



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL REVIEW NO. E025 OF 2025

ERICK MOGOA.....1ST

APPLICANT

LINAH MURIUKI.....2ND

APPLICANT

COLLETA CHEPNGETICH.....3RD

APPLICANT

VICTORIA MUCHOKI KAGORI.....4TH

APPLICANT

VERSUS

KENYA METHODIST UNIVERSITY.....1ST

RESPONDENT

THE COUNCIL, KENYA METHODIST UNIVERSITY.....2ND

RESPONDENT

THE SENATE, KENYA METHODIST UNIVERSITY.....3RD

RESPONDENT

THE REGISTRAR,

ACADEMIC AFFAIRS, KENYA METHODIST UNIVERSITY....4TH
RESPONDENT

THE VICE CHANCELLOR,

KENYA METHODIST UNIVERSITY.....5TH
RESPONDENT

RULING

1. The Applicants moved this court vide an application titled an **“Originating Motion”** dated 3rd November,2025 and subsequently amended on 10th November,2025, pursuant to Articles 22,23,27(1),47 and 48 of the Constitution, Sections 2,4,7,11 of the Fair Administrative Action Act, seeking the following reliefs: -
 - i. Spent
 - ii. Spent
 - iii. That this Honourable Court be pleased to make a DECLARATION that the Respondent’s Actions of omitting the names of the Applicants from the list of the 1st Respondent’s 25th graduation ceremony scheduled for Saturday 8th November 2025 without giving them written reasons or

according them a fair hearing constituted unfair administrative action.

iv. Spent

v. That this Honourable Court be pleased to make an order of JUDICIAL REVIEW by way of MANDAMUS directing the Respondents to include the names of the Applicants in the list of graduands for the 1st Respondent's next and or graduation ceremony.

vi. That this Honourable Court be pleased to issue an order directing the Respondents herein, jointly and severally, to pay damages to the Applicants for unlawfully, illegally and unprocedurally failing to include the Applicants in the graduation list for the 1st Respondent's 25th graduation held on 8th November, 2025 in the following manner: -

- a. **GENERAL DAMAGES** against the Respondents jointly and severally for the Respondents' unfair administrative actions which adversely affected the Applicants.
- b. **EXEMPLARY DAMAGES** against the Respondents jointly and severally.

- c. **DAMAGES** of Ksh.1,680,000 per Applicant for loss of future earnings calculated as Ksh.70,000 times 24 months, being the amount the Applicants would have earned had they been employed as nursing interns.
- vii. That this Honourable Court be pleased to make any such or further orders as it may deem necessary in the interest of justice.
- viii. That this Honourable Court be pleased to make an order as to costs.
2. The Application is predicated on the grounds on its face and supported by an affidavit of the 1st Applicant, Erick Mogo, sworn on his behalf and on behalf of the 2nd, 3rd and 4th Applicants on 10th November, 2025.
3. In opposition to the Application, Njeri Mbugua, the 1st Respondent's Legal officer, swore a Replying Affidavit on behalf of the respondents on 17th November, 2025.
4. In response to the aforesaid Replying Affidavit, the 1st Applicant, Erick Mogo, swore a further Affidavit on 25th November, 2025.

The Applicants' Case

5. The Applicants are nursing students of Kenya Methodist University (KEMU). They claimed that they had attained the necessary requirements for conferment of a Bachelors of Science Degree in Nursing and were thus eligible to graduate on 8th November, 2025. However, to their utter shock and dismay, they were deliberately omitted from the list of graduands on the said date.
6. They averred that upon inquiring about their omission from the graduands list, the Respondents informed them that the graduation booklet had already been printed and that there was no opportunity to include additional names in the graduation list.
7. They contended that they followed up with the administration but could not be cleared as they were past the 1st October 2025 deadline but the Respondents continued to include other students from the School of Nursing and Medicine in the graduation list after that date.
8. They thus posited that the Respondents' actions were discriminatory.

9. They attributed the failure to meet the deadline to the Respondent's actions, stating that a system update by the 1st Respondent temporarily delayed the clearance process and that the examination officer was unable to upload the project marks due to lack of training on the new system, which they maintained was a failure on the part of the University and had prejudiced them.
10. They averred that they raised the challenges they were facing but the Respondents did not respond and that they were not heard before the adverse action of excluding their names from the graduation list was taken.
11. They nonetheless contended that they had met all the requirements of the 1st Respondent for conferment of a degree in Nursing, as provided in clause 6.1.2 of the 1st Respondent's handbook and that failure to graduate would result in missing the July 2026-2027 internship placement, which requires graduation. They asserted that this would delay their internship until July 2027-2028, resulting in a two-year gap and stated that the year 2027 coincides with the general elections, which could further create

uncertainties and disrupt both the academic and internship calendar.

Respondents' Case

12. The Respondents contended that graduation is governed by the University's Academic Policy, examination rules and the 2025 Academic Calendar, which set timelines for meeting academic requirements.
13. They stated that the Applicants were ineligible to graduate on 8th November 2025 because they had not completed their project defenses on time.
14. They specifically stated that the 1st Applicant, together with four other students, defended their project on 9th October, 2025, the 2nd Applicant, with four other students, defended their projects on 22nd October 2025 while the 3rd and 4th Applicants, together with three other students, defended their projects on 9th October 2025. They contended that they all passed with minor corrections through their respective supervisors and that by the time they completed their projects, the clearance period had already lapsed.

15. They denied that system changes delayed clearance, asserting that the ERP system and Registrar's directives ensured proper processing of the graduation list. They further averred that University rules and the Academic Handbook do not provide a right to be heard before inclusion in the graduation list, and therefore the Applicants' expectation to graduate on 8th November 2025 was illegitimate.
16. The Respondents also disputed claims of discrimination. They stated that the request to include students from the Schools of Medicine and Pharmacy for the Year 6 class in the 2025 graduation list was made to the Vice Chancellor on 22nd July 2025 and approved by the University Senate. That the delay in the graduation of those students was due to disruptions to their academic calendar caused by the Health Workers' unrest which set their final examinations close to the graduation date. The Respondents maintained that the Applicants' request, made on 15th October, 2025, came after Senate approval of the graduation list and as a matter of

policy, all students are subject to the same graduation requirements.

17. They further averred that the Applicants' concerns about internship placement in 2027 are speculative and that the University is committed to providing letters of academic fitness to professional bodies upon request.
18. Ultimately, the Respondents contended that the Applicants have not met the requirements for conservatory orders or claims for damages and prayed that the application be dismissed with costs.

Applicants' Rejoinder

19. The Applicants averred that the Respondents' replying affidavit contains misrepresentations and half-truths.
20. They contended that the self-imposed deadline of 23rd September 2025 for publishing the graduation list was not met and that the earliest graduation list was issued on 18th October 2025, the second on 22nd October 2025, and the final list on 26th October 2025. They asserted that by 24th October 2025, they had cleared all requirements and

submitted their intention to graduate forms, yet their names were excluded from the graduation list while other students from the School of Nursing were included.

21. They averred that specific student i.e. **Muslima Aila Guyo, Lotinyang Timothy Rutto, Rutto Kibet Collins, Moyi Vihenda Loice,** and **Bundi Atera Gadson** were included in the final graduation list despite being in the same project groups and defending on the same dates as them, highlighting inconsistent application of standards.
22. They contended that, if uniform criteria were applied, none of these students, including themselves, should have been included in the 8th November 2025 graduation list.
23. Regarding the School of Medicine, they contended that some students were included in the graduation list before completing clearance or submitting intention to graduate forms.
24. They cited one Kemboi Kipyegon Brian, whose name appeared on the list published on 22nd October 2025 despite being cleared on 23rd October 2025.

25. They thus contended that the Respondents selectively applied rules, treating them differently from other students in similar circumstances and that no lawful explanation was provided for their exclusion.
26. They reiterated that missing graduation will prevent them from undertaking the July 2026–2027 nursing internship, which requires a Bachelor of Science in Nursing degree. They outlined expected earnings for nursing interns, totaling approximately Ksh 76,103 per month, and argued that they will lose this remuneration for two years due to the Respondents' actions.
27. The application was canvassed by way of written submissions.

Applicants' Submissions

28. The Applicants reiterated the averment contained in their affidavits in their submissions.
29. In buttressing their submissions, the Applicants relied on the cases of **Peter K. Waweru v Republic [2006] KEHC 3202(KLR) & Jacqueline Okeyo Manani & 5 Others v Attorney General & Another [2018] eKLR** on what

amounts to discrimination, **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others [2014] KESC 53 (KLR) (Supreme Court of Kenya, Petition Nos. 14, 14A, 14B & 14C of 2014)**, on the legal principles governing legitimate expectation & **Kimani v Kenyatta University & Another [2025] KEHC 6602 (KLR) (Petition E197 of 2023, High Court at Nairobi, 22 May 2025)**, where the High Court found that the respondents' refusal to release the petitioner's Continuous Assessment Test (CAT) marks, which prevented her graduation, amounted to unfair, irrational, and unconstitutional administrative action in breach of Article 47 of the Constitution.

Respondents' submissions

30. The respondents framed the following issues for determination by the Court;

a. Whether illegally obtained evidence is admissible.

b. Whether the Amended Application dated 10th November 2025 is merited;

31. It was submitted that the 1st respondent is the custodian of its students' private records including clearance forms. That the 1st respondent is a data processor and data controller with statutory obligations under the Data Protection Act. That its legal and reputational standing have seriously been breached by the applicants. That for instance, Kemboi Kipyegon Brian, the alleged student from the school of medicine, is not party or a witness to these proceedings and he had not filed the necessary consents to allow the use of his personal records to these proceedings. That the applicants have not explained the circumstances upon which, this personal information fell into their hands to warrant the use of the same in these proceedings. That unless the use of such information was justified then it qualified to be termed illegally obtained evidence and was inadmissible. Cited in support of this submission was **Civil Appeal No.31 of 2015 Okiya Omtatah Okoiti & 2 others -Versus- Attorney General & 4 others [2020] eKLR**

32. It was further submitted that from their own documents, the applicants cleared with the finance department on 27th October 2025, whereas the illustrations used showed that those students cleared with the finance department on 24th October 2025 and were thus included in the supplementary list that was published on 25th November 2025. That this was done after a Special Senate meeting of 25th October 2025. That by then, the applicants had not been cleared and could not be on the list. That as such the cited students were not in a similar situation as the applicants.
33. It was further submitted that the circumstances under which Medicine students were cleared to graduate was not applicable to the applicants. As such they could not be treated uniformly.
34. The respondents wondered why the issue of the portal only applied to the applicants yet their colleagues were able to clear on time. That the applicants have not shown that they sought the assistance of the Respondent's ICT Department.

35. It was also submitted that having not met the qualifications set out under Clause 6. 1. 2. The they had no legitimate claim for graduation on 3rd November 2025.

Analysis & Determination

36. I have carefully considered Application, the affidavits made in support and in opposition thereto, and the submissions on record. Issues that crystallize for determination are: -

- a) Whether the applicants were in breach of the Data Protection Act.
- b) Whether the Applicants were discriminated against by the Respondents.
- c) Whether the Applicants' right to fair administrative action under Article 47 of the Constitution was breached by the Respondents.
- d) Whether the Applicants had a legitimate expectation to graduate.
- e) Whether the Applicants are entitled to the relief they seek.
- f) Who should bear the costs of this Application?

37. Article 31 of the Constitution provides for the right to privacy. It states as follows;

Privacy

Every person has the right to privacy, which includes the right not to have—

(a) their person, home or property searched;

(b) their possessions seized;

(c) information relating to their family or private affairs unnecessarily required or revealed; or

(d) the privacy of their communications

infringed.

38. It is now well settled law that the question of illegally obtained evidence applies to both criminal and civil cases. In **Okiya Omtatah Okoiti & 2 others -Versus- Attorney General (supra)** the Court of Appeal observed that;

"The interpretation given by the Court in that case that Article 50(4) of the Constitution applies only to criminal law and not civil law is, with respect, doubtful. Article 50 of the Constitution deals generally with "fair hearing". In Article 50(7) for instance,

reference is made to "every person" as having the right to a fair hearing. This is in contrast to Article 50(2) which is specific "every accused person". In our view, under Article 50(4) if a court determines that admission of evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights would be detrimental to the administration of justice, the court may reject it irrespective of whether it is in connection with a civil or criminal trial."

39. The test is whether the evidence adduced, if illegal, violates any right or freedom and would be detrimental to the administration of justice.
40. The applicants did not explain how they came by the clearance forms for the other students. They could at least have annexed affidavits of the concerned students consenting to the use of their data/ information.
41. I am thus in agreement that the evidence was illegally obtained and stands to be expunged.

42. That said I note that the data in issue was not used against the said students. Rather, it is used against the record keeper. I would therefore be hesitant to expunge the same.
43. The irony of this submission was that while the respondents urged the court to expunge the documents, they used them to prop their case that the circumstances of those students were different.
44. Were the applicants discriminated against?
45. In **Jacqueline Okeyo Manani & 5 Others v Attorney General & Another** (supra) the High Court stated as follows with respect to what amounts to discrimination: -

“Black’s Law Dictionary, 9th Edition defines “discrimination” as (1) “the effect of a law or established practice that confers privileges on a certain class because of race, age sex, nationality, religion or hardship” (2) “Differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured”.

In the case of Peter K Waweru v Republic [2006] eKLR, the court stated of discrimination thus: - Discrimination means affording different

treatment to different persons attributable wholly or mainly to their descriptions whereby persons of one such description are subjected to ... restrictions to which persons of another description are not made subject or have accorded privileges or advantages which are not accorded to persons of another such description... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age sex ... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”(emphasis)

From the above definition, discrimination, simply put, is any distinction, exclusion or preference made on the basis of differences to persons or group of persons based such considerations as race, colour, sex, religious beliefs political persuasion or any such attributes that has real or potential effect of nullifying or impairing equality of opportunity or treatment between two persons or groups. Article 27 of the Constitution prohibits any form of discrimination stating that. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law, and that (2) Equality includes the full and equal

enjoyment of all rights and fundamental freedoms...”

46. According to the documents presented to the court, the other students referred to by the applicants were cleared on 23rd and 24th October 2025, and were included in the graduation list, while the Applicants were excluded.
47. The respondents state that the applicants were only able to clear with the finance department on 27th October, 2025 which was after the Special Senate meeting had cleared other graduands.
48. The applicants state that the delay in submission of the papers was not due to their own fault, but due to a system issue and as such they cannot be faulted. They wondered why the system would allow the other students to be registered but not them.
49. I have considered the explanation by the respondents. In my view, they have sufficiently explained why the Applicants were excluded from the graduation list, despite other students who submitted their clearance forms earlier. By its Special Senate meeting, the Respondents included other

students who were in the same position as the applicants but had complied by the time the Senate held its meeting. Since the applicants had not cleared by then, then they cannot equate themselves to those who had fully complied.

50. Therefore, in my view, there was no discriminatory treatment against the Applicants.

Issue No.2

51. Article 47 of the Constitution provides as follows;

- 1. every person has a right to administration action that is expeditious efficient, lawful, reasonable and procedurally fair.**
- 2. if a right or fundamental right of a person has been or is likely to be adversely affected by the administrative action, the person has a right to be given written reasons for the action.**
- 3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—**
 - a. provide for the review of administrative action by a court or, if**

appropriate, an independent and impartial tribunal; and

b. promote efficient administration.

52. Section 2 of the Fair Administrative Action Act in this regard defines an administrative action to include—

a. the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

b. any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

53. The Applicants claimed that they were eligible to graduate on 8th November 2025 but were omitted from the graduands list without being heard and that the missed 1st October, 2025 deadline resulted from the Respondents' actions.

54. The Respondents asserted that the Applicants were ineligible to graduate because they submitted their projects after the deadlines set out in Clause 6.1.2 of the KEMU Students' Academic Handbook and Code of Conduct and that the

University policies and the Students' Handbook do not provide a right to be heard before inclusion in the graduation list.

55. I have perused the said clause and it provides that a student is eligible to graduate only after: completing all general and programme-specific requirements, fulfilling the minimum programme duration, passing all prerequisite and core courses, attaining the minimum number of credit hours required for the programme; attaining the minimum cumulative GPA of 2.00, having no pending disciplinary cases, meeting all financial obligations, clearing all outstanding liabilities, submitting the intent to graduate within the stipulated guidelines, and being cleared for graduation.
56. There is no dispute that the Applicants submitted their projects outside the stipulated timeline. Their exclusion from the graduation list was anchored on non-compliance with requirements set out under Clause 6.1.2 of the Students' Academic Handbook and so there was no need to hear the Applicants on the non-compliance. Their omission from the

graduands list was thus reasonable and justifiable in the circumstances.

Issue no.3

57. The Applicants contended that the Respondents breached their legitimate expectation to graduate by excluding their names from the graduation list without any justifiable cause.

58. In **Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others** (supra) the Supreme Court dealt with the question of legitimate explanation. It held that: -

***“Legitimate expectation would arise when a body, -
by representation or by past practice, has
aroused an expectation that is within its power to
fulfil. Therefore, for an expectation to be
legitimate, it must be founded upon a promise or
practice by public authority that is expected to
fulfil the expectation. ”***

59. A legitimate expectation requires a clear promise by a public body. The University promised graduation contingent on meeting specified conditions.

60. Since the Applicants did not meet the requirements set in the Respondents' Academic Policy and Hand Book, precisely by meeting all academic and financial obligations, no legitimate expectation to graduate arose.

Issue No.4

61. **Article 23 of the Constitution** provides that a court "*may grant appropriate relief, including a declaration of rights*" when confronted with rights violations.

62. Under the said Article, the Applicants would have been entitled to 'appropriate relief' had I found that they were discriminated against.

63. As was held by the Constitutional Court of South Africa in **Fose vs Minister of Safety & Security [1977] ZACC 6:**

“Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do

so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.”

64. Having already opined that the Applicants were not discriminated against by the Respondents, I find that they are entitled order no. 5 and no. 6(a) of the Application.
65. In conclusion, I am of the view that the applicants have failed to establish any of the grounds of complaint in this petition. The respondents cannot have an open -ended academic process and calendar. The academic and financial requirements and timelines, which to me are not unreasonable, are meant to streamline the operations of the University.
66. All is not lost on the petitioners since the respondents have confirmed that they have complied and will be in the next graduation list.
67. This application is thus dismissed.
68. Costs are generally discretionally and are governed by Section 27 of the Civil Procedure Act, which provides as follows:

(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 to try the suit 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.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

69. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say: -

“It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.”

70. Although the Applicants have not succeeded, I exercise my discretion and order that each party bears its own costs.

71. In the end the court grants the following orders;

1. The petition is dismissed.

2. Each party to bear its own costs.

72. Orders accordingly.

Dated, Signed and Delivered at MERU this 7th day of May 2026.

**HESTON M. NYAGA
JUDGE**