Maina v Chief Executive Officer - Kenyatta National Hospital & another (Judicial Review Application E052 of 2025) [2025] KEHC 11997 (KLR) (Judicial Review) (8 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11997 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E052 OF 2025

RE ABURILI, J

AUGUST 8, 2025

BETWEEN

BEATRICE NJERI MAINA .... APPLICANT

AND

THE CHIEF EXECUTIVE OFFICER - KENYATTA NATIONAL HOSPITAL .... 1ST RESPONDENT

KENYATTA NATIONAL HOSPITAL .... 2ND RESPONDENT

JUDGMENT

1. The application before this court is the Applicant's originating motion dated 8th May 2025. The application is brought under Section 4, 7, 9 and 11 of the *Fair Administrative Action Act*, Articles 27, 47 and 50 of *the Constitution*, Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, 2010.

2. The application seeks an order of certiorari to remove and quash the 1st Respondent's declarations/ orders against the Applicant as per the suspension letter dated 17th April, 2025. It also seeks an order of mandamus against the Respondents to vacate and lift the suspension letter dated 17th April, 2025 and for them to provide a copy of their disciplinary manual/policy or its equivalent, detailing the rules and regulations pertaining to Registrars carrying out clinical rotations at KNH, the procedures undertaken in the event of breach of said rules and regulations and the timelines governing the same.

3. It also seeks an order or prohibition, directed against the Respondents prohibiting them from proceeding with the review by the Medical Advisory Committee (MAC), proceedings by the medical board, and any of the next steps in the 'comprehensive process' communicated by the Respondent via the letter dated 17th April, 2025.

4. The application is supported by the affidavit of Beatrice Njeri Maina sworn on 8th May, 2025.

5. The Applicant's case is that she was duly enrolled in the Master of Medicine (Mmed) in ENT Surgery program in 2018 at the University of Nairobi, this being a five-year program in which the various subjects in the curriculum are taught by way of among other modalities, clinical rotations at the 2nd Respondent's facility.

6. That as the University of Nairobi does not have its own teaching hospital, it has an agreement with the 2nd Respondent and so it's Registrars (postgraduate medical students) carry out their clinical rotations at the Hospital. That the terms Mmed ENT Surgery program, also known as the MMed Otorhinolaryngology, Head and Neck Surgery program (Mmed ORL-HNS), are used interchangeably in the various letters shared.

7. The Applicant states that she is currently in her 3rd year of the said program and that students of the MMed ENT Surgery program are referred to as Registrars or Senior House Officers. It is the applicant's case that she pursued her studies diligently until July 2023 when the Department of Surgery at the University of Nairobi suspended her from her clinical rotations without giving any reasons for this and without procedural fairness. That she challenged and appealed against the suspension as according to her it was unprocedural, unfair and contravened the provisions of the disciplinary procedure stipulated by the UoN Student Code of Conduct (Revised) 2021, specifically, Paragraphs 32 to 37 of the UoN Student Code of Conduct (Revised) 2021.

8. According to the applicant, the code provides that the disciplinary procedure at the University is delegated by the Senate to the Senate Disciplinary Committees, not to Departments. It is her case that the suspension also contravened Paragraph 32.1.9 of the same document that nobody but the Vice-Chancellor or his nominee can issue a suspension prior to a disciplinary hearing.

9. That by way of Paragraph 2.9.3 and 2.9.4 of the UoN document "Guidelines on Academic Progression" the University has communicated clearly that all actions taken in regard to students that are likely to affect their academic progression are to be availed to the faculty level (Dean/Associate Dean) and to the Academic Registrar.

10. That the Department of Surgery having not done so initially, decided to finally make the administrators at the Faculty level (Associate Dean Postgraduate Students and Research) aware of their arbitrary and unprocedural actions 2 months into her arbitrary suspension . The Department of Surgery is said to have responded to the Applicant's appeal vide a letter dated 25th August, 2023 with a copy to the Associate Dean.

11. According to the Applicant, the letter was drafted to justify their unprocedural actions on her to the Administrator. That a suspension pending a comprehensive process, that is psychosocial evaluation and fitness to practice evaluation at the Kenya Medical Practitioners and Dentists Council (KMPDC) was prescribed, in a clear departure from the Department's earlier decision to simply seek the advice of the Faculty of Health Sciences.

12. It is the Applicant's case that upon complaining about the atrociously unfair actions of the Department of Surgery to the Vice Chancellor, University of Nairobi, the suspension was lifted 3 weeks later by way of a letter dated 8th February, 2024.

13. That on 12th February, 2024, she applied for temporary withdrawal from the academic programme as her request for extension of study leave had been declined by her employer and her request was granted vide a letter dated 1st March, 2024. It is her case that she was readmitted a year later via the Deputy Vice Chancellor's letter dated 3rd February, 2025.

14. The Applicant deposes that a letter dated 27th March 2025 from the Vice Chancellor confirms that the readmission letter remains valid. She also states that despite her suspension from clinical rotations having been lifted over 1 year earlier, she received an email dated 12th March, 2025 from the Chairman, Department of Surgery in which he communicated that her previous suspension had not been sufficient of a penalty and that further steps would be taken, specifically in conjunction with the 2nd Respondent.

15. The Applicant's case is that the 1st Respondent issued her with a suspension letter dated 17th April 2025 which forms the basis of this application before this Court. Her case is that the similarities between the 1st Respondent's suspension letter and the letter dated 25th August 2023 from the Department of Surgery's letter are undeniable, for example that the allegations made in the Department of Surgery's are re-stated in the CEO's letter, with virtual copy-pasting of the allegation regarding multiple meetings with her lecturers having yielded no change.

16. She further states that the decision to suspend her pending a "process", communicated via the Department of Surgery's letter of 25th August 2023 is also reiterated in the 1st Respondent's letter.

17. The Applicant states that her letter of 14th March 2025 to the Vice Chancellor, containing her complaint that the Department of Surgery had failed to show regard for the post-readmission procedure communicated by the University via parts e) to i) of Paragraph 3.6.2 of the Students Information Booklet on the Procedures of Academic Process, may have also likely contributed in the triggering of the forwarding of the baseless allegations that were the basis for the UoN Department of Surgery's unprocedural suspension, to the 2nd Respondent.

18. The Applicant states that via letters dated 9th January 2025 and 20th February 2025 from the KNH Senior Director, Clinical Services to all postgraduate medical students (registrars/SHOs), it was communicated that in order not to be barred from carrying out clinical rotations at the Hospital, registrars were required to submit a practising license and professional indemnity certificate.

19. That she had duly complied, and only required to be granted, by the University of Nairobi, readmission following temporary withdrawal from the Mmed ENT Surgery program, in order to go on with her clinical rotations at the KNH. It is her case that instead, she found herself being required to be "cleared" through a "comprehensive process", even though her readmission following temporary withdrawal had already been effected.

20. She states that administrative action taken against her was highly unreasonable and that as a Year 3 Mmed ENT Surgery student, she has no qualification that would allow her manage ENT patients that is a Specialist Recognition, and that she is only a student, whose courses are taught by way of clinical rotations, among other teaching modalities.

21. That, indeed, the 9th January and 20th February 2025 letters from the Senior Director of Clinical Services, KNH made it clear that there is a clear distinction between registrars/Senior House Officers, and specialists. Further, that it is only the ENT specialists' (lecturers) presence or absence, situational awareness and ability to escalate the care of the ENT patients they are managing and teaching the students how to do that should make the difference between patient safety and lack thereof. Also, that it is the competence and availability of the ENT specialists who manage ENT patients seeking care at KNH, upon which quality of care at the Facility should be pegged, not that of their students.

22. According to the applicant, the process through which one can become a specialist is communicated by the Kenya Medical Practitioners and Dentists Council and that without a specialist qualification, she has no qualification to manage the ENT patients seeking care at the 2nd Respondent's facility but

can only attend lessons taught by those who do, and learn from them the various skills and knowledge to be acquired in the various courses the MMed ENT Surgery program is comprised of, including how to provide clinical care to ENT patients and when to escalate this care to other ENT specialists.

23. The applicant further states that her failure to acquire these skills and knowledge, should only endanger her marks in the clinical exams and other assessments of the Mmed ENT Surgery program, not the safety of KNH patients.

24. It is her case that the nexus between the arbitrary suspension by the Respondent, the subsequent medical board and "comprehensive process" is premised on baseless allegations and fabrications which have not undergone the scrutiny of a procedural disciplinary process. That she has not been in the KNH clinical rotations since July 2023 when she was initially suspended from clinical rotations and the allegations made against her, therefore, would date back to at the most recent, July 2023, close to 2 years ago. She argues that no evidence can be produced, by way of a signed attendance record, that she has been in the KNH clinical rotations since July 2023.

25. That following the lifting of her suspension on 8th February, 2024, she went into temporary withdrawal and she has been unable to resume her studies due to circumstances beyond her control which include not yet having successfully appealed her employer's decision to deny her extension of study leave.

26. It is her case that she had also commenced the Mmed ENT Surgery program back in September 2018 and the program syllabus is clear that clinical rotations are to begin in Part I of the program (the first 2 years) and this being the case, and with no specifics given to her as to when or where the supposed events are alleged to have occurred, she would have little real chance to prove her innocence of the allegations, in the upcoming medical board, as she has attended numerous clinical teaching activities in the wards, clinics, theatres and Casualties of KNH and been taught around numerous patients in her time in the program

27. The Respondents, it is argued, are also yet to respond to her demand letter dated 29th April, 2025 or to share with her the materials, evidence and information that is to be considered by the alleged medical board that is currently under consideration by the Medical Advisory Committee mentioned in its letter. She states that without information such as this, or regarding the particular dates, times and places pertaining to the allegations raised, she is unable to identify what witnesses she would need to call to testify on her behalf, in order to clear her name.

28. It is her case that she has been denied adequate time to prepare a proper defence prior to a fair hearing to determine whether the allegations made against her are warranting of any administrative actions at all by the medical board, or whether she is deserving of any of the "next steps" in the "comprehensive process" mentioned in their letter.

29. That the Respondent has also failed to assure her of an impartial tribunal, giving her no information on who exactly accused her and no reassurance that they will not be sitting in any committee that will determine the next administrative actions to be taken against her, despite her requests for the same.

30. According to the applicant, unless there is a vacation of the suspension against her, along with the medical board and subsequent steps in the "comprehensive process" mentioned in the Respondents' letter of 17th April 2025, the ends of justice will be desecrated and that she will be exposed to unreasonable, illegitimate and unfair proceedings.

31. She also states that if the decision to suspend her is not vacated, she faces the jeopardy of having adverse actions taken against her to bar her permanently from attending clinical rotations at KNH, and thus left with no way to learn critical skills that a student surgeon can learn nowhere else, and of never meeting the Department of Surgery's formative assessment (CAT) mark criteria for sitting exams.

32. According to the Applicant, the Chairman of the Department of Surgery, in his email of 12th March 2025 communicates that the reason she is yet to sit the Year 3 exam is that she is yet to attend clinical rotations and improve on the marks quoted in the 7th July 2025 suspension letter.

33. The applicant also states that having actions taken against her to bar her from her clinical rotations will leave her unable to sit any exams and lead her to being discontinued from the Mmed ENT Surgery program, on account of expiry of the stipulated course duration, which is 10 years.

34. She further states that she obtained by way of sponsorship, a sum of about Kshs. 14,000,000 to pursue the Mmed ENT Surgery program, a sum that must be repaid in cash or in kind. Therefore, that if the medical board and subsequent steps are allowed to proceed, she stands in jeopardy of having accrued a huge debt for nothing. That if the next steps alluded to in the 1st Respondent's letter are allowed to proceed, her source of income and career face jeopardy.

35. That, she will also be subjected to adverse administrative actions against her that put her at risk of irreparable financial damage as having failed to successfully appeal her recall to her workstation she is compelled to resign from her employment in order to go on with her studies.

36. In her further affidavit sworn on 10th June 2025, the Applicant avers that UoN has stipulated via Paragraphs 32 to 34 of the Students Code of Conduct 2021 that students who have had allegations made against them are to be given a hearing at the Faculty or Halls Disciplinary Committees within approximately 1 to 1.5 months of the date the alleged events occurred, having been given a Notice of Violation (specifics pertaining to the allegations), Inquiry Report and materials, evidence and information pertaining to the allegations, and 14 days to prepare their defence. She states that none of the above timelines stipulated by the University were adhered to, and that she had a penalty imposed upon her close to 2 years after she was last in the KNH clinical rotations.

37. It is also her argument that the UoN at Paragraph 15.3 of the Students Code of Conduct, 2021 states that not all disciplinary offences will attract the commencement of disciplinary proceedings and thus, the taking of disciplinary actions upon it's students, but rather only those stated within Part V of the document. According to her, the allegations that were the basis for the Respondents' arbitrary suspension that is "missing duties/missing teaching activities", "refusal to see KNH patients", "inability to escalate clinical care", "lack of situational awareness" and "failure to improve when urged to by the supervisors/lecturers" are nowhere mentioned under Part V of the Students Code of Conduct, 2021.

38. She reiterated that it is the Senate Disciplinary Committee that has the delegated mandate to evaluate and address concerns relating to trainee conduct. Further, that no evidence, by way of her signature acknowledging receipt of a list of allegations or a letter summoning her to appear before any disciplinary committee, or on any attendance record pertaining to a disciplinary hearing, or acknowledging receipt of a verdict letter, can be adduced to attest to her being summoned to any disciplinary hearing as from 2018 to 2024, much less her being found guilty of anything.

39. It is her case that no evidence in the way of her signature acknowledging receipt of a letter communicating the same, can be adduced of her suspension from clinical training pending psychiatric evaluation prior to 17th April 2025. Also, that the letter of 17th April 2025 from the KNH CEO indicates that she was suspended pending a "comprehensive process" and it is only upon her looking through the annexures on the Respondents' replying affidavit that she became aware of psychiatric evaluation being part of the "comprehensive process."

40. The Applicant states that at no point did the Appeals Disciplinary Committee issue her with a Notice of Violation or Inquiry Report, and no evidence, in the way of her signature acknowledging receipt of such documents, can be adduced to attest to the fact that she was given such documents. That, by 30th September 2024 when the Appeals Disciplinary Committee meeting was held, she had no idea that the Department of Surgery had brought up once more, the allegations that were the basis for the arbitrary and unprocedural suspension they had put her on for the 7 months preceding her temporary withdrawal.

41. According to the Applicant, she was never given ample opportunity to respond to the allegations, as can be seen in the letter of 17th April 2025 letter from the Respondent, the first forum that had been planned when she was declared guilty of all allegations and one that would compromise patient safety, is the Medical Board. This, according to her, being some mental health assessment, where she would have no opportunity to respond to the allegations.

42. That in the letter of 15th April 2025 MAC meeting, it can be seen that it was decided that Dr A.B. "must" provide his defence but of the Applicant, which according to her, simply meant a mental health assessment to see if the indefinite suspension prescribed would ever be lifted. She states that her demand letter to the KNH CEO, demanding among other things, to be furnished with the specifics pertaining to the allegations raised in the letter of 17th April but no response ever came.

43. The Applicant also filed written submissions dated 10th June 2025. She submits reiterating her pleadings and depositions that her suspension from clinical rotations was unlawful, procedurally unfair and in violation of her constitutional rights. She contends that she was never given prior notice, a chance to be heard, or reasons for the decision, contrary to the requirements of Article 47 of *the Constitution* and Section 4(3) of the *Fair Administrative Action Act*.

44. She relies on the case of Republic v Kenyatta University ex parte Njoroge Humphrey Mbuthi [2015] eKLR where the court is said to have held that suspension of a student without affording an opportunity to be heard violates the principles of fair administrative action and is subject to quashing.Reliance is also placed on the case of Geothermal Development Company Ltd v AG 7 3 Others [2013] eKLR where according to the Applicant, the court held that administrative action without affording the affected person a hearing is liable to quashing.

45. The Applicant also relies on Republic v Kenya School of Law ex parte Semo and Another [2019] KEHC 11665 KLR, where the court is said to have emphasised that students are entitled to procedural fairness, legitimate expectation and protection against arbitrary administrative decisions that affect their academic progression.

46. She further maintains that Kenyatta National Hospital had no legal authority to suspend her, as such powers lie exclusively with the University. The Applicant also invokes the principle of legitimate expectation, pointing out that following her earlier reinstatement by the University, she had a legitimate expectation that she would be allowed to proceed with her rotations without further interference.

47. On this point, she relies on Communications Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others [2014] eKLR, where the court is said to have recognized legitimate expectation where a public body's representation leads someone to rely on a particular course of conduct.

48. She accuses the Respondents of acting with improper motive, bias and procedural impropriety, including failure to disclose the allegations or evidence against her, denying her the right to defend herself and attempting to retrospectively justify the process after the fact.

49. The Applicant emphasizes that such action by the respondents was arbitrary and irrational, drawing support from Republic v. Public Procurement Administrative Review Board & Another Ex Parte Gibb Africa Ltd [2016] eKLR, where according to her, the court observed that judicial review remedies are aimed as a safeguard against unlawful administrative actions.

50. She also submits that being denied access to clinical rotations infringed on her constitutional right to education under Article 43(1)(f), and that the Respondents' actions should be quashed for lack of legality, fairness and justification.

The Response

51. In response to the application, the Respondents filed a Replying Affidavit sworn by Dr. John Kinuthia on 28th May 2025.

52. The Respondents' case is that pursuant to a Memorandum of Understanding (MoU) between the University, the Hospital and the Ministry of Health, the Hospital hosts postgraduate medical students, such as the Applicant, for purposes of clinical rotations and practical exposure.

53. The Respondent states that despite the MoU, the Hospital retains the responsibility of upholding clinical standards, patient safety and managing all aspects of trainee conduct that directly impacts patient care within the Hospital's premises.

54. According to the Respondents, the applicant enrolled in a postgraduate training program in Otorhinolaryngology and that she is a fully registered and licensed medical officer by the Kenya Medical Practitioners and Dentists Council (KMPDC).

55. The Respondents contend that the Applicant's participation in clinical rotations was predicated on her status as a licensed medical officer. Further, that the Hospital's requirement for the Applicant to maintain a professional indemnity cover during her postgraduate clinical rotations is a clear indication that she is regarded as a practicing clinician and not merely a student.

56. The Respondents argue that the Applicant's participation in clinical rotations imposes an obligation to uphold professional and ethical standards at all times, even within a supervised training setting and that as such, she therefore cannot seek to abdicate that responsibility by invoking her 'student' status.

57. The respondents aver that the Applicant's conduct during her training is said to have been persistently marked by professional misconduct, negligence and indiscipline, posing serious threats to patient welfare. Further, that she is personally aware of these issues.

58. The Respondents state that the Applicant has repeatedly absented herself from clinical duties, including rotations, theatre sessions and ward rounds and has exhibited erratic behaviour when present. That she has failed to follow clinical directives, received negative feedback from senior staff, been placed on probation after a serious surgical incident, consistently failed to report for on-call duties and remained absent throughout the academic year without justification.

59. The Respondents also oppose the application, asserting that concerns over the Applicant's fitness to practise date back to her undergraduate years, citing a 28th May 2009 memo questioning her suitability after she refused to examine a patient. It is their case that medical reports from that period diagnosed her with a mood disorder and highlighted a lack of insight into her condition, requiring urgent treatment.

60. Further, that over time, the Applicant is said to have exhibited repeated indiscipline, including neglect of duty and insubordination, resulting in a warning letter issued by the University on 1st June 2020. That, despite this, her conduct did not improve, prompting the Hospital to escalate the matter to the University and recommend a psychological evaluation.

61. The Respondents contend that the Applicant failed to meet core requirements of her Master of Medicine training, and her employer, the Nyeri County Government, expressed concern over her failure to complete the program within the granted study leave. A Special Committee is said to have been formed to assess her suitability which Committee upheld her suspension and recommended psychosocial evaluation.

62. It is the Respondents' case that the applicant's appeal was dismissed by a Consultative Ad hoc Committee and the matter was referred to the KMPDC, which sought further details. The University is said to have responded to KMPDC with a comprehensive report outlining the Applicant's history and performance.

63. According to the Respondents, citing continued shortcomings, the Hospital formally suspended the Applicant on 17th April 2025 and summoned her before the Medical Advisory Committee (MAC), a joint body responsible for clinical training oversight.

64. The Applicant, it is stated, was given sufficient notice and reminders but that she failed to appear, thereby forfeiting the opportunity to be heard. The Respondents maintain that all actions taken were procedurally fair, lawful and necessary to safeguard patients and that the Applicant has not exhausted internal grievance mechanisms, rendering her judicial review application premature. They urge the Court to refrain from interfering with ongoing administrative processes and argue that judicial review, where warranted, must follow exhaustion of internal remedies.

65. The Respondents also filed a supplementary affidavit sworn on 12th June 2025 by Dr. John Kinuthia.

66. The 2nd Respondent clarifies that it operates independently of the University of Nairobi and is not bound by its internal administrative instruments. Further, that its relationship with the University is governed by a Memorandum of Understanding (MoU) which grants the 2nd Respondent authority over clinical standards, patient safety and trainee conduct within its facility.

67. That under the MoU, the Hospital has the mandate to enforce disciplinary measures and ensure compliance with its Fitness to Practice guidelines. These guidelines are said to require all trainees, including the Applicant, to maintain professional competence and ethics and to submit to assessments or investigations where necessary.

68. The Respondents also emphasize that the Applicant has not been suspended from her studies, but only barred from engaging in clinical activities at the Hospital due to ongoing professional misconduct. They stress that clinical privileges are contingent on compliance with hospital standards and the KMPDC license, which the Applicant holds as a medical officer. Also, that the Hospital, while serving as a training ground, prioritizes patient safety and cannot treat patients as mere learning tools.

69. The Respondents contend that allowing the Applicant to continue in clinical practice would expose patients to risk and the institution to potential liability, given her serious breaches including refusal to perform urgent clinical tasks, chronic absenteeism, inaccessibility during duties and reported incidents of patient harm.

70. The Respondents in their written submissions dated 10th June 2025 submit that the Applicant's application is premature for failure to exhaust internal remedies, a mandatory requirement under

administrative law. They cite the case of Kenya National Examinations Council vs. Republic & Another [2017] eKLR, where the Court is said to have affirmed that internal remedies must be pursued unless exceptional circumstances are shown. They also rely on Kenya Union of Post-Primary Education Teachers (KUPPET) vs. Teachers Service Commission [2015] eKLR and Kenya Ports Authority v Mwangale & Others [2013] eKLR for the same principle.

71. They assert that the 2nd Respondent acted within its powers under Clause B(3) and B(7)(v) of the MoU and Clause 5 of the Fitness to Practice Guidelines in suspending the Applicant. They emphasize that the Medical Advisory Committee (MAC) has jurisdiction to assess postgraduate students' competence, behavior and health under Clause 6.5 of the Guidelines.

72. On fair administrative action, the Respondents rely on Article 47 of *the Constitution* and Section 4(3) of the *Fair Administrative Action Act*, which requires prior notice, reasons, an opportunity to be heard and access to a review mechanism. They also invoke Article 50 of *the Constitution* which is said to reinforce the right to a fair hearing, Article 10 on national values and Article 73 on leadership and integrity.

73. To justify proceeding in the Applicant's absence after alleged proper notice, they rely on the Commission for the Implementation of *the Constitution* v Minister for Education & 2 others [2013] eKLR where court is said to have underscored the importance of procedural fairness, including proper notification, but also acknowledged that decisions can be valid even if a party fails to attend after proper notice.

74. They also rely on the cases of Kenya Power & Lighting Co Ltd v Attorney General & 2 others [2012] eKLR and Kenya Revenue Authority v Asset Management & Investment Ltd & 3 others [2018] eKLR for the same principle.

75. On reasonableness, the Respondents submit that their action met the proportionality test under Article 24 of *the Constitution*, balancing the Applicant's right to clinical training against the public interest in ensuring patient safety. They contend that the decision was rational, justified and within their powers under institutional regulations.

Analysis and Determination

76. I have considered the application, the response thereto, the parties' respective submissions, the applicable constitutional and statutory provisions and the cited judicial pronouncements. The main issue for determination is whether the Applicant's suspension from clinical services at the 2nd Respondent's Hospital facility was procedurally fair and lawful within the meaning of Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015.

77. The parameters for judicial review remedy were set out by the Court of Appeal in Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001 as follows:

> "Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision's touching on violation of fundamental rights. These are issues within this court's jurisdiction, hence, on this ground, this case passes the exception requirement."

78. In Isaac Gathungu Wanjohi & Another v Director of City Planning of Nairobi & Another [2014] eKLR the court stated that:

> "In Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR it was held that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power."

79. Article 47(1) of *the Constitution* guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Section 4(3) of the *Fair Administrative Action Act* reinforces this by requiring that where an administrative action is likely to adversely affect a person's rights or fundamental freedoms, that person must be given prior and adequate notice, a reasonable opportunity to be heard, and written reasons for the decision.

80. The Applicant is a postgraduate student pursuing the MMed ENT Surgery program, and by letter dated 17th April 2025, she was suspended from participating in clinical activities at the 2nd Respondent's institution Kenyatta National Hospital pending what was referred to as a "comprehensive process."

81. Although the respondents claim that they took the action after giving notice and reasons for the decision but that the applicant refused to appear and be heard, there is nothing on record to show that this decision was made with any prior notice to the Applicant. There is also no evidence of disclosure of the specific allegations and or an opportunity for the Applicant to respond to the specific allegations before the suspension took effect.

82. The Respondents have admitted that the decision to suspend the Applicant arose from a consultative meeting held on 16th March 2023. However, the minutes of this meeting have not been provided and the Court is therefore unable to confirm whether the Committee considering the Applicant's conduct was properly constituted in accordance with Clause B(6) of the Memorandum of Understanding (MoU) entered into between the University, the Ministry of Health and KNH. Even assuming for a moment that the meeting was properly constituted, there is no evidence that the Applicant was accorded a hearing prior to the suspension decision or that reasons for the suspension were furnished to her at the time of the decision.

83. The Respondents argue that under Clause 6 of the MoU, KNH has jurisdiction over postgraduate students and clinicians within its facility, particularly on matters relating to patient safety and clinical standards. The Court agrees that the 2nd Respondent has disciplinary oversight within its premises. However, jurisdiction is not synonymous with power to act arbitrarily. The fact that the 2nd Respondent had disciplinary authority does not absolve it from complying with constitutional and statutory requirements of procedural fairness.

84. Indeed, Clause B(6) of the MoU provides for the establishment of a joint Disciplinary Committee composed of senior staff from both the University and KNH, with jurisdiction over clinicians and postgraduate students. This clause envisages a structured process and any disciplinary action particularly one with adverse academic consequences ought to be processed through such a forum.

However, there is no evidence placed before this Court that the Committee was constituted or convened in relation to the Applicant's case, or that the Applicant was ever invited to participate in the Committee's alleged disciplinary proceedings against the applicant.

85. This Court notes that the Applicant was only to appear before the Medical Advisory Committee (MAC) after the suspension had already been affected. Such a sequence undermines the fairness of the process. A hearing after the penalty is imposed is not a fair hearing at all because fairness must precede the decision. In this case, the alleged "comprehensive process" appears to have been triggered retrospectively, contrary to the principles of natural justice.

86. The allegations against the Applicant's absenteeism, refusal to undertake clinical duties, poor situational awareness and failure to improve were not formally communicated to her. She was not provided with any inquiry report or supporting documentation in accordance with the University Students Code of Conduct, 2021.

87. The Applicant also contends, correctly in the Court's view, that the said allegations are not listed among the disciplinary offences under Part V of the Students' Code of Conduct, 2021-the Code, and that no documented hearing in respect of the allegations raised by the respondents has been conducted since her admission into the programme.

88. In support of her position, the Applicant cites Republic v Kenyatta University ex parte Njoroge Humphrey Mbuthi [2015] eKLR, where the Court is said to have quashed a student's suspension that had been imposed without a hearing. Similarly, in Republic v Kenya School of Law ex parte Semo & Another [2019] eKLR, the Court is said to have emphasized the importance of due process in decisions affecting academic progression.

89. I agree. This is because, in postgraduate medical education, clinical rotations at a national referral hospital are a critical component of training, evaluation and progression. When a medical student is suspended from such a rotation, it directly affects their academic trajectory, professional development and licensing prospects. As such, any disciplinary or administrative decision that interrupts this progression must be governed by due process, a fundamental legal and ethical requirement ensuring fairness, accountability and justice.

90. In the instant case, despite the now well stated depositions against the applicant by the respondents, both the hospital and the academic institution have a duty to observe the right to a fair hearing before taking any adverse action. This principle is anchored in administrative law, human rights instruments, and professional codes of ethics.

91. At a minimum, this duty includes clear communication of the allegations to the student; an opportunity for the student to respond, explain, or defend herself; a fair and impartial investigation.; and a reasoned decision based on evidence and proportionality.

92. Crucially, the student was not given an opportunity to respond to the very serious allegations particularly on matters relating to patient safety and clinical standards or be heard before the suspension was imposed.

93. It is also worth noting that suspension of the applicant without due process has significant academic and professional consequences. This may delay or derail the student's academic progression and graduation; it stigmatizes the student and may damage her professional reputation; it raises mental health and wellness concerns, especially where mood disorders are alleged without evidence of clinical assessment or support and it also exposes the hospital and university to legal liability, as courts or professional tribunals may find such action arbitrary, discriminatory or unlawful.

94. On the allegations related to mental health of the applicant, it is expected that where the training institution suspects a mental health issue such as mood disorder which is likely to affect the student's performance in relation to the patient care, due process also requires a sensitive and professional approach, including: medical or psychiatric evaluation by qualified professionals; confidentiality and respect for the student's dignity and supportive interventions rather than punitive measures. Presuming incapacity or misconduct on the basis of suspected mental illness without medical evidence or hearing is not only unfair but may be discriminatory. There is no evidence that these measures have been undertaken to accord the applicant due process.

95. This Court hastens to highlight the institutional and educational obligations of the 2nd respondent as an institution entrusted with training future doctors. Both the university and the National referral hospital have an obligation to model professionalism, compassion and justice. The values expected of future health professionals must be reflected in how institutions handle allegations and disciplinary matters affecting those health professionals. Upholding due process is not optional. It is integral to the credibility and ethical integrity of the academic and healthcare system.

96. The Respondents have also suggested that the application is premature on grounds that the Applicant failed to exhaust internal remedies. I have read Clause B(6) which provides for a Disciplinary Committee. However, the Respondents have not demonstrated that this mechanism was invoked or that it was operational and accessible to the Applicant. The mere reference to an internal dispute resolution mechanism, without evidence that it was available and applied by the respondents, does not bar the Applicant from approaching the Court.

97. The Court in the case of Mohamed Ali Baadi and others v Attorney General & 11 others [2018] eKLR observed as follows:

> "
>
> " 94. While our jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute (See The Speaker of National Assembly vs James Njenga Karume[41]), the exhaustion doctrine is only applicable where the alternative forum is accessible, affordable, timely and effective. Thus, in the case of Dawda K. Jawara vs Gambia[42] it was held that:
>
> > "A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality]...the Governments assertion of non-exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case."
>
> 95. In the case of R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Ex Parte The National Super Alliance (NASA) Kenya[43] after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the Court held:
>
> (46) What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme

involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case, the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it.

[47]. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake.

See also Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.)"

98. While the doctrine of exhaustion ordinarily requires parties to first pursue and conclude alternative dispute resolution mechanisms established by statute, it is now settled that this requirement is not absolute. As articulated in R v Independent Electoral and Boundaries Commission & Others Ex Parte NASA Kenya (supra), the doctrine only applies where the alternative remedy is available, accessible, affordable, timely and effective in addressing the grievance.

99. The Applicant's legitimate expectation especially following her earlier reinstatement by the University that she would be allowed to continue with her clinical rotational training unless and until a fair process determined otherwise has not been denied by the Respondent. This expectation was violated when she was suspended without any prior engagement or explanation. As was held by the Supreme Court in Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others [2014] eKLR, legitimate expectation arises where a public authority's conduct creates a reasonable and legitimate anticipation of a certain outcome.

100. It bears repeating that procedural fairness is not a mere formality; it is a constitutional imperative. Patient safety is undeniably important, but it cannot override due process. As was observed in Njogu v Director of Alcoholic Drinks Control & Management, Nyeri County [2025] KEHC 2161 (KLR), even well-intentioned public bodies must operate within the bounds of the law and cannot purport to exercise powers not grounded in legal authority.

101. In Judicial Service Commission vs Mbalu Mutava & Another [2015] eKLR, the Court of Appeal explained that Article 47 marks a transformative development in administrative law, embedding the right to fair administrative action into the Bill of Rights and ensuring that state organs are guided by the principles of legality, accountability and transparency.

102. Thus, constitutional entrenchment of fair administrative action serves as a control over the exercise of public power and requires compliance with established procedures when individuals are adversely affected.

103. Section 7(2) of the *Fair Administrative Action Act* sets out the grounds on which judicial review may be granted, including procedural impropriety, bias, abuse of discretion, violation of legitimate expectation, and unreasonableness. In the present case, the suspension was imposed without a hearing, without notice, and without reasons, these are undoubtedly hallmarks of procedural impropriety.

104. It is the duty of this court to determine whether the process followed by the Respondents in disciplining and finally suspending the Applicant was lawful, reasonable and procedurally fair.

What amounts to procedural impropriety was stated in the case of Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300 to be as follows:

> "Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the process of taking a decision. The unfairness may be in the non- observance of the Rules of Natural Justice or to act with procedural fairness towards one affected d 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."

105. In the case of Republic v National Land Commission & another [2016] eKLR the Court held as follows when faced with a similar issue where the Commission had not complied with Article 47 of *the Constitution*:

> "73. The respondent National Land Commission has not controverted the serious assertions and depositions by the exparte applicant that he was never given an opportunity to be heard before the titles in issue were revoked unilaterally, which in essence is a violation of the applicant's right to fair administrative action as enshrined in Article 47(1) of *the Constitution* and as stipulated in Section 4 of the *Fair Administrative Action Act* No. 4 of 2015 which provide:
>
> 1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair;
>
> 2) Every person has the right to be given written reasons for any administrative action that is s taken against him.
>
> 3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision
>
> a) Prior and adequate notice of the nature and reasons for the proposed administrative action.
>
> b) An opportunity to be heard and to make representations in the regard;
>
> c) Notice of a right to a review or internal appeal against an administrative decision, where applicable;
>
> d) A statement of reasons pursuant to section 6;
>
> e) Notice of the right to cross examine or where applicable;
>
> f) Notice of the right to cross examine or where applicable or
>
> g) Information, materials and evidence to be relied upon in making the decision or taking the administrative action.

4) The administrative shall accord the person against who administrative action is taken an opportunity to-

a. Attend proceedings, in person or in the company of an expert of his choice;

b. Be heard;

c. Cross examine persons who give adverse evidence against him; and

d. Request for an adjournment of the proceedings, where necessary to ensure a fair hearing

5) Nothing in this Section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution*, the administrator may act in accordance with that different procedure."

74. The procedure for considering review of grants or dispositions in land is clearly set out in Section 14 of the *National Land Commission Act* and in the event any deficiency in that procedure, the *Fair Administrative Action Act* is at hand to fill in that gap if any, since the impugned decision was made after the said Act came into force. That being the case, this court does not find any reason why the respondent National Land Commission could not follow those procedures to accord the exparte applicant an opportunity to be heard, and to give him reasons why, after reviewing his titles, the Commission found it necessary to have the same revoked, and in any event, by the Registrar and not by the Commission.

75. Consequently, this court finds that the applicant's right to fair administrative action as stipulated in Article 47(1) of *the Constitution* and Section 4 of the *Fair Administrative Action Act* No. 4 of 2015 was violated."

106. In Kenya National Examinations Council vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, the Court held that an order of certiorari will issue where a decision is made without jurisdiction or in breach of natural justice.

107. The observations by G.V. Odunga, J (as he then was) in Republic v Chesang (Ms) Resident Magistrate & 2 Others ex parte Paul Karanja Kamunge T/A Davisco Agencies & 2 Others [2017] eKLR are also instructive. The court observed as follows:

" 25. However, it is important to remember that Judicial Review is a special supervisory jurisdiction which is different from both (1) ordinary (adversarial) litigation between private parties and (2) an appeal (rehearing) on the merits. The question is not whether the Judge disagrees with what the public body has done, but whether there is some recognisable public law wrong that has been committed. Whereas private law proceedings involve the claimant asserting

rights, judicial review represents the claimant invoking supervisory jurisdiction of the court through proceedings brought nominally by the Republic. See R v Traffic Commissioner for North Western Traffic Area ex parte Brake [1996] COD 248.26.

26. Judicial review is a constitutional supervision of public authorities involving a challenge to the legal and procedural validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or through a failure for any reason to take into account a relevant matter, or through taking into account an irrelevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. While the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies, it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. See Reid v Secretary of State for Scotland [1999] 2 AC 512."

108. The court in the above case observed that judicial review is a special supervisory jurisdiction concerned not with the merits of a decision but with its legality, procedural fairness, and rationality. The Court's role is not to substitute its own views for that of the administrative body, but rather to determine whether the impugned decision was made within the bounds of lawful authority, in accordance with fair procedure, and free from irrationality or error of law.

109. Thus, judicial review lies where there is a demonstrable public law wrong, such as abuse of power, procedural impropriety, taking into account irrelevant considerations, or failure to consider relevant ones not merely because the decision appears wrong or unwise in substance.

110. For the foregoing reasons, this Court finds merit in the instant application dated 8th May 2025. I find and hold that the decision contained in the letter dated 17th April 2025 suspending the Applicant from clinical services at Kenyatta National Hospital was made in violation of the Applicant's right to fair administrative action under Article 47 of *the Constitution* and the *Fair Administrative Action Act*.

111. Accordingly, the following orders are hereby issued:

    1. An order of Certiorari is hereby issued removing into this Court and quashing the decision made on 17th April 2025 by the 2nd Respondent suspending the Applicant from clinical rotational services at Kenyatta National Hospital.

    2. An order of Prohibition is issued prohibiting the Respondents from taking further administrative action against the Applicant in relation to the said suspension unless and until due process, as required by law and the applicable institutional frameworks, is followed.

    3. Each party shall bear their own costs of these proceedings.

4. It is so ordered.

5. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF AUGUST 2025

R.E ABURILI

JUDGE