



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Marwa v Dedan Kimathi University of Technology & 2 others (Petition
113 of 2020) [2024] KEELRC 895 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 895 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 113 OF 2020**

MA ONYANGO, J

APRIL 12, 2024

**IN THE MATTER OF: CONTRAVENTION OF THE BILL OF RIGHTS
UNDER ARTICLES 41(1) AND 47 OF THE CONSTITUTION OF KENYA, 2010
AND IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE
EMPLOYMENT ACT, 2007 AND FAIR ADMINISTRATION ACTION ACT, 2015.**

BETWEEN

PROF. SIMMY MWITA MARWA PETITIONER

AND

DEDAN KIMATHI UNIVERSITY OF TECHNOLOGY 1ST RESPONDENT

**VICE CHANCELLOR, DEDAN KIMATHI UNIVERSITY OF
TECHNOLOGY 2ND RESPONDENT**

**THE COUNCIL, DEDAN KIMATHI UNIVERSITY OF
TECHNOLOGY 3RD RESPONDENT**

JUDGMENT

1. The Petitioner filed the Petition herein on 22nd July, 2020 and the Amended Petition on 17th March 2021. The petition is against the 1st Respondent, a public university. The 2nd Respondent is the Vice Chancellor of the 1st Respondent while the 3rd Respondent is the Council of the 1st Respondent.
2. The Petitioner invoked various Articles of *the Constitution* and seeks the following reliefs:
 - a. A Declaration that the Petitioner's rights as enshrined under Articles 41 and 47 of *the Constitution* of Kenya, 2010 were violated by the decision of the 1st Respondent's Disciplinary Committee dated 16th December 2020 terminating the Petitioner's contract of employment.
 - b. A declaration that the 3rd Respondent's decision dated 15th February 2021 violated the Petitioner's rights enshrined under Articles 41 and 47 of *the Constitution* of Kenya, 2010.



- c. An order to bring into this court and quash the decisions of the 1st Respondent's Disciplinary Committee dated 16th December 2020.
 - d. An order for reinstatement of the Petitioner to his position as professor/lecturer or employee of the 1st respondent.
 - e. An order for the immediate payment to the Petitioner of all his withheld unpaid salary and allowances.
 - f. Damages for breach of the Petitioner's constitutional right to fair labour practices and unfair termination.
 - g. Costs of this suit
 - h. Interest on (e) and (f) above at court rates.
3. The basis of the Petition is that the Petitioner was unconstitutionally and unfairly terminated from employment by the 1st Respondent's disciplinary committee. The Petition is supported by the affidavit of Prof. Muita Marwa, the Petitioner.
 4. The Respondents opposed the Amended Petition vide the Replying Affidavit of P. Ndirangu Kioni, the Vice Chancellor and 2nd Respondent herein, sworn on dated 1st November 2021.

The Petitioner's Case

5. The Petitioner avers that he was employed by the 1st Respondent on 31st July 2013 in the position of Associate Professor Grade 14 and subsequently promoted in 2018 to Full Professor Grade 15 on permanent and pensionable terms.
6. The Petitioner contends that in June 2019, he fell sick and was admitted to Avenue Hospital in Parklands, Nairobi on 24th June 2019 for investigations, treatment and management and upon discharge on 27th June 2019, he was granted an initial sick off of 14 days. That thereafter, on 3rd July 2019, he was granted a further sick off of one month.
7. According to the Petitioner, his doctors advised him to undergo further medical investigations and in consultation with the 1st Respondent's Medical Officer, he travelled to the United Kingdom because he was able to access medical care in the UK where he had previously lived prior to his recruitment by the 3rd Respondent in 2013.
8. The Petitioner avers that he stayed in the UK between July 2019 and 29th November 2019 and resumed his academic duties with effect from 2nd December 2019; that in January 2020, the Petitioner commenced teaching for the January-April 2020; that in the course of January 2020, the Petitioner informed the 1st Respondent's Medical Officer of his need to travel back to the UK to attend medical appointments he had missed when he was back in Kenya which request was received by both the 1st Respondent's Medical officer and the 2nd Respondent though it was not replied to.
9. The Petitioner states that soon after, Covid-19 pandemic hit the world and international flights in the UK were suspended until 1st August 2020 which state of affairs rendered it impossible for the Petitioner to travel back to Kenya as early as he would have wished. He avers that he continued with recuperative management all this while on the assumption that his request to continue receiving medical attention had been granted by the Respondents.



10. According to the Petitioner, from 2nd December 2019 to June 2020 he was fully engaged in his duties as a Professor. The Petitioner avers that by letter which was delivered to him on 3rd June 2020 but backdated to 27th March 2020, the 2nd Respondent purported to grant him unpaid leave of absence for a period of one year from 2nd April 2020 to 2nd April 2021. The Petitioner maintains that the decision to send him on forced unpaid leave of absence for a period of one year was made without any application for such leave having been made by him to the Respondents. The Petitioner states that he wrote a letter to the 2nd Respondent protesting the decision.
11. The Petitioner further avers that on 30th June 2020 when the Respondents paid other staff of the 1st Respondent salaries, he was not paid. That on 9th July 2020, the Respondents paid to the 1st Respondents' Academic Staff their 2017-2020 CBA arrears but refused to pay the Petitioner the said payments which were legitimately due to him.
12. The Petitioner contends that on the 13th July 2020 he received a letter inviting him to attend in person, a Staff Disciplinary Committee Hearing scheduled for 22nd July 2020 at 10am. It is the Petitioner's case that the Respondents instituted the said disciplinary process while fully aware that the Petitioner was out of the Country having been prevented from returning to Kenya due to the prevailing Covid-19 Pandemic.
13. The Petitioner avers that the said disciplinary hearing was rescheduled to 16th November 2020 when the Petitioner was invited to physically attend the meeting and to defend himself against the same charges. The Petitioner states that upon receiving the invitation to attend the disciplinary hearing, he demanded to be given the particulars of the charges levelled against him, which particulars according to the Petitioner were never supplied to him.
14. The Petitioner states that at the end of the disciplinary hearing which was conducted not only in breach of his constitutional rights to fair hearing but also in breach of the 1st Respondent's own statutes relating to discipline, the Petitioner was informed that a decision would be rendered by the Disciplinary Committee on notice. However, before any decision could be delivered, the Petitioner was invited to attend a second hearing on 10th December 2020 contrary to the provisions of the Respondents' statutes.
15. The Petitioner states that the 1st Respondent's Disciplinary Committee delivered its decision on 16th December 2021 terminating his contract of employment which decision according to the Petitioner was not only reached in flagrant breach of the Petitioner's rights to fair labour practices but also, that the Committee lacked jurisdiction to terminate his contract of employment as it purported to.
16. The Petitioner avers that he lodged an appeal with the 3rd Respondent on 4th January 2021 but he was never invited for the hearing of his appeal and instead, he received communication from the 3rd Respondent that the Appeals Committee upheld the decision of the Disciplinary Committee terminating his employment.
17. According to the Petitioner, the decision of the Appeals committee is not only wrongful but was also reached in violation of his constitutional rights to fair labour practices and fair hearing and is therefore an affront to his right to practice and advance his professional career and earn a livelihood.

The Respondents' case

18. In the Replying Affidavit in response to the Petition, the Respondents confirm that the Petitioner was taken ill in June 2019 and the University's Medical Officer granted him leave of absence on medical grounds up to 20th October 2019. That the Petitioner was to report back to the University on 21st



- October 2019 but did not resume duty as expected thereby prompting the Human Resource Officer to write to him on 19th December 2019 enquiring about his absence.
19. According to the Respondents, following the failure of the Petitioner to report back to work, the Dean, School of Business Management and Economics wrote to him on 30th September 2019 enquiring about the status of the Petitioner's PhD students. The Petitioner responded to the letter to the effect that the Respondents should not have any plans for his involvement with any students until he had been given the medical go-ahead by his doctors.
 20. The Respondents state that given the above position, the Petitioner did not complete his workload for the period January-December 2019 thereby prompting the department to re-allocate to him the same units in January-April 2020 semester. That despite the reallocation of these units, the Petitioner did not conclude his teaching workload in time, that is, by 30th April 2020 and only submitted the results on 20th May 2020.
 21. It is the Respondent's case that the Petitioner was away from the University without authorization from 21st October 2019 to 2nd December 2019 as he did not fill annual or sick leave off duty forms as per the procedures of the University.
 22. The Respondents aver that the Petitioner was again away from his work station from January to 2nd March 2020 without leave and only applied for leave of absence to attend medical appointment on 2nd March 2020. Consequently, the Respondents aver that the Petitioner was away from work for a period exceeding 48 hours without the approval of the Respondents as evidenced by his leave schedule.
 23. It is the Respondents contention that the Petitioner failed or refused to adhere to the 1st Respondent's statute on sickness as provided for under Statute V section 18(e) of the 1st Respondent's statutes. That the Petitioner was away without authorization as he did not get a sick off form from the 1st Respondent's medical Officer. The Respondents state that section 18(e) requires an employee of the 1st Respondent who is prevented by illness from carrying out his duties to furnish a medical certificate to that effect from the 1st Respondent's Medical Officer. It is averred that the Petitioner did not fulfil this obligation.
 24. In response to the averments by the petitioner that he was sent on a one year unpaid leave of absence without him applying for the leave, the Respondents avers that the Petitioner was granted the leave of absence pursuant to the provisions of Schedule V, section 18(d) of the 1st Respondent's statutes which leave the Petitioner protested against and was withdrawn.
 25. It is the Respondent's case that in addition to the Petitioner's absenteeism, on 19th February 2019, a report was made against him by one of his students alleging that he had solicited for a bribe in order to be the student's PhD supervisor contrary to the 1st Respondent's Statute III sections 29, 38 and 39 and Part II section 9(1) of the Code of Conduct and Ethics for Public Universities.
 26. It is further alleged by the Respondents that on numerous occasions the Petitioner failed and/or refused to adhere to the 1st Respondent's reporting procedures as he would raise issues with the 2nd Respondent and other officers of the 1st Respondent before raising them with his direct supervisor, the chairman of his department, in violation of Statute III section 12 and 14 of the 1st Respondent's Statutes.
 27. That given the above actions of the Petitioner in absenting himself from work without approval of the Respondents; soliciting bribes from students; and failing to observe his reporting structure, the Respondents were left with no alternative but to constitute a disciplinary hearing against him to answer to these charges.



28. That the Respondent's vide a letter dated 10th July 2020, invited the Petitioner to a Disciplinary hearing that was to be conducted on 22nd July 20120 at the 1st Respondent's main campus. The letter informed the Petitioner of the charges to which he was to answer. That before the said hearing was conducted, the Petitioner filed the instant petition vide two applications dated 21st July 2020 and 23rd July 2021 and the court granted interim orders barring the disciplinary hearing from taking place.
29. The Respondents further state that after it resolved to rescind the decision granting the Petitioner unpaid leave of absence, they reinstated and paid him his salary for the month of June 2020, processed the Petitioner's Collective Bargaining Agreement arrears of Kshs 121,664 and issued him a cheque number 413210. The Respondents aver that they also rescheduled the disciplinary hearing to 26th August 2020 in consideration of the travel ban caused by the Covid-19 pandemic.
30. The Respondents state that the disciplinary hearing was eventually conducted virtually on 16th November 2020 in the presence of the Petitioner and adjourned to 10th December 2020 to enable the committee seek further clarifications from the management of the 1st Respondent and to enable the management avail to the Petitioner several documents which he had requested for.
31. It is further averred that on the 10th December 2020, the Disciplinary Committee met in the presence of the Petitioner to consider the comprehensive analysis of the contentious issues raised by the Petitioner and the additional documents as requested by the Petitioner during the Disciplinary Committee held on 16th November 2021 in order to ensure compliance with schedule XIV Section 8 (g)(i) of the Respondent's statutes.
32. The Respondents contend that after considering all the evidence and documentation tabled before it, the Committee resolved that the Petitioner's services with the university should be terminated with payment of three (3) months basic salary in lieu of notice with effect from 10th December 2020.
33. It is averred that the Petitioner appealed against the decision of the Staff Disciplinary Committee vide a letter dated 4th January 2021 and on 8th February 2021, the 3rd Respondent met and deliberated on the appeal in the absence of the Petitioner in accordance with Statute XIV Clause 11(e) of the 1st Respondent's statute. That vide a letter dated 15th February 2021, the 3rd Respondent communicated its decision to the Petitioner in which it upheld the decision of the Staff Disciplinary Committee to terminate the employment of Petitioner with three (3) months' pay in lieu but shifted the termination date to 8th February 2021.
34. The Respondents state that from the proceedings of the Staff Disciplinary Committee and the 3rd Respondent's Appeals Committee, it is evident that due procedure in accordance with the law was followed in the removal of the Petitioner from employment and that the Petitioner was accorded a fair hearing.
35. In the end, the Respondents urged the court to dismiss the instant Petition with costs as the Petitioner had failed to prove how his rights were violated by the Respondents.
36. In a rejoinder through a supplementary affidavit dated 20th January 2022, the Petitioner denied the allegations made by Prof. Kioni in the Replying Affidavit sworn on 1st November 2021. The Petitioner reiterated that he never absented himself from work without permission and averred that his medical records forming the bundle of his documents in court confirm that between 16th August 2019 to late November 2019, he was actively under medical care in the UK with full knowledge of the Respondents. The Petitioner also denied that he was absent from work from January 2019 to April 2020 and referred to the Human Resource Officer's admissions contained in the email dated 1st April 2020, marked



- PPNK7 which email according to the Petitioner confirms that he was actively involved in the co-supervision of PhD students.
37. It is the Petitioner's case that he was never absent from his work station for a period exceeding 48 hours without approval as alleged by the Respondents.
38. The Petitioner maintained that the termination of his employment by the Respondents was unfair both procedurally and in substance, and contravened his constitutional rights to fair labour practice and fair administrative action on grounds that the 1st Respondent's Disciplinary Committee had no power or authority to terminate his contract of employment as it purported to do. He further alleged that:
- a. He was not accorded a fair hearing or a fair opportunity to present his case at the Disciplinary Committee level and his request for particulars of the malicious charges levelled against him were ignored by the Respondents.
 - b. He was not given any opportunity to be heard on his appeal against the unconstitutional and unfair termination by the Disciplinary Committee
 - c. He was terminated for reasons which were not valid and on trumped up charges.
39. The Petitioner therefore prayed that his Petition be allowed, the termination be quashed and he be reinstated. He further prayed for damages for unconstitutional and unfair termination.
40. As directed by the court on 3rd November 2021, the Petition was disposed of by way written submissions.

The Petitioner's submissions

41. In his written submissions dated 29th March 2022, the Petitioner submits that the procedure which the Respondents and particularly the 2nd Respondent put in motion to remove him from employment was flawed right from the onset. The Petitioner avers that he was in the UK for specialised medical attention with the 1st Respondent's permission when the 2nd Respondent wrote to him on 3rd June 2020 sending him on a one year unpaid leave of absence. The Petitioner avers that the decision by the 2nd Respondent was clearly in breach of both law and the 1st Respondent's Statutes and more specifically, Schedule V, section 18(d) of the statute. It is the Petitioner's case that the 2nd Respondent decided to send the Petitioner on an unpaid leave for one whole year at a time when the Petitioner was sick and badly needed his employer's support. In support of his case, the Petitioner cited the case of *Simon Gitau Gichuru v Package Insurance Brokers Ltd (2017) eKLR*
42. The Petitioner submits that the 2nd Respondent not only unfairly sent him on unpaid leave for one year but also followed up this evidently unlawful decision by causing the Petitioner to be removed from his teaching responsibilities. According to the Petitioner, his contract of employment was terminated as at 8th June 2020 when he was removed from work without following due process.
43. It is the Petitioner's submission that the charges brought against him after a period of more than one year and six months from the dates the offences were alleged to have occurred after he protested the Respondents decision to grant him unpaid leave of absence was unfair as the 2nd Respondent breached the provisions of Schedule V section 12 of the 1st Respondent's Statutes which required the Respondents to afford the Petitioner an opportunity to respond to the allegations made against him before the same could be forwarded to the Disciplinary Committee for hearing.



44. The Petitioner submits that the 2nd Respondent deliberately ignored the above procedural requirement when he referred the matter to the Disciplinary Committee before giving him an opportunity to defend himself. On the Respondents allegation that he solicited a gift, the Petitioner submits that the 2nd Respondent averred in his response to the amended petition that it had formed an ad-hoc committee to look into the allegation but the Petitioner was not made aware of the formation of such a committee and was never invited to give his side of the story to the Committee as required under Schedule V section 2(ii) and (iii) of the 1st Respondent's Statutes.
45. The Petitioner further submits that the Respondent's refusal to supply him with the necessary particulars of the charges against him was a clear confirmation that the Respondents had already made a unilateral decision to send him on a one-year unpaid leave and remove him from duty.
46. It is also the Petitioner's submission that the reasons advanced by the Respondents for the termination of his employment were invalid as they were not proved.
47. According to the Petitioner, he never received communication from the 1st Respondent after his email dated 24th September 2019 and the letter dated 8th October 2019 which is an internal memo addressed to the 1st Respondent's Human Resource office by the Medical Office, was never copied or delivered to him. That the impugned charges were preferred against nearly one year later. He further submits that the fact that both the Disciplinary Committee and the Appeals Committee were informed by the Petitioner that he never received the letter dated 8th October 2019, which information was ignored, is a critical omission as they proceeded to conclude that the Petitioner had absented himself from work without permission between 21st October 2019 to 1st December 2019
48. The Petitioner submits that considering that he was genuinely sick and was in the UK for treatment, and further that the Petitioner asked for leave extension and the Medical Officer of the 1st Respondent requested for hospital documents which were availed to him to facilitate the leave extension, further, that the letter purporting to grant leave extension only up to 20th October 2019 was never delivered to the Petitioner, then the decision to terminate his employment on the grounds that he was absent from work without permission was wholly unfair, unjust and wrong.
49. The Petitioner submitted that the process leading to the unlawful and unfair dismissal violated his rights as enshrined in Article 27 of *the Constitution*. The case of Masai Mara University and Another vs Misia Manuguti Khadenyi(2021) Eklr was cited in support of this position.

Respondents' submissions

50. In their submissions dated 3rd June 2022, the Respondents framed the issues for determination to be;
 - i. Whether the Respondents followed proper procedure in conducting the hearings against the Petitioner;
 - ii. Whether the decision of the Disciplinary Committee and the Appeals committee on the charges levelled against the Petitioner were justified;
 - iii. Whether the Respondents infringed the rights of the Petitioner;
 - iv. Whether the Petitioner is deserving of the orders sought.
51. On the first issue, it is the submission of the Respondents that being committed to ensure that their disciplinary process has due regard to the rules of natural justice, the 1st Respondent enacted Schedule XIV which details the entire disciplinary process including the composition of the Disciplinary



- Committee. That under Clauses 10,11, 12 and 13 of Statute XIV the procedure for conducting the internal appeals process is provided for in detail.
52. It is the submissions of the Respondents that the Petitioner accepted the job offer from the 1st Respondent wherein he agreed to be bound by its statutes. That the Respondents duly conducted both the Disciplinary Committee hearing and the Appeals hearing in line with the proper procedure as per their statutes.
53. On the second issue, the Respondents submitted that all the charges levelled against the Petitioner were proved as evidenced by the documents produced in support of the charges and the minutes of the Disciplinary Committee hearing held on 16th November 2020 and 10th December 2020 as well as the minutes of the Appeals Committee.
54. On the issue whether the Respondents infringed the rights of the Petitioner, the Respondents submitted that they adhered to their own statutes as the Petitioner was informed of the nature of allegations against him as evidenced by the letter dated 10th July 2020; that the Petitioner was given an opportunity to be heard as can be seen from his response to the allegations via his letter dated 12th November 2020; that he was given a chance to submit to the disciplinary committee as seen by the minutes of the Disciplinary hearing conducted on 16th November 2020 and 10th December 2020; that the Respondents communicated to the Petitioner his right of appeal and also the outcome of the Disciplinary Committee hearing together with the reasoning behind the outcome; that the Petitioner's union representative Mr Daniel Kiragu sat in the disciplinary hearing committee to ensure an objective hearing; and lastly, that the Petitioner sat in and heard all the evidence in support of the charges.
55. The Respondents submits that they fully satisfied the elements of fair administrative action did not infringe upon the rights of the Petitioner.
56. Lastly, the Respondents submitted that the Petitioner is not deserving of the orders he is seeking as the Respondents did not infringe upon the rights of the Petitioner under Article 41 and 47 of *the Constitution*.

Analysis and Determination

57. It is common ground that the Petitioner was an employee of the Respondent. According to the Petitioner he was employed on 31st July 2013. The Respondent however posits that the Petitioner was employed on 7th November 2012. Parties agree that the Petitioner worked until 8th February 2021.
58. The issues falling for my determination are:
- i. Whether the termination of the Petitioner was unfair.
 - ii. Whether the Petitioner is entitled to the reliefs sought.
59. The Respondents disciplinary procedure is contained in Schedule XIV of the University Statutes. The same provides for composition of the staff disciplinary committee for the different cadre of staff, the principles to guide the disciplinary process, the time frame, investigation, notice of charges, right to respond, notice of disciplinary hearing, conduct of the hearing, powers of disciplinary committee, right, procedure, composition and the powers of appeals committee.
60. It is the Petitioner's averment that the Respondents hatched a plot to unconstitutionally, unlawfully and unfairly remove him from employment. That in furtherance thereof the 2nd Respondent, without being prompted, sent the Petitioner on unpaid leave of absence for a period of one year from 2nd April,



- 2020 to 2nd April, 2021, by letter dated backdated to 27th March, 2020 but delivered to him on 3rd June 2020.
61. It was the averment of the Petitioner that by letter dated the same date, that is 3rd June, 2020 he protested against being sent on the unpaid leave terming it unconstitutional and unfair.
 62. That on 8th June 2020 he received a letter from the Chair of the Business Development Department where he was working withdrawing the 2 PhD Units the Petitioner was scheduled to to teach for the May-August 2020 Semester. Further, that the Petitioner's Departmental workload for the May – August 2020 Semester was revised and the teaching work assigned to the Petitioner for January April, 2020 Semester deleted while the May – August 2020 Semester (2) PhD units were erased to create the impression that the Petitioner had not been active in teaching between January and June 2020.
 63. That Petitioner averred that he was technically removed from his teaching work from 8th June 2020 and despite his request to be reinstated no action was taken by the Respondent.
 64. The Petitioner averred that by his letters dated 3rd and 8th June 2020 he appealed to the Chairman against the unpaid leave when he did not receive any response to his letter protesting against the same dated 3rd March, 2020.
 65. It was the Petitioner's averment that on 13th July 2020 while still waiting for a response from the Chairman, he received a letter dated 10th July, 2020 inviting him to attend a Staff Disciplinary Hearing in person on 22nd July, 2020 at 10.00am. that he was further required to answer to charges of:
 - a. Charge I: Soliciting for a gift/favour from a student, Admission No. B311-03-0012/2012.
 - b. Charge II: Violating University set out laws, procedures and regulations applicable to your position.
 - c. Charge III: Neglect of duty and unauthorized absence from the University for a period exceeding 48 (Forty eight) hours.
 66. The Petitioner averred that the Respondents were aware that he was out of the country having been prevented from returning to Kenya from the UK following cancellation or suspension of all International Air Travel between Kenya and the UK in or about March, 2020 due to Covid-19 Pandemic.
 67. That being concerned about the activities of the Respondent the Petitioner filed the instant Petition on 21st July 2020. That the disciplinary hearing of 22nd July 2020 did not take place as planned and the Petitioner was able to get temporary relief from the court on 24th July 2020.
 68. The disciplinary hearing eventually took place on 16th November, 2020 without the Petitioner being provided with particulars which he had demanded.
 69. That before a decision could be made after the hearing the Petitioner was again invited for another hearing on 10th December, 2020.
 70. That after the hearing the Committee made a determination on 16th December recommending the termination of the Petitioner's employment on Charges II and III. The Committee stated as follows:

The Committee observed that the penalty they had recommended under charge 1 being, “a warning including severe reprimand” had been rendered redundant by the penalty they had recommended fir Charges 1 and II



This being the case, the Committee resolved that the recommended penalty for charges II and III being “termination of service with payment of 3 months basic salary in lieu of notice” should take precedence.

71. The Petitioner argued that the charges levelled against him that led to his termination of his employment were not valid and were not proved.
72. The Respondents on their part stated that they followed the procedure set out in Statute XIV as reflected in the minutes of the Disciplinary hearing held on 16th November and 10th December, 2020. That the Petitioner appealed against the determination and the appeal was handled in accordance with the Statutes and a communication of the outcome communicated to the Petitioner as provided in the Statutes.
73. The Respondent submitted that on Charge I the Petitioner did not deny that he received Kshs. 3000 from the student. That on charge II it was established that the Petitioner violated the procedure on annual and sick leave by being away without notifying his immediate supervisor or the Human Resource Office. That the Petitioner further failed to furnish medical certificate from a qualified medical practitioner or obtaining a certificate from the 1st Respondent’s medical officer.
74. It was submitted that the Petitioner had been issued with sick leave by the 1st Respondent’s medical officer from 8th October to 20th October, 2019 and was to report to work on 21st October, 2019. That he did not notify his immediate supervisor or the Human Resource office of his whereabouts as is evident from the letter dated 19th December, 2019 from the Human Resource Office.
75. It is further the Respondents’ position that the Petitioner was away from work without leave or permission from January to March 2020 without leave and only applied for leave on 2nd March 2020.
76. The Respondents filed a copy of the disciplinary proceedings for the two disciplinary hearings which are very detailed as is evident from 95 to 199 of the Respondent’s bundle.
77. From the documents on record I am satisfied that the Petitioner was taken through a fair disciplinary process as stipulated in the Respondent’s statutes.
78. I am further satisfied that the Respondents had valid reason to terminate the services of the Petitioner.
79. The Petitioner has raised issues about failure to supply him with particulars that he sought to enable him mount his defence to the charges against him. From the record it is evident that all documents available to the disciplinary committee were shared with the Petitioner. It is further evident that some of the documents sought by the Petitioner were by their nature not capable of being granted as they were unavailable.
80. For the forgoing reasons I find that the petitioner has not proved the averments in the petition. The petition is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 12TH DAY OF APRIL 2024

MAUREEN ONYANGO

JUDGE

