

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC EP JR NO. E002 OF 2025**

**IN THE MATTER OF:**  
**APPLICATION FOR GRANT OF JUDICIAL REVIEW ORDERS**  
**OF CERTIORARI, MANDAMUS, PROHIBITION AND**  
**DECLARATORY ORDERS**

**IN THE MATTER OF:**  
**ARTICLES 258(1), 165 (6) & (7), 165(3)(d)(ii), 162(2)(b),**  
**50(1), 48, 47,40, 27(1) & (2), 29(d), 3(1), 10(1) & (2)(a),**  
**(b) & (c) OF THE CONSTITUTION**

**IN THE MATTER OF:**  
**SECTIONS 3(1)(a) &(b), 4(1) & (3)(b), 7(2)(a)(i) &(ii), (b),**  
**(d), (e ), (g), (h) & (m), 9 AND 11 OF THE FAIR**  
**ADMINISTRATIVE ACTIONS ACT 2011**

**IN THE MATTER OF:**  
**RULES 9, 10, 11 AND 13 OF THE FAIR ADMINISTRATIVE**  
**ACTIONS RULES, 2024**

**IN THE MATTER OF:**  
**THE BLATANTLY ILLEGAL AND UNLAWFUL**  
**ADMINISTRATIVE ACTION REPOSED IN THE LETTERS**  
**DATED 21<sup>ST</sup> AND 24<sup>TH</sup> MARCH 2025 UNDER THE HAND OF**  
**MR. PATRICK ANALO AKIVAGA THE CHIEF OFFICER,**  
**URBAN DEVELOPMENT AND PLANNING**

**IN THE MATTER OF:  
SECTIONS 61(3) AND 72(3) OF THE PHYSICAL AND LAND  
USE PLANNING ACT 2019**

**IN THE MATTER OF:  
SECTION 26 LAND REGISTRATION ACT  
AND ALL OTHER ENABLING PROVISIONS AND  
PROCEDURES OF THE LAW**

**BETWEEN**

**REPUBLIC**

.....**APPLICANT**

**AND**

**COUNTY EXECUTIVE COMMITTEE**

**MEMBER NAIROBI CITY COUNTY ..... 1<sup>ST</sup>**

**RESPONDENT**

**CHIEF OFFICER, URBAN DEVELOPMENT &**

**PLANNING, NAIROBI CITY COUNTY ..... 2<sup>ND</sup>**

**RESPONDENT**

**AND**

**HALE END PROPERTIES LIMITED ..... EX PARTE**

**APPLICANT**

**JUDGMENT**

1. By a Notice of Motion application dated 9<sup>th</sup> April 2025, brought pursuant to **Articles 23(3), 47, 165 and 258** of the **Constitution** as read together with **Sections 3, 5, 7 and 11**

of the **Fair Administrative Actions Act**, the ex-parte Applicant seeks the following reliefs, that:

- a. The Honorable Court be and is hereby pleased to grant an order exempting the ex parte Applicant from the enjoinder to exhaust the lodgement of an appeal before the Nairobi County Physical and Land Use Planning Liaison Committee; in light of the obtaining exceptional circumstances, namely the “Temporary Suspension of Nairobi County Physical and Land Use Planning Liaison Committee Meetings” until further notice, pursuant to the Memo to Members of the Public issued by Hon. R.O. Monda, Nairobi County Physical and Land Use Planning Liaison Committee.***
- b. The Honourable Court be and is hereby pleased to grant an order of judicial review declaring as unlawful the blatantly illegal and unlawful action reposed in the letters dated 21<sup>st</sup> and 24<sup>th</sup> March 2025.***
- c. The Honourable Court be and is hereby pleased to grant an order of judicial review of certiorari to call, remove, deliver up to the court and quash the blatantly illegal and unlawful administrative action reposed in the letters dated 21<sup>st</sup> and 24<sup>th</sup>***

***March 2025, and all actions and/or decisions made subsequent thereon.***

- d. The Honourable Court be and is hereby pleased to grant an order of judicial review of prohibition, barring the Respondents and anyone claiming under or through their authority from in any way howsoever interfering or taking any adverse action howsoever against the ex-parte Applicant's proposed development including on any such supposed claims of disputations on ownership.***
- e. The Honourable Court do grant any further and/or consequential orders necessary to give effect to justice of the matters herein.***
- f. The Honourable Court be and is hereby pleased to award costs of the judicial review proceedings herein, to the ex-parte applicant.***

- 2.** The application is premised on the grounds set out on its face and in the Supporting Affidavit sworn by Mr. Li Bo, the Managing Director of Hale End Properties Limited. The deponent averred that the ex parte Applicant is the registered proprietor of LR No. 1870/IV/71, now known as Nairobi/Block 3/85, upon which it proposes to undertake a residential apartment development pursuant to development permission reference number PLUPA-BPM-003738-N, which was issued by the 1<sup>st</sup> Respondent on 30<sup>th</sup> November 2023.

3. Following the said approval, and upon obtaining other requisite approvals from the relevant statutory authorities, the Applicant commenced mobilisation in preparation for construction. The deponent averred that all approvals were obtained following due diligence, including verification of ownership, compliance with applicable by-laws and protocols, and payment of the prescribed statutory fees.
4. The deponent further averred that, notwithstanding the approval, the Respondents, through letters dated 21<sup>st</sup> and 24<sup>th</sup> March 2025, issued directives suspending the approved development and subsequently disapproving the approved plans, while directing the Applicant to stop all works “until such a time as the existing ownership of the property is ascertained.” It is contended that the said directives were issued unlawfully, irregularly, and without any lawful basis.
5. According to the deponent, **Article 40** of the **Constitution**, read together with **Section 26** of the **Land Registration Act**, protects the Applicant’s right to property. It is further contended that the Respondents’ assertion that ownership of the suit property requires further ascertainment is misconceived, as the question of ownership was conclusively determined by this court in ***Shimoni Resort Limited vs The Registrar of Titles & 5 Others [2016] eKLR***, a judgment that has neither been reviewed, varied, set aside nor appealed against.

6. It was contended that the issuance of a certificate of title, as confirmed by an official search at the Lands Registry, leaves no room in law or fact for the Respondent or any other person to re-ascertain ownership. The deponent stated that in an attempt to resolve the matter amicably, the Applicant, through its advocates, wrote to the Respondents setting out the factual and legal position, but the said correspondence was ignored, thereby compounding the impugned decision.
7. The deponent averred that the Respondents' decision is unlawful, unreasonable and tainted by errors of law and fact, amounting to illegality, irrationality and bias; that the Applicant attempted to lodge an appeal before the Nairobi County Physical and Land Use Planning Liaison Committee and that however, the Applicant was issued with a memorandum titled "Temporary Suspension of Liaison Committee" indicating that the Committee's proceedings had been suspended indefinitely.
8. In light of the indefinite suspension of proceedings of the Nairobi County Physical and Land Use Planning Liaison Committee, the Applicant contended that it has been denied an effective alternative remedy and that it therefore invokes this court's jurisdiction under **Articles 162(2)(b), 47 and 48** of the **Constitution**, as read with **Section 13(2)** of the **Environment and Land Court Act 2011** and **Section 9(4)** of the **Fair Administrative Action Act**, urging the court to entertain the judicial review application at first instance

without requiring exhaustion of remedies under the **Physical and Land Use Planning Act**.

9. It was further contended that the Applicant, being a legitimate investor within Nairobi County, has been gravely prejudiced by the impugned decision, having invested substantial resources in the project, created employment opportunities, and engaged various business partners. The Applicant urged that the impugned decisions be expeditiously quashed to enable the lawful continuation of the development.
10. The Applicant further contended that public interest and the rule of law demand that public bodies exercise their statutory powers lawfully, rationally, and procedurally fairly, and that no state organ should be permitted to act arbitrarily to deprive a person of lawfully acquired rights. It was urged that the grant of conservatory relief would occasion no prejudice to the Respondents, while mitigating the prejudice suffered by the Applicant.
11. The Respondent opposed the application through a Replying Affidavit sworn on 14<sup>th</sup> October 2025 by Boniface Waweru, County Attorney of Nairobi County Government. He deponed that under the **Physical and Land Use Planning Act (PLUPA)**, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are mandated to exercise development control, including assessment of

planning applications and enforcement of compliance with planning laws.

- 12.** The County Attorney deponed that the development approval issued on 30<sup>th</sup> November 2023 was granted pursuant to **Section 57(1)** of the **Physical and Land Use Planning Act, 2019**; that **Section 58** of the **Act** requires County Governments to evaluate development applications in accordance with approved physical and land use development plans, zoning guidelines, environmental impact assessments, and other applicable legal and policy frameworks and that **Section 61** of the Act obligates the County Executive Committee Member to consider development applications within thirty days and either approve them with or without conditions, or reject them with written reasons.
- 13.** The deponent stated that the Applicant sought permission to construct a 17-storey residential development comprising 119 apartments; that following deliberations by the Urban Technical Committee on 30<sup>th</sup> November 2023, the Applicant was granted conditional approval under Plan Reference No. PLUPA-BP-003748-N and that the conditions included a requirement that ownership and lawful possession of the land be verified, in line with the **Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021**.

- 14.** The County Attorney further deponed that subsequent to the approval, the 1<sup>st</sup> Respondent received complaints from stakeholders, including the area Member of County Assembly, alleging that the suit property constituted public utility land that had previously been surrendered or allocated to the Government of Kenya.
- 15.** In response to the complaints, it was deposed, and pursuant to **Section 61(2)** of the **Physical and Land Use Planning Act**, the 2<sup>nd</sup> Respondent issued a letter dated 21<sup>st</sup> March 2025 directing the Applicant to suspend all development activities pending submission and verification of ownership documents, including the title, deed plan, survey plan and current official search.
- 16.** It was averred that the purpose of the said directive was to enable the Respondents, in liaison with the Chief Land Registrar, to undertake due diligence on the legitimacy of the title. The deponent contended that instead of complying, the Applicant continued with construction works, thereby prompting the issuance of a further letter dated 24<sup>th</sup> March 2025 revoking the development approval.
- 17.** It was deposed by the County Attorney that the letter of 24<sup>th</sup> March 2025 cited the alleged public utility status of the land, complaints from the area Member of County Assembly, and non-compliance with approval conditions relating to proof of ownership as the reasons for revocation and that the letter

further directed that no further development works be undertaken until ownership of the property is conclusively determined.

- 18.** The County Attorney deponed that the impugned stop orders and revocation of planning permission were issued lawfully and in good faith, in furtherance of the public interest, to forestall illegal development and to prevent potential loss of public land in the event that the ex parte Applicant's title is found to be irregular.
- 19.** It was further averred that development permission under **Section 57** of the **Physical and Land Use Planning Act** is conditional upon compliance with statutory requirements and approval conditions, which expressly prohibit development on disputed private or public utility land.
- 20.** It was deponed that **Sections 57(5) & (6)** and **Section 61** of the Act empower the County Executive Committee Member to revoke or modify development permissions where there has been non-compliance or other justifiable cause and that the revocation was carried out in accordance with **Regulation 28** of the **Physical and Land Use Planning Regulations, 2021**, and was justified by public interest considerations under **Article 66(1)** of the Constitution.
- 21.** It was contended that the Applicant had an alternative statutory remedy by way of appeal to the Physical and Land Use Planning Liaison Committee established under **Section**

72 of the Act, which, according to the Respondents, is duly constituted and functional.

22. The County Attorney deponed that public interest considerations under **Articles 10** and **66(1)** of the **Constitution** allows regulation of land use and property rights in the public interest. He argued that the Respondents acted within the boundaries of this principle by invoking powers under **Section 57(5)** of the **Physical and Land Use Planning Act** and **Regulation 28** of the **Physical and Land Use Planning Regulations 2021** to halt further development and review the legitimacy of the ownership documents. Reliance was placed on the case of *Kenya National Highways Authority vs Shalien Masood Mughal & 5 Others [2017] eKLR*.
23. It was contended that any legitimate expectation arising from the grant of development permission is not absolute or unconditional. Reliance was placed on the case of *Keroche Industries Ltd vs Kenya Revenue Authority & 5 Others [2007] KLR 240* where the court held that legitimate expectation must be grounded in law and be consistent with the public interest.
24. It was further argued that the Applicant's failure to verify lawful ownership of the suit land rendered the development non-compliant with the conditions attached to the approval, thereby justifying its revocation. The County Attorney

maintained that the Respondents acted lawfully, proportionately, and in discharge of their statutory mandate, and urged the court to dismiss the application with costs on the ground that no violation of **Article 47** of the **Constitution** had been established.

25. As at 15<sup>th</sup> January 2026, none of the parties had filed written submissions in support of their respective pleadings, notwithstanding the directions issued by the court.

**Analysis and Determination**

26. Upon consideration of the application and the replying affidavit, the issues for the determination by this court are as follows:

- a. *Whether this Court is seized of jurisdiction in light of the doctrine of exhaustion*
- b. *Whether the Respondents lawfully and procedurally issued the stop and revocation notices dated 21<sup>st</sup> and 24<sup>th</sup> March 2025.*
- c. *The orders which should issue*
  - a. *Whether this court has jurisdiction in light of the doctrine of exhaustion.*

27. The doctrine of exhaustion requires a party to exhaust any alternative dispute resolution mechanism provided by statute and/or law before resorting to courts. Speaking to the rationale for this doctrine, the Court of Appeal in **Geoffrey**

**Muthinja & another vs Samuel Muguna Henry & 1756 others [2015] eKLR** observed as follows:

***“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.”***

28. In the case of **William Odhiambo Ramogi & 3 others vs Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested parties) [2020] eKLR**, a five-judge bench held as follows:

***“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies***

*before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts...”*

29. The court is, however, equally cognisant that the doctrine of exhaustion is not absolute. The Five-judge bench in **William Odhiambo Ramogi & 3 others vs Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested parties) [2020] eKLR** outlined the exceptions to the rule as follows:

*“As observed above, the first principle is that the High Court (read ELC) may, in exceptional circumstances consider and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.*

*The second principle is that the jurisdiction of the Courts to consider valid grievances from*

*parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR.*

*In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion..."*

30. These authorities align with **Section 9** of the **Fair Administrative Actions Act**. While **Subsection 2** stipulates that a Court shall not review an administrative action or decision unless internal mechanisms for appeal/review and all statutory remedies are first exhausted, **Subsection 4** provides that the court may, in exceptional circumstances, and on application by the applicant, exempt such person

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

- 31.** In the present case, the Ex parte Applicant has demonstrated circumstances that bring the dispute within the recognized exceptions to the exhaustion doctrine. First, the statutory appellate mechanism under the **Physical and Land Use Planning Act**, namely the Nairobi County Physical and Land Use Planning Liaison Committee, is presently unavailable. The Respondents did not rebut the memorandum evidencing suspension and no contrary evidence of sittings, membership, or appeal hearings was produced.
- 32.** This court recently acknowledged the non-operational status of the said Committee in **Odhiambo (Suing on behalf of themselves and in the public interest under Art 22 and 258 of the Constitution) vs Nairobi County Physical Land Use Planning Liaison Committee & 3 others**. In the absence of rebuttal evidence, the court accepts that the Committee was not functional at the material time.
- 33.** The indefinite suspension of the Liaison Committee constitutes an “exceptional circumstance” under **Section 9(4)** of the **Fair Administrative Action Act**. The exhaustion doctrine presupposes an accessible, functional and efficacious dispute resolution mechanism. Where the statutory forum is unavailable, the alternative remedy is not

merely inadequate but illusory, and to insist on exhaustion in such circumstances would occasion procedural injustice.

- 34.** Secondly, the dispute raises questions that transcend the technical merits of planning approval and fall within the core of constitutional and administrative law. The Applicant alleges violation of its right to fair administrative action under **Article 47** of the **Constitution**, including the right to lawful, reasonable, and procedurally fair decision-making as well as the right to property under **Article 40** of the Constitution. These allegations are not peripheral or cosmetic; they go to the legality and rationality of the Respondents' exercise of statutory power.
- 35.** For the reasons stated above, this court finds that it is properly seized of jurisdiction to entertain the application at first instance.
- 36.** I will now deal with the issue of whether the Respondents acted lawfully and procedurally in issuing the stop and revocation notices dated 21<sup>st</sup> and 24<sup>th</sup> March 2025.
- 37.** The facts underlying the ex-parte Applicant's cause are not disputed. On 30<sup>th</sup> November 2023, following an application for approval to develop residential apartments on Plot LR No. 1870/IV/71 Church Road, the 1<sup>st</sup> Respondent issued its approval to the Applicant through development permission reference number PLUPA-BPM-003738-N. This was in compliance with **Section 57(1)** of the **Physical and Land**

**Use Planning Act** which prescribes that a person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

- 38.** By a letter dated 21<sup>st</sup> March 2025, signed by Patrick Analo Akivaga, the Chief Officer for Urban Development and Planning, Nairobi City County, the Applicant was informed that a complaint had been received alleging that the suit property had been transferred to the Government for public use. The Applicant was directed to suspend ongoing works and to submit its title, deed plan, survey plan and a current official search for verification, which was to be undertaken in liaison with the Chief Land Registrar and concluded within seven days.
- 39.** Three days later, on 24<sup>th</sup> March 2025, Mr. Akivaga issued a further letter stating that an additional complaint had been received from the area Member of County Assembly alleging that the suit property was public utility land and did not comply with condition (f) of the approval, which prohibited development on disputed private or public utility land. On that basis, the approved plan PLUPA-BPM-003748-N was cancelled and the Applicant was directed to cease all works pending ascertainment of ownership.
- 40.** The Applicant has challenged the legality of the letters dated 21<sup>st</sup> and 24<sup>th</sup> March 2025 on the grounds that they were

issued unlawfully, irregularly, and without any lawful basis. The Applicant further contends that the Respondents' actions amount to an impermissible administrative re opening of ownership questions, contrary to the sanctity of title and the finality of court decisions.

**41.** The Respondents contend that the Applicant failed to comply with the directive to suspend all development activities pending the submission and verification of ownership documents, indicated in the letter dated 21<sup>st</sup> March 2025, and instead continued with construction works, thereby precipitating the issuance of a further letter dated 24<sup>th</sup> March 2025 revoking the development approval.

**42.** This application is anchored under **Article 47** of the **Constitution** which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. It is further made under **Section 7 (2)** of the **Fair Administrative Action Act** which prescribes as follows:

***“(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-***

***(a) the person who made the decision-***

***(i) was not authorized to do so by the empowering provision;***

***(ii) acted in excess of jurisdiction or power conferred under any written law;***

- (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;**
- (iv) was biased or may reasonably be suspected of bias; or**
- (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;**
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;**
- (c) the action or decision was procedurally unfair;**
- (d) the action or decision was materially influenced by an error of law;**
- (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;**
- (f) the administrator failed to take into account relevant considerations;**
- (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;**
- (h) the administrative action or decision was made in bad faith;**

- (i) the administrative action or decision is not rationally connected to-**
- i. the purpose for which it was taken;**
  - ii. the purpose of the empowering provision;**
  - iii. the information before the administrator; or**
  - iv. the reasons given for it by the administrator;**
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;**
- (k) the administrative action or decision is unreasonable;**
- (l) the administrative action or decision is not proportionate to the interests or rights affected;**
- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;**
- (n) the administrative action or decision is unfair;**  
**or**
- (o) the administrative action or decision is taken or made in abuse of power.”**

43. Lord Diplock in the case of **Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374**, at

**401D** clearly set the standards of judicial review when he stated that:

*“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”*

44. The Supreme Court in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)* held thus:

*“Judicial review is a constitutional supervision of public authorities involving a challenge to the legal and procedural validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or through a failure for any reason to take into account a relevant matter, or through taking into account an*

*irrelevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. While the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies, it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. See Reid v Secretary of State for Scotland [1999] 2 AC 512.”*

45. The Supreme Court additionally noted that under the Constitution of Kenya, specifically **Article 47** as read with **Section 7(2)** of the **Fair Administrative Actions Act**, there is an implicit shift towards merit review of impugned decisions:

*“Analysis of article 47 of the Constitution as read with the Fair Administrative Action Act reveals the implicit shift of judicial review to include aspects of merit review of administrative action. Section 7(2)(f) of the Act identifies one of the grounds for review to be a determination if relevant considerations were not taken into account in making the administrative decision; section 7(2)(j) identifies abuse of discretion as a ground for review while section 7(2)(k) stipulates*

*that an administrative action can be reviewed if the impugned decision is unreasonable. Section 7(2) (k) subsumes the dicta and principles in the case of Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223 on reasonableness as a ground for judicial review. Section 7(2)(i) and (iv) deals with rationality of the decision as a ground for review. In our view, whether relevant considerations were taken into account in making the impugned decision invites aspects of merit review. The grounds for review in section 7(2)(i) that require consideration if the administrative action was authorized by the empowering provision or not connected with the purpose for which it was take and the evaluation of the reasons given for the decision implicitly require assessment of facts and to that extent merits of the decision. It must be noted that the even if the merits of the decision is undertaken pursuant to the grounds in section 7(2) of the Act, the reviewing court has no mandate to substitute its own decision for that of the administrator. The court can only remit the matter to the administrator and or make orders stipulated in section 11 of the Act. On a case by case basis, future judicial decisions shall*

*delineate the extent of merit review under the provisions of the Fair Administrative Action Act.*

...

*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 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.”*

46. This court is guided by the above authorities accordingly.

47. The grounds upon which development permission may be revoked are set out in **Section 57(5)** of the **Physical and Land Use Planning Act**, which provides that a county executive committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.

- 48. Regulation 28** of the **Physical and Land Use Planning (General Development Permission and Control) Regulations** gives effect to **Section 57(5)** of the Act, by stipulating that revocation may follow contravention of the conditions of approval, considerations under **Article 66(1)** of the Constitution, or risk of natural disaster.
- 49.** It additionally prescribes that where the County Executive Committee Member revokes the development permission under sub regulation (1), the holder shall be issued with a notice of revocation of development permission in Form PLUPA/DC/12 set out in the First Schedule. Sub regulation (4) further stipulates that the county executive committee member shall specify the reasons for the revocation in the notice issued under sub regulation (3).
- 50.** In this matter, there is no evidence that beyond the letters dated 21<sup>st</sup> and 24<sup>th</sup> March 2025, the 1<sup>st</sup> Respondent issued a notice of revocation of development permission in its prescribed form as required under **Regulation 28** of the **Physical and Land Use Planning (General Development Permission and Control) Regulations**. This omission was not a mere technicality as it went to compliance with a mandatory statutory procedure.
- 51.** When the 1<sup>st</sup> Respondent purported to revoke the development permission on 24<sup>th</sup> March 2025, the Applicant had neither responded to the letter dated 21<sup>st</sup> March 2025

nor submitted the requested documents. That letter expressly indicated that, upon submission, a determination would be made within seven days. The revocation effected three days later, without affording the Applicant an opportunity to respond, breached the Applicant's right to fair administrative action by denying it a reasonable opportunity to be heard before an adverse decision was taken.

52. Further, at the time of revocation, the Respondents had not concluded any inquiry into the ownership of the suit property. The alleged non-compliance with condition (f) remained unproven, no report or recommendation had been made by the Land Registry, and the decision was founded on unverified complaints rather than any established contravention.
53. Even if a temporary suspension pending verification were permissible, revocation is a terminal administrative act requiring strict compliance with statutory and procedural safeguards. The escalation from an ongoing inquiry to final revocation, without verification or a hearing, was disproportionate to the objective the Respondents sought to achieve.
54. The Respondents contended that any legitimate expectation arising from the grant of development permission is not absolute or unconditional. The court in ***Keroche Industries Ltd vs Kenya Revenue Authority & 5 others***

**[2007] KEHC 3680 (KLR)** persuasively held that it is implied that power given to authorities or persons by an Act of Parliament must be exercised fairly, and the court has the power to reach out where the exercise of that power is unfair. It endorsed Lord Scarman's quote in **Reg vs Secretary Of State For The Environment ex pare Nottingham Shire Country Council [1986] AC** where he stated:

***“A power which is abused should be treated as a power which has not been lawfully exercised.”***

55. This court has found, in the foregoing paragraphs, that the Respondents breached the provisions of **Section 57(5)** of the **Physical and Land Use Planning Act** and **Regulation 28** of the **Physical and Land Use Planning (General Development Permission and Control) Regulations**. In acting contrary to the law, and having failed to give the Applicant an opportunity to be heard, this court finds that the Respondents breached the legitimate expectations of the ex-parte Applicant.
56. On whether the Respondents had the capacity to determine if the suit land is public land, the court finds that questions of title fall within the mandate of land registration and adjudicatory processes established by law.
57. Although the Respondents placed reliance on the case of **Kenya National Highways Authority vs Shalien Masood**

**Mughal & 5 Others [2017] eKLR** where the Court of Appeal underscored the public interest principle that persons who unlawfully acquire land cannot seek refuge under the doctrine of indefeasibility of title, the principle presupposes an affirmative finding of unlawful acquisition.

58. No such finding has been made against the ex parte Applicant in the present matter. On the contrary, the Respondents were bound to take into account the findings of the court in **Shimoni Resort vs Registrar of Titles, Commissioner of Lands, Minister For Lands, Attorney General, African Banking Corporation Limited & Sheikh Jabir Alahmed Aljabir Alsabah [2016] KEHC 4845 (KLR)**, where the court considered the question of ownership of LR No. 1870/IV/71 where it held that Shimoni Resort Limited, the Petitioner's predecessor in title, was a bona fide purchaser for value.
59. That determination has neither been reviewed nor set aside. In the circumstances, the Respondents could not purport, through administrative action, to reopen or disregard a subsisting judicial finding on ownership of the suit property. For purposes of development control, the Respondents were required to act within the limits of their statutory mandate and could not, in the absence of a lawful impeachment process, purport to determine ownership disputes through administrative action.

**60.** The Respondents sought to rely on **Section 61(2)** of PLUPA which stipulates that:

*“(2) With regards to an application for development permission that complies with the provisions of this Act and within thirty days of receiving an application for development permission, the county executive committee member may—*

*(a) grant the applicant the development permission in the prescribed form and may stipulate any conditions it considers necessary when granting the development permission; or*

*(b) refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing.”*

**61.** This provision governs the consideration of an application for development permission within the statutory timeline. It does not provide a basis to revoke an already granted permission on the footing of disputed ownership.

**62.** The Respondents further invoked **Article 66(1)** of the Constitution. **Article 66** permits regulation of the use of land in the interest of defence, public safety, public order, public morality, public health, or land use planning. However, such

regulation must be exercised within the confines of the law and in a manner that is reasonable, proportionate and procedurally fair as required under **Article 47** and the **Fair Administrative Actions Act**.

- 63.** In sum, the court finds that the revocation was effected without a hearing, was unsupported by evidence, and was disproportionate, and in breach of **Article 47** of the **Constitution**. Further, a planning authority cannot, through administrative correspondence, reopen ownership questions or undermine a subsisting judicial determination without offending the principles of legal certainty, finality of litigation, and the rule of law.
- 64.** Accordingly, the decision by the Respondents was unlawful and un procedural, and breached the Applicant's rights to fair administrative action. In the circumstances, the impugned letters dated 21<sup>st</sup> and 24<sup>th</sup> March 2025 are amenable to judicial review orders.
- 65.** This court therefore finds that the application dated 9<sup>th</sup> April 2025 is merited and issues the following orders:
- a. An order is hereby issued exempting the ex parte Applicant from the obligation to exhaust the statutory remedy of appeal before the Nairobi County Physical and Land Use Planning Liaison Committee, pursuant to Section 9(4) of the Fair Administrative Action Act, on account**

**of exceptional circumstances arising from the suspension of the said Committee's proceedings.**

- b. An order of certiorari is hereby issued calling into this court and quashing the decisions and administrative actions contained in the letters dated 21<sup>st</sup> March 2025 and 24<sup>th</sup> March 2025, by which the Respondents suspended and subsequently revoked or disapproved the ex parte Applicant's development permission and directed stoppage of works.**
- c. A declaration is hereby issued that the Respondents' decisions contained in the letters dated 21<sup>st</sup> March 2025 and 24<sup>th</sup> March 2025 were unlawful, unreasonable and procedurally unfair, and in breach of Article 47 of the Constitution and the Fair Administrative Action Act.**
- d. An order of prohibition is hereby issued restraining the Respondents, their agents, servants or anyone acting under their authority from interfering with, stopping, suspending or taking any adverse enforcement action against the ex parte Applicant's proposed development on LR No. 1870/IV/71 now known as**

**Nairobi/Block 3/85, on the basis of the letters dated 21<sup>st</sup> March 2025 and 24<sup>th</sup> March 2025.**

- e. The costs of this suit shall be borne by the Respondents.**

**Dated, signed and delivered virtually in Nairobi this 5<sup>th</sup> day of February, 2026.**

**O. A. Angote  
Judge**

**In the presence of:**

Ms Kioko for Lusi for the Applicant

Mr. Lumumba for Otieno for Respondent