



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

PETITION NO. 11 OF 2015

IN THE MATTER OF: ARTICLES 1 (1), 2(2) & (5), 10(2), (B) & (C), 20 (1), 21(1), 22(1), 27(1), 47(2), 48, 50(1), 165 & 258 OF THE CONSTITUTION, 2010

AND

IN THE MATTER OF: VIOLATION AND/OR INFRINGEMENT ON THE FUNDAMENTAL RIGHTS OF THE PETITIONER

AND

IN THE MATTER OF: ISEBANIA AND MABERA DIVISIONS

AND

IN THE MATTER OF: BUKIRA AND BUGUMBE CLANS

AND

IN THE MATTER OF: ISEBANIA BOYS HIGH SCHOOL

AND

IN THE MATTER OF: ANNE'S GIRLS BOARDING PRIMARY SCHOOL

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS & FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

SAMSON GETOBAI

MAROA

**JOHN KIMWAMA MOHOCHI
PETITIONERS**

AND

THE MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT

1ST RESPONDENT

**THE MINISTRY OF EDUCATION, S & TECHNOLOGY..... 2ND
RESPONDENT**

**KENYA NATIONAL BUREAU OF STATISTICS 3RD
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL 4th
RESPONDENT**

RULING

1. The instant Petition raises concerns on the administration of two schools within Migori County. They are Isebania Boys High School and St. Anne’s Girls Boarding Primary School.
2. The Petitioners contend that whereas the two schools are physical situated within Isebania Division of Migori County, for unknown reasons, the second Respondent herein transferred their administration from the Isebania Division to Mabera Division to the detriment of the Petitioners and all those who live within Isebania Division who are to cover longer distances to Mabera Division when dealing with administrative issues on the twin schools.
3. The Petitioners now challenge that unilateral decision to have been made in contravention of their right to a fair administrative action under **Article 47** of the **Constitution of Kenya, 2010** and that the prevailing status contravenes **Article 27** of the **Constitution** as it is discriminatory to those living within Isebania Division who must go all the way to Mabera Division on issues pertaining to the schools which schools are in their neighbourhood.
4. It is alleged that the Petitioners have severally raised their concerns with the second Respondent (the Ministry of Education, Science and Technology) and the former provincial administration in vain hence the filing of the instant Petition.
5. The **Basic Education Act, No. 14 of 2013** (hereinafter to as **‘the Act’**) which is an Act of Parliament giving effect to **Article 53** of the **Constitution** in *inter alia* promoting and regulating free and compulsory basic education and which provides for the governance and management of institutions of basic education places the overall responsibility of the governance and management of basic education in the entire country to the Cabinet Secretary for the time being responsible for matters relating to basic education and training.
6. The Cabinet Secretary discharges the responsibility through various institutions including the National Education Board whose agents are the County Education Boards, the Quality Assurance and Standards Councils, the County Governments among many others.
7. One of the duties of the County Education Boards is dispute resolution. I have carefully perused the Petition and the responses thereto and there seem to be no evidence that the matter was otherwise dealt with before filing in Court. That may explain the lamentations by the Petitioners that despite all efforts, the matter was not attended to as expected.
8. As the dispute involves people living within Isebania Division where the schools are situated and the administration of those schools by the parent ministry, it is my very considered view that this matter can greatly benefit from the intervention of the Migori County Education Board. I will therefore refer the dispute to that Board accordingly.
9. Consequently, the following orders hereby issue: -

- a. The Petitioners shall formally lodge the dispute with the Migori County Education Board within 21 days of this date together with a copy of this ruling and the resultant order.**
- b. The dispute shall be expeditiously dealt with in accordance with the Basic Education Act and the prevailing *status quo* shall be maintained pending the outcome.**
- c. The Migori County Education Board shall file its decision in this Court not later than the 30th day of September 2017.**
- d. Further directions to be taken upon filing of the decision.**

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 29th day of June 2017.

A. C. MRIMA

JUDGE