

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E017 OF 2026
MUKHWANA WANJALA WESLEY.....APPLICANT

VERSUS

KENYA COLLEGE OF ACCOUNTANCY
UNIVERSITY.....RESPONDENT

RULING ON AN APPLICATION FOR LEAVE TO APPLY

1. The chamber summons dated 23/1/2026 and supported by a statutory statement and verifying affidavit sworn by the Applicant Mukhwana W. Wanjala on the even date seeks leave of court to apply for Judicial Review orders of certiorari to remove into this court and quash Respondent's decisions contained in the twin letters Ref: SEN/December, 2025/PNM dated 2nd December 2025 and Ref: KCAU/VC/01/Vol.018 dated 20th January 2026 of suspending the Applicant from the Respondent University until January 2027 (December 2026).
2. The application also seeks an order of prohibition prohibiting the Respondent from denying or frustrating the Applicant in any way either by itself or through agents or otherwise from 2026 graduation; an order of mandamus compelling the Respondent to issue the Applicant with his Examination transcripts and degree certificate upon next graduation in 2026; and an order of declaration that

the Respondent violated the Applicant's Rights and Freedoms enshrined at Articles 47 and 50 of the Constitution, and that further that an Academic year for the Applicant comprise two semesters of 15 weeks starting September of the year in issue to April/June of the following year.

3. A brief background of the facts leading to the institution of these proceedings is that the Applicant, a student of the Respondent University was vide a letter dated 18th October 2025 and received on 20th October 2025 called to attend a meeting of the Student's Academic Disciplinary Committee. The letter required the applicant to appear before the Committee on 22nd October 2025 at 9 a.m.. The letter is said to have disclosed that the purpose of the meeting was for him to respond to charges of examination irregularity specifically alleged impersonations. The Applicant's case is that he had been forced to make a hand written confession at the scene on 6th August 2025.
4. That upon appearing before the committee on the said date, the proceedings were rescheduled to 31st October 2025 owing to what he terms as absence of one of the committee members. On 31st October 2025, the Applicant states that the Committee, comprising approximately 20 to 25 University staff members including two student representatives, convened and the Chairman introduced the proceedings, invited the legal representative to read verbatim the subject matter from the letter dated 18th October 2025, and thereafter called upon the

applicant to respond, following which members posed questions to him. The legal representative is said to have subsequently read out Regulation 6.5 alleged to have been violated by the applicant, together with its penal consequences, after which the Chairman made closing remarks and informed the Applicant that the verdict would be communicated in due course.

5. That vide a letter Ref: SEN/December, 2025/PNM, dated 2nd December 2025 the Respondent rendered the impugned verdict to the Applicant, finding him guilty of violating Section 6.5 of the Academic Misconduct in Examination or Class Test Regulations and resolved that the applicant be suspended from the University for one academic year being January-December 2026 (Resumption January 2027).
6. The Applicant states that he appealed this decision and on 15th January 2026, he appeared before the Students' Disciplinary Appeals/Committee to defend his appeal. That vide a letter dated 20th January 2026, the Students' Disciplinary Appeals/Committee resolved to uphold the Senate's decision that is, suspension for one (1) Academic Year (Resumption January 2027).
7. The Applicant contends that the disciplinary process violated the principles of natural justice and Articles 47 and 50 of the Constitution, citing a vague show cause letter lacking particulars or reference to the applicable regulation. He also complains that he was not accorded an opportunity to submit a written

response, alleged coercion to provide a handwritten confession, intimidation during the hearing and belated disclosure of the specific rule allegedly breached by him.

8. The applicant further asserts that the Respondent acted *ultra vires*, illegally and with procedural impropriety by suspending him after completion of his studies, usurping the Senate's statutory mandate under section 35(1)(b) of the Universities Act, and misapplying the duration of suspension in a manner that was unreasonable, irrational, taken in bad faith and violative of his constitutional rights, thereby effectively extending a one-year suspension into two academic years and unfairly withholding his graduation.

The Respondent's Replying Affidavit

9. Opposing the application for leave, the Respondent filed a replying affidavit sworn on 2nd February 2026 by Teresia Irura who introduces herself as the Head of Legal Services Department of the Respondent University. She depones that the Applicant knowingly and intentionally sat the examination on behalf of Sally Ndombi, thereby committing the offence of impersonation to which the Applicant herein admitted to and a sanction was imposed by the Respondent.
10. Further, that impersonation is a serious academic misconduct as per the Academic Misconduct in Examinations or Class Tests Regulations, and that the prescribed sanction is expulsion. However, that the disciplinary authority

exercised leniency by imposing a one-year academic suspension especially taking into consideration that the Applicant confessed of his wrong doing, pleaded that it was out of sympathy for his friend's situation and sincerely asked the panel to forgive him and consider that he had completed his course work and was just awaiting graduation.

11. It is deponed that the Applicant was granted a fair hearing, an opportunity to be heard by the Disciplinary Committee before a decision was reached and that therefore, there was no need for quashing the decision of the Senate and the Appeals Committee, respectively.

12. The Respondent contends that that the requirement for leave is mandatory and its purpose is to “eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless. Reliance is placed in the cases of **Republic v County Council of Kwale & Another Ex-parte Kondo & 57 Others (1996)**, **Republic v Kenyatta University Ex parte Ochieng Orwa Domnick & 7 Others (2018)** and **Uwe Meixner & Another v Attorney General [2005] eKLR**.

13. It is urged that the applicant's statutory statement fails to disclose any prima facie arguable grounds of illegality, irrationality or procedural impropriety. That instead, the Applicant's grievances raise factual disputes about the computation

of an academic year, the severity and timing of the suspension and the internal appeal process.

14. The Respondent further contends that the Courts have declined to intervene where a student faced disciplinary proceedings and was heard and participated as seen in **Republic vs. Moi University [2015] eKLR** where the court is said to have upheld the disciplinary procedures and dismissed the judicial review application.

15. Additionally, the Respondent contends that the application is an appeal disguised as judicial review, arguing that issues concerning interpretation of an academic year and imposition of suspension are internal academic functions governed by University policy, not legal errors warranting judicial intervention and that the Applicant, despite having completed his course and received a completion letter on 7th July 2025 as per section 9.6.1.2 of the Awards and Graduation policy, admitted to unlawfully accessing an examination room on 6th August 2025 to sit an exam for another candidate, thereby properly subjecting himself to disciplinary action.

16. It is further contended that the suspension lawfully took effect in 2026 following conclusion of due process in October 2025, and that the same was not backdated and does not delay graduation beyond July 2027.

17.The Respondent also states that the appeal procedure complied with the Academic Misconduct Regulations, with the Vice Chancellor properly exercising delegated authority and that accordingly, the Applicant has not met the threshold for leave, particularly as courts are slow to interfere in internal academic matters absent a clear statutory breach.

Submissions

18.The application was canvassed by way of oral submissions on 18th February 2026. Counsel for the Applicant, Mr. Masika, submitted that the Chamber Summons dated 23rd January 2026 is brought under Section 3 of the Fair Administrative Action Act and the Universities Act, and that at the leave stage the Applicant need only demonstrate a prima facie case, which he contended arises from the illegality in two letters dated 2nd December 2025 and 20th January 2026 issued by the Vice Chancellor that allegedly contravened section 35(1)(b) of the Universities Act by varying the Senate's decision to suspend the Applicant for the 2025/2026 academic year into a suspension running from January to December 2026, thereby effectively extending it.

19.He further argued that the appeal process was unlawful as the Regulations that were to be made by the University Council to regulate the affairs of the University had not been gazetted as required by section 23 of the Act. That the

decision on appeal was not referred back to the Senate and that there were procedural improprieties including failure to give adequate notice, to supply evidence, to comply with prescribed timelines and to adhere to the composition of the Disciplinary Committee, as well as participation of members in multiple decision-making stages, thereby rendering the applicant's disciplinary process irrational and unfair.

20. In her submissions opposing the application, Counsel for the Respondent, Mrs. Koome, submitted that no prima facie case had been established, maintaining that the Senate, as the supreme organ under the University Statutes, properly received and adopted the Disciplinary Committee's recommendation without amendment and that the Registrar merely communicated the decision as reflected in the Senate's minutes, with no unlawful extension of suspension or delay of graduation beyond July 2027 if clearance is completed.
21. She further submitted that the applicable Regulations and Charter were valid, and that the Applicant was accorded a fair hearing and granted leniency despite the offence of impersonation attracting expulsion. It was also her submission that the composition and procedure of the committee complied with the Regulations,
22. She submitted that the orders of mandamus and prohibition were unavailable in the circumstances, arguing that prohibition could not issue since the disciplinary

decision had already been implemented while mandamus could not compel the University to perform a duty in a particular manner.

23. On the question of the duration of suspension, counsel for the respondent maintained that there was no unlawful conversion of a one-year suspension into two years, contending that the Senate's decision contemplated resumption in January 2027 as reflected in its minutes, and that the Applicant was therefore serving only one academic year suspension beginning in January 2026, with eligibility for graduation in July 2027 upon completion of the clearance process.

24. In his rejoinder Mr. Masika counsel for the Applicant submitted that Senate was supreme, that on the charter, there was no evidence of gazettelement as the Regulations approved by the council in 2024 had not been gazetted. It was also his submission that the Applicant had already been punished and missed out on the graduation. He argued that Mrs. Koome attended the committee but another person signed the attendance list, to which Mrs. Koome responded, denying that she attended the meeting.

Analysis and Determination

25. I have considered the application as filed, the opposition thereto and submission for and against the prayers sought by the applicant. At this leave stage, in an application brought under Order 53 of the Civil Procedure Rules, the main reason for the leave as explained by Waki J. (as he then was), in **Republic vs.**

County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996, is to ensure that an applicant is only allowed to proceed to the substantive hearing if the Court is satisfied that there is a case fit for further consideration.

26. It follows, therefore, that at this stage, the Court is not expected to indulge in the merits of the intended application but for this court to establish whether the Applicant has made out an arguable case for leave to commence judicial review proceedings to issue. An arguable case is not necessarily one that must succeed, but that it is not frivolous or hopeless.

27. Regrettably, despite this guidance given to the parties' counsel by this court, they insisted on arguing on the merits of the intended motion. This Court however, resists the temptation of determining the merits of the intended motion should it be of the view that there is an arguable case, while observing that the applicant could still have applied via the Fair Administrative Action Act and Rules in which case, no leave to apply would be required.

28. In the cases of **Republic vs County Council of Kwale & Another Ex-parte Kondo & 57 others (supra)** and **Meixner & Another vs A.G [2005] eKLR**, it was held that the leave of court is required with a view to filtering out frivolous applications and the test to be applied is whether the applicant has an arguable case.

29. I reiterate that leave would have been unnecessary had the Applicant approached the court under the Fair Administrative Action and Rules. However, a party is at liberty to choose whether to apply under Order 53 of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act or under the Fair Administrative Action Act and Rules.

30. Still, leave to apply is not automatically granted by the court even where the matter is being handled ex parte. Grant of leave is in the discretion of the Court having regard to the facts of each case.

31. In the instant case, the Applicant alleges violation of his right to a fair hearing, challenges the composition of the Senate and the Appeals Committee during the hearing of the disciplinary case against him and refers to an alleged variation of the Senate's verdict by the Registrar. These matters, on their face, disclose an arguable case which, if ultimately established, may warrant the grant of judicial review relief.

32. To this extent, and in light of the material placed before this Court, without delving into the detailed but useful arguments by the respective parties' counsel which border on the merits of the case as intended, it is my finding that the case is an arguable one to justify leave. It cannot be said to be frivolous or hopeless.

33. In the circumstances, and bearing in mind that this Court is not at this juncture called upon to determine the legality or otherwise of the impugned decisions, I

am satisfied that the issues raised transcend a mere dissatisfaction with the outcome and raise questions fit for judicial interrogation. Consequently, I find that the threshold for grant of leave has been met. The Applicant ought to be afforded an opportunity to ventilate the substantive motion on its merits.

34. I therefore grant leave in terms of prayer 2 as sought in the Chamber Summons application dated 23rd January 2026.

35. The substantive motion to be filed and served upon the Respondent within 21 days of today's date.

36. Each party to bear their own costs of this application for leave to apply.

37. Directions shall be given in the physical file, to be uploaded in the Case Tracking system on the canvassing of the main motion once filed and served.

38. It is so ordered.

Dated, Signed & Delivered virtually at Nairobi this 4th Day of March 2026

**R.E. ABURILI
JUDGE**