



**Onyango v Kenya Methodist University (Petition E007 of 2021)
[2022] KEHC 13201 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E007 OF 2021
EM MURIITHI, J
SEPTEMBER 29, 2022**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOM UNDER ARTICLES 24, 27(5), 36(1), 37, 43 (1) (F), 47(1) (2),
50(1) (2) (3) (4) (5) OF THE CONSTITUTION**

AND

**IN THE MATTER OF ARTICLES 2(1) (4), 3(1), 10, 19, 20(2), 22(1), 23(3), 27(1), 28, 48,
165(3) (B) (6), 258(1), 259(1) OF THE CONSTITUTION**

AND

**IN THE MATTER OF SECTIONS 4(1) (2) (3) (E) (F) (G), 4(4) (A) (C), 6(1)(3), 7(2) (A) (B)
OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

PETER GLEN ONYANGO PETITIONER

AND

KENYA METHODIST UNIVERSITY RESPONDENT



JUDGMENT

1. The petitioner, a student of the respondent and the Chairman of Kenya Methodist Students' Association (KeMUSA) filed a petition dated 12/4/2021 seeking specific reliefs as follows:
 1. A declaration that the expulsion of the petitioner from the respondent university is null and void ab initio having violated his constitutional rights under Articles 24, 27(5), 36(1), 37, 43(1) (f), 47(1), 47(2), 50(1), 50(2) of the Constitution.
 2. Spent.
 3. Spent.
 4. Spent.
 5. A judicial review order of *mandamus* do issue to remove into this honorable court and compel the respondent to direct its mandated agents to release and avail to the petitioner all his transcripts up to the time of his impugned expulsion.
 6. Exemplary damages and costs of and incidental to this petition.

Petitioner's case

2. On December 26, 2020, the respondent through the Registrar, Academic issued a memo to notify its students of fee increment, which caused massive outcry and unrest among the students. The petitioner, as the students' overall leader lawfully played his part in looking after their welfare, and following the disturbance that occurred in the University between January 4, 2021 and January 20, 2021, the petitioner was named as one of the key perpetrators of the disturbance, which led to his suspension from the University pending disciplinary action, on January 25, 2021. He was notified on January 26, 2021 of his suspension and the subsequent disciplinary hearing and on January 29, 2021, he was required to defend himself before the disciplinary committee, despite not having been accorded ample time for preparation. During the hearing, he was informed that 2 students namely Justin Obara and Alvin Wanjala had named him as one of the perpetrators of the alleged disturbance, but when he sought to cross examine those students, the same was denied. He was bombarded with questions and accusations from all corners and at one point the deputy Vice-Chancellor of the respondent told him that, "To me you are a pretender. You pretend to work with the administration but you are not with the administration." When he attempted to share his official response to the allegations with the committee, the Registrar, Academic cut short the exercise by unceremoniously ending the meeting. He was notified of the committee's decision to expel him vide a letter dated February 1, 2021. In his view, the said decision was made in bad faith, unlawful, procedurally flawed and biased, as the committee was not properly constituted as per the KeMU Students' Handbook. Dissatisfied with the decision, he notified the Vice-Chancellor vide a letter dated February 4, 2021 of his intention to appeal. On February 18, 2021, he unsuccessfully wrote the Vice-Chancellor requesting to be furnished with the Committee's minutes, documents and substantive grounds that were used to expel him in order to prepare for the appeal. He avers that he was discriminated upon as he was barred from the University, and Administration Police were employed to ensure he moved from Meru. He was further evicted from his premises by his then landlord in the guise of a plea from members of the community. He was forced and futilely so, to seek protection against the Registrar, Academic from the Vice Chancellor. He accuses the Registrar, Academic of threatening to also expel him from attending meetings of the senate, yet he was the secretary. He further accuses the Registrar, Academic of imposing himself in



the disciplinary hearing despite not being a member of the committee. As a result of his expulsion, his name, character and reputation within the society at large were tarnished, and his education was halted because he was forced to skip a whole trimester despite paying the requisite fees and registering for the courses he intended to take. He prays the Court to issue the orders sought in order to protect him against continued violations of his fundamental rights and freedoms.

The Respondent's case

3. The respondent opposed the petition vide its replying affidavit sworn by Njeri Mbugua, its legal Officer, on September 20, 2021. She avers that on June 26, 2021, the respondent was granted leave to conclude the appeal pending before the respondent's Disciplinary Appeals Committee. The petitioner was invited for the hearing of the said appeal vide a letter dated June 28, 2021. Upon consideration of the petitioner's appeal, mitigation, demonstration of remorsefulness among other relevant factors, the Disciplinary Appeals Committee resolved to set aside in entirety the decision of the Social Disciplinary Committee, expelling the petition from the University. She avers that the respondent has always acted in utmost good faith, and remains committed to upholding the best interests of the petitioner so as to ensure that he enjoys full support and guidance as necessary in order to excel academically, socially and realize his full potential in all dimensions. She urges the court, in the best interest of the overriding objective, to bring the petition to a closure and mark it as fully settled, because the perpetuation of these proceedings would unnecessarily strain the rapport between the respondent and the petitioner. Needless to say, since all the issues giving rise to these proceedings have been carefully and amicably resolved, she urges the court not to impose costs or any further obligations upon the petitioner.

Submissions

5. The petitioner urges that he was never accorded an opportunity to defend himself before the decision to expel him was reached, and his appeal against that decision never saw the light of day. He urges that since the respondent has not controverted and/or rebutted the facts that the disciplinary proceedings as a whole were inefficient, unlawful, unreasonable and procedurally unfair, the said allegations remain true, and relies on *Daniel Kibet Mutai & 9 Others v Attorney General*(2019)eKLR, *Peter O Nyakundi & 68 Others v Principal Secretary, State Department of Planning of Devolution and Planning & Another*(2016)eKLR, *Re Hardial Sighn & Others*(1979)KLR, *Judicial Service Commission v Mbalu Mutava & Another*(2015)eKLR, *Republic v University of Nairobi ex parte Michael Jacobs Odhiambo & Others*(2016)eKLR and *Republic v Chuka University Ex-Parte Kennedy Omondi Waringa & 16 Others*(2018)eKLR. He submits that the respondent acted with impunity and disregarded the rules of natural justice when it did not give him the reasons of not hearing his appeal with promptitude. He submits that he is entitled to costs and exemplary damages so as to deter the respondent from committing similar tortious acts. He faults the respondent for failing to avail to him all his transcripts up to the time of his unlawful expulsion, thus hindering his ability to enroll to another school. Reliance was placed on *Republic v Rosemary Wairimu Munene, Ex-Parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd* JR No 4/2014, *Ruth Shikanda (Suing as Legal Repr. On behalf of the Estate of Agnes Ayori Ashiemi(DCD)v Sibed Transport Company Ltd*(2020)eKLR, *Lucy Wanjiku Gitumbi & another v Dedan Kimathi University of Technology*(2016)eKLR, *British Columbia (Minister of Forests) v Okanagan Indian Band*(2003)3 S.C.R. 371 SCC 71, *Obongo & Another v Municipal Council of Kisumu*(1971)EA 91 and *Godfrey Julius Ndumba Mbogori & another v Nairobi City County*(2018)eKLR.
6. The respondent urges that since the petition is anchored on the very grounds that supported the petitioner's appeal to the disciplinary appeals committee, and which appeal set aside the decision by the social disciplinary committee and unreservedly restored all the petitioner's student's rights, the



matter ought to be allowed to rest. It attributes the delay in hearing the petitioner’s appeal to the large number of appeals lodged by all the aggrieved students and the detailed nature of the hearings. It submits that it remains committed to attending to the academic and social development needs of the petitioner at all times. It submits that as much as it would be entitled to take a correspondingly rigid and hardline position or unleash a vicious defence, it has consistently inclined to an approach that favours an efficient and just resolution of issues at hand, in line with the principle of the law that abhors a course of action that propagates hostility. It relies on *Michael Mukhama Wanyonyi v Republic*(2021)eKLR and *William Olotch v Pan Africa Insurance Co Limited*(2020)eKLR.

Analysis and determination

7. Having considered the petition, the replying affidavit and the written submissions together with the authorities cited therein, the only issue for determination is whether the petition is merited.
8. The petitioner concurs that prayers 2, 3 and 4 of the petition are spent.
9. Article 24 of the *Constitution* provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and only to the extent that the limitation is reasonable and justifiable and that the limitation does not derogate from the right or fundamental freedom’s core or essential value.
10. Article 27(5) of the *Constitution* provides that, “A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).”
11. Article 36 (1) of the *Constitution* provides that, “Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.”
12. Article 37 of the *Constitution* provides that, “Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”
13. Article 43(1) (f) of the *Constitution* provides that every person has a right to education. Article 50 of the *Constitution* which provides that every person has a right to have any dispute that can be resolved by the application of law decided in a fair hearing before an independent and impartial tribunal and that a person is entitled to legal representation and to be informed of this right in advance.
14. The petitioner contends that after the respondent issued a memo notifying its students of fee increment, he, being the overall leader of the students, played his part in looking after their welfare. The said memo had far reaching effects and attracted massive outcry by students, which led to disturbance and unrest in the University. The petitioner was astonished when he was named as the key perpetrator of the said unrest and invited to a disciplinary hearing. Article 37 of the Constitution provides that: “Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”
15. The Students’ Code of Conduct and Discipline completely outlaws any form of picketing and demonstrations, which goes against the spirit of Article 37 of the Constitution. The petitioner was then informed that 2 students had named him as the key perpetrator of the said unrest, and when he sought for an opportunity to cross examine them, the same was denied by the respondent. This court finds that in denying the petitioner the opportunity to cross examine the 2 students who had accused him of being the key perpetrator of the unrest, the whole disciplinary process was irredeemably flawed as the petitioner’s rights to fair administrative action and fair hearing were violated. Article 47 of the *Constitution* requires all administrative actions to be expeditious, efficient, lawful, reasonable and procedurally fair and further requires that where a right or a fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has a right to be given written reasons for the action. Similarly, section 4(1) of the *Fair Administrative Action Act* provides that



every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Section 4(3)(4) of the said *Act* on the other hand provides: “(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision- (a) prior and adequate notice of the nature and reasons for the proposed administrative action; (b) an opportunity to be heard and to make representations in that regard; (c) notice of a right to a review or internal appeal against an administrative decision, where applicable; (d) a statement of reasons pursuant to section 6; (e) notice of the right to legal representation, where applicable; (f) notice of the right to cross-examine or where applicable; or (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action. (4) The administrator shall accord the person against who administrative action is taken an opportunity to- (a) attend proceedings, in person or in the company of an expert of his choice; (b) be heard; (c) cross examine persons who give adverse evidence against him; and (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”

16. It is now trite that even in cases where there is no express requirement that a person be heard before a decision is made, the tribunal or authority entrusted with the mandate of making the decision must act fairly. In *Judicial Service Commission v Mbalu Mutava & Another* [2015] eKLR, the Court of Appeal held that: “Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
17. The petitioner was invited to the disciplinary hearing on January 26, 2021 and heard on January 29, 2021, despite not having afforded ample time for preparation. He contends that the committee declined to consider his written response to the allegations, and on February 1, 2021, he was notified of the committee’s decision to expel him. After paying the requisite fees for appeal, he notified the Vice Chancellor on February 4, 2021 of his intention to appeal against the said decision to the Disciplinary Appeals Committee. The petitioner also complained that he was never supplied with the proceedings of the Social Disciplinary Committee together with the minutes thereof despite his requesting for the same, to enable him prepare for his appeal. That was a violation of Articles 47(1) (2) and 50 of the *Constitution* as read with Section 4(3) (g) of the *Fair Administrative Action Act*. The petitioner was notified of the hearing of his appeal scheduled for 6th July 2021 vide a letter dated June 28, 2021. Whereas the petitioner contends that the delay in hearing his appeal was inordinate and inexcusable, the respondent attributes the same to the prevailing corona virus pandemic. The court notes the contents of the schedule of the University Social Disciplinary Appeals Committee and Academic Disciplinary Appeals Committee meetings scheduled for May 11, 2021. In that schedule the hearing and determination of the appeals of some 8 students took place. Of significance to note is that the petitioner’s name is not on that schedule. It is evident that the Disciplinary Appeals Committees did sit on 11/5/2021 to hear and determine appeals of 8 students, yet they waited until 6/7/2021 to hear the petitioner’s appeal.
18. This court finds that the delay in hearing the petitioner’s appeal which had been lodged way back in February 2021 was manifestly inordinate and unreasonable, and was a violation of his constitutional right to be heard expeditious. In *Gideon Omare v Machakos University* [2019] eKLR the court (GV Odunga J) stated as follows: “For an authority or tribunal entrusted with taking administrative decisions which affect the rights of a person to close itself in an office and by way of fiat dismiss an



appeal without procedurally and properly hearing the same and without indicating how the decision was arrived at whether by tossing a coin or otherwise thus leave the petitioner speculating as to the manner in which the determination was made, can be anything but fair. In my view the power given to administrative or executive authorities ought to be properly exercised and must not to be misused or abused.”

19. The petitioner maintains that although he was reinstated back into the University, he suffered loss as his constitutional rights under Articles 27(5), 36(1), 37, 43(1)(f), 47(1)(2) and 50(1)(2) of the Constitution were violation by his unlawful expulsion. He contends that the underlying issues herein would subsist and the University would not be conducive for him to continue to pursue his education. He contends that the respondent has refused to avail to him all his transcripts up to the time of his unlawful expulsion, thus hindering his ability to enroll to another school.
20. On its part, the respondent contends that the petitioner’s account on the student online portal remains active to date, and all the transcripts are usually available and accessible through that portal. It contends that the petitioner ardently argued his appeal, offered a profuse apology and was deeply remorseful over his role in the regrettable events that triggered the disciplinary action.
21. This court notes that although the petitioner’s student online portal may be active after his reinstatement to the University, that was certainly not the case during the period he had been expelled, and finds the petitioner’s prayer to have all the transcripts for the period upto his expulsion availed to him, justified. Moreover, since the respondent is the custodian of such transcripts, this court does not find any prejudice or hardship that the respondent will suffer if prayer 5 is granted.
22. The petitioner contends that the disciplinary hearing was unlawful and procedurally unfair, as the Registrar, Academic imposed himself in the disciplinary hearing despite not being a member of the Social Disciplinary Committee. This court has looked at the Students’ Code of Conduct and Discipline where the composition of the Students’ Social Disciplinary Committee and the Students Academic Disciplinary Committee is provided. Article 11.1 provides that, “the quorum of the Students’ Disciplinary Committees shall be 2/3 of all members appointed by the Vice Chancellor as shown in 9.2 and 9.3 above.” It is discernable from Article 9.2 that the Registrar, Academic is clearly a member of the students’ disciplinary committee, and he did not impose himself into the disciplinary hearing, as alluded to by the petitioner.

Conclusion.

23. There is no doubt that the petitioner, as a student leader, was singled out unjustifiably and unreasonably so, victimized, suspended and ultimately expelled from the University, on the basis of his alleged participation in the unrest at the institution. In the premises, this court finds the petition dated April 21, 2021 to be merited.
25. This Court however declines to award exemplary damages as it has not been shown that the respondent’s actions were so arbitrary and oppressive, and it already reinstated the petitioner back to the University. Besides, there is need to foster the continuing relationship between the petitioner and the respondent to avoid straining it further. The court will equally not award costs because even after the petitioner had been reinstated into the institution and as the student leader, he insisted on prosecuting the petition, when it was clear that the issues raised therein had been amicably resolved. The Court notes the willingness of the Respondent to have the matter resolved by the internal mechanism of appeal.



26. The petitioner is however entitled to general damages for breach of his rights under Articles 37, 43(1) (f), 47(1) (2) and 50(1) (2) of the *Constitution*, as he was forced to stay away from the university from February to July, 2021 when his appeal was heard and determined by the Appeals Committee.

27. Accordingly, for the reasons set out above, the court makes the following orders:

1. A declaration that the expulsion of the petitioner from the respondent university is null and void ab initio having violated his constitutional rights under Articles 37, 43(1)(f), 47(1) (2) and 50(1) of the *Constitution*.
2. An order of Mandamus is hereby issued compelling the respondent to direct its mandated agents to release and avail to the petitioner all his transcripts up to the time of his impugned expulsion.
3. The petitioner is awarded general damages in the sum of Ksh 100,000 with interest at court rates until payment in full.
4. As the applicant's case was settled upon successful appeal under the Respondent's internal mechanism the court does not make any order as to costs and each party shall pay its own costs.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF SEPTEMBER 2022.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Okongó Advocate for the Applicant

Mr. Kamotho Advocate for the Respondent.

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