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**TOPIC: CHALLENGES IN THE REGULATION OF PRIVATE
UNIVERSITIES IN KENYA.**

INTRODUCTION:

The expanding economy, demographical pressures, and accompanying rapid population growth, have occasioned an expanded demand for university education in Kenya. In an attempt to meet this rising demand, the government has from time to time, engaged in upgrading of a number of existent tertiary colleges to constituent university colleges. With the exception of Nairobi University and Moi University, all public universities came into being through such arrangements. This trend has been the subject of debate in the education sector as it is seen to downplay the important role served by tertiary colleges, whose existence is currently under threat. The moral question has been, is it just to condemn those who fail to meet admission to public universities, and in the process, deny hundreds of thousands, the chance to pursue certificate and diploma programs, in favor of degree programs? This question gains more relevance when considered in the line of their product, that is, there still is need to train craftsmen and technicians, and tertiary colleges have served this role effectively over the years.

Further, the expansion of public universities has exerted unsustainable pressure on the exchequer; more so in the 1980's when the economy was performing rather poorly. To address these concerns, government policies have, albeit, belatedly had to therefore be reviewed, resulting in:

- Deliberate effort to encourage private sector participation in the provision of basic services, higher education included.
- Encouraging public universities to come up with innovative ways, for example, self sponsored, parallel degree programs, to stem demand, and create an alternate source of revenue.

PROBLEM STATEMENT

The entry into the education sector by private investors may pose a number of ethical issues. Since the 1980's, there has been phenomenal growth of private universities, set up to meet an ever rising demand for university education.

This paper looks at the happenings at one such university to exemplify typical ethical and governance issues that may impact on the capacity of private universities to deliver. Their mandate and calling should be towards meeting their primary functions of teaching, research and development, as well as delivery of education to meet societal needs and wants.

The paper represents a scenario likely to be replicated in a number of private universities and the challenges their administration may face, given current dynamics, as they endeavor to meet without compromise, the goals and objectives of university education in Kenya.

PRESENTATION OF THE CASE

Governance concerns have gained prominence in the mostly after 2002 after the corporate world suffered a series of setbacks that saw criminal investigations of a sizeable number of executives and high profile bankruptcy filings featuring big players. Though such cases featured mainly in the corporate arena, the emergence of private

investors in higher education may, if left unchecked, present scenarios to set a stage destined for similar fate.

As every investment opportunity poses an element of risk, private universities, set up as money making ventures, may pose serious ethical issues too. The interests of the education sector investor (shareholders) would be at risk if they are not well taken care of by the respective university councils (the equivalent of the board of governors), the vice chancellor (equivalent of the chief executive officer), faculty and other employees. Also at risk is the repute of our education system, with the potential of far reaching consequences for learners, other stakeholders, and aspects on our national image, in the event a university hires ineffective or corrupt managers, this may not be farfetched.

This possibility is further compounded by the presently evidenced stiff competition in the higher education sector for student numbers, coming both from public and foreign universities.

Private universities, and lately, public universities rely heavily on fees collections for revenues to finance their operations and generate returns for the shareholder.

This creates the possibility of conflicting interests in the interplay between the stockholders, learners, and the universities' managing councils. This is exemplified in the following case of a Kenyan University herein referred to as 'Mpya University'

The Mpya University.

Mpya University is owned by Mapesa limited company whose shareholding is by invitational placement. The owners have devised ingenious strategies to ensure that they can monitor and influence decision making, and running of the University. A look at the

governance structure of the university reveals that it is but just a veil used by the investor to further their interest, which potentially, compromises the noble roles of a learning institution. This raises ethical issue on how the governance of private universities should be constituted. It also brings to question the effectiveness and capacity of the regulatory body, Commission for Higher Education, in auditing governance and happenings at these universities.

What governance structure should be adopted, as a standard, for such ventures in the education sector that potentially could affect the futures of the public?

To what extent should the governance and running of an academic institution be guided by the principle of common good, in so far as providing for the development of each individual member of our society?

A look at the governance organs of Mpya University and unfolding events may serve as a guide toward the need for enhancing of the role of the regulatory body CHE.

The board of trustees:

The authority of the University is vested in the Board of Trustees who manages a trust set up by the owners to manage their interests in the university. It is headed by a chair. The board of trustees appoints the chancellor, members of the university council, in consultation with the chancellor, and also approves appointment of the vice chancellor. It is worth noting that the present composition of this board is drawn from among the major shareholders of Mapesa limited.

The university council

The governance of the University is entirely vested in the University council. Members of this council are appointed by the University Board of Trustees for a period of six (6) years. Among other functions, it controls, manages and regulates accounts, investments, property, and all the business affairs of the University. The council is also expected to promote and to make financial provisions and facilities for research within the University. Its composition is drawn, from among the major shareholders, and distinguished persons in industry, among them, CEOs of established and respected companies locally.

The Chancellor

The chancellor is the chief officer who, if present, chairs meetings of the university council and the Alumni Association. The holder of this office is appointed by the Board of Trustees. The office tenure is for six years. The incumbent holds more than 50% shareholding in Mapesa Limited. This happens to be his main investment.

The Vice-Chancellor

The Vice Chancellor is the Chief Executive Officer and the Academic and Administrative head of the Mpya University. He is the accounting officer, responsible to the Board of Trustees and the Council for maintaining and promoting the efficiency and good order of the University. He has to ensure the achievement and implementation of the university's Philosophy, Vision and Mission

as laid down in its Strategic plan. He is appointed by the university council on a five year, renewal contract, subject to a maximum ten year term. Position also has a maximum age limit, capped at 70. The appointment of a vice chancellor is through a committee whose membership is entirely drawn from the Council and the board of trustees. The incumbent has also invested substantially in Mapesa Limited.

Challenges facing the Mpya University.

The university, had for many years operated as a middle level college, and was among the leading players in the sector. Most of the teaching staff were either holders of first degrees, or pursuing their graduate degree programs. On migration to university status, there arose need to both develop the current staff and massive recruitment to meet staffing requirements set up by the regulator, CHE. Further, the facilities at its premises had to be upgraded. Both had far financial implications in terms of capital and the payroll expenses. The costs of migration were financed mainly by fees revenues and a bank overdraft, which at some point, ran to seventy million shillings.

At this critical stage of its development, there happened to have been an emergent trend of public and other established universities to set up town campuses at the central business district. This created serious competition, leading to dwindling enrollment at Mpya University.

Faced with this, and the accompanying drop in fees revenues to finance its operations, the leadership of the university was forced to focus toward efforts to raise funds to service its overdrafts, and

finance its operations and development activities. The investors also expect returns on their investments.

How was the leadership of the university expected to deliver its obligations? With no alternative sources of funding available, cost cutting was imperative. The question arising out of this is, how does a learning institution minimize on operational costs without potential for possible compromise?

At Mpya University, some implications of this cost cutting measures are discussed below

- Low complement of qualified full time staff. The university was not in a position to fund development of its existing staff, nor pay at prevailing market rate salaries. This resulted in a high staff turn-over, and inability to attract new staff. Impact was felt in terms of increased workloads for existing lecturers, and over reliance on part time lecturers. The integrity and ethics of some part time lecturers may be wanting. A number have turned into “money teachers”, whose motivation is only the money, and lack the commitment and attachment to effectively deliver.

Furthermore, it is worth noting that no research activities can go on in the university as lecturers resort to rote teaching, compromising quality of delivery.

In some cases, the unethical overworked lecturer, being the examiner teaches the examined areas only.

The end result, half baked graduates! Unfortunately, the poor learner has no way of figuring this out, till when they go out in employment, and cannot deliver, and worse, get sacked, or are unemployable.

The regulator, CHE needs to monitor staffing requirements on a regular basis, and specify guidelines for the engagement of teaching faculty.

- Cost cutting on procurement: These have seen lecturers go to class without necessary resources, as relations with suppliers run sour, due to delayed payments.
- Use of teaching staff on marketing campaigns. Given the limited finances at their disposal, and prohibitive costs of conventional advertising these channels, teaching staff are as part of their performance contract, required from time to time, to participate in marketing expeditions, forcing them out of class.
- Mounting of new programs to diversify course offering. This has been done without commensurate expansion of facilities.

After the vigorous process before granting letters of interim authority, and later, charters, CHE assumes a hands off approach. This needs to be reviewed. With commercialization of education, any new curricula of course offering ought to go through the regulator for approval. An inspection of facilities should follow to curb this practice.

- Abuse of Credit transfer system: Deliberate efforts to identify certificates and diplomas, to widen catchment of potential students. The word in town is that, “so long as you have some sort of certificate; Mpya University will find a course for you”.

The credit transfer system is becoming an avenue for circumventing the minimal university entry requirements specified by the regulator CHE, and as such, it should be mandated to prescribe minimum entry requirements, and credits transferrable, for all universities and programs, to create a national standard. This would save the

country's university system disrepute and maintain recognition internationally.

Conclusion

It is worth observing the on goings and decision making at Mpya is closely guided by involvement of shareholders, and their interests seem to take an upper hand. The need to keep this at arm's length from the management of university governance should be emphasized and enforced by regulation

The governance of private universities may ideally be guided within confines as dictated in the stakeholder theory. In this view, the investor and learner become the primary stakeholders. Secondary stakeholders would be varied, to include sponsors, and employers of the graduates. This should then allow the extension of fiduciary duties of the university 'firms' to include not only the shareholders, but also the learners, and owe some obligatory duty to serve for the good of society at large.

The regulatory body may need to consider closer monitoring and audit of the internal on goings in universities. Owners of these institutions may not necessarily live by the letter of their statutes. Commercialization brings a new face to university education, and it would be prudent, at this early stage, to standardize a number of aspects, and closely monitor for compliance. Most critical of these are matters pertaining to quality of graduates churned out by all universities. There should be a rethinking into all process, right from admission, administration, delivery and examination processes. It is a fallacy to trust all entities set up as a business venture, will live up to the expectations of a self regulating, self checking university.

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http://www.ascensionhealth.org/index.php?option=com_content&view=article&id=79:principle-of-the-common-good&Itemid=171