



Jonathan Gloag Academy Parents and Guardians (Petition Working Group) v Jonathan Gloag Academy Board of Governors & another; Mulema & another (Interested Parties) (Application E093 of 2024) [2024] KEHC 13838 (KLR) (Judicial Review) (8 November 2024) (Judgment)

Neutral citation: [2024] KEHC 13838 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E093 OF 2024
J NGAAH, J
NOVEMBER 8, 2024**

BETWEEN

JONATHAN GLOAG ACADEMY PARENTS AND GUARDIANS (PETITION WORKING GROUP) APPLICANT

AND

**JONATHAN GLOAG ACADEMY BOARD OF GOVERNORS 1ST RESPONDENT
COLLINS OYWERA, CEO KENYA CHILDREN'S HOMES
(UK) 2ND RESPONDENT**

AND

**WILLIAM MULEMA INTERESTED PARTY
CABINET SECRETARY, MINISTRY OF EDUCATION INTERESTED PARTY**

JUDGMENT

1. Before court is the applicant’s motion dated 16 May 2024. The prayers in the motion are as follows:
 - “ 1. A prohibitory order restraining Respondents from implementing or further implementing the 2nd Respondent’s unlawful decision on March 28, 2024 to purport to act as CEO of the school and, in that ultra vires capacity, to retire the school Head Teacher, Mr. Mulema, without consulting the parents.
 2. An order of certiorari do issue to bring to this court and quash the 2nd Respondent’s unlawful decision on 28th March 2024, to purport to act as CEO



of the school and, in that ultra vires capacity, to retire the school Head Teacher, Mr. Mulema, without consulting the parents.

3. A supervised mandamus or structural interdict compelling the JGA Board:
 - i. Within 7 days of this court's order to convene a meeting with the parents to deliberate and resolve the issues raised in the petition dated March 31, 2024;
 - ii. Within 14 days of the court's order to create, operationalize and integrate into all decision making processes, a Parent Teachers Association as contemplated in Section 55(3) of the Basic Education Act, CAP 211;
 - iii. Within 30 days of the court's order to transition the Board of Governors into a Board of Management consistent with the Basic Education Act, Cap 21;
 - iv. Within 45 days of this court's order to file a report in court indicating the steps taken to comply with the court's orders.
4. Each party bears its cost because this matter concerns the child's best interest."

2. The application is supported by a statutory statement dated 1 May 2024 and a verifying affidavit sworn on even date by Mr. Samuel Williams who has introduced himself as "a parent at the school and an official and representative in the unregistered working group formed by parents to address the concerns in this matter. Parents are aggrieved by the conduct of the JGA Board." I understand "JGA Board" to refer to Jonathan Gloag Academy Board of Governors, the 1st respondent in the instant application. Henceforth, I will refer to the 1st respondent as "the Board". The description given for "Jonathan Gloag Academy" in statutory statement is rather scanty but I gather from the rest of the application that it is a learning institution. I will hereinafter refer to it as "the Academy".
3. I must point out at the very outset that being an application for judicial review orders, it ought to have been made in the name of the state rather than in the applicants' names. In *Mohammed Ahmed versus Republic* (1957) E.A. 523 which was cited with approval in *Farmers Bus Service & Others versus The Transport Licensing Appeal Tribunal* (1959) E.A 779, it was held that prerogative orders are issued in the name of the crown (read republic) and applications for such orders must be intitled accordingly. Since it is an infraction of form rather than substance, nothing much turns on it; in any event, it has not been raised as an issue for determination in these proceedings.
4. According to Mr. Williams, parents of pupils or students at the Academy have, for a long time in the past, sought to be involved in decision-making on matters affecting the wellbeing and welfare of their children at the Academy. However, the Board has consistently blocked them and has, in particular, failed to create and run a Parents Teachers Association (hereinafter also referred to as "the PTA") contrary to section 55(3) of the Basic Education Act, Cap 211.
5. The applicants are, in particular, aggrieved by the decision made on 28 March 2024 by the 2nd respondent to retire the school headteacher, one Mr Mulema, without sufficient notice. According to the applicants, this decision was made abruptly, arbitrarily, unreasonably, unlawfully, and against the best interest of the applicants' children.
6. On 1 April 2024, the 2nd respondent acknowledged that his decision was concerning to the parents and represented that the Board and the founder, apparently, of the Academy, were aware of the parents'



- concerns. He further stated that the Board and the founder were committed to addressing those concerns in a fair and transparent manner. Accordingly, he requested the parents to submit their concerns to the Board in writing.
7. On 2 April 2024, parents picketed and petitioned the Board in writing by a letter dated 31 March 2024 signed by 608 parents. In that petition, parents requested respondents to rescind the decision to retire Mr Mulema and to allow him to continue in his job for the successful implementation of the Competency-Based Curriculum and stabilize the newly introduced Junior High School at the Academy.
 8. The parents also asked the Academy to immediately allow the formation of a Parents Teachers Association and allow the election of the PTA members in a transparent and democratic process. Finally, the parents asked the Board to affirm that the 2nd respondent, as the Chief Executive Officer of Kenya Children's Homes (UK), a separate legal entity, has no control over the Academy headteacher, who is only answerable to the Board. .
 9. It would appear that the parents' petition did not yield any, or any positive response from the Board and so on 11 April 2024, parents petitioned the Cabinet Secretary for Education, the 2nd interested party, seeking redress on the issues raised in the petition. There has, however, been no response from the 2nd interested party.
 10. On 1 May 2024, when the Board learned that parents were serious about proceeding to court, it issued a letter in what the applicants have described as "paying lip service to the spirit of dialogue", claiming to be committed to be responding to issues that have been raised or may be raised by the parents. It is out of lack of the respondents' response to the applicants' concerns that the applicants have moved this Honourable Court for the judicial review reliefs set out in the application.
 11. The applicants have, in this regard, sworn and concluded that, "this application, thus, impugns JGA's failure to establish and run a Parents Teachers Association under section 55(3) of the [Basic Education Act](#), Cap 211, to the detriment of the learner's best interest."
 12. The respondents filed a replying affidavit opposing the application. The affidavit has been sworn by Mr. Collins Oywera who has introduced himself as the Chief Executive Officer of Kenya Children's Homes (which I will also hereinafter refer to as the "KCH") and that he has sworn the affidavit on his own behalf and on behalf of the 1st respondent.
 13. It is Mr. Oywera's evidence that Kenya Childrens Homes is a charitable entity trust dedicated to providing quality education and supporting orphaned and destitute children in Kenya and "houses" amongst other institutions, the Academy, which he has described as " a primary school established to provide quality education".
 14. He has sworn further that he oversees the leadership of all the entities under the umbrella of Kenya Children's Homes, including the Academy, and that he reports to the Board of Governors of this particular umbrella institution. The Academy was founded to educate the orphaned and destitute children at the KCH, formerly known as Thomas Bernado House, alongside fee-paying pupils. The profits from the school are applied to charitable projects, in particular, projects for provision of education and care to vulnerable children.
 15. To date, the school has 1050 children. The Academy is headed by a Head Teacher who is responsible for managing the day-to-day affairs of the school. The Head Teacher reports to the Chief Executive Officer of the KCH and directly to Board Members at board meetings.



16. Mr. William Mulema, who is named as the 1st interested party in this application, has been the Academy's Head Master but that he retired on 28 March 2024. On the material date, the Academy sent out a communication to the parents informing them of the retirement of Mr. Mulema and that one Elizabeth Mumbo had been appointed as interim Head Teacher. Mr. Oywera signed the communication in his capacity the Chief Executive Officer of the KCH.
17. When parents raised concerns about Mr. Mulema's departure, Mr. Oywera asked them to reduce their concerns in writing for presentation before the Board. On 2 April 2024, about 100 parents arrived at the school and became rowdy and even threatened to kill Mr. Oywera. The police came to his rescue and evacuated him. Later on, on the material day, the Board received the parents' petition and assured the parents that their concerns would be addressed. Nonetheless, three of the parents were charged in court with the offences of threatening to kill an employee contrary to section 223 (I) of the Penal Code, cap. 63, and malicious damage to property contrary to section 339 of the Penal Code.
18. Despite the Board's efforts to address the parents' concerns, the applicants filed the instant application. It is the respondents' position that the allegations and demands upon which the application is founded are untrue and do not give rise to any legitimate claim by the applicants.
19. Mr. Oywera has further sworn that he has been advised by Mr. James Tugee, the respondents' learned counsel, which advice he believes to be true, that a Board of Management is the organ established to run the affairs of a public school under the [Basic Education Act](#). They argue that this is distinct from the Board of Governors running a private school .
20. The Academy, it is urged, is a private learning institution that is run by a Board of Governors and not a Board of Management. As a private learning institution, the role of the PTA would be limited to welfare and that there is no entitlement for parent representatives to sit on the Board of Governors or make decisions on the manner the school is run, including the hiring of staff.
21. These proceedings notwithstanding, the Board has continued to engage the parents through the class parent representatives and, in particular, on 10 May 2024 the Board held a meeting to discuss the parents' concerns.
22. When the application came up for highlighting of submissions on 18 September 2024, Mr. Ochiel, the learned counsel for the applicants, informed the court that the applicants wished to have the 1st and 2nd interested parties struck off from the application in view of certain developments that had arisen subsequent to the filing of the suit. For the same reason, the applicants were no longer interested in pursuing prayers 1 and 2 of the motion.
23. Having abandoned those two prayers, the applicants submissions centered on the failure by the respondents to comply with section 52 (2) of the [Basic Education Act](#) that requires each school to have a PTA. According to the learned counsel for the applicants, the association in a school is mandatory and, in support of this submission, he cited the decision in *Mutua & 6 others (Suing on their Own Behalf and on Behalf of 1,000 Others) St Bakhita Schools Limited & 3 others [2024] KEHC 8804 (KLR)* where the court is said to have asserted the centrality of the PTA in the management of both private and public schools. It is also said to have been held in that case that private schools are not private clubs, which operate on their rigid rules; instead, they are part and parcel of the bigger educational institutions that offer educational services and, therefore, are bound by all legislation.
24. In response to the applicants' submissions, Mr. Tugee, the learned counsel for the respondents urged that the applicants have no locus standi to bring this suit because they are not known in law. As far as compliance with section 52(1) of the [Basic Education Act](#) is concerned, counsel submitted that the



Academy is in the process of forming the PTA and, as a matter of fact, the PTA shall be operational in the year 2025. He admitted that the Academy has not complied with section 55(3) of the Education Act but that the school is committed to coming up with the PTA.

25. In as much as the respondents questioned the applicants' standing, he admitted that Mr. Samuel Williams who, as noted, swore the affidavit verifying the facts relied upon, is a parent at the Academy. Of course applicant for judicial review reliefs would not merit such reliefs unless he demonstrates that he has a sufficient interest in the matter to which the application relates. In *R versus Thames Magistrates Court* ex parte; Greenbaum (1957) 55 LGR 129 Lord Denning LJ said of locus standi for judicial review orders as follows:

“When application is made to (the court) by a party or person aggrieved, it will intervene (it is said) ex debito justitiae, in justice to the applicant. When application is made by a stranger it considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the court.”

26. To have locus standi in judicial review proceedings, one must demonstrate “sufficient interest”. Halsbury's Law of England, Judicial Review Vol. 61 (2010) 5th Edition at paragraph 656, speaks of ‘sufficient interest’ in the following terms:

“Sufficient interest’ is not defined, but it is in practice a broad, flexible concept. What is a ‘sufficient interest’ is a mixed question of fact and law. The determination of any issue as to whether the claimant has a sufficient interest to bring the challenge in question will depend on consideration of the relationship between the claimant and the matter to which the claim relates, having regard to all the circumstances of the case. In appropriate cases, the court may also have regard to broader concerns, including the merits of the challenge, the importance of enforcing the law, the importance of the issue raised, the presence or absence of any other person with sufficient interest, the nature of the unlawful conduct alleged and the role of the claimant in relation to the issues under consideration. In recent years, the rules on standing in judicial review claims have been considerably relaxed. Individuals have been recognised as having standing not only where their rights or interests are affected but in a broad range of situations where in some way they are affected by a decision. A public spirited citizen raising a serious issue of public importance may be recognised as possessing standing. The courts have increasingly recognised that a wide range of pressure groups have standing to bring challenges in matter which concern their areas of interest or expertise. (Emphasis added).

27. Despite the unincorporated and rather the amorphous nature of the applicant, there is sufficient evidence that it is a group composed of parents of pupils at the Academy. It has not been disputed that Mr. Samuel Williams who swore an affidavit on his own behalf and on behalf of the rest of the parents who signed the petition is one of the parents. They have a stake in the affairs of the academy and, even if it was to be assumed that they are not, the court cannot close its eyes to their broader concerns the most important of which is the need to comply with the provisions of the Education Act. I am therefore satisfied that the applicants are properly before this Honourable Court.
28. Having heard from the learned counsel both from the applicants and the respondents, there isn't much of a dispute on the question whether a parents association or a parents teachers association is necessary for the Academy. And there shouldn't be any because Part VIII of the *Basic Education Act*, on Governance and Management of Basic Education and Training, provides for the establishment of Governance structures in schools that includes parents association or PTA. Section 55 which falls under this part, provides, for instance, Board of Management for public schools, parents associations



for all schools, irrespective of whether they are public or not and parents and teachers associations for private schools. This section reads as follows:

55. Board of management

- (1) There shall be a Board of Management for every public—
 - (a) deleted by [Act No. 3 of 2021](#);
 - (b) primary school;
 - (c) secondary school;
 - (d) adult and continuing education centre;
 - (e) multipurpose development training institute; or
 - (f) middle level institutions of basic education.
- (2) Notwithstanding subsection (1) every school shall have a parents association which shall be constituted in the manner set out in the Third Schedule.
- (3) Every private school shall establish a parents' teachers association. (Emphasis added).

29. The obligation for private schools, such as the Academy, to have these governance structures is also spelt out in section 52 (1)(a) of the Act which reads as follows:

52. Duties and rights of a private school

- (1) A private school shall—
 - (a) establish necessary educational and governance structures;

30. In the face of these provisions of the law, the debate whether the Academy needs a parents' teachers association need not have arisen; and, being a statutory obligation, it need not have taken a petition from parents for the Academy or the respondents to come up with the association. The respondents simply needed to have complied with the law and put this governance structures in place as soon as the Education Act came into force on 25 January 2013.

31. By writing to the applicants or parents in May 2024, purporting to tell them “that the Board was still in the process of addressing their concerns and requesting parents to exercise patience”, more than 10 years after the Act came into force, and only after parents picketed at school denotes lethargy and, for purposes of this application, irrationality or unreasonableness, on the part of the Board.

32. Considering the composition and the functions for which a parents association is established in the 3rd Schedule to the Act, there is every possibility that the misunderstanding between parents and the respondents which has resulted in some parents being charged or exposed to criminal prosecution could have been avoided. The schedule reads as follows:

“Establishment and Functions of Parents Association

1. There shall be a Parents Association for every public or private secondary school consisting of—
 - (a) every parent with a pupil in the school;



- (b) a representative of the teachers in the school.
- 2.
- (1) There shall be an Executive Committee consisting of representatives of each class and two teachers.
 - (2) The members of the Executive Committee of Parents Association shall be elected during an annual general meeting of parents and teachers.
 - (3) The Parents Association shall, at its first meeting, elect a Chairperson from amongst the persons elected under paragraph 2 of this Schedule.
 - (4) The Chairperson and two members of the Association shall be co-opted to the Board of Management.
 - (5) The Head or Principal shall be the Secretary to the Association.
 - (6) The functions of the Parents Association shall be to—
 - (a) promote quality care, nutritional and health status of the pupils;
 - (b) maintain good working relationship between teachers and parents;
 - (c) discuss, explore and advise the parents on ways to raise funds for the physical development and maintenance;
 - (d) explore ways to motivate the teachers and pupils to improve their performance in academic and co-curricular activities;
 - (e) discuss and recommend charges to be levied on pupils or parents;
 - (f) undertake and oversee development projects on behalf of the whole Parents Association.
 - (g) assist the school management in the monitoring, guidance, counseling and disciplining of pupils; and
 - (h) discuss and recommend measures for the welfare of staff and pupils.
 - (3) The Parents Association shall hold such number of meetings at such places and at such times as the Association shall consider necessary for the proper discharge of its functions.
 - (4) Subject to the provisions of this Schedule, the Parents Association shall regulate its own procedure.



- (5) There shall be established National Parents Associations, County Parents Associations and Sub-County Parents Associations elected by Parents Associations from schools through a delegate system.
33. It goes without saying that if the association was in place, the source of the parents' concerns which, from the affidavits filed by both the applicants and the respondents, range from the welfare of the pupils and their teachers to the management of the Academy could have been resolved under the auspices of or within the mechanisms of the PTA governance structure.
34. The respondents have asked for more time to put the PTA structure in place but I reckon that, having delayed the formation of the PTA for more than a decade, the respondents do not deserve any more time to establish or put in place the necessary mechanisms to establish the parents association in tandem with the requirements of the Act. I am, therefore, satisfied that the applicants' application is merited. Under section 11 (1) (f) of the *Fair Administrative Action Act*, 2015, this Court has powers to compel the respondents to comply with the law. The section reads as follows:
11. Orders in proceedings for judicial review.
- (1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including-
- (f) an order compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;
- And subsection (2) of section 11 of the Act adds its voice to this provision when it says that:
- 11(2) In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties;
35. The argument that the respondents are out of reach of judicial review orders because it is a private entity has no foundation in law because section 3 of the *Fair Administrative Action Act* says the Act applies both to state and non-state agencies. It states as follows:
3. Application
- This Act applies to all state and non-state agencies, including any person-
- (a) exercising administrative authority;
- (b) performing a judicial or quasi-judicial function under *the Constitution* or any written law; or
- (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.
36. In view of the foregoing provisions, the applicants' application is hereby allowed in terms that the respondents are hereby ordered to forthwith establish or put in place such mechanisms as are necessary to establish a parents association or a parent teachers association for the Academy in accordance with the provisions of sections 52(1) (a) and 55(3) of the Education Act, and the 3rd Schedule to the Act.



For the avoidance of doubt, the association must be in place within thirty (30) days from the date of this judgment. Parties will bear their respective costs. Orders accordingly.

SIGNED, DATED AND UPLOADED ON THE CTS ON 8 NOVEMBER 2024.

NGAAH JAIRUS

JUDGE

