Morara & another v Egerton University (Judicial Review E001 of 2023) [2023] KEHC 21039 (KLR) (24 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21039 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

JUDICIAL REVIEW E001 OF 2023

HM NYAGA, J

JULY 24, 2023

BETWEEN

SHARON KWAMBOKA MORARA .... 1ST PETITIONER

EVANS MORARA NYANGONGO .... 2ND PETITIONER

AND

EGERTON UNIVERSITY .... RESPONDENT

JUDGMENT

1. The 1st Petitioner is a 2nd Year, 1st Semester student undertaking a Bachelor's Degree in Nursing at Egerton University, the Respondent herein, until 18th November, 2022 when she was purportedly expelled from the Respondent's Institution.
2. The 2nd Petitioner is the father to the Applicant who pays her school fees and meets her other parental obligations.
3. The Respondent is a Public University established under the *Universities Act* (No.42 of 2012) and the Egerton University Statutes Act 2013.
4. After duly obtaining leave on 27th February,2023, the Petitioners brought the present Application seeking the following substantive Orders:-
   a. A declaration that the expulsion letter dated 18th November, 2022 violated the 1st Petitioner rights to natural justice and is therefore unconstitutional, null and void.
   b. An order of Judicial Review in the Order of Certiorari to remove into this court for purposes of quashing the expulsion letter dated 18th November, 2022.
   c. An order of Mandamus to unconditionally reinstate the 1st petitioner as a second year Student at Egerton University, 2023 to continue with her studies.

d. A declaration that Sections 11.5,11.7 and 11.8 of the Respondent's Students Rules and Regulations 2020 are inconsistent with and irrationally limit Articles 25,47 and 50 of *the Constitution* on fair hearing and Legal Representation thus unconstitutional, null and void.

e. An order of Certiorari to remove into this Court for purposes of quashing Sections 11.5,11.7 and 11.8 of the Respondent's Student Rules and Regulations governing conduct and Discipline 2020.

f. An order of Mandamus to compel the Respondent to issue the 1st Petitioner with her end year 2022 examination results.

g. An order of Compensation for exemplary, aggravated and general damages for violation of the 1st petitioner's fundamental Rights under Articles 25,27,35,47 and 50 of *the Constitution* during the Respondent's Disciplinary hearing proceedings.

Background Facts

5. The 1st petitioner claims that she was expelled by the Respondent vide a letter dated 18th November,2022 before being accorded a hearing before the Faculty Board and the Senate to exculpate herself of any allegations.

6. She states that the disciplinary proceedings before the Student's Disciplinary Committee were done before the end of the term examination contrary to Section 22.1(a) of the Egerton University Rules and Regulations that require the same to be conducted 14 days after the end of the semester examination.

7. She purports that she was not served with any prior written charges/offences to help her prepare a defence before she was summoned through a call to appear before the Faculty Students Disciplinary Committee on the same day on 30th August 2022.

8. She states that she was not supplied with any written notice of the date, time and venue of the students Disciplinary Committee in accordance with Section 11.5 of the Respondent's Rules and Regulations,2020 and also that she was not allowed or informed to be accompanied by any witness or legal representative.

9. It is her contention that she was not given a copy of the information, materials or evidence relied on by the Student's Disciplinary Committee, Faculty Board and the Senate to reach the decision to expel.

10. She contends that the Faculty Student's Disciplinary Committee was conflicted, biased and had no legal mandate to recommend her expulsion other than give a report of its independent and impartial investigation or inquiry into the alleged offence.

11. She further states that the Respondent's Faculty Dean's Committee and the Senate approved the recommendation of the Student's Disciplinary Committee without an independent and impartial hearing of all parties to consider all facts and circumstances of this case that could exculpate or incriminate her.

12. She contends that she was deprived of constitutional right to a fair hearing in person to orally defend herself or through legal representative or through written submissions before the students Disciplinary Committee that investigated Faculty Deans Committee that recommended the expulsion and the Senate that approved the recommendation to expel her.

13. She avers that the allegation of examination malpractice is not one of the specific and particularized irregularities in accordance with section 21 of the Student Rules and Regulations Governing Conduct and Discipline, 2020.

14. She states that the expulsion letter is unlawful, illegal, null and void because it is written and communicated by the Academic Registrar who lacks capacity, instead of the Vice Chancellor as provided for under section 13 of the Rules and Regulations Governing Conduct and Discipline of Students 2020 and section 7(3) and (7) of the Egerton University Statutes 2013

15. It is her position that Sections 11.7,11.8 and 22.1 of the respondent's Rules and Regulations Governing Conduct and Discipline of Students 2020 are unconstitutional, null and void for being inconsistent with Articles 24,25,47 and 50 of *the Constitution* on the threshold for fair administrative action, fair hearing and fair trial

16. She avers that the respondent prematurely closed her portal before the verdict was communicated thus denied her an opportunity to access all previous exam results, register for this semester exams and attend all classes.

17. She contends that she has been discriminated against by the non-uniform and unequal treatment by the respondent in application of its rules and regulations as she was denied access to information and materials related to the disciplinary process.

18. It is her averment that the respondent's administrative decision to expel her is not proportionate to the intended purpose to correct the behavior of the immature minds and not to jeopardize her fundamental right to education and training enshrined in Articles 43 and 55 of *the Constitution*.

19. She avers that the Respondent's Disciplinary process leading to her expulsion was not only arbitrary, capricious, oppressive and outrageous but was also illegal, irrational, procedurally unfair and it violated her right to natural justice

20. She claims that she has suffered irreparable mental persecution, mala fides and degrading punishment and risk losing all the huge investment in form of parallel tuition fees, accommodation fees, meals and subsistence.

21. She further claims that the Respondent's directive that she surrenders her student ID and other institutional property, vacates the hall of residence and withholding of all her end year examination results demonstrates bad faith that should be sanctioned to deter recurrence.

22. She contends that it is notable that the illegal, un-procedural and irrational decision occurred despite the respondent having accessible and available legal counsel.

23. It was her contentment that the Respondent's Statutes 2013 and Rules and Regulations 2020 are not substantive statutory regulations contemplated in Article 24 of *the constitution* to limit her rights to education and training, rights to legal representation, fair hearing and trial by an independent and impartial body.

24. She avers that her expulsion with regard to *the Constitution*, statutes and its own regulations has compelling public interest on the future of the values of rule of law that should be protected and promoted by the courts as the custodial of public interest and the Rule of law.

25. The Application was opposed by the Respondent, who filed a Replying Affidavit deposed to by Prof. Mwanarusi Saidi the Academic Registrar, on 20th April, 2023.

26. The Respondent avers that the *Universities Act* (no.42 of 2012) provides that a university shall be governed in accordance with the Provisions of its Charter or Letter of Interim Authority granted under the Act and Statutes promulgated by its Council and that the university shall have specified Organs of Governance.

27. The Deponent deposes that Section 33 of the Egerton University Statutes provides that the Senate is in charge of all academic matters of the University.

28. She avers that upon admission to the University in 2021/2022 academic year, the 1st Petitioner was bound by the Respondent's Rules and Regulations once she reported and accepted to be a student of the Respondent registered into the Programme leading to the Bachelor of Science in Nursing in the Faculty of Health Sciences.

29. According to the deponent the 1st Petitioner was found to have violated Section 10(d) of Egerton University Statutes 2013, Statute 36 as she was involved in an Examination Malpractice. She deposes that from the record the 1st Petitioner was found with notes related to the FOND 121 examination that was conducted on 31st August,2022 between 12.00pm and 2.00pm and the chairperson of the department wrote to the Dean Faculty of Health sciences on 31st August,2022 informing the office of the examination malpractice that had been arrested while exams were being administered.

30. That the said memo was accompanied by examination malpractice report signed by the Chief Invigilator and witnesses by co-invigilator in compliance with statute 14 of the Egerton Universities statutes.

31. She avers that the examination malpractice form above was also signed by the 1st petitioner confirming that her mistake was rubbing a written exam card with FOND 121 micro notes which she had carried into the exam.

32. She states that the 1st petitioner was invited to attend the faculty of Health Sciences Disciplinary Committee meeting held on 6th September,2022 at the Faculty of Health Sciences Boardroom at 2. 00p.m to which she attended and admitted that she had the exam card with notes on it in the exam room and pleaded for leniency and thus she was in contravention of the Universities Rules and Regulations on examinations.

33. She contends that during the meeting, the 1st petitioner was accorded an opportunity to be heard otherwise she would not have confessed to the malpractice and asked for leniency and thus the breach of rules of natural justice alleged herein are unsubstantiated.

34. She states that during the said meeting, the committee found that the micro notes that had been scribbled by the petitioner were relevant to the exam that was being done and that she had used the exam card to conceal notes with the intention to use during the exam and that she had the intentionally erased the notes to try and conceal evidence after being caught.

35. It is her averment that the decision and recommendation of the Student's Disciplinary Committee of the faculty of Health Sciences was tabled before the Senate during its meeting held on 10th November, 2022 and the Senate adopted the recommendation of the Faculty's Student Disciplinary Committee and discontinued the Applicant.

36. It is her further averment that the Senate's above decision was communicated to the 1st Petitioner Vide a letter dated 18th November, 2022 and that the 1st Petitioner was also notified of her right to appeal within ninety days.

37. She states that on 15th December, 2022 and 9th January, 2023, the 1st petitioner wrote a letter to the Respondent appealing against her expulsion and consequently, the Planning, Development and Grievance Committee of the Council considered the 1st petitioner's appeal on 18th January, 2023 the decision thereon was forwarded to the council for ratification during its meeting held on 27th January, 2023 and the same was adopted and communicated to the 1st petitioner vide letter dated 6th March, 2023

38. She depones that by the time the 1st petitioner was serving the Respondent with a letter dated 24th February, 2023 addressed to the chairperson Appeal and Grievances Committee of the Council, it had already arrived at its verdict on her appeal hence the communication that was done vide letter dated 6th March, 2023

39. She contends therefore that decision to expel the 1st Petitioner was procedural, fair and legitimate and the appeal preferred there from having been dismissed for lack of merits, the instant application is just but an abuse of the Court process.

40. She believes that the instant Application is defective and untenable in Law and ought to be struck out.

41. She avers that although framed as a constitutional petition the matters at the foot and centre of this matter revolve around examination rules within a university which is governed purely by the university rules and therefore it is farfetched and absurd for the 1st Petitioner to purport that her constitutional rights listed have been violated without specifying the manner in which they have been infringed.

42. It is her deposition that the petitioners' allegation of violations of their right to equality and freedom from discrimination, fair administrative action, freedom from psychological torture and right to dignity have no basis both in fact and in law as the petitioners were not ignorant and all they needed to do was well within their knowledge.

43. The 1st petitioner swore a further affidavit on 28th April,2023 in response to the Respondents aforestated Replying Affidavit. She deposes that Replying affidavit is incompetent for having been sworn by the Academic Registrar without legal mandate as provided for under Section 15(5) of the Respondent's statutes 2013 and should therefore be expunged from the record.

44. She reiterated that the respondent act of expelling her was contrary to its Rules and Regulations and that she was not invited in writing to the alleged Student Disciplinary Committee.

45. Regarding the averment that she was found with notes related to FOND 121 during examination that was conducted on 31st August, 2022 between 12.00pm and 2.00pm, the 1st petitioner contends that the same is untrue and not backed by any evidence. She asserts that the expulsion decision is overtaken by events because on 21st March,2023, the Respondent's Senate approved and gave her one-year examination transcript confirming she passed all the subjects including the said FOND 121 and recommended her to proceed to year two thus vindicating her of the allegation of any examination malpractice.

46. Regarding the respondent averment that she confirmed her mistake was rubbing a written exam card with FOND 121 micro notes which she had carried into the exam room and confessed that indeed the malpractice occurred, the 1st petitioner states that the respondent conceals material fact that an exam card is not among the unauthorized materials as per section 36(10)(d) and that its checked by two invigilators to ascertain fees payment before one is admitted into the exam room and its thus unimaginable how the erased exam card escaped their attention only to discover it ten minutes into the exam. In addition, she asserts that there was no attestation by any independent witness, student representative or dean of students confirming the purported confession.

47. She avers that the alleged disciplinary meeting on 6th September,2022 was in the midst of exam and evidently oppressive to her as she lacked any preparedness or written charges or witness or accompaniment of a legal officer and that there was enough duress and calculated harassment that contravenes Fair Administrative Actions Act, 2015.

48. She asserts that Student Disciplinary Committee had no lawful delegated authority through the Senate to discharge Disciplinary functions on its behalf and that the Vice Chancellor exercises delegated authority from the senate on Administrative and Disciplinary matters and such substantive day to day disciplinary power cannot be re-delegated from the VC to the Student Disciplinary Committee.

49. She contends that there is no evidence that she was served with the Appeal decision and that the Respondent waived its right and acquiesced on the expulsion decision altogether after she sought refuge in court by promptly instructing the Faculty Registrar to issue her with one-year provisional exam transcript that recommended that she proceeds to year two vide exam transcript.

50. She asserts that there is no reason advanced why the appeal and grievance handling committee denied her an opportunity for oral defence hearing, present witnesses or legal representative for independent and impartial audience before refusing her appeal.

51. With respect to the Respondents averment that she has not specified the manner in which her constitutional rights have been violates, she reiterates that she was not given specific written charge or accorded an opportunity to present her witnesses or legal representative or cross examine the accusers and her appeal was oppressively denied audience which is clearly manifest violation of Articles 35,47 and 50 of *the Constitution*.

52. She avers that that the Respondent's statutes,2013 and Rules and Regulations 2020 have provisions that discriminate, deny legal representation, waive the right to oral defence hearing and permit bias and impartiality by allowing accusers to sit in the Disciplinary Committee as investigators and witnesses and altogether pass judgement contrary to the doctrine of natural justice that nobody can be a judge in his own case.

53. The Application was canvassed through written submissions. The Petitioners filed their Submissions on 28th April,2023 while the Respondent submissions was filed on 24th May,2023.

Petitioner's Submissions

54. The Petitioners rehashed the averments contained in their Application and Further Affidavit sworn by the 1st Petitioner in their Submissions.

55. In support of their submissions that the Respondent's disciplinary decision and actions were unlawful, the petitioners rely on the cases of Gideon Omare vs Machakos University [2019] eKLR & Republic vs University of Nairobi Misc. Application No.6 of 2019.

56. In addition to the above the Petitioners submit that Section 11.8 of the Respondent's Disciplinary Rules and Regulations 2020 entitles the petitioner to appear alone in person without a company of legal agent/advocate contrary to the Provisions in Article 50 of *the Constitution* and Section 7 of the Fair Administrative Actions Act that prescribe legal notification as mandatory.

57. The Petitioners also submit that the Respondent's decision to expel the 1st petitioner was ultra vires as the expulsion letter was written and signed by the Academic Registrar contrary to Section 15(5) of the Respondent's Statutes 2013.

58. To support their submissions that the Respondent's decision to expel the 1st Petitioner was procedurally unfair, reliance was placed on the case of Nabulime Miriam & others vs Council of Legal Education & 5 others [2016] eKLR, Gideon Omare vs Machakos University (supra) & Republic vs Egerton University 2015.

59. The Petitioners submit that Respondent's disciplinary decision to expel the 1st Petitioner was irrational, unreasonable and oppressive for reasons that it closed the 1st Petitioners Portal before the Appeal verdict was determined and communicated; denied the 1st Petitioner access to all information and material related to the Disciplinary Process in contravention of Article 35 of *the Constitution*; unreasonably ambushed the 1st Petitioner through a call to attend a faculty committee meeting that was latter converted to a student disciplinary committee without any written letter of allegation or prior date ,time and venue of any disciplinary committee; and that the purported exam malpractice is not outlined in the Respondent's statutes.

60. The petitioners further submit that one of the invigilators attested that the scribbling was not legible contrary to the assertion that it related to the aforesaid exam.

61. It is the Petitioners submissions that the Respondent's disciplinary decision to expel the 1st Petitioner was not proportionate to the intended purpose as it was extreme and drastic in the circumstances of this case and that it did not rationally connect with purpose, abrogated the 1st Petitioner's right to education, dashed her legitimate expectation to graduate with Bsc. in nursing and contravened her rights to Education and training enshrined in Articles 53 and 55 of *the Constitution*.

62. With respect to Reliefs and damages sought, the Petitioners argue that it is trite that rules and regulations of an administrative body exercising administrative or quasi-judicial authority as in the similar circumstances of this case cannot be permitted to limit fundamental rights to education and training and fair administrative action legitimately guaranteed by *the Constitution* because they are not substantive legislations contemplated in Article 24 of *the Constitution*.

63. They further argue that the Respondent's disciplinary process was fraudulent, lawless, scandalous, oppressive and offensive to the 1st Petitioner whose legitimate expectation was to be disciplined in accordance with the Respondent's Statutes 2013 and the Students' Rules and Regulations 2020.

64. The petitioners submit that there is compelling public interest for courts to interfere and hold the respondent liable and accountable for such unacceptable conduct as a deterrence and to vindicate the rule of law so as to enhance public confidence in public institution internal Administrative systems. The petitioners refer this court to the case of Onjira John Anyul vs University of Nairobi [2019] eKLR where the court awarded the petitioner Ksh.5 million for violation of his fundamental rights provided under Articles 47 and 50 of *the Constitution* and allowed his readmission to the university so as to continue with his studies and the case of Alton Homes Limited and Another vs Davis Nathan Chelogoi & 2 Others [2018] eKLR where the court awarded general damages of Kshs. 5,000,000/= to the Plaintiffs on grounds that the Defendants actions of selling and purchasing the suit property and which premises the Plaintiffs had occupied since 2007, and had paid substantial amount of money towards the purchase price and fulfillment of the sale agreement smacked of fraud and illegality.

Respondent's Submissions

65. The Respondent submits that the decision to expel the 1st Petitioner from her studies at its institution was informed by compelling justifications and the same was undertaken pursuant to a meticulous and painstaking process devoid of any indications of impropriety; irregularity; illegality

and unreasonableness. As such, the decision did not violate the Petitioner's right to fair administrative action and the judicial review orders prayed for are unmerited.

66. The respondent therefore prays that the court exercises restraint in interfering with the same as the petitioners have failed to lead sufficient evidence to demonstrate the alleged impropriety and illegality.

67. The Respondent associated itself with the proposition espoused in J N N, (a Minor) M N M, suing as next friend vs Naisula Holdings Limited t/a N School [2018] eKLR & Pastoli vs Kabale District Local Government Council and Others [2008] 2 EA 300 to the effect that an application for judicial review can only be challenged on grounds of illegality, irrationality and procedural impropriety.

68. The respondent argues that its decision to expel the 1st petitioner from the institution was legal as it was informed by the 1st petitioner's indulgence in gross examination malpractice contrary to section 10(d) of the Egerton University Statutes [2013]. The respondent asserted that Student Disciplinary Committee which recommended the expulsion of the 1st petitioner took into account the 1st petitioner averments, correctly appreciated and applied the provisions of the Egerton University Rules and Regulations Governing the Conduct and Discipline of Students.

69. With respect to the interpretation of Section 21 of the Egerton Rules and Regulations, the Respondent submits that it is prudent to engage in a holistic and purposeful analysis with regards to the words contained in section 21 of the Egerton Rules and Regulations that is germane to the issues in the instant case.

70. The respondent argues that courts are obliged to examine the object and purpose of statutory provisions and give them fundamental value so far as possible in conformity with *the constitution*. To this end, the Respondent referred the court to the case of Adrian Kamotho Njenga vs Kenya School of Law [2017] eKLR where the court cited the decision of the Supreme Court of India in Reserve Bank of India vs Peerless General Finance and Investment Co. Ltd.,1987 SCR (2) 1 . The court appreciated that in interpreting statutes, it is also a requirement that the court looks at both the text and context in order to ascertain the true legislative intent and that the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word.

71. On the same principles above, the Respondent also cited the South Africa case of Bato Staff Fishing (PTY) Ltd vs Minister of Environmental Affairs and Tourism and others [2004] ZACC 15; 2004(4) SA 490(CC): 2004(7) BCLR 687(CC) where the court stated that every piece of legislation must be construed in a manner that promotes the spirit purport and objects of the Bill of rights.

72. The respondent therefore submits that in interpreting key statutory provisions, it is imperative for the court to take into perspective the contextual factors with regards to the statute and also the mischief that a statute was intended to cure in the society at the particular time of its enactment.

73. In applying the above analysis, the Respondent argues that it is apparent that the examination irregularities set out in section 21 of the its Rules and Regulations also envisages the act of carrying into the examination room an exam card which contained written material that was relevant for the exam to be among the prohibited practices. That in particular, Section 21.1.2 of the Egerton Rules and Regulations States that it is an examination malpractice for a student of the University to bring into an examination room unauthorized materials relevant to the examinations e.g. books ,notes, papers, electronic devises with pre-set formulae, mobile phones, pre-written answers etc. That this list is not conclusive and as such does not set out a fixed limit with regards to the general nature of materials that may be brought into the exam which may implicate the individual who carries the same in examination malpractice.

74. The Respondent argues that the mischief that the rules seek to cure is the enjoyment of an undue advantage by students in examinations by virtue of engaging in various forms of examination malpractices.

75. In regards to the allegations relating to the unlawfulness of the Egerton statutes 2013 and Egerton rules and regulations,2020, the Respondent submits that the same possess the force of law and it is obligated to run the institution in pursuance of the rules and regulations set out thereon. It argues that the allegation that is unconstitutional buttresses a whimsical and capricious attempt by the 1st petitioner to avoid taking full responsibility for the consequences of her actions.

76. The respondent argues that whereas the 1st petitioner has inalienable right to receive education to the highest attainable standards, it must be noted that such right possesses a corresponding duty in the nature of obedience of school regulations. In support of this proposition reliance was placed on the case of J M O O vs Board of Governors of St. M's School, Nairobi [2015] eKLR.

77. The respondent further submits that having the expulsion letter authored by the academic registrar does not take anything away from the substantial integrity of the process since in exercise of functions at an organization as robust and expansive as it, there may be exigencies that may require persons to fill in the duties of others in order to ensure efficient functioning.

78. The respondent submits that its decision to expel the petitioner was procedural and fool-proof. It argues that the doctrine of procedural fairness, as a key element of the principles of natural justice is now of esteemed juridical lineage in Kenya. In support of this proposition reliance was placed on the cases of Gideon Omare vs Machakos University (supra) & Baker vs Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6.

79. The respondent further submits that the 1st petitioner was granted an adequate opportunity to present her case and that she was called to attend to the student Disciplinary Committee (SDC) Meeting for purposes of deliberating over the claims of examinations malpractice that had been directed at her.

80. It contends that the assertion by the 1st petitioner that there is lack of evidence to show that it gave her written charges or any written invitation to attend the disciplinary hearing before expulsion is absurd as she was fully aware of the charges that were facing her at the time and her contrary assertion is merely a meek attempt at subverting the course of justice.

81. Regarding the contention by the 1st Petitioner that she was ambushed through a call to attend the Faculty Student Disciplinary Committee (FSDC) and therefore did not have the opportunity to prepare her defence, the respondent submits that the same is unfounded since from the FSDC proceedings there is nowhere the 1st petitioner asked for time to enable her adequately prepare for the hearing but was denied

82. The respondent also submits that there is no evidence that a party was put in a position where they were a judge in their own case.

83. In regards to allegations of irrationality in the Respondent's decision to expel the 1st petitioner, the respondent submits the tenets of natural justice presupposes that administrative bodies are obligated to render decisions or enact policies that are normal. It relied on the case Suchan Investment Limited vs Ministry of National Heritage & Culture & 3 others [2016] eKLR where the court was of the considered view that proportionality is an indication of the shift towards merit consideration in statutory judicial review applications.

84. The respondent then submits that the decision to expel the 1st petitioner from the Respondent institution obeyed the rationality test and the same was merited.

85. Further to the above, the Respondent argues that the decision was taken in line with the Rules and regulations that govern the conduct of students at the Respondent institution and was necessary since it is its duty to ensure high levels of discipline in the school and that its standards are not brought into disrepute by the actions of its students.

86. The respondent urges this court not to interfere with the decision of its administrative bodies. Relying on the case of Nyongesa & 4 others vs Egerton University College [1990] eKLR, it submits that it is trite that administrative bodies have clear mandates under the law and also carry out various functions such as legislation and other duties in accordance with their particular expertise. As such save in circumstances where said bodies abuse the prerogative granted to them and thus engage in acts that are unlawful, then courts are bound to steer clear of their operations.

Analysis & determination

87. I have considered the Application, the response thereto, and the submissions filed by the parties together with the authorities that they cited. The issues that fall for determination are: -

    i. Whether the Replying Affidavit dated 20th April, 2023 ought to be expunged from the record.

    ii. Whether the Respondent's decision to expel the 1st Petitioner was procedurally unfair;

    iii. Whether the said decision was irrational and unreasonable;

    iv. Whether the decision rendered by the Student's Disciplinary Committee is tainted with illegality; and lastly,

    v. Whether the Petitioners are entitled to the relief they seek.

Whether the Replying Affidavit dated 20th April,2023 ought to be expunged from the record

88. The 1st petitioner contends that the Replying Affidavit should be expunged as it was sworn by the Academic Registrar without legal mandate provided for under Section 15(5) of the Egerton University Statutes, 2013.

89. I have perused the said section. It provides that The Registrar (Academic Affairs) shall report to the Deputy Vice-Chancellor (Academic Affairs) and shall assist in all the functions under the Deputy Vice-Chancellor (Academic Affairs) stipulated in the Statutes, and shall be the Secretary to the Senate and the Senate Committees.

90. It is clear therefore that this Section stipulates the registrar's duties. However, the swearing of an affidavit is not expressly stated as part of his/her duty. It is an inferred duty. It must be remembered that an affidavit can be sworn by anyone in the institution, provided that he/she has the requisite authority to do so.

91. I have looked at paragraph 2 of the Replying Affidavit where the Deponent adverts to the authority and mandate by the Respondent's Council to swear the Replying Affidavit. However, no such authority has been exhibited and/or annexed. It is good practice that whenever a deponent asserts that he/she has been donated authority to swear an affidavit on behalf of an institution or on behalf of another person he/she should annex the said authority for the court to ascertain the same.

92. Be that as it may, I believe this is an omission curable under Article 159(2) (d) of *the Constitution*. Under this Article, this court is expected to administer justice without being strictly bound by procedural technicalities. In the instant case, it is not in dispute that the deponent holds the position she attested to. Striking out the affidavit will only lead to another one being filed, probably with exactly the same contents as the one expunged. In my opinion, justice will be served by admitting the replying affidavit so as to avert piecemeal litigation.

93. This is not to state that parties ought to disregard laid down rules of procedure, but to acknowledge that the parties herein embarked on a quest for justice and it is court's duty to ensure, not only that justice is done, but that it is seen to be done. (See – Johanna Kipkemei Too vs Hellen Tum [2014] eKLR).

94. I am further guided by the reasoning of the Court of Appeal majority decision in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR where the court observed thus:

> "It is globally established that where procedural infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect. Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness...
>
> In modern times, the courts do not apply or enforce the words of statute or rules, but their objects, purposes and spirit or core values...reiterate what the court said in Githere V. Kimungu [1976 - 1985] E.A. 101, that:
>
> ".....the relation of rules of practice to the administration of justice is intended to be that of a handmaiden rather than a mistress and that the court should not be too far bound and tied by the rules, which are intended as general rules of practice, as to be compelled to do that which will cause injustice in a particular case.
>
> ...A look at recent judicial pronouncements from all the three levels of court structure leaves no doubt that the courts today abhor technicalities in the dispensation of justice."

95. From the foregoing, I decline to expunge the aforementioned Replying Affidavit.

Whether the Respondent's decision to expel the Applicant was procedurally unfair

96. Article 50(1) of *the Constitution* provides that every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent and impartial tribunal or body

97. In Pinnacle Projects Limited vs Presbyterian Church of East Africa, Ngong Parish & another [2018] eKLR, the court had the following to say on Article 50 with respect to fair trial principles in civil cases:

> "While the wording of Article 50 of *the Constitution* on the right to a fair hearing prima facie seems to focus on criminal trials it's not lost that fair trial in civil cases includes: the right of access to a court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is filed, the right to a public hearing, and the right to be heard within a reasonable time."

98. The court went on to say:

> "… it is important that in any judicial process adjudication parties involved be given opportunity to present their case and have a fair hearing before the decision against them is made by the respective judge or magistrate. It is not lost that procedural fairness is deeply ingrained in our administration of justice system.

99. In the case Geothermal Development Company Limited v. Attorney General & 3 Others (2013) eKLR it was stated as follows:

> "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. This right is not limited only in cases of a hearing as in the case of a court or before a tribunal, but when taking administrative actions as well. (See Donoghue v South Eastern Health Board [2005] 4 IR 217). Hilary Delany in his book, Judicial Review of Administrative Action, Thomson Reuters 2nd edition, at page 272, notes that, 'Even where no actual hearing is to held in relation to the making of an administrative or quasi-judicial decision, an individual may be entitled to be informed that a decision which will have adverse consequences for him may be taken and to notification of the possible consequences of the decision'…Article47 enshrines the right of every person to fair administrative action. Article 232enunciates various values and principles of public service including '(c) responsive, prompt, effective, impartial and equitable provision of services' and '(f) transparency and provision to the public of timely, accurate information'…Fair and reasonable administrative action demands that the taxpayer would be given a clear warning on the probable consequences of non-compliance with a decision before the same is taken; in this case, the Company should in no uncertain terms have received information as to the implication of the letter and the consequences of its failure to make good the payments demanded in the notice. (See Supreme court decision inTV3 v Independent Radio and Television Commission [1994] 2 IR 439) …In many jurisdictions around the world, it has long been established that notice is a matter of procedural fairness and an important component of natural justice. As such, information provided in relation to administrative proceedings must be sufficiently precise to put the individual on notice of exactly what the focus of any forthcoming inquiry or action will be. (See Charkaoui v Canada[2007] SCC 9, Alberta Workers' Compensation Board v Alberta Appeals Commission (2005) 258 DLR (4th), 29, 55and Sinkovich v Strathroy Commissioners of Police (1988) 51 DLR (4th) 750)."

100. Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may arise from non-observance of the rules of Natural Justice or to act with procedural unfairness towards the one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision. (See the case of Pastoli v Kabale District Local Government Council and Others (2008) EA 300).

101. In Republic vs Attorney General & Another Ex-parte Salome Nyambura Nyagah [2014] eKLR the Court expressed itself as follows:

> " In my view fair administrative action imports the rules of natural justice. To fail to adhere to the rules of natural justice may render an administrative action procedurally improper and procedural impropriety is no doubt one of the grounds for grant of judicial review remedies

102. Section 4(3) of the Fair Administrative Actions Act provides as follows: -

> " (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.

103. In the instant case, the 1st petitioner contends that she was not informed in writing the date, time and venue of the Disciplinary hearings and afforded an opportunity to prepare and present her defence as she was not supplied prior with the charges against her including the materials from her accusers and was also not informed of her rights to be accompanied by any witnesses or legal representative.

104. The Respondent on its part maintains that the 1st Petitioner was invited to Disciplinary Committee held on 6th September,2020 at the Faculty of Health Sciences Boardroom at 2. 00p.m which she attended and admitted the purported exam malpractice.

105. It is incontrovertible that the 1st Petitioner was not invited in writing but via a call to appear before the Student's Disciplinary Committee on the same date of the alleged offence.

106. To answer this issue, it would be prudent that this court refers to the provisions of the Respondent's Rules and Regulations.

107. The relevant Sections regarding this issue are sections 11.4,11.5,11.6& 11.7 of the Egerton Rules and Regulations governing the conduct and Discipline of Students 2020. These sections provide as follows:

> " Sections 11.4, The Chairperson of the student's disciplinary committee shall call a meeting within one month of receipt of a report or complaint.
>
> 11.5. The Secretary of the Disciplinary Committee shall notify the student and the complainant of the date, time and venue of the meeting and of the rights to be present and call a witness or witnesses.

11.6. If upon notification, the accused fails to appear before the committee without any reasonable explanation, the committee shall proceed with the case nonetheless.

11.7. The committee shall hold due enquiry and shall not be required to adhere to rules of evidence or procedures as applied in a court of law. In particular, the committee shall ensure that both sides are heard and the witnesses required in the case do not act as members of the committee."

108. From the above provisions, it is clear that there is no explicit requirement that notification of complaint must be in writing. It is however not shown that the Respondent notified the 1st petitioner of the requirements under clause 11.5. It was upon the respondent to show the court that it complied with the clause. Notice of a disciplinary hearing is as important as the hearing itself. It allows the person concerned to prepare adequately for the intended process.

109. The fact that the petitioner attended the disciplinary hearing is not sufficient to prove compliance with clause 11.5. It was imperative that the respondent shows the court that the process that led to the decision to expel the 1st petitioner was fair.

110. Although Clause 11.7 of the rules and regulations provides that the disciplinary process shall not to be required to adhere to the rules of evidence or procedure in a court of law, there are basic rules of law and natural justice that permeate through any disciplinary process. The right to be given time to prepare for the process, the right to representation where applicable, the right to cross examine any witness, the right to call one's own witnesses, for instance, are so fundamental to any process that if not adhered to, then it stands the risk of being quashed by this court.

111. What I am saying is that the disciplinary process, being an administrative action, was subject to Section 4(3) of the Fair Administrative Act and if the court is to find that the process was procedurally flawed then it has powers under section 7(2) thereof to review that decision.

112. In view of the foregoing, it is my considered view that the Respondent's decision to expel the Applicant was procedurally unfair.

Whether the said decision was unreasonable and irrational

113. The Petitioners invited this court to find that the decision to expel the 1st Petitioner from the University is unreasonable and irrational.

114. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards (See the case of Pastoli vs Kabale District Local Government Council and Others (supra))

115. Rationality, as a ground for the Review of an administrative action is dealt with in Section 7(2) (i) of Fair Administrative Action which provides that: -

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

i. the administrative action or decision is not rationally connected to-

a) the purpose for which it was taken;

b) the purpose of the empowering provision;

c) the information before the administrator; or

d) the reasons given for it by the administrator."

116. The test for rationality was aptly stated in Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others 2000 (4) SA 674 (CC) at page 708; paragraph 86 as follows:-

> " The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle."

117. In Trinity Broadcasting (Ciskei) v ICA of,[29] Howie P stated the rationality test as follows:-

> " In the application of that test, the reviewing Court will ask: is there a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at."

118. Reasonableness, as a ground for the review of an administrative action is dealt with in Section 7 (2) (k) of the *Fair Administrative Action Act*. A court or tribunal has the power to review an administrative action if the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

119. In Bato Star Fishing (Pty) Ltd vs Minister of Environmental Affairs and Others {2004} ZACC 15; 2004 (4) SA 490 CC at 512, para 44, O'Regan J approved the reasonableness test which was stated as follows by Lord Cooke in R vs Chief Constable of Sussex, ex parte International Trader's Ferry Ltd {1995} 1 All ER 129 (HL) at 157:-

> " The simple test used throughout was whether the decision in question was one which a reasonable authority could reach. The converse was described by Lord Diplock [1976] UKHL 6; [1976] 3 All ER 665 at 697[1976] UKHL 6; , [1977] AC 1014 at 1064 as 'conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt'. These unexaggerated criteria give the administrator ample and rightful rein, consistently with the constitutional separation of powers. ... Whatever the rubric under which the case is placed, the question here reduces, as I see it, to whether the chief constable has struck a balance fairly and reasonably open to him."

120. A Judicial Review Court will not substitute its own appraisal of the law and assessment of facts for that of a competent statutory body or agency clothed with authority to act in a particular field. In other words, for one to succeed in Judicial Review in such a case, the challenge to the impugned factual assessment by the statutory body can only be on the basis that the factual conclusion was undoubtedly unreasonable or as has been stated, the case must be one in which "the issues to be decided required a measure of professional knowledge or experience and the exercise of discretion pursuant to wider policy aims." Bryan v United Kingdom (1996) 21 EHRR 342.

121. Having considered the facts of this case, it is my considered view that the said decision itself was not irrational and unreasonable for reasons that the Rules did provide for expulsion as one of the decisions that could be made. It is not for this court to try and place the respondent in a straight jacket and dictate

to it what decision it ought to make. Exam cheating and other such malpractices are so fundamental to the integrity of the institution that they cannot be taken lightly.

122. It is my view, and subject to what I have stated hereinabove, that there are no grounds to hold that the decision to expel the 1st respondent was unreasonable or unfair.

Whether the decision rendered by the Student's Disciplinary Committee is tainted with illegality.

123. In the case of Municipal Council of Mombasa vs Republic & Umoja Consultants Limited, Nairobi Civil Appeal No. 185 of 2001, [2002] eKLR the Court of Appeal stated that in judicial review:

> " The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review."

124. An administrative decision is flawed if it is illegal. A decision is illegal if it: -

(a) contravenes or exceeds the terms of the power which authorizes the making of the decision;

(b) pursues an objective other than that for which the power to make the decision was conferred;

(c) is not authorized by any power;

(d) contravenes or fails to implement a public duty. (see the case of Republic v Public Procurement Administrative Review Board & 2 others Exparte Rongo University [2018] eKLR)

125. The Petitioners herein argue that the Respondent Disciplinary Decision was sanctioned by the Student Disciplinary Committee that lacked the delegated authority from the senate because substantive administrative duty is not delegable.

126. They also assert that the expulsion letter was written and signed by the Academic Registrar instead of the Vice Chancellor who authorized disciplinary authority and academic head on behalf of the Governing Council in accordance with Section 7(3) and (7) of the Egerton University Statutes 2013 and Section 10 of the Respondent's Rules and Regulations.

127. This position has not been controverted by the Respondent but it avers that such powers are delegable.

128. I have checked the Respondent's Rules and Regulation under Section 10.4 and it states that;

> " For the purpose of these Rules and Regulations the Vice Chancellor, acting on behalf of the council, is the disciplinary authority of the university and may in that capacity: Delegate any of these powers to his representative"

129. The contention by the Petitioners is therefore unfounded. The Vice Chancellor has powers to delegate and in doing so he/she would be acting within the law.

130. In the instant case, there is no evidence that the Student Disciplinary Committee acted outside its legal mandate to expel the 1st Petitioner. From the material before me, it was the proper body constituted to handle the complaint against the 1st Petitioner.

131. Although there is also no evidence that the Vice Chancellor mandated the Registrar to sign the expulsion letter on his/her behalf the letter was just to communicate the decision of the Committee. The Vice Chancellor had powers to delegate such functions and therefore it cannot be said that the Registrar acted ultra vires.

132. The Petitioners also argue that the disciplinary decision to expel the 1st petitioner was tainted with bias and failed the independence and impartiality test because some members sat in SDC as accusers, witnesses and investigators and jury to influence the recommendation to expel the 1st Petitioner.

133. I have checked the list of members in attendance in the minutes of 6th September, 2020 and it is my considered view that the Petitioners claim is unsubstantiated. I note from the minutes that one Emily Korir was the invigilator and she was the one who purportedly discovered that the 1st Petitioner's exam card had notes written on it and she took it and forwarded to the Chief Invigilator. There is no evidence of the members who sat in that capacity participated in prosecuting the complaint against the 1st Petitioner.

134. The Petitioners also submits that the Respondent acquiesced on the expulsion and is estopped from going back to the same since it had already served the 1st petitioner with one academic transcript dated 20th March, 2023 recommending her to proceed to year two. They also assert that in view of this, the expulsion decision has been overtaken by events. I have checked the transcript referred to by the petitioners and I do confirm that this is the position. To me that fact did not bar the Respondent from handling the disciplinary case against the 1st Petitioner and subsequently make a decision on the results of the paper in question.

135. The petitioners also argue that section 11.8 of the Respondent's Disciplinary rules and Regulations 2020 bars rights to legal representation thus is in contravention of the Provisions of Article 50 of *the Constitution* and Section 7 of Fair Administrative Actions Act,2015.

136. The said Section 11.8 of the Respondents Disciplinary Rules and Regulations 2020 expressly provides that ;

> " At all meetings of the committee before which a student is summoned, the procedure adopted shall be determined by the committee and the student alone shall be entitled to appear in person. For avoidance of doubt, the committee shall not entertain the audience of advocates or the legal agents on behalf of the students"

137. Article 2(4) of *the Constitution* reads as follows;

> "Any law…that is inconsistent with this Constitution is void to the extent of the inconsistency, any act or omission [in contravention] of [this] Constitution is invalid".

138. Regarding the University statutes that prohibit right to legal representation, the court in Gideon Omare vs Machakos University (supra) held thus: -

> " To the extent that the Respondent's Rules and Regulations Governing the Conduct and Discipline of Students of the University blanketly (sic) and indiscriminately without any qualification(s) prohibits or can be interpreted to prohibit the seeking of legal advice and/

or representation by a Student, Regulation any form of picketing, demonstrations and/or peaceful assembly, Regulations 11 6(c) of the said regulations is unconstitutional…"

139. Guided by the Provisions of Article 2(4) of *the Constitution* and persuaded by the above precedent, it is my view that Section 11.8 of the Respondent Rules and Regulation is unconstitutional for prohibiting rights to legal representation.

140. From the foregoing, it is my opinion that Respondent's Disciplinary Meeting that led to expulsion of the 1st Petitioner was tainted with procedural illegality.

Whether the Petitioners are entitled to the relief they seek.

141. Article 23 of *the Constitution* provides that a court "may grant appropriate relief, including a declaration of rights" when confronted with rights violations.

142. Under the said Article, the Applicant is entitled to 'appropriate relief' which means an effective remedy. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in *the Constitution* cannot properly be upheld or enhanced.

143. As was held by the Constitutional Court of South Africa in Fose vs Minister of Safety & Security [1977] ZACC 6:

> "Appropriate relief will in essence be relief that is required to protect and enforce *the Constitution*. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in *the Constitution* are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all important rights."

144. The courts have recognised that unlawful interference with a citizen's rights give rise to a right to claim redress and if the applicant has a right he/she must of necessity have the means to vindicate it and a remedy if they are injured in the enjoyment or exercise of it. As has been reiterated by the superior courts, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal. (See Rookes vs Barnard [1964] AC 1129 and Ashby vs. White [1703] 2 Ld Raym.938; 92 ER 126.

145. Having already opined that the Respondent's decision to expel the 1st Petitioner was procedurally unfair and was tainted with illegality I find that the 1st Petitioner is entitled to the following orders sought;

    a. A declaration that the expulsion letter dated 18th November, 2022 violated the 1st Petitioner rights to natural justice and is therefore unconstitutional, null and void.

    b. An order of Judicial Review in the Order of Certiorari to remove into this court for purposes of quashing the expulsion letter dated 18th November, 2022.

146. As regards an order of Mandamus to unconditionally reinstate the 1st petitioner as a second year Student at Egerton University, 2023 to continue with her studies I find that this will be prejudicial to the respondent, who despite having been found to have flouted the procedural rules embedded on *the Constitution* and the rules of natural justice, it had a meritorious complaint against the 1st petitioner. I am reluctant to grant this order. Instead, I direct that the 1st Petitioner be reinstated and be subjected to the disciplinary proceedings in the correct manner, as set out herein.

147. There was no evidence and submissions proffered by the Petitioners to demonstrate the unconstitutionality of clauses 11.5 and 11.7 of the Students Rules and Regulations 2020 and in my view this court can neither declare the said clauses unconstitutional.

148. In regards to sections 11.8 of the said Rules and Regulations, I have already opined that it is unconstitutional as it prohibits rights to legal representation.

149. The Petitioners also seek compensation for exemplary, aggravated and general damages for violation of 1st petitioner's fundamental rights of Article 25,27,35,47 and 50 of *the Constitution*.

150. On this prayer, I will, refer to the guidance by the Court of Appeal in Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR. The Court of Appeal made a comprehensive comparative analysis on how other jurisdictions have dealt with the issue. In the end, the Learned Judges expressed themselves as follows: -

> " Consistent with the above judicial experience and philosophy, it seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is "appropriate and just "according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the petitioner's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy."

151. In this case, the Petitioners' rights are certainly vindicated vide an appropriate declaration and other orders. There is however no cogent evidence led by the petitioners to demonstrate that the 1st Petitioner's Rights under Article 27 have been violated. The Respondent in conducting its Disciplinary process did not discriminate against her.

152. I have considered the case Onjira John Anyul vs University of Nairobi (supra) which Petitioners relied on, and also the case of Dismas Polle Mwasambu vs Technical University of Mombasa; Ethics and Anti-Corruption Commission (Interested Party) [2021] eKLR where the court awarded general damages of Kshs. 250,000/= to petitioners whose right to human dignity as protected by Article 28 of *the constitution*, right to fair administrative action as protected by Article 47, right to a fair hearing as protected under Article 50 of *the constitution*.

153. It is my view that in this case, an award of general damages would seem to be vindicating the 1st Petitioner fully. Whilst the process that arrived at the decision to expel her was flawed, the court cannot overlook the fact that she was facing very serious allegations of examination malpractice. Had I found that the decision itself was also irrational or unreasonable, I would have awarded her such damages. Therefore, I make no award of damages.

154. In the end the court grants the following orders;

a. A declaration that the expulsion letter dated 18th November, 2022 violated the 1st Petitioner rights to natural justice and is therefore unconstitutional, null and void.

b. An order of Certiorari quashing the expulsion letter dated 18th November, 2022.

c. An order of Mandamus compelling the respondent to conditionally reinstate the 1st petitioner as a second year Student at Egerton University, 2023 and subject her to the disciplinary proceedings in a fair and just manner.

d. A declaration that clause 11.8 of the Respondent's Students Rules and Regulations 2020 is inconsistent with and irrationally limits Articles 25, 47 and 50 of *the Constitution* on fair hearing and Legal Representation and is thus unconstitutional, null and void.

e. The petitioners shall have costs of this petition.

f. For the avoidance of any doubt, all the other prayers sought and not set out herein are disallowed.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JULY, 2023.

HESTON M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Applicant present

Mr. Murimi for Kisilah for Respondent