



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Appli 607 of 2008**

**MASTER FRANKLINE OMONDI AURA.....APPLICANT**

**Versus**

**THE PRINCIPAL & SECRETARY LENANA SCHOOL & ANOTHER..RESPONDENTS**

**RULING**

Frankline Omondi Aura a minor, has brought this application through his next friend Ronald Akoko Aura, his father. He seeks the leave of this court to commence Judicial Review proceedings by way of an order of certiorari to quash the decision of the Principal and Secretary to the Board of Governors of Lenana School, Nairobi and the Minister of Education, the Respondents herein.

The Applicant also seeks to apply for an order of mandamus to compel the Respondent to readmit or allow the Applicant to continue and complete his studies at Lenana School and thereafter sit for the National Kenya Certificate of Secondary Examination (K.C.S.E.)

Lastly the Applicant prays that should leave be granted, the same do operate as stay of the Respondent's decision to exclude him or suspend him from school. The Chamber Summons application is supported by a statement of facts dated 30<sup>th</sup> September 2008 and a verifying affidavit sworn by the next friend on the same date. The Respondent did not oppose the application for leave but is opposed to stay of the decision. Mr. Kirori, Counsel for the Respondent filed grounds of opposition on 28<sup>th</sup> October 2006.

The Applicant is a Form 3 student at Lenana High School. According to his father, there had not been any report of indiscipline from the school regarding the Applicant since he joined the school. That on 21<sup>st</sup> July 2008, the Applicant came home and reported that the school had been closed as a result of a walk-out from the school by all the students. The deponent learned that the prefects of the school had asked the principal to address the students on their grievances but he declined and instead he called in police and G.S.U. to forcefully evict the students. On 18<sup>th</sup> August 2008, while the deponent was overseas, the mother of the Applicant got a phone call that the Applicant was required to attend school which he did on 19<sup>th</sup> August 2008 at 8.00 a.m. He was in school till 8.00 p.m. when he was seen by the Board but that before that he was given a letter alleging he was involved in a strike or walk out and he was asked about some named students to which he admitted. He went back home and the school did not communicate with him till the school reopened on 2<sup>nd</sup> September 2008 and upon the Applicant reporting to school he was given a letter RAA 4, dated 20<sup>th</sup> August 2008 which excluded him from school to await his fate communicated from the Ministry of Education. The deponent wrote to the principal and Board of Governors of the school to reconsider their position (RAA 6) but there has been no response. The deponent contends that the son has a medical condition as he had undergone a heart surgery in February

2008 and is unlikely to have taken part in the strike. That the student needs to be in Nairobi in order to attend the Doctor and also the exclusion is unfair considering he is a KCSE candidate in 2009. It is the Applicant's contention that the whole procedure of exclusion from school is unlawful, unreasonable, unjustified and capricious.

The Respondents are agreeable to leave being granted but they oppose the leave operating as stay. Mr. Maina Kirori, Counsel for the Respondent urged that no final decision has been made by the Principal and it would be against good order if the child were allowed back into school pending the decision of the Ministry. He relied on the **NJUGUNA V MINISTER FOR AGRICULTURE EALR (200) EA 184** and **CA 266/1996 KENYA NATIONAL EXAMINATION COUNCIL V REP.**

It is true that the decision made by the principal of Lenana School in the letter dated 20<sup>th</sup> August 2008 excluding the applicant from school is not a final decision. The final decision is awaited from the Ministry of Education.

The Respondent not being opposed to the leave to bring Judicial Review proceedings to challenge the principal's decision, the only question for consideration is, can leave operate as a stay? Ordering a stay would mean the court making an order that the Applicant goes back to school. Unfortunately the Respondents did not file any reply for the court to ascertain what their position is and what had happened before the exclusion of the Applicant from school. An order of stay would impact the whole application and the courts will normally stay away from interfering with the running of schools or such other institutions unless very grave procedural lapses have been committed. See **NYONGESA & OTHERS V EGERTON UNIVERSITY COLLEGE (1990) KLR 602.**

It is true that exclusion from school means that the Applicant has missed the whole term's work in school which he will never be able to catch up with; However, even as I write this ruling, schools have about a week to close for December holidays and it would not make any sense ordering a return to school during the school holidays. I also think that it would be unsafe for this court to order a return to school without all the facts at hand. All that this court can do at this stage is to direct that this matter be expedited for the sake of the Applicant so that his fate is known before school reopens come January 2009 so that he goes back to school or so that alternative arrangements are made. An order of stay will not be granted at this stage.

Leave is therefore granted in terms of prayers 2 and 3 of the Chamber summons dated 30<sup>th</sup> September 2008. The Notice of Motion be filed and served within 7 days hereof.

Upon service of the Notice of Motion the parties do file and exchange skeleton arguments and L/As within another 5 days. Hearing date to be taken soon thereafter. Mention on 4<sup>th</sup> December 2008.

Dated and delivered this 21<sup>st</sup> day of November 2008.

R.P.V. WENDOH

JUDGE

**Present:**

Mr. Maina Kirori for the Respondent

Daniel: Court Clerk