



**Mwanje v ICS Technical College & another (Application 154 of 2024)  
[2025] KEHC 32 (KLR) (Judicial Review) (13 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 32 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 154 OF 2024  
J NGAAH, J  
JANUARY 13, 2025**

**BETWEEN**

**HELLEN MUHONJA MWANJE ..... APPLICANT**

**AND**

**ICS TECHNICAL COLLEGE ..... 1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL EXAMINATION COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The applicant’s application is a motion dated 12 July 2024 expressed to be brought under sections 8 and 9 of the *Law Reform Act*, Cap. 26 and Order 53 rules 2 and 3 of the Civil Procedure Rules. The applicant’s prayers are as follows:
  1. That the applicant be granted an order of Certiorari to quash the decision made by the 1<sup>st</sup> respondent on 8 July 2024 barring the applicant from sitting her KNEC Diploma in Secretarial Studies exams commencing on 15<sup>th</sup> July 2024.
  2. That the applicant be granted an order of Mandamus compelling the 1<sup>st</sup> respondent to issue the applicant with an Exam Card and Index Number to enable her sit for the Diploma in Secretarial exams slated for 15<sup>th</sup> July 2024.
  3. That the applicant be granted an order of Mandamus compelling the 2<sup>nd</sup> respondent to issue the Applicant with the KNEC Exams that are set to commence on 15<sup>th</sup> July 2024.
  4. The costs of this application be provided for.”
2. The application is based on a statutory statement dated 10 July 2024 and an affidavit verifying the facts relied on sworn on even date by the applicant herself.



3. According to the applicant, at the time of filing this suit, she was a first-year student at the 1<sup>st</sup> respondent college where she had enrolled in the School of Business for a diploma course in secretarial studies. On 9 March 2024, she registered and paid for the examinations by the Kenya National Examination Council(KNEC). The examinations were scheduled to be taken in July, 2024.
4. On 6 July 2024, the 1<sup>st</sup> respondent, through its official cell phone number, put a post on the schools' WhatsApp group informing students scheduled to sit for the KNEC examinations in July 2024 to submit their business plans and thereafter collect their examination cards and Index Numbers on 8 July 2024.
5. On 8 July 2024, the applicant successfully submitted her business plan and proceeded to the 1<sup>st</sup> respondent's examination department to collect her examination card and index number. However, one of the 1<sup>st</sup> respondent's officers informed her that she could not get the examination card and index number as her name was not on the list of candidates sitting for the examinations.
6. The applicant contends that if the school was not willing to provide her with the examination card and index number, it ought to have informed her early enough. It is her case that she had legitimate expectation that she would sit for the July 2024 examinations, having paid the requisite exam fees and complied with all the set requirements.
7. Ms. Judith Ngene Musyoka swore a replying affidavit on behalf of the 1<sup>st</sup> respondent opposing the application. She has sworn that she is the director of the 1<sup>st</sup> respondent and that the latter is in the business of education; offering training in artisan, certificate and diploma courses.
8. The college is approved by the Ministry of Education, Science and Technology and fully accredited by the Technical Vocational Educational and Training Authority (TVETA) to award artisan, certificate and diploma programs. The college is also an accredited KNEC Centre.
9. In the year 2023, the applicant applied and was admitted to the 1<sup>st</sup> respondent college. According to the applicant's admission letter, booking or registration for external examinations was to be done three months prior to the examination date.
10. On diverse dates in the month of February, more particularly on the 13<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> February, 2024, the applicant was notified that the deadline for registration for the KNEC examinations for July 2024 was on 19 February 2024. However, the applicant never visited the 1<sup>st</sup> respondent's offices to register for the examinations by 19 March 2024 and, therefore, she was not registered for the examinations slated for 15 July 2024. Accordingly, the 1<sup>st</sup> respondent cannot be faulted for the failure by the applicant to register for the examinations.
11. Mr. Justus Wabwile swore a replying affidavit on behalf of the 2<sup>nd</sup> respondent. He introduced himself as "the Assistant Director, TVET Examinations Assessment Administration of the 2<sup>nd</sup> respondent, a department which is in-charge of registration, administration and certification of Business & Technical, TVET examinations."
12. Mr. Wabwile has sworn further that he has been involved in educational assessment, awarding and grading of examinations results since he joined the 2<sup>nd</sup> respondent in 2008 for both school and post school examinations. Thus, the issues raised in the instant application fall within his duties and responsibilities.
13. He has also sworn that the 2<sup>nd</sup> respondent is established under the KNEC [\*Act no.29 of 2012\*](#). Its functions include:



- (a) Setting and maintaining examination standards, conducting public academic, technical and other national examinations within Kenya at basic and tertiary levels.
- (b) Award of certificates or diplomas to candidates in such examinations.
14. In execution of its mandate of setting and maintaining examination standards, conducting public academic, technical and other national examinations within Kenya at basic and tertiary levels, the 2<sup>nd</sup> respondent diligently undertakes the conduct of the business and technical examinations, guided by the provisions of the KNEC Act. The 2<sup>nd</sup> respondent is also guided by the provisions of the TVET [Act No. 29 of 2012](#).
15. The 2<sup>nd</sup> respondent only offers examinations to institutions that have been accredited, licensed and registered by the TVET Authority and have been approved as examination centres by the 2<sup>nd</sup> respondent in line with the provisions of the law.
16. As far as it is relevant to the instant application, the 2<sup>nd</sup> respondent issued a circular dated 10 July 2023, Ref: KNEC/TVET AA/REG/2023/002 on registration for the 2023/2024 Business & Technical Examinations. According to this circular, the registration period for the July 2024 series of examinations of institutional candidates, including Business Single and Group subjects, to which the applicant apparently belonged, was between 1 March and 30 April 2024.
17. The 1<sup>st</sup> respondent acts as the 2<sup>nd</sup> respondent's agent with respect to the registration for the examination or examinations which, as far as I understand the 2<sup>nd</sup> respondent, are for courses which the 1<sup>st</sup> respondent is approved to offer. The 2<sup>nd</sup> respondent does not interact with the applicant or any student, for that matter, as far as registration of students for examinations is concerned. The registration is conducted by the training institution or college, in this case, the 1<sup>st</sup> respondent, which continuously assesses the student or candidate. To be precise, the 2<sup>nd</sup> respondent registers candidates through examination centres of which the 1<sup>st</sup> respondent is one. The examination centres are, therefore, required to register candidates who have been trained in accordance with strict compliance with the syllabus.
18. Mr. Wabwile has sworn that according to what he has described as "the nominal roll" extracted from the 2<sup>nd</sup> respondent system, the applicant neither registered nor sat for the diploma in secretarial examinations for July 2024. The 2<sup>nd</sup> respondent offered the examination to all students who registered for the Business Technical Education Programme (STEP) throughout the Country from the 15 July 2024 to 2 August 2024. In the circumstances, the order of mandamus against the 2<sup>nd</sup> respondent would be untenable.
19. I have considered the applicant's and the respondents' submissions but I need to point out from the very outset, that the applicant's application has been, to some degree overtaken by time. At least prayers 2 and 3 of the application, cumulatively sought to have the applicant sit for the Kenya National Examinations Council's examination scheduled for 15 July 2024 which is now past. Despite the applicant's grievances, it is necessary the facts are put in their proper perspective to understand why it was always inevitable that this decision would be rendered post 15 July 2024.
20. To begin with the case tracking system shows that the substantive motion was filed on 12 November 2024, three days to the date when the examinations which the applicant was to sit for were set to be taken. In these circumstances, it could not have been possible for the motion to be served, heard and determined before 15 July 2024.



21. In appropriate cases, a conservatory or interim order would issue pending the hearing and determination of the substantive suit; however, such an order would not have been viable in the circumstances of the applicant's case because first, for reasons that will become apparent in due course, there was no factual or legal basis upon which to direct the 2<sup>nd</sup> respondent to direct the 2<sup>nd</sup> respondent to register the applicant as a candidate for the examinations that were to be taken and issue her with the examination card.
22. Secondly, if such an order was to be granted, there would be little else left for litigation and determination. In other words, the application would have been determined at ex parte stage, a position that is untenable in law. It was necessary that the respondents or any of them be given an opportunity to be heard if any orders were to be made against them or against any of them.
23. That said, the applicant's application is not wholly academic as prayer 1 is available for evaluation. Again, based on the material before court, and proceeding on the assumption that the applicant is still the 1<sup>st</sup> respondent's student, this Honourable Court is disposed to make findings that may regulate future interactions between the applicant and the 1<sup>st</sup> respondent, in particular and, if it will help, the interactions between the 1<sup>st</sup> respondents and its students in general.
24. It is also worth of note that under section 11 of the *Fair Administrative Action Act*, 2015, in judicial review applications, this Honourable Court is entitled to grant an order that is just and equitable. This section reads as follows:

11. Orders in proceedings for judicial review.

- (1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order-
  - (a) declaring the rights of the parties in respect of any matter to which the administrative action relates;
  - (b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;
  - (c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;
  - (d) prohibiting the administrator from acting in particular manner;
  - (e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;
  - (f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;
  - (g) prohibiting the administrator from acting in a particular manner;
  - (h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;
  - (i) granting a temporary interdict or other temporary relief; or
  - (j) for the award of costs or other pecuniary compensation in appropriate cases.



- (2) In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order-
- (a) directing the taking of the decision;
  - (b) declaring the rights of the parties in relation to the taking of the decision; (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or
  - (d) as to costs and other monetary compensation.
25. The question upon which the applicant’s application turns, which is the time when the candidates, including the applicant, ought to have registered for the July, 2024 series examinations, ought not be in dispute. According to the 2<sup>nd</sup> respondent, the registration period was between 1 March 2024 to 30 April 2024. In the submissions filed on the 2<sup>nd</sup> respondent’s behalf, it has been submitted as follows in respect to this particular issue:
- “The Applicant had a personal responsibility to register on time for said examination in accordance with instructions issued vide its circular, which circular indicated that registration would be conducted between 1<sup>st</sup> March-30th April 2024.”
26. The 1<sup>st</sup> respondent concedes that to be the position. In the admission letter addressed to the applicant a copy of which has been exhibited to the replying affidavit of Judith Ngene Musyoka and marked as “JNM2”, the 1<sup>st</sup> respondent wrote, inter alia, as follows:
- “We are pleased to inform you that you have been offered admission at ICS Technical College, for a diploma course in secretarial studies in the school of business.
- The first modules external diploma examination is scheduled at the end of the modules. You will be advised on booking and registration which is done three months to the examination date.”(Emphasis added).
27. As the applicant has sworn, the last date of the three months to 15 July 2024, when the external diploma examinations were taken, was on 15 April 2024. Although it appears to be earlier than the schedule provided by the 2<sup>nd</sup> respondent, this was the latest date by which the applicant ought to have booked and registered for the examination, assuming that the applicant was bound by the 1<sup>st</sup> respondent’s rather than the 2<sup>nd</sup> respondent’s schedule.
28. It has not been disputed that the applicant booked and registered for the examinations on 9 March 2024 which was way before the 2<sup>nd</sup> respondent’s deadline of 30 April 2024 and the 1<sup>st</sup> respondent’s deadline of 15 April 2024. Based on this fact, there is no valid or any valid reason why the 1<sup>st</sup> respondent did not register the applicant in time to sit for her examination of 15 July 2024.
29. The reason that “the applicant never visited our offices to register for the KNEC examinations by 19<sup>th</sup> February 2024 and was thus not registered to sit for the KNEC exams slated for 15<sup>th</sup> July 2024” is irrational. It is irrational for the simple reason that, even in the 2<sup>nd</sup> respondent’s own admission letter, the deadline for registration of the examinations in issue was 15 April 2024. It is also irrational because the purported deadline of 19 February 2024 was inconsistent with the 2<sup>nd</sup> respondent’s schedule of registration for these examinations.



30. I would agree with the applicant that having booked and registered for the 15 July examinations, it was her legitimate expectation that she would sit for the examinations as and when they became due. The ground of legitimate expectation in judicial review has been explained and applied by the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR where the court noted as follows:

“[263] Legitimate expectation” is a doctrine well recognized within the realm of administrative law, as is clear from the English case, *In re Westminster City Council*, [1986] A.C. 668 at 692 (Lord Bridge): “...the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation”.

[264] In proceedings for judicial review, legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in a public body retaining a long-standing practice, or keeping a promise.

[265] An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.

[266] Wade and Forsyth in their work, *Administrative Law*, 10th ed (pages 446-448), discuss the relevant legal principles on legitimacy of an expectation. For an expectation to be legitimate, it must be founded upon a promise or practice by the public authority, that is said to be bound to fulfil the expectation. Citing the House of Lord’s decision in *R. v. DPP ex p. Kebilene* [1999] 3 WLR 972 (HL), the learned authors observe that a statement made by a Minister cannot found an expectation that an independent officer will act in a particular way. They cited the case, *R. v. Secretary of State for Education and Employment, ex p. Begbie* [2000] 1 WLR 1115 (CA), where the Court of Appeal held that an election promise made by a Shadow Minister did not bind the responsible Minister after a change of government. The authors cite the House of Lord’s decision in *R. v. DPP ex p. Kebilene*, for the principle that clear statutory words override any expectation howsoever founded.

[268] An illuminating consideration of the concept of “legitimate expectation” is found in the South African case, *South African Veterinary Council v. Szymanski* 2003(4) S.A. 42 (SCA) at [paragraph 28]: the Court held as follows:

The law does not protect every expectation but only those which are ‘legitimate’. The requirements for legitimacy of the expectation include the following:

- i. The representation underlying the expectation must be ‘clear, unambiguous and devoid of relevant qualification’: De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in



public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.

- ii. The expectation must be reasonable: Administrator, Transvaal v. Traub (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037). ii. The representation must have been induced by the decision-maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); Attorney-General of Hong Kong v. Ng Yuen Shiu [1983] 2 All ER 346 (PC) at 350h - j.
- iii. The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v. Caledon Divisional Council 1963 (4) SA 53 (C) at 59E - G.”

This was also referred to with approval in *Walele v. City of Cape Town and Others*; 2008 (6) S.A 129 (C.C.) paragraph 41. [269] The emerging principles may be succinctly set out as follows:

- a. there must be an express, clear and unambiguous promise given by a public authority;
- b. the expectation itself must be reasonable;
- c. the representation must be one which it was competent and lawful for the decision-maker to make; and
- d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.

31. In my humble view, the applicant’s application meets the threshold of the ground of legitimate expectation set by the Supreme Court. Granted, the 1<sup>st</sup> respondent is more of a private entity than a public body but under section 3 of the Fair Administrative Action, its decisions are subject to judicial review. This provision of the law reads as follows:

3. Application.

- (1) This Act applies to all state and non-state Application agencies, including any person
  - (a) exercising administrative authority;
  - (b) performing a judicial or quasi-judicial function under the Constitution or any written law; or
  - (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.

32. For the reasons given, I would exercise my discretion and grant prayer 1 of the applicant’s application to the extent that the 1<sup>st</sup> respondent’s decision of 8 July 2024 barring the applicant from sitting for the



Diploma examinations by the KNEC in secretarial studies that were set to commence on 15 July 2024 is hereby brought to this Honourable Court and quashed, accordingly.

33. In view of the fact that the examinations of 15 July 2024 have already been taken, it would be an exercise in futility to grant prayers 2 and 3 of the application. In any event, the order of mandamus wouldn't issue against the 2<sup>nd</sup> respondent considering it was the 1<sup>st</sup> respondent's obligation to register the applicant for the examinations.
34. Noting that the damage occasioned to the applicant for failure to sit for the July, 2024 is irreversible, I would have been prepared to award the applicant nominal damages, at the very least. But the applicant has not shown any interest in compensation of any sort and, therefore, I am not disposed to venture into that arena at all.

Nonetheless, the applicant will have the costs of the suit which shall also be borne by the 1<sup>st</sup> respondent. Orders accordingly.

**SIGNED, DATED AND POSTED ON CTS ON 13 JANUARY 2025.**

**NGAAH JAIRUS**

**JUDGE**

