



**Wateriv Construction and Supplies Ltd v Sagalla International Talent Academy  
(Civil Case E040 of 2025) [2025] SCC 3 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] SCC 3 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT VOI  
CIVIL CASE E040 OF 2025  
FM MULAMA, RM  
JULY 11, 2025**

**BETWEEN**

**WATERIV CONSTRUCTION AND SUPPLIES LTD ..... CLAIMANT**

**AND**

**SAGALLA INTERNATIONAL TALENT ACADEMY ..... RESPONDENT**

**RULING**

On the preliminary objection dated 27th June 2025

**A. Background.**

1. The respondent has raised the instant preliminary objection based on 3 grounds which can be condensed into 1 ground to wit that the claim offends the mandatory provisions of section 56(8) as read together with Schedule 4 of the [Basic education Act](#) No. 14 of 2013.
2. Section 56 of the [basic education Act](#) provides thus;
  56.
    - (1) The Board of Management established under section 55 shall consist of the following members appointed by the County Education Board:
      - (a) six persons elected to represent parents of the pupils in the school or local community in the case of county secondary schools;
      - (b) one person nominated by the County Education Board;
      - (c) one representative of the teaching staff in the school elected by the teachers;
      - (d) three representatives of the sponsors of the school;



- (e) one person to represent special interest groups in the community; and
  - (f) one person to represent persons with special needs;
  - (g) a representative of the students' council who shall be an *ex officio* member
- (2) The Board of Management may from time to time co-opt into its membership such persons as it is satisfied possess skills and experience to assist in the discharge of the Board's functions.
  - (3) The number of members of the Board of Management co-opted under subsection (2) shall not exceed three at any particular time and such members do not have a right to vote at the meetings of the Board.
  - (4) The members of the Board of Management shall elect their chairperson from amongst themselves provided that the member to be so elected shall not be a person who was appointed under subsection (1)(c).
  - (5) For public schools sponsored by faith-based organisations, the Chairperson of the Board of Management shall be appointed by the County Education Board in consultation with the sponsor.
  - (6) For a public school, the chairperson of the Board of Management shall be elected by the members in their first meeting.
  - (7) Despite subsection (5), a faith-based sponsor who does not make a significant contribution and impact to a school or institution as contemplated under section 2 of the Act shall not be consulted in the appointment of the chairperson of the Board of Management of that school or institution.
  - (8) The conduct and affairs of the Board of Management shall be as set out in the Fourth Schedule.
  - (9) The provisions of sections 54 to 57 shall apply *mutatis mutandis* to a board of management of any public-
    - (a) primary school;
    - (b) secondary school;
    - (c) adult and continuing education centre; and
    - (d) multipurpose development training institute.
3. Schedule 4 on the other hand has 2 parts to wit conduct of business and affairs of the board of management and national education board respectively.
  4. The respondent sought to have the PO disposed off by way of submissions and parties were granted 7 days to file and exchange submissions which submissions have been considered and appreciated.

#### **B. Issues For Determination.**

5. The following issue is for determination by the court
  - a. Whether the preliminary objection dated 27<sup>th</sup> June 2025 is merited.
  - b. Whether costs should be awarded and to who should the PO be upheld.



## C. Analysis and Determination.

### Whether the preliminary objection dated 27<sup>th</sup> June 2025 is merited.

6. The case of *Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection where their Lordships observed thus:

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.
7. In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.
8. From the PO and submissions, it is not clear what exactly the claim has offended in the said section forming the basis of the PO. As already reproduced herein above, the sections seem to give the composition of the board of management and how the said board should conduct its affairs and which for all intents and purposes should be as per schedule 4 of the Act.
9. However, what I seem to gather from the PO that is not being brought out well is in my view the fact that the claimant has sued the school instead of suing the Board of Management which is a body corporate with perpetual succession capable of being sued and to sue as well. This is pursuant to part 1 of the 4<sup>th</sup> Schedule.
10. In the case of *Republic vs The Secretary to the Board of Governors, Musingu High School-Kakamega* (2011) eKLR Lenaola J (as he then was) held that “from the above it is obvious that the body lawfully capable of being sued on behalf of a school is the Board of Governors as a corporate entity and not one of its officials such as the secretary to the board. I also note specifically that the (Board of Governors) order. That order provides in Rule 10 as follows:

“No governor shall be subject to any personal liability in respect of any matter or thing done or omitted or any contract entered into by or on behalf of the board which he is a governor or by or on behalf of any school or group of school administered by that board.”
11. It is with the same reasoning that the drafters of the Act at schedule 4 of the Act intended that the schools Board of Management to be sued and/or to sue as appropriate and no wonder the said boards have perpetual succession.
12. In this instant claim, the claimant has sued the academy as opposed to the its board of management. It is thus clear that the claimant has sued the wrong person/Party as the school has no capacity to sue or be sued. It can only do so through its board of management.



**D. Conclusion and Disposition.**

13. The preliminary objection dated 27<sup>th</sup> June 2025 is allowed and the claim stands struck out.
14. Let each party bear its own costs of the claim.
15. It is so ordered.

**DATED, DELIVERED AND SIGNED AT VOI SMALL CLAIMS COURT THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**F. M. MULAMA**

**ADJUDICATOR/RM**

In the presence of;

N/A for the Claimant

N/A for the Respondent

