

**RUAHA CATHOLIC UNIVERSITY**



**RUCU**

**ANALYSIS OF THE RIGHT TO BE HEARD AS A FUNDAMENTAL  
REQUIREMENT OF JUSTICE IN SECONDARY SCHOOL  
DISCIPLINARY COMMITTEE; CASE STUDY DAR ES SALAAM**

A Research Paper Submitted in Partial Fulfillment of the Requirements for  
the Award of Bachelor of Laws Degree (LL.B) of Ruaha Catholic University

By

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**June, 2015**

### **Certification**

The undersigned certifies that she has read and do hereby recommend for acceptance by the Ruaha Catholic University, a research paper titled: “Analysis of the Right to be Heard as a Fundamental Requirement of Justice in Secondary School Disciplinary Committee; Case study Dar Es Salaam”, A Research Paper Submitted in partial fulfilment of the requirements for the Award of Bachelor of Laws Degree (L.LB) of the Ruaha Catholic University.

.....

Ms. Sekela Mlungu

(Supervisor)

Date.....

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I, Kisinini Goodluck do hereby declare that this research paper is my own original work and that, to the best of my knowledge, it has not been presented and will not be presented to another university for a similar degree, either in whole or in part, in any other University.

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## **Acknowledgement**

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For any drawbacks that may be found in this work, I solely remain to bear the responsibility.

## **Dedication**

This work is dedicated to my parents Bernard Kisinini and Victoria Mbise who laid the foundation of my success.

## **List of Statutes**

### **National Instruments**

The Constitution of the United Republic of Tanzania

The National Education Act Cap 353 1978

The Education (Amendment) Act Cap 375 1995

Teachers service commission Regulations 1989

The Subsidiary Legislation of the government school Board (establishment) order  
G.N.NO.304 of 2002

### **International Instruments**

The African Charter on People and Human Right 1981

The International Covenant on Civil and Political Rights 1966

## List of Cases

*Ceylon University Vs Fernando* [1960] W.L.R 223

*Chief constable of the North Wales Police vs. Evans* (1982) UKHL 10

*Felix Bushanga and others Vs Institute of Development Management Mzumbe and Another, High Court of Tanzania at Dar Es Salaam* Miscellaneous civil case No. 9 of (1991) (Unreported).

*Gitano Nyirabu and 3 others Vs Board chairman, Songea Boys Secondary School Board and 3 others High Court of Tanzania at Songea*, Miscellaneous civil application No. 3 of (1994) (Unreported)

*Knight Vs Indian Head School Division* No 19 [1990] LII 318

*Local Government Board Vs Arlidge* [1915] A.C.120

*Mahona Vs University of Dar Es Salaam.* [1981] T.L.R 55.

*Nicholson v. Haldimond-Norfolk (Regional Municipality.* [1979] 1 S.C.R. 311

*Ridge Vs Baldwin* [1963]2 All E.R 66

*Simeone Manyaki Vs Executive Committee and Council of the Institute of Finance Management and Others High Court of Tanzania at Dar Es Salaam*, Miscellaneous civil cause No. 424 of (1984) (Unreported)

*Tinker v. Des Moines Independent Community School District. Supreme Court of the United States*, 393 U.S. 503 [1969]

## **Abbreviations**

ACPHR	African Charter on Peoples and Human Rights
HC	High Court
ICCPR	International Convention on Civil and Political Right
IDM	Institute of Development and Management
LHRC	Legal and Human Right Center
SSDC	Secondary School Disciplinary Committee
TLR	Tanzania Law Report
UKHL	United Kingdom House of Lords
URT	United Republic Tanzania



## **Abstract**

This research work is about the Analysis of the Right to be heard as a fundamental requirement of justice in Secondary school disciplinary committees. Understanding right to be heard is of increasing importance to the policy makers, the government officials and activists and indeed anyone concerned with the administration of justice for the purpose of promoting right to be heard by the students in Secondary school disciplinary committees.

In so doing this study examines the concepts of right to be heard in secondary schools. This study has four chapters which includes, chapter one which provides for a general introduction, chapter two which provides for the conceptual framework of right to be heard in secondary schools in Tanzania, chapter three provides for analysis of the right to be heard in secondary school disciplinary committee and lastly chapter four provides for conclusion and recommendations.

The government of Tanzania under the Ministry of Education and Vocational Training is therefore faced with so many challenges as far as the students being expelled from schools without being given opportunities to defend themselves hence render to denial of justice in Secondary school disciplinary committees.

Based on the findings of this study reveals that right to be heard is not observed in secondary schools by secondary school disciplinary committee and the study concludes that much effort should be done to address the problem. Therefore the study recommends for incorporation of an efficient and responsive legal framework to address the above issues with a view to ensure and provide for legal certainty of right to be heard in secondary schools disciplinary committee in Tanzania.

## Table of Contents

Certification.....	i
Declaration and Copyright .....	ii
Acknowledgement.....	iii
Dedication.....	iv
List of Statutes.....	v
List of Cases .....	vi
Abbreviations .....	vii
Abstract.....	viii
CHAPTER ONE.....	1
GENERAL INTRODUCTION .....	1
1.1 Background of the Problem.....	1
1.2 Statement of the Problem .....	2
1.3 Literature Review .....	4
1.4 Hypothesis of the Research .....	8
1.5 Objectives of the Research .....	9
1.6 Significance of the Research .....	9
1.7 Research Methodology .....	9
1.7.1 Primary Sources.....	9
1.7.2 Secondary Sources.....	10
1.8 Scope and Limitations .....	10

1.8.1 Scope of the Study .....	10
1.8.2 Limitations of the Study .....	10
CHAPTER TWO.....	11
CONCEPTUAL FRAMEWORK OF RIGHT TO BE HEARD IN SECONDARY SCHOOLS IN TANZANIA .....	11
2. 1 Concept of the Right to be Heard .....	11
2.1.1 The Legal Framework of the Right to be Heard.....	12
2.1.2 International Level.....	12
2.1.3 Regional Level.....	14
2.1.4 Domestic Level.....	16
2.2 Right to be Heard in Secondary Schools .....	18
2.3 Secondary Schools Disciplinary Committee .....	20
2.3.1 Establishment and Composition of Secondary School Board. ....	21
2.3.2 Functions and Powers of Secondary Board Disciplinary Committee. ....	22
2.4 Secondary School Disciplinary Committee and Right to be Heard .....	23
CHAPTER THREE .....	27
ANALYSIS OF RIGHT TO BE HEARD IN SECONDARY SCHOOL DISCIPLINARY COMMITTEE .....	27
3.1 Right to be Heard in Secondary Schools .....	27
3.2 Cases to be Heard by Secondary School Disciplinary Committee.....	30
3.2.1 Picking Phones Calls in the Class.....	30

3.2.2 Bullying in School.....	31
3.2.3 Gross Disobedience or Misconduct.....	31
3.3 Procedure Applied by Secondary School Disciplinary Committee.....	32
3.4 Observation of Right to be Heard in Secondary Schools .....	33
3.4.1 The Overview of the Secondary School Teachers .....	33
3.4.2 The Overviews of the Secondary School Students.....	36
3.4.3 The Overview of Other Correspondences Apart from Secondary School Teachers and students. ....	39
3.5 Challenges Facing Students in Secondary School with no Right to be Heard .....	41
CHAPTER FOUR .....	43
CONCLUSION AND RECOMMENDATIONS .....	43
4.1 Conclusion.....	43
4.2 Recommendations .....	44
Bibliography .....	47

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background of the Problem

In Tanzania since the introduction of the bill of rights in 1984 the government has decided resolutely to respect the fundamental human rights, including the principle of natural justice which includes the right to be heard. However the Tanzania administrative system is to some extent tainted with the practice of non-adherence to the right to be heard. The right to be heard has come to be recognized mainly after the Constitution of United Republic of Tanzania.<sup>1</sup> Before the incorporation of the bill of rights the recognition was in some very few cases. Basically the government of Tanzania did not incorporate the bill of right early in the constitution for the reasons that it will conflict with the decision made between the executive and judiciary organs of the state. This was done because of serving the economic plans of the government at that time. It was believed that some rights could interfere with the economic plans which were put into force by the government's administrative organs by the time being. Furthermore, the administrative organs were tends to ignore themselves from adhering to the principles of the right to be heard, but after the inclusion of it and forming the basic laws of the land under Article 13(6)(a)<sup>2</sup> which provides that, for the purpose of ensuring equality before the law the state shall make provision to the effect that; when the right and duties of any person are being determined by the or any other agency, that person should be entitled to

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<sup>1</sup>The Constitution of the United Republic of Tanzania of 1977 (as amended from time to time).

<sup>2</sup> The Constitution of the United Republic of Tanzania of 1977 (as amended from time to time).

fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the agency concerned.

Although there is a stipulated provision for the right to be heard under the constitution of United Republic of Tanzania but Secondary schools disciplinary committees do not adhere to this specific provision when there is a case against the student.

With the incorporation of the bill of rights the rules of natural justice were given special status in the legal system of Tanzania. It's now settled that the judicial and quasi judicial proceedings must be subjected to the principles of natural justice particular right to be heard. To some extent the judicial officers in ordinary judicial proceedings have tried to observe the principles of the right to be heard in proceedings before them. However the same is not true to the disciplinary school committee at secondary school level, where there is great divergence with some elements or requirement of this principle of natural justice. This research is therefore inevitable to address the problem and seek for the redress.

## **1.2 Statement of the Problem**

This research work is about the right to be heard as a fundamental requirement of justice in Secondary school disciplinary committees whereby Section 29<sup>3</sup> empowers the minister of education to establish a school board as a secondary school disciplinary committee which is vested with powers to deal with disciplinary matters in schools.

The Act<sup>4</sup> does not provide for provision on the right to be heard as a fundamental requirement of justice in Secondary school disciplinary committees. Understanding right to be heard is of

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<sup>3</sup> Education(Amendment) Act of 1995

<sup>4</sup> Education(Amendment) Act of 1995

increasing importance to the policy makers, the government officials and activists and indeed anyone concerned with the administration of justice for the purpose of promoting right to be heard of the students in Secondary school disciplinary committees.

The government of Tanzania under the Ministry of Education and Vocational Training is therefore faced with so many challenges as to the students to be expelled from schools without being given opportunities to defend themselves hence render to the failure of implementing justice in Secondary school disciplinary committees.

In Tanzania the government has decided resolutely to respect the fundamental human rights, including the principles of natural justice in a right to be heard. However the Tanzania administrative system is to some extent tainted with the practice of non-adherence to the principle of the right to be heard. The problem arises in the administrative functions where the principles are being violated. Thus this study will explore the situation to the implementation of the right to be heard in the administrative boards with special focus to the Secondary school disciplinary committees, since the Act provides only for the establishment of disciplinary committee but do not provide for procedure to be followed before the dismissal of student.<sup>5</sup> This research therefore analyses and lays down the challenges and solutions in matters pertaining the right to be heard in secondary schools disciplinary committees in Tanzania and suggest what is to be done in the legal perspective.

The problem arises in the administrative functions where the right to be heard is violated. Thus, this study explores the situation to the implementation of the right to be heard in administrative boards with special focus to the secondary school disciplinary committee. Since

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<sup>5</sup> Education (Amendment) Act, 1995

Section 29<sup>6</sup> provides for the establishment of this disciplinary committee whereby under the Act they are referred as the school board.

### 1.3 Literature Review

The concept of right to be heard as in Latin maxim *Audi Alteram Partem* has been discussed with extension various authors, scholars article and journals as follows,

Maina on his book explain the right to be heard as follows, before a person is condemned or judged he should be granted an opportunity to present his side of the story. The person should be adequately briefed on the case facing him also the person should then be given an opportunity to face his accused. These two requirements form the basic ingredients of a fair hearing, therefore in any administration of justice they should comply with these principles because they are fundamental in determination of fairness.<sup>7</sup> This writer shows that in order to meet the requirement of justice there must be practical applicability of the principles of natural justice particular right to be heard, but the writer is too general on the view also did not point out specifically the right to be heard in secondary school disciplinary committee a thing which mark a need of having or conducting research also making people aware particularly students who are the direct victim of the infringement of right to be heard specifically in the secondary school disciplinary committee. Flick, explain the principle of *audi alteram partem* by stating that, the fundamental requirements of role of natural justice is that party whose right, property or legitimate expectation may be affected by the adjudication has the right to be heard.<sup>8</sup> The

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<sup>6</sup> .Education (Amendment) Act, 1995.

<sup>7</sup> .C.P.Maina, *et al*, *Justice and Rule of Law in Tanzania: Selected judgment and writing of justice*, James L Mwalusanya and commentaries, 2005.

<sup>8</sup> A.G.Flick, *Natural Justice: Principle and Practical Application*, Butter Worth's Limited, 1984<sup>2</sup>, 48.



concept aimed at providing the party with an opportunity for fair hearing prior to any agency determination that may affect him adversely.<sup>9</sup> Also the author has explained on the right to be heard, but specifically did not cover about it in a secondary school disciplinary committee.

Moreover, Kessari tries to explain more on the *maxim audi alteram partem* by saying that, it signifies the fact that no man should be condemned unheard. To give citizen a fair hearing is just as much as a canon of good legal procedure.<sup>10</sup> Kessari shows the continuation of conducting research and address the issue of right to be heard particularly in secondary school disciplinary committee simply because he did not cover and address the problem facing students as far as the right to be heard is concerned.

Thakker also explained the principle of the right to be heard by stating that no proposition established can be more incur the loss of liberty or property for an offence by judicial proceeding until he had a fair opportunity of answering the case against him. A party is not to suffer in person or in purse without an opportunity of being heard. He continues by explaining the importance of elements which are included in the *maxim audi alteram partem* are notice and hearing.<sup>11</sup> The author went further by saying that before any action is taken the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is *sin quo non* of the right of fair hearing any order passed without giving notice is against the principle of natural justice and it is *void ab initio*.<sup>12</sup> The author also shows the importance of right to be heard as among of the fundamental requirement of justice, but he

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<sup>9</sup> .De Smith CH 4, W Wade, Administrative Law chapter 15, 1977 thereafter decided as Wade.

<sup>10</sup> U.D.P. Kassari, Lecture on administrative Law Central Agency, University, 1985, 126.

<sup>11</sup> C.K. Thakker, *Lecture on administrative law*, Eastern Book Company Limited, Lucknow 2004, 158.

<sup>12</sup> *Ibid*.

shows unawareness on the side of the secondary school disciplinary committee, hence need for research.

Furthermore, Wade in his book explained and address the right to be heard by saying, this principle simply means hearing the other side. It is a fundamental procedure that both sides should be heard. This is more fair explanation of the principle of natural justice since it is embraced almost every question of fair procedure or due process.<sup>13</sup> It is also broad enough to include the right to be heard since it ensures a fair hearing to both parties.<sup>14</sup> The author also like the former writer did not talk about the right to be heard, particularly in the secondary school disciplinary committee. This provides that they are aware of the principles of natural justice, but they fail or unaware to include the principle in secondary school disciplinary committee, hence need for research.

Maina provides that the incorporation of bills of rights in the constitution of the United Republic of Tanzania in 1984 the rules of natural justice was made part of the basic law of the land so as to give recognition of natural justice special status in the Tanzania legal system and it is not easy to ignore them anymore. The author went further explaining that for a long time in Tanzania and in many other countries, there has been a widespread belief, which is of course wrong, that certain institutions in the society are insulated from due process, it is taken for granted that this institution has their own laws to guide them and the normal law of the land had nothing to do with them. These institution include the police, schools and higher learning institutions, there is no doubt that rules of natural justice apply in all cases involving a body or person making a decision which affect other people and their interest, those to be

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<sup>13</sup>.W. Wade, C. Forsyth, *Administrative Law*, Oxford University Press, New York 2004<sup>9</sup>,476.

<sup>14</sup>.*Idem*.

affected ought to be afforded opportunity to present their views and defend themselves.<sup>15</sup> The author consider that right to be heard is the fundamental principle of natural justice and has to be observed by any organ or institution in determining various cases so as to ensure fair dispensation of justice but the author has only concentrated that right to be heard should also be administered in higher learning institutions ignoring the importance of right to be heard in secondary school as far as school disciplinary committee is concerned in determining student cases, hence need for research.

Greer in his book explained the concept of right to be heard as a fundamental and basic principle which should be adhered with any organ dealing with adjudication of cases, dispute and conflict. The author went further by insisting that right to be heard should also be given priority in cases concerning children, that in case of any case concern children, it is at this point the author consider right to be heard in matters pertaining with children that this is right should be given paramount consideration.<sup>16</sup> The author concentrate on the right to be heard as a fundamental requirement of justice as far as children are concerned, the author has failed to show challenges apart from children on how student with no right to be heard are affected, and it is at this point the researcher addressed the challenges.

Richard and his fellow on their book they addressed the fairness hearing on the side of political and accountability that, the concept of due process because it denies those who are regulated the right to fair hearing, the right to a fair hearing is also denied where an administrator can be shown to have pre - judged the issue that will be litigated during the

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<sup>15</sup> C .P. Maina, Human Right in Tanzania; Selected Cases and Material, Sankt Augustin, Germany 1997, 430

<sup>16</sup> I. Greer; *Right to be Heard*; A Guide to Political Representation and Parliamentary Procedure, Green Associates, Amazon 15

hearing.<sup>17</sup>In the administrative process the two concepts are intertwined. Administrative law has been called a surrogate political process which means administrative decision makers must respect both concepts; this has led to overlap and an occasional merger of those two ideas. Obligations of fairness are seen as alternative method of bureaucratic control; similarly, political accountability has come to include an obligation to be fair in the administration of government.<sup>18</sup> Specifically the author has successfully addressed about the right to be heard as among of the fundamental requirement of justice, but only on the issues relating to political, unlike other writers. This proves that there is a need of conducting research so as to specifically address about the right to be heard and it is legal certainty in secondary school disciplinary committee so as to awake awareness in the society, hence the implementation of the right to be heard even in the secondary school disciplinary committee.

If those above writers did not talk about the right to be heard in secondary school disciplinary committee, what is the position of the principle of the right to be heard in the administration of justice in Tanzania with specific focus on the disciplinary cases entertained by secondary school disciplinary committee?.Hence need for research.

#### **1.4 Hypothesis of the Research**

It appears that lack of provision on the right to be heard in the National Education Act leads to infringement of student's rights.

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<sup>17</sup> R.J. Pierce, *et al*, *Administrative law and Process*, Foundation Press, New York 2004<sup>4</sup>,474.

<sup>18</sup> *Ibid*.

### **1.5 Objectives of the Research**

The objective of the study is to analyse the right to be heard in the administration of justice in Tanzania, specifically by the disciplinary committees in secondary school level.

Furthermore, to point out the deficiencies in the existing system as far as the basic tenets of the right to fairness is concerned. Also, this study intends to suggest the ways and means of implementing the right to be heard at secondary school disciplinary committee.

### **1.6 Significance of the Research**

The study proves the weakness of the National Education Act in Tanzania with regard to the right to be heard at secondary school disciplinary committee.

Secondly, the study helps the future researchers and law makers in developing theories on the right to be heard in secondary school disciplinary committee.

Also the study contributes in providing the ways and means of implementing the right to be heard in the administration of justice by administrative organs.

### **1.7 Research Methodology**

This research uses both primary and secondary ways of collecting data whereby the study employed both Primary data collection and Secondary data collection

#### **1.7.1 Primary Sources**

This provides primary data such as Acts, Statute, Conventions and any legal documents which help the researcher to reach its aim. The primary data collection obtained through conducting interviews and observations with regard to the subject matter of research problem.

### **1.7.2 Secondary Sources**

The secondary data obtained through library, reading relevance books, websites, journals and articles related to the problem, this will also analyse those literature works in relation to the topic at hand.

## **1.8 Scope and Limitations**

### **1.8.1 Scope of the Study**

The researcher conducted the study at various government and private secondary schools based on the issue of right to be heard as a fundamental requirement of justice in secondary school disciplinary committee. However, due to limitations of time and finance, this study was conducted in some government and private schools at Dar -Es -Salaam city with a special focus to those students and various staffs who are affected by the decisions of the disciplinary committee. The law which was critically analysed in the study was the National Education Act of 1978 Cap 353 and Education (Amendment) Act of 1995 which should be amended to incorporate the right to be heard as a fundamental requirement of justice in secondary schools.

### **1.8.2 Limitations of the Study**

The researcher faced various limitations in conducting the research. Some of the limitations include; the coverage of all views of Tanzanian students because the research was conducted in Dar es Salaam only so data collection did not reflect the views of all Tanzanian schools. It is under this situation the researcher collected data in few schools which had reflected the system of the whole secondary schools with the view of overcoming the above limitation.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK OF RIGHT TO BE HEARD IN SECONDARY SCHOOLS IN TANZANIA

In this chapter, the researcher has discussed the concept and meaning of the right to be heard and the elements, herein, right to be heard in secondary schools, secondary school disciplinary committee and how it was established, the secondary school disciplinary committee and right to be heard. Therefore Observance of the right to be heard is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual.<sup>19</sup>

#### 2. 1 Concept of the Right to be Heard

The concept of right to be heard is sometimes referred to as the concept of fair hearing; demands for an individual to be given an opportunity to be heard and answer to the allegations against him/her and present his/her own cases before any penalty can be given.<sup>20</sup> Also, right to be heard is one among the principles of natural justice, whereas natural justice can be referred as a higher law that, among other functions observe fairness within a trial, these principles of natural justice comprises several elements namely fairness, equity and impartiality.

Furthermore, the concept of right to be heard is derived from the Latin maxim *Audi Alteram Partem* which means that no person should be judged before being heard. It should be noted

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<sup>19</sup>Www. Decisions in relation to Customs matters - Right to be Heard Manual a file accessed on 29 March 2015 at 09:36 pm

<sup>20</sup> H .Wade, *Administrative law*, Calderon press, Oxford, 1977<sup>4</sup> 15

that this right to be heard principle arises before the decision is actually taken.<sup>21</sup> This right is one of the fundamental principles of natural justice. It is often characterized as a component of the rights of defence but it has a wider ambit requiring state authorities to provide an individual with an opportunity to state his or her case before taking a decision.<sup>22</sup>

Generally, the right to be heard is an important part of administrative law,<sup>23</sup> and the prominence of right to be heard in administrative context can be traced back to the Supreme Court's landmark decision in *Nicholson v. Haldimond-Norfolk (Regional Municipality)*.<sup>24</sup>

### **2.1.1 The Legal Framework of the Right to be Heard**

#### **2.1.2 International Level**

The right to be heard has been provided by several instruments so as to be observed by member state., and various instruments provides for the legal framework of right to be heard to effect fair trial, this much concern on right to rebut opponent evidence, also this to the effect that no one should be condemned unheard so that the saying justice should not only done but should seen to be done as it is provided under article 14 of the International Covenant on Civil and Political Rights 1966 ( ICCPR), this convention provides that any member state must observe and preserve the principal of natural justice specifically the right to be heard so as to ensure fair dispensation of justice.

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<sup>21</sup> Decision in relation to custom matters - right to be heard manual retrieved from [www.customsappeals@revenue.ie](http://www.customsappeals@revenue.ie)

<sup>22</sup> [www.duhaime.org](http://www.duhaime.org) › Legal Dictionary

<sup>23</sup> D. J. Mullan, *Essential of Canadian Law: Administrative Law*, Irwin Law, Toronto 2001 232.

<sup>24</sup> [1979] 1 S.C.R. 311



The right to rebut the opponent's evidence depending on the nature of the proceedings. This means if proceedings are judicial in nature, it is obvious there is right to rebut evidence. Unless clearly provided by law.<sup>25</sup>

The law requires that no decision which will affect a person will be taken without giving the right to be heard to the affected person.<sup>26</sup> This right to be heard also evidenced by Lord Haldane in a case of local *Government Board Vs Arlidge*,<sup>27</sup> in this case the court held that;

“Those whose duty is to decide...must act judicially, they must deal with the question referred to them and they must give to each of the parties the opportunity to be heard”

Therefore, in this case it was considered that right to be heard must be observed for fair equality of opportunity and pure procedural justice in respect of this, it means all parties in the case should be given equal chance to present their argument against each other. Right to be heard in general entails the chance for both parties to present their case before judgment which substantially will affect the right of either party in their cases respectively, this right led to pure procedural justice. For judgments to be just and fair both parties should be heard and so far there are several requirements to be observed in this respect like sufficient notice so as to allow the other party to prepare his or her defence.<sup>28</sup>

Therefore, the right to be heard entails that any person alleged to have done any wrong must be notified by administrative board, notice so given must be reasonable and sufficient also

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<sup>25</sup> Chief constable of the North Wales Police vs. Evans(1982)UKHL 10

<sup>26</sup> M.P, Jain,S.N, Jain. *Principle of Administrative law*; wadhwa and company, Law Publishers, New Delhi, 2005 228.

<sup>27</sup> [1915] A.C.120

<sup>28</sup> John. R, *Administrative law*, Calderon Press, Oxford, 2005 6 371

must specify the time, place and charges and must mention authority in which proceedings will be based. In this regard on the compliance of requirement of notice implied that the person has not been given adequate opportunity to be heard as provided in the case of *Ceylon University Vs Fernando*.<sup>29</sup>

The rationale behind the right to be heard by connecting between procedural due process and substantive justice of a final outcome. This means accurate decision in the sense of substantives of the case aim at maintaining objectivity and Impartiality procedural rights are also seen to protect human dignity and ensuring that the individual is told why he or she is treated unfavourable by enabling her to take part in the decision.<sup>30</sup>

### **2.1.3 Regional Level**

The African Charter on Human and People Rights 1981 (ACHPR) provides for the legal framework of the right to be heard as one of the basic principle of natural justice that should be observed by member state so as to ensure fair dispensation of justice. Also the charter insist for the right to be heard to be observed by member state so that just and fair decision to be attained and justice not only to be done, but seen to be done as it is provided under article 7 the African Charter on Human and People Rights illustrate on this position . In this regard the right to be heard must be clearly observed and these should be put into consideration as follows; “that a person who decides must hear, this means the one who is responsible to judge the case must hear the proceedings of the case”

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<sup>29</sup> [1960] W.L.R 223

<sup>30</sup> *Supra* note 24

This position was provided or can be seen in the case of *Knight Vs Indian*.<sup>31</sup> No evidence should be taken at the back of the proceedings. This means all evidence should be taken in the presence of both parties as evidenced in case of *knight Vs Indian Head School*.<sup>32</sup> Also, there is right to know report of inquiry as also same situation occurred in case of *Knight Vs Indian Head School*.<sup>33</sup>

The right to be heard is fundamental in determining of innocent of the parties in any contentious or non contentious matter before judgment is pronounced by the competent judge or administrative board. Also emphasize that wherever this right is violated the affected person may file an application to the court of law for remedies which will be appropriate.<sup>34</sup>

Then the proceedings may be termed either valid or invalid, depending on the findings. Natural justice allows a person to claim the right to adequate notice of the date, time and place of the hearing as well as dated notification of the case to be met.<sup>35</sup>

The rationale for the right to be heard ensures justification for process right this rationale is connected between procedural due process and substantive justice of a final outcome, this means accurate decision in the sense of substantive of the case aim at maintaining objectivity and impartiality procedural right is also seen to protect human dignity by ensuring that the individual is told why he/she is treated unfavourable by enabling him/her to take part in the decision.<sup>36</sup>

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<sup>31</sup> Head School Division No 191990 can LII 318

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*.

<sup>34</sup> C.K ,Takwani , *Lectures on Administrative law* Eastern Book Company 2010<sup>4</sup>

<sup>35</sup> *The Singapore legal system* ,: Singapore University Press, Singapore, 1999 <sup>2</sup> 229

<sup>36</sup> G, Paul, *Administrative law*, Butterworth Publishers 2008<sup>6</sup>. 371.

#### 2.1.4 Domestic Level

The constitution of the United Republic of Tanzania 1977, provides that so as to ensure equality before the law, the state authority shall make procedures take to account several principles, right and duties of court or any agency that parties shall be given right of fair hearing. This generally entails that no one should be condemned unheard.

Right to be heard entails that in administrative proceedings parties to the case should know and understand nature of proceedings, evidence tendered against, witnesses called by opposite side, as seen in case of *Mahona Vs University of Dar Es Salaam*.<sup>37</sup> Therefore, the Constitution of United Republic of Tanzania as the mother law provides that no person should be condemned unheard and this is to make sure that fair dispensation of justice is seen to be done as it is provided under Article 13 (6 )(a) of the constitution of the United Republic of Tanzania illustrate on this position.

The meaning of natural justice provided by an English common law and it involve procedural Requirement of fairness also provided other names of principle of natural justice as the substantial justice, fundamental justice, Universal justice and fair play in action, in other words *audi alteram partem* or role of fair hearing which mean hear both sides to constitute this right so as to provide for these ingredients notice and hearing.<sup>38</sup>

The two requirements of the right to be heard have been explained as follows, first, the person should be adequately briefed on the case facing him. This basically aims at making the

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<sup>37</sup> [1981] T.L.R.55.

<sup>38</sup> M.O, Kapilima , *General Laws of Tanzania, Question and Answers*, Star book Publishers, 2009 39.

accused person aware of the case at hand so that he can conduct re- examination of witnesses deposing against him. Second, the person should be given right to face the accuser. This means parties in the case should meet during proceedings and challenge each other for the aim to ensure justice between the parties.<sup>39</sup>

The right to be heard was one of the issues in the case of *Simeone Manyaki Vs Executive Committee and the council of the Institute of Finance Management and Others*.<sup>40</sup> This was a case dealing with leakage of examinations. It was alleged that a number of candidates had obtained unauthorized prior access to the examination paper and a model answer. The council of the Institute of Finance Management (hereinafter referred to as IFM) met and among other things, nullified the examination involved with the leakage and ordered the students affected, including the applicant, to re- take the examination. After the release of examination results the applicant was officially declared to have passed the examination which had been re- taken a few days later, he received a letter purporting to terminate him from studies and nullifying his results of the re-taken the examination. This was done without calling him and giving him the opportunity to present his case before the decision to terminate him and to nullify his examination results was reached. Naturally, he was dissatisfied and went to Court. Granting the application, Mapingo, J need inter alia that,

The applicant, whose rights and legitimate expectations stood to be so adversely affected by the inquiry had the right to have an adequate opportunity of knowing the case he had to meet of answering of putting forward his own case, and of being fair and impartial treated ....

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<sup>39</sup> M.P. Chriss, and H.K. Busimba, *Law and Justice in Tanzania, Legal and Human rights centre*, 2002 428

<sup>40</sup> High Court of Tanzania at Dar es Salaam, Miscellaneous civil cause No. 424, 1984 (Unreported)

In practice a person may be given an opportunity to be heard but not adequate for example not given enough time to prepare his/her defence in other cases, somebody may not be given an opportunity to be heard at all. These two situations have a great impact on the outcome of the case.

## **2.2 Right to be Heard in Secondary Schools**

Secondary schools means a school providing secondary education with reference in the Act to secondary school include that school to the extent to which it provides secondary education.<sup>41</sup>

Where by secondary education means formal full education of duration of four years for Ordinary level and two years For Advanced level continued immediately after primary Education in accordance with the syllabus approved by the commissioner,<sup>42</sup> whereby in Tanzania secondary schools are categorized into public schools and private schools which are provided under S 19 and S 23<sup>43</sup> and the Act provides for the manner through which this schools may be registered. The secondary school administration is governed by School boards which entails as an elected body corporate which manages delegated powers in regards to the delivery of education services within a defined territory.<sup>44</sup> A board exists separate and apart from the people elected locally as trustees, who are responsible for governance.

School boards exist in order to operate schools within their jurisdiction.<sup>45</sup> A board has the powers that are either set out expressly in legislation or regulation, or that are necessarily

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<sup>41</sup> Education(Amendment) Act No 10 Cap 375 1995

<sup>42</sup> Education(Amendment) Act No 10 Cap 375 1995

<sup>43</sup> National Education Act Cap 353 1978

<sup>44</sup> A Brown, *Legal Handbook for Educators*, Toronto, Carswell, 2009<sup>6</sup> 74

<sup>45</sup> <http://www.duhaime.org/LegalDictionary/S/SchoolBoard.aspx> accessed on 12:31 pm 28 December 2014

incidental to the exercise of the legislated powers.<sup>46</sup> School board is established with specific functions with respect to particular aspects relating to the management and conduct of schools.<sup>47</sup> The school board is established under Sections 29(1)<sup>48</sup> whereby the minister shall by an order published in the gazette establish a school board in respect of every national school.

Therefore, the right to be heard is one of the basic principles of natural justice underlying the notion that a person should not be condemned unheard and this is done so as to ensure and secure justice. Right to be heard covers a wide range of its applicability that means it is of great important for it to be used in secondary schools for adjudication of various decision concerning students cases, many decisions which are made in secondary school concerning student cases are inconsistency and they do not adhere this principle of natural justice since many student are expelled from schools without being given chances for them to be heard and in turn this results to violations of the right to be heard as well it undermines the right to education.<sup>49</sup> The National Education Act Cap 353<sup>50</sup> provides for the manner to prescribe conditions on the expulsion or exclusion from schools on the grounds of age, discipline and health where by this provision does not mention the concept of right to be heard as the fundamental principles which may be used before expulsion or exclusion of student from schools.

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<sup>46</sup> Brown *Supra* note 25

<sup>47</sup> S 38(2) (d) of the National Education Cap 353 1978

<sup>48</sup> National Education(Amendment) Act of 1995

<sup>49</sup> Article 11 of the Constitution of the United Republic of Tanzania of 1977

<sup>50</sup> S 60(o)

### 2.3 Secondary Schools Disciplinary Committee

To understand Disciplinary Problem first of all it is important to know the real meaning of Discipline. Therefore, Discipline is the required action by a teacher to a student (or group of students), after the student's behaviour disrupts the ongoing educational activity or breaks a pre established rule created by the teacher, the school administration or the general society.<sup>51</sup> It is under this point the researcher looks at the law that establishes Secondary Schools disciplinary committee and its functions according to the law that established that entity.

School committee for every pre- primary and primary school responsible for the management and maintenance of school is established under the National Education Act.<sup>52</sup> For secondary school, the school Board is responsible for the management and maintenance of the school, particularly on discipline matters as provided under section 29 of the Act.<sup>53</sup>

Therefore, in secondary school there is no disciplinary committee instead there is a school board which performs its duties as a disciplinary committee.<sup>54</sup>

As it was in the case of *Gitano Nyirabu and 3 others Vs Board chairman, Songea Boys Secondary School Board and 3 others*.<sup>55</sup> The school board was responsible for the entertainment the matter. Citing several authorities on the importance of the right to be heard as an integral part of the rules of natural justice, Samata, J quashes the decision of the board of

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<sup>51</sup> *School Discipline Rules of Procedure*, A Paper presented by Jayson, Henarndez; Guidance Councilor 1 San Miguel National High School

<sup>52</sup> S. 39

<sup>53</sup> National Education(Amendment) Act 1995

<sup>54</sup> section 29 of the National Education(Amendment) Act 1995

<sup>55</sup> Court of Tanzania at Songea, Miscellaneous civil application No. 3 of 1994 (Unreported)



Songea boys Secondary Schools to expel the four applicant *de novo* and in accordance with the principles of natural justice.

### **2.3.1 Establishment and Composition of Secondary School Board.**

The school board is empowered to make rules in secondary schools as it is provided under section 4 of the Subsidiary Legislation Act<sup>56</sup> and such rules do not provide for the right to be heard as a fundamental principle in the adjudication of student cases. The Act elaborates on the composition of the school board, where the standard structure includes following members approved by the Regional Commissioner and headmaster of the school has the role as the school board secretary. The compositions are as follows;

One member representing the voluntary organization of that school was originally established by that voluntary organization, the regional education officer or his representative who shall be a senior education officer in the Region, head of the school, One member representing the academic staff, Not more than five members appointed by the Regional commissioner upon recommendation of the regional education office, two members appointed by the regional commissioner upon recommendation of the head of school and two members co-opted by the Board during its first sitting.

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<sup>56</sup> The government school Board (establishment) order G.N.NO.304 of 2002

### **2.3.2 Functions and Powers of Secondary Board Disciplinary Committee.**

The functions of the school board are partly provided for to include management, development planning, disciplining and finance of the school.<sup>57</sup> However, this regulation the functions of the school board are provided at length as follows;

The school Board shall have the management and supervision powers to;

Review and direct the head of school in respect of the management development, planning, discipline and finance for the school of which the board has been established, discuss matters relating to implementation of education policy in Tanzania and make recommendations to the commissioner as appropriate, direct the head of school on any matter that may be referred to the school board by the commissioner, advise the commissioner on any matter that may be referred to the school board by him, promote better education and welfare of the school, initiate projects and programs for the general progress of the school and do other activities within its capacity, solicit contribution, donations and engage in income generating activities for the development and welfare of the school, ensure that the teachers of the school abide by the code of professional conduct as stipulated under the Teachers service commission Regulations of 1989, suspend any teacher on disciplinary grounds, misconduct or inefficiency or any act likely to cause disharmony in the school and inform the commissioner immediately of such an action, prescribe the kind of uniform to be worn by the students and facilitate formation of a parent - teachers association. Subject to the general and specific directions by the commissioner, the board shall have the power to suspend or dismiss a student on the commission of an offence warranting such punishment.

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<sup>57</sup> Section 29 of the National Education (Amendment) Act 1995

Therefore, the management of a school board is under the Regional Commissioner as the chairman of the school board and the headmaster of the school as the school board secretary. So, in case there is a discipline case against a student(s) the school board will be responsible for entertaining the matter as it was in the case of *Gitano Nyirabu and 3 others Vs Board Chairman, Songea Boys secondary school Board and others*,<sup>58</sup> this case shows the power of school board on entertaining school matters basing on disciplinary ground.

#### **2.4 Secondary School Disciplinary Committee and Right to be Heard**

Secondary School Disciplinary committee it is the committee established so as to determine student cases basing on disciplinary grounds and it is at this point the school disciplinary committee must ensure that each party to the case is given an opportunity in the case. In case no opportunity to be heard has been given such proceedings will be invalid as this right is of the essence to ensure justice is done accordingly. In this it is presumed that once party in the case was not afforded an opportunity to be heard, the proceeding will be invalid since the principle applies in proportion to the disciplinary committee which basically performs administrative functions.<sup>59</sup>

Also, the essence of a trial procedure that does not only give the opportunity of each party to present his own case but rather it is an opportunity of each party to attack evidence of the other side which is normally done through cross examination of opposing witnesses and written or oral argument.<sup>60</sup> This situation of giving party to the case an opportunity in attacking their

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<sup>58</sup> Court of Tanzania at Songea, Miscellaneous civil application No. 3 of 1994 (Unreported)

<sup>59</sup> C.D, Kenneth, *Administrative law Treaties*, St Paul Minn, West Publishing, 1958 321.

<sup>60</sup> *Ibid*

evidence as far as the decision of the committee is concerned is not practicable in secondary school disciplinary committee.

Moreover, there are two requirements of the right to be heard to be observed for the right to stand. First, the person should be adequately briefed on the case facing him, this basically aims at making the accused person to be aware of the case at hand so that he can conduct re-examination of witnesses deposing against him. Second, the person should be given right to face the accuser. These two requirements form the basis of the right to be heard.<sup>61</sup> As in the case of *Felix Bushanga and others Vs Institute of Development Management Mzumbe and Another*.<sup>62</sup> In respect to the right to be heard, the court quashed the decision of the Institute of Development Management Mzumbe and another to expel them, to compel the respondent to follow the law in the handling of disciplinary matters by channeling issue brought proper disciplinary committee and affording the students right to be heard and opportunity to appeal as provided by the law.

In the practice a person may be given an opportunity to be heard but not adequate, for example not given enough time to prepare his/her defence in other cases. Somebody may not be given an opportunity to be heard at all. These two situations have a great impact on the outcome of the case.

Apart from that also the right to be heard can be regarded insufficiently once given when the procedural suspects are improper and insufficient service of the notice, insufficient opportunity to defend his case and denial of respondents right to be represented this will amount that the right given is insufficient and can be seen mostly in secondary school

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<sup>61</sup>M.P; Chriss, and H.K, Busimba, *law and Justice in Tanzania: Legal and Human right centre* 2002 428.

<sup>62</sup> High court of Tanzania at Dar es Salaam miscellaneous civil case No. 9 of 1991 (Unreported).

disciplinary committee whereby students are not given sufficient opportunity to present their case.

In situations where inadequate right to be heard had granted the case can be analysed broadly and in totality depending on the circumstances of the case the effect of the absence and presence of the opportunity to be heard must be taken into account since it may affect students as far as the right to education is concerned.

Then the proceedings may be termed either valid or invalid depending on the findings. Natural justice allows a person to claim the right to adequate notification of the date, time and place of the hearing as well as detained notification of the case to be met.<sup>63</sup> In the case of *Ridge Vs Baldwin*<sup>64</sup> the court dismissed the case on the basis that, the decision was void because the watch committee did not observed the principles of natural justice since the claimant had neither been charged nor informed of the grounds they propose to proceed and had not been given a proper opportunity to present his defense.

For it to be right to be heard the person who is likely to be affected by the decision must be provided with sufficient notice to allow the case to be adequately prepare that at any time of right to be heard a person will be entitled to know the evidence that has been produced by and against him, be given proper opportunity to contest, correct or contradict any such evidence to state one's case and to raise any relevant matter before the tribunal.<sup>65</sup>

However, there are circumstances whereby right to be heard may be waived to the parties of the case such as<sup>66</sup>; when the right to be heard is likely to injure confidentiality, national interest

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<sup>63</sup> *The Singapore legal system*; Singapore: Singapore University press; 1999<sup>2</sup> 160.

<sup>64</sup> [1963]2 All E.R 66

<sup>65</sup> P.Leyland, T.Woods, *Book on Administrative law*, Oxford University Press, New York 2002<sup>4</sup> 353.

<sup>66</sup> H, Wade, *Administrative law*, Calderon Press Oxford, 1977<sup>4</sup> 16

or public order, purely administrative decisions or policy matter may also operate to the exclusion of principle of natural justice, in the circumstances of emergency example no enough time to conduct right to be heard of both parties but here decision must be proportional to mean what is protected must be greater than what is lost.<sup>67</sup>

Generally, the conceptual framework of the right to be heard in secondary school disciplinary committee as discussed above basing on the concepts of the right to be heard in secondary school disciplinary committee is not adhered by the secondary school disciplinary committee while the right to be heard is the Constitutional right of every individual in Tanzania.<sup>68</sup> So incase the school board has passed a sentence upon a student (s) in absence of him, then the student has the right to Appeal against the school board for the decision reached against him.

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<sup>67</sup>*Idem*

<sup>68</sup> Article 13(6) (a) of the Constitution of United Republic of Tanzania of 1977

## CHAPTER THREE

### ANALYSIS OF RIGHT TO BE HEARD IN SECONDARY SCHOOL DISCIPLINARY COMMITTEE

This chapter has evaluated the analysis of the Right to be heard in secondary school disciplinary committee whereby the focus dwelled upon the right to be heard in secondary school, cases to be heard by the secondary school disciplinary committee, procedures applied by the secondary school disciplinary committee, observation of right to be heard in secondary school as well as challenges facing students in secondary schools with no right to be heard.

Also, the chapter envisages analysis of the laws of Tanzania by exploring the practice of the secondary school disciplinary committee on matters pertaining the right to be heard, That being the case, this chapter, therefore, seeks to look at the lacunae in the laws of the country as well as the impediment facing the secondary schools disciplinary committee on the matter of the right to be heard since right to be heard is the constitutional right of every individual in Tanzania.<sup>69</sup>

#### 3.1 Right to be Heard in Secondary Schools

Right to be heard is one of the basic principle of natural justice, which underlying the notion that a person should not be condemned unheard as the position was in the case of *Mahona V University of Dar Es Salaam*<sup>70</sup> illustrate on that position. Therefore right to be heard in secondary schools entails that student should be given chance to be heard before their case is

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<sup>69</sup> Article 13(6)(a) of the Constitution of The United Republic of Tanzania of 1977

<sup>70</sup> [1981] TLR 55

determined so to make sure that justice is done in secondary schools but in practice right to be heard in secondary school seems to be overlapped following the reason that student are expelled from schools unheard without given chances to plead their case and this leads to breach of fundamental principle of natural justice as well as it infringes their right to education as it is provided under article 11.<sup>71</sup>

Also, the minister is empowered by order published in the gazette to establish school board in respect of every national school.<sup>72</sup> The school board is established to act as a secondary school disciplinary committee for the purpose of exercising advisory functions with respect to particular aspects relating to the management and conduct of the school.<sup>73</sup> The board was established for managerial or supervisory powers which may be exercised by the board over the school.<sup>74</sup> Therefore the board was as well established to hear and determine various disciplinary cases of students, The Act( National Education Act) establish the board with such purpose of hearing various disciplinary cases of student, but the Act lack the provision on the right to be heard and it has failed to show as to whether the right to be heard in secondary schools is a fundamental principle basing on that position it appears that lack of the provision of right to be heard in the National Education Act leads to the infringement of student(s) right. Therefore, the law applicable for the right to be heard is the Constitution of The United Republic of Tanzania of 1977 under Article 13 (6) (a). Since the Constitution is the mother law of the land every individual should adhere to it. The right to be heard is the Constitutional right of every individual in Tanzania and not a privilege. Although the Constitution require the

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<sup>71</sup> The Constitution of the United Republic of Tanzania 1977

<sup>72</sup> S 29 of the National Education (Amendment) Act 1995

<sup>73</sup> S.29(d) of The National Education(Amendment) Act 1995

<sup>74</sup> S.29(e) of The National Education (Amendment) Act 1995



state authorities to make appropriate procedures which protects the rights of any person on determination of the case against him that a person should be entitled to fair hearing but in most of authorities particularly secondary schools disciplinary committee right to be heard is not adhered to most student(s) are not given this right. In the case of *Felix Bushanga and Others Vs Institute of Development Management Mzumbe and Another*<sup>75</sup> in respect to the right to be heard, the court quashed the decision of the Institute of Development Management Mzumbe and another to expel them, to compel the respondent to follow the law in the handling of disciplinary matters by channeling issues brought proper disciplinary committee and affording the students the right to be heard and opportunity to appeal as provided by the law.

Also, the school board is responsible for the management and maintenance of the school particularly on discipline matters.<sup>76</sup> Although this law establishes the secondary school board, but it lack the provision on the right to be heard two students. It does not provide for procedures to be followed before punishing students as well as specific section for the right to be heard which the secondary school disciplinary committee should adhere to. Therefore, there is a need of improving the uniform law to all secondary schools in Tanzania which will protect students on the right to be heard, since the National Education (Amendment) Act of 1995 has a lacuna for procedures to be followed before passing a punishment to student(s) and law for right to be heard.

Moreover, the right to be heard should observe several elements as the principle of natural justice require the followings, right to be informed by an administrative board or secondary

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<sup>75</sup> High Court of Tanzania at Dar es salaam, Miscellaneous civil case no 9 of 1991(unreported)

<sup>76</sup> S 29 of the National Education (Amendment) Act 1995

schools disciplinary committee. In administrative proceedings parties to the case should know and understand nature of proceedings ,right to rebut the opponent evidence depending on the nature of proceedings, right of oral hearing or presentation unless it is expressly prohibited right to presentation, he who decides must hear no evidence should be taken at the back of the proceedings. For decision of disciplinary committees to provide justice to secondary school students basing on the principle of natural justice specifically on the right to be heard must be adequate in the sense disciplinary committees should create an environment for the party to produce evidence and rebut the case adequately by ensuring that the party is given reasonable time informed about the charges against him.

### **3.2 Cases to be Heard by Secondary School Disciplinary Committee**

The following are cases to be heard by a secondary school board as a school disciplinary committee:

#### **3.2.1 Picking Phones Calls in the Class**

In Modern world, globalization technological innovation all of them strongly affect our lives and of course these aspects have their positive and negative effect not only on school discipline but also on a whole life of the people. One among the positive impact of globalization is that it can be used to foster development, while globalization plays a vital role in education system whereby student can use internet in studying and this may increase efficiency in education system, but as well though globalization has many positive impact it is as well has negative impact especially for student simply because globalization has contributed easily access and flow of information and goods whereby student can access phones and use them in a manner that is not required. Now days there are a lot of discipline

problems in school whereby students are disrespectful they talk on the phones while the teacher is teaching.<sup>77</sup>

### **3.2.2 Bullying in School**

Bullying in schools is one of the biggest educational issues or cases that school administrators, teachers, students, and parents deal with today. Bullying has always been a problem, it doesn't take a lot of research to tell us that discipline in school is different today than it was in the 1950s. But it does take some investigation to find out why. Various studies have shown that students who act up in school express a variety of reasons for doing so.<sup>78</sup> Some think that teachers don't care about them, others don't want to be in school at all, and they don't consider goal setting and success in school important anymore. Students are unaware that their adolescent behaviour will result in punishment they won't like.<sup>79</sup>

### **3.2.3 Gross Disobedience or Misconduct**

This can also be a case which be taken in secondary school disciplinary committee whereby gross disobedience or misconduct occurs when school authorities believe that a student's behaviour is causing or might cause a major disruption or interfere with school activities.

Types of behaviour that are considered gross disobedience or misconduct include;

Repeated or willful behavior which shows disregard for school rules and regulations, insubordination to any school personnel (administrators, teachers, and all non-certified staff), acts which endanger or harm the health, safety, and welfare of others, behavior in which the student tries to harass, intimidates or frightens directly or indirectly, any student or school

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<sup>77</sup> [www.academia.edu/.../DISCIPLINARY-PROBLEMS-in-SCHOOLS](http://www.academia.edu/.../DISCIPLINARY-PROBLEMS-in-SCHOOLS). accessed on pdf at 10 :42am 28 ecember 2014

<sup>78</sup> [www.academia.edu/.../DISCIPLINARY-PROBLEMS-in-SCHOOLS](http://www.academia.edu/.../DISCIPLINARY-PROBLEMS-in-SCHOOLS). accessed on pdf at 10 :42am 28 ecember 2014

<sup>79</sup> *Ibid*

employee, use, sale or distribution of any alcoholic beverage or look-alike alcoholic beverage, illegal drug or look-alike drug or narcotic, or container exhibiting the odor of alcoholic beverages, excessive truancy, tardiness, or class cutting after warnings, possession of any dangerous weapon or look-alike weapon, theft or destruction of property belonging to other students, school, or staff, fighting or assaulting any person, use of profane or obscene language, possession or use of electronic communications equipment in school or on school property and sexual harassment of any student or school personnel.<sup>80</sup> Apart from those cases which may be tried by secondary school board as school disciplinary committee there are other cases which may also be tried in secondary school disciplinary committee such as academic misconduct, assemblies, attendance, behaviors, cheating, excessive show of affection, fighting, Illegal substances, prior excused absences, student dress and Vandalism.<sup>81</sup>

### **3.3 Procedure Applied by Secondary School Disciplinary Committee**

The Secondary School Disciplinary Committee must make sure that it abides with the procedure before expelling a student in schools and such procedures has to be considered if there has been serious misbehaviour; the school may decide to suspend a student. This decision is made only after all other disciplinary procedures have been tried and such procedures should consider the following.<sup>82</sup>

Types of behaviour by the student that may need disciplinary measures, nature of the disciplinary measures to be carried out, procedures to be followed before a student is suspended or expelled and grounds for lifting suspensions.

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<sup>80</sup> <http://www.millard.k12.ut.us/schools/dhs/index.php/gross-disobedience-or-misconduct> accessed on 16:20 pm 28 December 2014

<sup>81</sup> [policy.ku.edu/.../soe-student-academic-misconduct-](http://policy.ku.edu/.../soe-student-academic-misconduct-) accessed on 17:10 pm on 28 December 2014

<sup>82</sup> [http://www.citizensinformation.ie/en/education/primary\\_and\\_post\\_primary\\_education/attendance\\_and\\_discipline\\_in\\_schools/school\\_discipline.html](http://www.citizensinformation.ie/en/education/primary_and_post_primary_education/attendance_and_discipline_in_schools/school_discipline.html) accessed on 17:45 pm on 28 December 2014

The secondary school disciplinary committees are established in each secondary school with the aim of maintaining secondary school disciplinary committees. Although they maintain secondary school discipline sometimes students are not given the right to be heard hence the committee becomes inadequate. He thinks that there might be a law that establishes the disciplinary committee and such law gives the student(s) right to be heard, but the secondary school boards do not adhere to such laws.<sup>83</sup> The National Education Act is silent on the right to be heard be given to student (s). It only establishes the school boards, but not the procedures to be followed by the disciplinary committee before punishing the student.<sup>84</sup>

Therefore, the secondary school disciplinary committee in Tanzania does not have a well and specific procedure to be used in case if there are cases before them, but the issue of procedure is a matter of experience and not a statutory obligation while the issue of right to be heard in any situation is a constitutional right and any administrative organ must adhere to it regardless of any misconduct done by the student.

### **3.4 Observation of Right to be Heard in Secondary Schools**

In observing the right to be heard in secondary school the researcher has examined the overview of secondary school teachers, students and correspondents as far as the practice of the right to be heard in secondary school is concerned.

#### **3.4.1 The Overview of the Secondary School Teachers**

The overview of the secondary school teachers on the right to be heard was as follows,

Establishment of secondary schools disciplinary committee is the matter of practice, sometimes the school board required to pass punishment to student(s) without giving him a

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<sup>83</sup> A discipline teacher from Kamene secondary school

<sup>84</sup> A discipline teacher from Kamene secondary

right to defend himself, especially when the board thinks that, the student might spoil other students if he continues to stay at school. Moreover, such committee exists for a long time and each school has its own committee regarding the maintenance of secondary school discipline.<sup>85</sup> The act of denying right to be heard to student(s) by a school board for the purpose of protecting of other students are similar to the circumstances whereby right to be heard is sometimes waived to the parties of the case depending on circumstances of such case. These circumstances are such as.<sup>86</sup> When the right to be heard is likely to injure confidentiality, national interest or public order, also in the circumstances of the emergency, example no enough time to conduct right to be heard of both parties, but here decision must be proportional to mean what is protected must be greater than what is lost.

Disciplinary committees are established as a matter of practice with the aim of maintaining the discipline of the students in the school concerned, but these committee sometimes do not consider and offer for an opportunity to the student to defend himself (right to be heard) due to their own reasons.<sup>87</sup> Though it is known to everyone that, right to be heard is the constitutional right as it is stipulated under Article 13(6) (a).<sup>88</sup>

Also, the research finding shows that most of teachers are not aware of the laws that establish secondary schools disciplinary committees for instance madam Ester Zachariah says is a matter of practice developed from the customs done by many secondary schools in Tanzania. Also, went further, saying that students are given the right to be heard once they go against the school need before being punished. This right is given to petty offences, but once student(s)

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<sup>85</sup> A discipline master of Magoza secondary school

<sup>86</sup> H.Wade, *Administrative law*, Calderon Press, Oxford 1977<sup>4</sup> 16

<sup>87</sup> A teacher from Magoza secondary school

<sup>88</sup> Constitutional of the United Republic of Tanzania of 1977

commits a serious offence like being a source of riots at school, raping and pregnant a servant of school will be dismissed without given the right to be heard.<sup>89</sup>

Also, the researcher interviewed another secondary teacher and find out that, the teacher does not know the law for the establishment of the secondary school disciplinary committee. The teacher only knows that these committees are established in each secondary school with the aim of maintaining secondary school disciplinary matters. Although they maintain secondary school discipline sometimes students are not given the right to be heard hence the committee becomes inadequate. He thinks that there might be a law that establishes the disciplinary committee, and such law gives the student(s) right to be heard, but the secondary school boards do not adhere to such laws.<sup>90</sup> The National Education Act is silent on the right to be heard be given to student (s). It only establishes the school boards, but not the procedures to be followed by the disciplinary committee before punishing the student.

Also, these secondary school disciplinary committees are established by circular education policy where in this regard provide for the composition of the disciplinary committees and provide all principles to be observed by disciplinary committees. So, the position of secondary school disciplinary committee in Tanzania is that, students can either be given right to be heard or denied of such rights. The right to be heard is denied to student(s) for purpose of protecting the interest of school and other students if such accused student tends to injure those students moral or physically at school.<sup>91</sup>

Lastly, most of secondary schools disciplinary committees, especially the Catholic church seminary schools once student(s) commits a petty offence then the student is required to write

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<sup>89</sup> A teacher from Kamene secondary school

<sup>90</sup> A discipline teacher from Kamene secondary school

<sup>91</sup> The Headmistress from Kamene secondary school

a letter as a warn to him and if he repeats the same mistake the school board pass a punishment against him without giving him a right to defend himself. Also, there are some schools rules whereby once student(s) go against them like cheating on exams, theft, and fighting at school, the school board automatically dismiss him from school without giving him the right to be heard.<sup>92</sup>

The researcher found that, most of the teachers of the school are not aware of the laws which establishes the school board, also the law which establish the school board has some lacuna since it does not provide for the provision of the right to be heard, in short the National Education Act<sup>93</sup> is silent on the law for the right does not provide for procedures to be followed by school board before punishing student(s).

### **3.4.2 The Overviews of the Secondary School Students**

Students are the ones that are affected by the right to be heard, since the right given to them by the school board is inadequate and insufficient. Sometimes the school board does not give them the right to be heard despite that this right is the constitutional right to every citizen in Tanzania regardless of his or her status, age, religion, race and sex.

A student was punished by the school disciplinary committee for going outside the school during night hours to watch a football TV show without permission. In his views the student said that he was punished before he had been given the opportunity to be heard. He was caught with his fellow students entering the school on late night hours. On the next day school authority gave them three week suspension and the letters to be taken to their parents. They were told to come back with their parents on the day that was stipulated in the letter. He

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<sup>92</sup> A teacher from Magoza Secondary school

<sup>93</sup> Act No 25 of 1978



continues by saying the committee was not fair because he was not given a chance to defend himself.<sup>94</sup> This situation is the same as it was in the case of *Simeone Manyaki Vs Executive Committee and Council of the Institute of Finance Management and others*<sup>95</sup>, whereby in this case Simeone Manyaki was terminated from school and nullified his examination results without calling him and giving him the opportunity to present his case before the committee of the Institute of Finance Management.

Another student contends that his expulsion from school was based on disobedience of schools rule which prohibit fighting at school, whereby any student who does not obey is subject on such rules, basing on such situation he was just given a letter of expulsion without being given a chance so that he can defend his case before the secondary school disciplinary committee, whereby it is of legitimate expectation that any person to whom the decision will affect them has to be given a chance to defend his case since it is the requirement of principles of natural justice that no person should be condemned without being denied the right to be heard, he provides his experience when his case was determined without being given a chance to defend himself, basing on this experience shows that there are no procedures to be followed by secondary school disciplinary committee with regard to the right to be held. Furthermore he was of the view that right to be heard is not taken into consideration when deciding various students disciplinary cases as his case proves that he was expelled unheard, this situation has affected him at large extent since it denies his fundamental right to education, the student though does not have vast knowledge of law but the student was of the view that secondary

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<sup>94</sup> A student from Kamene secondary school

<sup>95</sup> High Court of Tanzania at Dar es salaam, Miscellaneous civil cause No 424,1984

school disciplinary committee should take into consideration the principle of natural justice as far as the right to be heard is concerned.<sup>96</sup>

Furthermore, another student according to his view he was suspended from the school by being punished by secondary school disciplinary committee. One among of the teacher caught him cheating during the terminal examinations, day after the end of exams, he was called and given a letter for the dismissal from school basing on the ground that he went against examination rules. With regard to the right to be heard in a secondary school disciplinary committee, he said that teachers and committee concerned did not give him any chances as to why he commits such a thing, what teachers said to him is that so long as he was caught cheating on the exam and it is contrary to the school regulation he deserve punishment.<sup>97</sup>

A student was suspended because he did not attend night study (prep) at school. On that incident date he was given thirty days suspension letter without being given a chance to defend himself against the allegations before him. He said, in secondary school disciplinary committees there is no adequate right to be heard, the students are mostly given that right after being subjected to punishment as he was given that right to be heard after he had finished his thirty days suspension punishment.<sup>98</sup>

Moreover, another student, on her views said that, students are punished once alleged to have committed any offence contrary to school regulation before being heard. She explained that situation occurred when one student was found possessing a mobile phone in the dormitory and was dismissed from school before she gave her defence. She said the dismissal given to

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<sup>96</sup> A student from Kamene Secondary School

<sup>97</sup> A student from Magoza Secondary school

<sup>98</sup> A student from Kamene Secondary school

that student was unfair because she was not given the right to be heard.<sup>99</sup> The act of punishing students without giving them the right to be heard is the same as to that of Gitano *Nyirabu and 3 Others Vs Board chairman, Songea Boys secondary school Board and 3 others*<sup>100</sup>, whereby students were punished without being given the right to be heard.

The researcher found that most of students interviewed does not know that the right to be heard is the fundamental principle in requirement of justice in secondary school because it is stipulated in the Constitution of the United Republic of Tanzania, although such right is not provided in the National Education Act.

### **3.4.3 The Overview of Other Correspondences Apart from Secondary School Teachers and students.**

Secondary students are not given right to be heard once they go against the school rules, especially in schools owned by the Catholic Church. According to his understanding he knows that everyone is entitled to be heard before determination of his case, because right to be heard is the constitutional right to every individual in Tanzania. He wonder why students are not given right to be heard even in court of law if a person has a murder case he is given right to be heard and defend himself before the court gives a sentence against him.<sup>101</sup> He concluded by saying that there is a law which protect a person from being punished without being given the right to be heard which is Article 13(6)(a) of The Constitution of United Republic of Tanzania of 1977 but the school board fail to adhere to this law instead they go against the law on determination of cases against students.

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<sup>99</sup> A student from Magoza Secondary school

<sup>100</sup> Court of Tanzania at Songea, Miscellaneous Civil Application No 3 of 1994(Unreported)

<sup>101</sup> A former CRDB Advocate currently Director of PSPF Branch in Dar es Salaams

Moreover, the secondary school disciplinary committee is an administrative body that is vested with powers to regulate and monitor the school rules. Also have powers to impose punishment to student(s) who violate school rules and regulations. She said that, right to be heard it is a constitutional right of every citizen in Tanzania but this is only in documents and not in practice since students are not given this right. Most of the students are being punished by the disciplinary committee without being given the right to be heard.<sup>102</sup>

Also, one residence explained that one of his daughter( Janet) was expelled from schools basing on the decision which was adjudicated by the secondary school disciplinary committee of Kamene secondary school, the reason for expulsion was based on disciplinary ground that the student did not obey and this contributed at large for her daughter to be expelled from school, wonderful enough her daughter was not given a time to defend or the right to be heard so that she can present herself as to why and what happened unfortunately she was just given a letter of expulsion from school. He was of the view that secondary school disciplinary committee are important school organ in administering of student cases, therefore this organ has a duty to adhere with the right to be heard in secondary schools as a fundamental requirement of natural justice which underlining the notion that no one should be condemned unheard.<sup>103</sup>

The researcher found that those who have legal knowledge shows awareness concerning the right to be heard in secondary school disciplinary committee, unlike those school teachers and students from different schools in Dar es Salaam.

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<sup>102</sup> A 4<sup>th</sup> year student of Bachelor Degree of laws at University of Dar Es Salaam

<sup>103</sup> A resident from Tabata Dar Es Salaam

### 3.5 Challenges Facing Students in Secondary School with no Right to be Heard

Students are faced with this problem of being unheard in their schools and this leads to infringement of students right such as the principle of natural justice which is the right to be heard, as well it affects their right to education following the reason that most of student are expelled without given the right to defend themselves as the position was stipulated in the case of *Tinker v. Des Moines Independent Community School District*.<sup>104</sup>

Also, the right to be heard is insufficiently given when the procedural suspects are improper and insufficient service of the notice, insufficient opportunity to defend their case and denial this shows that the right to be heard is insufficient implemented.

Then the proceedings may be termed either valid or invalid, depending on the findings. Natural justice allows a person to clean the right to adequate notification of the date, time and place of the hearing as well as detained notification of the case to be met.<sup>105</sup> For there to be right to be heard the person who is likely to be effected by the decision must be provided with sufficient notice to allow the case to be adequately prepare, that at any time of right to be heard a person will be entitled to know the evidence that has been produced by and against him, be given proper opportunity to contest, correct or contradict any such evidence to state one's case and to raise any relevant matter before the tribunal.<sup>106</sup>

Generally, the right to be heard should observe several elements as the principle of natural justice require the followings, right to be informed by an administrative board or secondary schools disciplinary committee. In administrative proceedings parties to the case should know and understand the nature of proceedings, right to rebut the opponent's evidence depending on

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<sup>104</sup> Supreme Court of the United States 393 U.S. 503[1969]

<sup>105</sup> *The Singapore legal system*, Singapore University press, Singapore 1999<sup>2</sup> 229.

<sup>106</sup> P. Leyland, T. Wood, *Book on Administrative law*, Oxford University Press, New York 2002<sup>4</sup>, 353.

the nature of proceedings, right of oral hearing or presentation unless it is expressly prohibited right to presentation, he who decides must hear and no evidence should be taken at the back of the proceedings. For decision of disciplinary committees to provide justice to secondary school students basing on the principle of natural justice specifically on the right to be heard must be adequate in the sense disciplinary committees should create an environment for the party to produce evidence and rebut the case adequately by ensuring that, the party is given reasonable time informed about the charges against him. In considering the above elements, the interviewee arguments are seen to be contrary to the elements of the right to be heard since students are punished before being given the right to be heard. Even though right to be heard is given after punishment, yet the secondary school disciplinary committees fail to fulfill the mentioned elements.

## **CHAPTER FOUR**

### **CONCLUSION AND RECOMMENDATIONS**

The research is all about; the Analysis on the right to be heard as a fundamental requirement of Justice in Secondary Schools Disciplinary Committee: the case study in Dar Es Salaam. It is observed that the law that govern education affairs are not clear on the procedures of the right to be heard in secondary school disciplinary committee. Therefore, in order to overcome the situation, it is the duty of the government to review the law and to provide for the provision on the right to be heard in secondary school disciplinary committee so as to enhance justice in secondary school in Tanzania.

#### **4.1 Conclusion**

The main objective of the research was to make the Analysis on the right to be heard as a fundamental requirement of Justice in Secondary Schools Disciplinary Committee: the case study in Dar Es Salaam. The study was guided by the hypothesis that, it appears that the lack of provision of right to be heard in the National Education Act leads to infringement of student's rights. Therefore, with the existence of these weaknesses justice may not be obtained.

The methods used in the study are both library research and field research, whereby these methods helped the researcher to gather information related to the subject matter. The tools used were interview and observation.

According to the research findings, the researcher has observed and satisfies that the hypothesis was proved. This is due to the fact that the assumption persuades the researcher to

come up with the real picture of the situation about the subject matter of the research. Hence, lead the researcher to have a positive proof about the hypothesis.

Therefore, according to this research the researcher observed that the National Education Act<sup>107</sup> shows little concern with regards to the right to be heard as a procedural requirement of justice in secondary school disciplinary committee.

## 4.2 Recommendations

From the conclusion above the researcher recommends as follows

The secondary school disciplinary committee should ensure that, there is adequate right of being heard to the students as the principle of natural justice requires so that to ensure justice is done and ensure not only done but also manifestly seen to be done.

The Legislature being the organ with exclusive power to make laws in Tanzania as provided in the constitution of the United Republic of Tanzania under Article 64<sup>108</sup>, should make sure it amends The National Education Act so as to provide for provision of right to be heard which will protect students. The National Education Act<sup>109</sup> is silent on the right to be heard, although it provides for the establishment of the school board as a secondary school disciplinary committee. The legislature being the organ with exclusive power as a law making body in the state, should make a law to effect the right to be heard to students apart from Article 13(6)(a) of the constitution of United Republic of Tanzania of 1977.

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<sup>107</sup> 1995

<sup>108</sup> 1977

<sup>109</sup> 1995



The right to be heard is a virtual right in the principle of natural justice, which means that everyone should not be condemned unheard instead should be given right to be heard before judgment in order for the justice to be done. This right is also a rule of fairness, as provided in the constitution of the United Republic of Tanzania under Article 13(6)(a) so as to effect that, everyone should be given right to be heard before passing judgment.

This right is evidenced in the case of *Simeone Manyaki Vs Executive Committee and Council of the Institute of Finance Management and Others*<sup>110</sup> whereby the brief fact was that, the case was dealing with the leakage of examination. It was alleged that a number of candidates had obtained unauthorized prior access to the examination paper and a model answer. The Council of the Institute of Finance Management (hereinafter referred to as IFM) met and among other things, nullified the examination involved with the leakage and ordered the students affected, including the applicant, to re-take the examination. After the release of examination results the applicant was officially declared to have passed the examination which had been re-taken a few days later, he received a letter purporting to terminate him from studies and nullifying his results of the re-taken the examination. This was done without calling and giving him the opportunity to present his case before the decision to terminate him and to nullify his examination results was reached.

Naturally, he was dissatisfied and went to court granting the application, Mapingo, J inter alia state that,

“The applicant whose rights are legitimate expectations stood to be so adversely affected by the inquiry had the right to have an adequate

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<sup>110</sup> High Court of Tanzania at Dar es salaam, miscellaneous civil cause no 424(unreported)

opportunity of knowing the case he had to meet of answering of putting forward his own case, and of being fair and impartial treated”

Considering the above explanations it means every individual should be given right to be heard specifically in secondary schools’ disciplinary committee whenever there is likely of having penal implications for the justice not only to be done but seen to be done.

In general, Right to be heard is one of the essential elements of natural justice and it should be observed by the secondary school disciplinary committee so as to ensure justice is not only done but seen to be done.

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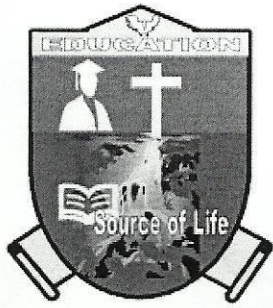
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