



REPUBLIC OF KENYA



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Amboye v Principal, Kombeni Girls' Secondary School & another (Petition E040 of 2023) [2025] KEHC 5652 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KEHC 5652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PETITION E040 OF 2023
OA SEWE, J
MARCH 14, 2025**

BETWEEN

FAIDA AMBOYE PETITIONER

AND

**THE PRINCIPAL, KOMBENI GIRLS' SECONDARY SCHOOL 1ST
RESPONDENT**

**THE BOARD OF MANAGEMENT, KOMBENI GIRLS HIGH
SCHOOL 2ND RESPONDENT**

JUDGMENT

1. The petitioner, Faida Amboye, filed the petition dated 14th August 2023 as the guardian of one of the students at Kombeni Girls High School (hereinafter, "the School"). She averred that the students of the School have suffered for a long time from bedbug infestation. She described the situation at the School as dirty and uninhabitable, to an extent that some students have had to seek treatment for skin related ailments.
2. The petitioner further averred that the students are not only affected physically but that the visible marks on their bodies have caused them great discomfort and embarrassment whenever they interact with other children and students from other schools. Therefore, the petitioner was concerned that the continued omission and neglect by the respondents' Board of Management and the Principal of their constitutional duty to the students is likely to force some of them to miss school so as to seek treatment, or abandon school altogether, if the situation persists and ultimately becomes unbearable to them.
3. The petitioner was further concerned that the continued failure and/or neglect by the school in respect of the rights of the students will consequently threaten the children's right to education under Article 53 of *the Constitution* and Article 28 of the United Nations Convention of the Rights of the Child, Article II of the African Charter of the Right's and Welfare of the Child as well as Article 13 of



- the International Covenant on Economic, Cultural and Social Rights that call upon state parties to recognize and uphold the right to education.
4. In addition to Article 53, the petitioner relied on Articles 2(5), 2(6) of *the Constitution* which provide that the general rules of international laws and the treaties and conventions ratified by Kenya shall form part of the laws of Kenya.
 5. Article 10 of *the Constitution* of Kenya was cited in connection with the national values and principles of governance. The Petitioner averred that public institutions are under obligation to uphold constitutional principles, such as human dignity, equity, social justice and human rights. The petitioner also relied on Article 42 which provides that every person has a right to a clean and healthy environment.
 6. The petitioner made reference to several International instruments such as:
 - (a) African Charter on the Rights and Welfare of the Child;
 - (b) United Nations Convention on the Rights of the Child;
 - (c) United Nations Universal Declaration of Human Rights;
 - (d) International Covenant on the Economic, Cultural and Social Rights.
 - (e) International Covenant on Civil and Political Rights.
 7. The petitioner stated that all the students at the Respondent's school have a legitimate expectation to be protected and taken good care of by those mandated by law to do so, for their development and survival as well as enjoyment of their rights and therefore a contrast is detrimental to the full enjoyment of these rights.
 8. Accordingly, the petitioner prayed for the following reliefs:
 - (a) A declaration that the respondent's inaction, neglect and failure to maintain cleanliness in the school dormitories denies the students their right to clean environment under Article 42 of *the constitution*.
 - (b) A declaration that the school's failure to address and solve the bedbug problem threatens the student's right to education under Article 53 of *the Constitution*.
 - (c) An order compelling the respondent to contract the services of a competent fumigation company to help get rid of the bedbugs.
 - (d) A declaration that the students of Kombeni Girls Secondary School are entitled to the right to their highest standard of health as guaranteed by Article 43 of *the constitution*.
 - (e) A declaration that the school is obliged by *the Constitution* and the law to consider the best interest of the child.
 - (f) A declaration that the poor sanitation at the school is the cause of persistent bedbug menace, that threatens the student's right to education under Article 43 of *the Constitution*.
 - (g) The court be pleased to make an order as to costs.
 9. The petition was supported by the affidavit of the Petitioner, sworn on 14th August 2023. She deposed that she is the guardian of a form 3 student at the school and that her ward was one of the students severely attacked by the bedbug infestation at the school's halls of residence. She explained that the school is a girl's boarding school managed by a Board of Management, the respondent herein. She



- added that the duties of the Board include the promotion of the best interests of the institution and ensuring high quality education for all pupils in accordance with the standard set for such schools by the government.
10. The Petitioner deposed that her ward had been complaining of bedbug infestation in the school since the early part of 2023 and that when she returned from school for mid-term break, she noted black marks on the girl's skin which she complained were itchy. The girl reported to her that the marks were from bedbug bites. The petitioner further averred that although she sought for medical intervention for the girl, the black marks remained visible even as she reported back to school.
 11. Out of concern, she took up the issue with other parents on the parents' WhatsApp group and got to learn that several other girls were affected yet the school had not taken any steps to get rid of the menace. She also pointed out that the issue had been discussed on different parent's forums but the school had not taken any steps to deal with it, yet the school has the human and financial resources to combat the infestation, thus subjecting the students to poor sanitation and an unclean environment which is detrimental to their health.
 12. The respondents opposed the Petition on the basis of the Replying affidavit sworn by the Principal of the school Ms. Pamela Onyach, (the 1st respondent herein). She averred that the school observes high levels of sanitation, health and general welfare of the students. She further averred that the school has met the general public health requirements as per the Sanitation Inspection Report dated 23rd August 2023 by the Department of Health Services, County Government of Kilifi. She annexed the report to her affidavit as Annexure PO-1 and pointed out that the Report confirmed, at page 13 thereof, that the school conducted a fumigation exercise in the dormitories on 11th July, 2023.
 13. While she conceded that there had been pest infestation in the school, the 1st respondent was categorical that the school had taken measures to control the said infestation. She added that the school had on several occasions, called for meetings to discuss ways of solving the menace. In addition, the school had outsourced fumigation services from Kimbean Investment, a pest control, cleaning and hygiene services provider and that on various dates the service provider visited the school and performed fumigation exercises. In particular, the 1st respondent mentioned the dates of 3rd July, 2023, 23rd April, 2023, 2nd February 2023 and 26th November, 2022 as the dates on which their service provider conducted fumigation exercise at the school. She annexed copies of Client Service Certificates, invoices and visitors Record in proof thereof as Annexures PO-1 and PO-3.
 14. The 1st respondent further deposed that the school has a total of 1095 student who come from different environments and backgrounds and therefore the issue of pest infestation is a continuing challenge that the School Management and the students are working together to eradicate.
 15. The petition was canvassed by way of written submission, pursuant to the directions given herein on 30th January 2024. Consequently, the petitioner filed written submissions dated 28th August 2024 and proposed the following issues for considerations:
 - (a) Whether the respondents' inaction neglect, and failure to maintain cleanliness in the school dormitories denies the students their right to clean environment.
 - (b) Whether the school's failure to address and solve the bedbug problem threatens the student's right to education.
 - (c) Whether the students in Kombeni Girls secondary school are entitled to the right to the highest standard of health.



- (d) Whether it is the duty of the respondents to ensure that the students at Kombeni Girls enjoy the highest standard of health as guaranteed by Article 43 of *the Constitution*.
16. No submissions were filed by the respondents. Therefore, in the light of the foregoing, there is no dispute that the students at Kombeni are entitled to:
- (a) Right to education
 - (b) Right to a clean environment
 - (c) Right to the highest standard of health possible under Article 43 of Constitution of Kenya.
17. In the premises, the two issues for determination are:
- (a) Whether the petitioner has proved the alleged violations; and
 - (b) Whether the remedies sought are available to the petitioner.
18. In terms of the burden of proof, the onus was on the petitioner to demonstrate the allegations made by her to the requisite standard. In *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR, the Supreme Court held:
- “(47) It is a timeless rule of the common law tradition, Kenya’s juristic heritage, and one of fair and pragmatic conception, that the party making an averment in validation of a claim, is always the one to establish the plain veracity of the claim. In civil claims, the standard of proof is the “balance of probability”. Balance of probability is a concept deeply linked to the perceptible fact-scenario: so there has to be evidence, on the basis of which the Court can determine that it was more probable than not, that the Respondent bore responsibility, in whole or in part.”
19. The position was reiterated by the Supreme Court in *Wamwere & 5 Others v Attorney General (Petition 26, 34 & 35 of 2019)* Consolidated)) [2023] KESC 3 (KLR) (Constitutional and Human Rights) (27 January 2023) thus:
- “A petitioner bore the burden to prove his/her claim of alleged threat or violation of rights and freedoms to the requisite standard of proof, which was on a balance of probabilities. Such claims were by nature civil causes. The onus of proof was on the 1st appellant to adduce sufficient evidence to demonstrate that she owned or erected or lived in the alleged properties; and that State agents interfered or deprived her of the subject properties. That was the import of section 107 of the *Evidence Act* on the burden of proof.”
20. Other than the bold assertion by the petitioner of bedbug infestation at the school, there was no proof that the situation at the School is so dirty and uninhabitable, to an extent that some students have had to seek treatment for skin related ailments. She contended for instance that her niece had to see a specialist for treatment in connection with the bed bug wounds. No evidence, even by way of documentation, was availed to demonstrate this assertion. The petitioner also stated that the students are affected not only physically but also emotionally in that the visible marks have caused them great discomfort and embarrassment whenever they interact with other children and students from other schools. Again, this was just a bare assertion without supporting evidence.
21. On the other hand, while conceding that there had been a pest infestation in the school, the 1st respondent averred that the school had taken measures to control the said infestation. She also



- demonstrated that the school had on several occasions, called for meetings to discuss ways of solving the menace. The respondents adduced evidence to prove that, in addition, the school outsourced fumigation services from Kimbean Investment, a pest control, cleaning and hygiene services provider and that on various dates the service provider visited the school and performed fumigation exercises. In particular, the 1st respondent made reference to the dates of 3rd July, 2023, 23rd April, 2023, 2nd February 2023 and 26th November, 2022 as the source of the dates on which the service provider conducted fumigation exercise at the school. She annexed copies of Client Service Certificates, invoices and visitors Record in proof thereof as Annexures PO-1 and PO-3.
22. The 1st respondent also averred that the school observes high levels of sanitation, health and general welfare of the students and produced a Sanitation Inspection Report dated 23rd August 2023 by the Department of Health Services, County Government of Kilifi, in proof thereof. She annexed the report to her affidavit as Annexure PO-1. That Report confirms that the school conducted a fumigation exercise in the dormitories on 11th July, 2023.
23. The 1st respondent also explained that the school has a total of 1095 student who come from different environments and backgrounds and therefore the issue of pest infestation is a continuing challenge that the school management and the students are working together to eradicate. That is a plausible explanation that goes to show that collective effort, including the support of the parents, was needed to ensure re-infestation is avoided.
24. Weighing the evidence presented by the respondent against the bare assertions of violations by the petitioner, I am convinced that the allegations of violations have not been demonstrated to the requisite standard. The respondents effectively rebutted the allegations by the petitioner that they had neglected and failed to maintain cleanliness at the School. The respondents also disproved the assertion by the petitioner that they had taken no action to address the bedbug problem. In the premises, the petitioner, having failed to prove her case to the requisite standard, is not entitled to any of the reliefs claimed by her.
25. In the result, it is my finding that the petition lacks merit. The same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF MARCH 2025.

OLGA SEWE

JUDGE

