



**Republic v Judicial Service Commission; Dari Limited & 2 others
 (Interested Parties); Esho (Exparte Applicant) (Judicial Review
 E002 of 2025) [2025] KEHC 4761 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4761 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAROK
 JUDICIAL REVIEW E002 OF 2025**

CM KARIUKI, J

APRIL 11, 2025

**IN THE MATTER OF JSC PETITION NO. 35 OF 2024, JSC
 PETITION NO. 73 OF 2024 AND JSC PETITION NO. 3 OF 2025**

-AND

**IN THE MATTER OF ARTICLES 20, 21, 22, 23, 27, 28, 47, 48 AND 50
 OF THE CONSTITUTION OF KENYA, 2010 AS READ WITH THE
 PROVISIONS OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015**

BETWEEN

REPUBLIC APPLICANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

AND

DARI LIMITED INTERESTED PARTY

CHRISTOPHER ROSANA INTERESTED PARTY

NELSON HAVI INTERESTED PARTY

AND

PARIKEN OLE ESHO EXPARTE APPLICANT



RULING

Background

1. By a letter dated 27/01/2025, the Respondent having received and considered Complaints comprising of JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 and JSC Petition No. 3 of 2025 (hereinafter referred to as “the said Petitions”) lodged by the 1st, 2nd, and 3rd Interested Parties respectively against Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) (hereinafter referred to as “the Seven Judges of the Supreme Court of Kenya”) directed the said Seven Judges of the Supreme Court of Kenya to respond to the said Petitions within 21 days.
2. The substance of the Complaints comprising of JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 and JSC Petition No. 3 of 2025 relates to decisions made by the Seven Judges of the Supreme Court of Kenya in their judicial capacity.
3. The ex parte applicant contends that the Respondent has no jurisdiction to review or sit on appeal against any judicial decision either under Article 168 of *the Constitution* of Kenya or under any other written law. As such, any Complaint formulated against a Judge or Magistrate on the merits of a judicial decision does not meet the threshold of a Complaint capable of being entertained by the Respondent in exercising its limited mandate and ought to be dismissed in limine.
4. Consequently, the Respondent’s action in admitting the said Petitions and affording them the color of legitimate Complaints in law, is not only tainted by illegality, impropriety, and irrationality but it constitutes an unprecedented brazen assault on the safeguards, principles, and values enshrined in *the Constitution* of Kenya necessitating immediate and urgent judicial intervention to wit:(that is to say).
5. Preservation of Judicial Independence: This Application raises critical constitutional issues regarding the independence of the judiciary, as guaranteed under Article 160(1) of *the Constitution* of Kenya (2010). Any delay in addressing the matter could undermine judicial independence, as the Respondent’s proceedings might subject judges to external control or interference.
6. Avoidance of Irreparable Harm: If the Respondent proceeds with the said Petitions, it could result in irreparable harm to the said Seven Judges of the Supreme Court of Kenya’s reputation, career, and judicial standing. Urgent intervention is necessary to prevent such harm, which cannot be adequately remedied through ordinary legal processes.
7. Constitutional and Legal Violations: This Application alleges that the Respondent’s actions are ultra vires, unconstitutional, and in violation of statutory limits. These are serious allegations that require immediate judicial scrutiny to prevent further breaches of *the Constitution* and the law.
8. Public Interest and Confidence in the Judiciary: The matter involves significant public interest, as it concerns the integrity and independence of the judiciary. Delaying the determination of the Application could erode public confidence in the judicial system, which is a cornerstone of the rule of law.
9. Procedural Impropriety and Unreasonableness: The Application raises concerns about procedural impropriety and unreasonableness in the Respondent’s decision to require the said Seven Judges to respond to the said Petitions. These issues need urgent resolution to ensure that administrative actions



adhere to the principles of natural justice and fairness under Article 47 of *the Constitution* and the *Fair Administrative Action Act* (2015).

10. **Judicial Immunity:** The Application highlights the principle of judicial immunity, which protects judges from being sued or subjected to external scrutiny for decisions made in their judicial capacity. Urgent determination is necessary to uphold this immunity and prevent the Respondent from placing judges on trial for their judicial decisions.
11. **Prevention of Precedent-Setting:** If the Respondent's actions are allowed to proceed unchecked, it could set a dangerous precedent where judges are routinely subjected to external petitions and investigations for their judicial decisions. This would undermine the judiciary's ability to function independently and impartially in accordance with Article 162 of *the Constitution* of Kenya.
12. **Lack of Established Guidelines:** The absence of clear procedural rules within the Respondent for handling complaints against judges in such circumstances creates a risk of arbitrary and unfair administrative actions. Urgent judicial intervention is necessary to ensure that such matters are handled in a manner consistent with constitutional principles and the rule of law.
13. **Irrationality of the Respondent's Directive:** The requirement for judges to respond to the said Petitions is ipso facto irrational, as the proper remedy for dissatisfied litigants lies within the court hierarchy (e.g., through appeals or reviews). Urgent determination is therefore merited to prevent the Respondent from overstepping its mandate and encroaching on judicial functions.
14. **Potential for Unreasonable Decisions:** If the Respondent's decision is found to be so unreasonable that no reasonable authority could have made it, it must be struck down promptly to prevent further unreasonable actions that could imperil the judiciary and the administration of justice.
15. **The Ex Parte Applicant's Application Dated 07/03/2025**
16. The ex parte applicant has, after procuring leave, filed a notice of motion dated 07/03/2025 seeking the following orders.
17. That an order of Certiorari to move into this Court for purposes of being quashed, a decision dated 27th January 2025 of the Respondent to require Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) the seven judges of the supreme court to file a response to the Petitions by the 1st, 2nd and 3rd Interested Parties herein.
18. That an order of Mandamus to compel the Respondent to promulgate appropriate clear procedural rules consistent with constitutional principles and the rule of law for handling complaints against Judges, Magistrates, and other judicial officers and to desist from continuing, maintaining, and sustaining any such charges and/or proceedings against Judges, Magistrates, and other judicial officers until the said procedural rules are in place.
19. That an order of Prohibition to prevent the Respondent from continuing, maintaining, and sustaining any such charges and/or proceedings against Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) the seven judges of the supreme court either under JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 and JSC Petition No. 3 of 2025 or any other Petition whatsoever either before it or at all.



20. THAT the Honourable Court be pleased to grant such other or further relief as it may deem fit in the circumstances.
21. THAT the cost of this Application be borne by the Respondent.
22. The application is premised on Sections 4 and 5 of the *Fair Administrative Action Act*, 2015, Articles 20-23, 27-28, 47, 48, 50, 160, 162 and 168 of *the Constitution* of Kenya, 2010 as read with Order 53 of the Civil Procedure Rules, Section 13, 32 & 47 of *Judicial Service Act*, No. 1 of 2011 and all other enabling provisions of the law and the Leave of Court granted on 18/02/ 2025 by this court.
23. The application is based on the grounds set out on the face of the application, facts set out in the statutory statement dated 17/02/2025, and supporting affidavits sworn by Pariken Ole Esho on 17/02/2025 and 07/03/2025.
24. The gist of the application is that in accepting and acting on Petitions by the 1st, 2nd, and 3rd Interested Parties herein that relate to official judicial conduct, the Respondent is effectively in violation of Article 160 of *the Constitution*. The Respondent further acted ultra vires its Constitutional and statutory mandate in admitting a Complaint that requires it to evaluate, review, and sit on appeal against a judicial decision of the Supreme Court of Kenya. The decision of the Respondent herein dated 27/01/ 2025 requires judges to respond to matters arising from judicial decisions, and as such, amounts to interference with judicial independence, making the said decision illegal. Judges are immune from being sued for decisions made in their judicial capacity under common law principles and Article 160(5) of *the Constitution* of Kenya.
25. The ex parte applicant contends that the lack of procedural rules for handling such complaints enables the Respondent herein to act arbitrarily in directing judges to respond to Petitions that do not meet the requisite threshold.
26. The 1st interested party's replying affidavit.
27. The 1st interested party filed a replying affidavit sworn by Hon. Raphael Tuju, one of the directors of the 1st interested party on 11/03/2025.
28. The 1st Interested Party Notice of Preliminary Objection
29. The 1st interested party filed notice of preliminary objection dated 11/03/2025 on the grounds;
30. That this Honourable Court has no jurisdiction to inquire into the proceedings by the 1st Respondent for the appointment and/or removal from office of the Judges of the Supreme Court by virtue of Articles 166 (1) (a) and (b) and Articles 168 (4), (5) and (8) of *The Constitution* of Kenya, 2010.
31. That the application falls short on the doctrine of "res-sub judice" under Section 6 of the *Civil Procedure Act* as there are eight other suits on the same subject matter pending determination being:
 - i. HCCHRPET/E079/2025- Hon. Lady Justice Njoki S. Ndung'u versus The Judicial Service Commission and Others;
 - ii. HCCHRPET/E083/2025- Hon. Lady Justice Martha Koome versus The Judicial Service Commission and Others;
 - iii. HCCHRPET/E086/2025- Hon. Lady Justice Philomena Mbete Mwilu versus The Judicial Service Commission and 3 Others;
 - iv. HCCHRPET/E087/2025- Hon. Justice Isaac Lenaola versus The Judicial Service Commission and 4 Others;



- v. HCCHRPET/E088/2025- Hon. Justice Mohamed Khadhar Ibrahim versus The Judicial Service Commission and 3 Others;
 - vi. HCCHRPET/E089/2025- Hon. Justice Mohamed Khadhar Ibrahim versus The Judicial Service Commission and 2 Others;
 - vii. HCCHRPET/E090/2025- Hon. Justice William Ouko Ibrahim versus Kenya Magistrates and Judges Association and Others
 - viii. HCCHRPET/E098/2025- Justice (Dr) Smokin Wanjala versus The Judicial Service Commission.
32. That the said Application is incompetent, defective, and bad in law and does not disclose any cause of action.
 33. That the Application ought to be struck out and dismissed with costs
 34. The 3rd Interested Party's Application dated 19/02/2025
 35. By a notice of motion dated 19/02/2025, the 3rd interested party sought the following orders.
 - i. Spent.
 - ii. This suit be and is hereby transferred to the high court of Kenya at Nairobi, judicial review division.
 - iii. The order for leave and stay made herein on 18/02/2025 be and is hereby set aside.
 - iv. The notice of motion for judicial review filed pursuant to the order for leave made herein on 18/02/2025 be and is hereby struck out and the suit dismissed.
 - v. The costs of this application, of the struck-out notice of motion and dismissed suit be paid by the ex parte applicant.
 36. The application is premised on sections 1A, 1B, 3, and 3A of the Civil Procedure Act, Order 51 Rule 15 of the Civil Procedure Rules.
 37. The application is based on the grounds set out on the face of the application and the supporting affidavit of NELSON HAVI sworn on 19/02/2025.
 38. The gist of the 3rd interested party's application is that the proper place of filing the claim is the High Court of Kenya at Nairobi, judicial review division for the reasons that; the Supreme Court of Kenya sits in Nairobi and that is where the subject matter is situated, the cause of action concerning the 7 judges of the supreme court arose and where the respondent and all the interested parties reside carry on business or work for gain; rule 8 of the fair administrative action rules is explicit on the place of suing; the filing of this claim in Narok amounts to forum shopping by the 7 judges of the supreme court.
 39. The 3rd interested party contends that the ex parte applicant has no locus standi to originate the claim as the 7 judges of the Supreme Court are not persons who cannot act in their own names or as a person acting in the public interest, or aggrieved by the decision of the respondent in the manner contemplated under article 22(2)(a) and (c) of the Constitution and section 7 (1) of the Fair Administrative Action Act. Therefore, the ex-parte applicant is a proxy of the 7 judges of the Supreme Court. See court of appeal in Law Society of Kenya v the Supreme Court & others [2024] eKLR.



40. The 3rd interested party contends that the grant of an order of leave and stay amounts to the suspension of a constitutional provision that is article 168(4) of *the Constitution*. See High Court in Rigathi Gachagua & Others V Speaker, National Assembly & Others [2024] eKLR.
41. The 2nd interested party's replying affidavit.
42. The 2nd interested party filed a replying affidavit sworn by Christopher Rosana on 25/02/2025.
43. The 2nd interested party contends that the ex-parte applicant lacks locus standi to institute these proceedings. He argued that the public cannot answer for the judge because the public cannot see the mind of the judge. Therefore, there is no 'public interest' under which a random member of the public may sue on behalf of the judge in the context of removal proceedings such as the ex parte applicant herein. Further, the judges have filed individual suits against JSC. Therefore, the present proceedings are superfluous.
44. The Ex parte applicant's replying affidavit
45. The ex-parte applicant filed a replying affidavit sworn by Pariken Ole Esho on 27/02/2025.
46. The ex parte applicant averred that the 2nd and 3rd interested parties have misunderstood the doctrine of public interest litigation as enshrined in articles 22(2) and 258 (2) of *the constitution*. The ex parte applicant cited the court of appeal in West Kenya Sugar Company Limited V Kenya Sugar Board & Another [2014] eKLR, Parliamentary Service Commission V Salaries Remuneration Commission; Hon. Attorney General & 3 Others (Interested Parties) (2018) eKLR, Trusted Society of Human Rights Alliance V Attorney General & Another [2012] eKLR, and Mumo Matemo V Trusted Society of Human Rights Alliance & 5 Others.
47. The ex parte applicant contends that the High court has unlimited original jurisdiction. Further, the geographical location of the Supreme Court has no bearing on the High court's jurisdiction. He is a resident of narok and is entitled to access justice in the nearest court within his locality. The allegations of forum shopping are baseless.
48. The ex-parte applicant contends that the circumstances, issues, and facts in the Gachagua case are different and distinct from those in the instant matter.
49. The ex-parte applicant contends that there is no prejudice that the interested parties will suffer if the conservatory orders of 18/02/2025 are maintained and extended until the hearing and determination of this matter.
50. Application dated 06/03/2025
51. The respondent filed an application dated 06/03/2025 seeking the following orders;
 - i. Spent.
 - ii. That this honourable court be pleased to review and set aside the orders for leave and stay issued on 18/02/2025.
 - iii. That the substantive notice of motion application for judicial review filed pursuant to the orders for leave and stay issued on 18/02/2025 be struck out with costs to the respondent/ applicant.
 - iv. That the costs of this application be in the cause.



52. The application is premised on articles 35 and 50(4) of *the constitution*, Sections 80, 81, and 82 of the *Evidence Act*, section 8 of the *Access to Information Act*, Sections 1A, 1B, 3A, and 80 of the *Civil Procedure Act*, Order 2 Rule 15 of the Civil Procedure Rules, and Rules 5 and 8(5) of the Fair Administrative Action Rules, 2024.
53. The application is based on the grounds set out on the face of the application and the supporting affidavit and further affidavit sworn by WINFRIDA B. MOKAYA on 06/03/2025 and 21/03/2025.
54. The respondent contends that the order of stay amounts to judicial interference in the respondent's exercise of its constitutional mandate under Article 168(4) of *the Constitution*.
55. The respondent contends that the instant proceedings are pre-emptive and premature as the respondent is still in the preliminary stages of evaluation of the petitions and is yet to make a decision on whether the petitions before it disclose grounds for removal of the judges.
56. The respondent contends that the ex parte applicant has no locus standi to institute the instant proceedings as petitions filed by interested parties are personal to the 7 judges.
57. The respondent contends that some documents in possession of the ex-parte applicant were obtained unlawfully and illegally. The ex-parte applicant has not explained how he obtained confidential information from the judiciary and the commission. For example, pleadings in Petition No. E033 of 2024; Dr. Felix Odhiambo Vs Registrar of The Supreme Court & Others and Petition No. E048 of 2024; Ahmednasir Abdullahi Advocates LLP & 10 Others Vs Chief Justice Martha Koome 9 Others and section 8 of *Access to Information Act*.
58. The respondent averred that the ex parte applicant is non-compliant with rule 5 of the Fair Administrative Action Rules, 2024 which requires one to issue a notice of intention to sue before moving the court for an order of mandamus.
59. The respondent therefore urged this court to set aside the orders of leave and stay issued on 18/02/2025.
60. The ex-parte applicant's replying affidavit
61. The ex-parte applicant filed a replying affidavit sworn by Pariken Ole Esho on 18/03/2025. In response to the application dated 06/03/2025, the ex-parte applicant contends that the respondent has a fundamental misunderstanding of the doctrine of public interest litigation as enshrined under Articles 22 (2) and 258 (2) of *the Constitution* of Kenya. The ex-parte applicant relied Court of Appeal in West Kenya Sugar Company Limited v Kenya Sugar Board & Another [2014] eKLR, and Parliamentary Service Commission v Salaries Remuneration Commissions; Hon. Attorney General & 3 Others (Interested Parties) [2018] eKLR.
62. The ex-parte applicant contends that the question of how evidence was obtained (e.g., irregularly or unlawfully) primarily relates to the admissibility of that evidence in court. However, the fact that evidence might be inadmissible does not automatically mean the entire case should be dismissed.
63. The respondent/applicant's further affidavit.
64. The respondent filed a further affidavit sworn by the chief registrar and secretary of the respondent, Winfridah B. Mokaya on 21/03/2025.
65. The respondent averred that the judicial review jurisdiction of the court under order 53 of the Civil Procedure Rules, 2010 is narrow and different from the constitutional jurisdiction of the court and the two should not be mixed.



66. The respondent averred that it would be detrimental to the administration of justice for a court to admit evidence obtained in contravention of the very laws it seeks to uphold.
67. The respondent averred that the seven judges of the Supreme Court have filed petitions in their own capacities challenging the decision impugned herein and there is, therefore, no propriety in the judicial review proceedings by the ex parte applicant supposedly brought in the public interest and the proceedings are therefore an abuse of the court process and ought to be dismissed forthwith.
68. Directions of the court
69. The application dated 17/02/ 2025 coming for ex parte hearing under a certificate of urgency and upon being satisfied a prima facie case was disclosed, this court made the following orders;
- i. The application is certified urgent and to be heard ex-parte in the first instance for the reasons of urgency set out in the Certificate of Urgency.
 - ii. The Ex-Parte Applicant, Pariken Ole Esho be and is hereby granted leave to apply for an order of Certiorari to move into this Court for purposes of being quashed, a decision dated 27th January 2025 of the Respondent to require Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) the 7 judges of the supreme court to file a response to the Petitions by the 1st, 2nd and 3rd Interested Parties herein.
 - iii. The Ex-Parte Applicant be and is hereby granted leave to apply for an order of Mandamus to compel the Respondent to promulgate appropriate clear procedural rules consistent with constitutional principles and the rule of law for handling complaints against Judges, Magistrates, and other judicial officers and to desist from continuing, maintaining and sustaining any such charges and/or proceedings against Judges, Magistrates and other judicial officers until the said procedural rules are in place.
 - iv. The Ex-Parte Applicant be is hereby granted leave to apply for an order of Prohibition to prevent the Respondent from continuing, maintaining, and sustaining any such charges and/or proceedings against Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) the 7 judges of the supreme court either under JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 And JSC Petition No. 3 of 2025 or any other Petition whatsoever either before it or at all.
 - v. The grant of leave herein is to operate as A STAY to stop the implementation of the decision by the Respondent requiring Her Ladyship Justice Martha Koome (CJ), Her Ladyship Justice Philomena Mwilu (DCJ), His Lordship Justice Mohamed Ibrahim (SCJ), His Lordship Justice Smokin Wanjala (SCJ), Her Ladyship Justice Njoki Susana (SCJ), His Lordship Justice Isaac Lenaola (SCJ) and His Lordship Justice William Ouko (SCJ) the seven judges of the supreme court to submit responses in respect of JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 and JSC Petition No. 3 of 2025 or any other Petition whatsoever either before it or at all and to Stop any such further proceedings against the said Seven Judges of the Supreme Court of Kenya pending the hearing and determination of the Substantive Judicial Review proceedings to be filed following the grant of leave herein.



- vi. The application be filed within twenty-one days of dates herein and the same be served within fourteen days after filing.
70. The leave and stay granted pursuant to application dated 19/02/2025 attracted one (1) PO by 1st interested party, (2) applications (one by the 3rd Interested party and one by the respondent which were canvassed by way of written submissions.
71. The ex-parte applicant's Submissions
72. The ex parte applicant submitted that further affidavit sworn by the respondent on 21/03/2025 is a belated afterthought filed without leave of court. The ex-parte applicant urged this court to disregard it entirely.
73. The ex parte applicant submitted that the Ex-Parte Applicant has the necessary locus to initiate these proceedings pursuant to Articles 22 and 23 of *the Constitution* and that this Honourable Court has jurisdiction to hear and determine the Judicial Review Application pending before it.
74. The ex parte applicant submitted that article 22 of *the constitution* of Kenya is applicable to judicial review proceedings, specifically when a person seeks redress for the denial, violation, or infringement of a right or fundamental freedom or a threat to such rights. Further Article 23 (3) of *the Constitution* has empowered this Court to grant appropriate relief in any proceedings brought under Article 22 of *the Constitution* where there has been a violation of or threat of a violation of a fundamental right or freedom such as the claim by the Ex-parte Applicant herein. The ex parte applicant relied on article 47 of *the constitution* the Court of Appeal in *West Kenya Sugar Company Limited v Kenya Sugar Board & Another* [2014] eKLR and approved by Justice G. V Odunga (as he then was) in *Parliamentary Service Commission v Salaries Remuneration Commissions; Hon. Attorney General & 3 Others (Interested Parties)* [2018] eKLR,
75. The Ex-parte Applicant submitted that he has brought this suit as a matter of public interest litigation, firmly grounded in Articles 22 (2)(c) and 258 (2) (c) of *the Constitution*, recognizing that the removal of Supreme Court judges is an issue of profound ramifications on constitutionalism, the rule of law and the administration of justice in our beloved country. The issues raised in this matter entail fundamental questions of law that transcend the ex-parte applicant's personal interests and extend beyond the individual judges of the Supreme Court.
76. The Respondent's conduct and tenor of the 1st, 2nd, and 3rd Interested Parties' petitions against all of the Supreme Justices has generated animated public anxiety especially given the potential paralysis of the judiciary. There is therefore need to protect judicial independence, prevent irreparable harm, address constitutional violations, uphold public confidence in the judiciary, and ensure that administrative actions are fair, reasonable, and lawful. The ex parte applicant relied on *Trusted Society of Human Rights Alliance v Attorney General & Another* [2012] eKLR, *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others*, *Republic v Director, Kenya School of Law & 2 others; Kitsao (Exparte Applicant) (Judicial Review Application E001 of 2024)* [2024] KEHC 2975 (KLR) (22 March 2024) (Judgment), article 22 and 258 of *the constitution*.
77. The ex-parte applicant submitted that pursuant to Article 165 of *the Constitution*, this court has unlimited jurisdiction to hear and determine the Ex-Parte Applicant's judicial review Application. The ex parte applicant relied on Section 9 of the *Fair Administrative Action Act*, *Republic v Director, Kenya School of Law & 2 others; Kitsao (Exparte Applicant) (Judicial Review Application E001 of 2024)* [2024] KEHC 2975 (KLR) (22 March 2024) (Judgment), *Dande & 3 others v Inspector General, National Police Service & 5 others (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated))* [2023] KESC 40 (KLR) (16 June 2023) (Judgment), *Communications Commission of Kenya & 5*



- others v Royal Media Services Limited & 5 others SC Petition No 14 Consolidated with 14A, 14B, & 14C of 2014 [2014] eKLR.
78. The ex parte applicant submitted that the impugned documents were not obtained irregularly or illegally. The question of how evidence was obtained (e.g., irregularly or unlawfully) primarily relates to the admissibility or otherwise of that evidence in court. However, the fact that evidence might be inadmissible does not automatically mean the entire case should be dismissed. The ex parte applicant relied on *Njenga v Dib Bank Kenya Limited (Cause E400 of 2020)* [2023] KEELRC 1549 (KLR) (15 June 2023) (Ruling).
79. The ex parte applicant submitted that these proceedings have only been brought to ensure that the said mandate is executed in strict compliance with *the Constitution* and the principles of fair administrative action under Article 47 of *the Constitution* as well as pursuant only to the dictates of section 47 of the *Judicial Service Act*. The order of stay issued by this court is neither preemptive nor does it in any way interfere with the mandate of the respondent. The ex parte applicant relied on *Hon. Justice Said Juma Chitembwe v The Tribunal Appointed to Investigate into the Conduct of the Hon. Justice Said Juma Chitembwe, Judge of the High Court* [2023] eKLR, *Nancy Makokha Baraza v Judicial Service Commission & 9 others* [2012] eKLR, *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR, *Mboya & Another V Judicial Service Commission & another*; *Rawal & 5 others (Interested Parties)* [2020] eKLR, and *Mwilu V Judicial Service Commission & 2 others*; and *Director of Public Prosecutions & another (Interested Parties)* [2021] eKLR.
80. The ex parte applicant submitted that for the respondent to undertake its duty of sieving the complaints it receives it is empowered under section 47(1) (c) of the *Judicial Service Act* to make regulations to provide for preliminary procedures for making any recommendations required to be made under *the Constitution*. However, to date, no such regulations have been made despite various recommendations for the same. What other notice did the respondent require in order to promulgate the said regulations? The court in *Katiba Institute v State Law Office and the Commission on Administrative Justice (Office of the Ombudsman & Another, Nairobi HCCHR Petition No. E168 of 2025* has stayed the implementation of Rules 5, 6, 7, 11(4), 27(3) and 33 of the Fair Administrative Action Rules, 2024. The ex parte applicant relied on *Shollei v Judicial Service Commission & another (Petition 34 of 2014)* [2022] KESC 5 (KLR) (17 February 2022) (Judgment).
81. The respondent's submissions.
82. The respondent submitted that this court lacks jurisdiction to entertain the proceedings before it on the grounds that its jurisdiction has been improperly invoked ab initio by the ex parte applicant for relying on unlawfully and illegally obtained evidence in the chamber summons dated 17/02/2025 initiating the judicial review proceedings and also for the reason that the ex parte applicant lacks locus standi to institute or sustain the judicial review proceedings.
83. The respondent submitted that the ex parte applicant did not make a request to be formally furnished with the said documents from the respondent as required under section 8(1) of the *Access to Information Act*. The respondent relied on Article 53(1) of *the Constitution*, the supreme court in *Njonjo Mue & Another Vs Chairperson Of The Independent Electoral Boundaries Commission & 3 Others* [2017] eKLR, Article 50(4) of *the Constitution* rule 41 of the practice directions to standardize practice and procedure in the high court (practice directions 2022), *Okiya Omtata Okiiti & 2 Others Vs Attorney General & 4 Others* [2020] eKLR, *Kenya Railways Corporation & 2 Others Vs Okiya Omtatah & 5 Others Supreme Court Petition 13 & 18 Of 2020* (Unreported), *Law Society Of Kenya Vs The Attorney General & 4 Others* [2023] KEHC 374(KLR), and *RC Vs KKR* [2021] eKLR.



84. The respondent submitted that the ex parte applicant is precluded from approaching this court in public interest under article 22(2) (c) of *the constitution* through judicial review proceedings instituted under order 53 rule 1 of the civil procedure rules 2010 for alleged violation of constitutional rights. Further, the ex parte applicant is not a person aggrieved by the decision requiring the 7 Supreme Court judges to respond as the responses are personal to the said judges. The respondent relied on Makupa Transit Shade Limited & another vs Kenya Ports Authority Limited & another [2015] KECA 721 (KLR), Republic Vs Deputy County Commissioner Buuri East & 4 Others; Kiirua Buuri Water Users Association (Suing Through Its Chairman) Kinyua Ikabu -Exparte Applicant [2023] KEHC 3218(KLR), and Janata Dal Vs H.S. Chowdhary & Others AIR 1993 SC 892.
85. The respondent submitted that effect of applicant application on the pending petitions before the respondent seeks to grant immunity and shield the 7 judges of the Supreme Court from the possibility of any future petitions to be filed for their removal amounting to judicial overreach on the part of the court. For this reason, therefore, it will interfere with the discharge of the respondent's constitutional mandate and therefore the orders for stay ought to be discharged forthwith. The respondent relied on Hon. Justice Said Juma Chitembwe Vs the Tribunal Appointed to Investigate The Conduct of Hon. Justice Said Juma Chitembwe, Judge Of The High Court [2023] KESC 114(KLR)
86. The respondent submitted that the ex-parte applicant did not issue notice to the respondent before filing the instant proceedings. The judicial review application is therefore defective and incompetent for non-compliance with rule 5 of the Fair Administrative Action Rules 2024. The respondent relied on Rule 5 of the Fair Administrative Action Rules, 2024, Malika Vs Registrar of Lands [2024] KEHC 374 (KLR), and Kakuta Maimai Hamisi Vs Peris Pesi Tobiko & 2 Others [2018] eKLR.
87. The 2nd interested party's submissions.
88. The 2nd interested party relied on his replying affidavit and stated that there is no need to repeat what is already laid out in the said replying affidavit. The 2nd interested party relied on Daniel Toroitich Arap Moi V Mwangi Stephen Muriithi & Another [2014] KECA 642(KLR).
89. The 3rd interested party's submissions.
90. The 3rd interested party submitted that the suit was filed before this court in contravention of the law of the proper place of filing of a claim. The 3rd interested party contends that the proper place of filing this suit is the High Court of Kenya at Milimani and therefore this court should transfer it. The 3rd interested party relied on rule 8 of the Fair Administrative Action Rules and Majimbo Georgiadis V Raila Odinga & 3 Others, No. E012 of 2023 (UR).
91. The 3rd interested party submitted that the 7 Supreme Court judges are not incapacitated from filing a suit on the subject matter. They have in fact filed suits at Milimani. Therefore, this action by proxy should be struck out. The 3rd interested party relied on Truth Justice and Reconciliation Commission V the Chief Justice of The Republic of Kenya & Another [2012] eKLR and Okiya Omtatah Okioti & 2 Another V Attorney General & 3 Others [2014] eKLR.
92. The 3rd interested party submitted that the order of stay made on 18/02/2025 ought to be discharged and the suit struck out for want of jurisdiction. The 3rd interested party contends that there is no power to stop JSC from considering a petition for removal of a judge from office. The order of stay amounts to a suspension of Article 168(4) of *the Constitution* and contravention of Article 2(2) thereof. The 3rd interested party relied on Attorney General & Another V Tolphin Nafula & 5 Others [2021] KECA 647(KLR), H. E Rigathi Gachagua & Others V Speaker, National Assembly & Others, Constitutional Petition No. E565 of 2024 (UR).



93. Issues, Analysis and Determination.
- Duty of court; After going through the pleadings, affidavits, submissions on record, I find the issues are
- Issues
- i. Whether this court has jurisdiction to entertain the judicial review application.
 - ii. Whether the orders for stay issued on 18/02/2025 interfere with the respondent's constitutional mandate.
 - iii. Whether the ex parte applicant was bound to issue notice to the respondent before filing the instant proceedings.
 - iv. Whether the respondent and 3rd interested party are entitled to the orders sought.
 - v. Whether this court has jurisdiction to entertain the judicial review application.
94. The Respondent's main contention of this Honourable Court's jurisdiction is that the Court's jurisdiction has been improperly invoked ab initio by the Ex-Parte Applicant in relying on purportedly unlawfully and illegally obtained evidence and further that the Ex-Parte Applicant lacks locus standi to institute or sustain the judicial review proceedings.
95. This court shall therefore proceed to address these two jurisdictional questions.
96. Locus standi of the ex parte applicant
97. The Respondent contends that the Ex-parte Applicant lacks the locus standi to institute these proceedings and further that Article 22 (2) (c) of *the Constitution* is inapplicable in judicial review proceedings such as this.
98. The 3rd interested party contends that the ex parte applicant has no locus standi to originate the claim as the 7 judges of the Supreme Court are not persons who cannot act in their own names or as a person acting in the public interest, or aggrieved by the decision of the respondent in the manner contemplated under article 22(2)(a) and (c) of *the Constitution* and section 7 (1) of the *Fair Administrative Action Act*. Therefore, the ex-parte applicant is a proxy of the 7 judges of the Supreme Court.
99. The 2nd interested party contends that the ex-parte applicant lacks locus standi to institute these proceedings. He argued that the public cannot answer for the judge because the public cannot see the mind of the judge. Therefore, there is no 'public interest' under which a random member of the public may sue on behalf of the judge in the context of removal proceedings such as the ex parte applicant herein. Further, the judges have filed individual suits against JSC. Therefore, the present proceedings are superfluous.
100. The ex-parte applicant contends that the Respondent's assertions are not only made in bad faith but are also made in bad faith, mischievous, misconceived, and legally untenable. They portray the Respondent's fundamental misunderstanding of the doctrine of public interest litigation as enshrined under Articles 22 (2) and 258 (2) of *the Constitution* of Kenya.
101. The ex parte applicant submitted that article 22 of *the constitution* of Kenya is applicable to judicial review proceedings, specifically when a person seeks redress for the denial, violation, or infringement of a right or fundamental freedom or a threat to such rights. Further Article 23 (3) of *the Constitution* has empowered this Court to grant appropriate relief in any proceedings brought under Article 22 of *the Constitution* where there has been a violation of or threat of a violation of a fundamental right or freedom such as the claim by the Ex-parte Applicant herein.



102. In R versus Thames Magistrates Court’ ex parte; Greenbaum (1957) 55 LGR 129 Lord Denning LJ said of locus standi for judicial review orders as follows:

“When application is made to (the court) by a party or person aggrieved, it will intervene (it is said) ex debito justitiae, in justice to the applicant. When application is made by a stranger it considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the court.”

And in an earlier case of R versus Liverpool Corporation, ex parte; Liverpool Taxi Fleet Operators’ Association (1870) LR 5QB 446, the learned judge had this to say:

“The writs of prohibition and certiorari lie on behalf of any person who is a person aggrieved and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him: but it does include any person who has a genuine grievance because something has been done or may be done which affects him.”

103. Article 22(1) and (2) of *the Constitution* provides that:

1. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
2. In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - a. a person acting on behalf of another person who cannot act in their own name;
 - b. a person acting as a member of, or in the interest of, a group or class of persons.
 - c. a person acting in the public interest; or
 - d. an association acting in the interest of one or more of its members.

104. Article 258 of *the Constitution* which provides as follows:

1. Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
2. In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - a. a person acting on behalf of another person who cannot act in their own name.
 - b. A person acting as a member of, or in the interest of, a group or class of people.
 - c. a person acting in the public interest; or
 - d. an association acting in the interest of one or more of its members.

105. The issue of sufficient interest, the Court finds that not even *the Constitution* of Kenya, 2010 interferes with the requirement for an applicant to show sufficient interest with a real nexus or connexion with the issue the applicant wishes to be judicially reviewed. The Court also holds that in appropriate cases, a party suing in the public interest needs not to establish “sufficient interest” but must show the stakes that constitute public interest to justify locus standi. In that regard, the Court gets guidance in the case of Trusted Society of Human Rights Alliance –V- Nakuru Water and Sanitation Services



Company and Another [2013] eKLR thus, “The court has considered the wording of the Article and is of considered opinion that under Sub-Article 258(1) any person can initiate the proceedings to enforce or protect *the Constitution* provided that the person establishes that he or she is acting in own interest. In such proceedings, the person initiating must show what has traditionally been called “sufficient interest” which acts as the sieve to determine the proper party. The person initiating the proceedings must establish an actual or threatened injury revolving upon the person’s legal right or interest. Thus, in the opinion of the court, under Sub-Article 258 (1), “every person” means a person who can establish “sufficient interest”.

106. On the other hand, a person who cannot establish “sufficient” interest can initiate the proceedings to protect or enforce *the Constitution* under provisions of Sub-Article 258(2). Such a person without sufficient interest will establish standing only and only if the person establishes any of the prescribed conditions namely:

-that the person is acting on behalf of another person who cannot act in their own name (such as the traditional incapacities of insanity, age of minority, or disabling statutory prescriptions as may, for example, be suffered by those belaboring under bankruptcy or insolvency);

-a person acting as a member of, or in the interest of, a group or class of persons (for example as it happens in the traditional representative suits);

-a person acting in public interest (in the opinion of the court, the person initiating the proceedings must establish the public interest, meaning, in the opinion of the court, that thing in which the general public has stakes as is protected by constitutional provision, executive policy, legislative provision, judicial determination or such other legitimate regulation like international law); or

-an association acting in the interest of one or more of its members.

107. In the instant case, the court finds that the ex-parte applicant has established that it has brought the application in the public interest; it is such a person acting in the public interest, in which event, and in the view of the court, the applicant has pleaded that he initiated the proceedings in the public interest - being that the general public has stakes in the manner the respondent reviews the petitions filed before it and such review or institution is said to be protected by the constitutional provisions, and statutory provisions and rules as the applicant seeks to show at the full hearing.

108. I therefore do not see any legal hindrance to the Applicant herein instituting legal proceedings in the manner he did herein.

Proper jurisdiction

109. The 3rd interested party contends that the proper place of filing the claim is the High Court of Kenya at Nairobi, judicial review division for the reasons that; the Supreme Court of Kenya sits in Nairobi and that is where the subject matter is situated, the cause of action concerning the 7 judges of the supreme court arose and where the respondent and all the interested parties reside and carry on business or work for gain; rule 8 of the Fair Administrative Action Rules is explicit on the place of suing; the filing.

110. The ex parte applicant contends that the high court has unlimited original jurisdiction. Further, the geographical location of the Supreme Court has no bearing on the high court’s jurisdiction. He is a resident of Narok and is entitled to access justice in the nearest court within his locality. The allegations of forum shopping are baseless.



111. Article 165 (3) of *the Constitution* provides that:

Subject to clause (5) the High Court shall have –

(a) unlimited original jurisdiction in criminal and civil matters;(b)– (e)

....In *Esther Muregi v Penta Tancom Limited* [2016] eKLR. The court held that;

I am not sure I would go as far as holding that the High Court can transfer a suit which was filed in court which had no jurisdiction in the first instance. However, I would agree that the liberating light of the provisions of Article 159(2) of *the Constitution* interpreted liberally and generously would inform our interpretation of sections 14, 15, and 18 of the *Civil Procedure Act*. To my mind, freeing the interpretation from the constraints of technicality and eager to do substantive justice would lead to a conclusion that sections 14 and 15 are procedural sections aimed at guiding parties on the appropriate place for suing. Suing in the “wrong” court as far as geographical location is concerned does not, however, necessarily make the suit a “nullity.” Such a suit may be a suitable candidate for transfer under section 18 of the *Civil Procedure Act* to the appropriate Court. It is important to point out, however, even under this liberal interpretation not all suits will be automatically transferred. Among other things, in my view, the High Court will consider the reasons for filing the suit in the;

“wrong” court in the first place. Where there is evidence of bad faith or improper motives, for example, the Court may refuse to transfer such a suit and leaving it to endure objections under section 16 of the *Civil Procedure Act*.

112. This paragraph is important because it introduces another aspect of jurisdiction: a court may have technical or substantive jurisdiction but still refuse to take up a matter out of legitimate prudential or administrative concerns. This is one reason Courts have judicially created the doctrine of forum non conveniens. A Court may have the substantive jurisdiction to take up a matter but refuse to do so because the matter would be most conveniently and fairly be adjudicated elsewhere.

113. I believe the local filing limits in sections 14, 15, and 16 of the *Civil Procedure Act* are an expression of this prudential doctrine. If the subject matter is located in one county at the far end of the country and the parties reside there, it is plainly ridiculous to bring suit at the other end of the country just because the High court have jurisdiction throughout Kenya, by the terms of *the Constitution*, has unlimited geographical jurisdiction throughout the country. The Judiciary has come up with administrative directives on where matters should be filed.

114. One way to state this is to say that where there is evidence that a party has filed suit in a Court in bad faith or in a manner that signals forum shopping, the prudential doctrine counsels that the Court should decline to take jurisdiction and should, instead request the High Court to transfer the case to the most appropriate Court where the case should be heard. In cases where the court in which the case was filed is a seriously inappropriate forum, and the filing smirks of bad faith, the Court should even dismiss the suit outright.

115. Although legally this Court’s geographical jurisdiction has not been expressly limited, it would only be logical that the cost implications, subject matter, residential considerations of the parties and the place of accrual of action would be material factors when an objection is raised against the geographical jurisdiction.



116. Rule 8 (5) FAA A rules, an application for judicial review shall, unless sufficient cause is shown to the contrary, be filed (a) where the subject matter is situated; (b) where the cause of action arose; or (c) where the respondent ordinarily resides, carries on business or works for gain.
117. However, in my view the territorial and geographical limitations must have at the core the need to ensure access to justice, a constitutional imperative. Access to justice should be paramount consideration. In any event, in Section 10 Rule (1) FAAA, an application for judicial review shall be heard and determined without undue regard to procedural technicalities.
118. And some of the determinants the Court ought to keep in mind while ensuring there is access to justice, are the considerations of expeditious, simple and proportionate determination of disputes. In any case there are various initiatives on dealing with case backlogs including MAHAKAMA POPOTE INITIATIVE via-"Social Transformation through Access to Justice, (STAJ)" which is a 10-year strategic blueprint (2023-2033) aimed at making the justice system more accessible, efficient, and responsive to the needs of Kenyans.
119. Mahakama Popote" in Kenya, which translates to "court anywhere," is an initiative by the Kenya Judiciary that leverages virtual court proceedings to increase efficiency and improve access to justice by allowing judicial officers in less busy stations to hear cases from courts with higher caseloads. The initiative aims to address the issue of unequal distribution of work among judicial officers and staff, as well as reduce case backlogs in busy court stations.
120. Judicial officers in stations with lower caseloads handle cases from stations with higher caseloads through virtual platforms, without physically traveling to those stations. Virtual hearings allow for faster case resolution and reduce delays.
121. By leveraging technology, the initiative ensures that justice is accessible to more people, regardless of their location. That it is available and reachable. It ensures that judicial resources are utilized effectively by distributing workload more evenly. It is illogical and untenable to argue that a Kenyan residing in Narok, Mandela Lokichogio etal in public interest litigation like the instant one must skip the High Courts in their region and lodge matters only in Judicial review Division in Nairobi to avoid being accused of forum shopping. Why clog the High court at Nairobi yet almost every county in Kenya is being serviced by a High court locally in compliance with Article 48 COK,2010?
122. In my view, and my finding is that the access to justice factor tilts in favour of having the Cause heard and determined in Narok where the ex parte applicant ordinarily resides.
123. The Court therefore declines invitations to transfer this suit to Nairobi.
Allegation of obtaining certain documents illegally and without explanation
124. The respondent contends that the Ex-Parte Applicant has not disclosed the source of the documents in support of its application and further that, this court did not allegedly make an inquiry into the said documents.
125. The Respondent categorically has stated it has issues with the following specific three (3) sets of documents which it claims are confidential information:
126. Letters dated 27/01/2025 that the Ex-parte Applicant has produced as annextures of his application dated 17/02/ 2025. The Respondent has termed the said letters as internal private communication between the Respondent and the said Judges.
127. Documents comprising the Petition lodged by the 1st Interested Party to the Respondent in JSC Petition No. 35 of 2024 that the Ex-parte Applicant produced as part of Annextures of his application



- dated 17/02/ 2025. The Respondent argued that the said Petition on its face contains internal communications of the Respondent.
128. Copies of documents comprising Petition E033 of 2024 and Petition No. E048 of 2024 that the Ex-parte Applicant produced as annexures of his application dated 17/02/ 2025. The Respondent's quarrel is that these documents were printed from the back end of the Judiciary Case Tracking System.
129. The ex parte applicant contends that the evidence filed in this matter will not prejudice the Respondent and will not be detrimental to the administration of justice. Further, the same were not obtained irregularly or illegally.
130. The ex parte applicant argued that none of the said documents are either internal communication, private and/or confidential documents, and the ex parte applicant has explained how he acquired the said impugned documents in his replying affidavit. It is also undeniable the existence of petitions E033 and E048 both of 2024 even without the documents being produced.
131. In my considered view, the court is called upon to determine when considering the respondent's prayer for expunging documents in the ex-parte applicant's list of documents on grounds that they had been illegally obtained or were based on illegally obtained evidence. With due respect, these prayers were in my view misconceived and premature.
132. I say so because a court cannot determine in the context of an application such as the one before me whether or not the aforesaid documents were lawfully or illegally obtained. This is a matter of evidence that can only be adduced during the trial if the ex-parte applicant actualizes its intention of relying on the said documents as evidence in support of its case. The court can only rule on the admissibility or otherwise of documents or any other evidence in the course of a trial if the party that wishes to rely on the documents applies for their admission as evidence in support of its case.

Whether the orders for stay issued on 18/02/2025 interfere with the Respondent's constitutional mandate.

133. The Respondent argued that this suit was brought in order to interfere with a constitutional process under Article 168 of *the Constitution*.
134. The Respondent also contends that instant proceedings are pre-emptive and premature as the Respondent is still in the preliminary stages of evaluation of the Petitions and is yet to make a decision on whether the Petitions before it disclose grounds for removal of the said Judges.
135. The 3rd interested party contends that the grant of an order of leave and stay amounts to the suspension of a constitutional provision that is article 168(4) of *the Constitution*.
136. The ex parte applicant contends that these proceedings have only been brought to ensure that the said mandate is executed in strict compliance with *the Constitution* and the principles of fair administrative action under Article 47 of *the Constitution* as well as pursuant only to the dictates of section 47 of the *Judicial Service Act*. Therefore, the order of stay issued by this court is neither preemptive nor does it in any way interfere with the mandate of the respondent.
137. The Orders issued on 18/02/ 2024 are clear that it stops the implementation of the decision by the Respondent requiring each of the seven (7) Judges of the Supreme Court to submit responses in respect of JSC Petition No. 35 of 2024, JSC Petition No. 72 of 2024 and JSC Petition No. 3 of 2025.
138. The Order does not prevent the filing and receipt by the Respondent of any future petitions against the said Judges or stop the JSC from exercising its Article 168 mandate in the future as suggested by the Respondent.



Whether the ex parte applicant was bound to issue notice to the respondent before filing the instant proceedings.

- 139. The respondent contends that the Judicial Review Application is also defective and incompetent for non-compliance with Rule 5 of the Fair Administrative Action Rules, 2024, which purportedly required the Ex-Parte Applicant to issue a Notice of Intention to sue as he seeks promulgation of the procedural rules for handling of complaints.
- 140. The ex parte applicant contends that for the respondent to undertake its duty of sieving the complaints it receives it is empowered under section 47(1) (c) (c) of the *Judicial Service Act* to make regulations to provide for preliminary procedures for making any recommendations required to be made under *the Constitution*. However, to date, no such regulations have been made despite various recommendations for the same.
- 141. On the issue of Notice of intention to sue, Rule 5 (1) FAARules, states “Where the applicant seeks to compel the respondent by way of an order to take a particular administrative action or decision, the applicant shall, before filing the Judicial Review application, issue a notice of intention to sue. This limb of the rules only comes into play where the judicial review seeks to compel the respondent by way of an order to take a particular administrative action or decision, (mandamus); Of course the scope of the instant application (MOTION) is wider and extends to the relieves for prohibition and certiorari (quashing) Respondent decision, thus such lapse cannot render the entire JR a nullity. The respondent will be at liberty to pursue the issue in hearing of the motion.
- 142. In conclusion the court makes the following orders.
 - i. The respondent applications dated March 6, 2025, 3rd party application dated February 19, 2025 and 1st Interested party objection dated March 11, 2025 are dismissed with orders on costs being that in substantive motion.
 - ii. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 11TH DAY OF APRIL, 2025

.....
CHARLES KARIUKI
JUDGE

