**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 428 OF 2017**

**ONJIRA JOHN ANYUL.....PETITIONER**

**-VERSUS-**

**UNIVERSITY OF NAIROBI.....RESPONDENT**

**JUDGMENT**

1. The petitioner herein, **ONJIRA JOHN ANYUL**, who was until 18th May 2016, a medical student at the University of Nairobi ( the respondent herein) sued the respondent through the petition filed on 1st September 2017 in which he sought the following orders:-

> **a. A declaration that the suspension and expulsion of the petitioner from the respondent University was null and ab initio and the petitioner be re-admitted to join the University's Bachelor of Medicine and Surgery ( M.B.Ch. B) Year V Class to complete his studies.**
>
> **b. A declaration that the petitioner's rights as stated in the petition were violated.**
>
> **c. Compensation for violation of the petitioner's rights as guaranteed under the Constitution.**
>
> **d. Costs of this petition be borne by the respondent.**
>
> **e. Such other orders this Honourable court shall deem fit.**

2. The facts of the case are that the petitioner was an aspirant for the position of Campus Representative, College of Health Sciences in the SONU (Student Organization of Nairobi University) in the students' elections that were slated for 1st April 2016.

3. As expected in any election, the said elections were characterized by many campaign meetings where candidates met the electorate (students) in a bid to sell their agenda and appeal for votes. One such campaign meeting took place on 18th March 2016 at an event organized by the University's School of Nursing at Safari Bowling Greens Restaurant which event was attended by student from the respondent university irrespective of their campuses.

4. The petitioner, among other candidates for the elective positions, attended and addressed the meeting but no sooner had the petitioner left the venue than a fight broke out when the rival groups supporting different candidates engaged in a fracas that ended in one student Humphrey Ouko, injuring another student, one Mr. Bramwel Kundu.

5. The petitioner's case was that he was through a letter dated 18th May 2016, suspended from the respondent university in allegations that he solicited Humphrey Ouko to fight Bramwel Kundu, illegally haboured Humphrey Ouko in his campus room and failed to report Humphrey Ouko after witnessing him attack Bramwel Kundu.

6. The petitioner attended a hearing before the respondent's Disciplinary Committee on 26th May 2016 but states that he was neither afforded an opportunity to be represented by a person of his choice in a trial where no witnesses were called to testify against him as the committee relied solely on witness statements thereby denying him an opportunity to cross examine his accusers.

7. Through a letter from respondents vice chancellor dated 6th July 2016, the petitioner was informed that he was found guilty of all the offences he had been accused of and that he was consequently expelled from the respondent's university.

8. The petitioner appealed against the decision of the Disciplinary Committee which appeal was heard on 26th May 2017 but as at the time of filing the petition, the petitioner had not been informed of the fate of his appeal.

9. The petitioner's case is supported by his affidavit sworn on 31st August 2017. He contends that to the extent that the respondent's disciplinary committee did not adhere to the principle of natural justice and fair hearing during the disciplinary proceedings, his rights under Articles 25, 27, 44, 47, 48 and 50 of the Constitution were violated.

10. In the written submissions in support of the petition, M/S Muma & Kanjama advocates isolated the issues for determination to be –

**a. Whether the petitioner was afforded a fair hearing before the College Disciplinary Committee and the Senate Disciplinary Committee.**

**b. What reliefs should the court grant?**

11. On fair hearing, counsel submitted that disciplinary proceedings before the respondent's disciplinary committee offended the provisions of the constitution and the principles of natural justice. In this regard, counsel stated that the petitioner was not given adequate notice of the case against him and neither was he supplied with the alleged witnesses statements so as to enable him prepare for the hearing. The petitioner stated that the very first time he became aware of the alleged witness statements was when the same were attached to the respondents replying affidavit.

12. It was submitted that the petitioner was denied the opportunity to cross examine the alleged witnesses notwithstanding the fact that the disciplinary process culminated in the severe punishment of expulsion. For this argument, counsel cited the case of **Republic v Kenyatta University Exparte Njoroge Humphrey Mbuthi [2015 eKLR** in which Odunga J. faulted the college for failure to accord a student the right to cross examine his accusers.

13. Counsel submitted that the respondent acted in an unreasonable manner by subjecting the petitioner to disproportionate and discriminatory punishment. Counsel also faulted the respondent for failing to give written reasons for its decision against the petitioner.

**Respondent's case**

14. The respondent opposed the petition through the replying affidavit of its Acting Deputy Vice Chancellor (Administration & Finance) **Professor Isaac M. Mbeche** who confirms that indeed the petitioner was on 18th May 2016 suspended from the university pending the investigations and hearing of the disciplinary case. He attached a copy of the suspension letter to his affidavit as annexure **"IMM1"**.

15. He further states that the petitioner was charged with four (4) offences namely:-

- **Count one:** Failure to respect and adhere strictly to the administrative and academic procedures established by the University of Nairobi Charter, 2013 for the control, governance and operations of the University contrary to Part 111(1) (a) (i) of the rules Governing the Conduct and Discipline of Students (RGCDOS).
- **Count two:** Failure to respect the rights and privileges of the members of the University Community at all times contrary to part III(1)(a)(i) of the rules Governing the Conduct and Discipline of Students(RGCDOS).
- **Count three:** Failure to refrain from conduct that might bring the university or any section or programme thereof to disrepute or public odium contrary to Part III (1)(a) (i) of the rules Governing the Conduct and Discipline of Students (RGCDOS).
- **Count Four**: Failure to carry yourself in all public places and with such humility and dignity as befits your status as a mature and responsible citizen contrary to Part III (1)(a) (i) of the rules Governing the Conduct and Discipline of Students(RGCDOS).

16. He also states that the petitioner and other students had on 21st March 2016 provided written statements on the circumstances under which one Raymond Bramwel Kundu had been attacked and that following a Disciplinary Committee meeting held on 9th June 2016, the petitioner was on 6th July 2016 expelled from the respondent university. He attached the students' statements, the Disciplinary Committees minutes and the expulsion letter to the replying affidavit as annexures **"IMM3"**, **"IMM4"** and **"IMM5"** respectively.

17. He confirms that following an appeal lodged by the petitioner to the Senate Student Disciplinary Committee, the petitioner's expulsion was on 26th May 2017 vacated and instead, he was suspended from the university for three(3) academic years from 18th May 2016 as shown in the Senate's minutes attached as annexure **"IMM8"**. It is the respondent's case that the petitioner's expulsion and subsequent suspension was valid, lawful and procedurally sound.

18. In its written submissions to the petition, the respondent's counsel M/S Donald B. Kipkorir Advocates submitted on the following salient points.

- **That the petitioner has failed to establish their locus standi to institute the petition as it does not raise any constitutional issues.**
- **That the petitioner has failed to establish why he opted for a constitutional route yet this is an administrative/disciplinary matter which applies to all universities.**

- **That the petitioner's rights were not violated as the petition is filed mala fide and not to advance the bill of rights.**
- **That the limitation of rights under Articles 19 and 24 is justified.**

19. Counsel submitted that the petition did not meet the threshold for a constitutional petition. For this argument counsel relied on the decision in the case **Anarita Karimi Njeru vs Attorney General [1979] KLR 154** where in the court held that a person alleging contravention or threat of a constitutional right must set out the right infringed and the particulars of such infringements.

20. Reliance was also placed on the decision in the case of **Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 Others [2015] eKLR** where the court declined to uphold a petition on grounds that the pleadings were not precise as is required in a constitutional petition.

21. On the issue of the right to education under Article 43 of the Constitution, counsel relied on the decision on the case of **Aluoch Dan Owino & 3 Others vs Kenyatta University [2014]eKLR** where it was held that:

> **"The right to education does not denote the right to undergo a course of education in a particular institution on one's terms. It is my view that an educational institution has the right to set certain rules and regulations, and those who wish to study in that institution must comply with such rules. One enters an education institution voluntarily; well aware of its rules and regulations, and in doing so commits himself or herself to abide by its rules. Unless such rules are demonstrated to be unreasonable and unconstitutional, to hold otherwise would be to invite chaos in educational institutions. I can therefore find no violation of the right to education in respect to the petitioners."**

22. On the claim under Article 47 of the Constitution on fair administrative action, counsel submitted that the respondent did not breach the rules of natural justice as the petitioner was accorded an opportunity to state his case before the disciplinary committee and on appeal before the Senate. For this argument counsel relied on the decision in the case of **Nyongesa & 4 Others vs Egerton University College** wherein it was held:

> **"Having thus stated, as I think to be desirable, the broad nature of the important issues and proposed procedure, I shall now state that courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run Universities or indeed any other bodies. However, courts will interfere and quash decisions of any bodies when the courts are moved to do so where it is manifest those decisions have been made without fairly and justly hearing the person concerned or the other side."**

The court continued to state:

> **"I would borrow the words of Nyarangi JA and equally state in that in this matter, it would be improper for this court to interfere with decision that was reached by the respondent as it has not sufficiently been shown that there was any breach of the rules of natural justice."**

**Analysis and determination**

23. I have considered the petition filed herein, the respondent's response and the submissions filed by the parties together with the authorities that they cited. The main issue for determination is whether the petitioner is entitled to the orders sought in the petition. In determining the said issue it is necessary to consider each of the prayers sought in the petition and whether the suspension and expulsion of the petitioner from the respondent university was null and void ab initio and whether the petitioner should be readmitted to the university.

24. It was not in dispute that the petitioner was expelled following the decision of the disciplinary committee before the Senate converted the expulsion to a 3 years suspension after the petitioner appealed against the decision of the disciplinary committee.

25. In the instant case, it is not in dispute that the petitioner was taken through a hearing before the respondent's disciplinary committee before the adverse action of expelling him from the university was taken. The petitioner's main grievance however is that the hearing was not conducted in a fair manner as he was not afforded an opportunity to be represented by an advocate of his choice and that no witnesses were called to testify against him thereby denying him the chance to cross examine his accusers. He also alleges violation of his right to education, fair hearing and fair administrative action under Articles 43, 50 and 47 respectively of the constitution.

26. Article 47 of the Constitution of Kenya provides 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.**

29. Closely related to fair administrative action is the right to fair hearing which is provided for under Article 50 of the Constitution which provides for the right to a fair trial to an accused person in criminal trials. I find that the Article is applicable to the disciplinary proceedings that were initiated against the petitioner considering the same were in the nature of quasi-criminal proceedings. I further find that the petitioner was entitled to a right to a fair hearing as provided under Article 50(1) of the Constitution that deals with "any dispute that can be resolved by application of law."

28. Procedural fairness is now a Constitutional requirement in administrative action and the requirement goes further than the traditional meaning of the duty to afford one an opportunity of being heard. It is now clear that even in cases where there is no express requirement that a person be heard before a decision is made; the tribunal or authority entrusted with the mandate of making the decision must act fairly. In **Judicial Service Commission vs. Mbalu Mutava & Another [2015] eKLR,** Civil Appeal 52 of 2014 in which the Court of Appeal held that:

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

29. The importance of fair administrative action as a Constitutional right was appreciated in the South African case of **President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1,** at paragraphs135 -136where it was held as follows with regard to similar provisions on just administrative action in section 33 of the South African Constitution:

> **"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…"**

30. A recent articulation of the elements of procedural fairness in the administrative law context was provided by the Supreme Court in **Baker v. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6** where it was held:

> **"The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."**

31. The Court further emphasized that procedural fairness is flexible and entirely dependent on context. In order to determine the degree of procedural fairness owed in a given in case, the court set out five factors to be considered: (1) The nature of the decision being made and the process followed in making it; (2) The nature of the statutory scheme and the term of the statute pursuant to which the body operates; (3) The importance of the decision to the affected person; (4) The presence of any legitimate expectations; and (5) The choice of procedure made by the decision-maker.

32. From the above foregoing therefore, it is clear that the principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.

33. Article 50(1) provides for the right to a fair trial to an accused person in criminal trials. The petitioner was entitled to a right to a fair hearing as provided under Article 50(1) of the Constitution that deals with *"any dispute that can be resolved by application of law."* The right to a fair trial has two main indicators, firstly; the need for the adjudicator to be independent and impartial, and the secondly; the requirement for fairness in the hearing procedures adopted. The procedure expected in such matters is aptly dealt with by **Michael Fordham** in ***Judicial Review Handbook***; 4th Edn. at page 1007 as follows:

> **"procedural fairness is a flexi-principle. Natural justice has always been an entirely contextual principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair. The content of the duty depends on the particular function and circumstances of the individual case".**

34. In the instant case, I find that the respondent, when conducting the disciplinary proceedings against the petitioner, was conducting a quasi- judicial process in which it was expected to adhere to the basic principles of fair hearing. Courts have held the view that they will not ordinarily interfere with the decisions of organs exercising quasi judicial functions unless it is shown that there is breach of statute or the rules of natural justice. This was the position taken in the case of **Daniel Nyongesa & Others vs Egerton University College CA No. 90 of 1989** in which Nyarangi JA held:

> **"Courts are very loathe to interfere with decisions of domestic and tribunals including college bodies. Court 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 manifests that decision has been made without fairly and justly hearing a**

**person concerned or the other side…..it is the duty of the courts to curb excesses of officials and bodies who exercise administrative or disciplinary measures. Courts are the ultimate custodians of the rights and liberties of people. Whatever the status and there is no rule of law that courts will abdicate jurisdiction merely because the proceedings or inquiry are of an internal disciplinary character."**

35. In determining whether or not the respondent adhered to the rules of natural justice in conducting its disciplinary proceedings, it is necessary to examine the manner in which the said proceedings were conducted. I have in this regard perused the minutes of the Disciplinary Committee's proceedings that were attached to the respondent's replying affidavit as annexure **"IMM4"** and I note that even though the petitioner was accused of soliciting and inciting another student, namely Humphrey Ouko to attack/fight one Bramwel Kundu, and for illegally habouring the said Humphrey Kundu in his campus room, neither the solicited student nor the one injured in the alleged attack were called as witnesses during the said disciplinary committees hearing. In effect therefore, the petitioner was not accorded an opportunity to face and cross examine his accusers.

36. The requirement that an accused person be granted an opportunity to face and cross examine his accusers was aptly articulated by Odunga J. in the case of **Republic v Kenyatta University Exparte Njoroge Humphrey Mbuthi [2015 eKLR** as follows:

**"However, the law is now clear that where adverse evidence is given about a person, the person is to be afforded an opportunity to cross-examine the said witnesses. In this case two crucial people whose statements were relied upon in the disciplinary proceedings against the applicant never appeared at the hearing. These were the person who claimed ownership of the laptop and the person who allegedly saw the applicant pick up the laptop. In the absence of these witnesses and as the law required that they be availed for cross-examination, there is no way the manner in which the respondent conducted its proceedings can be said to have met the threshold under Article 47 of the Constitution pursuant to which the Fair Administrative Action Act was enacted. It is not contended by the respondent that its disciplinary rules or procedure provided for a different mode of conducting proceedings from that provided under the Act. Even if there existed such a procedure it had to comply with the letter and spirit of Article 47 of the Constitution.'**

37. In the instant case, having found that neither the victim of the alleged attack nor the alleged attacker were called upon to testify as witnesses in the said disciplinary proceedings, I cannot hesitate but hold that the said proceedings were not conducted in accordance with the standards envisaged under Article 47 of the Constitution. It is noteworthy, as I have already stated in this judgment, that the allegations made by the respondent against the petitioner were not in the nature ordinary disciplinary cases that are expected in an institution such as the respondent university but were allegations that were criminal in nature and thus, the more reason why the respondent ought to have ensured that the allegations were proved to the standards expected in a criminal case.

38. It is also curious to note that the petitioner was accused and punished for allegedly soliciting another student to fight the said Bramwel Kundu without any proof of such solicitation whatsoever. I find that if indeed the said Humphrey attacked another student then it would not be fair to hold petitioner responsible for such an attack as to hold otherwise would be tantamount to a finding of vicarious liability for a criminal offence.

39. Needless to say, it was not disputed that no disciplinary action was taken against the said Humphrey Ouko who continued with his studies at the respondent's institution before graduating on 2nd September 2016 as shown in annexure **"OJA-1"** attached to the petitioner's affidavit in support of the petition thereby lending credence to the petitioner's claim that the disciplinary proceedings initiated against him were discriminatory in nature as the main actor in the fight was let to go scot free while the petitioner, whose only crime was to address a campaign rally which turned chaotic after his address was held responsible for the rowdy and unruly behavior of the attendees of such a meeting.

40. It was not disputed that violence broke out in a campaign rally attended by students in the run up for the university's student body elections. This court takes judicial notice of the fact that ordinarily campaign rallies in this country, be it in the general elections or any other election for that matter at times turn violent when supporters of rival candidates clash at such meetings. This was the scenario in the instant case and I therefore find that in the absence of the cogent proof of incitement, it would be most unfair to attribute any unbecoming behavior of the crowd or group of supporters to a particular candidate.

41. It is therefore my finding that failure to present the evidence of the alleged assailant and the victim to the disciplinary committee dealt a fatal blow to the credibility of the proceedings before the committee and even the subsequent substitution of the expulsion order with an order of a 3 year suspension, on appeal, cannot undo the mess created by the such failure.

42. Article 47 of the Constitution stipulates as follows:

**"Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**
**(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**
**(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall--**

**(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and**
**(b) promote efficient administration.**

43. Section 12 of Fair Administrative Actions Act provides that:

***"Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair*. (2)**

**Every person has the right to be given written reasons for any *administrative action that is taken against him.***

44. In the instant case, I find that event thought the petitioner was duly informed of the charges against him and was granted an opportunity to defend himself and present his side of the story, I still find that the hearing itself was conducted in a very unsatisfactory manner for the reasons that I have already highlighted in this judgment thereby making the entire exercise a sham process that was bereft of any form of proof and that appeared to have a pre-determined outcome. I say so because it is apparent that the hearing was founded on charges where there was no accuser/complainant and no witnesses or statements yet its outcome had the ultimate effect of literally ending the career of the petitioner herein, a young man with a bright future who was then pursuing a degree in course in medicine.

45. This court of the humble opinion that the harsh verdict passed on the petitioner by the disciplinary committee required the said committee to take the necessary precautions and to take the petitioner through a full proof process before passing the verdict. I find that the proceedings before the disciplinary committee can at best be described as a 'Kangaroo court' proceedings that had no semblance of a fair trial. It is to be noted that the petitioner was called upon to present his defence even before the evidence of his alleged accuser in this case, a Mr. Dismus Aminga, the respondents senior security officer, was taken contrary to the known procedure in all cases and trials that requires the complainant to present his case before the accused is called upon to give his defence.

46. What this court finds most astonishing about the entire trial is the fact that even though the alleged stabbing incident that the petitioner is alleged to have orchestrated took place in a crowded place and in the full glare of several witnesses, none of the said witnesses was called to give evidence before the committee and that the only witness for the respondent was the said senior security officer (Dismus Aminga) who was not an eye witness and whose evidence can at best be classified as inadmissible hearsay evidence. Needless to say, this having been a case of one student causing grievous harm to another, one has to wonder if the police were involved in the investigations and the outcome of such investigations.

47. For the above reasons, I find that the petitioner's right to fair administrative action and fair hearing were violated. Furthermore, I find that there was the element of the petitioner being subjected to discriminatory treatment in as far as it was not disputed that the student, one Humphrey Ouko who he allegedly procured by the petitioner to stab/fight another student was allowed to continue with his studies and graduate while the petitioner suffered the fate of expulsion/suspension.

48. Article 27 of the Constitution stipulates as follows:

> **(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.**
>
> **(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.**
>
> **(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.**
>
> **(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.**

49. In the present case I find that the petitioner's right to equality and freedom from discrimination was also violated.

**<u>Reliefs sought</u>**

50. Having found that the petitioner's rights under Article 27, 47 and 50 of the Constitution were violated, the next issue for determination is whether the reliefs sought in the petition should be granted. It is trite law that there is no wrong without a remedy.

51. Article 23 of the Constitution stipulates as follows on the remedies/reliefs that the court may grant for violation of rights……..

> **(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.**
> **(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.**
> **(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including--**
>
> > **(a) a declaration of rights;**
> > **(b) an injunction;**
> > **(c) a conservatory order;**
> > **(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;**
> > **(e) an order for compensation; and**
> > **(f) an order of judicial review.**

52. Section 11 of the Fair Administrative Actions Act on the other hand stipulates as follows:

> **In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order-**

**(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;**

**(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;**

**(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator; (d) prohibiting the administrator from acting in particular manner;**

**(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;**

**(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;**

**(g) prohibiting the administrator from acting in a particular manner;**

**(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;**

**(i) granting a temporary interdict or other temporary relief; or NO. 4 of 2015 Fair Administrative Action [Issue 1] FA1 – 10**

**(j) for the award of costs or other pecuniary compensation in appropriate cases.**

53. In the instant case, I note that the petitioner has been out of college since 8th March 2016 when he was first suspended pending the hearing of his disciplinary case. He was subsequently expelled from the university following the hearing by the disciplinary committee before the expulsion on 18th May 2016 converted to a 3 year suspension. It therefore goes without saying that the petitioner's peers and classmates have in the meantime proceeded with their studies as the petitioner stares into an uncertain future as a result of being subjected to a disciplinary process that does not stand the constitutional validity test. It is therefore my finding that the petitioner has undergone untold suffering and anxiety following his suspension from the respondent university for which he is entitled to be compensation in damages. Even though the parties did not make any submissions on the amount payable in damages this court is of the view that an award in the sum of kshs 1,000,000/- will be adequate compensation for the violation of the petitioner's rights.

54. In conclusion and have regard to my findings in this judgment, I find that the instant petition is merited and I allow it and make the following final orders;

**a. A declaration is hereby issued that the expulsion and subsequent suspension of the petitioner from the respondent university was null and void ab initio and that the petitioner be readmitted to join the respondent university's Bachelor of Medicine and Surgery (MBch.B) from where he had reached before his said suspension so as to complete his studies.**

**b. A declaration is hereby issued that the petitioner's rights under Articles 27, 47 and 50 of the Constitution were violated.**

**c. An award of kshs 1,000,000/- is hereby made to the petitioner for violation of his rights.**

**d. Costs of the petition.**

**Dated, signed and delivered in open court at Nairobi this 9th day of January 2019**

**W. A. OKWANY**

**JUDGE**

**In the presence of:-**

Mr Simiyu for the petitioner

No appearance for the respondent

Court Assistant – Kombo