



**Republic v Firearms Licencing Board; JJ Okwaro & Co  
Limited (Exparte) (Judicial Review Application E042 of 2023)  
[2023] KEHC 22614 (KLR) (Judicial Review) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22614 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E042 OF 2023  
JM CHIGITI, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE FIREARMS LICENCING BOARD ..... RESPONDENT**

**AND**

**JJ OKWARO & CO LIMITED ..... EXPARTE**

**JUDGMENT**

1. The Applicant moved this Honourable court vide Originating Notice of Motion Application dated 18.4.23 seeking for certiorari and Mandamus orders on the face of the Application as against the Respondent.
  - a. That this Honourable Court do issue orders of Certiorari, quashing the Respondent’s decision to delist the Applicant as a registered firearms dealer.
  - b. That this Honourable court do issue orders of Mandamus compelling the Respondent to return to Applicant his Certificate Of Registration As A Firearms Dealer, of Registration No. GDxx for the year 2023.
  - c. That this Honourable Court issue orders of mandamus compelling the Respondent to verify and ascertain the validity of the firearm licences of the Applicant’s prospective clients.
  - d. That this Honourable Court issue orders of Mandamus compelling the Respondent to issue the Applicant with permits to import and remove firearms.



- e. That the actions by the Respondent be declared illegal and arbitrary contrary to the provisions of Section 4 of the Fair Administrative Actions Act.
  - f. That the costs of this application be provided for.
2. The Applicant is a holder of Firearms Dealership Certificate of Registration Number GDxx under the Fire Arm Act and has been in active operation since 2003 and is in the business of importation and sale of firearms and ammunition to the public. The Applicant made a formal application to the Respondent for a fresh dealer's license for the year 2023 and was subsequently issued with the dealership license on 18<sup>th</sup> of January 2023.
  3. On the 24<sup>th</sup> of January 2023, the Respondent through its secretariat one Harrison Nguire requested for a copy of the original license issued to the Applicant to amend an error on the face of the license. Immediately the original copy was released to them, the Respondent has failed to authorise and or verify any new licenses. The respondent has refused to approve any import and removal permit requested by the Applicant making it impossible for the Applicant to conduct its business.
  4. It relies on the case of Municipal Council of Mombasa Vs Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, where the Court of Appeal held that:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.
  5. Further, circumstances under which orders of Judicial Review can be issued were elaborated by Justice Kasule in the Uganda case of Pastoli Vs Kabale District Local Government Canal & Others (2008) 2EA 300 at pages 300-304.
  6. The Applicants were never accorded a hearing nor invited for any meeting, nor given any written reasons therein, to have any concerns resolved in total contravention of the provisions of sections 4 of the Fair Administrative Actions Act. Which provide that every Administrative action has to be taken expeditiously, efficiently and lawfully.
  7. Since the Applicant released the original dealer's license to the Respondent, it is yet to receive the original copy of the said license six months down the line. In a bid to solve the issue the applicant wrote a letter dated 6<sup>th</sup> of February 2023 seeking to know of the applicable licence amendment timelines. The said verification is a requirement which was issued by the Respondent vide a letter to all firearms dealers dated 22<sup>nd</sup> of January 2020, as seen at annexure 10 in the Applicant's affidavit.
  8. The said directive was issued pursuant to the rampant concerns of fake certificates holders that was facing the country. The said letter notified all the dealers to confirm the validity of new firearms certificates and provided contact persons to that effect. Consequently, the Applicant has always requested for verification of every new licenses of its prospective clients since 2020 to avoid any risk of selling firearms to unregistered clients. It is only when the verification/confirmation has been communicated to the Applicant that it would proceed to sale the firearm to its prospective clients.



9. The Applicant was later surprised when the Respondent unilaterally and without any notification declined and refused to verify/confirm new licenses issued to them by the Applicant. The applicant wrote another letter on 28<sup>th</sup> February 2023, seeking an answer as to the reasons behind the Respondent's decision to refuse to verify the licenses. The Applicant's requests for a meeting, with intentions to resolve the issue and or be given an opportunity to ventilate their issues to the Respondent yielded no response. It has now been six months after the foregoing.
10. The Applicant further contends that the Applicant un-procedurally removed its name from their dealers' register in total contravention of the provisions of sections 13(3) of the Firearms Act which provides that the Licensing Officer can remove from the register of licensed dealers after giving reasonable notice and further pursuant to confirming that the dealer is no longer carrying on business as a firearms dealer. Through another letter dated 29<sup>th</sup> of March 2023, the applicant wrote requesting for an opportunity to be heard and all these amount to an abuse of the discretion accorded to the Respondent.
11. The authority to verify any new license issue and all dealers with their license rests with the Respondent exclusively under sections 13 and 14 of the Firearms Act.
12. The Respondent's conduct is unreasonable and irrational and not proportionate to the rights of the Applicant to conduct its business. The Respondent's actions in curtailing the Applicant's legitimate expectation.
13. The Court of Appeal in the case of Republic vs. Kenya National Examinations Council ex parte Gathenji & Others, (1997) e KLR explained the applicable principles for an order of mandamus to issue as follows:

“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:-

“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.”

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....”

14. The Respondents aforementioned action is irrational and a clear injustice against the Applicant. The Respondent should be compelled to pay the costs of this Application having failed to comply with the provisions of the *Firearms Act*, and the Fair Administrative Actions Act.

### **Respondent’s Case**

15. According to respondent, the application as presented is defective for failing to comply with the provisions of Order 53 Rule 1 of the Civil Procedure Rules 2010. The applicant herein, despite seeking judicial review orders did not seek leave to commence judicial review proceedings.

16. Justice Ndung’u in the case of Republic v Chief Magistrate Milimani Commercial Courts & 2 others Ex Parte Fredrick Bett [2022] eKLR held:

“I have considered the application dated 8<sup>th</sup> October, 2021, the reasons offered in support of the urgency, the grounds of opposition and submissions thereto and the question before this court is whether leave ought to have been sought and granted before the applicant could make the substantive application for judicial review as has been done to pursue the remedies of certiorari and mandamus.

17. The applicable law on leave to commence judicial review proceedings is Order 53 Rule 1 of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The reason for the leave was explained by Waki J. (as he then was), in Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996 as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.

18. It is also trite that in an application for leave, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant’s case is sufficiently meritorious to justify leave. In the present application, the Applicant has filed a chamber summons application seeking judicial review orders instead of one seeking leave to institute judicial review orders.

19. In Uwe Meixner & another v Attorney General [2005] eKLR, it was held that the leave of court is a prerequisite to making a substantive application for Judicial Review with a view to filtering out



frivolous applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage." At this stage an application for leave to bring Judicial Review proceedings must first be made. The leave stage as held by Waki J. (as he then was) is used to identify and filter out, at an early stage, claims which may be trivial or without merit.

20. The advent of the Fair Administrative Actions Act (The FAAA) expanded the scope of reliefs under judicial review. There was no departure, however, from the salient feature of judicial review, which is that, it relates to the court's power to supervise the exercise of administrative actions by those in authority or in quasi-judicial bodies. It is a special jurisdiction that must be distinguished from petitions to remedy breaches of fundamental rights and freedoms under *the constitution* or ordinary causes of action under the civil jurisdiction of the court. The FAAA did not provide an alternative procedure of moving the court under judicial review and order 53 of the civil procedure Rules was not repealed. Neither did the FAAA remove the need to sift applications that met the threshold for grant of leave to apply for judicial review orders. Order 53 thus remains the provision governing invocation of judicial review jurisdiction. I am in agreement with the holding of Korir, J in Felix Kiprono Matageiv Attorney General; Law Society of Kenya (Amicus Curiae) [2021] eKLR where he was of the view that "the procedural rules in Order 53 of the CPR governed judicial review prior the promulgation of *the Constitution* and are still in force as they have not been repealed."

**Whether an order of Mandamus compelling the Respondent to comply with the Applicant's prayers b, c, and d in their notice of motion dated 18 April 2023 should be granted**

21. According to the Respondent there is no legal license issued to the applicant. It further argues that issuance of Firearm Licenses is based on merit and the procedure and criteria for awarding such licenses is stipulated in section 5 of the *Firearms Act* CAP 114 Laws of Kenya.
22. It further argues that the Applicant has not demonstrated having applied for a permit to import firearms as it can only be considered and issued upon application. Furthermore, the *Firearms Act* CAP 114 in section 27 governs matters pertaining importation of firearms.
23. The learned Judge in the case of Republic v National Police Service Commission Exparte Daniel Chacha Chacha [2016] eKLR in paragraph 54 was of the opinion that:

"Therefore, the principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material."
24. The Respondent argues that the applicant did not make any application for any Firearms Dealing license. It is therefore unfounded for the applicant to purport that there was no procedure followed in revoking their license while there is no record of them ever applying for the said license hence no unfair administrative action.
25. In Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR, the court at paragraph 27 found that: "Mandamus is a



discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The Court has to weigh one thing against another to see whether the remedy is the most efficacious in the circumstances obtained. The discretion of the Court is a judicial one and must be exercised based on evidence and sound legal principles.”

26. Similarly, the High Court in *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR under paragraph 35 held as follows:

“...Judicial Review orders are discretionary and the Court has the ultimate discretion either to grant or decline. I entirely agree with this submission. The discretionary nature of the Judicial Review remedies sought in this application means that even if a court finds a public body has acted wrongly, it does not have to grant any remedy. Examples of where discretion will be exercised against an applicant may include where the applicant’s own conduct has been unmeritorious or unreasonable, for example where the applicant has unreasonably delayed in applying for Judicial Review, where the applicant has not acted in good faith, or where a remedy would impede the authority’s ability to deliver fair administration, or where the judge considers that an alternative remedy could have been pursued (emphasis mine).

### **Analysis and determination:**

27. Following are the issues for determination:

1. Did the applicant have to seek leave before filing the suit?
2. Is the applicant entitled to the orders sought?

#### **1. Did the applicant have to seek leave before filing the suit?**

28. The applicant herein, despite seeking judicial review orders did not seek leave to commence judicial review proceedings. According to the applicant, the Application was brought strictly under the Provisions of the Fair Administrative Actions Act 2015.

29. It relies on the case of *James Gacheru Kariuki & 22 others v Kiambu County Assembly & 3 others* [2017] eKLR;

“First, in Article 47, *the Constitution* expressly constitutionalizes administrative justice as a right and removes it from the clutches of Common Law. Indeed, the FAAA is the legislation required to implement Article 47 of *the Constitution*. Second, in Article 23, *the Constitution*, in spelling out the authority of the High Court to uphold and enforce the Bill of Rights, expressly permits the Court to grant any appropriate relief including an order for judicial review (Article 23(3)(f)). My reading of these two provisions is that they have the functional effect of blurring the bifurcation between challenges to the exercise of public power using the traditional mechanism of judicial review rooted in the common law (and, in Kenya, the Kenya *Law Reform Act*) and those based expressly on *the Constitution*. In a straightforward petition to enforce the Bill of Rights under Article 23 of *the Constitution*, <http://www.kenyalaw.org> - Page 8/12 *James Gacheru Kariuki & 22 others v Kiambu County Assembly & 3 others* [2017] eKLR the High Court can issue an order for Judicial Review. Conversely, one can found a substantive suit challenging the exercise of administrative power under Article 47 of *the Constitution* on the FAAA which is the statute enacted to perfect that Article. The Court further held that Section 9 of the Kenya *Law Reform Act* and Order 53 of the Civil Procedure Rules were introduced into our law to give the High Court special jurisdiction to issue the writs of certiorari, mandamus and



prohibition. Prior to that, the High Court did not have any such jurisdiction. However, in *the Constitution* of Kenya, 2010, the jurisdiction of the High Court to review the administrative actions of public (and private) bodies is now expressly provided for in Article 47 of *the Constitution* as read together with Article 23 of *the Constitution*. Parliament has, further, enacted the FAAA to give effect to Article 47 of *the Constitution*. In other words, it is no longer necessary to rely on the *Law Reform Act* as the law that clothes the High Court with jurisdiction to review administrative decisions and actions by public bodies. *The Constitution* bequeaths that jurisdiction to the High Court directly by constitutionalizing the right to Fair Administrative Action. It is important to recall that the right to fair administrative action is a fundamental right included in the Bill of Rights of *the Constitution*. It follows, then, that when a person is aggrieved by an administrative decision, that person's fundamental right as defined in Article 47 of *the Constitution* is potentially violated and that such a person may choose to bring a suit for enforcement of her fundamental rights under Article 23 of *the Constitution*. Parliament, in giving effect to Article 47 of *the Constitution* has now enacted the FAAA which provides an avenue for bringing such a suit by an aggrieved party. That avenue is provided for in Section 9 of FAAA. Notably, the avenue provided by Parliament does not compel parties to use the straitjacket of Order 53 of the Civil Procedure Rules to access the High Court. 33. In my view, therefore, the procedure provided for challenging administrative actions in the FAAA is, at the very least, an alternative means of instituting proceedings un-encumbered by the rigid procedural requirements of Order 53. Thus, Section 9(1) of the FAAA is explicit that: (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*. 34. This Section self-consciously creates an avenue for an aggrieved party to directly approach the High Court for relief. The Section does not require the party to mould her application for relief within the confines of the existing Order 53 of the Civil Procedure Rules. Instead Section 9(1) of FAAA simply allows a party aggrieved by an administrative decision or action of a public body to make an appropriate application to the High Court.”

30. The Respondent argues that the application as presented is defective for failing to comply with the provisions of Order 53 Rule 1 of the Civil Procedure Rules 2010.
31. I am in agreement with Waki J. (as he then was), in *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No. 384 of 1996 on the importance and reasons behind the requirement for leave before instituting judicial proceedings under Order 53 of The Civil Procedure Rules.
32. I am also in agreement with the holding of Korir, J in *Felix Kiprono Matagei v Attorney General; Law Society of Kenya (Amicus Curiae)* [2021] eKLR where he was of the view that “the procedural rules in Order 53 of the CPR governed judicial review prior the promulgation of *the Constitution* and are still in force as they have not been repealed.” However, whenever an Applicant moves the court for redress by way of the writs of Mandamus, Certiorari or Mandamus in the case of infringement, threat or violation of their rights, in clear cases away from procedural framework as set out under Order 53 of The Civil Procedure Rules then they don't have to seek the leave of the court.
33. Where an Applicant was moved the court under the Provisions of the Fair Administrative Actions Act 2015 and Article 47 of *The Constitution* he need not seek leave and I so hold. In so finding I have been guided by the Supreme Court in *Petition No. 6(E007) of 2022 Edwin Dande & Others v The Inspector*



General, National Police Service & Others reaffirmed that no leave is required when filing a suit seeking constitutional redress under Article 47 of *the Constitution*.

34. It is my finding that the applicant did not need to seek the leave of the court before seeking the reliefs it is seeking.

## **2. Is the applicant entitled to the orders sought?**

35. The Applicant is a holder of Firearms Dealership Certificate of Registration Number GDxx and has been in active operation since 2003. The Applicant has demonstrated that he filled in the statutory form and paid the requisite fees to the Respondent who then issued him with the controversial dealership certificate.

36. It is on this basis that the Applicant made a formal application to the Respondent for the issuance of a fresh dealer's license for the year 2023 that was issued on 18<sup>th</sup> of January 2023

37. On the 24<sup>th</sup> of January 2023, the Respondent through its secretariat one Harrison Ngiure requested for a copy of the original license so as to amend an error on the face of the license.

38. The Respondent has failed to authorise and or verify any new licenses as well as refused to approve any import and removal permit requested by the Applicant making it impossible for the Applicant to conduct its business.

39. The refusal to verify new licenses of the Applicant's prospective clients has paralysed the Applicant's business.

40. The Applicant is yet to receive the original copy of the said license six months down the line.

41. The Respondent is guilty of procedural impropriety and in total contravention of the provisions of sections 4 of the Fair Administrative Actions Act.

42. The un-procedural removal of the Applicant's name from their dealers' register is in total contravention of the provisions of sections 13(3) of the *Firearms Act* which provides that the Licensing Officer can remove from the register of licensed dealers after giving reasonable notice and further pursuant to confirming that the dealer is no longer carrying on business as a firearms dealer.

43. The Applicant was not accorded a hearing nor invited for any meeting, nor given any written reasons to justify the foregoing.

44. The applicants letter dated 6<sup>th</sup> of February 2023 enquiring on the timelines for the amendment of the licence remains unanswered.

45. The Respondent unilaterally and without any justification declined and refused to verify/confirm new licenses that were issued by the Applicant.

46. The Applicant through their counsel herein, proceeded to enquire from the Respondent's counsel vide the letter dated 28<sup>th</sup> February 2023, as to the reasons behind the Respondent's decision to refuse to verify the licenses. Unfortunately, no response was issued on the same either.

47. An effort by the Applicant to amicably resolve the issues wrote letters to the Respondent, requesting for a meeting, hoping to get an opportunity to ventilate their issues to no avail

48. The Applicant further wrote letter dated 29<sup>th</sup> of March 2023, requesting for an opportunity to be heard which letter bore no fruit.



49. The authority to verify any new license is limited to the Board. It is equally the only body that has with it the mandate and subject to the provisions of sections 13 and 14 of the [Firearms Act](#) to issue all dealers with their licenses. This is a statutory mandate.
50. In administrative law, a legitimate expectation is a clear, unambiguous and unqualified assurance, understood by those to whom it is given, that a particular course of action will be taken or a particular procedure will be followed. This is what the Applicant expected of the Respondent.
51. If a failure to do so would be unfair or an abuse of power and it may be susceptible to judicial review. In determining whether a claim for breach of legitimate expectation has been made out, it is not essential that any person for whose benefit the promise was made should have relied upon it to their detriment, but it certainly helps. Since the Applicant obtained the licenses legally, he had a legitimate expectation to open and operate its business without any interference, and further to be allowed to import and remove firearms for sale.
52. Therefore, the Respondent's actions in curtailing the Applicant's business operation through illegal and un-procedural means is in total contravention of the Applicants legitimate expectation. The Respondent is legally bound to issue the Applicant with the dealer's licence in line with the provisions of sections 14(1) of the [Firearms Act](#).
53. The Respondent is also under an obligation to issue import and removal permit under Sections 27 (1) of the [Firearms Act](#) if the Applicant has complied with all the legal requirements.
54. In *Tara Prospecting Limited v Minister for Energy* 2 [1993] I.L.R.M.. 770.
- “In cases involving the exercise of a discretionary statutory power, the only legitimate expectation relating to the conferring of a benefit that can be inferred from words or conduct is a conditional one, namely, that a benefit will be conferred provided that at the time the minister considers that it is a proper exercise of the statutory power, in light of the current policy, to grant it. Such a conditional expectation cannot give rise to an enforceable right to the benefit should it later be refused by the minister in the public interest.”
55. In the Privy Council in *United Policyholders Group v Attorney General of Trinidad and Tobago* [2016] UKPC 17, Lord Neuberger gives the main Judgment. He restates the basis of the doctrine: (i) where a public body (ii) states that it will do (or not do) something (iii) a person who reasonably (iv) relied (v) on that statement (vi) should (vii) in the absence of good reasons (viii) be entitled to rely on the statement and (ix) enforce it through the Courts.
56. He reaffirms at paragraphs 37/38 a number of points: (1) in order to find a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”; (2) the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty; (3) however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement, either on account of (2) above or if, taking into account both the fact that the principle applies and in all other relevant circumstances the public authority should or could reasonably decide not to comply with the statement.
57. Lord Neuberger continues, at paragraph 39, that it is clear that legitimate expectation can be invoked in relation to most, if not all, statements as to procedure, but it is unclear how far it can be implied in relation to statements as to substantive matters, for instance statements in relation to the macro-



economic/macro-political field. On this occasion, it was unnecessary to consider the law on this “difficult and important topic” more fully.

58. Lord Carnwath gave a lengthy concurring Judgment. He concluded, at paragraph 121:

“In summary, the trend of modern authority, judicial and academic, favours a narrow interpretation of the Coughlan principle, which can be simply stated. Where a promise or representation, which is “clear, unambiguous and devoid of relevant qualification”, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality the court will take into account any conflict with wider policy issues, particularly those of a “macro-economic” or “macro-political” kind.”

59. In R (Lahrie Mohamed) v HMRC, Judgment 28 June 2016, Elizabeth Laing J stated the principles thus: that to establish a legitimate expectation as a result of a particular representation it had to be shown that (1) a claimant had put all his cards on the table, (2) a representation had been made, (3) the representation was clear, unambiguous and devoid of any relevant qualification, (4) the representation had been relied upon by the claimant, (5) and it had been relied upon to his detriment. She added that it was especially difficult to satisfy the requirement that a claimant had to put all his cards on the table where it had been a purely oral exchange.

60. In R (Biffa Waste Services Ltd) v HMRC [2016] EWHC 1444 (Admin) Sir Kenneth Parker considered legitimate expectation as a result of guidance by way of what is to be regarded as a general statement. He restated the law on legitimate expectation/abuse of power from paragraph 77. He accepted that the determination of the meaning and scope of any representation or assurance by a public authority is not an exercise in mere semantics. The Court, having regard to the relevant legal and factual circumstances, must ascertain, where appropriate, what is fairly and reasonably implicit in such assurance: “Evaluating the fairness of the conduct of a public authority is not an exercise in semantics: it is necessary to ascertain, against the relevant legal and factual matrix, what the representation fairly and reasonably meant to those to whom it was made”.

61. At paragraph 115 Kenneth Parker J added: “On the footing ... that public law recognizes a principle of conspicuous unfairness I would have been prepared to hold, had it been necessary, that a public authority ... may not, without infringing that principle, put forward as the true meaning of a particular representation an interpretation that is wholly inconsistent with what the public authority intended at the time of that representation in question.”

62. The applicant and indeed any right thinking person would have expected the original licence to be returned as soon as the intended error on the face of the license was amended and no more. The licence has not been returned as a result of which the Applicant has not been in operation for six months. No reasons have been availed before this Honourable Court to justify the Respondent’s actions.

63. The Respondent’s impugned decision to decline to release the Applicant’s dealer’s license, to further delist the Applicant as a registered firearms dealer, to decline to verify and ascertain the validity of the Applicant’s prospective clients and to deny the Applicant the permits to import and remove firearms, without according the Applicant any notice thereto or an opportunity to be heard is illegal and a violation of the Applicants Rights to Fair Administrative Action guaranteed by Article 47 of *the Constitution*.



64. The prolonged failure to respond to the Applicants' letters, coupled with the failure to give reasons for detaining the licenses amounts to a breach and or violation of Fair Administrative as guaranteed under Article 47 of the Constitution.
65. This goes against section 13 (3) (a) and 4 as read together with sections 14 of the Firearms Act leading to an error of law. This illegality is what the case of Pastoli v Kabale referred to. I am satisfied that the applicant has proven that the conduct of the respondent was illegal, and in particular that the conduct was unfair and reasonable. The conduct offends the Applicants legitimate expectation.

### **Disposition**

66. No leave is required when filing a suit seeking constitutional redress under Article 47 of the Constitution. In so holding I have been guided by the Supreme Court in Petition No. 6(E007) of 2022 Edwin Dande & Others v The Inspector General, National Police Service & Others.
67. The applicant has proven that he is entitled to the orders sought.
68. Section 11(1) of The Fair Administration Act provides that the judicial review court has the power to grant any just and equitable relief including injunctions and declarations of right.
69. This position was affirmed in the Court of Appeal case of Muthoni Kihara & another v Commissioner of Mines and Geology & another [2017] eKLR as a result of which this court has in exercise of its discretion crafted the following the orders.

Order:

The Application dated 18.4.23 is allowed in the following terms;

1. A declaration is hereby issued to the effect that the Respondent acted illegally and arbitrarily contrary to the provisions of Section 4 of the Fair Administrative Actions Act.
2. An order of certiorari do issue quashing the Respondent's decision to delist the Applicant as a registered firearms dealer for the year 2023.
3. An order of Mandamus do issue compelling the Respondent to return to the Applicant his certificate of registration as a firearms dealer, being Registration No. GD15 for the year 2023 after correcting the intended error within 14 days.
4. An Order of mandamus do issue compelling the Respondent to verify and ascertain the validity of the firearm licenses of the Applicant's prospective clients within the dictates of the Firearms Act within 14 days.
5. An order of Mandamus do issue compelling the Respondent to issue the Applicant with permits to import and remove firearms subject to the compliance with the Firearms Act within 21 days.
6. The costs to the applicant.

**DATED, SIGNED AND DELIVERED THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**

**J. CHIGITI (SC)**

**JUDGE**

