



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION NO E014 OF 2025

PHILIP OUMA OMONDI.....

APPLICANT

VERSUS

**KINDERVILLE JUNIOR SCHOOL
LIMITED.....RESPONDENT**

RULING

1.The Applicant's notice of motion dated 15th April 2025 seeking orders;-

- "a. That pending the hearing and determination of this application and suit interpartes there be a temporary order of injunction restraining the Respondent whether by itself, or through its agents and or servants or other person deriving authority from the respondent from implementing the decision to increase fees as contained in invoices for term II of the year 2025 and notice dated 3rd March 2025 issued by the Respondent;***
- b. That pending the hearing and determination of this application and suit interpartes there be a temporary order prohibiting the Respondent***

whether by itself, or through its agents and/or servants or other person deriving authority from the respondent from discontinuance of any learner from attending classes and other school related activities;

c. That pending the hearing and determination of this application an order do issue barring the Respondent from victimizing the Petitioners/Applicants and their children on account of instituting this action;

d. That an order directing the respondent to establish a Parents Teachers Association with a Petitioners in accordance with Section 55 (2) and (3) of the Basic Education act;

e. That the cost of this application be provided for.”

2. The application is supported by the affidavit of PHILIP OMONDI OUMA sworn on the 15th April 2025. The gist of the application, as can be discerned from the grounds on its face thereof and in the affidavit, is that on/or about the 3rd March 2025, the Respondent arbitrarily issued them with a notice informing them of a decision by the "Board of Directors" to increase school fees by 20% with effect from Term II of 2025. being aggrieved by the said notice that was issued without involving the parents through the PTA or otherwise, they wrote to the Respondent seeking the school to reconsider the said decision to increase the school fees mid-year and further requested for a meeting. Despite their clear requests, they were between 28th March, 2025 and 31st

March 2025 issued with invoices for Term II 2025 which reflected the increase on school fees as per the said impugned notice dated 3rd March 2025 and in total disregard of their concerns leaving them with no other option other than this Honorable Court.

3. The application was opposed through a replying affidavit sworn by Silvia Kamotho the director of the respondent on 30th April, 2025 where she deposes that On 3rd March 2025, the Respondent issued a notice to all parents regarding an intended twenty percent (20%) fee adjustment effective from Term II of 2025 which notice provided comprehensive information regarding the justification for the adjustment and was issued well in advance of the commencement of the new term to allow parents adequate time to prepare. She deposes that following receipt of concerns from some parents regarding the fee adjustment, the Respondent, in the spirit of maintaining good relations and in accordance with principles of openness and transparency, convened a Parents' Meeting on 15th March 2025, specifically to address the parents' concerns. And during the said meeting Respondent's management comprehensively explained the rationale behind the fee adjustment, presenting detailed financial information that justified the necessity of the adjustment. That the fee adjustment implemented by

the Respondent is demonstrably reasonable and proportionate when objectively analysed in context. She deposes that that the Application has been brought prematurely and in disregard of the Respondent's demonstrable efforts to engage with parents on fee-related matters and the undertaking of a consultative process aimed at the formation of a PTA within the precepts of the Basic Education Act.

4. Learned Counsels for the parties agreed to canvass the application by way of written submissions. For the Applicant it was submitted that they have established the set threshold for grant of Interlocutory Injunction being a prima facie case with a probability of success, that the applicant will suffer irreparable injury which would not adequately be compensated by an award of damages if the order sought is not granted and if the Court is in doubt it will decide an application on the balance of convenience.

5. Reliance was placed in the case of **GIELLA -VS- CASSMAN BROWN & COMPANY LIMITED (1973) EA 358, Mrao v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, Constitutional Petition No. 158 of 2000 OAPA & 43 others v Oshwal Education Board [2020] eKLR and Mombasa Academy) v Nyali Academy Services T/A Mombasa Academy & Another [2020] eKLR.**

6. Further, the petitioners urged this court to make a finding that their constitutional right of association has been violated by the respondent.
7. Learned Counsel for the Respondent submitted that the Petitioners have approached this court with unclean hands and have failed to disclose material facts being that prior to the institution of these proceedings, the parties were engaged in court-initiated settlement negotiations within the framework of Nairobi High Court Civil Suit No. E086 of 2025, later transferred to **Machakos Civil Suit No. E014 of 2025.**
8. It was further submitted that the Petitioners have not made a prima facie case with a probability of success warranting issuance of such prejudicial prayers as are sought in the Application.
9. The Court was urged to dismiss the Petitioners' application with costs to the Respondent.

Analysis and determination

10. I have carefully considered the application, the rival submissions, the cases cited and the law.
11. This being a petition where it is alleged that the constitutional values and rights of the applicants and their children have been violated, I find that it raises constitutional issues. Therefore, the issue for determination is whether the

applicants have made a case for grant of a conservatory order.

12. In the case of **Munya v Kithinji & 2 others (Application 5 of 2014)[2014]KESC 30 (KLR)92 April 2014) (Ruling)** the Supreme Court held as follows in regard to conservatory orders;

“7. Conservatory orders bare a more decided public-law connotation: for they are orders that facilitate orderly functioning within public agencies, as well as uphold the adjudicatory authority of the Court in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues like “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.

8. Conservatory orders ought to be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

13. The applicant’s case is that is that on or about the 3rd March 2025, the Respondent arbitrarily issued them with a notice informing them of a decision by the "Board of Directors" to increase school fees by 20% with effect from Term II of 2025. being aggrieved by the said notice that was issued without involving the parents through PTA or

otherwise, they wrote to the Respondent seeking the school to reconsider the said decision to increase the school fees mid-year and further requested for a meeting. Despite their clear requests, they were between 28th March, 2025 and 31st March 2025 issued with invoices for Term II 2025 which reflected the increase on school fees as per the said impugned notice dated 3rd March 2025 and in total disregard of their concerns.

14. The respondent contended that the fee increment was done due to certain legitimate factors including significant inflation affecting operational costs including utilities, educational materials, and maintenance expenses, Necessary investments in technological infrastructure to enhance the quality of education provided, including Digital Learning & Academic Enrichment, Rising costs of maintaining compliance with regulatory requirements for private educational institutions and increased accreditation requirements in the delivery of the Competency based Curriculum.
15. The first issue that I take note of is lack of PTA, it is important that the school management must recognise PTA importance and consultations with the parents and guardians of the children, must empower the PTA and recognise its authority in advocating for the rights and interests of the school community, and create conducive platforms for constructive dialogue and conflict resolution mechanisms

between the school administration, the parents and the teachers.

16. This was emphasized in the case of **OAPA (Suing as Parents and/or Guardians of student minors currently schooling at Oshwal Academy) v Oshwal Education Relief Board & 2 others [2020] KEHC 3398 (KLR).**

“There was the issue of lack of a parents’ association for the 1st Respondent’s schools. It was not disputed by any of the parties that the law (Section 55(2) & (3) of the BEA) stipulates that a private school should establish a parents and teachers’ association to carry out the functions outlined in the Third Schedule of the BEA. The petitioners’ allegation that the 1st Respondent has not established parents’ associations in its schools was not disputed by the 1st Respondent. It has therefore been proved that the law has not been complied with in that particular respect. An appropriate order shall therefore issue accordingly.”

17. The role of PTA cannot be overlooked especially in such circumstances, had there been a functional PTA probably this case would not be here. Am not ignorant of the efforts of the school to form a PTA but it remains a fact that there was non existing at the time of this dispute.

18. The next issue is whether the respondent being a private school are bound by their contractual relationship between the applicant and respondent governed by the admission

agreements, I am alive to the the decision of the Court of Appeal in the case of the **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR** that:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

19. However, the same Court of Appeal appreciated in the case of **LTI Kisii Safari Inns Ltd & 2 others v Deutsche Investitions-Und Entwicklungsgellschaft ('Deg') & others [2011] eKLR** that there are certain situations where the Court may interfere with a bargain between parties. The majority, through the judgement of Tunoi, JA (as he then was), clearly expressed the current legal position by stating that:

“The equitable rule is that if the borrower is in a situation in which he is not a free agent and is not capable of protecting himself, a Court of Equity will protect him, not against his own folly or carelessness, but against his being taken advantage of by those in a position to do so. In VANZANT V COATES. [1969] 14 D.L.O.R. 256 it was held that the transaction would, in the foregoing circumstances be rescinded.”

The traditional view that “if people with their eyes open wilfully and knowingly enter into

unconscionable bargains, the law has not right to protect them”- as held in FRY V LANE 1888 40 Ch. D 312 - has long been altered. Also I would think that this old traditional view cannot any longer hold ground after the enactment of the new Constitution and the coming into effect of the new Civil Procedure Regime which introduced the principle of “overriding objective” which require all courts to swing its gates wide open in terms of being broadminded on the issue of justice in the context of the circumstances before it.

The position in England in cases involving inequality of bargaining power was succinctly stated by Lord Denning M.R. in LLOYDS BANK LTD VS BUNDY [1975] Q.B. 326 AND SCHROEDER MUSIC PUBLISHING CO VS MACANLAY [1974] 1 W.L.R. 1308, when he said that by virtue of it, the English law gives relief to one, who without independent advice, enters into a contract upon terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other.”

20. In the case **Mutua & 6 others (Suing on their Own Behalf and on Behalf of 1,000/- Others) v St Bakhita Schools Limited & 3 others [2024] KEHC 8804 (KLR)** it was held that:-

“It is to be noted that private schools are not private clubs, which operate on their rigid rules; they are part and parcel of the bigger educational institutions that offer educational services and therefore bound by all legislation appertaining thereto, amongst them Article 46, and 43 of the Constitution, and the Fair Administrative Action as enshrined under Article 47 Laws of Kenya.”

21. In the case of **SPG (Suing as parents and guardians of students minors currently schooling at Sabis International School - Runda) v Directors, Sabis International School - Runda & 3 others [2020] KEHC 4039 (KLR)** the court finding itself in similar circumstances as in the present suit, observed as follows:-

“Par 43.”... I further note that this matter concerns private sector in respect of private schools which provide education services that has remained unregulated despite the right to education being an important and fundamental right.”

22. Therefore education is a service, and the Consumer Protection Act provides for situations when courts can intervene to obviate contracts that are undoubtedly unconscionable, oppressive and unfair to meet objectives set out under Article 46 Laws of Kenya. See also the case of **Central Academic Educational Systems v Gaurav Kumar Jai Kumar Mittal v Brilliant Tutorials and SPG (suing as parents and guardians of students minors**

**schooling at Sabis International School Runda v
Directors Sabis [2020] eKLR.**

23. From the foregoing, I am inclined to find that there is need to interrogate whether the respondent's act of increasing school fees is in the best interest of the child notwithstanding that the school insists that the same is contractual. The applicants have established a prima facie case. I am also satisfied that the balance of convenience tilts in their favour. The harm that may be caused to the applicants and the children's interests outweigh the harm that the respondents may suffer if the conservatory order is not granted.

24. The case of **Pius Kipchirchir Kego v Frank Kimeli Tunai [2018] eKLR Amir Suleiman v Amboseli Resort Limited [2004] eKLR** lends support to my finding that the balance of convenience tilts in favour of the party which would suffer greater harm and inconvenience. Should the appeal be dismissed, the Respondent can still recover the fees in arrears. In the premises the application is granted.

25. The costs of the application shall abide the petition.

**Ruling signed, dated and delivered virtually on this 27th
day of November 2025.**

E. N. MAINA

JUDGE

IN PRESENCE OF:

Mr. Mwangi for Nyaata for Applicant

Mr. Mugambi for the Respondent

C/A: Geoffrey

ORIGINAL