



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CONSTITUTION AND HUMAN RIGHTS DIVISION**

**PETITION NO. 3 OF 2016**

**(Formerly NAIROBI – PETITION NO. 513 OF 2015)**

**KYALO KAMINA ..... PETITIONER**

**-VERSUS-**

**KENYA UNIVERSITIES & COLLEGES**

**CENTRAL PLACEMENT SERVICE ..... 1ST RESPONDENT**

**KENYA MEDICAL TRAINING COLLEGE ..... 2ND RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3RD RESPONDENT**

**JUDGMENT**

1. The petition before court is dated 19/11/2015. Vide the said petition, Kyalo Kamina (Petitioner) seeks orders against Kenya Universities & Colleges Central Placement Service (KUCCPS) (hereinafter the 1st Respondent), Kenya Medical Training College (KMTC) (2nd Respondent) and the Attorney General (AG) (3rd Respondent) that;

**A. A declaration that the Respondents have violated Articles 2, 3, 10, 19(1) & (2), 20(1) and (2), 21(1), 22(1), 23, 25(c), 43(1) (a) & (f), 47(1) & (2) 48 & 50(1) of the Constitution.**

**B. A declaration that the Universities Act No. 42 of 2012 and the Technical and Vocational Education and Training Act, 2013 supercede the Kenya Medical Training College Act. CAP 261 Laws of Kenya.**

**C. A declaration that KUCCPS is the body responsible for placement of students for admission in KMTC and universities and colleges.**

**D. Costs of the Petition.**

**E. And any other relief as this Honourable Court may deem fit to grant.**

2. The petition is founded on the alleged conflict between KMTC and KUCCPS on which body between the two has the legal right to admit students into KMTC.

3. On its part, the KMTC claims the exclusive right to admit students by virtue of **Section 6** of the **KMTC Act** and **Section 57** of the **Universities Act, 2012** while on the other hand KUCCPS claims exclusive right to admit students to KMTC by virtue of **Section 55** and **56** of the **Universities Act, 2012** and **Section 2** and **52** of the **Technical and Vocational Education and Training Act 2013**.

4. This confusion culminated in KUCCPS placing 2,302 applicants to KMTC in the 2015/2016 year with the KMTC board subsequently advertising for placement of regular students and informing members of the public through an advertisement in media that they would not be admitting any of the students placed to it by KUCCPS. The Petitioner's son (name withheld for what is stated to be fear of victimization) was one of the students placed by KUCCPS. In consent orders recorded in Nairobi JR Civil Application Number 291 of 2015, it was agreed that both sets of students would be admitted to KMTC among them the Petitioner's son.

5. The Petitioner avers that the right to health (**Article 43(1)(a) of the Constitution**), the right to education (**Article 43(1)(f)**), the right to fair

administrative action (**Article 47(1) & (2)**) were breached. It is further urged that the right to a fair and public hearing of any dispute before a Court or other independent and impartial tribunal (**Article 50**) was breached as the JR Civil Application Number 291 of 2015 was not resolved in Court as the matter was withdrawn without a clear way forward.

6. The 1st Respondent supports the petition in its entirety save to deny that the 1st Respondent has violated **Articles 2, 3, 10, 19(1) & (2), 20(1) & (2), 21(1), 22(1), 23, 25(c), 43(1) (a) & (f), 47(1) & (2), 48 & 50(1) of the Constitution.**

7. It is the 1st Respondent's case that it is body mandated by **Section 56(1) (a) of the Universities Act, 2012** to co-ordinate the placement of the government sponsored students to universities and colleges. It is urged that KMTC falls under the definition of Technical and Vocational College which as per the provision of **Section 2 (1) of the Technical and Vocational Education and Training Act** is "an institution offering technical and vocational education and training at diploma level".

8. The 1st Respondent urges that **Section 52** of the **Technical and Vocational Education and Training Act, 2013** directs that admission of students into technical and vocational education institutions shall be conducted *by the service* established under the Law relating to universities. Reliance is placed on a legal opinion by the 3rd Respondent dated 10/8/2015.

9. The 1st Respondent holds the position that the **Universities Act No. 42 of 2012** and the **Technical and Vocational Education and Training Act, 2013** override the **Kenya Medical Training College Act** as the later was enacted earlier in time and therefore the provisions of the two Acts were deemed to repeal the earlier Act which vested the power to place the students for admission in KMTC in its academic board. The later Act vests this power on the 1st Respondent.

10. The 2nd Respondent opposes the petition. It is the 2nd Respondent's case that it is a creature of statute having been established pursuant to **Section 3** of the **Kenya Medical Training College Act, Cap 261 Laws of Kenya (KMTC Act)** and as such the 2nd Respondent is a parastatal falling under the Ministry of Health.

11. It is urged that under **Sections 6 and 11** of the **KMTC Act** there is established an academic board whose functions include admission of qualified candidates to undertake courses offered by the 2nd Respondent.

12. The 2nd Respondent recognises the establishment of KUCCPS (1st Respondent) under **Section 5** of the **Universities Act, No. 42 of 2012** and further notes the provisions of **Section 56(1) (a)** of the **Universities Act** which granted the 1st Respondent the mandate to coordinate the placement of government sponsored students to universities and colleges.

13. It is acknowledged that confusion arose in the placement of students to KMTC in the academic year 2014/2015 with the 1st respondent placing a set of students for admission to the 2nd Respondent. The confusion attracted the attention of the National Assembly whose parliamentary health committee called a meeting between the permanent secretaries ministries of health and education, the chief executive officer of the 1st Respondent and the 2nd Respondent's director. In that meeting, it was resolved that the 2nd Respondent through its academic board was to continue selecting students for its various courses as mandated by the **KMTC Act**.

14. As regards the **Technical and Vocational Education and Training Act, No. 29 of 2013 ("TVET Act")**, it is the 2nd Respondent's case that the TVET Authority established under **Section 6** of the Act, has functions specified under **Section 7** of the Act which include inspecting, licencing, registering, regulating and accrediting training institutions and programmes and courses offered under the **TVET Act**. It is urged that the 2nd Respondent is neither licenced, regulated nor accredited by the TVET authority. The 2nd Respondent does not therefore source its mandate and or continued mandate from the TVET Act or its organs.

15. It is further urged that the targeted institutions under the **TVET Act** were those that had been established under the **Education Act, Cap 211 Laws of Kenya**, which include polytechnics, Technical Teachers Training Colleges and Technical Training Institutes as envisaged under Session paper No. 14 of 2012.

16. It is denied that the **Universities Act, No. 42 of 2012** and the **TVET Act, No. 29 of 2013** are overriding statutes to the **KMTC Act Cap 261, Laws of Kenya**. The 2nd Respondent falls under the Ministry of Health, which government ministry has been assigned the mandate to oversee the implementation of the KMTC Act as opposed to the 1st Respondent which falls and/or is supervised by the Ministry of Education.

17. The opinion letter dated 10/8/2015 from the 3rd Respondent's office is challenged on grounds that the same was done premised on the presentations made for the 1st Respondent and without involving the 2nd Respondent and that the opinion was overruled by resolutions of a meeting convened by the Head of Public Service in the presence of the Solicitor General. A letter by the Head of Public Service dated 16/9/2015 at clause (iv) states that the earlier legal opinion issued by an officer in state law office should be ignored and substituted by the legal advisory by the Attorney General or the Solicitor General.

18. The 3rd Respondent opposes the petition and states, inter alia, that the KMTC is not licenced and neither is it regulated by the Kenya Technical and Vocational Education Training Authority. The KMTC was never intended and does not fall within the provisions of the **Kenya Technical and Vocational Education and Training Act 2013**. The assertion that **TVET Act** is applicable to KMTC is misguided.

19. It is urged that the **TVET Act** targeted specific institutions as then existed under and or established by the **Education Act**. This is evidenced in **Section 58(1)** of the **TVET Act**.

20. This matter was disposed off by the way of written submissions. The Petitioner as well as all the Respondents have duly filed their respective submissions.

21. I have painstakingly analysed and considered the petition, the supporting affidavit as well as the replying affidavits on record. I have considered the relevant law applicable as well as learned submissions of counsel.

22. Whereas the petition raises a myriad of alleged constitutional violations, I am of the considered opinion that the petition revolves around statutory interpretation regarding the question of who, within the law, as between the 1st and 2nd Respondent, has the statutory mandate to admit students to the 2nd Respondent.

23. The issues for determination would thus crystallise into the following;

i) **Whether there is a conflict between the provisions of KMTC Act Cap 261 Laws of Kenya on the other hand and the Universities Act No. 42 of 2012 and the TVET Act 2013.**

ii) **If (i) above is in the affirmative, which provisions should prevail.**

iii) **Based on (I) and (ii) above, who between the Kenya Universities and Colleges Central Placement Service Board and the KMTC Academic Board has the legal mandate to admit students to KMTC.**

iv) **Whether the Petition's constitutional rights were violated and by who.**

24. As an appropriate starting point, this Court appreciates that it is called upon to interpret the specific provisions of the statutes aforementioned to discern if there exists any conflict thereon and which provisions override the other(s) if at all.

25. The position taken by Finlay, *CJ* in **MCGRATH vs. MCDERMOTT (1988) IR 258** at page 275 cited in **O'NEILL & ANOTHER VS GOVERNOR OF CASTLEREA PRISON & OTHERS [2003] IEHC83** where the judge dealt with the role of the Court in interpretation of statute is a useful guide and an appropriate beginning point. The Judge stated;

**“The functions of the Courts in interpreting a statute...is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even other statutes expressed to be construed with it.”**

26. The principle of interpretation of statute by court is further amplified in **RAHILL Vs. BRADY (1971) IR 69** at page 86

**“In the absence of some technical or acquired meaning the language of a statute should be construed according to its ordinary meaning and is according to the rules of grammar. While the literal construction generally has prima facie preference, there is also a further rule that in seeking the full construction of the section of an Act, the whole Act must be looked at in order to see what the objects and intentions of the legislature were, but the ordinary meaning of words should not be departed from unless adequate grounds can be found in the context in which the words are used to indicate that a literal interpretation would not give the real intention of the legislature.”**

27. And as correctly put by *Mativo J* in **BRENDA ACHIENG KWACH & 2 OTHERS vs. CHARLES ROTICH Sp & 3 OTHERS [2015] eKLR**;

**“There are numerous rules of interpreting the statute, but in my view and without demeaning the others, the most important rule is the rule dealing with the statutes plain language. The starting point of interpreting a statute is the language itself. In the absence of an expressed legislature intention to the contrary the language must ordinarily be taken as conclusive. Thus, when the words of a statute are unambiguous, then the first canon is also the last, judicial inquiry is complete. The implication is that when the language is clear as in the sections complained about, then it is not necessary to belabour examining other rules of statutory interpretation.”**

28. Let us take a short journey on what each of the relevant statutes provide. We begin with the **KMTC Act** being the earlier statute. The 2nd Respondent is established under **Section 3** of the **KMTC Act** as a body corporate with perpetual succession and common seal. **Section 5** stipulates the functions of the 2nd Respondent. Under **Section 11** of the Act, is established the Academic Board which under **Section 6** of the Act has the mandate to admit students to the 2nd Respondent. Suffice it to note that the words/language of these provisions are clear and unambiguous. There exists no expressed legislative intention to the contrary. I take the language as conclusive.

29. In comes the **Universities Act**. **Section 55(1)** of the Act establishes the 1st respondent as a body corporate with perpetual succession. The said service is as per **Section 55(3)** to be governed by the Placement Board. Under **Section 56 (1) (a)**, the placement board shall co-ordinate the placement of government sponsored students to *universities and colleges*.

30. A look at the preamble to the **Universities Act** states that the Act is intended, to, inter alia, provide for the development of university education, the establishment of the Kenya Universities and Colleges Central Placement Service Board and the repeal of certain laws. Section 2 gives interpretation of key phrases and for our purposes I pick 2 of these;

“Constituent college” means a constituent college of a university. “Institution” means a public or private institution or facility used for the conduct of university education.

31. **Section 71** of the **Universities Act** lists statutes specified for repeal. Of note here is that the **KMTC Act** is not among them. So does the **Universities Act** conflict with the **KMTC Act** in regard to who should admit students to KMTC? We shall revert to this in this judgment

later after evaluating the relevant and related provisions under the **Technical and Vocational Education and Training Act 2013** (“**TVET Act**”).

32. The **TVET Act** is an Act of Parliament to provide for the establishment of a technical and vocational education and training system; to provide for the governance and management of institutions offering technical and vocational education and training; to provide for coordinated assessment, examination and certification; to institute a mechanism for promoting access and equity in training to assure standards, quality and relevance; and for connected purposes.

33. Under **Section 2(1)** of the **TVET Act** a technical and vocational college is defined as “an institution offering technical and vocational education and training at diploma level.

34. Under **Section 52** of the **TVET Act**, admission of students into technical and vocational education institutions shall be conducted by the service established under the law relating to universities.

35. **Section 58(1)** of the **TVET Act** provides;

**“Notwithstanding the provisions of Education Act (Cap 211) or regulations made thereunder, all technical and vocational training institutions established by orders made under the Act shall within a period of two years from the date of commencement of this Act, seek accreditation from the Authority in accordance with the provisions of this Act.”**

36. A quick look at the **Education Act** notably **Section 4A** thereof shows that KMTC is not among institutes established by the minister by order in the gazette.

37. So, have the provisions in the **Universities Act** and the **TVET Act** taken away the mandate of the academic board of the KMTC to admit students to KMTC through the doctrine of implied repeal? This would arise if the Petitioner was able to demonstrate that the provisions in the **Universities Act** and **TVET Act** which are more recent as compared to the **KMTC Act** provide for the admission of students to the KMTC by the 1st Respondent.

38. This is because of the canons of interpretation with regard to the timing of legislation and the doctrine of implied repeal, which is to the effect that where provisions of one Act of Parliament are inconsistent or repugnant to the provisions of an earlier Act, the later Act abrogates the inconsistency in the earlier one (see **MARTIN WANDERI & 19 OTHERS VS. THE ENGINEEES REGISTRATION BOARD OF KENYA & 5 OTHERS [2014] eKLR**).

39. Even where there is conflict with legislation enacted subsequent to the subject Act, the inconsistency must be clearly demonstrated. In the case of **UNITED STATES vs. BORDEN CO 308 US 188 (1939)** the Court stated;

**“.....It is a cardinal principle of construction that repeals by implication are not favoured. When there are two acts upon the same subject, the rule is to give effect to both if possible. The intention of the legislature to repeal 'must be clear and manifest'. It is not sufficient as was said by Mr. Justice Story in Wood v. United States, 16 Pet 342, 362, 363, 'to establish that subsequent laws cover some or even all of the cases provided for by (the prior act); for they may be merely affirmative, or cumulative, or auxiliary'. There must be 'a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only, pro tanto, to the extent of the repugnancy'....”**

40. The words of *Avory J* in **VAUXHALL ESTATES LIMITED vs. LIVERPOOL CORPORATION [1932] IK.B** illuminate the principle further. He stated;

**“....I should certainly hold....that no Act of Parliament can effectively provide that no future Act shall interfere with its provisions... [I]f they [the two statutes] are inconsistent to the extent [viz. So that they cannot stand together], then the earlier Act is impliedly repealed by the later in accordance with the maxim 'Leges posteriores priores contrarias abrogant'.”**

41. Locally in **High Court Petition No. 320 of 2011, ELLE KENYA LIMITED AND OTHERS vs. THE ATTORNEY GENERAL AND OTHERS**, faced with an apparent conflict between the provisions of the Alcoholic Drinks Control Act which prohibited packaging of alcoholic drinks in bottles less than 250 ml enacted in 2010 and which came into operation in November 2010, and the **Finance Act, 2010** which amended **Section 91 A** of the **Customs and Excise Act** to provide for packaging of Alcoholic beverages in bottles of not less than 200 ml whose provisions were to apply retrospectively from 11th June 2010, *Justice Lenaola* ( as he then was) made a finding that the later Finance Act repealed the Alcoholic Drinks Control Act.

42. The Judge placed reliance on the decision of **VAUXHALL ESTATES LIMITED CASE** (above) where it was stated;

**“If it is once admitted that Parliament, in spite of those words of the sub-section has power by a later Act expressly to repeal or expressly to amend the provisions of the sub-section and to introduce provisions inconsistent with them, I am unable to understand why Parliament should not have power impliedly to repeal or impliedly to amend these provisions by the mere enactment of provisions completely inconsistent with them.”**

43. In our instant suit, the Petitioner's case is that there is an implied repeal of the **KMTC Act** since the **Universities Act** and the **TVET Act** make provisions taking away the admission of students to KMTC from the preserve of the Academic Board of the KMTC provided for under Section 6 of the **KMTC Act**.

44. A closer look at the provisions of the three Acts i.e. the **KMTC Act**, the **Universities Act** and the **TVET Act** does not entirely support that proposition.

45. First, under **Section 71** of the **Universities Act**, Parliament expressly repealed legislations that were affected by that Act. If the intention of parliament would have been to repeal the **KMTC Act**, nothing would have been easier than for it to provide for such a repeal. Indeed the preamble to the **Universities Act** reads that the act is intended to inter alia “provide for the development of university education, the establishment of the Kenya Universities and Colleges Central Placement Service Board and the repeal of certain laws.” The legislature had in my view at the very onset clear sight of the targeted laws for repeal and it expressed itself clearly on those affected Acts under **Section 71** of the **Universities Act**. And as held in **UNITED STATES Vs. BORDEB CO.** (above), where the repeal is not explicit, the intention to repeal must be clear and manifest.

46. Secondly, as to whether an implied repeal is applicable, it is not demonstrated in either the **Universities Act** or the **TVET Act** or both that KMTC is one of the colleges envisaged under the said Acts. A proper reading of the **TVET Act** read with the **Education Act** does not place the KMTC under the category of Technical and Vocational Education and training.

47. I have found very illuminating information from sessional paper no. 14 of 2010. The material in sessional paper No. 14 of 2010 is the basis upon which the **TVET Act** was born.

Counsel for the 2nd Respondent has submitted on this and I find it useful to paraphrase the relevant paragraphs of the sessional paper and make necessary comments thereon.

#### 48. Paragraph 1.34

It was appreciated that specialized vocational training programme exist in various government ministries and fall under the supervision of the respective sector ministries.

#### 49. Paragraph 1.35

The technical educational institutions were listed which included Polytechnic University Colleges, National Polytechnics, Technical Teachers Training College and Technical Training Institutes among others. The 2nd Respondent was not referred to or mentioned as among those inclusive institutions and safely, it can therefore be construed that it was intentional to omit it as forming part of the vocational training institutions subject of the Sessional paper.

#### 50. Paragraph 3.18

Technical training and vocational training institutions were also referred to. Highlights were made to Kenya and Mombasa Polytechnics, national polytechnics at Eldoret and Kisumu, Technical training institutes, institutes of technology, youth polytechnics and technical teachers training college. Again, there was no mention or reference to the 2nd Respondent.

#### 51. Paragraph 14.1

It was appreciated that education and training in Kenya is constituted in the Education Act and other related Acts of Parliament and that the Education Act and other related Acts of Parliament had not been harmonized.

#### 52. Paragraph 14.13

An implementation strategy was secured, and for purposes of harmonization, it was proposed under paragraph 14.12(1) thereof that there be a repeal of all the relevant Acts of parliament on education and training with a view of inter alia, resolving existing conflicts in the education related Acts. Notably, although the **Universities Act** and **TVET Act** are said to be a product of this Sessional Paper, the **KMTC** was never repealed and or amended to align it with this strategy under paragraph 14.13(1) of the Sessional Paper. This is a more clearer indication that the 2nd Respondent was never in the minds of the drafters of the Sessional Paper and or the consequent Acts, namely the **Universities** and **TVET Acts** respectively. Indeed, that paragraphs 15.16(11) and 15.2191) of the Sessional Paper proposed the establishment of 1st Respondent and **TVET Authority** respectively confirms the intention of the establishment and clear exclusion of the 2nd Respondent as among the targeted institutions.

53. A look at the definitions of the operative words would shed much needed light in the resolution of this dispute. The Macmillan Dictionary defines a technical college as a *'college that trains people for jobs in technology and other practical subjects'*. A vocational course is defined as *'one that teaches the skills necessary for a particular job or basically an occupation'*. A profession is defined as *'relating to work that needs special skills and qualifications'*. There is thus a stark difference between the institutions falling under the **TVET Act** and in which the 1st Respondent has mandate to coordinate placements and the 2nd Respondent which is a professional institution.

54. It is clear that the institutions targeted under the **TVET Act** are institutions under the **Education Act** and **KMTC** is not one of them, the same being anchored on and governed by an independent statute, the **KMTC Act** and falling under a different ministry, the Ministry of Health.

55. Indeed, under **Section 58(1)** of the **TVET Act**, all technical and vocational training institutions established under the **Education Act** are required to seek accreditation from the Authority (created by the **TVET Act**) within 2 years of the commencement date of the Act. This provision further amplifies the fact that **KMTC**, which exists under an independent Act of Parliament was not subject to the **TVET Act**, since if that was the intention of parliament, again, nothing would have been easier than to require all institutions created under other Acts of

parliament other than the **Education Act** to seek accreditation from the authority. This parliament did not do. To the extent that the Act is silent on KMTC, I am satisfied that KMTC is not subject to this law.

56. I agree with the submission by counsel for the 2nd Respondent that the 2nd Respondent is not a technical nor a vocational training institution. The mere fact that the 2nd Respondent offers an award of Diploma does not by itself bring it within the ambit of the **TVET Act** and the institutions governed by it.

57. It has been suggested, indeed, demonstrated through an advertisement in a local daily that KMTC at some point acknowledged the right of the 1st respondent to admit the students.

58. That may be so, but such an act is of no consequence in a litigation of this nature where the court is to make its own independent interpretation of the law and a finding thereon.

59. My analysis of the relevant Acts leads me to the conclusion that there is no explicit or implied repeal of the **KMTC Act** in the **Universities Act** and/or in the **TVET Act**. I also find no conflict between the provisions on admission of students in the **KMTC Act** and in the **Universities Act** and/or in the **TVET Act**.

60. I have considered the authorities submitted by counsel and I have no hesitation in reaching the conclusion that the authorities are distinguishable in that they relate to instances where there were parallel and/or conflicting provisions in two statutes and with the principle elucidated above, Courts have held that the latter provisions prevail. That clearly is not the obtaining situation in our instant suit.

61. I am satisfied from my reading of the relevant Acts that the purpose and intention of the legislature was to streamline the organization and management of the Technical and Vocational Education and Training Institutions of which the KMTC is not part thereof. Bearing in mind the principle of separation of powers and noting no ambiguity or conflict in the provisions of the Law complained of, this Court would be reluctant to transcend into the arena of law making and import other meaning to the law other than that within the object and intention of parliament. Issue No. (i) above therefore answers in the negative.

62. Following the finding above, it follows then that issue (ii) for determination must consequently answer in the following manner; that the provisions of admission of students to the KMTC found in the **KMTC Act** is the applicable law in so far as the admission of students to the KMTC is concerned.

63. It follows naturally that issue (iii) for determination must determine in favour of the KMTC Academic Board being the body with legal mandate to admit students to the KMTC.

64. On whether the Petitioner's constitutional rights were violated and by who, it is the Petitioner's case that his son was selected by the 1st Respondent for admission to KMTC among other 2,302 students. KMTC subsequently advertised for placement of students to it and informed members of the public that it would not be admitting students placed to it by the 1st Respondent.

65. It is the Petitioner's case that his son was confused, traumatized and angry.

66. The Petitioner avers that the right to health (**Article 43(1) (a)**) and the right to education (**Article 43(1) (f)**) was violated as the quality of manpower at KMTC was compromised and that KMTC refused to admit students placed by 1st Respondent. He acknowledged, though, that through a consent reached in Nairobi JR Civil Application No. 291 of 2015, all students selected by 1st and 2nd Respondents were to be admitted to KMTC.

67. It is instructive that the Petitioner does not name the son whose rights were violated (ostensibly for fear of victimization) and a question arises as to whether the court would practically enforce (if breach was to be established) the rights of an unknown entity. The alleged fear of victimization cannot hold, as a citizen who appears before court ought to be well aware that the court is a ready shield of protection for already committed violations (if at all) and even for any future violations by a party who may be unhappy with the institution of a suit.

68. On the material before court, the petition is based on the existence of 2 different interpretation of the Law by the 1st and 2nd Respondents whereupon the court is called upon to exercise its duty to give the correct interpretation.

69. The claim on violation of the petitioner's son constitutional rights to health is vague and unsubstantiated. As held in **NGOGE Vs. KAPARO & 4 OTHERS NAIROBI HCMA NO. 22 OF 2004** by a three judge bench;

**“Any...inclination to demand an inquiry every time there is a bare allegation of a constitutional violation would clog the Court with unmeritorious constitutional references which would in turn trivalise the constitutional jurisdiction and further erode the proper administration of justice by allowing what is plainly an abuse of the court process. Where the facts as pleaded in this case, do not plainly disclose any breach of fundamental rights of the Constitution there cannot be any basis for an inquiry.... The notion that whenever there is a failure by an organ of a government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by the chapters of the Constitution is fallacious... the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for the unlawful administrative action which involves no contravention of any human right or fundamental freedom.”**

70. The claim on violation of the Petitioner's son right to education was compromised by the consent orders recorded in Nairobi JR Civil Application No. 291 of 2015 whereby students selected by the 1st and 2nd Respondents, and who include the Petitioner's son were to be admitted to KMTC and indeed the Petitioner confirms this in the pleadings.

71. As regards the claim on violation of the Petitioner's rights under **Article 47(1)** and **Article 50** of the **Constitution**, the less said the better. The proceedings in **Nairobi JR Civil Application No. 291 of 2015** were judicial proceedings. The challenge to the withdrawal of the suit and matters related to a fair hearing in that court can only be addressed through the established legal procedures of review, or appeal and I make a finding that this claim is misguided.

72. With the result that the petition herein fails in its entirety. The same is dismissed with costs to the 2nd Respondent to be shared equally between the Petitioner and the 1st Respondent.

73. The 2nd Respondent is to ensure admission (if not yet completed) of all students placed by the 1st Respondent to it as per earlier orders of this Court.

#### **ORDERS**

(a) The petition herein is dismissed with costs to the 2nd Respondent to be shared equally between the Petitioner and the 1st Respondent.

(b) The 2nd Respondent shall admit all students placed to it by the 1st Respondent as at the date of this judgment including the Petitioner.

(c) The academic board established under **Section 11** of the **KMTC Act** is declared the body mandated to admit students to KMTC under **Section 6** of the the **KMTC Act**.

**Dated and Signed at Nakuru this 24th day of July, 2018.**

**A. K. NDUNG'U**

**JUDGE**