



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
MISC. APPLICATION NO. 110 OF 2014
WANYAMA EVANS BUDAKHA.....APPLICANT
VERSUS
KENYA NATIONAL EXAMINATIONS COUNCIL....RESPONDENT
J U D G M E N T

1). The applicant's notice of motion filed on 1-7-2014 prays for the following reliefs:

1. **An order of certiorari do issue to remove into the High Court the decision of the respondent to withhold and or nullify the results of Wanyama Evans Budakha to grade the applicant and on such removal, the decision be questioned**

2. **An order of mandamus to compel the respondent to release the results of Business Studies paper for the applicant and grade him accordingly.**

3. **Costs.**

2). The application is supported by the statement of facts and the verifying affidavit of Benedict Wanyama the applicant's guardian ad litem sworn on 11-6-2014.

3). Briefly, the applicant was a form four student at Sawagongo Secondary School who sat his KCSE exams in the year 2013 administered by the respondent. When the results were announced by the respondent several candidates from the said schools received results but the same were titled "Y" meaning that they had been cancelled. No apparent reasons were given by the respondent for the cancellation. The subject which was cancelled was Business Studies paper. The applicant's contention therefore is that there was no notice issued to the applicant and that this was in clear breach of the values of natural justice. In short the applicant was condemned unheard.

4). On its part the respondent vide the replying affidavit of Andrew M. Nyachio filed on 26-8-2014 has argued that indeed the applicant's results were cancelled and that the respondent had no obligation to notify the applicant before the cancellation. He argued that the rules and regulations governing the respondent does not envisage that an examinee ought to be notified before such cancellation is effected. The respondent goes ahead to depone that its Security Committee as well as the Research Team found out that there was serious anomalies from the said results and thus decided to undertake the action it did.

5). The issue to be decided herein is not the merits or demerits of the cancellation of the applicant's result but whether the respondent acted capriciously as deponed by the applicant. The court has perused the

written submissions by both parties as well as the rival authorities.

6). Were the rules of natural justice followed by the respondent? Was it under any obligation to notify the applicant? Does the respondent's operation insulate it from the rules of natural justice? These are issues that merits determination in this application.

7). It is clear that the respondent cancelled the results after its technical committees assessing the same and found that there was some irregularities. This action in my opinion is within the purview and mandate of the respondent. The respondent is the guardian of our national examination and it would be tragic if it does not adhere to the national and international standards in securing the results and the entire process.

8). There is no doubt that the applicant among others were warned prior to sitting the exams on the consequence of any malpractices during the exercise.

9). Was the respondent obliged to notify the applicant before cancelling the exams? Ordinarily any administrative body is expected to grant any aggrieved party an opportunity to be heard before being condemned.

But from the nature of the duties undertaken by the respondent it appears that it will be extremely onerous to expect it to hear any would be aggrieved party. Infact from the evidence on record and in particular the rule and regulations governing the respondent it has no obligation to conduct any hearing prior to cancelling the examination results. The candidates as stated above are fully aware or are expected to be fully aware of the regulations. Respectfully I do not think the two technical teams of the respondent will be expected to conduct a hearing prior to advising the cancellation of the results.

10). The courts will be very reluctant to intervene as was state in **Republic -VS- Council of Legal Education [2007]eKLR** where the court stated as follows:

“The other reason why this court has decided to intervene is one of principle in that academic matters involving issues of policy the courts are not sufficiently equipped to handle and such matters are better handled by the Boards entrusted by statute or regulations. Except where such bodies fail to directly and properly address the applicable law or are guilty of an illegality or a serious procedural impropriety the field of academia should be largely non-justiciable. I see no reason why in a democratically elected government any detected defects in such areas including defects in policy should not be corrected by the legislature”.

11). There is no provision for the respondent to give reasons for the canellation. This is a fundamental issue in the rules and regulation. It is however not for the courts to impose demand that the respondent do so. It is the duty of the law makers. There must be obviously sufficient reason for not doing so. But does this go against the cardinal rule of natural justice? I do not think so. Even if it did one would shudder to imagine the extent to which the respondent will be encumbered from performing its duties were it to conduct a quasi hearing before delivering the results.

12). The discretion granted however to the respondent is not for this court to challenge but for the policy makers. If the legislature deems it fit for the respondent to contact any examinees before results are cancelled and to conduct a hearing of some sort then let it say so. For now there is no said provision. Neither do I find that the failure to notify the applicant so fatal to warrant the application to be allowed. There is no place where the respondent indicated that it shall not cancel the results where there are any irregularities or that before such decision is taken the respondent shall conduct a hearing.

Consequently, I shall disallow the application. The respondent shall have the costs.

Dated, signed and delivered at Kisumu this19th day of February 2015.

H.K.CHEMITEI

JUDGE