



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Revision 399 of 2012

EVE CHEPKORIR MUTAI.....1ST ACCUSED/APPLICANT

KENNEDY OCHOLA.....2ND ACCUSED/APPLICANT

VERSUS

REPUBLIC OF KENYA THROUGH THE PROSECUTOR,

NAROK LAW COURTS.....COMPLAINANT/RESPONDENT

AND

NAROK UNIVERSITY COLLEGE.....INTERESTED PARTY/APPLICANT

REVISION

The Accused herein are students of Narok University College. They were charged with six counts of Making Documents without Authority, Forgery and Uttering False Documents on diverse dates as per the charge sheet.

The complainant is Narok University College. In addition to laying the complaint before the Police, and the subsequent prosecution of the accused, the University also suspended the accused in accordance with its internal administrative regulations on account of the malpractices which involved the taking of money from fellow students in exchange for banking-in-slips that turned out to be forgeries.

The offending students were disciplined by being meted out with a one year academic suspension and refund of the money inappropriately taken from fellow students.

Thereafter the accused students moved the subordinate court in Narok CMCC No. 148 of 2012, challenging the decision of the University College to suspend them. There is no record of what happened in that case. Counsel for the University College suggests that it was not prosecuted by the students.

However in an application dated and filed on 11th October 2012, counsel for the Accused sought orders lifting the accused students suspension by the University? The Application was brought under Narok CMCCr. Case No. 465 of 2012, and the Applicant students are described as Plaintiff/Applicants, and was described as a Notice of Motion under Order 51 rule 1 and 3 of the Civil Procedure Rules 2010 and Section 3 of the Civil Procedure Act, (*Cap. 21, Laws of Kenya*).

The orders lifting the accused students one academic year's suspension were granted and the accused students went back to the University.

I agree with the contention and concern of the University College that despite being the party against whom the orders were obtained and directed, it was not served with any application lifting the accused students suspension. I entirely agree also with, the University's contention, that orders granted were a grave violation and abuse of the legal process. **Firstly** because the application was never served upon the University, and **secondly**, the prosecutor (*who had no authority to act in a civil matter*) had no authority from the University to reply to or deal with the application. **Thirdly**, the orders being sought being of a civil nature, it is quite incomprehensible how the court could grant the same in a Criminal Case, without noting that the provisions invoked flowed from the Civil Procedure Rules.

Without a proper foundation by either a Plaint, on Originating Summons or Originating Notice of Motion, Petition or other known originating process, the purported Notice of Motion was incompetent *ab initio*, and no lawful orders could flow from it.

In exercise therefore of this court's supervisory jurisdiction as prescribed under Article 165(6) of the Constitution of Kenya and Section 362 of the Criminal Procedure Code, (*Cap. 75, Laws of Kenya*), I am satisfied that the learned magistrate had no jurisdiction to order the lifting of the suspension by the University of the accused students in a criminal proceeding. Those orders were not only irregular but illegal and have no force in law. In terms therefore of Section 364(1)(b) and 365 of the Criminal Procedure Code, I set aside the said orders of the subordinate court made on 18th October, 2012 and restore the orders of the University until otherwise lawfully set aside or varied.

Dated and signed at Nakuru this 3rd day of December, 2012

M. J. ANYARA EMUKULE

JUDGE