



**Ouma (Suing on His Behalf and on Behalf of 253 others) v Kinderville Leader
In Me (Formally Known As Kinderville Junior School) & another (Civil
Case E086 of 2025) [2025] KEHC 5203 (KLR) (Civ) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E086 OF 2025

SN MUTUKU, J

APRIL 8, 2025

BETWEEN

**PHILIP OMONDI OUMA (SUING ON HIS BEHALF AND ON BEHALF OF 253
OTHERS) APPLICANT**

AND

**KINDERVILLE LEADER IN ME (FORMALLY KNOWN AS KINDERVILLE
JUNIOR SCHOOL) 1ST RESPONDENT**

KINDERVILLE SCHOOLS LTD 2ND RESPONDENT

RULING

1. The Plaintiffs before the court filed the Notice of Motion (the Application) dated 4th April 2025 under Certificate of Urgency. The Application is seeking various orders as shown on the face of it, including orders against the Defendants/Respondents to restrain them from implementing the decision to increase fees as contained in invoices for the second school term for 2025 and the fees increment letter dated 3rd March 2025.
2. The matter was placed before me for directions on 4th April 2025. I directed the Applicants to serve the Application by close of business on 4th April 2025, a Friday, and attend court on 7th April 2025, the following Monday.
3. On 7th April 2025, Mrs Nyaata and Mr. Atika attended court representing the Applicants while Mr. Nkarichia appeared for the Respondents. Mr. Nkarichia informed the court that they had not managed to be mapped into the system. I directed parties to attend court the following day, 8th April 2025 to enable counsel for the Respondents to finalize coming on record. The court also encouraged the parties to take the intervening period before 8th April 2025 to pursue negotiations towards settling the matter.



4. On 8th April 2025, Mr. Nkarichia appeared on behalf of Mr. Emmanuel Wetangula for the Respondents while Mrs. Nyaata and Mr. Nyaata appeared for the Applicants. Counsel for the Applicants indicated to the court that the parties have made certain proposals towards settling this matter out of court and that they needed more time to finalize. Counsel sought that prayer 2 of the Application be allowed pending finalization of the negotiations by the parties.
5. Counsel for the Respondent was of a different view. He informed the court that they were willing to accept payment of school fees up to 90% pending hearing and determination of the suit because failure to receive this amount will render the Respondent unable to operate. Counsel informed the court that the Respondent is wrongly named in the proceedings and that this court lacked jurisdiction.
6. This court told the parties to address it on the issue of jurisdiction.
7. Mr. Emmanuel Wetangula, counsel for the Respondent, who had joined the proceedings at this stage, submitted that the Respondent school campuses are located in Sabaki, Syokimau and Kitengela, and that all the locations are outside Nairobi. He submitted that jurisdiction to handle this matter does not lie in this Court but in Machakos High Court.
8. Mr. Nyaata submitted that the High has unlimited jurisdiction to handle this matter because what is being contested is the geographical location of the Applicants and that the address for the Respondent, as given in the court documents, indicate that the Respondent is located in Nairobi. Counsel further submitted that the school in Syokimau is located in Nairobi because some parts of Syokimau are located in Nairobi.
9. In a rejoinder, Mr. Wetangula submitted that whereas the High has unlimited jurisdiction, courts have been established in all the counties to enable parties file disputes in the right forum. He submitted that the Respondent does not have an institution in Nairobi and that the schools are located in Sabaki, Syokimau and Kitengela.
10. I have considered rival submissions on the issue of jurisdiction. I recall the Supreme Court of Kenya decision in *Aviation & Allied Workers Union Kenya v Kenya Airways & Others* (Petition 4 of 2015) [2017] KESC 11 (KLR) (28 July 2017) (Judgment) which held that once a court's jurisdiction is objected to by a party to the proceedings, such an objection must be dealt with as a preliminary issue, before determining the case on merits.
11. The reason for this is that jurisdiction is everything and a court without jurisdiction to try a matter before it has not business in that matter. The Court of Appeal in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR, cited with approval the decision in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989) where it was held that:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
12. I appreciate that this court is clothed with unlimited jurisdiction in civil and criminal matters. But again, I am alive to the fact that almost every County in the Republic has a High Court. The establishments of these courts all over the country was meant to bring justice closer to the people and afford parties a convenient forum to file their cases. It also discourages forum shopping so that parties



are confined to the court within the geographical location where the subject matter of litigation is situated.

13. The Applicant has not placed any material before this court to demonstrate that the Defendant is located within Nairobi, or that Syokimau is in Nairobi. To this court's knowledge, Sabaki and Syokimau are locations situated within Machakos County. I am aware some parts of Kitengela fall within Machakos County while the bigger part of Kitengela lies within Kajiado County.
14. Having considered the issue of jurisdiction raised and the brief submissions, I am persuaded that this court, though possessed of unlimited jurisdiction, is not the right forum to handle this matter for the reasons that the subject matter is located in Machakos County. I will therefore down my tools at this stage, lest I embarrass this court by granting orders that might be challenged in future for lack of jurisdiction, with the effect that I am not able to determine the issues presented before me.
15. For good order and to avoid delay in determination of the pertinent issues raised in this matter, it is imperative that this matter be transferred to Machakos High Court for determination. Due to the urgency of this matter given that this court was informed that the schools will open on 28th April 2025, I direct the Deputy Registrar of the Civil Division of the High Court of Kenya in Milimani to urgently forward this file to the Deputy Registrar, High Court of Kenya at Machakos for the necessary action.
16. Further, this matter will be placed before the Presiding Judge or the Vacation Duty Judge at Machakos High Court for action. To allow the process of transmitting this file to Machakos and the necessary action, this matter shall be mentioned in before a Judge in Machakos as directed in this order on 10th April 2025.
17. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF APRIL 2025.

S. N. MUTUKU

JUDGE

