



IN THE HIGH COURT AT MIGORI

PETITION NO. 3 OF 2014

BETWEEN

VICTOR MWANGO1ST PETITIONER
JAMES MAINA 2ND PETITIONER
FELIX MOSICHO 3RD PETITIONER
ZACHARY BABERE 4TH PETITIONER
HARON MUTAI 5TH PETITIONER
PATRICK KABUI 6TH PETITIONER
SIMEON MWANGI 7TH PETITIONER
MERCY KARIM 8TH PETITIONER

AND

RONGO UNIVERSITY COLLEGE COUNCIL 1ST RESPONDENT
RONGO UNIVERSITY COLLEGE ACADEMIC BOARD2ND RESPONDENT
RONGO UNIVERSITY COLLEGE DISCIPLINARY COMMITTEE ...3RD RESPONDENT
PRINCIPAL RONGO UNIVERSITY COLLEGE4TH RESPONDENT

RULING

1. The petitioners in this matter are all students at Rongo University College (“the University”). They act in person and have moved the Court by way of the petition dated 1st September 2014 in which they contest their suspension from the University on grounds that the procedure used to discipline them violates **Article 47(1)** of the Constitution which protects the right to fair administrative process.

2. Together with the petition, the petitioners filed a Notice of Motion dated 1st September 2014 in which they asked for the following orders:

1. ***THAT*** the service of this process be dispensed with and the same be heard *ex-parte* in the first instance.
2. ***THAT*** a temporary injunction order be issued restraining the respondents from denying the petitioners the opportunity to sit for the ongoing end of semester examination, and other

- services designed to be offered by Respondents to the petitioners pending the final determination of this application.
3. **THAT** a temporary injunction order be issued restraining the respondents from handling, the disciplinary issues or taking any action against the petitioners in relation to the matters raised in this application until the final determination of this application.
 4. **THAT** a declaration be issued by this honourable Court that the letters of suspension dated 27th August, 2014 issued to the petitioners arbitrarily infringed and/or violated their constitutional rights contrary to the provisions of articles 27,35,37,43,47 and 50 of the Constitution of Kenya.
 5. **THAT** an order of mandatory injunction be issued directing the respondents to strictly comply with constitutional provisions and the rules of natural justice in undertaking their disciplinary authority against the petitioners.
 6. **THAT** the Petitioners be compensated.

3. It is worth noting that at this stage the Court is not called upon to fully determine the issues between the parties. It is to determine whether temporary relief ought to be accorded to the applicants pending hearing of the petition. The Court need only be satisfied that there is an arguable case or at any rate the petitioner's case is not frivolous and that the petitioners will not suffer irreparable damage.

4. It is not in disputed that the petitioners all received letters dated 27th August 2014 from the University Principal informing them that they had been suspended for 14 days effective 27th August 2014 pending the attendance of disciplinary proceedings before the University College Disciplinary Committee scheduled for 9th September, 2014 at 10.00 am at the University Boardroom. The petitioners have been accused of various infractions including participating in unlawful demonstrations, inciting students, assault causing bodily harm to a staff member, theft and related offences and damaging University property.

5. In exercising the power to suspend the petitioners, the University draws authority from the **Rules and Regulations Governing the Conduct and Discipline of Students** ("the **Regulations**") made in accordance with the provisions of the **Universities Act, 2012** and **Rongo University College Order. Regulation 2.1(b)** of the **Regulations** provides that the Principal may "*Suspend any student, suspected of committing an offence under these regulations, from the University College pending further disciplinary measures.*"

6. In my view and *prima facie*, the University has the power to suspend a student pending disciplinary measures such as those contemplated on 9th September 2014. Whether the other regulations are violated or implicated is as an arguable issue and the same will be determined at the full hearing.

7. The next issue is whether, if the injunctions sought are not granted the petitioners will suffer irreparable loss. The petitioners contended that the suspension came just before the end of semester exams and since they will not sit for their examinations, they are likely to miss their new semester which will interfere with the course of their studies.

8. On the other hand the University contends that it is entitled to carry out disciplinary proceedings and if the students are not implicated, it will organize special examinations for them.

9. I take the position that the University is a self-governing institution and our Courts have held in several cases that the Courts should not unnecessarily interfere in the internal processes of independent institutions. This dictum is to be found in such cases as **Nyongesa and 4 Others v Egerton University [1990] KLR 962** where Nyarangi J.A. stated that, "*Having stated thus, as I think to be desirable, the broad nature of the important issues and proposed procedure, I shall now state that courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run Universities or indeed any other bodies. However, courts will interfere to quash decisions of any bodies when the courts are moved to do where it is manifest that decisions have been made without fairly and justly hearing the person concerned or the other side.*"

10. The petitioners have only been notified of the disciplinary action against them. In the result I am unable to grant prayers 2 and 3 of the Notice of Motion as the same would amount stopping the University from exercising disciplinary authority over its students. Prayers 4, 5 and 6 are final prayers and can only be determined at the hearing of the petition.

11. I therefore dismiss the Notice of Motion dated 1st September 2014 with no order as to costs.

DATED and DELIVERED at MIGORI this 3rd day of September 2014

D.S. MAJANJA

JUDGE

Petitioners in person.

Mr Oluoch instructed by Neto Otieno and Company Advocates for the respondents.