



**Hirbo v University of Nairobi Independent Electoral Commission &
another (Judicial Review Miscellaneous Application E034 of 2025)
[2025] KEHC 3510 (KLR) (Judicial Review) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E034 OF 2025
RE ABURILI, J
MARCH 21, 2025**

BETWEEN

DIBORA ZAINAB HIRBO APPLICANT

AND

**UNIVERSITY OF NAIROBI INDEPENDENT ELECTORAL
COMMISSION 1ST RESPONDENT**

UNIVERSITY OF NAIROBI 2ND RESPONDENT

RULING

1. The application by way of Notice of Motion dated 19/3/2025 is brought under certificate of urgency. The application appears to be urgent in view of the events taking place within very strict timelines leading to UNSA elections scheduled for 26/3/2025. I certify the application as urgent.
2. In the Originating Motion, the applicant Dibora Zainab Hirbo seeks substantive orders of judicial review by way of certiorari and mandamus. She seeks to have this court quash the decision of the 1st respondent communicated to her via email dated 18.3.2025 disqualifying her from vying for student leadership as Chairperson of UNSA at the University of Nairobi and to compel the respondent to clear her to vie for the said position.
3. In the interim, she seeks orders that temporary orders suspending the elections scheduled for 26/3/2025 and stay of the decision disqualifying her from vying for the [position of Chairperson of UNSA pending the hearing and determination of the main suit.
4. The applicant has come to court expeditiously and from the affidavit sworn by her, the matter is indeed urgent.



5. The registry reached out to her advocate, Mr. Mokuia who joined the court virtually to address the court on the urgency of the matter and whether the prayer for stay of implementation of the decision to disqualify the applicant and suspend the impending elections was merited. Mr. Mokuia has addressed the court virtually reiterating the depositions in the affidavit and the grounds in support of the prayer for interim/interlocutory orders.
6. On whether I should grant an interlocutory or interim orders staying the decision of the Respondents communicated via email on 18/3/2025 at 9.19 pm barring the applicant from vying for the position of Chairperson UNSA pending the hearing and determination of the main suit, and therefore suspend the election for the Chairperson UNSA scheduled for 26/3/2025, I have considered the grounds in support of the application, the supporting affidavit sworn by the applicant Dibora Zainab Hirbo and the annexures thereto.
7. The decision to disqualify the applicant was made on 18/3/2025 at night and there is no delay in approaching this court seeking for a remedy. It is also true that the applicant was cleared by her Dean Faculty of Education to vie for the position on 14/3/2025.
8. However, the elections are also subject to other nomination processes which include the clearance by the electoral body responsible for managing the said UNSA elections and from the letter/email dated 18/3/2025 annexed at page 65 of the filed documents in support of this case written by UNSA Independent Electoral Commission, on “Verdict on Team Purpose” it is stated as follows:

“Following the conclusion of the nomination process, below is the verdict of your submissions.

Reasons:

1. The Chairperson has a pending disciplinary(sic)
2. Vice Chair has an incomplete academic record confirmed from the Faculty Dean– FASS.
3. Team does not meet Diversity for Faculty (PWD and Treasurer are from FHS)

Recommendation:

Comply with Requirements within two hours.

Kind regards,

For

IEC

9. It is the above communication that the applicant is aggrieved by. The applicant then wrote to the Electoral Commission (being the Chairperson, Team Purpose) insisting that she meets all the qualifications for candidacy under Part IV, specifically.
10. However, the applicant has not addressed the concerns raised against her running mate as having incomplete academic record as confirmed from the Faculty Dean – FASS.
11. The applicant also denies that she has any pending disciplinary case with the University. She annexes a charge sheet dated 10/2/2025 on assault contrary to Section 17.1.2 of the Students Code of Conduct (Revised 2021). She however explains that she was acquitted only that the minutes have not been signed and availed to her hence she has no pending disciplinary case, she avers.



12. The applicant has also annexed copy of UNSA Constitution. However, the said Constitution of 2017 is not signed. In my online search, I have come across UNSA Constitution, 2017 (amended in 2021) and is duly signed by Prof. S.G. Kiama, Vice Chancellor, UON, on 19/1/2022. Obviously, the 2017 constitution is out of date and the applicant serving currently as the Vice Chair of UNSA is in a better position to know this fact.
13. At Part IV on elections and qualifications for nominations, among the requirements or qualifications, is a verified academic status confirmed by the Academic Dean.
14. In this case, from the material availed to this court, the applicant is battling out for election with a running mate who has a query on completeness of academic record confirmed from the Faculty Dean – FASS, and with no evidence that her said running mate has been cleared.
15. The UNSA Constitution provides for Nomination of aspiring teams and under Rule 11(k), where a member of a validly nominated team withdraws, the team shall be deemed to have automatically withdrawn. My understanding therefore is that where a running mate is disqualified, then one cannot run the race alone.
16. Additionally, Part VII of the said Constitution on Election Disputes Resolution, provides that the Commission shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of results.
17. The election dispute shall be determined within 10 days of its lodgment with the commission but under Subsection (3), where a dispute relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.
18. Under Section 23, the grounds for challenging nomination and election outcome are set out, with a proviso that all disputes emanating from nomination and election process shall be handled internally by appropriate commission and Tribunal as Senate shall determine.
19. The undated letter by the applicant to the Commission is, in my understanding, an appeal challenging the disqualification although there is no evidence that the Commission responded to the said appeal.
20. However, there is no contest that the applicant's teammate who was supposed to be her Vice Chair was not cleared and there is no evidence that he appealed against the decision to disqualify him on the stated grounds in the verdict subject of this case. Further, that Vice Chair Teammate and running mate is not a party to these proceedings and has not sworn any affidavit to defend his position in this matter. There is also a bigger question of whether the 1st respondent body established under the UNSA Constitution has the capacity to sue and be sued in its name. I say no more.
21. The applicant has the burden of establishing a prima facie case at this stage and to persuade this court that she is entitled to a stay of implementation of the impugned decision and suspension of the elections scheduled for 26th March, 2025, noting that the whole nomination process has been completed and therefore by now, the ballot papers among other logistical arrangements for elections are in place. Elections are not just an event. They are a process and therefore weighing the prejudice, in my view, the respondents and other candidates shall be more prejudiced if the elections are suspended to accommodate the applicant who has not placed before this court material to warrant a stay of implementation of the impugned decision to disqualify her or suspension of the said elections.



22. Accordingly, I find the prayers for stay of implementation of the decision to disqualify the applicant to vie for the Chairmanship of the UNSA and the suspension of the impending election not merited and the same is hereby dismissed. I make no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MARCH, 2025

R.E. ABURILI

JUDGE

In the presence of

Mr. Mokuu Counsel for the applicant

CA: Mr. Brian

