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

Misc Appli 783 of 2007

IN THE MATTER OF APPLICATION BY ERIC KIMANI MUIRURI FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE EDUCATION ACT CAP 211 LAWS OF KENYA

BETWEEN

ERIC KIMANI MUIRURI …….....……. APPLICANT

VERSUS

THE BOARD OF GOVERNORS, UPPER HILL SCHOOL..…1ST RESPONDENT

THE CHIEF PRINCIPAL UPPER HILL SCHOOL …..…..... 2ND RESPONDENT

RULING

This is an application by a seventeen year old school student, for an Order of Certiorari to remove into this Court and quash the decision of the Respondent to recommend his expulsion from the Upper Hill School, and for an Order of Mandamus to have him re-admitted to school.

This is a Judicial Review application. It is brought by way of Notice of Motion, under Order 53 of the Civil Procedure Rules, and pursuant to leave granted by this Court on 24th July, 2007. The Applicant asks for the following Orders: -

a) An order of certiorari to remove into this court and quash the decision of the 1st Respondent communicated to the Applicant through his father PETER KIMANI MUNANO vide the letter dated 18th June 2007.

b) An order of Mandamus directed to the 2nd Respondent to immediately and unconditionally re-admit back to school the applicant.

c) An order of prohibition prohibiting the Respondents from expelling away from school the applicant and or doing any act which may prejudice the applicant's right to being at school attending classes and being taught like other students in the applicant's class and enjoying the school boarding facilities and participating in all school activities like any other student member of the applicant's school.

d) A stay of the decision made by the 1st Respondent as communicated vide the aforesaid letter dated 18th June 2007 pending the determination of this application.

Prayers (c) and (d) are not capable of being granted, for reasons that I will outline later. Essentially, therefore, the focus of this Ruling is on the first two prayers: an Order of Certiorari to quash "the decision", and Mandamus to compel his re-admission to school.

The material facts are not in dispute.

Eric Kimani is a form four student at the Upper Hill School, and is scheduled to write his Kenya Certificate of Secondary Education examination later this year.

Sometime in May, 2007 another student (not the Applicant) who we can call "Student No.1", was found in possession of five rolls of bhang at the school. He named yet another student (let us call him "Student No.2") as the one who had ordered the drug. When confronted, Student No.2 told the school authorities that "Eric Kimani would like to have a taste of the bhang." That is all. No bhang was ever found on Eric, there was no evidence that he had "tasted" any – indeed three separate laboratory tests that the Applicant was made to undergo cleared him of any drug use – and yet he was "expelled" for "trafficking bhang in school" among five other serious charges, none of which, in my view, were definitively established by an independent and unbiased tribunal in accordance with the law.

Based on that allegation by Student No.2, the Applicant was called into a meeting by the First Respondent, in the company of his father, to face five serious charges of which he had no prior notice, and in respect of which he was given no opportunity to properly defend himself, engage Counsel, or even cross-examine his Accuser. In his mind, the accusation against him related to his comment "that he would have liked to taste bhang", when in fact he was confronted with such serious charges including "trafficking"; drinking heavily, defiance of school authority, lack of respect for teachers, and creating disturbance in the school due to drunkenness.

In my view, this "meeting" that ultimately formed the basis of the Applicant's expulsion was no more than a charade or a Kangaroo Court; highly irregular, and against all norms of civilized society. The Applicant's Counsel, Ms. Rose Chege, has argued, and I agree, that the so-called meeting and conduct of the First Respondent violated the principles of natural justice, was irregular, and in complete violation of the Education Act.

The principles of natural justice are laid down by E.C.S. Wade and A.W. Bradley in "Constitutional and Administrative law" pg. 649-650 which states that Natural Justice requires that the Applicant should have

"***i) The right to be heard by an unbiased tribunal***

ii) The right to have prior notice of Charges leveled against him

iii) The right to be heard in answer to the Charges against him."

The Applicant was denied all the above rights, and was literally ambushed with serious charges, without any prior notice. Clearly, due process was not followed. His rights to a fair hearing were denied. The right to be heard is a fundamental one. No person can and ever should be condemned unheard.

Secondly, the meeting was "irregular", and in violation of Regulation 4(1) of the Education Act (School Discipline) Regulations which require that the Head Teacher **shall within 14 days of suspension** report the same to the Board of Governors (BOG) of the school (emphasis added). The Head Teacher did not do so within the stipulated time. He did so 25 days later.

Regulation 4 aforesaid is couched in mandatory language "**shall" within 14 days**. The language is clear, and I must give it its natural and ordinary meaning, that the Head Teacher **must** act within 14 days. Time is of the essence here because we are dealing with a student's future and possibly his life. I cannot

therefore impute any other meaning. Accordingly, I hold that the BOG meeting was irregularly called in a manner that was prejudicial to the interests of the Applicant.

Finally, in my view, the First Respondent acted in a manner that showed either complete bias, or malice. Even after suspending the Applicant, he required the latter to submit to a drug test. When the drug test result was delivered to the Second Respondent, he rejected it as being "fake" simply because the receipt for payment was not produced. The Applicant was made to submit to yet two more tests. He and his parents were subjected to inconvenience, expense, and humiliation. On each occasion they were made to wait for long periods. I find that the Second Respondent's conduct was completely unjustified, and borders on malice. All he had to do was to phone the laboratory to obtain authentification of the report, instead of subjecting the student and his parents to such unfair treatment.

For all these reasons, I have come to the conclusion that the Respondents did not follow the due process, that they violated the principles of natural justice, and acted contrary to the provisions of the Education Act, in making their decision, to recommend expulsion of the Applicant from their school. **Accordingly that decision is hereby quashed, and the First Respondent and the school are hereby ordered to re-admit the Applicant to their school unconditionally and with immediate effect.**

As I indicated earlier, prayers (c) and (d) are not available. While prayer (d) is now overtaken by events, prayer (c) might be interpreted to mean that the Applicant cannot be expelled for any reason. This Ruling should not be interpreted to mean that the Applicant now has "a blank cheque" from this Court. If he misbehaves, he can be subjected to disciplinary action, as long as the school follows due process.

One final comment. The Learned Counsel for the Respondents submitted that if this Court found in favour of the Applicant, "a bad precedent would emerge allowing mischievous students to rush to Court whenever they are punished making the running and maintenance of discipline in school very difficult." My answer to him is simple. It is school administrators who do not follow the law, the due process, and the simple rules of natural justice that actually set the bad precedent, cause undue hardship to students and parents, and needlessly increase the workload of our over-burdened Courts.

This case is, therefore, a proper one where I should award costs to the Applicant. To repeat, I find for the Applicant, grant prayers (a) and (b), and allow costs to the Applicant.

Dated and delivered at Nairobi this 18th day of September, 2007.

ALNASHIR VISRAM

JUDGE