

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO.....OF 2025

**IN THE MATTER OF ACTUAL VIOLATION OF ARTICLES 10, 11, 19, 20, 21,
24, 27, 28, 33(b), 43(1)(f), 47, AND 53 (b) OF THE CONSTITUTION OF
KENYA 2010;**

AND

**IN THE MATTER OF APPLICATION OF ARTICLES 22, 23, 159, 165 and
258 OF THE CONSTITUTION OF KENYA 2010;**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCEDURE RULES 2013**

AND

IN THE MATTER OF THE BASIC EDUCATION ACT, 2013

AND

**IN THE MATTER OF BARRING THE PARTICIPATION OF BUTERE GIRLS'
SECONDARY SCHOOL IN THE KENYA NATIONAL DRAMA AND FILM
FESTIVALS 2025**

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....PETITIONER

VERSUS

**EXECUTIVE SECRETARY, THE KENYA NATIONAL DRAMA & FILM
FESTIVAL COMMITTEE.....1ST RESPONDENT**

CABINET SECRETARY,

MINISTRY OF EDUCATION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

INSPECTOR GENERAL OF POLICE.....4TH RESPONDENT

THE INDEPENDENT POLICING

OVERSIGHT AUTHORITY.....5TH RESPONDENT

AND

BOARD OF MANAGERS,

BUTERE GIRLS SECONDARY SCHOOL.....1ST INTERESTED PARTY

KENYA NATIONAL COMMISSION

ON HUMAN RIGHTS.....2ND INTERESTED PARTY

NATIONAL GENDER EQUALITY COMMISSION.....3RD INTERESTED PARTY

CERTIFICATE OF URGENCY

We, **KELLY MALENYA and HAGGAI CHIMEI**, advocates of the High Court of Kenya with the conduct of this matter do hereby certify this petition filed herewith as urgent for the following reasons:-

1. That the human rights violation, the subject matter of the petition, are ongoing violations and affecting the children under Article 53. This makes the determination of the issues raised in the petition of utmost urgency.
2. That on the 3rd of April 2025, the Honourable Court sitting at the Kisii High Court issued a court order in the Kisii HCPET E006 of 2025 that the Principal of the Butere Girls Secondary School does facilitate and ensure that the students stage the play "Echoes of War" in its original form at the National Drama and Film Festivals on the 10th of April 2025.
3. That however, on the 9th of April 2025, the eve of the date of performance, the students' director namely Mr. Cleophas Malala was arrested and detained incommunicado thus prejudicing the students' ability to rehearse in preparation of the said performance and competitions.
4. That subsequently, on the 10th of April 2025, when the students of Butere Girls appeared to perform, they were escorted by police officers, were denied the use of décor and props and were to perform before an empty audience.
5. That consequently, and rightfully so, the students protested performing under these discriminatory circumstances which then resulted to them being teargassed by the police officers and escorted out of the venue without any further communication as to the fate of the performance.

6. That the National Drama and Film Festivals are ongoing and scheduled to run from the 7th of April 2025 to the 13th of April 2025, only three days from today.
7. That unless the court grants the orders sought in the application, the application and the petition shall be rendered nugatory as the festivals shall come to a close.

Dated at **Nairobi** this11th.....day of.....April.....2025


CHIMEI & MALENYA COMPANY
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY:-

CHIMEI & MALENYA CO. ADVOCATES,
UCHUMI HOUSE, 8TH FLOOR,
AGA-KHAN WALK,
P.O. BOX 19958-00100,
NAIROBI.

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AND

BOARD OF MANAGERS,

BUTERE GIRLS SECONDARY SCHOOL.....1ST INTERESTED PARTY

KENYA NATIONAL COMMISSION

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NATIONAL GENDER EQUALITY COMMISSION.....3RD INTERESTED PARTY

EXPARTE CHAMBER SUMMONS

(Under Rule 3 (1) of the High Court Vacation (Practice and Procedure) Rules, Articles 23 of the Constitution, Order 53 Rule 1(2) of the Civil Procedure Rules, and Section 9 of the Law Reform Act Cap 26 Laws of Kenya, and all other enabling provisions of the law)

LET ALL PARTIES concerned attend the Judge in chambers on the day of 2025 at 9.00 O'clock in the forenoon or so soon thereafter as counsel for the Applicant may be heard in an application for **ORDERS THAT:**

1. The matter be certified urgent and dispensed with *Ex Parte* in the first instance during the current court vacation;

WHICH APPLICATION is based on **GROUND:** -

- A. That the human rights violation, the subject matter of the petition, are ongoing violations and affecting the children under Article 53. This makes the determination of the issues raised in the petition of utmost urgency.
- B. That on the 3rd of April 2025, the Honourable Court sitting at the Kisii High Court issued a court order in the Kisii HCPET E006 of 2025 that the Principal of the Butere Girls Secondary School does facilitate and ensure that the students stage the play "Echoes of War" in its original form at the National Drama and Film Festivals on the 10th of April 2025.
- C. That however, on the 9th of April 2025, the eve of the date of performance, the students' director namely Mr. Cleophas Malala was arrested and detained incommunicado thus prejudicing the students' ability to rehearse in preparation of the said performance and competitions.

- D. That subsequently, on the 10th of April 2025, when the students of Butere Girls appeared to perform, they were escorted by police officers, were denied the use of décor and props and were to perform before an empty audience.
- E. That consequently, and rightfully so, the students protested performing under these discriminatory circumstances which then resulted to them being teargassed by the police officers and escorted out of the venue without any further communication as to the fate of the performance.
- F. That the National Drama and Film Festivals are ongoing and scheduled to run from the 7th of April 2025 to the 13th of April 2025, only three days from today.
- G. That unless the court grants the orders sought in the application, the application and the petition shall be rendered nugatory as the festivals shall come to a close.
- H. This Court's jurisdiction is unfettered as it has the authority to determine whether the Bill of Rights have been violated and whether an act done is in contravention of the Constitution.

WHICH APPLICATION is further supported by the Notice of Motion Application attached hereto.

DATED at NAIROBI this 11th day of April 2025



CHIMEI & MALENYA COMPANY
ADVOCATES FOR THE APPLICANT/PETITIONER

Drawn & Filed By:-

Chimei & Malenya Co. Advocates,
Uchumi House, 8th Floor,
Aga-Khan Walk,
P.O. Box 19958-00100,
Nairobi.

Email: malenya@cmcadvocates.co.ke / chimei@cmcadvocates.co.ke

TO BE SERVED UPON:-

1. The Executive Secretary, the Kenya National Drama and Film Festival.
2. The Cabinet Secretary, Ministry of Education.
3. Office of the Attorney General.
4. The Board of Managers, Butere Girls' High School.

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BOARD OF MANAGERS,

BUTERE GIRLS SECONDARY SCHOOL.....1ST INTERESTED PARTY

KENYA NATIONAL COMMISSION

ON HUMAN RIGHTS.....2ND INTERESTED PARTY

NATIONAL GENDER EQUALITY COMMISSION.....3RD INTERESTED PARTY

NOTICE OF MOTION

(Pursuant to Articles 19, 20, 21, 22, 23 and 258 of the Constitution of Kenya 2010, Rule 23 and 24 of the Constitution of Kenya (Protection of Human Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and all other enabling provisions of the law)

TAKE NOTICE that this Honourable Court shall be moved on the day of2025 at 9:00 in the forenoon or soon thereafter as the applicant's counsel may be heard on the applicant's application for **ORDERS THAT: -**

1. The petition and the application be certified urgent and the service of the application be dispensed with at the first instance.
2. Pending the hearing and determination of the application, the Butere Girls' High School be allowed to stage their play, "Echoes of War" at the Kenya National and Drama Festival in its original script, with the use of their chosen props and décor, with the assistance of their director and assistants and in the presence of an audience not later than the 13th of April 2025 but within the appropriate time in accordance with the set program.
3. That in the alternative to 2 above, a conservatory order be issued suspending the ongoing Kenya National and Drama Festival set to end on the 13th of April 2025 until the petition herein is heard and determined.
4. Pending the hearing and determination of the application, a mandatory order be issued to the 5th Respondent to furnish the court with a full report documenting police harassment and violence meted on Mr. Cleophas Malala, the play director and Butere Girls' High School Drama students on 9th and 10th of April 2025.

5. Pending the hearing and determination of the Petition, a mandatory order be issued directing the 5th Respondent to produce before this Honourable Court all the internal inquiries, investigations and/or prosecutions relating to the police harassment and violence meted on Mr. Cleophas Malala, the play director and Butere Girls' High School Drama students on 9th and 10th of April 2025.
6. Pending the hearing and determination of the Petition, the Butere Girls' High School be allowed to stage their play, "Echoes of War" at the Kenya National and Drama Festival in its original script, with the use of their chosen props and décor, with the assistance of their director and assistants and in the presence of an audience not later than the 13th of April 2025 but within the appropriate time in accordance with the set program.
7. Costs of the application be borne by the Respondents.
8. Any other relief that the court may deem fit to grant.

WHICH APPLICATION is premised on the grounds:-

- a. That the human rights violation, the subject matter of the petition, are ongoing violations and affecting the children under Article 53. This makes the determination of the issues raised in the petition of utmost urgency.
- b. That the Butere Girls' High School has had an outstanding performance of the play, "Echoes of War" all the way from the Sub County Levels to the Regional Levels, which play was adjudicated by the selected adjudicators and found fit to proceed to the National Levels.
- c. That despite the said excellent performance, the Butere Girls' faced a bar to perform at the National Levels at the first instance orchestrated by the Principal of the said School.
- d. That consequently, on the 3rd of April 2025, the Honourable Court sitting at the Kisii High Court issued a court order in the Kisii HCPET E006 of 2025 that the Principal of the Butere Girls High School does facilitate and ensure that the students stage the play "Echoes of War" in its original form at the National Drama and Film Festivals on the 10th of April 2025.

- e. That however, on the 9th of April 2025, the eve of the date of performance, the students' director namely Mr. Cleophas Malala was arrested and detained incommunicado thus prejudicing the students' ability to rehearse in preparation of the said performance and competitions.
- f. That subsequently, on the 10th of April 2025, when the students of Butere Girls appeared to perform, they were escorted by police officers, were denied the use of décor and props and were to perform before an empty audience.
- g. That consequently, and rightfully so, the students protested performing under these discriminatory circumstances which then resulted to them being teargassed by the police officers and escorted out of the venue without any further communication as to the fate of the performance.
- h. That the aforementioned absurd and malicious treatment has only discriminatorily been meted out against the Butere Girls' as all the other schools have performed or are due to perform with their chosen props and décor and before an audience.
- i. That the National Drama and Film Festivals are ongoing and scheduled to run from the 7th of April 2025 to the 13th of April 2025, only three days from today.
- j. That, the respondents, who have the role of administration, regulation and oversight of education and co-curricular activities in Kenya have arbitrarily barred the Butere Girls' from performing the play thus curtailing on the children right to basic education which includes participating in co-curricular activities, their freedom of expression including artistic creativity and the minors' legitimate expectation to show case and develop their talents at the national stage.
- k. That additionally, the acts and omissions of the Respondents is an express violation of their role under the Constitution to promote, protect, respect and fulfill the rights and fundamental freedoms in the Constitution.
- l. That further the Respondents' act and omissions are a violation of their duty under the Constitution to promote national and cultural expression through literature and arts.

- m. That it thus follows that the minors affected by the Respondents decisions and/or inactions are already suffering prejudice in terms of emotional distress, humiliation, demotivation, and an imminent threat to miss out on the very well-earned opportunity to perform at the national stage without any justification whatsoever.
- n. That the minors thus stand to suffer irreparable damage should the Respondents not be compelled to allow them perform at the national stage in the same manner as all the other contestants.
- o. That the respondents stand to suffer no harm, should the interim orders be issued.
- p. That unless the court intervenes and grants the orders sought in the application, the application and the petition shall be rendered nugatory as the festivals shall come to a close.

WHICH APPLICATION is further premised on the grounds in the supporting affidavit duly sworn by **DAVIS MALOMBE** and upon further grounds as may be adduced at the hearing hereof.

Dated at Nairobi this 11th day of April 2025

Chime

CHIMEI & MALENYA COMPANY
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY:-

Chimei & Malenya Co. Advocates,
Uchumi House, 8th Floor,
Aga-Khan Walk,
P.O. Box 19958-00100,
NAIROBI.

TO BE SERVED UPON:-

1. The Executive Secretary, the Kenya National Drama and Film Festival.
2. The Cabinet Secretary, Ministry of Education.
3. Office of the Attorney General.
4. The Board of Managers, Butere Girls' High School.
5. The Inspector General of the Police
6. The Independent Policing Oversight Authority
7. Kenya National Commission On Human Rights
8. National Gender Equality Commission

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CABINET SECRETARY,

MINISTRY OF EDUCATION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AND

BOARD OF MANAGERS,

BUTERE GIRLS' HIGH SCHOOL.....INTERESTED PARTY

SUPPORTING AFFIDAVIT

I, DAVIS MALOMBE, a resident of Nairobi c/o P.O Box Number 19958-00100
Nairobi do hereby make oath and state as follows;-

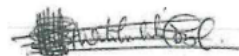
1. That I am a male adult of sound mind, the Executive Director of the petitioner and I have the authority to swear this affidavit on its behalf in support of the petition and the application.
2. The Petitioner is a non-governmental organization whose core agenda is campaigning for the entrenchment of a human rights and democratic culture in Kenya.
3. That the human rights violation, the subject matter of the petition, are ongoing violations and affecting the children under Article 53. This makes the determination of the issues raised in the petition of utmost urgency.
4. That the Butere Girls' High School has had an outstanding performance of the play, "Echoes of War" all the way from the Sub County Levels to the Regional Levels, which play was adjudicated by the selected adjudicators and found fit to proceed to the National Levels.
5. That despite the said excellent performance, the Butere Girls' faced a bar to perform at the National Levels at the first instance orchestrated by the Principal of the said School.
6. That consequently, on the 3rd of April 2025, the Honourable Court sitting at the Kisii High Court issued a court order in the Kisii HCPET E006 of 2025 that the Principal of the Butere Girls High School does facilitate and ensure that the students stage the play "Echoes of War" in its original form at the National Drama and Film Festivals on the 10th of April 2025.

7. That however, on the 9th of April 2025, the eve of the date of performance, the students' director namely Mr. Cleophas Malala was arrested and detained incommunicado thus prejudicing the students' ability to rehearse in preparation of the said performance and competitions.
8. That subsequently, on the 10th of April 2025, when the students of Butere Girls appeared to perform, they were escorted by police officers, were denied the use of décor and props and were to perform before an empty audience.
9. That consequently, and rightfully so, the students protested performing under these discriminatory circumstances which then resulted to them being teargassed by the police officers and escorted out of the venue without any further communication as to the fate of the performance.
10. That the aforementioned absurd and malicious treatment has only discriminatorily been meted out against the Butere Girls' as all the other schools have performed or are due to perform with their chosen props and décor and before an audience.
11. That the National Drama and Film Festivals are ongoing and scheduled to run from the 7th of April 2025 to the 13th of April 2025, only three days from today.
'Annexed hereto and marked DM1 is a copy of the National Drama and Film Festival 2025'
12. That, the respondents, who have the role of administration, regulation and oversight of education and co-curricular activities in Kenya have arbitrarily barred the Butere Girls' from performing the play thus curtailing on the children right to basic education which includes participating in co-curricular activities, their freedom of expression including artistic creativity and the minors' legitimate expectation to show case and develop their talents at the national stage.
13. That additionally, the acts and omissions of the Respondents is an express violation of their role under the Constitution to promote, protect, respect and fulfill the rights and fundamental freedoms in the Constitution.
14. That further the Respondents' act and omissions are a violation of their duty under the Constitution to promote national and cultural expression through literature and arts.

15. That it thus follows that the minors affected by the Respondents decisions and/or inactions are already suffering prejudice in terms of emotional distress, humiliation, demotivation, and an imminent threat to miss out on the very well-earned opportunity to perform at the national stage without any justification whatsoever.
15. It is only in the interest of justice and fairness that the application and petition are instituted urgently.
16. That which is stated herein is true to the best of my knowledge, information and belief.

SWORN AT NAIROBI

By the said **DAVIS MALOMBE**

) 

This.....^{11th} day of.....^{April}.....2025

)

BEFORE ME



COMMISSIONER FOR OATHS

DRAWN & FILED BY:-

Chimei & Malenya Co. Advocates,
Uchumi House, 8th Floor,
Aga-Khan Walk,
P.O. Box 19958-00100,
NAIROBI.

TO BE SERVED UPON:-

1. The Executive Secretary, the Kenya National Drama and Film Festival.
2. The Cabinet Secretary, Ministry of Education.
3. Office of the Attorney General.
4. The Board of Managers, Butere Girls' High School.
5. The Inspector General of the Police
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7. Kenya National Commission On Human Rights
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AND

BOARD OF MANAGERS,
BUTERE GIRLS SECONDARY SCHOOL.....1ST INTERESTED PARTY
KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS.....2ND INTERESTED PARTY
NATIONAL GENDER EQUALITY COMMISSION.....3RD INTERESTED PARTY

TO: THE HIGH COURT OF KENYA

AT NAKURU

PETITION

The humble petition of the **KENYA HUMAN RIGHTS COMMISSION** whose address of service for purposes of this petition is care of **Chimei & Malenya Company Advocates, Uchumi House, Aga Khan Walk, 8th Floor, suite no. 9, P.O Box 19958-00100 NAIROBI. Email: chimei@cmcadvocates.co.ke; malenya@cmcadvocates.co.ke** in the Republic of Kenya do state as follows:-

A. PARTIES

1. The petitioner is a non-governmental organization whose core agenda is campaigning for the entrenchment of a human rights and a democratic culture in Kenya and institutes this petition in the public interest.
2. The 1ST Respondent, the Kenya National Drama and Film Festival, is the official body in charge of the administration, oversight and execution of all decisions relating to the Kenya National Drama and Film Festival, and is responsible for overseeing the planning, adjudication and coordination of the festival at all levels including making decisions on participation and disqualification.
3. The 2nd Respondent, the Cabinet Secretaries in the Ministry of Education, is a state office established under Article 152 of the Constitution of Kenya 2010 with a duty to observe, respect, protect, promote and fulfill the Constitution, including the Bill of Rights, in the disposition of their various mandates.

4. The 3rd Respondent, the Attorney General, is the principal legal adviser of the national government and the representative of the national government in court which national government has the mandate to promote human rights especially in the safeguard the best interests of children and their right to basic education and freedom of expression.
5. The 4th Respondent, Inspector General Of Police is in charge of overall and independent command and matter of the National Police Service
6. The 5th Respondent, The Independent Policing Oversight Authority, is a civilian oversight body for the National Police Service, conducting independent investigations, inspections, audits, and monitoring to enhance professionalism and discipline within the service.
7. The 1st Interested Party, the Board of Managers Butere Girls' High School, is in charge of the management of the Butere Girls' High School, whose 50 students are the participants in the play, "Echoes of War".
8. The 2nd Interested Party, Kenya National Commission On Human Rights, is a constitutional body in Kenya responsible for promoting and protecting human rights.
9. The 3rd Interested Party, National Gender Equality Commission, is a constitutional body mandated with promoting gender equality and freedom from all forms of discrimination in Kenya, especially for special interest groups.

B. FACTS

1. That the human rights violation, the subject matter of the petition, are ongoing violations and affecting the children under Article 53. This makes the determination of the issues raised in the petition of utmost urgency.
2. That the Butere Girls' High School has had an outstanding performance of the play, "Echoes of War" all the way from the Sub County Levels to the Regional Levels, which play was adjudicated by the selected adjudicators and found fit to proceed to the National Levels.
3. That despite the said excellent performance, the Butere Girls' faced a bar to perform at the National Levels at the first instance orchestrated by the Principal of the said School.

4. That consequently, on the 3rd of April 2025, the Honourable Court sitting at the Kisii High Court issued a court order in the Kisii HCPET E006 of 2025 that the Principal of the Butere Girls High School does facilitate and ensure that the students stage the play "Echoes of War" in its original form at the National Drama and Film Festivals on the 10th of April 2025.
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8. That the aforementioned absurd and malicious treatment has only discriminatorily been meted out against the Butere Girls' as all the other schools have performed or are due to perform with their chosen props and décor and before an audience.
9. That the National Drama and Film Festivals are ongoing and scheduled to run from the 7th of April 2025 to the 13th of April 2025, only three days from today.
10. That, the respondents, who have the role of administration, regulation and oversight of education and co-curricular activities in Kenya have arbitrarily barred the Butere Girls' from performing the play thus curtailing on the children right to basic education which includes participating in co-curricular activities, their freedom of expression including artistic creativity and the minors' legitimate expectation to show case and develop their talents at the national stage.
11. That additionally, the acts and omissions of the Respondents is an express violation of their role under the Constitution to promote, protect, respect and fulfill the rights and fundamental freedoms in the Constitution.

12. That further the Respondents' act and omissions are a violation of their duty under the Constitution to promote national and cultural expression through literature and arts.
13. That it thus follows that the minors affected by the Respondents decisions and/or inactions are already suffering prejudice in terms of emotional distress, humiliation, demotivation, and an imminent threat to miss out on the very well-earned opportunity to perform at the national stage without any justification whatsoever.

C. LEGAL FOUNDATIONS OF THE PETITION

i. THE CONSTITUTION OF KENYA 2010

14. **Article 2 (1)** on the supremacy of the Constitution and its binding nature upon all the state organs with **Article 3(1)** obligating every person to uphold and respect the Constitution.
15. **Article 10** provides for the national values and principles that bind all state organs and public officers while making and implementing public policy decisions. Such national values and principles include human dignity, human rights, non-discrimination, integrity and accountability.
16. **Article 11** obligates the state to promote all forms of national and cultural expression through literature, the arts, communication and information and, to recognize the role of science and indigenous technology in developing the nation.
17. **Article 19** guarantees the inherence of the human rights and fundamental freedoms in the Bill of Rights to each individual.
18. **Article 20** binds all state organs and persons to the Bill of Rights while guaranteeing every person's right to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
19. **Article 21** fundamentally behooves the state to **observe, respect, promote and fulfill** the rights and fundamental freedoms in the Bill of Rights.
20. **Article 22 and 23** as read with **Article 258** entitle the petitioner to institute this petition in the public interest and in the interest of a group of persons on the claim of multiple violations of rights and fundamental freedoms and contravention of the Constitution.

21. **Article 24** provides a leeway for the limitation of fundamental freedoms and rights but the said limitation ought to be **reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom**.
22. **Article 28** enunciates the inherent dignity of every person and the right to have that dignity respected and protected.
23. **Article 27** speaks to equality of every person before the law, the right to equal protection and equal benefit of the law including full and equal enjoyment of all rights and fundamental freedoms and prohibits discrimination on any grounds.
24. **Article 33** guarantees the right of every person to the freedom of expression which includes the right to impart information, freedom of artistic creativity and academic freedom.
25. **Article 43(1) [f]** guarantees the right of every person to education.
26. **Article 47** guarantees the right of every person to a fair administrative action that is expeditious lawful, efficient, reasonable and procedurally fair. Additionally, each person is entitled to be given written reasons if they are likely to be affected by any administrative action.
27. **Article 53** while emphasizing the centrality of the principle of the best interest of the child guarantees the right of every child to free and compulsory basic education.

ii. INTERNATIONAL LAW

28. **Article 13 of the United Nations Convention on the Rights of the Child[UNCRC]** guarantees the right of every child to the freedom of expression including the right to impart information of all kinds, regardless of frontiers, in the form of art or any other media of the child's choice, which right is only limited on grounds of national security, public order e.t.c.
29. **Article 29** of the UNCRC obligates the State Parties to ensure that the education of every child is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

30. **Article 31** of the UNCRC obligates the state parties to recognize the right of the child to engage in play and recreational activities appropriate to the age of the child and to participate fully and freely in cultural life and arts.
31. The state is also obligated to respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, recreational and artistic activities.
32. **Article 11[2] of the African Charter on the Rights and Welfare of the Child** obligates the state parties to ensure that the education of the child is directed to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential.
33. The Supreme Court of the USA in the case of **Tinker vs Des Moines Independent Community School District [1969]** ruled that students and teachers do not shed their constitutional rights to the freedom of speech and expression at the school house gates.

STATUTES

34. **Section 4 of the Basic Education Act** enshrines the values and principles guiding the provision of basic education including
- Protection of every child against discrimination;
 - Encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development;
 - imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose togetherness, and respect;
 - promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture;
35. **Section 8 of the Children Act** couched in mandatory terms states that in all matters concerning the child, their best interest **shall be the primary consideration**.
36. **Section 14 as read with Section 13 of the Children Act** buttresses the right of every child to education and additionally, to leisure, play and participation in non-harmful cultural and artistic activities.
37. **Regulation 11 of the Basic Education Regulations 2015** provides that:-

The County Director of Education shall promote both recreational and competitive sports, games for physical development, performing and creative arts, talent shows and congresses in institutions of basic education and training by ensuring that—

(a) all students and pupils are accorded the opportunity to participate in activities from the institutional to the national level;

(b) every institution has or can access adequate facilities for co-curricular activities; and

(c) every institution shall put in place measures to promote co-curricular activities and ensure that all learners shall have access to suitable affordable sports kits.

(2) The calendar for all co-curricular activities shall be drawn up by the Cabinet Secretary in consultation with the relevant national and regional bodies and associations and shall be circulated to all institutions three months before the end of each school year.

D. CONTRAVENTION

38. The 2nd, 3rd and 4th respondents being state organs have the mandate to uphold, fulfill, respect, safeguard and promote the rights of the 50 students at Butere Girls' High School to the Basic education, freedom of expression including artistic creativity and academic freedom, fair administrative action and freedom from discrimination.
39. To the extent that the Butere Girls' High School students were denied the prerogative to perform with their props and décor, in the presence of an audience and with the assistance of their directors and assistants at the National Drama and Film Festivals at Nakuru while the rest of the participants had access to all these facilities was discriminatory and a violation of their right to equality under Article 27 of the Constitution.
40. To the extent that the Respondents have denied the Drama Students at Butere Girls' High School the chance to perform at the National Drama & Film Festival without any justification whatsoever or in the very least according them the reasons for such is a violation of the right to Fair Administrative Actions under Article 47.
41. To the extent that the Respondents have barred the Drama students at Butere Girls' High School from performing at the national level is a violation of their legitimate expectation taking into consideration their hardwork, excellence and diligence and exemplary performance all through the sub-county, county and regional levels of the festivals.

42. The acts/omissions of the respondents that have resulted in the denial of the opportunity for the Drama Students at Butere Girls' to perform at the national levels is an express violation of the respondents' duty to promote national and cultural expression through art and literature as mandated under Article 11 of the Constitution.
43. To the extent that the Respondents' actions and/or omissions have resulted in the denial of an opportunity for the Drama Students at Butere Girls' to stage the play, "Echoes of War' at the national stage violates the minors' freedom of expression including artistic creativity and academic freedom as guaranteed under Article 33 of the Constitution.
44. To the extent that the Respondents have unjustifiably denied the Drama Students at Butere Girls' from showcasing their talents and skills at the national stage is a violation of their right to play and participate in artistic activities as guaranteed in Section 14 of the Children Act.
45. To the extent that the Drama Students at Butere Girls' were violently escorted from the dais and subsequently tear-gassed is a violation of the minors' rights to be protected from abuse, all forms of violence and inhuman treatment and right to human dignity under Article 53 and 28 of the Constitution.
46. To the extent that the Drama Students at Butere Girls' have been humiliated and subjected to emotional distress in light of their hardwork in perfecting the play is a violation of their right to human dignity and against their best interest.
47. To the extent that the Drama Students at Butere Girls' have been barred from performing well-orchestrated play the Echoes of War without any justification whatsoever is an express violation of the minors' best interest in the development of their talents and skills contrary to Article 53 of the Constitution.

YOUR PETITIONER THEREFORE PRAYS THAT:

- i. A declaration be and is hereby issued that the acts and/or omissions of the Respondents in barring the Drama Students in Butere Girls' High School from performing at the national levels is a violation of their rights under Articles 33, 43 and 53 of the Constitution of Kenya.

- ii. A declaration be and is hereby issued that the cherry picked bar of the Drama Students in Butere Girls' High School from performing at the national levels is discriminatory and a violation of their rights under Article 27 of the Constitution of Kenya.
- iii. A declaration be and is hereby issued that the Respondents' acts and/or omissions resulting to the bar of the Drama Students in Butere Girls' High School from performing at the national levels is a violation of their obligation to promote national and cultural expression under Article 11 of the Constitution of Kenya.
- iv. A declaration be and is hereby issued that the acts and/or omissions of the Inspector General of Police, Douglas Kanja, under whose authority police officers caused the disruption of the performance of the 'Echoes of War' play by violently arresting and holding incommunicado Mr. Cleophas Malala and violently removing from stage and subsequently teargasing the Drama students of Butere Girls' High School is a violation of their rights to protection from inhuman treatment right to human dignity under Articles 25 and 28 of the Constitution.
- v. A mandatory order be issued compelling the 5th Respondent to carry out an urgent and impartial investigation on the police harassment and violence meted on Mr. Cleophas Malala, the play director and Drama students of Butere Girls' High School Drama students on 9th and 10th of April 2025.
- vi. Pursuant to the order sought in (iv), a mandatory order be issued compelling the 5th Respondent to ensure prompt disciplinary measures are taken against the police officers responsible for the harassment, assault and disruption caused to Mr. Cleophas Malala and Drama students of Butere Girls' High School on the 9th and 10th of April 2025.
- vii. A mandatory order be issued compelling the respondents to provide the Drama Students in Butere Girls' High School with psychosocial support.
- viii. A mandatory order be issued compelling the 5th Respondent present to court a comprehensive report on the measures taken to institute disciplinary measures against the police officers responsible for the harassment, assault and disruption caused to Mr. Cleophas Malala.

and Drama students of Butere Girls' High School on the 9th and 10th of April 2025 and to report to court periodically and as may be required by court.

- ix. Costs of the petition and interests thereon.

Dated at Nairobi this^{11th} day of.....^{April}.....2025

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CHIMEI & MALENYA COMPANY

ADVOCATES FOR THE PETITIONER

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TO BE SERVED UPON:-

1. The Executive Secretary, the Kenya National Drama and Film Festival.
2. The Cabinet Secretary, Ministry of Education.
3. Office of the Attorney General.
4. The Board of Managers, Butere Girls' High School.
5. The Inspector General of the Police
6. The Independent Policing Oversight Authority
7. Kenya National Commission On Human Rights
8. National Gender Equality Commission