



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC JUDICIAL REVIEW CASE NO. E012 OF 2024**  
**IN THE MATTER OF THE LAND ACT**  
**AND**  
**IN THE MATTER OF ARTICLES 40, 47, 60, AND 64 OF**  
**THE**  
**CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT**  
**2015**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO**  
**INSTITUTE**  
**JUDICIAL REVIEW PROCEEDINGS**  
**BETWEEN**  
**REPUBLIC.....**  
**APPLICANT**  
  
**VERSUS**  
**THE HONOURABLE ATTORNEY GENERAL FOR**  
**AND ON BEHALF OF THE GOVERNMENT**

OF KENYA.....  
RESPONDENT

AND

ALI OKELO APIYO.....1<sup>ST</sup> EX PARTE  
APPLICANT

MOHAMED ABUKAR MOHAMED.....2<sup>ND</sup> EX PARTE  
APPLICANT

HASSAN MURIITHI KANGETHE.....3<sup>RD</sup> EX PARTE  
APPLICANT

HABIDA ABDULLAHI.....4<sup>TH</sup> EX PARTE  
APPLICANT

ADOY JIROW EDIN.....5<sup>TH</sup> EX PARTE  
APPLICANT

KHAMIS RAMADHANI MOHAMED.....6<sup>TH</sup> EX PARTE  
APPLICANT

**JUDGMENT**

1. By a Notice of Motion dated 27<sup>th</sup> June 2024 brought under Order 53 Rules 3 and 4 of the Civil Procedure Rules, 2010 and Articles 40, 47, 60 and 64 of the Constitution of Kenya, 2010, the Applicants seek the following orders:

***a. An order of Prohibition do issue directed at the Respondent to remove into this Honourable Court and quash the decision to illegally and unprocedurally seize and/or alienate the Ex Parte Applicants plots for the development of social housing, parks, roads and other public utilities.***

***b. Such other orders or relief as this Honourable Court may deem just and expeditious to grant.***

***c. That the costs of this application be borne by the 2<sup>nd</sup> Respondent.***

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Ali Okelo Apiyo, sworn on even date.

### **THE APPLICANTS CASE**

3. The deponent averred that Highridge village had already been surveyed by the government and that the proposed land use plan had been approved by the Minister of Lands, Housing, and Urban Development. He further averred that the first titles were issued by the retired President Uhuru Kenyatta in 2020, while other titles were still being issued.
4. He further averred that on 30<sup>th</sup> April 2024, the Cabinet issued a notice directing the Nairobi Rivers Commission, Nairobi County Government and the Ministry of Lands to work with the communities living along the three main rivers in Nairobi Mathare, Ngong and Nairobi to establish an additional 30 meters planning corridor which would be useful in developing social housing, parks, roads and other public amenities.
5. He further averred that on 3<sup>rd</sup> May 2024, the local administration, together with representatives from the Water Resources Authority, visited residents of Highridge village and earmarked the Applicants' buildings for demolition. He

asserted that the plots in question have legitimate owners with a 99-year lease certificate issued by the government.

6. He further stated that some of the plots earmarked for demolition include schools with large student populations. The deponent is apprehensive that their children would have nowhere to pursue their education if the schools are demolished. He contended that the government should not victimize them at the expense of developing social housing, parks, roads, and public utilities. In conclusion, the Applicants urged the Court to grant the judicial remedy sought.
7. The Respondent entered an appearance but failed to file a response to the application.
8. The application was canvassed by way of written submissions.

### **THE EX PARTE APPLICANTS SUBMISSIONS**

9. The Ex Parte Applicants filed their submissions dated 23<sup>rd</sup> February 2026.
10. On behalf of the Applicants, Counsel argued that the Applicants were neither given individualized notices nor provided an opportunity to be heard or supplied with reasons before their properties were demolished.
11. Counsel argued that the impugned notice was issued via a general press release and was not personally served on the ex parte applicants. Counsel further claimed that the notice

- did not specify particular parcels of land or provide the applicants with an opportunity to present their arguments.
12. It was argued that other structures within the alleged corridor were not demolished, raising concerns about selective enforcement and the violation of Article 27 of the Constitution.
  13. It was further argued that the Respondent did not provide survey reports, environmental assessment restoration orders, or gazette notices showing that specific parcels encroached on riparian land.
  14. Counsel submitted that emergency considerations, such as floods, do not negate constitutional safeguards nor authorize demolition of the property without adhering to due process.
  15. In conclusion, Counsel urged the Court to grant the judicial review remedy sought.

### **ANALYSIS AND DETERMINATION**

16. Having considered the application and the Applicants submissions, the following issues arise for determination:
  - a) *Whether the Applicants have established a proper basis for the grant of the judicial review order sought;*
  - b) *Whether the Applicants are entitled to the order of prohibition.*
17. The parameters of Judicial Review were reaffirmed by the Court of Appeal in **Municipal Council of Mombasa vs**

**Republic & Umoja Consultants Ltd C. A Civil Appeal No. 185 of 2001**, where it was held that:

***“Judicial Review is concerned with the decision making process, not with the merits of the decision itself; the Court would concern itself with such issues as to whether the decision maker had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters. The Court should not act as a Court of Appeal over the decider, which would involve going into the merits of the decision itself - such as whether there was or there was not sufficient evidence to support the decision.*”**

18. The circumstances under which judicial review remedies may issue were outlined in **Pastoli v Kabale District Local Government Council and Others (2008) 2 E. A 300**, where the court held that:

***“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety ..... Illegality is when the decision-making authority commits an error of law in the process*”**

***of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality .... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards ..... Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.'***

19. The Applicants are seeking an order of Prohibition to quash the Respondent's decision to seize or alienate their properties for the purpose of constructing public utilities.
20. An order of Prohibition is issued to restrain a public body from continuing or undertaking an unlawful action. In Kenya National Examination Council v

**Republic Ex Parte Geoffrey Gathenji Njoroge and 9 others (1997) eKLR** the Court outlined the circumstances under which an order of Prohibition may issue as follows:

***“Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land.....It does not, however lie to correct the course, practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.***

*And further,*

***Prohibition cannot quash a decision which has been made, it can only prevent the making of a contemplated decision.”***

21. The Applicants argued that the government’s plans to alienate their properties violate their right to property under Article 40 of the Constitution. They contended that their plots are not located on riparian land. They also argued that the decision to alienate their plots was unlawful because there was no public participation.
22. The Applicant attributes the impugned directive requiring residents to vacate the area to the Cabinet. The Cabinet has not been joined as a party to these proceedings. The Applicants merely sued the Attorney General on behalf of the Government of Kenya. Without identifying the particular authority responsible for the decision.
23. The Applicants contend that the Respondent’s action violates their right to property as guaranteed by Article 40 of the Constitution. The Applicants

produced lease certificates confirming the 1<sup>st</sup> -4<sup>th</sup> Applicants' proprietorship. The Notice issued by the Special Cabinet requiring members of the public residing in risky areas to vacate within 48 hours, appears to have been issued as a precautionary measure in response to torrential rains. The directive was ordinarily issued to safeguard life and property.

24. The Applicants argued that the owners of the affected plots have been asked to vacate their plots to create space for the additional 30-meter planning corridor. The directive shows that the Cabinet directed the Nairobi Rivers Commission, the Nairobi County Government, and the Ministry to work with communities living along the three main rivers in Nairobi - Mathare, Ngong, and Nairobi to create an additional 30 metres planning corridor that would be useful for the development of social housing, parks, roads, and other public utilities. There is no indication in the notice that it targeted the Applicants or was meant to dispose of their properties. In light of the foregoing, the Court is not convinced that the Notice constitutes a decision to deprive the Applicants of their land.
25. The Applicants also relied on the proposed land plan use to support their case. A proposed land plan use does not, by itself, grant proprietary rights in land. The plan does not show that the government decided to compulsorily transfer the Applicants' land.
26. The Applicants argued that the decision was illegal because they were not served with individual notices and no public participation was held. According to the Applicants, the decision violates their rights under Article 47 of the Constitution.

46. **Article 47 (1) and (2) of the Constitution** provides:

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

***(2) 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.***

1. The above provision is echoed in Article 50(1) of the Constitution and Section 4(3)(b) of the Fair Administrative Action Act. It is clear from the above provision that the Tribunal or authority entrusted with the mandate of making decisions must act in a fair manner.
2. The Applicants argued that their right to fair administrative action was violated because they were not served with individual notices or involved in the decision making process.
3. **Article 24 of the Constitution** provides:

***(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—***

**(a) the nature of the right or fundamental freedom;**

**(b) the importance of the purpose of the limitation;**

**(c) the nature and extent of the limitation;**

**(d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and**

**(e) the relation between the limitation and its purpose, and whether there are less restrictive means to achieve the purpose.**

4. Based on the foregoing, it is clear that the right to fair administrative action is not absolute. The court notes that this right may be limited in exceptional circumstances, including emergency situations like flooding, where immediate action is necessary to protect life and property. The question now is whether this case falls into one of those situations. From the evidence on record, it appears that the Applicants were not given a hearing before the impugned decision was made. It is widely recognized that floods are natural disasters that can

cause loss of life and pose serious threats to public health and safety. Additionally, due to their very nature, floods cannot be paused to allow consultations with those likely to be affected. The most reasonable course of action is to relocate everyone at risk of flood-related harm out of harm's way.

5. In view of the foregoing, it is my considered view that the Special Cabinet actions were justified in an open and democratic society. They could not prevent the flooding, but they could save lives by ordering evacuations and demolishing structures that could intensify its impact. In view of the flooding affecting the country, the right to administrative action was necessarily limited. The Special Cabinet could not be expected to conduct prior consultations, as their immediate priority was to protect life and public safety.

6. The Applicants alleged that the Respondent violated their right not to be discriminated against

7. **Article 27 (1) of the Constitution** provides:

***Every person is equal before the law and has the right to equal protection and equal benefit of the law.***

8. The Applicants claimed that they were discriminated against because other structures within the alleged corridor were not earmarked for demolition. Although the Applicants allege discrimination, they did not demonstrate that they were subjected to differential or prejudicial treatment on any grounds enumerated in Article 27 of the Constitution. No

cogent evidence was tendered to show that they were treated differently from other persons in similar circumstances.

9. Based on the foregoing, I find that the Applicants have not demonstrated the existence of a specific unlawful decision capable of being prohibited.

10. The upshot of the foregoing is that the application is without merit and is hereby dismissed with no orders as to costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF:**

Ms Kitanga holding brief for Mutua for the Applicants

Ahmed - Court Assistant