



**Prime Start Academy v Kirinyaga County Education Board & another
(Petition E017 of 2024) [2025] KEHC 7112 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
PETITION E017 OF 2024
EM MURIITHI, J
MAY 30, 2025**

BETWEEN

PRIME START ACADEMY PETITIONER

AND

THE KIRINYAGA COUNTY EDUCATION BOARD 1ST RESPONDENT

**THE COUNTY DIRECTOR OF EDUCATION (MOE) KIRINYAGA
COUNTY 2ND RESPONDENT**

RULING

1. The applicant filed a Notice of Motion dated 9th December, 2024 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That the Honourable Court be pleased to issue a conservatory order staying the resolution purporting to close the petitioner vide the letter issued by the 2nd respondent dated 12th September, 2024 and referenced NO.MOE/CDE/KRG/GEN/09/87/41 pending hearing and determination of the petition herein.
 4. That the Honourable Court be pleased to issue such further or better relief as it may deem fit and just to.
 5. That the costs of this application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of Stanley Muriithi Kariuki. The applicant's case is that the Petitioner is a private Primary School and Junior Secondary School situated in Mwea East Sub-County in Kirinyaga County. The petitioner



was issued with a full registration to operate and manage a private school vide certificate number PE/11615/14 dated 24th March, 2024.

3. The petitioner has been an examination center from 2012 and has had learners sit for national examinations continuously from 2012. The Schools Kenya National Examination Kenya National; Examination Council (KNEC) code is 09224237 and its NEMIS code is PF6H. The latest KPSEA nominal roll for 2024 had 22 candidates. The current pupils' enrolment as of 2024, 3rd term is 246 pupils and some pupils had paid fees for upto term in 2025. The school closed on 23rd October, 2024.
4. On 23rd October, 2024, the petitioner's head teacher went to the sub-county director of Education's Office, Mwea East, for KIPSEA materials She was shocked to be furnished with a letter dated 12th September, 2024 and referenced NO.MOE/CDE/KRG/GEN/09/87/41 which purported to close the school immediately yet the letter was served more than 1 month, later when the school continued normally and learners sat for national examination. The letter indicated: The classes were congested; the school was not validly registered; the school did not comply with MOE safety and health standard on doors and window grills; the school lacked adequate trained and TSC registered teachers; the school did not have adequate land to offer CBC Curriculum; boarding facilities did not meet the minimum requirement to operate a boarding school; the school did not have an adequate playground to adequately implement CBC Curriculum and sanitation facilities were not adequate and were poorly maintained.
5. The petitioner wrote to the respondent a letter dated 28th October, 2024 in which it highlighted that the allegations in the letter dated 12th September, 2024 which was served belatedly were incorrect. The letter, however, was not responded to.
6. The petitioners aver that there are numerous pupils who have shown interest in joining the school but the applicant/petitioner is unable to attend to them and conduct interviews due to the impugned letter. The petitioner is not able to prepare well for operations for the first term of 2025 due to the resolution of closure of school as contained in the impugned letter. Unless the application herein is allowed the Constitutional rights of the petitioner, its 246 pupils and its 11 employees will continue being violated. That there is enough documentation from the 1st respondent and its officers showing that the petitioner is well operated in accordance with the Law. There is evidence of numerous visits by government officers to the school which demonstrates that there have been adequate and regular monitoring of the petitioner.
7. Further, education officers and other stake holders have visited the Petitioner on numerous occasions for inspection and guidance and have always commended the exemplary work and management of the Petitioner.
8. Officers from the Directorate of Quality Assurance and standards namely Mr. Gikonyo Danson P.F. No. 90170366 and Madam Dorothy Muchemi TSC NO. 283573 inspected the petitioner and gave it a score of 85.7% in the assessment of the checklist for registration of private Junior Secondary Schools 2023 on 11th January, 2023.
9. Moreover, the petitioner was thereby allowed to admit JSS Learners and did so in 2023. The grade 6 learners sat National Examinations in 2023 and 2024 in examinations supervised and marked by government officers. The Learners admitted in grade 6 in 2023 have progressed to grade 7 and are all registered in NEMIS. The current pupils' enrolment as of 2024, 3rd term is 246 pupils and same pupils had paid fees for upto term I in 2025. On 27th November, 2024 the principal Secretary wrote a circular dated 27th November, 2024 and referenced MOE.HQS/3/13/3(117) in which he attached a list of



the 348 schools in the Republic of Kenya that were not compliant with safety standards for boarding schools. The petitioner was not amongst the said schools.

10. The respondent on 6th January 2024 field a Replying Affidavit in which it is averred that on 11th September 2024, Kirinyaga County Education Officers visited the institution in line with their mandate of assessing compliance of school facilities in line with Safety Standards Manual for Schools in Kenya 2008. The inspection by the Education Officers was in response to the Principal Secretary, Ministry of Education circular reference number MOE/HQS/Gen/1 dated 10th September, 2024 directing all education officials to inspect and assess all public and private boarding schools within their jurisdiction after the Hillside Endarasha Academy fire disaster that killed over 20 learners in the year 2024.
11. Thus, a subsequent circular by the Head of Directorate. Quality Assurance Reference number: MOE/HQS/Gen/2 dated 18th September, 2024 was issued authorizing three Ministry of Education headquarter Quality Assurance and Standards Officers to team up with the Kirinyaga County Quality Assurance and Standards Officers for further boarding schools' assessment. That the County Education Officers and Quality Assurance and Standards Officers visited all the 46 public and private primary school boarding schools within the county. That among the 12 flagged schools was Prime Start Academy.
12. Further, the County Education Board Kirinyaga County did recommend the compliance by all affected schools and has information that they are working to ensure compliance save for Prime Star Academy which has taken us to court. They discovered that the Director/ Manager of the school Prime Star Academy was operating the boarding section of the said institution without the requisite approval of the County Education Board.
13. That in addition, the said institution was implementing CBC Curriculum whereas the registration certificate licensed the school to offer 8-4-4 curriculum. That the school was operated on a 0.25 acre of land to accommodate pre-primary up to junior school which is/was inadequate as the minimum land requirement is 4.0 acres as per the Registration Guidelines for Basic Institutions. 2021. That the extract of the minutes of Kerugoya/Kutus Town council as annexed by the Petitioner indicates that it was resolved that a lease of 99 years be issued. the petitioner has not brought a lease certificate to confirm the size of the land the school is situated which we deny that it is 1 acre as required by the Registration Guidelines for Basic Education Institutions 2021.
14. Moreover, they aver that there no approvals for infrastructure from relevant regulatory bodies that is: Architectural Plan Approval, Structural plan, Environmental Impact Assessment license/ National Environment Management Authority (NEMA) Approval and National Construction Authority (NCA) Project Registration.
15. Thus, the safety of the existing physical facilities for use by the learners could therefore not be ascertained.
16. Lastly, the school management had engaged untrained, unqualified and non-Teacher Service Commission (TSC) registered teachers to serve as teachers in the school contrary to the provisions of the [Basic Education Act](#) and Section 50 of the [Teachers Service Commission Act](#).
17. The petitioner on 17th January 2025 field a supplementary Affidavit averring that the petitioner avers in response to paragraph 13 of the replying affidavit the petitioner had all requisite approvals of the Sub County Director of Education on behalf of County Education board to operate the boarding section.
18. Further, in response to paragraph 14 of the replying affidavit he wishes to state a follows:



- a. That there is no category of schools known as CBC institution under the registration guidelines for Basis Education institutions 2021.
 - b. That of curriculum from 8.4.4. to CBC curriculum was automatic and no school was expected to make application for the same.
 - c. That as evident in the petition and Notice of Motion the petitioner is duly registered as an examination center to administer CBC Curriculum based exams.
 - d. That the petitioner offers national assessment examination for the CBC curriculum. I refer the Court to page 108 of the petitioner whereby on 7th February, 2022 Rebeca Leseketi from KNEC visited the petitioner monitoring SBA in the County.
 - e. That the petitioner's teachers have been attending CBS retooling seminars organized by the respondents, the records of which are with the respondents.
19. The petitioner avers in response to paragraph 15 and 16 of the replying affidavit as follows:
- a. That he owns Plot number 437 and 366 Kutus Mjini which are adjacent to each other and measuring approximately .036 HA.
 - b. That he has leased Plots numbers 359, 302 and 3030 which are all adjacent to each other all measuring 0.12 HA.
 - c. That the total size of the parcels of land which are all adjacent to each other is 0.48 HA
 - d. That his school in a major urban area and under the registration guidelines for basic education, 2021 at page 28 the required size is 0.4 HA. That it is therefore clear that they have a bigger parcel of land than requires:
20. Moreover, the petitioner avers that the school has approval for infrastructures from relevant regulatory bodies. Lastly, the school has adequate and qualified teachers.

Petitioner/ applicant submissions.

21. The petitioner submits that she was not granted an opportunity to be heard contrary to the provisions of Article 47 of *the Constitution* of Kenya, Section 4 and 5 of the *Fair Administrative Action Act* and the Rules of natural Justice. That the prior conduct of the respondents giving a positive appraisal of school, allowing admission of pupils and establishing a national examinations centre gave the petitioner legitimate expectation that it would continue in operation.
22. The petitioner submits the unilateral closure of the school has effect of killing the business and right to property in an arbitrary manner contrary to the provisions of Article 40 of *the Constitution* of Kenya.
23. From the evidence availed evidence by the petitioner all existing structures have been inspected and approved; and all existing facilities have been inspected and approved as submitted.
24. The petitioner submits that the respondent has not offered any justification for the closure of the school. The respondent's submissions suggest that the County Education Board, Kirinyaga County decided to close the petitioners boarding section of the school until it meets the ministry guidelines.
25. On the size of the land the respondents suggest that the requirement for a school land is 4 acres. The ministry of education guidelines 2021 (annexure LWW6) in the respondents' replying affidavit sworn on 6th January 2025 clearly indicates that in urban areas the acreage needed for primary and junior secondary school is 1 acre.



26. On teachers lacking TSC numbers, the petitioner submits that the said suggestion is blatantly untrue. At paragraph 10 of the Supplementary Affidavit sworn by Stanley Muriithi Kariuki on 17th January, 2025, he clearly set out that the names and TSC numbers of the petitioners who were in employment at the time the 2nd respondent projected to close the school.
27. The 1st respondent has the obligation, under section 79(i) (b) of the [basic education act](#), to establish and maintain a data bank of all teachers in the county. The 1st respondent therefore has a record of all the teachers working with the petitioner. The burden of proof that they do not have TSC numbers is therefore squarely upon the respondents.

Respondent submissions

28. Whether the decision by the 2nd respondent to close the school was valid
29. The Minister in conducting his duties as provided under Section 3 of the [Basic Education Act](#) issued a circular reference number MOE/HQOS/Gen/1 DATED 10th September, 2024 directing all education officials to inspect and assess all public and private boarding schools within their jurisdiction after the Hillside Endarasha Academy fire disaster that killed over 20 learners in the year 2024.
30. They submit that it is from the foregoing that the County Education Board Kirinyaga County decided to close the Petitioners boarding section of the school until they meet the ministerial guidelines and later discovered that Director/Manger of the Petitioner's School was operating the boarding section without the requisite approval of the Board.
31. The County Board during the assessment noted that the school was operated on 0.25 acre of land to accommodate pre-primary up to junior school which is/was inadequate as the minimum land requirement is 4.0 acres as per the Registration Guidelines for Basic Institutions 2021.
32. The Registration Guidelines for Basic Institutions 2021 has been reviewed in line with [Basic Education Act](#) of 2013 and other existing legal and policy documents on education and the guidelines are in line with the transformation of education and training from the 8-4-4 to 2-6-6-3 system as such these guidelines are used in the registration of institutions. Further they provide for the requirements for registration, procedures for private and public education institutions, re-registration process, and closure and de-registration process.
33. They submit that the Registration guidelines for Basic Institutions 2021 Section 3 provides that the directorate in-charge of quality assurance and standards shall access applications for licensing of education institutions of basic education and shall among other requirements confirm the suitability of the site, confirm adequacy of size of land, confirm availability of a site plan approved by department of public works, confirm availability of a valid title deed/lease agreement and confirm availability of approvals for all infrastructure from all the relevant regulatory bodies.
34. They submit that as annexed in their replying affidavit annexure LWM-6 the extract of the minutes of Kerugoya/Kutus indicates that it was resolved that a lease of 99 years be issued and the petitioners have failed and/or refused to present the lease certificate to confirm the size of the land that the school is situated a such it cannot be confirmed the actual size and ownership of the land as required by the guidelines.
35. The respondent submit that as evidenced in the Petitioner's annexure marked "SMK-3" is a letter by the Petitioner to The County Director of Education the petitioner alleged that the school stands on a piece of land slightly above 1 acre approximately 1.25 acres but have not given any evidence and in



this case the lease certificate to prove ownership and/or the exact size of the land as such the burden of proving the same lies with the petitioner who have failed to do so.

36. Additionally, under annexures marked SMK-9 the report indicated that the school has one acreage which is way below the required acreage thus has no adequate play field area and that the school should separate the dormitory for junior secondary. They request that this Honourable court to examine these inconsistencies closely and to take appropriate action in determining the admissibility and validity of these documents.

Qualification of teachers

37. Section 50 (2) (b) [Basic Education Act](#) provides as follows;

50.(2) No private school shall be registered if

(b) a teacher employed in the school is not registered by the Teachers Service Commission:

38. Further, The Registration Guidelines for Basic Institutions 2021 under Section 7 states the circumstances where learning institutions can be de-registered to include employment of unregistered teachers.
39. During the school's assessment the school management had engaged untrained, unqualified and non-teacher service commission registered teachers to serve as teachers in the school contrary to the provisions of Section 50 of the [Basic Education Act](#). Further the school's management had not engaged adequate, trained, qualified and TSC registered teachers for teaching primary and junior school levels offered by the institution.
40. They submit that the Petitioners have failed to prove the status of the teachers employed by the school as annexed in their annexure marked SMK—3 under paragraph (d) the school's director failed to list the details of the teachers to Include their names. qualifications and TSC numbers thus could not prove the same, citing *Gatere v Teachers' Service Commission & another* The Employment and Labour Relations Court at Nairobi (12024] KEELRC 13432).

Issue

41. Whether there is prima facie case to warrant the grant of conservatory order based on the petition for a determination whether the decision by the 2nd respondent to close the school was valid.

Analysis

42. The Notice of Motion seeks for a conservatory order staying a resolution purporting to close the petitioner, a boarding and day pre-primary, primary and Junior Secondary school, issued by the 2nd respondent vide a letter dated 12th September, 2024 and referenced MOE/CDE/KRG/GEN/09/87/41 pending the hearing and determination of the petition. The Honourable Court issued an interim conservatory order on 18th December, 2024.
43. The impugned letter of closure dated 12th September, 2024 was served upon the petitioner's head teacher on 23rd October, 2024 as she went to the sub-county director of Education's office, Mwea East to collect KIPSEA materials. This was 41 days after the letter was written.
44. The Petitioner submits that the said alleged closure was and is unlawful for the following reasons:
1. The 2nd respondent lacks the mandate and /or authority to close the school under the provisions of Sections 18(1), 52(2), 77(1) and 79 of the [Basic Education Act](#).



2. She did not follow the procedure given under Paragraph 7 of the Ministry of Education Registration guidelines for Basic Education Institutions which provides as follows:
- 7.0 Dce-registration Of Basis Education Institutions
- Institution of learning can be de-registered under the following circumstances.
- b. Failure to maintain the required standards set by the Ministry of Education.
 - c. Fraudulent acquisition of registration status/certificate.
 - d. Involvement in examination irregularities.
 - e. Failure to offer the approved curriculum.
 - f. Reported and proved abuse of learners' rights.
 - g. Employment of unregistered teachers.
 - h. Noncompliance with *Basic Education Act*, 2013 and/or any other applicable existing legal provisions, regulation and guidelines by the Government.
45. The petitioner was not granted an opportunity to be heard contrary to the provisions of Article 47 of *the Constitution* of Kenya, Section 4 and 5 of the *Fair Administrative Action Act* and the Rules of natural Justice. That the prior conduct of the respondents giving a positive appraisal of school, allowing admission of pupils and establishing a national examinations center gave the petitioner legitimate expectation that it would continue in operation.
46. The petitioner submits the unilateral closure of the school has effect of killing the business and right to property in an arbitrary manner contrary to the provisions of Article 40 of *the Constitution* of Kenya.
47. Moreover, the arbitrary Acts of the 2nd respondent had the effect of unlawfully affecting the rights of the 246 pupils who had already enrolled in the school as at that time contrary to the provisions of Articles 43(1) (f), 53(1) (b) and 53(2) of *the Constitution* of Kenya.
48. The petitioner was registered by National Government on 24th March, 2014. The school has been a National Examination Centre duly registered by KNEC and has a NEMIS CODE. The KPSEA nominal roll of 2024 with 22 candidates for 2024 is at page 23. Education officers and other stakeholders have visited the petitioner on numerous occasions for inspection and guidance and have always commended the exemplary work management of the petitioner. From the evidence availed evidence by the petitioner all existing structures have been inspected and approved; and all existing facilities have been inspected and approved as submitted hereunder.

Reason for closure of the school.

49. On closure of the school, the respondents submit that the County Education Board Kirinyaga County decided to close the Petitioners boarding section of the school until they meet the ministerial guidelines and later discovered that Director/Manger of the Petitioner's School was operating the boarding section without the requisite approval of the Board.
50. Nevertheless, the petitioner submits that there is no letter written to the petitioner indicating that the boarding section has been closed that was filed by the respondents or a letter setting out recommendations to be met.
51. Moreover, the ministry's schedule of schools whose boarding sections were closed did not include the petitioner as one of the schools in Kirinyaga county whose boarding section was closed.



52. The petitioner avers that Officers from the Directorate of Quality Assurance and standards namely Mr. Gikonyo Danson P.F. No. 90170366 and Madam Dorothy Muchemi TSC NO. 283573 inspected the petitioner and gave it a score of 85.7% in the assessment of the checklist for registration of private Junior Secondary Schools 2023 on 11th January, 2023 (annexture SMK 10).

What size does a school require?

53. The respondent submit that as evidenced in the Petitioner's annexure marked "SMK-3" is a letter by the Petitioner to The County Director of Education the petitioner alleged that the school stands on a piece of land slightly above 1 acre approximately 1.25 acres but have not given any evidence and in this case the lease certificate to prove ownership and/or the exact size of the land as such the burden of proving the same lies with the petitioner who have failed to do so.
54. The petitioner avers that his school in a major urban area and under the registration guidelines for basic education, 2021 at page 28 the required size is 0.4 HA. That he owns Plot number 437 and 366 Kutus Mjini which are adjacent to each other and measuring approximately .0.36 HA. Further, he has leased Plots numbers 359, 302 and 3030 which are all adjacent to each other all measuring 0.12 HA. Thus, the total size of the parcels of land which are all adjacent to each other is 0.48 HA.

Qualification of teachers.

55. The respondents aver that the school management had engaged untrained, unqualified and non-Teacher Service Commission (TSC) registered teachers to serve as teachers in the school contrary to the provisions of the [Basic Education Act](#) and Section 50 of the [Teachers Service Commission Act](#).

56. Section 50 (2) (b) [Basic Education Act](#) provides as follows:

50.

(2) No private school shall be registered if

(b) a teacher employed in the school is not registered by the Teachers Service Commission

57. They submit that the Petitioners have failed to prove the status of the teachers employed by the school as annexed in their annexure marked SMK—3 under paragraph (d) the school's director failed to list the details of the teachers to Include their names. qualifications and TSC numbers thus could not prove the same. In the case of *Gatere v Teachers' Service Commission & another* it was that:

“The Employment and Labour Relations Court at Nairobi [12024] KEELRC 13432) also addressed Issues related to unregistered teachers, reinforcing the position that the employment of unregistered teachers was against the law.”

The 1st respondent has the obligation, under section 79(i) (b) of the [basic education act](#), to establish and maintain a data bank of all teachers in the county.

58. However, the petitioner in his supplementary affidavit has supplied a list of all the teachers employed and their TSC numbers.

Conclusion.

59. The Court is well aware of the test for grant of conservatory orders as settled by the Supreme Court in *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others* [2014] eKLR. reiterated in *Dock*



Workers Union & another v Portside Freight Terminals Limited & 10 others [2024] KESC 35 (KLR) as follows:

“vii. The nature and principles to be considered before this court can grant a conservatory order or a temporary injunction have been crystallized through a long line of this court’s judicial pronouncements, the leading authority being, *Gatirau Peter Munya v Dickson Mwenda Kithinji* (supra). Those principles are:

- a. The Appeal is arguable and not frivolous:
- b. Unless the orders sought are granted, the appeal were it to eventually succeed, would be rendered nugatory:
- c. That it is in public interest that the conservatory orders be granted.viii. The question of whether an appeal is arguable, does not call for the interrogation of the merit of the appeal, and the court, at this stage must not make any definitive conclusions of either fact or law. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully at the hearing before the court. Even one arguable point is sufficient to meet this test.
- ix. On the nugatory aspect, the concern is whether what is sought to be preserved if allowed to happen is reversible; or if it is not reversible, whether damages will reasonably compensate the party aggrieved. See the decision of the Court of Appeal in *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others*, Civil Application No 31 of 2012; [2013] eKLR.
- x. As a third ground, this court in considering an application for conservatory orders cannot ignore the impact of such orders beyond the parties to the case should the order be granted or denied. Consequently, the court will make a general inquiry as to where the public interest lies, considering the parties’ respective rights. All the three conditions, including the third principle, we stress, must be met for an application for conservatory orders to succeed for the reason that conservatory orders have a public law connotation as earlier noted.”

60. At this stage of the proceedings, the Court need be satisfied that there is an arguable case for investigation at the hearing of the petition and that public interest which is the touchstone for the jurisdiction to grant conservatory orders in public litigation supports the holding of the status quo pending the hearing of the petition.
61. There is clear arguable and prima facie case in all the points of consideration in terms of applicable statutory and constitutional requirements for the school operation in this matter as to justify the hearing of the petition on its merit.
62. The Petition would be rendered nugatory if the conservatory is not granted as the school would be closed without consideration of its complaint of want of consideration of the rights of the many learners enrolled in the school, the fair administrative action and right to protection of property for the owner of the school and its teachers, and re-opening it thereafter would cause greater hardship.
63. There are considerations of the public interest for the protection of children’s right of education converging with the constitutional right to fair hearing and right to property for the school owner/ administrators and teachers, the Court finds merit in the application for conservatory order especially when the issue of closure of the school mid-stream the school academic calendar has the real prospect of



affecting multiple learners and their parents who have chosen the Petitioner/applicant as their preferred institution of learning.

Orders

64. The Court grants a conservatory order in terms of prayer NO. 3 of the Notice of Motion dated 9th December 2024 pending the hearing and determination of the Petition.
65. In the interests of early determination of the matter which affects the rights of children to an education, the Court shall give priority hearing to the petition.
66. Accordingly, the petition shall be mention on 12/6/2025 for purposes of taking directions as to hearing of the Petition.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Magee for the Applicant.

Ms. Muchiri for Mr. Kiongo for the respondents.

