



Republic v Kenya Veterinary Board & another; Commission for University Education & 2 others (Interested Parties); Ndiritu & 7 others (Ex parte) (Judicial Review E271 of 2025) [2025] KEHC 18343 (KLR) (Judicial Review) (15 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E271 OF 2025
JM CHIGITI, J
DECEMBER 15, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA VETERINARY BOARD 1ST RESPONDENT

THE HON. ATTORNEY-GENERAL 2ND RESPONDENT

AND

COMMISSION FOR UNIVERSITY EDUCATION INTERESTED PARTY

UNIVERSITY OF NAIROBI INTERESTED PARTY

EGERTON UNIVERSITY INTERESTED PARTY

AND

ALLAN NDIRITU EX PARTE

ANGEL MWANGI EX PARTE

ELLEN LIZ NJOKI EX PARTE

JOHN ORINDA EX PARTE

DANIEL INGOSI EX PARTE

MICKEY OTIENO EX PARTE

GRACE KYALO EX PARTE

WANJIRA MAUREEN EX PARTE



JUDGMENT

1. The application that is before this court for determination is the Notice of Motion dated 12th September, 2025 wherein the applicants are seeking the following orders:
 1. That this Honourable Court be pleased to grant the following Judicial Review Orders:
 - a. An order of certiorari be and is hereby issued removing into this Honourable Court for purposes of being quashed the 1st Respondent's public notice of 27th May 2025 imposing a pre-registration examination as a condition precedent to internship.
 - b. An order of prohibition be and is hereby issued prohibiting the 1st Respondent from administering or causing to be administered the said pre-registration examination scheduled for 11th and 12th September 2025 or any subsequent iteration in the absence of Statutory and/or Regulatory anchorage.
 - c. An order of mandamus be and is hereby issued compelling the 1st Respondent to index the final-year students of the Bachelor of Veterinary Medicine and related Animal Health degree and diploma programmes from duly accredited universities and proceed to place them on internship in strict compliance with Regulation 38 of the Veterinary Surgeons and Veterinary Paraprofessionals Regulations 2013 without conditioning such placement upon any pre-registration examination that is not anchored in any Statutory and/or Regulatory framework.
 - d. Such further and other reliefs as this Honourable Court may deem just and expedient to grant.
 2. That the costs of this Application be provided for.

The Applicant's Case;

2. It is the applicants' case that they were duly admitted into the Bachelor of Veterinary Medicine programme at the University of Nairobi in August 2020.
3. They believe that having successfully completed the prescribed five (5) years of study, they are now eligible for internship placement in accordance with the Veterinary Surgeons and Veterinary Paraprofessionals Regulations, 2013.
4. They are aggrieved because on or about 27th May 2025, the 1st Respondent issued a public notice introducing a pre-registration examination, scheduled for 11th and 12th September 2025, directed at veterinary surgeons and veterinary paraprofessionals with an explainer titled "Frequently Asked Questions on the Kenya Veterinary Board (KVB) Pre-Registration Exams," which expressly stated that the examination would determine eligibility for internship under the 1st Respondent.
5. The purported pre-registration examination expressly targets unindexed students admitted into courses leading to the award of the Bachelor of Veterinary Medicine and various Animal Health qualifications (certificate, diploma, and degree).
6. It is their case that the indexing of students has never been predicated on the sitting of any examination.
7. Indexing has traditionally been a straightforward administrative process undertaken as of right, upon completion and submission of the prescribed indexing application form.



8. The statutory internship programme for veterinary surgeons and veterinary paraprofessionals is regulated under the Veterinary Surgeons and Veterinary Paraprofessionals Regulations, 2013.
9. It is their case that these Regulations do not provide for any pre-registration examination as a condition precedent to internship placement.
10. It is their case that notwithstanding this, the 1st Respondent has directed that applicants for the said preregistration examination pay an examination fee of Kenya Shillings Nine Thousand Five Hundred Kshs.9,500.
11. According to them, the imposition of this steep fee, in the absence of any statutory or regulatory foundation, is manifestly oppressive, disproportionate, and discriminatory.
12. It imposes undue financial, logistical, and professional burdens on students, particularly those from economically disadvantaged backgrounds, thereby infringing their constitutional rights to equality, nondiscrimination, and access to professional opportunities.
13. They argue that the enforcement of this unlawful examination has already disrupted the statutory internship placements, which form a critical bridge between academic study and professional practice. Any further delay will occasion us irreparable harm, including but not limited to: loss of income, career stagnation, and significant psychological distress.
14. They argue that the inability of qualified graduates to access internships due to these unlawful requirements further undermines the public interest, as delays in the registration and deployment of veterinarians may jeopardize animal health, public health, food security, and the delivery of essential veterinary services across the country.
15. They submit that the imposition of these examinations constitutes an arbitrary, unlawful, and ultra vires administrative act. It is an exercise of unfettered discretion contrary to Article 47 of *the Constitution*, which guarantees fair administrative action.
16. This unlawfully denies the applicants and a significant number of graduates, already grappling with harsh economic realities, their rightful opportunity to proceed to an internship.

The Applicants' Submissions;

17. The applicants submit that they are final-year students enrolled in the Bachelor of Veterinary Medicine and related Animal Health degree and diploma programs at duly accredited universities.
18. They have completed the required academic and practical training and are about to start mandatory internship placements necessary for professional registration.
19. They submit that the 1st Respondent is responsible for handling their registration as required by law which occurs after they complete their statutory internships, which should begin once the applicants graduate from their respective universities in Kenya and receive their veterinary medicine degree certificates.
20. They submit that it is at the point of registration that the 1st Respondent may, as per Section 15 of the *Veterinary Surgeons and Veterinary Para-Professionals Act*, issue a pre-registration examination to satisfy itself on the suitability of an individual who has gone through the internship process to be registered as a veterinary surgeon.
21. It is their case that, however, in the case of the Ex-Parte Applicants, the 1st Respondent issued a notice on 27th May 2025, which purported to introduce a pre-registration examination for veterinary surgeons



and veterinary paraprofessionals as a precondition for internship placement and indexing and also directed that prospective candidates pay an examination fee of KES.9,500.

22. In the case of *Peninah Nandako Kiliswa v Independent Electoral & Boundaries Commission (IEBC) & 2 Others* [20251 eKLR, where the Supreme Court of Kenya held as follows:

“(26) It is also incumbent upon the applicant to make out a case for judicial review on the facts of the relevant matter. As stated in the Ugandan High Court case of *Pastoli v. Kabale District Local Government Council and Others* [2008/ 2 EA 300-301 .

“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 nonobservance 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 [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.... ”

23. The 1st Respondent acted with procedural impropriety by failing to observe procedural rules expressly laid down in statute as required, in the issuance of the preregistration examination notice.
24. The Ex-Parte Applicants agree that the 1st Respondent may indeed prescribe a pre-registration examination as per S. 15(2) of the *Veterinary Surgeons and Veterinary Para-Professionals Act*.
25. What the Ex-Parte Applicants disagree with is that such an examination should be a condition precedent to their placement for statutory internship.
26. Section 15 of the *Veterinary Surgeons and Veterinary Para-Professionals Act* lays down the qualifications one has to attain to be registered as a veterinary surgeon, it states as follows:

“ 15. Qualification for registration of veterinary surgeons

- (1) A person shall be qualified to be registered as a veterinary surgeon under this Act if he—
- a) is a citizen of Kenya;
 - b) holds a degree in veterinary medicine from a university recognized in Kenya. and has after such qualification served an internship of not less than



twelve months under a veterinary surgeon with not less than five years' standing; and (Emphasis mine)

27. It is their case that a simple reading of this section shows that the pre-registration examination that the 1st Respondent intends to administer arbitrarily is for pre-registration purposes for veterinary surgeons. It therefore follows that the 1st Respondent should procedurally follow the qualifications laid down under section 15(1) of the Veterinary Surgeons and Veterinary Para Professionals Act in the administration of the said examination.
28. From reading Section 15(1) of the *Veterinary Surgeons and Veterinary Para-Professionals Act*, it is evident that at the time of issuing the notice of 15th May 2025, the only qualification the Ex-Parte Applicants held was being citizens of Kenya.
29. They had not graduated with a degree in veterinary medicine or served an internship of not less than 12 months under the tutelage of a veterinary surgeon of five years' standing or more.
30. They submit that the notice of the 1st Respondent was therefore issued with procedural impropriety as it did not follow the laid down statutory procedure.
31. In addition to the 1st Respondent intending that the said examination be a condition for internship placement, it also intended that the same be mandatory for students who had not been indexed.
32. In its Replying Affidavit at Paragraph 16, the 1st Respondent purports to rely on the decision of the High Court in Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others, Constitutional Petition No. 37 of 2017 where the legality of Section 5A of the Universities (Amendment) Act, 2016 was unsuccessfully challenged.
33. According to them, the 1st Respondent fails to mention is that Hon. Justice Mwita dismissed the petition in its entirety for the reason that the petitioners did not demonstrate or substantiate how the amendment of the *Universities Act* through the University (Amendment) Act, 2016, violated their fundamental rights and freedoms under *the Constitution*, which is a key requirement in filing constitutional petitions.
34. Section 5A at subsection (2) confers powers on the 1st Interested Party to recognize, license, index students, approve, or accredit any academic program, including postgraduate degrees and diplomas, offered at a University
35. Section 5A of the University (Amendment) Act, 2016, at subsection (3) allows the 1st Interested Party to consult with professional bodies such as the 1st Respondent in carrying out the recognition, licensing, and indexing of students, approval, or accreditation of academic programs.
36. The norm concerning the indexing of students in the field of the Ex-Parte Applicants has been that they apply for indexing upon admission into their various universities regulated by the 1st Interested Party and are indexed in liaison with the 1st Respondent, which has a statutory duty to aid indexing as per the Veterinary Surgeons and Veterinary Para-Professionals Regulations, to wit, Regulation 36.
37. They submit that the 1st Respondent's Replying Affidavit at paragraphs 16 to 18, the 1st Respondent attempts to distance itself from the statutory mandate to index. Curiously, the intended pre-registration examination's purpose, besides the intended internship placement, is to index. The 1st Respondent, therefore, appears to embrace the mandate when it serves its purpose on one hand and on the other, distances itself when it does not suit. We submit that this Honourable Court should not allow this mischievous conduct of the 1st Respondent.



38. They therefore submit that the 1st Respondent's Notice of 27th May 2025 and its intended consequences are arbitrary, unlawful, and done with procedural impropriety and urge this Honourable Court to find so.
39. They submit that they have applied for judicial review in a timely manner, being within the six months from the date of the notice required by Section 9 of the [Law Reform Act](#) and Order 53, Rules 2 and 7 of the Civil Procedure Rules.
40. The Ex-Parte Applicants should further be granted the order of prohibition, as any attempt by the 1st Respondent to administer a procedurally improper examination would be prejudicial to the Ex-Parte Applicants.
41. The Ex-Parte Applicants also urge this Honourable Court to compel the 1st Respondent to carry out its statutory mandate under Regulation 36 of the Veterinary Surgeons and Veterinary Para-Professionals Regulations and liaise with the 1st Interested Party to index the Ex-Parte Applicants.
42. They submit that the 1st Respondent's notice of 27th May 2025 runs afoul of section 15(1) of the [Veterinary Surgeons and Veterinary Para-Professionals Act](#).
43. The pre-registration examination, as intended to be administered by the 1st Respondent, targets persons who are not qualified to sit the examination.

The Respondent's Case;

44. In opposing the application, 1st Respondent's chief executive officer filed a Replying Affidavit.
45. According to the 1st respondent The Board is a body corporate established under the Veterinary Surgeons and Veterinary Paraprofessional Act; 2011 (hereafter referred to as the (VSVP Act) and operationalized through Regulations of 2013, (hereafter referred to as VSVP Regulations) made under the VSVP Act.
46. The Kenya Veterinary Board regulates the entire practice by Veterinary Surgeons and Veterinary Paraprofessionals as guided by a robust Code of Ethics published as Veterinary Surgeons and Veterinary Paraprofessionals Regulations 2015 by the Registrar of KVB, hereafter referred to as Code of Ethics.
47. The Board in its mandate in considering applications for the registration of Veterinary Surgeons and veterinary paraprofessionals does not delve into issues of accreditation or recognition of the respective programs in the Universities or Technical and Vocational Training Institutions which is the function and mandate of the Commission on University Education (CUE) and Technical and Vocational Education and Training Authority (TVETA) which establish standards and set benchmarks for training in the pre- graduation period for Veterinary Surgeons and Veterinary Paraprofessionals respectively.
48. The Board in exercising its powers in administering the pre -registration examinations concern itself on the question whether, on the basis of the materials placed before it after graduation of a candidate, there is sufficient evidence of adequate training and competence to enable the graduate to be registered as a Veterinary Surgeon or Veterinary Paraprofessional and not whether the respective Universities enjoined herein as interested parties(or any other training institution) had been accredited or recognized to offer the degree / training programs by the Commission on University Education or TVETA.
49. It is its case that the applicants herein have not been candid and deliberately and selectively relied on the provisions of Regulations 36 and 38 of the VSVP Regulations in isolation to the applicable salient



provisions of Section 15 of the VSVP Act to hoodwink the Court that the 1st Respondent has acted ultra vires in prescribing the impugned pre- registration examination, the subject of this litigation.

50. The Supreme Court of Kenya in *Martin Wanderi & 106 others v Engineers Registration Board & 7 others; Egerton University & another (Interested Parties)* (Petition 19 of 2015 & 4 of 2016 (Consolidated)) [2018] KESC 54 (KLR) (17 July 2018) (Judgment) (with dissent - N Ndungu, SCJ) has expressly held that in determining whether the right to fair administrative action under Article 47 of *the Constitution* was breached, the court would first have to be satisfied that administrative power was exercised by a person who possessed the legal authority to do so. That being the test of legality; where the act done was ultra vires the mandate of the administrative entity, the act is void ab initio and the inquiry would stop there as there would be an outright violation of *the Constitution*.
51. The statutory powers of the Kenya Veterinary Board to administer pre-registration examinations are properly anchored on the express provisions of section 15(2) and 15(3) of the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to wit:

“Section 15(2) -The Board may in its discretion require an applicant under this section to undertake such examination as it may prescribe to satisfy itself that the applicant’s knowledge and skill qualify such person for registration. Section 15 (3) The examination referred to in subsection (2) may be conducted by the Board or by any other authority or institution appointed by the Board, and such examination shall be conducted subject to such terms and conditions as the Board may determine.”
52. It is clear under the above statutory provision that registration of Graduate Veterinary Surgeons by the professional body (Kenya Veterinary Board , the 1st respondent herein) and the attendant processes and procedures including pre- registration examinations is not within the jurisdiction of the respective Universities or the Commission of University Education (the interested parties herein) as conferred by the *Universities Act* No. 42 of 2015 but the exclusive jurisdiction of the Kenya Veterinary Board.
53. It is their case that the aforesaid powers of administration of pre-registration examinations is a statutory discretionary power that has not been demonstrated by the applicants to have been exercised whimsically, disproportionately, capriciously or irrationally as the adequate notices were issued way back in May 2025.
54. The Board has not introduced the impugned pre-registration examination to prejudice the applicants herein as a similar notice as issued last year (2024) and there was compliance. This is set out in the newspaper advertisement notifying the 2024 cohort of the pre- registration examination.
55. The fee of Kshs 1000 and Kshs .9500 as application and examination fees respectively, are provided for Regulation 19(1) and the schedule thereto of the VSVP Regulations of 2013 Form 31.
56. It is their case that the mode of administering the impugned pre-registration examination is not alien to the applicants herein since the Standard Operating Procedures (SOPs) were formulated and published by the 1strespondent herein in 2013 and The pre – registration examination practice to administer the said examinations is not new and the Kenya Veterinary Board has previously administered the examinations.
57. It is its case that indexing of students studying in Universities is not a function of the Board since the meeting held on 26thJune, 2020 vide Min 2471/06/2020 Committee reports-TeCEQA: Reported on dismissal of a Nairobi High Court Constitutional Petition No. 37 of 2017 which outlawed inter alia setting of training standards and indexing of university student by regulatory bodies following



the Universities Amendment Act 2016, section 5A thereof conferring the said functions exclusively to Commission on University Education.

58. Given the foregoing, order (c) of the reliefs sought by the applicants to compel the 1st respondent to index the final year students of the Bachelor of Veterinary Medicine and related Animal Health Degree and Diploma Programs would be an outright violation of Section 5A of the Universities Act and the express orders of the High Court in the afore -cited case.
59. It is their argument that the Court should not be persuaded to grant the orders of mandamus to compel the indexing of the students herein as the Universities Act prescribe a criminal offence for any professional or regulatory body that usurp the exclusive powers of the CUE to index students which is punishable by two years' imprisonment or a fine of Kshs. 2,000,000 or both for such infractions.
60. Following the amendment of the Universities Act that outlawed standard setting in training institutions and indexing of students , which powers were previously conferred on the Board by Section 7of the VSVP Act ,2011 ;the Board resolved that it would pursue means of quality assurance of the training and examination done by final year veterinary students including offering Board registration examination pursuant to the powers expressly conferred by section 15 of the VSVP Act ,2011.
61. It is submitted that Kenya is signatory to the World Organization for Animal Health (WOAH) Convention which is in sync with the provisions of section 15 of the VSVP Act,2011 in terms of the requirement to determine the Day One post training competency of a veterinarian in preparation for internship practice. Annexed hereto and marked MTA-5 is a copy of an extract of the WOAHA Convention.
62. The practice of administering pre-registration examination is not alien to the veterinary profession as other professional bodies in the one health practice like the Nursing Council of Kenya (NCK) and Pharmacy and Poisons Board (PPB) in Kenya also prescribe such examinations before one commences practice in the profession after training.
63. There are other applicants including foreigners willing to undertake the said pre-registration examinations per the requirement of the VSVP Act,2011 and the applicants herein should not be allowed to derail a statutory process clearly defined in law to the detriment of the applicants who have already applied.
64. The averment by the applicants that the pre-registration examination will hinder their placement in internship programs is not factual since the said internships commence from February 2026.
65. The Board communicated the onset of the September pre-registration exam series to the public and to the applicants through the representative Dean of Faculty of Veterinary Medicine and to other affected universities.
66. It is its case that granting of the orders of stay of the implementation of the Board decision to administer the said impugned pre -registration examination have greatly prejudiced the operations of the Board and are an antithesis to public interest.

The Respondent's Submissions;

67. According to the Respondents these are the issues for determination are whether the 1st Respondent's actions were procedurally unfair, constituted gross violation and illegality or were in non- compliance with statutory provisions.
68. It submits that the Office of the 1st Respondent is mandated as provided under Section 15 (2) and (3) of the Veterinary Surgeons and Veterinary Para professionals Act. (Act no. 29, 2011):-



- a. Section 15 (2) –as stated inter alia; – ‘The Board may in its discretion require an applicant under this section to undertake such examinations as it may prescribe to satisfy itself that the applicant’s knowledge and skill qualify such person for registration; b) Section 15 (3)-The examination referred to in subsection (2) may be conducted by the Board or by any other authority or institution appointed by the Board, and such examination shall be conducted subject to such terms and conditions as the Board may determine.
69. The KVB;- Part 1 of the Ministry of Agriculture, Livestock, & Fisheries, State of Department of Livestock Guidelines for Veterinary Internship Programme states inter alia that;-
- (a) Eligibility for Internship
The following are requirements for entry into the program:
- i. Evidence of indexing as a veterinary medicine student;
 - ii. Bachelor of Veterinary Medicine Certificate from an Institution recognized by the KVB 5;
 - iii. Passing of a qualifying examination determined by the Board for Veterinary graduates qualified from institutions not recognized by the KVB;
 - iv. Temporary registration certificate from the KVB;
 - v. National Identification Card;
 - vi. Personal Identification Number (PIN) from the Kenya Revenue Authority;
 - vii. Application;
 - viii. Insurance (medical and accident);
 - ix. Certificate of good conduct; and
 - x. Colored passport photographs.
70. It submits that Section 15 (2) and (3) of the said Act, read together with Part 1 of the Guidelines for Veterinary Internship Programme as state in paragamme above, we find the legal statutory framework anchored in our laws mandating the 1stRespondent to offer timely Pre-Registration Examinations to Veterinary Surgeons Graduates and other Veterinary Paraprofessionals. Contrary to the assertions fronted by the Applicants that, the aforesaid exams may be conducted for individuals who have gone through the internship process to be registered as a veterinary surgeon, we are guided by Part 1 a (iii) which make it a requirement that Passing the Pre-Registration Examinations is a mandate to be accomplished before one can qualify for internship.
71. It is its case that the court should allow the 1stRespondent to proceed to schedule the Pre –Registration examination notice to the qualified candidates.
72. It submits that last year’s Applicants were equally invited for the Pre –Registration examination and there was compliance by the said candidates and the examinations were administered and thereafter, the then candidate proceeded for the internship programme.
73. The Pre- Registration Examination has previously been administered on 13th& 14thNovember, 2017, 12th and 13th February, 2019, 10th to 13thMarch, 2020 to 20th to 23rd September, 2021, 6th to 9thFebruary, 2024, 18th & 19th September, 2024 and 5th & 6thFebruary, 2025.



74. This indicates that the Applicants herein have not been prejudiced by the invite for the pre-registration examination as this has been the norm since the year 2017 and the qualified candidates have been undertaking the requisite examinations as prescribed by the Statute.
75. It submits that it is trite Law that the function of indexing the Applicants is exclusively in the purview of the 1st Interested Party and the 1st Respondent has no legal mandate at all to undertake the function of indexing the Applicants as is alluded in prayer (C) of the Applicants' Notice of Motion dated 12th September, 2025.
76. Due procedure as anchored in law was followed when the Notice of 27th May, 2025 was issued inviting the various candidates for the Pre-Registration Examination.
77. Reliance is placed in the case of *Pastoli v Kabale District Local Government Council & Others*, [2008] 2 EA 300, 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: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).

Illegality is when the decision making authority commits an error of law in the process of taking the decision 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: *Re An Application by Bukoba Gymkhana Club* [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is 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. (*Al-Mehdawi v Secretary of State for the Home Department* [1990] AC 876).”

78. The Applicants' have not shown the un reasonability, illegality, and procedural impropriety of the decision made by the 1st Respondent.
79. The applicants have not proven that the Respondents breached of the rules of natural justice and/or are an abuse of their power so as to warrant the issuance of the sought orders.
80. On the issue of costs it submits that it submits that it is a well-established principle that costs follow the event. In the case of *Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 Others*, the court held that:

“...it is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial judge is given



discretion... But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party is a rule that should not be departed from without the exercise of good grounds of doing so.”

81. It is its submission that the Respondents should not be condemned to pay costs.

Analysis and determination;

Following are the issues for determination;

1. Whether or not the applicants are entitled to the orders sought.
2. Who shall bear the costs of the application?

The 1st issue is whether or not the applicants are entitled to the orders sought.

82. In determining whether or not the applicants have made out a case for the grant of the orders sought, the court is guided by the principle as enunciated in the case of Republic v Public Procurement Administrative Review Board Exparte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR where the Court held thus:

“The role of the court in Judicial Review proceedings was well stated in Republic vs National Water Conservation & Pipeline Corporation & 11 Others [9] where it was held that once a Judicial Review court fails to sniff any illegality, irrationality or procedural impropriety, it should down its tools forthwith. Judicial intervention is posited on the idea that the objective is to ensure that the agency did remain within the area assigned to it by Parliament. If the agency was within its assigned area then it was prima facie performing the tasks entrusted to it by the legislature, hence not contravening the will of Parliament, then a court will not interfere with the decision.”

83. The Applicants have to demonstrate that the Respondents acted illegally, irregularly and with procedural impropriety.

84. In determining whether the Applicants have proven their case, I am further guided by the Supreme Court in Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others (2020) KLR where it was held as follows:

“(49) Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

85. In applying the above principles to the case before it, this court has the duty to ascertain whether the 1st Respondent has the administrative power register Graduate Veterinary Surgeons and to issue the impugned notice and whether this power was exercised within the framework of Article 47 of *the Constitution* and the *Fair Administrative Action Act*.



86. It is clear under the above statutory provisions that the discretionary power to register Graduate Veterinary Surgeons lies with the Kenya Veterinary Board, the 1st respondent herein.
87. It is the Applicants' case that they are final-year students enrolled in the Bachelor of Veterinary Medicine and related Animal Health degree and diploma programs at duly accredited universities.
88. They are aggrieved that the 1st Respondent issued a notice on 27th May 2025, which purported to introduce a pre-registration examination for veterinary surgeons and veterinary paraprofessionals as a precondition for internship placement and indexing.
89. Section 15 of the *Veterinary Surgeons and Veterinary Para-Professionals Act* Cap. 366 makes provision for the Qualification for registration of veterinary surgeons. It stipulates that,
- (1) A person shall be qualified to be registered as a veterinary surgeon under this Act if he-
 - (a) is a citizen of Kenya;
 - (b) holds a degree in veterinary medicine from a university recognized in Kenya, and has after such qualification served an internship of not less than twelve months under a veterinary surgeon with not less than five years' standing; and
 - (c) is a member of a registered professional association representing the interests of veterinary surgeons.
 - (2) The Board may in its discretion require an applicant under this section to undertake such examination as it may prescribe to satisfy itself that the applicant's knowledge and skill qualify such person for registration.
 - (3) The examination referred to in subsection (2) may be conducted by the Board or by any other authority or institution appointed by the Board, and such examination shall be conducted subject to such terms and conditions as the Board may determine.
 - (4) A person seeking registration shall apply to the Board within a period of five years after qualification, and any person applying after the expiry of that period shall be subject to the provisions of subsection (2).
90. The court is satisfied that these are elaborate stages that applicants have to comply with towards getting registered.
91. Other than being a citizen of Kenya which the applicants are, one must become a graduate. After graduating, the next requirement is that the applicant must undertake an internship. It is only after the internship that students apply and then get a registration certificate.
92. The board has the discretion to set up examinations.
93. The applicants have expressly and repeatedly admitted that they are not graduates. In order to drive this point home they have even furnished the court with their college cards to demonstrate that they are yet to graduate.
94. The court has looked at the impugned notice, and it is satisfied that the same was issued by the 1st Respondent pursuant to Section 15 in exercise of its discretionary power. Further the Notice does not apply to the applicants given that they are yet to graduate.
95. It does not in any way be said to be illegal, irregular or procedurally misplaced.



96. The notice cannot form the basis for the applicants to move the court for the orders sought in the circumstances.
97. The impugned Notice would have been available and applicable to them as a cause of action had they been graduates which they admit they are not. They have put the cat before the horse. The cause of action is not ripe and I so hold.
98. In so finding, this court is guided by the case of Republic v National Employment Authority & 3 others ex-parte Middle East Consultancy Services Limited [2018] eKLR, where Mativo, J. (as he then was) stated:
- “ 45. This brings into focus the principle of ripeness which prevents a party from approaching a Court prematurely at a time when he/she has not yet been subject to prejudice, or the real threat of prejudice, as a result of conduct alleged to be unlawful. None of the parties deemed it fit to address this pertinent legal point. The principle of ripeness was aptly captured by Kriegler J[34] in the following words:-“The essential flaw in the applicants’ cases is one of timing or, as the Americans and, occasionally the Canadians call it, “ripeness”... Suffice it to say that the doctrine of ripeness serves the useful purpose of highlighting that the business of a court is generally retrospective; it deals with situations or problems that have already ripened or crystallised, and not with prospective or hypothetical ones. Although, as Professor Sharpe points out and our Constitution acknowledges, the criteria for hearing a constitutional case are more generous than for ordinary suits, even cases for relief on constitutional grounds are not decided in the air. ...The time of this Court is too valuable to be frittered away on hypothetical fears of corporate skeletons being discovered.”
46. Lord Bridge of Harwich put it more succinctly when he stated:- “It has always been a fundamental feature of our judicial system that the Courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.”[35]It is perfectly true that usually the Court does not solve hypothetical problems and abstract questions and declaratory actions cannot be brought unless the rights in question in such action have actually been infringed.[36] The requirement of a dispute between the parties is a general limitation to the jurisdiction of the Court. The existence of a dispute is the primary condition for the Court to exercise its judicial function.[37] On the other hand, mootness involves the situation where a dispute no longer exists. Ripeness asks whether a dispute exists, that is, whether it has come into being.
192. The principle of justiciability prohibits the court from entertaining hypothetical or academic issues or engage in abstract arguments. In the Wanjiru Gikonyo & 2 others case (supra) Onguto, J. stated: 27.Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases. The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through a factual matrix, for determination.28.Conversely, the court is also prevented from determining an



issue when it is too late. When an issue no longer presents an existing or live controversy, then it is said to be moot and not worthy of taking the much sought judicial time.”

99. It is this court’s finding that the issues in the instant suit are not justiciable.

On the issue of costs;

100. In Halsbury’s Laws of England, 4th Ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether cost are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

101. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

102. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of Judicial Procedure in civil matters, thus stipulates (Section 27(1)):

“Subject to such conditions and limitations’ as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order” [emphases supplied].

103. This court has taken note of the fact that the applicants’ case revolves around the question of the protection, promotion, and fulfillment of the right education is guaranteed under Article 43 of *the Constitution*.

104. The court further notes that the applicants are students who as at the time of filing this suit were yet to graduate.



105. In the spirit of promoting social transformation through access to justice - STAJ and in the exercise of its discretion, this court finds that this is a case where the court can depart from the costs follow the event principle a result of which the court will not condemn the applicants to pay costs.

It is so held.

Determination:

106. The application lacks merit.

Order;

The application is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2025.

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J. M. CHIGITI (SC)

JUDGE

