



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CONSTITUTIONAL PETITION NO 16 OF 2015

ALEX MBURU GITAU.....PETITIONER

VERSUS

KENYATTA UNIVERSITYRESPONDENT

JUDGMENT

Introduction

1. The petitioner first approached the Court by way of an application under certificate of urgency on 22nd January 2015. He stated that he had been expelled from the respondent on 27th of May 2014. His expulsion allegedly followed an accusation against him in November 2013 when he was accosted by security guards from Bricks Security Guards who accused him of participating in a robbery outside the perimeter fence of the University.
2. The petitioner was aggrieved that the respondent had not released the results of his appeal against his expulsion, and he therefore sought various interim orders in his application dated 22nd January 2015, an application he subsequently withdrew on 23rd March 2015.
3. The parties thereafter indicated that they were attempting an amicable settlement of the matter, which was ultimately unsuccessful, and the matter proceeded to hearing on the 13th of July 2015.

The Petitioner's Case

4. The petitioner's case is set out in the petition dated 22nd January 2015 and his affidavit of the same date. He also filed a supplementary affidavit sworn on 3rd July 2015 in response to the respondent's affidavit in opposition, two sets of submissions dated 22nd May 2015 and 6th July 2015, as well as two bundles of authorities.
5. In the said affidavit, the petitioner avers that he was a student at the respondent having been admitted to the institution in September 2012 to undertake a degree course in Bachelor of Science in Community Resource Management. He states that he continued in the respondent university as a student and obeyed and complied with the respondent's rules and regulations.
6. According to the petitioner, sometime on 7th November 2013, while he was watching cultural week performances at Bishops Square, within the respondent's premises, he was accosted by

- Bricks Security Guards personnel accompanied by two other people. He was allegedly identified out of the blue by the two individuals accompanying the Bricks Security Guards personnel as being one of the people involved in an alleged criminal activity that had allegedly occurred on 14th September 2013. He was hurriedly thrown into the Bricks Security Guard's rapid response vehicle and taken to the security offices, where he was accused of being part of a robbery that had occurred at the railway line on 14th September 2013.
7. Although he denied the accusations, he was taken to his hostel room where a search was conducted, but nothing was found in his room. He was then taken back to the security office where his student card was confiscated, but was returned to him two days later.
 8. The petitioner states that in the first week of December 2013, he was requested through a short text message(SMS) from the respondent's secretary's office of Senate Affairs to collect a letter from the said office. Although he had then finished his end of semester exams and gone home, he returned to the respondent where he was given a letter dated 28th November 2013 suspending him from the respondent with immediate effect pending appearance before the Senate Students Disciplinary Committee (SDC). While he expected to appear before the SDC when the respondent reopened in January 2014, he did not hear from the Committee.
 9. He therefore instructed his Advocates, Gitau Gikonyo & Company Advocates, to write to the respondent, which they did in their letter dated 27th January 2014. He then received an SMS around 15th February 2014 requiring him to attend the Students Disciplinary hearing on 20th February 2014.
 10. The petitioner alleges that he was not allowed to be accompanied by his advocate to the hearing, nor was he told the nature of the charges he was to face or the full facts and evidence in respect thereof. He was therefore not able to prepare anything in his defence, but he nonetheless attended the disciplinary proceedings on the morning of 20th February 2014.
 11. The petitioner alleges that as he entered the room where the disciplinary proceedings were to take place, he was handed the letter dated 17th February 2014 requiring him to attend the disciplinary hearing. It was on reading the letter, inside the SDC disciplinary proceedings room, that he learnt that he was to answer charges relating to a number of robberies that had allegedly taken place along the railway line outside the Kenyatta University perimeter wall. He states that he had no choice, despite the ambush and scanty information on the charges that he was to face, but to appear before the SDC and mount a defence.
 12. The petitioner alleges that the SDC took into account irrelevant matters and failed to take into account relevant matters in arriving at its decision; that he was not given an opportunity to cross examine the witnesses who gave evidence against him in order to test the veracity and credibility of the witness; that he was not given the opportunity to call and lead any witnesses in support of his defence, and neither was he afforded adequate opportunity to be heard on the charges facing him as he was threatened that he would be thrown out of the disciplinary proceedings.
 13. The petitioner further alleges that he was denied the right to engage an advocate to represent him during the proceedings even though the accusations against him were very serious. It is also his contention that the proceedings were conducted in an intimidating manner, and it was apparent that the respondent had already decided to find him guilty and expel him. He was informed, three months later by letter dated 27th May 2014, that the SDC had found him guilty of committing robbery along the railway line and he was therefore expelled from the respondent.
 14. The petitioner was given 14 days to appeal against the decision of the SDC. He states that being dissatisfied with the findings and decision of the SDC, he instructed his Advocates on 21st February 2014 to issue a notice of appeal which they did via letter dated 9th June 2014 addressed to the Chairman of the Senate. He also lodged his appeal by his letter which he states was

erroneously dated 20th June 2014.

15. The petitioner alleges that neither he nor his advocate got the record of proceedings before the SDC from the respondent to enable him prepare his appeal. His advocates therefore forwarded grounds of appeal via letter dated 10th July 2014. He was informed that his appeal would be heard on 30th July 2014, when he was required to appear. He alleges that his advocate was not allowed to represent him at the hearing of the appeal which proceeded on 30th July 2014.
16. The petitioner contends that since then, he has never been informed of the outcome of the appeal, despite numerous reminders and intervention by his advocate. He relies in this regard on a letter from his advocate dated 18th November 2014.
17. The petitioner avers that he had a legitimate expectation that he would be accorded a fair hearing that would enable him proceed with his studies but the respondent acted unfairly and in breach of its rules, and thereby deprived him of his right to education and career opportunity. He further contends, on the basis of advice from his advocate on record, that the respondent has acted in contravention of his fundamental rights as guaranteed under Articles 43, 47 and 50 of the Constitution. It is also his contention that the respondent has breached its official duties and contravened various other laws.
18. He states in this regard that the SDC had no jurisdiction to entertain the disciplinary hearing; and that it failed to uphold and accord him the right to fair administrative action under Article 47 of the Constitution.
19. He contends further that Clause 4(b) of the regulations governing the conduct and discipline of student only empowers the SDC to deal with all general offences committed by students in their day to day activities within the University. According to the petitioner, section 4 of the Criminal Procedure Code provides that an offence under the Penal Code may be tried by the High Court or by a subordinate court. Accordingly, robbery is a serious offence under the Penal Code and the respondent did not therefore have authority to pass a decision on a matter it has no jurisdiction over.
20. In his supplementary affidavit sworn on 3rd July 2015, the petitioner notes that the respondent has admitted that he was arrested for alleged involvement in a series of robberies along the railway line outside the respondent's perimeter wall. He also alleges that the respondent has never disclosed the names of the persons he is supposed to have robbed, and only did so in the replying affidavit in response to the petition. He also questions the inclusion of certain evidence at the SDC, such as the fact that one of the complainants was robbed of a Nokia phone, yet such information had allegedly not been reported to the police a day after the alleged robbery.
21. He also reiterates his averments that he was not allowed to question the two persons who had identified him as one of the persons who had robbed them, and that his statement and that of one of his witnesses were not relied on, nor was his friend called as a witness at the hearing by the SDC.
22. The petitioner further notes that the minutes relied on by the respondent relate to proceedings that took place on 21st February 2014, while the proceedings against him took place on 20th February 2014. He terms the documents relied on by the respondent as misleading and intended to mislead the court with respect to the conduct of the proceedings against him.
23. The petitioner further observes that the respondent wishes to adduce additional evidence at the appeal stage, and it is his contention that this shows that the respondent conducted shoddy investigations at the SDC stage, in blatant disregard of the rules of natural justice and procedure.
24. To the respondent's contention that it can conduct disciplinary proceedings with respect to the alleged offence of robbery with violence, the petitioner averred that the regulations provide that

the respondent can deal with general offences but specifically exclude serious offences, and robbery with violence is a serious offence which carries the death penalty.

25. In his submissions on behalf of the petitioner, Mr. Gikonyo reiterated the averments by the petitioner set out above. It was his submission that the respondent had no jurisdiction to entertain at its disciplinary committee sitting of 20th February 2014 the allegations made against the petitioner which were that he had been charged with criminal offences. In the petitioner's view, the SDC had no jurisdiction to hear a complaint that related to criminal offences. Counsel relied in this regard on the decision of **Boniface Waweru vs Mary Njeri & Another H. C Misc. Application No 639 of 2005**. Mr. Gikonyo submitted, secondly, that as the petitioner was suspended on account of some robberies, the question was whether a *quasi-judicial* tribunal can try a case of robbery, referring the Court to section 4 of the Criminal Procedure Code and section 295 and 296 of the Penal Code which define the offence of robbery.
26. It was his submission, thirdly, that for the tribunal to try the petitioner, there were regulations under which the committee was constituted, regulation 4(b) of which stated that the SDC could deal with general offences related to student activities within the University. As the petitioner was alleged to have committed an offence outside the university the committee did not have jurisdiction. He observed that the respondent has confirmed that the petitioner was found guilty of committing a major offence, so it had no authority to hear major offences.
27. The second main issue identified by Mr. Gikonyo was whether the petitioner was accorded a fair hearing and fair administrative action. In his view, such an inquiry would commence with the question whether he was given adequate notice of the charges against him. His submission was that in the letter dated 28th November 2013, the petitioner was simply informed that he was involved in a series of robberies at the railway line, but no particulars were given. The letter of 17th February 2014 did not give him information on the alleged robberies either. Mr. Gikonyo referred the Court to the decision in **Winrose Gathigia vs Kenyatta University H. C. Misc. Application No. 1029 of 2007** for the proposition that one must be given adequate particulars of the charges he was to face.
28. His second contention on this limb was that the petitioner was not given adequate time to prepare his defence. He was sent a text message on February 15, 2014, and given the letter dated 17th February 2014 just when he was about to enter the room, so he had no chance to prepare.
29. It was his submission, thirdly, that the rules of natural justice, especially on hearing the other side, were not followed. He submitted that during the inquiry, the petitioner was never heard. He had his own statement and a statement from a witness, but both statements were not placed before the tribunal. The petitioner was also not present when the complainants gave their evidence, but was questioned by the secretary of the committee. He was also denied the right to cross-examine his accusers, so no fair hearing was accorded to him. Mr. Gikonyo relied on the decision in **De Souza vs Tanga Town Council (1961) EA 377** on the principles to guide domestic administrative tribunals.
30. The petitioner was also aggrieved by the time the respondent had taken to resolve his appeal against his expulsion, and accuses the respondent of inordinate delay and of denying him his right to education. He asks the Court to grant him the following prayers:
 1. ***A declaration that the disciplinary hearing, the appeal thereafter and the expulsion of the petitioner from University without considerations of due process and all the tenets of natural justice are illegal, irregular and a violation of article 43 and 47 of the constitution, therefore, null and void ab initio.***
 2. ***A declaration that the respondent has contravened, denied, violated and infringed upon the petitioner's constitutional right to an administrative action that is lawful, reasonable and procedurally fair guaranteed under Article 47(1) of the Constitution.***

3. *A declaration that the respondent has contravened, denied, violated and infringed upon the petitioners right to education under article 43(f) of the Constitution.*
4. *Judicial review order of certiorari do issue to remove into the High Court and quash the proceedings of the 21st February 2014 and decision of the 27th May 2014 of the Students disciplinary Committee of the Respondent to expel the petitioner from Kenyatta University and all or any other decision, minutes and or proceedings approving recommending and authorizing the discontinuation of the petitioner herein on 27th May 2014.*
5. *The Honourable Court do issue a judicial review order of mandamus to compel the respondent, Kenyatta University to immediately readmit the petitioner into the degree course Bachelor of Science in Community Resource Management.*
6. *Judicial review order of prohibition restraining and/or prohibiting the respondent by themselves, their agents, servants, employees or any other person(s) acting on their instructions and/or direction from subjecting the petitioner to victimization and or any further disciplinary action on the same matter.*
7. *An order do issue directing the respondent whether by its employees, servants or agents or any of them or otherwise howsoever from discriminating or victimizing the petitioner in any manner whatsoever following his reinstatement and re-admission to Kenyatta University*
8. *The respondent be condemned to pay damages in compensation for the contravention of the petitioner's constitutional rights, together with your petitioner's costs of and incidental to this petition*
9. *The court to make issue and give such further, other and consequential orders, writs and directions as it may consider just, equitable, expedient and/ or appropriate to grant.*

The Case for the Respondent

31. The respondent opposes the petition and has filed an affidavit in reply sworn by Prof. Paul K. Wainaina on 25th May 2015. It has also filed submissions dated 5th June 2015. Its case was presented by Learned Counsel, Mr. Mwangi.
32. In his affidavit, Prof. Wainaina, the Deputy Vice Chancellor (Administration) of the respondent, avers that on 7th November 2013, the petitioner was arrested at the respondent's Bishop Square for alleged involvement in a number of robberies along the railway line outside the respondent's perimeter wall. The petitioner was on the same date positively identified by two people as being one of the persons who, in a group of others, robbed them of various items.
33. In the case of John Nyaga Ndigwa, the allegation was that the petitioner and others robbed him of his KCSE result slip, school leaving certificate, Nokia 110 phone and cash in the sum of Ksh3000. In the second incident, a Joseph Mugambi Ndigwa identified the petitioner as among the group of persons who robbed him along the railway line of his bag, and in the course of the robbery, the petitioner hit him with a stone causing him bodily harm. The two incidents were reported at Kiambu Police Station OB No 20/11/9/2013 and at Maziwa Police Station OB No 14/14/9/2013 respectively.
34. Prof. Wainaina further avers on behalf of the respondent that the Directorate of Security services made a report to the respondent of the petitioner's involvement in the series of incidents of robbery at the railway line in contravention of the respondent's Rules and Regulations Governing Student Conduct. The respondent therefore suspended the petitioner by its letter dated 28th November 2013 pending his appearance before the Student's Disciplinary Committee.
35. The respondent further avers that by its letter dated 17th February 2014, it invited the petitioner to

- appear before the SDC on 20th February 2014. The letter contained the charges preferred against the petitioner. Prof. Wainaina avers that the respondent therefore carried out its duty diligently by according the petitioner a fair hearing before the SDC. It is also his averment that the letter of acceptance to abide by the respondent's Rules and Regulations, which the petitioner executed on the 30th August 2012, empowers the SDC to hear all general offences committed by students in their day to day activities in the University. It is his deposition therefore that the SDC that heard the disciplinary case against the petitioner had the proper quorum and jurisdiction.
36. The respondent further avers that the right to legal representation is not fundamental to a disciplinary hearing, and the lack of such representation in the case of the petitioner did not prejudice his case before the SDC.
37. The respondent states that upon consideration of the evidence before the SDC and the petitioner's explanation, he was found guilty of the offences and was consequently discontinued. He was however, afforded a right of appeal against the decision to the Students Appeals Committee within 14 days, before which he appeared on 30th July 2014.
38. Prof. Wainaina avers that at the hearing of the petitioner's appeal, it was felt that more documents were required to assist the Committee in arriving at a decision. The respondent's Director of Security Services was requested to provide more documents, including copies of a P3 form and medical report from the clinic where Joseph Mugambi Ndigwa, the complainant was treated after the attack, and a statement from a lady who was with the victims when they were robbed. According to Prof. Wainaina, the respondent's Director of Security wrote on 18th September 2014 informing the Committee that he could not get the documents and required more time to furnish the Committee with the documents. The respondent deposes that on 29th December 2014 the Director of Security Services forwarded the documents to the Committee in support of the charge preferred against the petitioner.
39. It is therefore averred on behalf of the respondent that to grant the prayers sought by the petitioners would amount to the law aiding the wrongfulness of the petitioners.
40. In his submissions on behalf of the respondent, Learned Counsel, Mr. Mwangi argued that it was crucial for the Court to appreciate the sensitivity of this particular case, which sensitivity should not only inform the Court's understanding of the difficult position the respondent found itself in but also the outcome of the case. He reiterated the averments of Prof. Wainaina that the case involved a former student who had been positively identified by two of his colleagues as being part of a group that attacked and robbed them. Both attacks happened in close proximity to the University at a railway line along the university's perimeter wall, while the victims were in the cause of activities that can be characterized as university affiliated activities.
41. Learned Counsel observed that the petitioner's claim against the respondent was based on two broad grounds: that the SDC lacked jurisdiction to react to the alleged offence through a disciplinary process, and secondly, that the manner in which the process was carried out was improper.
42. On the question of jurisdiction, the respondent's submission is that the petitioner's position is untenable. Its position is that the fact that a matter is criminal in nature does not mean that a criminal court has exclusive jurisdiction to deal with the matter. It is its submission that the process before the SDC was not a criminal trial but disciplinary proceedings properly within the university's functions. According to the respondent, as regulation 3(i) on drug taking and drug possession illustrates, even the University's own rules and regulations recognize that there can be cases of indiscipline that can equate to criminal offences.
43. The respondent terms the petitioner's contention that the alleged offence took place outside the respondent's premises as a tenuous argument which presupposes that the University's power to

deal with disciplinary issues is geographically confined. According to the respondent, its rules and regulations recognize that it can deal with indiscipline by a student outside the university. Its case, however, was that the location where the offence took place actually traverses the university perimeter wall, with the potential that it is university students who are affected.

44. In response to the petitioner's complaints about the process he was subjected to, the respondent observes, first, that the petitioner has conceded in his submissions that he was accorded a hearing before he was expelled. To his complaint that he was not given sufficient time to prepare his defence, it contends that the charges facing the petitioner were brought to his attention as far back as 28th November 2013 in the letter informing him of his suspension. These charges, according to the respondent, were the same charges that were captured in the invitation to appear before the committee 3 months later in February 2014.
45. The respondent agrees with the petitioner with respect to the standard to be met in processes such as the petitioner was subjected to, and in particular his reliance on the principle set out in the case of **De Souza vs Tanga Town Council** (supra) that a tribunal is not required to treat the inquiry as a trial.
46. With respect to the delay in dealing with the petitioner's appeal, the respondent's position is that it is awaiting documents with respect to the attack and injuries sustained by the victims of the alleged robberies, as well as a statement from a witness. Nonetheless, in its view, even were the petitioner's complaint with respect to the delay legitimate, the remedy would not be to quash the proceedings before the SDC but to expedite the appeal process.

Petitioner's Submissions in Reply

47. In his response on behalf of the petitioner, Mr. Gitau submitted that the respondent had taken the position that its proceedings were not a criminal trial and that the regulations allowed it to hear the matter. It was his submission that in that event, the respondent should have handed the petitioner over to the relevant authorities so that the matter is investigated and he is charged.
48. To the respondent's contention that its rules allow it to try cases on matters that occur outside the university, his response was that the rules do not allow this, and the respondent should not make rules that it does not follow.

Determination

49. I have considered the pleadings and submissions of the parties, as well as the documents relied on and the judicial authorities in support of their respective cases. As is evident from the prayers sought by the petitioner and indeed is the undisputed law, a court dealing with a matter such as this is not concerned with the merits of the decision that is under challenge, but the process of arriving at the said decision. As was held in the case of **Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** with respect to the parameters of judicial review:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.”

50. I note that the parties have identified the following as the issues that arise for determination:
- i. *Whether the petitioner was given adequate notice of the charges he was to face before the disciplinary committee;*

- ii. *Whether the petitioner was accorded a fair hearing and fair administrative action;*
 - iii. *Whether the respondent acted outside its jurisdiction and ultra vires in hearing and determining an offence of a criminal nature;*
 - iv. *Whether the respondent observed the rules of natural justice in handling the petitioner's case.*
- li. Issues i), ii) and iv) above can be condensed into a consideration of the question whether the respondent observed the rules of natural justice in the conduct of the disciplinary proceedings against the petitioner. I will therefore consider the issue under the various heads that he has raised.

Whether the Respondent Observed the Rules of Natural Justice

52. The petitioner has impugned the proceedings against him in three respects in this regard. First, it is his case that he was not given sufficient notice of the charges against him, and was therefore not given sufficient time to prepare his defence. Secondly, he was not permitted to have his Advocate present during the proceedings, and was therefore denied legal representation. Thirdly, it is his contention that he was not allowed to confront his accusers or to cross-examine them.

Time to Prepare Defence

53. The evidence before me indicates that the petitioner was notified by the letter dated 28th November 2013 that he was to face disciplinary proceedings related to the robberies along the railway line. He contends, however, that the first information he received was by short text message in December 2013 requesting him to collect a letter from the office of Senate Affairs. He also alleges that he was informed by way of short text message that he should attend a hearing before the Student Disciplinary Committee on 20th February 2014. On the date of the hearing on 20th February 2014, he alleges that he was handed a letter backdated to 17th February 2014 regarding the charges that he was to face at the hearing.

54. The respondent's answer to this contention is that the petitioner was informed in the letter of suspension dated 28th November 2013 of the charges facing him. It concedes also that he was invited by letter dated 17th February 2014 to appear before the Students Disciplinary Committee. It does not say when this letter was sent to the petitioner.

55. On these facts, it would appear that there was inadequate time given to the petitioner to prepare for the hearing. The petitioner was invited to the disciplinary by way of a letter written three days before the hearing. There is no evidence before me to indicate how it was dispatched to the petitioner, and his averment that it was handed over to him on the morning of the hearing cannot be discounted. I therefore find, on the material before me, that while the petitioner was aware of the charges facing him regarding his involvement in a series of robberies along the railway line near the respondent's perimeter fence, he was not given adequate time to prepare for the hearing.

Right to Legal Representation

56. The petitioner alleges that he was not permitted to be represented by his advocate, and that his request to have his advocate present was turned down.

57. The respondent denies that the petitioner was denied legal representation, and that he did not request for such representation. It refers to minutes dated 21st February 2014 to argue that the petitioner did not request for or complain about the right to legal representation, and refers to the case of **Oluoch Dan Owino vs Kenyatta University High Court Petition No. 54 of 2014** in support.

58. In the **Oluoch Dan Owino** case relied on by the respondent, however, I expressed the following

view with respect to legal representation in proceedings such as the petitioner now faces:

[65].”*The right of a party to be represented by Counsel in quasi-judicial proceedings such as the petitioners were subjected to is well recognized, but is subject to the rules of procedure of the tribunal to which a party is appearing before, and must be requested for before a violation of the right to legal representation can be alleged. In the case of Republic vs Pwani University College Ex-parte Maina Mbugua James & 2 Others Misc App No. 28 of 2009, the court stated:*

“The respondent’s contention is that there was no denial of legal representation since there was no such request in the first instance. There doesn’t seem to be a hard and fast rule – going by the different approaches – in Enderby Town FC Ltd vs The Football Association (1971) 591 at 605 Lord Denny ruled: “It may be a good thing for the proceedings of a domestic tribunal to be conducted informally, without legal representation. Justice can often be done better by a good layman than by a bad lawyer.” The situation in Kenya was captured in the case of Geoffrey Mwangi Kariuki vs University of Nairobi. – but where the distinction can immediately be drawn in that the college Disciplinary Committee refused to allow Geoffrey to be represented by advocates in the proceedings, and the High Court ruled that he was entitled to such representation. My own view is that if an individual requests for legal representation, then he should be entitled to such representation but in the present scenario there was no such request and no such denial, so the breach alleged does not arise at all.” (Emphasis added).

59. The petitioner in this case alleges that he requested for legal representation, but the respondent refused to allow his advocate to be present at the hearing. The respondent have relied on the minutes attached to the affidavit of Prof. Wainaina to submit that no such request was made. I have, however, some concerns with regard to these minutes. It is common ground that the petitioner was summoned before the Committee for proceedings held on Thursday, 20th February 2014. In his affidavit in opposition to the petition, Prof. Wainaina deposes as follows:

7. “Subsequently, via letter dated 17th February 2014, the petitioner was invited to appear before the SDC on 20th February 2014 which letter contained the charges preferred against the petitioner. I therefore believe that the respondent carried out its duty diligently by according the petitioner a fair hearing before the SDC”.

60. However, as the petitioner points out, the minutes that the respondent has adduced in evidence are for proceedings that allegedly took place on Friday, 21st February 2014. The petitioner contends that the respondent has, in effect, manufactured these minutes for the purposes of this petition. For my part, I will leave it at the observation that no credible minutes have been placed before the Court that would allow a finding that there was no request for legal representation by the petitioner. On the material before me, I am constrained to find that the petitioner requested for, but was denied, legal representation.

Right to Cross-examine Witnesses

61. The petitioner also alleges that he was not allowed to cross-examine his accusers, and that his witness statements were not considered. The respondent does not address itself to these allegations. However, a perusal of the minutes it has presented as representing the proceedings before the Students Disciplinary Committee bears the petitioner out. The minutes indicate that the evidence of the two witnesses against the petitioner were reported to the SDC. There is no indication that the witnesses were present, or that the petitioner was allowed to ask any questions. The minutes also indicate that the petitioner was interviewed. There is no indication that the respondent considered his witness statements, or that such statements were presented before it.

62. Taken together, the proceedings before the respondent’s SDC against the petitioner did not accord with the rules of natural justice, and were in violation of the constitutional requirement for fair administrative action encapsulated in Article 47, under which a party is entitled to administrative action that is “*expeditious, efficient, lawful, reasonable and procedurally fair.*”

63.Indeed, the manner in which the respondent has dealt with the petitioner's appeal underscores the shortcomings of its process. At paragraph 12 of his affidavit, Prof. Wainaina avers as follows:

12. "On 30th July 2014, the petitioner appeared before the students appeals committee but it was felt that more documents were required to assist the Committee in arriving at a decision. The respondent's Director of Security Services was requested to provide more documents including copies of P3 form, medical report from the clinic where Joseph Mugambi Ndigwa, the complainant was treated after the attack and a statement from a lady who was with the victims when they were robbed."

64.The question must arise: can the Appeals Committee, in considering the petitioner's appeal, rely on additional evidence that was not before the SDC that made the initial decision to expel the petitioner, whose decision the petitioner was appealing against? Does it mean that the evidence presented before the SDC was not sufficient? Did the Appeals Committee intend to give the petitioner an opportunity to answer such new evidence as may be presented before it?

65.In my view, the petitioner has made out a clear case of procedural impropriety, which started at the inception of the disciplinary process against him, and which has continued with the path the respondent has taken in considering his appeal. The decision that the respondent took against the petitioner was tainted with irregularity, and cannot stand. I need not reiterate the words of the Court in **De Souza vs Tanga Town Council** (supra), which both the petitioner and respondent agree contain the guidelines on how domestic administrative tribunals should operate, the essence of which is that such tribunals must act justly and reach just ends by just means.

Whether the Respondent Acted in Excess of its Jurisdiction

66.The second issue that arises in this matter is whether the respondent acted in excess of its jurisdiction in subjecting the petitioner to disciplinary proceedings with respect to a matter that was criminal in nature. The petitioner argues that the respondent had no jurisdiction to deal with the charges facing him as its regulations specifically exclude serious offences. He refers to paragraph 2 of its General Offences clause which states that ***"The Committee deals with all general offences committed by students in their day to day activities within the university other than offences the University considers as major offences"***. His submission is that robbery was at the time he is alleged to have committed it, and still is, a major offence. He argues therefore that the jurisdiction of the respondent was therefore expressly ousted.

67.In his decision in **Judicial Review Appln. No. 155 of 2013- Zachariah Wagunza and Another vs Office of The Registrar Academic Kenyatta University and Others**, Odunga J was confronted with a similar argument. In deciding that the SDC had jurisdiction under the General Offences regulation to deal with accusations of theft against a student, he observed as follows:

[37.] "The next ground relied upon by the applicants is that the Students Disciplinary Committee entertained a criminal case when it had no jurisdiction to do so. That theft is a criminal offence cannot be doubted. However theft may also constitute the tort of trespass to property or conversion. It is therefore my view and I hold that theft or conversion may well fall under "general offences". To hold otherwise would in my view take away with one hand the powers given to the Disciplinary Committee to discipline errant students by the other hand. Accordingly, the mere fact that the allegations made against the applicants could well have been tried in a criminal court did not deprive the Respondents of the jurisdiction to investigate the same since the alleged offence occurred within the precincts of the University and was allegedly committed by students against a lecturer."

68.The petitioner's argument in this regard is similar to the applicants' in the above case, and just as fascinating, but ultimately, untenable. He was accused of participating in incidents of robbery with violence against his colleagues at the university at the railway line and the respondent's perimeter wall. His argument, if accepted, would mean that the respondent, even if a criminal offence was

committed inside its wall, or even a lecture theatre, would have no power to discipline the perpetrator. It is an argument that I find unacceptable, and unsupportable. It is my view, and I so hold, that the respondent was within its jurisdiction in subjecting the petitioner to its disciplinary processes.

69. Nonetheless, as I have found that the respondent did not follow the rules of natural justice and violated the petitioner's right to fair administrative action in the disciplinary proceedings against him, it is my finding that the decision to expel the petitioner cannot stand.

70. However, I am not satisfied that the violations and procedural improprieties in the conduct of the SDC proceedings against the petitioner, given the circumstances, entitle him to any relief in damages as claimed. At best, given the circumstances, he is entitled to a consideration of the complaints against him afresh, with the respondent adhering to the rules of natural justice in its proceedings.

71. I therefore make the following orders:

- 1. I declare that the proceedings before the respondent's Student's Disciplinary Committee held on 20th February 2014 violated the petitioner's right to fair administrative action guaranteed under Article 47(1) of the Constitution and the same are hereby quashed.***
- 2. The disciplinary case against the petitioner is remitted to the respondent's Students' Disciplinary Committee for commencement of fresh proceedings to be conducted in accordance with the rules of natural justice within sixty (60) days from the date of this judgment.***
- 3. Each party shall bear its own costs of the petition.***

Dated, Delivered and Signed at Nairobi this 13th day of November 2015

MUMBI NGUGI

JUDGE

Mr. Gitau Gikonyo & Clare Mwangi instructed by the firm of Gitau Gikonyo & Co. Advocates for the petitioner.

Mr. Mwangi instructed by the firm of Mohammed Muigai & Co. Advocates for the respondent.