



Mango v Omondi, Principal Butere Girls High School; Executive Secretary, The Kenya National Drama and Film Festival Committee & 2 others (Interested Parties) (Petition E006 of 2025) [2025] KEHC 4565 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
PETITION E006 OF 2025
WA OKWANY, J
APRIL 8, 2025**

BETWEEN

ANIFA MANGO PETITIONER

AND

MRS JENNIPHER OMONDI, PRINCIPAL BUTERE GIRLS HIGH SCHOOL RESPONDENT

AND

EXECUTIVE SECRETARY, THE KENYA NATIONAL DRAMA AND FILM FESTIVAL COMMITTEE INTERESTED PARTY

THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION, DEPARTMENT OF BASIC EDUCATION INTERESTED PARTY

THE HONOURABLE ATTORNEY GENERAL INTERESTED PARTY

RULING

1. The Petitioner herein filed the Petition dated 2nd April 2025 seeking the following prayers: -
 1. A declaration that the decision to bar the Drama Students at Butere Girls High School from performing at the Kenya National Drama Festival Nationals is unconstitutional, unlawful, and null and void.
 2. A declaration that the Respondent be compelled to reinstate the Drama Students at Butere Girls High School's participation in the Kenya National Drama Festival Nationals.
 3. A declaration that the Respondent provide the cast and the teachers in charge of the drama club with adequate security during the entire national festival.



4. A declaration that the Respondent facilitate and ensure the students of Butere Girls High School perform the Play in its original form at the National level festival as scheduled.
 5. An Order awarding costs of the Petition to the Petitioner.
 6. Any other or further orders, writs, and directions this Court considers appropriate and just to grant for the purpose of the enforcement of the Drama Students at Butere Girls High School's fundamental rights and freedoms; the enforcement and defence of the Constitution pursuant to Article 23 (3) of the Constitution.
2. Concurrently with the Petition, the Petitioner filed an Application (Notice of Motion) dated 2nd April 2025 that is the subject of this ruling. The Applicant seeks the following orders in the said Application: -
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 3. That the Honourable Court be pleased to issue an order that incase the Principal has received any formal communication from the interested parties banning and/or barring the Butere Girls from participating, the same be stayed.
 4. That the Honourable Court be pleased to issue an order compelling the Respondent to facilitate and ensure the 50 students of Butere Girls High School perform the Play in its original form at the National level festival as scheduled.
 5. That the Honourable Court be pleased to issue any other relief it may deem just and expedient to grant in the circumstances.
 6. That the costs of this Application be borne by the Respondents.
3. The Application is supported by the Applicants Affidavit and is premised on the grounds that: -
- a. That this Honourable Court has the jurisdiction to hear, determine, and issue the Orders sought in this Application.
 - b. That the Petitioner/Applicant is an alumnus of Butere Girls High School, a former drama member in the said school and currently a lawyer by training practicing law within the Republic of Kenya.
 - c. That the Respondent and Interested Parties are public officers and entities responsible for the administration, regulation, and oversight of education and co-curricular activities in Kenya, including the Kenya National Drama and Film Festival.
 - d. That on or about 22nd February 2025, 50 Drama Students at Butere Girls High School presented a play that was adjudicated at Sub County levels by adjudicators of high standing and professional repute who collectively found the play to be fit to proceed to the County levels Drama Festival.
 - e. That on or about 11th March 2025 the 50 Drama Students at Butere Girls High School presented same play which was adjudicated at County levels by adjudicators of high standing and professional repute who collectively found the play to be fit to proceed to the Regional levels Drama Festival.



- f. That on or about 22nd March 2025 the same students presented the play which was then adjudicated at Regional levels by adjudicators of high standing and professional repute who collectively found the play to be fit to proceed to the National levels Drama Festival.
 - g. That, the Respondent, made the arbitrary decision to bar the 50 Drama Students at Butere Girls High School from performing their play at the National Drama Festival to be held between 7th April 2025 and 15th April 2025, without justifiable cause.
 - h. That the Principal, Respondent herein, acting on verbal instructions from an undisclosed source, has refused to allow students to perform at the national level festival, claiming that the play has political undertones, which it does not.
 - i. That, the 50 Drama Students at Butere Girls High School are barred from performing their play at the National Drama Festival to be held between 7th April 2025 and 15th April 2025, despite them having paid school fees which in part caters for extracurricular activities.
 - j. That the drama committee organized a winners' Gala on the 29th and 30th of March 2025, to the exclusion of Butere Girls High School's play from the program.
 - k. That the decision was made in an opaque and unfair manner, depriving the 50 Drama Students at Butere Girls High School of their legitimate expectation to participate in the festival.
 - l. That the exclusion of the 50 Drama Students at Butere Girls High School from the festival has caused them emotional distress, humiliation, and a loss of opportunity to showcase their talent on a national stage.
 - m. That the balance of convenience tilts in the Petitioner/Applicant's favour as the students of Butere Girls High School stand to be prejudiced should they not have an opportunity to be heard and participate in the drama festivals at the national level.
 - n. That the 50 Drama Students at Butere Girls High School will suffer irreparable damages if the Respondent is not compelled to allow them to perform their play in its original form.
 - o. That unless this Honourable Court intervenes and hears the matter urgently, the Respondent will proceed to illegally exclude the students of Butere Girls High School from performing at the Drama Festival, which opportunity they earned fair and square through their dedication and hard work.
 - p. That the Respondent stands to suffer no harm if the interim orders sought are granted.
 - q. That it is in the interest of justice to grant orders sought and admit the Application for priority hearing in view of the nature of the matter.
 - r. That unless the Honourable Court intervenes, the rights of the 50 Drama Students at Butere Girls High School and the public at large protected and recognized by the Constitution of Kenya 2010 are likely to be denied, violated, infringed or threatened.
4. When the matter first came up for directions, under Certificate of Urgency, on 3rd April 2025, interim conservatory orders were issued to preserve the substratum of the Application pending the hearing and determination of the main Application. Parties were subsequently directed to file and exchange responses and submissions to the Application.
 5. The Respondent filed a Replying Affidavit in opposition to the Application wherein she confirmed that the School's play "Echoes of War" was position 1 at the Sub-county level, position 2 at the County



level and position 3 at the Regional festivals held at Chavakali High School on 22nd March, 2025. She stated that presentation of teams to the National Drama Festivals is usually done by the Regional Director of Education on behalf of the Ministry of Education.

6. The Respondent averred that once a school qualifies to participate in the Drama Festivals at the National level, the school's management does not have any role to play. She further stated that Butere Girls High School (hereinafter "the School") did not qualify to participate at this year's National Drama Festivals despite having being in 3rd position with a score of 90% in the English play titled, "Echoes of War".
7. The Respondent provided the list of the top ten (10) plays as follows:

S/no.	School	Score	Type Of Play
1.	Friends School Kamusinga	92%	English
2.	Fesbeth Girls	91%	English
3.	Butere Girls	90%	English
4.	Vihiga High	89%	English
5.	Moi Girls Vokoli	87%	English
6.	Chakol Girls	82%	English
7.	Chebukaka Girls	81%	English
8.	Bunyore Girls	80%	English
9.	St. Mary's Kibabii	79%	Kiswahili
10.	Chavakali High	78%	English

8. The Respondent averred that the schools that qualified to represent the region at secondary school level play category were:
 - a. Friends School Kamusinga - English
 - b. Fesbeth Girls - English
 - c. St. Mary's Kibabii - Kiswahili
9. According to the Respondent, the Regional Director of Education relied on Rule 21.3 of The Kenya National Drama as well as the Film Festivals Regulations Rule Book, Page 39 Sec. 21:3 to nominate the three (3) plays that qualify to proceed to the National Drama Festivals level.
10. The Respondent averred that she is aware that Butere Girls High School did not qualify to participate and represent Wester Region at this years' National Drama Festivals. She added that it is therefore not true that she informed her students that the government had banned and/or barred the School from participating in this years' National Drama Festivals. She further averred that since the students had



already gone home for the holidays, she could not recall them back to the school as they were already in their parents' custody.

11. The 1st and 3rd Interested Parties filed a joint affidavit sworn by the Regional Director of Education (Western Region) Mr. Obiero Jared Osure, in response to the Application. The said deponent averred that his office was in charge of selecting the teams to represent the region at the National Drama Festivals and relied on The Kenya National Drama and Film Festivals Regulations Rule Book, page 39, Section 21.3 to nominate the Plays whenever all top plays were performed in one language.
12. He stated that the criteria contained in the said Regulations was employed in this case and that no complaint was filed. He added that any Play that that scored 79% and above could be allowed to participate at the National Level upon a written request being made to the Executive Secretary of the National Drama and Film Festivals through the Regional Director on condition that they would cater for their transport expenses. He stated that Butere Girls did not submit any such request and could therefore not be scheduled to perform at this late stage. He averred that his office did not write any letter or send any message to Butere Girls banning their play and stated that such allegations were irresponsible and malicious.
13. The Applicant filed a further Affidavit in response to the Respondent's and Interested Parties' Replying Affidavits wherein she averred that the Respondent and Interested Parties are justifying an illegality by relying on an outdated Regulation Book without the precise citation of the year and without annexing the said Regulation Rules Book to their response. She averred that the Rules and Regulations Book that is currently in use is the Ministry of Education Kenya National Drama and Film Festival Rules and Regulations 2025 (hereinafter "Regulations or Rules").
14. She averred that the list annexed by the Respondent's Replying Affidavit was evidence that the school picked to replace Butere Girls High School (St. Mary's Kibabii), was not among the top Four overall best performers as provided for under Rule 21.3 of the said Rules. She asserted that a disjunctive reading of the said Rule does not, create a possibility of eliminating, any of the three winning plays, but provides for an addition, of a fourth play which meets the criteria set thereto.
15. It was the Applicant's averment that there is no rule that expressly requires that the school in third position should pave way for affirmative action and that even if that was the case, Butere Girls High School was the only girls' school among the three winning plays and that excluding them would be against the interest of affirmative action pleaded by the Respondent and Interested Parties as the reason for barring them from performing at the National Level.
16. The Applicant further averred that the Respondent managed the school as delegated authority from the Principal Secretary, Ministry of Education, Department of Basic Education, to carry out day to day management of the school and that such power extends to the authority to recall students even after sending them home for the holidays.
17. The Application was canvassed by way of written submissions.

The Applicant's Submissions

18. The Applicant submitted on the criteria for granting interim orders as was outlined in the case of *Stanley Anyamba Ageyo & Another v Musa Matu Riunga & 5 Others* [2022] eKLR wherein the court cited the case of *Giella v Cassman Brown* (1973) EA at page 358 and held as follows:
 - i. An applicant must show a prima facie case with a probability of success.



- ii. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.
 - iii. If the Court is in doubt, it will decide an application on the balance of convenience.”
19. It was submitted that the Petitioner/Applicant has established a prima facie case as it was not disputed that the Butere Girls High School play was among the top three winning plays and that the import of Rule 21.3 was not to remove the school in the third position but to create an alternative affirmative action where a Kiswahili play or a play in an indigenous Language had not made it to the category of the “Three winning plays”.
 20. The Applicant faulted the Respondent and the Interested Parties for citing what, according to the Applicant, were outdated Rules and Regulations that have since been revoked and new Rules published. The Applicant also noted that the Respondent did not furnish any evidence to show that it was, on the recommendation from the Adjudicators, that the St. Mary’s Kibabii that was ranked at position 9 purportedly replaced Butere Girls High School, thus going against the rule of the “top Four overall” criteria under Rule 21.3.
 21. The Applicant argued that she had demonstrated an arguable case with a probability of success. For this argument, reference was made to the decision in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KECA 175 (KLR) where the court defined what amounts to a prima facie case.
 22. It was submitted that the 50 Drama Students at Butere Girls High School will suffer irreparable damage if they are not allowed to perform at the National Drama Festivals, because they had invested in their talents emotionally, mentally and physically. It was the Applicant’s case that denying the said students the opportunity to showcase their talents would also amount to an infringement to their freedom of expression provided for in Article 33 of the *Constitution*. Reference was made to the decision in *Okiya Omtatah Okoiti v Attorney General & 2 others* [2013] eKLR for the argument that the court’s obligation is to give effect to the enjoyment of fundamental rights and freedoms to the fullest extent.
 23. The Applicant also cited the case of *Machiri Limited v Mayfair Insurance Company Ltd ;Jinsing Limited (Interested Party)* (Civil Case E502 of 2022) [2023] KEHC 20218 (KLR) *Jinsing Limited (Interested Party)* (Civil Case E502 of 2022) [2023] KEHC 20218 (KLR) where it was held that that special circumstances must be established an interim mandatory injunction can be granted and the case of *Sipili Maternity & Nursing Home ltd v Nation Media Group & Another* [2022] eKLR where it was held that the court must balance between public interest and freedom of speech as guaranteed under Article 33 of the Constitution vis a vis a private interest to reputation.

The Respondent’s and Interested Parties’ Submissions

24. The Respondent and Interested Parties isolated the issues for determination as follows: -
 - a. Whether the Interested Parties violated the Petitioner’s rights under Articles 47 and 50 of the Constitution
 - b. Whether the Petitioner has satisfied the constitutional threshold for the grant of the orders sought.
 - c. Whether the Interested Parties violated the Petitioner’s rights under Articles 47 and 50 of the *Constitution*.
25. It was submitted that the Interested Parties adhered to the requirements of fairness, lawfulness, and procedural propriety as guaranteed under Article 47 of the *Constitution* and cited Rule 21:3 of the



Regulations when making the decision to exclude the School from participating in the Festivals. It was submitted that the said Regulations were never formally or expressly revoked since the 2025 Rules were to operate as a supplement or update to the existing framework, rather than an abrogation of prior rules, it was the Respondents' and interested parties' case that in the absence of express repeal, the previous provisions/Regulations remain operative and binding.

26. It was submitted that the Petitioner's grievance arose from a misapprehension of the discretion vested in the adjudicating and administrative bodies and that the cardinal principle of administrative law was that discretion properly and lawfully exercised ought not to be interfered with by the courts in the absence of evidence of illegality, irrationality, or procedural impropriety. For this argument, reference was made to the case of *Republic v Chief Justice of Kenya & 6 others Ex-Parte Moiyo Mataiya Ole Keiwua* [2010] eKLR.
27. It was submitted that in line with Rule 21.3, a Kiswahili play by St. Mary's Kibabii was rightfully selected to proceed to the national level and that any schools scoring 79% and above could apply to attend the nationals at their own cost which application Butere Girls did not make. Reference was made to the decision in *Dry Associates Limited v Capital Markets Authority & Another* [2012] eKLR, where it was held that; -

“Where a person fails to utilize the avenues available to them, they cannot later fault the decision-makers for acting in accordance with policy and procedure.”

28. It was submitted that there was no evidence to show that Butere Girls High School was discriminated against or treated unequally or that it was banned and/or barred from participating at the Kenya National Drama Festivals on the basis of the contents of the play either as alleged or at all. Counsel maintained that the only reason for the exclusion of the school was that it did not qualify to be state sponsored for the said event.
29. It was the Respondent's and Interested Parties case that the Applicant's grievance arises from a misapprehension of the discretion vested in the adjudicating and administrative bodies. They added that it is a cardinal principle of administrative law that discretion properly and lawfully exercised ought not to be interfered with by the courts without evidence of illegality, irrationality, or procedural impropriety. For this argument, reference was made to the decision in *Republic v Chief Justice of Kenya & 6 others Ex-Parte Moiyo Mataiya Ole Keiwua* [2010] eKLR, where the Court pronounced itself thus:

“It is not for the court to substitute its opinion with that of an administrative body or professional forum properly mandated to make such decisions, unless there is irrationality, bad faith or abuse of discretion.”

30. It was submitted that the exclusion of Butere Girls from the National Festivals was neither arbitrary nor unlawful but was in accordance with the governing regulations and discretionary powers vested in the relevant bodies. It was the Respondent's and Interested Parties' case that the plea for the granting of the orders sought was therefore not anchored on any legal basis and that the legal test for the issuance of mandamus was not satisfied. It was their further case that interfering with the operational discretion of the Interested Parties, in the absence of evidence of illegality or bad faith, would unjustifiably hamstring such institutions and amount to judicial overreach.



Analysis and Determination

31. I have carefully considered pleadings filed herein and the arguments made, by both sides. I find that the main issue for determination is whether the Applicant has made out a case for the granting of the orders sought in the Application. I note that the main prayer sought is in the nature of a mandatory injunction. Besides seeking to stay any alleged formal communication from the Interested Parties banning and/or barring the School from participating in the Festival, the Applicant also seeks orders to compel the Respondent to facilitate and ensure that the 50 students of the School perform the Play, Echoes of War, in its original form at the Festival as scheduled.
32. In determining this Application, this court will be required to determine whether the decision to exclude Butere Girls from participating in the National Festivals was arbitrary and unlawful or if the same was in accordance with the governing regulations and discretionary powers vested in the relevant bodies.
33. At the core of this Application is the issue of whether Butere Girls' qualified to participate in the 2025 National schools Drama Festivals. While the Applicant argued that the school qualified for the said Festival, the Respondent and the Interested Parties were of the contrary opinion. Parties were also not in agreement on the applicable rules governing the criteria for participation in the Festivals as while the Applicant maintained that the Ministry of Education Kenya National Drama and Film Festival Rules and Regulations 2025 are applicable, the Respondent and the Interested Parties relied on the 2024 Rules.
34. The Respondent argued that the selection of schools to proceed to the national level was conducted transparently and in accordance with the Kenya National Drama and Film Festival Regulations 2024, specifically Rule 21:3 which provides that: -
- “Where all top plays are performed in one language, due consideration and affirmative action is to be given to plays in Kiswahili or indigenous languages.”
35. The Respondent and Interested Parties contended that, contrary to the Applicant's claim that the 2024 Rules were revoked by the 2025 Rules, there was no formal or express revocation of the said Regulations. According to the Respondent and the Interested Parties, the 2025 Rules operate as a supplement or update to the existing framework, rather than an abrogation of prior rules. They added that in the absence of express repeal, the previous provisions remain operative and binding.
36. Rule 21.3 of the Ministry of Education Kenya National Drama and Film Festival Rules and Regulations 2024 stipulates that: -
- “Of the Three winning plays, in the Primary Junior and Secondary School categories, at least one should be in Kiswahili or an indigenous Language. In case none is in Kiswahili/ indigenous, the best play in Kiswahili/ indigenous Language with a score of not less than 75% shall be performed at the National Level on the recommendation of the Adjudicators.
37. Rule 21.3 of the Ministry of Education Kenya National Drama and Film Festival Rules and Regulations 2025, on the other hand, provides as follows:
- “Of the Three winning plays, in the Primary Junior and Secondary School categories, at least One should be in Kiswahili/ indigenous Language. In case none is in Kiswahili/ indigenous Language, the best play in Kiswahili/ indigenous Language with a score of not less than 78%



shall be performed at the National Level on the recommendation of the Adjudicators. The play should also have been ranked among the top Four overall.” [Emphasis added]

38. A simple reading of the two versions of Rule 21.3 reveals several variations in the Rules as while the 2025 Rule sets the cut off qualification score for Kiswahili/indigenous language play at not less than 78%, the 2024 Rule sets the score at 75%. In addition to the scores, the 2025 Rule requires the Kiswahili/indigenous play to have been ranked top four overall while in the 2024 Rule, the play only needs to be the best in the Kiswahili/indigenous language category.
39. Considering the marked variations/difference in the above Rules I find that the Respondent’s and Interested Parties’ claim that the 2025 Rules operate as a supplement or update to the existing 2024 Regulations misleading and untenable. It is clear that the two Regulations, which appear to be a replica of each other save for the noted variations, were developed to govern the Drama Festivals in each given year in which case, the 2024 Rules cannot be applied to the 2025 Festival. This means that according to the 2025 Rules, the selection of a Kiswahili/Indigenous Play must meet the following threshold: -
 - a. Must be in Kiswahili or Indigenous Language
 - b. Must attain a score of 78% and above
 - c. Must be ranked at the Top Four Overall Plays position
 - d. Must be recommended by the Adjudicators
40. My understanding of Rule 21.3 of the 2025 Regulations is that where the 3 winning plays are in English language, as was the case in the instant Application, then best play in Kiswahili/indigenous Language with a score of not less than 78% shall be performed at the National Level on the recommendation of the Adjudicators as long as the play is ranked among the top Four overall.
41. This court further holds the view that if indeed the 2025 Rules were to supplement the 2024 Rules, then the said Rules would have expressly stated so and would not have been drafted to conflict with the previous Rules. Instead the Rules would be bridging any gaps in order to supplement the existing 2024 Rules. This was not the case in the present Application. It is my finding that parties cannot refer to previous rules where a new set of rules have been promulgated.
42. In the instant case, looking at the list of the top ten (10) performing schools that was presented by the Respondent and Interested Parties, it is clear that St. Mary’s Kibabii School, that was purportedly nominated by the Interested Parties’ deponent did not qualify in the top four overall position as envisaged by Rule 21.3 of the 2025 Regulations. It is instructive to note that the said school was in position 9 overall thereby failing to meet the qualification criteria set in the Regulations. No material was placed before this court to show that the said school got the adjudicators’ approval to perform at the National level.
43. Even assuming, for argument’s sake that the 2024 Regulations were still applicable in 2025, I find that nowhere in the said Rule 21.3 is it stated that the qualified Kiswahili/indigenous play will bump off/ take the place of or replace the school that is number 3 overall position in ranking. My understanding of the said Rule is that while the 3 winning English plays automatically qualify for the National Festival, the best Kiswahili/indigenous language play would only be allowed to perform alongside the three (3) winning plays if it meets the threshold of 78%, attains the fourth overall position and gets the adjudicators’ approval.



44. I therefore find that the explanation given by the Interested Parties' deponent, for excluding Butere Girls' from participating in the National Festival and substituting it with a school that ranked in the 9th overall position is neither convincing nor supported by the Rules governing the said Festival.
45. It is my further finding that the action taken by the Western Regional Director of Education to exclude Butere Girls' from the National Festival lends credence to the Applicant's claim that there may have been more than meets the eye in the school's disqualification. I therefore find that the Regional Director of Education (Western) did not exercise his discretion fairly, properly and lawfully.
46. Turning to the prayer for mandatory injunction to compel the Respondent to ensure that Butere Girls' participate at the National Festival, I am alive to the fact that it is now trite that the court can only grant a mandatory injunction under the provisions of section 3A of the *Civil Procedure Act* and not under Order 40 of the *Civil Procedure Rules*. (See *Belle Maison Ltd. v Yaya Towers Ltd.* Nairobi HCCC No. 2225 of 1992).
47. In the case of *Kenya Breweries Limited & Another v Washington O. Okeyo* Civil Appeal No. 332 of 2000 [2002] 1 EA 109 the Court of Appeal stated as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However if the case is clear and one which the Court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application...A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the Court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

48. Similarly, in *Dickson Mwangi v Braeburn Limited T/A Braeside School* Civil Appeal No. 12 of 2004 [2004] 2 EA 196 the Court of Appeal held that interlocutory mandatory injunctions should only be granted with reluctance and only in very special circumstances. In *Gusii Mwalimu Investment Company Ltd. & 2 Others v Mwalimu Hotel Kisii Ltd.* Civil Appeal No. 160 of 1995 [1995-1998] 2 EA 100 the same Court (Lakha, JA) held that:

“Whereas the court does have jurisdiction to grant a mandatory injunction even on an interlocutory application, the granting of a mandatory injunction on interlocutory relief is a very exceptional form of relief to grant. A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff a mandatory injunction will be granted on an interlocutory application. On motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must inter alia feel a high degree of assurance that the injunction was rightly granted; and



this is a higher standard than is required for a prohibitory injunction. Each case must depend on its own facts.”

49. Courts have also made a distinction between prohibitory injunctions as was espoused in the locus classicus case of *Giella v Cassman Brown* (1973) EA at page 358 and mandatory injunctions. While the former seeks to stop a party from acting or taking certain steps towards realizing an action, the latter refers to authorizing a party to act or take positive steps towards realizing a particular action.
50. In *Kamau Mucuba v The Ripples Ltd.* Civil Application No. Nai. 186 of 1992 [1990-1994] EA 388; [1993] KLR 35 the Court of Appeal expressed itself as hereunder:-

“Whereas a prohibitory injunction requires abstention from acting, a mandatory injunction requires the taking of positive steps, and may require the dismantling or destruction of something already erected, or constructed. This will result in a consequent waste of time, money and materials if it is ultimately established that the defendant was entitled to retain the erection...Historically, the principles laid down with regard to temporary mandatory injunctions are that they will only be granted in exceptional and clearest cases. The grant of a mandatory injunction on interlocutory relief is a very exceptional form of relief to grant, but it can be granted. If a mandatory injunction is granted on motion, there will normally be no question of granting a further mandatory injunction at the trial; what is done is done and the plaintiff has, on motion, obtained once and for all the demolition or destruction that he seeks. Where an injunction is prohibitory, however, there will often still be a question at the trial whether the injunction should be dissolved or contained...A court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the Court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted and that is a higher standard than is required for prohibitory injunction.”

(See also *Megarry J.’s decision in Shepard Homes v Sandham* [1970] 3 WLR Pg. 356)

51. Applying the principles governing the granting of orders of mandatory injunction, as stated in the above cited cases to the present case, I find that the Applicant’s case presents the special circumstances envisaged in the said authorities for the following reasons: Firstly, I have already found that Butere Girls’ was not only qualified to participate in the National Festival having emerged at position 3 overall, but was also unfairly and arbitrarily excluded from the contest. Secondly, the contest was set to begin yesterday 7th April 2025 which means that any further delay in allowing their participation, pending the determination of the Petition, will mean that by the time the main suit will be determined, the prayers in the Application and Petition would have been overtaken by events. In such an eventuality, the School will have been completely locked out from this year’s competition, thereby suffering irreparable loss that cannot be compensated by way of damages.
52. This court cannot ignore the fact that the students at Butere Girls’, their teachers and the entire school have invested in their time, talents and resources in preparing for the prestigious National Festivals. I find that in the circumstances of this case, denying the said students the opportunity to showcase their talents would be tantamount to an infringement to their freedom of expression as provided under Article 33 of the *Constitution*.
53. I find that the Applicant has established a prima facie case for the granting of conservatory orders. I find guidance in the decision in the case of *The Centre for Human Rights and Democracy & Others v*



The Judges and Magistrates Vetting Board & others Eldoret Petition No. 11 of 2012, where the court held as follows: -

“In our view where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in the contravention of any Constitutional or legal provision or without the authority of the law or any such legal wrong or injury is threatened, the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered, helpless or hapless in the eyes of the wrong visited or about to be visited upon him or her. This is meant to give an interim protection in order not to expose others to preventable perils or risks by inaction or omission.” [Emphasis added]

54. For the reasons that I have stated in this ruling, I find that the Application dated 2nd April 2025 is merited and hereby allow it in the following terms: -
- a. That an order is hereby issued to stay any order to ban, exclude and/or bar the Butere Girls from participating in the 2025 Drama and Music Festivals at National Level.
 - b. That an order is hereby issued compelling the Respondent to facilitate and ensure the 50 students of Butere Girls High School accompany their drama teachers and/or playwright to perform the Play, Echoes of War, in its original form, at the National Drama Festival in Nakuru as scheduled.
 - c. The costs of this Application will be in the cause.

55. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF APRIL 2025.

W. A. OKWANY

JUDGE

