



**Njuki v Board of Management Kamama Boys High School & another; Cabinet Secretary, the Ministry of Education Science & Technology (Interested Party) (Constitutional Petition 5 of 2018) [2022] KEHC 505 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 505 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CONSTITUTIONAL PETITION 5 OF 2018**

**LM NJUGUNA, J**

**APRIL 28, 2022**

**IN THE MATTER OF ARTICLE 22 (2) (A), 23 (1) & (F), 165 (3) (B), (6) & (7), 258 (2) (B) AND 259 (1) OF THE CONSTITUTION OF KENYA 2010.**

**A N D**

**IN THE MATTER OF RULE 10,11 AND 14 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES, 2013)**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT, 2015**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 3 (1), 10 (2) (B), 21(3), 27 (1) 29 (D), 43 (1) (F), 47 (1) AND 53 (1) (B), (D) & (2) OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**STEPHEN NGAIR NJUKI ..... PETITIONER**

**AND**

**BOARD OF MANAGEMENT KAMAMA BOYS HIGH SCHOOL ..... 1<sup>ST</sup> RESPONDENT**

**OBADIAH KARIUKIMWATHA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CABINET SECRETARY, THE MINISTRY OF EDUCATION SCIENCE & TECHNOLOGY ..... INTERESTED PARTY**



## RULING

1. The applicant herein has moved this court by way of the Notice of Motion dated the 4<sup>th</sup> November 2020 seeking for orders that the court be pleased to dismiss the petition dated the 14<sup>th</sup> May, 2018 for want of prosecution and the costs of the application to be provided for.
2. The application is premised on the grounds on its face and its supported by the annexed affidavit sworn by the counsel for the applicant in which she depones that; the petition herein was filed on the 5<sup>th</sup> May, 2018 and the same was served upon the respondent who filed its response on the 23<sup>rd</sup> July 2018. That the matter came up in court on the 16<sup>th</sup> July 2018 when it could not proceed and it was put off to the 31<sup>st</sup> July 2018 when again it could not proceed as neither the petitioner nor his advocate were in court.
3. She further deponed that the court directed that the matter be mentioned on the 10<sup>th</sup> October, 2018 during which date, the court was not sitting and parties were advised to take other dates in the registry. That since then, the petitioner has not taken any step to set down the matter for hearing.
4. She avers that the petitioner has lost interest in the petition and the same should be dismissed for want of prosecution.
5. The court has considered the application before it, together with the annexed affidavit. The same is not opposed as the respondent did not file a response to the same. It is brought under order 17 Rules 2 (1) and (3) of the Civil Procedure Rules. As deponed by counsel for the applicant, the matter was last in court on the 31<sup>st</sup> July, 2018 which is more than two (2) years since. On the said date, counsel for the petitioner was not in court and the court ordered that the matter be mentioned on the 10<sup>th</sup> September 2018 but the matter was not listed. Since then, the only other action in this matter is the present application.
6. The court notes that when the application came up in court on the 16<sup>th</sup> February, 2022 counsel for the petitioner prayed for time to file a response and he was given 21 days. To date, no response has been filed. In my view, the petitioner has not been keen on prosecuting this matter or he has lost interest in it.
7. In the premises, I find that the application dated 4<sup>th</sup> November, 2020 has merits and it is hereby allowed.  
It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28<sup>TH</sup> DAY OF APRIL 2022**

**L. NJUGUNA**

**JUDGE.**

In the presence of:

Counsel for the applicant.....

Counsel for the respondent .....

