

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 91 OF 2017

DR. PETER KAMAU WANYOIKE & 10 OTHERS.....PLAINTIFF/APPLICANT

VERSUS

JUJA PREPARATORY SCHOOL COMPANY LIMITED.....DEFENDANT

RULING

This is a dispute relating to fees payable by the plaintiffs who are parents of some pupils in the defendant's school on one hand and the school on the other. From the record before me, the dispute started when the pupils were about to sit their examination a step which was allowed by the court.

It has now transpired that as at the time the pupils were sitting the said exams some fees were due and payable by the plaintiffs to the defendant. The examinations have now been marked and some results released to the defendant. However, the defendant is reluctant to release the results to some of the pupils because of the fees not paid, leading to the present application asking the court to order the release of the results to the pupils.

There is evidence that some of the examination results have not been released to the defendant for onward transmission to the pupils, because of what is said to be suspected examination malpractices. There is uncontroverted evidence contained in the replying affidavit sworn by the school administrator of the defendant one Margaret Muigai, that some plaintiffs have honoured their contractual obligation by paying the outstanding fees arrears and have since been given provisional results of their children. These plaintiffs are four in number.

The right to education is guaranteed under the Constitution, and there is a legitimate expectation on the part of the pupils that once they sit an examination, they will receive some results. The plaintiffs knew or ought to have known that there is a cost attached to their children going to the defendant's school. In the present case, and going by the material presented, it is the plaintiffs' word against that of the defendant. Regrettably, the children are caught in between the dispute.

I have balanced the interests of all parties herein and come to conclusion that, the welfare of the children should be considered paramount. Going by the prayers of the Notice of Motion dated 22nd August, 2017 I am inclined to allow prayer No. 2 thereof and order the release of the results to the plaintiffs, on condition that all the plaintiffs whose children's results have been withheld shall sign an undertaking to pay all the fees and costs of this suit should the court hold in favour of the defendant. Such undertaking shall include telephone and physical address of the plaintiffs.

The hearing of this suit shall be fast tracked so as to guarantee the interests of the parties herein.

The costs of this application shall be in the cause.

Dated, signed and delivered at Nairobi this 31st Day of August, 2017

A. MBOGHOLI MSAGHA

JUDGE