



REPUBLIC OF KENYA

AT THE EDUCATION APPEALS TRIBUNAL NAIROBI

EAT A 005/019

CATHOLIC DIOCESE OF NAKURU.....APPELLANT

VS

THE COUNTY EDUCATION BOARD

NAKURU COUNTY.....RESPONDENT

RULING

FACTS OF THE CASE

The Appellant vide a letter dated 17th September 2019 lodged this appeal under a certificate of urgency. The brief facts upon which the appellant hinged this appeal are that;

- 1) The appellant herein runs 73 schools within Nakuru County and in compliance with the Basic Education Act, No 14 of 2013, had made an application to The Nakuru County Education Board for re registration of schools run by it.
- 2) Vide a letter dated 19th August 2019, The Nakuru County Director of Education wrote to His Eminence The Bishop of The Catholic Diocese of Nakuru making reference to 8 schools and informing him that guidelines from The Ministry of Education made it a mandatory requirement that managers of private or faith based organizations should have qualifications pertaining to the level being applied for in particular that for secondary schools, the managers should be either degree or diploma holders in education, for primary schools, the managers should be P-1 holders and for pre-primary schools, the managers should have ECDE certificates. The Director of Education therefore sought to have these documents in relation to these schools in order to enable the schools to be registered. In other words the respondent sought to have the name of a person with an education background as a manager.
- 3) The appellant vide a letter dated 28th August 2019 and 16th September 2019 responded to the letter by The County Director of Education and set out several facts *inter alia*;;
 - a) It explained that, the appellant is a registered trust under Cap 164 Laws of Kenya with the Bishop as the trustee legally appointed by the trustees.
 - b) The trust holds properties in its name as a legal person and that the ministry of education

guidelines do not recognise a legal person in law but natural persons and as such it can only register the schools in the name of His Eminence The Bishop of the diocese.

c) The appellant pointed out that the decision to decline registration was unfair to the children in the said institutions as the deadline for registration was 2nd September 2019.

d) The day to day management of schools is done by the head teachers who are registered by TSC and are employees of the education secretariat run by the appellant.

e) The school cannot entrust its properties to other parties who are not trustees by registering the schools in their individual names.

f) That the schools can only be registered under the trust name or under the trustee appointed by the apostolic administrator as provided in the trust.

4) The Two letters did not elicit any response from the respondent.

5) The appellant therefore lodged this appeal and sought the following reliefs;

a) A declaration compelling the respondent to register the schools and release the certificates of registration within Seven days.

b) The trust be considered in The Ministry of Education Regulations with a provision clause for the Faith based institutions.

c) The board does reconsider its decision that infringes the rights of The Children under articles 43(1)(f),53(1)(b),55(a) & 56(b) of The Constitution of Kenya.

6) The appeal was fixed for hearing on 25th September 2019 when both parties appeared. The appellant was represented by Sister Melody Mwendu Mwavichi an advocate of the High court of Kenya together with Franchesca Kipsoi the assistant education secretary of The Catholic Diocese of Nakuru while the respondent was represented by Mr Lawrence Karuntimi the Nakuru County Director of Education who is also the secretary to the Nakuru County Education Board together with Mr.Geoffrey Kimani the Nakuru County Quality & Standards Assurance & Standards officer.

7) At the hearing Sister Mwendu made it clear that this appeal emanates from a decision by Mr.Geoffrey Kimani vide a letter dated 19th August 2019 communicated through a WhatsApp message. She also set out the correspondences between her and the respondent culminating to the decision to appeal.

8) She reiterated that the chairperson of the board and education secretariat of the appellant holds a Master's degree in education and is in charge of day to day management of the schools.

9) She also submitted that all the schools run by the appellant are registered under the trust name or under the trustee appointed by the Apostolic Administrator as provided for in the trust.She concluded that the decision to decline the registration on the grounds alluded to above was not only unlawful but also unconstitutional as it seeks to take away the rights of children to compulsory Basic education.

10) Mr.Lawrence Karuntimi on his part submitted that he was not aware of the issues raised since as at the time of hearing, he had only been in the office for two weeks.Nonetheless he reiterated that their concern was the qualification of the proposed manager of the schools.He stated that the appellant had presented Bishop Rt Rev Maurice Muhatia Makumba as the manager of the institution.

11) Mr. Geoffrey Kimani on his part stated that he only started dealing with issues of registration of schools from June 2019.He stated that The Respondent sat for a meeting on 14th May 2019 when it was realised that the appellant had presented Bishop Rt Rev Maurice Muhatia Makumba as the manager of the

institution. He stated that the board met and approved the re-registration of 148 schools but declined to re-register the 8 schools as they discovered that there was a problem when it came to Bishop Rt Rev Maurice Muhatia Makumba being presented as the proposed manager of the institution which they are not comfortable with as he does not possess the qualifications of The Ministry of education guidelines 2011.

ANALYSIS & DETERMINATION

12) From the foregoing, the respondent is the County Education Board established under section 17 of The Basic Education Act and discharges its functions as provided for under section 18 of The Basic Education Act.

13) This tribunal is established under the provisions of section 93 of the Basic Education Act No.14 of 2013.

The Basic Education Act is

“An Act of Parliament to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes “

Sec 93. The Education Appeals Tribunal

(1) There is established an Education Appeals Tribunal.

(2) Any person aggrieved by the decisions of the County Education Board may appeal to the Education Appeals Tribunal.

(3) The Cabinet Secretary in consultation with the National Education Board and relevant stakeholders shall prescribe regulations on the operation and structure of the Education Appeals Tribunal.

(4) The Education Appeals Tribunal shall comprise of—

(a) the chairperson of the National Education Board;

(b) the Director-General;

(c) the Secretary to the Teachers Service Commission;

(d) a representative of the Education Standards and Quality Assurance Council;

(e) a representative of the Kenya Private Sector Alliance;

(f) a representative of the Attorney-General; and

(g) the Chief Executive Officer of the National Council for Nomadic Education in Kenya.

14) From the foregoing, having analysed the facts of the case and the law, there is only one preliminary issue that arises for determination;

(i) The question as to whether there is a competent appeal before these tribunal

15) The tribunal upon considering the grounds of appeal and the submissions by the respondent observes that there is no formal written decision by the Nakuru County Education Board communicating the

decision on the question of registration of The Eight schools in question.

16) Most notably, Sister Mwendu pointed out that this appeal emanates from the decision of Mr. Geoffrey Kimani vide a letter dated 19th August 2019 on behalf of The Nakuru County Director of Education. The letter set out the requirements of school managers of private or faith based organizations and qualifications pertaining to the level being applied for. He therefore sought to have these documents in relation to these schools in order to enable the schools to be registered. In other words the respondent sought to have the name of a person with an education background as a manager.

17) The respondents have only casually stated that they held a meeting but no such minutes have been presented before the tribunal. We also take note that the issues raised by the appellant rotate around the constitutional rights of the child to free and compulsory basic education as guaranteed by article 53(1)(b) of the constitution.

18) In the absence of the minutes of the meeting by the respondent, the tribunal made an interim order directing the Chairperson of The Nakuru County Education Board to present the minutes of the meeting held on 14th May 2019 to the registrar for presentation before this tribunal by close of business on 27th September 2019.

19) The respondent complied and presented minutes dated 4th June 2019 of a meeting of the Nakuru County Education Board held on 14th May 2019.

20) The tribunal has considered the contents of the minutes and particularly minute 7/14/5/19. They only reveal that a total of 148 basic education institutions were approved for registration. There is nothing to show from the minutes that there were deliberations on the 8 schools that are run by the appellants and what considerations were made and how or whether a decision was arrived at.

21) Black's Law Dictionary 10th edition defines a decision as “**a judicial or agency determination after consideration of the facts and the law**”.

in the case of Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001 the Learned Judge stated that it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiff against them is uncontroverted and therefore unchallenged.

22) The fair administrative action Act of 2015 defines an administrative action and further provides;

“administrative action” includes—

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

3. Application

(1) This Act applies to all state and non-state agencies, including any person—

(a) exercising administrative authority;

(b) performing a judicial or quasi-judicial function under the Constitution or any written law; or

(c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.

4. Administrative action to be taken expeditiously, efficiently, lawfully etc.

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

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to—

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross-examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

5. Administrative action affecting the public

(1) In any case where 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;**
- (c) 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 which such appeal shall be lodged.**

CONCLUSION

23) To the foregoing, this tribunal makes the conclusion that there is no decision capable of being considered by it. Consequently this tribunal directs the respondent as follows;

- 1. The Nakuru County Education Board shall reconsider the decision to register the appellant's schools and make a written decision within 20 days from the date hereof and in line with the provisions of Article 47 of The Constitution and The Fair Administrative Action Act 2015.**

That shall be the order of the tribunal

DATED and DELIVERED at NAIROBI this 2ND day of October 2019.

Waigi Kamau – Chairperson

Elyas Abdi – Member

Dr Pius Mutisya - Member

Harun Yusuf - Member