

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISC.CAUSE NO.178 of 2022**

**NATUKUNDA TRACY BAMANYA.....APPLICANT**

**VERSUS**

**ST PETER'S SENIOR SECONDARY  
SCHOOL NAALYA LIMITED.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Application was brought under Article 42 of the Constitution, Section 33,36 & 38 Judicature Act Cap 13 as Amended and Rules 6 &7 Judicature (Judicature Review ) Rules NO.11 of 2009 for reliefs and orders that;

- a) An order of Certiorari to quash and declare as null and void, or otherwise illegal, and/or a nullity the decision of the respondent to indefinitely suspend the applicant without being afforded an opportunity to be heard and without a reasonable cause.*
- b) An order of Injunction to permanently stop the respondent and its servants, agents or other persons acting under its authority from enforcing the impugned decision to indefinitely suspend the applicant.*
- c) An order of prohibition to prohibit the respondent from conducting any further hearing arising out of the impugned indefinite suspension and*

*preventing the Applicant from reporting to the school for third term, attending classes, sitting for mocks and or tests, and/or examinations.*

- d) An order of mandamus to direct the respondents to immediately reinstate the applicant's admission status till conclusion of her Uganda Advanced Certificate Examination Level.*
- e) A declaration that the respondents impugned act of indefinitely spending the applicant without hearing her on the alleged continuous misconduct is in-operative, null, void, irrational and contravene the principles of natural justice and the right to a fair hearing.*
- f) An order that the respondents pays damages for wrongly suspending the applicant indefinitely and for the anxiety, inconvenience, torture and mental distress caused to the applicant.*

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- I) The applicant is a student of St Peters Senior Secondary School Naalya Limited (SPENA) in Senior Six Arts, offering Divinity Entrepreneurship and Literature.
- II) That on the 11<sup>th</sup> August 2022 the applicant was indefinitely suspended by the respondent without appearing before the disciplinary committee which was an error in law and breach of the principles of Natural justice and fairness.
- III) That the applicant informed the respondent that she had not committed any offence and had not appeared before any

disciplinary committee for any indiscipline case and that the disciplinary committee had been dissolved.

- IV) That through the applicant's lawyer's M/s TM Kayemba Advocates, the applicant contested being indefinitely suspended without being accorded any form of hearing or any case of indiscipline being proved against her and demanded for rescinding of the respondent's decision which was ignored.
- V) That the applicant together with her mother tried to schedule appointment with the Head Teacher of the respondent who instead offered to schedule for an appointment for her to meet the Disciplinary Committee which out of order for a parent to appear before a Disciplinary Committee after allegedly indefinitely suspending the applicant.

The respondents opposed this application and filed an affidavit in reply sworn by Mr Katongole John the Headmaster of the respondent which has been summarized as follows;

1. That throughout the applicant's studies with the respondent, the applicant was always indiscipline and disobedient to the rules set by the respondent.
2. That in first term of the 2022 academic year, the Applicant was found in possession of cannabis (commonly referred to as "marijuana") and a matchbox which is an offence under Rule 14 of the Respondent's Rules and the punishment is indefinite suspension.
3. That the Applicant was questioned by the school's teachers on these illicit items and then asked to record a statement, in her statement, the

applicant willfully and in the presence of her parents, admitted to possession and use of cannabis while in school on multiple occasions and asked for forgiveness.

4. That further investigations were carried out by questioning other students who revealed that the applicant had been distributing cannabis cookies and cannabis for smoking to students of the respondent.
5. That the school management concluded the investigations and then summoned the applicant and her parents to the school to present the findings to them, due to the gravity of the offences committed, the parents of the applicant were summoned to the school disciplinary committee.
6. That the disciplinary committee informed the parents and applicant that she had grossly violated the school rules and the punishment under the rules was indefinite suspension. The disciplinary committee decided to not immediately enforce the indefinite suspension and allowed the Applicant a leave of absence of five (5) days after her parents pleaded with them and to me for time to ensure their daughter is able to change, days after her parents pleaded with them and to me for time to ensure their daughter is able to change.
7. That the applicant chose to abuse the discretion that had been exercised by the disciplinary committee by attacking the students who implicated her to the school teachers and the disciplinary committee and continued to harass other students at the school.

8. That the applicant left the school with no other option but to enforce the decision of the disciplinary committee and to indefinitely suspend the applicant because she posed a danger to the lives and health of other students.
9. That the Applicant was accorded a fair hearing at all material times, being given the opportunity to make her representation on multiple occasions both in writing and later on before the disciplinary committee and the head teacher. The decision- making process was fairly conducted and the management of the respondent gave the applicant many opportunities to not only discuss her disciplinary issues but also to reform.
10. That there was no illegality that manifested out of the decision and steps taken to reach the decision of indefinitely suspending the applicant. She was indefinitely suspended as a result of her own admission and the evidence of the other students following a thorough investigation and being given the opportunity to make her representation.

The applicant filed two affidavits in rejoinder one sworn by the applicant and the other sworn by the parent to the applicant a one Mwesigwa Edward Bamanya briefly denying any wrongdoing and contending that she was coerced to confess wrong doing to be forgiven or not to be suspended

**The following issues were framed for determination.**

1. *Whether the decision of the Respondent to suspend the Applicant was tainted with procedural impropriety?*
2. *What remedies are available to the parties?*

The applicant was represented by *counsel Tumuhariwe Harriet* (T.M. Kayemba Advocates) who is also her mother while counsel *Alex Ntale* (MMAKS Advocates) appeared for the respondent.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

### **DETERMINATION**

*Whether the decision of the respondent to suspend the applicant was tainted with procedural impropriety?*

The applicant's counsel submitted the Respondent made an administrative decision to indefinitely suspend the applicant, alleging continuous indiscipline without citing any offence committed in their suspension letter, nor presenting any defense that a fair hearing was conducted or accorded.

Furthermore, the counsel for the Applicant submitted that the respondent violated **Article 42 of the Constitution of the Republic of Uganda** which provides for the right to just and fair treatment in administrative decisions and that it was procedurally improper for the respondent to enforce an Indefinite suspension as a final measure which is a punishment with consequential denial of a right to education and not give its student the applicant a chance to defend herself.

On illegality, counsel for the applicant submitted that a statement was extracted by the head teacher from the applicant, the same head teacher sat as an investigation officer, a disciplinary committee and an implementer of his impugned decision there by acting in excess of his legal powers.

The respondent's counsel in his submissions argued that whereas the applicant alleges that she was not given a fair hearing, the respondent swiftly took all necessary and reasonable precautions to ensure that applicant was duly heard right from the time she was found with a matchbox. That the applicant was later summoned and requested to record a statement in which she accepted and admitted to drug use.

That the applicant was given the opportunity to be heard or make her representations in response to the allegations and did not deny the contents of statement but merely stated that it was made under duress even though didn't adduce any evidence in support of the allegation.

In rejoinder, counsel for the applicant retaliated that there was never a disciplinary committee sitting or decision reached by such body which was and that the respondent did not furnish evidence of such a sitting, time or day the body sat or an invitation to a disciplinary committee or any proceedings.

### *Analysis*

The applicant challenges the decision of the respondent for procedural impropriety through non observance of the principle of natural justice and specifically not being told what offence. According to counsel for the applicant, the applicant was given leave of absence in the first term on suspicion of dealing in drugs on 13<sup>th</sup> March 2022 and was later cautioned and allowed to return to school without any charge or appearance before the disciplinary committee for lack of evidence on 22<sup>nd</sup> March 2022.

The applicant was found to have breached or broken the school rules and regulations which specifically prohibits the use of alcohol/stimulants and prescribes indefinite suspension as the punishment for the breach of this rule. She indeed admitted to the breach of the school rule in her apology, although later she tried to contend that the apology was made under duress.

Fairness is highly a variable concept. Therefore, courts will readily accept that fairness is not something that can be reduced to one-size-fits-all formula. This therefore means that the courts shall answer questions of fairness on a case by case basis, having regard to factors such as complexity and seriousness of the case.

Essentially, procedural fairness involves elementary principles that ensure that, before a right or privilege is taken away from a person, or any sanction is otherwise applied to him or her, the process takes place in an open and transparent manner. It is also called 'fair play' in action and embraces the means by which a public authority, in dealing with members of the public, should ensure that procedural rules are put in place so that the persons affected will not be disadvantaged and are treated justly and fairly.

Article 42 of the Constitution provides;

*Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.*

In working out what is fair the courts are wary of over-judicialising administrative process. They recognise that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures of such court. The nature of the letters or an exchange between the applicant and the respondent was procedurally sufficient to constitute an opportunity to be heard or a hearing of the applicant in the circumstances of the present case.

In the case of *Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009*. The Court of Appeal delivered itself as follows;

*“There is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed”.*



The court should look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to a question of whether a decision properly taken would have been any different or would have benefited the applicant. The applicant thought that she should have been given a separate hearing setting out the offence for which she was being indefinitely suspended after she had been allowed back in school in March 2022.

The respondent should accord the applicant a due process in order to arrive at a decision which is fair and just as provided under Article 42 of the Constitution. In the case of *R v Chelsea College of Art and Design, ex p Nash [2000] ELR 686*, the court held that *“would a reasonable person, viewing the matter objectively and knowing all the facts which are known to the court, consider that there was a risk that the procedure adopted by the tribunal in question resulted in an injustice or unfairness”*

The applicant and her mother indeed were invited for a second disciplinary hearing on 18<sup>th</sup> August 2022 after the indefinite suspension but the mother who is now the applicant’s counsel refused to honour the invitation. In her wisdom it was out of order for a parent to appear before a disciplinary committee after the impugned indefinite suspension.

What is required in any particular case is incapable of definition in abstract terms. As Lord Bridge has put it;

*“ the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody , domestic, administrative or judicial, has to make a decision will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.”*

See *Lloyd v Mc Mahon [1987]AC 625 at 702*

The requirement fairness and to follow rules of natural justice must be tailored in a manner that has regard to all circumstances of each case or

particular circumstances and varies according to the context. Therefore, what fairness requires is “essentially an intuitive judgment”. In order to ascertain what must be done to comply with the principles of natural justice in a particular case, the starting point is the statute creating the power. See *Kioa v Minister of Immigration and Ethnic Affairs* (1985) 65 ALR 231. *Sheridan v Stanley Cole (Wainfleet) Ltd* [2003] EWCA Civ 1046 [2003] 4 All ER 1181; *Principal Reporter v K* [2011] 1 WLR 18; *R (on application of Shoemith) v Ofsted* [2011] EWCA Civ 642; *R v Secretary of State for Home Department, ex parte Doody* [1993] 3 All ER 92.

In cases involving indiscipline of students at any learning institution or school, it is only fair that the student is first suspended as the school constitutes a disciplinary hearing. It cannot be a wise idea for the institution to continue hosting such a suspected indiscipline case among the rest of the school community. What the applicant is demanding from the respondent i.e to be heard or follow rules of nature justice which has to be appreciated in the circumstances of the case and the nature of the decision that was made. In the celebrated case of *Maneka Gandhi v Union of India* [1978] 1 SCC 248 court noted;

*“The rules of natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a greater extent on the facts and circumstances of that case, framework of the law under which the enquiry is held and constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened the Court must decide whether the observance of that rule was necessary for a just decision on the facts of the case.”*

This court accepts that fairness is variable concept and fairness is not something that can be reduced to a one-size-fit all formula. The circumstances of the present case did not require the applicant being given a hearing before being indefinitely suspended since the school has a wider duty to protect the rest of the students and the school community at large. This was a temporary corrective action as the investigations were being

concluded by the school administration or management. Therefore, no hearing would have been expected in such circumstances before the conclusion of the investigations.

Right to a hearing may be excluded if prompt action needs to be taken by administration in the interest of public safety, public health, or public morality, or broadly in public interest. The reason is that hearing may delay administrative action, defeating the very purpose of taking action in the specific situation.

The applicant was justifiably suspended indefinitely without a hearing due to the nature of the alleged offence of breaching the school rules and regulations. The applicant was found to be involved in using drugs-cannabis, weed cookies and specifically being a supplier in the school. The actions of the applicant did not only constitute a breach of school rules and regulations but it is also a criminal offence under the Penal Code.

The school management needed to protect the rest of the students from the applicant in the interest of broader public interest to the school community promptly.

Therefore, this application stands dismissed with costs.

I so Order.

**SSEKAANA MUSA**

**JUDGE**

**22<sup>nd</sup> September 2023**