Kanyiri v The University of Nairobi (Petition 431 of 2019) [2022] KEHC 13187 (KLR) (Constitutional and Human Rights) (30 September 2022) (Judgment)

Neutral citation: [2022] KEHC 13187 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION 431 OF 2019

HI ONG'UDI, J

SEPTEMBER 30, 2022

BETWEEN

ANDREW KAGO KANYIRI .... PETITIONER

AND

THE UNIVERSITY OF NAIROBI .... RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated 23rd October 2019 seeking the following reliefs: -

   i. a declaration that the actions of the respondent were inconsistent with the provisions of *the constitution*.

   ii. a declaration that the additional 10 years in engineering training, above the 5 years required for academic knowledge in engineering, be recognized and gained as practical experience to comply with the engineer's registration act chapter 530 and in compliance with the guarantees under article 46, 35(2), 27, 28, 29 & 43 of *the constitution*, so as to exonerate and restore the integrity, competence and competitive edge required for full enjoyment of his entitled rights and also for the country to benefit from the merited engineering knowledge attained in the 15 years.

   iii. an order compelling the respondent to correct the petitioner's academic records declaring that the petitioner had passed his exams.

   iv. an order compelling the respondent to compensate the petitioner for special damages for each instance of psychological torture suffered before and after being discontinued from his studies.

   v. an order compelling the respondent to compensate the petitioner for general damages for loss of income over the duration delayed to his graduation.

vi. an order compelling the respondents to pay to the petitioner punitive damages;

a. to uphold the specific application of rights and freedom as provided for in *the constitution*.

b. to empower the universities' administrative influence over doctoring student's examinations

c. to create a notable jurisprudence to safeguard our beloved country's human resource.

vii. an order compelling the respondents to pay the petitioner the costs of this suit.

viii. any other appropriate relief the court may deem just to grant.

The Petitioner's case

2. A summary of his case as set out in his affidavit in support of the petition sworn on 22nd October 2019 and response to the replying affidavit sworn on 27th January 2020 is that, he is a former student of the respondent from 16th October 2000 to 4th September 2015, and was pursuing a five-year undergraduate course in Bachelor of Science in Civil & Construction Engineering. During the end of his second year 2001/2002, the respondent administered to him one retake for a first-year unit and six second year units in the academic year 2002/2003.

3. According to him, these were doctored results since the official undergraduate academic transcript, stated that all units in first year were passed after the resit in the academic year 2001/2002 and all units of second year were passed at first attempt. He was hence recommended to proceed to third year in the academic year 2002/2003. He averred that in the following year, the respondent remained constant with doctoring the examination results by administering to him, one first year retake and one second year retake in the academic year 2003/2004.

4. The following year he was allowed to progress to third year with a pass during the academic year 2004/2005. In the academic year 2004/2005, he was discontinued. This led to psychological torture and he was as a result evaluated by a psychiatrist of KNH one Dr. Mareko who in his report of 23rd June 2006, indicated that he was suffering from depression. The said report was seconded by the university's doctors.

5. On 6th November 2006, he appealed the decision to discontinue him before the University Senate Examination Appeal's Committee on whose authority he was readmitted to the academic year 2006/2007. However, in the said academic year the respondent deferred his readmission as directed by the Senate committee and as stated on his academic progression report dated 22nd October 2007.

6. During the academic year 2007/2008, he attended classes but sought to defer examinations through the university's medical doctor. He however attended all his classes and sat for all examinations in the 2008/2009 academic year. Subsequently, the respondent released examinations results stating that he had been discontinued. He challenged the said results on the basis that, he had sat for all examination papers in the academic year; not only two as stated in the provisional results. Further, that he was in his third year and not fourth year as stated.

7. Subsequently, the correct information was published a week later on the provisional results dated 18th August 2009 indicating that he had been recommended to proceed to fourth year for the academic year 2009/2010 with two re-sits.

8. In the said year, he was discontinued and, in his appeal, the respondent was notified of irregularities concerning him vide the letter dated 22nd October 2010. It however dismissed his claims taking no further action. This again triggered mental distress which was confirmed after evaluation in a report by Dr. Mareko dated 6th March 2012 stating that he had relapsed and suffered from mood disorder. The assessment was seconded by the Medical board meeting that represented the Senate Examination Appeal's committee. Subsequently, they revoked the discontinuation, urging him to seek further medical attention from the University's doctors and counselors.

9. It's his averment that on 29th October 2014, the respondent through the new sitting chairman of the department of Civil and Construction Engineering produced his academic history whose details were different in relation to the second-year results. To wit, it stated that he progressed to the third year after sitting one unit in the second year and one unit in the first year in the academic year 2003/2004. This was contrary to the initial academic history which stated that he sat 3 units in the second year and one unit in the first year in the academic year 2003/2004 and that he progressed to the third year after sitting for one supplementary paper in the academic year 2004/2005. On 11th February 2016, he obtained his official undergraduate academic transcript.

10. In the response to the replying affidavit by the respondent, he averred that he was unaware of the petition referred to by the deponent dated 28th November 2019. He reiterated that contrary to the averments by Prof. Julius A. Ogeng'o, he passed all the units of the second year at first attempt. The said two first year referrals were passed after resit and was granted the recommendation to proceed to the third year in the academic year of 2002/2003.

11. He averred that he and the Senate Appeals Committee were deprived of information created and kept in the respondent's records. Further in response to the assertion by the respondent that the academic registrar vide letter dated 5th October 2017 informed him that he will be readmitted to the 3rd year with effect from 2007/2008 academic year, he averred that that the same was misleading to the extent that the date was supposed to be for the academic year 2006/2007 vide the letter dated 30th January 2017

12. He further averred that although he deferred doing his examinations as stated by the respondent, the same excluded circumstances leading to that event. He added that, after the respondent's dismal delay, he was fearful and anxious because of suspicions that his academic stagnation may not be by his actions. The premonition's of losing his career in the 8-year battle for his qualifications lead to mental distress hence the voluntary outreach to the psychiatrist Dr. Awiti.

13. He deposed that contrary to the averments by Prof. Julius A. Ogeng'o, he passed third year in the year 2008/2009 and the respondent recommended that he proceeds to the fourth year of study. He deponed that the respondent was limiting the truth only revealing that the name was included among the 4th year class while omitting crucial evidence of falsified results under code name FCE 421 and FCE 412 with marks E and D respectively, and a conclusion DISCO meaning discontinuation. He was however allowed to proceed to the 4th year after they produced his 3rd year results one week later. According to him, the assertion that he appealed to the Senate Appeals Committee which upheld the discontinuation was misleading to the extent that the respondent upheld the discontinuation for not taking responsibility to pertinent matters addressed in the appeal letter dated 22nd October 2022.

14. He deposed that the assertion that he failed one unit in his final year, re-sat and passed was misleading to the extent that it purported that the unit was failed, repeated and passed the following academic year. Further deliberations on that unit have been addressed in the letter dated 16th October 2014 whose response nullified that result, by awarding full honours to the same unit in a special examination vide letter dated 17th October 2014.

15. He deposed that his academic transcript bore many As and Bs which contradicts the statement that his prolonged stay at the University was caused by his failure to work hard. According to him, it is the delay caused by the respondent's action that made him repeat academic units that led to the deterioration of his health. He reiterated that the mental stress was induced by suspicion of foul play, perpetrated by the respondent in administering falsified results on him, which destabilized his learning composure, making him to reach out to the psychiatrist Dr. Awiti.

16. By reason of the aforesaid, he averred that the respondent contravened Articles 47 (1), (3), 29(d) (f), 46(1) (a) (c), 28, 35(1) (b), 43, 55, 30, 20, 25(a) and 24 of *the Constitution*.

The respondent's case

17. The respondent filed a response dated 5th December 2019 and a replying affidavit sworn by Professor Julius A. Ogeng'o on 13th January 2019. In the said pleadings, the respondent set out a chronology of events since the joining of the petitioner to the respondent's institution until graduation as follows:

    i. The petitioner was admitted to the respondent university in 2000 through inter- university transfer from Egerton University for a Bachelor of Science (Engineering).

    ii. He sat for his 1st year examination during the academic year 2000/2001 and got two referrals but was recommended to proceed to 2nd year pending retake of the units with the referral.

    iii. In the academic year 2001/2002 he sat for his 2nd year examinations whereby he failed six units and also carried forward the 1st year referrals.

    iv. In 2002/2003 academic year, he retook the six units in 2nd year, failed one of them and still carried forward the 1st year referral.

    v. In the academic year 2003/2004, he retook the one failed unit in second year and the 1st year referral passed and was recommended to proceed to 3rd year.

    vi. In the academic year 2004/ 2005, he sat his 3rd year examinations and failed more than eight units and was therefore discontinued on academic grounds. The decision was later appealed against on medical grounds vide recommendation dated 23rd June 2006 to allow him continue with his studies on the premise that he had been treated for depression and was fit to resume studies.

    vii. On 6th November 2006, after appearing before the Senate Appeals Committee he was advised to resume studies in the academic year 2006/2007 vide letter dated 30th January 2007. Further vide letter dated 5th October 2007, he was informed by the Academic registrar that he would be re-admitted to 3rd year with effect from 2007/2008 academic year.

    viii. He resumed classes in the 2007/2008 academic year but voluntarily deferred doing examinations through Dr. Owiti, the University Psychiatrist who recommended a 12-step program for rehabilitation.

    ix. He resumed classes during the 2008/2009 academic year, sat for his 3rd year examinations and failed more units and was discontinued. His name was however posted among the 4th year class instead of the 3rd year class. He challenged the same and based on the said reason, he was allowed to proceed to fourth year of study.

x. During the 2009/2010 academic year, the fourth-year examinations were released while the petitioner was on attachment and he was again supposed to be discontinued. He appealed to the Senate Appeals Committee which upheld the discontinuation.

xi. He later sought for medical appeal through Dr. Mareko who recommended the same to the Vice Chancellor. He was subsequently invited by the Senate Appeals Committee to appear before it and it recommended that he proceeds with his studies vide a letter dated 1st January 2011.

xii. In the 2012/2013 academic year, he resumed his classes and passed all the units. He then proceeded to the final year failed one unit and after resitting the same and passing, graduated in 2015 with a Second Class Honours (Lower Division).

18. The respondent therefore averred that the prolonged stay of the petitioner at the university was his own undoing; that his health on several occasions made him take breaks from his studies causing delay in completion of the course withiin the required time; and that he indulged in alcoholism forcing him to defer his studies to undergo a program for alcohol rehabilitation.

The petitioner's submissions

19. The petitioner filed submissions dated 30th June 2020. On breach of Article 27 of *the Constitution*, he argued that the respondent victimized him, isolated him from his classmates, and treated him adversely leading to depression. He further argued that he had legitimate expectation that he would be accorded treatment similar to his classmates and colleagues. He relied on Petition 240 of 2019 *Wallace Maina Gatundu v Council of Legal Education &2 others* [2020] eKLR.

20. Regarding Article 28 of *the Constitution*, he submitted that the respondent undignified him by consistently disparaging his image in the face of his colleagues and portraying him as a failure despite passing his second-year exam. Further that, it is the actions of the respondent, reckless errors or malice that directly impacted him negatively and that had a ripple effect on his subsequent performance.

21. In regard to Article 29(d) of *the Constitution*, he argued that the unauthorized administrative methods he was subjected to, amounted to psychological torture as defined in the *Prevention of Torture Act* 2017. He sought the court's redress in special damages as per the Act.

22. Concerning Article 35(1) (b) of *the Constitution*, he argued that the respondent contravened the said Article by failing to provide him with the true results of 2nd and 4th years which were only issued to him after he had completed his course.

23. On Article 47 of *the Constitution*, he submitted that the respondent maliciously kept him as a failure to resit examinations despite the recommendation by the Senate that he had passed and was to proceed to the next class. He relied on the case of Wallace Maina (supra) to support this argument.

24. He identified the following issues as falling for determination:

i. Whether the respondent maliciously doctored the petitioner's examination results

ii. Whether the respondent's actions prejudiced the petitioner and caused him untold suffering and anguish

iii. Whether the respondent is liable to compensate the petitioner for the injury and damage suffered

iv. Whether the petitioner is entitled to the reliefs sought

25. On the first issue, he argued that the respondent's administration maliciously required him to resit 2nd year despite the senate's recommendation to proceed to 3rd year. Subsequently, the administrator attempted to conceal his insubordinate and malicious acts by forcing him to drop out of the university in order to escape prosecution. Consequently, gaslighting was instituted to inflicted intellectual impairment that led to his discontinuation in the academic year 2004/2005.

26. He submitted that the respondent further denied him access to readmission in the 3rd year in 2006/2007 despite the Senate's Examination Appeals Committee's recommendation. Relying on his annexure AKK-5 he submitted that the same demonstrated doctored results of the fourth year from the respondent in the academic year 2008/2009; it is not known to date where the results came from or to whom they belonged.

27. In respect of the second issue, he submitted that the respondent's malice, recklessness and mistakes had a direct impact on him causing depression, anxiety, and disorientation which he had no history of. He was also falsely branded an academic failure for stagnating in campus for 15 years and regarded untrustworthy and incompetent professionally up to date. He suffered humiliation and embarrassment in front of his peers, comrades and friends and lost his social standing. He therefore pleaded for the damaged professional reputation.

28. He also lost his prime years to the 10 years at the university and asked this court for compensation for losing valuable time and loss of opportunities to earn income. He further pleaded for the expenses he underwent for the prolonged 10 years.

29. On the third issue, he argued that the respondent did not deny tampering with the integrity of his result slip. None of his annexures were denied hence they should be acceptable to the court and he be compensated.

30. Urging the court to grant the reliefs sought, he submitted that his fundamental rights were violated. For this he relied on Wallace Maina case (supra) urging for compensation as in that case. Further relying on Petition 1 of 2017 *Inganga Alfred Aranga v University of Nairobi* [2017] eKLR he argued that the court awarded compensation for violation of the petitioners constitutional rights.

31. Relying on the Supreme Court of India case of *Damodar Lal vs Sohan Devi and others*, Civil Appeal No. 231 of 2015, he argued that the respondent administered unauthorized authority by ignoring or excluding relevant material on account of his academic record which is the only document that represents the official administrative authority as determined by the Senate. Being guided by Section 17(1) of the *Prevention of Torture Act* of 2016 he pleaded for a compensation of Kshs. 20 Million.

32. On general, exemplary and extraneous damages, he submitted that he suffered irreparable loss as a direct consequence of the respondent's actions and claimed for damages. Relying on Miscellaneous Application 1118 of 2003, *Suyianka & 4 others vs Kenyatta University & 2 others* (2007) eKLR he claimed general damages for loss of income for the 10 years at the market rate of Kshs. 500,000 per month as rated by the scale of fees for Professional Engineering Services 2020 of the *Engineers Act* of 2011 in regard to the petitioner's evidence of a monthly payment of Kshs. 100,000/-.

33. He sought to be paid up to 10 years of his illegally prolonged stay at the university with interest from the date of action in the year 2005 when he was to graduate. He further relied on the cases of *Brooker v Bernard & others*, 1964 AC 1129 and *Kampala City Council v Nakaye* 1971EA 91 on exemplary damages. He prayed for the costs of the suit and interest from the date of the action in the year 2002.

The respondent's submissions

34. The respondent filed submissions dated 10th June 2020 by Akide & company advocates raising the following issues: -

i. Whether or not the petitioner has demonstrated a case to warrant the court to grant the orders sought

ii. Whether the petitioner is entitled to the reliefs sought

35. On the first issue, counsel submitted that the petitioner has not shown that the decision made by the respondent to have him repeat several classes and units for failure to pass the said units was unreasonable. According to the respondent, the petitioner's prolonged stay in the University was either occasioned by the following:

    i. His own failure to work hard in his studies thus being made to repeat classes; or

    ii. His health on several occasions made him take breaks from his studies to seek medical attention therefore causing the delay in completion of the said course within the required time; or

    iii. He indulged in alcoholism forcing him to defer his studies so that he could undergo a program for alcohol rehabilitation.

36. He argued that for the impugned decision to be annulled, it must be demonstrated that the same was not grounded in law or regulations. This was not demonstrated in this case. He further submitted that the respondent acted in the best interest of the public with the sole aim of upholding the credibility and integrity of degrees that it awarded and that at no time was it motivated by any malice against the petitioner. The petitioner's rights are subject to limitations as provided under Article 24 of *the Constitution*.

37. Relying on the cases of *Onyango Oloo vs Attorney General* 1986-1989 E.A 456 and *Pastoli vs Kabalt District Local Government Council & Others* 2008 E.A 300, counsel submitted that a decision of an inferior court or public authority or tribunal may only be quashed by an order of certiorari where the said court, authority or tribunal has acted in excess of its jurisdiction, failed to comply with the Rules of Natural Justice, the presence of an error of law on the face of the record, or where the decision reached is unreasonable in the ordinary sense.

38. He argues that accordingly, the respondent had the mandate to determine the cut off points of its students each year and would also determine the consequences to follow should a student fail to attain the pass mark. It provided in its statutes instances when a student would be required to re-sit units.

39. Counsel submitted that the court would not interfere with the decision of the respondent to discontinue the applicant unless it was satisfied that the decision had no basis or was unreasonable. While relying on the cases of *Nyongesa & 4 others vs Egerton University College* [1990] eKLR and *Republic vs Egerton Exparte Robert Kipkemoi Koskey* [2006] eKLR, he submitted that the only business of this court is to determine whether the applicant was treated fairly and whether the rules of natural justice were adhered to.

40. Counsel further submitted that the University Rules and Regulations which all the students of the Nairobi University including the petitioner have signed and committed themselves to abide by are lawful and contain limitations in the exercise of certain rights and freedoms. All these are reasonable and justifiable in Kenya's open democratic society based on human dignity, equality and freedom. The petitioner freely and voluntarily agreed to be bound and to comply with the Rules and Regulations of the University.

41. On the second issue, and while relying on *El Mann vs Republic* [1967] E.A, counsel submitted that the petitioner is not entitled to the order sought as there was no demonstration of any violation of his rights and freedoms as claimed.

42. Regarding compensation for loss of income under section 11(1) (b) of the *Engineer's Registration Act*, Cap 530 laws of Kenya, he submitted that the same was misconceived. That pursuant to section 18(a) of the *Engineers Act* No. 43 of 2011 the petitioner was still a student, at the time of the alleged violations. Relying on the case of *MKK v CWN* [2016] eKLR that set down the grounds that need to be proved in a claim for compensation for psychological and emotional stress, he argued that the petitioner failed to demonstrate how the respondent conducted itself in an extreme and outrageous way with the intention of causing him severe psychological anguish.

43. Further that it cannot be said for sure that the depression, if any, suffered, by the petitioner was in any way caused by the respondent. He urged the court to dismiss the petition.

Analysis and determination

44. Having carefully considered the parties' pleadings and submissions, cited authorities and the law. I find the following to be the issue arising for determination: -

i. Whether this court has jurisdiction to determine this matter

45. The petitioner while setting out a chronology of events from his admission to the respondent university in 2000 until 2015 when he graduated has argued that his examination results were doctored by the respondent. He has further submitted that as a result of the actions by the respondent, he was forced to undertake re-sits, discontinued from school and spent ten more years in school instead of five years required for the course. He has therefore submitted that his rights under Articles 47 (1), (3), 29(d) (f), 46(1) (a) (c), 28, 35(1) (b), 43, 55, 30, 20, 25(a) and 24 of *the Constitution* were violated and has sought for special, general and exemplary damages among other prayers as set out in his petition.

46. The respondent equally set out a chronology of events from the time the petitioner joined the respondent university in 2000 until 2015 when he graduated. It has been argued that the prolonged stay in the university was either occasioned by

    i. the petitioner's failure to work hard in his studies making him repeat classes;

    ii. his taking breaks from his studies on the basis of health concerns and indulging in alcoholism that forced him to defer his studies severally to undergo rehabilitation.

47. Counsel has also submitted that the petitioner voluntarily submitted himself to the university's regulations and laws which did not violate any of his rights. It has lastly urged this court not to interfere with its decision unless it is determined that the petitioner was treated unfairly and that the rules of natural justice were not adhered to.

48. What is clear to this court is that the petitioner is challenging the decisions by the respondents. To wit, the discontinuation, re-sits and retakes. He alleges that as a result of the decision by the respondent he spent an extra ten years in school instead of five. According to him his results were doctored by the respondent. He was all along involved in the process and even appealed against some of the respondent's decisions. The petitioner is in essence challenging the merit of the decision, and not the process. The question therefore would be whether this court has the jurisdiction to interfere with the decision of the respondent.

49. The locus classicus on jurisdiction is the case of Owners of the *Motor Vessel "Lillian S' v. Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA. held as follows:

> ...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

50. The Supreme Court in the Matter of *Interim Independent Electoral Commission* [2011] eKLR, Constitutional Application No. 2 of 2011 held in part as follows:

> ...a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.

51. In *Samuel Kamau Macharia and another v. Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No. 2 of 2011, the Supreme Court held as follows:

> (68). A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.

52. Article 165 (6) and (7) of *the Constitution* provides as follows:

> (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
>
> (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

53. In *Nyongesa & 4others vs Egerton University Colleg*e [1990] eKLR the court held as follows:

> I shall now state that courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run universities or indeed any other bodies. However, courts will interfere to quash decisions of any bodies when the courts are moved to do so where it is manifest that decisions have been made without fairly and justly hearing the person concerned or the other side. It does not assist for anyone to question or criticise the particular posture of courts. It is the duty of courts to curb excesses of officials and bodies who exercise administrative or disciplinary measures. Courts are the ultimate custodians of the rights and liberties of people whatever the status and there is no rule of law that courts will abdicate jurisdiction merely because the proceedings or enquiry are of an internal disciplinary character.

54. In *Republic vs Egerton Exparte Robert Kipkemoi Koskey* [2006] eKLR the court held:

> It is not the function of this court to probe into the accuracy, truth or otherwise of the allegations of examination malpractice that were alleged by the respondent against the applicant. The court is interested in knowing whether the rules of natural justice were observed by the respondent in the conduct of its investigations as against the applicant. It has been held that Judicial Review is not an appeal from a decision, but a review of the manner in which the decision was made...

55. Both the petitioner and respondent have pleaded and defended their positions. The petitioner alleges that the examination results were doctored by the respondent. The respondent has pleaded otherwise. Looking at the arguments made by the petitioner, it would force this court to consider questions like, were the petitioner's results doctored? Who doctored them? Did the petitioner suffer as a result? It is difficult for this court to ascertain which party is indeed telling the truth as the matter has not been investigated.

56. This court does not have the mandate to delve into issues as the duty of the petitioner is to place all the material he wishes to rely on before this court. Any investigation to be conducted falls under another docket. Consequently, in the absence of any proof of whether the examination results were doctored or not and in the absence of any investigation report, it is not possible to ascertain whether the petitioner's rights were violated as alleged.

57. That notwithstanding, suppose this court was to look into the issue of violation of rights, has the petitioner proved a violation of the same? Section 107 of the *Evidence Act*, Cap. 80 laws of Kenya is explicit that whoever alleges must prove. In my humble view, while the petitioner has listed the constitutional rights and/ or provisions violated, he has not proved the same. In the absence of an investigation report demonstrating that indeed the results were doctored, this court cannot make a conclusion on whether the petitioner's rights were violated. As indicated hereinabove, this court cannot investigate whether the results were doctored or not, as this is the mandate of another body.

58. Secondly, as stated earlier on, the petitioner is calling upon this court to get into the merits of the decision by the respondent. This court subject to its supervisory jurisdiction can only interfere with the decision if the process in arriving at the decision was not lawful or the rules of natural justice were violated or that the decision was arrived at unfairly. That process has not been challenged by way of Judicial Review and therefore the respondent's decisions in respect of the petitioner's performance remain unchallenged.

59. The above being the position it is my finding that this court lacks jurisdiction to entertain this petition and the same is dismissed with costs.

Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF SEPTEMBER, 2022 IN OPEN COURT AT MILIMANI NAIROBI.

H. I. Ong'udi

Judge of the High Court