



**Njeri v Kiambu National Polytechnic & 2 others; Kenya National Examination Council & another (Interested Parties) (Constitutional Petition E329 of 2024)
[2025] KEHC 12265 (KLR) (Constitutional and Human Rights) (12 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E329 OF 2024**

AB MWAMUYE, J

AUGUST 12, 2025

**IN THE MATTER OF ARTICLE 2(1), 2(4), 3(1), 10, 19(2), 20(1), 20(2), 21(1),
22, 23, 24, 25(C), 27(1), 27(2), 28, 43(1)(F), 47, 48, 50(1), 55, 159(1) & (2),
165(6) & (7), 258, 259 AND 260 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULES, 2013**

AND

**IN THE MATTER OF SECTIONS 4(1), (2), (4), (5), (6), (5)(1) &(2), (6)(1) &
(2), 7(1) & (2), 8, 9(1), (2), (3), (4) OF FAIR ADMINISTRATIVE ACT, 2015**

AND

**IN THE MATTER OF SECTIONS 3(1), (2)(A), (B), (C) AND (F) OF TECHNICAL
AND VOCATIONAL EDUCATION AND TRAINING ACT CAP 210**

AND

IN THE MATTER OF THE DOCTRINE OF LEGITIMATE EXPECTATION

AND

**IN THE MATTER OF DECISION CONTAINED IN THE MEMO DATED 2ND JULY
2024 ON THE TERMS OF RESUMPTION OF STUDENTS TO THE INSTITUTION**

BETWEEN

STEPHEN KIMANI NJERI PETITIONER

AND



KIAMBU NATIONAL POLYTECHNIC 1ST RESPONDENT
BOARD OF GOVERNORS KIAMBU NATIONAL POLYTECHNIC 2ND
RESPONDENT
SECRETARY GOVERNING COUNCIL/CHIEF PRINCIPAL KIAMBU
NATIONAL POLYTECHNIC 3RD RESPONDENT

AND

KENYA NATIONAL EXAMINATION COUNCIL INTERESTED PARTY
TECHNICAL AND VOCATIONAL EDUCATION AND
TRAINING INTERESTED PARTY

JUDGMENT

1. The Petitioner approached this Court vide a Petition dated 9th July 2024 seeking the following orders:
 - a. A declaration be and is hereby issued that the Respondent's decision contained in the Memo dated 2nd July, 2024 suspending the students is unconstitutional, null and void ab initio and the same be set aside and/or vacated forthwith.
 - b. A declaration be and is hereby issued that the Respondents' actions complained of hereinabove culminating to the decision contained in the Memo dated 2nd July 2024 suspending the students from Kiambu National Polytechnic violated the Petitioner's right to education and legitimate expectation under Articles 43(1)(f) and 55 of the Constitution of Kenya, 2010.
 - c. A declaration be and is hereby issued that the Respondents' actions complained of hereinabove culminating to the decision contained in the Memo dated 2nd July, 2024 suspending the students from Kiambu National Polytechnic violated the Petitioner's rights and fundamental freedoms under Articles 27(1), 27(2), 28, 43(1)(f), 47, 48, 50(1) & 55 of the Constitution of Kenya, 2010.
 - d. A declaration be and is hereby issued that the disciplinary proceedings held by Respondents' Institution and Disciplinary Committee were and are discriminatory, unfair, unprocedural and unconstitutional thus illegal and null and void ab initio and the same be set aside and/or vacated forthwith.
 - e. An order of mandamus be and is hereby issued compelling the Respondents to unconditionally re-admit the students back to the Kiambu National Polytechnic and to continue with their studies and examination by Kenya National Examination Council (KNEC).
 - f. An order of mandamus be and is hereby issued compelling the 1st Interested Party (KNEC) to administer all examinations that the relevant students shall have missed out during the period of the suspension from the Kiambu National Polytechnic.
 - g. A declaration be and is hereby issued that the students be and is hereby entitled to compensation for violation of their constitutional rights and fundamental freedoms by the Respondents.



- h. The students be and is hereby compensated by way of damages for mental, psychological and emotional anguish/ torture and suffering he was subjected to by the Respondents due to the violation of his constitutional rights.
 - i. Any further and other orders as may be deemed necessary on the facts and in the circumstances of the case.
 - j. The Respondent be condemned to pay costs of this Petition.
 2. The Petition was accompanied by an Affidavit in support dated 9th July, 2024 sworn by the Petitioner, Stephen Kimani Njeri to which he averred that through a letter dated 2nd July 2024, the Respondents herein unlawfully, illegally, unprocedurally and/or without following the due process of the law, suspended some students from the 1st Respondent's institution on trumped up charges that they were involved in a demonstration demanding accountability from the Respondents.
 3. The Petitioner further avers that in his capacity as a guardian and alongside other parents and students were summoned for readmission vide a memo dated 2nd July 2024, which stated as follows:

“...Following the students’ unrest and closure of the Polytechnic on Monday 24th June 2024, trainees are hereby advised to resume as per the instructions and schedule (attached).
Every student shall;

 - a. Report accompanied by the Registered Guardian between 8:00-3:00 p.m.
 - b. Clear outstanding fees as at Term 2 2024.
 - c. Pay Kshs. 200 for damages and present the receipt

All students are required to download the student guide from the website, read, understand and sign the declaration form witnessed by the guardian and present it during the readmission exercise...”
 4. According to the Petitioner, the Respondents prejudiced the self- sponsored students who at the point of admission did not appoint a Registered Guardian and the students whose Registered Guardian were unable to attend due to one reason or another. Further, most students were prejudiced from doing the examination offered and supervised by Kenya National Examination Council (KNEC) since the exams were set to run from 10th July 2024 to 2nd August 2024 yet, the dates for readmission were slated for 5th July 2024 to 2nd August 2024.
 5. The Petitioner further avers that the Respondents locked out a huge number of students who have outstanding fees as at term 2 2024, which was unilateral and vindictive action by the Respondents to stifle peaceful dissent and demands for accountability. He equally avers that the Respondents began disciplinary process against the students however the process has been marred with various Constitutional infringement such as having their phones confiscated in bid to investigate whether the students were involved in the peaceful demonstrations in any capacity.
 6. The Petitioner contends that that the Respondents’ impugned decision has violated the legitimate expectation of the students to sit for the examination slated between 10th July, 2024 and 2nd August 2024 despite having read, studied and prepared for the same.
 7. The Respondents in response to the Petition, filed Grounds of Opposition dated 2nd September 2024 systematically opposing the Petition on the grounds that the Petitioner has not demonstrated with



precision how the Respondents have violated his constitutional rights in accordance to the guidance in *Anarita Karimi Njeri v Republic (1976-1980) KLR 1272*.

8. They contend that the issues raised in the Petition were well canvassed in the *Basic Education Act* 2013, and its subsidiary legislation, Basic Education Regulations, 2015 which enjoys presumption of constitutionality and the Petitioner has not challenged the constitutionality of the Act or its subsidiary legislation.
9. The Respondents further contend that the right to education provided under Article 43 (1)(f) of *the Constitution* of Kenya can be limited thus Regulation 30 of the Basic Education Regulations 2015 grants every institution powers to develop its own rules which are consistent with the law. In addition, Regulation 33 outlines what constitutes mass indiscipline to include unlawful demonstrations, boycott of classes or meals, the destruction of school property or invasion of other institutions, shopping centres or homesteads. Finally, Regulation 35 gives power to the Board of Management to declare the institution in case of mass indiscipline.
10. They therefore urged this court to determine whether the decision-making process by the 1st and 2nd Respondents was expeditious, efficient, lawful, reasonable and procedurally fair as per Section 4(1) of the Fair Administrative Actions Act and not reviewing the merits of the decision.
11. The 1st Interested Party filed a Replying Affidavit in response to the Petition dated 26th February 2025 and sworn by Keith Maleche, the Director, TVET Examination Assessment Administration who avers that the 1st Interested Party issued a circular dated 10th July 2023 under Ref: KNEC/TVET-AA/REG/2023/002 on registration for the 2023/2024 Business and Technical Examinations slated for the period starting 15th July 2024 to 2nd August 2024. He states that the Petitioner's assertion that the examination was slated for 10th July 2024 is unfounded.
12. He further asserts that the 1st Respondent acts the 1st Interested Party's agent as regards registration for examination. The Examination centres are therefore required to register candidates who have been trained in accordance with strict compliance with the syllabus. According to the 1st Interested Party, the candidates from the 1st Respondent who registered for the examination were offered the examination and no student was precluded from sitting for the said exam. He avers that the 1st Interested Party is not a party to the disciplinary process and that the order of mandamus is untenable as the 1st Interested Party already offered exams to all registered students from 15th July 2024 to 2nd August 2024 thus the Petitioner should register for the next series of examination.
13. The Petitioner filed a Supplementary Affidavit dated 10th January 2025 and sworn by Stephen Kimani Njeri, the Petitioner herein, who reiterated contents of his supplementary affidavit and averred that the right of Education under Article 43(1) of *the Constitution* of Kenya ought to be limited within the purviews of *the Constitution* and that the Respondents never followed proper regulations by issuing the Memo dated 2nd July, 2024 by suspending all students.
14. He further avers that the Respondents unilaterally closed the school on assumption of mass indiscipline by students which was not substantiated and also the Respondents never adhered to Regulation 34 of the Basic Education Regulations 2015 by notifying the County Director of Education within 24 hours after the closure which was not done. The Respondent ought also to issued a proper notice and have the school closed within the purview of the Education Regulations and further take into account the examination scheduled that was due three days after the memo dated 2nd July, 2024.



15. The petition was canvassed by way of written submissions, and in compliance all parties except the 2nd Interested Party filed and served their submissions.

Petitioner's Submissions

16. The Petitioner filed written submissions dated 20th January 2025 and submitted that the Petition discloses breach of fundamental rights with reasonable precision as required under the principles laid out in *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272*. According to the Petitioner, Part B of the Petition indicates the Constitutional and Legal foundation of the Petition by articulating the provisions which the Respondents ought to have acclimatized itself with before unlawfully issuing the Memo dated 2nd July 2024. Reliance was also placed on the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR*.
17. The Petitioner argued that the Memo dated 2nd July 2024 violated the Constitutional tenets guaranteed under Articles 43(1)(f) and 55 of *the Constitution* of Kenya since the Respondents unlawfully issued the memo without regard to the welfare of the students and also ignored the fact that KNEC examination was in 3 days from the date of issuing the memo. The Petitioner submitted that the Respondents actions were a total affront to the right to education of the students and in order to have effect to the right to education, the institution ought to have been unconditionally opened and activities resumed as normal. Reliance was placed on the case of *Jesse Waweru Wahome & others vs Kenya Engineers Registration Board and Egerton University & others, (2012)eKLR* and the case of *Andrews v Law Society of British Columbia [1989] 1 SCR 321*.
18. The Petitioner further submitted that the decision resulting to the Memo dated 2nd July, 2024 was unmerited and the Respondents acted in violation of Article 47 of *the Constitution* of Kenya 2010 since the Respondents never adhered to the proper procedures before issuing the Memo. According to the Petitioner, the same was arbitrary and unmerited. He further submitted that the Respondents issued a blanket memo indicating unrest of students without giving proper reasons and went ahead to immediately suspend all students which was unfair in the circumstances. They cited the following cases in support; *Geoffrey Oduor Sijeny v Kenyatta University [2018] eKLR*; *Judicial Service Commission vs Mbalu Mutava & Another [2015] eKLR, Civil Appeal 52 of 2014*; and the South African case of *President of the Republic of South Africa and Others vs South African Rugby Football Union & Others (CCT16/98) 2000(1) SA1*.
19. The Petitioner stated that since the Respondents actions were unmerited and a breach of *the Constitution* tenets as per the 2010 Constitution, and having their rights violated, the students are entitled to damages and/or compensation together with the costs of this suit. In support of this, they cited the case of *Bank of Baroda (Kenya) Limited vs Timwood Products Ltd, Civil Appeal No. 132 of 2001 [2008] eKLR* and *Dak v Eldoret College of Professional Studies and another (Constitutional Petition 13 of 2020) [2022] KEHC 16750 (KLR) (23 December 2022)*.

Respondents Submissions

20. The Respondents filed written submissions dated 12th March 2025 where they submitted that the Petitioner has not demonstrated with reasonable precision, how his fundamental rights and freedoms have been violated or are threatened contrary to the mentioned provisions of *the Constitution*. According to the Respondents the Petitioner cannot be shielded by the protection accorded under Article 159(2) (d) of *the Constitution* on procedural technicalities and the generality of the pleadings bars the Respondents from effectively defending themselves against the allegations and ultimately, this



Honourable Court from making a pronouncement on the same. Reliance was placed on the case of JMO OO v Board of Governors of St. M's School, Nairobi [2015] eKLR.

21. They further submitted that the 1st Respondent was within its mandate as per its parent statute when it decided to close the institution temporarily and furthermore, legitimate expectation cannot override the law. They cited the case of Republic v Nairobi City County & another exparte Wainaina Kigathi Mungai [2014] KEHC 4095 (KLR) . In addition, they submitted that the legitimate expectation if any was negated by the mass indiscipline by the students and was defeated by the illegality thus the inability to sit for exams was warranted.
22. The Respondents contend that the unsustainability or unreasonableness cannot be a ground to determine the Respondents' administrative act as unfair since the closure period was temporary for a period not exceeding two weeks. They further contended that the legality of the closure of the institution has been proven in totality by the Respondents but the Petitioner has not demonstrated to the court the unreasonableness or any of the other grounds laid out under Article 47(1) of *the Constitution* in line with principle of specificity mentioned in the Anarita Karimi Njeru case.
23. The Respondents argued that Regulation 36(1)(b) of the Basic Education Regulations allows for a determination of the condition under which all or any of the students are to be re-admitted to the same or any other institution thus the requirement of a guardian/ parent for the readmission exercise was in compliance with the law under Regulation 39 and was in no way discriminatory. They relied on the case of Mwajomba v Mambogani Limited (Cause E430 & 448 of 2020 (Consolidated) [2024] KEELRC 722 (KLR) (14 March 2024) (Judgment). They further argued that the allegations that the Respondent illegally accessed students' phones are unsubstantiated since the Petitioner has not produced any evidence to show that the 1st Respondent confiscated the students' phones illegally.

1st Interested Party's Submissions

24. The 1st Interested Party filed submissions dated 6th March 2025 where they submitted that the Petitioner does not accuse the 1st Interested Party of any wrong doing and being a guardian not a student, the Petitioner failed to disclose any allegations or transgressions on the part of the 1st Interested Party.
25. They also submitted that the order of mandamus has been overtaken by events as the examination commenced on 15th July 2024 and ended on 2nd August 2024. Secondly, the Petitioner failed to inform the court whether the said candidates of the 1st Respondent sat for the said examination and lastly there is no specific allegation made against the 1st Interested Party since the 1st Interested Party has not made any decision tainted with unconstitutionality against the petitioner or any student of the 1st Respondent. Hence, the order of mandamus is not effective remedy in the circumstances. They relied on the case of Nyambari Traders and Welfare Association v County Government of Kiambu & 2 others [2016] eKLR.

Analysis and Determination

26. Having carefully considered the Petition, the responses, the affidavits and submissions, the following key issue arise for determination: -
 - i. Whether the actions of the Respondents have violated the Petitioner's rights;
27. The evidence before me indicates that disciplinary matters at the Polytechnic are vested on the Respondents by statute. Article 43(1) (f) of *the Constitution* states that every person has the right to



education. However, it is prudent to note that the right to education is limited under Article 24 of *the Constitution*.

28. Section 53 of the *Basic Education Act* 2013 grants the Cabinet Secretary powers by way of regulation to entrust the governance or management of any aspect of basic education and training to any agency, body, organ or institution as may be appropriate for the purposes of the Act. Section 55 provides for the Board of Management whose functions are then outlined under Section 59 of the *Basic Education Act*.

29. In exercise of the powers conferred by Section 95 of the *Basic Education Act*, the Cabinet Secretary for Education, Science and Technology established the Basic Education Regulations, 2015. Regulation 33 of the Basic Education Regulations state as follows:

- “ 33. Learners shall be deemed to have participated in mass indiscipline in the institution if they jointly take part in –
- a. Unlawful demonstration;
 - b. boycott of classes or meals;
 - c. the destruction of school property; or
 - d. Invasion of other institutions, shopping centres or homesteads.

30. Regulation 34(1), 35 and 38 further states as follows:

- “ 34. If the head of the institution notices any of the activities described in regulation (1) 33 among the students, which in his or her opinion may result in the disruption of general activities in the institution, he or she shall close the institution and notify the County director of Education accordingly within twenty four hours after such closure.

...

35. In cases of mass indiscipline, the Board of Management of an institution may (1) declare the institution closed and students held back from attending school for a period not exceeding two weeks.

- (2) The Board of Management shall submit a report to the County Education Board within two days after the closure of an institution under paragraph (1).

...

38. If the head of the institution is of the opinion that –

- (a) the acts of indiscipline have persisted in spite of the warnings or corrective measures taken under these regulations; and
- (b) if the act of indiscipline is likely to threaten the safety of the other learners in the institution, the head of the institution shall issue the learner, with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specifying the date the learner, accompanied by the parent or guardian is required to appear before the Board of Management of the institution¹.



31. There is no dispute that the Respondents in the instant petition were performing a quasi-judicial function. The question then that the court is called upon to determine is whether the petitioner was afforded administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair.

32. In addressing my mind to the issues raised in this Petition, I must state that the duty of the Court in this case is to make inquiries confined to checking the Respondents' decision for any illegalities, unreasonableness or procedural improprieties that is non-compliant with the rules of natural justice. This view was reiterated by the Court of Appeal in Civil Appeal No. 180 of 2013 – Isaack Osman Sheikh vs IEBC & Others where the court expressed itself as follows:

“A judicial review of administrative, judicial and quasi-judicial action and decisions of inferior bodies and tribunals by the High Court in exercise of its supervisory jurisdiction flowing from Article 165(6) of *the Constitution* is not the nature of an appeal. It concerns itself with process and is not a merit review of the decision of those other bodies. And it does not confer on the High Court a power to arrogate to itself the decision-making power reserved elsewhere.”

33. The Petitioner has alleged violation of their rights guaranteed under a number of Articles of *the Constitution*. The alleged violations relate to the memorandum circulated by the Respondents dated 2nd July 2024, and the alleged discrimination of students who did not appoint a registered guardian and those students whose guardians were unable to attend readmission due to one reason or the other.

34. It is important to set out the contents of the letter that provoked these proceedings. The letter dated 2nd July, 2024 which provoked these proceedings was couched in the following terms: -

“...Following the students' unrest and closure of the Polytechnic on Monday 24th June 2024, trainees are hereby advised to resume as per the instructions and schedule (attached).

Every student shall;

d. Report accompanied by the Registered Guardian between 8:00-3:00 p.m.

e. Clear outstanding fees as at Term 2 2024.

f. Pay Kshs. 200 for damages and present the receipt

All students are required to download the student guide from the website, read, understand and sign the declaration form witnessed by the guardian and present it during the readmission exercise...”

35. This letter was purportedly issued pursuant to Regulation 38 of the Basic Education Regulations, 2015. The provisions in the Regulation 38 of the Basic Education Regulations, 2015 outlined above have been subject to judicial interpretation in Republic vs Board of Management St. Joseph's School Rapogi [2019] eKLR where the court expressed itself as follows:

“24. A letter issued pursuant to Regulation 38 must contain the following details: -

i. Be addressed to a Parent or Guardian;

ii. State the nature of the act of indiscipline;



- iii. Specify the date the student, accompanied by the Parent or Guardian, is required to appear before the Board for a disciplinary hearing.”

36. I am aware that the right to education does not denote the right to undergo a course of education in a particular institution on one’s terms. It is my view that an educational institution has the right to set certain rules and regulations, and those who wish to study in that institution must comply with such rules. One enters an educational institution voluntarily, well aware of its rules and regulations, and in doing so commits himself or herself to abide by the rules. Unless such rules are demonstrated to be unreasonable and unconstitutional, to hold otherwise would be to invite chaos in educational institutions. I can therefore find no violation of the right to education in respect of the Petitioner.
37. It appears that the intention behind the regulations which were prepared pursuant to statute, is to promote a peaceful and conducive learning environment for students at the Respondents’ Institution; and that students wishing to engage in demonstrations within the institution or similar activities do so within authority given. Looking at the words used in the Regulations in their ordinary meaning, and considering what appears to be the intention behind their promulgation in the context of an academic institution, it is difficult to see grounds for the Petitioner’s dissatisfaction with them.
38. In *Pastoli vs Kabale District Local Government Council and Others* [2008] 2 EA 300, the Court while citing *Council of Civil Unions vs Minister for the Civil Service* [1985] AC 2 and *An Application by Bukoba Gymkhana Club* [1963] EA 478 at 479 held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality...irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”
39. As discussed above, I have noted that the Respondents in adherence to Regulation 38 of the Basic Education Regulations, 2015 followed due procedure outline in the same to suspend the students from the institution. They procedurally issued a memo requiring them during readmission to attend the disciplinary meeting together with their guardians or parents and also issued dates that particular students were required for readmission. The reasons given by the petitioner that there are students who do not have registered guardians is untenable as the Respondents followed due process as required by statute. The Respondent cannot then approach this court to make changes on requirements provided by statute.
40. I am therefore unable to find anything unconstitutional in the decision by the Respondents. The Respondents were granted the mandate, under the establishing Act, to prepare, require compliance and discipline in accordance to the Regulations aimed at ensuring a conducive learning environment.



41. In light of the foregoing, I am not persuaded that there was any violation of the Petitioner's rights. In my view, the Respondents' actions subjected the process of readmission after mass suspension through the required compliance steps set-out by Statute. I therefore conclude by finding that the process leading up to the readmission of students from the 1st Respondent's institution to followed all lawful processes in accordance to Regulation 38 of the Basic Education Regulations, 2015 and cannot be invalidated as claimed. It is my finding that the decisions or actions by or of the Respondents were not tainted with illegality, irrationality, or procedural impropriety; and that they followed the requirements as provided by statute.
42. From my findings above, my final orders are that:
- a. The Petition is hereby dismissed
 - b. In the interests of justice, each party shall bear its own cost
43. Orders accordingly. File closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF AUGUST, 2025.

.....

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner – Mr Omoro

Counsel for the Respondents – No appearance

Counsel for the 1st Interested Party- Mr Lesikito h/b Ms Gisem

Counsel for the 2nd Interested Party- No appearance

Court Assistant – Ms Lwambia

