



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
PETITION NUMBER E014 OF 2021

BENJAMIIN MBATIA KINYANJUL.....1ST APPLICANT/PETITIONER
 MARY MUTHONI WAINAINA.....2ND APPLICANT
 PRISCILLA KERUBO GICHUKI.....3RD APPLICANT
 ANN MOKEIRA.....4TH APPLICANT
 ELIZABETH NJOKI MAINA.....5TH APPLICANT
 MARY NYAMBURA KAMAU.....6TH APPLICANT
 LAVINE ADHIAMBO ODUOL.....7TH APPLICANT

EDGEL MISSION (FORMERLY DISCIPLESHIP OUTREACH

MINISTRY)..... 8TH APPLICANT
PRINCE OF PEACE SCHOOL.....9TH APPLICANT

AND

SUB COUNTY DIRECTOR OF EDUCATION,
NAKURU.....1ST RESPONDENT
COUNTY DIRECTOR OF EDUCATION.....2ND RESPONDENT
CABINET SECRETARY OF EDUCATION.....3RD RESPONDENT
HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

R U L I N G

1. What is before me is the Notice of Motion dated 7th June 2021 brought under **Order 42 rules 6(1), 2 (a) (b) of the Constitution of Kenya (sic), Rule 4, 13, 19, 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013 and all other enabling provisions of the law.**

2. It seeks the following orders;

- 1. THAT the Application and the Petition filed herewith be certified as urgent and opt for hearing on a priority basis.**
- 2. THAT this Honourable court be pleased to issue an order for opening of “Prince of Peace School” forthwith and resumption of normal learning until the hearing and determination of this humble Petition.**

3. THAT this Honourable court be and is hereby pleased to issue an order for opening of “Prince of Peace School” forthwith and resumption of normal learning until the hearing and determination of this humble Application.

4. THAT costs be in the cause.

3. The grounds for the application as set out on its face are that on 20th May 2021 the Sub County Director of Education Nakuru West visited the Prince of Peace School run by Discipleship Outreach Ministry and by word of mouth, without notice, or affording the 1st applicant an explanation, in total disregard of the plight of the schooling children who are all from marginalized and destitute homes and are all on sponsorship, closed the school. It is the applicant’s position that the school had a student population of sixty five (65) students whose fundamental Rights to Education should not be denied for reasons that have nothing to do with learning process.

4. In the affidavit in support sworn by Benjamin Mbatia Kinyanjui, the Director Manager of the school on 7th June 2021, he deponed that he had the authority of the four parents to swear the affidavit (2nd to 5th applicants) and two (2) teachers (6th and 7th) applicants. He deponed further that the Ministry that runs the school is registered and he annexed its registration certificated No. R 36513 dated 26th January 2012. He deponed further that the school was established in January 2019, and all the students were sponsored by Fordenverein Kinderheim Bindura, and if the school remained closed the sponsors would pull out. He annexed copy of statement showing the sponsor, copy of bank statement from Equity Bank, copies of expenses accounts, copies of photos of the school, pupils, and the school register for term 2 showing consistent attendance of students.

5. It is the applicants’ contention that the school should not remain closed for lack of Registration which is ongoing, and that the closure has resulted in the student’s rights to education being threatened, infringed and /or curtailed.

6. That the fact that he was not given any audience by the Ministry of Education officials was an infringement of his right to good administrative decisions. He annexed a copy of the application for registration of the school made in 2019.

7. The application is opposed by the Respondents through the affidavit of Gabriel Lopus the Sub County Director of Education Nakuru West Sub county. It is the position of the respondent that that the school has been running without registration in contravention of S. 76 of the Basic Education Act. That the Principal State Counsel has even recommended the prosecution of the applicants for purporting to run a learning institution.

8. He deponed further that on 3rd October 2019 he notified the applicant of the intention to close the school but it was not until 25th May 2021 that the applicant made a written application for registration of the school. He annexed the requisite exhibits.

9. It was the position of the respondents that the orders sought if granted would be aiding the applicant to commit offences, that were not in the best interests of the children as it was necessary that the children’s right be protected by having a registered institution supervised and monitored by the Ministry of Education which had started the process of registration. In any event the affected children were already admitted in other learning institutions.

10. The applicant filed a Supplementary Affidavit demonstrating that he had indeed commenced the process of Registration of the school;

1. He wrote an application on 15th August 2019 in the letter;

“15th August, 2019

Sub County Director,

Ministry of Education,

Nakuru County.

RE: APPLICATION TO REGISTRER A NON-PROFIT MAKING PRIVATE PRIMARY SCHOOL

*Edgel Mission in a non-profit making organization registered under the Societies Acts of Kenya, registration number 36513. The organization wish (sic) to register a non-profit making primary school at Ronda Kaptembwo Location plot number 29/924 (Ronda). The proposed name of the school is **Prince of Peace School**. The mission of the school shall be to provide quality Christ centered primary education to the less fortunate children in Nakuru and beyond.*

The purpose of this letter therefore is to seek your guidance in the way forward and to declare our intention to register the school.

Yours faithfully,

Benjamin Mbatia,

DIRECTOR EDGEL MISSION.”

11. That the school was visited by Ministry officials on 3rd September 2019 certain recommendations made.

12. That the school was inspected by School Health Inspector on 10th June 2021 and she recommended the school for registration, her report is annexed. The report is headed Inspection Report for Edgel Academy Registration; **“for purposes as a private nursery school.”** As at the time of inspection the school had forty seven (47) student, and three (3) teachers.

13. After the closure on 20th May 2021 the applicant on 9th June 2021 wrote to the Sub County Education seeking alternatives for the students, in public schools;

Kibowen Komen Primary School

Eleen Ngochich Primary School

Mwariki Primary School

14. He received a response from Eileen Ngochoch Primary School asking for Kshs. 716,600/= for fees for forty seven (47) pupils, at 1,500/= lunch and chairs for sixty five (65) students at 1,800/= and 1,300/= respectively, graduation fee for 26 at 600/= school uniform 130 sets at 1,600/=, track suit at 1,500/= P.E. T. Shirt at 400/= and Jumper at 1,500/= for 65 students. He contends that these charges are oppressive as these children cannot afford the same and are evidence that basic education is not free in Kenya as is the common saying. He also proceeded to provide compare and contrast photographic evidence of the learning environments of the children at Prince of Peace and at Eileen Ngochoch Schools, that Eileen Ngochoch has class capacity of 70 pupils as compared to 22 at Prince of Peace that the learning environment at Eileen Ngochoch is chaotic and highly congested while that at Prince of Peace is serene.

15. Both parties filed written submissions which I have considered.

16. The issue is whether this court can order the re-opening of the school, Prince of Peace or is it Edgel Academy to be re-opened despite the fact that it is not registered. Has its closure infringed on the right to education for the 65 students?

17. It is not disputed that the applicant is running an unregistered education institution. That is a fact. He depones that he began running the school in January 2019 and applied for registration in August 2019.

18. What does the law say about this? The **Basic Education Act No. 14 of 2013** 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 National Education Board, the Education Standards and Quality Assurance Commission and the County Education Board and connected purposes.

19. Evidently this law provides for both the right to compulsory free basic education, and the manner in which it is to be enforced.

20. One of those is the provision for the licencing, registration and accreditation of persons and institutions of education, training and research. This is provided for under **Part X of the Act**.

21. **Section 76** prohibits the provision of basic education by a person who is not accredited/registered to do by the Act, Any person/organization intending to establish an institution offering basic education SHALL make an application in the prescribed manner. Contravention of these provisions of the law amounts to an offence for which one is liable on conviction to pay a fine not exceeding Kshs. 20 million or to serve a term of three years imprisonment or both.

22. The law did not envisage that one would set up the school, and begin to provide basic education first without licence. The law clearly states that one must first get the necessary approvals before any child steps into the institution and a teacher stands before the child to teach.. There is good reason for this. There is provision for the Education Standards and Quality Assurance Council put in place to carry out the necessary assessments. We cannot have every other person coming up with what they call a school, bringing children together, and beginning to offer what in their view is an education. The mere fact that children are from destitute marginalized homes does not make them the subject of experimentation or stock for startups, irrespective of the good Samaritan motives.

23. Two wrongs cannot ever make a right, start a school without registration, bring in students and begin to teach without approval, then turn around and use the same children, as the bargaining chip to keep the school open? It does not work that way.

24. The applicant is an educated person. By starting the school, without registration, he put the children’s education at risk. He may have good motives in setting up the school, but he went about it the wrong way, and this court would be giving an illegality the stamp of its authority if it proceeded to allow his plea. It is not the place of this court to tell the applicant how he could have gone about it. Granted we have many families who can barely afford the minimum requirements for the free and compulsory education. A perusal of the list from Eileen Ngochoch Primary School, a public school is proof of that. Parents who can barely put food on the table for their children will never have money for the P.E kits, jumpers and track suits, graduation fees etc. Hence their children will remain out of school. So people like the applicant who can afford to sponsor children would well supporting them in the schools available while they seek to set up their own legitimate institutions. Many of us have leaped from the palms of such generosity and would be the last ones to deny children from these families such necessary support. The applicant could have started by supporting them in various institutions of public learning as he awaited registration. He could even have supported the overcrowded public schools by adding classrooms therein to include these children in need, pending the registration of his schools. I am just saying that there are many ways in which the sponsors who sponsor his students could have sponsored them and can continue to do so in other schools where the overheads for his school could pay school fees for another child in need.

25. Back to the school. It three teachers, but he only annexed one certificate of accreditation from Teachers Service Commission (TSC), are the others accredited? He himself is not licenced or accredited by TSC to promote or manage the teaching of basic education. He ought to be aware that school is not just about the buildings and the space, which of course are necessary and good, it is also about the service provision for the children, the standard of education and whether the institution and its personnel are doing what is required.

26. Let the applicant get registration then we can proceed to open the door of the school to the children. The applicant must comply with the provisions of **Part 7 (VII) of the Basic Education Act**, even when or especially when he is dealing with poor, destitute and marginalized children because they are the ones at the risk of exploitation for various reasons. Being desperate does not mean that you get substandard or cut corners services. The applicant began the wrong way round, and cannot expect sympathy from the court.

27. The letter of application speaks about an intention to start a school, a lie because by that time he already had children in class. The proposal name of the school in the application is **Prince of Peace** the school in question here is **Edgel Academy**. The Inspection Report is in respect of Edgel Academy, **a proposed private nursery school**. Prince of Peace, is **proposed Primary School**. It is no wonder that he was ordered to close down the institution until he decides what services he wishes to offer to the orphans, destitute and marginalized children. It is noteworthy that out of the 65 so described children, only one child's story is annexed, there is no evidence that the others are orphans etc.

28. From the going it is my finding and holding;

i. That the closure to the school herein was in the best interests of the children to allow registration of the institution. To allow the same to run without registration would be abetting the commission of offences under the Basic Education Act.

ii. The right to education of the 65 children was not violated by the closure as alternatives were found pending the completion of the registration process.

iii. That besides the application is not merited and is dismissed with costs.

Dated, Signed and delivered virtually this 18th day of August 2021.

Mumbua T. Matheka

Judge

In the presence of: VIA ZOOM

Edna Court Assistant

For Applicant: Mr. Muthanwa

For Respondent: Ms. Cheruiyot