Omollo v Commission for University Education & another (Judicial Review E189 of 2024) [2025] KEHC 6467 (KLR) (Judicial Review) (22 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6467 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW E189 OF 2024

JM CHIGITI, J

MAY 22, 2025

BETWEEN

CHRISTINE WINNIE OMOLLO ..... APPLICANT

AND

COMMISSION FOR UNIVERSITY EDUCATION ..... 1ST RESPONDENT

COMMISSION ON ADMINISTRATIVE JUSTICE ..... 2ND RESPONDENT

JUDGMENT

Brief background

1. The Application that forms the subject of this judgment is the one dated 2nd September 2024.
2. Prior to her employment by the 2nd Respondent, the Applicant had enrolled at Digital Advisory Learning Center (DALC) in 2001 and undertook a Diploma in Management through collaboration with University of Cambridge.
3. Consequently, the Applicant got a credit transfer to a Bachelor's Degree programme which she completed on 3rd November, 2006 and was thereupon awarded a degree certificate in Business Administration.
4. Subsequently, the Applicant got a credit transfer to the University of the Valley-Mexico.
5. The Applicant was appointed by the 2nd Respondent to the position of Human Resource & Administration Manager on 7th August, 2015.
6. The appointment was subsequently confirmed on permanent and pensionable terms by the 2nd Respondent vide its letter dated 1st October, 2015.

7. On 26th February, 2024, the 2nd Respondent wrote to the 1st Respondent requesting the 1st Respondent to verify the Applicant's Bachelors' Degree in Business Administration from University of Cambridge.

8. The 1st Respondent responded to the request vide its letter dated 25thApril, 2024 stating that the University of Cambridge Association of Managers is not a recognized institution in the United Kingdom and the qualifications awarded by the said institution were therefore not recognized in the United Kingdom and by convention Kenya.

9. On 12th July, 2024 The Applicant requested the 1st Respondent to supply her with information, materials and evidence it relied upon in making the determination that the University of Cambridge Association of Managers is not a recognized institution in the United Kingdom.

10. The 1st Respondent failed to provide the information which the 1st Respondent stated that such information was confidential and could not be shared with third parties.

11. This has precipitated the filing of the instant suit.

Applicant's case;

12. Through the aforementioned application ,the applicant seeks orders that:

    i. An Order of Certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent (Commission for University Education) of failing to recognize the Applicant's Bachelor's Degree in Business Administration vide their letter dated 25th April,2024.

    ii. An Order of Certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent (Commission for University Education) of failing to recognize the Applicant's Bachelor's Degree in Business Administration vide their letter dated 25th April,2024 until such a time when the 1st Respondent shall supply the Applicant with the information, materials and evidence it relied upon in making the determination that the University of Cambridge, Association of Managers is not a recognized institution in the United Kingdom.

    iii. An Order of Certiorari to remove into this Honourable Court and quash the 2nd Respondent's Show Cause Letter dated 8th July,2024.

    iv. An Order of Prohibition prohibiting the 2nd Respondent from taking any disciplinary action against the Applicant in relation to matters raised in the Show Cause Letter dated 8th July,2024.

    v. An Order of Certiorari to remove into this Honourable Court and quash the 2nd Respondent's Show Cause Letter dated 8th July, 2024.

    vi. An Order of Prohibition prohibiting the 2ndRespondent from taking any disciplinary action in relation to matters raised in the Show Cause Letter dated 8th July,2024 until such a time when the 2nd Respondent Commission will be properly constituted.

    vii. Costs of and incidentals to the application be provided for.

    viii. Such further or other relief that this Honourable court may deem just and fit to grant

13. The Applicant is an employee of the 2nd Respondent who prior to her employment, she had enrolled at Digital Advisory Learning Center (DALC) and also undertook a Diploma in Management through a collaboration with University of Cambridge.

14. She then got a credit transfer to a Bachelor's Degree programme which she completed on 3rd November, 2006 and was consequently awarded a Degree Certificate in Business Administration.

15. She then got a credit re-transfer to the University of the Valley – Mexico.

16. On 26th February,2024 the 2nd Respondent wrote to the 1st Respondent requesting the 1st Respondent to verify her Bachelor's Degree in Business Administration from University of Cambridge.

17. The 1st Respondent in its letter dated 25th April,2024 refused to recognize her Bachelor's Degree in Business Administration.

18. It is her case that the 1st Respondent has refused to supply her with the information, materials and evidence it relied upon in making the determination that the said University is not a recognized institution in the United Kingdom.

19. She argues that she requested the 2nd Respondent to supply her with the information, materials and evidence it relied upon in making the determination that the University of Cambridge Association of Managers is not a recognized institution in the United Kingdom to no avail.

20. Further and in addition to requesting the 2nd Respondent to supply her with the information and materials, the 2nd Respondent sought for the same information and material from the 1st Respondent vide its letter dated 12th July,2024.

21. The 1st Respondent failed to provide the information and instead responded to the 2nd Respondent vide letter dated 25th July,2024 in which they stated that such information was confidential and could not be shared with third parties.

22. She is aggrieved that The 1st Respondent did not issue her with a notice nor accorded her any opportunity to be heard prior to making its decision as adumbrated in its letter dated 25th April, 2024 in breach of Article 47 (1) (2) of the *Constitution* and Sections 4(2), (3) of the Fair Administrative Actions Act.

23. It is her case that she cannot defend herself against the 1st Respondent's decision in a case that is predicated on the decision that adversely affects her.

24. She is aggrieved that the 2nd Respondent has commenced disciplinary proceedings against her by way of issuing me with a Show Cause Letter dated 8th July,2024.

25. She finds it inappropriate for the 2nd Respondent to institute the above disciplinary proceedings despite the fact that they are yet to be supplied with the information, materials and evidence that the 1st Respondent relied upon in making the decision or taking the administrative action it took as adumbrated in their letter dated 25th April,2024.

26. It is her case that the 2nd Respondent has instituted the above disciplinary proceedings in utter disregard of its enabling Act (Commission on Administrative *Act, No.23 of 2011*), The *Fair Administrative Action Act*, 2015 and its own Human Resource Policies and Procedures Manual, Sections 4.43 and 4.45 respectively.

27. It is her case that Section 9 of the Commission on Administrative Action Act (CAJ Act), the 2nd Respondent Commission is composed of a Chairperson and two other members who are appointed in accordance to the *Constitution* and the CAJ Act.

28. Article 250 (12) of the *Constitution* requires each Commission to have a Secretary who it appoints and is the Chief Executive Officer and is responsible for carrying out the decisions of the Commission

29. She argues that The 2nd Respondent's Secretary acted ultra vires in issuing the Applicant with the Show Cause Letter dated 12th July,2024 and therefore the said Show Cause Letter ought to be quashed.

30. The 2nd Respondent did not formally respond to her request for a fair an unbiased hearing following a letter dated 30th July, 2024 wherein the 2nd Respondent objected to the request to have Mr. Dan Karomo and Dr. Mary Kimari relinquish themselves from full participation in the disciplinary process.

31. The above disciplinary proceedings is in utter disregard of its own Human Resource Policies and Procedures Manual, Section 4.45 according to her.

32. She argues that The 2nd Respondent failed to provide her with a fair hearing by declining to formally respond to her letter dated 30th July, 2024.

33. It is her case that the 2nd Respondent is not properly constituted and The disciplinary proceedings undertaken by the 2nd Respondent against the Applicant are illegal, unlawful and therefore null and void ab initio for abrogating Article 47 of the *Constitution* and the same are in breach of the Commission on Administrative Action Act and Sections 4(2), (3) of the Fair Administrative Actions Act.

34. She argues that The 1st Respondent has committed an error of law in the process of making the decision and The 1st Respondent's actions are irrational unreasonable and made in bad faith, ultra vires and a breach of her right to fair administrative action.

35. In her Supplementary Affidavit she argues that the Respondents being public bodies carrying out statutory functions with their decisions affecting members of the public, their decisions are subject to court supervisory jurisdiction by way of judicial review and the improper or unreasonable exercise of their powers or the improper or unreasonable failure to exercise their powers is subject to judicial review as is the case in the instant matter.

36. The Respondents actions are administrative actions which are subject to Article 47 of the *Constitution* and as such this honourable court has the prerequisite jurisdiction to deal with the matters at hand.

37. The Respondents are subject to the Fair Administrative Actions Act which operationalizes articles 47 of the *Constitution*. Under Part III of the Act, a victim of unfair administrative action can apply to the court for review of the impugned action.

38. She argues that the Employment and Labour Relations Court (ELRC) does not have jurisdiction over the issues arising between her and the 1st Respondent.

39. She argues that this honorable Court is clothed with proper jurisdiction to handle the matters arising between the Respondents and her.

40. She argues that the main issue in dispute is not her employment with the 2nd Respondent but the 1st Respondent's actions of unilaterally and unprocedurally making a decision not to recognize my Bachelor's Degree in Business Administration vide their letter dated 25th April, 2024.This honorable Court thus has the jurisdiction to hear and determine the matter at hand.

41. She argues that it is trite law that where the relevant authorities concerned hold the view that a particular person's educational qualification is not recognized, the authority concerned is a under a Constitutional duty to furnish the person with written reasons for non-recognition.

42. She is aggrieved that the 1st Respondent did not furnish her with any reason, material or evidence as to why they chose not to recognize my Bachelor's Degree and the materials and evidence they relied on in coming to the conclusion that University of Cambridge was not a recognized institution in the United Kingdom and by convention Kenya.

43. She is concerned that she was not furnished with any written reasons that had informed their letter of 25th April,2024 and the 1st Respondent did not accord her any opportunity to be heard prior to arriving at the decision.

44. In failing to give her any written reasons for the decision they took vide their letter of 25th April,2024, the 1strespondent is in direct breach of section 4 (2) of the *Fair Administrative Action Act*.

45. The decision is not only unreasonable but capricious, unfair and tainted with procedural impropriety and the Respondent is guilty of violation of its duty to ensure fair administrative action is taken by them in the execution of its statutory duties and mandate.

Applicant's Submissions;

46. It is her submission that as a direct consequence of the 1st Respondent's letter dated 25th April, 2024, the 2nd Respondent has commenced disciplinary proceedings against the Applicant by way of issuing her with a Show Cause Letter dated 8th July, 2024 in utter disregard of its enabling Act (Commission on Administrative *Act, No.23 of 2011*), The *Fair Administrative Action Act*, 2015 and its own Human Resource Policies and Procedures Manual, Sections 4.43 and 4.45 respectively.

47. As per section 9 of the Commission on Administrative Action Act (CAJ Act), the 2nd Respondent Commission is composed of a Chairperson and two other members who are appointed in accordance to the *Constitution* and the CAJ Act.

48. Article 250 (12) of the *Constitution* requires each Commission to have a Secretary who it appoints and is the Chief Executive Officer and is responsible for carrying out the decisions of the Commission.

49. As such, the Secretary to the 2nd Respondent Commission is an employee of the Commission and is not at the same level as the Commissioners and hence she cannot usurp the Commissioners roles by instigating a disciplinary process against a fellow employee.

50. The 2nd Respondent's Secretary, Mercy K. Wambua, therefore acted ultra vires in issuing the Applicant with the Show Cause Letter dated 12th July,2024 and therefore the said Show Cause Letter ought to be quashed.

51. It is trite law that termination of employment of employees in Constitutional Commissions such as the 2nd Respondent is vested with the Commission and the legal interpretation of the "Commission" is the Commissioners.

52. That owing to the fact that the term of the Commissioners came to an end on the 2nd of August,2024 then the 2nd Respondent lacks the capacity to carry out the impugned disciplinary process against the Applicant.

53. She submits that the disciplinary proceedings undertaken by the 2nd Respondent against the Applicant are illegal, unlawful and therefore null and void ab initio for abrogating Article 47 of the *Constitution* and being in breach of the Commission on Administrative Action Act and Sections 4(2), (3) of the Fair Administrative Actions Act.

54. Reliance is placed in the case of Michael Sistu Mwaura Kamau v *Ethics & Anti-Corruption Commission & 4 others [2017] eKLR Civil Appeal 102 of 2016* where it was held that a Secretary of a constitutional commission is an employee of and not a member of the Commission and cannot perform the functions of the Commission in the absence of a duly constituted commission. The court stated thus:

> "On the first issue in this appeal, we are unable to agree with EACC's contention that the secretariat on its own can investigate and make recommendations to the DPP in the absence of commissioners. Firstly, section 2 of the EACC Act defines 'commission' to mean the EACC as established under section 3 of the EACC Act. Section 3 of the EACC Act then establishes the EACC whose composition is provided for under section 4. Under that section, the composition of the EACC shall consist of a chairperson and four other members appointed in accordance with the provisions of the Act. This provision is in line with Article 250(1) of the *Constitution*, which provides that each of the constitutional commissions shall consist of at least three but not more than nine members. As regards the secretary, Article 250(12) of the *Constitution* requires each commission to have a secretary who it appoints and is the chief executive officer. Similarly, section 16 of the EACC Act has mandated the EACC to appoint, with the approval of the National Assembly, a suitably qualified person to serve as its secretary. Under section 16(7) of the Act, the secretary is the chief executive officer of the EACC, the accounting officer, and is responsible for carrying out the decisions of the EACC, the day-to-day administration and management of the affairs of the EACC, supervision of the employees and perform such other duties as may be assigned by the EACC.
>
> Accordingly, we take the view that the secretary is an employee of the EACC. He or she is appointed by the commissioners and as correctly held by the High Court, is not on the same level as the commissioners. We are satisfied that the High Court was right when it stated that:
>
> > "to contend that the secretary, who is an appointee of the commission, is part of the commission would mean that the commission would, where the commissioners are nine, be composed of a membership of ten. One only need to mention this to realize how ridiculous this argument is. We have no hesitation at all in holding that the secretary of the commission is not a member of the commission as contemplated under Article 250(1) of the *Constitution*".
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> Secondly, the respondents urged us to find that the EACC could exercise its functions through the secretariat, whether or not the commissioners were in office. In particular, the EACC submitted that the making of recommendations to the DPP was a function of the secretariat and not the commissioners, whose absence could not affect the technical operations of the EACC. To our mind, the functions of the EACC are distinct and separate from those of the commissioners and the secretariat...
>
> It is clear from the provisions of both section 11(1) and 11(6) that the Act has separated the powers of the EACC and those of the commissioners. This in our view is not in vain. The EACC has been given powers and functions, which can only be exercised and performed by the commissioners. The law also recognizes that the commissioners may not have the technical, professional and administrative skills needed to perform all the aforesaid functions and, in that regard, has mandated EACC to recruit appropriate staff to help in discharging its functions. Such staff, who form the secretariat, is ultimately subject to the direction, control

and oversight of the commissioners. It is the core mandate of the EACC under section 11(1)(d) of the EACC Act to:

> "...investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the *Anti-Corruption and Economic Crimes Act* or any other law enacted pursuant to Chapter Six of the *Constitution*".

From that provision, it is crystal clear to us that the functions of investigating and making recommendations to the DPP belong corporately to EACC and not to the secretary or the secretariat alone. The investigations and the recommendation to the DPP must be authorised and sanctioned by the commissioners who are required to exercise oversight over the secretariat and overall, to give strategic direction to EACC in the performance of its actions under the Act. That is the position notwithstanding section 23 of ACECA, which empowers the secretary or a person authorized by the secretary to conduct investigations on behalf of EACC. A proper reading of ACECA together with the EACC Act cannot justify the conclusion that officers to whom specific powers of the EACC have been delegated can purport to bypass the EACC commissioners who are ultimately responsible and accountable to Kenyans for the proper discharge of EACC's constitutional and statutory duty.

Additionally, section 35 of the ACECA provides;

> "...following an investigation, the commission shall report to the DPP on the results of the investigation. The commission's report shall include any recommendation the commission may have that a person be prosecuted for corruption or economic crime".

To our mind this provision makes it abundantly clear that upon the conclusion of the investigations, even if undertaken by the secretary or the investigator, it is the EACC, meaning the commissioners, who are expected to report to the DPP on the results of the investigations and make appropriate recommendation. We do not see anything in the law that empowers the secretary to bypass the commissioners and report or make recommendations directly to the DPP. Section 16(7) (f)(i) and (iv) of the EACC Act which makes it the responsibility of the secretary to carry out or execute the decisions of the EACC and to perform such other duties as the EACCC may assign him is also consistent with the view that we have taken.

The respondents further contended that the meetings of the EACC under the second schedule to the EACC Act are in reference to the functions assigned to the commissioners, namely policy, strategy and discipline. In its view, the operational decision, among them investigations and recommendations, are the responsibility of the secretary and not of the commissioners. We have already found that the power to undertake investigations and make recommendations is one of the core functions of the EACC and is undertaken by the commissioners with the help of the secretary and other staff of the EACC as the commissioners may direct from time to time. If the commissioners are not in office, it would therefore follow that the business of EACC as contemplated under paragraph 5 of the Second Schedule to the EACC Act as read with section 11(1)(d) of the EACC Act cannot be undertaken.

> We are also in agreement with the finding of the High Court that the decision transmitted to the DPP recommending the prosecution of the appellant without the sanction of the commissioners was in violation of the provisions of Article 250(1) of the *Constitution*, section 11 of the EACC Act and section 35 of the ACECA. See also the persuasive decision of the Uganda Constitutional Court in Hon. Sam Kuteesa & Others v. The Attorney General (supra) where it was held that the Inspector General of Government could not prosecute independently of or in the absence of a properly constituted Inspectorate of Government, upon which the *Constitution* of Uganda vested the power to prosecute corruption offences."

55. The 1st Respondent's arbitrary action is an affront to Article 43 (1)(f) of the *Constitution* which grants every person the right to an education according to her.

1st Respondents case:

56. In opposing the application, the 1st Respondent filed a replying affidavit of Prof. Mike Kuria, the Commission for University Education (CUE) who indicates that the 1st Respondent is a body corporate established pursuant to the provisions of Section 4 of the *Universities Act* CAP 210(Act), Laws of Kenya.

57. It is its case that its functions under section are 5 (1)(g) is:

> " to recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the standards and guidelines set by the Commission from time to time."

58. It is its case that the 2nd Respondent applied to the 1st Respondent for recognition of Bachelor's Degree in Business Administration issued by University of Cambridge Association of Managers in United Kingdom.

59. Upon applying, the 2nd Respondent paid the requisite fee and attached all the required documents to facilitate the processing of the application.

60. The outcome was that the University of Cambridge Association of Managers was not a recognized degree awarding institution in the United Kingdom and hence its qualifications, including the Bachelor's Degree in Business Administration in question, could not be recognized in Kenya.

61. These results were communicated to the 2nd Respondent. The application for the recognition of the Bachelor's Degree in Business Administration issued by the University of Cambridge Association of Managers in United Kingdom in the name of Christine Winnie Omollo, was done by the 2nd Respondent, who is eligible to apply for this service as provided for in the Act.

62. The 1st Respondent argues that it supplied the 2nd Respondent, with the information they sought. At no time did the Applicant seek directly for any information from the 1st Respondent and the same was not availed.

63. It is his case that,the 1st Respondent has not acted in breach of Article 47(1)(2) of the *Constitution*, as the recognition of Bachelor's Degree in Business Administration issued by University of Cambridge Association of Managers in United Kingdom in the name of Christine Winnie Omollo was done within the established legal framework or any other Article of the *Constitution* in whatever way.

64. The Applicant cannot be heard to say that the decision taken by the 1st respondent was un-procedural because materials and evidence relied upon in decision making were not shared with her.

65. It is his case that The Commission holds in strict confidence, the information shared with and between the Commission and the 2nd Respondent and could not share the same with the Applicant, since the Applicant did not apply to the Commission for recognition of the Bachelor's Degree in Business Administration issued by the University of Cambridge Association of Managers in United Kingdom.

66. It is its case that nothing stopped the Applicant from applying for recognition of her Bachelor's Degree in Business Administration from the 1st Respondent and if not satisfied with the outcome, then ask for materials and evidence relied upon in arriving at the decision.

The 1st Respondent's Submissions

67. It submits that The 1st Respondent has a strict mandate in ensuring that the standards of education are clearly upheld.

68. Reliance is placed in the Court of Appeal in the case of Eunice Milkah Maema Vs CLE & Others CA121/2013 reiterated the need of ensuring high standards of education where he provided that;

> " We are also of the view that the learned judge correctly applied the principle in the decision in Susan Mungai V The Council for Legal Education Petition No. 152/2011 to the effect that the Council has the power to set standards to ensure that the highest professional standards are maintained in the profession and it is not for the Court to be concerned with the efficaciousness of the decision made pursuant to the Regulations"

69. This is informed by the fact that the Commission of University Education's mandate is provided for by the *Universities Act* No. 42 of 2012. Section 5 (1) (g) and 5A (2) of the aforesaid Act provides that;

The functions of the Commission shall be to...

5 (1) (g) recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the standards and guidelines set by the Commission from time to time;

Section 5A(2) —20

(2) Despite the provisions of any other law, the recognition, licensing, student indexing, approval or accreditation of any academic programme including postgraduate degrees, diplomas including postgraduate diplomas and other academic certificates offered at a university shall be the exclusive mandate of the Commission to be exercised in accordance with this section at the exclusion of any other person or body.

70. It submits that that the Applicant is seeking this court to review the merits of the decision of the Respondent and asking this court to substitute the decision the Respondent arrived at procedurally, with that of this Honorable Court.

71. Courts have previously held that judicial review jurisdiction should not act as the court of appeal.

72. In the case of Republic v Commissioner of Customs Services Exparte Africa K-Link International Limited [2012] eKLR where it was held:

> " It must always be remembered that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself. Once it has been

established That a statutory body has made its decision within its jurisdiction following all the statutory procedures, unless the said decision is shown to be so unreasonable. That it defies logic, the court cannot intervene to quash such a decision or to issue an order prohibiting its implementation since a judicial review court does not function as an appellate court. The court cannot substitute its own decision with that of the Respondent."

73. Reference is made to Peter Kaluma in his book, Judicial Review, Law Procedure and Practice, page 46 which enumerates as follows:

> " The remedy of judicial review is radically different from those of review and appeal. Judicial Review is not an appeal from a decision but a review of the decision-making process and the legality of the decision-making process itself. When determining an appeal, the court is concerned with the merits of a decision. Conversely, in Judicial Review the courts exclusive concern is with the legality of the administrative action or decision in question. Thus, instead of substituting its own decision for That of some other body, as happens in appeals, the court in an application for judicial review is concerned only with the question as to whether or not the action under attack is lawful or should be allowed to stand or be quashed."

74. The Court of Appeal in Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd [2002] eKLR as follows:

> " Judicial review is concerned with the decision-making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision."

75. It also relies on Republic vs. Public Procurement Administrative Review Board & Another Exparte Selex Sistemi Integrati Nairobi HCMA No. 1260 of 2007 [2008] KLR 728 where the court held as follows:

> " From the foregoing it is clear that the 1st Respondent considered all the issues raised by the applicants before proceeding to dismiss their request for review. In my view the applicants are asking me to look at the 1st Respondents said decision and reach a conclusion that the 1stRespondent erred both in fact and in law when it reached that decision. The question would then be whether this court acting as a judicial review court has powers to interfere with the decision...This court is being asked to determine whether the 1st respondent misapprehended the law as relates to the technical evaluation and award of scores thereunder. In my view, such an enquiry would amount to sitting on appeal over the decision of the 1strespondent.

76. It also relies in the cases of Pastoli v Kabale District Local Government Council & Others, [2008] 2 EA 300 and Republic vs Kenya National Examination Council Exparte Gathenji and others Civil Appeal No.266 of 1996, where the Court of Appeal stated;

> " that an order of certiorari can only quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules

> of natural justice are not adhered to or any other reasonable cause. It is trite law that the remedy of Judicial Review is not concerned with the merits of the case but the decision-making process. In order for an applicant to succeed in an application for Judicial Review, he must satisfy the court that a public officer has acted unprocedurally, that his decision was unreasonable and that the impugned decision was illegal"

77. It submits that The 1st Respondent's decision was demonstrably lawful, reasonable, and made in full accordance with the applicable legal framework. 79.It was based on a proper consideration of the relevant factors and evidence, and there is no legal or factual basis for quashing the decision or compelling the Respondent to take any further action.

The 2nd Respondents case:

78. It is its case that the Applicant and the 2nd Respondent have an employer-employee relationship as a result of which this Court does not have the statutory jurisdiction to hear and determine disputes touching on the employment relationship and the court cannot consider and/or adjudicate over prayers III, IV, V and VI of the Notice of Motion and the same should be dismissed.

79. On 26th February, 2024, the 2nd Respondent requested the 1st Respondent to authenticate the Academic Certificates presented by its employees. The 1st Respondent requested for further documents to enable it conduct the exercise and the Applicant failed to share some of the documents relating to her academic certificates.

80. On 25th April, 2024, the 1st Respondent notified the 2nd Respondent that the University of Cambridge Association of Managers from which the Applicant obtained her Bachelor's Degree in Business Administration is not a recognized institution in the United Kingdom, consequently, the Applicant's qualification is not recognized.

81. Consequently, the Applicant was issued with a Notice to Show Cause (NTSC) dated 8th July, 2024 requiring her to show cause why disciplinary action should not be taken against her for submitting Academic Certificates.

82. On 10th July, 2024, the Applicant made a request for information, amongst others, correspondence between the 1st Respondent and the Government of the United Kingdom.

83. The 2nd Respondent supplied the information requested for by the Applicant except information relating to the accreditation status of the University of Cambridge Association of Managers.

84. The 2nd Respondent transferred the request to the 1st Respondent, in view of the fact that the 1st Respondent is the custodian of the information in question in line with Section 10 of the *Access to Information Act*, 2016. In addition, the 2nd Respondent notified the 1st Respondent of the request made by the Applicant.

85. On 12th July, 2024, the Applicant made a request for extension of time within which to respond to the Notice to Show Cause. The 2nd Respondent acceded to the request and extended the timeline.

86. On 26th July, 2024, the 2nd Respondent invited the Applicant for a disciplinary hearing on 31st July, 2024. At the hearing, the Applicant requested for an adjournment in order for her to get further information from the 1st Respondent. On 19th August, 2024, the hearing proceeded, and the Committee informed the Applicant that the committee would proceed to prepare its report.

87. The Commission advised the Applicant vide a letter dated 12th July 2024 that it was not the custodian of the information and that the request had been transferred to the 1st Respondent in line with Section 10 (1) of the *Access to Information Act* 2016.

88. The 1st Respondent through its correspondence advised that official communication between it and other related bodies is confidential and therefore could not be shared with third parties.

89. It is its case that it supplied all the information within its possession that was relied upon to commence the disciplinary proceedings, as required by law.

90. In response to the Applicants case the 2nd Respondent states as follows:

    a. Pursuant to Clause 4.42 of the 2nd Respondent's Human Resource Manual, the Commission Secretary exercises delegated authority by the Commission in management of disciplinary matters at the Commission.

    b. Clause 4.45 of the Human Resource manual vests in the Commission Secretary the power to manage disciplinary cases.

    c. Pursuant to Clause 4.46 of the Human Resource Manual, all disciplinary cases for employees in CAJ Grade 2 and above are to be handled by the Commission through the relevant established committee. The Applicant falls under Grade 3, disciplinary proceedings for grade 3 and below are handled by the Commission Secretary.

    d. Without prejudice to the foregoing: -

        i. The term of the Commissioners ended on 8th August, 2024.

        ii. The Disciplinary Proceedings against the Applicant were commenced on 8th July, 2024.

        iii. As at the time of commencement of the Disciplinary Proceedings, the Commission was fully constituted and the Resolution to subject the Applicant to disciplinary action was properly made.

        iv. The decision to subject the Applicant to disciplinary action was not invalidated by the termination of the Commissioners} term as claimed by the Applicant.

91. It argues that pursuant to clause 4.45 (iii) of the Human Resource Manual, an obligation is placed on the employee to respond to a Notice to Show Cause, within 21 days from the date of the NTSC. As demonstrated hereinabove, the Applicant was granted time to respond to the NTSC within the stipulated 21 days and was even granted an extension upon making a request.

92. It is its case that the term of the Commissioners came to an end on 8th August, 2024.

93. The 2nd Respondent, in subjecting the Applicant to disciplinary proceedings, acted in accordance with the provisions of the *Employment Act*, Fair Administrative Actions Act and the *Constitution* of Kenya. In view of the foregoing, the Applicant has not met the threshold for the grant of the Orders sought.

2nd Respondent's Submissions;

94. The 2nd Applicant submits that Article 162 (2) of the *Constitution* establishes the Employment and Labour Relations Court as a special Court with the status of a High Court. Sec. 12 of the *Employment and Labour Relations Court Act*, Cap 8E Laws of Kenya outlines the jurisdiction of the Court amongst which is original and appellate jurisdiction to hear and determine disputes relating to or arising out of employment between an employer and an employee.

95. The 2nd Respondent submits that the dispute between it and the Applicant arises out an employment relationship, consequently, the High Court does not have jurisdiction to hear and determine such a dispute as guided by the Court of Appeal in Karisa Chengo & Others vs R (2015) eKLR.

96. It further relies in the case of United States International University (USIU) vs Attorney General (2012) eKLR) at page 30 of the 2nd Respondent's bundle of authorities that:-

> " In the final analysis, I would adopt the position of the Constitutional Court of South Africa in Gcaba v Minister of Safety and Security (Supra). The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), section 12 of the Industrial Court Act, 2011 has set out matters within the exclusive domain of that court. Since the court is of the status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the *Constitution* and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the *Constitution* within a matter before it."

97. Without prejudice to the foregoing, the 2nd Respondent submits that pursuant to Sec. 41 of the *Employment Act*, an employer has the power to institute disciplinary proceedings against any of its employees.

98. The Court held as much in *Risper Otieno Mtula v Mumias Sugar Co. Ltd (Cause 268 of 2014)* [20151 KEELRC whilst dismissing an application seeking to prohibit an employer from disciplining the employee, at page 46 of the 2nd Respondent's bundle of authorities as follows: -

> " On the issue of temporary injunction, the applicant has not proved that the disciplinary process against her is unlawful. The law grants employers powers to discipline employees and if found guilty, to terminate their employment. The fact that the suspension and show cause were included in the same letter does not make the process unlawful. The orders prayed for would curtail the respondent's right to discipline and to terminate the employment of its employees after subjecting them to due process. In the ruling delivered by this court on 3rd December 2014, the court recognized this right of the employer and granted the Respondent the leave to subject the applicant to proper administrative and disciplinary process before taldng any decision against her."

99. It submits that;

i. Pursuant to Clause 4.42 of the 2nd Respondent's Human Resource Manual, the Commission Secretary exercises delegated authority by the Commission in management of disciplinary matters at the Commission.

ii. Clause 4.45 of the Human Resource manual vests in the Commission Secretary the power to manage disciplinary cases.

iii. Pursuant to Clause 4.46 of the Human Resource Manual, all disciplinary cases for employees in CAJ Grade 2 and above are to be handled by the Commission through the relevant established committee. The Applicant falls under Grade 3, disciplinary proceedings for grade 3 and below are handled by the Commission Secretary.

100. The 2nd Respondent submits that the Applicant has not discharged the twin burden placed on her shoulders, for the application to have merit.

Analysis and determination;

101. Upon perusing the parties' pleadings and the rival submissions, the following issues commend themselves for determination;

1. Whether this court has justification.
2. Whether the Applicant has made out a case for the grant of the orders sought.
3. Who shall bear the costs.

Whether this court has jurisdiction;

102. The question of jurisdiction is well established in the locus classicus, Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd where the Court pronounced itself as such:

> " I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it." Emphasis ours.

103. In the case of Lydia Nyambura Mbugua vs. Diamond Trust Bank Kenya Limited & Another it was held that:

> " ...what is important when determining whether the court has jurisdiction, is not so much the purpose of the transaction, but the subject matter or issue before court, for I think that the purpose of the transaction, may at times be different from the issue or subject matter before court That is why I hold the view, that in making a choice of which court to appear before, one needs to find out what the predominant issue in his case is, and not necessarily, the predominant purpose of the transaction..."

104. Article 162(2) and (3) of the *Constitution* of Kenya, 2010 provides as follows: -

> " (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
>
> (a) employment and labour relations....
>
> (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)."

105. The jurisdiction of the Employment and Labour Relations Court is as provided for under Section 12 (1)(a) which stipulates that,

> " The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the *Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including -
>
> (a) disputes relating to or arising out of employment between an employer and an employee;"

106. The law on the issue of jurisdiction is settled by the Supreme Court in the case of Republic vs. Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. The apex Court held as follows:

> "It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the *Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters "reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)".

107. In the instant suit the Applicant's issues against the 2nd Respondent are predicated around the Notice to show cause, the composition of the 2nd Respondent, the failure to be given ample notice to attend the hearing inter alia.The case against the 2nd Respondent is clearly an employment dispute.

108. In the circumstances, it is this court's finding and I so hold that the court with competent jurisdiction to preside over the dispute against the 2nd Respondent is the Employment and Labour Relations Court and this court cannot determine the claim nor issue orders that touch on such a dispute.

109. The Applicant's claim against the 1st Respondent however in the right court under Order 53 of the Civil Procedure Rules and Article 165 of the *Constitution*.

110. Section 9 provides for the procedure for judicial review as follows: -

> "(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the *Constitution*.
>
> (2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
>
> (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that Applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
>
> (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the Applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal."

111. In order to succeed in this suit, against the 1st Respondent, the Applicant has to prove that its case falls within the parameters that settled in the case of Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300, that:

> "In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also, Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).
>
> Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....
>
> Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".
>
> Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."

112. In the case of Republic v Attorney General & 4 others Exparte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR the stated that:

> "Judicial review applications do not deal with the merits of the case but only with the process. In other words, judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an Applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a matter and will leave the parties to resort to the normal forums where such matters ought to be resolved.
>
> The Court in judicial review proceedings is mainly concerned with the question of fairness to the Applicant in the institution and continuation of the criminal proceedings and once the Court is satisfied that the same are bona fides and that the same are being conducted in a fair manner, the High Court ought not to usurp the jurisdiction of the trial Court and

trespass onto the arena of trial by determining the sufficiency or otherwise of the evidence to be presented against the Applicant.

Where, however, it is clear that there is no evidence at all or that the prosecution's evidence even if were to be correct would not disclose any offence known to law, to allow the criminal proceedings to continue would amount to the Court abetting abuse of the Court process by the prosecution."

113. This court has looked at Section 2 of the *Fair Administrative Action Act* which provides that 'failure', in relation to the taking of a decision, includes a refusal to take the decision. The court finds that the 1st Respondent has failed to furnish the Applicant with the information that she is seeking.

114. Section 4 (1) of the *Fair Administrative Action Act* provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

115. From the evidence tendered by the Applicants, this court is satisfied that the Applicant has proven that the 1st Respondent carried itself in a procedurally unfair and illegal manner.

116. Whether or not the application for recognition of her degree was lodged by the 2nd Respondent, it is this court's finding that the Applicant had a legitimate expectation that she would know why the 1st Respondent refused to recognise her degree. This data belongs to her.

117. Where a person's legitimate expectation is not fulfilled by taking a particular decision, then the decision maker should justify the denial of such expectation by showing some overriding public interest.

118. In so holding, I am guided by De Smith, Woolf & Jowell, "Judicial Review of Administrative Action" 6th Edn. Sweet & Maxwell page 609:

> " A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public."

119. Section 11 (2) of The *Fair Administrative Action Act* stipulates that in proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order- (a) directing the taking of the decision; (b) declaring the rights of the parties in relation to the taking of the decision; (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties.

120. Section 7 of the *Fair Administrative Action Act*, 2015 provides for the institution of judicial review proceedings as follows: -

> " (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–
>
> (a) A court in accordance with section 8; or
>
> (b) A tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if–

(a) The person who made the decision–

(i) Was not authorized to do so by the empowering provision;

(ii) Acted in excess of jurisdiction or power conferred under any written law;

(iii) Acted pursuant to delegated power in contravention of any law prohibiting such delegation;

(iv) Was biased or may reasonably be suspected of bias; or

(v) Denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;

(b) A mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

(c) The action or decision was procedurally unfair;

(d) The action or decision was materially influenced by an error of law;

(e) The administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the Applicant;

(f) The administrator failed to take into account relevant considerations;

(g) The administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;

(h) The administrative action or decision was made in bad faith;

(i) The administrative action or decision is not rationally connected to–

(i) The purpose for which it was taken;

(ii) The purpose of the empowering provision;

(iii) The information before the administrator; or

(iv) The reasons given for it by the administrator;

(j) There was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;

(k) The administrative action or decision is unreasonable;

(l) The administrative action or decision is not proportionate to the interests or rights affected;

(m) The administrative action or decision violates the legitimate expectations of the person to whom it relates;

(n) The administrative action or decision is unfair; or

(o) The administrative action or decision is taken or made in abuse of power.

(3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that–

(a) The administrator is under duty to act in relation to the matter in issue;

(b) The action is required to be undertaken within a period specified under such law;

(c) The administrator has refused, failed or neglected to take action within the prescribed period."

121. Section 11 provides for orders in proceedings for judicial review as follows: -

"(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order–

(a) Declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b) Restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an Applicant;

(c) Directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) Prohibiting the administrator from acting in a particular manner;

(e) Setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) Compelling the performance by an administrator of a public duty owed in law and in respect of which the Applicant has a legally enforceable right;

(g) Prohibiting the administrator from acting in a particular manner;

(h) Setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

(i) Granting a temporary interdict or other temporary relief; or

(j) For the award of costs or other pecuniary compensation in appropriate cases."

122. Article 35(1) Every citizen has the right of access to--

a. information held by the State; and

b. information held by another person and required for the exercise or protection of any right or fundamental freedom.

123. The 1st Respondent has admitted that it has information related to the Applicant which it even shared with the 2nd Respondent.

124. The argument by The 1st Respondent that it cannot release the information because it is confidential and that it was requested for by the 2nd Respondent and not the Applicant cannot form the basis of denying the Applicant access to the information that touches on her right to education.

125. The reasons fronted by the 1st Respondent to justify the refusal to give the Applicant the information that she is seeking fail the Article 24 of the *Constitution* which provides that;

(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.

126. In the instant suit the Applicant has demonstrated that the information held by the 1st Respondent is required by the Applicant for the exercise or protection of her right or fundamental freedom and in particular the right to education and employment.

127. The duty to uphold fair administrative action extends past the issuance of decisions. The decision maker who fails or refuses to give the affected party the reasons for its decision offends the rule of law.

128. In the instant suit, the Applicant is prejudiced and affected by the 1st Respondent's decision. The most basic thing the 1st Respondent had to do was to furnish the Applicant with the requested information. The refusal to give the information is a fundamental infraction of the procedural dictates that are at the heart of fair administrative action.

129. The 1st Respondent cannot hide under the hood and or guise of confidentiality as it deprives the Applicant of her right to access her information.

130. A person who is aggrieved or negatively affected by a decision cannot challenge a decision if they do have access to the reasons for the decision that affects them. This amounts to an illegality that does not accord with the rule of law under Article 10 and right to fair hearing as guaranteed under Article 50 of the *Constitution*.

On the issue of costs;

131. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

> "...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ..." [emphasis supplied].

132. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters stipulates at Section 27(1);

> "Subject to such conditions and limitations' as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction shall be no bar to the exercise of those powers:
>
> > Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order" [emphases supplied].

133. The basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba's words [Judicial Hints on Civil Procedure, at p.94]:

> "The object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure...Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action."

134. In this suit, each party shall bear its costs.

Disposition;

135. The Applicant has made out a case for the grant of the orders sought against the 1st Respondent. The suit against the 2nd Respondent fails.

Order;

1. An Order of Certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent (Commission for University Education) of failing to recognize the Applicant's Bachelor's Degree in Business Administration vide their letter dated 25thApril,2024 is hereby issued.
2. An Order of Certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent (Commission for University Education) of failing to recognize the Applicant's Bachelor's Degree in Business Administration vide their letter dated 25thApril,2024 until such a time when the 1st Respondent shall supply the Applicant with the information, materials and evidence it relied upon in making the determination that the University of Cambridge, Association of Managers is not a recognized institution in the United Kingdom is hereby issued.
3. The prayer for an Order of Certiorari to remove into this Honourable Court and quash the 2nd Respondent's Show Cause Letter dated 8th July,2024 is declined.
4. The prayer for an Order of Prohibition prohibiting the 2ndRespondent from taking any disciplinary action against the Applicant in relation to matters raised in the Show Cause Letter dated 8th July,2024 is declined.
5. The prayer for an Order of Certiorari to remove into this Honourable Court and quash the 2nd Respondent's Show Cause Letter dated 8th July,2024 is declined.
6. The prayer for an Order of Prohibition prohibiting the 2nd Respondent from taking any disciplinary action in relation to matters raised in the Show Cause Letter dated 8th July,2024 until such a time when the 2nd Respondent Commission will be properly constituted is declined.
7. Each party shall bear its costs.
8. The application for recognition of the Applicants papers shall be reheard by the 1st Respondent with the Applicant participating within 7 days.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2025

.....

J. CHIGITI (SC)

JUDGE