



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT MERU**

**APPEAL NO.E002 OF 2021**

**(Before D.K.N.Marete)**

**AKIRANG'ONDU BOYS SECONDARY SCHOOL.....1ST APPLICANT/APPELLANT**

**BOM AKIRANG'ONDU SECONDARY SCHOOL.....2ND APPLICANT/APPELLANT**

**PRINCIPAL AKIRANG'ONDU BOYS**

**SECONDARY SCHOOL.....3RD APPLICANT/APPELLANT**

**VERSUS**

**DANIEL AKAIGA..... RESPONDENT**

**R U L I N G**

This is an application by way of a Preliminary Objection dated 22nd February, 2021. It comes out as follows;

- 1. The Attorney General's office is procedurally barred from action for and/or on behalf of the Respondents.*
- 2. The application herein ought to be declared null and void an ignition for breach and non-compliance of initial court orders issued by the lower court.*
- 3. The respondents' action to appoint the Attorney General is ultra-vires to the powers and duties of the respondents' respective offices.*
- 4. The appointment of the office of the Attorney General herein goes against the spirit and the grain of the Education Act, State Corporations Act and the Mwangozo Code of governance.*
- 5. The action of the respondent to appoint the Attorney General is in violation of Section 10 & 11 of the Education Act, CAP 211 Laws of Kenya.*
- 6. The actions of the respondent further are in violation of the doctrine of incorporation since the respondents have statutory powers to sue and to be sued.*
- 7. The office of the Attorney General lacks the locus-standi to institute a case against a duly incorporated institution with powers to sue and be sued.*
- 8. Abuse of court process and the law.*
- 9. Lack of substratum.*
- 10. Being frivolous, vexatious, scandalous and;*
- 11. The application on record be dismissed with costs.*

The Appellants faults the Preliminary Objection for not being grounded on pure points of law and prays that it be dismissed with costs.

The Respondent /Objector in a joint written submissions dated 10th June, 2021 submits that the Attorney-General has no *locus standi* to act for the Appellants. This is because the 1st and 2nd Appellant are bodies corporate with internal capacity to sue and be sued. These are also semi autonomous entities and enjoined with perpetual succession as per Section 6, 10 and 11 of the Education Act.

The Respondent further submits that the Attorney-General has capacity to act to act for the 3rd Appellant but not the first two. On these she only has the power of advise.

This application tilts in favour of the appellants. This is because it is trite law and practice that the Attorney-General comes out in defense of public interest as is the case here. The submission that the Appellants are public institution and or agent, is not in dispute. The bone of contention is the exercise of their function. The Respondents position on this is unsustainable and must fail.

The Applicants in their written submissions dated 7th June, 2021 opposes the preliminary objection and submits a case for the office of the Attorney-General being inappropriate avenue for the representation of the Appellants. This is because she is her public defender in terms of Article 156 (6) of the Constitution of Kenya, 2010.

The 1st Applicant is a public institution whereas the others are her agents. In the instant case, the schools Board of Management, a body corporate was lawfully opted to induct the Attorney-General to act on her behalf in tandem with Section 35 and 56 of the Basic Education Act, 2013 as read with the Fourth schedule, Part 1, Section 1, Section 12 of the Government Proceedings Act also empowers the Attorney-General to enlist when Government is sued.

I am therefore inclined to dissolve the preliminary objection with orders that each party bears their costs of the same.

And on this note, we can now proceed to tackle the other application dated 9th February, 2021.

**DATED AND DELIVERED AT NYERI THIS 9TH DAY OF MARCH, 2022.**

**D.K.NJAGI MARETE**

JUDGE

Appearances

1. Mr. Kieti instructed by State Law Office for the Appellants.
2. Mr.Kobia instructed by Kobia Michubu & Company Advocates for the Respondent.