

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

FAMILY ORIGINATING SUMMONS E005 OF 2023

ZUHURA ANUBII SALEH APPLICANT

VERSUS

MAURICE KAJINA OSANO RESPONDENT

RULING

1. Vide a judgment delivered by this Court, (Aburili J) on **4/12/2024** and subsequently a decree issued on **17/12/2024**, the applicant secured injunctive relief against the respondent barring him from taking any action that may interfere with her business of Venmar School on **Land Parcel Kisumu/Kasule/3655**. Further, it permanently prohibited the respondent from accessing the business of Venmar School (Hampshire School) and/or becoming involved in any capacity in matters pertaining to Venmar School (Hampshire School).
2. By a Motion on Notice brought under a certificate of urgency dated **14/3/2025**, the applicant sought an order directed at the OCS Kongony Police Station or any other Police Station stationed near Venmar School (Hampshire School) to offer and provide enough security to her or her appointed agent and/or administrator in

order to enforce the court decree and ensure peace as she takes over the school's administration.

3. The application was brought under *Articles 50 (1) & 159 (2) (a)* of the *Constitution of Kenya*, *Section 3 (A)* of the *Civil Procedure Act*, *Order 51 (1)* of the *Civil Procedure Rules 2010* and *Section 24* of the *National Police Service Act*. It was anchored on the grounds set out therein as well as the supporting affidavit of **Zuhura Anubii Saleh** sworn on the **15/3/2025**.
4. She contended that despite knowledge of the Court's judgment and decree, the respondent has made it difficult for her to access Venmar School (Hampshire School) even going as far as locking her up within the school. That the respondent's conduct is meant to demean her and the administration of justice thus necessitating the escort of the OCS Kongony Police Station to enable her access the School.
5. In response, the respondent swore a replying affidavit on the **31/10/2025** in which he stated that the order issued by the Court merely stopped him from dealing with Venmar School in any manner inconsistent with the applicant's interest and that there was no order allowing the applicant to take over the management of the School. That consequently, the applicant is seeking enforcement of non-existent orders.

6. I have considered the record. The order sought by the applicant calls upon this Court to exercise its discretion. This being an exercise of judicial discretion, like any other judicial discretion must be on fixed principles and not on private opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously. The Court's discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the applicant for such orders.

7. In the present case, the applicant asserts that the respondent is in violation of the judgment delivered on the **4/12/2024** by refusing her access to Venmar (Hampshire) School. On his part, the respondent asserts that the Court directed him not to interfere with the applicant's interest but did not grant her management of the school.

8. For avoidance of doubt, the orders of Aburili J. in the said judgment were as follows: -

- a) "The defendant, M.K.O, his agents, proxies and or anyone acting on his behalf are hereby prohibited from harassing her in any way, and or taking any action that may dispose of, encumber, and or interfering with occupation and status of Land Parcel Kisumu/Kasule/3655.***

b) A permanent injunction is issued prohibiting the defendant M.K.O from accessing Venmar School, now named Hampshire School, which latter name shall revert to Venmar School, transferring teachers, dismissing them, becoming involved in its management in any capacity, operating or accessing the school account number held in all banks in any capacity, taking loans, withdrawing cash, and/or becoming involved in any capacity in matters pertaining to Venmar School.

c) Decree to issue.

d) Each party to bear their own costs of the suit.”

9. The aforementioned orders are very clear. The respondent was barred from interacting in any way with Venmar (Hampshire) School. The applicant who had previously been managing the school and who had been displaced by the respondent was thus reinstated into management vide the aforementioned orders.

10. It is not clear where the respondent is getting his assertion that *he was ordered not to interfere with the applicant's interest (sic)*. If at all this was his interpretation of the aforesaid orders, as deponed in his replying affidavit, then this is a clear misunderstanding and misinterpretation of the court's order. It is a deliberate attempt to disobey the clear orders of this Court. That won't do.

11.The applicant deponed that the respondent had violently prevented her from accessing the school and went as far as locking her up in a cell within the School.

This averment was not been controverted by the respondent.

12.From the evidence presented before this Court, it is clear that the respondent is in continual disobedience of the orders of this Court of **4/12/2024**. The applicant has proved that she merits the orders sought.

13.In the circumstances, it is hereby ordered that: -

a) *The OCS Kongony Police Station do provide enough security to the applicant, Zuhura Anubii Saleh, and/or her agent and/or administrator to gain access into Venmar (Hampshire) School and at the same time escort out the respondent and/or his agent from the said School.*

b) *The costs of the application is awarded to the applicant.*

It is so ordered.

DATED and **DELIVERED** at Kisumu this 25th day of **March, 2026**.

A. MABEYA, FCI Arb

JUDGE

