

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E400 OF 2025

**LORADO COMPANY LIMITED.....
APPLICANT**

VERSUS

CABINET SECRETARY,

**MINISTRY OF MINING1ST
RESPONDENT**

**DIRECTOR OF MINES AND GEOLOGY.....2ND
RESPONDENT**

**AHG METALS KENYA LIMITED3RD
RESPONDENT**

JUDGMENT

1. Before this Court for determination is Originating Motion dated 4th December 2025. The motion is supported by the affidavit of Moses Njiru Njeru sworn on even date. The application seeks the following reliefs:

a. That a declaration do issue to the effect that the removal of application for a prospecting licence no. 5455 from the mining cadastre system by the 2nd Respondent was and is invalid [ultra vires] and void ab initio and of no effect.

- b. That an ORDER OF MANDAMUS do issue against the 1st and 2nd Respondents compelling them to reinstate the applicant's application for a prospecting licence no. 5455 on the mining cadastre system.*
 - c. That an ORDER OF CERTIORARI do issue to remove to the High Court the decision of the 1st and 2nd Respondents to grant mining licenses No's ML/2025/0212 and ML/2025/0237 to AHG METALS KENYA LIMITED for the purpose of the said decision and the resulting licenses being quashed.*
 - d. That an order of stay be issued on the operation and validity of mining licenses No's ML/2025/0212 and ML/2025/0237 as issued by the 1st and 2nd Respondents to AHG METALS KENYA LIMITED pending the hearing and determination of these proceedings.*
 - e. Costs of this application be provided for.*
 - f. Such further and other relief that the Honourable Court may deem just and expedient to grant.*
2. The Applicant's case is that on 10th May, 2024, it lodged an application for grant of a prospecting licence on the Mining Cadastre System and was assigned reference number App No. 5455. That at the time of lodging the application, the area applied for was vacant. It is the Applicant's case that it uploaded all the

required documents, and made the necessary payment to the **Ministry of Mining, Blue Economy and Maritime Affairs** as prescribed by law.

3. The Applicant states that the acceptance of Application No. 5455 by the Cadastre System on 10th May, 2024 was sufficient proof that the area was free, since the system cannot accept another application for a mineral right over an already allocated area.
4. However, that by a letter dated 14th May, 2024, the Director of Mines wrote to Mr. Njiru as Cadastre Agent stating that Application No. 5455 had been accepted erroneously because the area was already covered by mineral right No. 221 held by **Mayfox Mining Company Limited**.
5. It is urged that the Director of Mines then expunged the applicant's **Application No. 5455** from the system and replaced it with Prospecting **Licence No. 221** in favour of **Mayfox Mining Company Limited**. The Applicant found this action surprising because the Cadastre System indicated that **Mayfox Mining Company Ltd.'s** licence was applied for on 11th July 2003, granted on 3rd February 2005, and expired on 31st January 2017. The Applicant contends that replacing **Lorado's** application with an expired licence was illegal and beyond the Director's powers and mandate.
6. That anxious that an injustice was being perpetrated, the Applicant wrote to the Director of Mines on 15th May, 2024 requesting investigations into the

expunging of their application. It is urged that no response was received. Subsequently, that the Applicant discovered that the contested area had been partitioned into three blocks and apportioned to two new companies: **H-NUO Kenya Company Limited** and **AHG Metals Kenya Limited**, as follows: **App No/5677** belonging to **AHG Metals Kenya Limited**, covering 278 Cadastre blocks, applied for on 5th July 2024; **App No/5681** belonging to **H-Nuo Kenya Company Limited**, covering 264 Cadastre blocks, applied for on 5th July 2024; **App No/5683** belonging to **AHG Metals Kenya Limited**.

7. This development is said to have raised suspicion regarding the handling of mineral rights by officials within the Ministry responsible for Mining. On 7th July, 2024, it is stated that the Applicant petitioned the Cabinet Secretary in the **Ministry of Mining, Blue Economy and Maritime Affairs** and copied various investigative agencies, requesting investigations into suspected dishonesty by Government officials.
8. The Applicant relies on the Mining Act, which provides that applications for mineral rights are considered on a first come first serve basis and maintains that **Application No. 5455** by **Lorado Company Limited** ought to have been considered before **App No/5677**, **App No/5681**, and **App No/5683**.
9. The Applicant states that **Mayfox Mining Company Limited** filed suit in **MILIMANI H.C JR MISC CAUSE NO. E076 OF 2024 MAYFOX**

MINING CO. LTD -VS- CABINET SECRETARY; MINISTRY OF MINING AND OTHERS, seeking; An order of certiorari to quash the decision contained in the 2nd Respondent's letter dated 5th June, 2024 rejecting renewal of its licence and removing the mining area from the cadastre system, an order of prohibition restraining the 1st and 2nd Respondents from removing the mining area pending hearing and determination, and an order of mandamus compelling approval of its licence pursuant to the Mining Act.

10. The Applicant herein is said to have successfully applied to be enjoined as an Interested Party in that suit, and **AHG Metals Kenya Limited** was also enjoined as a Respondent.

11. That while the proceedings were pending, on 20th March, 2025, the 1st Respondent issued notice of his intention to grant a mining licence to **AHG Metals Kenya Limited** under **Application Ref. ML/2025/0237** at the lapse of 42 days. That the Notice was published in the Kenya Gazette on 28th March, 2025 under **Notice No. 3874**. According, to the Applicant on 6th May, 2025, the Applicant objected to the intended grant, but received no response from the 1st or 2nd Respondents.

12. That on 8th August, 2025, the Applicant in the said suit filed a notice of withdrawal before the matter was heard and determined. The Applicant herein objected to the withdrawal, citing pending issues, but on 6th November, 2025,

the court upheld the withdrawal. Meanwhile, on 18th September, 2025, the 1st and 2nd Respondents granted **Licences No. ML/2025/0212 and ML/2025/0237** to **AHG Metals Kenya Limited** over the disputed area.

13. The Applicant also filed a Further Affidavit sworn by Moses Njiru Njeru on 9th February 2026, further asserting in deposition that under **sections 32(1) and 33(2) of the Mining Act**, the Cabinet Secretary may grant, deny or revoke a mineral right upon the recommendation of the Mineral Rights Board. The Applicant states that the 1st and 2nd Respondents confirmed in their Replying Affidavit that on 9th April 2024 the Mineral Rights Board recommended the removal from the Mining Cadastre System of a previous application by Mayfox Company Ltd, and that the Cabinet Secretary approved that removal on 9th May 2024.

14. According to the Applicant, this meant that all statutory steps required under the Mining Act had been completed and the area was therefore legally free when the Applicant lodged its application. The Applicant maintains that the allegation by the Respondents that the acceptance of its application was erroneous or caused by a system error is false, since there is no provision in the Mining Act allowing reinstatement or reconsideration of a removed application, and once the earlier application had been removed the Mineral Rights Board and the Cabinet Secretary became functus officio.

15. The Applicant further contends that the provisions of section 193(a) and (b) of the Mining Act concerning correction of errors in the register do not apply as there was no error, inaccurate or unlawful entry upon the register to warrant a correction by the 2nd Respondent, and that section 20(1) does not confer upon the 2nd Respondent discretion to reinstate an application that has been removed or expunge a lawfully lodged application.
16. The Applicant also avers that after lodging its application and complying with the statutory requirements, the application ought to have been placed before the Mineral Rights Board for consideration and recommendation to the Cabinet Secretary, and that any decision thereon should have been communicated by the Cabinet Secretary, and not the 2nd Respondent.
17. The Applicant also questions the claim of an alleged system error, noting that a director of the 3rd Respondent allegedly received a notification when the Applicant lodged its application, which the Applicant argues suggests bias or preferential treatment by the 1st and 2nd Respondents.
18. In response to the Respondents' affidavits regarding the Notice of Motion dated 10th December 2025, the Applicant states that the ruling delivered on 6th November 2025 in HCJRMISC/E076/2024 only addressed the withdrawal of that suit and did not determine the substantive dispute, and therefore the present proceedings are neither an appeal nor barred by *res judicata*.

19. The Applicant further states that judicial review proceedings are properly instituted against the public bodies responsible for the impugned administrative action and that failure to join the 3rd Respondent at the outset does not amount to concealment, since Interested Parties may seek joinder.
20. The Applicant also relies on sections 9(1) and 10(1) of the Fair Administrative Action Act, which it urges permit an aggrieved party to apply for judicial review without unreasonable delay and require courts to determine such applications without undue regard to procedural technicalities, thereby supporting the Court's discretion to enlarge time. That these two sections supersede regulation 6 (1) of the Fair Administrative Action Rules.
21. It is also the Applicant's case that any capital expenditure allegedly made by the 3rd Respondent cannot legitimize an unlawful decision, and dismisses assertions that adverse orders would cause the 3rd Respondent to withdraw investment from Kenya as an attempt to intimidate the Court. The Applicant therefore reiterates the prayers in the Originating Motion dated 4th December 2025 and the Notice of Motion dated 10th December 2025 and urges the Court to allow the applications.

The 1st and 2nd Respondent's response

22.The 1st and 2nd Respondent's filed a replying affidavit sworn on 30th January 2026, by Gregory Kituku.

23.The 1st and 2nd Respondents state that Special Licence No. 221 was initially issued on 3rd February 2005 to Sebimu Exploration and Mining Co. Ltd, and was subsequently transferred to IGE Kenya Ltd, then to Apex Africa Resources Ltd on 21st February 2012, and finally to **Mayfox Mining Company Ltd** on 26th March 2015. That the licence was renewed on 20th March 2015 for two years until 20th March 2017, after which the Mining Act, 2016 came into force, subjecting existing mineral rights to the transitional provisions under section 225 of the Act.

24.It is urged that **Mayfox Mining Company Ltd** thereafter applied for a prospecting licence under the new regime on 27th September 2017, and its application was considered by the **Mineral Rights Board** on 19th October 2017, which required it to submit additional documentation and meet outstanding obligations.

25.The Respondents further explain that although the Cabinet imposed a moratorium on the issuance of new mineral rights vide letter dated 2nd December 2019, signed by the Head of Public Service, Joseph Kinyua addressed to the Cabinet Secretary for Mining, the moratorium did not affect existing licence holders such as Mayfox, who were expected to regularize their

applications. That following the partial lifting of the moratorium in October 2023, **Mayfox Mining Company Ltd** resubmitted the required documents on 6th November 2023.

26. According to the Respondents, during the 72nd Mineral Rights Board meeting held on 13th February 2024, **Mayfox Mining Company Ltd** application was recommended for rejection due to failure to meet the minimum statutory requirements, including compliance with exploration reporting standards. Further, that a 14-day notice issued on 4th March 2024 required **Mayfox Mining Company Ltd** to submit technical exploration reports dating back to 2005, but the response received on 5th March 2024 was considered inadequate.

27. The Respondents contend that on 3rd April 2024, **Mayfox Mining Company Ltd**'s licence was erroneously removed from the Online Mining Cadastre System due to an administrative or systemic oversight during the ongoing review process.

28. That as a result of that error, **Lorado Company Limited**, the applicant herein lodged Application No. 5455 on 10th May 2024 over the same area. However, that upon discovery of the error, the Director of Mines invoked sections 193(a) and (b) of the Mining Act, which empower the Director to correct errors or omissions in the Cadastre, and on 13th May 2024 reinstated Mayfox's application and restored the area in the Cadastre System. It is the 1st and 2nd

Respondent's case that the Applicant was subsequently notified by a letter dated 14th May 2024 that the area had appeared vacant due to a system error and that its application could not confer any rights over the area.

29. The Respondents maintain that the Ministry acted lawfully and within its statutory mandate under sections 20(1) and 193(a) and (b) of the Mining Act to safeguard the integrity of the mineral rights system and prevent double allocation. They further state that the Applicant's application was predicated on the erroneous availability of the area and therefore did not create any legal entitlement.

30. The Respondents add that the Mineral Rights Board later reconsidered the Mayfox matter on 9th April 2024 and recommended removal of its application from the Cadastre System, which was subsequently approved by the Cabinet Secretary. That once the area was properly freed following due process, new applications were lodged, including those by H-Nuo Kenya Company Limited and AHG Metals Kenya Limited, which were considered in accordance with the first-come-first-served principle under section 56 of the Mining Act.

31. The 1st and 2nd Respondents also state that the Applicant had participated in earlier proceedings in HC JR Misc. Cause No. E076 of 2024 as an Interested Party, and that after the withdrawal of that suit, the Ministry proceeded to process the mineral rights in accordance with the law, including consideration

of objections under section 34 of the Mining Act. They maintain that the mineral rights have since been lawfully granted to other companies, which have already made substantial investments in reliance on the licences.

32. The Respondents therefore contend that the Applicant's claim is founded on a technical error that was lawfully corrected and does not disclose any violation of rights warranting judicial review. They further argue that any order reversing the grants at this stage would prejudice the current rights holders and expose the Ministry to significant financial liability.

33. Accordingly, the 1st and 2nd Respondents oppose the Applicant's prayers and maintain that their actions were lawful, undertaken in good faith, and in the public interest.

The 3rd Respondent's response

34. The 3rd Respondent filed a Replying Affidavit sworn on 4th February 2026 by John Francis Myklusich. According to the 3rd Respondent, the present applications amount to a collateral attack on the ruling delivered on 6th November 2025, which upheld and gave effect to the Notice of Withdrawal dated 8th August 2025 filed by Mayfox Mining Company Limited in HCMSCIR No. E076 of 2024. That the ruling finally disposed of the issues then before the

Court, and this Honourable Court cannot sit on appeal over, revisit, or review the decision of a court of concurrent jurisdiction.

35. It is urged that the doctrines of res judicata, finality of litigation, and functus officio firmly prohibit such an indirect or collateral challenge. Further, that the instant applications are misconceived and amount to an impermissible attempt to reopen a matter already settled by a competent court.

36. That on 28th March 2025 via a Gazette Notice No. 3874 the 1st Respondent notified the general public that the 3rd Respondent had applied for a Mining License over part of the cadaster area previously covered by Mayfox Mining Company Limited special prospecting license No. 221. That the Gazette Notice also referred to an application by H-Nuo Kenya Company Limited.

37. The 3rd Respondent states that in early 2022 the AHG Group proposed acquiring the cadaster area from Mayfox through a Kenyan special purpose vehicle, Development Collective Kenya Limited (DCKL), which was incorporated for that purpose. That, Mayfox had held the cadaster area for about 7 years, and in March 2022, AHG Group and Mayfox began commercial negotiations and signed a non-binding Term Sheet dated 23rd March 2022 outlining key commercial terms, with the understanding that they would later execute a Licence Transfer Agreement (LTA).

38. It is urged that in April 2022, AHG Group invested considerable funds towards the proposed acquisition, and between March and August 2022 the parties and their advisors negotiated the LTA to effect the transfer of SPL 221 from Mayfox to DCKL. However, that on 25th August 2022, in an undated letter from Mayfox, DCKL was informed that although SPL 221 had been renewed until 31st January 2017 under the repealed Mining Act, the Minister had allowed licenses such as SPL 221 to run six years beyond that renewal period, meaning the licence would expire on 31st January 2023.

39. That the proposed commercial transaction ultimately did not materialise. The 2nd Respondent rejected Mayfox's renewal application for SPL 221 for lack of requisite documents, confirming that the licence had not been duly renewed and therefore could not be transferred to DCKL. It is the 3rd respondent's case that the licence was subsequently removed from the online mining cadaster system, opening the area to fresh applications.

40. The 3rd Respondent asserts that, from the Director of Mines' affidavit in High Court Judicial Review Misc. Application No. E076 of 2024 (Mayfox Mining Limited v Cabinet Secretary for Mining & 3 Others), the processing of the 3rd Respondent's application was procedural and above board.

41. The 3rd Respondent further states that under Regulation 6(1) of the Fair Administrative Action Rules, 2024, an aggrieved party has six(6) weeks to

institute judicial review proceedings. Consequently, that the Applicant had until 26th June 2024 to challenge the Director's communication of 14th May 2024, but it neither filed proceedings within that period nor sought extension of time.

42. That instead, the Applicant only attempted to participate later when Mayfox filed the previous Judicial Review (Misc. Application No. E076 of 2024) by lodging a joinder Application dated 26th September 2025, thereby relying on proceedings initiated by Mayfox. The 3rd Respondent argues that the Applicant therefore never had enforceable or justiciable rights arising from the Director's communication and cannot now revive rights it never possessed by seeking extension of time.

43. The 3rd Respondent further contends that the Applicant chose to join the earlier proceedings which were withdrawn, as an Interested Party, despite knowing that an Interested Party plays a peripheral role in judicial review proceedings. That under Regulation 9 of the Fair Administrative Action (Judicial Review Procedure) Rules, the Applicant could instead have filed a separate judicial review application for consolidation or sought joinder as a substantive respondent, which would have allowed it to seek substantive reliefs.

44. It is urged that following the collapse of the LTA transaction, the AHG Group decided to apply afresh for a mining licence through the 3rd Respondent. The 3rd Respondent, led by co-director Tarayia Kores, is said to have applied for a

mining licence over the cadaster area formerly covered by SPL 221, which was then open to public applications. It is urged that the application was approved by the Mineral Rights Board, leading to the Gazette Notice and the issuance of the mining licenses to the 3rd Respondent on 18th September 2025.

45. The 3rd Respondent states that both it and the AHG Group have made substantial financial investments in the project, and that with the 2nd Respondent's permission, it mobilised drilling and geology teams and equipment to the cadaster area.

46. Further the 3rd Respondent asserts that between March and April 2025, it spent about USD 230,000, and the total investment has since risen to approximately USD 1,300,000. It is also urged that maintaining teams and equipment at the site costs about USD 100,000 per month, and halting or demobilising operations would result in significant unrecoverable losses and additional costs arising from terminating commitments to deployed drilling and geology teams.

47. The 3rd Respondent further avers that suspending or revoking its licenses would also have serious consequences for the Turkana community, including the indefinite suspension of employment opportunities for unemployed and impoverished residents, the possible withdrawal of the AHG Group's investment from Kenya to other parts of Africa or beyond, and the loss of employment opportunities for thousands of local residents who rely on such

work to support their families. The 3rd Respondent further contends that granting the relief sought would effectively reward a disgruntled applicant who approached the court without disclosing material facts in pursuit of selfish commercial gain.

Submissions

48. The application was canvassed by way of oral submissions made before the court on 12th December 2026. However, the 3rd Respondent also filed skeletal written submissions erroneously dated 11th February 2025 instead of 11th February 2026, which the court has also considered.

49. Mr. Kimathi counsel for the applicant made oral highlights that from the date of the said removal on 14th May 2025, to the date of filing of this matter on 10th December 2025, a period of 18 months had elapsed, and that within that period, the applicant has been in contentious engagement with the Respondents in various ways. It was urged that the delay in filing these proceedings was occasioned by the Applicant's participation in Judicial Review Application No. Misc. E076/2024.

50. That the Applicant herein lodged an objection to the grant of those licenses on 6th May 2025 but the 1st Respondents neither responded to that objection, nor took any action. Counsel also submitted that as at the time, parties were still in court in JR. E076/2024 whose Ruling on its withdrawal was rendered on 6th November 2025 hence the delay had been explained.

51. Counsel reiterated that the application 5455 was made on 10th May 2024 hence it precedes any other applications that were lodged thereafter, for purposes of Section 56 of the Mining Act as regards, first come, first served basis.

52. Further, that the 1st Respondent is in violation of Section 34(4)(5) of the Mining Act and Section 4 of the Fair Administrative Action Act, the said grant is therefore null and void ab initio.

53. He also submitted that the removal of the Applicant's application from the cadre system was irregular and unlawful as evidenced by Annex G.K. 11 & GK 12. That on the alleged empowerment of the 2nd Respondent under Section 20(1) of the Mining Act there was no such provision of law hence he exceeded his powers. Mr. Kimathi stated that the 1st and 2nd Respondents violated the law in their actions against the Applicant.

54. Mr. Munene, counsel for the 1st and 2nd Respondents submitted that the application was in the wrong forum as espoused under Section 157 of the

Mining Act. He submitted that the Section provides that anybody aggrieved by the decision of the Cabinet Secretary has to file an appeal to the High Court.

55. That, the Act having provided for an alternative mode of dispute Resolution mechanism, the instant application offends Section 9(2) of the Fair Administrative Action Act which uses the term “shall” and Section 9(4) which gives an allowance for an exemption on an application by the applicant. He submitted that there was no application for exemption. That the procedure is under Section 155 & 156 of the Mining Act, and that all has not been exhausted.

56. Counsel submitted that the submissions by Mr. Kimathi were to be considered in an appeal and not in the Judicial Review. Further that the three grounds for Judicial Review had not been established to warrant the reliefs sought.

57. Mr. Munyua, counsel for the 3rd Respondent submitted that the Applicant undertook in a consent dated 13th November 2025 not to challenge the decision of 6th November 2025. That the Applicant never challenged the decision of 14th May 2024 until another aggrieved party lodged a Judicial Review case. Counsel urged that the application is brought after an unreasonable delay, and that it was unfair on the part of the 3rd Respondent as litigation could not be conducted piecemeal. He relied on the case of **IEBC vs Maina Kiai**. He reiterated that the application was **res judicata** JR E076/2024.

58. Mr. Munyua submitted that the principle of first come first served cannot apply where the application is premature and that the granting of the Mining licenses to the 3rd Respondent was procedurally done by the 1st and 2nd Respondents. Mr. Munyua further submitted that the action complained of does not breach any fair administrative action. Additionally, that the applicant was notified of the error which was corrected. Counsel submitted that the reliefs sought are not available and to support this position relied on the case of **KNEC vs Geoffrey Gathenji & R vs The National Treasury and Economic Planning ex parte Law Society of Kenya [2025] eKLR**.

59. In a rejoinder, Mr. Kimathi for the applicant submitted that the Mining Act does not mandate parties to engage into the mechanisms under the Act and that Section 157 of the Act only applies to a person who elects to resolve the dispute through the Cabinet Secretary. That Section 9(2) & (4) of the Fair Administrative Action Act does not apply to the circumstances of this case. He also submitted that the consent of 13th November 2025 was about costs in that suit which were awarded to the Interested Party as negotiated to avoid going into the taxation.

60. On joinder of the 3rd Respondent and other parties, it was submitted that Judicial Review was brought against public authorities and any other party interested in the matter can apply to be enjoined.

Analysis and Determination

61. Having carefully considered the pleadings, affidavits and submissions by the parties, this Court is of the view that the following issues arise for determination:

- i. Whether these proceedings are procedurally competent*
- ii. Whether the actions of the 1st and 2nd Respondents in expunging the Applicant's Application No. 5455 from the Mining Cadastre System and subsequently processing and granting mineral rights over the disputed area were lawful, reasonable and procedurally fair under the Mining Act.*
- iii. Whether the Applicant has established grounds for the grant of the judicial review remedies sought.*
- iv. What orders should this Court make*

Whether these proceedings are procedurally competent

62. The 1st Respondent contends that the Applicant ought to have first exhausted the dispute resolution mechanism under section 154 of the Mining Act through the office of the Cabinet Secretary before approaching this Court.

63. The 3rd Respondent contends that the present proceedings are incompetent as they amount to a collateral attack on the ruling delivered on 6th November 2025 in **Mayfox Mining Co. Ltd v Cabinet Secretary for Mining & Others**. It is

argued that the said ruling upheld the Notice of Withdrawal dated 8th August 2025 filed by Mayfox Mining Company Limited and thereby disposed of the issues then before the Court. According to the 3rd Respondent, the doctrines of res judicata, finality of litigation and functus officio preclude this Court, being a court of concurrent jurisdiction, from revisiting matters that were already settled in those proceedings.

64. The 3rd Respondent further argues that the Applicant had participated in the previous judicial review proceedings as an Interested Party and was therefore aware of the nature and scope of those proceedings. It maintains that an Interested Party plays a peripheral role in judicial review proceedings, and that the Applicant had procedural options available to it, including filing a separate judicial review application or seeking joinder as a substantive respondent. That having failed to pursue those options, the Applicant cannot now attempt to revive the dispute through the present proceedings.

65. Additionally, the 3rd Respondent argues that the Applicant's challenge to the Director of Mines' communication dated 14th May 2024 is time-barred under the Fair Administrative Action (Judicial Review Procedure) Rules, 2024, which require an aggrieved party to institute judicial review proceedings within six weeks of the impugned administrative decision. It is urged that

66. The Applicant maintains that the ruling delivered on 6th November 2025 in the earlier proceedings merely addressed the withdrawal of that suit and did not determine the substantive issues relating to the legality of the administrative actions in dispute. Consequently, the Applicant contends that the present proceedings are neither an appeal nor a collateral attack on that decision and are therefore not barred by the doctrine of *res judicata*.

67. The Applicant further argues that judicial review proceedings are properly instituted against the public bodies responsible for the impugned administrative action and that failure to initially join the 3rd Respondent does not render the proceedings defective, as interested parties may be joined at any stage. The Applicant also relies on sections 9(1) and 10(1) of the Fair Administrative Action Act, which allow an aggrieved party to apply for judicial review without unreasonable delay and enjoin courts to determine such applications without undue regard to procedural technicalities. On that basis, the Applicant urges the Court to exercise its discretion to enlarge time and hear the matter on its merits.

68. The 3rd Respondent has also contended that the present proceedings are time-barred under Regulation 6(1) of the Fair Administrative Action (Judicial Review Procedure) Rules, 2024, which requires an aggrieved party to institute judicial review proceedings within six weeks of the impugned administrative action. According to it, the Applicant ought to have challenged the decision of

the Director of Mines' communicated on 14th May 2024 by 26th June 2024 and its failure to do so renders the present proceedings incompetent.

69. However, this Court takes judicial notice that the implementation of some of the Rules made under the **Fair Administrative Action (Judicial Review Procedure) Rules, 2024**, including Rule 6 thereof, was subsequently stayed by the Court in the case of **HCCHRPET/E168/2025 Katiba Institute vs. State Law Office and The Commission on Administrative Justice (Office of The Ombudsman) and 1 Others**. In the circumstances, the strict timelines contemplated under Rule 6 cannot be relied upon to defeat the present proceedings. Consequently, the argument that the Applicant's claim is time-barred solely on the basis of that provision cannot stand.

70. That notwithstanding, this Court must consider whether the present proceedings are otherwise barred by the doctrines of *res judicata*, finality of litigation, or *functus officio* as contended by the 3rd Respondent. It is not in contention that the Applicant had participated as an Interested Party in the proceedings in *Mayfox Mining Co. Ltd v Cabinet Secretary for Mining & Others*. Those proceedings, as has been confirmed by both the Applicant and the Respondents, were terminated following the withdrawal of the suit by Mayfox Mining Company Limited the Applicant therein before the substantive issues raised therein were considered on merit.

71. Section 10 of the Fair Administrative Rules, 2024 provides for Claims which may not be entertained as follows:

10. A claim for judicial review shall not be entertained by the court if the claim directly and substantially in issue—

(a) has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and

(b) has been heard and determined by a court of competent jurisdiction.

72. The above Rule recognizes the doctrine of res judicata which bars the Court from hearing and determining suits which have already been heard and determined fully, by courts of competent jurisdiction, between the same parties or their legal representatives and over the same subject matter.

73. Thus, where a suit is withdrawn before the substantive issues are adjudicated upon, there is no final determination on the merits capable of triggering the bar of *res judicata*. In this case, the ruling delivered on 6th November 2025 merely upheld the notice of withdrawal of suit filed by the Applicant in that matter and did not determine the legality or otherwise of the administrative decisions now challenged before this Court. See **John Florence Maritime Services Ltd &**

**another v Cabinet Secretary Transport & Infrastructure & 3 others
[2021] KESC 39 (KLR).**

74. Similarly, the doctrines of finality of litigation and *functus officio* arise only where a court has conclusively determined the issues before it and on the merits. In the present circumstances, the earlier proceedings were brought to an end by withdrawal and therefore did not result in any determination capable of binding this Court or precluding the Applicant from instituting separate proceedings to challenge the impugned administrative actions.

75. This Court is also mindful that judicial review proceedings are primarily concerned with the legality, procedural propriety and rationality of the decision or action taken by the administrative body. Where a party alleges that a public authority acted outside the powers conferred upon it by statute, the Court retains jurisdiction to interrogate the lawfulness of that action, subject to the applicable statutory framework.

76. On the issue of exhausting mechanisms under Section 154 of the Mining Act, the said section provides as follows:

154. General provisions on dispute resolution

Any dispute arising as a result of a mineral right issued under this Act, may be determined in any of the following manners—

(a) by the Cabinet Secretary in the manner prescribed in this Act;

(b)through a mediation or arbitration process as may be agreed upon by the disputing parties or as may be stated in an agreement;

or

(c)through a court of competent jurisdiction.

77. The above Section provides that any dispute arising as a result of a mineral right issued under the Act may be determined by the Cabinet Secretary in the manner prescribed in the Act, through mediation or arbitration as agreed by the parties, or through a court of competent jurisdiction. The section therefore sets out the various avenues for dispute resolution rather than establishing a mandatory sequential procedure that must first be exhausted by an aggrieved party before that party can approach a court of competent jurisdiction.
78. The use of the word “may” in section 154 further demonstrates that the options provided are permissive rather than obligatory, thereby leaving it to the aggrieved party to elect the appropriate forum for resolution of the dispute. Consequently, I find that the Act itself expressly recognizes the jurisdiction of this Court to determine disputes arising from mineral rights without first requiring recourse to the Cabinet Secretary.
79. Accordingly, the contention by the 1st Respondent that the Applicant was required to first exhaust the process before the Cabinet Secretary is misconceived and unsupported by the statutory framework of the Mining Act.

80. In the circumstances, this Court is not persuaded that the present proceedings constitute a collateral attack on the ruling delivered on withdrawal of suit in the earlier judicial review matter, nor that they are barred by the doctrines of res judicata, finality of litigation, or functus officio. This Court therefore finds that the Applicant's claim is procedurally competent and properly before this Court.
81. Having found that the present proceedings are properly before this Court, the next issue for consideration is whether the impugned administrative actions complained of by the Applicant were lawful, rational or procedurally fair under the mining Act.

Whether the actions of the 1st and 2nd Respondents in expunging the Applicant's Application No. 5455 from the Mining Cadastre System and subsequently processing and granting mineral rights over the disputed area were lawful, reasonable and procedurally fair under the Mining Act.

82. The Applicant's case is that on 10th May 2024 it lodged Application No. 5455 on the Mining Cadastre System seeking the grant of a prospecting licence over the disputed area. According to the Applicant, the Cadastre System accepted the application and assigned it a reference number, which in its view was confirmation that the area was available for allocation. The Applicant contends that it uploaded all the required documents and made the prescribed payments

to the Ministry of Mining, Blue Economy and Maritime Affairs as required by law.

83. The Applicant therefore maintains that the subsequent letter dated 14th May 2024 from the Director of Mines stating that its application had been erroneously accepted was unlawful. It argues that the expunging of its application from the Cadastre System and the reinstatement of Special Prospecting Licence No. 221 in favour of Mayfox Mining Company Limited was illegal and beyond the powers of the Director of Mines.
84. The Applicant further contends that once the Mineral Rights Board had recommended the removal of Mayfox's application and the Cabinet Secretary had approved that removal, the relevant statutory processes under the Mining Act, 2016 had been concluded and the area had become legally available for fresh applications.
85. The Applicant additionally argues that the Mining Act adopts a first-come-first-served principle in the consideration of applications for mineral rights. It therefore contends that its application ought to have been considered before the later applications lodged by AHG Metals Kenya Limited and H-Nuo Kenya Company Limited. According to the Applicant, the subsequent allocation of the disputed area to those entities raises serious concerns regarding the integrity of the mineral rights administration process.

86. The 1st and 2nd Respondents, however, take a different view. They explain that Special Licence No. 221 was initially issued on 3rd February 2005 and subsequently transferred to several entities before ultimately being held by Mayfox Mining Company Limited. The Respondents state that following the enactment of the Mining Act, 2016, existing mineral rights were subject to the transitional provisions of section 225 of the Act, and Mayfox had applied for a prospecting licence under the new legal framework.
87. According to the Respondents, the removal of Mayfox's licence from the Online Mining Cadastre System occurred due to an administrative or systemic oversight during an ongoing review process. They state that this error created the impression that the area was vacant, thereby enabling the Applicant to lodge Application No. 5455.
88. That upon discovering the error, the Director of Mines invoked the corrective powers under sections 193(a) and (b) of the Mining Act to rectify the register and reinstate Mayfox's application. The Applicant was thereafter informed by the Director's letter dated 14th May 2024 that the area had appeared vacant due to a system error and that its application could not confer any rights over the area.
89. The Respondents further contend that once Mayfox's application was subsequently rejected after due consideration by the Mineral Rights Board and

approval by the Cabinet Secretary, the area was properly opened for fresh applications. They maintain that the applications by AHG Metals Kenya Limited and H-Nuo Kenya Company Limited were thereafter processed in accordance with the law and the applicable procedures governing the allocation of mineral rights.

90. The 3rd Respondent similarly maintains that the processing of the subsequent applications and the grant of the mining licenses were undertaken lawfully and in accordance with the applicable statutory framework. It further contends that the Applicant's claim is founded on a technical error that was lawfully corrected by the relevant authorities and which could not create any enforceable rights in its favour.
91. The question to be resolved in these circumstances is whether the Director of Mines acted within the powers conferred under the **Mining Act** in expunging the Applicant's Application No. 5455 from the Mining Cadastre System and reinstating **Special Prospecting Licence No. 221 in favour of Mayfox Mining Company Limited**, and whether the subsequent processing of mineral rights over the disputed area complied with the law.
92. Sections 193(a) and (b) of the Mining Act which the 2nd Respondent relies on to support the reinstatement of the revoked mining rights belonging to Mayfox Mining Company Limited states as follows;

“193. Power to correct register

An authorised officer shall, where—

(a) an error is made in the register; or

(b) a matter is incorrectly entered or recorded in the register, notify the person affected by the error and promptly rectify the error by correcting the error in the register.

93. The material placed before this Court shows that the Mineral Rights Board, at its 72nd meeting held on 13th February 2024, considered the application by Mayfox Mining Company Limited and recommended its rejection for failure to meet the minimum statutory requirements, including the failure to submit technical exploration reports dating back to 2005. A letter dated 4th March 2024 was thereafter issued requiring the company to submit the requisite documentation within fourteen days, failing which appropriate action would be taken.

94. It is not disputed that Mayfox Mining Company Limited did not provide the requested documentation. Consequently, on 9th April 2024 the Mineral Rights Board recommended the removal of the application from the Mining Cadastre System, and that recommendation was approved by the Cabinet Secretary on 9th May 2024. Upon that approval, the statutory process contemplated under sections 32 and 33 of the Mining Act had run its course, with the effect that the

mineral right previously held by Mayfox Mining Company Limited stood revoked.

95. The Applicant subsequently lodged Application No. 5455 on 10th May 2024 through the Online Mining Cadastre System. According to the Applicant, the system accepted the application and assigned it a reference number, indicating that the area was available for allocation. However, by a letter dated 14th May 2024 the Director of Mines informed the Applicant that the application had been accepted in error and proceeded to expunge it from the system while reinstating Special Prospecting Licence No. 221 in favour of Mayfox Mining Company Limited.
96. The Respondents contend that this action was taken pursuant to the corrective powers conferred upon the Director of Mines under section 193(a) and (b) of the Mining Act, which permits the correction of errors or omissions in the Mining Cadastre where they result in an inaccurate or unlawful entry. The question that arises is whether that provision empowered the Director to restore a mineral right that had already been revoked following the recommendation of the Mineral Rights Board and the approval of the Cabinet Secretary.
97. In this Court's understanding, section 193 of the Mining Act is intended to allow the correction of clerical or administrative errors in the register so as to ensure that the cadastre accurately reflects the legal status of mineral rights. The

provision cannot reasonably be interpreted as conferring authority upon the Director of Mines to reverse or undo a substantive decision arrived at through the statutory process prescribed under the Act. Once the Mineral Rights Board had recommended removal of Mayfox's application and the Cabinet Secretary had approved that recommendation, the relevant administrative process had been concluded. The Director of Mines could not purport to correct the register by reversing the decision already made, procedurally.

98. In those circumstances, THIS Court finds that the Director of Mines lacked statutory authority to reinstate Special Prospecting Licence No. 221 or to expunge the Applicant's application on the basis of a purported administrative error. The impugned action therefore fell outside the powers conferred on the Director of Mines by the Mining Act and was *ultra vires*.
99. It follows from the foregoing analysis that the decision to expunge the Applicant's Application No. 5455 from the Mining Cadastre System on the basis of a purported administrative error was made without lawful authority.
100. This Court is however mindful that the mineral rights over the disputed area were subsequently processed and granted to other entities after the area was later reopened for applications.
101. In exercising its jurisdiction in judicial review, the Court is concerned primarily with the legality, rationality and procedural fairness of administrative action

rather than the determination of private rights or the substitution of its own decision for that of the relevant statutory authority, except in specific cases having regard to the circumstances of each case, as was held by the Supreme Court in the **Dande & 3 Others Vs. Inspector General, National Police Service & 5 Others [2023] KESC 40 (KLR)** and **Saisi & 7 others v Director of Public Prosecutions & 2 others Petition 39 & 40 of 2019; [2023] KESC 6 (KLR) (Consolidated)** cases.

102. The Court in **Pastoli Limited v Kenya Pipeline Company & Another [2018] eKLR**, reiterated that judicial review examines the legality, procedural propriety, and rationality of administrative decisions, without substituting the Court's judgment for that of the authority, as that would amount to an appeal.
103. It is also important to note that the Mining Cadastre System serves as the official public register for mineral rights and applications. Members of the public are entitled to rely on the integrity and accuracy of that system when lodging applications. Any administrative action that arbitrarily removes a duly lodged application undermines the certainty and transparency required in the administration of mineral rights and is inconsistent with the principles of legality and procedural fairness governing public decision-making, as entrenched under Article 47 of the Constitution and the Fair Administrative Action Act.

104. In **Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others** [2016] KECA 729 (KLR) it was held that:

“The Constitution of Kenya in particular Article 47 makes provision for fair administrative action. Section 4 (3) (b) of the Fair Administrative Act stipulates that 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 an opportunity to be heard and to make representations in that regard. These provisions are given effect by the Fair Administration Act. Section 4 (3) (g) of the Act requires the person affected to be given information, materials and evidence relied upon in making the decision or taking the administrative action.”

105. Accordingly, this Court finds that the decision of the 2nd Respondent to expunge the Applicant’s Application No. 5455 from the Mining Cadastre System was unlawful and was made without statutory authority. On what appropriate relief this Court should make in such circumstances, a declaration to that effect, would be appropriate while the claim for damages arising from the impugned administrative action may be pursued by the Applicant in separate appropriate proceedings.

106. This Court further notes that on 20th March 2025, the 1st Respondent issued a notice of intention to grant a mining licence to AHG Metals Kenya Limited (Application Ref. ML/2025/0237), which was published in the Kenya Gazette on 28th March 2025. The Applicant lodged an objection to the intended grant on 6th May 2025, but the objection was not responded to by the 1st or 2nd Respondents, illustrating a procedural lapse given that section 34 of the Mining Act requires objections to be considered before the grant of a mineral right. The failure to address the objection lodged by the applicant further highlights the administrative unfairness surrounding the handling of the Applicant's application.

107. Additionally, this Court observes that a moratorium on the issuance of certain new mineral rights had previously been imposed by the Cabinet, which moratorium was partially lifted in October 2023. By the time the Applicant submitted its application on 10th May 2024, the moratorium no longer prevented new applications and the therefore, the Applicant was entitled to rely on the Mining Cadastre System in lodging its application.

Whether the Applicant has established grounds for the grant of the judicial review remedies sought.

108. The final issue for determination is whether the Applicant has satisfied the legal threshold for the grant of the judicial review remedies sought in these proceedings. Judicial review remedies are discretionary and are granted where an applicant demonstrates that a public authority acted illegally, irrationally, or in breach of the rules of procedural fairness.
109. As established in the preceding analysis, the decision by the 2nd Respondent to expunge the Applicant's Application No. 5455 from the Mining Cadastre System and to reinstate Special Prospecting Licence No. 221 in favour of Mayfox Mining Company Limited was undertaken without statutory authority. The Respondents relied on section 193 of the Mining Act to justify the impugned action, however, that provision only permits correction of clerical or administrative inaccuracies in the Cadastre. The section does not authorize reversal of a substantive administrative decision made through the statutory process involving the Mineral Rights Board and the Cabinet Secretary.
110. In these circumstances, this Court is satisfied that the impugned administrative action was *ultra vires* the powers conferred upon the 2nd Respondent and was therefore unlawful. The Applicant has demonstrated sufficient grounds for the Court to intervene under its supervisory jurisdiction over administrative action as contemplated in Article 165(6) of the Constitution, consistent with established legal principles.

111. That said, the grant of judicial review remedies must take into account the practical consequences of the orders sought and the rights of third parties who have relied on the impugned administrative action. The evidence placed before this Court shows that mineral rights over the disputed area were subsequently processed and granted to other entities. Judicial review is primarily concerned with correcting unlawful administrative conduct rather than conferring substantive benefits upon an applicant or disturbing rights that have already crystallized to other beneficiaries. As was stated in the case of **Kenya National Examination Council v Republic; GGN & 9 others (Ex parte) (Civil Appeal 266 of 1996) [1997] KECA 58 (KLR) (21 March 1997) (Judgment)** that:

“26. Now, if a party applies for a licence under section 8 and the licensing court simply refuses or neglects to consider and determine the application such a party would be entitled to come and ask the High Court for a mandamus, and if the High Court is satisfied that the licensing court has simply refused or neglected to consider and determine the “application” the High Court would be entitled to issue an order of mandamus, compelling the licensing court to consider and determine the application as it is bound by the law to do so. The High Court would, in those circumstances, be compelling, through the remedy of mandamus, the licensing court to

perform its public duty imposed on it by section 4(1) of the Liquor Licensing Act, and the public duty imposed by that section is the consideration and determination of the application for a licence.”

112. In this case, licenses have already been given to other entities who are already engaged in the prospecting exercise. It would be inappropriate to grant orders compelling the allocation of a mineral rights to the Applicant or to invalidate or quash the decision granting licenses which are already issued to third parties who were not responsible for the administrative error. Such orders would exceed the proper scope of judicial review and risk creating uncertainty in the administration of mineral rights.

113. This Court, however, finds that the Applicant is entitled to relief in the nature of a declaratory order affirming that the decision of the 2nd Respondent to expunge Application No. 5455 from the Mining Cadastre System was unlawful and made without statutory authority. A declaration in these circumstances appropriately vindicates the Applicant's right to lawful administrative action while preserving stability in the mineral rights regime.

114. The claim for damages or compensation arising from the impugned administrative action requires proof of loss and quantification of damages, matters which fall outside the scope of judicial review. The Applicant is

therefore at liberty to pursue such claims before the appropriate Division of the High Court should it wish to do so.

115. As I conclude, in view of my findings in this case, I find it necessary to point out that administrative authorities are bound at all times to act strictly within the confines of the law and in accordance with the principles of fairness, transparency and procedural propriety. Any exercise of administrative function or power that departs from the prescribed legal framework, especially where such decision or action has the effect of altering or reallocating rights such as a mining prospecting licence in favour of another party without lawful justification, inescapably gives rise to a reasonable trepidation of impropriety and this apprehension undermines public confidence in the integrity of public institutions.

116. Administrative bodies must therefore refrain from conduct that may suggest favoritism, bias or corrupt practice to the detriment of parties who have acted in compliance with the law. The rule of law requires that statutory powers be exercised only for the purposes for which they were conferred and in a manner that is lawful, rational and procedurally fair. Any deviation from these principles not only prejudices legitimate investors but also exposes such administrative actions to judicial scrutiny and invalidation by courts.

117. Given the economic significance of mineral resources and the regulatory framework governing their exploitation, it is imperative that authorities entrusted with the administration of mining licences in the country act with the highest degree of legality, transparency and impartiality. The allocation, alteration or reassignment of a mining prospecting licence is a matter regulated by statute and must strictly follow the procedures prescribed under the law.

118. In the end, this the Court makes the following orders:

- a. A declaration is hereby issued that the decision of the 2nd Respondent removing the Applicant's application for a prospecting licence, being Application No. 5455, from the Mining Cadastre System was unlawful, ultra vires, and therefore null and void ab initio.*
- b. The prayer for an order of mandamus compelling the 1st and 2nd Respondents to reinstate the Applicant's application for a prospecting licence No. 5455 on the Mining Cadastre System is declined for reasons advanced in this judgment.*
- c. The prayer for an order of certiorari to quash the decision of the 1st and 2nd Respondents granting Mining Licences No. ML/2025/0212 and ML/2025/0237 to AHG Metals Kenya Limited is declined for reasons stated in this judgment.*

- d. The prayer for an order of stay of the operation and validity of Mining Licences No. ML/2025/0212 and ML/2025/0237 issued to AHG Metals Kenya Limited is declined for reasons given in this judgment.*
- e. Each party shall bear its own costs of the application.*
- f. Orders accordingly.*

Dated, Signed and Delivered virtually at Nairobi this 9th Day of March, 2026

R.E. ABURILI

JUDGE