



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Civil Appli 354 of 2009

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE LAW REFORM ACT

BETWEEN

REPUBLIC APPLICANT

V E R S U S

THE KENYA NATIONAL EXAMINATION COUNCIL..... RESPONDENT

R U L I N G

Before me is a Chamber Summons dated 16th June, 2009 filed by M/s Magare & Company advocates for the applicants, who are four in number. The respondent is named as **THE KENYA NATIONAL EXAMINATION COUNCIL**. The application was brought under Order LIII rule 1 of the Civil Procedure Rules.

The orders sought are-

- (a) *This application be certified as urgent and the same be heard on priority basis.*
- (b) *Leave be granted to the applicants to apply for an order of certiorari to remove into this Honourable court and quash the decision of the Kenya National Examinations Council to cancel the results of Dennis Akumu Otieno, Rono Kiprop Elijah, Maringa Frankson Kariuki, and Macharia Joseph Kamau for the examination in respect of the course Higher Diploma in Mechanical Engineering.*
- (c) *Leave be granted to the applicants to apply for an order of mandamus to compel the Kenya National Examinations Council to revoke its decision to cancel the results of Dennis Akumu Otieno, Rono Kiprop Elijah, Maringa Frankson Kariuki, and Macharia Joseph Kamau for the examination in respect of the course Higher Diploma in Mechanical Engineering.*
- (d) *Leave be granted to the applicants to apply for an order of mandamus to compel the Kenya National Examinations Council to release the results of Dennis Akumu Otieno, Rono Kiprop Elijah,*

Maringa Frankson Kariuki, and Macharia Joseph Kamau for the examination in respect of the course Higher Diploma in Mechanical Engineering.

(e) Leave so granted do operate as a stay of execution of the order barring the applicants from sitting for examinations set by the respondent.

The application was filed with a **VERIFYING AFFIDAVIT** sworn by each of the applicants on 10th June, 2009 and a **STATEMENT** also dated 10th June, 2009. The affidavits give the circumstances under which the examination results of the applicants were cancelled, and how they were barred by the respondent from sitting examinations for 2 years vide a letter from the Mombasa Polytechnic University College dated 17th March, 2009.

Counsel for the applicants also addressed me in support of the application. Counsel emphasized that the actions of the respondent contravened the provisions of the Kenya National Examinations Council Act and rules made thereunder, and were ultra vires.

I have considered the application, documents filed and the submissions of counsel for the applicants. At this stage, I am not required to go into the substantive merits of the case, but to determine whether the applicants have demonstrated an arguable case. In my view, with the facts before me, the applicants have demonstrated an arguable case. There is something that this court needs to investigate regarding the exercise of statutory power.

I have been asked to grant stay orders, with regard to the order barring the applicants from sitting for examinations. In my view, an order of stay is not appropriate at this stage. I appreciate that this is a matter that needs urgent attention, but I can not ascertain what consequences the stay requested will have, if granted. I will not grant the stay requested for.

Consequently, I order as follows-

- 1. I certify the application as urgent.***
- 2. Leave be and is hereby granted to the applicants to file judicial review proceedings for certiorari, and mandamus as prayed. The Notice of Motion will be filed within 21 days from today.***
- 3. I decline to grant stay orders.***
- 4. Mention on 24/7/2009.***

Dated and delivered at Nairobi this 30th day of June, 2009.

George Dulu

Judge.