



**RWT (suing as next friend of BGN - a minor) v SNS School (Petition 290 of 2012)
[2012] KEHC 5408 (KLR) (Constitutional and Human Rights) (8 October 2012) (Judgment)**

R. W. T V S. N. S. SCHOOL[2012]eKLR

Neutral citation: [2012] KEHC 5408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION 290 OF 2012
DAS MAJANJA, J
OCTOBER 8, 2012**

BETWEEN

RWT (SUING AS NEXT FRIEND OF BGN - A MINOR) PETITIONER

AND

SNS SCHOOL RESPONDENT

Schools ought to grant students a fair hearing before suspending them

The petitioner contested the decision by a school to suspend a child without according the child a fair hearing. The court held that schools must adhere to the rules of natural justice. The best interests of the child must be such that the child and his guardian were given an opportunity to answer to allegations made against the child and such procedure must be one that was suitable for that purpose.

Reported by John Ribia

Constitutional Law - fundamental rights and freedom - right to fair administrative action - rules of natural justice - where a school suspended a student without giving the student a fair hearing - where the school had not presented their processes to show that they were aligned with the principles of natural justice - whether the decision of a school to expel a student from school without giving the student the opportunity to be heard was a breach of the rules of natural justice - Constitution of Kenya, 2010 article 47

Constitutional Law - fundamental rights and freedoms - rights of the child - best interests of a child - where a school suspended a student without giving the student a fair hearing - whether suspending a child from school indefinitely without a fair hearing and before his final year was against the best interests of the child - Constitution of Kenya, 2010 article 53

Brief facts

The petitioner filed a suit against a school which had expelled a child from the institution on account of being a truant. The petitioner contended that the suspension had been effected without according the child and



the guardian an opportunity to be heard. The petition challenged the manner in which the child had been suspended.

Issues

- i. Whether the decision of a school to expel a student from school without giving the student the opportunity to be heard was a breach of the rules of natural justice.
- ii. Whether suspending a child from school indefinitely without a fair hearing and before his final year was against the best interests of the child.

Held

1. Discipline in school was a delicate and sensitive matter both for the parents and the school authority. Both institutions, the parents and school, bore special responsibility to nurture the child by providing an environment where his potential could be realized so that the child became a responsible citizen.
2. Article 53 of the *Constitution* recognized that the best interests of the children was the paramount consideration in any matter concerning children. In a school environment, it was the welfare of all the children that must be taken into account rather than one deviant child who had a disciplinary problem. But there was also a responsibility to be borne in respect of that one child, one that flowed from the human rights and fundamental freedoms of each individual. Those could not be subordinated to others merely because the interests of the other children were greater. There must be a good reason to do so consistent with the values and principles of the *Constitution*.
3. The High Court was not a disciplinary institution for children. The role of the court when moved under the provisions of article 22 was to enforce fundamental rights and freedoms provided in the bill of rights. In taking that responsibility the court must weigh all the relevant facts and circumstances and consider what was in the best interest of the child.
4. The school had a set of rules and a code of conduct which had to be adhered to by the child and it was the duty of the guardian to ensure that the child was familiar with these rules and regulations and abided by them. On the other hand, the school was required to have a fair process, consistent with the rules of natural justice, in which an errant child could be disciplined.
5. By not providing the necessary procedures to demonstrate that the child and guardian were given a hearing before the separation letter dated June 6, 2012, the respondent did not adhere to the rules of natural justice. Moreover, the letter did not stipulate the nature of separation or a specific suspension period.
6. Article 53 of the Constitution recognized the general principle that the best interests of the children was the paramount consideration in any matter concerning children. The best interests of the child must be such that the child and his guardian were given an opportunity to answer allegations against the child and such procedure must be one that was suitable for that purpose. There was a responsibility to be borne in respect of that one child, one that flowed from the human rights and fundamental freedoms of each individual. Those could not be subordinated to others merely because the interests of the other children were greater. There must be a good reason to do so consistent with the values and principles of the Constitution.
7. Expulsion or suspension of a child from school may negatively affect him particularly in a situation where he had only one year to finalize high school. That would be contrary to his best interests.

Petition Allowed.

Orders

- i. *The child, BGN was to be re-admitted to the school upon complying with the normal conditions imposed by the school for re-admission.*
- ii. *No order as to costs.*
- iii. *The parties were at liberty to apply for further and other orders.*



Citations

Cases

None referred to

Statutes

Kenya

1. Children Act (cap 141) sections 4, 5, 7 - (Interpreted)
2. Constitution of Kenya, 2010 articles 2(6); 3(1); 22; 27(5); 36(1); 43(f); 47(1); 53; 53(1)(b), (d), (2) - (Interpreted)

International Instruments

1. African Charter on the Rights and Welfare of the Child, 1990 articles 3; 4; 7; 8; 11(1), (2)
2. United Nations Convention on the Rights of the Child, 1989 articles 2; 3; 12; 15; 28; 37

Advocates

1. Mr Kamau instructed by Njeri, Lukorito and Mungai Advocate for the Petitioner
2. Mr Kabarú instructed by Kabarú and Company Advocates for the Respondent

JUDGMENT

1. This matter concerns a child BGN, who is a student at the respondent's school.
2. It is not in dispute that he was suspended due to disciplinary infractions. According to a letter dated June 6, 2012, written to BGN's guardian, the school stated as follows, "Your child has been found to have been absent from school purposely to attend a party at another student's residence with some of his classmates. Following thorough investigations the school's disciplinary committee has established that the truant students used the name of the school uniform to achieve their objectives. Your child grossly violated the school rules and placed the school under possible jeopardy. The disciplinary committee therefore recommends this letter of separation of which your child will be exempted from school until further notice".
3. This letter came just as the child was about to complete his form three studies, the guardian moved the court for interim relief and together with the petition dated July 12, 2012 sought the following orders;
 - (1) That a declaration do issue that the decision by the respondents, servants and or agents to expel the minor from SNS School was against the principles of natural justice, arbitrary, capricious, not in the best interest of the minor and therefore unlawful and further constituted a violation of his rights that are enshrined in articles 2(6), 3(1) 27(5), 36(1), 43(f), 47(1) and 53(1)(b), (d), (2) of the *Constitution* and sections 4, 5 and 7 of the *Children's Act*.
 - (2) That a declaration do issue that the decision by the respondents' servants and or agents to expel the minor from SNS School was against the principles of natural justice, arbitrary, capricious, not in the interests of the minor and therefore unlawful and further constituted a violation of his rights that are enshrined in articles 2, 3, 12, 15, 28 and 37 of the *United Nations Convention on the Rights of the Child* and articles 3, 4, 7, 8 and 11(1), (2) of the *African Charter on the Rights and Welfare of the Child*.
 - (3) That an order do issue to the respondent to readmit the minor into SNS School immediately.



- (4) That this honourable court be pleased to issue a permanent injunction restraining the respondent either by itself, its servants, employees and/or agents from violating the rights of the minor espoused in prayer 1 and 2.
- (5) That the costs of the petition be provided for.
4. As an interim measure, I directed that the child be permitted to sit his end of year form three examinations in order not to prejudice his ability to proceed to fourth form. The issue now is whether I should grant the orders in the petition. He has only one year to complete his high school studies.
5. I am aware that discipline in school is a delicate and sensitive matter both for the parents and the school authority. Both institutions, the parents and school, bear special responsibility to nurture the child by providing an environment where his potential can be realized so that he becomes a responsible citizen.
6. Article 53 of our Constitution now recognizes the general principle that the best interests of the children is the paramount consideration in any matter concerning children. I agree with Mr Kabar, counsel for the respondent, that in a school environment, it is the welfare of all the children that must be taken into account rather than one deviant child who has a disciplinary problem. But there is also a responsibility to be borne in respect of that one child, one that flows from the human rights and fundamental freedoms of each individual. These cannot be subordinated to others merely because the interests of the other children are greater. There must be a good reason to do so consistent with the values and principles of the Constitution.
7. I am also alive to the fact that this court is not a disciplinary institution for children. The role of the court when moved under the provisions of article 22 is to enforce fundamental rights and freedoms provided in the bill of rights. In taking this responsibility I must weigh all these facts and circumstances and consider what is in the best interest of the child.
8. I have considered the various depositions and submissions and take the following view of the matter. The school has a set of rules and a code of conduct which must be adhered to by the child and it is the duty of the guardian to ensure that the child is familiar with these rules and regulations and abides by them. On the other hand, the school is required to have a fair process, consistent with the rules of natural justice, in which an errant child can be disciplined.
9. Unfortunately, the respondent did not provide the necessary procedures to demonstrate that the child and guardian were given a hearing before the separation letter dated June 6, 2012. That letter in my view is lacking in several respects. Is it a suspension or expulsion letter? If it is a suspension, why is it stated “your child will be exempted from school until further notice” which implies that the student is expected back at some indeterminate date. A previous suspension letter dated March 10, 2011 provided a specific suspension period.
10. I take the view that the best interests of the child must be such that the child and his guardian are given an opportunity to answer allegations against the child and such procedure must be one that is suitable for this purpose. Expulsion or suspension of a child from school may negatively affect him particularly in a situation where he has only one year to finalize high school.
11. In my view, the child has served his suspension, he has had time to reflect on his way and it would be in his best interests to be re-admitted to the school to complete his studies subject to complying with the normal conditions imposed by the school for re-admission
12. The petition is therefore allowed on the following terms;



- (a) The child, BGN, be and is hereby re-admitted to the respondent school forthwith and upon complying with the normal conditions imposed by the school for re-admission.
- (b) There shall be no order as to costs.
- (c) The parties are at liberty to apply for further and other orders.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER 2012

D.S. MAJANJA

JUDGE

Mr Kamau instructed by Njeri, Lukorito and Mungai Advocate for the petitioner.

Mr Kabaru instructed by Kabaru and Company Advocates for the respondent.

