



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW**

**MISCELLANEOUS APPLICATION NO. 672 OF 2017**

**IN THE MATTER OF ARTICLES 19, 20,21,22,23 AND 165(6) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ARTICLES 43(1) (E) AND (F), 47, 50, 53(1) (B), 55(A) AND (55(B) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 4,5,6,7,8,9,10,11 AND 12 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 28 OF THE KENYA NATIONAL EXAMINATION COUNCIL ACT NO. 20 OF 2012, LAWS OF KENYA AND SECTIONS 50,84, AND 92 OF THE BASIC EDUCATION ACT NO. 14 OF 2013 [REVISED EDITION 2014] LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF REVOCATION OF CERTIFICATE OF REGISTRATION OF TERESIA'S GIRLS SENIOR SCHOOL.**

**AND**

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**BETWEEN**

**TERESIA'S GIRLS SENIOR SCHOOL THROUGH JANE MWAI.....APPLICANT**

**VERSUS**

**PRINCIPAL SECRETARY, THE MINISTRY OF EDUCATION.....1<sup>ST</sup> RESPONDENT**

THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

AND

THE PARENTS TEACHERS ASSOCIATION TERESIA'S GIRLS

SENIOR SCHOOL.....1<sup>ST</sup> INTERESTED PARTY

AND

SIMON KINYANJUL.....2<sup>ND</sup> INTERESTED PARTY

LAZARUS OKELLO OWITI.....3<sup>RD</sup> INTERESTED PARTY

CATHERINE NYANG'ANG'L.....4<sup>TH</sup> INTERESTED PARTY

CATHERINE NJEERI WANGOMBE.....5<sup>TH</sup> INTERESTED PARTY

HENRY SUKULAI OWUORI.....6<sup>TH</sup> INTERESTED PARTY

NORAH KWAMBOKA BICHANGE.....7<sup>TH</sup> INTERESTED PARTY

SAMSON WAWERU NGUGI.....8<sup>TH</sup> INTERESTED PARTY

MONICAH WANGARI MWANIKI.....9<sup>TH</sup> INTERESTED PARTY

#### RULING

1. By a chamber summons dated 30th November 2017, the ex parte applicant herein **Teresia's Girls Senior School** through **Jane Mwai** seeks leave of court to apply for Judicial Review orders of:

**a. Certiorari to remove into this court and quash the decision of the Permanent Secretary Ministry of Education contained in his letter dated 13<sup>th</sup> November 2017 deregistering the applicant school.**

**b. Prohibition prohibiting the 1<sup>st</sup> respondent, its agent or persons acting on its behalf from doing anything to cancel or interfere with the registration of the school.**

**c. Leave if granted to operate as stay of the impugned decision.**

**d. Costs.**

2. The application is predicated on the grounds on the face of the application, the statutory statement and the verifying affidavit sworn by **Jane Mwai** on 30th November 2017 and annexing the registration status of the complainant school and the impugned decision.

3. According to the applicant, the Permanent Secretary Ministry of Education had no mandate to deregister the applicant school unilaterally without first giving the applicant an opportunity to be heard as stipulated in Sections 4 and 5 of the Fair Administrative Action Act, 2015 and Article 47 of the Constitution on the right to fair administrative action and Article 50(1) on the Right to a fair hearing.

4. Further, it is claimed that matters of examination malpractice fall within the mandate of the County Education Board to investigate and make a decision by way of a recommendation to the Ministry, and not for the 1<sup>st</sup> respondent Principal Secretary to take the law in his hands and unilaterally deregister the school.

5. It is averred that the deregistration of the applicant school was arbitrarily done and as a result, the children's right to education have been affected.

6. The Respondents were served with the application as directed by the court for interpartes hearing but they did not file any response. At the interpartes hearing, the court nonetheless granted leave to their counsel Mr Odhiambo to argue the respondent's position.

7. I have considered the application and the submissions by the applicant's counsel Mr Munyua and the opposition by Mr Odhiambo advocate for the respondents claiming that the applicant has not exhausted the available remedies under Section 93 of the Basic Education Act and or appealed to the County Education Board.

8. I have examined the provisions of the Basic Education Act and the impugned decision. I have not found any provision that commands the applicant to appeal to the County Education Board the decision of the Principal Secretary. The Appeal Tribunal established under Section 93

of the Basic Education Act hears appeals from the County Education Board which Board is established under Section 17 of the Act.

9. On the whole, the applicant's claim that the decision made by the Principal Secretary affects its rights and rights of Children under Article 47 of the Constitution and Sections 4 and 5 of the Fair Administrative Action Act, 2015 on the right to be given a hearing and reasons for the decision has been violated is a matter which is arguable, prima facie.

10. This court finds that on the material placed before the court, and without delving into the merits of the intended motion, the application has a prima facie arguable case for ventilation and in-depth investigation.

11. Accordingly, I grant the applicant leave to apply as stipulated in prayers Nos. 2(a) and (b) of the chamber summons dated 30<sup>th</sup> November 2017 which are separate and independent Judicial Review prayers for purposes of the substantive motion. The main motion to be filed and served within 21 days from the date hereof.

12. On the prayer for stay of the decision of the Permanent Secretary, I note that the impugned decision affects not only owners of the school but parents and the 145 students who are displaced and may not get an alternative school come January 2018.

13. Further, there is a serious indictment on the part of the Principal Secretary as to whether he accorded the applicant an opportunity to be heard before deregistering the applicant school and whether he had the legal mandate to deregister the applicant school.

14. As the right to Education is a right guaranteed by Article 43 of the Constitution and as 145 Children are allegedly affected by the impugned decision, whereas this court does not condone any form of examination malpractices or academic dishonesty in our educational institutions, it would be a miscarriage of justice to cause children who are settled in school and who have committed no sin to be displaced for the alleged mistakes of the school administration.

15. It is for that reason that I am inclined to order that the leave herein granted shall operate as stay of the decision of the Permanent Secretary Ministry of Education taken on 13<sup>th</sup> November 2017 closing and deregistering the applicant school until these Judicial Review proceedings are heard and determined interpartes on the substantive motion. This order of stay is issued pursuant to Order 53 Rule (4) proviso, of the Civil Procedure Rules.

16. The matter shall be mentioned on 7<sup>th</sup> February 2018 by which time the applicant should have filed and served the main motion and the respondents and interested parties as enjoined hereto on 1<sup>st</sup> December 2017 filed their responses to the substantive Notice of Motion.

17. Costs shall be in the cause.

**Dated, signed and delivered in open court at Nairobi this 14th day of December, 2017.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr Munyua for the applicant and interested parties

Mr Odhiambo for the Respondents

Court Assistant: George