



Student Representative Council (of Molepolole College of Education) v. Attorney General of Botswana

Student Representative Council (of Molepolole College of Education v. Attorney General of Botswana), [1995] BWCA 17 (Bots.).

Country: Botswana

Region: Africa

Year: 1995

Court: Court of Appeal of Botswana at Lobatse

Health Topics: Child and adolescent health, Sexual and reproductive health

Human Rights: Freedom from discrimination

Facts

The Student Representative Council of the Molepolole College of Education brought legal action against the Attorney General as representative of the Principal of the Molepolole College of Education and the Permanent Secretary in the Ministry of Education (respondents) on behalf of students affected by regulations of the Teacher's Training College. Specifically, the Council challenged the Regulation 6 of the Teacher's Training College which demanded that students inform the college authorities as soon as a pregnancy was confirmed. According to the regulation, students who became pregnant between December and April would be forced to leave the college immediately and those whose pregnancy was confirmed between May and November would be required to miss the next academic year. If a student became pregnant for the second time while at college, the institution had the right to expel her.

Decision and Reasoning

The Court rejected the respondents' argument that forcing the future mother to withdraw from the institution was beneficial to her and to her future child and that the regulation was clearly discriminatory against women and was contrary to the Constitution. The Court held that the enforced withdrawal could not be compared to a maternity leave. It considered that the two mentioned provisions were designed to ensure that mothers "stay[ed] away" from the college.

Decision Excerpts

"Why should the student be away for a whole year? The answer of the Principal of the College is that the regulations as they stand are not discriminatory. They were formulated positively by the College with the intention of providing a student with a well planned maternity leave. They are meant to protect the nursing mother and child". But why should this well planned maternity leave be enforced for at least one whole year? The Principal does not deal with that point. Surprisingly, she rather finds that "the regulations applied are consistent with what happens in other departments such as the Civil Service where pregnant women are required to take three months confinement leave." How any one can compare an enforced leave of one year with a 3 months' confinement leave and declare without reservation or further explanation that the two treatments are consistent is puzzling to me. That is so, especially, as in African societies, families arrange to look after the children of members from an early age in order to enable the mothers to pursue their careers, whether in studies or at work, or employment. I must confess that I find the explanation unconvincing. It seems to me that those two provisions quoted were designed primarily not with a view to benefit the pregnant female student but to ensure that she stays away from College for at least a year. That must be so because the provisions of the regulation do not allow the student to make a case that she need not stay away for so long and that she had made arrangements for the care of the child while she continues with her studies. It is true that in paragraph 7 of regulation 6, the Principal is given the right to consider exceptional cases on their merits. But why should the situation posited earlier be categorised as exceptional in order to merit individual consideration by the Principal?" Page 32.

"On a reading of the regulation as a whole, I am forced to the conclusion that the purpose of the regulation was purely punitive. It is recalled that when Mr. Chamme was asked what would happen if a married student got pregnant, whether she would be required to stay away from College for a year, his answer was that her situation would be treated as an exceptional case by the Principal. Why should her position be different from

the unmarried student? Clearly it is because in the view of the College Administration the unmarried student's conduct calls for punishment and the regulation is to enable this purpose to be achieved. No further confirmation of this intention seems to me necessary. " Page 33.

"Now, it is impossible to justify this provision as a regulation meant positively for the benefit of the mother and child. The Principal does not attempt to explain the intention behind it; and learned Counsel for the Respondent concedes that he is unable to justify it. If there was any doubt why the regulation was made, and I find it difficult to entertain such doubt on the face of the other provisions, this provision puts such doubt beyond question and reveals the real intention behind the regulation as simply punitive.

Such an intention in the making of a law or regulation specifically for women is unreasonable and unfair. The question then is, does that lead to such law or regulation made being struck down as contrary to the provisions in sections 3 and 15 of the Botswana Constitution? In my view it does. We have here a regulation made ostensibly for the benefit of women, which if that claim is correct would fall into the class of "treatment of different sexes based on biological differences" and would therefore be taken as not amounting to discrimination on the ground of sex as stated in the case of Attorney General v. Unity Dow. Were the regulation not made for the benefit of the female students of the College, I would have said without hesitation that prima facie the regulation was discriminatory. My reading of the provisions of the regulation leads me to the conclusion that the reason given by the College Administration for the regulation is incorrect and unacceptable. The regulation is held in terrorem over the head of the female student. Her male counterpart can be responsible for any number of pregnancies in the College during his course and suffer no such liability or punishment." Page 33-34.

Copyright © 2015 www.GlobalHealthRights.org