



**JKR (Father to AKK - Minor) & 2 others v Kenya National Examination Council & 3 others
(Constitutional Petition E002 of 2025) [2025] KEHC 15021 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CONSTITUTIONAL PETITION E002 OF 2025
CM KARIUKI, J
OCTOBER 24, 2025**

BETWEEN

**JKR (FATHER TO AKK - MINOR) 1ST PLAINTIFF
SB (MOTHER TO CKG - MINOR) 2ND PLAINTIFF
JR (FATHER OF SCR - MINOR) 3RD PLAINTIFF**

AND

**KENYA NATIONAL EXAMINATION COUNCIL 1ST DEFENDANT
MINISTRY OF EDUCATION THE REPUBLIC OF KENYA 2ND DEFENDANT
LELEGOIN SECONDARY SCHOOL 3RD DEFENDANT
OFFICE OF THE ATTORNEY GENERAL 4TH DEFENDANT**

RULING

1. In an application dated 19th September 2025, the applicants sought the orders that:
 1. That pending the hearing and determination of this Application, the Honourable High Court do prohibit Respondents from assigning the said Applicants and the 75 minors/students to any other Examination Centre other than Lelegoin Secondary School.
 2. That there be a Declaratory order that Kenya National Examination Council, Ministry of Education of the Republic of Kenya, Lelegoin Secondary School and the Office of the Attorney General of the Republic of Kenya have and are continuing to violate the rights of the Applicants 75 minors/students with respect to Access to education, non- discrimination with respect to Access to education, failed to address expeditiously complains made and that said Respondents have deliberately been delaying the resolution of the complained of issues/matter by the said 75 minors/students.



3. That there be an Order of Mandamus Order compelling Kenya National Examination Council, Ministry of Education, Republic of Kenya, Lelegoin Secondary School, and Office of the Attorney General of the Republic of Kenya to immediately reinstate the listed 75 minor/ students of Lelegoin Secondary School, the 3rd Respondents Register of examination Centre Student.
 4. That any other order and or relief be given to give effect to the above orders, the parties filed their own respective affidavits and the submissions to support their cases.
2. The same application is based on the affidavit of JKR (Father to AKK minor) on behalf of the 74 parents and the 75 Student/minors of Lelegoin Secondary School and also supported by other reasons to be adduced at the time of the hearing hereof: -The applicant's case is also set out in the statement of the facts lodged by the applicants through what is stated a filing of a representative suit of 74 parents and 75 parents in the instant suit. JKR (father to AKK minor) files suit and swears affidavit for and on behalf of the other 74 parents, a resident of Narok County, Brasinora Sub-County - Kirindoni Division.
 3. He depones that all the said Minors (75 minor/students and their parents) have been affected by their deregistration from Lelegoin Secondary School and are now said to be subjected to private registration in the absence of their consent, in what is averred to be a clear violation of *the constitution* and all fundamental rights and privileges. All 75 minor/students who are students of Leleg Oin Secondary School are awaiting to sit the Kenya Secondary School Examination (KSCE) 2025 and have been in limbo despite all requisite compliances by themselves and their parents. The young minors/students are said to deserve to sit at the school where they studied. They are familiar with the environment, familiar with fellow students, whereupon they paid school fees/tuition and paid all requisite fees for registration at Lelegoin Secondary School, rather than with elderly/octogenarians, prisoners, risk-takers, and candidates of convenience who are said to be unknown to the Applicant Minors.
 4. The Parents believe the exclusion of 75 minors is a clear case of discrimination and academic oppression, which could have a detrimental effect on the children's potential and ultimately their performance. This is why the Plaintiffs/Applicant are suffering and will continue to suffer on account of the Respondents' actions and/or inactions with respect to their registration within Lelegoin Secondary School. The internal arbitration and administrative processes were attempted but in vain.
 5. The reliefs sought in the Application, namely, prohibition, declaration, and mandamus, are the same as those sought in the Petition. The Respondent No. 1 rejoins via affidavits of Timothy Mutiso Ngui, sworn on 1st and 15th October 2025, opposing the Application. He depones that the orders sought, prohibition, declaratory, and mandamus, which are final, render the Application fatal, and thus the Court is urged to dismiss it in limine.
 6. Following the Court's directions and mutual agreement, on 6 October 2025, the 1st Respondent instructed its officers, Mr. Fredrick Mbuta and Mr. Joram Chege, to conduct a comprehensive re-inspection at Lelegoin Secondary School. That on 10th October 2025, the said officers, accompanied by the Sub-County Director of Education, arrived at the School to undertake the aforesaid inspection exercise. The team was well received by the Principal of the School, Mr. Peterson Mosoti, and the Director of Studies, Mr. Okemwa, at Lelegoin Secondary School. The team was taken around the School by the Principal Mr. Peterson Mosoti where the following was observed: -

- “ 1. Classrooms=On top of the 10 old classes, the institution has constructed four (4) new permanent standard classrooms measuring 7m by 9m with 3 of them already completed and being used for learning, and 1 class at 90%



completion. Five (5) semi-permanent standard classrooms have been improved to accommodate more candidates.”

7. The table below gives a summary of the classrooms and their capacity: -

Classrooms	Candidates
(Permanent)	280 (20x14)
5 (semi-Permanent)	100
1. Semi-Permanent Hall	50
Total	430

- i. At maximum, the centre can only host 430 candidates (short of 121 candidates to accommodate all 551 registered candidates).
 - ii. School Laboratory: The school has one science laboratory measuring 7m by 9m, which can only accommodate 26 candidates per shift for the 2025 KCSE practical examinations.
 - iii. The school laboratory has insufficient apparatus and equipment. The only evidence provided by the school is the intention to acquire more apparatus by way of a procurement order listing the apparatus requested from a supplier.”
8. The team also completed the Kenya National Examinations Council questionnaire for the inspection of KPSEA, KJSEA, and KCSE examination centers, where the foregoing information was entered. The document was signed by the Centre manager, the Principal of the School, Mr. Peterson Mosoti, and the Sub-County Director of Education to confirm the accuracy of the team's observation. In summary, the inspection found that the school has made significant improvements in its infrastructure and can accommodate a substantial number of students for the examinations. However, there are still some concerns about the adequacy of the science laboratory. I annex hereto the KNEC's questionnaire for inspection of KPSEA, KJSEA, and KCSE examination centre, the report by KNEC's team, and the SCDE and photographs of the school collectively marked as 'TMN-1'
9. That the Principal of the School signed the KNEC's questionnaire for inspection of KPSEA, KJSEA, and KCSE examination Centre, confirming that the School does not have the capacity to handle all the registered candidates. Thus, the 1st Respondent submits that the Applicant's Application does not meet the threshold for the grant of any interim orders; hence, the Application and the Petition should be dismissed with costs.
10. Further, the 1st Respondent adds deponent who is the Senior Examinations Administrator in the Examinations Management Department in charge of the KCSE Registration of the 1st Respondent, having worked at the Examinations Administration Directorate for fifteen (15) years of the 1st Respondent since 2010, that the Kenya National Examinations Council (hereinafter “the 1st Respondent's”) is a State Corporation established under section 3 of the *Kenya National Examinations Council Act* No. 29 of 2012 with the statutory mandate to, among others: -



- a. Set and maintain examination standards while conducting public academic, technical, and other national examinations within Kenya at basic and tertiary levels, award certificates and diplomas to candidates.
 - b. Research educational assessment; and
 - c. Advise on the development and use of any systems of assessment and the government on any policy decision relevant to the administration of examinations in Kenya.
11. That the 1st Respondent relies on the provisions of *the Constitution*, *Basic Education Act*, and the *Kenya National Examinations Council Act* in the process of registration of candidates. The 1st Respondent derives its mandate from *the Constitution* of Kenya, Chapter Four Articles 43, 53, 54, 55, and 57, and the Fourth Schedule of *the Constitution* of Kenya, wherein the National Government undertakes educational policy and examinations. The *Kenya National Examinations Council Act* Cap 214 A empowers the Council to make rules regulating the conduct of examinations and for all purposes incidentals thereto. In line with this power, the Kenya National Examinations Council (Management of Examinations) Rules of 20JE were passed under Legal Notice No. 233 of 20JE.
 12. That Rule 9 (1) to (8) of the Kenya National Examinations Council [Management of Examinations] Rules of 20JE regulations provide that:

“(J) The Council shall specify the entrance requirements for every examination. A candidate who intends to sit for examinations shall fulfil all the entry requirements set by the council for the relevant examination. A candidate who meets the requirements specified in paragraph (1) shall be regarded as a bona fide candidate after the candidate has completed and submitted the prescribed entry registration details. The candidates should be registered through the head of the institution. (S) A private candidate shall be registered through the County Director of Education.”
 13. Many shortfalls and breaches of the statutory regulations by the school management have been cited, but the Applicants have offered no rebuttal. Despite all that, the first respondents, who are experts in examination management, have indicated that candidates, especially those registered in private centres, sit the examination at the most convenient centre. In this case, the candidates will be accommodated at the adjacent Lelagoin Primary School, which shares a fence with Lelagoin Secondary School.
 14. Further, it is deponed that the applicants have not provided evidence proving they are indeed the parents of the minors or that the minors are among the 75 candidates who were to sit the 2025 KCSE examination at Lelagoin Secondary School. They have not presented any school reports, school results, or letters from the school proving their children were enrolled at Lelagoin SS. The applicants have not demonstrated their power of attorney to act on behalf of the 75 candidates by providing evidence of parental consent.
 15. The Applicants have not demonstrated to this Court how the decision to register the 75 candidates at the Trans Mara East SCDE private centre was unconstitutional, unprocedural, was made by any ulterior motive, was prejudicial, in bad faith, unreasonable, or unfair as regards the applicants. The Applicants have not proved to this Court which constitutional right has been violated or is in danger of violation.
 16. Further, the Applicants have not demonstrated the particular prejudice they stand to suffer or have suffered, and neither has any 'weighty' constitutional question been raised by the Petition. The 2025 national examinations and assessments are commencing from 21 October 2025, being the Kenya Primary School Education Assessment (KPSEA), Kenya Junior Secondary Education Assessment



(KJSEA), and Kenya Certificate of Secondary Education (KCSE), and which shall see over 3.4 million children sitting these examinations and assessments across the Country.

17. The 1st Respondent is now expending all efforts on the preparations for the upcoming 2025 national assessments. All efforts are being concentrated there, with multiple examination-related activities ongoing currently, and the 1st Respondent prays that the Court considers this suit as a vexatious, frivolous, and a waste of this Honourable Court's time, and dismiss it with costs to the 1st Respondent. The Applicants have not presented any evidence that they complained about the issues raised to the 1st Respondent, or that the 1st* Respondent even received any demands. The attached letters do not bear any stamp of receipt from the 1st Respondent: Therefore, they did not exhaust local remedies before approaching this Honorable Court. The 75 candidates were never registered at Lelagoin Secondary School, hence cannot be reinstated.

Issues Analysis and Determination:

18. After reviewing the parties' pleadings, affidavits, and submissions, the issues are whether the Application and/or Petition is flawed in law due to poor drafting, seeks final orders in the interim Application, and lacks consent to file a representative suit. If the above is in the negative, is the Application meritorious? A person bringing a representative suit in Kenya generally needs the consent of those they represent, which can be in the form of written authority or by following the notice requirements of the Civil Procedure Rules. For a representative suit under Order 1 Rule 8 of the Civil Procedure Rules, consent from all individuals is not required; instead, a notice must be given to allow them to join or be excluded from the suit.
19. Key requirements for consent and notice Written authority: If the suit is brought on behalf of a small, identifiable group, each person must provide a written authority, and the person filing the suit must demonstrate this authorization to the Court.
20. Notice by public advertisement or personal service: If there are numerous people with the same interest and it is not practical to serve them all personally, the court may order public advertisement. In either case, notice must be given to all persons on whose behalf or for whose benefit the suit is fulfilled. Reasons for these requirements to ensure the legitimacy of the suit, the requirement for consent and notice helps ensure that the suit is brought in good faith and that the represented parties are aware of the legal action being taken on their behalf, as per Kenyan law.
21. To allow for participation: The notice requirement allows individuals to opt-in to the suit, meaning they can apply to the Court to become a formal party to the proceedings if they choose to. Failure to comply with these rules can lead to the suit being struck out. See Mulla, *The Code of Civil Procedure, ACT V of 1908; Sixteenth Edition, Nairobi Civil Case No 433 OF 2003 Rose Florence Vs Standard Chartered Bank of Kenya Limited and 2 others, J.J. Campos & another v A.C. Desouza & 5 others (1933) KLR 86 and Ibrahim Buwembo, Emmanuel Sserunjogi, Zubairi Muwanika for and on Behalf of 800 others V Utoda LTD HCCS No.664 of 2003-* on the provisions of the Civil Procedure Code of Uganda similar to those in Order 1 Rule 8 of the Civil Procedure Code, 2010 for Kenya.
22. The Application and the Petition, in the instant case, are fatally defective for non-compliance with the cited civil rules. The non-compliance above warrants striking out the entire suit, i.e., the Application together with the Petition. Secondly, in the Application, the final orders sought in the Petition are replicated, namely, the order of prohibition, the Declaratory order, and the Order of Mandamus. Final orders cannot be granted at the interlocutory stage when the main Petition has not been heard.
23. At this stage, the applicants ought to seek interim conservatory orders and establish the threshold for the grant of any interlocutory relief or any conservatory order by this Court. The Principles regarding



grant of Interim Conservatory orders See the cases of Olive Mwhaki Mugenda & Another V Okiya Omtata Okoiti & 4 others [2016] Keca 663 (KLR), Vivo Energy Kenya Limited -v- Maloba Petrol Station Limited & 3 others (2015) eKLR And Stephen Kipkebut t/a Riverside Lodge and Rooms -v- Naftali Ogola (2009) eKLR, Cytonn Investments Management PLC V Kaikai & another (Civil Suit E247 of 2021) [2022] KEHC 14246 (KLR) (Civ) (21 October 2022) (Ruling), Infinity Industrial Parl Limited V Bank of Baroda (Kenya) Limited (Commercial Case E322 of 2024) [2025] KEHC 12055 (KLR) (commercial And Tax) (14 August 2025) (Ruling)

24. The flaws narrated above go to the root of the Petition and the Application, making them fatally defective. Thus, the Court has no jurisdiction to delve into the merit of the Application or the Petition, but has no option other than striking out the Petition and the application. However, the court notes that the school registered four hundred and seventy seven (477) candidates for K.C.S.E. 2025 and an additional of seventy five (75) private candidates. The total number of candidates at the examination center is five hundred and fifty two (552). A total of four hundred and thirty (430) candidate will sit for exams at Lelagoin Secondary School and the spillover of one hundred and twenty two (122) candidates will sit for their exams at the neighbouring Lelagoin Primary School. This separation of candidates in two schools is due to the Kenya National Exam Council's standards on sitting arrangements during national exams. The court has information that at the moment, there is no reported case of unrest in the school and the students are calm and busy revising for their exams. Therefore, the Court makes the orders that:
- i. The Petition, along with the Application, are hereby struck out.
 - ii. Parties to bear their own costs as the suit is in the nature and form of public interest litigation.

DATED AND DELIVERED IN NAROK VIA MICROSOFT TEAMSTHIS 24.10.2025.

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CHARLES KARIUKI
JUDGE

