



**Office of the Controller of Budget v Nakuru County Government & 8 others; Council of Governors & 4 others (Interested Parties) (Constitutional Petition E012 of 2024) [2025] KEHC 6976 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CONSTITUTIONAL PETITION E012 OF 2024**

**SM MOHOCHI, J**

**MAY 22, 2025**

**BETWEEN**

**OFFICE OF THE CONTROLLER OF BUDGET ..... APPLICANT**

**AND**

**NAKURU COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MURANG'A ..... 2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY OF NATIONAL TREASURY ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY OF EDUCATION ..... 4<sup>TH</sup> RESPONDENT**

**NATIONAL ASSEMBLY ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**SENATE ..... 7<sup>TH</sup> RESPONDENT**

**LABAN OMUSUNDI ..... 8<sup>TH</sup> RESPONDENT**

**KATIBA INSTITUTE ..... 9<sup>TH</sup> RESPONDENT**

**AND**

**COUNCIL OF GOVERNORS ..... INTERESTED PARTY**

**NG-CONSTITUENCY DEVELOPMENT FUND BOARD . INTERESTED PARTY**

**NG-AFFIRMATIVE ACTION FUND BOARD ..... INTERESTED PARTY**

**LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

**MINISTRY OF LABOUR AND SOCIAL PROTECTION .. INTERESTED PARTY**



## RULING

1. Before me is a Notice of Motion Application by the 3<sup>rd</sup> Respondent Controller of budget, dated 30<sup>th</sup> April 2025 inter alia seeking the following relief(s): -
  - i. That, this Honourable Court be pleased to clarify and/or reconcile the effect and scope of Orders 7 and 9 issued on 3<sup>rd</sup> February 2025 in light of Orders 5, 6, and 8 which remain unaddressed in the ex tempore ruling delivered on 8<sup>th</sup> April 2025.
  - ii. That pending the clarification of the aforementioned orders, the implementation and/or enforcement of Orders 7 and 9 be stayed to the extent that they conflict with Orders 5, 6, and 8 as they create legal uncertainty.
  - iii. That costs of this application be in the cause.
2. The Application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
3. The Applicant contends and submits that Order 5 and Order 6 which are identical in substance) "that a temporary conservatory order is issued restraining the 3<sup>rd</sup> Respondent from withdrawing, retracting and or interfering with its circular (OCOB/Circular No 1 of 2025) issued on 14<sup>th</sup> January, 2025.
4. That Order 7 which states: A temporary conservatory is hereby issued, restraining the 3<sup>rd</sup> Respondent (the Controller of Budget) from going against its Circular to authorize and approve any county requisitions for expenditure on bursaries and other education support programs targeted at universities, primary, secondary and special schools which are not accompanied by requisite inter-governmental transfer agreements
5. That Order 8 which states that, a temporary conservatory is hereby issued, restraining the 3<sup>rd</sup> Respondent from implementing any agreement reached with the 1<sup>st</sup> Interested Party during the 26<sup>th</sup> Intergovernmental Budget and Economic Council in so far as the agreement undermines the contents of the circular and the reliefs sought under Paragraphs 104(A), (B), and (E) of the Petition.
6. That Order 9 which states that a temporary conservatory is hereby issued, restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from issuing new bursaries or bursaries to new beneficiaries that extend beyond life of the current financial year.
7. That on 8<sup>th</sup> April 2025, the Court issued an ex-tempore ruling aimed at clarifying Orders 7 and 9 only, without addressing the effect of Orders 5, 6, and 8, which continue to validate and protect the authority and applicability of Circular No. 1 of 2025.
8. That the ex-tempore ruling appears to imply a freeze or restriction on bursaries extending beyond the current financial year, potentially contradicting the Circular which remains in force under Orders 5 and 6.
9. That the selective clarification of some orders and silence on others has introduced interpretive uncertainty and operational challenges for the 3<sup>rd</sup> Respondent in fulfilling its constitutional mandate.
10. That it is in the interest of clarity, legality, and judicial consistency that this Honourable Court addresses the interplay between the contested orders and provides guidance accordingly.
11. That Order 9 restrains the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from issuing new bursaries extending beyond the current financial year.



12. That, the Circular as issued on 14<sup>th</sup> January, 2025 remains in force and has not been suspended or set-aside pursuant to the Court's Orders issued on 3<sup>rd</sup> February, 2025.
13. That, it is in this order that no approval has been done in regards to bursaries.
14. That this application is made to seek the Court's clarification to reconcile these orders in a manner that preserves the integrity of the judicial process and facilitates lawful execution of public finance mandates.
15. That the 3<sup>rd</sup> Respondent' Margaret Nyakango swore an affidavit in support of the application for clarification and any further directions this Court may deem just and expedient. The temporary orders were to this Court intended to stop any fresh bursaries in the new financial year of 2025 – 2026.

### **1<sup>st</sup> Respondents Case**

16. The 1<sup>st</sup> Respondent opposed the application in its notice of preliminary objection dated 19<sup>th</sup> May 2025 citing the Application as an abuse of the Court process and a deliberate attempt to delay compliance with the orders of this Honorable Court issued in its ex-tempore Ruling delivered on 8<sup>th</sup> April 2025
17. That, the ex-tempore Ruling delivered by this Honourable Court expressly stated that the conservatory orders issued on 3<sup>rd</sup> February 2025 apply only to new beneficiaries of bursaries in the new financial year 2025/26.
18. That the purported confusion alleged by the 3<sup>rd</sup> Respondent is unfounded as the Court's directions were clear and devoid of any ambiguity. The claim of uncertainty by the 3<sup>rd</sup> Respondent is unjustified and serves no purpose other than to obstruct justice.
19. That the 3<sup>rd</sup> Respondent has approached the Court with unclean hands as she is in disobedience of the orders and directions of this Honourable Court; As such, cannot purport to seek clarity while still acting in defiance of existing orders issued by the Court.
20. That, the 3<sup>rd</sup> Respondent's Application serves no legitimate purpose and instead delays the delivery of justice to the detriment of thousands of vulnerable children who remain out of school due to the inadvertent failure to authorize release bursary funds.
21. That, the conduct of the 3<sup>rd</sup> Respondent in the matter goes against the provisions of Article 53(2) of *the Constitution* which places a child's best interest to be of paramount importance in every matter concerning the child.
22. That it is in the interest of justice and public interest that this Honorable Court dismisses the application with costs to enable parties to enforce its orders without further delay.

### **2<sup>nd</sup> Respondent's Case**

23. In its sworn Affidavit by Dr. Newton Mwangi the 2<sup>nd</sup> Respondent contends that, the real motive of 3<sup>rd</sup> Respondent's present Application is to perpetuate her disobedience of Court Orders, and protract the anguish of underprivileged school going children.
24. That subsistence of the subject Application will only sustain the 3<sup>rd</sup> Respondent's continued disobedience of the Court Orders and therefore, this Court ought to act ex-debito justitiae and instantly determine the said Application, so as to protect the authority of this Court, and prevent this Court from being brought into disrepute.



25. That, time is of essence because schools have reopened yet thousands of bursary-recipients cannot resume school until the 3rd Respondent approves withdrawal from public funds monies to clear their bursary-cheques for payment of school-fees.
26. That the Application is an abuse of process as it is a misuse or perversion of the legal system for an improper purpose of delaying justice and has been brought to wreak havoc in the education sector.
27. That the 3<sup>rd</sup> Respondent is now engaging the Court in a game of musical chairs of clarification and re-clarification of plain and unambiguous Court orders.
28. That education is not a game; it is the foundation upon which a nation builds its character, economy, and progress, and to play with it-through underfunding, instability, or agenda-driven policies is to gamble with the potential of an entire generation.
29. That, the 2<sup>nd</sup> Respondent prays that the 3<sup>rd</sup> Respondent's Application filed on 30<sup>th</sup> April, 2025, be dismissed with costs.

### **Analysis & Determination**

30. The jurisdiction of the Court to review its decisions, is provided for under section 80 of the *Civil Procedure Act*, while the grounds on which such an application may be made are provided for under Order 45 rule 1 of the Civil Procedure Rules.
31. Section 80 provides:  
Any person who considers himself aggrieved-
  - i. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred: or
  - ii. By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.
32. Order 45 of the rule's augments Section 80, providing for grounds for review. The Court may exercise its discretion and allow an application for review where an applicant shows that there is an error or mistake apparent on the face of the record; discovery of new and important matter that was not in the applicant's knowledge, or for any other sufficient reason. The jurisdiction for review involves exercise of discretion which, like all other discretions, must be exercised judicially.
33. The power of clarification can be invoked where the judgment or ruling is ambiguous, unclear or otherwise confusing. The power is to be exercised to make such judgment or ruling less confusing and more comprehensible.
34. It is important to recall that all the Respondents in the petition are public bodies either devolved governments, commissions or independent offices, are all publicly funded to deliver a public or government service rendering services to Kenyan, they exist not in a vacuum but on behalf of the Kenyan people and nothing else.
35. This Court expects public bodies to constantly demonstrate responsiveness to the needs and interest of the people. In this instance the matter at hand involves children and young Kenyan bursary recipients in the current year whose educational continuity hangs in the balance, this Court was earlier informed of over 42,000 beneficiaries that stood at the risk of not joining school in second term of the educational calendar.



36. The Ex-Tempore Ruling dated 8<sup>th</sup> April 2025 reaffirms the import of the temporary conservatory orders issued and that the question as to whether the Court shall issue conservatory orders pending hearing of the Petition awaits hearing on merit.
37. Further more the Ruling of the Court considered that the constitutional predicate of the child's best interest would lean in favor of ensuring minimum disruption of education to the beneficiaries of bursaries from counties across the country.
38. Any litigant public body be it an independent office, commission ministry department or agency (MDA) appearing in Court or ignoring the plight of the people or disregarding the constitutional predicates deserves no equitable relief.
39. In consideration of the Application it is this Court's view that the orders of this Court are not ambiguous in any way, this Court sees no confusion by the said orders and that the temporary conservatory orders do not affect bursaries awarded in the current financial year (FY 2024-2025)
40. I find no merit in the Application dated 30<sup>th</sup> April 2025 and accordingly dismiss the same.
41. This is a constitutional petition filed by the Petitioners as spirited active citizens for the benefit of the larger populace and any plea for costs orders by a public body against another public body is nonsensical at best amounting to moving moneys from the left pocket to the right. Such cost orders are drawn from taxpayer's money respectively decline to make any adverse cost orders

**SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAKURU ON THIS 22<sup>ND</sup> MAY 2025**

**MOHOCHI S.M**

**JUDGE**

