



Robert & 2 others v Kenya National Examination Council; Regional Center of Management (Interested Party) (Petition E433 of 2023) [2025] KEHC 13175 (KLR) (Constitutional and Human Rights) (25 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E433 OF 2023
LN MUGAMBI, J
SEPTEMBER 25, 2025**

BETWEEN

**JUMA ROBERT 1ST PETITIONER
RASHID MOHAMED 2ND PETITIONER
ABDI ASIA ALI 3RD PETITIONER**

AND

KENYA NATIONAL EXAMINATION COUNCIL RESPONDENT

AND

REGIONAL CENTER OF MANAGEMENT INTERESTED PARTY

JUDGMENT

Introduction

1. The Petition dated 6th November 2023 is supported by the 1st Petitioner’s affidavit in support of similar date.
2. The Petitioners’ grievance is that the Respondent withheld their March 2023 examination results in respect of Business Technical Education Programme (BTEP) Diploma courses without any justification. Consequently, the Petitioners contends that the Respondent violated their right to education and Article 43 (1)(f) of *the Constitution* and the right to a fair administrative action under Article 47 of *the Constitution* and the right to a legitimate expectation.
3. The Petitioners thus seek the following reliefs against the Respondent:



- a. A permanent order to stop and/or restrain the Kenya National Examinations Council from cancelling, deleting or in any manner whatsoever losing record of business exam results of Abdi Asla Ali, Juma Robert and Rashid Echesa Mohamed.
- b. An order compelling the Kenya National Examinations Council to declare examination results of Abdi Asia Ali, Juma Robert and Rashid Echesa Mohamed who sat for their business examination.
- c. Upon declaration of the exams results, this Court be please to issue an order compelling the Kenya National Examinations Council to issue diploma certificates to Abdi Asia Ali, Juma Robert and Rashid Echesa Mohamed in their respective courses.
- d. A compensation to the Petitioners for the violation of their constitutional rights to be treated with inherent dignity, freedom from discrimination, violations of the right to education and unfair treatment in such sum and or amount that shall be assessed by the Court.
- e. Exemplary and aggravated damages for the malicious, oppressive and undignified conduct of the Respondent.
- f. Costs of the Petition.
- g. General damages.
- h. Costs of the suit.
- i. Such further reliefs that this Court may deem just and fit to grant in the interest of justice.

Petitioners' Case

4. The Petitioners stated that they were students with the Interested Party in which they registered for the BTEP Diploma courses. The 1st and 2nd Petitioner pursued the Diploma in Business Administration while the 3rd Petitioner pursued a Diploma in Accountancy.
5. The 1st Petitioner states that after they registered by the Interested Party, they were also required to register with the Respondent through the Interested Party as the examinations are administered only by the Respondent. The Interested party conducts the learning only. Consequently, upon registration by the Interested Party, they paid the Respondent's requisite fees and were issued with invoices and listed among the students to sit for the examinations scheduled for March 2023.
6. The 1st Petitioner depones that they continued with their studies with the Interested Party and were never informed at any point that there was an issue with their registration with the Respondent. In fact, they all sat for the March, 2023 examinations as scheduled by the Respondent.
7. He depones that once the examination results were ready, the Respondent withheld their results.
8. Aggrieved, they approached the Interested Party. The Interested Party in a letter dated 13th June 2023 to the Respondent inquired why the Petitioners results had been withheld.
9. In its response letter dated 9th August 2023, the Respondent claimed that the Petitioners had not met the minimum qualifications for the registration of the Diploma courses.
10. The Petitioners allege that this shocked them as they had been allowed to undergo the whole process and at no point where they informed that they were unqualified.



11. Moreover, the Petitioners averred that the Respondent stated that this information had already been relayed to the Interested Party before administration of the March 2023 examination yet the purported communication to the Interested Party was not exhibited by the Respondent in the said letter to establish the claim.
12. The Petitioners thus contend that it was the Respondent who listed the Petitioners among the candidates who would sit for the March 2023 examinations. They argue thus that they had a legitimate expectation they would receive their examination results once they concluded the examinations. The Petitioners stated that the Respondent's actions violated their right to education and livelihood under Article 43(1)(f) of *the Constitution*.
13. The Petitioners further argue that the Respondent was obligated to issue them with written reasons for their disqualification in line with Article 47 of *the Constitution*, which it failed to do.
14. As such, the Petitioners are apprehensive that unless this Court intervenes, the Respondent will be successful in utilizing its mandate to illegally and unilaterally withhold the Petitioners examination results and compel them to undertake the whole process again to their detriment having regard to finances and time spent.

Respondent's Case

15. The Respondent filed its Replying Affidavit through its Deputy Director, TVET Assessment Administration, Keith Achesa Maleche sworn on 5th February 2024.
16. On the onset, he states that the Respondent's mandate is regulated by the *Kenya National Examinations Council Act* and its attendant Rules. He depones thus that the Respondent has the statutory duty to register, set and mark the Business Technical Education Programme (BTEP) examinations. He asserts that in line with its mandate the Respondent undertook the conduct of the BTEP examinations in March 2023.
17. He depones that prior to this, the Respondent vide a letter dated 11th August 2022, Ref: KNEC/GEN/EA B&T/PM/TE/BE/2022/011 Business and Technical Examinations, addressed to all Regional Directors of Education MoE and TVET, TSC County Directors of Education, Sub County Directors of Education and all heads of schools, issued the key dates of the activities concerning the examinations.
18. He states that the letter in addition to issuing instructions for registration and fees remittance, guided that the heads of institutions to only upload candidates for courses their institutions are approved to offer.
19. The letter also stated that the candidates registered for courses not approved would be deleted without notice.
20. Additionally, the letter guided on the entry requirements for the BTEP courses and thus required that students meet the minimum examination entry requirements, in this case Diploma Courses, KCSE with mean grade C- (Minus) or relevant craft certificate. Where students are exempted they were required to produce a copy of the exemption letter and proof of attaining the minimum entry requirements for the course they registered. He asserts that the Respondent did not receive any request for exemption from the Petitioners for any of the courses for the March 2023 series.
21. Likewise, the letter informed that it was a requirement that candidates entered for an examination must have been bona-fide enrolled students studying at the institution and who meet the minimum entry requirements for each course.



22. He depones that the Respondent received a letter from the Interested Party on 13th June 2023 inquiring about the Petitioners missing marks. He states that when the Respondent investigated the matter, it was established that the Petitioners were unqualified and thus had been deleted. He informs that the Respondent's system only captures the details of qualified candidates and not qualified students, Details of unqualified candidates are therefore deleted.
23. He asserts that this occurred because the Petitioners did not complete the requisite hours prescribed in the Course syllabus, being 3 years thus the Petitioners had not met the minimum requirement. He avers that the Petitioners could not have qualified to sit for the March 2023 examinations since they enrolled for the course after passing the Craft Certificate course administered in July and November 2021 hence they was no way the requisite contact hours could have been achieved.
24. In response to the Interested Party's inquiry on 9th August 2023, the Respondent relayed this information that the Petitioners had not met the minimum qualifications for registration for the Diploma Courses in the March 2023 series. The Respondent further stated that this information had been brought to the Interested Party's attention prior to the March 2023 examination series. The Interested Party was therefore advised to direct the Petitioners to sit for the next series as by then, they would have obtained the necessary contact hours.
25. He argues that the Interested Party's action amounts to an examination irregularity as institutions are not allowed to fast-track candidates who are unqualified to sit for an examination. He adds that this information was well within the Interested Party's knowledge owing to the Guidelines and Directions issued to all learning institutions by the Respondent.
26. On this basis, he argues that the Petition is baseless, misconceived and devoid of merit and so should be dismissed. He maintains that the Respondent's decision was fair, without malice and in compliance with the law.

Interested Party's Case

27. The Interested Party filed its response sworn on 5th February 2024 by its Director, Elisha Ouko Ouma.
28. He depones that the Interested Party registered the Petitioners in their respective Diploma courses as highlighted. He informs that the Interested Party is only responsible for learning while all examinations are conducted by the Respondent. He avers thus that the Interested Party is required to register the students for examination with the Respondent, which is the one that clears candidates to sit for examinations.
29. He depones that the Interested Party as required, registered the Petitioners and proceeded to issue the requisite examinations fees. He asserts that there was no cause for alarm as when the list of candidates qualified to sit for the examinations was issued by the Respondent, the Petitioners were among them.
30. Considering this, the Petitioners continued with their studies as they waited for their examinations which they did in March 2023.
31. He depones that upon release of the examination results, the Petitioners results were not issued. This caused him to reach out to the Respondent vide their letter dated 13th June 2023. He states that the Respondent in its letter dated 9th August 2023 informed that the Petitioners had not met the minimum qualification for the registration of the Diploma courses.
32. He claims that they were perturbed by the Respondent's response and its change of position as the Petitioners had undergone through their respective programs to completion and sat for their examinations. It is stated that the Respondent did not inform the Interested Party that the Petitioners



were unqualified as alleged. He denies the Respondent's allegations that it communicated this position to them.

33. He notes that the Respondent did not even produce any evidence to support this claim and neither did they ever receive such communication. Moreover, the Respondent who is obliged by law to issue reasons for its actions did not do so before the Petitioners sat for their examinations.
34. He argues that the Interested Party had a legitimate expectation that the Petitioners' examination results would be released with the other students results which was not the case.
35. He contends that the Respondent used its power to frustrate the Petitioners which violates their constitutional right to education. In light of this, he argues that the Petitioners should not be punished for the Respondents lack of due diligence and who in addition effectively listed the Petitioners as qualified to sit for the examinations.

Petitioners' Submissions

36. Okatch and Partners Advocates for the Petitioners filed submissions dated 27th September 2024 and underscored the issues for determination as: whether the Petitioners are deserving of the orders sought and who should bear the costs of the Petition.
37. On the first issue, Counsel submitted that the Respondent is governed by the [Kenya National Examinations Council Act](#) and various legislation. Particularly, Counsel stated that Kenya National Examination Council Guidelines on the Responsibilities of an Approved Examination Center provides that: 'Candidates who fail to meet the requirements of the course should not be entered for examinations. The Council believes that all candidates entered for any examination, meet all the requirement for registration. After registration, the council will verify the information and shall deregister any candidate who does not meet the course requirement'.
38. According to this Guideline, Counsel submitted that it is clear that any candidate who fails for meet the minimum requirements should not be entered for examinations and only candidates who meet the minimum required are entered.
39. Furthermore, Counsel submitted that pursuant to the Respondent's instructions on the Registration of candidates and administration of the Year 2022/2023 Business and Technical Examinations Letter dated the 11th August 2022, before the Respondent confirms and approves that a candidate is qualified to sit for the examinations, the institutions heads must forward all their registration data to it to confirm that the same are accurate and complete. Considering this, it was stated that it is the responsibility of the Respondent to only enlist names of candidates who have met all the requirements and to deregister those that have not.
40. In this matter it is noted that the Petitioners successfully registered for the March 2023 examinations and upon being approved to have met the minimum set requirements were issued with the respective invoices of the fees payable to the Respondent. The Respondent then proceeded to approve their names as part of those listed to undertake the March 2023 examinations.
41. Counsel stressed that while the Respondent asserted that it had communicated the Petitioners' failure to meet the set standards, no material was adduced to demonstrate this communication, prior to the Petitioners sitting for this examination. This communication was in fact only issued after the Petitioners had already sat for the examination.
42. Counsel emphasized that the right to a fair administrative action under Article 47 of [the Constitution](#) informs that every person has the right to administrative action that is expeditious, efficient, lawful,



reasonable and procedurally fair. Counsel submitted that the Respondent did not adhere to this in this case.

43. Equally, Counsel submitted that the unilateral act by the Respondent of withholding the Petitioners results is a direct infringement of the Petitioners right to education, livelihood as guaranteed under Article 43(1)(f) of *the Constitution*. Reliance was placed in Republic vs Kenya National Examination KneC Ex-parte Charles Obara & 8 others (2013)eKLR where it was held that:

“it is also the ex parte Applicants case that the actions of the Respondents violates their rights to education as enshrined under Article 43(1) (f) of *the constitution*. However I find that the exparte Applicant’s constitutional right to education is subject to the rules and regulations which given the education system and in this case to maintain the standard of education.”

44. To this end, Counsel submitted that the costs ought to be awarded to the Petitioners. Reliance was placed in Rosemary Wairimu Munene (Ex parte Applicant) v. Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No. 6 of 2004 where it was held that:

“The issue of costs is the discretion of the court as provided under section 27 of the *Civil Procedure Act*. The basic rule on attribution of costs is that costs follow the event. It is well recognized that the principle costs follow the event 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 case.”

45. Like dependence was placed in Reid, Hewitt & Co v Joseph, AIR 1918 Cal 717 and Myres v Defries (1880) 5 Ex D 180.

Respondent’s Submissions

46. On 20th September 2024, the Respondent’s Counsel, Befly Bisem filed submissions and highlighted the issues for discussion as: whether the Petitioners’ rights under Articles 27(1), (2), (5),43(1) (f) and 47 (1)(2) of *the Constitution* were violated, whether the Petitioners had any legitimate expectation and whether the Petitioners can be granted any of the prayers sought.
47. Counsel recapping the Respondent’s averments submitted on the right to education that the Petitioners had not attained minimum contact hours required for a Diploma Course to be qualified to undertake the examinations. For this reason, Counsel submitted that the Petitioners were not qualified to assert violation of their right to education. In the end their results were deleted by the Respondent’s system. As such Counsel stressed that the Respondent cannot be faulted for enforcing the rules and regulations for qualifications.
48. Reliance was also placed in Republic v Kenya National Examination KNEC ex parte Chargles Obara & 8 others [supra].
49. Like dependence was placed in H O O (a child suing through his father and next friend) P O O v Board of Management & 2 others [2018] eKLR.
50. Furthermore, Counsel argued that the Interested Party and the Petitioners colluded so that they be registered, yet were unqualified students, contrary to Rule 13 of the Kenya National Examinations Council (Management of Examination) Rules, Legal Notice 133 of 2015.
51. On the freedom against discrimination, Counsel submitted that the Petitioners had failed to demonstrate how they were treated differently by the Respondent compared to the other candidates. Counsel maintained that the Respondent had a justification to delete the Petitioners results being that



they had failed to attain the minimum contact hours. To buttress this point reliance was placed in *Phylis Kemuma Onenga v Dima College Limited*[2022] eKLR where it was held that:

“The test for determining whether the Petitioner’s claim on discrimination will be successful involves showing that there was a nexus between the negative treatment she experienced as against the fellow students.”

52. On the right to a fair administrative action, Counsel submitted that the allegation of its breach was false. Counsel submitted that the Interested Party failed to adhere to the contents of the circular and letter that had been issued to the regional director of education, regional directors of TVETs, TSC County Directors of Education, sub county directors of education and all heads of schools.
53. Once the Interested Party received this communication, it ought to have informed the Petitioners that they had inadequate contact hours hence unqualified to sit for the March 2023 examination. As such, Counsel argued that the Petitioners were misled by the Interested Party. Considering this, it was argued that the Respondent had not breached the Petitioners rights as alleged.
54. On the second issue, Counsel submitted that legitimate expectation cannot arise where there is a failure to comply with rules and regulations on the part of the Petitioners. Equally that there is no legitimate expectation on the part of the Petitioners that the Respondent shall issue examination results to unqualified persons.
55. Reliance was placed in *Republic v KNEC & another ex parte Martin Phiri and Nancy Phiri Trading As Harvest View Academy* [2014]eKLR where it was held that:

“With respect to legitimate expectation, it is my view that the Candidates legitimate expectation was that they would be treated fairly. There cannot be a legitimate expectation that a candidate will pass examination and move to the next stage. As was held in *Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others*, {supra} simply legitimate expectation arises for example where a member of the public as a result of a promise or other conduct expects that he will be treated in one way and the public body wishes to treat him or her in a different way. I am unable to find from the record that the Respondent had promised the Candidates that they would pass the examination in question. 49. I have considered the Notice of Motion dated 16th January 2014 and it is my view and I so hold that the same lacks merit.”

56. Similar dependence was placed in *Republic v Communications Authority of Kenya v Ex Parte Airtel Networks Kenya Limited* [2017] eKLR.
57. On the last issue, Counsel submitted that, in light of the foregoing the Petitioners were not entitled to the relief sought as they were not qualified in the first place to undertake the said examinations since had not attained the requisite contact hours. Reliance was placed in *Kenya National Examinations Council v Republic Ex parte Kemunto Regina Ouru*[2010]eKLR where it was held that:

“Considering the foregoing we come to the conclusion that balancing one thing against the other, the balance tilts in favour of the public interest of ensuring that national examinations results enjoy public confidence and integrity by letting the experts handle them as they deem best provided what they do is applied equally to all candidates with similar complaints against them.”



58. Additional dependence was placed in *Sophia Abdillahi Chacha v Director of Public Prosecution & another* (2012)eKLR.

Interested Party's Submissions

59. Suge and Company Advocates for the Interested Party filed submissions dated 12th February 2025. Counsel underscored the issues for determination as: whether the Petitioners are deserving of the orders sought and who should bear the costs of this Petition.
60. Counsel submitted that the Interested Party registered the Petitioners as per the Respondents instructions. Counsel noted that as per the Respondent instructions on the Registration of candidates and administration of the Year 2022/2023 Business and Technical Examinations Letter dated 11th August 2022, before the Respondent confirms and approves that a candidate is qualified to sit for the examinations the institutions heads must forward all their registration data to KNEC to confirm that the same are accurate and complete.
61. Considering this Counsel submitted that he Respondent herein cannot aver that the Petitioners were not qualified to sit for the examinations only after they had sat for the said examinations and four months after the examinations had been done and the results released.
62. Counsel submitted that as per Article 47 of *the Constitution*, the Respondent had an obligation to make prior communication to the Petitioners before approving them to sit for the March 2023 examinations. In light of these circumstances Counsel submitted that the Petitioners were deserving of the orders sought.
63. On the final issue, Counsel urged that the Petitioners ought to be awarded the costs of this suit as are the successful parties. Reliance was placed in Section 27 of the *Civil Procedure Act*.

Analysis and Determination

64. In view of the foregoing, it is my considered view that the issues that arise for determination in this matter are as follows:
- i. Whether the Respondent's actions violated the Petitioners' rights under Articles 43(1)(f) and Article 47 of *the Constitution* in the circumstances of this case.
 - ii. Whether the Respondent violated the Petitioners' legitimate expectation.
 - iii. Whether the Petitioner is entitled to the relief sought.

Whether the Respondent's actions violated the Petitioners' rights under Articles 43(1)(f) and Article 47 of *the Constitution* in the circumstances of this case.

65. It is imperative to start by examining the mandate of the Respondent. The Respondent is established under Section 3 (1) of the Kenya National Examination Council Cap 214A with functions set out under Section 10 (1) and (2) as follows:
- 1) The functions of the Council shall be to—
 - a. set and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels;
 - b. award certificates or diplomas to candidates in such examinations; such certificates or diplomas, shall not be withheld from the candidate by any person or institution;



- c. confirm authenticity of certificates or diplomas issued by the Council upon request by the government, public institutions, learning institutions, employers and other interested parties;
 - d. issue replacement certificates or diplomas to candidates or diplomas to candidates in such examinations upon acceptable proof of loss of the original;
 - e. undertake research on educational assessment;
 - f. advise any public institution on the development and use of any system of assessment when requested to do so, and in accordance with such terms and conditions as shall be mutually agreed between the Council and the public institution;
 - g. promote the international recognition of qualifications conferred by the Council;
 - h. advise the Government on any policy decision that is relevant to, or has implications on, the functions of the Council or the administration of examinations in Kenya;
 - i. do anything incidental or conducive to the performance of any of the preceding functions.
- 2) In performance of its functions under subsection (1), the Council shall have powers to—
- a. make rules regulating the conduct of examinations and for all purposes incidental thereto;
 - b. make rules regulating the confirmation of examination results and for purposes incidental thereto;
 - c. make rules regulating the conduct of issuance of replacement certificates or diplomas and for all purposes incidental thereto;
 - d. make rules regulating the conduct of issuance of certificates or diplomas and for all purposes incidental thereto;
 - e. withhold or cancel the results of candidates involved in examination irregularities or malpractices;
 - f. appoint any officer responsible for education or training, including heads of education and training institutions to assist in the administration of examination as may be prescribed by the Council in consultation with the Cabinet Secretary;
 - g. equate certificates issued by accredited foreign examining bodies with the qualifications awarded by the Council;
 - h. conduct examinations on behalf of foreign states or entities upon request by such states or entities;
 - i. conduct academic, technical and other examinations outside Kenya on request;
 - j. offer examination services and other advisory services relevant to examinations to private institutions in Kenya upon request by such institution and on such terms as the Council may determine;
 - k. invite such body in or outside Kenya, as the Council may consider necessary, to conduct on its behalf, academic, technical and other national examinations within



Kenya, or to conduct these examinations jointly with the Council and to award certificates or diplomas to successful candidates in such examinations;

- l. co-operate with such bodies, under paragraph (k), in the performance of its functions;
- m. advise the bodies invited under paragraph (k) upon the adaptation of examinations necessary in Kenya and to assist any such bodies to conduct such examinations;
- n. to align its Regulations on the collection and processing of information which consists of personal data with the Data Protection Act.

66. In discussing the mandate of the Respondent in *Phylis Kemuma Onenga v Dima College* [2022] eKLR, the Court explained thus:

“ 40. KNEC is charged with the mandate of regulating its examinations. It is for that reason authorized to issue the rules and regulations governing registration and conduct of its examinations...

41. In line with this the Council has the power to enact regulations with a view of advancing its functions under Section 14 of the Act. This is evidenced by the various regulations for each school category in which it regulates the examinations. There are also periodic circulars that contain instructions for the registration and administration of candidates’ examinations by the various institutions, which are done by KNEC.

42. A perusal of the material relied on by the respondent shows that it did not supply the Court with KNEC’s periodic circular in particular the one for 2017. The circulars usually contain the instructions for registration and administration of candidate examinations. The circular is commonly sent to all the heads of the institutions, undertaking examinations.

43. What is essential to note however is that learning institutions are the ones charged with the obligation to ensure that eligible candidates fully comply with all registration requirements as required by KNEC. This means therefore that the respondent was required to ascertain that all its students had complied with the requirements to enable them forward their names to KNEC. There is nothing on record to show any steps taken by the respondent to ensure compliance with this requirement by the petitioner.” [Emphasis mine]

67. Moreover, in *Republic v Kenya National Examination Kneec Ex-parte Charles Obara & 8 others* (supra) the Court observed as follows:

“It is clear then that KNEC has express powers donated by the Act to regulate the conduct of Examinations and make rules and regulations thereof. As such, this court is only concerned with the issue whether the said power was exercised judicially and in accordance with the principles of natural justice as it is not the function of the courts to substitute their decision in place of those made by the targeted or challenged body...

...In the circumstances, I agree with the Respondent that as an accredited institution by the KIE, the Institute must have been aware of the regulations and in any case it was part of their core duty to exercise due diligence by taking the necessary steps to acquaint itself on behalf of its students with the Respondent’s rules and regulations. The Institution is wrong to plead ignorance of the regulations and if the court was to harken to their plea, a very dangerous



precedent would be set where institutions would admit unqualified candidates then feign ignorance of the rules. [Emphasis mine]

68. In the instant case, the Respondent was able to demonstrate that it had issued a general circular specifying the requirement which stipulated the guidelines for registration of candidates being circular dated 11th August 2022, Ref: KNEC/GEN/EA B&T/PM/TE/BE/2022/011 for the Business and Technical Examinations, addressed to all Regional Directors of Education MoE and TVET, TSC County Directors of Education, Sub County Directors of Education and all heads of schools. The said circular among others specified the entry requirements for students undertaking the Diploma to be a C- and where exemption was allowed, proof by way of a letter of exemption.
69. The Interested Party on the other hand countered this position and blamed the Respondent for the Petitioners' predicament. The Interested Party maintained that it was the duty of the Respondent to confirm and approve that a candidate is qualified to sit for the examination and all what the institution heads were required to do was to forward all their registration data to the Respondent who would confirm that the same were accurate and complete. According to the Interested Party, it was thus the responsibility of the Respondent to enlist the candidates that had met all the requirements and deregister those who had not.
70. The Responsibility to ensure the names forwarded for registration belonged of students as candidates met all the relevant minimum criteria for registration was a responsibility placed on the shoulders of the Head of Institutions according to the regulations that were developed by the Respondent under its mandate set out in Section 10 (2) (a) which permits it to make rules regulating the conduct of the examinations and all purposes incidental thereto. Under the heading- Responsibilities of Heads of Institutions In The Examination Process Under Circular Ref KNEC/GEN/EA B&T/PM/TE/BE/2022/011 of 11/8/22 Regulation 10.3.4 stipulated as follows:
- “Heads of Institutions are requested to strictly follow the outlined procedures as any deviation from the same would either render the candidate's ineligible for registration/ taking the examination or cause the processing of the results of candidate to be delayed, deferred or cancelled.”
71. Under Rule 6.0 -regulation for Registration for Business Technical Education Programme Examinations (BTEP); stated as follows:
- Candidates must have met the minimum examination entry requirements for the individual courses as follows:
- 6.1 Artisan Course- Kenya Certificate of Primary Education (KCPE)
 - 6.2 Craft Course = KCSE with mean grade D Plain or relevant Artisan Course
 - 6.3 Diploma Courses- KCSE with mean grade C- (Minus) or relevant Craft Certificate
 - 6.4.3 Candidates granted exemption must produce a copy of the exemption letter and proof of attaining the minimum entry requirements for the course they registered. To apply for exemption, candidates must write to the Council seeking exemption and pay the equivalent of the full examination paper fee into a KNEC bank account.
 - 6.4.4 Institutional candidates entered for an examination must have been bona fide enrolled students studying at the institution.



6.4.5 Heads of Institutions must ensure that only those candidates who meet the minimum entry requirements for each course are registered for the examination.

72. The duty to conduct due diligence and verify that the names of candidates forwarded for registration met the specified registration criteria thus belonged to the Interested Party, a position even supported by the judicial authorities alluded to above. The Interested Party cannot now turn round and try to shift blame to the Respondent who refused to release the results of the Petitioners upon later realization that it was misled by the 1st interested party into registering the Petitioners who had not met the basic requirements for the registration.
73. The issue of legitimate expectation does not arise as regards the action taken by the Respondent as at no time did it represent or act in a manner that it was waiving the laid down conditions for the registration and thus made the Petitioners to act accordingly. What is apparent is that the Interested Party misled the Respondent into registering the Petitioners who had not met the standard requirements in breach of the Respondent's clear regulations. In the absence of a copy of the exemption letter, proof of attaining the minimum entry requirements for the course they were registered, there is no way the Petitioners could have met the requisite registration requirement and this Court cannot make an unqualified candidate qualified as that would be to usurp the legal mandate of that squarely belongs to the Respondent.
74. The tribulations suffered by the Petitioners were caused by the Interested Party's failure to strictly abide by the registration guidelines issued by the Respondent.
75. This is a Constitutional Petition where this Court is empowered to grant an appropriate relief where the circumstances of the case permit. I would thus absolve the Respondent and blame the Interested Party which I hold liable to the Petitioner for their wasted academic time and expenses following withholding of the examination as a result of the inappropriate registration initiated by the Interested Party without following the guidelines. Had the Interested Party properly complied with the registration regulations, the Petitioners would not have found themselves in this situation.
76. As such, the Interested Party shall pay general damages of Kshs. 250,000/- to each Petitioner and also the costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025.

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L N MUGAMBI

JUDGE

