

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPSABET

JUDICIAL REVIEW CASE NO. E003 OF 2025

BETWEEN

KIPROP

GIDEON:.....

:APPLICANT

AND

UNIVERSITY OF EASTERN AFRICA,

BARATON:.....1ST RESPONDENT

THE VICE CHANCELLOR,

UNIVERSITY OF EASTERN AFRICA,

BARATON:.....2ND RESPONDENT

THE UNIVERSITY SENATE,

UNIVERSITY OF EASTERN AFRICA,

BARATON:.....3RD RESPONDENT

**THE INDEPENDENT ELECTORAL COMMISSION, STUDENT
ASSOCIATION OF BARATON UNIVERSITY
[SABU]:.....4TH RESPONDENT**

**THE APPEALS COMMITTEE, STUDENT ASSOCIATION OF
BARATON UNIVERSITY
[SABU]:.....5TH
RESPONDENT**

**THE DEPUTY VICE CHANCELLOR,
STUDENT AFFAIRS AND
SERVICES:.....6TH RESPONDENT**

**MS. NAOMI KASIVA
WAEMA:.....7TH RESPONDENT**

RULING

1. Kiprop Gideon, is the Applicant herein and vide the Notice of Motion dated 8th April 2025, he seeks the following orders against the seven [7] Respondents, namely, The Vice Chancellor - University of Eastern Africa Baraton, the University Senate - University of Eastern Africa Baraton.

The university of Eastern Africa - Baraton, the Independent Electoral Commission Student Association of Baraton University [SABU], the Appeal Committee - Student Association of baraton University [SABU], the Deputy Vice Chancellor - Student Affairs and services and Naomi Kasiva Waema: -

2. [1] That an order of certiorari be issued to the quash the outcome of the Student Association of Baraton University [SABU] 2025/2026 elections and the subsequent swearing in of the purportedly elected student leaders.

[2] That, an order of prohibition be issued restraining the Respondents from effecting or enforcing the results of the impugned SABU Election and the premature swearing in ceremony prior to making a determination of the Election Appeals.

[3] That, an order of mandamus be issued compelling the Respondents to reconvene a constitutionally compliant electoral process in accordance with SABU Constitution and the Constitution of Kenya.

- 3.** The grounds for the application are set out in the Notice of Motion and supported by the Applicant's averments in the supporting affidavit filed herein on 22nd September 2025.

Being essentially a judicial review application for orders of certiorari, prohibition and mandamus, the anchor enabling provisions of the law applicable are **Section 8** and **Section 9** of the **Law Report Act** even though the relevant provisions of the Constitution have been invoked.

- 4.** The Respondents oppose the application on the basis of the grounds and averments contained in the replying affidavit dated 26th May 2025, deposed by the Sixth [6] Respondent, **Dr. Paul Wahonya**, the Acting Deputy Vice Chancellor - Academics and Lecture, Student Affairs and Services of the

University of Eastern Africa - Baraton [Third [3rd] Respondent who also doubles up as the Attorney General for the Student Association of Baraton University [SABU].

5. As directed by the court on 18th June 2025, the application was canvassed by way of affidavit evidence and written submissions which were filed herein on behalf of the Applicant by **Rotich Langat & Partners Advocates** and on behalf of the Respondents by **Rachuonyo & Rachuonyo Advocates**.

Having considered the application on the basis of the supporting grounds and those in opposition thereto in the light of the rival submissions, it became apparent to this court that the basic issue for determination is whether the Appellant has demonstrated sufficient judicial review orders against the Respondents.

6. This being the case and as noted hereinabove the applicability of the **Law Reform Act**, the common law principles on the remedy of Judicial Review would aptly apply to the circumstances of this case although it does not escape the mind of this court that **Article 47** of the **Constitution** provides for the right to fair administrative action and therefore violation of such right may attract the remedy of Judicial Review.

7. Under **Article 22[1]** of the **Constitution** every person has the right to institute court proceedings claiming that a constitutional right has been denied, violated or infringed, or is threatened and Under **Article 23[1]**, the High Court has jurisdiction in accordance with Article 165, to hear and determine application for redress of a denial, violation or infringement of, or three to, a right or fundamental freedom in the **Bill of Rights**.
8. In any proceedings brought under **Article 22**, a court may grant appropriate relief including “*inter-alia*” on order of **Judicial Review [See Article 23[3] [f] of the Constitution]**. It is therefore not in doubt that this court’s jurisdiction to deal with this application whether under the common law or statutory law regime or the constitutional law regime remains intact. Both regimes grant this court the constitutional and statutory jurisdiction to deal with this matter.
9. Vide the ex-parte chamber summons dated 8th April 2025 which was filed contemporaneously with the present application, also dated 8th April 2025, the Applicant sought for and was granted leave to apply for Judicial Review orders of certiorari, prohibition and mandamus specifically against the decisions and actions of the Respondents culminating in the swearing in of the **Student Association of Baraton**

[SABU] student council for the period 2025/2026 before determination of the Election Appeals was made.

The grant of leave operated as a stay of the swearing in, assumption of office and execution of duties by the **President Elect [7th Respondent]** and other **SABU** officials pending determination of this application.

10. A later application dated 28th April 2025 filed by the Respondents seeking orders for review of the ex-parte stay order was withdrawn in court on 18th June 2025.

Basically, the facts of the case as emanating from the verifying affidavit of the Applicant dated 8th April 2025 in support of the ex-parte chamber summons dated 8th April 2025 reveal that the Applicant was the outgoing president of the Student Association of Baraton University [SABU] for

For the Academic year 2024/2025 and during the student governance year 2020/2021 the constitutional Review Committee of the association formulated a constitution to govern the student electoral process. This was ratified by the university and remained the binding legal framework for all of the associations elections.

11. That, prior to the Applicant being elected the President of the Student Association an open letter drafted by “concerned students” and addressed to the University’s Vice

Chancellor [**one, Prof. Msafiri Jackson**] raised concerns over justice, fairness and transparency in student elections. Threats of students unrest were made in the letter, but the university was yet to address them.

12. That, on the 13th February 2025, the duly appointed chairperson for the 2025/2026 elections of the Student Association i.e. **Mr. Abraham Kitur**, was irregularly removed by the University Senate [2nd Respondent] during an emergency meeting prompted by an anonymous letter alleging bias. The removal was allegedly in contravention of the said chairperson's right to a fair hearing in terms of **Article 47[1]** of the **Constitution** and **Article 16[1][c]** of the Student's Association Constitution which mandates a transparent removal process.

13. That, following the removal and in contravention of the provisions of the Associations constitution aforementioned, a **Mr. Evans Odero**, was appointed, hitherto unlawfully, the new chairperson of the Independent Electoral Commission [IEC] [4th Respondent] thereby creating confusion and conflicts over the electoral process and on 16th February 2025, the Secretary of the commission published the 2025/2026 SABU Election Regulations. This was followed by publication between 20th/ 21st February 2025 of the names of the candidates cleared for the upcoming elections. Later,

the acting chairperson of the Electoral Commission [**Evans Odero**] summoned the Applicant's running mate, one **Ms. Scola Akinyi**, for further vetting, a process already concluded and supposed to have been undertaken by the Deans Council, rather than the chairperson of the Electoral Commission.

14. That by a letter dated 6th March 2025, the Applicant petitioned the University's Vice-Chancellor [1st Respondent] seeking resignation of the Electoral Commission Chairperson for unlawful vetting and breach of **Ms. Akinyi's** right to privacy and irregular use of third parties including the chaplain, one **Dr. Mumbo**, in vetting her.

Six days later the chairperson of the Electoral Commission in contravention of Article 20[2] [b] of the Association Constitution which requires complaints against candidates be lodged within a day after publication of names of the cleared candidates initiated a complaint against the said **Ms. Akinyi** citing bias and possible third party influence.

15. That, the Applicant's petition to the vice chancellor was ignored and on 10th March 2025, his running mate [**Ms. Akinyi**] received a letter from the Electoral Commissions Secretary questioning the authenticity of her baptismal certificate. In the meantime, the Applicant was advised to replace her as his running mate and on 11th March 2025, he

convened a meeting with the Deans Council over the emerging issues, but was asked to step out during the meeting session without later receiving the determination made by the council in his absence.

16. That, the 2025/2026 SABU elections proceeded regardless of the unresolved complaints and concerns, however, an appeal dated 19th March 2025 was filed by a student called **Raphael Otieno**, challenging the SABU Executive Council elections citing among other things, bias by the Electoral Commission Chair, unfair treatment of the Applicant's candidacy and the unlawful clearance of the President Elect, **Ms. Naomi Waema** [7th Respondent] who was then under active suspension.

17. That, despite the limited window between 14th and 19th March 2025 provided for elections appeals, the Appeals Committee [5th Respondent] failed to determine the appeal aforementioned and also failed to respond to a follow-up letter by the aforementioned **Raphael Otieno** dated 24th March 2025. Subsequently, the Applicant received an email notification on a handing over ceremony scheduled for 4th April 2025, to which he responded vide a letter dated 4th April 2025 Addressed to the Deputy Vice Chancellor Student Affairs Services, **Dr. Paul Wahonya** [6th Respondent] in objection to the pre-mature handover in terms **of Article**

21[2] of the **Student Associations Constitution** which provides that a student congress serves for a full academic year and the terms of the current administration was to lapse on 30th April 2025. As such, the Student Executive Council 2024/2025 was still executing official duties and overseeing ongoing project including SABU Project 2025. Therefore, any premature handover was both unconstitutional and impractical.

18. The Applicant contended that he was willing to facilitate a structured transition after the completion of the official term, but the administration was bent at enforcing the rushed and pre-mature handover. That, the actions by the Respondents collectively subverted democracy, eroded justice and endangered the rule of law thereby necessitating urgent judicial intervention to forestall irreversible harm occasioned by failure to make a determination on the election appeals and resolve constitutional order within the university [3rd Respondent].

19. It was for the foregoing factors that the Applicant seeks judicial review orders for purposes of quashing the alleged flawed electoral process, prohibiting the pre-mature swearing in and compelling the Respondents to adhere to the provisions of the Constitution of Kenya and that of the Student Association of Baraton University [SABU]. His

affidavit in support of the present application dated 8th April 2025 is a repetition of the foregoing allegations.

20. In opposing the application on his own behalf and that of the rest of the Respondents, the 6th Respondent, **Dr. Paul Wahonya**, averred in his replying affidavit dated 26th May 2025 that there was non-disclosure and concealment of material facts at the time leave was granted to commence these proceedings. That, the present application is replete with misrepresentations and was filed before the Applicant exhausted the existing internal dispute resolution mechanisms stipulated in **Chapter VI** of the **SABU Constitution Contrary to Section 9[2] and [3] of the Fair Administrative Action Act 2015.**

21. That, at the time leave was granted the Applicant failed to disclose that the impugned swearing in ceremony of the elected SABU representatives had already taken place on 25th March 2025 in BUC Church in accordance with the Associations Constitution. That, the inauguration and assumption of office of the duly elected officials of the Association had taken place prior to the filing of the Applicants application with a majority of the former officials having handed over their duties.

22. The 6th Respondent also averred that the Applicant had instituted an internal dispute resolution mechanism that was

still active as at the time of the filing of this application and when leave was granted no decision had been made by the University Council which had eight [8] weeks to resolve issues referred to it. That, the Applicant should have waited until the 30th May 2025, prior to seeking redress from the court having written a letter dated 4th April 2025, to the University Council and being a presidential candidate he did not contest, the outcome of the elections and neither did he present any appeal for consideration.

23. It was further averred by the 6th Respondent that an appeal was presented to the appeals committee by one **Raphel Otieno**, Contrary to the Association's Constitution as he was not a candidate in the 2025 election. Consequently, the appeals committee rightly voted to disqualify the appeal.

That, all the four appeals submitted before the Electoral Appeal, Committee were heard and determined and the Applicant had already accepted the results by agreeing and signing the vote tally sheet, thereby rendering his change of time malicious and an afterthought intended to derail the operations of the student body.

24. With regard to **Mr. Abraham Kitur**, the former Chairperson of the 2025 Electoral Commission, the 6th Respondent averred that he **[Kitur]** had already served his

one year term for the previous year and the University Senate therefore appointed new members of the Commission as per its Constitutional Mandate. That, **Mr. Kitur** did not complain, contest or otherwise challenge his “*unlawful removal*”.

25. That, Contrary to the Applicants allegations the new chairperson of the Electoral Commission, **Mr. Evans Otieno**, was duly elected by the entire commission and appointed accordingly in a lawful manner and that the duly elected president of the Association [7th Respondent] during the 2024/2025 semester was not under active suspension, the complaint against her by a lecture called **Ruth Nyaboke Mitaki** having been withdrawn long before the start of the election process.

26. The 6th Respondent denied that he acted “*ultra-vires*” and contended that his actions were in accordance with the Associations Constitution, Student Handbook and/or Faculty and staff handbook.

He averred that the controversy over the Applicant’s running mate, **M/S Scola Akinyi**, was promptly resolved and she was cleared to run.

27. The 6th Respondent went on to aver that should the orders sought by the Applicant be granted, the students

would be denied their rights to representation for the year 2025 in various university governance organs. He contended that the present application is premature and stated that the leadership of the university would be ready and willing to have the disputes and concerns raised herein be resolved amicably using the university's dispute resolution mechanism. That, the Applicant does not stand to suffer any irreparable harm if the impugned elections are upheld neither has he demonstrated any infringement or violation of his fundamental rights.

28. The 6th Respondent further contended that it would be in the interest of justice for the application to be dismissed to allow smooth running of the university. He emphasized that the Applicant would suffer no prejudice if the application is dismissed. He therefore prayed for the dismissal of the application with costs.

29. Basically, the parameters of judicial review were set out by the Court of Appeal in the case of **Municipal Council of Mombasa Vs. Republic and Umoja Consultants Limited Civil Appeal No. 185 of 2001**, in the following terms: -

“Judicial Review is concerned with the decision making process, not with the merits of the decision itself; the court would

**concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters, or did take into account irrelevant matters.....
The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision.”**

30. Under the common law traditions judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected **[See, Republic Vs. Secretary of State for Education and Science Ex-parte Avon County Council [1991] 1 AllER 282].**

The broad grounds on which the court exercises its judicial review jurisdiction, though not exhaustive, were restated in the **Uganda Case of Pastoli Vs. Kabale District Local Court Council and Others [2008] 2EA 30].**

31. It was held in that case that: -

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the Complaint. Acting without jurisdiction or “*ultra-vires*,” or contrary to the provisions of a law or its principles are instances of illegality

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.....

Procedural impropriety is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness

towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

32. The purpose and scope of judicial review as set out in the foregoing decisions aligned with the common law traditions of the United Kingdom which are linked to illegality irrationality and procedural impropriety as basic grounds for the remedy of Judicial Review which is exercisable under common law as a prerogative writ issued to supervise administrative authority. However, the common law principles as was held in the South Africa case of **Pharmaceutical Manufacturers Association of South Africa ex-parte President of the Republic of South Africa and Others [2000] [2] SA 647 [CIC]** have been subsumed under the Constitution and in so far as they might continue to be relevant to Judicial Review, they gain their force from the Constitution.

33. The said court stated that in the Judicial Review of public power, the two are intertwined and do not constitute separate concepts. That, there was only one system of the law shaped by the constitution which is the Supreme Law,

and all Law, including common law, derives its force from the constitution and is subject to constitutional control.

The decision shows that the doctrine of judicial review is derived from the English Common Law Traditions and the South Africa Constitutional Principles.

34. The Supreme Court of Kenya in the case of **Dande and 3 Others Vs. Inspector General, National Police Service and 5 Others [2023] KESC 40[KLR]**, expanded the scope of judicial review and underscored the protection of constitutional rights. Thus, the merits of administrative actions, not just procedures, may be examined and where constitutional rights are invoked a substantive inquiry is necessary to ensure justice is achieved. The scrutiny of the substance and fairness of decisions meant that the Supreme Court created a Judicial Review jurisdiction that balances administrative authority with constitutional justice.

35. Administrative decisions must therefore align with constitutional/ principles and values such that administrative bodies are called upon to ensure not only procedural compliance, but also substantive fairness in decision making. The threshold for fairness ought to be high.

In the case of **IEBC Vs Maina Kiai & 5 Others [2017] KECA 477[KLR]**, the Court of Appeal underscored judicial scrutiny of administrative discretion and in the old case of

Kenya National Examination Council Vs. Republic exparte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, the court emphasized fairness in the exercise of administrative actions.

36. It is clear that whereas the constitution permits judicial review of the administrative actions of both private and public entities, the common law permits judicial review of the administrative acts of public entities only.

The need for judicial review under both regimes of the law would therefore arise were an individual believes that an administrative authority has acted unlawfully and in violation of constitution rights. These are vital tools for holding public bodies/private bodies accountable and for rectifying injustice while ensuring that the principles enshrined in the constitution are upheld.

37. In the English decision in the case of **Chief Constable of North Wales Police Vs. Evans [1982] 1VOLR 155**, it was stated that: -

“It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that an individual is given fair treatment by the authority to which he has been subjected and that it is not part of the purpose to substitute the

opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in questions.”

38. The present application both under the constitution and the Law Reform Act is a demonstration of the Applicant’s dissatisfaction with the electoral process undertaken by the Respondents as mandated by the **Student Association of the Baraton University [SABU] Constitution**. He believes that the process was conducted in violation of not only the **SABU Constitution**, but also the **Kenya Constitution, 2010**, such that his fundamental rights to equality and freedom from discrimination, privacy, fair administrative action and fair hearing under **Articles 27, 31, 47 and 50 of the Constitution of Kenya 2010**, were breached.

39. The Applicant therefore sought **Firstly**, an order of Certiorari, to quash the outcome of the Students Association 2025/2026 elections and the subsequent swearing in of the purportedly elected student leader.

Secondly, an order of Prohibition restraining the Respondents from effecting or enforcing the results of the impugned elections and the premature swearing in ceremony prior to making a determination for the Election Appeals. **Thirdly**, an order of Mandamus compelling the

Respondents to reconvene a constitutionally compliant electoral process in accordance with the SABU constitution and the Constitution of Kenya.

40. The big question would be whether such orders would lie against the Respondents or any of them on the basis of the evidence and the legal principles pertaining to the remedy of judicial review under both the Constitution and the Law Reform Act. Looking from another angle, the question is whether the Applicant is entitled to the orders sought in this application/ petition.

41. In the case of **Republic Vs. Judicial Service Commission Ex-parte Pareno [2004] 1 KLR 203**, it was held that: -

“Judicial Review orders are discretionary and are not guaranteed and hence a court may refuse to grant them even where the requisite grounds exist, since the court has to weigh one thing against another and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles.”

42. It was further held in the same case that: -

“The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders. Since the court exercises a discretionary jurisdiction in granting prerogative orders, it can withhold the gravity of the order where among other reasons there has been delay and where the public body has done all that it can be expected to do to fulfil its duty or where the remedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realized, the court would not grant the order sought even if merited.”

- 43.** In **Suleiman Vs. Amboseli Resort Limited** **[2004]2KLR 989**, the court observed that what is required of the court in responding to prayers should always be to opt for the lower rather than the higher risk of injustice. The judicial review remedy ought not be granted where it would have the effect of causing administrative chaos and/or public inconvenience. The interest of an Applicant must in the circumstances be balanced against that of the public.

44. With regards to orders of certiorari, prohibition and mandamus, the Court of Appeal in the case of **Kenya National Examination Council Vs. Republic Ex-parte Geoffrey Gathenji Njoroge & 19 Others [Supra]** stated that an order of certiorari can only quash a decision already made and will issue if the decision is made without or in excess of jurisdiction on where the rules of national justice are not complied with. Herein the material availed by the Applicant do not show or even create suspicion that the Respondent's acted without or in excess of their jurisdiction conferred by the student Association Constitution. There is no demonstration to show that he was actually denied an opportunity to be heard.

45. Given that the impugned elections were conducted in a proper and legal manner and that new office bearers were elected and sworn into office, an order of certiorari would not be most effectious in annulling the outcome of the elections and the swearing in of the new office bearers. More so, considering that there existed alternative dispute resolution mechanisms binding both the Applicant and the Respondents.

46. In that regard, **Section 9[2], [3] and [4] of the Fair Administrative Action Act [Act No. 4 of 2015]**, provides that: -

“[2] The High Court or a Subordinate Court, under Sub-Section [1] shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

[3] The High Court or a Subordinate Court shall if it is not satisfied that the remedies referred to it Sub-Section [2] have been exhausted, direct that Applicant, shall first exhaust such remedy before instituting proceedings under Sub-Section [1].

[4] Notwithstanding Sub-Section [3], the High Court or a Subordinate Court may, in exceptional circumstances and on application by the Applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”

47. The foregoing provision alludes to the doctrine of exhaustion. The requirement that alternative procedure be exhausted prior to resorting to judicial review is in accord with judicial review being regarded as a remedy of last resort. However, an Applicant would not be required to resort to some other procedure if the procedure is less

convenient or less appropriate. Therefore, unless due to the inherent nature of the remedy provided under the statute or otherwise to resort thereto, would be less convenient or otherwise less appropriate, parties ought to follow the procedure provided for under statute or otherwise. **[See JFK Omanga Vs. Post Master General Postal Corporation of Kenya & 2 Others NBI HCMA NO. 997 of 2003].**

48. In the case of Speaker of the **National Assembly Vs. Karume Court of Appeal No. 92 of 1992 [NBI]**, the Court of Appeal held that there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

49. In **Republic Vs. National Environmental Management Authority [2011] eKLR**, the court held that:

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“The principle running through these cases is where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is

only in exceptional circumstances that an order for Judicial Review would be granted.”

As was held in the **English decision in Re- Preston [1985] AC 835**, a remedy by judicial review should not be made available where an alternative remedy existed and should only be made as a last resort.

50. Regard being given to the legal principles enunciated in the aforementioned decisions as against the evidence provided by the Applicant in this case and indeed the circumstances of this case, it would follow that the remedy of judicial review for grant of an order of certiorari is not available to the Applicant on account of insufficient evidence and the doctrine of exhaustion.

51. With regard to the orders of prohibition and mandamus, the court in the **Ex-parte Geoffrey Gathenji Njoroge Case [supra]** stated that an order of prohibition is powerless against a decision which has already been made since such order prevents the making of a decision. And, that an order of mandamus is in the form of a command whose purpose is to remedy the defects of justice. Accordingly, it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing that right. It may also

issue in cases where there is an alternative legal remedy, but that mode of redress is less convenient and effective.

52. It was further stated in the **Ex-parte Gathenji** case that mandamus must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hand of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.

53. Thus, an order of mandamus compels the performance of a public duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same. If the complaint is that the duty has been wrongly performed i.e. that the duty has not been performed according to the Law, then mandamus is the wrong remedy to apply for because like an order of prohibition, an order of mandamus cannot quash what has already been done **[See, the Ex-parte Gathenji Case [supra].**

54. Applying the principles foregoing to the facts of this case clearly shows that the orders of prohibition and mandamus are also not available to the Applicant on account of insufficient evidence and also the doctrine of exhaustion.

It may also be noted that considering that the Applicant readily and willingly participated in the impugned process and was in that regard awarded fair-treatment and an opportunity to refer his grievance to an appeals committee through the internal dispute resolution mechanism, his action of presenting this petition in court on the basis of misleading facts smacked of a gross abuse of the court process.

55. It is also intriguing that the Applicant purported to raise his complaint using Third Parties who did not in their own right raise similar complaints nor find any need to participate in these proceedings.

In any event, the complaints raised by the Applicant were well addressed and communicated to him as revealed in the replying affidavit of the Sixth [6th] Respondent. Indeed, the Sixth [6th] Respondent went on to prove and show by necessary evidence that the Applicant is not deserving of this court's favour in exercise of its discretion.

56. In sum, this petition/ application is devoid of merit and an abuse of the court process as there was nothing whatsoever to show or suggest that the Applicants Constitutional Rights under **Articles 27, 31, 47 and 50 of the Constitution 2010** were ever breached, infringed

and/or violated by the Respondent during the impugned process.

The application/ petition must therefore and is hereby dismissed with costs to the Respondents.

Ordered accordingly.

Delivered and Dated this 5th day of December 2025

**HON. J. R. KARANJAH,
JUDGE**