



**Khan & 4 others v Board of Directors Oshwal Academy Limited (Petition 74 of 2019)  
[2024] KEHC 17252 (KLR) (Constitutional and Human Rights) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 17252 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION 74 OF 2019**

**J WAKIAGA, J**

**DECEMBER 6, 2024**

**BETWEEN**

**MOHAMED ARIF KHAN & 4 OTHERS & 4 OTHERS ..... PETITIONER**

**AND**

**THE BOARD OF DIRECTORS OSHWAL ACADEMY LIMITED RESPONDENT**

**JUDGMENT**

**Petitioners case**

1. The Petitioners instituted this suit by way of a Petition dated 26.2.19 and amended on 30.4.19 seeking the following:
  - a. A declaration that the performing of five obligatory prayers in Islam at their ordained times is protected constitutionally under Articles 32 and 27(4) and (5) of the *Constitution* of Kenya.
  - b. A declaratory order do issue that the 1<sup>st</sup> Respondent's decision to inhibit and/or disallow performing of dhuhur (afternoon) prayers by Muslim pupils and/or students indirectly discriminates against Petitioner's daughter and other Muslim female students at the school on their right to education on the basis of their religion.
  - c. A declaratory order that the decision by the 1<sup>st</sup> Respondent school and such or any other schools or learning institutions in the country to inhibit and/or refuse Muslim pupils or students to pray their five obligatory prayers at ordained times is discriminatory, unlawful and unconstitutional.
  - d. A declaratory order do issue that compelling a Muslim student or pupil not to perform the five obligatory Islamic prayers at their ordained times contrary to his or her Islamic belief or religion contravenes article 32(4) of the *Constitution*.



- e. A declaratory order that attendance of the congregational Friday jumu'ah prayers by Muslim pupils and students between 12.30pm-1.45pm when the prayer is held is protected constitutionally under Articles 32 (2) of the *Constitution*.
- f. An order of injunction do issue restraining the 1<sup>st</sup> Respondent from effecting, enforcing and/ or implementing the guideline No 3 of Oshwal Academy Nairobi Guidelines and Regulations for Cooperative Engagement between the School and Parents, policy introduced through a circular dated 12/1/2019 banning the practice, expression and manifestation of freedom of religion.
- g. An order of injunction do issue restraining the 1<sup>st</sup> Respondent, the school, teachers or its agents from effecting, enforcing and/or implementing the Oshwal Academy Nairobi Terms for Continuity of Students, policy introduced unilaterally through a circular dated 20/2/2019.
- h. In the alternative, a declaratory order do issue declaring guideline No 3 of the 1<sup>st</sup> Respondent's policy Guidelines and Regulations for Cooperative Engagement between the School and Parents illegal null and void for limiting and/or breaching the 1<sup>st</sup> Petitioner's children and Muslim pupils and students their right to practice and observe their religion contrary to Article 32 as read together with Article 27(4) and (5) of the *Constitution*.
- i. In the alternative, a declaratory order do issue declaring guideline No 9 of the 1<sup>st</sup> Respondent's policy Guidelines and Regulations for Cooperative Engagement between the School and Parents and that the policy on Terms for Continuity of Students illegal null and void for limiting and/or threatening the 1<sup>st</sup> Petitioner's children and Muslim pupils and students their right to fair administrative action that is lawful, reasonable and procedurally fair contrary to Article 47(1) as read together with Article 23(1) of the *Constitution*.
- j. A declaratory order do issue that preventing or prohibiting Muslim students to hold Islamic prayers (salat) with a threat of suspension or expulsion for non-compliance with such a school' policy contravenes articles 32(4), 43(1)(f), 53(2) of the *Constitution* and sections 4 and 7 of the *Children Act*.
- k. A declaratory order do issue that the 1<sup>st</sup> Interested Party has an obligation to promote respect for the right of freedom from discrimination in schools or learning institutions and to develop a culture of the aforesaid right in these schools or learning institutions in accordance with article 59(2)(a) of the *Constitution* and section 8(a) of the *National Gender and Equality Commission Act*.
- l. A declaratory order do issue that the 1<sup>st</sup> Interested Party has a legal duty and/or must monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in both private and public schools or learning institutions contrary in accordance with article 59(2) (c) of the *Constitution* and section 8(b) of the *National Gender and Equality Commission Act*.
- m. A declaratory order do issue that the 1<sup>st</sup> Interested Party has a legal duty and/or must ensure the country's compliance with obligations under 2(2) (sic) of the *International Covenant on Economic, Social and Cultural Rights*; articles 2 and 28 of the African Charter on Peoples and Human Rights; and article 26 of the *International Covenant on Civil and Political Rights*; in schools and learning institutions in accordance with article 59(2)(g) of the *Constitution* and section 8(c) of the *National Gender and Equality Commission Act*.



- n. A declaratory order do issue that 1<sup>st</sup> Interested Party has a legal duty on its own initiative to investigate or research on the violation of the equality and freedom from discrimination in both private and public schools or learning institutions and to make recommendations to improve the functioning of the Cabinet Secretary in charge of Education and such schools or learning institutions in accordance with article 59(2)(f) of the [Constitution](#) and sections 8(f) and 29 of the [National Gender and Equality Commission Act](#).
- o. A declaratory order do issue that 1<sup>st</sup> Interested Party has a legal duty to co-ordinate and advise on public education programmes for the creation of the culture of respect for the principles of the equality and freedom from discrimination in both private and public schools or learning institutions in accordance with article 59(2)(a) of the [Constitution](#) and section 8(h) of the [National Gender and Equality Commission Act](#).
- p. A declaratory order do issue that the 2<sup>nd</sup> Interested Party has a legal duty to promote respect for the rights of freedom of conscience, religion, belief and opinion, best interests of children and education in schools or learning institutions and to develop a culture of such rights in these schools or learning institutions in accordance with article 59(2)(a) of the [Constitution](#) and section 8(a) of the [Kenya National Human Rights Commission Act](#).
- q. A declaratory order do issue that the 2<sup>nd</sup> Interested Party has a legal duty to promote the protection and observance of the rights of freedom of conscience, religion, belief and opinion, best interests of children and education in both private and public schools or learning institutions in accordance with article 59(2)(c) of the [Constitution](#) and section 8(b) of the [Kenya National Human Rights Commission Act](#).
- r. A declaratory, order do issue that the 2<sup>nd</sup> Interested Party has a legal duty to monitor, investigate and report on the observance of the rights of freedom of conscience, religion, belief and opinion, best interests of children and education in both private and public schools or learning institutions in accordance with article 59(2)(d) of the [Constitution](#) and section 8(c) of the [Kenya National Human Rights Commission Act](#).
- s. A declaratory order do issue that the 2<sup>nd</sup> Interested Party has a legal duty to promote the protection and observance of the rights of freedom of conscience, religion, belief and opinion, best interests of children and education in both private and public schools or learning institutions in accordance with article 59(2) (c) of the [Constitution](#) and section 8(b) of the [Kenya National Human Rights Commission Act](#).
- t. A declaratory order do issue that 1<sup>st</sup> Interested Party has a legal duty on its own initiative to investigate or research the violation of the rights of freedom of conscience, religion, belief and opinion, best interests of children and education in both private and public schools or learning institutions and to make recommendations to improve the functioning of the Cabinet Secretary in charge of Education in accordance with article 59(2)(f) of the [Constitution](#) and section 8(e) of the [Kenya National Human Rights Commission Act](#).
- u. A declaratory order do issue that the 2<sup>nd</sup> Interested Party has a legal duty to ensure compliance with obligations under 2(2) (sic) of the International Covenant on Economic, Social and Cultural Rights; articles 2, 6 and 28 of the [African Charter on Peoples and Human Rights](#); and article 26 of the [International Covenant on Civil and Political Rights](#) in schools and learning institutions in accordance with article 59(2)(g) of the [Constitution](#) and section 8(f) of the [Kenya National Human Rights Commission Act](#).



- v. A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal duty to promote the elimination of all forms of discrimination on the basis of ethnicity or race in schools or learning institutions in accordance with section 25(2) (a) of the [\*National Cohesion and Integration Act\*](#).
- w. A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal duty to discourage both private and public schools or learning institutions in the country from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity and race in accordance with section 25(2) (b) of the [\*National Cohesion and Integration Act\*](#).
- x. A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal duty to promote respect for religious, cultural, linguistic and other forms of diversity in a plural society in both private and public schools or learning institutions in the country in accordance with section 25(2) (e) of the [\*National Cohesion and Integration Act\*](#).
- y. A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal duty to promote equal access and enjoyment of Muslim pupils and students to public educational services and facilities in accordance with section 25(2) (f) of the [\*National Cohesion and Integration Act\*](#).
- z. A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal obligation to investigate on its own accord the violation of Muslim students' and pupils' right on freedom of conscience, religion, belief and opinion and Muslim female students' right to equality and freedom from discrimination in both private and public schools or learning institutions in the country in accordance with section 25(2) (i) of the [\*National Cohesion and Integration Act\*](#).
- (aa) A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal obligation to make recommendations on penalties to be imposed on any person in a school or learning institution who breaches either the constitutional or statutory provisions dealing with ethnicity in accordance with section 25(2) (q) of the [\*National Cohesion and Integration Act\*](#).
- (bb) A declaratory order do issue that the 3<sup>rd</sup> Interested Party has a legal obligation to issue notices directing schools or learning institutions, their sponsors, Boards of Management, principals, teachers or their agents which are involved in actions or conduct amounting to violations of human rights on the basis of ethnicity or race to stop such actions or conduct within a given time in accordance with section 25(2) (s) of the [\*National Cohesion and Integration Act\*](#).
- (cc) An order do issue directing the 2<sup>nd</sup> Respondent to ensure that children belonging to marginalized, vulnerable or disadvantaged groups such as the 1<sup>st</sup> petitioner's' children are not discriminated against and prevented from pursuing and completing their basic education in accordance with section 39 (c) of the [\*Basic Education Act\*](#).
- (dd) A declaratory order do issue declaring that the 2<sup>nd</sup> Respondent has failed to monitor the functioning of both private and public schools in the country to ensure that incidences of the violations of the Muslim students' and pupils' rights of equality and freedom from discrimination and freedom of conscience, religion, belief and opinion stop contrary to section 39(i) of the [\*Basic Education Act\*](#).
- (ee) An order do issue directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent in consultation with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties and other stakeholders after due consultations to formulate and put in place a policy, rules, regulations and/or directions for better protection of Muslim students' and pupils' fundamental rights to freedom of religion and belief under Article 32 of the [\*Constitution\*](#) and freedom from discrimination under Article 27 of the [\*Constitution\*](#) in Kenya's education system as desired under Article 27(6) of the [\*Constitution\*](#) of Kenya.



- (ff) Costs of the Petition.
- (gg) Or such other order(s) as this Honourable Court shall deem just.
2. The Petition is supported by the affidavit sworn on 30.4.19 by the 1<sup>st</sup> Petitioner Mohamed Arif Khan, who is the father of MK and RK (minors and pupils at Oshwal Academy Nairobi Primary). The Petition is also supported by the affidavit of the 2<sup>nd</sup> Petitioner, Professor Mohamed S. Badamana, a Muslim religious scholar and Chairperson of the umbrella body of Muslims in Kenya, sworn on 26.2.19 and the affidavit of Dr. Yusuf Nzibo, Chairperson of Supreme Council of Kenya Muslims, sworn on 30.4.19.
  3. The Petitioners' claim that they filed the Petition on behalf of the 1<sup>st</sup> Petitioner's children and in the public interest. They seek the protection of the fundamental right to education and the freedom of free exercise of religion by Muslim students at the 1<sup>st</sup> Respondent (the School) and in other learning institutions in the country, by offering obligatory prayers as required under the Islamic faith.
  4. It is the Petitioners' case that prior to the Westgate terrorist attack in September 2013, the School allowed its Muslim learners to walk to the Parklands Mosque for Friday prayers over the lunch break. On other days of the week, parents would pick their children for lunch and return them by 2:00 pm. This allowed the learners to observe their prayers in their homes. Following the terrorist attack however, this practice was stopped for security reasons. Parents engaged the school and it was agreed that they would collectively provide transport for the Friday prayers and return the learners within the lunch break. This arrangement continued until sometime in September 2017.
  5. The Petitioners further stated that as a result of the foregoing, the students opted to observe their afternoon prayers within the school premises. In May 2018, the school principal, Mrs. Chotai, gave a directive for Muslim pupils to stop praying within the school compound and stationed teachers in class rooms over the lunch hour to ensure observance of the directive. The issue was raised at a parents' forum in May 2018 but the School declined to allow the request by Muslim parents and further rejected a request for Muslim learners to pray anywhere within the school compound. Subsequent correspondence between the School and the advocates of parents of Muslim children bore no fruit. The School's stand was that it does not accord special treatment to any faith and that no special treatment can be accorded to Muslim students. The Petitioners assert that it is on record that as part of the School routine in the assemblies and orientation, Jain prayers are performed, a classic example of double standards.
  6. The Petitioners further stated that in a circular dated 12.1.19, the School unilaterally and without consultation with the parents, introduced new guidelines known as Guidelines and Regulations for Cooperative Engagement Between the School and the Parents. Clause 3 of the Guidelines provides that the school is based on Jainism and the values thereof, that the school does not provide for the practice or engagement of any religious rites, rituals or expression, but rather provides an environment where all regardless of their faith can equally participate and engage in school community. Further that the School will not provide spaces, teaching clubs or school resources to religious practice which led the 1<sup>st</sup> Petitioner and other Muslim parents to instruct their Advocates on record to seek the intervention of the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties.
  7. The Petitioners further faulted Clause 9 of the Guidelines which provides that the School in its sole discretion may terminate enrolment or decline to re-enrol a student if it concludes that the action or inaction of a parent or guardian makes positive and constructive working relationship impossible or interferes with the School's accomplishment or mission.



8. Additionally, the Petitioners averred that by a letter dated 20.2.19 the School introduced guidelines and important information for parents relating to the common entrance test. The Petitioners state that the School also introduced Terms for Continuity of Students which contains conditions precedent to the acceptance of a child at the School. Further that the terms also give the School the sole discretion to terminate or decline re-enrolment if it concludes that a parent or guardian interferes with the school's accomplishment as a faith based academic oriented institution. Further that parents were required to sign the transition form as a condition precedent. The Petitioners' contention is that prior to February 2019, progression at the School had been automatic for all students.
9. The Petitioners averred that the School's refusal to allow Muslim pupils and students to perform their prayers at the school and the impugned policies violate Article 1(1), 2(1), 2(4), 3, 10, 27 (1), 27 (4) & (5), 28, 32(4), 43(1)(f), 53(2) of the Constitution. They further claim violation of Articles 1, 2, 3, 7 of the Universal Declaration of Human Rights as well as Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. Other provisions claimed to be violated are Articles 2, 6 and 28 of the African Charter on Peoples and Human Rights; Article 26 of the International Covenant on Civil and Political Rights. Lastly, violation of Sections 4, 27 (d), 50, 59(i), (j) and (k) of the Basic Education Act.
10. The Petitioners contend that despite the School's actions being made known to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, they are yet to discharge both their constitutional and statutory mandate to address the issues raised.

### **The Responses**

11. The School opposed the Petition vide a replying affidavit sworn on 4.4.19 by Jyotsna Chotai (Chotai), academic consultant of the School. She deposed that the School which has been in existence since 1950 is founded on the Jain faith of which parents are made aware upon enrolment to the School. Further that this fact is set out in the Students' Code of Conduct. Additionally, that despite the said foundation, no religious subject is taught in school but that the students are expected to recite the school prayer during the morning hours and are also known to recite the Navkaar Mantra and adhere to a vegetarian diet. Chotai further stated that save for the school prayer and vegetarian food, no preferential treatment is given to any religion.
12. It was further averred that prior to 2013, parents would pick their children during lunch hour but denied that they would do so for the dhuh prayers. Further that on 16.1.13, the Head of the School issued a notice to all parents and guardians to the effect that the students of junior and senior high school would not be allowed to leave school during the lunch hour unless escorted by parents. She explained that that decision was necessitated by security concerns following the Westgate attack.
13. Chotai admitted that the guidelines in question were issued and stated that the same were widely accepted by parents, save for those represented in this Petition. She added that the Petitioners represent only 40 out of a population of 313 Muslim students at the School.
14. Chotai further deposed that the School is focused on the security and best interests of the children in compliance with the Constitution and has even adopted a Child Protection Policy. Further that the need to ensure that the children are not segregated during lunch hour is aimed at protecting the security of the children. She denied the allegation that the School has deployed teachers to monitor the classrooms during lunch hour.
15. Chotai further stated that by a letter dated 23.7.18, the School denied the allegations of discrimination. She added that by a letter dated 22.10.18, the 3<sup>rd</sup> Interested Party required her, Dr. Lalik Modak, the



headmistress, primary school, Mr. Kiarie, head of the mathematics department and the Petitioners to appear at its offices on 30.10.18 and 5.11.18, which they did, and recorded their statements.

16. Hassan S. Mohamed (Mohamed) the Chief Executive Officer and Secretary to the 3<sup>rd</sup> Interested Party, filed a replying affidavit sworn on 29.7.19. He deposed that the 1<sup>st</sup> Petitioner together with other Muslim parents of the School through their advocates, sought its intervention via a demand letter dated 5.5.18. Further that the 3<sup>rd</sup> Interested Party engaged the School through a letter dated 16.7.18 notifying it that investigations had been initiated following the 1<sup>st</sup> Petitioner's complaint and required a response. The School responded by a letter 23.7.18 denying the allegations of discrimination, harassment and victimization of Muslim students. Summonses were issued to the representatives of the School and the Petitioners to attend the NCIC offices on 30.10.18 and 5.11.18 to record statements.
17. Mohamed thus asserted that the 3<sup>rd</sup> Interested Party has not breached or violated any provisions of the *Constitution*, Statute, or International Covenants mentioned in the Petition and asked the Court not to make any orders against it.
18. None of the other parties filed any affidavit in support or opposition to the Petition.
19. Parties were directed to file written submissions. The only submissions filed however, are those of the Petitioners, the School and the 2<sup>nd</sup> Interested Party.
20. The School also filed a further affidavit sworn on 7.11.24 by Chotai. The Petitioners however objected to the admission of this affidavit, having been filed and served late and without leave of the Court.
21. The Court has considered the objection raised by the Petitioners to the said affidavit. Rule 21(2) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* (Mutunga Rules) provides that:

A party who wishes to file further information at any stage of the proceedings may do so with the leave of the Court. (emphasis added)

1. Any party seeking to file additional information or evidence may do so but only with the leave of the Court. In the present case, directions were initially given on 25.6.24 to file submissions and timelines duly given. On 24.10.24 the School had not filed submissions and was directed to file and serve within 7 days. Under Rule 3(6) of the Mutunga Rules, a party to proceedings, or an advocate for such party is under a duty to assist the Court to further the overriding objectives of the rules and in that regard to comply with the directions and orders of the Court.
2. It is common ground that that this affidavit was filed without leave of the Court and was served upon the Petitioners on the eve of the hearing date. This was clearly not in compliance with the directions given. Further it prejudices the Petitioners who would not have an opportunity to respond. As such the affidavit shall not be considered by the Court and is hereby expunged from the record.
3. Parties through their respective counsel orally highlighted the same before us. Arising from the submissions, the issues that have been distilled for determination are as follows:
4. Whether the Petition is moot.
5. Whether the provisions of the *Constitution* and in particular the Bill of Rights applies/binds the School.
6. Whether the impugned policies violate the *Constitution*.
7. Reliefs to be granted.



8. Costs.
9. Whether the Petition is moot
22. The School's case is that there is no live controversy before the Court. It was submitted that the 1<sup>st</sup> Petitioner, who is the main grievant in this case, is no longer a parent of the School. Further that a majority of parents for the last seven years have either withdrawn their children or had their children transition from the School. The Court was thus invited to note that there is no live grievance before it.
23. The Petitioners maintain that while the 1<sup>st</sup> Petitioner's children may have graduated, the School still admits practicing Muslim students. As such, the case remains live. Further that Justice Korir ruled that the verdict in this case will help this country to address the continuing tension as to the practice of religion by pupils in schools whose religious inclinations are different from that of learners.
24. Blacks Law Dictionary Eighth Edition defines mootness as follows:
 

“a “moot case” is defined as “a matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights”, and as a verb, as meaning “to render a question as of no practical significance.
25. In Daniel Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] eKLR Mativo, J. (as he then was) considered the doctrine of mootness and stated:
  26. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner or applicant would be entitled to, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[17]
  27. The legal doctrine known as 'mootness' is well developed in constitutional law jurisprudence. Accordingly, a case is a moot one if it.[18]
 

“...seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has actually been asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical effect upon a then existing controversy.”
  28. Furthermore, a case will be moot-[19]
 

“...if the parties are not adverse, if the controversy is hypothetical, or if the judgment of the court for some other reason cannot operate to grant any actual relief, and the court is without power to grant a decision.”
  29. Barron and Dienes put it succinctly when they observe that “a case or controversy requires present flesh and blood dispute that the courts can resolve.”[20] Loots, a South African constitutional commentator, endorses these sentiments and points out that a case- [21]
 

“. is moot and therefore not justiciable if it no longer presents an existing or live controversy or the prejudice, or threat of prejudice, to the plaintiff no longer exists.”



30. However, a court will decide a case despite the argument of mootness if to do so would be in the public interest.[22]
26. It is indicated in the Petition that the 1<sup>st</sup> Petitioner has brought the Petition on his children's behalf and jointly and severally with the 2<sup>nd</sup> Petitioner on their own behalf and in the public interest. They stated that they seek orders to actualize Articles 22(3), 27(5) and 32 of the Constitution and in particular to protect the fundamental rights to education and freedom of free exercise of religion by Muslim students at the School, by offering obligatory prayers as required under the Islamic faith.
27. We recognize that the issue in controversy herein extends beyond the 1<sup>st</sup> Petitioner's children, to all the students in the School who are practicing Muslims. Indeed Korir, J. (as he then was) in his ruling of 30.4.2020 certifying this matter as raising substantial questions of law under Article 165(4) of the Constitution stated:
28. This petition does indeed raise a substantial question of law that will require interpretation of various constitutional provisions. It is also noted that the outcome of this Petition will affect the entire education sector and is therefore a matter of great public interest.
29. Further it is clear from the material before us not all students said to be represented in this Petition have left the School. It is also evident that the impugned regulations remain in force. In the circumstances, we find and hold that there still exists a live controversy that warrants the consideration of this Court, notwithstanding the fact that the 1<sup>st</sup> Petitioner's children have left the School.

#### **Whether the provisions of Constitution and in particular the Bill of Rights applies/binds the School**

30. We now turn to the School's contention that it is a private institution and that the Court should exercise judicial restraint in interfering with internal administration of a school unless there is manifest violation of their rights, which it denies.
31. Article 2(1) of the Constitution provides that the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. Similarly, Article 20(1) provides that the Bill of Rights applies to all law and binds all State organs and all persons.
32. The School has described itself as a private educational institution owned and managed by Oshwal Education and Relief Board. Although it has denied that it is a limited liability company it still falls within the definition of a person under Article 260 of the Constitution, which includes a company, association, or other body of persons, whether incorporated or unincorporated.
33. The position that the Bill of Rights applies to and binds all persons, including private entities was affirmed by the Court in Abdalla Rhova Hiribae & 3 others v Attorney General & 7 others [2013] eKLR, where Ngugi, J (as she then was) stated:
46. The 2<sup>nd</sup> Respondent is correct that, at the time the decisions it has relied on were made, the Constitution then in force, limited the application of constitutional rights to the State, and an action for violation of a constitutional right could not be maintained against private individuals or entities; that there was only vertical, and not horizontal, application of the Bill of Rights. However, the Constitution of Kenya 2010 has changed the situation, and the Bill of Rights is binding on both state and non-state actors. Article 2 of the Constitution provides that 'This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.' (Emphasis added)

At Article 20, the Constitution provides that



'The Bill of Rights applies to all law and binds all State organs and all persons.' (Emphasis added)

47. To my mind, the express constitutional provision that the *Constitution*, in general, and the Bill of Rights, in particular, applies to and binds all persons represents a radical departure from the position under the former Constitution where only the State could be held liable for violation or infringement of constitutional rights. In my view, where the facts so demonstrate, an individual or corporate person such as the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and seven<sup>th</sup> respondents can be held to have violated another person's constitutional rights, and appropriate orders or declarations issued."
34. Similarly, in *Isaac Ngugi v Nairobi Hospital & 3 others* [2013] eKLR, Majanja, J. held:
21. The approach adopted in the Kenya Bus Case (*supra*) cannot survive the *Constitution*. The supremacy clause of our Constitution recognizes that the *Constitution* is the supreme law and binds all persons and all State organs at both levels of Government. Article 3(1) states that every person has an obligation to respect, uphold, and defend the *Constitution*, while Article 19(1) provides that "The Bill of Rights applies to all law and binds all State organs and all persons." The term 'person' includes a company, association, or other body of persons, whether incorporated or not, such as the hospital, in accordance with Article 260. (See also *Sonia Kwamboka Rasugu v Sandalwood Hotel and Resort Limited and others* Nairobi Petition No 156 of 2011 [2013] eKLR at para. 30).
21. The issue of whether the Bill of Rights applies horizontally or vertically is beyond peradventure...
25. I take the position that the history of the country and the events leading up to the promulgation of the *Constitution* leave no doubt that it was intended to be a transformative document. I would be hesitant to adopt a hard and fast position that would prevent the principles and values of the *Constitution* being infused into the lives of ordinary Kenyans through the application of the Bill of Rights to private relationships where necessary."
35. In the case of *Rose Wangui Mambo & 2 others v Limuru Country Club & 17 others* [2014] eKLR a 3 Judge bench of this Court considered the application of the Bill of Rights in respect of a private entity and observed:
- It must be obvious by now that not only do we find that we have jurisdiction to entertain the dispute before us, but that we consider the fact that the 1st Respondent is a private members club to be of limited relevance to the issues at hand. The respondents cannot be allowed to wave a private entity card to bar this Court, when properly moved, from assuming jurisdiction where there are allegations of breach of fundamental rights and freedoms by its members or any other person. It cannot be safe, in a progressive democratic society, to arrive at a finding that allows private entities to hide behind the cloak of 'privacy' to escape constitutional accountability. We think that it would be to accord a narrow, constricted interpretation to our Supreme Law, contrary to the canons of constitutional interpretation that have for ages infused our judicial system and which now find constitutional sanction under Article 259 to accede to such a proposition.
36. Flowing from the constitutional provisions and cited case law it is clear that the Bill of Rights applies and binds private entities such as the School. The fact that the School is a private entity cannot bar



this Court from assuming jurisdiction, given the allegations raised of breach of fundamental rights and freedoms of Muslim students. As such this Court has jurisdiction to interrogate the impugned policies and make appropriate findings and orders.

### **Whether the impugned policies violate the Constitution**

37. The Petitioners' case is that the impugned policies violate the Constitution. They allege violation of the Constitution rights of Muslim students at the School to religion, education, fair administrative action and equal protection and equal benefit of the law.
38. They submitted that the School cannot be allowed to hide under the cover of equal treatment and non-discrimination of their students. In support of this position, they cited the House of Lords case of Mandla (Sewa Singh) and another v Dowell Lee and others [1983] 2 AC 548, where Lord Templemen observed:

I find it impossible to believe that Parliament intended to exclude the Sikhs from the benefit of the Race Relations Act and to allow discrimination to be practised against the Sikhs in those fields of activity where, as the present case illustrates, discrimination is likely to occur.

Lord Templemen went on to state:

I agree with my noble and learned friend that Gurinder Singh cannot comply with the school rules without becoming a victim of discrimination. The discrimination cannot be justified by a genuine belief that the school would provide a better system of education if it were allowed to discriminate.

39. They submitted that not all different treatment is discriminatory, nor is all similar treatment equality. They further submitted that the principle of equality or equal protection before the law or the doctrine of non-discrimination was pronounced in the classic statement of Judge Tanaka in the South West Africa (Liberia v South Africa) [1966] ICJ REP. Additionally, that this position, was reiterated in the case of Federation of Women Lawyers (FIDA -K) & Sothers v Attorney General & another [2011] eKLR.
40. It is the Petitioners' case that although the impugned guidelines are neutral and do not target the Muslim religion, their effect negatively impact Muslim students in the School who are not able to conduct their prayers as required by Islam. The Petitioners argue that the guidelines thus subject Muslim students to indirect discrimination. They relied on the cases of Gichuru v Package Insurance Brokers Ltd (Petition 36 of 2019) [2021] KESC 12 (KLR) (22 October 2021) (Judgment) and The Queen on the Application of Sarika Angel Watkins- Singh (A child acting by Sanita Kumari Singh, her mother and Litigation Friend) v The Governing Body of Aberdare Girls High School and another [2008] EWHC 1855 (Admin) and Mec For Kwazulu Natal, School Liaison Officer & others Sarika Pillay CCT51/06 [2007] ZACC 21.
41. It was submitted that in the impugned guidelines, there is proof of pattern, as laid down in the English case of Sarika. First, that the principal of the School communicated that no Muslim learners will be allowed to say prayers openly and that prayers should be made in the heart where God resides. The principal proceeded to place teachers in the classrooms to ensure compliance.
42. Second, that the comparative group are the learners who are not affected by the impugned policy to wit non-Muslim learners. Third, is that the impugned policy disadvantages practicing Muslims learners at the School, who are obligated to pray at the prescribed times as a matter of exceptional importance to them. Finally, on whether the guidelines are justified by legitimate aim, the Petitioners submitted that the impugned guidelines and the refusal by the School to allow the Muslim students to conduct prayers



- in the School does not satisfy any legitimate aim and that the means applied is not proportionate to achieving that aim.
43. The Petitioners further contend that they seek accommodation for Muslim learners at the School. They argue that the refusal to accommodate Muslim students and the subsequent adverse consequence for any parent who insisted on the rights of their children to offer dhuhur prayers at the School, amounted to discrimination. They further submitted that accommodation is a very essential principle in equality law and that unlike favouritism, accommodation permits exceptions and exemptions where merited in society, notwithstanding existence of common rules or policies. They relied on the case of *MEC for Kwazulu Natal case* (*supra*) and *Gichuru v Package Insurance case* (*supra*), which supported the principle of accommodation.
  44. The Petitioners cited the case of *PO (Suing as next friend of AA & 9 others v St. Annes Primary School, Abero & 6 others* (Civil Appeal 173 of 2020) [2023] KECA 571 (KLR) (12 May 2023) (Judgment), and submitted that granting accommodation to a person seeking exemption or leniency to a common rule in no way accords that person special status or special treatment. Further that accommodation does not elevate a person above the rest.
  45. The 2<sup>nd</sup> Interested Party supported the Petition and submitted that the freedom of conscience, religion, belief and thought is an important aspect of community life within the Kenyan context. Further that under Article 32 of the *Constitution*, each individual has the right to freely manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship. In support of this contention, they relied on the cases of *Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others* (Civil Appeal 172 of 2014) [2017] KECA 751 (KLR) (3 March 2017) (Judgment) and *JWM (alias P) v Board of Management [particulars withheld] High School & 2 others* (Petition 10 of 2019) [2019] KEHC 10897 (KLR) (Constitutional and Human Rights) (13 September 2019) (Judgment) and *Christian Education South Africa v Minister for Education* CCT 4/00.
  46. The 2<sup>nd</sup> Interested Party contends that the reason advanced by the School for denying Muslim students their private time for prayer during lunch hour due to security reasons is untenable, illegal and unconstitutional as it indirectly prohibits Muslim students from conducting prayers as demanded by their faith. The 2<sup>nd</sup> Interested Party further faulted the School for suggesting that the parents supporting the Petition could consider other learning institutions with favourable school terms. They relied on the cases of *Seventh Day Adventist Church (East Africa) Limited* (*supra*) and *Mohamed Fugicha v Methodist Church in Kenya (suing through its registered trustees), Teachers Service Commission, County Director of Education Isiolo County & District Education Officer Isiolo Sub-County* (Civil Appeal 22 of 2015) [2016] KECA 273 (KLR) (7 September 2016) (Judgment).
  47. The 2<sup>nd</sup> Interested Party further submitted that clauses 3 and 9 of the impugned Regulations prohibit manifestation of any form of worship and bestows upon the School the discretion to terminate enrollment if, in its view, a parent interfered with the school's accomplishment. Further that the regulations are a veiled tool primarily geared towards compelling parents to adhere and abide by them, despite their inconsistency with the *Constitution*. Additionally, that compelling parents to accede to such regulations violate their right to religion, beliefs and worship and offends the *Constitution*.
  48. It was further argued that the state of affairs created by the School compelled parents of Muslim students to choose between quality education for their children and their fundamental right to hold and manifest their religious beliefs. They thus submitted that this violates their children's right to education as guaranteed under Article 43(1)(f) of the *Constitution* and as set out in Section 28(1) of the *Basic Education Act*. Reliance was placed on the case of *JWM (alias P)* (*supra*).



49. The 2<sup>nd</sup> Interested Party additionally submitted that the School's demands for compliance with its religious beliefs but contemptuous when other religions are concerned, amounts to discrimination and a direct contravention of Article 27 of the Constitution which guarantees equality and freedom from discrimination.
50. It was further argued that to the extent that the regulations ban manifestation of any religious conduct within the School amounts to indirect discrimination as was held in the Mohamed Fugicha case (*supra*) and in Mohamed Abduba Dida v Debate Media Limited & another [2018] eKLR. It was added that the impugned regulations would not pass the four part test in the Sarika case.
51. We now turn to the submissions by the School. Its case is that the Petitioners have neither stated with a degree of precision the alleged infringement and violations of their rights, nor demonstrated by way of cogent evidence how the circulars of 12.1.19 and 20.2.19 infringed on their rights. They relied on the cases of Anarita Karimi Njeru v Republic (1976-1980) 1 KLR 1272 and Trusted Society of Human Rights Alliance v AG & 2 others, Nbi HC Petition 229 of 2012 [2012] eKLR.
52. The School further submitted that the Petitioners seek to invite public interest in a private arena since the said circulars are administrative and have no specific attack on Muslim parents and students. Further that the Petitioners have failed to discharge the burden of proof over the violations alleged, with any concrete evidence. The School argued that violations of rights ought to be buttressed with evidence and not speculations as was held in the cases of LTJ Kisii Safari Inns Ltd & 2 others v Deutsche Investitions-Und Entwicklungsgellschaft ('Deg') & others [2011] eKLR; Little Prinz Ev Germany v Lumumba & 4 others (Sued on behalf of and or/trustees of Little Prinz Children's Home Trust); Ministry of Labour and Social Protections Children Department, Kakamega East Sub-county (Interested Party) [2023] KEHC 3483 (KLR) and JK (Suing on behalf of CK) v Board of Directors Rusinga School & another (Petition 450 of 2014) [2014] KEHC 7490 (KLR).
53. It was further contended that courts have on numerous occasions declined, as it should in this case, to be invited to interrogate issues of private running of institutions couched as violation of private rights. Reliance was placed on the case of Cherono Gladys v University of Nairobi [2020] eKLR and OAPA (Suing as parents and/or guardians of students minors currently schooling at Oshwal Academy) v Oshwal Education Relief Board & 2 others [2020] eKLR and Victoria Mutai & 28 others v Kirinyaga University [2020] eKLR.
54. Addressing the allegation of discrimination, the School submitted that mere discrimination in the sense of unequal treatment or protection by the law in the absence of a legitimate reason is an unacceptable phenomenon. However, where there is a legitimate reason, then the conduct or the law complained of cannot amount to discrimination. Further that the law which promotes differentiation must have a legitimate purpose and should bear a rational connection between the differentiation and the purpose. Reliance was placed in the cases of Kamau v Attorney General & 2 others; Equality Now & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) (Constitutional Petition 244 of 2019) [2021] KEHC 450 (KLR) (Constitutional and Human Rights) and Federation of Women Lawyers (FIDA-K) & 5 others v AG & another, NBI HC Petition 102 of 2011; [2011] eKLR.
55. The School urged the Court to consider whether granting the reliefs sought, would actually promote common identity of students or occasion disparities between students on the basis of manifestation of their faith. The School urged the Court to find that the Petitioners rights have not been infringed, and cited the Supreme Court in Methodist Church in Kenya v Fugicha & 3 others (Petition 16 of 2016) [2019] KESC 59 (KLR).



56. The School went on to contend that it endeavors to treat all pupils in a similar manner, and that there is no evidence that the Petitioners have been discriminated against. The Court was urged to be persuaded by the case of *Republic v Head Teacher, Kenya High School & another Ex-Parte Smy*[2012]eKLR. Further that if the minority demands of the parents in this Petition were to be granted, it would fly in the face of the constitutional principles of non-discrimination and the equality before the law. Additionally, that allowing the Petition would lead to further agitation by other parents of different religions thus inviting disorder, indiscipline and social disintegration of a private institution. The Court was invited to decline the invitation to accord preferential treatment to Muslim learners.
57. After considering the material before us we note that the circumstances herein are that initially junior high boys were allowed to walk to Parklands Mosque to attend Friday prayers over the lunch break. This was discontinued following the 2013 Westgate terrorist attack on security grounds. Parents engaged the School and it was agreed that they would collectively provide transport to the Mosque for Friday prayers. Prior to the terror attack, Parents were allowed to pick up their children and take them home for lunch every day which offered them an opportunity to observe dhuhur prayers in their homes. After the attack this was stopped and students began observing their dhuhur prayers in the School mostly in the classrooms during lunch break.
58. The gravamen of the dispute herein is that the School has stopped the junior high boys from attending Friday prayers at the mosque in September 2017. In May 2018, the School in a directive announced in the assembly by the principal stopped students from observing dhuhur prayers in the School altogether. The principal then placed teachers in classrooms to enforce the directive.
59. The 1<sup>st</sup> Petitioner and other Muslim parents tried to engage the School's administration over their children's right to observe dhuhur prayers at the School but the School was adamant. Subsequent correspondence between the School and the advocates of parents of Muslim children bore no fruit. The School's stand was that it does not accord special treatment to any faith and that no special treatment can be accorded to Muslim students.
60. The Petitioners allege double standards, as it is on record that as part of the School routine in the assemblies and orientation, Jain prayers are performed. Further that the Student's Code of Conduct only provided for the respect for the Jain belief and in particular students were to carry vegetarian foods during school trips and functions within and outside the School, which Muslim students observed.
61. The School thereafter issued 2 policies which are at the centre of the dispute herein. The Petitioners' complaint is that the policies required all parents, in mandatory language, to ensure that their children abide by the School policies.
62. The first policy is the Guidelines and Regulations for Cooperative Engagement between the School and the Parents dated 12.1.19. The offending provisions according to the Petitioners are:
3. That, while the School is based on Jainism and values thereof, recognizing the diversity of our student body, and desirous to encourage integration and community cohesion for all, the School does not provide for the practice or engagement of any religious rites, rituals, or expressions but rather provides an environment where all regardless of their faith can equally participate in the School community. No religious classrooms, spaces, teachings, clubs or school resources whatsoever shall be designated to religious practice.
  9. That the School may terminate enrolment, or decline to re-enrol a student, if the School, in its sole discretion, concludes that the actions or inactions of a parent (or guardian) make a positive and constructive working relationship impossible, or interferes with a schools accomplishment or mission.



63. The second policy was introduced by a circular is dated 20.2.19 and is the Transition to Oshwal Academy Nairobi Junior High Campus 2019-2020 which introduced inter alia the Terms for Continuity of Students. The offending clause is:
3. That progression to the next stage will be at the sole discretion of the School administration. The exercise of such discretion shall be final as to the determination and to the reasons thereof. The communication of any reasons or considerations shall be at the sole and final discretion of the School Admission.
64. The Petitioners and many other Muslim parents refused to sign the form committing to abide by the policies as required because in their view, it meant writing off their children's freedom of conscience, religion, belief and opinion including through worship, practice and observing teachings of their faith on prayers.
65. Having laid out the facts and the submissions by the parties, we now proceed to consider whether the fundamental rights and freedoms of Muslim students as guaranteed under the Constitution were violated by the School.
66. It bears repeating that Article 2(1) stipulates that the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. Further, the Constitution provides for the Bill of Rights which under Article 20(1) applies to all law and binds all State organs and all persons.
67. In the Petition before us, we are called upon to consider and make a determination as to whether the constitutional rights of Muslim students in the School have been violated by the two policies in question, issued by the School. The rights alleged to be violated include the right to freedom of conscience, religion, belief and opinion under Article 32, the right to education under Article 43(1) (f), the right to fair administrative action under Article 47 and the right to equality and freedom from discrimination under Article 27 of the Constitution.
68. Article 32 provides as follows:
1. Every person has the right to freedom of conscience, religion, thought, belief and opinion.
  2. Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.
  3. A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.
  4. A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.
69. In exercise of the right to freedom of religion a person is entitled to either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.
70. The Petitioners case is that the School's policy of refusing Muslim students to conduct dhuhur prayers in the school premises violates their freedom of worship. The School on the other hand contends that allowing them to do so would accord Muslim students special treatment which is against the policy of integration and cohesion.



71. The record shows that the School is owned by Oshwal Education and Relief Board and managed by the Jain Community. The School is founded on Jainism, an ancient religion and this fact is made known to parents on admission and also in the Student Code of Conduct.
72. The *Basic Education Act* makes provision for the role of sponsors of schools. Under Section 27(d) a sponsor is required to maintain spiritual development while safeguarding the denomination or religious adherence of others.
73. Freedom of conscience, religion, belief and thought is an essential aspect of community life within the Kenyan context. Article 32(1) of the *Constitution* succinctly provides that every person has the right to freedom of conscience, religion, thought, belief and opinion; Article 32(2) provides that every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.
74. The plain purpose of the above provision is that it grants every person the right to freely manifest any religion or belief through worship, practice, teaching, or observance, provided it does not subject others to constitutional infringement. In the Seventh Day Adventist Church case (*supra*) the Court of Appeal stated as follows:
  29. The right to freedom of conscience, religion, thought, beliefs and opinion, as explained above in its various facets is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others, privately or in public. The manifestation through observance includes observance of a day of worship, and a believer will not be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
  31. Without any distinction whatsoever under article 32, the freedom of religion and belief and the right to manifest those freedoms through worship, practice, teaching or observance are protected equally.
75. The two policies introduced by the School in 2019 may seem neutral. Clause 3 of the Guidelines of 12.1.19 provides that the School seeks to encourage integration and community cohesion for all. Further that the School does not allow the practice or engagement of any religious rites, rituals, or expressions but rather provides an environment where all regardless of their faith can equally participate in the School community. Additionally, that no religious classrooms, spaces, teachings, clubs or school resources whatsoever shall be designated to religious practice.
76. Muslims have set times for prayer and this fact was recognized by the School. There is evidence to show that following the Westgate terrorist attack, the School allowed transport to be provided to junior high boys, to attend Friday prayers at the Mosque and further allowed students to observe dhuhr prayers in the School. In May 2018, the School in a directive announced in the assembly by the principal stopped students from observing dhuhr prayers in the School altogether. For the School to discontinue the practice is tantamount to violating the rights of Muslim students to practice and manifest their religion as guaranteed under Article 32 of the *Constitution*. The discontinuation further violated the provisions of Section 27(d) of the *Basic Education Act* which requires school sponsors to not only maintain spiritual development but also to safeguard the denomination or religious adherence of others.



77. We are fortified in this finding by the holding in *Seventh Day Adventist Church case (supra)* where the Court of Appeal stated:

The *Constitution* and many international instruments, by dint of article 2(5) and(6)of the *Constitution* form part of our law, including the Universal Declaration of Human Rights (UDHR) which affirm the general precept and humanitarian values to be adopted so as to afford every human being the right to freedom of thought, conscience and religion, as well as the right to manifest his religion or belief in teaching, practice, worship and observance? ...?including observance of a day of worship?. These two rights, that is, the right to freedom of religion and the right to express and practice one's beliefs, coupled with the prohibition against compelling a person to act or engage in anything that is contrary to that person's religion, must be taken to mean that the rights and freedoms of the SDA, students, to freely exercise their religion by observing the core principle of the Sabbath is guaranteed because article 32(2) recognizes the right to observe a day of worship as part of the right to freedom of religion.

78. By parity of reasoning, to prohibit Muslim students from engaging in a core requirement of Islam, namely dhuhur prayers in the School, is to violate their right to manifest their religion or belief individually or in community with others, in public or in private, as guaranteed under Article 32(2) of the *Constitution*.

79. We are also guided in our finding by the decision in *JWM (alias P) (supra)* where the Court of Appeal stated in part in paragraph 31:

Article 32, therefore, guarantees the right to manifest, observe and practice religious beliefs and prohibits actions that compel one to act in a manner that goes against his or her religious beliefs.

80. See also the case of Constitutional Court of South Africa in *Christian Education South Africa v Minister of Education CCT 4/100*, where the Court held the following with regard to the import of the right to religious freedom:

This broad approach highlights that freedom of religion includes both the right to have a belief and the right to express such belief in practice. It also brings out the fact that freedom of religion may be impaired by measures that coerce persons into acting or refraining from acting in a manner contrary to their beliefs. Just as it is difficult to postulate a firm divide between religious thought and action based on religious belief, so it is not easy to separate the individual religious conscience from the collective setting in which it is frequently expressed.

81. Further in the case of *PO (Suing as next friend of AA & 9 others v St. Annes Primary School, Abero & 6 others* (Civil Appeal 173 of 2020) [2023] KECA 571 (KLR) (12 May 2023) (Judgment), the Court of Appeal considered the issue of violation of the freedom of religion and stated:

The refusal of that request by the 1<sup>st</sup> respondent, was akin to coercing the appellants to abandon or forgo tenets of their faith and to adopt a religion which was not of their choice, ultimately infringing the appellants right to freedom of religion as envisaged under article 32 of the *Constitution*.

82. We note that the School relied on paragraph 60 of the decision in *Methodist Church in Kenya v Fugicha & 3 others* (Petition 16 of 2016) [2019] KESC 59 (KLR), where the Supreme Court stated:



60. Our findings above would effectively dispose prayer
- (c) of the petition before us that a declaration be made that the 1<sup>st</sup> respondent herein had no proper cross-petition to be determined. It also disposes of prayer (c) which was an alternative to prayer
  - (d). That leaves us with prayers (a) and
    - (b) – that the judgment of the Court of Appeal be set aside with costs. What were the orders of the Court of Appeal? They were that: [p.75] The High Court’s order that the decision to allow Muslim students to wear hijab/trousers is discriminatory, unlawful and unconstitutional is set aside.
      - a. The order of injunction preventing the respondents from allowing Muslim students to wear hijab contrary to school rules and regulations of St Paul’s Kiwanjani Day Mixed Secondary School be and is hereby quashed and set aside.
      - b. The mandatory injunction compelling the respondents to comply and ensure full compliance with the current school rules and regulations that were executed by the students and parents during the reporting in respect of St Paul’s Kiwanjani Day Mixed Secondary School is set aside to the extent that it prohibits Muslim female students from wearing the hijab/trousers in addition to the school uniform.
      - c. The order that the school uniform policy does not indirectly discriminate against the interested parties Fugicha’s daughters or other Muslim female students is set aside and substituted with an order that the said uniform policy in directly discriminates against the interested parties’ daughters and other Muslim female students in so far as it prohibits and prevents them from manifesting their religion through the practice and observance of wearing the hijab.
83. We have read the decision and note that the Supreme Court found that the 1<sup>st</sup> respondent Mohamed Fugicha’s cross-petition before the High Court was incompetent as he had been joined in the proceedings as an interested party. The matter was not determined on merit for the Supreme Court stated as follows in paragraph 59:
- In the same breadth, we recognize that the issue as contained in the impugned cross petition is an important national issue, that will provide a jurisprudential moment for this court to pronounce itself upon in the future. However, to do so, it is imperative that the matter ought to reach us in the proper manner, so that when a party seeks redress from this court, they ought to have had the matter properly instituted, the issues canvassed and determined in the professionally competent chain of courts leading up to this apex court. In view of this, it is our recommendation that should any party wish to pursue this issue, they ought to consider instituting the matter formally at the High Court.
84. We now turn to the allegation of violation of the right to education. The Petitioners contend that the Terms for Continuity of Students policy introduced by the circular dated 20.2.19 violates the right of students to education. They contend that prior to the said policy progression at the School was automatic and that the radical shift was illegal for creating uncertainty and against basic principles of provision of basic education as provided under the *Basic Education Act*. Relying on the *PO (Suing as next friend of AA & 9 others v St. Annes Primary School, Ahero (supra)*, the Petitioners submitted that that it is not safe for an institution that is also bound by Section 27(d) of the *Basic Education Act* to say a child can go elsewhere if they did not int like what the School offers.



85. The School denied the allegations of violation of the right to education and submitted that admission is voluntary and upon admission, all prospective parents are informed that the School is founded on Jainism and informed of the Code of Conduct.
86. Article 43(1)(f) of the Constitution provides that every person has the right to education, while Article 53(1)(b) guarantees to every child the right to free and compulsory basic education. Under Section 4(a) of the Basic Education Act the right of every child to free and compulsory basic education is one of the guiding principles for provision of basic education. Section 5 of the Act established the National Education Board the functions of which include inter alia working with all relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed.
87. We have looked at the policy introduced by the School and note that the same require parents to accept of the terms thereof. The policy gives the School absolute discretion to terminate enrolment of any pupil. The policy also removes the guaranteed transition and progression of students if the School in its sole discretion concludes that the parents or guardian have interfered with the School's accomplishment.
88. We also note that the opening paragraph of the Terms for Continuity of Students indicates that the School may require the withdrawal or dismissal of any student if in its sole discretion the School concludes that such student's attitude, influence, or behaviour does not serve the best interests of the School. We further note that the School has argued that parents voluntarily enrolled their children in the School with full knowledge of the School's policies. We find that granting the School absolute discretion in making such key decisions affecting students, is arbitrary.
89. In the premises, our view is that the requirement by the School that parents must sign an acknowledgment that they have read and understood the impugned policies, to which they object, given the arbitrariness with which decisions concerning the enrolment and continuation of students are made, would result in violation of the students' constitutional right to education. This is because a student whose parent declines to accept and acknowledge the impugned policy would lose admission or enrolment in the School. Additionally, the suggestion that the parents supporting the Petition could consider other learning institutions with favourable school terms is in our view unacceptable in an open and democratic society as it violates Article 32(2) of the Constitution and Section 34 of the Basic Education Act.
90. In the Seventh Day Adventist Church case (*supra*) the Court of Appeal confronted by a similar situation stated:

The schools have been reluctant to relax the Saturday school engagements to accommodate students of the SDA Church in the face of clear constitutional guarantee and in the absence of any law restricting those rights. Instead the schools, even in this case have proffered lame and gloomy arguments, which the learned Judge, unfortunately agreed with, such as the fact that the students were warned of the schools policy that they would required to attend classes and engage in other related programmes seven days a week and that with full knowledge of this policy they had consciously, without coercion or misrepresentation chosen to enroll and embark on their studies; that by so doing they bound themselves to abide by the rules and regulations of the school; that in any event the students had the choice to join any other school where they would freely practice their religions and observe the Sabbath. This view is not only impractical, but also ignores many factors that a student or parent considers in choosing a school, such as the availability of public schools where the students' particular religious beliefs would be accommodated, the student's personal career



choice and academic standards of the school. It violates, not only sub-article (3) of article 32 of the Constitution but also section 34 of the Basic Education Act.

91. In the JWM (alias P) v Board of Management case (*supra*), Mwita, J. considered violation of the right to education and stated:

As already stated, articles 43(1)(f) of the Constitution guarantees the right to education while article 53(1)(b) guarantees every child, including MNW, the right to compulsory basic education. This right cannot be compromised on the basis of one's religious beliefs or the way one manifests those beliefs. These constitutional guarantees notwithstanding, the minor finds herself torn into choosing between the right to keep her rastas as a way of manifesting her religious beliefs and education. If she opts to keep her rastas, she must then forgo her right to education because of school rules. The opposite is that she shaves her rastas, thus surrenders her right to manifest her religious beliefs, and resumes school, despite this being a right guaranteed by the Constitution. School rules and regulations stand in the way of her right to religion and education because they do not allow one to wear "dreadlocks."

92. On the allegation of violation of the right under Article 27, we note that the impugned policies are expressed to be intended to encourage integration and community cohesion. Clause 3 indicates that the school does not provide for the practice or engagement of any religious rites, rituals or expression but rather provides an environment where all regardless of their faith can equally participate and engage in school community. While this may be so, it can be seen from the averments in the School's replying affidavit that all students are expected to recite the school prayer in the morning hours and to recite the Navkaar Mantra and to only eat vegetarian food as per the Jain faith.

93. The Petitioners contend that although the impugned policies are neutral their effect negatively impact Muslim students. Further that withholding permission or denying Muslim students an opportunity to hold dhuhur prayers in the School compound indirectly discriminates against them on account of their religion.

94. Article 27 of the Constitution guarantees to every person the right to equality and freedom from discrimination as follows:

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4). (emphasis added)
- (6) ...

95. For a party to succeed in a claim for indirect discrimination such party must demonstrate the existence of the four levels of the proof pattern. This proof pattern is laid down in the English case of Sarika



(*supra*) which was cited by the Supreme Court, in the case of [Gichuru v Package Insurance Brokers](#) (*supra*) as follows:

- (54) In considering indirect discrimination, Justice Silber in the UK High Court case of Queen, on the Application of *Sarka Angel Walkins Singh v the Governing Body of Aberdare Girls High School, & another* [2008] EWHC 1865, (paragraph 38), considered the claimants' case on the grounds of indirect discrimination, prescribing several steps to guide the proof:
- a. to identify the relevant 'provision, criterion or purpose', which is applicable;
  - b. to determine the issue of disparate impacts, which entails identifying a pool for the purpose of making a comparison of the relevant disadvantage;
  - c. to ascertain whether the provision, criterion or practice also disadvantages the claimant personally; and
  - d. to consider whether the policy is objectively justified by a legitimate aim; and to consider (if the above requirements are satisfied) whether this is a proportionate means of achieving such a legitimate aim.
56. We are persuaded by the reasoning in the comparative jurisprudence as set above as it properly illustrates and expounds on the salient features of indirect discrimination. In the premises, the respondent claimed that the suspension of the appellant vide its letter dated 22nd May 2014 was purely premised on the fact that the appellant was visibly unwell and that he failed to avail a professional opinion on his health. That even though the doctor's report was availed, the said report was too confusing and inconclusive. The respondent is emphatic that at no point did it subject the appellant to undignified treatment.
96. In the instant case, the impugned guidelines of 12.1.19 as well as the communication of the principal of the School at the assembly prohibiting the observance of dhuhur prayers in the School meet the first part of the pattern.
97. The second part of the proof pattern is to determine the issue of disparate impacts, which entails identifying a pool for the purpose of making a comparison of the relevant disadvantage. The impugned policy adversely affects Muslim learners, notwithstanding that they are in the minority, in that it denies them an opportunity to practice their faith by observing dhuhur prayers during the lunch break. We are guided in this regard by the decision in the [Seventh Day Adventist Church case](#) (*supra*) where the Court of Appeal stated that they, although the minority in those schools, like their counterparts who believe in Sunday as their day of worship, are entitled to equal protection and benefit of the law.
98. Similarly, in the [MEC for Kwazulu Natal case](#) (*supra*) Langa CJ stated:
4. Fortunately, on the approach I adopt below, the final determination of the more direct question of whether the Equality Act always requires a comparator can be left for another day. I hold that there is an appropriate comparator available in this case. It is those learners whose sincere religious or cultural beliefs or practices are not compromised by the Code, as compared to those whose beliefs or practices are compromised. The ground of discrimination is still religion or culture as the Code has a disparate impact on certain religions and cultures. The norm embodied by the Code is not neutral, but enforces mainstream and historically privileged forms of adornment, such as ear studs which also involve the piercing of a body part, at the expense of minority and historically excluded forms. It thus places a burden on learners who are unable to express themselves fully and must attend school in an environment that does not completely accept them. In my view, the comparator is not learners who were granted



an exemption compared with those who were not.<sup>19</sup> That approach identifies only the direct effect flowing from the School's decisions and fails to address the underlying indirect impact inherent in the Code itself.

99. The third part of the proof pattern is that the Court must ascertain whether the policy disadvantages the claimant personally. The Petitioners' case is that Muslims learners at the School are required to hold prayers at the prescribed time and that this is a matter of exceptional importance to them. The impugned policy that denies them this opportunity, therefore disadvantages them personally.
100. The fourth level in that proof pattern is whether the impugned policy is justified by a legitimate aim and whether the means used are proportionate to that legitimate aim.
101. We have considered that the School asserts that the policy is justified by legitimate aim. First that the policy, which in effect denies Muslim learners to offer prayers at the school, seeks to encourage integration and cohesion among learners and to promote equality amongst learners. Second, that the aim is to disallow any manifestation of any religion. The School has further stated that the policy is acceptable to a majority of parents and opposed by only a few.
102. As we have indicated herein, the policy violates the right of Muslim learners to religion, education and the right not to be discriminated against, and places them at a disadvantage vis a vis the other learners. While we appreciate the right to religion under Article 32 of the Constitution is not absolute, any limitation must be in accordance with Article 24 which provides:
9. A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
- a. the nature of the right or fundamental freedom;
  - b. the importance of the purpose of the limitation;
  - c. the nature and extent of the limitation;
  - d. the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
  - e. the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) ...
103. Article 24(1) makes it clear that a constitutional right can only be limited by legislation. In the Seventh Day Adventist Church case (*supra*) the Court of Appeal had this to say on limitation of a right in the absence of legislation:
- We have determined the question and found that there was no law, as contemplated in article 24 permitting any form of limitation, and that the denial or restriction of the rights or fundamental freedoms of SDA students to observe the Sabbath as decreed in the Holy Book amounted to an infringement of their freedoms. We repeat that the law must exist first before the question of justification or reasonableness can be inquired into.
104. Duly guided and given that there is no legislation in place limiting the rights of Muslim students, we find that the reasons given by the School cannot justify limitation on human rights. Further that the



limitation is unreasonable and unjustifiable in an open and democratic society based on human dignity, equality and freedom.

105. We turn to the Petitioner’s contention that the impugned policies violate the right of Muslim students to fair administrative action as guaranteed under Article 47 of the *Constitution*. The School countered this contention by stating that they are a private institution and that to insist that guidelines and policies should be made after consultation with the Petitioners would amount to a mockery of the Board’s powers duties and responsibilities. Further, that enrolment in the school is voluntary and that parents agree to abide by the rules and regulations of thereof. As such, disregard of the school policies should not be allowed without a plausible justification.
106. The question that begs is, do school regulations override constitutional provisions? The answer is an emphatic no! In the *Mohamed Fugicha case (supra)*, the Court of Appeal considered school regulations as juxtaposed with fundamental rights and freedoms and stated:
126. We are not prepared to hold that, by merely signing the admission letter or the school rules, a student and/or her parent or guardian is thereby estopped from raising a complaint or seeking exemptions ex post facto. Where, as here, the exemptions or accommodation sought are on clear constitutional grounds, it would be escapist even surreal, for a court to point at the signed letter of admission as a bar to assertion of fundamental rights and freedoms. We do not accept that schools are enclaves that are outside the reach of the sunshine of liberty and freedom that the *Constitution* sheds. Students do not abandon their constitutional rights when they enter the school gate to regain them when they leave. Nor can fundamental rights and freedoms be contracted away in the name and at the altar of education. Schools cannot raise an estoppel against the *Constitution*. No one can. We are firm in our assessment that students in Kenya are bearers and exercisers of the full panoply guarantees in our Bill of Rights and they are no less entitled to those rights by reason only of being within school gates.
107. Article 47 provides for fair administrative action as follows:
2. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
  3. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
  4. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
    - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
    - b. promote efficient administration.
108. Article 47 requires that any administrative action must expeditious, efficient, lawful, reasonable and procedurally fair. Clause (2) provides that where right or fundamental freedom of a person, as is the case herein, has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
109. In line with the above provisions, prior to discontinuing the dhuh prayers in School and issuing the impugned policies, the School was obligated to give written reasons to the students and their parents for the action.



110. We are duly guided by the cited cases, and based on the material before us we find that the impugned policies violated the provisions of Article 47 of the Constitution.
111. We have also found that the policies of 12.1.19 and 20.2.19 disadvantaged Muslim learners at the School. The question we ask ourselves is whether the School would have suffered any hardship by exempting the Muslim learners from the application of the two offending policies and allowing them to observe dhuhr prayers in the school as requested. To answer this question, we shall consider the concept of reasonable accommodation.
112. In the Seventh Day Adventist Church case (*supra*) the issue was that a number of public schools had increasingly curtailed the right of freedom of worship of students who professed the Seventh Day Adventist faith. The schools failed to accommodate the religious practices of the church and failed to allow the said student the right to observe the Sabbath in keeping with their faith. The Court of Appeal dwelt on the concept of reasonable accommodation and in its decision, expressed itself in the following terms:

Because of the challenges encountered in trying to balance various competing rights and interests that are bound to arise in the exercise of those rights at the workplace, schools or anywhere else, courts in many jurisdictions have evolved and applied the concept of “reasonable accommodation?”. For instance in schools with multi-faith students, the students are able to co-exist, each practicing their respective religions and balancing that with their right to education under the Constitution and the law, while at the same time complying with school rules and regulations. This concept was explained in simple terms in two persuasive cases decided by the *South Africa Constitutional Court, Pillay* (*supra*), (per Langa, CJ), and that of the Canadian Court of Appeal in *R v Video Flicks* [1984] 48 OR (2d) 395, both cited with approval by this Court in *Mohamed Fugicha* (*supra*). Starting with the former (Pillay) the duty of reasonable accommodation was explained as follows:-

Two factors seem particularly relevant. First, reasonable accommodation is most appropriate where, as in this case, discrimination arises from a rule or practice that is neutral on its face and is designed to serve a valuable purpose, but which nevertheless has a marginalizing effect on certain portions of society. Second, the principle is particularly appropriate in specific localized contexts, such as an individual workplace or school, where a reasonable balance between conflicting interests may more easily be struck.....At its core is the notion that sometimes the community, whether it is the State, an employer or a school, must take positive measures and possibly incur additional hardship or expense in order to allow all people to participate and enjoy all their rights equally. It ensures that we do not relegate people to the margins of society because they do not or cannot conform to certain social norms.?

113. In the PO (Suing as next friend of AA & 9 others v St. Annes Primary School, Abero (*supra*), Kiage, JA stated:

Essentially therefore, I am of the view, as was admitted by parties herein, that the school would not have suffered any hardship by exempting the appellants from the 30-minutes Friday Mass. In compliance with the concept of reasonable accommodation, the school ought to have adjusted its rules to enable all students to practice their respective religions while still complying with the school rules and regulations.



114. Duly guided, we find that the School ought to have adopted the concept of reasonable accommodation by allowing Muslims students to observe dhuhr prayers in the School. This would not have caused any hardship or expenses to the School and none was alleged. Indeed, the Court has not been told that any harm or disharmony or lack of integration occurred during the time dhuhr prayers had been allowed to take place in the School.
115. In the end and in view of the foregoing, we find and hold that the impugned policies violate the Constitution in the manner set out herein. In the premises, the same cannot stand.
116. Having stated the above, we further note that the learned Judges in the PO (Suing as next friend of AA & 9 others v St. Annes Primary School, Ahero case (supra), further stated that Ministry of Education circular dated 4.2.22 titled Violation of Religious Rights in Schools is a useful guideline in respecting and enforcing the religious rights of learners, and that school administrators would do well to heed it. The circular is reproduced hereunder:

The Ministry of Education (MOE) is committed to the provision of quality education to all children in Kenya. Towards this end, the Ministry has achieved significant milestones in ensuring no child is left behind or excluded from getting education. It is however noted that even as the Government is allocating more and more resources to ensure all children are in school, a few of the school administrators and managers are using flimsy excuses to keep learners away from schools. In particular, it has been noted that some schools are violating the religious rights of learners and using religion as a factor to either deny admission or expel learners from school. This violation normally takes the form of;

- a. Prohibition from wearing religious attire like hijab and turbans;
  - b. Forcing students to take Islamic Religious Education (IRE), Christian Religious Education (CRE), Hindu Religious Education (HRE) subjects;
  - c. Denying learners an opportunity to observe religious rights and prayers;
  - d. Failure to allocate worship rooms or spaces; and,
  - e. Forcing learners to participate in religious rites and activities that are contrary to their beliefs.
- The violation of religious rights is against various national legislation, regional and international conventions. In particular, the Constitution of Kenya 2010, acknowledges that Kenyans belong to diverse ethnic, cultural and religious backgrounds and the Constitution elaborately expounds on the need to respect these diversities. In particular, chapter 4 on Bill of Rights bestows rights and fundamental freedoms that include:

1. The right to freedom of conscience, religion, belief and opinion (article 32(1)).
2. The right to manifest his/her beliefs through worship, practice, teaching and observance (article 32(2)).
3. No one may be denied access to any institution, employment, facility or enjoyment of any right because of one's religion or belief (article 32(3)).
4. One cannot be compelled to act or engage in an act that is contrary to his/her religion (article 32(4)).

Further, the Basic Education Act 2013 protects the rights of children to access education. Section 4 on the guiding principles in provision of education provides among others;

1. The right of every child to free and compulsory basic education.



2. Protection of every child against discrimination within or by an education department or education institution on any ground whatsoever.

The violation of religious rights in schools has negative effects on maintenance of peace and tranquility and some students end up dropping out altogether.

The Ministry of Education is committed to ensuring the religious rights of learners are protected and will not allow school administrators, Board of Management, sponsors or any other stakeholder to violate these rights. You are directed to enforce the contents of this circular and cascade the same to:

1. All Sub County Directors of Education in your County
2. All Basic Education institutions under your jurisdiction.”

117. The above circular is based on constitutional and statutory provisions and sets out the right to exercise and manifest the freedom of conscience, religion, belief as stipulated in Article 32. The Ministry of Education through this circular directed school administrators, boards of management, sponsors and any other stakeholder not to violate those rights.
118. The complaint by the Petitioners has in fact been addressed by the Ministry of Education through the circular above. In light of this the School is required to ensure that the religious rights of all learners including Muslim learners are not violated or limited by any policy formulated by the School. This also applies to the impugned policies contained in the circulars dated 12.1.19 and 20.2.19.
119. In light of the foregoing, we find that the reliefs sought by the Petitioner against the 2<sup>nd</sup> Respondent have been fully addressed in the said circular dated 4.3.22 by the Ministry of Education. We need not make any orders or declarations against the 2<sup>nd</sup> Respondent and by extension the 3<sup>rd</sup> Respondent as sought herein.
120. The Petitioners seek declaratory orders against the Interested Parties. A careful look at the declarations sought will show that they relate to the Interested Parties’ respective constitutional and statutory mandates.
121. The 3<sup>rd</sup> Interested Party stated in its response that following a complaint by the 1<sup>st</sup> Petitioner, it initiated investigations and even called the parties to a meeting to record statements. This was confirmed by both the Petitioners and the School. The position of the 3<sup>rd</sup> Interested Party is that it has not breached or violated any provisions of the Constitution, Statute, or International Covenants mentioned in the Petition and asked the Court not to make any order against it. This was not denied by the Petitioners.
122. The 2<sup>nd</sup> Interested Party denied the allegation that it failed in its constitutional and statutory mandate. The 2<sup>nd</sup> Interested Party filed submissions in support of the Petition and urged that the same be allowed save for the prayers against it.
123. From the material placed before us, we find that the Petitioners have not demonstrated that the Interested Parties have failed to discharge their respective mandates. Accordingly, the orders sought against the Interested Parties cannot issue.
124. The Petitioners further sought a declaratory order that the decision by other learning institutions in the country to inhibit and/or refuse Muslim pupils or students to pray their five obligatory prayers at ordained times is discriminatory, unlawful and unconstitutional. We note that those other learning institutions have not been named nor made parties herein. No material was placed before us to support this prayer. We accordingly find that such a prayer would be a prayer at large and cannot be granted.



### **Reliefs to be granted**

125. Having come to the conclusion that the actions of the school as against the Muslim learners resulted in violation of their constitutional rights to freedom of worship, education and fair administrative action, and having looked at the prayers sought in the amended petition, in light of our findings herein, the orders that commend themselves and which we hereby grant are as follows:
126. A declaration is hereby issued that the decision of the 1<sup>st</sup> Respondent to inhibit and/or disallow performance of (dhuhr) afternoon prayers by Muslim learners in the school indirectly discriminated against them on the basis of their religion.
127. A declaration is hereby issued that the policies issued by the 1<sup>st</sup> Respondent known as Guidelines and Regulations for Cooperative Engagement between the School and Parents and the Terms for Continuity of Students, to the extent that they violate the rights and freedoms of the Muslim students in the 1<sup>st</sup> Respondent, are null and void
128. On the issue of costs, we note the existence of the relationship between the parties herein, which is still continuing and this being a matter for protection of constitutional rights and freedoms, we are of the considered view and hold that each party shall bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF DECEMBER 2024**

**SIGNED BY: HON. JUSTICE WAKIAGA J.**

**THE JUDICIARY OF KENYA.**

**MILIMANI HIGH COURT**

**HIGH COURT CONSTITUTION AND HUMAN RIGHTS**

**DATE: 2024-12-06 11:52:35**

