



Gwiyanga & 255 others v Human Resource Management Professionals Examinations Board (HRMPEB) (Petition E201 of 2024) [2025] KEHC 10560 (KLR) (Constitutional and Human Rights) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10560 (KLR)

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

PETITION E201 OF 2024

EC MWITA, J

JULY 18, 2025

BETWEEN

NICHOLAS ONDIGO GWIYANGA & 255 OTHERS PETITIONER

AND

HUMAN RESOURCE MANAGEMENT PROFESSIONALS EXAMINATIONS BOARD (HRMPEB) RESPONDENT

JUDGMENT

1. The petitioners filed a petition dated 16th April 2024 against the respondent challenging a circular dated 14th February 2024 claiming it violated the Constitution and their rights and fundamental freedoms. The petition was supported by an affidavit sworn by the 1st petitioner.
2. The petitioners stated that the circular had various guidelines on the registration of candidates for the June 2024 examination. Under paragraph 5 of the circular, the respondent purported to implement a curriculum support resource centre where all students will have access to curriculum support materials, including curriculum learning guidelines, revision kits, formative assessments and access to the E-library.
3. On 22nd February 2024, the respondent invited the petitioners to a zoom meeting in which the respondent gave directives, among them, introduction of administrative fee of Kshs. 2,500 per unit applicable to private candidates. The respondent also introduced curriculum support fee of Kshs. 1,000 per unit.
4. The petitioners asserted that the additional examination charges cause a significant financial burden and unjust hardship on students; it was done without public participation and lacked transparency



and accountability. The petitioners further asserted that no regulations have been published or shared for purposes of public participation.

5. It is the petitioners' case that the respondent acted ultra vires its mandate and arbitrarily in proposing and implementing the additional examination charges. Further, that the respondent's actions violate the provisions of articles 10, 43 and 47 of the Constitution.
6. The petitioners therefore sought the following relief:
 - a. A declaration that the petitioners' fundamental rights and freedoms as enshrined under articles 10, 43 and 47 of the Constitution of Kenya 2010 as read with the provisions of the *Fair Administrative Action Act*, 2015, have been contravened and infringed upon by the respondent by their decision to impose and implement administrative fee for private candidates of Kshs. 2,500 per unit and curriculum support fee of Kshs. 1,000 per unit.
 - b. An order of certiorari be issued to bring to this court and quash the decision of the respondent to impose and implement administrative fee for private candidates of Kshs. 2,500 per unit and curriculum support fee of Kshs. 1,000 per unit.
 - c. An order of prohibition be issued to prohibit the respondents by themselves and or their agents in any way implementing administrative fee for private candidates of Kshs. 2,500 per unit and curriculum support fee of Kshs. 1,000 per unit.
 - d. The costs of the petition.

Response.

7. The respondent opposed the petition through a replying affidavit sworn by Ms. Margaret Nguu (Ms. Nguu). It was deposed that pursuant to section 17 of the *Human Resource Examination Professional Act*, 2012, the Board is mandated to prescribe and regulate syllabus instructions for Human Resource Management Professionals' Examinations; prepare and conduct examinations for persons seating examinations under the Act and issue certificates to candidates who have satisfied d examination requirements.
8. Ms. Nguu stated that the various examination fees chargeable are informed by the Act and the various policies developed by the Board, particularly section 17 (d) of the Act and Clause 17 Part III of the Human Resource Examination Professional Board examination policy developed in 2020. Further, that Clause 17.4 lists the various examination fees chargeable while Clause (g) provides that the Board may charge any other fees as determined by the Board.
9. Ms. Nguu stated that paragraph 2.6 of the private candidates' policy at paragraph 2.6 allows the Board to charge suitable examination fees for its services to private candidates. The fee may also be reviewed from time to time in accordance with economic trends while Clause 4 allows the Board to charge such additional fees in relation to private candidates.
10. Ms. Nguu asserted that during the development of the policy, the Board undertook extensive public and stakeholders' consultation. With regard to private candidate policy, the Board held a virtual meeting on 9th June 2023. The draft policy document was shared with the Ministry of Public Service and Institute of Human Resource Management who in turn shared it with students, training institutions and other stakeholders.
11. According to Ms. Nguu, that the Board explained to students and stakeholders through virtual meetings held on 2nd February and 22nd February 2024, that the curriculum support resource centre was informed by the need to improve the quality and standardization of the curriculum and was to



include curriculum learning guide and access to e-library. Stakeholders were also informed that the Board introduced private candidate's fees to support private candidates since they are not supported by any learning institution.

12. Ms. Nguu deposed that considering the concerns raised by the petitioners, the Board held two consultative meetings with the petitioners with a view of appreciating their concerns and explained the rationale behind the fees. The first meeting was held between the petitioners and the management on 29th February 2024 and the proposals were escalated to the Board for determination. The second meeting was held between the petitioners and the board on 13th March 2024. The board resolved to retain private candidate administration fee of Kshs. 2,500 per unit and to reduce the curriculum support materials fees from Kshs. 1,200 per subject to Kshs. 1,000 per subject. The Board explained that introduction of private candidature option online examination and CBET programs necessitated investment in ICT infrastructure as well as development of curriculum development materials.
13. Ms. Nguu again asserted that that the issue of constitutionality of the fees chargeable by the Board was determined in *High Court Petition E420 of 2021*. The merit and the rate of fees chargeable is a policy issue within the exclusive mandate of the Board.

Submissions.

14. The petition was disposed of through written submissions with brief oral highlights

Petitioner's submissions.

15. Mr. Ojienda, learned counsel for the petitioners submitted highlighting their written submissions, that there was no sufficient and meaning full public participation. According to counsel, public participation must be realistic and not an illusory. The public should be accorded reasonable access to the information which they are supposed to give their views on; should be sensitized on what they are giving their views on; should be accorded reasonable time to interrogate the information and come up with views and there must be a defined manner in which the public will tender their responses on the matter. Counsel relied on the decision in *William Odhiambo Ramogi & 3 Others v The Attorney General & 3 Others; Muslims For Human Rights & 2 others (Interested Parties)* [2021] eKLR.
16. Learned counsel again relied on the decisions in *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR; *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] KLR; *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* [2018] eKLR; *Matielele Municipality and Others v President of the Republic of South Africa and Others* (2) (CCT73/05A) [2006] ZACC 12 and *Mui Coal Basin Community & 15 others v Permanent Secretary Ministry of Energy & 17 others* [2015] eKLR.
17. Citing article 47 of the *Constitution*, section 2 and 5(1) of the *Fair Administrative Actions Act*, 2015 and the decision in *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR and *Republic v Fazul Mahamed & 3 others Ex-parte Okiya Omtatab Okoiti* [2018] eKLR, counsel argue that the decision to impose and implement administrative fee for private candidates and curriculum support fee were administrative actions that required to pass through the tests of lawfulness, reasonableness and procedural fairness, which was not done.
18. Counsel reiterated that the petitioners' rights and fundamental freedoms guaranteed under articles 10, 43 (f) and 47 of the *Constitution* were violated by the respondent. He urged the court to allow the petition with costs.



Respondent's submissions.

19. Miss Wanjiru, learned counsel for the respondent relied on their written submissions.
20. In the written submissions, the 2nd respondent contended that there was sufficient public participation. Counsel cited the decisions in *Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others*, CCT 86/08 [2010] ZACC 5 to assert that there was stakeholders' engagement on all fronts as demonstrated in their documents.
21. The respondent again cited section 17 of the *Human Resource Management Professional Act* on its mandate and argued that performance of the mandate is prescribed by law thus, lawful since the constitutionality of the Act has not been challenged. The respondent maintained that the petition does not meet the threshold of a constitutional petition and relied on the decisions in *Raila Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others* [2013] eKLR; *Pearlberg v Varty (Inspector of Taxes)* [1972] 1 WLR 534 and *Anarita Karimi Njeru v Republic* [1979] eKLR.
22. The respondent argued that the petition is res judicata as the issues herein were dealt with in Petition E430 of 2021; *Namunyanyi v The Human Resource Management Professional Examination Board; Kenya National Association of Private Colleges (Interested Party)* [2022] KEHC 12694 (KLR). Counsel relied on section 7 of the *Civil Procedure Act* and the decisions *in re Estate of Riungu Nkuuri (Deceased)* [2021] eKLR; *Wamanda & 2 others v Egoli Estates Limited & another* [2024] KEELC 1416 (KLR); *Bernard Mugo Ndegwa v James Nderitu Gitbae & 2 others* [2010] eKLR; *Omondi v National Bank of Kenya Limited and Others* [2001] EA 177 and *Maumbwa & 3 others v Kisemei* [2022] KEHC 10416 (KLR) on the issue and urged the court to dismiss the petition with costs.

Determination.

23. I have considered the pleadings and arguments made on behalf of the parties. I have also considered the decisions relied on. The issues that arise for determination are whether the petition is res judicata and depending on the answer to this issue, whether the impugned actions violate the Constitution and rights and freedoms guaranteed in the Bill of Rights.

Res judicata.

24. The respondent argued that this petition is *res judicata* because the issues raised herein were ventilated in petition No. E430 of 2021; *Namunyanyi v The Human Resource Management Professional Examination Board; Kenya National Association of Private Colleges (Interested Party)* [2022] KEHC 12694 (KLR). For that reason, the respondent urged the court to dismiss the petition as the same issue cannot be relitigated through the present petition.
25. Section 7 of the *Civil Procedure Act* provides that "No court shall try any suit or issue in which the matter directly in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or issue in which such issue has been subsequently raised, and has been heard and finally determined by such court."
26. Res judicata is a bar to further litigation on issues that have been previously litigated upon between the same parties in a court of competent jurisdiction and the court has determined the issue with finality. The doctrine of res judicata protects finality in litigation over similar issues between the same parties in courts of competent jurisdiction.



27. In *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another* (Motion No 42 of 2014) [2016] eKLR, the Court of Appeal had the following to say with regard to the essence of *res judicata*:

Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights....[T]he doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.

28. The Supreme Court of Kenya also dealt with the issue of *res judicata* in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* (Petition 17 of 2015) [2021] KESC 39 (KLR), stating:

(58) [W]henver the issue of res judicata is raised, the court will look at the decision claimed to have settled the issue in question; the entire pleadings and record of that previous case and the instant case to ascertain the issues determined in the previous case, and whether these are the same issues in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title, and whether the previous case was determined by a court of competent jurisdiction.

29. The position in law is that for the plea of *res judicata* to succeed, the issues in the previous case and the new suit should be similar; parties in the two cases be the same or litigating under the same title and issues in the former suit should have been finally determined by a court of competent jurisdiction. In making that determination, the court dealing with the plea of *res judicata*, should look at the pleadings and prayers sought in the two suits; the parties named in the former suit and the subsequent suit and the decision of the court in the previous suit to ascertain whether the matter was before a court of competent jurisdiction and the issues were indeed, similar and had been determined with finality.
30. To prove the plea of *res judicata* in the present petition, the respondent had to show evidence that the issues in this petition had been determined with finality in the previous matter.
31. I have read the pleadings and the decision in Petition No. E E430 of 2021, *Namunyanyi v The Human Resource Management Professional Examination Board; Kenya National Association of Private Colleges (Interested Party)*. The petition was filed against The Human Resource Management Professional Examination Board as the respondent while Kenya National Association of Private Colleges was joined as an interested party. The petition challenged introduction of certification fee by the Human Resource Management Professionals Examinations Board the respondent in that petition as well as this petition.
32. In the previous petition, the petitioner, an individual, sought the following declarations and orders:
- A declaration that the respondent contravened Articles 10(2)c, 22(1), 23(1), 27(2), 35(1)(b) and 47 of the *Constitution* in exercise of its mandate of determining certification fees for the CHRP program;
 - An order that the CHRP(K) certification fees unilaterally and arbitrarily implemented were not subjected to public participation and consequently same is null and void
 - An order be issued that the CHRP(K) Certification fees imposed upon the currently gazetted CHRP(K) finalists by the respondent contravenes the legitimate expectation of the candidates/trainees as the same was not disclosed at the time of their enrolment to the program;



- d. The communication published in the Daily Newspaper on Monday September 27, 2021 by the respondent requiring the gazetted finalists to pay Ksh 4500 termed as 'CHRP(K) Certification fees' as a pre-condition for admissibility for a certification ceremony be declared null and void and set aside;
- e. The Court be pleased to order the respondent to refund the CHRP(K) Certification Fees paid by any of the gazetted finalists.
33. The previous petition challenged introduction of certification fee of Kshs. 4,500 on among other grounds that there was no public participation. The court considered the petition and concluded that a reading of the section 17 of the *Human Resource Management Professionals Act*, discloses that the respondent in carrying out its mandate is authorized to prescribe fees making it an operational decision hence not requiring submission to the principle of public participation; that the petitioner did not demonstrate that the decision to introduce the fee occasioned an unfair financial burden with far reaching consequences on the students, stakeholders and the general public and that the respondent did not violate the principle of public participation and did not violate Articles 10(2)c, 22(1), 23(1), 27(2), 35(1)(b) and 47 of the *Constitution*.
34. The previous decision considered introduction of fees and the petition was against the same respondent as in the present petition although the petitioners in the two petitions are different. Whereas the petitioner in the previous petition was an individual, petitioners in the current petition are several students who have challenged introduction of administrative fee of Kshs. 2,500 per unit for private candidates and curriculum support fee of Kshs. 1,000.
35. The issue of the respondent's mandate to set or introduce fee was at the core of the previous litigation and is the same issue in this petition though raised by different parties but on the same grounds. Further, the issue of public participation before introduction of the fee was an issue in the previous petition and involved consideration of section 17 of the Act as is in the present petition.
36. Taking into account the principles applicable on the doctrine of res judicata that parties in the previous and current litigation be the same or litigating under the same title; that the issues in the former suit and those in the present suit be same and that the issues in the former suit should have been finally determined by a court of competent jurisdiction, there is no doubt that those requirements are met in this petition. Although petitioners are not the same, they litigate for and under the same interest.
37. For those reasons, I agree with the respondent that the issue of whether it can set fees was determined in petition E E430 of 2021, *Namunyanyi v The Human Resource Management Professional Examination Board; Kenya National Association of Private Colleges (Interested Party)*. The court also considered the import of section 17 of the Act in that regard thus, rendering the present petition *res judicata*.
38. For my part, I have read The *Human Resource Management Professionals Act*. Section 16 establishes the Examinations Board, a corporate body capable of suing and being sued. Section 17 provides for the functions of the Examinations Board, which include—making rules with respect to examinations and prescribing fees and other charges payable with respect to such examinations. The Act confers on the Board the mandate to prescribe fees and charges payable in respect with examinations, which mandate was discharged leading to this challenge.
39. The petitioners complained over the guidelines issued on 14th April 2024 regarding registration for the examinations to be taken in June 2024. They stated that a meeting (through zoom) was held on 22nd April 2024 in which directives were given on payment of the Kshs. 2,500 per unit for private candidates and Kshs. 1000 for curriculum support. The petitioners argued that no regulations had been published or shared for public participation and therefore the respondent action was ultra vires



40. The respondent maintained that setting examination fees is informed by the Act and the various policies the Board had developed, particularly section 17 (d) of the Act and Clause 17 Part III of the Human Resource Examination Professional Board examination policy developed in 2020. Further, that Clause 17.4 contains the various examination fees chargeable while under Clause (g) the Board may charge any other fees it may determine.
41. The respondent maintained that paragraph 2.6 of the private candidates' policy allows the Board to charge suitable examination fees for its services to private candidates as provided by the examination policy. The fee may also be reviewed from time to time depending on economic trends while Clause 4 allows the Board to charge such additional fees in relation to private candidates as may be necessary.
42. The respondent asserted that during development of the policy, the Board undertook extensive public and stakeholders' consultation. With regard to private candidate policy, the Board held a virtual meeting on 9th June 2023; the draft policy document was shared with the Ministry of Public Service and the Institute of Human Resource Management who in turn shared it with students, training institutions and other stakeholders.
43. The Board explained to students and stakeholders during virtual meetings held on 2nd February and 22nd February 2024 that the curriculum support resource centre was informed by the need to improve quality and standardization of the CHRP curriculum to include curriculum learning guide and access to e-library. Stakeholders were also informed that the Board introduced the private candidate's fees to support private candidates since they are not supported by any learning institution.
44. It is the respondent's position that given the concerns raised by the petitioners, the Board held two consultative meetings with the petitioners to appreciate their concerns and explain the rationale for the fees. A meeting was held between the petitioners and the management on 29th February 2024 and the proposals were escalated to the Board for determination. Another meeting was held between the petitioners and the board on 13th March 2024 and the board resolved to retain private candidate administration fee of Kshs. 2,500 per unit and to reduce the curriculum support materials fees from Kshs. 1,200 per subject to Kshs. 1,000 per subject.
45. The petitioners did not deny the respondent's position that there is a private candidates' policy allowing the Board to charge suitable examination fees for its services to private candidates and that such fee may also be reviewed from time to time depending on the economic trends. The petitioners did not also deny that there is a Human Resource Examination Professional Board examination policy developed in 2020 or that they were not aware of the policy.
46. Having considered the facts in this petition and the material placed before the court, as well as the law and in particular, section 17(d) of the Act, the respondent has mandate to prescribe or set fees and other charges payable with respect to examinations. This being a statutory mandate, the respondent's action in prescribing fees and charges cannot be ultra vires because it is sanctioned statute.
47. There is also evidence from both the petitioners and the respondent that there were meetings over the fees between February and March 2024 a demonstration that the issue was indeed discussed even though it may not have been agreed.
48. In the circumstances, considering the law and in particular section 17 of the Act, the previous decision which held that the respondent has mandate under section 17 and this court's own evaluation of the matter, the conclusion I come to, is that the petitioners have not demonstrated that the respondent acted ultra vires its power, or violated any provisions of the Constitution, including article 47 to render the impugned fees unconstitutional or illegal.



49. Consequently, and for the above reasons, the petition is declined and dismissed. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025

E C MWITA

JUDGE

