



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL APPEAL NO. 127 OF 2018

ST. VINCENT MAISHA BORA CENTRE.....APPELLANT

(Appealing through Sister MARY JANE ORIOKI)

VERSUS

DEPARTMENT OF CHILDREN SERVICES.....RESPONDENT

(Appeal from the ruling of the Children's Court of Kenya at Nairobi (Delivered 26<sup>th</sup> November 2018 by Honourable Gitonga) in Misc. Children Case No. 2 of 2018)

**RULING**

1. The facts of this case are that the applicant (St. Vincent Maisha Bora Centre) is not a registered children's home. It began in 2009 as a community based organisation running a children's orphanage catering for vulnerable children to whom it provides basic needs. It is recognised by the Catholic Archdiocese of Nairobi. The centre supports 8 students in universities, 15 students in middle level colleges, 61 students in secondary schools and 9 pupils in primary schools. It houses 16 children at the centre.
2. The sub-County Children Officer for Langata inspected the centre and found it dirty and unkempt. It lacked staff to support the children. It had not been registered as a charitable children's home. The officer recommended that the centre be closed, and the children be placed at Mama Ngina Children's Home for care, protection and tracking of family members. The respondent (Department of Children Services) went to the children court (trial court) for an order of closure.
3. The court asked that the applicant be served. It was served and appeared before the court while represented. The court heard the parties. It gave the applicant 90 days to regularise its operations, and to right the wrongs pointed out by the respondent. The applicant had essentially accepted that it had fallen short as pointed out by the respondent.
4. At the end of the 90 days the parties returned to court. The centre had made effort to clean the place for the children. The place had been inspected and was in order. Except that, it had not been registered. The respondent had put a moratorium on the registration of charitable children's homes. The court acknowledges that it had no power to order the registration of the centre, as the power to do that belonged to another statutory body. Because it is illegal to operate a children's home without it being registered, the court ordered closure of the centre. The decision was made on 26<sup>th</sup> November 2018. It asked the children to be transferred to Mama Ngina Children's Home.
5. On 4<sup>th</sup> December 2018 the applicant filed an appeal to this court challenging the order of closure and transfer of the children. It was alleged that the orders exceeded the trial courts power under **sections 67, 68 and 71** of the **Children Act (No. 8 of 2001)** and the **Eighth Schedule** of the **Act**.
6. With the appeal was filed the present application under certificate of urgency seeking that the ruling and decree of the trial court be stayed pending the hearing and determination of the appeal.
7. The application was served but did not elicit any response.
8. In my considered opinion, a party cannot keep children who are in need of care and protection in an institution that has not been sanctioned, through registration, under the **Act**.

9. Under **section 58** of the **Act**, the applicant's centre required approval by the National Council for Children Services. Under **section 71** of the **Act** the Minister has authority to make regulations for the better management of children's homes and the programmes they undertake in regard to care and protection of the children they have.

10. In other words, the creation and management of a charitable home for the care and protection of children is governed by the **Act**. It is through the **Act** that the best interests of the children will be safeguarded, promoted and protected. A party who has not brought himself/herself within the provisions for the **Act** cannot benefit from the discretionary power of the court under **Order 42 rule 6(1) and (2)** of the **Civil Procedure Rules**. The party would not be entitled to stay of the orders and decree of the trial court pending the appeal that has been preferred.

11. In conclusion, I do not find merit in the application which I hereby dismiss with costs.

**DATED and DELIVERED at NAIROBI this 24<sup>TH</sup> JANUARY 2019**

**A.O. MUCHELULE**

**JUDGE**