



**Republic v Attorney General & 6 others; Wilson (Ex parte Applicant) (Suing on Behalf of the Residents of Chepchoina Phase 111 in Trans Nzoia County) (Environment and Land Judicial Review Case E005 of 2024) [2025] KEELC 5947 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5947 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024**

**CK NZILI, J  
JUNE 18, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF LANDS HOUSING & PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY LAND ADJUDICATOR TRANS-NZOIA ..... 5<sup>TH</sup> RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION & SETTLEMENT SCHEME ..... 6<sup>TH</sup> RESPONDENT**

**LAND SETTLEMENT FUND BOARD OF TRUSTEES ..... 7<sup>TH</sup> RESPONDENT**

**AND**

**LOSHAKEP CHUMEL WILSON ..... EX PARTE APPLICANT**

**SUING ON BEHALF OF THE RESIDENTS OF CHEPCHOINA PHASE 111 IN TRANS NZOIA COUNTY**

**JUDGMENT**

1. Through the notice of motion 3/10/2024, the ex-parte applicant seeks the court to:



- (a) An order of certiorari to remove to this court and quash the decision of the meeting held on 11/6/2021 culminating in the 6<sup>th</sup> respondent's decision to confirm and or approve the vetting committee in Chepchoina Phase 111 Settlement Scheme.
  - (b) An order of certiorari to remove into this court and quash the decision of the meeting held on 13/4/2022 of the Chepchoina Phase 111 Sub-County Selection Committee that culminated in the publication of the list of beneficiaries of Chepchoina Phase 111 compiled on 11/8/2023.
  - (c) An order of mandamus compelling the 6<sup>th</sup> respondent to revoke the confirmation and approval of the vetting committee in Chepchoina Settlement Scheme phase 111.
  - (d) An order of prohibition prohibiting the 7<sup>th</sup> respondent from considering, approving, verifying, publishing, and or initiating the process of settlement of squatters in Chepchoina Settlement Scheme Phase 111 as per the list of beneficiaries already identified for allocation.
  - (e) An order of prohibition prohibiting the 3<sup>rd</sup> respondent from issuing, allocating, and or opening a register in each of the parcels in favor of the 7<sup>th</sup> respondent as per the list of beneficiaries already identified for allocation.
  - (f) Costs to be borne by the respondents.
2. The exparte applicant describes himself as a male adult compos mentis and says that on 11/6/2021, a public meeting was held at the Chepchoina Settlement Scheme where certain persons were purportedly elected before being confirmed as members of the Chepchoina Phase 111 vetting committee, in clear contravention of the law, regulations and provisions of Section 134 of the *Land Act* and Section 33(1) of the Land Regulations 2017. Thereafter, it is averred that the names were confirmed and approved by the 6<sup>th</sup> respondent in a letter dated 8/10/2021, contrary to the cited law. The applicant avers that on 13/4/2022, an initial meeting of the sub-county selection committee meeting took place where some 24 members were purportedly elected as such and a chairman duly elected.
  3. Again, the exparte applicant avers that the sub-county selection committee was not constituted in line with Section 134(4) of the *Land Act*, there was no documentation from the appointing authority the Cabinet Secretary Ministry of Lands Housing and Physical Planning, majority of the members who were in attendance on 13/4/2022 were illegally and improperly elected, and that extra persons were appointed into the committee representing communities such as the Luhya, Turkana, Sabaot/Ogiek, Pokot and minority groups in contravention of Section 134(4) of the *Land Act*.
  4. Equally, the exparte applicant avers that the preceding events leading to the creation of the vetting committee on 11/6/2021 resulting in the appointment of the committee forming part of the subcounty selection committee contravened the law, since there existed no substantive or procedural law providing for their creation or appointment and vetting committee at the time. The exparte applicant avers that the 6<sup>th</sup> respondent's failure to adhere to the law governing the selection, approval, and appointment of the subcounty selection committee members, warrants the finding that *the constitution* of the membership of the Chepchoina Phase 111 Sub-county selection committee is null and void.
  5. Further, the exparte applicant avers that the respondents decisions, resolutions and actions made and or passed in the subsequent meetings of the aforesaid committee are in vacuo, from an improperly and illegally constituted committee which is not in tandem with the *Land Act* and the provisions made thereunder.



6. According to the exparte applicant, there was no public participation, such that the list of beneficiaries compiled as of 11/8/023 contained erroneous entries, some of the people included are not squatters or displaced people from elsewhere, and some members share the same identity, and parcel numbers, contrary to Section 34(2) and 41(5) of the Land Regulations 2017.
7. The exparte applicant avers that the list of the beneficiaries failed to recognize bona fide owners of the scheme, included names of persons by law not entitled to be beneficiaries, and that the effect has been to disenfranchise bona fide members who are the indigenous residents of the scheme as per Section 34(b) (i) of the Regulations.
8. Moreover, the exparte applicant avers that after the list of beneficiaries was compiled, there was no publication of the same by the 7<sup>th</sup> respondent within 30 days, in the daily newspapers with nationwide coverage and the affixing of a copy at the County Headquarters offices in line with Section 38(1) of the Regulations. In addition, exparte applicant avers that at the moment, there are members of the public who purport to have received letters of offer, whereas there was no balloting process that was ever done in public or at all, contrary to Section 37(a) of the Regulations.
9. Therefore, the exparte applicant avers that there is tension on the ground which has been brought about by the members of the public, who acting on the strength of the said letters of offer, are trespassing onto parcels already occupied by over 700 households, making up of the scheme, yet the letters were unprocedurally and irregularly obtained or issued.
10. The exparte applicant avers that such persons, acting on the strength of those letters have embarked on selling their purported parcels of land to unsuspecting purchasers contrary to Section 134(7) of the [Land Act](#).
11. In the verifying affidavit sworn on 27/9/2024, the exparte applicant repeats the contents of the statement of facts and annexes a copy of the letter dated 10/10/2021, minutes for the meeting held on 13/4/2022, list of beneficiaries, and a summary indicating the names of the person illegally entered into the said list, as annexures marked LCW-1, 2, 3, and 3A, respectively. The exparte applicant also relies on his further affidavit sworn on 10/2/2023.
12. The court record shows that the respondents were granted leave and time to put in responses on 16/10/2024, 6/12/2024, and on 12/2/2025. When the matter came up for hearing on 1/4/2025, the respondents had not filed any such responses.
13. Miss Jeruto, learned counsel for the exparte applicant urged the court based on the notice of motion, to find that the decisions made on 11/6/2021 and 13/4/2022, were capable of being quashed. Learned counsel emphasized that the exparte applicant had initially filed Kitale ELC Constitutional Petition No. E14 of 2024 which was withdrawn to pave the way for this application. The learned counsel relied on written submissions dated 24/3/2025. It isolated six issues for determination. On whether the judicial review remedies sought are merited, it is submitted that the exhibits attached to the affidavits in support show several instances of procedural improprieties in the lead up to the impugned actions and decisions complained of. It is submitted that [the constitution](#), composition and the appointment process of the vetting and Sub-County Selection Committees were contrary to the provisions of Section 134(4) of the [Land Act](#), 2012 as the process is vested solely in the permanent secretary and requires representation from the statutory stipulated categories.
14. The exparte applicant submitted that in the case of Chepchoina Phase 111 the vetting committee was constituted via a public meeting held on 11/6/2021 and later, purportedly formalized by the Director Land Adjudication and Settlement Scheme, contrary to the legal requirements outlined under Section 134 of the [Land Act](#), 2012 and Section 33(1) of the Land Regulations, 2017. It was submitted that it



- is quite absurd for the Vetting Committee to have been purportedly formalized by the 6<sup>th</sup> respondent having given that the purported creation of the vetting committee on 11/6/2021 resulting in the appointment of the members forming part of the Chepchoina Sub-county Selection Committee, are in clear contravention of the law since there exist no substantive and/or procedural law providing for their creation or appointment of vetting committee such that the committee's purported formation through a public meeting lacks legal basis. Reliance is placed on *Peninah Nadako Kiliswa -vs- Independent Electoral & Boundaries Commission & 2 others* [2015] eKLR.
15. Accordingly, it is submitted that the prayers before the court regarding the purported vetting committee are for orders of Certiorari to quash the decisions taken by the said vetting committee and mandamus to compel the 6<sup>th</sup> respondent to revoke the confirmation and approval of the vetting committee in Chepchoina Settlement Scheme Phase 111. Reliance is placed on *Attorney General & Another -vs- The Commission on Administrative Justice (Civil Appeal 7 of 2018)* [2024] KECA 1157 [KLR], where the Court of Appeal reaffirmed that decisions made without adhering to procedural safeguards as prescribed by statute are ultra vires and unenforceable.
  16. Concerning the lack of procedural compliance in appointing Sub-county Selection Committee Members, it is submitted that the purported Sub-County Selection Committee, appointed during a meeting held on 13/4/2022, included additional members representing specific communities (Luhya, Turkana, Sabaot/Ogiek, Pokot, and others), which is not provided for under Section 134 (4) of the [Land Act](#), 2012. This inclusion violated the strict requirements of the law since any decision taken therein lacks force of law and is subject to quashing by this court as held by a plethora of judicial precedent on this issue.
  17. It was submitted that Section 134(4) of the [Land Act](#) mandates that a Sub-County Selection Committee be appointed by the Cabinet Secretary for Lands and Physical Planning and its membership must conform to the clear composition outlined in the law. This includes representatives from various specific groups, with the appointment process carefully regulated to ensure inclusivity and compliance with statutory requirements. In the present case there is no documentation evidencing the involvement of the 2<sup>nd</sup> respondent or compliance with the procedure mandated by Section 134 thereof.
  18. Further, it is submitted that the [Land Act](#) requires that the chairperson of the Sub-County Selection Committee be appointed at the first sitting of the committee by members nominated under paragraphs (e), (f), (g) and (h) of Section 134(4) of the [Land Act](#). The process followed was non-compliant with these provisions in that, the chairperson in this case was proposed by Herbert Mayamba and seconded by Margaret Aule, both of whom were purportedly representing communities and had thus no standing in light of the strict provision of Section 134(4) of the [Land Act](#) under paragraphs (e), (f), (g) and (h).
  19. Equally, it is submitted that the failure by the 6<sup>th</sup> respondent to adhere with the laws and regulations governing the selection, approval and appointment of the Sub-County Selection Committee members warrants the finding that [the constitution](#) of the members of the Chepchoina Phase 111 Sub-County Selection Committee as null and void. Further, it is submitted that it is laughable that the respondents can be heard to state that due procedure was followed in the case of Chepchoina Phase 111 in that the Subcounty Selection Committee was established a staggering one year after the impugned had been illegally established.
  20. Further, the *ex parte* applicant submitted that consequently, the aftermath decisions, resolutions and actions made and/or passed in the subsequent meetings upon their appointment as the Chepchoina Phase 111 Sub-County Selection Committee are in vacuo, since the committee itself was not properly



- and legally constituted, in tandem with the provisions of the Land Act and Section 35(1) of the Land Regulations, 2017. Reliance is Republic -vs- Public Procurement Administrative Review Board & Others Exparte Rongo University [2018], the court emphasized that decisions made without strict adherence to statutory procedural safeguards must be quashed.
21. On breach of public participation requirements, it is submitted that public participation is a cornerstone of governance, as emphasized under Article 10 of the Constitution, the Land Regulations, 2017, specifically Section 34, mandates public involvement in identifying beneficiaries of the settlement scheme. It is submitted that the process undertaken in compiling the list of beneficiaries failed to meet the threshold for public participation, since the process leading to the compilation of the beneficiary list lacked transparency and was riddled with irregularities, including errors in entries such as duplicate identity card numbers, omission of bona fide owners which has had the effect of disenfranchising the bona fide owners who are the indigenous residents of Chepchoina Phase 111, within the meaning of Section 23(b)(i) of the Land Regulations, 2017, other parcels have two people sharing the same parcel, following the compilation of the said list of beneficiaries, there was no publication of the impugned list by the 7<sup>th</sup> respondent within thirty (30) days, in newspapers of nationwide circulation and a copy of the register was equally not affixed at the headquarters of the County offices as provided for at Section 38(1) of the Land Regulations, 2017.
  22. Reliance is placed on Mui Coal Basin Local Community & Others -vs- Permanent Secretary Ministry of Energy & Others [2015], where the Court of Appeal reiterated that public participation must be meaningful, deliberate, and encompass all stakeholders, failure to involve the public, renders the decisions and actions arising from such process procedurally flawed and invalid.
  23. Concerning the procedural flaws in the allocation of settlement parcels, it is submitted that Section 37 of the Land Regulations, 2017, stipulates a balloting process for allocating parcels within the settlement scheme. No such process was conducted, instead, letters of offer were issued arbitrarily, creating undue tension on the ground, including trespassing and disputes. Further, Section 134(7) of the Land Act prohibits the sale of allocated parcels within settlement schemes. Despite this, the recipients of these irregularly issued letters of offer commenced selling their parcels to unsuspecting third parties.
  24. It is further submitted by the exparte applicant that at the moment, there are members of the public who are purporting to having received letters of offer whereas there was no balloting process that was ever done in public or at all, as provided for in Section 37(a) of the Land Regulation, 2017. It is submitted that there is tension on the ground which has been brought about by members of the public, who acting on the strength on the said letters of offer are trespassing onto the parcels already occupied by the over 700 households making up Chepchoina Phase 111, despite the fact that the impugned letters of offer were obtained and/or issued unprocedurally.
  25. Again, the exparte applicant submitted that courts have quashed administrative decisions that were procedurally flawed and inconsistent with statutory and constitutional provisions. See Republic -vs- National Land Commission & Others; Exparte Joyjoa Clearing & Forwarding Ltd & Others (ELC JR. No. 34 of 2019), where the court quashed the decision of the National Land Commission to revoke the applicant's land titles. The court found that the decision was procedurally flawed and inconsistent with statutory and constitutional provisions, emphasizing on the importance of adhering to due process in administrative actions.
  26. Regarding the nullification of the Chepchoina Phase 111 Committees, it is submitted that the cumulative procedural and substantive irregularities in the constitution of the vetting and selection committees warrant a finding that these entities were unlawfully constituted and their decisions, resolutions and actions are therefore null and void ab initio. It is further submitted that through a



- plethora of case law, the courts have affirmed the principles that a decision tainted by illegality and procedural impropriety is incapable of conferring rights or imposing obligations and must be quashed and to further lend credence to the arguments above. See Republic -vs- National Land Commission; African Inland Church & Others (IP); Mbindyo (Exparte), which cited with approval Pastoli -vs- Kabale District Local Government Council & Others [2008] 2EA 300.
27. Miss Chilaka, learned counsel for the 1<sup>st</sup> - 3<sup>rd</sup>, 5<sup>th</sup> -7<sup>th</sup> respondents urged the court to find that the application offends Order 53 Rule 2 of the Civil Procedure Rules. On her part, Miss Obino for the 4<sup>th</sup> respondent told the court that they were yet to put in a response, despite the record alluded to above.
  28. The exparte applicant has moved the court under Sections 134 and 135 of the [Land Act](#), Sections 32, 33, 34, 35, 36, 37, and 38 of the Land Regulations 2017, Sections 8 and 9 of the [Law Reform Act](#), Order 53 of the Civil Procedure Rules, Sections 7, 8, 9, 10, 11 and 12 of the Fair Administrative of Action Act and lastly, he has invoked Articles 2, 10, 22, 23(3)(f), 40, 47, 50(1), 60, 67, 68 and 162(3) (b) of [the Constitution](#).
  29. The 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> - 7<sup>th</sup> respondents have raised a jurisdictional issue on whether the notice of motion is time-barred by dint of Order 53 Rule (2) of the Civil Procedure Rules, since the decisions sought to be quashed can only be challenged on account of certiorari, if an application is made within 6 months from the date the decisions were made. Judicial review post-2010 is partly governed by Order 53 of the Civil Procedure Rules, Sections 8 and 9 of the [Law Reform Act](#), the Fair Administration Actions Act, and Articles 23 and 47 of [the Constitution](#) of Kenya.
  30. In Republic -vs- Kenya Revenue Authority Ex-Parte Stanley Mombo Amuti [2018] eKLR, the court said that the entrenchment of judicial review in [the Constitution](#) expanded the scope of the remedy on the right to access justice and that unless there was a compelling reason under Article 22 of [the Constitution](#), a party who has applied for an extension of time should not be denied a chance to move to court, since judicial review was one of the reliefs for violation of the Bill of Rights and Freedoms. The court cited with approval National Social Security Fund -vs- Sokomania Ltd & Anor [2021] eKLR, that no leave was required to institute judicial review under Section 7 of the [Fair Administrative Action Act](#), as read with Article 23(3) of [the Constitution](#) and the [Environment and Land Court Act](#).
  31. Section 5 of the [Fair Administrative Action Act](#) grants an aggrieved party to an administrative decision, the right to apply for the review by a court. Section 9 thereof provides that the application ought to be made without unreasonable delay.
  32. Unreasonable delay as held in Jaber Mohsen Ali & another -vs- Priscillah Boit & another [2014] eKLR, depends on the surrounding circumstances of each case since even a delay of one day could be unreasonable.
  33. In Athuman Nusura Juma -vs- Afwa Mohamed Ramadhan [2016] eKLR, the court said that there was an excusable delay as the parties were confused for they were also not aware of the judgment date. In Charo -vs- Mwashetani & 3 others ([Application 15 of 2014](#)) [2014] KESC 47 (KLR) (4 July 2014) (Ruling), the court observed that timelines were vital ingredients in the quest for efficient and effective governance under [the Constitution](#). In Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 7 others [2014] KECA 782 (KLR), court held that extension of time was not a matter of right but a discretionary power, as long as there were extenuating circumstances.
  34. In John Florence Maritime Services Ltd & Another -vs- C.S. Transport & Infrastructure & Others [2021] KESC 39 [KLR] (CIV) (6<sup>th</sup> August 2021) (Judgment), the court cited Mohamed Abdi Mohammed -vs- Ahmed Abdukadir Mohammed & Others [2018] eKLR, that the interests of justice dictate that courts should strive to ensure that all parties to a dispute are accorded a fair hearing to



- resolve the dispute judiciously and that the right to a fair hearing was broad enough to include an opportunity of hearing being given which is also reasonable. The court went on to hold that under Order 51 Rule 14 of the Civil Procedure Rules, a party could respond to a motion through grounds of opposition, preliminary objection, replying affidavit, or statement of grounds of opposition.
35. As to judicial review, the court held a judicial review was a constitutional supervision of public authorities, by subjecting administrative actions to the legal and procedural validity of the decision, to check if the same is ultra vires, perverse, irrational, grossly disproportionate, and one with legal deficiency. The court said that Article 47 of *the Constitution* and as per the *Fair Administrative Action Act* allows courts to consider certain aspects of the merits of the decision when considering an application for judicial review as held in *Suchan Investments Ltd -vs- Ministry of National Heritage & Culture & Others* [2016] eKLR.
  36. In *Dande & Others -vs- Inspector General of Police & Others* [2023] KESC 40 [KLR] (16<sup>th</sup> June 2023) (Judgment), the court observed that the entrenchment of judicial review in *the Constitution* elevated it to a substantive and a justiciable right, hence it was no longer a strict administrative law remedy. The court said that when a party approaches a court under the provisions of *the Constitution*, then the court can carry out a merit review of the case, but if filed under Order 53 of the Civil Procedure Rules without claiming a violation of rights or even the violation of *the Constitution*, then the court can only limit its scope to the process and how the decision complained of was reached or action was taken and not the merits of the decision per se.
  37. Further, the court held that the dual approach to judicial review existed but the approach must be determined based on the pleadings and the procedure adopted by the parties at the inception of the proceedings.
  38. The exparte applicant has taken a dual approach in this application. He has invoked both *the Constitution* and the statute laws before and after 2010, regarding judicial review. Paragraphs 5, 20, and 22, of the statement of facts, invoke Article 47 of *the Constitution*, the concept of public participation, under Article 10 thereof, publication of the list of beneficiaries as regards the manner of resettlement of squatters, as per Articles 2, 10, 22, 23, 40, 57, 50, 60, 67, 68, and 162(b) thereof, as the basis upon which the notice of motion is brought.
  39. From the court record, the respondents were given adequate opportunity to file responses on 9/10/2024 and 16/10/2024. On 12/2/2025, the respondents were granted an additional 30 days to file a substantive response to the notice of motion. The respondents failed to comply with court timelines, or file replying affidavits to controvert and or deny the contents of the supporting and further affidavits to the notice of motion, the verifying affidavit and the statement of facts.
  40. The preliminary objection raised by the respondents in my view lacks merit. The notice of motion seeks to challenge an ongoing process of resettlement of squatters and the identification of the genuine beneficiaries.
  41. A brief Constitutional and statutory framework of the Settlement Scheme is laid as hereunder. Article 40 of *the Constitution* protects the right to property, including land. Article 60 of *the Constitution* sets out the key principles informing the National Land Policy. They include, equitable access, security of land rights, sustainable and productive management of land resources, transparent and cost-effective administration of land, sound conservation, elimination of gender discrimination, and the encouragement of communities to settle land disputes through recognized local initiatives consistent with *the constitution*. Article 67 thereof establishes the 4<sup>th</sup> respondent to oversee land matters, including settlement.



42. The processes and practices by settlement programmes includes the following procedures; acquisition of suitable land for settlement, planning, demarcation and survey, identification of poor landless Kenyan for settlement, verification of genuine squatters, allocation procedures, transfers land and land development, loan repayment processing, issuance of final legal document, registration and lastly; land settlement and its linkages to other departments such as the Department of Survey, Department of Land Administration and Registrar for registration, Department of Physical Planning to provide a plan in settlement schemes, National Government Administration for administrative purpose and security, Ministry of Agriculture, Ministry of Physical Works and Ministry of Education.
43. Some of the challenges facing settlement schemes include issues of double allocation, boundary disputes, allegations of corruption, mismanagement, environmental concerns, concerns of lack of public participation and dispute resolution.
44. Part 1X of the *Land Act* deals with settlement schemes programmes. Section 134 thereof empowers the National Government to implement settlement programmes to provide access to land for shelter and livelihood. Such settlement programmes would include the provision of access to land to squatters and persons affected by causes that may lead to movement and displacement. Under this Part, the 4<sup>th</sup> respondent is to reserve public land for the settlement programmes and where no public land is available, the 7<sup>th</sup> respondent is to purchase or acquire land for the settlement scheme upon planning and the survey, the settlement schemes are to be allocated to households in accordance with the national values and principles enshrined in *the Constitution*. The principles of the national land policy and the requirements under Articles 40, 47, 69 and 232 and the *Fair Administrative Action Act*.
45. Section 135 of the *Land Act* establishes the 7<sup>th</sup> respondent, whose responsibility is to provide access to land to squatters. One of the moral pertinent processes of allocating land within a settlement scheme is the identification of beneficiaries and the verification of squatters on the land. The squatters are and, must be given priority during the planning, demarcation and surveying of a settlement scheme. Mechanisms must therefore be put in place of appeal in the event an individual is aggrieved by the decisions of the Sub-county Selection Committee. With the promulgation of *the Constitution* and the establishment of the 4<sup>th</sup> respondent, the *National Land Commission Act*, the *Land Act*, some functions of the Land Adjudication and Settlement Department, which fell within the 3<sup>rd</sup> respondent, have been transferred to the 4<sup>th</sup> respondent. The management and implementation of the settlement scheme programmes, previously governed under the repealed Agriculture Act, Cap 318, under Section 168(3), meant that the roles of the 6<sup>th</sup> respondent, who wore two hats then, being in charge of the adjudication and consolidation of land rights and interests for trusts under the *Land Adjudication Act* and was also authorised to establish settlement schemes under the Agriculture Act (repealed), was curtailed.
46. The teething problems being experienced are transitional in nature in terms of *the constitution* of the Subcounty Settlement Committee envisaged by Sections 134 and 135 of the *Land Act* vis-à-vis the previously existing District Settlement Selection Committee(s). See Yaa Baya Mwaro -vs- Karisa Kazungu Thoya [2013] eKLR. Part V1 of the *Land Registration Act*, 2017, relates to settlement programmes. Rule 33 relates to the selecting up of the Sub-county Selection Committee under Section 134(4) of the *Land Act*. Rule 34 relates to the identification and verification of the beneficiaries, squatters, displaced persons, the poor and the landless. Rule 35 relates to the preparation of the list of beneficiaries in Form LA 42 set out in the Third Schedule and its submission, together with minutes by the committee to the board for approval. Rule 37 relates to the allocation of land in a settlement scheme by drawing ballots as per Form LA 43 in the Third Schedule, after which the successful beneficiaries are entered in a register and forwarded to the Board. Rule 38 relates to the publication of the names of the successful beneficiaries through newspapers and the affixing of a copy at the County, Sub-county



- or Ward headquarter offices, in line with Form LA 44, including the notification to the general public of the names of the persons allocated the land by the 7<sup>th</sup> respondent under Form No. 49. Rule 39 relates to breach of Settlement Land Allocation conditions.
47. In this suit, the *ex parte* applicant is seeking the writs of certiorari, mandamus, and prohibition on account of the processes and the decisions of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents said to fly against Sections 134 and 135 of the *Land Act* and provisions of *the Constitution*. In *Saisi & 7 others -vs- Director of Public Prosecutions & 2 others* (Petition 39 & 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR) (Civ) (27 January 2023) (Judgment), the court said judicial review was the court's way of enforcing the rule of law, in ensuring that public authorities functions were undertaken per the law, were accountable to the law and that Article 47 of *the Constitution* guarantees every person the right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The court held that the *Fair Administrative Action Act* provides the particulars of judicial review, where an administrative act, omission, or decision, affects the legal rights or interest of an aggrieved person, as per the grounds set out in Section 7 of the *Fair Administrative Action Act*.
48. The court said the nature of evidence in judicial review proceedings was based on affidavit evidence and that a court's scope is limited by Section 11(1) and (2) of the *Fair Administrative Action Act*. In *Kiluwa Limited & another -vs- Business Liaison Company Limited & 3 others* (Petition 14 of 2017) [2021] KESC 37 (KLR) (6 August 2021) (Judgment), the court held that the basis for a review of an administrative action is provided by Article 47 of *the Constitution* namely; expeditious, efficiency, lawfulness, reasonableness and procedural fairness. Article 47 of *the Constitution* abhors opaqueness in decision making and seeks openness in the decision-making process.
49. It is trite that he who alleges must prove under Sections 107 and 112 of the *Evidence Act*. The burden, therefore is on the *ex parte* applicant to prove that the respondents' decisions or actions fly against Articles 10 and 47 of *the Constitution* as read together with Sections 134 and 135 of the *Land Act* and the Regulations made thereunder. As a starting point, the *ex parte* applicant does not state his interest in the Chepchoina Phase 111 land. *The Constitution* grants the *ex parte* applicant capacity in his personal, private, or public interest, to bring proceedings to enforce compliance with *the Constitution*, in general and in particular, on breach of rights, including the right to property such as land.
50. He need not disclose how he has been personally aggrieved by the actions of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents. The *ex parte* applicant has averred that he as a resident of the area, he is aware of the impending allocation or formalization of the process in the settlement scheme, where the residents have collectively and individually raised complaints, reservations, protestations, and are apprehensive that the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents manner of constituting, identifying, electing, selecting and the formation of the membership or beneficiaries to the settlement scheme has not complied with the law and would profoundly impact or deny the residents their proprietary interests or rights to the subject land at the expense of non-residents.
51. Concerns, issues, or actions to safeguard any of the rights or interests over any parcel of land in the settlement scheme and the manner the process will and has been undertaken in my view are not moot or idle. The failure to respond, or give an explanation to supply and or guarantee the public and the affected parties the rights to access the official information, fair administrative action, public participation in the process, and official documents relating to the settlement scheme processes are constitutional rights to which the *ex parte* applicant is entitled as held in *Mui Coal Basin Local Community & 15 others -vs- Permanent Secretary Ministry of Energy & 17 others* [2015] KEHC 473 (KLR) and *Pastoli -vs- Kabale District Local Government Council* (*supra*).



52. In *Shollei -vs- Judicial Service Commission* [2022] KESC 5 [KLR] (17<sup>th</sup> February 2022) (Judgment), the court held that the burden to demonstrate the effect of an administrative action lay with the person against whom the action had been taken. The *ex parte* applicant has attached the minutes, letters and a list of the beneficiaries, which the respondents have not disputed. A public authority may not vary the scope of the statutory powers or duties as a result of its own errors or the conduct of others. It cannot act outside the law.
53. The decisions made on 11/6/2021 and or 12/4/2022 are being challenged for non-compliance with the law on *the constitution*, election, approval, selection and the management of the committee to oversee the process and the list of beneficiaries of the settlement scheme. Courts have held that policy and practice are that people living on the land meant to settle the landless must be given priority during the identification of the beneficiaries. The Sub-county plot selection committee plays a critical role in the preparation of a scheme plan, identification of the beneficiaries, and the verification of the squatters, which then is sent to the director of land adjudication and settlement for approval. The respondents despite adequate time, have not replied to the notice of motion to state how they have complied with Section 134 of the *Land Act* and the Regulations, in the process of *the constitution* and the management of the Sub-county selection committee, indicated who have to be appointed by the cabinet secretary as required by the law, to comprised of the District County Commissioner, Sub-county administrator, National Land Commission representative, National Government Administration Officers representative, a representative of special needs group, a representative of the women, a youth representative and a representative of the elders. The proper constitution of the committee which is statutory in nature ensures that there is sufficient and adequate public participation in line with Articles 10, 69, 174 and 227 of *the Constitution*, which require active citizenry in the running of their affairs affecting the public interest. Access to information held by the state is guaranteed under Article 35 of *the Constitution*. The averments on oath by the *ex parte* applicant have not been controverted. The annexures have not been challenged.
54. The *ex parte* applicant has alleged that public participation was not met by the respondents. Public participation is a fundamental national value and a governance principle under Articles 1, 10, 118, and 232 of *the Constitution*. It entails:
- (a) a) Proper Sensitization.
  - (b) Adequate notice.
  - (c) Facilitation of the public.
  - (d) Consideration of the views.
  - (e) Inclusiveness of diversity and fair representation.
  - (f) Integrity and transparency.
55. Order 53 provides that a respondent to a notice of motion may oppose the same through grounds of opposition or a replying affidavit. Failure to respond to the same by way of replying affidavit and deny the averments on oath has consequences in law. In *Peter O. Nyakundi & Others -vs- Principal Secretary, State Department of Planning, Ministry of Devolution & Planning & Another* [2016], the court said that grounds of opposition are only deemed to address issues of law and cannot amount to a proper or valid denial of allegation made on oath, and that failure to file a replying affidavit can only mean that those facts are admitted.
56. In *Kennedy Otieno Odiyo & Others vs KENGEN Co. Ltd* [2010] eKLR, the court observed that in the absence of a replying affidavit, it means that the respondents have no claim against the applicant.



In K.N. *Biwott -vs- George Mbuguss & Kalamka Ltd, Civil Case No. 2143 of 1999*, the court said that the failure to file a replying affidavit amounts to an admission of facts on the applicant's application. The law is not that a party must be heard in every litigation, so long as a party is given reasonable opportunity of being heard and does not utilize the opportunity, then only the point on which the party not utilizing that opportunity can be heard is why he did not utilize it as held in *Union Insurance Co. (K) Ltd -vs- Ramzan Abdul Dhanji, Civil Appeal No. 179 of 1998*.

57. The efficacy and scope of mandamus is to command a public officer, who has a duty imposed on him by statute to fulfill that duty where there is lethargy on the part of the officer or the body concerned, where there is wrongness, there is unreasonableness, bad faith, bias, irrationality and or unlawfulness. See *Kenya National Examinations Council -vs- Republic, Ex-parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR*, and administrative law, Sir W. Wade & Forsyth, page 605, prohibition is concerned with proceedings in the future and not in the past. It restrains a public body from continuing to act in unlawful manner. See *Timothy Kagonda Muriuki & 4 others -vs- Republic & 3 others [2013] eKLR*. Certiorari seeks to quash illegal decisions and actions.
58. The ex parte applicant asks the court to order that the respondents adhere to the law on the management of settlement scheme by the offices of the respondents. Further, the ex parte applicants have demonstrated that the respondents' officers owe him a public duty, he has a clear right to the performance of the duty and that the orders, if issued, will have a practical value. The respondents have not denied that they owe the ex parte applicant a legal duty to the performance of the obligations set out in Sections 134 and 135 of the *Land Act* regarding a settlement scheme and especially on the process of the identification of genuine beneficiaries through the process set out by the law. See *BAT (K) PLC -vs- C.S. for the Ministry of Health & Others [2019] KESC 15 [KLR] (26<sup>th</sup> November 2019) (Judgment)* and *Cabinet Secretary for the National Treasury & Planning & Others -vs- Okoiti & Others [2024] KESCA 57 [KLR] (20<sup>th</sup> August 2024) (Ruling)*.
59. Article 47 of *the Constitution* and Sections 4 and 12 of the Fair Administration of Action Act give the court power to review administrative actions where a person adversely affected by the action moves the court. It is intended to subject administrative processes to constitutional discipline as held in *Dry Associates Ltd -vs- Capital Markets Authority & Another [2012] eKLR*. Article 47 of *the Constitution* is reflective of Kenya's national values. It subjects the administrative actions of public officers to administrative law regulation beyond the tenets of the common law as held in *Judicial Service Commission -vs- Mbalu Mutava & another [2014] eKLR*.
60. The 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents are constitutionally and statutorily required to act fairly and procedurally towards those likely to be affected by their decisions, without bias, observing rules of natural justice. Section 5 of *Fair Administrative Action Act* requires issuance of a public notice on the proposed administrative action inviting public views, the consideration of those views, relevant facts and materials, giving reasons for the decisions and giving the manner and the period to lodge an appeal. Failing to do so contravenes Sections 4 and 5 of the *Fair Administrative Action Act* and Article 47 of *the Constitution*. It is fundamentally demanded of a decision maker that his decisions be made with due regard for the affected parties' interests. See *Msagha -vs- Chief Justice & Others [2006] eKLR*. The decision maker must be seen to act and be seen to have acted fairly. See *Onyango Oloo -vs- Attorney General [1986-89] EA 456*.
61. In this case acting fairly to ensure that the holding, usage and sustenance of the land interests and rights only of the deserving beneficiaries to the settlement scheme, by putting in place measures to guarantee the integrity, credibility, efficiency, procedural, fairness, expediency of not only the process, but also the outcome is what Article 47 requires of the respondents. In order to ensure equitable access by the applicant access to their lands and the security of their land rights.



62. In the instant matter, the exparte applicant deserves the writs of certiorari, mandamus and prohibition, under Sections 3(1) and 4(1) of the Fair Administrative Action Act, against the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents.
63. For avoidance of doubt, the court grants;
- a. An order of certiorari be and is hereby issued to remove into this court to quash the decision of the meeting held on 11/6/2021 culminating in the 6<sup>th</sup> respondent's decision to confirm and or approve the Sub-County vetting committee in Chepchoina Phase 111 Settlement Scheme.
  - b. An order of certiorari be and is hereby issued to remove into this court to quash the decision(s) arising out of the meeting held on 13/4/2022 of the Chepchoina Phase 111 Sub-County Selection Committee that culminated in the publication of the list of beneficiaries of Chepchoina Phase 111 that was compiled on 11/8/2023.
  - c. An order of mandamus be and is hereby issued compelling the 6<sup>th</sup> respondent to revoke the confirmation and approval of the vetting committee in the Chepchoina Settlement Scheme phase 111.
  - d. An order of prohibition be and is hereby issued prohibiting the 7<sup>th</sup> respondent from considering, approving, verifying, publishing, and or initiating the process of settlement of squatters in Chepchoina Settlement Scheme Phase 111, as per the list of beneficiaries already identified for allocation.
  - e. An order of prohibition be and is hereby issued prohibiting the 3<sup>rd</sup> respondent from issuing, allocating, and or opening a register in each of the parcels in favor of the 7<sup>th</sup> respondent as per the list of beneficiaries already identified for allocation.
  - f. An order of mandamus shall also issue directed at the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents, to henceforth, strictly adhere to the law and the rules made thereunder in the constitution, selection and appointment of the Sub-County Selection Committee in line with Section 134 of the Land Act.
  - g. The respondents are directed to publish and supply the members of the settlement scheme with all minutes, proceedings, details and the list of the members and or beneficiaries to the scheme and all other relevant information under their custody relating to the settlement scheme, since its inception to the present within 45 days from the date hereof, to be presented during a meeting for the members of the Settlement Scheme, to be undertaken within the scheme during the same period under the chairmanship of the Assistant County Commissioner of the Sub-County.
64. There will be no order as to costs.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18<sup>TH</sup> DAY OF JUNE 2025.**

In the presence of:

Court Assistant – Dennis

Petitioners present

Jeruto for Exparte applicant present

Kulei for Chilaka for Attorney General present for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents



Obino for 4<sup>th</sup> respondent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE**

