



**Nelvin v Kenyatta University (Petition E381 of 2022) [2024] KEHC 185 (KLR)
(Constitutional and Human Rights) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E381 OF 2022
LN MUGAMBI, J
JANUARY 19, 2024**

BETWEEN

WETENDE ESTHER NELVIN PETITIONER

AND

KENYATTA UNIVERSITY RESPONDENT

JUDGMENT

1. The Petition is dated 21/7/2022. The Petitioner seeks the following reliefs:
 - i. A judicial review order of mandamus compelling the Respondent to issue the Petitioner with her transcripts and degree certificate for Bachelor of Laws.
 - ii. An order directing the Respondent to include the Petitioner in the forthcoming graduation list
 - iii. A declaration and finding that the Respondent has violated the provisions of Articles 26, 27, 28, 35, 43 and 47 of *the Constitution*
 - iv. An order for compensation for violations of the Petitioner's rights.

Petitioner's case:

2. The Petitioner stated that in September 2015 she was admitted for a Bachelor of Laws Degree Course at Kenyatta University (hereinafter referred to as the University). Her admission number was 1955/15104/2015.
3. She completed her bachelor of laws degree course in March 2021 and joined the Kenya School of Law for the post graduate Advocates Training Program as she waited to graduate sometime in July, 2021.



4. Nevertheless, two weeks prior to the graduation, she was called and informed that she would not be graduating due to examination malpractices. On 24/6/2021 she was invited to go and pick some letters from the University. She was handed two letters; one that suspended her from the University in respect of an alleged exam malpractice concerning 'LIL 300 Public International Law' which allegedly, had occurred almost two years ago. The other letter required her to appear before the University Disciplinary Committee over the said allegations on the very day she collected the letters.
5. The Petitioner contends that the Respondent unfairly curtailed her right to education under Article 43(1)(f) of *the Constitution* for discontinuation of her studies and also through subjecting her to an administrative process that did not meet the constitutional standards laid down under Article 47 of *the Constitution*. That the Respondent discriminated against her by only punishing her with discontinuation and leaving out all the other students that had been suspected of examination malpractice thus violated Article 27 (3) of *the Constitution*. In her further affidavit sworn on 9th October, 2022; the Petitioner clarified that although the 'Final Report on Alleged Examination Irregularities in the School of Law During 1st Semester of Academic Year 2019/2020 (annexure BK 1)' named Vivian Andia, Stella Francesca, Esther Nelvin Watende, Elizabeth H. Anyango and Brian Rono Kiprono in category A as students who committed gross misconduct per Students Disciplinary Committee recommendations as indicated in the Respondents Replying Affidavit, according to the Students Disciplinary Committee recommendations internal memo dated 9th July, 2021; all the rest of the students in the said category A, save for the Petitioner were suspended for one and half academic years while she was the only one discontinued. The Petitioner thus argued that if the finding was based on the students whose names were in category A, then the punishment ought to have been applied uniformly.
6. That Kenyatta University Students Information Handbook 2017-2021 provides that 'any student found to be involved in any examination irregularity shall immediately suspended by Registrar of Academics and a report pending appearance before the Student Disciplinary Committee shall be prepared and availed to the Registrar at the time of the incident'. That the recommendation in the report on 21st December 2020 was to suspend all the students who appeared in category A list which decision was not expeditiously implemented. That the Respondent dragged the matter, approved her admission to the Kenya School of Law only to bring up the issue at the verge of graduation from Kenyatta University and barring her studies at the Kenya School of Law. This was through the suspension letter dated 10th June, 2021.
7. She stated that at the time of collecting the two letters and appearing before the University Disciplinary Committee where she was confronted with allegations of examination leakage in the month of December 2019; no written allegations had before that been served on her. She had not prepared her defence and did not have legal representation; let alone being accompanied by anyone. No witnesses were called to testify against her during the disciplinary hearing or any prior statements given to her.
8. After the disciplinary committee hearing, she was discontinued. On 3/8/2021, she filed an Appeal against the decision but the same has to date never been heard. She filed this Petition in July, 2022.
9. Reacting to the response by the University, she explained that when the leakage was detected, the examination for the entire class was cancelled and all the 200 students were required to sit for a Special Examination in December, 2020. She sat and passed the said Special Examination getting G rade B per results that were reflected on the Student Portal. Accordingly, the Petitioner contended that she sat for all examinations and met all the necessary academic requirements for her graduation and certification.



10. The Petitioner refuted claims by the Respondent that granting the reliefs sought would devalue the quality of certification awarded to future students graduating from the institution and on the contrary argued that failing to do so would cause the Respondent greater harm and disdain when prospective learners get wind of how the Respondent deals unfairly by framing charges and frustrating its learners at the verge of graduation.
11. On 25/5/2023, the Petitioner testified in Court in Court. Her examination in Chief was generally in line with what was deposed in her affidavits. She denied coming across a letter reference 'Appeal Against Discontinuation' dated 2/6/22 by the University inviting her to attend The Student Appeals Committee Meeting on 15/6/2022 stating that the first time she saw the letter was an attachment to the University's replying affidavit. She said the University should have officially reached her through her mobile number 0715XXX609 which has never stopped functioning but it did not. She maintained that she was not involved in any examination malpractice.
12. During cross-examination she stated that it is the Dean of the Faculty who informed the students that there was examination leakage a fact that the petitioner could not personally attest to as she was unaware of this leakage. She nevertheless confirmed she was questioned during the Academic Committee led investigations by a Mr. Waliaula.
13. Questioned as why she did not seek more time to prepare for her defence before attending the Disciplinary Committee hearing, she explained she was in panic mode being the first to be called during the Disciplinary meeting and could not think about that option at the time.

Petitioner's submissions

14. The Petition identified only two issues as requiring the determination of this Court, namely:
 - a. Whether the Respondent infringed the rights of the Petitioner under Articles 27, 43, 47, 48 and 50 of *the Constitution* and,
 - b. Whether an order of mandamus should issue against the Respondent compelling them to issue the Petitioner with her transcripts and academic certificates as well as include her name in the forthcoming graduation list.
15. On the claim that the Petitioner's rights under Article 27 were violated for being discriminated against by the Respondent, the Petitioner reiterated what she had stated in her testimony and her affidavits that the list of students who were alleged to have engaged in the said malpractice was over 20 yet only the Petitioner was barred from graduating and her Program at the Kenya School of Law stopped.
16. Concerning violation of her right to fair administrative action under Article 47 of *the Constitution*, the Petitioner submitted that she was entitled to a process that is expeditious, efficient, lawful, reasonable and procedurally fair. Despite that, the Respondent suspended her one and half years after the occurrence of the event and after she had sat the special examination for LIL 300 Public International Law and had passed. This was also after she had cleared her 1st semester of study at the Kenya School of Law. The suspension and subsequent discontinuation happening just before the University's graduation. That she was ambushed with summons to appear before the Students Disciplinary Committee hearing by being required to appear within 30 minutes of picking the suspension letter, was not provided an opportunity to tender written defence or record the proceedings. Witnesses were not availed and did not have a chance to cross-examine any. That it was in contravention of the Provisions of Section 4(3) (1) (f) of the *Fair Administrative Action Act* to fail to provide a person likely to be affected by a decision, with information, materials and evidence to be relied upon in making the decision or



taking administrative action. The Petitioner relied on *Geothermal Development Company Limited v Attorney General & 3 Others* (2013) eKLR where the Court held:

“...As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response...in many jurisdiction around the world, it has long been established that notice is a matter of procedural fairness and an important component of natural justice...”

17. On denial of an opportunity to avail witnesses and being denied an opportunity by the Respondent to confront the witnesses on allegations against her through cross-examination, the Petitioner cited the case of *Lucy Wanjiku Gitumbe & Another v Dedan Kimathi University of Technology* (2016) eKLR where the Court held thus:

“...In Kenya, the right to education is a fundamental right enshrined and guaranteed by Article 43 (1) (f) of *the Constitution*...Whilst the Court does respect academic freedom, the court exists to vindicate constitutional rights of students. There is absolutely no reason why the applicant students were never accorded an opportunity to cross-examine their accusers which I consider was essential to due process as it is inevitably a factor which the court will consider in determining the overall fairness of administrative proceeding, even though the hearing was not conducted by persons experienced in legal process...”

18. The Petitioner contended that the Respondent also created a legitimate expectation upon the Petitioner for which it should be held to account. This was by nullifying the results of LIL 300 Public International Law and offering a chance to the Petitioner to sit a Special Examination and writing to Kenya School of Law confirming she had fully completed her course at the University.

19. The Petitioner submitted that her right to education under Article 43 had been violated by the Respondent’s unfair discontinuation of her studies in the manner demonstrated.

20. On whether the order of mandamus should be granted, the Petitioner argued that the Respondent is a public body hence judicial review orders of mandamus can apply to it. That over and above that consideration, all the factors necessary for issuance of mandamus were also present. In that regard, the Petitioner relied on *Republic v Principal Secretary Ministry of Internal Security & Another Exparte SchonNooranik & Anor* (2018) eKLR where factors to consider before granting an order of mandamus were discussed. The Court stating that:

“...The test for mandamus is set out in *Apotex Inc. vs Canada* (Attorney General [23] and, was also discussed in *Dragan vs Canada* (Minister of Citizenship and Immigration). [24] The eight factors that must be present for the writ to issue are:-

- i. There must be a public duty to act;
- ii. The duty must be owed to the Applicants
- iii. There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance



- ii. An express refusal, or implied refusal through unreasonable delay
- iii. There is no equitable bar to the relief sought...”

21. The Petitioner contended that it is the duty of the Respondent to provide its graduates with transcripts and degree certificates once all the requirements have been met by the students. That the Petitioner complied and satisfied those requirements having sat and passed all the examinations. The Respondent forwarded her name to the Kenya School of Law. That her appeal against the decision has not been heard yet. That despite showing a letter inviting her for the Appeal hearing, the Respondent did not make any reasonable effort to trace her. That the claim that she had given the school wrong mobile number and was unreachable is not genuine as previously the respondent was able to reach her to attend the Student Disciplinary hearing through a call and text which was not the case with the Appeal. Moreover, the Appeal was to be heard one year after her Appeal was lodged which is a reflection of lack of expediency in dealing with the matter.
22. Other cases relied upon by the Petitioner to demonstrate violation of right to administrative action include the Kenya Human Rights Commission v Non-Governmental Organization Coordination Board (2016) eKLR and Republic v Kenyatta University exparte Martha Waihuni Ndungu (2019) eKLR.

The Respondent’s Case

23. The response by the Respondent was through the replying affidavit sworn on 22/8/2022 by Professor Benard Kivunge who at the time was the Acting Registrar (Academic).
24. The deponent admitted that the Petitioner was a student of Respondent who had joined Kenyatta University (the University) in 2015. That the petitioner together with the rest of her classmates sat for the Public International Law Paper ‘LIL 300’ on 13/12/2019. Nevertheless, in January, 2020 there was information that the said examination had been leaked before it was administered to the students by being widely shared by students in a WhatsApp group.
25. That then Dean of the School of Law, Dr. Faith Kabata convened a meeting with the Students who included the Petitioner. The students admitted there was leakage. This prompted her to report to the Deputy Vice-Chancellor (Academic). The Deputy Vice-Chancellor formed an Academic Committee to investigate the matter. On 25/2/2020 it compiled its preliminary report where it implicated four students who the University suspended.
26. However, in the course of investigations it was discovered that a large number of students were involved prompting the Academic Committee to ask for an extension of time to complete the investigations, a request that was approved. That in the course of investigations, Covid 19 struck leading to closure of the University on 17th March, 2020. The closure interrupted the investigations because the University was closed until late September, 2020 and even when it came to the reopening of the University, it was done in phases. That despite those challenges including the loss of one of the committee members to the Covid 19, the Committee compiled and completed its investigations. It handed in its report (annexure BK 1) to the Deputy Vice-Chancellor Academic on 21/12/2020. That in summary, the report recommended that:Thirteen named students including the Petitioner named herein who were suspected of being culpable should be suspended pending their appearance before the Student Disciplinary CommitteeDisciplinary action to be taken against members of staff who were thought to have participated in the irregularitiesThe results of entire LIL 300 should be nullified and the students be given a chance to take the examination afresh.



27. The Petitioner's name was among those of students named in Category A of the Academic Committee Investigation Report after her name was adversely mentioned repeatedly in respect to the leakage of LIL 300 examination through creating a WhatsApp group on the night before the examination was administered so as to sell it to the interested students.
28. That the University adopted the recommendations of the Academic Investigation Committee by cancelling the results of LIL 300 and allowed all the students including those who it had suspended to sit for another examination in January, 2021. This action was not intended to let off the culprits as the disciplinary process was still in process. The 1st batch of students who had been suspended earlier went through the Disciplinary Committee hearing on 1st March, 2021. The Covid Pandemic re-escalated and April 2021, the President declared cessation of movement from Nairobi. After the situation came back to normal the process was finalized.
29. The Petitioner was suspended on 10th June, 2021. This was communicated through the letter annexure BK 2. By a letter dated 15th June, 2021 (annexure BK 3) she was invited to attend the Students Disciplinary Committee hearing. The Disciplinary Committee hearing took place as evidenced by copy of the minutes 'annexure BK 4'.
30. Following the conclusion of the Disciplinary Committee Proceedings, the deponent wrote an internal memo to the Vice-Chancellor dated 9th July, 2021 (annexure BK 5) indicating the conclusion reached by the Students Disciplinary Committee on the students found culpable of examination irregularities who included the Petitioner. That the Petitioner was discontinued through the letter dated 28th June, 2021 (annexure BK 7).
31. The Petitioner deposed that any delay in conclusion of the disciplinary cases was not deliberate but was largely due challenges posed by Covid 19 pandemic.
32. The Respondent asserted that it has the power to investigate examination irregularities and take necessary measures including discontinuation of students found culpable as per the attached copy of the Respondent's Handbook BK 6.
33. That the deponent was one of the members of the Students Disciplinary Committee and sat through the proceedings when the Petitioner appeared to answer to allegations levelled against her. He deposed that the petitioner responded to questions put to her and did not at any time request to be furnished with any document during the Disciplinary Committee hearing. That even before her appearance at the Disciplinary Committee, she had earlier on appeared before the Academic Committee Investigation where she had given her side of story hence she was aware of the issues she was facing.
34. That after being informed of her discontinuation, it was also made clear that she could appeal the decision. The Petitioner lodged an Appeal on 3rd August 2021 (annexure BK 8). The same was placed before the Students Disciplinary Appeals Committee and the Petitioner notified to appear on 15th June, 2022. However, it did not take place due to closure of the University due to upcoming general elections (Copy of letter inviting the Petitioner to the Students Disciplinary Appeals Committee-annexure BK 9).
35. The Respondent refuted an assertion by the Petitioner that she had a legitimate expectation of graduating in July 2021 and contended that the Petitioner was well aware that investigations on leaked LIL 300 Public International Law examination were on-going because she had appeared before the Investigation Committee and this issue had not been resolved. That the Petitioner knew, or ought to have known that her graduation was subject to her being cleared of any examination irregularity.



36. That while the Respondent forwarded the name of the Respondent to the Kenya School of Law as proof that she was to join that Institution, the same did not bar the Respondent from recalling the decision considering the gravity examination irregularity carries.
37. That the Respondent is bound to protect the quality of education and cannot allow the Petitioner to undermine education standards by advancing a law career that is tainted by examination malpractice. That it would therefore be prejudicial to compel the respondent to furnish the Petitioner with original transcripts and degree certificate and include her in the graduation list in the circumstances. That compelling the Respondent to allow a student to graduate when the Respondent has formed the view that the student was involved in examination malpractice degrades the value of the degree and qualifications awarded by the Respondent.
38. That the Petition is premature and in bad faith. That the court must exercise restraint and refuse to delve into matters of discipline of the Respondent's Students before the Respondent has completed its Internal processes.
39. Prof. Bernard Kivunge also appeared in Court and testified orally on behalf of the Respondent on 25/5/2023. He reasserted the contents of the replying affidavit during in testimony in Chief. He produced annexures BK 1 to BK 9 as Respondent's exhibits 1 to 9 respectively. He also produced P. exhibit 10 which exhibited the letter inviting the Petitioner for her Appeal hearing on 15/6/2022 together with the schedule of call logs indicating that calls to the mobile number she had provided were not going through. As such, the Petitioner did not appear as she could not be reached.
40. He testified that the University re-administered the examination to all the students after initial cancellation because at that time it was not possible to tell who was involved in the initial leakage and only after investigations were those that had been involved held accountable.
41. During cross-examination, he explained that invitation to the Petitioner to attend the Student Disciplinary Committee hearing was sent on 15/6/2021 to appear on 24/6/2021 which was a clear 9 days' notice. Asked however to elaborate and provide proof of the receipt of the notice or the fact that the petitioner was notified through a call nine days in advance, he stated:
- “...Normally, students are informed through a phone call or SMS. Students normally anticipate because they are suspended, they say they will pick the letter on the date of disciplinary. They can pick the letter when they come...I don't have where she signed to pick it. She was called...”
42. Challenged to provide evidence that she was called nine days earlier, he testified:
- “...I might have brought call logs but if so needed I will provide right now...”
43. Cross-examined on whether the Committee furnished statements or evidence against her, he answered:
- “...When you deal with students you must be careful. If a student finds a colleague smoking bhang for example, you do not disclose because they will never share information. We could read whatever we have to her but could not bring the other students to testify against her. We would share the evidence but not the names. We read the evidence to her, nothing hard copy was given to her. It is information from classmates...We were dealing with very honest students who provided information to the Committee...”



44. Concerning the mobile number used to contact students facing disciplinary hearing, he explained that the University is normally guided by the last telephone contact that the student has provided. He Stated that at admission the mobile number given by the Petitioner was 0716XXX144 and email was wetndem@gmail.com. On 4/6/2021, the Petitioner wrote an application to the University and provided 0715XXX607 as her number and this what the University had unsuccessfully used to contact her for purposes of her appeal. In Court, she gave 0715XXX609 that is, the same number except the last digit which is '9' and the email she gave in court was also different esthernelvin96@gmail.com. When she wrote her appeal, the Petitioner did not provide her phone number or email address hence the University had to dig through her records to get her last indicated contacts which is phone number 0715XXX607 which was used to reach her without any success.
45. He said currently, the appeal process is suspended because it cannot be concluded when there is a pending court case.
46. During Re-examination, the witness clarified that they could not provide witness statements because none of the students was required to write statements. He explained:
- “... The Students had appeared before a Committee that was Investigating. When you do an investigation, you call people and talk to them, somebody speaks to them. Investigation Committee inquired, none of these students was asked to write individual statements. Students gave their accounts. We needed to protect students from others...”
47. He also clarified that Students Disciplinary Committee is not bound by the recommendations of the Academic Investigation Committee but it is helpful in helping interrogate the students.

Respondent's submissions

48. The Respondent summed up what it considered as the issues for determination as follows:
- a. Inappropriate presentation of facts during submissions.
 - b. Whether the Respondent has right to discontinue the Petitioner.
 - c. Whether the Respondent's disciplinary process was fair.
 - d. The limited role of the Court in matters involving internal dispute resolution mechanism.
 - e. Whether Petitioner's legitimate expectations were violated.
 - f. Whether Petitioner is entitled to orders sought.
49. The Respondent expressed concern that the Petitioner had through submissions attempted to misrepresent facts which the Court should guard against. The respondent particularly cited paragraph 5 of the Petitioner's submissions and relied on the case of Robert Ngande Kathathi v Francis Kivuva Kitonde (2020) eKLR where it was held that a Party cannot introduce evidence through its submissions.
50. In response to the submission by the Petitioner's Counsel that witnesses were not availed to testify and for cross-examination the Respondent countered that it takes seriously the protection of the students who divulge sensitive information such as matters concerning examination irregularities hence due to sensitivity of students' disciplinary cases, it is not unreasonable for the Respondent to disallow cross-examination of witnesses in certain instances. That the absence of cross-examination is not evidence that there was no fair hearing, it is possible to hold a fair hearing without cross-examination and in the said case, the Respondents submitted that there was fair hearing. Counsel further submitted that



under Section 63 (2) of the University’s Act, 2012 “A University council may act on general evidence the character or conduct of the person concerned and shall not be bound by rules of evidence set out in *Evidence Act* (cap 80).” That this section protects the process by the Respondent even if it proceeded without cross-examination if the Respondent finds that in the circumstances, it was not desirable.

51. That Respondent invited the Court to find that there was no unreasonable delay urging it to consider the effects of Covid 19 on the whole process.
52. On submission that the Petitioner was discriminated against in view of the punishment meted on her vis-à-vis other students that were found culpable, the Respondent submitted that it all goes down to the degree of participation and there should be no expectation that punishment would be similar as degrees of culpability differed based on evidence that was before the Students Disciplinary Committee.
53. On the issue of breach of legitimate expectation, the Respondent submitted that names do not automatically appear in a graduation list and student with outstanding issues such as disciplinary matters cannot be put in a graduation list. That the petitioner was aware that the disciplinary process was still going on.
54. The Respondent contended that it has the power to ensure proper standards of education are maintained by ensuring that students who have not met the requisite standards do not graduate from the Institution. The Respondent relied on *Daniel Ingida Aluvaa v Council of Legal Education & Another* (2017) eKLR where the Court held:

“...Power to maintain standards in the course of studies confers authority not merely to prescribe minimum qualifications for admission, courses of study, and minimum attendance at an Institution which may qualify the student for admission to the examination, but also authority to refuse to grant a degree, diploma, certificate or other academic distinction to students who fail to satisfy the examiners assessment at the final examination...”

55. In regard to the contention that discontinuation unfairly violated of the Petitioner’s right to education, the Respondent contended this was not the case as the Respondent followed due process in accordance with its rules, which the Petitioner was well aware of, in finding that the Petitioner was culpable based on evidence that had been evaluated. The Respondent relied on *Waweru Edwin Thini v University of Nairobi* [2020] eKLR which was discussed in *JMO OO v Board of Governors of St. M’s School, Naiobi* [2015] EKLR where the court stated:

“ ... It is correct that *the Constitution* guarantees to children the right to education...However, it must be restated and re-emphasized that rights have their corresponding responsibilities, and the responsibility of students in school is abide by school regulations. It would certainly not be in the best interest of the Petitioner, or the other students in the respondent school to ignore disruptive conduct on the part of the petitioner or any other student...”

56. Concerning the legality and fairness of the disciplinary process, the Respondent denied the contention that the Petitioner was not given sufficient notice. That the Petitioner was informed in good time to collect the letter inviting her to the disciplinary hearing but on her own volition chose to collect the letter on the date of the Disciplinary hearing was proceeding. That she did not complain about the short notice or seek to cross-examine any witnesses. The Respondent relied on *Waweru Edwin Thini v*



University of Nairobi (supra) 2020 eKLR where the court dismissed a Petitioners similar complaints as follows:

“The issue herein remains whether the Petitioners had a fair trial in view of delayed service, non-disclosure of the witnesses, and non-availability of witnesses statement. From the Respondents evidence the Petitioner knew the charges he was facing and evidence against him. It was averred that the Petitioner did not seek adjournment, but opted to proceed with the case without raising any issues. From the above, I find the Petitioner was on his own volition proceeded with hearing and he had a fair trial...”

57. The Respondent urged the Court to exercise restraint and refuse to delve Students Disciplinary Committee issues which are Internal matters for the University. That the Court may only interfere if the decision made went against *the Constitution* and the law and not the merits of the decision. That the court cannot interrogate the finding that the Petitioner was not involved in examination malpractice. That all that is required is for the Court to ascertain that the Disciplinary Committee followed a fair process which it did. The Respondent relied on *Nkatha Joy Faridan Mbabu v Kenyatta University* (2016) eKLR where it was held thus:

“...The composition of Disciplinary Committee is set out in the Statute, and it comprises University Officers. The University has jurisdiction to conduct its own disciplinary proceedings...The Courts must loath to interfere with any decision of such Institution unless it is evident that it was undertaken outside of legal provision and contrary to constitutional provisions...”

58. Further, the case of *Daniel Inginda Aluvaala & Anor v Council of Legal Education & Anor* (2017) eKLR where the court remarked:

“...Self-restraint adopted by Judiciary in exercising the power of review in academic matters has left certain academic decisions or regulations governing training and qualifications untouched. These areas are not disturbed by the Courts unless the decisions under challenge are constitutionally so fragile and unsustainable. Academic decisions of the Universities and other educational institutions requiring expertise and experience belong to this category. If the decision is legal and lawful, the reasonableness and propriety of the same may not be questioned by courts. In other words, among the *Wednesbury* principles of illegality, irrationality, and impropriety, if the decision can get over the first, it may withstand the other two tests, unless it is shockingly unreasonable, perverse or improper...If this Court is substituting its own opinion in place of opinion expressed by a body mandated and authorized by law as discussed above, it shall not only be overstepping its mandate but it will result in chaos. The Court can only interfere if the Respondent acted outside their legal mandate or acted unreasonably...”

59. The Respondent contended that even if the court were to find that there were procedural flaws in the disciplinary process adopted in disciplining the petitioner by the Student Disciplinary Committee, the solution cannot be the court directing the student to be allowed to graduate despite the Respondent’s standpoint that Petitioner was involved in examination malpractice. That at most, what the court should do is remedy this procedural lapse and not to sanitize an examination malpractice which cannot be in public interest. That the Petitioner did not seek the order of certiorari to quash the Respondent’s decision hence this option cannot even be available for consideration.



60. On the claim by the Petitioner of existence of legitimate expectation, the Respondent submitted that there was no any action that it took that bound it to any expectation that the Petitioner had to graduate because at the time the graduation was to take place, the Disciplinary Committee had already heard the Petitioner and what was remaining was its decision. That the allegation that forwarding the name of the Petitioner to the Kenya School of Law did not create a legitimate expectation as admission to the Kenya School of Law was conditional on students producing a degree certificate which she could not produce before graduation. That it is the Petitioner who took the risk to enroll to the School of Law without the requisite documents. The Respondent cited the of Republic v Principal Secretary, Ministry of Transport Housing & Urban Development exparte Soweto Residents Forum CBO [2019] eKLR where the Court explained that legitimate expectation rests on the presumption that public authority will follow a certain procedure in advance of a decision being taken. The Court ruled:

“...In adjudicating legitimate expectation claims the court follows a two-step approach. Firstly, asks whether the administrator’s actions created a reasonable expectation in the mind of aggrieved party. If the answer to the question is in the affirmative, the second question is, whether the expectation is legitimate. If the answer to the second question is equally affirmative, then the court will hold the administrator to the representation, that is enforce the legitimate expectation...”

61. On legitimate expectation, the Respondent also cited the Supreme Court of case of Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR where the Court held that for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation.

Analysis nd Determination

62. Having considered the pleadings, reviewed the evidence presented by the parties together with their submissions, the Court is of the view that the pertinent issues for determination in this Petition are as follows:

1. Whether the disciplinary process conducted by the Respondent against the Petitioner complied with the requirements of Article 47 of *the Constitution* and provisions of Section 4 of the Fair Administrative Actions Act, 2015.
2. Whether the penalty of discontinuation against the Petitioner while giving separate lesser punishments to other students that were facing similar charges and placed in ‘category A’ with Petitioner in the Academic Committee’s Investigative Report is discriminatory and violation of Article 27 of *the Constitution* by the Respondent, and, (b) Whether the punishment of discontinuation meted against the Petitioner by the Respondent is a violation of the right to education under Article 43 (1) (f) of *the Constitution*.
3. Whether the doctrine of legitimate expectation can be invoked by the Petitioner as against the Respondent in the circumstances of this case.
4. Whether the Court should grant any reliefs.



1. Whether the disciplinary process conducted by the Respondent against the Petitioner complied with the requirements of Article 47 of *the Constitution* and provisions of Section 4 of the Fair Administration Actions Act, 2015.

63. The duty to act fairly towards a person whose rights or interests are likely to be affected by an administrative decision is a fundamental right enshrined under Article 47 of *the Constitution* which provides as follows:

Fair administrative action

47.

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.

64. Further to Article 47, the Fair Administrative Actions Act 2015 was enacted and its preamble states that ‘it is an Act of Parliament to give effect to Article 47 of *the Constitution* and connected purposes’.

Section 3 of the Act defines the extent as which the Act applies. It states:

3. This Act applies to all state and non-state agencies, including any person—

- (a) exercising administrative authority;
- (b) performing a judicial or quasi-judicial function under *the Constitution* or any written law; or
- (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.

65. Under Article 3 of *the Constitution*, it is the responsibility of every person to respect, uphold and defend *the Constitution*. Consequently, reading Articles 3, 47 and Section 3 of the Fair Administrative Actions Act together, it is crystal clear that Respondent’s Disciplinary Committee, a body performing a quasi-judicial had to comply with the provisions of Article 47 and the relevant provisions of the Fair Administration Actions Act 2015 without exception.

66. Section 4 of the Fair Administrative Actions Act specifies the requirements that underpin the duty to act fairly which every administrative decision maker is required to observe. It provides as follows:

Administrative action to be taken expeditiously, efficiently, lawfully etc

3.



- (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
 - (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
 - (b) an opportunity to be heard and to make representations in that regard;
 - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - (d) a statement of reasons pursuant to section 6;
 - (e) notice of the right to legal representation, where applicable;
 - (f) notice of the right to cross-examine or where applicable; or
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to–
 - (a) attend proceedings, in person or in the company of an expert of his choice;
 - (b) be heard;
 - (c) cross-examine persons who give adverse evidence against him; and
 - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
- (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
- (6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution*, the administrator may act in accordance with that different procedure.



67. The above provisions are enacted to give effect to Article 47 as indicated in the preamble to the Act. They are the standards that must be observed to ensure fairness in making administrative decisions. These principles which include prior adequate notice before taking administrative decision, disclosure of any information that is to be relied on in making the decision, giving the person likely to be affected sufficient opportunity to heard and to confront persons giving adverse information through cross-examination are key requirements that define the duty to act fairly in making administrative decisions. Further, requirements include the need to act expeditiously and reasonably.
68. It is now necessary to consider whether the disciplinary process undertaken by the Respondent's Student Disciplinary Committee complied with these provisions. The Petitioner's contention was that the Respondent did not comply while the Respondent maintained that they were fully complied with.
69. It is not in dispute that the Respondent had the power to conduct the disciplinary proceedings against the Petitioner. That was within its authority.
70. What the Petitioner vehemently contested was the lack of procedural fairness prior to the institution of those proceedings. That she was served with the letter of suspension and the letter inviting her to the disciplinary hearing and on that very day that she was asked to go and collect the letter and was subjected to the disciplinary hearing. That between collecting the letter and the hearing, it was only a span of 30 minutes. She had not been supplied with any statements of witnesses and none turned to testify against her hence she could not confront her accusers through cross-examination on the adverse information that was being levelled against her. She also complained of the long delay between the disciplinary proceeding and the date of the alleged incident that was the subject matter of the disciplinary proceeding. It had taken one and half years since the alleged incident occurred.
71. The Respondent refuted the claims of failure to notify the Petitioner in good time. The Respondent countered that she had been notified through her mobile phone at least nine days before the Disciplinary Committee hearing took place. That she was invited through her phone to go and collect the letters but she opted to collect the same on the date she was going to attend the hearing. That she did not raise the issue of lack of preparedness at the hearing or seek an adjournment of the proceedings or even ask for additional information. That she also did not express that she wanted to cross-examine any witnesses.
72. The assertion by the Respondent that the Petitioner was called nine days prior to pick the letters informing her about the Disciplinary hearing was not substantiated by any evidence showing the day the Petitioner was called to collect the letter. Despite the Respondent's witness stating in cross-examination that if call logs were needed he would provide, none was provided at all. Further, despite that matter being pleaded in the Petition, the replying affidavit did not attach the said call logs to counter the assertion. Further, the Respondent witness could not attest to the fact that he was the one who directly called the Petitioner or call the witness who could confirm having directly called her nine days before the disciplinary hearing. Consequently, the assertion by the Petitioner that she was not served with the letter inviting her to the disciplinary hearing until the actual date when she was called and made to appear at the disciplinary hearing that very day has not been displaced by the Respondent's evidence. It is this Court's duty to examine and find if an individual who is subject to an administrative process received fair treatment in accordance with the law. Summoning the Petitioner to a Disciplinary hearing that had such far reaching consequences in her life without providing her with the adequate notice to ensure that she was sufficiently prepared to respond to the accusations against her is not consistent with the duty to act fairly and goes against the provisions of Section 4 of the Fair Administrative Actions Act and Article 47 of *the Constitution*.



73. There were other legal flaws. the Respondent's witness was categorical that during the disciplinary hearing no witnesses were called. The Respondent only relied on the contents of the investigation committee report. The Respondent's witness stated on cross-examination as follows:

“...When you deal with students you must be careful. If a student finds a colleague smoking bhang for example, you do not disclose because they will never share information. We could read whatever we have to her but could not bring the other students to testify against her. We would share the evidence but not the names. We read the evidence to her, nothing hard copy was given to her. It is information from classmates...We were dealing with very honest students who provided information to the Committee...”

74. A look at the Disciplinary Committee proceedings shows that not even the author of this the Academic Committee Investigation report that the Disciplinary Committee totally based its reliance on was called to validate it before the Disciplinary hearing. Secondly, no witnesses who had personal knowledge that the Petitioner with others had formed the alleged WhatsApp group in which the examination was leaked was called to testify against her or to confirm the existence of the alleged WhatsApp group. In response to this failure, the Respondent stated that it had a duty to protect its honest students who provided it with information. However, looking at the Academic Committee Investigation Report, it is evident that the names of students that implicated others in connection with the alleged leakage are not even concealed. Failure to call them to attest to those facts in the presence of the Petitioner cannot thus be excused on the basis of fear for their safety which the Respondent cited. Moreover, the response by the Respondent that the Petitioner did not complain or seek adjournment or indicate that she wanted witnesses availed for cross-examination cannot be a justification for failure to comply on its part. It should be noted that the primary duty to ensure those conditions are met is placed on the administrator. Complying with those conditions does not depend on the affected person's demand.

Section 4 which sets out the conditions starts by stating that “The administrator shall accord the person against whom administrative action is taken an opportunity to-“

75. Although Courts as ably submitted by the Respondent's Counsel ordinarily give deference to decisions of Academic Institutions in matters pertaining to student discipline and academic affairs, it is the duty of the court to intervene where there is manifest injustice particularly if it is demonstrated that there was departure from procedures set out in the statute or *the Constitution* which as a matter of fairness ought to have been observed. Justice Odunga in Republic v Mount Kenya University & another [2017] eKLR quoting from Halsbury's Laws of England 4th Edition Vol (1)(1) Para 60 aptly captures justification behind this principle:

“...The purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large. It is meant to uplift the quality of public decision making, and thereby ensure for the citizen civilized governance, by holding the public authority to the limit defined by the law. Judicial review is therefore an important control, ventilating a host of varied types of problems. The focus of cases may range from matters of grave public concern to those of acute personal interest; from general policy to individualized discretion; from social controversy to commercial self-interest; and anything in between. As a result, judicial review has significantly improved the quality of decision making. It has done this by upholding the values of fairness, reasonableness and objectivity in the conduct of management of public affairs. It has also restrained or curbed arbitrariness, checked abuse of power and has



generally enhanced the rule of law in government business and other public entities. Seen from the above standpoint it is a sufficient tool in causing the body in question to remain accountable...”

76. Indeed, even in cases cited by the Respondent Counsel urging restraint by the Courts, Courts are categorical that this is only to the extent that the decisions reached are procedurally fair. For instance in the case of *Nkatha Joy Faridan Mbabu v Kenyatta University* (2016) eKLR the Court stated:

“...The University has jurisdiction to conduct its own disciplinary proceedings...The Courts must loath to interfere with any decision of such Institution unless it is evident that it was undertaken outside of legal provision and contrary to constitutional provisions...”

77. Denying the Petitioner an opportunity to confront her accusers by cross-examination in the face of such grave allegations bearing enormous consequences in her life was grossly unfair. It was a contravention of section 4 (c) of the Fair Administrative Actions Act.

78. This Court thus finds that through its actions, the Respondent violated Article 47 and Section 4 of the Fair Administrative Act in respect to its conduct of the disciplinary process against the petitioner.

79. On the issue of delay in commencing and concluding the Disciplinary Proceedings, I am satisfied with the explanation by the Respondent that in view of the challenges posed by Covid 19 Pandemic, the delay in conclusion of the matter was justifiable in the circumstances. The Court takes judicial notice that this was prevailing state of affairs then and operations of most of the institutions including courts were stopped for almost a year before things came back to normal.

2.(a) Whether the penalty of discontinuation against the Petitioner while giving separate lesser punishments to other students that were facing similar charges and placed in ‘category A’ with Petitioner in the Academic Committee’s Investigative Report is discriminatory and violation of Article 27 of *the Constitution* by the Respondent, and, (b) Whether the punishment of discontinuation meted against the Petitioner by the Respondent is a violation of the right to education under Article 43 (1) (f) of *the Constitution*.

80. The Petitioner contended that she was discriminated and her rights under Article 27 violated by the Respondent. The Petitioner stated that the list of students who were alleged to have engaged in the said examination malpractice was over 20 but only the Petitioner was barred from graduating and her Program at the Kenya School of Law stopped.

81. The Respondent refuted the discrimination claim and stated that punishment meted was dependent on the degree of participation and there should be no expectation that punishment would be similar as degrees of culpability varied based on evidence that was before the Students Disciplinary Committee.

82. *The Constitution* prohibits discrimination under Article 27. It states:

Equality and freedom from discrimination

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.



- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- (6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
- (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
- (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender,

83. In *James Nyasora Nyarangi & 3 Others V Attorney General* [2008] eKLR citing a South African Court decision, explained what discrimination entails as follows:

“... The said constitutional Court of South Africa laid down the enquiry needed to be done to determine whether differentiation amounts to unfair discrimination. In the case of *Harksen V Lane No Others* 1998(1) SA 300(CC) para 54 it held: -

“Firstly, does the differentiation amount to discrimination” If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend on whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner...”

If the differentiation amounts to ‘discrimination, does it amount to unfair discrimination” If it has been on a special ground, then unfairness will be presumed. If on unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation...”

- 84. On this particular issue, the Petitioner argued that imposition of different punishment on her for an identical misconduct, being examination malpractice was discriminatory. She argued that they should have been given comparable punishments.
- 85. Discrimination in the imposition of the punishments would have been in the first place presumed if it was based on any of the prohibited grounds such as race, ethnicity, gender, social status and so on. This was however not the case. The Petitioner’s complaint was not that the disparity in punishment was based on any of the specified grounds.
- 86. She merely argued that because there was disparity in the punishment, then it was discriminatory. I do not agree. Imposition of punishment will depend on several factors such mitigation, degree of remorse



demonstrated, the extent of planning and involvement in the alleged misconduct, willingness to tender apology to mention but a few. All these are relevant factors that may inform the level of punishment that may be imposed as long there is discretion in imposing the range of penalties that may be available by the Respondent. Depending on aggravating or mitigating factors, the Respondent was at liberty to impose the option it considered appropriate to the Petitioner or any of her colleagues depending on the circumstances of each case.

87. Discontinuation was one of the stipulated penalties for examination malpractice and if the disciplinary hearing was properly conducted, imposition of such punishment should not be termed a violation of the right to education under Article 43(1) (f) of *the Constitution* as it is essential to the maintenance of education standards. Examination malpractice is a grave matter that does not only affect the integrity of the institution concerned but also poses a serious threat to the education standards generally and the quality of services to the public is compromised in the long run. Examination malpractice must thus be checked and nipped in the bud and anybody engaging in such nefarious conduct must be prepared to pay the price. *The Constitution* cannot offer him a place of refuge.
88. Nevertheless, the process leading to the punishment of the Petitioner in the instant Petition has already been found wanting for non-compliance with provisions Article 47 and Section 4 of the Fair Administrative Actions Act hence the punishment, being a product of that process cannot stand.

2. Whether the doctrine of legitimate expectation can be invoked by the Petitioner as against the Respondent in the circumstances of this case.

89. The Petitioner contended that the Respondent's actions in dealing with the Petitioner created a legitimate expectation that she had satisfied all the requirements by the Respondent for her to graduate. That although the Respondent nullified the results of LIL 300 Public International Law over alleged leakage; it offered the Petitioner an opportunity to sit for Special Examination in respect of the same unit, marked the same and released the results which gave her grade B in the said exam. That the Respondent further wrote to the Kenya School of Law to confirm that the Petitioner had completed her undergraduate studies and thus could be offered a chance at the Kenya School of Law pending graduation. The Petitioner pointed out that the behaviour by the Respondent served to create a legitimate expectation that the Petitioner had fulfilled all the required conditions for her graduation from the University.
90. In response, the Respondent submitted that there was no action that it took which bound it to the expectation that the Petitioner would graduate because at the time the graduation was to take place, the Disciplinary Committee had heard the Petitioner and what was remaining was the Disciplinary Committee's decision. That forwarding the name of the Petitioner to the Kenya School of Law did not create a legitimate expectation as admission to the Kenya School of Law was also conditional on students producing a degree certificate which she could not produce before graduation. That it is the Petitioner who took the risk to enroll to the School of Law without the requisite documents.
91. Whether or not a legitimate expectation existed, it is a question of law which must be decided based on the evidence. The doctrine of legitimate expectation prevents a public authority from unfairly resiling from its representation (whether by words or conduct) that create a reasonable expectation to a person that it will act in a particular way in respect to matter the person has an interest in.
92. The question therefore becomes, did the Respondent create a reasonable expectation in the mind of the Petitioner that she had fulfilled the requirements necessary for her to be included in the graduation list despite what had transpired?



93. The Respondent's Handbook, Kenyatta University Student Information Handbook-2017-2021 clause 4.6 states:
- “A student who is involved in any examination irregularity shall be suspended immediately by the Registrar (Academic) upon receipt of an incident report pending appearance before the Students' Disciplinary Committee.”
94. The alleged incident of leakage of LIL 300 Public International Law happened on 13/12/19. According to the Respondent, the matter required detailed investigation because the matter was widespread and many students were involved. The investigations were carried out by the Respondent's Academic Investigation Committee. It compiled its report dated 21st December 2020 and recommended suspension of all the students who appeared in category A list of the said report.
95. The Respondent did not immediately suspend the named students who included the Petitioner pending their appearance before the Students Disciplinary Committee as required clause 4.6 of the Kenyatta University Handbook or in line with the Academic Committee's Report recommendation. Instead, the Respondent, contrary to this recommendation and despite the provisions of clause 4.6 of the Student Handbook that required immediate suspension of students reported for examination malpractice pending their appearance before the Student Disciplinary Committee; it decided to give the Students a Special Examination in January, 2021. In the Replying Affidavit of Prof. Bernard Kivunge of 22/8/2022, paragraph 23 he says:
- “That the aforesaid recommendation was adopted by the Respondent. Consequently, the results of the said unit were cancelled, and students, including those who were suspended, were allowed to take the examination in January, 2021.”
96. At this point in time, the Petitioner had not even been suspended as her suspension letter is dated 10/6/2021.
97. Upon sitting for the Special Examination which was apparently free from any malpractice, the Petitioner passed and the Respondent gave her a grade B. This is confirmed by annexure WEM 3 (Petitioner's transcript) showing the results of LIL 300 Public International Law as grade B. The Respondent did not deny the authenticity of this transcript or the grade.
98. The Respondent did not also deny that it forwarded a list of students from the Institution who were expected to join the Kenya School of Law and the name of the Petitioner included. The Petitioner was enrolled to the Kenya School of Law on the strength of the Respondent's letter pending graduation.
99. It is the legal duty of the Respondent to certify students who have fulfilled the academic qualifications for purposes of graduation and getting the relevant certificates. Looking at the totality of the Respondent's conduct there is no doubt that it was responsible for reasonably inducing the Petitioner with the expectation that she had met the requirements necessary for graduation from the University. It tested and awarded her marks in LIL 300 in the Special Examination instead of suspending her according to its regulations. It approved her to proceed and join the Kenya School of Law awaiting graduation. The suspension over alleged initial leakage of LIL 300 was an afterthought. It came six months after the Special Examination which she had sat and passed. In *Republic v Principal Secretary, Ministry of Transport Housing & Urban Development exparte Soweto Residents Forum CBO* [2019]



eKLR the Court held that a legitimate expectation is enforceable if the Court finds that it was validly induced. The Court ruled:

“...In adjudicating legitimate expectation claims the court follows a two-step approach. Firstly, asks whether the administrator’s actions created a reasonable expectation in the mind of aggrieved party. If the answer to the question is in the affirmative, the second question is, whether the expectation is legitimate. If the answer to the second question is equally affirmative, then the court will hold the administrator to the representation, that is enforce the legitimate expectation...”

100. The Respondent having administered a separate examination and grading the student instead of suspending the student to allow the conclusion of the disciplinary process first, cannot turn around and purport to invalidate the results and deny her a chance from graduating. The Respondent tested her and graded her in the examination which would be the only impediment to her graduation. The Respondent has not contested the said grade. In *Violet Ombaka Otieno & 13 others v Moi University* (2019) eKLR the Court while faced with a similar scenario stated:

“...The petitioners had provided evidence of transcripts issued to them by the respondents indicating that they had passed their examinations. This was adequate evidence of representations made and conduct by the respondent as to the possibility of graduation by the petitioners, and it is my finding that this legitimate expectation on their part was violated by their non-inclusion in the final list of graduands for the respondent’s 38th graduation ceremony...”

101. In the instant case, the Respondent went ahead and wrote to the Kenya School of Law informing it the University was releasing her to the join the Institution. I find that the disciplinary action taken by the Respondent was belated, frustrating and unjustifiable to the Petitioner. The Petitioner must be protected from such arbitrariness.

Reliefs

102. Under Article 23 (3) of *the Constitution*, the Court is empowered to grant various reliefs to enforce fundamental rights and freedoms. It is instructive to note that the wording of this provision does not limit a Court to only the reliefs specified thereunder or to those that a party might have prayed for. If the Court considers that particular violation will be better remedied by a different or additional relief, nothing will stop the Court from granting the relief in the interest of justice. Article 23 (3) reads:

“In any proceedings brought under Article 22, a Court may grant appropriate relief, including-

- a. a declaration of rights
- b. an injunction
- c. a conservatory order
- d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24
- e. an order for compensation; and



f. an order of judicial review.

103. In the present case, the Court has established that the disciplinary process adopted by the Respondent was against the requirements of Article 47 and also section 4 of the Fair Administrative Actions Act. Further, the Respondent by its actions breached a legitimate expectation created in regard to the Petitioner.
104. To protect the Petitioner from effects of an unfair disciplinary process, the decision by the Respondent must thus be quashed by an order of certiorari. Further, the Court shall direct the fulfilment of the legitimate expectation by the Respondent through issuance of an order of mandamus.
105. The Court thus grants the following reliefs:
1. A declaration that the Respondent's Disciplinary Committee Report and subsequent action taken by the Respondent against the Petitioner was done in violation of Article 47 of *the Constitution* of Kenya and Section 4 of the *Fair Administrative Action Act* (No. 4 of 2015).
 2. An order of certiorari be and is hereby issued quashing the Respondent's decision against the Petitioner based on the Report of the Students Disciplinary Committee proceedings which is the subject matter of this Petition.
 3. An order of mandamus be and is hereby issued compelling the Respondent to issue the Petitioner with her academic transcripts and degree certificate for the Bachelor of Laws and to allow her to graduate in the forthcoming graduation.
 4. Each Party to bear its own costs of this Petition.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 19TH DAY OF JANUARY, 2024.

.....

L. N. MUGAMBI

JUDGE

