



KHALIB
MOHAMED.....APPLICANT

VERSUS

**THE CHAIRMAN BOARD OF GOVERNORS, NAIROBI
SCHOOL.....RESPONDENT**

RULING

The application for my determination is the Notice of Motion dated 19th October 2011 seeking the following orders:

- (1) An order of prohibition stopping, restraining and prohibiting the respondent or any person, officer, body or authority acting under it for or on its behalf from demanding any money, bills or outstanding hospital bill of Kshs.157,000/= before releasing school leaving certificate, Kenya Certificate of Secondary Education results slip and certificate for the year 2009.
- (2) An order of mandamus compelling the respondent to release to the applicant unconditionally school leaving certificate and Kenya certificate of secondary education result slip and certificate for the year 2009.

The application is based on the following grounds;

- (a) The respondent has unlawfully, capriciously and illegally withheld Applicant's School Leaving Certificate, Kenya Certificate of Secondary Education Results Slip and Certificates for the year 2009.
- (b) The Respondent has no power and Jurisdiction to withhold the said results and certificates.
- (c) The applicant has been completely locked out of future professional career he would wish to pursue after completion of his 8-4-4 education without appropriate School Leave Certificate, Kenya Certificate of Secondary Education Results slip and Certificates and cannot therefore get a chance to further his studies.
- (d) The withholding of applicant's Certificates by the Respondent on the basis of Kshs.157,000/= incurred as a result of treatment of soft tissue injuries is drastic, draconian, unfair, illegal and too harsh.
- (e) The decision by the Respondent to withhold the said certificates was made in violation of the rules of natural justice as the Applicant was not afforded the opportunity to be heard or make representations regarding the decision of the said hospital bills which amount adversely affects the applicant.
- (f) The Respondent has acted in excess of its Jurisdiction.
- (g) The Respondent has abused its jurisdiction and powers.
- (h) The Respondent has exercised statutory authority and applied the law for an extraneous purpose.

- (i) The conduct of the Respondent was fraught with procedural unfairness and irregularities.
- (j) The conduct of the Respondent amounts to triple punishment to the Applicant and actuated by mala fide.
- (k) That it is proper and just in the interest of justice that the Honourable Court be pleased to allow this application.

The applicant was admitted to the Nairobi School on 23rd January 2006 for Kenya Secondary School education which is a four year course. The Kenya secondary Certificate of Education examination is administered by Kenya National Examination Council. The school provides a well rounded education from students from all over the country. The applicant was a candidate for Kenya Certificate of Secondary education for the year 2009 which the applicant undertook successfully. It is the contention of the applicant that in the month of April 2009 while in his final year he was involved with a fight with one student namely Peter Maithya. The said Maithya allegedly assaulted the applicant resulting in a fight where the said Maithya suffered injuries resulting in his admission at MP Shah Hospital. As a result of admission of Peter Maithya to MP Shah Hospital he incurred a bill of 157,000/= being hospital bill incurred as a result of treatment of injuries resulting from the fight between him and the applicant. The applicant was then thereafter expelled from school for a period of 2 months. It is the contention of the applicant that the Principal and administrators have continued unlawfully and illegally refused to release his papers on the grounds that he is required to pay the sum incurred in the hospitalization of Peter Maithya. It is further contended that the decision for the action taken by school breached the fundamental rights of the applicant and that withholding his certificates is extremely harsh as he has been locked out of future professional career which he wish to pursue. It was contended on behalf of the applicant that the respondent's action is grossly unfair, unjust and unreasonable for the applicant's academic/school certificates is a matter which is dear to the applicant and his family.

The application is opposed and through an affidavit filed on 9th November 2011, the Board of Governors of the school state as follows:

- (1) That it is not true that the respondent has unlawfully, capriciously and illegally withheld the applicant's leaving certificate, Kenya Certificate of Secondary Education for the year 2009 and the result slips as contended by the applicant.**
- (2) That the school leaving certificate is a document issued by the school to the students upon leaving the school which briefly describes the student's conduct while in school to enable other people dealing with the student in the future to know them well.**
- (3) The leaving certificates are issued upon clearance with the relevant school departments on evidence that the student has been cleared of any issues.**
- (4) There is no time limitation with regard to issuance of certificate and the same can be issued at any time upon request by the applicant.**
- (5) The applicant has never visited the school neither cleared with school department nor requested for his school leaving certificate.**
- (6) On 17th march 2011 the school received a demand letter from M/S Lutta & co. Advocates demanding for the same**
- (7) The same cannot be issued to advocates as the school prefers the document is collected by the owner upon clearance with all school departments.**
- (8) On 23rd April 2009 the applicant engaged in a fight with fellow students resulting in injuries to one Peter Maithya. The victim was seriously injured and rushed to MP Shah Hospital where he**

was admitted for three days for treatment. Subsequently the applicant was suspended from school as part of disciplinary process.

(9) The school paid the bill incurred from the injured student's treatment to secure the discharge of the said student.

It is also contended that at the time the applicant was facing more than 10 disciplinary cases involving theft, fighting, and breach of school regulation and had been actually granted a final chance to improve.

On 11th June 2009, the applicant's mother one Amina Mohamed undertook to reimburse the school the sum of kshs.157,000/= which the school had spent in hospitalization for the student hurt by the applicant. The mother of the applicant did not reimburse the money as had been undertaken by herself. It is also contended that the respondent has made no decision regarding the applicant pending cases as the applicant has yet to come to the school to clear with the various departments and as such there is nothing before this court to quash.

In paragraph 27 of the replying affidavit it is contended by the respondent that it is not true that it has refused and/or declined to release documents as it is the applicant who has not requested for them.

The simple and straightforward question for my determination is whether the applicant is entitled to an order of prohibition and mandamus as prayed in the Notice of Motion. An order of prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue with proceedings therein in excess of jurisdiction or in contravention of the law of the land. The catch words are that;

- (1) there must be proceedings
- (2) the proceedings are being conducted in excess of jurisdiction or in contravention of the law.

In this case, there is no decision that was made or conducted by the respondent showing that the payment of Kshs.157,000/= is a condition precedent before releasing school leaving certificate, Kenya Certificate of Secondary Education result slip and certificate for the year 2009 belonging to the applicant.

The second order sought by the applicant is a order of mandamus compelling the respondent to release to the applicant unconditionally school leaving certificate and Kenya Certificate of Secondary result slip for the year 2009. An order of mandamus is issued to compel the performance of duties of a public nature. It is important to understand that there must be a demand and refusal for a person to seek and be granted an order of mandamus. It is a demand for justice and its refusal which is a condition precedent for seeking and issuing an order of mandamus. An order of mandamus does not lie in absence of demand for justice. In essence there must be a legal right to perform a legal duty for issuing an order of mandamus. It is in the form of a command directed to a person or an inferior tribunal requiring him or them to do a particular thing as specified which appertains to his or their office and is in the nature of public duty. It is essential that there must be good faith in making an application for issuing an order of mandamus. It is also important to note that there must be a refusal or reluctance by the respondent to perform a public duty which has been requested for and which has been denied or delayed. In this case, it has not been demonstrated that the applicant went back to the school and demanded his documents but which nevertheless was delayed or denied by the school. It is uncontroverted that the first time the applicant made a demand is through a letter dated 17th March 2011 asking for his documents from a firm of advocates. It is not the business of the court to manage or micro manages the internal affairs of schools and tribunals in the absence of any decision being made by the tribunal in matters involving the issuance and release of personal documents. It was incumbent upon the applicant and/or his parents to go back to school and clear with all the relevant departments in order for the documents to be issued. It is after appearance before the relevant departments and the decision making authority of the school that one can say his documents are being withheld unfairly and/or illegally. There is no evidence to show that the applicant went back to school and cleared with the relevant departments and authority for this court to reach a conclusion that there was a demand followed by a refusal. Consequently, it is my decision that

there are no grounds to show that the respondent acted in breach of the principles of natural justice in excess of his jurisdiction and abuse of its powers since there is no demand personally made by the applicant. No doubt the relationship between a student and a school is of personal nature and it will be wrong for this court to supervise the internal machinery and practice of the respondent without any justification to show that it acted illegally and/or unlawfully. It is the duty of the applicant as a former student to formally request his documents from the school and undergo the procedure laid down by the respondent for the release and discharge of his documents. I cannot say that the applicant's documents were detained on account of undertaking made by the applicant's mother in the absence of any steps taken to ask for the said documents.

It has been contended by the respondent that the applicant has not collected his documents as is apprehensive of outstanding disciplinary cases he has pending at the school. It is also contended that the applicant's decision to bring this matter to court is an attempt of jumping the gun since he has plethora of disciplinary issues that he has to clear at the school before being cleared. My short answer is that the school has no jurisdiction to preside over any pending or outstanding disciplinary case or cases against the applicant as he has already left the jurisdiction of the school. It is therefore not open for the school to expose the applicant to any form of disciplinary case or cases that he may have committed at the time he was a student at the school. The jurisdiction of the respondent ceased and/or expired at the time the applicant completed his Form Four examination. He therefore cannot be subjected and is not liable to school for any offence or disciplinary case which he may have committed when he was a student of the respondent. The contention that the applicant is apprehensive of the pending disciplinary cases has no merit and is made without jurisdiction by the respondent. Consequently, I make the following orders;

- (1) That the applicant goes to the school and clear with the relevant departments and upon clearance be issued with all his documents.**
- (2) The school has no powers and/or authority to subject the applicant to any disciplinary process.**
- (3) Upon clearance with the relevant departments and relevant authority the school is hereby directed to release all the documents to the applicant.**
- (4) Each party to bear its own costs.**

Dated, signed and delivered at Nairobi this 20th day of July, 2012.

M. WARSAME
JUDGE