

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCEP PET. NO. E021 OF 2025

**IN THE MATTER OF ARTICLES 2, 10, 19, 20,21, 22, 23, 47,
48, 50 AND 258 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION AND
VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLE 47 AND 48 OF THE CONSTITUTION**

AND

**IN THE MATTER OF FAILURE BY THE NAIROBI PHYSICAL
AND LAND USE PLANNING LIAISON COMMITTEE TO
DISCHARGE ITS MANDATE UNDER THE PHYSICAL AND
LAND USE PLANNING ACT, 2019**

AND

**IN THE MATTER OF THE DOCTRINE OF LEGITIMATE
EXPECTATION**

AND

**IN THE MATTER OF THE PRINCIPLES OF GOOD
GOVERNANCE AND THE RULE OF LAW**

BETWEEN

**VICTOR ODHIAMBO (Suing on behalf of
themselves and in the public interest
under Art. 22 and 258 of the Constitution
PETITIONER**

VERSUS

NAIROBI COUNTY PHYSICAL LAND

USE PLANNING LIASON COMMITTEE 1ST

RESPONDENT

COUNTY GOVERNMENT OF NAIROBI 2ND

RESPONDENT

NAIROBI CEC EXECUTIVE

MEMBER IN CHARGE OF PLANNING 3RD

RESPONDENT

THE ATTORNEY GENERAL 4TH

RESPONDENT

JUDGMENT

Background

1. Vide a Petition dated 4th June 2025, the Petitioner seeks judgment against the Respondents for the following reliefs:

- a. A declaration that this is a public interest litigation;*
- b. A declaration that the failure by the 1st Respondent to sit and determine appeals amounts to a violation of Articles 47 and 48 of the Constitution;*
- c. A declaration that the continued inaction of the 2nd and 3rd Respondents in facilitating the proper functioning of the 1st Respondent is unconstitutional and violates Articles 10, 47 and 48 of the Constitution;*

- d. A declaration that the petitioner and other similarly situated persons have a legitimate expectation to have their appeals determined within the statutory timelines;*
- e. An order of mandamus compelling the 1st Respondent to immediately commence sittings and determine all pending appeals within 60 days of the date of judgment;*
- f. An order of mandamus directing the 2nd and 3rd Respondents to, within 30 days.*
 - i. provide necessary resources and administrative support for the committees' operations.*
 - ii. Submit to court a comprehensive implementation plan.*
- g. An order for compensatory relief in terms of general damages to the petitioner for the violation of constitutional rights.*
- h. Cost of the petition.*

2. The facts giving rise to the Petition, as set out in the Petition and in the Supporting Affidavit sworn by Victor Odhiambo, are that the Petitioner brings this matter both in his own interest and in the public interest pursuant to **Articles 22** and **258** of the **Constitution**. He seeks to vindicate not only

his personal rights but also those of other members of the public who, he avers, have been denied access to the appellate mechanism guaranteed by law.

3. It was the Petitioner's case that he had previously lodged an appeal before the Nairobi County Physical and Land Use Planning Liaison Committee in **PLUPLC Appeal No. E013 of 2024 - Victor Odhiambo vS Governor, County Government of Nairobi & Another**, in which the Committee determined the issue of the authority competent to issue decrees within the County.
4. The Petitioner further averred that in January 2025, he prepared a subsequent appeal challenging the County's failure to maintain a register as required under **Section 62** of the **Act**. Upon attempting to file the appeal, he was advised that the 1st Respondent had ceased to sit owing to the failure by the 2nd and 3rd Respondents to pay allowances to Committee members, among other reasons.
5. The Petitioner deponed that despite numerous inquiries, he confirmed that the Committee had not resumed its sittings. In his view, this amounted to a violation of his right of access to justice under **Article 48** and the right to fair administrative action under **Article 47** of the **Constitution**.
6. It was further contended that the failure by the 1st Respondent to sit contravenes **Section 79(3)** (*sic*) of the

Physical and Land Use Planning Act, which imposes a statutory duty to determine appeals within sixty days.

7. The Petitioner asserted that the County Government of Nairobi, by failing to facilitate the sittings of the Liaison Committee through non-payment of members' allowances, had violated **Articles 47** and **48** of the **Constitution** and the spirit of the Constitution.
8. The Petitioner alleged violation of the constitutional guarantees of fair administrative action and access to justice under **Articles 47** and **48** of the **Constitution**. He contended that the 1st Respondent had abdicated its statutory mandate, thereby denying him and other affected parties the opportunity to ventilate their grievances before a competent forum, as contemplated by law, and that the prolonged institutional paralysis had occasioned an indefinite suspension of their right to be heard, amounting to a constructive denial of justice.
9. It was his case that **Article 47** confers upon every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The complete inaction of the 1st Respondent, coupled with the failure by the 2nd and 3rd Respondents to offer any written reasons for such paralysis, violates both the letter and spirit of this constitutional safeguard. The absence of a functioning forum, the Petitioner argued, represents the most egregious form of

procedural unfairness, effectively nullifying the statutory sixty-day period within which appeals are to be determined under **Section 79(3)** (*sic*) of the **Physical and Land Use Planning Act**.

- 10.** The Petitioner asserted that the Respondents' collective failure has created an institutional vacuum that extinguishes the forum through which lawful, reasonable, and fair redress could otherwise be obtained. Such dysfunction, in his view, subverts the Constitution both procedurally and substantively by rendering constitutional entitlements illusory and undermining the rule of law.
- 11.** He maintained that access to justice under **Article 48** encompasses not only access to courts but also to other lawfully established tribunals and quasi-judicial bodies. By failing to operationalize and facilitate the sittings of the 1st Respondent, the 2nd and 3rd Respondents have, according to the Petitioner, erected an institutional barrier that wholly deprives citizens of their right to access justice through the statutory appellate mechanism.
- 12.** The Petitioner argued that such institutional paralysis is particularly detrimental in the context of urban development and planning, fields governed by statutory timelines and carrying significant social and economic implications. The resulting legal uncertainty, he claimed, undermines both the

rule of law and public confidence in the predictability of governance.

- 13.** He further invoked the doctrine of legitimate expectation, submitting that the statutory establishment of Liaison Committees under the **Physical and Land Use Planning Act** gave rise to a reasonable and enforceable expectation that appeals would be heard and determined within 60 days. The failure by the Respondents to discharge their legal and administrative duties, he argued, amounts to arbitrary and capricious governance contrary to the principles of good administration.
- 14.** The Petitioner asserted that citizens are entitled to rely upon institutional continuity when structuring their affairs in accordance with established legal frameworks. The collapse of such frameworks through state inaction, he contended, constitutes a breach of public trust and a violation of the foundational principles of administrative justice.
- 15.** He contended that statutory institutions create legitimate public expectations of performance, and the negligent failure to ensure their functionality undermines integrity of governance and diminishes constitutional accountability.
- 16.** In support of his claim, the Petitioner invoked **Article 10** of the **Constitution**, arguing that the Respondents' conduct contravenes the national values and principles of

governance, including the rule of law, integrity, transparency, accountability, public participation, and social justice.

- 17.** He asserted that the failure to operationalize a legally established tribunal offends the foundational principle that governance must be conducted in accordance with the law and that state organs must give effect to constitutional values.
- 18.** It was his contention that the systemic inaction and lack of transparency concerning the Committee's paralysis amount to a grave affront to good governance, while the absence of a functioning appellate mechanism excludes the public from participatory decision-making processes in land use planning and urban development.
- 19.** The Petitioner further maintained that the Liaison Committee forms an integral component of the land use and planning framework, and its failure compromises the coherence and stability of related institutions. Institutional integrity, he submitted, demands that public bodies operate not only within their mandates but in a manner that safeguards the consistency and credibility of public administration.
- 20.** The Petitioner described as a constitutional aberration the continued existence of a tribunal that exists in law but not in function. He contended that the 2nd and 3rd Respondents, by failing to ensure that the Committee is properly constituted and resourced, have become complicit in an institutional

breakdown that undermines devolution and erodes public trust in county-level governance.

- 21.** He argued that constitutional design presupposes institutional permanence and continuity and that a committee that operates intermittently, or not at all, fails to meet its constitutional and statutory mandate, thereby collapsing the administrative integrity upon which the land use regulatory regime is predicated.
- 22.** The Petitioner pointed to **Section 72** of the **Physical and Land Use Planning Act, 2019**, which employs mandatory language in establishing Liaison Committees, providing that they shall consider and determine appeals; that the use of the word shall create a binding legal obligation rather than a discretionary power and that the peremptory requirement in **Section 79(3)(sic)** to determine appeals within sixty (60) days must be strictly observed in keeping with the maxim *expressio unius est exclusio alterius*.
- 23.** He further contended that the 2nd Respondent bears a constitutional duty under **Article 174 (f)** to ensure the provision of reliable and effective services, while the 3rd Respondent's supervisory role under **Section 72(4)** of the Act obliges it to oversee the Constitution and functionality of all Liaison Committees. Their collective failure, he claimed, constitutes a dereliction of constitutional responsibility, perpetuating legal uncertainty and administrative injustice.

Responses to the Petition

- 24.** In response, the 2nd and 3rd Respondents filed a joint Replying Affidavit sworn by Wilfred Wanyonyi Masinde, the Deputy Director for Development Inspection and Planning in the Directorate of Planning, Compliance and Enforcement. He deponed that the Nairobi Physical and Land Use Planning Liaison Committee was duly established pursuant to the provisions of the Physical and Land Use Planning Act, with a statutory mandate to hear and determine complaints arising from decisions of the planning authority.
- 25.** Mr. Masinde averred that the Committee has consistently convened to hear and determine grievances lodged by members of the public and has diligently discharged its statutory mandate, thereby contributing to the timely resolution of planning-related disputes.
- 26.** It was his deposition that remuneration and allowances payable to Committee members are to be borne by the respective County Governments, based on the number of sittings held and in accordance with the Salaries and Remuneration Commission's approved guidelines.
- 27.** He further stated that on 26th November 2024, the Chairperson of the Nairobi Physical and Land Use Planning Liaison Committee wrote to the County Executive Committee Member for Planning notifying him of the suspension of the Committee's operations owing to non-payment of members'

allowances; that a public notice to similar effect was issued on the same date, temporarily suspending the Committee's sittings until further notice and that following that communication, the Committee last convened in December 2024 and has not held any sitting thereafter.

- 28.** It was deponed that the issue of remuneration and allowances had since been discussed by the relevant departments within the Nairobi City County Government; that although the Committee's claims were duly invoiced by the departmental accountant, payment was delayed due to lack of funds and the absence of prior budgetary allocation in the 2024-2025 financial year, and that such expenditure must first be approved by the Controller of Budget before release of funds from the exchequer.
- 29.** Mr. Masinde asserted that the requisite allocation has now been factored into the 2025-2026 County Budget and forwarded to the Controller of Budget for approval and that upon approval and release of funds, payment will be made to Committee members and the secretariat to enable resumption of sittings.
- 30.** The 4th Respondent, in its separate Reply to the Petition, denied all allegations of constitutional and statutory violations made jointly against the Respondents and put the Petitioner to strict proof thereof.

31. It was further averred that the Petition, as drawn, discloses no reasonable cause of action against the 4th Respondent, who maintained that no reliefs are available or properly issuable against it in the circumstances of this case.

Submissions

32. Learned Counsel for the Petitioner submitted that the 1st Respondent, the Nairobi County Physical and Land Use Planning Liaison Committee, is a statutory tribunal established under **Section 76** of the **Physical and Land Use Planning Act, 2019 (PLUPA)**, with the mandate was to hear and determine appeals arising from development control and other planning decisions within Nairobi County. Being a quasi-judicial body, it was argued, it plays a central role in safeguarding the planning and property rights of citizens within Nairobi County.

33. Counsel referred to **Sections 61(3), 72(3), and 80(2)** of the **Act**, which require that appeals be determined within specified timelines not exceeding sixty days from filing. The use of the word “shall”, it was argued, denotes a mandatory obligation rather than a discretionary power. Consequently, administrative delay, financial constraints, or institutional neglect cannot lawfully justify the suspension of the Committee’s sittings.

34. It was further submitted that **Section 77(3)** of the **Act** and **Article 183(1)** of the **Constitution** impose a clear

supervisory duty upon the County Executive Committee Member responsible for planning, and by extension the County Government and the National Directorate, to ensure that Liaison Committees are duly constituted, resourced, and functional. The 2nd and 3rd Respondents therefore bear a continuing constitutional and statutory obligation to maintain the Committee's operational integrity.

- 35.** Counsel stated that when the Petitioner sought to file an appeal in January 2025 challenging the County's failure to maintain a public planning register under **Section 62 PLUPA**, he discovered that the Committee had ceased operations for want of payment of members' allowances. Repeated inquiries confirmed that no sittings were being held, thereby denying him and other citizens a lawful forum for redress.
- 36.** It was argued that such paralysis violated **Article 47(1)** of the **Constitution**, which guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair and that the indefinite suspension of the Committee's sittings amounted to a constructive denial of justice.
- 37.** Counsel contended that compliance with statutory timelines is not optional and that administrative or budgetary convenience cannot override explicit legislative commands. Reliance was placed on **Kenya National Commission on**

Human Rights v Attorney General & Another [2017] eKLR, where the Court affirmed that the State bears a positive duty to maintain functional institutions essential for the protection of constitutional rights.

- 38.** On the question of reasonableness, Counsel submitted that there existed no lawful or rational basis for the Committee's prolonged dormancy; that the governing statute remained in force, and the alleged non-payment of allowances could not absolve the County Government from its duty to ensure continuity and that reasonable governance required the adoption of alternative administrative measures to sustain the tribunal's work and the prolonged inaction thus amounted to gross administrative negligence and a violation of **Article 47**.
- 39.** Counsel further argued that the Committee's inoperability infringed **Article 48** of the **Constitution** on access to justice. The Liaison Committee being the exclusive appellate forum under PLUPA, its dormancy created a jurisdictional vacuum, leaving citizens without any lawful avenue to ventilate planning grievances, a situation that amounted to a total barrier to justice. The violation, Counsel emphasized, was systemic, affecting not only the Petitioner but all residents of Nairobi County with pending or potential appeals.

40. Counsel urged the Court to find that the Respondents' inaction violated **Articles 10, 47, and 48** of the **Constitution** and their statutory duties under the Physical and Land Use Planning Act, 2019. He prayed for declaratory and structural orders compelling the Respondents to reactivate and operationalize the Liaison Committee within defined timelines so as to restore citizens' constitutional right of access to justice in planning matters within Nairobi County.

Analysis and Determination

41. Upon careful consideration of the Petition, the responses filed, and the submissions of counsel, the following issues arise for determination:

- a. Whether the inaction or failure by the 1st Respondent to convene and determine appeals constitutes a violation of Articles 47 and 48 of the Constitution;*
- b. Whether the 2nd and 3rd Respondents, in their respective executive and supervisory capacities, failed in their statutory and constitutional obligations to facilitate the proper functioning of the 1st Respondent;*
- c. Whether the Petitioner has established a legitimate expectation capable of protection under the Constitution; and*
- d. Whether the Petitioner is entitled to the reliefs sought.*

42. The Petitioner invoked **Articles 22 and 258** of the **Constitution** and averred that he brings the Petition both in his own interest and in the public interest, on behalf of other persons similarly situated who are affected by the inoperability of the Liaison Committee.
43. According to Black's Law Dictionary, public interest litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.
44. In *Kayuga & another vs Kioko & 2 others (Petition E017 of 2022) [2022] KEHC 10703 (KLR)*, the court considered the definition of public interest litigation as follows:

“In Public Interest Litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. The proceedings in a Public Interest Litigation are intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory or sizeable segments of the society while owing to poverty, ignorance, social and economically disadvantages cannot

themselves assert and quite often not even aware of those rights.”

45. The facts on record demonstrate that the suspension of the Committee’s sittings affect a broad class of persons seeking to challenge planning decisions within Nairobi County. In the circumstances, this Court is satisfied that the Petition falls within the ambit of public interest litigation as contemplated under Articles 22 and 258.

46. The facts material to this Petition are largely uncontested. The 1st Respondent, the **Nairobi County Physical and Land Use Planning Liaison Committee**, is a statutory tribunal established under **Section 76** of the **Physical and Land Use Planning Act, 2019 (PLUPA)**. Its mandate is expressly set out under **Section 78** of the **Act** and includes: hearing and determining complaints and claims relating to applications submitted to the County planning authority; hearing appeals against decisions of the planning authority; advising the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and determining appeals arising from enforcement notices issued under the Act.

47. It is not disputed that the **Nairobi County Physical and Land Use Planning Liaison Committee** has not convened since December 2024. The Deputy Director for Development Inspection and Planning, Wilfred Wanyonyi Masinde,

confirmed that the Committee suspended its sittings following non-payment of members' allowances.

- 48.** This suspension was formally communicated by the Chairperson of the Liaison Committee on 26th November 2024 to the County Executive Committee Member for Planning.
- 49.** The public notice issued on the same date merely informed the public that sittings stood suspended until further notice. No indication was given as to the anticipated resumption or alternative arrangements. The Committee last sat in December 2024 and has remained dormant since then.
- 50.** The Petitioner contends that the failure of the 1st Respondent to sit, receive appeals or execute its statutory mandate offends **Articles 47 and 48** of the **Constitution**. **Article 47(1)** guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and **Article 47(2)** entitles persons whose rights or fundamental freedoms have been or are likely to be adversely affected by administrative action to written reasons for such action. **Article 48** obligates the State to ensure access to justice and prohibits the imposition of unreasonable impediments to the pursuit of legal remedies.
- 51. Section 2** of the **Fair Administrative Action Act** defines an “administrative action” to include decisions, acts or

omissions of authorities or quasi-judicial tribunals that affect the legal rights or interests of any person.

52. Section 5 of the Fair Administrative Action Act prescribes the procedural safeguards to be observed where an administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public. It provides:

“In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall-

(a) issue a public notice of the proposed administrative action inviting public views in that regard;

(b) consider all views submitted in relation to the matter before taking the administrative action;

(c) consider all relevant and material facts; and

(d) where the administrator proceeds to take the administrative action proposed in the notice-

i. give reasons for the decision of administrative action as taken;

ii. issue a public notice specifying the internal mechanism available to the

persons directly or indirectly affected by his or her action to appeal; and

iii. specify the manner and period within the which such appeal shall be lodged.”

53. In *Kenya National Commission on Human Rights & another vs Attorney General & 3 others [2017] KEHC 8086 (KLR)*, the High Court emphasised that administrative actions of a general and significant public effect that materially and adversely affect constitutional or statutory rights must comply with procedural fairness requirements. It held:

“In order to give meaning to the notion of procedural fairness to the public, a number of concepts need to be explained. In order to identify the administrative action affecting the public, the following test may be applied:- the administrative action must (a) have a general effect; (b) the general effect must have a significant public effect; and (c) constitutional, statutory (i.e. by means of enabling legislation), or common-law rights of members of the public must be at issue.

The rights of the public must be affected. These rights are interpreted widely to include constitutional, statutory and common-law rights.

These are the rights held collectively by the public as members of a group or class.

The effect of the administrative action on the rights of the public must be material and adverse. The material effect seems necessary to ensure that matters of a trivial nature (that are fundamentally insignificant in their effect on rights) escape the application of the procedures for fairness to the public. The adverse effect seems to indicate that the rights of the public must have been negatively affected by the administrative action. Since the requirements of procedural fairness to the public are set in motion by administrative action adversely affecting the public, it is important to establish who constitutes the public. The word "public" is defined as including any group or class of the public. The reference to "group or class" may imply a link between the individuals to constitute a definable group or class of persons. Any administrative action which affects the public (generally, impersonally and non-specifically) as opposed to individuals must satisfy the requirements of Section 4 for procedural fairness. To ensure that administrative action affecting the public is procedurally fair (i.e. before the

implementation of a particular decision), the public official must strictly adhere to the provisions laid down under the Act.”

54. When these principles are applied to the present matter, it is evident that the suspension of the Liaison Committee sittings, without adequate notice, participation or provision of alternatives, materially and adversely affects the public, particularly those seeking to challenge planning decisions as contemplated under PLUPA.
55. Furthermore, access to justice, as guaranteed under **Article 48** is a foundational pillar in the realization of environmental rights. It forms part of the broader framework of procedural environmental rights, alongside access to information and public participation, as articulated in **Principle 10** of the **1992 Rio Declaration on Environment and Development**, to which Kenya is a signatory. The principle provides as follows:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the

opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

- 56.** This international norm, now firmly domesticated through **Articles 42, 47, 48** and **69** of the **Constitution**, reinforces the centrality of accessible dispute-resolution mechanisms in the protection of environmental and land-use rights.
- 57.** In this regard, the Petitioner correctly submitted that the right of access to justice under **Article 48** is not confined to the formal courts. It extends to all lawfully established tribunals, quasi-judicial bodies and administrative mechanisms through which disputes may be fairly, expeditiously and cost-effectively resolved. Where the Constitution or statute creates such an avenue and vests it with jurisdiction, its availability and functionality become integral to the architecture of access to justice.
- 58.** The County Physical and Land Use Planning Liaison Committee, established under **Section 72** of the **Physical and Land Use Planning Act (PLUPA)**, plays a critical role in ensuring accountability in county-level development control.

- 59. Section 77** of the Act prescribes a multi-disciplinary composition, bringing together an advocate nominated by the Law Society of Kenya, representatives of the National Land Commission and National Construction Authority, a registered physical planner, architect, surveyor, and two nominees of the County Chamber of Commerce.
- 60.** This composition reflects Parliament’s deliberate intention that planning and land-use disputes be subjected to scrutiny by a body equipped with the requisite professional expertise, technical competence and institutional legitimacy.
- 61. Sections 40(4), 61(3), 72(3), and 80(2) of PLUPA** impose strict timelines within which appeals must be lodged and determined, ranging from fourteen to sixty days for lodgment and fourteen to thirty days for determination. These tight timelines demonstrate the Legislature’s appreciation that disputes concerning development permissions, enforcement notices and planning decisions must be addressed with expedition. They further affirm that Parliament intended the Liaison Committee to serve as the primary, specialized and expeditious forum for resolving planning disputes.
- 62.** The Committee therefore provides a faster, more efficient and less costly dispute-resolution mechanism than the ordinary courts. Its availability is not merely a statutory convenience, but a critical component of the constitutional and legislative scheme governing land-use governance,

public participation in planning processes, and the protection of environmental rights under **Article 42** of the Constitution.

- 63.** The court in *Vaitha & 14 others vs County Government of Mombasa & 3 others (Constitutional Petition E010 of 2024) [2025] KEELC 824 (KLR)* affirmed the centrality of Liaison Committees in the architecture of development control and castigated the County Government of Mombasa for failing to operationalise the Committee in accordance with PLUPA.
- 64.** Further, in *Diana Kethi Kilonzo vs IEBC & 2 Others [2013] eKLR*, the Court emphasised that constitutional and statutory bodies must be allowed to discharge the mandates entrusted to them by the people of Kenya, and that public power must be exercised in fidelity to constitutional and statutory commands.
- 65.** In light of the foregoing, this Court finds that the unavailability of the Nairobi County Physical and Land Use Planning Liaison Committee effectively disabled a statutory avenue for ventilating planning-related grievances. This omission hindered the Petitioner's ability to access prompt, expert and cost-effective adjudication of planning disputes, thereby violating the Petitioner's rights to fair administrative action under **Article 47** and access to justice under **Article 48** of the **Constitution**.

- 66.** It is not in dispute that remuneration and allowances payable to members of County Physical and Land Use Planning Liaison Committees fall upon County Governments, to be paid in accordance with the number of sittings held and in line with guidelines issued by the Salaries and Remuneration Commission. It is equally not contested that the 2nd and 3rd Respondents failed to meet these financial obligations, a failure which ultimately led to the suspension of the Committee's sittings and the cessation of its operations.
- 67.** While no substantive justification was offered for this failure, the 2nd and 3rd Respondents asserted that discussions had been held internally within the County Government regarding the remuneration challenge. It was further stated that the delay in payment arose from lack of funds and the omission of the Committee's expenses from the 2024-2025 County budget.
- 68.** Mr. Masinde averred that provision has now been made in the 2025-2026 County Budget, which has since been forwarded to the Controller of Budget for approval, and that payment to Committee members and the secretariat shall be effected upon the release of funds to enable the resumption of sittings.
- 69.** The Court has considered the Respondents' assertion that budgetary provision has now been made in the 2025-2026 financial year and that sittings will resume upon the release

of funds. While this may be a step in the right direction, it does not render the Petition moot. The Committee remains dormant, no concrete timelines have been provided, and no binding plan has been adopted to prevent a recurrence of similar paralysis. The Court is therefore duty-bound to pronounce itself on the constitutional questions raised.

70. This Court takes judicial notice that the Nairobi Physical and Land Use Planning Liaison Committee was operationalized on 5th May 2023 following the gazettelement of its Chairperson, the representative of the National Land Commission, and the appointment of three secretariat staff. In view of this, the explanation that the Committee was not factored into the 2024-2025 budget points inexorably to a failure on the part of the County Government to discharge its statutory mandate. A tribunal that has been operationalized cannot lawfully be deprived of the budgetary support necessary for its continued functioning.

71. The national values and principles of governance, articulated in **Article 10** of the **Constitution**, including the rule of law, accountability, integrity, transparency, public participation and social justice, bind all State organs whenever they apply or interpret the law or implement public policy. A statutory tribunal established under PLUPA forms a central component of Kenya's land-use governance framework, and the State is constitutionally obligated to ensure that such a body is not

merely established in name, but is fully enabled to function in substance.

- 72.** It bears emphasis that the Constitution imposes positive obligations on the State and its organs to ensure the effective functioning of institutions designed to protect and enforce rights. **Article 21(1)** obliges the State to “observe, respect, protect, promote and fulfil” rights, while **Article 21(2)** requires the adoption of legislative, policy and other measures, including budgetary and administrative measures, necessary to actualize these rights. Budgetary neglect of a statutory tribunal amounts to dereliction of administrative duty, inconsistent with this constitutional command.
- 73.** The obligation to ensure that the Liaison Committee functions effectively is anchored not only in **Article 48** on access to justice, but also in the environmental and sustainability duties imposed under **Articles 42** and **69** of the **Constitution**. **Article 42** guarantees every person the right to a clean and healthy environment, while **Article 69** requires the State to ensure sustainable environmental management and to promote public participation in environmental decision-making processes. These obligations cannot be realized where statutory institutions designed to mediate disputes in land-use and planning matters are rendered dysfunctional through financial neglect.

74. These constitutional obligations find further support in **Article 24** of the **African Charter on Human and Peoples' Rights**, which guarantees the right to a general satisfactory environment favourable to development, and in **Principle 10** of the **Rio Declaration**, which underscores that environmental matters are best handled with public participation, adequate access to information, and effective access to judicial and administrative proceedings.
75. These instruments underscore that States must maintain functional institutional mechanisms through which environmental and planning-related grievances may be addressed.
76. Considered together, the constitutional framework and applicable international obligations impose a positive duty on the State to ensure that statutory bodies such as the County Physical and Land Use Planning Liaison Committees are adequately funded, staffed, and operational.
77. A failure to allocate resources necessary for their functioning undermines both the legislative design of the Physical and Land Use Planning Act and the constitutional rights guaranteed under **Articles 42, 47, 48** and **69** of the Constitution.
78. The 2nd and 3rd Respondents' failure to provide the requisite financial and administrative support to a tribunal expressly established by law amounts to a clear deviation from the rule

of law and is inconsistent with the national values set out in **Article 10**. A statutory body rendered dormant through budgetary omission or neglect not only frustrates the intention of Parliament, but also deprives the public of the fair, lawful, and efficient administrative processes to which they are entitled under the Constitution.

- 79.** In the circumstances, this Court finds that the 2nd and 3rd Respondents failed in their constitutional and statutory obligations to facilitate the effective functioning of the 1st Respondent. Their omission disabled a critical avenue for the resolution of planning and land-use disputes, thereby infringing the Petitioner's rights and undermining the broader constitutional scheme governing environmental governance, public participation, and access to justice.
- 80.** The last issue to consider is whether the Petitioner has established a legitimate expectation capable of constitutional protection.
- 81.** The doctrine of legitimate expectation is now firmly settled in Kenyan jurisprudence. In ***Attorney General & 2 others vs Muthuri & 4 others (Civil Appeal 352 of 2019) [2021] KECA 41 (KLR)*** the court stated thus;

“The concept of “legitimate expectation” was more succinctly propounded in the South African case, South African Veterinary Council vs Szymanski 2003 (4) S.A. 42 (SCA) at [paragraph

28]: the Court held expressed itself follows:-“The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following: (i) The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.(ii)The expectation must be reasonable: Administrator, Transvaal v. Traub (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).ii.The representation must have been induced by the decision- maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); Attorney-General of Hong Kong v. Ng Yuen Shiu [1983] 2

All ER 346 (PC) at 350h - j.iii. The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v. Caledon Divisional Council 1963 (4) SA 53 (C) at 59E - G.”

82. In *Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others [2014] eKLR*, the Supreme Court distilled the core elements of the doctrine into four guiding principles:

- a. there must be an express, clear and unambiguous promise given by a public authority;*
- b. the expectation itself must be reasonable;*
- c. the representation must be one which it was competent and lawful for the decision-maker to make; and*
- d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.*

83. In the present case, the establishment of the Nairobi County Physical and Land Use Planning Liaison Committee under **Section 72 of PLUPA**, coupled with its previous consistent operation, created a clear and lawful representation that the appellate mechanism prescribed by statute would remain functional.

- 84. Sections 72(3) and 80(2)** of the PLUPA impose strict timelines for the lodging and determination of appeals, thereby reinforcing the expectation of an accessible and continuously operational appellate forum. The abrupt and indefinite suspension of the Committee’s sittings, without any justification, or alternative mechanism, amounted to a departure from this statutory representation and created uncertainty where the law demands procedural clarity and accessibility.
- 85.** Accordingly, this Court finds that the Petitioner’s legitimate expectation of an operational appellate forum was not only reasonable but firmly grounded in statute. The frustration of that expectation through administrative inaction and budgetary omission constitutes a violation of the principles of fairness, predictability, and legal certainty that underlie the doctrine of legitimate expectation and form part of the broader constitutional values enshrined in Article 10 of the Constitution.
- 86.** The Petition seeks both declaratory and structural reliefs compelling the reactivation of the Nairobi County Physical and Land Use Planning Liaison Committee. Having found that the Respondents’ inaction violated **Articles 10, 47, and 48** of the **Constitution** and the relevant provisions of the **Physical and Land Use Planning Act**, this Court finds that a declaratory relief is not only appropriate but necessary to

affirm the constitutional and statutory obligations that were disregarded.

- 87.** While the Petitioner prayed for an order of mandamus compelling the 1st Respondent to determine all pending appeals within sixty (60) days, this Court must also be guided by considerations of practicality and institutional capacity.
- 88.** The mandate of the Committee is ongoing, and its caseload may fluctuate. It would therefore be inappropriate for the Court to micro-manage its day-to-day adjudicative timetable. What is required is that the Committee resumes sittings and processes appeals in accordance with the statutory timelines set by PLUPA.
- 89.** The Court will accordingly grant structural orders directed principally at securing the Committee's reactivation and continuous functionality, rather than prescribing the disposition of individual appeals within a fixed period.
- 90.** The Petitioner further prayed for compensatory damages for the violation of his constitutional rights. The legal principles applicable to monetary awards in constitutional matters are clearly established. In **Peter Ndegwa Kiai t/a Pema Wines & Spirits vs Attorney General & 2 others [2021] KECA 328 (KLR)** the Court of Appeal affirmed the approach taken by the Privy Council in **Siewchand Ramanoop vs The AG of T&T, PC Appeal No 13 of 2004**, where it was held by Lord Nicholls that a monetary award for

constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:

“When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the

importance of the constitutional right and the gravity of the breach, and deter further breaches.”

91. The Court of Appeal further emphasized that an award of general damages in constitutional litigation is discretionary and must be informed by the particular circumstances of each case. Such damages may be granted where loss is demonstrated or where vindication of the infringed right requires monetary redress.
92. In the present case, the nature of the violation is institutional rather than personal. The material placed before the Court discloses no element of malice or targeted conduct against the Petitioner; rather, it points to systemic administrative neglect that rendered a statutory body inoperative.
93. In such circumstances, the remedy must serve to restore lawful functionality and ensure future compliance, rather than impose compensatory liability where no pecuniary loss has been pleaded or proved.
94. While the **Ramanoop** case (supra) recognizes that in appropriate cases an additional monetary award may be necessary to vindicate a constitutional right even in the absence of pecuniary loss, this Court is persuaded that the combination of declaratory and structural relief granted herein sufficiently vindicates the Petitioner’s rights and marks the Court’s disapproval of the impugned conduct.

95. Accordingly, the Petition is merited. Judgment is entered for the Petitioner in the following terms:

- a. A declaration does hereby issue that this Petition constitutes public interest litigation within the meaning of Articles 22 and 258 of the Constitution.**
- b. A declaration does hereby issue that the failure by the 1st Respondent to convene and determine appeals constitutes a violation of Articles 47 and 48 of the Constitution.**
- c. A declaration does hereby issue that the 2nd and 3rd Respondents have violated their constitutional and statutory duties under the Physical and Land Use Planning Act, 2019.**
- d. A declaration is hereby issued that the Petitioner and other similarly situated persons had a legitimate expectation that appeals lodged before the 1st Respondent would be heard and determined within the statutory timelines, and that this expectation was violated by the Respondents' inaction.**
- e. An order of mandamus is hereby issued compelling the 2nd and 3rd Respondents to operationalize and facilitate the sittings of the Nairobi County Physical and Land Use Planning**

Liaison Committee and to ensure that the 1st Respondent resumes hearings and determines appeals in accordance with the timelines prescribed under the Physical and Land Use Planning Act, 2019, within sixty (60) days of this judgment.

- f. The 2nd and 3rd Respondents shall file with this Court a compliance report within sixty (60) days.**
- g. The Petitioner is awarded the costs of this Petition, to be borne jointly and severally by the 2nd and 3rd Respondents.**

Dated, signed and delivered virtually in Nairobi this 27th day of November, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Maondo for Petitioner

Ms. Magero holding brief for Achola for 2nd and 3rd Respondents

Court Assistant: Tracy