



REPUBLIC OF KENYA



**Gems National Academy Limited t/a Regis Schools v Regis Runda Academy Limited & 3 others  
(Environment & Land Case E095 of 2023) [2024] KEELC 923 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 923 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E095 OF 2023  
LN MBUGUA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**GEMS NATIONAL ACADEMY LIMITED T/A REGIS SCHOOLS ..... PLAINTIFF**

**AND**

**REGIS RUNDA ACADEMY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**RUNDA GARDENS DEVELOPMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**PETER M BURUGU ..... 3<sup>RD</sup> DEFENDANT**

**MARY W BURUGU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated 18.12.2023 filed by the plaintiff seeking orders of injunction restraining the defendants from establishing, managing or starting another school and changing, rebranding, redesigning the current established school namely; "Regis school Runda" (hereinafter, the school), situated on parcel L.R. 20091. They also seek orders restraining the defendants from trespassing, interfering or managing the said school and that instead, they be allowed to manage the aforementioned school.
2. The application is premised on grounds set out on the face of the application and on the supporting affidavit of Dr. Ernest Mureithi Waithaka, a director of the plaintiff dated 18.12.2023. The applicants have given a rather lengthy account relating to their relationship with the defendants which was anchored on, a Development and lease agreement dated 26.6.2018, a long term lease agreement dated 27.8.2019, a master Licence Agreement dated 19.1.2023, and other mutual agreements. From the aforementioned relationship, the plaintiff hosted the Regis school Runda.
3. That through intimidation, harassments and threats of eviction, a temporary license was granted to the defendants to recoup their money, but the school was to be handed back at the end of the temporary



- license in December 2023. However, the applicants received communication to relocate their school to another location, and that the respondents had plans to establish their own school on the same property.
4. The plaintiffs contend that the acts of the defendants in converting the school as their own on the same land amounts to a hostile take over which is illegal and unlawful. They contend that no prejudice would be occasioned upon the defendants who are already in possession of over Ksh. 326 519 102 which amount was not accounted for by the respondents.
  5. In opposition, the respondents filed an equally lengthy Replying Affidavit dated 12.1.2024, and a Supplementary Affidavit dated 13.1.2024 both sworn by the 3<sup>rd</sup> defendant (Peter Mburugu), as well as Grounds of opposition dated 12.1.2024 where a Preliminary Objection based on jurisdiction has been raised.
  6. In the Preliminary Objection the defendants aver that pursuant to the provisions of Section 10 of the [Arbitration Act](#) the court cannot entertain this matter. It is also argued that a major component of the dispute falls under the purview of the [Basic Education Act](#).
  7. In the Replying Affidavit of the 3<sup>rd</sup> defendant, the defendants contend that under a 1 year master license agreement which was to lapse on 22.12.2023, the defendants mandate to have any dealings with the school had come to an end. That is why they issued a circular to the school community informing them of the impending lapse of the master licence agreement.
  8. I have considered all the arguments raised herein including the rival submissions. There is no dispute that the plaintiffs are the proprietors of the school known as “Regis School Runda.” The same is situated on parcel L.R. 20091 owned by the 2-4 defendants. The plaintiffs were operating the school as tenants of the defendants through various agreements, of which the court stayed the proceedings herein pending the outcome of the arbitration matter *vide* a ruling dated 31.10.2023.
  9. The current dispute arises from the import of the Master License Agreement dated 19.1.2023. It appears that by that agreement, the defendants took over the management of the school. The aforementioned agreement was to last one year. What then was to happen after the one year period? Were the defendants supposed to continue operating the school or were they to hand over the same back to the plaintiffs. Does the matter fall under the [Basic Education Act](#)?
  10. There are accusations and counter accusations between the protagonists, but behind the scenes, there are anxious parents and children who need to know their fate.
  11. On the question of jurisdiction, I find that this matter appears to be multifaceted, in that there is a question regarding the running of Regis school Runda, the question of debts (who owes what to whom?), and finally the nature of the lease (if any) between the parties.
  12. On the question of the management of the school, the fall back is the [Basic Education Act](#) at section 76 which makes provisions of; Licensing, registration and accreditation of persons and institutions of education, training and research.
  13. The mandate of this court does not extend to interrogation of the cited law. Needless to state that from both sides of the divide, the defendants do not intend to operate the Regis school Runda. It is the finding of this court that the issues regarding the management of the school do not fall under the jurisdiction of this court.
  14. The question of debts is closely tied to the status of the lease, an issue which is already before the arbitration forum pursuant to the ruling of this court delivered on 31.10.2023. Nevertheless, and in



order to have clarity of details, I find it important to interrogate the import of the Master License Agreement which was coming to an end in December 2023. The import of that agreement is that the defendants had taken over the school in question for a period of one year Only.

15. Paragraph 3 B, C and F of the said Agreement states as follows:
- b) “The Landlord, under the terms of a Development and Lease Agreement dated 26<sup>th</sup> June 2018 (DLA) entered with the Licensor, granted to the Licensor a lease dated 27<sup>th</sup> August 2019, which the Licensor by its conduct terminated sometimes on or around November 2019, a discovery made by the Landlord on or around November 2021. Thereafter, the Landlord permitted the Licensor to continue operating the School on the Demised Premises and continued to invoice for rent on a quarterly basis, thereby creating a periodic lease under the provisions of the Land Act, No. 6 of 2012.”
  - c) “The Landlord, following the Licensor’s persistent default in paying rent for the Demised Premises, under the provisions of the Land Act, re-entered or retook possession of the Demised Premises on or around 23<sup>rd</sup> December 2022”
  - f) “Appreciating the Landlord is not registered or licensed to operate the School, and desirous of ensuring the continuity of provision of high-quality education services to the students enrolled with the School, the parties have in utmost good faith mutually reached understandings and arrangements for the Licensor to grant of an interim license to the Licensee to operate the School, as the Parties separately deal with the consequences of the aforesaid forfeiture of lease“
16. From the foregoing, is there any lease between the parties?. That is a question that the court cannot delve into at this stage, seeing that the dispute is already before the arbitration. Thus the ascertainment of the plaintiffs rights and or interests in the suit property where the Regis schools falls under is a subject of contest. In the circumstances, on what basis would this court proceed to issue the orders sought in the application? None Whatsoever?.
17. An injunction is an equitable remedy, meaning that the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration. See-[Paul Gitonga Wanjau v Gatbuti Tea Factory Company Ltd & 2 others](#) [2016] eKLR.
18. It is not lost to this court that the plaintiffs had filed an earlier application dated 8.3.2023 where they were seeking orders to restrain the defendants from managing the Regis school, yet by then, they had entered into the master license agreement of 19.1.2023. The plaintiffs obtained interim orders from this court on 14.3.2023 which were extended now and then until 23.5.2023 when the application was dismissed for want of prosecution.
19. The foregoing analysis, depicts the plaintiff as a party who has approached the court with unclean hands. They have not sufficiently established the nature and extent of their rights and interests on the suit property where the school stands. In the circumstances, they do not deserve the orders sought. Thus the application is hereby dismissed with costs to the defendants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**



Makhoha for Plaintiff

Court assistant: Eddel

