



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CONSTITUTIONAL PETITION NO. 21 OF 2019**

**DOMNICK OBEL OBONGO.....1<sup>ST</sup> PETITIONER/APPLICANT**

**THE BOARD OF MANAGEMENT**

**RALIEW SECONDARY SCHOOL.....2<sup>ND</sup> PETITIONER/APPLICANT**

**VERSUS**

**COUNTY DIRECTOR OF EDUCATION, SIAYA COUNTY....1<sup>ST</sup> RESPONDENT**

**COUNTY EDUCATION BOARD, SIAYA COUNTY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Respondents were served with the application as directed by the court on 3/6/2019 and have appeared and seek the leave of court to file and secure their response within 7 days of today. They also seek for directions on how the application should be disposed of.

2. The Applicant/Petitioner's Counsel has no issue with the time being accorded to the Respondent to file and serve a response but seeks for interim/conservatory orders in terms of prayers Nos 2 and 3 of the Notice of Motion. According to the Respondent's counsel, the impugned decision made on 21/5/2019 has already been implemented as a Caretaker Committee has been established to manage the school (Raliew Secondary School), in the place of the School's Board of Management. In her view, the conservatory orders being sought have been overtaken by events especially Prayer 3 which seeks for an injunction to prohibit the Respondents from purporting to conduct the business of the subject school.

3. I have considered the request by the Respondent's counsel and the request by the Petitioner's counsel and the rejoinder to the latter. The right to be heard is a constitutional imperative. As such, this court must accord the Respondent an opportunity to be heard. The Respondent is hereby granted 3 days of today to file and serve a response to the application dated 3/6/2019.

4. On whether I should grant any conservatory orders at this stage as prayed for in prayer 2 and 3 of the Notice of Motion, I note that the Caretaker Committee was put in place on 21/5/2019 before initiation of this petition and therefore making conservatory orders amounts to reversing the decision of the Respondents which has been implemented without according them a hearing. Accordingly, I decline to issue any conservatory orders.

5. I further direct that the application dated 3/6/2019 shall be canvassed by way of written submissions. The Petitioner, upon being served with the response by the Respondent shall have corresponding leave to file and serve a further affidavit if need be, within 5 days of service, together with written submissions not exceeding 6 pages font 12 double spaced. The Respondent shall thereafter have 5 days from date of service within which to file and serve a supplementary affidavit if need be together with written submissions limited to 5 pages font 12 double spacing. Highlighting shall be on 24/6/2019.

6. Orders accordingly.

**Dated, signed and Delivered at Siaya, this 10<sup>th</sup> Day of June 2019.**

**R.E. ABURILI**

**JUDGE**

**Ruling delivered in open court in the presence of:**

Mr. Arika Advocate for the Applicants/Petitioners

Ms. Langat Counsel for the Respondents

CA: Brenda and Modesatr