

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CONSTITUTIONAL PETITION NO. E13 OF 2025**

**SHERIA MTAANI NA SHADRACK WAMBUI.....1<sup>ST</sup>**  
**PETITIONER**

**VERSUS**

**THE BOARD OF MANAGEMENT LITEIN**

**BOYS HIGH SCHOOL.....1<sup>ST</sup>**  
**RESPONDENT**

**CHIEF PRINCIPAL, LITEIN BOYS HIGH SCHOOL.....2<sup>ND</sup>**  
**RESPONDENT**

**COUNTY DIRECTOR OF EDUCATION, KERICHO COUNTY...3<sup>RD</sup>**  
**RESPONDENT**

**KENYA NATIONAL EXAMINATIONS COUNCIL.....4<sup>TH</sup>**  
**RESPONDENT**

**CABINET SECRETARY, MINISTRY OF EDUCATION.....5<sup>TH</sup>**  
**RESPONDENT**

**TEACHERS SERVICE COMMISSION.....6<sup>TH</sup>**  
**RESPONDENT**

**JUDGMENT**

1. **Sheria Mtaani na Shadrack Wambui**, the Petitioners herein filed the Constitutional Petition dated 8<sup>th</sup> October, 2025 and sought for the following Declarations and Orders:-

***(a) A declaration that the unilateral imposition of a levy of Kshs.49,699/= per student, the staggered readmissions, and the threats of de-registration of the School as a KNEC Centre are unlawful,***

***unconstitutional, and void for being in violation of Articles 10, 43 (1) (f) 47, and 53 of the Constitution, Section 4 and 5 of the Fair Administrative Action Act, and Sections 28 and 29 of the Basic Education Act.***

***(b) A declaration that the Respondents are constitutionally and statutorily obligated to determine and apportion any genuine repair or restoration costs through a transparent, participatory, and inclusive process involving parents and stakeholders, and not unilaterally, as such decisions directly and materially affect the Petitioners.***

***(c) A declaration that all learners at Litein High School are entitled to the full enjoyment of their right to education under Articles 43 (1) (f) and 53 (1) (b) of the Constitution, and that such right shall not be curtailed, delayed, or made conditional upon payment of any contested levy.***

***(d) An order of certiorari be and is hereby issued to quash the impugned levy, circulars, and***

***communications purporting to impose or enforce payment of Kshs.49,699 per student as being ultra vires, unreasonable, and unfair.***

- (e) An order of mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to Re-admit all students with priority to Form 3 candidates, forthwith and unconditionally; Engage an independent and accredited valuer within seven (7) days to assess actual damages; and convene a joint stakeholders meeting within fourteen (14) days comprising parents, teachers, and representatives of the Ministry of Education to determine a fair and verifiable contribution framework.***
- (f) An order of prohibition restraining the Respondents, their agents, or assigns from enforcing or collecting the impugned levy, delaying or denying readmission of any student on account of non-payment thereof; or initiating or effecting de-registration of Litein Boys High***

***School as a KNEC examination Centre owing from facts arising herein.***

***(g) An order directing the 3<sup>rd</sup> - 6<sup>th</sup> Respondents, in exercise of their Statutory Oversight under the Basic Education Act to review, reconstitute, and where necessary dissolve the existing Board of management of Litein High School and to reassign or replace the current Principal in the interests of restoring public confidence, accountability, and a conducive learning environment.***

***(h) Costs of this Petition and interest thereon be provided for.***

***(i) Such further, ancillary, or consequential relief as this Honourable Court may deem just and appropriate in the circumstances.***

2. Shadrack Wambui swore an Affidavit filed in support of the Petition. The Respondents filed grounds of opposition, the Replying Affidavit of Richard Sang and the Replying Affidavit of Timothy Mutiso Ngui to oppose the Petition. This Court

gave directions to have the Petition disposed of by Written Submissions.

3. I have considered grounds stated on the Petition plus the facts deponed in rival Affidavits. I have further considered the grounds of opposition and the written submissions. The Petitioner made submissions to the effect that the 1<sup>st</sup> Respondent's School the disturbance was the third. One in a row signaling persistent and unresolved welfare and governance issued within the school environment. It was pointed out by the Petitioner the unrest lasting for a whole night in the presence of security personnel, as confirmed by the Respondent raised serious questions regarding institutional oversight, security preparedness, issues that cannot fairly be blamed solely on students but Plainly reflect systemic administrative lapses.

4. The Petitioner urged that losses and costs at the school were substantially as a result of school management's negligence and adamance. The Petitioner further urged that it has not been addressed by the Respondents as to who and how Petrol was sneaked into the school.

5. It is stated by the Petitioners that although the administration knew about the looming unrest as admitted, previous experience did not teach them to enhance the security to contain the situation. The Petitioners further argued that the Respondents negligent act or omission contributed to the destruction/loss even as there was human intervention in the chain of events between the original negligent act or omission and the loss.
6. It is said that the inquiry will be whether the injury can be treated as flowing directly or substantially from the negligence. It is the Petitioners' submission that the school administration was contributorily negligent. The Petitioners also argued that the school administration failed and it rightly can be said that there was contributory negligence by the school administration and it can be proved or otherwise the Court should take judicial notice of the facts that there exists a duty of care to the students and the school property and that the destruction likely to cause loss was foreseen as there had been two previous unrests in the recent past.

7. The Petitioners further submitted that in the wake of threats by the Respondents to de-register the school as a KNEC Examination Centre should the impasses persist there is therefore a honest and apparent basis to reconstitute and where necessary dissolve the existing board of management of the 2<sup>nd</sup> Respondent school and replace the current Principal in the interest of restoring public confidence accountability and a conducive learning environment in the school.

8. The Petitioners also stated the parents they represent are not opposed to contributing to genuine restoration efforts but they acknowledge the reality of the damage to the school infrastructure but they insist that any recovery process must be fair, transparent, consultative and evidence based. They further argued that had all the stakeholders been involved in generating the Bill of Quantities as presented to this Court, this Petition would be non-existent.

9. It is pointed out that the meetings the Respondent alleged to have taken place were held when literally, all meetings were chaotic and ended prematurely by parents being chased

from those meetings. The Petitioners further stated that the strict measures put forth by the 1<sup>st</sup> Respondent to be met by the parents and guardians of the minors are extremely adverse exorbitant, unreasonable and curtailing to the parents of the minors herein.

10. The Petitioners also argued that they remain arbitrary and unsubstantiated as the Parents Association were never involved in the meetings where decisions financially and psychologically affecting the parents and students were made. The Petitioners made assurances to this Court that if the Representative body of the parents is included in the final computations, no issue will arise.

11. In response to the Petitioners' arguments, the Respondents argued that the instant Petition falls short of the set threshold in the case of **Anarita Karimi Njeru -vs- Republic [1976 - 1980] KLR 1272**, that a person seeking redress for violation of the Constitution should set out with reasonable degree of precision that which he complains and the provision said to have been infringed.

12. The Respondents argued that the Petitioners have not provided adequate particulars of the claims relating to the alleged violations of the Constitution of Kenya. The Petitioners have argued that the Respondents decision to impose the levy was unilateral, opaque and in contravention of the Petitioners' rights under Articles 10 and 47 of the Constitution and Sections 4 and 5 of the Fair Administrative Action Act.

13. In response to this submission, the 1<sup>st</sup> Respondent stated that it convened Board of Management meeting in less than 24 hours after the unrest and the Petitioners participated, either directly or through their representatives, in the deliberations regarding the imposition of the levy. The Respondents further argued the 1<sup>st</sup> and 2<sup>nd</sup> Respondents performed their duties and acted on intelligence reports, called the Security Officers to be alert who were overwhelmed by the large number of students.

14. It is also pointed out by the Respondents that the allegations of negligence were introduced by the Petitioners through submissions yet those allegations were not pleaded

in the main Petition. The Respondents averred that on 22/9/2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents convened a meeting with the Board of Management, Parents' Association and representatives of the County Director of Education to assess the extent of damage and determine the appropriate remedial measures. It is the Respondents further submission that the 1<sup>st</sup> Respondent invited Officers from the Regional Works Office – Rift Valley, Nakuru who conducted an on-site inspection.

15. The Respondents submitted minutes showing assessors were invited on 22/9/2025 and prepared a report quantifying the total damage at Kshs.69,038,665/=. The Respondents also indicated that on 1<sup>st</sup> October, 2025, the Board of Management, the Parents Association and Engineers deliberated on the Bill of Quantities. In the same meeting, it is also shown that other losses were discussed putting damages to the tune of Kshs.99,962,450/=. It is said a total of 18 parents attended the meeting to represent the parents which was open, consultative, transparent and evidence based.

16. It is the Respondents' submission that the 1<sup>st</sup> Respondent acted within their constitutional and statutory mandate in establishing the loss and apportioning Liability, therefore the imposition of the impugned levy was not opaque. It is also stated by the Respondents that the Petitioners never made any application requesting access to information regarding the levy. The Respondents stated that they are desirous to protect Litein Boys High School by undertaking steps within their powers to have the institution rebuilt and not de-registered.

17. The Respondents further argued that the imposition of levy does not violate the students' right to education. The Respondents further pointed that the prayer seeking for the dissolution of the Board of Management cannot be given through this Petition. The Prayer offends the doctrine of exhaustion. It is also argued that members of Board of Management have not been given an opportunity to be heard neither have they sued individually.

18. Having considered the material placed before this Court and the rival submissions, this Court has come to the

following conclusions in the matter. **First**, this Court is satisfied that the Petition meets the threshold set in the case of Anarita Karimi Njeru -vs- Republic [1976 - 1980] KLR. In sum, the Petitioners actually set out with reasonable degree of precision the complaints and the provisions which were infringed. **Secondly** it is clear from the material and submissions submitted by the Respondents that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents decision to impose a levy was not unilateral. The Respondents were able to present to this Court evidence showing that the imposition of the impugned levy followed participatory meetings that were duly attended by the Petitioners through the Parents Association giving rise to board resolutions.

19. There is also evidence showing that Regional Public Works Officers and Assessors were invited and actually met on 23<sup>rd</sup> September, 2025. It would appear those meetings were open, consultative and evidence based. This Court is also satisfied that the Respondents have also tendered evidence showing that they acted within the Constitutional and Statutory mandates is apportioning liability.

20. ***Thirdly***, the other vexing issue which needed answers is whether the requirement to pay the levy imposed violated the learners rights to Education under Articles 43 and 53 of the Constitution and Sections 28 and 29 of the Basic Education Act. The Respondents on the other hand have presented evidence to this Court showing that the destruction at the school was extensive. The Respondents presented a report showing the extend of the destruction.

21. The students vandalized classrooms, offices, teachers quarters and the dining hall and also damage furniture, windows, electrical appliances and school buses. It has already been indicated that the levy was arrived at a following participatory meetings that were attended by all the stakeholders. It is also pointed out that the school runs on strict budget that depends on capitation it receives from the Ministry of Education.

22. This Court is convinced that it was incumbent upon the parents to pay the impugned levy. I am persuaded that the imposition of the levy does not violate the students' right to education. In any case, the right to education is not absolute

its dependent on the conditions imposed by learning institution.

23. The **final** issue which arose is whether an order for judicial review should issue to dissolve the Board of management. The Respondents have pointed out that the prayers must fail since it breaches the doctrine of exhaustion. Regulation of the Basic Education Regulations provides the procedure of dissolution of the Board of management.

24. With respect, I am persuaded by the arguments of the Respondents that Petitioners should have applied to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents to dissolve the Board of Management by following the set procedure in the Regulations. I agree with the Respondents that the prayer for dissolution of the Board of Management violates the doctrine of exhaustion.

25. In the end, I find the Petition dated 8<sup>th</sup> October, 2025 to be without merit. The same is dismissed. Since this is a Public Interest Litigation Case, I direct that each meets its own costs.

**Delivered, signed and dated at Kericho this 19<sup>th</sup> day  
of December, 2025.**

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**J.K. SERGON  
JUDGE**

In the presence of:-

C/Assistant - Rutoh

Shadrack Wambua ) For Petitioners

Shadrack Wambua holding brief for Omari )

Miss Chepkemoi, Ojwang for 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> & 5<sup>th</sup> Respondent

