

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC JR. NO. E005 OF 2024

REPUBLIC-----

-----APPLICANT

VERSUS

THE ATTORNEY GENERAL-----1ST
RESPONDENT

THE CABINET SECRETARY, MINISTRY OF
LANDS HOUSING & PHYSICAL PLANNING-----2ND
RESPONDENT

THE CHIEF LAND REGISTRAR-----3RD
RESPONDENT

NATIONAL LAND COMMISSION-----4TH
RESPONDENT

COUNTY LAND ADJUDICATION AND SETTLEMENT
OFFICER
TRANS-NZOIA-----5TH
RESPONDENT

DIRECTOR OF LAND ADJUDICATION &
SETTLEMENT SCHEME-----6TH
RESPONDENT

LAND SETTLEMENT FUND
BOARD OF TRUSTEES-----7TH
RESPONDENT

GEOFFREY MOSIONG KIRUI-----8TH
RESPONDENT
(AND 151 OTHERS)

AND

**EX PARTE APPLICANT-----LOSHAKEP
CHUMEL WILSON**

***(Suing on behalf of the residents of
Chepchoina Phase 111 in Trans Nzoia County)***

JUDGMENT

A. THE EXPARTE APPLICANTS CASE

1. The exparte applicant approached this court through a statement of facts, a verifying affidavit, and a notice of motion dated **3/10/2024**. He describes himself in paragraph one of the statement of facts as a Kenyan citizen of sound mind and disposition.
2. The prayers sought are:
 - (a) **An order of *certiorari* to bring into this court and to quash the decision arrived at in the meetings held on 11/6/2021, culminating in the 6th respondent's decision to confirm and or approve the vetting committee in the Chepchoina Phase III Settlement Scheme, hereinafter the Scheme.**
 - (b) **An order of *certiorari* to bring into this court and to quash the decision of the meetings held on 13/4/2022 by the Scheme Subcounty Selection Committee, leading to the publication of the list of beneficiaries of the Scheme compiled as of 11/8/2023.**
 - (c) **An order of *mandamus* compelling the 6th respondent to revoke the confirmation and**

approval of the vetting committee to the Scheme.

(d) An order of prohibition against the 7th respondents stopping it from considering, approving, verifying, publishing, and or initiating the process of settlement of squatters in the Scheme as per the list of beneficiaries already identified for allocation.

(e) An order of prohibition against the 3rd respondent, stopping it from issuing, allocating, and or opening a register in each of the parcels in favour of the 7th respondent as per the list of beneficiaries already identified for allocation.

- 3.** The application is supported by grounds on its face, an affidavit in support sworn by Loshakep Chumel Wilson on **3/10/2024**, and a statement of facts dated **3/10/2024**.
- 4.** The salient facts and grounds that the exparte applicant relies upon are captured in paragraphs **9 - 26** of the statement of facts. The description of the applicant is captured in paragraph **1** thereof. He states that he is a Kenyan male adult only.
- 5.** The exparte applicant in the primary pleadings, out of which he sought and obtained leave to commence these proceedings, did not state any other capacity in which he brings the proceedings. Equally, after the

leave stage, the exparte applicant did not seek and obtain leave of court to bring these proceedings and to file the notice of motion in a representative capacity on behalf of any person, entity, or group, under **Order 1 Rule 8** of the Civil Procedure Rules. Similarly, the exparte applicant at the leave stage or thereafter did not file any authority to sue and or bring these proceedings on his behalf and that of any other group or entity.

- 6.** It is averred that on **11/6/2021**, a purported public meeting was held in the Scheme, where certain persons were purportedly elected before being confirmed as members of the Scheme's Vetting Committee, in clear contravention of the law and regulations set out in **Section 134** of the Land Act and **Section 33** of the Land Regulations **2017**.
- 7.** The exparte applicant avers that upon the purported election of the vetting committee, the 6th respondent vide a letter dated **8/10/2021** confirmed and or approved the committee contrary to the law cited above. The exparte applicant avers that on **13/4/2022**, the Vetting Committee held its initial meeting and purportedly elected **24** members, who then proceeded to elect their chairman.

8. Further, the exparte applicant avers that as per **Section 134(4)** of the Land Act, the 1st respondent was supposed to select a committee comprised of defined members and not in the manner the purported committee was selected or elected in the meeting held on **13/4/2022**, including the appointment of an extra person to represent communities such as the Luhya, Turkana, Sabaot/Ogiek, Pokot, and the minority.
9. The exparte applicant avers that the 1st and 6th respondents' failure to adhere to the law on the selection, approval, and appointment of the vetting committee warrants a finding that the constitution of the committee members is null and void. Further, the exparte applicant avers that the subsequent decisions, resolutions, and actions made and or passed during the meetings of the committee upon the appointment were also null and void.
10. The exparte applicant avers that the improperly constituted committee, in line with **Rules 34(1)** and **35(1)** of the Land Regulations, **2017**, also failed to undertake any public participation towards the compilation of the list of beneficiaries as of **11/8/2023**, which is replete with erroneous entries

or irregularities, to include people who are not squatters or displaced person(s), and to include names sharing similar identities or two persons sharing the same parcel of land contrary to **Rules 34(2) and 41(5)** of the Land Regulations **2017**.

- 11.** The exparte applicant avers that the list of beneficiaries compiled failed to take cognizance of the *bona fide* owners of the Scheme and instead comprised persons who are not entitled to be included, which in effect disenfranchises the genuine indigenous persons of the area, within the meaning of **Rules 34(b) (1)** of the Regulations **2017**.
- 12.** The exparte applicant avers that there was no publication of the impugned list of beneficiaries or the register within **30** days in the manner stipulated under **Rule 38(1)** of the **2017** Regulations. As a result of non-publication, the exparte applicant avers that at the moment, there are members of the public who are purporting to have received letters of offers, yet there was no balloting process conducted in public or at all, as provided under **Rule 37(a)** of the Regulations **2017**.
- 13.** The exparte applicant avers that in view of the foregoing, there has been tension on the ground,

which is brought by some members of public who are acting on the strength of the said letters of offer, trespassing onto parcels of land already occupied by over **700** households, making up the members of the Scheme, even though the impugned letters of offer were obtained or issued unprocedurally.

- 14.** The exparte applicant avers that the tension has been exacerbated by the fact that persons who have the said letters of offer have commenced selling off their purported parcels of land to unsuspecting purchasers, contrary to **Section 134(7)** of the Land Act. The exparte applicant avers that unless the court intervenes and grants the reliefs sought, he will continue to be frustrated in his quest to ensure justice is served.
- 15.** In the verifying affidavit, the exparte applicant, at paragraph **1**, does not state his interest in the matter, nor does he introduce his capacity as suing on behalf of anyone else. The authority to act or sue on behalf of any aggrieved squatters, landless persons, or beneficiaries is not mentioned or attached to the said affidavit, sworn on **27/9/2024**.
- 16.** Further, the exparte applicant in the verifying affidavit rehearses the grounds set in paragraphs **9 -**

26 of the statement of facts. As part of his evidence, he has attached as exhibits a letter dated **8/10/2021**, minutes for the meeting held on **13/4/2022**, a list of beneficiaries, and a summary including the names of persons illegally included as annexure marked **LCW-(1), (3), and 3(a)** respectively.

17. After service with the notice of motion, the 1st, 2nd, 3rd, 5th, 6th, and 7th respondents entered an appearance by a notice of appointment dated **14/10/2024**, through Winnie Chelangat, Principal State Counsel.

18. The 4th respondent is represented by Obino Eunice Advocates, who filed grounds of opposition and written submissions dated **3/4/2025**, that the notice of motion offends **Order 53** of the Civil Procedure Rules and does not satisfy the grant of the reliefs sought. Reliance was placed in **Republic -vs- Principal Secretary, Ministry of Internal Security & Ex parte Schon Noorani & Another [2018] eKLR.**

19. The exparte applicant also relies on a further affidavit sworn on **10/2/2025**, stating that there was no official documentation filed by the 1st - 7th

respondents, as regards the setting up of the Scheme.

- 20.** The exparte applicant, as regards **Kitale ELC No. 2 of 2014**, deposed that the said case, though it was over Chepchoina Phase II and not Phase III, was not litigated upon. The exparte applicant insisted that the purported allocation of **970** plots in an illegitimate process *ab initio* was a product of a systematic illegality or improprieties, as alleged, generally and in particular, since the law does not contemplate any vetting of proposed subcounty selection committee members.
- 21.** Following the ruling dated **29/10/2025**, the 6th respondent's replying affidavit, sworn on **27/9/2025**, was struck out with costs for being filed out of time, without leave, and for non-service on the exparte applicant.
- 22.** Further, following the application dated **23/7/2025**, **152** applicants represented by Geoffrey Mosiong Kirui through an authority dated **23/7/2025** joined the proceedings as respondents.

B. RESPONDENTS RESPONSE

- 23.** The 9th to the 161st respondents, hereinafter the **152** respondents, oppose the notice of motion dated

3/10/2024 through a replying affidavit sworn by Geoffrey Mosing Kirui on **27/11/2025**. It is deposed that the land for Chepchoina Settlement Scheme was acquired by the Settlement Fund Trustees from the Agricultural Development Corporation, for purposes of settling squatters and other landless Kenyans, as Parcel **L.R. No. 8026**, measuring **7,385** acres, out of which **4,385** acres were allocated through Chepchoina Settlement Scheme Phase I, leaving a balance of **3,000** acres, forming part of Chepchoina Settlement Scheme **III**.

- 24.** The **152** respondents depose that the process adopted in the Scheme has been lawful, legal, procedural, and in adherence with the guidelines, generally and particularly, **Sections 134** and **135** of the Land Act, Rules **32, 33, 34, 35, 36, 37,** and **38** of the Land Regulations **2017**.
- 25.** The **152** respondents depose that the entire process of allocation leading to the issuance of letters of allotment was inclusive, transparent, and free of any form of discrimination.
- 26.** Further, the **152** respondents depose that, through the community forums and public notices, members of the community were informed in **April 2021** of

the first public baraza, which was to be held on **11/6/2021**.

- 27.** The **152** respondents depose that owing to the adequate notice, mobilisation, and choice of venue, the attendance was impressive, as shown in the annexed minutes and photographs of the meeting at the chief's office on **11/6/2021**, annexed as **MKG-(1)** and **2(a)-(g)**, respectively.
- 28.** The **152** respondents aver that, informed by past experience during the Chepchoina Settlement Scheme Phases I & II, members of the public chose persons amongst themselves representing different interested groups to be observers and or monitors during the process of vetting to ensure fairness, transparency, and credibility, who were not part of the Sub-County Selection Committee.
- 29.** The **152** respondents depose that to ensure that information reached every corner of the scheme, another public baraza was held on **10/11/2021** at Last Gate, whose attendance was admirable as per minutes attached as annexure marked **MKG-(3)**.
- 30.** The **152** respondents depose that to pave the way for the exercise, and in compliance with **Section 134 (4)(1)** of the Land Act, the area Member of

Parliament nominated **4** persons as per a letter dated **15/11/2021**, attached as annexure **MKG-(4)**.

- 31.** The **152** respondents depose that on **4/11/2021**, the list of the proposed selection committee was forwarded to the 2nd respondent as per annexure marked **MKG-(5)**, who in compliance with **Section 134(4)(a-h)** of the Land Act, appointed the Endebess Sub-County Selection Committee to vet the applicants in compliance with the law as per annexure marked **MKG-(6)**.
- 32.** Further, the **152** respondents depose that after the vigorous vetting of the applicants, **970** applicants were successful and were subsequently invited for balloting on **31/7/2023**. The **152** respondents depose that during the balloting held on **31/7/2023**, there was full public participation, where the list of the beneficiaries was conspicuously displayed and read out to the members of the public, in the presence of over **1,500** interested parties, including the area Member of Parliament and local leaders.
- 33.** The **152** respondents depose that the successful applicants were later issued with allotment letters, and a majority have accepted the offer by tendering the requisite payment as per the annexed bundle of

allotment letters and their respective receipts marked **MKG-(6)**.

C. WRITTEN SUBMISSIONS

- 34.** The proceedings herein were disposed of through oral and written submissions. The 1st - 9th respondents, save for the 4th respondent, did not file any written submissions.
- 35.** The exparte applicant relies on written submissions dated **24/3/2025**, **28/11/2025**, and a supplementary one dated **2/12/2025**, isolating five issues for determination.
- 36.** On whether the remedies sought are merited, the exparte applicant submits that the application has demonstrated that there were procedural improprieties in the lead up to the impugned actions and decisions complained of, namely:-
- (i) The unlawful constitution of the vetting and Subcounty Selection Committee through a public meeting held on **11/6/2021**, and the confirmation of the same by the 6th respondent, yet the said process is solely vested with the 2nd respondent, under **Section 134** of the Land Act and **Section 33(1)** of the Land Regulations, **2017**.*
 - (ii) There exists no substantive and or procedural law providing for the creation of appointment and confirmation of a vetting committee, through a public meeting by the 6th respondent.*

Reliance is placed on **Peninah Nadako Kiliswa -vs- Independent Electoral & Boundaries Commission & 2 others [2015] eKLR and Attorney General -vs- The Commission on Administrative Justice [2024] KECA 1157 KLR.**

(iii) Lack of procedural compliance in the appointment of the Subcounty Selection Committee members. It is submitted that during the purported selection on **13/4/2022**, extra members representing specific communities were included, yet there is no such provision under **Section 134(4)** of the Land Act. In this case, the *exparte* applicant submits that only the 2nd respondent has the mandate to appoint the members, and in this case, the respondents have not provided any documentation that **Section 134(4)** of the Land Act was complied with.

(iv) The chairperson of the Committee, instead of being appointed by the members at their first sitting, was proposed and seconded, contrary to **Section 134(4)** of the Act under paragraphs **(e), (f), (g), and (h).**

In view of non-compliance with the law on the constitution of members of the Selection Committee, the *exparte* applicant submits that the decisions, resolutions, and actions made and or passed in the subsequent meetings upon their appointment are in *vacuo*, since the committee itself was not properly and legally constituted in tandem with **Section 35(1)** of the Land Regulation, **2017**. Reliance is placed on **Republic -vs- Public Procurement**

Administrative Review Board & Others Ex parte; Rongo University [2018] eKLR.

(v) Breach of public participation requirements. The exparte applicant submits that public participation, being the cornerstone of governance, under **Article 10** of the Constitution, and **Section 34** of the Land Regulations, **2017**, was not complied with, since the process leading to the compilation of the beneficiaries list lacked transparency and was riddled with irregularities, including; errors in duplication of identification card numbers, omission of bona fide members indigenous to the area, sharing of one parcel of land and lack of publication of the list by the 7th respondent within **30** days as provide under **Section 38(1)** of the Land Regulations, **2017**. Reliance is placed on **Mui Coal Basin Local Community & Others -vs- Permanent Secretary Ministry of Energy & Others [2015] eKLR.**

(vi) Procedural flaws in allocating settlement parcels. The exparte applicant submits that, whereas **Section 37** of the Regulations **2017** stipulates that a balloting process be used, there is no evidence that the process was conducted. Instead, letters of offer were issued arbitrarily, creating undue tension on the ground, including trespass and land disputes.

37. Further, the exparte applicant submits that though **Section 134(7)** of the Land Act prohibits the sale of allocated parcels in settlement schemes, the recipients of the irregularly issued letters of offer commenced such sale as per the further supporting

affidavit. Equally, the exparte applicant submits that there are non-members who did not ballot but have received letters of offer, contrary to **Section 34(a)** of the Regulations **2017**, creating tension among the occupants. Reliance is placed on **Republic -vs- National Land Commission & 2 others; Joyjoa Clearing & Forwarding Limited [2022] KEELC 2552 (KLR) (12 July 2022) (Judgment).**

- 38.** The exparte applicant urges the court, due to highlighted procedural and substantive irregularities, to find that there were illegalities and procedural improprieties incapable of conferring power to the illegally constituted committee whose resolutions, decisions, and actions are null, to be capable of conferring rights or imposing obligations on them. Reliance is placed on **Republic -vs- National Land Commission; African Inland Church & 3 others (Interested Parties); Mbindyo (Exparte Applicant) [2024] KEELC 13319 (KLR),** citing with approval **Pastoli -vs- Kabale District Local Government Council & Others [2008] 2 EA 300.**
- 39.** The exparte applicant submits, as regards the replying affidavit of the **152** respondents at paragraph **14**, that the mere presence of observers

contradicts the letter dated **8/10/2021**, as the law does not provide for a vetting committee. The exparte applicant terms the minutes of **11/6/2021** and **12/4/2022** as amounting to an unauthorised election contravening the law.

40. Further, the exparte applicant submits that paragraphs **11, 12, 12, and 15** of the **152** respondents' replying affidavit contain no evidence of notices, agendas, and discussions. The exparte applicant terms annexures marked **MKG 2(a-d)** as inadmissible in law. The exparte applicant submits that the letter dated **18/11/2021**, forwarding the names to the 2nd respondent, was otiose and of no legal consequence for the author, who is a County Land Adjudication & Settlement Officer who lacks the mandate unless it was written by the County Commissioner under **Section 33(3)** of the Land Regulations, **2017**.

41. The exparte applicant terms paragraph **9** of the **152** respondents' replying affidavit, mentioning the Member of Parliament's letter, suspect otherwise the meeting of **13/4/2022** predated the purported appointment by the internal memo.

- 42.** The ex parte applicant submits that the **152** respondents' reliance on community representatives as observers is strange to **Section 33(1)** of the Regulations, **2017**.
- 43.** The ex parte applicant refutes the assertion by the **152** respondents at paragraph **20** of the replying affidavit, given that **Section 38** of the Regulations requires publication of the list and not reading the names publicly. The ex parte applicant submits that the respondents acted against **Articles 10** and **47** of the Constitution, as read together with **Sections 4-5** of the Fair Administrative Action Act.
- 44.** As to annexures **MKG-2(a-d)**, in the **152** respondents' affidavit, the ex parte applicant submits that they refer to events irrelevant to Phase **III**. As to the beneficiaries list, the ex parte applicant submits that pages **142, 143, 187, 188, 189, 190, 233, 333,** and **334** of the **152** respondents' affidavit confirm the sale of land contrary to **Section 134(7)** of the Land Act.
- 45.** The ex parte applicant in the supplementary affidavit dated **2/12/2025** submits that a settlement scheme cannot operate before having been set up, in compliance with **Section 32** of the Land Regulations,

2017. It is submitted that unless there was compliance with Sub-Regulation **(1)-(5)** and Regulations No. **32(6), (7)** and **(8)**, the scheme does not exist in law.

- 46.** The exparte applicant submits that the **152** respondents have attached no documentation evidencing the identification, resolution, acquisition, preparation of a base map, plan, survey, geo-reference, cadastral plan, map, and area list which were forwarded for the registration, for there to be a properly constituted settlement scheme. Therefore, the exparte applicant submits that all the actions taken in relation to the purported scheme, including the formation of the committee, identification of beneficiaries, compilation of lists, and issuance of letters of offer, are ultra vires, null, and void *ab initio*.
- 47.** The exparte applicant submits that the failure to register the scheme violates the principles of law and fair administrative action under **Articles 2** and **47** of the Constitution. Reliance is placed in **Attorney General & Another -vs- The Commission of Administrative Justice [2024] KECA 1157 [KLR]**.

- 48.** The **152** respondents rely on written submissions dated **3/12/2025**, isolating three issues for courts determination. It is submitted that the judicial review is not pleaded with precision, as held in **Anarita Karimi Njeru -vs- The Republic [1976-1980] KLR**, and **Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Others [2013] KECA 445 [KLR]**.
- 49.** The **152** respondents submit that **Sections 134** and **135** of the Land Act were fully complied with as regards the constitution of the Sub-County Selection Committee, going by the internal memo dated **13/5/2022**, and minutes of **11/6/2021** and **13/4/2022**.
- 50.** The **152** respondents submit that the foregoing shows that there was substantial compliance with the law, and any irregularities thereof did not seriously affect the outcome of the entire process. Reliance is placed on **Raila Odinga & Another -vs- Independent Electoral and Boundaries Commission & Others [2014] eKLR**.
- 51.** The **152** respondents submit that there is a presumption that all acts done by a public officer have been lawfully done and that all procedures have

been duly followed. In this case, the *exparte* applicant has not rebutted the presumption by cogent, clear, and uncontroverted evidence. Reliance is placed on **Chief Land Registrar & Others -vs- Nathan Tirop Koech & Others [2018] eKLR.**

D. ISSUES FOR DETERMINATION

52. The issues calling for my determination are:

- (1) If the *exparte* applicant has disclosed his capacity and interest in instituting these proceedings.***
- (2) If the *exparte* applicant sought leave to join other applicants or bring the proceedings in a representative capacity.***
- (3) If the *exparte* applicant has in his pleadings and evidence alluded to any known, bona fide, and genuine grievances of the residents of the settlement scheme.***
- (4) If the *exparte* applicant filed the application within the set timelines to be entitled to the writ of certiorari.***
- (5) If the *exparte* applicant has met the ingredients to be entitled to the reliefs sought.***
- (6) What is the order as to costs?***

E. DETERMINATION

53. *Locus standi* was defined in **Alfred Njau & 5 Others -vs- City Council of Nairobi Civil Appeal No. 74 of 1983 [1983] KECA 56 [KLR] [28th June 1983] (Judgment)**, as the capacity to sue, or the right to

appear in a court. The court said that the threshold in an application for judicial review is sufficient interest, which would found the necessary standing for the purpose of applying for prerogative orders. The court said that the requirement of sufficient interest was an important safeguard to prevent people from running to the courts to challenge the actions of local authorities all over the country.

- 54.** The court held that the purpose of defining capacity is to prevent the court's time from being wasted by busy bodies with misguided or trivial complaints of alleged administrative error(s), and to remove the uncertainty in which public officers and authorities might be left, whether they could safely proceed with administrative action while judicial review is pending, even though misconceived. The court said that if the requirement of locus standi were not there, courts would be flooded and public bodies harassed by irresponsible applicants.
- 55.** The question in these proceedings is whether the ex parte applicant has defined his legitimate right or interest, individually, collectively, or otherwise, which he would reasonably say requires the court's

protection in relation to the subject land, or the area and the issues pleaded herein

56. In **Robert Githua Thuku -vs- William Ole Nabala**

Civil Appeal No. 113 of 2016, the court cited the definition of *locus standi* in *Black's Law Dictionary 9th Edition* that, for one to have standing, he must show that:

- i. The challenged conduct has caused him actual injury.*
- ii. The interest sought to be protected is within the zone of interest meant to be regulated by the statute or the constitutional guarantee in question.*

57. In these proceedings, the exparte applicant did not expressly indicate or give out particulars of his relationship with any portion(s) of the suit land in the scheme, to show that he is a valid holder of a legal, possessory, or beneficial interest. He did not state if he holds any such interest or right concerning any particular parcel of land.

58. The exparte applicant did not state whether any of a defined parcel of land to which he holds some interest or right, or is in possession, use, or occupation of, has been given to someone else, or whether he is among the persons who attended the

balloting or balloted for or was denied an opportunity to ballot or participate in the exercise.

- 59.** The exparte applicant did not state if he was one of the attendees, participants, or residents who attended any of the meetings he has complained about. Further, the exparte applicant does not state whether he was one of the persons who ought to have been invited to attend the public participation meeting, or who attended the same but was denied an opportunity to participate.
- 60.** Further, the exparte applicant did not state if, while in attendance, he witnessed the respondents ignoring or failing to allow the locals or the attendees to participate in the process of electing, nominating, and or in other means as required by law, in constituting the committees or panel of representatives to the committees.
- 61.** The exparte applicant did not state the sources of his information or the basis of lodging the proceedings, perhaps after exhausting other means of dispute resolution. The law is that he who alleges must prove and demonstrate sufficient interest in a matter or issue. The exparte applicant must therefore substantiate his interest before the court by showing

how he is related to the subject matter or issue at hand.

62. At a personal level, the exparte applicant has provided no proof of any interest or right in relation to proprietorship of any land, by virtue of being a squatter or landless person. The exparte applicant has not established an actionable claim or standing in the matter generally, and in particular, that he is a landless person or a squatter on a particular portion of the identified or earmarked land, for the resettlement of needy persons such as him.

63. In **Toronken & 5 others -vs- Nguruman Limited & 10 others; County Government of Narok & another (Interested Parties) [2025] KEELC 7598 (KLR)**, at issue was whether the plaintiff had any direct proprietary rights or enforceable interests in the suit property, and further whether the suit disclosed any cause of action. The court held that the plaintiffs had no registrable interests in the suit property, which interests could be protected by the court since it was corporate property.

64. In **Mirugi Kariuki -vs- Attorney General [1990-1994] EA 156 [1992] KLR 8**, the court said that

sufficiency of an applicant's interests must be weighed against the nature of his complaint. The court said that if he fails to show a *prima facie* case on reasonable grounds of believing that there was a failure of public duty, whose purpose is to keep away busy bodies, cranks, and mischief makers.

- 65.** In these proceedings, the *exparte* applicant in the statement of facts did not invoke public interest, or seek to bring the suit as suing in a representative capacity for himself and on behalf of bona fide landless persons or squatters in Chepchoina Phase III Settlement Scheme.
- 66.** In the application for leave and the verifying affidavit sworn on **27/9/2024**, the *exparte* applicant did not state that the residents or squatters had authorised him to bring these proceedings. Out of all the annexures to the verifying affidavit, the *exparte* applicant did not attach an authority to bring these proceedings in a representative capacity.
- 67.** Given the foregoing, the court finds that the *exparte* applicant is not specific on the nature of the duty owed to him by the public bodies and how his rights were violated, specifically and generally, to found a cause of action at both individual or collectively, to

be entitled to represent the residents, other than himself, even if he had defined his personal interest of rights thereto.

- 68.** The exparte applicant's bone of contention is that the entire process from the start to process, starting with the meeting of **1/6/2021**, undertaken by the respondents, was tainted with procedural and substantive improprieties, rendering all the impugned actions, resolutions, meetings, and decisions null and void *ab initio*.
- 69.** The 1st, 3rd, 5th, and 7th respondents and the **152** respondents have raised a jurisdictional issue that the notice of motion is time-barred by dint of **Order 53 Rule 2** of the Civil Procedure Rules. The law is that, under **Order 53 Rule 2** of the Civil Procedure Rules, leave should not be granted to apply for an order of *certiorari* to remove any proceedings for it being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such short period as may be prescribed by any Act.
- 70.** It is not disputed that these proceedings were instituted in **2024**, long after the impugned decisions were made and implemented generally, and in

particular after expiry of six months from the date of the decisions.

- 71.** In *Kiluwa Ltd & Another -vs- Business Liaison Co. Ltd & Others Petition No. 14 of 2017*, the issue(s) before the Supreme Court were whether **Article 47** of the Constitution applies retrospectively, and whether the appellant's claim was time-barred. The court said that the basis of review of administrative action is expeditiousness, lawfulness, reasonableness, and procedural fairness.
- 72.** Further, the court held that for a party to be time-barred from litigating its claim, such limitation of time must be stated in the constitution, statute, or as a principle of common law. The court said that a court must determine when time starts running. In other words, the court said that the question as to when the cause of action arose has to be settled to shut out a litigant on the ground of the passage of time.
- 73.** In these proceedings, the exparte applicant has invoked both **Order 53** of the Civil Procedure Rules and **Article 47** of the Constitution. **Section 9(1)** of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action

may, without unreasonable delay, apply for judicial review of any administrative action to the High Court.

- 74.** In these proceedings, the court has made a finding that the ex parte applicant has not made a nexus between his personal or public interest in the subject settlement scheme. Be that as it may, assuming that he was an aggrieved party, he had an obligation to move the court without unreasonable delay at the earliest opportunity, where he says that there was no public participation and that the settlement scheme, right from its conception, was illegal, void ab initio, for him to be entitled to the writ of *certiorari*.
- 75.** In **Mwangi S. Kaimenyi -vs- Attorney General & Another [2014] eKLR**, the court said that there is no precise measure in law of what amounts to inordinate delay, and that it all depends on case to case, depending on its circumstances, the subject matter of the case, the nature of the case, and the explanation given for the delay.
- 76.** In **Davis Gitonga Karani -vs- Judicial Service Commission Petition No. 3 of 2021**, the court held that delay on its own does not lead the court to conclude there is infringement of rights, and where

there is delay, the court must interrogate whether the same is justifiable and thus excusable.

- 77.** In **Ogengo -vs- Attorney General & Another Civil Appeal No. 121 of 2019 [2026] KECA 148 [KLR] (30th January 2026) (judgment)**, an application for judicial review to enforce a decree issued on **22/7/1983** was being challenged as offending **Section 9(2)** of the Fair Administrative Actions Act, as a general public policy.
- 78.** The court held that the appellant should have explained to the satisfaction of the court why it took him **31** years to enforce the judgment or decree. The court said that its mandate includes the management of its dockets efficiently and ensuring fairness to all parties. The court said that unexplained delays disrupt court processes and negatively impact the administration of justice and efficient case management.
- 79.** The court said that the mere fact that a judicial review application for mandamus is not time-bound is no license for a party to sit on his laurels forever and wake up from his deep slumber after **31** years to seek redress. The court said that the delay defeats the essence and whole purpose of judicial review

proceedings, which are designed for quick, speedy, urgent, and expedited remedies, unlike standard civil suits, which often deal with disputes over long timelines. The court held that whether the application was filed without unreasonable delay went to the competence of the application and the jurisdiction of the court, which is everything, and without it, a court may not entertain the application.

- 80.** In **Musango & Others -vs- DCC Makindu Subcounty & Others [2025] KECA 499 [KLR] (21st March 2025) (Judgment)**, a preliminary objection had been raised by dint of **Section 9(3)** of the Law Reform Act, that the motion had been brought after **6** months. The court held that the six-month rule only applies to an application seeking an order of *certiorari* and not in respect to mandamus.
- 81.** Applying the foregoing case law, the exparte applicant has not explained when he became aware of the initial public participation exercise in relation to the settlement scheme. He has not indicated whether he was part of the persons or residents who were invited or not invited to the initial meeting, to disclose what the settlement scheme was and how they were expected to participate in the exercise.

- 82.** The exparte applicant, other than speaking in general terms, has not told this court when, at a personal or public level, he felt aggrieved by any of the actions of the respondents' resolutions, actions, activities, modalities, procedural and substantive missteps, and what action, if any, he took without unreasonable delay to demand remedial action at the initial level.
- 83.** Further, the exparte applicant at an individual or collective level has not shared any complaint or protest letter that he made to any of the respondents or their officers, who were undertaking the exercise, processes, actions, or activities. The law is that an aggrieved party must move to court without unreasonable delay. Waiting until the exercise was almost at the tail-end is what the exparte applicant did until the six-month period expired.
- 84.** A cause of action refers to an act on the part of the defendant that gives the plaintiff his cause of complaint. See. **D.T. Dobie Ltd -vs- Muchina & Another [1982] eKLR.** In **Whitehorse Investments Limited -vs- Nairobi City County. [2019] eKLR,** the appellant had failed to move to court until the time given to seek relief under the

then Physical Planning Act expired. Explanation for the delay was not given. The court cited **Republic - vs- National Environment Management Authority Civil Appeal No. 84 of 2010**, that in determining whether there are exceptional circumstances for judicial review to be invoked, the suitability of the alternative remedy or form has to be established.

- 85.** The court said that the appellant had failed to demonstrate that his property was in imminent danger of demolition. The court held that the failure to invoke the jurisdiction of the statutory body under the Physical Planning Act amounted to unreasonable delay.
- 86.** As to exceptional circumstances under **Section 9(2)** of the Fair Administrative Action Act, the court held that a party has to demonstrate such exceptional circumstances, even orally before the court and, further that in the interest of justice a court may find the exceptional circumstances to exist, even without being expressly moved to so find, especially when a party has a very good case for judicial review but may be unaware of the stringent requirements of law.

- 87.** Guided by the foregoing case law, my finding in the circumstances is that the ex parte applicant has not explained the inordinate delay, let alone come under the exceptional circumstances clause to be entitled to the writ of certiorari outside the six months rule. The writs of certiorari are therefore unavailable to the ex parte applicant.
- 88.** Coming to the merits of the claim on account of writs of mandamus and prohibition, judicial review refers to the authority of the court to examine the actions of administrative bodies on account of expeditiousness, efficiency, lawfulness, reasonableness, and procedural fairness as set out under **Article 47** of the Constitution.
- 89.** In **Suchan Investment Ltd -vs- Ministry of National Heritage & Culture & Others [2016] eKLR**, the court said that under the common law, judicial review was not concerned with merits review. However, under **Section 7(2) (1)** of the Fair Administrative Action Act, the proportionate test applies as a ground of judicial review. See also **SGS Kenya Limited -vs- Energy Regulatory Commission & Others SCOK Petition No. 2 of 2019 [2020] eKLR**.

90. In **Dande & Others -vs- Inspector General National Police Service & Others [2023] KESC 40 [KLR]**, the court observed that a dual approach to judicial review may be applied based on the pleadings and the procedure adopted by the parties at the inception of the proceedings. The court held that the entrenchment of judicial review in the Constitution elevates it to a substantive and justifiable right, and where a party invokes the Constitution, then the court has to carry out a merit review of the case, unlike where the proceedings are based on **Order 53** of the Civil Procedure Rules
91. The exparte applicant in the statement of facts has sought to bring into this court and to quash the decision(s) arrived at in the meetings held on **11/6/2021** and **12/4/2022**, culminating in:
- (a) *The 6th respondent's decision to confirm and or approve the vetting committee in the scheme.*
 - (b) *The scheme subcounty selection committee publishing the list of beneficiaries as of **11/8/2023**.*
 - (c) *The exparte applicant further seeks an order of mandamus compelling the 6th respondent to revoke the confirmation and or the approval of the vetting committee.*

(d) *An order of prohibition against the 7th respondent, stopping it from considering, approving, verifying, or publishing the process of settlement of squatters as per the list of beneficiaries already identified for allocation.*

(e) *An order of prohibition against the 3rd respondent, stopping it from issuing, allocating, and or opening a register in each of the parcels of land in favour of the 7th respondent as per the list of beneficiaries already identified for allocation.*

92. In the statement of facts and in the verifying affidavit, the exparte applicant did not set as one of the grounds that the scheme was set up against the law, or is non-existent in the eyes of the law, as per **Rule 32** of the Land Regulation **2017**. The exparte applicant did not set out as one of his grounds the legality of the conception, formation, registration, procurement, and identification of the land for settlement purposes.

93. Written submissions cannot amount to pleadings, or evidence as held in **D.T. Moi -vs- Mwangi Stephen Muriithi & Another [2014] eKLR.** Parties are bound by their pleadings. The exparte applicant in his submissions invites the court, guided by **Attorney General & Another -vs- The Commission on Administrative Justice [2024]**

KECA 1157 [KLR], to determine whether the failure to register the scheme violates the principles of legality, the rule of law, the Fair Administrative Action Act, and **Articles 2** and **47** of the Constitution.

- 94.** In judicial review, a party at the notice of motion hearing without leave of court cannot introduce new grounds or facts other than those captured in the statement of facts and the verifying affidavit at the leave stage.
- 95.** Parties are bound by their pleadings and may not be allowed to travel outside their pleadings in the middle of the hearing. Equally, a party may not amend the statement of facts and the verifying affidavit through subsequent documents or otherwise without seeking leave to introduce the said facts or grounds.
- 96.** Indeed, after the leave is granted to file a notice of motion, there is no requirement in law that the notice of motion must be accompanied by a fresh supporting affidavit. Therefore, an applicant in the notice of motion cannot introduce new grounds or facts without seeking leave to amend the statement of facts or file a further verifying affidavit to the statement of facts. The court, therefore, shall refrain

from determining issues outside the primary pleadings by the ex parte applicant.

- 97.** The purpose of judicial review is to ensure that the individual receives fair, expeditious, efficient, lawful, reasonable, and procedural fairness in an administrative action. It aims to promote efficient administration of law. See **Commissioner of Lands -vs- Kunste Hotel Nakuru Civil Appeal No. 234 of 1995.**
- 98.** Judicial review is a discretionary remedy only granted to an ex parte applicant who has met the threshold. It must be exercised based on evidence and sound legal principles of illegality, irrationality, procedural impropriety, and proportionality. See **John Wachiuri T/A Githakwa Graceland & Others -vs- The County Government of Nyeri & Anor JR No. 17 "B" of 2015.**
- 99.** In **SGS (K) Ltd -vs- Energy Regulatory Commission** (*supra*), the court held that judicial review revolves around the paths followed in decision-making under the umbrella of basic administrative law.
- 100.** In **Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance**

(NASA) Kenya & 6 Others [2017] eKLR, the court cited **Communications Commission of Kenya -vs- Royal Media Services Petition No. 14 of 2014**, that the Constitution **2010** has elevated judicial review to a pedestal that transcends the technicalities of the common law, and that **Order 53** of the Civil Procedure Rules and the Fair Administrative Action Act, are now part of the constitutional remedies that a court can grant under **Article 23(3), (6), and (8)** of the Constitution, and that the fusion of common law judicial review remedies into the Constitution and Statute review remedies, means a party can chose the common law remedy or the Constitution or statutory procedure under Fair Administrative Action Act.

101. The court held that where the application is grounded on **Order 53** of the Civil Procedure Rules but cites constitutional provisions, it reflects the aforesaid fusion, that Kenya has one exclusive system for judicial review, and that the common law and statutory judicial review are complementary and mutually non-exclusive judicial review approaches.

102. In these proceedings, the exparte applicant seeks the court to quash the decisions made on

11/6/2021 and **13/4/2022**. The two decisions are not attached as required in **Order 53 Rule 7(1)** of the Civil Procedure Rules. There is no evidence that the ex parte applicant sought and was denied copies of those decisions, proceedings, resolutions, or deliberations by the makers of those decisions, under **Article 35** of the Constitution and the Access to Information Act.

103. Failure to comply with **Order 53 Rule 7(1)** of the Civil Procedure Rules is fatal as the provision is in mandatory terms. It is a precondition to seeking an order of *certiorari* as held in **Samson Kirerea M'Ruchu -vs- Minister for Lands & Settlement CA No. 21 of 1999**, as cited in **Musa Kingori Gaita -vs- Kenya Wildlife Services [2006] eKLR** and **Republic -vs- Ruiru District Land Disputes Tribunal & another; Ex parte Lucia Waithira Muiruri & Another [2014] eKLR**.

104. The ex parte applicant must demonstrate that the respondents, as public and administrative bodies, failed to comply with procedural and substantive fairness in decision-making. In **Pastoli -vs- Kabale District Local Government Council** (*supra*), the court said that for an applicant to succeed, he 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 making the decision or making the act, the subject of the complaint.

105. It also includes acting without jurisdiction or *ultra vires*, or contrary to the provisions of the law or its principles. 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, could have reached such a decision, or where the decision is in defiance of logic and acceptable moral standards. See **Re An Application by Bukoba Gymkhana Club [1963] EA 478.**

106. Procedural impropriety, on the other hand, is when there is failure to act fairly on the part of the decision-making authority in the process of making a decision by either non-observance of the rules of natural justice or to act with procedural fairness toward one to be affected by the decision, or the failure to adhere and observe procedural rules expressly laid down in a statute. See **Al-Mehdawi -**

vs- Secretary of State for the Home Department [1990] AC 876.

- 107.** In **Suchan Investment Ltd -vs- Ministry of National Heritage & Culture & Others [2016] eKLR**, pursuant to **Article 47** of the Constitution and **Section 7** of the Fair Administrative Action Act, the court said that any person who is aggrieved by an administrative action or decision making may apply for review of the decision or administrative action based on the grounds of review under the **Section 7** thereof. **Article 165(6)** of the Constitution also grants this court powers to supervise persons, or bodies, or authorities exercising quasi-judicial functions likely to affect a person's right.
- 108.** To constitute an illegality or an abuse of process, the exparte applicant has to show that the decision maker, act, or process was tainted with illegality, abuse of discretion, was used for an improper purpose, or breached the duty to act fairly, failed to exercise statutory discretion fairly, or acted in a manner to frustrate the purpose of the Act the decision was irritational and unreasonable. See **Peter Ngunjiri Maina -vs Director of Public Prosecutions & Others [2017] eKLR** and

Republic -vs- Director of Public Prosecutions & Others; Ex parte Nomini Saisi [2016] eKLR.

- 109.** In **Kenya National Examination Council -vs- Republic; Ex parte Geoffrey Gathenji & Others Civil Appeal No. 266 of 1996**, the court said that prohibition looks into the future so that a tribunal does not act contrary to the rules of justice or rule of law, or in excess of jurisdiction or violate rules of natural justice or, to forbid the tribunal in continuing with proceedings in excess of its jurisdiction or in contravention of the laws of the land. The court held that an order of *certiorari* can quash a decision already made and or issue if the decision is without jurisdiction or in excess of jurisdiction or where rules of natural justice are not complied with. Further, the court held that, mandamus cannot command the duty in question to be carried out in a specific way.
- 110.** The exparte applicant takes the view that the formation of the vetting committee, identification of the subcounty selection committee, by the appointing or constitutional authority, violated the law, the Constitution, and the statute, its principles, values, and especially public participation.

- 111.** Further, the exparte applicant complains that the illegally constituted committee proceeded to illegally and unprocedurally identify, confirm, and authenticate a list of beneficiaries who have now been issued with letters of offer and are likely to be issued with title deeds. The exparte applicant terms the whole exercise as ultra vires, null and void *ab initio*.
- 112.** On the other hand, the respondents aver that there was substantial compliance with the law and that any irregularities thereof did not seriously affect the outcome of the entire process, as held in **Raila Odinga & Others -vs- Independent Electoral and Boundaries Commission** (*supra*). Further, the respondents urge the court to find that there is a presumption of regularity that all acts by public officers have been lawfully executed by following all procedures laid out in law, as held in **Chief Land Registrar & Others -vs- Nathan Tirop Koech** (*supra*).
- 113.** As a starting point in paragraph **1** of the statement of facts, the exparte applicant states that he is a Kenyan citizen. He avers that there was a purported public meeting on **11/6/2021**, which

elected a vetting committee contrary to **Section 134** of the Land Act and **Rule 33** of the Land Regulations **2017**. The writ of mandamus is aimed at remedying the defects of justice. It issues to meet the ends of justice and to enforce a legal right owed to an applicant.. The burden was on the applicant to demonstrate what personal land rights the respondents have failed or neglected to perform. The **152** respondents have demonstrated that the 1st - 9th respondents fulfilled their statutory duties, hence the remedies sought by the exparte applicant of mandamus and prohibition are overtaken by events or are unnecessary. See **Republic -vs- Judicial Service Commission (JSC) ex parte Stephen S. Pareno [2004] eKLR.**

- 114.** The exparte applicant did not state if he was present in the meeting or lodged any complaints soon thereafter on the illegality of the process with the respondents. Further, the exparte applicant states that by a letter dated **8/10/2021**, the committee was confirmed and approved. The exparte applicant did not say if he took any action between **11/6/2021** and **8/10/2021**, when the committee was approved or confirmed. See **Makupa Transit**

Shade Limited & 12 others -vs- Kenya Ports Authority & another [2019] KEHC 11208 (KLR).

- 115.** Further, the exparte applicant goes on to say that the vetting committee held its first meeting on **13/4/2022**, where it elected **24** members, among them a chairman, contrary to **Section 134(4)** of the Land Act. Between **October 2021** and **April 2022**, the exparte applicant does not state if he made any complaints to the relevant authorities or whether the potential landless persons or squatters, were aggrieved of such decision or processes and perhaps made him as their spokesman to air or lodge any grievances to the relevant authorities and especially the 6th respondent that it was neglecting its statutory duties on delegating them to third parties contrary to the law.
- 116.** The exparte applicant avers that the aftermath of the decisions, resolutions, and or acts, and the subsequent meetings of the committee upon its approval were also null and void by dint of **Rules 34(1)** and **35(1)** of the Regulations **2017**, up to and including the public exercise of balloting, and the compilation of list of **970** successful beneficiaries to the scheme to include non-squatters, landless or

displaced persons as of **11/8/2023**, and which names have not been published within **30 days** of its compilation as required by **Rules 37** and **38(1)** of the Land Regulation **2017**. The ex parte applicant relies on annexures marked **LCW-(1), (2), (3), and 3(a)**.

117. The respondents, on the other hand, through the 4th respondent and the **152** other respondents, term the notice of motion as offending **Order 53** of the Civil Procedure Rules. By a replying affidavit of Geoffrey Mosiong Kirui, sworn on **27/11/2025**, the history of the scheme is set out, and the deponent insists that the scheme was established and its processes are so fair, legal, procedural, lawful, and in adherence with **Sections 134** and **135** of the Land Act and **Rules 32-38** of the Land Regulations **2017**.

118. The deponent deposes that there was adequate quality and quantity of public participation as per annexures marked **MKG - 2(a)-(g), and (3)**. Further, the deponent avers that there was compliance with **Section 134(4)** of the Land Act as per the letter dated **15/11/2021**, attached as **MKG-(4)**, and that on **18/11/2021**, the list of the proposed selection committee was forwarded to the 2nd respondent as

per annexure marked **MKG-(5)** and **(6)**, in line with **Section 134 4(a)-(h)** of the Land Act.

119. The deponent states that after the vigorous vetting of applicants, **970** persons were successful in the balloting exercise in public on **31/7/2023**, whose list was later publicly displayed in the presence of local leadership, where after allotment letters were issued to them as per annexure marked **MKG-(6)**.

120. The exparte applicant has the burden to prove before this court that, in the 1st instance, he was an aggrieved party and secondly, demonstrate how he was aggrieved and his constitutional rights breached or violated by the respondents generally and in particular the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.

121. The exparte applicant relied on uncertified, unverified, and unauthenticated annexures to the verifying affidavit. The exparte applicant does not state if he sought and obtained any official proceedings, resolutions, minutes, activities, and or decisions of the respondents, and or was denied access to or copies, to bring to this court for quashing as required under **Order 53 Rule 3** and **(7)(1)** of

the Civil Procedure Rules. Though the court under **Article 159** of the Constitution is required to look at substantive justice, he who alleges non-compliance by a state organ, or administrative bodies within **Articles 35** and **47** of the Constitution, must substantiate his assertion with tangible and cogent evidence.

122. The general rule is that issuance of a writ of mandamus is limited to where there is a specific legal remedy enforcing it or where the alternative remedy is less convenient. Its scope against public bodies is limited to the performance of a public duty. See **Joyce Manyasi -vs- Evan Gicheru & 3 Others [2009] eKLR**

123. **Section 134** of the Land Act grants the national government powers to implement settlement schemes to provide access to land for shelter and livelihood. Settlement programmes include and are not limited to the provision of access to land to squatters, displaced persons, development projects, conservation, internal conflicts, or other causes that may lead to movement and displacement.

124. The identification of beneficiaries must be carried out and verified by a sub-county selection

committee appointed by the Cabinet Secretary among the right groups set out under **Section 134(4)** of the Land Act. Upon planning and survey of land in a settlement scheme, land in a settlement scheme shall be allocated to households in accordance with national values and principles of governance under **Article 10** of the Constitution and the principles of national land policy in **Article 60(1)** of the Constitution or any other requirements of natural justice.

125. **Part VI** of the Land Regulations **2017** deals with planning, survey, establishment of the sub-county selection committee, identification and verification of beneficiaries, preparation of a list of beneficiaries, determination of the cost of land, allocation of land, publication of names of successful beneficiaries, breach of settlement land allocation, development and promotion of settlement programmes, and settlement of squatters.

126. The exparte applicant, as indicated above, did not supply the court with any letter as per **Rule 33** of the Regulation **2017**, from the Cabinet Secretary requesting the nomination of suitable persons to the members of the sub-county selection committee for

the scheme. There is nothing to show that the Cabinet Secretary delegated its powers to seek the nomination of the person(s) as per the law to any existing body, and that the nominated, confirmed, and appointed members were constituted other than from the eight groups set out in law.

127. As to the identification and verification of beneficiaries, what the exparte applicant should have provided to the court is the names contained in a verified and certified **Form Nos. LA 42 & 43** set out in the Third Schedule of the Land Act, which are the official documents that the committee prepares and submits to the Board for approval.

128. It is from the said Forms No. LA **42 & 43** that the exparte applicant would have indicated who among the **970** proposed beneficiaries are ineligible or otherwise disqualified from entitlement to the scheme. It is from Form No. LA **43** that the exparte applicant would have laid a basis that there was no public participation or compliance with the law in the balloting or the identification of the beneficiaries in a transparent and accountable manner.

129. Capacity to sue, as indicated above, goes to the jurisdiction of the court. Sufficient interest in the

issue at hand, denial of a right is what forms the basis of an ex parte applicant, being aggrieved by a decision or action. At the very least the court would have expected the ex parte applicant to establish a nexus with the subject parcels of land set aside as pleaded by the **152** respondents, with clear particulars and details of what part of the scheme he was denied use, occupation and possession and which in view of the list of the beneficiaries, he risks being displaced from, unless the entire process and its outcome is reversed by way of writs of judicial review. The burden was on the ex parte applicant to demonstrate with tangible and cogent evidence how the entire process by the respondents was not expeditious, was inefficient, was unlawful, was unreasonable, and was procedurally unfair.

130. In **Republic -vs- Kenya Bureau of Standards & 4 others; Ex parte United Millers Limited [2019] eKLR (Nairobi JR No. 396 of 2018/2019)**, the court said that fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives, such as fraud, or dishonesty, malice, or personal self-interest or arbitrariness. The court said

that in reviewing the decision based on irrationality, the justification basis of the connection made by the administrative decision maker between the materials made available and the conclusion arrived at.

(F). FINAL ORDERS

131. Looking at the annexures to the verifying affidavit as compared to those in the replying affidavit of Geoffrey Kirui as annexures marked **MKG-(1)-(6)** vis-à-vis the law on settlement schemes, I find no basis that the setting up of the Sub-county Selection Committee, its resultant, actions, resolutions, proceedings, decisions and the ultimate identification of beneficiaries through balloting and the preparation of the list of beneficiaries was contrary to both the enabling statutory and the constitutional rights, values and principles of sound administrative law. The existence of justification, transparency, intelligibility, and respect for the law is what an administrator has to show.

132. I do not find any basis to find that the process and the outcome were marred by irrationality, unreasonableness, illegitimacy, inefficiency, procedural unfairness, or were *ultra vires*, or *void ab*

initio as provided under **Section 7** of the Fair Administrative Action Act.

133. The *exparte* applicant has miserably failed to substantiate his assertions and to meet the above tests for the court to grant him the writs of mandamus and prohibition. The notice of motion dated **3/10/2024** is dismissed with no orders as to costs.

134. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **18th** day of **March 2026**.

In the presence of:

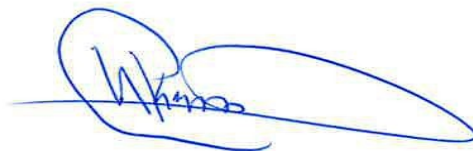
Court Assistant - Dennis

Jeruto for the applicant present

Chilaka for the 1st, 2nd, 3rd, 5th, 6th, & 7th respondents present

Obino for the 4th respondent absent

Serebe for the 152 respondents



**HON. C.K. NZILI
JUDGE, ELC KITALE.**