



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CIVIL APPLICATION NO.2 OF 2009**

**REPUBLIC (ex-parte JOYCE MUDOLA YAKHAMA).....APPLICANT**

**VERSUS**

**THE SECRETARY TO THE BOARD OF GOVERNORS  
MUSINGU HIGH SCHOOL-KAKAMEGA .....RESPONDENT**

**R U L I N G**

1. The Notice of Motion dated 27<sup>th</sup> January 2009 seeks orders under Order LIII Rules 3(1),(2) and (3) of the Civil Procedure Rules that an order do issue to bring to this court and quash the decision of the Respondent dated 8<sup>th</sup> August 2008. In fact from the record, what happened was that on 8<sup>th</sup> August 2008, the Board of Governors of Musingu high School met and resolved to terminate the Applicant's services as a copy typist and the decision was communicated to the Applicant by the secretary of the Board by a letter dated 13<sup>th</sup> August 2008.
2. In any event, from the Statement of Facts and Verifying Affidavit sworn on 27<sup>th</sup> January 2009, the Applicant's case is that she was suspended from duty vide a letter dated 31<sup>st</sup> October 2007 and before she could be heard, the Board then took the drastic decision of terminating her services.
3. In his Replying Affidavit sworn on 8<sup>th</sup> November 2010, the Respondent raised an issue of law which I consider pertinent; whether the proceedings before this court are proper since he has been sued in his capacity as the secretary of the School's Board and yet the decision complained of, was not his decision.
4. I note that the Board is a creature of statute because Section 10(2) of the Education Act Cap.211 provides as follows;  
“(1) The Minister may, by order, establish a board of governors for any maintained or assisted school, other than a primary school managed and maintained by a local authority, or, if the manager of any unaided school applies to him, for that unaided school, and the Minister may –  
**(a) establish one board of governors for two or more schools; or**  
**(b) establish boards of governors for two or more schools by means of the same order.**  
(2) The Minister may, by order, declare a board of governors to be a body corporate under the name of the board of governors of the school or schools, and the board shall have perpetual succession and a common seal with power to hold both movable and immovable property, and may in its corporate name sue and be sued.”

5. From the above, it is obvious that the body lawfully capable of being sued on behalf of a school is the Board of Governors as a corporate entity and not one of its officials such as the Secretary to the Board. I also note specifically that the Board of Governors for Musingu is created by the Education (Board of Governors) Order. That order provides in Rule 10 as follows;

**“No Governor shall be subject to any personal liability in respect of any matter or thing done or omitted or any contract entered into by or on behalf of the board of which he is a governor or by or on behalf of any school or group of schools administered by that board.”**

Rule 11 refers to the Secretary as the custodian of the common seal of the Board and his role is limited in that regard.

6. If the above is the law, are the proceedings properly before the court? I think not. By suing the Secretary of the Board, a non-corporate entity as opposed to suing the Board, the Applicant must be shut out of the fountain of justice.

7. In any event, the decision taken to terminate the Applicant’s services was a decision of an administrative body and it is that decision that should be challenged and not the one communicating the decision which was what the Respondent did.

8. In the event, there being no proper Respondent before the court, I will strike out the Motion dated 27<sup>th</sup> January 2009 with no order as to costs.

9. Orders accordingly.

**I. LENAOLA  
JUDGE**

**DELIVERED, DATED AND COUNTER-SIGNED BY L. KIMARU, JUDGE AT KAKAMEGA  
THIS 13<sup>TH</sup> DAY OF JUNE, 2011**

**L. KIMARU  
JUDGE**