**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW MISC. APPLICATION NO. 9 OF 2019**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**UNIVERSITY OF NAIROBI.....1ST RESPONDENT**

**VICE CHANCELLOR, UNIVERSITY OF NAIROBI.....2ND RESPONDENT**

**DEPUTY VICE CHANCELLOR (STUDENT AFFAIRS),**

**UNIVERSITY OF NAIROBI.....3RD RESPONDENT**

**EX PARTE:**

**1. MWANGI EMMA WAHITO**

**2. OKUMU JUSTICE ONYANGO ALIAS JOKU**

**JUDGMENT**

**The Application**

1. Emma Wahito and Okumu Justice Onyango alia Joku are the *ex parte* Applicants in this application, and are hereinafter referred to as "the Applicants". The two Applicants are law students at the University of Nairobi, which is the 1st Respondent herein. They contend that the Deputy Vice Chancellor (Student Affairs) of the 1st Respondent, and who is sued as the 3rd Respondent herein, suspended them from the said University with immediate effect in a letter dated 20th December 2018 and 14th January 2019 respectively. Further, that the said letters also indicated that they would be advised as to when they would be called upon for the disciplinary hearing.

2. The Applicants subsequently moved this Court through a Notice of Motion application dated 31st January 2019 a s amended on 4th February 2019, in which they seek the following orders:

> **a. An order of certiorari to bring into this Court and quash the proceedings, directions, orders and decision of the Deputy Vice Chancellor in charge of Student Affairs of the University of Nairobi, one Prof. Isaac M. Mbeche, contained in the letters dated 20th December 2108 to the Applicants, which letters purport to suspend the Applicants from the University of Nairobi with immediate effect.**
>
> **b. An Order of Prohibition to prohibit the Deputy Vice Chancellor (Student Affairs) of the University of Nairobi, the University of Nairobi and all its organs, agents or other persons acting through it, from suspending or taking any disciplinary action whatsoever against the ex parte Applicants.**
>
> **c. An order of Mandamus directed at and requiring the Respondents to reinstate the Applicants to the University, its precincts, lectures and university activities unconditionally and with immediate effect.**

**d. That the costs of the application be borne by the Respondents.**

3. The application was supported by the grounds on its face and the supporting affidavits of the 1st and 2nd Applicants sworn on 31st January 2019. The Applicants' advocate, Muriuki Muriungi Advocate, in addition filed written submissions dated 17th February 2020 on the application. The Applicants' case, as summarized from the said pleadings and submissions, is as follows.

4. The Applicants averred that they were moderators of public hearings on issues concerning the 1st Respondent's students' welfare, and issued notices to the relevant authorities of the 1st Respondent of the said meetings. Further, that they held peaceful meetings and hearings at various campuses of the Respondent between 7th and 14th December 2018.

5. However, that on 14th January 2019, they received the letters of suspension dated 20th December 2018 and 14th January 2019 respectively from the 3rd Respondent, on account of holding the said meetings. It is the Applicants' case that the 3rd Respondent's action of suspending them is in breach of constitutional and statutory provisions and the rules of natural justice. Further, that the suspension or action of the 3rd Respondent was done without legal authority, and in breach of the legal framework relating to the suspension of students.

6. It was the Applicants' submission that the Deputy Vice Chancellor (Student Affairs) did not have the legal authority or power to suspend the them from the 1st Respondent University, and that in the suspension letters dated 20th December 2018 and 14th January 2019, the 3rd Respondent purported to exercise authority under Part IV (a)(ii) of the University of Nairobi Regulations Governing the Conduct and Discipline of Students which do not vest or delegate any powers to discipline students on the 3rd Respondent, but expressly on the Vice Chancellor acting as a delegate of the University Council. Therefore, that the common law principle of delegatus non poteste delegare is applicable and there could be no further delegation to the 3rd Respondent.

7. Reliance was placed on the decision by the Court of Appeal in **Attorney General & 2 Others vs Independent Policing Oversight Authority & Another (2015) e KLR** on what constitutes delegation of powers and its requirements, as well as the decision of this Court in **Republic vs University of Nairobi *ex parte* Maxwell Magawi Odhiambo (2019) e KLR.**

8. The *ex parte* Applicants further submitted that their suspension pending disciplinary action was illegal and a breach of the rules of natural justice, as the Respondents failed to accord them a chance of being heard before making a decision to suspend them. Further, that the decision was made in violation of Article 50 of the Constitution on fair hearing, Article 47 of the Constitution on fair administrative action, and section 4(3) &(4) of the Fair Administrative Action Act.

9. Lastly, the *ex parte* Applicants contended that the Respondents failed to abide by the procedural requirements set out in Part IV(C) of the Regulations Governing the Organisation, Conduct and Discipline of Students, that set out the procedure to be followed when a student is alleged to have committed a disciplinary offence, and under which a penalty can only be imposed after a student has been accorded a hearing.

**The Response**

10. The application was opposed through a replying affidavit sworn on 18th November 2019 by Prof. Isaac M. Mbeche, the 1st Respondent's acting Vice Chancellor. The Respondents' Advocate, Donald Kipkorir of KTK Advocates in addition filed written submissions dated 10th March 2020. According to the Respondents, the Applicants were suspended on 30th December 2018 and 17th January 2019 respectively for participating in an illegal gathering on 7th December 2018, which was organised by an unrecognised body of students. Consequently, that the 1st Respondent's Director of Security Services made a report to the Vice Chancellor informing him of the gathering.

11. Further, that the Applicants are governed by the University of Nairobi Regulations Governing the Conduct and Discipline of Students and that they led other students in holding the illegal gatherings in various campuses of the 1st Respondent, particulars of which were given, without approval from the Vice Chancellor as required under Part III (A)(iv), C (2) (B), and Part IV(b) (F) of the Regulations.

12. The Respondent's counsel submitted that the Applicants are not deserving of the reliefs sought, as they are the authors of their own misfortune as they participated in an illegal gathering. Reliance was placed on the decision in **Monicah Karimi Njiru vs Egerton University (2011) e KLR** for this position. Furthermore, that the Applicants have not met the threshold for the grant of the orders of certiorari, prohibition and mandamus, as they have not demonstrated that the Respondents acted in error of law, in excess of their jurisdiction or contrary to natural justice.

13. The decisions in **Fredrick Masaghwe Mukasa vs Director of Public Prosecutions & 3 Others (2016) e KLR, Republic vs Cabinet Secretary for Internal Security ex parte Gregory Oriaro Nyauchi & 4 Others (supra), Republic vs Egerton University ex parte Robert Kipkemoi Koskey (2006) e KLR** and **Paul Kiplagat Birgen & 25 Others vs Interim Independent Electoral Commission & 2 Others (2011) e KLR** were cited on the threshold and requirements required to be met for the grant of these orders.

14. Furthermore, that the Respondents' actions were sanctioned by their Rules and Regulations Governing the Organisation, Conduct and Discipline of Students, and were made in good faith and in furtherance of their mandate, as they have the powers and jurisdiction to discipline students. The decision in **Peris Wambogo Nyaga vs Kenyatta University (2014) e KLR** was cited for this position.

15. Lastly, on the infringement of the Applicant's right to fair administrative action and a fair hearing, the Respondents submitted that they went to great lengths to ensure that they followed due process in giving the Applicants an opportunity to be heard. The decisions in **Linus Simiyu Wamalwa vs University of Nairobi & Another, (2015) e KLR** and **Moses Nandalwe Wanjala vs Kenyatta University (2015) e KLR** were relied upon for this submission.

**The Determination**

16. Three issues have been raised in this application that require determination. These are firstly, whether the 3rd Respondent's decision to suspend the Applicants was illegal and *ultra vires*; secondly, whether the 3rd Respondent acted fairly in suspending the Applicants from the 1st Respondent University; and lastly, whether the Applicants are entitled to the reliefs they seek.

**On the Legality of the 3rd Respondent's Decision**

17. It is not in dispute that the 3rd Respondent suspended the Applicants by way of a letter dated 20th December 2018 and 14th January 2019. In order to establish that the 3rd Respondent acted illegally, the Applicants are required to show that the Respondents failed to correctly understand, interpret and/or apply the law that was used in making this decision. It is not in contention that the applicable rules in this regard are the Respondent's Regulations Governing the Organisation, Conduct and Discipline of Students, which were extensively cited by both the Applicants and Respondents. The said Rules and Regulations are made by the 1st Respondent's Senate and Council in accordance with the provisions of the 1st Respondent's Charter.

18. Under sections 19 and 20 of the Universities Act of 2012, a University Charter is the instrument that establishes and gives legal status and authority to a University to *inter alia* undertake its academic programmes. Section 15 of the Charter specifically provides for the duties and powers of Deputy Vice Chancellors as follows:

> **"The Council shall, in consultation with the Chancellor, appoint from among the professors of the University, two or more Deputy Vice-Chancellors, who shall, under the general authority of the Vice-Chancellor, exercise such powers and perform such duties as may be provided for by the statutes."**

It is thus evident that the Deputy Vice Chancellor can only exercise such powers and duties of as are provided by the Charter or University Statutes.

19. In addition, under section 22 of the Charter, it is the University Council that is given the power to make statutes that prescribe Student's conduct, including the Regulations Governing the Organisation, Conduct and Discipline of Students. Part IV A of the Regulations in this regard provides as follows with respect to disciplinary actions against students:

> **"(A) Disciplinary Authority:**
>
> **For purposes of these regulations the Vice-Chancellor, acting on behalf of Council, is the disciplinary authority of the University and may in that capacity :-**
>
> **(i) Vary or add to the list of disciplinary offences specified herein until such action shall cease to have effect unless approved at the next meeting of Council;**
>
> **(ii) Suspend any student suspected of committing any disciplinary offence under the regulation from the University pending disciplinary actions.**
>
> **(iii) Take any other measures necessary for the proper operation of disciplinary procedures set out herein**."

20. It is evident from the said regulations that the Vice Chancellor is the one granted power to exercise disciplinary authority over students, and in doing so acts as a delegate of the Council. While a person to whom a statutory power or duty is conferred is required to personally perform such a power and duty, and should not delegate it, sometimes there may be an express power to delegate, or an implied power to delegate may be construed from the terms of a statute. In the present case, no such express power to delegate is given to the Vice Chancellor by Part 1V (a) of the Regulations which are reproduced in the foregoing.

21. It is also notable that an implied power to delegate will not be construed in certain circumstances. One of these circumstances is where the importance of the function is such that it will have a considerable effect on an individual or public at large or other interest. This is particularly so where the function is of a judicial nature as in disciplinary proceedings. This has been held to be so in various decisions including **General Council of Medical Education and Registration of the United Kingdom vs Dental Board of the United Kingdom, (1936) Ch 41, Bernard vs National Dock Labour Board, (1953) 2 QB 18** and **Vine vs National Dock Labour Board, (1957) AC 488.**

22. Moreover, it is also the general position in law that a person to whom powers or duties are delegated cannot delegate their performance to someone else under the principle expressed by the maxim *delegatus non potest delegare* (a delegate has no powers to delegate). A power to delegate further can only arise where it is within the scope of the primary delegate's authority. The High Court (Aburili J.) has applied the above principles in the case of **Republic vs Chuka University ex parte Kennedy Omondi Waringa & 16 others (2018) eKLR** where it was held as follows**:**

> **"162. There is no provision in the Rules and Regulations permitting that the Chairman could delegate the power of signing the impugned letters to any other person. As was held by Lord Somervel in Vine vs. National Doc Labour Board [1956] 3 All ER 939, at page 951:**
>
> **"The question in the present case is not whether the local board failed to act judicially in some respect in which the rules of**

**judicial procedure would apply to them. They failed to act at all unless they had power to delegate. In deciding whether a person has power to delegate, one has to consider the nature of the duly and the character of the person. Judicial authority normally cannot, of course, be delegated…There are on the other hand many administrative duties which cannot be delegated. Appointment to an office or position is plainly an administrative act. If under a statute a duty to appoint is placed on the holder of an office, whether under Crown or not, he would normally, have no authority to delegate. He could take advice, of course, but he could not, by a minute authorize someone else to make the appointment without further reference to him. I am however, clear that the disciplinary powers, whether "judicial" or not, cannot be delegated."…**

**164. Similarly in Hardware & Ironmongery (K) Ltd vs. Attorney-General Civil Appeal No. 5 of 1972 [1972] EA 271, the Court expressed itself as follows:**

**"What matters is the taking of the decision and not the signature. If the Director had taken the decision that the licence was to be cancelled, he then, properly, have told the Trade Officer to convey the decision to the parties. But it is clear from the officer's evidence that this is not what happened. The fact that the Act makes express provision for delegation of the Director's powers makes it, if not impossible, at least more difficult to infer any power of delegation. There is no absolute rule governing the question of delegation, but in general, *where a power is discretionary and may affect substantial rights, a power of delegation will not be inferred, although it might be in matters of a routine nature. The decision whether or not the licence should be revoked required the exercise of discretion in a matter of greatest importance, since it involved weighing the national interest against a grave injustice to an individual. It was clearly a decision to be taken only by a very senior officer and was not one in respect of which a power of delegation could be inferred."***

**165. The above position is restated in section 7(2)(a)(i)(ii) and (iii) of the *Fair Administrative Action Act, 2015* where it is provided that a court or tribunal may review an administrative action or decision, if the person who made the decision was not authorized to do so by the empowering provision; acted in excess of jurisdiction or power conferred under any written law; or acted pursuant to delegated power in contravention of any law prohibiting such delegation."**

23. I am in agreement with the positions set out in the various judicial decisions cited hereinabove. It is thus the finding of this Court for the foregoing reasons the 3rd Respondent acted illegally and *ultra vires* in purporting to suspend the Applicants, as he had not been granted such powers under the applicable law and regulations.

**Whether the Respondents acted fairly in suspending the Applicants**

24. At the procedural front, Part 1V(C) of the Regulations Governing the Organisation, Conduct and Discipline of Students is dedicated to the procedure to be followed when a student is alleged to have committed a disciplinary offence as follows:

**"(C) Disciplinary Procedures**

**(i) All disciplinary offences shall, in the first instance be reported to and dealt with by Committees constituted as follows:-**

**A) At the residential level (hereinafter the Halls Disciplinary Committee)**

- **The Warden - Chair**
- **The Dean of Students**
- **The Director of S.W.A.**
- **A representative of the Faculty of the student concerned**
- **The Head Custodian of that Hall**
- **The Student Hall Chairperson**
- **The Hall Administrator - Secretary**

**2. At the College level (hereinafter the College Disciplinary Committee);**

- **The Principal - Chair**
- **The Dean of Faculty/Director of Institute or School**
- **The Chairperson of the student's Department where appropriate one representative nominated by the College Student 's organization one representative from the Students' Hall of Residence nominated by the Students' Hall Chair**
- **The College Registrar - Secretary**

**(ii) All disciplinary offences committed within the Halls of Residence or all such offences as relate essentially to the proper conduct of residential affairs shall be reported to the Halls Disciplinary Committee for action.**

**(ii) If any matter reported to a Halls Disciplinary Committee is, in its opinion essentially of an academic nature or involves issues extraneous to the residential affairs of the hall concerned, such a matter shall be transmitted at once to the appropriate College Disciplinary Committee for action.**

**(iii) All other disciplinary offences wherever committed shall be reported to the appropriate College Disciplinary Committee**

**for action.**

**(iv) All appeals from the decisions of Halls and College Disciplinary Committees in respect of matters falling within their respective jurisdictions shall lie with the Senate Disciplinary Committee constituted as follows:-**

- **Deputy Vice-Chancellor (Academic Affairs) - Chair**
- **Principal / Director of S.W.A.**
- **Dean of Students**
- **Dean of Faculty**
- **Warden or equivalent**
- **Two (2) Senate Representatives**
- **Three (3) Students Representatives**
- **Academic Registrar - Secretary**

**(v) Provided that student representation shall be excluded in offences related to examination and other academic matters.**

**(vi) At all proceedings or a Disciplinary Committee before which he/she is summoned, the student shall be entitled to a fair hearing and to representation either in person or by somenone of his/her choice, to call witnesses in his/her defence, and to appeal to the Senate Disciplinary Committee. Legal representation is not allowed.**

**Disciplinary Committee at the Halls or College levels shall have power to impose any one or more of the following penalties:-**

**a) A letter of warning or reprimand**

**b) The payment of damages commensurate with the nature and gravity of the offence committed,**

**c) Suspension from the University for a specified period,**

**d) Expulsion from the Halls of Residence,**

**e) Any other penalty which the Committee in question may deem fit to impose or recommend to the Senate Disciplinary Committee.**

**(ii) No student may be expelled from the University, and any penalty imposed by a Disciplinary Committee in accordance with sub clause (1)- (5)- herein shall not take effect without the approval of the Senate Disciplinary Committee.**

**(iii) In arriving at an appropriate penalty or combinations thereof, the appropriate Disciplinary Committee shall be at liberty to consider the total conduct (past and present) of the student within or outside University and not merely the immediate circumstances furnishing the reason for disciplinary action against him/her.**

**(iv) The record and decision of any disciplinary action taken against a student shall be reported to his/her Warden, Chair of the Department, Dean of Faculty, College Principal and the Vice-Chancellor and shall form part of the student's record at those levels.**

**2. Nothing in this section shall preclude Senate from proceeding against any student under Statute XX (6), nor shall anything in these regulations be read so as to impede."**

25. No evidence was availed by the Respondents that this procedure was followed, or that the Applicants were afforded any hearing before being suspended. The report that was attached by the 3rd Respondent as regards what transpired before the suspension was "Annexure IM4" to his replying affidavit, which was an Internal Memo from the Director of Security Services dated December 10, 2018, which identified a group of students including the Applicants who went to various campuses of the Respondents in an unlawful assembly.

26. The subsequent letter of suspension dated 20th December 19, 2018 and 14th January 2019 sent to the Applicants both read as follows in part:

**"NOTE: that by delegated authority to the Vice Chancellor in accordance with Part IV a) (ii) of the Regulations, I hereby suspend you from the University with immediate effect pending your appearance before appropriate disciplinary committee to face the above charges.**

**You will be invited to appear before the disciplinary committee at a date and venue to be communicated to you when your attendance shall be required without fail.**

**In the meantime, you are required and strongly advised to keep off from University precincts including lecture halls and activities of the University unless expressly authorized in writing by the Vice Chancellor or until such a time as the**

**investigations/disciplinary process shall be finalized. "**

27. It is noteworthy that it is specifically provided for in the Regulations Governing the Organisation, Conduct and Discipline of Students that penalties, including suspension, can only be recommended and imposed after a student has been accorded a hearing and upon approval by the Senate Disciplinary Committee. In the present case, as shown by the above cited internal memo and letters of suspension, the Applicants were suspended with immediate effect without being accorded a chance to state their respective cases and/or defend themselves against the accusations made against him.

28. In addition, it is now a core requirement in the Constitution that every person who is to be affected by a decision must be accorded fair administrative action under Article 47, and also by the Fair Administrative Act of 2015. The core aspect of the duty to act fairly under these provisions and also under the common law rules of natural justice is the need to ensure that a person affected by a decision has an effective opportunity to make representations before it is taken, so that he or she has the chance to influence it.

29. Section 4(3) and (4) of the Fair Administrative Action Act provides the key procedural steps that are required to satisfy the requirements of fairness as follows:

**(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 whom administrative action is taken an opportunity to-**

**(a) attend proceedings, in person or in the company of an expert of his choice;**

**(b) be heard;**

**(c) cross-examine persons who give adverse evidence against him; and**

**(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.**

30. The Respondents not only therefore breached the aforesaid Constitutional and statutory duties to act fairly, but also failed to comply with its own applicable disciplinary set by its own statutes. This Court therefore finds that the 3rd Respondent not only acted in excess of his powers and duties in suspending the Applicants, but was also procedurally *ultra vires* and was procedurally unfair.

**On the Relief Sought**

31. I am on this issue guided by the parameters for the grant of judicial review orders, as set out by the Court of Appeal in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others, Civil Appeal No. 266 of 1996** thus:

**"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once.**

**Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way...These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done...Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons."**

32. This Court's powers to grant relief in judicial review are discretionary, and once it reaches a conclusion that a particular decision or action was unlawful, it has discretion to grant or refuse a final remedy. If and when the Court grants a final remedy, it also has discretion as what remedy should be granted.

33. The Courts take into account the circumstances of each case, and in practice will only refuse a remedy unless there is good reason to do so arising either from the action or inaction of the claimant, the impact of the remedy on others, and the practical value of the remedy.

34. In the present application, the Applicants have established that the 3rd Respondent acted illegally and his decision to suspend them was *ultra vires* and procedurally unfair, and therefore merits to be quashed. A quashing order nullifies the decision to which it relates, with the same effect as if the relevant decision had never been taken or made in the first place, and therefore has retrospective effect. To this extent, the order sought of mandamus is therefore merited and necessary to restore the status of the Applicants.

35. I am however of the view that the Respondent cannot be restrained from exercising the powers it is granted under statute, and the orders of prohibition therefore cannot be granted on the terms sought. Lastly, this Court is also bestowed with powers and discretion under section 11 of the Fair Administrative Action Act to grant any order that is just and equitable in cases of judicial review. Section 11 (e) and (h) of the Fair and Administrative Action Act in particular empowers this Court to grant an order setting aside an administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions.

36. In the premises, I find that the Applicants' Notice of Motion application dated 31st January 2019 as amended on 4th February 2019 is merited to the extent of the following orders:

**I. An order of certiorari be and is hereby granted to bring into this Court and quash the proceedings, directions, orders and decision of the Deputy Vice Chancellor in charge of Student Affairs of the University of Nairobi, Prof. Isaac M. Mbeche, contained in the letters dated 20th December 2108 and 14th January 2019 to the Applicants, which letters suspended the Applicants from the University of Nairobi with immediate effect.**

**II. An order of Mandamus be and is hereby issued, directed at and requiring the Respondents to reinstate the Applicants to the University, its precincts, lectures and university activities unconditionally and with immediate effect.**

III. **The matter of the Applicants' conduct shall be and is hereby remitted back to the 1st Respondent's Vice Chancellor for reconsideration in accordance with the provisions of the Constitution, Fair Administrative Action Act and the Respondent's Statutes.**

**IV. The Respondents shall meet the Applicants' costs of the Notice of Motion dated 31st January 2019 as amended on 4th February 2019.**

37. Orders accordingly**.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2020**

**P. NYAMWEYA**

**JUDGE**

**FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS JUDGMENT**

**In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this judgment will be delivered electronically by transmission to the email addresses of the Applicant's and Respondents' Advocates on record.**

**P. NYAMWEYA**

**JUDGE**