



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 1 OF 2014

AND

IN THE MATTER OF THE UNIVERSITIES ACT (ACT NO. 52 OF 2012) LAWS OF KENYA

AND

**IN THE MATTER OF THE DECISION OF THE SENATE EGERTON UNIVERSITY DATED
11TH OCTOBER, 2013 EXPELLING PRASUN MAULIK PATEL**

AND

**IN THE MATTER OF THE EGERTON UNIVERSITY'S APPEALS AND GRIEVANCES
COMMITTEE HELD ON THE 30TH APRIL, 2014**

AND

**IN THE MATTER OF RATIFICATION OF APPEALS AND GRIEVANCES COMMITTEE'S
DECISION BY THE FULL GOSPEL COUNCIL ON THE 5TH AUGUST 2014**

AND

**IN THE MATTER OF THE VIOLATION OF THE APPLICANT'S CONSTITUTIONAL RIGHT
TO EDUCATION, UNIVERSITIES ACT AND THE EGERTON UNIVERSITY STATUTES**

AND

IN THE MATTER OF REPUBLIC

VERSUS

EGERTON UNIVERSITYRESPONDENT

AND

PATEL MAULIK PRASUNAPPLICANT/SUBJECT

JUDGMENT

Before this court is the Amended Notice of Motion dated 2nd April 2015 in which the Applicant **PATEL MAULIK PRASUN** sought reliefs as follows:

(a) That this honourable court be pleased to issue orders of certiorari to bring to itself for purposes of quashing the Respondent's minutes, findings resolutions and decision arrived at on 11th October, 2013;

(b) That this honourable court be pleased to issue orders of certiorari to bring to itself for purposes of quashing the Respondent's Grievances Handling and Appeals Committee of Council's decision purportedly arrived at on the 30th April, 2014, as too, the purported subsequent decision of the full council meeting held on 5th August, 2014;

(c) That this honourable court be pleased to issue an order of mandamus compelling commanding or mandating

(i) The Egerton University to desist from upholding or persisting in the implementation of the orders made by the Egerton University Senate on 11th October, 2013;

(ii) The Respondent to desist from upholding and or persisting in the implantation of the orders issued by the Respondent's Grievances Handling and Appeals Committee of Council's decision of the full Council meeting held on 5th August, 2014;

(iii) The Respondents to desist from withholding part of the Subject's Year II results and to release all the Year II results

(iv) The Respondent to re-admit the subject Patel Maulik Prasun, back to Egerton University to continue with his normal studies and sit for his examinations without any interruption.

(v) The Respondent to allow and facilitate the subject to undertake any Year II re-sit examinations that he is required to undertake in the failed and or to compensate the marks in the failed courses with those related courses that the subject has passed in pursuant to the Respondent's statutes

(vi) The Egerton University and the Egerton University Senate to desist from purporting to discontinue the Applicant's education

(vii) That the Egerton University and the Egerton University to desist from purporting to curtail the and or in any way infringe the subject's right to education

(d) That the costs of this Notice of Motion and the Chamber Summons dated 9th January, 2014 be borne by the Respondent.

The application was supported by the Verifying Affidavit sworn on 9th January 2014, the Statutory Statement of Facts dated 17/6/2015 and the Supplementary Affidavit dated 10/7/2015.

FACTS

The applicant was a student at Egerton University hereinafter referred to as (the Respondent) where he was pursuing a degree in **Bachelor of Medicine and Surgery**. The applicant sat for his examination for his first year of study during the 2011/2012 academic year. He failed both the main exam and the re-sit in the Biochemistry Course.

By way of a letter dated 30/10/2012 the applicant was instructed by the Respondent to repeat the entire first year of study because he had failed the re-sit. This letter was not received by the applicant until sometime in December, 2012 by which time the stipulated period of registration for the first year had

already elapsed and the applicant had already done the examinations for the first semester.

Nonetheless the applicant did report to the Heads of Department in the various courses in order to take the special examinations. He was advised by the relevant Heads of Departments of the common courses that he was not required to retake the common courses which he had already passed. The applicant was further informed that the marks attained in the previous year would be accredited to his transcript. As such he only repeated the other courses.

Upon completing the academic year, the applicant received his transcript wherein the marks for all the common courses had been credited. The transcript also showed that he had passed the courses that he had repeated and recommended that he could proceed to level two (2nd year) of study.

On 11/10/2013 while pursuing his second year of study, the applicant received a letter from the Respondent informing him that the University Senate had in its meeting held on 10/10/2013 decided to discontinue his studies at the University on academic grounds. This was due to the fact that he had failed more than 50% of the Credit Factors during the academic year 2012/2013. This decision was said to have been taken pursuant to Section 34(10) (a) of the Egerton University Act which provides

“A student shall be discontinued for failing more than 50% of all the Credit Factors taken in the ordinary examinations of one academic year”.

The applicant lodged an appeal against this decision of the Senate before the **Grievances and Appeals Committee Council** (hereinafter referred to as the appeals committee) on 30/10/2013. However the Respondent delayed in constituting the appeals committee, and in setting down a date for the hearing of the appeals. This prompted the applicant to file these Judicial Review proceedings. The appeals committee finally rendered its decision on 20/8/2014 during the pendency of this matter in court, in which it dismissed the applicant’s appeal and upheld the decision of the Senate to discontinue the applicant from his studies at the University. However following an application to court by the applicant this decision to discontinue him was stayed. The applicant therefore proceeded with his studies and is currently in his 3rd year of study.

The applicant in his papers argues that the Respondent acted arbitrarily and ultra-vires in discontinuing him without any justifiable course. The letter of 11/10/2013 informing him that he had been discontinued for failing more than 50% of the Credit Factors was contrary to the Respondent’s earlier communication, through the transcript dated 29/9/2013 that he had passed the 1st year of study and was therefore qualified to proceed to the next level. The applicant argued that the Respondent failed to explain why its two stances on the same issue were contradictory and they also failed to inform the applicant in which courses he had allegedly failed to attain the pass-mark.

Additionally the applicant argued that he had not been invited to defend himself before the appeals committee, and the Heads of Department were not called to clarify if indeed they had made representations to the applicant, to warrant the setting aside of the decision. Finally the applicant argued that he had invested heavily in his studies and would suffer great prejudice if the decision of the Respondent to discontinue him was allowed to stand.

The Respondent on their part filed a Replying Affidavit sworn on 8/5/2014 by the University’s Deputy Registrar Academic Affairs Professor Nderitu F.G. in which reply the Respondent contended that upon failing the first year of study the applicant was advised to repeat the entire year. He however failed to retake all the courses as directed and it was on this basis that his results were nullified. The applicant was discontinued pursuant to the University’s **Undergraduate Degree and Diploma Programmes Rules and Regulations**. The Respondent insisted that it acted procedurally and fairly in discontinuing the applicant and asked the court to dismiss the suit with costs.

The application was disposed of by way of written submissions. Both parties duly filed their submissions which were then highlighted in open court on 12/7/2016.

The applicant's submissions were dated 30/11/2015. Counsel for the applicant submitted that although the Respondent has full discretion to set the cut off points to determine which students have passed and which have failed, this discretion had, in the case of the applicant been exercised unfairly and capriciously.

The Respondent issued the applicant with a transcript indicating that he had successfully completed his first year of study and could proceed to the next level. Thereafter relying on a provision that had long been repealed by Section 77(1) (f) of the Universities Act No. 42 of 2012, the Respondent purported to discontinue the applicant based on the allegation that he had failed more than 50% of the Credit Factors. The fact that no explanation was given as to why the Respondent had rescinded its earlier decision coupled with the delay in determining the applicants appeal all point to bad faith on the part of the Respondent when considering the applicant's case.

The applicant submitted that there was a reasonable explanation for his failure to retake the common courses. He had been informed of the decision to repeat the year much later after the said courses had been taught and the main exams administered. Further the applicant submits that he had been advised by the Heads of Departments that he was not required to repeat those courses.

In addition the applicant submitted that the Respondents resolution that a student who was required to repeat an academic year must repeat all the courses was passed on 27th September, 2013 after he had already been advised by the Heads of Department that it was not necessary to do so. That resolution ought not be applied retrospectively as against the applicant.

The applicant also submitted that the Respondent had no basis for discontinuing his studies and it relied on non-existent rules to do so. His right to be heard had been contravened and accordingly the Respondents decision to discontinue him in breach of the rules of natural justice ought not be allowed to stand.

Finally it was submitted for the applicant that having given him an assurance that he had qualified to proceed to the next level, with the intention that the applicant would act on this assurance in a certain way, the Respondent was estopped from acting against the assurance already given and from denying the truth of its representation.

The Respondent filed their submissions on 26/2/2016. It submitted that the decisions of the University were in line with the **University Guidance and Rules** which the applicant being a student of that institution is obliged to adhere to. The Respondent submitted that it acted within its power and authority in discontinuing the applicant. It was the applicant who acted contrary to the directive of the respondent to repeat the full year and the court ought not in the circumstances overrule the decision of the Faculty Board.

The Respondent submitted that the applicant was accorded the same treatment as all other student of the University who were discontinued for failure to attain the required grades. Additionally the applicant's case was exhaustively considered and investigated by the Council of the Grievances and Appeals Committee before his appeal was rejected. The applicant could not therefore allege that he had been treated unfairly.

The Respondent submitted that the applicant could not claim to be acting on the advise and/or instruction of un-named Heads of Department because such communication if any is required to be made through the Dean of the Faculty. The applicant had a duty to comply with the orders of the Faculty Board. The Respondent denied the allegation that it had introduced new regulations. The rules of the University have always required that a student who is repeating a year must also take all the common courses. The applicant failed to cite a specific University regulation that authorized the transfer of credits.

On the allegation that the Respondent could not act contrary to the transcript already issued to the applicant, the Respondent submitted that said transcript only contained provisional results. It was not final and conclusive proof that the applicant had passed his first year of study. In any event that transcript was issued on the basis of marks which had been issued irregularly. It was submitted that the applicant acted

in bad faith as he failed to disclose to the court that he continued to attend classes notwithstanding that he had already been discontinued. The Respondent denied having accepted any fees from the applicant after officially discontinuing him. Finally the Respondent urged the court to dismiss the suit with costs.

ANALYSIS AND DETERMINATION

This petition raises two main issues for determination

- (i) Was the Applicants right to be heard before the Respondent made the decision to discontinue him infringed.
- (ii) Was there a breach of the Applicants legitimate expectation by the Respondent

I will proceed to consider each issue individually.

1. Right to be Heard

The remedy of Judicial Review is concerned with the process and not the merits of a decision. The aim of Judicial Review is to ensure that each person is given fair treatment by the authority to which he has been subjected. A court in a Judicial Review application will not be sitting on appeal against the decision of the authority in question and the court will not substitute its own opinion on the issue in question on the basis that on the same facts it would have reached an altogether different decision.

A decision of an inferior court or public authority or tribunal may only be quashed by an order of certiorari where said court authority or tribunal has been found to have acted without jurisdiction, acted in excess of its jurisdiction, failed to comply with the Rules of Natural Justice where there is an error of law on the face of the record or where the decision reached is unreasonable in the ordinary sense. (see **ONYANGO OLOO Vs ATTORNEY GENERAL 1986 – 1989 E.A 456** and **PASTOLI Vs KABALT DISTRICT LOCAL GOVERNMENT COUNCIL & OTHERS 2008 E.A 300**)

The Respondent University had the mandate to determine the cut off points for its students in each year of study. The University would also determine the consequences to follow should a student fail to attain the pass mark. It has provided in its statutes instances where a student would be required to re-sit units. The court will not interfere with the decision of the Respondent to discontinue the applicant unless it is satisfied that such decision had no basis or was so unreasonable that a reasonable body faced with the same facts would not come to the same decision.

The court is not an expert in all fields. The courts must therefore leave to each body, tribunal or authority the leeway to run its business and make decisions based on its particular area of expertise without any interference. A mere allegation against a decision of a public body will not suffice. Neither is it the duty of this court to determine whether the expulsion of the applicant was warranted and merited. The only business of this court is to determine whether the applicant was treated fairly and whether the rules of natural justice were adhered to. In this I am guided by the decision of the Court of Appeal in **NYONGESA & 4 OTHERS Vs EGERTON UNIVERSITY COLLEGE [1990]eKLR** where it was held as follows

“I shall now state that courts are very loath to interfere with the 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 to quash decisions of any bodies when the courts are moved to do so where it is manifest that decisions have been made without fairly and justly hearing the persons concerned or the other side. It does not assist for anyone to question or criticize the particular posture of courts. It is the duty of 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 enquiry are of an internal disciplinary character”.

Also see REPUBLIC Vs EGERTON EX-PARTE ROBERT KIPKEMOI KOSKEY [2006]eKLR where the court held

“It is not the function of this court to probe into the accuracy, truth or otherwise of the allegations of examination malpractice that were alleged by the Respondent against the applicant. The court is interested in knowing whether the rules of natural justice were observed by the Respondent in the conduct of its investigations against the applicant. It has been held that judicial review is not an appeal from a decision, but a review of the manner in which the decision was made”. (own emphasis)

The applicant has claimed that he was not heard before the decision to discontinue him was made. The right to be heard is a fundamental rule of Natural Justice. Article 47 of **The Constitution of Kenya (2010)** guarantees to any person facing administrative action, the right to administrative action ‘**that is expeditious, efficient, lawful, reasonable and procedurally fair**’. Thus a person who stands to be adversely affected by an administrative decision, must be accorded an opportunity to be heard before that decision is made.

In NYONGESA & 4 OTHERS Vs EGERTON UNIVERSITY COLLEGE (Supra), the Court of Appeal held that a student who faced the possibility of being denied their award, certificate or diploma should not suffer the penalty of such deprivation without being accorded a hearing. In that case **Hon. Justice Masime, JA** (as he then was) stated

“In my respectful view a student who has studied to the completion of a University course and who claims to be entitled to the award of a degree, diploma, certificate or other award should not suffer the penalty of deprivation of such award without notice of hearing. That must be so since such a penalty would clearly take away his ‘prize’ and future source of academic standing and livelihood and all that appertains to it. Prior Notice of the proposal to impose such a penalty and of proceedings therefore must in my view be given to persons liable to be directly affected so that they are able to

(i) Make representation on their own behalf if they wish

(ii) Appear at the hearing if one is to be held and

(iii) Effectively prepare their own case and answer the allegations which they have to meet”.

This is a requirement, which any procedure adopted by the Respondent herein must also adhere to. Where an administrative body is vested with powers to determine its own procedure, then it is obliged to ensure that the procedures so adopted align with Article 47 of the Constitution. In the case of MSAGHA Vs CHIEF JUSTICE & 7 OTHERS [2006] 2 KLR 553, the Court held that

*“All that is fundamentally demanded of the decision maker is that his decision in its own context be made with due regard for the affected parties’ interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case, nevertheless some judges prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice, often the terms are interchangeable. But it is perhaps now the case while a duty to act fairly is incumbent on every decision-maker within the administrative process whose decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure. The rules of natural justice are generally formulated as the rule against bias (*nemo iudex in sua causa*) and in respect of the right to a fair hearing (*audi alteram partem*)”.*

In the case of KENYA REVENUE AUTHORITY Vs MENGINYA SAUMU MURGANI [2010] eKLR the Court of Appeal held that a hearing does not necessarily have to be an oral hearing. All that is required is that the decision-making body achieves the degree of fairness appropriate to their task. The

procedure to be followed is up to them and there is no rule that for fairness to be achieved an oral hearing must take place.

In **GRACE KAZUNGU & ANOTHER Vs NSSF Cause No. 703 of 2010** it was stated that fairness requires that a person receive notice that his case is under consideration. Secondly one must be provided with the particulars of the case against them to enable him prepare an explanation or response thereto. Thirdly one must be allowed the opportunity to make submission in that case.

Back to the present case, it is not disputed that the appellant was not heard by the faculty board before it made recommendations to the senate to disqualify him. However the Respondent argued that the applicant was heard during his appeal and as such his right to be heard was accorded to him. The Respondent relied on the letter written by the applicant to the appeals board stating why he should not be discontinued as proof of this fact.

However I find that the right to be heard can only be said to have been satisfied if the person facing the administrative action is informed **in advance** of the charges against him to enable him respond to the same.

In **SELVARATAN Vs RACE RELATIONS BOARD [1976] All E.R** the Court held that a person need not be informed with full details of the charge against him, all that is required is that the allegations against him be stated broadly. It was held in that case that

“The investigative body is under a duty to act fairly, but that which fairness required depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution of proceedings, or deprived of remedies or redress or in some such way adversely affected by the investigation and report, then he should be told the case made against him and he afforded a fair opportunity of answering it. The investigating body, is however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only”.

My own take is that fairness requires that the person under investigation must be furnished with sufficient particulars to enable him comprehend the nature of the case against him and to enable him answer to it.

In this case the applicant ought to have been informed that he was being accused of failing to sit for all the courses and accordingly his results for the whole year stood to be cancelled leading to his disqualification from the University. There is no evidence that the applicant was informed **beforehand** of the charge against him. Nor was he at any time informed that the decision to disqualify him was on the basis that he did not sit for all the courses. All that the applicant was told was that he had failed to attain the required pass mark. From the material availed to the court it is clear that the applicant did not fully comprehend why he was being discontinued yet he had already been issued with a transcript in which his marks from the previous year had been accredited and which transcript indicated that he was authorized to proceed to the next academic year. This is why in his appeal to the appeals committee the applicant submitted that the board had made an erroneous decision and argued that he had actually passed his first year of study.

The right to be heard is not dependent on the strength of ones case. Even in the face of a seemingly hopeless case, a person has a right to be heard before an administrative decision is made against him. In this case it is very clear to me that the applicant’s right to a fair hearing was contravened as he was not allowed an opportunity to defend himself before the decision to discontinue him was made and I further find that the basis for that decision was not properly communicated to the applicant.

LEGITIMATE EXPECTATION

The meaning of the term ‘**legitimate expectation**’ was expounded as follows in the case of **JOEL**

NYABUTO OMWENGA & 2 OTHERS Vs IEBC & NOTHER [2013] eKLR

“..... For a legitimate expectation to arise, the decision of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do and until there had been communicated to him some rational grounds for withdrawing it on which he had been given an opportunity to comment; or (ii) he has received assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn”.

Thus a ‘**legitimate expectation**’ may arise either from an express promise or from past practice and conduct which a person may reasonably expect to continue. This doctrine protects a party who based on reliance upon such a promise by a public body or on past conduct acts to his detriment. It is intended to ensure that a person is not denied a benefit that he had previously enjoyed without prior notice and on the basis of irrational grounds.

The Respondents Heads of Department promised the applicant that his marks would be credited to his transcript. Relying on this promise, the applicant did not retake the required exams. This decision was however reversed by the board who decided to discontinue the applicant because he had not attained the pass mark as a result of not doing all the relevant courses. The senate stated during its deliberations of the applicants results, that the general rule is that a student is required to retake the year must sit for all courses.

One of the elements of the doctrine of legitimate expectation is that the expectation must be legitimate. It must be within the powers of the decision maker to make and deliver on that promise. A promise which is made Ultra Vires the powers of the decision maker cannot be upheld. In **JUSTICE KALPANA H. RAWAL Vs JUDICIAL SERVE COMMISSION & 3 OTHERS [2016] eKLR**, the Court held that

“The decision of the Supreme Court that we have just cited adds to legitimate expectation involves a representation that must be one which it was competent and lawful for the decision maker to make without which the reliance cannot be legitimate. Other important aspects of the doctrine is that the law does not protect every expectation save only those which are legitimate (South African Veterinary Vs Szymanski 2003 ZASZA 11); clear statutory words override any contrary expectation, however, founded (Republic Vs DPP Ex-parte Kibilene and Republic Vs Nairobi City County & another, Ex-parte Wainaina Kigathi Mungai HC JR. Misc. C No. 356 of 2013); the representation must be one which the decision maker competently and lawfully make without which the reliance cannot be legitimate (Hauptfleisch Vs Caledon Divisional Council (1963) (4) SA 53); legitimate expectation does not arise when it is made ultra vires the decision-makers powers (Rowland Vs Environment Agency (2003) EWCA Civ. 1885); and a public authority which had made a representation which it has no power to make is not precluded from asserting the correct position which is within its power to make (Republic Vs Keny Renue Authority, ex part Aberdare Freight Services Ltd [2004] 2 KLR 530”.

The directive that the applicant repeat the entire year was given by the University Senate. In its ordinary meaning as was understood by the applicant himself he was required to retake all the courses. It was for this reason that the applicant tried to liaise with the Heads of Department in order to sit the special exams. In stating as a general rule a student required to retake the year was required to repeat all the courses on offer in that year, the Senate was not making a new rule that was to be applied retrospectively. Rather it was restating the regulation in force at the time. Thus any party wishing to be exempted from retaking exams, was obliged to apply specifically for such exemption.

From the material available before this court the decision to exempt a student from taking certain courses was one which could only be made by the Senate. All students’ results were to be submitted to the Faculty Board for deliberation and the Faculty Board would thereafter forward its recommendations to the Senate on the appropriate cause of action. The final decision lay with the Senate. Only the Senate

could decide which courses a student should re-sit, and only the Senate could exempt a student from taking all the courses. The decision of the Heads of Department was not binding on the senate, as there was no evidence to suggest that in this case the powers to make this decision has been delegated by the Senate to the Heads of Department.

The Heads of Department therefore could not make a promise to the applicants that his grades would be accredited as it was not within their mandate to give such a promise. The senate cannot be bound by promises made by the Heads of Departments. Similarly the Senate could not be bound by the provisional transcript because that transcript was not deemed final until it had been approved by that same senate. The applicant could not therefore claim legitimate expectation on the basis of a promise made by a body which had no mandate to make such a promise. As such the applicant's allegation that the Respondent had infringed his legitimate expectation fails.

CONCLUSION

Based on the foregoing this petition only succeeds in part as follows

(i) This court finds that the Respondent did infringe on the applicant's right to a fair hearing when it made the decision to discontinue him without informing him of the case against him, giving him sufficient time to prepare his defence and allowing the applicant an opportunity to make his submissions before a decision prejudicial to himself was made.

(ii) This court finds that the Respondent did not in any manner infringe upon the applicants right to legitimate expectation as the Heads of Department had no authority to make a promise that contravened the directive of the Senate.

(iii) In addition to orders of certiorari, the applicant also sought orders of mandamus to compel the Respondents to allow him to continue with his second year to facilitate him to take any exams he had been unable to take during the time when the orders discontinuing him were in force and to direct the Respondent to released these results to him. I find that this prayer has already been overtaken by events as following various orders of the court, the applicant has continued with his studies and as at July 2015 was in his third year of study.

(iv) For the avoidance of doubt this court is by no means declaring that the applicant met the required **academic** criteria to proceed with his studies. All the court is asserting is that the **procedure** adopted in reaching the decision to discontinue the applicant from his studies at the Respondent University did not meet the required threshold as the applicant was not accorded his right to be heard **before** that decision was reached.

Therefore this court allows this application dated 2nd April 2015 and issues the following orders

(i) An order of certiorari be and is hereby issued quashing the Respondent's Senate's decision to discontinue the applicant dated 11th October, 2013;

(ii) An order of certiorari be and is hereby issued quashing the Respondent's Grievances Handling and Appeals Committee of Council's decision dated 30th April, 2014, and the subsequent decision of the full council meeting dated 5th August, 2014 dismissing the applicant's appeal and upholding the decision of the Senate to discontinue the applicant

(iii) An order of prohibition be and is hereby issued restraining the Respondent from implementing the decision of the Senate and the Grievances Handling and Appeals Committee of Council quashed under order (ii) above;

(iv) The applicant shall have the costs of the suit.

Dated in Nakuru this 18th day of July, 2017.

Maureen A. Odero

Judge