Republic v Magistrate's Court at Makadara & 2 others; Jakaranda Gardens Management Company Limited & 7 others (Ex parte Applicants) (Judicial Review Application E332 of 2025) [2025] KEHC 15136 (KLR) (Judicial Review) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15136 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E332 OF 2025

RE ABURILI, J

OCTOBER 27, 2025

IN THE MATTER OF ARTICLES 22(3),23,27,47,50,157 AND 165 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTIONS 4 &5 OF THE OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS ACT

AND

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

AND

IN THE MATTER OF SECTIONS 8 &9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF SECTIONS 7,8,9,10 AND 11 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION RULES, 2024

AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI & PROHIBITION

BETWEEN

REPUBLIC .... APPLICANT

AND

THE MAGISTRATE'S COURT AT MAKADARA .... 1ST RESPONDENT

THE DIRECTOR, DIRECTORATE OF CRIMINAL INVESTIGATIONS .... 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS .... 3RD RESPONDENT

AND

JAKARANDA GARDENS MANAGEMENT COMPANY LIMITED .... EX PARTE APPLICANT

YUAN XIAMING .... EX PARTE APPLICANT

SHENGQI WANG .... EX PARTE APPLICANT

FAITH KANANGA GIMAIYO .... EX PARTE APPLICANT

JAMES AGGREY OJWANG .... EX PARTE APPLICANT

DOUGLAS NDERITU KARAGO .... EX PARTE APPLICANT

CATHERINE WAIRIMU MURIUKI .... EX PARTE APPLICANT

SILAS OYUGI .... EX PARTE APPLICANT

RULING

1. The Chamber Summons dated 21st October, 2025 seeks orders for extension of time for the exparte applicants to lodge judicial review application out of time, pursuant to the Fair Administrative Action Rules, 2024. The applicants also seek leave of court to apply for judicial review orders of certiorari to quash the ruling dated 11th December, 2024 made by the Chief Magistrate's Court at Makadara in Inquest Case No. E011 of 2023 and leave to prohibit the arrest and arraignment of the applicants before the said Court as directed by the Inquest Court on 11th December, 2024.

2. The applicants also pray that the leave so granted do operate as stay of the orders issued by the Inquest Court directing the arrest and arraignment of the applicants.

3. The circumstances leading to the application are contained in the detailed statutory statement and verifying affidavit annexed thereto and mainly, that following the death of the deceased Eriya Mugisha, a 13-year-old boy, through electrocution in the premises managed by the applicants, an inquest was held at Makadara Chief Magistrate's Court that found the management of the first applicant herein, Jakaranda Gardens Management Company Limited culpable for being negligent hence the orders of 11th December, 2024.

4. The applicants challenge the ruling and orders of 11th December, 2024 made pursuant to the provisions of section 387 (3) of the Criminal Procedure Code on account of being ultravires, irrationality and unreasonableness, unfairness bad faith and abuse of power on the part of the Makadara Chief Magistrate's Court.

5. The application is also verified by the affidavit sworn by Shengqi Wang, the Director of the 1st applicant Management Company annexing the proceedings and ruling in the Inquest matter.

6. The application was argued orally before me this morning by Ms, Phare'z advocate for the applicants reiterating the prayers and grounds upon which the application is predicated.

7. The issue for determination is whether the prayers sought are available to the applicants. There are ancillary questions that I will resolve in the process of answering the main issue herein.

8. The requirement for leave to apply for judicial review, formerly known s prerogative orders was explained in Matiba vs. Attorney General Nairobi H.C. Misc. Application No. 790 of 1993 by Bosire, Mbogholi-Msagha & Oguk, JJ wherein the Court held that leave is supposed to exclude frivolous vexatious or applications which prima facie appear to be abuse of the process of the Court or those applications which are statute barred.

9. Equally, in Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka [2006] 1 EA 321, Nyamu,J (as he then was) held that leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be unmeritorious. See also Republic vs. The P/S Ministry of Planning and National Development Ex Parte Kaimenyi [2006] 1 EA 353.

10. Earlier on in Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996 Waki, J (as he then was), put it thus, on the purpose of applying for leave in judicial review matters:

> " 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".

11. This position was confirmed by the Court of Appeal in Meixner & Another vs. Attorney General [2005] 2 KLR 189 in which the Court held that the leave of the court is a prerequisite to making a substantive application for judicial review and that the purpose of the leave is to filter out frivolous applications hence the granting of leave or otherwise involves an exercise of judicial discretion.

12. The circumstances that guide the grant of leave to apply for judicial review remedies were well enumerated in Mirugi Kariuki vs. Attorney General Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8 as follows:

> "The law relating to judicial review has now reached the stage where it can be said with confidence that, if the subject matter in respect of which prerogative power is exercised is justiciable, that is to say if it is a matter on which the Court can adjudicate, the exercise of the power is subject to review in accordance with the principles developed in respect of the review of the exercise of statutory power…the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter… It is not the absoluteness of the discretion nor the authority of exercising it that matter but whether in its exercise, some of the person's legal rights or interests have been affected. This makes the exercise of such discretion justiciable and therefore subject to judicial review. In the instant appeal, it is of no consequence that the Attorney General has absolute discretion under section 11(1) of the Act if in its exercise the appellant's legal rights or interests were affected. The applicant's complaint in the High Court was that this was so and for that reason he sought leave of the court to have it investigated. It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers…In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a prima facie case. For that, he should have been granted leave to apply for the orders sought."

13. In R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199, the Court of Appeal was of the view that leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave.

14. 16. In Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 (HCK), the Court stated:

> "Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds

and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him....Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of John vs. Rees [1970] Ch 345 at 402. In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration."

15. From the above judicial pronouncements, it is clearly established that under common law, the grant of leave to commence judicial review proceedings is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to demonstrate to the court that he/she has a prima facie arguable case for grant of leave. Whereas he or she is not required at that stage to go into the depth of the application, he/she has to show that he/she has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile. As was held in Re: Kenya National Federation of Co-Operatives Ltd & Others [2004] 2 EA 128 based on Judicial Review Handbook (3 Ed) By Michael Fordham:

> " A claimant for permission is under an important duty to make frank disclosure to the Court of all material facts and matters and it is especially important to draw attention to matters which are adverse to the claim, in particular: (1) any statutory restriction on the availability of judicial review; (2) any alternative remedy; (3) any delay/ lack of promptness and so need for an extension of time. In facing up to adverse points, the claimant will have an early opportunity to explain why those points are not fatal and why the case should be permitted to proceed (that is a "confess and avoid"). The duty of "full and frank" disclosure harks back to the time when permission for judicial review was ex parte."

16. Applying the above principles to this case, the question is whether the prayers sought are available to the applicants.

17. The orders/ ruling which is being challenged were made on 11th December, 2024. This application which also contains a prayer for extension of time, acknowledges therefore, that time for filing of judicial review application especially in respect of certiorari, lapsed by operation of the law although the applicant's counsel chose to say nothing about extension of time in her submissions. However, in her prayer 2, extension of time is sought pursuant to the Fair Administrative Action Rules, 2024. The Chamber Summons is also cited to be brought under Order 53 Rule 1 of the Civil Procedure Rules and Rule 6 of the Fair Administrative Action Rules, 2024.

18. The question is, can this court enlarge the period for filing of application for leave to apply for certiorari, once the six months period provided for in law elapses? To answer this important question, we shall examine the applicable law.

19. Section 9(3) of the *Law Reform Act* provides:

> (3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

20. On the other hand, Order 53(2) of the Civil procedure Rules provides:

    2. Time for applying for certiorari in certain cases [Order 53, rule 2] Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

21. The above provisions prohibit the filing of judicial review applications for certiorari after expiry of six months from the date of the impugned decision where such decision is a judgment, decree, conviction, order or other proceeding.

22. How have the courts dealt with the question of whether the period of six months can be extended by the court on application by a party?

23. In RE AN APPLICATION BY GIDEON WAWERU GATHUNGURI MISC CR APPLICATION NO. 2 OF 1962, RUDD J Ag Chief Justice in the Supreme Court of Kenya held that:

    i. An application for extension of time to file an application for judicial review orders of certiorari out of the statutory six months limitation period did not lie in view of the clear statutory provisions of section 9(3) of the *Law Reform Act*;

    ii. The Rules made under section 9 of the *LAW Reform Act* could not defeat the clear provisions of sub section (3) of the same section which imposed an absolute period of limitation, so that leave should not be granted unless the application for leave was made not later than six months after the date of the conviction and sentence;

    iii. The application for leave should not have been granted since it was made more than six months from the conviction and sentence;

    iv. Since the remedy was discretionary and it was clear that in fact the order for leave to proceed should not have been made, the court would not exercise its discretion and make the order sought.

    v. The application was dismissed.

24. In Municipal Council of Mombasa v Republic & Umoja Consultants Ltd. [2002] KECA 8 (KLR) the Court of Appeal had this to say concerning time for filing of an application for leave to apply for judicial review application for certiorari:

> “The decision to raise the fees and charges could only be quashed if the respondents had applied for an order of certiorari. The respondents had not done so. Indeed, they could not have done so at the time they came to court because the limitation period of six months within which to apply for an order of certiorari had long passed. According to Mr. Mburu, the appellant could not be prohibited from taking a decision which it had already taken. As we understand the matter, that was the basis on which the case of the KENYA NATIONAL EXAMINATIONS COUNCIL, ante, was heavily relied on. How did Mr. Justice Waki deal with these contentions? We quote him:
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> ……

....But the decision had been made and its making had been made known to the respondents. They did not challenge it, i.e. they did not, within six months of its being made go to the High Court for an order of certiorari to have it moved into the High Court and be quashed...."

25. In the c a recent case of Johana v Secretary Teachers Service Commission & another [2025] KECA 732 (KLR) the Court of Appeal observed as follows:

> " We are not aware of any provision made by the Rules Committee that prescribes that leave in respect of certain matters be made within six months or shorter periods. From section 9(3) of the *Law Reform Act*, it is clear that the time within which leave to apply for orders of certiorari may be sought is prescribed by the Act. The Act does not provide for extension of time in that regard. This Court in Thomas Achuch Ako v Special District Commission & Ministry of Lands & Settlement [1989] KLR 163 held that under the *Law Reform Act*, leave to apply for prerogative orders ought not to be granted unless the application is made within 6 months of the decision sought to be quashed. Similarly, in Wilson Osolo v John Ojiambo Ochola & Another [1996] KLR it was held by this Court that:
>
> "There was quite clearly a fundamental error on the part of the Superior Court in granting such an extension of time as section 9(3) of the *Law Reform Act*, Cap 26 Laws of Kenya, quite clearly shows that an application for leave to apply for an order of certiorari cannot be made six months after the date of the order sought to be quashed. It can readily be seen that order 53 rule 2 (as it then stood) is derived verbatim from s. 9(3) of the *Law Reform Act*. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules that procedure cannot be availed for the extension of time limited by statute, in this case, the *Law Reform Act*. There is no provision for extension of time to apply for such leave in the *Limitation of Actions Act* (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here."

26. In the above cited Gideon Waweru Gathunguri case, the Supreme Court of Kenya as it was then made it clear that extension of time for filing an application for leave to apply for certiorari did not lie under the Civil procedure Rules in view of the substantive provisions of Section 9(3) of the *Law Reform Act*.

27. Across our borders, the Uganda Court of Appeal stated as follows in Re: An Application by Mustapha Ramathan for Orders of Certiorari, Prohibition and Injunction, Civil Appeal No. 25 of I996:

> " Statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest riepublicae ut sit finis litum, meaning that litigation shall be automatically stifled after fixed length of time, irrespective of the merits of the particular case. A good illustration can be found in the following statement of Lord Greene M R in Hilton v Sutton Steam Laundrv ll946l I KB 6l at nase 81 where he said "But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitations is entitled, of course, to insist on his strict rights".

28. In the end, I find that this court is deprived of any jurisdiction to extend time limited for filing of application for judicial review orders of certiorari as sought herein, in view of the provisions of section 9(3) of the *Law Reform Act* which limits the period for filing of such applications to six months from the date of the impugned ruling or order.

29. There is another question here, whether the applicant could invoke both Order 53 of the Civil procedure Rules and the *Law Reform Act* and at the same time seek for extension of time to apply under the Fair Administrative Action Rules, 2024?

30. The quick answer is that an applicant cannot invoke Order 53 of the Civil Procedure Rules and section 9 of the *Law Reform Act* to seek leave for judicial review and at the same time rely on the Fair Administrative Action (FAA) Rules, 2024 to obtain an extension of time under Rule 6 after the expiration of the period set in section 9(3) of the *Law Reform Act* and Order 53 (2) of the Civil procedure Rules.

31. This is because, the two procedural frameworks are distinct, operating under different legal principles and requirements. Attempting to combine them amounts to an abuse of the court process.

32. Under Order 53, an applicant must first obtain the court's leave before filing the substantive motion, whereas the Fair Administrative Action Rules abolished the leave requirement to simplify and expedite judicial review proceedings.

33. The timelines prescribed under each regime also differ; Order 53 allows an application for leave to be made within six months of the decision being challenged, while Rule 6 of the Fair Administrative Action Rules impose a shorter six weeks limit for certain administrative actions.

34. In addition, Rule 6 (2) of the Fair Administrative Action Rules provides a specific mechanism for seeking enlargement of time prescribed under Rule 6(1), setting out the grounds upon which such extension may be granted, including instances where fraud, mistake, or misrepresentation prevented timely filing.

35. A litigant must therefore elect one procedural path and comply fully with its requirements.

36. The proper approach, where a party wishes to proceed under the *Fair Administrative Action Act* and Rules, is to file an originating motion directly under those Rules and, if necessary, apply for extension of time under Rule 6 with cogent reasons for the delay. Conversely, a litigant proceeding under Order 53 of the Civil procedure Rules whose substantive statute is the *Law Reform Act*, must adhere to its procedure in entirety and cannot selectively import provisions from the Fair Administrative Action Rules.

37. I am alive to the fact that the *Fair Administrative Action Act* implements Article 47 of *the Constitution* which guarantees the right to fair administrative action that is fair, just, efficient and expeditious. I am equally aware that despite the *Fair Administrative Action Act*, the *law Reform Act* and Order 53 of the Civil Procedure Rules have never been repealed so that we are left with only one legal regime in matters judicial review. I am also aware that this very issue was discussed quite ably by my brother Justice Weldon Korir (as he then was) in Nairobi HC Constitutional Petition No. 337 of 2018 in Felix Kiprono Matagei v Attorney General and the Law Society of Kenya [2021] eKLR, in which the learned Judge held that there was need for Parliament to repeal sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil procedure Rules to avoid confusion as to the manner in which judicial review actions should be instituted; until the anticipated repeal is done, and in view of section 12 of the *Fair Administrative Action Act* which clearly makes provision for the Principles of common law and rules of natural justice and stipulates that:

    12. This Act is in addition to and not in derogation from the general principles of common law and the rules of natural justice.

38. In the humble view of this Court, the two legal regimes will continue to co-exist side by side and a party applying is given leeway to elect to approach the Court either under the Common law principles

governed by sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules, or file an originating motion purely under section 11 of the Fair Administrative Action Rules, 2024.

39. The above positions notwithstanding, it is important to note that the operationalization of Rules 5,6,7 and 11 (4) of the Fair Administrative Action Rules, 2024 were stayed by Mwamuye J on 28th March, 2025 vide High Court Constitutional Petition No. E168 Of 2025 Between Katiba Institute Vs State Law Office and The Commission On Administrative Justice (Office Of The Ombudsman) And 1 Other where the learned Judge ordered as follows:

> " .... upon a preliminary consideration of the matter, IT IS HEREBY ORDERED AND DIRECTED THAT:
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> 1. Pending the inter partes hearing and determination of the Petitioner/ Applicant's Notice of Motion Application dated 28/03/2025, a conservatory order be and is hereby issued staying the implementation of Rules 5, 6, 7, 11(4), 27(3), and 33 of the Fair Administrative Action Rules 2024.
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> 2. ...."

40. That stay of implementation of the stated Rules which includes Rule 6 that provides for timelines for filing of applications for judicial review orders of certiorari to quash administrative proceedings or action has not been vacated or discharged. That being the case, an applicant cannot rely on the stayed provisions of the law to found a cause of action or to seek for enlargement of time within which to file an expired cause of action.

41. Therefore, regarding the application for extension of time to seek leave to apply for certiorari, I find and hold that the existing legal provisions under section 9(3) of the *Law Reform Act* and Order 53 of the Civil procedure Rules do not permit such extension once the six months period has expired, as is the case herein. Had the limitation period depended only upon Order 53 of the Civil procedure Rules, then the time for the application could have been capable of being extended under Order 50 Rule 5 of the Civil procedure Rules. However, this Rule cannot have effect to defeat the express limitation absolutely imposed by section 9(3) of the *Law Reform Act*. See the case of An Application by Gideon Waweru Gathunguri (supra).

42. The extension of time and leave sought are both declined.

43. The applicant further prays for leave to apply for prohibition seeking to prohibit the respondents from purporting to arrest, arraign the exparte applicants pursuant to the impugned order or ruling of 11th December, 2024.

44. From the applicant's counsel's own submissions this morning, the applicants were arrested and arraigned before Court and that the matter was even before that court this morning.

45. In Republic v National Transport and Safety Authority & another [2016] eKLR, G.V. Odunga J (as he then was) had this to say concerning the prayer for prohibition, where certiorari was not available to the applicant:

> " 21... As was held in Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001:
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> > "Where a decision is made and its making has been made known to the Respondents who did not challenge the same within 6 months of its being made by way of certiorari to have it moved into the

High Court and be quashed, it is not open for them to seek to have the Appellant prohibited from implementing the decision as an order of prohibition would normally issue to stop or pre-empt a contemplated action where such contemplated action is either outside the jurisdiction of the decision-maker, or where the decision maker has evinced an intention to act contrary to law."

22. Without quashing the Regulations in issue there would be no basis or granting the order of prohibition sought. See Kenya National Examinations Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 [1997] eKLR.

46. In the Kenya National Examinations Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 [1997] eKLR case, the Court of Appeal stated as follows regarding judicial review order of prohibition:

" That is why it is said prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision. That was why Mr. Stanley Munga Githunguri was able to get an order prohibiting the Chief Magistrate of Nairobi from trying him when such a trial would amount to an abuse of the process of the Chief Magistrate's court – See STANLEY MUNGA GITHUNGURI V REPUBLIC, Criminal Application No. 271 of 1985 (unreported). But if Mr. Githunguri had allowed the Chief Magistrate to try him and a conviction had been recorded, an order 7th Edition defines the word "cancel" as "obliterate, cross-out; annul, make void, abolish, countermand, revoke order or arrangement for..."

The Council told the respondents that it had obliterated, crossed-out, annulled, made void, abolished etc..." their results, yet despite that averment, which as we have said was never challenged, the respondents were still insisting that the results be released to them. Could the orders sought namely prohibition and mandamus, deal with that situation? That now brings us to the question we started with, namely, the efficacy and scope of mandamus, prohibition of certiorari. These remedies are only available against public bodies such as the Council in this case. What does an ORDER OF PROHIBITION do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See HALSBURY'S LAW OF ENGLAND, 4th Edition, Vol.1 at pg.37 paragraph 128. When those principles are applied to the present case, the Council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether, that power is to be exercised. If the Council of prohibition would be ineffectual against the conviction because such an order would not quash the conviction. The conviction could be quashed either on an appeal or by an order of certiorari. The point we are making is that an order of prohibition is powerless against a decision which

has already been made before such an order is issued. Such an order can only prevent the making of a decision. That, in our understanding, is the efficacy and scope of an order of prohibition…"

47. No doubt, prohibition looks at that which is not yet done. Once the arrest and arraignment is done, as is conceded in this case, the prayer seeking leave to apply for prohibition though not time bound, to prohibit the arrest and arraignment of the applicants became superfluous. It cannot issue.

48. In the end, I must observe that the ruling which is sought to be impugned was well within the applicants' knowledge all along and no doubt, it is a decision that was objectionable. The remedy of Certiorari was open to any aggrieved person as there was sufficient time to react before limitation period set in. Crying foul on that decision nearly one year after the ruling would attract legal censure.

49. For all the above reasons, I find that all the prayers sought in these proceedings are not available to the applicants.

50. Accordingly, the chamber summons dated 21st October, 2025 is hereby dismissed with no orders as to costs.

51. This file is closed

DATED, SIGNED &DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER, 2025

R.E. ABURILI

JUDGE