



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
PETITION CASE NO. 2 OF 2015

CECILIA .W. ARUDA.....1ST PETITIONER
JACKLINE .G. OGENDI.....2ND PETITIONER
CALLEN KEMUNTO NYANGERI.....3RD PETITIONER
UGUSTI MORANGA NYACHOTI.....4TH PETITIONER

-VERSUS-

COUNTY DIRECTOR OF EDUCATION NYAMIRA COUNT.....1ST RESPONDENT
HON. ATTORNEY GENERAL.....2ND RESPONDENT

J U D G M E N T

This petition dated 21/10/2015 was filed on 21/10/2015. The petitioners are four in number. They bring this petition against the County Director of Education Nyamira County together with the Hon. Attorney – General, as his legal representative.

It is important to note that, Hon. Attorney –general despite his Kisii office being served on 1st December, 2015, neither entered appearance or filed a replying affidavit. The Applicant’s affidavit of service was filed on 14th December, 2015 and is dated 14th December 2015.

The interim order of temporary injunction was issued against the 1st Respondent in terms of the application dated 21st October 2015 by way of notice of motion, restraining the 1st Respondent from appointing the members of the board of management of Nyariacho Mixed Secondary School especially the six nominated on 22nd July 2015 to represent the parents and/or community members of the said school pending interpartes hearing of the said application.

The Hon. Attorney-General did not make appearance or file his response.

This court however is now seized with authority to make its judgment on the main petition by the petitioners herein.

The petition seeks the following reliefs:

- a. **A declaration that the meeting held on 22/07/2015 at Nyariacho Mixed Secondary School to nominate the members of the board of management to the said school especially and more particularly the nomination of six (6) members to represent the parents and/or community was illegal improper and/or unconstitutional and the same be declared null and void.**
- b. **A permanent injunction do issue against both Respondents from appointing the six (6) members who were nominated on 22/07/2015 to represent the parents or community of Nyariacho Mixed Secondary School**
- c. **Costs of this suit.**

The petition is brought under Articles **19, 20, 21, 23 (3) 40 and 165 of the constitution**. It is also invokes basic **Act, No.14 of 2013 S. 56** thereof and 3rd schedule.

In their supporting affidavit, Cecilia Aruda avers as follows: paragraph 6, thereof:-

“That I know of my own knowledge that the 1st defendant however failed and/or neglected to give notice to the parents and/or community members of the school who are some of the major stake holder of the school and held the said meeting without representation of the said parent or community members of the said school and proceeded to make the nominations and annexed herewith is a list of the attendees extracted from the visitors book of the school while clearly shows that the parent and community members were unrepresented and or were totally absent. And the same marked as C.W.A.1”

And paragraph 7 says:

“That the failure and/or neglect by the County Director of Education by himself and/or his agents and/or servants to notify and/or give space and opportunity for the parents and/or community of the school to be represented is an infringement and/or violation of the legal and the constitutional rights in the participation of the nomination and/or appointment of the members of the board of management to the Nyariacho Mixed Secondary School more particularly and especially the slot of the six (6) members to the said board who are to represent the parents and/or the community in the said board is a cross violation and/or infringement of their right to do so.

And paragraph 8 says:

“That therefore also the exercise of the said nomination of the board of management of Nyariacho Mixed Secondary School carried out on 22nd July 2015 was marred with an irregularity or illegality in the manner the said meeting has its composition failed to meet the minimum threshold set out by the law.”

And finally, paragraph 9 says:

“That as a result of the foresaid infringement and/or violation of the rights of the parents and/or community, and the said meeting having or marred with the illegalities and irregularities of the aforesaid rights of the petitioner’s herein and the parents of the school in general the nominees to the board of management in Nyariacho Mixed Secondary School for the Six (6) slots earmarked for the parents and/or community were not legally and properly nominated and the same should therefore declared illegal improper and unconstitutional and hence the filing of this petition..”

Article 10 of the constitution says (1) the national values and principles of governance in this Article bind all State organs, state officers, and public officers and all persons whenever any of them

- a. **Applies or interprets this constitution**
- b. **Enacts, applies or interprets any law, or**

c. **Makes or implements public policy decisions.**

2. The national values and principles of governance include, inter alia,

a.**democracy and participation of the people**

b.**inclusiveness, equality**

c.**good governance, integrity, transparency**

The 1st Defendant or 1st Respondent is a public officer bound by the tenets of **article 10** of this constitution, in interpreting the Basic Education Act, he was in breach of the constitution in excluding public participation by failure to invite the parents and the school community as Stakeholders in board management of Nyariacho Mixed Secondary School. Personal nominees, by definition, excludes public participation and inclusiveness and democracy: **CWA-1** indicates the nominees were handpicked on 22/07/2015 as such they don't meet the threshold of the constitutional requirements on governance values and principles as stipulated in **Article 10** of the Kenyan Constitution.

I wish to allude to *Petition No. 1 of 2014, Thuku Kirori & 4 others –vs- County Government of Murang'a [2014] e KLR.*

In that case the petitioners' case against the respondents is that the latter were in the process of recruiting personnel to provide veterinary services within Murang'a County on behalf of the County Government. In pursuit of this court, the County Government is alleged to have sponsored several people to undertake training on animal health at a Government institute at Kabete, **[without public participation]**.

The court held “.....**public participation as contemplated under articles 10 and 174 of the constitution is that the participation of the public in that concern there should not be narrowly interpreted to mean engagement of a section of people purporting to be professionals who are out to rip maximum profits and services for which they are neither registered nor qualified to offer, the ultimate goal for public engagement as envisaged in the constitution is for the larger public benefit.**”

Accordingly this court will grant the following orders as prayed for:

- a. **A declaration that the meeting held on the 22nd July 2015 at Nyariacho Mixed Secondary School to nominate the members of the board management to the said school especially and more particularly the nomination of the Six (6) members to represent the parents and/or community of the school was illegal, improper and/or unconstitutional and the same be declared null and void.**
- b. **A permanent injunction do issue against respondents herein from appointing the Six (6) members who were nominated on 22nd July 2015 to represent the parents or community of Nyariacho Secondary School.**
- c. **Costs of this suit.**

Dated this 22nd day February, 2016.

It is so ordered.

C.B. NAGILLAH

JUDGE

In the presence of:-

Magara holding brief for Soire for the Petitioners

Unrepresented for the Hon. Attorney –General

