

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Civil Appli 12 of 2005

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, MEDICAL LABORATORY

TECHNICIANS AND TECHNOLOGISTS BOARD

MINISTRY OF HEALTH

DR. FAITH W. MULI.....RESPONDENTS

RULING

The application has been brought through Notice of Motion under **Order LIII Rule 3 (1) and (2)** of the Civil Procedure Rules, **Section 8 (2), 9 (1) (b)** of the Law Reform Act, Cap. 26, Laws of Kenya. The application seeks the following Orders:

(1) **THAT** *this Honourable Court be pleased to issue an Order of Certiorari to bring before this Court and quash the decision of the Chairman, Medical Laboratory and Technologists Board, Dr. Faith W. Muli contained in a letter dated 29th November, 2004 to the subject herein being STEP UP TRAINING INSTITUTE demanding for its closure.*

(2) **THAT** *this Honourable Court be pleased to grant an Order of Prohibition prohibiting/restraining the Chairman, Technicians and Technologists Board, Dr. Faith Muli from enforcing the decision contained in her letter dated 29th November, 2004 demanding for immediate closure of **STEPUP TRAINING INSTITUTE**.*

The application has been supported by the grounds on the surface of the same and the supporting affidavit of one **Bernard G. Mwarania** dated 12th January, 2005. From the affidavit of service dated 7th April, 2005, it is crystal-clear that the Respondent was duly served on 23rd February, 2005. Unfortunately, the Respondent never attended Court nor did he send any representative.

Having carefully perused the submissions of Mr. Henry Aming'a – for the applicant, the Court hereby finds that the Applicant was **not** heard before the Respondent ordered for the closure of his premises. It is a basic principle of natural justice that before any party is condemned, he should be given a chance to be heard. Despite being aware of the contents of the Application, the Respondent deliberately chose **not** to challenge nor to controvert the same. Without going through the other grounds, I hereby grant the Applicant –Prayers No. 1 and 2.

Since the decision of the Respondent was not justified, he will have to pay the costs of the Application.

Those are the Orders of the Court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open Court in the presence of Mr. Orina for Mr. Aming'a.

MUGA APONDI

JUDGE

14TH JULY, 2005