



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 10364 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEHC 10364 (KLR)

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

SM MOHOCHI, J

JUNE 17, 2025

BETWEEN

OFFICE OF THE CONTROLLER OF BUDGET APPLICANT

AND

NAKURU COUNTY GOVERNMENT 1ST RESPONDENT

COUNTY GOVERNMENT OF MURANG'A 2ND RESPONDENT

CABINET SECRETARY OF NATIONAL TREASURY 3RD RESPONDENT

CABINET SECRETARY OF EDUCATION 4TH RESPONDENT

NATIONAL ASSEMBLY 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT

SENATE 7TH RESPONDENT

LABAN OMUSUNDI 8TH RESPONDENT

KATIBA INSTITUTE 9TH 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 3rd Respondent Controller of budget, dated 30th 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 3rd February 2025 in light of Orders 5, 6, and 8 which remain unaddressed in the *ex tempore* ruling delivered on 8th 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 1st and 2nd 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 3rd Respondent from withdrawing, retracting and or interfering with its circular (OCOB/CIRCULAR No 1 of 2025) issued on 14th January, 2025.
4. That Order 7 which states: A temporary conservatory is hereby issued, restraining the 3rd 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 3rd Respondent from implementing any agreement reached with the 1st Interested Party during the 26th 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 1st and 2nd Respondents from issuing new bursaries or bursaries to new beneficiaries that extend beyond life of the current financial year.
7. That on 8th 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 3rd 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 1st and 2nd Respondents from issuing new bursaries extending beyond the current financial year.



12. That, the Circular as issued on 14th January, 2025 remains in force and has not been suspended or set-aside pursuant to the Court's Orders issued on 3rd 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 3rd 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.

1st Respondents Case

16. The 1st Respondent opposed the application in its notice of preliminary objection dated 19th 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 8th April 2025
17. That, the *ex-tempore* Ruling delivered by this Honourable Court expressly stated that the conservatory orders issued on 3rd February 2025 apply only to new beneficiaries of bursaries in the new financial year 2025/26.
18. That the purported confusion alleged by the 3rd Respondent is unfounded as the Court's directions were clear and devoid of any ambiguity. The claim of uncertainty by the 3rd Respondent is unjustified and serves no purpose other than to obstruct justice.
19. That the 3rd 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 3rd 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 3rd 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.

2nd Respondent's Case

23. In its sworn Affidavit by Dr. Newton Mwangi the 2nd Respondent contends that, the real motive of 3rd 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 3rd 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 3rd 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 2nd Respondent prays that the 3rd Respondent's Application filed on 30th 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 8th 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 only affect bursaries awarded in the current financial year (FY 2024-2025)
40. I find no merit in the Application dated 30th 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 17TH JUNE, 2025

MOHOCHI S.M

JUDGE

