Judicial Approaches in Plagiarism Litigation: Lessons for Universities in East Africa

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Abstract

The escalation of plagiarism in universities and subsequent litigation by postgraduate students seeking to challenge universities' decisions through courts of law worldwide are noticeably increasing. This article reviews trends in plagiarism related litigation involving postgraduate students in universities in East Africa. The focus is on select universities in Kenya, Uganda and Tanzania. The objective is to determine the approaches that courts of law in the region and those in other jurisdictions have adopted in developing legal principles in the course of determining plagiarism related litigation. The recommendations advanced seek to assist courts in the region to determine cases in accordance with emerging and well-defined legal principles on plagiarism amplified in numerous precedents. The exposition will also hopefully assist university authorities to discharge their respective roles more effectively and diligently in the course of dealing with plagiarism related disciplinary cases. Potential student litigants will also be in a better position to make logical and informed choices with confidence on decisions arrived at by universities.

Key Words: academic integrity; East Africa; plagiarism litigation; university postgraduate research

Introduction

The guiding definition of plagiarism in this article is that amplified in an Indian court case (Shri Parameshwaramurthy, 2012). The court in this case defined plagiarism extensively as the use of another person's work idea, view or concept and presenting it as ones own, without acknowledgment or not acknowledging it fully or properly and adequately. It noted that plagiarism is unethical, unprofessional and embodies academic dishonesty (Shri Parameshwaramurthy, 2012, pp. 54-68).

The increase in plagiarism by postgraduate students in Universities throughout the world has triggered a lot of concern.[1] There is abundant literature on the causes and concerns on plagiarism by postgraduate students the world all over (European Network for Academic Integrity, 2021). In Canada, it has been noted that the trend has reached unbearable levels (Lindsay, 2011). The worrying trend, it has been observed, has risen during the COVID-19 pandemic period (Nagi & Varughese, 2022).

[1] Reference to postgraduate students in this article, unless otherwise stated, refers to Ph.D. and Masters Degree students.

In Africa, studies on plagiarism and its impacts by postgraduate students at Universities have been conducted in Nigeria and Mozambique (Oyewole & Abioye, 2018 & Peter & Coughlin, 2015, respectively). The increase in plagiarism during the COVID-19 pandemic era has also been documented in South Africa (James, 2022). In East Africa plagiarism has been likened to cancer (Okoche, 2013). In depth studies on plagiarism in Universities in Kenya, Uganda and Tanzania have been undertaken (Ramadhan, 2017; Mbilinyi & Msuya, 2018). Concerns have also been raised in Rwanda (Sibomana, Ndayambaje & Uwambayinema, 2018 & Times Reporter, 2015). Recent studies indicate that Universities in Rwanda are finding it more difficult to cope with the upsurge of plagiarism (Clarke, Chan, Bukuru, Logan & Wang, 2022).

Plagiarism litigation initiated by postgraduate students seeking to challenge Universities' in courts over allegations of plagiarism has been increasing across the globe. The earliest court cases can be traced to the United States and have been covered to a great extent. (Neal & Weeks, 1983). Postgraduate students in Universities in Canada have sued Universities challenging their decisions on plagiarism charges (Marie-Eve-Morasse, 2021). Similar litigations have been filed in the United Kingdom (UK Centre for Legal Education [n.d]). In India, a postgraduate student sued the Principal of Gondwana University in his personal capacity in an effort to pursue her rights against the institution and the court ruled in her favour (Ali, 2021). A Ph.D. student and one-time senior government official in Thailand, who had allegedly plagiarized his thesis, instituted criminal and civil lawsuits against Chulalongkorn University in 2012. The highest court in the country upheld decisions of the lower courts and dismissed his claims (Lamubo, 2013).

Studies and literature on plagiarism litigation in the East Africa region are, however, scarce despite an emerging trend of aggrieved postgraduate students increasingly challenging Universities in courts. More specifically, an analysis of the approaches used by courts in applying legal principles set out in precedents to determine cases on plagiarism by University postgraduate students in the region has not been undertaken. This article seeks to fill this gap and stimulate further research and discussion in this uncharted area.

Universities' Regulatory Frameworks on Plagiarism

Efforts to deter plagiarism by Universities in East Africa, especially at the postgraduate level have witnessed the introduction of a number of mechanisms by national regulatory authorities. The University regulatory authority in Kenya directs Universities 'to institute mechanisms to curb plagiarism in all scholarly writings, which shall include thesis/dissertations/projects' to address plagiarism. (Commission for Kenya University Education, 2014). Tanzania's Universities' regulatory body has defined instances that constitute plagiarism and directs all Universities to put in place anti-plagiarism software to detect it. It also makes it mandatory for postgraduate students to submit anti-plagiarism reports before consideration for graduation. (Tanzania Commission for Universities, 2019). Uganda's Universities' regulatory authority is comparatively less comprehensive, simply directing Universities to maintain academic standards (National Council for Higher Education of Uganda, 2014). Other mechanisms that Universities have put in place to address plagiarism include putting in place rules and regulations, imposing penalties on students.

These include suspension from studies or expulsion of those found guilty or nullifying their dissertations and thesis or withdrawal of degrees (Ramadhan, 2017).

The introduction of rules and regulations is a relatively new development, as plagiarism was not a challenge to Universities in the region at inception (Mbilinyi & Msuya, 2018). The extent of their success in addressing plagiarism at Universities is not the concern of this article. Suffice to point out here that there is controversy on this matter (Ramadhan, 2017).

Students have also challenged anti-plagiarism software in courts for allegedly violating their privacy and copyright infringement. (AV v IParadigms LLC, [n.d]); Zimmerman, 2008). Most universities have formal institutionalized systems charged with enforcing the regulations and rules. The organs charged with the process are essentially required by virtue of their establishing legal instruments to conduct disciplinary proceedings in a manner that is similar to court proceedings (Lewis, 1983).

Disciplinary Proceedings on Plagiarism at Universities

The application of anti-plagiarism regulations by University authorities in their quasi-judicial capacities ought to comply with a number of legal requirements (Lindsay, 2011). Critical among these is according students the right to be heard, including at the appellate stage and ensuring they get charge sheets in time (Picozzi, 1987). Where the procedure is not complied with, the student, with good representation, can easily succeed in court without the court having delved on the substantial issue of plagiarism.

One key criterion that a court would consider in a plagiarism suit is whether there is in place any rule or regulation making plagiarism an offence and whether such rule or regulation was brought to the attention of the aggrieved student (Picozzi, 1987). These are generally matters relating to the principle of procedural fairness where courts will not condone Universities that do not comply with these principles. (Lewis, 1983; Walsh, [n. d]). As noted above, in Shri Parameshwar (2012), courts have engaged in the meaning of the word plagiarism. In this regard Universities must construe the scope of the word plagiarism in their regulations or rules clearly addressing issues such as *mens rea* (guilty mind) or intention and dishonesty. The charge of plagiarism must also be clear on specific alleged actions of plagiarism. In the absence of these, courts are likely to overturn decisions of Universities' disciplinary committees. In one case, the Supreme Court of Queensland was called upon to determine the issue of whether a University student had allegedly collaborated with and copied assignments from a fellow student was guilty of plagiarism (*Re* Hamzy-Hancock, 2007). Philip McMurdo, J held:

None of the allegations of plagiarism is proved. I find that in each case the failure to give proper attribution was the result of poor work and not an intention to pass off the work of another as the applicant's work (*Re* Hamzy-Hancock, 2007).

Some authorities have associated plagiarism with criminality, probably due to its historical development, deriving meaning from the word *plagiori* (from the word *plaga,* Latin for "trap" or "snare"), which referred to the stealing of a slave or child. (Green, 2002). However,

plagiarism is not a criminal offence *per se*. (Flanagan v University College Dublin, 1988; Lindsay, 2011).

As noted above, aggrieved postgraduate students particularly from Universities in Kenya, Uganda and Tanzania, the focus of this article, are progressively becoming litigious. Such litigation has witnessed courts applying legal principles and precedents from branches of law in areas of constitutionalism, intellectual property, administrative and tort to determine plagiarism litigation cases.

Assessment of Plagiarism Court Cases in East Africa

The cases discussed have been purposefully selected from those available on online judicial platforms in Kenya, Uganda and Tanzania. The cases selected are those from courts of record, High Courts and Courts of Appeal or Supreme Courts, which form part of the precedent in the common law tradition. Specific focus is on cases that have been filed by postgraduate student litigants challenging decisions of their Universities to expel them from studies after having been found guilty of plagiarism. The online judicial platforms provide free access to, among other legal materials, judgments of courts of record of each of the three countries for Kenya, Uganda and Tanzania are available on thee platforms. In the course of discussing the approaches adopted in the selected cases, some comparison is made to precedents in other jurisdictions, most of which are also freely available online. The aim is to assess the extent to which the approaches adopted by courts in plagiarism litigation in these countries reflect current and evolving global trends.

Kenya

Kenya has one of the earliest plagiarism litigation cases in the East African region (Anne Nang'unda Kukali v Mary Ogola and the University of Nairobi, 2010). The applicant in this case sought a temporary injunction to restrain the University of Nairobi from awarding her a Masters degree. She alleged that the first respondent had plagiarized her Masters dissertation. The applicant maintained that she had copyrights over a dissertation she had submitted and graduated at another University. The court was satisfied that the plagiarism allegation was proved and the court determined the case on the basis of copyright law despite having clearly noted that the facts revolved around plagiarism.

In doing so, the court assumed that plagiarism and copyright are synonymous despite having been established by long renowned precedents that there is a fundamental difference between the two (Sengupta, 2015). The distinction also finds support in a number of authorities. It has been noted that:

> In short, plagiarism and copyright infringement do share important characteristics, but for the most part remain distinct from one another. All cases of plagiarism are not cases of copyright infringement, and vice versa. And while all cases of copyright infringement may be legally actionable if monetary damages are proven, many cases of academic plagiarism offer no cause of action or private remedy whatsoever (Lindsay, 2011, p. 40 and Mawdsley, 2009, pp. 261-264).

Hardy and James have also clarified the difference between plagiarisms and infringement of copyright in terms of the law, citing with approval, the case of Ogunkoya v Harding (2017). They note that:

> The confusion often stems from the fact that copyright infringement is enshrined in law whereas plagiarism is not so precisely defined. Rather than being based in law, the meaning of plagiarism is found in the professional or moral codes, which govern authors' work (Hardy & James, 2017, p.1)

Being one of the first test cases, the court in Anne Nang'unda Kukali should have conducted sufficient research to enable it to delve properly on the abundant precedents on plagiarism litigation in Universities. Counsel should have led the court in this initiative.

Despite the shortfall, this case still serves as a good lesson to students who plagiarize. They should realize that a student whose work was allegedly plagiarized could sue the plagiarizer (and the University) to assert her rights in law on the basis of tortious liability. (Lipka, 2008). It is in this context, the court in the Kenyan case of Anne Nang'unda Kukali determined the matter on the basis of tortious liability and awarded the applicant financial damages for infringement of copyright. It is also important to point out here that the copyright is also vested in Universities (derived from dissertations and theses in their custody). Universities can sue students who infringe their copyrights. (Friesen, 2022). Students whose works have been plagiarized on the basis of contributory liability, however, cannot sue universities unless they prove that the universities are to blame. The High Court of Uganda in the case of Bensaon Barigye v Dr. John Ddumba Ssentamu and Makerere University Council confirmed this view. In this case, the plaintiff, a student had enjoined Makerere University for allegedly infringing his copyright where another student had plagiarized it. The Court firmly held that the University could not be taken to have been an accessory to plagiarism as it did not condone or authorize the plagiarisation (Bensaon Barigye v Dr. John Ddumba Ssentamu and Makerere University Council, 2003).

Another plagiarism litigation case from Kenya involves a doctoral candidate at Kenyatta University, whom it was alleged had either plagiarized his thesis or employed undergraduate students to write it for him for a fee. (*Ex-parte* Wellington Kihato Wamburu, 2017). The thesis was subjected to an anti-plagiarism check as per the University's regulations. The disciplinary committee found him guilty. He challenged the University's decision, arguing that the committee was biased and illegally constituted. The court held in his favour and quashed the proceedings of the committee.

The court did not address the issue of plagiarism. It only focused on constitutional guarantees on the right to education and judicial review remedies. This is understandable since the applicant argued, correctly so, that he was not afforded an opportunity of presenting his case before the disciplinary committee.

A lesson drawn this case is that University authorities charged with disciplinary procedures in cases of alleged plagiarism should strictly follow applicable Regulations and due process,

being quasi-judicial organs. Non-compliance with these leads to such painful decisions, at the detriment of the credibility of the University.

It should be noted here, however, that there are a number of precedents on plagiarism that have a direct bearing on judicial review. The court in Wellington Kihato Wamburu cited some authorities but made no reference to plagiarism and its hazards in Universities, even in passing, by way of *obiter dictum*. *Obiter dictum* or *obiter dicta* are statements issued by a court to emphasize its observation on matters not directly litigated before it but have implications in society. Such statements do not form part of the reasons for the court's decision. However, they are useful in developing jurisprudence in the law in as far as it somehow touches areas litigated before the court: plagiarism in this case (Sarwan Singh Lamba v. Union of India, 1994). It has been noted that courts in subsequent cases can adopt an *obiter dictum* wholly and hence develop legal principles further (Sarwan Singh Lamba v. Union of India, 1994).

Uganda

One of the litigated plagiarism related cases from Uganda (Kitara David Lagoro v Gulu University, 2019) warrants an examination. Its facts and principles expounded by the High Court of Uganda are very relevant and have wide ranging implications for decision-making bodies in Universities when dealing with examination of postgraduate dissertations. This case also provides food for thought to students and Universities as it addresses emerging issues of academic plagiarism.

The applicant, a doctoral student at Gulu University, allegedly fabricated data when he submitted his thesis for examination. *Viva voce* examiners passed the thesis, subject to many corrections. The examiners assigned two of its members to form a sub-committee to oversee the corrections. The applicant submitted his corrected version of the thesis to the sub-committee. They did not approve it, but requested the applicant to furnish them with information and data to ascertain the institutions that the applicant had claimed to obtain data from. The applicant did not respond to the request within the deadline provided. The sub-committee contacted the institutions, which the applicant had stated he had visited and collected data from. Three of the institutions denied the applicant had undertaken studies at their facilities. The University therefore declined to award the applicant the required degree. Dissatisfied, the applicant sued the University.

Some of the court's observations have implications for plagiarism litigation involving University organs charged with enforcing plagiarism regulations. Citing with approval, the Court of Appeal of Kenya (Nyongesa & 4 Others v Egerton University College, 1989), the Court restated the approach by courts in the region not to interfere with 'University autonomy' and 'academic freedom' but would do so where students' Constitutional rights are infringed. The Court cautioned on the failure by some Universities organs, to abide strictly to the principles of law that guarantee fair hearing in disciplinary proceedings. Mubiru J, cited Nyarangi, J. A (in Nyongesa, 1989) where he stated:

> … courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run universities or indeed any other bodies. However, courts will interfere to quash decisions of any bodies when the courts are moved to do so where it is manifest that decisions have been made without fairly and justly hearing the person concerned or the other side. It does not assist for anyone to question or criticise the particular posture of courts. It is the duty of courts to curb excesses of officials and bodies who exercise administrative or disciplinary measures. (Para 24)

Another lesson from this case relates to the conduct of Universities' disciplinary personnel to take further steps to establish allegations of plagiarism or academic dishonesty. The decision to contact institutions, which the applicant had said he obtained data from, was found to be appropriate.

The court in Kitara's case also clarified the issue of jurisdiction of courts to entertain cases relating to academic decisions of Universities in matters of academic quality. In doing so, it cited, with approval, the holding a case decided by the High Court of Zambia (Mumbuna Wamuneo Mwisiya v The Council of the University of Zambia, 1981) which stated that courts have jurisdiction to determine cases relating to thresholds of academic standards, including plagiarism.

Kitara's case also took judicial notice of key elements of the *viva voce* examination process and provided directions on conditions for reconstituting the *viva voce* panel, requirement of an interpreter and the sanctity of such examination. It stated that:

> ...the *viva voce* panel is wholly a matter of academic judgment in which this court should not interfere (see R v. Judicial Committee ex parte Vijayatunga [1990] 2 QB 444; R v. Cranfield University ex parte Bashir [1999] ELR 317 and R v. Cranfield University ex parte Bashir [1999] ELR 317, [1999] EWCA Civ 995)… (Kitara David Lagoro v Gulu University, 2019).

On the role and purpose of research in relation to plagiarism, *Kitara's* case provides an unambiguous message to students. It affirmed:

> …research is primarily conducted to advance the common good and not to further the interest of either the individual researcher or the institution as a whole. Students therefore have an obligation to conduct research honestly, competently and ethically. The University expects academic honesty on the part of its students that any work a student submits for assessment is their own and is not the result of dishonest behaviour… (Kitara David Lagoro v Gulu University, 2019, p. 28).

Therefore, it follows that students must be honest to ensure that the research process benefits all.

Tanzania

Dr. Jean-Bosco Ngendahimana v the University of Dar-es-Salaam is the leading authority on plagiarism litigation in Tanzania, having been determined by the country's highest court (Dr. Jean-Bosco Ngendahimana. 2017). The applicant was a doctoral candidate at the University of Dar-es-Salaam School of Law (UDSoL) under the sponsorship of the Tanzanian-German Centre for Eastern African Legal Studies (TGCL) Programme run jointly with the University of Bayreuth, in Germany. He submitted his thesis for examination and successfully defended it during a *viva voce* examination in 2013. His name was entered into the University's (UDSM) graduation booklet ready for graduation in November 2013.

As required by the TGCL Programme, all doctoral candidates' theses are published in the TGCL Research Series of the year in which they graduate. These are subjected to a peer process before publication. The applicant's thesis underwent the peer review process and subjected to anti-plagiarism check. It did not meet the threshold. The University authorities found the applicant guilty of plagiarism and discontinued him from studies.

The applicant sought the intervention of the High Court through judicial review. His case was dismissed by the High Court. He appealed to the Court of Appeal. He maintained that at the time of discontinuation from studies, the University did not have clear regulations on plagiarism providing for the penalty imposed. He also claimed that he was not accorded a fair hearing.

On the issue of judicial review, the Court of Appeal, like cases in Kenya and Uganda discussed above, applied the renowned precedents to re-iterate the position that disciplinary authorities in Universities must confirm to rules of natural justice. It re-echoed the need for consistency shown by precedent by refusing to interfere with issues of academic standards in Universities (Dr. Jean-Bosco Ngendahimana, 2017, p. 17).

There are judicial precedents that have re-iterated courts' stance on non-interference in plagiarism litigation cases that could have been cited by the Court of Appeal, but the occasion to cite these was left to pass. The New York Supreme Court, for instance has held that 'matters involving academic standards generally rest upon the subjective judgment of professional educators; courts are reluctant to impose the strictures of traditional legal rules (Tedeschi v Wagner College, 1980).

Unlike in the cases in Kenya and Uganda, analyzed above, the applicant in this case specifically challenged the University on non-existence of regulations on plagiarism. Cases from Uganda and Kenya had focused predominately on judicial review of decisions of Universities' disciplinary organs. The Court of Appeal of Tanzania therefore was placed in a comparatively better position to address plagiarism more holistically. Indeed it took this opportunity head-on by probing on whether the UDSM had regulations to address plagiarism. It took note of the definition of plagiarism, referring to Postgraduate Regulations of the UDSM, which defined plagiarism and provides the consequences for non-compliance. These regulations, however, did not contain the requirement for subjecting postgraduate theses to an anti-plagiarism check before submission for examination.

The judges in Jean-Bosco's case should therefore be applauded as a good precedent that

provides guidance and direction of addressing plagiarism litigation in Tanzania. The case has ramifications for plagiarism litigation for courts in the East African region and beyond. The case may, in the absence of other precedents in the region, be influential as courts in the region have referred to and applied, with approval, other precedents. A good example is the East African Court of Justice where cases from Tanzania and Uganda were cited. (Among A., v A.G of Uganda et al., 2013). In Malawi, the High Court applied with approval (State v Attorney General et al*.,* 2002), the dictum of Justice Lugakingira of Tanzania in one of his decisions (Reverend Christopher Mtikila, 1985).

One interesting issue that arises out of the Jean-Bosco case is that at the time the applicant submitted his thesis which was approved, the University of Dar-es-Salaam did not require candidates to undertake a plagiarism check before submission of theses for examination or at any stage, as noted above. The applicant was therefore technically not in a position to verify whether his thesis was plagiarized without such check. We should, however, point out here that even if he would have found other means to pre-test the thesis with an anti-plagiarism soft ware, he was not required by regulations to do so. It is therefore not surprising that neither the applicant's two renowned senior supervisors nor the *viva voce* examination panel discovered the problem. They had no access to anti-plagiarism software.

The applicant could most likely not have succeeded on the claim that the plagiarism was discovered after his thesis was approved. This is because Universities retain the right to withdraw degrees years after conferment. This was the case in relation to the German Education Minister who had to resign in 2013 after Düsseldorf's Heinrich Heine University stripped her off her doctorate for plagiarism. The University, upon a tipoff from an unnamed source, re-examined the thesis that she had submitted in 1980, and graduated. (BBC News, 2013). Courts have also approved the withdrawal of degrees after conferment in plagiarism litigation. The Superior Court of New Jersey addressed the withholding of a student's degree for one year because of plagiarism (Napolitano v Trustees of Princeton University, 1982). The court found the charge of plagiarism valid and the withholding of the degree a viable punishment. Similarly, in the United States the court rescinded the applicant's degree 17 years after it was awarded after finding discrepancies, including plagiarism (Waliga v Board of Trustees, Kent State University, 1986). In another case, which was based on allegations of plagiarism, a Court in the United States held, *inter alia*, that the respondent University was not estopped from annulling the applicant's doctoral degree (Faulkner v University of Tennessee, 1994).

The decision by Jean-Bosco to go to court was also a call for the University of Dar-es-Salaam authorities. They hurriedly put in place Guidelines and Regulations requiring all postgraduate students to submit anti-plagiarism check reports before submitting their theses or dissertations for examination. These were promulgated when the case was still pending in court. The Regulations that existed did not require students to conduct anti-plagiarism checks and submit reports derived from the checks before submission of theses or dissertations. The new Guidelines that sought to address this vacuum are now in place (University of Dar-es-Salaam, 2016).

Conclusions and Recommendations

Conclusions

Like in other jurisdictions, courts that have been called upon to determine plagiarism litigation in Kenya, Uganda and Tanzania have uniformly upheld Universities' decisions and refrained from interfering with their academic standards. However, this approach should not let Universities relax in ensuring that proceedings to determine plagiarism cases comply with the legal principles relating to due process.

It is clear from the analysis that generally courts in Kenya and Tanzania have not sufficiently referred to and exhausted precedents on plagiarism litigation. In this regard, they have not helped to fully exhaust and advance the law in various aspects and angles of plagiarism. There exist abundant court precedents in many jurisdictions that have a direct bearing on plagiarism and University education. The approach taken by the High Court of Uganda in Kitara's case is exemplary and an exception to this trend. The court in this case addressed diverse issues covered by precedents on the University-student relationship in the context of plagiarism in other jurisdictions. It provides other courts with a broader scope to consider in plagiarism litigation cases in future.

Although not directly addressed by the East African cases discussed above, it is clear from the approach by the judicial precedents that University regulatory authorities in the region ought to issue a directive to these institutions to promulgate Regulations addressing plagiarism. This will be in compliance with Article 2 of the Treaty establishing the East African Community, which calls for the harmonization of education curriculum in Universities in the region (EAC, 2007). The Inter University Council for East Africa (Inter University Council for East Africa, 2015) also requires harmonization of education issues at the regional level. The Tanzania Commission of Universities' directive provides good guidance and should be emulated. Lack of clear provisions on plagiarism in institutional legal instruments such as students' regulations and policies would likely be detrimental to Universities (Jones, 2006).

It has also been noted that students have sued those who plagiarize their work (and have enjoined Universities) in plagiarism litigation founded on copyright infringement. In this regard, students who contemplate plagiarism should remember that they also risk being dragged to court by authors of publications they copy from.

The difference between plagiarism and copyright infringement has, however, not been addressed by the precedents we have analyzed. The opportunity to address this was missed in Anne Nang'unda Kukali where the court's attempt was *per incuriam* and is likely to lead to confusion. The multitude of authorities discussed in this analysis clearly reveals that plagiarism and copyright violation are not the same.

Recommendations

A number of recommendations to be considered by students, University authorities and the legal fraternity can be made from the analysis above.

Students

Students should not plagiarize and anticipate courts' lenience in condoning their misdeeds. They should only consider seeking recourse to courts where they have proof of violation of their rights by non-compliance of procedure in disciplinary proceedings. Courts of law will, however, not entertain trivial issues of technicalities relating to plagiarism that seek to override substantive matters of justice. The Court of Appeal of Tanzania has amplified this position (Yakobo Magoiga Gicehere vs. Peninah Yusuph, 2017). In the event that the machineries put in place by Universities do not detect plagiarism, student plagiarists should not feel safe after graduation. As noted, members of the public who have read plagiarized dissertations and theses have brought plagiarizers to the attention of Universities and the culprits brought to task and held accountable, many years after graduation.

Universities

Universities must appraise students in a compulsory module in a research course, on a continued basis, on the consequences of plagiarizing. University personnel charged with overseeing plagiarism proceedings should also be regularly updated on recent trends and developments relating to plagiarism litigation. This could be done through teach-in seminars or continued education programmes. Universities authorities need to ensure that plagiarism Regulations and rules are in place, unambiguous and known to all students. The emphasis of these should be to reform and ensure students comply rather than provide for an ambush approach just before graduation. Emphasis should focus on inculcating a culture of observing academic standards among students by encouraging them to conduct more frequent anti-plagiarism checks.

Courts have been called upon to address challenges of anti-plagiarism software through plagiarism litigation. Universities should address these and any challenges that emerge or likely to emerge on a continued basis. University regulatory authorities in the EAC should designate approved anti-plagiarism software to be used by Universities for purposes of uniformity. This is because the various forms of anti-plagiarism software have different challenges, including their degrees of precision and as a result dissertations passed by one University may fail in another with a higher threshold (Stapleton, 2012).

The analysis of the judicial approaches has clearly revealed that it is ill advised for an aggrieved student plagiarizer to attempt to challenge plagiarism proceedings in court in an effort to solicit sympathy. Students and Universities should avoid plagiarism litigation, as these taint their images in the short and long run.

Legal Fraternity

Judges should, with assistance of counsel, conduct more research to uncover existing abundant and instructive precedents on plagiarism litigation to enrich their judgments. Where an opportunity to address the difference between copyright and plagiarism arises through subsequent plagiarism litigation, for example, this should be taken up to correct the misconception that the two are synonymous.

References

Among, A. Anita v A.G of Uganda et al [2013] EACJ 3 (29 November 2013). Retrieved from https://africanlii.org/ea/judgment/east-african-court-justice/2013/3-0

Ali, M. (2021, August 31). HC dismisses plagiarism case against college principal. *The Times of India.* Retrieved from https://timesofindia.indiatimes.com/city/nagpur/hc-dismisses-plagiarism-case-against-college-principal/articleshow/85780705.cms?frmapp=yes&from=mdr

Anne Nang'unda Kukali v Mary Ogola and the University of Nairobi, 2010 [2010] eKLR. Retrieved from http://kenyalaw.org/caselaw/cases/view/74504

Anney, V. N. & Mosha, M. A. (2015). Student's plagiarisms in higher learning institutions in the era of improved Internet access: Case study of developing countries. *Journal of Education and Practice*, 6 (13), 203-216.

AV v IParadigms LLC (n.d.). United States Court of Appeals for the Fourth Circuit, 544 F. Supp. 2d 473, 480 https://www.ca4.uscourts.gov/opinions/published/081424.p.pdf:

Bensaon Barigye v Dr. John Ddumba Ssentamu and Makerere University Council (2003). Retrieved from *New Vision Newspaper* 5 February 2003 https://www.newvision.co.ug/news/1274226/judge-throws-plagiarism

BBC News (2013, February 9). German minister Annette Schavan quits over plagiarism. Retrieved from https://www.bbc.com/news/world-europe-21395102

Clarke, O., Chan, W. Y. D., Bukuru, S., Logan, J. & Wang, R. (2022). Assessing knowledge of and attitudes towards plagiarism and ability to recognize plagiaristic writing among university students in Rwanda. *High Educ*. https://doi.org/10.1007/s10734-022-00830-y

Commission for Kenya University Education (2014). Universities standards and guidelines, June 2014 p. 52. Retrieved from https://www.daystar.ac.ke/downloads/PhD_Downloads/universities%20standards%20and%20guidelines%20june%202014.pdf

Dr. Jean-Bosco Ngendahimana v the University of Dar-es-Salaam. (2017). Civil Appeal No. 304 of 2017, Court of Appeal of Tanzania at Dar-es-Salaam [Unreported]. Retrieved from https://tanzlii.org/tz/judgment/court-appeal-tanzania/2021/3528

East African Community (2007). Treaty establishing the East African Community. Retrieved from https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download

European Network for Academic Integrity (2021). European Union on academic integrity and plagiarism. Retrieved from https://academicintegrity.eu/conference/proceedings/2021/book_of_abstracts2021.pdf

Ex-parte Wellington Kihato Wamburu. (Miscellaneous Application No. 466 of 2017). Retrieved from http://kenyalaw.org/caselaw/cases/view/148378

Faulkner v. Univ. of Tennessee, (1994) WL 642765 (Tenn.Ct.App. 1994) cited in Standler, R. B (2012). plagiarism in colleges in USA: legal aspects of plagiarism, academic policy. Retrieved from http://www.rbs2.com/plag.pdf

Flanagan v University College Dublin (1988) IR 724, [20]. Retrieved from https://ie.vlex.com/vid/flanagan-v-university-college-793568889

Friesen, J. (2022 May 11). University of Toronto sues tutoring service for copyright infringement. *The Globe and Mail News Paper*. Retrieved from https://www.theglobeandmail.com/canada/article-university-of-toronto-sues-tutoring-service-for-copyright-infringement/Friesent

Green, S. P. (2002). Plagiarism, norms, and the limits of theft law: Some observations on the use of criminal sanctions in enforcing intellectual property rights. *Hastings Law Journa*l, 54 (1), 167-242. Retrieved from https://www.researchgate.net/publication/228244566_Plagiarism_Norms_and_the_Limits_of_Theft_Law_Some_Observations_on_the_Use_of_Criminal_Sanctions_in_Enforcing_Intellectual_Property_Rights

Hardy, A. & James, C. (2017). Plagiarism v copyright infringement of the society of authors. *The Authors Journal*, Winter 2017. Retrieved from https://societyofauthors.org/getmedia/872311fe-f54f-4dde-9599-a407a9c1c13a/Plagiarism-and-copyright-infringement.aspx

Inter University Council for East Africa (2015). Harmonization of higher education in East Africa. Retrieved from http://repository.eac.int/bitstream/handle/11671/2047/Harmonization%20of%20Higher%20Education%20in%20East%20Africa%20Status%20Update.pdf?sequence=1&isAllowed=y

James, A. (2022, 12 May). Study reveals deep concerns over cheating, learning quality. *University World News Africa Edition*. Retrieved from https://www.universityworldnews.com/post.php?story=20220502063704 64

Jones, M. (2006). Plagiarism proceedings in higher education: Quality assured? Glasgow Caledonian University. Retrieved from http://marketing-porg-statamic-assets-us-west-2.s3.amazonaws.com/main/Jones_fullpaper2006.pdf

Kitara David Lagoro v Gulu University (2019) (Miscellaneous Civil Cause 10 of 2017) [2019] UGHCCD 58 (12 February 2019). Retrieved from https://ulii.org/ug/judgment/hc-civil-division-uganda/2019/58

Lamubo, S. (2013, October 13). Appeal court upholds university verdict on plagiarism. *University World News*. Retrieved from https://www.universityworldnews.com/post.php?story=20131031161316390#:~:text=The%20board%20concluded%20that%20an,the%20'rule%20of%20law'

Lewis, C. B. (1983). The legal nature of university and the students university relationship. *Ottawa Law Review*, 15, 249-273. Retrieved from https://rdo-olr.org/wp-content/uploads/2018/01/olr_15.2_lewis.pdf

Lindsay, B. (2011). Student plagiarism in universities: the scope of disciplinary rules and the question of evidentiary standards. *International Journal of Law & Education* 16 (1), 27-45. Retrieved from https://www.anzela.edu.au/assets/ijle_vol_16.1_-_3_lindsay.pdf

Lipka, S. (2008, December 5). Judge rules for expelled student who sued a fellow student over plagiarism. *The Chronicle of Higher Education.* Retrieved from https://www.chronicle.com/article/judge-rules-for-expelled-student-who-sued-a-fellow-student-over-plagiarism-1389/

Marie-Eve-Morasse, (2021 September 15). Quebec universities have seen cases of plagiarism double since the start of the pandemic. *Toronto Star*. Retrieved from https://www.thestar.com/news/canada/2021/09/15/quebec-universities-have-seen-cases-of-plagiarism-double-since-the-start-of-the-pandemic.html

Mawdsley, R. D. (2009). The tangled web of plagiarism litigation. *Brigham Young University Education and Law Journal*, Fall 2009, (2) 21-35. Retrieved from: https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1259&context=elj

Mbilinyi,D & Msuya, J (2018). Knowledge and strategies of controlling plagiarism at the University of Dar-es-Salaam, Tanzania. *University of Dar-es-Salaam Library Journa*l, 13 (2), 33-48.

Mumbuna Wamuneo Mwisiya v The Council of the University of Zambia (HP 48 of 1981) [1981] ZMHC 9 (20 August 1981). Retrieved from https://zambialii.org/zm/judgment/high-court-zambia/1981/9

Nagi, K. & Varughese K. J. (2022). A study of attitudes towards plagiarism among Thai university students. *European Journal of Foreign Language Teaching* 5 (4), 21-35. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3843418

Napolitano v. Trustees of Princeton University, 453 A.2d 263 N.J.Super.A.D. 1982. Retrieved from https://law.justia.com/cases/new-jersey/appellate-division-published/1982/186-n-j-super-576-0.html

National Council for Higher Education of Uganda (2014). Quality assurance framework for universities and the licensing process for higher educational institutions. Retrieved from https://businesslicences.go.ug/uploads/documents/Quality-Assurance-Framework-for-Universities.pdf

Neal, D., & Weeks, K. M. (1983). Plagiarism at Princeton: An academic judgment or a disciplinary procedure. *Popular Media* 12. Retrieved from https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1006&context=popular_media

Nyongesa & 4 Others v Egerton University College, Civil Appeal No. 90 of 1989, Court of Appeal at Nairobi. Retrieved from http://kenyalaw.org/caselaw/cases/view/7707/

Ogunkoya v Harding [2017] EWHC 470 (IPEC). Retrieved from https://www.casemine.com/judgement/uk/5a8ff75060d03e7f57eab2c4

Okoche, J. M. M (2013). Plagiarism: the cancer of East African university education. *Journal of Education and Practice*, 4 (17), 137-143. Retrieved from https://www.academia.edu/33967567/Plagiarism_the_Cancer_of_East_African_University_Education

Oyewole, O. & Abioye A. (2018). Awareness of plagiarism acts and policy by postgraduate students in University of Ibadan, *Nigeria' Library Philosophy and Practice (e-journal)*. Retrieved from https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=5311&context=libphilprac

Peter, E. & Coughlin, P. E. (2015). Plagiarism in five universities in Mozambique: magnitude, detection techniques, and control measures. *International Journal for Educational Integrity*, 11 (2). Retrieved from https://doi.org/10.1007/s40979-015-0003-5

Picozzi, James, M. (1987). University disciplinary process: What's fair, what's due, and what you don't get. *The Yale Law Journal*, 96 (8), 2132-2161. Retrieved from https://core.ac.uk/download/pdf/160249451.pdf

Ramadhan Z. Z. (2017). *Plagiarism in master of education studies at selected East African universities*. (Master's thesis). The Nelson Mandela University, Port Elizabeth, South Africa. Retrieved from https://cermesa.uol.de/wp-content/uploads/2018/05/ZAINABU-RAMADHAN.pdf

Re Humzy-Hancock [2007] QSC 34, p. 11. Retrieved from https://www.queenslandjudgments.com.au/caselaw/qsc/2007/34

Reverend Christopher Mtikila v AG et al. [1985] Tanzania Law Reports [TLR] 3

Sarwan Singh Lamba & Others vs Union Of India & Others on 12 May 1995. Retrieved from https://indiankanoon.org/doc/538878/

Sengupta, S. S. (2017). Copyright infringement & plagiarism: Are they really two sides of a coin? Chandmal Tarachand Bora College (CTBC's) *International Research Journal*, 9 (1), 45246-45249. Retrieved from http://eprints.rclis.org/25412/1/Copyright_Infringement___Plagiarism.pdf

Shri P M Parameshwaramurthy vs State of Karnataka (2012). WRIT PETITION NO.4340/2012 (S-RES). 21 November 2012. Retrieved from https://indiankanoon.org/doc/101702059/

Sibomana, E., Ndayambaje, I. & Uwambayinema, E. (2018). Plagiarism in higher education environment: causes and solutions. *Rwandan Journal of Education*, 4 (2). Retrieved from https://www.ajol.info/index.php/rje/article/view/175119

Stapleton, P. (2012). Gauging the effectiveness of anti-plagiarism software: An empirical study of second language graduate writers, *Journal of English for Academic Purposes* 11, 125–133

Standler, R. B (2012). Plagiarism in colleges in USA: Legal aspects of plagiarism, academic policy. Retrieved from http://www.rbs2.com/plag.pdf

State v Attorney General et al. ([2002] MWHC 67]) the High Court of Malawi. Retrieved from https://malawilii.org/mw/judgment/high-court-general-division/2002/67

Tanzania Commission for Universities (2019). Handbook for standards and guidelines for university education in Tanzania. (3rd Ed) paragraphs 4.21.4, 4.24.4 and 5.19.5. Retrieved from https://www.tcu.go.tz/sites/default/files/Handbook%20for%20Standards%20and%20Guidelines%20for%20University%20Education%20in%20Tanzania%20-%203rd%20Edition.pdf

Tedeschi vs Wagner College, 49 N.Y.2d 652 (1980). Retrieved from https://www.leagle.com/decision/198070149ny2d6521637

Times Reporter (2015, June 3). Plagiarism on increase in Rwanda: Plagiarism in varsities: How big is the vice? *The New Times*. Rwanda. Retrieved from https://www.newtimes.co.rw/section/read/189388

UK Centre for Legal Education (n.d.). Plagiarism in UK law schools: Policies, procedures and penalties. Retrieved from https://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/resources/assessment-and-feedback/bermingham2/index.html

University of Dar-es-Salaam. (2016). Guidelines and regulations for plagiarism and deployment for postgraduate students for teaching or technical assistance, January 2016, Office of the Vice Chancellor, Academic. Retrieved from https://www.udsm.ac.tz//upload/20201117_032651_UNIT_16_CUSTOM_PAGE_Guidelines%20and%20Regulations%20for%20Plagiarism%20and%20Deployment%20of%20PG%20Students.pdf

Waliga v Board of Trustees, Kent State University, 488 N.E. 2nd 850 (Ohio), 1986. Retrieved from https://casetext.com/case/waliga-v-bd-of-trustees-of-kent-state-univ

Walsh, M. (n. d.). Peking University loses plagiarism law Suit. *SIXTH TONE News*. Retrieved from https://www.sixthtone.com/news/1841/peking-university-loses-plagiarism-lawsuit

Yakobo Magoiga Gicehere vs. Peninah Yusuph, (2017) Court of Appeal of Tanzania at Mwanza, Civil Appeal No. 55 of 2017. Retrieved from https://tanzlii.org/tz/judgment/court-appeal-tanzania/2018/222

Zimmerman, T. A. (2008). McLean students file suit against Turnitin.com: Useful tool or instrument of tyranny?' Conference on College Composition and Communication. Retrieved from https://cccc.ncte.org/cccc/committees/ip/2007developments/mclean