

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CONSTITUTIONAL PETITION NO. _____ OF 2025

**IN THE MATTER OF THE RIGHT TO LIFE, HUMAN DIGNITY & SECURITY OF THE
PERSON, RIGHT TO EDUCATION, FAIR ADMINISTRATIVE ACTION, FAMILY RIGHTS
AND THE RIGHTS OF CHILDREN**

AND

**IN THE MATTER OF ARTICLES 2(1) & (4), 3(1), 10, 19, 20 (1), (2), (3) & (4), 21(1)
& (3), 22(1) & (2), 23 (1) & (3), 26, 28, 29(d), 45, 47 (1) & (2), 53 (1)(b) & (2), 165
(3), AND 232(1) & (2) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE BASIC EDUCATION ACT CAP 211 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE CHILDREN ACT CAP 141 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....1ST PETITIONER

ELIMU BORA WORKING GROUP.....2ND PETITIONER

**ANJELINE MACHARIA WAMBUI (Suing on her own behalf and on behalf of her Son
R.T.K (Deceased))3RD PETITIONER**

**VICTOR KIRAGU MUTHONI (Suing on his own behalf and on behalf of his Son E.G.K
(Deceased))4TH PETITIONER**

**TIMOTHY GIKONYO KINUTHIA (Suing on his own behalf and on behalf of his Son
R.M (Deceased))5TH PETITIONER**

**NAOMI WANJIKU KARIUKI (Suing on her own behalf and on behalf of her Son L.M.G
(Deceased))6TH PETITIONER**

**PAUL GATHOGO WAHITO (Suing on his own behalf and on behalf of his Son T.W.G
(Deceased)).....7TH PETITIONER**

CYRUS CHEGE KEHATO (Suing on his own behalf and on behalf of his Son R.M.C (Deceased))8TH PETITIONER

ESTHER WAIRIMU NDUNGU (Suing on her behalf and on behalf of her Son M.N.M (Deceased)).....9TH PETITIONER

CHARLES WACHIRA MUREITHI.....10TH PETITIONER

PETER KURIA.....11TH PETITIONER

JOSEPHINE WANJIKU KURIA (Suing on her own behalf and on behalf of her son K.M. (Deceased)).....12TH PETITIONER

-VERSUS-

HILLSIDE ENDARASHA ACADEMY ALIAS HILLSIDE ACADEMY.....1ST RESPONDENT

DAVID KINYUA.....2ND RESPONDENT

MARY WANJERI.....3RD RESPONDENT

NATIONAL EDUCATION BOARD.....4TH RESPONDENT

NYERI COUNTY EDUCATION DIRECTOR.....5TH RESPONDENT

NYERI COUNTY EDUCATION BOARD.....6TH REPSONDENT

CABINET SECRETARY, MINISTRY OF EDUCATION.....7TH RESPONDENT

THE HON. ATTORNEY GENERAL.....8TH RESPONDENT

PETITION

TO:

THE HIGH COURT OF KENYA AT NYERI, CONSTITUTIONAL & HUMAN RIGHTS DIVISION, NYERI LAW COURTS

THE HUMBLE PETITION OF KENYA HUMAN RIGHTS COMMISSION, ELIMU BORA WORKING GROUP, ANJELINE MACHARIA WAMBUI (Suing on her own behalf and on behalf of her Son R.T.K (Deceased)), VICTOR KIRAGU MUTHONI (Suing on his own behalf and on behalf of his Son E.G.K (Deceased)), TIMOTHY GIKONYO KINUTHIA (Suing on his own behalf and on behalf of his Son R.G (Deceased)), NAOMI WANJIKU KARIUKI (Suing on her own behalf and on behalf of her Son L.M.G (Deceased)), PAUL GATHOGO WAHITO (Suing on his own behalf and on behalf of his Son T.W.G (Deceased)), CYRUS CHEGE KEHATO (Suing on his own behalf and on behalf of his Son R.M.C (Deceased)), ESTHER WAIRIMU NDUNGU (Suing on her behalf and on behalf of her Son M.N.M (Deceased)), GEORGE WANJAU KINGORI, CHARLES WACHIRA MUREITHI, PETER KURIA, JOSEPHINE WANJIKU KURIA (Suing on her

own behalf and on behalf of her son K.M. (Deceased)) and IRENE WANJIRU GATHONI (HEREINAFTER REFERRED TO AS THE “PETITIONERS”), WHOSE ADDRESS OF SERVICE FOR PURPOSES OF THIS SUIT SHALL BE CARE OF: **M/S OKWIRI & COMPANY ADVOCATES, RENAISSANCE CORPORATE PARK, 3RD FLOOR, ELGON ROAD, UPPERHILL, P.O. BOX 19749-00202, NAIROBI**, is as follows;

A. DESCRIPTION OF PARTIES

1. The Petitioners - KENYA HUMAN RIGHTS COMMISSION, ELIMU BORA WORKING GROUP, ANJELINE MACHARIA WAMBUI (Suing on her own behalf and on behalf of her Son R.T.K (Deceased)), VICTOR KIRAGU MUTHONI (Suing on his own behalf and on behalf of his Son E.G.K (Deceased)), TIMOTHY GIKONYO KINUTHIA (Suing on his own behalf and on behalf of his Son R.G (Deceased)), NAOMI WANJIKU KARIUKI (Suing on her own behalf and on behalf of her Son L.M.G (Deceased)), PAUL GATHOGO WAHITO (Suing on his own behalf and on behalf of his Son T.W.G (Deceased)), CYRUS CHEGE KEHATO (Suing on his own behalf and on behalf of his Son R.M.C (Deceased)) and ESTHER WAIRIMU NDUNGU (Suing on her behalf and on behalf of her Son M.N.M (Deceased)) **GEORGE WANJAU KINGORI, CHARLES WACHIRA MUREITHI, PETER KURIA, JOSEPHINE WANJIKU KURIA (Suing on her own behalf and on behalf of her son K.M. (Deceased)) and IRENE WANJIRU GATHONI** - are (two) non-profit private entities engaged in the promotion and defence of human rights and fundamental freedoms in the Republic of Kenya; (twelve) Kenyan female and male adults citizens and parents of the respective minors whom are their sons that perished in the Endarasha Hillside Academy fire incident that occurred on the 5th September, 2024 respectively, whose address of service for purposes of this petition shall be care of **M/S OKWIRI & COMPANY ADVOCATES, RENAISSANCE CORPORATE PARK, 3RD FLOOR, ELGON ROAD, UPPERHILL, P.O. BOX 19749-00202, NAIROBI**.
2. The 1st Respondent - HILLSIDE ENDARASHA ACADEMY ALIAS HILLSIDE ACADEMY - is a private (school) institution offering basic learning/education required to be registered/licensed by the ministry of education as such and supervised by it regarding the same.
3. The 2nd and 3rd Respondents – DAVID KINYUA and MARY WANJERI - are Kenyan male and female adults respectively presumably of sound mind and the owners/co-owners and/or proprietors/co-proprietors of HILLSIDE ENDARASHA ACADEMY ALIAS HILLSIDE ACADEMY.
4. The 4th, 5th AND 6th Respondents – NATIONAL EDUCATION BOARD, NYERI COUNTY EDUCATION DIRECTOR and NYERI COUNTY EDUCATION BOARD - are

statutorily established entities under the Basic Education Act CAP 211 of the Laws of Kenya charged with amongst other things: - setting standards for education and monitoring education. The address of service for the Cabinet Secretary, Ministry of Education for purposes of this petition shall be **MINISTRY OF EDUCATION, JOGOO HOUSE "B", TAIFA ROAD, P.O. BOX 300400-00100, NAIROBI**

5. The 6th Respondent -THE CABINET SECRETARY, MINISTRY OF EDUCATION – is the head of the Ministry of Education (and the Semi-Autonomous Government Agencies thereunder) being a ministry in charge of education in the Country which is responsible for the formulation and implementation of education and training policies, standards, curricula, examinations and the granting of university charters. The address of service for the Cabinet Secretary, Ministry of Education for purposes of this petition shall be **MINISTRY OF EDUCATION, JOGOO HOUSE "B", TAIFA ROAD, P.O. BOX 300400-00100, NAIROBI.**
6. The 7th Respondent – THE HON. ATTORNEY GENERAL- is the principal legal adviser to the Government, who shall protect, promote and uphold the rule of law and defend the public interest. The Hon. Attorney General also represents the national government in court or any other legal proceedings to which the national government is a party. The address of service for the Hon. Attorney General, for purposes of this petition shall be **ADVOCATES PLAZA, P.O. BOX 1744, NYERI.**

B. THE PETITIONERS' LOCUS STANDI

6. The Petitioners institute the present petition on the strength of Article 3 (1) of the Constitution, respecting, upholding and defending the Constitution.
7. Under the auspices of Article 22(2) of the Constitution, the Petitioners may institute Court proceedings in their own interest, in the interest of such persons whom cannot act in their own name and in the public interest safeguarding against the denial, infringement, threat and/or violation of rights and/or fundamental freedoms under the Bill of Rights.
8. Under the provisions of Article 258 of the Constitution, the Petitioners may institute Court proceedings in their own interest, in the interest of such persons whom cannot act in their own name and in the public interest against actual and/or threatened contraventions of the Constitution.

C. THE JURISDICTION OF THE HONOURABLE COURT

9. Under Article 23(1) of the Constitution, the High Court has jurisdiction in accordance with Article 165 to hear and determine applications for redress of a denial, violation or infringement or threat to a right or fundamental freedom in the Bill of Rights.
10. Under Article 165 (3) (d) (1) & (ii) of the Constitution, the High Court has jurisdiction to hear any questions respecting the interpretation of the Constitution, including the determination of questions whether any law is inconsistent with or in contravention of the Constitution and whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution.
11. In **Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & others [2015] eKLR (Petition 628, 630 of 2014 & 12 of 2015 (Consolidated))** the Court held:

112. However, we are satisfied, after due consideration of the provisions of Article 22, 165(3) (d) and 258 of the Constitution, that the words of the Constitution, taken in their ordinary meaning, are clear and render the present controversy ripe and justiciable: a party does not have to wait until a right or fundamental freedom has been violated, or for a violation of the Constitution to occur, before approaching the Court. He has a right to do so if there is a threat of violation or contravention of the Constitution.

113. We take this view because it cannot have been in vain that the drafters of the Constitution added “threat” to a right or fundamental freedom and “threatened contravention” as one of the conditions entitling a person to approach the High Court for relief under Article 165(3) (b) and (d) (i). A “threat” has been defined in Black’s Dictionary, 9th Edition as “an indication of an approaching menace e.g. threat of bankruptcy; a Person or a thing that might cause harm” (emphasis added). The same dictionary defines “threat” as “a communicated intent to inflict harm or loss to another...”

114. The use of the words “indication”, “approaching”, “might” and “communicated intent” all go to show, in the context of Articles 22, 165(3) (d) and 258, that for relief to be granted, there must not be actual violation of either a fundamental right or of the Constitution but that indications of such violations are apparent.

D. LEGAL FOUNDATION OF THE PETITION

12. Article 1 of the Constitution of Kenya provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. Such sovereign power is delegated to various State organs such as the national executive which shall perform their functions in accordance with the Constitution.

13. Article 2 of the Constitution provides for the supremacy of the Constitution and that it binds all persons and State organs at both levels of government. And that any law, act or omission in contravention of this Constitution is invalid/void to the extent of the inconsistency.

14. Article 3 (1) of the Constitution states that every person has an obligation to respect, uphold and defend the Constitution.

15. Article 10 (1) of the Constitution states that the national values and principles of governance in Article 10 (2) bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets this Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

16. Article 10 (2) of the Constitution states that the national values and principles of governance include the rule of law, participation of the people, democracy, human dignity, equity, social justice, inclusiveness, equality and human rights.

17. Article 19 of the Constitution provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies, and that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. These rights belong to each individual and are not granted by the State.

18. Article 20 of the Constitution states that the Bill of Rights applies to all law, it binds all State organs and all persons and that every person shall 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 of the Constitution states that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

20. Article 22 as read with Article 258 of the Constitution states that every person has the right to institute court proceedings on his behalf or on behalf of others claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

21. Article 23 of the Constitution vests this Honourable Court with the jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation, infringement of, or threat to a right or fundamental freedom. It also provides the remedies that the court can award in its endeavour to enforce the Bill of Rights.

22. Article 26 (1) of the Constitution states that every person has the right to life.

23. Article 28 of the Constitution states that every person has inherent dignity and the right to have that dignity respected and protected.

24. Article 29 (d) of the Constitution states that every person has the right to freedom and security of the person, which includes the right not to be subjected to torture in any manner, whether physical or psychological.

25. Article 45 (1) states that the family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State

26. Article 47 (1) of the Constitution states that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

27. Article 53 (1) (b) and (2) of the Constitution states that every child has the right to free and compulsory basic education and that a child's best interests are of paramount importance in every matter concerning the child.
28. Article 232 of the Constitution provides for binding values and principles in regards to public service. These include high standards of professional ethics, accountability for administrative acts, transparency and provision to the public of timely, accurate information.
29. Section 8 (1) (a) of the Children Act, 2022 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies - (a) the best interests of the child shall be the primary consideration.
30. Section 8 (2) of the Children Act, 2022 provides that all judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to - (a) safeguard and promote the rights and welfare of the child; (b) conserve and promote the welfare of the child; and (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
31. Section 4 (1) & (2) of the Fair Administrative Action Act provides for the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair; and the to be given written reasons for any administrative action that is taken against him.
32. Section 4 of the Basic Education Act amongst other things provides that basic education shall be guided by the following values and principles—(a) the right of every child to free and compulsory basic education;(c) promotion of quality and relevance; accountability and democratic decision making within the institutions of basic education; (q) promoting the protection of the right of the child to protection, participation, development and survival.

33. Article 6 of the International Covenant on Civil and Political Rights states that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
34. Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person.
35. Article 24 of the International Covenant on Civil and Political Rights states that every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.

E. THE FACTS RELIED UPON/BRIEF FACTS OF THE PETITION

36. On the 6th September, 2024 the Country woke up to the devastating news that a fire had broken out at the 1st Respondent – Hillside Endarasha Academy Nestled in Nyeri County, Kieni.
37. On the night of 5th September, 2024, at or around 9:30-10:00 p.m., 21 (twenty-one) young boys, aged between 10-14 years, whom undertook their schooling at Hillside Endarasha Academy, tucked themselves into their beds in the said School's dormitory for boys.
38. Upon the soft pillows of their parents' prayers, of their sweat, of their toil, of love poured through the years, rested the said 21 young boys each being their respective family's pride, beacon of hope, bright eyed and wide. With the hope of securing a brighter future for their sons, these parents had enrolled them at Hillside Endarasha Academy to pursue their basic education.
39. In this same night of the 5th September, 2024 just a short while after the 21 boys were to be asleep or had retired to their beds, a fire broke out at the Hillside Endarasha Academy (*hereinafter referred to as "the School"*) boy's dormitory claiming the 21 young boys' lives.
40. When the fire broke out, the School had just opened for third term studies in the learning calendar year for 2024. It was in the very same week and just a few days

after the School's said third term's opening that the fire broke out claiming the 21 boys' young lives.

41. Unbeknownst to the said 21 young boys' parents – 12 of whom are the 3rd -14th Petitioners, and the young boys themselves, that the adieu which they had bid to each other when they saw off their young boys to school was to be final as this was the last time they were to lay their eyes on one another.
42. Just a few days after they had entrusted their young boys to the care, concern and protection of the 1st -3rd Respondent, on the night of the 5th September in the late hours thereof, the 3rd – 14th Petitioners were to later on receive the dreadful news that fire had broken out at the School. The 3rd-14th Petitioners mostly got the news of devastating occurrence through phone calls from other parents whose children were also enrolled at the said school, concerned relatives and friends.
43. That most of the 3rd – 14th Petitioners (with the exception of the 3rd, 8th and 12th Petitioners) made their way to the School within a period of few minutes to a few hours of the fire having broken out at the School and them being informed of the same as stated above, whilst some of them arrived in the wee hours of the morning as the 5th September, 2024 transitioned to the 6th September, 2024.
44. That upon their arrival at the School and despite their frantic efforts to try and locate their sons, the 3rd – 14th Petitioners (with the exception of the 3rd, 8th and 12th Petitioners) were given little to no information by the 1st – 3rd Respondents on the whereabouts and/or state of their young sons but were instead hurdled into a classroom as parents whom could not locate their children.
45. That the 3rd – 14th Petitioners (with the exception of the 3rd, 8th and 12th Petitioners) were only told of there being deceased boys, by the Directorate of Criminal Investigation, as a result of the fire incident at or around 5 p.m. on the 6th September, 2024, after having been taken round in circles the whole day. It is at this time of being informed of there being deceased boys that they were taken to the boys' dormitory, the scene of the tragic incident.
46. The 8th Petitioner's son was found by him having been taken to hospital, in circumstances of which remain unknown to him, who later unfortunately succumbed to his injuries at the Kenyatta National Hospital having been

transferred there for specialized care. This was on the morning of the 6th September, 2024.

47. The 8th and 12th Petitioners would come later on to the School on or about the 7th – 8th September, 2024.

48. The 3rd – 14th Petitioners (with the exception of the 3rd, 8th and 12th Petitioners) were taken to the scene of the fire incident where they found that the boys' dormitory had been razed to the ground by the said inferno and charred human remains could be seen.

49. The School's boys' dormitory was made of wood.

50. The ensuing days after the fire incident and after the DNA matching process of matching the DNA of the 21 young boys remains to their parents, the 3rd – 14th Petitioners were forced by the State to bury their on either the 26th or the 27th September, 2024 and no other date whatsoever and that they were also forbidden from taking their sons to a mortuary of their choice even way after the DNA sampling and identification had taken place.

51. That despite the State's promise(s) to the 3rd – 14th Petitioners of taking swift action to secure answers to them and ensuring accountability for the said fire incident nothing of the sort whatsoever has taken place to date.

52. That the 1st – 3rd Respondents all throughout the occurrence of the said incident and the aftermath thereof neither consoled with the 3rd – 14th Petitioners nor offered them any answers as to the circumstances surrounding and/or leading up to the occurrence of the said fire incident. Throughout the occurrence of the said incident and its aftermath, received no communication whatsoever from the 2nd -3rd Respondents.

53. That all the while throughout the occurrence of the said incident and the aftermath thereof, (and even up to date) the 3rd – 14th Petitioners experienced distraught and despair and have up to date received no consolation or means of closure whatsoever from the 1st – 7th Respondents as a result of the said incident.

54. The Petitioners have repeatedly sought for answers and accountability thereunto from the Respondents in relation to the said incidence but to no avail.
55. The 1st – 7th Respondents had the primary duty of care to the 3rd – 14th Petitioners' son regarding safeguarding and ensuring the safety, security and/or protection of their lives.
56. That the actions and/or inactions of the 1st – 7th Respondents collectively and/or individually resulted in the demise of the 3rd – 14th Petitioners' sons.
57. It was in fact an admission of dereliction of duty by the 7th Respondent when after the fire incident herein stated, the 7th Respondent conducted a safety audit resulted in the finding that a majority of the boarding schools audited did not meet safety standards.
58. That the cutting short of the lives of the sons of the 3rd – 14th Petitioners has resulted in emotional, psychological and/or mental torture and trauma to them occasioning them loss and harm that has brought about adverse effects on the health of some of them.
59. That the right to life is the fulcrum for all other constitutionally entrenched rights and the foundation upon which the Bill of Rights is established.
60. That it is trite that the heaviest caskets are the smallest.
61. That an audit report on fire safety preparedness by the Auditor General submitted in the month September, 2020 painted a harrowing picture of the safety situation of the Country's schools and in particular boarding schools.
62. That despite the availability of the abovementioned information, the Auditor General's report, as a matter of public notoriety, the Respondents failed, refused, ignored and/or neglected to safeguard, secure, prevent and/or mitigate against the loss of the 3rd – 14th Petitioners' sons' lives and also failed, ignored, refused and/or neglected to put in place efficient, sufficient and secure functioning mechanisms to prevent and/or safeguard their sons' lives from being lost.

63. That the manual for safety standards for schools was neglected, ignored and/or failed to be adhered to by the Respondents leading to the loss of the 3rd – 14th Petitioners' sons' lives.
64. That the school infrastructure standards and guidelines was neglected, ignored and/or failed to be adhered to by the Respondents leading to the loss of the 3rd – 14th Petitioners' sons' lives.
65. That it has been a long held apprehension that schools and in particular boarding schools have become death traps for young learners.
66. Human rights means the rights relating to life, liberty and equality and the dignity of the individual guaranteed by the Constitution or embodied in the international covenants.

F. NATURE OF MAIN VIOLATIONS/THREATS TO THE CONSTITUTION

Violation(s) and/or threat(s) against Article 10 of the Constitution

67. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place sufficient, efficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 1st – 7th Respondents' actions violate and/or threaten Article 10 of the Constitution in so far as human dignity, accountability and human rights are constitutionally binding principles that ought to have informed their (policy) decisions.

Violation(s) and/or threat(s) against Article 19 of the Constitution

68. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place sufficient, efficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 1st – 7th Respondents' actions violate and/or threaten Article 19 of the Constitution by failing to attain to the preservation of the dignity of individuals and the realization of the potential of all human beings.

Violation(s) and/or threat(s) against Article 21 (1) of the Constitution

69. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 4th – 7th Respondent's dereliction of its monitoring and oversight duty over the 1st – 3rd Respondent resulting in the loss of the lives of the 3rd – 14th Petitioners' sons' lives violates and/or threatens Article 21 (1) of the Constitution with particular regard to the right to life, human dignity and rights of the child.

Violation(s) and/or threat(s) against Article 26 of the Constitution

70. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 3rd – 14th Petitioners' sons' right to life was contravened as a result of the aforesaid actions and/or inactions of the 1st – 7th Respondents. The 3rd – 14th Petitioners' lives right to life has been contravened as a result of the aforesaid actions and/or inactions of the 1st – 7th Respondents.

Violation(s) and/or threat(s) against Article 28 of the Constitution

71. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 3rd -14th Petitioners' human dignity and that of the deceased sons was and continues to be contravened by the actions of the 1st – 7th Respondents as stated.

Violation(s) and/or threat(s) against Article 29 (d) of the Constitution

72. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 3rd – 14th Petitioners' continued emotional, psychological and mental torment by virtue of the actions as stated by the 1st – 7th Respondents amounts to torture.

Violation(s) and/or threat(s) against Article 45(1) of the Constitution

73. By failing to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. The 4th – 7th Respondent's dereliction of its monitoring and oversight duty over the 1st – 3rd Respondent resulting in the loss of the lives of the 3rd – 14th Petitioners' sons' lives contravened Article 45 (1) and in particular failing to protect the family unit.

Violation(s) and/or threat(s) against Article 47 (1) of the Constitution

74. By failing (the 1st -7th Respondent) to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons.

Violation(s) and/or threat(s) against Article 53 (1) (b) of the Constitution

75. By failing (the 1st -7th Respondent) to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. In particular, to the extent that compulsory basic education encompasses there being in place a safe learning environment.

Violation(s) and/or threat(s) against Article 53 (2) of the Constitution

76. By failing (the 1st -7th Respondent) to safeguard, protect and secure the 3rd -14th Petitioners' sons' lives and by failing to put in place efficient, sufficient and secure functioning mechanisms and/or systems to prevent and/or safeguard the 3rd – 14th Petitioners' sons' lives from being lost and not being accountable to the 3rd – 14th Petitioners regarding the said loss of their sons. That the best interest principle cannot be attained without the safety of a child and/or a safe learning environment being of paramount importance.

G. CASES RELATED TO ISSUES IN THIS PETITION

77. There is no case pending in any court involving the parties herein and over the same subject matter herein.

H. RELIEFS SOUGHT BY THE PETITIONER

REASONS WHEREFORE;

THE PETITIONERS HUMBLY PRAY FOR: -

- a. A DECLARATION be and is hereby issued that the State and the Respondents have the duty and responsibility to safeguard, protect and secure the lives of learners in all institutions of basic education and training against loss, death and/or demise and that the State abdicated on this duty and responsibility which resulted in death by fire of the 21 young boys at the Hillside Endarasha Academy.
- b. A DECLARATION be and is hereby issued that the Respondents failed, neglected and/or ignored to take adequate measures to prevent and/or mitigate against the fire at the Hillside Endarasha Academy and as a result of their reckless and/or negligent acts the 3rd – 14th Petitioners' sons' lives were lost which resulted in the violation of their constitutional rights.
- c. A DECLARATION be and is hereby issued the Respondents infringed upon and/or violated the 3rd – 14th Petitioners' sons' right to life.
- d. A DECLARATION be and is hereby issued that the right to life equates to the right to live a life that is meaningful, complete and worth living.
- e. A DECLARATION be and is hereby issued that as a result of the loss of the 3rd – 14th Petitioners' sons' lives, the 3rd – 14th Petitioners' rights to life under Article 26 and 28 of the Constitution have been infringed upon and/or violated by the Respondents.
- f. A DECLARATION be and is hereby issued that the 3rd – 14th Petitioners' right to human dignity under Article 28 of the Constitution has been infringed upon and/or violated by the Respondents by virtue of their failure to be accountable to the 3rd – 14th Petitioners as to the cause of and the circumstances surrounding the fire incident at Hillside Endarasha Academy that claimed their sons' lives.

- g. A DECLARATION be and is hereby issued that the 4th – 7th Respondents contravened and/or violated the provisions of Article 21(1), 45, 53(1)(b) and 53 (2) of the Constitution.
- h. A DECLARATION be and is hereby issued that the right to free and compulsory education equates to the right to a safe learning environment.
- i. An order of MANDAMUS compelling the 4th – 7th Respondents, within 30 (thirty) days of the order hereof, to make public and/or publicize their own findings and/or investigations or any such other findings and/or investigations into the cause of the fire at the Hillside Endarasha Academy and their own resultant decision thereby or otherwise for their allowing for the continued operations of the Hillside Endarasha Academy.
- j. An order of STRUCTURAL INTERDICT compelling the 4th -7th Respondents, within 30 (thirty) days of the order hereof, to present to Court for scrutiny a comprehensive audit report of the fire safety preparedness compliance of the Hillside Endarasha Academy alias Hillside Academy.
- k. Any other relief(s) and/or order(s) the Honourable Court deems appropriate, just and/or fit to grant.

DATED at NAIROBI this 22nd day of September 2025



OKWIRI AND COMPANY
ADVOCATES FOR THE PETITIONERS

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TO BE SERVED UPON:

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