

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW APPLICATION NO. E022 OF 2026**  
**IN THE MATTER OF: AN APPLICATION BY KATAHIRA &  
ENGINEERS INTERNATIONAL LIMITED FOR JUDICIAL REVIEW  
ORDERS  
AND  
IN THE MATTER OF THE TAX PROCEDURES ACT, 2015  
AND  
IN THE MATTER OF THE AGENCY NOTICES DATED 15<sup>TH</sup>  
DECEMBER 2025 ISSUED BY THE KENYA REVENUE AUTHORITY  
BETWEEN  
KATAHIRA & ENGINEERS  
INTERNATIONAL LIMITED .....APPLICANT  
VERSUS  
KENYA REVENUE AUTHORITY ..... RESPONDENT  
-AND-  
NCBA BANK KENYA LIMITED.....1<sup>ST</sup> INTERESTED PARTY  
STANBIC BANK LTD .....2<sup>ND</sup> INTERESTED PARTY  
**JUDGMENT****

1. This judgment determines the substantive Notice of Motion dated 17<sup>th</sup> February 2026 filed under Certificate of Urgency and premised on Articles 47 and 165 of the Constitution, Sections 7, 8, and 9 of the Fair Administrative Actions Act, Order 53 Rule 3 of the Civil Procedure Rules and all other enabling provisions of the law.

2. The *ex-parte* Applicant seeks the following Orders: -

***(1) THAT an Order of CERTIORARI do issue to remove into this Honourable Court and quash the decision of the Respondent contained in the Agency Notices dated 15<sup>th</sup> December 2025,***

*issued to NCBA Bank and Stanbic Bank pursuant to Section 42 of the Tax Procedures Act, 2015.*

- (2) THAT an order of PROHIBITION do issue prohibiting the Respondent, whether by itself, its officers, servants or agents from enforcing, implementing, acting upon or giving effect to the said Agency Notices of any other enforcement or recovery measured arising from the same tax demand.*
- (3) THAT an order of MANDAMUS do issue compelling the Respondent forthwith to rescind, withdraw and vacate the Agency Notices dated 15<sup>th</sup> December 2025 issued against the ex-parte Applicant's bank accounts.*
- (4) THAT the Respondent be restrained from issuing any further agency notices, demands or enforcement measures in respect of the same tax assessment that was conclusively determined in Tax Appeals Tribunal Appeal No. E276 of 2025, unless in strict compliance with the law.*
- (5) THAT this Honourable Court do order the Respondent to pay punitive and exemplary damages to the ex-parte Applicant as assessed by the Honourable Court.*
- (6) THAT costs of this Application be awarded to the ex-parte Applicant.*

3. The Notice of Motion is predicated on the grounds on the face thereof and the Verifying Affidavit sworn by Ivy L. Adhiambo. The *ex-parte* Applicant avers that Kenya Revenue Authority issued the Agency Notices against it in blatant disregard of a valid, final and binding Judgment of the Tax Appeals Tribunal in TAT Appeal No. E276 of 2025, which judgment nullified and set aside the tax assessments forming the basis of the impugned agency notices. That following the delivery of the Tribunal's judgment, the Respondent became *functus officio* and the matter became *res judicata*, thereby extinguishing any jurisdiction to issue or enforce the Agency Notices by the Respondent.
4. It was averred that the issuance of the Agency Notices dated 15<sup>th</sup> December 2025 was *ultra vires* Section 42 (14) of the Tax Procedures Act as there was no enforceable tax liability capable of recovery. That the Respondent's actions were illegal, irrational, unreasonable, procedurally unfair and constituted an abuse of statutory power since they acted in wilful defiance of the doctrine of finality of litigation and in contemptuous disregard of a binding adjudicatory decision.
5. The *ex-parte* Applicant asserts that the Respondent's actions violated the applicant's constitutionally guaranteed right to fair administrative action under Article 47 and the right to property under Article 40 of the Constitution and that the continued issuance of demands and agency notices amounted to harassment, administrative arbitrariness and bad faith.

That the *ex-parte* Applicant has continued to suffer grave financial and operational prejudice, including disruption of its banking and contractual obligations as a result of the impugned agency notices being issued to its bankers.

6. The background to this case is contained in the *ex-parte* Applicant's verifying affidavit and the Statement of Facts dated 17<sup>th</sup> February 2026.
7. The *ex-parte* Applicant's contention is that the Agency Notices issued to their bankers NCBA Bank and Stanbic Bank, the two Interested parties herein, demanding for payment of Kshs, 139,409,439/= under Section 42 of the Tax Procedures Act was unlawful and was the subject of the *ex-parte* applicant's protest letter dated 20<sup>th</sup> January 2026. The *ex-parte* Applicant contended that the agency notices had led to a freezing of their bank accounts which had in turn caused irregular financial disruptions.
8. There was no response filed by the Respondent in this case. The Court gave directions for canvassing of the Application by way of oral submissions. Both parties appeared and made oral submissions on 4<sup>th</sup> March 2026,

### **The Exparte Applicant's Submissions**

9. Counsel for the *ex-parte* applicant submitted urging this Court to allow the Application as prayed stating that the facts were as set out in the Grounds in support and the Affidavit by Ivy Adhiambo.

10. On their part, Ms. Nzia Counsel for the Respondent submitted that the Agency Notices were issued pursuant to Section 41 of the Tax Procedures Act and that before the said agency notices were issued, the *ex-parte* Applicant had not proved payment of outstanding taxes. She further submitted that they had challenged the decision of the Tax Appeal Tribunal in Case No. 276 of 2025 by way of an appeal to the High Court and that the Agency Notices referred to new taxes, which required the *ex-parte* Applicant to follow the laid down procedure before filing the present Application in Court. She reiterated that the Agency Notices did not emanate from the proceedings conducted and determined by the Tax Appeals Tribunal in **TAT Appeal No. E276 of 2025**.
11. In a rejoinder, Counsel for the *ex-parte* Applicant Submitted that the Respondent had not proved to the Court that the new Agency Notices were based on the new taxes and not the **TAT Appeal No. E276 of 2025**.

#### **Analysis and Determination**

12. From the pleadings by the *ex-parte* applicant and the submissions of the parties' counsel, the main issue for determination is ***whether the Application is merited and whether the orders sought ought to be granted.***
13. As a preliminary issue, it is necessary to set out the events that led to the present Application. From the court record, the *ex-parte* Applicant

obtained judgment dated 7<sup>th</sup> October 2025 in its favour in an appeal before the Tax Appeals Tribunal. The subject of the said Appeal was the Objection Decision dated 8<sup>th</sup> October 2021 rendered by the Respondent concerning a Notice of Objection lodged by the *ex-parte* Applicant dated 18<sup>th</sup> May 2021, in which the *ex-parte* applicant challenged the Respondent's Assessment Notice of 15<sup>th</sup> April 2021.

14. It was the *ex-parte* Applicant's case that the Respondent had issued Agency Notices dated 16<sup>th</sup> May 2022 and 23<sup>rd</sup> September 2022 for alleged unpaid VAT of Kshs. 72,468,992/=. The *ex-parte* Applicant contended that it moved the Tax Appeals Tribunal vide Misc. Application No. 177 of 2022 to seek leave to appeal out of time, which leave was declined and its application dismissed. The *ex-parte* applicant then moved the High Court on appeal when the second Agency Notice of 23<sup>rd</sup> September 2022 was issued seeking the same amount of Kshs. 72,468,992/=.
15. In a decision rendered on 7<sup>th</sup> October 2025, the Tax Appeals Tribunal found the Appeal to be merited and the Tribunal invalidated the Respondent's Objection Decision dated 8<sup>th</sup> October 2021. Subsequently, on 15<sup>th</sup> December 2025, the Respondent issued another Agency Notice to the *ex-parte* Applicant's banks (NCBA Bank and Stanbic Banks) demanding payment of Kshs. 139,409,439/= from the *ex-parte* Applicant's existing accounts. It is these Notices that form the subject of the present Application for determination by this Court.

16. Article 47 of the Constitution guarantees every person the right to fair administrative action which is expeditious, efficient, lawful and procedurally fair. The Article stipulates:

***47. Fair administrative action***

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

***(2). If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.***

***(3). Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—***

***(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal;***

***and***

***(b) promote efficient administration.***

17. On the other hand, **Section 7 of the Fair Administrative Actions Act** provides thus: -

***7. Institution of proceedings***

***(1). Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to—***

***(a) a court in accordance with section 8; or***

*(b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.*

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

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

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

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

*(iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;*

*(iv) was biased or may reasonably be suspected of bias; or*

*(v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;*

*(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;*

*(c) the action or decision was procedurally unfair;*

*(d) the action or decision was materially influenced by an error of law;*

- (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;*
- (f) the administrator failed to take into account relevant considerations;*
- (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;*
- (h) the administrative action or decision was made in bad faith;*
- (i) the administrative action or decision is not rationally connected to—*
- (i) the purpose for which it was taken;*
  - (ii) the purpose of the empowering provision;*
  - (iii) the information before the administrator; or*
  - (iv) the reasons given for it by the administrator;*
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;*
- (k) the administrative action or decision is unreasonable;*
- (l) the administrative action or decision is not proportionate to the interests or rights affected;*

- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;*
- (n) the administrative action or decision is unfair; or*
- (o) the administrative action or decision is taken or made in abuse of power.*

*(3). The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that–*

- (a) the administrator is under duty to act in relation to the matter in issue;*
- (b) the action is required to be undertaken within a period specified under such law;*
- (c) the administrator has refused, failed or neglected to take action within the prescribed period.*

18. Having set out the law above, I now examine the impugned Agency Notices which read in part as follows: -

*“In exercise of the powers conferred upon me by Section 42 of the Tax Procedures Act, 2015, I hereby declare you to be an agent of the above taxpayer and require you to pay me the sum of Kshs. 139,409,439, being tax due by the above tax payer, from any money which may, at any time:*

*(a) Be owed by you to the taxpayer;*

*(b) Be held by you for, or on account of the said tax payer;*

*(c) Be held by you on account of some other person for payment to the said taxpayer;*

*(d) Be held by you with authority from some other person to pay money to the said taxpayer.....”*

19. Certiorari, Mandamus and Prohibition are public law remedies under Judicial Review which vest in Courts a special jurisdiction in issuing the said orders. [See the cases of **St. Patrick Hill School Ltd vs. PS. Ministry of Foreign Affairs [2008] eKLR** and **Kenya National Examination Council vs. Republic ex-parte Gathenji (CA No. 266/96)**].
20. In the present case, the *ex-parte* Applicant decries the fact that the Respondent has been arbitrarily issuing Agency Notices which has in turn put the *ex-parte* applicants into disrepute and subjected it to financial and operational prejudice. In the verifying affidavit, the *ex-parte* Applicant's deponent asserts that their bank accounts had been frozen on account of the said Agency Notices. Further, that, since the TAT had nullified the Respondent's tax assessment in which they demanded the payment of Kshs. 72,468,992/=, the Respondent's decision to further demand another sum of Kshs. 139,409,439/=, through the impugned Agency Notices of 15<sup>th</sup> December 2025 was a blatant disregard of the TAT's decision.

21. On their part, the respondent never filed any affidavit to contest the factual depositions by the ex parte applicant. Counsel for the Respondent argued from the bar that the said Notices were based on fresh assessments by the Respondent and that they were not issued in relation to the decision or the amounts stated in the TAT Appeal No. E276 of 2025.
22. These proceedings were initiated pursuant to Order 53 of the Civil Procedure Rules. This Court therefore appreciates that it must nonetheless wear the lens of the decision in **Dande and others v Inspector General of Police and others** where the Supreme Court held that merit review is permitted in certain cases where circumstances permit, owing to judicial review being a constitutional remedy.
23. Ordinarily, Judicial Review is concerned with the process making ambit of a decision as opposed to the merits of the said decision. The Supreme Court of Kenya in the case of **Judges and Magistrates Vetting Board vs. Centre for Human Rights and Democracy [2014] eKLR** stated thus: -  
  
*“When Courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, Courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights; and ensures that decision makers are not above the law, but have taken*

*responsibility for making lawful decisions, in the knowledge that they are reviewable.”*

24. From the material on record and arguments by the parties’ counsel, the question is, if indeed the Agency Notices issued by the Respondent on 15<sup>th</sup> December 2025 were in respect of a different assessment, what due process was then followed in demanding for the settlement of the same, after the TAT had set aside the earlier assessments?

25. The Respondent’s Notices were premised on **Section 42** of the **Tax Procedures Act** which provides in part as follows:

***42. Power to collect tax from person owing money to a taxpayer***

***(1). This section applies when a taxpayer or a non-resident person who is subject to tax in Kenya is, or will become liable to pay a tax and —***

***(a) the tax is unpaid tax; or***

***(b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for the payment of the tax.***

***(2). The Commissioner may, in respect of the taxpayer or the non-resident person who is subject to tax in Kenya and by notice in writing, require a person (referred to as the "an agent")—***

***(a) who owes or may subsequently owe money to the taxpayer or the non-resident person who is subject to tax in Kenya;***

*(b) who holds or may subsequently hold money, for or on account of, the taxpayer or the non-resident person who is subject to tax in Kenya;*

*(c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer or the non-resident person who is subject to tax in Kenya; or*

*(d) who has authority from some other person to pay money to the taxpayer or the non-resident person who is subject to tax in Kenya, to pay the amount specified in the notice to the Commissioner, being an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the Commissioner believes will not be paid by the taxpayer or the non-resident person who is subject to tax in Kenya by the due date...*

26. The above provisions postulate that, this Section becomes activated where the tax is unpaid or the Commissioner believes that the tax payer may not settle the tax debt by the due date. It means that there has to be an assessment process undertaken to require the making of a demand for settlement by the *ex-parte* Applicant. That demand must be in writing and giving timelines within which, the tax demanded must be paid. Only upon such notice or demand and failure to pay or to challenge the assessment

would the respondent be entitled to issue agency notices against the tax payer.

27. In this case, there was no evidence adduced by the Respondent to demonstrate that the said amounts had been assessed and were due for payment or that demand was ever made to the *ex-parte* Applicant and they declined to settle. If anything, had the said Agency Notices been premised on fresh assessments, then it was incumbent on the part of the Respondent to demonstrate that it had followed the due process in seeking a self-assessment and issuing the relevant Notices before going ahead to demand payments from the *ex-parte* Applicant's bankers.
28. in my view, the Respondent jumped the gun and took an extreme measure when it proceeded to issue Notices under Section 42 to the Interested Parties (the *ex-parte* applicant's bankers), yet there was no demonstration of any assessment or demand for payment given to the *ex-parte* Applicant and a subsequent refusal to pay.
29. I am inclined to agree with the *ex-parte* Applicant that if indeed the amounts were fresh assessment, then the Respondent had a duty to prove the assertion. Even then the Respondent was under a statutory duty to make issue a demand notice for settlement of assessed tax before employing the extreme measure of directly engaging the tax payer's bankers.

30. On what orders to issue, the Court of Appeal in **Kenya National Examination Council vs Republic; Njoroge & 9 others (Ex parte) (Civil Appeal 266 of 1996) [1997] KECA 58 (KLR) (21 March 1997) (Judgment)** explained judicial review remedies and their purposes as follows:

*“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it 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...*

*The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...*

*Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”*

31. Applying the principles espoused in the above decision, I find that the ex parte applicant is entitled to judicial review orders of certiorari which is the quashing order. The said Judicial Review remedy empowers this Court to discharge or to completely set aside or to remove a decision rendered by a public body such as the impugned Agency Notices issued by the Respondent herein, without following due process as stipulated in law.
32. Prohibition on the other hand as a remedy applies where a public body has acted in excess of its powers or conducted itself in a manner that contravenes the rules of natural justice. It means that, it being futuristic, it can only apply to an intended action by a public authority only. In this case, the respondent despite a judgment by the Tax Appeals Tribunal setting aside the assessed taxes, the Respondent went ahead and issued agency notices based on the same set aside taxes. In my view, Prohibition becomes necessary to prohibit any future conduct that is illegal and an overreach. Prohibition order is meant only to stop an authority from wrongfully exercising its powers. Accordingly, I find that prohibition is available to prohibit the respondent from re-issuing any agency notices based on the same taxes assessed which were set aside by the Tax Appeals Tribunal, as to do so is to defy lawful orders of the Tribunal.
33. Turning to the prayer for a Mandamus, this type of order is meant to compel a public authority to carry out a duty that the law recognizes. It's not simply about forcing someone to act. There must be a public duty that

the authority owes to another person. In this case, the Respondent issued agency notices despite an order of the Tribunal setting aside the taxes assessed against the exparte applicant. Mandamus in my view, is an efficacious remedy to compel withdrawal, cancellation and or vacating the agency notices issued against the bank accounts of the exparte applicant on 15<sup>th</sup> December, 2025, considering the conduct of the respondent in forcefully enforcing the assessed taxes which had nonetheless been set aside by the Tax Appeals Tribunal.

34. On whether I should award punitive damages against the Respondent, Punitive damages are meant to punish the wrongdoer and deter similar conduct in the future. They are not meant to compensate the applicant for losses as would the compensatory damages do.

35. Punitive damages are awarded only in cases where the respondent's conduct is proved to be so egregious, malicious, reckless, or wilfully wrongful. Simple negligence or minor unlawful acts generally do not justify punitive damages.

36. In the instant case, I note that the respondent is a public authority and it acted in an official capacity in unprocedurally issuing the agency notices. In addition, the impugned act was simply a procedural illegality and therefore this court must be slow in awarding damages which were not even quantified by the exparte applicant.

37. Having said as much, I find the Notice of Motion dated 17<sup>th</sup> February 2026 merited and I allow it as follows:

- a. An order of CERTIORARI is hereby issued quashing the decision of the Respondent contained in the Agency Notices dated 15<sup>th</sup> December 2025 issued to NCBA Bank and Stanbic Bank pursuant to Section 42 of the Tax Procedures Act, 2015.*
- b. An order of PROHIBITION is hereby issued prohibiting the Respondent, whether by itself, its officers, servants or agents, from enforcing, implementing, acting upon or giving effect to the said Agency Notices or any other enforcement or recovery measures arising from the same tax demand which was set aside by the Tax Appeals Tribunal in TAT Appeal No. E276 of 2025.*
- c. An order of MANDAMUS is hereby issued compelling the Respondent to forthwith rescind, withdraw and vacate the Agency Notices dated 15<sup>th</sup> December 2025 issued against the Ex Parte Applicant's bank accounts held with the interested parties herein.*
- d. The Respondent is restrained from issuing any further agency notices, demands, or enforcement measures in respect of the same tax assessment that was conclusively determined in Tax Appeals Tribunal Appeal No. E276 of 2025, unless in strict compliance with the law.*
- e. As regards punitive and exemplary damages, Judicial Review is primarily concerned with legality, and no exceptional circumstances have been demonstrated to warrant such an award.*
- f. On costs, the application was essentially unopposed as the respondent's counsel only appeared for brief oral statements not backed by any material. The applicant's counsel relied essentially*

*on what had been filed and that is what this court has relied on to make the determination. There is also the need to promote harmony between the applicant and the respondent in their engagement over tax issues which remain unresolved and for that reason, I order that each party bear their own costs of these proceedings.*

38. Orders accordingly.

**Dated, Signed & Delivered at Nairobi virtually this 9<sup>th</sup> Day of April 2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL