



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CORAM: A.K NDUNG’U, J**

**PETITION NO. 6 OF 2020**

MICHAEL KOJO OTIENO.....1<sup>ST</sup> PETITIONER

EVANS OTIENO OLOO GOR..... 2<sup>ND</sup> PETITIONER

MARY MWANDA AKACH.....3<sup>RD</sup> PETITIONER

IRENE ADHIAMBO OJWANG’.....4<sup>TH</sup> PETITIONER

ROBERT SAM OLUOCH.....5<sup>TH</sup> PETITIONER

WALTER OKELO OPIYO..... 6<sup>TH</sup> PETITIONER

MILLICENT ADHIAMBO.....7<sup>TH</sup> PETITIONER

**VERSUS**

**CABINET SECRETARY FOR EDUCATION, SCIENCE &**

**TECHNOLOGY..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF EDUCATION, SCIENCE & TECHNOLOGY.....2<sup>ND</sup> RESPONDENT**

**KENYA INSTITUTE OF**

**CURRICULUM DEVELOPMENT (KICD)..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

**Court:** I have considered the submissions by the parties. I have had due regard to the Petition and the accompanying application. To begin with, I note that this is a matter involving children of this country. In any matter involving the interest of a child, the child’s interests are paramount. Any directions given in the matter have of necessity therefore to put that into consideration.

Granted, we are all in the new normal arising from the COVID 19 pandemic that has afflicted the whole world. The disruptions to our political, social and economic lives are there for all to see. The Education sector has not been an exception. Indeed, it is one of the most affected given the nature of the art of learning in our schools where many pupils/students congregate together for instructions.

There is need for a collective approach in seeking solutions to any problems that may arise from effects of the pandemic. It is no longer an issue about us versus them.

In that regard therefore, even as I proceed to give directions on the prosecution of this petition, I am clear that this is one litigation that is suitable for mediation. Our courts have now entrenched this mode of dispute resolution with considerable measure of success.

I urge the parties involved and which should include other stakeholders in the Education Sector to explore the possibilities of a mediated

outcome in these proceedings. I take judicial notice of the fact that the Ministry of Education already has a team that is charged with making recommendations on resumption of learning in our schools.

As regards the disposal of the application, I note the need for expedition. An expeditious disposal of the petition will dispense with the need to prosecute the application accompanying the petition. I direct that the petition be heard without the need to hear the application which in essence seeks same orders as the petition.

The respondents are to lodge responses within 14 days hereof and serve. There is leave to petitioners to lodge any further affidavit if so desired with 7 days of service of responses.

I further direct that once the affidavits are closed, the matter in the interest of time and expedition, be heard by way of written submissions. Directions on submissions to be made in the next mention.

Mention 21/7/2020 for further orders/directions.

**Dated, signed and delivered at Kisii this 23<sup>rd</sup> day of June, 2020.**

**A. K. NDUNG'U**

**JUDGE**