

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E.342 OF 2025

NARENDRA GALOT.....APPLICANT

VERSUS

**COUNCIL OF THE INSTITUTE OF
CERTIFIED PUBLIC SECRETARIES KENYA.....1ST RESPONDENT
INSTITUTE OF CERTIFIED PUBLIC
SECRETARIES KENYA.....2ND RESPONDENT**

AND

JOPHECE OBONYO YOGO.....INTERESTED PARTY

JUDGMENT

1. This Judgment determines the Originating Motion dated 31st October, 2025 and filed in court on 3rd November, 2025. The application is brought under the provisions of sections 7,9 and 11 of the Fair Administrative Action Act and Rules 11, 27 (1) (c), (f) and (j) of the Fair Administrative Action Rules, 2024 as well as section 26 (1) of the Certified Secretaries of Kenya Act, Cap 534 of Laws of Kenya.
2. The application was argued orally as the respondents and interested party, despite being served with the Motion and hearing notice, did not enter any appearance or file responses to challenge the application.
3. The applicant seeks an order of mandamus compelling the respondent Council of the Institute of Certified Public Secretaries of Kenya and the Institute itself to consider the applicant's complaint dated 15th May, 2025

under section 26 of the Certified Public Secretaries of Kenya Act within a period of Thirty days from the date of the order herein sought and to provide reasons for the decision made in consequence thereof. He also prays for costs of the application to be paid by the respondents and the interested party.

4. The applicant's case as contained in the grounds, supporting affidavit sworn by the applicant Narendra Galot and annexures thereto is that he is a grantee and co-administrator of the estate of the late Lalchand Pusharam Galot. vide a letter dated 15th may 2025 titles: Inquiry into professional misconduct of Jophece Obonyo Yogo with regard to Manchester Outfitters Limited, he lodged a formal complaint with the respondents against the said Jophece Obonyo Yogo a certified public secretary for alleged acts of professional misconduct and sought an inquiry into the same under section 26 of the Institute of Certified Public Secretaries Act.
5. The applicant in the said letter set out what he considered to be the specific acts of gross misconduct on the part of the interested party herein among them:
 - a. ***Refusal by the interested party and his failure to include the names of the grantees of the estate of the late Lalchand Pusharam Galot by way of transmission as shareholders in the register of members and paid up share capital Manchester***

Outfitters Limited in spite of being aware of both the Certificate of confirmation of grant to the said estate;

- b. The interested party's continued making of statutory returns to the Registrar of Companies without inclusion of names of the grantees of the estate of the deceased as shareholders in spite of being aware of the existence of the Certificate of Confirmation of grant of the said estate, which is misleading.*
- c. The refusal by the interested party to rectify or report the material misstatements of the statutory returns filed with the Registrar of Companies in so far as they relate to the non-inclusion of the grantees of the estate of the late Lalchand Pusharam Galot as Shareholders by Transmission.*
- d. That the interested party, despite knowing that only two management shareholders -Mohan Galot and administrators of the estate of the late Lalchand Pusharam Galot in Manchester Outfitters Limited are entitles to vote at any general meeting under Clause 59ii) of the Memorandum of Association and that an increase of share capital requires a special resolution of at least seventy five per cent of members entitled to vote under section 257 of the Companies Act, has facilitated and filled statutory returns indicating increase of share capital without*

statutory vote threshold and thereby facilitating Mohan Galot to fraudulently increase his shares in the company.

- e. That the interested party despite knowing that the administrators of the estate of the late Lalchand Pusharam Galot have 50% voting rights as holders of one management share, failed to notify them to attend the alleged general meeting where share capital was said to have increased, which, according to the applicant, is gross misconduct on the part of the interested party who knew or ought to have known that a general meeting to increase share capital cannot be undertaken by one shareholder Mohan Galot, who holds only 50% of the total voting rights, far short of the 75% prescribed by law.*
- f. Jophece Obonyo Yogo in spite of knowing that the estate of the late Lalchand Pusharam Galot as original shareholder has preferential right to subscribe to any new or additional shares in Manchester Outfitters Limited under article 7 of the articles of association of the company, failed to ensure that the estate through the administrators or grantees were accorded the preferential right when fraudulently and illegally allotting Mohan Galot 4,000 ordinary shares in the capital of the company.*

g. Jophece Obonyo Yogo has been grossly negligent and has facilitated irregularities in the company by allowing illegal increase of share capital without the requisite statutory threshold and proceeding to file returns showing allotment of all the additional shares to Mohan Galot contrary to the provisions of the companies Act and the memorandum and articles of association of the company.

6. According to the applicant, the above alleged acts constitute gross misconduct and are contrary to section 24(2)(f)(g) &(h) of the Institute of Certified Public Secretaries Act and call for expeditious inquiry that is objective and transparent as the actions of the said Jophece Obonyo Yogo are alleged to have deliberate and intended to facilitate the fraudulent share acquisition by Mohan Galot to maintain a majority shareholding in the company.
7. The applicant send a reminder on 24th June 2025 seeking to have the complaint acted upon but no action was taken by the respondents hence the application herein.
8. The respondents and interested party despite being served with the application, did not respond to the same. It is therefore left to this Court to make a determination on whether the applicant is entitled to the orders sought.

Analysis and determination

9. I have considered the application and the relevant legal provisions. The issue is whether the orders sought are available to the applicant.
10. The commencement point is an analysis of the disciplinary process under the Certified Public Secretaries of Kenya Act (Cap. 534) Laws of Kenya.
11. The disciplinary regime governing Certified Public Secretaries is established under Part IV of the Certified Public Secretaries of Kenya Act (Cap. 534).
12. Pursuant to section 26, where the Council of the Institute has reason to believe that a registered member has been guilty of professional misconduct, it shall refer the matter to the Disciplinary Committee established under section 25 of the Act.
13. Although the Act does not expressly prescribe a detailed mechanism for the lodging of complaints by third parties, the Council's jurisdiction is triggered once it has information or material disclosing alleged professional misconduct by its member. Upon receipt of such complaint or information, the Council is under a statutory duty to apply its mind and determine whether the threshold for referral to the Disciplinary Committee has been met.
14. Under section 25(2) and the Fourth Schedule to the Act, the Disciplinary Committee is mandated to conduct an inquiry into the alleged misconduct. The inquiry process guarantees procedural fairness and includes: notice of the allegations to the member concerned; the right to be heard, either

personally or through an advocate; and the power to summon witnesses, administer oaths, and receive evidence.

15. These safeguards are consistent with Article 47 of the Constitution, which requires administrative action to be lawful, expeditious, reasonable, and procedurally fair.
16. Upon conclusion of the inquiry, the Disciplinary Committee submits its report and recommendations to the Council in accordance with section 26(1). Under section 27, the recommendations may include: no further action; reprimand of the member; publication of a reprimand; suspension of a practicing certificate; and cancellation of registration.
17. Where the recommendation involves serious sanctions, or where the Council disagrees with a recommendation of no further action, the Council is required to forward the report, together with its own recommendations, to the Registration Board.
18. The Registration Board, acting under section 27, considers the report and may, pursuant to section 28 of the Act: take no further action; reprimand the member (with or without publication); suspend the member's practicing certificate; or cancel the member's registration.
19. Before making its determination, the Board must afford the affected member an opportunity to be heard, in compliance with both the Act and constitutional standards of fair administrative action.

20. Section 29 of the Act provides a statutory right of appeal to the High Court for any person aggrieved by a determination of the Registration Board involving suspension or cancellation. Such appeal must be lodged within ninety (90) days of notification of the decision.

21. On appeal, the High Court may confirm, vary, or set aside the decision of the Board.

22. On the legal consequences of failure by the Council to consider a complaint, The Act does not prescribe timelines within which the Council must act upon receipt of a complaint. However, the absence of express timelines does not confer upon the Council the liberty to decline without reasons, ignore, or indefinitely delay the exercise of its statutory mandate.

23. On the other hand, the Council, being a statutory body exercising public power, is bound by Article 47 of the Constitution (fair administrative action); Article 232 (values and principles of public service); as well as the Fair Administrative Action Act, 2015. In my view, a failure or refusal to consider a complaint within a reasonable time amounts to unlawful administrative inaction.

24. Section 2 of the Fair Administrative Action Act defines "**administrative action**" to include-

(a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

25. Additionally, "**decision**" is defined to mean *any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be*. The Act also defines "**failure**", in relation to the taking of a decision, *to include a refusal to take the decision*.

26. Section 4 of the Fair Administrative Action Act provides for the procedure for administrative actions as follows:

4. Administrative action to be taken expeditiously, efficiently, lawfully etc.

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross-examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

27.As earlier stated, although there is no provision for the timelines within which a complaint or an inquiry should be undertaken and or completed, section, 58 of the Interpretation and General provisions Act provides as follows:

58 Provisions where no time prescribed

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

28. It is therefore imperative that irrespective of the merits or outcome of the decision to be rendered by the Council and which decision is appealable to the High Court, the Council is expected to consider a complaint filed with it by a complainant, against any one of its members and determine whether the complaint discloses material sufficient enough to be subjected to an inquiry and a decision made one way or the other, with reasons for the decision, which an aggrieved party may challenge by way of an appeal to the High Court.

29.In this case, the applicant lodged a complaint on 15th May, 2025 but to date, no action has been taken. The respondent being a statutory body, cannot be left to refuse to attend to complaints raised against its members, noting that it has power to determine merits of the complaint after such inquiry.

30. Therefore, on whether mandamus is available to the applicant, an order of mandamus lies to compel the performance of a public duty where a statutory body has failed or refused to act.

31. Halsbury's, "Laws of England", Halisham Edition, Vol. IX, 744, para 1269, Cited in *Tan Bug Tain v. Collector of Bombay*, AIR 1946 Bom 216 at p. 255 states:

"The writ of mandamus is a high prerogative writ of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right and it may issue in cases where although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual".¹² "Mandamus will be appropriate to compel a tribunal to exercise a jurisdiction which it possesses but declines to exercise"¹³ and again Halsbury says, "The Court will as a general rule and in exercise of its discretion, refuse an order of Mandamus when there is an alternative specific remedy, beneficial and effective."

32. The scope of mandamus in Kenya was authoritatively stated in **Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR**, where the Court of Appeal held that:

“The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again, we turn to HALSBURY’S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of

performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. We can do no better than give examples.”

33. The applicant prays for an order Mandamus to compel the respondents to consider the complaint filed against the interested party by the applicant, alleging gross misconduct. Mandamus will issue to compel a person or body of persons who has failed to perform a duty to the detriment of a party who has a legal right to expect the duty to be performed. Basically, Mandamus is a judicial command requiring the performance of a specified duty which has not been performed.

34. The duty imposed by section 26(1) of the Act on the Council is to consider allegations of misconduct and to refer qualifying matters for inquiry is a public statutory duty enforceable by judicial review. The applicant has no other alternative appropriate remedy. In **R (Regina) vs. Dudsheath, ex parte, Meredith [1950] 2 ALL E.R. 741, at 743**, Lord Goddard C. J. said -

"It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. "

35. Mandamus thus lies to compel the exercise of statutory power where a public body has failed or refused to act, though not to dictate the outcome of that exercise.

36. The Court of Appeal decision in **Makupa Transit Shade Limited & Anor vs. Kenya Ports Authority & Another** [2015] eKLR stated as follows regarding the order of mandamus:

"What of the Order of mandamus" The general rule is that the issuance of mandamus is limited to where there is no specific legal remedy for enforcing it or the alternative legal remedy is less convenient, beneficial and effectual. Its scope against public bodies is limited to performance of a public duty where statute imposes a clear and unqualified duty to do that act. However, if the duty is discretionary as to its implementation, then mandamus cannot dictate the specific way the decision will be exercised. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out

in a specific way. The applicant in addition has to show that it has a legal right to the performance of the legal duty by the party against whom it issues.”

37. In **Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR)**, the High Court stated that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the Applicant. Ringera J (as he then was) stated as follows:

“On whether or not an order for Mandamus could issue to Compel the Electoral Commission to perform a duty imposed upon it by the constitution, I am in agreement with the submission of counsel for the applicant that it would in appropriate circumstances. The authorities cited show that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the applicant. A fortiori it is should be an appropriate remedy to compel the performance of a constitutional duty.”

38. In **Republic v Commissioner of Lands ex parte Lake Flowers Ltd [2008] eKLR**, the Court held that mandamus will issue to compel a public authority to exercise discretion where it has unlawfully declined or failed to do so, though not to dictate the manner of that exercise.

39. Applied to Cap. 534, the Council has a public and statutory duty to consider complaints alleging professional misconduct. Where the Council fails, refuses, or unreasonably delays to consider such complaint, an affected party has locus standi to seek judicial review and this Court may issue an order of mandamus compelling the Council to consider and determine the complaint, without the Court directing the expected outcome.

40. In this case, the applicant did lodge a complaint with the respondents against the interested party dated 15/5/2025, seeking action. He also issued a reminder dated 24th June, 2025 before filing these proceedings, after the respondents ignored the complaint and demand for action. There was reasonable time given to the respondents to act on the complaint and give feedback to the complainant, whichever way.

41. In the end, I find and hold that the applicant has established that he is entitled to the prayers sought, there being no other remedy available to him to cause the respondents to consider the complaint and make a determination which can be appealable to the High Court.

42. Accordingly, I hereby issue judicial review order of mandamus compelling the respondents herein to, within 45 days of service upon them of this judgment, to substantively consider the applicant's complaint dated 15th May 2025 in accordance with the relevant law and procedural safeguards and make a determination, one way or the other, with reasons for the decision

within the said 45 days. In default, contempt of court proceedings to ensue against the respondents.

43.I however make no orders as to costs as the respondents and interested party did not participate in these proceedings.

44.I so order.

45.This file is closed.

Dated, Signed & Delivered virtually at Nairobi this 21st Day of January, 2026

**R.E. ABURILI
JUDGE**

ORIGINAL