Republic v Registrar of Academics, Kenyatta University & 2 others; Kimani (Ex parte Applicant) (Judicial Review Application E138 of 2025) [2025] KEHC 12166 (KLR) (Judicial Review) (25 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12166 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E138 OF 2025

RE ABURILI, J

AUGUST 25, 2025

BETWEEN

REPUBLIC .... APPLICANT

AND

THE REGISTRAR OF ACADEMICS, KENYATTA UNIVERSITY .... 1ST RESPONDENT

THE DEPUTY, VICE CHANCELLOR, ACADEMIC AFFAIRS, KENYATTA UNIVERSITY .... 2ND RESPONDENT

KENYATTA UNIVERSITY .... 3RD RESPONDENT

AND

CHARLES NGURE KIMANI .... EX PARTE APPLICANT

JUDGMENT

1. This Judgment determines the Originating Summons dated 22nd May 2025, and filed on 26th May 2025, brought pursuant to Section 3A of the *Civil Procedure Act*, Sections 8 and 9 of the *Law Reform Act*, Order 53 Rule 1(2), (2), (3) & (4) of the Civil Procedure Rules and Sections 7,9 and 11 of the *Fair Administrative Action Act*.

2. The applicant seeks an order of Certiorari quashing the decision of the 1st Respondent contained in the letter dated 19th January 2022 and issued on 28th March 2025. He also seeks an order of Prohibition prohibiting the 1st Respondent from issuing any further or other decision affecting the Applicant's eligibility for graduation. The applicant further seeks an order of Mandamus compelling

the Respondents to clear the Applicant and include his name in the graduation list for the current academic year.

3. The application is supported by the affidavit sworn on 22nd May 2025 by Charles Ngure Kimani, the applicant.

4. The Applicant's case is that he was admitted into the 3rd Respondent University, in 2010 to pursue a Bachelor of Laws (LLB) degree, and that he remained a committed and compliant student throughout his studies.

5. That in the 2013/2014 academic year, he was diagnosed with a serious medical condition that resulted in his absence from the said University and that he promptly informed the Respondents of this upon his readmission.

6. It is his case that the 1st Respondent acknowledged and approved his deferment appeal, subject to payment of a processing fee of Kshs. 2,000 which he complied with, and was formally readmitted on 25th January 2016.

7. That upon resumption, he successfully completed all coursework, sat all required examinations, paid all his fees and became eligible for graduation in December 2021. However, that when he applied for graduation clearance, he was informed by the 2nd Respondent that he had an outstanding fee balance of Kshs. 91,000 allegedly relating to the deferred semester of the 2013/2014 academic year.

8. According to the applicant, this claim by the University was illogical, unlawful and contrary to the 3rd Respondent's established policy which prohibits students from progressing to subsequent semesters or sitting examinations without full fee payment.

9. He alleges that according to the 3rd Respondent, under Clause 4.52 of the University's General Information Handbook at page 40, registration for course units is contingent upon full payment of fees within the prescribed university deadlines. Further, that Clause 4.61 of the same General Information Handbook is said to permit only duly registered students to sit for examinations.

10. The applicant argues that having completed his studies, undertaken examinations and received academic transcripts, it was manifestly evident that he had no outstanding fee balance and had fully complied with institutional requirements.

11. He further states in deposition that on 3rd December 2021, he wrote to the 2nd Respondent explaining that the fees for the deferred semester had been carried forward and that based on that legitimate expectation, he had completed his studies.

12. The Applicant further claims that despite multiple written letters, follow-ups and physical visits to both the 1st and the 2nd Respondents' offices since 2021, his grievances were ignored, his concerns dismissed and no formal communication or resolution was provided to him.

13. The Applicant further states that on 18th May 2023, he wrote again to the 1st and 2nd Respondents, expressly stating that he had completed all academic units and cleared all fees, but that his letter was ignored, in breach of his right to fair administrative action guaranteed under Article 47 of *the Constitution*.

14. He states that for over five years, he has endured emotional distress, career stagnation and reputational injury as a result of the Respondents' negligent handling of his academic and financial records.

15. It is also his case that on 21st March 2025, he visited the offices of the 2nd Respondent and inquired about the status of his appeal letter dated 3rd December 2021 and he was informed that there was no

status and no communication with regard to his appeal and that he was referred to the 1st Respondent's office for a response and the way forward.

16. That on 28th March 2025, he visited the 1st Respondent's office where he was informed that the officer in charge was unaware of his case and therefore unable to assist. The Applicant states that when his academic file was availed, he was served with a backdated letter dated 19th January 2022, which had never previously been served or communicated to him.

17. The said letter, according to the Applicant, claimed that his appeal was rejected due to an unresolved fee balance and incomplete academic units in Semester 1 of the 2013/2014 academic year and further alleged that no medical evidence had been provided to support his deferment.

18. The Applicant deposes that the academic transcripts issued by the 3rd Respondent and which have not been contested, demonstrate that he completed all the requirements of the programme, including units missed in the 2013/2014 academic year due to illness. He relies on his Year 3 academic transcript which he states reflects the unit Commercial Law II appearing twice, first as unattempted in 2013/2014 and later as completed in Semester II of the 2015/2016 academic year with a grade of D.

19. He further refers to his Year 4 academic transcript which he claims similarly records the unit International Organizations Law twice, first as unattempted in 2013/2014 and subsequently as completed in Semester II of the 2015/2016 academic year with a grade of C.

20. The applicant also states that the same Year 4 transcript also records his Dissertation, initially indicated as not completed in 2013/2014 due to his absence, but later shown as successfully undertaken across Semester I and II of the 2017/2018 academic year, with a grade of B. He explains that the symbol "RET" in the transcripts denotes "Retake" or "Retained," signifying units not sat in the original semester but later registered for and completed and maintains that this is consistent with the University's transcript practice.

21. On this basis, the Applicant contends that the University's letter dated 19th January 2022, suggesting that he had not completed programme requirements, was erroneous and misleading as it failed to account for his transcripts and the Dean's letter of 1st April 2021 confirming his eligibility to graduate.

22. The Applicant also states that the allegations in the said letter were being raised for the very first time and constitute a deliberate afterthought and fabrication meant to frustrate his right to graduate and shift blame from the Respondents' own administrative failures.

23. He further asserts that it is false and misleading for the Respondents to allege that he had incomplete marks or failed to submit medical documents, given their earlier written approval of his deferment and readmission.

24. Further, that the 1st and 2nd Respondents' actions amount to bad faith, concealment, and procedural impropriety, intended to deny him the fruits of his academic labour and to jeopardize his future.

25. It is the Applicant's further claim that the said letter contains vague and unfounded assertions, fails to specify which academic units are allegedly incomplete and unjustifiably challenges his medical condition years after the fact, an issue never previously contested.

26. He also avers that his student financial ledger clearly shows no outstanding balance at the time of applying for graduation and that the alleged debt is a fabrication inconsistent with the official record.

27. The Applicant also states that his name was unlawfully excluded from the 2021 graduation list without formal notification or justification, in breach of the right to fair administrative action and due process.

28. He claims that the Respondents' actions and omissions have deprived him of the opportunity to advance to the Kenya School of Law, pursue professional admission and secure meaningful employment thus causing him grave loss and injury.

29. The Applicant also filed a Supplementary Affidavit sworn on 17th June 2025 deposing in reiteration that upon recovering from the illness, he was re-admitted into the University in 2015/2016 after paying the prescribed re-admission fee and engaging the Finance Department, which confirmed that his fees from the previous semester had been carried forward. Further, that he subsequently retook and passed the missing units, as reflected in his academic transcripts. He points in particular to the successful completion of Commercial Law II, International Organizations Law, and his dissertation, which had initially been recorded as unattempted in 2013/2014 but were later completed with passing grades.

30. He relies on a letter from the Dean of the School of Law dated 1st April 2021, which confirmed that he had satisfied all academic requirements and was scheduled to graduate on 23rd July 2021, as creating a legitimate expectation that he would graduate.

31. The Applicant disputes the Respondents' claim that he owed fees for the first semester of the 2013/2014 academic year, contending that the allegation is baseless and contradicted by the University's own records. He relies on a student financial ledger dated 1st October 2019, duly stamped by the University, which showed a credit balance of Kshs. 14,820/= and no arrears.

32. He details the invoicing and payments for 2013/2014 academic year, asserting that the university invoiced him the sum of Kshs. 85,100/= on 30th August 2013, and that he paid Kshs. 85,100/= on 9th October 2013 for Semester 1 but that these were misallocated to Semester I of the 2010/2011 academic year. He also argues that the university's invoiced him for Kshs.83,600/= on 18th January 2014 and that on 14th February 2014, he paid Kshs. 83,600/= for Semester II of 2013/2014 academic year.

33. It is the Applicant's further claim that the Respondents under transaction no. 38 attempt to reintroduce the same invoice for Semester I of the 2013/2014 academic year, this time reinstating the Kshs. 85,100/= as allegedly unpaid.

34. In addition, he asserts that a new charge of Kshs. 9,000/= is introduced under the description "judicial attachment," which further obscures the transparency of the financial ledger and adds unexplained liabilities to his account.

35. He also highlights some inconsistencies such as a reversal dated before the invoice itself, an example being transaction No. 14, which purports to reverse the payment for the 1st Semester of the 2013/2014 academic year and is dated 18th August 2013, a date according to the Applicant, that precedes the issuance of the actual invoice for that semester, which was raised on 30th August 2013.

36. These inconsistencies, it is contended, undermine the authenticity of the ledger and points to manipulation. He further contends that under the University policy, only duly registered students who have paid their fees can sit examinations, and that it would be illogical to suggest that he could have completed the course without paying full fees.

37. The Applicant further argues that the amount shown in transaction No. 14 as being reversed (Kshs. 83,600/=) does not correspond to the amount of the initial invoice (Kshs. 85,100/=), further compounding the discrepancy. Further, that if indeed a reversal was being done for the 1st Semester of the 2013/2014 academic year, it would be expected to match the exact invoiced figure which it does not.

38. The Applicant contends that the reinstatement of an invoice for Kshs. 85,100 plus a Kshs. 9,000 fee was an afterthought, introduced only after he had been cleared and scheduled to graduate in July

2021, thereby undermining the integrity of the University's records. He argues that the Respondents' contention that he completed the course without paying fees is illogical and contradicted by the University's own policies requiring full fee payment for registration and examinations.

39. He further states that the only notification of an alleged balance came informally via a phone call from the Dean in November 2021, weeks before the graduation ceremony to be held in December 2021, not through official written communication.

40. It is the Applicant's case that he was never given prior and adequate notice, a formal statement of reasons or an opportunity to be heard before the decision to exclude him from the graduation list was made. He insists that the Respondents' reliance on a letter dated 19th January 2022, purportedly rejecting his appeal, is misplaced because it was never served on him until 28th March 2025, more than three years later, despite his 3rd December 2021 appeal and repeated follow-ups.

41. The Applicant states that after a prolonged deadlock, a meeting was scheduled with the 1st Respondent on 28th March 2025 to address the status of his appeal. He argues that given that the 1st Respondent's office had his full academic file before them including his academic history, prior correspondence and appeal documentation, it would have been logical and reasonable for them to have served him with the alleged letter dated 19th January 2022 at that time if it had indeed existed and been available.

42. That the absence of prior service of the letter shows that no such letter was communicated, making it misleading for the Respondents to rely on it. The Applicant further explains that he withheld submitting his letter of 21st March 2025 until after the meeting of 28th March 2025, in line with prior directions, and adds that if the January 2022 letter had been valid, there would have been no need for the 2nd Respondent's officers to request a new letter.

43. Finally, the Applicant highlights that from 3rd December 2021 to 21st March 2025, he repeatedly visited the 1st Respondent and the 3rd Respondent, that is the University's Archives Department offices and that he was consistently told that no official feedback on the appeal had been given.

44. That he also escalated the matter to the Vice-Chancellor via an email dated 18th May 2023, but received no response. He therefore maintains that the Respondents acted unlawfully, unfairly and contrary to Articles 43(1)(f) and 47 of *the Constitution* as well as the *Fair Administrative Action Act*.

45. The Applicant concludes that he had met all academic and financial obligations and that the Respondents' actions in blocking his graduation were procedurally flawed, arbitrary and designed to deny him the fruits of his studies. He avers that the delay has caused him severe prejudice including reputational injury, emotional distress and economic loss through missed job and pupillage opportunities and delayed entry into the legal profession. He prays for appropriate relief, including an order of mandamus compelling the Respondents to process and confer him the degree and compensation for the prejudice suffered.

Response

46. In response, the Respondents filed a Replying Affidavit sworn on 16th June 2025 by Bernard Muthiani Kivunge, the Registrar Academics of the 3rd respondent. In the deposition, it is contended that the Ex parte Applicant acknowledged that he had read, understood and accepted the terms and conditions contained in the Letter of Admission and confirmed his intention to be bound by the terms of the Letter by returning all the relevant documents before the registration day.

47. That the applicant additionally signed the Declaration form confirming that he had read, understood and accepted to be bound by the regulations made from time to time for the good governance

of the University. The regulations are said to speak inter alia to: semester off, payment of school fees, registration of courses, examinations, results and transcripts, completion, graduation and communication with the University.

48. The Respondents state that after his admission to the University, by a letter dated 30th August 2010 and addressed to the Registrar of Academics, the Ex parte Applicant sought to defer his studies in the academic year 2010/2011 to commence the same in the following academic year. That this request was approved by the Registrar of Academics through vide a letter dated 9th September 2010. That consequently, the Ex parte Applicant commenced his studies in the 2010/2011 academic year.

49. The Respondents contend that in the 2013/2014 academic year, the Ex-parte Applicant absented himself from the University for a period exceeding the permissible duration, without obtaining prior approval and without notifying the Registrar of Academics, in contravention of the University's established policies and procedures.

50. It is also the Respondents' contention that the Handbook for General Information at page 14 requires students seeking to be away for more than two weeks or to take a semester off to apply in writing to the Registrar (Academics) within the stipulated timelines, with approval to be copied to relevant offices. Further, that it is the student's responsibility to confirm such approval. The Ex-parte Applicant, it is alleged, did not apply for or obtain approval for a semester off as required.

51. The Respondents further state that the Ex parte Applicant's assertion that he promptly informed the University of his illness is entirely unsubstantiated. That there is no letter, medical report or communication addressed to or received by the office of the Registrar of Academics or any other relevant office of the University within the relevant period.

52. The Ex parte Applicant is said to have retrospectively sought approval for deferment after the fact of his alleged illness and without supporting documentation. That he neither applied for a semester off nor notified the relevant officers at the material time, in blatant disregard of the University's communicated procedure.

53. According to the Respondents, despite not following the laid-down procedure for deferment or notifying the Registrar of Academics of his alleged illness, the University nonetheless re-admitted the Applicant back into the programme, in good faith, allowing him to proceed with the remainder of his studies.

54. That after his re-admission, the University reviewed the financial records of the Ex parte Applicant and discovered that he was inadvertently not invoiced for Semester I of the 2013/2014 academic year and the mandatory judicial attachment, which is a component of the academic programme.

55. That upon discovering this oversight, the University took steps to rectify the error by reflecting the accurate financial position in the Ex parte Applicant's records. The same was allegedly communicated to him.

56. That vide the letter dated 3rd December 2021, the Ex parte Applicant sought to appeal the University's decision to invoice the fees for the Semester I of the 2013/2014 academic year. In the said letter, the applicant is said to have claimed that he had been hospitalized for over a month and, as a result, he unilaterally called off the semester. Notably, that the assertion of ill health was made without the presentation of a single document or medical record in support. The Ex parte Applicant it is stated, equally presents no evidence before this Honourable Court to substantiate the alleged illness or hospitalization.

57. The Respondents state that upon receipt of the letter dated 3rd December 2021, the Academic Registrar's office promptly addressed the Ex parte Applicant's appeal and communicated its response vide a letter dated 19th January 2022 wherein it clearly set out the reasons for the invoicing fees for Semester I of the 2013/2014 academic year.

58. The reasons according to the Respondents, were that the Ex parte Applicant failed to complete the units in Semester I of the 2013/2014 academic year; that he failed to present any evidence of ill health to justify his absence or support his claim for deferment; and that the units that he had registered for in Semester I of the 2013/2014 academic year could not be deleted, as it was against the University policy.

59. The Respondents maintain that there were no delays in addressing the letters received from the Ex parte Applicant and that additionally, the decision of the Registrar of Academics was logical, lawful and firmly within the precincts of the University's established policies, which require that students must complete semesters in which they register. The Ex-parte Applicant is said to have failed to follow the laid down procedure for deferment, which he cannot now claim that the Registrar of Academics acted unlawfully in invoicing fees for Semester I of the 2013/2014.

60. Further, that the Ex parte Applicant being allowed to proceed and complete the entire course without paying the requisite fees was purely as a result of inadvertence on the part of the University and that upon discovery of this oversight, the University took corrective action and duly communicated the accurate position to the Ex parte Applicant.

61. According to the Respondents, having invoiced fees that had previously not been invoiced and promptly communicating that decision to the Applicant, there exists no basis for the claim that a legitimate expectation arose. It is their case that the Ex parte Applicant was neither given an express assurance nor did he meet the conditions upon which such an expectation could reasonably be founded. The Respondents further state that the University acted within its mandate to rectify the error and to ensure compliance with its financial and academic policies.

62. The Respondents contend that the Ex parte Applicant's assertion that he continuously followed up and physically visited the offices of the Academic Registrars is not credible as had he genuinely made such visits or formal inquiries since 2021, as he alleges, his concerns would have been addressed expeditiously, consistent with the demonstrated promptness with which the Office of the Academic Registrar responded to all written correspondence duly received.

63. According to the respondents, the circumstances instead reveal a lack of diligence on the part of the applicant and a failure to take personal responsibility in managing his academic affairs and maintaining proper communication with the University. They state that between 3rd December 2021 and 28th March 2025, there is no documented evidence of any inquiry or formal follow-up made by the Ex parte Applicant regarding the status of his appeal with the office of the Registrar of Academics.

64. Further, that his claim that the Vice Chancellor ignored his letter is unsupported, as there is no proof that it was received. Moreover, that the issues raised were outside the Vice Chancellor's mandate, with the Students' Handbook providing proper channels through the Registrar (Academics) and as such, by bypassing these procedures, the Applicant cannot validly claim inaction on the part of the University.

65. The respondents further claim that on 28th March 2025, the applicant is said to have visited the office of the Registrar of Academics and was furnished with documents, amongst them, the letter dated 19th January 2022, which he now claims was backdated and had not previously been served upon him. That contrary to his allegation, the letter was availed for the Applicant's collection.

66. That in his letter to the Vice Chancellor, he canvassed the same issues and grounds contained in the said letter of 19th January 2022 and that therefore, it is implausible for the applicant to claim that he had not seen or been made aware of the letter prior to 28th March 2025.

67. That the approval granted by the University pertained solely to his re-admission into the academic programme and not to the unauthorized deferment. That his subsequent re-admission cannot be construed as a retroactive validation or regularisation of the initial unauthorized breach.

68. It is the Respondents' contention that every communication by the University or the Registrars, including the letter dated 19th January 2022, is clear, specific, unequivocal and free from ambiguity. Further, that the University has consistently maintained that the sole reason the Applicant has not graduated is his failure to clear the requisite fees payable for the programme.

69. The Respondent's argue further that an examination of the Applicant's student ledger reveals that the total amount invoiced for the entire programme was Kenya Shillings Six Hundred Fifty-Eight Thousand One Hundred (Kshs. 658,100). Out of this amount, the Applicant paid Kenya Shillings Five Hundred Sixty-Seven Thousand and Twenty (Kshs. 567,020), leaving an outstanding balance of Kenya Shillings Ninety-One Thousand and Eighty (Kshs. 91,080).

70. Further, that it is the university's policy that only students who have fully met their financial obligations to the University and have passed the required number of academic units shall be eligible to graduate.

71. Additionally, that the University has never challenged or cast doubt on the Applicant's alleged medical condition. Rather, the University merely required the Applicant to furnish appropriate documentation in support of the claim, proof which, to date, has not been provided.

72. As such, that Applicant's exclusion from the graduation list was neither arbitrary nor without justification, rather, it resulted directly from his failure to satisfy the financial obligations expressly set out in the University's student handbook and in the University's policy.

73. It is the Respondents' further contention that any delay in the Applicant's career progression is his own responsibility for failing to follow procedures. They maintain that they acted lawfully, fairly and within their mandate and that judicial review cannot be used to challenge the merits of their decision. The Applicant, it is contended, seeks to quash the Registrar's lawful decision, restrain him from exercising his mandate and compel clearance for graduation despite unpaid fees. The Respondents contend that such reliefs are unavailable since graduation depends on settlement of dues.

74. They further argue that the application is time-barred under Section 9(3) of the *Law Reform Act*, having been filed in 2025, more than three years after the impugned January 2022 decision, without sufficient explanation for the delay.

Submissions

75. The Originating motion was canvassed by way of written submissions. The Applicant filed written submissions dated 17th June 2025. It is submitted that at the heart of this dispute lies the question of whether the Applicant, having fulfilled all academic requirements and had been previously cleared financially, held a legitimate expectation to be cleared for graduation.

76. The Applicant submits that the doctrine of legitimate expectation protects individuals from arbitrary decisions by public authorities that frustrate their justifiable hopes or assurances. Also, that it arises when a public body, by its conduct, promises, or established practice, creates in the mind of an individual a reasonable expectation of a particular benefit or treatment. According to the Applicant

this doctrine is firmly rooted in fairness and serves as a safeguard against capricious administrative action.

77. The Applicant relies on the Supreme Court case of Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others SC Petition Nos. 14, 14A, 14B & 4 14C of 2014, where the Court is said to have held that Legitimate expectation arises when a public authority, through a promise or consistent practice, creates an expectation that it has the power to fulfil.

78. Further reliance is placed in the case of Keroche Industries Ltd v Kenya Revenue Authority & 5 Others [2007] eKLR where the Court is said to have adopted the test laid out in R (BIBI) v Newham London Borough Council where Schieman LJ gave a set of three practical questions for the Court to pose in ascertaining whether a claim based on legitimate expectation is properly grounded and these are; What has the public authority, whether by practice or by promise committed itself; Whether the authority has acted or proposes to act unlawfully in relation to its commitment; and What should the court do.

79. The Applicant submits that the Respondents, both through formal university policy and consistent past practice, have committed themselves to ensuring that students who complete all academic coursework and clear all fee balances are eligible for graduation. This commitment, the Applicant argues, is clearly articulated in the university's manuals, reinforced through standard administrative procedures, and ingrained in institutional practice.

80. The Applicant argues that given the clear commitment made by the Respondents, the unlawful nature of their subsequent actions and the significant prejudice suffered by the Applicant, this Court is well placed to uphold the principles of fairness and legality.

81. It is also submitted that it is evident that the Applicant's case falls squarely within the parameters of the doctrine of legitimate expectation as developed in Kenyan jurisprudence. That the University, through its own formal communications, consistent practices and institutional policies, created in the Applicant's mind a legitimate and reasonable belief that he had met all academic and financial obligations and would accordingly graduate.

82. Further, that the issuance of the letter dated 1st April 2021 from the Dean of the School of Law confirming his academic eligibility, coupled with the University's well-established practice of barring students with fee arrears from sitting for examinations, yet allowing the Applicant to proceed uninterrupted, constituted a clear representation that his path to graduation was unobstructed.

83. That the Respondents' sudden reversal, relying on a backdated and previously undisclosed letter from January 2022, served more than three years later in March 2025, constituted not only a departure from their prior conduct but an arbitrary and capricious administrative action. It is submitted that the retrospective imposition of a fee balance that was neither invoiced nor communicated, without affording the Applicant a fair hearing or due notice, violates the minimum thresholds of fair play required of public institutions.

84. The High Court, it is submitted addressed a materially identical scenario in Kimani v Kenyatta University & Another [2025] KEHC 6602 (KLR), where the Applicant had similarly completed all academic and financial requirements but was denied graduation due to an alleged fee balance that was neither communicated in a timely manner nor supported by evidence. According to the Applicant the Court in that case applied the doctrine of legitimate expectation.

85. The Applicant reiterates that the law requires that individuals affected by administrative decisions be given adequate notice and a fair opportunity to be heard. He relies on the case of Republic v Kenyatta University Ex Parte Martha Waihuini Njuguna [2019] eKLR, where he states that the Court affirmed the importance of procedural fairness.

86. The Applicant further submits that an administrative action must be rational and proportionate to the facts at hand. He relies on the case of Sceneries Limited v National Land Commission [2017] eKLR, where the court is said to have held that administrative sanctions must be proportionate and not exceed what is necessary. According to the Applicant, the Respondents' conduct was disproportionate and devoid of reasonable justification, thereby failing the standard of reasonableness mandated by Article 47 of *the Constitution* and the principle of Wednesbury unreasonableness.

87. It is also submitted that, there exists no policy permitting the retrospective imposition of "academic deficiencies" once a student has been formally cleared for graduation. Nor is there any lawful basis for backdating an adverse administrative decision by more than three years, especially when it contradicts earlier official communication affirming academic completion.

88. The Applicant submits that the Respondents acted ultra vires by issuing an administrative decision barring the Applicant from graduation based on information that lacked validity or lawful foundation. According to him, such action falls outside the scope of the Respondent's legal and policy framework and is therefore null and void.

89. The Applicant relies on the case of Okiya Omtatah Okoiti & 3 others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 6 Others [2021] eKLR, where the court is said to have held that a decision is ultra vires when the authority acts without jurisdiction or contrary to law, making the decision illegal.

90. The Applicant submits that the judicial review remedies sought namely, certiorari, mandamus, and a declaration of rights, are justified under the circumstances as these remedies are not only appropriate but necessary to vindicate his constitutional rights and correct the Respondents' abuse of administrative power.

91. That Judicial review remedies are grounded in Article 23(3)(f) of *the Constitution*, further buttressed by the *Fair Administrative Action Act* and the *Law Reform Act*. These legal frameworks are said to empower courts to grant a range of reliefs, including: certiorari, mandamus and declarations of rights.

92. On the issue of costs, the Applicant submits that it is a general principle, that costs follow the event, and a successful party is generally entitled to an award of costs unless there are exceptional reasons to the contrary. The Applicant relies on the case of of Eleven Energy Ltd v Kiarie & 5 others [2025] KEELC 4479 (KLR) to support this position.

93. The Court in the case of Kimani v Kenyatta University & Another [2025] KEHC 6602 (KLR) is said to have awarded the Petitioner with costs after its finding that the Respondents and/or their agents acted unfairly, irrationally, illegally and unconstitutionally contravening Article 47 of *the Constitution* and the Petitioner's legitimate expectation.

94. The Respondent also filed written submissions dated 23rd June 2025. They identify four issues for determination and these are whether the Ex parte Applicant had a right to legitimate expectation and if it was violated, whether his right to fair administrative action was violated, whether the orders sought are merited and costs. On legitimate expectation, they submit that the doctrine is anchored in law and arises from clear, lawful, and unambiguous promises or consistent past practices of an authority.

95. They cite Halsbury's Laws of England, the Supreme Court decision in Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others, and Republic v Principal Secretary, Ministry of Transport, Housing & Urban Development ex parte Soweto Residents Forum CBO [2019] eKLR, to underscore that a legitimate expectation must be precise, lawful, and within the powers of the authority.

96. The South African case of National Director of Public Prosecutions v Philips cited in Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO, is also relied on for the criteria for legitimate expectation, namely that the promise must be clear and unambiguous, the expectation must be reasonable, it must be induced by the decision-maker, and it must be lawful.

97. In response to the Applicant's claim that completion of coursework and clearance of fees guaranteed graduation, the Respondents argued that this was only partly true since students must also apply for a Letter of Completion, hence eligibility alone does not confer entitlement. They further contend that the claim that no student is allowed to sit examinations with outstanding fees was inaccurate, since the University has at times allowed students with arrears to sit exams subject to approvals.

98. As regards the letter of 1st April 2021 from the Dean, they maintain that it only confirmed eligibility for graduation and did not create an entitlement. The Respondents cite the case of Foreman v. Security Insurance Co. of Hartford, 15 S.W.3d 214 (Tex. App.-Texarkana 2000, no pet.), where the court is said to have held that "eligibility is determined solely by whether the individual meets the applicable criteria for receipt of benefits, not by whether the benefits are actually received."

99. The Respondents emphasize that eligibility is a present qualification that looks to the future and does not confer an absolute right. This according to them, was also the position in the case of Hughes v. Kerfoot, 263 P.2d 226 (Kan. 1953).

100. They also argue that the 2019 financial ledger relied upon by the Applicant was outdated and misleading as it did not reflect subsequent financial obligations. They place reliance on the case of Republic v Kenya Revenue Authority; Proto Energy Ltd (Ex parte) [2022] where the court is said to have held that a legitimate expectation arises only if a precise, specific, and lawful representation creates it; individuals must know the law to judge if it can be relied on, and once established, the administrator must honour it unless overridden by stronger public interest considerations.

101. They also rely on the case of DMO v Kisii University & 2 others (Petition E019 of 2024) [2025] KEHC 1600 (KLR) where the court is said to have held that legitimate expectation cannot arise where fee arrears remain unpaid. They conclude that any expectation harboured by the Applicant was not legitimate and could not have been violated.

102. On fair administrative action, the Respondents submit that Article 47 of *the Constitution* and the *Fair Administrative Action Act* guarantee fairness, but that the University acted within its mandate under section 29(b) of the *Universities Act* in invoicing fees arising from the Applicant's failure to seek deferment in 2013/2014. They argue that the Applicant was notified and given an opportunity to contest the decision, which he did through a hand-delivered letter dated 3rd December 2021.

103. That his appeal was considered and rejected by a letter dated 19th January 2022, with reasons given, including incomplete academic records and absence of medical evidence. They state that the appeal was determined within a reasonable time and in accordance with University policy. They contend that claims of lack of notice, delay, and concealment were unfounded. Reliance is placed in the case of Kenya National Highways Authority v PPP Petition Committee & 2 others [2018] eKLR where the Court is said to have held that the requirement of procedural fairness in administrative action was met where the disputants exchanged letters. Further, they rely on the case of Dry Associates Limited V Capital Markets Authority & Another Interested Party Crown Berger (K) Ltd [2012] KEHC 5568 (KLR), where the court is said to have emphasized that procedural fairness is a flexible concept, and that correspondence by way of letters is sufficient fulfilment of the fairness requirement.

104. On whether the orders sought should be granted, the Respondents submit that should this Honourable Court be inclined to consider the application, the Ex parte Applicant bears the burden of proving that he satisfies all the relevant legal requirements to justify the grant of the reliefs sought, all of which is subject to this Court's discretion as was stated by the Court in Republic v Directorate of Criminal Investigations & another; Omumani (Ex parte Applicant) (Judicial Review Application E160 of 2024) [2025] KEHC 4307 (KLR).

105. The Court of Appeal is said to have in the case of Kenya National Examinations Council v R exparte Kemunto Regina Ouru Nairobi Civil Appeal No. 127 of 2009 (Unreported) set aside judicial review orders of certiorari and mandamus granted by the trial court on the basis of policy.

106. They contend that none of the grounds for certiorari, prohibition or mandamus has been established, and that the Applicant has failed to meet the procedural safeguards imposed under the Fair Administrative Action Rules, 2024. Specifically, that Rule 5 requires a notice of intention to sue before mandamus applications, which was not issued, and Rule 6(1) requires filing of certiorari applications within six weeks of the impugned decision.

107. On costs, they submit that under section 27 of the *Civil Procedure Act*, costs follow the event, and that the application should therefore be dismissed with costs.

Analysis and Determination

108. Having carefully considered the application, affidavits, annexures, and rival submissions of the parties, the following issues arise for determination:

    1. Whether the Order of Certiorari is available to the Applicant or the same is time barred
    2. Whether the Applicant lawfully deferred his studies during the 2013/2014 academic year and whether his absence was justified
    3. Whether the Applicant met the academic and financial requirements for graduation
    4. Whether the Applicant's alleged legitimate expectation to be cleared for graduation is valid in law
    5. Whether the judicial review remedies sought are available to the Applicant

Whether the Order of Certiorari is available to the Applicant or the same is time barred

109. The Applicant seeks certiorari to quash the Registrar Academic's (the Registrar) decision of 19th January 2022 dismissing his appeal. He further submits that courts have discretion to grant certiorari even beyond the statutory limitation where justice demands. The Respondents, however, contend that Section 9(3) of the *Law Reform Act* requires such an application to be filed within six months of the impugned decision.

110. The Registrar's letter, argued, is dated 19th January 2022, yet these proceedings were filed in May 2025, over three years later. The Respondents also maintain that the Applicant failed to comply with the Fair Administrative Action Rules, 2024, particularly Rule 5, which requires notice of intention before mandamus, and Rule 6(1), which mandates that applications for certiorari be filed within six weeks.

111. While certiorari serves to quash illegal decisions, it must ordinarily be sought within six months under Section 9(3) of the *Law Reform Act*.

112. The decision under challenge was made on 19th January 2022, and these proceedings were filed on 26th May, 2025. Section 9(3) of the *Law Reform Act* is couched in mandatory terms, stating that an application "shall not be made unless within six months,". For that matter, the Respondents contend that the prayer for certiorari is statutorily barred. The Applicant, however, asserts that the Registrar's letter was backdated and withheld until 28th March 2025.

113. A copy of the letter annexed to the Applicant's affidavit confirms that he only received it on 28th March 2025 and nothing in his prior correspondence with the Vice Chancellor demonstrates awareness of its contents. The Respondents have not provided cogent evidence to show that the letter was made available to the Applicant before 28th March 2025.

114. Whereas the default position is that the six-month limitation runs from the date of the decision, courts recognize that where a decision was not communicated to the affected party, the operative date may be treated as the date on which the party actually became aware of the decision. This principle reflects the equitable nature of certiorari and prevents injustice arising from decisions withheld or backdated.

115. In the present case, the Applicant has demonstrated that he only became aware of the Registrar's decision on 28th March 2025, and there is no evidence to suggest that he knew or ought to have known of the decision earlier.

116. Accordingly, this Court finds that the Applicant acted promptly upon becoming aware of the impugned decision and therefore the prayer for the order of certiorari is not statute barred. This is so, considering that whether or not the letter was physically prepared earlier, the contents of the decision remained effectively unknown to the Applicant until the date of receipt, justifying the timeliness of this application.

117. Furthermore, the applicant filed the Originating Motion under the Fair administrative Action Rules, 2014 (See Rule 11). which provide for the timeline of six weeks for filing of the judicial review application from the date when the cause of action arises. Although he cited the *law Reform Act* and Order 53 of the Civil procedure Rules, it is clear to this Court that the proceedings are purely brought under the Fair Administrative Action Rules, 2024. Under the said Rules, leave to apply is not provided for. Instead, the applicant is expected to issue Notice of intention to sue prior to the filing of the application within the six weeks stated above. (See Rules 5 and 6).

118. The Court of Appeal in the case of Dominic Musei Ikombo v Kyule Makau [2019] KECA 482 (KLR) observed as follows on when the time starts running:

> " 14. On the first issue, we observe that there is no concession by the respondent that the application for Judicial Review was filed outside the six months statutory limitation prescribed under Section 8 and 9 of the *Law Reform Act* on which the application was premised. There was no application for extension of time before the court and the decision of Ako Vs Special District Commissioner Kisumu and another [1989] KLR 163, (cited to us) and a plethora of cases adopting the findings therein are not relevant for purposes of this judgment. The pertinent question which we need to address is whether the six months start running from the date of the impugned decision or from the date the parties became aware of the same.
>
> "15. Unfortunately, although Mrs. Nzei maintained that the relevant date was the date the respondent became aware of the decision, she did not furnish us with any decided cases to that effect. The trial Judge on the other hand based his

determination on the fact that the limitation period was inapplicable as none of the parties was able to state with certainty when the impugned decision was delivered since the respondent had failed to file a replying affidavit to controvert the averments made by the respondent.

"16. This Court has however held the view that one can only challenge a decision that is within his/her knowledge. Holding otherwise would be irrational as it would be expecting a party to possess super human powers to know the contents of a decision long before it is delivered. It would also create fertile ground for corruption and other underhand maneuvers where a party would collude with the decision maker or their staff intending to frustrate the judicial review process, to hide or otherwise ensure that a decision is not availed to the parties until the statutory 6 months limitation period has expired.

"17. This Court has addressed this point in several decisions and held that the six months should start running from the date the impugned decision is communicated to the affected parties or when they become aware of it. In Republic VS. Kenya National Highways Authority & 2 others ex parte Amica Business Solutions Limited [2016] eKLR, this Court pronounced itself as follows:-

"In our considered view, Order 53 Rule (2) was meant to cover both judicial and quasi-judicial proceedings, <u>where there was a hearing; all affected parties were informed; or were aware of the proceedings and where there was a judgment or decision capable of being disseminated and accessed by all affected parties.</u>" (Emphasis supplied).

"18. In this case Counsel for the respondent has made heavy weather of the fact Section 9 (3) of the *<u>Law reform Act</u>* and Order 53 rule 2 Civil Procedure Rules specifically provide for the date when the decision was dated and not <u>when it was delivered. From the above decision however, it is evident that the applicable date is the date when the parties became aware of the decision.</u> The appellant did not rebut the averment that the decision became known to the respondent on 12th February, 2013, in which case the application for leave, having been filed on 5th July, 2013 was filed within the 6 months' timeline. We therefore hold that the application was not statutorily time barred and was properly before the High Court. Ground 1 in the memorandum of appeal fails." [emphasis added]

119. As for the prayers for prohibition and mandamus, these remedies are distinct from certiorari and may still be granted independently. Prohibition seeks to prevent the Respondents from issuing any further decision affecting the Applicant's eligibility for graduation. It is a prospective remedy and can be issued where there is a clear risk of repeated unlawful action. Mandamus compels the Respondents to perform a legal duty, namely to clear the Applicant and include his name in the graduation list for the current academic year.

120. The grant of these remedies does not depend on quashing the past decision, and the Applicant has demonstrated both a legal right to graduate and a duty on the part of the Respondents to act. Therefore, even if the Respondents had successfully challenged the timeliness of certiorari, the Applicant would remain with the prayers for prohibition and mandamus, given the continuing effect of the Registrar's decision on his rights and the Respondents' ongoing obligations.

121. It is also important to note that the implementation of Rules 5 and 6 of the Fair Administrative Action Rules, 2024 was suspended by Mwamuye J in Katiba Institute v. State Law Office & The Commission on Administrative Justice (Office of the Ombudsman) & 1 Other (HCCHRPET E168 of 2025) and, as such, these Rules are currently not in force and cannot be relied upon to challenge the timeliness or propriety of this application.

122. Accordingly, the prayer for certiorari is not statute barred and the same shall be considered on its merit.

Whether the Applicant lawfully deferred his studies during the 2013/2014 academic year and whether his absence was justified

123. The Applicant asserts that during the 2013/2014 academic year, he fell ill, and was unable to continue with his studies or sit his examinations. He relies on his academic transcripts, which show the coding “RET” (retake/retained) for units such as Commercial Law II, International Organizations Law and the Dissertation, with later completion in subsequent years. The Applicant argues that this demonstrates that the University allowed him to remedy the missed units, which he submits amounts to recognition of his illness and that his academic progression was uninterrupted thereafter.

124. The Respondents, however, contend that the only deferment formally approved was for the 2010/2011 academic year, following a written request by the Applicant dated 30th August 2010 and a subsequent approval letter from the Registrar of Academics dated 9th September 2010. They maintain that in 2013/2014, the Applicant absented himself without approval, in breach of the University Handbook Rules requiring a written application to the Registrar and proof of reason.

125. The Respondents highlight that no medical evidence or contemporaneous communication was provided for 2013/2014, and that the Applicant only retrospectively invoked illness years later. They emphasize that the University’s decision to allow him to retake missed units was discretionary, and an act of administrative leniency, not recognition of a valid deferment.

126. The core factual dispute is whether the 2013/2014 absence constituted a legitimate deferment, as claimed by the Applicant, or an unauthorised absence, as maintained by the Respondents. The Applicant equates later completion of the missed units with acceptance of a valid deferment, whereas the Respondents insist that deferments must be prospective and documented, and that transcripts simply show units were retaken, not that the absence was formally authorized.

127. The University Handbook for General Information annexed by the Respondents to their replying affidavit makes it clear that any student wishing to take a semester off must apply in writing to the Registrar (Academics) within the stipulated timelines and obtain prior approval. The Handbook for General Information for Parents and Guardians, at page 20, provides as follows:

> “ A student who wishes to take a semester off due to financial or other problems may apply by writing to the Registrar (Academic). Students are advised to apply for semester off early in the semester to avoid unnecessary expenditure. The response to the application will be copied to the Dean of the School, the Director Students Affairs; Health Services; Students Finance and Director, Accommodation Services."

128. The Applicant has not shown compliance with these requirements for 2013/2014, academic year nor has he tendered any concurrent medical report or correspondence to substantiate his claim.

129. While the transcripts confirm that the Applicant later retook and passed the units which he had missed, this does not equate to an authorised deferment. The “RET” coding denotes retake or retained, reflecting registration without completion and does not validate the reason for the absence

or substitute for the requirement of prior approval. The University's subsequent decision to re-admit the Applicant may be seen as administrative leniency but cannot be construed as retroactive approval of an unauthorized absence, in the absence of an express authorization.

130. The Applicant's contention that his illness justified unilateral deferment is further weakened by his failure to provide evidence by way of a letter from any medical officer confirming that he was ill. The absence in 2013/2014 must therefore be treated as unauthorised, and the University was entitled to record the semester as registered, retain the units and invoice the associated fees.

131. Notably, the Applicant sought readmission on 20th January 2016, which was approved on 25th January 2016, despite the only prior deferment having been formally approved for the 2010/2011 academic year due to financial constraints. No evidence of a deferment request for 2013/2014 has been produced.

132. From the foregoing, it is clear that the Applicant voluntarily undertook to comply with university rules; that only the 2010/2011 deferment was formally approved and that the 2013/2014 absence was unauthorised and unsupported by evidence.

133. The later completion of units reflects academic remediation, not compliance with administrative procedures. The University acted within its policy framework in invoicing fees for the 2013/2014 academic year. Consequently, the foundation of the Applicant's claim of unfair treatment or legitimate expectation in respect of this period is significantly weakened and is not available.

Whether the Applicant met the academic and financial requirements for graduation

134. The Respondents' position is that upon review of the Applicant's financial records following his re-admission, it was discovered that he had not been invoiced for Semester 1 of the 2013/2014 academic year, nor for the mandatory judicial attachment which forms part of the LL.B. programme.

135. They submit that this omission was inadvertent and that, once identified, the University corrected the error and duly invoiced the Applicant, leaving an outstanding balance of Kshs. 91,080.

136. The Applicant disputes this position, maintaining that he had cleared all financial obligations, citing earlier financial ledgers and the absence of any demand for the alleged balance prior to 2021. He argues that the belated invoicing, purportedly communicated through a backdated letter of 19th January 2022, was arbitrary, unlawful and violated his legitimate expectation, particularly since he had been allowed to sit examinations and progress academically without any hindrance.

137. The University's Handbook for General Information is unequivocal that only students who have settled all fees are eligible for graduation, a principle the Applicant himself acknowledges. The Respondents have produced a ledger showing that out of Kshs. 658,100 payable for the full programme, the Applicant paid Kshs. 567,020, leaving an outstanding balance of Kshs. 91,080, a figure not substantively challenged with documentary proof of full settlement. He who alleges must proof. The burden of proving that all the fees for all the semesters was paid lay on the applicant to prove by way of bank deposit slips or other credible evidence.

138. In support of his assertion, the Applicant claims that for years, he was neither invoiced nor prevented from sitting examinations and that a Dean's letter dated 1st April 2021 confirming academic eligibility for graduation created a legitimate expectation of financial clearance.

139. This Court notes, however, that the Letter of Completion, which signifies eligibility to graduate, can only be issued by the Registrar (Academics) and not by the Dean. Page 24 of the Handbook provides:

> " Letter of Completion:
>
> Upon request to the Registrar (Academics) a letter of completion will be issued before graduation to a student who has completed the degree programme and met the entire financial obligation to the University."
>
> "Graduation:
>
> a. Only students who have completed and passed all the required number of units including practicum graduate.
>
> b. A student who intends to graduate should apply to the Registrar (Academics)."

140. The Applicant has not demonstrated that the University expressly waived the fees, or that that it lawfully did so without a formal resolution. The failure to invoice earlier was therefore an administrative error, which the University was entitled to correct. Even assuming that there was delay in service of the demand for payment, the substantive financial obligation arising from the Applicant's registration and incomplete units in 2013/2014 was not extinguished. Thus, a procedural lapse in communication cannot negate a lawful financial duty.

141. For the above reasons, any claim of legitimate expectation is undermined by the fact that the University could not lawfully waive statutory fees through omission or silence. Accordingly, it is this court's finding that whereas there is no evidence of pending units, the Applicant has not demonstrated that he met the financial requirements for graduation and therefore the Respondents acted within their mandate in rectifying their financial records and requiring payment of fees arrears before they could grant the applicant clearance for graduation.

Whether the Applicant had a legitimate expectation to be cleared for graduation

142. This issue is partially discussed in the preceding paragraph. The Applicant avers that having completed all academic requirements and previously being financially cleared, he reasonably expected to graduate. He relies on the Dean's letter dated 1st April 2021, which confirmed his academic eligibility, the University's practice of barring students with fee arrears from examinations (yet allowing him to proceed uninterrupted) and the fact that no invoice for the 2013/2014 semester was issued until the backdated letter of 19th January 2022, which he claims was only served in 28th March 2025. On this basis, he argues that the Respondents' reversal was illogical, arbitrary, unlawful and procedurally unfair.

143. The Respondents, however, maintain that no legitimate expectation arose. They emphasize that legitimate expectation must stem from a clear, precise and lawful representation within the authority's power. That allowing the Applicant to sit examinations despite arrears was an administrative error, not a waiver of financial obligations.

144. Similarly, that the Dean's letter only confirmed academic eligibility and did not confer an absolute right to graduate. The Respondents also state that the Applicant still owed Kshs. 91,080, and no legitimate expectation can arise contrary to express University policy requiring fees clearance before graduation, as reflected in the case of DMO v Kisii University [2025] KEHC 1600 (KLR).

145. The principles of legitimate expectation are well-established. In Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (Petition 14, 14A, 14B & 14C of 2014

(Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment), the Supreme Court held as follows:

> "(265) An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.
>
> "[266] Wade and Forsyth in their work, Administrative Law, 10th ed (pages 446-448), discuss the relevant legal principles on legitimacy of an expectation. For an expectation to be legitimate, it must be founded upon a promise or practice by the public authority, that is said to be bound to fulfil the expectation. Citing the House of Lord's decision in R. v. DPP ex p. Kebilene [1999] 3 WLR 972(HL), the learned authors observe that a statement made by a Minister cannot found an expectation that an independent officer will act in a particular way. They cited the case, R. v. Secretary of State for Education and Employment, ex p. Begbie [2000] 1 WLR 1115 (CA),where the Court of Appeal held that an election promise made by a Shadow Minister did not bind the responsible Minister after a change of government. The authors cite the House of Lord's decision in R. v. DPP ex p. Kebilene, for the principle that clear statutory words override any expectation howsoever founded.
>
> "[267] The principle is well reflected in judicial practice in Kenya. A relevant excerpt from Republic v. Nairobi City County & Another ex parte Wainaina Kigathi Mungai, High Court Judicial Review Misc. case No. 356 of 2013; [2014] eKLR thus reads[paragraph 33]:...the legal position is that legitimate expectation cannot override the law. This was the position in Republic vs. Kenya Revenue Authority, ex parte Aberdare Freight Services Limited [2004] 2 eKLR 530 where it was held:'...a public authority may not vary the scope of its statutory powers and duties as a result of its own errors or the conduct of others. Judicial resort to estoppel in these circumstances may prejudice the interests of third parties. Purported authorisation, waiver, acquiescence and delay do not preclude a public body from reasserting its legal rights or powers against another party if it has no power to sanction the conduct in question or to endow that party with the legal right or inventory that he claims... Legitimate expectation is founded upon a basic principle of fairness that legitimate expectation ought not be thwarted – that in judging a case a judge should achieve justice, weigh the relative 'strength of expectation'..."
>
> "[268] An illuminating consideration of the concept of "legitimate expectation" is found in the South African case, South African Veterinary Council v. Szymanski 2003(4) S.A. 42 (SCA) at [paragraph 28]: the Court held as follows: The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following:
>
> i. The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative

Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.

(ii) The expectation must be reasonable: Administrator, Transvaal v. Traub (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).

ii. The representation must have been induced by the decision-maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); Attorney- General of Hong Kong v. Ng Yuen Shiu [1983] 2 All ER 346 (PC) at 350h - j.

iii. The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v. Caledon Divisional Council 1963 (4) SA 53 (C) at 59E - G."

146. From the above decision, it is clear that for a legitimate expectation to arise, there must be a clear, lawful representation or established practice by a public authority and such expectations must not conflict with statutory requirements. In the Applicant's case, the absence of an express waiver of fees and the University's clear policy requiring fees clearance before graduation is a clear indication that no legitimate expectation for graduation clearance was established.

147. I reiterate that the letter of 1st April 2021 confirmed only the Applicant's academic eligibility that is, according to the Oxford Advanced Learner's Dictionary, "the state of being able to have or do something because you have the right qualifications" and did not confer entitlement, defined as "the official right to have or do something; something that you have an official right to" (Oxford Advanced Learner's Dictionary), which requires satisfaction of all conditions, including financial obligations.

148. In the end, this court is unable to find that the Applicant had a legitimate expectation to be cleared for graduation.

Whether the judicial review remedies sought are available to the Applicant

149. The other major issue is whether the Applicant is entitled to the remedies of certiorari, mandamus and prohibition. The Applicant seeks certiorari to quash the impugned decision, mandamus to compel the University to clear him and include his name in the graduation list for the current academic year and prohibition to restrain the Registrar Academics from any further or other decision affecting his eligibility for graduation. He contends that the impugned decision was ultra vires, illegal and procedurally unfair.

150. The Respondents maintain that mandamus and prohibition are unavailable. On mandamus, they argue that this remedy compels the performance of a statutory duty. However, that graduation is conditional on clearing fees, and that in this case, the Applicant still owes Kshs. 91,080. That the courts have consistently declined to issue mandamus where no legal duty has crystallized.

151. On prohibition, the Respondents contend that it prevents unlawful action but cannot restrain a lawful statutory function such as the Academic Registrar's role in managing graduation process and that judicial review remedies are discretionary and their grant may be refused where it conflicts with policy, fairness or public interest.

152. The principles governing the judicial review remedies are now well-established. Mandamus compels a public officer to perform a duty imposed by law, but the duty must be clear, specific and owed to the applicant. Prohibition prevents unlawful action but cannot stop a lawful statutory mandate. Certiorari quashes decisions that are ultra vires, illegal, or procedurally unfair, and is also available where the applicant was not reasonably aware of the decision until a later date. The discretionary nature of judicial review remedies requires courts to weigh legality, fairness, delay and public interest before granting the relief.

153. The Court of Appeal in the case of Kenya National Examination Council v Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No.266 of 1996, elaborated what Judicial Review Orders entail as follows:

> " That now brings us to the question we started with, namely, the efficacy and scope of mandamus, prohibition of certiorari. These remedies are only available against public bodies such as the Council in this case. What does an Order Of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See Halsbury's Law Of England, 4th Edition, Vol.1 at pg.37 paragraph 128. When those principles are applied to the present case, the Council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether, that power is to be exercised. If the Council of prohibition would be ineffectual against the conviction because such an order would not quash the conviction. The conviction could be quashed either on an appeal or by an order of certiorari. The point we are making is that an order of prohibition is powerless against a decision which has already been made before such an order is issued. Such an order can only prevent the making of a decision. That, in our understanding, is the efficacy and scope of an order of prohibition.
>
> "The next issue we must deal with is this: What is the scope and efficacy of an order of Mandamus? Once again, we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:
>
> "The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."
>
> At paragraph 90 headed "the mandate" it is stated:

> "The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.
>
> "...Only an order of Certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the appeal before us, the respondents did not apply for an order of certiorari and that is all we want to say on that aspect of the matter."

154. Applying these principles to the facts of this case, I have already found that the Applicant only became aware of the Registrar's decision through the letter dated19th January 2022, which he received on 28th March 2025. The letter denied his appeal to reverse fees for Semester II, 2013/2014, and the basis that he had not completed the units and had not provided evidence of ill health.

155. However, the Applicant was not given a fair opportunity to know of or respond to this decision when it was made, noting further, that the decision claims that the applicant had incomplete units contrary to the University's own admission that the applicant had completed all the units and that only fees was an outstanding issue. The Respondents have not provided evidence that the letter was properly communicated at the relevant time. In addition, the respondents have not demonstrated that there are any units pending completion. Accordingly, certiorari is available and is granted to quash the decision on grounds of procedural unfairness, without affecting the substantive requirement that all academic and financial obligations must be fulfilled.

156. That said, the Applicant's unpaid balance of Kshs. 91,080 means the University owes no legal duty to graduate him. Mandamus cannot compel performance of an illegal or non-existent duty. Similarly, prohibition cannot restrain the Academic Registrar from enforcing lawful conditions precedent to graduation, namely clearance of fees and completion of examination requirements. Granting either remedy would create a precedent allowing fee defaulters to circumvent University policy. The public interest in maintaining institutional integrity and ensuring equal treatment of students outweigh any individual hardship.

157. The Applicant also claims that having met all academic and financial obligations, the Respondents' actions in blocking his graduation were procedurally flawed, arbitrary and designed to deny him the fruits of his studies.

158. He avers that the delay has caused him severe prejudice including reputational injury, emotional distress and economic loss through missed job and pupillage opportunities and delayed entry into the legal profession. He prays for appropriate relief, including an order of mandamus compelling the Respondents to process and confer him the degree and compensation for the prejudice suffered.

159. However, no material was placed before the court to justify compensation. Besides, there is no substantive prayer on the Originating Motion dated 22nd May, 2025.

160. Accordingly, only certiorari is available to the applicant, removing into this Court and quashing the decision communicated to the applicant vide letter of 19th January 2022. Mandamus and prohibition are not available to the applicant and are hereby declined. The discretionary nature of judicial review further supports this approach in light of delay, non-compliance with procedural rules and overriding public interest. The reliefs sought are therefore only partially merited as stated hereinabove.

161. In light of the above I make the following final orders:

1. An order of certiorari is hereby issued, removing into this Court and quashing the decision of the 1st Respondent contained in the letter dated 19th January 2022 and received by the Applicant on 28th March 2025, on grounds of procedural unfairness.
2. The prayer for mandamus compelling the Respondents to clear the Applicant for graduation is declined, as the Respondents owe no legal duty to graduate a student with outstanding financial obligations. The applicant is free to clear the outstanding fees and seek to be cleared to graduate.
3. The prayer for prohibition restraining the 1st Respondent from exercising mandate over the Applicant's graduation is equally declined, as the Registrar acted within lawful statutory authority.
4. The University may, in accordance with its policies and regulations, communicate any further decisions to the Applicant regarding graduation, provided procedural fairness is observed.
5. In the circumstances, given the mixed outcome of the application with the Applicant succeeding only on the issue of certiorari, and the Respondents prevailing on mandamus and prohibition, and considering that the matter raised issues of public and constitutional interest, it is just that each party bears its own costs.
6. This file is closed.
7. It is so ordered.

DATED, SIGNED & DELIVERED AT NAIROBI VIRTUALLY THIS 25TH DAY OF AUGUST 2025

R.E ABURILI

JUDGE