



**KWG (A Child Suing Through her Father and Next Friend) v Aga Khan Academy, Mombasa & 2 others (Constitutional Petition E044 of 2023) [2023] KEHC 22313 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22313 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CONSTITUTIONAL PETITION E044 OF 2023**

**OA SEWE, J**

**SEPTEMBER 20, 2023**

**IN THE MATTER OF: THE CONTRAVENTION OF FUNDAMENTAL RIGHTS & FREEDOMS AS ENSHIRINED UNDER ARTICLES 3, 10, 19, 20, 21, 22, 23, 27, 28, 29, 43, 47, 53, 258 & 259 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**BETWEEN**

**KWG ..... PETITIONER**

**A CHILD SUING THROUGH HER FATHER AND NEXT FRIEND**

**AND**

**AGA KHAN ACADEMY, MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL, SENIOR SCHOOL AGA KHAN ACADEMY,  
MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**AGA KHAN EDUCATION SERVICE, KENYA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The petitioner’s notice of motion dated 24/8/2023 has been argued and is fixed for ruling on 2/10/2023. Counsel for the petitioner prayed that, in the meantime, the minor be re-admitted to school to continue with her studies, seeing as she has already missed out on 1 ½ months of classwork. Counsel posited that no prejudice will be suffered by the respondent if such an order is given.
2. The respondent was opposed to the interim orders being granted. According to Mr. Weru, the decision to discontinue has already been made and that the issue of interim relief has already been considered and declined. He further submitted that the petitioner came to court after the semester had began and therefore it would be in the best interest of the minor to await the court’s ruling on the matter for a once and for all determination.



3. I have had the benefit of perusing the documents filed herein as annexures to the petitioner's Supporting Affidavit. I have likewise perused the record of the proceedings held herein to date. It is plain therefrom that the issue of interim relief is yet to be determined. It is also plain that the petitioner approached the court a week after the commencement of the current semester and therefore has lost about 1 ½ months of class work.
4. It is averred in the supporting affidavit that the petitioner was enrolled at the 1<sup>st</sup> respondent alongside her twin brother and three other siblings to undertake her studies under the International Baccalaureate (IB) curriculum, and that she has been forced to remain at home as her other siblings continue with their studies.
5. Thus, taking into account all the circumstances of this matter, including the best interest of the minor, I am convinced that the orders prayed for are warranted. Accordingly, it is hereby ordered that:
  - (1) The respondents be and are hereby ordered to re-admit the petitioner forthwith to continue with her education at the 1<sup>st</sup> respondent pending the court's ruling on 2/10/2023.
  - (2) An interim order of temporary injunction be and is hereby granted restraining the respondents from enforcing the contents of the letter dated July 5, 2023 pending further orders of the court on 2/10/2023.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**OLGA SEWE**

**JUDGE**

