



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NUMBER 441 OF 2016

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS

OF THE INDIVIDUAL UNDER ARTICLES 2, 3, 19, 20, 22, 23, 27, 47, 48 AND 50

OF THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010.

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS

UNDER ARTICLES 27, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF KENYA SCHOOL OF LAW ACT, ACT NO. 26 OF 2012 LAWS OF
KENYA.**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT ACTS NO. 4 OF 2015
LAWS OF KENYA**

AND

IN THE MATTER OF THE UNCONSTITUTIONAL DECISION BY DIRECTOR/CHIEF

EXECUTIVE & SECRETARY KENYA SCHOOL OF LAW BOARD ON EXPULSION

OF THE PETITIONER CONTAINED IN A LETTER DATED 1ST DECEMBER 2011

BETWEEN

MIGIRO CHADWICK KERAMA MATHIUS.....PETITIONER

VERSUS

KENYA SCHOOL OF LAW.....1ST RESPONDENT

DIRECTOR/CHIEF EXECUTIVE

KENYA SCHOOL OF LAW.....2ND RESPONDENT

COUNCIL OF LEGAL EDUCATION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

JUDGEMENT

Introduction

1. The Petitioner herein describes himself as a Kenyan citizen, acting in his own interest within the meaning of articles 22(2) and 258(2) of the Constitution of Kenya, 2010 with an obligation to defend the Constitution of Kenya within the meaning of article 3 of the Constitution.
2. The 1st Respondent is described in the petition as a body corporate established as such under the ***Kenya School of Law Act***, Act No. 26 of 2012 Laws of Kenya with power to sue and be sued in its own name.
3. The 2nd Respondent is described as the Director/Chief Executive exercising executive mandate of the 1st Respondent and is joined in this suit as a person with an obligation to respect, uphold and defend the Constitution within the meaning of article 3 of the Constitution of the Republic of Kenya.
4. The 3rd Respondent is ***the Council of Legal Education*** a body established under section 4(1) of the ***Legal Education Act, 2012***. Its functions include the regulation of legal education and training in Kenya and licensing legal education providers.

Petitioner's Case

5. According to the Petitioner, he was a student who applied for admission to the 1st Respondent for the Advocates Training Programme in the year 2008 but received a letter stating that he was not qualified hence he was required to sit for proficiency law examination and pass to enable him be admitted successfully.
6. On 18th September 2008, the petitioner applied for the proficiency examination as required by the 1st Respondent and when he went to sit for the proficiency examination he was informed that he was excluded because he had an A level that enabled him to get a direct admission to the school. Subsequently, the petitioner received an admission letter dated 25th November 2008 to the Kenya School of Law in the academic year 2009/2010 and sometime in November 2009 he successfully sat for the bar examinations and passed six units namely; Probate & Administration, Legal writing & drafting, Trial Advocacy, Professional Ethics, Legal practice & management and conveyancing.
7. It was pleaded that the Petitioner in 2010 complied with the registration of re-sit examinations where he successfully registered for the three units; civil Litigation; criminal litigation and commercial transactions that he had failed and sat for the resit examinations where he passed Civil Litigation. He further registered for the second time for the resit examinations of the two papers he failed namely; criminal litigation and commercial transactions which he sat for the examinations on 19th July 2011 and 28th July 2011 respectively and passed Commercial transactions.
8. The Petitioner further pleaded that in September 2011, he received a call from a person who introduced himself as an employee of the 1st Respondent claiming that the Petitioner had presented a forged receipt to register for the resit examinations and asked him to pick his letter urgently. The Petitioner however on 11th November 2011, responded to the above mentioned letter via his email address denying the allegations made against him by the 1st Respondent and received no further communication.

9. It was averred that on 17th July 2013, the Petitioner made payment to the 1st Respondent's account being payment of criminal litigation resit examination and on 30th July 2013 did resit for the said criminal litigation examination and passed it. However, on 11th December 2013, when the Petitioner went to clear with the school and handed over the student Identity Card at the school registry but he was not issued with compliance certificate by the 1st Respondent. Upon making a follow up on the issue he was issued with a letter stating that he was expelled from the school.

10. It was pleaded by the Petitioner that on 8th November 2014, he Petitioner filed an appeal against the decision made by the 1st Respondent but his appeal was dismissed without being accorded the right to be heard.

11. It was the Petitioner's case that like any other person holding equivalent qualifications, he had legitimate expectation that the Respondents would follow a lawful procedure in conducting its affairs and in arriving at decisions as contained in its letter 1st December 2011 expelling the petitioner from the school. It was therefore averred by the Petitioner that the determination by the respondent violated his fundamental rights and freedoms and that the respondents were perpetuating illegal actions and unless restrained by this honourable court from so doing they are determined to continue with breach of his constitutional rights.

12. It was the Petitioner's case that the decision made by the Respondents was done without according the petitioner a hearing thus being detrimental to the petitioner's legitimate expectations and a breach of the rules of natural justice. The said decision was, according to the Petitioner, unlawful, malicious, unreasonable, discriminatory, actuated by bad faith, based on extraneous considerations against the petitioners lawful, legitimate and rightful expectations and taken in breach of rules of natural justice in that the Respondents failed to accord the Petitioner sufficient notice of the proceedings of the disciplinary committee before expelling him; the Respondents failed to accord the petitioner a fair opportunity to present his case and to enable him correct or contradict any relevant statements and allegations prejudicial in his view; and the Respondents failed to avail any evidence whether written or oral in support of the allegations prior to making the decision of expelling the Petitioner.

13. It was the Petitioner's case that by the respondents' deliberate actions of denying to issue him a compliance certificate as such the petitioner cannot take any further steps towards eventually enrolling as an advocate of the High court of Kenya hence the Respondents have breached his legal legitimate expectation. On account of the foregoing the Petitioner's case was that he had been discriminated contrary to article 27 of the constitution of Kenya, 2010 and his rights to fair administrative action that is efficient, lawful, reasonable, and procedurally fair guaranteed under Article 47 of the Constitution violated the petitioners right to administrative action that is efficient, lawful, reasonable, and procedurally fair guaranteed under article 47 of the constitution of Kenya, 2010.

14. In response to the Respondents' case, the Petitioner denied that he knowingly a copy of the alleged forged payment print out receipt number 16698 of Kshs. 12,000/= which he used to register for his resits examination of Criminal Litigation and Commercial Transactions. To the contrary he averred that on 4th July 2011, he paid in cash of Kshs. 12,000/= at the accounts office of the 1st Respondent being money for resit examinations and was issued with a payment print out receipt. He reiterated that on 11th August 2014 when he visited the 1st Respondent institution to inquire why the compliance certificate was taking long to be issued to me, is when he was informed that the alleged computer print out he used for registration of his resit examinations is alleged to be a forgery. He was however not contacted to avail the alleged computer print out receipt for authentication purposes by the 1st Respondent.

15. The Petitioner categorically denied that he received a letter dated 21st November, 2011 inviting him to appear before the student Disciplinary committee since the address (35379-00200) used in posting the letter dated 21st November 2011 belong to the firm of S. Ogeto Ongori & Company advocates and the same address does not belong to him. He disclosed that in January 2010, he applied for pupillage in the firm of S. Ogeto Ongori & Company Advocate for a period of 6 months which expired in June 2010

during which period, he used the address of the firm in receiving and postage of letters hence he did not receive the letter as the same was returned unclaimed.

16. According to the Petitioner, in 2008 when he applied for admission into the Advocates Training Programme at the 1st Respondent institution, he used his personal and official address which is 2494-40200 Kisii. He therefore asserted that he did not receive the notice to appear and failed to attend the student disciplinary committee. He therefore averred that there was no disciplinary committee culminating in his expulsion on 1st December 2011 as there is no evidence of minutes and resolution produced or attached to that effect.

17. Whereas the Petitioner admitted that he filed an appeal on 8th November 2014 against the alleged decision of the student disciplinary committee contained in a letter dated 1st December 2011 which letter, when he preferred the said appeal, he used his personal and official address of 2494-40200 Kisii and not 35379-00200 Nairobi. However, there was no evidence of minutes and resolution showing how the appeal was deliberated on by the relevant committee and the alleged decision made. He however averred that when the 1st Respondent rejected his appeal, the address used was 5690-00200 which address did not belong to him and that he collected the letter at the school.

18. With respect to the print out the Petitioner contended that the alleged forged payment receipt is computer generated and a print out from the Kenya School of Law hence there is no original copy in existence. In his view, forgery can only be proved through a competent court of law yet he has never been arrested, charged or convicted with forgery. To his knowledge no forensic investigations have been carried out to confirm the forgery allegations and he was never given notice to attend the disciplinary committee to defend myself and answer the allegations made against him.

19. It was therefore his case that such failure and omission to inform him on the part of the Respondent violated my right to fair hearing and in reaching the alleged decision to expel him from school on the ground of alleged forgery, the respondents acted as a complainant and judge in its own case which is illegal.

1st Respondents' Case

20. The Petition was opposed by the 1st Respondent.

21. According to the 1st Respondent, the petitioner registered for the Advocates Training Programme re-sit examinations in 2011 for three units namely Civil Litigation, Criminal Litigation and Commercial Transactions where he passed Civil Litigation. Further, the petitioner registered for the second to re-sit for the two papers he had failed namely Commercial Transactions and Criminal Litigation on 28th July and 19th July 2011 respectively and passed commercial Transactions.

22. It was the 1st Respondent's case that in early September 2011 the 1st Respondent contacted the Petitioner and one **Ms. Mugambi Anne Wangari** on telephone in follow up to the query during which conversation the Petitioner and the said **Mugambi Anne Wangari** claimed to have had in their respective possession an "original receipt" bearing their respective names which could be presented to the 1st Respondent for authentication. It was averred that on the 15th September, 2011, when both **Ms. Mugambi Anne Wangari** and the petitioner were expected to avail their respective 'original receipt', it is only the former who presented the original receipt to the 1st Respondent for authentication. Upon examination of the finance system, it was confirmed that **Ms. Mugambi Anne Wangari's** receipt was authentic and system generated.

23. It was contended that on 12th October, 2011, a demand letter was sent to the Petitioner to avail the 'original receipt' to which the Petitioner replied on 11th November 2016, giving a general denial claiming that 'someone wanted to finish him' but completely failed to mention the whereabouts of the 'original receipt'. Via a letter dated 21st November, 2011, the petitioner was invited to appear before the Student

Disciplinary Committee, on 29th November, 2011, on a charge of suspected forgery of an official receipt. According to the 1st Respondent, the postal address used to invite the petitioner, 35379-00100, is the same address that had been used for the letter dated 12th October, 2011 which he duly acknowledged and replied to. However, despite adequate notice to appear, the petitioner failed to attend the Student Disciplinary Committee.

24. It was disclosed that the Student Disciplinary Committee found the petitioner guilty of presenting forged receipts culminating in his expulsion from 1st respondent institution on 1st December, 2011. It was averred that on 8th November, 2014 the petitioner filed an appeal against the decision of the Student Disciplinary Committee with the office of the 2nd Petitioner which appeal was rejected as the petitioner, once again failed to avail the 'original receipt' allegedly in his possession.

25. It was the 1st Respondent's case that the registration of the petitioner to undertake resits examination in July 2013 was inadvertent as he was no longer a student. Further, the petitioner persists in his failure and or refusal to avail the 'original receipt' for authentication. The 1st Respondent asserted that the petitioner's conduct was fraudulent and having been given a chance, he completely failed to redeem his image by producing the alleged 'original receipt'.

Determinations

26. I have considered petition, the supporting affidavit, the replying affidavit, the submissions filed and authorities cited in support thereof and this is the view I form of this matter.

27. In this case, it is my view that the Petitioner having lodged an appeal with the office of the 2nd Respondent, it is that decision that this Court can properly interrogate since in these proceedings, this Court is not sitting on appeal against the decision made by the 1st Respondent.

28. In these proceedings, the Petitioner contends that his appeal against the decision expelling him was dismissed without him being accorded a hearing.

29. According to the Respondents, the said appeal was rejected as the Petitioner, once again failed to avail the original receipt allegedly in his possession. It was the Respondents' case that the registration to undertake resits examinations in July, 2013 was inadvertent since the Petitioner was no longer a student.

30. The Respondents have however not exhibited the appellate proceedings to show how the said appeal was heard and a determination arrived at to dismiss the same. The Respondents' case that the said appeal was "rejected" seems to infer that the appeal was summarily rejected. In the absence of any evidence to the contrary and as the Petitioner has alleged that he was never afforded an opportunity of being heard on the appeal, one cannot but help but agree with the Petitioner that he was never afforded an opportunity of being heard on his appeal.

31. 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.

32. Procedural fairness is therefore 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 administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”

33. 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 paragraphs 135 -136 where 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...”

34. 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.”

35. 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 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.

36. Therefore, 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 his 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.

37. The right to be afforded an opportunity of being heard must have be distinguished from the necessity to have an oral hearing especially in disciplinary matters. The procedure 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”.

38. In **Kenya Revenue Authority vs. Menginya Salim Murgani Civil Appeal No. 108 of 2009**, the Court of appeal delivered itself as follows:

“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed.” [Emphasis mine].

39. n **Russel vs. Duke of Norfolk [1949] 1 All ER at 118**, the Court expressed itself as hereunder:

“There are in my view no words which are of unusual application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on circumstances of the case, the nature of the inquiry, rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. Accordingly I do not derive much assistance from the definition of natural justice which have been from time to time being used, but whatever standard is adopted one essential is that the person concerned would have had a reasonable opportunity of presenting his case.” [Emphasis mine].

40. However as is stated in *Halsbury Laws of England*, 5th Edition 2010 Vol. 61 at para. 639:

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the *audi alteram partem* rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.”

41. What the above cases hold is that whatever form of proceedings adopted by the authority, it must meet the irreducible minimum elements of fairness. In this case, it is clear that after the Petitioner filed his appeal, he was not invited to argue his case. Whereas he need not have appeared before the Tribunal in person, the law expected that the Petitioner would be heard on his case before a determination either way was made.

42. The question that arises however, is whether in the circumstances of the case, the Petitioner ought to have been availed an opportunity whether orally or in writing to present his case.

43. In **Gathigia vs. Kenyatta University Nairobi HCMA No. 1029 of 2007 [2008] KLR 587** the Court held:

“I would at this stage adopt the observations made in the Hypolito Cassiani De Souza vs. Chairman Members of Tanga Town Council 1961 EA 77 where the court set down the general principles which should guide statutory domestic or administrative tribunals sitting in a quasi-judicial capacity. P 386 – the court said; “1.if a statute prescribes, or statutory rules and regulations binding on the domestic tribunal prescribe, the procedure to be followed, that procedure must be observed; 2. if no procedure is laid down, there may be an obvious implication that some form of inquiry must be made such as will enable the tribunal fairly to determine the question at issue; 3.In such a case the tribunal, which should be properly

constituted, must do its best to act justly and reach just ends by just means. It must act in good faith and fairly listen to both sides. It is not bound, however, to treat the question as a trial. It need not examine witnesses; and it can obtain information in any way it thinks best.....; 4.The person accused must know the nature of the accusation made; 5.A fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement prejudicial to their view and to make any statement they may decide to bring forward; 6.The tribunal should see to it that matter which has come into existence for the purpose of the *quasi-lis* is made available to both sides and once the *quasi-lis* has started, if the tribunal receives a communication from one party or from a third party, it should give the other party an opportunity of commenting on it.”

44. Unless the appellate procedure provide for summary dismissal of an appeal, where the right to appeal is provided by the disciplinary regulations, the said right ought not to be denied by introducing procedures which are inimical to a fair hearing and adjudication of the prescribed avenue for redress. A first appellate tribunal generally re-evaluates the evidence adduced at the first instance and therefore it cannot be said that by merely having a glance at the cold print decision, an appellate Tribunal has re-evaluated the evidence when even its record of the proceedings before it, assuming there were in fact such proceedings, are not exhibited.

45. How the 2nd Respondent arrived at its determination reject the appeal before the applicant had presented his case, defeats reason. In **Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation [1948] 1 KB 223**, Lord Greene stated (at page 229) that:

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in Short vs. Poole Corporation [1926] Ch. 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.”

46. In my view, an introduction of a procedure which does not permit the hearing of a party in his case whether orally or otherwise, may well amount to bad faith and constitute irrationality as one cannot be in a position to know what factors were considered by the authority in arriving at the decision. Such a decision may well be described as having being arbitrarily arrived at. This must necessarily be so because statutes are interpreted by reference to their purpose, and statutory powers must be exercised for the purpose for which they were conferred. Public authorities are required to promote, and not to frustrate, the legislative purpose. In my view the purpose of the procedure for an appeal is to afford a person aggrieved by the earlier decision an opportunity to challenge the same. To thwart that intention by blocking a person’s grievance from being agitated based on the same grounds on which the original complaint was based amounts in my view to thwarting the intent and purpose of an appeal. This position was adopted in **R (Haworth) vs. Northumbria Police Authority [2012] EWHC 1225 (Admin)** at [104] cited at page 534 of *Judicial Review Handbook* 6th Edn. by Michael Fordham where the Court was dealing with the refusal to consent to police pension reconsideration, however strong the merits a decision which was found to be “not in accordance with statutory purpose”.

47. Section 4(3)(b) of the ***Fair Administrative Action Act*** provides that where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision an opportunity to be heard and to make representations in that regard.

48. In my view the right of appeal can only be meaningfully enjoyed if the appellant is heard before the decision is made. For an authority or tribunal entrusted with taking administrative decisions which affect the rights of a person to close itself in an office and by way of fiat dismiss or reject an appeal without procedurally and properly hearing the same and without indicating how the decision was arrived at whether by tossing a coin or waving a magic wand or raising a green flag or otherwise leave the petitioner speculating as to the manner in which the determination was made, can be anything but fair. In my view the power given to administrative or executive authorities ought to be properly exercised and must not to be misused or abused. This is so because as elucidated by **Prof Sir William Wade** in his learned work, *Administrative Law*:

“The powers of public authorities are...essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of [his property] just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land...regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose...But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them...”

49. It was further contended that the Petitioner was never given the reasons for the decision. Article 47(2) states:

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

50. Similarly section 4(3)(d) of the *Fair Administrative Action Act* provides where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision a statement of reasons. To simply “reject” an appeal, as seems to have been the position in this case cannot, by any stretch of imagination, constitute a reasoned decision. To do so, in my respectful view, can only be a lesson on how not to conduct administrative proceedings. Accordingly, the decision made by the 2nd Respondent violated Article 47(2) of the Constitution and contravened section 4(3)(d) aforesaid.

51. As the Petitioner’s appeal was never heard on merits, the order which commends itself to me and which I hereby grant is a declaration that the purported decision made by the 2nd Respondent rejecting or dismissing the Petitioner’s appeal was tainted with procedural irregularity and is hereby quashed. I also direct the 2nd Respondent to within 30 days of service of this order hear and determine the Petitioner’s appeal in accordance with the law and make a determination thereon. In default an order will issue compelling the 3rd Respondent to issue the Petitioner with the compliance certificate.

52. The costs of these proceedings are awarded to the Petitioner to be borne by the 2nd Respondent.

53. It is so ordered.

Dated at Nairobi this 10th day of February, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Kiriimi for Mr Nyakiengana for the Petitioner

CA Mwangi