



**Republic & 3 others v JKUAT University Council & 2 others; Commission  
for University Education (Interested Party) (Judicial Review Application  
92 of 2020) [2023] KEHC 983 (KLR) (21 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 983 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
JUDICIAL REVIEW APPLICATION 92 OF 2020  
RN NYAKUNDI, J  
FEBRUARY 21, 2023**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
PROCEEDINGS FOR ORDERS CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26**

**AND**

**IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF CONTRAVENTION OF SECTIONS 4  
& 5 OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015**

**AND**

**IN THE MATTER OF CHAPTER OF JKUAT UNIVERSITY**

**AND**

**IN THE MATTER OF ARTICLES 10(2) (C), 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOM UNDER ARTICLES 35(1), 43(1)(F),  
47(1) (2), 48, 50 (1)(2) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE JKUAT UNIVERSITY STUDENT HANDBOOK AND POLICY**

**AND**

**IN THE MATTER OF CLOSURE NOTICE DATED 30/07/2020 BY THE  
KUAT UNIVERSITY GOVERNING COUNCIL OF CLOSURE OF JKUAT**

**JUDICIAR REVIEW NO. 92 OF 20201**



**UNIVERSITY ELDORET CAMPUS AND RELOCATION  
OF STUDENTS TO CAMPUSES IN OTHER COUNTIES**

**AND**

**IN THE MATTER OF COMMISSION FOR UNIVERSITY EDUCATION**

**BETWEEN**

**REPUBLIC ..... 1<sup>ST</sup> APPLICANT**  
**LOLEM REUBEN ..... 2<sup>ND</sup> APPLICANT**  
**JAHEZM DEDE ..... 3<sup>RD</sup> APPLICANT**  
**SUSAN CHEPTOO ..... 4<sup>TH</sup> APPLICANT**

**AND**

**JKUAT UNIVERSITY COUNCIL ..... 1<sup>ST</sup> RESPONDENT**  
**THE VICE CHANCELLOR - JKUAT UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**  
**THE DIRECTOR JKUAT ELDORET CAMPUS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**COMMISSION FOR UNIVERSITY EDUCATION ..... INTERESTED PARTY**

**JUDGMENT**

**Coram:** Before Justice R. Nyakundi

Mukabane & Kagunza Advocates

Mukelele Moni & Company Advocates

1. By a Notice of Motion dated 12<sup>th</sup> July, 2021, the Applicants seek the following orders: -
  1. That an order of certiorari do issue to remove into this Honourable Court and quash the JKUAT Eldoret campus closure Notices issued on 29/7/2020 and 30/7/2020 requiring closure of the university together with any other proceedings and decisions connected therewith.
  2. That an order of prohibition do issue against the Respondents to prohibit the Respondents from closing JKUAT Eldoret campus and/or an order rescinding the Respondents decision to close down JKUAT Eldoret campus.
2. The application is premised on the grounds adduced therein and is further supported by the affidavit dated 13<sup>th</sup> July, 2021 sworn by Lolem Reuben.

**The Applicants' Case**

3. The Applicant's case is that they student leaders of Jomo Kenyatta University (JKUAT) Eldoret Campus. The Applicants maintain that the Respondents herein established JKUAT



Eldoret campus and enrolled students on the understanding that the students who signed the admission letters were to finish their education without any interruption.

4. The Applicant contend that the Respondents' University policy is very clear in that where a campus is to be subjected to any closure for any reason, the on-going students at the university will be afforded the opportunity to finish their studies without admitting new students which is the criteria that was applied when JKUAT closed its campuses in Kisumu and Kigali Rwanda.
5. The Applicants further deposed that on 29/7/2020 and 30/7/2020, the Respondents herein issued a closure notice of JKUAT Eldoret campus. The Applicants maintain that the students are opposed to the said closure for reason inter alia that:
  - a. Most students at JKUAT Eldoret campus enrolled due to the proximity to their homes and work places.
  - b. Some students are employed in Eldoret and use the salary they derive from employment to meet fees and if the institution is closed, they tend to lose their livelihood and at the same time their education will come to a halt.
  - c. Some students had specifically enrolled for evening classes because they had job related commitments and took accommodation within Eldoret area.
6. The Applicants further deposed that the students were enrolled by the signing of admission letters and have been paying their fees as and when it was due. According to the Applicants in return they expected the university to offer them quality education at JKUAT Eldoret Campus without any interruption at the said campus and that was their legitimate expectation.
7. The Applicants contend that the Respondents are intending to act arbitrary and in an ultra vires manner by closing the JKUAT Eldoret campus which in turn will affect the students' fundamental rights without affording the students an opportunity to be heard before the said decision was made.
8. According to the Applicants, if the Respondents would require them to shift to any other campuses, then it will only be fair if the Respondents take into account the circumstances surrounding the Applicants.
9. The Applicants contend that the impugned decision is bound to fundamentally affect and interrupt the Applicants' pursuit of education. The Applicants maintain that the impugned decision by the Respondents is contrary to the rules of natural justice and fair administrative action.
10. According to the Applicants, the Commission for University Education did not order for the closure of the said campus. That the issues that were raised by the Commission for University Education were addressed and that there is a report to that effect which was hidden by the 2<sup>nd</sup> Respondent from the Commission for ulterior motives and that the said report never reached the Commission.
11. The Applicants further deposed that the Standard Newspaper group had interviewed the Interested Party herein and that the Interested party confirmed that it did not order for the closure of JKUAT Eldoret campus.
12. The Applicants contend that the Respondents cannot grant them a fair hearing regarding the issue as they have already made a biased conclusion that JKUAT Eldoret campus must be closed and are hiding behind the Interested party herein.



## The Respondents' Case

13. The application is opposed vide the affidavit sworn by Prof Robert Kinyua dated 12<sup>th</sup> April, 2021.
14. The Respondents' case is that on 22<sup>nd</sup> November, 2016, the Commission for University Education made an initial inspection of the University resources for the purpose of determining whether to grant provisional accreditation to the University to run academic programmes in its Eldoret campus. That Commission granted the campus provisional accreditation with stipulations to remedy severe deficiencies and itemized in its report and recommendations.
15. The Respondents further deposed that the report by the Commission considered various parameters including compliance and adequacy of physical and financial resources within the campus as set out in the standard accreditation of institutions.
16. Further that on 20<sup>th</sup> August, 2019, a re-inspection of the campus was carried out by the Commission to determine the extent to which the Respondents had implemented the recommendations of the inspection carried out on 22<sup>nd</sup> November, 2016 in order to make a final determination on the accreditation status of the campus. That the inspection was further intended to take stock of the current status of the campus.
17. The Respondents maintain that from the re-inspection, the Commission noted that most of the recommendations that were given in the initial report were still outstanding including inadequate physical and human resources to support the programmes on offer and student enrolment. That the finding by the Commission was that the campus did not meet the minimum standards for campuses. Consequently, the 1<sup>st</sup> Respondent was issued with a notice to close the campus within a period of Ninety (90) days being from the 6<sup>th</sup> of December, 2019.
18. The Respondent further deposed that the University's Senate considered the contents of the Commission's order of closure of the campus and requested for additional time within which to close the campus. That the Commission allowed the request and extended the closure notice to the 30<sup>th</sup> day of August, 2020.
19. Accordingly, the 3<sup>rd</sup> Respondent on 29<sup>th</sup> July, 2020, circulated an Internal Memo to all students informing them that the campus was to be closed by the end of August, 2020. That the Internal Memo invited the bona fide students to elect which of the University's other campuses they would wish to consider in order to be transferred, or whether they would opt for the e-learning mode. The Respondents maintain that this was to facilitate a smooth transition for the students.
20. The Respondents contend that the closure herein was occasioned by the directive of the Commission which is mandated by the law to regulate all matters of University education.
21. According to the 1<sup>st</sup> Respondent, its decision is not ultra vires and or biased or in breach of the Applicant's rights to fair hearing as the same was in compliance with the directive issued by the Commission in exercise of the powers conferred upon it by the law. The Respondents further contend that the said directive has not been challenged by the Applicants herein.
22. The Respondents maintain that the University is committed to ensuring that its students continue with their education either by transferring them to campuses of their choice or providing the students with a platform for e-learning mode.



23. The Respondent contend that if the Applicants herein were aggrieved by the decision of the Commission to close the campus, then they ought to have taken up the issue with the Commission, which is the body vested with the mandate in law inter alia to regulate university education and to accredit and inspect university programmes in Kenya. According to the Respondents the Applicants herein have ample time within which to comply with the Internal Memo that was issued on 20<sup>th</sup> June, 2020 subject to the Commission's directive.
24. The Respondent further deposed that the Applicants herein have not provided a basis for the issuance of the orders of the sought as against the 2<sup>nd</sup> & 3<sup>rd</sup> Respondent as they are not proper parties to these proceedings.
25. The Respondents urged that this instant application is incompetent, without merit and constitutes an abuse of the process of this Court.
26. The Respondents also filed a further affidavit dated 28<sup>th</sup> September, 2021, in which the reiterated the contents of their affidavit dated 15<sup>th</sup> April, 2021 save for arguing that the contents of the newspaper article marked as LR-7 cannot be authenticated and or ascertained as the author of the said article was never summoned to verify its contents.
27. Further that the University has deployed integrated Information Communication Technology (ICT) in respect to all its courses and programmes. That the students were well aware of this by virtue of the same having being indicated in their respective letters of admission. The Respondent maintain that the University has provided a platform to enable its students proceed with learning uninterrupted. That indeed, by offering the students an alternative of e-learning platform the University acted in accordance with its policies.

### **The Submissions**

28. The application was canvassed vide written submissions. The Applicants filed submissions on 15<sup>th</sup> July, 2021 whereas the Respondents filed submissions on 15<sup>th</sup> October, 2021.
29. In their submissions the Applicants faulted the Respondents for failing to consult the students before rendering the decision to close the JKUAT Eldoret Campus. The Applicants argued in view of having paid the university fees, there was a legitimate expectation that the university would offer quality education at the said campus rather than to arbitrary close it Eldoret campus without hearing the views of the students.
30. The Applicants further submitted that decision to close the campus will affect about 1580 students who are various stages of completion of their studies. The Applicants contended that the closure will also affect employed persons who work at Eldoret town while attending evening classes. The Applicants argued that students will also incur relocation costs due to arbitral decision by the Respondents to close the said campus.
31. The Applicants urged that the closure notice is thus illegal, irrational, ultra vires and un-procedural. The Applicants prayed that the same ought to be quashed.
32. The relied on the following cases to buttress their submissions; Justice Amraphael mbogholi Msagha v Chief Justice of the Republic of Kenya & 7 Others [2006] eKLR, Republic v Secretary of the Firearms Licensing Board & 2 others Ex -parte:Senator Johnson Muthama [2018] eKLR,RV Commissioner of Customs Services Ex-parte Imperial Bank Limited [2015] eKLR and Republic v Chief Justice of Kenya & 6 others Ex-parte Moiyo Mataiya Ole Keiwua [2010] eKLR.



33. The Respondents submitted that JKUAT is body corporate capable of suing and being sued. The Respondent argued that the said legal capacity does not thus extend to its officials in their individual capacities. The Respondents cited the following cases; Republic V Vice Chancellor Kisii University Ex-parte Muthamia Samuel Mwiti [2019] eKLR and Kiama Wangai V Pamela Tsimbiri & 7 Others [2014] eKLR.
34. The Respondents faulted the Applicants for not exhausting all the internal appeal and or dispute resolution mechanisms available in law before filing this instant application. The Respondents contended that if the Applicants were aggrieved by the decision to close the said campus then they ought to have taken issue with Interested Party and the Cabinet Secretary in accordance with the Universities Act. The Respondents relied on the decision in the following cases; Republic V Kenya Revenue Authority Ex-parte Style Industries Limited [2019] eKLR and Cortec Mining Kenya Limited V Cabinet Secretary of Mining & 9 Others [2017] eKLR.
35. The Respondents also maintained that the order to close the said campus was in accordance with the directive issued by the Interested Party herein and the university had no option but comply. The Respondents cited the case of Captain J.N. Wafumbwa V General Julius Karangi & 2 Others [2014].
36. The Respondents argued that an order of prohibition cannot issue to prevent the Interested Party from performing any of its statutory functions. The Respondents relied on the case of Republic V Secretary of the Firearms Licensing Board & 2 Others Ex-parte Senatir Johnson Muthama [2018].
37. With regard to the pray for an order for certiorari the Respondents submitted that the same cannot issue as the said notices have since expired. The Respondents maintained that Court orders are never issued in vain. The Respondents cited the case of Republic V County Government of Embu [2018] eKLR.
38. The Respondents contended that the relief sought by the Applicants under prayer (2) is unavailable in judicial review proceedings as envisaged under Section 8 of the Law Reform Act as read with Order 53 of the Civil Procedure Rules.
39. With regard to allegations that Respondents violated the Applicant's right to fair administrative action. The Respondents submitted that the Applicants have failed to demonstrate to thus Court that there exists any provision in law to the effect that once the interested party had made its decision to close the campus, the Respondents were required to undertake any further exercise to avert the said decision. The Respondents relied on the case of Martin Wanderi & 106 Others V Engineers Registration Board & 10 Others [2018] eKLR.
40. The Respondent further submitted that they have no obligation under Universities Act to undertake public participation once the Interested Party has issued its directive for closure of a campus. The Respondents cited the case of Kipkoech B. Ng'etich V Inspector General of Police & 4 Others; Law Society of Kenya [2020] eKLR
41. Regarding the newspaper extract, the Respondents argued its contents are merely hearsay and therefore inadmissible in evidence in the absence of the author. The Respondents cited the case of Monica Wangu Wawere V Attorney General [2019] eKLR.



## Determination

42. Following the 2010 Constitutional Reforms, Declarations and injunctions in Public Law may now be sought alongside the prerogative remedies in an application for Judicial Review. A claimant may also be at liberty to include a claim for damages or reparation. The precise extent of the remedy is such that it is incorporated under Article 23 (3) (F) of *the Constitution* to redress any threats any threat to all actual violation of any fundamental Rights and Freedoms including by private persons. There is also the further provision of Article 47(1) of *the Constitution* of Kenya which also guarantees a right to fair administrative action that does not violate or threaten to violate any fundamental right of freedom. It is relatively clear that in Article 47(1) every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. It is also relevant to note that the High Court does exercise as supervisory jurisdiction over inferior bodies, tribunals, or subordinate courts as provided for under Article 165 (6) and (7) of *the Constitution*. Indeed the court in Kenya Roads and Board ex parte John Harum Mwaui Mis Civil Application No 1372 of 2002 (Unrep) had this to state: “ In Kenya the courts have jurisdiction and have been given the mandate by *the constitution* to exercise unlimited original jurisdiction to scrutinize Acts of parliament and the actions of other organs of upholding the rights of the individual. The citizens can therefore come to court and seek judicial review of not only administrative actions but also the act of the legislature or any other arm of the government. Those obvious is a great departure from the Common Law Approach which is based on the supremacy of Parliament where the mandate of the courts is confined to reviewing the manner in which the public authorities exercise the power which have been conferred upon them by the legislature.”
43. This petition prompted the existing fact that public bodies are invariably given wide discretion by enabling legislation by parliament to assist them in exercising their public law duties. In relation to the legal contest between the petitioners and the respondents it’s all a question of whether the 1<sup>st</sup> respondent and the subsidiary bodies acted illegally, abused discretion, or took into account factors not relevant or applied wrong principles in exercise of the statutory power to make the decision. From a comparative jurisprudential stand point the court in R Versus Ministry of Defence Exp. Smith (1996) which states : “ The greater the policy content of a decision, and the more remote the subject matter of a decision from ordinary judicial experience, the more hesitant the court must necessarily be in holding a decision to be irrational....where decisions of a policy-laded, esoteric or security – based nature are in issue even greater caution than normal must be shown in applying the test, but the test itself is sufficiently flexible to cover all situation”
44. There are strong argument by the petitioners challenging the decision making process of closing the Eldoret Cumpus which primarily in the context of decisions, does impact their individual concerns and rights on access to education. For the petitioners the remedy for practical use is a declaration that the decision by the 1<sup>st</sup> respondent and other bodies to be declared unlawful and ultra vires. Essentially the decision making process in question is tainted with illegality, impropriety and unreasonableness. The Landmark case of Associated Picture Houses Ltd vs Wednesbury Corporation (1948)
45. Made the following observations of clarity to the above concept as they are construed in administrative law. As to the proposition of the term unreasonable Lord Green held that “A person with a decision must so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from the



consideration matters which are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said, and often is said to be acting unreasonably. Unreasonableness is a high threshold test as indicated by Lord Greene himself who said it would require something “overwhelming” for a decision –marker to be acting unreasonably”.

46. On irrationality Lord Diplock preferred to use the term irrationality in this sense that “By Irrationality I mean what can now be succinctly referred to as “Wednesbury unreasonable it applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no considerable person who had applied his mind to the question to be decided could have arrived at it.” By procedural impropriety, Lord Diplock included failure to observe basic rules of natural justice and failure to act with procedural fairness towards the person who will be affected by the decision, as well as failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. (See also *Pastoli vs. Kabale District Local Government Council & Others* (2008) EA, 300)
47. As these cases show whether the decision of the Respondents can be effectively reviewed by this court depends largely on the Petitioner satisfying the criteria outlined in the stated jurisprudence. To insist on the 1<sup>st</sup> Respondent continuum of offering academic programs at Eldoret Campus requires of the Petitioner that it has erred in one of the ways discussed by Lord Diplock in the above authority. The circumstances in which the 1<sup>st</sup> Respondent moved to make the impugned decision is traceable to the factual foundation in their affidavit evidence. I take it that the principles upon which the 1<sup>st</sup> Respondent decided on some kind of matters arising suited to the closing of the Eldoret Campus must have been within the principles of Law in the statute governing its operations. In the Judicial Review Jurisdiction, there is cautionary principle that no transgression by the court to limit exercise of policy / legislative power by public bodies unless in exceptional scenarios. The threshold is to secure the discretion of public bodies and the courts to stay away from usurping that jurisdiction. In the petition at bar the manifested grounds challenging the decision making process of the 1<sup>st</sup> Respondent appear to direct the court towards that end. What went wrong? In terms of procedural and substantive justice occasioning initiation of this petition. Obviously, University Education provider transcends individual rights, it is about the wellbeing of the common good in our society. It is clear from the provisions in section 4 and 7 of the *fair Administrative Action Act* a range of criteria is laid down in the law in making decision or carrying out other Administrative Actions.
48. It is not lost that the process and the consideration of the decision to close the Eldoret Campus constitute administrative action. As pointed out earlier, elsewhere in this ruling Article 47 (1) of *the Constitution* was enacted to promote Administrative Justice Right. Flowing from this Article a Public Body, Tribunal, court or any other quasi-Judicial forum must promote the national values and principles of governance based on humanity, equality, participation, inclusiveness, transparency and accountability. As submitted by the respondents the proposition to close down the Eldoret Campus may have been anticipated due to the prevailing policy change in rendering academic programs and the persons likely to be affected by the decision were involved appropriately. In the text and content of the petition, the representations made failed to establish that the substance of the adverse decision on closure was reached without being given an opportunity to know all the ramifications of the case. The test set out by the court of Appeal in *Republic –vs – Kenya National Examination Council ex parte Gathenji & Others* Civil Appeal No. 266 of 1996 is compatible with the rebuttal evidence by the despondence.



49. The application before me is for an order of judicial review, which is intended to quash and prohibit the JKUAT Eldoret Campus closure notices issued on 29/7/2020 and 30/7/2020 respectively.

50. In the case of *Municipal Council Of Mombasa –vs- Republic & Anor* [2002] eKLR the Court of Appeal made the following observations:

Judicial review is concerned with the decision-making process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have power i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision did the decision-maker take into account relevant matters or did he take into account irrelevant factors? These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a court of appeal over the decider, acting as an appeal court over the decider would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision, and that, as we have said, is not the province of Judicial Review.” (See also the *Republic vs Retirement Benefit Appeal Tribunals ExParte Augustine Juma & Others* (2013) eKLR

In *Penina Nadako Kiliswa –vs- Independent Electoral & Boundaries Commission (IEBC) & 2 Others* (2015) eKLR

51. The Applicants contended that that the decision was arbitrary as the Respondents had not given the students an opportunity to be heard before the decision was made.

52. The Respondents on the other hand contended that the said decision was informed by the directive that was issued by the Interested Party herein. The 1<sup>st</sup> Respondents further argued that in view of the said directive it accordingly informed its students and even gave them the option to transfer to its other campuses and in the alternative provided for them an opportunity to pursue e-learning.

53. The Applicants herein have indicated that they are students and had paid fees to the University and expected the University to offer them quality education at the said campus and that was a legitimate expectation. The Applicants have also indicated that they enrolled at the JKUAT Eldoret Campus due to proximity to their homes and places of work.

54. The Applicants in a nutshell want this Court to rescind the decision by the 1<sup>st</sup> Respondent to close its Eldoret campus.

56. The petition also brings forth the test of legitimate expectation to executive decision. In *Keroche Industries Ltd v Kenya Revenue Authority and Others* Supra note 108. What constitutes the core of the decision can be summarised as follows: “In all legitimate expectation cases, whether substantive or procedural three practical question raise. The first question is to what has the public authority whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment, the third is what the court should do. This formulation of the questions is we think a more helpful way of approaching the problems in this type of case than the fivefold question adopted during argument”

57. I agree with the petitioners that they had some form of expectations from the University management based on the past practices or promises when the Eldoret Campus was not



operational. This doctrine does not provide a legal right but a locus standi to challenge any decision which goes against the grain of *the constitution*. It is both procedural and substantive. In this petition the petitioners had expected the pre-existing policy on Eldoret Campus to continue offering academic courses for their benefit. In response to that inquiry the respondent significantly brought out the policy changes which justified a departure from the boundaries of the doctrine of legitimate expectation. In reality on analysis of the factual matrix of the petition the Respondent's decision not to fully fill a promise to retain Eldoret Constituent Campus was rational and sufficient investigation was conducted into the consequences before choosing to make the impugned decision. The larger purposive objective accompanied with public interest surpassed the expectation by the petitioners. It is evident there exist an alternative remedy for the petitioners that provides a level balance to cater for the interest and rights on access to University Education.

58. In my view the Applicants ought to have demonstrated to this Court that Respondents acted outside of the powers and mandate given to them under the *Universities Act*, or that they abused those powers in some way.
59. From a cursory perusal of the Applicants' pleadings it is evident that the Applicants have not established that the Respondents herein acted outside their mandate as provided for in *Universities Act* and or their Charter. The Applicants have failed to mention any specific provision of the *Universities Act* that has been breached by the Respondents.
60. On my mind the 1<sup>st</sup> Respondent though authorised to provide various learning programmes, the same is not without the supervisory arm of the Commission for University Education. The Commission for University education is body mandated to ensure the advancement of quality university education in Kenya, which entails regulating and accrediting universities academic programmes, among other functions.
61. There is nonetheless, a very real tension between the Petitioners and the Respondents. Suffice it to say whether to apply the proportionality test to the aims of the Respondent's decision making they did achieve the correct balance as Leyland and Antony, Textbook on Administrative Law (5<sup>th</sup> edn (OUP, 2005) states: "proportionality works on the assumption that administrative action ought not go beyond what is necessary to achieve its desired result( in everyday terms, that you should not use a sledgehammer to crack a nut) and, in contrast to irrationality, is often understood to bring the courts much closer to reviewing the merit of a decision. Proportionality test may go further than the traditional test as it may require attention to be directed to the relative weight accorded to interest and considerations. Proportionality is only a ground on judicial review of decisions when and only when the law requires judges to hold the scales, and to weigh one set of interests against another".
62. I have looked at the re-inspection report dated 20<sup>th</sup> August, 2019 on record and from the said report it is evident that the Commission for University Education recommended that JKUAT Eldoret campus had severe deficiencies in complying with the recommendations of the previous inspection and thus ordered that the said campus be closed.
63. The Applicants have failed to demonstrate to this Court that decision to close JKUAT Eldoret campus is unlawful or malicious. The Court cannot stop a lawful process. It can only intervene if it is shown to be an abuse of the process, illegal or baseless or if it is prompted by ulterior motives or any such other motives other than furtherance of the law, relevant regulations and public interest.



64. With the foregoing in mind it is my finding that the orders being sought by the Applicants are not tenable.
65. The Applicants have in fact been given options to transfer to JKUAT's other affiliate campuses or alternatively learn via the e-learning platform.
66. With regard to allegations of infringement of the Applicants Constitutional rights I must remind them that application before me is founded on Order 53, not *the Constitution*. If the Applicants desired to obtain orders relating to violations of *the Constitution*, then they ought to have moved the Court by way of a Constitutional petition.
67. In the end it is my finding that the Applicants herein have failed to demonstrate that it has a case for grant of the Judicial Review order sought. The Motion, dated 12<sup>th</sup> July, 2021, is for dismissal, and I hereby dismiss the same. Costs should follow the event, but since the Applicants are of students, I shall order that each party bears its own costs.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2023.**

**R. NYAKUNDI**

**JUDGE**

([xxxx.com](#), [xxxx.com](#))

