Yongo v Director General NTSA; Mwananchi Credit Limited (Interested Party) (Judicial Review E001 of 2025) [2025] KEHC 5772 (KLR) (Judicial Review) (8 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5772 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW E001 OF 2025

JM CHIGITI, J

MAY 8, 2025

BETWEEN

BRYAN YONGO .... APPLICANT

AND

DIRECTOR GENERAL NTSA .... RESPONDENT

AND

MWANANCHI CREDIT LIMITED .... INTERESTED PARTY

JUDGMENT

1. This is a judgment in relation to the Notice of Motion dated 9th January 2025 wherein the applicant seeks the following orders;
    a. Judicial review, an order of mandamus do issue, compelling the Respondent to forthwith transfer the ownership of motor vehicle KBV 300Z Mercedes Benz exclusively to the Applicant and issue a new logbook bearing ownership to the Applicant
    b. That the costs of this Application be provided for in the cause.
    c. That the Honourable Court do issue any other orders as the circumstances of this case may deem fit.

The Applicants case;

2. In the year 2014 the Applicant borrowed Kshs. 1,000,000/= from the Interested Party. This morphed into Milimani Commercial Case No. 1322 of 2015 that was ultimately settled by a consent dated 27th May 2015 whereby the applicant paid the sum of Kshs. 1,700,000/= to Auckland Auctioneers.

3. On 5th May 2015 the Interested Party issued a letter to Auckland Auctioneers to release motor vehicle Mercedes Benz Reg. No. KBV 300Z which had been attached alongside the original log book and transfer granted that the said motor vehicle which was jointly registered.

4. His efforts to have the Interested Party transfer the same have not yielded any response as the Interested Party has not relinquished its interest in the TIMS System.

5. It is his case that he lodged an application for a forced transfer with the Respondent who he argues in cahoots with the Interested Party have declined to affect the transfer hence the filing of this case.

6. On the 3rd of July, 2024 he wrote to the Director of Public Prosecutions where he made a complaint against the Interested Party. On the 12th of July, 2024 the DPP wrote to the DCI instructing them to act on his complaint aforesaid and the DCI with in collusion with the Interested Party failed to act on the said complaint. Reminders didn't bring out any change.

7. He argues that the logbook for the said motor vehicle still bears his name and that of the Interested Party as a co-owner notwithstanding fact that they have no proprietary interest in the said motor vehicle upon redemption of the said loan noting that pursuant to the payment of the said loan the Interested Party released to me the original logbook.

8. It is his case that the Interested Party had through Auckland Auctioneers repossessed the said motor vehicle on 29th April 2015 and pursuant to his paying the sum of Kshs.1,700,000/- to the Interested Party on the 5th of May 2015 authorized Auckland Auctioneers to release the motor vehicle to the Applicant and equally released the original logbook to him.

9. This issue was subject to litigation being Milimani Chief Magistrates Court Civil Case No. 1322 of 2015 which was settled by consent filed therein dated 27th May 2015 and that court became functus officio.

10. It is his case that he sold the motor vehicle to a third party but he is unable to receive payment in the absence of a log book in his name.

11. Despite lodging an application for forced transfer which was rejected in the system by the Respondent, it was a legitimate expectation that the Respondent and officers under it would proceed with administrative actions in a formal manner which was not to be.

12. This was an express violation of the Administrative Action Act 2015 as well as Article 47(1) of *the Constitution* and accordingly the Respondent at the behest of the Interested Party has acted in an opposite and high-handed manner to protect criminal activities of the Interested Party.

13. He submits that, pursuant to the filing of this matter the Court gave directions dated 8th January 2025.The Respondents did not comply with the said directions and in particular the timelines to file their responses and the Interested Party filed a Notice of Appointment of Advocates on the 21st of January 2025 through the Firm of A. S. Kuloba & Wangila Advocates. The parties were served on the 9th of January 2025 as seen in the Affidavit of Service.

14. It is his case that any pleadings filed after the said timelines should be expunged and this Court should deprecate such conduct from parties as the same is irregular and unacceptable.

15. Reliance is placed in the decision of the Supreme Court in Dande & 3 others v Director of Public Prosecutions & 2 others (Petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (19 May 2022) (Ruling) where the Court rendered itself thus:

> "(18) However, before we conclude, it is important at this juncture to note that pre-trial directions in this matter were issued by the Deputy Registrar on March 11, 2022, therein, the respondent was to be served with the application forthwith and was in turn to file a response within 7 days therein. Unfortunately, we observe that parties in defiance of the said directions, and after being issued with the ruling notice on May 4, 2022, continued to file responses up to the eleventh hour including as late as May 11, 2022. This practice is irregular and unacceptable. We have, in this respect, not taken into consideration in this ruling, submissions irregularly filed"

16. He submits that the duty of the judicial review court is to check the respondent's impugned decision for any illegalities, unreasonableness or procedural improprieties, that is non-compliance with the rules of natural justice – a view that was reiterated by the Court of Appeal in Oluoch Dan Owino & 3 others vs. Kenyatta University [2014] eKLR where the court relied on the finding in Civil Appeal No. 180 of 2013- Isaack Osman Sheikh -vs- IEBC & Others that:

> "A judicial review of administrative, judicial and quasi-judicial action and decisions of inferior bodies and tribunals by the High Court in exercise of its supervisory jurisdiction flowing from Article 165(6) of *the Constitution* is not in the nature of an appeal. It concerns itself with process and is not a merit review of the decision of those other bodies. And it does not confer on the High Court a power to arrogate to itself the decision-making power reserved elsewhere."

17. He also Relies on the case of Hangsraz Mahatma Ganahi Institute & 2 Others [2008] MR 127 it was stated that;

> "Judicial Review is not a fishing expedition in unchartered seas. The course had been laid down in numerous case laws. It is that this court is concerned only with reviewing, not the merits of the decision reached, but of the decision-making process of the authority concerned. It would scrutinize the procedure adopted to arrive at the decisions to ascertain that it is in uniformity with all elements of fairness, reasonableness and most of all its legality. It must be borne in mind and which had been repeated many times by this court that it is not its role to substitute itself for the opinion of the authorities concerned. This court on a judicial review application does not act as a court of appeal of the decision of the body concerned and it will not interfere in any way in the exercise of the discretionary power which the statute had granted to the body concerned. However, it will intervene when the body concerned had acted ultra vires its powers, reached a decision which is manifestly unreasonable in the Wednesbury sense; had acted in an unfairly manner and the applicant was not given a fair treatment."

18. Reliance is placed in Republic vs. Attorney General & Another Exparte Ongata Works Limited[2016] eKLR Odunga J referred to the case of R (Regina) vs. Dudsheath, Ex Parte, Meredith[1950] 2 ALL E.R. 741, at 743 , Lord Goddard C. J. held as follows:

> " It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy..."

19. Reliance is placed in Republic v Kenya National Examinations Council Exparte Gathenji and 9 Others, [1997] eKLR it was held that:

> " The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 from Paragraph 89. That learned treatise says:
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> "The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."
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> At paragraph *90* headed "the mandate" it is stated:
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> "The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way."
>
> What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed...."

20. The case of Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another [2018] eKLR is relied on where the court held as follows:

> " Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. v Canada (Attorney General), and, was also discussed in Dragan v Canada (Minister of Citizenship and Immigration). The eight factors that must be present for the writ to issue are: -
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> i. There must be a public legal duty to act;
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> ii. The duty must be owed to the Applicants;
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> iii. There must be a clear right to the performance of that duty, meaning that:
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> a. The Applicants have satisfied all conditions precedent; and

b. There must have been:

i. A prior demand for performance;

ii. A reasonable time to comply with the demand, unless there was outright refusal; and

iii. An express refusal, or an implied refusal through unreasonable delay;

iv. No other adequate remedy is available to the Applicants;

v. The Order sought must be of some practical value or effect;

vi. There is no equitable bar to the relief sought;

vii. On a balance of convenience, mandamus should lie and the Applicant adopts this holding which is relevant in the instant case.

21. He submits that, the Order of Mandamus is derived from the Latin word 'Mandare' meaning to command. It is a judicial remedy in the form of an order from a court to any Government, Subordinate court, Corporation, or Public authority, to do some specific act which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty, where a public body or official has unlawfully refused, declined or otherwise failed to undertake the duty.

22. Article 159 of *the Constitution* of Kenya, 2010 implores the courts to dispense justice expeditiously. Finally, Article 48 of *the Constitution* gives the Exparte applicant the right to access justice.

23. It is urged that the Supreme Court of Kenya in the case of John Florence Maritime Services Limited & Another versus Cabinet Secretary for Transport and Infrastructure & 3 Others (2021) eKLR, emphasized and re-affirmed its position on the principle of finality spelt out in the Muiri Coffee case and stated that;

> " The principle of finality is one of the pillars upon which our Judicial system is founded."

24. Reliance is also placed in the case of Republic v Kenya National Examination Council Exparte Gathenji & Others [1997] eKLR cited with approval in the case of Vivo Energy Limited (Formerly Known as Kenya Shell Limited) v National Land Commission [2020] eKLR; which stated as follows on the writ of mandamus: -

> " The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus" Once again we turn to Halsbury's Law of England,4th Edition Volume 1 at page 111 From Paragraph89. That learned treatise says: - "The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. [ts purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and

effectual." At paragraph 90 headed "the mandate" it is stated: "The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way." What do these principles mean" They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed...."

25. It is urged that a consent was entered on 27th May 2015 between the Ex parte Applicant and the Interested Party in The Chief Magistrates Court at Nairobi Milimani Commercial Courts Civil Case No. 1322 of 2015 in the following terms;

That by consent:

1. This matter is fully and finally settled.

2. There shall be no Orders as to costs.

26. It is his case that he paid the Interested Party the loan and the Interested Party released the motor vehicle and the log book to the Ex parte Applicant as demonstrated herein.

27. It is urged that Hancox J (as he then was) in the case of Flora Wasike Vs Destimo Wambuku (1982-1988) I KAR 625, said in his judgement at page 626-

> " It is now settled law that a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out." See the decision of this court in J.M Mwakio Vs Kenya Commercial Bank Ltd Civ. Apps 28 of 2982 and 69 of 1983.

28. Further that, in Kenya Commercial Bank Ltd –vs- Specialized Engineering Co. Ltd [1982] KLR 485 Justice Harris opined that: -

> " The marking by a Court of a consent order is not an exercise to be done otherwise than on the basis that the parties fully understand the meaning of the order either personally or through their advocates, and when made, such an order is not lightly to be set aside or varied save by consent or one or other of the recognized grounds."

29. Reliance is further placed in the case of Samuel Mbugua Ikumbu –Vs- Barclays Bank of Kenya Limited [2015] eKLR the Court of Appeal in discussing variation of consent orders stated as follows: -

> " The law on variation of a consent judgment is now settled. The variation of a consent judgment can only be on grounds that would allow for a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts."

30. Also, in the case of Brooke Bond Liebig v. Mallya 1975 E.A 266 it was held:

> " A consent judgment may only be set aside for fraud collusion, or for any reason which would enable the court to set aside an agreement."

31. In Hirani V. Kassam (1952), 19EACA 131, this Court with approval quoted the following passage from Seton on Judgments and Orders, 7th edition, Vol.1p.124 as follows: -

> " Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them...and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court...or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement."

32. He submits that as a general rule agreements and understandings made or entered into by parties to a suit are acceptable to the courts. Order 25 Rule 5(1) of the Civil Procedure Rules 2010 provides as follows: -

> " 5(1) Where it is proved to the satisfaction of the court and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the Defendant satisfies the Plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith."

33. The case of Mohamed Bare & 48 Others –vs- Kenya Rural Roads Authority 2016 eKLR is relied on where Hon Justice Monica Mbaru discussed the significance and importance of filing a consent in court and held as follows: -

> "
>
> " 16. Where there is a consent order or judgment, the same becomes binding on all the parties to the action if made in the presence and with consent of counsel on record. One cannot challenge such an order or judgment unless it is shown to have been entered into through fraud, collusion of by misrepresentation as held in Kuwinda Rurinja Co. Ltd Versus Kuwinda Holdings ltd & 13 others [2013] eKLR.
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> 17. The universal practice is to record that a judgment or order is by consent by the court. In employment and labour relations matters/claims, such practice is regulated by the Employment and Labour Relations Court (Procedure) Rules, 2016 where all claims filed with the court must have an order or judgment of the court issued by the Judge of the court. Unlike in the High Court practice rules where certain powers are granted to the Registrar and or their deputies, before this court, an order is valid upon issuance by the Judge of the court. See Rule 28 of the Employment and Labour Relations Court (procedure) Rules, 2016. This was clearly set out by the court in Kassmir Wesonga Ongoma et al versus Ismael Otoicho Wanga, Civil Appeal No.25 of 1986 [1987] KLR thus:

"The purpose of a consent judgment is for the parties to inform the court that they have compromised all their differences in a manner suitable to themselves without asking the court to make any further decision. .... A consent becomes the order of the court compromising the differences to the satisfaction of parties."

34. It is his submission that , the aforesaid consent compromised any claim by the Interested Party on Motor Vehicle KBV 300Z Mercedes Benz S350 and curiously from 27th May 2015, the Interested Party has never claimed any proprietary interest in the said motor vehicle nor purported to exercise its statutory power of sale and the chattels mortgage that was executed between the parties in the year 2015 and in any event, any monetary claim by the Interested Party of the subject chattel is Statute Bad.

35. An Indian Judge by the name of J.R. Midha of Delhi High Court in his farewell speech in the year 2021, upon retirement as a Judge after 13 years of service is said to have stated that;

" In the court of justice both parties know the truth. It is the judge who is on trial."

36. On the import of the Affidavit of Dennis Mombo Filed in Milimani Chief Magistrates Court Civil Case No. 1322 of 2015 he deposed thus;

" 18. That I released all the relevant documents to the Plaintiff that would necessitate the transfer of the subject vehicle the moment we filed the consent setting this matter and at the time and as I have nothing to do with the transfer and as such the prayers sought are not only ill advised but would relegate court to issuing orders in vain when as shown in fact in the Plaintiffs supporting affidavit I released the logbook to the Plaintiff and all relevant documents approximately years ago.

19. That having released all the necessary documents to the Plaintiff it was left to him to affect the transfer of the car into his names and not the 1st Defendants duty. So that my Lord, this is a clear and unequivocal admissions that the Interested Party has no claim or any proprietary interest in the said motor vehicle and I rely on the doctrine Estoppel matter in Pais."

37. He submits that the depositions to herein above are dubious evidence and relies on the case of N.K Brothers Ltd. & Another vs. Jane Wairimu Kamau Civil Appeal No. 156 of 1998 [2001] 1 EA 170 (Kwach Bosire & Keiuwa JJA on 9th February 2001 that: -

" Where dubious evidence is allowed it does not enhance its quality even if not challenged as the same has no probative value and should be disregarded.

38. This according to him can be seen at paragraph 14, 15, 16 and 17 of the said affidavit of Dennis Mombo and this Honourable Court should take judicial notice that the transaction leading to this matter was entered in the year 2014 and the loan the Interested Party is alluding to regarding the Range Rover was entered on the 24th of November 2016 and was separate and distinct and the said depositions are remiss of logic or common sense granted that a consent could not have been entered on an anticipated transaction.

39. According to the Interested party is said to have caused the Ex parte Applicant to be arraigned on trumped up charges in Chief Magistrates Criminal Case No. 2035 of 2018 wherein the Exparte Applicant was acquitted on 23rd January 2024.

40. The above affidavit is admissible in these proceedings by dint of Section 34(1) (b) and (d) of the *Evidence Act*.

41. Further that Section 34 (1) of the *Evidence Act* allows for the admission of evidence in judicial proceedings in subsequent proceedings, including those of a civil nature but in the following circumstances:

> "(a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable;"

42. It is urged that Sub-section (b) and (d) of section 34 (1) as read together with Section 45 of the Act, enunciate the admissibility of evidence in proceedings between the same parties and the question in issue being substantially similar in the first as in the second proceeding. Section 45 provides that the judgment obtained in such proceedings may be admissible as evidence if the matter is of public interest.

43. According to him the discretion of the Court (exercising such discretion as provided under Section 3A of the *Civil Procedure Act* and the overriding objective enunciated under Sections 1A and 1B of the same Act), may be allowed in subsequent civil proceedings. Further that the Court in exercising such discretion shall take cognizance of the provisions of the Section 34 (1) (b) and (d) as aforesaid in that the issues in question in the two proceedings are similar in nature as the parties thereto.

44. Sopinka, Lederman & Bryant in The Law of Evidence in Canada, 2nd Edition (Butterworths, 1999) at page 1123,is referred to where the learned authors state:

> "A judgment of a civil court, however, need only be based on proof to a balance of probabilities. A civil judgment is, therefore, worthy of less respect in a subsequent proceeding and should not, as a general rule, be admissible as prima facie proof of the commission of the relevant acts or the existence of negligent conduct. ... It is not logically irrelevant; it just has less weight."

45. He submits that it was reiterated in Mills v Cooper (supra);

> ".... a party to civil proceedings is not entitled to make, as against the other party, an assertion, whether of fact or the legal consequence of fact, the correctness of which is an essential element in his cause of action or defence, if the same assertion was an essential element in his previous cause of action or defence in previous civil proceedings between the same parties or their predecessors in title and was found by a court of competent jurisdiction to be incorrect, unless further material which is relevant to the correctness or incorrectness of the assertion and could not by reasonable diligence have been adduced by that party in the previous proceedings has since become available to him."

46. Reliance is also placed in the case of Thoday v Thoday (1964) 1 All ER 341 at page 352 wherein the learned Judge stated:

> ".... Of the determination by a court of competent jurisdiction of the existence or non-existence of fact, the existence of which is not itself a condition the fulfilment of which is necessary to the cause of action which is being litigated before the court, but which is only relevant to proving the fulfilment of such a condition, does not at any rate per rem judicatam

exonerate either party in subsequent litigation from asserting the existence or non-existence of the same fact contrary to the determination of the first court."

47. Any claim arising from the loan granted by the interested party regarding the subject motor vehicle KBV 300Z is Res Judicata by dint of the said consent.

48. The Supreme Court case of John Florence Maritime Services Limited & another versus Cabinet Secretary for Transport and Infrastructure & 3 others (2021) eKLR, is relied on where it was emphasized and re-affirmed its position on the principle of finality spelt out in the Muiru Coffee case and stated that:

> " The principle of finality is one of the pillars upon which our Judicial system is founded."
> ELC NO. 94 OF 2017 8 27.

49. The Supreme Court further asserted that the doctrine of res judicata, applies across the board including in constitutional litigation. It is based on the principle of finality which is a matter of public policy to prevent abuse of the process of court, and

> " ... a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end..."

50. Section 8 of the *Traffic Act* reads:

> " A person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle."

51. He submits that in the instant case, that he is the registered owner of the said motor vehicle and the Interested Party only had an interest by dint of the chattels mortgage for the loan hence the joint registration and which loan was fully serviced.

52. Section 20 of the Sale of Goods Acts states:

> " Unless a different intention appears, the following rules apply for ascertaining the intentions of the parties as to the time at which the property in the goods is to pass to the buyer"
>
> (a) Where the is an unconditional contract for sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed;

53. It is his case that the actions of the Interested Party have brought him great loss granted that from May 2015, the Exparte Applicant has been unable to sell or transfer the said motor vehicle hence "inhibited" the Ex parte Applicant from ownership.

54. He submits that, a person is presumed to intend the direct consequences of his act. He relies in Croften Hand Woven Harris Tweed Co v. Veich (1942) 1 All ER 142 at p. 153 where Viscount Mangham said:

> " On this point if it arises, there is little authority to guide us, but I will add that, when the question of real purpose is being considered, it is impossible to leave out of consideration the principle that men are in general to be taken as intending the direct consequences of their acts: See the summing up of Fizgibbon, LJ in Quinn v. Leather (1901) A.C. 495 at

p.499." So that my Lord, the refusal to hand over ownership back to the interested party in the TIMS system is unlawful.

55. He further submits that a logbook is a document of title as enunciated in the case of Fred Kamanda v Uganda Commercial Bank Civil App No. 17 of 1995 (SC) (unreported) where it was held:

> " A registration card is therefore evidence of ownership as the person in whose name the vehicle is registered is presumed to be the owner of the vehicle unless proved otherwise. A registration card is prima facie evidence of title, and I would hold that it is a document of title."

56. He also relies in Mogui ss Co. V. Mcgregor Gow & Co. (1889) 23 QBD 598 at page 713 was quoted:

> " Now, intentionally to do that which is calculated in the ordinary course of events to damage and which does in fact, damage another in that other person's property or trafe, is actionable if done without just cause or excuse"

Commenting on the dictum, Street observes.

> " This dictum of Bowen LJ (which was a later judgement of his shows) was intended to put the proof of absence of just cause on the plaintiff - Skinner v. Shew (1893) 1 Ch.413 at p.422 CA) recognizes that even though no contract has been inferred with and there has been no conspiracy, trade interests are protected in tort against illegal and intentional interference.
>
> The leading case is Allen v. Floods (1898) A.C. 1 (H.L). The House of Lords there established that a representative of a group of employees who maliciously induced an employer not to engage employees from a rival union did not commit a tort against persons thereby deprived of a job. This case settles that the act of an individual, however harmful and malicious it may be, is not actionable if it is otherwise lawful. This inquiry is directed then to the circumstances in which acts causing such damage can be said to amount to wrongful conduct, although they are neither actionable conspiracies (as already defined) nor interferences with existing contracts."

The Respondent's case

57. In its submissions that the Respondent indicates that it filed a Replying Affidavit sworn by one Collins Kipkorir Kieng on 17th February, 2025. The said Replying Affidavit is not in the CTS and the court file.

58. It is its submission that the Ex parte Applicant herein sought for an order of mandamus to compel the Respondent to forthwith transfer the ownership of motor vehicle Registration number KBV 300Z exclusively to the Applicant herein and issue a new logbook bearing ownership of the Applicant.

59. It submits that as stated in the Respondent's Replying Affidavit its role is to register motor vehicles as provided for in the *National Transport and Safety Authority Act*.

60. It also submits that the process of transfer has been highlighted in the Replying Affidavit where it is state as an institution it has not received any application from the Applicant to act on.

61. The process that is supposed to be initiated is a discharge process which is to be initiated by the Interested Party. It submits that the same has been highlighted in the Replying Affidavit. Unless the discharge is initiated on our system the Respondent is not able to act as the process is purely an online process. As and when the Interested Party initiates the same it submits that then it shall be able to approve and print a logbook in the applicant's name.

62. It submits that the matter is not ripe for hearing hence the same should be dismissed. As the Applicant herein has ably stated that he reported the matter to the DCI and Investigations meaning investigations are underway therefore before a determination is made, the investigations herein should be concluded.

63. Reliance is placed in the case of Republic v-National Employment Authority & 3 others Ex-parte Middle East Consultancy Services Limited (2018) eKLR where the principle prevents a party from approaching a Court prematurely at a time when he/she has not yet been subject to prejudice, or the real threat of prejudice, as a result of conduct alleged to be unlawful.

> "Further the essential flaw in the applicants' cases is one of timing or, as the Americans and, occasionally the Canadians call it, 'ripeness' …suffice it to say that the doctrine of ripeness serves the useful purpose of highlighting that the business of a Court is generally retrospective; it deals with situations or problems that have already ripened or crystallized, and not with prospective or is generally retrospective; it deals with situations or problems that have already ripened and crystallized, and not with prospective or hypothetical ones. Although, as Professor Sharpe points out and our Constitution acknowledges, the criteria for hearing a Constitutional case are more generous than for ordinary suits, even cases for relief on Constitutional grounds are not decided in the air…The time of this Court is too valuable to be frittered away on hypothetical fears for corporate skeletons being discovered."

64. The Respondent also submits that where the Respondent sits no decision in whatsoever manner has been made. The Applicant has not furnished this Court with the said decision. The Interested Party has not discharged the Applicant to enable the Respondent act for the Applicant to come to a conclusion that the decision was biased, irrational and unreasonable ought to have demonstrated to what extent the decision was unreasonable, biased and irrational which has not been demonstrated.

65. The simple test used throughout was whether the decision in question was one, which a reasonable authority properly directing its mind to the law could reach. The converse was described by Lord Diplock as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.' This stringent test has been applied in Australia where the Court held that in order for invalidity to be determined, the decision must be one which no reasonable person could have reached and to prove such a case required "something overwhelming." It must have been conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt and when "looked at objectively, is so devoid of any plausible justification that no reasonable body of persons could have reached them."

66. The above being the position of testing if the decision made was unreasonable or not, it is submitted that their case in point does not match the standard of unreasonableness demonstrated above as no decision has been made whatsoever concerning the specific motor vehicle as no application has been presented.

67. It submits that there was no decision that has been attached by the applicant that warrants this Court to grant the orders sought by the Applicant.

68. It is submitted that the Respondent did not perform any illegality because the Respondent has not received any application and failed to proceed as required.

69. It is submitted that it has the mandate under NTSA Act vide section 4 to register and transfer motor vehicles. It submits that the issue is between the Ex parte Applicant and the Interested Party once they sort out the issue of discharge, we shall approve the same on system and have the logbook printed out.

70. The Respondent submits that the order of mandamus cannot be granted in this given scenario because for the order of mandamus to be issued the order must command no more than the party against whom the application is made is legally bound to perform.

71. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty and leaves discretion as to the mode of performing the duty in the hands of the party whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.

72. The Respondent relies on the case of Kenya *Examination Counsel vs- Republic Exparte Geoffrey Gathenji Njoroge& 9 others Civil Appeal 266 of 1996*.

73. The *National Transport and Safety Authority Act* mandates NTSA to register motor vehicles but the Authority has discretion on the process of registration and transfers. The power to Transfer or not to transfer register is vested on Respondent unless there is a right of appeal and the Respondent has not refused to transfer. It has not received any application online.

74. It submits that it should not be compelled to pay for the costs of the suit reason being that it has always been willing to register the motor vehicle in question but was never furnished with the correct entry number to enable us proceed with the Registration.

The Interested Parties case;

75. It is its case that the motor vehicle registration number KBV 300Z, "the subject car", was the subject of a suit the Exparte applicant filed in CMCC No. 1322 of 2015, Bryan Yongo Otumba vs Mwananchi Credit Limited & Auckland Auctioneers.

76. It is its case that in the said lower court matter, by an application dated 17th November, 2020, the Exparte applicant herein sought following order interalia: -

    a) That the 1st defendant (the interested party herein) be compelled to formally relinquish any claim against the applicant's motor vehicle registration number KBV 300Z, Mercedes Benz saloon, white in color.

77. It is further its case that the court in the lower court matter then rendered its ruling on the plaintiff's (Exparte applicant's) application dismissing the Exparte applicants' application which had sought the orders in his application as enumerated above.

78. The present application is an abuse of this Honorable court's process due to the fact that first, the orders he seeks in the present application, are more or less similar to those he had sought at the lower court against the Interested party, only that this time round, the orders to transfer the subject car, have been solely directed to the Respondent not the Interested Party.

79. In the circumstances the Interested Party is persuaded that this suit is an abuse of process because having been denied the orders to transfer the motor vehicle for reasons stated in the ruling the Applicant is seeking the same orders, an exercise akin to forum shopping, to which this court should frown against.

80. The learned magistrate, when faced with the application to compel the transfer as shown above, stated in her last paragraph of the ruling that since the consent the Exparte applicant herein has in fact referred to in his application had settled the lower court matter, she could not issue the orders sought in the Exparte applicant's application at the lower court.

81. It is its case that the mischief in the present application is seen where the Exparte applicant after the lower court denied him the orders to have the interested party transfer the subject motor vehicle as sought, in this application he has tactfully and deliberately coined the prayers which seek more or less what he had sought and was denied, but now directed to the Respondent ONLY and merely not the interested party, from whom he had asked the court to compel to transfer the vehicle which was declined.

82. It is its case that the Interested Party authorized the release of the subject car and all the documents necessary for him to effect the transfer, released to him in good faith via the letter of release of the subject car in May 2015.The Interested Party released all documents necessary to have him to effect the transfer even way before the advent of TIMS system c a m e into operation.

83. The Exparte Applicant never immediately effected the transfer and this delay on his part was basically a blessing in disguise to the Interested Party because, when it was discovered that a subsequent loan, he had taken using the motor vehicle registration number KCH 856A, the vehicle's registration number was found to be fake.

84. It is its case that the Applicant had secured a loan of Kshs. 4,000,000/= using the KCH 856A which bore a number plate found to belong to another make of a vehicle, and this money remains owing to the Interested party to date and who is basically exposed since it has nothing to hold on to as security for this subsequent loan.

85. This matter of the Kshs 4,000,000/= loan is now at the Court of Appeal, being Civil Appeal No. E.033 of 2020.

86. In the above civil appeal matter, the Exparte Applicant has on several occasioned promised to give the interested parties advocates a professional undertaking to settle the interested party's loan sum of Kshs 6,000,000/= inclusive of accrued interest but the same has never been forthcoming ever since he filed that civil appeal.

87. It is its case that the only thing therefore, that the interested party can hold on to is not to Exparte applicant who luckily did not transfer it at the time, otherwise the interested party would have had nothing left to hold on and compel him to pay the loan he had otherwise secured with the KCH 856A which car remains a subject of litigation due to its registration status.

88. It is its case that the failure to disclose that similar prayers although directed to the interested party in CMCC No. 1322 of 2015 were denied, is tantamount lays the Exparte applicants mischief bare and he is trying to steal a match through forum shopping by now seeking the same orders via the present application.

Analysis and determination;

1. Whether documents that have been filed out of time are admissible.
2. Whether the applicant has made out a case for the grant of the orders sought.
3. Who shall bear the costs.

Whether documents that have been filed out of time are admissible.

89. On 8th January, 2025, the court issued the following directions:

1. The Application dated 7.1.25 is admitted during the recess owing to the urgency therein.
2. The leave is granted in line with Prayer 2.

3. The Applicant shall file and serve the substantive application within 7 days.

4. The Respondent and the interested party shall file and serve their responses 7 days.

5. The Applicant shall thereafter file and serve its submissions within 7 days thereafter.

6. The Respondent and the interested party shall thereafter file and serve their submissions within 7 days of service.

7. The matter shall be mentioned on 19.2.25 to report compliance.

90. According to the Affidavit of Service the parties were served on the 9th of January 2025.On 19.2.25 when the matter came up for Mention, the respondent and the interested party were again directed to comply with the directions of 8.1.25.On 5.3.25 the reason respondent informed the court that it filed a replying affidavit dated 3.3.25.

91. In its submissions the Respondent indicates that it filed a Replying Affidavit sworn by one Collins Kipkorir Kieng on 17th February, 2025.There is no Replying Affidavit in the CTS and the court file.

92. The Supreme Court in the case of Dande & 3 others v Director of Public Prosecutions & 2 others (Petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (19 May 2022) (Ruling) rendered itself thus:

> " (18) However, before we conclude, it is important at this juncture to note that pre-trial directions in this matter were issued by the Deputy Registrar on March 11, 2022, therein, the respondent was to be served with the application forthwith and was in turn to file a response within 7 days therein. Unfortunately, we observe that parties in defiance of the said directions, and after being issued with the ruling notice on May 4, 2022, continued to file responses up to the eleventh hour including as late as May 11, 2022. This practice is irregular and unacceptable. We have, in this respect, not taken into consideration in this ruling, submissions irregularly filed"

93. The Respondent and the Interested Party did not comply with the prescribed timelines and there was no application that was made for the enlargement of time.The pleadings that were filed by the Respondent and the Interested Party are hereby expunged from the record.

94. This court is also guided by the Supreme case of Okoiti & 3 others *v Cabinet Secretary for the National Treasury and Planning & 10 others (Application E029 of 2023*) [2023] KESC 69 (KLR) where it was held;

> " 26. Taking all the above matters into account, we must state that, this court has on several instances underscored the importance of compliance with its orders, rules and practice directions. With regard to filing and service of documents within the requisite time, the court has in a long line of decisions stressed that it will not countenance breaches of timelines set by the rules or by the court, and affirmed the general constitutional principle that justice shall not be delayed. See Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others, SC Petition No 5 of 2016; [2018] eKLR and Kenya Railways Corporat*ion & 2 others v Okoiti & 3 others, SC Petition (Application)No 13 of 2020*& Petition 18 of 2020 (Consolidated)); [2022] KESC 68 (KLR). It goes without saying that compliance with court orders goes to the root of the rule of law as well as the dignity of any court.

27. Neither the *Supreme Court Act* nor the Supreme Court Rules or this court's Practice Directions permit the applicants to file written submissions in the manner that they did. Rule 31 of this court's Rules stipulates that an interlocutory application, such as the applicants', should be filed together with written submissions. Therefore, we find it irregular for parties to file joint submissions as well as separate submissions at the same time. Not only would it be repetitive but also unnecessary and a waste of precious judicial time. In any event, based on the directions issued, the applicants' submissions were to be served together with the motion. In the end and without be labouring the point, we hereby strike out the four sets of the applicants' written submissions. In addition, we caution litigants to adhere to the court's practice directions relating to the length of written submissions lodged before the court, as explained in the preceding paragraph.

28. Moving onto the respondents' responses and/or submissions, we are not convinced with the explanation for the delay. To begin with, litigants and advocates should accord this court the respect and decorum it deserves as the apex court of the land. Further, nothing has been placed before us to substantiate the contention by the 5th and 9th respondents that the delay was occasioned by difficulties in accessing the court's online platform.

29. Be that as it may, to accede to the respondents' prayer to deem the responses and/or submissions filed out of time as properly before the court is tantamount to sanctioning an illegality. The respondents ought to have first sought leave of the court to file their responses out of time prior to filing the same. See Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others, SC Application No 16 of 2014; [2014] eKLR and University of Eldoret & another v Hosea Sitienei & 3 others, SC Application No 8 of 2020; [2020] eKLR. Consequently, save for the 3rd and 4th respondents submissions, we strike out the responses and submissions filed out of time without leave of the court."

Whether the applicant has made out a case for the grant of the orders sought.

95. The Applicant prays for interalia that Judicial review, an order of mandamus do issue, compelling the Respondent to forthwith transfer the ownership of motor vehicle KBV 300Z Mercedes Benz exclusively to the Applicant and issue a new logbook bearing ownership to the Applicant.

96. There being no reliefs sought against the Interested party, the court finds no reason as to why the suit against the Interested Party should not be dismissed. I do hereby proceed to dismiss the suit against the Interested Party.

97. In order to succeed against the Respondent,The Applicant must demonstrate that it has an arguable case against the Respondent within the principles as enunciated in the case of Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also, Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR) where the court held as follows;

> " Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without

Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re an Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."

98. In the case of Republic v Public Procurement Administrative Review Board; Exparte Madison General Insurance Kenya Ltd; Accounting Officer (KEBS) & another (Interested Parties) wherein the High Court cited with approval the case of Council of Civil Service Unions v Minister for the Civil Service (1985) A.C. 374,410 and held as follows: -

"

" 43. A person aggrieved by the decision of the Board has recourse before this court by dint of section 175 of the Act. The emphasis I would wish to lay here is that the recourse is one under the judicial review jurisdiction of this court and not an appellate one. The court, thus, would be exercising its supervisory powers over the board through sniffing for any whiff of illegality, irrationality or procedural impropriety. In Council of Civil Service Unions v Minister for the Civil Service (1985) A.C. 374,410 Lord Diplock stated as follows:

"My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation

[1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it…" (Emphasis Added).

99. The Applicant had a legitimate expectation that the Respondent would transfer the ownership of motor vehicle KBV 300Z Mercedes Benz exclusively to him and issue a new logbook bearing ownership to the Applicant.

100. In Supreme court case of Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others the court pronounced itself as follows:

> "Legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfil the expectation." Samuel Kamau Macharia& Another v. Kenya commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR, where The Supreme Court pronounced itself on jurisdiction thus:
>
> "(68) A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which Is conferred upon it by law. We agree with counsel for the first and second Jurisdiction to entertain a matter before it, is not one of mere procedural Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, Commission (Applicant), Constitutional Application Number 2 of 2011. Where they cannot expand its jurisdiction must operate within the constitutional limits. It confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, court or tribunal by statute law." (Emphasis provided).
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> 66. According to De Smith, Woolf & Jowell, "Judicial Review of Administrative Action" 6th Edn. Sweet & Maxwell page 609:
>
> > "A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public."

101. In the Canadian case of Borowski vs. Attorney General of Canada (1989) 1 SCR 342 it was stated that an appellate court will not entertain an appeal if the state of facts to which the proceedings in the lower court related have ceased to exist and the substratum of the litigation has disappeared. The Doctrine of Mootness reflects the complimentary concern of ensuring that the passage of time or succession of events had not destroyed the previously live nature of the controversy. Mootness involves the situation where a dispute no longer exists.

102. Black's Law Dictionary Tenth Edition defines the term "moot" as having "no practical significance; hypothetical or academic "and a "moot case" as a "matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights".

103. In Evans Kidero v Speaker of Nairobi City County Assembly & another [2015] eKLR the court held thus:

> " The law of mootness inquires whether events subsequent to the filing of a suit have eliminated the controversy between the parties. Mootness issues can arise in cases in which the plaintiff challenges actions or policies which are temporary in nature, in which factual developments after the suit is filed resolve the harm alleged, and in which claims have been settled. Generally, a case is not moot so long as the plaintiff continues to have an injury for which the court can award relief, even if entitlement to the primary relief has been mooted and what remains is small. Put differently, the presence of a "collateral" injury is an exception to mootness. As a result, distinguishing claims for injunctive relief from claims for damages is important. Because damage claims seek compensation for past harm, they cannot become moot. Short of paying plaintiff the damages sought, a defendant can do little to moot a damage claim. The Exparte applicant having ceased to be the Governor of Nairobi County, makes these proceedings are now moot and a mere academic exercise."

104. A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.

105. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner or applicant would be entitled to, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.

106. The case of Samuel Kimani & another v Dominic Kamiri Karanja [2022] eKLR the Judge in agreement with the sentiments of Mativo J in Evans Kidero v Speaker of Nairobi City County Assembly & Another (2018) eKLR held:

> " In the circumstances, it is my view that the matter before me stands moot for all intents and purposes and the Court therefore dismisses the second and third motions herein with costs to the Respondent."

107. In Mills vs. Green, 159 U.S. 651, 653 (1895) the court held: because courts generally only have subject-matter jurisdiction over live controversies, when a case becomes moot during its pendency, the appropriate first step is a dismissal of the case.

108. In Chafin vs. Chafin, 133 S. Ct. 1017 (2013), the Supreme Court discussed mootness at length in a complex child abduction case and held that the dispute between the parents was not moot because issues regarding the custody of the child remained unresolved. The Court noted that the prospects of success of the suit were irrelevant to the mootness question, and uncertainty about the effectiveness and enforceability of any future order did not moot the case.

109. A case is moot, however, when the court cannot give any "effectual" relief to the party seeking it. See Knox v. Service Employees International Union, Local 1000, 132 S. Ct. 2277, 2287 (2012); A case can, of course, become moot when the plaintiff has abandoned their claims, but such abandonment must be unequivocal. Pacific Bell Telephone Company vs. Linkline Communications, 555 U.S. 438, 446 (2009).

110. Board of Pardons vs. Allen, 482 U.S. 369, 370 n.1 (1987), illustrates the use of a damage claim to avoid mootness. Prisoners who were denied parole without a statement of reasons challenged the denial. They claimed that the state statute mandating release under certain circumstances created a liberty interest in eligibility for parole protected by the Fourteenth Amendment. Plaintiffs sought damages as well as declaratory and injunctive relief. Although plaintiffs were later released, mooting their individual claims for injunctive relief, their damage claims remained alive. Because the immunity of defendants was not settled, the Supreme Court reached the merits, holding that plaintiffs had a cognizable liberty interest in the processing of their parole applications. The Court remanded the case for further proceedings.

111. In the instant suit the Applicant has not demonstrated to the court that he lodged an application with the Respondent for the purpose of securing a logbook in his name. He advanced an argument that he attempted to initiate a forced transfer to achieve what he is now seeking in the suit. The procedure for effecting a change of ownership in the logbook is well articulated in The *National Transport and Safety Authority Act*.

112. This suit is not ripe for hearing and determination given that the Applicant has not complied with The *National Transport and Safety Authority Act* and has not made a formal application in the TIMS system of as availed by the Respondent. He cannot have his cake and eat it. The Applicant cannot be heard to blame the Respondent for his failure to lodge his inaction. The suit is not ripe for hearing and the Applicant cannot advance a claim under the breach of the legitimate expectation principle.

113. The Applicant blames the Interested Party and argued that the Interested Party is standing in the way of his securing the completion of the transfer for failure to release him on the TIMS platform.

114. It is Applicant's submission that the actions of the Interested Party have brought him great loss granted that from May 2015, the Exparte Applicant has been unable to sell or transfer the said motor vehicle hence "inhibited" the Exparte Applicant from ownership.

115. It must be noted, however that the orders that the Applicant is seeking in the suit, are against the Respondent not against the Interested Party. In any event, the evidence the Applicant is tendering against the Interested Party is by nature contractual based which calls for a merit analysis which is beyond this court's remit.

116. The court cannot delve into the case that the Applicant has against the Interested Party within judicial review proceedings owing to the limited nature of judicial review proceedings that are guided by Order 53 of the Civil Procedure Rules prescribed alongside their *Fair Administrative Action act*.

117. It was incumbent upon the Applicant to prove his case under section 107 and 108 of the *Evidence Act*, cap 80. In the case of Karugi & Another v. Kabiya & 3 Others/1983]eKLR, the Court held as follows:

> "The burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof. We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason

of the defendant's failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant.”

118. The sum totality of the foregoing analysis is that the burden of proof remains on the shoulders of the Applicant. It does not matter whether or not the Respondent and the Interested Parties, replying, Affidavit and submissions were struck out. The Applicant had the burden to prove his case which he has failed to discharge and I so hold.

Who shall bear the costs?

119. Costs shall follow the event.

Disposition:

120. The court finds that the Applicant has not made out a case for the grant of the order sought within the parameters of the grant of Judicial Review order they set out in the case of Muntu supra.

Order;

The application dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY 2025.

..

J. M. CHIGITI (SC)

JUDGE