



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. E001 OF 2020**

**IN THE MATTER OF: ARTICLES 1, 2(1) & (4), 3(1), 10, 19, 20, 21, 22, 23, 27, 35, 47, 73, 75, 159, 165, 232 AND 259 OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF THE BASIC EDUCATION ACT NO. 14 OF 2013**

**AND**

**IN THE MATTER OF: UNFAIR AND CORRUPT PRACTICES AT MIGORI TEACHERS TRAINING COLLEGE**

**AND**

**IN THE MATTER OF: SECTIONS 53, 54, 55, 56, 57, 59, 61, 63 AND THE FOURTH SCHEDULE OF THE BASIC EDUCATION  
ACT NO. 14 OF 2013**

**AND**

**IN THE MATTER OF: THE BASIC EDUCATION REGULATIONS, 2015**

**AND**

**IN THE MATTER OF: ILLEGAL CONSTITUTION OF THE BOARD OF MANAGEMENT OF THE MIGORI TEACHERS  
TRAINING COLLEGE**

**BETWEEN**

**KENNEDY OKINYI ODONGO.....1<sup>st</sup> PETITIONER**

**DANIEL OGOLLA ORIMBA.....2<sup>nd</sup> PETITIONER**

**VERSUS**

**BOARD OF MANAGEMENT, MIGORI**

**TEACHERS TRAINING COLLEGE.....1<sup>st</sup> RESPONDENT**

**CABINET SECRETARY,**

**MINISTRY OF EDUCATION.....2<sup>nd</sup> RESPONDENT**

**MIGORI COUNTY EDUCATION**

**BOARD.....3<sup>rd</sup> RESPONDENT**

**MIGORI COUNTY DIRECTOR OF**

**EDUCATION.....4<sup>th</sup> RESPONDENT**

**AND**

**HEZRON SAGGIA.....1<sup>st</sup> INTERESTED PARTY**

**CHRISTOPHER CHACHA OGWE.....2<sup>nd</sup> INTERESTED PARTY**

**DOLLY RAJUAI.....3<sup>rd</sup> INTERESTED PARTY**

**JAMES ROBI WAMBURA .....4<sup>th</sup> INTERESTED PARTY**

**JUDGMENT**

1. Hezron Saggia (1<sup>st</sup> Interested Party) was appointed the Chairman of the Board of Management of Migori Teachers Training College (the Board of Management) from around 2008 until he was replaced by Dolly Rajuai (3<sup>rd</sup> Interested Party) sometime in 2009.
2. Christopher Chacha Ogwe (2<sup>nd</sup> Interested Party) and James Robi Wambura (4<sup>th</sup> Interested Party) also serve as members of the Board of Management having been appointed around 2009.
3. On 7 October 2020, Kennedy Okinyi Odongo and Daniel Ogolla Orimba (the Petitioners) moved the Court contending that the Interested Parties were holding office illegally and contrary to the provisions of the Basic Education Act.
4. The Petitioners sought the following reliefs
  - (i) A declaration that the Interested Parties are not fit to hold office as members of the Board of Management of the Migori Teachers Training College as they do not possess the requisite qualifications.
  - (ii) An order of permanent injunction restraining and/or barring payment of salaries and/or allowances to the Interested Parties on account of being members of the Board of Management of the Migori Teachers Training College.
  - (iii) A declaration that the 1<sup>st</sup> Respondent is not properly constituted by virtue of having the Interested Parties as members and therefore, an order that the 1<sup>st</sup> Respondent is forthwith disbanded.
  - (iv) An order of prohibition do issue against the 1<sup>st</sup> Respondent to ensure that no further or future recruitment shall be concluded without vetting to rid the statutory body of members who have served full terms and ensure that the rule of law is respected.
  - (v) A declaration that the actions of the Respondents of engaging the Interested Parties as members of the Board of Management of the Migori Teachers Training College for a third term have contravened Articles 10, 27 and 73 of the Constitution of Kenya and hence null and void.
  - (vi) A declaration that the Respondents have breached the Constitution and have abdicated their duty to respect and uphold the Constitution of Kenya in their administrative duties.
  - (vii) An order of mandamus compelling all the Interested Parties to reimburse all the salaries and allowances paid to them after the expiry of their term in office as members of the Board of Management of the Migori Teachers Training College to wit salaries and allowances from the year 2015 to date.
  - (viii) Compensation in redress to the clear violation of Constitutional and statutory provisions and Petitioners rights under Article 27 of the Constitution of Kenya, 2010.
  - (ix) The Petitioners to be paid costs of this Petition.
5. Filed with the Petition was a Motion under a certificate of urgency seeking interim reliefs.
6. When the Motion was placed before the Court on the same day, the Court directed that it be served and further that the parties file and exchange affidavits and submissions within set timelines.

7. The Board of Management caused a replying affidavit sworn by its Secretary to be filed on its behalf and that of the Respondents and Interested Parties on 30 October 2020.
8. The 2<sup>nd</sup> to 4<sup>th</sup> Respondents filed a replying affidavit sworn by the County Director of Education on 9 November 2020.
9. On 11 November 2020, the Petitioners proposed that the Motion be abandoned in favour of accelerating the hearing and determination of the Petition.
10. The Court, therefore, directed the parties to file and exchange affidavits and submissions.
11. The Petitioners submissions should have been filed and served by 11 December 2020 but were only filed on 19 January 2021. The reason given by the Petitioners for the late filing was that the Respondents had failed to file and/or serve their responses to the Petition within the agreed timelines.
12. The Petitioners also filed a supplementary affidavit on 19 January 2021. Considering the nature of directions issued on 11 November 2020, the fact that leave was not sought and that the Respondents would not have an opportunity to address the issues raised in the supplementary affidavit, the Court expunges the affidavit from the record.
13. The Respondents and Interested Parties submissions were not on record by yesterday.
14. From the record, the Court understands the primary issue for examination to be whether the Fourth Schedule to the Basic Education Act and/or whether the Basic Education Regulations govern the term or tenure of office of a member of a Board of Management of the institutions set out in section 55 of the Act.
15. The Basic Education Act was enacted in 2013, assented to on 14 January 2013 and commenced on 25 January 2013 while the Basic Education Regulations were gazetted on 8 April 2015.
16. The Act establishes the National Education Board, County Education Boards and Boards of Management of public schools.
17. The Boards of Management are established pursuant to section 55 of the Act.
18. The Act of 2013 has what is referred to as *Conduct of Business and Affairs of the Board of Management* as the Fourth Schedule. The Schedule was enacted pursuant to section 56(8) of the Act.
19. Under Regulation 3 of the *Conduct of Business and Affairs of the Board of Management*, the tenure of a Board member is set at 3-years from date of appointment with eligibility for a further term of 3-years.
20. Of importance Regulation 3(3) of the *Conduct of Business and Affairs of the Board of Management* which provides that  

Notwithstanding the foregoing, a person who has served as a member of a Board of Management for one term at the date of the commencement of this Act may be re-appointed for a second and final term of three years.
21. The Court has also looked at the Basic Education Regulations, 2015. The material provisions, among other things, set out the qualifications for a Board of Management member, the composition of the Board and how one becomes a member of the Board. It also reserves the power to the Cabinet Secretary to dissolve the Board.
22. The Regulations, do not purport and have not set out the tenure of a Board member.
23. The Regulations do not purport to revoke or supersede the *Conduct of Business and Affairs of the Board of Management* as outlined in the Fourth Schedule to the Act.
24. Consequently, the Court sees no inconsistency between the Regulations and *Conduct of Business and Affairs of the Board of Management*.
25. In the view of the Court, when it comes to the term of a member of a Board of Management recourse must be taken to the *Conduct of Business and Affairs of the Board of Management* and not the Basic Education Regulations, 2015.
26. The intention of the legislature as to the term or tenure of a Board member as expressed in the *Conduct of Business and Affairs of the Board of Management* is clear.
27. The intention of the legislature was that Board members who were in place as of the commencement of the Act could be re-appointed for a further term of 3-years upon the expiry of their terms.
28. Applying that interpretation to the case at hand, if any of the Interested Parties were serving as Board members of Migori Teachers Training College as of 25 January 2013, they could only be eligible for one further term of 3-years.
29. The Petitioners asserted that the 1<sup>st</sup> Interested Party was initially appointed as a Board member in 2008 and the assertion was not denied.

30. As regards the 2<sup>nd</sup> to 4<sup>th</sup> Interested Parties, it was deposed that they had served as Board members from 2009. Again, the assertions were not denied.

31. The Respondents and Interested Parties knew the exact dates of the appointment of the Interested Parties but opted not to disclose the same.

32. Even without the disclosure of the exact dates the Interested Parties were appointed to the Board of Management of Migori Teachers Training College, and assuming that the tenures started on 25 January 2013 when the Basic Education Act commenced, they could only valid serve for six years, that is up to around 25 January 2019 and not up to 8 April 2022 as contended by the Respondents.

33. The Court has also considered the contentions by the Respondents that under the Basic Education Regulations, 2015 the term of the Interested Parties started on 8 April 2015 when the Regulations commenced. The assertion cannot be correct as the Basic Education Regulations, 2015 do not provide for the term and tenure of board members but for the qualifications to serve as a Board member.

34. The Court finds that the Interested Parties are illegally in the office having served for more than the prescribed term(s).

### **Conclusion and Orders**

35. In fashioning appropriate relief, the Court has taken into consideration that the Petitioners did not file submissions in time, the Petition did not raise any Constitutional questions but turned on statutory interpretation and that the Interested Parties did not appoint themselves as Board members.

36. From the foregoing the Court orders that

(a) A declaration be and is hereby issued that the Interested Parties are not eligible to hold office as members of the Board of Management of the Migori Teachers Training College having served more than 2 terms of 6 years cumulative.

(b) A declaration be and is hereby issued that the 1<sup>st</sup> Respondent is not properly constituted by virtue of having the Interested Parties as members.

(c) An order is hereby issued directing the Respondents as may be applicable to cause the reconstitution of the Board of Management of Migori Teachers Training College forthwith.

37. No order on costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 3<sup>rd</sup> day of February 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Petitioners Nanda, Oorange & Co. Advocates

For 1<sup>st</sup> Respondent Abisai & Co. Advocates

For 2<sup>nd</sup> to 4<sup>th</sup> Respondents Honourable the Attorney General

For Interested Parties Abisai & Co. Advocates

Court Assistant Chrispo Aura