



**ENE (Suing as mother and next friend of CE) v Board of Management Maranda High School & 2 others; Sub-County Director of Education Bondo (Interested Party) (Petition E004 of 2025) [2025] KEHC 15573 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15573 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT SIAYA**

**PETITION E004 OF 2025**

**DK KEMEL, J**

**OCTOBER 31, 2025**

**IN THE MATTER OF ARTICLES 19,20, 21, 22, 258  
AND 259(1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF THE FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 28 ,29©-  
(F), AND 53(1D) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE BASIC EDUCATION ACT NO. 4 OF 2013**

**AND**

**IN THE MATTER OF THE AFRICAN CHARTER  
ON THE RIGHTS AND WELFARE OF THE CHILD**

**AND**

**IN THE MATTER OF THE UNITED NATIONS ON THE RIGHTS OF A CHILD**

**BETWEEN**

**ENE (SUING AS MOTHER AND NEXT FRIEND OF CE) ..... PETITIONER**

**AND**

**BOARD OF MANAGEMENT MARANDA HIGH SCHOOL ... 1<sup>ST</sup> RESPONDENT**

**DR EDWIN NAMACHANJA ..... 2<sup>ND</sup> RESPONDENT**

**KEVIN OJ OMOLLO ..... 3<sup>RD</sup> RESPONDENT**



AND

**SUB-COUNTY DIRECTOR OF EDUCATION BONDO .... INTERESTED PARTY**

**JUDGMENT**

1. By a Petition dated 7<sup>th</sup> March 2025 the Petitioner has approached this court alleging violation under articles 19,20, 21, 22, 258 and 259(1) of *the Constitution*.
2. The brief facts in support of the Petition are inter alia; that the minor herein (CE) was admitted to Maranda High School as a form one student in February 2021 and given the admission number 14362; that the Petitioner avers that the minor was an above average student and multi-talented and actively participating in co-curriculum activities; that at all times material to this petition, the minor was a form 4 student at Maranda High school and owing to his high discipline and hard work, he was made the Rugby Captain in the school; that on or about 1<sup>st</sup> February 2024 at about 2000hrs, the minor was called to the office of the deputy principal together with other rugby players; that while in the said office, the minor was informed that another student namely Master AJ, a rugby player had been found with one roll of cannabis sativa allegedly obtained during a rugby tournament at St. Marys' Yala the previous weekend; that after the players in the office being interrogated to close to two and half hours, the 3<sup>rd</sup> Respondent resorted to canning them using a Bunsen burner rubber tube severally, occasioning bodily injuries to the minor herein; that the Petitioner received communication from the 2<sup>nd</sup> Respondent via a text message on 1/2/2024 at about 2300hrs indicating that she was required to go to the school urgently to pick the minor who had been suspended indefinitely; that the petitioner contends that she tried to raise concerns with the school over what had happened but that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were dismissive and so she opted to leave with her child; that she arrived at her home in Bungoma County and took the child to Bungoma County Hospital for treatment and testing of any drug or substance use and that the results showed that he was clean; that the Petitioner then received communication on the 6<sup>th</sup> February 2024 that she was required to appear on 7<sup>th</sup> February 2024 before the Disciplinary Committee of the Board of Management; that the Petitioner appeared before the board which was made up of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, Peter Ochieng (Deputy principal), PTA representative and a representative of the school sponsor; that there was no representative from the Sub County Director of Education as required in compliance of regulation 39 of the Basic Education Regulations of 2015; that the petitioner contends that during the said hearing, it was clear that when the team headed by the 3<sup>rd</sup> Respondent were on their way to the Rugby tournament held on 27<sup>th</sup> and 28<sup>th</sup> January 2024, the 3<sup>rd</sup> Respondent allowed a former student, one Carlos Khisa to board the school bus and participate in the games on both days; that the petitioner contends that it was clear that it was the 3<sup>rd</sup> Respondent who was in charge of the teams when they went for the tournaments at St Marys' Yala and that he was present and allowed the driver to pick the non-student and accompany them for the tournaments; that the Petitioner contended that the 3<sup>rd</sup> Respondent shamefully and illogically shifted the responsibility of chaperoning the students to the minor herein since he was the captain for the rugby team; that the petitioner despite tabling evidence that the minor tested negative for any drug abuse and that it was not the duty of the minor to chaperone the other students while on a school trip, members of the board sided with the 3<sup>rd</sup> Respondent; that the petitioner was later directed to go with her child and wait for a decision from the County Education Board; that the petitioner was shocked to learn that the 1<sup>st</sup> Respondent had earlier met in her absence and conducted disciplinary proceedings against the minor; that due to delay in resolving the matter and due to the fact that registration of candidates was due as well as the fact that the school was hostile to her and the minor, she opted to



transfer the minor to another school; that the petitioner contends that the issue of the minor's claims of corporal punishment and the fact that the doctors had given a clean bill of health regarding alleged drug use, she lodged a report with the police at Bondo Police station vide OB number 37/27/02/2024; that the petitioner was later surprised to receive a letter of re-admission of the minor to school with a final warning; that the petitioner contends that the said attempt at re-admission of the minor were an afterthought by the school to clear itself from liability as they had wasted the minor's time as he was a candidate; that the petitioner contends that the decision making process of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents showed that they did not bother or care of the best interest of the minor who was to sit for KCSE examinations.

3. The petitioner contends that the Respondents had violated the relevant provisions of articles 47, 43, 50(2) (k), 29(f), of *the constitution* and that the minor suffered great loss and damage and now prays for the following orders:
  - a) A declaration that the corporal punishment meted out by the 3<sup>rd</sup> Respondent on the minor on 1/2/2024 violated the minor's right to be protected against violence, torture, inhuman and degrading treatment under article 29(f) of *the constitution* as read with the *Basic Education Act*.
  - b) A declaration that a denial by the Respondents to allow the petitioner peruse the disciplinary proceedings of 7/2/2024 violated the minor's right to fair hearing under article 50(2) of *the constitution* as read with the *Basic Education Act*.
  - c) A declaration that the decision of the Respondents to proceed with a disciplinary proceeding without the participation and or input of the Interested Party violated the petitioner's right to fair hearing.
  - d) A declaration that the Respondents decision to suspend the minor based on an allegation that was not substantiated by any independent person save for the minor who was questioned by the 3<sup>rd</sup> Respondent violated the minor's right to fair hearing and fair administrative action.
  - e) A declaration that the action of the Respondents to purport to re-admit the minor was an afterthought since the minor had already moved to another school following the illegal suspension.
  - f) A declaration that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to withhold excess fees paid on behalf of the minor is null and void.
  - g) An order directing the Respondents to refund to the petitioner any excess fees paid.
  - h) General damages for the violation of the minor's rights to education, fair hearing, access to information, fair administrative action and protection from violence, torture, inhuman and degrading treatment.
  - i) General damages and Punitive damages for the illegal and unwarranted corporal punishment meted on the minor and hounding him out of the school.
  - j) Exemplary damages for the emotional, psychological and mental anguish suffered by the petitioner and the minor by the callous actions of the Respondents.
  - k) Costs of the suit.
  - l) Any further orders the court may deem fit and just to grant in the circumstances.
4. The Respondent's opposed the petition and filed a replying affidavit sworn by the 2<sup>nd</sup> Respondent on 28/3/2025 who averred inter alia; that functions of the 1<sup>st</sup> Respondent inter alia is to determine



cases of pupils' discipline and make reports to the County Education Board as outlined in the [Basic Education Act](#); that the 1<sup>st</sup> Respondent herein may establish such committees as the Board may consider deem necessary as provided for in the [Basic Education Act](#) and specifically Section 61 of the said Act; that the student (CE) was admitted as a form one student on 8/2/2021 as per the letter of admission marked as EWN2; that upon admission to the school, the learner continued to attend school and participated in the sporting activities specifically Rugby and served as the captain of the Rugby team; that on 27/1/2024 the school rugby team participated in a tournament at St. Mary's Yala; that it is from the said tournament that the school administration realized that the learners had participated in illegal activities to wit smoking of cannabis sativa and taking of illicit brew commonly referred to as chang'aa; that after the internal investigations the students were required to offer an explanation in writing as per the annexed bundle of documents containing the confessions by the students including CE; that from the explanation in the bundle above the learners engaged in drinking of illicit brew and smoking of cannabis sativa commonly referred as bhang; that the school then began the disciplinary process where CE was called to a school committee comprising of one Deputy Principal and seven teachers on 2/2/2024 as per the attached minutes marked as EWN4; that the learners were sent home for parental and professional counselling as they await to appear before the disciplinary committee as per the annexed letter marked as EWN5; that after the conclusion of the hearing, the committee made a decision to forward the matter to the Discipline and Academic committee where he is a member which held its meeting on 7/2/2024 where the students appeared as per the annexed copy of minutes marked EWN6; that it is important to note that CE admitted to witnessing students smoking bhang and that the sub-committee concluded that he had participated in the vice; that the committee made a decision to forward the indiscipline case to the full board for further discussions; that the full board found that CE was the team leader being the captain of the rugby team hence bearing responsibility of the team discipline and therefore CE and other players were guilty of breaking school rules; that the Board forwarded the case to the County Education Board for determination with a recommendation for exclusion as per the annexed copy of minutes of the full board marked as EWN 7; that subsequently, he forwarded the decision of the Board with the recommendation for exclusion of the learners from the school to the County Education Board as required by law as per the annexed copy of the letter marked as EWN 8; that the said communication was also relayed to the Petitioner via bulk messaging services and to all the students involved in the indiscipline case as per the annexed copy of the text message marked EWN 9; that before the County Director of Education could relay the decision of the county education board, the Petitioner decided to transfer CE; that CE cleared with all the school departments and was allowed to transfer to a different school as per the annexed copy of letter and clearance form marked as EWN 10; that on 13/5/2024, the County Director of Education relayed the decision of the County Education Board which allowed the students to be readmitted with a warning to adhere to the school rules and regulations; that the decision was relayed in a timely manner as both the Full School Board and County Education Board normally meets only once a term and that there was no inordinate delay as alleged by the Petitioner; that the decision was communicated to all the students and the other six students reported back to school save for CE who had already transferred as per the annexed copy of the letter to the Petitioner marked as EWN 11; that corporal punishment was banned in schools and at no point did the school administer any form of beating to the student; that without prejudice to the foregoing, that if indeed CE was assaulted by the 3<sup>rd</sup> Respondent, he ought to have reported the same to the relevant authorities for investigations and subsequent charging of the alleged offender if indeed a criminal offence was committed; that he further stated that the student was sent home for either peddling, smoking or abetting use of drugs in school and hence the drug test report is immaterial in the present petition; that at the opportune time they will require the author of the Medical Report from Bungoma County Referral Hospital to be cross examined on the contents thereof; that if the Petitioner was aggrieved by the process leading to the suspension of CE, they ought to file a Judicial



Review application and not a Constitutional Petition; that the Respondents herein followed the law in discharging their duties and that at no point were the rights of the Petitioner violated as alleged; that the instant petition does not raise any constitutional violations and that the same should be dismissed with costs.

5. The petition was canvassed by written submissions. Both parties duly complied.
6. Vide submissions dated 30/5/2025, the Petitioner submitted reiterating the facts as stated above adding firstly, that the Respondents violated the minor's rights as he was subjected to corporal punishment against the law and regulations under the Basic Education Act and Rules and secondly, that he was subjected to a disciplinary process which was not procedurally fair and against the tenets of the constitution and the Basic Education Act and Rules.
7. The Petitioner submitted on article 29 (c), (d), (e) and (f) of the Constitution of Kenya that every person has inherent dignity and the right to freedom and security of person, which means the right not to be subjected to any form of violence from either public or private sources, subjected to torture in any manner, whether physical or psychological, subjected to corporal punishment, or treated or punished in a cruel, inhumane degrading manner. She likewise submitted on article 53 (1) (d) of the Constitution of Kenya to wit that every child has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment, punishment and hazardous or exploitative labour.
8. The Petitioner also referred this court to Rule 9 of the Teachers Service Commission (Code of Conduct and Ethics for teachers) Regulations which provides that:

“ A teacher shall be entrusted with the duty to care for a child, including a child with special needs and shall take reasonable steps to ensure the child is protected from abuse, neglect, harmful cultural practices, all forms of violence, discrimination, inhumane treatment, corporal punishment and exposure to hazardous or exploitative labour.”

9. The Petitioner maintained that she has complied with the strictures in presenting petition namely that the issues in contention have been specified as per the decision of the court in the case of Communications Commission of Kenya & 5 others Vs Royal Media Services Ltd & 5 Others [2014] eKLR where the Supreme Court held as follows:

“(349)...Although Article 22(1) of the constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show that the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru V. Republic [1979] KLR 154: the necessity of a link between the aggrieved party, the provisions of the constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”

Also, reliance was placed in the case of Japheth Ododa Origa v Vice Chancellor University of Nairobi, Academic Registrar, and Another- Constitutional Petition No. E197 OF 2023 – Judgement Page 23 of 40 Nairobi & B.M Waweru [2018] KEHC 4861 (KLR) the Court discussed as follows

“ 15. Precision in pleading is vital in Constitutional Petitions because it enables the opposite party to fully understand the case they face and be in position to adequately respond to it. It also enables the court to decipher the issues brought before it for adjudication. It helps in



avoiding surprises and ambiguities in the litigation but more importantly it shows the link between the aggrieved party, the litigation but more importantly it shows the link between the aggrieved party, the constitutional provisions at play and the possible infringement. This was well stated by the Supreme Court in the case of Communication Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others [2014] eKLR....”

10. Learned counsel for the Petitioner also relied on several authorities including but not limited to Charles Muturi Macharia & 6 Others vs Standard Media Group & 4 others (SC) Petition No. 13 (e015 of 2022), Peter Ndegwa Kiai t/a Pema Wines & Spirits vs AG & 2 Others [2021] KECA 328 (KLR) and DWK & Another vs Board of Management AJ Primary School & 2 others [2021] eKLR to advance the Petitioner’s prayer that the court should award general damages for the aforesaid violation of the Petitioner’s constitutional rights as well as rights due to the minor under the Basic Education Act.
11. On the other hand, the Respondents vide their submissions dated 19/6/2025 reiterated the contents of their replying affidavit dated 28<sup>th</sup> March 2025 sworn by the 2<sup>nd</sup> Respondent. They placed reliance on the case of Republic vs The Head Teacher Kenya High School exparte as SMY Judicial Review Application No. 318 of 2010. They submitted that no corporal punishment was administered to CE. They submitted that at no point did the school violate the constitutional rights of CE, adding that it followed due process in handling the disciplinary matter.
12. I have given due consideration to the petition, rival affidavits, submissions as well as authorities relied on by the parties. I find the issue for determination is whether the petition has merit.
13. As this is a constitutional petition, the cardinal principle is that the same must indicate that the Petitioner has clearly spelt out the specific rights allegedly infringed and/or violated so as to enable the Respondents to respond thereto. It is trite that in seeking to invoke the High Court jurisdiction in accordance with Article 22 of the Constitution, one must plead with specificity which rights have been infringed upon. In Communications Commission of Kenya and 5 others v Royal Media Services Ltd and 5 others (2014) eKLR the Supreme Court held as follows:

“(349) .... Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”

Again, in Japheth Ododa Origa v Vice Chancellor University of Nairobi, Academic Registrar, Constitutional Petition No. E197 of 2023 – Judgment Page 23 of 40 Nairobi & B.M Waweru [2018] KEHC 4861 (KLR) the Court held as follows:

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infringement. This was well stated by the Supreme Court in the case of *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR...”

It is noted that the present Petition is precise and clear that the Petitioner has brought the petition as a mother of the minor (CE) and that the minor has consented to the Petitioner to file and swear the affidavit on his behalf. A perusal of the entire petition clearly shows that the Petitioner has enumerated all the specific violations and infringement of the minor (CE) to warrant the same to be placed before this court for determination. Further, the said averments have not created any doubt or discrepancy as to the claims raised against the Respondents and the reliefs sought in the final analysis. I am therefore satisfied that the Petitioner has met the threshold as guided in the *Anarita Karimi Njeru* case (supra).

14. It is noted that the Petitioner’s grievance is three-fold, namely whether the disciplinary proceedings conducted against the minor (CE) were in consonance with the dictates of *the Constitution* and the *Basic Education Act* and secondly, whether the minor (CE) was subjected to corporal punishment and finally, whether the Petitioner should be awarded damages.
15. As regards the issue of whether the minor’s rights were violated during the disciplinary proceedings, it is noted that the right to education is safeguarded under Article 43(f) and 53(1)(b) of *the Constitution* of Kenya, 2010. This right is what gave rise to the *Basic Education Act* which provides for the rules for conducting disciplinary hearings for learners. It is also noted that the 1<sup>st</sup> Respondent is guided by the mandatory provisions under Basic Education Regulations when conducting disciplinary hearings. Under Regulations 37 of the Basic Education Regulations, the same provides as follows:

“Every institution shall establish and keep a register of indisciplined learners indicating the name, class, category of indiscipline, date and warning or any other corrective measures taken by the institution.”

It is further noted that the Respondents are to ensure compliance with Regulations 38(1) of the Basic Education Regulations which provides as follows;

“If the head of the institution is of the opinion that—

- (a) the acts of indiscipline have persisted in spite of the warnings or corrective measures taken under these regulations; and
- (b) if the act of indiscipline is likely to threaten the safety of the other learners in the institution, the head of the institution shall issue the learner, with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specifying the date the learner, accompanied by the parent or guardian is required to appear before the Board of Management of the institution.”

Again, under Regulations 39 of the Basic Education Regulations and especially Regulation 39(4) it is provided that;

“In all disciplinary proceedings affecting a learner the attendance of the Sub-County Education Officer shall be mandatory”

16. It is noted that the hearing which was conducted on 7/2/2024 did not include the full Board of Management as captured in the Minutes availed herein. It is also clear that the Sub-County Education Officer was not present during the said hearing in clear violation of Regulation 39(4) yet the Sub-



County Education Officer is key and pivotal in safe guarding the rights of learners and ensuring the compliance of the tenets set out under the *Basic Education Act*. His exclusion in the disciplinary hearing amounted to the 1<sup>st</sup> Respondent violating the safeguards under the law that protects learners such as C.E. Indeed, the aforesaid disciplinary proceedings were later overturned by the County Director of Education who directed the affected learners be re-admitted back in school and be warned.

17. It is noted that Regulations 39(4) of the Basic Education Regulations provides that the recommendation of the Board of Management shall within two days be communicated to the County Director Education for directions and further guidance. It seems that the same was not done as the Respondents did not avail evidence to that effect. From the averments of the Respondents, there is evidence that the matter eventually reached the County Director, Education who later considered the issues raised and directed that all the seven learners who had been recommended for exclusion be re-admitted back to school and be warned. It seems that only six learners reported back to school to continue with the learning while the minor herein (CE) did not ostensibly on the ground that his parent had already transferred him to another school in Kakamega County.
18. It is clear that had the Petitioner waited for the County Director to respond to the disciplinary proceedings conducted against the minor (CE) and others, she would not have filed this petition because her son could have gone back to school following the directive of the County Director that the students be re-admitted and warned. Indeed, the petitioner, on her own volition, organised for the transfer of her son which request was acceded to by the Respondents.
19. It is instructive that disciplinary proceedings in several schools in the country is a frequent occurrence because of the issues of indiscipline brought about by students who go against school rules. Indeed, the *Basic Education Act* and Basic Education Regulations 2015 and more specifically Regulation 32 provides that a learner shall be deemed to be individually indisplined if he gets involved in certain untoward behaviour such as drug trafficking, or substance abuse. It is noted that the genesis of the disciplinary proceedings related to the minor and other rugby players who were alleged to have engaged in illegal activities such as smoking of cannabis sativa and taking illicit brew (chang'aa) during the Rugby tournament. It transpired from the internal investigations conducted by the school that the incident had indeed taken place and which warranted the school to conduct the disciplinary process in line with Regulation 38 of the Basic Education Regulations which provide that if the head of the institution is of the of opinion that the acts of the indiscipline have persisted in spite of the warnings or corrective measures taken or if the act of indiscipline is likely to threaten the safety of the other learners in the institution, the head of the institution shall issue a learner with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specify the date the learner, accompanied by parents/guardian is required to appear before the Board of Management of the institution. It is noted that the 3<sup>rd</sup> Respondent wrote a letter to the guardian and briefed her that her son together with others had been involved in some form of indiscipline namely the use of drugs and alcohol and that she was informed that she would be invited to come to school with her son and to appear before a disciplinary process. This process was duly conducted and that the Petitioner was later advised to wait for the final word from the County Director of Education but that she became impatient and opted to transfer her son to another school which request was allowed by the Respondent and that upon the intervention of the said County Director of Education, the minor had already secured another chance in another school within Kakamega County. It is instructive that the Respondents did not deny the Petitioner's request to transfer the minor (CE) to another school and hence her claims that she had been unduly delayed in the process is unbelievable. The Petitioner ought to have waited for the final word at the tail end of the disciplinary proceedings so as to mount proceedings of this nature. In fact as matters stand, the Petitioner appears to have jumped the gun by seeking to transfer her son to another school midstream while the process was still being addressed. The



process was finally determined by the County Director of Education in favour of the affected students including CE who were directed to go back to school and be warned. It is only six of the students who went back to school while the Petitioner's child (CE) opted to go to another school. There is no evidence to the effect that the Petitioner's said child was denied to return back to school and hence, up to that point, the Petitioner's grievance, if any, was already resolved by the County Director of Education. I find that the petition by the Petitioner was therefore premature. It seems the Petitioner is out to punish the Respondents for the disciplinary process against her son which were later reversed by the County Director of Education. As the Petitioner had opted to move her son to another school, she cannot turn around and seek to punish the Respondents for a process which was lawful. Indeed, the transfer of the said minor to another school was the Petitioner's own decision.

20. As regards the claim that the minor (CE) was subjected to corporal punishment, it is noted that the provisions of section 36 of the *Basic Education Act* must be adhered to by all schools and which provides that no pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment in any manner whether physical or psychological. Further, article 53(1) (d) of *the constitution* provides for the right of every child to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment, punishment, and hazardous or exploitative labour. All these are also found in Rule 9 of the Teachers Service Commission (Code of Conduct and Ethics for teachers Regulations) which behoves on all teachers to take all reasonable steps to ensure that a child is protected from abuse, neglect, harmful cultural practices, and corporal punishment. It is noted that the Petitioner availed treatment notes and P3 form filled at Bungoma County Referral Hospital but that the issue of assault was not deliberated upon. Indeed, the issue of assault ought to have been dealt with and that the Petitioner should have gone ahead to lodge her complaint with the TSC Sub County Director for action and proceed to identify the concerned teacher who was alleged to have punished the minor (CE). It is instructive that the 2<sup>nd</sup> Respondent denied the allegations of assault and thus it was proper for the Petitioner to have escalated the issue for investigations so as to ensure that the assailant was prosecuted. I find that in the absence of proof of assault, the claims by the Petitioner must be rejected.
21. As regards the claim for damages, it is noted that from the decision of the court in the Supreme Court Petition No. 15 of 2017 of Gitobu Imanyara & 2 Others Vs Attorney General, once a petitioner has presented proof on a balance of probabilities that his/her rights were violated, the court must vindicate and affirm the significance of the violated rights even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation and thus the approach in awarding damages or compensation in constitutional rights violation cases are different from that in tortious claims. It is noted that the Petitioner has sought for a sum of Kshs 5,000, 000/ as general damages over the violations of the rights of the minor (CE). As noted in the foregoing analysis that the Petitioner did not manage to surmount the requisite evidence against the Respondents on a balance of probability, i find that the issue of damages will not arise. It is instructive that the Petitioner jumped the gun by seeking to transfer her child before the Disciplinary process was concluded. In fact the disciplinary process was later vetoed by the County Director of Education who directed the affected learners including the minor (CE) to be re-admitted and warned and that the rest of the students went back to school while the Petitioner's son did not as the Petitioner had already transferred him to another school in Kakamega County. Under those circumstances, iam inclined not to make an order on compensation for the Petitioner.
22. In view of the foregoing observations, it is my finding that the Petitioner's petition dated 7/3/2025 lacks merit. The same is dismissed. Each party to bears their own costs.

**DATED AND DELIVERED AT SIAYA THIS 31<sup>ST</sup> DAY OF OCTOBER 2025.**



**D. KEMEI**

**JUDGE**

In the presence of:

Mbeka.....for Petitioner

M/s Esendi.....for Respondents

Maureen.....Court Assistant

