



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 48 OF 2017**

**N J.....PETITIONER**

**VERSUS**

**AGHA KHAN ACADEMY.....1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL AGA KHAN ACADEMY.....2<sup>ND</sup> RESPONDENT**

**AGA KHAN EDUCATION SERVICES KENYA.....3<sup>RD</sup> RESPONDENT**

**AGA KHAN EDUCATION SERVICES EAST AFRICA.....4<sup>TH</sup> RESPONDENT**

**AGA KHAN DEVELOPMENT NETWORK.....5<sup>TH</sup> RESPONDENT**

**AGA KHAN COUNCIL FOR KENYA.....6<sup>TH</sup> RESPONDENT**

**AND**

**PRINCE SHAH KARIM AL HUSSAINI AGA KHAN.....INTERESTED PARTY**

**JUDGMENT**

1. In a petition dated 14<sup>th</sup> February 2017 and filed in Court on the same day, *N J*, father to *JNR* (minor), sued the *Aga Khan Academy, the principal of Aga Khan Academy, Aga Khan Education Service Kenya, Aga Khan Education service East Africa, Aga Khan Development Network*, and *Aga Khan Council of Kenya*, the 1<sup>st</sup> to 5<sup>th</sup> respondents respectively and *Prince Shah Karim Al Hussein Aga Khan*, the Interested party, on behalf of *JNR*, the minor herein.

2. The facts giving rise to this petition are that in September 2009, the 2<sup>nd</sup> the petitioner enrolled his three children at the 1<sup>st</sup> respondent academy for their early years of education under the provisions of the assured trust and beliefs of the 1<sup>st</sup> interested party who is said to own and operates the 1<sup>st</sup> respondent as a non-profit making organization under the management of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents.

3. The petitioner averred that in the year 2010, he encountered a turbulent financial period following theft of his assets valued at about 7 million shillings, which adversely affected his ability to meet the cost of his children’s education. He stated that he brought his sorry state of affairs to the 1<sup>st</sup> respondent’s attention and also that of the chairperson of the 3<sup>rd</sup> respondent as well as the president and vice president of the 2<sup>nd</sup> and 5<sup>th</sup> respondents who represent the interested party. The petitioner averred that meetings were subsequently held between the parties following which an unconditional grant was given in the form of a settlement under the power of the 2<sup>nd</sup> and 5<sup>th</sup> respondents directing the head of the 1<sup>st</sup> respondent, one *Jerry-Lynn Harslook*, to unconditionally retain the petitioner’s 3 children at the institution without disturbance or discrimination, but with some limited financial contribution from the petitioner.

4. The petitioner stated that he made monthly payments which were unconditionally accepted by the 1<sup>st</sup> respondent; that in February 2013, the 1<sup>st</sup> respondent erroneously issued notices for removal of his children from the 1<sup>st</sup> respondent and demanded fees in relation to the terms that were covered by that agreement. He contended the demand was a breach of the agreement and amounted to harassment. The petitioner further contended that the 1<sup>st</sup> respondent issued a notice dated 28<sup>th</sup> July 2016 demanding fees for the first term of 2016 of Ksh 229,700 for the minor, which amount he paid in two installments of Ksh 150,000 and 79,700 respectively. He stated that another amount of Ksh. 3,118,000.00 was demanded on 29<sup>th</sup> September 2016 but he disputed it.

5. The petitioner went on to aver that by letter dated 18<sup>th</sup> October 2016, the respondent's advocates demanded Ksh. 3,113,706.30, and in a meeting held on 7<sup>th</sup> January 2017, the disputed amount was brought to the new president's attention and the petitioner pointed out to him that this could have been due to improper record keeping. However, according to the respondents, no agreement was arrived at and the respondent sought to remove the minor from the school. The petitioner termed this a violation of the minor's fundamental rights contrary to the Constitution, and filed this petition seeking the following reliefs-

*a) A conservatory order be issued in favour of the petitioner prohibiting the respondents from suspending/ removing the minor/ issue from attending class and school activities.*

*b) The honourable Court do issue prohibitory orders safeguarding the petitioner's son from any further discrimination, harm or disturbance of his right to education up to the final years at the 1<sup>st</sup> respondent and or from the senate, agents, employees or officers of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.*

*c) A declaration that the petitioner's son's fundamental human rights have been infringed by the respondents.*

*d) Any other reliefs that the court deems that are just.*

*e) Costs and interest.*

#### **5<sup>th</sup> respondent's response**

6. The 5<sup>th</sup> respondent filed a notice of preliminary objection dated 6<sup>th</sup> march 2017 and filed on 7<sup>th</sup> march 2017, contending that the Court lacks jurisdiction to hear a dispute involving the 5<sup>th</sup> respondent in the face of section 11(i) of the **Privileges and Immunities Act**, (chapter 179 Laws of Kenya), as read with **Order 2** of legal Notice No 167/1997 of 27<sup>th</sup> August 1997 effective 11<sup>th</sup> July 1997, conferring immunity on the 5<sup>th</sup> respondent; and that under Part 1 of the Fourth Schedule to the Act, the 5<sup>th</sup> respondent is immune from suits and legal processes hence the petition against it is unsustainable.

#### **2<sup>nd</sup> and 3<sup>rd</sup> respondent's response**

7. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed a replying affidavit by **Apollo Labazira**, the regional CEO of the 3<sup>rd</sup> respondent herein, sworn on 22<sup>nd</sup> March 2017 and filed on the same day. **Mr. Labazira** deposed that the 5<sup>th</sup> respondent is represented in Kenya by His Highness, the Aga Khan's representative –**Dr. Azim Laichaveanf**; that the 3<sup>rd</sup> respondent is part of the Aga Khan Development Network and is the one responsible for managing education in Kenya including the 1<sup>st</sup> respondent; and that its mandate is among others, to ensure that parents adhere to terms and conditions of admission to schools.

8. **Dr. Labazira** deposed that the petitioner defaulted in paying school fees for his 3 children at the 1<sup>st</sup> respondent, and according to him, the petitioner had persistently defaulted in paying school fees for his children. He deposed that fees were paid for the first two years only and thereafter there was default. **Mr. Labazira** deposed that the petitioner was informed in September 2011 that his children would not be allowed in school and in December 2011, he was asked to clear the outstanding fees. He stated that at one point, one of the children's results and certificates were withheld but were released at the request of the 3<sup>rd</sup> respondent's chairman. He averred that the first two children completed school in 2015 at a time when the fee balance was Ksh 1,338,238 and 1,464,168 respectively.

9. It was deposed that a final reminder was sent to the petitioner respecting the minor's fees on 28<sup>th</sup> September 2016, but the fee remained unpaid. And finally, the minor was suspended over unpaid fee arrears of Ksh 1,112, 860 leading to this petition. He denied knowledge of any unconditional grant, fees waiver or agreement referred to by the petitioner.

10. Another affidavit was filed by **Moez Jamal**, former chairman of the 3<sup>rd</sup> respondent, sworn on 21<sup>st</sup> March 2017 and filed in Court on 22<sup>nd</sup> March 2017. **Mr. Jamal** deposed that in 2011 the then chairperson **Mr. Azmina Rahemtulla**, brought to his attention the petitioner's complaint that he had been denied educational assistance. He stated that the former chairperson informed him that the committee was unable to establish a genuine financial need on the part of the petitioner, and on that basis, the petitioner requested to be accommodated in fee payment and promised to pay after several meetings which made the chairperson authorize release of the petitioner's children's certificates. He therefore denied that there was any unconditional grant given to the petitioner's children's fees.

#### **6<sup>th</sup> respondent's response**

11. The 6<sup>th</sup> respondent filed a replying affidavit by **Nawaaz Gulam**, president of the 6<sup>th</sup> respondent, sworn on 20<sup>th</sup> February 2017 and filed on 10<sup>th</sup> march 2017. He deposed that the chairman of the 3<sup>rd</sup> respondent's board of directors brought to his attention the dispute between the petitioner and the 1<sup>st</sup> and 3<sup>rd</sup> respondents; that he held a meeting with the petitioner with a view to resolving the matter and in order not to disrupt the minor's education, he asked the petitioner to meet the 3<sup>rd</sup> respondent, but the petitioner insisted that he had an agreement with the school administration; that he made it clear to the petitioner that he could not make decisions on behalf of the 3<sup>rd</sup> respondent; that on 18<sup>th</sup> January 2017, the petitioner wrote to him distorting contents of their discussion to the effect that he had assured the petitioner that the minor's education would not be disrupted or that he would follow the terms of the agreement the petitioner was relying on. He stated that his role is to ensure that interests of the 6<sup>th</sup> respondent are safeguarded but he cannot impose or amend policies of individual institutions of the 3<sup>rd</sup> respondent.

#### **Petitioner's submissions**

12. **Dr. Khaminwa**, learned senior counsel for the petitioner, submitted highlighting their written submissions, that the petition relates to payment of the minor's school fees, and that the school had agreed on how the fee would be paid but changed its position and sent the minors home. According to **Dr. Khaminwa**, under the 2010 Constitution, sending a child away from school for non-payment of school fees cannot happen, contending that a child has a constitutional right to compulsory basic education.

13. Learned Senior Counsel contended that Article 2(1) of the Constitution is clear on the supremacy of the Constitution, and that Article 2(5) imports international law and instruments as part of the laws of Kenya. In that case, Learned Senior Counsel submitted, a child is an important creature in international law which is concerned about the welfare of children. He referred to **ICCPR, UNCRC, 1989** and the **Africa Chartered on Human and Peoples rights** and the **African Charter on the Welfare of the Child (1990)** to support his contention. Learned Senior Counsel argued that these international instruments emphasize what is contained in our Constitution. He also submitted that Article 28 of the Constitution deals with human dignity and Article 53(2) is clear that the child's welfare is paramount.

14. Learned Senior Counsel went on to submit, that the minor was not party to the contract or agreement between his father and the school and therefore, the school authority should have gone for the father but not disturb the minor's education. He relied on a number of authorities to emphasize on their case and urged the Court to grant the petition.

#### **2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondent's submissions**

15. **Miss. Babu**, learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents, submitted highlighting their written submissions, that the 3<sup>rd</sup> respondent is a private institution, and that the respondents do not owe any child a right to free education. Learned counsel contended that a submission to the effect that there is a duty to such a right will lead to absurdity.

16. **Ms. Babu** contended that the right to education binds the state to provide free education and referred to the preamble to the Basic Education Act which gives effect to the Constitution. She argued that section 29 of the Act is clear that public schools should not charge fees. Learned Counsel relied on a number of authorities to support their case. According to counsel, the victim is the 3<sup>rd</sup> respondent who had been forced to keep a child in school despite the parent's refusal to pay fees. She also relied on the regulations governing the school and urged the court to dismiss the petition.

#### **5<sup>th</sup> respondent's submissions**

17. **Mr. Mailu**, learned counsel for the 5<sup>th</sup> respondent submitted, relying on their preliminary objection and written submissions, that the 5<sup>th</sup> respondent enjoys immunity from legal processes. According to learned counsel, the immunity was granted under section 11 of **The Privileges and Immunity Act (Cap 179)**; that based on the Privileges and Immunities (Aga Khan Development Network) Order 1997- Legal Notice No. 165 of 1997 and the Fourth Schedule to privileges and immunities Act rule 1 part 1, the 5<sup>th</sup> respondent is immune to suits and other legal processes.

18. Learned counsel relied on the case of **Karen Kandie Njeri v Sheller Afrique & another** (Petition No 2 of 2015) and other decisions to support his contention. **Mr. Mailu** contended that having pleaded immunity, it was the petitioner's duty to show that the pleaded immunity does not exist which was not done. He urged that the petition be dismissed.

#### **Determination**

19. I have carefully considered this petition, the responses thereto; submission by counsel for the parties and the authorities relied on. The question that arises for determination is whether the respondents have violated the minor's right to education. However before delving into the main issue, there is a preliminary point that I must address first, that is; whether the 5<sup>th</sup> respondent enjoys immunity from suits and legal process.

20. The 5<sup>th</sup> respondent filed a notice of preliminary objection contending that this Court has no jurisdiction to hear a dispute involving the 5<sup>th</sup> respondent, citing section 11(1) of the **Privileges and Immunities Act**, as read with **Order 2** of legal Notice No 167 of 1997 dated 27<sup>th</sup> August 1997. The order is said to have taken effect on 11<sup>th</sup> July 1997, conferring immunity on the 5<sup>th</sup> respondent. Reference was also made to Part 1 of the Fourth Schedule to the Act for that purpose.

21. Section 9(1) of the Act provides that; **"This section shall apply to an organization which he minister may, by order, declare an organization of which Kenya, or the government, and one or more foreign sovereign powers, or the government or governments thereof, are members."** The section goes on to state that the minister may by order, (a) provide that an organization to which this section applies shall, to the extent as may be specified in the order, have immunity and privileges set out in part 1 of the Fourth Schedule to this Act.

22. Section 11 of the Act which is material to this petition. provides that;

**"where the government of Kenya has, whether before or after he commencement of this Act, entered into any agreement with an external agency under which, in return for assistance or co-operation in works executed in, or services rendered to, Kenya by that agency, the government has agreed that such agency or person in its service should enjoy immunities or privileges, the minister may, by order;**

**(a) Declare that such agency is one to which this section applies;**

**(b) Provide that, to such extent as may be specified in the order, such agency shall have the immunities and privileges set out in part 1 of the Fourth Schedule to this Act".**

23. Section 11(4) further provides that *for the purposes of this section, “external agency” means; (a) the government of a foreign state; (b) a recognized agency of such a government; (c) an internationally recognized foundation or other body.* Pursuant to section 11, the minister responsible by order, published Legal Notice No. 165 of 1997 in the Gazette (The Aga Khan Development Network Order), conferring immunity and privileges to the 5<sup>th</sup> respondent with effect from 11<sup>th</sup> July 1997.

24. The manner of conferring statutory immunity is provided for in section 11(3) which provides that *(3) where immunities and privileges are conferred upon any person by an order under subsection (1) of this section, the Minister shall, by notice in the Gazette, specify the persons who are for the time being entitled to those immunities and privileges.* Statutory immunity was thus conferred on the 5<sup>th</sup> respondent by paragraph 3 of the *Aga Khan Network Order* which states that *“The Aga Khan Development Network shall have the privileges and immunities specified in part 1 of the Fourth Schedule to the Act.”* Part 1 of the Fourth Schedule is clear that it applies to sections 9 and 11 and provides for *immunity from suit and legal process.*

25. There is no doubt, therefore, that the 5<sup>th</sup> respondent has immunity from suits and other legal processes a fact the petitioner did not dispute. That means the 5<sup>th</sup> respondent is immune from suits and legal processes in this country including this petition. It is therefore clear to me, that the 5<sup>th</sup> respondent having been conferred with immunity and privileges in accordance with the law is immune from the present litigation and the petitioner’s decision to include it in this petition was doomed to fail.

26. I agree with the holding by *Olga Sewe, J* in *Fred Khaemba v International Organization of Migration* [2016] eKLR where the learned judge stated;

***“the respondent has demonstrated that through legal Notice No.461 of 1990, the IOM was declared to be an organization to which section 9 Privileges and Immunities Act applies, and that the organization “shall have the privileges and immunities specified in part 1 of the Fourth Schedule to the Act. ...immunity from suits and legal process being one of the immunities covered in part 1 of the Fourth Schedule, there can therefore be no dispute that thee respondent is an international organization that enjoys the privileges and immunities offered by section 9 of the Privileges and Immunities Act.”***

27. A similar position was taken by *Sergon, J* in *Peter Letiwa & another v Charles Mbugua* [2016] eKLR, the learned Judge observing that the 2<sup>nd</sup> appellant in that case had immunity from suits and legal processes in this country which could not be taken casually without serious ramification in international relations. *Githinji, J* (as he then was) also observed in *S.S. Sehmi v I.C.I.P.E* [2000] eKLR that *“production of the Gazette containing the minister’s order purported to be printed by the Government Printer is prima facie evidence in all courts and for all purposes whatsoever of the due making and tenor of the minister’s order.”*

28. Taking into account the fact that the 5<sup>th</sup> respondent has been conferred with statutory immunity and enjoys privileges and immunities from suits and legal processes in this country, this petition is unsustainable against it and the for that reason, objection well founded.

#### ***Whether the minor’s right to education was violated.***

29. The petitioner contended that the respondents violated the minor’s right to education when they sought to keep the minor out of school for non-payment of school fees. The petitioner admitted that he enrolled his children at the school and was required to pay school fees. He stated that he paid fees until some point when he encountered financial challenges and sought assistance from the respondents. He contended that he reached an understanding with the respondents that his children would not pay fees. However, the school later decided to keep the minor away from school for non- payment of fees. The petitioner has relied on the Constitution, the Basic Education Act and International instruments to maintain that the respondents owe the minor the right to education.

30. The respondents have denied the petitioner’s contention. They have on their part argued that there was no such agreement entitling the petitioner’s children to study at the 1<sup>st</sup> respondent institution without paying fees. They contended that the petitioner owes the institution a substantial amount of money arising from unpaid school fees for his three children, and for that reason, they are unwilling to have the minor at the institution any longer. The respondents have also relied on the Constitution to argue that private institutions cannot be forced to offer free education to children as this is the government’s responsibility.

31. Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education. This makes a child’s constitutional right to have basic compulsory education. In that regard, section 30 of the Basic Education Act imposes a duty on both the state and parents to ensure that children get education. The section provides that;

***1 “Every parent whose child is-;***

***(a) Kenyan, or***

***(b) resides in Kenya;***

***Shall ensure that the child attends regularly as a pupil at a school or such other institution as may be authorized and prescribed by the Cabinet Secretary for purposes of principal, mental, intellectual or social development of the child.***

***2. A parent who fails to take his or her child to school as required under subsection (1) commits an offence”. (emphasis)***

32. Section 28 imposes on the cabinet secretary the duty to implement the children’s right to free and compulsory basic education. The section requires him to do this in consultation with the National Education Board and the relevant County Education Boards to facilitate establishment of learning centres namely; pre-primary, primary and secondary schools, mobile schools as well as adult and continuing

education centers. They may also establish appropriate boarding schools in arid and semi-arid areas.

33. To underscore the seriousness the government has attached to the children's right to education, section 31 makes it first, the responsibility of every parent or guardian to have the child admitted to a basic education institution; second, where a parent or guardian defaults in the discharge of this responsibility, he/she will be deemed to have committed an offence and will be liable to fine not exceeding one hundred thousand or jail term for a period not exceeding two years or to both.

34. Regarding free and compulsory education, section 29 under the sub title "*Fee tuition*", makes it clear that; "(1) **No public school shall charge or cause any parent or, guardian to pay tuition fees for or on behalf of any pupil in the school.** The section does not however exempt foreigners from paying tuition fee. Subsection(2)(b) **states that other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges;**

35. It is clear from section 29(1) that public institutions offering basic education do not charge fee for or on behalf of the learners. This underscores the fact that free basic education is offered by public institutions. That is why section 39 of the Act places responsibility on the **Cabinet Secretary** to ensure success of compulsory basic education through provision of infrastructure including schools, learning and teaching equipment and appropriate financial resources among others.

36. The National Assembly enacted the Basic Education Act, with a view to giving effect to Article 53 of the Constitution and other enabling provisions, for purposes of promoting and regulating free and compulsory basic education among other objectives. The Act defines "**basic education**" to mean **educational programmes offered and imparted to a person in an institution of basic education; including adult basic education and education offered in pre-primary educational institutions and centres.**

37. The Basic Education Act is, therefore, the law governing provision of compulsory basic education in the country; and, bestows responsibility on parents to enroll their children for basic education and provides for punishment, in default. The Act also is clear that **no tuition fee is to be charged by public institutions.** It means therefore, that children are entitled to free basic education with respect to public institutions.

38. With regard to private institutions, the law does not place a duty on these institutions to provide free education. In my respectful view, it would be wrong for this Court to force a private institution such as the 1<sup>st</sup> respondent herein, a private business enterprise, to provide free education to the petitioner's child. A parent who enrolls his child in a private institution does so on his own free will and desire and is taken to have understood as well as undertaken to abide by the terms and conditions of enrolment governing operations in such an institution. He must not expect free services including education to his child. Where the terms under which the child was admitted were based on the parent's ability to pay school fees, they remain so unless varied in favour of the parent by the private education provider.

39. The 1<sup>st</sup> respondent is a private institution that offers education at various levels on payment of fees. The petitioner contended that the respondents gave an understanding or agreement that his children would not be forced to pay school fees, but which the respondents have walked away from. Well if that be true, although the respondents have denied it, it is an agreement that the petitioner can seek to enforce as a civil claim in the appropriate High Court Division but could not confer on him a constitutional right capable of enforcement before this Division as a violation of constitutional right and fundamental freedom. To my mind, private institutions do not have constitutional or legal obligation to provide free education to children whose parents enrolled them in such institutions on the basis that they would pay fees but fail to do so and turn to Court seeking orders to force such institutions to educate their children free of charge. Accepting such a scenario would be to interfere with private institutions' mandate to offer education to those willing to pay for their services to enable them meet the promised services..

40. I am aware of Article 53(2) which states that a child's best interests are of paramount importance in every matter concerning the child. In that regard, it is true that where education of a child is concerned, the best interest of the child must be given considerable paramount. I have perused the responses to this petition and it is clear to me, that even though the petitioner had fees balance for his children, the respondents nevertheless released the children's results and certificates. They also allowed the minor to continue with education albeit for some time hoping that the issue of fees would be resolved amicably which never came to be. In that context, I do not see any violation on the part of the respondents in so far as the claim for free education is concerned. They owe no duty and none was violated.

41. I must also point out that it is not every violation of law that should lead to filing of a constitutional petition claiming violation of constitutional rights and fundamental freedoms. There must be a real infringement, violation or threat to violation of the constitution and human rights, giving rise to a clear case of constitutional interpretation or violation otherwise there is likely to be abuse of court process. As was stated by the **Supreme Court** in **Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others** [2014] eKLR;

**"[349]... Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement..."**

42. For my part, I am unable to trace the link between the alleged agreement or undertaking by the respondents to allow the petitioner's children to study freely at their institution and the alleged violation of the minor's constitutional rights and fundamental freedoms to compulsory free education which is only applicable to public schools funded by the peoples and not private institutions.

43. In the case of *Benard Murage v Fine serve Africa Limited & 3 others* [2015] eKLR the Court stated as mush that “*Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first*” And in *Harrkinson v Attorney General of Trinidad and Tobago* [1980] AC 265, it was stated that;

*“The notion that wherever there is a failure by an organ of government or a public officer to comply with the law this necessarily entails the contravention of some human rights or fundamental freedoms guaranteed for individuals by chapter 1 of the constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action... The mere allegation that a human right has been or is likely to be contravened is not itself sufficient to entitle the applicant to invoke the jurisdiction of the Court under the section if it is apparent that the allegation is frivolous, vexatious or abuse of the process of Court as being made solely for the purpose of avoiding the necessity of applying the normal way for appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”*

44. In the circumstances of this petition, I am unable to agree with the petitioner that there was violation of the minor’s right to education. The petitioner failed to perform his obligation, and if unable, he could not force the respondents as private institutions to keep his child in school without paying fees. Having chosen to enroll the child in a private school, he was bound by the terms and conditions of admission but could not turn to claim that the child must remain in school without paying fees. That being my view of the matter, I find no merit in the petition dated 14<sup>th</sup> February 2017. It is declined and dismissed with costs.

**Dated Signed and Delivered at Nairobi this 30<sup>th</sup> Day of July 2018**

**E C MWITA**

**JUDGE**