



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Judicial Review Misc. Appli. 22 of 2009**

**DAVID TIMAIYO & 66 OTHERS.....PLAINTIFFS**

**-VS-**

**KENYA NATIONAL EXAMINATION COUNCIL:.....DEFENDANTS**

**RULING**

The ex parte application dated 15<sup>th</sup> January, 2009 was ordered by this court to be heard interparties on 20<sup>th</sup> January, 2009.

I have taken into account the grounds as set out in the statement and the Affidavit including the oral submissions of Counsel.

It is a principle of justice that like cases should be treated alike. The Principal issues in JR.Misc.21/09 are the same as in this application and I therefore grant leave in terms of prayer 1, 2 (i) and (ii). However, I decline to order that leave operates as stay as per prayer 3 or at all.

I have done so in the exercise of the court unfettered discretion and I have taken into account the following considerations.

- i. The results in the English paper have been cancelled.
- ii. The pupils whose results were released or not cancelled have not been joined or served. Judicial review is about fairness. Education rights are vested in individuals under the International Covenant on Economic, Social and Cultural Rights and the court in a full hearing has to balance Rule 15 (2) with the right to education for each pupil.
- iii. Any interim order could affect the selection rights of the other 2008 candidates before the ascertainment of the reasons for cancellation by the experts.
- iv. Appreciation of the fact that while cancellation of the examination results is drastic as against the pupils, and their future – at other end of the pendulum need on an examiner right might be justified in imposing appropriate sentences on examination cheats.
- v. There is need for the court to receive further evidence concerning the alleged, collusion or irregularity/misconduct and cancellation.

As the parties agree on the need to reach finality as early as possible I order that the applicants file and serve the Notice of Motion within seven (7)days and that the matter be mentioned on 28<sup>th</sup> January, 2009 for the purpose of allocating a priority hearing date. The Notice of Motion to be served on the Respondents on or before 23<sup>rd</sup> January, 2009.

Costs to abide the outcome of the Judicial Review application.

It is so ordered.

Dated at Nairobi this 21<sup>st</sup> Day of January, 2009

**J. G. Nyamu**

**JUDGE**