



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

PETITION NO.16 OF 2014

IN THE MATTER OF ARTICLES 19, 20, 21, 23 (3), 40 & 165 OF THE CONSTITUTION OF 2010

AND

IN THE MATTER OF VIOLATION OF AND INFRINGEMENT OF THE RIGHTS OF THE PETITIONER

AND

IN THE MATTER OF BASIC EDUCATION ACT NO.14 OF 2013

AND

IN THE MATTER OF THE BOARD OF GOVERNOR NYARIACHO MIXED SECONDARY SCHOOL

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE AND PROCEDURE RULES

AND

IN THE MATTER OF SECTION 19 (6TH SCHEDULE) OF THE CONSTITUTION 2010

BETWEEN

CHRISTOPHER MOGAMBI OMONYWA)

TERESIA MOKEIRA NYACHUBA) PETITIONERS

AND

HONOURABLE ATTORNEY GENERAL)

THE COUNTY EDUCATION BOARD NYAMIRA)RESPONDENTS

RULING

1. The application for determination before this court is the Notice of MOTION dated 12th May 2014 brought pursuant to the provisions of the law cited on the face of the application and based on the grounds as set out on the face of the application. The application is also supported by the annexed affidavit of Christopher Mogambi Omonywa a parent at Nyariacho Mixed Secondary School sworn on the 13th May 2014.

2. Briefly he states in his affidavit that Nyariacho Mixed Secondary School is a public school within the meaning of the **Basic Education Act No.14 of 2013** and thus by law mandated to have a Board of Management. That the Board of Management of Nyariacho secondary School was appointed in September 2012 but inaugurated in January 2013 and was to run for three (3) years effective from 28th September 2012.

3. He states further that in the month of May 2014 the said Board of Management was disbanded by the County Education Board Nyamira vide a letter dated 7th May 2014 annexed to the affidavit and marked “CMO2”. He opines that the decision by the said County Education Board was irregular, improper, illegal and unconstitutional as the said board does not have the mandate to disband any Board of Management of a public school in the manner it did.

4. He also says that the said action is likely to affect the financial operations of Nyariacho Mixed Secondary School because members of the disbanded Board of Management were mandatory signatories to the school account. That aside, that the academic performance of the school is also likely to be affected bearing in mind that there was a change of administration in the school by transfer of the principal in December 2013 and the posting of a new principal who took over in January 2014. That all the happenings will in turn affect the rights of the students in the said school as enshrined in the Constitution.

5. Lastly the deponent states that KCSE performance of the school which had nosedived in year 2012 to 2.7 had improved with the intervention of the current board and had gone up to 4.743. He urged the court not to allow any discription so as to maintain the upward trend that has been achieved so far. He maintains that the application herein raises salient pertinent and plausible constitutional issues that require this court to grant the orders sought.

6. The application is opposed. There is on record a replying affidavit by Charles Nyandusi Motanya the Chairman of the 2nd respondent sworn on 30th of May 2014. Briefly he contends in his affidavit that the County Education Board has the mandate to appoint and revoke the appointment of Board of Management Members under the **Basic Education Act 2013**. That under the **Education Act Cap 211 Laws of Kenya**, the Minister had power to suspend or dissolve the Board of Governors of Schools which powers have since been devolved to the **County Education Board** vide the **Basic Education Act 2013**.

7. According to Mr. Motanya, the Board of Management of Nyariacho Secondary School was appointed in September 2012 composed of the persons as listed in his affidavit. He explains that the County Education Board has from time to time received complaints from the principals of the said school concerning the conduct of business by the said Board of Management, which complainants range from unpaid creditors, employment and sacking of staff without following laid down procedures, frequency of meetings, meetings being held outside the school compound amongst others.

8. That as a result of the said complaints the County Education Board authorized the Quality, Standards Assessment Office Nyamira to carry out an inspection and audit of the school on 18th February 2014 during which the complaints were confirmed.

9. Mr. Motanya further depones that the inspection report recommended certain measures to be taken with immediate effect. Some of the serious findings about the said board of Management was the inclusion of one Manson Moreka Monyenye as a board Member without appointment by the appointing authority. He

states that the report recommended that Manson Moreka Monyenye must cease to attend Board of Management meetings since he had not been procedurally appointed.

10. The deponent states further that his office was bound to act on the recommendations as contained in the report pursuant to the provisions of the **Basic Education Act 2013 (the Act) (Section 66)**. He opines that the slight improvement in performance in 2013 was due to other factors other than the Board of Management. For the record, **Section 66** of the **Act** sets out the powers of the Quality Assurance and Standards Officers, which powers include facilitation of compliance with education standards by promoting a collegial and collective approach to quality assurance and by provision of appropriate incentives for voluntary compliance with the standards and quality assurance in basic education.

11. Further that the decision to dissolve the Board of Management was reached after taking all the above stated matters and the relevant laws and the best interests of the child into account. He denies that the dissolution of the board will affect the finances and operations of the school.

12. In the supplementary affidavit, Christopher Mogambi Omonywa states that there is no evidence of any kind shown by the respondent in support of their allegations. He contends that the Act does not provide a limit as to the number of meetings a Board of Management can hold in any given year and that Manson Moreka Monyenye was co-opted as a member of the board in accordance with the provisions of the Act to guide the board on some issues. He contends that from the entire response, the respondents have totally failed to address the gist of this application that the County Education Board does not have and did not have the mandate under the Act to dissolve the Board of Management of the School vide minute number 3/4/2014.

13. The replying affidavit by Charles Nyandusi Motanya is supported by Stafford Nyauma's affidavit dated 9th June 2014. Mr. Nyauma is the litigation counsel from the Attorney General (the 1st Respondent) herein and has the conduct of the matter herein.

14. This matter came up for submissions on 25th June 2014 where Mr. Soire made oral submissions on behalf of the applicant. Mr. Nyauma for the A.G. was absent though he was fully aware that the application would proceed on that date.

15. Having gone through the notice of motion dated 12th May 2014 together with the supporting affidavit, and the replying affidavit and having heard the arguments/submissions by Mr. Soire for the applicant, the only question for determination is whether the 2nd respondent herein (County Education Board Nyamira) had the power to disband the entire Board of Management of Nyariacho Mixed Secondary School.

16. Mr. Soire submitted that the County Education Board exceeded its mandate as provided for in the **Act**. He referred to **Section 18** thereof which provides for the functions of the County Education Boards under which the Nyariacho Mixed Secondary Board of Management falls. He also submitted that none of those functions (a-n) allows the County Education Board to dissolve a Board of Management of a Secondary School as happened in this case.

16. From a reading of **Section 18 (a-n)** of the Act, the functions of the County Education Board are well spelt out. The said County Education Board had no mandate whatsoever under the said provisions to dissolve and/or disband the Board of Management of Nyariacho Mixed secondary School. Their actions vide minute No.3/4/2014 were therefore illegal and improper and *ultra vires*. I find that the application herein is merited as it raises salient and pertinent constitutional issues that require to be addressed further. Accordingly I make the following orders:-

1. The Notice of Motion dated 12th May 2014 be and is hereby granted in terms of prayers (c) thereof.

2. Mention on 1st August 2014 at 9.00 a.m. for taking of directions on how to proceed with the petition.

3. *Costs of this application shall abide the outcome of the petition.*

4. Orders accordingly

Dated, signed and delivered at Kisii this 3rd day of July, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. S.M. Sagwe for J.O. Soire for Petitioners/Applicants

N.A for Respondents

Mr. Bibu -- Court Assistant