



**Muriithi v Headteacher SDA Chiakariga Primary School & 5 others (Petition E001 of 2025) [2026] KEHC 1586 (KLR) (17 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1586 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
PETITION E001 OF 2025  
RL KORIR, J  
FEBRUARY 17, 2026**

**BETWEEN**

**JULIUS MURIITHI ..... PETITIONER**

**AND**

**THE HEADTEACHER SDA CHIAKARIGA PRIMARY SCHOOL .... 1<sup>ST</sup>  
RESPONDENT**

**THE THARAKA NITHI COUNTY EXECUTIVE COMMITTEE MEMBER  
EDUCATION ..... 2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF EDUCATION . 3<sup>RD</sup> RESPONDENT**

**PTA CHAIRPERSON - DANIEL MWITI ..... 4<sup>TH</sup> RESPONDENT**

**THE BOM VICE CHAIRPERSON - VERONICA WANGU  
GATITI ..... 5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Respondents to the present Petition as listed by the Petitioner are self- descriptive.
2. The Petitioner described himself as a male adult person and a resident of Tharaka-Nithi County. He is the father of one LJJ then aged 5 years and 7 months.
3. The Petitioner filed the present home-made Petition dated 4<sup>th</sup> January 2025 seeking a raft of declarations and orders which I reproduce verbatim as follows:-
  - i. The actions of the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents be declared tortuous, inhuman, illegal and unconstitutional.



- ii. The 1<sup>st</sup> Respondent's actions of preventing school attendance of the child be declared an offence and the 1<sup>st</sup> Respondent be sentenced in line with the provisions of the [Basic Education Act 2013 Section 38 \(2\)](#) or any harsher lawful sentence. This is in public interest, interest of the administration of justice and serve as a deterrent to those other heads of institution who are using their positions to rob parents and other heads of learning institutions.
  - iii. The County Government of Tharaka Nithi be ordered to transfer the running of pre-primary education to the National Government as provided for in Article 187 of [the Constitution](#) of Kenya.
  - iv. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent be declared to have contravened the [Basic Education Act 2013, Section 36 \(1\)](#) by subjecting the child to psychological torture and cruel, inhuman and degrading treatment and that contravention consequences provisioned under Section 36 (2) of the same Act be invoked against them.
  - v. All extra levies collected at Chiakariga Primary School that do not meet the criterion stipulated in the [Basic Education Act 2013 Section 29 \(2\) \(b\)](#) be declared illegal, stopped forthwith and the 1<sup>st</sup> Respondent be ordered to disclose the net sum of all funds he has extorted from the parents since he resumed head teacher's role at Chiakariga Primary School and be ordered to refund the affected parents
  - vi. The 3<sup>rd</sup> Respondent be declared to have failed to deliver on his mandate of ensuring compulsory admission and attendance of children of school age at school. In essence it be declared that the 3<sup>rd</sup> Respondent has failed to perform their duties stated in the Basic Education Act 2013 Section 39 (a) (b), (f), (h), (i) omissions which have contributed to the right of education of the child subject of this petition being denied, violated and infringed.
  - vii. An award of damages do issue directing that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents jointly and severally compensate the Petitioner as he shall submit to the Respondents his losses and quantifiable damages within 30 days of the making of this order for the losses incurred by him from 19<sup>th</sup> February 2024.
  - viii. The Petitioner's child subject of these proceedings LJJ be compensated by way of damages for the psychological suffering inflicted on her since 19<sup>th</sup> February 2024 in breach of her rights against such psychological torture enshrined in [the Constitution](#) and other international legal instruments that Kenya has ratified in furtherance of the said minor and Kenya's enrolled children in general. The child has developed psychological problems which have persisted despite her going through a costly psychological counselling.
  - ix. This honourable court be pleased to issue such further or other order (s) as it may deem just and expedient for the ends of justice.
4. The Petitioner's case is that his child was expelled from SDA Chiakariga Primary School on 19<sup>th</sup> February 2024 by the 1<sup>st</sup> Respondent for failure to pay admission fee way back in the year 2022 when she was being admitted and termly levy of Kshs. 1,200 which was for teacher's capacity building. He averred that he paid the admission fee of Kshs. 6,100 in the year 2022 but the 1<sup>st</sup> Respondent kept the receipt.
5. He contends that he raised the issue of expulsion of the minor with the Children's Officer and Sub-County Director of Education who told him to obey the 1<sup>st</sup> Respondent unquestioningly. As a result, he reported the matter to the County Director of Education on 26<sup>th</sup> March 2024 who directed that



- the minor be presented to school. He alleged that he took the minor to school the next day but the 1<sup>st</sup> Respondent closed all the ECD classrooms stating that he did not want them in the compound.
6. The Petitioner further states that the 1<sup>st</sup> Respondent incited a clique of parents who were loyal to him leading to the 4<sup>th</sup> and 5<sup>th</sup> Respondents violently storming the minor's classroom, pulling her outside and leaving her outside a busy tarmac road occasioning threat to her life. He alleged that on 18<sup>th</sup> July 2024, the 4<sup>th</sup> and 5<sup>th</sup> Respondents visited violence on the minor which led to her being taken to the police station where she was picked by her mother. That he reported the matter to the County Director of Education who told him that those were criminal issues. That the case he lodged "was collapsed" through the influence of the 1<sup>st</sup> Respondent and the ODP who he alleged was compromised.
  7. It was his averment that he had to go to Jogoo house where he got intervention to have the child reinstated in school. That despite her reinstatement, no teacher has attended to her or guided her accordingly.
  8. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents filed grounds of opposition dated 3<sup>rd</sup> March 2025 and raised the grounds: -
    - i. That the Petition is fatally defective, misconceived and mischievous or otherwise an abuse of the court process and therefore unsustainable in the obtaining circumstances.
    - ii. That the Petition does not meet the threshold of a Constitutional Petition as set out in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR.
    - iii. That the Petitioner is seeking to circumvent criminal proceedings which would best resolve the issues raised in the Petition. Therefore, the Petitioner's sole intention is to engage in a fishing expedition in the high seas of constitutional litigation to avert the statutory requirements of criminal proceedings.
    - iv. The Petition is imprecise and too general and has failed to meet the threshold of a constitutional petition, to warrant any positive order from this court.
    - v. That further, it is an established principle of law that where there is an alternative remedy and especially where parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order would be granted by courts and the Petitioner had not established the existence of any exceptional circumstances.
    - vi. That the Petition is otherwise frivolous vexatious and an abuse of the court process.
  9. The 1<sup>st</sup> Respondent filed a replying affidavit dated 30<sup>th</sup> April 2025. He deposed that he is the current headteacher of SDA Chiakariga Primary school and Junior School. He stated that the Petitioner is the father of one minor L.J who was a PP2 student in SDA, Chiakariga Primary School and Junior School in the year 2022. He stated that the allegation that the minor was expelled from school on 19<sup>th</sup> February 2024 for failure by the parent to pay Kshs.1,200 is false and an attempt to mislead the court.
  10. It was his statement that parents of the school met on 26<sup>th</sup> March 2024 and resolved that, as agreed in their meeting held on 3<sup>rd</sup> March 2024 that every Early Childhood Education (ECDE) parent would pay Kshs. 1,200 to help financially in the operations of the ECDE class which lacked adequate resources due to the low enrolment of students. That the Petitioner failed to comply with the resolutions of the parents' meeting terming the payment of Kshs. 1,200 as an illegal levy. That despite his failure to comply at no time was the minor expelled from school.
  11. He further stated that due to continued complaints and disturbances by the Petitioner, the Director of Education convened a meeting with the Petitioner and the other officials in which it was resolved that



the Petitioner co-operates with the other parents. That the Petitioner proceeded to lodge complaints against him in various offices leading to various investigations made and reports made by various offices as follows: -

- i. a report by the Children's office recommended that the Petitioner obey school policy and guidelines and warned him against using the minor to settle scores with the management.
  - ii. A report by the Assistant County Commissioner was made on 23<sup>rd</sup> July 2024.
  - iii. The Sub-County quality assurance and standards officer also conducted investigations into the Petitioner's complaints and concluded that the minor was not denied admission into the school and advised the parent to enrol the child into grade one, however, the Petitioner opted to file the instant Petition.
12. The 1<sup>st</sup> Respondent further stated that it was the Petitioner himself who was infringing his own child's right to education by failing to take her to school and pay the required fees. That the Petitioner's child has never been abused in school or discriminated in any manner as every child was required to pay fees of Kshs.1,200. Further that the allegation of the child being abused by parents was reported to the police and taken up by the ODPP.
13. The 1<sup>st</sup> Respondent stated that the requirement for the payment of Kshs. 1,200 is lawful as the same was resolved by the Parents Teachers Association in accordance with the provisions of the Basic Education Act which renders the Petition frivolous, vexatious and an abuse of the court process.
14. The 2<sup>nd</sup> Respondent filed a Preliminary Objection dated 7<sup>th</sup> March 2025 raised on the following grounds:-
- i. That this honourable court is deplete of jurisdiction to entertain and issue the prayers sought in the Petition herein whose subject matter, (primary education) is not a constitutional mandate of the 2<sup>nd</sup> Respondent, the County Government.
  - ii. That the Petition is defective against the 2<sup>nd</sup> Respondent as the child in question is not in early childhood education (pre-primary), which is the sole responsibility of the County Government under Part 2, Section 9 of the Fourth Schedule to the Constitution. Primary education falls within the mandate of National Government under Part 1, Section 16.
  - iii. That the governing legal framework, including the Basic Education Act 2013, confines the County Government's responsibility to pre-primary education. The Petition erroneously seeks to extend this mandate.
  - iv. That the Petitioner's prayer seeking to transfer the management of the pre-primary education to the National Government under Article 187 of the Constitution is legally untenable as the provision only allows for voluntary agreements between governments, not compulsory transfer.
  - v. That the Petition amounts to an abuse of the court process by seeking orders contrary to clear constitutional provisions and statutory mandates.
15. Both the Petition and the Preliminary Objection were canvassed by way of written submissions. The Petitioner filed submissions dated 21<sup>st</sup> April 2025. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents filed submissions dated 7<sup>th</sup> July 2025 while the 2<sup>nd</sup> Respondent filed submissions dated 1<sup>st</sup> April 2025.
16. The Petitioner raised the issue for that the 1<sup>st</sup> Respondent breached the minor's rights as follows: -
- i. Right to free and compulsory basic education



- ii. Right not to be subjected to torture in any manner, whether physical or psychological.
  - iii. Right to life
  - iv. Right to freedom from discrimination.
17. Having considered the pleadings, affidavits, and submissions, I identify the following issues for determination:-
- i. Whether the Preliminary Objection by the 2<sup>nd</sup> Respondent is merited.
  - ii. Whether the Petition meets the threshold of a competent constitutional petition.
  - iii. Whether the actions of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents violated the constitutional rights of the minor.
  - iv. What remedies, if any, should issue.

### **The Preliminary Objection**

18. I will first address the Preliminary Objection raised by the 2<sup>nd</sup> Respondent. Black Law Dictionary Ninth Edition defines a Preliminary Objection as “an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary. An objection to the court’s jurisdiction is an example of a Preliminary Objection.”
19. In *Mukhisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, the Court held that:-
- “A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
20. The 2<sup>nd</sup> Respondent contends that under Part 2, Section 9 of the Fourth Schedule to *the Constitution*, pre-primary education is a function of the County Government, while primary education is a function of the National Government under Part 1, Section 16. They urge that the Petition improperly seeks to transfer management of pre-primary education to the National Government, contrary to Article 187, which provides only for voluntary transfer of functions between the two levels of government. They further urged that the 2<sup>nd</sup> Respondent was improperly enjoined as a party as it had no constitutional or legal mandate over primary school education. They prayed that the Petition against them be struck out for misjoinder.
21. The Petitioner filed a response to the 2<sup>nd</sup> Respondent’s Preliminary Objection. He stated that the 2<sup>nd</sup> Respondent was properly enjoined as the minor L.J was expelled from school while she was in PP2 which falls within the ECDE under the County Government.
22. I have looked at the Petitioner’s own annexures and particularly [Exhibit 4] being letters he wrote to the Sub-County and County Director of Education respectively complaining that his child had been denied admission into Grade One.
23. Article 186(i) of *the Constitution*, establishes distinct functions for the National and County Governments. Under Part 1 paragraph 16 of the Fourth Schedule, primary education is assigned to National Government while part 2 paragraph 9 assigns pre-primary and early childhood education to the County Government.



24. To the extent that the subject was a grade one pupil therefore, I see no role that the County Government would play.
25. As for the Petitioner's prayer for transfer of function cross the two levels of government, it is my considered view that such a monumental constitutional suggestion is outside the scope of this Petition. I find merit in the Preliminary Objection to the extent that this Court cannot compel the transfer of pre-primary education functions from the County to the National Government or vice versa under Article 187 of *the Constitution*. Such a transfer requires Intergovernmental agreement and cannot be decreed judicially by this court in the present Petition.
26. It is my finding therefore that the Petitioner's case against the 2<sup>nd</sup> Respondent was not legally tenable. The suit against the 2<sup>nd</sup> Respondent is thus struck out. In other words, the 2<sup>nd</sup> Respondent is removed from the proceedings for misjoinder.

### **Whether the Petition meets the threshold for Constitutional Petitions**

27. I now proceed to consider the Petition against the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents.
28. The Respondents argued that the Petition was defective for lack of precision as required in the case of Anarita Karimi Njeru v Republic [1979] eKLR, which emphasized the need to plead constitutional violations with reasonable precision.
29. It is trite that a constitutional petition must state with reasonable precision the constitutional provisions alleged to be facing threat of violation or have been violated, the manner of violation, and the relief sought. The Anarita case (*supra*) elaborated that a constitutional petition must: -
  - i. show the precise right alleged to have been violated,
  - ii. state the facts with sufficient particularity to enable the Respondent meaningfully to answer, and
  - iii. show why ordinary remedies are inadequate or why exceptional circumstances require constitutional intervention.
30. It is also trite, as submitted by the Respondents, that the requirement for precision in Constitutional Petitions was aimed at weeding out frivolous claims as held in the case of East Africa Pentecostal Churches Registered Trustees and 1754 Others vs. Samuel Muguna Henry & 4 Others [2015] eKLR where the court stated:-
 

“... This is a Court of Law and should not be used to handle frivolous and vexatious petitions whose sole intention is to engage in fishing expedition in the high seas of constitutional litigation. It should be noted that in this petition various Articles of constitution have been cited in the petition, however the petitioners have not provided particulars of alleged violations of *the constitution*. Further no evidence has been produced or attached to demonstrate the petitioner's rights have been infringed or threatened.....”
31. In this case however, and as earlier observed, the Petitioner was an unrepresented litigant and drew his homemade Petition as a lay man. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (The Mutunga Rules) which were developed to give effect to Article 22(3) of *the Constitution* of Kenya, 2010 had in mind such persons when they provided an elaborate and flexible scheme to guide Constitutional litigation.
32. Rule 4 of the Rules provides that: -



- (1) Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed, or threatened, a person referred to in Article 22 of *the Constitution* may make an application to the High Court in accordance with these rules.
  - (2) An application under sub-rule (1) may be made by-a person acting on his or her own behalf;
    - (e) an association acting in the interest of one or more of its members.
    - (d) a person acting in the public interest; or
    - (c) a person acting as a member of, or in the interest of, a group or class of persons;
    - (b) a person acting on behalf of another person who cannot act in their own name;
    - (a) .....
33. Further, Rule 10 provides: -
- (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
  - (2) The petition shall disclose the following—
    - (g) whether the petitioner wishes to give oral evidence.
    - (f) the relief sought by the petitioner; and
    - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
    - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit;
    - (c) the constitutional provision violated;
    - (b) the facts relied upon;
    - (a) the petitioner’s name and address;
  - (3) Subject to rules 9 and 12, the petition shall be signed by the petitioner or the petitioner’s advocate.
  - (4) The petition shall be supported by an affidavit.
  - (5) The Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.
  - (6) An oral application entertained under sub-rule (5) shall be reduced into writing by the Court.
34. In considering the merits of the Petition before me. I am guided by Article 159(d) of *the Constitution* which commands courts to administer justice without undue regard to procedural technicalities. I am further guided by the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, where the Court of Appeal held that: -

“We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision



must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”

35. My appreciation of the Petition before me is that it lacks precise legal elegance. That notwithstanding, there is clarity in what the Petitioner alleges which attaches to clear provisions of *the Constitution* alleged to have been violated or are at risk of violation by the Respondents.
36. The Petition clearly identifies the rights allegedly violated, the impugned conduct (expulsion and mistreatment of the minor), and the reliefs sought. It therefore satisfies the requirements under Rule 10 of the Mutunga Rules and Article 159(2)(d) of *the Constitution*. Consequently, I dismiss the arguments urging this court to dismiss or strick out the Petition for legal imperfection. The Respondents perfectly understood, as the court did, that the Petitioner alleged the violation of his child’s right to education.
37. The Petitioner alleged that the 1<sup>st</sup> Respondent expelled or denied the minor access to the school on 19<sup>th</sup> February 2024 and the child remained expelled for the entire first term of 2025. That the reason for the expulsion was his refusal to pay illegal levies including “admission fee” and teacher capacity building” amounting to Ksh.1,200. He also alleged that the minor had been subjected to psychological torture.
38. Article 53 of *the Constitution* provides:-
- 1) ) Every child has the right-
    - (a) to a name and nationality from birth;
    - (b) to free and compulsory basic education;
    - (c) to basic nutrition, shelter and health care;
    - (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
    - (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
    - (f) not to be detained, except as a measure of last resort, and when detained, to be held—
      - (i) for the shortest appropriate period of time; and
      - (ii) separate from adults and in conditions that take account of the child’s sex and age.
  - (2) A child’s best interests are of paramount importance in every matter concerning the child.
39. Section 28(1) of the *Basic Education Act*, 2013 guarantees free and compulsory basic education to every child. Section 29(2)(b) prohibits charging or authorizing charges in public schools beyond what is approved by the Cabinet Secretary.36(1) criminalizes subjecting a child to psychological torture or cruel, inhuman and degrading treatment within a learning institution.
40. It was clear from the above provisions of *the Constitution* and the law that the Petitioner’s complaints were anchored in law.
41. In submissions before this court, the 1<sup>st</sup> Respondent stated that he had already readmitted the minor but the parent Petitioner refused to enroll her in Grade one even after being so directed by the sub-



County Director of Education and the Sub-County Quality Assurance Standards Officer. This court also observed that when the parties appeared in court, the 1<sup>st</sup> Respondent undertook to have the minor back in school.

42. I therefore find that the Petitioner proved on a balance of probability that the child was sent out of school for failure of the Petitioner to pay the levies agreed on by the Parents Association of the school for purposes of improving the school and motivation of teachers.
43. The question is whether the levies agreed upon by the parents of the school and executed by the 1<sup>st</sup> Respondent were lawful. The court in the case of *Wasike v Principal Secretary Ministry of Basic Education & 4 others* [2025] KEHC 8322 (KLR) LN had occasion to address similar issues. Mugambi J. expounded on the vexing question of unauthorized school levies as follows:-

“

“74. 74.The question is, does the fact that this regulation allows the parents association to deliberate and come up with strategies on ways to raise funds for the physical development and maintenance of the school, motivation of teachers and pupils to improve their performance in academic and co-curricular activities; discuss and recommend charges to be levied on pupils or parents and/or undertaking or overseeing development projects on behalf of the whole Parents Association violate a Child’s right to education?

75. In my view, no Constitution provision is violated if the parents in any school coalescing as the parents’ association agree to deliberate and propose ways in which they can raise resources to support the school community as one of the major stakeholders. They can agree to support the school infrastructure development or any other programme in the school including those that are meant to motivate the teachers and the students under the performance improvement programme and this and I see no justifiable ground for declaring such an initiative unconstitutional. Nonetheless, any extra or additional levies must not be implemented in a way that destabilize or violates any child’s right to free and compulsory education meaning that such levies should never give room or excuse for excluding child’s entry into the school, sending away from the school any child or in any way allowing any child to be harassed for non-payment of such extra or additional levies. From a Constitutional view-point, objectives of the Regulation 2 (6) c, d, e & f in the Third Schedule they be impeached. Only the conduct of school may be impeached if it victimizes the child.

76. However, if the resolutions so reached are implemented are processed in the manner that is not authorized by the law or are implemented in a way that that interferes with the child’s right to free and compulsory basic education, there will be cause of action founded on Article 53 (1) (b) of *the Constitution* hence each case will depend on its own specific facts and not the general condemnation of the Third Schedule Regulation 2 (6) c, d, e, & f. If the enforcement of any resolutions reached in the meeting of the parents’ resolution victimizes the child by interfering with the right to free and compulsory basic education, then there would be a violation of Article 53 (1) (b) of *the Constitution*.



77. The *Basic Education Act* has in addition provided safeguards to ensure that the right of every child to free and compulsory basic education under Article 53 (1) (b) of *the Constitution* is not unnecessary compromised by such payments by requiring a strict procedure of approval in respect of such charges despite any such resolutions being made.

Section 29 (2) (b) of the *Basic Education Act* stipulates that that any additional charges in a public school can only be made with the approval of the Cabinet Secretary in consultation with the County Education Board and further declares that ‘no child shall be refused to attend school because of failure to pay such charges. ‘It states at 29 (2) (b)‘Other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges.’”

44. I am persuaded that the authority above is the correct exposition of the law.
45. In the present case, the 1<sup>st</sup> Respondent justified the levies as having been agreed upon by the parents. There was however no proof that the levies proposed and agreed upon by the parents had been approved by the Cabinet Secretary for Education as required by law. I find that the 1<sup>st</sup> Respondent was in violation of the Regulations in imposing a levy that denied the minor access to education.
46. The 3<sup>rd</sup> Respondent (Sub-County Director of Education) was notified of the violations but failed to act decisively. His inaction amounts to dereliction of duty under Section 39 of the *Basic Education Act*, which mandates officers to ensure compulsory attendance of children of school going age.
47. I reiterate that the right to education is a core socio-economic right and any act of exclusion, humiliation, or denial to a child violates *the Constitution*. Education is the bridge between deprivation and opportunity and no public officer or institution has the discretion to curtail it.
48. The Petitioner stated that his child had been violently removed from the school by the 4<sup>th</sup> and 5<sup>th</sup> Respondent. That he had reported the case to the police and the ODPP. There was paucity of evidence on this allegation in this Petition. However, this court must observe that children must be protected at all times whether in school or out of school. The case therefore must be properly investigated and criminal action taken.
49. The Petitioner sought damages for the violations. I have considered and found the same not awardable in the circumstances of this case. It must be taken that the intention of the Petitioner was to vindicate the rights of his minor child. In the case of *Gitobu Imanyara and 2 Others vs. Attorney General 2016 eKLR* the Court of Appeal set out the applicable principles thus:-

“.....it seems to us that the award of damages for constitutional violations of an individual’s right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court’s discretion for award of damages in Constitutional violation cases though is limited by what is “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deer any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach. If not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the petitioner’s interest, but the interests of society as a whole that



ought as far as possible to be served when considering an appropriate remedy.” (Underline mine)

50. In the end, the Petition partially succeeds. These are my final orders:-
- i. The Petition against the 2<sup>nd</sup> Respondent is struck out.
  - ii. The prayer for the transfer of the education function across the National and County Government is not merited and is dismissed.
  - iii. A declaration is hereby issued that the actions of the 1st Respondent in expelling or denying the minor access to school, is unconstitutional and violates Articles 28, 43, and 53 of the Constitution and Section 28 of the Basic Education Act, 2013.
  - iv. A declaration is hereby issued that any levies imposed by the 1st Respondent or Parents Association outside the framework of Section 29(2)(b) of the Basic Education Act are unlawful. The funds already collected into and utilized by the school shall however not be refunded. Any future levies must strictly be in accordance with the requirements in Basic Education Act Cap 211 Laws of Kenya.
  - v. A declaration is hereby issued that the failure by the 3rd Respondent acting through its officers to enforce compulsory basic education for the minor amounts to dereliction of statutory duty under Section 39 of the Basic Education Act.
  - vi. The Director of Public Prosecutions represented by the 6th Respondent shall investigate the allegations of assault and psychological harm to the minor reported to the police and take appropriate legal action against any person found culpable.
  - vii. The Petitioner shall facilitate his child’s right to education by meeting all lawful school requirements in accordance with his parental responsibility.
  - viii. There shall be no order on costs.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Judgement delivered in presence of the Petitioner acting in person and in the absence of all the Respondents. (Muriuki Court Assistant.)

