



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 103 OF 2013

BRIAN MWADIME & OTHERSAPPLICANT

VERSUS

REPUBLICRESPONDENT

REVISION

BRIAN MWADIME and Eight(8) others students at Kenyatta High School Mwatate were charged with the offence of Arson contrary to section 332 (a) of the Penal Code.

They pleaded not guilty. In the course of proceedings the trial magistrate was informed by Counsel for the Accused Mr. Mwanyumba that the Accused persons had received letters of suspension from school.

Mr. Tola the principal is shown to have told the Court that the students were suspended for purposes of their own safety and security and to prevent them from impending investigations.

The trial magistrate then proceeded to revoke the suspension letters and he noted that he was doing so in order to protect the students right to education which is enshrined in the Constitution. He further noted that the suspension when their case was still pending hearing and determination amounted to double jeopardy.

Section 362 of the Criminal Procedure Code provides,

“ The High Court may call for and examine the record of any Criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court”.

The reasons for the review are that the orders or revocation of the letters of suspension were without any basis, that they were made without the magistrate satisfying herself or demanding an explanation from the Board of Governors.

I have gone through the proceedings and the orders granted by the trial magistrate and I am satisfied

that she gave valid reasons for such revocation.

I find no good reason to interfere with her orders. I had called for the lower Court file. It has stalled the hearing of the case.

It is ordered that the lower Court file be returned to Wundanyi Court. The trial magistrate to proceed with the hearing of the charges facing the Accused persons.

Same to be mentioned before her for appropriate orders on **18th February, 2014.**

Ruling delivered dated and signed in open Court this 11th day of February, 2014.

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M. MUYA

JUDGE

11TH FEBRUARY, 2014

In the presence of:-

Learned State Counsel Mr. Tanui

Court clerk Musundi