



**Republic v Rongo University; Omondi & another (Exparte) (Judicial Review E009 of 2024) [2024] KEHC 15244 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15244 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
JUDICIAL REVIEW E009 OF 2024  
A. ONG’INJO, J  
NOVEMBER 28, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**RONGO UNIVERSITY ..... RESPONDENT**

**AND**

**MARTIN MIGERE OMONDI ..... EXPARTE**

**ALEX OOKO OGOLA ..... EXPARTE**

**JUDGMENT**

1. The Exparte Applicant Martin Migere Omondi and Alex Ooko Ogola instituted Judicial Review Proceedings against Rongo University to remove into court and quash the decision of the student disciplinary committee of the senate held on 9.5.24 and verdicts communicated to them on 14.7.24 by a letter dated 24.6.24.
2. They also sought on the said applications an order of prohibition directed at the Senate Prohibiting them from executing the recommendation made on the 9<sup>th</sup> day of May 2024 to suspend the Appellants for one academic year. The substantive Application dated 16<sup>th</sup> September, 2024 was premised on the grounds that the disciplinary hearing by the Respondent was a total mistrial the same having violated the rule of natural justice of audi alteram including hearing the alleged complaints and yet passing a verdict from mere allegations. That the said verdict recommending suspension of the Exparte Applicants violated and/or infringed the Constitutional rights of the ex-parte Application who risk losing an academic year of study should the recommendation by the senate be implemented.



3. The substantive Notice of Motion is also supported by the affidavit of Martin Migere Omondi sworn on 16.9.2024. The 1<sup>st</sup> Applicant averred that the Senate denied them the right to legal representation and proceeded with hearing without according them the right to be represented or heard.
4. The Application was opposed by the Replying Affidavit of Professor Samuel Gudu who averred that the University observed the provisions of its Rules and Regulations that govern the conduct of student when carrying out the due process of disciplinary actions against Martin Migere Omondi and Alex Ooko Ogola and found they had breached Rule 10(b), 25 and 30 of the Rules and Regulations that govern the conduct of students. That it was he students Disciplinary Committee of the Senate tat recommended a one year suspension for the Applicants
5. Upon finding they had breached the Rules and Regulations that govern conduct of students, that apart from the Applicants 11 other students were also suspended for a period of one academic year each. That the University strictly followed internal rivals throughout the disciplinary process.
6. That the Applicants ignored to exhaust the internal mechanisms of appeals to the Vice Chancellor and instead chose to run to the court.
7. The Deponent of the Replying Affidavit urged the court not to grant the Applicants the orders sought as the same would weaken the internal Administration of the Respondent as the recurrent, indecent behaviours of the students will be unmanageable in future.
8. The substantive Application was heard by way of written submissions.
9. The proceedings were heard by way of written submissions.
10. The Applicants in their submissions dated 24.9.24 restated the purpose of Judicial Review proceedings as being concerned with the decision making process and the Applicant is to prove that a public officer has acted unprocedurally, that his decision was unreasonable and that the impugned decision was illegal (See National Examination Council vs. Republic Ex parte Geoffrey Gathinji Njoroge and 9 Others. In their submissions the Applicants contended that there was procedurally impropriety since the Applicants were denied the right to fair administrative action and fair hearing in violation of Articles 47 and 50 of *the Constitution* and Section 4(3) of the Fair Administrative Actions Act. The Applicants also argued that the Respondent also flouted its own Section 12 (b) of the Rules and Regulations Governing Conduct and Discipline of the Students 2017. It was submitted that there was procedural unfairness against the Applicants.
11. The Ex parte Applicants also contended that when they appeared before the disciplinary committee of the Senate they denied the charges but their accusers (Complainants) were not present to testify against them and therefore they did not have an opportunity to cross examine the said accusers and test their evidence brought against them. The Applicants relied on the decision Republic vs. Kenyatta University Exparte Njoroge Humphrey Mbuthi (2015) eKLR in which Odunga J (as he then was) where he faulted the college for failure to accord a student a right to examine his accusers.
12. The Applicants submitted that Section 12 (b) (3) of the Respondents Rules and Regulations prohibits representation by a lawyer during the disciplinary proceedings contract to Section 4(5) of the Fair Administrative Actions Act which provides that bodies with quasi judicial powers should not limit the right to legal representation. The holding in Republic vs, Dedan Kimathi University of Technology; Ex parte Mutuku (J. R. E003 of 2021 ) [2022] KEHC 358 (KLR) was cited where Justice J. N. Njagi stated that the Respondents was in breach of fundamental right to legal representation in barring legal representation to student appearing before the disciplinary committee.



13. Finally, the Applicants also argued that they were never given opportunity to mitigate before the decision to suspend them was reached and that amounted to unfair hearing. In conclusion the applicants argued the court to issues an order prohibiting the Deputy Vice Chancellor Academic and Students Affairs from continuing to implement the illegal decision made on 9.5.24 as there was a serious procedural error during the proceedings and the requirements for exertion for internal mechanism would be rendered futile.
14. The Respondents in their submissions dated 14.10.24 argued that they observed the rights of the Applicants including the rights to natural justice and fair administrative actions in terms of giving a notice of the hearing stipulating the charges the rights to be accompanied by persons of their choices, rights to call witnesses. That the applicants chose to appear in company of their fathers and brother and when the charges were read to them by the legal officers they were reminded of their rights to examine witnesses and rights to call their own witnesses. The Respondents submitted that the Applicants did not raise any issues with respect to the charges neither did they fault the notice of invitation. The Court was urged to help in preserving the need and value of the disciplinary process of the Respondents and all other learning institution as it would never be possible to implement the internal rules and regulations of the institution. The Respondents cited the case of Alice Njeri Ngichiri vs. Kenyatta University 2012 eKLR. In respect to right to fair hearing under Article 50 (1) of *the Constitution* the Respondents submitted that the same does not apply where administrative duties such as disciplinary process is concerned and cited JSC vs, Mbalu Mativa & Another 2015 EKLR and Wanjala Seith Wanyama vs. Kenyatta University (2021) eKLR. It was submitted that the Respondents Administrative Action against the Ex-parte Applicants met *the constitution* threshold as provided in Article 47 of *the Constitution*. The Respondents urged the court to preserve its decision to suspend the Ex-parte Applicants as they were issued with adequate notice of invitation detailing the substance of the charge against them and they attended the said disciplinary hearing and therefore such disciplinary proceedings cannot be invalidated. That the Respondents action were lawful and in adherence to constitution, Fair Administrative Actions Acts, the University Act and Rules of Natural Justice and therefore the court must not usurp the discretion of public authority to make decisions concerning their management.
15. The Application herein has been considered together with the rival submissions and issues for determination are:-
  - a. Whether the Exparte Applicants were accorded the rights to be heard, right to cross examine witnesses and the right to mitigate as provided under Article 47(1) and 50(1) of *the Constitution* and Section 4(3), (4) and (5) of the Fair Administrative Actions Act 2015
  - b. Whether the Exparte Applicants are entitled to reliefs sought.
16. The purpose of Judicial Review is to uphold the principles of checks and balances by ensuring the decision making process by public bodies exercising quasi-judicial functions is lawful and in line with *the Constitution*. The Fair Administrative Actions Act was enacted to give effect to Article 47 of *the Constitution* which entrenched Judicial Review as a Constitutional right to safeguard *the Constitution* values and principles.
17. The grounds upon which Judicial Review Proceedings are available are whether such public body acted outside the boundaries of the power given to it; whether the body erred in its application of the power; whether it was wrong to act in view of material consideration if it abused its discretion to assess all relevant consideration or use its power for improper purpose. Judicial Review is not concerned with the merits of a decision but rather the process used to arrive at a decision.



18. Article 47(1) of *the Constitution* provides that every person has the right to Administrative Action that is expeditious, efficient, lawful, reasonable and procedurally fair.
19. Section 4(3) of The Fair Administrative Actions Act provides that where an administrative action is likely to adversely affect.
  - a. Prior and adequate notice of the nature and reasons for the proposed administrative action;
  - b. An opportunity to be heard and to make representations in that regard;
  - c. Notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - d. A statement of reasons pursuant to section 6;
  - e. Notice of the right to legal representation, where applicable;
  - f. Notice of the right to cross examine or where applicable; or
  - g. Information, materials and evidence to be relied upon in making the decision or taking the administrative action
  - (4) The Administrator shall accord the person against whom administrative action is taken an opportunity to-
    - a) attend, proceedings, in person or in the company of an expert of his choice;
    - b) be heard;
    - c) cross –examine persons who give adverse evidence against him; and
    - d) request for adjournment of the proceedings, where necessary to ensure a fair hearing.
  - (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.”
20. The right fair trial under Article 25(c) are not limited and therefore inalienable. This right is further provided for under Article 50(1) where it provides that every person has a right to have any dispute that can be resolved by application of law decided in fair and public hearing before a court of law or, if appropriate another independent and impartial tribunal or body. The rights under Article 50 (2) that are replicated in the Fair Administrative Actions act and applicable in this instance are the rights to choose and be represented by an Advocate and to be informed of this right promptly to be informed of the evidence the prosecution is intending to use in trial and to have reasonable access to that evidence and to challenge the evidence by the accuser and to adduce evidence.
21. By a letter dated 2.5.24 the Vice Chancellor Prof. Samuel Gudu wrote to G. S. Okoth Advocate informing him that in accordance with the Rules and Regulation Governing Conduct and Discipline of Students 2017 the students are not allowed to have legal representation in the disciplinary committee. This assertion by the Vice Chancellor went against the provisions of Article 47(1) and 50 (1) (2) of *the Constitution* and Section 4(3) (e) of the Fair Administrative Actions Act. Rules and Regulations must conform to provisions of Constitution and Statute for them to be lawful.
22. Secondly, the Ex-parte Applicants also complained and this court confirmed from the proceedings of the senate committee that they did not have the opportunity to face their accusers and cross examine them and that violated the provisions of Article 47(1) and 50(1) of *the Constitution* and Section 4 (3) (f) of the Fair Administrative Act.



23. This court has established that by denying the Applicants the right to legal representation, the right to cross examine witnesses and the right to mitigate before the decision was made was in violation of the Constitution and the Fair Administrative Actions Act and in the circumstances, this court finds that the Ex-parte Applicants have proved their Allegations against the Respondent herein and the application to quash the decision of the student disciplinary committee of the senate held on 9.5.24 is allowed.
24. No orders as to costs.

**DELIVERED DATED AND SIGNED AT MIGORI THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. ONG'INJO**

**JUDGE**

Judgment delivered in the presence of

