THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 36 OF 2019

DENIS WAHOME MURIITHI.....PETITIONER

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

JUDGMENT

1. The Petitioner, Dennis Wahome Muriithi, was a student at the Respondent, Kenyatta University, having been admitted in the year 2011 to pursue undergraduate studies leading to the award of a degree in Bachelor of Science (Computer Science). He completed his studies in November 2016 and was scheduled to graduate in December 2016 but was not allowed to do so leading to the filing of this petition.

2. The Respondent is a public university established under the provisions of the Kenyatta University Act. The Respondent will henceforth be simply referred to as the University.

3. Through the petition dated 23rd January, 2019, the Petitioner seeks the following orders:

a) A declaratory order that by declassifying the Petitioner from the Respondent's list, the Respondent has contravened the Petitioner's fundamental rights under Articles 26, 27, 28, 35, 40, 43(1)(f), 47 and 50 of the Constitution;

b) That subsequent to the above, the Petitioner be deemed to have passed the disputed units and be unconditionally cleared for final graduation at the Respondent's institution and/or the Respondent do release to the Petitioner all his academic transcripts to enable him pursue his academic dreams in another institution;

c) An order that the Respondent do pay the Petitioner General Damages;

d) That this Honourable Court be pleased to make any other or further Orders/Directions to secure the enforcement of the Petitioner's fundamental rights as it will deem fit.

e) An order that the Respondent do pay to the Petitioner costs of this Petition.

4. The Petitioner's case as gleaned from the pleadings is that following the completion of his studies at the University in November 2016 he was duly classified by the Engineering and Technology Department as having fulfilled all the requirements for the award of a degree and was accordingly scheduled to graduate in December 2016 as confirmed by the provisional graduation list. It is the Petitioner's case that he thereafter commenced the clearance process with the University but towards the final stages of the process, he learned that his name had been arbitrarily removed from the final graduation list.

5. The Petitioner avers that after his removal from the graduation list, he was subsequently suspended from the University on 30th November, 2016 for allegedly tampering with his online examination grades. He was thereafter summoned by a letter dated 25th January, 2017 to attend disciplinary proceedings conducted by the University's Student Disciplinary Committee ("Disciplinary Committee") on 25th January, 2017.

6. The Petitioner avers that the Disciplinary Committee found him guilty of tampering with his online marks in some units. Following this finding a determination was made, as communicated in the letter dated 2nd June, 2017, to discontinue him from further studies at the University.

7. The Petitioner states that he appealed the decision of the Disciplinary Committee to the University's Disciplinary Appeals Committee ("Appeals Committee") through a letter dated 9th February, 2017 and appeared before it on 20th July 2017. The Appeals Committee, however, upheld the decision of the Disciplinary Committee through a letter dated 25th January, 2018.

8. The Petitioner's case is that the Disciplinary Committee comprised of the University's staff members who had a pre-determined mindset about his case as evidenced by a letter written long before he even finished his studies**.** The Petitioner asserts that his case was not heard by the Disciplinary Committee and Appeals Committee as they failed to give him an opportunity to defend himself before making their decisions.

9. It is further the Petitioner's case that he was not notified of the charges prior to the hearing and the disciplinary proceedings took one and a half years which was too long thereby violating his rights to fair hearing and fair administrative action.

10. The Petitioner avers that it was impossible for him to have interfered with the online results as he was not a staff member of the University and he therefore had no access to the online data. He additionally deposes that no one testified against him and no evidence was adduced during the proceedings to ascertain the hacking of the system to change his results. He further avers that the University's rules and regulations on influencing and tampering with online examinations do not create any cognizable offense of an exam irregularity that would lead to the penalty of discontinuation from studies. It is also his contention that the decisions of the Disciplinary Committee and the Appeals Committee were malicious, ill-informed, without merit and therefore *ultra vires.*

11. The Petitioner avers that despite trying to get the results of the undisputed subjects from the University to enable him to transfer to another university, the University had refused to release the results to him. Further, that his attempts to sit examinations for the disputed units afresh have been unsuccessful as the University contends that he is no longer its student. He additionally avers that this situation has made potential employers not consider him for employment opportunities.

12. The Petitioner accuses the University of violating his rights to fair administrative action under Article 47, fair hearing under Article 50, life under Article 26, equality and freedom against discrimination and human dignity under Articles 27 and 28, and property under Article 40 by failing to inform him of the charges of exam tampering, and failing to grant him an opportunity to defend himself before suspending and discontinuing him from his studies. According to the Petitioner, an award of Kshs. 3,000,000 as general damages would vindicate the violated constitutional rights and fundamental freedoms.

13. The Petitioner annexed assorted exhibits to his supporting affidavit.

14. The University opposed the petition through a replying affidavit sworn on 20th June, 2019 by its Acting Deputy Vice-Chancellor, Professor Joseph Ngeranwa. Professor Ngeranwa avers that for the University to award a degree, the student must pass all the required units, meet the financial obligations, have no pending disciplinary case, and the online examinations data should correspond with the physical examination records held by the departments.

15. The University while confirming that the Petitioner was set to graduate in December 2016, states that whilst verifying the examination data for the Petitioner and the other students prior to the approval of the final graduation list, the Petitioner was suspended for being involved in an examination irregularity.

16. The University further deposes that following the Petitioner's suspension, he was invited to appear before the Disciplinary Committee for interfering with online examination data in 3 units as follows: SMA 200 from grade E to B; SCO 301 from grade E to B; and SMA 104 where there was no mark to grade C.

17. The University states that during the disciplinary proceedings, it emerged that the Petitioner was aware that the units and grades in issue had been altered and suspected that his friends could have changed his grades without his knowledge as they knew he had retakes. It is deposed that the Petitioner submitted the suspect's number but refused to give the name. It was therefore concluded that the Petitioner was not honest in the oral submissions.

18. It is the Respondent's averment that it was evident from the disciplinary proceedings that the Petitioner had contravened the University regulations on examinations. The University's case is that the Disciplinary Committee found the Petitioner guilty of influencing the tampering of his grades and proceeded to recommend his discontinuation in line with the University's Regulations on Penalty for Examinations Irregularity.

19. According to the University, the Petitioner was informed of the accusations against him and given a chance to prepare and respond to the accusations at the hearing. It is therefore averred that the disciplinary procedures were fair, just and adhered to the rules of natural justice. It is the University's case therefore that the petition seeks to sanctify the action of illegally changing examination results with a view to enhancing degree classifications which is bound to negatively impact the public and undermine the credibility and integrity of the degrees awarded by the University. The Court is consequently asked to dismiss the petition with costs.

20. The University annexed various documents to the replying affidavit in support of its case.

21. The Petitioner swore a further supporting affidavit on 14th September, 2019 in response to the Respondent's replying affidavit. Through the affidavit he denied influencing the tampering of examination results as he had already completed his studies and was looking forward to his graduation.

22. The Petitioner deposes that the University was dishonest as it failed to adduce evidence to support the allegation that he had hacked the system, despite having an IT Department with capabilities to retrieve evidence or prove such allegations. He additionally avers that the

person who detected the irregularities did not appear before the Disciplinary Committee to give the details of the tampering.

23. The Petitioner states that Section 4(3)(f) & (4)(c) of the Fair Administrative Action Act, 2015 was not complied with in respect of his case as he was not accorded an opportunity to cross-examine any witness. It is therefore his case that the proceedings were based on hearsay as no investigative report was produced.

24. The Petitioner states that the disputed units are in relation to his studies in the 1st, 2nd and 3rd years and he questions why it took the University that long to detect the alleged examination irregularities noting that one cannot proceed to another academic year without being successful in all their units for the previous year. He avers that he had been cleared by the other departments including the academic department which had given him the green-light to graduate.

25. The first issue identified by the Petitioner in his written submissions dated 1st October, 2019 is whether the disciplinary proceedings were fair. The Petitioner submits that the disciplinary proceedings were irregular, malicious and unlawful as they violated his right to fair administrative action under Article 47 of the Constitution. It is the Petitioner's case that no investigative report was tendered. Further, that the proceedings were based on hearsay as the allegations were not corroborated by any witness and neither was any documentation tendered as evidence. The Petitioner contends that despite providing the telephone number of the suspect, the suspect was not called to testify.

26. It is further submitted that the disciplinary process was not procedural as it was not carried out in compliance with the rules of natural justice and therefore violated the Petitioner's constitutional right to a fair hearing and fair administrative process. It is urged that, as provided by Article 25 of the Constitution, the right to a fair trial cannot be limited. The Petitioner supports his case by relying on the decisions in **Constitutional Petition No. 365 of 2012, Eliud Nyauma Omwoyo & another v Kenyatta University** and **De Souza v Members of Tanga Town Council,1961(EA) 377.**

27. The second issue submitted upon by the Petitioner is whether his legitimate expectation and constitutional rights were violated. It is submitted that the Petitioner passed all the examinations for the previous academic years without any queries raised by the University. The Petitioner contends that he was eventually listed in the provisional graduation list which implied that he had qualified to graduate and he reasonably expected to graduate.

28. The Petitioner submits that the University's failure to inform him of the case against him and to hear him before removing his name from the graduation list violated his right as he had a legitimate expectation to a fair hearing as provided in Article 50 of the Constitution. The Petitioner supports his argument by relying on the cases of **Serah Mweru Muhu v Commissioner of Lands** (citation not provided); **Republic v Kenyatta University Ex Parte Martha Waihuini Ndungu [2019] eKLR;** and **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR.**

29. On the third issue as to whether he is entitled to general damages, the Petitioner submits that he has suffered greatly since being discontinued from the University. It is the Petitioner's case that he has no source of income and his only route to success was his education which was denied by the University. The Petitioner relies on the decision in **Francis Ongele O'palla v Attorney General [2012] eKLR** and contends that he is entitled to damages as one of the remedies for the violation of his constitutional rights.

30. In response to the Petitioner's submissions, the University filed written submissions dated 28th November, 2019. The University submits that contrary to the Petitioner's allegation, the proceedings before the Disciplinary Committee complied with the relevant constitutional provisions. It is submitted that upon the discovery of the irregularities in the Petitioner's online examinations data he was immediately informed of his suspension through the letter dated 30th November, 2016 and a hearing scheduled before the Disciplinary Committee for 25th January, 2017. Further, that the Petitioner's removal from the final graduation list was fair as the University had to balance the right of the Petitioner to graduate and the need to ensure that degrees are awarded to deserving graduates. Reliance is placed on the case of **Alice Njeri Ngichiri v Kenyatta University [2012] eKLR** in support of the submission.

31. It is submitted that the University adheres to the rules and regulations which guide the conduct of the students in relation to examinations and all students are expected to comply with those guidelines. The University contends that it undertook all the necessary procedures to ensure that the Petitioner was heard and a fair determination made. Reliance is placed on the decisions in **Oluoch Dan Owino v Kenyatta University [2014] eKLR** and **Alice Njeri Ngichiri v Kenyatta University [2012] eKLR.**

32. The University submits that the Petitioner did not request for the investigation report during the disciplinary proceedings and the appeal. It is stated that the Petitioner admitted that he knew that his results had been tampered with and he cannot therefore claim to be unaware of its extent. The University relies on the decision in **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR,** and asserts that the procedure for determining matters of examination irregularities was carried out in full cognizance and application of the rules of natural justice and without unjust delay and hence complied with the constitutional right of fair administrative action.

33. The University contends that the Petitioner is not entitled to any of the reliefs sought as the University has demonstrated that its actions were lawful and adhered to the rules of natural justice. It is additionally argued that even if the Court were to find in favour of the Petitioner then general damages are not awardable as held in **Captain (RTD) Charles Masinde v Augustine Juma & 8 others [2016] eKLR** and **Alice Njeri Ngichiri v Kenyatta University [2012] eKLR.**

34. From the pleadings and submissions of the parties in this matter, it is not in dispute that the Petitioner was a student at the University who paid all his fees prior to completion of his studies in November 2016. Likewise, it is not in dispute that the Petitioner was taken through a hearing before the Disciplinary Committee before the adverse decision of discontinuing him was taken. This decision was confirmed by the Appeals Committee.

35. In the circumstances, the question to be answered in this judgement is whether the disciplinary process met the constitutional standards.

36. Generally speaking, education processes should remain free from judicial interference and from the imposition of adversarial procedures which diminish the cooperative relationship between the education institution and the learner. Nevertheless, courts have undertaken review of disciplinary actions in academic institutions in order to ensure compliance with the rules of natural justice. According to William M. Beaney and Jonathan C. S. Cox in their article **"Fairness in University Disciplinary Proceedings", 22 Case W. Rsrv. L. Rev. 390 (1971),** one of the functions of the courts is to review whether the disciplinary procedures comport with the requirements of due process.

37. Essentially courts are in agreement that for serious charges, carrying a penalty of probation, suspension, or expulsion, the student should be given notice of the charges and a hearing in which the university is required to present evidence of the violation and the student is given an opportunity to refute the evidence or justify his conduct. Majority of the court decisions are against arbitrary or one-sided actions by the education institution in response to alleged violation of its rules.

38. In the persuasive United States of America case of **French v Bashful 303 F. Supp. 1333 (E.D. La. 1969)**, the Court reasoned that the valuable nature of the right to education and the relative seriousness of the possible punishment of probation, suspension, or expulsion warrants greater procedural safeguards.

39. Every student has the right to education and the right to constitutional due process. Whenever a student is deprived of the right to education through disciplinary proceedings such as suspension or expulsion, the student is entitled to due process. This includes the right to notice and a fair hearing prior to the administration of any harsh punishment.

40. The material part of Article 47 of the Constitution provides for the right to fair administrative action as follows:

> **(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.**

41. Additionally, the Fair Administrative Action Act, 2015 at Section 4(3)&(4) details the ingredients of fair administrative action thus:

> **(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.**

42. Section 7(2) of the Fair Administrative Action Act, 2015 provides grounds upon which a court or tribunal may review an administrative action. The grounds include bias, procedural impropriety, ulterior motive, failure to take into account relevant matters, abuse of discretion, unreasonableness, violation of legitimate expectation or abuse of power. It is apparent from a reading of the stated provision that the court is being called upon to review the decision-making process in order to determine whether the Article 47 constitutional right to fair administrative action was complied with. In the instant case, the Court is required to ensure that the disciplinary process by the University complied with the requirements of procedural fairness.

43. The importance of the constitutional right of fair administrative action was appreciated in the South African case of **President of the Republic of South Africa & others v South African Rugby Football Union & others (CCT16/98) 2000 (1) SA 1** where it was held that:

> **"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…"

44. In conducting review of disciplinary proceedings, the right to fair administrative action cannot be divorced from the right to fair hearing provided for under Article 50 of the Constitution even though the rights are distinct as observed by the Court of Appeal in **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR.**

45. In my view, one of the purposes of the right to fair administrative action is to protect and affirm the right to a fair hearing. The principles of natural justice require that a person receives a fair hearing before a decision that will adversely affect him or her is made. Where a party applies for review of an administrative action on the ground that procedural fairness was not adhered to, the court is required to interrogate the procedures adopted by the administrator in order to determine whether there was compliance with the principles of fair administrative action.

46. The above statement finds support in the Indian case of **B.C. Chaturvedi v Union of India, 1995(6) SCC 749** where it was held that:

"The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The disciplinary authority is the sole judge of facts. The Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence."

47. In the case at hand this Court is required to consider whether the principles of natural justice were complied with by the University in respect to the Petitioner. The Court's scrutiny is mainly focused on the procedural aspect of the matter considering that this is not an appeal against the decision of the University. In light of the provisions of the Fair Administrative Action Act, 2015, the Court is now required to peruse the evidence that was adduced in order to determine whether the decision that was confirmed by the Appeals Committee was reasonable. It should, nevertheless, be noted that this Court cannot make a decision for the Disciplinary Committee and the Appeals Committee but only examine whether they arrived at their decisions in line with the principles of fair administrative action and fair hearing.

48. The standards applicable to court trials cannot be applied to university disciplinary committees. Nevertheless, the record must show that the basic requirements of the rules of natural justice were complied with in any particular case. The need to have some form of proceedings becomes very important where the sentence is harsh like in the case of the Petitioner. Discontinuation of studies renders all the work put in by the student and the money invested worthless.

49. The need for fairness in disciplinary proceedings finds support in the decision of the Supreme Court of India in **The State of Rajasthan v Heem Singh, Civil Appeal No. 3340 of 2020** where it was held that:

"In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so, would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

50. The University has been accused of not complying with the principles of natural justice. It was therefore incumbent upon it to adduce evidence rebutting the allegation. The University has not provided a record of the proceedings so that the Court can verify that the charge was read to the Petitioner and evidence adduced in support of the allegation of tampering with online examination results. Instead, the University provided minutes dated 22nd May, 2017 in which the Petitioner's case was discussed and a decision that he be discontinued arrived at. This in my view is akin to providing a judgement to an appellate court without proceedings and it makes it difficult to determine whether the claim by the Petitioner that no evidence was adduced against him is correct or not.

51. In a similar scenario, the Court held in the case of **Republic v Chuka University Ex-Parte Kennedy Omondi Waringa & 16 others**

[2018] eKLR that:

> **"104. The proceedings simply show the Faculty, Student's details, charges against the respective student, responses by the student, mitigation of the student and the observations by the disciplinary committee and signatures by committee members, which scenario is replicated by the Grievances Handling and Appeals Committee which merely rehearsed what was before the Students Disciplinary Committee without referring to the evidence that was tendered against the respective applicants.**
>
> **105. What appears therefore in the proceedings are situations where the students were being taken through a trial where they were expected to prove their innocence as opposed to their being treated as innocent until proven guilty.**
>
> **106. The findings of the Students Disciplinary Committee were therefore only based on what the students are said to have stated because, for example, it is not on record as to who was taking the video clips which identified some of the applicants' involvement in the acts complained of.**
>
> **107. In my humble view, it is not enough that there were some charges framed against the applicants by the University. It must be shown that those charges were read out to them by a person and evidence tendered to prove those charges, and the students given an opportunity to be represented by an advocate and to cross examine their accusers.**
>
> **108. Since the culpability of the applicants was based on adverse evidence against them that evidence tending to proof the charges levelled against them must be evident on record. No such evidence was adduced in this case."**

52. A perusal of the evidence placed before this Court by the parties confirms that the Petitioner was taken through a disciplinary procedure that did not comply with the minimum standards of fair administrative action. Matters were made worse by the manner in which his appeal was conducted. There is no evidence that the Petitioner's appeal was considered. All the Petitioner was told through the letter dated 25th January, 2018 was that **"the Committee considered your appeal and I regret to inform you that it was unsuccessful."**

53. The right to a fair hearing extends to appeals. Somebody whose appeal is being dismissed is entitled to know the reasons as to why the appeal was not successful. I find support for this statement in the case of **Gideon Omare v Machakos University [2019] eKLR** where it was held that:

> **"…"Appeal" is defined in Black's Law Dictionary, 10th Edition at page 117 inter alia as "A proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal." Ballentines Law Dictionary on the other hand defines the same word at page 29 inter alia as "The process by which a court or a higher level administrative body is asked to review the action of an administrative agency." Clearly, what is required is not just a confirmation of the agency's decision as the Senate purported to have done in this matter but a review of the said Student's Disciplinary Committee's decision."**

54. In light of my finding that the disciplinary proceedings did not meet the required standards of fair administrative action it follows that the University violated the Petitioner's right to fair administrative action under Article 47 and right to fair hearing under Article 50. Those are the only rights that were violated because I find no evidence to support the Petitioner's claim that his rights under Articles 26, 27, 28, 40 and 43(1)(f) were violated.

55. What are the appropriate remedies in the circumstances of this case? One of the remedies asked for is a declaratory order to the effect that the Petitioner be deemed to have passed the disputed units and be unconditionally cleared for final graduation at the University. Allowing such a prayer would amount to the Court usurping the role of the University to examine students and award them degrees upon meeting the set standards.

*56. A*lthough it has been found that the University did violate the Petitioner's constitutional rights, the power to make any administrative decisions with regard to examinations and award of degrees remains within the jurisdiction of the University. The appropriate remedy is that found in Section 11(1)(e) of the Fair Administrative Action Act, 2015 which is to set aside the administrative decision and remit the matter to the University for commencement of fresh disciplinary action against the Petitioner to be conducted in accordance with constitutional and legal principles. In order to ensure that the Petitioner's case is processed by the University without undue delay, appropriate orders will accompany this particular remedy.

57. The remaining question is whether the Petitioner is entitled to general damages. In this case I have found that the University violated the Petitioner's right to fair administrative action. That finding does not, however, absolve the Petitioner of the serious allegation of tampering with his grades. In such circumstances awarding general damages may send the wrong message that this Court approves of disregard of the University's rules and regulations. In the circumstances I am persuaded by the holding in **Alice Njeri Ngichiri v Kenyatta University [2012] eKLR** that:

> **"57. In the circumstances, though I do find that there was a violation of the right to be heard and of fair administrative action, and balancing the right of the petitioners to be heard against the greater public interest to ensure that students graduate from our institutions of higher learning with the grades that they deserve, and thus preserve the integrity of our tertiary education, I make no award of damages against the respondent."**

I will therefore not accede to the Petitioner's prayer for general damages.

58. In light of my findings in this judgement, I find that the appropriate orders are as follows:

a) A declaration is hereby issued that the discontinuation of the Petitioner's studies by the Respondent amounted to contravention of his rights under Articles 47 and 50 of the Constitution;

b) The proceedings of the Disciplinary Committee and the Appeals Committee are set aside. The University is at liberty to commence fresh disciplinary proceedings against the Petitioner within ninety days from the date of this judgement. Failure to do so will mean that the University has no case against the Petitioner and the Petitioner will therefore be entitled to graduate in the graduation that will take place immediately after the expiry of the ninety days;

c) The University is directed to release, with immediate effect and not later than 30 days from the date of this judgement, the results for the units with undisputed grades which the Petitioner has undertaken at the University; and

d) The Petitioner is awarded the costs of the proceedings against the Respondent.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF JULY, 2021.

W. KORIR,

JUDGE OF THE HIGH COURT

DATED, COUNTERSIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF JULY, 2021.

J. A. MAKAU,

JUDGE OF THE HIGH COURT