



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISC. APPLICATION NO. 318 OF 2019

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

AND

ABEL GOGO.....1ST INTERESTED PARTY

NIXON RONO.....2ND INTERESTED PARTY

EX PARTE APPLICANT:

IRENE ELIZABETH WANJIKU KISANGI

JUDGEMENT

The Application

1. The *ex parte* Applicant herein, Irene Elizabeth Wanjiku Kisangi, is a female Kenyan adult, and at the time of filing the present suit, she was the station manager for Mozambique Airlines operating under Fast Track Kenya Limited, the then authorized general sales agent of Mozambique Airlines. The *ex parte* Applicant has instituted this suit against the Kenya Airports Authority, which is a body corporate established under Section 3 of the Kenya Airports Authority Act No.3 of 1991, and the Attorney General, who are the 1st and 2nd Respondents herein respectively. The 1st and 2nd Interested parties are sued in their capacity as officers of the 1st Respondent.

2. The suit was instituted by a Notice of Motion application dated 8th November 2019, in which the *ex parte* Applicant is seeking the following orders:

- a) Certiorari to bring into this High Court the purpose of quashing the decision of the 1st Respondent through its officers the 1st & 2nd Interested parties made on the 25th day of July 2019 that the Airport Movement Pass of the Applicant be confiscated without any justifiable explanation.
- b) Prohibition prohibiting the 1st Respondent through its officers the 1st and 2nd Interested Parties from unilaterally making administrative decisions materially affecting its employees, to wit, the Applicant without their/her participation and or involvement.
- c) Mandamus compelling the 1st Respondent through its officers the 1st & 2nd Interested Parties to forthwith release the Airport Movement Pass belonging to the Applicant herein unconditionally with immediate effect.
- d) That costs of this application be provided for.

3. The application is supported by the grounds on its face, a statutory statement and verifying affidavit sworn by the *ex parte* Applicant both dated 25th October 2019, and a replying affidavit dated 19th December 2019. It is averred that on 25th July 2019 the 1st Respondent through its officers the 1st and 2nd Interested parties confiscated the *ex parte* Applicant's Airport Movement Pass, making it difficult for her to continue with her duties as she is unable to access her work premises and that owing to this she is on the verge of losing her job on grounds of absconding duty.

4. Further, that the reason why the 1st Respondent confiscated the *ex parte* Applicant's movement pass was that, on 11th July, 2019 passengers on board Mozambique airline were deported back to their point of origin which was Kenya and later on to Ethiopia on grounds that they did not have proper travel documentation. Further, the *ex parte* Applicant deponed that she was tasked with the selling of tickets, the confirmation of details in the ticket to ensure they are similar to those in the identification documents and also confirming that the passenger has a valid visa. She contended that it was not her job to authenticate the travel documents and that this was the sole duty of the Immigration Department.

5. The *ex parte* Applicant averred that when the deportation of the said passengers was taking place she was unwell and had not been on duty from 2nd July 2019. Further, that she reported back to work on 23rd July 2019 although she was still not in the office regularly, therefore that the criteria used to confiscate her movement pass and not the passes of those who were on duty on the material date is in question, and manifests discrimination as she is the only one who has been subjected to the adverse acts of the 1st Respondent through its officers. In addition, that although the matter leading to the confiscation of her pass has been investigated and the *ex parte* Applicant recorded a statement on the same, the findings remain unknown.

6. According to the *ex parte* Applicant, she has not been charged with any criminal offence nor has she faced disciplinary proceedings, and therefore the confiscation of the pass was unconstitutional and not drawn from any statutory instrument. Further, it is averred that the 1st Respondent acted ultra vires and that the said actions are administratively unreasonable, baseless, illegal and fall below the constitutional threshold. Lastly, that unless the constitutionality of the actions of the 1st Respondent and its officers are determined, they will succeed at insubordinating the Constitution, and leaving the *ex parte* Applicant to suffer irreversible damage.

The Responses

7. The 1st Respondent filed a Replying Affidavit sworn on 12th February 2020 by Abel Gogo, the 1st Respondent's Airport Manager and also the 1st Interested Party herein. It was averred therein that pursuant to the provisions of the Kenya Civil Aviation Security Regulations, 2015 (now amended and repealed by Regulations 2019) made under the Civil Aviation Act No. 21 of 2013, the 1st Respondent as the operator of Jomo Kenyatta International Airport and other airports in the country. Further, that it is responsible for the maintenance, co-ordination and implementation of security controls, including identification and resolution of any activity that may pose a threat to civil aviation at the airports, in order to safeguard security of the passengers, crew members and airport and aviation facilities from unlawful acts and interference.

8. In this regard, that under Regulation 26(2) of the Kenya Civil Aviation Security Regulations, the 1st Respondent is mandated to establish a permit system which inter alia regulates access to airside areas and security restricted areas at the airports, as is also required by the Kenya National Civil Aviation Security Program, International Civil Aviation Organization (ICAO) Standards and Recommended Practices and the policies by Airports Council International (ACI) and International Air Transport Association (IATA) to which Kenya is a signatory. In addition, that the 1st Respondent has with the approval of the Kenya Civil Aviation Authority, established and implemented a comprehensive Airport Security Programme applicable to Jomo Kenyatta International Airport, a constituent part of which are the Security Permit Issuance Policy Guidelines implemented with effect from 1st November, 2018.

9. The 1st Respondent's case is that the *ex parte* Applicant has not demonstrated that the withdrawal of her security permit by the 1st Respondent was done illegally, irrationally or that the decision contravened the Regulations and Security Guidelines pursuant to which it was issued. It is further deponed that the permit was withdrawn in accordance with the 1st Respondent's Security Permit Guidelines and that good reasons were established following detailed and comprehensive investigations undertaken into human trafficking of 10 Ethiopian nationals through Jomo Kenyatta International Airport, whose travel was facilitated by Fast Track Kenya Limited.

10. The 1st Respondent averred that in line with the Security Permit Guidelines the 1st Respondent is empowered to withdraw a permit on the spot without the consent of the permit holder upon breach of the conditions of the issuance. It was deponed that the decision to withdraw the *ex parte* Applicant's permit was made after she was given an opportunity to offer clarifications including recording a statement with the Multi-Agency Investigations team during investigations of human trafficking incidents. The Multi-Agency reports identified the *ex parte* Applicant as having been part of the people who facilitated trafficking of 10 nationals of Ethiopian origin by facilitation of their clearance at the airport and boarding of flight, which amounts to misuse of the permit and breach of the issuance conditions thereby entitling the 1st Respondent to recall/withdraw it on the spot without the consent of the permit holder.

11. According to the 1st Respondent, the *ex parte* Applicant was issued with a one-year Security Permit which was applied for and obtained under Mozambique Airlines, which had appointed Fast Track Kenya Limited as its agent. Further, the airline terminated the agency relationship owing to security incidents and in its place appointed another agent. Therefore, that Fast Track Kenya Limited which operated from the space allocated by the 1st Respondent ceased all operations at the Airport and it no longer maintains any staff and has no offices at the airport from where the *ex parte* Applicant can operate from. The deponent averred that in accordance with the 1st Respondent's Security Permit Guidelines, the Applicant's permit is no longer valid as it expired on 31st December, 2019 as all permits issued are renewed annually upon security screening and verification processes having been undertaken. The deponent deposed that the orders should not be granted as they interfere with the decisional independence of the 1st Respondent in execution of its statutory mandate.

12. Lastly, it was deponed that the involvement of the *ex parte* Applicant in trafficking did not require her physical presence, as

investigations and statements contained in the Preliminary Summary of the Evidence by the Multi-Agency team indicated that she would work from home and authorise issuing of tickets to passengers. In addition, that public interest heavily tilts against granting any orders of certiorari, prohibition and mandamus sought, as the 1st Respondent's interim measures amount to reasonable actions to pre-empt and deter further human trafficking activities which may cause irreparable damage to Kenya as an international travel hub thus hurting the country's economic interests.

13. It was therefore contended that the decision to withdraw the *ex parte* Applicant's permit was an official decision of the 1st Respondent as the issuing authority, and that the Interested Parties acted in their official and not personal capacities and therefore they ought not to have been enjoined in this suit.

14. The 2nd Respondent did not file any response to, or participate in the hearing of the instant application.

The Determination

15. The *ex parte* Applicant's application was canvassed by way of written submissions. Cliff Ombeta, the *ex parte* Applicant's Advocate, filed submissions on 12th March 2021, while **the 1st Respondent's advocates on record, Lesinko, Njoroge & Gathogo Advocates, filed written submissions dated 20th January 2021. It was not disputed by the parties that the 1st Respondent confiscated the permit of the *ex parte* Applicant pursuant to powers granted to it under the Security Permit Issuance Policy Guidelines which are developed by the 1st Respondent pursuant to the provisions of Regulation 26(2) of the Kenya Civil Aviation Security Regulations which allow for airport security permits.**

16. **The three issues that arise for determination are firstly, whether the 1st Respondent's decision to withdraw the *ex parte* Applicant's permit was unreasonable; secondly, whether the said decision was procedurally fair; and lastly whether the *ex parte* Applicant merits the remedies sought..**

Whether the 1st Respondent's decision was unreasonable

17. The *ex parte* Applicant submitted that no reason was advanced by the 1st Respondent as to why it confiscated here permit, and that this was irrational and unprocedural. The case of **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 380** on the circumstances when the grounds of unreasonableness and irrationality will arise was cited in this regard. **It was further submitted that the allegations of human trafficking have not been substantiated and that the *ex parte* Applicant has never been prosecuted for human trafficking or faced disciplinary proceedings over the same. It was further submitted that clause 7.6 of the Kenya Airports Authority Security Permit Issuance Policy Guidelines provides twelve (12) instances when a permit can be withdrawn and in all these the actual use of the permit is required. However, that the 1st Respondent and its officers have failed to demonstrate how the Applicant used her pass to facilitate the movement of the Ethiopian Nationals.**

18. The 1st Respondent on its part submitted that it was undertaking its statutory and regulatory obligation to safeguard Jomo Kenyatta International Airport (JKIA) by curbing and preventing human trafficking when making the impugned decision. Further, that Clause 7.6 of the Security Permit Guidelines empowers the 1st Respondent to withdraw a permit on the spot without the consent of the permit holder upon the breach of the conditions of the issuance, which this fact is well known to the *ex parte* Applicant. In buttressing the argument that it was lawfully exercising its statutory and regulatory powers, the 1st Respondent cited the case of **Kenya Civil Aviation Authority and Another vs. Timothy Nduvi Mutungi [2017] e KLR**, where it was held that compelling the Respondent to give approvals in the circumstances of that case would conflict with their statutory mandate and was tantamount to usurpation of its powers.

19. It was further submitted that the *ex parte* Applicant has not demonstrated that the 1st Respondent's decision was *mala fides* or that it was arrived at in bad faith, or that it was influenced by ulterior motives and thus she does not deserve the grant of the Orders that she seeks. The 1st Respondent also cited the case of **Republic vs. Independent Electoral and Boundaries Commission (IEBC) Ex parte National Super Alliance (NASA) Kenya & 6 Others [2017] eKLR**, in support of this position.

20. The Fair Administrative Action Act under Section 7 provides for reasonableness as a ground for review of an administrative action. Courts and tribunals have the power to review an administrative action if the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function. Lord Diplock in the case of **Council of Civil Service Union vs Minister for The Civil Service [1984] 3 ALL ER 935** defined unreasonableness as follows;

“So outrageous in defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

21. In **Energy Regulatory Commission v SGS Kenya Limited & 2 others [2018] eKLR**, the Court of Appeal while addressing its mind as to what constitutes unreasonableness referred to the English Court of Appeal decision of **Associated Provincial Picture Houses Ltd vs Wednesbury Corporation [1948] 1 KB223**, where Lord Greene M.R in his lead judgment, agreed upon by Somerville LJ and Singleton J, stated as follows;

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word „unreasonable? in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own

attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting „unreasonably? Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J in Short v. Poole Corporation [1926] Ch 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.”

22. In the present case, the 1st Respondent has pointed to the legal basis for the decision to withdraw the *ex parte* Applicant’s permit. Regulation 26 of the Kenya Civil Aviation Security Regulations provides as follows in this regard:

(1) The Authority, in conjunction with the airport operator and other responsible persons concerned, shall identify areas where, based on a security risk assessment carried out by the relevant national authorities, operations vital to the continued safe operation of civil aviation in Kenya are carried out, and designate those areas as security restricted. areas.

(2) An area designated as a security restricted area shall-

(a) be marked and protected through physical or personnel protective measures or through a combination of these measures to prevent unauthorised access to it;

(b) be separated from public or non-security restricted areas by an appropriate physical barrier; and

(c) be inspected at regular intervals.

(3) Authorised access to a security restricted area at every airport and designated off-airport facilities serving commercial air transport operations shall be controlled through the issuance of airport security permits for persons and vehicles.

23. Clause 7 of the 1st Respondent’s Security Permit Issuance Policy Guidelines provides for conditions for withdrawal and cancellation of an airport security permit as follows;

a) An airport Security Permit is termed as misused when;

i) An applicant has given false information during the initial application for permit.

ii) A permit holder fails to comply with any conditions applying to an airport security permit.

iii) A permit holder accesses a restricted area for which his/her permit does not allow.

iv) A permit holder uses a false or unauthorized permit to gain access or at a security restricted area.

v) A permit holder fails to display his/her permit when accessing or at a security restricted area.

vi) A permit holder uses a permit to gain access and engages in illegal business/activities or uses the permit for reasons other than for official duty.

vii) A permit holder uses his/her permit when not on authorized duties.

viii) A permit holder continues to use an airport security permit after it has expired and the expiry date has not been validated by the KAA MD or his appointee.

ix) A permit holder uses his/her permit after he/she is no longer authorized to possess it.

x) A permit holder fails to present himself/herself to security screening at an access point

xi) A permit holder is involved in illegal, irregular or unethical activities at the airport.

xii) Any other reason that the Issuing Authority may term as misuse of a permit.

b) Any person who commits any of these offences is liable, on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both as per Regulation 62 (7) of KCASR’s,1025.

c) When a permit has been found to have been misused the Issuing Authority will recall/withdraw it on the spot without the consent of the permit holder.

d) The GMSS will give guidance on the calculation of a misused permit in the database and circulation of a blacklist.

24. The circumstances in which the permit was withdrawn have been explained by the 1st Respondent, namely the suspected involvement of the *ex parte* Applicant in the human trafficking in Jomo Kenyatta International Airport, and it availed evidence of preliminary findings of an investigation made into the said incident. The *ex parte* Applicant's arguments seem to indicate that the findings and decision by the 1st Respondent were wrong, however this Court as the judicial review court cannot examine the merits of the said findings and decision, particularly as regard whether they were true or false, which is the province of a trial Court.

25. This Court's remit as regards the merits of the 1st Respondent's impugned decision is limited to establishing that there were cogent and logical reasons for withdrawal of the *ex parte* Applicant's permit, and provisions empowering the 1st Respondent to do so. Given that the 1st Respondent has provided evidence of and demonstrated these two factors, it is my finding that the **Wednesbury** threshold for unreasonableness has not been demonstrated in the present case.

Whether the 1st Respondent's decision was procedurally fair

26. The *ex parte* Applicant contended that she was not accorded a chance to be heard even after it was established that she was away on sick leave, and this violated the rules of natural justice that must guide all administrative decisions. To buttress this argument, the *ex parte* Applicant cited **Halsbury's Laws of England Fourth Edition Vol.1** at paragraph 47, Article 47 of the Constitution, Section 4(3) and (4) of the Fair Administrative Action Act were also cited. It was submitted that the 1st Respondent and its officers are out to harass the *ex parte* Applicant and this Court was invited to protect her. Counsel cited the case of **Cape Holdings Limited vs. Attorney General & Another [2012] eKLR** where the Court stated that it is the duty of the courts to ensure that public power and authority are not used as tools to intimidate, harass and achieve an ulterior motive not pertaining to that which the system was even formed to perform.

27. Counsel submitted that it is after the Airport Movement Pass of the Applicant was confiscated that the Applicant's agency contract was terminated through a letter dated 1st November, 2019 and that this goes to show how grave the actions of the 1st Respondent through its officers were and that they were out to harass not just the Applicant herein but her employer as well.

28. While concluding and urging this Court to find that the 1st Respondent through the 1st and 2nd Interested Party acted ultra vires, unprocedurally and unfairly, counsel cited the case of **Republic vs. Kenya National Examination Council ex parte Geoffrey Gathenji & 9 Others** where the Court held as the remedies of certiorari and prohibition are tools that this court uses to supervise public bodies and inferior tribunals to ensure that they do not make decisions or undertake activities which are ultra vires their statutory mandate or which are irrational or otherwise illegal.

29. The 1st Respondent on its part submitted that adherence to the rules of natural justice and procedural fairness are evident in the fact that the Multi Agency Investigations were carried out, the Applicant was given notice of the allegations against her, and that the decision was taken by a duly constituted panel only after she had been provided with an opportunity to offer clarifications, including recording a statement with the Multi-Agency Investigations team during investigations. Further, it was submitted that while the right to be heard implies that the Applicant be provided with an opportunity to offer explanations and clarifications that should be taken into consideration in decision making, it does not in any way imply that the 1st Respondent should not have arrived at the decision that the Applicant is challenging. **In submitting on what amounts to procedural impropriety Counsel cited the case of Republic v Public Procurement Administrative Review Board & 2 others Ex-Parte Higawa Enterprises Limited [2017] eKLR**

30. In conclusion Counsel submitted that even if this Court were to find that there was some procedural lapse, the 1st Respondent beseeched the Court to exercise its discretion to decline granting the Orders sought by the Applicant considering the compelling public interest of preventing human trafficking and maintaining optimum security at the JKIA and also safeguarding the Airport's reputation as an international travel hub

31. Article 47 of the Constitution, and the provisions of the Fair Administrative Act in this regard now import and imply a duty to act fairly by a decision maker in any administrative action. Article 47 of the Constitution provides as follows in this regard:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

32. The Fair Administrative Action Act was enacted to implement the provisions of Article 47, and the said Act defines an administrative action to include - (i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or (ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

33. In addition, section 4 (3) and (4) of the Fair Administrative Action Act lays down the procedure to be adopted by decision makers as follows:

“(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 that 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 legal representation, 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 administrator shall accord the person against whom 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.”

34. The Fair Administrative Action Act therefore clearly applies to the Respondent in its capacity and exercise of its powers as a statutory authority, and in respect of any decisions that it makes that may affect the rights of others, including the members of the *ex parte* Applicant. Procedural fairness in administrative action is embedded in the natural justice requirements that no man is to be a judge in his own cause, no man should be condemned unheard and that justice should not only be done but seen as done. The core of the duty to act fairly therefore is the need to ensure that a person affected by a decision has an effective opportunity to make representations, before it is made and by an impartial decision maker. The Court of Appeal in this respect held as follows in **Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR:**

“The term “procedurally fair” used in Article 47(1) by a proper construction, imports and subsumes to a certain degree, the common law including rules of natural justice which means that common law is complementary to right to fair administrative action.

35. The relevant test for breach of the duty to act fairly was set out in the text on **Judicial Review: Principles and Procedures** by Jonathan Auburn, Jonathan Moffett and Andrew Sharland, at paragraph 5.28 as follows:

“For a claim for judicial review based on an allegation of a breach of the duty to act fairly to succeed, it is not enough for the claimant merely to establish that there has been a defect in the relevant decision-making process, the claimant must also show that any defect (or the cumulative effect of several defects) rendered the procedure as a whole unfair.... The focus must always be on the fairness of the procedure as a whole, and not simply on the fairness of particular elements of it.”

36. The applicable test therefore, is whether the procedure employed as a whole, complied with the requirements of fairness in the particular circumstances of a case. In the present case, it is evident that the *ex parte* Applicant’s permit was confiscated without notice, while the evidence brought by the 1st Respondent shows that she was among the persons interviewed during the investigations that followed thereafter. Therefore, the *ex parte* Applicant was accorded an opportunity to be heard after the fact, and the defect alleged is that she was not accorded prior notice of the decision.

37. It is notable in this regard that the need to give notification that a decision is going to be taken can be dispensed with where the notice would risk frustrating the purpose for which the decision is being taken. Courts have in this respect held that the need to take urgent action may override the requirements of notice, if it arises out of a need to protect the public or a section of it. Put another way, the public interest can override the requirement to give a person notice of a decision. This overriding factor is also recognised in the limitation to rights provided in Article 24(1) of the Constitution.

38. I am also persuaded by the decision in **R vs Birmingham City Council ex parte Ferrero (1993) 1 All E.R 530** at 541-543 (Taylor LJ), wherein it was held that the decision by a local authority to issue a suspension notice in respect of goods allegedly breaching safety standards, without providing an opportunity to make representations before the notice was made, was not unlawful. Also see **R vs Davey (1899) 2 QB 301** and **R vs Secretary of State for Transport ex p Pegasus Holdings (London) Ltd (1988) 1 WLR 990.**

39. In the instant case, the factor that was taken into account by the 1st Respondent to immediately withdraw the *ex parte* Applicant’s permit without notice was the alleged commission of a criminal offence that had implications on public safety, namely the trafficking of unauthorised persons through an airport. In addition, the *ex parte* Applicant was thereafter given an opportunity to make representations on the alleged incident. It is my finding for these reasons that the procedure adopted by the 1st Respondent as a whole was not unfair, despite the lack of notice.

Whether the Remedies sought are Merited

40. The *ex parte* Applicant has sought the remedies of certiorari, prohibition and mandamus. On the last issue as regards the relief sought, the *ex parte* Applicants have sought orders of certiorari, prohibition and mandamus. An order of prohibition restrains a public body from

acting in the manner specified in the order to restrain a threatened or impending unlawful conduct. An order of certiorari on its part nullifies an unlawful decision or enactment. An order of mandamus on the other hand requires a public body to do some particular act as specified in the order, to enforce public law duties.

41. The Court of Appeal in the case of **Republic v Kenya National Examinations Council ex parte Gathenji & Others, (1997) e KLR** explained the circumstances under which these orders can issue, and they are available where unlawful conduct or a breach of duty has been demonstrated on the party of a public body or official. In the present case the decision of the 1st Respondent to withdraw the *ex parte* Applicant's permit has been found to have been legal, reasonable and fair. The said remedies are therefore not merited.

The Disposition

42. The *ex parte* Applicant's Notice of Motion dated 8th November 2019 is accordingly found not to be merited, and is hereby dismissed with no order as to costs.

43. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF MAY 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS JUDGMENT

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this judgment will be delivered electronically by transmission to the email addresses of the *ex parte* Applicant's and Respondents' Advocates on record.

P. NYAMWEYA

JUDGE