



**DMO v Kisii University & 2 others (Petition E019 of 2024)
[2025] KEHC 1600 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
PETITION E019 OF 2024**

TA ODERA, J

FEBRUARY 18, 2025

**IN THE MATTER OF ARTICLES 2, 3, 20, 21, 22, 23,28,
29 (D), 47 OF THE CONSTITUTION OF KENYA, 2010;**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
UNDER ARTICLES 27,228, 29 (D), 47 OF THE CONSTITUTION OF KENYA, 2010;**

IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015;

IN THE MATTER OF THE UNIVERSITIES ACT NO. 42 OF 2012;

**IN THE MATTER OF THE KISII UNIVERSITY
CHARTER, LEGAL NOTICE NO. 225 OF 2013.**

IN THE MATTER OF THE DOCTRINE OF LEGITIMATE EXPECTATION

BETWEEN

DMO PETITIONER

AND

KISII UNIVERSITY 1ST RESPONDENT

THE VICE CHANCELLOR, KISII UNIVERSITY 2ND RESPONDENT

THE DEAN, SCHOOL OF LAW, KISII UNIVERSITY 3RD RESPONDENT

JUDGMENT

1. The petitioner herein is a student at Kisii university Faculty of Law admission number is LAPII/XXXX/20. The 1st Respondent is a public university established under section 13 of the Universities



Act of 2012 and of the Kisii University Charter which was enacted and published pursuant to the provisions of the Act as Legal Notice Number 225 of 2013. The 2nd Respondent is a holder of a statutory office established under Section 39 of the Universities Act of 2012 and Section 15 of the Kisii University Charter, Legal Notice number 225 of 2013; and who is the executive head of the university responsible for its administrative and academic matters and who is also the secretary to the University Council where the Petitioner studies. The 3rd Respondent is the administrative and academic head of the 1st respondent's school of law.

2. The Petitioner pleaded that he has since completed his studies from the institution and has even obtained clearance by the 3rd Respondent and obtained an admission at the Kenya School of Law for the academic year 2025. He was scheduled to graduate during 1st respondent's 13th graduation ceremony which was scheduled for 19th December, 2024 and his name was in the initial graduation list but the respondents unilaterally barred him from the same and the Petitioner finds himself barred unilaterally without cause from graduating without any cause.
3. Also, that attempts to resolve the issue has proved futile as the Respondents blatantly declined to include his name of the Petitioner in the graduation list nor even create an addendum to the graduation list.
4. Further that unless the respondents are restrained by this Honourable Court, the Petitioner's right education will be grossly punished, disadvantaged in a competitive education system and will be distanced from his right to a fair Administrative Action.
5. The petitioner also pleaded legitimate expectation; that upon completing his studies and being cleared by the respondents he expected to graduate on 19.12.24 and that the decision to remove his name from the graduation list has thus violated his rights.
6. The petitioner termed the actions of the respondents as arbitrary and callous action, perpetrated upon him by the Respondents.
7. The petition is supported by petitioner's supporting affidavit dated 16.12.24 where he deponed that the respondents had removed his name from the graduation list as he was owing school fees which is said was in arrears due to adjustment of the same upwards which he was not aware of. He said he later learnt that the same was for the year 2021 when the lecturers went on strike and they missed lectures for a semester. He said he cleared all the examinations and the university cleared him and he made an application to Kenya school of Law and secured a slot as per the admission letter. The petitioner lamented that his classmates were to graduate on 19.12.24 while was to be left behind and he urged that this would cause him psychological torture and trauma. He annexed his academic transcripts (DMO 1a-d), completion certificate and admission letter to the Kenya School of Law (DMO 3a and 3b), a screen shot of the final graduation list (DMO 5) and financial statement (DMO 4).
8. The petitioner sought the following prayers:
 - a. Declarations to the effect that the Respondent has breached the Petitioner's rights and statutory provisions inter alia
 - i. Right to equality and freedom from discrimination.
 - iv. Right to freedom from psychological torture.
 - v. Right to dignity.
 - vi. Right to fair administrative action.



- b. An order of prohibition to stop Kisii University 13th Graduation until the Petitioner is included in the graduation list of 19th December, 2019.
 - c. A mandatory injunction compelling the Respondents to include the name of the Petitioner in the graduation list of 19th December, 2024.
 - d. A mandatory injunction compelling the Respondents to issue an LLB degree certificate to the Petitioner.
 - e. Damages for harm, loss and injury suffered by the Petitioner caused by the action of the Respondents.
 - f. Costs of and incidental to these proceedings.
 - g. Such other, further additional, incidental and/or alternative reliefs or remedies as the Honorable Court shall deem just and expedient so to grant.
9. The respondent filed a replying affidavit of Dr. Charles Otukey Moitui the Dean of the School of Law dated 16.12.24. He deponed that the University has laid down guidelines to be followed by graduands which were in the graduation advertisement in the daily news nation newspaper dated 21.11.24 (CM-2) and among them was the requirement for the graduands to clear any fees arrears by 27.11.24 or else they would not be allowed to graduate but the petitioner did not comply. Also, that the listing in the initial list was a procedural requirement and not a direct ticket for graduation as the graduands had a duty to clear school fees to be allowed to graduate. He also stated that the senate later approved the final list of graduands (C.M 8) and that University has a fees payment policy (C.M 6) and they acted in accordance to it. Dr. Moitui further deponed that the petitioner came to court with unclean hands by failing to disclose that he owed the University fees which he later paid on 12.12.24 as per the financial statement (C.M 4). Also, that the respondents cannot be blamed for the negligent acts of the petitioner.

Submissions

10. The petitioner submitted that prayer no. (b) and (c) have been overtaken by events. Also, submit that the Petitioner's rights were violated and his legitimate expectation was never met. He cited the case of Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others where the Supreme Court held that: -

“Legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfil the expectation. ”

Counsel submitted that it is the petitioner's case that his name was removed from the final graduation list and that the respondent's contention is that he failed to clear his fee balance on time.

He reproduced paragraph 21 of the petitioner's affidavit where he states that;

“that I confirm, that if my name was missing in the initial list, I would have followed up and make necessary arrangements to ensure that I have cleared with the Respondents, this notwithstanding, it is the norm of our institution to ensure that fee is cleared before one does the examination for the semester, and I had cleared my fees before doing my examinations.”



11. It was also submitted that from the fees statement (DMO 4) the fees for year 2 semester 1 was adjusted but this was not brought to the attention of the petitioner. Further that the petitioner cleared the arrears and a credit of 101 ,400/- was made on his account. The 3rd Respondent depones that as per the University Policy on payment of university 2015/2016 students are required to pay all outstanding fees and Paragraph 6.3 of the same provides that:
- a. "first instalment of 75% of the semester's tuition fee shall be paid before the start of the semester plus 100% of other applicable charges include examination, medical subscription, activity, registration, student's identification card, computer, internet, filed/academic trips, attachment, library, students' union and accommodation.
 - b. Those accommodated by the University shall pay 100% of the boarding charges up-front.
 - c. Second installment of 25% of the semester's tuition fees must be paid in full on or before the end of the third week from the date of the commencement of the semester."

Also, that from the said statement, the Petitioner has been paying his fees in accordance with the guidelines provided by the school. The balance of Kshs. 101 ,400/- was for year 2 semester 1, which was adjusted. This was never brought to the Petitioner's attention noting that the Petitioner had paid Kshs. 5,960/- as fine for the said students strike. The Petitioner cannot in any way be faulted for the inaction of the Respondents as the Respondents adjusted the fee last minute.

12. It was brought to the attention of the court that annexure CM-7, and at paragraph 10 of the Replying affidavit, the Respondent contends that the advertisement in the Daily Nation of 21st November, 2024, required all students to clear all outstanding arrears by 27th day November, 2024. The 3rd Respondent, had cleared the Petitioner vide a letter dated 24th October, 2024 stating that the Petitioner had cleared his studies and was awaiting graduation in December 2024. Counsel argued that as at the writing of this letter, the Petitioner was made to believe that everything on his side was complete. The Petitioner also got an admission to the Kenya School of Law vide a letter dated 6th November, 2024. However, for him to join the said institution, he must have his final academic transcripts and his LLB degree Certificate.
13. Petitioner also submitted that the respondent is an administrative body and it ought to have contacted the petitioner upon reconciliation of their books or in the alternative they would have retained him in the list and follow up on the balance later. Petitioner cited Civil Appeal 52 of 2014 Judicial Service Commission v Mbau Mutava & [2015] eKLR Court of Appeal addressed itself on the above. The Court held that: " Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed. "
14. Also, that he had already paid for his graduation gown by the time the graduation was gazetted. He was never informed that he had a fee balance and that Article 55(a) of *the Constitution* provides that the State shall take measures, including affirmative action programmes, to ensure that the youth access relevant education and training. It was submitted that his Court is alive to it's Constitutional mandate by *the Constitution* to protect the Petitioner's right to access education and training. The petitioner told this court that the gazette notice by the Respondents is but a punitive action made to ensure that students, even those from challenged background are denied graduation.



Counsel relied on the case of *Simon Okwaro Habu v Egerton University* [2019] eKLR, the court at paragraph 31 stated thus: -

"The letter dated 23rd May 2017 indicates that the petitioner had been "caught up in the system" requiring payment of fees for the four years and he must pay. The only explanation giving for the term "Caught up in the system" is the one given by petitioner to mean requirement to pay for 4 years even if the course took 3 years. Petitioner explained that the system was introduced in June 2016 whereas he had been cleared in all the units and finance in the year 2015. The clearance of petitioner in 2015 is not rebutted.

The court went and held that:

From the foregoing, I find that the petitioner has demonstrated that he resat the unit which he failed in 1st year in 3rd year and passed as shown by transcript filed. Apart from the unit number changing from 331 to 174, the course description is the same. No evidence was adduced to rebut evidence that it was the same course offered in first year. Petitioner was also cleared by department of finance and it would not be fair for the respondent to demand arrears again after clearing him; there is therefore no justification to deny the petitioner opportunity to graduate' Further in *Mutimba Creser Masayi Joseph v Masinde Muliro University of Science and Technology* [2020] eKLR, the Petitioner herein graduated with fee arrears and even started working with the certificate obtained from the institution, however, since he had not paid the fee, the school wanted to cancel his certificate but the court directed that he clears his fee and maintain the certificate".

15. The Petitioner has been offered counsel further submitted that the petitioner has been offered a chance to join Kenya School of Law for the academic year 2025-2026 and that for an aspiring advocate, a post graduate diploma in law goes a long way towards the realization of the right to education as guaranteed under Article 43 of *the Constitution*. This right cannot be taken away unless that is done within the tight threshold as set out in Article 24 of *The Constitution*.
16. Also, that no reason has been given as to why respondents should not issue petitioner with his LLB degree to enable him proceed for his Post graduate Diploma, the 3rd Respondent had already given him a go ahead vide his letter dated 24th October, 2024.
17. It was submitted that since the Petitioner has proved that his rights were infringed and his legitimate expectation also denied, we submit that the Petitioner is entitled to damages for harm, loss and injury caused by the action of the Respondent. The Petitioner has indeed suffered emotional anguish caused by the Respondent.
18. Counsel cited the case of *Mutimba Creser Masayi Joseph v Masinde Muliro University of Science and Technology* [2020] eKLR, *J. W MUSYOKA* reiterated the Court of Appeal, in *Gitobu Imanyara & 2 others vs. Attorney General* [2016] eKLR, where it was held:

"The relevant principles applicable to award of damages for constitutional violations under *the Constitution* was explained exhaustively by the Privy Council in the famous case of *Siewchand Ramanoop v The AG of T&T*, PC Appeal No 13 of 2004. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense. Per Lord Nicholls at Paragraphs 18 & 19:

When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The



comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminus with the cause of action.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches.

All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award".

19. Respondent submitted that the petition herein is academic and not legal as the petitioner failed to comply with the due procedures of the university of clearing with all the department before graduation. Counsel told this court that the petitioner has not graduated and the petition is speculative as there is no evidence that the respondents have refused to give him his degree. Also, that the petition is not supported by an affidavit as the one filed does not state the particulars of failure of the respondents to issue him with the said certificate. He cited Nyahururu Civil Appeal No. E022 of 2023 Laikipia University v Franis Mwaura Kibia.
20. It was submitted that no damage had been proved to warrant grant of damages Constitutional Petition No. 12 Of 2019 Mutimba Creser Masayi Joseph v Masinde Muliro University Of Science And Technology where petitioner was not granted damages as the same had not been proved though the court found that his constitutional rights has been violated. It was submitted that the petition is incompetent and was only meant to malign the name of the respondents and this court was urged to dismiss the same.
21. I have carefully considered the petition the reply and the able submissions by both counsel on record. The issues arising for determination are;
 - i. Whether the respondents violated the rights of the petitioner under Articles 27, 28 47 of *the Constitution* and if so,
 - ii. Whether the petitioner had a legitimate expectation to graduate.
 - iii. On whether this court has jurisdiction to order release of the degree to the petitioner.
 - iv. Whether the petitioner is entitled to damages for the said breach of his constitutional rights



Determination

Whether the respondents violated the petitioner's rights under Article 27, 28 and 47 of the constitution

22. The petitioner pleaded that his rights under Articles 47, 27, and 28 of the constitution were violated by the respondents by removing him from the graduation list. The respondents averred that the petitioner did not comply with the condition for clearance of fees arrears before 27.11.24 as per the Daily nation newspaper notice dated 21.11.24. The petitioner says he was not aware of the arrears and that the same was not communicated to him. Further that the fees was adjusted sometime in the year 2021 and that he paid the same on 10.12.24. It is clear to me that the petitioner was in arrears as admitted by him. It is unbelievable that the fees was adjusted by Kshs. 104,000/= which was the arrears. No notice of the adjustment was produced herein. It is clear to me that the petitioner was in arrears as admitted by him. Though the petitioner says that he has a right to graduate upon completion of his studies, he also had a corresponding responsibility to pay school fees in good time. He paid the fees arrears on 10.12.24 upon expiry of the deadline of 27.11.24. The petitioner was a self-sponsored parallel program student who was expected to pay school fees in time and no plausible explanation was given for the delay. The 3rd respondent told the court that the final list of graduands was printed on 3.12.24, this was before the said fees was paid. Each house had its own rules and the 1st respondent was working within the time lines. The directives given by the 1st respondent were very clear on timelines that in case of default then the students would not be allowed to graduate. Article 47 of the Constitution provides as follows;

1. every person has a right to administration action that is expeditious efficient, lawful, reasonable and procedurally fair.
2. if a right or fundamental right of a person has been or is likely to be adversely affected by the administrative action, the person has a right to be given written reasons for the action.
3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.

23. It then follows that there was no violation of the right to fair hearing under Article 47 of the Constitution as the petitioner was aware of the time lines and consequences of non-compliance so there was no need to hear the petitioner on the non-compliance. The removal of the petitioner from the graduands list was thus reasonable and justifiable and thus it cannot be said that he was discriminated against under Article 27 of the constitution and that his right to human dignity under Article 28 was infringed upon.

Whether the petitioner had a legitimate expectation to graduate.

24. On legitimate expectation, the petitioner argued that upon passing the examinations, being on the initial list of graduands and being issued with a provincial completion certificate by the 3rd respondent he had a legitimate expectation to graduate and transit to the Kenya school of Law. The respondents' case is that the first list had to be approved by senate upon the graduands complying with all the graduation conditions of the university and hence since the petitioner did not comply with clearance



of fees, he was not in the final approved list of graduants. Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others where the Supreme Court held that: -

“Legitimate expectation would arise when a body, - by representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfil the expectation. ”

25. It is clear that for the doctrine of legitimate expectation to apply, a public body must have made a promise that is expected to fulfil. The university is a public body and it made a promise to graduants that they would graduate but this was subject to compliance with conditions listed in the newspaper advertisement. The petitioner did not comply with the condition for payment of fees arrears in time and thus he could not have expected to graduate. Legitimate expectation does not therefore arise.

On whether this court has jurisdiction to order release of the degree without graduation

26. The petitioner submitted urged this court to order the respondents to release the LLB degree to the petitioner to register at Kenya School of Law since the prayers to compel the respondents to include the petitioner in the graduation list was overtaken by events as he missed the graduation on 19.12.24. The respondents submitted that the prayer cannot issue as it is not in the petition. It is trite law that parties are bound by their pleadings and court orders cannot issue in vacuum. I however note that the release of the degree was pleaded as prayer d. of the petition. The 3rd respondent deponed that the degree cannot be released to the petitioner as he has not graduated. This court takes judicial notice that universities do release degrees to graduants upon graduation. Though the petitioner is seeking mandamus orders against the 1st respondent, the mandate to issue degree certificates is upon the 1st respondent and it has to ensure that its rules and regulations have been complied with. This court can only issue mandamus orders where a public body has neglected to perform its mandate without justification. The petitioner herein did not graduate for failure to clear fees arrears. The 1st respondent acted within its mandate by removing the name of the petitioner from the graduation list. In any event I agree with the 1st respondent that a degree can only be released to a graduate. This court can therefore not issue the order for release of the degree in the circumstances.
27. On whether the petitioner is entitled to damages, since violation of the rights of the petitioner has been proved, then the issue of damages does not arise. However, had the petition succeeded then this court would have been guided by the principles set out by the Court of Appeal, in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, where it was held:

“The relevant principles applicable to award of damages for constitutional violations under *the Constitution* was explained exhaustively by the Privy Council in the famous case of *Siewchand Ramanoop vs. The AG of T&T*, PC Appeal No 13 of 2004. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense. Per Lord Nicholls at Paragraphs 18 & 19:

When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the



award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminus with the cause of action.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches.

All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award".

28. In the upshot I find that the petition is devoid of merit and the same is dismissed. Each party will bear its own costs.

T. A. ODERA

JUDGE

18.2.25

Delivered virtually via Teams Platform in the presence of:

Petitioner

Mr. Nyakweba hold brief for Mr. Ochwangi for Respondent

Court Assistant - Oigo

