



**Walunya v Kenyatta University (Constitutional Petition E470 of 2021)
[2023] KEHC 22407 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E470 OF 2021**

AC MRIMA, J

SEPTEMBER 21, 2023

BETWEEN

KENT WALUNYA PETITIONER

AND

KENYATTA UNIVERSITY RESPONDENT

JUDGMENT

1. In the year 2015, Kent Walunya, the Petitioner herein, was admitted to Kenyatta University, (hereinafter referred to as ‘the University’ or ‘the Respondent’), to pursue an undergraduate Bachelor’s Degree in Law.
2. On 10th June, 2021, the Petitioner was suspended from the university on grounds of examination irregularities in respect of a unit known as LIL 300 and later, through a letter dated 26th July 2021 was discontinued from the university.
3. Prior to the suspension, the Petitioner, in a meeting with the Dean of Studies, was informed that the results of LIL 300 were cancelled for having leaked and students who sat for the paper were required to re-sit it.
4. During investigation of the examination leakage, the Head of Security, one Mr. Waliaula questioned the Petitioner on who in the administration was responsible for the leakage.
5. Subsequently, the Petitioner was invited to the university for the purposes of helping with the investigation. In the investigation, inquiries were made on when the Petitioner got to know about the leakage.
6. In his response, the Petitioner informed the members in the meeting that he only got to know of the leakage when the Dean of Studies informed him about it.



7. On the information that the meeting was not a disciplinary meeting, the Petitioner was requested by some of the members to give information as to whether he was in any WhatsApp Group that discussed the examination and to admit if he had the examination paper prior to sitting it.
8. Subsequently, the Petitioner continued with his studies, sat again for LIL 300, passed, and by the time he was supposed to apply for admission to The Kenya School of Law, he had completed all his units required for graduation.
9. On visiting the Dean of Studies, he got the confirmation that all his units were in order and was eligible to graduate. She, (Dean of Studies) wrote the Petitioner a letter to the Kenya School of Law indicating that he had completed all his units, save for Legal Research and Writing, a matter the Dean assured the Petitioner that it will also be well sorted out.
10. The Petitioner's name was included in the list forwarded to Kenya School of Law and on that basis applied to the School seeking admission.
11. The Petitioner eventually did not get an admission letter to the Kenya School of Law. Upon following it up with the Dean of Studies, he was informed that the matter involved the unit LIL 300 and was requested to wait for its resolution.
12. The Petitioner was subsequently invited, through a text message, for a disciplinary hearing in the university's main campus on 24th June 2021 where he was asked to among other things, to admit being the kingpin of the examination leakage, give out the name of person responsible and consent to having seen the examination paper beforehand.
13. The Petitioner denied the accusation. He was informed that a verdict would be delivered the same day and accordingly was asked to wait for it.
14. Eventually, the verdict was not rendered that day. The Petitioner was informed by the Head of Security that it would be sent to him the following day.
15. It is the Petitioner's case that since that day there has been no verdict from the University and despite following it up with the Dean of Studies, he was informed that it would be delivered 'next week'.
16. In the Further Affidavit, the Petitioner deposed that he attended appeal hearing on 2nd December 2021 where the Senate Appeals Committee refused to furnish the Petitioner with evidence used to determine his fate.
17. As a result of the foregoing, the Petitioner was excluded from the list of graduates of 23rd July, 2021.

The Petition:

18. Through the Petition dated 29th October 2021, supported by the Affidavit, the Further Affidavit and Supplementary of Kent Walunya deposed to on 29th October 2021, 10th February 2022 and 22nd March 2022 respectively, the Petitioner sought to vindicate various constitutional violations occasioned to him by the Respondent.
19. Contemporaneously with the filing of the Petition was the application by way of a Notice of Motion which was also supported by the Petitioner's Affidavit deposed to on 29th October 2021.
20. In the application, the Petitioner claimed that vide a letter dated 20th July 2021, he appealed to the Respondent's Senate on the decision to discontinue him from the University despite having sat all his examinations.



21. He claimed that the appeal was never heard and the Senate never communicated the date on when his case was to be heard.
22. In the main, the Petitioner averred that he was not accorded a fair hearing by the University. He pleaded that under Article 47 of *the Constitution* as read with section 4 of Fair Administrative Actions Act, there is an obligation for administrative action to be lawful, reasonable and procedurally fair.
23. The Petitioner pleaded that the Respondent merely mentioned that the Petitioner was involved in leakage but had not adduced any evidence to that end.
24. He averred further that the Respondent had not accorded him the opportunity to receive and examine the evidence that linked him to the irregularity beforehand or at all.
25. The Petitioner further averred that the disciplinary process was not expeditious since it was carried out in the year 2021 while the irregularity occurred in the year 2019.
26. In further faulting the administrative action of the Respondent, the Petitioner pleaded that by being asked to re-sit the examination and taking through a disciplinary process was tantamount to vilifying him twice.
27. The Petitioner further posited that the action of the Respondent barring him from graduating while other students who sat the exam LIL 300 were listed to graduate and subjecting him, alone, to disciplinary proceedings violated his constitutional right not be discriminated otherwise protected in Article 27 of *the Constitution*.
28. The Petitioner further averred that the action of the Respondent that led to omission of his name in the 49th graduation of 23rd July 2021 stripped him of his right to dignity protected under Article 28 of *the Constitution*.
29. It was further his case that the Respondent's decision to discontinue him from further studies without according him fair hearing violated his right provided for under Article 29 of *the Constitution* not to be subjected to torture, physical or psychological, or treated or punished in a cruel, inhuman or degrading manner.
30. The Petitioner embellished the foregoing by stating that he had legitimate expectation that he would graduate alongside his peers and had been treated with cruelty by the Respondent by the indication that he would be cleared for graduation only to be denied eligibility for the same.
31. The Petitioner further averred that he had been subjected to torture by the Respondent's letter to Kenya School of Law indicating that he had completed all the University's requirements only for the Respondent to fail to include his name in the graduation list.
32. The Petitioner further pleaded that he had been denied socio-economic rights and the Respondent's failure to avail information it relied upon to accuse him of irregularity was a derogation of his right to information guaranteed under Article 35 of *the Constitution*.
33. He deposed in the Supplementary affidavit that the claim by the Respondent that one Brian Rono mentioned him adversely in the irregularity was without evidence and that he had never used Telegram application.
34. The Petitioner faulted the minutes of the Respondent disciplinary committee stating that it did not include his request for evidence that was adduced against him during the hearing.



35. The Petitioner further contended that failing to issue him with the verdict and the time and place of hearing of his appeal was violation of his right to information.
36. Based on the foregoing sequence of events, the asserted constitutional and legal provisions violated, the Petitioner sought the following orders in the application;
1. Spent.
 2. That pending the hearing and determination of this Application inter partes, a conservatory order be and is hereby issued restraining the Respondents either by themselves, servants and or representatives from preparing and or publishing the next final graduation for the 50th graduation ceremony scheduled for December 2021.
 3. That pending the hearing and determination of this Application inter partes, a conservatory order be and is hereby issued staying the Respondent's 50th graduation ceremony scheduled for December 2021.
 4. That pending the hearing and determination and final disposal of this Petition, a conservatory order be and is hereby issued restraining the Respondents either by themselves, servants and or any of its representatives from preparing and or publishing the next final graduation for the 50th graduation ceremony scheduled for December 2021.
 5. That pending the hearing, determination and disposal of this Petition inter partes, a conservatory order be and is hereby issued staying the Respondent's 50th graduation ceremony scheduled for December 2021.
 6. That an order be and is hereby issued that the Respondent Expedite the hearing of the Petitioner's appeal on a priority basis and a decision made and communicated to the Petitioner before the Respondent's 50th graduation ceremony scheduled for December 2021.
 7. Costs be in the cause.
 8. Any other relief that this Honourable Court is pleased to issue in the circumstances.
37. In the main, he prayed for the following reliefs: -
- a. A declaration be hereby issued that the respondent has violated Articles 10, 25, 27, 28, 43, 47, 48, 50 and 55 of *the Constitution* of Kenya 2010.
 - b. A declaration that the suspension and discontinuation of the Petitioner from the Respondent institution was null and void ab initio and the Petitioner be re-admitted to join the University's Bachelor of Law and be admitted into the Respondent's 50th Graduation Ceremony scheduled for December 2021.
 - c. A declaration that the discontinuation of the Petitioner from the Respondent University pursuant to an allegation of examination irregularity constitutes a flagrant abuse of the Petitioner's right to fair hearing and fair administrative action.
 - d. Judicial Review orders of certiorari quashing the decision of the respondent to discontinue the Petitioner's studies at the Respondents institution.
 - e. A declaration that the Petitioner's rights as stated in the petition were violated.
 - f. A compensation for violation of the Petitioner's rights as guaranteed under *the Constitution*.



- g. Costs of this Petition be borne by the Respondent.
- h. Such other ordered this Honourable Court shall deem fit.

The Submissions:

38. In its written submissions dated 10th February 2022, the Petitioner reiterated violation of Article 47 of *the Constitution* by refereeing to the decision of the Court of Appeal in Judicial Service commission -vs- Mbalu Mutava & Another where the importance of fair administrative action in the 2010 constitutional dispensation was discussed as follows;

Article 47(1) marks an important transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the bill of rights.

39. As regards violation of his fair hearing rights under Article 50 of *the Constitution*, the Petitioner relied on the case of Irfen Temel & Another -vs- Turkey, Application No. 3645802/02 where it was observed;

The court reiterates that the right to education does not in principle exclude recourse to disciplinary measures, including suspension or expulsion from an educational institution in order to ensure compliance with its internal rules.

...however, such regulating must not injure the substance of the right nor conflict with other rights enshrined in the convention or its protocols.

40. The Petitioner further submitted that in High Court Miscellaneous Application No. 1029 of 2007, Winrose Gathigia -vs- Kenyatta University, the Court spoke to Article 50(2)(b) in demonstrating how the Responded breached his rights. It was observed;

The letter did not contain sufficient particulars of the offence that the petitioner was to face to enable the Petitioner mount her defence.

41. The Petitioner fortified his violation of fair hearing rights by relying on the decision in Miscellaneous Application No. 264 of 2013, Republic -vs- Kenyatta University Ex-Parte Gatetua Macharia Kennedy where it was observed: -

... My finding is affirmed by the fact that the Applicant was not provided with the report that formed the basis of the accusation against him. No witness was called to give evidence against him. In short, no evidence was adduced in support of the charges facing him.

42. In embellishing the violation of his right to legitimate expectation, the Petitioner referred the Court to the decision in Re Westminster City Council (1986) A.C 668.

43. In the end, the Petitioner urged the Court to find that his Constitutional rights had been violated and to allow the Petition.

The Respondent's case:

44. Kenyatta University opposed both the application and the Petition through the Replying Affidavit and Further Affidavit of Dr. Bernard Kivunge, the Acting Registrar (Academic) deposed to on 14th January 2022 and 10th March 2022 respectively.



45. He deposed that the examination in dispute was administered on or about 13th December 2019. In January 2020, it was discovered that there was an irregularity occasioned by leakage which was shared by students including on WhatsApp before the examination date.
46. It was his case that upon investigation by a Committee appointed by the Vice Chancellor, four students were suspended. However, the Committee sought more time since it was of the view that more students were culpable.
47. He deposed that while investigations were ongoing, Covid-19 struck and consequently, many activities including disciplinary hearing in the University ground to a halt, were suspended or got disorganized.
48. He deposed that the University was closed to late September 2020 and when it was reopened, it was in phases and in a scaled down manner thereby occasioning delays in finalizing the investigations.
49. He deposed that despite the foregoing, the Committee completed its investigations and submitted its report to the Vice Chancellor on 21st December 2020 where 15 students including the Petitioner herein were recommended for suspension. Additionally, the results of the entire LIL 300 class were nullified and fresh examinations recommended.
50. It was his case that the nullification of the results was not a reason to let the students involved in the malpractice walk scot-free.
51. He deposed further that the period April 2021 and May 2021, Covid escalated and there was cessation of movement in and out of Nairobi, slowing down activities including disciplinary hearing.
52. Dr. Kivunge stated that when disciplinary proceedings resumed, the Committee was satisfied that there was prima facie evidence that the Petitioner was involved in the examination irregularities and on 10th June 2021, was accordingly issued with a suspension letter pending his appearance before the disciplinary committee on 24th June 2021.
53. Based on the foregoing, it was his deposition that the Respondent acted swiftly and there was no deliberate or unreasonable delay. He stated that members of the Students Disciplinary Committee are full time employees who handle many other cases and not just examination irregularities.
54. With respect to the proceedings of 24th June 2021, he deposed that the Petitioner did not complain of insufficiency of notice. Instead, he told his side of the story and was given a chance to ask questions.
55. It was his case that the letter of 15th June 2021 inviting the Petitioner to the disciplinary hearing communicated succinctly the allegations facing the Petitioner and he did not request to be furnished with any documents or evidence prior to attending the disciplinary proceedings.
56. He deposed that the Students Disciplinary Committee considered the Petitioner's defence and found him guilty. It was his case that in the discontinuation letter of 26th July 2021, the Petitioner was informed of his right to appeal.
57. The Respondent rebutted the claim of discrimination stating that the Petitioner failed to give sufficient particulars to enable it respond.
58. Similarly, he deposed that the Petitioner's claim of legitimate expectation of graduating in July 2021 and then in December 2021 is without basis since he understood the investigations were ongoing.
59. It was his case that despite sitting exams in the second time, it did not absolve him of the irregularities.



60. In conclusion, Dr. Kivunge urged the Court not to allow the Petition and the application as it occasion prejudice to the Respondent in ways money cannot compensate. He prayed that it was in public interest that the Respondent be allowed to carry on with the graduation.

The submissions:

61. The Respondent filed written submissions dated 11th March 2021. It identified the issues for determination as whether; the Respondent has the right to discontinue the Petitioner; the Disciplinary process was fair and the limited role of this Court in matters involving internal dispute resolution mechanisms.
62. On the first issue on discontinuation of the Petitioner, the Respondent justified its action by submitting that it has a responsibility of ensuring that it maintains its status and standards by allowing only those above reproach to graduate.
63. It drew support of the foregoing position from the decision in Daniel Inginda Aluvaala & Another - vs- Council of Legal Education & Another (2017) eKLR where it was observed that;

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 the students who fail to satisfy the examiner's assessment at the final examination.

64. The Respondent further relied on the decision in Waweru Thini -vs- University of Nairobi (2020) eKLR where the Court cited the decision in JMOO -vs- The Board of Governors of St. M's School, Nairobi 2015 eKLR where it was made remarks on the responsibility of students while claiming the right to education;

...however, it must be restated and re-emphasized that rights have their corresponding responsibilities, and responsibility of students in school is to abide by the school's regulations. It would certainly not be in the best interest of the Petitioner, or of other students in the respondent school, were the Respondent to ignore disruptive conduct on the part of the Petitioner, or of any other student.

65. On the second issue on propriety of the disciplinary process, the Respondent submitted that the Petitioner was taken through a rigorous process to determine his culpability.
66. It was submitted that the Petitioner was given an opportunity to present his case and it was established that he needed to be subjected through Students Disciplinary Committee.
67. In denying the incidence of delay and procedural unfairness, it was submitted that the Petitioner came to the hearing with no objections as to the short notice and that during hearing, the Petitioner did not request to cross examine any witness.
68. The Respondent buttressed its case by citing the decision in Waweru Thini -vs- University of Nairobi (2020) eKLR where the learned Judge found that the Petitioner was accorded a fair hearing for been informed of the charges he was facing and opted to proceed without seeking an adjournment and without raising any issues.
69. The Respondent further justified its decision and the unique challenges faced by universities in disciplinary process involving students and stated that based on provision of section 63(2) of the



Universities Act, a University may act on general evidence the character or conduct of the person concerned and shall not be bound by the rules of evidence as set out in the Evidence Act.

70. On the last issue of this Court's role in interfering with internal dispute resolution mechanisms of the Respondent, it was submitted that the Student Disciplinary Committee is a quasi-judicial body best suited to deal with student matters in the university.

71. The foregoing submission found favour in the case of Daniel Ingida Aluvaala & Another -vs- Council of Legal Education & Another (2017) eKLR where it was observed: -

Self-restraint adopted by the Judiciary in exercising the power of review in academic matters has left certain academic decisions or regulations governing trainings and qualifications of professionals untouched. These areas are not disturbed by the Courts unless the decision under challenge is so fragile and unsustainable.

If the decision is legal and lawful, the reasonableness and propriety of the same may not be questioned by the courts. In other words, among the Wednesbury principles of illegality, irrationality and impropriety, if the decision can get over the first test, it may withstand the other two tests, unless it is shockingly unreasonable, perverse or improper.

72. In conclusion, the Respondent urged the Court to resist the invitation by the Petitioner to consider the merits of the decision to discontinue the Petitioner. It prayed that the Petition is dismissed with costs.

Analysis:

73. Having read and understood the parties' cases, this Court finds that the dispute revolves around the issue as to whether the Petitioner was accorded a fair hearing before the Respondent in line with Article 47 of the Constitution.

74. The respective parties' cases have been well captured above. It is not in doubt that the Petitioner was a Law student at the University who was to graduate on 23rd July, 2021 if no issue had arisen. It is also not in doubt that all students in the Respondent's institution are bound by and must adhere to the rules and guidelines governing the affairs and programmes of the University.

75. Whenever a disciplinary issue arises against a student, the Respondent is sufficiently empowered to address such through the laid down internal processes and has powers to give appropriate verdicts which may include expulsion of a student from the University.

76. Of paramount importance is the fact that even when the University is guided by the law and its rules in undertaking its internal processes, the institution must always remember that our country has a Constitution, which was promulgated in 2010, which is the supreme law. All other laws, regulations, policies and processes must, therefore, and always be in line the Constitution.

77. That nexus is the gist of this Petition and the focus is Article 47 of the Constitution.

78. Article 47(1), (2) and (3) of the Constitution states that: -

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.

79. The legislation that was contemplated under Article 47(3) is the Fair Administrative Actions Act. Section 4 thereof provides that: -

- 4. Administrative action to be taken expeditiously, efficiently, lawfully etc.
 - (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.



80. Section 2 of the Fair Administrative Actions Act defines an ‘administrative action’, an ‘administrator’ and a ‘decision’ as follows: -

‘administrative action’ includes –

- i. The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- ii. Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

‘administrator’ means ‘a person who takes an administrative action or who makes an administrative decision’.

“decision” means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be;

81. The Court of Appeal in Civil Appeal 52 of 2014 Judicial Service Commission vs. Mbalu Mutava & Another (2015) eKLR addressed itself to Article 47 of *the Constitution* as follows: -

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

82. In South Africa, the Constitutional Court in *President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others CCT16/98* 2000 (1) SA 1 ring-fenced the importance of fair administrative action as a constitutional right. The Court referred to Section 33 of the South African Constitution which is similar to Article 47 of the Kenyan Constitution. The Court expressed itself as under: -

Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...

83. Article 47 of *the Constitution*, therefore, goes beyond being a mere codification of the common law principles on administrative action. Its main purpose is to ‘... regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of



administrative justice...'. The entrenchment of Article 47 in *the Constitution* was a deliberate move by Kenyans in demanding inter alia fairness, transparency and accountability in public administration. Public officers must, therefore, embrace the paradigm shift and engage the right gear in ensuring that the manner in which they make and execute administrative decisions complies with Article 47 of *the Constitution* and the Fair Administrative Actions Act.

84. This Court will now apply the foregoing to the facts in this case. As said, the main issue is whether the Petitioner was accorded an expeditious, efficient, lawful, reasonable and procedurally fair process during the disciplinary hearing both before the Disciplinary Committee and on appeal.
85. According to the University, the proceedings before the Disciplinary Committee on 24th June 2021 were carried out within the law and that the Petitioner did not complain of insufficiency of notice. Instead, he told his side of the story and was given a chance to ask questions. It was also contended that in its letter of 15th June 2021 inviting the Petitioner to the disciplinary hearing, the University communicated succinctly the allegations facing the Petitioner and that the Petitioner did not request to be furnished with any documents or evidence prior to attending the disciplinary proceedings.
86. It is, therefore, apparent that the Petitioner was invited to attend the impugned disciplinary proceedings vide a letter dated 15th June, 2021. The Petitioner obliged. Further, it is the Respondent's position that the Petitioner was not accorded any evidence against him for the reason that he did not request for such.
87. Article 47(2) of *the Constitution* has it that 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. That is replicated in Section 4(2) of the Fair Administrative Actions Act which provides that every person has the right to be given written reasons for any administrative action that is taken against him.
88. The meaning that can be attributed to the above provisions is that steps must be taken to furnish the affected person with the reasons as to why the action against him/her/it is instituted.
89. In this case, the reasons for indicting the Petitioner were attributed to the investigations that were carried out by the Committee which was formed by the Vice-Chancellor to look into the issue of the leaked examination.
90. The Committee carried out its mandate and, in the course, interrogated several persons including the Petitioner. It was on the basis of the recommendations of the Committee that the disciplinary proceedings were initiated against the Petitioner.
91. The manner in which an administrator is to discharge the constitutional and legal burden on fair hearing is provided for in Section 4 of the Fair Administrative Actions Act. In particular Section 4(3)(g) states 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—
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
92. Put succinctly, the Respondent was, therefore, under a mandatory obligation to supply any information, materials and evidence which it intended to rely upon at the hearing. Such included the report of the Committee or witness statements.



93. Therefore, the Respondent's claim that the Petitioner did not request for such evidence does not hold. The constitutional and statutory duty is bestowed upon the Respondent and not otherwise.
94. As a result of the failure on the part of the Respondent, it can be noted that the entire chain of complaints laid by the Petitioner revolve around that failure. Had the Respondent, therefore, complied with the duty, may be the instant proceedings may not have been necessary.
95. Given that the Petitioner was not accorded the necessary materials to enable him prepare for his defence before the Disciplinary Committee, then the resultant proceedings and the verdict thereof stand in violation of *the Constitution* and the law.
96. Further, the Petitioner contended that even when he appealed against the decision of the Disciplinary Committee to the Senate Appeals Committee, the said Committee also refused to furnish the Petitioner with evidence used to determine his fate. As such, the Senate Committee also acted in violation of *the Constitution* and the law.
97. Having said as much, this Court, now and hereby, finds and hold that the decision by the Respondent to discontinue the Petitioner from the University cannot stand the test of *the Constitution* and the law. The decision infringes Article 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act.
98. The Petitioner has also sought for damages as a result of the constitutional violations. To this Court, in view of the relationship between the parties, this is a case where declarations and other orders in the nature of judicial review suffice. The Court declines to award damages for the infractions.

Disposition:

99. Deriving from the above, the Petition and the application herein are hereby determined as follows: -
 - a. A declaration be and hereby issue that the decisions of the Respondent's Students Disciplinary Committee, the Senate Appeals Committee and/or the Respondent herein in suspending and discontinuing the Petitioner from the University were contrary to Article 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act. The said decisions are, therefore, constitutionally infirm, null and void ab initio.
 - b. An order of Judicial Review in the nature of Certiorari hereby issue bringing the said decisions of the Respondent's Students Disciplinary Committee, the Senate Appeals Committee and/or the Respondent herein in suspending and discontinuing the Petitioner from the University before this Court for quashing. The said decisions are hereby quashed.
 - c. An order hereby issues that the Petitioner be and is hereby reinstated into the studentship of the University and that he is eligible to graduate in the next graduation ceremony of the University save for other grounds.
 - d. Each party shall bear its own costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at KITALE this 21ST day of SEPTEMBER, 2023.

A. C. MRIMA

JUDGE

