Republic v Auctioneers Licensing Board; Harrison Kihara t/a Hariki Auctioneers (Ex parte Applicant); Mutisya (Interested Party) (Judicial Review Application E 102 of 2024) [2025] KEHC 8983 (KLR) (Judicial Review) (23 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8983 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E 102 OF 2024

RE ABURILI, J

JUNE 23, 2025

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE AUCTIONEERS ACT CAP 526 LAWS OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

AND

INTHE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

SECTION 25 OF THE CONSTITUTION OF KENYS, 2010 AND ALL THE ENABLING LAWS AND PROCEDURES

BETWEEN

REPUBLIC ..... APPLICANT

AND

AUCTIONEERS LICENSING BOARD ..... RESPONDENT

AND

HARRISON KIHARA T/A HARIKI AUCTIONEERS ... EX PARTE APPLICANT

AND

JAPHETH MUTISO MUTISYA ..... INTERESTED PARTY

JUDGMENT

1. The Exparte Applicant, Harrison Kihara was a licensed practicing auctioneer. He was disciplined by the Auctioneers Licensing Board ["the Board"] for unlawfully attaching the motor vehicle of the interested party Japheth Mutiso Mutisya, without proclamation or lawful basis, thereby committing professional misconduct. After hearing the complaint, the Auctioneers Licensing board found the applicant auctioneer guilty of professional misconduct. The Board ordered the Auctioneer to refund to the applicant the Kshs 293,500 which the interested party had paid the auctioneer as auctioneers fees, imposed a fine and ordered payment of costs to the interested party

2. The auctioneer filed an application seeking review of that decision but the application was dismissed. He then filed these judicial review proceedings seeking orders of certiorari to remove into this Court and quash the decision of the Board made on 29th November, 2023 and communicated to the applicant on 27th November, 2023 finding the applicant guilty of professional misconduct and ordering him to refund to the interested party the fees which the latter had paid as auctioneers fees and which the applicant claims was drawn to scale and consequential orders,

3. The applicant also prays for an order of certiorari to remove into this Court and quash the decision of th3e respondent made on 18th January 2024 and communicated to the applicant on 29th January 2024 to withhold the exparte applicant's license pending compliance with the impugned orders of 20th November, 2023

4. The applicant further prays that prohibition do issue prohibiting the respondent from suspending the applicant's licence and mandamus to issue compelling the respondent to issue the applicant with a license.

5. The application is supported by the statutory statement and verifying affidavit both dated 9th May 2024 and annextures thereto.

6. The applicant deposes and states that he fully complied with the process under the *Auctioneers Act* and Rules made thereunder upon receipt of warrants of attachment and sale in the Chief Magistrate's Court at Kajiado

7. The applicant claims that the complaint by the interested party that no proclamation was done and that the fees charged was exorbitant had no basis because upon the applicant being served with the compliant, he responded on 24th August 2024 attaching a proclamation notice. He laments that the respondent claimed that the applicant never filed a response nor defended the complaint, which was not the case.

8. He therefore seeks this Court's intervention.

9. Opposing the application, the respondent filed grounds of opposition contending that the application was premature; has no merit and is based on misconception of the law; that the application offends the provisions of the law under section 9[2] of the *Fair Administrative Action Act* as well as section 25[1] of the *Auctioneers Act*; that this is an appeal disguised as judicial review application; that the application seeks to curtail the statutory mandate of the respondent which does not fall in the realm of judicial review and that the application is an abuse of court process.

10. The interested party filed a replying affidavit sworn on 24th September, 2024 denying that no proclamation Notice was ever served upon him or any of his family members. That he was ambushed by the applicant, accompanied by armed goons who seized his property to wit, motor vehicle registration number KCU 816 P and that the request by the interested party for any warrants were met with unkind words and or threats to his life. That it was then that he filed a complaint with the licensing Board and that the applicant filed a replying affidavit in defence and the matter was set for ruling on 27th November, 2023 whereupon the applicant was found guilty of professional misconduct, ordered to refund the money paid to him by the interested party totaling Kshs 293,500, within 30 days, pay a fine of Kshs 50,000 and costs of Kshs 30,000, but that the applicant had not complied with that order.

11. That when the Board fixed the matter for mention on 18th January 2024, to confirm if the applicant had complied with the orders, the applicant filed an application for review of the decision of the Board vide an application dated 15th January, 2024 which application was dismissed. The interested party denies that the applicant was denied an opportunity to be heard.

12. The interested party deposes that if the orders sought herein are granted, they shall compromise the mandate of the Board in disciplining rogue auctioneers.

13. Parties filed written submissions to canvass the judicial review application, with the applicant restating his case in the submissions dated 18th November, 2024 and submitting on the exhaustion doctrine and on whether the reliefs sought are merited.

14. On exhaustion of remedies, the applicant admits he did not appeal under section 25 of the *Auctioneers Act* but that he uptilted the internal review by filing an application for review of the impugned decision, which application was dismissed. He relied on section 9[2] of the *FAIR Administrative Action Act* and submitted that the section implies that the applicant can exhaust either appeal or review and all other remedies available under any other law as the provision uses disjunctive conjunction 'or'. He cited Republic v Kenya School of Law [2019]e KLR in which the use of the word or was interpreted to mean disjunctive being, either one or the other.

15. He submitted that he opted to file a review under Order 45 of the Civil Procedure Rules and only after his application for review was dismissed, did he file these proceedings which he defends to be properly before this court because having pursued a review option, he could not appeal, noting that by the time that the orders for review were made, the 30 days for filing of an appeal had lapsed.

16. Therefore, on whether section 9[2] of the *FAIR Administrative Action Act* was violated, it was submitted that even if the applicant did not exhaust the remedies as argued by the respondent, the applicant falls squarely within the exemptions provided under section 9[4] of the *Fair Administrative Action Act* as there was no adequate alternative remedy provided for in law.

17. That any aggrieved party is not chained to the alternative remedies provided. He cited the Supreme Court decision in Nicholus *v Attorney General & 7 others: National Environmental Committee & 5 others Interested Parties Pet E007 of 2023* where the Supreme Court stated that the availability of the

alternative remedy does not necessarily bar an individual from seeking constitutional relief because resorting to alternative remedy is contingent upon the adequacy of a existing means of redress.

18. It was submitted, therefore, that the appeal mechanism was not adequate as it was limited to the record before the Board which omitted his replying affidavit which denial of the right to be heard forms the basis of this judicial review proceedings and secondly, that the appeal under order 42 Rule [31] is limited to confirming, varying or reversing the decree from which an appeal is preferred. That on appeal, the court cannot issue orders in the nature of prohibition, certiorari and mandamus. Thirdly, that these proceedings are anchored on key constitutional grounds which an appellate court could not entertain including the right to be heard.

19. On whether the reliefs sought are available to him, the applicant's counsel submitted that the applicant was denied the right to be heard as stipulated in section 24[3] of the *Auctioneers Act* as reproduced. That in this case, the Board proceeded to fix a ruling date without having site of the applicant's replying affidavit and that it entertained a notice to show cause when the application for review was pending.

20. Further, that the Board acted without jurisdiction by ordering the applicant to pay the interested party compensation more than 100,000 which is the limit under section 24[4] of the *Auctioneers Act* hence it acted ultravires.

21. Further, that the order to withhold the license for the applicant was not anchored in law.

22. The applicant urged this court to grant the orders sought in these judicial review proceedings.

23. On the part of the respondent, the submissions dated 2nd October, 2024 reiterate the grounds of opposition as filed, challenging the jurisdiction of this court on the ground of the doctrine of exhaustion of remedies and urging this court to dismiss the judicial review application as filed. The respondent maintained that failure to utilize the appeal mechanism under section 25 [1] of the *Auctioneers Act* was fatal as it violated the provisions of section 9[2] of the *Fair Administrative Action Act*. Reliance was placed on several decisions including Republic v Kenyatta University Exparte Ochieng Orwa Dominic & 7 Others [2018]e KLR a decision by Mativo J on exhaustion of remedies; Republic v Firemarms Licencing Board & another Exparte Stephen Vincent Jibling [2019[eKLR on exhaustion of administrative remedies; Speaker of the National Assembly v James Njenga Karume [1992] eKLR; Republic v National Environmenatal Management Authority Exparte Sound Equipment Ltd [2011] eKLR; Frankline Kilonzo and Alice Nafula Wanyama v State Law and Registrar of Societies[2023]eKLR; among others.

24. It was submitted that no exceptional circumstances were demonstrated to warrant exemption from exhaustion of remedies and finally, that the respondent carried out its mandate and statutory duties in accordance the law and the *Auctioneers Act* and that therefore this application should be dismissed with costs to the respondent.

Analysis and determination

25. I have considered the judicial review application as filed, the responses thereto and the written submissions. The issues for determination are whether the application violates the doctrine of exhaustion of remedies and if not, whether the reliefs sought are available to the applicant.

Doctrine of Exhaustion of Remedies

26. Exhaustion of alternative remedies is now a constitutional and legal imperative under *the Constitution* and the Statutes. Under Article 159[2] c of *the Constitution*, it is provided that:

In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

c. alternative form of dispute resolution including reconciliation, mediation, arbitration and traditional Dispute Resolution Mechanisms shall be promoted subject to clause [3].

27. Thus, where there is clear procedure provided under the relevant Statute, a party cannot overstep the statutory procedures and cling on Constitutional right. Further, where there is clear laid down procedure for redress of a grievance, the party is under an obligation to follow that procedure or demonstrate that his case falls in the exceptions to the resort to the alternative mechanism stipulated in law. In speaker of the National Assembly v James Njenga Karume [1992] eKLR, the Court of Appeal held that:

> " ..... In our view there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that orders 53 of Civil Procedure Rules could oust clear Constitution and Statutory provisions."

28. The above decision personified the doctrine of exhaustion of remedies. The Black's Law Dictionary 10th Edition defines the doctrine of exhaustion of remedies as follows-

> " Exhaustion of remedies. The doctrine that if an administrative remedy is provided by Statute a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which judicial relief is unnecessary."

29. The courts and Tribunals are mandated to ensure that parties follow the procedure laid down in the statutes and approach the administrative agencies or other avenues provided for redress. This is what Section 9[2] of the Fair Administrative Act envisages when it provides as follows in prohibitory mandatory terms:

> " The High Court or the Sub-ordinate court under sub-section [1] shall not review an action or decision under this Act unless the mechanisms including the internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted."

> " 3] The High Court or a sub-ordinate court shall if it is not satisfied that the remedies referred to in sub- section [2] have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section [1]."

30. According to the applicant, in his submissions, the appeal mechanism provided for under section 25 of the *Auctioneers Act* are not efficacious, noting that he had already applied for review which application was dismissed and that by that time, the period of 30 days for filing an appeal had expired. Further, that he is claiming that he was not heard since his replying affidavit was not considered in the decision condemning him for professional misconduct. He also asserts that the respondent acted ultravires by granting an order for refund of money in excess of what the Act provides for, compensation not exceeding 100,000 yet the refund as ordered was over Kshs 200,000. That his claim for violation of

his constitutional rights could not be handled adequately by an appeal and finally, that section 9[2] of the FAAA as read with section 9[4] does provide for exemption from the alternative remedies and that his case is special in the circumstances described. He relies on the Supreme Court case of Nicholus *v Attorney General & 7 others; National Environmental Complaints Committee & 5 others [Interested Parties] [Petition E007 of 2023*] [2023] KESC 113 [KLR] [28 December 2023] [Judgment] where the Apex Court held that exhaustion of alternative remedies is not applicable to all cases where the alternative remedy is not adequate especially where the applicant or petitioner alleges violation of the human rights under the Bill of Rights.

31. I have read the Supreme Court case very carefully alongside the case for the applicant herein. Among the holdings by the apex Court, I have identified the following as summarized in the reporting by Kenyalaw:

    9. The provisions of the Environmental Management Coordination Act and the *Energy Act* did not expressly oust the jurisdiction of the ELC in respect of the procedure for the determination of disputes that involved the management of the environment or issues of petroleum and energy. In the ordinary course of events, the ELC still had original jurisdiction over the matters that were handled by NEMA, unless such jurisdiction was specifically and expressly ousted in a constitutionally compliant manner. The same held true for proceedings under the *Energy Act*.

    10. Section 9[2] of the *Fair Administrative Action Act*, provided that where there existed internal mechanisms for the resolution of a dispute, the court would not review the administrative action until the internal dispute mechanism had been exhausted. That fact notwithstanding, there was nothing that precluded the adoption of a nuanced approach, that safeguarded a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms could offer. That was also why section 9[4] of the *Fair Administrative Action Act* created the exception that exhaustion of administrative remedies may be exempted by a court in the interest of justice upon application by an aggrieved party.

    11. Neither the NET, EPRA nor EPT had the jurisdiction to determine alleged violations of *the Constitution*. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrated the enforcement of fundamental rights and freedoms.

    12. The availability of an alternative remedy did not necessarily bar an individual from seeking constitutional relief. That was because the act of seeking constitutional relief was contingent upon the adequacy of an existing alternative means of redress. If the alternative remedy was deemed inadequate in addressing the issue at hand, then the court was not restrained from providing constitutional relief.

    13. There was a need for the court to scrutinize the purpose for which a party was seeking relief, in determining whether the granting of constitutional reliefs was appropriate in the given circumstances. That meant that a nuanced approach to the relationship between constitutional reliefs for violation of rights and alternative means of redress, while also considering the specific circumstances of each case to determine the appropriateness of seeking such constitutional reliefs, was a necessary prerequisite on the part of any superior court.

    14. Where the reliefs under the alternative mechanism were not adequate or effective, then there was nothing that precluded the adoption of a nuanced approach. What must matter at the end was that a path was chosen that safeguarded a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution

mechanisms could offer. That was because, to achieve a harmonious and effective legal framework, it was imperative to strike a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant's right to access the court. However, such convergence required a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism.

15. It was sufficient that the appellant alleged that a right in *the Constitution* had been infringed or threatened with violation, making it clear that in light of the provisions of *the Constitution* and the *Environment and Land Court Act*, the issues raised were within the original jurisdiction of the ELC. That was also why section 3 of the Environmental Management Coordination Act provided that, one of the general principles under the Act was the entitlement to a clean and healthy environment. Section 3[3] of the Environmental Management Coordination Act was even more instructive as it granted any person, who claimed that their right to a clean and healthy environment had been violated, the right to apply to the ELC for redress.

16. There was nothing that barred the appellant from filing a claim before the ELC as he had two options available to him once NEMA was unable to enforce the stop order against the 2nd and 3rd respondents. The first option was to appeal to the NET. The other option was to file a claim before the ELC, which the appellant did, as against both NEMA and KPLC for the claim under the *Energy Act*. The ELC was thereafter obligated to interrogate his claims on merit and render a determination one way or the other. By not doing so, it fell into error which the Court of Appeal failed to rectify."

17. In Geoffrey Muthinya & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR, the Court of Appeal held-

> " It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the court is invoked. Courts ought to be Fora of last resort and not the first port of call the moment a storm brews within churches as is bound to happen. The exhaustion doctrine is a sound on and serves the purpose of ensuring that there is a postponement of judicial consideration of matter to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside courts. This accords with Article 159 of *the Constitution* which commands courts to encourage alternative means of dispute resolution."

32. The applicant relied on the holding in the above Supreme Court decision at paragraph 105, flowing from paragraph *104* where the apex Court relied on the High Court decision of a three Judge Bench. The Supreme Court stated:

104. Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under articles 22, 23[3] and 162[2][b] of *the Constitution* as read with Section 4[1] of the Environment and *Land Act*. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of *the Constitution*. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims

for Human Rights & 2 others [Interested Parties] [2020] eKLR where the High Court [Achode [as she then was], Nyamweya [as she then was], & Ogola, JJ] stated:

> "In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court." [Emphasis ours].

33. The Supreme Court was clear that the NET had no jurisdiction to hear and determine matters violation of the Constitutional rights and therefore the ELC was wrong in declining jurisdiction. It cannot therefore be a decision of universal application in all cases where a party claims that their constitutional rights were violated like in this case. I say so because decisions of the Licensing Board are appealable to the High Court as a matter of right and the fact that the applicant's evidence in defence was not considered is a matter the Appellate side of the High Court can determine, so is the allegation that the Board awarded the interested party more money than what the law provides in section 24 [4] of the Act. Needless to say, that, that claim is frivolous for reasons that the Kshs 293,500 that the Board awarded was not compensation or a fine for wrongdoing by the applicant Auctioneer as envisaged in section 24[4] of the Act, but a refund of what the applicant had received from the interested party as Auctioneers costs.

34. The applicant's counsel conveniently interpreted the section and stated that the Board's jurisdiction to order a fine and compensation is capped at Kshs 100,000, which interpretation is hollow and erroneous. From the section, the Board can order for compensation not exceeding one hundred thousand shillings to the person damnified by conduct of the Auctioneer or pay a fine not exceeding one hundred thousand shillings or such combination of all the other orders stated under the section, including revoking or suspending the auctioneers license and in the latter case, for not more than six months.

35. It is not correct to say that the Board cannot order an auctioneer to refund fees wrongfully collected from an affected party or that a fine and compensation can be lumped together with the refund.

36. The comprehensive approach under the law on ho to deal with rogue auctioneers ensures accountability of auctioneers for their actions and that those who are wronged are provided with remedies. To restrict the interpretation to suit the applicant's case would indeed set a very dangerous precedent where an auctioneer fleeces a wronged party of millions and defends self by saying I can only refund you an amount not exceeding one hundred thousand shillings. It would amount to the court sanctioning theft of private property by wanton auctioneers.

37. Back to the issue of the appeal remedy being the one sanctioned by section 25 of the *Auctioneers Act*, it is not correct to state that the appeal remedy is not adequate because ethe applicant filed for review thereby complying with section 9[2] of the FAAA. It was his choice to either go on appeal at that stage or apply for review and even when the review application was dismissed, he could still have appealed against the ruling. He cannot hide under Order 45 of the Civil Procedure Rules by misinterpreting it the way his counsel has done. The order provides for options of review or appeal and not having both at the same time. However, the applicant having opted for a review in the first instance, the law does not bar him from appealing a decision against the ruling for review.

38. As if that is not enough, as I researched on this case, I came across matters on appeal where Auctioneers have invoked the appeal mechanism under section 25 of the *Auctioneers Act* even where they allege that they were not heard by the Board and the Courts have made appropriate orders based on evidence on record. See Hudson Kariuki Njiru t/a Vision Auctioneers v Kanyi [Civil Appeal E877 of 2022] [2024] KEHC 11847 [KLR] [Civ] [30 September 2024] [Judgment] and therefore this Court wonders what changed for this applicant.

39. In Jeremiah Memba Ocharo v Evangeline Njoka & 3 others [2022] eKLR the Court dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows and in line with the Nicholus Abidha v Attorney General case: -

> " However, our case law has developed a number of exceptions to the doctrine of exhaustion. In Republic v Independent Electoral and Boundaries Commission [IEBC] Ex Parte National Super Alliance [NASA] Kenya & 6 Others [2017] after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:
>
> " What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue [and hence the ability of a statutory forum to balance them] to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case [supra], the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also Moffat Kamau and 9 others v Aelous [K] Ltd and 9 others.]" It follows that a party will invoke the doctrine of exhaustion where a litigant who is aggrieved by an agency's actions and seeks redress in a court of law without pursuing the available remedies before the agency itself. See William Odhiambo Ramogi & 3 Others v Attorney General and 4 Others Muslim for Human Rights & 2 Others [Interested Parties] [2020] eKLR.

40. Based on all the above, I find and hold that the Applicant's failure to appeal the Board's disciplinary decision even after his application for review was dismissed, which dismissal order on application for review was appealable as of right means he bypassed the statutorily prescribed route under section 25[1]. I say as of right because Order 43 Rule 1[x] of the Civil Procedure Rules expressly confers a right of appeal from orders for review under Order 45 of the Civil Procedure Rules and it provides:

> 43[1] An appeal shall lie as of right from the following Orders and rules under the provisions of section 75[1][h] of the Act—
>
> ...
>
> ...
>
> [x]Order 45, rule 3 [application for review];

41. I therefore have no hesitation in finding that the application for judicial review herein was premature, rendering this application incompetent for non-exhaustion of remedies.

42. Courts ought to be fora of last resort and except in those exceptional circumstances as those exemplified in the Supreme Court decision in the Nicholus Abidha case cited by the applicant, where statutory dispute-resolution mechanisms exist, judicial review will not be entertained unless those statutory and internal mechanisms, including reviews and appeals have been exhausted. This is exactly what the Section 9[2], [3] and [4] of the *Fair Administrative Action Act* envisaged.

43. The applicant claims that his case falls in the exemptions envisaged under section 9[4] of the *fair Administrative Action Act*, but that is by way of mouth in his submissions, he did not include any prayer for exemption to persuade the court that he had avoided the appeal mechanism because it did not provide an efficacious remedy. I find his case extremely distinguishable from that of Nicholus Abidha v Attorney General.

44. In Ndiara Enterprises Ltd v Nairobi City County Government [2018] KECA 825, the Court of Appeal upheld the "Lilian S. " v Caltex Oil [Kenya] Ltd [1989] KLR 1, principle on jurisdiction as applied by this Court in holding that judicial review jurisdiction is barred unless internal remedies are first pursued, and that an exemption must be formally sought and supported by special, meritorious grounds.

45. In Nyende v Advocates Disciplinary Tribunal & 3 Others [2025] KEHC 4533 JR Appl. E084 of 2025, the High Court rreasserted that judicial review cannot proceed where an appeal is outstanding and no exemption has been sought under the *Fair Administrative Action Act*. The applicant advocate had claimed that his rights to a fair hearing and a fair administrative action under Articles 50 and 47 of *the Constitution* had been violated, by the Disciplinary Tribunal failing to consider his replying affidavit which had been filed and was on record but that the impugned decision ignored it.

46. In Obare v Clerk, County Assembly of Siaya [2020] e KLR and Amugune v Advocates Disciplinary Tribunal &2 others JR Application E024 of 2025 [2025] KEHC 4305 [KLR] JR] [2nd April, 2025] Ruling] the High Court held that where statutory appeal remedies exist, applicants must exhaust them before seeking judicial review, and must apply to be exempted if genuinely exceptional circumstances arise.

47. The applicant claims that appeal was not available since as at the time he got the ruling on review, the time for appeal had expired hence, only judicial review was available. Again, the proviso to section 79G of the *Civil Procedure Act* clearly provides a remedy for a party who is late in filing appeals within 30 days from the date of the decision.

48. They have an opportunity to apply for extension of time within which an appeal ought to have been filed. No such effort was made by the applicant, even assuming he was late in filing an appeal against the ruling on review where he wanted the Board to review its decision where it had not considered his affidavit in defence. Those are matters which the High Court on appeal can competently adjudicate upon and make appropriate orders as provided for in section 78 of the *Civil Procedure Act*, on the powers of the High Court on appeal.The High Court on appeal has powers under section 78 of the *Civil Procedure Act* to delve into the issues that the applicant herein has raised in this Judicial review matter including setting aside the ruling on the review application, before the Auctioneers Licensing Board and ordering for a fresh hearing where the applicant establishes that the Board did not consider his replying affidavit or awarded compensation in excess of one hundred thousand shillings comprised in the order for refund of fees paid by the interested party to the Auctioneer, thereby acting ultra vires, or that, the Bord withheld his license, that the Board proceeded to fix a ruling date without having site of the applicant's replying affidavit and that it entertained a notice to show cause when the application for review was pending, among other orders.

49. Furthermore, internal review does not equate to appeal; it addresses procedural fairness, not merits, and does not substitute appellate remedy by the same body that made the orders, as the Board could not have been expected to sit on its own appeal.

50. I reiterate that no exceptional circumstances as required by the Karume, Ndiara, or Obare cases were demonstrated by the applicant and the assertions that appeal would be "fruitless" or "improper" are absent, unsubstantiated, and were not raised formally.

51. It is important to appreciate that the exhaustion doctrine promotes legal certainty, upholds the institutional competence of specialized administrative bodies, precludes premature court intervention and conserves judicial resources. Under Article 159[2][c] of *the Constitution*, courts should intervene only after administrative and other statutory remedies are exhausted.

52. In the end, with all the above in mind, I find and hold that this Court is not properly seized of the matter. The Applicant has not appealed nor applied for exemption; accordingly, jurisdiction of this Court is absent and invoking the Motor Vessel 'Lilan S' principle, I find that this court is deprived of jurisdiction to entertain the judicial review application dated 9th May 2024 which is hereby struck out with no orders as to costs.

53. This file is closed.

54. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JUNE, 2025

R.E. ABURILI

JUDGE