



The Right to Fair Administrative Action and the Principle of Legitimate Expectation in Academic Institutions: *The case of Kimani v Kenyatta University*

23rd June 2025

Introduction

In a recent decision by the constitutional court sitting in Nairobi, the court reaffirmed the centrality of fair administrative action and the doctrine of legitimate expectation in academic institutions. The case of *Nyambura Kimani v Kenyatta University & Dr. Linda Kimencu* centered on the university's refusal to release a student's Continuous Assessment Tests (CAT's) results and/or allow her to withdraw from the unit, being an elective one, altogether. These actions in turn prevented the student from graduating from an institution she had joined more than ten years ago.

The court ruled favour of the student-petitioner having established that the institution's actions were unconstitutional, irrational, and in breach of the petitioner's rights.

Petitioner's case

The petitioner enrolled at Kenyatta University in 2009 and completed her coursework in 2013. However, she was unable to graduate due to missing marks in several units. By 2022, all but one unit (UCU 104) had been resolved. Despite

sitting for a makeup CAT for this elective unit and exceeding the 49-unit graduation threshold with 51 completed units, the university declined to allow her to graduate. The petitioner argued that the university's actions were procedurally unfair and violated her constitutional rights.

Issues for Determination

- Whether the petitioner's right to fair administrative action under Article 47 of the Constitution had been violated;
- Whether the petitioner's legitimate expectation to graduate upon meeting the university's academic requirements was infringed;
- Whether she was entitled to declaratory relief, mandamus, and compensatory damages.

Court's Findings

On the Right to Fair Administrative Action

On this issue the court held that the university's conduct was procedurally and substantively unfair. It criticized the refusal to

record or release the petitioner's CAT marks, despite evidence she was physically present on the day the assessment was administered. His Lordship found that *"the 1st and 2nd Respondents violated the Petitioner's right to fair administrative action under Article 47 given the kind of treatment she has been subjected to."* The judge also emphasized that administrative actions must be lawful, reasonable, and procedurally fair, especially in institutions that wield significant power over students' future.

On the right to Legitimate Expectation

The argument by the university that despite UCU 104 being an elective unit, the petitioner was obligated to complete it was not convincing to the court. The court found this insistence unjustified, especially since the petitioner had surpassed the minimum academic requirement of 49 units. Relying on the ***Communications Commission of Kenya v Royal Media Services Ltd*** and ***KRA v Universal Corporation Ltd***, the judge found this action to be "irrational [in that] the Respondent could still use this course UCU 104 to deny her a chance to graduate...."

Remedies

Having established that the petitioner's rights were violated, the court directed that the university to include the petitioner in the next graduation list. In addition, an award of Kenya Shillings Eight Hundred and Fifty Thousand (Kshs.850,000) for the violation of her constitutional rights was made.

Implications of this Judgement

This judgment underscores that educational institutions must respect constitutional safeguards in their administrative conduct. Students have the right to be treated fairly, and universities must uphold transparency and procedural propriety by ensuring: timely and accurate processing of assessments; Compliance with internal regulations; and respect for student rights and legitimate expectations.

Conclusion

This case is a watershed moment for student rights in Kenya. For a problem so widespread across the universities and tertiary institutions it emphasizes that these institutions must operate within constitutional parameters, balancing academic autonomy with due process. The judgment sends a clear message: no institution is above the Constitution.

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20th June 2025