



**Koome v Kiambu Institute of Science and Technology & 4 others  
(Constitutional Petition E221 of 2021) [2023] KEHC 17969 (KLR)  
(Constitutional and Human Rights) (30 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17969 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E221 OF 2021**

**AC MRIMA, J**

**MAY 30, 2023**

**BETWEEN**

**MANYARA FREDRICK KOOME ..... PETITIONER**

**AND**

**KIAMBU INSTITUTE OF SCIENCE AND TECHNOLOGY ... 1<sup>ST</sup> RESPONDENT**

**JANE MWINGI NJIRU GITAU ..... 2<sup>ND</sup> RESPONDENT**

**SAMWEL KWEMOI SIMATWA ..... 3<sup>RD</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Background:**

1. Manyara Fredrick Koome, the Petitioner herein, is a student at Kiambu Institute of Science and Technology (hereinafter referred to as 'KIST' or 'the institution' or 'the 1<sup>st</sup> Respondent'), a tertiary institution providing training in technical and vocational education in various Diploma and craft levels.
2. The events leading to institution of the instant dispute can be traced to 2<sup>nd</sup> June, 2021.
3. On the fateful day, as the Petitioner was leaving the institution, he was stopped by security guards manning the gate with the instructions that he was required to see the 2<sup>nd</sup> Respondent herein, Dr. Jane Mwingi Njiri Gitau, the institution's Deputy Principal Administration - Chair Person Disciplinary Committee.



4. At the 2<sup>nd</sup> Respondents office, it is his contention that he was informed (by the 2<sup>nd</sup> Respondent) that the Institution does not tolerate people of his kind.
5. Subsequently, without any explanation whatsoever, he was ordered to hand over his school identity card and to immediately contact his guardian for a meeting with the 2<sup>nd</sup> Respondent on the same day.
6. As the Petitioner's guardian was not in the country, his brother, Manyara Reginald Mworira, rushed to the school where the 2<sup>nd</sup> Respondent's secretary informed him that he the meeting would be held on Friday 4<sup>th</sup> June 2021 and it is only the Petitioner's father who could attend the meeting.
7. Upon further inquiry the into the nature of the meeting, the Petitioner's brother was handed a letter titled 'Disciplinary Matter'. It contained various allegations against the Petitioner among them; refusal to show Student's ID to the security at the gate, refusal to remove marvin when ordered by the guards, use of provocative language before two deputy principals, conduct contrary to clause 3.2 of KIST Rules and Regulations which prohibits assault of staff members, student or member of the public and or use of abusive language.
8. It is his case that before leaving the institution, he went to collect his keys from his roommate whereupon the 3<sup>rd</sup> Respondent, Samwel Kwemoi Simatwa, a security guard at the institution alongside three other guards confronted and stated dragging him towards the gate.
9. It is his case that on inquiring the reason for getting dragged, the security guards beat him up causing him harm in view of other students as well as the 2<sup>nd</sup> Respondent whose instructions were to forcefully eject the Petitioner.
10. The Petitioner's brother who at the time was outside the school signed back in to come to the aid of the Petitioner by restraining the 3<sup>rd</sup> Respondent from punching the Petitioner.
11. Upon insisting to the 2<sup>nd</sup> Respondent on writing an official statement on what had witnessed in the school, she (2<sup>nd</sup> Respondent) refused.
12. On learning that the Petitioner's brother was an Advocate of the High Court, the 2<sup>nd</sup> Respondent informed the Petitioner to come with his registered representative on 4<sup>th</sup> June 2021 for hearing.
13. At that point the Petitioner and his brother were ordered out of the Institution where they left and they immediately reported the assault to Kiambu Police Station under Occurrence Book OB31/2/06/2021.
14. The Petitioner asserted that he was given a Medical Examination Report and upon examination by a Doctor, his injuries were categorized as 'harm'.
15. On 4<sup>th</sup> June 2021, the Petitioner, in the company of his parents presented themselves before the 2<sup>nd</sup> Respondent.
16. The Petitioner's parents were handed the letter dated 4<sup>th</sup> June 2021 whose contents were the events of 2<sup>nd</sup> June 2021. The letter elaborated how the Petitioner and a stranger (his brother) physically assaulted the guard near the gate causing him physical injuries contrary to clause 3.2 of KIST Rule and Regulations that prohibit assault of staff members, students or a member of the public or use of abusive language.
17. The letter went on to request a toxicology test and submit it to the disciplinary committee on 18<sup>th</sup> June 2021. He was consequently suspended him for a period of two weeks, from 4<sup>th</sup> June 2021 to 17<sup>th</sup> June 2021.



18. Upon leaving the 2<sup>nd</sup> Respondents' Office, the Petitioner was led away by two men who identified themselves as Police Officers. The Petitioner was informed by the officers that they had the 2<sup>nd</sup> Respondent's instructions to arrest him for allegation of assaulting the 3<sup>rd</sup> Respondent on 2<sup>nd</sup> June 2021.
19. He was taken in the 1<sup>st</sup> Respondent's vehicle to Kiambu Police Station where, despite no statements being taken, he was locked up until 5<sup>th</sup> June 2021 when he was released on bail.
20. The Petitioner was subsequently charged for assault in Kiambu Chief Magistrates Criminal Case No. E105 of 2020, republic -vs- Fredrick Koome Manyara, a case which was later withdrawn on 16<sup>th</sup> August 2021.
21. The Petitioner asserted that consequently, the 2<sup>nd</sup> Respondent warned and intimidated other students who witnessed the assault against giving testimony.
22. It was his case that on returning to the Institution on 18<sup>th</sup> June 2021, he was handed a letter dated 18<sup>th</sup> June 2021 which required him to submit toxicology test results before commencement of disciplinary procedure.
23. The Petitioner stated that he was subsequently indefinitely suspended.
24. The Petition was opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The 4<sup>th</sup> and 5<sup>th</sup> Respondents did not participate despite service.

**The Petition:**

25. Through the Petition dated 17<sup>th</sup> June 2021, supported by the Petitioner's Affidavit and Supplementary Affidavit deposed to on 17<sup>th</sup> June 2021 and 11<sup>th</sup> November 2021 respectively, the Petitioner approached this Court seeking to ventilate various constitutional infractions occasioned to him by the Respondents' actions. The Petitioner also sought to highlight unconstitutionality of the Institution's Students' guide.
26. Contemporaneously filed with the Petition was the Notice of Motion application supported by the Affidavit of the Petitioner. It sought various interim reliefs and by the Order of this Court of 6<sup>th</sup> July 2021, it was subsumed in the Petition.
27. On 21<sup>st</sup> September 2021, this Court granted prayer 2 and 3 of the Application. It directed the 1<sup>st</sup> Respondent and its agents, the 2<sup>nd</sup> Respondent included, to return the Petitioner's school Identification card, allow him to access the school and it stayed the disciplinary process pending hearing and determination of the Application and the Petition.
28. In the main the Petitioner averred that the latter dated 2<sup>nd</sup> June 2021 was malicious and authored in bad faith and ultra-vires part III Section A(2) of The Students' guide which vests disciplinary authority upon the Principal.
29. He pleaded that no procedure to prove his guilt as envisaged under Part III Section A(2) and Section C had been undertaken to justify the action against him.
30. The Petitioner pleaded that the conduct of the Institutions' officers, specifically the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent were a blatant abuse of his right not to be treated in a cruel, inhumane and degrading manner protected under Article 29(c) of the Constitution.



31. The Petitioner averred that the ‘hearing’ purported to have been scheduled for 4<sup>th</sup> June 2021 was malicious charade undertaken by the 2<sup>nd</sup> Respondent contrary to KIST Students Guidelines and [the Constitution](#).
32. He pleaded that no disciplinary procedure or hearing was undertaken as provided for under Part III section 1 and 2 of KIST Students Guidelines prior to disciplinary action being taken against him.
33. He posited that the process was a malicious scheme orchestrated by the 2<sup>nd</sup> Respondent since no disciplinary committee had been constituted as per Part III section C(1) of KIST Students guide.
34. The Petitioner asserted that the process undertaken by the 2<sup>nd</sup> Respondent was in breach of his right to dignity, fair administrative action, impeded access to justice, violated his right to fair hearing and the right to be presumed innocent until proven guilty guaranteed by [the Constitution](#) in Article 28, 47, 48 and 50(1) respectively.
35. He further posited that failure to be accorded adequate time and facilities to prepare a defence and being denied access to the process leading to his disciplinary action violated his constitutional right to be present in any hearing was in violation of Article 50(2)(c)(g) and 50(2)(f) of [the constitution](#) respectively.
36. The Petitioner further pleaded that the failure by the institution to give him a chance to adduce evidence was contrary to Article 50(2)(k) of [the Constitution](#).
37. With respect to the suspension, he pleaded that the 2<sup>nd</sup> Respondent was malicious for doing it unprocedurally and without a sound reason. It is his case that the suspension and getting locked out of the Institutions online platform meant that he could not attain the threshold for class attendance, could not register for examinations and could not graduate in violation his right to Education provided for under Article 55 and 43 of [the Constitution](#).
38. The Petitioner further asserted that the requirement to take a drug/toxicology test was malicious as it did not have any basis in the KIST Students’ Guide and would be used to discriminate against him contrary to Article 27 of [the Constitution](#).
39. He pleaded that the use of drugs was never an issue against him and has never been accused of using them. It was further his case that the test was vague for lack of specificity and in contravention of Article 50(2)(k) of [the Constitution](#) which guarantees every person the right not to give self-incriminating evidence.
40. In contesting his prosecution, the Petitioner averred that it was malicious, an abuse of Court process by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent mean to cover up the assault upon him.
41. The Petitioner faulted the Director of Public Prosecutions, 5<sup>th</sup> Resident herein for failing to discharge its duty in protecting public interest, the administration of justice and abuse of legal process.
42. The Petitioner averred that the Inspector General of Police, 4<sup>th</sup> Respondent herein never informed him of the status of his assault despite being the first one to report and has never done investigations into the incident.
43. In challenging the KIST Student Guide, on disciplinary Procedure, the Petitioner averred that Part III Section C does not provide for hearing contrary to Article 10, 27,35(1)(b), 47, 48 and 50 of [the Constitution](#).



44. It was further his case that the action taken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was not in consonance with *the Constitution* as KIST guidelines does not provide for any complaint mechanism against any member of 1<sup>st</sup> Respondent's staff.
45. On the foregoing comprehensive factual and legal basis, the Petitioner prayed for the following reliefs;
- a. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the Petitioner's rights and fundamental freedoms protected under Article 10, 24, 25(c), 27, 28, 29(c)(d)(f), 31(c), 32(1), 32(3), 31(1)(b), 47, 48, 50(1), 50(2)(a), 50(2)(b), 50(2)(c), 50(2)(f), 50(2)(g), 50(2)(j), 50(2)(k), 43 and 55 of *the Constitution* of Kenya.
  - b. A declaration that the 1<sup>st</sup> Respondent's Students' Guide in so far as they do not provide for a hearing; that they do not provide for a complaints mechanism to students against any member of the 1<sup>st</sup> Respondent's staff or agent in cases where the staff member or agent violates the rights of a student contrary to Article 10, 27, 47 and 50 of *the Constitution* and Article 29 of *the constitution* on the right of freedom and security of a person; and they do not provide for a mechanism to prevent the 1<sup>st</sup> Respondent's officers from intimidating, victimizing and or maliciously prosecution students who report and or witness violations by the 1<sup>st</sup> Respondent officers unjustifiably and illegally limit the Petitioner's rights under *the Constitution* and are therefore unconstitutional null and void.
  - c. A declaration that the disciplinary proceeding that were undertaken by the 2<sup>nd</sup> Respondent against the Petitioner and his subsequent suspension is null and void ab initio for having violated the Petitioner's constitutional rights under *the Constitution*.
  - d. An order do issue prohibiting the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent from undertaking further disciplinary proceeding against the Petitioner with regards to the issues that are subject of this Petition.
  - e. An Order do issue mandating the 1<sup>st</sup> Respondent to expunge the letters dated 2<sup>nd</sup> June 2021 and 4<sup>th</sup> June 2021 from the Petitioner's file.
  - f. A declaration that the penalty issued against the Petitioner to undertake drug/toxicology test and submit results to the Disciplinary Committee is unconstitutional null and void.
  - g. Conservatory Order do issue prohibiting the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from investigating and prosecuting the Petitioner based on events of 4<sup>th</sup> June 2021.
  - h. Orders do issue terminating the proceedings in MCCR E1052 of 2020 Republic -vs- Fredrick Koome Manyara pending before The Kiambu Chief Magistrate's Court.
  - i. An Order for Compensation for violation of the Petitioner's Constitutional Rights and fundamental freedoms.
  - j. Costs of the Petition.

### **The Submissions**

46. The Petitioner filed written submissions dated 12<sup>th</sup> November 2021. From the outset, it was its case that the Petition raised constitutional issues that warranted this Court's intervention based on the provisions of Article 2(4) and 165(3)(d) of *the Constitution*.
47. The Petitioner relied on the case of Gideon Omare -vs- Machakos University (2019) eKLR where at issue was legality of an institution's disciplinary action.



48. On legality of KIST Students' Guide, the Petitioner submitted that Part III Section C was inconsistent to *the Constitution* a requirement provided for Article 2(4) since the said provision does not provide for hearing of a student when facing a disciplinary action.
49. The Petitioner reiterated the averments in the Petition in respect of the various unconstitutionality of the disciplinary process. To fortify his case, he relied on the decision in Republic -vs- Kirinyaga University College & 2 Others Ex Parte Isaya Kamau Kagwina (2015) where the Court observed;
- “The ex-parte applicant was subjected to unfair trial by being denied the right to be represented by an advocate of his choice at the disciplinary hearing. It is vital to note that no one can hide under the guise of ‘house rules’ or ‘own regulations’ to deny a party a fair hearing or any of his constitutional rights.”
50. The Petitioner submitted that the 1<sup>st</sup> 2<sup>nd</sup> & 3<sup>rd</sup> Respondent never responded to the assertion that KIST Students' Guide were illegal, unfair unreasonable and unconstitutional.
51. In highlighting the damage he suffered including the possibility of not graduating as a result of the unprocedural suspension, he found support in the case of Republic -vs- Kirinyaga University College & 2 Others Ex-Parte Isaya Kamau Kagwima (supra) where it was observed;
- “The decision to suspend him for three years adversely affected his right as it meant that he was going to take longer time to graduate if at all. It was important for the Respondents to ensure that the applicant was subjected to due process that was open and fair.”
52. It was his case that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondent had not demonstrated how fair administrative action, a requirement under Article 47 of the Constitution had been carried out in the disciplinary process.
53. On entitlement to damages, the Petitioner relied on the South African decision in Hoffmann -vs- South African Airways (CCT17/00) [2000] ZACC where it was held inter-alia;
- “The balancing process must at least be guided by the objective, first to address the wrong occasioned by the infringement of the constitutional right, second to deter future violations; third to make an order that can be complied with and fourth, of fairness to all those who might be affected by the relief.”
54. On the amount of damages, the Petitioner sought to persuade this Court based on the decision in Commission on Administrative Justice -vs- Kenya Vision 2030 Delivery Board & 2 Others, the one in Thomas Mutsotso Bismbebe -vs- Commissioner of Police & Another 92013) eKLR where the Petitioners were awarded Kshs, 700,000/- and Kshs. 800,000/- respectively for violation of the right to fair administration and for malicious prosecution respectively.
55. The Petitioner urged the Court to allow the Petition as prayed. On the issue of costs, he drew support from the decision in Erick Kimani Muiruri -vs- Board of Governors, UpperHill School and Another (2007) eKLR where the court in awarding costs to the student observed that;
- “It is school administrators who do not follow the law, the due process, and the and the simple rules of natural justice that actually set a bad precedent, cause undue hardship to students and needlessly the workload of our over-burdened Courts.
- This is, therefore, a proper one where I should award costs to the Applicant.”



### **The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's Case**

56. Kiambu Institute of Science and Technology, Dr. Jane Mwingi Njiru Gitau and Samwel Kwemoi Simatwa responded to the Petition and the Application through the Replying affidavit of Dr. Jane Mwingi Njiru Gitau deposed to on 2<sup>nd</sup> November 2021.
57. She deposed that, the Petitioner, having been admitted to the school on 4<sup>th</sup> September 2018, was bound by its rules and regulations as provided for in KIST students' guide and students' handbook accessible to all students on the students' portal.
58. It was her case that the Petitioner had cited various constitutional infractions but had failed to demonstrate how violations had been accessioned to him by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
59. She deposed through its processes, the Petitioner had been subject to fair trial but it is the Petitioner that refused to subject himself to the said process by prematurely instituting the instant proceedings for the sole purpose of escaping the disciplinary process of the 1<sup>st</sup> Respondent and the due process instituted by the 3<sup>rd</sup> Respondent against him in Chief Magstrates Criminal Case No. E1052 of 2020 Republic -vs- Fredrick Koome Manyara.
60. She deposed that the crux of the disciplinary proceedings against the Petitioner was as a result of attacking the 3<sup>rd</sup> Respondent for refusing to produce his identity card and to remove his cap on the basis that he was a Rastafari.
61. She deposed that having signed the school rules and regulations, the Petitioner was bound by them and could not escape the due process of the 1<sup>st</sup> Respondent. To that end, she referred to clause 3.2(2) which prohibits assault and or use of abusive language.
62. In disputing unconstitutionality of the letter dated 2<sup>nd</sup> June 2021, she deposed that no student is immune from disciplinary proceedings which are commenced in the presence of a student's parents.
63. It was her case that in violation of conditions of the said correspondence, the Petitioner refused to undergo drug test without any valid reason despite the requirement that all students subject disciplinary proceeding resulting from violence and were also required to undergo mandatory counselling and rehabilitation sessions.
64. She deposed that the foregoing is a requirement of the school for purposes of maintaining order.
65. It was her case that in further violation of the correspondence of 2<sup>nd</sup> June 2021, the Petitioner brought his brother instead of his registered guardian.
66. It was his case that the claim of being assaulted by the 3<sup>rd</sup> Respondent was false only meant to sanitize his assault against the 3<sup>rd</sup> Respondent.
67. On the foregoing, Mrs. Gitau maintained that the Petitioner's right to fair administration, to dignity, to access justice had not been violated in any way.
68. In urging the Court to dismiss the Petition and the Application, it was her deposition that court proceedings ought not be used as armour against institutions whenever disciplinary proceedings are instituted for violation of rules and regulations.

### **The submissions:**

69. In further opposition to the Petition and the Application, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent filed written submissions dated 2<sup>nd</sup> November 2021.



70. It identified the salient issue for determination as; whether commencement of disciplinary proceedings against the Petitioner violated his constitutional rights and whether he had made out a prima facie case for the grant of the orders sought.

71. On the first issue, it was restated that institution of disciplinary proceedings did not in any way violate the Petitioner's claimed rights. To buttress that proposition, the case of *AM -vs- Premier Academy (2017) eKLR* was cited and the one in *JNN, a minor MNM suing as next friend -vs- Naisula Holdings Limited T/A N School (2018) eKLR* where suspensions and expulsions are a sanctioned form of punishment. In the case, it was observed;

“In my view, the authority of schools and their administrators to impose sanctions to including expulsion, as a disciplinary action against erring students is consistent to their duty and statutory mandate to teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop mora character and person discipline and the right to impose appropriate and reasonable disciplinary measures.”

72. On the issue whether the Petitioner had attained the threshold for issuance of the reliefs prayed for in the application and the Petition, it was submitted that the Application does not demonstrate any public interest and must fail.

73. It was its further case that there was no demonstration of violation or threatened violation. To that end, the case of *P.P (A Minor Suing through his father and next friend) FWV Board of Management, High School (2017) eKLR* where it was found as follows;

“The prejudice must flow from the violation or threatened violation of the constitutional right. Thus, the demonstration of a prima facie case (in this case violation of rights and/or threat thereof) goes hand in hand with the demonstrations of related prejudice.”

74. In making the submission that the Petitioner had not exhausted the internal remedies and that the Petition was aimed at thwarting the Criminal Case and disciplinary case against the Petitioner, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondent referred court to the decision in *Waweru Edwin Thini -vs- University of Nairobi (2020) eKLR* where it was observed;

Under Section 9(2) of the *Fair Administrative Action Act*, No. 4 of 2015 it is provided:-

“The High Court or a subordinate Court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanism including internal mechanisms for appeal or review and all remedies available under any written law are first exhausted.”

75. It was their case that the Petitioner had approached the Courts with unclean hands for using it as smokescreen to scuttle the disciplinary proceedings and the criminal proceedings.

76. It was urged that the Petition and the application be dismissed with costs for being abuse of Court process.

#### **Analysis:**

77. This Court has carefully considered the Petition, the response thereto, the parties' submissions and the decisions referred to. The gravamen is the manner in which the disciplinary proceedings were undertaken by the 1<sup>st</sup> Respondent.



78. Whereas the 1<sup>st</sup> Respondent contended that the Petitioner, as a student, is subject to the institution's prescribed disciplinary process just like any other student, the Petitioner own his part contended that no due process was undertaken in dealing with the matter.
79. There is no doubt that the institution has a Students' Guide wherein various issues are articulated including disciplinary matters. Further, and certainly, the Petitioner, being a registered student of the institution is expected to adhere to the Students' Guide.
80. Part III of the Students' Guide provides for the discipline of the students. Section A of Part III designates the institution's Principal as the disciplinary authority and vests in the Principal powers including suspension of students.
81. Section B of Part III of the Students' Guide provides for the disciplinary procedure. It states as follows: -
1. All disciplinary .....
  2. All appeals .....
82. In this case, the process was initiated vide the Institution's letter dated 2<sup>nd</sup> June, 2021. The letter was issued by the 2<sup>nd</sup> Respondent herein who described herself as the Deputy Principal Administration – Chairperson Disciplinary Committee. It was copied to the Principal, Dean of Students, HOD, among others.
83. The letter did not per se suspend the Petitioner, but directed him to appear before two Deputy Principals on 4<sup>th</sup> June, 2021 at 9:00am to answer to some charges. The charges were on assault of members of staff, failure to sufficiently identify himself to the security personnel and the issue of the Petitioner's dress code.
84. On the 4<sup>th</sup> June, 2021 before the scheduled proceedings took off, the Petitioner was handed over a letter evenly dated suspending him for 2 weeks effective the instant day to the 17<sup>th</sup> June, 2021. The Petitioner was also directed to undertake a drug/toxilological test and submit the results to the Disciplinary Committee on 18<sup>th</sup> June, 2021.
85. Sensing that an injustice had been visited on him, the Petitioner instituted these proceedings through the Petition and the Notice of Motion evenly dated 17<sup>th</sup> June, 2021.
86. The Notice of Motion prayed for the following orders: -
1. Spent
  2. That the Court be pleased to issue an interim conservatory order in favour of the Petitioner/ Applicant and order the 1<sup>st</sup> Respondent and its agents including the 2<sup>nd</sup> Respondent to return the Petitioner's school ID and allow the Petitioner to access facilities for learning pending the hearing and determination of this Application and Petition.
  3. That the Court be pleased to issue an interim conservatory order in favour of the Petitioner/ Applicant and order the 1<sup>st</sup> Respondent and its agents including the 2<sup>nd</sup> Respondent to stay disciplinary action as per the 2<sup>nd</sup> Respondent's letter dated 4<sup>th</sup> June 2021 forthwith pending hearing and determination of this Application and the Petition.
  4. That the Honourable Court be pleased to issue interim conservatory orders prohibiting the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from investigating and prosecuting the Petitioner based on the events of 4<sup>th</sup> June 2021 pending hearing and determination of this Application.



5. That the Honourable Court be pleased to issue interim conservatory orders suspending the proceedings in Kiambu MCCR E105 of 2020 Republic versus Fredrick Koome Manyara pending hearing and determination of this Application and Petition.
6. That the Honourable Court be pleased to issue such further of better relief as it may deem fit.
7. That the Costs of this application be provided for.
87. On 6<sup>th</sup> July, 2021 after this Court was informed that the disciplinary proceedings were yet to be undertaken by the 1<sup>st</sup> Respondent issued prayers 2 and 3 of the Notice of Motion.
88. The grant of the interim conservatory orders was compelled by the foregoing nature of the events between the institution and the Petitioner. There were two main reasons why the interim orders issued. First, the letter dated 2<sup>nd</sup> June, 2021 was dispensed by the 2<sup>nd</sup> Respondent and not the Principal. The Students' Guide accorded the Principal the power to deal with disciplinary issues on behalf and in consultation with the Disciplinary Committee. That power was not delegated to the Deputy Principal by the Guide. Further, there is no basis laid by the 2<sup>nd</sup> Respondent that she exercised the disciplinary powers on behalf of the Principal. At least the 2<sup>nd</sup> Respondent would have adduced an instrument to that end.
89. Second, the Petitioner was required to appear before two Deputy Principals to answer the three charges. Section 2 of Part III of the Students' Guide constituted the Disciplinary Committee. It has 4 standing members and others who may be co-opted as may be necessary. Therefore, the requirement that the Petitioner appears before two Deputy Principals did not have any basis and was foreign to the institution.
90. The above fate equally befell the letter dated 4<sup>th</sup> June, 2021.
91. It was on the basis of the foregoing illegalities that this Court opted to stop the furtherance of an illegal process. Had the Students' Guide been properly applied, this Court would have definitely arrived at a different interim decision.
92. Be that as it may, the upshot is that the disciplinary proceedings against the Petitioner were not properly so initiated. The letters dated 2<sup>nd</sup> June, 2021 and 4<sup>th</sup> June, 2021 lacked any legality and cannot stand.
93. It is a standing legal principle that an alternative dispute resolution process ought to be firmly adhered to and that Courts must exercise restraint and give way to such mechanisms to be first undertaken. (See the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21, Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR and In R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA) [2017] eKLR among others).
94. Applying the above principle to this matter, if the institution wanted to subject the Petitioner to a disciplinary process then it ought to have strictly followed the laid down procedure in Part III of the Students' Guide. After all, the Petitioner had legitimate expectation that he will be subjected to such a process in the event need arose.
95. Having said so, it is apparent that the process initiated by the institution was flawed and cannot hold. The decisions by the 2<sup>nd</sup> Respondent were, therefore, without any basis, illegal and irrational. Such attracted remedies in the realm of judicial review on the basis of infringement of Article 47 of *the Constitution* to the extent that they were unlawful and unreasonable. The decisions also infringed the Fair Administrative Actions Act.



96. With such a finding, the rest of the issues raised by the Petitioner cannot be discussed since the substratum thereof cannot stand. If the Petitioner was contending the decisions of the Principal, the Disciplinary Committee or the Board of Governors, then it would be prudent for this Court to deal with the other issues raised by the Petitioner. However, since there are no valid decisions to be interrogated, the rest of the issues shall await another opportunity to be addressed.
97. In the end, noting that the Petitioner was a final year student in 2021 and in view of the interim conservatory orders issued by this Court, there is a possibility that the Petitioner may have completed his studies and possibly left the institution, then the following orders shall issue: -
- a. A Declaration hereby issue that the decisions by the Deputy Principal of the Kiambu Institute of Science and Technology contained in the letters dated 2<sup>nd</sup> June, 2021 and 4<sup>th</sup> June, 2021 regarding the conduct of the Petitioner were contrary to Article 47 of *the Constitution* for being unlawful and unreasonable. They also offended the doctrine of exhaustion for failing to adhere to the process provided in the Students' Guide. The decisions are, hence, unconstitutional, null and void and with no legal effect.
  - b. An Order of Certiorari hereby issue, calling, removing, delivering up to this Honourable Court and quashing or revoking the Respondents' letters dated 2<sup>nd</sup> June, 2021 and 4<sup>th</sup> June, 2021.
  - c. If need still persists, then the 1<sup>st</sup> Respondent's Principal is at liberty to institute disciplinary proceedings against the Petitioner as long as such disciplinary process inter alia adheres to the provisions of the Students' Guide.
  - d. Given the possibility of further proceedings between the parties, each party shall bear its own costs of the Petition.
  - e. Any prayer not specifically allowed is deemed to have been disallowed.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 30 DAY OF MAY, 2023.**

**A. C. MRIMA**

**JUDGE**

**Judgment virtually delivered in the presence of:**

Mr. Oenga for Mworio Counsel for the Petitioner.

Mr. Njenga, Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

No appearance for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

Regina/Chemutai – Court Assistants

