



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCL PET E004 OF 2025**

**IN THE MATTER OF: ARTICLES 1,2,3(1), 4(2), 19,20,21(1),22,23,27,28,33,35,47,48,50(1), 27,73,162(2) (b), 174,201, 227,232 AND 259(1), 260 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED VIOLATION ARTICLES 4(2), 10,27,28,33,35,47,48,73,174,201, 227,232 OF THE CONSTITUTION OF KENYA 2010.**

**IN THE MATTER OF: THE ACCESS TO INFORMATION ACT, NO. 31 OF 2016**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, NO 4 OF 2015**

**IN THE MATTER OF: THE PUBLIC FINANCE MANAGEMENT ACT, CAP 412A**

**IN THE MATTER OF: THE PUBLIC SERVICE (VALUES AND PRINCIPLES)ACT, CAP 185A**

**IN THE MATTER OF: THE LEADERSHIP AND INTERGRITY ACT NO. 19 OF 2012**

**IN THE MATTER OF: THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, NO.33 OF 2015**

**IN THE MATTER OF: THE DOCTRINE OF LEGITIMATE EXPECTATION**

**IN THE MATTER OF: DECISION TO CONTRUCT KENNETH MATIBA TECHNICAL AND VOCATINAL COLLEGE AT GATHERU PRIMARY SCHOOL CONTRORY TO PUBLIC PARTICIPATION OUTCOME.**

**BETWEEN**

**EUNICE NGANGA.....PETITIONER**

**VERSUS**

**HON. ATTONERY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF EDUCION,  
STATE DEPARTMENT FOR TECHNICAL, VOCATIONAL**

**EDUCATION AND TRAINING.....2<sup>ND</sup> RESPONDENT**

**SKYLINE(K) LIMITED.....3<sup>RD</sup> RESPONDENT**

**AND**

**DEPUTY COUNTY COMMISSIONER**

**KAHURO SUB COUNTY, MURANG'A COUNTY .....1<sup>ST</sup> INTERESTED PARTY**

**MEMBER OF PARLIAMENT, KIHARU CONSTITUENCY .....2<sup>ND</sup> INTERESTED PARTY**

**BOARD OF MANAGEMENT, GATHERU PRIMARY SCHOOL ..... 3<sup>RD</sup> INTERESTED PARTY**

**BOARD OF MANAGEMENT, GITUTO PRIMARY SCHOOL.....4<sup>TH</sup> INTERESTED PARTY**

## **RULING**

(1)This ruling is on the notice of motion dated 22-7-2025. The motion which is brought under **Articles 22,23,48,50(1), 258, 259 (1) and 162(2) (b)** of the Constitution of Kenya, **Rules 3,**

13 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, **Legal Notice No. 117 of 2013** and all other enabling laws seeks the following residual orders.

- (i) The Court be pleased to issue, ex parte, an injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, Skyline (K)Limited, whether acting directly or indirectly through their agents, appointees, assignees, representatives halting ongoing construction works at Gatheru Primary School for Kenneth Matiba Technical for Vocational college pending the hearing and determination of this petition.**
- (ii) Consequent to the grant of prayer 1 above the Court be pleased to issue ex parte a prohibitory order restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Skyline(K) Limited whether acting directly or indirectly through their agents, appointees, assignees, representatives from undertaking further construction works at Gatheru Primary School for the Kenneth Matiba Technical and Vocational College until the hearing and determination of this petition.**
- (iii) That costs abide the outcome of this petition.**

(2)The motion is based on the following grounds. Firstly, in September 2019, at a rally in Wanjengi location, the area Member of Parliament informed the community members that the National Government was considering allocating a Technical and Vocational College to Wangu ward, Kiharu Constituency in honour of the late Veteran Politician Kenneth Matiba.

(3)Secondly, shortly after, some respected community members sprang into action and formed a five(5) member committee. They pitched for the proposed college to be built at Gituto Primary School. In the end, the committee together with the Church, the Deputy County Commissioner for the area and the member of National Assembly organized a public participation meeting comprising of 144 delegates. During the exercise held on 12-10-2023, only two locations expressed interest in having the college in their locations. Gathamba location proposed Gatheru Primary School and Wanjengi proposed Gituto Primary School. When the votes of the delegates were counted, 91 of them voted for Gituto Primary School while 53 voted for Gatheru Primary School.

(4)Thirdly, the delegates were informed that a team of experts from the Ministry of Education would visit both schools to confirm the sufficiency of the land required for the construction of

the college. The committee waited for a report from the experts and none was forthcoming. The committee sought information from the Ministry of Education and the member of National Assembly but this was to no avail.

- (5)Fourthly, the Petitioner has obtained information that the construction of the college has already started at Gatheru Primary School even though Gituto Primary School was the one preferred by the majority of the delegates.
- (6)Fifthly, the contract for the tender was awarded to Skyline (K) Ltd on 1-8-2024 and it does not state the actual location of the project and there is no 'site board' displayed as required by the law.
- (7)Sixthly, the committee requested for an urgent meeting with the member of National Assembly. He attended the meeting accompanied by Ministry of Education officials. The member of National Assembly and the Ministry of Education officials could not explain who is funding the project, what became of the public participation exercise of 12-10-2023, dates of the visit to the two schools to assess the acreage, why the experts team did not invite representatives from the community or Gituto Primary School Board of management, why the report of the experts team was not shared publicly among other concerns.
- (8)The motion is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> interested parties and in this connection, Jane Wangechi Kariuki the Director, Vocational, Technical Education in the State Department for Technical, Vocational Education and Training (TVET) has sworn a replying affidavit dated 25-11-2025 in which she replies as follows. One, even though Gituto Primary School had been voted for by the majority of the delegates, that was not the only criterion for selecting the site of the project. There was the criterion of the available size of the land. While Gatheru Primary School had the recommended ten(10) acres, Gituto Primary School could only afford five(5) acres. Again the topography of Gatheru Primary School was more suitable than the one at Gituto Primary School because it did not require much levelling therefore reducing the costs of construction.

- (9) Two, Thika Technical Training Institute(TTT1) was appointed by the state Department for TVET to mentor Kenneth Matiba TVC. On 18-11-2024, a team from Thika TTI assessed the two proposed sites and it is this team that recommended Gatheru Primary School. This recommendation was forwarded to the NG-CDF Kiharu Constituency as well as to the Ministry of Education. This information was meant to be cascaded to the residents of the constituency.
- (10) Three, on 26-10-2023, the Ministry of Education advertised tenders in the National media for construction of 14 projects nationally including the Kenneth Matiba TVC. There were no successful bidders in respect of Kenneth Matiba TVC and this prompted a readvertisement through the print media on 28-5-2024. Competitive evaluation was done and eventually the 3<sup>rd</sup> Respondent was successful. Prior to the award of the tender, the 3<sup>rd</sup> Respondent lodged valid, lawful tender documents with the Ministry of Education inclusive of an NCA certificate.
- (11) Four, on 11-4-2025, the site was handed over to the third Respondent who took over the construction of Kenneth Matiba TVC. On 29-7-2025, a meeting was held at Kahuro Deputy County Commissioner's office where the leaders of the locations of Wanjengi and Gathamba were invited. At the meeting it was resolved that the Gituto area community do engage in internal consultations for the purposes of arriving at a consensus that the works for the construction of Kenneth Matiba TVC do continue at Gatheru Primary School. A report was meant to be handed over to the Deputy County Commissioner, Kahuro Sub county on the consensus.
- (12) Five, the state Department for TVET was not under any obligation to confirm from the residents of Wangu location whether they were in receipt of the decision of the Ministry of Education on the approved site of the project.
- (13) Six, the Respondents deny contravening any of the Petitioner's constitutional rights, national values and principles of governance in selecting Gatheru Primary School as the site for the project.

- (14) Seven, the purpose of Kenneth Matiba TVC project is to ensure that there is increased access and equity in the TVET section to the residents of Kiharu Constituency, Murang'a County at large. The nature of the reliefs sought by the Petitioner will deny the residents of Kiharu, Murang'a and Kenya opportunities to acquire skills needed for employment, job creation and overall sustainment of their livelihoods. Further, public resources towards the construction works have been invested by the Government through the Ministry of Health and Kiharu NG-CDF will be lost if the orders sought are granted.
- (15) Eight, the Petitioner has not demonstrated the nature of the loss to be suffered by Gituto residents by the construction of the project at Gatheru.
- (16) Finally, judicial intervention should be granted to acts that are manifestly in breach of the law or where the Court is satisfied that the decision maker was manifestly unfair and was influenced by other considerations other than the law.

For the above and other reasons, the Respondents and the interested parties pray for the dismissal of the motion dated 22-7-2025.

- (17) I have carefully considered the motion in its entirety including the two affidavits by the Petitioner and the Director Vocational Technical Education, the annexures and the pleadings on record. Since the main order sought by the Petitioner is one for injunction, I find that the sole issue for determination is whether the motion meets the threshold for the grant of an order of injunction.

It is trite law that for an order of injunction to issue, the Applicant must prove two things. The first one is that there is a prima facie case with a probability of success. The second one is that the Applicant stands to suffer substantial loss that cannot be adequately compensated by an award of damages. If the Court is not sure of the above two, it looks at the balance of convenience. The above was the ratio *decidendi* in the celebrated case of **Giella vs. Cassman Brown [1973]EA 358.**

Since the petition is still at an early stage of prosecution, I will avoid considering the first two conditions because doing so could prejudice a fair hearing of the petition. This is because the

pleadings are not yet closed and new evidence could be filed by the parties therefore changing the character of the petition. I will therefore look solely at the balance of convenience.

- (18) The Petitioner has asked this Court to stop the construction of the project because of two major reasons. The first one is the construction of the project at Gatheru Primary School rather than at Gituto Primary School. The second reason is that the 3<sup>rd</sup> Respondent does not possess the requisite credentials to undertake the project.

I have to weigh which party will suffer the greater harm from granting or denying the injunction sought.

- (19) It is my finding that the party to suffer the greater harm from the grant of the injunction is the general public at Kiharu Constituency and Kenya at large. The project is not a local affair. It is a national affair aimed at equipping the youth of Kenya with skills for employment, job creation and overall sustainment of their livelihoods. To stop the project could occasion great loss to the larger public. The Petitioner and the committee formed by the respected community leaders are not likely to suffer as much harm as the general public of the Republic if an injunction was issued to stop the project.

Secondly, there is prima facie evidence from the Director of Vocational Technical Education that most of the necessary steps were complied with in choosing Gatheru Primary School as the site for the project.

Finally, in the event that the petition is not successful, there is no guarantee from the Petitioner that the financial costs attendant to issuing the orders sought will be recoverable.

For the above stated reasons, I find **no merit** in the motion dated 22-7-2025. I **dismiss** the said motion. Costs in the cause.

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 3<sup>rd</sup> day of December, 2025.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**

**Court Assistant – Mwangi Njonjo.**

**Petitioner – Present in person**

**1<sup>st</sup> and 2<sup>nd</sup> Respondent's Counsel – Miss Chege**

**1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> /Interested parties – Miss Chege**