



RIARA LAW SCHOOL

UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

23RD AUGUST 2024

RLB 206, ADMINISTRATIVE LAW I

EXAMINER: SAMUEL KYALO

INSTRUCTIONS

1. This is the final examination in Administrative Law I. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has six (6) pages, including this first page. The paper consists of **FIVE** questions. Answer **QUESTION ONE** and **ANY OTHER TWO** questions.
3. Time allocated for this examination is **TWO (2) HOURS**. You must stop writing when time is called.
4. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
5. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
6. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalised. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE

Until last week, Billy Kandagor was an engineering student at River Road University (RRU)-Nairobi, a Kenyan public university. Billy has also been serving as the President of the River Road University Student Association (RRUSA), since January 2024.

Billy was unceremoniously expelled from the University following allegations of misconduct, namely leading a student strike which resulted in disruption of learning activities at the University. The strike in question was organized by RRUSA in July 2024 to protest against arbitrary increases in meal prices at the University cafeteria, mismanagement of university funds, among other issues. The demonstrations were largely peaceful and took place every Wednesday in the month of July.

As a result of the sustained pressure, the university management agreed to reduce meal prices in late July. However, the student body remained steadfast, insisting that all their demands be met before they could call off the protests. They were particularly focused on changes in management, calling for the immediate resignation of the current Vice-Chancellor, Professor William Zakayu. The students championed Professor Thomas Tukutu, the Chairman of the University Academic Staff Union, to replace Professor Zakayu as Vice-Chancellor. To demonstrate their rage, the students organized a major demonstration dubbed “ReformRRU” and planned to march to the Vice Chancellor’s office. However, this demonstration took an unfortunate turn: some students were attacked by unknown individuals; the Vice Chancellor’s office was burned down; and there were instances when protestors openly smoked marijuana to “cleanse RRU.” Most RRU students believe that the demonstrations were ‘hijacked’ by paid goons to taint the image of RRUSA and the student protests. In the aftermath, the University Senate convened on 8th August, 2024 and declared the university indefinitely closed, citing safety concerns and extensive property damage.

In the morning of 9th August, Billy received a telephone call from the Dean of Students, Dr. Josephine Kombo, requiring him to attend a disciplinary committee meeting at 10:00 am on the same day. With the university's closure the previous day, Billy and his friends had decided to travel out of town and at the time Dr. Kombo called, Billy was on a train heading to Mombasa to attend the *Jaba Festival*. Consequently, Billy informed Dr. Kombo that he could not attend the meeting on such short notice and requested that it be rescheduled for the following day. This request was declined.

Two hours later, Billy received an email from the university stating as follows (in part):

EXPULSION FROM THE UNIVERSITY

Reference is made to your invitation to appear before the University Disciplinary Committee on August 9, 2024, where you did not present yourself. The committee deliberated on your case in your absence, found you guilty of all the charges tabled against you, and decided that you ought to be expelled from the university. Accordingly, I wish to inform you that you have been expelled from the university effective immediately.

You may however appeal this decision by submitting a formal appeal in writing to the Students Appeals Disciplinary Committee within 14 days, in accordance with RRU's Code of Conduct.

Yours sincerely,

Professor William Zakayu, PhD, EBS

VICE-CHANCELLOR

Immediately after receiving this email, Billy booked the next train back to Nairobi and prepared an appeal, which he lodged the following morning. The Appeals Committee subsequently invited Billy to a hearing on 15th August, 2024.

Billy attended the hearing. To his surprise, both the Vice-Chancellor and the Dean of Students were members of the three-member Appeals Committee despite having been members of the original Disciplinary Committee. Billy therefore objected to the composition of the Appeals Committee, but his protest was dismissed and Billy was reminded to “*Save the Committee's time*”. The committee then proceeded to ask Billy mostly “Yes or No” questions and did not allow him to support any grounds he raised in his appeal or present any evidence in support of his case.

At one point, the Vice-Chancellor asked the following: “*Is it not true that the RRUSA demonstrations were financed by Professor Thomas Tukutu, the Chairman of the University Academic Staff Union?*”

Billy was shocked and did not immediately respond. That marked the end of the proceedings.

On 16th August, 2024, Billy received a letter communicating that the Appeals Committee had decided to uphold the original Disciplinary Committee’s decision to expel him. Professor Thomas Tukutu also received a letter terminating his employment with immediate effect based on “*Gross misconduct confirmed by evidence availed to the University management during a student disciplinary hearing on August 15, 2024.*”

Both Billy and Professor Tukutu have come to your newly opened law firm, Sharp & Smart LLP, and they are impressed by your experience as an administrative law expert. They immediately retain you as their advocate.

Required:

- a) With the aid of relevant authorities, explain to Billy if there are any violations of natural justice arising from the conduct of the original Disciplinary Committee and the decision rendered on 9th August 2024. **(10 marks)**
- b) With the aid of relevant authorities, advise Billy on natural justice violations, if any, by the Appeals Committee. **(10 marks)**
- c) Advise Professor Tukutu on any violations of administrative law principles, including natural justice principles, arising from his termination from employment. **(10 marks)**

QUESTION TWO

“The Constitution 2010 has brought in a new era of administrative law beyond the traditional anchorage in statutory or common law. The review power of the courts is no longer grounded in the common law or statute but instead the Constitution itself confers fundamental rights to fair administrative justice” (Walter Khobe, ‘The Architectonics of Administrative Law’ (2016) 2 Kabarak Journal of Law and Ethics 1, 4).

- a) Critically evaluate the validity of the above statement while discussing the constitutional underpinnings of administrative law in Kenya. **(15 marks)**
- b) Discuss the significance, if any, of the Fair Administrative Action Act, 2015, on Kenyan administrative law and practice. **(5 marks)**

QUESTION THREE

In the aftermath of severe floods that affected many parts of Nairobi County, the National Environment Management Authority (NEMA) has announced that it will demolish “all residential buildings in areas where any flooding has been reported recently”. This decision was announced by the CEO of NEMA, Mr. Zablon Maharaka, during a radio show he attended at *Ghetto FM*, during which he stated that NEMA was planning to demolish all the affected buildings within three days, in order to avoid any further loss of lives.

Boniface Matata, who owns a residential building in Athi River, visits the offices of Africa Law LLP, where you work as a Legal Assistant.

Part A:

Your supervisor, Ms. Juliet Sijui, has asked you to urgently draft an opinion outlining the key violations by NEMA and the strongest grounds in support of Matata’s case (*You are not required to discuss the (civil) procedures relating to the filing of any court proceedings by Matata*). **(10 Marks)**

Part B:

As you work on Matata’s file, you realize that the information provided by Matata does not clearly demonstrate if his house is one of the houses scheduled for demolition. You recall your Administrative Law class panel discussion on “access to information in Kenya”, and you pitch this idea to your supervisor, Ms. Sijui, who thinks it’s a brilliant strategy. However, she mentions that she is not familiar with the current law relating to access to information. With the aid of relevant statutory provisions and case law, briefly explain to Ms. Sijui the procedure you will follow to access (from NEMA) the information on the houses scheduled for demolition. **(10 Marks)**

QUESTION FOUR

“Delegated legislation (also called subsidiary legislation) is a common feature in common law jurisdictions... It is understandable why delegated legislation has become a popular means of governance. The proliferation of delegated legislation can be partially explained by the general expansion of the executive state in jurisdictions around the world. But delegated legislation

provides certain specific advantages to government authorities.” Kenny Chng, 'Re-examining judicial review of delegated legislation' (2014) 44 Legal Studies 81, 81-82.

- a) Explain the rationale for delegated legislation in administrative governance. In other words, what justifies the continued use of delegated legislation despite its “non-legislative” nature? **(10 marks)**
- b) With the aid of case law and statutory provisions, discuss the major grounds under which delegated legislation can be reviewed by Kenyan courts. **(10 marks)**

QUESTION FIVE

After attending the "*Combating Impunity and Corruption Summit 2024*," held in Wuhan, China in July 2024, Professor Janet Pindu, the newly appointed Cabinet Secretary for the Ministry of Tourism and Wildlife, feels the need for aggressive measures to end corruption in Kenya. Upon her return to Kenya, Professor Pindu and her technical advisor, Yash Ndio, develop the “Anti-Corruption Regulations 2024,” which Professor Pindu unveils for the first time during the *National Prayer Breakfast Meeting* held at State House on 8th August 2024. The new Regulations stipulate, among other things, that any individual can arrest and physically 'discipline' any person suspected of engaging in corruption without subjecting the suspects to court processes.

Professor Pindu argues that massive corruption within Kenyan government agencies has hindered the attraction of 'high-quality' tourists. She claims that the Regulations are authorized under “general powers” conferred upon the “Minister” under Section 68 of the Anti-Corruption and Economic Crimes Act.

A number of human rights activists express their concerns about the Regulations. They argue that while combating corruption is crucial, it must be done in a manner that upholds administrative and constitutional principles. Subsequently, a group of activists engage your law firm to advise them on the issues raised by the Regulations. While talking to you, they draw your attention to the definition of the term “Minister” in the Anti-Corruption and Economic Crimes Act— “*Minister*” means the Minister responsible for integrity issues” (Section 2).

With the aid of case law and relevant authorities, advise them on the best grounds under which the Anti-Corruption Regulations 2024 can be challenged. **(20 marks)**