



REPUBLIC OF KENYA



KENYA LAW
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**Wamban & 8 others v University of Nairobi & 8 others (Petition E006, E007 & E008 of 2025
(Consolidated)) [2025] KEHC 4811 (KLR) (23 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4811 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
PETITION E006, E007 & E008 OF 2025 (CONSOLIDATED)**

**DK KEMEL, J
APRIL 23, 2025**

BETWEEN

**JAMES OWITI WAMBAN 1ST PETITIONER
JULIET ATIENO BWOGA 2ND PETITIONER
BRIAN KHAMATI MUKANZI 3RD PETITIONER
HAMZA MOHAMEDNUR OSMAN 4TH PETITIONER
VIRGINIA KINYAMASYO KASYOKA 5TH PETITIONER
NYABENDE ABRAHAM NYAMUGARA 6TH PETITIONER
NAKAMYA ELIZABETH ANTONIA 7TH PETITIONER
JAPHET KOFA KASE 8TH PETITIONER
DIBORA ZAINAB HIRBO 9TH PETITIONER**

AND

**THE UNIVERSITY OF NAIROBI 1ST RESPONDENT
THE INDEPENDENT ELECTORAL COMMISSION OF THE UNIVERSITY OF
NAIROBI 2ND RESPONDENT
DR KENNETH OMBONGI, CHAIRPERSON OF THE UNIVERSITY OF
NAIROBI INDEPENDENT ELECTORAL COMMISSION 3RD RESPONDENT
SUSAN CHEPKONGA, VICE CHAIRPERSON OF THE UNIVERSITY OF
NAIROBI INDEPENDENT ELECTORAL COMMISSION 4TH RESPONDENT
ENG KEN NJOROGE, MEMBER OF THE UNIVERSITY OF NAIROBI
INDEPENDENT ELECTORAL COMMISSION 5TH RESPONDENT**



**JOHNBOSCO MUTUKU KISIMBI, MEMBER OF THE UNIVERSITY OF
NAIROBI INDEPENDENT ELECTORAL COMMISSION 6TH RESPONDENT**

**MUTHOMI NEHEMIAH, MEMBER OF THE UNIVERSITY OF NAIROBI
INDEPENDENT ELECTORAL COMMISSION 7TH RESPONDENT**

**CORAZON ROSE NUFULA, MEMBER OF THE UNIVERSITY OF NAIROBI
INDEPENDENT ELECTORAL COMMISSION 8TH RESPONDENT**

**FAITH GRACE ATIENO, MEMBER OF THE UNIVERSITY OF NAIROBI
INDEPENDENT ELECTORAL COMMISSION 9TH RESPONDENT**

JUDGMENT

1. The respective Petitioners herein lodged the petitions on different dates against the Respondents herein seeking several reliefs. The three petitions were consolidated on the 24/2/2025 and that proceedings are to be conducted in Petition No. E006/2025. The genesis of the petitions relate to the denial of the Petitioners to participate in the nomination and eventual University of Nairobi Student Assembly Elections which were to take place on the 26/3/2025. The specific claims and the reliefs sought in the said petitions are as set out hereunder:

1. The Petitioner's case in Petition No. E006/2025 is supported by the verifying affidavit of the Petitioner James Owiti Wamban follows:
 1. The rules of natural justice, the right to fair trial and the right to fair hearing and in line with *the Constitution* of Kenya, 2010, *Universities Act*, the Fair Administrative Actions Act, 2015 dictate that the Petitioner is entitled to be accorded fair trial throughout the entire processes leading to the University of Nairobi Student Elections.
 2. That the arbitral rejection and denial of the petitioner's Team Owiti comprising of the Chairperson, the Treasurer, Sports Director Representative and the Persons with Disabilities Representative all bona fide students of Nairobi University to take part in students elections amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.
 3. That the denial and the neglect to supply the petitioner prior to their denial and disqualification from elections based on grounds as communicated by the respondents issues not a creation of the respondents amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.
 4. That further, the refusal to offer justifiable reasons relevant to the petitioner's team disqualification amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.
 5. That the decision taken administratively by the respondent's to deny the petitioner the right to be heard and the reasons why a specific administrative issue taken by the respondent that fundamentally affects the petitioner's constitutional rights have occasioned a violation of the Petitioner's right to fair hearing under Article 50 of *the Constitution*.
 6. That the decision to bar the petitioner and his team was never subjected to students' participation as envisaged under *the constitution*.



7. That in arriving at the decision to disqualify the petitioner the same was marred with bias and partiality.
8. That the decision by the respondent was never made in the best interest of the students.
9. That the 2nd and 3rd respondent in disqualifying the petitioner without affording him the right to be heard and or rebut the same was an administration decision which was exercised unlawfully, unreasonably and that has become procedurally unfair to the Petitioner who is entitled to the rights to fair administration action that is lawful, reasonable and procedurally fair as enacted under Article 47 (1) of *the Constitution*.
10. Your Petitioner avers that the respondents in conducting students' elections do not have powers to abrogate people's constitutional rights.
11. Your Petitioner avers that the decision of the respondent is unconstitutional and the same has been clearly designed to violate the rights of the Petitioner.
12. That section 41 of the *Universities Act* does not envisage the actions of the respondent.
13. That the respondent by virtue of Article 38 and 81 of *the Constitution* of Kenya are mandated to conduct elections in a free and fair manner reflecting universal suffrage.
14. That the respondents are also obligated by the University of Nairobi Students Association Constitution to uphold *the constitution*.
15. That in deciding to conduct the affairs of the student elections by e-ballot system, the respondent were obligated to comply with *the constitution* and all electoral laws with a view to ensure a free and fair elections.
16. That there are no guidelines regulating the affairs and the conduct of elections as intended by the respondents and as such the respondents are only conducting the elections outside the law.

A. Protection of Fundamental Rights under *the Constitution* of Kenya

17. Article 20(1)(2) & 3(b) – protection of fundamental rights to be mandatorily be protected by the court by adopting the interpretation that most favours the enforcement of a right or fundamental freedom.
18. Article 25 (a) and (c) – the freedom from torture, cruel, inhumane treatment and degrading manner and the right to fair trial.
19. Article 10(1) and (2) - national values and principles of good governance.
20. Article 22 (1) – the right to institute proceedings whether in private and in public interest. It is in the public interest that the electorate is continuously and uninterruptedly represented by their elected leaders in exercise of their sovereign will. The services of an elected leader can only be interrupted only in accordance with the principles of fair hearing and fair administrative action that is in strict compliance with the values of good governance enshrined at Article 10 of *the constitution*. The court must uphold the sanctity of *the constitution*.
21. Article 23 (1) (3) – right to declaratory orders.
22. Article 28- right to human dignity.



23. The Respondents have violated the Petitioner's constitutional right guaranteed under Articles 27, 41, 47 and 50 of *the constitution* of Kenya.
24. Article 38,81,82 of *the Constitution* of Kenya, 2010 enshrines the conduct of elections
25. Petitioner's legitimate expectation to natural justice, due process and a fair administrative action and fair labour practice has been infringed by the Respondent.

Reasons wherefore your Petitioner prays for judgment against the respondents jointly and severally for; -

1. The Court be pleased to issue an order quashing the elections of the UNSA Elections held on the 26.3.2025 the same violated Section 41 (1) of the *Universities Act* 2012 as amended in 2016 and Article 38 and 81 of *the Constitution* of Kenya 2010.
 2. An Order directing the respondents to organize free UNSA Elections in strict compliance with Article 38 and 81 of *the Constitution* of Kenya, 2010.
 3. An Order directing the respondents to come up with electoral regulations and guideline on electronic voting system before organizing a fresh election in strict compliance with Article 38 and 81 of *the constitution* of Kenya, 2010.
 4. General damages for violation of the petitioner's constitutional rights
 5. An order do issue declaring the actions by the respondent to disqualify the petitioner from engaging in students elections as null and void and as such unconstitutional.
 6. Costs of the Petition be provided for.
2. The Petitioner upon being served with a replying affidavit by the Respondents, filed a supplementary affidavit dated 27/3/2025 wherein he deposed as hereunder.
1. That the 3rd respondent has not denied the grievance by the applicant/petitioner that together with his "Team Owiti" the respondents blocked them from participating in the student elections that were scheduled on the 26.3.2025.
 2. That the respondents herein had been using threats, intimidations, instituting false disciplinary measures and heavily fining those who question the shambolic selection of student leaders under the e-ballot system to evade accountability and transparency over students' elections.
 3. That the 2nd respondent in their communication to Team Owiti on March 21st claimed that team Owiti had not uploaded documents on e-ballot and therefore could not be verified, a verdict made on the 18.3.2025 and disqualifying the Team.
 4. That Team Owiti had complete documents and had met all the constitutional threshold to be cleared for student elections and that the refusal by the 2nd and 3rd respondent to clear Team Owiti was unconstitutional.
 5. That the petitioner and his Team Owiti were never granted a fair hearing on the issues of e-ballot failures and the reasons for disqualification and an opportunity to challenge the same and that the respondents' verdict being final and without recourse and valid reasons infringed on the petitioner's and his Team Owiti the constitutional rights under Article 38 and 81 of *the Constitution* of Kenya, 2010.



6. The respondents in making their decision to disqualify Team Owiti contravened article 50 (1) of *the Constitution* of Kenya by failing to established Electoral Tribunal which ought to have considered and determined grievances arising out of the students' election dispute and related matters.
7. That team Owiti had its name and symbol approved by the respondents upon application. Attached is the approval marked as "JO-1."
8. That the UNSA Election timelines notices is hereby marked as "JO-2."
9. That the published Notice of the Nominated Teams as at 18th March, 2025 after the closure of the Nomination process conducted on the 17.4.2025 is marked as "JO-3."
10. That an updated published Notice of the Nominated Teams as dated 19th March, 2025 after the closure of the Nomination process conducted on the 17.4.2025 is marked as "JO-4."
11. That an updated published Notice of the Nominated Teams as dated 20th March, 2025 after the closure of the Nomination process conducted on the 17.4.2025 is marked as "JO-5."
12. That an updated published Notice of the Nominated Teams as dated 21st March, 2025 after the closure of the Nomination process conducted on the 17.4.2025 is marked as "JO-6."
13. That the 1st and 2nd respondent has not justified and or explained why upon closure some teams continued to be cleared and nominated, the criteria used and the fairness, transparency, impartiality, accountability, favoritism thereof or lack and the reasons thereof to the locked out teams.
14. That a list of locked out teams, disqualified and the reasons thereof today has not been provided.
15. That the notice for the end of campaign period is attached and marked as "JO-7."
16. That the notice for commencement of campaign period for UNSA Elections 2025 is marked and attached as "JO-8."
17. That the campaign period vide the said notice began on 18th March, 2024 and ended on 24th March, 2024, yet the 1st and 2nd respondent continued to as late as 21st March, 2024 clear some teams for elections translating to only two days of campaigns.
18. That Team Owiti comprised of the following and the Team Owiti clearance documents are also attached and marked as "JO-9." in full compliance with nomination rules the same well received by the respondents.

Chairperson-James Owiti, Faculty of Arts and Social Sciences, Masters in Diplomacy, a Luo from Siaya County.

Vice Chairperson- Edna Mwangeli, Faculty of Science & Technology, Bachelor of Science Chemistry, a Kamba from Makueni County.

Secretary General- Felix Okemwa, Kenya Science Campus, Bachelor of Education, Abagusii from Kisii County.

Treasurer- Wendy Naliaka, Faculty of Veterinary Medicine, Bachelor of Veterinary Medicine, a Tachoni Kalenjini Sub-tribe from Nairobi County.



Sports and Welfare Representative- Gabriel Amina, Faculty of Law, Bachelor of Laws, a Luhya from Kakamega County.

Special Interest Group Representatives:

International Students Representative- Baker Alexa Faith, Department of Diplomacy and International Studies, Masters of Diplomacy, American from Pennsylvania, U.S.A

People with Disability Representative- Stanley David PWD Reg No NCPWDP62714, Faculty of Agriculture, Bachelor of Agriculture Education & Extension, mixed TesoLuhya from Busia County.

19. That Team Owiti met the diversity of faculty criteria by drawing its membership across the faculties and therefore the claim by the respondent that Team Owiti did not meet the faculty diversity is false and malicious.
20. That in response to paragraphs 69 to 74 of the respondent's replying affidavit, the petitioner maintains that he together with Team Owiti had met all the nominations requirements under Part IV, Section 8 of the University of Nairobi Rules and Regulations Governing Students Elections 2017 and there was no basis and justification to disqualify him. Attached are all the nomination clearances for the petitioner and the team members marked as "JO-10a to JO-10g."
21. That in response to paragraph 73 of the respondent's replying affidavit, the petitioner explains as follows vide the attachments marked as "JO-13(a) to JO-13(e)."
 - a. That he confirms that on the 16.3.2025 and 17.3.2025 all attempts to gain access to the e-ballot system to upload the Team's nomination documents and to confirm all details as captured was futile as cookies to the portal were deliberately disabled.
 - b. That indeed the ICT department acknowledged the issues raised the same as they had raised the issue before deadline for nomination.
 - c. That on 20th March, 2025, after the exercise the ICT Department responded that according to them their issue had been resolved meaning indeed they acknowledged the issue.
 - d. That before the Commission could rectify the issue and confirm the same, the 3rd respondent had made a decision on 21.3.2025 to bar our team without according us a fair hearing on the basis of uploading documents only even upon realizing that the documents were in order.
 - e. That they had indulged the respondents herein to submit the documents via another team member e-ballot that was unsuccessful, we indulged them to send via email, which we sent and they acknowledged as being in order but again insisted that they were not uploaded via portal and as such the team was barred arbitrarily.
22. That he relies on the attached affidavits sworn by students to further buttress the challenges with the e-ballot system and the ultimate fate they faced from the respondents marked as "JO-14(a) to JO-14(c)."
23. That the Dean of the Faculty of Arts and Social Sciences cleared the applicantpetitioner to vie for the Chair of the University Council.
24. That the petitioner herein and team member who is the International Student Representative were cleared on merit by the Dean Faculty of Arts and Social Sciences.



25. That the International Representative who was out of the country submitted her documents for clearance on Friday 14th March through the applicant's petitioner's Personal Assistant and it was demanded that she flies back to the Country and submit her documents in person for clearance by the 2nd and 3rd respondent, a situation that took the intervention of the Dean of Students Mr. Johnson Kinyua Ireri, to have her documents be signed for clearance in her absence.
26. That in response to paragraph 4,5,6,7,8,9,10 and 11 of the replying affidavits, the applicantpetitioner affirms as follows:
 - a. That the Universities (Amendment) Act 2016 introduced the Student Electoral College and that for the purpose of conducting the election of members of the University of Nairobi Student Council, there are Thirteen (13) Electoral Colleges, with each Electoral College producing three delegates totaling to 39 delegates as voters for election of the Student Council.
 - b. That the 3rd respondent herein unjustifiably and without any authority to do so, selected 7 Teams in 7 Electoral College to go unopposed therefore totaling to 21 selected delegates (voters) as against the law and with the sole intention of influencing the Student Council Election.
 - c. That consequently, the unlawful and unconstitutional selection of unopposed teams is in contravention of the *Universities Act* and Article 81 of *the Constitution* of Kenya 2010.
 - d. That the unlawful selection of unopposed Teams infringed on the students' rights and ultimately stripped them of the right to vote and participate in elections as provided for in *the Constitution* of Kenya, 2010 and section 41 of the *Universities Act* of 2012 (amended).
27. That under the UNSA Constitution, a student may be nominated as an aspiring team for the election if that student has been in session for the preceding two semesters, and is available to serve for the entire term of the office. The petitioner has been in session and was cleared by the Dean of Students.
28. That Membership of the Association to which the applicantpetitioner herein sought is open to all students of the University and that a member may seek election to any office or position established in the UNSA Constitution.
29. That attached find the UNSA Constitution 2017, (Amended 2021), the University of Nairobi Rules and Regulations Governing Student Elections, 2017 and the University of Nairobi Students Association Electoral Code of Conduct, 2017 marked as "JO-11."
30. That the respondent herein failed to adhere to the nomination rules as required by the law to wit:
 - a. That the respondents nominated on the 17.3.2025 6 teams: Team Tuwote, Team Absolute, Team Fleet, Team Change, Team Grand and Team Oribo before campaigns.
 - b. That the respondents on the 18.3.2025 nominated the following teams after the commencement of campaigns Team Arua, Team Mikakati, Team Legends, Team Kazi, Team Kazi Safi and Team Kilele.



- c. That the UNSA Constitution stipulates that the nominations must all be carried out before the commencement of campaigns and that campaigns must proceed for a period of 7 days which the respondents never complied with.
- d. That the teams nominated after the end of the nomination on the 17.3.2025 were allowed to constitute afresh and submitted their documents after the end of the nomination exercise vide email and not e-ballot and the Commission accepted the same while for team Owiti they were disqualified. See paragraphs 64, 65,70,71,74 of the respondent's replying affidavit that the portal had been closed yet they continued to receive nominations and clear other teams from which forum if at all documents were only to be verified by the portal only.
- e. That the respondents nominated on the 20.3.2025 the following teams: Team Infinite, Team Juris League, Team Horizons, Team Patrick Monk, Team Elevet, Team Pamoja, Team Integrity, Team Waledi, Team Prospective.
- f. That on 21.3.2025, the respondent nominated Team Msomi only.
- g. That further to demonstrate that the respondents were not fair, impartial, all inclusive, not favourable to teams, transparent, neutral and were not independent, the 1st and 2nd respondent after the completion of the nomination exercise on the 17.3.2025, proceeded on the 18.3.2025 to direct team purpose to comply with requirements and submit. See the communication from the 1st and 2nd respondent to team purpose marked as "JO-12."
- h. That the 1st and 2nd respondent through the elimination method resulted in 7 faculties with only 1 team cleared. Meaning they are unopposed and this will affect the Council Students Elections and in turn thwarted the universal suffrage culminating into a selection not an election.
- i. That the 1st and 2nd respondent with only 2 teams cleared for student council elections, it translates to the winning team only requiring at least 7 faculties to secure a win of 21 votes, this was a schemed attempt to influence and manipulate the outcome of the students council elections as against Article 38 and 81 of *the Constitution of Kenya, 2010*.
- j. That the Nomination Rules, demanded that nomination papers shall be picked from the Electoral Commission, chaired by the respondent herein, fourteen (14) days prior to the date of the Electoral College election, the respondents did not adhere to this requirement as nomination papers were availed on short timeline.
- k. That the respondent demanded a fee of Ksh 3,000.00= to be paid as nomination fee and that the fees paid on behalf the Electoral Commission, that the Electoral Commission proceeded to send an email with account details on Friday 14th march at 5.01 pm with a payment deadline on Sunday 16th march at 11.59 pm knowing so well that the University Finance Office doesn't operate on weekends and as such locking out students and various teams that needed to contest.
- l. That the respondents demanded that Teams do submit duly signed nomination papers to the Electoral Commission nine (9) days prior to the election date between 8.00 am and 5.00pm, setting a deadline on Sunday at 11.59 pm and then further extending the same to 10.00 am was unconstitutional as the UNSA Constitution which binds the



elections dictate for (9) days prior to the election date between 8.00 am and 5.00pm therefore the deadline ought to have been on Monday at 5.00 pm and not Sunday 11.59pm or Monday 10.00 am.

- m. That the 3rd respondent ought to have appointed returning officers and polling clerks to support the scheduled elections on the 26.3.2025, however, the recruitment of returning officers and polling clerks was neither done and or advertised, the recruitment of the returning offices if any was not competitive, there was no public participation and the list of appointed returning officers was not published anywhere yet elections were slated.
 - n. That the 2nd and 3rd respondent were obligated to appoint election observers drawn from the Commission on Administrative Justice and the National Gender and Equality Commission when elections of 26.3.2025 were scheduled, yet there were no known election observers appointed by the 2nd and 3rd respondents as no such list was published.
 - o. That despite the respondents scheduling an election on the 26.3.2025, the rules demanded that there shall be established Electoral Tribunal which shall consider and determine arising election dispute and related matters, contrary to the said dictate, there was no Electoral Tribunal appointed by the respondents.
 - p. That the respondents purport that the Nomination Process ended on 17th of March 2025 yet out of partiality on 18th, 19th, 20th and 21st the respondents were still imploring their preferred Teams to reconstitute Teams, bring new Team Members and upload their nomination documents to be nominated.
 - q. That the Respondents on a correspondence dated 18th March 2025 declared commencement of campaigns after successful nominations on 17th March 2025, but contrary to the rules continued to receive nomination documents from their preferred Teams and published new nominated Teams on 20th and 21st of March, 2025.
31. That the e-ballot system and the UNSA Election portal intended for use by the respondent on the 26.3.2025 failed the all Constitutional test to conduct a credible election as envisaged in *the Constitution* of Kenya, 2010 among other electoral laws in the following manner:
- a. The respondent has described the e-ballot system at paragraph 43 of his response, as a portal accessible at e-ballot.uonbi.ac.ke as an online platform designed to facilitate electronic voting for students of Nairobi enabling them to cast their votes wherever they are with internet access.
 - b. That as per the log ins produced as evidence at paragraph 53 of the reply, on the issues of Access records 2025, there is no explanation why there was system log in fail on 13.3.2025, 16.3.2025 and 17.3.2025.
 - c. That at paragraph 53 of the response, the respondent herein acknowledges that indeed the e-ballot log in had failed.
 - d. That the e-ballot system is not simple, accurate, verifiable, accountable and transparent as majority of students cannot access the said portal and therefore it doesn't meet the constitutional threshold of electronic electoral system.



- e. That the respondent have not put in place and have failed to ensure that the technology used meets the Constitutional threshold and further the respondents did not develop a policy on back-up mechanism or progressive use of the e-ballot system in the electoral process.
 - f. That the e-ballot system as was slated to be used in the 26.3.2025 elections by the respondents was dysfunctional and ineffective as majority of the University of Nairobi cannot log in the portal as and when required as the same is being regulated by the respondents, hence this infringe the students' rights right to vote and participate in elections as provided for in *the Constitution* of Kenya, 2010, and the *Universities Act* of 2012 (amended).
 - g. That the respondents herein deliberately and maliciously disabled cookies on the applicant's petitioner's e-ballot logins for Team Owiti, a strong Team in the election.
 - h. The dysfunctionality of the e-ballot system was a fault on the part of the respondents and not the Petitioner.
 - i. That despite challenges noted on the e-ballot system and raised by the petitioner together with other students, there was no intervention whatsoever and infant the petitioner was unjustifiably vilified and disqualified with no reasons at all.
 - j. That the e-ballot system that was to be utilized in the 26.3.2025 students' elections did not have a back-up plan and strategy as it has been with other online platforms in the University, for example when there is failure on the mthani exam portal students are always allowed to do exams on google classroom and other online platforms. The respondent failed to have a back-up in case of election failure on the e-ballot system.
32. That in conducting the said elections, the Respondents herein adopted a purely an electronic system of elections, being the e-ballot system, vide the UNSA Election Portal wherein the entire electoral process is being managed electronically and a must have internet access and power back up.
33. That the University Electoral Commission, has not put in place an alternative mode of conducting the elections as a support mechanism to the process.
34. That equally, there are no guidelines developed to managed the affairs of the said elections and to conduct the same within the law.
35. That I am alive to the fact that an election, being in the conduct similar to the one being conducted by the respondent's herein ought to be simple, transparent, take into account the special needs of persons with disabilities and other persons or groups with special needs.
36. That the respondents herein in planning and arranging to hold student elections ought to take administrative arrangements for the registration of students and the conduct of elections be designed to facilitate, and shall not deny, an eligible student the right to vote or stand for election as the one slated for the 26.3.2025.
37. That the respondents in deploying the e-ballot system and the UNSA Election Portal in conducting its elections, the said electoral system adopted is obligated to comply with the following principles— (a) freedom of citizens to exercise their political rights under Article 38; b) not more than two-thirds of the members of elective public bodies shall be of the same gender; (c) fair representation of persons with disabilities; (d) universal suffrage based on the



aspiration for fair representation and equality of vote; and (e) free and fair elections, which are (i) by secret ballot; (ii) free from violence, intimidation, improper influence or corruption; (iii) conducted by an independent body; (iv) transparent; and (v) administered in an impartial, neutral, efficient, accurate and accountable manner.”

38. That the preparations leading to the elections as the one slated for the 26.3.2025 must meet the minimum standards articulated in Article 81 of *the Constitution* that election system must be free and fair; transparent; and administered in an impartial, neutral, efficient, accurate and accountable manner.
 39. That the actions by the respondents were an affront to the *Universities Act* and *the Constitution* of Kenya, 2010.
 40. That the guiding principles of the 2nd respondent is to ensure that it conducts free and fair elections, credible, impartial and transparent.
 41. That the University of Nairobi Students Association (UNSA) Constitution, 2017 (Amended, 2021), has its objects under Article 7 to ensure that it promotes the welfare, aspirations and interests of students.
 42. That the 1st respondent’s actions and omissions are in violation of Articles 10, 27, 38, 47,50 and 81 of *the Constitution* of Kenya, 2010 and section 41 of the *Universities Act*.
 43. That what is deposed to herein is true to the best of my knowledge information and belief save where sources of information and grounds of belief have been disclosed.
3. The claim in Petition No. E0072025 is supported by the verifying affidavit of the 1st Petitioner Juliet Atieno Bwoga as follows:
- i. This matter is about the Respondents issuance of an unconstitutional election directive predicated on the aforesaid decision contained in the Verdict Letter dated 21032025 conveyed to the Petitioners by the 2nd Respondents on the same day through email wherein the Electoral Commission declined to clear Petitioners’ Team on the ground that they failed to meet diversity test. The said letter’s relevant content is reproduced as hereunder for ease of reference: -

“Team Step up, The Commission on 18th March 2025, communicated the verdict of verification of your nomination documents. The Commission gave you a window to work on the issues raised in particular, the team not having met both faculty and programme diversity, as the Chairperson and PWD were from the Faculty of Law, while the International Representative and Secretary General were from the Faculty of Health Sciences.”

The Commission further scrutinized your response regarding the matter and the following was noted:

The issue of faculty and programme diversity was not fully addressed as the team Chairperson and PWD are from the Faculty of Law, both pursuing Bachelor of Laws.

Also, note the Commission was very firm on the Student Council teams’ strict compliance with the required regulations.

This is therefore to inform you your team was not cleared based on the above.
 - ii. As pleaded above, prior to the above Verdict Letter dated 21032025, at night the 2nd Respondent on 18032025 at 9.26 pm by email (marked as “P=2” attached at page 2 of the



Bundle of Annexures) communicated the verdict of verification of the Petitioners' nomination documents to the effect that their team was not cleared as they did "not meet both faculty and programme diversity (Chairperson and PWD are from the faculty of Law, International Representative and Secretary General are from the Faculty of Health Sciences". Further, the 2nd Respondent required the Petitioners to "comply with the requirements within two hours from the time of" the said email. In view of the 1st Respondent's aforesaid late hour communication, the Petitioners promptly expressed their concerns by email on the same day at night - being 18032025 - at 11:30 pm whereupon they indicated that they had noticed the development that the e-ballot portal was already closed thereby making it impossible to make the upload, and therefore they however in good faith resorted to upload their documents containing updated team members via the email channel.

- iii. Further, Your Petitioners aver that when they were given a 2-hour window to comply with the requirements, they wrote to the Commission seeking an extension of time as it was late into the night thus making it difficult to get clearance forms signed by the Dean. However, the said request went unanswered, and as such they were left with no choice but to resubmit their team with the PWD representative post still unchanged.
- iv. In any event, Your Petitioners aver they met all the requirements for nomination as stipulated in the Amended UNSA Constitution, and that the final nomination list they submitted after the Commission initially declined to clear them had addressed the issue of diversity leaving only the Chairperson and the Representative of Persons Living with Disability coming from the Faculty of Law while the remaining five members all were drawn from different faculties.
- v. Specifically, and for ease of reference, the Petitioners aver that the aforesaid Article 10(1)(b) as read with schedule 3 part iv Section 11(l) of the rules and regulations governing students elections under University of Nairobi Students Association (UNSA) Constitution, 2017 (Amended, 2021), stipulates as follows: -

Article 10(1) (B)

The Composition of Students' Council

"The special interests of the Students shall comprise

- i. People with Disability;
- ii. Interests of international students;
- iii. Sports and social welfare."

Schedule 3 Part IV Section 11(L)

Part IV – Elections

" 11. Nomination of aspiring teams –

- l) Student Council; Faculty and Campus teams shall include in the composition of the team in terms of ethnicity, race, gender, disability, international students' representation and approved academic programs."
- vi. The Petitioners aver that upon receiving the 2nd Respondent's impugned decisions of 18th and 21st March 2025 respectively, and aggrieved by the same, they made an appeal to the decisions where they are yet to receive any formal response on the same. Further, the Petitioners contend



that the Respondents' Electoral Commission had deliberately maintained endless silence, and at all material times relevant to this Petition, the Respondent have neither addressed with the Petitioners nor described the legal nature of the purported disqualifications in line with article 10(1) (b) as read with schedule 3 part iv section 11(a) (l) of the rules and regulations governing students elections under university of Nairobi Students Association (UNSA) Constitution, 2017 (Amended, 2021). Your Petitioners aver that the Respondents who in total breach of *the constitution* for want of response to the Petitioners' concerns for the reason that the 1st Respondent is always in internal meeting, have unlawfully, illegally, irregularly and unreasonably, and without authority and relevant safeguards of due process denied the Petitioners to participate in the Students' Council 2025 Elections, which actions are meant to stultify the Petitioners' fundamental rights to conduct the affairs of the Students' Association. Marked as "P=3" being Email correspondences and call logs and SMS Communications attached at pages 3 - 14 of the Bundle of Annexures,, are clear evidence to demonstrate that Your Petitioners have in vain exhausted internal dispute resolution and/or appeal mechanisms for resolving the dispute, thereby making it necessary to approach this Honourable Court in seeking for an appropriate remedy.

The Respondents' particulars of breach

- i. Failure to comply with Nomination Requirements (marked as "P=4" attached at pages 15 - 17 of the Bundle of Annexures). in line with Article 10(1) (b) as read with schedule 3 part iv section 11(a) (l) of the rules and regulations governing students elections under university of Nairobi students association (UNSA) Constitution, 2017 (Amended, 2021). Specifically, the Commission misinterpreted the aforementioned provision as nowhere therein is it expressly mentioned that not more than one team member should come from the same faculty.
- ii. In particular, the Petitioners aver that in a memo dated 12.03.2025 (marked as "P=4" attached at pages 15 - 17 of the Bundle of Annexures), the 1st Respondent being the Chairperson of the Commission issued a communication on the requirements for nomination which basically copied the provisions of schedule 3 part iv Section 11(l) of the rules and regulations governing students Elections under the Amended UNSA Constitution but in the aforesaid memo mischievously, and contrary to the spirit of *the Constitution*, added another requirement that stated that: "where applicable, each team should demonstrate diversity in terms of faculty, campus and approved academic programs." Further, with the said additional requirement, the Commission unconstitutionally and erroneously construed it to mean that all the seven members of a team including representatives of special interests' groups must come from different faculties.
- iii. Ignoring the Petitioners' various alignments submitted in line with the following that permutations:
 - a. Permutation 1 submitted on 17032025 (marked as "P=5A" attached at pages 18 – 100 of the Bundle of Annexures).
 - b. Permutation 2 was submitted on 18032025 (marked as "P=5B" attached at pages 101 - 186 of the Bundle of Annexures).
 - c. Permutation 3 was submitted on 22032025 (marked as "P=5C" attached at pages 187 - 267 of the Bundle of Annexures). Even though when the Petitioners received an email at 12:22 am titled "Student Council



Nominations Verdict' highlighted that their team had not been cleared because the Chairperson and the PWD representative were from the same faculty, they took cognizance of the fact that the verdict did not have a clause stating that further appeals were NOT allowed. Therefore, in good faith, the Petitioners were still in the process of pursuing a replacement to the PWD representative in fulfilling the Commission's requirements via 9:51 pm email communication.

- d. Flawed Commission's communication channels with disabled e-ballot system and continuous lack of response to nomination clearances.
- e. The Commission's casual view of the issue of diversity raised by itself about fielding of the Chairperson and PWD from the same faculty (law) as well as the Secretary General and the International Representative (Health Science), contrary to the Petitioners' humble and rightful opinion that the UNSA's Constitution does not stipulate such requirement for the special group's positions (PWDs and International Representatives) as urged by the Respondents. Further, the 1st Respondent ignored the informed position without such requirement as had been done for the preceding teams that had been cleared by the Commission on previous years, and as the Commission only said it was not aware of the preceding cases, it merely stated it would address it later, which it never did.
- (f) Whereas the 1st Respondent on 18032025 sent a communication to the Petitioners at 4:42 pm which showed that only teams from 6 faculties had been cleared to run following the nomination's clearance across various faculties, it is forth to note that the council teams had not been cleared with seven (7) other faculties.
- g. Jeopardized campaign period before full clearance of teams contrary to UNSA Constitution which provides for a one-week campaign window ending a day before the elections thereby derailed the election progress.
- h. Deliberately answering and ignoring the Petitioners' well-articulated concern to the Electoral Commission regarding the Persons with Disabilities post to the effect of the factual position touching on PWDs scarcity. This Email went unanswered.
- i. The 1st Respondents ignored, did not answer and did not give a feedback to the Petitioners' urgent calls to the Commission whereupon by email the Petitioners submitted a second appeal. Any subsequent calls to the Commission's office did not yield fruits. Nonetheless, in spite of all these unclear communications and technicalities, the Commission by communication reiterated that only two teams, namely, Team Weledi And Team Fresh Perspective had been cleared (by Announcement marked as "P=6" attached at page 268 of the Bundle of Annexures and email "P=8" attached at page 270), proceeded to announce the end of election campaign (by announcement dated 24032025 marked as "P=7" attached at page 269 of the Bundle of Annexures), and further notified the mock elections that were scheduled for the same date (by Mock Elections Notice marked as "P=9" attached at page 271 of the Bundle of Annexures).



- j. The Respondents throughout mischievously frustrating the entire election nomination process by continuously avoiding essential email, calls, texts and even a physical visit to the Office of the 1st Respondent to the extent that majority of the Petitioners' emails and texts went unanswered. And many times, they tried calling the Commission officials would respond by stating that they are in a meeting and would get back in vain.
- vii. In view of the foregoing, the Petitioners verily believe that in the discharge of their duties for their Team in competitive election environment, their qualification scope is fully within the threshold provided by the rules and regulations governing Students elections under university of Nairobi Students Association (UNSA) Constitution, 2017 (Amended, 2021).
- Viii. In view of the foregoing factual challenges occasioned by the Respondents' impugned decision, the Petitioners verily believe that the issue of diversity being advanced by the 1st Respondent against the clear provisions of UNSA Constitution, 2017 (Amended, 2021) is extremely strange. In the circumstances, the Petitioners contend that the impugned decision is openly skewed against the Petitioners and the same has no factual and legal basis. The UNSA Constitution, 2017 (Amended, 2021) marked as "P=10" is attached at pages 272 - 323 of the Bundle of Annexures).

Grounds relied upon and the points of Law for determination

- a. The Petitioners reserve the right to subject the Respondents to the following Articles of *the Constitution* which have been violated by the aforesaid Verdict Letter dated 21032025, thus the present Petition: -
- b. Article 3 of *the Constitution* of Kenya obliges the Petitioners to uphold and defend *the Constitution* and in particular to insist that all organs, bodies and or offices of the Government of Kenya be established in strict compliance with *the Constitution*.
- c. Article 10(2) (c) of *the Constitution* of Kenya obliges the Respondents to observe and keeping with principles of good governance, integrity, transparency and accountability in exercise of the public authority.
- d. Article 22 (1) of *the Constitution* of Kenya entitles the Petitioners to move this Honourable Court whenever a right or fundamental freedom in the Bill of rights is denied, violated, infringed or threatened.
- (e) Article 27 of *the Constitution* of Kenya entitles the Petitioners equality before the law and guarantees them equal benefit of the law; and protection from discrimination directly or indirectly on any ground including race and religion.
- f. Article 47 (1) of *the Constitution* of Kenya entitles the Petitioners to a fundamental and inalienable right to a lawful and procedurally fair administrative action.
- g. Article 81 of *the Constitution* of Kenya entitles the Petitioners preparations leading to an elections process that must meet the minimum standards articulated in this Article in such a way that the system must be free and fair; transparent; and administered in an impartial, neutral, efficient, accurate and accountable manner.
- Viii. The Petitioners aver that by the connivance between the 1st Respondent and 2nd Respondent through extreme injustice against the Petitioners, the Respondents have breached, infringed



and grossly violated, and further threatened to continue infringing and violating the Petitioners' fundamental and inalienable right to a lawful and procedurally fair administrative action; as well as equality and freedom against discrimination, contrary to, inter alia, the express and implied provisions of Articles 3 (1); 10(2) (c); 22 (1) & (4); 23 (1) & (3); 27(1), (4) & (5); and 47(1) & (2) of *the Constitution* of Kenya.

Particulars of breaches, infringements, violation, discrimination, illegality, unreasonableness and procedural unfairness of the decision hence breach of article 47 of *the constitution* of Kenya on Fair Administrative Action

- a. The Petitioners aver that the Respondents have blatantly contravened the clear provisions of Rules and Regulations governing Students' elections under university of Nairobi students' Association (UNSA) Constitution, 2017 (amended, 2021), and further contend that the Respondents have handle discriminatorily without giving opportunity to participate in election yet they fully qualified for the nomination. Accordingly, Your Petitioners aver that the discrimination manifested in the impugned verdict letter is not only unreasonable and unjustifiable neither but also not envisaged under *the Constitution* of the Republic of Kenya. Further, the impugned decision has infringed on the Petitioners' right not to be discriminated upon under Article 27 (1), (2), (4) and (5). The Petitioners aver that it was unreasonable and procedurally unfair for the Respondents to strictly demand that Representatives of special interest groups should come from different faculties from the rest of the team members as some faculties do not have special interest groups of students, and it would be unpractical to assume that each faculty has a representation of special interest groups which is not the case with some faculties.
- b. The Petitioners avers that by arbitrarily failing to clear the Petitioners' Team, the Respondents acted with discriminately biasness contrary to the express provisions of rules and Regulations governing Students elections under university of Nairobi Students association (UNSA) constitution, 2017 (amended, 2021) as read together with *the Constitution* of the Republic of Kenya. Such action clearly demonstrates breach of two Articles of *the constitution*. Firstly, the Respondents breached the mandatory fiduciary duty in Article 3(1) of *the Constitution* of Kenya on the Respondents to respect, uphold and defend *the Constitution* of Kenya. Secondly, the Respondents breached the mandatory national values and principles of governance in article 10(2) (c) of *the Constitution* of Kenya on the Respondents to observe good governance, integrity, transparency and accountability. In this regard, the Petitioners specifically aver other than the requirement that team members should come from different faculties, the diversity test requires that not more than one team members should come from the same ethnic group, yet with open display of favoritism and in blatant disregard of the election principles stipulated in the UNSA Constitution, the Electoral Commission has cleared a team, TEAM MIKAKATI in Kikuyu campus.
- c. The Petitioners are that the Respondents' impugned decision as shown has infringed on the Petitioners' rights enshrined under Article 47(1) of *the Constitution* which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- d. The Respondents have threatened the Petitioners' legitimate expectation based on corporate and professional focus required of the Respondents in fairly and procedurally addressing the Petitioners' as elaborately mentioned in diversity addressed



in this Petition in line with the principles established in Article 47(1) of *the Constitution* of Kenya.

- ix. The Petitioners herein for and within the membership of their approved election Team have properly approached this Honourable Court under Articles 3, 22, 23, 258 (1) (2)(b) (c), and 259(1) of *the Constitution* of the Republic of Kenya.
- x. It is in the best interest of justice and by extension in the public interest that the orders sought herein be granted as follows:
- xi. In accordance with Article 165(6) of *the Constitution* of Kenya, this Honourable Court has jurisdiction to hear and determine this Petition in the public interest.

Reasons wherefore Your Petitioners humbly pray for judgement against the Respondents jointly and severally for orders that

- a. A declaration that due to their actions and omissions predicated on the decision contained dated 21032025 by UNSA Independent Electoral Commission and any subsequent decisions and/or actions emerging therefrom, the Respondents have violated Articles 10, 19, 21, 22, 23, 24, 27, 28, 35, 47, 50, 81, 227(1), and 232 by not clearing the Petitioners for Students' Council 2025 Elections and for ALL consequential actions thereto purportedly disqualifying the Petitioners' approved Team known as STEP UP TEAM are unconstitutional, irregular, and unprocedural as they infringe on, threaten, and grossly violate the Petitioners' right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, and amount to abuse of office; and the same be quashed.
 - b. A mandatory injunction Order of the Court compelling the Respondents do cleared the Petitioners' Team, namely, STEP UP TEAM, for onward participation in Students' Council 2025 Elections.
 - c. An order of permanent injunction restraining the Respondents either by themselves, assigns, representatives, officers and/or agents from interfering with and/or purporting to stultify the Petitioners' participation in Students' Council Elections.
 - d. The Respondents to bear the costs of and incidental to this Petition.
 - e. This Honourable Court be pleased to issue such further or other Orders(s) as it may deem just and expedient for the ends of justice in the circumstances of this Petition.
4. The Petitioners' case in Petition No. E0072025 is as follows:
- a. That the rules of natural justice, the right to fair trial and the right to fair hearing and in line with *the Constitution* of Kenya, 2010, *Universities Act*, the Fair Administrative Actions Act, 2015 dictate that the Petitioner is entitled to be accorded fair trial throughout the entire processes leading to the University of Nairobi Student Elections.
 - b. That the arbitrary rejection and denial of the petitioner's Team Owiti comprising of the Chairperson, the Treasurer, Sports Director Representative and the Persons with Disabilities Representative all bona fide students of Nairobi University to take part in students elections amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.
 - c. That the denial and the neglect to supply the petitioner prior to their denial and disqualification from elections based on grounds as communicated by the respondents issues



not a creation of the respondents amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.

- d. That further, the refusal to offer justifiable reasons relevant to the petitioner's team disqualification amounts to a violation of the petitioner's fundamental right to fair administrative action under Article 47 of *the Constitution*.
- e. That the decision taken administratively by the respondent's to deny the petitioner the right to be heard and the reasons why a specific administrative issue taken by the respondent that fundamentally affects the petitioner's constitutional rights have occasioned a violation of the Petitioner's right to fair hearing under Article 50 of *the Constitution*.
- f. That the decision to bar the petitioner and his team was never subjected to students' participation as envisaged under *the constitution*.
- g. That in arriving at the decision to disqualify the petitioner the same was marred with bias and partiality.
- h. That the decision by the respondent was never made in the best interest of the students.
- i. That the 2nd and 3rd respondent in disqualifying the petitioner without affording him the right to be heard and or rebut the same was an administration decision which was exercised unlawfully, unreasonably and that has become procedurally unfair to the Petitioner who is entitled to the rights to fair administration action that is lawful, reasonable and procedurally fair as enacted under Article 47 (1) of *the Constitution*.
- j. That the Petitioner avers that the respondents in conducting students' elections do not have powers to abrogate people's constitutional rights.
- k. Your Petitioner avers that the decision of the respondent is unconstitutional and the same has been clearly designed to violate the rights of the Petitioner.
- l. That section 41 of the *Universities Act* does not envisage the actions of the respondent.
- m. That the respondent by virtue of Article 38 and 81 of *the Constitution* of Kenya are mandated to conduct elections in a free and fair manner reflecting universal suffrage.
- n. That the respondents are also obligated by the University of Nairobi Students Association Constitution to uphold *the constitution*.
- o. That in deciding to conduct the affairs of the student elections by e-ballot system, the respondent were obligated to comply with *the constitution* and all electoral laws with a view to ensure a free and fair elections.
- p. That there are no guidelines regulating the affairs and the conduct of elections as intended by the respondents and as such the respondents are only conducting the elections outside the law.

The Petitioner also pleaded rights under *the Constitution* as follows:

- a. Article 20 (1) (2) & 3 (b) – protection of fundamental rights to be mandatorily be protected by the court by adopting the interpretation that most favours the enforcement of a right or fundamental freedom.
- b. Article 25 (a) and (c) – the freedom from torture, cruel, inhumane treatment and degrading manner and the right to fair trial.



- c. Article 10(1) and (2) - national values and principles of good governance.
- d. Article 22 (1) – the right to institute proceedings whether in private and in public interest. It is in the public interest that the electorate is continuously and uninterruptedly represented by their elected leaders in exercise of their sovereign will. The services of an elected leader can only be interrupted only in accordance with the principles of fair hearing and fair administrative action that is in strict compliance with the values of good governance enshrined at Article 10 of *the constitution*. The court must uphold the sanctity of *the constitution*.
- e. Article 23 (1) (3) – right to declaratory orders.
- f. Article 28- right to human dignity.
- g. The Respondents have violated the Petitioner’s constitutional right guaranteed under Articles 27, 41, 47 and 50 of *the constitution* of Kenya.
- h. Article 38,81,82 of *the Constitution* of Kenya, 2010 enshrines the conduct of elections
- i. Petitioner’s legitimate expectation to natural justice, due process and a fair administrative action and fair labour practice has been infringed by the Respondent.

Reasons Wherefore your Petitioner prays for judgment against the respondents jointly and severally for; -

- i. The Court be pleased to issue an order quashing the elections of the UNSA Elections held on the 26.3.2025 the same violated Section 41 (1) of the *Universities Act* 2012 as amended in 2016 and Article 38 and 81 of *the Constitution* of Kenya 2010.
- ii. An Order directing the respondents to organize free UNSA Elections in strict compliance with Article 38 and 81 of *the Constitution* of Kenya, 2010.
- iii. An Order directing the respondents to come up with electoral regulations and guideline on electronic voting system before organizing a fresh election in strict compliance with Article 38 and 81 of *the constitution* of Kenya, 2010.
- iv. General damages for violation of the petitioner’s constitutional rights
- v. An order do issue declaring the actions by the respondent to disqualify the petitioner from engaging in students elections as null and void and as such unconstitutional.
- vi. Costs of the Petition be provided for.

5. Petitioner’s case in Petition No. E0082025 is supported by verifying affidavit of Debora Zainab Hirbo as follows:

- 1. The Petitioner Dibora Zainab Hirbo, states that she is a duly registered student at the University of Nairobi under Registration Number E3535532022 and is the current Vice President of UNSA and that she meets all the qualifications to vie for the position of Chairperson as per the UNSA Constitution.
- 2. That the Petition is premised on all of the provision of law cited on the face of the Petition and such other prescriptions of law as shall be illustrated in the Petitioner’s written and oral submissions to the Petition.



3. That the petitioner applied to contest for the position of the Chairperson of the University of Nairobi Students Association Council 2025 under Team Purpose.
4. That during the said process, the 8th Respondent, revived a 2024 complaint, contrary to its Students' Code of Conduct, and purported to commence a disciplinary hearing against the Petitioner in February 2025.
5. That the charge containing the alleged offence was served upon the Petitioner on 27th February 2025, where upon she appeared before the Disciplinary Committee on 6th March 2025 and was immediately acquitted of the said charge.
6. That the 8th Respondent quickly drafted another charge and invited the Petitioner for another hearing on 13th March 2025 against the Principle of Double Jeopardy protected under Article 50 (2) (o) of *the Constitution*.
7. That the Petitioner nonetheless appeared and the Disciplinary Committee made a finding that the written evidences and oral statements presented could not conclusively prove the counts and it was on this basis that the Chairperson of the Disciplinary Committee cleared her to contest and made neutral recommendations in good faith.
8. That the Petitioner lodged his Application papers with the 1st – 7st Respondent's, however, on 18th March 2025, the 1st Respondent sent an email to the Petitioner informing her of their verdict and requiring her to comply within two hours of in order to regularize her position.
9. That the Petitioner duly complied by submitting another set of team for her Vice Chairperson as well as the treasurer, however, on 21st March 2025, the 1st - 7th Respondents sent a communication to the Petitioner informing her that her that her team had not been cleared for the following reasons;
 - a. That by the time of her alleged clearance, there was a pending disciplinary case that went to proceedings and found the Petitioner guilty. The Dean, Faculty of Education has confirmed that the clearance was unprocedural.
 - b. That the Dean, Faculty of Education recalled the clearance dated 14th March 2025 in a letter dated 21st March 2025.
 - c. This communication was sent despite the fact that the Petitioner had been cleared of the charges against her and despite the fact that this specific fact was not a ground upon which a candidate would be barred from contesting in an election.
 - d. That the Petitioner was equally never accorded an opportunity to be heard before the purported recall was made.
 - e. That on 18th March 2025, before the decision dated 21st March 2025, the Petitioner had already lodged an appeal against the email sent to her, unfortunately, the 1st – 7th Respondents have never made a determination on the Petitioners Appeal despite her frequent follow ups on email, the last following being on 25th March 2025 a day before the elections.
 - f. That the Petitioner therefore contends that her rights as protected in the constitutions were blatantly infringed upon and therefore this court should come to her rescue.

Particulars and Nature of breaches and contravention of Constitution and statutes



- a. That the Respondents violated and breached the Petitioner's right under Article 38 (2) which provides that every citizen has the right to a free, fair and regular elections based on universal suffrage and the free expression of the will of the electors. The Article gives the Petitioner a right to be a candidate in an election.
- b. That the fact that Respondent's used a non – existent ground to disqualify the Petitioner was gross violation of this right.
- c. That the Petitioner contends that the Existence of a pending disciplinary case was not a ground for disqualification under Part IV, Rule 8 & 10 of Schedule 3 of the University of Nairobi Rules and Regulations governing student elections contained in the UNSA constitution.
- d. That the Respondents violated and breached the Petitioner's right enshrined in Article 27 which right entitles her to equal protection and benefit of the law. The fact that the Disciplinary case was activated in February 2025 when the alleged offence happened in August 2024 offended the provisions of the University of Nairobi Students Code of Conduct (revised) 2021 which at Rule 34 requires the Disciplinary Committee to notify the affected student within 7 days and issue him with a notice of not less than fourteen days to appear and respond to the allegations.
- e. That the Respondents' therefore selectively applied the law to disqualify the Petitioner from the race.
- f. That the Respondents violated and breached the Petitioner's Rights protected under Articles 47, 50 (1), (2) and (2) (0) for the following reasons;
 1. That there was no fair hearing before the unilateral decision recalling the Applicant's clearance.
 2. That the Applicant was not given any reason for such a recall before the decision was made behind her back.
 3. That the Petitioner was charged twice for the same offence violating the principle of double jeopardy.

The Petitioner therefore seeks the following prayers namely:

1. A declaration be and is hereby issued that Respondents' decision communicated via the email dated 18th March 2025 disqualifying the Petitioner from contesting for the Position of University of Nairobi Student Association Chairperson in the 2025 elections previously scheduled for 26th and 27th March 2025 violated her rights enshrined in Article 27, 38, 47 and 50 of *the Constitution*.
2. An order of certiorari is hereby issued quashing Respondents' decision communicated via the email dated 18th March 2025 and vide the Letter dated 21st March 2025 disqualifying the Petitioner from contesting for the Position of University of Nairobi Student Association Chairperson in the 2025 elections previously scheduled for 26th and 27th March 2025.
3. An order of mandamus is hereby issued compelling the Respondents to clear the Petitioner to vie for the position of the Chairperson of the University of Nairobi



Students Association (UNSA) in the 2025 elections previously scheduled for 26th and 27th March 2025.

4. An order of General damages for the violations of the Petitioners rights
 5. Such other appropriate reliefs that this Honorable Court may deem expedient to meet the ends of justice.
6. The Respondents opposed the petitions. Dr. Kenneth Ombongi, who is the Chairperson of the University of Nairobi Independent Electoral Commission filed three (3) replying affidavits dated 2732025, 142025 and 242025 wherein he averred as follows:
1. That, the Universities (Amendment) Act 2016 and in particular Section 18 (1C), (1D), and (1E) Introduced changes to the manner of election of student leaders in the universities. Section 18 amended Section 41 of the University 2012, and introduced Sub-sections (1A), (1B), (1C), (1D), (1E), (1F), (1G), (1H) and (1I) to Section 41 of the Act. The amendments have to do with student governance and leadership in the universities.
 2. That, the provisions introduced what is now called Student Electoral College. The amendments affect the students' Associations governance, electoral process and procedures by allowing an inclusive approach to student leadership.
 3. That, one of the reasons that led to the amendment was the constant students' riots during student elections and soon thereafter and external interference by external forces including politicians.
 4. That, the amendments were also was necessary to limit the terms a student leader should be elected, and that the amendments introduced through Section 18, (1C), (1D), and (1E) were aimed at ensuring that students' leadership was aligned with national values and principles of governance as envisaged in Article 10 of *the Constitution*.
 5. That, the amendments do not infringe the students' rights since they still have the right to vote and participate in elections as provided for in *the Constitution* in that the Students in each campus, Schools or Faculty will conduct elections to elect their student council directly through universal suffrage, ensure that there is student representation from all Schools, Faculties, Departments as well as Satellite campuses through A Student Council that derives power from the entire University.
 6. That, the said amendments have not taken away the students' right to elect their leaders and that the Electoral College envisaged under Section 18 1C, 1D and 1E, enables all students to participate in electing three (3) representatives in each electoral college.
I produce a copy of the *Universities Act* 2012 (amended 2016) marked "KAO-1" in support of the above.
 7. That, in that case, students elect their representatives to the council, while section 18 (1H) provides that rules will be promulgated for purposes of governing elections into the Council.
 8. That, the amendments did not offend Article 81 of *the Constitution* but introduced and provided for participation of both gender, as well as the diversity of the people of Kenya, brings equality among Schools and Colleges and eventually inclusiveness in the Universities' Students' leadership.
 9. That, in that regard, Section 41 as amended provides as follows;



1. Every University Shall Have a Students' Association composed of all students of the university.
 - (1A) a students' association shall be governed by a students' council comprising of:
 - (a) a Chairperson;
 - (b) a Vice Chairperson who shall be of opposite gender with the Chairperson;
 - (c) a Treasurer;
 - (d) a Secretary-General who shall be the secretary to the Council; and
 - (e) Three other members to represent special interests of students.
 - (1B) every students' council shall be elected in accordance with the Act and its membership shall-
 - (a) Reflect national diversity; and
 - (b) Have not more than two-thirds of its members being of the same gender.
 - (1C) For purposes of conducting the election of the members of the student council referred to in subsection (1A), the students' association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate.
 - (1D) The students of each Electoral College constituted under subsection (1C) shall elect three representatives-
 - (a) From amongst persons who are not candidates under subsection (1A); and
 - (b) Of whom not more than two-thirds shall be of the same gender.
 - (1E) The representatives of each Electoral College shall elect the members of the student council within thirty days of the election under subsection (1D).
 - (1F) A member of the student council shall hold office for a term of one year and may be eligible for re-election for one final term.
 - (1G) A person who has held office as a member of the student council of a University for two terms is disqualified from election as a member of the student council of any other University or constituent college in Kenya.
 - (1H) Every students' association shall, in consultation with the University, formulate and enact rules to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.
 - (1I) An election conducted pursuant to this section shall comply with the general principles of the Kenyan electoral system under Article 81 of *the Constitution* and the rules governing the election of members of the student council.
- (2) The functions of a Students' Council shall be to-
 - (a) oversee and plan, in consultation with the Senate, students' activities for the promotion of academic, spiritual, moral, harmonious communal life and social well-being of all students;



- (b) Draw to the attention of the appropriate authority, where necessary, special needs for particular students;
 - (c) Offer suggestions to the Senate or its equivalent on matters affecting the well-being of students; and
 - (d) Undertake such other functions as provided in its governance instrument as approved by the Council.
10. That , the import of Section 41 (1B), (1C),(1D),(1E),(1F) as amended, (impugned Section 18), is that the students' association will convert itself into an electoral college in terms of Departments, Schools or Colleges where by students in each of these electoral colleges (departments, schools and colleges) will elect three representatives who should not be candidates, and the election should abide by gender parity that not more than two thirds should be of one gender, the term of office is one year with eligibility for re-election for one final term.
 11. That, a student can only be elected into office for only two terms. There is a requirement in section 41(1H) that every students' associations should in consultation with the university formulate rules to govern the conduct of elections.
 12. THAT, these representatives from electoral colleges will then elect the council within thirty days. Section 41 (1B) provides that elections of the council should be conducted in accordance with the Act, take into account the diversity of the people of Kenya and special interests. This ensure that student leadership in universities reflects the face of Kenya as required by *the constitution*.
 13. THAT, prior to the amendments, Section 41 of the *Universities Act* did not have a provision on the manner of conducting student elections in universities.
 14. THAT, the impugned amendments have introduced a system through which students in each department, campus, college or faculty will first elect three of their own representatives through universal suffrage.
 15. THAT, these representatives will then represent the school, department, campus, college or faculty in electing the council. The amendments also bar finalist candidates from offering themselves for election.
 16. THAT, for the first time the provisions make it plain that the election of representatives either at the electoral college or council level, shall take into account gender parity so that one gender shall not have more than two-thirds of the members, take care of special interests and limit the term of office to two terms of one year each.
 17. THAT, furthermore, the elected representatives should reflect the diversity of the people of Kenya. In other words, the electoral framework are aimed at achieving fair and inclusive representation in colleges, schools or faculties of each university, and place term limits in elective positions.
 18. THAT, electoral system protect minority interests so that even colleges that have fewer students will feel fully represented, give equal say to campuses or schools and ensure that as many students as possible have an equal chance to aspire for leadership in the Universities rather than leave those positions to the same people for as long as they are in the University.



19. THAT, a proper reading of Article 24 of *the Constitution* is that limitation of rights is permissible where necessary and justified. In this case the right to vote by universal suffrage may appear to be limited but students will still elect their college, school, faculty or campus representatives through universal suffrage where students' associations in those colleges, schools and faculties will constitute themselves into electoral colleges for purposes of electing representatives who will in turn elect the council.
20. THAT, as it is, the vote by universal suffrage will not be completely limited. If there is any limitation introduced by the amendments, it is justified as it is meant to achieve fair and equitable representation as well as orderly elections in universities.

The University Of Nairobi Students Association Constitution 2017 (amended 2021)

21. THAT, Article 10 of the UNSA CONSTITUTION establishes and provides for the Composition of Students' Council to consist of:
 - a. A Chairperson;
 - b. A Vice-Chairperson who shall be of opposite gender with the Chairperson;
 - c. A Secretary-General who shall be the Secretary to the Students' Council;
 - d. A Treasurer;
 - e. Three other members to represent special interests of students, namely Special needs, Interests of international students & Sports and social welfare. He annexed a copy of the Students Association Constitution 2017(amended 2021) marked "KAO-2" in support of the above.
22. THAT, the Respondents wish to state and clarify that the University of Nairobi is comprised of thirteen faculties campuses under Article 20 of the UNSA Constitution for purposes of electoral colleges of the Student's Association Elections, namely;
 - a. Faculty of Agriculture
 - b. Faculty of Arts and Social Sciences
 - c. Faculty of Built Environment and Design
 - d. Faculty of Business and Management Science
 - e. Faculty of Education
 - f. Faculty of Engineering
 - g. Faculty of Health Sciences
 - h. Faculty of Law
 - i. Faculty of Science and Technology
 - j. Faculty of Veterinary Medicine
 - k. Kenya Science Campus
 - l. Kisumu Campus
 - m. Mombasa Campus



23. THAT, the nomination clearance took place on Monday 17th March, 2025 as per the circulated timeline with all teams required to engage in the nomination process, which included filling out forms and securing seconders from their supporters.
24. THAT, following the completion of nomination process conducted on March 17, 2025, the Independent Electoral Commission, pursuant to Schedule 3, Part IV, Section 11(a) (I) of the Rules and Regulations Governing Students Elections, 2017 (Amended, 2021), the Commission announced and published the names of successful Teams from Faculties and Campuses. He annexed a copy of the updated nominated teams for faculties campuses and Council students' associations for UNSA elections, 2025 marked "KAO-3" in support of the above.
25. THAT , the requirement for diversity is a University of Nairobi Students Association constitutional principle and requirement under the preamble, Articles 8 (e), 9 (3)(d), 14 (b), schedule 3: 1 (b) and 20(4) of the University Of Nairobi Students Association Constitution & Rules And Regulations Governing Students Elections, 2017 with the principle aim and purpose to achieve;
 - a) Students and University community diversity of backgrounds and cultures of members, united by a common purpose and Aspirations
 - b) Guiding values and principles of the Student's Association in terms of Inclusivity and diversity,
 - c) Promote cultural, racial and religious diversity of the members of the Student's Association;
 - d) Promote gender balance and national diversity;
 - e) Promote diversity of the University programs and presentation at the Faculty and Council level in students' representation.
26. THAT, diversity of faculty criteria quota promotes the presence and representation of facilities at Council level in the students' governance structure in the University and cannot be faulted as a disqualification criterion as alleged & claimed by the Petitioners.
27. THAT, diversity of faculty criteria quota at Council level is important in fostering an inclusive and supportive environment for all faculties and campuses within the University and plays a pivotal role in promoting inclusion, celebrating academic program diversity, encourage participation from a wide range of students and addressing the needs of all students in the University.
28. THAT, diversity of faculty criteria quota at Council level help foster a rich range of ideas and perspectives in council representation for the good of the University and students' community.
29. THAT, diversity principle and structure of governance is also underpinned in *the constitution* of Kenya 2010 to reflect the regional and ethnic diversity of the people of Kenya, devolved government at the faculties & campuses levels.
30. THAT, faculty and program of 'Education diversity ensure the University Council variation in students' backgrounds, experiences, attitudes, and aspirations, particularly in relation to areasfields of specialization, which leads to a diverse student body that enhances leadership outcomes and promotes interactions with peers from different backgrounds.



31. THAT, the diversity of a university's student's Council influences its strength, productivity, and intellectual personality and many other attributes contributes to the richness of the students leadership environment for teaching, research and learning.
32. THAT, Student's Council Team being the apex governing body of the Students need diversity in discipline, intellectual outlook, cognitive style, and personality to offer students the breadth of ideas that constitute a dynamic intellectual community.
33. THAT, a diverse student council benefits the students and the University cohesiveness, communication, joint missions of teaching and research by increasing creativity, innovation, and problem-solving.
34. THAT, the Requirements of diversity in faculty and programs mirrors Articles 90 (c), 91, 94 (2), 130 (2), 131 (2)(a), 174 (b), 197(2)(a) and 250 (4) of *the Constitution* of Kenya 2010 on;
 - a. Regional and ethnic diversity of the people of Kenya and faculty and academic programs offered at the university.
 - b. Diversity of the nation, the will of the students, and exercises their sovereignty.
 - c. Composition of the council executive to reflect the academic program and specialization diversity of the students of the University.
 - d. Promotes respect for the diversity of the students and academic in the university.
 - e. Fosters national unity by recognizing diversity in faculties and programs in the university.
 - f. Ensure that the Council diversity is reflected in its memberships in equitable proportions.
 - g. Protects minorities within faculties campuses in equitable proportions in equitable proportions.
35. THAT, under Section 3 (2) of the *Universities Act*, 2012, the Respondents are required and enjoined to;
 - a. Promote quality and relevance of its programs in the facultiescampuses and students' leadership;
 - b. Promote inclusive, efficient, effective and transparent governance systems and practices and maintenance of public trust;
 - c. Ensure sustainability and adoption of best practices in management and institutionalization of systems of checks and balances;
 - d. Institutionalize non-discriminatory practices.
36. THAT, Articles 90 (2) (c), 91 , 94 (2) , 130 (2) , 131 (2)(a), 174 (b), 197(2)(a) and 250 (4) of *the Constitution* of Kenya 2010 as read together with section 3 (2) of the *Universities Act*, 2012 and section 25 of *National Cohesion And Integration Act* No. 12 of 2008 in the student's council in order to:
 - a. Promote the elimination of all forms of discrimination on the basis of facultycampus or program in the University



- b. Discourage persons, institutions and associations from advocating or promoting discrimination or discriminatory practices on the ground of facultycampus ;
 - c. Promote tolerance, understanding and acceptance of diversity in all aspects of students leadership life and encourage full participation by all facultiescampuses and programs in the students' leadership;
 - d. Promote educational and training programs to create public awareness, support and advancement of peace and harmony among faculties and academic program; he annexed extracts of *the Constitution* 2010, the *Universities Act* 2012 *National Cohesion and Integration Act* marked "KAO-4" in support of the above.
37. THAT, on Monday, 17th March 2025 step up team appeared before the Independent Electoral Commission for council nomination clearance at 5.33 P.M.
38. THAT, the Chairperson of The Step-up Team, Ms. Juliet Bwoga introduced the seven members of the team to the Commission, indicating their respective positions in the team composition as follows:



NO.	FULL NAME	FACULTY	COURSE OF STUDY	YEAR OF STUDY	POSITION
1	JULIET ATIENO BWOGA	LAW	BACHELOR OF LAWS	3	CHAIRPERSON
2	NYABENDE ABRAHAM NYAMUGARA	EDUCATION	BACHELOR OF EDUCATION PHYSICAL (EDUCATION)	2	VICE CHAIR
3	Hamza Mohamednur Osman	Health Sciences	Bachelor of Medicine & Surgery	4	Secretary General
4	Nakamya Elizabeth Antonia	Engineering	Bachelor of Science (Civil Engineering)	2	Treasurer
5	Kinyamasyo Virginia Kasyoka	Science & Technology	Bachelor of Science (Biology)	3	Sports & Social Welfare Representative
6	Japhet Kase Kofa	Law	Bachelor of Laws	3	Persons with Disabilities Representative
7	Tamupiwa Kimberly Chikwakwata	Health Sciences	Bachelor of Medicine & Surgery	2	International Students Representative

39. THAT, the Commission reviewed and verified the nomination documents for The Step up Team as uploaded in the e-ballot and in accordance with the nominations checklist and the UNSA Constitution, when the Commission noted that;
- i. The Chairperson of The Step up Team, Ms. Juliet Bwoga and the Person with disabilities representative, Mr. Japhet Kase Kofa were from the same Faculty i.e. Faculty of Law.
 - ii. The Secretary General of the Team, Hamza Mohamednur Osman and the International Students, Ms. Tamupiwa Kimberly Chikwakwata were from the same Faculty i.e. Faculty of Health Sciences.
40. THAT, Step up Team was given an opportunity to give clarification and response to the issues noted by the commission. On the issue of Faculty and program diversity, the team informed the commission that they had challenges in getting a representative for persons with disabilities



and International Students, therefore they had to settle for representatives from Faculty of Health Sciences and Faculty of Law where the Chairperson and Secretary General came from.

41. THAT, the Commission deliberated on the issues noted about noncompliance with the requirement for Faculty and Program diversity upon review and verification of nomination documents for The Step up Team. It was unanimously agreed, that all Council teams should comply with all requirements for nomination as they represent the whole university.
42. THAT, the Commission unanimously agreed not to clear the team because the two team members were from the same Faculty i.e. Faculty of Law and another set of two members were from the same Faculty i.e. Faculty of Health Sciences
43. THAT, the Commission also agreed to provide the team with an opportunity to address the above-identified non-compliance, which would be outlined in the official communication with a deadline to comply.
44. THAT, Step up Team was given a second opportunity to address the above issues, however when they appeared before the UNSA Independent Electoral Commission, the Team only managed to realign the team to meet the set diversity requirements by reshuffling the team members who were from the faculty of health science.
45. THAT, Step up Team did not reshuffle the person with disability aspirant from the faculty of law and by this time, the Council nomination timelines were up and validly nominated Council teams cleared and published. He annexed a copy of the Commission's minutes, communications exchanged between the team and the Commission marked "KAO-5" in support of the above.

Reply To Claim On Breach And Contravention Of *The Constitution* And The Statutes

46. THAT, on the Petitioners' claims of disqualification criterion on faculty and program diversity, the Respondents wish to state and clarify that the University of Nairobi is comprised of thirteen faculties/campuses under Article 20 of the UNSA Constitution for purposes of electoral colleges of the Student's Association Elections, namely;
 - a. Faculty of Agriculture
 - b. Faculty of Arts and Social Sciences
 - c. Faculty of Built Environment and Design
 - d. Faculty of Business and Management Science
 - e. Faculty of Education
 - f. Faculty of Engineering
 - g. Faculty of Health Sciences
 - h. Faculty of Law
 - i. Faculty of Science and Technology
 - j. Faculty of Veterinary Medicine
 - k. Kenya Science Campus
 - l. Kisumu Campus



- m. Mombasa Campus
47. THAT, the requirement for diversity is a University Of Nairobi Students Association constitutional principle and requirement under the preamble, Articles 8 (e), 9 (3)(d), 14 (b), schedule 3: 1 (b) and 20(4) of the University Of Nairobi Students Association Constitution & Rules And Regulations Governing Students Elections, 2017 with the principle aim and purpose to achieve;
- a) Students and University community faculty and program diversity of backgrounds and cultures of members, united by a common purpose and Aspirations
 - b) Guiding values and principles of the Student's Association in terms of Inclusivity and diversity,
 - c) Promote faculty and program diversity of the members of the Student's Association;
 - d) Promote gender balance and national diversity;
 - e) Promote diversity of the University programs and presentation at the Faculty and Council level in students' representation.
48. THAT, Petitioners claim that faculty and program diversity are a new criterion for disqualification of aspiring candidates has no basis and is made in bad faith, ignorance of the law and highly contemptuous of the thirteen facultiescampuses from which a Council team ought to choose their members from to enable a team realize faculty and program diversity at the Council Association representation level.
49. THAT, for a seven students' Council members team (a chairperson, a vice-chairperson, a secretary-general, a treasurer, a person with disabilities, international students & Sports and social welfare representative), a Council team has least thirteen facultiescampuses to match their membership from to reflect faculty diversities and representation of the University in order to achieve and realize inclusivity and diversity of faculties and campuses.
50. THAT, that faculty and program diversity criteria quota promote the presence and representation of facilities at Council level in the students' governance structure in the University and cannot be faulted as a disqualification criterion as alleged & claimed by the Petitioners.
51. THAT, faculty and program diversity criteria quota at Council level is important in fostering an inclusive and supportive environment for all faculties and campuses within the University and plays a pivotal role in promoting inclusion, celebrating academic program diversity, encourage participation from a wide range of students and addressing the needs of all students in the University.
52. THAT, faculty and program diversity criteria quota at Council level help foster a rich range of ideas and perspectives in council representation for the good of the University and students' community.
53. THAT, faculty and program diversity principle and structure of governance is also underpinned in *the constitution* of Kenya 2010 to reflect the regional and ethnic diversity of the people of Kenya, devolved government at the faculties & campuses levels.
54. THAT, the guidelines on requirements for nomination must be read together with the requirements under the UNSA Constitution, the *Universities Act* 2012 and *the Constitution*



2010 and not in exclusion. A team should demonstrate diversity in terms of Faculty, Campus and approved academic programmes.” The guidelines apply for both nominations’ requirements for Student Counsel and faculty campus Student’s Association. He annexed copies of the guidelines marked “KAO-6” in support of the above.

55. THAT, there is no material placed before this court to show that the aspiring Step up Team met all the qualifications for nomination, even after being accommodated twice to do so.
56. THAT, the Petitioners have not adduce any evidence to support the claim of irreparable harm suffered because she failed to meet the minimum criterion for UNSA 2025 elections nomination requirements and inclusivitydiversityintegration requirements in *the Constitution*.
57. THAT , the Petitioners Claim of grave constitutional violation and guarantees of the right to free, fair, and regular elections based on universal suffrage, as well as the right to participate in political activities without unlawful restrictions has not been proven as the Petitioners have failed to meet the test of integrity and rule of law requirements as provided in the UNSA Constitution 2021 and inclusivitydiversityintegration requirements in *the Constitution*.
58. THAT, the Petitioners right to nomination and participating in students election are not absolute, but is subject to the rules and regulations governing nomination in the Respondents institution and students elections.
59. THAT, from the above sets of facts and the justifications, no serious Constitutional matter has been raised in the Petition and the provisions of *the constitution* are not applicable in this dispute. No constitutional questions and principles have been raised in the Petitioners have brought forth disjointed issues with no clarity at all.
60. THAT, no constitutional issues are discernable in the entire Petition to warrant its admission and adjudication before the Honourable Court. The Petition herein are abuse of the Court process and there ought to be a clear delineation of constitutional matters and the ordinary civil suits.
61. THAT, it is indisputable that a constitutional Petition to be sustainable as such must at a minimum satisfy a basic threshold with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation andor threatened violation. It is not enough to merely cite constitutional provisions.
62. THAT, the dispute herein is nomination criteria, thus civil in nature and there are no Constitutional issues that warrant adjudication by the Court and the Petition may very well constitute an abuse of the due process of the court. The orders sought should therefore be declined and the Petition dismissed with costs to the Respondents. He produced a copy of the updated nominated teams for faculties campuses and Council students’ associations for UNSA elections, 2025 marked “KAO-7” in support of the above.
63. THAT, the requirement for diversity is a University of Nairobi Students Association constitutional principle and requirement under the preamble, Articles 8(e), 9(3), 14(b), schedule 3:1 (b) and 20(4) of the University of Nairobi Students Association Constitution and rules And Regulations Governing Student Elections 2017 with the principle aim and purpose to achieve;
 - a. Students and University community diversity of backgrounds and cultures of members, united by a common purpose and Aspirations.



- b. Guiding values and principles of the Student's Associations in terms of inclusivity and diversity.
 - c. Promote cultural, racial and religious diversity of the members of the Student's Association.
 - d. Promote gender balance and national diversity.
 - e. Promote diversity of the University Programs and presentation at the Faculty and Council level in Student's representation.
64. THAT, the diversity aforesaid has several advantages inter alia: promotes proper representations, student's governance structure in the University: fosters an inclusive and supportive environment for whole faculties and campuses in promoting inclusion, encourage participation from a wide range of students: helps to foster a rich range of ideas and perspectives in council representation for the good of the University and the student community.
65. THAT, that all the teams were given adequate opportunity to organize themselves and participate in the nomination but they failed to meet the criteria provided for by the UNSA constitution and therefore the petitions should be dismissed with costs to the Respondents.
7. The petitions were canvassed by way of written submissions. All parties duly complied.
8. The Petitioner in Petition No. E0062025 filed submissions dated 4/4/2025 which were as follows:
- a. That the petitioner affirms that the respondents in organizing the 26.4.2025 UNSA elections, infringed, denied, violated and further threatened to violate his fundamental constitutional rights and freedoms as safeguarded in Articles 38 and 81 of *the Constitution* of Kenya, 2010, Article 4 (c), (d), Article 7(f), Article 8(b),(c),(e),(f), Article 13 (2), Article 14 (c), (d), Article 15 (e), (k), of the University of Nairobi Students Association (UNSA) Constitution 2017, (Amended, 2021), Part II on the General principles for electoral System, Section 18 of The University of Nairobi Rules and Regulations Governing Students Elections 2017 and Section 41(1)(i) of the *Universities Act* of 2012 (amended 2016) as there were massive, systematic, systemic and deliberate non-compliance with *the Constitution* and the law which contravened the principles of a free and fair election under Article 81(e) of *the Constitution*.
 - b. That the respondents' nominations, voting and the subsequent slated 26.4.2025 elections were to be conducted by way of an electronic system vide e-ballot portal accessible at <http://eballot.uonbi.ac.ke> being an online platform and operates only with internet access. The petitioner maintains that his attempts to gain access together with his team Owiti members with a view to upload their nomination documents having been successfully cleared was unsuccessful because the respondents had disabled cookies. That they sought the intervention of the respondents to use an alternative means in which they sent their documents via email which documents were well received and acknowledged by the respondent only for him and his team to be disqualified.
 - c. That even upon being disqualified and never being afforded a fair hearing and or any chance to correct a challenge emanating from the respondents, the respondents continued to clear other teams way beyond the nomination date, it further allowed



other teams to submit nominations via other alternative modes and cleared them for elections save for the petitioner and his team herein.

- d. That the respondents have not challenged and or disputed the requirement and the obligation that in conducting UNSA elections, they are obligated to comply and conduct the said elections in accordance with the general principles guiding the conduct of the Kenyan electoral system under Article 81 of *the Constitution* of Kenya, 2010 as the yardstick. This is what the respondents seem to have forgotten and the said is costly and sacrosanct.
- e. That Article 20 (4) enjoins a court of law, tribunal or other authority when interpreting the Bill of Rights to promote the values that underpin an open and democratic society based on human dignity, equality, equity and freedom and the spirit, purport and object of the Bill of Rights. Article 259 (1) (a) (b) (c) (d) and (3) require *the Constitution* to be interpreted in a manner that promotes its purposes, values and principles and advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights and which permits the development of the law and contributes to good governance. It should also be in line with the well-known guiding principle that “The law is always speaking.”
- f. That the right to participate in political processes is also enshrined in key international human rights instruments among them the Universal Declaration of Human Rights which at Article 21 states that, “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” Article 13 of the African Charter on Human and Peoples’ Rights provides that, “Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.”
- g. We begin by submitting that UNSA elections were not a one-day event. It began with voter registration, the nomination processes and the ultimate elections that were now slated on the 26.4.2025. It is for that reason that Article 38 and 81 of *the Constitution* of Kenya, 2010 and all other Kenyan electoral laws have set parameters or thresholds that an election must meet in order for it to be considered to be a valid election.
- h. Section 41 of the *Universities Act*, 2012 (amended 2016) introduced a system through which students in each department, campus, college or faculty will first elect three of their own representatives through universal suffrage. These representatives will then represent the school, department, campus, college or faculty in electing the council. The amendments also bar finalist candidates from offering themselves for election. The provisions make it plain that the election of representatives either at the Electoral College or council level, shall take into account gender parity so that one gender shall not have more than two-thirds of the members, take care of special interests and limit the term of office to two terms of one year each. That the elected representatives should reflect the diversity of the people of Kenya. In other words, the electoral reforms are aimed at achieving fair and inclusive representation in colleges, schools or faculties of each university. That this protects minority interests so that even colleges that have fewer students will feel fully represented, give equal say to campuses or schools and ensure that as many students as possible have an equal chance to aspire for leadership in the Universities. The universal suffrage here ensures that students elect their college, school, faculty or campus representatives through universal suffrage where students’



associations in those colleges, schools and faculties constitute themselves into electoral colleges for purposes of electing representatives who will in turn elect the council.

- i. That what the above meant is that the petitioner and his Team Owiti had from various department, campus, college or faculty first had them elected three of their own representatives through universal suffrage to represent them in the elections.
- j. That the representatives from team Owiti then had to represent the school, department, campus, college or faculty in electing the council as slated in the 26.4.2025 elections. The net effect of barring them on the stated grounds from contesting has the known effect to the students who had by universal suffrage proposed them.
- k. That the 1st and 2nd respondent are obligated to clear teams for nomination and allow them to take part in election contest. The respondents at paragraph 55 of their replying affidavit, indicates that on 17th March, 2025, they invited team Owiti for clearance and read to them the checklist for the UNSA 2017 Constitution. At pages 56 of the respondents' replying affidavit, it is evident that the petitioner and his Team Owiti presented and met all the criteria set out in Schedule 3: Section 8 of the University of Nairobi Rules and Regulations Governing Students Election, 2017. At paragraph 57 of the respondents' replying affidavit, the 2nd and 3rd respondent affirms that the petitioner and his team submitted their nomination documents as emailed to the Commission.
- l. That in response to pages 58, 59 and 60 of the Respondent's reply, the Commission and the chairperson indicates that the petitioner had not updated their documents through the e-ballot system, the communication to the Commission and the ICT department elicited no response and that the petitioner requested to submit the same via another mode and that there was no response. At pages 63 of the respondent's replying affidavit, the 3rd respondent, indicates that he observes that the Commission had the authority to clear teams for purposes of UNSA Elections. It is on that basis that they disqualified the petitioner and his Team Owiti from contesting in the UNSA 26.4.2025 elections. The petitioner affirms that together with his team, they had met all the criteria for clearance by the Commission as per Section 8 of the University of Nairobi Rules and Regulations Governing Students Elections 2017 and were not disqualified under Section 10 on o. 7
- m. If the rules, save for the fact that the e-ballot system was not working an obligation on the part of the respondents. The respondents have not demonstrated whatsoever how all the other cleared teams successfully uploaded their nomination documents, how they cleared each and every team via the e-ballot system, save for a blanket response that they had cleared some teams. The respondent has also not explained why they decided to clear some other teams' way beyond the nomination period and why some other teams cleared did not comply with the e-ballot system.
- m) That submitted that the restrictions used by the respondents to bar students from participating in UNSA elections ought to be appropriate to the intended purpose, they must be necessary in a democratic society' in the sense that there are alternative measures less burdensome to the rights of contesting teams to participate in elections; and they are not abusive (proportionality stricto sensu), in the sense that they are



surrounded by safeguards so as to avoid their abusive application as the one taken by the respondents herein in baring the petitioner and his team.

- n) That there are some aspects which form the essential content of the right of students to freely participate in the government of their Universities. These aspects comprise the effective participation in the electoral process, including campaigning, fair and equitable access to the e-ballot; the monitoring of the electoral process by candidates, students and the competent voter registration by the respondents; the secret ballot; participation in the process of vote counting and publication of the election results by respondents, candidates and any other relevant actors for the transparency of the elections; the possibility of contesting the results before the competent administrative and judicial bodies, if appropriate. These aspects of student's right to participate in the government of their Universities cannot be suppressed, even in an emergency situation such as strikes, demonstrations, limited or lack of resources, poor background, basis of faculties undertaken by different campuses, academic failures and resist, suspension of students, opposing the University administration by students, without undermining the integrity of the electoral process.
- o) The reasons for possible limitations must be founded in a legitimate Commissions' interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained. Even more important, a limitation may never have as a consequence that the right itself becomes illusory.
- p) That the respondents were bound by Article 38(1) of *the Constitution* grants the students, the petitioner and his team the right to make political choices, and sub-Article 2 states that every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under *the constitution* or any office in a political party. Article 81 on the other hand emphasizes on the freedom to exercise political rights, gender parity and fair representation including equality of the vote.
- q) That the right to vote and participate in an elections organized by the respondents is not a right be trifled with. It signified the power of the students to participate and pick those they desire to lead them for a given period of time. The importance of protecting the right to vote was emphasized in the South African case of Richter v Minister for Home Affairs and 2 others [2009] ZACC, where it was stated that: "We should accordingly approach any case concerning the right to vote mindful of the bright, symbolic value of the right to vote as well as the deep, democratic value that lies in a citizenry conscious of its civic responsibilities and willing to take the trouble that exercising the right to vote entails.
- r) That the UNSA election is first and foremost the students' election. Every student of the University of Nairobi must protect his or her right to vote, right to participate in the political affairs of the University. It is upon exercising all the rights which *the Constitution* bestows upon them, that they can claim the sovereign power that they donate to their representative in their respective colleges. That Article 1 of *the Constitution* recognizes the sovereignty of the people of Kenya and that power is exercised through democratically elected representatives in the election process. Article



38 of *the Constitution* sets out the political rights of the individual and underpins the said sovereignty of the people. It provides as follows:

“Article 38(3) every adult citizen has the right, without unreasonable restrictions: -

- (a) to be registered as a voter:
- (b) to vote by secret ballot in any election or referendum: and
- (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office”

The rights guaranteed under Article 38 are realized through the electoral process set out under Chapter 7 of *the Constitution* which is titled “Representation of the People”.

Article 81(3) of *the Constitution* outlines what free and fair elections entail; they must be by free ballot, free from violence, intimidation, improper influence or corruption. The election must be conducted by an independent body, must be transparent, neutral, efficient, accurate and accountable.

Article 10 of *the Constitution*, sets out the National Values and principles of governance which every state officer, public officer is enjoined to observe. They include, “good governance, integrity, transparency and accountability” (Article 10 (2) (c).

Article 249 of *the Constitution* sets out the objects and authority of Commissioners and Independent Officers which includes the protection of the people and promotion of Constitutionalism.

- s) *The Constitution* as the supreme law is founded on the sovereignty of the people of Kenya (see *Njoya and Others v Attorney General and Others* (2008) 2 KLR (EP) 658). This sovereignty is exercised through voting for representatives in the National and County governments who exercise delegated authority of the people in accordance with Article 2. It is beyond argument then that the right to vote is fundamental to our system of government. *The Constitution*, with its emphasis on the peoples’ sovereignty, the values of the rule of law, equity, inclusiveness, equality, human rights as well as the right to vote guaranteed under Article 38 and the qualification of voters provided under Article 83 does not exclude prisoners from being registered to vote and consequently voting in an election. Apart from merely guaranteeing the right, *the Constitution* places upon the State and its agencies the positive responsibility to ensure that all the people of Kenya and particularly those who are marginalized or vulnerable are able to exercise this fundamental right.”
- t) That the nature and extent of the representation guaranteed under Constitution and the obligations of the 1st and 2nd respondent herein is at the heart of this case as was noted by the court in the case of *Johnson Muthama v Minister for Justice and Constitutional Affairs and Another Nairobi Petition 198 of 2011* [2012]eKLR, that, “In bringing this matter for determination, the petitioners have demonstrated the concern of citizens in ensuring that the rights enshrined in *the Constitution* translate into reality, and that the organs of state entrusted with the duty of implementing the requirements of *the Constitution* do so in a manner that is faithful to the letter and spirit of *the Constitution*. This matter is concerned with the exercise of sovereign



power by the citizen and with the protection of the citizens' right to participate in their governance ...”

u) The petitioner submitted on the doctrine of legitimate expectation as follows: It is not in doubt and it has not been challenged by the respondents that the petitioner and his team are all students of the University of Nairobi who fronted themselves and were proposed to contest in the 26.4.2025 elections. It is also not contested that the petitioner and his team had met all the requisite requirements to contest and had paid a fee and also cleared to vie. It was therefore their legitimate expectation that upon paying the nomination fees, upon being cleared and upon presenting their documentation to represent the students, the respondents were obligated to clear them for the elections and if not, then there ought to have been reasonable restrictions as provided under Article 38 of *the Constitution* of Kenya, 2010. The doctrine of legitimate expectation has been discussed in all superior courts which have addressed the guiding principles on the application of the principle of legitimate expectation. In the case of *Republic v Kenya Revenue Authority ex- parte Aberdare Freight Services Ltd & 2 others* [2004] eKLR, Nyamu, J (as he then was) stated: Legitimate expectation is founded upon a basic principle of fairness that legitimate expectations ought not be thwarted – that in judging a case a judge should achieve justice, weigh the relative “strengths of expectation” of the parties... This principle was considered in the English case of *Council of Civil Service Unions v Minister for Civil Service* (1995) AC 374 where Lord Diplock defined the principle as follows: For a legitimate expectation to arise the decision: “must affect the other person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advance reasons for contending that they should not be withdrawn” For a legitimate expectation to arise the decision in question had to affect a party by depriving him of the same benefit that others have enjoyed. A legitimate expectation could arise where a party had been assured that a benefit or advantage by the decision maker would not be withdrawn without giving him first an opportunity to be heard. A procedural legitimate expectation rests on the presumption that a public authority will follow ascertain procedure in advance of a decision being taken. In adjudicating legitimate expectation claims the court follows a two-step approach. Firstly, it asks whether the administrator's actions created a reasonable expectation in the mind of the aggrieved party. If the answer to this question is affirmative, the second question is whether that expectation is legitimate. If the answer to the second question is equally affirmative, then the court will hold the administrator to the representation; that is enforce the legitimate expectation. The first step in the analysis has both an objective and a subjective dimension. It is firstly asked whether a reasonable expectation of a certain outcome was created. The representation itself must be precise and specific and importantly, lawful. Once a reasonable expectation exists, the administrator is required to act in accordance with that expectation. It is the Petitioner's view that the 1st and 2nd Respondent denied the petitioner and team Owiti their legitimate expectation to a fair administrative action since his concerns were not taken into account and no consultations between him and the respondents on how the failure by the e-ballot system to enable nomination, his concerns raised, addressing the challenges encountered by the respondent system with a view to enable them engage in the said elections just as other students, the same was in flagrant violation of the expectation, the 1st and 2nd Respondent instead, disqualified the petitioner and his team and proceeded to clear other teams way beyond the nomination dates and even accepted alternative modes of nomination without



consensus thus prejudicing the petitioner and his team. We therefore hold that his legitimate expectation was violated. That citing Article 27 of *the Constitution*, the petitioner contended that the respondent has a constitutional obligation to treat all vying students equally and accord them equal protection and benefit of the law. The question then was why did the respondents continue to clear other teams' way beyond the nomination date if at all they were strict with timelines, yet on the flip side other teams were just disqualified on timeline basis? Why did the respondents accept alternative mode of submitting nomination papers for other team and only proceeded to disqualify others on the basis that their nomination papers were only to be received vide the e-ballot system? The respondents ought to have exhibited objectivity and impartiality in decision making, and ensuring that decisions are not influenced by favoritism and other improper motives or corrupt practices as was in the nomination of the 17.4.2025. Reliance was placed in case of the PPDTC E003 of 2022 Elisha Odhiambo v Dr. George Jalango Midiwo and Others, para. 68 bears repeating: Once a party invites candidates to put in their applications for party nominations, collects fees from them, and sets dates for nomination, it creates in the candidates aspirants a legitimate expectation that there will be a level playing field to compete for the positions. It guarantees that it has the ability to hold free and fair nomination processes and to respect the outcome of elections and subsequent decisions of party election and judicial organs, notwithstanding the desires of a few those who occupy top echelons of its leadership. It also assures candidates of the independence, objectivity and impartiality of its judicial and other decision-making organs. The will of the majority is always the essence of democracy. A usurpation thereof by a few in a committee cannot be allowed to stand. It was submitted that the actions of the respondents were in contravention of the *Universities Act* section 41 which obligated them that an election conducted pursuant to this section shall comply with the general principles of Kenyan electoral system under Article 81 of *the Constitution* of Kenya. That the respondents have not also denied the fact that they made a decision to disqualify the petitioner and his team. They have not proved in any way that they accorded the petitioner a fair hearing prior to their decision. The Commission has not presented any material to the effect that the petitioner and his respective team was granted a chance to make out their case either before any tribunal or anybody. The respondents contravened Article 50 (1) of *the Constitution* of Kenya by failing to establish a tribunal or to the very least, address conclusively the issues as had been raised by the petitioner. The respondents and more specifically the Commission has not demonstrated how it selected unopposed teams, and further proceeded to clear some teams post the nomination dates and disqualify some on the same ground, ideally, the Commission did not meet the guiding principles of leadership and integrity as enshrined on article 73(2) (b) of *the Constitution* of Kenya, 2010. The Petitioner submitted on the use of Electronic System (e-ballot) in UNSA Elections as follows:

- i. That *the Constitution* of Kenya, 2010, the *Universities Act* and the UNSA Constitution aims to ensure that the Students' Association operates in a fair and democratic manner by ensuring that proper management structures are put in place and that the structures put in place shall function to maintain integrity.
- ii. That the respondents herein had a duty, in accordance with Article 249(1) to protect the sovereignty of students, secure the observance of democratic values and principles and promote constitutionalism in conducting the 26.4.2025 UNSA Elections.
- iii. That Article 83 underlines the requirements of the voting exercise itself to be as simple, accurate, and taking into account those with special needs. Article 83(3) states clearly that some administrative arrangements for the registration of voters and the conduct of



elections shall be designed to facilitate and shall not deny, an eligible citizen the rights to vote or stand for election.

- iv. That Commission was required to ensure free, fair, credible elections which are administered in a transparent, efficient, accurate and accountable manner regardless of the method they proposed to use the same ought to have been transparent, efficient nor accurate.
- v. That the e-ballot system proposed for use on the 26.4.2025 was dysfunctional and ineffective as it contravened Article 81(a) by denying students freedom to exercise their political rights under Article 38(1) of *the Constitution* of Kenya.
- vi. That it was not only the petitioner that was not able to upload the nomination documents vide the e-ballot system. The respondents have not challenged the fact that the e-ballot had an issue and that is the reason why they opted to use alternative modes.
- vii. That the Respondents have not demonstrated that from the time being the 17.4.2025 when the e-ballot had an issue and indeed they received nominations vide email address addressed to the Commission, the issue and the challenge with the e-ballot system has since been rectified and an alternative mode put in place heading to the next scheduled elections.
- viii. That the Commission have not demonstrated that they have a complimentary voting system to complement the e-ballot system. The Commission has further not demonstrated how they will ensure that the students right to vote and more specifically those in areas with no internet connectivity and power will be upheld and safeguarded having affirmed that the e-ballot is vide the portal and with only internet access.
- ix. That the Commission has not demonstrated to the court and to the petitioner and all parties involved which policy they have put in place to ensure that the slated elections will be held and guided by the law only and conducted within *the Constitution*.
- x. That the Commission has not told the court and made it clear to the petitioner, how the e-ballot system is simple, accurate, verifiable, transparent, secure, secret ballot, neutral, free from external influence, accountable and efficient save for indicating that the same has a backup system, which has not been explained and that who is responsible for controlling the system as it is. Essentially, the Respondents wanted to conduct an opaque selection without being accountable to anyone.
- xi. That the Commission is obligated to ensure that ...(a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent and that appropriate structures and mechanisms to eliminate electoral malpractices are put in place including the safekeeping of electoral materials. These safeguards put in place by the 1st and the 2nd respondent have not been demonstrated whatsoever.
- xii. That the Respondents in making a decision to use e-ballot to say the use of technology in the conduct of the 26.4.2025, the Commission was mandates for that purposes to develop a policy on the progressive use of technology in its electoral process, which it has not demonstrated, the Commission herein is mandated to ensure that the e-ballot is simple, accurate, verifiable, secure, accountable and transparent.
- xiii. That the respondents herein have note taken keen note that technology, like all human inventions, no matter how advanced, is bound to fail at one point or another, leading



to a bad user experience. Hardware breaks, software gets bugs, and connectivity disappears, among many challenges in automation. It is perhaps this realization that led the court in *Raila 2013*, *Raila 2017* and *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others*, SC Petition No 2B of 2014; [2014] eKLR (*Gatirau Munya case*) to state that it is a global truism that no conduct of any election can be perfect. Similar reflections may have informed the insertion of section 44A to the *Elections Act* directing IEBC to avail, alongside the use of technology required by section 44, a complementary mechanism in the event of technical failure. Section 44A provides as follows:

“Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of article 38 of *the Constitution*.” We restate our position that the practical realities of election administration are such that imperfections in the process are inevitable. Some imperfections may have far-reaching ramifications, which in turn may lead to nullification of an election while others may not reach that level or degree of significance. The nullification of the presidential election of 2017 was partly based on this reality. Therefore, the use of information technology to guarantee the accuracy and integrity of the election results. It requires: - establish an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results....3....ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent....(5) ...in consultation with relevant agencies, institutions and stakeholders, including political parties, make regulations for the implementation of this section.....

A reliance was placed in the case of *Petition No. 5 of 2013 – The National Gender and Equality Commission v. The Attorney General & Others*: where the court emphasized that where an election process is marred by technical failures or procedural irregularities, such failures can amount to a violation of constitutional rights.

- xiv. That the Respondents’ assertion that the e-ballot system was effective is misleading. Section IV (18) (iii) of the UNSA Constitution explicitly provides that the technology used in elections must be “simple, accurate, verifiable, secure, accountable, and transparent.” The e-ballot system used by the Commission failed this standard, as it required an email verification code, which was non-functional for a significant number of students, including the Petitioner. As a result, many eligible users were disenfranchised, rendering the election process unfair and non-inclusive.

The Petitioner further submits that the Respondents failed to adhere to Section IV (18) (ii) of the UNSA Constitution, which requires the Commission to develop a policy on the progressive use of technology in the electoral process. The Respondents have not demonstrated that such a policy exists or was followed in the conduct of the elections, thereby compromising the integrity of the process.

The Petitioner submitted on Fair Administrative Action as follows: That the 3rd respondent claims that the decision to disqualify the petitioner and his team was arrived at based on failure to upload documents. That they had the said authority and it was used to disqualify the team based on those saving powers. That it is the view of the petitioner that his team was never given



an opportunity to be heard based on the adverse decision that the respondents took. Further, that Article 47(1) of *the Constitution* and section 4(1) of the *Fair Administrative Action Act* provides for a right to administrative action, which is expeditious, efficient, lawful, reasonable and procedurally fair. In addition, Section 4(3) of *Fair Administrative Action Act* requires a person against whom an administrative action has been taken to be given an opportunity to be heard and to make representations in that regard. The petitioner herein was denied this opportunity; and may the court find that this was a violation of his fundamental rights. That the respondents actions and omissions were not only illegal but contrary to the principles of Fair Administrative Action, and that it failed to meet the requirements provided for in Articles 27, 38 and 81 of *the Constitution* of Kenya, 2010. Reliance was placed in the case of Kisumu, High Court, Petition No.1 of 2017, Inganga Alfred Arunga – Versus University of Nairobi it was the court’s holding that; “a declaration be granted to the Petitioner that his right of fair administrative action under Article 47(1) of *the Constitution* was violated when the Respondent arbitrarily and without due process confiscated his degree certificate and refused to release his original transcripts. That the Petitioner urges this court to find that the decision by the respondents to proceed and accept other modes of nomination, extend the nomination dates for other teams whereas it proceed to disqualify the petitioner, the petitioner has met the required Standard of Proof, in this matter, that the said actions were not only illegal but contrary to the principles of Fair Administrative Action, and that the action failed to meet the requirements provided by Articles 27, 38 and 81 of *the Constitution* of Kenya, 2010. Finally, it was submitted the Commission has not explained how it settled on the other candidates that used alternative modes of nominations and the candidate it enlarged the time for nominations to. It is our view, whatever process it used, it ought to have taken into account the interests of all of the parties involved. The Commission had no right to interfere or originate that process of fresh nomination as it purported to do.

9. The submissions by the Petitioners in Petition No. E0072025 are dated 742025 and it was submitted as follows:
 1. The Petitioners are duly registered students in the University of Nairobi, the 1st Respondent herein, and they filed this suit on their capacity as approved team known as STEP UP TEAM whose members are aspiring to vie for the Students’ Council 2025 Elections. In the main, the Petition challenges a decision in which the 2nd Respondent vide a verdict letter dated 21.3.2025 [marked as “P=1” attached as VERDICT LETTER TO STEP UP TEAM at page 1 of the Bundle of Annexures] conveyed by the UNSA INDEPENDENT ELECTORAL COMMISSION (“the commission”) uncleared the Team for nomination status of Students’ Council 2025 Elections, yet the Petitioners contend that they are fully qualified for the nomination. For ease of reference, the content of the impugned decision is reproduced as hereunder.

“ Team Step up,

The Commission on 18th March 2025, communicated the verdict of verification of your nomination documents. The Commission gave you a window to work on the issues raised in particular, the team not having met both faculty and programme diversity, as the Chairperson and PWD were from the Faculty of Law, while the International Representative and Secretary General were from the Faculty of Health Sciences.

The Commission further scrutinized your response regarding the matter and the following was noted:



The issue of faculty and programme diversity was not fully addressed as the team Chairperson and PWD are from the Faculty of Law, both pursuing Bachelor of Laws.

Also, note the Commission was very firm on the Student Council teams' strict compliance with the required regulations.

This is therefore to inform you your team was not cleared based on the above.

DR. KENNETH OMBONGI, OGW

CHAIRPERSON

INDEPENDENT ELECTORAL COMMISSION

Copy to: Vice Chancellor

DVC, Academic Affairs"

2. It was submitted that the Petitioners entirely rely on the Petition and List & Bundle of Documents dated 28th March 2025 together with the Supporting Affidavit dated 31st March 2025 which narrate substantial evidence which demonstrate the Respondents' contravention of the Nomination Requirements (marked as "P=4" attached at pages 15 - 17 of the Bundle of Annexures) as read together with ARTICLE 10(1)(B) AS READ WITH SCHEDULE 3 PART IV SECTION 11(L) OF THE RULES AND REGULATIONS GOVERNING STUDENTS ELECTIONS UNDER UNIVERSITY OF NAIROBI STUDENTS ASSOCIATION (UNSA) CONSTITUTION, 2017 (AMENDED, 2021), which stipulates as follows: -

ARTICLE 10(1) (B)

The Composition of Students' Council

"The special interests of the Students shall comprise

- i. People with Disability;
- ii. Interests of international students;
- iii. Sports and social welfare."

SCHEDULE 3 PART IV SECTION 11(L)

IV – ELECTIONS“11. Nomination of aspiring teams –

- l) Student Council; Faculty and Campus teams shall include in the composition of the team in terms of ethnicity, race, gender, disability, international students' representation and approved academic programmes.”
3. It was submitted that the genesis of the Petitioners' challenge was primarily initiated by a memo dated 12.03.2025 (marked as "P=4" attached at pages 15 - 17 of the Bundle of Annexures) in which the 2nd Respondent being the Chairperson of the Commission issued a communication on the requirements for nomination which basically copied the provisions of SCHEDULE 3 PART IV SECTION 11(L) OF THE RULES AND REGULATIONS GOVERNING STUDENTS ELECTIONS under the Amended UNSA Constitution. However, and contrary to the spirit of *the Constitution*, the Commissions' aforesaid memo, added another requirement that stated that: “where



applicable, each team should demonstrate diversity in terms of faculty, campus and approved academic programs.” It is the said additional requirement having no constitutional backing that the Commission unconstitutionally and erroneously construed the same to mean (without any constitutional basis) that all the seven members of a team including representatives of special interests’ groups must come from different faculties.

4. It was submitted that in response to the Petition, the Respondents’ the Answer to Petition at paragraph 42 of the Replying Affidavit have stated that upon review and verification of the Petitioners’ nomination documents uploaded in the e-ballot in accordance with the nomination’s checklist and UNSA Constitution, the Team’s Chairperson and the Person with Disabilities Representative were from the same Faculty, namely, Faculty of Law; and the Team’s Secretary General and International Students were from the same Faculty, namely, Faculty of Health Sciences. At paragraph 49 of the Replying Affidavit, the Respondents have confirmed that the Petitioners’ Team appeared before the Commission wherein the Petitioners “only managed to realign the team to meet the set diversity requirements by reshuffling the team members who were from the faculty of health science.” At paragraph 50 of the Replying Affidavit, the Respondents have conceded the Petitioners’ Team “did not reshuffle the person with disability aspirant from the faculty of law.”
5. It was submitted that from the foregoing, that even though the Petitioners’ Team comprising of the Person with Disabilities Representative was submitted, the Respondents still declined to clear Team for nomination, thereby giving rise to this Petition. In the premise, the Petition was primarily filed due to the Respondents’ allegation on the impugned decision’s contravention of and/or violation, infringement, discrimination and threat of contravention of the Petitioners’ fundamental rights and freedoms under ARTICLES 19, 20, 21(1), 22, 23, 35, 24, 25, 27, 28, 47, 50 AND 81 OF *THE CONSTITUTION* OF THE REPUBLIC OF KENYA; AS READ TOGETHER WITH ARTICLES 1, 2, 3(1), 10(2), 232(1) (A), (C), (E) & (F), 258 (1) (2) (B) (C) AND 259 (1) OF *THE CONSTITUTION* ON NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE, which extremely violates their legitimate expectation to participate in election. The Petitioners, therefore, pray for judgement against the Respondents jointly and severally for ORDERS THAT
 - a. A declaration that due to their actions and omissions predicated on the decision contained dated 21032025 by UNSA INDEPENDENT ELECTORAL COMMISSION and any subsequent decisions and/or actions emerging therefrom, the Respondents have violated Articles 10, 19, 21, 22, 23, 24, 27, 28, 35, 47, 50, 81, 227(1), and 232 by not clearing the Petitioners for Students’ Council 2025 Elections and for ALL consequential actions thereto purportedly disqualifying the Petitioners’ approved Team known as STEP UP TEAM are unconstitutional, irregular, and unprocedural as they infringe on, threaten, and grossly violate the Petitioners’ right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, and amount to abuse of office; and the same be quashed.
 - b. A mandatory injunction Order of the Court compelling the Respondents do cleared the Petitioners’ Team, namely, STEP UP TEAM, for onward participation in Students’ Council 2025 Elections.



- c. An order of permanent injunction restraining the Respondents either by themselves, assigns, representatives, officers and/or agents from interfering with and/or purporting to stultify the Petitioners' participation in Students' Council Elections.
 - d. The Respondents to bear the costs of and incidental to this Petition.
 - e. This Honourable Court be pleased to issue such further or other Orders(s) as it may deem just and expedient for the ends of justice in the circumstances of this Petition.
6. It was therefore submitted that in view of the foregoing background information, we submit that the issue for determination is whether the Petition has merit?
7. It was submitted that the court should take note of the uncontested pertinent facts on record which at this stage noticeably and overwhelmingly lend credence to the merit of the Petition as hereunder in respect of pleaded particulars of the Respondents' breaches, infringements, violation, discrimination, illegality, unreasonableness and procedural unfairness of the decision hence breach of Article 47 of *the Constitution of Kenya* on fair administrative action, namely: -
- i. The Respondents failed to comply with Nomination Requirements (marked as "P=4" attached at pages 15 - 17 of the Bundle of Annexures), misinterpreted the aforementioned provision as nowhere therein is it expressly mentioned that not more than one team member should come from the same faculty.
 - ii. The Respondents ignored the Petitioners' various compliance nomination alignments submitted in line with the following that permutations: (a) Permutation 1 submitted on 17032025 (marked as "P=5A" attached at pages 18 – 100 of the Bundle of Annexures); (b) Permutation 2 was submitted on 18032025 (marked as "P=5B" attached at pages 101 - 186 of the Bundle of Annexures); (c) Permutation 3 was submitted on 22032025 (marked as "P=5C" attached at pages 187 - 267 of the Bundle of Annexures). Even though when the Petitioners received an email at 12:22 am titled "STUDENT COUNCIL NOMINATIONS VERDICT" highlighted that their team had not been cleared because the Chairperson and the PWD representative were from the same faculty, they took cognizance of the fact that the verdict did not have a clause stating that further appeals were NOT allowed. The Commission's casual view of the issue of diversity raised by itself about fielding of the Chairperson and PWD from the same faculty (law) as well as the Secretary General and the International Representative (Health Science), contrary to the Petitioners' humble and rightful opinion that the UNSA's Constitution does not stipulate such requirement for the special group's positions (PWDs and International Representatives) as urged by the Respondents.
 - iii. The Commission's casual view of the issue of diversity raised by itself about fielding of the Chairperson and PWD from the same faculty (law) as well as the Secretary General and the International Representative (Health Science), contrary to the Petitioners' humble and rightful opinion that the UNSA's Constitution does not stipulate such requirement for the special



group's positions (PWDs and International Representatives) as urged by the Respondents. Further, the 1st Respondent ignored the informed position without such requirement as had been done for the preceding teams that had been cleared by the Commission on previous years, and as the Commission only said it was not aware of the preceding cases, it merely stated it would address it later, which it never did.

- iv. The Respondents' deliberately ignoring the Petitioners' well-articulated concern to the Electoral Commission regarding the Persons with Disabilities post to the effect of the factual position touching on PWDs scarcity. The Respondent mentioned flawed communication channels with disabled e-ballot system, continuous lack of response to nomination clearances and unanswered emails. The Respondents throughout mischievously frustrating the entire election nomination process by continuously avoiding essential email, calls, texts and even a physical visit to the Office of the 1st Respondent to the extent that majority of the Petitioners' emails and texts went unanswered. And many times, they tried calling the Commission officials would respond by stating that they are in a meeting and would get back in vain.
 - v. In spite of all these unclear communications and technicalities, the Commission by communication reiterated that only two teams, namely, TEAM WELEDI and TEAM FRESH PERSPECTIVE had been cleared (by Announcement marked as "P=6" attached at page 268 of the Bundle of Annexures and email "P=8" attached at page 270), proceeded to announce the end of election campaign (by announcement dated 24032025 marked as "P=7" attached at page 269 of the Bundle of Annexures), and further notified the mock elections that were scheduled for the same date (by Mock Elections Notice marked as "P=9" attached at page 271 of the Bundle of Annexures).
8. It was submitted that in reaching the impugned decision which with unsupported fabricated narrative on the Persons with Disabilities post, the Respondents never acted within its constitutional mandate formulating by the Students Council Elections guidelines. Accordingly, we submit that the Respondents failed to comply with the provisions of Article 10 and 47 of *the Constitution* and thus the Petitioners' allegation are merited.
 9. Learned counsel cited several authorities in support of the petition. In the case of ANNEXURE=1: HUXLEY MAGAK -VS- JOMO KENYATTA UNIVERSITY OF AGRICULTURE & TECHNOLOGY (JKUAT) & 2 OTHERS, CONSTITUTIONAL PETITION NO. E440 OF 2021 AT NAIROBI, the High Court rendered itself as follows:

“

“85. A closer look at the manner in which the Respondents arrived at their decision depicts a calculated ill-motive by considering very extraneous matters not provided for in the JKUSA Constitution. As such, the decision was irrational, unfair and unreasonable. It was plainly made in bad faith. The decision cannot stand.”



.....

“86. The above is aptly captured in Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoiti [2018] eKLR where the common wrongs in public law were discussed as follows: -

In John Wachiuri TA Githakwa Graceland & Wandumbi Bar & 50 Others vs The County Government of Nyeri & Ano [39] the Court emphasized that there are three categories of public law wrongs which are commonly used in cases of this nature.

These are: -

ILLEGALITY- Decision makers must understand the law that regulates them. If they fail to follow the law properly, their decision, action or failure to act will be "illegal". Thus, an action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond its powers.

FAIRNESS- Fairness demands that a public body should never act so unfairly that it amounts to abuse of power. This means that if there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them and it must not be in breach of the rules of natural justice. The body must act impartially, there must be fair hearing before a decision is reached.

IRRATIONALITY AND PROPORTIONALITY- The Courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute 'irrationality' or 'perversity' on the part of the decision maker. The benchmark decision on this principle of judicial review was made as long ago as 1948 in the celebrated decision of Lord Green in *Associated Provincial Picture Houses Ltd vs Wednesbury Corporation*: -

If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere...but to prove a case of that kind would require something overwhelming...”

10. Also in the case of *MAGAWI MAXWELL ODHIAMBO & 10 OTHERS -VS- THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA & UNIVERSITY OF NAIROBI, PETITION NO.113 OF 2019 AT NAIROBI*, the court made the following pertinent observations: -

“ 11From the provisions of section 41(II) of the *Universities Act*, it is clear that any election that has to be conducted has to be in strict compliance with the general principles of *the Constitution* of Kenya as set out under Article 81 of *the Constitution* of Kenya.

12.

It has also to be noted that the right to contest in an elections is not absolute, as it is not a matter of walk in walk out, at the leisure of the intended candidate. The right has to be in accordance with the provisions of the law



governing the elections process. Article 24 (1) (a) – (e) of *the Constitution* of Kenya provides:-

"24. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including;

(a)

The nature of the right or fundamental freedom;

(b)

The importance of the purpose of the limitation;

(c)

The nature and extent of the limitation;

(d)

The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

(e)

The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose."

13.The right and freedom to contest in the election of students' council in the University is a function of Article 38 and 81 of *the Constitution* but such right cannot be urged is not subject to limitations which may be imposed by the law. Section 11 of *the Constitution* of University of Nairobi Students Association provides....."

11. As regards the issue of discrimination, reliance was placed in the case of FRANCIS CHENG'OLI & 2 OTHERS -VS- KENYA UNIVERSITIES STAFF UNION, PETITION NO. E026 OF 2021 AT NAIROBI, where the court rendered itself as follows: -

"61. All amendments must also be in compliance with the law. Section 34(2) of the *Labour Relations Act* specifically provides that –

- (2) *The constitution* of a trade union, employers' organisation or federation shall—
- a. not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and
 - b. Provide for the election, by secret ballot, of all officials of a trade union at least once every five years.

The amendments at Article 16.3(b) to the effect that only members who had served for not less than eight years are eligible to vie for elections in national



office is discriminatory and therefore in conflict with Section 34(2)(a) of the *Labour Relations Act*.

The amendment of Article 16.4(f) to the effect the serving officers are exempted from professional qualifications is also discriminatory and in violation of Section 34(2) (a) of the *Labour Relations Act*.

Both provisions also violate Article 27 of *the Constitution* of Kenya 2010 which provides for equality and freedom from discrimination.

Article 41 further provides for freedom to form, join or participate in the activities and programs of a trade union which includes the right to participate in union elections by all members.

For the foregoing reasons, I find that the Petitioners have proved on a balance of probabilities that the Respondent did not give them an opportunity or participate in the amendment of *the constitution* of the Respondent nor were they consulted before the amendments were effected.

12. The learned counsel urged the Court to take cognizance of pronouncements in the aforesaid cited case decisions, and subsequently in line with the reasons advanced therein uphold our Written Submissions herein by finding and holding that the instant Petition has merit.
13. It was finally submitted that on the strength of the above submissions regarding the circumstances of this matter, and in the wider interest of justice, equity and fairness, and by extension in the public interest, we urge this Honourable Court to find and hold that this Petition has merit and grant the orders sought therein.
10. The Petitioner in E0082025 filed her submissions dated 342025. At the onset, the Petitioner laid down a background leading to the filing of this petition which was as follows:
 1. The petitioner applied to contest for the position of the Chairperson of the University of Nairobi Students Association Council 2025 under Team Purpose (Refer to the 1st Application by the Petitioner at pages 55 – 139 of the Petitioner’s bundle).
 2. During the said process, the 8th Respondent, revived a 2024 complaint, contrary to its Students’ Code of Conduct, and purported to commence a disciplinary hearing against the Petitioner in February 2025.
 3. The charge containing the alleged offence was served upon the Petitioner on 27th February 2025, where upon she appeared before the Disciplinary Committee on 6th March 2025 and was immediately acquitted of the said charge (Refer to the documents appearing at pages 142 – 143 of the Petitioner’s bundle).
 4. The 8th Respondent quickly drafted another charge, signed on 10th March 2025 and invited the Petitioner for another hearing on 13th March 2025 against the Principle of Double Jeopardy protected under Article 50 (2) (o) of *the Constitution* (Refer to the document at pages 144 – 146 of the Petitioner’s bundle).
 5. The Petitioner nonetheless appeared and the Disciplinary Committee made a finding that the written evidences and oral statements presented could not conclusively prove the counts and it was on this basis that the Chairperson of the Disciplinary Committee cleared her to contest and made neutral recommendations in good faith. (Refer



specifically to page 9 of 10 of the documents appearing as from pages 147 – 156 of the Petitioner’s bundle, point number 16 and 17).

6. The Petitioner was cleared to contest and lodged his Application papers with the 1st – 7st Respondent’s, however, on 18th March 2025, the 1st Respondent sent an email to the Petitioner informing her of their verdict and requiring her to comply within two hours of in order to regularize her position. (Refer to the Petitioner’s Clearance at pages 212 – 219 of the Petitioner’s bundle specifically at page 219 as well as the email at page 140 of the Petitioners Bundle).
7. The Petitioner duly complied by submitting another set of team for her Vice Chairperson as well as the treasurer, however, on 21st March 2025, the 1st - 7th Respondents sent a communication to the Petitioner informing her that her that her team had not been cleared for the following reasons;
 - a. By the time of her alleged clearance, there was a pending disciplinary case that went to proceedings and found the Petitioner guilty. The Dean, Faculty of Education has confirmed that the clearance was unprocedural.
 - b. The Dean, Faculty of Education has recalled the clearance dated 14th March 2025 in a letter dated 21st March 2025.
8. That this communication was sent even though the Petitioner had been cleared of the charges against her and even though this specific item was not a ground upon which a candidate would be barred from contesting in an election.
9. That the Petitioner therefore felt that her rights were violated and first approached a Nairobi Court through a Judicial Review Application to challenge the fairness of the procedures employed, however, the said suit was not entirely successful.
10. That the Petitioner therefore elected to invoke this Honourable Court’s jurisdiction and sue the Respondents for violation of her constitutional rights as shall be submitted herein below.
11. Learned counsel raised two issues for determination inter alia; whether the petition is res judicata and whether the Respondents violated the Petitioner’s rights protected under Articles 27, 38, 47 & 50 of *the Constitution* of Kenya, and whether the Petitioner is entitled to the prayers sought in her amended Petition?
 - i. Whether the Petition is Res Judicata?
12. It was submitted that the Respondent has contended that this Petition is Res Judicata pursuant to the verdict made in HCJRMISCE0342025; DIBORA HIRBO – VERSUS – UNIVERSITY OF NAIROBI INDEPENDENT ELECTORAL COMMISSION & ANOTHER. The Petitioner submits that this Petition is not Res Judicata because it raises questions of violations of rights that were not in issue in the Judicial Review Application and indeed, the court in its verdict never made any analysis or finding as to whether the Petitioner’s Rights had been violated. It is trite that when considering whether a suit is Res Judicata, the court has to look at three conditions which must be satisfied by the party seeking to rely on the doctrine. The court must be satisfied that there was a former suit or proceeding in which the same parties as in the subsequent suit litigated; that the matter in issue in the latter suit must have been directly and substantially in issue in the former suit; and that a court competent to try it had heard and finally decided the matters in controversy between the parties.



13. Looking at the two cases, it was submitted that it is obvious that the parties in the two cases are not the same, as matter of fact, the court in the Judicial Review found the suit to be incompetent on account of the Applicant having sued a non – existent body which had no capacity of being sued. Secondly, the issues raised in the judicial Review for determination are completely at variance with the issues in the Petition as submitted at Paragraph 17 above and finally, the court’s verdict in the Judicial Review did not touch on determination of whether rights had been violated or not.
14. It was submitted that this element was confirmed by the Honourable Justice Mativo in *Mumira v Attorney General (Constitutional Petition E007 of 2020)* [2022] KEHC 271 (KLR) (8 April 2022) (Ruling) at Paragraph 8 where the Honourable Judge cited other decided cases that laid down the conditions to satisfy the defence of the doctrine of Res Judicata.
15. It is the Petitioner’s submission that the court in the Judicial Review Application restricted itself on the question of Procedural fairness and arrived at a verdict that there was no evidence before the court to show that the Petitioner complied with the conditions communicated in the email dated 18th March 2025.
16. It was submitted that in the instant Petition, the Petitioner has taken a different approach and contends that the decision dated 21st March 2025 was the final decision used to disqualify her and her team based on a ground not provided for in the Respondent’s election laws therefore, the Respondents violated her constitutional rights. In any event, the Supreme Court has settled the question of whether issues raised in a Judicial Review would be Res Judicata when raised again a constitutional petition and the verdict was that the court sitting in a Judicial Review exercises limited jurisdiction and therefore it follows that a determination of a judicial review application cannot be termed as final determination of issues under a constitutional petition. The considerations are different, the orders the court may grant are more expanded under a constitutional petition, and therefore, the outcomes are different.

Learned counsel relied on the case of *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015)* [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), where the Supreme Court at Paragraphs 107, 108 and 109 held as follows;

- “ 107. The court, when determining a constitutional petition, is empowered to look beyond the process and not only examine but delve into the merits of a matter or a decision. The essence of merit review is the power to substitute a decision that the court can make when determining a constitutional petition. Further, the court is further empowered to grant not just judicial review orders but any other relief deemed fit to remedy any denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. This court in its decision in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] eKLR went ahead to reaffirm use of structural interdicts and supervisory orders to redress the violation of a fundamental right in order to allow the development of court-sanctioned enforcement of human rights as envisaged in the Bill of Rights.



108. We arrive at the inescapable conclusion that the High Court, in determining a judicial review application, exercises only a fraction of the jurisdiction it has to determine a constitutional petition. It therefore follows that a determination of a judicial review application cannot be termed as a final determination of issues under a constitutional petition. The considerations are different, the orders the court may grant are more expanded under a constitutional petition, and therefore, the outcomes are different.
109. The court, in hearing a constitutional petition, may very well arrive at the same conclusion as the court hearing a judicial review application. However, the considerations right from the outset are different, the procedures are different, the reliefs that the court may grant are different, and the court will be playing fairly different roles.”
- ii. Whether the Respondents violated the Petitioner’s rights protected under Articles 27, 38, 47 & 50
17. It was submitted that Article 27 of *the Constitution* provides that every person is equal before the law and has a right to equal protection and equal benefit of the law. This Article therefore enjoins the Respondents to apply laws equally to all students and not apply laws selectively in a manner that causes prejudice to other students.
18. The Petitioner submits that Respondents selectively applied the provisions of the University of Nairobi Students Code of Conduct (revised) in 2021, with a view of locking her out of the elections (Refer to the code 157 -211 of the Petitioner’s bundle). This submission is informed by the following reasons;
- a. The two student disciplinary complaint sheets appearing at pages 142 and 144 of the Petitioner’s bundle referred to particulars of events that occurred on 2nd August 2024.
- b. The same were premised on the University of Nairobi Students’ Code of Conduct (revised) in 2021, which, in clauses 32, 33, and 34, lays down how the disciplinary process is supposed to be conducted.
- c. The code envisages at clause 32 lodging of a complaint against a student within three days, the security department is to decide on whether to initiate an inquiry within three days and if it does so, it has to inform the student within three days and conclude inquiries expeditiously and submit a progress report within three days from the occurrence of an incidence of violation of the code or any other university regulation (See sub clauses 32.1.1, 32.1.2, 32.1.4, 32.1.5 and 32.1.11).
- d. Clause 33 envisages the security department to submit a copy of the inquiry report, notice of violation stating the violation and particulars of violation and list of witnesses to the relevant disciplinary committee within three days from the date of conclusion of the inquiry.
- e. Clause 34 envisages the Disciplinary Committee to serve the affected student within seven days and serving him a hearing notice of not less than 14 days.
19. It was submitted that, essentially, the Respondents’ code, which they used to disqualify the Petitioner, does not contemplate a disciplinary case lasting more than two months. In the



instant case, uncontroverted facts, the Respondents revived these charges in February 2025, close to 7 months after the occurrence of the events, and just a few days before the elections. As a matter of fact, the inquiry report, which the code contemplates to be tabled within three days of the occurrence of the violation, was done on 10th January 2025 (see page 76 of the Respondents' bundle), more than 5 months after the occurrence of the alleged violations. This pointed to a malicious and ill-motivated effort to lock the Petitioner out of the election. Worse enough, the Petitioner appeared before the Disciplinary Committee on 6th March 2025, was cleared of the allegations, the 8th Respondent without following the procedure laid down in her code of conduct, hastily prepared another complaint sheet on 10th March 2025 and summoned the petitioner to appear before the disciplinary committee on 13th March 2025. The Petitioner was not even accorded time to prepare herself as provided for in the Code and required under Article 50.

20. It was submitted that as a true soldier and walking tall with her innocence, the Petitioner appeared again and was acquitted, a decision that led to the Chairperson of the disciplinary committee and who was the Dean Faculty of Education to clear her (see page 219 of the bundle). The Respondents were, however, determined to disqualify her; therefore had to unilaterally recall her clearance and purport to disqualify her.
21. The Petitioner strongly contends that this was in blatant and gross violation of the University of Nairobi Students Code of Conduct (revised) in 2021, which is a law that is supposed to be applied equally by the 8th Respondent to all students.
22. It was submitted that the 8th Respondent, having therefore chosen to weaponize the code of conduct and conveniently invoke its provisions to disqualify the Petitioner, violated her right to equal protection of the law and equal benefit of the law.
23. It was submitted that the proper presumption to make in law according to the Petitioner is that the 8th Respondent codified its disciplinary procedures with timelines which guide them when dealing with offences against students, they were under an obligation to apply the same measure to the Petitioner by dealing with her case in August 2024 and not 7 months later. The fact that the 8th Respondent chose to deal with the Petition outside the provisions of the Students' Code of Conduct and close to the elections renders their act an afterthought, discriminatory, and illegal.
24. Reliance was placed in the case of *Bitange Ndemo v Director of Public Prosecutions & 4 others* [2016] eKLR, where the court at Paragraphs 126 and 127 held that where a prosecution has been commenced in an arbitrary, discriminatory and selective manner to secure a conviction or a certain goal amounts to abuse of a legal process and therefore a violation of Article 27 of *the constitution*.
25. The Petitioner contends that the Respondents violated and breached her rights under Article 38, which gives her the right to contest for office in a free and fair election. This is because the 1st- 7th Respondents in the decision dated 21st March 2025 (see page 220 of the Petitioner's Bundle) purported to disqualify the Petitioner on account of a pending disciplinary case that went to the proceedings and found the Petitioner guilty.
26. The Petitioner submits that the decision was illegal and unfairly denies the Petitioner her right to contest for an election within the university in line with Article 38 for the following reasons;
 - a. A perusal of the 8th Respondent's Disciplinary Committee minutes (See pages 147 – 156) specifically at page 155 of the bundle, 9 of 10 of the minutes, minute number



16 and 17, the disciplinary committee expressly found that written evidences and oral witness statements could not conclusively prove the counts and that the disciplinary action was taken in good faith. The 1-7th Respondents decided to manufacture their verdict and use it to disqualify the Petitioner.

- b. Under the University of Nairobi Students Association (UNSA) Constitution 2017, Amended 2021) (see pages 3- 54 of the Petitioner’s bundle), Schedule 3, Part IV, rule 8 and 10, existence of a disciplinary case is not a ground that can be used to disqualify a student from the elections.
- c. The Respondents in their Replying Affidavit at paragraph 43 allege that the Petitioner was disciplined, found guilty and unsuitable to be cleared. This is far from the truth, as demonstrated in the minutes, the Petitioner was never found guilty and it was on that account that the Chairperson of the Disciplinary Committee who double up as the Dean of Faculty cleared the Petitioner.
- d. In any event, the court in the JR NUMBER 34 of 2025 already found that the Respondent could not use this ground to disqualify the Petitioner, and therefore, the issue is moot.
- e. The new grounds introduced by the Respondents that the Petitioner is yet to demonstrate and prove that she obeyed the Faculty Disciplinary Committee verdicts are a creation of their active imagination and do not exist in any of the 8th Respondent’s election rules or the Code of Conduct.
- f. The said ground is therefore an illegality and null.

Reliance was placed in the case of *Magak v Jomo Kenyatta University of Agriculture & Technology (JKUAT) & 2 others (Constitutional Petition E440 of 2021)* [2023] KEHC 1090 (KLR) (Constitutional and Human Rights) (23 February 2023) (Judgment), where at Paragraph 85 the court held as follows;

“85. A closer look at how the Respondents arrived at their decision depicts a calculated ill motive by considering very extraneous matters not provided for in the JKUSA Constitution. As such, the decision was irrational, unfair, and unreasonable. It was made in bad faith. The decision cannot stand.”

27. Learned counsel emphasized that in that case, the court went further at paragraph 87 and found that the actions by the University violated the Petitioner’s Political Rights protected under Article 38 since they disqualified the Petitioner on account of non-existent grounds. We urge Your Lordship that you be guided by the wisdom in the said case and find that the Respondents violated the Petitioner herein rights under Article 38.
28. It was also submitted that the Petitioner contends that her rights under Articles 47, 50 (1) (2) and (2) (o) were violated by the Respondents for the following reasons;
 - a. There was no hearing before the Respondent’s unilateral decision to recall her clearance.
 - b. She was not given any reason for such recall before the decision was made.



- c. The recall was based on the wrong reasons that she was found guilty and that she could not be cleared to contest if she had a pending disciplinary case.
 - d. She was subjected to a disciplinary process twice on the same set of facts and particulars.
29. It was also submitted that Article 47 grants the Petitioner a right to a fair administrative action that is lawful, reasonable, and procedurally fair. This aspect was litigated upon in JR 34 OF 2025, and the court made a finding that the Petitioner's clearance was proper; therefore, the Respondent had no basis to recall the same. This issue having been already determined, we implore the court to return a positive verdict that the Respondents indeed violated the Petitioner's right to a fair administrative action protected under Article 47 as well as her right to a fair hearing protected under Article 50 which enjoins the Respondents to accord the Petitioner an opportunity to be heard before a decision is made like the instant decision recalling her clearance.
30. It was further submitted that Article 50 (2) (o), on the other hand, grants the Petitioner a right not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted. The Petitioner in her Affidavit contends that she was charged and invited for a disciplinary hearing on 6th March 2025, where she was heard and acquitted. However, before she could catch a breather, the Respondent on 10th March 2025 hastily formulated another complaint sheet, based on the same particulars, and tried the Petitioner on 13th March 2025. These facts have not been controverted by the Respondents. The Respondents could not charge and try the Petitioner twice, emanating from the same set of facts. That was an anomaly that flies in the face of Article 50 of *the Constitution*.
31. It was submitted that the rule against the principle of double jeopardy was emphasized by the courts in Fredrick Magera v National Water Conservation & Pipeline Corporation [2014] eKLR, where the Honourable Judge at Paragraph 27 found that subjecting the Claimant to a 2nd Disciplinary Process based on the same set of facts violated principles of natural justice, legality and amounted to double Jeopardy.
32. It was submitted that the above decision has been made in a more recent case in Mwangi v Kenya Revenue Authority (Employment and Labour Relations Cause 148 of 2019) [2024] KEELRC 1792 (KLR) (11 July 2024) (Judgment), where at Paragraph 77 the Honourable Judge stated that by subjecting the claimant to two different disciplinary committees and by failing to provide the claimant with the proceedings and recommendations of the 1st disciplinary committee, the respondent violated the principle of legality in subjecting the claimant to double jeopardy to his loss and detriment.
33. It was further submitted, that the Petitioner contends that since she had duly qualified to vie for the Position of Chairperson of the University of Nairobi Students Association and the fact that she is a student at the 8th Respondent, she had a legitimate expectation that she would be subjected to the laws governing students conduct and elections in a fair manner as envisaged in the UNSA constitution as well as the Students Code of Conduct. The fact that the Respondents had to go out of the UNSA Constitution, in terms of Schedule 3, Part IV, rule 8 and 10 and introduce a new ground disqualify her, the fact that the Respondents had to manufacture a guilty verdict contrary to the minutes exhibited to disqualify the Petitioner and the fact that the Respondents had to try the Petitioner outside the provisions of the Students Code of Conduct (revised) in 2021, violated her legitimate expectation, a doctrine based on considerations of fairness.



34. It was also submitted that the High Court has recently in the case of *Republic v Law Society of Kenya & another; Irungu (Expert Applicant); Winye & 2 others (Interested Parties) (Judicial Review Application 028 of 2024)* [2024] KEHC 1489 (KLR) (Judicial Review) (19 February 2024) (Judgment), extensively discussed the Doctrine of Legitimate Expectation from Paragraphs 72 – 84. The Court further held that violation of that doctrine offends the Provisions of Article 27 of *the Constitution*, which entitles all persons to equal benefit of the law.
35. Learned counsel urged this court to quibble with that decision and find that the Petitioner had a legitimate expectation to be subjected to the laws and rules of the 8th Respondent as captured in the UNSA Constitution as well as the Students' Code of Conduct. The Petitioner had a legitimate expectation that he would be cleared to contest for election, and had met all the criteria.
36. As regards the Respondents' claim at paragraphs 50 – 62, where they alleged that the Petitioner and her team did not comply with the requirements for clearance, the Petitioner maintains that far from the truth, as the issue is irrelevant to this Petition. It was contended that the Petitioner has annexed evidence from pages 221 – 318 of her bundle detailing the submission of the new team in compliance with the directions sent on 18th March 2025. The Petitioner maintains that the Respondents never responded to her frequent follow-ups via email, even though the email appearing at page 312 of the Petitioner's bundle demonstrates that the Respondent's email was active and was used to make communications.
37. It was finally submitted that the court be guided by the above facts, law and case law, find this suit in favour of the Petitioner and grant the Prayers sought in the Petition Amended on 28th March 2025.
38. The Respondents' submissions are dated 842025, which were as follows:
 1. To ensure the nominations elections were conducted in a civilized and orderly manner, Election Rules and Regulations were developed to guide the nominations and resolve disputes. All the Petitioners were notified of the conditions prospective candidates must comply with, including being of good standing. The three Petitioners were afforded an opportunity to present their cases before the Independent Electoral Commission, and the Commission system guaranteed the right to be heard at the Verification level and the Dispute Resolution Committee as an appeal process where representation is invited.
 2. The Council Nomination process commenced on Wednesday, March 12, 2025, when access to the e-ballot was granted to all students to download and upload nomination documents, and to second and nominate preferred teams. After nominations held on March 17 and appeals held on March 18, 2025, a total of 25 teams were cleared as follows:
 - a. Student Council Two teams
 - b. Faculties and Campuses Students Association Teams 22 teams were cleared
 3. The two council teams and the 22 Faculty Campus teams were all conducted using the e-ballot platform and system.

Team Owiti



4. 1) were read out to Team Owiti. The Chairperson of Team Owiti, Mr. James Owiti Wamban, introduced the seven members of the Team to the Commission, indicating their respective positions in the team. From his oral submission, the following were noted as members of the team:
5. This membership was also confirmed through the documents he emailed to the Commission at 1.15 am after the deadline for uploading documents had lapsed. Team Owiti was given an opportunity to give clarification and responses on why he had not uploaded his nomination documents in the e ballot as instructed by the Commission.
6. In response, Mr. Owiti informed the Commission that he did not upload the document because he had issues with the e-ballot. It was working until Saturday, 15th March 2023, and thereafter, he could not log in. He communicated this to ICT but did not get a response. He requested that the Commission allow him to use an alternative for submitting his documents. He also informed the Commission that the Dean Faculty of Arts and Social Sciences did not clear his academic status as he was a first-year Master's student.
7. That the team's international student representative had not submitted her documents for clearance by the Dean Faculty of Arts and Social Sciences and was only received on March 17, 2025, at 11 am, and this also caused some delay. Observed:
 - a. The Commission has the authority to clear teams for the 2025 UNSA elections.
 - b. That all teams were required to upload their documents in e-ballot by Monday 17th March, 2025 at 10am.
 - c. That team Owiti had not uploaded any document in the e-ballot by Monday, 17th March, 2025, at 10 am as instructed by the Commission in communication dated March 14, 2025.
 - d. That he also wrote to the Commission at 11:38 am, requesting that another member of his team be allowed to upload nomination documents.
8. The first time he wrote to the Commission that he was experiencing system issues was on Monday, 17th March, 2025, at 10.51 am, when he sent a screenshot of an email he had sent to ICT support, Faculty of Arts and Social Sciences, that he was experiencing some challenges. However, on scrutinizing the screenshot, it was confirmed that it was sent to ICT FASS on Monday, 17th March, 2025, at 10 am. That he had emailed some nomination documents through the email at 1 15 am. On perusal of the documents sent through the email, the following was noted:i. Three certificates of good conduct were invalid (Treasurer, Sports and Social Welfare Rep, and PWD Rep-ii. The Chairperson Mr James Owiti had a waiting receipt only and not a certificate of good conduct.iii. The Chairperson, Mr James Owiti, had not been cleared by the Dean, Faculty of Arts and Social Sciences, as he was a first-year Master's student.iv. The pupil pass for International representative was not available.v. The International representative had not been cleared by the Dean, Faculty of Arts and Social Sciences as she was a first year masters' students.vi. The International representative biodata nomination form was not available.



9. The Commission could not verify the documents of the team because:
 - i. The verification of the document was being done online based on the documents uploaded in the e-ballot portal as instructed by the Commission on various dates.
 - ii. The documents sent via email were also incomplete.
10. The Commission deliberated on the issues noted during the oral submission by the team, and reviewed the documents shared via email. It was observed that the possible reason why he had not uploaded the document was that the team had incomplete documents by the time the portal was closed. This was confirmed by Mr. Owiti submission that he received the International representatives' documents at 11am after the portal had closed.
11. That Mr. Owiti was not able to demonstrate that the e-ballot was not working, and if he was not able to log in, any other member of his team would have uploaded the documents on behalf of the team. The emailed documents were also sent later at 1.10 pm, and they were still incomplete. The Commission unanimously agreed not to clear the team because they failed to meet the requirements for nominations, and the reason for not uploading the documents was not convincing. The Commission also reiterated its stand on strictly following the nomination guidelines for the Student Council teams as they represented the whole University.
12. Team Owiti was not cleared, not because of the e-ballot platform and system, but because of:
 - a. Three certificates of good conduct were invalid (Treasurer, Sports and Social Welfare Rep, and PWD Rep.
 - b. The Chairperson, Mr James Owiti had a waiting receipt only and not a certificate of good conduct.
 - c. The Chairperson Mr James Owiti had not been cleared by the Dean, Faculty of Arts and Social Sciences as he was a first-year masters' students.
 - d. The pupil's pass for the International representative was not available.
 - e. The International representative had not been cleared by the Dean, Faculty of Arts and Social Sciences, as she was a first-year master's student.
 - f. The International representative biodata nomination form was not available.
13. The above compliance requirements had nothing to do with the Respondent's electronic and e-ballot system. The Respondents' electronic and e-ballot system worked well at the Council and faculties campuses nomination stage as follows;

Council Teams Nominations Eballot Report
14. Facultiescampuses Teams Nominations Eballot Report



SN.	FACULTY/CAMPUS	TOTAL VOTES TALLY
1	FACULTY OF AGRICULTURE	
2	FACULTY OF ARTS AND SOCIAL SCIENCES	
3	FACULTY OF BUILT ENVIRONMENT AND DESIGN	
4	FACULTY OF BUSINESS AND MANAGEMENT SCIENCE	
5	FACULTY OF EDUCATION	
6	FACULTY OF ENGINEERING	
7	FACULTY OF HEALTH SCIENCES	
8	FACULTY OF LAW	
9	FACULTY OF SCIENCE AND TECHNOLOGY	
10	FACULTY OF VETERINARY MEDICINE	
11	KENYA SCIENCE CAMPUS	
12	KISUMU CAMPUS	
13	MOMBASA CAMPUS	

STEP UP TEAM

15. On 17th March, 2025, the Commission met with the Step up Team on the item of clearance for nomination before they could proceed to the next stage of the electoral process. The nomination criteria and checklist provided in the UNSA 2017 constitution (Amended 2021) were read out to the Step Up Team. The Commission has the authority to clear teams for the 2025 UNSA elections. The Chairperson of the Step Up Team, Ms. Juliet Bwoga, introduced the seven members of the Team to the Commission, indicating their respective positions in the team. The Commission reviewed and verified the nomination documents for The Step



Up Team as uploaded in the e-ballot and accordance with the nominations checklist and the UNSA Constitution.

16. During the review and verification of the nomination documents for The Step Up Team, the Commission noted that;

The Chairperson of the Step up Team, Ms. Juliet Bwoga, and the Person with disabilities representative, Mr. Japhet Kase Kofa, were from the same Faculty, i.e., the Faculty of Law.

- iii. The Secretary General of the Team, Hamza Mohamednur Osman and the International Students, Ms. Tamupiwa Kimberly Chikwakwata were from the same Faculty I.e. Faculty of Health Sciences.

Other than the three issues noted above, the team met other nomination criteria as set out by the Commission.

17. The Step Up Team was allowed to give clarification and a response to the issues noted by the commission. On the issue of Faculty and program diversity, the team informed the commission that they had challenges in getting a representative for persons with disabilities and International Students, therefore, they had to settle for representatives from the Faculty of Health Sciences and the Faculty of Law, where the Chairperson and Secretary General came from. The Commission deliberated on the issues noted about noncompliance with the Faculty and Program diversity requirement upon review and verification of nomination documents for the Step Up Team. It was unanimously agreed that all Council teams should comply with all requirements for nomination, as they represent the whole university.

18. The commission unanimously agreed not to clear the team because the two team members were from the same Faculty, i.e., Faculty of Law, and another set of two members were from the same Faculty, i.e., Faculty of Health Sciences. The Commission also agreed to provide the team with an opportunity to address the above-identified non-compliance, which would be outlined in the official communication with a deadline to comply.

19. When the Step Up Team was given a second opportunity to address the above issues, the Team appeared before the UNSA Independent Electoral Commission. The Team only managed to realign itself to meet the set diversity requirements by reshuffling the team members who were from the faculty of health science. Step up Team did not reshuffle the person with disability aspirant from the faculty of law, and by this time, the Council nomination timelines were up, and validly nominated Council teams were cleared and published.

Compliance With Elections Timelines: Team Owiti And Team Step Up Failed To Comply With Election Timelines

20. The Respondents contended that they had strict timelines by which to conduct the elections and confirm the new student leaders to ensure that the students' governance and leadership at the University are not affected. The Independent Electoral Commission had strict election timelines and criteria as decreed under Article 16 of the UNSA Constitution as read together with Schedule 3 Rules articles 11, 13, 14, 15 and 16 of the rules & regulations governing students' elections, which timelines culminate in confirmation of the nominated teams at the faculty and council levels at the UNSA 2025 students' elections. To seek nomination and clearance after the time for nomination has lapsed from the date the Commission announced nomination elections and criteria for nomination is an affront to *the Constitution* and the enabling electoral laws, and any nominations after the time established by the law and outside the set criteria are a nullity. That means that the Honourable court does not, as of now, have



jurisdiction as an election court to entertain the Petitions, its jurisdiction having ceased by operation of the law.

14. The Petitioner's teams (Team Owiti and Team Step Up) are ignorant of the fact that this court lacks jurisdiction to expand the UNSA Constitutional timelines requiring the submissions and clearance of team names and team representatives for purposes of conducting UNSA 2025 Elections. The election timelines issued on 3rd March, 2025 were decreed under Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' elections. The announcement of the 2025 elections under Article 16 of the UNSA Elections was on 4th March, 2025. The deadline for submissions of names of aspiring teams and campaign symbols to the Electoral Commission for Students' Council was on Friday 7th March, 2025 with publications of approved team names and symbols being Monday March 10th, 2025. The nomination for Students' Council was on Monday 17th March, 2025 and publication of duly nominated and successful aspiring teams was on Tuesday 18th March, 2025.
14. Both Team Owiti and Step up Team failed to meet strict UNSA Constitutional timelines requiring submissions of team members cast on set criteria for nomination and clearance. The teams were given a chance and heard to participate in the UNSA 2025 elections but failed to meet the set criteria within strict timelines as dictated by Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' and to clear the two teams without meeting the set nomination criteria outside the set timelines will be an affront to the strict constitutional timelines and criteria demanding for strict nominations timelines and compliance with inclusivity and leadership and integrity requirements.
14. In *Oloo v Independent Electoral & Boundaries Commission (IEBC) & 3 others (Election Petition Appeal E001 of 2023)* [2023] KEHC 18410 (KLR) (Election Petitions) (19 May 2023) (Ruling) were the court noted that it would be moot and an academic exercise for the court to entertain election nomination proceedings after effluxion of the timelines as set in law. More so that the request for a fresh election nomination long after the constitutional and statutory period for election nomination has expired would offend the binding Supreme Court jurisprudence in *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* (2019) eKLR where it was held that "all election nomination petitions must be resolved within the provided timeframes without qualification".
14. Failure by the two teams to comply with stipulated criteria and timelines does not have the effect of freezing UNSA constitutional timelines and neither does this court have powers capable of turning back the hands of nomination time demanding for expeditious compliance. It would be an exercise in futility to return the two teams to the Commission for nomination clearance as the constitutional timelines for UNSA 2025 elections nominations have long expired. That this court consequently lacks the power in law to order for council elections nominations due to the effluxion of time. The two teams are seeking nominations and clearance to participate in the UNSA 2025 Elections from the back door.
14. Respondents submit that Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' demonstrates the drafters' seriousness in setting timelines that are aimed at ensuring that council elections nominations matters are not only executed within certain timelines but are equally nominated and cleared within specific timelines. That the dictates of Article 16 of the UNSA Constitution, as read together with Schedule 3 Rulesarticles 11, 13, 14, 15, and 16 of the rules & regulations governing students, are codified and require nominations to be determined within a set timeframe. It the Respondents submission that Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' regime and legal framework yield to the conclusion that students' nomination criteria and elections timelines must be complied



with concurrently or consecutive as set out in the UNSA Constitution and communicated by the Independent Electoral Commission. It is the Respondents' submissions that the nomination criteria and timelines do not stop and no judicial intervention is capable of returning back the hands of time.

14. The Respondents therefore contend that team Owiti and Step Up Team Petitions are vexatious, misconceived, have no basis in law and are otherwise meant to delay students' elections and to waste the court's precious judicial time. The Petitioners have misdirected themselves on basis legal issues and or are have been ill advised on very simple and clear issues of law and procedures and applications of law on council nomination criteria and timelines.
14. The Respondents rely on the Supreme Court decision in Martha Wangari Karua case (supra) where the Petitioner's election petition had been struck out by the High Court for its failure to comply with the rules. Subsequently, the petitioner appealed to the Court of Appeal which ordered for the matter to be heard by the High Court long after the six months' timelines had expired. Consequent to the hearing of the Petition, a question arose at the Court of Appeal and later at the Supreme Court as to the legality of the High Court proceedings long after the expiration of the six months decreed in law. The Supreme Court Justices held that once a petition is filed at the High Court sitting as the Election Court, it must be determined within a period of 6 months and in that case where the High Court decided the matter long after the six months' period had lapsed the High Court proceedings were a nullity.
14. The Respondents further submit that this Honourable Court has no power to direct the Independent Electoral Commission to subject the two teams to fresh nomination after the expiry of the timelines set in law and the Petitions have become moot as the Courts do not act in vain. The Respondents put reliance in the case of Shadrack Kinyanjui Wambui v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR where Mativo J (as he then was) held as follows: A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.
14. The issue being raised in the instant Petitions on whether election nomination petition can be heard after the expiry of statutory nomination period has expired was comprehensively dealt with by the Supreme Court in the case of Martha Wangari Karua v IEBC & 3 others (supra) where the court after considering other decisions emanating from the High Court and the Court of Appeal rendered itself thus, We have already explained why there was a need to provide for defined timelines for electoral nominations and once nomination time lapse the election court no longer has any powers to hear and determine the election petition. It must down its tools without prompting."

DIBORA ZAINAB HIRBO

(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) And Hirbo v University of Nairobi Independent Electoral Commission & another (Judicial Review Application E034 of 2025) [2025] KEHC 3838 (KLR) (Judicial Review) (25 March 2025) (Judgment) Neutral citation: [2025] KEHC 3838 (KLR))

14. Petitioner is serving currently as the Vice Chair of UNSA and is in a better position to know the facts about the election process and requirements. The elections are also subject to other nomination processes. The election process is via Team and not individual independent candidates.
14. The Vice Chair had an incomplete academic record confirmed from the Faculty Dean– FASS.



14. The team does not meet Diversity for Faculty (PWD and Treasurer are from FHS) Petitioner has not addressed the concerns raised against her running mate, as having an incomplete academic record, as confirmed by the Faculty Dean – FASS.
14. Petitioner is battling out for election with a running mate who has a query on the 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 the 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. The understanding, therefore, is that where a running mate is disqualified, one cannot run the race alone. There is no contest that the Petitioner’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 to this case. Further, the 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. 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.
14. Elections are not just an event. They are a process, and therefore, weighing the prejudice, the Respondents and other candidates shall be more prejudiced if the elections are suspended to accommodate the Petitioner, 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. The prayers for stay of implementation of the decision to disqualify the Petitioner to vie for the Chairmanship of the UNSA and the suspension of the impending election are not merited, and the same is hereby dismissed. Onto other merit questions, on the Respondents’ allegations that the Petitioner was convicted of violating the Students’ Code of Conduct, again, that is so, as per the new material availed by the Respondent.
14. Other grounds for disqualification of Team Purpose and therefore the Petitioner herein from vying, the Vice Chair was stated to have incomplete academic records.
15. It was incumbent upon the Petitioner to demonstrate that ground was baseless by either having the Vice Chair of her team being enjoined to these proceedings or him swearing an affidavit to counter that allegation. Reading of the UNSA Constitution provides for inclusivity and diversity, at Articles 8(e)- “Article 8: Guiding values and principles of the Association the Association shall, in its operation be guided by the following values and principles: (a) Patriotism and national unity, (b) Good governance and accountability transparency, (c) Integrity and transparency, (d) Gender equity; (e) Inclusivity and diversity, (f) Respect for the rule of law; 9(3) (b),(d),- 9(3) Duties of Members Every member shall: a) Comply and abide by the letter and spirit of this Constitution; b) Shall strive to promote nondiscrimination and inclusivity; d) Promote cultural, racial and religious diversity of the members of the Association; 14(b) d) Promote cultural, racial and religious diversity of the members of the Association; and Schedule 3:1(b) and 20(4). Those are also values in the preamble of the UNSA Constitution. See preamble “PROUD of the diversity of backgrounds and cultures of members, united by a common purpose and aspirations, GUIDED by the national values and principles of governance, principles of leadership and integrity and general principles of elections as spelt out in Articles 10,81 and Chapter 6 of *the Constitution of Kenya 2010*.” Additionally, the deposition that the Treasurer of the Team, Ms. Catherine Olga Makalama and the PNA representative, Ms. Faith Pendo Ndaa were from the same Faculty of Health Sciences was not controverted. The guidelines on requirements for nomination must be read together with the requirements under the UNSA Constitution and not in exclusion. In addition, the Petitioner being the current serving Vice Chairman



of UNSA, must have read and understood the requirements under the UNSA Constitution. In the said Guidelines, “each team should demonstrate diversity in terms of Faculty, Campus and approved academic programmes.”

14. The guidelines apply for both nomination requirements for Student Counsel and campus Student’s Association. They are dated 12/3/2025. There is no material placed before this court to show that the aspiring Team Purpose met all the qualifications for nomination, even excluding the question of whether the Petitioner had pending disciplinary case and as stated earlier, this case is not about the merits or otherwise of the disciplinary proceedings against the Petitioner.
14. The Honourable court would only make appropriate orders if it found that the Petitioner had demonstrated that her entire team met all the requirements for nomination. Petitioner has not demonstrated that her entire team purpose was qualified to be nominated to contest in the forthcoming elections scheduled for 26th March, 2025.
14. Stopping UNSA 2025 is injurious and detrimental to public interest and the operations of the University of Nairobi as a public body and the students Community as key stakeholders in the governance of the University. Consequently, the Petitioner’s contention must be weighed against those of the Respondents, duly nominated faculty/campus/council teams, the student’s community and the University who have dealt with other participants vying for nominations/candidacy as a potential teams under the same rules and regulations. This is because stopping the elections on behalf of three students would be prejudicial to the students’ fraternity, operations of various committees and organs of the University. Moreover, there are already twenty-two teams that are contesting for elections in the impugned elections after successfully conducting nomination elections exercise. In view of this, it is the Respondents’ submissions that the prayers sought by the Petitioner be declined based on the wider public interest & good over individual interests as propounded in the case of *Maurice Omurwa Magembe & another v Kenyatta University & 5 others* [2021] KEHC 2080 (KLR).
15. Petitioner has not sought to review the decision of the Independent Electoral Commission, nor show how university students shall be affected if they do not participate in the UNSA Elections. To grant the orders sought in the circumstances of this case would be disproportionate to the mischief that is sought to be cured by such orders. Public and students’ interest lie in allowing the faculty/campus and Council elections to proceed.
14. It was in the wider legitimate and public interest of the student voters that the election be allowed to proceed as the Petitioner’s private interests had nil chance of success and as the (Petitioner) remained unqualified to participate in the UNSA 2025 elections. To support this point, the respondents rely on the case of *Kipngeno Rono v Kapkoros Tea Factory Ltd & 2 others* [2021] KEHC 9339 (KLR) where prayer for conservatory orders to stop the Respondents from nominating candidates and holding elections in respect of Ndaraweta electoral Area was denied.
14. In the circumstances, the Petitioner’s entire suits against the Respondents are frivolous, a monumental procedural and substantive legal nullity, fatally and irredeemably incompetent, an abuse of the court process, an afterthought, vexatious, mischievous and proper candidate for dismissal and/or striking out with costs. It was further added that the authorities being relied on by the Petitioner to support their Petitions are not at all applicable in the circumstances of the dispute herein and the Petitioner has been misadvised on the substance and contents of the aforesaid Supreme Court authorities.
14. Learned counsels for the Petitioner and Respondents highlighted their respective submissions on the 9/4/2025. The same were a reiteration of their respective standpoints.



14. I have considered the petitions and responses thereto as well as the submissions both filed and highlighted by the respective learned counsels. The issue for determination is whether the petitions files by the petitioners have merit.

14. The genesis of the dispute relates to nomination of student leaders through their teams under the UNSA 2025 elections Pursuant to the University of Nairobi UNSA Independent Electoral Commission, Its chairperson, Dr. Kenneth Ombongi issued out a notice dated 4th March in accordance with provisions of Article 16(1) and (2) of the UNSA constitution, 2017(amended) 2021, in which he directed that the elections be held on 26th March 2025 and that prospective eligible candidates and students were advised to comply with UNSA constitution. On March 12th 2025, the said chairperson issued out the requirements for nominations to all students and aspiring teams. The nomination requirements for student council were inter alia:

- a. Membership should not be more than 23 of either gender.
- b. The Chair and Vice Chair should be of opposite Gender.
- c. Not more than one candidate per county.
- d. Not more than one candidate from an ethnic community.
- e. The team has no first year or Final Year student.
- f. International Student should have a valid passport, be registered with relevant office and a pupil passDiplomatic passRefugee certification.
- g. Students with disability should have registration cards at NCPWD and be registered with the office of the Dean of Students.
- h. Sports and Social Welfare representatives must be active participants in University sports and other co-curricular activities. Evidence or confirmation should be sought from the Department of Sports and Games or The Dean of Students.
 - i. All team members should meet the requirements for clearance by their respective Academic Deans as follows:

A verified academic status.Has no pending supplementary examination in the entire academic record for the current study programme.Is not repeating the year on academic grounds.Has been in session for the preceding two semesters, and is available to serve for the entire term of his office.Has not held leadership positions in the student’s council or facultycampus Association for two terms in any university or Constituent college.J) Each member of a Team should possess a Certificate of Good Conduct from the National Police Service, except for International Student Representatives.

K) Each team should demonstrate diversity in terms of Faculty, Campus and approved academic programs.

L) Paid requisite nomination fees of Ksh. 3000=

m) Each team should have 1 proposer and 300 seconders who meet the academic and faculty diversity of the registered students’ voters in the university.

The nomination requirements for Campus Students’ Association.

- a. Membership should not be more than 23 of either gender.
- b. The Chair and Vice Chair should be of opposite Gender.



- c. Not more than one candidate per county.
- d. Not more than one candidate from an ethnic community.
- e. The team has no first year or Final Year student.
- f. International Student should have a valid passport, be registered with relevant office and a pupil pass
Diplomatic pass
Refugee certification.
- g. Students with disability should have registration cards at NCPWD and be registered with the office of the Dean of Students.
- h. Sports and Social Welfare representatives must be active participants in University sports and other co-curricular activities. Evidence or confirmation should be sought from the Department of Sports and Games or the Dean of Students.
 - i. All team members should meet the requirements for clearance by their respective Academic Deans as follows:
A verified academic status. Has no pending supplementary examination in the entire academic record for the current study programme. Is not repeating the year on academic grounds. Has been in session for the preceding two semesters, and is available to serve for the entire term of his office. Has not held leadership positions in the student council or faculty campus Association for two terms in any university or Constituent college.
- j. Each member of a Team should possess a Certificate of Good Conduct from the National Police Service, except for International Student Representatives.
- k. Each team should demonstrate diversity in terms of Faculty, Campus and approved academic programs.
- l. Each team should have 1 proposer and seconded by at least 2% of the registered students in the Faculty Campus.
- m. Paid requisite nomination fees of Ksh. 2000=

46.) The petitioners herein have maintained that they duly complied with their foregoing requirements but they were eventually locked out from participating in the nomination exercise. They have accused the respondents of discriminating against them and that their rights protected under Articles 38, 47, and 50 of *the Constitution* of Kenya have been violated. For the petitioners in Petition No. E0062025, it was averred that he duly complied with the E-Ballot System but which had problems and sought to use another mode and which was rejected by the respondents. It was contended by the petitioner that he had legitimate expectation that his rights would be respected. As regards the petitioners in E007 of 2025, it was contended that the petitioners duly complied with the rules and regulations of the nominations but were nonetheless locked out. It was further contended that the respondents used technicalities to deny them the right to participate in the elections. As regards the petitioner in E008 of 2025, it was contended that the petitioner met the requirements but however was denied a chance to participate in the elections when the respondents purported to use some previous disciplinary proceedings involving the petitioner to lock her out of contention. It was further contended that the respondents have weaponized the University Student Code of Conduct to disqualify the petitioner and thereby violated her right of equal protection of the law and equal benefit of the law, and further have violated principles of natural justice, illegality, and amounted to double jeopardy.



47. . The respondents have relied on the replying affidavits sworn by Dr. Ombongi dated 27th March 2025, 1st of April 2025 and 2nd of April 2025. As regards Petition No. E006 of 2025, the respondents contended that the E-Ballot System that was used was properly working and that all students had been facilitated with the data bundles whenever they were within the campus. It was also contended that the petitioner did not fully comply with the requirements as he did not have a certificate of good conduct but only a waiting receipt and further the petitioner had not been cleared by the Dean as well as the fact that the details regarding the international student were missing and finally that the nomination documents were not filed within the timelines. As regards petition No. E007 of 2025, the respondents contended that the petitioners did not comply with matters regarding diversity, disability, and international students' outlook. It was also contended that the petitioners' team had the same candidate from the same community and the same faculty, which did not reflect diversity. As regards Petition No. E008 of 2025, the respondents contended that the petitioner had been dealt with in some disciplinary proceedings and therefore the petitioner was affected by the strict requirements of integrity under Chapter 6 of *the Constitution*. Further, it was contended that the Petitioner's team did not meet the criterion for diversity and that the person with disability and the treasurer came from the same faculty. It was finally contended that the petitioner's individual legitimate expectation should not override the public legitimate expectation of the majority in the university, especially those who have already been nominated to proceed for the election, and that the student population is currently suffering at the alter of the present petitioners who are pursuing personal agendas.
48. The subject of the elections in dispute must be seen from the prism of the University of Nairobi Students Association (UNSA) Constitution 2017 (Amended 2021). It is a fifty-two-page document with the preamble being that the Association shall be guided by the national values and principles of governance, principles of leadership, and integrity, and general principles of elections as spelt out in Articles 10, 81, and Chapter 6 of *The Constitution* of Kenya 2010. Some of the guiding principles of the said constitution are inter alia; that the students association operates fairly and democratically; that proper management structure is in place and that the structure functions to maintain integrity, reputation and responsibility; that the objective of the association is to promote and enhance the enjoyment of academic freedom and freedom of conscience, expression and association; that guiding principles shall include good governance and accountability, transparency, integrity, gender equity, inclusivity and diversity, respect for the rule of law; that members of the association have a right to seek election in any office or position established in this constitution and shall be entitled to vote in UNSA elections; that election disputes shall be determined by the electoral tribunal established under Article 19 of *the Constitution*; that all students have a right to vote under Section 41 of the Act; that students may be nominated as a member of an aspiring team for an election under these regulations if heshe meets the qualifications.
49. The petitioners herein have maintained that they have complied with the requirements of the foregoing constitution and regulations made thereunder and that the respondents had no right to deny them the opportunity to participate in the nominations and thereafter contest in the ensuing elections.
50. On the other hand, the respondents have presented their version of events as follows;
- i. In order to ensure the nominations elections were conducted in a civilized and orderly manner, Election Rules and Regulations were developed to guide the nominations and resolve disputes. All the Petitioners were notified of the conditions prospective candidates must comply with, including being of good standing. The three Petitioners were afforded an opportunity to present their cases before the Independent Electoral Commission, and the Commission system guaranteed the right to be heard at the Verification level and the Dispute Resolution Committee as an appeal process where representation is invited.



- ii. The Council Nomination process commenced on Wednesday, March 12, 2025, when access to the e-ballot was granted to all students to download and upload nomination documents, and to second and nominate preferred teams. After nominations held on 17th March 2025 and appeals held on 18th March 2025, a total of 24 teams were cleared as follows:
 - a. Student Council
 - i. Two teams
 - b. Faculties and Campuses Students Association Teams
 - i. 22 teams were cleared
- iii. The two council teams and the 22 FacultyCampus teams were all conducted using the e-ballot platform and system.

Team Owiti

- iv. On 17th March, 2025, the Commission called Team Owiti on the subject to clear the Team for nomination before they could proceed to the next stage. The nomination criteria and checklist provided in the UNSA 2017 constitution (Amended 2021) was read out to Team Owiti. The Chairperson of Team Owiti, Mr. James Owiti Wamban introduced the seven members of the Team to the Commission, indicating their respective positions in the team. From his oral submissions, the following were noted as members of the team:
 - v. This membership was also confirmed through the documents he emailed to the Commission at 1.15 am after the deadline for uploading documents had lapsed. Team Owiti was given an opportunity to give clarification and responses on why he had not uploaded his nomination documents in the e-ballot as instructed by the Commission.
 - vi. In response, Mr. Owiti informed the Commission that he did not upload the document because he had issues with the e-ballot. That it was working until Saturday, 15th March 2025 and thereafter he could not log in. That he communicated this to ICT but did not get a response. He requested that the Commission to allow him to use an alternative for submitting his documents. That he also informed the Commission that the Dean Faculty of Arts and Social Sciences did not clear his academic status as he was a first-year Master's student.
 - vii. That the team's international student representative had not submitted her documents for clearance by the Dean Faculty of Arts and Social Sciences and were only received on March 17, 2025, at 11am and this also caused him some delay.

Observed:

- e. The Commission has the authority to clear teams for the 2025 UNSA elections.
- f. That all teams were required to upload their documents in e-ballot by Monday, 17th March, 2025, at 10 am.-
- g. That team Owiti had not uploaded any document in the e-ballot by Monday, 17th March, 2025, at 10 am as instructed by the Commission in communication dated March 14, 2025.
- h. That he also wrote to the Commission at 11:38 am requesting that another member of his team to be allowed to upload nomination documents.
- viii. That the first time he wrote to the Commission that he was experiencing system issues was on Monday, 17th March, 2025, at 10.51 am, where he sent a screenshot of an email he had sent to



ICT support, Faculty of Arts and Social Sciences, that he was experiencing some challenges. However, on scrutinizing the screenshot, it was confirmed that it was sent to ICT FASS on Monday, 17th March, 2025, at 10 am. That he had emailed some nomination documents through the email at 1. 15 am. On perusal of the documents sent through the email, the following was noted:

1. Three certificates of good conduct were invalid (Treasurer, Sports and Social Welfare Rep and PWD Rep.
 2. The Chairperson Mr James Owiti had a waiting receipt only and not a certificate of good conduct.
 3. The Chairperson Mr James Owiti had not been cleared by the Dean, Faculty of Arts and Social Sciences as he was a first year Masters' students.
 4. The student pass for International representative was not available.
 5. The International representative had not been cleared by the Dean, Faculty of Arts and Social Sciences as she was a first-year master's student.
 6. The International representative biodata nomination form was not available.
- ix. The Commission could not verify the documents of the team because:
1. The verification of the document was being done online based on the documents uploaded in the e-ballot portal as instructed by the Commission on various dates.
 2. The documents sent via email were also incomplete.
- x. The Commission deliberated on the issues noted during the oral submission by the team, and review of the documents shared via email. It was observed that the possible reason why he had not uploaded the document is because the team had incomplete documents by the time the portal was closed. This was confirmed by Mr. Owiti's submission that he received the International representatives' documents at 11 am after the portal had closed.
- xi. That Mr. Owiti was not able to demonstrate that the e-ballot was not working, and if he was not able to log in, any other member of his team would have uploaded the documents on behalf of the team. The emailed documents were also sent later at 1.10 pm, and they were still incomplete. The Commission unanimously agreed not to clear the team because they failed to meet the requirements for nominations, and that the reason for not uploading the documents was not convincing. The Commission also reiterated its stand on strictly following the nomination guidelines for the Student Council teams as they represented the whole University.
- xii. Team Owiti was not cleared not because of the e-ballot platform and system failure but because of:
- g. Three certificates of good conduct were invalid (Treasurer, Sports and Social Welfare Rep and PWD Rep.
 - h. The Chairperson Mr James Owiti had a waiting receipt only and not a certificate of good conduct.



- i. The Chairperson Mr James Owiti had not been cleared by the Dean, Faculty of Arts and Social Sciences as he was a first year masters' students.
- j. The student pass for International representative was not available.
- k. The International representative had not been cleared by the Dean, Faculty of Arts and Social Sciences as she was a first year masters' students.
- l. The International representative biodata nomination form was not available.
- xiii. The above non-compliance requirements had nothing to do with the Respondents' electronic and e-ballot system. The Respondents' electronic and e-ballot system worked well at the Council and faculties campuses nomination stage as follows;

COUNCIL TEAMS NOMINATIONS EBALLOT REPORT

- xiii. FACULTIESCAMPUSES TEAMS NOMINATIONS EBALLOT REPORT



SN.	FACULTY CAMPUS	TOTAL VOTES TALLY
1	FACULTY OF AGRICULTURE	
2	FACULTY OF ARTS AND SOCIAL SCIENCES	
3	FACULTY OF BUILT ENVIRONMENT AND DESIGN	
4	FACULTY OF BUSINESS AND MANAGEMENT SCIENCE	
5	FACULTY OF EDUCATION	
6	FACULTY OF ENGINEERING	
7	FACULTY OF HEALTH SCIENCES	
8	FACULTY OF LAW	
9	FACULTY OF SCIENCE AND TECHNOLOGY	
10	FACULTY OF VETERINARY MEDICINE	
11	KENYA SCIENCE CAMPUS	
12	KISUMU CAMPUS	
13	MOMBASA CAMPUS	

STEP UP TEAM

- xiv. On 17th March, 2025 the Commission met with the Step up Team on the item of clearance for nomination before they could proceed to the next stage of



the electoral process. The nomination criteria and checklist provided in the UNSA 2017 constitution (Amended 2021) was read out to The Step up Team. The Commission has authority to clear teams for purposes of 2025 UNSA elections. The Chairperson of the Step up Team, Ms. Juliet Bwoga introduced the seven members of the Team to the Commission, indicating their respective positions in the team. The Commission reviewed and verified the nomination documents for The Step up Team as uploaded in the e-ballot in accordance with the nominations checklist and the UNSA Constitution.

- xiv. During the review and verification of the nomination documents for The Step up Team, the Commission noted inter alia; that the Chairperson of the Step up Team, Ms. Juliet Bwoga and the Person with disabilities representative, Mr. Japhet Kase Kofa were from the same Faculty I.e. Faculty of Law; that the Secretary General of the Team, Hamza Mohamednur Osman and the International Students, Ms. Tamupiwa Kimberly Chikwakwata, were from the same Faculty I.e. Faculty of Health Sciences.

Other than the three issues noted above, the team met other nomination criteria as set out by the Commission.

- xiv. The Step up Team was given an opportunity to give clarification and a response to the issues noted by the commission. On the issue of Faculty and program diversity, the team informed the commission that they had challenges in getting a representative for persons with disabilities and International Students, therefore they had to settle for representatives from Faculty of Health Sciences and Faculty of Law where the Chairperson and Secretary General came from. The Commission deliberated on the issues noted about no-compliance with the requirement for Faculty and Program diversity upon review and verification of nomination documents for The Step up Team. It was unanimously agreed, that all Council teams should comply with all requirements for nomination as they represent the whole university.
- xiv. The commission unanimously agreed not to clear the team because the two team members were from the same Faculty i.e. Faculty of Law and another set of two members were from the same Faculty i.e. Faculty of Health Sciences. The Commission also agreed to provide the team with an opportunity to address the above-identified non-compliance, which would be outlined in the official communication with a deadline to comply.
- xiv. When Step up Team was given a second opportunity to address the above issues, the Team appeared before the UNSA Independent Electoral Commission, the Team only managed to realign the team to meet the set diversity requirements by reshuffling the team members who were from the faculty of health science. Step up Team did not reshuffle the person with disability aspirant from the faculty of law, and by this time, the Council nomination timelines were up, and validly nominated Council teams were cleared and published.
- xiv. The Petitioner's teams (Team Owiti and Team Step Up) are ignorant of the fact that this court lacks jurisdiction to expand the UNSA Constitutional timelines requiring the submissions and clearance of team names and team representatives for purposes of conducting UNSA 2025 Elections. The



elections timelines were issued on 3rd March, 2025 and were decreed under Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' elections. The announcement of the 2025 elections under Article 16 of the UNSA Elections was on 4th March, 2025. The deadline for submissions of names of aspiring teams and campaign symbols to the Electoral Commission for Students' Council was on Friday 7th March, 2025 with publications of approved team names and symbols being Monday 10th March, 2025. The nomination for Students' Council was on Monday 17th March, 2025 and publication of duly nominated and successful aspiring teams was on Tuesday 18th March, 2025.

- xiv. Both Team Owiti and Step up Team failed to meet strict UNSA Constitutional timelines requiring submissions of team members cast on set criteria for nomination and clearance. The teams were given a chance and heard to participate in the UNSA 2025 elections but failed to meet the set criteria within strict timelines as dictated by Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' and to clear the two teams without meeting the set nomination criteria outside the set timelines will be an affront to the strict constitutional timelines and criteria demanding for strict nominations timelines and compliance with inclusivity and leadership and integrity requirements.
- xiv. Respondents submit that Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' demonstrates the drafters' seriousness in setting timelines that are aimed at ensuring that council elections nominations matters are not only executed within certain timelines but are equally nominated and cleared within specific timelines. That the dictates of Article 16 of the UNSA Constitution, as read together with Schedule 3 Rulesarticles 11, 13, 14, 15, and 16 of the rules & regulations governing students, are codified and require nominations to be determined within set timeframe. It the Respondents submission that Article 16 of the UNSA Constitution as read together with Schedule 3 Rulesarticles 11, 13, 14, 15 and 16 of the rules & regulations governing students' regime and legal framework yield to the conclusion that students' nomination criteria and elections timelines must be complied with concurrently or consecutive as set out in the UNSA Constitution and communicated by the Independent Electoral Commission. It is the Respondents submissions that that nomination criteria and timelines do not stop and no judicial intervention is capable of returning back the hands of time.
- xiv. The Respondents therefore contend that team Owiti and Step Up Team Petitions are vexatious, misconceived, have no basis in law and are otherwise meant to delay students' elections and to waste the court's precious judicial time. The Petitioners have misdirected themselves on basis legal issues and or have been ill-advised on very simple and clear issues of law and procedures, and applications of law on council nomination criteria and timelines.

DIBORA ZAINAB HIRBO (TEAM PURPOSE)



- xiv. Petitioner is serving currently as the Vice Chair of UNSA and is in a better position to know the facts about the election process and requirements. The elections are also subject to other nomination processes. The election process is via Team and not individual independent candidates.
- xiv. The Vice Chair had an incomplete academic record confirmed by the Faculty Dean, FASS.
- xiv. That the Team does not meet Diversity for Faculty (PWD and Treasurer are from FHS) and that the Petitioner has not addressed the concerns raised against her running mate, as having an incomplete academic record, as confirmed by the Faculty Dean – FASS.
- xiv. Petitioner is battling out for election with a running mate who has a query on the completeness of the academic record confirmed from the Faculty Dean– FASS, and with no evidence that her said running mate has been cleared.
- xv. The UNSA Constitution provides for the 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. The understanding, therefore, is that where a running mate is disqualified, one cannot run the race alone. There is no contest that the Petitioner’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 to this case. Further, the 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. 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.
- xiv. Other grounds for disqualification of Team Purpose and therefore the Petitioner herein from vying, the Vice Chair was stated to have incomplete academic records.
- xv. It was incumbent upon the Petitioner to demonstrate that ground was baseless by either having the Vice Chair of her team being enjoined to these proceedings or him swearing an affidavit to counter that allegation. Reading of the UNSA Constitution provides for inclusivity and diversity, at Articles 8(e)- “Article 8: Guiding values and principles of the Association the Association shall, in its operation be guided by the following values and principles: (a)Patriotism and national unity, (b) Good governance and accountability transparency, (c) Integrity and transparency, (d) Gender equity; (e) Inclusivity and diversity, (f) Respect for the rule of law;9(3) (b),(d),- 9(3) Duties of Members Every member shall: a) Comply and abide by the letter and spirit of this Constitution; b) Shall strive to promote nondiscrimination and inclusivity; d) Promote cultural, racial and religious diversity of the members of the Association;14(b) d) Promote cultural, racial and religious diversity of the members of the Association; and Schedule 3:1(b) and 20(4). Those are also values in the preamble of the UNSA Constitution. See preamble “PROUD of the diversity of backgrounds and cultures of members, united by a common purpose and aspirations, GUIDED by the national values and



principles of governance, principles of leadership and integrity and general principles of elections as spelt out in Articles 10,81 and Chapter 6 of *the Constitution* of Kenya 2010.” Additionally, the deposition that the Treasurer of the Team, Ms. Catherine Olga Makalama and the PNA representative, Ms. Faith Pendo Ndaa were from the same Faculty of Health Sciences was not controverted. The guidelines on requirements for nomination must be read together with the requirements under the UNSA Constitution and not in exclusion. In addition, the Petitioner being the current serving Vice Chairman of UNSA, must have read and understood the requirements under the UNSA Constitution. In the said Guidelines, “each team should demonstrate diversity in terms of Faculty, Campus and approved academic programs.”

The guidelines apply for both nomination requirements for Student Counsel and campus Student’s Association. They are dated 1232025. There is no material placed before this court to show that the aspiring Team Purpose met all the qualifications for nomination, even excluding the question of whether the Petitioner had a pending disciplinary case and as stated earlier, this case is not about the merits or otherwise of the disciplinary proceedings against the Petitioner.

51. From the foregoing explanation rendered by the Respondents, it is clear that the Petitioners teams were expected to comply with the nomination regulations and rules some of which related to diversity, gender inclusivity, clearance from the faculty Deans, inclusion of persons with disability, certificate of good conduct, international student representative, timely submissions of documents. Learned counsels for the petitioners have hinged their submissions on the provisions of *the Constitution*, namely Articles 10, 38, 47, 50, and 81 have been violated by the Respondents as the Petitioners were shut out of the nomination race. The said provisions are as follows:

Article 10(1) - The national values and principles of governance in this Article bind all state organs, State officers, public officers and all persons whenever any of them-

- a. Applies or interprets this constitution;
- b. Enacts, applies or interprets any law; or
- c. Makes or implements public policy decisions.

(2) The national values and principles of governance include-

- a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.
- b) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.
- c) Good governance, integrity, transparency, and accountability; and
- d) Sustainable development.

Article 38 (1) every citizen is free to make political choices, which includes the right-

- a) to form, or participate in a political party;
- b) to participate in activities of, or recruit members for a political party; or
- c) to campaign for a political party or cause.



- (2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for-
- a) any elective public body or office established under this constitution; or
 - b) any office of any political party of which the citizen is a member.
- (3) Every adult citizen has the right, without unreasonable restrictions-
- a) to be registered as a voter;
 - b) to vote by secret ballot in any election or referendum; and
 - c) to be a candidate for public office, or office within a political party which the citizen is a member and, if elected, to hold office.

Article 47 (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Article 50 (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body.

Article 81 The electoral system shall comply with the following principles.

- a) Freedom of citizens to exercise their political rights under article 38.;
- b) not more than 23 of the members of elective public bodies shall be of the same gender.
- c) fair representation of persons with disabilities;
- d) universal suffrage based on the aspiration for fair representation and equality of vote; and
- e) free and fair elections, which are-
 - i) by secret ballot;
 - ii) free from violence, intimidation, improper influence or corruption.
 - iii) conducted by an independent body.
 - iv) transparent; and
 - v) administered in an impartial, neutral, efficient, accurate and accountable manner.

52. It is noted that the elections in question were in pursuance of the provisions of Section 41 (II) of the University Act and the regulations thereunder which were to be conducted in strict compliance with the general principles of *the constitution* of Kenya as set out in Article 81 of *the constitution*. All the petitioners were expected to comply with the requirements of the nomination and likewise, the Respondents were under an obligation to ensure that the rights of the contestants are taken care of. In the case of Magawi Maxwell Odhiambo and ten others versus the Attorney General of the Republic of Kenya, and the University of Nairobi, Petition No. 113 of 2019 at Nairobi, it was held

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- “ 12. It has also been noted that the right to contest in an election is not absolute, as it is not a matter of walk-in walk-out, at the leisure of the intended candidate. The right has to be in accordance with the provisions of the law governing the election’s process. Article 24 (1) (a)-(e) of *the constitution* of Kenya provides –
- “24(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all the relevant factors including,
- a) The nature of the right or fundamental freedom;
 - b) The importance of the purpose of the limitation;
 - c) The nature and extent of the limitation;
 - d) The need to ensure that enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
 - e) The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose”
13. The right and freedom to contest in the election of students council in the university is a function of Article 38 and 81 of *the constitution* but such right cannot be urged and is not subject to limitations which may be imposed by the law...”

50. Even though the petitioners have maintained that they were unfairly locked out of nomination and have given their side of the story, I find the version given by the Respondents to be believable and plausible. The criteria and conditions imposed by the rules governing the nomination gave the petitioners an opportunity to seek to comply. The requirements to all students and aspiring teams for the UNSA 2025 elections comprised inter alia; membership should not be more than 23 of either gender; the chair and vice chair should be of opposite gender; not more than one candidate per county; not more than one candidate from an ethnic community; the team should not have any first year or final year student; international students should have a valid passport, registered with relevant office; students with disabilities should have registration cards from NCPWD and be registered with the office of the Dean if students; all team members should meet the requirements by their respective academic Deans such as a verified academic status, no pending supplementary examination in the current study programme, not repeating the year on academic grounds etc. The chronology of events as presented by the Respondents appear to be true position for all the petitioners hearing. It is evident that from the criteria for the nominations each of the petitioners appear not to have fully complied with the conditions. Starting with the petitioner in Petition E 006 of 2025 (Team Owiti), it is noted that his main ground is that the E-ballot system had problems thereby forcing him to submit outside the set timeline. However, the Respondents brought to the fore that the petitioner James Owiti had not been cleared by the Dean, faculty of Arts and Social Sciences as he was a first year master’s student. Indeed, first years and final year students were not eligible to contest or to offer themselves for nomination. Further, the International Student Representative was also not cleared by the Dean faculty of Arts and Social Sciences as she was a First year Masters student and further the said student did not avail her bio-data. It is also



noted that the petitioner's emailed documents though sent outside the stipulated period at 1:10 P.M, the said documents were also found to be incomplete. The issue of timelines is crucial since Article 16 of UNSA constitution as read with Schedule 3 rules, 11, 13, 14 and 15 of the rules governing students and that the candidates were under obligation to comply. It is not in dispute that matters of elections in this country are time bound. Hence courts are reluctant to extend time for parties who are late after the set timelines have expired. In the case of Martha Wangari Karua versus Independent Electoral and Boundaries Commission and three others [2019] eKLR the Supreme Court of Kenya held that all election nominations petitions must be resolved within the provided time frames without qualification. There was thus delay in submission of documents and further the documents did not comply with the set criteria.

As regards Petition No. E 007 2025, (Step Up Team), it is noted that its chairperson Ms. Juliet Bwoga, and the person with disabilities Mr. Japheth Kase Kofa were from the same faculty, namely the Faculty of Law. Again, the secretary general of the team Hamza. M. Osman and the international student Ms. Tamupiwa Kimberly Chikwakwata were from the same faculty of Health Sciences. The team was given the opportunity to sort out the discrepancy but they were not able to and therefore they were not cleared to contest. I find that the disqualification was proper.

As regards Petition E 008 of 2025 (Team Purpose), it's noted that the vice chair had an incomplete academic record, which was confirmed by the Dean of Faculty- Arts and Social Sciences. Again, the team did not meet the principle of diversity since the persons with disability and the treasurer were all from the same faculty of Health Science. The petitioner herein, who was gunning for the position of chair, had been the previous vice chair of UNSA. After the disqualification of the vice chair candidate there is no evidence that the petitioner herein or the said vice chair appealed against the decision of disqualification. The said vice chair has not been made a party in these proceedings and further that he has not sworn an affidavit in support of this petition. In the absence of the vice chair, it would appear to me that the position of the petitioner herein becomes rather vulnerable since the position of vice chair is missing in the team's setup, and therefore, the team is technically not complete, and hence the rejection by the Respondent on grounds that the team did not demonstrate diversity in terms of faculty, campus and approved academic programs. It is noted that the petitioner's teammate who was supposed to be her vice chair was not cleared and that there is no evidence that he appealed against the decision to disqualify him on the stated grounds in the verdict subject of this case. The key issue that emerged is that the said petitioner had had some disciplinary cases in the past and which were brought out to her attention. The petitioner has vehemently contested the said disciplinary proceedings, arguing that she has been made to suffer double jeopardy. It was the petitioner's contention that the conduct of the Respondents in resuscitating previous disciplinary proceedings was meant to lock her out of the nomination exercise. She further maintains that the existence of a disciplinary case is not a ground for disqualification. She also maintained that she cannot be tried twice over similar circumstances. It is noted that the disciplinary proceedings aforesaid are matters of public record, and that on page 79 of the Respondent's document, the petitioner was charged with 8 offences to which she pleaded not guilty, and that she presented her defence and thereafter the committee resolved to warn her then ordered her to write a written apology and further she was restricted from accessing the council chamber. The petitioner was at liberty to appeal to the Appeals Disciplinary Committee within seven days. The petitioner claims that she had initially been cleared before the Dean Faculty of Education purported to recall the clearance vide a letter dated 2132025 and that she reads malice on the part of the Respondents.



The Petitioner in Petition No. E0082025 (Team Purpose) further contended that even though she had lodged a JR application at Nairobi Milimani Court Vide JR No. E o342025, she still has a right to file this petition as the prayers sought herein would not be available in a JR application. She has contested the Respondent's claim that the matter is Res judicata. Indeed, the claims and prayers sought herein are not similar to those in the JR matter and that the parties are somehow different. It is trite that for the doctrine of Res judicata to arise, the parties must be the same and litigating under the same title and that the matter in the previous matter had been substantially determined as between the parties. The Petitioner is entitled to approach this court for redress as the court handling the JR matter exercises limited jurisdiction namely on the question of procedural fairness and thus the fact that the Petitioner had filed the JR application is no bar to her filing the present petition in her quest to seek for comprehensive reliefs. See John Florence Maritime Services Limited & another versus Cabinet Secretary Transport & Infrastructure & 3 others (Supreme Court Petition No. 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021). I find that the Respondents' claim that the matter is Res judicata lacks merit. Had this been the only obstacle, then the Petitioner herein would have sailed through but for the fact that her Vice chair nominee's documents were found to be incomplete. Again, as noted above, the Petitioner's vice chair nominee has not been roped into these proceedings as one of the petitioners and has also not filed an affidavit in support of the Petitioner's averments. I find the Petitioner and her Team Purpose was properly disqualified from contesting in the elections.

51. Finally, the petitioners have claimed that they have a legitimate expectation that the Respondents are to ensure that they comply with constitutional guidelines and to ensure that they achieve their stated objectives, namely to be considered in the nominations so that they exercise their constitutional rights. The said legitimate expectation must be pecked upon the petitioner's compliance with the nomination rules. If the petitioners have duly complied with the set nomination rules, they are entitled to have a legitimate expectation that their rights will be respected. The petitioners have maintained that they expected to be cleared to contest in the elections as they have met the requisite criteria. However, the evidence that has been presented by the respondents has left no doubt that the petitioners herein did not fulfill all the requirements of the nomination in order to entitle them to participate in the elections. Consequently, I am not convinced that the Respondents have violated the petitioners' right to legitimate expectation. I find their legitimate expectation must be weighed against the public legitimate expectation of the University and the candidates who have met the nomination criteria threshold. I find that the Respondents did not thwart or interfere with the legitimate expectation of the Petitioners herein in any way. I find the public interest and those of the student voters and nominated candidates stand to be prejudiced if the elections are not allowed to proceed.
52. In view of the foregoing observations, it is my finding that the three petitions herein lack merit. The same are hereby dismissed. The conservatory orders issued earlier herein are hereby discharged. I make no order as to costs.

DATED AND DELIVERED AT SIAYA THIS 23RD DAY OF APRIL 2025

D.KEMEI

JUDGE

