

**IN THE HIGH COURT FOR ZAMBIA
AT THE FAMILY & CHILDREN'S DIVISION
HOLDEN AT LUSAKA
(Family Jurisdiction)**



2023/HPF/640

**IN THE MATTER OF: SECTIONS 3(1), 4, 9(1), 10 AND 28 OF THE
CHILDRENS CODE ACT NO. 12 OF 2022**

**IN THE MATTER OF: SECTION 10, 15 AND 26 OF THE TEACHING
PROFESSION ACT NO. 5 OF 2013**

**IN THE MATTER OF: REGULATION 4 AND 21 OF THE TEACHING
PROFESSION (CODE OF ETHICS)
REGULATIONS S.I NO. 1 OF 2018**

**IN THE MATTER OF: THE VIOLATION OF THE CHILD'S RIGHTS TO
PROTECTION BY THE CHILD'S PARENTS**

**IN THE MATTER OF: THE VIOLATION OF THE CHILD'S RIGHTS TO
DIGNITY, RESPECT, EDUCATION AND
PROTECTION BY HIS PARENTS**

**IN THE MATTER OF: AN ORDER FOR PRODUCTION OF TEACHING
CERTIFICATES**

**IN THE MATTER OF: AN ORDER FOR THE DAMAGES AS
COMPENSATION FOR SLANDER, EMOTIONAL
HARDSHIP AND HARASSMENT ON THE CHILD**

**CHAMBATA BANDA (Suing on behalf of T.B
as guardian and next friend)**

1ST PETITIONER

**SUWILANJI CHABU BANDA (Suing on behalf of
T.B as guardian and next friend)**

2ND PETITIONER

AND

SIMBA INTERNATIONAL SCHOOL

1ST RESPONDENT

TANAKA MAREBESA

2ND RESPONDENT

JENNI ANDERSON-WEBSTER

3RD RESPONDENT

Before The Honourable Mrs. Justice T.S. Musonda

For the 1st and 2nd Petitioners: **Mr. D. Jere & Ms. A.Njolomba of Messrs.
Dickson Jere & Associates**

For the 1st Respondent **:** **Mr. C.M. Munkonka of Messrs. Caristo
Mukonka Legal Practitioners**

For the 2nd Respondent **:** **Mr. J.K. Matende of Messrs. Legal Aid
Board**

For the 3rd Respondent **:** **Mr. I. Shikapwasha of Messrs. Howard
Marietta & Peterson Legal Practitioners**

JUDGMENT

Legislation referred to:

- 1. The Constitution of Zambia (Amendment) Act, No.2 of 2016**
- 2. The Children's Code Act, No. 12 of 2022**
- 3. The Teaching Profession Act, No. 5 of 2013**

4. **The Teaching Profession (Code of Ethics) Regulations, S.I No. 1 of 2018**
5. **The Education Act, No. 23 of 2011**
6. **The Health Professions Act, No. 24 of 2009**
7. **The Health Professions (General) Regulations of 2012**
8. **The Health Professions Act, No. 17 of 2024**
9. **The Data Protection Act, No. 23 of 2021**

International Instruments referred to:

1. **The United Nations Convention on the Rights of the Child**
2. **The African Charter on the Rights and Welfare of the Child**
3. **The European Convention on Human Rights**

Cases referred to:

1. **Mponda v. Mponda, SCZ Appeal No. 199 of 2015**
2. **Killian Ives Mulenga v. The Attorney General, CAZ Appeal No. 45 of 2017**
3. **Wilson Masauso Zulu v. Avondale Housing Project Limited [1982] ZR 171**
4. **Khalid Mohamed v. Attorney General (1982) Z.R 49 (S.C)**
5. **Muvi TV Limited v. Killian Phiri & Kennedy Muswenu, SCZ Judgment No. 13 of 2015**
6. **Charles Muturi Macharia (suing as the next friend of and on behalf of Christine Wangari Muturi) & 7 Others v. The Standard Group & 4 Others, SC Petition 13 No. 13 (E15) of 2022**
7. **MAK v. RMAA & 4 Others, SC Petition No.2 (E003) of 2022; [2023] KESC 21 (KLR)**
8. **Zambia Railways Limited v. Pauline S. Mundia, Brian Simumba [2008] Z.R 287**
9. **R v. Tabassum [2000] 2 CR App R 328**
10. **Monica Wangu Wamwere and 5 Others v. The Attorney General, SC Petitions Nos. 26, 34 & 35 of 2019**

11. **David Chinyengele v. Scaw Limited, SJ No. 2 of 2017**
12. **Bevin Ndovi v. Post Newspapers, SCZ Judgment No. 8 of 2011**
13. **F.O v. Croatia, Application No. 29555/13**

Other works referred to:

1. **Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of a child to have his or her best interest taken as a primary consideration (art. 3, para.1, CRC/C/GC/14 (29th May 2013)**
2. **Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 5 (2003) CRC/GC/2003/5, General measures of implementation of the Convention on the Rights of the Child, 27 November 2003**
3. **Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 7 (2005) CRC/C/GC/1, Implementing child's rights in early childhood, 1 November 2005**
4. **Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the Child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011**
5. **Convention on the Rights of the Child, Committee on the Rights of the Children, General Comment No. 14 (2013) CRC/C/GC/14, 27 May 2013**

1. INTRODUCTION

1.1 This Petition was instituted on 10th November 2023 by two parents acting on behalf of their minor child pursuant to **Section 28 of the Children's Code Act No. 12 of 2022**. The Petition was amended on 28th November 2024. In the amended Petition, the Petitioners allege that the rights of the minor were infringed by the 1st, 2nd, and 3rd Respondents, and seek the following reliefs:

- (i) **An order for the 1st Respondent produces the Referral Form exhibiting consent given by the Petitioners to subject the child to assessment by an Occupational Therapist.**
- (ii) **An order that the 1st Respondent produces a Report stating why the child was recommended for assessment by an Occupational Therapist.**
- (iii) **An order that the 1st Respondent produces the Teaching Certificate held by the 2nd Respondent.**
- (iv) **Payment for damages by the 1st Respondent for contravening the child's right to development, respect, education, dignity and protection by his parents.**
- (v) **An order restraining the 2nd Respondent, whether by herself, her agents or otherwise, from further slandering the child.**
- (vi) **Payment of damages by the 2nd Respondent for slander against the child.**
- (vii) **Payment by the 2nd Respondent for contravening the child's rights to development, respect, education, dignity, and protection by his parents.**
- (viii) **An order that the 3rd Respondent be reprimanded, and her case referred to the Health Professions Council of Zambia (HPCZ) for disciplinary action on account of practising in Zambia without a certificate.**

- (ix) **An order that the 3rd Respondent produces the Report and all information obtained concerning the child which is in her possession and the same be given to the Petitioners.**
- (x) **An order that the 3rd Respondent pay damages to the Petitioners for subjecting the child to a therapy without the consent of the parents.**
- (xi) **Costs of and incidental to these proceedings be awarded to the Petitioners.**
- (xii) **Interest on all sums due; and**
- (xiii) **Any other reliefs that the court may deem necessary.**

2. THE PARTIES

- 2.1 **Chambata Banda (“1st Petitioner”)** petitions this Court as guardian and next friend to T.B (“the Child”).
- 2.2 **Suwilanji Chabu Banda (“2nd Petitioner”)** petitions this Court as guardian and next friend to T.B.
- 2.3 **Simba International School (“1st Respondent”)** is a private international school.
- 2.4 **Tanaka Marebesa (“2nd Respondent”)** is an employee of the 1st Respondent.
- 2.5 **Jenni Anderson-Webster (“3rd Respondent”)** is an Occupational Therapist by profession.

3. PLEADINGS

- 3.1 The amended Petition is supported by an affidavit verifying facts dated 29th November 2025 and skeleton arguments.
- 3.2 The 1st Respondent filed an answer, an affidavit verifying facts, and submissions dated 8th December 2023.
- 3.3 The 2nd Respondent filed an affidavit in opposition verifying facts and skeleton arguments dated 8th December 2023.
- 3.4 The 3rd Respondent filed an answer and an affidavit verifying facts dated 11th March 2025.

3.5 The Petitioners filed an affidavit in reply to the 3rd Respondents answer and affidavit verifying facts dated 18th June 2025.

4. THE PETITIONERS' CASE

4.1 The Petitioners' case is summarized as follows:

4.2 At the date of the initial presentation of the Petition, the Child was seven years old and had been enrolled at the 1st Respondent's school since 2021, in Grade 1. The Child has since changed schools and is currently enrolled at another school.

4.3 The Child is ambidextrous, having used both hands for tasks from infancy.

4.4 The Petitioners averred that the Child's ambidexterity posed challenges at his previous school, as teachers struggled to teach a mixed-handed child. This led the Petitioners to enroll the Child at the 1st Respondent's school in 2021, in Prep 2.

4.5 The Petitioners averred that the Child made significant progress, as the teachers were able to teach him despite his unusual hand dominance. However, challenges arose when the Child proceeded to Prep 3, as he was not making progress in Arithmetic.

4.6 At that time, the Petitioners noted that they were suddenly not being given the Child's Arithmetic exercise book for their perusal and assessment.

4.7 On the parent-teacher consultation day held on 11th March 2023, the Petitioners raised concerns with the 2nd Respondent regarding the Child's lack of progress in Arithmetic.

4.8 In response, the 2nd Respondent became defensive and angry towards the Petitioners, avoiding the issue that the Child was not being taught Arithmetic.

4.9 At the same meeting, the Petitioners also highlighted signs of the Child's lack of progress when given work at home.

4.10 The 2nd Respondent, in an effort to protect her job, began making malicious and slanderous statements about the Child to other parents and teachers, stating he had delayed Arithmetic and ability to learn.

- 4.11 Following the meeting, the 1st Petitioner sent an email on 3rd April 2023, exhibit “**CB2**” to the Primary Deputy Head, Claire Birgham, expressing concern about the 2nd Respondent and the Child’s progress.
- 4.12 The 1st Respondent had also requested production of the Child’s Arithmetic exercise book. The book was subsequently provided, but was blank, confirming the Child’s non-participation in Arithmetic classes taught by the 2nd Respondent.
- 4.13 To address the lack of teaching by the 2nd Respondent, the 1st Respondent, in consultation with the Petitioners, referred the Child to remedial reinforcement in Arithmetic with a teacher named Sasha Beukman, a Coordinator at the Special Needs Department (SEN).
- 4.14 The 1st Respondent also committed to provide the 1st Petitioner fortnight feedback through Sasha Beukman. Despite this assurance, and remedial reinforcement commencing in April 2023, the 1st Petitioner was never given any fortnight report.
- 4.15 Meanwhile, the 2nd Respondent continued to issue malicious and slanderous statements against the Child and the 2nd Petitioner to other parents and teachers in the Parent Teachers Association (PTA).
- 4.16 The Petitioners set out the following particulars of slander against the Child:
- (i) The 2nd Respondent has been orally defaming the Child, stating that the Child has an inability to learn, has social issues with friends, and has low confidence, thereby violating the Child’s rights to respect, dignity, and education, as provided under **Sections 9(1) and 10 of the Children’s Code Act, No. 12 of 2022.**
 - (ii) The 2nd Respondent has made these false statements to other parents, fellow teachers, and her superiors at the 1st Respondent, knowing them to be untrue, and knowing that she is subjecting the Child to ridicule, contempt, and disrespect.

- (iii) The slanderous actions of the 2nd Respondent have caused damage to the Child and his parents.

4.17 In addition, the Petitioners set out the following particulars of statutory breach by the 2nd Respondent:

- (i) A teacher is mandated under **Sections 45 and 46 of the Teaching Profession Act No. 5 of 2013** to ensure that he/she does not contravene the provisions of the Act and the Code of Ethics.
- (ii) A teacher is mandated under **Regulations 4 and 21 of the Teaching Profession (Code of Ethics) Regulations, Statutory Instrument No.1 of 2018** to uphold and foster the integrity of the profession for the enhancement and protection of learners, and to respect a learner's rights and dignity.
- (iii) The 2nd Respondent breached these duties by engaging in conduct that is dishonest, deceitful, unprofessional, and prejudicial to the teaching profession and the wellbeing of the Child.
- (iv) The 2nd Respondent disregarded the Child's rights and dignity by creating a false profile about a child who lacks such developmental problems, all in order to protect her job.
- (v) The breach of statutory duty by the 2nd Respondent has resulted in damage and emotional hardship to the Child and his parents.

4.18 As a result of the 2nd Respondent's actions, whereby she took it upon herself to harm the reputation of the Child and the 2nd Petitioner, the Petitioners engaged Messrs. Ituna Partners to issue a demand letter dated 5th June 2023, exhibit "**CB3**" to the 2nd Respondent, instructing her to cease and desist the malicious and slanderous statements.

- 4.19 Despite the demand letter, the Petitioners state that the 2nd Respondent did not cease making malicious statements about the Child and the Petitioners.
- 4.20 On 19th September 2023, the 1st Petitioner received an email from the 1st Respondent stating that an Occupational Therapist would visit on 2nd and 3rd October 2023, and the Child was identified as a learner who would benefit from the service.
- 4.21 Exhibits **"CB4"** are copies of the email and attachments.
- 4.22 The 1st Petitioner did not respond, confused as to why his son was scheduled to meet an Occupational Therapist, given the Child did not have a developmental disability and was only at the SEN Department for remedial Arithmetic classes.
- 4.23 On 27th September 2023, the 1st Petitioner received another email, exhibit **"CB5"**, from the 1st Respondent requesting that he fill in the parent questionnaire and return it by Thursday.
- 4.24 On 2nd October 2023, the Occupational Therapist, the 3rd Respondent herein, assessed the Child without their consent.
- 4.25 Upon learning about this, the 2nd Petitioner visited the school and asked the Occupational Therapist about the purpose of the visit. The response was that the 1st Respondent had reported the Child had inability to learn, social issues, low confidence, lack of organizational skills, and delayed speech. The Petitioners assert that this created a profile of autism on the Child.
- 4.26 In a state of dismay, the Petitioners began making further inquiries with the Deputy Primary Head, SEN Department Coordinator, and Assistant, questioning why the Child was being labeled as having these issues when they were simply coming from a situation where the 2nd Respondent had failed to teach the Child Arithmetic, necessitating remedial reinforcement.
- 4.27 The Petitioners requested the school to immediately produce the Referral Form, which required their consent prior to the Occupational Therapist meeting the Child. However, the 1st Respondent neglected

- and/or failed to produce the Form, as they did not have the Petitioners' consent.
- 4.28 They assert that the 1st Respondent was not forthcoming, and the SEN Department and Assistant were hostile towards the Petitioners. The Assistant only informed the 2nd Petitioner that the assessment was recommended by the 2nd Respondent, the Child's previous teacher.
- 4.29 The Petitioners reiterated that the Child has no such developmental disabilities, and if he did, his pediatrician would have been aware.
- 4.30 Given the events, the Petitioners aver that they questioned the qualifications and professionalism of the 1st Respondent's employees involved. The sequence of events prompted the Petitioners to question the qualifications and professionalism of the 1st Respondent's employees who were involved in the entire situation.
- 4.31 The Petitioners accordingly engaged Messrs. Ituna Partners, who wrote a demand letter dated 10th October to the 1st Respondent, exhibit "**CB6**". The letter requested: a report on why the Child was recommended for Occupational Therapist assessment; immediate production of the academic qualifications and Teaching Certificates held by the teachers involved; and production of the Referral Form exhibiting consent.
- 4.32 By letter dated 12th October 2023, the 1st Respondent requested an extension of the three-day deadline given in the demand letter. Further, the 1st Respondent requested a meeting with the 1st Petitioner in a letter dated 12th October 2023, exhibit "**CB7**" to resolve the matter amicably.
- 4.33 The meeting was held on 16th October 2023, and the 1st Respondent failed to meet the 1st Petitioner's demands. This related to production of Teaching Certificates, the Referral Form, a report on the reasons for referral to assessment, and compensation for the Child's harassment.
- 4.34 Meanwhile, the Child was bullied by classmates, leading the Petitioners to keep him at home away from school.

- 4.35 The Petitioners contend that they have experienced harassment and labeling by the 1st and 2nd Respondents because they were parents trying to protect their Child from undue diagnosis spearheaded by the failure of a teacher to teach.
- 4.36 The 2nd Respondent's attempt to protect her job by blaming the Child for lack of Arithmetic progress pushed the 1st Respondent to label the Child autistic, which they obliged, thus neglecting the Child's rights.
- 4.37 It also came to the attention of the 1st Petitioner that the 3rd Respondent was not registered to practice in Zambia with the Health Professions Council of Zambia. She accordingly, performed her trade in Zambia illegally.
- 4.38 Further, the 3rd Respondent, is still keeping the information, and findings, regarding the assessment. She has refused to release the same to the Petitioners despite several demands.
- 4.39 Additionally, the 3rd Respondent has gravely affected the Petitioners mentally, emotionally, and psychologically, as they are not sure why she is keeping the Child's medical data without their consent.
- 4.40 The Petitioners set out the following particulars of statutory breach committed by the 1st and 3rd Respondents:
- (i) The school is mandated under **Section 10 of the Children's Code Act** to ensure a learner's right to early childhood care, development, and education are upheld.
 - (ii) The school breached this duty by creating a profile on the Child, stating that he is lacking developmentally, and yet he is not.
 - (iii) The school further breached this duty by allowing the 2nd Respondent, who is its employee, to shift blame onto a Child for lack of progress in Arithmetic, which was due to her failure to teach the Child.
 - (iv) The school is mandated under **Section 9(1) of the Children's Code Act** to uphold a Child's right to be protected by his parents.

- (v) The school contravened this right when the Occupational Therapist met the Child and assessed him without the consent and presence of his parents, and the said Occupational Therapist is operating in Zambia illegally, as she is not registered to practice as such.
- (vi) The school and the 3rd Respondent breached the statutory duty by inviting the 3rd Respondent to carry out her therapy and/or assessment on the Child when they ought to have known that the 3rd Respondent was not registered to practice in Zambia.
- (vii) The 3rd Respondent has refused or neglected to release the consent form, date, and information obtained on the Child despite several reminders, and the same remains with her without the consent of the Petitioners.
- (viii) The school is mandated under **Sections 10, 11, 15, and 26 of the Teaching Profession Act, 2013** to not employ teachers who are not registered under the Act.
- (ix) The school has failed and/or neglected to produce Teaching Certificates of the 2nd Respondent and the other teachers who were cited by the Petitioners during their inquiries with the 1st Respondent.
- (x) The 1st Respondent has therefore employed persons who are holding out as teacher's contrary to the **Teaching Profession Act, 2013** as the said teachers are not registered and therefore may not be qualified and are not conversant with children's psychology and the **Teaching Profession (Code of Ethics) Regulations, 2018**.
- (xi) As a result of the statutory breach by the 1st Respondent, the Child has directly suffered loss and emotional hardship.

4.41 The Petitioners assert that the Court has jurisdiction to redress children's rights violations under the **Children's Code Act**.

5. THE 1ST RESPONDENT'S CASE

- 5.1 The following is a summary of the 1st Respondent's case.
- 5.2 The 1st Respondent confirmed that it is a private international school, registered as Ndola Education Trust in Zambia.
- 5.3 The 1st Respondent is further registered with the Ministry of Education under the **Education Act No. 23 of 2011** and licensed to operate a school, as evidenced by exhibit "**MM1a**".
- 5.4 Additionally, the 1st Respondent is registered with Cambridge Assessment International Education 2018-ZM423, as per exhibit "**MM1b**".
- 5.5 The subject Child was admitted to Prep 2 at the 1st Respondent's school on 16th September 2021, following the of signing the Conditions of Enrolment and Consent and Indemnity Form, evidenced by exhibits "**MM2a**" to "**MM2d**".
- 5.6 During the admission interview, the Petitioners stated they were dissatisfied with the treatment of their son by teachers at his former school, prompting the transfer to the 1st Respondent's school.
- 5.7 The Petitioners initially sought a Grade 1 placement. However, after assessment, the Child was placed in Prep 2, which is two levels below Grade 1. This means a learner will move from Prep 2 to Prep 3 before moving to Grade 1.
- 5.8 Prep 2 and Prep 3 are foundational classes in the early years of learning, designed to build a child's capacity, confidence, and disposition to use numeracy and literacy skills in daily life through engaging in play and problem-solving.
- 5.9 The school curriculum does not have much depth in calculations, computations, and division at Prep 2 and Prep 3. These Arithmetic concepts are taught as the Child progresses to higher grades.
- 5.10 After the Child completed Prep 2, he progressed to Prep 3 after one academic year. He also progressed to Grade 1.
- 5.11 However, during Prep 3, the Child's school attendance was poor, with an attendance of 50 days out of 73 days, a score of 51%. Teachers

- started noticing he had problems. It was therefore the absenteeism which partly contributed to challenges faced by the Child in Prep 3. This was brought to the attention of the Petitioners.
- 5.12 The 1st Respondent asserted that none of its teachers shifted the blame onto the Child for the progress in Arithmetic.
- 5.13 The 1st Respondent referred to exhibits “**MM3a**”, “**MM3b**”, and “**MM4**”, showing progress reports and attendance registers.
- 5.14 At the start of each academic year, the SEN Department observes learners in various classes who may benefit from learning support. Mr. Kabwasha, a teacher specialized in the field, observes learners for two weeks. He accordingly identified four children, among them the Child in issue. This was confirmed by the class teachers as well. It was noticed that the Child took considerable time to respond during learning and needed probing from the teacher to respond.
- 5.15 Extra lessons were arranged at no extra charge, and the Petitioners were informed, as evidenced by correspondence under exhibit “**MM5**”.
- 5.16 Despite the Child’s poor record of school attendance, his performance slightly improved due to the 1st Respondent’s intervention.
- 5.17 The 1st Respondent denies the allegations of slander against the Child or the 2nd Petitioner.
- 5.18 The 1st Respondent also denied receiving any demand letter alleging defamatory remarks by the 2nd Respondent.
- 5.19 The 1st Respondent contended that feedback was provided to the Petitioners on the Child’s progress and remedial measures.
- 5.20 In September 2023, the Primary School section of the 1st Respondent planned Continuing Professional Development training with the 3rd Respondent, who agreed to visit the school on 2nd and 3rd October 2023.
- 5.21 The 3rd Respondent also extended an open invitation to interested parents of children who felt their children would benefit from her expertise. The SEN Department sent emails to parents informing them about this and that they could make appointments, as evidenced by exhibit “**MM6**”. The email attachments were the flyer, parents’ and

- teacher questionnaire, and charges applicable, as the service was not free of charge. Parents were given an option to opt for assessment.
- 5.22 On 27th September 2023, the 2nd Petitioner approached a teacher, Sasha Beukman, and requested that the Child be seen by the 3rd Respondent. The 2nd Petitioner was interested in having her son benefit because of his ambidextrous nature. Further, they had previously made efforts to meet the 3rd Respondent without success.
- 5.23 On 29th September 2023, Mr. Kabwasha, by phone between 12:30 to 12:37 hours, confirmed the request for the Child to be seen by the 3rd Respondent on 2nd October 2023. The 2nd Petitioner confirmed the appointment and further informed the 1st Respondent that she had already spoken directly with the 3rd Respondent and would send the Parent's questionnaire directly to her.
- 5.24 On 2nd October 2023, the Petitioners came to the school and requested the Deputy Head-Primary, Mrs. Birgham, to meet the 3rd Respondent before the Child's scheduled assessment.
- 5.25 The 2nd Petitioner was informed that the 3rd Respondent was busy at the time, but she managed to intercept her and took her to observe the Child. At that time, he was having a Physical Education lesson.
- 5.26 Between 12:00 and 13:00 hours, the Child was assessed as scheduled.
- 5.27 There appeared to have been miscommunication between the Petitioners, and the 1st Petitioner requested the Deputy Head-Primary that the assessment be discontinued. The matter was escalated to the Head of the 1st Respondent school, Mr. Mark Makwilimba.
- 5.28 The 1st Respondent reiterated that the assessment was not forced on the Child but done at the request of the Petitioners. Further, the 1st Respondent never paid the Child's assessment fee of \$200.00.
- 5.29 The messages communicated to the Child and his parents do not suggest any malice or slander from the 1st Respondent, nor that the assessment was without consent. Reliance was placed on a copy of a printout of the message that the 2nd Petitioner sent to the 3rd Respondent, which was very cordial in content. The 3rd Respondent's

- report, exhibit “MM9”, similarly did not suggest any malice or assessment without parental approval.
- 5.30 The Petitioners were in fact given a detailed briefing before and during the assessment, as it was just simple ordinary questions and activities that the Child was asked to do.
- 5.31 Engaging the 3rd Respondent was consistent with school policy and aligned with the **Education Act, 2011** and the **Children’s Code Act**, intended to assist learners, and in their best interests. There was no breach of the Child’s right to protection by his parents, considering the assessment was done at the 2nd Petitioner’s request, and no objection was raised before the assessment was conducted. In this case, there was implied consent through the conduct of the Petitioners. Further, the therapist’s fee of \$200.00 was not paid by the school.
- 5.32 The 1st Respondent also denies malice or any suggestion that the Child was autistic. Further, the Conditions of Enrolment and the Consent and Indemnity Form signed by the Petitioner were to the effect that the Child could take part in all activities of the school.
- 5.33 On 4th October 2023, the 2nd Petitioner confronted Mr. Kabwasha aggressively concerning events of 2nd October 2023. Mr. Kabwasha reported the matter to Mr. Makwilimba. The 2nd Petitioner was written to and guided on the school’s expected parental code she was expected to uphold.
- 5.34 However, on 5th October 2023, she again confronted Mr. Kabwasha at the pickup point and used aggressive and unpalatable language, even throwing an envelope in his face in full view of other learners, staff, and parents.
- 5.35 Mr. Makwilimba invited the 1st Petitioner to discuss the deteriorating parent-teacher-school relationship, and when he arrived, he presented a demand letter from his Advocates, Messrs. Ituna Partners.
- 5.36 The 1st Respondent had tried to resolve the issue amicably, as there was no violation of the Child’s rights or any breach of the law. The 1st Respondent referred to correspondence exchanged between the

Petitioners' Advocates, the 1st Petitioner, and the 1st Respondent's Advocates, under exhibit "MM7".

- 5.37 According to the 1st Respondent, court proceedings were initiated before efforts to resolve matters amicably could be concluded. In fact, the 1st Respondent was in the process of submitting the Referral Form together with the qualifications for the teachers when the court process was received.
- 5.38 The 1st Respondent also denied that the Child was profiled as having developmental health disabilities. Additionally, developmental issues were limited to schoolwork and not related to any pediatric or health issues of the Child.
- 5.39 The 1st Respondent denied breach of statutory provisions, while conceding that it had an obligation to ensure learners' rights to early childhood care, development, and education were upheld.
- 5.40 In conclusion, the 1st Respondent denied that the Petitioners were entitled to the reliefs sought on the basis of the following:
- (i) The Referral Form and the prior communications made between the Petitioners, the school, and the 3rd Respondent had been made available in court.
 - (ii) The reasons for recommending the Child for assessment by the 3rd Respondent were explained to the Petitioners by the said Respondent prior to the assessment, and the assessment was done at the Petitioners' instance.
 - (iii) The Teaching Certificates for teachers identified by the Petitioners would be made available in court.
 - (iv) There was no justification for payment of damages on the basis that the 1st Respondent never contravened the Child's rights or any provisions of the law.
 - (v) The 1st Respondent or any of its teachers has never slandered the Child or the Petitioners.
 - (vi) The payment of damages for slander against the Child was thus not justified.

(vii) Payment of damages for contravening the Child's right to development, respect, education, dignity, and protection of his rights by his parents is not justified, as there was no contravention of the Child's rights.

5.41 Finally, the 1st Respondent prays that the Petition be dismissed with costs.

6. THE 2ND RESPONDENT'S CASE

6.1 The 2nd Respondent's case is summarized as follows:

6.2 The 2nd Respondent is a qualified and licensed teacher employed by the 1st Respondent, as evidenced by her Teaching Practising Certificate and Primary Teacher's Diploma, exhibits "TM1" and "TM2".

6.3 The 2nd Respondent averred that the Child's ambidexterity does not affect learning ability or lack thereof and is not a disability.

6.4 The 2nd Respondent did not dispute matters within the Petitioners' peculiar knowledge, particularly those relating to periods in Prep 2 before she became the Child's teacher. According to the 2nd Respondent, these reflected a subjective assessment of the Child's performance and when a change, if any, began.

6.5 The 2nd Respondent further averred that throughout Prep 3, the Child's attendance was very low, averaging just above 50% across terms, which contributed to him falling behind in schoolwork.

6.6 The 2nd Respondent disputed the Petitioners' allegations of lack of progress in Arithmetic, noting absenteeism was the main factor. In the Term 3 test for February 2023, the Child scored 72% in Numeracy and 31%, which were shown to the Petitioners at a consultation meeting.

6.7 The 2nd Respondent was only one of the two teachers assigned to the Prep 3 class, and they were assisted by two assistants. The Petitioners were advised that the Child's consistent school attendance would improve performance.

6.8 The 2nd Respondent acknowledged a parent-teacher consultation on 31st March 2023, where the Petitioners queried the absence of a Numeracy book. The 2nd Respondent clarified that Prep 3 learners used

- worksheets, not exercise books, and these were compiled into portfolios reviewed with parents at the end of the term.
- 6.9 However, during discussions, the Petitioners became incensed and made allegations that the Child was not being taught Arithmetic. Further, that the 2nd Respondent and the other teacher were unqualified to teach the class, contrary to the claim that they raised concerns on the Child's progress. Despite this, the 2nd Respondent remained calm and respectful, in line with the 1st Respondent's school policy.
- 6.10 The 2nd Respondent denied the allegation that the Child was not taught Arithmetic, stating he was taught Numeracy and other subjects alongside other learners, using the approved curriculum.
- 6.11 The 2nd Respondent denied spreading malicious or slanderous statements about the Petitioners or the Child.
- 6.12 The 2nd Respondent averred that allegations of slander were fabricated and intended to tarnish her professional image without just cause.
- 6.13 Further, it was wrong for the Petitioners to raise the allegations and attribute them to unnamed parents and teachers from whom the Court would not have heard. It was equally wrong for the Petitioners to allege slanderous and malicious statements against them without stating the words of the statement and to whom they were made.
- 6.14 Whilst the 2nd Respondent acknowledged receipt of a letter from Messrs. Ituna Partners, the letter did not state the words claimed to be defamatory or to whom they were made.
- 6.15 Ultimately, the 2nd Respondent denied making untrue statements about the Child and the 2nd Petitioner, nor was evidence availed of a third party to whom the defamatory statement was made.
- 6.16 Additionally, communications and interactions between the Petitioners and the 1st Respondent were within the Petitioners' peculiar knowledge, as they were not within the 2nd Respondent's knowledge and information.

- 6.17 Contrary to the Petitioners' claims, the 2nd Respondent averred that no assessment for or referral of the Child to the SEN Department occurred during the time the Child was in her class. Even after the 2nd Respondent ceased to be the Child's teacher, no such action was done at her instance, with her approval, or input.
- 6.18 The 2nd Respondent also denied allegations that she blamed the Child to protect her job, stating such claims are false. Further, during her tenure, the Child and other learners were taught the 1st Respondent's approved curriculum diligently and competently.
- 6.19 In conclusion, the 2nd Respondent denied any statutory breach or violation of the Child's rights. Accordingly, she disputes the reliefs sought against her and maintains that the Petitioners are not entitled to the remedies claimed in the Petition.
- 7. THE 3RD RESPONDENT'S CASE**
- 7.1 The 3rd Respondent's case is summarized below.
- 7.2 The 3rd Respondent averred that she is a British trained and registered Occupational Therapist by profession, as evidenced by exhibit "JAW7", a letter from the Health and Care Professions Council in the United Kingdom confirming her good standing and up-to-date registration.
- 7.3 The 3rd Respondent attempted to register with the Health Professions Council of Zambia but was informed her qualifications were above the required minimum qualifications provided for under **Section 8(2) of the Health Professions Act No. 24 of 2009** and **Regulation 5 of the Health Professions (General) Regulations of 2012**. Consequently, she was ineligible for registration until the current legislation was amended. In support of this, reliance was placed on exhibit "JAW7", a letter from the Health Professions Council of Zambia.
- 7.4 Regarding the matter before Court, the 3rd Respondent was invited by the 1st Respondent to conduct a Continuing Professional Development training session for primary school staff on 2nd October 2023, as evidenced by exhibit "JAW1", a copy of the PowerPoint presentation.

- 7.5 Ahead of the training, she shared a flyer, exhibit **"JAW2"**, explaining Occupational Therapy and areas in which an Occupational Therapist can assist children or students. The flyer was circulated to relevant parents and guardians, including the Petitioners.
- 7.6 Further to the scheduled training, the 3rd Respondent offered additional services to the 1st Respondent. These included spending additional time during the morning of the training to see and attend to any children or students recommended by the SEN Department for remedial programme guidance.
- 7.7 On 28th September 2023, she was informed by the 1st Respondent that some parents were apprehensive and concerned about her involvement with their children, unclear about her role. To address this, she requested contact details of the concerned parents to explain her role directly ahead of the scheduled visit on 2nd and 3rd October.
- 7.8 Accordingly, on 29th September 2023, the 3rd Respondent contacted the 2nd Petitioner by telephone, and the two had a lengthy conversation on a few points. The 2nd Petitioner shared information and insight regarding the Child, including background information about his schooling history, ambidexterity, and habits. Throughout the conversation, the 3rd Respondent took down notes, as shown by exhibit **"JAW3"**, a copy of the notes taken.
- 7.9 By way of summary, she explained her role as an Occupational Therapist and how she would likely identify areas where a child could benefit from input to support the normal development trajectory.
- 7.10 The 2nd Petitioner, who appeared more open to the Child's assessment, was advised that the assessment could only be done once the Consent Form and Parent Questionnaire were filled in and sent back to the 1st Respondent. However, this was never done.
- 7.11 According to the 3rd Respondent, as a result, on 2nd October 2023 the scheduled assessment was never conducted on the Child, save for the impromptu assessment conducted at the Petitioners' request.

- 7.12 She informed the 2nd Petitioner that the 1st Respondent had told her the Child had an inability to learn, social issues, low confidence, lack of organizational skills, and delayed speech. Further, prior to her visit, the SEN Department submitted referral paperwork for children or students needing assistance to aid their remedial classes, contingent on parents or guardians filling in and submitting a Consent Form and Parent Questionnaire. To support her assertions, reliance was placed on exhibit "**JAW4**", a copy of the referral paperwork.
- 7.13 On 2nd October 2023, whilst at the 1st Respondent's premises, the Petitioners requested to meet her. She suspended what she was doing and met the Petitioners, who were in the company of the Child. The 2nd Petitioner requested her to observe the Child, who was having Physical Education lessons. The Petitioners and the 3rd Respondent observed him for a short while. She then suggested that it would be more helpful to watch the Child do more specific activities to better understand his ambidextrous nature and whether he had any coordination difficulties affecting him. The Petitioners permitted her to proceed, and it was agreed that feedback would be provided during lunch break that day.
- 7.14 Accordingly, the 3rd Respondent took the Child out of his classroom for a brief period of less than 30 minutes. She observed him doing specific activities in the SEN classroom and outdoors in the school playground. Notes from these activities were recorded in exhibit "**JAW5**", the Occupational Therapy Initial Assessment Form.
- 7.15 As agreed, she provided the Petitioners with feedback regarding the brief private session conducted with the Child. She informed them that the Child was a lovely boy who was doing well in several areas. However, after watching his movements, she observed that he had some difficulty with bilateral coordination. He could thus benefit from activities to help his development in this particular area. Having observed his social interactions, she formed the view that he was "sensory sensitive" and recommended a sensory profiling tool, which she emailed to the 2nd Petitioner but received no response.

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- 7.15 As agreed, she provided the Petitioners with feedback regarding the brief private session conducted with the Child. She informed them that the Child was a lovely boy who was doing well in several areas. However, after watching his movements, she observed that he had some difficulty with bilateral coordination. He could thus benefit from activities to help his development in this particular area. Having observed his social interactions, she formed the view that he was "sensory sensitive" and recommended a sensory profiling tool, which she emailed to the 2nd Petitioner but received no response.

- 7.16 The 3rd Respondent reiterated that completing the assessment process and generating a report with recommendations required the Petitioners to complete and return the Consent Form and Parent Questionnaire earlier provided to them.
- 7.17 That evening, the 3rd Respondent received a WhatsApp message from the 2nd Petitioner thanking her for coming and relaying that the Child described her as “a nice lady who had feelings and smiled,” as evidenced by exhibit “**JAW6**”. Following this, she did not receive any documentation from the Petitioners, nor did she meet or further interact with the Child.
- 7.18 She reiterated that the scheduled assessments were never conducted due to the Petitioners’ failure to submit the relevant paperwork. She was also not compensated for the time spent initially assessing the Child and the telephone conversation with the 2nd Petitioner. Since no assessment was conducted, no information or findings were formulated to generate a report on the Child. Further, the Occupational Therapy Initial Assessment Form (exhibit “**JAW5**”) shows that the results were non-medical in nature, as no medical data was compiled or collected from the Child.
- 7.19 No formal or informal demands were made to the 3rd Respondent for the report by the Petitioners or their legal representatives.
- 7.20 She added that she made no reference or inference that the Child had any developmental disabilities, as that was outside her professional orbit as an Occupational Therapist.
- 7.21 In conclusion, the 3rd Respondent maintained that the only assessment conducted on the Child was the initial assessment, which was done at the Petitioners’ request and partly in their presence.

8. THE PETITIONER'S CASE IN REPLY TO THE 3RD RESPONDENT'S CASE

- 8.1 The following is a summary of the Petitioners' case in reply to the 3rd Respondent's case:
- 8.2 The Petitioners maintained that, contrary to the 3rd Respondent's claim, an assessment was conducted on the Child without their consent. The said assessment was also carried out despite their refusal to provide the necessary paperwork to proceed with the assessment.
- 8.3 Regarding the telephone call referred to by the 3rd Respondent, the correct position was that the call was made by her to the 2nd Petitioner, stating that she wanted to assess the Child. The 2nd Petitioner asked what the assessment was about and was informed that the Child had delayed speech, difficulties in socializing with peers, and challenges in reading and writing.
- 8.4 Further, the Petitioners asserted that the 2nd Petitioner asked the 3rd Respondent if the 1st Respondent had mentioned the Child's ambidextrous nature, thinking that was the reason for the telephone call. The 3rd Respondent, in confusion, stated that the 1st Respondent had never raised those concerns with her and wondered whether the Petitioners attended parent-teacher consultation meetings. The 2nd Petitioner questioned her about the source of information regarding the Child needing therapy, since the 1st Respondent had not mentioned any need for therapy.
- 8.5 The Petitioners also contended that the 2nd Petitioner only went to the school because of information received that the Child was undergoing evaluation.
- 8.6 They averred that they met Deputy Head Ms. Brigham, who was unaware of the assessment. Ms. Brigham contacted Mr. Kabwasha, who stated that the 3rd Respondent was unavailable as she was in session, causing them to wait for an hour. They further averred that they went to the Deputy Head's office demanding cancellation of the assessment but were referred to the office of the school Head.

- 8.7 Regarding the 3rd Respondent's account of observing the Child during P.E. and later in the SEN classroom, the Petitioners averred that the alleged meeting took place in the field, away from offices and staff, where she said she wanted to assess the Child's motor skills. When asked why she did not assess him during Physical Education, she replied that the assessment would not yield better results because of the parents' presence. They further averred that she informed them the 1st Respondent had a problem with the Child because he was an introvert, and that her assessment in socialization, speech, and arithmetic recorded no negative results.
- 8.8 She added that she would share the exact report with the 1st Respondent and would advise the 1st Respondent to hold a parent-teacher consultation where such matters should be addressed.
- 8.9 The Petitioners denied the 3rd Respondent's assertions regarding the feedback sessions and her request to them to complete and return the Consent Form and Parent Questionnaire for her to complete the assessment process and generate a report.
- 8.10 They further maintained that they made several unsuccessful requests for the assessment report.
- 8.11 Regarding the 3rd Respondent's registration status, the Petitioners contended that the assessment was conducted before she was registered on 1st November 2023, as evidenced by exhibit "CB1" in the affidavit in reply, a copy of a letter dated 12th August 2024. Further, her registration attempt was made subsequent to the commencement of this matter, as demonstrated by exhibit "CB2".

9. SUMMARY OF SKELETON ARGUMENTS AND SUBMISSIONS
THE PETITIONERS' SKELETON ARGUMENTS

- 9.1 It was argued, by reliance on **Article 133(2) of the Constitution of Zambia, Act No. 2 of 2016**, together with **Section 28 of the Children's Code Act**, that this Court is properly seized with jurisdiction to determine the Petition.

- 9.2 It was further argued, with reference to **Section 3(1) and 3(3) of the Children's Code Act**, that in all matters concerning a child the best interests of that child must be treated as paramount.
- 9.3 It was also argued, by reliance on **Section 4** of the same Act, that the principles laid down there provide the framework for determining matters relating to children.
- 9.4 Reliance was also placed on the Supreme Court decision in *Mponda v. Mponda (1)*, where it was held that the best interests of the child must be considered holistically. It was further argued that a social welfare report is not a prerequisite if sufficient evidence is before the Court.
- 9.5 It was argued that the 1st and 2nd Respondents failed to act in the Child's best interests, thereby infringing his rights to development, dignity, education, and parental protection. Reliance was placed among other authorities, on the case of *Killian Ives Mulenga v. The Attorney General (2)* in support of the submission that defamatory statements communicated to third parties constitute slander. It was contended that the 2nd Respondent committed slander by making false statements about the Child's abilities, labelling him as unable to learn, lacking confidence, and needing Occupational Therapist assessment. This, it was argued, led to undue labelling, emotional hardship, and the temporary removal of the Child from school.
- 9.6 Further reliance was placed on **Article 16 of the United Nations Convention of the Rights of the Child**, which protects children against unlawful interference with privacy, honour, and reputation, and **Regulation 21(1) of the Teaching Profession (Code of Ethics) Regulations, 2018**, which requires teachers to respect learners' rights and dignity. It was argued that the 2nd Respondent disrespected the Child's rights by failing to accommodate his mixed-handedness and by making false statements about his abilities.
- 9.7 Reliance was also placed on **Section 14(1) of the Education Act, 2011**, which guarantees the right to early childhood care, basic education, and high school education, and **Section 10(1) of the**

Children's Code Act, which directs that education must develop the Child's personality, talents, skills, and respect for rights and freedoms. It was submitted that the 1st Respondent contravened these rights by recommending assessment by an Occupational Therapist without parental consent, contrary to **Section 9(1) of the Children's Code Act**, which guarantees a Child's right to parental protection.

9.8 Reliance was also placed on **Sections 10(1) and 15(1) of the Teaching Profession Act, 2013**, which require registration and practising certificates for teachers, and **Section 26**, which prohibits unregistered persons from practising or holding out as teachers. It was argued that the 1st and 2nd Respondents contravened these provisions, thereby breaching the Child's rights and undermining the integrity of the teaching profession.

9.9 In conclusion, the Petitioners prayed for the grant of reliefs sought, and costs against the Respondents.

THE 1ST RESPONDENT'S SUBMISSIONS

9.10 It was submitted that the actions taken by the school were intended to assist the child and did not amount to a violation of his rights under the **Children's Code Act**.

9.11 It was argued that upon enrollment from his former school, the child was asked to perform basic tasks such as writing his name and numbers but demonstrated difficulty, which justified placing him in Prep 2.

9.12 It was further argued that the interventions implemented had a transformative effect, moving him from dependency to independence, enabling him to follow instructions and complete tasks unaided.

9.13 It was submitted that the Child's poor academic performance was attributed in part to poor school attendance, as shown in the Progress Reports exhibited as **"MM3a"** and **"MM4"**. These demonstrate absences amounting to one-third of the school term, with attendance as low as 51%. These observations, corroborated by the Prep 2 and 3

- teachers and the SEN teacher, led to a recommendation for remedial support.
- 9.14 It was also argued that the Child was not an isolated case, as other learners had also been recommended for extra lessons. The decision to assign learning support was intended to benefit the Child, consistent with the school's remedial policy. This aligned with **Section 3 of the Children's Code Act**, which prioritizes the child's best interests, and **Section 10**, which emphasizes the development of the child's personality, talents, skills, and abilities.
- 9.15 Additionally, the invitation extended to the 3rd Respondent to train teachers was argued to be aimed at enhancing staff skills in compliance with **Section 10 of the Children's Code Act** and should not be construed as a violation of children's rights. The subsequent offer of services to parents and children was optional and based on payment of a fee, with the school merely facilitating appointments. The email invitation was a general offer, not directed at any specific child.
- 9.16 It was further argued that the SEN Department was established in line with **Section 23 (4) of the Education Act, 2011** which mandates education institutions to adopt policies supporting learners with special needs. Also, **Section 49 (3)**, which allows private institutions to cater for such learners. The department's purpose was to support children falling behind academically, not only those with specific conditions such as Downs Syndrome. Recommending a child for SEN support should not be misconstrued as implying developmental challenges, and any associated stigma was unfounded.
- 9.17 With regard to the 3rd Respondent's visit, it was argued that she was invited to provide Continuous Professional Development training to teachers, and her services to parents and children were optional, with parents booking and meeting her privately. Accordingly, the 1st Respondent should not be held responsible for interactions between the Petitioners and the 3rd Respondent's, as it merely facilitated scheduling. Further, WhatsApp messages exhibited as **"MM8"** and

- “MM9” between the Occupational Therapist and the 2nd Petitioner were highlighted, showing cordial communication, with no indication of dissatisfaction expressed by the Petitioners.
- 9.18 It was also submitted that parental consent was not required from the 1st Respondent, as any assessment was a private arrangement between parents and the Occupational Therapist, based on payment for services rendered. The 1st Respondent was protected from the Petitioners’ claims under the terms of the Enrolment Consent and Indemnity document.
- 9.19 Regarding the 1st Respondent’s status, it was submitted that it is duly registered, accredited, and licensed to operate as a private school in Zambia, as evidenced by the affidavit. All teachers employed are qualified, holding Teaching Practising Certificates from the Teaching Council of Zambia, as required by law.
- 9.20 The 1st Respondent disputed the Petitioners’ claim of lacking progress reports, stating that detailed reports and correspondence were provided, and meetings with teachers were held on open days, as acknowledged by the Petitioners in exhibits “MM3” and “MM5”.
- 9.21 On the defamation claim, it was submitted that no evidence was adduced to substantiate it. The 1st Respondent denied creating an autism profile for the child and asserted that recommending extra lessons through the SEN Department did not amount to defamation.
- 9.22 Reliance was placed on *Wilson Masauso Zulu v. Avondale Housing Project Limited (3)* and *Khalid Mohamed v The Attorney General (4)*, to argue that the Petitioners have failed to establish a case against the 1st Respondent on the balance of probabilities, and that the Petition lacks merit and should be dismissed with costs.

THE 2ND RESPONDENT’S SKELETON ARGUMENTS

- 9.23 It was argued that defamation is unambiguous, and defined as malicious or groundless harm to another’s reputation by making a false statement to a third party.

- 9.24 Reference was made to *Killian Ives Mulenga v The Attorney General*, which established that communicating untrue and damaging information to a third party constitutes defamation, with the remedy being a tort claim. It was further argued that in a defamation claim, it is imperative to explicitly state the actual words alleged to be defamatory in the particulars of claim. Reliance was also placed on *Muvi TV Limited v Killian Phiri & Kennedy Muswenu (5)*, where it was held that the law requires the actual words complained of to be set out verbatim in the statement of claim.
- 9.25 It was also argued that the Petitioners' affidavit evidence contained no mention of specific defamatory statements made against the 2nd Petitioner, warranting dismissal of the claim. The alleged labelling in paragraph 33 was said to be insufficient, as it did not specify the defamatory words used.
- 9.26 Regarding alleged defamation against the Child, the 1st Respondent contended that the claim is two-fold: first, the statement about delayed Arithmetic, which she denies making, and second, the statement that the child had an inability to learn, allegedly communicated to teachers and parents.
- 9.27 On the first aspect, it was argued that even if the statement was made, it is justified by the 1st Petitioner's own affidavit acknowledging the Child's lack of progress in Arithmetic, and a defamatory statement must be untrue.
- 9.28 On the second aspect, it was contended that the Petitioners had not provided admissible evidence, and the deposition was inadmissible hearsay.
- 9.29 It was emphasized that a deponent in an affidavit must clearly state the particulars of their source of information, relying on **Order 5 Rules 16-18 of the High Court Rules, Chapter 27 of the Laws of Zambia** which require affidavits to contain statements of fact from personal knowledge or information believed to be true, with the source explicitly stated. Given the Petitioners' failure to comply, it was argued that the

alleged defamatory statement to teachers and parents was inadmissible.

- 9.30 On the alleged breach of the Child's rights, it was argued that there was no evidence of discrimination, contrary to the **Teaching Profession (Code of Ethics) Regulations, 2018**. It was further argued that the child was not deprived of the right to education under **Section 14(1)** of the **Education Act, 2011**.
- 9.31 The Petitioners' reliance on **Section 5 of the Children's Code Act** was said to be misplaced, as it imposes responsibility on the State and family, not on the 2nd Respondent. It was contended that there was no act or omission by the 2nd Respondent interfering with the State's or the Petitioners' duty to uphold the Child's rights.
- 9.32 Regarding allegations about qualifications, the Respondent argued that these are unfounded, as substantiated by her affidavit evidence, and that any breach of the **Teaching Profession Act, 2013** is a matter for criminal prosecution under **Section 26(4)** of the Act. On the allegations of harassment and labelling, it was argued that the Petitioners' evidence lacks specific details of acts allegedly committed, and the claim must fail for want of particulars.
- 9.33 In conclusion, the 2nd Respondent argued that the Petition lacks merit and should be dismissed. It was reiterated that she is qualified and licensed, discharged her duty of teaching in accordance with the approved curriculum, did not discriminate against any learner. Accordingly, the Petitioners have failed to prove all claims against her.

THE 3RD RESPONDENT

- 9.34 The record reflects that the 3rd Respondent did not file any skeleton arguments or written submissions.

10. THE HEARING

- 10.1 The following is a summary of oral submissions by Counsel at the hearing of the Petition.

- 10.2 Counsel for the Petitioners, submitted that, as agreed by Counsel, reliance would be placed on the Petition and all supporting documents without viva voce evidence.
- 10.3 Counsel submitted that the thrust of the Petition was that the Child in issue was subjected to an assessment by the 3rd Respondent without the consent of the parents.
- 10.4 Having scanned through the Respondents' answers, Counsel noted that the consent form was never signed, entailing that no consent was granted.
- 10.5 Counsel further submitted that, at the time the 3rd Respondent conducted the assessment, she was not registered to practice in Zambia. The attempt to register was only made after this matter was commenced.
- 10.6 In conclusion, Counsel submitted that the Court would review the rest of the Petitioners' case and render judgment on the same.
- 10.7 Counsel for the 1st Respondent submitted that the 1st Respondent was opposing the Petition based on the answer, affidavit in support, and skeleton arguments. Reliance would be placed on these documents.
- 10.8 Counsel emphasized that the 1st Respondent had nothing to do with the assessment of the Child. Further, the assessment was an arrangement between the 2nd Respondent and the 3rd Respondent, at the instance of the 1st Petitioner, as stated in the affidavit filed by the 3rd Respondent. It followed that no case had been established against the 1st Respondent.
- 10.9 Counsel reiterated that whatever action the 1st Respondent took was in the best interests of the Child, in line with the provisions of the **Education Act, 2011**.
- 10.10 In conclusion, Counsel submitted that the detailed submissions were as contained in the 1st Respondent's written submissions.
- 10.11 There were no oral submissions for the 2nd Respondent.

- 10.12 Counsel for the 3rd Respondent submitted that, in opposing the Petition, reliance would be placed on the 3rd Respondent's answer and supporting affidavit.
- 10.13 The 3rd Respondent would rely on the aforementioned documents. Additionally, Counsel submitted that the 3rd Respondent maintained that an assessment was never conducted on the Child.
- 10.14 Counsel further submitted that, as the affidavit in support and reply show, the Petitioners by their own admission did not sign, fill in, and return the parental questionnaire sent to them. Further, they did not sign and return the referral form also sent to them. Additionally, they never, by their own admission, paid the \$200.00 for the assessment.
- 10.15 Counsel submitted that it was therefore the 3rd Respondent's contention that the Child did not meet the prerequisites for the assessment to be concluded.
- 10.16 Further, the 3rd Respondent's affidavit reveals that she possesses a Master of Science in Occupational Therapy.
- 10.17 The 3rd Respondent accordingly implored this Court to appreciate the documents submitted in support of her case.
- 10.18 In conclusion, Counsel submitted that the 3rd Respondent prayed that the Petition be dismissed with costs.
- 10.19 In reply, Counsel for the Petitioners submitted that the 1st Respondent cannot evade the issue of the assessment. This was because the 1st Respondent communicated the same to the Child's parents and the assessment was done at their premises.
- 10.20 The 1st Respondent's affidavit was detailed and instructive. It confirmed that the 1st Respondent sent the flyer to the Petitioners. This in itself indicates that the 1st Respondent played a role in the assessment.
- 10.21 Regarding the 3rd Respondent's submission that no assessment was conducted, Counsel counter-submitted that the 1st Respondent's affidavit, at paragraph 48, disclosed that the assessment was done.
- 10.22 Further, paragraph 49 disclosed that the assessment did not involve any medical treatment or administration of medicine. In this regard,

the 3rd Respondent ought to have noted what the 1st Respondent stated regarding the assessment having been conducted.

11. ISSUES FOR DETERMINATION

11.1 Having considered the Petition, the contending answers and affidavits, together with the oral submissions of Counsel, the following issues arise for determination.

- (i) Whether the 1st Respondent should be directed to produce the Referral Form exhibiting consent given by the Petitioners for the Child to be subjected to assessment by the Occupational Therapist.
- (ii) Whether the 1st Respondent should be directed to produce a report stating why the Child was recommended for assessment by an Occupational Therapist.
- (iii) Whether the 1st Respondent should be directed to produce the Teaching Certificate held by the 2nd Respondent.
- (iv) Whether the 1st Respondent is liable to pay damages for contravening the Child's rights to development, respect, education, dignity, and parental protection.
- (v) Whether the 2nd Respondent slandered the Child.
- (vi) Whether an order restraining the 2nd Respondent, whether by herself, her agents or otherwise, from further slandering the Child should be issued.
- (vii) Whether the Petitioners should be awarded damages for slander against the Child.
- (viii) Whether the 2nd Respondent contravened the Child's rights to development, respect, education, dignity, and parental protection.
- (ix) Whether the 3rd Respondent should be reprimanded and her case referred to the Health Professions Council of Zambia for disciplinary action on account of practising without a certificate.

- (x) Whether the 3rd Respondent should be directed to produce the report and all information obtained concerning the Child in her possession, to be given to the Petitioners.
- (xi) Whether the 3rd Respondent should be ordered to pay damages to the Petitioners for subjecting the Child to therapy without parental consent.

12. THE LAW, ANALYSIS AND DETERMINATION

12.1 As a threshold issue, I am satisfied that I have jurisdiction to determine this Petition pursuant to **Section 28 of the Children's Code Act**, which provides as follows:

A person who alleges that a provision of this Act is being or is likely to be contravened in relation to a child, may petition the Children's Court for redress, on behalf of the child, without prejudice to any other action with respect to the same matter which is lawfully available.

12.2 The **Children's Code Act** domesticated the **Convention on the Rights of the Child**, and the **African Charter on the Rights and Welfare of the Child**, which both respectively set the 'best interest of the child' as a foundational legal principle. Regarding this principle, **Section 3 (1) of the Children's Code Act**, states:

(1) A child's best interest is the primary consideration in a matter or action concerning the child, whether undertaken by a public or private body.

12.3 The Supreme Court of Kenya in *Charles Muturi Macharia (suing as the next friend of and on behalf of Christine Wangari Muturi) & 7 Others v. The Standard Group & 4 Others (6)*, at page 18, paragraph 47, held that the best interests principle is not merely a guiding consideration but a free standing right in itself.

12.4 **Section 3 (3) of the Children's Code Act** restating the best interests of the child, provides as follows:

(3)A court, an administrative institution, an authorized officer or a person acting in the name of an administrative institution, exercising a power conferred by this Act or any other written law in relation to a child, shall treat the best interests of the child as the first and paramount consideration to the extent that the-

(a) best interests of the child safeguards and promotes the rights of the child;

(b) best interests of the child conserves and promotes the welfare of the child; and

(c) court, an administrative institution, an authorized officer or a person acting in the name of an administrative institution secures for the child guidance and correction as is necessary for the welfare of the child and in the public interest.

12.5 In terms of the application of the best interests principle, the Supreme Court of Kenya in *Charles Muturi Macharia (suing as the next friend of and on behalf of Christine Wangari Muturi) v. The Standard Group & 4 Others* cited its earlier decision in *MAK v. RMAA & 4 Others (7)*, where it was stated as follows:

The concept of the child's best interest is flexible and adaptable. It should be adapted and defined on an individual basis, according to the specific situation of the child concerned considering their personal context, situation and needs.

- 12.6 Applying the law and authorities cited, it is clear that in proceedings where adults litigate on behalf of minors, the paramount consideration is the best interests of the child, not those of the adults.
- 12.7 Turning to the burden of proof, it is a settled principle that the party who asserts the affirmative of an issue must prove it. The standard is proof on a balance of probabilities, not beyond reasonable doubt. This position was affirmed by the Supreme Court in ***Zambia Railway Limited v Pauline S. Mundia, Brian Simumba (8)***.
- 12.8 Further, as held by Supreme Court in ***Wilson Masauso Zulu v Avondale Housing Project Limited***, a plaintiff who fails to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case.
- 12.9 These principles apply to the Petitioners, who bore the burden of proving their claims against each Respondent.
- 12.10 The Petitioners have separate claims against each of the three Respondents. For clarity, I shall consider the claims against the 1st Respondent, followed by the 2nd Respondent, and thereafter the 3rd Respondent.
- CLAIMS AGAINST THE 1ST RESPONDENT**
- 12.11 The Petitioners seek the following reliefs against the 1st Respondent: an order compelling production of the Referral Form said to contain their consent for the child's assessment by the 3rd Respondent; an order requiring production of a report explaining why the child was recommended for such assessment; an order directing production of the Teaching Certificate held by the 2nd Respondent; and payment of damages for contravening the child's rights to development, respect, education, dignity, and parental protection.
- 12.12 I will now proceed to analyze and determine the reliefs sought against the 1st Respondent.

Issue 1: Whether the 1st Respondent should be directed to produce the Referral Form exhibiting consent given by the Petitioners for the Child to be subjected to assessment by the Occupational Therapist

- 12.13 Regarding the events forming the basis of this claim, the 1st Petitioner stated that on 19th September 2023 he received an email from the 1st Respondent informing him of the 3rd Respondent's scheduled visit on 2nd and 3rd October 2023. He did not respond, being uncertain why the Child was scheduled to meet the 3rd Respondent when he had no developmental disability and was only attending SEN remedial classes in Arithmetic. On 27th September 2023, he received another email requesting completion of a parent questionnaire.
- 12.14 The Petitioners claim that on 2nd October 2023, the 3rd Respondent met the Child for assessment without the 1st Petitioner's written consent.
- 12.15 On the other hand, the 1st Respondent's case was that on 27th September 2023, the 2nd Petitioner approached Miss Sasha Benkman, a teacher at the school, and requested that the 3rd Respondent see the Child, citing his ambidexterity.
- 12.16 On 29th September 2023, through Mr. Kabwasha, the 2nd Petitioner confirmed the request for the Child to be seen on 2nd October 2023, adding that the parent questionnaire would be sent directly to the 3rd Respondent.
- 12.17 On 2nd October 2023, the Petitioners visited the school and asked the Deputy Head Primary, Mrs. Brigham, to allow them to meet the 3rd Respondent before the Child's scheduled assessment. Although informed that she was busy, the 2nd Petitioner intercepted her and took her to the field where the Child was having a Physical Education lesson, so she could observe him.
- 12.18 Later that day, the 3rd Respondent proceeded with the scheduled assessment.

- 12.19 The 1st Respondent maintained that there was miscommunication between the Petitioners, as the 1st Petitioner asked that the assessment be discontinued, leading to escalation to the Head of School.
- 12.20 Although the issue under this head concerns the 1st Respondent, it is necessary to refer to the 3rd Respondent's position, as it has a direct link to the matter under consideration.
- 12.21 The 3rd Respondent denied conducting the assessment on the Child without consent.
- 12.22 On 29th September she contacted the 2nd Petitioner by phone, explained her role, and was told that the Child could be assessed once the Consent Form and Questionnaire were completed. She stated that the formal assessment was never done, save for the impromptu observation at the 2nd Petitioner's request. This was because of the Petitioners' failure to fill in and submit the Consent Form and Parent Questionnaire, as advised by the 3rd Respondent.
- 12.23 The 3rd Respondent later received a WhatsApp message from the 2nd Petitioner thanking her for the visit and relaying the Child's positive feelings towards her.
- 12.24 The Petitioners, however, stated in their reply that their visit on 2nd October was prompted by information that the Child was being assessed without their prior consent, and that they were intervening rather than consenting.
- The Court's determination**
- 12.25 As a starting point, it is clear that while the 3rd Respondent maintains that the full assessment envisaged was never conducted, save for an impromptu observation, the Petitioners assert that an assessment was conducted, and this was confirmed by the 1st Respondent.
- 12.26 I refer to exhibit "MM9", being copies of email exchanges between the 1st and 3rd Respondents contained in the 1st Respondent's affidavit, which shed light on the issue.
- 12.27 In the email dated 6th October 2023, addressed to the 3rd Respondent, Ms. Claire Birgham, the Primary Deputy Head stated:

Hi again Jenni,

I have had your assessment reports from F....., D..M..'s mum, and she is very pleased with the results....

Are you able and willing to send me a write-up- about your interaction and actual encounter with Mr. and Mrs. Banda (T...'s parents). We are having some issues and would really appreciate your feedback...

12.28 The 3rd Respondent's response is contained in an email also dated 6th October 2023. In that email she explained that she had observed the Child during Physical Education, asked the 2nd Petitioner to allow her to assess the Child privately, and said she would provide feedback afterwards. That feedback was given, and after the meeting the 2nd Petitioner felt the 3rd Respondent had understood the Child well and expressed gratitude. Thereafter, the 2nd Petitioner sent a text message saying the Child had enjoyed his time with the 3rd Respondent and was looking forward to receiving the report. In the concluding paragraph, the 3rd Respondent wrote:

And that is the extent of our interactions to date. I am writing up the assessments, in the order that I saw the children so I haven't yet got on to T...'s.

12.29 From this exchange, including the concluding paragraph, it is evident that the 3rd Respondent did not suggest that a full assessment would depend on the Petitioners submitting the Consent Form and Parent Questionnaire. On the contrary, she described herself as writing up assessments in the order the children were seen and confirmed she had yet to write the Child's assessment. This acknowledgment demonstrates that an assessment of the Child was in fact undertaken.

I therefore find that an assessment was conducted, contrary to the 3rd Respondent's claim that it was not the full assessment envisaged requiring parental consent documents, but merely an impromptu exercise.

- 12.30 Having outlined the events, it is certain that there was no referral form that was sent by the 1st Petitioner to the 2nd Respondent as requested. Normally, I would end here. However, both the 1st and 3rd Respondents contend that despite the absence of the referral form, the assessment was done at the 2nd Petitioner's request. For completeness, I shall proceed to address the broader issue of consent.
- 12.31 Notably, the Petitioners maintain that they only visited the school to intervene, having heard that the child was being assessed without their consent.
- 12.32 To determine whether the Petitioners' presence was a mere act of intervention and not consent, I find the WhatsApp message produced in the 1st Respondent's affidavit, exhibit "MM8", and the 3rd Respondent's affidavit, "JAW6", significant. It is reproduced below:

Hey Jenni..thank you for coming.. T...described you in his own words as I quote "A nice lady, she has feelings..so we said what do you mean by she has feelings? Then he said she's happy, she smiles.

- 12.33 The 2nd Petitioner further stated:

Let me share a video with you concerning his hands when he was 4 years..

- 12.34 The Petitioners only filed an affidavit in reply to the 3rd Respondent's affidavit, and never filed any reply to the 1st Respondent's affidavit, which, like the 3rd Respondent's affidavit, contained the WhatsApp message. In their reply to the 3rd Respondent's affidavit, the Petitioners did not deny that the 2nd Petitioner sent these messages to the 3rd

Respondent, nor did they provide any explanation of their context. I therefore accept that the 2nd Petitioner sent these messages.

- 12.35 The tone and content of the messages, demonstrate the 2nd Petitioner's appreciation for the 3rd Respondent's visit to the extent of sharing a video of the Child and, the Child's positive description of the 3rd Respondent. I will not be faulted to conclude that this signifies that the 2nd Petitioner was fully aware of the 3rd Respondent's actions regarding the Child on the day in question.
- 12.36 The 2nd Petitioner's own communication is thus inconsistent with a claim that there was no outright consent to the assessment.
- 12.37 On the evidence, I therefore find it more probable than not that while no referral form was ever sent to the 1st Respondent, the 2nd Petitioner permitted the assessment, through her conduct. Notwithstanding this finding, the matter does not end here, however. I refer to the 3rd Respondent at this point.
- 12.38 The 3rd Respondent produced exhibit "**JAW7**" in her affidavit, together with exhibit "**JAW8**", both of which bear upon her professional standing at the material time.
- 12.39 Exhibit "**JAW7**" is a letter from the Health and Care Professions Council in the United Kingdom, confirming her registration and good standing, but examination of this letter shows that she was entered on the register only from 1st November 2023, without practice restrictions.
- 12.40 Exhibit "**JAW8**", a letter from the Health Professions Council of Zambia dated 28th August 2024, states that she applied for registration on 19th August 2024 but was found ineligible under **Section 8(2) of the Health Professions Act No. 24 of 2009** and **Regulation 5 of the Health Professions (General) Regulations, 2012**, as her qualifications, a Bachelor of Science in Social Sciences and a Master of Science in Occupational Therapy, did not meet the statutory requirement of a Bachelor of Science in Occupational Therapy or its equivalent.

- 12.41 **Section 6(1) of the Health Professions Act, 2009**, which was in force at the time this matter was commenced, prohibited any person from practising as a health practitioner unless registered in accordance with the Act.
- 12.42 The definition of a health practitioner under **Section 2**, meant a person registered to practice as a health practitioner under **Section 8**.
- 12.43 **Section 8 (s)** provided that an occupational therapist was eligible to register as a health practitioner.
- 12.44 It follows that the 3rd Respondent was not registered to practice in Zambia when she assessed the Child on 2nd October 2023, nor was she registered with the Health and Care Professions Council in the United Kingdom at that time.
- 12.45 The implied consent found to have been given by the 2nd Petitioner must therefore be considered in light of this fact, as clearly the 1st Respondent held out the 3rd Respondent as an Occupational Therapist.
- 12.46 The principle laid down in the English case of **R v. Tabassum (9)** is instructive. In that case, the Court held victims consented only to acts of a medical nature, but because the defendant had no medical qualifications, the acts were without medical significance and fundamentally different in nature and quality.
- 12.47 In the present case, although the 3rd Respondent held academic qualifications, she was not registered to practice in Zambia as an Occupational Therapist subject to the **Health Professions Act, 2009**. It follows that although implied, the consent by the 2nd Petitioner cannot be deemed valid consent to an unregistered professional conducting an assessment on the Child. I hold that this consent was based on a misconception of fact. The implications of this finding will be addressed in the analysis of the later claims against the 1st and 3rd Respondents.
- 12.48 Having conclusively addressed the issue of consent, it suffices, for the purposes of the Petitioners' claim under this head, that there is no Occupational Therapy Referral Form which the 1st Respondent can

produce, as it is established that the 1st Petitioner did not submit one. It follows that the order sought under this head cannot be granted, since the 1st Respondent cannot be ordered to produce what does not exist.

Issue 2: Whether the 1st Respondent should be directed to produce a report stating why the Child was recommended for assessment by an Occupational Therapist

- 12.49 The claim under this head concerns the reasons why the Child was recommended for assessment by the 3rd Respondent.
- 12.50 The 1st Respondent explained that, as a matter of school policy, at the beginning of each academic year the SEN Department observes learners who may benefit from learning support.
- 12.51 The Child was identified as one of four learners who could benefit from such intervention. According to the assessment, he was taking considerable time to respond during lessons and required probing from the teacher. He was therefore given remedial lessons, and his performance improved, as evidenced by the correspondence collectively marked exhibit **"MM5"** in the 1st Respondent's affidavit.
- 12.52 Regarding the 3rd Respondent's visit, it is already established that the 1st Petitioner received an email from Mr. Kabwasha notifying him that the Child had been identified as a learner who would benefit from occupational therapy services.
- 12.53 The 3rd Respondent's position was that the 1st Respondent had notified her that the Child had an inability to learn, social issues, low confidence, lack of organizational skills, and delayed speech. She further explained that the school submitted referral paperwork for learners requiring assistance, to be completed upon parents or guardians filling in a Consent Form and Parent Questionnaire. Reliance was placed on **"JAW4"**, a copy of the Occupational Therapy Referral Form submitted by the SEN Teacher at the 1st Respondent school.

The Court's determination

12.54 I reviewed the Occupational Therapy Referral Form, which I shall address in detail when considering another claim against the 1st Respondent. For present purposes, it suffices that the Occupational Therapy Referral Form shows the SEN Teacher referred the Child on the basis, among others, that he was very quiet, had delayed speech and language, and was socially withdrawn, engaging only when extensively prompted.

12.55 From the background given by the 1st Respondent and the Occupational Therapy Referral Form, the reasons for the Child's recommendation for assessment are clear. Consequently, there is no necessity to order the 1st Respondent to produce a further report, as the rationale is already established.

Issue 3: Whether the 1st Respondent should be directed to produce the Teaching Certificate held by the 2nd Respondent

12.56 Regarding this relief, the Petitioners allege that the 1st Respondent employed teachers who are not registered, thereby "holding out" these individuals as qualified teachers.

12.57 This allegation stems from the 1st Respondent's failure to produce the 2nd Respondent's Teaching Certificate when requested by the Petitioners.

12.58 In response, the 1st Respondent argued that it was in the process of complying with the Petitioners' demands when it received the court documents. The 1st Respondent further denied the allegation, stating it does not employ teachers who are unregistered or hold them out as qualified teachers.

The Court's determination

12.59 In resolving this issue, I refer to "MM10" in the 1st Respondent's affidavit, comprising copies of Teaching Practising Certificates issued by the Teaching Council of Zambia.

12.60 These relate to the following:

- (i) Tanaka Marebesa, an Early Childhood Teacher, the 2nd Respondent, bearing TCZ Number 18/05/0503/001483, for the period 17th January 2022 to First Quarter of 2025, and issued on 17th January 2022.
- (ii) Chilufya Amos Kabwasha, a Special Education Teacher, bearing TCZ Number 18/05/0508/005307, for the period 1st January 2022 to 31st December 2023, issued on 1st January 2022.
- (iii) Anna Leigh Brigham, an Early Childhood Teacher, bearing TCZ Number 21/05/0503/002329, for the period 1st January 2021 to 31st December 2023, issued on 1st January 2021.

12.61 The 2nd Respondent, equally produced, her Teaching Practising Certificate, exhibit **"TM1"** bearing the same TCZ Number 18/05/0503/001483 reflecting on the certificate produced by the 1st Respondent, together with and her Primary Teacher's Diploma obtained from Mulungushi University in association with Siakama College of Education, exhibit **"TM2"**, on 29th January 2021.

12.62 Based on the evidence presented, the 2nd Respondent on 10th November 2023 when this Petition was initially filed held a valid Teaching Practising Certificate.

12.63 Further, the other certificates relating to Chilufya Amos Kabwasha and Anna Leigh Brigham also demonstrate the same conclusion: they held valid Teaching Practising Certificates. There is no basis for a finding that the 1st Respondent held out the named Teachers as "teachers".

12.64 In conclusion, the 1st and 2nd Respondents having already provided the requested Teaching Practising Certificate relating to the 2nd Respondent in their respective affidavits, I hold that the Petitioners' relief for production of the certificate is satisfied. Consequently, no further order is required in the circumstances.

Issue 4: Whether the 1st Respondent is liable to pay damages for contravening the Child's rights to development, respect, education, dignity, and parental protection

- 12.65 The Petitioners contended that the 1st Respondent had failed to uphold the learner's right to early childhood care, development, and education under **Section 10 of the Children's Code Act**.
- 12.66 They maintained that the school had breached this duty by creating a profile suggesting the Child was developmentally lacking and by allowing the 2nd Respondent to attribute his lack of progress in Arithmetic to him.
- 12.67 They further asserted that the 1st Respondent had contravened the Child's right to parental protection by permitting the 3rd Respondent to assess him without parental consent, and in circumstances where the 3rd Respondent was not lawfully registered to practise in Zambia.
- 12.68 The 1st Respondent disputed the allegations, insisting that its measures were consistent with school policy and taken in the best interests of the Child. It maintained that its actions were aligned with the **Education Act, 2011** and the **Children's Code Act**, and denied that the Child had been labelled autistic.
- 12.69 The 1st Respondent further relied on the Consent and Indemnity Form signed by the parents upon enrolment, which, it explained, included permission for participation in school activities and curriculum requirements.

The Court's determination

- 12.70 The issue for determination is whether, on a balance of probabilities, the Petitioners have proved contravention of the Child's rights to development, respect, education, dignity, and parental protection.
- 12.71 Turning to the facts, the unchallenged exhibits "**MM3a**", "**MM3b**", and "**MM4**", comprising progress reports and attendance registers, demonstrate that the Child's progress was affected by poor attendance and punctuality.

- 12.72 The emails in exhibit "**CB2**" reflect the 1st Petitioner's concern over Arithmetic progress, while subsequent communications under exhibit "**MM5**" show that the Child was steadily improving with remedial support, though some remedial lessons were missed. I will address this aspect in detail when considering claims against the 2nd Respondent.
- 12.73 For present purposes, I find no sufficient evidence to uphold the allegation that the 1st Respondent permitted the 2nd Respondent to attribute the Child's lack of progress in Arithmetic to him. The issue requiring assessment in the context of rights violation is the referral made by the 1st Respondent to the 3rd Respondent without parental consent, and in circumstances where the 3rd Respondent was not lawfully registered to practise in Zambia.
- 12.74 It is undisputed that the Petitioners neither submitted to the 1st Respondent the Occupational Therapy Parent Questionnaire nor the Occupational Therapy Referral Form. Nevertheless, the evidence shows that Mr. Kabwasha, a teacher at the 1st Respondent's school, submitted an Occupational Therapy Referral Form (exhibit "**JAW4**") directly to the 3rd Respondent without the Petitioners' consent. As established, the 3rd Respondent was not lawfully registered to practise in Zambia as an Occupational Therapist.
- 12.75 The form contained the following descriptions of the child:
- (i) **Reason for referral- Please describe briefly how the child's difficulties are affecting their day to day life:**
T...is a very quiet boy who has delaysments in speech and language. He is socially withdrawn and only engages when interacted with extensively.
 - (ii) **Movement and Mobility: Sitting, Standing, Walking, Balance, Co-ordination, Seeks/avoids movement, Handwriting, using scissors, participation in PE**
He is very slow when moving around but he does get around the playground

- (iii) **Cognition: Ability to concentrate, ability to learn new information, ability to process instructions, ability to think flexibly, ability to problem solve:**
He concentrates especially in smaller group settings. He is slow to grasp new concepts but when he does, he is good at them.
- (iv) **Self Care Skills: Dressing, bathing, toileting, feeding, self-organisation, excessive sensitivity or discomfort when completing self care tasks, avoidance of particular foods**
He is a very neat and tidy boy who keeps after himself and his surroundings (OCD) kind of ordeliness.
- (v) **Interaction and Play Skills: Interest in toys, turn taking, paying with peers, role play, imagination, friendships**
Does not engage in a lot of play or interaction with peers but can have a good laugh with one or two at times.
- (vi) **Behaviour: Interests, response to changes in routine, aggression, high/low activity level which affects taking part in activities, impulsivity, mood, poor focus on toys/play/school work:**
He is a very calm boy who follows instructions when in line and likes to be neat.
- (vii) **Communication: ability to express oneself, ability to understand spoken or written instructions:**
He lacks the ability to express himself and this affects his retention of new information taught.

12.76 This is a case in which the Petitioners were requested to submit consent for the Child to be assessed by the 3rd Respondent. At the same time, however, the 1st Respondent itself submitted an Occupational Therapy Referral Form to the 3rd Respondent, the contents of which were materially identical to the form that had been sent to the 1st Petitioner.

- 12.77 The submission of the Occupational Therapy Referral Form without parental authorization is indeed material in assessing breach of the Child's rights.
- 12.78 In resolving this issue, at this point I refer to the relevant provisions of the **Children's Code Act** and the **Education Act, 2011**. As the **Children's Code Act** domesticated the **United Nations Convention on the Rights of the Child**, the General Comments of the Committee on the Rights of the Child form part of the interpretive framework of the domesticated rights and will be referred to accordingly.
- 12.79 **Section 5 of the Children's Code Act** guarantees a child's right to life, dignity, respect, survival, and development, with parental protection integral to that right.
- 12.80 **Section 10** enshrines the right to education, while **Section 14 of the Education Act, 2011** defines education as the full development of judgment, personality, talents, and abilities.
- 12.81 **Section 24 of the Children's Code Act** guarantees the child's right to privacy.
- 12.82 The Committee on the Rights of the Child, General Comment No. 5 (2003) at page 4, interprets "development" as a holistic concept embracing physical, mental, spiritual, moral, psychological, and social development, aimed at achieving the optimal development for all children.
- 12.83 The Committee further in General Comment No. 7 (2005) at page 3, states that children, including the very youngest children, must be respected as persons in their own right. Young children should be recognised as active members of families, communities, and societies, with their own concerns, interests, and points of view.
- 12.84 The Committee on the Rights of the Child, General Comment No. 13 (2011) at page 3, highlights that the concept of dignity requires that every child is recognised, respected, and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests, and privacy.

- 12.85 Paragraph 1 of General Comment No. 13, references Article 19 of the United Nations Convention of the Rights of the Child, which denotes protection to mean protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.
- 12.86 As earlier noted, the Occupational Therapy Referral Form prepared by the 1st Respondent described the Child as “delayed in speech and language,” “socially withdrawn,” “slow to grasp new concepts,” “OCD kind of orderliness,” “does not engage in play,” and “lacks the ability to express himself.” These observations concerned the Child’s development in communication, cognition, social interaction, and learning ability. They were of a private and sensitive character and should not have been communicated outside the school context without parental consent.
- 12.87 Accordingly, the failure to involve the Petitioners contravened **Section 5 of the Children’s Code Act**, which guarantees a child’s right to life, dignity, respect, survival, and development with parental protection integral to that right. It also went against General Comment No. 7 (2005), which emphasises that children, including the very youngest, must be respected as persons in their own right within the family and educational setting.
- 12.88 Applying the right to privacy, disclosure of developmental information without parental consent breached **Section 24 of the Children’s Code Act**. It further undermined the right to dignity as explained in General Comment No. 13 (2011), which requires that every child be recognised, respected, and protected as a rights holder with individuality, distinct needs, interests, and privacy.
- 12.89 The principle of consent is underscored by **Section 17 of the Data Protection Act No. 3 of 2021**, which prohibits processing or sharing a child’s personal data without parental or guardian authorization.

- 12.90 In addition, **Regulation 22 of the Teaching Profession (Code of Ethics) 2018** imposes a clear duty of confidentiality on teachers, prohibiting disclosure of confidential information about a learner except as required by law or in the interest of the learner or parent. Both were disregarded in this case.
- 12.91 Consequently, the 1st Respondent's referral without consent deprived the Child of parental protection, which is integral to the right to development under **Section 5 of the Children's Code Act**. Additionally, **Section 10(1)(a)(i) and (iii)** requires that education be directed at developing the child's abilities to the fullest potential and fostering respect for parents. By bypassing parental consent, the 1st Respondent excluded the parents from the educational process, undermining the statutory aim of education and thereby breaching the Child's right to education.
- 12.92 Turning to the best interests principle, the 1st Respondent argued that its actions were taken in the Child's best interests. Whether this argument can be upheld requires reference to **Section 3 of the Children's Code Act** and international instruments, namely, the **United Nations Convention on the Rights of the Child** and the **African Charter on the Rights and Welfare of the Child**. These require that the primary consideration in all decisions concerning a child must be their best interests.
- 12.93 The Committee on the Rights of the Child, General Comment No. 14 (2013) guides the application of this principle. Page 10, paragraph 37 states that "primary consideration" requires precedence over other factors. Page 12, paragraph 46 explains that assessment and determination of the Child's best interests are two steps to be followed when making a decision. Assessment consists of evaluating and balancing all elements necessary in a specific situation for a specific child and requires the child's participation. This is consistent with the holding in **MAK v. RMAA & 4 Others** (supra) that the "best interests"

principle must be adapted and defined individually, according to the specific situation of the child concerned.

- 12.94 Applied to the facts of this case, disclosure of confidential information by a school without parental consent and participation cannot be reconciled with the Child's best interests.
- 12.95 It is also necessary to comment on the 1st Respondent's reliance on the Consent and Indemnity document, exhibit "MM2d", as a shield from liability. That reliance cannot stand. The document referred to activities such as curricular requirements, games, sports, educational tours, and excursions, requiring authorization of the Head Teacher. Referral to assessment by an Occupational Therapist cannot be among those activities, as it required parental consent.
- 12.96 This is confirmed by the 1st Respondent's own communication to the 1st Petitioner, in which it acknowledged that parental consent was required in the first instance, not authorization of the Head Teacher.
- 12.97 At the date of the assessment on 2nd October 2023, the 3rd Respondent to whom the referral was made was not lawfully registered to practise in Zambia, nor was she registered to practise in the United Kingdom. This fact is material because **Section 10 of the Children's Code Act** guarantees the child's right to education directed at developing abilities to the fullest potential, and such development must be supported by qualified professionals duly registered to practise.
- 12.98 The 1st Respondent failed in its duty to verify the 3rd Respondent's status before inviting her to attend to learners, including the Child. It is no defence to claim that assessments were private arrangements, when it was the 1st Respondent which officially initiated the parents' interactions with the 3rd Respondent.
- 12.99 The 1st Respondent's referral of an unregistered therapist to assess the Child, without parental consent, undermined parental protection, thereby aggravating the violation of rights guaranteed under **Section 5 and Section 10 of the Children's Code Act**.

- 12.100 In the final analysis, I hold that the 1st Respondent's action amounted to a breach of the Child's rights to development, dignity, education, and parental protection.
- 12.101 Regarding damages, it is established that damages are generally compensatory in nature, intended to restore a claimant to the position they would have been but for the breach or violation.
- 12.102 However, in the context of human rights violation cases, the Supreme Court of Kenya in the case of *Monica Wangu Wamwere and 5 Others v. The Attorney General (10)* stated at page 41, paragraph 91 that:

Crafting of remedies in human rights adjudication goes beyond the realm of compensating for loss as it is principally about vindicating rights. Though the appellants did not lead any evidence of the loss they may have suffered due to the violation of their right and freedom from inhuman treatment, it is important for the Court to vindicate and affirm the importance of the violated rights.

- 12.103 Additionally in *Charles Muturi Macharia (suing as the next friend of and on behalf of Christine Wangari Muturi) v. The Standard Group & 4 Others*, the Supreme Court stated at page 40, paragraph 97:

.....,once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even if though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violations cases is different from that in tortious claims.

- 12.104 In this case, the Petitioners asserted that the Child directly suffered loss and emotional hardship. However, no particulars or evidence were provided. It follows that although violation of the Child's rights has been proved, no harm suffered by the Child has been established.
- 12.105 Drawing from the above authorities, the principle is straightforward: once a violation of rights is established, the Court must vindicate and affirm their importance even where no evidence of actual loss is shown. Although those decisions arose in constitutional petitions, the reasoning is equally persuasive here, where the **Children's Code Act** requires the Court to safeguard and give effect to the rights of the child.
- 12.106 This approach also aligns with our own jurisprudence on nominal damages, which recognises the infraction of a legal right despite the absence of proof of actual damage, as affirmed in ***David Chinyengele and Five Others v. Scaw Limited (11)***.
- 12.107 Applying these principles, I hold that although the Petitioners have not demonstrated any harm to the Child, the infringement of statutory rights requires recognition. The appropriate remedy is an award of nominal damages, to vindicate the rights guaranteed under the **Children's Code Act** and underscore their importance in the public interest.
- 12.108 Accordingly, I award the sum of **ZMW 10,000.00** as nominal damages to the Child, through the Petitioners as his representatives.

CLAIMS AGAINST THE 2ND RESPONDENT

- 12.109 In the manner they were set out, the Petitioners' claims against the 2nd Respondent include an order restraining the 2nd Respondent, whether by herself, her agents or otherwise, from further slandering the Child, payment of damages by the 2nd Respondent for slander against the child, and payment of damages by the 2nd Respondent for contravening the Child's rights to development, respect, education, dignity, and protection by his parents.

12.110 I will commence by determining first whether the 2nd Respondent slandered the Child. It is only after determining this claim that the claims relating to damages for slander and contravention of the rights alluded to can be considered. Finally, whether the issue of damages for rights violation arises.

Issue 5: Whether the 2nd Respondent slandered the Child

12.111 The Petitioners allege that on 31st March 2023, the 1st Respondent held a parent-teacher consultation, during which they raised concerns with the 2nd Respondent about the Child's lack of progress in Arithmetic.

12.112 They further questioned why his Arithmetic exercise book was not being handed over to them for their perusal and assessment. They also highlighted that when given work home, the Child showed signs of lack of progress. In response, the 2nd Respondent became defensive and angry towards the Petitioners rather than address the concerns to establish a way forward.

12.113 They claim the 2nd Respondent, became malicious towards the Petitioners and began spreading malicious and slanderous statements about the Child and the Petitioners to other parents and teachers, stating he had delayed arithmetic and ability to learn. The Petitioners assert this prompted the 1st Petitioner to send an email to the Deputy Head, Claire Birgham, expressing concern over the 2nd Respondent and the Child's progress as evidenced by exhibit "**CB2**" in the affidavit verifying Petition dated 3rd April 2023.

12.114 Further, even after an intervention meeting with the 1st Respondent, where it was resolved that the Child be given remedial reinforcement in Arithmetic with another teacher, the 2nd Respondent continued to make the malicious and slanderous statements against the Child and 2nd Petitioner, thereby harming their reputation. The 1st Petitioner engaged Advocates to issue a demand letter, exhibit "**CB3**", dated 5th June 2023, which was received by the 2nd Respondent. However, the 2nd Respondent did not stop issuing the malicious and slanderous statements.

12.115 The alleged slanderous statement was only produced in paragraph 15 of the Petitioners' Petition which read as follows:

T...’s mother is accusing me of not teaching him and yet he just can’t learn. She went to a shop and asked him to count the numbers on the receipt and he failed and that is why she is upset. This is the reason he was chased from Lechwe and when he came her for assessments he failed, I am the one who pleaded for a place for him. The mother lies on his hands ati he’s ambidextrous but he just failed. I am a close friend to bana T...’s family. He has delayed arithmetic, social issues, delayed speech and low confidence.

12.116 It is with this background that the Petitioners in particular allege that the 2nd Respondent's has orally defamed the Child stating that the Child has an inability to learn, has social issues with friends, and low confidence. This is a violation of the Child’s right to respect, dignity, and education in contravention with **Sections 9(1) and 10 of the Children’s Code Act.**

12.117 Further, the false statements were made to other parents, fellow teachers, and superiors at the 1st Respondent school, knowing them to be untrue, and knowing she was subjecting the child to ridicule, contempt and disrespect.

12.118 Lastly, the slanderous actions of the 2nd Respondent have caused damage to the Child and the Petitioners.

12.119 The 2nd Respondent denies making defamatory statements, calling them an attempt to tarnish her professional reputation without cause. She argues the Petitioners' claims lack specifics, such as the exact words used and to whom they were made. The 2nd Respondent maintains she has made no untrue statements about the Petitioners or

the child and has not been provided evidence of any third-party witnesses to her alleged statements.

- 12.120 The 2nd Respondent challenges the Petitioners' defamation claim regarding the statement "child has inability to learn", arguing it was allegedly made to other teachers and parents, not the Petitioners themselves. She contends there is no evidence from these alleged recipients, rendering the 1st Petitioner's deposition hearsay.
- 12.121 The 2nd Respondent's argued that based on authorities cited in the skeleton arguments, a person communicating untrue, reputation-damaging information to a third party commits a legal wrong. She argues the Petitioners must specify the exact defamatory words and to whom they were made. Consequently, the Petitioners' claim should fail due to lack of specifics about the defamatory statements she allegedly made in the affidavit evidence.
- 12.122 Further, although one of the alleged defamatory statements relied upon by the Petitioners is that she described the child as having "delayed arithmetic". The 2nd Respondent contends that even if she did make this statement, it would not be defamatory because the 1st Petitioner admitted in paragraph 9 of his affidavit that the child was indeed struggling with arithmetic.

The Court's determination

- 12.123 As a starting point, the Supreme Court in *Bevin Ndovi v. Post Newspapers (12)* defined defamation at J14 as the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him. The Court further stated that whether given words are defamatory is a matter of law, and it is not for the plaintiff or witnesses to say so.
- 12.124 The case cited in the 2nd Respondent's skeleton arguments, *Killian Ives Mulenga v. The Attorney General*, offers further insight. In that case, the Court of Appeal at page J13 noted the established principle that defamation is a tort that seeks to protect the reputation of a

person. The Court further cited ***Clerk and Lindsell on Torts, 12th Edition***, where the learned authors, in relation to defamation, stated that the law recognizes the right of every person, during life, to possession of a good name. A person who communicates to a third party a matter which is untrue and likely, in the course of things, substantially to damage the reputation of another, is, on the face of it, guilty of a legal wrong for which the remedy is a claim in tort for defamation.

12.125 The Court of Appeal further stated the established principle that defamation consists of two distinct torts, namely libel and slander. The issue before that Court, however, concerned slander, which is similarly the issue under consideration.

12.126 At page J14, after considering the definition of slander as outlined in ***Halsbury's Laws of England*** at paragraphs 1 and 12, the Court of Appeal stated the elements to be proved in an action for defamation, which are as follows:

- (i) The words or statement uttered must be one that tends to injure the reputation of the plaintiff by lowering the person in the estimation of right thinking members of society generally causing him to be shunned or avoided or to expose him to hatred, contempt or ridicule, injurious to his profession.
- (ii) The uttered words must refer or make reference to the plaintiff.
- (iii) The words uttered must be communicated to at least another person other than the plaintiff.
- (iv) The plaintiff suffered some injury to his or her reputation.

12.127 It follows that even where words are uttered but do not lower the claimant in the estimation of right-thinking members of society generally, no cause of action accrues.

12.128 In addition to the general principles of defamation, it is necessary to highlight the **Teaching Profession (Code of Ethics) Regulations, 2018**.

- 12.129 Turning to **Regulation 4(a)**, it is mandatory for a teacher to uphold and foster the integrity and dignity of the profession through use of the teacher's knowledge and skills for, among others, the enhancement and protection of learners.
- 12.130 Further, **Regulation 21(1)** makes it mandatory for a teacher to respect a learner's rights and dignity. In addition, **Regulation 21(2)(6)** requires a teacher to put in place reasonable measures to accommodate a learner with special education needs and to be considerate of a learner's feelings and circumstances.
- 12.131 **Section 28(1)** prohibits a teacher from imposing degrading or inhuman treatment on learners.
- 12.132 Defamatory words by a teacher directed at a child in a school context breach the Teachers' Code of Ethics, as such words cannot be said to enhance or protect a learner. A learner's dignity is lowered, as defamatory words belittle a child in the eyes of others and create an environment which negatively affects the child's ability to fully participate in education, thereby violating the right to education.
- 12.133 Such utterances also fail to take into account a child's feelings and breach the best interests principle, which must be a primary consideration in any actions, including a teacher's conduct towards a learner.
- 12.134 Moreover, defamatory words directed at a child amount to degrading treatment, since they humiliate and reduce the child's standing in the presence of others. Defamatory statements have no place in any educational setting.
- 12.135 This position is exemplified by the majority judgment of the European Court of Human Rights in the case of **F.O v. Croatia (13)**, decided in the context of **Article 8 of the European Convention on Human Rights**, which protects the right to respect for private life.
- 12.136 Though distinguishable on the basis that it involved verbal abuse by a teacher against a pupil in a classroom setting, the Court nevertheless established at paragraphs 60 and 61 that words uttered in the

classroom in front of other pupils were capable of humiliating and belittling the applicant in the eyes of others. Of relevance, the Court held, among others, that it was in the best interests of the applicant as a child, his classmates, and children in general to be effectively protected from any violence or abuse in educational settings.

12.137 Applying the law to the facts of this case, the Petitioners bore the burden of proving the following in relation to the Child at the center of these proceedings:

- (i) That the 2nd Respondent uttered malicious and slanderous statements tending to injure the Child's reputation, lowering him in the estimation of other parents, teachers, and school administrators.
- (ii) That the statements referred to the Child.
- (iii) That the statements were communicated to other parents, teachers, and school administrators.

12.138 From the evidence presented, the Petitioners produced a demand letter, exhibit "**CB3**", issued to the 2nd Respondent by their Advocates. In that letter, the 2nd Respondent was informed that she had been uttering false, malicious, unfounded, and ill-conceived statements against the 2nd Respondent and the Child, with the aim of exposing them to hatred, contempt, ridicule, and embarrassment in the eyes of right-thinking members of society and the general public, thereby lowering the reputation of the 2nd Petitioner and the Child.

12.139 The only other statement allegedly made was contained in paragraph 15 of the Petition, regarding comments attributed to the 2nd Respondent. She was alleged to have said that she was accused of not teaching the Child because he had no ability to learn, and that this was the reason he was "chased" from his previous school. It was further alleged that the 2nd Petitioner lied about the Child being ambidextrous, when in fact he had failed, suffered delayed arithmetic, social issues, delayed speech, and low confidence.

- 12.140 The Court of Appeal in ***Killian Ives Mulenga v. The Attorney General*** at page J19, emphasized that in slander, the statement about a person must be communicated as a fact to one or more other persons. The Court stated that a person publishes slander who speaks words defamatory of the claimant to or in the presence of a third person who hears them and understands them in a defamatory sense.
- 12.141 Upon review, I find that the Petitioners merely alleged in the Petition and supporting affidavit that the 2nd Respondent was making malicious and slanderous statements about the Child to other parents, fellow teachers, and superiors at the 1st Respondent school.
- 12.142 The Petitioners were required to demonstrate that the words were actually uttered to third parties, namely, other parents, teachers, and the school administration, and that those third parties heard and understood the words in their defamatory sense.
- 12.143 No third parties were called to confirm that they heard the 2nd Respondent utter the alleged slanderous words against the Child. In the absence of such corroboration, the allegations remain unproven. The Petitioners' claim for slander therefore fails and is dismissed.
- Issue 6: Whether an order restraining the 2nd Respondent, whether by herself, her agents or otherwise, from further slandering the Child should be issued; and**
- Issue 7: Whether the Petitioners should be awarded damages for slander against the Child**
- 12.144 I will address the sixth and seventh issues collectively, as they both depended on the Petitioners establishing slander against the 2nd Respondent.
- 12.145 Having found that the Petitioners failed to prove their case, the claim for an order restraining the 2nd Respondent from further slandering the Child is rendered moot, and the claim for damages for slander equally cannot succeed.

12.146 Both claims accordingly fail and are dismissed.

Issue 8: Whether the 2nd Respondent is liable to pay damages for contravening the Child's rights to development, respect, education, dignity, and parental protection

12.147 A background to the Petitioners' grievances against the 2nd Respondent has partly been outlined under the consideration of the slander claim.

12.148 Additionally, for the purposes of the issue under consideration, the Petitioners averred that after the Child was enrolled at the 1st Respondent's school in Prep 2, the Child who is ambidextrous, made significant progress as the teachers were able to teach him despite his use of both hands.

12.149 According to the Petitioners, it was when the Child moved to Prep 3, that they began to experience challenges, noting that he was not making progress in Arithmetic. The Petitioners were suddenly not given his Arithmetic exercise book for their perusal and assessment.

12.150 Petitioners claimed that after the teacher parent consultation, the 1st Petitioner sent emails to the 1st Respondent requesting the production of the Child's Arithmetic exercise book. After it was eventually produced, it was discovered that it was blank, meaning the Child was not being taught by the 2nd Respondent which was her duty to do.

12.151 To rectify this lack of teaching by the 2nd Respondent, the 1st Respondent in liason with the Petitioners decided to refer the Child to remedial reinforcement with a teacher, Sasha Beukman, the coordinator at the SNE Department, as evidenced by the email addressed to the 1st Petitioner, exhibit "**CB2**", in the Petitioners affidavit.

12.152 The emails in exhibit "**MM5**" in the 1st Respondent's affidavit confirm the remedial lessons arrangements.

12.153 In response, the 2nd Respondent stated that a child's ambidextrous nature had no bearing on learning ability or lack of it. Further that the Petitioners' claims reflected the 1st Petitioner's subjective assessment of the Child's performance and when a change if any started.

- 12.154 Additionally, that Numeracy work for Prep 3 was recorded on Worksheets and not in books. Further, performance was compiled into a portfolio and discussed with parents or guardians at the close of the term and this applied to Prep 3 pupils.
- 12.155 The 2nd Respondent denied that the child was not being taught Numeracy. Additionally, the Petitioners made the allegation despite being showed a portfolio that indicating that the Child had attained a 71% score in Numeracy and 31% in Literacy with the challenge being that the Child's attendance rate was poor, averaging just slightly above 51% across the terms.

The Court's determination

- 12.156 The issue under this head requires a threshold determination of whether the 2nd Respondent contravened the rights alleged.
- 12.157 As established earlier a Child's right to development, dignity, respect, education, and protection by parents are guaranteed under **Sections 5 and 10 of the Children's Code Act**, and **Section 14 of the Education Act, 2011**.
- 12.158 Further, **Regulation 21 (1) of the Teachers Profession (Code of Ethics) Regulations, 2018**, places a mandatory duty on a teacher to respect a learner's rights and dignity. Additionally, **Regulation 21 (4)**, makes it mandatory for a teacher to ensure the holistic development of a learner through curricular and cocurricular activities.
- 12.159 As a starting point, the allegations of slander attributed to the 2nd Respondent have already been dismissed. Since that allegation formed part of the Petitioners' assertion of the Child's rights violation claim, it falls away and will not form part of this analysis. The analysis that follows is therefore confined to the remaining claim that the 2nd Respondent failed to teach the Child Arithmetic.
- 12.160 Turning to that claim, the Petitioners alleged that after the Child advanced to Prep 3, he made no progress in Arithmetic. They stated that they were no longer given access to his Arithmetic exercise book, and when it was eventually produced, it was blank.

- 12.161 The 2nd Respondent claimed that Arithmetic/ Numeracy work was recorded in Worksheets in Prep 3. The Petitioners did not challenge this assertion. I therefore, find as a fact that the Child's Arithmetic work for Prep 3 was recorded in Worksheets and not note books.
- 12.162 Further, the 2nd Respondent contended that the Child's performance was affected by poor attendance. This issue was also raised by the 1st Respondent which produced exhibits "**MM3a**" and "**MM3b**" comprising the Child's Progress Reports for Prep 2 and Prep 3, and "**MM4**", Attendance Registers.
- 12.163 I reviewed the aforementioned exhibits, which were not challenged by the Petitioners, entitling me to make a finding that they were authentic.
- 12.164 Exhibit "**MM3a**" is dated July 2022, and scores the Child's attendance at 71%. The report further recorded that the Child's number formation required more practice, number recognition exceeded learning goals, the Child's ability to count objects exceeded learning goals and the Child's understanding of number order was within expected learning goals. Overall, the Child showed great improvement in all learning areas. On goals for the future, the Class Teacher stated:

T.....needs to make an effort to attend school on a regular basis in order for him to improve at a faster rate.

- 12.165 Exhibit "**MM3b**" is dated July 2023 when the Child was in Prep 3. It recorded that number formation and number recognition required more practice. Additionally, counting objects accurately and understanding of number order was within expected learning goals. The Teacher's comment among others was that the Child had continued to gain confidence. Regarding goals for the future, it was stated:

T....has done so well in many areas this year but, I am concerned that both his attendance and his punctuality have affected his overall progress.

12.166 Exhibit “MM4”, comprising Attendance Registers, shows that the Child had a score of 51% for the period covered in Prep 3, Term 1 2022/2023.

12.167 Further, in another unchallenged email dated 7th June 2023 under exhibit “MM5”, the 2nd Respondent of relevance to remedial lessons, gave an update on the Child’s progress in Numeracy, in class and remedial lessons and added:

Unfortunately, T...was not in school on Wednesday, Thursday and Friday. This means he missed remedial classes on Wednesday afternoon and class lessons on Thursday.....I have since had remedial lessons with T...on Tuesday and Wednesday to help him catch up on what he missed. He is faring well....Other than that he is progressing well.

12.168 In my view, the Progress Reports and Attendance Registers, together with the email of 7th June 2023, demonstrate that the Child’s progress was affected by his poor attendance, which was an issue in Prep 2 and Prep 3. The Petitioners cannot accordingly assign blame on the Child’s lack of progress in Arithmetic on the 2nd Petitioner. As **Section 10 (2) of the Children’s Code Act** provides, parents equally have the mandatory duty to ensure the Child’s right to education. The 2nd Petitioner according to the email of 7th June 2023, in fact demonstrates her commitment to assisting the Child notwithstanding that he missed remedial lessons on the stated days, an act which would be deemed in the Child’s best interests.

12.169 The Petitioners did not respond to the 2nd Respondent’s assertion that the Child’s performance was affected by poor attendance, which stood at 51% at the end of the term.

12.170 Taken as a whole, I find no basis to conclude that the 2nd Respondent failed to teach the Child Arithmetic and thereby contravened the Child's rights to development, respect, education, dignity, or parental protection.

12.171 It follows that there is equally no basis upon which to order payment of damages for breach of the aforesaid rights.

CLAIMS AGAINST THE 3RD RESPONDENT

12.172 The Petitioners' claims against the 3rd Respondent include reprimand and referral to the Health Professions Council of Zambia for practising without a certificate, production of the Child's report and related information, and damages for subjecting the Child to therapy without parental consent. These reliefs will be determined in turn.

Issue 9: Whether the 3rd Respondent should be reprimanded and her case referred to the Health Professions Council of Zambia for disciplinary action on account of practising without a certificate

12.173 The Petitioners' case against the 3rd Respondent is that she breached statutory duty by carrying out an assessment on the Child when she knew she was not registered to practise in Zambia.

12.174 I have already found that the assessment was conducted at a time when the 3rd Respondent was neither registered as an Occupational Therapist under the Health Professions Council of Zambia nor under the United Kingdom Health Professions and Care Council. The 3rd Respondent's conduct clearly violated **Section 6(1) of the Health Professions Act, 2009**.

12.175 As to the claim for reprimand, having already found that the 3rd Respondent acted without authority in contravention of **Section 6(1)**, I hold that she should never have practised without registration. I accordingly reprimand her conduct as unlawful and censurable.

12.176 As to the claim for the 3rd Respondent's referral to the Health Professions Council of Zambia for disciplinary proceedings, **Section 62** of the Act outlines the procedure for initiation of disciplinary action.

12.177 Specifically, **Section 62 (1)** provided as follows:

(1) A person may lodge a complaint with the Disciplinary Committee against a health practitioner where the person alleges that the health practitioner has contravened the Code of Ethics or any provision of this Act.

- 12.178 The **Health Profession Act, No.17 of 2024**, is framed in exact terms.
- 12.179 I established earlier that a health practitioner was defined under the **Health Practitioners Act, 2009** as person registered as a health practitioner under **Section 8. Section 8 (2)(s)** lists an occupation therapist as eligible for registration.
- 12.180 The purpose of referring to these provisions is to demonstrate that it is only a registered health practitioner who is subject to disciplinary proceedings upon a complaint being filed.
- 12.181 It follows that I cannot refer the 3rd Respondent for disciplinary action to the Health Professions Council of Zambia, as she is not a registered health practitioner.
- 12.182 In the result, the claim under this head succeeds in part. The 3rd Respondent is reprimanded for practicing without registration, while the relief for referral to the Health Professions Council of Zambia is declined.
- Issue 10: Whether the 3rd Respondent should be directed to produce the report and all information obtained concerning the Child in her possession, to be given to the Petitioners**
- 12.183 The Petitioners argue that the 3rd Respondent has refused or neglected to release the consent form, date and information obtained on the Child despite several reminders, and that the same remains with her without their permission.
- 12.184 The 3rd Respondent denies receiving any request from the Petitioners for the assessment that took place on 2nd October 2023.

The Court's determination

- 12.185 My review of the 3rd Respondent's affidavit shows exhibit "JAW3" comprising notes taken by the 3rd Respondent, "JAW4", the Occupational Therapy Referral Form, and "JAW5", the Occupational Therapy Initial Assessment Form.
- 12.186 In my view, all these clearly relate to the Child's assessment and are available on record as copies. However, considering that the 3rd Respondent had no authority to conduct any assessment at all, I direct her to hand over to the Petitioners the original versions of all documents in her possession relating to the Child's assessment, including any other copies made.
- 12.187 Notably, the 3rd Respondent did not exhibit any final report. If such a report was in fact generated, it must also be handed over to the Petitioners in its original form. If no report was generated, she cannot be ordered to produce one, as she was in the first instance not authorised to assess the Child being unregistered. For these reasons, the claim under this head succeeds in part.

Issue 11: Whether the 3rd Respondent should be ordered to pay damages to the Petitioners for subjecting the Child to therapy without parental consent

- 12.188 The Petitioners also sought an order that the 3rd Respondent pay damages for subjecting the Child to therapy without parental consent.
- 12.189 I have already found that the 2nd Petitioner gave implied consent to the assessment, which however was vitiated by the 3rd Respondent's non-registration as an Occupational Therapist at the material time.
- 12.190 As already established, the WhatsApp message sent by the 2nd Petitioner to the 3rd Respondent following the assessment demonstrates that the Child described the 3rd Respondent in a positive way.
- 12.191 Notwithstanding that description, the fact remains that the 3rd Respondent was not a registered Occupational Therapist. Her conduct violated the Child's right to be assessed only by a duly registered health

professional, and the parents' right to consent in matters concerning their child's welfare. This is consistent with the best interests of the Child principle in **Section 3 of the Children's Code Act**.

12.192 Accordingly, I order the 3rd Respondent to pay nominal damages in the sum of K5,000.00 to the Child, through his representatives, the Petitioners. This award recognises the infringement of the Child's rights arising from therapy conducted without lawful authority and parental consent, notwithstanding the absence of proved injury.

13. CONCLUSION

13.1 For the reasons set out in the foregoing analysis, the Court makes the following orders:

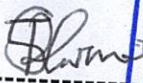
- (i) The Petitioners' claim that the 1st Respondent produce the Referral Form exhibiting parental consent fails, as no such form was ever submitted.
- (ii) The Petitioners' claim that the 1st Respondent produce a report explaining why the Child was recommended for assessment is satisfied, the reasons being already established in the Occupational Therapy Referral Form, exhibit "**JAW4**", in the 3rd Respondent's affidavit verifying facts in support of answer. Consequently, no further order is necessary.
- (iii) The Petitioners' claim that the 1st Respondent produce the 2nd Respondent's Teaching Certificate is satisfied, the certificate being evidenced by exhibits "**MM10**" and "**TM1**" in the respective affidavits of the 1st and 2nd Respondents verifying facts and opposing the Petition. Consequently, no further order is necessary.
- (iv) The Petitioners' claim for damages against the 1st Respondent for contravening the Child's rights to development, dignity, respect, education, privacy, and parental protection under **Sections 5, 10, and 24 of the Children's Code Act** is granted to the extent of nominal damages in the sum of ZMW 10,000.00, recognising the violation notwithstanding the absence of proved injury.

- (v) The Petitioners' claim alleging slander against the 2nd Respondent fails, as no slander was proved.
- (vi) As a consequence of the failure of the slander claim, the Petitioners' claim for a restraining order against the 2nd Respondent, whether by herself, her agents or otherwise, from further slandering the Child, and for payment of damages for slander against the Child, is denied.
- (vii) Equally, the Petitioners' claim for damages against the 2nd Respondent for contravening the Child's rights to development, respect, education, dignity, and parental protection under **Sections 5 and 10 of the Children's Code Act, No.12 of 2022** and **Section 14 of the Education Act, No. 23 of 2011** fails in full.
- (viii) The Petitioners' claim for reprimand of the 3rd Respondent is granted, she having conducted an assessment at a time when she was not registered as an Occupational Therapist under the **Health Professions Act, No. 24 of 2009**. However, as she was not a registered health practitioner, she cannot be referred for disciplinary proceedings under **Section 62 of the Act**.
- (ix) The Petitioners' claim for production of the report and all information obtained concerning the Child succeeds in part. The 3rd Respondent is directed to hand over to the Petitioners the original versions of all documents in her possession relating to the Child's assessment, together with any copies made. If a final report was generated, it must also be handed over in its original form. If no report was generated, the 3rd Respondent cannot be required to produce one, as she lacked lawful authority to conduct the assessment.
- (x) The Petitioners' claim for damages against the 3rd Respondent for subjecting the Child to therapy without lawful authority is granted to the extent of nominal damages in the sum of ZMW 5,000.00, recognising the infringement of the Child's right to be

attended to only by a duly registered health professional and the parents' right to consent in matters concerning their child's welfare, notwithstanding the absence of proved injury.

- (xi) Given that the issues raised implicate matters of public interest in the enforcement of children's rights under the **Children's Code Act** it is just and equitable that each party bear their own costs.
- (xii) The sums awarded as nominal damages shall carry interest at short term bank deposit rate from the date of Petition to date of judgment and thereafter at the current lending rate as determined by the Bank of Zambia until full payment.
- (xiii) The Petitioners are not entitled to any other reliefs sought, no basis having been laid for their grant.
- (xiv) The Petition accordingly succeeds in part, as set out above.
- (xv) Leave to appeal is hereby granted.

DATED THE 24TH DAY OF APRIL 2026



T.S. MUSONDA
JUDGE

