



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

**Cause 1206 of 2010**

**CHARLES ODHIAMBO KISERA .....CLAIMANT**

**VS**

**THE MAKINI SCHOOL ..... RESPONDENT**

**RULING**

The application in court is the one dated 23rd November 2011 filed by the claimant Applicant herein Charles Odhiambo Kisera against the Respondent the Makini School Ltd.

The Applicant seeks orders to stay an intended ruling coming out of the Respondent Notice of motion dated 25th March, 2011. This application was filed in court and heard *ex parte* on 30th March, 2012. On this day the court ordered that this Notice of Motion be served upon the claimants. The Claimants were also granted leave to reply to the application within 30 days from 30th March, 2011. The application was then scheduled to be heard on 9th May 2011 at 9.00 a.m. On the 9th May, 2011, the application was again adjourned to 29th June 2011 and thereafter to 13th September, 2011.

When the application came up now on 13<sup>th</sup> September, 2011, the Claimant Applicant was absent. The court proceeded with the hearing of this application in the absence of the claimant. A ruling was set to be delivered on notice.

Before the Ruling could be delivered, the claimant applicant filed this application on 23<sup>rd</sup> November, 2011, praying that there be an interim stay of Ruling and/or any order issued in respect of the application dated 25<sup>th</sup> March, 2011, and that the proceedings thereafter be set aside/or reviewed and varied.

Through his supporting affidavit, the Claimant avers that he has always attended court dutifully without fail. That the last day of 29<sup>th</sup> June 2011, he was in court and ready to proceed. However there was a fire drill within the building which disrupted the proceedings. The matter was then adjourned to 30<sup>th</sup> September 2011. He later learnt it was adjourned to 13<sup>th</sup> September 2011, and was heard in his absence. He came to learn that the same is pending for a ruling. It is this ruling that this application seeks to be stayed so that he can be given a chance to present his case. This application was heard *ex parte* as the Respondent though served, failed to attend the court.

It is a principle of natural justice, that a man should not be condemned unheard. This principle is enshrined in our Constitution under Article 50 (1) which states as follows:-

**(1) “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.**

I now order that:-

- 1. Intended ruling on Notice of Motion dated 3<sup>rd</sup> November, 2010 be set aside.**
- 2. The application be set for hearing *interpartes* forthwith.**
- 3. Costs in the cause.**

Read, delivered and signed this 27th day of September 2012, in the presence of the Court Clerk; Rachel Gichuki, Mr. Omondi holding brief for M/s Hayanga for Respondent and Claimant in person.

**HELLEN WASILWA  
JUDGE**