



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC APPLICATION NO. 11 OF 2014

IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE PROCEEDINGS IN THE
NATURE OF JUDICIAL REVIEW

AND

IN THE MATTER OF THE DIRECTION FOR SUSPENSION OF THE OPERATIONS OF BRIDGE
INTERNATIONAL ACADEMIES' ILLASIT LOITOKTOK BY THE DISTRICT EDUCATION
OFFICER, LOITOKTOK DISTRICT

AND

IN THE MATTER OF THE LETTER BY THE DISTRICT EDUCATION OFFICER DATED 27TH
JANUARY, 2014

BETWEEN

BRIDGE INTERNATIONAL ACADEMIES LTD..... APPLICANT

VERSUS

THE DISTRICT EDUCATION OFFICER-LOITOKTOKRESPONDENT

RULING

1. This is an application that was brought pursuant to the provisions of **Order 53 rule 1(1) (2) (3) and (4)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** for orders that:-
 - i. The Applicant be granted leave to seek by way of Judicial Review for an order of *certiorari* to remove to this court for purposes of being quashed and forthwith quash the respondents letter dated **27th January, 2014**.
 - ii. An order of *prohibition* do issue prohibiting the respondent or any person acting under him from demanding, directing, insisting or ordering the applicant to comply with the respondent's letter dated **27th January, 2014**.
 - iii. An order of *prohibition* do issue to prohibit the respondent or any person acting on his behalf from closing the applicants Academy in **Illasit, Loitoktok** and/or arresting, harassing children, staff and teachers of the applicants Academy in **Illasit Loitoktok**.
 - iv. Leave so granted to operate as a stay of implementation of the letter dated **27th January, 2014** and the District Education Officer's direction suspending operations at the school on the **29th January, 2014** until hearing and determination of the substantive application or further orders of the court.

2. Prayers (i) (ii) and (iii) of the application were granted by **Jaden, J.** Pursuant to her order, prayer (iv) was to be canvassed *interparte*, hence this application. The action taken by the applicant to seek relief herein was prompted by a letter dated **27th May, 2014** from the **Ministry of Education, Science and Technology** addressed to the **Director, Bridge International Academies.** By virtue of the said letter, which was served as a notice, the ministry through the respondent suspended the operations of **Bridge International Academy (Loitoktok Branch).** According to the letter, the school had not complied with the basic education standards required. The suspension would be lifted following compliance.
3. I have considered rival submissions filed by both parties. I however, wish to note that at this stage, I will not delve into the merit and demerit of the letter which will be tantamount to determining the substantive application that is yet, to be filed. The reason being, that the judicial review application was actuated by the letter in issue. The only issue to be determined is whether leave granted should operate as stay of the letter in question.
4. In the case of **James Mburu Gitau t/a Jambo Merchants versus Sub-county Public Health Office Kiambu County [2013] eKLR Odunga, J** expressing principles that would guide a court in granting an order for leave to operate as stay stated concisely thus:-

“Some of them are that the decision sought to be quashed has been implemented leave ought not to operate as stay; that in considering whether the said leave ought to operate as stay of proceedings the court has to be careful in what it states lest it touches on the merits of the main application for Judicial Review, that the objective of granting stay is to ensure that the ex parte applicants application is not rendered nugatory by the act of respondents during the pendency of the application, that the purpose of stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made and it is not limited to judicial or quasi-Judicial proceedings as it encompasses the administrative decision making process being undertaken by public bodies such as a local authority or ministers”

He further stated that –

“It is only where the inherent outcome of the decision challenged is likely to render the success of the judicial review nugatory or an academic exercise that the court would stay the said proceedings. The strength or otherwise of the applicants case notwithstanding, it must be shown that the probability of a determination being made in the challenged proceedings are high and cannot be said to have been achieved on mere conjuncture and speculation. It follows that the stage at which the said proceedings have reached may be crucial in determining whether or not to grant the stay sought though that is not the determinant factor.”

5. The school in issue commenced its operation on the **7th January, 2014**, having not complied with requirements of the **Basic Education Act.** The respondent acted promptly on learning of the ongoing un-procedural operation by suspending the operations on the **27th January, 2014.** It is unlikely that the school was in full operation then. It has been alleged that the school has approximately 400 children. So far the school has not complied with the law, failure to do so will mean the school not being allowed to operate at all. This would mean the children being exposed to learning environment that is not compliant to standards acceptable by the law.
6. It would be in the best interest of the children for the suspension of operations to remain in place pending determination of the application. That action would also make the applicants to make haste to file the substantive application. I therefore find that failure to grant stay will not render the substantive application nugatory.
7. No good reason having been given to warrant granting of stay to operate in the circumstances; it would not be in the interest of justice to grant leave to operate as stay of order of suspension. I therefore decline to grant the order sought.

8. Costs shall be in the main application.

DATED, SIGNED and DELIVERED At MACHAKOS this 3RD day of APRIL, 2014

L.N. MUTENDE

JUDGE