



REPUBLIC OF KENYA



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**Mereka v Sikalieh (Petition E299 of 2022) [2025] KEHC 3467 (KLR)  
(Constitutional and Human Rights) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3467 (KLR)

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

**PETITION E299 OF 2022**

**LN MUGAMBI, J**

**MARCH 20, 2025**

**BETWEEN**

**DAVID MUKII MEREKA ..... PETITIONER**

**AND**

**SAMORA M. SIKALIEH – CHAIRMAN, KAREN LANGATA DISTRICT  
ASSOCIATION ..... RESPONDENT**

**JUDGMENT**

1. The Petition dated 20<sup>th</sup> June 2022 was later on amended on 1<sup>st</sup> July 2022. The petition is supported by the petitioner’s affidavit in support of equal date and a further affidavit dated 18<sup>th</sup> February 2025.
2. The gravamen of this petition revolves around the allegation that the respondent ousted the petitioner from his post as the Secretary of the Karen Langata District Association (K LDA) without adhering to the principles espoused under Articles 47 of *the Constitution*.
3. For that reason, the petitioner seeks the following relief:
  - i. A declaration that the petitioner’s right to fair Administrative Action guaranteed under Article 47 of *the Constitution* has contravened.
  - ii. A declaration that arriving at the decision expressed in the letter dated 9<sup>th</sup> June 2022, the respondent violated the principles of fair trial enshrined under the Article 47 of *the Constitution* and Section 4 of the Fair and administrative Action Act.
  - iii. A declaration that the decision expressed in his letter dated 9<sup>th</sup> June 2022 instructing the petitioner to resign is unlawful and illegal.



- iv. An order compelling the respondent to reinstate the petitioner to the paid-up members WhatsApp group of Karen Langata District Association.
- v. An order compelling the respondent to pay general, exemplary and aggravated damages to the petitioner for violation of the petitioner's fundamental rights under Article 47 of *the Constitution*.
- vi. Interest on (e) at court rates from the time of filing this suit until payment in full.
- vii. Cost of this Petition.
- viii. Any other orders that the court may deem fit.

### **Petitioner's Case**

4. The petitioner informs that he is a member of the KLDA and was elected as its secretary in an Annual General Meeting (AGM) held on 22<sup>nd</sup> March 2022. He is in addition the Chair of the Legal Sub – Committee and a member of the Development Sub -Committee.
5. The petitioner avers that he raised a number of administrative issues concerning the manner in which the respondent was running the affairs of KLDA. These matters were discussed in a sub-Committee meeting held on 25<sup>th</sup> May 2022. He points out that in the said meeting the respondent did not raise any issues against him.
6. Shortly thereafter, the respondent vide an email communication dated 2<sup>nd</sup> June 2022 issued a notice for a special KLDA Committee Meeting to discuss a number of matters.
7. The petitioner states that during the meeting he shockingly learnt that the respondent had appointed another member to act as the Secretary in that meeting and take down the minutes. He claims that he has never received a copy of this meeting minutes.
8. Furthermore, he contends that the said meeting did not address the matters that were on the agenda that had been shared previously. Instead, he claims became the subject matter of that meeting by being intimidated, harassed and slandered. As a consequence, the petitioner left the meeting as it was evident that the respondent was not going to grant him a fair hearing.
9. He avers that later on he received a letter dated 9<sup>th</sup> June 2022 accusing him of a number of offences. Moreover, he was asked to voluntarily resign from his post as the Secretary, Chair and member in the Legal Sub - committee and Development sub-committee respectively, so as not to be subjected to a vote at a Special General Meeting. Additionally, he asserts that the respondent removed him from the WhatsApp group of the paid up KLDA members.
10. The petitioner is grieved that he was not granted a fair hearing in view of the charges that were meted out against him. He claims that the charges were framed so as to intimidate him to resign. It is stated that the respondent has also refused to issue him with the details of the alleged offences and thus his conduct in direct violation of *the Constitution* and the Fair Administrative Actions Act.
11. He is apprehensive that the respondent will call a Special General Meeting so as to discuss the matter and effectively pass a resolution to dismiss him if this Court does not intervene. Following the filing of this suit, new officers have since been appointed and currently in office. In view of the foregoing the petitioner asserts that the respondent conducted itself unlawfully and illegally in dismissing him, thus contravened his rights under Article 47 of *the Constitution*.



## **Respondent's case**

12. In response, the respondent filed his Replying Affidavit sworn on 14<sup>th</sup> February 2025.
13. He stated that KLDA is a resident's association registered under the *Societies Act* and operates through its elected office bearers who serve voluntarily without pay.
14. He affirms that the petitioner was elected as the KLDA secretary on 22<sup>nd</sup> March 2022. However, he decries that upon his appointment, the petitioner proceeded to conduct himself in manner that does not benefit KLDA. He claims that the petitioner was rude to his fellow office bearers, refused to stay in meetings making it hard to hold meaningful meetings.
15. Additionally, it is claimed that the petitioner would adjust the meeting minutes to suit his own agenda. Likewise, that they had received a number of complaints against the petitioner from the members on his conduct such as making unilateral decisions. It is contended that the petitioner's actions threatened to paralyze the activities of KLDA.
16. He depones that the petitioner was informed of these concerns by the management committee on 9<sup>th</sup> June 2022 and required him to respond to the allegations against him at a Special General Meeting. He points out that in the said communication no determination had been made on the petitioner's case.
17. He states that the petitioner responded on the same day and he denied all the charges but would not make a response to them as he was in the process of resigning after all. On this premise he argues that the petitioner's claim that he was not given an opportunity to be heard is baseless.
18. He states that contrary to the petitioner's assertion, the decision to request the petitioner to resign was a collective decision of the Management Committee. Equally, he avers that he did not remove the petitioner from the Whatsapp group but that he voluntarily exited the group upon his exit as the Secretary.
19. Additionally, he states that KLDA held its AGM on 7<sup>th</sup> April 2023 and elected new officers. Subsequently, more officers were elected the following year in the AGM held on 7<sup>th</sup> March 2024. On this basis he avers that the petition has been overtaken by events.
20. He further underscores that since the petitioner has adversely mentioned the current Secretary, Mburu Ngugi the orders sought herein would be manifestly unjust as he is not a party in these proceedings.
21. On the sought damages, he contends that the petitioner has not demonstrated the loss or damage he had incurred as a result of stepping down as the Secretary. This is especially being that the Management Committee receives no remuneration and is a non-profit resident association.
22. He equally adds that the petition does not raise any constitutional issues and is devoid of merit, as such should be dismissed with costs.

## **Petitioner's Submissions**

23. In support of his case, the petitioner filed submissions dated 17<sup>th</sup> October 2023 through Mereka and Company Advocates where the issues for discussion were listed as: whether the decision instructing the petitioner to resign was lawful and whether the remedies sought should issue.
24. On the first issue, counsel reiterating the petitioner's averments stated that the petitioner had not been supplied with details of his allegations and neither was the same tabled before the Management Committee. In addition, that the petitioner was not given an opportunity to be heard nor supplied with the information relied upon to arrive at the impugned decision.



25. Considering this, Counsel submitted that the petitioner’s right under Article 47 and 50 of *the Constitution* had indeed been violated by the respondent. In addition, Section 4(1), (2) and (3) of the Fair Administration Action Act. Reliance was placed in *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR where it was held that:

“ Article 47(1) marks an important and transformative development of administrative Justice it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies but also entrenches the right to fair administrative action in the bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of la human dignity social justice/ good governance/ transparency and accountability. The administrative actions of public officers’ state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra v1res from which administrative law under the common law was developed.”

26. Like dependence was placed in *Dry Associates Ltd v Capital Markets Authority and Another* [2012] eKLR, *Republic v Fazul Mahamed & 3 others Ex-Parte Okiya Omtatah Okoiti* [2018] eKLR and *Chepkemoi Mukenyang v Evanson Pkemei Lomaduny & another* [2022] eKLR.

27. On the second issue, Counsel submitted that this Court has the power to grant various reliefs under Article 23(3) of *the Constitution*. In this matter, Counsel submitted that the petitioner’s rights under Article 47 and 50 of *the Constitution* had been violated by the respondent as he was not granted a fair hearing. Counsel stressed that this violation had also been demonstrated by the petitioner.

28. To buttress this point, reliance was placed in *Chepkemoi Mukenyang* (supra) where it was held that:

“ We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringe and the manner in which they are alleged to be infringed.”

### **Respondent’s Submissions**

29. The respondent’s submissions are not in the Court file or Court Online Platform (CTS).

### **Analysis and Determination**

30. It is worthy to note that the respondent in opposition to the petition had filed a Notice of Preliminary Objection challenging the petitioner’s failure to exhaust the existing internal mechanisms. Hon. Lady Justice M. Thande in a Ruling dated 30<sup>th</sup> June 2023 determined as follows:

20. The Court has considered that there exist no internal dispute resolution mechanisms under the KLDA constitution. This can only mean that the Petitioner, being aggrieved by the decision of the Respondent and now seeks to enforce his fundamental rights and freedoms, is bereft of a forum for ventilating his grievances. The jurisdiction of this Court must therefore not be ousted as it is this Court that is charged with the power to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.



21. In view of the foregoing, the finding of this Court is that it has jurisdiction to entertain the Petition herein. Accordingly, the Preliminary Objection dated 4.7.22 is without merit and the same is hereby dismissed. Costs in the cause.”
31. That said, it is my considered view that the issues that arise for determination are as follows:
- i. Whether the respondent violated the petitioner’s constitutional right under Article 47 of *the Constitution*.
  - ii. Whether the petitioner is entitled to the relief sought.  
Whether the respondent violated the petitioner’s constitutional rights under Article 47 of *the Constitution*.
32. Article 47 of *the Constitution* of Kenya provides as follows:
- a. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
  - b. 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.
33. Additionally, the *Fair Administrative Action Act* under Section 4 which provides in sub-section 3 & 4 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—
    - i. prior and adequate notice of the nature and reasons for the proposed administrative action;
    - ii. an opportunity to be heard and to make representations in that regard;
    - iii. notice of a right to a review or internal appeal against an administrative decision, where applicable;
    - iv. a statement of reasons pursuant to Section 6;
    - v. notice of the right to legal representation, where applicable;
    - vi. notice of the right to cross-examine or where applicable; or
    - vii. 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. Section 7(2) of the *Fair Administrative Action Act*, further provides the grounds of review by the Court as: bias, procedural impropriety, ulterior motive, failure to take into account relevant matters, abuse or discretion, unreasonableness, violation of legitimate expectation or abuse of power.
35. The importance of fair administrative action as a constitutional right was appreciated in the South African case of *President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others* (CCT16/98) 2000 (1) SA 1, as follows:
- “Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of Section 33, but also its content. The principal function of Section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...”
36. Equally in *Muigana & 16 others v County Government of [2024] KEHC 960 (KLR)* the Court observed as follows:
36. In general, the *Fair Administrative Action Act* has introduced six aspects that are important in enhancing access to administrative justice in Kenya. First, Section 3(1) has expanded the scope of judicial review to include the actions of public and private bodies. This implies that it is not only the actions of public bodies that are subjected to judicial review but also the actions of private actors that may be subjected to judicial review where they violate the rights or interests of affected individuals.
37. Second, the Act has expounded on the constitutional grounds for judicial review and codified the grounds for judicial review under common law such as ultra vires, procedural fairness, and reasonableness. Section 7(2) of the Act provides for the grounds upon which a court or tribunal may review an administrative action or decision.
38. Third, Section 9 of the Act outlines the procedure for judicial review Fifth schedule, under Part IV of the Act (titled ‘Miscellaneous’), stated that the provisions of the *Fair Administrative Action Act* are additional to and not derogations from the rules of common law and natural justice. See M Akech, *Administrative Law* (2016).
39. The acknowledgment of common law principles in the review of administrative action has a significant impact on how Article 47 of *the Constitution* should be interpreted. According to OJ Dudley, in ‘*The Constitution* of Kenya 2010 and Judicial Review, Courts that interpreted the *Fair Administrative Action Act* have continued to appreciate and apply the principles of common law in the post-2015 jurisprudence. Courts have further interpreted Article 47 and the *Fair Administrative Action Act* in a way that ensures common law principles and rules of natural justice are further developed.
40. Lastly, the Act has elaborated the right to be given written reasons for administrative action. The requirement to give reasons for administrative action under the *Fair Administrative Action Act* has both substantive and procedural aspects...”



37. This principle of natural justice is a lifeblood in administrative justice without which, a finding of miscarriage of justice would most certainly be an inescapable be affirmed. In the Indian case of *Ramseth vs. Collector of Dharbang*, AIR 155 PAT 345 emphasized thus:

“There must be ever present to the mind of men the fact that our laws of procedure are grounded on the principle of Natural Justice which require that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings which affect their lives and property should not continue in their absence and that they should not be precluded from participating in such proceedings.”

38. The Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 also affirmed as follows:

“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”

39. In the same manner, the Court in *Judicial Service Commission vs. Mbalu Mutava* (Supra) discussed as follows:

“In exercise of its powers under *the Constitution* or under legislation, public officers, state officers, state organs and independent bodies or tribunals may make decisions which may be characterized as judicial, quasi-judicial or administrative depending on the empowering provision of *the Constitution* or the law. The landmark decision of the House of Lords in *Ridge v. Baldwin* [1964] AC 40 clarified the law, that the rules of natural justice, in particular right to fair hearing, (*audi alteram partem* rule) applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as:

- i. the right to be heard by an unbiased tribunal.
- ii. the right to have notice of charges of misconduct
- iii. the right to be heard in answer to those charges.

On his part, Lord Reid when dealing with class of cases of dismissal from office “where there must be something against a man to warrant his dismissal” said at page 66:

“There, I find an unbroken line of authority to the effect that an officer cannot be dismissed without first telling him what is alleged against him and hearing his defence or explanation.”

40. Turning to the facts of this case, the Petitioner deponed that by email of 2<sup>nd</sup> June, 2022, the Chair called for a Special General Meeting of KLDA that specified the agenda for the meeting as follows: Committee members roles, Secretariat roles, Development/legal Committee projects under review, parliamentary studies centre, My Town Karen, Pepo Lane development, Shopping Mall on Langata Road and finally, Africa Reit On Langata Road.

41. That to the Petitioner’s surprise, despite being the elected Secretary of KLDA, in that meeting he found that the Chairman had nominated one Mr. Mburu Ngugi to be the Secretary and to take the minutes. Those minutes have however to date never been availed to him. That without any prior notice, and in



complete departure from agenda circulated earlier the petitioner, he became the subject of discussion in the agenda where he was harassed, intimidated and aspersions cast on him and thus left the meeting upon realizing it had deviated and he was not being given a fair hearing.

42. That in a letter dated 9<sup>th</sup> June, 2022; referenced ‘RE: Resignation From Your Position As Karen Langata District Association Hon. Secretary’ (DM 4); the Petitioner was notified of various misconducts; which included: deviating from the mandate of association, going against residents’ wants and committees directions, acted in a manner that lacks decorum in more than one occasion, writing to statutory bodies single handedly without the authority of the committee, acted in ways that were suspicious and that could place the committee in jeopardy, acted contrary to committee decisions and consequent directions. The Chair further demanded for his resignation as Secretary of KLDA voluntarily or be subjected to a vote at a Special General Meeting of KLDA as well as stepping down as the Chair of the Legal Sub-Committee and the Member of the Development Committee.
43. The Respondent in the Replying Affidavit does not deny the fact that the Petitioner was the elected Secretary of KLDA, (in fact affirms that he had been elected on 22/3/22); but he avoids to respond to the contention by the petitioner that he unilaterally replaced the Petitioner in the meeting of 2/6/2022 without his prior knowledge or notice.
44. Further, while the Respondent claims that the Petitioner was involved in several misconducts that necessitated that had generated many complaints from the members, nothing is exhibited to substantiate the fact that such complaints by members existed.
45. Moreover, there is no evidence that prior to the meeting of 2<sup>nd</sup> June, 2022; the Petitioner had been made aware that his removal would be discussed as an agenda then by the Committee for possible forwarding to Special General Meeting to consider a vote for his removal. It cannot thus be argued that he was provided with prior notice of the allegations and opportunity to respond to the same.
46. Indeed, the Respondent confirms that the very day he was served, is the same date that the Petitioner responded clearly confirming that no prior notice of the allegations had been given.
47. To further compound the obvious flaws; there were no minutes of the committee attached by the respondent to confirm that the Committee considered and resolved what is communicated in respondent’s letter of 9<sup>th</sup> June, 2022 to the Special General Meeting as purported in the respondent’s letter of 9<sup>th</sup> June, 2022 yet reading the letter, one would have expected to see the minutes containing the resolution. The last paragraph of the letter of 9<sup>th</sup> June, 2022 by the Respondent reads:

“The Committee has decided to instruct you to desist from acting on behalf of KLDA Committee and KLDA Association. We further request you, to step down from your position as KLDA Honourable Secretary voluntarily so as not to subject you to a vote at a Special General Meeting.”
48. The above position is not substantiated by any minutes to ascertain this fact, which shows that the decision was possibly respondent’s unilateral decision.
49. In my view, the action of the Respondent against the Petitioner was in violation of the Petitioner’s rights under Article 47 of *the Constitution*. The removal was unprocedural and unlawful. It was done in blatant breach of the provisions as to notice and the need to accord the Petitioner a hearing as provided for in Section 4 (3) of the Fair Administrative Actions Act.



50. The Respondent argues that the breach of the right attracts no remedy considering that subsequent elections were held and the Petitioner was not voted in, further that this is a voluntary position in a Residents Association that does not attract any remuneration.
51. What is in issue here is violation of the constitutional rights of the petitioner which the petitioner has proved. The fact of being removed from a position entrusted by the Community exposes one indignation and shame as one is seen as incapable serving others. That alone is enough to attract a remedy.
52. The Respondent occasioned the removal by writing the letter and appointing someone to act in the Petitioner's place and never provided minutes of committee to back those decisions. The consequences of the unlawful and unconstitutional actions are thus borne by the Respondent in person and not the KLDA as an Association.
53. Article 3 (1) obligates every person to respect, uphold and defend *the Constitution*. The illegal action of the Respondent cannot be let go without redress.
54. The Supreme Court in *Charles Muturi Macharia & 6 Others v Standard-Group & 4 Others* (SC Petition No.13 (E015) of 2022) guided as follows in regard to award of remedies in Constitutional matters:
91. By the provisions of Articles 22 and 23 of *the Constitution*, the High Court has the power and authority to enforce and uphold the Bill of Rights in claims of infringements. In proceedings brought by any person claiming that a right or fundamental freedom has been denied, violated or infringed, or is threatened, the court may, under Article 23 grant appropriate relief, including:
- a. a declaration of rights
  - b. an injunction
  - c. a conservatory order
  - d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under article 24.
  - e. an order for compensation
  - f. an order of judicial review.”
92. This Court in the case of *Gitobu Imanyara & 2 Others v. Attorney General*, SC Petition No. 15 of 2017, described Article 23 as “the launching pad of any analysis on remedies for Constitutional violations”. This statement has repeatedly been made in other decisions like *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; *Initiative for Strategic Litigation in Africa (Amicus Curiae)*, SC Petition No. 3 of 2018; [2021] KESC 34 (KLR) and others. As a launching pad, it is acknowledged that the list of six remedies in Article 23(3) is not closed; that the court can grant any other appropriate relief not included in the list; that whether or not to grant a constitutional relief is an act of judicial discretion which must be exercised upon known legal principles and not arbitrarily, whimsically or capriciously.”
- ...
94. To answer directly the question posed by this issue, under common law principles, it is settled that an injured party is entitled to damages for the loss and injury suffered under private law



causes of action, like in tortious claims. In situations like those, compensation for personal loss depends on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable are broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in Article 23. While it is not necessary to prove loss or damage in cases of constitutional rights violations, the court may consider the extent, nature, gravity and immensity of harm suffered by the aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review will suffice to vindicate the right.

95. In assessing the appropriate sum to be awarded as compensation, the court must feel satisfied that the sum will afford the victim adequate redress to vindicate the victim's constitutional right. Assessment of the right quantum for compensation will take into account all the relevant facts and circumstances of the violation and the victim in the particular case, bearing in mind any aggravating features. We stress that the purpose of constitutional relief of an award of compensation is not necessarily intended to punish the violator, but only to vindicate the right of the victim.

....

Therefore, once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violation cases is different from that in tortious claims....”

55. In view of the foregoing, I opine that the following reliefs commend themselves to this Court to grant in this Petition, which I hereby grant as follows:
- a. A declaration that the decision by the Respondent against the Petitioner contained in the letter dated 9<sup>th</sup> June, 2022 in violation of the right to fair administrative action of the Petitioner under Article 47 of *the Constitution* and Section 4 of *Fair Administrative Action Act*.
  - b. The Petitioner is entitled to damages assessed at Kshs.250,000/- (Two hundred and Fifty Thousand) for violation of his rights under Article 47 of *the Constitution* to be borne by the respondent in person. The same shall be borne personally by the respondent not KLDA Association.
  - c. Costs of this Petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MARCH, 2025.**

.....  
**L N MUGAMBI**  
**JUDGE**

