

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. _____ OF 2024

**IN THE MATTER OF THE CONSTITUTIONAL PRINCIPLES OF NATURAL
JUSTICE,**

RULE OF LAW, ACCOUNTABILITY, GOOD GOVERNANCE AND TRANSPARENCY

AND

**IN THE MATTER OF ARTICLES 2(1) & (4), 3(1), 10, 19, 20 (1), (2), (3) & (4), 21(1), 22(1)
& (2), 23 (1) & (3), 35, 47 (1) & (2), 53 (2), 165 (3), AND 232(1) & (2) OF THE
CONSTITUTION OF KENYA**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

AND

**IN THE MATTER OF THE KENYA NATIONAL EXAMINATION COUNCIL ACT, NO.
29 OF 2012**

AND

IN THE MATTER OF THE ACCESS TO INFORMATION ACT, NO. 31 OF 2016

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....1ST PETITIONER
ELIMU BORA WORKING GROUP.....2ND PETITIONER

-AND-

THE KENYA NATIONAL EXAMINATIONS COUNCIL.....1ST RESPONDENT
THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION.....2ND RESPONDENT
THE CABINET SECRETARY, MINISTRY OF EDUCATION.....3RD RESPONDENT
THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

PETITION

TO:
THE HIGH COURT OF KENYA AT NAIROBI,
CONSTITUTIONAL & HUMAN RIGHTS DIVISION,
MILIMANI LAW COURTS.

THE HUMBLE PETITION OF THE KENYA HUMAN RIGHTS COMMISSION & ELIMU BORA WORKING GROUP (HEREINAFTER REFERRED TO AS THE “PETITIONERS”), WHOSE ADDRESS OF SERVICE FOR PURPOSES OF THIS SUIT SHALL BE CARE OF: M/S OKWIRI & COMPANY ADVOCATES, RENAISSANCE CORPORATE PARK, 3RD FLOOR, ELGON ROAD, UPPERHILL, P.O. BOX 19749-00202, NAIROBI, is as follows;

A. DESCRIPTION OF PARTIES

1. The Petitioners – THE KENYA HUMAN RIGHTS COMMISSION & ELIMU BORA WORKING GROUP are non-profit private entities engaged in the promotion and defence of human rights and fundamental freedoms in the Republic of Kenya, whose address of service for purposes of this petition shall be care of **M/S OKWIRI & COMPANY ADVOCATES, RENAISSANCE CORPORATE PARK, 3RD FLOOR, ELGON ROAD, UPPERHILL, P.O. BOX 19749-00202, NAIROBI.**
2. The 1st Respondent – THE KENYA NATIONAL EXAMINATIONS COUNCIL- is a body corporate established under the Kenya National Examinations Council Act, No. 29 of 2012 which is mandated by the law to, *inter alia*, set and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels. Its address of service for purposes of this petition shall be the **KENYA NATIONAL EXAMINATIONS COUNCIL, NEW MITHANI HOUSE, SOUTH C, P.O. BOX 73598-00200, NAIROBI.**
3. The 2nd Respondent – THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION- is the administrator of the Ministry of Education which is responsible for the formulation and implementation of education and training policies, standards, curricula, examinations and the granting of university charters. The Principal Secretary is also the chief executive officer of the said Ministry for purposes of the Access to Information Act No. 31 of 2016. The address of service for the Principal Secretary, Ministry of Education, for the purposes of this petition shall be **MINISTRY OF EDUCATION, JOGOO HOUSE “B”, TAIFA ROAD, P.O. BOX 300400-00100, NAIROBI.**
4. The 3rd Respondent – THE CABINET SECRETARY, MINISTRY OF EDUCATION – is the head of the Ministry of Education (and the Semi-Autonomous Government Agencies thereunder) being a ministry in charge of education in the Country which is responsible for the formulation and implementation of education and training policies, standards, curricula, examinations and the granting of university charters. The address of service for the Cabinet Secretary, Ministry of Education for purposes of this petition shall be **MINISTRY OF EDUCATION, JOGOO HOUSE “B”, TAIFA ROAD, P.O. BOX 300400-00100, NAIROBI.**

5. The 4th Respondent – THE HON. ATTORNEY GENERAL- is the principal legal adviser to the Government, who shall protect, promote and uphold the rule of law and defend the public interest. The Hon. Attorney General also represents the national government in court or any other legal proceedings to which the national government is a party. The address of service for the Hon. Attorney General, for purposes of this petition shall be **THE HON ATTORNEY GENERAL CHAMBERS, 7TH FLOOR, SHERIA HOUSE, HARAMBEE AVENUE, P.O. BOX 40112, NAIROBI.**

B. THE PETITIONER’S LOCUS STANDI

6. The Petitioners institute the present petition on the strength of Article 3 (1) of the Constitution, respecting, upholding and defending the Constitution.
7. Under the auspices of Article 22(2) of the Constitution, the Petitioners may institute Court proceedings in the public interest safeguarding against the denial, infringement, threat and/or violation of rights and/or fundamental freedoms under the Bill of Rights.
8. Under the provisions of Article 258 of the Constitution, the Petitioners may institute Court proceedings in the public interest against actual and/or threatened contraventions of the Constitution.

C. THE JURISDICTION OF THE HONOURABLE COURT

9. Under Article 23(1) of the Constitution, the High Court has jurisdiction in accordance with Article 165 to hear and determine applications for redress of a denial, violation or infringement or threat to a right or fundamental freedom in the Bill of Rights.
10. Under Article 165 (3) (d) (1) & (ii) of the Constitution, the High Court has jurisdiction to hear any questions respecting the interpretation of the Constitution, including the determination of questions whether any law is inconsistent with or in contravention of the Constitution and whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution.
11. In *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & others [2015] eKLR (Petition 628, 630 of 2014 & 12 of 2015 (Consolidated))* the Court held:

112. However, we are satisfied, after due consideration of the provisions of Article 22, 165(3) (d) and 258 of the Constitution, that the words of the Constitution, taken in their ordinary meaning, are clear and render the present controversy ripe and justiciable: a party does not have to wait until a right or fundamental freedom has been violated, or for a violation of the Constitution to

occur, before approaching the Court. He has a right to do so if there is a threat of violation or contravention of the Constitution.

113. We take this view because it cannot have been in vain that the drafters of the Constitution added “threat” to a right or fundamental freedom and “threatened contravention” as one of the conditions entitling a person to approach the High Court for relief under Article 165(3) (b) and (d) (i). A “threat” has been defined in Black’s Dictionary, 9th Edition as “an indication of an approaching menace e.g. threat of bankruptcy; a Person or a thing that might cause harm” (emphasis added). The same dictionary defines “threat” as “a communicated intent to inflict harm or loss to another...”

114. The use of the words “indication”, “approaching”, “might” and “communicated intent” all go to show, in the context of Articles 22, 165(3) (d) and 258, that for relief to be granted, there must not be actual violation of either a fundamental right or of the Constitution but that indications of such violations are apparent.

D. LEGAL FOUNDATION OF THE PETITION

12. Article 1 of the Constitution of Kenya provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. Such sovereign power is delegated to various State organs such as the national executive which shall perform their functions in accordance with the Constitution.
13. Article 2 of the Constitution provides for the supremacy of the Constitution and that it binds all persons and State organs at both levels of government. And that any law, act or omission in contravention of this Constitution is invalid/void to the extent of the inconsistency.
14. Article 3 (1) of the Constitution states that every person has an obligation to respect, uphold and defend the Constitution.
15. Article 10 (1) of the Constitution states that the national values and principles of governance in Article 10 (2) bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets this Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.
16. Article 10 (2) of the Constitution states that the national values and principles of governance include the rule of law, participation of the people, democracy, human dignity, equity, social justice, inclusiveness, equality and human rights.

17. Article 19 of the Constitution provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies, and that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings. These rights belong to each individual and are not granted by the State.
18. Article 20 of the Constitution states that the Bill of Rights applies to all law, it binds all State organs and all persons and that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
19. Article 21 of the Constitution states that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.
20. Article 22 as read with Article 258 of the Constitution states that every person has the right to institute court proceedings on his behalf or on behalf of others claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
21. Article 23 of the Constitution vests this Honourable Court with the jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation, infringement of, or threat to a right or fundamental freedom. It also provides the remedies that the court can award in its endeavour to enforce the Bill of Rights.
22. Article 35 of the Constitution states that every citizen has the right of access to information held by the State, information held by another person and required for the exercise or protection of any right or fundamental freedom and that the State shall publish and publicize any important information affecting the nation.
23. Article 47 (1) and (2) of the Constitution states that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair and that; if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
24. Article 53 (2) of the Constitution states that a child's best interests are of paramount importance in every matter concerning the child.

25. Article 232 of the Constitution provides for binding values and principles in regards to public service. These include high standards of professional ethics, efficient, effective and economic use of resources, accountability for administrative acts, transparency and provision to the public of timely, accurate information.
26. Section 3(d) of the Access to Information Act which provides for the promotion of routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access to information.
27. Section 4 of the Access to Information Act which underpins the right to access to information.
28. Section 5 (1) (a) (iii), (vi) and (c) of the Access to Information Act which states that a public entity shall facilitate access to information held by such entity and which information may include the procedure followed in the decision making process, including channels of supervision and accountability; guidelines used by the entity in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and also shall publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.
29. Section 4 (1) & (2) of the Fair Administrative Action Act provides for the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair; and the to be given written reasons for any administrative action that is taken against him.
30. Section 5 of the fair Administrative Action Act provides that any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall (a) issue a public notice of the proposed administrative action inviting public views in that regard; (b) consider all views submitted in relation to the matter before taking the administrative action; consider all relevant and materials facts; and (d) where the administrator proceeds to take the administrative action proposed in the notice - (i) give reasons for the decision of administrative action as taken; (ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and (iii) specify the manner and period within the which such appeal shall be lodged.

31. Section 8 (1) (a) of the Children Act, 2022 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies - (a) the best interests of the child shall be the primary consideration.
32. Section 8 (2) of the Children Act, 2022 provides that all judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to - (a) safeguard and promote the rights and welfare of the child; (b) conserve and promote the welfare of the child; and (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
33. Section 10 (1) (a) & (g) of the Kenya National Examinations Council Act, 2012 provides that the functions of the Council shall be to and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels; and promote the international recognition of qualifications conferred by the Council.
34. Rule 12 (1) of the Kenya National Examinations Council (Marking of examinations, release of results and compilation) Rules, 2015 provide that the Council shall determine and document the procedures and regulations to be followed during marking of all Council examinations.
35. Rule 18 of the Kenya National Examinations Council (Marking of examinations, release of results and compilation) Rules, 2015 provides that the Council shall develop regulations for the marking of all examinations.
36. Rule 3 (1) of the Kenya National Examinations Council (Handling of examination irregularities) Rules, 2015 provides that the Council shall prepare and circulate to candidates regulations governing the conduct of Council examinations.
37. Article 11 of the African Charter on the Rights and Welfare of the Child provides that the education of the child shall be directed to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential.

E. THE FACTS RELIED UPON/BRIEF FACTS OF THE PETITION

38. On or about the 23rd November, 2023 the 1st Respondent released the examination results in relation to the Kenya Certificate of Primary Education (hereinafter referred to as “KCPE”) examinations.
39. The said released KCPE examinations 2023 results were marked with a lot of hue and cry by parents of children whom had sat for the said examinations and the general membership of the public as a result of the widespread reported irregularities in the learner’s results and/or marks (whom had sat for the said examinations) released by the 1st Respondent.
40. It is an uncontroverted fact that the released KCPE examinations 2023 as stated herein were tainted with irregularities which fact was acknowledged by the 1st Respondent on or about the 25th November, 2023.
41. That the 1st Respondent released the KCPE examinations 2023 results without any due regard to the learners, the legal and/or the constitutional mandate imposed upon them in exercise of their functions and the discharge of their responsibilities and/or duties under the law.
42. The 1st Respondent’s handling and/or release of the KCPE examinations 2023 results cast a shadow of doubt, and/or created uncertainty amongst the general public, on the ability (or otherwise capability) of the 1st Respondent to discharge the respective mandate of its office as spelt out in the law and the Constitution.
43. The credibility, validity and/or reliability of the examinations and/or the examinations’ management including the release of the results of the said examinations overseen by the 1st Respondent was called into question pursuant to the release of the KCPE examinations 2023 with the attendant irregularities inherent and/or subsequent thereto.
44. The issuance and/or release of the KCPE examinations 2023 by the 1st Respondent with the attendant irregularities inherent and/or subsequent thereto led to a loss of public confidence by the general citizenry in the 1st Respondent as an institution legally mandated to carry out the management of national examinations resulting in an apprehensiveness amongst learners whose examination is overseen by the 1st Respondent.
45. The role that education plays in any modern society and the global economy is one that is sacrosanct as it holds the keys to societal transformation and the creation of opportunities to the general populace in a competitive world.
46. The mismanagement and/or mishandling of the examinations by the 1st and 2nd Respondents in their respective capacities has brought the Kenyan learner (Children) and the quality of the assessment of their learning under international and/or global scrutiny,

and which in turn has brought about an air of suspicion of the quality of the learners that are subjected to assessment by the 1st Respondent negating (and/or limiting) the availability of opportunities open for learners here in on the global stage (and/or market).

47. The manifest errors and/or irregularities of the KCPE examinations 2023 results released by the 1st Respondent has had a negative effect on the children that had sat for the said examinations by amongst other things creating and/or resulting in embarrassment, selfdoubt and depression.
48. The absence of proper and credible examinations results translates to a lack of adequate capacity to assessment of children and learners preventing proper self-evaluation and early intervention and/or assistance where need be.
49. The primary level of studies is grounding and/or basic level of education that sets the trajectory for the future of a learner.
50. The release of the examination results with inherent and/or attendant irregularities subsequent thereto has not been an isolated incidence of the KCPE 2023 examinations result but also the Kenya Certificate of Secondary Education (hereinafter referred to as “KCSE”) 2023 has been marred with the same issue(s).
51. Following the release of the KCPE 2023 examinations results, on or about the 8th December, 2023 the Petitioners herein on the strength of Articles (1), (2) & (3), 2(1) & (4), 10, 35, 47, 53 (1),(b) & (2) of the Constitution and Sections 3 (d), 4, 5 (a) (iii), (vi) & (c) of the Access to Information Act and, Sections 4 (1) & (2) and 5 of the Fair Administrative Action wrote to the 1st and 2nd Respondents seeking to be furnished with the following information and/or documents;
 - i. KNEC policy and/or guidelines on marking, award of marks and moderation process.
 - ii. KNEC examinations guidelines and regulations. iii. KNEC policy and/or guidelines on the compilation, verification, review and reporting of examination results.
 - iv. KNEC service charter.
 - v. Detailed audit on the examination process.
 - vi. Statement(s) and/or report(s) on the last review of any subsisting policies and/or guidelines stated herein.
 - vii. Statement(s) and/or report(s) on the public participation and/or stakeholder input in the formulation of any subsisting policies and/or guidelines.
52. The Petitioners have, at the time of filing this petition, never received any communication from the 1st and 2nd Respondents on their request to access of information despite notice of the same.

53. On or about the 13th December, 2023 the Commission on Administrative Justice through its Access to Information Commissioner wrote to the 1st and 2nd Respondents bringing to their collective attention the access to information request made by the Petitioners herein and was equally unsuccessful in eliciting the sought for information.
54. The information requested by the Petitioners herein has not only never been availed to the Petitioners but has equally never been published and/or publicized despite the same affecting the nation as a matter of importance.
55. The actions by the 1st and 2nd Respondents are derelictions of the duties, trust and responsibilities placed upon them by the Kenyan people.
56. The establishment and maintenance of high standards of operations and reporting of examination results cannot be overlooked and/or overstated.

F. NATURE OF MAIN VIOLATIONS/THREATS TO THE CONSTITUTION

Violation(s)/threat(s) against Article 2 (4) of the Constitution

57. By refusing, failing and/or neglecting to furnish, and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 2 (4) of the Constitution which provides that,

Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

Violation(s)/threat(s) against Article 10 of the Constitution

58. By refusing, failing and/or neglecting to furnish, and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 10 of the Constitution in so as far accountability, transparency and the rule of law is incumbent upon them in the circumstances surrounding this petition which Article of the Constitution provides that,

The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them— (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions.

(2) The national values and principles of governance include—

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;

(b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;

(c) good governance, integrity, transparency and accountability; and (d) sustainable development.

59. In releasing examinations results tainted with irregularities, the 1st Respondent's actions violate and/or threaten Article 10 of the Constitution above stated.

Violation(s)/threat(s) against Article 35 of the Constitution

60. By refusing, failing and/or neglecting to furnish and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 35 (1) & (2) of the Constitution which provides that,

(1) Every citizen has the right of access to—

(a) information held by the State; and

(b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

(2) The State shall publish and publicise any important information affecting the nation.

Violation(s)/threat(s) against Article 47 of the Constitution

61. By refusing, failing and/or neglecting to furnish and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 47 (1) & (2) of the Constitution which provides that,

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

62. In releasing examinations results tainted with irregularities, the 1st Respondent's actions violate and/or threaten Article 47 of the Constitution above stated.

Violation(s)/threat(s) against Article 53 (2) of the Constitution

63. By refusing, failing and/or neglecting to furnish and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 53 (2) of the Constitution which provides that,

A child's best interests are of paramount importance in every matter concerning the child.

64. In releasing examinations results tainted with irregularities, the 1st Respondent's actions violate and/or threaten Article 53(2) of the Constitution above stated.

Violation(s)/threat(s) against Article 232 of the Constitution

65. By refusing, failing and/or neglecting to furnish and/or give the Petitioners herein access to the information requested, publish and/or publicize such said information, by virtue of their letter dated the 8th December, 2023 the 1st and 2nd Respondents' actions violate and/or threaten Article 232 (1) (a)-(f) & (2) of the Constitution which provides that,

(1) The values and principles of public service include— (a)

high standards of professional ethics;

(b) efficient, effective and economic use of resources;

(c) responsive, prompt, effective, impartial and equitable provision of services;

(d) involvement of the people in the process of policy making;

(e) accountability for administrative acts;

(f) transparency and provision to the public of timely, accurate information

(2) The values and principles of public service apply to public service in—

(a) all State organs in both levels of government; and (b) all State corporations.

G. CASES RELATED TO ISSUES IN THIS PETITION

66. There is no case pending in any court involving the parties herein and over the same subject matter herein.

H. RELIEFS SOUGHT BY THE PETITIONER

REASONS WHEREFORE;

THE PETITIONERS HUMBLY PRAY FOR:-

- I. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide for the information sought under Article 35 (1) (a) of the Constitution and/or publicize the information on the basis of the information in accordance with Article 35 (2) of the Constitution on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of the right to access to information.
- II. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide information sought under Article 35(1) (a) and/or publicize the information in accordance with Article 35(2) on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of Article 10 of the Constitution specifically the values of
the rule of law, participation of the people, human rights good governance transparency and accountability.
- III. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide information sought under Article 35(1) (a) of the Constitution and/or also publicize the information in accordance with Article 35(2) on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of Article 2 (4).
- IV. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide information sought under Article 35(1) (a) and/or publicize the information in accordance with Article 35(2) on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of Article 232 of the Constitution specifically the values of high standards of professional ethics, responsive and prompt provision of services, involvement of the people in the process of policy making, accountability for administrative acts, transparency and provision to the public of timely, accurate information.
- V. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide information sought under Article 35(1) (a) and/or publicize the information in accordance with Article 35(2) on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of Article 53(2) of the Constitution on the best interest of the child principle.
- VI. A **DECLARATION** be and is hereby issued that the failure by the 1st and 2nd Respondents to provide information sought under Article 35(1) (a) and/or publicize the

information in accordance with Article 35(2) on the basis of the Petitioners' request dated the 8th December, 2023 is a violation of Article 47 of the Constitution.

- VII. A **DECLARATION** be and is hereby issued that the release of the KCPE and KCSE 2023 examinations results with the inherent and/or subsequent irregularities thereto and/or therein is a violation of Article 53 (2) of the Constitution on the best interest of the child principle.
- VIII. An order of **MANDAMUS** be and is hereby issued compelling the 1st and 2nd Respondents to forthwith provide at the Respondents' cost, information sought by the Petitioners in their letter to the Respondents dated 8th December, 2023.
- IX. An order of **MANDAMUS** be and is hereby issued compelling the 1st and 3rd Respondent to conduct a forensic audit of the KCPE and KCSE 2023 examinations and publicize the same in accordance to Article 35 (2) encompassing, amongst other things, the process of marking, award of marks, moderation process, compilation (of results), verification (of results) and review (of results) in the said KCPE and KCSE 2023 examinations within 90 days from the date hereof.
- X. An order of **PROHIBITION** be and is hereby issued prohibiting the 1st and 3rd Respondent from setting and conducting any KCSE examinations including issuance of KCSE examinations results and/or certificates in the absence of the forensic audit of the KCPE and KCSE 2023 examinations as prayed for in prayer IX above.
- XI. Costs of this petition in favour of the Petitioners.

DATED at **NAIROBI** this **13th** day of **February** **2024**



OKWIRI AND COMPANY
ADVOCATES FOR THE PETITIONERS

DRAWN AND FILED BY:

OKWIRI AND COMPANY ADVOCATES,
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ELGON ROAD, UPPERHILL,
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TO BE SERVED UPON:

1. THE KENYA NATIONAL EXAMINATIONS COUNCIL,
NEW MITIAHNI HOUSE SOUTH C,
P.O. BOX 73598-00200,
NAIROBI

2. PRINCIPAL SECRETARY, THE MINISTRY OF EDUCATION, THE
MINISTRY OF EDUCATION,
JOGOO HOUSE "B", TAIFA ROAD,
P.O. BOX 30400-00100,
NAIROBI

3. THE HON. ATTORNEY GENERAL CHAMBERS,
7TH FLOOR, SHERIA HOUSE,
HARAMBEE AVENUE,
P.O. BOX 40112,
NAIROBI

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THE CABINET SECRETARY, MINISTRY OF EDUCATION.....3RD RESPONDENT
THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

SUPPORTING AFFIDAVIT

I, **DAVIS MALOMBE**, of C/O P.O. BOX 41079-00100 in the Republic of Kenya do hereby make oath and state as follows;

1. **THAT** I am a male adult of sound mind and the Executive Director of the 1st Petitioner herein and hence competent to swear this affidavit.

2. **THAT** I swear this affidavit in support of the 1st Petitioner's position in this petition and also on behalf of the 2nd Petitioner whose authority I have been granted to swear this affidavit in support of its position in this petition (*Annexed herewith and marked as "DM-1" is the said authorization*).
3. **THAT** I swear this affidavit in support of the Petition herein and confirm the facts stated therein are true and correct.
4. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the Petition, including each of the paragraphs (individually as well as cumulatively) and solemnly state the facts therein are true to the best of my knowledge, information and belief.
5. **THAT** the 1st Respondent is a statutory body mandated with, among other things, to set and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels.
6. **THAT** the 1st Respondent's statutory mandate as stated above is underpinned by the right to education and the best interests principle that the children in Kenya are to enjoy under the Constitution, in so far as basic primary and secondary education is concerned.
7. **THAT** the African Charter on the Rights and Welfare of the Child (hereinafter referred to as the "Charter") under the provisions of its Article 11 provides for the fact that the *"education of the child shall be directed to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential."*
8. **THAT** the right to education and best interests principle provides a wholesome approach to the children learners in Kenya not only safeguarding the access to education or learning institutions but equally guaranteeing the quality of the education offered in such institutions.
9. **THAT** the various processes and actors involved in the education system, including the 1st and 2nd Respondent herein, by the auspices of the right to education and the best interests principle are legally bound to ensure that examinations undertaken by children learners in Kenya are of the highest quality in line with international best practices and global standards that give Kenyan children learners a competing chance in the global job market.
10. **THAT** the constitutional dictates of the right to education and best interests principle and the Charter requirements herein stated are not aspirational realities but present and actual guarantees for the Kenya populace inclusive of the children.

11. **THAT** the national principles and values espoused in the Constitution mandate the 1st and 2nd Respondent herein not only to be transparent, accountable, employ good governance and ensure participation of the people but to also uphold the rule of law.
12. **THAT** the release of the 2023 KCPE examinations results was marred with widespread outcries of irregularities in the released examinations result.
13. **THAT** in regards to the release of the 2023 KCPE examinations results there were children learner(s) whom reported missing marks and discrepancies in examinations results and also receiving marks for a paper (sign language) they never took whilst missing marks on the paper they actually took (Kiswahili) (*Annexed hereto and marked as “DM-2A”, “DM-2B”, “DM-2C” and “DM-2D” are news report articles highlighting the said discrepancies from <https://www.citizen.digital/news/knec-explains-errors-in-kcpeexam-results-n331980> <https://nation.africa/kenya/news/kcpe-candidates-to-know-formone-placements-on-monday-4465290> <https://nation.africa/kenya/news/nowgovernment-orders-forensic-audit-of-2023-kcpe-results--4456970> <https://viraltea.co.ke/knec-speaks-after-admitting-to-awarding-wrong-marks-to-2023kcpe-candidates> accessed on the 5th February 2024*).
14. **THAT** in addition to the above, questions also arose by affected children learners regarding grades in Science, Social Studies and Religious Education in relation to the truncation thereto as being incorrect and that such subjects were missing the plus (+) and minus (-) signs as expected (*See “DM-2A”, “DM-2B”, “DM-2C” and “DM-2D”*).
15. **THAT** the release of the 2023 KCPE examinations results was also dogged with the inability to access the said results through the medium provided for by the 1st Respondent, which was at a (monetary) cost (*Annexed hereto and marked as “DM-3A” and “DM-3B” are news report articles that reported on the said plight <https://www.tuko.co.ke/education/529041-kcpe-2023-anxiety-sms-code-shared-by-knecfails-return-results/> <https://www.k24tv.co.ke/news/candidates-fail-to-access-kcpe-result122060/> accessed on the 5th February 2024*).
16. **THAT** as a result of the 2023 KCPE examinations results release, the public was left with more questions than answers on the integrity and credibility of the 1st Respondent in handling examinations as mandated by law (*Annexed hereto and marked as “DM-4” is a news report article highlighting the said issue <https://www.standardmedia.co.ke/article/2001486107/rushed-release-of-exam-results-affects-integrity> accessed on the 5th February 2024*).
17. **THAT** there was also public concern over the award of (the same) 75 marks in Science to all the children learners in one of the schools (*See “DM-2A”, “DM-2B”, “DM-2C” and “DM-2D”*).

18. **THAT** the effect (psychological or otherwise) on children learners in the wake of the release 2023 KCPE examinations results cannot be gainsaid (*Annexed hereto and marked as “DM-5A” is a news report article on the said issue <https://www.standardmedia.co.ke/article/2001486324/joy-for-student-as-kcpe-scoreadjusted-upwards> accessed on the 5th February 2024 ; annexed further hereto and marked is “DM-5B” is a video of news coverage of the issue labelled*



WhatsApp Video 2024-02-05 at 09.05.53.mp4

[WhatsApp Video 2024-02-05 at 9.05.53] equally accessible on the flash disk produced herewith and the accompanying certificate thereto. See also “DM-2B”).

19. **THAT** the release of the 2023 KCSE examinations results was not without its fair share of public outcry of the examinations results so released (*Annexed hereto and marked as “DM-6A” and “DM-6B” are news report articles highlighting the said issue <https://www.citizen.digital/news/relief-for-2023-kcse-candidates-after-knec-finally-releases-withheld-results-n335182> <https://thekenyatimes.com/latest-kenya-timesnews/national/concerns-over-changing-kcse-results-on-knec-portal/> accessed on the 5th February 2024).*

20. **THAT** there were reports of incidences of different results accessible at different times by the same learner (*See “DM-6”).*

21. **THAT** in the wake of the release of the KCSE 2023 examinations results, children learners in Oruba Boys in Migori County lamented against what they felt were irregular examination results in awarding a majority of the children learners in the school grades of D and E (*Annexed hereto and marked as “DM-7” is a news report article over the same issue <https://nation.africa/kenya/news/education/oruba-boys-secondary-schoolcandidates-protest-over-unfair-kcse-results-4488402> accessed on the 5th February 2024).*

22. **THAT** the 1st and 3rd Respondent have made admission to the fact that the 2023 KCPE examinations results had irregularities (*Annexed hereto and marked as “DM-8A” a letter by the 1st Respondent dated the 25th November, 2023 to the same effect and “DM-8B” <https://educationnewsarena.co.ke/knec-has-owned-errors-in-just-released-kcpe-results/> is a news article over the same issue accessed on the 5th February 2024; annexed further hereto and marked as “DM-8C” and “DM-8D” are videos of news coverage evidencing the same labelled as*



WhatsApp Video 2024-02-05 at 08.32.43.mp4



WhatsApp Video 2024-02-05 at 08.31.27.mp4

[WhatsApp video 2024-02-5 at 8.32.43 and WhatsApp video 2024-02-5 at 08.31.27] equally accessible on the flash disk produced herewith and the accompanying certificate thereto).

23. **THAT** the integrity and credibility of the 1st Respondent’s ability and capacity to conduct national examinations is of fundamental importance to the nation.

24. **THAT** the absence of specific, detailed and/or particularized information in relation to the manner and processes by which examinations are conducted by the 1st, 2nd and 3rd Respondent (cumulatively) in reference to marking, award of marks, moderation process, compilation, verification, review, and reporting of examinations is a denial of the public (most importantly children learners) of the ability to secure redress and the requisite mechanism(s) for transparency, integrity and accountability.

25. **THAT** the information sought for by the Petitioners herein from the 1st and 2nd Respondent is one that is timely and one that will shed light to the credibility and capability or otherwise of the 1st Respondent to discharge its mandate under the law (*Annexed hereto and marked as “DM-9A” “DM-9B” and “DM-9C” are copies of the access to information request letter dated the 8th December, 2023 by the Petitioners and a copy of the letter dated the 13th December, 2023 by the access to information commissioner*).

26. **THAT** what is deponed herein is true to the best of my knowledge, information and belief save for where otherwise stated.

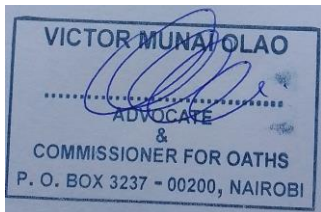
SWORN BY TH SAID:

DAVIS MALOMBE at Nairobi)

This.....**13th**day of**February**.....2024) _____

BEFORE ME)

DEPONENT



COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:

OKWIRI & CO. ADVOCATES,
RENAISSANCE CORPORATE PARK, 3RD FLOOR, ELGON ROAD, UPPERHILL,
P O BOX 19749- 00202,

NAIROBI

Email: info@okwiridavocates.com

TO BE SERVED UPON:

1. THE KENYA NATIONAL EXAMINATIONS COUNCIL,
NEW MITIAHNI HOUSE SOUTH C,
P.O. BOX 73598-00200,
NAIROBI

2. PRINCIPAL SECRETARY, THE MINISTRY OF EDUCATION,
THE MINISTRY OF EDUCATION,
JOGOO HOUSE "B", TAIFA ROAD,
P.O. BOX 30400-00100,
NAIROBI

3. THE HON. ATTORNEY GENERAL CHAMBERS,
7TH FLOOR, SHERIA HOUSE,
HARAMBEE AVENUE,
P.O. BOX 40112,
NAIROBI

This is the Exhibit marked "AN-2"
Referred to in the annexed Affidavit / Declaration
of: DAVIS MALOMBE
Sworn / Declared before me this 13th
Day of February 20 24 at NAIROBI
Commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. OF 2024

IN THE MATTER OF THE CONSTITUTIONAL PRINCIPLES OF NATURAL JUSTICE

RULE OF LAW ACCOUNTABILITY GOOD GOVERNANCE AND TRANSPARENCY

AND

IN THE MATTER OF ARTICLES 2(1) & 3(1), 10, 19, 20 (1), (3) & (4), 21(1), 22(1) & (2), 23 (1) & (3), 35, 47 (1) & (2), 53 (2), 165 (3), AND 232(1) & (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE KENYA NATIONAL EXAMINATION COUNCIL ACT, NO.29 OF 2012

AND

IN THE MATTER OF THE ACCESS TO INFORMATION ACT, NO. 31 OF 2016

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....1ST PETITIONER

ELIMU BORA WORKING GROUP.....2ND PETITIONER

-AND-

THE KENYA NATIONAL EXAMINATIONS COUNCIL.....1ST RESPONDENT

THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION.....2ND RESPONDENT


THE CABINET SECRETARY, MINISTRY OF EDUCATION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

AUTHORITY TO ACT

I, **BOAZ WARUKU**, the Coordinator of the 2nd Petitioner herein has authorized the 1st Petitioner's Executive Director, **DAVIS MALOMBE** to act for and sign on our behalf all documents and to swear all affidavits and do all that is necessary for the prosecution of this suit.

DATED at NAIROBI this 12th day of February 2024



2ND PETITIONER'S COORDINATOR

DRAWN AND FILED BY:

OKWIRI AND COMPANY ADVOCATES,
RENAISSANCE CORPORATE PARK, 3RD FLOOR,
ELGON ROAD, UPPERHILL,
P.O. BOX 19749-00202,
NAIROBI
Email: info@okwiriadvocates.com



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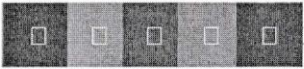
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KNEC Explains Errors In KCPE Exam Results

BV Ian Omondi

12 Published on: November 25, '2023 02: 1 3 (EAT)



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of: DAVIS MALOMBE

Sworn / Declared before me this 13th

Day of February 2024 at Nairobi

[Signature]
Commissioner for Oaths

KNEC explains errors in KCPE exam results



File image of the KNEC headquarters in Nairobi. PHOTO | COURTESY



The Kenya National Examination Council (KNEC) has come out to address discrepancies reported by some candidates in the just released 2023 Kenya Certificate of Primary Education (KCPE) results.

The council, in a statement to newsrooms on Saturday, noted that it had received appeals over some errors in results obtained through the short code 40054 that was provided by the Ministry of Education.

"It was brought to the attention of KNEC that results for some candidates had misalignment of the marks and grades in Kiswahili as they were placed at the Kenyan Sign Language," read the statement from KNEC CEO Dr. David Njengere.

"There were also cases where the grades in Science and Social Studies & Religious Education were truncated incorrectly and were missing the plus (+) and minus (-) signs as expected."

According to the examinations body, all results on its portal were accurate, hence the said errors only affected candidates who tried to access theirs through the SMS short code.

This, Dr. Njengere explained, was due to "configuration issues," which he assured that the council has since raised with the SMS service provider and fixed promptly.

"KNEC also received queries from candidates with low marks in some of the subjects, mainly in English and Kiswahili," stated the council boss.

"KNEC has reviewed all the appeals and found that there were 133 candidates affected. These cases have all been addressed and results for the affected candidates updated appropriately."

Dr. Njengere further addressed viral reports of a school where all candidates scored 75 marks in Science, saying a deep review had found no signs of malpractice whatsoever conducted by the institution.

"Science is a multiple-choice question paper, thus making it possible for the candidates to get identical marks," the KNEC chief noted.

"Though this maybe assumed to be an examination irregularity, it is not adequate evidence for KNEC to sanction the results for candidates without a supporting report that cheating happened during the administration of examination.."

He further candidates to collect their result slips from their various schools and submit any appeals within the 30-day period as stipulated in the KNEC Rules of 2015 Legal Notice 131.

TAGS:

KCPE results

KNEC

Dr. David Njengere

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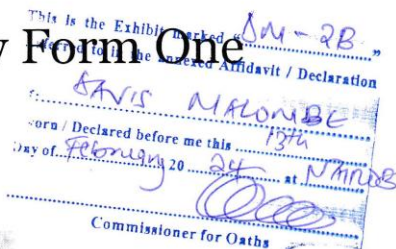
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KCPE candidates to know Form One placements on Monday

Friday, December 15, 2023



KCPE 2023 top student Michael Warutere from Riara School. He scored 428 marks.

Evans Habil | Nation Media Group

By Winnie Atieno

Nation Media Group

What you need to know:

- Some candidates, whose results had discrepancies, said the Kenya National Examination Council is yet to rectify the anomalies.
- While releasing the results, Education Cabinet Secretary, Ezekiel Machogu said 9,354 2023 KCPE candidates will sit for

a special test in January.

The 1.4 million candidates who sat for the 2023 Kenya Certificate of Primary Education (KCPE) will know the schools they have been selected to join on Monday.

Education Director-General, Dr Elyas Abdi said the 2024 Form One placement exercise will be announced at the Lenana School on December 18.

This is the last cohort of the KCPE in the 8-4-4 system ushering in the Competency-Based Curriculum.

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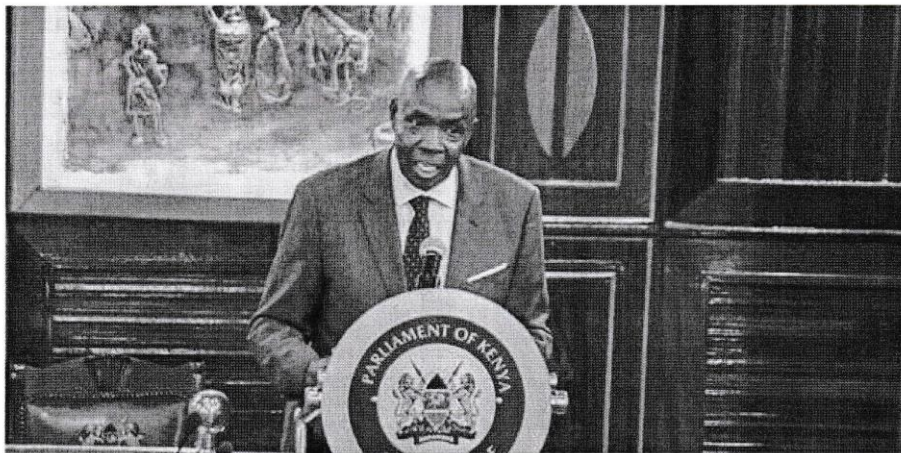
ePaper Kenya Edition

News

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KCPE exams: Ezekiel Machogu says results audit underway

Friday, December 08, 2023



Education Cabinet Secretary Ezekiel Machogu fields questions from members of the Senate at Parliament Buildings in Nairobi on August 9, 2023. MPs want Machogu to explain the numerous complaints and claims of irregularities in the 2023 KCPE exams. Dennis Onsongo | Nation Media Group

By Samwel Owino

Reporter
Nation Media Group

What you need to know:

- Mr Machogu said the audit will unearth why some candidates got wrong results from the mobile telco that was contracted by the Kenya National Examination Council (KNEC) to relay

correct and accurate results

According to the CS, no contract was terminated explaining that the award of the printing exams is normally done every year and not on a long-term basis.

The erroneous results of the 2022 Standard Eight national exams received by some candidates through the SMS platform will now be subjected to a forensic audit with the outcome expected in 14 days.

Education Cabinet Secretary Ezekiel Machogu on Thursday told members of Parliament that he has already written to his Information, Communication and Digital Economy counterpart Eliud Owalo to conduct the forensic audit and table report.

Appearing before the National Assembly Committee on Education over the numerous errors in the 2023 Kenya Certificate of Primary Education (KCPE) test results, Mr Machogu said the audit will unearth why some candidates got wrong results from the mobile telco that was contracted by the Kenya National Examination Council (KNEC) to relay correct and accurate results.

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“We have requested a forensic audit from an independent body. I have already written to my colleague in ICT so that we know what happened. I have also written to Safaricom so that we know exactly what happened,” Mr Machogu told MPs.

For instance, some of the widely reported anomalies included candidates receiving grades with missing quality signs of plus (+) or minus (-). Some candidates received their grades of 73B+ while others with the same score indicated 73B (plain) while some had 75A (plain) instead of the correct grade which is 75A- (minus)

“From the preliminary review of the matter, it has been established this problem was caused by the truncation of data by the service provider, leading to the missing signs,” Mr Machogu

said.

The CS also told MPs that from the preliminary report, the errors were also caused by configuration issues on the interface used to access results data from the database of the service provider. Mr Machogu told MPs that this year's anomalies of assigning different grades to identical marks were reported on the SMS platform messages but clarified that there were no such anomalies in the official results on the KNEC portal and in the printouts sent to schools.

"This optional SMS service is charged at a fee of Sh25 against airtime per SMS request. The clients are only billed for successful requests and are not charged for unsuccessful requests," Mr Machogu said.

The CS told MPs that the rate for the SMS code service charge was agreed upon with the service provider and is within the standard premium rates for similar services offered by government institutions via SMS codes.

"I wish to reiterate that no person was charged for messages sent before the results could be accessed and only received an SMS informing them of the delay," Mr Machogu said.

While Mr Machogu said the forensic audit will address the anomalies on the SMS platform, MPs want other issues such as the audit of the entire results of the 2023 KCPE included in the report.

MPs want the audit to include candidates who were awarded marks in subjects they did not sit for such as sign language, the recourse for candidates who got wrong marks, reimbursement of money to parents who sent SMS and got wrong results but were charged, and comprehensively address the instances where some candidates in some schools got the same marks in a particular subject.

"Ensure you cover all those issues by members in your report that you will present before us," directed the committee chairman Julius Melly.

Mandera South MP Abdul Ebrahim said the forensic audit should

not be confined to the errors that occurred on the SMS platform alone.

“Why only confine the audit to SMS, we want the entire 2023 results audited,” Mr Ebrahim said.

Accompanied by Basic Education Principal Secretary Belio Kipsang, KNEC CEO David Njeng'ere and other senior officials from both the education ministry and the examination council, Mr Machogu said he has nothing to hide and will provide all the information required.

“We are not hiding anything, when we find that the right marks were not given, we will give. People have appealed and we have adjusted,” Mr Machogu said.

Dr Njeng'ere told MPs that they have already written to the mobile telco that was providing results through the SMS platform demanding to know whether there are parents that were charged and received wrong results.

“If anyone was charged and received wrong messages, a refund will be made,” Dr Njeng'ere said.

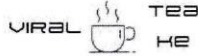
Mr Machogu also told off Azimio la Umoja One Kenya leader Raila Odinga over claims that vicious tender wars were at the centre of the reported discrepancies on the KCPE results.

According to the CS, no contract was terminated explaining that the award of the printing exams is normally done every year and not on a long-term basis.

“The procurement is done on an annual basis. We don't give someone a contract for two or three years and the same procurement laws that were used last year, are the same ones that were used this year and will be used even next year,” Mr Machogu said.

Mr Melly also urged political players not to politicise education matters saying it should be left to the relevant stakeholders to address the emerging issues.

smundu@ke.nationmedia.com



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National

KNEC Explains Why It Confessed Awarding Wrong Marks To 2023 KCPE Candidates

KNEC acknowledged receiving appeals from some affected schools which were dissatisfied with their results as received by the institutions and the candidates



Viral Tea Ke Writer Nov 25, 2023 - 13:39

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Updated: Nov 25, 2023 - 13:55



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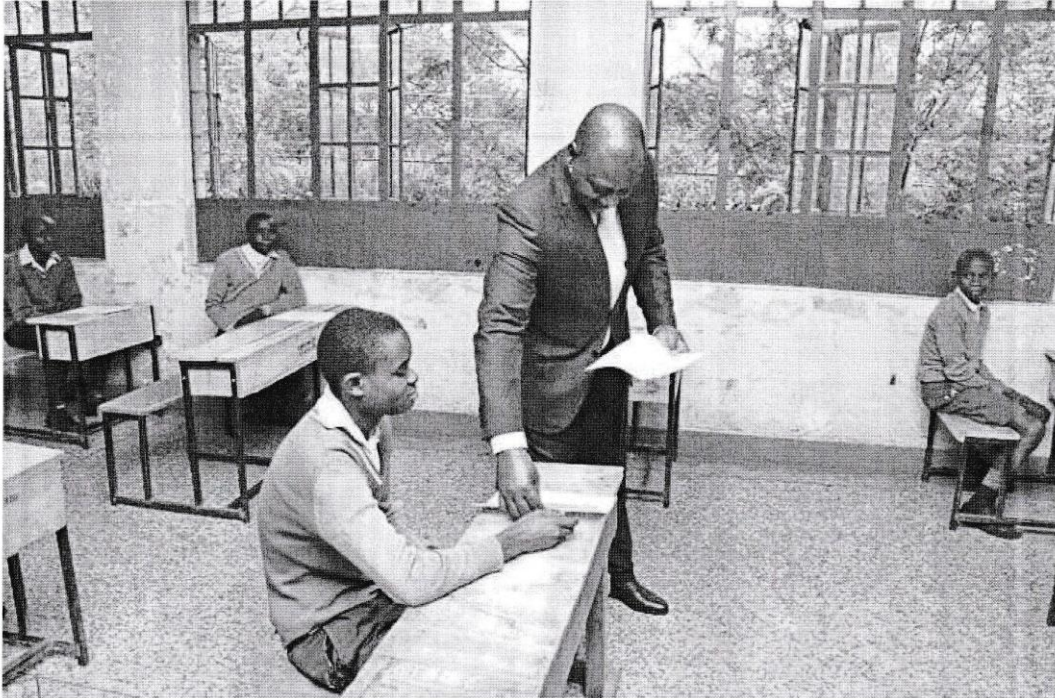


Kenya National Examination Council (KNEC) headquarters at Dennis Pritt Road, Nairobi. /KNEC

The Kenya National Examinations Council (KNEC) has spoken after it confessed to releasing some results containing errors a day following the release of the 2023 Kenya Certificate of Primary Education (KCPE) results.

In the statement dated Saturday, November 25, KNEC acknowledged receiving appeals from some affected schools which were dissatisfied with their results as received by the institutions and the candidates via the SMS code **40054**.

The KNEC Rules of 2015 Legal Notice 131 on the marking of examinations, release of results and certification, Rule 27, provides for candidates/schools to lodge appeals for review of the examination results to the Council in writing within thirty days from the date of release of the examination results.



President Ruto at the Joseph Kang'ethe Primary School in Kibra witnessing the administration of KPSEA and KCPE Examination papers to the candidates on November 29, 2022. /PCS

The council divulged that some candidates had misaligned marks and graded in Kiswahili as they were placed in the Kenyan Sign Language.

"There were also cases where the grades in Science and Social Studies and Religious Education were truncated incorrectly and were missing the plus (+) and minus (-) signs as expected.

"The error affected only the SMS results due to configuration issues, as the results in the KNEC portal are accurate. KNEC notified the SMS service provider, and the error in the text messages was resolved immediately," KNEC explained.

The council also revealed that it had received queries from candidates with low marks in some of the subjects, mainly in English and Kiswahili.

"KNEC has reviewed all the appeals and found that there were one hundred and thirty-three (133) candidates affected. These cases have all been addressed, and results for the affected candidates have been updated appropriately," added the council.

KNEC also studied the KCPE examination results for a school that was widely circulated on social media forums indicating all the candidates in the school attained an identical mark of 75 in Science.

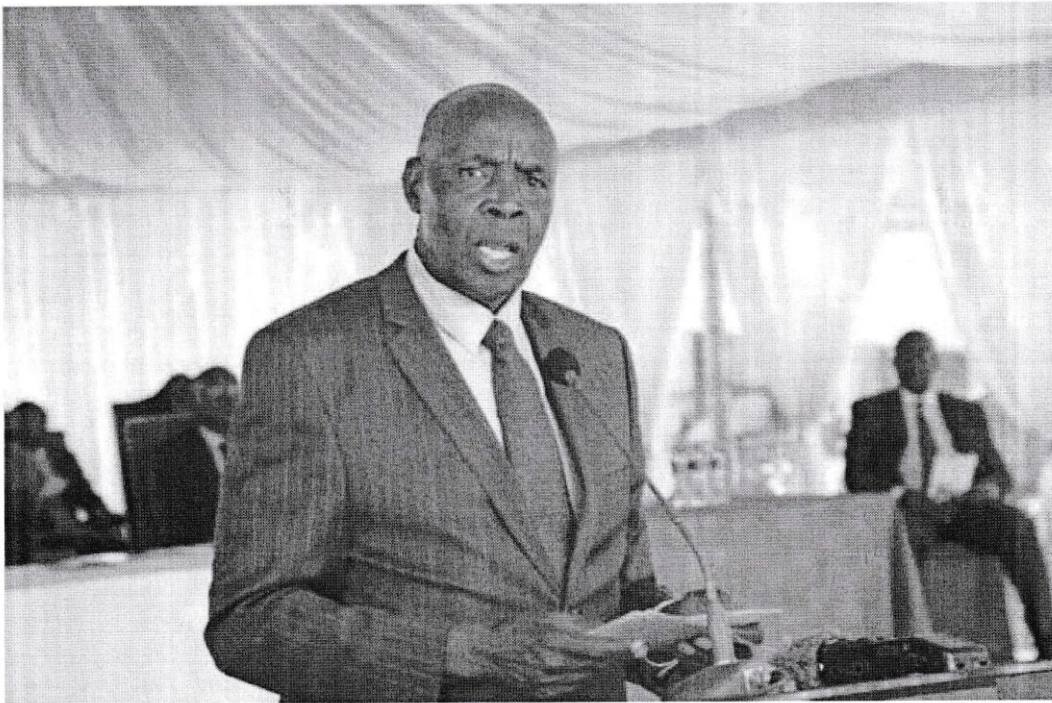
Upon review of the results for the school and all the reports that were received from the examination centres and anonymous letters, it noted that it had not found any indication that the school was involved in examination malpractice.

"Science is a multiple-choice question paper, thus making it possible for the candidates to get identical marks. Though this may be assumed to be an examination irregularity, it is not adequate evidence for KNEC to sanction the results for candidates without a supporting report that cheating happened during the administration of the examination," KNEC argued.

Candidates have been advised to visit their schools and collect the official provisional results slips and raise any query for review of their results, if any, within the stipulated 30-day period.

According to Education Cabinet Secretary (CS) Ezekiel Machogu who released the results on Thursday, November 23, over 1.4 million pupils sat for the 2023 KCPE exams.

The CS however revealed that 9,354 candidates failed to sit for the exams but promised that the Ministry would conduct thorough mapping and administer a special examination in January 2024.



Education CS, Ezekiel Machogu during a past address. /FILE

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EDUCATION

KCPE 2023: Anxiety as SMS Code Shared by KNEC Fails to Return Results

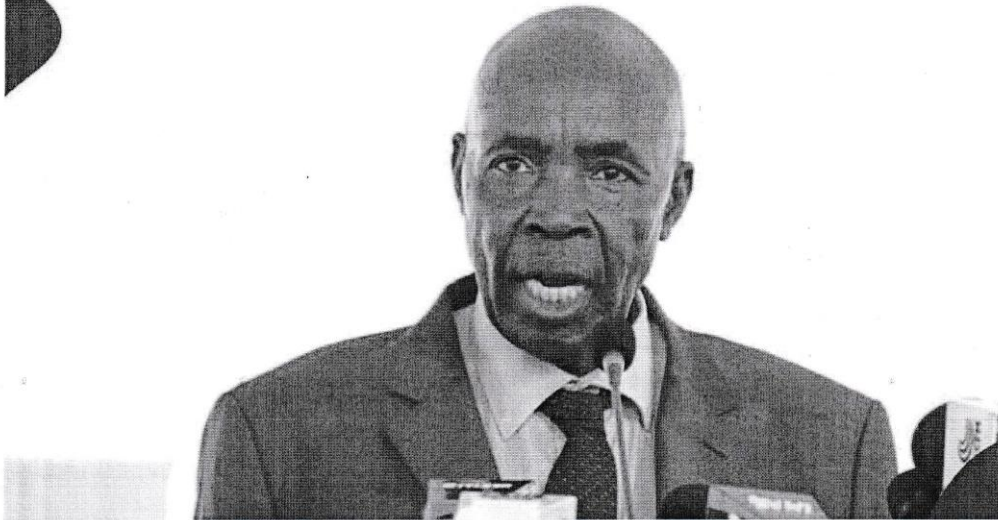
Thursday, November 23, 2023 at 12:13 PM · by Racheal Nyaguthie

- Education Cabinet Secretary Ezekiel Machogu officially released the 2023 Kenya Certificate of Primary Education (KCPE) results minutes before 11am on Thursday, November 2023
- Kenyans were instructed to access their results by sending their index numbers to 40054 via SMS, as announced by Machogu from Mitihani House
- More than an hour later, candidates and parents could not access the 2023 KCPE results through the SMS code

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*TUKO.co.ke's Current Affairs journalist, Racheal Nyaguthie, has spent more than four years reporting on **politics** and crime stories in Kenya and covered the 2022 Presidential Election*

Kenyans have taken to social media to lament after the SMS code shared by the Kenya National Examination Council failed to return results.



Ezekiel Machogu officially released the results this morning. Photo: Ezekiel Machogu.

Source: Twitter

Advertisement

Education Cabinet Secretary Ezekiel Machogu officially released the 2023 Kenya Certificate of Primary Education (KCPE) results a few minutes before 11am on Thursday, November 2023.

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Nuru Okanga Says He Hasn't Received His KCPE Results Despite Congratulatory Messages Online

Machogu, while speaking from Mitihani House, announced that parents and candidates would access their results by sending their index numbers to 40054.

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The CS had assured the results would be ready for access through the SMS code immediately after the official release of the 2023 **KCPE**.

Why is KCPE code not working?

However, more than an hour later, parents and candidates cannot access the 2023 KCPE results.

Anxiety is already building up, and questions abound on why, despite many attempts, they cannot access their results through the SMS code.

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A spot check by **TUKO.co.ke** shows that parents are getting a message that the results are unavailable.

It reads:

"Dear Customer, the KCPE 2023 results are not available. Kindly try again later after the announcement. KNEC helpline 08007224900."

READ ALSO

KNEC Apologises for Delays in Remitting KCPE Results Via SMS Code: "We'll Update You"

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A parent who tried at 12.13pm said he was getting the same message from **KNEC**. He has tried twice to access the results since their official release

Each SMS costs KSh 25 bob.

Ministry acknowledges glitch

The Ministry of Education has since **acknowledged a break in the system**, hindering the remitting of the 2023 Kenya Certificate of Primary Education (KCPE) exam results.

KNEC said they will inform Kenyans once their IT team sorts out the problem.

"Greetings, we apologise for the delay in accessing KCPE 2023 results. We will update you once they are available on 40054," KNEC said in a text message to some Kenyans.

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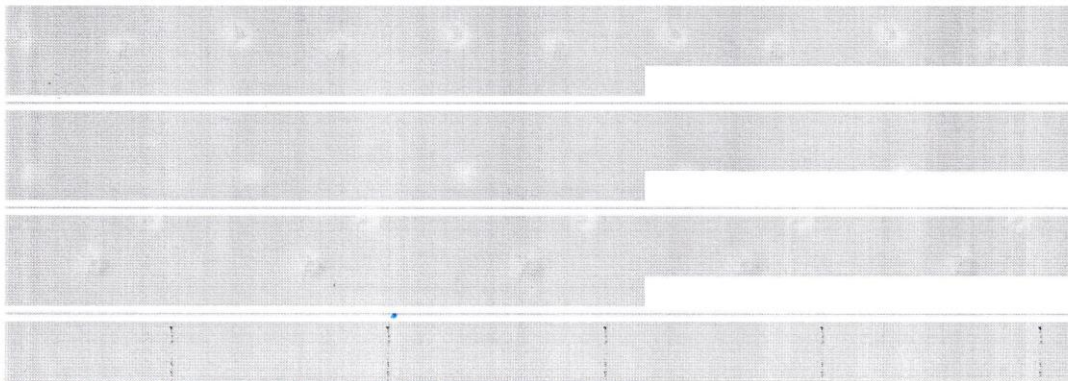
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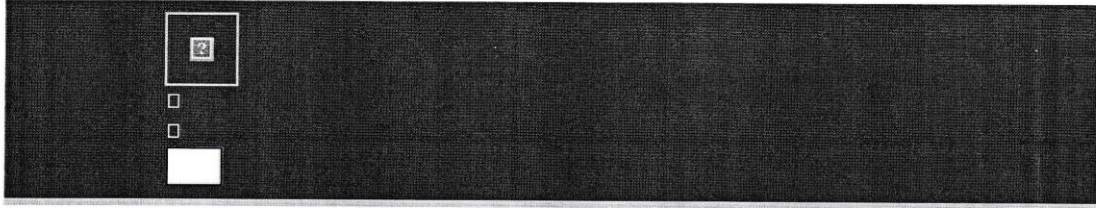
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> KNEC apologises as candidates fail to access KCPE results

KNEC apologises as candidates fail to access KCPE results

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By Naomi Njoroge, K24 Digital

On Thu, 23 Nov, 2023 14:29 | < 1 min read

KNEC apologises as candidates fail to access KCPE results

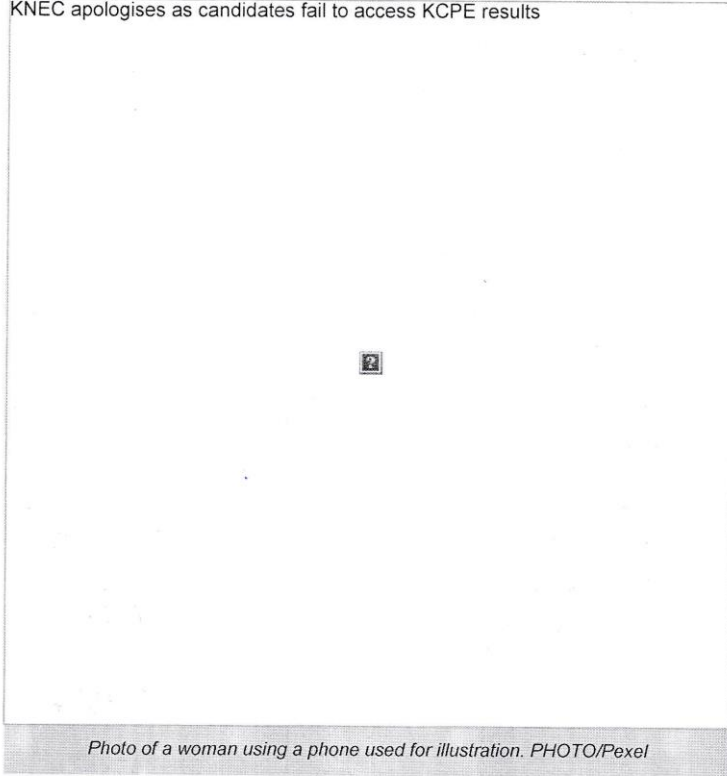


Photo of a woman using a phone used for illustration. PHOTO/Pexel



Kenya National Examinations Council(KNEC) has issued an apology as

candidates report frustrations in accessing Kenya Certificate of Primary Education (KCPE) results using shortcode 40054.

In an update, KNEC said the systems are down due to a technical hitch noting an announcement will be made once the issue has been sorted.

"We apologize for the delay in accessing KCPE 2023 results through the SMS code. We will update you once they are available on 40054. #KCPE2023 #kcpe2023results," KNEC stated.

Candidates have complained that they are unable to receive the results via SMS with the response reading; "Dear customer, the KCPE 2023 results are not available. Kindly try again later after the announcement."

We apologize for the delay in accessing KCPE 2023 results through the SMS code. We will update you once they are available on 40054. #KCPE2023 #kcpe2023results— KNEC (@KNECKenya)
November 23, 2023

The KCPE results were released on Thursday, November 23, 2023, morning by Education Cabinet Secretary Ezekiel Machogu.

This year, a total of 1.4 million students took the KCPE exams, marking the final cohort of Class Eight pupils to undertake the examination under the 8-4-4 system.

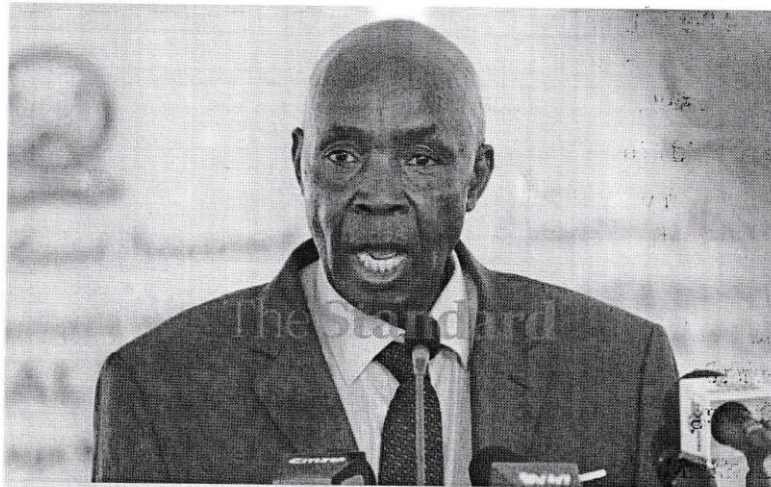
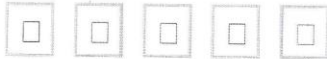
39 cohorts have sat these exams since inception in 1985, with two major reviews being made on the assessment tests used.



Editorial

Rushed release of exam results affects integrity


By Editorial | 2mos ago

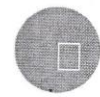


Education CS Ezekiel Machogu during the release of 2023 KCPE results at Mithani House in Nairobi on November 23, 2023. [Denish Ochieng, Standard]

The government again rushed to release the 2023 Kenya Certificate of Primary Education (KCPE) results. This means learner outcomes in the exam concluded on November 1 were ready for release within three weeks.

Speaking during the release of the results at New Mitihani House in Nairobi, Education Cabinet Secretary Ezekiel Machogu also announced that Form One placement will be completed in two weeks.

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He said this will give parents and guardians adequate time to prepare their children to join Form One next year.

All this appears well-intentioned. However, education experts and stakeholders such as teacher unions have previously warned that it compromises quality and inevitably undermines the integrity of the results.

It obviously does not allow the Kenya National Examinations Council (Kneec) adequate time to standardise and moderate learners' scores so as to come up with a scientific grading system.

Since the rush to release exam results began in 2016, questions have emerged each year over their authenticity with aggrieved parents and schools challenging them. In 2016, for instance, Star Sheikh Academy in Athi River challenged the results announced by then Education Cabinet Secretary Fred Matiang'i and a Kneec review saw some of them corrected.

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-  Puzzle of 175,748 students who dropped out of secondary school
-  KNEC cancels results of four candidates over impersonation
-  Male candidates outshine females learners in 2023 KCSE exams

In the following year, a mass failure in the Kenya Certificate of

Secondary Education (KCSE) examination was blamed on the rush to release them.

In that year, nearly three-quarters of the candidates scored a D + and below. In that exam, only 70,073 candidates achieved the mean grade of C+, the university cut-off point, with 142 candidates getting As.

Matiang'i's explanation at the time was that the thousands of As realised in previous exams were a result of "massaged" results.

But Kenya Union of Post-Primary Education Teachers (Kuppet) secretary general Akelo Misori and others, differed, instead offering that the mass failure was the result of a lack of a comprehensive audit.

Misori even claimed the release of the results on December 21 barely a month after the conclusion of the exams was finalised even before the marking process was over. It appears that we are yet to learn lessons from this as the fast-tracked result releases continue unabated. This year, for instance, some students received results for subjects whose exams they did not sit.

While in 2017, examiners were subjected to military-like conditions at the marking centres, this time they were promptly paid and released, which though welcome, now raises eyebrows.

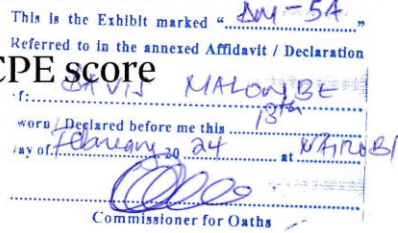
Though it is believed things will improve with the change of the national examination system, it is still our hope we will not witness the same with the 2023 KCSE exam results. This is because apart from undermining quality, it also jeopardises the efforts made by



Home / Education

Joy for student as KCPE score adjusted upwards

By Benard Lusigi | 1d ago



Prudence Shalimba (centre). Kneec revised her marks from 358 to 409. [Benjamin Sakwa, Standard]

It was a relief for a 2023 KCPE candidate from Shinyalu constituency, Kakamega county after the [Kenya National Examination Council \(Kneec\)](#) revised her marks from 358 to 409.

Prudence Shalimba, 13, from Ileho Village, was shocked when she received her [KCPE results](#) last week.

Prudence, a former student of Mukango Hope Academy was index one and had been expecting a good score but this was not the case when the results were released last week by Education Cabinet Secretary [Ezekiel Machogu](#).



"I was happy that the results were out, however, the happiness was short-lived when my father told me that I had scored 358 marks, I was so devastated because those were not my true marks," she said.

"My parents talked to me and told me they would seek redress which they did and on Sunday while I was in church, my mother came to where I was sitting and showed me the new results I had now scored 409 which made me top in my class from position three," she added.

Keep Reading



Machogu to face MPs over KCPE results errors



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Make Kneec a trusted agency that assesses success, not failure of learners



Moi Primary School Kabarak parent moves to court over KCPE results

The teenager said she was relieved after refusing to eat for two days as her parents sought a review of the score.

"I have never scored below 80 in Kiswahili and 400 marks overall and definitely I knew there was a problem, and the second results were my real grades. I hope to join Kenya High and become a surgeon in the future," said



Prudence's mother Gladys Shalimba said she had initially been awarded 358 marks which they disputed considering that their child had never scored below 400 marks in her previous tests.

"When we sent a [text inquiring about the results](#), we were shocked to receive 358 marks with 36 marks in Kiswahili, we suspected something was wrong. My daughter could not score poorly in Kiswahili which is her favorite subject," said Ms Shalimba.

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The mother of three said the family resorted to seeking a review of the score and on Friday they wrote to KneC stating that the results were not the true reflection of what the candidate had been scoring.

"My daughter was depressed over the poor results, we are urging KneC and the Ministry of Education to be keen when releasing the results to avoid confusion among parents and students," said Shalimba.

The family had planned a celebration after the release of results but cancelled when Prudence received the low marks.



“We cancelled our planned celebrations because we had not expected to receive such results but now with these higher marks we are planning for a celebration to appreciate our God,” said Shalimba.

Japheth Aliata, Director of the Mukango Hope Academy urged the Ministry of Education and KneC to take time and go through the results before releasing them.

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“I do not see the need to hurry and release the results when we have a lot of time, let those responsible be keen, and proofread the results before they release them because this has painted a bad picture of KneC,” said Aliata.

“The confusion has caused distress among many students who have been affected and moving forward the government should take exam matters concerning the life of students very seriously to avoid unnecessary litigation because we had planned to raise Sh6,000 for remarking and if the results were to turn out differently then litigation would be our last resort,” he added.

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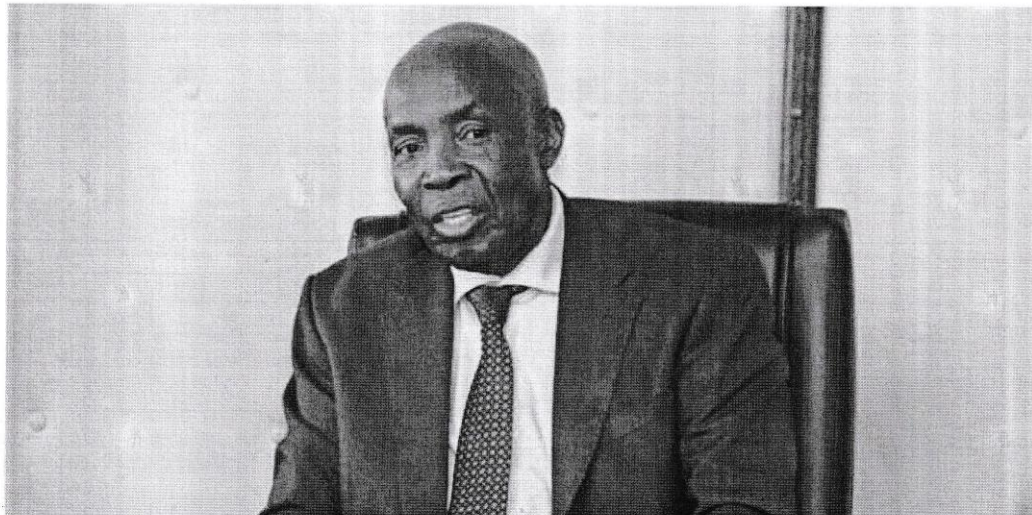
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Concerns Over Changing KCSE Results on KNEC Portal

Education CS Ezekiel Machogu released 2023 KCSE results on Monday, January 8, 2024.



by Cynthia Maende — January 9, 2024



Education Cabinet Secretary Ezekiel Machogu. PHOTO/MoE.

Estimated Reading Time: 2 mins

A day after the release of the 2023 Kenya Certificate of Secondary Education (KCSE) results, a wave of concern swept across the country over inconsistent results on the Kenya National Examinations Council – KNEC portal.

During the event at Moi Girl's High School in Eldoret, Education Cabinet Secretary Ezekiel Machogu ruled out provision of SMS service for candidates to access their grades.

Machogu emphasized that candidates should rely on the KNEC website to obtain their results, marking a departure from the ministry's tradition.

Parents scrutinized the results on the KNEC portal, revealing inconsistencies among various subjects.

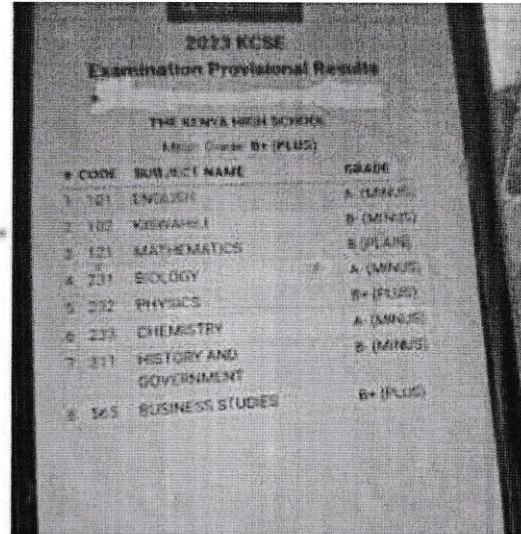
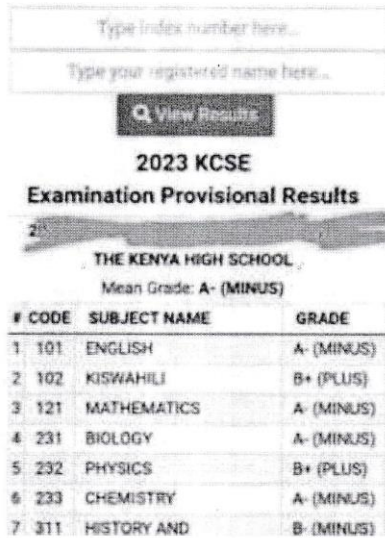


Photo showing different results of a student accessed at different times. PHOTO/Courtesy.

Images shared by concerned individuals highlighted instances where schools received conflicting results.

Ndungu Nyoro, for instance, claimed that Kenya High, an academic giant was among the institutions that were affected by the anomaly.

Also Read: Confusion as KNEC Flags Nyambaria High School's Results Slip

Kenyans React to results on KNEC portal

“Same student, different results. This time for a student at Kenya High. I hope tomorrow we’ll not have it drop further,” posted Ndungu Nyoro on his Face Book page.

Nyoro emphasized the urgency for parents to investigate these irregularities to prevent any potential disadvantage to their children.

“I’ve also seen such a story where a student had a D+ in the morning and results kept changing. By 5:00 pm he had B plain. We are waiting for around 8:00pm maybe his true score is A plain,” commented Face Book user Ngure Njogu.

Additionally, Homa Bay Member of Parliament Peter Kaluma urged parents to take note of the changing grades in the provisional results on the KNEC portal.

In a screenshot shared by the Mp, results from a Nairobi school student changed from a mean grade of B+ to an A-.

On his X account, Kaluma also shared alleged changing results from Mangu High School showing difference in overall Chemistry mean grade whereby the school had earlier scored a B plain before the results changed to an A- minus.

“Parents do not sleep. The results are changing every minute. You blink, it goes to A, blink again, and it will be an E,” warned Kaluma, urging swift action to address the inconsistencies.

Also, comparisons were drawn to the 2022 General Election, where similar concerns arose regarding discrepancies in the results reported by the Independent Electoral and Boundaries Commission (IEBC).

“They are changing results all the time like Jose Camarago’s election results,” humorously remarked Kileleshwa Member of County Assembly Robert Alai.

Also Read: Machogu, KNEC Sued Over Poor KCPE Results

Machogu Silent

Despite mounting criticism and demands for clarification, Machogu and KNEC were yet to issue a statement.

After the release of the 2023 Kenya Certificate of Primary Education (KCPE) results, the CS admitted to errors such as misalignment of marks and incorrect grading in subjects like Kiswahili.

Following the 2023 KCPE errors, stakeholders called for the overhaul of KNEC for failing to deliver.

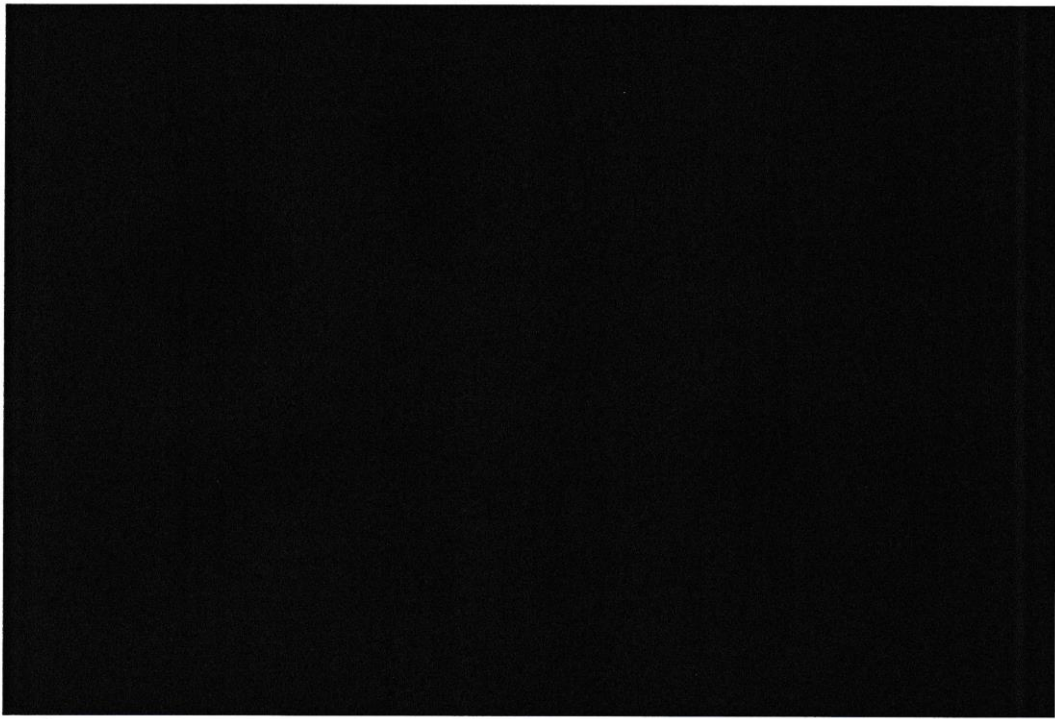
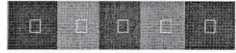
At the same time, a section of parents sued Machogu over the results for the last KCPE test under the 8-4-4 system.

Azimio leader Raila Odinga also called out the minister.

Relief For 2023 KCSE Candidates After KNEC Finally Releases Withheld Results

By Chispine Otieno

Published on: January 20, 2024 09:07 (EAT)



The Kenya National Examinations Council (KNEC) has finally released the results of some KCSE candidates whose marks had been withheld over suspected malpractice.

Kisii's Cardinal Otunga Boys fraternity was elated on Friday morning after receiving the results of all its 432 students who sat the 2023 KCSE exams.

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During the release of the 2023 KCSE results, the Ministry of Education through KNEC flagged the results of 4,113 candidates across the country on allegations of breaching exam regulations.

There is however heightened tension in some schools whose candidates are yet to receive results.

“I wish to inform the general public that we finally have 100% of the results and their results are very impressive because all of them are transiting to the university,” Cardinal Otunga school Principal Albert Ombiro said.

With a total registered candidature of 432, the last candidate at the school got a B-, with the Principal saying the students had 6 As, 60 A- 137 B+ and 26 B-.

Kisii County Commissioner Tom Anjere stated: “All of us need to take responsibility if the school has not done well, it's not just the candidate, it is all the stakeholders...so let us not get to this miss advise of chasing the principal on basis of poor performance.”

A similar sigh of relief was also witnessed at Nyakongo Secondary School after KNEC released withheld results of the entire 2023 KCSE cohort of 263 students, exonerating the school from alleged cases of malpractice.

In Migori County, Mabera Secondary School also received their withheld results from the examination body.

In Nandi County, however, there is heightened tension at Samoei Secondary School which is yet to receive its results. Area MP Benard Kutir expressed his displeasure with the Ministry of Education over the decision to withhold the results.

“There was no hurry of releasing results without not being conscious of people and the suffering parents are going through...you should have done investigations before saying these results have been cancelled because now you're holding students on ransom as others are celebrating...everybody is in limbo,” said the Nandi Hills lawmaker.

KNEC flagged results for a total 4113 candidates over suspected exam malpractice.

Their fate was to be decided by a special committee constituted by the Ministry of Education where

principals of affected schools were to be questioned regarding their claims.

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Oruba Boys Secondary School candidates protest over 'unfair' KCSE results

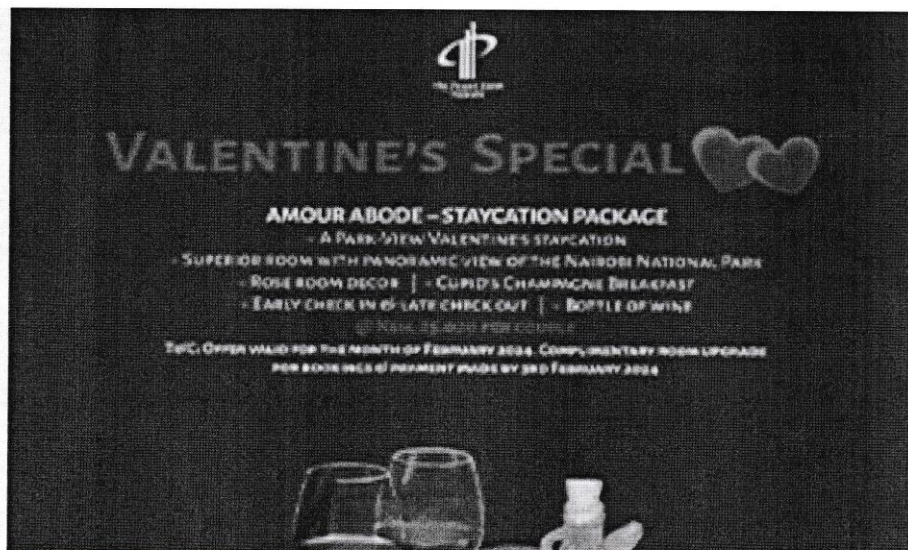
Thursday, January 11, 2024





By George Odiwuor
Nation Media Group

While top schools across the country were celebrating the release of the 2023 Kenya Certificate of Secondary Education (KCSE) results after a stellar performance, a group of former students in Migori County staged a protest over dismal results.



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Students who sat their KCSE examinations at Oruba Boys Secondary School last year took to the streets on Tuesday to protest over what they termed as shocking results.

The candidates said their scores did not reflect their academic abilities. They also said their grades will greatly limit their career choices.

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The students demonstrated outside the Ministry of Education offices in Migori town on Tuesday to register their displeasure with the Kenya National Examination Council (Kneec).

Read: KCSE results - More E grades in 2023 compared to 2022

Efforts by Nation.Africa to get a comment from the school's management were unsuccessful, but one of the senior teachers at the

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one of the senior teachers at the school, who spoke on condition of anonymity, said the school's management committee would soon hold a meeting to chart the way forward, including petitioning the Ministry of Education.

John Omondi, one of the 75 candidates in the school, said he was shocked when he received his results on his mobile phone.





Former students of Oruba Boys Secondary School in Migori County protest over the poor results in the 2023 KCSE on January 9, 2023. Photo credit: Courtesy

"I was not expecting to get a D for my hard work. I was fully prepared for the exams and I knew I would score better grades," he said.

"In an examination, there must be

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"In an examination, there must be top candidates and those who get low grades. But in our case, we got almost similar grades, which does not make sense," he said.

Read: Against all odds - Selfless boda boda rider set for university education

Gordon Okinyi said he was similarly surprised by his low grades, which he said were way below what he used to get when he was in school.

"We expected to celebrate based on how we have been performing. It is however surprising that our top candidates got a C-," he said.

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"The Ministry of Education should check the great disparity between the results we have been getting in internal examinations and our final scores in KCSE," he added.

Tony Omondi said it would be difficult to distinguish him from a

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Tony Omondi said it would be difficult to distinguish him from a school dropout because of his poor grades.

"Where do I go with a D? All my future plans have been ruined," he lamented.

The Ministry of Education is yet to respond to these complaints.

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PRESS STATEMENT (for immediate release)

Saturday, November 25, 2023

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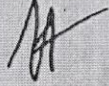
QUERIES ON THE 2023 KCPE EXAMINATION RESULTS

1. The Ministry of Education released the 2023 KCPE examination results for **1,406,557** on Wednesday, 23rd November 2023.
2. The KNEC Rules of 2015 Legal Notice 131 on the marking of examinations, release of results and certification, Rule 27, provides for candidates/schools to lodge appeals for review of the examination results to the Council in writing within thirty days from the date of release of the examination results. In this regard, KNEC received appeals from some affected schools on dissatisfaction on their results as received by candidates/schools through the SMS code 40054. It was brought to the attention of KNEC that results for some candidates had misalignment of the marks and grades in Kiswahili as they were placed at the Kenyan Sign Language. There were also cases where the grades in Science and Social Studies & Religious Education were truncated incorrectly and were missing the **plus (+)** and **minus (-)** signs as expected. The error affected only the SMS results due to configuration issues, as the results in the KNEC portal are accurate. KNEC notified the SMS service provider and the error in the text messages was resolved immediately.
3. KNEC also received queries from candidates with low marks in some of the subjects, mainly in English and Kiswahili. KNEC has reviewed all the appeals and found that there were **one hundred and thirty-three (133)** candidates affected. These cases have **all** been addressed and results for the affected candidates updated appropriately.
4. KNEC has studied the KCPE examination results for a school that was widely circulated on social media forums indicating all the candidates in the school attained an identical marks of 75 in Science. KNEC has reviewed the results for the school and all the reports that were received from the examination centres and anonymous letters and has not found any indication that the school was involved in examination malpractices. Science is a multiple-choice question paper, thus making it possible for the candidates to get identical marks. Though this maybe assumed to be an examination irregularity, it is not adequate evidence for KNEC to sanction the results for candidates without a supporting report that cheating happened during the administration of examination.

Page 1 of 2

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E-mail: ceco@kneec.ac.ke Website: www.kneec.ac.ke

5. Candidates have been advised to visit their schools and collect the official provisional results slips and raise any query for review of their results, if any, within the stipulated 30 days period.



Dr David Njengere, MBS

CHIEF EXECUTIVE OFFICER

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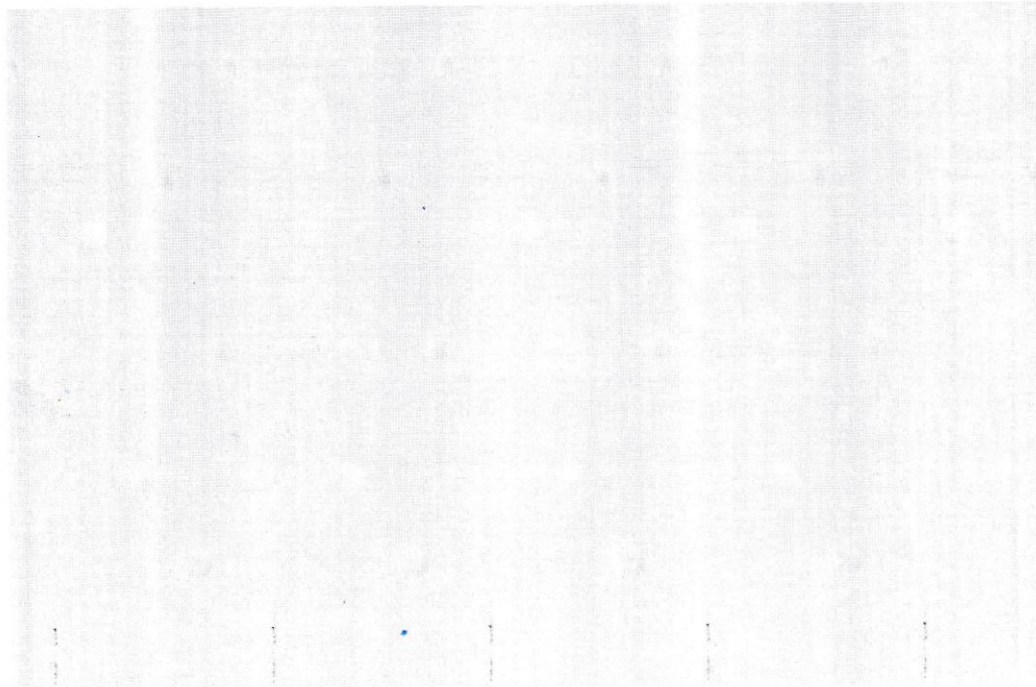


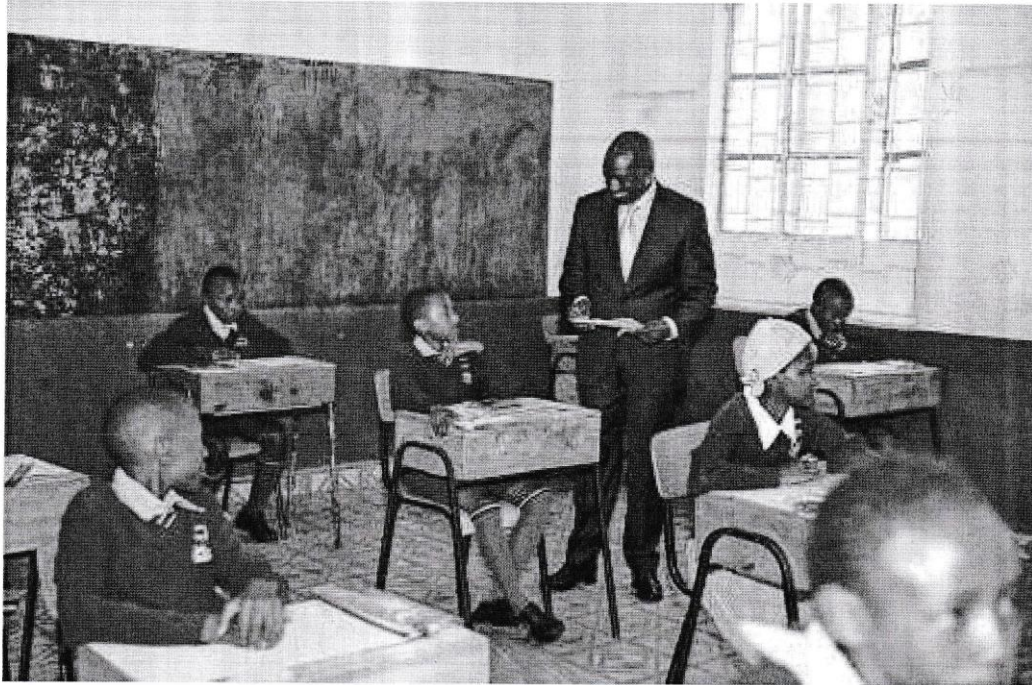
KNEC Has Owned Errors In Just Released KCPE Results

KNEC Has Owned Errors In Just Released KCPE Results



by Editorial Team — December 18, 2023 Reading Time: 1 min read





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KNEC Has Owned Errors In Just Released KCPE Results

The Kenya National Examinations Council (KNEC) has acknowledged the occurrence of errors in released results, responding to concerns raised by a section of candidates who observed inconsistencies on their result slips. Assuring students that the discrepancies will be rectified, KNEC pledged to address the matter promptly.

Reports from affected candidates revealed instances of missing marks for certain subjects and discrepancies in recorded exam results. For example, one candidate expressed concern about the marks for their Kiswahili paper, alleging that only the results for their Insha paper were accurately reflected.

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Another case highlighted a candidate who did not receive results for a specific paper, receiving scores for an exam in Kenya Sign Language that they never took, while missing out on results for their Kiswahili paper.

Also Read: 133 KCPE Candidates Awarded Wrong Marks In Some Subjects

Despite these challenges, Education CS Ezekiel Machogu released the overall results on Thursday, November 23, with the highest-scoring candidate achieving 428 marks. It's noteworthy that over 1.4 million students participated in the national examinations that commenced on November 30. However, more than 9,000 students reportedly failed to sit the exams due to undisclosed reasons.

To address this issue, the Ministry of Education plans to conduct special exams for students who missed the national examinations this year. According to Machogu, these special exams are scheduled for January 2024, providing an opportunity for those who were unable to participate in the initial exams.

KNEC Has Owned Errors In Just Released KCPE Results

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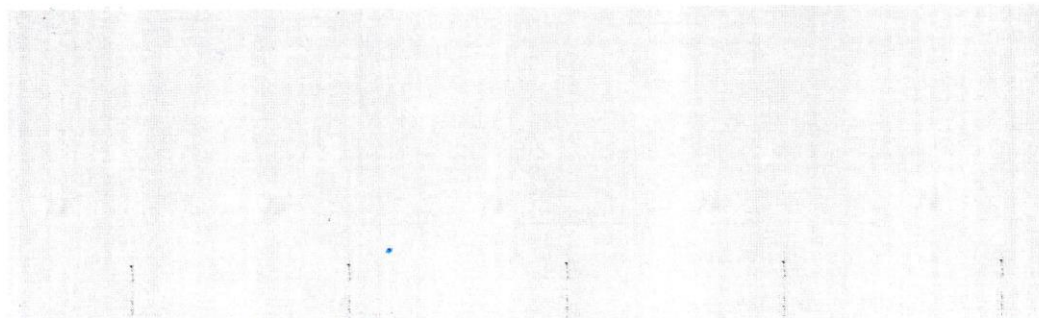
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This is the Exhibit marked "KN-9A"
referred to in the annexed Affidavit / Declaration

of: SAUC WALOMBU

sworn / Declared before me this 24th day of December 2023 at NAIROBI

Commissioner for Oaths



Our Ref: KNEC/AC/8-12/23

Your Ref: TBA

Date: 8th December, 2023

1. THE CHIEF EXECUTIVE OFFICER,
KENYA NATIONAL EXAMINATIONS COUNCIL,
NEW MITIHANI HOUSE, SOUTH C,
P.O. BOX 73598-00200,
NAIROBI
2. THE OFFICE OF THE PRINCIPAL SECRETARY,
THE MINISTRY OF EDUCATION,
JOGOO HOUSE "B", TAIFA ROAD,
P.O. BOX 300400-00100,
NAIROBI



Dear Sirs,

RE: ACCESS TO INFORMATION REQUEST

The above refers.

Being in receipt of instructions from the Kenya Human Rights Commission (hereinafter referred to as the "KHRC") and Elimu Bora Group, I shall address you as hereunder.

The Kenya National Examinations Council (hereinafter referred to as "KNEC") as established under the Kenya National Examinations Council Act, 2012 is mandated by law, amongst other things, to "set and maintain examination standards".

In the recent past and even presently, issues of examination irregularities and/or malpractices in the conduct of examinations and/or the release of examination results, and in particular the Kenya Certificate of Primary Education (hereinafter referred to as "KCPE") and the Kenya Certificate of Secondary Education (hereinafter referred to as "KCSE"), have scandalized the institution that is

OLIETI RAPHAEL OKUBO C/O
OKWIRI & CO. ADVOCATES,
RENNAISSANCE CORPORATE PARK, 3RD FLOOR,
ELGON ROAD, UPPERHILL,
P.O. BOX 19749-00202,

NAIROBI

Tel: 0725090769

Email: raphael@okwiriadvocates.com / okuboraphael@yahoo.com



Our Ref: KNEC/AC/8-12/23

Your Ref: TBA

Date: 8th December, 2023

1. THE CHIEF EXECUTIVE OFFICER,
KENYA NATIONAL EXAMINATIONS COUNCIL,
NEW MITIHANI HOUSE, SOUTH C,
P.O. BOX 73598-00200,
NAIROBI

This is the Exhibit marked "DM-9B"
referred to in the annexed Affidavit / Declaration
of: DAVID MALOMBE
Sworn / Declared before me this 13th
Day of February 2024 at NAIROBI
[Signature]
Commissioner for Oaths

2. THE OFFICE OF THE PRINCIPAL SECRETARY,
THE MINISTRY OF EDUCATION,
JOGOO HOUSE "B", TAIFA ROAD,
P.O. BOX 300400 -00100,
NAIROBI

Dear Sirs,

RE: ACCESS TO INFORMATION REQUEST

The above refers.

Being in receipt of instructions from the Kenya Human Rights Commission (hereinafter referred to as the "KHRC") and Elimu Bora Group, I shall address you as hereunder.

The Kenya National Examinations Council (hereinafter referred to as "KNEC") as established under the Kenya National Examinations Council Act, 2012 is mandated by law, amongst other things, to "set and maintain examination standards".

In the recent past and even presently, issues of examination irregularities and/or malpractices in the conduct of examinations and/or the release of examination results, and in particular the Kenya Certificate of Primary Education (hereinafter referred to as "KCPE") and the Kenya Certificate of Secondary Education (hereinafter referred to as "KCSE"), have scandalized the institution that is

KNEC resulting to public outcry against KNEC by dint of their management of the said examinations and/or their discharge of the statutory mandate stated above. Needless to say, the result of such public outcry is a direct loss of credibility by KNEC of its ability and/or capability to discharge its mandate under the law and to attain to the Constitutional dictates to which it is bound by the sovereign will of the people; and the validity and reliability of such examinations.

It is on this backdrop and the recent release of the 2023 KCPE results that witnessed reported widespread irregularities and in view of the provisions of Articles 1(1) (2) (3), 2(1) (4), 10, 35, 47, 53 (1) (b) (2) of the Constitution; Sections 3 (d), 4, 5 (a) (iii) (vi) (c) of the Access to information Act, 2016; and Sections 4 (1) (2) and 5 of the Fair Administrative Action Act, 2015 that we hereby request to be furnished with the following information and/or documents, that is,

- a. KNEC policy and/or guidelines on marking, award of marks and moderation process.
- b. KNEC examinations guidelines and regulations.
- c. KNEC policy and/or guidelines on the compilation, verification, review and reporting of examination results.
- d. KNEC service charter.
- e. Detailed audit on the examination process.
- f. Statement (s) and/or report(s) on the last review of any subsisting policies and/or guidelines stated herein.
- g. Statement(s) and/or report(s) on the public participation and/or stakeholder input in the formulation of any subsisting policies and/or guidelines stated herein.

We look forward to your kind response within such responsible time, but not later than 21 days of the date hereof.

We remain most obliged.

Yours faithfully,



OLIETI RAPHAEL OKUBO (MR.)

ADVOCATE

C.C. Commissioner of Access to Information
Commission on Administrative Justice


Chairperson: Hon. Florence Kajju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Ndungu, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/ATI/KNEC/013/77/23-JK

Chief Executive Officer
Kenya National Examination Council
New Mitihani House, South C
P.O. Box 73598-00200
NAIROBI

This is the copy of the Affidavit / Declaration
Referred to in the annexed Affidavit / Declaration
of: DAVID MACHOMBE
Sworn / Declared before me this 13th
Day of February 2024 at NAIROBI

Commissioner for Oaths

Dear Sir,

RE: REQUEST FOR INFORMATION BY RAPHAEL OKUBO OLJETI RELATING TO THE REPORTED IRREGULARITIES IN THE RECENT RELEASED KCPE RESULTS BY THE MINISTRY OF EDUCATION

Reference is made to the above matter.

The Commission is in receipt of the letter dated 8th December 2023 (copy enclosed) from Raphael Okubo Olieti requesting for information relating to the reported irregularities in the recent released KCPE results by the Ministry of Education. The Applicant particularly requests for information regarding the following;

1. KNEC policy and/or guidelines on marking, award of marks and moderation process;
2. KNEC examinations guidelines and regulations;
3. KNEC policy and/or guidelines on the compilation, verification, review and reporting of examination results;
4. KNEC service charter;
5. Detailed audit on the examination process;
6. Statements and or reports on the last review of any subsisting policies and or guidelines stated herein; and
7. Statements and or reports on public participation and or stakeholder input in the formulation of any subsisting policies and or guidelines stated herein

This is therefore to request you to respond to the Applicant soonest in line with section 9(4) of ATI, Act 2016.

Your prompt response will be highly appreciated.



LUCY NDUNGU, FBS

ACCESS TO INFORMATION COMMISSIONER

CC: Raphael Okubo Oieti
Okwiri & Co. Advocates
Renaissance Corporate Park, 3rd Floor
Elgon Road, Upperhill
P.O. Box 19749-00202
NAIROBI
Email: raphael@okwiriadvocates.com

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. OF 2024

IN THE MATTER OF THE CONSTITUTIONAL PRINCIPLES OF NATURAL JUSTICE,

RULE OF LAW, ACCOUNTABILITY, GOOD GOVERNANCE AND TRANSPARENCY

AND

IN THE MATTER OF ARTICLES 2(1) & (4), 3(1), 10, 19, 20 (1), (2), (3) & (4), 21(1), 22(1) & (2), 23 (1) & (3), 35, 47 (1) & (2), 53 (2), 165 (3), AND 232(1) & (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE KENYA NATIONAL EXAMINATION COUNCIL ACT, NO. 29 OF 2012

AND

IN THE MATTER OF THE ACCESS TO INFORMATION ACT, NO. 31 OF 2016

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....1ST PETITIONER

ELIMU BORA WORKING GROUP.....2ND PETITIONER

-AND-

THE KENYA NATIONAL EXAMINATIONS COUNCIL.....1ST RESPONDENT

THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION.....2ND RESPONDENT

THE CABINET SECRETARY, MINISTRY OF EDUCATION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

CERTIFICATE UNDER SECTION 106 (4) (B) OF THE EVIDENCE ACT (CAP 80) OF THE LAWS OF KENYA

I, **OLIETI RAPHAEL OKUBO**, a resident of Nairobi and of P.O. BOX 228415-00100, Nairobi, in the Republic of Kenya do hereby certify in accordance with Section 65 (8) and Section 106 (4) (B) of the Evidence Act (Cap 80 of the laws of Kenya), as follows;

1. THAT on or about the 6th December, 2023, the 7th December, 2023 and the 5th February, 2024, I made screen recordings of news footage available on YouTube which was stored on a mobile phone model name; Itel S18/Itel S663L; IMEI 1: 359218583518746, IMEI 2: 359218583518753 for purposes of transferring the same to a flash disk for usage in court.
2. THAT on or about the 5th February, 2024 I sent the said footage to my WhatsApp account, opened my WhatsApp on my desktop and downloaded the recordings to the desktop HP 24f, Serial No. 3CM94709YT, Product No. 2XN60AA, 3DW75AV, 2XN60AS and Assembly part No. L09850-001.
3. THAT I thereafter transferred the downloaded footage on flash disk by the name “advance media” and with an inscription on its side being “GT2023-02” and “B02023-08”.
4. THAT the said footage are labelled WhatsApp Video 2024-02-05 at 08.31.27, 08.32.43 and 09.05.53.
5. THAT all the electronic gadget were in good working condition, operated and performed the actions described above seamlessly and without any technical difficulties working in their usual and ordinary manner.
6. THAT I certify the electronic evidence referred to in the Plaintiff’s pleadings to be true and accurate and that the same have not in any way been retouched, altered or interfered with.

Certified at Nairobi this 5th day of February, 2024.