



Noorani v Commissioner of Investigation & Enforcement (Judicial Review Application E164 of 2024) [2025] KEHC 13291 (KLR) (Judicial Review) (26 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E164 OF 2024
JM CHIGITI, J
SEPTEMBER 26, 2025**

BETWEEN

SCHON NOORANI APPLICANT

AND

COMMISSIONER OF INVESTIGATION & ENFORCEMENT RESPONDENT

JUDGMENT

Applicant's Case:

1. Through the Application dated 1.10.24 the Applicant prayer for orders;
 1. ...spent.
 2. That the Honourable be pleased to grant an order restraining the Tax Appeal Tribunal from further handling proceedings in relation to the TATC 281 of 2023, Schon Noorani versus Commissioner of investigations and Enforcement either by delivering any judgement and/ or scheduling the matter for any proceedings however whatsoever pending the hearing and determination of this Application.
 3. That in the alternative the Honourable Court be pleased to grant an order of stay of proceedings or conservatory order in respect to TATC 281 of 2023 Schon Noorani -vs- The Commissioner of Investigation & Enforcement pending the hearing and determination of the Application.
 4. That the Honourable Court do grant an order for certiorari to review and quash the proceedings conducted on the 16/07/2023 in respect to TATC 281 of 2023 Schon Noorani - vs- Commissioner of Investigation & Enforcement and set the matter for hearing ante.



5. That order of prohibition to prohibit the Respondent by itself and its officers, servants and agents not to proceed to meet out any Ruling and Judgement emanating from the proceedings as conducted by the Respondent on 16th July 2024.
6. That the Honourable Court do order that the matter proceeds before a different bench from the one presided over by Hon. Eric Nyongesa and the same to be heard by an impartial bench altogether.
7. That cost be awarded to Applicant.

The Applicant's Case:

2. The application is supported by the affidavit of the Applicant who is the Appellant in TATC 281 of 2023 while the Commissioner of Investigation & Enforcement is the Respondent.
3. In the said appeal, he has challenged the KRA, acting through its Commissioner of Investigation & Enforcement decision to demand from him tax dues.
4. It is his case that the said appeal has come up severally before the Tribunal and pre-trial directions taken and recorded by the Tribunal.
5. He argues that through the pre-trial directions, his Advocate expressed his will and intention that the matter be heard by physical appearance of the parties hence viva voce evidence.
6. He believes that those directions were made by the Tribunal that the matter would proceed on the 16th July 2024 by way of viva voce evidence in open court.
7. Being a senior citizen and once in a while he argues that he has challenges with his health and that has deterred him from attending to some business.
8. That this matter was scheduled for hearing on the 16th July 2024, and he was aware of the same, however, before that date he was taken ill as he had health complications making it impossible to attend to any business as his ability and capacity to talk was affected which information he relayed to his advocate. It is his case that the said information was shared with the Tribunal and counsel on the other side.
9. It is his case that on the 16th July 2024 there were demonstration by Gen Z and his Advocate on the other hand was holed at home fearing the wrath of the spill over between the demonstrators and law enforcement/enforcers.
10. When the matter came up as listed in the day's cause list and was called out his Advocate introduced his case and together with the fact that he also did not report to his office for fear of what would come up during demonstration, he did not have his file and could not proceed with hearing of the matter.
11. He believes that those two issues were weighty and any well guided mind would have taken the wise decision to drop hearing of any matter on that date, particularly those cases that required the litigants to travel or commute to court due to chaos that would erupt at every demonstration.
12. The his health is delicate and he is a senior citizen, subjecting him to the trial of having to travel to court with a neck band which inhibited his speech making capacity, coupled with the fact that his Advocate was also away did not make any good reasoning.
13. His Advocate informed the Tribunal that the evil of adjourning the matter and giving him another chance would be a lesser one compared to denying the Applicant the right to be heard on an issue of this magnitude.



14. The Tribunal took a trajectory that was obviously in contrast with the law in the sense that the Tribunal refused to be guided by *the Constitution* that guaranteed the right to be heard and law of natural justice, that each person has a right to state his case.
15. That the Tribunal avoided my Advocate and purported to alter and revise the pre-trial directions that the matter be disposed of by way of viva voce evidence to one of virtual hearing and instantly required my lawyer to proceed.
16. He argues that it was practically impossible for us to proceed, for he was unwell, my Advocate did not have his file.
17. He is therefore aggrieved by the decision to lock me out of hearing and he was readily and willing to come before the Tribunal.
18. This was the first time this matter was coming up for hearing and there is no doubt that the very justified Application for adjournment would have caused no harm.
19. The law favours disposal of cases on merit rather than on caprice of procedures and technicalities.
20. He maintains that the Tribunal erred in proceeding with the appeal in the absence of the Applicant despite plausible reasons for the absence and/or after valid excuse given in the Application for adjournment by the Applicant counsel.
21. It is his case that the Tribunal acted in great violation of the Applicants right to fair hearing and constitutional order by proceeding with a matter in which the Applicant is the appellant without the Applicant and such perilous exercise is/was tantamount to denial of sacrosanct right enshrined in *the Constitution*.
22. The Tribunal failed to appreciate that the Applicant is a senior citizen and was sick and frail to come to court for physical hearing on a day the whole country was gripped with Countrywide demonstration against the government which by and large occasionally turned violent and indeed the day experienced wide scale violence in which people lost their lives.
23. On the 13th September 2024, the Tribunal purported to deliver judgement in the matter and without any notice at all delivered to his Advocate and/or myself contrary to good order and conduct on the part of the Tribunal.
24. He has read the said judgement and in many ways it lacks essentials of a judgement and he is not pleased with it.
25. It is his case that when he filed the Judicial Review Application, he directed his Advocate to serve the Application on the Tribunal and the other side as well to avoid a situation in which the litigation before the court is unknown to the Tribunal also to avoid a situation in which two judicial institution will be dealing with one matter and the possibility of clashing orders which is not ideal situation.
26. The Tribunal did not heed to the same and instead proceeded at a speed to deliver its judgement perhaps with a view to stifle and render his Application overtaken by events.
27. It is his case that the whole process of hearing and delivery of judgement in the matter were handled without respect to his Constitutional right to be heard.



The Respondents case;

28. It is its case that investigations in the case emanated from investigations of another case Granada Limited whereby transactions that relate to the Appellant were identified and the Appellant was alleged to be involved in money lending business and failed to declared the interest income earned.
29. The Appellant is also suspected to have used the proceeds from money laundering business to invest in real estate.
30. The Respondent argues that it carried out investigations into the business of the Appellant for the period year 2014 - 2018 with a view of confirming its tax compliance under Income tax obligations and VAT so as to confirm if the income declared under section 3 (2) and part IV on *Income Tax Act* was correct.
31. The Respondent argued that it reviewed the following bank account statements from Prime Bank Accounts upon which it was established that; -
 - a. Account no. 300306xxxx registered in the name of Ahmed Noorani and Schon Noorani.
 - b. Account no. 545031xxx registered in the name of Ahmed Noorani and Schon Noorani; and.
 - c. Account number 300011xxxx and account no. 300011xxxx registered in the name of Karan International Limited and PAA Brothers Company respectively.
32. The information from the itax Data base on non-filers showed that the Appellant had made taxable supplies whose annual value exceeds five million shillings but failed to register for VAT obligation as per section 34(1) (a) of VAT Act. As such a notice was issued as per section 8(8) of *Tax Procedures Act* to register the Appellant.
33. Investigation established that the Appellant received rental income through the joint accounts.
34. Investigations in the case revealed that the Appellant acquired two properties and sold a commercial property known as Uchumi stores in March 2014.
35. The proceeds were invested in money lending business and acquisition of real estate properties. The analysis of the bank deposits is as tabulated.
36. It is its case that the Applicant was served with the investigations findings of the taxes amounting to Kshs. 84,700,251 and he responded to notice for registration on 15th July, 2020 and requested for clarification which the Respondent issued on 28th July, 2020. He in return explained that they did not own all the property from which the Respondent had charged rental income.
37. The Bank accounts were jointly held with other relatives namely Sunny Schon Noorani, Ruhul Schon Noorani, Karan Schon Noorani, Fahim Abdul Noorani.
38. It is its case that the Applicant submitted documents showing the source of income and a loan schedule and tenancy agreements between his relatives and the tenants.
39. Based on the above finding the Respondent determined the taxable income on interest on income and rental income and issued assessments 30th November, 2022 for Kshs. 33,115,895.
40. The Applicant filed an objection on 30th December, 2022 which was duly acknowledged by the Respondent.



41. The Respondent upon considering the Appellants' objection letter issued a decision based on the documents provided and reviewed the rental tax due to Kshs. 30, 861, 159.
42. The matter underwent the full trial process in the Tax Appeals Tribunal which culminated into an open court hearing on 16th July, 2024 with the Respondent having two witnesses heard the Applicant herein was in attendance and undertook time allocation for 10:30 a.m for taking of the witness evidence. After which parties were directed to file submissions.
43. The Respondent is apprehensive it will suffer prejudice if the prayers for orders of stay ,certiorari and prohibition in the Application filed are allowed herewith since the Applicant was derelict on their duty to attend court through their counsel on the 16th July, 2024 even where the court recorded the counsel appearance before issuance of time allocation for hearing hence the burden of proof lies upon the Applicant to prove any prejudice suffered before this court.
44. It is its case that if the orders of stay, certiorari and prohibition are allowed then the Respondent's claim for total tax amounting to Kshs. 30, 861, 159 would be stifled and the Respondent suffer irreparable loss.
45. The Applicant's Application is not only frivolous but amounts to an abuse of the court process.
46. The Applicant acknowledged the receipt of the hearing date as issued on 12th June, 2024 and neither regularized their position by appearing in court for taking witness evidence and cross examination pursuant to the tax laws.
47. Failure on the part of the Applicant to adhere to court time allocation and procedures in hearing on taking witness evidence as legally placed upon it by tax laws cannot be sufficient grounds for grant of orders of stay, certiorari and prohibition.
48. The court should take into account the actions of the Applicant up to this stage.
49. The Application is an abuse of the court since the issues have been canvassed and subjected to two legal processes under two bodies of competent jurisdiction being the tax demand and objection stage and the Tax Appeals Tribunal.

Analysis and determination:

Upon per using the Application and the response is as read alongside the submissions and different cases is advanced by the parties, the “find the following to be the issues for determination;

1. Whether the Application has merit
 2. Who should be at the cost.
50. In determining whether the application has merit, this court is guided by the case of Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300 as follows:

“In order to succeed in an Application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when



the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

51. The nature of evidence in Judicial Review proceedings is based on affidavit evidence. Technical or specialized issues like tax related matters and appeals are best heard by the specialised institutions.
52. The court may not set about forming its own preferred view of the evidence, rather it may only quash an impugned decision. This is codified in Section 11(1)(e) and (h) of the [*Fair Administrative Action Act*](#).
53. The merits of a case are best analyzed in a trial or on appeal after hearing testimony, cross-examination of witnesses and examining evidence adduced.
54. In the instant suit, the Respondent has literally set out in detail the evidence that it has against the Applicant herein. For instant it sets out that investigations were conducted, a demand letter was made, the itax banking rental income money lending income, interest and what the Applicant owes inter alia.
55. This court cautions itself that it lacks the capacity and the legislative machinery to conduct a merit analysis on whether the Applicant is liable or not or even what amounts of interest is owed.
56. The in-depth understanding of the complexities around tax laws are well within the remit of the Tax Tribunal and not the Judicial Review court.
57. This court focuses on the issues of illegality, irregularity as well as procedural impropriety within the [*Fair Administrative Action Act*](#).
58. Having so observed, in determining whether the Applicant has proved his case, I am guided by The Supreme Court in *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* (2020) KLR where it was held as follows:

“(49) Section 108 of the [*Evidence Act*](#) provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
59. The Applicant is asking this Court to grant an order for certiorari to review and quash the proceedings conducted on the 16/07/2023 in respect to TATC 281 of 2023 Schon Noorani -vs- Commissioner of Investigation & Enforcement and set the matter for hearing ante.
60. At the heart of the Applicants concerns is the argument that he was not heard before the Appeal was determined. Article 47 of [*The Constitution*](#) provides that; “every person has a right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”



61. Section 7 of the Fair Administrative Actions Act provides that:
- (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–
 - (a) a court in accordance with section 8; or
 - (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
62. Michael Fordham in his book *Judicial Review Handbook*, 6th edition, Hart Publishing, 2012, defines Judicial Review as;
- “.... The court’s way of enforcing the rule of law: ensuring that public authorities functions are undertaken according to law and that they are accountable to law. Ensuring, in other words that public bodies are not ‘above the law’”
63. Black’s Law Dictionary, 9th Edition, page 924 defines Judicial Review as;
1. A court’s power to review the actions of other branches of government; esp, the court’s power to invalidate legislative and executive actions as being unconstitutional.
 2. The constitutional doctrine providing for this power.
 3. A court’s review of a lower court’s or an administrative body’s factual or legal findings.
64. Section 7 of the Fair administrative Actions Act (FAAA) further provides as follows:
- “(2) A court or tribunal under subsection (1) may review an administrative action or decision, if–
 - a. the person who made the decision–
 - i. was not authorized to do so by the empowering provision;
 - ii. acted in excess of jurisdiction or power conferred under any written law;
 - iii. acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - iv. was biased or may reasonably be suspected of bias; or
 - v. denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person’s case;
 - b. a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - c. the action or decision was procedurally unfair;
 - d. the action or decision was materially influenced by an error of law;



- e. the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the Applicant;
- f. the administrator failed to take into account relevant considerations;
- g. the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
- h. the administrative action or decision was made in bad faith;
- i. the administrative action or decision is not rationally connected to–
 - i. the purpose for which it was taken;
 - ii. the purpose of the empowering provision;
 - iii. the information before the administrator; or
 - iv. the reasons given for it by the administrator;
- j. there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- k. the administrative action or decision is unreasonable;
- l. the administrative action or decision is not proportionate to the interests or rights acted;
- m. the administrative action or decision violates the legitimate expectations of the person to whom it relates;
- n. the administrative action or decision is unfair; or
- o. the administrative action or decision is taken or made in abuse of power.

65. The court has looked at the proceedings 16/07/2023 and from the record, it is clear that at the right to fair hearing is a fundamental right that cannot be taken away. It goes a long way in, ensuring that no one should be condemned without being accorded an opportunity to express their case of themselves. Proceedings that are devoid of fairness by way of denying any litigants the opportunity to be heard offend Article 50 of *the constitution*. As such where an Applicant owing to justifiable reasons is unable to be present when the hearing is being conducted, then such a person should be given a chance to present their case at a later stage. The decision maker must be very cautious and must pay extra attention whenever a litigant or a person who is likely to be prejudiced by the outcome of the proceedings is not in court when the matter is called out.

66. The Applicant had a legitimate expectation that he would get a chance to defend himself before the Tax Tribunal.

67. The audi alteram partem rule is embedded in our law even prior to the advent of our Constitutional dispensation. *Administrator of Transvaal v Traub* [1989] ZASCA 90; 1989 (4) SA 731 (A). See also *Masethla v President of the RSA* 2008 (1) 566 (CC) at [74] and [75]; *Malan v City of Cape Town*



- 2014 (6) SA 215 (CC) at [135]; FirstRand Bank Ltd (t/a Rand Merchant Bank) and Another v the Master of the High Court, Cape Town and Others 2014 (2) SA 527 (W) at [40] and [44].
68. In *Nortje en 'n Ander v Minister van Korrektiewe Dienste and Andere*, 2001 (3) SA 472 (SCA) Brand AJA (as he then was) commented that the Application of the audi rule is an elastic concept and that specific definition for the requirements are neither practical nor appropriate.
69. It goes without saying that legitimate expectation to be heard entitles a person to procedural fairness.
70. The term legitimate expectation was first verbalized in the context of administrative law in the decision handed down by Lord Denning MR in *Schmidt v Secretary of State for Home Affairs* [[1968] EWCA Civ 1; 1969] 2 Ch 149 (CA); [1969] 1 All ER 904. In this regard, Lord Denning observed:
- “...an administrative body may, in a proper case, be bound to give a person who is affected by the decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say.”[25].
71. From the record it is clear that the Applicant was denied his day in court thereby taking away his right to be heard.
72. In the replying affidavit of Jacqueline Martim particular she deposed follows on oath;
- “Paragraph 19 THAT the matter underwent the full trial process in the Tax Appeals Tribunal which culminated into an open court hearing on 16th July, 2024 with the Respondent having two witnesses heard the Applicant herein was in attendance and undertook time allocation for 10:30 a.m for taking of the witness evidence. After which parties were directed to file submissions.
- Paragraph 20. THAT in the circumstances, the Respondent is apprehensive it will suffer prejudice if the prayers for orders of stay, certiorari and prohibition in the Application filed are allowed herewith since the Applicant was derelict on their duty to attend court through their counsel on the 16th July, 2024 even where the court recorded the counsel appearance before issuance of time allocation for hearing hence the burden of proof lies upon the Applicant to prove any prejudice suffered before this court.”
73. The Supreme Court in the case of *Githiga & 5 others v Kiru Tea Factory Company Ltd* (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment) held that under Article 50(2) of *the Constitution* procedural fairness in the administration of justice involved the fair hearing rule that required a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.
74. The High Court in *Britam General Insurance Limited v Ukwale Agnes Ndungu* [2019] eKLR applied the dicta of the Supreme Court of India in *Sangram Singh v Electio Tribunal Kotah* 1955 AIR 425 that emphasized that the principle of natural justice requires that;
- “Men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
75. The consequence of breach of the rules of natural justice *Nancy Musili v Joyce Mbete Katisi* [2018] eKLR is the denial of the right to be heard that renders any decision made null and void ab initio.



76. Justice Odunga (as he then was) explained in the case of Republic v Commission on Administrative Justice & 2 others Ex parte Michael Kamau Mubea [2017] eKLR the importance of an affected party being accorded an opportunity to be heard as follows:

“112. In my view, reference to hearing the other side must have been with respect to oral representation since I do not see how a decision affecting a person can be made without affording that person an opportunity to present his case either orally or by in writing in light of the provisions of Article 47 and 50 of *the Constitution*. However, the law is clear that where a tribunal decides to hear one party then it must hear all the parties.”

77. In the instant suit, it is this court’s finding that the Respondent did not controvert the Applicant’s explanations as to why he did not attend Court. On a balance of probabilities, it is this court’s finding that the Applicant did not present their case during the hearing.

78. The judgment is in the circumstances tainted with procedural impropriety given that the Applicants right to be heard as guaranteed under Article 50 of *the Constitution* was violated.

79. The rehearing will be reopened to resume from the point where the Applicant was supposed to give his evidence on 16th July, 2024. The Applicant prayed that the court direct the Application to be heard by a different Tribunal. No reason has been advanced whatsoever justify the issuance of such an order and the same declined.

Costs:

80. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

81. The Applicant is entitled to costs.

Disposition:

82. The Applicant has proven his case within the principles as enunciated in the case of Council of Civil Service Unions versus Minister for the Civil Service (1985) 1 AC 374(Supra).

Order:

The amended Application is allowed in the following terms:

1. Prayers 1,2 and 3 are spent.
2. Prayers 4 and 5 an order for Certiorari is hereby issued reviewing and quashing the proceedings conducted on the 16/07/2023 in respect to TATC 281 of 2023 Schon Noorani -vs- Commissioner of Investigation & Enforcement.



3. Prayer 6 is allowed with TATC 281 of 2023 Schon Noorani -vs- Commissioner of Investigation & Enforcement being set for hearing ante within 45 days.
4. Costs to the Applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

.....

J. CHIGITI (SC)

JUDGE

