examiners.

It has been said that an order of mandamus, unlike certioriari and prohibition, is not primarily a means of reviewing the decision of an inferior tribunal, but is rather a comprehensive remedy for securing the performance of public duties. It will issue to control abuse of discretionary powers or where such decision was guided by irrelevant considerations. The court will not normally issue an order on how to exercise the power.

In this case, it has not been suggested or shown that the Senate refused to act as provided by law nor that it has acted unreasonably. The functions and powers of the Senate and that of the Vice Chancellor are clearly defined in the 1970 Edict. It provides as follows:

“SENATE: S.16(2)

The Senate shall, subject to the provisions of this Edict (and subject also to the powers reserved to the Council in all matters affecting the finances of the University), be the supreme academic authority of the University and be responsible for all academic matters in the University and shall organise, control and direct the academic work of the University, both in teaching and research, and shall take such measures and act in such a manner as it thinks proper for the advancement of the University as a place of education, learning and research.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the Senate, subject to the provisions of this Edict and the Statutes, shall have the following functions -

(d) to regulate all University examinations, and after considering the recommendations of the Boards of the faculties concerned respectively, to appoint University and External Examiners;

(e) to regulate the admission of persons to the University and to courses of study in the University and their continuance or discontinuance in such courses and the conditions qualifying for matriculation and for admission to the various titles, degrees, distinctions and other awards offered by the University;

(f) to award degrees (other than honorary degrees) diplomas, certificates and other academic titles and distinctions to persons who shall have pursued in the University such courses of study as may be approved by the Senate and shall have passed such examinations of the University and satisfied such other conditions as may be prescribed by Regulations of the University;

(h) to determine what formalities shall attach to the conferment of degrees and other distinctions;

(k) to review, refer back, control, amend or disallow any act of any Faculty, Institute, School, Board, Department or other academic body of the University and to give directions to any such body;

(t) to require a student on academic grounds to withdraw from the University;

S.17 (1) Subject to a right of appeal from the decision of the Senate to the Council, the Senate shall have power to deprive any person of any degree, diploma, certificate, fellowship, scholarship, studentship, bursary, medal, prize or other academic title, distinction or award whatsoever conferred upon or granted to him by the University, if after such inquiry as the Senate may deem necessary, the Senate is satisfied that he has been guilty of scandalous or other dishonourable conduct in obtaining the same.

VICE CHANCELLOR:

31 (1) The Vice Chancellor shall exercise such functions as may be conferred or imposed upon him by this Edict, the Statutes, Ordinances and Regulations, and shall, subject to the provisions of this Edict, exercise general supervision over discipline in the University (including in particular the exercise of disciplinary control over students) in such manner as the Vice-Chancellor may deem appropriate.”

Pursuant to the power to make regulations under S.27(1) of the 1970 Edict, the Senate made “Regulations for the Award of First Degrees under the Course Unit System.

”Regulation 1.

The degree shall be awarded as First Class Honours, Second Class Honours (Upper Division), Second Class Honours (Lower Division) and Third Class Honours. Students who fail to meet the requirements for the Honours degree may, subject to the condition prescribed below, or other conditions approved by Senate, be awarded a Pass degree.

Regulation 16

The performance of candidates in all examinations may be moderated in such a manner as Senate may determine, by assessors appointed by Senate from outside the University.

(iii) The final award and the class of the degree shall be based on the cumulative grade point average obtained by each candidate in all prescribed courses and approved electives taken at this or any other approved University provided that repeat courses shall not be counted twice.

Regulation 17

(i) At the end of each semester, a provisional list of successful candidates in course examinations shall be published by the Registrar soon after the recommendation of the Faculty Board to Senate.

(iii) The final results of candidates for the award of a degree shall be published by the Registrar after they have been approved by Senate.

While it seems that the publication of the provisional results is automatic under the above quoted sub-regulation (i), it is my considered view that this is subject to the supreme supervisory power of the Senate in all academic matters in the University, more particularly under section 16 sub-section (2), (f), (h), (k) of the 1970 Edict.

It is clear that the laws of the university fully empower the Senate to take the decision to suspend the publication of the results of each of the three appellants, in the interest of promoting the objectives of the University as provided in section 4 of the 1970 Edict.

The facts on the record of proceedings reveal that it was the Senate and not the Council of the University that took the decision at its meeting of 28th July, 1981 to withhold the results of the appellants (See Paper No. 1906 at p.108 of the record of appeal) pending an enquiry into the allegations. The minutes of that day also indicate (p.103) that is was the Vice Chancellor who on the advice of the Registrar, set up the panel to investigate discreetly the allegations and causes of the leakages made by Paul Usoro, President of the Law Students Society. Under the 1970 Edict, the Vice Chancellor is vested with the power of general supervision over discipline including, in particular, the exercise of disciplinary control over students vide sections 31 and 32.Sub-section 2 of S.32 gives a right of appeal by the student to the Council. See also Statute 6 - as to his functions and responsibility for discipline of students. Section 29 of the Edict also gives the Council power to deal with all matters relating to the maintenance of discipline and order in the university. In my view, the provisions in the Edict are adequate and reasonable for any aggrieved student to appeal against the decision of the Senate and the Vice Chancellor in any disciplinary action taken against her. None of the appellants has availed herself of these provisions. Indeed, none of them has given time to any of the repository of these powers to exercise its power before having recourse to the High Court for relief. In the circumstance, even if the court has jurisdiction, which it has, to entertain their grievances, it will in the exercise of its discretion refuse their application for mandamus, see R. v. Smith (1873) L.R. 8 Q.B. 118; Stepney B.C. v. Walker (John) & Sons Ltd. (1934) A.C. 365, 395-397.

The reliefs sought in the application are that the respondent publish and communicate the results and for a declaration that failure or refusal to publish same was illegal. From the foregoing, and having regard to reasons given for the suspension of publication, while not denying the jurisdiction of the court to grant the reliefs, it is inconceivable that it would make the orders sought in the exercise of its discretion in the circumstances of this case.

It all boils down to this. Should the court make the order for mandamus in the circumstances of the case when there exist statutory provisions for the reliefs sought by the appellants? The remedy so provided is more convenient, cheaper and more expeditious than proceedings in court and further, the statutory forum is better equipped in dealing with the matter than the court. The court guided by a long line of decisions will refuse, in principle and justice, to entertain the matter. This is not for want of jurisdiction but more on ground of public policy and discretion.

I am satisfied that there are adequate and appropriate provisions in the Edict for appeals and hearing of grievances by any affected student against any disciplinary actions taken by the Vice Chancellor and the Senate.

I will dismiss the appeal and affirm the decision of the trial court and of the Court of Appeal and award the respondents costs which are fixed at N300.

**KAWU, J.S.C**.

For the reasons given by my learned brother, Irikefe, J.S.C. in his judgment just read by him, a preview of which I have already had, I would also dismiss this appeal. I endorse the orders proposed by my learned brother in the same judgment.

Appeal dismissed.