



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO.82 OF 2012**

**BETWEEN**

**NYAKAMBA**

**GEKARA.....PETITI  
ONER**

**AND**

**THE HON. ATTORNEY**

**GENERAL.....1ST RESPONDENT**

**S.G. MUTUNGU, THE CHAIRMAN P.T.A. THE KENYA HIGH  
SCHOOL.....2ND RESPONDENT**

**ROSEMARY C. SAINA, THE PRINCIPAL & SECRETARY, P.T.A.THE KENYA HIGH  
SCHOOL.....3RD RESPONDENT**

**JUDGMENT**

**Introduction**

1. This matter is closely related with Petition No.431 of 2012 where this Court is expected to rule decisively on its understanding of the application of **Article 32** of the **Constitution** to students who profess the Seventh Day Adventist faith and what orders the Court should make to secure their right to worship on Saturday which is their professed Sabbath Day.
2. While giving directions in both Petitions, it was my understanding that the present Judgment would focus specifically on the alleged right of the Petitioner not to be compelled to attend the Parents Teachers Association (PTA) meetings at Kenya High School which have traditionally been held on Saturdays. In passing however, I will touch on **Article 32** in that context and to avoid duplication of matters, I will address the issue of attendance or non-attendance of Saturday classes by Seventh Day Adventist students in Petition No.431 of 2012 which seeks orders that affect all schools in Kenya as opposed to Kenya High School only.

**Case for the Petitioner**

3. In the Amended Petition dated 29/4/2012 and in Submissions by his advocate, the Petitioner's case can be summarised thus;

That he is a parent at the Kenya High School and therefore a bona fide member of the school's PTA. He is also an adherent of the Seventh Day Adventist (SDA) Church and an elder at the Nairobi Seventh Day Church.

4. One of the beliefs of the Seventh Day Church, according to the Petitioner, is that the Sabbath is to be observed on Saturday and in his own words; he worships on that day *“and ... cannot do any work or any activities for ... pleasure including attending school meetings.”* That therefore the practise at Kenya High School of calling for PTA meetings on Saturday contravenes the Petitioner's right and freedom of worship and is inconsistent with the Constitution of Kenya and should be declared null and invalid to the extent of that inconsistency.

5. He has also raised other issues connected to the argument above including that;

i) *by not being afforded the opportunity to attend the PTA meetings, he is being denied the opportunity of participating in the making of important decisions that affect the welfare of his child and*

ii) *his attempts at having the Association meetings held on a day other than Saturday was met with a rebuff by the management of the Kenya High School and he read malice in that action.*

6. The prayers he now seeks are the following;

***“a) A declaration that the Petitioner's freedom of worship enshrined in Article 32(3) of the Constitution has been infringed and/or violated by the 2nd and 3rd Respondents by virtue of the fact that the Petitioner requires to attend but will be unfairly denied the opportunity to attend and participate in the proceedings of the annual general meeting of the Parents and Teachers Association of Kenya High School scheduled on 17th March 2012 on account of his belief or religion.***

***b) Consequently, an order do issue declaring the Parents and Teachers Association of the Kenya High School annual general meeting scheduled to take place on 17th March 2012 and any such meeting scheduled to be held on any Saturday is invalid by reason of violating (sic) of the Seventh Day Adventist parents' right and fundamental freedom in the Bill of rights and amounts to discrimination envisaged in Article 27 of the Constitution on account of religion and belief and consequently an injunction do issue restraining the 2nd and 3rd Respondents from holding such meetings on Saturdays.***

***c) A declaration that the Kenya High School's School Rule and Regulation No.4 in so far as it envisages the half day school program to be Saturday is inconsistent with the provisions of the Constitution of Kenya particularly Articles 27 and 32 as the said Rules and Regulation purport to deny the Seventh Day Adventist Students their rights and freedoms enshrined in the said Articles of the Constitution.***

***d) A declaration that the Seventh Day Adventist students at The Kenya High and in any other public school be no longer compelled to attend classes on Saturdays under any circumstances.***

***e) An order for reasonable compensation be made to the Petitioner to be paid by the Respondents for an amount to be determined by this Honourable Court for violation of the Petitioner's rights and fundamental freedoms.***

***f) An order that the costs consequent upon this Petition be borne by the Respondents in any event.***

***g) All and any such order as this Honourable Court shall deem just.”***

### Case for the 1st Respondent

7. The 1st Respondent filed Grounds of Opposition which I now reproduce herebelow;

*“1) That the Petition is incompetent and and a gross abuse of the Court's process.*

*2) That the rights claimed are not absolute.*

*3) That there is no violation of the Constitution or constitutional right of the Applicant/Petitioner disclosed, hence no justifiable cause. (sic)*

*4) That there is no constitutional issue for the Court's determination.”*

8. In his written Submissions filed on 10/6/2013 and on the issue that I set out to address above, learned State Counsel stated that **Article 8** of the **Constitution** provides that there shall be no State religion and that in creating policies, the State is obligated to accommodate all faiths objectively and within bounds of reason. That this implies that no religion can purport to inform or direct State policy.

9. Further, that people holding diverse religious beliefs should have the same rights and no person or religious organisation should deny other people their rights, discriminate against them unfairly, oppress or denigrate them or impose their religious views on others. In any event, that **Article 32** of the **Constitution** which protects the freedom of conscience, religion, thought, belief and opinion must be read with **Article 24** of the **Constitution** which creates limitations to enjoyment of rights and one of those limitations is that the enjoyment thereof by an individual should not prejudice the rights and fundamental freedoms of others. **Article 25** of the **Constitution** also creates non-derogable rights and the rights and freedoms enshrined in **Article 32** are derogable and are therefore not absolute as the Petitioner would seem to be arguing.

10. In conclusion, that public interest ought not to target religious practices when regulations are being promulgated and that religious expression should be tolerated generally but not when it is offensive, indecent or when it endorses an illegality; that in the instant case, there is no evidence whatsoever that the Kenya High School has in any way infringed on the Petitioner's right to religion and beliefs and the Petition should be dismissed.

### Case for the 2nd and 3rd Respondents

11. The 2nd and 3rd Respondents filed an answer to the Amended Petition in which they jointly acknowledge the supremacy of the Constitution, 2010 and their commitment to the observance, respect, protection and promotion of the Bill of Rights, **Chapter Four** of the said **Constitution**. In that regard, they also maintain that as a secular National Public School with parents, teachers and students drawn from diverse religious, ethnic and socio-economic backgrounds, a delicate balance has to be created to create harmony and unity within that diversity.

12. Regarding the Petitioner's specific complaint on the Parents Teachers Association meetings held on Saturday(s), their response is that the Petitioner is making a mountain out of an ant hill because his initial protestations were only about a meeting of the Parents Teachers Association slated for 17th March 2012. A response was given to him that his letter dated 12th March 2012 seeking a postponement of the meeting was far too close to the actual date of the meeting and that it would have caused tremendous inconvenience if the request was acceded to. That the alternatives presented to him included being supplied with minutes of the meeting and in appreciation of his inability to attend the meeting because of his faith. That the said meeting was in any event the 33rd of its kind and it had become generally acceptable to all parents at the school to convene meetings on Saturdays and it was also reasonable, objective, procedural,

well founded and was made with no intention to violate any person's human rights including the Petitioner's.

13. The 2nd and 3rd Respondents have also made the point that compared to the cumulative violation of the rights of all other parents at the Kenya High School, if the orders sought were granted, the alleged violations against the Petitioner would be trivial and insubstantial and that the Amended Petition is ultimately one that is ill conceived, ill founded, unwarranted, vexatious and an abuse of the Court process.

14. They have also added as follows in Submissions filed on their behalf;

i) *That membership of the PTA is not mandatory and the decision to hold its meetings on Saturday(s) was found to be the most suitable and convenient for most members.*

ii) *That other parents who subscribe to the Seventh Day Adventist faith have over the years found no reason to object to the meetings being held on Saturday(s).*

iii) *The rights under Article 32 are limited by Article 25 of the Constitution and the limitations are justified and reasonable in an open and democratic Society based on human dignity, equality and freedom and also taking into account all relevant factors.*

iv) *That the Education Act, Cap 211 and the Rules made under it have empowered the 3rd Respondent and the Kenya High School Board of Governors to formulate appropriate regulations for purposes of good governance and that includes the creation of a PTA to foster good relations between staff, students and parents. The Parents Teachers Association also assists in fund raising efforts among other things and that no prejudice would be caused to the Petitioner if meetings of the Parents Teachers Association are held on Saturdays as he has access to materials arising from all deliberations at the Annual General meeting.*

15. For the above and other reasons, they seek orders that the Petition should be dismissed with costs.

### **Determination**

16. At the beginning of this judgment, I framed only one issue for determination and I have stated why. That issue for avoidance of doubt is whether the calling of Parents Teachers Association meetings on Saturday(s) at the Kenya High School is an infringement of the Petitioner's right to freedom of religion enshrined in **Article 32** of the **Constitution**. That Article provides as follows;

***“(1) Every person has the right to freedom of conscience, freedom of conscience, religion, 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.”***

17. Of particular relevance to this judgment is **Article 32(2)** and **(4)** whose elements include;

a) *The right to manifestation of one's belief(s) through observance of a day of worship and*

b) *that one shall not be compelled to act or engage in any act that is contrary to the*

person's belief or religion.

18. The facts of this case in the context above are not debatable because for 34 years, the Kenya High School has held one Parents Teachers Association meeting annually on a Saturday determined by the leadership of the Parents Teachers Association and the Petitioner feels aggrieved by that tradition because as an adherent of the Seventh Day Adventist faith, Saturday is a day of rest and no activities of any kind, including Parents Teachers Association meetings, should be undertaken by believers of that faith. That his rights under **Article 32** of the **Constitution** have been violated and he therefore seeks the intervention of this Court by the present Petition.

19. Advocates for the parties pointed me to the following decisions which they considered relevant;

i) **Republic vs Head Teacher, Kenya High School ex-parte MY (a minor), J. R. No.318/2010** (Nbi) which was a case seeking orders *inter-alia* that Muslim students at Kenya High School should be allowed to wear the hijab while in school.

Githua, J. dismissed the Motion seeking judicial review orders arguing that the “*respondent's limitation of the applicant's right to outwardly manifest her religion by wearing a hijab in school was reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom*”

ii) **Ndanu Mutambuki and 119 Others vs Minister of Education and 12 Others [2007]eKLR** where Nyamu, J. in a case involving the right to wear or not to wear headscarfs by students while in school stated *inter-alia* as follows;

***”School uniforms and discipline do constitute and have been generally required as part and parcel of the management of schools and further constitute basic norms and standards in any democratic society.***

***No doubt the hallmark of a democratic society is respect for human rights, tolerance and broadmindedness. In the case of schools, nothing represents the concept of equality more than school uniforms. Unless it is an essential part of faith it cannot be right for a pupil to get up one morning and decide to put on headscarf as well, this derogates from the hallmarks of a democratic society and violates the principle of equality. In weighing the individuals fundamental right under Section 78 against those of the others, I find myself unable to disregard the weight of these basic standards and norms and in my view they do tilt the scales in favour of a finding of no infringement in the circumstances of this case ...”***

The advocate for the Petitioner also referred me to a photocopy of a document titled “*Working Paper 2; Protection of Fundamental Rights through the Court of Justice of the European Communities*” by a certain Professor. Sadly, the document was so blurred that I was unable to read it at all and so its value or lack of it is impossible to tell.

Counsel for the 1st Respondent also referred me to a number of decisions from the U.S.A. and the following are of interest;

a) **Lemon vs Kurtzman 403 U.S. 602 (1971)** where the U.S. Supreme Court established what later became known as the “*Lemon Test*” regarding enactment of Statute for a secular purpose. Three tests were set out viz;

i) that it must have a primary secular purpose.

ii) that it must have primary effects that neither advance nor inhibit religion.

iii) that it must not result in excessive entanglement with religion.

b) **Beadle vs Hillsborough County Sheriff's Department 29F:3d 589 (11 Cir.1994)**; this case was in relation to accommodation granted to an employee and in the context of this case, the argument being made is that whereas an employer merely needs to show that he has offered reasonable accommodation, in the present case, the 2nd and 3rd Respondents have offered the Petitioner reasonable alternatives to his attendance at Parents Teachers Association meeting regardless of the fact that the Petitioner seemed to have stuck to only one alternative viz. meetings on any day other than Saturday.

c) **Peterson vs Hewlett – Packard Co.358 F.3d 599, 606 (9th Cir. 2004)**; this case revolved around the issue of the extent to which an employer can “*reasonable accommodate*” an employee's religious practises, observances, and beliefs. The principle laid down in the judgment was that whereas the right exists, it should be enjoyed in such a manner that “*undue hardship*” is not imposed on the employer.

20.The relevance to the present case is that whereas the Petitioner has rights under **Article 32** of the **Constitution**, the enjoyment of those rights should not be such that undue hardship in the management of the affairs of the Kenya High School is imposed upon either the 2nd or 3rd Respondents.

21.All the above decisions are helpful but I should at this point note that in addressing the rights under **Article 32** of the **Constitution**, **Article 8** must first be understood. It provides clearly as follows;

“**There shall be no State religion**” [and as I understand it, a “State religion” is a religion established by Law as the only official religion of a State – [www.marriam-webster.com/dictionary/State](http://www.marriam-webster.com/dictionary/State) religion. The import of the provision is that no religion shall have prevalence over any other and no particular one should be seen as the one each citizen is obligated to follow including on the observance] of a day of worship.”

22.Further, neither **Articles 8, 32** nor **260** of the **Constitution** define religion and the enjoyment of that right but in the Human Rights Review 2012, in an analysis of **Article 9** of the **European Convention on Human Rights** which is, in **Article 9(1)** word by word the same as **Article 32(2)** of the Constitution, 2010 and **Article 9(2)** the same as **Article 24(1)** of our **Constitution**, the authors noted as follows;

i) the right to hold, as distinct from the right to manifest, religious and other beliefs is an absolute right.

ii) the right to manifest a belief is a qualified right and its limitation is permissible if it is prescribed by law and can be justified as necessary in a democratic society in the interests of public safety, the protection of public order, health or morals or the protection of the rights and freedoms of others.

23.In the same review, the case of **R (Williamson) vs Secretary of State for Education and Skills [2005]2 AC 246** is highlighted. Lord Nicholls had this to say;

***“Religious and other beliefs and convictions are part of the humanity of every individual. They are an integral part of his personality and individuality. In a civilised society individuals respect each other's beliefs. This enables them to live in harmony.”***

And on “*manifestation*” which is the crux of the case before me, the House of Lords in Williamson stated thus;

***“when questions of “manifestation” arise ... a belief must satisfy some modest, objective minimum requirements. The belief must be consistent with basic standards of human dignity or integrity. ... The belief ... must possess an adequate degree of seriousness and importance ... it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The***

*belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification ... Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the convention ...”*

The authors of the Review in following the discussion above, then make a profound statement which I find attractive. They state thus;

*“The holding and manifestation of beliefs may be intrinsically bound up with each other. Manifestation can occur through worship, teaching and proselytism observation by wearing symbols or special clothes, or by eating or avoiding certain foods. The right to manifest a belief is a qualified right and is subject to limitations as set out in Article 9(2). Interferences with the manifestation of belief may consist, for example, of uniform policies at work or school, or requirement to work at certain times or carry out certain tasks. Limitations on an individual's freedom to manifest his or her religion or belief are only permissible if prescribed by law and necessary in a democratic society in the interests of public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others.”* (Emphasis added)

**Further that Article 9 places the following obligations on the State:**

*“i) a negative obligation requiring the State not to interfere in the right of individuals and organisations to hold religious and non- religious beliefs.*

*ii) a positive obligation to secure enjoyment of Article 9 rights by ensuring they are protected in law, and there are sanctions if they are infringed, and by preventing or remedying any breach by its own agents or institutions.”*

24. I am attracted to the above exposition because in the case before me, the 2nd and 3rd Respondents presented to the court Minutes of the Parents Teachers Association meeting held on 17th March 2013. In attendance were 804 parents and teachers of the Kenya High School with six recorded apologies and of interest is a statement at page 9 of the Minutes as follows;

*“The issue of holding Annual General Meeting on Saturday which was being objected through a Court injunction by one Form 1 Seventh Day Adventist parent was widely discussed. It was resolved that Saturday was still the day suitable and convenient for both parents and the school. This matter was proposed by Anne Adiema mother to Ruth Adiema of Form 3S4 and seconded by Mr. Kopere father to Beyl Kopere of 4S3”*

Further that;

*“Mohamed Hassan father to Amina Hassan of Form 1S1 expressed that discipline is universal and issues of religious differences should be discussed amicably.*

*Religious differences should not be used as a tool to fight school in Courts. He added that the school should create a forum for hearing parents views”*

25. At page 10 of the Minutes, it is further recorded as follows;

*“Lawrence Muchama a parent to Purity Muchama of 1K1 observed that it was unfortunate that the school is spending valuable time in Court. He said that he is an Seventh Day Adventist but not in support of the happening. He said that the parent who has taken the school to Court has gone on his own as an individual and not on behalf of the other Seventh Day Adventist parents. He wished this matter could be settled in a peaceful [way]”*

Another Minute states that;

“Anne Adiema parent to Ruth Adiema Form 3 also an Seventh Day Adventist asked the Seventh Day Adventist parent who went to Court to come forward and express his problem so that it is settled at this meeting.

Another Seventh Day Adventist parent – Tom Kopere father to Beverly Kopere of 4S3 suggested that the Parents Teachers Association Constitution to have a dispute a resolution Clause.

All parents agreed that Annual General Meeting to continue to be held on Saturdays because it is the day convenient with majority and will not interrupt learning in School.

Bernard Monumbura father to Deborah Nyachama proposed and seconded by Mr. Kodhek father to Beverly Kodhek of 4S4.”

26. I will not trouble myself with the issue whether it was in the place of the PTA to discuss a pending Court Case but it was sued and so had a duty to respond to the suit. My point is that out of the 804 participants at the meeting, adherents of the Seventh Day Adventist Church were present and voiced strong objections to the Petitioner's stated position. More fundamentally, all those present voted to continue holding their one Annual General Meeting a year on a Saturday. This is critical in determining whether the Petitioner's right not to attend that one meeting every year if not granted, would amount to a violation of his right to manifest his religious beliefs. Conversely, whether therefore grant of that right would amount to discrimination against other individuals and the Parents Teachers Association as a group. That is the delicate balance that this judgments must strike and in that regard. The U.N. Special Rapporteur on Freedom of Religion or Belief in a 2008 report found that the United Kingdom for example had “*balanced approaches in responding to difficult situations with regard to freedom of religion or belief and the contentious issues involved*” and welcomed a case-by-case approach which allowed each complaint to be judged according to its particular circumstances.

27. The European and Human Rights Commission in Submissions to the European Court of Human Rights also stated that balancing competing interests is a proper approach to be taken by any Court in such matters and for example that;

i) *some forms of manifesting belief, such as wearing religious clothing or jewellery, are likely to have a limited impact on other people (quite the opposite of what Githua, J. held in **Republic vs Head Teacher, Kenya High (supra).**)*

ii) *an employer may legitimately refuse to accommodate an employee's religious beliefs where such accommodation would involve discrimination on the basis of other protected characteristics including the protected rights of non-discrimination of others.*

28. In the above context, a number of decisions from other jurisdictions would provide persuasion and are relevant to the present case and they are the following;

**a) Kalac vs Turkey [1997] 27 EHRR 522** where it was held that Mr. Kalac's voluntary acceptance of military discipline that could impose limitations on his right and freedom to take part in the activities of a religious sect could not be held as a violation of his right to manifest his religious beliefs.

**b) Kontinnen vs Finland [1996] 87 DR 68** where it was ruled that the **Article 9** rights of a Seventh Day Adventist were not interfered with when his employer refused his request not to work on Sabbath Day (in his case, Fridays).

**c) Ahmed vs the United kingdom [1981] 4EHRR 126** where a teacher was forced to resign because the school refused him permission to leave work 45 minutes early to attend a mosque during working hours. The European Human Rights Commission ruled that;

i) his **Article 9** rights had not been interfered with because he had freely entered into his contract.

ii) He had not notified his employer of his religious observance needs at the time of his recruitment, or for the six years that he had been employed.

iii) he was free to resign and find employment elsewhere on terms that reflected his religious needs.

**d) Stedman vs the United Kingdom [1997]23 EHRR CD** where a Christian employee was required to work on Sundays some time after she had been on the job. Her complaint was not upheld and it was held that “*she was dismissed for failing to agree to work certain hours rather than for her religious belief as such and was free to resign and did in effect resign from her employment*”.

**e) Copsey vs A.W.B. Devon Clays Ltd [2005] ICR 1789** where an employee challenged his employer's decision to include Sunday as a working day. The Court of Appeal of England held that his rights had not been interfered with as he could find another job which would enable him attend Sunday religious services.

**f) Chatwal vs Wandsworth Borough Council [2011] UKEAT/0487/10/JOJ**, para 26 – Mr. Chatwal, a Sikh argued that a clause in his contract which required him to have contact with meat products indirectly discriminated against him but the claim was dismissed because he failed to show that a significant number of Amridhtari Sikhs, like himself, held similar beliefs about not touching meat products.

29. With the above background of decisions from other judgments and turning back to the present case, elsewhere above, I have indicated that the Petitioner was only required to attend one PTA meeting a year and therefore only four meetings in the period his daughter remained a student at the school. Further, other Seventh Day Adventist parents expressed strong reservations about his opposition to the Saturday meetings as did the collective membership of the PTA. But they did not close the door to him and extended an invitation for him to voice his concerns within the meeting. In the end therefore I am faced with the lone voice of the Petitioner against the more than 800 others who consider Saturday(s), convenient and agreeable for PTA meetings to be held. And I say so not so much because of the obvious reverse discrimination that they will certainly face but because the right of the Petitioner in the circumstances must be qualified in the language of **Articles 24 and 25 of the Constitution**. I do so in line with the criteria set at paragraph 22 above.

30. It must also be noted that admission to public schools such as the Kenya High School is voluntary and a parent may choose for religious and other reasons to take a willing child to another school of the same standard whose general rules are agreeable to him/her. This Court finds it difficult to regulate the way schools are ran when an alleged offending policy finds favour with 99.99% of those who are affected by it and although clothed with the right to manifest his religion, the Petitioner cannot do so in a vacuum devoid of the commensurate right to respect the same right as held by others.

**Article 25 of the Constitution** provides that;

***“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited–***

- a. ***Freedom from torture and cruel, inhuman or degrading treatment or punishment;***
- b. ***Freedom from slavery or servitude;***
- c. ***The right to a fair trial; and***
- d. ***The right to an order of habeas corpus”.***

31. Having so said, I am convinced that the Kenya High School must learn from the lessons of the past. One parent at the meeting held on 17th March 2013 stated that the school was spending far too much time resolving its disputes in Court.
32. The above statement like all others made at the meeting must be taken seriously. It points to an obvious problem; the school has not created a clear internal policy around religious issues, delicate and complicated as the issue may be. How come few other schools of the same standard don't end up being taken to Court on these issues? I am referring to Loreto Girls, Limuru and Limuru Girls School as well as Nairobi Girls Schools, for example. The Parents Teachers Association meeting of 17/3/2012 identified the problem and I would encourage the school to have a mechanism to resolve those disputes that can be resolved without recourse to Court and focus on the business of imparting knowledge and not "*trade blows*" with parents and students in the corridors of justice.
33. The Petitioner may also explore other ways of resolving his issues with the school with the rights of other parents in mind.

### **Conclusion**

34. Looking at the prayers sought in the Petition, prayers (c) and (d) will be determined in Petition No.431/2012 while prayer (b) is meant to be an intervention on behalf of other SDA parents but I have shown why the prayer cannot be granted. Prayer (e) on the other hand is consequent upon (b) being granted and once (b) has been denied, then (e) is also denied. I should restate that my findings above are made in the circumstances of the case before me and with regard to the one issue I set out to address and is in no way an expression of the larger issue to be addressed in Petition No.431 of 2012 and which will be determined on its own merits and in its unique circumstances.
35. In any event, for the reasons that I have given above, the Petition before me is dismissed but as to costs, it may be argued that the Petitioner was acting alone and for his personal interests and therefore costs must follow the event. I have however noted the relationship between the parties and it is best that each should bear its own costs.
36. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2013**

**ISAAC LENAOLA**

**JUDGE**

**In the presence of:**

**Irene – Court clerk**

**Mr. Ojwang for Respondents**

**Mr. Kago for 2nd Respondent**

**Miss Omariba holding brief for Mr. Opini for Petitioner's**

**Order**

Judgment duly read.

**ISAAC LENAOLA**

**JUDGE**