

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. E014 OF 2025**

**IN THE MATTER OF: APPLICATION UNDER ARTICLES 22,  
23, 165(3) (b) OF THE  
CONSTITUTION OF KENYA;**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS**

**AND FREEDOMS UNDER ARTICLES 22, 23, 25, 28, 29(d),  
(f),33 (1) (c) 35 (1) 43 (1) (f) & Article 47 OF THE  
CONSTITUTION OF KENYA AND SECTIONS 4, 5 AND 7 OF  
FAIR ADMINISTRATIVE ACTION ACT**

**AND**

**IN THE MATTER OF: ALLEGED VIOLATION OF THE  
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS)**

**PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF: ALLEGED VIOLATION OF RIGHTS  
ENSHRINED IN CHAPTER FOUR THEREOF IN SO FAR AS  
THE PETITIONER'S CONSTITUTIONAL RIGHTS WERE  
INFRINGED**

**BETWEEN**

**ABRAHAM KYULU MUTUA .....**  
**PETITIONERS**

**-VERSUS-**

**JOMO KENYATTA UNIVERSITY**  
**OF AGRICULTURE AND TECHNOLOGY.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein filed the petition dated 25<sup>th</sup> June 2025 pursuant to Rules 3, 4(1), 8 and 10 of the Constitution of Kenya (protecting the Right and Fundamental Freedoms) Practice and Procedure Rules 2013) seeking a raft of declaratory orders as follows:
  - i) That a declaration be made that the Respondent violated the petitioner's rights under Article 28,29, 33, 35, 43, and 47 of the Constitution and Section 4,5, and 7 of the Fair Administrative Action Act.

- ii) That a mandatory order directing the Respondent to update the Petitioner's academic records and include him in the next graduation list;
- iii) That an order compelling the Respondent to issue the Petitioner with his degree certificate forthwith;
- iv) General damages for violation of the Petitioner's constitutional rights;
- v) Costs of the Petition.
- vi) Any other relief this Honourable Court deems fit to grant.

2. The petition is supported by a supporting affidavit of the Petitioner sworn on even date wherein he averred inter alia; that he enrolled at the Jomo Kenyatta University of Agriculture and Technology (JKUAT), School of Business, and successfully completed my fourth year of study in December 2019, with his registration Number HD241-2695/2014; that upon following up on his academic status in readiness for graduation, he was informed by a departmental administrator that he had two missing marks in first-year units due to system updates, and that he was assured that the issue would be resolved and that he would graduate; that due to professional obligations and employment commitments, he was unable to immediately follow up on the graduation process; that upon resuming his follow-up, he found that there had been

departmental reshuffles and that the new administrators claimed that he had additional missing marks in the units inter alia; Business Studies; Calculus; Communication Skills; Welfare Economics; Advanced Statistics for Economists; all Year 3 Semester 2 units; all Fourth-Year units. That he approached the relevant officials and was informed by one Mr. Francis Njeru that his results were intact and would be forwarded to the Examination Officer, yet to date no updates have been made on his student record and that his graduation has not materialized; that this ongoing situation has caused him severe emotional and psychological distress, especially as he continues to be denied access to his degree certificate despite having completed the required academic work; that as a result, he has lost employment opportunities and experienced professional embarrassment and stagnation, which has greatly undermined his dignity and aspirations; that the Respondent's actions and omissions amount to violations of his constitutional rights as hereunder:

- i. Article 28: by failing to treat me with dignity as a deserving graduate and professional;
- ii. Article 29(d)(f): by subjecting me to psychological torture through prolonged uncertainty and negligence;
- iii. Article 33(1)(c): by interfering with my right to access and share information about my academic standing;
- iv. Article 35(1): by denying me timely and accurate information regarding my academic records;
- v. Article 43(1)(f): by effectively denying me the right to education through administrative inertia;

vi. Article 47: by failing to provide fair, lawful, and timely administrative action in the processing of my graduation.

That unless this Honourable Court intervenes, he stands to continue suffering irreparable harm including permanent loss of academic recognition and professional progression.

3. The Respondent failed to file a response to the petition despite being served.
4. The petition was canvassed by way of written submissions. However, it is only the Petitioner who complied.
5. The Petitioner's submissions were presented on 8<sup>th</sup> December 2025.
6. I have given due consideration to the petition and the accompanying affidavit in support thereof as well as the submissions filed. I find the issue for determination is whether the petition has merit.
7. It is noted that the Petitioner, is seeking orders compelling the Respondent to release and update his academic results and prepare him for graduation since according to him, he duly completed all coursework and academic requirements as required by the Respondent and that he has been denied the opportunity to graduate due to the Respondent's failure to update and release his full academic record. The Petitioner contends that the Respondent's inaction has infringed upon his fundamental rights and freedoms guaranteed under Articles 28, 29, 33, 35, 43, and 47 of the Constitution of Kenya, and the Fair Administrative Action Act, No. 4 of 2015 and therefore he

seeks the intervention of this Honourable Court to protect and enforce his constitutional rights under Article 22 of the Constitution.

8. I have perused the documents presented by the Petitioner in support of his petition and note that the Respondent had clearly confirmed that the Petitioner had completed his studies way back in December 2019 and was awaiting graduation in June 2020. One of the documents in that regard is a letter dated 17<sup>th</sup> December 2019 written by the Respondent's Project and Attachment Co-ordinator for the purposes of enabling the Petitioner to secure an internship opportunity in some organization or institution. The same is as follows:

**JOMO KENYATTA UNIVERSITY OF  
AGRICULTURE AND TECHNOLOGY  
SCHOOL OF BUSINESS**

**Department of Economic, Accounting & Finance**

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**Ref: JKU/2/112/011**

**Date: 17<sup>th</sup> December 2019**  
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**TO WHOM IT MAY CONCERN**

**Dear Sir/Madam,**

**Re: ABRAHAM KYULU MUTUA - REG. NO. HDB 241 2695/2014**

This is to inform that Abraham is a bona fida student in this university pursuing a degree in Bachelor of Science in Economics in the department of Economic,

Accounting and Finance, School of Business, Jomo Kenyatta University of Agriculture and Technology.

The Department will be grateful if you can offer an internship opportunity to this student in your organization. He has completed his studies in December 2019 and awaits for graduation in June 2020. The internship is meant to expose the student to real work environment and enable him to apply the concepts, issues and skills learnt in the Degree programme.

Should you require any other information concerning the above student, please do not hesitate to contact the undersigned.

Thanking you in advance.

Yours sincerely

**FMN. CHUNE**

**PROJECT AND ATTACHMENT CO-ORDINATOR**

**FOR: CHAIRMAN, DEPARTMENT OF ECONOMICS,**

**ACCOUNTING AND FINANCE.**

It is clear from the foregoing letter that the Respondent did confirm that the Petitioner had completed his studies and was awaiting graduation which had been scheduled for the month of June 2020. It is instructive that the Respondent failed to file a response to the petition and to deny the existence of such a letter. Again, the Petitioner's advocate sent a demand notice to the Respondent which elicited no response either and therefore the Petitioner was left with no alternative but to seek redress in court since his rights under Article 28, 35, 43, 47 of the Constitution were violated. The same are herebelow cited.

- i) Article 28 of the Constitution guarantees every person the right to inherent dignity and to have that dignity respected and protected. The Respondent's arbitrary withholding of the Petitioner's academic results has subjected him to psychological distress, humiliation, and public embarrassment, thereby infringing this right.
- ii) Article 35(1)(b) grants every citizen the right of access to information held by another person required for the exercise or protection of any right. The Respondent's refusal to furnish the Petitioner with his complete academic record and reasons for delay violates this provision.
- iii) Article 43(1)(f) guarantees the right to education. Denying the Petitioner access to his results and the opportunity to graduate effectively limits this right. The Respondent, as a public institution, is constitutionally bound to respect and fulfil the right to education.
- iv) Article 47 of the Constitution guarantees every individual the right to administrative action that is fair, prompt, efficient, lawful, reasonable, and procedurally just. The significance of this right was emphasized in **Mutimba Creser Masayi Joseph v.**

**Masinde Muliro University of Science and Technology [2020] KEHC 7950 (KLR)**, where the Court referenced the decision in **Judicial Service Commission v. Mbalu Mutava & another [2015] eKLR**. In that case, the Court of Appeal observed that Article 47(1) represents a major and transformative step in administrative justice. It not only establishes a constitutional basis for regulating the powers of state organs and administrative bodies but also embeds the right to fair administrative action within the Bill of Rights. This right reflects key national values enshrined in Article 10, including the rule of law, human dignity, social justice, good governance, transparency and accountability.

Again, the court in **Kenyan Human Rights Commission & another v. Non-Governmental Organization Coordination Board & another (2018) eKLR**, stated:

*“...Administrative actions that flow from statutes, must now meet the constitutional test of legality, reasonableness and procedural fairness. Accordingly, a party, a hearing before taking action against him is no longer discretionary. It is firmly entrenched in our Constitution as an inviolable right. It is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and*

*quasi-judicial functions. These no longer have place in our constitutional dispensation...”*

Also, in **Judicial Service Commission v. Mbalu Mutava & Another [2015] eKLR**, the Court held that Article 47 and the Act require fairness and accountability in all administrative processes. The Respondent’s continued silence amounts to administrative inaction that is unreasonable, unjustified, and unlawful, warranting judicial intervention.

The foregoing authority is in sync with the provisions of Section 4(1) of the Fair Administrative Action Act which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Also, under Section 4(2), when administrative action is likely to adversely affect rights, the administrator must give prior and adequate notice, an opportunity to be heard, and written reasons for the decision.

It is clear that the Respondent’s conduct contravened the above statutory requirements by failing to provide written reasons for the delay, denying the Petitioner an opportunity to be heard, and failing to act within a

reasonable time despite confirming that the Petitioner had duly completed his studies and was due for graduation.

9. The Petitioner having completed his studies and which was confirmed by the Respondent, was entitled to be informed by the Respondent of the date for his graduation. The Petitioner therefore had legitimate expectations that upon completion of his studies he would be allowed to graduate. Beyond constitutional and statutory breaches, the Respondent's conduct violates the doctrine of legitimate expectation. The Petitioner had a legitimate expectation, arising from his completion of all academic requirements and verbal assurances from the Respondent's officials, that his results would be processed, recorded, and that he would graduate in the next available ceremony. This expectation was reasonable, legitimate, and based on consistent conduct by the Respondent.

The doctrine of legitimate expectation is rooted in fairness and good administration, ensuring that public authorities act consistently and fulfil promises made to those they serve.

**In Kenya Revenue Authority v Universal Corporation Ltd [2020] KECA 395 (KLR)**, the Court of Appeal held that a legitimate expectation arises where a public authority, through a clear and lawful promise or

established practice, leads an individual to reasonably believe that they will receive or retain a specific benefit or be treated in a particular way.

For such expectation to be enforceable, the representation must be clear, unambiguous, made by an authorized person, reasonable, and relied upon by the claimant to their detriment, without any overriding public interest justifying departure. The doctrine ensures fairness, consistency, and accountability in public administration.

By failing to act in accordance with its assurances, and by withholding the Petitioner's results without cause or communication, the Respondent violated the Petitioner's legitimate expectation, thereby acting contrary to the principles of good governance, fairness, and administrative justice enshrined in Articles 10 and 47 of the Constitution. The Court in **Khelef Khalifa & 2 others v Independent Electoral and Boundaries Commission & another [2017] KEHC 4303 (KLR)** observed as follows:

*“Statutory bodies derive their authority or jurisdiction from a legal instrument establishing them, and may only do what the law authorizes them to do. This is known as the principle of legality, which requires that administrative authorities not only refrain from breaking the law, but that all their content comply with the Constitution and*

*particularly the Bill of Rights. Their decisions must conform to the Constitution; legislation; and the common law.”*

The Petitioner’s claim that his legitimate expectation was violated by the Respondent therefore has merit in that the Respondent’s conduct amounted to a breach of his legitimate expectation and thus the declaratory and mandatory orders sought are legitimate.

10. It is noted that the Petitioner has sought for a raft if orders vide his petition dated 25<sup>th</sup> June 2025. The main prayer sought is for the Respondent to release his academic results and prepare him for graduation in addition to other reliefs. In the case of **Gitobu Imanyara & 2 others v Attorney General [2016] eKLR** it was held that:

*“...the South African Case of Dendy v University of Witwatersrand, Johannesburg & others- [2006] 1 LRC 291 where the Constitutional Court of South Africa held that: “...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases. “...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future*

*infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief*

*required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy."*

The Petitioner has also sought, in addition to declaratory orders, for damages for violation of his constitutional rights. It is noted that learned counsel for the Petitioner in his submissions has not made any submissions regarding the claim for damages. At best, the Petitioner appears to be more interested in the grant of the declaratory orders he has sought in the petition. The Court of Appeal in **Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 Others [2021] KECA 328 (KLR)** reaffirmed the principles governing the award of damages for constitutional violations. The Court cited with approval the decision of the Privy Council in **Siewchand Ramanoop v Attorney General of Trinidad and Tobago, Privy Council Appeal No. 13 of 2004**, where Lord Nicholls explained that remedies for constitutional breaches are not limited to traditional compensatory

damages. The objective of a constitutional remedy is to uphold and vindicate the infringed right.

11. It is not in doubt that the Petitioner who was set to graduate in the month of June 2020 has had to agonizingly wait for all that long yet the Respondent was all aware that he had completed his studies. Indeed, such a long period has caused untold suffering to the Petitioner. It is further noted that the Respondent has not given any plausible explanation as to why it has not fulfilled the Petitioner's dreams. The conduct of the Respondent can be seen by its failure even to file a response to the demand notice as well as this petition. I find that the Petitioner has suffered significant prejudice arising from the Respondent's unlawful inaction, including emotional distress, loss of dignity, denial of opportunities for employment and further education, and prolonged uncertainty about his academic standing. These injuries flow directly from the Respondent's violation of his rights under Articles 28, 35, 43, and 47 of the Constitution. It is quite clear that the Respondent stringed the Petitioner and took him in circles without allowing him fulfil his aspirations and dreams of being allowed to graduate after successfully completing his papers. The action of the Respondent thus visited the Petitioner with untold suffering warranting this court to intervene.

12. As regards the claim for damages, it is not in dispute that the Petitioner has been kept waiting for very long time to graduate yet he had already completed his studies as confirmed by the Respondent. Indeed, the Petitioner has suffered great prejudice and emotional distress, loss of dignity, denial of opportunities for employment and further education if need be. The Petitioner's peers/colleagues are probably way ahead of him in terms of progress while the Petitioner is still stuck without any academic certificate thanks to the Respondent's recalcitrance. In the circumstances, I am of the view that in addition to the declaratory orders sought by the Petitioner, he is entitled to some form of compensation. The Petitioner has been out in the cold for over five years without accessing his degree certificate. I find an award of Kshs 100,000/= would be adequate and reasonable as compensation for violation of the Petitioner's constitutional rights.

13. In view of the foregoing observations, it is my finding that the Petitioner's petition has merit. The same is allowed and that the following prayers are hereby granted:

- a. That a declaration be and is hereby issued that the Respondent violated the petitioner's rights under Article 28,29, 33, 35, 43, and 47 of the Constitution

and Section 4,5, and 7 of the Fair Administrative Action Act.

- b. That a mandatory order be and is hereby issued directing the Respondent to update the Petitioner's academic records and include him in the next graduation list;
- c. That an order compelling the Respondent to issue the Petitioner with his degree certificate forthwith;
- d. General damages in the sum of Kshs 100,000/= is hereby awarded to the Petitioner and to be paid by the Respondent for violation of the Petitioner's constitutional rights;
- e. The Petitioner is awarded costs of the Petition.

**Dated and delivered at Siaya this 19<sup>th</sup> day of January 2026.**

**D. K. KEMEI**

**JUDGE**

**In the presence of:**

**Felix Oketch.....for Petitioner.**

**N/A.....for Respondent.**

**Maureen/Kimaiyo.....Court Assistant.**

SIAYA HC PETITION NO. E014 OF 2025 - JUDGMENT