

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
JUDICIAL REVIEW APPLICATION E006/2026

PATRICK ANALO AKIVAGA.....1st

APPLICANT STEPHEN

MWANGI.....2nd APPLICANT

FREDRICK OCHANDA.....3rd

APPLICANT SIMON

OMONDI.....4th APPLICANT

TOM OCHAR.....5th

APPLICANT EDWARD

OKUKU.....6th APPLICANT

VERSUS

COMMISSION ON ADMINISTRATIVE

JUSTICE.....

RESPONDENT

AND

**COLDSTONE INVESTMENT LIMITED....1st INTERESTED
PARTY**

**KHALEEJ TOWERS.....2nd INTERESTED
PARTY**

RULING

1. Before this court for determination is the Respondent's Notice of Preliminary Objection dated 16th February, 2026 premised on the following grounds:

i. This Honourable Court lacks requisite jurisdiction to hear and determine this dispute as presented:

a. This Honourable Court lacks the constitutional and statutory jurisdiction to hear, entertain and determine the Applicants' challenge against the decision, findings and recommendations contained in the Respondent's investigation report because the dispute as framed does not fall within the jurisdiction conferred upon this Court under Article 162(2)(b) of The Constitution of Kenya, 2010; and Section 13 of The Environment and Land Court Act.

b. The application neither concerns title to land, use of land, occupation of land, nor environmental planning or protection within the statutory mandate of this Court. It instead challenges administrative findings and recommendations of a constitutional commission, a matter falling out rightly outside the jurisdiction conferred upon this Honourable Court.

ii. The application is incompetent and fatally defective.

a. The Applicants' Originating Motion infringes on the doctrine of exhaustion provided for under Rule 5 of The Fair Administrative Action Rules, 2024 by failing to effect service of the Notice of Intention to Sue and the Applicants have not sought exemption from the said statutory requirement as provided for under Section 9(4) of The Fair Administrative Act, 2015.

iii. THAT the said application is brought in bad faith, is frivolous, vexatious and an abuse of the court process hence a good candidate for striking out with costs to the 1st Respondent.

2. The objection was canvassed by way of written submissions.

Submissions

3. The Respondent/Objector filed submissions dated 28th February 2026. Counsel argued that the objection raises pure points of law which, as expressed in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696** does not require the court to ascertain contested facts.

4. It was submitted that as held in **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1**, jurisdiction is a threshold question that must be determined at the outset; that where a court has no

jurisdiction, it must “down its tools” and that in ***Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others [2012] eKLR***, the Supreme Court affirmed that a court’s jurisdiction flows from the Constitution or statute and cannot be expanded by judicial craft.

5. It was urged that under **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**, this court’s mandate is limited to disputes relating to the environment and the use, occupation and title to land.
6. Counsel submitted that the present proceedings do not concern land rights, title, boundaries, or planning approvals, but instead challenge the findings and recommendations of an investigative report issued by the Commission on Administrative Justice, and therefore fall outside this court’s jurisdiction.
7. Guided by the supreme court decision in ***Republic vs Karisa Chengo & 2 Others [2017] eKLR***, it was stated, specialized courts must confine themselves to matters assigned to them under the Constitution and cannot assume jurisdiction outside that mandate
8. Counsel further submitted that the Applicants’ Originating Motion is incompetent for failure to comply with the Fair Administrative Action Act, 2015 and the Fair Administrative Action Rules, 2024. It was argued that **Rule 5(1)** requires

the service of a notice of intention to sue before instituting judicial review proceedings, unless exemption is sought under **Section 9(4)** of the **Act**.

9. On costs, counsel submitted that the Applicants had instituted proceedings prematurely and without proper jurisdictional foundation and urged that the same is for dismissal with costs.
10. In opposition, the 1st to 6th Applicants filed submissions dated 18th February 2026. Counsel submitted that the law is now settled that a preliminary objection can only be founded on a pure point of law which is clear, uncontested, and capable of disposing of the matter. Reliance was placed on **Hassan Nyanje Charo vs Khatib Mwashetani, Independent Electoral and Boundaries Commission, Juma Musa & Gideon Mwangangi Wambua (Civil Application No. 23 of 2014) [2014] KESC 5 (KLR) (8 December 2014) and Oraro vs Mbaja [2005] KLR 141, and John Musakali v Speaker, County of Bungoma & 4 others [2015] KEHC 2131 (KLR).**
11. According to counsel, determining whether the present suit falls within this court's jurisdiction requires an examination of the impugned investigation report and the factual circumstances underlying the dispute, as well as an evaluation of evidence and contested facts, which falls outside the scope of a preliminary objection.

12. Counsel acknowledged the settled principle that jurisdiction flows from the Constitution or statute, as affirmed by the Supreme Court in ***Samuel Kamau Macharia & another vs Kenya Commercial Bank Limited & 2 others [2012] eKLR*** and urged that this court's jurisdiction as set out under **Article 162(2)(b)** of the **Constitution of Kenya**, and **Section 13** of the **Environment and Land Court Act, No. 19 of 2011**, has been interpreted broadly and is not restrictive.
13. Citing the decisions in ***Republic vs Senior Principal Magistrate Shanzu & 5 others; Two Thirds Investment Limited (Interested Party); Ex parte Kalama Said Kalama & 40 others [2020] KEELC 1443 (KLR)*** and ***Republic v Attorney General & another; Kathenge & 3 others (Interested Parties); Musyoka Kamusina (Ex parte) (Environment and Land Judicial Review Case E002 of 2022) [2022] KEELC 2555 (KLR)***, it was submitted that this court retains jurisdiction so long as the dispute substantially concerns land, even where related proceedings exist in another forum.
14. In the present case, it was urged, the present judicial review proceedings arise from a land dispute involving development undertaken on L.R. No. 36/VII/234 and L.R. No. 36/VII/235 in Eastleigh, Nairobi, including issues relating to development approvals and the existence of a sewer wayleave, which

matters fall squarely within the constitutional and statutory mandate of this court.

15. It was further submitted that this court has jurisdiction under **Section 13(7)(b)** of the **ELC Act** to issue prerogative orders, including certiorari, and that the present application seeks to quash the findings and recommendations contained in the Commission on Administrative Justice investigation report dated 6th February 2026.
16. Cited in support of this position was **Republic v Attorney General & 4 others Ex Parte Marisi Ole Pakini Tenkeye & 2 others [2017] KEHC 1648 (KLR)**, and **Amarnath v Commission on Administrative Justice (Office of the Ombudsman) & 2 others (Environment and Land Judicial Review Case 2A of 2022) [2022] KEELC 12650 (KLR) (26 September 2022)**.
17. With respect to the contention that the Applicants were required to issue a notice of intention to sue under **Rule 5** of the **Fair Administrative Action Rules, 2024** before filing the present proceedings, it was asserted that the Respondent has misapprehended the scope and purpose of that provision, and that as explained in **Republic vs Judicial Service Commission; Dari Limited & 2 others (Interested Parties); Esho (Ex parte Applicant) [2025] KEHC 4761 (KLR)**, it only applies where an applicant seeks to compel a Respondent, by way of an order, to take a particular

administrative action or decision, which relief is in the nature of mandamus. This position is reinforced by **Rule 7** of the **Fair Administrative Action Rules, 2024**.

- 18.** On costs, counsel submitted that pursuant to **Section 27(1)** of the **Civil Procedure Act**, costs shall follow the event unless the court orders otherwise and the Objection being unfounded, the Applicants should be awarded costs. Reliance was placed on the decision in **Rai & 3 others vs Rai & 4 others (Petition No. 4 of 2012) [2014] KESC 31 (KLR)**.

Analysis and Determination

- 19.** Having considered the Preliminary Objection and submissions, the only issue that arise is whether the Preliminary Objection is competent and if so, merited.
- 20.** The law with respect to preliminary objections is now well settled. Law JA in **Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors (1969) EA 696 at 700** stated that:

“...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the

contract giving rise to the suit to refer the dispute to arbitration.”

21. **Newbold, P** further held:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”

22. The Supreme Court in the case of *Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR* re-affirmed the principles as set out in the *Mukhisa Case(supra)* stating:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving

rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

- 23.** It is apparent from the foregoing that a preliminary objection should raise pure points of law, argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion. Further, it should be capable of disposing off the suit or application.
- 24.** The present objection is premised primarily on jurisdiction, albeit on two fronts. First, that the subject matter herein falls within the jurisdiction of the High Court rather than this court; and second, that the Applicants failed to comply with the mandatory statutory requirements under the Fair Administrative Action Act and the Fair Administrative Action Rules, 2024 before instituting these proceedings. It is also urged that the motion has been brought in bad faith and constitutes an abuse of the process of the court.

- 25.** The court has considered the foregoing objections. Beginning with the question of whether the dispute falls within the jurisdiction of this court or that of the High Court, that issue may be determined solely from the pleadings as framed. It does not require the court to ascertain contested facts, interrogate evidence, or resolve disputed matters of fact.
- 26.** Equally, with regard to the second limb concerning exhaustion and compliance with the Fair Administrative Action Act and the Fair Administrative Action Rules, 2024, there is no dispute that the Applicants did not serve a notice of intention to sue before instituting these proceedings. The only question for determination is whether, in law, such notice was mandatory and whether the omission renders the proceedings incompetent. That issue is also a pure question of law.
- 27.** However, the objection that the suit was brought in bad faith, is frivolous, vexatious and amounts to an abuse of the court process does not constitute a pure point of law. Such an allegation would require the court to interrogate the motives and conduct of the Applicants, examine the surrounding factual circumstances, and evaluate whether the proceedings were instituted for an improper purpose.
- 28.** It would necessarily call for the ascertainment of facts and the exercise of judicial discretion. It therefore falls outside the proper scope of a preliminary objection.

29. Moving to the merits of the objection, it is trite that jurisdiction is everything. This position was succinctly captured by Nyarangi, J.A. in **Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Limited [1989] KLR 1** 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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

30. Elaborating on the same, the Supreme Court in **In the Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011) (Ruling)** stated:

“Assumption of jurisdiction by courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is

the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14): "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step." The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution."

- 31.** This court's jurisdiction is principally derived from **Article 162(2)(b)** of the **Constitution**, which mandates Parliament to establish courts with the status of the High Court to determine disputes relating to the environment and the use, occupation and title to land.

- 32.** Pursuant to this constitutional command, Parliament enacted the Environment and Land Court Act, 2011, whose **Section 13(2)** elaborates the court's mandate to include disputes relating to environmental planning and protection, land use planning, title, tenure, boundaries, compulsory acquisition, land administration and management, and other disputes connected to land and environmental matters.
- 33.** The court is also empowered to determine claims concerning the right to a clean and healthy environment under **Articles 42, 69** and **70** of the **Constitution**, and to exercise appellate jurisdiction over subordinate courts and tribunals in matters falling within its mandate.
- 34.** In ***Republic vs Chengo & 2 others (Petition 5 of 2015) [2017] KESC 15 (KLR) (26 May 2017) (Judgment)***, the Supreme Court emphasized that this court is a specialized superior court of equal status to the High Court, established to exercise a distinct and specialized jurisdiction.
- 35.** Consequently, neither the High Court nor other superior courts may exercise supervisory authority over it, and each court must confine itself to the jurisdiction specifically conferred by the Constitution and statute.
- 36.** Notwithstanding the distinct jurisdiction vested in the courts, disputes have nonetheless arisen, as in the present instance, regarding whether jurisdiction properly lies with the High

Court or with the specialized courts established under **Article 162(2)** of the **Constitution**. This is particularly so because the factual matrix in many disputes is not always clear-cut, and matters often involve overlapping issues.

- 37.** In resolving such jurisdictional questions, two principal approaches initially emerged within the superior courts. One school of thought advocated for the “predominant purpose test,” while the other favored the “predominant issue before the court test.”
- 38.** The proponents of the predominant purpose test include Ngugi, J (as he was then) in **Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another(2016) eKLR**, who stated that jurisdiction depends on the dominant purpose of the transaction. Where it concerns the sale, use or disposition of land, the matter falls within the jurisdiction of the Environment and Land Court, but where it predominantly concerns services, works or construction, jurisdiction lies with the High Court. In determining this, the court may consider the nature of the agreement, the parties’ business, the substance of the dispute and the reliefs sought.
- 39.** A different perspective was advanced by Munyao, J, (as he then was) in **Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another[2018]eKLR**, where the learned Judge emphasized that what is determinative is not

the purpose of the underlying transaction, but rather the predominant issue placed before the court for determination.

40. The Judge held that although the purpose of creating a charge may be to secure financial accommodation, the litigation that arises from such a transaction may primarily concern the exercise of the statutory power of sale, which directly implicates the use, occupation or title to land and therefore falls within the jurisdiction of the Environment and Land Court.
41. The Court of Appeal has since had occasion to pronounce itself on the question and has clarified the applicable approach. In **Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates vs Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates [2019] eKLR**, it held as follows:

“We reiterate the position taken in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land. The dispute between the appellant and the respondent related to the professional undertaking given by the appellant to facilitate

the land transaction between his client and the respondent's client.

We could not have put it more clearly. A professional undertaking in a legal transaction is a separate contract between advocates that creates legal obligations anchored on professional relationship and etiquette between the advocates. It creates an independent cause of action separate from the transaction undertaken by the advocates' clients. Such an independent cause of action is reflected herein in the OS lodged by the respondent (who was the plaintiff) wherein the respondent sought orders against the appellant (who was the defendant) that:

“the defendant do honour the professional undertaking dated 11th March 2016 and.....fully indemnify the clients in respect of all claims of interest to the tune of Kshs 800,000/= suffered by reason of breach of the defendant's professional undertaking.....”

[15] The dominant issue in the dispute that was before the learned Judge was the honouring of the professional undertaking, and not the land transaction between the advocates' clients. The undertaking had nothing to do with the environment, or the use and occupation of land,

or title to land. The land transaction that the advocates' clients were engaged in was not in issue. The learned Judge therefore properly rejected the application to have the respondent's suit transferred to the ELC."

- 42.** Guided by the exposition by the Court of Appeal in ***Joel Kyatha(supra)***, the court will adopt the pre-dominant issue test.
- 43.** By way of brief background, by their Originating Motion dated 10th February 2026, the Applicants principally seek an order of certiorari to quash the findings and recommendations contained in the Respondent's investigation report, published through the press statement titled "*Ombudsman Recommends Legal Action, Compensation, and Reforms following Nairobi City County Construction Irregularities*," issued on or about 6th February 2026.
- 44.** Briefly stated, the Applicants' case is that the Respondent, acting on a complaint arising from disputes relating to construction approvals, boundary encroachment, sewer infrastructure, and alleged planning and environmental violations concerning L.R. Nos. 36/VII/234 and 36/VII/235, proceeded to investigate the matter and publicly issued adverse findings and recommendations against them. The six

Applicants are public officers within Nairobi City County Government.

- 45.** The Applicants contend that the matters investigated by the Respondent were already directly and substantially in issue before various courts and specialized tribunals, including the Environment and Land Court, the National Environment Tribunal, the Water Tribunal, and the County Physical and Land Use Planning Liaison Committee, and that the impugned investigation was therefore undertaken in contravention of **Section 30(c)** of the **Commission on Administrative Justice Act, 2011**.
- 46.** Further, they have argued in the suit that the Respondent acted unlawfully by assuming jurisdiction over matters in respect of which the complainant, Coldstone Investment Limited, had available rights of appeal and other adequate legal remedies, including proceedings before the Environment and Land Court, contrary to **Section 30(g)** of the **Act**.
- 47.** It is their case that the impugned findings and recommendations not only trespassed into matters reserved for courts and statutory tribunals, but also directly contradicted binding determinations of the Environment and Land Court, particularly the judgment delivered on 5th February 2026 in Nairobi ELC Petition No. E069 of 2024,

thereby giving rise to conflicting pronouncements, institutional confusion, and legal uncertainty.

- 48.** In essence, the Applicants maintain that the Respondent's investigations, findings, recommendations, and the resultant press statement are *ultra vires*, in breach of statute, procedurally unfair, unreasonable, and irrational, and are therefore null and void and amenable to quashing by an order of certiorari.
- 49.** The Commission on Administrative Justice is a constitutional commission established under **Article 59(4)** of the **Constitution** and operationalized through the Commission on Administrative Justice Act, 2011, with the mandate to investigate maladministration, abuse of power, unfair treatment and related administrative grievances within the public sector.
- 50.** On 6th February, 2026, the Commission released a press statement titled "*Ombudsman Recommends Legal Action, Compensation, and Reforms following Nairobi City County Construction irregularities.*" The report arose from a complaint lodged before it by Coldstone Investment Limited in relation to a dispute with Khaleej Towers Limited over developments undertaken on the neighbouring parcel by Khaleej Towers.
- 51.** Coldstone's complaint was that the neighbouring development had been irregularly approved and was being

undertaken in violation of planning, zoning, building and environmental requirements. On its part, Khaleej asserted that it had obtained the requisite approvals and complained of interference from Coldstone Investment Limited.

- 52.** The Commission stated that it undertook investigations into the complaint and made findings on, *inter alia*, the status and location of the sewer line, the lawfulness of the approvals issued, the regularity of the building approval process, the conduct of Nairobi City County officers, and the adequacy of enforcement measures undertaken in relation to the development.
- 53.** In particular, the Commission found that although the sewer line served a public utility function, it ran exclusively within Coldstone's property, and did not alter the ownership status of the land. It concluded that the presumed existence of a public wayleave could not lawfully justify the manner of construction undertaken by Khaleej Towers Limited.
- 54.** The Commission further found that the approvals granted in respect of the project, were marred by serious procedural irregularities, were non-transparent, and were issued in a context of weak regulatory enforcement, contrary to the applicable planning and building law framework.
- 55.** The Commission also found that there had been failures in the enforcement process, including failure to act effectively on enforcement notices and revocation measures, thereby

revealing serious lapses in regulatory compliance and broader systemic weaknesses in oversight within Nairobi City County.

- 56.** On the basis of those findings, the Commission concluded that the approvals issued by Nairobi City County were irregular and reflected administrative negligence, and that Coldstone Investment Limited had suffered material and structural loss arising from the unlawful failure by the relevant public officers to exercise due diligence and enforce the law.
- 57.** The Commission made specific findings against the Applicants herein concluding that they facilitated unlawful development through approval of non-compliant plans, failure to verify unresolved objections, premature ratification of applications, inconsistent handling of development approvals, and weak enforcement.
- 58.** It found that despite notices and revocations having been issued, the officers failed to follow up, report continuing violations, or ensure compliance, thereby allowing the impugned development to continue unlawfully. The Commission recommended *inter-alia* that action be taken against the Applicants herein.
- 59.** It is not disputed that this court is vested with judicial review jurisdiction where the subject matter falls within the constitutional and statutory province of this court. The court

also notes that the present proceedings are not founded solely on the traditional common law judicial review under **Order 53** of the **Civil Procedure Rules**, but are anchored on the **Constitution**.

- 60.** In *Dande & 3 Others vs Inspector General, National Police Service & 5 Others (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (16 June 2023) (Judgment)* the Supreme Court clarified that where judicial review proceedings are brought under the Constitution, courts are not confined to the narrow traditional common law approach, but may undertake a broader based inquiry depending on the pleadings and the nature of the grievance presented.
- 61.** The Supreme Court emphasized that where litigants frame their grievances as constitutional violations, the superior courts are entitled to interrogate not only procedural legality, but also whether the impugned action was lawful, reasonable, proportionate, and within the decision-maker's jurisdiction.
- 62.** The court has considered the impugned report and press statement alongside the nature of the reliefs sought in these proceedings and notes that the report went beyond merely identifying alleged breaches of public duty by the Applicants.
- 63.** The Commission made substantive findings on the legality of development approvals, the propriety of planning decisions,

the regulatory status of the impugned construction, the adequacy of enforcement action, and, significantly, the existence, location and legal effect of the alleged sewer wayleave over L.R. Nos. 36/VII/234 and 36/VII/235.

- 64.** In particular, the Commission determined that the sewer line ran exclusively within Coldstone's property, did not alter the ownership status of the land, and did not create a public wayleave or development buffer capable of justifying construction up to the boundary line or relaxation of statutory setbacks. Those substantive determinations formed the foundation upon which the Commission concluded that the approvals issued were irregular and that the Applicants had failed in their enforcement and regulatory duties.
- 65.** It therefore follows, and guided by the Supreme Court decision in **Dande & 3 Others (supra)**, that an inquiry into the lawfulness, reasonableness, proportionality and jurisdictional propriety of the impugned report and recommendations requires the court to examine both the findings made and the subject matter upon which they were founded.
- 66.** In the present case, that inquiry inevitably extends to questions of whether the existence of a sewer wayleave altered the ownership status of the land, created a development buffer, or lawfully justified construction up to

the boundary line, omission of prescribed setbacks, and installation of windows overlooking the adjoining property.

67. Further, the court must interrogate the regulatory propriety of the approvals granted in respect of the suit properties. These are all matters that fall squarely within the jurisdiction of this court under **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**.

68. In the premises, the court holds that it possesses the requisite jurisdiction to hear and determine the present judicial review proceedings.

69. Turning to the question whether the Applicants were required to issue a notice of intention to sue before instituting the present proceedings, the Respondent contends that the application is defective and incompetent for failure to comply with **Rule 5** of the **Fair Administrative Action Rules, 2024**.

70. **Rule 5(1)** of the **Fair Administrative Action Rules, 2024** provides that:

“Where the applicant seeks to compel the respondent by way of an order to take a particular administrative action or decision, the applicant shall, before filing the judicial review application, issue a notice of intention to sue.”

71. A plain reading of the provision reveals that the obligation to issue a notice of intention to sue arises only in circumstances where the applicant seeks to compel the respondent to take a specific administrative action or decision. Such relief is in the nature of mandamus.
72. Speaking to this, the court in **Republic vs Judicial Service Commission; Dari Limited & 2 Others (Interested Parties); Esho (Ex Parte Applicant) (Judicial Review E002 of 2025) [2025] KEHC 4761 (KLR) (11 April 2025) (Ruling)** observed that the requirement under Rule 5 is triggered only where judicial review proceedings seek to compel the performance of an administrative duty. In that case the court stated as follows:

“This limb of the Rules only comes into play where the judicial review application seeks to compel the respondent by way of an order to take a particular administrative action or decision, which is relief in the nature of mandamus. Where the application seeks other reliefs such as prohibition or certiorari, the absence of such notice cannot render the proceedings a nullity.”

73. In the present case, the Applicants do not seek to compel the Respondent to undertake any administrative action. Instead, they seek an order of certiorari to quash the findings and

recommendations contained in the Respondent's investigation report issued on **6th February 2026**.

74. The impugned administrative action has therefore already crystallized into a completed decision. The relief sought is the quashing of that decision, not the compulsion of any further administrative step.

75. In those circumstances, the court finds that the requirement to issue a notice of intention to sue under **Rule 5 of the Fair Administrative Action Rules, 2024** is not applicable to the present proceedings. The objection in this regard is unmerited.

76. In the end, the court finds no merit in the Notice of Preliminary Objection dated 16th February, 2026. The same is dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 30th day of April, 2026.

O. A. Angote
Judge

In the presence of;

Mr. Munguti for Beka for 1st - 6th Applicant's

Mr. Akama holding brief for Nyaosi for 2nd Interested Party

Ms Amutavi for Oketch for Respondent

Mr. Munguti for Anzala for 1st Interested Party
Court Assistant: Tracy

ORIGINAL