

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAND COURT NINE, HELD IN ACCRA, ON 12TH NOVEMBER 2024, BEFORE HER LADYSHIP, JUSTICE BARBARA TETTEH-CHARWAY, HIGH COURT JUDGE.

SUIT NO:HR/0019/2024

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 33 OF THE 1992 CONSTITUTION AND ORDER 67 OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004 (C.I 47)

AND

IN THE MATTER OF AN APPLICATION BY YAW ACHIAW BOATENG SUING BY HIS NEXT FRIEND AND FATHER KOFI OWUSU BOATENG ESQ; JEDIDAH NANA YAW BOAKYE MENSAH SUING BY HIS NEXT FRIEND AND MOTHER WHITNEY BOAKYE – MENSAH; KAITLYNN AKONNOR SUING BY HER NEXT FRIEND AND FATHER PAUL AKONNOR AND NANA AFIA BOATENG SUING BY HER NEXT FRIEND AND FATHER DR. KOBBY BOATENG FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL HUMAN RIGHTS UNDER THE CONSTITUTION OF THE REPUBLIC OF GHANA (1992)

1. Y.B
APPLICANTS
BG 538, ABAYATEYE STREET
EAST LEGON HILLS

SUING BY HIS NEXT FRIEND AND FATHER,
KOFI OWUSU BOATENG
BG 538 ABAYATEYE ST.
EAST LEGON HILLS

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REGISTRAR
HUMAN RIGHTS COURT - 1 ACCRA, G R

2. J.M
NO. 4 HOPE ST. SATELITE
ASHALEY BOTWE

SUING BY HIS NEXT FRIEND AND FATHER
NANA YAW BOAKYE MENSAH
NO. 4 HOPE ST. SATELITE
ASHALEY BOTWE

3. K.A
18TH BETHEL STREET
SHALOM ESTATE, ADENTA

SUING BY HER NEXT FRIEND AND FATHER
PAUL AKONNOR
18TH BETHEL STREET
SHALOM ESTATE, ADENTA

4. N.B
4 JOY STREET
NORTH LEGON

SUING BY HER NEXT FRIEND AND FATHER
DR KOBBY BOATENG
4 JOY STREET
NORTH LEGON

VRS

NEW NATION SCHOOL
RESPONDENT
(GOD'S NEW NATION SCHOOL)
NEW CHURCH ROAD, ASHALEY BOTWE
ACCRA

JUDGMENT

1] The applicants are all minors, between the ages of 14 and 17 while the respondent is a private school. The applicants were pupils of the respondent school until they were withdrawn by their parents. They bring this application through their parents or next friends for the following reliefs;

- i. A declaration that the Respondent isolating the applicants from their colleagues during classes, subjecting them to disciplinary proceedings, suspending them indefinitely and reducing it five days and demanding an apology letter from the Applicants breached the fundamental human rights and freedoms of the Applicants guaranteed under the 1992 constitution particularly Articles 28(4); 21(1) (a) and (b); 15(1) and 28(3); 17(2) and (3)
- ii. A declaration that the Respondent had no right to prevent the applicants from attending classes, subject them to disciplinary proceedings, suspend them indefinitely and reduce it to five days and demand an apology letter and bond of good behavior from the applicants for following, watching and liking social media posts in their individual homes and that the conduct of the 1st respondent breached the applicants' constitutionally guaranteed human rights and freedoms particularly under articles 21(1) (a) and (b) of the 1992 constitution.
- iii. An order of this court expunging from the testimonial of the respondent issued to 3rd applicant the facts leading to the

institution of this case and further order directed at the respondent to issue a new testimonial to the 3rd applicant devoid of the facts culminating in this case within two weeks of this Honourable Court delivering the judgment

- iv. An order of perpetual injunction restraining the respondent either by themselves, servants and or agents from in anyway issuing testimonials to the 1st, 2nd and 4th applicants bordering on the facts leading to the institution of this case other than the true academic records of the 1st, 2nd and 4th applicants
- v. An order directed at the respondent to compensate the applicants for the breach of their fundamental human rights and freedoms without any just cause
- vi. Costs for maintaining this suit, including legal fees.

2] The facts that led to the commencement of this action are that on 13th September 2023, the respondent caused letters to be served on the applicants' next friends, informing them that their wards were to attend a disciplinary hearing the next day and inviting them to accompany their wards to the said disciplinary hearing, if they so wished. The letters did not indicate what the applicants had done to warrant the disciplinary hearings and the applicants, according to their next friends, were at sea as to why they were being summoned. With the exception of the parent of the 1st applicant, whose date was rescheduled, the parents of the other applicants went to the school the day after receiving the letters. On their arrival, they discovered that the applicants had been isolated from their classmates by being made to wait in the dining hall. When the applicants eventually took their turns before the disciplinary hearing, it came to light that they were summoned because they had *watched, followed or liked* certain posts on TikTok and or Instagram that disrespected, degraded or defamed the

respondent and some of its officials. On Instagram, the handle was “**free NNS students please ...we are suffering.**” On TikTok, the account name was “**newnationschoolsucks.**” According to the applicants’ next friends, while the respondent’s representatives did not attribute the creation of the social media pages to the applicants, they assumed that the applicants knew the persons who created those pages and therefore sought to extract the names of the said persons from the applicants by subjecting them to interrogation and pressurizing them to give responses.

3] Subsequent to the disciplinary hearings, the respondent by a letter dated 15th September 2023, suspended the applicants from school “until further notice”. In the said suspension letters, respondent assured the applicants that if they provided accurate information leading to the identification of the account owner, their cases would be reviewed and their suspensions would be commuted to a lower punishment. However, if they failed to cooperate, their suspensions would remain intact. Upon receiving the suspension letters, applicants’ next friends requested for a meeting with the school authorities. At the said meeting, which was held virtually on 17th September 2023, applicants’ next friends, presented their protests and grievances to the respondent’s director. The applicants’ next friends claim that in the course of presenting their grievances, the respondent’s director, abruptly ended the meeting. Subsequently, respondent by a letter dated 18th September 2023, called for a virtual meeting with applicant’s next friends. However, before the meeting could be held, new letters dated 22nd September 2023, were addressed to the applicants in which their indefinite suspensions were reduced to five days for cooperating their cooperation during the disciplinary hearing. By the said letter, the applicants were to return to school on 28th September 2023 and to present a sincere letter of apology as well as sign a bond to be of good behaviour. Upon receipt of this letter, the 1st applicants’ father by a letter dated 25th September 2023, caused his lawyers to write to the respondent to demand a rescission of the suspension and to request for

records of the disciplinary proceedings. Meanwhile, the 3rd applicant's father withdrew her from the respondent's school and the respondent in its testimonial included information on the events that led to the withdrawal of the 3rd applicant from the school.

4] It is the case of the applicants' next friends that respondent's inclusion of extraneous matters in the testimonial of 3rd applicant was done in bad faith and designed to frustrate 3rd applicant's right to education simply because her father had withdrawn her from the school. Their further case is that the respondent is likely to extend the same treatment to the other applicants unless the court intervenes. They therefore seek a declaration from the court that the respondent's conduct infringed on the fundamental human rights of the applicants namely their;

- i. Right to education
- ii. Freedom of thought, conscience and belief
- iii. Freedom of speech and expression
- iv. Right to human dignity
- v. Right not to be deprived by any other person of education by reason only of religious and other beliefs
- vi. Right against discrimination
- vii. Right to dignity and right against subjection to torture, inhuman, cruel or degrading punishment or treatment.

5] The Respondent, for their part explained that the disciplinary hearing was to establish whether the applicants and other invited students had associated themselves with the abusive social media posts against the school and some members of staff. Respondent claimed that all the students who appeared before the committee admitted that they were associated with the offending posts on social media. It is the respondent's case that the said posts were offensive, abusive and at variance with ideals and tenets of the school to which all students including applicants had agreed to abide by upon admission to the school. The respondent claimed

that the videos the applicants and other students were found to have liked watched or associated themselves with on social media were;

- i. A video of a bus speeding towards the picture of two (2) named teachers or senior management
- ii. A video depicting death threat of the said teachers next to a dug-out grave or cemetery
- iii. A video depicting a prostitute referring to a female teacher
- iv. A video depicting the burning down of the respondent

6] It is the case of the respondent that all the applicants including the other students who were invited were found to have involved themselves in cyberbullying. It is the respondent's further case that the applicants and other students were suspended because they endorsed the social media posts which depicted harm to the school and some staff members and put the affected staff members in a state of apprehension. The respondent further explained that the function of the school is to instil values such as responsibility, respect and integrity and also to provide physical and emotional safety for all students and staff. According to the respondent, the sanctions meted out to the applicants and other students were meant to teach them responsibility for their actions and to make responsible choices. Respondent further claimed that the actions of the applicants substantially and materially had the potential to disrupt the operations of the school and interfere with the rights of other students, the teaching body and management. The respondent further claimed that the actions of the applicants and other invited students put the name, brand and reputation of the school into disrepute and that respondent reserved the right to discipline them. Respondents maintained that they took the best interest of the applicants into consideration at every stage of the proceedings.

7] In defence of their decision to divulge information on events leading to the withdrawal of 3rd applicant from the school in her testimonial, respondent's stated that being a member of the Association of Certified

Schools (ASCIS) they were mandated to disclose the truth about movements of students among member groups and that any member of the said association would require a testimonial which contained information on both academic performance and character (or any relevant information) from the members to help the recipient school make informed decisions about the admission of their potential student. Respondent further claimed that all the applicants had been withdrawn from the school and were attending schools of their choice. Furthermore no mention was made of the disciplinary proceedings in 1st applicant's testimonial. Respondent maintains that it did not breach applicant's fundamental human rights nor has it threatened to do so.

8] The first issue to be determined is whether or not the Respondent's, by isolating the applicants from their colleagues during classes, subjecting them to disciplinary proceedings, suspending them indefinitely and reducing it five days and demanding an apology letter from the Applicants breached the fundamental human rights and freedoms of the Applicants guaranteed under the 1992 constitution particularly Articles 28(4); 21(1) (a) and (b); 15(1) and 28(3); 17(2) and (3)

9] Articles 28 (3) and (4) of the 1992 constitution provide that;

(3) A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment

(4) No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs"

10] The above provisions address two different scenarios. Firstly, the practice of subjecting children to cruel, inhuman or degrading treatment or punishment is proscribed. Secondly, the constitution frowns on the practice of using religion or other beliefs as a basis for denying children medical treatment, education or other social or economic benefits. These provisions

can be invoked in dealing with situations where parents or guardians, on the grounds of their religious or cultural beliefs, may, for example, refuse blood transfusion for their critically ill children against sound medical advice or refuse to take them to school. It can also be invoked where children are subjected to cruel, inhuman or degrading punishment, the kind that causes intense physical or mental suffering and is extremely humiliating and undignified. The Convention Against Torture (CAT) defines torture as “any act by which severe suffering whether physical or mental is intentionally inflicted on a person... by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”

11] By law, the onus is on the applicants’ next friends to adduce evidence to substantiate their allegations that the applicants were subjected to torture, cruel, inhuman and degrading treatment by the respondent and also denied either medical treatment, education or any other social or economic benefit by reason of religious or other beliefs. See: See Sections 10 and 11 of the Evidence Act, 1975 Act 323). See also the case of OKUDZETO ABLAKWA (No. 2) vs. ATTORNEY GENERAL & ANOTHER [2012] 2 SCGLR 845 at page 867 where the court explained the law governing proof when it stated that:

“If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation, which he fails to prove or establish...”

Proof in law as discerned from cases such as *Majolabge v Larbi (1959) GLR 190* and *Zabrama v Zegbedzi (1991) 1 GLR 221* does not consist of a mere repetition of allegations but by producing the requisite evidence to substantiate the

allegations. See also the case of *Ackah v. Pergah Transport Ltd & Ors (2010) SCGLR 728 at 736* where it was held per Adinyira JSC that:

“it is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party, material witnesses, admissible hearsay, documentary and things (often described as real evidence) without which a party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a jury”

12] In the instant case, the facts show that the applicants were made to wait in the dining hall while their classmates continued with their normal lessons. After they had taken their turns before the disciplinary committee, they were suspended indefinitely but subsequently the suspensions were reduced to a definite period. The question is, can one describe the separation or isolation of the applicants from other students for the purpose of making their appearance before the disciplinary committee as torture, cruel, inhuman and degrading treatment and a denial of applicant's right to education based on religious beliefs? It is the view of the court that such a characterization would be extravagant. This court finds nothing humiliating or undignified about the respondent separating the students who had been invited to appear before the disciplinary committee from those who had not to avoid disruption of classes by calling them out one by one. While the court appreciates the fact that the lack of information from the respondent on the reason why applicants were being summoned before the disciplinary committee would naturally have caused the applicants some anxiety, it does not appear to the court that the disposition of the children while waiting to be called can be characterized as one of intense mental suffering as there is no evidence to support such a conclusion. Furthermore, the imposition of indefinite suspension on the applicants cannot also be characterized as cruel, inhuman and degrading

punishment. Suspensions are regular forms of punishment which many schools reserve for serious infractions of school rules and misconduct. Again, the applicants' next friends failed to prove that the respondent denied education to the applicants based on their religious beliefs. This court therefore finds that applicant's failed to substantiate their allegation that the respondents violated their right to education and freedom from cruel, inhuman and degrading treatment.

13] Article 21(1) (a) and (b) of the 1992 constitution provides that: "All persons shall have the right to:

- (a) Freedom of speech and expression, which shall include freedom of the press and other media
- (b) Freedom of thought, conscience and belief, which shall include academic freedom.

It is the case of the applicants' next friends that the punishment meted out to the applicants for watching and liking social media posts from the comfort of their homes, violated their right to freedom of speech, expression, thought, conscience and belief. The respondent, on the other hand, submits that the applicants associated themselves with videos on social media that were damaging to the reputation of the school and also threatened the lives of some of the teachers. According to the respondent, the videos the applicants and other students were found to have liked, watched or associated themselves with on social media were;

- a) A video of a bus speeding towards the picture of two (2) named teachers or senior management
- b) A video depicting death threat of the said teachers next to a dug-out grave or cemetery
- c) A video depicting a prostitute referring to a female teacher
- d) A video depicting the burning down of the respondent

14] In making a determination as to whether or not the respondent's decision to suspend the applicants constituted a violation of their right to freedom of expression, thought and conscience, one must do a delicate balancing of the applicants' rights *vis a vis* the respondent's right to protect its institutional image and the safety of its teachers. From the facts before this court, it is clear that the applicants were not responsible for the creation of the offensive videos that were posted on social media under the Instagram, handle "**free NNS students please ...we are suffering.**" And the TikTok, account, "**newnationschoolsucks.**" The applicants, who are all minors, watched these videos on social media and liked them. There is no evidence that they shared or reposted the videos. While generally, the act of liking a social media post, may indicate one's endorsement or approval of the content, in the case of children, some may *like* a social media post merely because it is funny in a grotesque way or as a way of identifying with a certain group. By coming down too hard on such children, their independence of thought and expression may be crushed. At the same time, there is also a need for children to be made aware of the implications of their actions and its effect on others. Schools must train children in a holistic manner so that they can become responsible and accountable citizens.

15] Inasmuch as the respondent has a right to discipline her students in order to instill in them the right values and to protect her reputation as well as the safety of her teachers, it is the view of the court, that the indefinite suspension meted out by respondent to the applicants was not proportionate to the alleged misconduct. In view of the fact that the respondent's aim as expressed in the suspension letters, was to get the applicants to cooperate by revealing the names of those who created the social media accounts that they had liked, the respondent could have used the opportunity to find out why the applicants had associated themselves with those social media posts and educated the applicants on the responsible use of social media.

16] By suspending the applicants indefinitely and subsequently reducing the punishment to five days suspension, respondent killed an ant with a sledge-hammer. As budding citizens, the applicants must be encouraged to express themselves in a healthy manner not only on social media but also, in their daily interactions with people. The role of schools in shaping the worldview of children is so critical that in disciplining them, one must be cautious not to impair their ability to express themselves freely as that would be a greater evil. Even in punishment, the best interest of the child must be taken into consideration. This court therefore finds that the punishment meted out by the respondent to the applicants violated their right to freedom of expression as same was not proportionate to the alleged misconduct.

17] The respondent further alleged that the applicants were involved in Cyber bullying because the videos that they liked or followed were injurious to the affected teachers. Cyber bullying occurs when someone uses technology to harass, threaten, embarrass or target another person. While the court agrees that the mental and physical well being of teachers is key to the educational process, the court thinks that the reference to the applicants as being involved in cyber bullying is unfortunate. This is because the applicants did not create the videos in question. Neither did they share them or repost them after they had watched them. They liked the videos or followed the videos for reasons best known to them. To accuse them of cyber bullying one must show that their actions caused distress to the teachers in question. This court is of the view that the respondent has not established in what manner the applicants' liking or following the videos online caused either emotional or psychological harm to the teachers in question. In the circumstances, the respondent's allegation that the applicants engaged in cyber bullying was unsubstantiated.

18] Article 15(1) of the 1992 constitution provides that "the dignity of all persons shall be inviolable". It is the case of the applicants' next friends that

the conduct of the respondent in separating the applicants from their classmates, suspending them and demanding apology letters as well as signing of a bond to be of good behavior violated the applicant's right to dignity. The respondent denies this allegation. The onus therefore is on the applicants' next friends to show how the series of events violated the applicant's right to dignity.

19] It is the view of the court that the applicants' next friends failed to substantiate this allegation. As noted earlier by the court, mere separation of the applicants from their classmates for the purpose of making their appearance before the Disciplinary Committee cannot be characterized as humiliating or undignified treatment. The applicants may have felt embarrassed and perplexed as they did not know what they had done; however, their right to dignity was not compromised.

20] Articles 17 (2) and (3) of the 1992 constitution provide that:

(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed whereby persons of one description are subjected to disabilities or restrictions which persons of another description are not made subject or granted privileges or advantages which are not granted to persons of another description.

It is the case of the applicants' next friends that by isolating the applicants from their colleagues during classes, subjecting them to disciplinary proceedings, suspending them indefinitely and reducing it to five days and demanding an apology letter from the Applicants, respondent breached the

fundamental human rights and freedoms of the Applicants guaranteed under the 1992 constitution particularly Articles 17 (2) and (3). Respondent denies this allegation. The onus is therefore on the applicants' next friends to prove that the applicants were discriminated against.

21] It is important to note that Article 17 (2) and (3) of the 1992 constitution apply where different treatment is given to different persons attributable only or mainly to their race, place of origin, political opinions, colour, gender, occupation, religion or creed. In the instant case, there is no evidence that the respondent gave different treatment to the applicants based on any of the criteria listed above. The court therefore finds that applicants failed to prove that the respondent discriminated against them.

22] The applicants further sought a declaration that the Respondent had no right to prevent them from attending classes, subject them to disciplinary proceedings, suspend them indefinitely and reduce it to five days and demand an apology letter and bond of good behavior from the applicants for following, watching and liking social media posts in their individual homes and that the conduct of the respondent breached the applicants' constitutionally guaranteed human rights and freedoms particularly under articles 21(1) (a) and (b) of the 1992 constitution.

23] This court has held that the respondent's suspension of the applicants for watching and liking the impugned social media posts (whether at home or in school) violated the applicant's right to freedom of expression as the punishment was not proportionate to the alleged misconduct. However, the court finds that the respondent was well within its rights to cause the applicants to wait in the dining hall pending their disciplinary hearings and to invite them to disciplinary hearings as its role in disciplining children cannot be in dispute.

24] The applicants further sought the following;

- i. An order of this court expunging from the testimonial of the respondent issued to 3rd applicant the facts leading to the institution of this case and further order directed at the respondent to issue a new testimonial to the 3rd applicant devoid of the facts culminating in this case within two weeks of this Honourable Court delivering the judgment
- ii. An order of perpetual injunction restraining the respondent either by themselves, servants and or agents from in anyway issuing testimonials to the 1st, 2nd and 4th applicants bordering on the facts leading to the institution of this case other than the true academic records of the 1st, 2nd and 4th applicants

25] As regards the respondent's inclusion of information on the reason why 3rd applicant was withdrawn from respondent's school in her testimonial, it is view of the court that inasmuch as the respondent sought to give a true picture of events that led to the applicants' withdrawal, the information had the potential of prejudicing the minds of other school owners against admitting the 3rd applicant into their schools. Furthermore, this court having found that the respondent's reaction was harsh and violated applicants' right to freedom of expression, orders that the said information should be expunged from the 3rd applicant's testimonial and any other subsequent testimonials to be written for the other applicants.

26] In conclusion, with the exception of the applicants' right to freedom of expression, the respondent has not violated any other rights of the applicant. From the evidence before the court, the applicants have all been withdrawn from respondent's school and are pursuing their education in other schools. There will therefore be no award as to damages or costs.

SGD

BARBARA TETTEH-CHARWAY (MRS)

JUSTICE OF THE HIGH COURT

COUNSEL

1. KAREN NTI- DADZIE HOLDING BRIEF FOR JAMES GAWUGA
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2. LEONIE BANNERMAN WILLIAMS HOLDING BRIEF FOR ALFRED
BANNERMAN-WILLIAMS JNR. FOR THE 1ST RESPONDENT–
PRESENT

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