



Buckner Kenya v Principal Secretary, Ministry of Education & 2 others (Constitutional Petition E003 of 2021) [2023] KEHC 23757 (KLR) (19 October 2023) (Judgment)

Neutral citation: [2023] KEHC 23757 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CONSTITUTIONAL PETITION E003 OF 2021**

AC MRIMA, J

OCTOBER 19, 2023

BETWEEN

BUCKNER KENYA PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF EDUCATION 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

**COUNTY DIRECTOR OF EDUCATION TRANS-NZOIA COUNTY 3RD
RESPONDENT**

JUDGMENT

Background:

1. The dispute subject of this judgment relates to the status of a Primary School known as Reynold Community Primary School (hereinafter referred to as ‘the primary school’) which was registered as a public school instead of a private school.
2. The Petitioner, Buckner Kenya, is a duly registered charitable non-profit organization in Kenya. It undertook various projects within the country towards attaining its mandate. One of such was the establishment of the primary school within Hututu village in Cherangany Sub-County of the Trans-Nzoia County.
3. It was the intention of the Petitioner to come up with a Private-Public arrangement with the Respondents herein towards furthering the objects of the primary school. To that end, the Petitioner commenced negotiations with the Respondents and eventually prepared a Memorandum of Understanding for execution and further dealing.



4. It was alleged that when the Memorandum of Understanding was sent to the Respondents for execution, the Respondents did not act on it and instead, and unilaterally, registered the primary school as a public school and in total disregard to the Petitioner.
5. It was contended that the Respondents further sent teachers from the Teachers Service Commission to the primary school in furtherance of their unilaterally actions.
6. Aggrieved by the decision to register the primary school as a public school and the subsequent actions, the Petitioner instituted the instant Petition.
7. The Petition was vehemently opposed by the Respondents on several fronts including that the dispute is unjusticiable on account of the doctrine of exhaustion.

The Petition:

8. Through the Petition dated 22nd March, 2021, supported by the Affidavit of one Dickson Masindano deposed to on the even date, the Petitioner sought to assert and defend its constitutional entitlements.
9. Upon reiterating the facts captured in the background of this judgement in detail, the Petitioner prayed for the following reliefs:
 - a. A declaration that the petitioner’s Reynold Community Primary School is the petitioner’s private property, and that its take-over by the Kenya Government and subsequent designation as a public/government school was arbitrary, wrongful, and violated the petitioner’s constitutional rights guaranteed in Articles 35(2), 40 and 47 of the *Constitution*, as well as Article 10 as to the requirement of public consultation, participation and stake-holder participation.
 - b. An order quashing the Kenya Government’s take-over of Reynold Community Primary School as well as its subsequent designation of the school as a public/government school
 - c. A mandatory order directing the respondents, the Ministry of Education and all the relevant Kenya Government agencies to through a Legal Notice in the Kenya Gazette re-designate and revert the Public School status of Reynold Community Primary School to its original Private School status.
 - d. Costs of this petition.
 - e. Any other(s) or further orders as this honourable court shall deem fit to meet the ends of justice in this petition.

The Submissions:

10. In its written submissions dated 25th January 2023, the Petitioner expounded on the issues raised in the Petition and made a case that the Petition be allowed.
11. The Petitioner also referred to several decisions in urging for the success of the Petition.

The Respondents’ Case:

12. The Respondents opposed the Petition through a Response to Petition dated 24th October, 2022 and a Replying Affidavit sworn by one Stephen Wanyama Mathayo, the Head-Teacher of Cherangany Primary School within Trans-Nzoia County. The deponent was the first Head Teacher to be posted by the Teachers Service Commission to the primary school sometimes in 2015.



13. He deposed that when he reported to the primary school, he learnt that the school's first registration was a public primary school and that he witnessed several teachers posted thereto by the Teachers Service Commission.
14. The aspect of the Memorandum of Understanding, as alleged by the Petitioner, was flatly denied by the Respondents. They contended that such a document was never forwarded to any of the Respondents as there was no basis for such.
15. The Respondents defended the decision to register the primary school as a public school. Responding to the allegation of the take-over, the Respondents posited that the primary school had never been registered as a private school before.
16. It was contended that the Petition was a non-starter as it was before a wrong forum and that it ought to be dismissed.

The Submissions:

17. In their written submissions dated 26th January, 2023, the Respondents submitted heavily on the doctrine of exhaustion and argued that this Court lacks the jurisdiction to deal with the matter. Several decisions were referred to that end.
18. The Respondents further argued that there was no violation of any of the Articles 10, 35, 40 and 47 of the Constitution either as alleged or at all.
19. They ultimately reiterated their calling that the Petition be dismissed with costs.

Analysis:

20. This Court has carefully considered the pleadings, the responses, the written submissions and the various decisions referred to by the parties. One of the preliminary issues raised by the Respondents has a jurisdictional inclination. It is contended that the Petition fails the test of justiciability on account of the doctrine of exhaustion.
21. This Court will, therefore, briefly look at the doctrine and then juxtapose it with the Petition herein.
22. The doctrine in doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR. The Court stated as follows:
 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the *Constitution* and was aptly elucidated by the High Court in *R v Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:
 42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words:



Where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

43. While this case was decided before the *Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 *Constitution*. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.

This is *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that:

It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution.

23. The Court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows: -

59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the *Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. (See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)

60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the *Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.



61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court’s jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.
62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.
24. The above decision was appealed against by the Respondents. The Court of Appeal in upholding the decision and in dismissing the appeal in Mombasa Civil Appeal No 166 of 2018 *Kenya Ports Authority v William Odhiambo Ramogi & 8 others* [2019] eKLR held as follows: -
- The jurisdiction of the High Court is derived from Article 165 (3) and (6) of the *Constitution*. Accordingly, the High Court has unlimited original jurisdiction in criminal and civil matters, including determination of a question of enforcement of the bill of rights and interpretation of the *Constitution* encompassing determination of any matter relating to the Constitutional relationship between the different levels of government.
- At the High Court, we note that the learned Judges dealt with this matter under the question framed as follows: Is the court barred from considering the suit at present by virtue of Article 189 of the *Constitution* and sections 33 and 34 of *Inter-Governmental Relations Act* of 2012 (IGRA)? The parties have advanced similar arguments as before the learned Judges of the High Court. The High Court went further than just looking at the ruling by Ogola J They also took into account the doctrine of exhaustion as enunciated in *Republic v Independent Election and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya & 6 Others* [2017] eKLR. They applied a dual pronged approach before concluding that the dispute was not an inter-governmental dispute under IGRA. First, they considered that the test for determining the matter as an inter-governmental dispute for purposes of application of IGRA was not simply to look at who the parties to the dispute were, but the nature of the claim in question and; secondly, they considered that the claimed Constitutional violations seeking to be enforced are not mere “bootstraps.” We have keenly addressed our minds to the learned Judges’ decision and are satisfied that they stayed within the expected contours and properly directed themselves. Once they determined that the dispute was not inter-governmental in nature, we do not think it is necessary to consider whether the petitioners had exhausted their legal avenue. Jurisdiction by the High Court under Article 165 (5) of the *Constitution* became automatic. And in our view, it could not be ousted or substituted.
25. Further, in Civil Appeal 158 of 2017, *Fleur Investments Limited -vs- Commissioner of Domestic Taxes & another* [2018] eKLR, the Learned Judges of the Court of Appeal relied on an earlier decision in *Speaker of National Assembly vs Njenga Karume* (1990-1994) EA 546 to assume jurisdiction by bypassing the mechanism under Income Tax Tribunal. They observed as follows: -



23. For the reasons we have given earlier and others that will become apparent, there were definitely exceptional circumstances that existed in this case that were outside the ambit of the Income Tax Tribunal which called for intervention by way of judicial review. Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the *Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.
26. Courts have in many occasions reiterated the position that where there are alternative avenues legally provided for in dispute resolutions, there should be postponement of judicial consideration of such disputes until after the available avenues are fully adhered to or unless it is adequately demonstrated that the matter under consideration falls within the exception to the doctrine of exhaustion.
27. In ascertaining whether the doctrine of exhaustion applies in this matter, the provisions of the [Basic Education Act](#), No. 14 of 2013 (hereinafter referred to as ‘the Education Act’) come to play.
28. The Preamble of the [Education Act](#) states that it is an Act of Parliament to give effect to Article 53 of the [Constitution](#) and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes.
29. Section 4 of the [Education Act](#) provide for the lucrative guiding principles to the statute.
30. The Education Act variously provides for entities that are critical in attaining the objectives of the Act. One of such entities is established in Section 5. It is the National Education Board whose functions are also richly provided for.
31. There is also the County Education Board established under Section 17 of the [Education Act](#) and whose functions are provided for in Section 18.
32. Given the central role played by the County Education Board, and especially in this matter, this Court will reproduce its functions in verbatim, and as under: -
18. Functions of the County Education Boards
- (1) The functions of the County Education Board shall be to-
- (a) oversee in consultation with the county government, the operation and management of youth polytechnics, early childhood education including early childhood care and education programmes in the county;
 - (b) coordinate and monitor education and training in the County on behalf of the national government and the county government;
 - (c) interpret national policies in education based on the county's needs;
 - (d) initiate proposals for policy reforms;



- (e) plan, promote, develop, and coordinate education, training and research in the county in accordance with the provisions of this Act, the national education policy and the laws and policies of the county government;
- (f) collaborate with the Board of Management, the Principal, the Head Teacher, and other appropriate authorities in the management of basic schools;
- (g) register and maintain a data bank of all education and training institutions within the county;
- (h) monitor curriculum implementation in basic education in the county;
- (i) monitor the conduct of examinations and assessments at the basic education and training levels in the county in collaboration with all the relevant national bodies;
- (j) collaborate with the Teachers Service Commission on teacher management within the county;
- (k) prepare and submit a comprehensive school termly annual report including Educational Management Information System data to the Cabinet Secretary on all areas of its mandate including education and training services, curriculum, policy implementation and school-based audit report within the County;
- (l) coordinate with all relevant agencies to ensure that all the barriers to the right to quality education are removed and with National Government to facilitate realization of the right to education within the county;
- (m) put measures in place to ensure all children and youth of school going age within the county attend and stay in to complete basic education.
- (n) perform such other functions as may be necessary for the better carrying out of the functions of the county education board under this Act or any other written law.

(2) The County Education Board may in consultation with the National Education Board and relevant stakeholders appoint a sub county education office with clear functions and powers.

33. Part X of the [Education Act](#) provides for Licensing, Registration and Accreditation Procedures in Basic Education.
34. Section 76 of the [Education Act](#) makes it mandatory that any person who intends to offer basic education in Kenya must be accredited and registered as such under the Education Act. The application is made to the relevant County Education Board.
35. The County Education Board on receipt of any such application considers it within prescribed parameters and decides to either approve or reject the application.
36. A party aggrieved by the decision of the County Education Board has a recourse under Section 85 of the [Education Act](#). The provision states as follows: -



85. Appeal against decision of County Education Board
- Any person aggrieved by the decision of County Education Board under this Part may, within thirty days of being notified of the decision, appeal against such a decision to the Education Appeals Tribunal established under section 93.
37. It is this provision that formed the gist of the jurisdictional objection by the Respondents.
38. Section 93(1), (2) and (3) of the [Education Act](#) states as follows: -
93. The Education Appeals Tribunal.
- (1) There is established an Education Appeal Tribunal.
 - (2) Any person aggrieved by the decisions of the County Education Board may appeal to the Education Appeals Tribunal.
 - (3) The Cabinet Secretary in consultation with the National Education Board and relevant stakeholders shall prescribe regulations on the operation and structure of the Education Appeals Tribunal.
39. The composition of the Education Appeals Tribunal is provided for in Section 93(4) of the Education Act as follows: -
- (4) The Education Appeals Tribunal shall comprise of—
- (a) the Chairperson of the National Education Board;
 - (b) the Director-General;
 - (c) the Secretary to the Teachers Service Commission;
 - (d) a representative of the Education Standards and Quality assurance Council;
 - (e) a representative of the Kenya Private Sector Alliance;
 - (f) a representative of the Attorney-General; and
 - (g) the Chief Executive Officer of the National Council for Nomadic Education in Kenya.
40. Having laid bare, the above relevant statutory provisions, the Court will now consider the objection.
41. There is no doubt that the primary school was never registered as a private school. There is only one registration and that is that the primary school was registered as a public primary school. The Petitioner, however, decried foul-play and contended that it was short-changed and ended up, irregularly and unfairly, losing its property and investment as well as the control of the primary school.
42. That being the case, this Court must ascertain two principal issues. The first issue is whether the dispute wholly falls within the jurisdiction of the Education Appeals Tribunal. The second issue is, even if the first issue is answered in the affirmative, whether there are any exceptions as discussed under the doctrine of exhaustion.
43. On the first issue, the Petitioner's main concern relates to the registration of the primary school. It is evident from the correspondences exchanged between the Petitioner and the Respondents that once the ownership of the school reverts to the Petitioner and the registration changes to a private school wholly owned by the Petitioner, then the dispute will stand resolved.



44. The Petition prayed for three main reliefs. They are a declaration that the Petitioner's rights were violated by the joint actions of the Respondents, an order in the nature of a Certiorari whose effect is to quash the alleged take-over and an Order in the nature of Mandamus to re-designate the registration of the primary school to a private school.
45. Are the prayers sought available before the Education Appeals Tribunal (hereinafter referred to as 'the Tribunal')?
46. The duty to register any school is vested in the County Education Boards. Sections 82 and 83 of the [Education Act](#) provides for the various parameters to be considered by the County Education Boards in coming up with the decisions to approve or reject applications for registration.
47. The Tribunal's main mandate is to hear and determine appeals from the County Education Boards. The Chairperson of the National Education Board is one of the members of the Tribunal. The qualifications of the Chairperson of the National Education Board are provided for in Section 8(1) of the [Education Act](#) to include that such must hold a degree in education from a university recognized in Kenya, must have knowledge and at least fifteen years' experience in matters relating to education, must have had a distinguished career in their respective fields and meets the requirements of Chapter Six of the [Constitution](#).
48. A representative of the Attorney General is also a member of the Tribunal. There are other five more members representing various sectors in the Tribunal.
49. The Tribunal, which comprises of a representative of the Attorney General is, therefore, in a position to decide if, in a given set of facts, the [Constitution](#) is infringed in any manner.
50. This Court ascribes to the position that in a case where Parliament donates powers to an entity like the Tribunal, then such a Tribunal has the mandate to determine if one's rights are infringed in discharging its duties. In this case, the Tribunal is in a position to consider the appeal on the registration of the primary school in light of the averments of infringement of the Bill of Rights and is in a position to find whether there was any denial, violation, infringement or threats. However, the Tribunal lacks the jurisdiction to interpret the [Constitution](#).
51. The reason for the foregoing holding is simple. The members of the Tribunal, as an entity and individually so, are public officers and Article 10 calls upon them to infuse the national values and principles of governance while undertaking their duties. Article 3 obligates every person to respect, uphold and defend the [Constitution](#). Therefore, the Tribunal must be in a position to uphold the [Constitution](#), and in doing so, to be able to determine whether a given set of circumstances reveal denial, violation, infringement or threat to the rights in the Bill of Rights.
52. The above duty is to be distinguished from the duty to interpret the [Constitution](#). Determining whether a given set of circumstances reveal denial, violation, infringement or threat to a right or fundamental freedom in the Bill of Rights is just that simple. Conversely, interpretation of the [Constitution](#) is a serious judicial function. While interpreting the [Constitution](#), the High Court is called upon to apply its legal mind to determine the applicability and extent thereof of a constitutional provision to a set of facts. In arriving at such an interpretation, the High Court is supposed to consider all the applicable principles in constitutional interpretation. (See the Supreme Court in [In the Matter of Interim Independent Electoral Commission](#) [2011] eKLR). The High Court may also look at comparative jurisprudence from other jurisdictions on the subject. Such a determination yields to a binding legal principle unless overturned by a Court with superior jurisdiction.



53. Unlike the High Court, Tribunals and other quasi-judicial bodies do not make the law. They can, however, apply themselves to a given set of facts and determine denial, violation, infringement or threat to a right or fundamental freedom in the Bill of Rights.
54. There is, therefore, a defined distinction between determining the denial, violation, infringement or threat to rights in the Bill of Rights and interpreting the Constitution. Whereas the former is not exclusively a judicial function, the latter is. The jurisdiction, therefore, to interpret the Constitution is the exclusive duty reserved to the High Court vide Article 165(3)(d) of the Constitution.
55. In the instant matter, the Tribunal has the jurisdiction to determine whether the Petitioner's rights in the Bill of Rights were denied, violated, infringed or threatened. The Tribunal has further powers to remedy the dispute in a manner that it wholly satisfies the prayers in the Petition. In other words, the Tribunal has powers to find that the primary school ought to be registered as a private school, in the event an appeal against the finding of the County Education Board is successful. That, hence settles the first issue.
56. The Court will now consider the second issue. It is whether any of the exceptions to the doctrine of exhaustion are applicable in this matter. One of the exceptions is if the Tribunal would not serve the values enshrined in the Constitution or law.
57. As stated, the members of the Tribunal are public officers and are bound by the Constitution and have a duty to respect, uphold and defend the Constitution. There is no demonstration in this case that the Tribunal would not uphold the values in the Constitution.
58. The other exception is if the Tribunal is not suitable to determine all the issues raised. In other words, if the Petitioner will not be accorded adequate audience before the Tribunal, or the Petitioner may not have the quality of audience before the Tribunal which is proportionate to the interests the Petitioner wishes to advance in this Petition, then the jurisdiction of the Tribunal will be ousted.
59. As pointed out earlier, the prayers sought in the Petition can, in one way or the other, be wholly provided for by the Tribunal. The Tribunal can reverse the impugned decision if the appeal succeeds. It is of importance to note that the Petitioner did not seek the interpretation of the Constitution in any of its prayers neither did it challenge the constitutionality of any provision of the Education Act. There is also no prayer for damages or compensation. By and large, the Petitioner just wants the decision to register the primary school as a public school be reversed. That is a prayer which the Tribunal can, without any shred of doubt, grant, in the event the appeal succeeds.
60. Therefore, the manner in which the dispute was presented before this Court presents a scenario where none of the exceptions to the doctrine of exhaustion apply in favour of the Petitioner.
61. The upshot is, hence, that this Court's jurisdiction was not properly invoked.
62. The Petitioner was legally supposed to lodge an appeal before the Tribunal since it was dissatisfied with the decision of the County Education Board to register the primary school as a public school. Conversely, the Petition ought to have been tailored in a manner, or a demonstration made, that ousted the jurisdiction of the Tribunal.
63. Since none of the options were taken up by the Petitioner, the route taken by the Petitioner must come to an end.
64. Having said as much, this Court is alive to the provisions of Article 159(2)(d) of the Constitution which roots for substantive resolution of disputes. Likewise, Article 48 of the Constitution urges Courts to ensure access to justice is not hindered.



65. This Court, therefore, finds that this is a case where the real issues in dispute ought to be determined given the input allegedly made by the Petitioner into the project and the overall role of the Respondents in the education sector. To that end, this Court will extend the time within which the Petitioner may lodge an appeal before the Tribunal and in the spirit of opening the doors of justice wider.

Disposition:

66. Deriving from the foregoing discussion, this Court finds that the Petition suffers a false start.

67. Consequently, the following final orders do hereby issue: -

- a. This Court declines jurisdiction to deal with the Petition on the basis of the doctrine of exhaustion. The Petition is, hence, struck out.
- b. The time for lodging an appeal under Section 85 of the *Basic Education Act* is hereby extended for 30 days from the delivery of this judgment.
- c. Since the dispute between the parties still subsists, each party shall bear its own costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 19TH DAY OF OCTOBER, 2023.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss Sifuna, for the Learned Counsel for the Petitioner.

Mr. Odongo, Learned Counsel instructed by the Office of the Attorney General for the Respondents.

