



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI LAW COURTS)  
PETITION 247 OF 2011

**IN THE MATTER OF INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT OF  
RIGHTS AND  
FUNDAMENTAL FREEDOMS UNDER CONSTITUTION OF THE REPUBLIC OF KENYA**

AND

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 25, 27, 28, 43 AND 47 OF THE  
CONSTITUTION OF KENYA**

BETWEEN

KELVIN MUSYOKA.....PETITIONER

VERSUS

THE PRINCIPAL, MATUNDA SECONDARY SCHOOL.....1<sup>ST</sup> RESPONDENT  
THE CHAIRMAN, B.O.G. MATUNDA SECONDARY SCHOOL.....2<sup>ND</sup> RESPONDENT

**R U L I N G**

1. On 21<sup>st</sup> November, 2011, Majanja, J. dismissed a Notice of Motion dated 14<sup>th</sup> November 2011 which was premised on **Articles 22, 23, and 165** of the **Constitution**. The interim Orders sought then were that the Respondent should be restrained from suspending the Petitioner from the 2<sup>nd</sup> Respondent's school.
2. On 16<sup>th</sup> December 2011, the Petitioner filed another Application dated 15<sup>th</sup> December 2011 seeking Orders as follows under **Articles 19, 20, 22, 23 and 165** of the **Constitution**;  
*“(1) That the Application be certified as urgent and be heard ex-parte in first instance.  
(2) That there be conservatory Orders directing the Respondents to re-instate and/or re-admit the Applicant to Matunda Secondary School unconditionally pending the hearing and determination of this Application.  
(3) That there be an injunction restraining the Respondents and/or any other person acting under*

***their authority or direction from expelling, suspending , punishing, harassing or in any other manner whatsoever interfering with the Petitioner’s access to school or his education pending the hearing and determination of this Application.***

***(4) That there be a Judicial Review order of Certiorari removing to this Court the purported decision of Board of Governors dated 24<sup>th</sup> November 2011 and all proceedings related thereto and the same be quashed.***

***(5) That there be a Judicial Review Order of Mandamus compelling the Respondents to unconditionally re-admit the Petitioner to Matunda Secondary School and the Petitioner be facilitated to sit for all necessary end of year exams and the assessments thereof be done and credited accordingly and/or the Petitioner be allowed to progress to form 4 and any other Orders as may be appropriate.***

***(6) That there be an Order of prohibition restraining the Respondents or any other person acting under or through their authority from expelling, suspending, punishing or harassing the petitioner in any manner whatsoever based on the decision made on 24<sup>th</sup> November 2011 or arising from the accusations thereof.***

***(7) The costs of this Application be provided for.”***

3. At the hearing of the Application, Mr. Ngala quite rightly conceded that Prayers 4, 5 and 6 cannot be granted at this stage of the proceedings and I agree.

4. Regarding Prayer 3 above, Majanja, J. dealt with it and I see no “*new ground for revisiting it*”.

5. Turning to Prayer 4 and reading the Applicant’s Affidavit in support purportedly sworn on 15<sup>th</sup> December 2012 but which is unsigned, there is a letter dated 24<sup>th</sup> November 2011 from the 1<sup>st</sup> Respondent and nowhere is there mention of the fact that the Applicant had been suspended or expelled from School. The letter merely requires him to attend school on 5<sup>th</sup> January 2012 and perform a pre-set punishment on 6<sup>th</sup> January 2012 and 7<sup>th</sup> January 2012. Discipline of errant students in school cannot be unconstitutional in the circumstances and there is nothing expected of this Court in that regard.

6. I have also seen the response contained in the Replying Affidavit sworn on 9<sup>th</sup> January 2012 by Francis Gichuhi Mwaniki, the Principal of the Respondent’s school and his explanation as to what led to the Applicant’s punishment is reasonable and I accept it.

7. Many cases are filed in this Court that do not in any way raise serious Constitutional questions for determination and one of them is the present one. The way it was presented and argued left me baffled.

8. In any event, I see no merit in the Application dated 15<sup>th</sup> December 2012 and the same is dismissed with no order as to cost.

9. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH, 2012.**

**ISAAC LENAOLA**

**JUDGE**

**CORAM**

ISAAC LENAOLA – JUDGE

Miron – Court Clerk

Mr. Ngala for Applicant

Mr. Wasike for Respondents

**ORDER**

Ruling duly delivered.

ISAAC LENAOLA

**JUDGE**

**FURTHER ORDER**

Directions on the Petition to be taken on 4<sup>th</sup> May 2012.

ISAAC LENAOLA

**JUDGE**

**16/3/2012**