



Case Number:	Judicial Review Case 182 of 2014
Date Delivered:	23 Dec 2015
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	Weldon Kipyegon Korir
Citation:	Republic v Principal Secretary, Ministry of Education Science and Technology Ex parte Presbyterian Foundation [2015] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Judicial Review
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	application dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 182 OF 2014**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE PRINCIPAL SECRETARY, MINISTRY OF**

**EDUCATION SCIENCE AND TECHNOLOGY.....1<sup>ST</sup> RESPONDENT**

**EX-PARTE**

**PRESBYTERIAN FOUNDATION**

**JUDGEMENT**

1. Through the notice of motion application dated 20<sup>th</sup> May, 2014, the ex-parte Applicant Presbyterian Foundation prays for an order of mandamus to compel the Respondent, the Principal Secretary, Ministry of Education, Science and Technology to register the Applicant's school known as P.C.E.A. Kinoo Girls High School which is erected on L.R. No. Dagoretti/Kinoo/539.

2. The Applicant's case is that it is the owner of land parcel number Dagoretti/Kinoo/539 on which it has erected a girls school known as Kinoo Girls High School. The school was constructed in 2006. In 2010, the Respondent granted provisional registration to the school to enable it register its students for the Kenya Certificate of Secondary Education.

3. It is the Applicant's case that sometimes in 2013 the Respondent, without notice, withdrew the school's provisional registration citing a dispute over the land on which the school is situated. The Applicant avers that acting on the request of the Respondent it submitted documents showing that it is the registered owner of the land on which the school is erected.

4. Upon submission of the ownership documents, the Respondent through a letter dated 24<sup>th</sup> February, 2014 confirmed that the school had met the criteria for registration and directed the District Education Officer to register the school immediately. In particular, the Respondent confirmed that the Applicant was the registered owner of the land on which the school is situated.

5. According to the Applicant, it had pursued the registration of the school with the Respondent without success. Further, that it has been forced to register its form four students as private candidates which is prejudicial to the candidates.

6. The Applicant hinges its prayer for mandamus on the ground that the Respondent has failed its public obligation to the Applicant without any justifiable cause and/or excuse.

7. The Principal Secretary, Dr. Richard Belio Kipsang opposed the application by way of a replying affidavit and a supplementary affidavit sworn on 27<sup>th</sup> March, 2015 and 29<sup>th</sup> October, 2015 respectively. His case is that he rejected the application to register the Applicant's school as there is a dispute over the land on which the school is erected. It is his position that the reasons for his decision were communicated to the Applicant through a letter dated 5<sup>th</sup> March, 2014. As such the Respondent asserts that there is no basis for granting the Applicant an order of mandamus.

8. The second ground on which the Respondent opposes the application is that the Applicant has not exhausted the appeals mechanism provided by Section 85 of the Basic Education Act, 2013.

9. The Applicant's case is that the Respondent had denied it registration without reason. The Respondent's reply is that there is a dispute over the ownership on which the school is established.

10. The only question to be answered is whether the Respondent's actions are legal.

11. I will start by outlining the undisputed facts. The Applicant exhibited a title deed issued on 13<sup>th</sup> June, 2013 showing that the Presbyterian Foundation as Trustees of Kinoo Girls High School is the registered owner of land parcel number Dagoretti/Kinoo/539.

12. The Respondent countered the Applicant's case by producing a title deed issued on 29<sup>th</sup> April, 2003 showing that the same land parcel (L.R. No. Dagoretti/Kinoo/539) is registered in the name of Presbyterian Foundation as Trustee Mama Ngina Primary School.

13. It is the Respondent's averment that the title deed exhibited by the Applicant was cancelled on 16<sup>th</sup> October, 2013 on suspicion that it had been obtained fraudulently. Further, that a new title was issued in the name of Presbyterian Foundation (as Trustees of Mama Ngina Primary School).

14. The Applicant's response to the Respondent's exhibits was through the further affidavit of Samwel Waweru Njoroge. He deposed that the Applicant is not aware that L.R. No. Dagoretti/Kinoo 539 is registered in the name of Presbyterian Foundation as Trustees of Mama Ngina Primary School. He also averred that the title for Mama Ngina Primary School is Dagoretti/Kinoo 537.

15. A perusal of the documents exhibited by the parties in this matter shows that L.R. No. 539 is registered in the name of Presbyterian Foundation (as trustees of Mama Ngina Primary School). The Applicant insists that the title is registered in the name of Presbyterian Foundation as trustees of Kinoo Girls High School.

16. The Applicant (through paragraph 9 of the further affidavit of Samwel Waweru Njoroge) and the Respondent (through paragraph 7 of the supplementary affidavit of Dr. Richard Belio Kipsang) agree that this court, as moved, does not have jurisdiction to determine a land dispute. The documents placed before the court clearly shows that there could be a problem with the title of the land on which Kinoo Girls High School is registered.

17. However, these proceedings are targeted at the Respondent's failure to register Kinoo Girls High School. Upon perusal of the Basic Education Act, 2013 it emerges that the application before this court and the response thereto are misdirected.

18. The parties did not refer to the relevant law in existence prior to the enactment of the Basic Education Act, 2013. It is however clear that Section 96 of the Basic Education Act repealed the Education Act and the Board of Adult Education Act.

19. It is noted that the applicant was given provisional registration under the previous legal regime. According to the verifying affidavit sworn by Samwel Waweru Njoroge in support of the application for leave to commence these proceedings, the application for full registration was made on 15<sup>th</sup> July, 2013.

20. The impression given by the parties is that the application for full registration was considered under the Basic Education Act, 2013. I will therefore proceed on that presumption.

21. Part X (sections 76-85) of the Basic Education Act, 2013 provides for Licensing, Registration and Accreditation Procedures in Basic Education and Training. Section 83 provides that an application for establishment of a basic education institution shall contain:

- “(a) Name, physical, postal and electronic addresses of the proposed institution;**
- b. In the case of a mobile school, the name of a general area and the name of the family in which the school is situated;**
- c. The governance and management structures of the institution, membership of the proposed institution, academic qualifications and experience of the promoters and managers of the intended institution;**
- d. The aims and objects for which the institution is to be established and the programmes of instructions and the courses of study that will be offered;**
- e. The number, qualifications and competence of the teachers and non teaching staff;**
- f. Available suitable infrastructure, and appropriate equipment;**
- g. A statement of financial ability; and**
- h. Such other matters as may be prescribed in the regulations made under this Act.”**

22. Section 76 (2) provides that:

**“A person or organization intending to establish an institution offering basic education shall make an application in the prescribed manner to the relevant County Education Board.”**

23. Looking at the documents exhibited by the parties in this case, it appears that they have proceeded as if the Respondent is mandated to register institutions offering basic education. That presumption is a wrong one as the Basic Education Act, 2013 clearly mandates the relevant County Education Board to register a basic education institution. Any person or organization aggrieved by the decision of the County Education Board can, as provided by Section 77 (2) of the Basic Education Act, 2013, appeal to the Education Appeals Tribunal established under Section 93(1) of the Act.

24. The letters exchanged between the parties and the fact that this application was filed shows that the Applicant's application to have school registered was rejected by relevant County Education Board. Unfortunately the parties did not exhibit the particular letter rejecting the Applicant's application.

25. In the letter dated 22<sup>nd</sup> November, 2013 one Mrs. Mukulu Ngilu Kariuki writing on behalf of the Respondent directs the County Director Education Kiambu to register the school immediately.

26. In a letter dated 24<sup>th</sup> February, 2012 signed by one Otini R Joel on behalf the Respondent, the District Education Officer, Kikuyu District is “**directed to facilitate the registration of the school on or before 7<sup>th</sup> March 2014 failure within which the Ministry shall register the school without any further reference to you.**”

27. On 5<sup>th</sup> March, 2014 the same Otini R Joel changes tune and rejects the registration of the school on the grounds that there is a dispute over the land on which the school is established.

28. Looking at the papers filed in court, I find that there is no decision by the county Education Board, Kiambu on the Applicant’s application for full registration. There are no minutes of the discussion of the application.

29. It is not denied that the Applicant had been granted provisional registration even though its application had not disclosed the reference number of the parcel of land on which the school was to be established. Rejection of its application for full registration on the ground that it has not established that it is the owner of the school on which the land is registered is therefore untenable.

30. From the papers filed in court, it is difficult to discern if a decision has indeed been made by the relevant authority (the County Education Board, Kiambu) on the application for full registration of Kinoo Girls High School. The Court cannot give orders on the strength of a decision that has not been established to exist. The letters from the Respondent do not amount to a decision as the Respondent has no mandate under the Basic Education Act, 2013 when it comes to the registration of an institution under the Act. That mandate is solely vested on the County Education Board whose decision can be appealed against to the Education Appeals Tribunal.

31. It is not clear whether the Applicant lodged its application for full registration with the relevant authority namely Country Education Board, members. If it deed so, then it should seek answer from that authority. Any grievance arising from such a decision should be addressed to the Education Appeals Tribunal

32. The other alternative is to apply for full registration a fresh. The Basic Education Act, 2013 provides timelines for processing an application for registration of an institution offering basic education.

33. In conclusion, I find that the Applicant has not placed sufficient material before the Court to warrant issuance of an order of mandamus. Orders cannot issue in light of the said evidence before the Court. As such, the application is dismissed. As the application was made in the interests of education of Kenyan children, I order each party to meet own costs of the application.

Dated, signed and delivered at Nairobi this 23<sup>rd</sup> day of Dec. ,2015

**W. KORIR,**

**JUDGE OF THE HIGH COURT**



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