

“An accused person has a right to a copy of record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law”.

He thus seeks for the orders prayed in the motion.

8. In response to the applicant applications, the secretary of the Respondent stated that he reported as a new Principle of the School on 1st January, 2015 and was served with court documents on 5th May, 2016. He did not though state why he failed to file an affidavit to reply to the application. However, he stated that the sought minutes containing proceedings of the BOG are in his custody and a set was sent to the TSC. He stated that the applicant ought to have filed appeal against the verdict within 14 days of the verdict and thus he is now time barred. Further he can only seek the sought information from the TSC tribunal.

9. The chairman of the respondent confirmed the applicant appeared before the BOG of which he was then a member and after a hearing the applicant, he was found guilty along with 3 other teachers and was thus served with a warning letter. He stated that the applicant did not indicate the purpose for seeking the proceedings. He reiterates the secretaries’ contention that the same sought information is confidential.

10. After hearing the parties and their submissions, the court finds that the only issues is, whether the applicant is entitled to the information sought? Under Article 35 (1) (b) every citizen has the right of access to information held by another person and required for exercise or protection of any right or Fundamental Freedom.

11. The applicant wanted to appeal against the BOG verdict but was denied the document sought to enable him exercise right of appeal and enforcement of his right of fair trial under Article 50 (1) and 25 (C).

12. Though the above provisions were not in force then as the Constitution 2010 was promulgated on 27th August, 2010, the provisions of Section 77 (9) of the repealed Constitutions had entrenched principles for fair hearing and natural justice. The instant application is brought under new Constitutional dispensation with provisions of Article 50 (1) and 25 (C) being in force.

13. The fact that the time for lodging an appeal has lapsed, does not derogate the applicant’s right entrenched under Article 35 (1) (b). The allegations for confidentiality of the proceedings under Education Act cannot override the Constitutional Provisions under Bill of Rights. In any event the Education Act of 2009 would have to give way to Article 35 (1) (b) by virtue of schedule 6 rule 7 which stipulated that, all law in force immediately before effective date continues in force and shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with constitution.

14. No prejudice has been demonstrated in event a copy of sought information is provided to the applicant. The court therefore makes the following orders:-

(1) A copy of the proceedings for the BOG be supplied as prayed in paragraph 2 of the Notice of Motion dated 27th April, 2016 within 14 days;

(2) The respondent to pay applicant Ksh. 10,000/= as costs of this application.

Orders accordingly.

SIGNED, DATED, and DELIVERED at **KAKAMEGA** this **16TH** day of **AUGUST**, 2016.

C. KARIUKI.

JUDGE.

In the Presence of:-

..... **for the Applicant.**

.....**for the Respondents.**

..... **Court Assistant.**