



JO (Suing Through His Father and Next Friend SWO) & another v Board of Management Pumwani Boys Secondary School; Nairobi County Education Board & another (Interested Parties) (Constitutional Petition E387 of 2023) [2025] KEHC 13378 (KLR) (Constitutional and Human Rights) (12 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E387 OF 2023**

**B MWAMUYE, J
SEPTEMBER 12, 2025**

BETWEEN

**JO (SUING THROUGH HIS FATHER AND NEXT FRIEND
SWO) 1ST PETITIONER
SWO 2ND PETITIONER**

AND

**BOARD OF MANAGEMENT PUMWANI BOYS SECONDARY
SCHOOL RESPONDENT**

AND

**NAIROBI COUNTY EDUCATION BOARD INTERESTED PARTY
NAIROBI COUNTY DIRECTOR OF EDUCATION INTERESTED PARTY**

JUDGMENT

Introduction

1. The Petitioners filed this petition dated 5th October, 2023 following suspension of 1st Petitioner, James Osongo from school by the Respondent. The 1st Petitioner filed this petition through his father, the 2nd Petitioner. The Petition is supported by the supporting affidavit of Stephen Wambanda Osongo, the 2nd Petitioner.
2. The Petitioners seek the following orders in the Petition: -



- i. A declaration that the 1st Petitioner's fundamental rights and freedoms as enshrined under Article 43 (1) (f) of the Constitution of Kenya have been contravened and infringed by the Respondent.
- ii. A declaration that the 1st Petitioner's fundamental rights and freedoms as enshrined under article 53 (1) (b) of the Constitution have been contravened and infringed upon by the Respondent.
- iii. An order for unconditional reinstatement/readmission of the 1st Petitioner to his school until completion of his studies and issuance of his Kenya Certificate of Secondary Education.
- iv. An award of general damages under Article 23 (3) of the Constitution of Kenya for the violation of the 1st Petitioner's rights by the Respondent.
- v. An award of special damages as pleaded under paragraph of the petition herein.
- vi. Any other relief that this Honorable Court considers appropriate and just in the circumstance.

Petitioners' Case

3. The Petitioners' case is premised on the Petition and the supporting affidavit of Stephen Wambanda Osongo sworn on 5th October, 2023. He averred that since the 1st Petitioner joined Pumwani Boys Secondary School in 2020, he has never been involved in any disciplinary issues nor has he been called to school for purposes of disciplinary issues until 20th July 2023 when the Respondent, through the School Principal issued the 1st Petitioner with a suspension letter dated 20th July 2023 for gross indiscipline and he was to return to school on 24th July 2023 accompanied by a parent or a guardian.
4. It is averred that on 24th July, 2023 when the 1st Petitioner returned to school being accompanied by a guardian, he was instructed to go for counselling vide a letter dated 24th July, 2023. In the said letter, the 1st Petitioner was supposed to be counselled for anger management, drug and substance abuse, sex education, handling other student property (stealing) and poor academic grades.
5. It is the Petitioners' contention that he underwent counselling and a report dated 28th July, 2023 was prepared. Further, a drug test was performed on the 1st Petitioner which tested negative.
6. The Petitioners aver that upon the 1st Petitioner's return to school on 31st July 2023, accompanied by a guardian, the Respondent, by way of a letter dated the same day, proceeded to suspend the 1st Petitioner on the grounds that his conduct allegedly warranted such disciplinary action.
7. According to the Petitioners, it was subsequent to the aforementioned incidents that the 1st Petitioner was subjected to multiple suspensions, including instances where he remained under suspension while additional suspensions were imposed, all without any lawful or justifiable cause. Notwithstanding his suspension, the school continued to demand payment of school fees from him.
8. It is deponed that on 28th September 2023, when the 1st Petitioner reported back to school accompanied by the appointed guardian for a disciplinary hearing, he was issued with a suspension letter dated the same day. It is further averred that the said letter directed both the 1st and 2nd Petitioners to appear before the Director of Children Services – Starehe Sub-County, Kariakor, without providing any justification or explanation for such directive.
9. It is further averred that, despite the Petitioners' compliance with the said directive and upon being informed by the office of the Director of Children Services that there was no necessity for their



attendance, the Respondent nonetheless refused to allow the 1st Petitioner to resume his studies at the school.

10. The Petitioners contend that the Respondent has failed or neglected to conduct any disciplinary hearing concerning the alleged and unfounded infractions attributed to the 1st Petitioner, notwithstanding having made certain recommendations to the interested parties herein. It is further asserted that such recommendations were never communicated to the Petitioners, thereby contravening the principles of natural justice and procedural fairness.
11. It is further argued that the 2nd Petitioner has been compelled to incur unnecessary expenses in engaging private tutors to prepare the 1st Petitioner for his Kenya Certificate of Secondary Education (KCSE) examinations, despite having already paid the requisite school fees. Moreover, it is deponed that the indefinite suspension of the 1st Petitioner, as communicated in the letter dated 2nd October 2023 constitutes an infringement of his right to compulsory and basic education as guaranteed under the [Constitution](#) and applicable law

Respondent's Case

12. The Respondent filed a replying affidavit sworn by Richard Mwangi Mugo, the Principal of Pumwani Boys Secondary School on 24th May 2024. He confirmed that the Petitioner was admitted to Pumwani Boys Secondary School on 13th January 2020 and issued with the school's rules, guidelines and regulations.
13. He averred that the 1st Petitioner has had disciplinary issues all through his stay in Pumwani High School, which escalated in 2023 when he was in form four (4). He further averred that the 1st Petitioner admitted to those disciplinary issues by writing apology letters.
14. He contends that on 21st November 2021, the 1st Petitioner sneaked out of school claiming he had forgotten his keys in a hotel near Ena Coach stage and came back to school at 5:20 pm which was past reporting time. On 13th September 2022, he was accused of bullying a form 1 student by twisting his arm after declining to buy him biscuits, an act that made the parents of the form 1 student to transfer their child to another school for fearing the safety of their child. On 20th June 2023, the 1st Petitioner allegedly sexually harassed a form 1 boy by touching his buttocks and asking for sexual favours from him. On 19th July 2023, he was found with stolen items in his two boxes as well as a drug substance (Ndovu).
15. He further averred that whenever the 1st Petitioner was sent home, the permission slip was always accompanied by a discipline dossier which the Petitioners have failed to disclose. Additionally, the parents to the 1st Petitioner are absentee parents and his father has never appeared for any disciplinary hearing whereas his mother only came once and she was late.
16. It is the Respondent's case that the 1st Petitioner exhibited recurrent behavioural issues, prompting the school to intervene by directing him to undergo counselling and further recommending that he be referred to a children's officer for additional support.
17. It is further averred that the conduct of the 1st Petitioner infringed upon the rights of other students, to the extent that one student was compelled to transfer to another school, while others remained in a state of fear and apprehension.
18. The Respondent deposed that the reliefs sought by the Petitioner ought to be denied on the grounds that the 1st Petitioner's fundamental rights were not violated. He was permitted to continue his studies as a day scholar even during suspension periods, in consideration of his status as a candidate. Moreover,



the school exercised due care in managing his difficult circumstances, striking a fair balance between addressing the Petitioner's conduct and safeguarding the rights of other students.

19. The Petition was canvassed by way of written submissions and in compliance, the both parties filed their respective submissions.

Petitioners' Submissions

20. In their written submissions dated 28th February 2025, it was submitted that the Preliminary objection raised by the Respondent fails to meet the test as articulated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* as it does not raise pure points of law but rather it invites this Honourable Court to interrogate facts. It was further argued that the Petitioner has invoked this Honorable's Court jurisdiction under articles 22, 23 and 165 (3) (b) of the Constitution which grant the court the power to hear and determine cases involving the violation of fundamental rights and freedoms.
21. On compliance with Article 47 of the Constitution and the Right to Fair Administrative Action, Counsel for the Petitioners submitted that while it is not in dispute that the 1st Petitioner was a student at Pumwani Boys Secondary School, the disciplinary actions taken against him by the Respondent, being the Board of Management of the said institution, failed to meet the threshold of fair administrative action as guaranteed under Article 47 of the Constitution.
22. It was argued that although schools have the prerogative to enforce discipline, such enforcement must be exercised in accordance with principles of natural justice and procedural fairness. Counsel contended that even the most indisciplined student is entitled to due process and cannot be subjected to arbitrary or unreasoned administrative decisions. The Petitioners relied on the decision of the South African Constitutional Court in *President of the Republic of South Africa and others v South African Rugby Football Union and others* (CCT16/98)2000 (1) SA 1 and the Court of Appeal decision in *Judicial Service Commission v Mbalu Mutava & Another* (2015) eKLR, to emphasize that Article 47 establishes a constitutional standard that all administrative bodies must adhere to when exercising disciplinary functions.
23. The Petitioners further contended that the disciplinary proceedings were flawed due to the absence of adequate and specific notice, as mandated by Regulation 38 of the Basic Education Regulations and Section 4(3) of the Fair Administrative Action Act. They argued that the suspension letters issued to the 1st Petitioner failed to articulate the precise nature of the alleged misconduct with the requisite particularity prescribed by law. Consequently, it was submitted that the 1st Petitioner was deprived of a fair opportunity to prepare and respond to the charges, thereby rendering the disciplinary process both procedurally unfair and unlawful.
24. Counsel for the Petitioners took issue with the Respondent's claim that a disciplinary hearing was held on 12th September 2023, arguing that the same could not have occurred as the 1st Petitioner was at the time, already under suspension pursuant to the letter dated 11th September 2023. It was submitted that there is no credible evidence to show that the 1st Petitioner was informed of or present at the alleged hearing, nor that a Sub-County Education Officer, whose attendance is mandatory under Regulation 39(4) of the Basic Education Regulations, was present. The Petitioners impugned the minutes produced by the Respondent terming them unsigned and therefore unreliable.
25. It was the Petitioners' submission that the Respondent failed to demonstrate that the Board of Management, as required under Section 59 of the Basic Education Act, properly adjudicated on the disciplinary matter, and that what transpired amounted to an irregular process conducted by persons lacking the legal mandate. It was further argued that even in the event the Board sat on 28th September



- 2023, neither the 1st Petitioner nor his parents were present, which vitiated the proceedings and offended the principles of fair hearing.
26. The Petitioners further submitted that the Respondent failed to adjudicate the disciplinary matter within a reasonable and expeditious timeframe, as mandated under Article 47 and Section 4(1) of the *Fair Administrative Action Act*. The 1st Petitioner, being a KCSE candidate, was initially suspended on 20th July 2023; however, the matter remained unresolved for an extended period. Instead, the Respondent issued successive suspension letters, resulting cumulatively in the 1st Petitioner missing the final portion of the second term and the entirety of the third term in 2023. It was contended that the Respondent's failure to act with the requisite urgency in respect of a student undergoing critical national examinations occasioned undue delay and caused significant disruption to the 1st Petitioner's education.
27. On whether the 1st Petitioner's right to education were infringed, it was submitted that the Respondent's actions and omissions culminated in an infringement of the 1st Petitioner's right to education, contrary to Article 43(1)(f) and Article 53(1)(b) of the *Constitution*. Counsel underscored that education is a constitutionally guaranteed right and cannot be arbitrarily denied or unprocedurally withheld. It was asserted that the Respondent failed to provide the 1st Petitioner with an opportunity to resume school despite being a KCSE candidate and the action of the Respondent not resolving the disciplinary cases expeditiously culminated on infringing his right to education.
28. Further it was argued that Regulations 39(2) and (3) clearly elaborates on cases where a parent failed to appear for a hearing and the Respondent failed to observe the said provisions thereby not resolving the issue expeditiously, which in turn made the 1st Petitioner miss out on school for the remainder of the year which constituted a direct violation of the 1st Petitioner's constitutional right to education.
29. On entitlement to reliefs sought, the Petitioners submitted that they are entitled to the reliefs sought in the Petition, including special damages amounting to KES 75,208/= and general damages for breach of constitutional rights. They relied on Article 23(3) of the *Constitution* which empowers this Court to grant appropriate relief, including compensation. Reference was made to the decisions *Gitobu Imanyara & 2 others v Attorney General* (2016) eKLR, *Onjira v University of Nairobi* (2019) eKLR, and *E.K. & 5 others v Registered Trustees of S.H.S* (2015) eKLR, to support the position that monetary awards may be issued not only to compensate the injured party, but also to vindicate constitutional rights and deter future violations. It was thus urged that the Court should find the disciplinary process flawed, the resultant exclusion from school unlawful, and grant compensation as a means of redress and vindication of the 1st Petitioner's rights.

Respondent's Submissions

30. The Respondent submitted that, notwithstanding the numerous constitutional provisions cited by the Petitioners, only Articles 43(1)(f) and 53(1)(b) are germane to the matter before the court, being the sole provisions upon which the Petitioners base their reliefs. The Respondent contended that at no time were the 1st Petitioner's rights and freedoms infringed. It was further argued that the Petition is riddled by material non-disclosure and deliberate misrepresentation of facts. The Respondent maintained that the 1st Petitioner is a habitual trouble maker with a well-documented record of indiscipline dating back to 2021. Further, pursuant to Rule 37 of the School Rules and Discipline Procedure for Students, the Respondent kept a register detailing the 1st Petitioner's multiple transgressions, which was duly admitted in evidence. The register details multiple serious offences including truancy, bullying, sexual misconduct, theft, assault, and drug possession, all of which were substantiated either by the 1st Petitioner's own admissions or corroborative witness statements.



31. The Respondent further argued that appropriate procedural steps were taken following each incident, culminating in the formation of a disciplinary sub-committee after the serious offences of July 2023. This sub-committee, acting within the framework of the school's disciplinary code, recommended counselling and medical intervention, which the 1st Petitioner consented to. The school, contrary to allegations by the Petitioners, had already issued a first warning as early as September 2022 and had documented an apology by the 1st Petitioner following the said warning. Thereafter, in September 2023, following further misconduct involving threats to another student, a disciplinary meeting was convened, which the 1st Petitioner's mother disrupted by her rowdy conduct and non-cooperation. This led to a postponement of the session, and further strained the already fragile disciplinary relationship between the school, the student, and his family.
32. The Respondent submitted that the difficulties in disciplining the 1st Petitioner were aggravated by an unstable home environment, including a dysfunctional family setup, absence of parental figures, and emotional trauma stemming from intra-family accusations and cult like religious activities. These factors, it is argued, significantly impeded the school's capacity to effectively rehabilitate the 1st Petitioner, despite its best efforts. The Respondent emphasized that the school continued to act within its statutory and constitutional obligations, ensuring that the 1st Petitioner's right to education and fair treatment was upheld at every juncture. The school also consistently attempted to involve the parents in the disciplinary process, but their non-cooperation and absenteeism rendered the process increasingly unmanageable. On multiple occasions, the 1st Petitioner reported to school unaccompanied, contravening the conditions set for his reintegration.
33. It is the Respondent's contention that every disciplinary decision made was accompanied by proper documentation and procedural fairness. When the 1st Petitioner was sent home on 20th July 2023, he was issued a permission slip accompanied by a disciplinary dossier detailing the basis of that decision. The Petitioners, however, selectively presented only the permission slip in their pleadings, thereby misrepresenting the nature and context of the suspension. Following subsequent incidents of misconduct, the 1st Petitioner was given opportunities to appear before various disciplinary forums, including a Board of Management sitting, which he attended without his parents. The Board, having taken note of the repeated absenteeism of the parents and the failure of familial support, escalated the matter to children's services. The 1st Petitioner and his guardian reacted with hostility to the Board's decision, further entrenching the breakdown in institutional cooperation.
34. The Respondent contends that due process was observed at all times, and that the matter was eventually referred to the County Education Board as per the applicable legal framework. The Petitioners, however, circumvented this process by prematurely approaching this Honourable Court before exhausting the statutory remedies available under the Education Act, including review by the Education Appeal Tribunal. The Respondent denied the Petitioners' assertion that no sub-county education officers were present during disciplinary sittings, affirming that officers were present on the key dates of 12th and 28th September 2023, as evidenced by the minutes annexed in their Replying Affidavit.
35. It was submitted that the 1st Petitioner was eventually permitted to complete his studies as a day scholar and successfully sat for his national examinations. As such, the Respondent prays for a dismissal of the Petition on the grounds of non-disclosure, procedural impropriety, and lack of constitutional or statutory breach.



Analysis And Determination

36. I have carefully considered the pleadings herein, parties' submissions, cited authorities and the law. I find the following to be the issues for determination:
- i. Whether the matter should be determined by Tribunal as raised in the Preliminary objection.
 - ii. Whether the petitioner has made out a case of violation of the various rights complained of.

Whether the matter should be determined by the Tribunal as raised in the Preliminary objection

37. The Court of Appeal in *Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd.* [1969] EA 696 held:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

38. The Respondent stated that this Court lacks jurisdiction because the matter falls under regulations 40 and 41 of the [Basic Education Regulations](#) and should have been filed in the Educations Appeals Tribunal.

39. Regulation 39 of the [Basic Education Regulations](#) provides; -

“39. Procedure for handling disciplinary cases: -

- (1) The particulars of the complaint preferred against the learner shall be read out to the parent or guardian and the learner at the meeting with the Board of Management under regulation 38, and the learner shall be asked to defend himself or herself.
- (2) Where the parent or guardian fails to appear, the business of the Board shall be adjourned, and the matter shall be deferred and a new date set and communicated for the parties to appear. (3) Where the parent or guardian fails to attend on the rescheduled date, the case shall be heard and determined such absence notwithstanding.
- (4) In all disciplinary proceedings affecting a learner the attendance of the Sub- County Education Officer shall be mandatory.
- (5) The recommendations of the Board of Management shall within two days be communicated to the County Director of Education.”

40. Further, Regulation 40 provides: -

“40. Exclusion of learner from the institution in case of indiscipline



Where the County Director of Education receives the recommendation of the Board of Management then he or she shall seek the advice of the County Education Board as to whether to—

- (a) order for conditional or unconditional re-admission of the learner;
- (b) transfer the learner to an alternative institution; or
- (c) transfer the learner to a corrective center in the context of education.”

41. Finally, Regulation 41 provides;

“ 41. Appeals to the Tribunal

Any Person aggrieved by a decision under regulation 40 may appeal to the Education Appeals Tribunal.”

42. The procedure for handling of disciplinary cases is set out in regulation 39 of the Basic Education Regulations. The school’s Board of Management is required to hear the complaint against a student and make recommendations to the County Director of Education. Under regulation 40, once the County Director of Education receives the recommendations, he seeks the advice of the County Education Board as to whether to order for conditional or unconditional re-admission of the learner, transfer of the learner to an alternative institution or transfer of the learner to a corrective centre in the context of education. Under regulation 41 any person aggrieved by a decision under regulation 40 may appeal to the Education Appeals Tribunal.

43. This Tribunal is established under the provisions of Section.93 of the *Basic Education Act* No.14 of 2013.

44. The *Basic Education Act* 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.”

45. Sec 93 of the Education Appeals Tribunal provides that:

- (1) There is established an Education Appeals 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.
- (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.

46. The *Basic Education Regulations*, 2015 at Part III provides for school rules, discipline procedures for students and exclusion as follows;

32. Individual liability for indiscipline

A learner shall be deemed to be individually disciplined if involved in-

- (a) physical fights;
- (b) bullying of other learners;
- (c) stealing;
- (d) playing truancy;
- (e) cheating in examinations;
- (f) abusing teachers or other persons in authority;
- (g) defiance of lawful instructions;
- (h) drug trafficking or substance abuse; or
- (i) any other conduct categorized as indiscipline by the Board of Management.

37. Register to be kept

Every institution shall establish and keep a register of disciplined learners indicating the name, class, category of indiscipline, date and warning or any other corrective measures taken by the institution.

47. The jurisdiction conferred on this tribunal is an appellate jurisdiction. That jurisdiction is strictly limited by section 93(2) of The *Basic Education Act* to matters arising from the decisions of The County Education Boards.

48. In the instant case there was no decision from the County Education Board. The Respondent forwarded the issue to the County Education Board vide a letter dated 2nd October 2023. The Petitioners neither appeared before the said board nor waited for its decision. They opted to file the instant Petition.

49. The Court observes that the Petitioners' case does not originate from a decision of the County Education Board. Consequently, there is no identifiable decision made either by the County Education Board or the County Director of Education that is subject to challenge in these proceedings. However, the Petitioners assert that the Petition is grounded not on an administrative appeal, but on alleged violations of constitutional rights. In that regard, they argue that the procedural requirement under Regulation 41 of the *Basic Education Regulations* ought not to preclude the Court's jurisdiction.



50. It is well established that, although procedural safeguards and statutory dispute resolution mechanisms should ordinarily be adhered to, courts retain the discretion to entertain matters where allegations of constitutional violations are raised particularly in instances where the alternative administrative processes may not provide adequate or effective relief.
51. In the present case, the Petition raises serious questions concerning potential infringements of the 1st Petitioner’s constitutional rights, including whether due process was observed during his suspension. These issues warrant judicial consideration, notwithstanding any procedural shortcomings. Accordingly, before delving into the substantive merits of the Petition, the Court must first make a preliminary determination on whether the 1st Petitioner’s constitutional rights were indeed violated and whether the disciplinary process adhered to the principles of fairness and legality.

Whether the petitioner has made out a case of violation of the various rights complained of.

52. There is no dispute that the 1st Petitioner at the time of filing this petition was a form four student at Pumwani Boys Secondary school. There is also no dispute that the 1st Petitioner was suspended and not expelled. He was attending the school as a day scholar because he was a candidate awaiting to do his KCSE exams. According to the 1st Petitioner this was never the case as he was forced to engage private tutors and never readmitted back to school.
53. The Ministry of Education has put in place Rules & Regulations to govern the conduct of pupils / students and teachers in the schools. The [Basic Education Act](#) Regulations speak to all this. Regulations 33 provides:

“ A learner shall be deemed to be individually indisciplined if involved in –

- (a) physical fights;
- (b) bullying of other learners;
- (c) stealing;
- (d) playing truancy;
- (e) cheating in examinations;
- (f) abusing teachers or other persons in authority;
- (g) defiance of lawful instructions;
- (h) drug trafficking or substance abuse; or
- (i) any other conduct categorized as indiscipline by the Board of Management.”

54. Further Regulation 38 provides:

“ If the head of institution is of the opinion that-

- (a) The acts of indiscipline have persisted in spite of the warnings or corrective measures taken under these regulations; and
- (b) If the act of indiscipline is likely to threaten the safety of the other learners in the institution, the head of the institution shall issue the learner, with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specifying the date the learner, accompanied by the



parent or guardian is required to appear before the Board of management of the Institution.”

55. The purpose of school rules and regulations is to promote discipline, good conduct, and moral behaviour among students, thereby fostering a conducive learning environment. These rules also serve to guide teachers in the management of student behaviour within the institution. In their replying affidavit, the Respondent enumerated the reasons underpinning the 1st Petitioner’s suspension, emphasizing that the said suspension was not indefinite.
56. On the other hand, the Petitioners contend that the Respondent violated the 1st Petitioner’s right to basic education by subjecting him to multiple suspensions allegedly without justifiable cause. This, they argue, amounted to an unlawful interference with his right to access education under Article 43(1) (f) of the *Constitution*.
57. The determination of this matter is guided by article 53(2) of the *Constitution* which provides that, “A child’s best interests are of paramount importance in every matter concerning the child.” This provision is also given effect by section 4(2) of the *Children’s Act* which provides that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.”
58. The Petitioner’s case concerns discipline in school. In *RWT (Suing through next friend and grandmother BGN) v SNS School* [2012] KEHC 5408 (KLR), the court observed follows: -
- “ [5] I am aware that discipline in school is a delicate and sensitive matter both for the parents and the school authority. Both institutions, the parents and school, bear special responsibility to nurture the child by providing an environment where his potential can be realized so that he becomes a responsible citizen.
- (6) Article 53 of our Constitution now recognizes the general principle that the best interests of the children is the paramount consideration in any matter concerning children. ... in a school environment, it is the welfare of all the children that must be taken into account rather than one deviant child who has a disciplinary problem. But there is also a responsibility to be borne in respect of that one child, one that flows from the human rights and fundamental freedoms of each individual. These cannot be subordinated to others merely because the interests of the other children are greater. There must be a good reason to do so consistent with the values and principles of the *Constitution*.
- (7) I am also alive to the fact that this court is not a disciplinary institution for children. The role of the court when moved under the provisions of article 22 is to enforce fundamental rights and freedoms provided in the Bill of Rights. In taking this responsibility, I must weigh all these facts and circumstances and consider what is in the best interest of the child.”
59. The issue raised by the Petitioners is one about due process and whether the 1st Petitioner’s rights were thereby violated. The ability of the school to take disciplinary action against delinquent students has not been impugned by the Petitioners. Indeed, the School has elaborate procedures contained in the Handbook which the 1st Petitioner and his parents agreed to be bound by when he was admitted to the school.



60. The question for consideration is whether the 1st Petitioner was subjected to due process. I must emphasise that such an inquiry does not involve the court substituting itself for the school but satisfying itself that the procedure adopted met the threshold of what constitutes a fair process. The applicable principle was laid down by Nyarangi JA, in *Nyongesa and others v Egerton University College* [1990] KLR 692 which were cited with approval by Musinga J in *Republic v Egerton University ex parte Robert Kipkemoi Koskey* Nakuru Misc Civil Application No 712 of 2005 where it was stated as follows: -

“Having thus stated, as I think to be desirable, the broad nature of the important issues and proposed procedure, I shall now state that courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run universities or indeed any other bodies. However, courts will interfere to quash decisions of any bodies when the courts are moved to do so where it is manifest that decisions have been made without fairly and justly hearing the person concerned or the other side.”

This state applies with equal force to a school environment.

61. What constitutes a fair process is dependent on the facts and circumstances of each case. Implicit in the concept of fairness is flexibility. A school disciplinary panel dealing with children’s matters must have the necessary flexibility, having regard to the school environment and the child’s rights, to deal with student discipline provided that the process is fair; that the child who is subject to the proceedings is given a hearing and an opportunity to defend himself and herself (See *Pearl berg v Varty (Inspector of Taxes* [1972] I WLR 534, *Commissioner General, Kenya Revenue Authority v Vano Onema Omwaki t/a Marenga Filing Station* Kisumu Civil Appeal No 45 of 2000 (Unreported) and *Kenya National Examination Council v Republic exp. Geoffrey Njoroge & others* Nairobi Civil Appeal No 266 of 1996(Unreported).
62. The 1st petitioner alleges that the school violated his constitutional right to education by suspending him on various occasions without following due process, particularly by not according him a proper hearing. However, the record reflects a consistent pattern of serious indiscipline issues involving the 1st petitioner, including bullying a fellow student to the extent that the victim had to transfer schools, allegations of homosexuality, theft, and being found in possession of a drug. In response to these incidents, the school did not resort to immediate expulsion or permanent suspension; instead, it attempted to address the petitioner’s behavioral problems through non-punitive measures. Notably, the school referred the petitioner to counseling services and engaged the children’s officer after observing signs of possible family instability, including an absentee father and cult like religion. These actions indicate an effort to rehabilitate rather than punish the 1st petitioner, demonstrating that the school acted in a manner consistent with both educational and child welfare obligations.
63. Procedurally, the Respondent school appears to have followed the established disciplinary framework required by law. The 1st petitioner was informed of the disciplinary actions and, in some instances, was allowed to appear before school authorities to respond to the allegations which he admitted by writing apology letters, though he often failed to attend with a parent or guardian as required. It is only on one occasion that his mother appeared, and even then, she arrived after the parent of the victimized student had left. The 1st petitioner was also directed to appear before the county education board or await its decision, a key step in the appeals and disciplinary review process but he failed to do so. Despite repeated violations and his non-compliance with procedural requirements, the school allowed him to continue attending classes as a day scholar and facilitated his sitting for final examinations, showing that his right to education was not arbitrarily curtailed.



64. It is correct that the *Constitution* guarantees to children the right to education, and it also requires that in every matter concerning the child, the best interests of the child must be the primary consideration. However, it must be restated and re-emphasised that rights have their corresponding responsibilities, and the responsibility of students in school is to abide by the school's regulations. It would certainly not be in the best interests of the petitioner, or of the other students in the respondent school, were the respondent to ignore disruptive conduct on the part of the 1st Petitioner, or of any other student. As the court observed in the case of *Fredrick Majimbo & another v The Principal, Kianda School, Secondary* Section High Court Petition No 281 of 2012:

“[26.] In my view, the school, in suspending the petitioners' daughter, used the guidelines and processes set out in its Code of Conduct, and in accordance with the agreement reached between the school and the petitioners on April 4, 2012. From the evidence before me, the petitioners had accepted the school's regulations, as had their daughter, in gaining admission to the school. They had agreed on April 4, 2012, and they had confirmed this agreement on May 1, 2012, that in the event of one more transgression of the school's regulations by their daughter, she would be asked to leave the school. I can therefore find no basis for alleging violation of the rights of the petitioners' daughter. She does indeed have a right to education, and her best interests must be taken into account in any decision affecting her. The respondent has been, in my view, very accommodating of the petitioners' daughter in the face of frequent, and on the face of it, unapologetic infractions. To deal with the petitioners' daughter in a manner different from the way they have dealt with her would doubtless have been against her best interests as it would have been to condone indiscipline and misconduct, to the detriment of her long term interests.

[27.] Further, as the respondent correctly argues, the rights of the petitioners' daughter must be considered alongside the rights of the other students in the school. The school has an obligation to all its students, and as the respondent submits, failing to discipline the students who break rules would set a bad precedent and affect students and parents who are willing to abide by school regulations

28.] There is no material placed before me from which I can properly find any violation of the petitioners' daughter's rights under articles 43(1)(f) or 53(2) The school must be allowed to govern its student body on the basis of the provisions of the Education Act and its Code of Conduct, and the court will be very reluctant to interfere unless very strong and cogent reasons for interfering with its decisions are placed before it, which has not been done in this case.”

65. Similarly, in the case of *Oluoch Dan Owino v Kenyatta University* High Court Petition No 54 of 2014, the court observed as follows:

“[51.] “As I understand it, the right to education does not denote the right to undergo a course of education in a particular institution on one's terms. It is my view that an educational institution has the right to set certain rules and regulations, and those who wish to study in that institution must comply with such rules. One enters an educational institution voluntarily, well aware of its rules and regulations, and in doing so commits himself or



herself to abide by its rules. Unless such rules are demonstrated to be unreasonable and unconstitutional, to hold otherwise would be to invite chaos in educational institutions.”

66. From the foregoing, while the 1st petitioner asserts a violation of his right to education, the facts reveal a balanced and legally compliant approach by the school in managing a difficult disciplinary case. The school’s actions were responsive and proportional, taking into account both the 1st Petitioner’s welfare and the safety and rights of other students. The referral to counseling and involvement of child protection authorities underscore the school’s rehabilitative intent. The 1st petitioner’s failure to comply with procedural steps, such as appearing before the county education board or attending meetings with a guardian, cannot be blamed on the school. Accordingly, the 1st Petitioner’s right to education was not infringed, and the disciplinary process undertaken by the school was lawful and justified.
67. For the foregoing reasons, I find that the Petition is devoid of merit and it is accordingly dismissed in its entirety.
68. In the interests of justice each party shall bear its own costs.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF SEPTEMBER 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioners – No appearance

Counsel for the Respondent – Mr. Kimathi

Counsel for the 1st Interested Party -No appearance

Counsel for the 2nd Interested Party – No appearance

Court Assistant – Ms. Lwambia

