

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
PETITION NO.....OF 2024
IN THE MATTER OF THE CONSTITUTION OF KENYA

AND
IN THE MATTER OF ARTICLES 2(6), 3, 19, 20, 22, 23, 29, 43 1(f), 47 AND
48 OF THE CONSTITUTION

AND
IN THE MATTER OF VIOLATION OF ARTICLES 53(2) AND ARTICLE 28 OF
THE CONSTITUTION OF KENYA

AND
IN THE MATTER OF SECTION 8 OF THE CHILDREN ACT 2022

AND
IN THE MATTER OF SECTION 18 AND 19 OF THE EDUCATION ACT

AND
IN THE MATTER OF BASIC EDUCATION ACT

AND
IN THE MATTER OF SAFETY STANDARDS OF MANUAL FOR SCHOOLS IN
KENYA 2018

AND
IN THE MATTER OF ARTICLE 3 OF THE CONVENTION OF THE RIGHTS OF
THE CHILD, ARTICLE 4 OF THE AFRICAN CHARTER ON THE RIGHTS AND
WELFARE OF THE CHILD APPLICABLE IN KENYA UNDER ARTICLE 2(5) &
(6) OF THE CONSTITUTION OF KENYA

AND
IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE
RULES 2013, RULE 3, 4, 5, 9 AND 10)

BETWEEN
KENYA HUMAN RIGHTS COMMISSION1ST PETITIONER
DAVID KARANI.....2ND PETITIONER
ELIMU BORA WORKING GROUP.....3RD PETITIONER

VERSUS
DAVID KINYUA.....1ST RESPONDENT
MARY WANJERI.....2ND RESPONDENT
BOARD OF MANAGEMENT
HILLSIDE ENDARASHA ACADEMY3RD RESPONDENT
NYERI COUNTY DIRECTOR OF EDUCATION4TH RESPONDENT

NYERI COUNTY EDUCATION BOARD.....5TH RESPONDENT
 NATIONAL EDUCATION BOARD.....6TH RESPONDENT
 CABINET SECRETARY MINISTRY OF EDUCATION.....7TH RESPONDENT
 THE ATTORNEY GENERAL.....8TH RESPONDENT

PETITION

TO:

THE HIGH COURT,

AT NYERI.

The humble petition of **KENYA HUMAN RIGHTS COMMISSION** whose address of service for purposes of this suit is care of **CHIMEI & MALENYA COMPANY ADVOCATES, UCHUMI HOUSE, 8TH FLOOR, SUITE NO. 9, AGA KHAN WALK, P.O BOX 19958-00100 NAIROBI. EMAIL: malenyalaw@cmcadvocates.co.ke /chimei@cmcadvocates.co.ke** in the Republic of Kenya is as follows:-

A. PARTIES

1. The 1st petitioner is a non-governmental organization (NGO) whose core agenda is the campaign for the entrenchment of observance of human rights and a democratic culture in Kenya,
2. The 2nd Petitioner is a public-spirited individual with a keen interest in children related matters.
3. The 3rd Petitioner is a network of civil society organizations working to promote the right to education in Kenya through awareness creation, research, advocacy and partnership building.
4. The 1st Respondent is a male adult of sound mind and is the co-owner of Hillside Endarasha Academy.
5. The 2nd Respondent is a female adult of sound mind and is the co-owner of Hillside Endarasha Academy.
6. The 3rd Respondent is the board in charge of the management of the school.
7. The 4th Respondent is the director in charge of education within the county of Nyeri.

8. The 5th Respondent is the board in charge of education within the county of Nyeri.
9. The 6th Respondent is tasked with the role of advising the Cabinet Secretary in charge of Basic Education and training matters, the department of education and related departments on policy matters.
10. The 7th Respondent is the Cabinet Secretary in charge of the Ministry of Education whose role is oversight of learning institutions.
11. The 8th Respondent is the principal legal advisor to the government and the legal representative in government proceedings.
12. The petition is instituted in the public interest.

B. FACTS

13. That on 5th September 2024 a fire broke out in Hillside Endarasha Academy and razed down one of the dormitories that had housed more than 150 pupils.
14. That consequently 21 pupils lost their lives in the fire while a number of others were injured necessitating closure of the school.
15. That barely a month later the Respondents have made an announcement on the reopening of the school and resumption of studies by the pupils by the 9th October 2024.
16. That the Respondents are in quite a rush to reopen the school without having put in place all the requisite measures to ensure safety of the pupils in accordance with the prescribed safety standards for school structures and school learning environment.
17. No report has been presented on how the 3rd Respondent has complied with the safety measures.

C. LEGAL FOUNDATION

18. **Article 2** of the Constitution of Kenya provides for the supremacy of the Constitution and that any act or omission in contravention of the Constitution is invalid.
19. **Article 3** of the Constitution behooves every person to respect, uphold and defend the constitution.
20. **Article 19** of the Constitution asserts that the Bill of Rights is an integral part of Kenya's democratic state.
21. **Articles 20, 21, 22, and 23** of the Constitution provide for the application, implementation, and enforcement of the Bill of Rights.
22. **Article 28** of the Constitution provides for respect and protection of the inherent human dignity.
23. **Article 29** of the Constitution provides for freedom and security with the right to not be treated in a cruel, inhuman, or degrading manner.
24. **Article 43** of the Constitution provides for economic and social rights including the right to education.
25. **Article 53** of the constitution provides for the best interest of the child in every matter concerning them.
26. **Article 47** of the Constitution provides for the right to a fair administrative action that is lawful, reasonable, and procedurally fair.
27. **Article 48** provides for access to justice for all persons.

D. CONTRAVENTION

28. To the extent that the Respondents intend to hastily reopen the school without due consideration of the safety standards required of a learning institution is a violation of the children's right to access to quality basic education.
29. To the extent that the Respondents intend to reopen the school and the pupils to resume their studies without the necessary psychosocial support in the aftermath of such a tragedy is a violation to the principle of the best interest of the children.
30. To the extent that the Respondents have not presented a comprehensive report on the state of the school and the measures in place to ensure that the pupils have a conducive learning environment and such a tragedy will not occur again is a violation of the laws set in place regarding the safety standards of schools in Kenya.

E. PRAYERS

31. The Petitioner therefore humbly prays for;
- a. A mandatory injunction that the 3rd, 4th, 5th, 6th, 7th and 8th Respondents do conduct a comprehensive inspection of the school with safety guidelines and present a comprehensive report to Court on measures taken to implement and to report to court periodically on the safety of pupils and as may be required by Court;
 - b. A mandatory injunction that the Respondents do offer and pay for psychosocial support to the pupils and affected parents and equip them with the necessary skills to forge ahead with their day to day lives; and
 - c. Any other further relief that this Honourable court shall deem fit to grant.

WHICH PETITION is based on the supporting affidavit of **DAVIS MALOMBE** and other further grounds to be adduced at the hearing hereof.

DATED at NAIROBI this 7th day of October 2024

CHIMEI & MALENYA COMPANY

ADVOCATES FOR THE PETITIONERS

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