



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Civil Application 30 of 2012

IN THE MATTER OF: LAW REFORM ACT CHAPTER 26 LAWS OF KENYA SECTION 8 AND 9, ORDER 53 CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: THE EDUCATION ACT CHAPTER 211 LAWS OF KENYA

AND

IN THE MATTER OF: EDUCATION (SCHOOL DISCIPLINE) REGULATIONS L.N 40 OF 1972, L.N 56 OF 2001

AND

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

AND

- 1. THE BOARD OF GOVERNORS, [particulars withheld] GIRLS HIGH SCHOOL.....1ST RESPONDENT**
- 2. THE PRINCIPAL, [particulars withheld] GIRLS HIGH SCHOOL.....2ND RESPONDENT**

EX-PARTE

S.M. A. (Minor suing through the next friend A.A.....EX-PARTE APPLICANT

JUDGMENT

1) **S. M. A.** (S.) is a minor fighting to keep her place at **[particulars withheld]** Girls High School. These Judicial Review proceedings, which are brought through her mother and next friend A.A., challenge a decision dated 28th July 2012 and communicated in a letter of 30th July 2012 excluding her from the school with immediate effect.

2) The Board of Governors [particulars withheld] High School, the 1st Respondent, met on 26th July 2012 and 28th July 2012 to consider the events that occurred in the school on the night of 24th July 2012. on that night, at around 1.00am, 80 students broke through the school fence and walked out of school.

3) The Board meetings were preceded by enquiries carried out by three panels which comprised of The School Discipline Committee and Heads of Departments. The Board meeting of 28th July 2012 was to consider the recommendations of the panels. The decision under challenge was reached in this meeting.

4) The Applicant says that the decision is ultravires and raises the following grounds-

“(a) The decision by the 1st Respondent to expel the minor was ultravires since the Director of Education is the only person authorized by the Education (School) Discipline regulations to terminate or expel students.

(b) That the decision was not fair to the minor herein since it has interfered with the minor’s right to education.

(c) That the 2nd Respondent herein erred in law in carrying out and executing an ultravires decision and/or recommendations.

(d) That this Honourable Court is by law empowered to suspend the acts and omissions of Quasi Judicial bodies.

(e) That the mode of communication the expulsion was done contrary to the laid down guideline in the Education (School Discipline) Regulations.

(f) That the minor herein was never informed of the allegations leveled out against her before the disciplinary meeting was held.

(g) That it is in the interest of justice that the Applicant’s right to education be safeguarded by this Honourable Court.”

5) It is the position of the Respondent that the Decision of the first Respondent was arrived at within the procedure prescribed by statute and that the Board merely made recommendations to the Director of Education as required by Regulation 4(2) of The Education (School Discipline) Regulations. That it is now upon the Director to either confirm or vary the decision.

6) The Education (School Discipline) Regulations provides the procedure for processing disciplinary cases for students in all Government assisted and maintained schools. [particulars withheld] Girls High School is a Government maintained school. Under Regulation 10, The Board of Governors of a school may make administrative rules in respect to the discipline of pupils. This Court was not told whether or not the Board of Governors of [particulars withheld] Girls High School has made such administrative rules. In the absence of any administrative rules then the role of this Court is to examine whether the Respondents disciplined Sophia in keeping with the Regulations themselves.

7) Following the walk out of 24th July 2012 a body styled The School Students Council met on 25th July 2012. After certain deliberations it made this recommendation-

“The Council members recommended that the names (sic) student be investigated and interrogated and those found to have been involved be given appropriate punishment or expulsion.”

8) Following this, the Principal constituted three panels of teachers to investigate the matter further. The findings of panels was reported to the Board on 26th July 2012. Upon considering that report, the Board resolved-

“After going through the report the Board of Governor members agreed to make a comprehensive report after the others (form three and four) have been interrogated. This was to take place on Friday 27th July 2012. Some members of the Board agree to attend the panels.”

9) Thereafter three panels of teachers met on 27th July 2012 and interrogated the suspected students. It is the contention of S. that she appeared before a panel on 30th July 2012 and not on 27th July 2012. She says that she could not attend the panel on 27th July 2012 as she was not allowed into the school as she had school fees balance. The contention by S. that she was not interviewed on 27th July 2012 is true as it is corroborated by the minutes of The Special Board of Governors meeting held on 28th July 2012. MIN 3/2012 reads as follows-

“The form three and four grilling took place on Friday as had earlier been decided by the Board. The school’s discipline committee and heads of department interrogated the students in three panels. The panels were as follows –

PANEL 1 MRS. I. M.- CHAIRING

(IN THE SMASSE ROOM)

**MR. F. K.
MR. E. I.
MS. E. O.**

PANEL 2 MR. I. M.CHAIRING (IN THE D.S)

**MR. R. T.
MRS. G. L.
MR. A. M.**

PANEL 3 MR. E. L.– CHAIRING (LIBRARY)

**MS W. G.
MR. N. H.
MR. M. M.**

The students supposed to be interrogated were thirty two. Most of them attended the panel meetings and gave their observations. The ones who did not turn up was due to non clearance of fees apart one (S. M.) who didn’t give a reasons for not turning up. These were:

**1. I.W. 3G
2. F. K. 4B
3. E. J. 3B
4. Z.M. S. 3G**

5. S. M. (did not turn up)”

10) It is in this meeting of 28th July 2012 that S’s fate was sealed. This is what the minutes show-

**“S. A. M. 3G
From the findings S. M.:-**

§ Took the illegal oath

§ Whipped some girls out of school

§ **Threatened girls if mentioned**

§ **Risked live of other students and also her own**

§ **Was involved in the planning with K. and M.**

The board members looked at the accusations and found her guilty. She was given an exclusion from the school.”

This cannot be reconciled with what the Principal and Secretary to the Board of Governors says in paragraph 25 of her replying affidavit sworn on 17th October 2012-

“25. THAT MS. S. M. the Applicant herein did not turn up for the interview on 27th July 2012 but the Board recommended that she be interviewed on 30th but when she appeared refused to give any information to the satisfaction of the panel.” (my emphasis)

It is my finding that unlike her colleagues S’s case was determined before she had been questioned by the panel.

11) Is this in breach of the Regulations? Regulation 4(1) and 4(2) would be relevant. They provide-

“4.(1) The head teacher or teacher acting in that capacity shall, within fourteen days of the suspension, report the suspension to the Board of Governors of the school.

(2) The Board of Governors shall, after considering the report, recommend to the Director of Education through the Provincial Director of Education responsible for the area in which the school is situated, punishment other than corporal punishment which in the opinion of the board is commensurate with the offence committed.”

The Board first met on 26th July 2012 in which they received the initial findings of the panels. It then resolved that form three and form fours be interrogated on 27th July 2012 whenafter they would make a decision. It would on receipt of this further report that a decision would be made. Although the procedure in the Regulations contemplates that the Board would consider a report by the head teacher I would not find it a breach of the rules if the Board considered a report of a panel of teachers duly delegated to do so by the Head Teacher. Thus far there would be no procedural impropriety.

12) What is critical about S’s case is that she was not interviewed as required by the Board. According to the minutes of the Board she failed to show up without good reason. In these proceedings, she stated that she was infact refused access into the school and therefore to the panel meetings because she had a balance of fees. The minutes of the Board and what the Secretary to the Board said on oath are not entirely consistent. It is the affidavit testimony of the Principal that the Board recommended that she be interviewed on 30th July 2012.

13) The decision I reach is that a drastic finding was made in respect to S. before she had been granted a hearing before the panel. This would be in breach of the rules of natural justice and the very procedure that the Board had prescribed for processing the cases. For that reason the Board acted ultra vires. Their decision of 28th July 2012 in respect to S. is for quashing, as I hereby do.

14) That said I am unable to issue an order of mandamus directing that she be re-admitted back to the school. There are allegations (which have not been duly processed upto now) that S. bears some responsibility for the acts of indiscipline that occurred on the night of 24th July 2012. In fairness to both S. and the school there is need to get to the bottom of those allegations. In my discretion, I direct that the Board of Governors do process her case afresh in accordance with the procedure that the Board itself had prescribed and also in accordance with the Education (School Discipline) Regulations. This should be done within the next 7 days so that S. can know her fate well before Schools resume in the new year.

15) There are no orders on costs.

Dated and signed at Mombasa this 26th day of November, 2012.

F. TUIYOTT
JUDGE

Dated and delivered in open court in the presence of:-

Mbeto for Njuguna for Applicant

No appearance for Respondent

Court clerk - Moriasi

F. TUIYOTT
JUDGE