



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 3 OF 2006

**IN THE MATTER OF: SECTIONS 70(C), 75 AND 84 AND IN THE MATTER OF THE
CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT
PRACTICE AND PROCEDURES RULES, 2006**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTIONS 70(C), 75 AND 84**

BETWEEN

**THE REGISTERED TRUSTEES OF BAPTIST CONVENTION OF KENYA, CARRYING ON
BUSINESS AS KIEMBENI BAPTIST CHURCH PRIMARY SCHOOL.....PETITIONERS**

AND

THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY.....1ST RESPONDENT

THE MUNICIPAL COUNCIL OF MOMBASA.....2ND RESPONDENT

RULING

INTRODUCTION

1. By an Application dated 20th February 2014, the 1st Respondent sought orders principally that the “Court do review its dated 29th December 2011 in this matter and the resultant order.” A similar application for review dated 4th September 2013 filed by the 2nd Respondent was withdrawn when the matter came up for hearing of the two applications on the 10th April 2015.
2. The decision of the Court of 29th December 2011 sought to be reviewed made specific declarations and orders as follows:
 - a. *A declaration that the operation of the Kiembeni Baptist Church Primary School by the Respondents without consent of the Petitioners is a violation of the Petitioners’ right to property in the parcel of land Plot No. 811/II/MN (old Plot No. 169/II/MN Kiembeni-Bamburi.*
 - b. *A declaration that the Kiembeni Baptist Church Primary School belongs to the Petitioners who have the sole right of operation save where the Petitioners may in accordance with the law seek the Respondents’ assistance, at the Petitioners’ sole discretion.*

- c. *An order of mandamus to compel the 1st Respondent to cause the registration of the Kiembeni Baptist Church Primary School, Bamburi Mombasa as a Private School in contravention with Section 15 of the Education Act.*
- d. *All the children/pupils enrolled with the school at various classes from Nursery to STD Eight for the year 2012 to proceed with their studies until completion on the basis of the Public School Status.*
- e. *The Petitioners will commence enrolment of pupils for the Academic Year 2013 and the school will revert to full Private status upon completion of studies for the pupils enrolled under the Public School System as at Academic Year 2012.*
- f. *The 2nd Respondent will pay the Petitioners' costs and the 1st Respondent will bear its own costs.*

3. Upon an application dated 3rd April 2013 for committal for contempt of court for disobedience of the said orders against **“Onesmus Mwatsuma, Head teacher, Kiembeni Baptist Church Primary School and Tubman Otieno, Town Clerk Municipal Council of Mombasa”**, the Court made orders as follows:

12. Taking into consideration the whole circumstances of this case, I consider that the justice of the case will be served by making, consistently with the rule of law principle that orders of the court must be obeyed as long they are not discharged, varied or perfected on review or appeal, and instead of an order of committal for contempt, the following orders:

1. *An Injunction against 1st respondent from registration of any new pupils for the Year 2015 in the classes of Nursery and Standard 1 of the Primary School the subject of these proceedings until further orders of the Court.*
 2. *The 1st respondent and the 2nd respondent to take all necessary steps for the registration, and to effect the registration of the school, as a private school within 30 days.*
 3. *Upon such registration, the applicant to commence registration of new pupils as a private school in terms of the Decree of the Court of 29th December 2011.*
 4. *Without prejudice to the foregoing orders, the 1st respondent is at liberty to move the court for the hearing of its review application; If it is successful in its application, the school may revert to its public status.”*
4. The Respondents did not comply with these orders and instead the applications for review were then listed for hearing coming up on the 10th April 2015.

THE APPLICATION FOR REVIEW

5. The 1st Respondent gave its grounds for review on the face of the application as follows:

1. *That a ruling was delivered in this matter on 29th December 2011.*
2. *That Order 3 compelled the applicant herein to cause registration of Kiembeni Baptist Church Primary School, Bamburi as a private school in accordance with section 15 of the Education Act (Repealed).*
3. *That the respondent/petitioner herein was to commence enrolling pupils in the academic year 2013.*
4. *That on 25th January 2013 before the applicant could comply, the Basic education Act came into force.*
5. *That the new law at section 43 provides a manner of conversion [of] public school to a private school.*
6. *That there now exists a disconnect between the law and the ruling delivered by this Honourable Court.*

The application was supported by an affidavit sworn on 20th January 2014 by Counsel for the 1st Respondent to the same effect as the grounds of the application.

6. The 1st Respondent filed a Replying Affidavit sworn on 8th May 2014 by Trustee Francis Jomo opposing the application for review on the grounds, principally, that it was made in bad faith and calculated to defeat the ends of justice and the rule of law having failed obey the lawful orders of the court and that the application was misconceived in view of *'the legal principle or fact that the law does not apply retrospectively and that there is no new evidence and/or apparent mistake on the face [of] the record to warrant the court to review its said orders as of the provisions of Order 45 of the Civil Procedure Rules 2010.'*

SUBMISSIONS BY THE PARTIES

7. The application came for hearing on the 10th April 2015 when Counsel for the parties – Mr. Ngari for 1st Respondent and Mr. Mogaka for Petitioners [Counsel for the 2nd Respondent did not attend the hearing of the 1st Respondent's application upon withdrawing his own review application] made oral submissions in the matter as follows, and ruling was reserved for the 29th May 2015.

"Mr. Ngari for the 1st respondent/applicant:

[Before the court is] Notice of Motion dated 20th February 2014 supported by my affidavit of the same date. We seek prayer 3 for review of the court's judgment of 29th December 2011 and resultant orders. We are seeking review based on the grounds of the application.

Replying Affidavit of the Petitioner at paragraphs 5 of the Affidavit, it is admitted that it is the 2nd Respondent's clerk who was to comply with the judgment. The 1st Respondent would then comply with Judgment. Annextures to the Affidavit in reply are letters to the Town Clerk of the 2nd Respondent. It is an admission that compliance was a 2-stage process. When the 2nd Respondent delayed in complying it led to the 1st Respondent not complying.

The implication of the delay was that there was a change in the law. The old Act – Education Act – was repealed and replaced by the Basic Education Act. The Basic Education Act was assented to on 14th January 2014 and came into force on 26th January 2014. The new law at section 43 (2) provides a manner of conversion of a public basic education institution.

We pray that the court, [in view of its finding on the] application for contempt to review the judgment so that the ruling corresponds to the Basic Education Act 2013. This is a court of law and compliance by the 1st Respondent is done in accordance with the law. I point out that the replying affidavit does not address the issue at all. The contents of the affidavit only reiterate the delay that was occasioned by the 2nd respondent leading to noncompliance with the judgment by the 1st respondent. I believe the 1st respondent has demonstrated to this court the elements of Order 45 rules 1 (a) and (2) of the Civil Procedure Rules thereby warranting a review of the judgment. I pray that the application be allowed as prayed.

I pray that the court orders the petitioners/respondents through the County Education Board to submit to the national Education Board for consideration and approval in accordance with section 43(2) of the Basic Education Act.

Mr. Mogaka for the Petitioner/respondent:

We rely on the Replying affidavit of 8th May 2014. There is no response to that affidavit

and its contents remain unchallenged. One of the facts is that the 1st Respondent participated throughout being represented by the chief Government advisor, the Attorney General. The Ministry is headed by a Cabinet Minister who is in charge of the implementing the education Act and the Basic Education Act. The Cabinet Minister appeared in Court through the [Ministry's] Chief Litigation Counsel. The County Government was subsequently joined. The attorney General's representative was present in Court even on the date of the Judgment.

[The] spirit of the Constitution of Kenya is that the Rule of law is the foundation of democracy and good governance and constitutionalism. Rule of Law requires that court orders to be followed. The three arms of government – Judiciary protects the Constitution. Interpretation of the Constitution to ensure the constitution is upheld Article 258 (1) of the Constitution. The Court has given judgment

The application for review is a threat to constitutionalism. The Respondent refused to comply with the judgment of the court and with the new law, and the 1st respondent seeks review to judgment in light of the new law. The breach of the law be based on the old law. Did Parliament provide that the Act would provide retroactively in matters already determined by the court? So that if there was a judgment given before the new law it should be overtaken.

Paragraph 4 of the Replying Affidavit – Act came into force on 26th January 2013. Judgment was given on 29th December 2011. The 1st respondent states that it will not comply with the judgment because a new law came into force 2 years later.

The orders of the Court. A declaration of violation of right. A Declaration that the petitioners should solely operate the school. Orders of Mandamus in accordance with section 15 of the Education Act. The section was in force up to 24th January 2013. The Court directed the petitioners to enroll in January 2013. The old students were to continue and finish class 8. There was no provision for registration to be done in 2013.

It has not been shown that the minister tried to comply with the judgment before the new Act came into force or the ministry following other agents to comply with the order of the court.

In the absence of the new act saying that it will apply retrospectively – the act does not say that court orders in place should be disobeyed – it has not been shown that the process going on is contrary to section 43 of the new Act.

Article 10 of the Constitution provides for the Rule of law meaning that the court orders must be complied with until discharged or a legislation that nullifies court orders. It has not been shown that the order of 29th December 2011 is subject to section 43 of the new Act. All the Act states is that commencing 25th January 2013, it would apply. The Court order was in 2011. Can the submission be that the Government cannot comply with orders granted before the new Act?

Principles for review of Judgment

1. **NBK v Njau** Civil Appeal No. 211 of 1996 at p. 4 review to be granted to correct an apparent error on the record and discovery of new material.
2. **Kisya Investments Ltd. v. AG and Anor.** CA No. 31 of 1995.
3. **D.J. Lowe v. Banque Indosuez** CA No. 217 of 1998 at p.2.

There was no law in existence on 29th December 2011. For example an accused jailed for terrorism cannot be hang if the law were changed later to provide for death sentence. A

change in the law after judgment given before the law was changed – there would be reviews after every new law. I urge the court to see the impact of the decision to review in respect to its binding nature of the high Court over magistrates and tribunals.

The order was clear. The new Act of 2013 does not affect the judgment. The protracted litigation has delayed implementation of the order of 29th December 2011. Various people used proxies and there are Petitions No. 3/2013; 3/2006 and /2013. There was also a contempt court finding with an order for certain things to be done with 30 days. The cabinet secretary is aware as he was represented by Counsel Mrs. Kariuki and the Attorney General was represented. Court orders must be obeyed; it is not for parties to choose to comply or not to comply with the order. We pray that the application be dismissed.

Mr. Ngari in reply:

The law applying retrospectively. The circumstances of this case are peculiar. Order 45 of the Civil Procedure Rules provides for review for sufficient reason. We rely on the ground of sufficient reason being that compliance was a two-stage process and the 2nd respondent did not initiate registration of the school which led to 1st respondent not complying.

Ruling of 22nd December 2014 - Order No. 2 requires the 1st and 2nd Respondents. There is a question of what law to apply. I urge the court to look into the matter in totality. We have demonstrated sufficient reason. The court is bound to follow the law. I urge the court to allow the application. The 1st respondent should not be taken to doubt the sanctity of a court order. Rule of Law is the basis of constitutionality. On totality of the circumstances, I urge the court to allow the application as prayed.

ISSUES FOR DETERMINATION

8. Whether the change in the law after delivery of Judgment is sufficient reason to review the judgment of court and whether the decision of the court for the registration of a private school in this case may be implemented despite the change in the law under which it was to be implemented.

DETERMINATION

Grounds of review

9. It is true that ‘sufficient reason’ is one of the grounds for review of a judgment under Order 45 rule 1 of the Civil Procedure Rules. I also agree with the principles set down in the case-law cited by the Counsel for the Petitioners: that the grounds for the grant of an application for review are set out in Order 44 of the old Civil Procedure Rules (now Order 45 of the Civil Procedure Rules 2010) (*Kisya Investments Ltd. v. AG and Anor.*, Court of Appeal Civil Appeal No. 31 of 1995 (1996) eKLR); that care should be exercised in review upon discovery of fresh evidence to ensure that there was no remissness on the part of the applicant in adducing all possible evidence at the hearing (*D.J. Lowe & Co. Ltd. v. Banque Indosuez CACA NAI*. 217 of 1998 (1998) eKLR; a review is different from an appeal and that a wrong conclusion of law is a ground of appeal and not review (*National Bank of Kenya Limited v. Ndungu Njau*, Civil Appeal No. 211 of 1996 (1997) eKLR). In the *National Bank* case, the Court of Appeal made the following significant observation:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect

exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the Respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, we agree that the learned judge would be sitting on appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”

In the matter before the court, however, the issue is one of change of law after judgment rather than a submission of wrong conclusion of law in a judgment. As shown below, the decision of the Court of Appeal is relevant to this case as the matters in dispute in that case, as in this case, had been fully canvassed and determined by the trial judge.

Is change of law after judgment sufficient reason to review a judgment?

10. The rhetorical question posed by Counsel for the Petitioner’s whether it can be submitted ‘*that the Government cannot comply with orders granted before the new Act?*’ is actually specifically answered by section 23 of the Interpretation and General Provisions Act, cap. 2 of the Laws of Kenya. Section 23 (3) (c) and (e) of the Interpretation and General Provisions act provides significantly that –

*“Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal **shall not** -*

(a)

(b)....

(c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed; or

(d)....

(e) affect an investigation, legal proceedings or **remedy in respect of a right, privilege, obligation, **liability**, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings or remedy may be instituted , continued or enforced, and any such penalty, forfeiture or punishment may be imposed, **as if the repealing written law had not been made.**”**

11. Furthermore, the well known non-retroactivity principle of statutory interpretation is abundantly clear from the provision of section 9 of the Interpretation and General Provisions Act, that An Act shall come into operation on the day on which it is published in the Gazette except where in accordance with subsection (3) “*it is enacted in the act, or in any other written law, that the Act or any provision thereof shall come or be deemed to have come into operation on some other day*”.

12. It is clear, however, that in a proper case, changes in the law in circumstances not covered by the Interpretation and General Provisions Act, made it impossible for an order of the court to be implemented a court may review its decision on the ground of ‘sufficient reason’ to ensure that the order of the Court was consistent with the statutory provision and this in keeping with the character of the Court as a court of law. Not so where the change in the law does not affect the rights and liabilities accruing or incurred before the new law.

Whether a two-stage process of implementation

13. There was no question of a two-stage process of implementation, as submitted by Counsel for the 1st Respondent, with the 2nd respondent first complying with the Judgment to pave way for compliance by the 1st Respondent. Indeed, it was that two-stage arrangement that led to the institution of the Petition following the refusal or neglect by the Municipal Council of Mombasa to sign the documentation necessary for the registration of the school as a private school.

14. There is a lot of similarity between this case and the situation described in the *National Bank* case. As said in that case –

“In the instant case the matters in dispute had been fully canvassed before the learned judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the Respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, we agree that the learned judge would be sitting on appeal on his own judgment which is not permissible in law.”

15. Similarly, the issue of the ownership of the school and the Municipal Council’s refusal to sign the necessary forms for application for the registration of the school as a private school was canvassed and the court made a specific finding as follows:

“16. It is not disputed that the Petitioners are the registered proprietors of the parcel of land Plot No. 811/II/MN (OLD Plot No. 169/II/MN) Kiembeni-Bamburi Mombasa upon which the School the subject of these proceedings is built. On the evidence, it appears that the School or a substantial part of it was constructed by the Petitioners before they successfully sought approval to operate as a School from the 2nd Respondent in 1989. There is also evidence that subsequent developments as the school were carried out with the participate of the Petitioners and the parents as shown in the letter of 7th October 1991 by the Chairman of the School Board of Governors Rev. Benson E. Shisoka, exhibit “MC 1” to the 2nd Respondents Replying Affidavit of 31/10/2006:

“The Church and the parents have now completed the erection of two classrooms which will cater for STD 4 RED and STD 4 BLUE. The building has costed (sic) Kshs. 250,000”.

There is also evidence that the School approached the respondents for deployment of Government Teachers which was done though not to the required members. It is also not in dispute that following the introduction of Free Primary Education in 2003, the Petitioners sought to terminate it’s relationship with the Government and applied for registration of the school as a Private school. By this Act, the Petitioners, in my view effectively withdrew their consent for the use by the Government of the school as a Public school. The purported withdrawal of the application for registration of the school as a Private School by former manager of the school whose services had been terminated by the petitioners was ineffectual for reason of lack of authority. The school manager had completed the application forms for and on behalf of the school in his capacity as the school manager and once he lost his employment as such, he also lost the authority to transact business on behalf of the school.”

16. Upon hearing the petition, the court made the orders for declaration of the school as a private school and its ownership by the petitioners, and mandamus directing its registration by mandamus in accordance with section 15 of the Education Act. The order which set out above did not require the Municipal Council at the time to do anything towards the registration of the school, having already declined to sign the necessary forms and resulting in the litigation. The Court Order (c) in issue herein was directed specifically towards the 1st Respondent Ministry as follows:

“(c) An order of mandamus to compel the 1st Respondent to cause the registration of the

Kiembeni Baptist Church Primary School, Bamburi Mombasa as a Private School in contravention with Section 15 of the Education Act.”

Registration of the school as a private school

17. Section 15 of the Education Act cap. 211 of the Laws of Kenya, (which was repealed by the Basic Education Act of 2013) provided for registration of schools as follows:

“15. Registration

1. *Where application is made for the registration of an unaided school, the Minister shall cause the school to be provisionally registered for a period of 18 months, if he is satisfied that-*
 - a. *The establishment of the school is consistent with the needs of Kenya and the economic and efficient provision of public education; and*
 - b. *The premises and accommodation are suitable and adequate, having regard to the number, ages and sex of the pupils who are to attend the school, and fulfill the prescribed minimum requirements of health and safety and conform with any building regulations for the time being in force under any written law; and*
 - c. *The manager is suitable and proper person to be the manager of the school:*

Provided that, where the establishment of the school only comprises only of one or more of the acts specified in paragraphs (a), (b), (c), (d), and (e) of section 14 (3), the Minister may register the school at the outset instead of first registering it provisionally.

2. *If, at the end of one year from the provisional registration of a school the minister is satisfied that efficient and suitable instruction is being provided at the school, he may cause the school to be registered.*
3. *The Minister may, as a condition of provisional registration or registration require the manager of an unaided school to apply to him for an order establishing a board of governors for the school, and such a requirement may be made at any subsequent time.*
4. *Where the Minister refuses to provisionally register or to register an unaided school, he shall inform the person making the application in writing of the grounds of refusal.”*

18. Section 43 of the basic education Act is in the following terms:

“43. (1) Basic Education institutions shall be categorized as –

- a. *Public schools which are schools established, owned or operated by the Government and includes sponsored schools;*
 - b. *Private schools which are schools established, owned or operated by private individuals, entrepreneurs and institutions.*
2. *A public basic education institution shall not be converted to a private basic education institution or to other private status without consultation with the National Education Board and approval of the Cabinet Secretary.”*

19. There is also no question of conversion of a public school into a private school. The order is for recognition of the school as a private school and its registration as such in accordance with the applicable law. In accordance with the Judgment of the Court the public school was to run parallel to the private school until its enrolled pupils completed their Class 8, as set out in Orders (d) and (e) as follows:

“(d) All the children/pupils enrolled with the school at various classes from Nursery to STD Eight for the year 2012 to proceed with their studies until completion on the basis of the Public School Status.

(e) The Petitioners will commence enrolment of pupils for the Academic Year 2013 and the school will revert to full Private status upon completion of studies for the pupils enrolled under the Public School System as at Academic Year 2012.”

20. Accordingly, section 43 of the new Basic Education does not apply; it is rather section 50 of the Act which contains provisions as to registration of private schools, and section 50 (3) is in terms similar to section 15 of the Education Act as follows:

“Subject to the provisions of this Act, the registration of any private school shall be provisional for a term of one year renewable for one further term until the institution is quality assured and notice given in writing to the proprietor that the registration is final.”

CONCLUSION

21. It is hypocritical for the 1st respondent Ministry to pretend that it was hindered from implementing the Judgment of 29th December 2011 by an Act of Parliament – the Basic Education Act - which was enacted two years after the Judgment in January 2013. The respondent did not show what action it took towards the implementation of the Judgment for the two years prior to the enactment of the Basic Education Act, 2013. The excuse of non-compliance with the Judgment resulting from non-compliance by the 2nd Respondent is not supported by evidence of any requests, instructions or demand to the 2nd respondent with regard to the latter’s performance of any perceived role in the implementation of the Judgment.

22. Moreover, the specific terms of the Judgment, set out above, expressly bound the 1st Respondent to effect the registration of the school as a private school and it did not depend for its implementation on further approvals from the Municipal Council of Mombasa or other organs as subsequently created by the new Basic Education Act. If the 1st Respondent/applicant was aggrieved by the conclusions of the Court on fact and/or law, it ought to have preferred an appeal within the prescribed time. (see *NBK v. Njau*, supra). To attempt a reconsideration of the merits of the case through an application for review is misconceived.

23. By the terms of the judgment *in rem* for the registration of the school as a private school, and the provisions of section 23 (3) (c) and (e) of the Interpretation and General Provisions Act as set out above, that the new law would not affect the petitioner’s right to the declaration and registration as a private school accrued, and the 1st Respondent’s liability in accordance with the judgment to register the school in accordance with section 15 of the old Education Act, the 1st respondent Ministry is under a lawful duty to comply with the terms of the Judgment against which no appeal was filed within the prescribed time.

24. In any event as observed, the provisions for registration of a private school under section 50 (3) of the new Basic Education Act are similar to the provisions of section 15 of the old Education Act. It has not been shown that there is anything in the new Act - which in terms of section 23 of the Interpretation and General Provisions Act does not affect accrued rights and incurred liabilities – that prevents the implementation of the order of the court to register the school - not to convert the school from public to private as urged by the 1st Respondent - as a private school. Section 50 (3) of the new Act seamlessly takes over from section 15 of the old Education Act in fact to enable the registration of the school as a private school to be done. It was not shown that the limitations imposed by section 50 (2) of the new Act as regards the qualification of the proprietor and teachers of the school, the suitability of the premises and integrity of its manager apply to the case before the Court.

25. The 1st Respondent/applicant has not shown any steps taken towards securing the registration of the school under the old education Act or the new Basic Education Act or any difficulties encountered and there is no room for review of the decision of the Court. If there was any need for consultation on the registration by the 1st Respondent with the 2nd Respondent, it was for the 1st Respondent who in terms of the Judgment was to effect the registration of the school to initiate the process of registration by calling on the 2nd respondent to forward any necessary documentation. The 1st Respondent would then through

its organs proceed to register the school in accordance with the directions of the Court.

26. To suggest that an approval of a body outside the court or the appellate process of the court is necessary for the registration to be effected as directed by the Court is to subject the decision of the court to judicial review by an administrative body, which amounts to an unconstitutional interference with the judicial independence of the Judiciary. The inescapable verdict is that the respondent Ministry of Education of the Government of Kenya has for four (4) years since the delivery of Judgment on the 29th December 2011 deliberately refused to comply with orders of the Court under the pretext firstly of a two-stage process of implementation involving a defaulting Municipal council of Mombasa and, lately, a disconnect with the terms of the order with changed provisions of law.

27. What the court ordered is that the school, Kiembeni Baptist Church Primary School be registered as a private school. The mechanics for the registration of the school whether under the Education Act, the Basic Education Act or any other Act that may come into force cannot take away the judgment *in rem* rendered by the Court on the 29th December 2011. It is for the respondent, as directed by the Court, to effect **the registration of the school as a private school** under the applicable law.

ORDERS

28. Accordingly, for the reasons set out above, the 1st Respondent's Notice of Motion dated 20th February 2014 is dismissed with costs to the Petitioners.

EDWARD M. MURIITHI

JUDGE

Dated and Delivered on the 29th day of May, 2015.

M. MUYA

JUDGE

In the presence of:

Mr. Mogaka for Petitioners

Ngare for the respondents

Kiarie Court Assistant.