REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
HCCHR PETITION NO E002 OF 2026
IN THE MATTER OF ARTICLES 2, 10, 19, 20, 21, 22, 23, 24, 27, 28, 43, 47, 50, 53 AND 165 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS

AND FREEDOMS

AND

IN THE MATTER OF BASIC EDUCATION ACT 2013 AND FAIR ADMINISTRATION ACT 2015

BETWEEN

WESTERN HUMAN RIGHTS FORUM…….. ….PETITIONER

VERSUS

BOM KANYAWANGA HIGH SCHOOL……1ST RESPONDENT

THE CHIEF PRINCIPAL ……2ND RESPONDENT

THE COUNTY DIRECTOR OF EDUCATION ……3RD RESPONDENT

CS MINISTRY OF EDUCATION ……4TH RESPONDENT

THE HON. AG ……5TH RESPONDENT

RULING

Before this court is an application brought pursuant to Article **2, 10, 19, 20, 21, 22, 23, 24, 27, 28, 43, 47, 50, 53 and 165 of the Constitution of Kenya 2010 and** Rules 23 & 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013) seeking for orders;-

1. Pending the hearing and determination of this Motion, this Honourable Court be pleased to issue a conservatory order staying and/or suspending the implementation, enforcement, or execution of the decision contained in the Respondents' letter dated 23RD January 2026 demanding payment of KSHS. 6,500 per student as a condition for re-admission.
2. Pending the hearing and determination of this Petition, this Honourable Court be pleased to issue a conservatory order restraining the Respondents, whether by themselves, their agents, servants, or officers, from denying, barring, suspending, or otherwise preventing any student from resuming or continuing studies at Kanyawanga High School on account of non-payment of the impugned levy.
3. THAT This Honourable Court be pleased to issue a mandatory conservatory order compelling the Respondents to immediately and unconditionally re-admit all affected students pending hearing and determination of this Petition.
4. The costs of this Motion be in the cause.

The application is supported by the annexed affidavit of JOHN ABURA OUCHO sworn on 28th January 2026 and the grounds on its face.

The 1st and 2nd Respondents filed Replying Affidavit sworn by Onyango Jacob Ojwang the Chief principal of the 1st Respondent. Kanyawanga

Boys High School and also the Secretary to the Board of Management opposing the application.

Jacob Onyiego swore a Replying Affidavit on behalf of 3RD, 4TH 5TH & 6TH RESPONDENTS opposing the application and in response to the replying affidavits by the Respondents the Applicant filed a supplementary affidavit. The Respondents also filed further affidavit concurrently with their written submission opposing the application.

This application was canvassed by way of written submissions. The Applicant's submissions are to the effect that the Petition arises from the unconstitutional conditioning of access to basic education on payment of a compulsory damage levy imposed by the Respondents following alleged unrest at Kanyawanga High School.

That by a circular dated 23rd January 2026, the Respondents demanded payment of KSHS. 6,500 per student and expressly made such payment a condition precedent to re-admission, thereby placing hundreds of learners at immediate risk of exclusion from school.

That the Respondents attempt to justify this decision by reference to alleged consultations, investigations, and stakeholder participation; however, when subjected to constitutional scrutiny, the impugned decision collapses for lack of legality, procedural fairness, proportionality, and respect for the best interests of the child, which are foundational constitutional values under Articles 10 and 53 of the Constitution.

The Applicant identified issues for determination as:-

a. Whether the imposition of a compulsory levy as a condition for re-admission violates Article 53(1) (b) of the Constitution.
b. Whether the levy constitutes unconstitutional collective punishment.

c. Whether the Respondents complied with Article 47 of the Constitution and the Fair Administrative Action Act.
d. Whether the Respondents discharged the burden under Article 24 to justify limitation of rights.
e. Whether the Petitioner has satisfied the threshold for conservatory orders

In his analysis as to whether the imposition of a compulsory levy as a condition for re-admission violates Article 53(1) (b) of the Constitution. He submitted that Article 53(1) (b) of the Constitution of Kenya guarantees every child the right to free and compulsory basic education, a right that is immediate, enforceable, and not subject to administrative whims. That when the Respondents converted education into a pay-to-access privilege by conditioning re-admission to school on payment of the impugned levy, they abridged the essence of this right.

The Applicant cited the holding in ***Mumo Matemu & 4 Others v Trusted Society of Human Rights Alliance & Another [20131 eKLR***, where the Supreme Court reiterated that where a fundamental right is clearly limited by administrative action, the High Court must intervene to enforce and vindicate that right without delay. Similarly,

The Applicant also relied on the authority in ***Centre for Rights Education and Awareness (CREAW) v Speaker of the National Assembly & Another [20171 eKLR (Court of Appeal),*** where it was affirmed that where administrative action impairs a constitutional right, particularly in education and equality, the judiciary must uphold the constitutional guarantee and not allow administrative convenience to erode it.

It was submitted that the Respondents' contention that learning continues if students report and pay is disingenuous, because where

re-admission is tied to payment, education is not freely accessible; it is coercively purchased, contrary to the constitutional guarantee.

On whether the levy constitutes unconstitutional collective punishment, it was submitted that the Respondents concede that no individual disciplinary proceedings were concluded, no culpability established, and no learner specifically identified as responsible for the alleged damage before the levy was imposed. That despite this, all Form Three and Form Four students were penalized indiscriminately, irrespective of innocence, absence, or non-participation in the alleged unrest. The Applicant contended that this constitutes collective punishment, which is alien to Kenyan constitutionalism, breaches Article 27 of the Constitution of Kenya on equality, and violates Article 50 of the Constitution of Kenya on fair process and fair administrative action.

In ***Centre for Justice, Governance and Environmental Advocacy v Attorney General & Another [20171 eKLR (High Court),*** the court held that collective sanctions against a group where no individual culpability is established offend the principles of justice, equality, and fair hearing.

That the Court of Appeal's decision in ***Law Society of Kenya v Kenya School of Law & Another [20161 eKLR*** similarly emphasized that sanctions affecting access to education or professional training must respect individualized due process and that broad, undifferentiated penalties are impermissible. Discipline in schools must be individualized, evidence-based, and procedurally fair; financial sanctions imposed en masse without due process are administrative punishment masquerading as discipline and cannot be sustained.

On whether the Respondents complied with Article 47 of the Constitution and the Fair Administrative Action Act.

It was submitted that Article 47 of the Constitution and the Fair Administrative Action Act demand that any administrative action affecting rights be lawful, reasonable, and procedurally fair, which includes notice, reasons, participation, and an opportunity to be heard.

It was argued that the Respondents heavily relied on alleged consultations; however, paragraph 17 of the Replying Affidavit is unsupported by any annexure whatsoever. There is no attendance register, no parental resolutions, and no evidence of authority to bind all parents, which shows that the alleged consultations were either perfunctory or non-existent.

That in the case of ***Judicial Service Commission v Mbalu Mutava & Others [20151 eKLR (Court of Appeal)***, the court underscored that procedural fairness is not a technicality but a constitutional command, and unsupported assertions cannot substitute for evidence of fair procedure. Even if meetings were held, parents cannot lawfully consent to the violation of their children's constitutional rights, nor can a Board of Management contract out of the Constitution.

The Applicant also argued that the importance of meaningful participation was underscored in ***Fundamental Rights Alliance v Attorney General & another [20151 eKLR*** where the High Court reaffirmed that procedural fairness in administrative action affecting rights must be demonstrable and not presumed.

On whether the Respondents discharged the burden under Article 24 to justify limitation of rights, the Applicant submitted that Article 24 of the Constitution places the burden squarely on the Respondents to demonstrate that any limitation of rights is lawful, reasonable, proportionate, and the least restrictive means available.

That in this case, the Respondents have not shown why innocent students had to pay, why alternative funding mechanisms were not pursued, or why education had to be weaponized to enforce compliance. The limitation imposed was blanket, punitive, and excessive, and therefore fails constitutional muster.

That in The Supreme Court holding in ***Mumo Matemu (supra)*** it was explained that where rights are limited, the limitation must be demonstrably justified in an open and democratic society based on human dignity, equality, and freedom.

Further that the ***Court of Appeal in Centre for Rights Education and Awareness (CREAW) v Speaker of the National Assembly (supra)*** held that limitation of rights that fails to meet the proportionality test cannot be upheld, particularly where less restrictive means are available.

On whether the Petitioner has satisfied the threshold for conservatory orders, the Applicant submitted that he had demonstrated a prima facie case with a likelihood of success, a real and imminent threat to constitutional rights, and overwhelming public interest in uninterrupted access to education. The Respondents' claim that conservatory orders would disrupt learning is paradoxical, because the Petition seeks precisely to preserve learning, dignity, and equality pending determination. Conservatory orders do not determine the merits but preserve the constitutional substratum so that justice is not rendered illusory.

That in ***Centre for Rights Education and Awareness (CREAW) v Speaker of the National Assembly (supra)***, the Court of Appeal affirmed that conservatory orders are appropriate where constitutional rights are imperiled, and the balance of convenience favours the protection of those rights.

On whether the principle of exhaustion does apply to the Petition herein, the Applicant submitted that the Respondents' reliance on the doctrine of exhaustion is misplaced as this Petition raises pure constitutional questions, implicates the rights of minors, and is brought in the public interest under Articles 22 and 258 of the Constitution. He said that where a decision is unconstitutional on its face, this Court cannot defer to internal mechanisms that lack the power to grant constitutional relief. That in Mumo Matemu (supra), the Supreme Court held that constitutional rights must be enforceable and that access to the High Court should not be unduly fettered by demands for exhaustion where rights are directly threatened.

The Applicant finally submitted that this case is not about excusing indiscipline but it is about upholding the Constitution even when discipline is required. That the Respondents chose expediency over legality, collective punishment over due process, and coercion over constitutional compliance. The balance of justice, the supremacy of the Constitution, and the best interests of the child all point in one direction: protection of the learners' right to education.

The Petitioner prayed that this Court be pleased to allow the application as prayed.

The Respondents submissions dated 18th February 2026 identified issue for determination as:-

Whether the Applicant has met the legal thresh hold for grant of conservatory orders?

The Respondents spelt out principles governing conservatory orders as outlined in Centre for Rights Education and Awareness (CREAW) & 7 others vs Attorney General 16 of 2011) (201 Il KEHC 4297 (KLR) (Civ) where the court held that an applicant must demonstrate:

i. Prima facie case with likelihood of success

ii. That failure to grant the orders will result in prejudice

iii. That the public interest favours grant of the orders

The Respondents Similarly referred to the holding in ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others (20141eKLR,*** where the Supreme court held that conservatory orders are granted on the merit of the case and public interest considerations. It was held as follows:

> ***"Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to 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 as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should 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".***

Whether the Applicant has established a prima facie case, the Respondents submitted that he had failed to establish a prima facie case for the reasons that the levy was lawfully imposed pursuant to Section 56 of the Basic Education Act which establishes the Board of Management of school and mandates the BOM as responsible for the overall management, financial oversight and maintenance of educational standards of the institution.

That Section 10 and Section 55 of the Basic education Act mandates the Board of management to manage school resources, maintain school infrastructure and ensure safety and proper functioning of the institution.

That the Parents Association established under Section 55(2) of the Basic Education Act also plays a key role in school development, student welfare and disciplinary matters.

It was also submitted that the Cabinet Secretary and County Director of Education exercise supervisory and regulatory authority over all educational institutions in the country. The role of the county director of the Education is limited to supervision, coordination and implementation of national education policies.

It was also submitted that the levy complained of was an administrative decision undertaken at the institutional level to facilitate restoration of damaged infrastructure and ensure continuity of learning. It was submitted that the Applicant has failed to demonstrate any act or omission on the part of the Respondents in their different capacities that have violated the constitution.The Respondents submitted that in their replying affidavits they have enumerated the steps taken by the Board of Management and the Ministry of Education when the strike took place. Consultative meetings were held by the Executive Board of Management as well as the full board to forge a way forward.

That Following the strike, school property was destroyed, necessitating repairs and the levy was imposed purposely for restoring the learning environment. That further the levy was imposed upon consultation with the various stake holders including the parents and was therefore lawful and within the mandate of the institution.

It was also submitted that the Applicant had not demonstrated that any student had been denied access to education for failure to pay the levy and no material has been placed before the court in that regard. There is no mention of any specific student who has been affected by the levy nor any student who has been denied access to education in the institution after the strike for failure to pay the levy hence the Notice of motion and the Petition is speculative and premature.

It was submitted that the levy does not violate constitutional rights and the Applicant had not demonstrated violation of Article 43 (Right to Education), Article 47 (Fair administrative Action) and Article 53(Best interest of the Child).

The Respondents argued that the levy is remedial and it is not punitive. That it was imposed to ensure there is continuity in learning and to ensure that the right to education of the students in the institution is not paralyzed by such an unfortunate incident.

The Respondents argued that the Applicant had not specifically pleaded constitutional violations and had not demonstrated how the levy had violated the constitutional rights of the learners affected.

In the case of ***Board of Management of Uhuru secondary School vs City County Director of Education (201 S) eKLR*** the court recognized the authority of school management to take administrative measures necessary for smooth operations of institutions. In the same case the court held that the petitioner seeking conservatory orders must demonstrate the infringement of rights and freedoms. The court held that:-

> **"I am conscious of the fact that as I determine whether or not I should grant any conservatory orders on this matter, I must not venture into scrutiny of the facts and**

evidence. That will be for the trial court. However the Petitioner ought to demonstrate how the rights and freedoms of the Principal and the students as well as the Petitioners rights have been impeded or put at risk. "

It was submitted that the levy does not violate any constitutional rights, on the contrary the Board of Management seeks to restore the infrastructure to a status that is both safe and in proper condition for use by the learners.

Whether the applicant will suffer prejudice, it was submitted that the Applicant herein is not a parent in the school and the court had not been provided with the evidence of an actual person/people or parent complaining of the levy and whose rights and freedoms under the Bill of rights are threatened, or were in the process of being threatened or have been violated by the actions of the Respondents. That to the extent that the Petitioner is claiming to be acting on behalf of a human rights organization, the Petitioner ought to have identified the parents, guardians and the students affected by the decision of the 1st Respondent and the manner in which that decision has negatively affected them. That infact the school is yet to receive any complaint by parents on the levy imposed. The levy was imposed on all form 3 and 4 students without discrimination. The Respondents in their replying affidavits have stated that disciplinary measures will be undertaken upon the conclusion of the investigations, but meanwhile learning must continue. It was submitted that the Applicant has not shown the prejudice he or any parent or student is likely to suffer if the levy is effected.

It is important to note that the learners have already reported back to school despite the interruption of learning activities caused by the

strike. The students have reported to school as per the schedule annexed to the 1st and 2nd Respondents Replying affidavit marked "0JO 7" and learning is ongoing. The Notice of motion herein is therefore overtaken by events.

The Respondents contended that the levy is intended to repair destroyed infrastructure which repair and restoration process has actually commenced. That once the repairs are complete, the education in the institution will continue uninterrupted. The failure to repair school infrastructure will severely disrupt learning and prejudice the over 1200 learners in the institution.

The Respondents also submitted that if the petition succeeds, appropriate remedies including refunds may be ordered by the court and the Applicant has not shown any prejudice or danger that the Applicants face in the event that the Conservatory orders are not granted.

On the issue of public interest, the Respondents submitted that the same weighs heavily against the grant of conservatory orders. That if the prayer for conservatory order is allowed, the institution will be unable to carry out repairs of the damaged facilities, learning will be disrupted, the discipline will be undermined, there will be no accountability in schools and such an order will encourage impunity among students. It was therefore the Respondents case that public interest favours ensuring functional learning of institutions. The Respondents cited the holding in ***Judicial Service commission v Speaker of the National Assembly and another (2013) eKLR*** where it was stated that***:-***

> **"conservatory orders take into account public interest and constitutional values."**

That in Jatnes Marien a Obon oa 2 others v Fund manager Suna West National Government Constituency Development Fund where the Petitioners sought to stop the disbursement of funds meant for CDF due to mismanagement, Mrima J when considering whether it was in the public good held that;

"29. the net effect of allowing the application will therefore be against the grain of public interest. The constituents of Suna West stand to suffer irreparably.

30. Whereas the petitioners are litigating in public interest and they demonstrated a prima facie case, I find that the unique nature of the application calls for restraint. Allowing the application will avail a greater harm to the public than the intended good. "

Whether the petition will be rendered nugatory, it was submitted that the Petition will not be rendered nugatory if conservatory orders are not granted because any financial payments can be refunded. That the court was urged to take judicial notice that the funds collected from levy was meant for repairs which were necessary to restore infrastructure and some of the money will have already been used to urgently deal with the repairs which were necessary to have the learners resume school after the strike. That the petition can still be heard and determined.

The Respondents submitted that the levy is an administrative action lawfully taken by the school management pursuant to statutory mandate and the Applicant is not keen on solving the dispute but rather intends to use the unfortunate incident to make demands, because of campaigns against the Principal of the school and the

school management and organize media campaign and "peaceful" demonstrations at the school gate and the Ministry of Education offices as contained in the documents annexed to his supporting affidavit more particularly the letters addressed to the Chief Principal, the Board of Management and the County Education Director and marked as JAO 2,JA03 and JAO 4 respectively.

It was submitted that the Applicant had not exhausted available dispute resolution mechanisms under Section 40 of the Basic Education Act and Regulations including engagement with the Board of Management, County Director of Education or the Cabinet Secretary for Education.

That the court dealing with an application for conservatory orders must maintain the delicate balance of ensuring that it does not delve into issues which are in the realm of the main petition. The prayers sought in the Petition are similar to the prayers sought in the instant application.

The Respondent cited the holding in ***Muslim for Human Rights (Milimani) & 2 others v Attorney General & 2 others (201 1) eKLR where the court*** stated cs follows;

> ***"The court must be careful for if not to reach final conclusion and to make final findings. By the time the application is decided; all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely visa vis the case of either parties. The principle is similar to that in temporary or interlocutory injunctive in civil matters. This is a cardinal principle and happily makes my functions and work here much easier***

despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side".

It was concluded that the Applicant had failed to demonstrate a prima facie case, any constitutional Violation by the Respondents, any prejudice likely to be suffered by the Applicant and lastly, he has not demonstrated that public interest favours the grant of conservatory orders sought. No irreversible harm has been demonstrated and the conservatory orders are therefore unnecessary.

Faced with a similar application, the High Court sitting in Kericho in ***Wambua v Board of Management Litein Boys Hiqh School 5 others [20251 KEHC 19132 (KLR)*** directed that parents pay Kshs 25,000 pending the hearing and determination of the Petition. It is the submission of the Respondents that the levy imposed by the Board of management of Kanyawanga High School is justified and lawful. The Respondents prayed that the Notice of Motion dated 28th January 2026 be dismissed with costs as it lacks merit.

ANALYSIS AND DETERMINATION

Having considered the application, the supporting affidavit, the Replying Affidavit, the Supplementary Affidavit and Further Affidavit the court is presently concerned only with the question whether the circumstances merit the grant of conservatory orders, without delving into final merits of the Petition.

The guiding principles for grant of conservatory orders are now settled. The Applicant must demonstrate:

1. A prima facie case with a likelihood of success;

2. Real danger of prejudice if the order is not granted;

3. Favourable public interest considerations.

While considering an application for conservatory orders the court must refrain from making final or conclusive findings, and must preserve the substratum of the Petition.

On whether a prima facie case has been established, the Applicant argued that conditioning re-admission on payment of the levy violates the right to free and compulsory basic education under Article 53(1)(b) and the decision amounts to collective punishment, as no individualized culpability was established. He also argued that procedural fairness was lacking because the alleged consultations with parents and stakeholders were unsupported by evidence. That the Respondents failed to meet the burden under Article 24 to justify limitation of rights.

The Respondents contended that the levy was lawfully imposed under Sections 10, 55 and 56 of the Basic Education Act by the BOM which acted within statutory mandate to restore damaged infrastructure and maintain safety. The Respondents also argued that consultations were held with parents and stakeholders and no student has been denied admission or shown to have suffered actual prejudice. That the levy is remedial, not punitive, and necessary for restoration of learning facilities.

The Applicant has raised weighty questions concerning whether a compulsory levy tied to re-admission impermissibly limits the right to basic education; he has also raised the issue whether undifferentiated financial sanctions may amount to collective punishment; whether procedural fairness under Article 47 was met and whether the

Respondents discharged the Article 24 burden in limiting rights of minors.

These issues are neither frivolous nor speculative. Conversely, the Respondents raise substantial statutory-mandate and public-administration arguments that will require full ventilation at trial.

The Applicant has demonstrated an arguable prima facie case requiring preservation of the constitutional question for hearing.

On whether the learners face prejudice if the orders are not granted, the Applicant argues that hundreds of learners risk exclusion from school if they cannot pay the levy and the constitutional substratum i.e. the right to free and compulsory basic education faces immediate threat.

The Respondents argue that no learner has been turned away for non-payment of the levy and re-admission schedules annexed to the Replying Affidavit show learning has resumed. They have also argued that any payments can be refunded should the Petition succeed. They also contend that the Applicant is not a parent and has not identified any specific child prejudiced.

The court accepts that no individual learner was cited by name. However, the circular expressly makes payment a precondition to re-admission. Whether or not this has been enforced, the circular on its face creates a real danger of exclusion**,** which directly touches on the constitutionally protected right to basic education.

Further, the fact that repairs may already be underway does not negate the potential harm to learners whose ability to access education may be compromised.

The standard is not actual harm**,** but real and imminent danger and / or threat to violation of the right to basic education as provided in the Constitution. On that score, the Applicant has met the threshold.

In their submissions the Respondent argued as follows in regard to the Applicant's standing:-

Applicant herein is not a parent in the school. He argues that the matter before court has been brought in public interest. The court has however not been provided with the evidence of an actual person/people or parent complaining of the levy and whose rights and freedoms under the Bill of rights are threatened, or were in the process of being threatened or have been violated by the actions of the Respondents .

That to the extent that the Petitioner is claiming to be acting on behalf of a human rights organization, the Petitioner ought to have identified the parents, guardians and the students affected by the decision of the 1st Respondent and the manner in which that decision has negatively affected them. That infact the school is yet to receive any complaint by parents on the levy imposed. The levy was imposed on all form 3 and 4 students without discrimination. The Respondents in their replying affidavits have stated that disciplinary measures will be undertaken upon the conclusion of the investigations, but meanwhile learning must continue. It was submitted that the Applicant has not shown the prejudice he or any parent or student is likely to suffer if the levy is effected.

Article 22(1) gives *every person* the right to institute court proceedings claiming a violation or threat of violation of rights.

Article 22(2) expands standing by allowing suits to be filed by a person acting on behalf of another unable to act; a person acting as a member of, or in the interest of, a group/class; a person acting in the public interest and an association acting in the interest of its members.

Article 258 provides locus standi for *any* matter involving enforcement of the Constitution not just the Bill of Rights. It allows *any person* to institute proceedings claiming the Constitution has been contravened or is threatened with contravention. **Article 258(2)** mirrors Article 22(2) by allowing acting on behalf of another; acting in public interest and acting on behalf of an association.

The Applicant therefore had the locus to institute the current petition and application claiming a violation or threat of violation of rights.

Whether Public Interest favours grant of conservatory orders, the Applicant argues that public interest lies in uninterrupted, equal access to education without unconstitutional conditions and that the best interests of the child must prevail.

The Respondents argument is that repairs must proceed to restore the learning environment; halting the levy will undermine discipline and school management and public interest lies in enabling schools to function and ensuring accountability.
Both sides have advanced compelling public-interest positions. On one hand, public interest strongly supports restoration of damaged infrastructure and maintenance of order in schools. On the other hand, the Constitution elevates the best interests of the child, and the right to free basic education is immediate, not progressive. At this interim stage, the court must balance competing interests. The risk of children being excluded from school pending determination of the Petition

outweighs the administrative inconvenience to the institution, particularly because financial remedies remain available. This court is persuaded that public interest tilts in favour of preserving learners' access to education.

On the principle of exhaustion of internal dispute mechanisms, the Respondents submitted that the Applicant failed to invoke mechanisms under Section 40 of the Basic Education Act. However, where a matter raises pure constitutional issues involving alleged violation of rights of minors, courts have recognized exceptions to the doctrine of exhaustion. The Petition raises questions that fall squarely within the constitutional mandate of this Court and the objection on exhaustion is therefore not a bar to interim relief at this stage.

Having considered the material before this court, rival submissions, and applicable constitutional principles, the Court finds that the Applicant has satisfied the threshold for grant of conservatory orders.

Accordingly, the Court makes the following orders:

1. A conservatory order is hereby issued suspending the implementation and enforcement of the levy of Kshs. 6,500 as a condition for re-admission of learners,

2. No learner shall be denied access to school or learning on account of non-payment of the said levy pending determination of the Petition.

3. The Respondents shall continue with internal processes for assessment, repairs and restoration of school facilities, provided such actions do not infringe learners' constitutional rights.

4. Costs of this application shall abide the outcome of the Petition.

5. The Petition shall be fast-tracked for hearing on priority basis.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 5TH DAY OF MARCH, 2026.

HON. ANNE ADWERA-ONG'INJO

JUDGE

In the Presence of:

Victor – Court Assistant