



Kambona v Cabinet Secretary Ministry of Health & another; Nguka & 5 others (Interested Parties) (Judicial Review Application E014 of 2026) [2026] KEHC 3988 (KLR) (Judicial Review) (25 March 2026) (Judgment)

Neutral citation: [2026] KEHC 3988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E014 OF 2026
RE ABURILI, J
MARCH 25, 2026**

BETWEEN

OSCAR KAMBONA EX PARTE APPLICANT

AND

CABINET SECRETARY MINISTRY OF HEALTH 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

PROFESSOR GORDON NGUKA INTERESTED PARTY

SYLVESTER NDORI INTERESTED PARTY

DR PATRICIA MBOGO INTERESTED PARTY

BANICE KENDI MUGO INTERESTED PARTY

JUDITH ADHIAMBO KOBE INTERESTED PARTY

KENYA NUTRITIONISTS AND DIETICIANS INSTITUTE INTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted by this Court on 17th December 2025, the ex-parte Applicant instituted this Judicial Review application vide a Notice of Motion dated 8th January, 2026, premised on Articles 22, 23 and 47 of *the Constitution* of Kenya, Sections 8 and 9 of the *Law Reform Act*, Cap 26; Sections 7-11 of the *Fair Administrative Action Act*, Order 53 Rule 3 of the Civil Procedure Rules and all other



enabling provisions of the law. The Application is supported by an affidavit in support sworn on even date by Oscar Kambona.

2. The ex-parte Applicant prays for the following orders:
 1. An Order of Mandamus do issue compelling the 1st Respondent to forthwith gazette and appoint Council Members of the Kenya Nutritionists and Dieticians Institute, in accordance with Section 5 of Cap 253B.
 2. An Order of Prohibition restraining the Respondents from further delaying, frustrating or otherwise interfering with the statutory functioning of the Institute by failing to gazette the duly nominated council members.
 3. An Order of Certiorari to quash any administrative action, Gazette Notice or decision purporting to unlawfully extend, suspend, or otherwise interfere with the expiry and reconstitution of the Council, contrary to Cap 253B.
 4. A Declaration that the Respondent's failure to gazette the Council members violates Articles 10, 35, 43 (1) (a) and 47 of *the Constitution* of Kenya.
 5. Any other Orders or directions that the Honourable Court may deem fit and just.
 6. Costs of this Application be provided for.
3. The background to this case is contained in the Statutory Statement dated 11th December 2025 together with the averments in the Verifying Affidavit of Oscar Kambona sworn on even date.
4. The ex-parte Applicant is a registered and licensed nutritionist and dietician in Kenya, practicing and offering services in nutrition and/or dietetics and a member of the 6th Interested Party. He pleads that his term and the 1st – 5th Interested Parties' term as a Council Members of the 6th Interested Party expired on 15th July 2025 and 28th July 2025 respectively, vide Gazette Notices Nos. 8265 and 8817, leaving the 6th Interested Party without a governing Council.
5. The ex-parte Applicant states that on 18th June 2025, the 1st Respondent, vide letter Reference No. KNDI/CEO/CS/17/06/2025, was formally notified of the Council's term under the said Gazette Notices and names of the newly proposed members forwarded for appointment. That on 21st July 2025, the Respondents were again served with a letter Reference No. KNDI/CEO/CS/MOH/Vol.3/14/07/2025 notifying them that all stakeholder bodies had formally endorsed the said nominees to constitute the Council. However, the two letters have yet to be responded to.
6. The ex-parte Applicant asserts that the 1st Respondent had a clear statutory duty under Section 5 of Cap 253B to gazette and appoint Council Members, which he has failed to do for over four months despite receipt of necessary documents, thereby frustrating the statutory process. It is further averred that failure to gazette the Council rendered the 6th Interested Party unable to convene its Annual General Meeting under Section 30(4) of Cap 253B, placing the institution in violation of public law and paralyzing regulatory functions.
7. Additionally, it is contended that the ex-parte Applicant's inaction constituted an illegality, irrationality and procedural impropriety, amounting to a breach of statutory duty and violation of fundamental constitutional rights. That the continued and unreasonable delay undermines the regulation of nutrition and dietetics practice in Kenya, exposes the public to unregulated professional standards and threatened public health, thereby raising urgent issues of public interest.



8. None of the respondents filed any response to the Notice of Motion despite service being effected upon them and neither did they enter any appearance to the Motion.
9. The Interested Parties equally did not file any response to the Motion. However, on 24th February 2026, Ms. Gathenya, Counsel holding brief for Mr. Munene for the Respondents informed the Court that the 1st Respondent, the Cabinet Secretary was in the process of appointing the Council.
10. This Court issued directions on 20th January 2026 to have this matter canvassed by way of written submissions. I note that the only submissions on record are the ex-parte Applicant's submissions.

The ex-parte Applicant's Submissions

11. Counsel for the ex-parte Applicant submitted that Judicial Review was the only constitutional remedy available for prolonged inaction for statutory duty and cited Section 5 (2) (b) of Cap 253B- *Nutritionists and Dieticians Act* which set out the framework for *the constitution* of the Council through nomination by stakeholders, formal appointment and gazette by the Cabinet Secretary. The case of Kenyan National Examinations Council vs. Republic: GGN & 9 others (Ex Parte) (1997) KECA 58 (KLR) was cited for the proposition that orders of Mandamus were granted to compel the performance of a public duty imposed by statute where a person vested with the said duty failed or refused to do so.
12. Counsel further submitted that the 1st Respondent by failing to gazette the nominated members without lawful justification failed to observe the laid down procedure under Section 5 of Cap 253B. Reliance was placed on the case of Kariuki vs. County Government of Kajiado & 2 Others (2023) KEELC 923 (KLR). The applicant's counsel argued that there was a legitimate expectation from the ex-parte Applicant and the Interested Parties that upon compliance with Section 5 (2) of the Act and submission of the endorsed nominees, gazette would follow however, that instead, there have been no reasons advanced for the delay which was not only unreasonable but procedurally unfair and against the provision of Section 4 (1) of the *Fair Administrative Action Act*. The case of Keroche Industries Ltd vs. Kenya Revenue Authority and 5 Others was cited to explain the aspect of legitimate expectation.
13. Counsel further submitted that the ex-parte Applicant had adequately demonstrated an illegal, unreasonable administrative action by the 1st Respondent's inaction amounting to a violation of statutory and constitutional obligations which entitled him to the relief of Mandamus; a Prohibitory order restraining the Respondents from further delaying the statutory functioning of the 6th Interested Party and declaratory reliefs under Article 23 (3) of *the Constitution*. It was also submitted that the public interest in this case was overwhelming enough to favour the Court's intervention and vindicate the rule of law.

Analysis and Determination

14. I have considered the Notice of motion as pleaded and the depositions by the applicant supported by written submissions. The main issue for determination in this matter is whether the Notice of Motion Application has met the threshold for granting the reliefs sought.
15. Section 5 of the *Nutritionists and Dieticians Act*, Cap 253B, (hereinafter referred to as the Act) empowers the 1st Respondent to gazette and concurrently appoint members of the 6th Interested Party's Council. The section provides, material:
 5. Establishment and composition of the Council of the Institute



- (1) ...
- (2) The Council shall consist of-
 - a. a chairperson who shall be appointed by the Cabinet Secretary and who shall-
 - (i) ...
 - b. one qualified nutritionist or dietician professional with a minimum of a diploma in good standing from private practice who shall be appointed by the Cabinet Secretary;
 - c. the Director of Nutrition and Dietetics Services in the Ministry responsible for health or their designated representative;
 - d. one representative of the Consumers Federation of Kenya, who shall be a holder of at least a Bachelor's Degree;
 - e. one representative of faculties teaching nutrition and dietetics at public universities who shall be competitively sourced and who shall be a holder of at least a Master's Degree;
 - f. one representative from public and private middle level colleges, offering courses in nutrition or dietetics;
 - g. the Director-General for health or their designated representative;
 - h. one member with technical knowledge and competencies in finance who shall be appointed by the Cabinet Secretary; and
 - i. the Chief Executive Officer as an ex officio member.
- (3) ...
- (4) All appointments under this section shall be notified in the Gazette by the Cabinet Secretary for the time being responsible for matters relating to health.
- (5) Pursuant to nominations in paragraphs (d), (e) and (f) of subsection (2), each organization shall present two nominations one of whom will be appointed by the Cabinet Secretary taking into account ethnic diversity, gender disability, skills mix and regional balance.
- (6) ...

16. The procedure set out in the above section of the Act is that the relevant stakeholders will provide nominees as Council Members whose names shall be forwarded to the Cabinet Secretary who shall then gazette and appoint the nominees to serve as Council Members for a term of 3 years.

17. In the instant case, the ex-parte Applicant contends that on 18th June 2025, a letter Referenced No. KNNDI/CEO/CS/17/06/2025 was sent by the Chief Executive Officer, Dr. David Okeyo to the 1st Respondent and that subsequently on 21st July 2025, the Respondents were again served with another letter Reference No. KNNDI/CEO/CS/MOH/Vol.3/14/07/2025 notifying them that the nominee had been endorsed by the relevant stakeholders. The ex-parte Applicant laments that these letters have not been responded to, months after they were sent. There have also been no steps taken by the 1st Respondent to fulfil his role of appointing the said Council Members as a Cabinet Secretary.



18. The applicant seeks in his 1st prayer, an order of Mandamus to compel the 1st Respondent to gazette and appoint the Council members. It is trite that Mandamus is a Judicial Review remedy directed to a public body or authority that is vested with a statutory duty. In the case of *In the Matter of an Application for Judicial Review vs. County Council of Narok* [2009] KEHC 2108 (KLR), it was held that:

“Mandamus” is never used to “revoke” any decision or action... It is a command and therefore only commands or compels performance of a public duty which has not been performed as at the time the command or compulsion is made.”

19. Section 5 of the Act vests in the 1st Respondent a public duty to appoint the members of the Council. This appointment has not been done. Counsel for the Respondents appeared before this Court on 24th February, 2026 and informed the Court that the 1st Respondent was in the process of appointing the said Council. I note that from the date when the said notifications were sent to the respondents to date, there has been no gazettelement or appointment as rightfully pointed out by the ex-parte Applicant.

20. Where a public duty exists, it is incumbent upon the office holder to fulfil the said public duty unless there are other legitimate and lawful reasons for holding back on the performance of that duty. On the facts displayed in this court, no explanation was forthcoming regarding the 1st Respondent’s inaction. It is also not clear what Counsel for the respondent meant when she told the court at its last sitting that the 1st Respondent was in the process of appointing the Council Members.

21. Additionally, I note that there existed a legitimate expectation on the part of the 1st Respondent in that, once the office of the Cabinet Secretary was seized of the names of the nominees, the automatic next step was to proceed and appoint the said nominees, unless the Cabinet Secretary has reservations, and for reasons to be supplied to the applicant and the interested parties that one or more of the nominees did not meet the legal criteria for appointment.

22. The principle of legitimate expectation was well-explained in Pollard, Parpworth and Hughes writing at page 583 in the 4th Edition of *Constitutional and Administrative Law: Text with Material* where the learned authors stated thus: -

“Legitimate expectation refers to the principle of good administration or administrative fairness that, if a public authority leads a person or body to expect that the public authority will, in the future, continue to act in a way either in which it has regularly (or even always) acted in the past or on the basis of a past promise or statement which represents how it proposes to act, then, prima facie, the public authority should not, without an overriding reason in the public interest, resale from that representation and unilaterally cancel the expectation of the person or body that the state of affairs will continue. This is of particular importance if an individual has acted on the representation to his or her detriment.”

23. As already stated, Section 5 of the Act contemplates a scenario where once nominations are done by the relevant stakeholders, the next step is to forward the names of the nominees to the Cabinet Secretary for gazettelement and appointment. This is the legitimate expectation imposed on the 1st Respondent regarding the process of constituting the Council, which was not fulfilled.



24. In *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2EA 300, the court, citing *Council of Civil Service Unions vs. Minister for Civil Service* [1985] AC 2 and in an application by *Bukoba Gymkhana Club* [1963] EA 478 the Court stated, at p.479 thus:

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

25. Section 4 of the *Fair Administrative Action Act* provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair and that every person has the right to be given written reasons for any administrative action that is taken against him.

26. Section 5 of the same *Fair Administrative Action Act* provides that:

6. Request for reasons for administrative action.

- (1) Every person materially or adversely affected by any administrative action has a right to be supplied with such information as may be necessary to facilitate his or her application for an appeal or review in accordance with section 5. (2) The information referred to in subsection (1), may include (a) the reasons for which the action was taken; and (b) any relevant documents relating to the matter. (3) The administrator to whom a request is made under subsection (1) shall, within thirty after receiving the request, furnish the applicant, in writing, the reasons for the administrative action. (4) Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason. (5) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and shall inform the person making the request of such departure

27. Section 2 of the FAAA defines “administrative action” to include- (i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or (ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates; while “failure” in relation to the taking of a decision, includes a refusal to take the decision.

28. In this case, it is clear that the 1st Respondent’s failure to act in accordance with the statute by stalling the gazettelement and appointment of the Council Members of the 6th Interested Party, more than four (4) months after receipt of the nominees and without giving any reasons for such prolonged failure and



delay is not only unlawful but also unreasonable and procedurally unfair. This finding is not without reasons. The statute is clear on the steps to be taken to constitute the Council. Then there is a clear public duty placed on the 1st Respondent to act and the corresponding public interest to have a fully constituted Council to conduct the affairs of the 6th Interested Party.

29. I reiterate that there is no justification for the 1st Respondent to remain silent over the issue of the appointment of the Council. The Courts exist to uphold the rule of law and to provide safeguards for the conduct of public bodies and authorities that must be held accountable in observing the law. Consequently, I find the prayer for Mandamus is justified.
30. On the 2nd prayer for Order of Prohibition to restrain the Respondents from further delaying, frustrating or further interfering with the Institute's statutory functioning by failing to gazette the nominees, the case of Kenya National Examination Council vs. Republic; Njoroge & 9 others (Ex parte) (Civil Appeal 266 of 1996) [1997] KECA 58 (KLR) (21 March 1997) (Judgment) is instructive that:

“Prohibition looks to the future Prohibition can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...”
31. In my view, the material placed before this Court do not demonstrate a scenario where the Respondents would likely continue to delay or frustrate the process of appointing the Council Members in future, particularly where this Court has found that a mandamus order to compel performance of a statutory duty of gazettement and appointment of members of the Council as nominated is merited.
32. In my humble view, prohibition orders are not merited in the circumstances of this case. This is so, because, it must be appreciated that Courts exists to administer justice. This may entail compelling public officers to carry out their statutory duty where such officers have failed to. However, where such orders may cross over to the realm of interfering with the conduct or roles endowed upon other arms of the government, in this case the Executive, the courts must be reluctant to issue the said orders. This reasoning stems from the fact that the Cabinet Secretary is mandated to consider, gazette and appoint the nominees for Council Membership, if they are compliant with the legal requirements. In the event that they are not compliant, the Cabinet Secretary is obliged to give reasons and even call for a different nominee who fits the criteria set out in the law. By issuing prohibition orders to restrain the Respondents from further delaying with the gazettement of the nominees, would be inviting this Court to tie the hands of the 1st Respondent even where the delay may have been justified. In other words, this Court would be delving into the decision-making process of the 1st Respondent, which would be ultra vires its functions and role in Judicial Review.
33. On the third prayer for Orders of Certiorari, the ex-parte Applicant seeks to quash any administrative action or gazette notice or decision which may unlawfully extend or suspend or interfere with the constitution of the Council. In the view of this Court, certiorari exists only to quash or obliterate an existing decision. So far, there appears to be no such formal decision to delay the said process. In other words, there is no evidence adduced to show that the 1st Respondent has expressly declined to appoint the said council. If anything, albeit lacking of evidence, the Court was informed by Counsel that the 1st Respondent was in the process of appointing the Council Members. That in itself is a demonstration



that there was no actual decision not to appoint so that the same would be available for quashing. This Court's understanding is that this Application was meant to remedy the delay or continues inaction of the 1st Respondent, but not to attack the actual decision. Thus, I find the prayer for certiorari to be unmerited in the circumstances of this case.

34. On the 4th prayer seeking declaratory reliefs, I find that there exists a public interest to expediently constitute the Council. It was submitted that the inaction of the 1st Respondent delayed the conduct of an Annual General Meeting which has subsequently paralyzed statutory functions and exposed the public to risk because there is no Council to regulate the affairs of a regulated profession. For these reasons, I find the 4th prayer merited.
35. In the final analysis, this Application is partially successful and is allowed in the following terms:
1. An Order of Mandamus is hereby issued compelling the 1st Respondent Cabinet Secretary, Ministry of Health to forthwith gazette and appoint the duly elected Council Members of the Kenya Nutritionists and Dieticians Institute, in accordance with Section 5 (1)-(7) and the First Schedule of the *Nutritionists and Dieticians Act*, 2007, Cap 253B of laws of Kenya and more specifically, the persons nominated in accordance with the Act. Such appointment and gazettelement shall be undertaken within 14 days of the date of service of this judgment upon the Cabinet Secretary Ministry of Health and the Attorney General.
 2. A Declaration is hereby issued declaring that the 1st Respondent's failure to gazette the Council Members violates Articles 10, 35, 43 (1) (a) and 47 of *the Constitution* of Kenya.
 3. This judgment shall be served upon the Attorney General forthwith.
 4. Each party to bear its own costs.
36. I so order.
37. Except where there is noncompliance with this judgment, this file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH, 2026

R.E. ABURILI

JUDGE

