IN THE COURT OF APPEAL
AT KISUMU

(CORAM: ASIKE-MAKHANDIA, OMONDI & KIMARU,

JJ.A.) CIVIL APPEAL NO. 231 OF 2019

BETWEEN

REBECCA JUMA..1ST APPELLANT
RUTH ONYANGO...2ND APPELLANT
JENTRIX NEKESA..3RD APPELLANT
PREZOEL SOPHY...4TH APPELLANT
JOYGRACE AWINO...5TH APPELLANT
MESSAGE OF THE HOUR ASSEMBLIES...............6TH APPELLANT

AND

REPUBLIC..1ST RESPONDENT THE SECRETARY BOARD OF MANAGEMENT ST. JOSEPH GANJALA SECONDARY SCHOOL......2ND RESPONDENT THE PRINCIPAL ST. JOSEPH GANJALA SECONDARY SCHOOL..3RD RESPONDENT SAMIA SUB COUNTY PARENTS ASSOCIATION ....4TH RESPONDENT

(Being an appeal from the Judgment and Decree of the High Court of Kenya at Busia, (Waweru, J.) dated 13th June 2019

in

HC Judicial Review No. 1 of 2018)
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JUDGMENT OF THE COURT

[1] This is an appeal against the judgment and decree of the High Court of Kenya at Busia delivered on 13th June, 2019, in Judicial Review Application No. 1 of 2019. The dispute leading to this appeal

arose from

a disagreement between several students of St. Joseph's Ganjala

Secondary School and the school administration, following the introduction of a grooming policy by the school administration. The policy required all students to keep short hair or bald heads. The policy was communicated through a school newsletter dated 25th October 2018. The appellants who were students in the school were among those who refused to go along with the policy. This led to their indefinite suspension by the principal of the school, (the 3rd respondent).

[2] The 1st to 5th appellants who were members of the Message of the Hour Assemblies, (**"the 6th respondent"**), a Christian denomination argued that the introduced policy infringed upon their religious beliefs, which prohibited female adherents from shaving their hair. They placed reliance on the book of 1 Corinthians 11:6 in the Bible in support of their position. They therefore commenced Judicial Review proceedings specifically for an order of certiorari to remove into the High Court for purposes of quashing the aforesaid school's policy. They also sought a stay of the policy's implementation and costs of the proceedings. They contended that the policy was introduced unilaterally by the 3rd respondent and the secretary, Board of Management, (the 2nd respondent), without consultation and that its enforcement violated their constitutional

rights under **Article 32** of the Constitution, that

guarantees the right to freedom of conscience, religion, belief and opinion allowing individuals to manifest their religion or belief through worship, practice, teaching, or observance. This right protects against compulsion to act against one's beliefs and ensures no denial of access to institutions or employment due to one's faith.

[3] The respondents opposed the application. Through joint affidavits of Domitila Nageri, on behalf of the 1st, 2nd and 3rd respondents and Gabriel Faustin Mumbo Wanyama, on behalf of the 4th respondent arguing that the dispute fell outside the scope of judicial review as the appellants were challenging the merits of the decision rather than the decision- making process. It was their case that they had lawful authority under the **Basic Education Act,** to set hair grooming standards in the school. They also asserted that the policy had been ratified through an academic meeting held and further endorsed by the Board of Management, the Parents Teachers Association, and class representatives of the school. They maintained that there was therefore sufficient public participation before the decision was arrived at. That the applicants' assertion that the decision was unilateral was accordingly misplaced. Further, the respondents stated that religious rights are not absolute and can be limited and that in the circumstances

of this case, if the appellants were allowed to practice their religion in school in the manner suggested, then that will be tantamount to discrimination against the other students who profess other religions. Given the foregoing, the respondents urged the trial court to dismiss the proceedings.

[4] The trial court after considering the pleadings, affidavits, statutory provisions and judicial precedents cited by both parties, dismissed it holding that the policy was not unconstitutional and had been sufficiently ratified through representative forums, satisfying the requirement for public participation. That the appellants' reliance on the book of 1 Corinthians 11:6 in the Bible was found to be either a misinterpretation of the Bible or selectively applied, as the verse offers alternatives and does not oblige only long hair. The application was accordingly dismissed with each party bearing their own costs.

[5] Aggrieved by the decision, the appellants filed this appeal on the grounds that the trial court failed to uphold the religious significance of long hair for women under **Article 32** of the Constitution and relevant international instruments; exhibited bias and hostility through dismissive remarks about the appellants' faith; improperly relying on personal religious views that undermined judicial

impartiality and

violated **Article 50** of the Constitution on fair hearing; misapplying **Article 20(3)** of the Constitution by failing to interpret the law in favour of enforcing fundamental freedoms; disregarding the personal nature of religious rights; failing to appreciate the factual context of the dispute, particularly the imposition of the policy without accommodating objections; and conducting the proceedings in a manner that limited oral submissions and ignored written submissions and cited authorities by the appellants, thereby occasioning a miscarriage of justice.

[6] The appeal was canvassed by way of written submissions on the part of the appellants only. When the appeal came up for hearing, **Mr. Gathaara**, learned counsel appeared for the appellants, but there was no representation by the respondents, though they had all been served with the hearing notice for the day. There were equally no written submissions filed by the respondents.

[7] Counsel for the appellants submitted that the trial Court erred in failing to uphold the appellants' constitutional rights of freedom of religion under **Article 32** of the Constitution, by endorsing a policy that compelled them to shave their heads contrary to their religious beliefs. Counsel argued that the policy violated the appellants' right to manifest their faith and denied them access to education, thus

contravening

Article 32(2), **(3)**, and **(4)** of the Constitution. Counsel further contended that the policy was imposed without procedural fairness, violating **Article 47** of the Constitution on fair administrative action. Counsel emphasized that the appellants' religious practice of keeping long hair is distinct from other religious attire and involves no external additions, making it a natural and personal expression of faith. He criticized the rationale behind the policy, which was allegedly based on time spent grooming hair, as unreasonable and unsupported by academic performance data.

[8] Citing the cases of **Nyakamba Gekara v Attorney General & 2 Others** **[2013] eKLR**, **Seventh Day Adventist Church (East Africa) Ltd v Minister for Education & 3 Others v Minister of Education** **[2014] eKLR**, and **R (Williamson) v Secretary of State for Education and Skills** **[2005] 2 AC 246**, counsel asserted that religious beliefs are integral to personal identity and must be respected, even by the state. He also relied on the case of **Hussein Muhumed Sirat v Attorney General & Another** **[2017] eKLR**, to argue that the trial court's judgment was tainted by personal religious bias and prejudice and failed to objectively adjudicate the dispute. Accordingly, counsel prayed

that the appeal be allowed, the impugned judgment quashed, and the appellants be permitted to resume their education with their hair intact.

[9] This is a first appeal and as a first appellate court, our duty is to re- evaluate the evidence and legal reasoning of the trial court and reach our independent conclusions. See the case of **Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212**.

[10] The issues for determination in this appeal are threefold in our view, whether: the hair grooming policy implemented by the school violated the appellants' constitutional right to freedom of religion under **Article 32** of the Constitution; the High Court erred in its interpretation and application of the law, particularly **Articles 20(3), 47,** and **50** of the Constitution; and whether the appeal raises any live or justiciable controversy warranting appellate intervention.

[11] On the first issue, **Article 32**, of the Constitution of Kenya, provides:

> **"32. Freedom of conscience, religion, belief and opinion (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion. (2) Every person has the right to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.**

(3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

(4)A person shall not be compelled to act, or engage

in any act, that is contrary to the person's belief or religion."

[12] This provision protects both the internal freedom to hold religious beliefs and the external freedom to manifest those beliefs through practice and observance. The 1st to 5th appellants, students at St. Joseph Ganjala Secondary School and members of the 6th appellant contended that their religious doctrine prohibits female adherents from shaving their hair, and that the school's grooming policy requiring short hair or bald heads infringed upon this religious practice.

[13] From the record, it is evident that the grooming policy was not introduced arbitrarily. The respondents demonstrated that the policy had been ratified through an academic meeting and subsequently endorsed by the Board of Management, the Parents Teachers Association, and class representatives. The school's newsletter merely reiterated an agreed policy. The appellants were aware of this policy prior to their suspension, their views were incorporated as there was public participation, and their continued stay in school under those terms suggests acquiescence until the point of enforcement. In the case of **Methodist Church in Kenya v Mohamed Fugicha & 3 Others** **[2019] eKLR**, the Supreme Court

emphasized that religious expression in public institutions must be balanced against institutional order and

discipline. Similarly, in the case of **Seventh Day Adventist Church (East Africa) Ltd v Minister for Education & 3 Others**, this Court held that while religious diversity must be respected, institutional policies are valid where they serve legitimate administrative purposes and are applied uniformly.

[14] The appellants' belief in maintaining long hair cannot be dismissed by this Court as insincere. However, the manifestation of religious beliefs must be weighed against the legitimate interests of the institution. The policy was uniformly applied, and no evidence was presented to show that it targeted the appellants' faith or was enforced discriminatorily. Moreover, the school's justification that grooming standards promote hygiene, discipline, and uniformity falls within the scope of reasonable institutional regulations.

[15] In the case of **Nyakamba Gekara v Attorney General & 2 others (supra)**, the Court cautioned against judicial officers substituting their own theological interpretations for those of the adherents. While the High Court's remarks may have been strongly worded, the core finding that the appellants' interpretation of scripture did not mandate long hair was incidental to the legal reasoning. The determinative question

was whether the policy unjustifiably infringed on their constitutional rights, and from the record, it did not.

[16] We are satisfied that the policy, having been adopted through representative forums and applied uniformly, did not compel the appellants to act contrary to their religion in a manner that violated **Article 32** of the Constitution. The appellants were not denied access to education because of their religious beliefs; rather, they were suspended for non-compliance with a general policy applicable to all students in the school. Their objections were noted but not accommodated, which may raise administrative concerns under **Article 47**, but does not, in this context, amount to a violation of **Article 32**.

[17] Upon a thorough analysis of the record and applicable law, we are satisfied that the appellants' arguments under **Article 32** are unfounded. Accordingly, we dismiss this ground of appeal.

[18] On the second issue, the appellants contended that the High Court failed to properly apply **Articles 20(3), 47,** and **50** of the Constitution, thereby infringing on their rights to fair administrative action, fair hearing, and the development of the law in favour of fundamental freedoms. **Article 20(3)** requires courts to interpret the Bill of Rights in a manner that promotes the values of an open

and democratic society,

and to adopt the interpretation that most favours the enforcement of a right or fundamental freedom. **Article 47** guarantees every person the right to fair administrative action that is lawful, reasonable, and procedurally fair. **Article 50** ensures the right to a fair hearing before an independent and impartial tribunal.

[19] From the record, it is clear that the policy was not introduced arbitrarily. The respondents demonstrated that the policy had been ratified through an academic meeting, and subsequently endorsed by the Board of Management, the Parents Teachers Association, and school class representatives. The school's newsletter merely reiterated what had already been agreed upon. The appellants were aware of this policy prior to their suspension, and their remaining in school under those terms suggests acquiescence until the point of enforcement and they cannot to be heard now to complain about the alleged constitutional violations.

[20] The appellants argued that the policy was imposed without accommodating their religious objections, thereby violating **Article 47** of the Constitution. However, the record shows that the policy was uniformly applied and that the appellants were not singled out or denied an opportunity to express their concerns. The administrative process

was not perfect, but it was not so deficient as to amount to a violation of **Article 47** of the Constitution. The school acted within its mandate under the Basic Education Act to set hair grooming standards, and the appellants' objections, while sincere, did not override the institution's legitimate interest in uniformity and discipline in the school.

[21] As for **Article 50**, the appellants claimed that the trial Court limited oral submissions to five minutes per counsel and failed to consider written submissions or cited authorities. While brevity in oral submissions may be undesirable in complex constitutional matters, it does not, in itself, amount to a denial of a fair hearing. The record does not show that the appellants were denied the opportunity to present their case or that the trial court refused to consider their written submissions. The conduct of the proceedings, though arguably terse, did not violate the threshold of impartial adjudication under **Article 50** of the Constitution.

[22] Regarding **Article 20(3)**, the appellants argued that the court failed to interpret the law in a manner that favoured the enforcement of their religious rights. However, constitutional interpretation must be balanced. In **Seventh Day Adventist Church (East Africa) Ltd v Minister for Education & 3 Others**

(**supra**), this Court held that while

religious freedoms must be respected, institutional policies are valid where they serve legitimate administrative purposes and are applied uniformly. The policy in question was not targeted at the appellants' faith and did not prevent them from practicing their religion outside the school context. The policy was a general standard, and its enforcement did not amount to compelling the appellants to renounce their beliefs.

[23] Upon a comprehensive review of the record and applicable constitutional provisions, we are satisfied that the appellants' arguments under **Articles 20(3)**, **47**, and **50** of the Constitution are bereft of merit. Accordingly, we dismiss this ground of appeal as well.

[24] On the last issue as to whether the appeal raises any live or justiciable controversy warranting appellate intervention, a justiciable controversy must present a real, substantial dispute capable of resolution by a court of law. Courts are not allowed to adjudicate on hypothetical or academic questions unless expressly authorized. As the Supreme Court stated in **John Harun Mwau v Independent Electoral and Boundaries Commission & Another [2018] eKLR**:

> **"Courts do not render advisory opinions or**

engage in academic exercises unless specifically empowered to do so. A dispute must be real and not hypothetical.”

[25] The record does not show that the 1st to 5th appellants are currently enrolled at the institution or that they seek reinstatement for ongoing studies. The reliefs sought of quashing the policy and allowing the appellants back into the classroom are no longer practically enforceable. These appellants have likely completed their education or transitioned elsewhere. Mr. Gathaara, counsel for the appellants, submitted that the 6th appellant being the only existing appellant wishes to use the decision in this appeal as a precedent for future reference. While this may reflect a broader interest in religious jurisprudence, it does not transform the appeal into a live controversy. Courts do not issue rulings for symbolic or instructional purposes unless the dispute remains active and affects the parties directly.

[26] In the case of **Law Society of Kenya v Attorney General & Another [2013] eKLR**, this Court emphasized that judicial resources must be directed towards resolving real disputes, not theoretical grievances. The present appeal, though raising important constitutional questions, has been overtaken by events. The appellants' challenge now amounts to an academic exercise, and the reliefs sought are moot.

[27] The dispute has since lost its practical relevance, and despite

this

Court’s engagement with counsel for the appellants on the viability of

the appeal having been rendered moot with the passage of time, he persisted in prosecuting it. Perhaps this would have been an appropriate case for an order for counsel to be held personally liable in costs for insisting with the prosecution of a moot appeal. However, since he proclaimed that it was the 6th appellant who was hell bent on prosecuting the appeal despite his counsel to the contrary, we will spare him the rod.

[28] Having resolved all the issues against the appellants, the only order that best commends itself to us is that this appeal is for dismissal with no order as to costs.

Dated and delivered at Kisumu this 3rd day of October, 2025.

ASIKE-MAKHANDIA
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JUDGE OF APPEAL

H.A. OMONDI
……………………………….
JUDGE OF APPEAL

L. KIMARU
……………………………….
JUDGE OF APPEAL

I certify that this is a true copy of the original
Signed
DEPUTY REGISTRAR