



**Abdikadir v University of Nairobi; Ag Vice Chancellor Academic Affairs
& another (Interested Parties) (Judicial Review Application E031 of 2025)
[2025] KEHC 3305 (KLR) (Judicial Review) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E031 OF 2025
RE ABURILI, J
MARCH 19, 2025**

BETWEEN

ABDULLAHI JABIR ABDIKADIR APPLICANT

AND

THE UNIVERSITY OF NAIROBI RESPONDENT

AND

THE AG. VICE CHANCELLOR ACADEMIC AFFAIRS INTERESTED PARTY

THE DEAN FACULTY OF HEALTH SCIENCES INTERESTED PARTY

JUDGMENT

Introduction

1. These proceedings initiated by way of Originating Motion dated 7/2/2025 are brought under the provisions of the Fair Administrative Action and the new 2024 Rules made under the Act. The applicant is a fifth year medical student at the University of Nairobi Medical School. He was accused by a fellow student of defrauding her of her college fees by pretending that he was a doctor at the UON and would help her register and pay the fees to the University. He took her money and did not pay her fees. The victim student lodged the complaint against the applicant herein to the University Administration who initiated disciplinary proceedings against the applicant. A decision was made to suspend him from the University for one year and to withhold his examination results.
2. The applicant first came to this court vide Judicial Review application No. E235 of 2024 seeking leave of court to apply, which application the court rejected for want of exhaustion of internal dispute



- resolution mechanisms. He then went back to exhaust the internal dispute resolution mechanisms by way of an appeal before returning to court seeking for a remedy in judicial review.
3. In the Originating Motion dated 7th February 2025, the applicant seeks an order of certiorari to bring into the High Court and quash the respondent's decision as communicated to him vide letter dated 30th September, 2024 and upheld by the letter dated 29th January, 2025. The applicant also seeks an order of prohibition to prohibit the respondent University of Nairobi from suspending, barring, locking out or in any way interfering with the applicant's studies at the respondent's institution.
 4. The Originating Motion is predicated on the grounds on the face thereof giving the background of the matter and is said to be supported by the 'supporting affidavit' of Abdullahi Jabir Abdikadir.
 5. On 24th February 2025, the respondent was represented by Mr. Omondi who intimated to court that there was a possibility of the matter being resolved amicably and the court did grant the parties the opportunity to negotiate for an amicable resolution failing which, the respondent was also given time limits within which to file a response so that the matter is not overtaken by the strict timelines for determination, as stipulated under the new Rules made under the *Fair Administrative Action Act*.
 6. By 3/3/2025, when the matter came up for oral hearing in the event that parties had no consent to record, the respondent's counsel was absent and there was no representation or reasons given for his absence. No response to the judicial review application had been filed and served upon the applicant's counsel as earlier directed by the Court. This court therefore allowed the applicant's counsel to argue the application as earlier scheduled on 24/2/2025 and reserved the matter for judgment. I then embarked on judgment writing.
 7. However, my writing of this judgment has not been without hurdles. The applicant's counsel wrote to court complaining that the respondent and interested parties' counsel had filed the replying affidavit out of time after the application had been heard and a judgment date set. Secondly, counsel wanted this court to expedite and bring forth the judgment date because this semester's examinations were to begin on Monday 17th hence the need to render the judgment before then. This off course was under the presumption that because the matter was heard without any opposition from the adverse parties, then the decision must be favourable to the applicant.
 8. The court maintained that it would deliver the judgment as scheduled. I went ahead and wrote the judgment as is my custom, independently, without focusing on the noises around me. The respondent and interested parties then filed an application under certificate of urgency on 17th March, 2025 seeking to arrest this judgment and to have their replying affidavit sworn on 10th March, 2025 deemed to be duly filed within time. This court directed the application to be served expeditiously and directed the applicant's counsel to, upon being served, act with promptness and file a response thereto as the court was ready to hear the application in question today and render a ruling to pave way for the judgment to be rendered on schedule. That is exactly what I did prior to the delivery of this judgment. I heard the application as scheduled, retired to write the ruling which I delivered this afternoon and on asking the parties' counsel whether they were ready to take the judgment in the main Motion which judgment was ready, save that I had to add this portion to explain how the judgment delivery was brought forward, they both readily accepted my proposal and hence, this judgment.
 9. As I perused the Originating Motion and proceeded to peruse the 'supporting affidavit' which annexes the exhibits relied on by the applicant, my sight caught a document in the name of a 'supporting affidavit' which is not signed by anyone and neither is it commissioned by a commissioner for oaths or an advocate. I then had to stop and ask myself whether the Originating Motion is competently before this court for determination on its merits. I reached the E-portal several times. A similar document



had been printed and placed on the physical file for proceedings. Still, I could not find the signed or commissioned supporting affidavit.

10. Ordinarily, unless the provisions under which the pleadings are initiated provide for an affidavit in support, this court would not be so much bothered for example, in Constitutional Petitions among other matters where there is no mandatory requirement for an accompanying affidavit to the pleading, unless there is an objection raised by the adverse party to the competence of such proceedings which the court would and I have, in the past, on several occasions, pronounced myself on such matters.
11. As earlier stated, the Originating Motion is initiated pursuant to the new Rules under the Fair Administrative Action Rules, 2024 implementing the provisions of the [*Fair Administrative Action Act*](#).
12. Rule 11 of the Fair Administrative Action Rules, 2024 provides as follows:
 11. Originating motion
 - (1) An application for judicial review shall be by way of an originating motion accompanied by a supporting affidavit.
 13. What the above Rule mandates is that an Originating Motion must be accompanied by a supporting affidavit and there are no two ways about it. So, in this case, was there a supporting affidavit and if not, does failure to have an a supporting affidavit vitiate or render fatal the Originating Motion? What does the law say about this?
14. In Civil Application No. 26 of 2018 Gideon Sitelu Konchellah v. Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR (para.6-8), the Supreme Court pronounced itself on the effect of an affidavit that is not signed by the person who is said to be the deponent, not dated and/or commissioned by a commissioner for oaths/magistrate as follows:
 - “(6) As regards the 1st Respondent; it came to the notice of the Court that the said affidavit is not signed, dated or commissioned. This posed the question to the Court; what is the effect of an affidavit that is not signed by the person who is said to be the deponent, not dated and/or commissioned by a Commissioner for Oaths/or magistrate?
 - (7) The making of affidavits is governed by the [*Oaths and Statutory Declarations Act*](#), Cap 15 Laws of Kenya. Section 5 of the Act provides, thus;

“Every Commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”

Further, Section 8 states:

“Magistrate or commissioner for oaths may take the declaration of any person voluntarily making and subscribing it before him in the form in the Schedule.”

Hence, an affidavit must clearly state the place and date where it was made and it must be made before a Magistrate or a Commissioner for oaths.
 - (8) We have no hesitation in finding that the purported Replying Affidavit filed by the 1st Respondent is fatally defective as the same contravenes all the legal requirements for the making of an affidavit. Hence it has not legal value in the matter before us. We have checked all the eight copies of the Replying Affidavit as filed in the Court Registry and confirmed that none of the copies was signed,



commissioned and dated. Consequently, as the same is defective, it is deemed that there is no Replying Affidavit on record filed by the 1st Respondent. (Emphasis added).

15. What emerges from the above decision from the apex Court and which decision binds this court is that failure to swear an affidavit is not a procedural technicality that can be saved by application of the provisions of Article 159(2)(d) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act* on the overriding objectives of the law.
16. In *Mwahima Mwalimu Masudi v Independent Electoral and Boundaries Commission & 3 others* [2017] eKLR, the court adopted the discussion on the relevance of Article 159(2) (d) of *the Constitution* as was stated in the case of *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 6others* [2013] eKLR where Kiage JA stated:

“...I am not in the least persuaded that Article 159 of *the Constitution* and the oxygen principles which both commend courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succour and cover to parties who exhibit scant respect for rules and timelines...”
17. For all the above reasons, and as Rule 11 of the Fair Administrative Action Rules mandate that an Originating Motion shall be accompanied by a supporting affidavit, and as the supposed supporting affidavit is not signed or sworn before a commissioner for Oats or Magistrate, this court finds and holds that the purported affidavit in support is no affidavit at all and therefore the Originating Motion dated 7/2/2025 as filed is incompetent and the same is hereby struck out.
18. It is worth noting that it is in the supporting affidavit that the evidence in the form of exhibits would be annexed to prove the allegations against the respondent and the interested parties hereto otherwise the allegations in the Originating Motion remain just that. This court would not even look at those exhibits which are not produced on oath or by way of deposition, as annexures to the supporting affidavit.
19. On costs, the applicant being a student, I order that each party shall bear their own costs of the Motion.
20. This file is accordingly closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MARCH, 2025

R.E. ABURILI
JUDGE

