REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

PETITION NO. 1 OF 2017

VICTORIA MUTAI & 28 OTHERS.....PETITIONERS

VERSUS

KIRINYAGA UNIVERSITY.....RESPONDENT

JUDGMENT

1. The Petitioners who are students at Kirinyaga University, a Public University established under the Provisions of the Universities Act No. 42 of 2012 filed the Petition on 14-2-2017 and it was later amended on 27-9-2019. The Petitioners were seeking the following reliefs:

> **(a) A declaration that the respondent has violated the petitioner' constitutional rights and fundamental freedoms as protected under Articles 10, 25c, 27 (1), 29(d), 29(f), 35 (1) (b) 37, 43 (1) (f) , 47, 48, 50 (1) 50 (2) (a) (b) (c) and (g) and 55 of the Constitution.**
>
> **(b) A declaration that the disciplinary proceedings and the subsequent suspension of the petitioners by the respondent's disciplinary committee were and are unfair, illegal, unlawful, unconstitutional, null and void.**
>
> **(c) An order quashing the suspension of the petitioners by the respondent's disciplinary committee forthwith.**
>
> **(d) A declaration that the decision of the Ad hoc Appeals Committee dismissing the Petitioners appeal was unfair, illegal, unlawful, unconstitutional, null and void.**
>
> **(e) General Damages for violation of the petitioners' constitutional rights and fundamental freedoms.**
>
> **(f) A declaration that Kyu Statute Schedule 111 Part 10 (b) (vi) and IX violates Article 37 of the Constitution of Kenya and is therefore illegal, unlawful, unconstitutional, null and void.**
>
> **(g) Costs of the petition.**

2. The facts giving rise to this petition are that on 14-11-2016 the respondent posted a notice on all the notice boards notifying the students that the University had been closed with immediate effect. The reasonsgiven for takingthat action were stated to be due to the ongoing boycott of classes and tense situation in the University. The students including the petitioners complied with the noticeand left the university.

3. Thereafter, the petitionersapart from Kibet Meshackand Gideon Kipkosgei respectively received summons to appear before the disciplinary committee of the respondent on 15-12-2016, 16-12-2016 and 5-1-2017.

4. The petitioners were notified that they could not be represented by any other person or lawyer during the hearing before the disciplinary committee.

5. It was alleged that the 1, 2, 3 & 4 petitioners had violated the Kirinyaga University Statutes schedule 111 Part 10 (b) (vi) and IX on various dates between 12 & 16 -11-2016 at the University surroundings.

6. The allegations was that they had designed, conceived or effected a scheme or strategy which was an attempt to disrupt normal operations of the University and whose logical consequence was to disrupt the due operation of academic or other programs of the University.

7. The petitionersallege that the complaintswere vagueand did not give any particulars to enable them know the scheme and the strategy alluded to in the complaint. That no evidence was presented against them during the hearing before the disciplinary committee though they gave evidence and denied having committed the alleged transactions.

8. After the hearing by the disciplinary committee the 1 -4 petitioners learnt that they were found guilty and 1st, 2nd& 4th were suspended for four academic years and the 3rd for two academic years. It is their contention that the punishment was harsh and excessive, cruel and inhuman. It was also disproportionate as some of the petitioners were in their academic year and they were emotionally and psychologically tortured in the manner they were treated by the respondent.

9. As against the 19 - 25 petitioners the respondent alleged that they violated the University statutes as they led their classmates in the boycott scheduled classes and a field trip. They allege that though no evidence was adduced against them during the proceedings, they denied having committed the alleged transgressions.

10. The Petitioners allege that they were alleged to have violated **KyU Statues Schedule 111 part - 10 (b) (vi**) but they were found guilty for having violated **KyU Statutes Schedule 111 part 10 (5**) (ix) which they had not been called upon to answer. That the verdict wastherefore unlawful and unconstitutional because they were condemned unheard.

11. For the 25 Petitioners Murungi Moses Githinji, it was alleged he distributed materials of libelous and malicious in nature towards the University on Social media platform shared by his fellow students. The verdict is unlawful as he was not given an opportunity to be heard. The 19 -25 were suspendedfor four (4) academic years.

12. The Respondent's complaints against the rest of the Petitioners apart from Kamau R. Elijah was that they were in violation of **KyU Statutes Schedule III part 10 (b**) on various dates between 8th -11-2016 and 5-11-2016 by Publishing materials of libelous and malicious nature towards the University on Social media platform shared by fellow students.

13. The 25 Petitionerwere alleged to have violated the KyUStatutes for participating in activities geared towards destruction of University property by participating in values and demonstrations for which permission was required and not obtained from the University or Government authorities. He aversthat no evidence was adduced against him but he denied having committed the alleged transgressions. The 25 petitionerswere suspended for four academic years.

14. The Petitioner having been aggrieved and dissatisfied with the verdict lodged theirappeal and engagedtheir advocates who wrote to the University.

15. The Universitywrote a response and promised to set a date for the appeal and that they could be representedby an advocate. The appeals were listed for hearing on 21st and 22nd-6-2017. However, 2nd Petitioner was not called for hearing. The hearings were notfree and fair.

16. The hearings were not free and fair for the reasons that;

***(a)* the petitioners submissions were not considered.**

***(b)* the person who made complains against the petitioners did not make any submissions and the Petitioners were not therefore given any opportunity to either question or interrogate them**.

(c) on the other hand the petitioners were questioned in addition to them furnishing the ad hoc appeals committee with their submissions.

(d) some members who sat on the ad hoc appeals committee had made adverse petitions against the petitioners and therefore they were not fair and impartial.

17. The Petitioners aver that the ad hoc appeal committee failed to determine the appeals lawfully, fairly and impartially in accordance to the right fair administrative action as provided for under Article 47 of The Constitution for the following reasons;

(a) It failed to determine the appeals in reasonable time. It had to take the intervention of the honourable court for it to determine the appeal

(b) It made a communaldecision on appeal.

(c) It did not give any reason for its decision.

(d) It declined to furnish the petitioners with the proceedings and the decision in respect of the appeal, despite demand for the same.

18. The petitioners allege violation of the Law, in that the respondent's act in prohibiting the petitioners from being represented by a lawyer when they appeared before its disciplinary committee violated their right to fair trial as provided for under Article 50 (1), 2 (a), (c) & (g) , and Article 25 (c) of The Constitution and their right to access to Justice as provided under Article 48 of The Constitution.

19. The fact of subjecting the petitioners to disciplinary proceedings while not subjecting others who allegedly conducted themselves in a similar manner to the same process, and punishing them, while not punishing others in similar circumstances violated the Petitioners rights to equal protection of the Law as provided under Article 27 (1) of The Constitution.

20. The Act of punishing the Petitioners to lengthy suspensions when no evidence was presented against them, as having made the alleged

transgression was unconstitutional, and violated the following constitutional rights.

(a) Right to fair trial as provided under Article 51 (1) (2) (a) (c) & (g) their constitutional rights.

(b) Right to access justice as provided for under Article 48 of The Constitution.

(c) Right not to be subjected to torture in any mannerwhether physical or psychological as provided for under Article 29 (d) of The Constitution.

(d) Right notto be treated or punished, in a cruel, inhuman or degrading manner as provided for under Article 29 (f) of the Constitution.

(e) Right to Education as provided for under Article 43(1) and Article 55 of The Constitution.

21. The Respondents failure to give the petitioner the following documents violated their Constitutional rights.

(a) Certified copies of the proceedings, and decision of the disciplinary committee in regard to hearing conducted on 15th December, 2016, !6th December, 2016 and 5th January, 2017.

(b) A copy KyU statutes.

(c) A copy of class attendance registers for 10th and 11th November, 2016.

(d) Any evidence that may have been relied on by the committee.

(e) Proceedings and decision in regard to the petitioners appeals before the ad hoc appeals committee.

This violated the rights to ;

(a) Right to access information as provided for under Article 35 (1) (b) of The Constitution.

(b) Right to fairadministrative action as provided under Article 47 of the Constitution.

(c) The National values and principles of governance set out in Article 10 of the Constitution and in particular human dignity, human rights, non-discrimination, transparency and accountability.

22. That the Respondents failure to give reasons for the petitioners appeal before the ad hoc appeals committed violated their right to fair administrative action as provided under Article 47 of The Constitution, and right to access information as provided under Article 35 (1) of the Constitution and the provisions of the respondents statutes that purport to limit the students right to peaceably and unarmed to assemble, demonstrate, to picket, and present petition to public authorities violated Article 37 of the Constitution.

23. The Respondents filed aReplying affidavit sworn on 28th November, 2018 by Charles Omwantho who is the Deputy Vice Chancellor Academic and Students Affairs at the Kirinyaga University and the Chairman of the Disciplinary committee of Kirinyaga University. He avers that he is well versed with the facts leading to this case and duly authorized by the Respondent to swear this affidavit on its behalf.

24. He avers that the Amended Petitionis based on misapprehension of the Constitution of Kenya 2010. That the true facts of this case do not disclose with the required decree of precision and any violation of the Articles of the constitution enumerated at paragraph 3 -29 of the amended petition as required by rules of procedure and the court has therefore not been properly moved to grant the prayers sought.

25. He avers that the Respondent is fully - fledged Public University having been granted a charter by the President of the Republic of Kenya on 7th October, 2016. Consequently, its governance is regulated under the Provisions of the Universities Act 2012 , the Charter and the Statutes.

26. That Section 34 of the said Act is categorical that a University shall be governed in accordance with the provisions of its charter, or letter of interim authority granted under the Act, and the statutes made by its council.

27. He further depones that he is aware that the students Disciplinary Committee of the Respondent is established pursuant to Kirinyaga University Statutes 2016 with a mandate to do the following;

(a) To receive and consider matters of disciplinary nature affecting students on behalf of Senate, and to report to the Senate on appropriate action taken, provided that the disciplined student may appeal to the Vice Chancellor.

(b) To investigate issues surrounding misconduct by students which may have adverse effect on the students and to recommend to Senate appropriate corrective measures.

(c) To formulate and review, from time to time the code of conduct for University students and in particular to recommend to Senate

*amendments to the "**Rules and Regulations Governing the Conduct and Discipline of Students" if the need arises.***

28. He further deposes that at paragraph 35 of the Respondent Charter the Respondent's council shall make statutes to regulate the affairs of the university and this paragraph as read with paragraph 38 (1) of the University Charter gives the respondent a transition period for full implementation of the charter.

29. Section 23 of the Universities Act provides Act

> **"A university Council shall submit to the Cabinet secretary its statutes for publication in the gazette not later than three months after the making of a statute and a regulation."**

With respect to this, the Respondents' application of the statutes was justified taking into account that this action was undertaken within the transition period.

30. He further depones that following the unjustified boycott of classes by the students from 10th November, 2016 to 14th November, 2016 and tension at the Respondent's normal learning and operations became completely untenable necessitating the University's Senate to close down the University on 14th November, 2016. The Senate has the power to close down theRespondent for a good cause.

31. It is his contention that on 14th November, 2016 the Petitioner'sdid not obey the notice which required the students to leave the university compound within 45 minutes.

32. That it is false for the Petitioner's to plead that they left the University compound as directed by the aforesaid notice as the truth of the matter is that the petitioners defiantly regrouped on 15th November, 2016 and held a violent demonstration within the University's compound willfully disobeying the said lawful notice with a view to frustrate or undermine the decision of the Senate to close down the University.

33. As a direct consequence of the unlawful demonstration, there would have been potential loss of property belonging to the Respondent worth of millions through destruction by the Petitioners.

34. That the allegation by the Petitioners that they were exercising their rights under Article 37 of the Constitution of Kenya to peaceably assemble and demonstrate against the decisions of the Senate to close the University is misplaced and should not find favour before a Court of Justice.

35. That the provisions of the Constitution ought to be read together with the respondent's statutes that stipulate that any attemptto conveneor organize any participation or involvement in demonstrations, gatherings, processions or public ceremonies for which permission is required but has not been obtained from the University Authority or the Government is illegal.

36. The Petitioners ought to exhibit the permission that was sought and granted to them before purporting to exercise their rights.

37. He contends that it is contradictory that the petitioners have admitted in their court papers that indeed the University was closed down due to students boycotting the classes and tense situation at the Respondent's premises but have not explained the reason behind boycotting of classes which is an offence under the statutes.

38. That the petitioners inconvenienced other students with the who had nothing dowith violent protests' by causing unnecessary tension andin their studies.

39. He further deposes that boycottingof scheduled lectures, tutorials, seminars, practical's an d field trips and other courses of instructions and assault of and issuance of threats to other students or staff in contemplation or furtherance of any such boycott is outlawed by the Statutes. Consequently the respondents was bound toinvestigate such disciplinary offenceand make a decisionwith the accordance with the statutes to act as deterrent against such actions in future.

40. That following the investigations, the respondents identified the students who had been suspected to have been involved in the commission of various offences and inciting information/message circulated by the students on the Social media platforms.

41. That the Petitionerswere so daring that they had added members of the university administration in the what's up group including the Vice chancellor Professor Mary Ndung'u

42. It is his contention that, the charges leveled against the students were not tramped up or malicious as the same were based on credible evidence, after credible investigations by the respondent.

The investigations were not complex since the students werenot hiding their actions.

43. Thereafter, the students were summoned for disciplinary hearing as required under the Respondent Statute, and no one was condemned without been heard.

44. The respondent further depones that the all the Petitioners received their summons to appear before the disciplinary committee in particular 10th and 29th Petitioners were sent summons through their respective email addresses, but failed to show up for the hearing without any explanation.

45. That the summons did not bar the petitioners from calling the witnesses of their choice. However they opted to appear without witnesses.

46. The summons to appearclearly indicated that the offences were against the University, the complainant was the University and the evidence was tendered to the Petitioners' when they appeared before the Disciplinary committee. That it is not true that the complains against the petitioner were fake and general in nature. The charges were based on Statutes and the same were clear to the petitioners.

47. That in fact none of the Petitioners' sought for any clarification upon receiving the summons as would be required.

48. It isfurther averred thatupon admission to the university the petitioners were given the University's statutes and agreed to be bound by their stipulation.

49. That the Students disciplinary committee a creature of the statutes is empowered to impose any of the following verdicts depending on the nature or gravity of the offences;

(a) To dismiss the case against the students.

(b) To issue a letter of warning or reprimand,

(c) To require the student to make good any loss or damage.

(d) To suspend the student from the university for a specific period.

(e) To expel the students from the halls of residence.

50. That upon hearing, each of the students who appeared before the disciplinary committee on diverse dates, the verdict were rendered by the disciplinary committee finding some of the suspects guilty and others not guilty. Among the students that were found guilty, two expelled an d others were suspended for specific periods.

51. It is his contention that the various punishment meted out on the Petitioners were not cruel, in human, harsh and excessive as alleged.

52. That the penalties were proportionate taking into account the magnitude of the offences committed and in any case the same were well provided for in the statutes.

53. He further deposes that he is aware that some of the students found guilty of the accusations lodged appeals against the verdicts to suspend or expel them from the university.

54. That a perusal of the minutes will reveal that some of the petitioners were found guilty on their own admission.

55. That the 1st disciplinary committee meeting was held on 15th December, 2016 and the process continued up to 16th December, 2016 and therefore cases heard on 15th December, 2016 were dispensed with on the same day, and hence there is no problem having suspended the students from 15th December, 2016.

56. The respondent further wishes to confirm that, the accusations that were levelled against the petitioners in the summons were based on violation of the statutes of the respondent, as a result of the conduct of the petitioner.

The university was closed down due to boycott of classes and field trips and tense situations caused by the petitioners which are disciplinary offences.

57. As against the 2nd Petitioner he deposes that he was the then Chairperson of the student council, informed the disciplinary committee that he met and addressed the students from 13th November, 2016 as reflected in the minute 3 /15/ 12/ 2016 and he admitted to organizing demonstrations for which authority was required but not obtained.

58. That he can therefore, confirm that disciplinary committee relied on evidence presented to it as well as the oral submissions of the Petitioners.

59. That he believes that the Respondent right to discipline errant students' cannot be taken away by the court, as such move will be in violation or contravention of the University's Act 2012.

60. It is the Respondent contention that the Petitioner approached this court pre-maturely with unclean hands and by concealing material facts of what transpired before the students' disciplinary hearings, to fraudulently mislead and obtain undeserved orders.

60. That a perusal of the minutes will further reveal that the students that were indeed heard and some of the petitioners admitted having committed disciplinary offences but attempted to lie or justify their actions.

62. It is the respondents contention that the respondent was not expected to comply with all strict requirement of a trial outlined under the Evidence Act in admitting and considering evidence against the petitioners, as members of the disciplinary committee are themselves laymen

in matters of law and procedure.

63. That the petitioners having commenced the internal appeal process, ought not to have sought the High court's intervention pending the determination of the appeal by the respondent. Taking into account the ad hoc committee set to hear the appeals had already been constituted by the time the present Petition was filed.

64. As regards the field trip scheduled on 10th and 11th November, 2016 which the 18th, 19th , 20th, 21st , 22nd and 24th Petitioners were supposed to attend the 18th, 19th, 20th, 21st, 22nd and 24th petitioners threatened the fellow students with dire consequences should they attend the scheduled field trip. Hence only 13 students managed to attend.

65. These Petitioners led their classmates to boycott the field trip, as a result no student attended the trip on 11th November, 2016.

66. The 19th Petitioner informed the Disciplinary Committee that despite the scheduled trip on 11th November, 2016 he engaged in verbal exchanges indicating that his classmates and him would not attend the field trip as attested by the minutes.

67. He attributes the charge against the 25th petitioner to a typographical error, and he was charged with violating Schedule 3, 10 (b), (v).

68. That the 5th, 8th, 10th, 13th 14, 16th 18th and 27th Petitioners admitted participating in social media platforms where they posted messages on a what's up group inciting other students to engage in acts of violence against the respondent, something which is not acceptable.

69. That the 26th Petitioner was seen hurling stones towards the University property in the ladies hostel during the unauthorized demonstrations held on 15th November, 2016 and consequently the punishment meted out to him was not harsh but proportionate to the offence committed by him.

70. On the issue of the sum of Kshs; 1,500/= he depones that it was restitution for costs incurred due to the disruption of academic calendar and not to pay for damages as alleged.

71. The restitution of the costs was a decision of the Senate, that was made after the decision to resume studies were made.

72. It is also contended that this petition offends the **Mandatory Provisions of Section 9 (2) of The Fair Administrative Act No.4 of 2015** to the extent that it was filed before the internal appeal mechanismswere first exhausted. It should either be withdrawn by the Petitioners' or be dismissed with costs to the Respondent.

73. That these courts' discretion should only be invoked after theinternal appeals are heard and determined.

74. That following the decision of this court, on 7th April, 2017, that respondent gave hearing dates of the appeal from 5th July, 2017 to 13th July, 2017. The Respondent conducted the appeal between 5th July, and 11th July, 2017 with the petitioners' and the advocate on record appearing before the ad hoc committee.

75. That the petitioners had been informed with a letter dated 16th January, 2017 that the Respondent would hear the appeals within 14 days.

76. That upon determination of the appeal, it was agreed that the ad hoc committee's report would be ready within a month. The verdict were eventually shared with the petitioners' advocate in a letter dated 19th September, 2017 and informed the petitioners of the dismissal of the appeal.

77. The respondent contends that the students were given a chance to defend themselves through oral and/or written representations prior to the verdict being made. The Disciplinary Committee made its verdict on the immediate events that led to the closure and not any other facts as alleged by the Petitioner without any iota of evidence.

78. That not all students who did not attend the Industrial visit in Nyeri had taken part in inciting others from attending. The Respondent appreciates that they may have genuinelyfeared being targeted by those who were organizing the boycott of classes and the trip.

79. That the list of those suspended also includes students from classes that were not meant to go for the Industrial visit. That the allegation of discrimination are without any merits whatsoever.

80. That in view of the foregoing the respondents prayer before the court is to dismiss the amended petition as he is aware that the appeal process was concluded on 11th July, 2017.

81. As for the 2nd Petitioner, the Respondent contends that he was served with the notice of the hearing of the appeal and the advocate was also informed. However, the 2nd petitioner opted to make a written response through a letter addressed to the Vice Chancellor apologizing for his misconduct and request him to settle the matter out of court. It is the contention by the Respondent that the hearing of the appeals were free and fair, for the following reasons;

(a) The Petitioners were present during the hearing of their appeals accompanied by their advocate on record.

(b) The petitioners and their advocate on record were accorded an opportunity to make their submissions before the Appeals Committee.

(c) The Respondent availed copies of the minutes of the Disciplinary Committee meetings of 15th and 16th December, 2016 and 5th January, 2017 to the Petitioners through their advocate on record which contained all the Complaints and allegations against the petitioners.

(d) During the appeals hearing between the 5th of July, 2018 to the 13th of July, 2018, the petitioners and their advocate were accorded an opportunity to submit on the pleadings of the Disciplinary Committee meeting.

(e) Contrary to the Petitioner'sallegation, themembership of theAd Hoc Appeals Committee was freshly constituted and none of the members of the freshly constituted Ad hoc Appeals Committee had sat in the Disciplinary Committee. Thus the likelihood of biased decision during the appeal should not rise.

82. It is contended that the Ad Hoc Committee determined the appeals lawfully and impartially in accordance with **Article 47of theConstitution, Section 63 of The University's Act** and in particular;

(a) The Respondent heard and determined the appeals expeditiously. In addition, as stated hereinabove the extension of time to determine the appeals was granted by this Honourable Court as explained by the Respondents. Further, the Petitioner's advocate equally sought additional time to prepare for the appeals hearing.

(b) Each appeal was heard and determined on its own merit.

(c) Each Petitioner was accorded an opportunity to be heard in person and further allowed representation by their advocate on record.

(d) The Ad hoc Appeals Committee acting on behalf of the University council may act on general evidence of the petitioners' character and conduct and is not bound by the rules of evidence as set out.

83. The Respondent avers that the Statute XVIX of the Statutes paragraph 1 (1) provides for appointment of the ad hoc committee by the respondent as it may deem fit. That **Section 62 of TheUniversity's Act** give the University Council power to delegate any of its functions or duties to any committeeor officer of the University. The Ad hoc AppealCommittee on appeals was appointed pursuant to that Section, and the Statutes to hear and determine the petitioners appeals.

84. That the Ad Hoc Appeal Committee had jurisdiction to hear the appeal and moreover the petitioners and their advocates submitted themselves to the Appeals Committee during the hearingsconducted between 5th July, and 13th July, 2017 and cannot thereafter purportto challenge the jurisdiction of the appeals committee.

85. That the Act gives the University's lay way to conduct quasi – judicial proceedings, and the proceedings are not bound by the strict rules of evidence.

THE PARTIES FILED SUBMISSIONS;

For The Petitioners it was submitted that the complains against the petitioners were fake and general, they were not given any particulars so that they would know the scheme or strategy alluded to in the complaint.

On the establishment andthe Constitution of theAd hoc committee on appeals and the disciplinary committee they submitted that the University Statute have not been not gazetted and therefore do not have the force of law. Anything done pursuant to the said statutes would therefore be null and void.

Section 23 of theUniversity's Act No. 42 require in Mandatory terms that University Statutes and Regulations be gazetted. That the same must be gazzetted not later than threemonths after they have been made. In this case, even assuming the Statutes were made on the date of Disciplinary cases were heard against the appellant in December, 2016 thethree months are not gone.

The statutes as they stand have no legal force, and this committee must down its tool at this stage.

In response to this submissions, it is submitted **Section 23 of the University'sAct** that provides that a University Council shall submit to the Cabinet Secretary its statutes for publication in the gazette not later than three months after the making a statute or regulation.

It is therefore clear that the respondent's application of the statutes was justified taking into account this action was undertaken within the transition period.

There is no dispute that the action taken by the Respondent was within the transition period. Paragraph 35 of the Respondent's Charter provide that the Respondent council shall make Statutes to Regulate the affairs of the university.

This paragraph as read with paragraph 38 (1) gives the Respondent a transition period for full implementation of the Charter and **Section 23 of The University's Act** provides that a University council shall submit to the Cabinet secretary its statutes of publication in the gazette not later than three (3) months after making of a Statute or Regulation.

The Evidence tendered by the Respondent in the Affidavit of Charles Omwantho isthat theUniversity was given its Charter on 7th October, 2016, and the **University's Act under Section 34** states 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 made by its council.

It is therefore clear that the action was taken during the transition period, in which case the requirement for the gazettement ofthe Statutes andRegulation had not taken effect.

The argument that the Statutes had not been gazetted is not valid in view of Section 23 of The University's Act. The action of the Respondent was justified as the action was undertaken within the Transition period.

The Statutes have provision for general disciplinary matters and has stated the composition of the disciplinary committee and other matters concerning the process of the disciplinary committee and so forth.

It is therefore not true to say that there is no provision for appointment of members of a disciplinary committee.

The Rule cited may be a typographical error. There is provision that a student has a right to appeal to the Vice Chancellor against the decision of the Disciplinary committee if he considers himself aggrieved.

The appeals were not a nullity. The Appeals Committee is an Ad hoc committee that is not a standing committee and is appointed to perform the specific task when it arise and it is dissolved upon completion of the task. There is proof that there is an Appeal process. See the case of; **Republic -vs- Kenyatta University & 2 others ex parte JaredJuma High Court Misc. No. 90 of 2009** which was cited with approval by Mumbi Ngugi J, in **Oluoch Dan Owino & 3others -vs- KenyattaUniversity (2014) eklr** where the court expressed itself as follows;

> "**Discipline** ***at the Respondent's University is necessarily an internal process conducted using internal personnel. It would be impractical to sub-contract or delegateas itwere, this function to an outside agency. Most bodies established under statute also establish disciplinary committees. Kenyatta University is no exception. The composition of the disciplinarycommittee is set out in the Statute, and it comprisesUniversity officers. The University has jurisdiction to conduct its own disciplinary proceedings. This must necessarily be so. The suggestion that disciplinary proceedings are a matter for courts is untenable …. the existence of such a disciplinary committee hasalways been recognized by the courts. The courts also recognizethat their relationshipwith such committee is limited to supervision."***

The Respondent submit that under Section 62 of The University Act, the University council has power to delegate any of its functions or duties to any of its committees or officer of the university, and that the Ad hoc appeal committee on appeals was appointed pursuant to Section 62 of the University's Act and the Statutes to hear and determine the Petitioners appeal cases, and it had jurisdiction to hear the appeals and the petitioners and their advocates submitted themselves to the appeals committee during the hearings and cannot therefore purport to challenge the jurisdiction of the appeals committee.

The Petitioner further submits that the Disciplinary Committee lacks the jurisdiction and legal mandate to hear the disciplinary cases against the appellants and the verdicts of the Disciplinary Committee were null and void.

He further submits that the Disciplinary committee was irregularly and unlawfully constituted.

He submits that the Disciplinary Committee that heard the cases had 14 members, instead of 10 members and the Disciplinary Committee that heard the cases on 7th January, 2017 had seven (7) members. Schedule 3 part 10 (d) (4) of the Statutes provide in clear terms a person required to be witnesses shall not sit as members of the committee.

That in the proceedings before the Disciplinary committee the petitioners were not notified that the committee would consider any documentary evidence or that it did indeed consider any documentary evidence. However, when they moved to court, they were served with some documents which the disciplinary committee allegedly relied on and the documents indicate that some committee members submitted documents authored by them for consideration. The said members were therefore, sensually witnesses and they should not have sat in the Committee. This were;

(i) Dr. Hannah Kinuthia, - Head of School of Business & Economics and she produced two list of 3rd year students who proceeded for an Academic trip on 10th November, 2016 and 11thNovember, 2016, and she produced a letter she wrote to the Vice Chancellor on 31st October, 2016

(ii) Rev. Allan Maina -Dean of Studentsproduced an Internal memo dated 24th February, 2017 addressed to the Dean of students which had a list of students who participated in the cultural day event. He also made a statement dated 21st November, 2016 and produced an internal memo dated 6th December, 2016.

(iii) Joel Kimani Ndung'u who made a statement dated 18th November, 2016

(iv) Professor Charles Omwantho who also made a statement dated 18th November, 2016. He also chaired the Disciplinary proceedings and also produced minutes a meeting held on 14th November, 2016.

It is submitted that this was against the rules of natural justice for a man to be a judge in his own case.

The Disciplinary committee members who gave evidence through their statements and documents were not only complainants but also witnesses. It was therefore unlawful and irregular for them tobe amongst the persons who wereto decideon their case.

It is further submitted that the **Fair, Administrative Action Act. No. 4** of **2015**applies to all persons andagencies exercising administrative authorities performing a judicial or quasi-judicial action under the Constitution or any written law, or whose action, omission or decision affects the legal rights or interests of any persons to whom such actions, omission or decision relates. This Act of Parliament gave effect to **Article 47 of the Constitution** which provides that

> " *every person has the right to Administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."*

Section 12 of The Act provides that;

> "*the act is in addition to and not in derogation from the general principles of common law and the rules of natural justice."*

That is therefore evident that the Disciplinary Committee was unlawfully constituted and no fair determination would have flowed from its proceedings. its verdictwere therefore null and void.

FOR THE RESPONDENT IT IS SUBMITTED THAT;

It is submitted that the Petitioners receivedtheir summons to appear before the disciplinary committee which contained particulars of the charges facing each of the petitioners. The summon did not bar the petitioners from calling witnesses of their choice, and the petitioners opted to appear before the Disciplinary Committee without witnesses.

The charges werebased on the Statutes and the same were clear to the petitioners. None of the Petitioners sought for any clarification upon receiving the summons.

That 5th, 8th, 10th, 13th, 14th, 16th , 18th and 27th petitioners admitted in participating in Social media platform where they posted messages on what's up group. The messages were inciting students to participate in acts of violence which was not acceptable.

Indeed the authorized meeting planned demonstrations as well as inciting messagescirculated on social media by thePetitioner resulted in a lot of tension within the university resulting to closure of the Institution.

That it became apparent during the disciplinary hearing on 10th November, 2016 the 18th, 19th , 20th, 21st, 22nd and 24th Petitioners threatened their fellow students with dire consequences should they attend the scheduled field trip hence only 13 students attended.

On 10th November, 2016 when the 18th, 19th, 20th, 21st, 22nd and 24thpetitioners were scheduled to attend the trip, they led their classmates to boycott the field trip and as a result no student attended the trip on 11th November, 2016.

He has proceeded to submit on how the various Commissioners were served with summons and heard.

He submits that it is manifestly clear that every petitioner was given an opportunity to be heard before the Disciplinary committee arrived at its verdict. He refers the court to **High court Misc. App. No. 54** of **2009Republic -vs- Kenyatta university - Justice Musinga** (as he then was)stated

> **" it was not sufficiently demonstrated that the students disciplinary committed violated the principles of natural justice in any substantial manner that would have affected its decision.**
>
> **The applicant was given an opportunity to defend herself and proceedings to that effect were exhibited herein.**
>
> **Secondly there is also sufficient evidence that the disciplinary committee considered the defence that was advanced by the applicant before it arrived at its decision."**

It is submitted that the Petitioners were heard and their cases were determined on merit as envisaged in the minutes of the meeting attached to the replying affidavit. The committee was not biasedand gave the petitionersan opportunity to present their cases, and the petitioners presented a weak case which could not sustain a finding of innocence from the committee even after due procedure was followed.

Furthermore, the petitioners were represented by an advocate during the hearing of the appeals. That according to the **Hilaire BarnettConstitutional and AdministrativeLaw book** attached, relied on by the petitionersthe author opines as follows on legal representation.

> ***" whether or not legal representation is available as of right will also depend on the nature of the hearing and the nature of rights affected. There is no general legal right of representation and in some cases it may proof to be either unnecessary or counterproductive to the proceedings, and accordingly the courts have been unwilling to the general right to representation, where the proceedings are before the tribunal the right to representation is at the discretion of the tribunal"***

That in this particular case, the Statutes governing the disciplinary committee hearings, do not permit legal representation and therefore the

committee was within its right to deny a lawyer from representing the petitioner.

Further the composition of the disciplinary committee is by non-lawyers because of the nature of the hearing. Indeed there is no general right to legal representation in a domestic tribunal.

The decision relied on by the Petitioners in the case of; **Isaiah Kamau-vs- Kirinyaga University** is not binding in this court.

The Petitioners submit that they had a right to legal representation as provided under **Section 4 (3) (e) of The Fair Administrative Action** Act where it is provided where an administrative action is likely to adversely affect the rights of fundamental freedom of any person the administrator shall give the person affected by the decision, notice of a right to legal representation where applicable."

That under Section 4 (5) it is provided that;

> **"nothing in this Section shall have the effect of limiting the right of any person to appear or to be represented by a legal representative in Judicial or Quasi Judicial proceedings."**he relied on the case of; **IsaiahKamau Kagwema -vs- Kirinyaga University college & Another**(High Court Kerugoya Mis. App. 114 of 2013) where the court stated that;
>
> **"the Rule denying the students a right to legal representation when they appeared before its disciplinary committee was null and void."**

That the Principles of fair hearing include:

> **- The right to be given notification of a hearing.**
>
> **- The right to be given indication of any adverse evidence,**
>
> **- The right to be given the opportunity to respond to the evidence, the right to an oral hearing,**
>
> **- The right to question witnesses**.

The Respondent did not adhere to this Legal Principles and that if the case is serious the legal representation is important.

He submits that the students should have been allowed to have legal representation as the charges and punishment were serious.

The Petitioner further submit that they were denied information, materials and evidence that were to be relied on in the disciplinary proceedings.

The refer the court to **Section 4 (3) (g) of the Fair AdministrativeAction Act no. 4 of 2015**requires that "**a person be furnished withmaterials, information and evidence to be relied upon in making a decision**." They submit that this was not complied with as the material of the disciplinary committee show that no petitioner was confronted with the statement made by witnesses or with any documentary or other evidence.

The proceedings were therefore unlawful and the verdicts reached were therefore unlawful, null and void.

The Petitioner further submits that they were not notified of their right tocall witnesses.

The petitioner also submits that the witnesses whose evidence was relied on by the disciplinary committee did not testify.

The petitioners did not have an opportunity to cross-examine them as provided**Under Section4 (3) (f) and Section 4(4) (c) ofThe FairAdministrativeActions Act.**

The Petitionersalso allege that they were discriminated **Contrary toArticle 27 (1) of the Constitution.**

The petitioners urged the court to look at the affidavit sworn on 14th February, 2014 and the submissionsmade during the appeal.

On the Respondents case the petitioner submits that the respondent has failed to show that the committee was properly constituted. He has relied on the cases of;

> **Eric Kimani Muiruri -vs- Board of Governors Upper Hill School & Another (2007) eklr.**
>
> **Geoffrey Mworia -vs- Water Resources Management Authority & others (2005) unreported.**
>
> **James Maina &2 others -vs- Kirinyaga Water& Sanitation Co. (2016) eklr.**

The Respondent submit that the punishment was commensurate to the offences committed by the Commissioners. He relies on the case of;

Oluoch Dan Owino -vs- Kenyatta University (2014) eklr where it was stated that an Educational institution has the right to set certain rules and regulations an d those wishing to study in those institutions must comply with those rules.

In the matter before this court there no prayer seeking to nullify the Statutes or the punishment stated therein an d the Respondent contends that each student was remanded depending on the gravity of the offence and in accordance with the Statutes that govern the operation of the University. The punishment was neither cruel norharsh as alleged by the Petitioner.

He has also referred the court to the case of ; **Gathigia -vs- KenyattaUniversity where Justice Wendo** stated that the fact that the Petitioner was subjected to expulsion does not amount to inhuman treatment since the expulsion was a consequence of some penal action being taken after alleged breach of some action.

He has also referred in the Court of Appeal decision: In **Nyongesa& 4others -vs- Egerton University College (1990) eklr where NyarangiJ.A.**stated as follows;

> **"…. Courts in Kenya have no desire to run universities or indeed any other bodies, However courts will interfere to quash decisions of any bodies when the courts are moved to do so where it is manifest that decision have been made without fairly and justly hearing the person concerned or the other side.**
>
> **If the Tribunal after taking into consideration the rules of natural justice for the hearing of the student makes a decision to discontinue or not to admit a student thecourt does not substitute it's view in the place of the school's board or other responsible organ**"

It is submitted that the petitioners have failed to distinguish between a hearing before a Court of Law manned bya trained judicial officer and internaldisciplinary proceedings of the disciplinary committee conducted by none lawyers.

In the case**of: Kenyatta university (supra)** the Judge relied on the court of appeal in : **Judicial Service Commission vs- Gladys Boss Shollei&Another (Civil Appeal No. 50 of 2014)** where it was held

> **"that Article 50 (2) of the Constitution provides for a right to a fair trial to an accused person in Criminal trials. The sub-article was not applicable in the criminal proceedings against the respondent. Which as already notedwere neitherCriminal proceedings nor QuasiCriminal Proceedings. "**

He submits that **Article 50of the Constitution** should be given similar interpretations in this proceedings. Not every irregularities of the statutes will lead to nullification of the entire proceedings before a disciplinary committee. At the end of the day the basic requirement is whether the Petitioners were treated fairlyin the decision making process.

In the present case, proceedings as captured in theminutes in the DisciplinaryCommittee and Ad hoc disciplinary committee will demonstrate before any shadow of doubts that the petitioners were indeed treated fairly.

They urge the court todismiss the Petition.

ANALYSIS AND DETERMINATION.

I have considered the petition, the affidavits and the submissions the issue for determination Is

(1) Whether the respondent violated the Petitioners constitutional rights and fundamental freedom.

(2) Whether the Disciplinary proceedings and subsequent suspension by the Respondent Disciplinary Committee were fair, illegal, unlawful, Unconstitutional, null and void.

(3) Whether theAd hoc Appeals committee acted fairly in dismissingthe Petitioners Appeal.

(4) Whether Schedule III Part 10 (b) (VI) and (IX) violate Article 37 of the Constitution and is therefore illegal, unlawful, unconstitutional, null and void.

1. Whether the respondent violated the Petitioners Constitutional rights and fundamental freedom.

All these issues relate toright to Fair Administrative Action. **Article 47 (1)** of the Constitution provides that;

> ***"every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."***

The right to Fair Administrative Action is in the billof rights. The rightsshould not be violated by any person, body, institution or the government.

As a right, a person, bodies, institutions, government are bound by the Article to ensure that Administrative actions are fair and do not violate this right.

The Administrative actions must conform to **Article 47** and must be efficient, lawful, reasonable and procedurally fair as provided under the Article.

In the case of: **Judicial service commission - v- Mbaru Mutava & Another (2015) eklr quoted in the case of Greggory Magare -vs- University of Nairobi & another (2017) eKLR.**The Court of Appeal stated that, Article 47marks an important and transformative development of the 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 administrative action of public officers, state organsand otheradministrative bodies arenow subjected by Article 47 (1) to the Principle of Constitutionality rather than to the doctrine *of 'ultra vires'* from which administrative law and a common law was developed.

The right to fair administrative action has now been anchored in the Constitution as a Constitutional right which is available to all citizens to enjoy the right. This was emphasized in the case of; President of the **Republic of South Africa & others -vs- South African Rugby Union & others. (CCT 16/98) 2000 (1) SAI*"the right to a 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 o f Section 33, but also its content, The Principle function of Section 33 is to regulate the conduct of the public administration and in particular to ensure that where Action is taken by the administration it affects or threatens individuals the procedures followed comply with constitutional standards of administration of justice."*** Cited in the case of: **Greggory Magare - vs- University of Nairobi & another (2017) eKLR (supra)**

Section 33 of the South African Constitution is similar to our Article 47 of the Constitution, where the right to fair administrative action is breached it would amount to an infringement of the right, under **Article 47 (2)** it is provided that;

> ***" if a right or a fundamental freedom has been or is likely to be adversely affected by administrative action, the person has the right to be given reasons for the action."***

Under Article 47 (3) Parliament was required to enact legislation to give effect to the right under **Sub-Article 1 of Article 47** to provide for the review of Administrative Action of a court or independent or impartial body, impartial tribunal to promote efficient administration.

The Parliament enacted the Fair Administrative Actions Act No. 4 of 2015, which has made provision for ensuring that the right to fair administrative action is respected and to check against the infringement of Article 47 (1) of the Constitution.

Under Section 4 (3) it is provided that,

> ***"where an administrative action is likely to adversely affect the rights of 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.***

The Act places a legal obligation on persons, bodies and administrative bodies to take steps in ensuring that a person who is likely to be affected by any administrative actions has been given an opportunity to be heard and to understand the Action he is likely to face and the reasons for it. This is in line with the Rule of natural justice that a person should not be condemned unheard.

See: **Harlsburys Laws of England, 5th Edition Vol. 61 page 539** Paragraph 639 where it is stated as follows.

> **"The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a f air opportunity to be heard the (avai alteram partem rule) is a fundamental principle of justice. This rule has been refined and adopted to govern proceedings of bodies other than Judicial tribunals, and duty to act in conformity with the rule has been imposed by common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of an administrative decision on the interests of an individual may suffice itself to attract a duty to comply with this rule. Common law and statutory obligations of procedural fairness now also have to be read in right of the right under the convention for the**

protections of Human Rights and Fundamental Freedoms to a fair trial which will be engaged in cases involving the determination and civil rights or obligations on any criminal charge."

The right to a fair administrative action is a Constitutional right under Article **47 (1)**where a person and every person has a right to an administrative action that is fair, expeditious, efficient , lawful, and procedurally fair.

The Question which the court has to consider in this proceedings is whether the petitioners right to fair administrative action was violated or infringed.

The Petitioners have alleged thatthey received summons to appear before the disciplinary committee of the respondent on 15th December, 2016, 16th December 2016 and 15th January, 2017. The summons was very clearthat the Petitioners could notbe represented by anyother person or a lawyer duringthe hearing of Disciplinary Committee.

The respondent had alleged that the petitioners had violated some school regulations and rules and it was alleged that on the said date within and around the Universitythey designed, conceived or effected a scheme or strategy which was an attempt to disrupt normal operations of the University and whose logical consequence was to disrupt the due operations of Academic or other programs of the University.

The said Act contravened the aforementioned provisions of the University Rules and Regulations.

They allege that the complains against the Commissioners were fake and general. They were not given any particulars so that they would know the scheme orstrategy alluded to in the complaint.

The Petitionerclaims that they were lawfully denied the right to legal representation.

The petitioners were served with summons to appear before the disciplinary committee after investigations were done, and there was credible evidence against the Petitioners, after the University was boycott or after boycotting of scheduled lectures, tutorials, seminars, practical's, field trips and other courses of the institutions and assault and issuance to threats to student or staff in contemplation or furtherance of any such boycott is outlawed by the statutes.

The summon did not bar the petitioners from calling witnesses of their choice, and the petitioners opted to appear before the disciplinary committee without witnesses.

The Petitioner were given an opportunity to be heard but they fault the University for denying them legal representation at the hearing of the disciplinary committee meetings.

The Petitioners' have relied on the case of; **ISAIAH KAMAU KAGWEMA-VS- KIRINYAGA UNIVERSITY COLLEGE & ANOTHER** where the court held that the alleged Rule denying students to legal representation when they appeared before its disciplinary committee was null and void. This is a persuasive decision, and there are various decisions where the courts have ruled on the proceedings of the disciplinary committee of University as well as the Rules set by the University's.

In the case of: **Judicial Service Commission –vs- Gladys Boss Shollei (supra)** The Court of appeal stated that Article 50 of the Constitution provides for a right to fair hearing for an accused person in Criminal trials, the right to legal representation is entrenched in Article 50 of the Constitution.

In the case of; **Oluoch Dan Owino -vs- Kenyatta University (supra)** it was stated that; an educational institution has the right to set certain rules and regulations and those wishing to study in that institution must comply with such rules, also in the Constitutional and Administrative Law Book it was stated that whether or not legal representation is available as of right will also depend on the nature of hearing and the nature of rights affected.

There is no general right of representation in some cases it may prove to be either unnecessary and counterproductive to the proceedings and accordingly the courts have been unwilling to the general right of representation and where the proceedings are before the Tribunal the right to representation are at the discretion of the Tribunal.

The proceedings before the Disciplinary committee are not court proceedings and as stated by the Court of Appeal in the case of ; **Gladys Boss Shollei (supra**) **Article 50 (2)** applies to the proceedings in Criminal trials, and is not applicable in disciplinary proceedings.

In the present case, the Statutes governing the disciplinary committee herein, do not permit legal representation and **Article 50** does not apply to such proceedings. The Students who joined the University are served with the statutes in the university containing rules and regulations and they bind themselves to follow them.

A Court of Law will therefore not interfere with the regulation set by the University with regard to proceedings in the disciplinary committee. The university has a discretion to decide on the Rules and Regulations like not allowing legal representation in disciplinary proceedings.

The court of law willnot declare such rules as unconstitutional, in view of the nature of the hearing, and the composition of the disciplinary committee is non-lawyers because of the nature of the hearing.

The Court of Appeal inthe case of; **Nyongesa & 4 others -vs- EgertonUniversity (supra)**the Court of Appeal was emphaticthat courts in Kenya have no desire to run university's or indeed any other bodies.

It would amount to running the Institutions by dictating the Rules that they should put in their Statutes with regard to proceedings before the disciplinary committee.

The Statutes of the University on the meeting of the Disciplinary committee states that the Chairperson shall call a meeting of the disciplinary committee to held within one month of the report been received by him or her.

At the meeting the Disciplinary committee before which the a student is summoned the procedure adopted shall be determined by the committed and the student entitled to representation in person and not by any other person or lawyer.

The import of this Rule is that the student must appear in person but not to send a person to represent him or a lawyer. I think the Rule is emphasizing that the student appears at the meeting of the Disciplinary Committee personally.

From the submissions by the Petitioners andthe Respondents, it is demonstrated that the petitioners were given aright tobe heard and indeed theStatutes of theuniversity clearly provide that the student is served with the allegation and given an opportunity to be heard.

Under the Statute of the University paragraph 10 deals with Students discipline andat Sub -paragraph (d) there is provision for general disciplinary matters which provide as follows;

"The Senate shall also operate as the Students' Disciplinary Committee with power to handle general offences.

Composition of the Disciplinary Committee.

1. **Deputy Vice- Chancellor (Academic and StudentAffairs) - Chairperson**
2. **Dean of Students - Member**
3. **Two students' Representatives - Member**
4. **Chairperson Students Union - Member**
5. **Two Senate Representatives - Member**
6. **Dean of Faculty or Warden reporting the case - Member**
7. **Register (ASA) - Member**
8. **Any other person co-opted to the Committee**

This regulation show that the student is supposed to be given a hearing and to appear before the disciplinary committee. The Petitioners appeared before the Disciplinary committee which is established by the Senate of the University.

There is undisputedevidence by the Respondent in the affidavit sworn by Charles Omwantho that there was a boycott of classes by students on 10th of November, 2016 and the Petitioners have admitted in their papers that indeed the university was closed down due to students boycotting the university and following investigations the Respondents were identified the students who were suspected to have been involved and they were taken through the Disciplinary process which I have referred to above.

The petitioners were given a hearing, before the Disciplinary committee and the committee has powers to impose any one or more of the following measures:

1. **To dismiss the case against the students.**
2. **To issue a letter of warning or reprimand and such letter shall form part of the student personal record and a copy thereof shall be sent to the parent guardian of the affected student.**
3. **To require the student to make good any loss or damage to the university property, or pay damages commensurate to the nature or gravity of the offence.**
4. **To suspend the student from the university for a specific period**
5. **To expel the student from the halls of residence,**
6. **a combination of any two or more of the above.**
7. **To impose any other penalty or penalties as the committee may deem fit.**

The Regulations of the Respondent at paragraph 9 provides that;

> **"A student has the right to appealto the Vice Chancellor against the decision of the disciplinary committee if he considers himself aggrieved by the said decision, and such appeals will be made in writing within 14 days of the date of communication of the Committee's decision. "**

It is on record that the petitioners appeared before the appeals committee. The Respondent demonstrated that the petitioners breached the University's statute's as the learning at the university was paralyzed. The petitioners did not obey the notice dated 14th November, 2016 requiring all the students to leave the University's compound.

The petitioners regrouped and held violent demonstrations within the University's compound in defiance of the said lawful notice. As a consequence, property worth millions of shillings were destroyed.

Under Article 19 the Rights and fundamental freedoms in the bill of rights belong to each individual and are not granted by the state, the rights of the petitioners

Under Article 37of the Constitution of Kenyato peaceably assemble and demonstrateagainst the decision of the Senate to close the university has not been established in view of the averments by the Respondents. The minutes of the disciplinary committee which were availed in this court demonstrate that the Petitioners and in particular 2nd petitioner who was the Chairperson of the student council admitted organizing demonstrations which required Authority, but authority was not obtained.

The minutes also show that some of the Petitioners admitted the allegations, while those who denied there was evidence presented before the disciplinary committee.

The Petitioners breached the Statutes of the Respondent and the disciplinary process was withinthe Law.

The Petitioners claimed that they are discriminated as it was alleged that numerous students allegedlycommitted similar offences as the appellant herein. However, only a few of the students were chosen to undergo disciplinary proceedings and no reasons were given.

The contention is that **Article 27 (1)** of the Constitution was violated. The Article provides that;

> ***"every person is equal before the law and has the right to equal protection an d equal benefit of the law. "***

The Respondent in the affidavit Charles Omwontho deponed that Kshs; 1, 500/= which the students were ordered to pay were restitution for costs incurred due to disruptions of Academic calendar and not to pay for damages alleged. It was meant to cover costs for use during September, to December 2016. Only students that were resuming studies in January, 2016 were required to pay the costs.

The restitution was a decision of the Senate made after the decision to resume studies was made.

It was also explained that some of the students may have genuinely feared been targeted by those who were organizing the boycott of classes and the trip.

That the list of those suspended also include students from classes that were not meant to go for the Industrial visit and that the allegations for discrimination are without any merit.

It is a mere allegation that the Petitioners were discriminated.

From the foregoing it is clear that the Petitioners' were taken through the Disciplinary process of the University, their right to fair administrative action were not violated.

They were served with the allegations, labelled against them, they appeared before the disciplinary committee, they were given an opportunity to be heard, the decisions were communicated to them. They filed an Appeal and the appeals were heard. In the case of; **Greggory Magare -vs- University of Nairobi & Another (Supra)JusticeChacha Mwita** stated as follows,

> **" The Law is now settled that where there is an internal mechanism for dealing with administrative issues, that internal process must be concluded before one can move to court to seek redress in overturning administrative action or decision.**
>
> **Section 7 of the Fair, Administrative Act (*sic*)states that a party aggrieved with an administrative action may apply for review of that administrative action or decision in a court in accordance with Section 8 of The Act.**
>
> **Section 9 (2) provides that; a court should not review an administrative decision or action unless the mechanisms including internal mechanisms for appeal or review and all remedies have been exhausted. This was intended to ensure that administrators or institutions develop their own internal mechanism for dealing with internal disputes in order to ensure fairness in those administrative actions, as Majanja J observed in; Moses Kiarie Kariuki & 4 Others -vs- Attorney General & 3 others (2014) eklr.**

Article 47 intends to bring discipline to administrative action so that values and principles of the Constitution are infused in matters of public administration."

In this case the Petitioners were taken through the disciplinary mechanisms which I find complied with the requirements under Section 4 (3) of the Fair Administrative Actions Act.

The Respondent as an Institution has the mandate to put in place internal regulations to manage the conduct of his students and the courts will be slow to interfere with the Regulations unless it so obvious that the University has acted unlawfully and without jurisdiction and in violation of the rights of the petitioners enshrined in the Constitution.

The Petitioners have failed to demonstrate that the disciplinary proceedings under the regulations ofthe respondent were not quasi –judicial and**Article 50 of the Constitution** does not apply to such proceedings.

I find that the Petitioners failed to prove that their rights were violated or that the disciplinary proceedings were unfair and this court would find no reason to quash or suspend the decision of the Disciplinary Committee.

In view of the foregoing there was no violation of the Petitioner's right to fair, administrative action and it follows that the relief sought cannot be granted.

I therefore dismiss the Petition.

I make no orders as to costs.

Dated, Signed at Kerugoya this 9th day of June 2020

L. W. GITARI

JUDGE