



Munene v Land Surveyor’s Board, Survey of Kenya & 2 others (Judicial Review Application E216 of 2024) [2025] KEHC 3684 (KLR) (Judicial Review) (24 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E216 OF 2024
RE ABURILI, J
MARCH 24, 2025**

BETWEEN

COLIN MUNENE APPLICANT

AND

THE LAND SURVEYOR’S BOARD, SURVEY OF KENYA 1ST RESPONDENT

**THE SECRETARY LAND SURVEYOR’S BOARD, SURVEY OF
KENYA 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. Before this Court for determination is the exparte applicant’s substantive Notice of Motion dated 9th December 2024 pursuant to the leave to apply granted on the same day. The application seeks the following orders:
 - i. That an order Of Mandamus to issue compelling the 1st and 2nd Respondents to carry out its statutory mandate of issuing the Applicant a licensed Surveyor Certificate Number 282.
 - ii. That an order of Mandamus to issue compelling the 1st and the 2nd Respondents to carry out its Statutory Mandate of Gazetting the Applicant in Kenya Gazette Notice as a bonafide Licensed Surveyor Certificate Number 282.
 - iii. That an Order of Mandamus to issue compelling the 1st and 2nd Respondents re-advertise and re-Gazette the Kenya Gazette Notice Vol. CXXV1-No.81 of 7th June 2024 including the Applicant’s name and number 282.



- iv. That the Honourable Court be pleased to give further orders and directions as it may deem fit and just.
- v. That Costs of and incidental to the application be provided for.
2. The application is supported by a statutory statement dated 26th August 2024 and the affidavit sworn by the applicant Colin Munene also sworn on 26th August 2024.
3. The applicant's case is that he is employed by the Ministry of Lands, Public Works, Housing and Urban Development, Department for Lands and Physical Planning and that he currently works as a Deputy Director (Land Surveys). It is his case that he was employed in December 1993 as a Land Surveyor II and that at all material times, he has faithfully served under the Director of Surveys without any proven misconduct.
4. That in January 2019, the applicant applied to the Land Surveyor's Board for examinations for a Trial Survey Examination in accordance with the Second Schedule of Subsidiary Legislation of the Survey Act Cap 299 and it was approved vide a letter dated 17th July 2019.
5. The Board is said to have provided the applicant with a syllabus for the Trial Survey Examinations vide its letter dated 14th October 2019 and also appointed an examiner Dr. Sammy Musyoka and set the Trial Survey Examinations outlining the conditions on the conduct of the examination.
6. It is the applicant's case that in the letter dated 28th February 2022 he approved Dr. Sammy Musyoka as his examiner, and that he requested the Director of Surveys for a non-production cadastral subdivision on LR No. 2337113 which was approved.
7. That upon completing all the examinations as provided for in the Subsidiary Legislation, the applicant applied for the Kenya Land Surveyors License and on 17th May 2023, the Board issued him with a congratulatory letter that he had been approved as a Licensed Surveyor of Kenya with Licence Certificate Number 282 and that the Board was making preparations to issue him with a License Certificate Number 282.
8. The applicant laments that on 31st December 2018, the Board had issued him with a pass in the Land Law Examination of 2017 Index No. LSBZOI7-03 and that on 7th June 2024, he came across a Kenya Gazette Notice Vol. CXXVI-Vol 81 of 7th June 2024 which had a list of all Licensed Surveyors with his name and number omitted. According to the applicant, the current Board deliberately and without reason expunged his licence without due procedure.
9. The respondents did not file a response to the Notice of Motion as the grounds of opposition on record are dated 18th November 2024 which were filed even before leave was granted. The grounds also on several occasions allude to the application for leave and not the substantive application. I note from the record that the court (Justice Jairus Ngaah) on 9th December 2024 granted the respondents 14 days to file and serve their response to the substantive motion but this directive was never complied with.
10. The application was canvassed by way of written submissions.

The Applicant's submissions

11. The applicant's written submissions are dated 3rd February 2025. The applicant relied on Article 47 of the Constitution of Kenya 2010 on Fair Administrative Action. He also referred to Section 7 of the Survey Act (Cap 299) of the Laws of Kenya which establishes the Board and also provides for its duties.



12. He submitted that the Second Schedule of the Subsidiary Legislation Rule 16 of the *Survey Act* (Cap 299) lays down the Examinations to be conducted for admission as a licensed Surveyor as Trial survey. The applicant also referred to Section 8(2) of the *Law Reform Act* (Cap 26) and Section 6(1),7(1) and 9 of the *Fair Administrative Action Act*.
13. The applicant submitted that Section 20 of the *Survey Act* (Cap 299) provides that a Notice of the grant, revocation or suspension of any licence or of the termination of the suspension thereof shall be published in the Gazette.
14. It was also his submission that he was never informed in writing of any cancellation of his license. Further, that he wrote to the Principal Secretary, Ministry of Lands, Public Works, Housing and Urban Development, State Department for Lands and Physical Planning on 12th June 2024 but he did not receive any response.
15. The applicant submitted that it took the Board more than one year to take an action not to gazette him and this was in contravention of Article 47(1) of *the Constitution* which requires that administrative action be expeditious, efficient, lawful, reasonable and procedurally fair. He also submitted that the administrative action of not gazetting him was illegal and unreasonable.
16. On the judicial review order of mandamus, the applicant relies on the cases of Republic v Registrar of Births and Deaths Ex parte Grace Wairimu Ndungu [2021] eKLR and Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu [2014] eKLR.

The Respondents' submissions

17. The respondents filed written submissions dated 17th January 2025. The submissions although filed on 18th January 2025 are headed "These written submissions are filed on behalf of the respondents and are in support of the Grounds of Opposition dated 18th November 2024" which according to counsel for the respondents, was an oversight on their part. The grounds referred to in the heading were filed in response to the application for leave as can be seen from the date and nature of grounds raised therein.
18. In an effort to amend this oversight on 19th March 2025 the respondent's counsel purported to upload grounds of opposition which are now dated 17th January 2025 and the written submissions of even date which are titled "These written submissions are filed on behalf of the respondents and are in support of the Grounds of opposition dated 17th January,2025."
19. I have carefully examined the Case Tracking System and the e-filing portal and I note that nowhere in the system were grounds of opposition dated 17th January 2025 ever filed other than on 19th March 2025. I have also had an opportunity to compare the grounds of opposition dated 18th November 2024 and filed before this court on 20th November 2024 and the grounds that were uploaded on 19th March 2025 and I must say that save for the introduction, all the 6 grounds that have been raised in the grounds of opposition dated 17th January 2025 are a copy and paste of the grounds raised in the one dated 18th November 2024 with the term 'application for leave' being referred to on several occasions.
20. It is obvious that the respondent's counsel was purporting to make the court believe that a response to the Notice of Motion had been filed which is not the true position. This kind of sharp practice by counsel shall not be tolerated. There are established means of seeking leave of court to file documents in a regular manner and with leave of court, not the manner in which the respondents' Counsel from Office of Attorney General has done in this matter on behalf of the respondents.
21. This court frowns on dishonesty and goes out of its way to ensure justice is served for all parties to disputes before it. Filing of documents behind the back of the adverse party is a trial by ambush which



is unacceptable. It is stealing a match on the adverse party by sneaking in documents after the court has already set a date for judgment. This is prejudicial to the adverse party and it is unacceptable and not tolerated or condoned in this court.

22. Having established as much, I decline to allow the purported grounds of opposition dated 17th January 2025 to form part of the record that is before this court. The grounds of opposition dated 17th January 2025 and uploaded in the CTS on 19th March 2025 after this court had reserved this matter for judgment delivery on 5/2/2025 are hereby struck out and expunged from this court record.
23. Regarding the submissions, I note that the same were filed on 18th January 2025 and this is after leave had been granted and the Notice of Motion served upon the respondent and as such, I will allow the respondent's counsel's explanation that the heading that the submissions are in support of the grounds dated 18th November 2024 was indeed an oversight on counsel's part.
24. In any case the applicant will not suffer any prejudice as he had the opportunity to address any issue raised in the submissions in his submissions dated 3rd February 2025 and filed on even date. I note from the applicant's submissions that service of the respondent's submissions is not disputed. I will now proceed to analyse the respondents' submissions.
25. According to the respondents, the present application is improperly before this honorable Court, as the Land Surveyors Board validly and procedurally exercised its statutory mandate under Sections 9, 11, and 12 of the *Survey Act*, Cap. 299, and Rule 15 of the Survey Regulations, 1994. It was submitted that these statutory provisions collectively empower the Board to set qualifications and conditions for licensing and to exercise discretion in approving or rejecting applications based on compliance with these established requirements.
26. The respondents also submitted that the law grants the Board extensive powers to regulate the licensing of surveyors to ensure that only qualified and competent individuals practice in this critical field. Section 9 of the *Survey Act* is said to underpin the Board's authority to require essential documentation, including but not limited to, a full membership certificate from the Institution of Surveyors of Kenya as a prerequisite for granting a license and as such, a requirement is fundamental to upholding the integrity and professionalism of the surveying field.
27. Further, that Section 11 of the *Survey Act* entrusts the Board with the responsibility to enforce professional standards while Section 12 is said to fortify the Board's discretionary authority, allowing it to refuse licenses where applicants fail to comply with procedural and statutory requirements. This provision according to the respondents, underscores the legislative intent to entrust the Board with discretion in licensing matters.
28. According to the respondents, the Land Surveyors Board acted squarely within its statutory and regulatory framework and that therefore the applicant's attempt to challenge the Board's lawful and procedural exercise of its mandate is without merit and should be dismissed. It was their submission that if the court were to grant the orders sought by the applicant, it would be a usurpation of the statutory mandate of the Land Surveyors Board.
29. The respondents relied on the Supreme Court case in *Martin Nyaga Wambora & 3 Others v. Speaker of the Senate & 6 Others* Petition 32 of 2014 [2017] KESC 1 (KLR) where it was stated that judicial intervention in administrative matters should be exercised sparingly and only in cases where there is a clear abuse of power or violation of the law.
30. It was also the respondent's submission that, it is a well-established principle of judicial review that an applicant must define and articulate, with specificity, the legal rights alleged to have been violated



and the nature of those violations. To further buttress this position the respondents relied on *Mumo Matem v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, where the Court is said to have held that judicial review proceedings require a clear and precise statement of alleged violations for the court to engage in a merit-based review.

31. The respondents submitted that the applicant had failed to provide particulars of the constitutional, statutory, and procedural violations purportedly committed by the respondent and without such specificity, this honorable court is deprived of the necessary framework to assess the merits of the claims.
32. Further submission was that it is not the court's role to speculate on the nature of the violations or to construct the applicant's case for them. It was further urged that the application offends Sections 8 and 9 of the *Law Reform Act* which require that an applicant must demonstrate a clear and specific violation of their legal rights and that the violation arises from an unlawful act or omission by the 1st respondent.
33. The respondents submitted that the present application raises issues that fall outside the jurisdiction of this judicial review court as judicial review is a specialized legal remedy, intended solely to assess the legality, rationality, or procedural propriety of administrative actions. That it was not, however, designed to evaluate the substantive merits of a decision, as would be appropriate in an appellate forum.
34. It was their submission that the applicant does not allege any illegality, irrationality, or procedural impropriety in the actions of the Board instead, the issues raised appear to challenge its substantive decision to deny the applicant a license.
35. Further, that the applicant has not specifically identified any procedural irregularity that would warrant judicial intervention and that as was held in *Municipal Council of Mombasa v. Republic & Umoja Consultants Ltd* [2002] eKLR, judicial review is not an appeal and should not be used as a substitute for an appellate process.
36. Further submission was that where no procedural flaw or illegality is identified, a judicial review court must refrain from engaging in a merit review of the impugned decision. The respondents submitted that any party aggrieved by the merits should seek through an appeal as is provided under Section 18 of the *Survey Act*, Cap 299.

Analysis

37. I have considered all the above arguments for and against the grant of the judicial review orders sought by the applicant and the relevant statutory and judicial pronouncements. The main issue for determination is whether the applicant has made a case for the grant of the judicial review orders sought.
38. The respondents in their submissions have extensively reiterated sections of the law in an effort to discredit the applicant's application on the grounds that it seeks for this court to interfere with the 1st respondent's decision. The respondents have also argued that this court as a judicial review court has no jurisdiction to hear and determine the application which seeks for a merit determination of the impugned decision. Further, that the section 18 of the *Survey Act* provides for an appeal to the High Court and not judicial review.
39. A closer examination at the application in question, I note that it is not true that the applicant seeks to challenge the 1st respondent's jurisdiction. If anything, the applicant at all material times complied with all the procedures that had been laid down by the 1st respondent before he could be licensed as



a land surveyor in Kenya and subsequently, he was even approved as a Licensed Surveyor of Kenya as shown by the contents of the 1st respondent's letter dated 17th May 2023.

40. It is also clear that what the applicant seeks to challenge is the 1st respondent's decision to not gazette the applicant a licensed land surveyor in Kenya as seen from the Kenya Gazette Notice dated 7th June, 2024 yet no reasons were given for the same. The applicant also challenges the 1st respondent's decision to wait for over a year, after licensing him to practice as a land surveyor, to make the decision not to gazette him.
41. The applicant invoked Article 47 of *the Constitution* on his right to Fair administrative action. He also challenges the 1st respondent's inaction on grounds that a Notice of the revocation or suspension if at all, of his license was not issued as is required under section 20 of the *Survey Act* hence there was no impediment to the 1st respondent gazetting the applicant as a licensed land surveyor.
42. The respondents do not deny that no reasons were given and have not attempted to give any reasons to the applicant on the 1st respondent's decision not to gazette him as a licensed land surveyor yet in the Board's letter dated 17th May 2023, it informed the applicant that he had been duly licensed and registered as a Licensed Surveyor (Kenya) with effect from the said date and that he was authorized to use the initial LS(K) after his name.
43. The respondents argue that the application before this Honourable Court ought to be dismissed on the basis that it improperly seeks to challenge the merits of their decision rather than the process through which it was made. They contend that judicial review is not an avenue for the court to reassess the correctness of their decision but rather a means of evaluating whether the decision-making process was lawful and procedurally sound. Additionally, they assert that Section 18 of the *Survey Act* provides that any person aggrieved by the 1st respondent's decision under Section 17 should appeal to the High Court, rather than file a judicial review application.

Determination

44. Adopting the established principles governing judicial review, the court in *Republic v Kenya Revenue Authority & another; Shapi & 3 others (Ex parte)* [2021] KEHC 401 (KLR) observed that:

“Under Section 7 of the *Fair Administrative Action Act*, a decision or administrative action may be judicially reviewed if, among other things, it was taken in bad faith, arbitrarily or capriciously, or if the decision is not rational or is otherwise unconstitutional or unlawful. Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud, dishonesty, malice, or personal self-interest. These motives, which have the effect of distorting or unfairly biasing the decision-maker's approach to the subject of the decision, automatically cause the decision to be taken for an improper purpose and thus fall outside the permissible parameters of the power.”

This authority reinforces that judicial review is not concerned with whether a decision was correct on its merits but rather whether it was made in accordance with the law and established procedural safeguards.

45. Similarly, in *Republic v Director of Immigration Services & 2 others Ex parte Olamilekan Gbenga Fasuyi & 2 others* [2018] eKLR, the court held:

“...Judicial review is about the decision-making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal, and the court should not attempt to



adopt the forbidden appellate approach. Judicial review is the review by a judge of the High Court of a decision, or refusal to exercise a power of decision, to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction—reflecting the role of the courts in ensuring that power is exercised lawfully. Judicial review is a means to hold those who exercise public power accountable for the manner of its exercise. As long as the process followed by the decision-maker is proper, and the decision is within the confines of the law, a court will not interfere.”

45. The foregoing decisions reinforce the principle that judicial review is limited to assessing the lawfulness, rationality, and procedural propriety of an administrative action. It does not extend to re-evaluating the merits of the decision itself. The respondents, therefore, correctly argue that if the applicant is dissatisfied with the substance of the 1st respondent’s decision under Section 17 of the [Survey Act](#), the proper course of action is to appeal under Section 18 rather than seek judicial review.”
46. It is evident that upon being informed of his registration, the applicant had a legitimate expectation of being gazetted, unless valid reasons were provided to justify otherwise. The doctrine of legitimate expectation is a fundamental principle in administrative law, ensuring that public authorities uphold fairness and consistency in their decision-making processes. In this case, the applicant’s expectation was not merely subjective but was based on a formal communication of registration.
47. The failure to gazette the applicant without providing sufficient justification amounts to a violation of the principles of fairness, transparency, and reasonableness enshrined under Article 47 of [the Constitution](#) and the [Fair Administrative Action Act](#). Courts have consistently held that where an individual is led to believe that a particular administrative action will follow, public authorities must either fulfill that expectation or provide compelling reasons for any deviation.
48. The Supreme Court in the case of *Kenya Revenue Authority v Export Trading Company Limited* [2022] KESC 31 (KLR) held as follows on legitimate expectation:

“Legitimate expectation would arise when a body, by representation or by past practice, had aroused an expectation that was within its power to fulfill. For an expectation to be legitimate, therefore, it had to be founded upon a promise or practice by a public authority that was expected to fulfill the expectation. The emerging principles of legitimate expectation were that;

 - a. there had to be an express, clear, and unambiguous promise given by a public authority;
 - b. the expectation itself had to be reasonable;
 - c. the representation had to be one that was competent and lawful for the decision-maker to make; and
 - d. there cannot be a legitimate expectation against clear provisions of the law or [the Constitution](#).”
49. In the instant case, it would be fair to say that all the 4 principles outlined in the above case were met. The 1st respondent in its letter dated 17th May 2023 informed the applicant that it was making arrangements to issue him with a license certificate number 282 as soon as possible. The applicant having complied with all the 1st respondent’s requirements for licensing, he had a reasonable expectation that he would be gazetted. It is obvious that the representation by the 1st respondent was competent and lawful to make as it is the body mandated under the [Survey Act](#) to regulate licensing



processes for Land Surveyors in Kenya. It is also my humble opinion that the applicant's legitimate expectation cannot be considered as being against the law or *the Constitution*.

50. The applicant before this Court has also challenged the respondent's decision to not gazette him as a Licensed Land Surveyor on grounds that the decision not to gazette him was reached contrary to what Article 47 of *the Constitution* which guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. In my humble opinion, this case falls squarely within the jurisdiction of this court. Sub-article (2) provides that if a person's rights or fundamental freedoms are likely to be adversely affected by administrative action, they have the right to be given written reasons for the action.
51. In the present case, the Board had approved the applicant's licensing but subsequently omitted his name from the Kenya Gazette without providing any reasons. The lack of an explanation deprived the applicant of an opportunity to challenge or understand the basis of the decision. Such omission amounts to an infringement of his constitutional rights and a violation of his right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
52. Section 4 of the *Fair Administrative Action Act*, 2015 provides as follows:
 4. Administrative action to be taken expeditiously, efficiently, lawfully etc. (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 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 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.



- (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.
53. Under section 2 of the Fair Administrative Action Act, an administrative action is defined as follows:
- “Administrative action” includes
- (a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- (b)) 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
- ...
54. Section 6 of the Fair Administrative Action Act mandates that an administrator must give reasons for the decision taken against a person. The section stipulates, inter alia:
6. Request for reasons for administrative action
- (1) Every person materially or adversely affected by any administrative action has a right to be supplied with such information as may be necessary to facilitate his or her application for an appeal or review in accordance with section 5.
- (2) The information referred to in subsection (1), may include
- (a) the reasons for which the action was taken; and
- (b) any relevant documents relating to the matter.
55. The Respondents argue that the Board acted within its statutory mandate under Sections 9, 11, and 12 of the Survey Act, Cap 299.
56. While the Board has discretion in licensing, such discretion must be exercised in a manner consistent with constitutional and statutory dictates. Section 4(3) of the Fair Administrative Action Act reproduced above reinforces the obligation of administrative bodies to provide reasons for their decisions, particularly where a decision adversely affects an individual.
57. The considerations for judicial review were aptly captured by G. V. Odunga, J (as he then was in the High Court) in the case of Republic v Chesang (Ms) Resident Magistrate & 2 others ex parte Paul Karanja Kamunge t/a Davisco Agencies & 2 others [2017] eKLR where he held 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.”

58. By failing to provide reasons for its decision not to gazette the applicant yet in its letter dated 17th May 2023, the Board had informed the applicant that he had duly been licensed and registered as a Licensed Surveyor, the Board acted unfairly, unreasonably and in breach of the applicant’s lawful legitimate expectation of being gazette as such Licensed Land Surveyor, thereby denying the Applicant an opportunity to understand or contest the decision.

59. This Court in the case of *Republic v National Land Commission & another* [2016] eKLR 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 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.”
60. On the contention that the applicant is seeking to challenge the merits of the decision made by the Board and therefore this court as judicial review court had no jurisdiction to entertain the judicial review application, the Supreme Court in the case of *John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others* [2021] eKLR observed that Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015, have expanded the scope of judicial review to include aspects of merit consideration. Judicial review traditionally focused on procedural propriety, but statutory judicial review now incorporates principles of proportionality, rationality, and reasonableness.
61. The above decision underscores the evolving scope of judicial review in Kenya. Traditionally confined to assessing procedural propriety, judicial review now incorporates aspects of merit review under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015. As the court noted, statutory judicial review includes proportionality, rationality, and reasonableness as grounds for intervention.
62. The above decision nonetheless clarifies that while courts may assess the substantive merits to some extent, they lack the authority to substitute administrative decisions. This aligns with the principle that judicial review remains distinct from an appellate function, ensuring administrative bodies retain their decision-making prerogative while being held accountable for fairness and legality. This shift necessitates a nuanced approach in practice, balancing deference to administrative discretion with constitutional safeguards against abuse of power.
63. The respondents further contend that the applicant should have appealed against the decision not to gazette him instead of applying for judicial review and they have cited section 18 of the *Survey Act*. Section 18 of the *Survey Act* provides as follows:
18. Appeal to High Court
- Any person aggrieved by a decision of the Board under section 17 , or under subsection (4) of section 31 , may, within one month after the date of the decision, appeal to the High Court against the decision, and, on any such appeal, the High Court may give such directions in the matter as it thinks proper, including directions as to the costs of the appeal, and no appeal shall lie from an order of the High Court under this section.[emphasis added]
64. From the above section, an appeal to the High Court is only in respect of decisions of the Board which are made pursuant to section 17 of the Act as well as section 31(4) of the *Survey Act*. The question is, does the decision not to gazette the applicant as a licensed land surveyor fall under the above stated provisions of the *Survey Act* and therefore appealable to the High Court?
65. My exploration of the *Survey Act* and the mentioned sections which I shall reproduce hereunder reveal otherwise. Section 17 provides as follows:
17. Disciplinary powers of Board
- (1) Where, after due inquiry by the Board, a licensed surveyor has been found to have been guilty of professional misconduct, or, having been convicted of a criminal offence, is found by the Board to be unfit to practise, the Board may—
- (a) cancel the licence granted to such licensed surveyor; or



- (b) suspend the licence for a period not exceeding three years; or
 - (c) impose a fine not exceeding one thousand shillings on such licensed surveyor; or
 - (d) reprimand such licensed surveyor.
- (2) Upon any inquiry held by the Board under subsection (1), the person whose conduct is being inquired into shall be afforded an opportunity of being heard, either in person or by an advocate.
 - (3) For the purpose of proceedings at any inquiry held by the Board, the Board may administer oaths and affirmations and may, subject to the provision of any regulations made under this Act, enforce the attendance of persons as witnesses and the production of books and documents.
 - (4) Any person who, having been summoned by the Board to attend before it, fails so to attend, or fails to produce any books or documents which he is required to produce, shall be guilty of an offence and liable to a fine not exceeding two hundred shillings.

66. The above section does not require any further interpretation. It is clear that the decisions that are made under the said section and from which an appeal lies to the High Court are in respect of the Board exercising its disciplinary powers against the land surveyors.

67. In this case, there were no disciplinary proceedings commenced or even contemplated against the applicant and it is therefore unfortunate that the respondents can invoke wrong provisions of the law to deny justice to the applicant. That is unacceptable and this court cannot countenance, aid or abet an injustice being meted out to any person in its full view as is the case herein, which then smacks malice on the part of the 1st respondent in refusing to gazette the applicant's name as a licensed land surveyor.

68. What about section 31(4) of the *Survey Act*? The section provides for correction of errors as follows and I will reproduce the entire section since the subsection also refers to section 18 of the Act and therefore it is important to understand the background information leading to the subsection:

31 Correction of Errors

- (1) The Director, or a Government surveyor authorized in writing by the Director in that behalf, may at any time undertake such field and office checks on the survey work of a licensed surveyor as he thinks fit.
- (2) The Director, or a Government surveyor duly authorized to authenticate a plan under section 32 may, by notice in writing, instruct any licensed surveyor to correct at his own expense within a time specified in such notice any error made by him in the survey represented by the plan submitted for authentication:

Provided that such notice shall not be sent more than twelve months after the date on which the plan was sent to the Director under section 30
- (3) In the event of such licensed surveyor refusing or neglecting within the time specified to correct such error, it shall be lawful for the Director to undertake such correction and to recover the whole cost of such correction from the licensed surveyor concerned
- (4) If such licensed surveyor refuses or neglects to pay the cost of the correction referred to in subsection (3) within fourteen days of the same having been demanded of him,



the Director may report the facts to the Board for disciplinary action, and after due inquiry the Board may order such licensed surveyor to pay the cost of correction to the Director; and if such licensed surveyor refuses or neglects to comply with such order within one month after the date of the order the Board may, subject to section 18 , suspend the licence of the licensed surveyor until the cost of correction has been paid, or for a period not exceeding three years, whichever he thinks fit.

69. The above section gives power to the Director of Surveys to check on the survey done by a licensed surveyor and where errors are found to have occurred, give notice of any error made by a surveyor in the survey represented by the plan submitted for authentication and direct that the error be corrected. If the errors are not corrected, within one month after the date of the order, the Board may, subject to section 18 , suspend the licence of the licensed surveyor until the cost of correction has been paid, or for a period not exceeding three years, whichever he thinks fit.
70. Again, the section has nothing to do with matters licensing and refusal to gazette a surveyor who has been issued with a license, but on demanding correction of errors and in default, disciplinary action would be taken against the surveyor who, if aggrieved by the decision to discipline him may appeal to the High Court.
71. The respondents have also challenged the applicant's application on grounds that the application is fatally defective as it does not specify the alleged violations further that it has failed to meet the statutory threshold under sections 8 and 9 of the *Law Reform Act*.
72. This court in the case of Republic v Public Procurement Administrative Review Board Ex-parte Syner- Chemie Limited [2016] KEHC 2718 (KLR) observed emphasized that courts must interpret statutes in light of constitutional principles. *The Constitution*, particularly Articles 10, 20, 47, 48, and 159, requires courts to promote justice rather than uphold outdated statutory provisions that may undermine constitutional rights.
73. This is not a constitutional petition. The applicant has pleaded precisely what has brought him before this court, being the refusal to gazette him after being licensed to practice and no reasons being given to him for failure to gazette him. The violation is apparent. It is the violation of the applicant's right to fair administrative action as espoused in Article 47 of *the Constitution* and as well as the legal requirements under sections 4 and 6 of the *Fair Administrative Action Act* as reproduced herein above. In short, the applicant was entitled to be given reasons for the refusal to gazette him as a licensed surveyor.
74. This is a judicial review application and from my analysis above, I have already found that the 1st respondent acted irrationally and with procedural unfairness and illegally in failing gazette the applicant and in failing to give reasons for inaction and has not given such reasons. I reiterate many times that the right violated is the right to fair administrative action and this has been, quite clearly, demonstrated by the applicant.
75. Judicial review remedies are discretionary and granted where illegality, irrationality, or procedural impropriety is established. The Applicant has demonstrated that the Board's decision was procedurally unfair and in contravention of Article 47 of *the Constitution*. The omission of the applicant's name in the Kenya Gazette without explanation is an arbitrary administrative action warranting this court invoking its supervisory jurisdiction under Article 165(6) and (7) of *the Constitution* through judicial review. Persons who are given power should not abuse that power or discretion. They should not be malicious and or act in such manner as to prejudice and violate rights of others. That power is given and it can be taken away.



76. Therefore, on whether mandamus should issue, the principles governing the grant of mandamus were articulated in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR. The court held that mandamus compels the performance of a public duty imposed by statute where the responsible authority has failed or refused to perform that duty. However, mandamus cannot command how the duty should be performed where discretion exists.
77. Having considered the pleadings, submissions, and applicable law as elucidated above, I find that the Land Surveyor's Board's decision to omit the applicant's name from the Kenya Gazette without providing reasons was unlawful, unreasonable, and procedurally unfair.
78. Accordingly, the 1st respondent having approved the applicant's application to be licensed as a land surveyor and having duly licensed and registered the applicant as a licensed surveyor (K) on 11th May 2023 and having authorized the applicant to use the initials LS(K) after his name, I find the substantive Notice of motion application for judicial review dated 9th December, 2024 merited. I allow it and issue the following judicial review orders:
- a. An Order of Mandamus is hereby issued compelling the 1st and 2nd respondents, Land Surveyors Board Survey of Kenya and the Secretary to the Board to issue the applicant Colin Munene with the Licensed Surveyor's Certificate Number 282 as communicated in the letter dated 11th may 2023 communicating the decision of the Board to the applicant
 - b. An order of mandamus is hereby issued compelling the 1st and 2nd respondents to issue a notice to the Kenya Gazette, gazetting the applicant Colin Munene as Licensed Surveyor Certificate Number 282
 - c. The Court declines to issue prayer (iii) recalling the earlier Gazette Notice for the Respondents to re-advertise and re-Gazette the Kenya Gazette Notice Vol. CXXV1-No.81 of 7th June 2024 as it involved other licensees.
 - d. The 1st and 2nd respondents shall comply with the orders (a) and (b) above within 30 days of this judgment and file into court evidence of compliance
 - e. The Respondent shall pay to the applicant the costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 24TH DAY OF MARCH, 2025

R.E. ABURILI

JUDGE

