REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E363 OF 2025

CUP OF JOE LIMITED………………...……………………APPLICANT

VERSUS

TEA BOARD OF KENYA……………………………….1ST RESPONDENT

THE PRINCIPAL SECRETARY STATE DEPARTMENT

FOR AGRICULTURE…………………………………...2ND RESPONDENT

AND

EAST AFRICA TEA TRADE ASSOCIATION……INTERESTED PARTY

ORIGINAL

JUDGMENT

1. This Judgment determines the Originating Motion dated 18th November, 2025 brought under the provisions of Articles 22, 23 and 47 of the Constitution of Kenya, 2010; Sections 2, 4, 7, 9(4), 11 of the Fair Administrative Actions Act and Rules 11, 13 and 14 of the Fair Administrative Actions Rules,2024.
2. The applicant seeks the following orders:
    a. *(spent) This application be certified urgent and be heard on priority basis in the first instance;*
    b. *(spent) Pending hearing and determination of this application inter partes, a conservatory order do issue suspending the implementation*

of the Letter from the 2nd Respondent dated 18th July 2025 reference no. MOALF/LCD/9/29/1 and the Letter from the 1st Respondent dated 28th August 2025 reference no. TBK/RLS/1;

c. *(spent) Pending hearing and determination of this application inter partes, an order be and is hereby issued lifting the ban and allowing the applicant herein to participate in all the trade platforms, auctions and logistical systems administered by the Respondents;*

d. *(spent) Pending hearing and determination of this application inter partes, a conservatory order does issue suspending the implementation of the Letter from the 1st Interested Party dated 11th August 2025;*

e. *Under Article 23 of the Constitution, the Court does grant the following or other appropriate judicial review reliefs:*

   i. *A declaration that the decision communicated by the 2nd Respondent dated 18th July 2025 vide a Letter reference no. MOALF/LCD/9/29/1 offends Article 10, 27, 47 and 50 of the Constitution of Kenya, 2010 and Section 65 (c) of the Tea Act and is therefore invalid.*

   ii. *A declaration that the decision communicated by the 1st Respondent dated 28th August 2025 vide a Letter reference no. TBK/RLS/1 offends Article 10, 27, 47 and 50 of the Constitution of*

ORIGINAL

Kenya, 2010 and Section 65 (c) of the Tea Act and is therefore invalid.

iii. *An Order of Prohibition restraining the Respondents and Interested Party from enforcing the decisions of 18th July 2025 and 28th August 2025 and of reference no. MOALF/LCD/9/29/1 and TBK/RLS/1 respectively.*

iv. *An Order of Certiorari bringing to this Court and quashing the Respondents' decisions of 18th July 2025 and 28th August 2025 and of reference no. MOALF/LCD/9/29/1 and TBK/RLS/1 respectively.*

v. *An Order of Mandamus does issue compelling the Respondents to issue the Applicant with a renewed certificate of registration for the year 2024/2025 in strict compliance with section 41 of the Tea Act.*

vi. *An Order of Mandamus does issue compelling the 1st Respondent to conduct a fresh Compliance Inspection and allow the Applicant to lodge an application for renewal of certificate of registration for the year 2025/2026.*

3. The originating Motion is predicated on the grounds on the face of the application and supported by the annexed affidavit sworn by Joseph Kamau Kiminda on 18th November, 2025.

4. The applicant's case is that on 8th May 2023, the Chief Executive Officer of the 1st Respondent issued a circular *vide* a Letter referenced as **Ref:**

ORIGINAL

TBK/RLS/1 to all Tea Industry Chain Players including but not limited to Tea importers and Exporters notifying them to apply for renewal of their licenses and/or registration certificates.

5. That on 6th June 2024, pursuant to the aforesaid notice, the Applicant initiated its application for renewal of its certificate of registration via the portal: https://imis.teaboard.or.ke as directed by the 1st Respondent and paid the applicable fee of Kes. 10,000. Later, on 19th June 2024, a Compliance Inspection was conducted by the 1st Respondent as a prerequisite to the renewal of the certificate of registration. That the Applicant was found to be fully compliant and was graded 100% compliant.
6. That on 18th January 2025, the Applicant wrote a letter to the 1st Respondent decrying a significant obstacle in getting its shipment permits approvals as a result of a deferral of its certificate of registration renewal application.
7. Additionally, that on 23rd July 2025, the Chief Executive Officer of the 1st Respondent wrote a Letter to the Managing Director of the Applicant notifying him of alleged Trade malpractices which allegedly involve the Applicant buying and exporting Tea without a valid registration certificate, and alleged trade malpractices with Ms. Debshe E Sabz Gostar a company based in Iran. The Applicant was consequently invited for a meeting at the 1st Respondent's Offices on 8th August 2025.
8. It is stated that during the aforesaid meeting, the Applicant was made aware of a Letter dated 18th July 2025 from the 2nd Respondent; a Letter referenced

ORIGINAL

Ref: MOALF/LCD/9/29/1 to the Chief Executive Officer of the 1st Respondent where he was being directed to cancel Tea Trade Licenses for the Applicant on alleged Tea Trade irregularities conducted between Kenya and the Islamic Republic of Iran by the Applicant.

9. According to the applicant, the said Tea Trade irregularities between the Applicant and the government of the Islamic republic of Iran are said to be grossly unfounded. It is asserted that in **Judicial Review Application No. E051 of 2021: Republic versus Commissioner General Kenya Revenue Authority & 2 others *Ex parte* Cup of Joe Limited**, Justice John Mativo *(as he then was)* on an Application for Review of the decision of the Respondents' declining to release the consignment held at the Regional Logistics Centre at Changamwe quashed the decision holding that the decision violated the *ex parte* applicant's right to fair administrative action. This consignment, according to the applicant, forms the basis of the Letter by the 2nd Respondent dated 18th July 2025 directing the 1st Respondent to cancel the certificate of registration of the Applicant herein as a tea buyer/ exporter/importer hence the letter dated 28th July 2025 issued by the 2nd respondent cancelling the applicant's registration certificate.

10. Further, that on 15th August 2025, the Chief Executive Officer of the 1st Respondent wrote a Letter to the Managing Director of the Applicant forwarding a summary of issues discussed at the hearing with the ad hoc

ORIGINAL

committee on 8th August 2025, after which the Applicant was granted 7 days to respond to the said issues.

11. That on 21st August 2025, the Applicant wrote a Letter to the Chief Executive Officer of the 1st Respondent and the Chief Executive Officer of the 1st Interested Party responding to the summary of issues raised against the Applicant.

12. That on 28th August 2025, the Chief Executive Officer of the 1st Respondent wrote a Letter to the Managing Director of the Applicant notifying it of the Board's decision to revoke its certificate of registration for breach of the provisions of the Tea Act. This alleged decision was communicated to the Applicant on 7th November 2025.

13. The Applicant laments that the 1st Respondent never issued the Applicant with written reasons why it refused to issue it with the 2024/2025 certificate of registration which it purported to be revoking in the first place. This, according to the Applicant, was despite the clear provisions of Section 65 of the Tea Act that give a time limit of sixty days, within which the Board ought to communicate its decision on an enforcement action initiated on its own motion.

14. The Applicant asserts that the 1st Respondent's purported meeting on 8th August 2025 with the Applicant was inconsequential since the 2nd Respondent by fiat had issued it with an irregular, unprocedural and unlawful directive to revoke the Applicant's certificate of registration

ORIGINAL

without according the Applicant a fair hearing as stipulated under Article 50 of the Constitution of Kenya, 2010.

15. It is averred that the 2nd Respondent pursuant to Section 7 of the Tea Act is a member of the 1st Respondent, hence by already issuing a directive to the 1st Respondent, the meeting Board was grossly impartial.

16. The Applicant therefore challenges the decision of the Respondents for infringing on its economic rights as well as right to Fair Administrative Action and right to fair hearing. The Applicant claims that it has been subjected to a grossly flawed and irregular process and has been unlawfully denied a registration certificate for the year 2024/2025 despite being fully compliant with the stipulations under the Tea Act.

17. The Applicant contends that the decision by the Respondents impinges on its right to fair administrative action under Article 47 of the Constitution as it was never furnished with the reasons for denial of renewal of its tea buying and export registration certificate which is supposed to be issued by the 1st Respondent, contrary to Section 41 of the Tea Act.

18. The Applicant claims that it was never furnished with the alleged complaint against it leading to denial of renewal of its tea buying and export registration certificate contrary to section 62-68 of the Tea Act.

19. It also claims that it was never furnished with authenticated laboratory test samples showing that the tea it imported and exported was of low grade as communicated in the letter by the Respondents.

ORIGINAL

20. The Applicant asserts that the said decision by the Respondents exposes the Applicant to imminent closure, interruption and disruption of business operations, loss of contracts, and immense reputational damage.

21. It contends that Kenya is the third world's largest exporter of tea, and the world's leading exporter of black tea. Disruption of legitimate exporters like the Applicant has immeasurable economic effects such as reduced export volumes, reduced export tonnage, loss of foreign exchange earnings, weakening of forex inflows, reduced auction and trade settlement revenues and erosion of investor confidence. Therefore, that the respondents' action will plunge the country into economic loss, reputational loss, market displacement, policy credibility erosion and loss of foreign exchange and rural livelihoods.

22. It avers that State power exercised brutely and unlawfully creates a systemic risk, and not merely an individual risk. Kenya's Tea Industry Market is founded on predictability, regulatory integrity, and buyer confidence. Arbitrary cancellation and opaque enforcement actions create investor uncertainty, reduced confidence among international commodity buyers and market volatility due to regulatory unpredictability. That this damages the country's position against rising competitors such as Sri Lanka, India and Vietnam and that it also leads to disruption of strategic Trade relations and loss of preferential bilateral access. Loss of major buyer portfolios have a ripple effect in Kenya's performance in the international market.

ORIGINAL

23. Further, that State power unlawfully exercised also has a ripple effect on smallholder economy. Over 650,000 small-scale farmers depend on tea income. A disrupted supply chain results in reduced farm gate prices, delayed payments through private buyers and processors, low bonus dividends and increased rural poverty and potential social unrest and that the Respondents' actions affect livelihoods beyond the Applicant.

24. The respondents filed separate replying affidavits vehemently opposing the originating Motion and the applicant was granted leave of court to file a further affidavit to counter the assertions and all the parties filed written submissions to canvass the Originating Motion and this court has considered all the issues discussed in those submissions, together with the authorities supplied, whether constitutional, statutory or judicial pronouncements supplied to this Court.

25. The parties also framed issues for determination. I however find only one main issue for determination and that is, whether this Court exercising judicial Review Jurisdiction is the right court for the judicial review reliefs sought.

26. This issue, I am aware, is being raised by this Court *sua sponte. Sua Sponte or suo motu is a Latin term meaning "of one's own will." Sua sponte refers to action taken by the court without the prompting of the parties, and if the court becomes aware that it lacks subject matter jurisdiction over a case, it*

ORIGINAL

may raise the issue sua sponte and dismiss the lawsuit even though the litigants did not present the issue for consideration.

27. It follows that the issue of jurisdiction must be attended to at the onset of the suit and the court may, on its own motion, examine whether it has jurisdiction to hear and determine the suit and should it find that it has no jurisdiction, it must down its tools and say no more. This is o, considering that the Court is deemed to know the law and jurisdictional issues being pure points of law, parties ought to first be satisfied that the subject matter of the dispute is one that falls within jurisdiction of the Court before initiating those proceedings. On the other hand, the Court must be satisfied that it has jurisdiction to entertain the dispute before delving into the merits thereof.

28. In **Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Wrigley Company (East Africa) Limited & another (Civil Appeal 459 of 2019) [2025] KECA 2021 (KLR) (28 November 2025) (Judgment) the Court** of Appeal quite recently acknowledged that the Court on its own motion can raise the question of its jurisdiction and deal with it immediately. The Court of Appeal stated as follows at paragraph 44 of the Judgment:

> ***"44. Limitation is a classic preliminary point. <u>Once a party, or the court on its own motion, raises a question of jurisdiction, it must be addressed immediately since any decision made without jurisdiction is liable to be set aside ex debito justitiae.</u> As this Court affirmed in the well-known decision of Owners of***

FINAL

the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, jurisdiction is everything, and where a court lacks it, it must down its tools."

29. In the **Owners of Motor Vessel "Lilian S" v Caltex Oil K. Ltd,** the Court of Appeal stated as follows at paragraph 7:

"7. A question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It was immaterial whether the evidence was scanty or limited. Scanty or limited facts constituted the evidence before the court. A party who failed to question the jurisdiction of a court may not be heard to raise the issue after the matter was heard and determined. There were no grounds as to why a question of jurisdiction could not be raised during the proceedings. As soon as that was done, the court should hear and dispose of that issue without further ado."

30. In **Barclays Bank of Kenya vs Pyritic Guards Limited [2015] eKLR**, the Court of Appeal stated that:

"It is also trite law that a point of law can be raised at any stage, even though not raised before the court of first instance. The Court can also on its own motion raise a point of law at any point and make a determination based on the same even where such point has not been canvassed by the parties. The learned judge did not therefore do

anything outrageous by raising the issue of non-compliance with Regulation 79 of Table A of the Companies Act and acting on it." ***(Emphasis added)***

[37] It is, therefore a basic rule of procedure that jurisdiction must exist when the proceedings are initiated. Because the question of jurisdiction is so fundamental, a limitation on the authority of the court, it can be raised at any stage of the proceedings by any party or even by the court suo motu. As a matter of practice, this Court has a duty of jurisdictional inquiry to satisfy itself that it is properly seized of any matter before it.

[38] It is a settled legal proposition that conferment of jurisdiction is a legislative function and it can only be conferred by the Constitution or statute. It cannot be conferred by judicial craft. See Samuel Kamau Macharia & Another v Kenya commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR. Nor can parties, by consent confer on a court power it does not have."

31. In the **Matter of Advisory Opinions of the Court under Article 163 of the Constitution (Constitutional Application No. 2 of 2011 at para. 30),** the Supreme Court stated:

"...a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern or interpret the intentions of Parliament, where the legislation is clear and there is no ambiguity."

ORIGINAL

32. In **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others, Supreme Court Civil Appeal (Application) No. 2 of 2011,** the Supreme Court rendered itself as follows regarding a Court's jurisdiction:

"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."

33. In **Karisa Chengo & 2 Others –vs- Republic (Criminal Appeal No.s 44, 45 and 76 of 2014 (2015) EKLR,** the Court of Appeal had this to say on the question of jurisdiction:-

"However, before that, we should reiterate that jurisdiction is a fundamental principle in the dispensation of justice. The Supreme Court in the recent decision of Re the Matter of Interim Independent Electoral Commission stated that:-

"Assumption of jurisdiction by the courts is a subject regulated by the Constitution, by statute law and by principles laid down in judicial precedent. The classical decision in this regard is the Owners of Motor Vessel "Lilian S" –vs- Caltex Oil (Kenya) Ltd (1989) KLR 1, which bears the

ORIGINAL

following passage (Nyarangi J.A. at Paragraph 14): I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. (30) The Lilian 'S' Case establishes that jurisdiction flows from the law, and the recipient court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity. In the case of the Supreme Court, their respective jurisdictions are donated by the Constitution."

34. In the instant case, the applicant seeks for various judicial review orders under Article 23 of the Constitution namely:

    i. A declaration that the decision communicated by the 2nd Respondent dated 18th July 2025 vide a Letter reference no. MOALF/LCD/9/29/1 offends Article 10, 27, 47 and 50 of the Constitution of Kenya, 2010 and Section 65 (c) of the Tea Act and is therefore invalid.

    ii. A declaration that the decision communicated by the 1st Respondent dated 28th August 2025 vide a Letter reference no. TBK/RLS/1 offends Article 10, 27, 47 and 50 of the Constitution

ORIGINAL

of Kenya, 2010 and Section 65 (c) of the Tea Act and is therefore invalid.

iii. An Order of Prohibition restraining the Respondents and Interested Party from enforcing the decisions of 18th July 2025 and 28th August 2025 and of reference no. MOALF/LCD/9/29/1 and TBK/RLS/1 respectively.

iv. An Order of Certiorari bringing to this Court and quashing the Respondents' decisions of 18th July 2025 and 28th August 2025 and of reference no. MOALF/LCD/9/29/1 and TBK/RLS/1 respectively.

v. An Order of Mandamus does issue compelling the Respondents to issue the Applicant with a renewed certificate of registration for the year 2024/2025 in strict compliance with section 41 of the Tea Act.

vi. An Order of Mandamus does issue compelling the 1st Respondent to conduct a fresh Compliance Inspection and allow the Applicant to lodge an application for renewal of certificate of registration for the year 2025/2026.

35. The Applicant has cited several provisions of the Constitution, the Fair Administrative Action Act and the Tea Act, which provisions were allegedly violated by the respondents in their communication to the Applicant vide the

ORIGINAL

two impugned letters of 18th July 2025 and 28th August 2025, delivered to the Applicant on 7th November, 2025.

36. The applicant's main complaint is that the respondents revoked its registration certificate for the 2024/2025 and that it had not been enabled to apply for renewal of the 2025/2026 registration certificate.

37. **Part VIII** of the **Tea Act** deals with– **COMPLAINTS AND INVESTIGATION PROCEDURE.**

38. Section 62 concerns Complaint and investigation against a licensee and it stipulates as follows:

> ***(1)A person who is aggrieved by or is likely to be aggrieved by the contravention of any provision of this Act by a licensee may file a complaint requesting the Board to enforce the provisions of this Act against that licensee.***
>
> ***(2)The complainant shall, in the complaint,—***
>
> ***(a)cite the specific provisions of this Act that the licensee has contravened or is likely to contravene;***
>
> ***(b)state the facts relating to the alleged contravention or likely contravention; and***
>
> ***(c)attach any documents relevant to the complaint.***

ORIGINAL

(3) The Board shall provide a written response to the complainant within fifteen days of receipt of a complaint.

(4)The Board may by written notification to the complainant, extend the review of the complaint by up to thirty days where it determines that a complaint raises—

(a)a novel issue whose disposition requires the Board to consider an issue that it has not previously addressed; or

(b)a complex issue whose disposition requires the Board to obtain significant factual information to resolve a difficult legal, factual or policy issue.

(5)The Board may dismiss a complaint if—

(a)the complainant fails to show that it has been injured, or is likely to be injured as a direct result of the alleged contravention of the provisions of this Act as cited in the complaint;

(b)the factual allegations in the complaint are unsupported or are without merit;

(c)the factual allegations in the complaint, even if proven to be true, do not constitute a contravention of this Act or the regulations made thereunder; or(d)it concludes that the exercise of its enforcement discretion would not be appropriate.

ORIGINAL

(6)Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.

(7)Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—(

a)the specific provisions of this Act that the licensee has been alleged to contravene; and(b)reasonable details of the alleged facts constituting the contravention.

(8)A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.

(9)The Board shall, subject to section 68 on confidentiality, provide copies of all documents filed by each party to the other party.(10)The Board may—

(a)allow the filing of additional responses by the parties;

(b)upon application and for good reasons, extend time for the filing of any documents or replies by the parties to the complaint;

ORIGINAL

(c)request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or

(d)direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to the complaint.

39. Section 63 is on **withdrawal of complaint** and the section provides:

(1)A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.

(2)The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.

40. On the other hand, section 64 is on **decision on a complaint** and it provides as follows:

<u>(1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.</u>

(2) Where necessary, the Board may, by written notice to the parties and before the expiry of the sixty-day review period, extend the time and specify the date by which it shall issue its decision.

41. Further, section 65 is on **enforcement action** and it states:

ORIGINAL

(1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—

(a)notify the licensee and clearly indicate the specific provisions of this Act the licensee is alleged to have contravened;

(b)allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and

(c)issue its decision within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty-day review period, extend the time and specify the date by which it shall issue its decision.

ORIGINAL

42.Section 66 provides for **Interim directive** as follows:

(1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.

(2)In determining whether to issue an interim directive the Board shall consider whether—

(a)there is prima facie evidence that the licensee has contravened the provision of this Act;

(b)continuation of the licensee's conduct is likely to cause serious harm to other licensees, consumers or the general public;

(c)the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and

(d)issuance of the interim directive is in the public interest.

34. On **Enforcement measures**, section 67 provides that:

(1) Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including—

(a)issuing a written warning to the licensee;

(b)directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;

(c)directing the licensee to take specific remedial action;

(d)declaring any agreement or contract void;

(e)imposing a financial penalty relative to the period that the breach persists; or

(f)<u>suspension or cancellation of the licence issued under this Act.</u>

ORIGINAL

(2)A person aggrieved by the decision of the Board under this section may appeal to the High Court.

43. According to the applicant, the respondents did not comply with the above provisions in their decision to revoke its registration certificate as a licensee and that no written reasons were given for their decision which is impugned herein hence the provisions of the Tea Act was violated. The provisions that I have reproduced above concern complaints against a licensee and the determination by the 1st respondent together with enforcement process.

44. Under section 67 (2), the Act is clear that ***(2)A person aggrieved by the decision of the Board under this section may appeal to the High Court.***

45. A reading of the letters complained of issued on 18th July and 28th August 2025 shows that the respondents gave reasons for such revocation of the registration certificate of the applicant as a tea buyer/ exporter/importer, which revocation followed a meeting on 8/8/2025 and correspondence, and vide the letters 23rd July and 15th August, 2025, the 1st respondent supplied the applicant with a comprehensive list of issues raised against the applicant, upon which the applicant responded vide its letter of 21st August 2025.

46. As to the adequacy of the reasons contained in the said correspondence culminating in the revocation of the certificate of registration or the refusal to allow the applicant to access the online portal for application for renewal of the license, is not for this Court to determine and hence, the appeal mechanism provided for under ***section 67(2) of the Tea Act.*** I say so,

ORIGINAL

considering that **Part IX – MISCELLANEOUS PROVISIONS** of the Tea Act at **section 69** provides for **Arbitration of disputes** and the section provides that: ***A party who is not satisfied with the decision of the Board may, within thirty days, appeal to a Court of competent jurisdiction.***

47. Further, under **PART III** of the Act on **Regulatory Provisions** and under **section 39,** the Act sets out the **considerations for licensing**. Section 40 is on **conditions of a license** while section 41 **on applications for renewal of a license.** At section 42, the Act provides for **situations that may lead to revocation of a license, in the opinion of the Board.**

48. Ultimately, Section 44 of the Tea Act provides for **Appeals to the High Court** by an applicant for or holder of a licence who is aggrieved by a decision of the Board in respect of the grant, refusal, renewal, variation or revocation, the conditions imposed on the grant, renewal or variation, of a licence. The section provides:

44. **Appeals to the High Court**

(1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of —

(a)the grant, refusal, renewal, variation or revocation; or

(b)the conditions imposed on the grant, renewal or variation, of a licence.

ORIGINAL

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

45. Section 5 of the Act provides for functions of the Board which include to develop, promote and regulate the development of the tea industry while section 42 provides for Revocation of a License or registration certificate. Under the latter section, the Board may revoke, alter or suspend a license issued if an offence under the Act, has been committed or conditions/terms contravened

46. From the above elaborate provisions of the Act, it is clear to this Court that the avenue provided for challenging decisions of the Board under the Act are set out under each category of grievance and that is, an appeal to the High Court as specifically stated or to a court of competent jurisdiction.

47. The applicant is thus expected to have considered all these provisions of the Act especially on redress for the grievances that it has against the respondents and if in its opinion, the appeal or review mechanism was not available or adequate and that it was in the interest of justice to approach this court by way of judicial review, apply under section 9 of the Fair Administrative Action Act, for exemption from resorting to the specifically provided avenues for challenging decisions of the Board.

48. In its Originating Motion, there is no prayer for exemption from an appeal or review mechanisms but the applicant only referred to internal mechanisms which it alleged are not available or adequate, owing to the fact that the 2nd

ORIGINAL

respondent is a member of the Board of the 1st Respondent that made the decision hence the internal mechanisms could not be utilized by the applicant. The applicant states as follows in its pleadings:

> ***"Under Section 9(4) of the Fair Administrative Actions Act, this court is empowered to exempt a party from exhaustion of any internal remedy if the court considers such exemption to be in the interest of justice. The internal remedies herein were neither available nor adequate since they were tainted by bias due to direct interference from the 2nd Respondent."***

49. No doubt, the 2nd respondent is a member of the Tea Board of Kenya by virtue of office as stipulated in section 7(b) of the tea Act which provides that the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing shall be a member of the Board of the 1st respondent. It is therefore no secret that the 2nd respondent is part of the Board and therefore participates in decision making process by the 1st respondent.

50. Furthermore, an appeal to the High Court or to a court of competent jurisdiction is not an internal appeal mechanism and therefore the question of being ***tainted by bias due to direct interference from the 2nd Respondent*** does not arise**.**

51. Moreover, the review provided for under the Act is where an aggrieved person would seek review of the decision impugned and that is the same

ORIGINAL

situation that happens in Court. A court which has made a decision has jurisdiction or power to review its own decision. This is what section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules provide for in civil cases. Review cannot be sought from a different court. It must be from the same court or forum that made that decision. Another example is Rule 35 of the Fair Administrative Action Rules which provides that (***1) Where under these Rules judgment has been entered or the judicial review application or appeal has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just***.

52. Thus, although the applicant further asserts that it received the decisions impugned only on 7th November, 2025, which was after 2 months or sixty days of the date of the said decision(s) where there is delay in the filing of the appeal within the stipulated period, the proviso to section 79G of the Civil Procedure Act comes into play in appeals to the High Court, where a person may seek extension of time within which to file such an appeal.

53. I note that even the Fair Administrative Action Rules, at Rule 6 (2) and (3) provides for enlargement of time for filing of applications for judicial review where the applicant has been caught by time lapse. However, this rule was stayed by the High Court in **HCC PET E168 of 2025** by Mwamuye J in **Katiba Institute v Attorney general and The Commission on Administrative Justice (Ombudsman).**

ORIGINAL

54. The question therefore is whether this Court is the right forum for adjudication of the current dispute between the applicant herein and the respondents. The answer is a clear NO. The reasons are as follows:

55. The commencement point is the jurisdiction of this court in Judicial Review proceedings. This question of jurisdiction has many facets and is not a mere technicality. It goes to the root of the matter for, without jurisdiction, the Court can do no more than down its tools and say no more. See the **Owners of Motor Vessel "Lillian S" v Caltex Oil (K) Ltd** (supra).

56. The jurisdiction of this court in Judicial Review proceedings is derived from **Article 165(6) and (7) of the Constitution** which confers on this court supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. In the exercise of the said supervisory jurisdiction, this court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

57. Further, section 5 of the High Court Organization and Administration Act provides for Jurisdiction of the Court as follows:

> ***The Court shall exercise—***
>
> ***(a)the jurisdiction conferred to it by Article 165(3) and (6) of the Constitution; and***

ORIGINAL

(b)any other jurisdiction, original or appellate, conferred to it by an Act of Parliament.

58. In addition, Section 11(1) of the High Court (Organization and Administration) Act provides that:

For purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—

a. the Family and Children Division;

b. the Commercial Division;

c. the Admiralty Division;

d. the Civil Division;

e. the Criminal Division;

f. the Constitutional and Human Rights Division;

g. the Judicial Review Division; and

h. any other division as the Chief Justice may, on the advice of the Principal Judge determine.

59. Each of the Divisions of the High Court exercise jurisdiction as conferred by the Constitution and Acts of Parliament. An appeal against decisions of the Board as provided for under the Tea Act will be filed in the Civil Appeal Division of the High Court and not in the Judicial Review Division. Neither can judicial review proceeding be filed in the Civil Appeal Division of the

ORIGINAL

Court. This is because, Judicial review is not synonymous with an appeal and neither is an appeal the same as judicial review.

60. In **Republic v Retirement Benefits Appeals Tribunal; Post Office Savings Bank & another (Interested Parties); Kalume & 75 others (Exparte Applicant) (Judicial Review Application E162 of 2024) [2025] KEHC 5419 (KLR) (Judicial Review) (30 April 2025) (Ruling)** the Court stated as follows:

    2. Judicial Review is Not an Appeal Mechanism

    34. Generally, and except in a few cases, Judicial review is not intended to be a way to appeal or reexamine the substantive merits of a case. Instead, judicial review focuses on whether a public body or tribunal acted unlawfully, irrationally, or unfairly in making its decision. Even if a party is dissatisfied with the Court of Appeal's decision on the question or statute of limitations, judicial review cannot be used to challenge or relitigate that decision.

61. In **Republic vs. The Retirement Benefits Appeals Tribunal Ex Parte Augustine Juma & 8 others [2013] eKLR,** the Court held:

    "To put the essence of this application in perspective, it must be remembered that the function of this court sitting in judicial review is not concerned with the merits of the decision…I will add that judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. Once a body is vested with the power to

ORIGINAL

do so something under the law, then there is room for it to make that decision, wrongly as it is rightly. That is why there is the appellate procedure to test and examine the substance of the decision itself. It follows, therefore, that the correctness or 'wrongness' or error in interpretation or application of the law is not appropriately tested in judicial review forum. In simple terms, a 'wrong' decision done within the law and in adherence to the correct procedure can seldom be said to be ultra vires as to attract remedy for the prerogative writs. The Court of Appeal in Kenya Pipeline Company Limited vs. Hyosung Ebara Company Limited & 2 Others, CA Civil Appeal 145 of 2011 [2012] eKLR expressed this view as follows; Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter…"

62. The Supreme Court in the case of **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others**

ORIGINAL

(Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) had this to say on the question of whether, despite the expanded extend of judicial review remedy, judicial review court cannot exercise appellate jurisdiction over the decision of the body that is being supervised under Article 165(6) and (7) of the Constitution:

> ***"[102] Despite the shift from common law to codification in the Constitution and the Fair Administrative Action Act, the purpose of the remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision–making process itself. This finding is further reinforced by the fact that though the court in determining a judicial review application may look at certain aspects of merit and even set aside a decision, it may not substitute its own decision on merit but must remit the same to the body or office with the power to make that decision. In this regard we cite the decision of Lord Hailsham LC in Chief Constable of North Wales Police v Evans (1982) 3 All ER at pg 141 said of the remedy of judicial review as follows:***
>
> ***It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual Judges for that of the authority constituted by law to decide the matters***

ORIGINAL

in question. The court will not, however, on a judicial review application act as a "Court of Appeal" from the body concerned, nor will the court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within the body's jurisdiction, or the decision is Wednesbury unreasonable. The function of the court is to see that lawful authority is not abused by unfair treatment. If the court were to attempt itself the task entrusted to that authority by the law the court would, under the guise of preventing the abuse of power be guilty itself of usurping power." ***[Emphasis added]***

63. As to the jurisdiction of each of the divisions of the High Court as established under the High Court Organization and Administration Act, in **Republic v Registrar of Companies & 5 others Exparte Midlands Company Limited [2019] eKLR** P. Nyamweya J(s she then was) stated:

"21. The Applicant in this regard submitted that the Respondents had juxtaposed jurisdiction to forum, and cited the cases of Owners of Motor Vessel "Lilian S" v Caltex Oil (K) Ltd, Mombasa Civil Appeal No. 50 of 1989 and Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others (2012) eKLR, for the position that a court's jurisdiction flows from either the Constitution or legislation or both, and that that more than one court may have jurisdiction over a certain case. That on the other hand, the appropriate forum is a matter

ORIGINAL

governed mostly by statutes and court rules, and is the place where it would be most convenient for the parties to have the matter heard by a court with the requisite jurisdiction.

38. Secondly, there are alternative fora that are more appropriate to resolve the factual disputes raised in this Application, such as the Civil or Commercial Division of the High Court, where no restrictions or limitations exist as those that arise in judicial review."

64. **Article 47(1) & (2) of the Constitution** guarantees every person including the applicant herein the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

65. The right to fair Administrative Action, is, like all other rights under the Bill of Rights enforceable under Article 22, while Article 23 vests in the High Court the jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

66. Among the remedies available to an applicant who alleges that their rights have been violated or threatened with violation is Judicial review.

ORIGINAL

67. In 2015, Parliament enacted the Fair Administrative Action Act to implement the right to fair administrative action as guaranteed in Article 47 of the Constitution.

68. Section 9 of the Fair Administrative Action Act No. 4 of 2015, provides that***:***

> ***9. Procedure for judicial review***
>
> ***(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.***
>
> ***(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.***
>
> ***(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).***
>
> ***(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the***

ORIGINAL

applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

69. For this court to exempt the applicant from exhausting the appeal mechanism provided for in the Tea Act, the applicant must satisfy this court that the appeal mechanism is not adequate or available to it. The above section is clear that an applicant ought to first exhaust the internal or alternative dispute resolution or appeal mechanisms before invoking jurisdiction of this Court seeking for judicial review remedies.
70. The section however provides for exemption to resorting to alternative or internal dispute resolution mechanisms on application by the applicant and upon the court being satisfied that such exemption is in the interest of justice.
71. As stated above, the applicant could have appealed even if the appeal was out of time since the proviso to section 79 G of the Civil Procedure Act provides for extension of time for filing of appeals. Further, the applicant could have provided the reason for any delay as- the impugned decisions being communicated after the appeal period provided for under the Tea Act had lapsed.

ORIGINAL

72. With the above position in mind, therefore, on whether I can delve into the merits of the Originating Motion, the case of **Ndiara Enterprises Ltd v Nairobi City County Government [2018] eKLR** is instructive. In that case, the Court of Appeal had the following to say:

> ***"The appellant denied that there was alternative remedy available to it on matters relating to fair administrative action as per Article 47 of the Constitution. It reiterated its position that the alleged failure by the respondent to act according to the law had violated its legitimate expectations. It cited the case of Town Council of Kikuyu v The NSSF & Ors; Judicial Review No. 81 of 2013 where Odunga, J. held that legitimate expectation would arise where a member of the public, as a result of a promise or other conduct expects, that he will be treated in one way and the public body wishes to treat him or her in a different way. That frustration of such legitimate expectation by a public body would amount to abuse of power. It also cited the case of Republic v KNEC ex parte Gathenji & Others, Civil appeal No. 266 of 1996 where this Court set out the circumstances under which an order of mandamus would issue.***
>
> ***In conclusion, the appellant submitted that the question before the High Court was whether there existed a duty on the respondent's part to demolish the illegal structures on the suit property, evict the***

trespassers and whether failure to demolish the said structures in accordance with its enforcement notices amounted to breach of the right to fair administrative action. It remained categorical that it appropriately sought for an order of mandamus to compel the respondent to act in accordance with the provisions of the Physical Planning Act. Lastly, that Article 23 of the Constitution grants the High Court power to enforce the Bill of Rights by granting the appropriate relief which include an order of judicial review. It maintained that it had a right to fair administrative action under Article 47 of the Constitution and its case was fit for judicial review by the High court since it had supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function. Since according to it, the respondent was such a body, it argued that its actions, decisions or omissions to act according to the law were amenable to judicial review. The same agreements were of course advanced in favour of mandamus to compel approval of the plans for the construction of the perimeter wall by the respondent.

During the plenary hearing of the appeal, only counsel for the appellant appeared. Once again neither the respondent nor its counsel appeared to oppose the appeal though served with the hearing notice. Learned counsel, Ms. Elizabeth Ngonde and reiterated the gist of the

appellant's case. Counsel maintained that the High Court had jurisdiction to entertain the proceedings as per the provisions of the PPA and FAA Act. That since notices had been issued under the PPA, the respondent should have enforced them.

The issues arising for determination in our view are, whether the High Court was the proper forum or had the requisite jurisdiction to hear and determine the judicial review application and whether an order of mandamus was available to the appellant in the circumstances of this case. The appellant has impugned the High Court's finding that it lacked jurisdiction to determine its application. The appellant claimed that a public duty was imposed on the respondent by virtue of sections 29 and 30 of the PPA to comply with the appellant's demands. The said provisions provide as follows:

> ***"29. Powers of local authorities Subject to the provisions of this Act, each local authority shall have the power-***
>
> ***(a) To prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;***
>
> ***(b) To control or prohibit the subdivision of land or existing plots into smaller areas;***

(c) To consider and approve all development applications and grant all development permissions;

(d) To ensure the proper execution and implementation of approved physical development plans;

(e) To formulate by-laws to regulate zoning in respect of use and density of development; and

(f) To reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approval physical development plan.

30. Development permission

(1) No person shall carry out development within the areas of a local authority without a development permission granted by the local authority under section 33."

Where development approval is denied, section 33 of the Act gives a clear procedure for redress to an aggrieved person. The said section provides as follows:

<u>"(3) Any person who is aggrieved by the decision of the local authority refusing his applications for development</u>

permission may appeal against such decision of the relevant liaison committee under section 13.

(4) Any person who is aggrieved by a decision of the liaison committee may appeal against such decision to the National Liaison Committee under section 15.

(5) An appeal against a decision of the National Liaison Committee may be made to the High Court in accordance with the rules of procedure for the time being applicable to the High Court."

Cognizant of the clear procedure for redress provided under the Act, the learned Judge refused to admit jurisdiction in determining the application on the basis that where a clear and specific procedure for redress of a grievance is provided, then that procedure should be strictly followed. The Judge cited the cases of The speaker of The National Assembly v Njenga Karume (2008) 1 KLR 425, Mutanga Tea & Coffee Company Ltd v Shikara Ltd & Anor (2015) eKLR for that proposition."

73. I must reiterate, nevertheless, that section 9(2) of the Fair Administrative Action Act must be read with section 9(3) and (4) and the sections are clear that a party wishing to be exempted from the obligation of exhausting the

internal appeal or revie mechanisms, they must apply for such exemption and demonstrate the exceptional circumstances warranting such exemption.

74. Thus, the first prayer in the application for judicial review application would be that of exemption so that, that aspect is dealt with on merit before the rest of the prayers can be considered. This is because exhaustion doctrine is such an important principle and requirement that Article 159 (2) (c) of the Constitution mandates courts to promote Alternative dispute resolution mechanisms.

75. In the end, I find that this is not a proper case where judicial review orders would be appropriate, in view of the clear statutory provisions under the Tea Act providing for appeal mechanisms. I find and hold that the applicant ought to have exhausted the appeal mechanism provided for under the Tea Act for challenging the decisions of the respondents for revoking its registration certificate, and or for refusing to renew its license.

76. Therefore, for want of jurisdiction to determine the merits of the originating Motion, I hereby down my tools and strike out the Originating Motion dated 18th November, 2025.

77. I order that each party bear their own costs of the originating Motion, noting that the main dispute between the parties is still outstanding.

78. This file is hereby closed.

Dated, Signed and Delivered at Nairobi this 31st Day of December, 2025

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R.E. ABURILI
JUDGE

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