Republic v Pharmacy and Poisons Board & another; Galaxy Pharmaceuticals Ltd (Ex parte Applicant) (Judicial Review Application E352 of 2025) [2026] KEHC 4863 (KLR) (Judicial Review) (15 April 2026) (Judgment)

Neutral citation: [2026] KEHC 4863 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E352 OF 2025

RE ABURILI, J

APRIL 15, 2026

IN THE MATTER OF: REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAIROBI MILIMANI LAW COURTS JUDICIAL REVIEW DIVISION, JUDICIAL REVIEW APPLICATION NO. E352 OF 2025

-AND -

IN THE MATTER OF: AN APPLICATION BY GALAXY PHARMACEUTICALS LIMITED FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

-AND -

IN THE MATTER OF: A NOTICE OF INTENTION TO CANCEL REGISTRATION OF HEALTH PRODUCTS DATED 26TH MARCH 2025 AND A SURRENDER OF CANCELLED DRUG REGISTRATION CERTIFICATES DATED 22ND MAY, 2025 BY PHARMACY AND POISONS BOARD OF FORTY (40) HEALTH PRODUCTS

-AND -

IN THE MATTER OF: SECTION 3B(2) (E) OF THE PHARMACY AND POSIONS BOARD ACT, CAP 244 LAWS OF KENYA AS READ TOGETHER WITH RULES 11(1)(B), 11(1)(C), 11(3) AND 12 OF THE PHARMACY AND POSIONS BOARD (REGISTRATION OF HEALTH PRODUCTS AND TECHNOLOGIES) RULES 2022 AND GUIDELINES 2.0 AS READ WITH GUIDELINE 3.0 OF THE PHARMACY AND POISONS BOARD GUIDELINES FOR SUSPENSION, WITHDRAWAL, WITHHOLDING AND CANCELLATION/ REVOCATION OF MARKETING AUTHORIZATION OF HEALTH PRODUCTS AND HEALTH TECHNOLOGIES IN KENYA, HPT/PER/GUD/042 REVISION NO. 02.

-AND -

IN THE MATTER OF: SECTION 8 & 9 OF THE LAW REFORM ACT AND ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010

-AND -

IN THE MATTER OF: OF THE FAIR SECTIONS 4,7,8,9 AND 11 ADMINISTRATIVE ACTIONS ACT, NO.4 OF 2015

-AND -

IN THE MATTER OF: ARTICLES 40, 47, 50(1), 165(6) AND 165(7) OF THE CONSTITUTION OF KENYA

-AND -

IN THE MATTER OF: SECTION 7 OF THE TRADEMARKS ACT CAP 506

BETWEEN

REPUBLIC ..... APPLICANT

AND

PHARMACY AND POISONS BOARD ..... RESPONDENT

AND

PRISM LIFE SCIENCES LTD ..... INTERESTED PARTY

AND

GALAXY PHARMACEUTICALS LTD ..... EX PARTE APPLICANT

JUDGMENT

Background

1. The ex-parte Applicant (Galaxy Pharmaceuticals Limited) is a Kenyan company and describes itself as the lawful proprietor and Marketing Authorization Holder (MAH) for some forty (40) pharmaceutical products. That Prism Life Sciences Limited, the Interested party herein is a foreign manufacturer who previously produced these products under a private contractual arrangement. The exparte Applicant asserts that in 2016, it successfully varied the Marketing Authorization Holder (MAH) to reflect itself as the MAH, a change approved by the Respondent Pharmacy and Poisons Board, for eight years.

2. It is the applicant's case that in August 2024, following a commercial dispute, the Interested Party lodged complaints of counterfeit and substandard products against the applicant. That following this complaint, the Respondent is said to have quarantined the ex-parte Applicant's products. However, according to the applicant, the laboratory tests conducted in March 2025 confirmed the said quarantined products to be compliant. That despite these findings made by the Respondent, the Respondent is said to have refused to lift restrictions on the said products and that instead, it issued a Notice of Intention to Cancel the registration on 26th March 2025 citing alleged irregularities in the 2016 MAH variation and that in doing so, the Respondent did not provide any specific particulars, reasons nor accord the exparte applicants a fair hearing.

3. The Notice to cancel triggered the filing of Judicial Review Application No. E113 of 2025 by the ex-parte Applicant. Notwithstanding the existence of the said Judicial Review Proceedings, where there was no stay order issued, the Respondent proceeded to cancel the registrations on 22nd May 2025.

4. It is alleged that subsequently, the Respondent cleared the quarantined products for sale, irregularly updated its database and permitted third parties, including the Interested Party herein to import and deal in the Applicant's trademarked products, while criminalizing the Applicant's own importation. Further, that that the Respondent later introduced new, contradictory reasons for the cancellation in October 2025.

5. The Interested Party's case is that this Court lacks jurisdiction as the matter is a commercial dispute and lies within the Commercial Courts. That the suit is also time-barred, involves sub judice issues already before other courts and amounts to forum shopping. It is also their position that the matter is res judicata as the issue has previously been judicially reviewed and denied by this Court in Judicial Review Division in JR No. E113 of 2025 Galaxy Pharmaceuticals Limited versus Pharmacy and Poisons Board & Prism Life Sciences Ltd on 15th August 2025; that the current suit repeats the same claims, constituting abuse of court process and that the applicant failed to exhaust internal dispute resolution alternatives as required by law.

6. The above is the snapshot of this case.

The Application

7. Vide its Notice of Motion dated 10th November 2025 and filed pursuant to leave granted by this Court in HCJR E328 of 2025 on 21st October 2025, premised on Articles 23, 40, 47, 50 and 165 of *the Constitution* of Kenya, Sections 7, 8, 9, and 11 of the *Fair Administrative Action Act*, 2015, Fair Administrative Action Rules 2024; Order 53 Rules (1), (2), (3) and (4) of the Civil Procedure Rules 2010, the inherent power and jurisdiction of the honourable Court and all other enabling provisions of the law; the applicant seeks the following orders:

    1. Spent

    2. spent

    3. That An Order of Certiorari do issue to bring into this Honourable Court and quash the Notice of Intention to Cancel dated 26th March 2025 and the subsequent decision of 22nd May 2025 cancelling the Applicant's registration certificates for Forty (40) pharmaceutical products.

    4. That An Order of Mandamus compelling the Respondent to Reinstate the Applicant's drug registration certificates for the affected Forty (40) pharmaceutical products, reissue the retention certificates for the pharmaceutical products and restore the said products onto the Respondent's official register/database of approved medical products;

    5. That An Order of Prohibition restraining the Respondent from assigning, authorising. licensing, or otherwise permitting the Interested Party or any third party to import, distribute, market, or deal in any of the pharmaceutical products registered under the Applicant's trademarks, or in any other way interfering with the Applicant's exclusive proprietary rights over the said products.

    6. That a declaration be issued that the Respondent's conduct in cancelling the Applicant's registrations was unconstitutional, illegal, irrational, and procedurally unfair, in violation of Articles 40, 47, and 50 of *the Constitution*. [certiorari was sufficient]

7. spent.

8. That the costs of this Application be provided for.

8. The Application is premised on the grounds on the face of it, supported by the Statutory Statement dated 16th October 2025 and the verifying affidavit of Jay Mitendra Hirani, the ex-parte Applicant's Director sworn on 7th November 2025.

9. The ex-parte Applicant avers that on 26th March, 2025, the Respondent issued a Notice of Intention to cancel the Applicant's drug registration certificates, citing vague and unsubstantiated allegations of substandard or counterfeit products, an ownership dispute and irregular misrepresentation in variation of the Marketing Authorization Holder (MAH). The reason for the cancellation in the Form 5 was stated as "For Misrepresentation of information during application for registration."

10. It is averred that the Notice was issued in total disregard of the law and it illegally, unlawfully and unreasonably purported to cancel the drug registration certificates of over forty (40) pharmaceutical products owned by the ex-parte Applicant.

11. The ex-parte Applicant contends that the said "Notice of Intention to Cancel Registration of Health Products" was illegally, un-procedurally and irregularly issued because the Respondent failed to comply with the mandatory provisions of Rule 11(3) of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, Guideline 3.1.3 of the Pharmacy and Poisons Board Guidelines for Suspension, Withdrawal, Withholding and Cancellation/Revocation of Marketing Authorization of Health Products and Health Technologies In Kenya (herein after referred to as the Guidelines) and Section 4(3) of the *Fair Administrative Action Act*. That despite having investigated the ex-parte Applicant's Pharmaceutical products and cleared the same for having met the threshold, the Respondent still proceeded to issue a notice of cancellation and cancelled the same.

12. It is the applicant's further case that the Respondent failed to issue a well-reasoned response to the ex-parte Applicant thereby denying it an opportunity to present its case before the Respondent and that the Respondent instead gave a response through their advocates on record during the pendency of the Judicial Review No.113 of 2025 stating that the courts would be the appropriate forum to fully examine and resolve the issues raised.

13. It is averred that the Respondent actualised its threat to cancel the ex-parte Applicant's drug registration certificates through its letter dated 22nd May 2025 while the Judicial Review proceedings were ongoing which letter cancelling the registration was also un-procedural and irregular for failing to comply with Rule 12 of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules; Clause 3.1.4 of the Guidelines; Article 47(1) of *the Constitution* of Kenya; Section 4(1) of the *Fair Administrative Action Act*; Failure to comply with section 4(3)(b) of the *Fair Administrative Action Act*; Section 4 (3) (g) of the *Fair Administrative Action Act*' and Rule 12 of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules.

14. It is further averred that the letter was issued in outright bad faith by usurping the High Court's jurisdiction over an ongoing commercial dispute, despite there being no injunction prohibiting the Applicant's operations and failing to give a reasoned determination or disclosing any supporting documentation for the decision.

15. It is asserted that the Respondent's decision to cancel registration of the products was arbitrary and in disregard of the laboratory findings as the Respondent had quarantined the Applicant's products since 27th August 2024, which, vide a letter dated 13th March 2025 were later confirmed through laboratory analysis to have fully complied with applicable standards and the same were cleared for release and sale

in the Kenyan market during the pendency of the Judicial Review proceedings. That this made the Respondent's impugned decision unreasonable and irrational and meant that they unlawfully assumed jurisdiction over a commercial dispute Milimani Commercial Case No. E065 of 2025 and Milimani Commercial Case No 718 of 2025, which falls within the exclusive domain of the High Court. That in doing so, the Respondent acted beyond its statutory mandate and contrary to due process.

16. It is further averred that the Respondent acted ultra vires by determining a trademark dispute based on their letter dated the 14th October 2024 where the Respondent wrote a letter to the Applicant clearly overstepping their jurisdiction. That the letter dated 14th October 2025 issued to the ex-parte Applicant is similarly un-procedural, illegal, irregular and irrational for several reasons inter alia, that it does not comply with the mandatory provisions of Rule 11(3) & 12 of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules; secondly, that it gives contradictory reasons for cancellation based on the contradicting allegations provided in the Notice dated 26th March 2025 and the complaint letter by the Interested Party; it failed to comply with Guideline 3.1.5; 3.1.6; 3.17; and 3.1.10 of the Pharmacy and Poisons Board Guidelines for Suspension, Withdrawal, Withholding and Cancellation/Revocation Of Marketing Authorization of Health Products and Health Technologies in Kenya; it failed to take into consideration the pending commercial dispute between the parties which issues of a Private agreement, meetings held and the fact that the Interested Party was only contracted to manufacture the pharmaceutical product on behalf of the Applicants; and that there is a misrepresentation of the fact that the ex-parte Applicant failed to respond within 14 days yet the ex-parte Applicant responded to the Notice of Cancellation in a letter dated the 3rd of April, 2025 which was done eight days prior to the impugned cancellation.

17. The ex-parte Applicant further avers that the Respondent relied on complaint lodged by the complainant/interested party herein without subjecting it to the mandatory legal threshold for proving ownership of a trademark, a purview that is a preserve of the High Court and that it similarly failed to specifically disclose the nature of misrepresentation or to comply with Section 4(3) of the *Fair Administrative Action Act*.

18. Th exparte applicant contends that despite the Respondent's knowledge that the ex-parte Applicant is the registered proprietor of Forty (40) pharmaceutical products with a valid trademark which was lawfully acquired through registration with the Kenya Industrial Property Institute (KIPI), which trademark the exparte applicant has been in continuous commercial use in Kenya since 2003, the Respondent cancelled the ex-parte Applicant's drug registration certificates thereby undermining the exparte applicant's rights under Article 40 of *the Constitution* and the exclusive rights guaranteed under Sections 7 and 46 of the Trademarks Act.

19. It is the exparte applicant's further case that the Respondent reverted the drug registration certificates to the Interested Party despite a Report prepared by the Respondents on the 9th January, 2023 in which they wrote a letter on Non-Compliance with Good Manufacturing Practices by the Interested Party, stating that the Board would not approve drugs manufactured at the Interested Party's site for registration and sale in Kenya. That in view of this, the Interested party was required to apply for reinspection of the facility once corrective actions in the report were addressed.

20. The ex-parte Applicant avers that on 9th May, 2023 the Respondent issued to the Interested Party through the ex-parte Applicant, a suspension of the GMP Certification of the manufacturing facility, setting out alleged serious breaches of key GMP principles and that the Interested Party was found to be operating in non-compliance with the laid down GMP requirements. That such suspension remained in force until such time when all Corrective Action and Preventive Actions would be adequately addressed.

21. Consequently, the exparte applicant asserts that the Respondent's actions are unreasonable and disproportionate as they have created a regulatory stalemate to the effect that any importation by the Applicant is now criminalized under the guise of cancellation, while importation by third parties using the Applicant's trademarks and which constitutes counterfeiting with a public health risk due to potential shortages of life-saving medical products are allowed.

22. The exparte applicant maintains that the Respondent has acted in a procedurally unfair, irrational, illegal and oppressive manner, in violation of the Applicant's rights under Articles 40, 47 and 50 of *the Constitution*, which called for the Court's urgent intervention, to avert irreparable, commercial and constitutional harm on the Applicant. Further, that the Applicant had a legitimate expectation arising from the Respondent's conduct and representations, that its duly registered drug registration certificate and drug retention certificates would remain valid and enforceable unless lawfully cancelled after a fair administrative process. The abrupt cancellation is said to have violated that legitimate expectation.

23. Further deposition on behalf of the exparte applicant is that where a public body acts without affording the affected party an opportunity to be heard, or fails to follow a fair process, any subsequent action taken on the basis of such a decision risk causing irreversible harm and it is void ab initio. That unless restrained, the Respondent will continue relying on the unlawful cancellation to facilitate the infringement of the Applicant's trademarks, displace it from the pharmaceutical market and cause grave and irreparable harm that cannot be remedied by damages.

24. The exparte applicant contends that the products in question treat serious medical conditions and that therefore, the regulatory stalemate created by the Respondent where both the Applicant and third parties cannot lawfully trade endangers public access to essential medicines which contravened the right to access to essential medication under Article 43 (1) (a) of *the Constitution* of Kenya, constituting a misuse of power and a threat to public health.

25. The fear by the exparte applicant, following the cancellation and the effects thereof is that it risks imminent closure of its operations if the current regulatory stalemate persists, as it had taken substantial loan facilities to support its operations in regard to importation and manufacturing of their Pharmaceutical Products. Further, that the continued disruption of its operations has rendered it unable to meet its financial obligations, exposing it to default and possible insolvency, yet it has employed over thirty (30) staff members whose families depend on the company for their livelihood such that the closure of their operations would result in loss of employment, economic hardship and social instability.

26. The exparte applicants urge this Court to find that the Respondent's actions are disproportionate, unreasonable, and ultra vires its statutory mandate, warranting intervention by the Court through the prerogative orders sought.

The Respondent's Replying Affidavit

27. Opposing the Application, the Respondent filed a Replying Affidavit sworn by Dr. Ahmed I. Mohammed, the Respondent's Acting Chief Executive Officer/Registrar, sworn on 8th January 2026. The Respondent contends that the ex-parte Applicant was afforded an opportunity to be heard prior to the decision to cancel its drug registration certificates being made and that the process of suspension, withdrawal, withholding and revocation of Marketing Authorization Holder is anchored in the law and that there was compliance with the law in the issuance of the letter dated 26th March 2025.

28. The deponent avers that the jurisdiction of this Court has been wrongly invoked and that the suit is an abuse of the court process to the extent that the dispute herein is commercial in nature, whose proceedings are ongoing before the Commercial Division of the High Court, thereby invoking the jurisdiction of two courts at the same time. That their decision contained in its letter of 26th March 2025 is justified as the drug registration certificates held by the ex-parte Applicant were issued out of misrepresentation.

29. It is deposed in contention that the ex-parte Applicant has not satisfied the conditions for the grant of orders of Certiorari & Prohibition sought herein and that the proceedings fatally defective, having been instituted to challenge a decision after the lapse of six (6) months, in contravention of Section 9 (3) of the *Law Reform Act*.

Interested Party's Replying Affidavit

30. The Interested Party filed a Replying Affidavit dated 25th November 2025 sworn by Ajay Joshi, its director, who deposes that the Application, the Verifying Affidavit and Statutory Statement by the ex--parte Applicant, reveal that the main issue in the suit, the ownership of the 45 pharmaceutical products, is pending before the Commercial Courts vide Milimani Commercial Case No. E605 of 2025 and Milimani Commercial Case No. E718 of 2025. That this is well acknowledged by the ex-parte Applicant thereby rendering these proceedings duplicative and an abuse of process.

31. The Interested Party contends that the ex-parte Applicant's application is forum shopping, duplicative, and an abuse of judicial process, adding that the ex-parte Applicant fraudulently attempted to usurp ownership of the interested party's products through forged documents, counterfeit drugs and misrepresentation, which was confirmed by the Regulatory and investigative bodies. This then, according to the Interested Party, justified the cancellation of certificates.

32. It is deposed that the Interested Party is a global pharmaceutical manufacturer, incorporated in India, with a reputation for high-quality medicines and that it appointed the ex-parte Applicant in 2003 as its Local Technical Representative (LTR) and distributor in Kenya. It is deposed that the said appointment did not confer ownership or intellectual property rights, specifically trademarks, as these remained with the Interested Party.

33. The Interested Party avers that the ex-parte Applicant forged and fabricated a private agreement dated 20th August 2003 and meeting minutes purportedly held in September 2004, which were proven false by two forensic reports from the Directorate of Criminal Investigations (DCI).

34. On Trademark Misappropriation, the Interested Party contends that the ex-parte Applicant relying on the aforementioned forgery and spurious private agreement, illegally and in a conniving manner registered the trademarks in its own name, despite acting only as the interested party's Local Technical Representative. That further, the ex-parte Applicant acquired a company name: Prism Medico & Pharmacy Ltd to mimic the Interested Party's "PRISM" brand, then imported counterfeit drugs.

35. It is further deposed that the ex-parte Applicant distributed substandard drugs e.g., LIPILOC, TELMI, MEXIC that failed quality tests, posing risks to public health and that as a result of the fraud, forgery and distribution of substandard drugs, the Interested Party terminated their appointment of the exparte applicant as LTR and appointed a new representative. That it also lodged a formal complaint with the Pharmacy and Poisons Board (PPB) in August 2024.

36. It is deposed that the Pharmacy and Poisons Board (Respondent) found that the ex-parte Applicant had irregularly varied the Market Authorization Holder (MAH) through misrepresentation and cancelled the exparte applicant's certificates after the DCI confirmed the key documents relied on by

the ex-parte Applicant were forgeries. The Interested Party also asserts that the ex-parte Applicant's case is built on fraud and misrepresentation, and therefore it is before this Court with "unclean hands."

37. Further, that the matter is res judicata and sub judice, making the current suit an abuse of process since prior attempts by the ex-parte Applicant to secure reliefs in other courts were denied. The Interested Party urges dismissal of the ex-parte Applicant's case, arguing that the Respondent acted lawfully under Rule 11(b) and (c) of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules.

The Applicant's rejoinder

38. In a rejoinder, the ex-parte Applicant filed a Supplementary Affidavit sworn Jay Hitendra Hirani on 22nd January 2026 reiterating the contents of the Notice of Motion dated the 10th November 2023, the Chamber Summons and accompanying affidavit dated 16th October, 2025. In summary, the ex-parte Applicant maintains its assertions that the Respondent exceeded its statutory authority by intervening in a commercial trademark dispute, selectively investigating only one party, ignoring evidence of compliance and unlawfully cancelling the exparte applicant's registration certificates. That the effect of the Respondent's actions is severe commercial and social harm, which warranted the judicial review reliefs sought by the ex-parte Applicant.

39. Mr. Hirani further deposed that they had been appointed both as a sole distributor in a commercial role and as a Local Representative before the Ministry of Health and the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules 2022, in a regulatory role. That under Kenyan law, foreign applicants had to appoint a Local Representative, confirming a formal regulatory agreement distinct from the commercial arrangement.

40. It is deposed that in terms of the commercial relationship, the ex-parte Applicant and the Interested Party traded from 2003–2014 and again from 2016–2024, and that the Respondent was not privy to their commercial dealings. He deposes further that in January 2023, the inspection revealed irregularities at the Interested Party's facility, including inadequate documentation and non-compliance with WHO-GMP standards, that the GMP certification was suspended in May 2023, that the Interested Party complained about counterfeit/substandard drugs and trademark misuse in August 2024 and in October 2024, the Respondent quarantined the Applicant's products despite later analysis confirming compliance.

41. It is deponed further that the Respondent required the Applicant to prove trademark ownership but did not require the Interested Party to do the same, that Certificates were reverted to the Interested Party despite its non-compliance history which was ultra vires the Respondent's mandate, since trademark disputes fall solely under the High Court or Kenya Industrial Property Institute.

42. On the issue of Cancellation of Certificates, it is deposed that the Respondent issued a Notice of Cancellation in March 2025 citing misrepresentation which was objected to by the exparte applicant through the ex-parte Applicant's advocates, but that the Respondent falsely claimed that no objection was lodged. That consequently, the cancellation proceeded despite ongoing Judicial Review proceedings, which cancellation decision was illegal, irrational and marred with procedural impropriety.

43. The ex-parte Applicant disputes the issue of sub judice raised by Respondent, and emphasizes that administrative decisions are exempt from certain statutory limits under Kenyan law. It decried the cancellation of its registration certificate and lamented that it not only led to severe commercial setbacks but also hospitals and pharmacies cancelled their orders resultantly denying patients critical medication.

44. Lastly, it is asserted that by admission, the Interested party has not been exporting to Kenya since 2022 therefore the effect of not trading with the exparte Applicant's trademark is now being felt by the exparte Applicant who not only introduced the product to the Kenyan market but ensured its safety, efficacy and quality as per the objectives of the Respondent, for 18 years.

45. A Further Affidavit was filed on 5th February 2026 sworn by the same director Mr. Hirani in response to the Interested Party's Replying Affidavit. He deposes that the Interested Party is improperly turning Judicial Review proceedings into a commercial dispute over ownership of pharmaceutical products and trademarks yet Judicial Review is limited to examining the lawfulness, rationality, and procedural propriety of administrative decisions.

46. The deponent urges that the Interested Party is misconstruing the matter as a commercial dispute over ownership of the 45 pharmaceutical products and asserts that their allegations of proprietary claims, trust arrangements, and trademark disputes are outside the scope of Judicial Review and should only be determined in a substantive civil suit, not in these proceedings.

47. It is deposed that the timing and conduct of the Interested Party was questionable because the parties had a cordial relationship for nearly 20 years and that the alleged complaint arose only after the Interested Party was found to be non-GMP compliant in 2024, suggesting malice and inconsistency.

48. Further, the ex-parte Applicant denies claims that trademarks were registered in trust and asserts that any such issues involve complex factual and legal questions unsuitable for Judicial Review. That in any event, it is the ex-parte Applicant who has already secured a High Court Order in HCOMM 718 OF 2025 restraining infringement of its trademarks.

49. It is further deposed that the variation of the ex-parte Applicant by the Interested Party as its Local Technical Representative (LTR) occurred in 2016, well before the alleged fallout in 2022 and that the Interested Party's claim that it was uninformed is misleading, as the change did not require notification under Rule 4(4) hence it cannot be said that the variation was effected without due process.

50. The ex-parte Applicant asserts that the allegations of unsafe pharmaceutical products are unfounded since quarantine and laboratory testing confirmed compliance and the quarantined products were released for sale. That additionally, the Interested Party's claim of an anonymous complaint is false as the records show that the complaint was lodged only after the non-GMP findings, thereby undermining the credibility of the alleged anonymous complaint.

51. That although the Interested Party accuses the exparte Applicant of forum shopping, Judicial Review is distinct from commercial suits and that the pending suits in other courts do not challenge the Respondent's administrative process. It is urged that the interested party's Replying Affidavit should be struck out for improperly expanding the scope of judicial review proceedings.

52. The ex-parte Applicant makes reference to the DCI reports and an ODPP letter and asserts that the forgery charges cannot be sustained and therefore the Court should disregard or strike out the Interested Party's Replying Affidavit and focus solely on whether the Respondent acted lawfully and procedurally in cancelling the Drug Registration Certificates.

53. The parties took directions to canvass the Application by way of written submissions which are now on record.

The ex-parte Applicant's Submissions

54. Counsel for the ex-parte Applicant submitted that the Respondent acted ultra vires, in breach of Articles 40 and 47 of *the Constitution*, and statutory provisions, in an irrational, unreasonable, and disproportionate manner.

55. Counsel for the applicant isolated four issues for determination being:

    a. whether the Court has the requisite jurisdiction;

    b. whether the Respondent acted ultra vires, unlawfully, or on the basis of an error of law;

    c. whether the Respondent breached the ex-parte Applicant's constitutional and statutory right to fair administrative action; and

    d. whether the Respondent's decisions were irrational, unreasonable, and disproportionate.

56. On the first issue of the Court's jurisdiction Counsel for the Applicant asserts that the Respondent's actions constitute administrative decisions under Article 47 of *the Constitution* and the *Fair Administrative Action Act* 2015, thereby falling within the Court's supervisory jurisdiction under Articles 165 (6) and (7) of *the Constitution*. Their argument is that the Respondent, as a statutory body, performs public functions affecting legal rights, making its decisions amenable to Judicial Review, irrespective of underlying commercial aspects. That the existence of parallel commercial suits does not oust this Court's jurisdiction, as Judicial Review focuses on the decision-making process, not the merits of commercial disputes.

57. On limitation of time, counsel for the applicant submits that the Court is properly seized of jurisdiction and that Section 9 (4) and (5) of the *Law Reform Act* when read together with Order 53 Rules (1) and (2) of the Civil Procedure Rules expressly exempts administrative actions from the mandatory six-months limitation period, thereby validating the filing of the present suit.

58. Counsel further submits that the issue of other remedies being available in other forums was untenable because the Respondent involved itself into the ongoing private commercial dispute between the ex-parte Applicant and the Interested Party prior to the filing of the present suit and as held by the court in Republic vs. Commissioner of Lands ex-parte Lake Flowers Limited, Nairobi HC. Misc Application No. 1235 of 1998 (UR), and that therefore, the availability of other remedies is not a bar to the granting of JR reliefs.

59. The argument that the matter was res subjudice was also dismissed by the applicant on the ground that the matter before the Court is an administrative decision by a statutory body and not concerned with the merits as was in the ongoing commercial disputes. Counsel citeed the case of Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd (2002) KECA 8 (KLR) which outlines the scope of Judicial Review.

60. On the second issue of the ultra vires actions of the Respondent, it is submitted that the Respondent's decision is premised on an error of law because they acted ultra vires and unlawfully by intervening in a private commercial and intellectual property dispute, which falls outside its statutory mandate to regulate pharmacy and public health.

61. Counsel for the ex-parte Applicant submitted that the Respondent conceded the commercial nature of the dispute but proceeded to exercise regulatory powers to resolve it, relying on commercial letters

rather than valid regulatory agreements. It is further argued that the Respondent misapplied legal frameworks such as conflating the Market Authorization Holder variation with LTR notification under Rule 4(4) of the 2022 Rules to justify cancellation based on alleged misrepresentation or fraud, rendering its decision jurisdictionally defective, null, and void ab initio.

62. Counsel argues that the Respondent usurped powers not conferred upon it by statute effectively transforming itself into an arbiter of trademark ownership and commercial rights. That accordingly, their actions were not a lawful exercise of regulatory oversight but an unlawful incursion into a private commercial and intellectual property dispute, which culminated into the issuance of a Notice of Intention to Cancel Registration that must be found to be a clear abuse of power and unenforceable as held by Lord Brightman in the case of Chief Constable of North Wales vs. Evans (1982) WLR 115, at pg. 1117 and Lord Macnaughten in Westminister Corporation vs. London and Northwestern Rail Co. (1905) AC 426 at P.430.

63. Counsel cites Rule 11 (3) of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, 2022, which require both Notice and a forum for hearing for the holder of a registration before cancelling their registration. That further, Clause 3.0 of the Guidelines for Suspensions, Withdrawal and Cancellation/Revocation of Marketing Authorization sets out a structured sequential process which mandatory procedure was not adhered to by the Respondent. Counsel urged that the Respondent's decision is tainted with illegality as explained in the case of Pastoli vs. Kabale District Local Government Council & Others (2008) EA 300.

64. On the third issue, it is submitted that the Respondent's conduct breached Articles 40 and 47 of *the Constitution* and Sections 4, 7, and 11 of the *Fair Administrative Action Act*, which entails a denial of fair hearing where the Notice of Intention to Cancel was issued with a procedurally defective response period of 14 instead of 20 days and cancelling registrations without considering the Applicant's objections or affording a hearing, despite pending Judicial Review. The second aspect being acting in bad faith, bias, and predetermination in shifting blame and citing inconsistent reasons for cancellation.

65. Further submission is that the Respondent solely relied on the Interested Party's allegations, failed to disclose investigation reports, and approved a third-party Local Technical Representative for the Interested Party while investigations were ongoing. The third instance of denial for fair hearing was that there was arbitrary deprivation of property when the Respondent cancelled the ex-parte Applicant's registrations and allowed third parties to import/market the Applicant's trademarked products without consent. Counsel submits that this was a deprivation of the ex-parte Applicant's intellectual property rights under Article 40 without due process or compensation.

66. Counsel relies on the Supreme Court cases of Communications Commission of Kenya vs. Royal Media Services & 5 Others (2014) eKLR, Republic vs. Migori County Government & Another Ex-Parte Nyangi John Juma (2018) KEHC (KLR) and Council of Civil Service Unions and Others vs. Minister for the Civil Service (1924) 3 All ER 935 at pg. 936 in support of these arguments.

67. On the 4th issue, Counsel submits that the Respondent's actions were irrational, unreasonable, and disproportionate, exemplified by maintaining quarantine on products confirmed compliant by laboratory tests, approving a third-party Local Technical Representative for a party found non-compliant with Good Manufacturing Practices (GMP), cancelling 40 drug registration certificates based on allegations concerning only two trademarks, while allowing a non-compliant third party to operate and disrupting the supply chain of essential medicines, impacting public health contrary to Article 43 (1) (a), without any evidence of public health risk.

68. Counsel submits that irrationality and unreasonableness are grounds for intervention by the court on Judicial Review as held in Nairobi High Court Misc. Application No. 1769 of 2004, R vs.

Ministry of Planning and Another Ex-Parte Professor Mwangi Kimenyi and Republic vs. KENYA revenue Authority Ex-Parte Yaya Towers Limited (2008) KEHC 489 (KLR). Counsel asserts that the Respondent created a regulatory stalemate by barring the ex-parte Applicant from trading lawfully and subjecting third party importation to counterfeiting and quality compromise.

69. Counsel for the applicant urged this Court to grant the requested orders of Certiorari, Mandamus, and Prohibition to quash the unlawful decisions, compel reinstatement of the registrations, and restrain the Respondent from further unlawful interference, thereby ensuring lawful regulatory oversight and protecting public interest.

The Respondent's Submissions

70. In its submissions dated 15th January, 2026, the Respondent submitted that the issues raised in these proceedings are heavily contested questions of fact which are best determined through a different forum and are therefore not suitable for determination through Judicial Review. The respondent framed the following issues for determination:

    a. Whether this Honourable Court, sitting as a Judicial Review court, is the appropriate forum for determining the issues raised herein, which are heavily contested questions of fact and are more suitably addressed in a different forum.

    b. Whether the Applicant has satisfied the threshold for grant of the judicial review orders sought herein; and

    c. Whether these proceedings are fatally defective, having been instituted to challenge a decision after the lapse of six (6) months, in contravention of Section 9(3) of the *Law Reform Act*.

71. On the first issue of whether this Court, sitting as a Judicial Review court, is the appropriate forum for determining the issues raised herein, which are heavily contested questions of fact and are more suitably addressed in a different forum, it was submitted that these proceedings are predicated on and underlying commercial dispute between the Applicant and the Interested Party as shown by the two sets of pleadings initiated before the Commercial Court as annexed as "AIM 14(a) & (b),"

72. Counsel for the respondent maintained that the disputes therein concern, inter alia, trademarks, breach of trust and agency, conspiracy to defraud and the wrongful use and privatization of proprietary rights, which contested issues remain unresolved and that notably, the orders sought in the instant proceedings are directly intertwined with, and arise from, those very contestations which the Respondent submits, ought to properly be determined by the Commercial Court.

73. On the order compelling the Respondent to issue the requisite permits to facilitate importation, subject to the condition that any importation by third parties be undertaken only with the prior written authorization of the trademark owner, such authorization not to be unreasonably withheld and the order of prohibition restraining the Respondent from assigning, authorizing, licensing, or otherwise permitting the Interested Party or any third party to import pharmaceutical products registered under the Applicant's trademarks, reliance was placed on Republic v Registrar of Titles & another Ex-parte David Gachina Muriithi & another [2014] KEHC 7555 (KLR) where Odunga G.V (as he then was) is said to have held as follows regarding canvassing factual issues in judicial review proceedings.

> " Similarly, in this case even if I were to grant the orders sought herein, the issue of validity of the applicant's title would remain unresolved and since there is already in existence civil

> proceedings revolving around the suit property substantially between the parties herein, it is my view that that issue ought to be determined before that forum in which viva voce evidence will be taken so that appropriate declaratory orders can be made and the matter brought to finality. To grant the reliefs sought without determining the ownership of the suit land would in my view be an exercise in futility. It must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.
>
> It follows therefore that where the resolution of the dispute before the Court requires the Court to make a determination on disputed issues of fact that is not a suitable case for judicial review."

74. In view of the foregoing, the Respondent submits that the substratum of the present proceedings is a complex and unresolved commercial dispute between the Applicant and the Interested Party, which is already the subject of pending proceedings before the Commercial Court, with the reliefs sought herein being inextricably intertwined with contested questions of fact touching on proprietary and commercial rights that can only be properly resolved through the taking of viva voce evidence.

75. on whether the Applicant has satisfied the threshold for grant of the judicial review orders sought herein. The respondent submitted that it is settled law that, to succeed in an application for judicial review, the applicant must demonstrate that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety in addition to lack of proportionality as was affirmed in Republic v Secretary County Public Board & Another ex parte Hulbai Gedi Adbiille citing the Ugandan case of Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA.

76. The respondent maintained that contrary to the allegations set out by the Applicant, the Respondent fully complied with requisite legal provisions and guidelines when arriving at the decision to cancel the drug registration certificates held by the Applicant.

77. That the applicant was to provide reasons why the Respondent should not proceed with the intended administrative action but that it did not, only for it to show up in court and allege that it was denied an opportunity to be heard. Reliance was placed on Republic v Betting Control and Licensing Board & another; Outdoor Advertising Association of Kenya (Exparte Applicant) [2023] KEHC 23792 (KLR) (Judicial Review) (6 October 2023) (Ruling) where the court is said to have observed that:

> " Whether or not a person was given a fair hearing would depend on the circumstances and the type of the decision to be made. The minimum requirement was that the person affected got the chance to present his case."

78. In light of the foregoing, the Respondent maintains that it acted within the confines of the law and adhered to the principles of procedural fairness an that the Applicant's failure to respond within the stipulated timeframe left the Respondent with no alternative but to proceed with the cancellation and that therefore, the allegation that the Respondent failed to issue a well-reasoned response to the Applicant thereby denying it an opportunity to present its case is unfounded.

79. Further submission was that the letter dated 26th March, 2025 conveying the decision to cancel the drug registration certificates held by the Applicant clearly set out the reasons for cancellation, that "the procedure for variation of the Marketing Authorization Holder (MAH) on the disputed products herein from Prism Life Sciences Limited to your Company vide your request dated 12th and 26th April, 2016 was irregular." It is therefore submitted that it is misleading and utterly dishonest for the

ex-parte Applicant to contend that no specific reasons were given by the Respondent prior to the cancelation. Reliance was placed on Dry Associates Ltd v Capital Markets Authority and Another, [2012] eKLR as cited with approval in the case of James Willy Kingori v Chairman Extra Ordinary Meeting of Michimikuru Factory Ltd & 2 others; Maurice Kobia Dickson (Interested party) [2022] eKLR where it was observed that:

> " Article 47 is intended to subject administrative processes to constitutional discipline...every person has the right to be given written reasons for any administrative action that is taken against him."

80. It was reiterated that the ex-parte Applicant was adequately informed of the reason for the decision to cancel the drug registration certificates and was even invited to make any representation as to why the decision to cancel ought to be set-aside. That if the Applicant had any issues with the reasons provided, nothing would have been easier than for them to write back asking for clarification, which they did not do.

81. On the claim that the Respondent acted ultra vires by determining a trademark dispute, clearly overstepping its mandate, reliance was placed on Okoiti & 3 Others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 5 Others (Petition 42 & 27 of 2014 (Consolidated)) [2021] KEELRC 2306 (KLR) (30th July, 2021) (Judgment) what amounts to an ultra vires act.

82. It was submitted that the decision to cancel the said certificates was not intended to determine or resolve a trademark dispute, but rather to address and rectify an irregularity occasioned by the Applicant's misrepresentation, since the trademarks dispute is pending in court.

83. It was submitted that these proceedings are fatally defective, having been instituted to challenge a decision after the lapse of six (6) months, in contravention of Section 9(3) of the *Law Reform Act* as read with Order 53 Rule 2 of the Civil Procedure Rules, 2010.

84. reliance was placed on Republic Vs Director of Land Adjudication and Settlement & 2 others [2017] e KLR where the Court is stated to have held that held that:

> " Section 9 of the *Law Reform Act*, Cap 26 is very explicit in the time frame within which an order for certiorari may be applied and has similar provisions as the Civil Procedure Rules aforestated. Section 9(3) of the *Law Reform Act* read together with order 53 rule 2 are couched in mandatory terms; 'Leave shall not be granted unless the application for leave is made not later than 6 months after the date of the decision.'

85. It was therefore submitted that this application having been filed on 16th October, 2025, this Court is divested of jurisdiction to grant leave or entertain an application for orders of certiorari sought herein.

86. Secondly, that while this court granted leave to the Applicant to institute these proceedings, well after the lapse of the 6 months statutory period on reasons that "the decision being challenged does not fall under the categories of matters stated under order 53 Rule 2 as they are administrative decisions, not judgments, orders, decrees, convictions or proceedings." the Respondent respectfully disagrees with this position and submits that it conducted proceedings before arriving at the decision to cancel the certificates.

87. it also relied on section 2 of the Fair Administrative Actions Act which defines what administrative action and or decision is.

88. That going by the definitions of the above terms. it is clear that the decision to cancel the drug registration certificates held by the Applicant is an administrative decision, which fall under the purview of Section 9(3) of the Land Reform Act and Order 53 Rule 2 of the Civil Procedure Rules and that the Court of Appeal affirmed that these provisions cover quasi-judicial proceedings in Republic vs Kenya National Highways Authority & 2 others Ex-parte Amica Business Solutions Limited 2016 eKLR citing other decisions on applicability of section 9(3) and Order 53 of the Civil Procedure Rules to administrative decisions.

The Interested Party's Submissions

89. The interested party filed submissions isolating four issues for determination being:

    a. whether this Court has the jurisdiction to hear and determine the suit;

    b. Whether the instant suit is a forum shopping expedition and an abuse of the court process;

    c. Whether the instant suit offends the doctrine of public interest; and

    d. Whether the ex-parte Applicant is entitled to the judicial review remedies sought.

90. On the issue of jurisdiction, Counsel cited the cases of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1 and Joseph Muthee Kamau & Another v. David Mwangi Gichure & Another (2013) eKLR and submitted that the suit is time-barred as it was filed after the expiry of the six months' statutory period. The case of Republic v Central Bank of Kenya Ex-Parte Finerate Forex Bureau Ltd 2015 KEHC, 7083 (KLR) citing the decision by the Court of Appeal in Ako v Special District Commissioner Kisumu and Another [1989] KLR 163 was also relied on on the holding that under sub-section (3) of Section 9 of *Law Reform Act* Cap 26 leave shall not be granted unless application for leave is made inside six months after the date of the judgment.

91. On the issue that these proceedings are sub judice, reliance was placed on the Supreme Court in Kenya National Commission on Human Rights vs. Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR and a reiteration made that the same issues are before the Commercial Courts in Milimani Commercial case No. E605 of 2025: Prism Life Sciences Ltd vs Galaxy Pharmaceuticals & Pharmacy and Poisons Board and Milimani Commercial case No. E718 of 2025: Galaxy Pharmaceuticals vs Prism Life Sciences Ltd & Pharmacy and Poisons Board & Another.

92. Counsel submitted that there is no single difference between the instant suit and the two ongoing commercial suits save for the different courts in which the matters have been filed and that the instant suit is a derivative of the commercial suits, given that the root issue before this Honorable Court is also up for determination by the commercial courts, to wit; the ownership of the pharmaceutical products in issue. Counsel urged the Court to consider the case of A.N.N. vs R.M.K [2021] eKLR; Daniel Kipkemoi Bett & Another vs Joseph Rono [2022] eKLR.

93. Further, that the doctrine of res judicata applies as explained in the case of The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, [2017] eKLR since the issues were conclusively determined by this Court in the prior suit JR No. E113 of 2025. He urged the Court to consider the principles in William Koross vs Hezekiah Kiptoo Komen & 4 Others [2015] eKLR that litigation should come to an end.

94. Counsel for the interested party also highlighted the issue of Forum Shopping and argues that the present Application is an abuse of Court Process since the ex-parte Applicant is engaging in forum shopping and abusing the court process by pursuing multiple suits on the same matter and raising issues in different courts simultaneously, contrary to settled principles prohibiting multiplicity of actions. That the ex-parte Applicant's actions are intended to harass opponents and they cite case of Shitanda v County Speaker of Kajiado County & 2 others (Constitutional Petition E004 of 2023) [2023] KEHC 17822 (KLR) (15 May 2023) (Ruling).

95. Additionally, it was submitted that the ex-parte Applicant has failed to abide by the provisions of Section 9 (2) of the *Fair Administrative Action Act* through its sheer failure to exhaust the available alternative dispute resolution mechanisms and that this Court is therefore barred from entertaining the instant suit. That Judicial Review is a last resort, not a first option as was decided in the case of Geoffrey Muthiga Kabiru v Samuel Munga & 1756 others [2015] eKLR [2015] eKLR. As such, the Court should decline jurisdiction under Section 9 (2) & (3), of the *Fair Administrative Action Act*.

96. Counsel submitted that the case concerns public health involving pharmaceutical products used to treat chronic illnesses and the Respondent's decision aims to protect the public from fraudulent, substandard drugs. Counsel also submits that prior investigations into corporate fraud and forgery amplify public interest concerns which calls for courts to balance individual rights against broader public interest and administrative efficiency. Counsel cited several authorities on the issue of public interest such as Mombasa High Court Petition No. E017 of 2022 Ndoro Kayuga & Another vs. Mike Sonko Mbuvi Gideon Kioko & Others, Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 others [2014] eKLR, Judicial Review Application 028 of 2024 Republic v. Law Society of Kenya.

97. On the Applicant's Entitlement to Judicial Review Remedies, it is submitted that judicial review should not undermine the efficiency of public bodies as held in Gichuhi & 2 others v Data Protection Commissioner; Mathenge & another (Interested Parties) (Judicial Review E028 of 2023) [2023] KEHC 17321 (KLR) (Judicial Review) (12 May 2023) (Judgment). It was submitted that the ex-parte Applicant approached the Court with unclean hands, omitting material facts and attempting multiple bites at the cherry after failed reliefs in the Commercial Court and earlier judicial reviews. That it failed to exhaust dispute resolution mechanisms as required rendering the suit a sham and abuse of court process and an attempt to circumvent the Milimani Commercial suit HCCOMM/E065/2025 and Judicial Review Division in JR No. E113 of 2025. That in those cases, status quo was ordered and Judicial review orders were denied hence the Court should strike out this case with costs.

Analysis and Determination

98. Having extensively considered the detailed pleadings, affidavits and submissions of all parties together with constitutional, statutory provisions and the judicial pronouncements relied on by each of the parties, I find the following main issues for my determination: -

    i. Whether this Court has jurisdiction to entertain these proceedings on the various aspects raised by the respondent and the interested party.

    ii. Whether the Application is merited and therefore whether or not the orders sought can be granted.

i. Whether this Court has jurisdiction

99. The Application challenges the Respondent's administrative actions of issuing a Notice of Intention to Cancel and the subsequent cancellation of the applicant's forty (40) drug registration certificates.

100. the locus classicus on jurisdiction is Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Ltd (1989) KLR 1 where the Court of Appeal held thus:

> " Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before court the moment it holds the opinion that it is without jurisdiction".

101. The Supreme Court in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others (2012) eKLR aptly pronounced itself in this regard thus: -

> " A court's Jurisdiction flows from either *the Constitution* or Legislation or both. Thus, a court of law (tribunal) can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings... Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."

102. On the constitutional and statutory jurisdiction of this Court, it is trite that Judicial review as a constitutional mechanism that governs public-private power dichotomy. This Court draws its authority or jurisdiction to entertain judicial review of administrative action from Article 165(6) and (7) of *the Constitution*. Additionally, judicial review remedy is now embedded in Article 23 of *the Constitution* and it Is a remedy for rights and constitutional violations.

103. This is followed by the tenets of fair administrative actions espoused in Article 47 of *the Constitution* and the procedure for redress outlined in the *Fair Administrative Action Act*, 2015.

104. Article 47 of *the Constitution* provides that:

47.

(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.

105. Judicial Review proceedings initiated under Order 53 of the Civil procedure Rules are concerned with the legality, propriety, rationality or reasonableness of a procedure as opposed to merits of a decision. See Saisi v Director of Public Prosecutions & 2 others (Petition 39 of 2019) [2020] KESC 18 (KLR) (4 September 2020) (Ruling) - Petition 39 of 2019.

106. Having established this, I note that this Court's jurisdiction is challenged on five major fronts being: that it is time barred, res judicata, res sub judice, forum shopping and exhaustion doctrine.

107. On limitation of time, it is argued that the matter is barred by the statutory timelines of 6 months set out in section 9(4) and (5) of the *Law Reform Act* and Order 53 rules (1) and (2) of the Civil Procedure Rules, 2010.

108. Section 9 of the *Law Reform Act* provides:

> 9. Rules of court
>
> 1. Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court—
>
> a. prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;
>
> b. requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
>
> c. requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.
>
> 2. Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe those applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.
>
> 3. In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

109. Under Order 53 of the Civil Procedure Rules:

> 1. Applications for mandamus, prohibition and certiorari to be made only with leave [Order 53, rule 1]
>
> (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
>
> 2. Time for applying for certiorari in certain cases [Order 53, rule 2]
>
> Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to

appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

110. I have considered the submissions by the ex-parte Applicant in this regard. They argue at page 6, paragraph 6 of their submissions that the Court was properly clothed with jurisdiction and that Section 9 (4) and (5) of the *Law Reform Act* when read together with Order 53 Rules (1) and (2) of the Civil Procedure Rules expressly exempts administrative actions from the mandatory six-months limitation period, thereby validating the filing of the present suit. I have equally examined the *Law Reform Act*, Cap 26 as referenced above and find that the provisions relied on being Section 9 (4) and (5) do not exist. However, this does not render their submissions fatal.

111. The wordings of section 9 (2) and (3) of the *Law Reform Act* together with Order 53 Rules (1) and (3) are succinct on the object of the judicial review orders being either a judgment, order, decree, conviction or other proceedings that is intended to be quashed. The import of this is that the six months' rule only extends to decisions made by administrative bodies where there is a formal proceeding conducted and a decision rendered. This is what the decisions relied on by the respondent and the interested party say in no uncertain terms and I will reproduce them herein below, including the Supreme Court decisions. In this case, there was no formal hearing or proceeding before the notices of cancellation and the cancellation of registration was effected and a demand for surrender made to the applicant.

112. s made by a Instead, that limitation period is only to be applied against a court order, a judgment, a decree, a conviction or proceedings of any administrative body.

113. In Republic v Kenya National Highways Authority & 2 others ex-parte Amica Business Solutions Limited [2016] KECA 142 (KLR), the Court of Appeal stated as follows:

> " Turning to the second limb of the appeal as to the limitation of time, the point of departure by the parties to the dispute is whether the letter by the 1st respondent is subject to the provision of order 53 rule 2 of the Civil Procedure rules and section 9(3) of the *Law reform Act* in so far as the 6 months limit period is concerned. This issue is two-fold. On the one hand, the argument is whether the limitation applies only to judicial decisions and not administrative actions and on the other hand is whether the six months period applies from the date of the decision or the date when the appellant knew about it.
>
> It is common ground that the appellant made the application beyond the six months period. In the absence of proof by the appellant that the 1st respondent backdated the approval, the line of argument is not persuasive. On the former, the trial judge found that the six months period applied to all applications for orders of certiorari while on the latter, the learned judge made what appears to have been an obiter remark to the effect that in some cases, the six months period would operate from the date the appellant knew about the decision. Interestingly, the learned judge still went on to hold that the appellant's application was time barred.
>
> On the face of it, it is difficult to appreciate the trial judge's finding that the application was statute barred yet the judge acknowledged that the same could be made and considered within 6 months from the date the appellant knew about it. The respondents argued that the trial judge did not have authority to enlarge time and relied on decided cases that strictly uphold the timelines set out in the statute.
>
> The appellant on its part did not submit on the enlargement of time but instead relied on the trial judge's indication as stated above. The appellant instead pursued the argument that

the provisions of order 53 rule 2 of the Civil Procedure Rules and section 9(3) of the *Law Reform Act* and cited case law to support this submission. Conversely, the respondents did not rebut the appellant's arguments both in submissions or authorities cited.

The decision complained of is unique in the sense that the decision of the 1st respondent arose out of the request by the 3rd respondent. At no time were there formal proceedings leading to the decision. The decision was in a letter responding to 3rd respondent's request for permission to erect and maintain billboards and gantries. The elephant in the room here is whether that communication qualifies as one of the acts contemplated under section 9 (3) of the *Law Reform Act* and Order 53 Rule 2 of the Civil Procedure Rules.

There has been debate as to whether the six months limitation envisaged in order 53 Rule 2 of the Civil Procedure Rules applies strictly to "any judgment, order, decree, or conviction, or other proceedings", or whether this also includes decisions of other kinds, or letters such as the one that is the subject of this case.

In our considered view, Order 53 Rule (2) was meant to cover both judicial and quasi-judicial proceedings, where there was a hearing; all affected parties were informed; or were aware of the proceedings and where there was a judgment or decision capable of being disseminated and accessed by all affected parties. This could not in our considered view have been meant to cover letters which were sent to specific persons in response to theirs which were not even copied to other ostensibly interested parties, like in the case here.

We are persuaded in this respect by the High Court decision in The Goldenberg Affair Ex-parte Hon. Mwalulu and Others, HCMA No. 1279 of 2004 [2004] eKLR, and Republic vs The Commissioner of Lands Ex-parte Lake Flowers Limited Nairobi, H.C. Misc. Application No. 1235 of 1998 where the courts held that the six (6) months limitation period set out in order 53 Rules 2 and 7 only applied to specific formal orders mentioned in Order 53 Rules 2 and 7 and to nothing else, certainly not to contents of one private letter in response to another.

We are also persuaded by the Tanzania Court of Appeal decision in Mobrama Gold Corporation Ltd vs Minister for Water, Energy and Minerals and Others, Dar-es-Salaam Civil Appeal No. 31 of 1999 [1995 – 1998] 1 EA 199 in which case the court held that the phrase "or other proceedings" has to be construed ejusdem generis with 'judgment, order or decree, and conviction'' as having reference to judicial or quasi-judicial proceedings as distinct from the acts and omissions for which certiorari may be applied for. We hold the view therefore that the six months limitation would not apply to "decisions" made by administrative bodies which fall outside the purview of the definition "decision, judgment, order, decree or other proceedings" as contemplated under Order 53 rule2 of the *Civil Procedure Act*.

Moreover, the Appellant was not part of the process leading to the impugned letter. He could not therefore have known of the letter with a view to challenging it within the time prescribed under judicial review. It is our view therefore that the Appellant was not statutorily time barred in moving the court for orders of certiorari as he did.

In conclusion therefore, having considered the appeal before us, the very able submissions of all counsel herein, the law, facts and cases cited to us, we come to the inevitable conclusion that save for that small clarification on limitation of time, this appeal must fail."

114. This court appreciates that once the six months period under section 9(3) of the *Law Reform Act* for filing judicial review proceedings named therein elapses, that period cannot be extended. In this case,

however, throughout the proceedings, the applicant contends that it was never accorded any hearing before cancellation or notice of cancellation and the deregistration of the products. The respondent claims that it accorded the applicant a hearing. No evidence was placed before this Court to show any proceedings were conducted leading to a decision to cancel the registration complained of. In my view, this case is in pari materia with the above cited cases, citing other decisions where, albeit the administrative decision was found to have been falling within the limitation period, but only if there was a formal hearing proceeding giving rise to the impugned decision.

115. This court in the exparte chamber summons for leave did not refer to the above decisions but had them in mind when granting leave to apply and did not delve deep into the aspect of the above binding Court of Appeal decision, and neither is this court oblivious of the fact that prior to the above decisions, the Court of Appeal had earlier on held in the case of Republic v Judicial Commission of Inquiry unto the Goldenberg Affair & 3 others ex parte Mwalulu & 8 others [2004] eKLR, Nakumatt Holdings Limited v Commissioner of Value Added Tax [2011] eKLR and Republic v Principal Registrar of Government Lands & another [2014] eKLR held that the 6 months limitation does not apply to administrative decisions.

116. The impugned Notice of Intention to Cancel dated 26th March 2025 and the subsequent decision of 22nd May 2025 cancelling the Applicant's registration certificates for Forty (40) pharmaceutical products is a decision of the Respondent that does not fall under the items listed in the above legal provisions, as there were no proceeding leading to the impugned decisions.

117. The impugned decisions entailed an administrative decision under the regulatory framework made by way of a notice and a letter of cancellation, not backed by any 'proceedings', which would otherwise be barred by the said time limit as it would fall in the category of "any other proceeding" by interpretation. Accordingly, I find the Respondent's and the interested party's contention that the suit was time-barred and that leave was obtained miraculously, to be devoid of any merit.

118. The next issue challenging jurisdiction of this Court is that the suit is res judicata. Section 7 of the *Civil Procedure Act* provides thus: -

> 7. No court shall, try, any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.

119. The Supreme Court in John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) held at paragraph 59 thus: -

> " For res judicata to be invoked in a civil matter the following elements must be demonstrated:
>
> a. There is a former judgment or order which was final;
>
> b. The judgment or order was on merit;
>
> c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
>
> d. There must be between the first and the second action identical parties, subject matter and cause of action.

(See Uhuru Highway Developers Limited v Central Bank of Kenya & others [1999] eKLR and See the decision of the Court of Appeal in Nicholas Njeru v Attorney General & 8 others Civil Appeal 110 of 2011 (2013) eKLR)"

120. Similarly, the Court of Appeal in Songoi v Songoi (Civil Appeal 110 of 2016) [2020] KECA 942 (KLR) (31 January 2020) (Judgment) while making reference to a Supreme Court decision held: -

> 15. On res judicata, the Supreme Court in Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others [2014] eKLR expressed itself as follows on the issue of res judicata:
>
> (317) The concept of res judicata operates to prevent causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....
>
> (319) There are conditions to the application of the doctrine of res judicata:
>
> (i) the issue in the first suit must have been decided by a competent Court;
>
> (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and
>
> (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title Karia and Another v. The Attorney General and Others, [2005] 1 EA 83, 89."

121. The Respondent in their Replying Affidavit contended that this case is res judicata as the issue has previously been judicially reviewed and denied by this Court in Judicial Review Division in JR No. E113 of 2025 Galaxy Pharmaceuticals Limited versus Pharmacy and Poisons Board & Prism Life Sciences Ltd on 15th August 2025. In their submissions, Counsel for the Respondent argued that litigation should come to an end and cites the case of The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, [2017] eKLR and William Koross vs Hezekiah Kiptoo Komen & 4 Others [2015] eKLR stating that the issues in the present suit were conclusively determined by this Court in the prior suit JR No. E113 of 2025.

122. I have considered this Court's decision in JR No. E113 of 2025 where the judgment reads in part:

> " 11. As I was busy reading the file and preparing to write the judgment, I observed that the notices for cancellation of the registration certificates have since been actualized as threatened....
>
> 13. During the pendency of the proceedings, the Respondent cleared some of the drugs/products to be released into the market for sale after tests on the same proved that the products were safe for administration. The respondent then

proceeded to cancel the registrations and demanded surrender of the cancelled certificates.

14. This Court notes that the latter facts emerged in the submissions filed by the applicant who did not seek to amend the statutory statement of facts to challenge the cancellation as a separate or subsequent decision. The application remains as initially filed, challenging only the notice of intention to cancel the registration certificates.

15. In other words, there is no pleading on record for this Court to determine the merits of the underlying dispute or the legality of the cancellation itself, which is not the subject of the current application. The only issue the Court can determine, therefore, is whether the application, as it stands, has been overtaken by events, has become moot and non-justiciable.

16. Accordingly, I shall not delve into the detailed responses by the respondent and interested party or their submissions, since the issue that I have raised is fundamental and can on its own, determine the judicial review proceedings herein. The reasons for this is contained in the analysis below....

23. In the present case, the implementation of the impugned notice through cancellation has transformed the legal landscape and rendered the original challenge to the notice moot and academic. The new decision, the cancellation, has created a new and distinct cause of action, requiring fresh procedural compliance and grounds for review. Judicial review, by its nature, does not allow the introduction of new causes midstream, particularly when no amendment has been made.

28. In view of the foregoing, this Court finds that the judicial review application subject of these proceedings has been overtaken by events and is now moot. The challenge to the notice of intention to cancel the registration certificates no longer presents a live controversy and the Court cannot issue orders in respect of a cause of action that is spent, nor can it issue orders concerning a subsequent administrative action (cancellation of registration certificates and surrender) that is not properly before it.

29. The appropriate course of action, had the Applicant wished to challenge the cancellation, would have been to withdraw the present application and file a fresh judicial review application, properly framed to address the cancellation Accordingly, the Judicial Review Notice of motion Application dated 5th May, 2025 is hereby struck out for mootness."

123. The above decision is clear that the issue raised was with respect to the issuance of the Cancellation Notice where the ex-parte Applicant was challenging the legality of the same. The Court did not reach a merit determination on account that the cancellation notices had while the proceedings were pending, taken effect by cancellation of registration based on the notices and that as the applicant had not amended the pleadings to incorporate the evolving matter, the challenge to the notice of cancellation had been overtaken by events. See paragraph 23 above.

124. That is not the same situation being addressed in this case where the matter evolved upon the implementation of the cancellation Notice where the Respondent undisputedly cancelled the registrations and demanded surrender of the cancelled certificates of the 40 pharmaceutical products.

125. Evidently, this evolution morphed the issues in dispute to a fundamentally different angle, thereby negating the first parameter of res judicata. I further note that the issue in dispute in the prior case was never heard and determined on merit as this Court did not even delve into the detailed affidavits in reply having found, prima facie, that the cause of action was moot and unnecessary for determination. Based on the foregoing, it is my finding that the doctrine of res judicata is inapplicable to these proceedings and the plea fails.

126. Turning to the third jurisdictional issue of sub-judice, Section 6 of the *Civil Procedure Act* provides that:

> 6. No Court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or other Court having jurisdiction in Kenya to grant the relief claimed.

127. In Joel Kenduiywo v District Criminal Investigation Officer Nandi & 4 Others [2019] eKLR, the Court of Appeal enunciated the principle behind section 6 of the *Civil Procedure Act* thus:

> "Section 6 of the *Civil Procedure Act* is meant to prevent abuse of the court process where parallel proceedings are held before two different courts with concurrent jurisdictions or before the same court at different times. This is to obviate a situation where two courts of concurrent jurisdiction arrive at different decisions on the same facts, evidence and cause of action."

128. The Supreme Court in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR held that:

> "(67). The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.
>
> (68) In the above context, it cannot be denied that the issues and prayers sought by the Petitioner in the two Constitutional Petitions generally call for the interpretation and application of provisions of Chapter Six of *the Constitution*. The issues and orders in the two Constitutional Petitions substantially ascend from the criteria for the implementation of the provisions of Chapter Six of

the Constitution. For the High Court to sufficiently pronounce itself in the two Constitutional Petitions, it has to interpret and apply the provisions of Chapter Six of *the Constitution* on leadership and integrity.

(69) In Constitutional Petition No. 142 of 2017, the Petitioner challenges the constitutionality of the Working Group as well as the criteria on the implementation of the provisions of Chapter Six of *the Constitution* as established by the Working Group. The High Court has therefore been tasked to examine the constitutionality or otherwise of the criteria so established by the Working Group.

(70) In Constitutional Petition No. 68 of 2017 the Petitioner therein challenges requirement for clearance by the state and private organs on grounds that it threatens and violates the provisions of *the Constitution*. For the High Court to determine the constitutionality of the requirement for clearance challenged by the Petitioner in Constitutional Petition No. 68 of 2017 or the Working Group criteria as well as the 'Resolution on Complimentary Framework of Collaboration by Agencies to Ensure Compliance with Leadership and Integrity Requirements in August 2017 General Elections' and 'Compliance with Leadership and Integrity Requirements in the 2017 General Elections' challenged in Constitutional Petition No. 142 of 2017, it has to examine, interpret and apply the provisions of Chapter Six of *the Constitution*.

(71) In so doing, the High Court shall be compelled, to determine whether a Constitutional test is set up in Chapter Six of *the Constitution*, whether the set test (if any) is fit and proper, objective or subjective, the scope of application of the test, the implementing organs and bodies. These are substantially the same issues subject of the Advisory Opinion sought by the Applicant comprised at pages 13 to 19 of the Reference before this Court.

(72) We therefore find that this Reference, as framed, mainly raises issues of constitutional interpretation. These issues are also substantially in issue before the High Court in Constitutional Petition No. 68 of 2017 and Constitutional Petition No. 142 of 2017. In view of Article 165 of *the Constitution*, the High Court is the Court of first instance with regard to jurisdiction for interpretation and application of *the Constitution* and that Court has already been moved.

(73) Guided therefore by these principles, and in exercise of our discretion, we decline to exercise our jurisdiction under Article 163(6) of *the Constitution*. This Reference is sub-judice and this Court will not usurp the High Court's jurisdiction under Article 165 (3)."

129. In Republic v Kariuki & 3 others; Law Society of Kenya (Ex parte Applicant) (Judicial Review E045 of 2020) [2020] KEHC 10142 (KLR) (Judicial Review) (8 October 2020) (Ruling), Mativo J. (as he then was) explained the purpose of the sub judice rule as follows: -

"24. The sub judice rule like other maxims of law has a salutary purpose. The basic purpose and the underlying object of sub judice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject

matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings. (National Institute of Mental Health & Neuro Sciences v C. Parameshwara, (2005) 2 SCC 256.) [emphasis added].

130. The Respondents contend that the main issue in the suit is the ownership of the 45 pharmaceutical products, which is a matter that is presently before the Commercial courts vide Milimani Commercial Case No. E605 of 2025 and Milimani Commercial Case No. E718 of 2025. Although this court is not fully seized of the full facts in dispute before the said Commercial courts, I have discerned from my reading of the averments of the parties in their respective affidavits and annextures of the applicant making disclosure of the pending commercial disputes that the parties are contesting the issue of alleged ownership of the intellectual property alongside the alleged substandard or counterfeit products, and irregular misrepresentation in variation of the Marketing Authorization Holder.

131. The Interested Party asserts that the ex-parte Applicant fraudulently attempted to usurp ownership of its products through forged documents, counterfeit drugs, and misrepresentation, which the Respondent and other investigative bodies confirmed.

132. In the instant case, the ex-parte Applicant questions the legality, propriety and rationality of the decision by the Respondent to cancel and recall its registration certificate without according it a hearing.

133. In Nguruman Limited v Nielsen & another (Civil Appeal 20 of 2018) [2023] KECA 274 (KLR) (17 March 2023) (Judgment),the Court of Appeal stated as follows in an appeal where this Court had made a finding of the proceedings being sub judice:

> " 15. Three issues fall to be determined, namely: whether the suit or issue in Nairobi HCCC No 237 of 2014 is directly and substantially in issue in the former suit, namely Nakuru HCELC No 103 of 2009; secondly, whether the former suit in Nakuru HCELC No 103 of 2009 was between the same parties or parties under whom they or any of them claim in Nairobi HCCC No 237 of 2014; and, thirdly, those parties were litigating under the same title.
>
> 16. On the 1st issue, the matters in controversy in Nairobi HCCC No 237 of 2014 relate to alleged wastage, vandalism, destruction and looting on the suit property, for which the appellant claimed general damages, aggravated damages, damages for loss of use, cost of restoration, interest thereon and costs of the suit.
>
> 17. On the other hand, in Nakuru HCELC No 103 of 2009, the matters in controversy relate to the alleged trespass on, and occupation of, the suit property, deprivation of the use and enjoyment of the property, and for which the appellant claims mesne profits, general damages and an order for vacation of the suit property, injunctive relief to restrain the defendant and its directors from entering into, occupying, taking possession of or remaining thereon, and from advertising or otherwise claiming proprietorship or shareholding in the suit property, costs of the suit and interest.
>
> 18. To our mind, the issues in controversy in the former suit in Nakuru and the latest suit in Nairobi, and the relief sought in the respective suit are directly and substantially different.

...."

.....Equally, it is preposterous to expect the ex-parte Applicant to lodge a complaint before the Respondent who was the decision maker on the issue of cancellation of its registration certificate. That would be a forum that does not guarantee fair hearing due to bias.

134. I find this matter and the matters before the Commercial Courts to be distinct in that, in the commercial dispute, the parties are clamouring for rights, specifically proprietary ownership rights while in this case, the parties are contesting the procedural aspect of the Respondent's impugned Notice of Cancellation and subsequent actions without according the applicant a hearing and as I have stated, ther is no evidence of such hearing prior to the cancellation of registration, which prompted these proceedings. These cannot be said to be similar and consequently, the question of sub-judice fails.

135. Equally and without deliberating further, I find that the Respondent's claim that the ex-parte Applicant is guilty of forum shopping and therefore abusing the court's process cannot hold because has not demonstrated that there is a multiplicity of suits filed in different forums seeking the same reliefs over the same subject matter.

136. Lastly on exhaustion of remedies, in the context of these proceedings, I find this issue to be linked to the sub judice doctrinea raised. It is contended by the Respondent that the applicant should have exhausted the commercial disputes before accessing this court for judicial review. I have already stated that the cases before the Commercial Court are distinct from this judicial review matter, considering that these proceedings were prompted by the notice of cancellation and the subsequent cancellation of registration of the applicant's products and recall of the certificates, which dispute though similar but is not the same as the commercial dispute.

137. Furthermore, no statutory provisions have been cited by the Respondents to demonstrate that there were other avenues available to the ex-parte Applicant other than the Judicial Review court to determine all the issues raised in this matter to justify the doctrine of exhaustion to be successfully invoked.

138. I have however read the *Pharmacy and Poisons Act* and Rules and what I have established is that section 42B of the Act provides for Appeals as follows:

> 42B. Appeals
>
> An appeal under any of sections 27 (2), 28 (3), 32 (5) and 50 (2) of this Act shall be in writing, and shall be lodged within thirty days after the date of the act appealed against.

139. Section 27 is on wholesalers dealers licence and under subsection(2):

> The Board may refuse to issue or renew, or may revoke, a licence under this section, for any good and sufficient reason relating either to the applicant or licensee, or to the premises in which the business is, or is proposed to be, carried on, and an appeal shall lie from such refusal or revocation to the Cabinet Secretary, whose decision thereon shall be final.

140. Section 28 of the Act concerns Licence to deal in poisons for mining agricultural or horticultural purposes and under subsection (3):

> (3) If the Board is satisfied that it is in the public interest that a licence under this section should be issued or renewed it may, upon payment of the prescribed fee, issue to the applicant a licence in the prescribed form, or, as the case may be, renew such licence: Provided that the Board may refuse to issue or renew,

or may revoke, a licence for any good and sufficient reason relating either to the applicant or licensee or to the premises in which the business is, or is proposed to be, carried on, and in case of such refusal or revocation an appeal shall lie to the Cabinet Secretary, whose decision thereon shall be final.

141. Section 32 concerns Licence to sell Part II poisons and subsection (5) provides that:

> (5) The Board or the person appointed by it may refuse to issue or renew a licence, or may revoke the licence of any person who in his opinion is for a reason relating either to the person or his premises not fit to be so licensed, and in the event of refusal or revocation an appeal shall lie to the Cabinet Secretary, whose decision shall be final.

142. Section 50 of the Act concerns Penal sanctions with regard to bodies corporate and subsection (2) provides that:

> Any body corporate may appeal to the Cabinet Secretary against a direction given under this section, and the decision of the Cabinet Secretary on any such appeal shall be final.

143. The provisions for appeal set out appeals from specific sections of the Act and the respondents have not shown that the decision as made fell within those provisions and that the applicant failed to comply with those provisions before approaching the court.

144. Overall, I find that this Court is properly vested with jurisdiction to hear and determine the matter at hand. I shall now proceed to determine the merits of the main issue in question which is:

ii. Whether or not the Application is merited and whether or not the orders sought can be granted.

145. As to what judicial review entails, the cases of Pastoli vs. Kabale District Local Government Council and Others [2008] 2EA 300, citing Council of Civil Service Unions vs. Minister for Civil Service [1985] AC 2 and an application by Bukoba Gymkhana Club [1963] EA 478 are instructive that:

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

146. The above is the threshold that an Application for judicial review has to meet in order to succeed in seeking Judicial Review Orders. The ex-parte Applicant challenges the Notice of Intention to cancel of 26th March 2025 and the subsequent decision by the Respondent to cancel their registration certificates for Forty (40) pharmaceutical products dated of 22nd May 2025.

147. It is their case that the Respondents actions were void ab initio because they were marred with irregularity, illegality and impropriety, firstly, for failing to give the ex-parte Applicant an opportunity to be heard, secondly by failing to follow a due and fair process, thirdly, by usurping the role of the commercial courts and delving into the realm of the commercial dispute in determining the trademarks question and by acting contrary to the legitimate expectation and thus violating various fundamental rights.

148. I have considered the reliefs sought in the ex-parte Applicant's prayers where it seeks Certiorari, Mandamus and Prohibition. The scope and nature of these orders were explained in a number of cases. 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), the Court of Appeal explained the said remedies 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."

149. In R vs. Kenya National Examinations Council Ex-parte Geoffrey Njoroge and others Civil Appeal 266 of 1966 the Court of Appeal at page 47 further stated thus: -

> " The next issue we must deal with is this. What is the scope and efficiency of an ORDER OF MANDAMUS? Once again we turn to HALBURY'S LAWS OF ENGLAND 4th Edition Volume 1 at page 111 from paragraph 89. The learned treatise says:-

"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 there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where although there is an alternative legal remedy yet that mode of redress is less convenient, beneficial and effectual."

90 "mandate"

The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, gives discretion to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way."

150. Githua J. in Muciimi Mbaka & Co. Advocates vs. Town Clerk, City Council of Nairobi [2012] eKLR, also elaborated on the Judicial Review relief of Mandamus as follows: -

" An order of mandamus is issued to compel performance of a public duty or a duty imposed by statute where there has been failure to perform the said duty to the detriment of an aggrieved party. A local authority has a legal obligation and a public duty to satisfy decrees issued against it and the person entrusted with this task is the Clerk to the Local Authority who according to section 129(1) of the Local Government Act is the Chief Executive and Administrative Officer in-charge of coordinating the operations of a Local Authority...Section 263A of the Local Government Act requires the Clerk of a Local Authority to pay without delay sums awarded in a judgement or order to the person entitled out of the revenue of the Local Authority. As the Respondent has failed or refused to pay the Applicant the monies decreed...it is evident that he is in blatant breach of the express duty imposed on him by statute to satisfy decrees issued against the City Council of Nairobi out of the revenue generated by the Council. I do not see any reason why the respondent should not be compelled to pay the Applicant without delay, the decretal sums due out of the revenue of the City Council of Nairobi".

151. In The Matter of An Application For Judicial Review And For The Orders Of Certiorari, Prohibition And Mandamus & Others vs. The County Council Of Narok & 9 Others [2009] KEHC 2108 (KLR) Khamoni J (as he then was). aptly elaborated on the three reliefs as follows: -

" Mandamus comes in to command or compel. It commands or compels performance of a public duty where no other effective means of redress is available. Mandamus cannot therefore be issued for the purpose for which certiorari is issued as it is sought to be done in these proceedings where "certiorari" and "Mandamus" are intended to be used simultaneously so that at the time "certiorari" is used to "quash" the two decisions complained of, "Mandamus" is being used to "revoke" the same two decisions. With all due respect, that is a clear misconception of the application of the remedy of mandamus, firstly because once "certiorari" has quashed a decision that decision no longer remains in existence to be "revoked" by "Mandamus". Secondly, "Mandamus" is never used to "revoke" any decision or action. It never applies to what is there. 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...."

152. It follows then that certiorari quashes a decision or an order; mandamus compels the performance of a certain action and prohibition is futuristic to prevent further derogation from due process.

153. In the present case, the ex-parte Applicant decries the fact that there was no due process followed in issuing the Notice of Intended Cancellation and the subsequent cancellation of the registration of the forty products. The Respondent on the other hand contends that the ex-parte Applicant was granted a hearing before the actions were undertaken. However, no evidence of this has been furnished before the Court as proof of any form of or semblance of a hearing before cancellation of registrations. If anything, the notice of cancellation was implemented and the threat to cancel actualized as the Judicial Review proceedings in JR E113 of 2025 were still ongoing.

154. The question is, at what time did the hearing take place before such cancellation? To my mind, although there were no stay orders and although the Respondent was acting well within its mandate to implement the Notice of cancellation of registration and recalling for surrender of the cancelled certificates of registration, I find that the respondents acted in complete disregard of due process and quickly executed their intention to cancel without affording the ex-parte Applicant any hearing.

155. I further find that the decision to cancel the registration of the products was marred with irregularity because the Respondent ventured into the realm of the commercial courts in determining the trademarks dispute, which issue was substantially still in contention for determination at the commercial courts. This usurping of the role of the Commercial Courts also went contrary to the ex-parte Applicant's legitimate expectation that the Respondent would let the Court adjudicate over the ongoing trademark infringement dispute between the Interested Party and the exparte applicant until determination on merit before taking any further steps in that regard.

156. I have further considered the ex-parte Applicant's contention that there was a violation of various fundamental rights by the Respondent. I note that at this point, the Court should balance the interests of the ex-parte Applicant against the broader interest of justice. I find that the Respondent having quarantined the ex-parte Applicant's products, and conducted laboratory tests in March 2025 and confirming those products to be compliant, and even authorising those products to be sold in the market, then the Respondent's decision to still issue the Notice of Intention of Cancellation and the subsequent cancellation and recalling of the certificates were irrational because the ex-parte Applicant's products were no longer a threat to the larger public health. There was thus no justification for the Respondent to decline to lift the restrictions imposed upon the ex-parte Applicant and more so, in refusing to give reasons for the refusal. Such conduct can only be seen from the perspective of being irrational and unreasonable.

157. In the result, I find that the ex-parte Applicant has made out a case for warranting judicial review reliefs. I however observe that the manner in which the order for prohibition was framed, enters into the realm of the pending commercial dispute between the parties and which dispute is pending before the Commercial courts for hearing and determination. In the circumstances, I decline to grant the order of prohibition sought by the exparte applicant.

158. Accordingly, I allow the Application dated 10th November 2025 in the following terms:

    a. An Order of Certiorari is hereby issued removing into this court and quashing Notice of Intention to Cancel dated 26th March 2025 and the subsequent decision of 22nd May 2025 cancelling the Applicant's registration certificates for Forty (40) pharmaceutical products.

b. An Order of Mandamus is hereby issued compelling the Respondent to Reinstate the Applicant's drug registration certificates for the affected Forty (40) pharmaceutical products, reissuing the retention certificates for the pharmaceutical products and restoring the said products onto the Respondent's official register/database of approved medical products;

c. The prayer for prohibition is declined for the reasons given above

d. The prayer for declaration is declined in view of the orders of certiorari and mandamus issued above and as the issue of proprietary rights [trademarks]is still pending before the commercial courts

159. Each party shall bear their own coasts of these proceedings as parties have outstanding unresolved issues before the commercial courts.

160. This file is closed.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF APRIL, 2026

R.E. ABURILI

JUDGE