



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL REVIEW NO. 9 OF 2014

IN THE MATTER OF:-

An Application to Apply for Orders of Judicial Review in the Nature of Certiorari

-And-

Sections 8 (2) and 9 of the Law Reform Act

-And-

The District Education Board, Meru South District

-And-

The Basic Education Act, 2013

--And-

Neema Junior Academy

BETWEEN

REPUBLIC.....APPLICANT

Versus

**THE DISTRICT EDUCATION OFFICER MERU SOUTH DISTRICT.1ST
RESPONDENT**

**THE DISTRICT EDUCATION BOARD MERU SOUTH DISTRICT...2ND
RESPONDENT**

**THE HON ATTORNEY GENERAL.....3RD
RESPONDENT**

-AND-

**JAMLICK MUGAMBI NDII.....EX-PARTE
APPLICANT**

JUDGMENT

[1] Before me is a Notice of Motion Application brought pursuant to Order 53 Rule 1 (1), (2) and (4) of the Civil Procedure Rules, 2010 in which the Applicant seeks the following orders:

- 1. THAT an order of Certiorari do issue to remove to the court the proceedings and decision of the District Education Board Meru South District of 09/12/2013 for purposes of quashing the same.**
- 2. THAT costs of this application be borne by the Respondents.**
- 3. That the court do make any other or such better orders which it may deem fit to grant in the circumstances.**

The major quarrel

[2] The major quarrel in the application is inter alia that the District Education Board Meru South acted *ultra vires* its powers in arriving at the decision to close down Neema Junior Academy, for the 2nd Respondent contravened the rules of natural justice. It did not accord the Ex-parte Applicant an opportunity to be heard and accordingly, the decision arising from such proceedings is defective in substance.

Brief facts

[3] The Applicant stated that he was the proprietor of Neema Junior Academy. The said school had earlier applied for registration in accordance with the relevant provisions of the law having satisfied all requirements. But, on 10th January 2014 he was served with a notice from the District Education Officer, Meru South District, notifying him of the decision of the 2nd Respondent to close down the school. Without affording the school an opportunity to state its case, the decision to close down it down was made. On this basis, the Applicant contended that the 2nd Respondent acted beyond its powers in arriving at its decision and that the decision was a nullity.

1st Respondent opposed motion

[4] The application was opposed via a Replying Affidavit filed by the 1st Respondent on 16th April 2015. It was deposed inter alia that Neema Academy did not follow the laid down procedure for registration of a school in that the school did not inter alia seek authority from the District Education Board to start the school. The deponent further contended that Neema Academy lacked a site plan, land registration documents, a business name certificate, standards assessment report, physical infrastructure as required, and extra teacher to handle early childhood and development education class, staff toilets, permanent classrooms of the recommended size, a kitchen, fence and a gate, recommended land size for primary schools in rural low density zones, policy administrative documents and also lacked vision and motto statements. Consequently she contended that the 2nd Respondent on 9th December 2013, held a District Education Board meeting where they deliberated that Neema Academy be closed until it fulfils all the requirements for registration of a private primary school as required by the Ministry of Education.

Submissions by the Ex parte Applicant

[5] The Applicant submitted in support of its position and stressed that the procedure adopted by the 2nd Respondent did not allow the Ex parte Applicant adequate time to reply to the allegations levelled against the school. Accordingly, this is a matter of process which is a perfect candidate for Judicial Review to intervene and scrutinize the procedure leading to the decision to close the school. As the 2nd Respondent did not afford the Applicant a hearing, the board was, therefore, illegally constituted and acted *ultra vires* its mandate. A further submission was made that the 2nd Respondent exceeded its powers when it

purported to make a decision under the Education Act which had been repealed by the Basic Education Act 2013. The new Act did away with District Education Boards and established County Education Boards. Therefore, the board acted illegally in contravention of clear provisions of statute.

[6] The Ex parte Applicant also submitted on his *locus standi*. He argued that he was the proprietor of the school and therefore competent to file these proceedings. Consequently the Applicant urged the court to find that he had established cogent grounds for this court to call for and quash the decision of the 2nd Respondent of 9th December 2013.

[7] The Respondents did not file submissions despite having been given ample to do so prompting the court to rule on 23rd February 2017, that it would decide the matter on the material before court.

DETERMINATION

[8] I have carefully considered this application; the Respondents replying affidavit and the authorities relied upon by the Applicant. From the material presented to this court, on 9th December 2013, the Respondent ordered the Applicant's school to be closed on the grounds inter alia that the school fell short of all the basic but necessary requirements for the running a school. Although the scope of judicial review has been enlarged by the Constitution, in this case, however, the Ex parte Applicant has clearly delineated the scope of his application; challenge to the procedure adopted by the 2nd Respondent in arriving at the decision to close the school herein. He argued that the Respondents had not adequately responded to the issues raised by the Applicant on the propriety of the procedure adopted by the 2nd Respondent prior to arriving at the challenged decision. I will, therefore, as per the Supreme Court Practice 1997 Vol. 53/1 – 1416 be;

“...concerned with reviewing not the merits of the decision in respect of which the application for Judicial Review is made, but the decision making process itself.”

[9] Applying the test, this court is particularly concerned with the allegation that the Ex parte Applicant was condemned unheard. In any quasi-judicial or judicial or administrative proceedings in which the rights of a person will be affected, such person has the right to be heard before a determination is made. From the record, there is nothing to suggest that the school herein was afforded an opportunity to be heard before the order for its closure was made by the Respondents. In fact, the 2nd Respondent did not deny the allegation that the school was not heard before the impugned decision was made. It seemed to be concerned more with the merits of its decision to close the school. See the 2nd Respondent's replying Affidavit filed in court on 16th April 2015. Those are quite rational arguments but for another use and forum. For now, needles to state that the tag Rules of Natural Justice often falls in our lips, but sometimes we attribute less to it than it really portend. Let it be known that right to be heard is a matter of natural justice and now a cardinal principle of justice under the Constitution. It is the linchpin of justice and when it is ignored the concerned proceeding are irreparably vitiated. As such, the decision made by the 2nd Respondent on 9th December 2013 to close the Applicant's school is a perfect candidate for quashing. Accordingly, an order of Certiorari is hereby issued to remove to the court the proceedings and decision of the 2nd Respondent of 9th December 2013 to close the Applicant's school for purposes of quashing. However, registration of the school herein should be in accordance with the law. This order should not, therefore, be taken to be an order for the registration of the school herein. And as these proceedings are in the nature of public litigation, I hereby order each party to bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 15th day of May 2017

F. GIKONYO

JUDGE

In the presence of:

M/s. Nyagah advocate for Ex parte applicant

Mr.Kiongo advocate for respondent

F. GIKONYO

JUDGE